

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Honorable G. Thomas Cooper, Circuit Court Judge

TAURUS WATTS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000500

APPENDIX

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1 A Washington Heights is this whole area here to include
2 Briarcliff Drive.

3 Q And you can circle that -- just write Washington
4 Heights next to it.

5 A (Witness complies.) And I kind of made the circle a
6 little soon, but it actually includes this whole area right
7 here.

8 Q Okay. And what is the other neighborhood that you went
9 to looking for this Chevy Suburban?

10 A Basically, when we left the club we drove down
11 Hardscrabble -- yeah, we drove down Hardscrabble Road cross
12 Farrow Road. Once you cross Farrow Road, go down a little
13 bit E.L. Hunter is actually going to run off to the left of
14 Hardscrabble Road. And it is not, for some reason, this is
15 E.L. Hunter in this area, runs off to the left. You follow
16 E.L. Hunter down and it's going to turn into a road,
17 Ballington Road, Ballington Road actually will circle around
18 to the right. It becomes a dirt road. Circles back around
19 and comes back up on Hardscrabble Road. We drove into that
20 area. We also -- basically did this whole neighborhood here
21 off of Hardscrabble Road.

22 Q Okay. And tell the jury -- you can have a seat now.

23 A (Witness complies.)

24 Q -- when you searched those neighborhoods tell the jury
25 whether or not you were able to locate the tan Suburban?

1 A While we were in the neighborhood of Washington
2 Heights, we actually located two tan Suburbans in that
3 neighborhood on Briarcliff Drive.

4 Q Okay. And where were they located; what were their
5 addresses?

6 A The first vehicle was a tan Suburban. This vehicle was
7 backed into the yard at 425 Briarcliff Drive. At this point
8 in time I was unable to get a tag from that vehicle due to
9 it being backed into the -- actual grass of the house.

10 Q Well, why didn't you just go onto the property and look
11 at it?

12 A I had no legal right to be on that property at the
13 time.

14 Q Was it private?

15 A It was.

16 Q What would you have needed to go on that property at
17 that time?

18 A I would have needed a search warrant.

19 Q And did you have one at this time?

20 A I did not.

21 Q And so were there other cars parked in that area where
22 you could see from the public road?

23 A Yes, ma'am. To the right of the tan Suburban, which
24 was backed in -- the tan Suburban was backed in like this.

25 There was a red Pontiac Grand -- A Pontiac Grand Am that was

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1 pulled in front-ways. And I was able to get a tag number
2 off of that vehicle. I took the tag number from the Pontiac
3 in hopes to identify the residents of that location.

4 Q Okay. At this time you just wrote down the tag number
5 of the Pontiac?

6 A I did.

7 Q And what tag number was that?

8 A The tag was a South Carolina tag, 324-DRT. And
9 phonetically, Delta, Romeo, Tango.

10 Q Okay. Were you able to find -- you indicated you saw
11 two Suburbans, tan in color; is that correct?

12 A That is correct.

13 Q Where was the other one?

14 A The second vehicle that was located on Briarcliff Road.
15 This vehicle was located at 221 Briarcliff Drive. This
16 vehicle, this tan Suburban, however, had a U-Haul trailer
17 attached to it.

18 Q And by the way, what time of day are we talking about?

19 A 5:45, 6:00 o'clock, I believe -- well, actually it
20 would have been later than that. I didn't get on the scene
21 until 5:40, so probably 6:30.

22 Q All right. Prior to going to look for the tan
23 Suburban, were you made aware by Deputy Galinski that he had
24 stopped the Isuzu Rodeo?

25 A I cannot recall exactly when I became aware of the

1 white Rodeo. I do know that there were some issues made
2 because they had it pulled over for quite some time before
3 investigators were actually made aware of the white Rodeo.
4 It would have been shortly thereafter that I was made aware
5 of the stop on the white Rodeo.

6 Q And based on your information what did you do as far as
7 Mr. Jacobs?

8 A At that point, once I realized that they had a white
9 Rodeo that matched one of the descriptions that Mr. Jacobs
10 had given me, I went back to H&J club and asked Mr. Jacobs
11 to accompany me to the location where they had this vehicle
12 pulled over.

13 Q And what was the purpose in taking him there?

14 A In an event to identify the passenger who he had told
15 me had fired into the air.

16 Q And when you took him to the location did you have a
17 confrontation with one of the two passengers of that Isuzu
18 Rodeo?

19 A I did.

20 Q And tell the jury exactly what this entailed?

21 A Basically, when I first arrived on the scene when they
22 had the white Rodeo pulled over I had made contact with who
23 I now know to be Luther Landrum, who was the driver of the
24 vehicle. Based on the information that I had at that time,
25 I had drawn no conclusions to anything considering this

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1 investigation, basically we were only hours into this
2 investigation. Based on the information that Mr. Jacobs had
3 given to me, stating that the person who fired in the air
4 was a passenger --

5 MR. SWERLING: Your Honor. I have to object. This
6 isn't really getting to the heart of the issue. I mean,
7 he's being allowed again to testify again to what Mr. Jacobs
8 said and conclusions he drew. He can't do that.

9 MS. SHIPLEY: Your Honor, he's explaining his
10 investigation. That is part of his realm.

11 MR. SWERLING: The question was what happened
12 between him and Mr. Landrum and it's gone well beyond that.

13 MS. SHIPLEY: He's explaining his answer, Your
14 Honor.

15 MR. SWERLING: No. I mean, the issue is what
16 happened between him and Mr. Landrum.

17 THE COURT: Correct.

18 MS. SHIPLEY: Okay. I'll move on.

19 THE COURT: Answer that question and then we'll see
20 if it requires an explanation.

21 MR. MCRAE: Yes, Your Honor.

22 THE COURT: Okay.

23 BY MS. SHIPLEY:

24 Q And did you have a confrontation with Luther Landrum
25 when you first got to the stop where the Isuzu Rodeo was?

1 A I did.

2 Q Okay. And eventually were you able to -- describe the
3 process of identification that you had Ricky Jacobs do?

4 A I had each of the individuals taken out of the back of
5 the patrol cars that they were being detained in. They were
6 lead so that Mr. Jacobs could view them. We take great
7 caution to make sure that the suspects did not see Mr.
8 Jacobs.

9 Q Where was Mr. Jacobs seated?

10 A He was seated in the passenger seat of my -- I drive a
11 Ford F-150 pickup truck, and he was seated in my passenger
12 seat of that pickup truck.

13 Q And describe the windows on your pickup truck?

14 A They are -- in that pickup truck they are tinted, they
15 are tinted windows.

16 Q How far away was your vehicle parked from where you had
17 both subjects taken out for identification?

18 A At least 50 feet.

19 Q Okay.

20 A 20 -- yeah, 30 to 50 feet.

21 Q And did the witness indicate -- well, I'll just move
22 on. And you indicated they were identified as being the
23 passenger who did what?

24 A Shoot one time in the air.

25 Q After that, tell the jurors what you did -- is that

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1 when you go to look for the tan Suburban as well; you said
2 at 6:30 you looked for the tan Suburban?

3 A Yes.

4 Q Okay. And did you look in other neighborhoods besides
5 Washington Heights and the E.L. Hunter Roads, neighborhoods?

6 A We went in and around the neighborhoods where people
7 attend that club. I mean we did not make a thorough search
8 of the whole surrounding area, no.

9 Q But were you able to locate any other tan Suburbans?

10 A Those were the only two found.

11 Q Now, after you located this vehicle, the two different
12 tan Suburbans on Briarcliff, what did you do next?

13 A We returned -- once I returned after showing Mr.
14 Jacobs, we went back to H&J club and made sure everything
15 was being completed. To see if there was any thing else,
16 any other evidence we needed to look at. See if there was
17 anything maybe we needed to look at at the incident
18 location.

19 Q And tell the jury, did you go and search the front
20 parking lot of the H&J?

21 A I did.

22 Q And what, if anything, did you locate there?

23 A In the front of the H&J club there was some blood, just
24 right in front of the door, and I believe there was a ball
25 cap, a ball cap laying right there in front of -- just

1 outside the front door, the door to the club.

2 Q And so on State's 115, is that the broken piece of cell
3 phone that you were describing to the jury --

4 A Yes.

5 Q -- and the droplet's of blood?

6 A Yes.

7 Q Did you go to the back deck of the H&J club?

8 A I remember walking through the club once, and weather
9 or not I actually went onto the back deck, I cannot recall
10 for sure.

11 Q Did you also go to -- by the way, was there any
12 information in your possession at this time that shots were
13 even fired inside --

14 MS. JOHNS: Your Honor, I object. She's asking him
15 to testify to something --

16 BY MS. SHIPLEY:

17 Q Pursuant to your investigation were you made aware --

18 THE COURT: Thank you.

19 BY MS. SHIPLEY:

20 Q Pursuant to your investigation were you made aware of
21 any shots being fired within the club.

22 A Not to my knowledge.

23 MS. SHIPLEY: Your Honor, this is an investigation.

24 MR. SWERLING: But she's trying to try the case
25 through this witness. Now, that's got to come from the

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1 actual eye-witnesses in the case. Not what an investigation
2 surmises or concludes or what his investigation reveals.

3 MS. SHIPLEY: He has to be able to explain why he's
4 looking at it.

5 THE COURT: But I think it needs to come from him
6 as opposed to your questions. If you could ask him
7 something more open-ended as to what he did or how he
8 reacted.

9 BY MS. SHIPLEY:

10 Q Did you go to the car wash?

11 A I did.

12 Q And what did you observe there?

13 A I walked around the car wash next door, located to the
14 right of the club, as you're facing the club. I looked for
15 any additional evidence, any other possible crime scenes,
16 any other evidence or any other indication of any other
17 shooting or other type of assault within the confines of
18 that car wash.

19 Q Now, did you get a phone call from Ricky Jacobs later
20 on that morning?

21 A I did.

22 Q And what time was that?

23 A At approximately 9:15 that morning.

24 MS. SHIPLEY: Your Honor, now, based on 801
25 (d) (1) (a) or (d) (1) ©.

1 BY MS. SHIPLEY:

2 Q What information --

3 MR. SWERLING: Can you hold on so I can look at
4 this.

5 MS. SHIPLEY: Sure.

6 BY MS. SHIPLEY:

7 Q What information did Mr. Jacobs provide you as to the
8 last name of Taurus?

9 A He told me the individual that goes by Taurus, that the
10 last name was either Watts or Watson.

11 Q And as to the driver?

12 MR. SWERLING: I object. That hasn't even come up
13 yet. There is no basis for him to testify as to anything
14 Mr. Jacobs said concerning anyone else.

15 MS. SHIPLEY: Your Honor, Mr. Swerling can please
16 refer to Page 4 of 13 of the investigator's notes. At the
17 very bottom of the page.

18 MR. SWERLING: No. I'm talking about his
19 testimony. I know what is in the investigator's reports and
20 what people have said. They have testified from the witness
21 stand, but if Mr. Jacobs testified to something, that's one
22 thing, but we can't go into something that he didn't testify
23 to, or if he testified to something and there's no dispute
24 about it, and state's just trying to use it un 801 as a
25 prior consistent statement. The only thing that Mr. McRae

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1 should be able to do and Ms. Shipley should do for Mr. McRae
2 is say what his investigation is. And that I'm not
3 objecting to.

4 BY MS. SHIPLEY:

5 Q What did your investigation reveal as a result of
6 receiving a phone call from Rick Jacobs at 9:15 on June 30?

7 MR. SWERLING: That's hearsay.

8 THE COURT: You all approach.

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

11 THE COURT: All right. Overruled.

12 BY MS. SHIPLEY:

13 Q And what was the name of the other person that he
14 provided to you at that time?

15 A He told me that he did not know the last name of the
16 driver, but he did give me the first name of Tremaine.

17 Q Based on now having the full name of the passenger,
18 tell the jury what you did next?

19 A I looked in several databases available the Richland
20 County Sheriff's Department for a Taurus Watts.

21 Q And were you able to locate one?

22 A I did.

23 Q And what address was that listed for this Taurus Watts?

24 A He listed an address as 133 Ida Lane.

25 Q And can you please look at State's No. 162, and see if

1 you see that Ida Lane on there?

2 A Ida Lane is right here. Ida Lane is actually -- Ida
3 Lane comes off of Hardscrabble here and actually circles
4 around and it does connect back to Hardscrabble down here
5 somewhere.

6 Q Okay, and if you can just circle the name of the road
7 so we won't forget where that is?

8 MR. MCRAE: May I step down, Your Honor?

9 THE COURT: Yes, you may.

10 A It was right here.

11 BY MS. SHIPLEY:

12 Q All right, and based on finding a photograph in your
13 database tell the jury what you did next?

14 MS. JOHNS: Your Honor. He didn't testify to any
15 kind of photograph in the database.

16 MS. SHIPLEY: He just did.

17 MS. JOHNS: No. He said he found my client's name
18 in a database that he has access to. He didn't say anything
19 about a photograph.

20 MS. SHIPLEY: May we approach?

21 THE COURT: Yes, you may.

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

24 THE COURT: All right. Overruled.

25 BY MS. SHIPLEY:

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1 Q When you found the name Taurus Watts in the database
2 were you able to locate a photograph?

3 A I did.

4 Q And when you get a photograph of a suspect and you want
5 to present it to a witness what procedures do you follow in
6 doing so.

7 A We obtained the photo from one of the data bases
8 available to us. We also -- well, before we show it to any
9 witnesses we will also include at a minimum five additional
10 photos of similar hair style, similar skin color, skin tone.
11 And based -- we don't look for pictures that look identical,
12 but we look for pictures that are similar.

13 Q And were you able to then research the name Tremaine in
14 your database?

15 A I did.

16 Q And were you able to find an address for -- and a last
17 name for that individual?

18 A When I entered Tremaine in the database, Tremaine Wray
19 --

20 MR. SWERLING: Your Honor, I think he needs to
21 explain to the jury that database is driver's licenses. I
22 think it definitely needs to be explained.

23 MS. SHIPLEY: Yes, ma'am. There's different kinds
24 of databases.

25 THE COURT: Okay.

1 BY MS. SHIPLEY:

2 Q And in your driver's license database were you able to
3 find a name belonging or a last name for Tremaine?

4 A I did.

5 Q And what address was listed for him?

6 A 425 Briarcliff Drive.

7 Q And did that address ring a bell to you?

8 A It did. It was the same address where we found the tam
9 in color Suburban backed in and the red in color Pontiac in
10 the driveway. The Pontiac had the tag of 324-Delta, Romeo,
11 Juliette. (sic).

12 Q And did you run that tag as a results?

13 A I did. That tag returned to one Nellie Walker Wray of
14 425 Briarcliff Drive.

15 Q And were you -- did you get a picture of Mr. Wray?

16 A I did.

17 Q And did you also develop a photographic lineup for him?

18 A I did.

19 Q Now, Did you eventually, on June -- or July 1, go to
20 the Outback Steakhouse on Two Notch Road? I'm sorry, the
21 afternoon of June 30, 2007?

22 A (No response.)

23 Q If I may just direct you to your notes. July 1, 2007,
24 did you get any information as to where Mr. Wray worked?

25 A I did. I was informed that Mr. Wray works at the

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1 Outback Steakhouse on Two Notch Road.

2 Q And did you go to the Outback Steakhouse?

3 A I did.

4 Q By this time on July 1, 2007, had you obtained a
5 written statement from Ricky Jacobs?

6 A Not at the time.

7 Q On July 1, 2007?

8 A We -- I received the statement from Mr. Jacobs at
9 approximately 1:15 in the afternoon on July 1.

10 Q And when you got this written statement from him did
11 you show him the photographic lineups of Mr. Wray and Mr.
12 Watts?

13 A I did.

14 Q And was he able to identify each one?

15 MR. SWERLING: That issue is not in dispute. I
16 don't know why we're going over it.

17 MS. SHIPLEY: Your Honor, he's explaining the
18 course of his investigation.

19 MR. SWERLING: Mr. Jacobs identified them. He
20 testified he identified them. I mean, there's no dispute
21 about that. I don't understand -- you can't try the case
22 through Mr. McRae.

23 THE COURT: I'll give you a little leeway. Go
24 ahead.

25 MS. SHIPLEY: Thank you, Your Honor.

1 BY MS. SHIPLEY:

2 Q What did you do as a result of -- when was it that you
3 obtained arrest warrants for Taurus Watts and Tremaine Wray?

4 A The arrest warrants were obtained later that afternoon
5 on July 1.

6 Q And did you also have the witness, Ricky Jacobs,
7 identify the type of weapon he saw?

8 A I did.

9 Q Now at 4:30 in the afternoon, tell this jury where you
10 went?

11 A We went back to the Outback Steakhouse.

12 Q What did you do when you got there?

13 A We found a tan in color Suburban parked behind the
14 Outback Steakhouse. Myself, several of the other
15 investigators, several uniformed officers with the Richland
16 County Sheriff's Department made entry -- we went into the
17 Outback Steakhouse and we arrested Mr. Wray.

18 Q And was that without incident?

19 A Without incident.

20 Q And what did you do as far as his vehicle was
21 concerned?

22 A The vehicle was taken to the Richland County Sheriff's
23 Department headquarters and placed into our secure garage.

24 Q And did you obtain a search warrant to search that
25 vehicle?

1 A I did.

2 Q And on July 2, 2007, tell the jury -- first of all, had
3 you been briefed by David Collins the ballistics expert
4 along the way during your investigation?

5 A Yes.

6 Q Okay. And you were made aware of his findings during
7 your investigation?

8 A Yes.

9 Q And on July 2, 2007, tell the jury whether or not you
10 met with any further witnesses on that date?

11 A Are you -- I briefed other investigators that morning.

12 Q Okay. And were you also briefed on July 2, by David
13 Collins?

14 A I was.

15 Q Okay.

16 A David Collins attended the briefing.

17 Q And explain to the jury why it's important for you as a
18 lead investigator in a homicide investigation to brief other
19 members of your team?

20 A Basically, I -- I do is I brief other supervisors, I
21 brief other primary investigators, primary homicide
22 investigators, also, within the -- I brief the case with the
23 facts that we have to date. In that briefing suggestions
24 are made. The importance is to let everybody know where we
25 are within the investigation. Also, I'm not a ballistics

1 expert, I'm not a crime scene expert. I don't process that
2 information, but those people who are the experts in those
3 fields brief me on their findings.

4 Q Okay. And I'm going to bring your attention to July 2,
5 2007. Tell the jury what happened that evening.

6 A At approximately 7:40 p.m., I am called by the Richland
7 County desk sergeant and am told that Taurus Watts is in the
8 lobby at Richland County headquarters.

9 Q And he had turned himself in?

10 A To turn himself in... Yes.

11 Q And at that point he is arrested; correct?

12 A Correct. The warrant is served on him.

13 Q And where -- was Investigator Gilbert Gallegos also
14 notified of this?

15 A Once I was notified by the desk sergeant of Mr. Watts'
16 presence at Richland County headquarters and asked him to
17 return to Richland County headquarters.

18 Q All right. Just because the suspects are arrested does
19 your investigation just stop right there?

20 A No.

21 Q Tell the jury what other follow up investigation you
22 did in this case?

23 A We continued to investigate the -- or attempted to
24 investigate the witness accounts of what occurred in the --
25 inside the club that night. We continued on July 5, we had

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1 another briefing in the morning. After that briefing
2 Investigator Gallegos and myself departed for St. Matthews
3 in an attempt to locate James Lamont Goodwine. Mr. Goodwine
4 was one of the witnesses inside the club that had not given
5 a statement.

6 Q And were you able to make contact with him?

7 A We were able to make contact with family members but we
8 were not able to make direct contact with Mr. Goodwine.

9 Q Okay. And did you happen to meet with another witness
10 that same day?

11 A We -- at about 5:15 that evening we held another
12 interview with Verda Roberts.

13 Q And with Verda Roberts, and at that point did she give
14 a written statement to you?

15 A She did.

16 Q And I'm going to bring your attention to July 6, 2007.
17 Tell the jury who you asked to return to headquarters to
18 meet with you?

19 A We asked -- based on the interview that we had with Ms.
20 Roberts, Ms. Verda Roberts, we asked Jalicca or Lisa Johnson
21 to return.

22 Q And did she?

23 A She did.

24 Q And please describe for this jury her demeanor?

25 A Based on --

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1 MR. SWERLING: Relevance.

2 MS. SHIPLEY: Your Honor, the witness testified in
3 this case -- may we approach?

4 THE COURT: Yes.

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

7 THE COURT: I'll allow the objection -- overrule on
8 that and then the question you just asked.

9 BY MS. SHIPLEY:

10 Q And did you then request cell phone records for
11 Tremaine Wray?

12 A I did.

13 Q Okay. I'm going to bring your attention to the date of
14 May 18, 2009.

15 A Give me just a moment to pull that up.

16 Q Sure.

17 A May 18, 2009?

18 Q Yes, sir.

19 A Okay.

20 Q Up to this point who are the only people charged with
21 the murder of Demuria Johnson?

22 A The only people who were charged by the Richland County
23 Sheriff's Department in this case were Tremaine Wray and
24 Taurus Watts.

25 Q Tell this jury when you became aware of the name of an

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1 individual by the name of Brian Watson?

2 A On May 18, I was notified by Capt. Stan Smith, who is
3 my supervisor, that a Mr. Brian Leroy Watson may have some
4 information on this case.

5 Q And did you then make arrangements to meet with Mr.
6 Watson?

7 A Mr. Watson -- Capt. Smith had tasked Sgt. Faust to pick
8 up Mr. Watson --

9 MR. SWERLING: The question was did you make
10 arrangements to meet with Mr. Watson.

11 A No, ma'am.

12 BY MS. SHIPLEY:

13 Q Did you meet with Mr. Watson?

14 A Yes, ma'am.

15 Q When did you meet with Mr. Watson?

16 A I met with him on the evening of May 18.

17 Q Who was present with him?

18 A His attorney.

19 Q And did you then take -- get information from Mr.
20 Watson at that time?

21 A I did.

22 Q And was this all orally at the time?

23 A Initially, yes.

24 Q Okay. As a result of your conversation of Mr. Watson,
25 where did he take you?

1 A He took me to two separate locations.

2 Q Okay, and tell the jury where those locations are?

3 A The first location was to a bridge located on Langford
4 Road within Richland County. The second location were two
5 other bridges on Cherokee Road and the location of these two
6 bridges were actually in Kershaw County, just over the
7 county line.

8 Q And I'm going to show you State's 41 through 43, 44,
9 46, and 45, and ask you if you recognize those?

10 MS. SHIPLEY: Those are 146, Your Honor.

11 (The correct numbers are State's 141, 143, 144, 145, and
12 146.)

13 BY MS. SHIPLEY:

14 Q And ask if you recognize those?

15 A State's 145 is a picture of the bridge located on
16 Langford Road, along with State's 146, is also the location
17 on Langford Road. No. 144, is also Langford Road.

18 Q Okay, and I'm going -- is that the first bridge that
19 Mr. Watson lead you to?

20 A It is.

21 Q And State's 142, 147; I'm going to show you that.

22 A Nos. 142 and 147 depicts the two bridges located on
23 Cherokee Road.

24 Q And which bridge was the one that he led you to of
25 those two?

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1 A Of those two he led up to the bridge at No. 142.

2 Q Okay. What, if anything, is near that bridge that
3 makes it different from the other bridge; are there any
4 structures near by?

5 A No. When he took us to the first bridge on Langford
6 Road, after he showed us that bridge he became a little
7 unsure of himself, then he recalled that the bridge, the
8 second bridge was located near his grandmother's church. It
9 was actually recently hit by a tornado.

10 Q Okay. I'm going to show you State's No. 141, and ask
11 you if you recognize this?

12 A I do.

13 Q And what does it depict?

14 A It depicts Cherokee Road and the location of the -- the
15 second location of the two bridges on Cherokee Road.

16 Q And do you see those on this exhibit?

17 A I do.

18 Q Describe the quality?

19 A It's very dark photo. I can show you -- I can show the
20 jury the general -- and the important items on this picture
21 that are related to this case.

22 Q Okay.

23 MS. SHIPLEY: Your Honor, at this time state seeks
24 to introduce 141 into evidence.

25 MR. SWERLING: No objection.

1 MS. JOHNS: Without objection.

2 THE COURT: Okay. Admitted.

3 (State's Exhibit No. 141, photo of
4 bridge, was marked and entered.)

5 BY MS. SHIPLEY:

6 Q Using your pointer, can you please show the jurors
7 where on this exhibit --

8 MR. MCRAE: Your Honor, may I step down?

9 MS. SHIPLEY: Your Honor, may he step down?

10 THE COURT: Yes, you may.

11 BY MS. SHIPLEY:

12 Q Show the jury the first bridge that he takes you to on
13 Cherokee Road.

14 A The first bridge is going to be located in this general
15 area. You can see somewhat here, the water. The second
16 location on the second bridge is going to be here.

17 Q Okay, so he takes you to the first bridge, is that
18 correct?

19 A That's correct.

20 Q Closest to the church?

21 A Closest to the church. The church is actually right
22 here. There's actually a large spillway here, and then the
23 first bridge is right here.

24 Q All right. And at that point describe the lighting
25 conditions -- you may have a seat.

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1 A (Witness complies.) Thank you.

2 Q Describe the lighting conditions for this jury?

3 A Again, when the information was given to us it was late
4 in the afternoon. And by the time that we actually got Mr.
5 Watson, spoke to him first and got out to the locations, it
6 began to get dark quickly.

7 Q Did you contact the dive team?

8 A I did.

9 Q And did they respond?

10 A They did.

11 Q And were they able to continue their search that night?

12 A They started, briefly, and then for safety of offices
13 and to be able to do a good search they needed to stop for
14 the evening and pick it up the next morning once it got
15 light.

16 Q And what did you do to secure the location?

17 A The first location --

18 Q That would be the first location on Langford Road?

19 A The first location on Langford Road was secured, a
20 guard was placed on it. On the second location it was also
21 secured and checked throughout the evening by region road
22 deputies.

23 Q Now, after you had to call off the search because it
24 got dark tell the jury where you went next with Brian
25 Watson?

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1 A Once we left the location at the bridges we returned to
2 Richland County headquarters to take a written statement
3 from Mr. Watson.

4 Q And what time was that statement given, the written
5 statement?

6 A Approximately, 9:10 p.m.

7 Q Okay. Based on your information provided to you by
8 Brian Watson who did you go interview next?

9 A Based on the information that Mr. Watson had given us I
10 asked Investigator Gallegos to call Rashonda Simpson and
11 tell her that we needed to meet with her. Initially, she
12 wanted to do it the next morning. However, being the
13 importance of the information that we received, myself and
14 Investigator Gallegos went to her house.

15 Q And did you make contact with her at her house?

16 A We did.

17 Q And describe for the jury what, if anything, you told
18 her you were there?

19 A Myself and Investigator Gallegos walked -- again they
20 were quite curious to know why we needed to speak to them,
21 because at this point --

22 MR. SWERLING: Your Honor --

23 THE COURT: Sir, just answer the question.

24 MR. MCRAE: I'm sorry, Your Honor.

25 THE COURT: Thank you.

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1 A Could you ask me again?

2 BY MS. SHIPLEY:

3 Q Sure. What did you tell her why you were there?

4 A I told her we were there because we had information
5 that she had knowledge of where the murder weapon was and
6 how it was disposed of in this case.

7 Q And did you provide her with any names of individuals

8 --

9 MR. SWERLING: Objection, Your Honor.

10 Can we approach.

11 THE COURT: Sure.

12 MS. SHIPLEY: Your Honor, it's not him, it's not
13 hearsay, he said --

14 THE COURT: Hold on, hold on.

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

17 THE COURT: We will be concluding very momentarily.
18 I'm aware of the jury note earlier.

19 BY MS. SHIPLEY:

20 Q What name did you provide Rashonda Simpson?

21 A Tremaine Wray.

22 Q Describe to this jury her reaction when you told her
23 that name?

24 A She became very up --

25 MR. SWERLING: Describe her to me.

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1 MR. MCRAE: I'm trying, Your Honor.

2 THE COURT: Right.

3 MR. MCRAE: I am.

4 THE COURT: Not anything she said. Describe her.

5 Go ahead.

6 MR. MCRAE: Okay.

7 A She became extremely nervous and immediately her mother
8 asked for an attorney to be present for any other questions.

9 MR. SWERLING: Objection. That's what happens
10 here. Her mother has nothing to do with it. It's hearsay,
11 and that's the danger you get into when you start doing
12 these other kinds of things.

13 THE COURT: Okay.

14 MR. SWERLING: The question was what was her
15 reaction.

16 THE COURT: Okay. The jurors are to exclude the
17 last remark.

18 MS. SHIPLEY: Your Honor, this is probably good to
19 take a break at this point.

20 THE COURT: All right. We'll take a break for the
21 evening. You are reminded not to discuss the case, and you
22 all are to report back here to your jury room at 9:30.

23 (Jury out at 5:30 p.m.)

24 THE COURT: Okay. Just as to the witness, just
25 make sure that you have so much information about the case.

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1 You've lived with it a couple of years.

2 MR. MCRAE: Yes, ma'am.

3 THE COURT: Just make sure when Mr. Shipley is
4 asking you questions you listen very carefully to the
5 question she's asking and don't answer anything beyond that.

6 MR. MCRAE: Yes, ma'am.

7 THE COURT: Ms. Shipley is smart enough to know
8 that if she needs some more information from you, based on
9 what's she's aware of in the investigation, I feel very
10 confident she will pull it out of you.

11 MR. MCRAE: Yes, ma'am.

12 THE COURT: Okay.

13 MS. SHIPLEY: Thank Your Honor.

14 THE COURT: Anything else at this time?

15 MS. SHIPLEY: No, Your Honor.

16 MR. SWERLING: I guess, the only -- we don't need
17 to be on the record.

18 THE COURT: No. Sir, you can step down. You are
19 still under oath and reminded not to discuss your testimony
20 with anybody.

21 MR. SWERLING: Judge, I was just talking to Ms.
22 Johns about if there was anything we need to bring to your
23 attention. And I don't think so.

24 THE COURT: Okay. And I'll be here early in the
25 morning and just let me know, about 9:15 in case y'all have

1 anything.

2 Mr. Swerling indicated a commitment tomorrow at 12:45;
3 so we'll try to break by 12:20, just for planing purposes,
4 and then resume back by 2:00.

5 MS. SHIPLEY: And just to give the Court some
6 guidance as far as our scheduling.

7 THE COURT: Sure.

8 MS. SHIPLEY: We're going to wrap up McRae. I
9 imagine he will be a lengthy cross-examination. But then
10 our last witness would be Investigator Gallegos and then the
11 state plans on resting at that time.

12 THE COURT: Okay. That's fine.

13 (Court at recess for evening at 5:40 p.m.)
14
15
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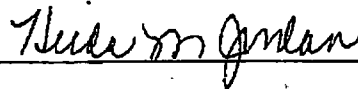
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CERTIFICATE

I, THE UNDERSIGNED HILDA M. JORDAN, CVR, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN COURT OF GENERAL SESSIONS FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 12TH DAY OF OCTOBER 2009.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



HILDA M. JORDAN, CVR

COLUMBIA, SOUTH CAROLINA

MAY 23, 2010

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

STATE OF SOUTH CAROLINA)

PLAINTIFF,)

VS.)

TREMAINE WRAY AND TAURUS WATTS,)

DEFENDANT.)

07-GS-40-5913

07-GS-40-5914

VOLUME 7

OCTOBER 13, 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:
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JOANNA MCDUFFIE, ESQUIRE

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JACK SWERLING, ESQUIRE
ARIE BAX, ESQUIRE

ATTORNEY FOR DEFENDANT WATTS
THERESA JOHNS, ESQUIRE

HILDA M. JORDAN, CVR
CIRCUIT COURT REPORTER

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E-X-I-B-I-T-S

ID ENTERED

State's Exhibit No. 163

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1 THE COURT: Anything you all need to go over before
2 we start?

3 MS. SHIPLEY: Yes, ma'am.

4 THE COURT: Okay.

5 MS. SHIPLEY: We talked in court yesterday about
6 what an investigator is allowed to testify to during his
7 direct examination concerning hearsay statements, concerning
8 hearsay statements, and I've handed up to the Court several
9 cases and to counsel.

10 First, Your Honor, State verses Thompson. On Page 5 of
11 the opinion. A bystander told an officer where the person
12 driving a particular vehicle seen leaving the scene of a
13 crime lived. That person remained unidentified as a
14 bystander. That officer in that case was permitted to
15 explain that that witness told him where the house was and
16 the Court held that evidence is not hearsay unless it's an
17 out of court statement offered to prove the truth of the
18 matter asserted. And out of court statement is not hearsay
19 if it is offered for the limited purpose of explaining why a
20 government investigation was undertaken. Here the
21 statements were not entered into for the truth -- but rather
22 why officers began their surveillance in that case. The
23 statements were not hearsay therefore the trial judge
24 committed no error in allowing those statements into
25 evidence.

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1 THE COURT: Let me just say this. I think we're
2 all in agreement. I think the distinction that was being
3 made is that how you potentially posed the question. It
4 needs to be more open ended about what was relayed to you
5 and then that's the information he's acting on. It's not
6 hearsay because he is using it for his purpose of his
7 investigation to do something about it. I think if you're
8 relaying it in such a way -- well, you heard him testify
9 here at trial and said this, but now, what did he tell you.
10 You know what I'm saying.

11 MS. SHIPLEY: Yes, ma'am.

12 THE COURT: The distinctions. I think it's the
13 method and manner in which you're trying to -- for purposes
14 of your investigation what was relayed to you and then what
15 did you do next.

16 MS. SHIPLEY: Okay.

17 THE COURT: What was your next step and what did
18 you do next. Because the set up makes it sound like you're
19 going particularly after certain statements made as opposed
20 to let him tell what he was told in his investigation and
21 how he acted on it.

22 MS. SHIPLEY: Okay.

23 THE COURT: So I don't disagree with that concept,
24 but I think that where defense was going is it makes it
25 sound like you're trying to impeach a witness through this

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6

1 officer when really you're just trying to get this officer
2 to act on his investigation for purposes of what he saw.

3 MS. SHIPLEY: Okay. Thank Your Honor.

4 THE COURT: Defense?

5 MR. SWERLING: I don't have a response, Your Honor.
6 I'm in general agreement with you. I think it is a way --
7 question posed and what is being -- what is being posed, I
8 mean, I think that there are situation where you can use
9 this to try and show a prior consistent statement, which is
10 one of the things I was objecting to yesterday.

11 THE COURT: Right.

12 MR. SWERLING: Well --

13 THE COURT: And I agree in that respect, but again
14 it's the way and manner in which, because the questions, as
15 I recall, the questions in particular was saying did Ricky
16 Jacobs say this when he testified, but then what did he tell
17 you.

18 MS. SHIPLEY: Okay.

19 THE COURT: And you can't make that distinction for
20 the jurors. You just need to ask him what was relayed to
21 him when he got on the scene, how he acted on that
22 information, what were his next steps.

23 MS. SHIPLEY: Okay. Thank you, Your Honor.

24 THE COURT: So that way you're not going and
25 purposefully looked at as trying to impeach Mr. Jacobs

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1 through this witness, because that's not this witnesses
2 purpose. And I believe that that rule on prior statements
3 by a witness opines essentially that the witness and the
4 declarant were the same person. So the prior
5 inconsistencies or prior statement will be as to what this
6 witness said.

7 MS. SHIPLEY: Okay. Thank Your Honor.

8 THE COURT: Okay. So we're all on the same page.

9 MS. SHIPLEY: Yes, ma'am.

10 THE COURT: Oh, Mr. Bax, you are excused from
11 federal court.

12 MR. BAX: Thank you.

13 THE COURT: All right. And then just quickly I'm
14 going to hand you all the proposed jury charges. So you can
15 just have them and look them over at an appropriate time.

16 MS. SHIPLEY: Your Honor, are you planning on
17 charging eye-witness testimony.

18 THE COURT: Yeah, can did have -- it's not in here.

19 MS. SHIPLEY: And I just wanted to --

20 THE COURT: I haven't looked at them all that
21 thoroughly just yet, but we will.

22 MS. SHIPLEY: Because of the eye witness testimony
23 charge that I plan on going back into the photographic line
24 up for the purpose of did you suggest in any way.

25 THE COURT: Okay.

1 MS. SHIPLEY: Did the witness hesitate in any way.

2 THE COURT: Okay. We have eye-witness
3 identification.

4 MS. SHIPLEY: Okay. Thank you.

5 THE COURT: And, of course, we will work at those
6 later. That will just give you some general parameters, and
7 it includes language, Mr. Swerling, that you put in, which
8 we already had, but we separated mere presence and hand of
9 one is hand of all. So the language is in there. Okay.

10 Juror, please.

11 And we do have a note from the jury, again, about the
12 5:30 day care situation.

13 (Court's Exhibit No. 6, note from
14 jury, was marked and entered.)
15 (Jury in at 9:39 a.m.)

16 THE BAILIFF: The jury's all present, Your Honor.

17 THE COURT: Thank you ladies and gentleman of the
18 jury, and I did receive the note about excusing the jury by
19 5:30. That should not be a problem.

20 Okay, we're ready to proceed and continue with the
21 direct examination of Investigator McRae.

22 Ms. Shipley.

23 MS. SHIPLEY: Thank you, Your Honor.

24 DON MCRAE - CONTINUED DIRECT EXAMINATION

25 BY MS. SHIPLEY:

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9

1 Q Investigator McRae, yesterday I asked you some
2 questions about the photographic line-ups that you prepared
3 in this case?

4 A Yes, ma'am.

5 Q I just handed you State's No. 5 and No. 6 for
6 identification purposes. Do you recognize those documents?

7 A I do.

8 Q And you were explaining how it is why you pick similar
9 photographs; can you explain that to the jury?

10 A I pick similar photographs because of the fact that we
11 want the -- we want the pictures to be not necessarily
12 identical, but similar in nature therefore we don't lead
13 reference to one particular photograph.

14 Q And in this case who did you present those photos?

15 A To Ricky Jacobs.

16 Q And did you observe him review those photos?

17 A I did.

18 Q Tell this jury did you suggest in any manner which
19 photo to pick out?

20 A In no way did I do that. No, ma'am.

21 Q And tell the jury whether or not in your observations
22 of his choice?

23 A Mr. Jacobs immediately picked, in State's No. 5, Mr.
24 Jacobs immediately picked No. 4.

25 Q And who is No. 4?

1 A No. 4 is Tremaine Wray. And in State's Exhibit No. 6,
2 Mr. Jacobs immediately picked picture No. 6.

3 Q And who is picture No. 6 of?

4 A Taurus Watts.

5 Q Thank you. Now, after you got the statement from Ricky
6 Jacobs and the identification, what was your next course of
7 action in your investigation?

8 A (No response.)

9 Q And by the way, what are you referring to?

10 A I'm referring to my own personal case notes.

11 Q Okay.

12 A Of the case, as I investigated it. Once I completed
13 the statement from Mr. Jacobs I then obtained an arrest
14 warrant for both Mr. Wray and Mr. Watts, and obtained a
15 search warrant on the tan in color Suburban.

16 Q And when you -- had you obtained a tag number for that
17 tan in color Suburban?

18 A Yes, ma'am.

19 Q And explain to the jurors how you found that tag number
20 or where you observed the tag number?

21 A Based on the information that I had received of Mr.
22 Wray working at the Outback Steakhouse, we went to the
23 Outback Steakhouse. We also -- and let me back up just a
24 moment on that.

25 Q Well, just let me to ask you to answer the question.

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11

1 Did you observe the tan in color Suburban at the Outback
2 Steakhouse?

3 A I did.

4 Q And were you able to see the license tag?

5 A Yes, ma'am.

6 Q Did you write the license tag down?

7 A I did.

8 Q And as a result of writing down the tag, did you run
9 the tag?

10 A Yes.

11 Q And who was the car registered to?

12 A The tag -- the vehicle was registered to a Nellie
13 Walker Wray.

14 Q And what was that address?

15 A 425 Briarcliff Drive.

16 Q And, again, were you familiar with that address?

17 A I was.

18 Q And how were you familiar with it?

19 A That was the same address that myself and Investigator
20 Gallegos had observed the tan in color Suburban back into
21 that residence at 425 Briarcliff.

22 Q And I'm going to hand you State's No. 53, and ask you
23 to look at that, please?

24 A Yes, ma'am.

25 Q Do you see a tan in color Suburban in that photograph?

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12

1 A There is a tan in color SUV, whether it's a Suburban or
2 not I'm not that familiar to actually be able to testify
3 that that is a GMC Suburban.

4 Q Is that the vehicle that you observed back into 425
5 Briarcliff?

6 A Again, I can't testify to that either. I can't even
7 tell if that is an actual tan in color Suburban or not.

8 Q Did you, in interviewing Ricky Jacobs, ever ask him and
9 don't go into any responses, but did you ever ask him about
10 any events that happened inside the club?

11 A No, ma'am.

12 Q And the arrests warrants that you obtained for Mr.
13 Watts and Mr. Wray; what was the charge?

14 A Murder.

15 Q And as an investigator how did you make that
16 determination?

17 A As --

18 MR. SWERLING: Objection. About him concluding
19 about how he made that conclusion about the charges,
20 objection.

21 THE COURT: Y'all approach.

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

24 THE COURT: Objection sustained.

25 BY MS. SHIPLEY:

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13

1 Q Did you charge Earl Greene or Luther Landrum with
2 anything involving this case.

3 A Involving this particular case, no, ma'am.

4 Q And why not?

5 A I did not have sufficient probable cause to charge them
6 with anything in this case.

7 Q And based on what information that you had in your
8 possession as part of the investigation?

9 A Based on the information from the statements that I had
10 taken.

11 Q Now, you indicated earlier you obtained a search
12 warrant for the Chevy Suburban; correct?

13 A That is correct.

14 Q Did -- as part of being the lead investigator in the
15 case, do you brief the crime scene investigators as to what
16 evidence you're looking for?

17 A I do.

18 Q And did you brief Anna Elsey in this case or Anna
19 Clemmons?

20 A Yes, ma'am.

21 Q And what did you brief her?

22 A I briefed her based on what we had learned throughout
23 the investigation, exactly what we were going to be looking
24 for inside that tan Suburban.

25 Q And what was that?

1 A Would have been any forensic evidence to include;
2 blood, fiber, GSR. Any forensic evidence that may be used
3 to help in this case. I believe that was pretty much what
4 was on the face of that search warrant was forensic
5 evidence.

6 Q Okay. Now, we left off yesterday about your being over
7 at Rashonda Simpson's resident; correct?

8 A Yes, ma'am.

9 Q After you explained to Ms. Simpson what you were doing
10 there, where did you go next?

11 A We, myself and Investigator Gallegos and Rashonda
12 Simpson went to an attorney's residence here in Columbia.

13 Q And who was that attorney?

14 A Nathaniel Roberson.

15 Q And when you got to Mr. Roberson's house, tell the jury
16 what you did?

17 A When we arrived at Mr. Roberson's house, myself and
18 Investigator Gallegos were asked to have a seat in the
19 dining area, which Investigator Gallegos and I did. And
20 Rashonda Simpson and some of her other family members went
21 into a back room to speak to Mr. Roberson.

22 Q And at any point were you able to obtain a written
23 statement from Ms. Simpson?

24 A Myself and Investigator Gallegos did.

25 Q Okay. After you obtained a written statement from Ms.

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15

1 Simpson, what did you guys do next?

2 A Based on the information that -- I need to go to my
3 notes on that part. Once we completed the statement, myself
4 and Investigator Gallegos returned to Richland County
5 headquarters to review the statements that we had taken
6 concerning this part of this case to date.

7 Q Okay. Can you tell the jury what efforts you undertook
8 to locate any other witnesses related to the information
9 provided by Mr. Watson?

10 A We attempted to locate Jarrell Dansby because he was --
11 his name would also come up as having information in this
12 part of this investigation.

13 Q And were you able to locate Mr. Dansby.

14 A No.

15 Q Explain to the jury what you decided to do as a result?

16 A At that point, based on the statements that we had
17 taken, I obtained a warrant for Jarrell Dansby's arrest for
18 accessory after the fact.

19 Q After the fact of what?

20 A Murder.

21 Q And were you able to serve that on him at any time?

22 A The actual serving of the warrant never took place.

23 Q And why is that?

24 A I --

25 Q Did you receive contact from someone on his behalf?

1 A We did. Well, we had received word through Mr.
2 Dansby's attorney that he would be willing to come in and
3 give a statement.

4 Q And as a result of his willingness to come forward,
5 what was done with the warrant?

6 A Based on his willingness to come in that warrant was
7 never served on Mr. Dansby.

8 Q Now, after you obtained -- did you get a written
9 statement from Mr. Dansby?

10 A We did.

11 Q And what date was that, by the way, that you received a
12 written statement from Mr. Dansby?

13 A It would have been May 20, 2009.

14 Q Okay. And I'm going to bring you back now to the early
15 morning hours of May 19, 2009, did you observe and supervise
16 the dive team in the creek at the bridge on Cherokee?

17 A I was there for moments. In and out, back and forth.

18 Q And as a lead investigator in this case were you
19 notified of their results in searching for the weapon?

20 A I was.

21 Q And what was the result?

22 A They -- the result of the dive was negative. There was
23 no gun found.

24 Q I'm going to ask you, list some names for you and ask
25 you if you ever interviewed or if any of these people came

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17

1 to you with information regarding this case? Ronald Wray?

2 A No.

3 Q Darius White?

4 A No.

5 Q Brian Morris?

6 A No.

7 Q Uraine (sp) Wilson?

8 A No.

9 Q Darian Gordon?

10 A No.

11 Q Marion Jacobs?

12 A No.

13 Q Maurice Cunningham?

14 A No.

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

16 Your Honor, that is all I have.

17 THE COURT: Okay.

18 MR. SWERLING: Can we approach for a minute?

19 THE COURT: Certainly.

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

22 THE COURT: Ladies and gentlemen of the jury, I'm
23 going to send you to your jury to for a short break while we
24 have something set up here. I'll remind you not to discuss
25 the case.

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18

1 (Jury out at 9:55 a.m.)

2 THE COURT: Mr. McRae, you're still under oath,
3 but you may step down a moment.

4 MR. MCRAE: Yes, ma'am.

5 (Pause.)

6 MR. SWERLING: Your Honor, this may take a couple
7 of minutes.

8 THE COURT: You're fine. Be at ease.

9 (Court in recess for short break.)

10 (Court in session after short break.)

11 MR. SWERLING: All right. I'm ready.

12 THE COURT: All right. Jurors, please.

13 (Jury in at 10:14 a.m.)

14 THE BAILIFF: Jury's all present, Your Honor.

15 THE COURT: Thank you. Mr. Swerling, you may
16 proceed.

17 MR. SWERLING: Thank you.

18 DON MCRAE - CROSS-EXAMINATION

19 BY MR. SWERLING:

20 Q Investigator McRae, how are you, this morning?

21 A Good, Mr. Swerling. How are you.

22 Q Good. I have a few questions. Okay. You were the
23 chief investigator on this case; correct?

24 A I was.

25 Q So basically you were coordinating the investigation

State v. Tremaine Wray & Taurus Watts 10/13/09

19

1 and the other investigators working on the case were also
2 reporting to you?

3 A That is correct.

4 Q And I think you even testified when Ms. Shipley was
5 asking you those questions, you know, that there would be
6 briefings so you could brief them and they could brief you,
7 and you could pass it on to Capt. Smith or Sgt. Barnes or
8 other people who assisted you; is that right?

9 A Yes, sir.

10 Q So, I mean, you were aware shortly after this whole
11 thing happened that there was a fight in the bar; is that
12 correct?

13 A That is correct.

14 Q And it was believed, in fact, I believe your notes
15 reflect that before Mr. Jacobs came in for his interview
16 that there were -- it was believed that -- I believe you
17 wrote down on June 30th at 11:30. I guess that would be at
18 11:30 in the morning. You wrote at 11:30, the fight is what
19 is believed is what led up to the shooting outside?

20 A That is correct.

21 Q And so what happened inside the club you believed was
22 important?

23 A Yes.

24 Q And you had investigators working on that?

25 A Yes.

1 Q So when Jacobs came in on the 1st, and gave a statement
2 you were aware that there had been a fight in the club and
3 it was believed that that fight led up to the shooting
4 outside?

5 A That's correct.

6 Q Now, you told Ms. Shipley that Mr. -- you didn't ask
7 Mr. Jacobs about anything that happened inside. He's the
8 owner of the club, he was in the club --

9 A Yes.

10 Q -- and you never, ever, discussed with him what
11 happened inside the club, who the people were inside the
12 club, what led up to the fight or how it all developed? Are
13 you saying that?

14 A Well, my investigation with Mr. Jacobs and based on the
15 statement and my questioning of Mr. Jacobs began outside
16 once he exited the club. The details of what had happened
17 inside the club I felt through my briefings was handled well
18 through Heidi Scott and the other investigators who went to
19 the hospital to interview those people that were inside the
20 club.

21 Q But I mean you've been in law enforcement a long, long
22 time, --

23 A Seven years.

24 Q -- and we've known each other for quite a while?

25 A Yes, sir.

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1 Q And it really just doesn't make sense that Mr. Jacobs
2 wouldn't be asked as the owner of the club, and, you know,
3 the fact that there was a shooting outside and it was
4 believed that the fight in the club led to the shooting
5 outside, that nobody asked Mr. Jacobs about what happened in
6 the fight, or who was in the fight in the car, in the bar?

7 A (No response.)

8 Q It doesn't make a whole lot of sense does it?

9 A Based on the information that was given me by the other
10 investigators I felt we had a good hold on what had happened
11 inside the club. Therefore, I concentrated my questions to
12 Mr. Jacobs about what had transpired outside, not inside.

13 Q It really didn't make any difference what Mr. Jacobs
14 said happened inside?

15 A No, I did not say that.

16 Q No, but I'm asking you?

17 A I felt we had enough information and any additional
18 information about Mr. Jacobs, I -- I just did not go into
19 any questioning about what happened inside the club with Mr.
20 Jacobs.

21 Q Well, he would be a witness?

22 A Yes.

23 Q And he's the owner?

24 A Yes.

25 Q And he's given all this information about what happened

1 outside, and I'm not going to beat this horse any long, but
2 the fact of the matter, I guess you're telling me that Mr.
3 Jacobs never discussed with you or anyone else what happened
4 inside the club?

5 A That's correct.

6 Q He wasn't asked that until the witness stand?

7 A To my knowledge that is correct.

8 Q Two years after the event?

9 A That is correct.

10 Q So there's no question then when I asked him and when
11 he told the jury that Tremaine Wray was inside the club;
12 that was the first time, as far as investigators knew, that
13 Mr. Wray said that, that was two years and some months after
14 the events?

15 A That Mr. Wray said that?

16 Q I'm sorry. Mr. Jacobs said that. Not Mr. Wray.

17 A Yes, sir.

18 Q Okay. As a matter of fact, the only thing Mr. Jacobs
19 said about Mr. Wray is he saw him walking to the club; isn't
20 that true?

21 A That is what he told me, yes, sir.

22 Q So when he said he saw him walking to the club that
23 means that he never said to you that he was inside the club?

24 A That's correct.

25 Q Matter of fact, the first thing Mr. Jacobs said to you

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1 about it was that he saw Mr. Wray as he was closing the
2 club. I guess when he told you he was closing the club, he
3 never went into why he was closing the club, did he, because
4 your notes don't reflect that?

5 A (No response.)

6 Q I mean, you can look at your notes.

7 A I understand the question, counselor, I'm just trying
8 to formulate the thoughts in my head. I don't know and I
9 don't recall because it is not in my notes whether or not
10 Mr. Jacobs initially told me or even if he told me in his
11 statement why he was closing the club. I would need the
12 statement to refresh my memory on that.

13 Q Okay. Well, I'll show it to you.

14 A (Reads statement.) That's correct.

15 Q Okay. So he -- he never said and you never asked as to
16 why he was closing the club; correct?

17 A Correct.

18 Q Although, the fight was the thing that he's testified
19 to as the thing that made him close the club and tell
20 Tremaine Wray and Taurus Watts, according to what he said,
21 that the club was closed?

22 A Yes.

23 Q All right. So I'll go back to what I was asking you
24 about before. All -- well, first of all, when he told you
25 about this individual he didn't know his name, Mr. Wray, I'm

1 speaking of?

2 A Mr. Wray, no he did not.

3 Q Even though he knew him for years. He did not tell you
4 what his name was?

5 A No.

6 Q And he also told you he didn't get a good look at that
7 individual; didn't he?

8 A Yes.

9 Q But he thought he could identify him if he saw him,
10 because he had been in the club; correct?

11 A Correct.

12 Q But there's no question from your notes and from what I
13 understand in this investigation that Mr. Jacobs first --
14 according to this investigation, first saw Mr. Wray outside
15 the club walking towards the club to get in and he told him
16 the club was closed?

17 A Yes.

18 Q There is no evidence from what Mr. Jacobs said that Mr.
19 Wray was in the club earlier?

20 A Other than his testimony.

21 Q Other than what he said two years and six months later?

22 A That is correct.

23 Q All right. Now, Mr. Jacobs -- what you try to do
24 during an investigation is you try and document because
25 sometimes trials sometimes take a couple years, a few years,

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1 but to try and document as much as you can, not only to
2 assist and further your investigation but to preserve things
3 for court; is that correct?

4 A Yes.

5 Q Okay. Because witnesses have to come in, they have to
6 relay to the jury what they saw?

7 A Yes.

8 Q Okay. So prior to this discussion about the cars under
9 this canopy there and his -- running into Mr. Wray, we have
10 no idea what -- there's nothing preserved about what Mr.
11 Jacobs saw, heard, or thought; is that correct?

12 A As far as --

13 Q This investigation?

14 A Rephrase -- I'm not understanding your question, sir.

15 Q The purpose of your investigation is to go ahead and
16 document things and preserve things for court presentation,
17 okay, the investigation?

18 A With my case notes.

19 Q Right. And you would agree that prior to Mr. Jacobs
20 seeing Mr. Wray in the parking lot, there's nothing that we
21 have from Mr. Jacobs about any of the events of that evening
22 in the investigation?

23 A Prior to seeing --

24 Q Mr. Wray in the parking lot?

25 A -- Mr. Wray and Mr. Watts in the parking lot?

1 Q Right. Correct. Now, what we do have is some things
2 that he said once he got in the parking lot, and I want to
3 ask you about some of those. You interviewed him that night
4 of June 30, or that morning, correct?

5 A I spoke with him, yes.

6 Q You spoke with him out by the club on Hardscrabble
7 Road?

8 A The first time that I attempted to speak to Mr. Jacobs
9 was right there in front of the club.

10 Q Right there in front of the club?

11 A Right, and then --

12 Q Then y'all went across the street?

13 A -- we went across the street where he parked his car.

14 Q And then you went down to where the Isuzu was?

15 A He point it out, he point out to me where the Isuzu was
16 parked and the direction it was facing.

17 Q Right, but I mean the -- going to the Isuzu where he
18 could identify Landrum and Greene, he was with you then, as
19 well?

20 A Later that day Mr. Jacobs did accompany me when I went
21 to the location where they had that white Isuzu pulled over.

22 Q That's where I'm talking about. That's what I'm
23 saying?

24 A Yes.

25 Q And that was somewhere around what, 6:00 o'clock that

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1 morning. You say later on that day, but it was actually
2 that morning?

3 A Yeah. It was -- it was the early morning hours.

4 Q And he was with you at the Isuzu for the
5 identification, I'm talking about --

6 A At the location, yes.

7 Q Okay. And then he was with you when you went back to
8 Hardscrabble Road?

9 A When I took him back to the club, yes, sir.

10 Q So y'all spent a few hours together?

11 A Hours?

12 Q Well, what time did you get there?

13 A I arrived at 5:40 in the morning.

14 Q 5:40 in the morning?

15 A Yes, sir.

16 Q And what time do you think he was let go, because I
17 don't see it in your notes?

18 A Well, I arrived at the scene at 5:40. Of course, I did
19 some things initially. You know, as I testified under
20 direct, I went through the neighborhoods, which is going to
21 take a little bit of time.

22 Q No. Actually, I'm just talking about the time with Mr.
23 Jacobs?

24 A I know. I understand, sir. It would have been some
25 time between -- maybe an hour at the most.

1 Q And the first time he told you what happened out there
2 -- and you said he actually described where the cars were
3 parked. I'm not going to make you get up, but it's my
4 understanding that he said the Suburban and the Isuzu, when
5 he talked to you, were in the same vicinity?

6 A Correct.

7 Q And would you point that out?

8 A (Witness indicates.) From my understanding from
9 speaking with Mr. Jacobs the Suburban was somewhere up under
10 the canopy and the Isuzu was somewhere up here on the road.
11 Here, I believe here.

12 Q He actually showed you. Your notes show it was in the
13 same vicinity. I would claim that to be the same vicinity.
14 I mean, it's parked on the same side as the club. It's
15 parked to the left of the club as you're facing the club. I
16 would call that same vicinity.

17 Q All right. I'm not asking what he testified to on the
18 witness stand, but my -- your notes reflect that it was in
19 the same vicinity as the Suburban. And the Suburban was
20 where?

21 A The Suburban was under the canopy.

22 Q All right. So the same vicinity as the Suburban would
23 indicate it was near the canopy.

24 A Not necessarily. I mean, it wouldn't indicate to me
25 that it would be under the canopy. It could be out on the

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1 roadway, same vicinity, same area.

2 Q The same vicinity could be out on the roadway?

3 A Sure. In my opinion.

4 Q Well, let me ask you this. Your notes reflect that he
5 actually showed you where, so let's go there. You actually
6 walked the area. Mr. Jacobs show the investigator where the
7 tan Suburban was parked and where the white Isuzu was
8 parked.

9 A Yes, sir.

10 Q And is was said in the same vicinity. So I'm asking
11 you to be a little more definite if you can. If he did show
12 you where it was and said it was in the same vicinity, could
13 you tell the jury, because it's kind of an important issue?

14 A I understand.

15 Q Where was it?

16 A Where was -- where did he tell the Isuzu was parked?

17 Q Right.

18 A He said it was parked on the side of the road,
19 somewhere in this area.

20 Q Okay.

21 A I mean --

22 Q And that would be, in your opinion, the same vicinity?

23 A Yes, sir.

24 Q Okay. Speaking of the Isuzu, he never told you in your
25 investigation or in your statement that when he walked past

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1 the Isuzu he saw somebody with a pistol in their hand; isn't
2 that true?

3 A (No response.)

4 Q No matter where it was, here or here or there, he never
5 told you that anybody, that he ever saw anybody in the Isuzu
6 when they were parked with a pistol in their hand?

7 A I don't believe so.

8 Q Well, can you look because I just like things to be
9 very certain?

10 A Yes, sir.

11 MR. SWERLING: And Your Honor, just for the record.
12 I'm holding State's 7.

13 A In my notes, while the vehicle was parked, in my notes
14 it states that Mr. Jacobs told me that a passenger held a
15 pistol out the window and fired in the air.

16 BY MR. SWERLING:

17 Q That's the first thing he said about a pistol --

18 A That's correct.

19 Q -- being fired out a window?

20 A That's correct.

21 Q So the answer to my question is that he never told you
22 that he saw that car parked, walking by it, and he saw the
23 individual with a black gun or a gun prior to it leaving
24 that area and the guy firing out the window?

25 A While the Isuzu was stationary?

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1 Q Yeah.

2 A No.

3 Q So that's something else that just came up, correct,
4 not part of your investigation?

5 A Repeat -- I --

6 Q You testified to it, I don't know, a month ago, I don't
7 remember, but when you testified it was really, it's never
8 been part of the investigation that he ever said that?

9 A That he --

10 Q That is inconsistent with what he told --

11 A Well, I'm sure he saw the pistol in the man's hand when
12 he fired the shot, yeah.

13 Q When he fired the shot, but remember what I'm focusing
14 on is he testified that he walked past the Isuzu and the guy
15 was sitting there with a gun in his hand.. That never
16 happened, he never told you that?

17 A No, he never told me that.

18 Q Of course, Mr. Jacobs recollection of the events would
19 be extremely important in this case, wouldn't they?

20 A Yes.

21 Q Now, let's see a couple of other things. When you were
22 speaking with him that evening, and this of course is in the
23 morning -- Mr. Jacobs said he observed another vehicle in
24 the area, in the same vicinity exit out of the parking lot,
25 and he first told you that that vehicle, the Isuzu, turned

1 left on Hardscrabble Road, correct?

2 A Correct.

3 Q And then pulled a weapon, an unknown weapon, unknown
4 pistol and fired once in the air; is that correct?

5 A That's correct.

6 Q So when he first told you what happened, Mr. Jacobs was
7 telling you that the Isuzu came out of the parking lot, he
8 said parking lot, so I guess it has to be at least in the
9 parking lot, correct?

10 A (No response.)

11 Q Doesn't it say parking lot?

12 A (No response.)

13 Q Let me make sure. I don't want you to have to --

14 A No, sir. I'm just -- exit out of the parking lot.

15 Q Exit out of the parking lot?

16 A And turned left onto Hardscrabble Road. Yes.

17 Q Okay. The parking lot would, at least, have to be the
18 -- what's considered the parking lot, right?

19 A Correct.

20 Q And exited left on Hardscrabble Road?

21 A Correct.

22 Q He doesn't say anything in there about going right,
23 doing a U-turn, shots fired, anything like that the first
24 time you talked to him?

25 A Out of the parking lot, turned left on Hardscrabble

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1 Road. That's correct.

2 Q And according to what he said on that occasion there
3 was no delay from the time the Suburban pulled out and the
4 time he pulled out; correct?

5 A (No response.)

6 Q And of course we're all focusing on what happened after
7 the -- you know, we're not talking about what happening in
8 the club --

9 A Right, right. I understand that, but --

10 Q He doesn't mention any kind of delay?

11 A Not in my notes.

12 Q Well, it's not there --

13 A These notes are my notes and my interpretation of what
14 he told me that night.

15 Q Right. Well, we'll get to some other things, too, but
16 the point is you never heard anything about a delay between
17 the time that the Suburban pulled out, and the Isuzu pulled
18 out. The Isuzu pulled out right after the Suburban. That's
19 what's reflected in your notes, isn't it?

20 A There's no distinction in my notes that I can see.

21 Q Pardon?

22 A There is no distinction in my notes that I can see when
23 each vehicle pulled out that I can see.

24 Q Okay. Well, let's -- we're talking Mr. Jacobs. I'm not
25 talking about you in this situation. I'm talking about what

1 Mr. Jacobs told you, not what you -- okay. I guess my point
2 is this, he never said anything to you on that occasion that
3 there was a three to four minute delay between the time the
4 Suburban exited the parking lot and fired a shots and the
5 Isuzu exited the parking lot and fired a shot?

6 A No.

7 Q In fact, he never said it at any time?

8 A Not to me.

9 Q Okay. He told the jury that, but as far as your
10 investigation he didn't; correct?

11 A Correct.

12 Q And as a matter of fact, on this particular occasion as
13 well, and he never did tell you. He didn't say, and, again,
14 I'm not talking about what happened inside the club, I'm
15 talking about what happened outside the club which is what
16 you were focusing on. He never said that he got his
17 father's -- got his car from his father's house and put it
18 back under the canopy in front of the club between the
19 Suburban firing the shots and the Isuzu firing the shot, did
20 he?

21 A No.

22 Q First time he ever said something like that was
23 probably in front of the jury, two years and six months
24 later or however much time, three months later, four months
25 later; correct?

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1 A Correct.

2 Q Mr. Jacobs, eyewitness. All right. Then we go to the
3 point here where you went to the location where the Isuzu
4 was stopped. That's maybe in the third or fourth page of
5 your report; correct?

6 A Correct.

7 Q Now, from what I understand you had the suspects step
8 out of the vehicle?

9 A No, not initially when we arrived at the location.

10 Q But at some point you had the subjects step out of the
11 vehicle?

12 A Correct.

13 Q For identification purposes?

14 A Correct.

15 Q Which vehicle were they in, the patrol vehicle?

16 A I believe, if I remember correctly one was in one
17 patrol vehicle and one was in the other patrol vehicle.

18 Q Okay. And there's no question, you would not dispute
19 what Mr. Galinski said, their hands were not bagged;
20 correct?

21 A At the time that they were taken -- at the time they
22 were at the scene, no, they were not bagged.

23 Q They were not bagged out on Two Notch Road?

24 A No.

25 Q And I think you're -- when they got out of the vehicle

1 were their hands handcuffed?

2 A When they got out of the vehicles, yes, they were
3 handcuffed.

4 Q Were they handcuffed in front of them or behind them?

5 A They would have been handcuffed behind them. That's
6 our policy.

7 Q But the policy also is to bag the hands, correct?

8 A I don't know that there is such a policy that requires
9 bagging the hands. It's recommended we bag the hands.

10 Q Recommended. And in fact units from the Sheriff's
11 Department carry bags to go ahead and bag hands?

12 A Not all units, no.

13 Q Well, investigators?

14 A No.

15 Q Crime scene people?

16 A I don't know what entails the inventory --

17 Q Let me ask you this, bags are readily available;
18 correct?

19 A Oh, I would answer that in the affirmative, yes.

20 Q I would hope that the Sheriff's Department has enough
21 bags, if not, we'll get a tax increase. All right. The
22 idea of bagging someone's hands is so they can't rub their
23 hands on the seat of the car, they can't rub their hands on
24 their clothes, that the gunpowder residue can't -- because
25 as we've heard gunpowder residue is fairly fragile and will

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1 get off the hands?

2 A Yes.

3 Q Through touching something, hands, clothes, backseat of
4 the car?

5 A Correct.

6 Q And these guys -- no question, according to the
7 evidence, they fired a gun, one of them fired a gun?

8 A According to our witness, yes.

9 Q And their hands were not bagged when you saw them?

10 A No, they were not.

11 Q And that was at least 6:00 o'clock, 6:30 in the
12 morning; correct?

13 A Yes, sir.

14 Q And when you left their hands still had not been
15 bagged, as far as you know?

16 A As far as I know. Once they were -- once the
17 identification was complete they were put back in the patrol
18 vehicle, and I returned to the club.

19 Q Also, Greene and Landrum, they weren't very
20 cooperative, were they?

21 A No.

22 Q They were agitated?

23 A Very agitated.

24 Q They were very agitated. And, of course, Mr. Jacobs
25 did identify them, and said that the passenger, I guess was

1 Greene?

2 A Yes.

3 Q Greene had fired the gun up in the air outside the
4 passenger window of the Isuzu?

5 A One time, yes, sir.

6 Q Now, it would seem logical at that point, that someone
7 would ask Landrum and Greene where the pistol is that they
8 used to fire the weapon. So I'll just turn it over to you.
9 At that point, did you ask them?

10 A Yes.

11 Q Okay. And did they respond?

12 MS. SHIPLEY: Your Honor, I'm going to object, that
13 was a hearsay statement.

14 MR. SWERLING: It's not offered for the truth of
15 the matter asserted.

16 THE COURT: Okay.

17 A Did they respond?

18 BY MR. SWERLING:

19 Q Did they respond, did they tell you where the gun was?
20 I guess I'll get right to the heart --

21 A No.

22 Q -- in fact, all they kept talking about was, you know,
23 some other shots being fired over at Hardscrabble Road?

24 A Correct.

25 Q So we have in that vehicle, and you know from that

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1 evening there are matching bullets from what they found in
2 the Isuzu, same caliber, same head stamp, same manufacturer,
3 found in the Isuzu was found on the side of the road,
4 Hardscrabble Road?

5 A Same bullets matching --

6 Q Matching manufacturer -- Winchester --

7 A Same manufacturer.

8 Q -- 9 millimeter Luger --

9 A Same manufacturer.

10 Q -- jacketed bullets found in the Isuzu and they were
11 also found on the side of the road?

12 A Yeah. Same type of readily available ammunition.

13 Q And these two characters, and by the way, one had
14 dreads, correct?

15 A Yes. I believe Mr. Landrum had dreads.

16 Q He had dreads and they -- highly was thought of and
17 there was some discussions there, because it was on the
18 video that they may have dumped the gun?

19 A (No response.)

20 Q That was what y'all were speculating?

21 A Common sense would lead you to believe that.

22 Q Well, that's what I'm asking you. I'm not -- I don't
23 have a lot of common sense. They went out looking for the
24 gun; correct?

25 A We did.

1 Q Because it didn't make any sense that Mr. Greene and
2 Mr. Landrum who were seen firing the gun and had bullets in
3 their car, that they didn't have the gun in their
4 possession?

5 A Correct.

6 Q So y'all were concluding that gun's got to be somewhere
7 and there was a search made for that gun?

8 A Yes.

9 Q And you didn't find it?

10 A No.

11 Q You never found the gun?

12 A No.

13 Q All right. Now, you were out there for a little bit?

14 A A short period of time.

15 Q Then you also had a second discussion with Mr. Jacobs
16 about the Isuzu, correct?

17 A (No response.)

18 Q I'm talking about -- it's right under -- this is like
19 the third page of your notes. Where it's --

20 A Right.

21 Q -- where you were talking about you were on
22 Hardscrabble Road; correct?

23 A Right. Right. After we went -- Yes. I see that.

24 Q And he said -- and I'm not, again, I'm talking about
25 what Mr. Jacobs said. This is not between me and Mr. McRae,

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1 okay. You and I have known each other a long time. But it
2 says right there that the Isuzu started coming out of the
3 parking lot by the gas pumps?

4 A Yes.

5 Q Where are the gas pumps?

6 A Under the blue canopy.

7 Q All right. Okay. So if the Isuzu, according to Mr.
8 Jacobs, is pulling out from under the gas pumps we're not in
9 this area up here, correct?

10 A That is how I interrupted it, but yes.

11 Q Okay. Well, I mean, gas pumps can be -- the only gas
12 pumps that we know of are under this canopy; correct?

13 A Under -- it's not blue, I'm sorry. The store is
14 actually blue. Under the --

15 Q This right here.

16 A It's my mistake. The gas pumps, yeah. You know --

17 Q No, that's not what that says. The gas pumps. It
18 doesn't say --

19 A It says -- give me just a moment. It says, by the gas
20 pumps.

21 Q By the gas pumps?

22 A It doesn't say next to, it says by.

23 Q Buy the gas pumps. Well, the gas pumps are here,
24 right?

25 A Correct.

1 Q So the jury can figure out what by means. All right.

2 A I'm sure they have their opinion. Yes.

3 Q And on that particular occasion Mr. Jacobs was relaying
4 this information to you, he said they came out of the
5 parking lot of the club up by the gas pumps and started to
6 turn right. Which would have been the opposite direction of
7 Farrow Road?

8 A Correct.

9 Q Opposite direction of the Suburban?

10 A Correct.

11 Q After the passenger fired one shot in the air, the
12 driver of the white Rodeo did a U-turn -- I think I finally
13 got it right, it's Rodeo. I think I was thinking of Rodeo
14 Drive -- did a U-turn on Hardscrabble Road and traveled down
15 Hardscrabble Road; correct?

16 A Correct.

17 Q So at this point what we have is Mr. Jacobs saying
18 something different than he told you before, that he
19 originally started going right; okay?

20 A Correct.

21 Q And then the passenger fired up in the air?

22 A Correct.

23 Q And then at that point after he fired up in the air he
24 started going down Hardscrabble Road to Farrow Road?

25 A Correct. That was my interpretation of what Mr. Jacobs

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1 told me that night.

2 Q Okay. Well, it's also in the statement, but we'll get
3 to that, too. It's not just your interpretation, but what
4 he wrote. So that means that the car was going -- heading
5 right to make a right turn?

6 A Correct.

7 Q And the passenger fired the shot before he made the U-
8 turn; correct?

9 A Right. That's the way I interpreted it on my case
10 notes.

11 Q On your notes. Mr. Jacobs never told you on that
12 occasion that there was a three or four minute delay?

13 A No.

14 Q Never told you he saw a gun inside the Isuzu; correct?

15 A (No response.)

16 Q Inside the Isuzu?

17 A That he saw it inside when he walked by?

18 Q Yeah.

19 A I don't know how much time --

20 Q That's not my question. The question was did he --

21 A No.

22 Q He didn't say it this time that he saw the gun in there
23 like he testified to?

24 A No.

25 Q Never said on this occasion it was three or four

1 minutes before they followed the Suburban down, correct?

2 A Correct.

3 Q And said the gun fired, the passenger in the car fired
4 the shot before he made a U-turn and going down Hardscrabble
5 Road?

6 A Correct.

7 Q So therefore, he never said, ever, that the Isuzu fired
8 the shot as it was driving down Hardscrabble Road across
9 from the car wash, never said that, did he?

10 A Not that wording, no.

11 Q Never said it at all?

12 A No.

13 Q Actually, until last week; isn't that true?

14 A Correct.

15 Q That's a different scenario than is described in your
16 investigative notes and in his statement; correct?

17 A I guess you could say that the location of the one shot
18 was a little different and the actions of the Isuzu Rodeo
19 were different.

20 Q Eyewitness? I mean you agree?

21 A I agree.

22 Q Okay. Now, again, he was supposed to come and see you
23 at 5:00 o'clock that afternoon; right?

24 A Yes.

25 Q And that would have been on the day of the 30th?

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1 A The afternoon. Yes.

2 Q But Mr. Jacobs, he never even showed up did he?

3 A No.

4 Q Police investigation, critical witness and he just
5 decided to go to sleep in a motel and just didn't wake up?

6 A My understanding of what he did relayed to me the next
7 day.

8 Q So he missed his appointment. Y'all went looking for
9 him, couldn't find Mr. Jacobs, Mr. Eyewitness; correct?

10 A Correct.

11 Q And you don't hear from him until the next morning;
12 correct?

13 A At 7:00 o'clock on the 1st, right.

14 Q Right. But in the meantime, now, just so we're sure.
15 You're briefed as to what went on, hospital and discussions
16 about the witnesses and the fight and everything like that?

17 A Yes.

18 Q And when he came in on the 1st to give you his
19 statement, you had all that information, at least, the
20 developing information?

21 A Yes.

22 Q And I think you and Mr. Gallegos went out to the
23 Outback to look at the car. I'm going back through all of
24 that. So we have Mr. Jacobs arriving at the Sheriff's
25 Department, not at 5:00 o'clock on the day you asked him to

1 be there on the 30th, but at -- let's see, 13:15 is what
2 1:15 in the afternoon?

3 A Yes, which is the time I told him to be there.

4 Q That morning?

5 A Yes.

6 Q But he was supposed to be there the day before?

7 A Yes.

8 Q So he comes in and gives you his statement; correct?

9 A Yes.

10 Q And in that statement, again, he doesn't say why he was
11 closing the bar, he just said he was closing the club,
12 correct?

13 A Correct.

14 Q And that he saw Tremaine Wray walking towards the club;
15 which was the information he gave you?

16 A Yes.

17 Q And he told him the club was closed; correct?

18 A Correct.

19 Q Then -- Okay, the Suburban exited the parking lot and
20 turned left on Hardscrabble Road. It passed the club and
21 he observed shots being fired from the driver's side window;
22 correct?

23 A Correct.

24 Q In actuality in his statement he says he saw Tremaine
25 Wray doing that, didn't he?

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1 A In his statement?

2 Q Yes.

3 A Let me have his statement again? What was the question
4 again?

5 Q What he had in there, in his statement, is a little bit
6 different than your notes. He said he saw Tremaine Wray
7 shooting from the driver's side?

8 A I believe -- in the first part of this statement, if I
9 can get to it real quick and make sure I read this exactly.

10 Q Well, I know exactly where they are. It says Tremaine
11 Wray, the first part of the statement; correct?

12 A Correct.

13 Q All right. There's another part of the statement where
14 he says Tremaine Wray. And at the end of the statement he
15 says it was too far down the road for me to see who was
16 shooting?

17 A Right, and --

18 MS. SHIPLEY: Your Honor, may he finish his answer?

19 MR. SWERLING: Well, I'm just trying to get -- I'm
20 trying to move along.

21 THE COURT: That's fine. Let me him answer.

22 A When he first told -- when we were initially taking the
23 statement and we got to the part where I asked him the
24 question, tell me what happened -- knowing that Tremaine was
25 the driver and that he was driving the vehicle and that the

1 shots came from the driver's side of that vehicle, it was
2 placed in here, you know, it was taken for granted that
3 Tremaine was shooting. However, it is further clarified in
4 the statement on that page that the gunfire was coming from
5 the driver's side window.

6 BY MR. SWERLING:

7 Q So the answer to my question is that he did tell you in
8 his statement that Tremaine did fire the gun from the
9 driver's side door; correct?

10 A It was stated that Tremaine did but further clarified
11 that he could not be for sure that it could be Tremaine --

12 Q Let's take it one step at a time.

13 A -- that was shooting. It was clarified at the end of
14 the statement.

15 Q Well, I'm going to give you -- I'm going to be fair.

16 A Okay.

17 Q It says here Tremaine fired the gun out the door?

18 A Yes, it did.

19 Q Then it says here, Tremaine was shooting at the crowd?

20 A It said that at the beginning.

21 Q Pardon? It's two different places. On the top.

22 A Okay. That's where he says Tremaine was shooting at
23 the crowd. And then at the beginning paragraph it says
24 Tremaine fired the gun. So it says Tremaine fired the gun
25 outside the driver's side door, then it says Tremaine was

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1 shooting at the crowd, then it's further clarified --

2 Q I'll get there, you don't -- I didn't ask that question
3 yet, okay. I'll get there. So on two occasions you wrote
4 down that Tremaine was shooting at the crowd and then he
5 signed that statement?

6 A Yes.

7 Q But at the end in the question and answer because
8 you're a good investigator you -- it didn't make a whole lot
9 of sense to you, so he put down the gunfire was coming from
10 the driver's door -- the driver's side window, but I did not
11 see him firing the gun because it was too far down the road?

12 A Correct.

13 Q Correct?

14 A Correct.

15 Q And in that statement he also says when they got to the
16 end of the bar, at the end of the bar Tremaine fired the gun
17 out of the driver's side door. When they got to the end of
18 the bar, correct?

19 A Which part of the statement?

20 Q That's the first part.

21 A At the end of the building the club is contained in,
22 yes.

23 Q Then he remembered a white colored Isuzu. Once the
24 vehicle -- once the vehicle that Tremaine and Taurus were in
25 started shooting the passenger of the Rodeo fired one shot

1 in the air?

2 A Correct.

3 Q That what it says?

4 A Yes.

5 Q You had no delay -- once the vehicle that Tremaine and
6 Taurus were in started shooting the passenger of the Rodeo
7 fired one shot in the air?

8 A Yes.

9 Q No three or four minute delay?

10 A No.

11 Q No moving the car back and forth across the street in
12 between?

13 A No.

14 Q And then it says he told you the Rodeo was behind this
15 SUV?

16 A Correct.

17 Q Behind the SUV; correct?

18 A Correct.

19 Q And the shot was fired up in the air; correct?

20 A Correct.

21 Q So when you say behind the SUV one would assume from
22 that statement that he was behind the Suburban; yes or no?

23 A I assume yes.

24 Q Then it said that he also told you that evening or that
25 day in his statement that the Rodeo was still at the other

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1 end of the bar when the passenger shot one time in the air
2 after that shot the Rodeo made a U-turn and started towards
3 Farrow Road?

4 A Correct.

5 Q That is the fourth time that Mr. Jacobs has the shot
6 being fired right after the Suburban shots were fired.

7 A Correct.

8 Q It's the third or fourth time that he says that the
9 shot was fired before the Rodeo made a U-turn down
10 Hardscrabble Road?

11 A Correct.

12 Q So again, at the time he gave you the statement and you
13 had a chance to sit down and talk to him at the Richland
14 County Sheriff's Department at 1:15 in the afternoon, he's
15 still not telling you anything about seeing a pistol in one
16 of the guy's hands in the Isuzu?

17 A While it's parked.

18 Q While it's parked. He's still not telling you the car
19 turned right and then turned left and then the shots were
20 fired as it was going past the club. He hasn't told you
21 that. He hasn't told you that he was not immediately behind
22 the Suburban; correct?

23 A Correct.

24 Q Hasn't told you that it was a three or four minute
25 delay; correct?

1 A Correct.

2 Q Hasn't told you that he went and pulled the car from
3 his father's house, had enough time to go back to the club,
4 park his car before the Isuzu started firing; he doesn't say
5 that?

6 A No.

7 Q And he still doesn't say, sitting there in the
8 Sheriff's Department, knowing there was a fight in the club,
9 he never tells you why the club was closed, why he was
10 closing the club?

11 A He was never asked.

12 Q Well, but I mean, he's telling you what happened?

13 A At -- from the parking lot, yes.

14 Q Right. He's telling you what happened?

15 A And --

16 Q The first time he tells you in his statement during
17 your investigation he saw Tremaine Wray was when he was
18 walking towards the club?

19 A Correct.

20 Q As a matter of fact, in your notes, which pretty much
21 runs with -- is consistent with the interview that we just
22 talked about, this written statement, said that Mr. Jacobs
23 said immediately after the tan Suburban fired the shots the
24 passenger of the white Rodeo fired his shots; correct?

25 A Where at?

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1 Q In your investigative notes.

2 A Can you state the question again?

3 Q Yeah. In your investigative notes, not just in the
4 statement, but your notes or your recollection of the
5 interview it says that he immediately fired the gun after
6 shots were fired from the Suburban, did the U-turn and
7 started going down towards Farrow Road?

8 A Correct.

9 Q By the way, Landrum and Greene never told you anything
10 about the gun, never admitted at any point, even when they
11 were taken down to the Sheriff's Department and they were
12 questioned and they were given an opportunity. They were
13 never charged with anything after this incident; correct?

14 A Not with relation to this incident; that's correct.

15 Q Yeah. They were charged with some stuff, like some
16 dope buying and -- but I mean the fact that you had
17 information that there was a gun fired from the Isuzu never
18 led to any charges?

19 A No. No.

20 Q And there was never a gun found?

21 A No.

22 Q And these guys -- wherever that gun is nobody knows to
23 this day?

24 A Correct.

25 Q Okay. Goodby Mr. Jacobs. Mr. Wray was taken into

1 custody for that incident, I believe you said?

2 A Yes.

3 Q At the Outback Steakhouse?

4 A Correct.

5 Q And his vehicle was also there and you had already
6 obtained an arrest warrant and a search warrant for the
7 vehicle?

8 A Correct.

9 Q How did you gain access to the Suburban?

10 A Once he was taken into custody -- we may have got the
11 keys. I don't know how we got access into the Suburban, I'm
12 sorry.

13 Q Somebody got access into the Suburban?

14 A Yes.

15 Q Okay. And -- but there's nothing to reflect how that
16 was done, correct?

17 A Correct.

18 Q And there were several officers out there with you;
19 correct?

20 A Correct.

21 Q And people did go into the Suburban?

22 A Well, we took --

23 Q To transport it down to the Sheriff's Department?

24 A Go in the vehicle?

25 Q Somebody had to enter the Suburban?

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1 A We don't enter the vehicle. It would have been the two
2 truck driver.

3 Q Okay. I thought you just said that you did?

4 A You asked me if we obtained access once we obtained the
5 search warrant. Of course, we gained access when we were
6 executing the search warrant, but in the parking lot. When
7 we were taking custody of that vehicle no officer would have
8 gone inside that vehicle. The vehicle would have been
9 prepared and put on the tow truck by the two truck driver.

10 Q Do you know, did he go in the vehicle?

11 A Who?

12 Q The two truck driver?

13 A I'm sure he would have had to gone into the vehicle.

14 Q So the vehicle was taken down to the Sheriff's
15 Department and then was processed, as we know now. The
16 vehicle was in the custody of the Sheriff's Department on
17 July 1st or 2nd?

18 A I think it was July 1st.

19 Q July 1st. And the requisition for the GSR was not done
20 until I think July 25th or July 27th; correct?

21 A I'll take your word on that. Do you have the
22 requisition that I can look at?

23 Q I think it's somewhere in the evidence, but I don't
24 want to waste the jury's time.

25 A I'll take your word for it, sir.

1 Q Let's put it this way, sometime later in July everybody
2 knew there had been a fight at the club; correct?

3 A Correct.

4 Q Everybody knew that the Suburban was described as
5 firing shots, or shots along with the Isuzu?

6 A Correct.

7 Q Did anybody ever look for the Isuzu GSR kit between
8 January and June and January of 2008?

9 A No.

10 Q Was anybody curious where the GSR kit was from the
11 Isuzu?

12 A It didn't even cross my mind. No.

13 Q Okay. What we knew -- I mean, the Isuzu was a vehicle
14 that was known as having fired a shot?

15 A Yes.

16 Q And this Isuzu GSR kit supposedly was in someone's
17 closet?

18 A Correct. Locker, security locker.

19 Q Supposed to be in evidence, isn't it? Not criticism
20 against you, but it's supposed to be in evidence?

21 A Yes.

22 Q Okay. In other words, Investigator McRae would have
23 taken it over to the evidence window and said, clock this
24 in?

25 A I would hope so.

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1 Q You don't leave stuff around a closet or a cabinet or
2 your own person thing for seven months.

3 A It's not a personal locker. It in a secure lab with
4 only that person having access and a supervisor, so --

5 Q Go ahead. I mean, I don't care. My point is this,
6 that's just not protocol?

7 A No.

8 Q You don't do that.

9 A No.

10 Q But nobody asked about the GSR kit from June to January
11 for the Isuzu?

12 A No.

13 Q And actually if they had gone looking for it they
14 wouldn't have found it; correct?

15 A I can't say that. I mean, once we'd gone looking for
16 it we would have gone to the person who actually took the
17 GSR kit and one of the places I would assume to look would
18 be in his secure locker for evidence, and in the lab.

19 Q I don't want to misquote someone, but it seems like he
20 found it accidentally or something he saw in his evidence
21 bag that had not been turned into evidence?

22 A If I can recall his testimony, correct.

23 Q And sometimes I forget, but my understanding was that's
24 what happened, okay.

25 A Okay.

1 Q He saw it and he turned it in --

2 A Correct.

3 Q -- oh, hey, we've got something here that really needs
4 to be turned in?

5 A Correct.

6 Q And then you sent it out to SLED. It's not even
7 labeled on the outside of the envelope as Isuzu. It's
8 labeled Greene, Jerome.

9 A I believe that's how it was taken into evidence. I
10 don't recall. If you let me see the label on the GSR kit, I
11 can tell you what's on the label.

12 Q Not important.

13 A I believe the GSR kit was labeled correctly. I just
14 believe our evidence clerk took -- when he took in the
15 evidence he took it in and put that name down.

16 Q Okay. And so when the GSR kit was sent out there for
17 the Suburban, everybody knew that the Suburban, there was --
18 even I believe it says it on the requisition it says indoor
19 and outdoor shooting. That's what it said when it was sent
20 out to SLED?

21 A Indoor/outdoor shooting?

22 Q Yeah. I think it was on there, right into evidence
23 just correct me. I'm assuming I'm correct. It says
24 something about indoor/outdoor on the requisition sheet?

25 A (No response.)

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1 Q Well, I don't want --

2 MS. SHIPLEY: Objection, Your Honor, if we could
3 find the document. It doesn't say that.

4 MR. SWERLING: Well, it does.

5 MR. BAX: It's marked for ID, Defense No. 2.

6 MR. SWERLING: I don't want to mess up the court
7 reporter's organization.

8 Okay.

9 BY MR. SWERLING:

10 Q It says outdoors from vehicle. So it doesn't say
11 indoor/outdoor, but it says outdoors/from vehicle.

12 A Correct. Outdoors from vehicle.

13 Q Outdoors/from vehicle.

14 A Outdoors/from vehicle.

15 Q So I interpret that to be indoors and outdoors. But I
16 mean when this was sent out to SLED, that was the
17 information that y'all had that the Suburban had fired a
18 weapon; correct?

19 A Correct.

20 Q And sled made a determination to not do it because of
21 secondary transfer. They decided good, bad, and everything
22 else, you know, secondary transfer. They can't do a test on
23 secondary transfer; correct?

24 A Well, I can't testify to why they don't do an
25 examination.

1 Q Well --

2 A And from what I interpreted or from what I understood
3 was when the GSR expert, Mr. Moskal, initially received the
4 GSR kit for the tan Suburban it was not indicated or he
5 misinterpreted the fact that there were shots fired from
6 that tan Suburban.

7 Q Right. So because of whatever it was, the
8 misinterpretation or he wasn't given enough information,
9 there was no GSR run on the Suburban because he put down
10 secondary transfer?

11 A That is what he wrote down based on his interpretation,
12 yes.

13 Q And the actual GSR for the Suburban wasn't run until
14 later on, as well; correct?

15 A That is what -- yes.

16 Q Some later date in January. January? Okay.

17 A (No response.)

18 Q By the way, that white t-shirt that Jacobs described as
19 the weapon being wrapped in, did y'all ever find that t-
20 shirt?

21 A No.

22 Q Never found that gun, either?

23 A No.

24 Q Despite what Watson said and Rashonda and Jarrell
25 Dansby said, there was no weapon found?

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1 A The weapon was not found.

2 Q You tried to talk to Landrum again down at the
3 Sheriff's Department and he basically told you where to go
4 didn't he?

5 A Pretty much, yes.

6 Q Let me ask you -- who's L.M. I have no idea. There
7 seems to be another weapon circled with L.M. on it. It was
8 turned over to us in discovery, but do you know anything
9 about that?

10 A I've never seen this before in my life.

11 Q Okay. So that's not something that's familiar to you
12 in this case investigation?

13 A No.

14 Q We were supposed to start the trial of this case on May
15 18, 2009; correct?

16 A Correct.

17 Q And that happens to be the magical day that Brian
18 Watson came forward, isn't it?

19 A That's when I'm notified of Mr. Watson, yes.

20 Q Just so it's clear, he came forward on the day this
21 case was supposed to start trial?

22 A That's -- again, when I found out Mr. Watson had
23 information on this case.

24 Q And he had had that information, of course, we know
25 from his own testimony since March?

1 A He had the information he provided us?

2 Q Well, he --

3 A He made the decision.

4 Q He remembered at that time?

5 A Yes.

6 Q As I understood, he said he forgot all about it for two
7 years and then in March he remembered it all?

8 A Correct.

9 Q In March, March 15th?

10 A Correct.

11 Q And then waited until May 18th as far as you're come
12 forward, the day the trial was supposed to start?

13 A Correct.

14 Q Correct. Okay. And he was interviewed that night?

15 A On the evening of May 18th, yes, sir.

16 Q And we all came in here the following day and were made
17 aware of what was going on; correct?

18 A Correct.

19 Q So you interviewed him that night about 9:15. You
20 interviewed Rashonda Simpson about what 12:00 or 12:30 over
21 at Mr. Roberson's house in the morning?

22 A The times again, it was way in the evening, which ran
23 into morning hours. Yes, sir.

24 Q And certainly these folks, according to what they were
25 saying, accessories after the fact; correct?

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1 A Correct.

2 Q Mr. Watson wasn't charged with anything was he?

3 A Mr. Watson?

4 Q Brian Watson, he wasn't charged. He dumped the gun.

5 A Yes.

6 Q Ms. Simpson, according to Mr. Watson was present when
7 he dumped the gun?

8 A According to Mr. Watson yes, she was. Yes.

9 Q And she didn't get charged?

10 A No.

11 Q And Mr. Dansby, according to Mr. Watson, all three of
12 them were present when he dumped the gun?

13 A Correct.

14 Q And, of course, they were all told they could be
15 charged, you would tell them that they could be charged?

16 A I would.

17 Q And Mr. Dansby was, in fact, charged, but the warrant
18 was withdrawn?

19 A Correct.

20 Q He cooperated, correct?

21 A Correct.

22 Q Now, just let me ask you a couple of things about that.
23 I don't want to go back in to all of that, but I'm curious.
24 Could find the gun, but in reading Mr. Watson -- reading
25 your notes regarding Mr. Watson, he said he took the gun out

1 of the black bag, that Sam's black bag, it's a book bag?

2 A Jans.

3 Q Jans. Threw it in the creek, right?

4 A I remember him saying he took the gun out of the bag
5 and began to beat it. I don't recall if he testified --

6 Q He didn't testify. I'm asking you.

7 A Okay.

8 Q He took the gun out of the bag and threw it under the
9 bridge?

10 A Threw it under the bridge, correct.

11 Q Okay. Where's the bag, the black jans bag? Couldn't
12 find the gun but somebody should have had the bag?

13 A Not necessarily. I don't know what happened to the
14 bag?

15 Q Did anybody ask about that?

16 A No.

17 Q What about the brown -- the potato sack looking bag
18 that Mr. Dansby was talking about. Where's that?

19 A Could not locate it.

20 Q Did you try to locate it?

21 A No.

22 Q Did y'all go to the area in the back yard where Ms.
23 Simpson said they were digging, where Mr. Dansby didn't say
24 they were digging, but Ms. Simpson said they were digging,
25 did you go to that yard and find out what they were digging?

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1 A Two years later we wouldn't have been able to locate
2 that.

3 Q Did you get the hammer?

4 A No.

5 Q And the fact of the matter is, and let me just ask you
6 this, Ms. Simpson never told you anything about the banging
7 and trying to destroy the weapon did she? It's not in your
8 notes and it's not in her statement?

9 A No. No.

10 Q Told the jury that for the first time, as far as your
11 investigation.

12 A Beg the Court's indulgence where I get to that part.
13 (Pause.) That's correct.

14 Q And, of course, we now know she visited her uncle at
15 least twice between March 18 and May 18, at the jail, her
16 uncle Brian Watson. It's in there.

17 A Okay.

18 MR. SWERLING: Excuse me one second Your Honor.

19 THE COURT: Sure.

20 MR. SWERLING: Please answer any questions Ms.
21 Johns has for you.

22 THE COURT: Let's take a short break. I'll remind
23 you not to discuss the case.

24 (Jury out at 11:15 a.m.)

25 THE COURT: You all be at ease for about 10 to 15

1 minutes.

2 (Court in recess for short break.)

3 (Court in session after short break.)

4 THE COURT: Jurors, please.

5 (Jury in at 11:48 a.m.)

6 THE BAILIFF: Jury's all present, Your Honor.

7 THE COURT: Okay. Thank you. Ms. Johns, you may
8 begin with your questions.

9 MS. JOHNS: Thank Your Honor. May it please the
10 Court.

11 DON MCRAE - CROSS-EXAMINATION

12 BY MS. JOHNS:

13 Q Investigator McRae, you had already stated on the
14 record, this is just to get us to the place where we are
15 right now. You were the investigator on-call that night?

16 A I was.

17 Q And you got a call in the early morning hours that got
18 you out of bed and you came to the crime scene; correct?

19 A Yes, ma'am.

20 Q Okay. And when you were called, do you know what time
21 it was?

22 A In my case notes, I wrote 5:08.

23 Q Okay. And you were aware of an officer responding to
24 the scene; is that right?

25 A An officer responding to the scene?

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1 Q A deputy, a first responder?

2 A There would have probably been several deputies
3 responding to that scene.

4 Q Okay, and you mentioned one of those deputies as being
5 Deputy W. Gregory; is that correct?

6 A Correct.

7 Q And you know that Deputy W. Gregory had responded to
8 this particular scene; is that right?

9 A He is the one that did one of the initial incident
10 reports. That's correct.

11 Q He did respond to the call, in fact, his call numbers
12 are on the 911 transcript; is it not?

13 A I would need to see the transcript to be able to verify
14 that and know what his call sign was.

15 Q Do you know what his call sign was?

16 A No, ma'am, I would not.

17 Q You were aware, based on you preparation for this case
18 that Deputy Gregory arrived at 4:15 a.m.; correct?

19 A According to the initial incident report that Deputy
20 Gregory wrote. Yes, his time of arrival was 4:15.

21 Q And the dispatch time was 4:12 a.m.; right?

22 A That's correct.

23 Q Okay. And it being that Deputy Gregory is one of the
24 first responders, I know that there are many out there?

25 A Yes, ma'am.

1 Q But he did memorialize himself being there; isn't that
2 right?

3 A By him submitting this incident report, yes, he -- I
4 mean, I'm not disputing the fact that Deputy Gregory was or
5 was not there.

6 Q Okay. And you have the benefit of looking at his
7 incident report; right?

8 A I did. I have it in front of me.

9 Q And from that incident report we've learned that he
10 spoke with people that were at the scene?

11 A Correct.

12 Q And when he spoke to people at the scene he initially
13 stated there was a subject that was involved in a shooting;
14 isn't that right?

15 A A subject. Yeah, I -- read plural.

16 Q Okay. Well, let me show you this. Okay, suspects,
17 excuse me.

18 A Well, if you look at Page 1, under subject No. 1, you
19 will see that there was a subject listed in that, and if you
20 look at Page 2, there's an unknown subject, Subject No. 2.

21 Q Subjects. Excuse me. Subjects.

22 A Yes. Subjects.

23 Q Okay, and in the description of Subject No. 1, it says
24 dread locks in hair; correct?

25 A Correct.

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1 Q And throughout the body of his incident report, his
2 states that the suspects with plural s, left the scene. Do
3 you agree with that?

4 A Yes.

5 Q And a few minutes later a complaint states that a white
6 vehicle SUV with the suspects in it began shooting?

7 A That is Mr. Gregory's comments within the case of his
8 initial -- and I emphasize the word, initial -- incident
9 report.

10 Q Okay. But it does say that; right?

11 A Yes.

12 Q Okay. The suspects then began shooting towards the --
13 MS. SHIPLEY: Objection. She's reading from the
14 transcript or the report. She should pose a question.

15 MS. JOHNS: I'll pose a question, Your Honor.

16 THE COURT: Thank you.

17 BY MS. JOHNS:

18 Q Your review of the report states that suspects left in
19 car; right?

20 A Correct.

21 Q And later returned; is that right?

22 A I don't think it says and later returned.

23 Q Okay. Would you agree it says the suspects left the
24 location?

25 A Yes.

1 Q And after a few minutes -- and a few minutes later --
2 excuse me. --

3 MS. SHIPLEY: Your Honor, I'm going to object under
4 hearsay. We don't know what information is being -- where
5 this information is coming from.

6 MS. JOHNS: I'll withdraw the question, Your Honor.
7 Let me rephrase.

8 THE COURT: Okay. Thank you.

9 BY MS. JOHNS:

10 Q You had information that the suspects left the scene
11 and returned later; correct?

12 A I don't -- no.

13 Q No?

14 A No.

15 Q Okay, well, I'm going to let you look at this. This is
16 from your investigation; is it not?

17 A It is.

18 Q Gregory's incident report. Just look at that and tell
19 me if it says the suspects left?

20 A It does say they left. It says the suspects left.

21 Q Okay.

22 A Yes.

23 Q And then returned later and began shooting at the club?

24 A I think you're taking it out of context a little bit,
25 counselor. I don't know if I'm allowed to read what's in

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1 this report?

2 THE COURT: You need to just answer what her
3 question is.

4 MR. MCRAE: Okay.

5 A Nowhere in this report do I read that that car left and
6 came back.

7 BY MS. JOHNS:

8 Q I'm not asking you about the car. I'm saying the
9 suspects. It states that the suspects left.

10 A Yes.

11 Q And later returned?

12 A It does not state that.

13 Q Let me see. Oh. The suspects left; would you agree
14 with that?

15 A Yes.

16 Q And a few minutes later --

17 A Yes?

18 Q -- the complainant states that the white SUV --

19 MS. SHIPLEY: Objection.

20 Q -- with the suspects in it.

21 MS. SHIPLEY: This is not evidence in the record
22 that's inconsistent to --

23 THE COURT: You all approach and let me see that.

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

1 THE COURT: Objection sustained.

2 BY MS. JOHNS:

3 Q Investigator McRae?

4 A Yes, ma'am.

5 Q You relied upon this incident report did you not, to
6 initiate this investigation?

7 A Relied. I used it in my investigation. Yes. I would
8 not use the term, rely.

9 Q You used it?

10 A It was a tool of the investigation.

11 Q Correct. So it was a tool --

12 A Yes.

13 Q -- used in your investigation?

14 A Correct.

15 Q And based on the information you began looking for a
16 white SUV; isn't that right?

17 A I began looking for a white SUV, no, ma'am.

18 Q Your department began looking for a white SUV; is that
19 correct?

20 A Yes.

21 Q And based on is, as you used it for a tool, you know
22 that the white SUV began shooting towards the club; isn't
23 that right?

24 A That is what is stated in the report. I cannot state
25 that is fact or not. As a matter of fact, my investigation

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1 revealed that that did not occur.

2 Q Okay, but you did use it as a tool, did you not?

3 A I did.

4 Q And it is from a deputy in your department; correct.

5 A It's an initial incident report, we relied basically --

6 Q I didn't ask you if you relied basically --

7 MS. SHIPLEY: Your Honor --

8 THE COURT: Answer the question and then --

9 MR. MCRAE: Yes, ma'am.

10 A Yes. I used it as a tool in my investigation.

11 BY MS. SHIPLEY:

12 Q And using it as a tool it contains certain information;
13 would you agree with that?

14 A It does contain information.

15 Q One of it being that the first suspect had dread locks
16 in his hair?

17 A One of the suspects in this vehicle, yes.

18 Q And it states Suspect No. 1, dread locks in hair; isn't
19 that right?

20 A That was inside this particular vehicle, yes.

21 Q Okay. Does it say what vehicle it was?

22 A It states a white vehicle, SUV.

23 Q Is that listed as an SUV vehicle?

24 A Listed as a vehicle --

25 Q Yes, sir. On Page 2, where it says vehicle, gun, etc.

1 Is it listed as a vehicle?

2 A No.

3 Q Okay. So it's not listed as a vehicle.

4 A (No response.)

5 Q It's not listed as a vehicle; isn't that correct, on
6 this form.

7 A In the narrative it's listed as a white vehicle. The
8 officer did not list that vehicle in on Page 2, which is not
9 required.

10 Q Okay. Not required. So you knew there was a white
11 vehicle involved; fair to say?

12 A Involved with --

13 Q A shooting?

14 A -- the incident, yes.

15 Q And you do know that this information that you use as a
16 tool indicates that the vehicle was possible a white Nissan
17 with a black stripe; correct?

18 A Yes.

19 Q And it states that a Suspect No. 2, fired over the top
20 of the vehicle.

21 MS. SHIPLEY: Objection. Hearsay, again.

22 MS. JOHNS: I'll rephrase the question, Your Honor.

23 THE COURT: Thank you.

24 BY MS. JOHNS:

25 Q Information that you did not rely upon but used as a

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1 tool, based on that information that you received there was
2 information that somebody shot over the top of a white
3 vehicle; right?

4 A According to this initial incident report, yes.

5 Q Now, that was at 4:15 a.m.; right?

6 A That is the time that Deputy Gregory arrived. It was
7 sometime between 4:15 his time of arrival and 6:30 a.m., his
8 time of departure.

9 Q And you also had a Sgt. Barnes come to the scene?

10 A Yes, Sgt. Barnes was on the scene.

11 Q And Sgt. Barnes was on the scene prior to your arrival;
12 isn't that correct?

13 A I do not know. I do not recall Sgt. Barnes time of
14 arrival, but if my memory serves me right upon my arrival he
15 is who I met with. So it would be fair to say he was there
16 upon my arrival.

17 Q So he was already there, right?

18 A Correct.

19 Q And both you and Sgt. Barnes had an opportunity to talk
20 to Ricky Jacobs, didn't you?

21 A I did. Opportunity, Mr. Barnes was there so yes.

22 Q I don't want to be difficult.

23 A I'm trying to answer your questions as best to my
24 ability.

25 Q And I'm trying to ask them the best way I can.

1 A I understand.

2 Q You and Eric Barnes together spoke with Ricky Jacobs,
3 right?

4 A Yes.

5 Q And as a tool, you know that Sgt. Barnes had also
6 filled out some field notes?

7 A That's correct.

8 Q And in his field notes he states --

9 MS. SHIPLEY: Objection. Hearsay.

10 MS. JOHNS: I'll withdraw that, Your Honor.

11 THE COURT: Thank you.

12 BY MS. JOHNS:

13 Q In these notes you were aware there was a suspect
14 involved that had dread locks; right?

15 A A suspect from this vehicle that had dread locks, yes.

16 Q Okay. Now, you want to tell me where it says this
17 vehicle because I don't see it in here?

18 A It is not contained in Eric Barnes file. But it is in
19 the initial incident report.

20 Q And whose incident report is that?

21 A Weldon Gregory.

22 Q Well, I've moved beyond that now. I'm on Sgt. Barnes,
23 okay?

24 A Okay.

25 Q Now, did you use Sgt. Barnes follow up investigation as

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1 a tool in this particular investigation?

2 A No.

3 Q You've not?

4 A No.

5 Q Okay. So what Sgt. Barnes says is meaningless to you?

6 A I did not say that.

7 Q But you're not using it as a tool?

8 A I'm using his input, but to use that particular
9 document in my -- that document was probably not authored
10 until after the incident was investigated.

11 Q So would you agree with me that Sgt. Barnes has an
12 independent memory of what happened --

13 A Probably.

14 Q -- the morning of June 30?

15 A I would.

16 Q Sgt. Barnes says that there was --

17 MS. SHIPLEY: Objection. He just testified he did
18 not rely on Sgt. Barnes notes.

19 THE COURT: Okay. Ms. Johns, I need you to ask him
20 a question and not state what's in the report to him. Allow
21 him to respond to the question and then to the extent that
22 you need to refer to the report then do so.

23 MS. JOHNS: Yes, Your Honor.

24 BY MS. JOHNS:

25 Q The initial information received was that there was a

1 single subject; isn't that right?

2 A A single subject?

3 Q Well, let me just ask you this. When you received the
4 information, information was received that a suspect had
5 gone to his vehicle and got an Uzi type weapon from the
6 passenger side; is that what the information is in this
7 case?

8 A There was information to this case that a witness had
9 observed a subject trying to enter the club from the parking
10 lot with what appeared to be, according to this, an Uzi type
11 firearm.

12 Q Okay. And there was information that the subject had
13 an Uzi type weapon wrapped in a white towel?

14 A White towel or white t-shirt; that's correct.

15 Q And the white towel information you say you received
16 from Ricky Jacobs; is that right?

17 A That's correct.

18 Q And you agree that you were with Eric Barnes when
19 initial contact was made with Ricky Jacobs; isn't that
20 right?

21 A Whether or not -- Mr. Barnes and I were both at the
22 location at the same time, but I don't know that initial
23 contact was made while he was standing right next to me.
24 Could have been.. Could not have been. I mean, I don't
25 know.

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1 Q Mr. McRae, do you have any independent memory of your
2 initial contact with Ricky Jacobs on the morning of June 30,
3 2007?

4 A I do, but I cannot tell you whether or not --

5 Q Okay. I withdraw that question.

6 A Okay.

7 Q Based on your independent recollection of meeting with
8 Ricky Jacobs on June 30, 2007, in the early morning hours
9 did you take a statement from him immediately?

10 A Did I take a statement from him immediately?

11 Q Yes?

12 A Verbal comments, yes. But a formal statement, no.

13 Q Do you have your field notes with you, Investigator
14 McRae?

15 A I do.

16 Q Your handwritten notes?

17 A No.

18 Q You didn't take any handwritten notes?

19 A Yes. Once I transcribe my handwritten notes to my
20 permanent investigative file my handwritten notes are not
21 saved.

22 Q Do you know where your handwritten notes are?

23 A I do not.

24 Q Now, based on your assignment as the lead investigator
25 on this case did you also send another investigator down to

1 the hospital to speak to potential witnesses there?

2 A I believe that the other investigator was already sent
3 to the hospital by Sgt. Barnes.

4 Q So Sgt. Barnes had some input as to how this
5 investigation should be followed up?

6 A Every investigator who works this case would have had
7 input. We work as a team, not one person independently
8 responsible -- not -- not that one person is not
9 responsible, but we all have input and we all direct, if I
10 may say, the course of the investigation.

11 Q So the answer is yes?

12 A To -- restate your question?

13 Q To Sgt. Barnes going down to the hospital?

14 A Sending someone. Not Sgt. Barnes going. Sgt. Barnes
15 sent. Yes.

16 Q So Sgt. Barnes sent someone down to the hospital --

17 A Yes.

18 Q -- correct?

19 A Yes. That would have been -- yes.

20 Q And you work as a team?

21 A We work as a team, yes.

22 Q And you also had somebody down at the hospital by the
23 name of Michael Smith; is that right? I'm sorry, M.P.
24 Smith?

25 A M.P. Smith. Yes. That would have been Doc Smith.

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1 Q I'm sorry.

2 A Doc, D-o-c Smith.

3 Q Oh.

4 A That's what we call him.

5 Q That's a nickname?

6 A Yes.

7 Q And were you privileged to the incident report that he
8 prepared?

9 A I am.

10 Q Did you use this as a tool in your investigation?

11 A As a tool. It is part of the investigation, yes.

12 Q And do you recall, can you see there is a name down
13 there, Travis Malone; is that right? Page 2?

14 A Page 2 of Mr. Smith's report?

15 Q Yes, sir. Page 2. Travis Malone.

16 A Oh, his investigative file. Yes.

17 Q See the name Travis Malone?

18 A Yes, I do.

19 Q Did he get a statement from Mr. Malone?

20 A I believe a statement was taken from Mr. Malone. I'd
21 need to see it to refresh my memory.

22 Q Would you be surprised to know there was not a
23 statement taken from Mr. Malone?

24 A No.

25 Q Okay. And what about Timothy Weldon?

1 A Not, I don't know.

2 Q Do you see Timothy Weldon?

3 A I do.

4 Q Do you have a statement from Mr. Weldon?

5 A No.

6 Q Weren't these two people at the hospital?

7 A I believe so, yes.

8 Q Okay. And being at the hospital they are potential
9 witnesses, right?

10 A They are.

11 Q And they're potentially eyewitnesses, too, aren't they?

12 A Yes.

13 Q Okay. You got a statement from Timothy Weldon did you?

14 A No.

15 Q And you have his address in here at Winnsboro; isn't
16 that right?

17 A P.O. Box.

18 Q Okay. And there is a phone number; is there not?

19 A Yes. There is.

20 Q Okay. Can you look at your investigative report and
21 tell me when and what day you called Mr. Weldon?

22 A I didn't.

23 Q You didn't?

24 A No.

25 Q Did you assign anybody to call him?

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1 A Not to my recollection, no.

2 Q You didn't think talking to Timothy Weldon was
3 important either?

4 A I didn't -- I don't know if it wasn't important, but it
5 did not get done.

6 Q Well, wasn't he part of the party?

7 A I don't know. I can't sit here and tell you whether he
8 was part of the party or not.

9 Q Well, his name was written down?

10 A Well, that doesn't make him part of the party.

11 Q Would it make him a potential witness?

12 A It does.

13 Q Do you have any reason why you didn't talk to him?

14 A No, I do not.

15 Q Did you ever try?

16 A No, I did not.

17 Q Do you know of anybody that ever asked him if he was an
18 eyewitness?

19 A I do not recall, no.

20 Q Do you want to look at your notes to see if you, at any
21 time, asked about Timothy Weldon?

22 A I don't recall.

23 Q Well, you talked to Verda Roberts, you had somebody
24 talk to Verda Roberts, and Stephanie Boston?

25 A Yes, ma'am.

1 Q And Charlie Bates, right?

2 A Right.

3 Q And what about Marcus Gordon; did you ever assign
4 anybody to talk to Marcus Gordon?

5 A No.

6 Q Well, wasn't he injured in this mayhem, chaos?

7 A May have been grazed.

8 Q May have been grazed. Did you talk to him?

9 A No.

10 Q You have no idea what his story is?

11 A I don't know if he has a story.

12 Q Well, it says may have been grazed?

13 A Yes, ma'am.

14 Q Well, he's a potential victim isn't he?

15 A He is.

16 Q And this mention of him being grazed is where, right
17 forearm?

18 A Right forearm; that's correct.

19 Q And to the best of your knowledge do you know whether
20 or not he was at the club?

21 A I do not know.

22 Q You don't know?

23 A No.

24 Q Well, is there a reason why you didn't talk to Mr.
25 Gordon?

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1 A No.

2 Q Do you think you could find Mr. Gordon?

3 A I don't know.

4 Q What about Mr. Weldon?

5 A I don't know.

6 Q Do you who that man is right there? Stand up for me.

7 MS. SHIPLEY: Objection, Your Honor. It's
8 inappropriate.

9 THE COURT: That's correct.

10 MS. JOHNS: I'll withdraw that, Your Honor.

11 BY MS. JOHNS:

12 Q Truth is, Mr. McRae, you didn't talk to many of the
13 witnesses who were at the club, at all?

14 A Many of the witnesses did not want to talk to me.

15 Q Okay.

16 A There were, as earlier testimony states, there were 40
17 to 50 people inside that club that were potential, as you
18 stated, eyewitnesses that did not talk to me.

19 Q Well, you had Mr. Gordon at the hospital that was a
20 potential victim; you didn't want to talk to him?

21 A And I believe Mr. Gordon checked himself out of the
22 hospital before the reporting officer was able to speak with
23 Mr. Gordon.

24 Q Well, somebody talked to him long enough to get his
25 information; is that fair to say?

1 A That's fair to say, but obviously there was not enough
2 time in between the time that he left because he checked
3 himself out of the hospital.

4 Q Well, you had all of his information didn't you?

5 A Ma'am?

6 Q You had all of his information didn't you?

7 A Yes.

8 Q Okay. Are you aware of a person by the name of Mr.
9 Goodwine?

10 A Yes.

11 Q Okay. And he didn't want to speak to you either did
12 he?

13 A I don't know if he wanted to speak to us or not. We
14 attempted to talk to him. We left a business card and he
15 never returned the call. I cannot state under oath whether
16 or not my information was given to Mr. Goodwine.

17 Q Okay. And you had to hunt him down, though, didn't
18 you?

19 A Hunt him down. I went to his home.

20 Q I'll withdraw the hunting down, but you did make
21 efforts to go to his home somewhere in Orangeburg; right?

22 A St. Matthews, yes, I did, along with Investigator
23 Gallegos.

24 Q Okay. And you made several attempts to get in touch
25 with him didn't you?

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1 A No. I made one attempt.

2 Q Well, you left your information. You just testified to
3 that, right?

4 A I'm sorry?

5 Q You left your information with his family?

6 A Yes.

7 Q Okay. And he never called you back?

8 A No.

9 Q And he didn't show up until last week, correct?

10 A That's correct.

11 Q Now, regarding witnesses that did not want to speak
12 with you, I want to show you what's marked as State's
13 Exhibit No. 53, and tell me there's a window there; is that
14 Taurus Watts standing in that window?

15 A I'm sorry?

16 Q Is that Taurus Watts standing in that window?

17 A In which window ma'am.

18 Q In the window of the club?

19 A Well, ma'am, do you have a magnifying glass? I can't
20 see that far.

21 Q Well, there is a person standing there, is there not?

22 A I can't identify who that person is.

23 Q Well, do you see a person there?

24 A No.

25 Q You don't see a person there?

1 A No. Do you have a magnifying glass?

2 Q Okay. Under ICE you cannot determine and distinguish
3 that that's a human being?

4 A No.

5 Q Okay.

6 MS. JOHNS: May I publish, Your Honor?

7 THE COURT: Is this already in evidence?

8 MS. SHIPLEY: It is, but he should be given an
9 opportunity -- Mr. Swerling has a magnifying glass.

10 THE COURT: Okay.

11 MR. SWERLING: I just always happen to have one.

12 THE COURT: Okay.

13 (Magnifying glass and photo passed to Mr. McRae.)

14 A You said where?

15 BY MS. JOHNS:

16 Q Under the word, ICE?

17 A The word ICE. I see a subject there. I see a person
18 there, but I can't tell you who he is.

19 Q So then for me to ask you who it is wouldn't help you
20 at all?

21 A No.

22 MS. JOHNS: May I publish this to the jury, Your
23 Honor?

24 THE COURT: This is already in evidence?

25 MS. JOHNS: Yes, ma'am.

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1 THE COURT: Okay. That's fine.

2 THE COURT: What's the exhibit number?

3 MS. JOHNS: No. 53, Your Honor.

4 THE COURT: Okay. Thank you.

5 BY MS. JOHNS:

6 Q After looking at State's No. 53, he's looking out the
7 window; is that fair to say?

8 A Yes.

9 Q And he looks like he interested in what's going on;
10 isn't that right?

11 A But I don't know what's going on in that picture. I
12 mean, the crime scene is there, but I can't tell if I'm
13 there or not. I'm not in the photo.

14 Q Okay. Now, based on the information that you received
15 from Ricky Jacobs, did you do a search of all SUVs in that
16 zip code area?

17 A A search of all SUVs in that zip code would have been
18 against the law.

19 Q It would have been?

20 A To search all SUVs in that zip code, ma'am, to do a
21 search I would have needed a search warrant, and to get a
22 search warrant would have taken probable cause.

23 Q No. I'm just asking if you went to one of your data
24 banks to see about all the SUVs in that zip code area. Did
25 you go to a data base and look for all tan in color SUVs?

1 A No.

2 Q That were registered in that area?

3 A No.

4 Q What about white Nissan Pathfinders, did you do that?

5 A No. It would have been an exercise in futility.

6 Q Well, you have access to DMV, do you not?

7 A Yes, but that would have been an exercise in futility.

8 There was no point in attempting to locate every SUV within
9 that area and try to locate them. That would not have been
10 a meaningful use of my time or the department's assets.

11 Q Okay. Well, you had a couple of SUVs parked right out
12 in front of the business; did you not?

13 A Yes.

14 Q Did you obtain who the owner of those SUVs were?

15 A Again, I don't know if those SUVs were parked out
16 there. I don't know if I was still there. I don't know.

17 Q You don't know --

18 A And the information that we had on the SUV was that it
19 had departed the area. So why would I be concerned with an
20 SUV that was still there when the information had said that
21 the SUV had left?

22 Q I don't know, Mr. McRae. I'm just asking?

23 A I don't know either.

24 Q Okay. But you didn't did you?

25 A No. There was no point.

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1 Q So if an SUV would have left and came back you wouldn't
2 have --

3 A There was no information in our investigation that
4 stated that SUV came back.

5 Q I didn't mean to interrupt you. Go right ahead. What
6 were you saying?

7 A I didn't have any information that an SUV left and came
8 back.

9 Q Yeah. Went to -- in stead you used your time in the
10 department to ride around in the Briarcliff Road
11 neighborhood, right?

12 A Based on my experience and the knowledge of that
13 neighborhood, I knew that patrons of that club lived in the
14 Washington Height area and that area in and around the club.
15 Therefore, in my experience in law enforcement and being a
16 criminal investigator, that was a smart piece of
17 departmental assets and my time.

18 Q What about Timothy Weldon, Winnsboro, South Carolina.
19 He doesn't live in that neighborhood?

20 A No, he does not.

21 Q What about Stephanie Boston, Charlie Bates, they don't
22 live in that neighborhood? You talked to them.

23 A No, but we had direct information that they were
24 involved in the fight at the club, and at the time they were
25 willing to talk to us.

1 Q So one, you have to be willing --

2 A No.

3 Q -- to talk to you?

4 A I did not say that.

5 Q Well, I'm just trying to get it straight for the jury.

6 That's all.

7 A I understand that. But I did not say that you had to
8 be willing to talk to me.

9 Q Okay. Well, you said that based on --

10 A I said that these individuals were willing to talk to
11 me.

12 Q So you had individuals that were willing to talk to
13 you?

14 A And I had some individuals that were not willing to
15 talk to me.

16 Q And one of them was Lamont Goodwine, not willing to
17 talk to you; is that right? He's not willing to talk to
18 you?

19 A He didn't not talk to us that night. No.

20 Q And he lives in St. Matthews, right?

21 A That's correct.

22 Q And he did not live in those neighborhoods did he?

23 A No, he did not, nor did most of the party that night.

24 Q Okay. So when you say that based on your information
25 about that neighborhood, that really doesn't mean anything

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1 in this case because people came from everywhere, right?

2 A To include Washington Heights area and the area in and
3 around Farrow Road.

4 Q So you took the information from one witness and you
5 drove around Washington Heights looking for SUVs, right?

6 A I did not say I took information from a witness. I
7 used my experience and my knowledge of the area and took
8 that upon my own to look around the area for a tan in color
9 SUV.

10 Q Okay.

11 A A tan in color Suburban, to be more specific.

12 Q Right. In Washington Heights, is that right?

13 A In and around Washington Heights and Farrow Road and
14 Hardscrabble Road area, yes.

15 Q Okay. And you just happened upon three SUVs in the
16 Washington Heights area; right?

17 A Two.

18 Q What about the champagne Navigator?

19 A It's not a tan Suburban, is it, ma'am?

20 Q I don't know. I think --

21 A You just said it was champagne --

22 Q -- well, it's a champagne Navigator. You did see a
23 champagne Navigator in the Washington Heights area, didn't
24 you?

25 A But we had information it was a tan in color Suburban.

1 Q Okay.

2 A I mean, there were probably other tan in color SUVs in
3 the area that I paid no attention to, also.

4 Q So there were a lot of SUVs in that area, then?

5 A I did not say that. I said probably more than one tan
6 in color Navigator that paid no attention to because the
7 investigation revealed it was a tan in color Suburban.

8 Q Okay. In fact, the vehicle, even in this case is not
9 tan, it's silver, isn't it?

10 A I believe we all agree that that is subjective because
11 I have seen the photos from when that search warrant that
12 was conducted on that vehicle. There are pictures that make
13 that vehicle look white. There are pictures that make that
14 vehicle look tan. It would depend on how, A) The sun is
15 hitting it, and B) The area where the vehicle is at.

16 Q So, let me see if I've gotten this investigation
17 straight. Now, you went to the Washington Heights area
18 before you went to the location where the white Isuzu was
19 pulled over; isn't that right?

20 A That's correct, because I did not have that
21 information. For some reason I did not get that information
22 until we had returned from the Washington Heights area.

23 Q Okay. And would you agree -- well, why don't you just
24 tell the jury when you did go to the scene where the white
25 Isuzu Rodeo with the black stripe had been pulled over; what

1 time was that?

2 A I don't recall the exact time. It was probably about
3 6:20 to 6:30. I don't know.

4 Q Between your time of arrival --

5 A Yes, ma'am.

6 Q -- which was 5:40 a.m.?

7 A Yes, 20 minutes til 6:00.

8 Q Twenty minutes to 6:00?

9 A That's correct.

10 Q Until the estimated time of arrival at the location
11 where the white Isuzu Rodeo had been pulled over?

12 A Approximately, 40 minutes. Yes, ma'am.

13 Q So about 40 minutes, you went through the Washington
14 Heights area?

15 A That's not the only thing that I did. That's not the
16 only thing that I testified that I did. I met with Doc
17 Barnes, I met with Ricky Jacobs. I believe I also testified
18 under cross from Mr. Swerling, I walked the area and made
19 sure the area was secure. So in 40 minutes, give or take a
20 few minutes, yes, that's what I did.

21 Q And what you also did is that you also drove through
22 the Washington Heights area looking for tan SUVs?

23 A That's correct.

24 Q Now, at that time you had no idea that Tremaine Wray
25 drove a tan SUV, did you?

1 A No.

2 Q But you just happened to be looking for a tan SUV?

3 A We had information that the rounds were fired from a
4 tan Suburban, yes, ma'am.

5 Q So anybody that drives a tan Suburban therefore must
6 live in Washington Heights?

7 A No, ma'am. Again, I go back to tell you that I picked
8 that area because based on my experience of the area and the
9 fact that I patrolled that area and the fact -- I'm going to
10 back up. I have something I do not want to state. Based on
11 my experience I know the people that live in that area go to
12 the club. So it was an educated --

13 Q Educated what?

14 A -- guess.

15 Q Okay.

16 A That the tan Suburban that we were looking for may have
17 been in the Washington Heights Farrow Road area.

18 Q Do you have the benefit, obviously, I'm asking for the
19 benefit of the jury.

20 A Sure.

21 Q Do you have radio contact with the department during
22 this entire investigation?

23 A Actually, that is too broad of a question if I may
24 explain.

25 Q Okay.

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1 A We have -- for the Richland County Sheriff's Department
2 we have one, two, three, -- six channels for all of Richland
3 County. The Washington Heights area is in Region 3,
4 therefore my radio would have been on channel 3. At the
5 location of what that white Rodeo was pulled over would have
6 been in Region 2, therefore those deputies would have been
7 transmitting on tac 2 not tac 3, which was the tac that I
8 was on.

9 Q Okay. Now, based on that information that you received
10 you learned that there was more than 20 shots fired; isn't
11 that right, more than 20 shots fired?

12 A I don't recall being give a number of more than 20.

13 Q Well, if that came over the radio call you'd say that's
14 what it was, right?

15 A Ma'am, that call went out for the officers to respond.
16 I was still asleep.

17 Q Then you would have been asleep also when there was a
18 call that there was a box Chevy --

19 MS. SHIPLEY: Objection, Your Honor.

20 Q -- seen there?

21 MS. SHIPLEY: The witness testified he did not hear
22 it. He had no person knowledge of it.

23 MS. JOHNS: He didn't say that he didn't have
24 information about other --

25 THE COURT: You can ask the question and then he

1 can let you know what he has a response to.

2 BY MS. JOHNS:

3 Q Were you aware of a call coming across the radio that
4 described a box Chevy, two-tone leaving the area?

5 A I don't recall.

6 Q Do you recall hearing a white Pathfinder coming across
7 at 4:15 a.m.?

8 A Again, ma'am, I was asleep. I was not notified of this
9 incident until 5:08.

10 Q Okay. So I'm going to show you a document that
11 involves the 911 call log. So the first incident on that
12 call log at 5:08 a.m. is well after they had the Isuzu
13 stopped, isn't it?

14 A What, I'm sorry?

15 Q It's well after they had the Isuzu stopped?

16 A No. Can you restate your whole question for me,
17 please?

18 Q After 5:08 when you got your initial call --

19 A Yes.

20 Q -- and you had the privilege of listening to your radio
21 calls, the Isuzu Rodeo had already been stopped, right?

22 A Ma'am, as I have already testified. I was on tac 3.
23 The Isuzu Rodeo, that whole stop would have been transmitted
24 over tac 2.

25 Q So your answer is no. You did not know about it?

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1 A My answer is no. And I've already testified about it,
2 because we went to Washington Heights first.

3 Q Okay.

4 A And I do believe I stated under this line of
5 questioning that there was some confusion between that
6 vehicle being stopped and myself being notified of that
7 stop.

8 Q So the first radio call that you were aware of that
9 there was a signal 18 at 5:16 a.m.?

10 A I don't know if I was aware of that call or not.
11 There's a lot of traffic transmitted over that radio that I
12 don't recall.

13 Q All right. When you arrived at the crime scene, had
14 the crime scene already been taped off?

15 A Yes.

16 Q I'm going to show you State's Exhibit No. 94. Do you
17 see any tape in that photograph?

18 A It's a dark photograph. Let me orientate myself to
19 this. I do see a police car blocking the road. I can make
20 out some lights down at the other end, but I -- without the
21 proper lighting I can't tell if there's any tape down there.
22 And I can't even see where the club and the car wash is in
23 that.

24 Q You can't make out where the club or the car wash is in
25 that photo?

1 A It's a street -- the angle of the shot is down
2 Hardscrabble Road. I mean, I have no idea where the club is
3 in that photo. No.

4 Q Okay. Well, the angle of the shot is down Hardscrabble
5 Road and do you see any lights down that road?

6 A I see several lights.

7 Q Okay. Do you see vehicles down that road?

8 A I see several lights.

9 Q Can you tell whether or not they're vehicles?

10 A No.

11 Q So do you know if that's what Ricky Jacobs saw?

12 A I'm sorry?

13 Q Do you know what Ricky Jacobs saw?

14 A I don't know what Ricky Jacobs saw. I wasn't there
15 when Ricky Jacobs saw that he saw.

16 Q Okay. Did you talk to the DJ in this club?

17 A No.

18 Q I'll show you State's Exhibit No. 46, do you know who
19 this is?

20 A I believe that that -- I believe that that's Luther
21 Landrum.

22 Q In this picture, State's Exhibit No. 46, does this
23 person have dread locks?

24 A Yes.

25 Q Was he the driver of the Isuzu Rodeo with the black

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1 stripe?

2 A He was.

3 Q Did his automobile, the white Isuzu Rodeo with the
4 black stripe down the side have ammunition in it?

5 A It did.

6 Q And was that ammunition consistent with the ammunition,
7 well, the shell casings, the cartridges that were found at
8 the scene?

9 A Was it consistent with, it was the same brand. Yes.

10 Q Now, you stated on direct examination that Mr. Watts
11 lived down on Ida Lane, according to State's Exhibit No.
12 162?

13 A I never stated where Mr. Watts lived.

14 Q You said the information that you received regarding
15 Mr. Watts shows his last known address as Ida Lane?

16 A That's correct.

17 Q And who lives at that address on Ida Lane?

18 A Who lives at that address on Ida Lane, I have no idea
19 who lives at that address on Ida Lane. The information gave
20 an address.

21 Q Gave an address --

22 A I do not know who else lives at that location.

23 Q Did you ever find out?

24 A No.

25 Q So if his mother lives there would that mean anything

1 to you?

2 A Well, would it mean anything to me, how? Okay, his
3 mother lives there.

4 Q Well, that was the last known address for him?

5 A That was the last known address, yes.

6 Q Well, did you go there and try to talk to her?

7 A No.

8 Q Okay.

9 A She wasn't a witness in a crime, so why would I go
10 speak to her?

11 Q Well, that's his last known address, sir, you would
12 have gone there to look for him, right?

13 A Would I have gone down to look for him once he's
14 wanted?

15 Q Somebody had --

16 A Once a warrant is issued, sure.

17 Q I'm just asking Mr. McRae. I'm just asking if you went
18 there?

19 A No.

20 Q You did not?

21 A No.

22 Q You didn't assign anybody to go there, did you?

23 A There was no purpose to go there --

24 Q I didn't ask you if there was a purpose. I asked you
25 if you assigned anybody to go there.

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1 MS. SHIPLEY: Your Honor, can he explain.

2 THE COURT: He can answer yes or no and explain you
3 answer.

4 A No. I did not assign anybody to go there because there
5 was no need for anybody to go there until after a warrant
6 was obtained for Mr. Watts' arrest. There would have been
7 no reason for an investigator to go to Mr. Watts' address
8 prior to that.

9 BY MS. JOHNS:

10 Q Okay. And this Ida Lane is not in Washington Heights,
11 is it?

12 A No.

13 Q But you went to Washington Heights without a warrant,
14 didn't you?

15 A We went to Washington Height in the vicinity of
16 Hardscrabble Road for another purpose. We went to search
17 for a tan in color Suburban.

18 Q Okay. But you didn't go look for a tan in color
19 Suburban on Ida Lane?

20 A No.

21 Q Okay. Now, when did you get a search warrant for Ida
22 Lane?

23 A I didn't.

24 Q So you never went to search the house?

25 A No.

1 Q Did you ever find a gun related to Taurus Watts?

2 A No.

3 Q What about a white in color t-shirt?

4 A No.

5 Q Did you ask permission to go search for items like that
6 from this house?

7 A No.

8 Q Okay. Didn't you testify at sometime during this trial
9 that my client, Mr. Watts, had turned himself in to the
10 Sheriff's Office?

11 A He did.

12 Q Okay. And you had already issued a warrant for his
13 arrest on July 1, 2007, didn't you?

14 A That's correct.

15 Q And you already published information about him being
16 wanted through the Sheriff's Department, did you not?

17 A Published information through the Sheriff's Department,
18 yes.

19 Q Okay. And that's called a BOLO, right?

20 A Yes.

21 Q Be on the lookout for?

22 A That's correct.

23 Q And the information that you were looking for in
24 wanting to arrest him, you had already circulated that
25 information; is that fair to say?

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1 A That's fair to say.

2 Q So when Mr. Watts voluntarily came into the Sheriff's
3 Department to turn himself in, that would be something you
4 would be interested in, I mean, you were there right?

5 A I think once I found out he was at the Sheriff's
6 Department, correct.

7 Q And you saw him at the Sheriff's Department, didn't
8 you?

9 A Saw him at the Sheriff's Department?

10 Q Yes, sir.

11 A Yes.

12 Q And for all you know, he was there voluntarily, right?

13 A As far as I know, yes.

14 Q Well, he didn't show up to the lobby with cuffs on did
15 he?

16 A No.

17 Q Okay. Now, I think Mr. Swerling touched on this a
18 little bit, and I just want to make sure that I'm not
19 missing anything. You know this trial was scheduled for May
20 18, 2009 of this year, right?

21 A That's correct.

22 Q And that is the same date that Mr. Brian Watson got in
23 touch with you at the Department, correct, through his
24 lawyer?

25 A Through his attorney, correct.

1 Q All right. You didn't hear anything else about Mr.
2 Watson prior to that date wanting to get in touch with you
3 about this case did you?

4 A No.

5 Q Now, did you ask Mr. Watson how long he had known
6 Taurus Watts?

7 A I believe I did. Let me check my notes. I did.

8 Q And he had know him for a while, had he not, almost
9 five years?

10 A That's correct.

11 Q He knew his cousin, Brian Morris, right?

12 A I'm sorry?

13 Q He also testified that he knew my client's cousin,
14 Brian Morris?

15 A That's correct.

16 Q Okay. He didn't volunteer any information from
17 February to May 2009 about Brian Morris to you, did he?

18 A No.

19 Q In fact, that May 19 was the first time you heard from
20 Brian Watson about is case; right?

21 A That's correct.

22 Q And there is actually no issue with the fact that Brian
23 Watson knew who his niece was married to, right?

24 A I'm sorry?

25 Q There's no discrepancy that Brian Watson knew to whom

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1 his niece was married to, right?

2 A Correct.

3 Q So all along his arrest for armed robbery in February
4 to May 19, 2009, you would agree that Brian Watson knew to
5 who his niece was married to, Jarrell Dansby, right?

6 A Correct.

7 Q You didn't receive any information prior to the May 19
8 date that you needed to talk to Jarrell Dansby did you?

9 A Prior to May 18, no.

10 Q Now, with regard to this Isuzu Rodeo, let's go back to
11 that for a little bit.

12 A Okay.

13 Q What route did that Isuzu Rodeo take when it left
14 Hardscrabble Road?

15 A I would have no idea.

16 Q All right. Well, there was some information that you
17 received from Deputy Galinski, did you not, that he saw the
18 car on Rabon Road?

19 A That's correct.

20 Q And he did a U-turn, the deputy did a U-turn on Rabon
21 Road to follow the white Isuzu Rodeo, is that right?

22 A That's correct.

23 Q And where is Rabon Road in relation to Hardscrabble
24 Road?

25 A There are -- in relation to Hardscrabble Road?

1 Q Yes.

2 A It's out on Farrow Road maybe a mile or a mile and a-
3 quarter.

4 Q In State's Exhibit No. 162, let's try to keep this away
5 from the court reporter, where would Rabon Road be located?

6 A Farrow Road runs here, Hardscrabble runs here. Farrow
7 Road -- Rabon Road would be down in here off of Farrow Road.

8 Q Okay, and does Rabon Road connect with another major
9 road?

10 A Rabon Road is probably three or four miles and runs in
11 between Two Notch and Farrow Road.

12 Q Okay. Runs between Two Notch and Farrow Road. Can you
13 get to Rabon Road from Two Notch then?

14 A Can you get from Rabon Road from Two Notch?

15 Q You're on Two Notch, can you get to Rabon Road?

16 A Sure.

17 Q And you can get to Rabon Road from Farrow Road, as
18 well, is that right, Farrow Road being this right here?

19 A There's actually two ways you can get to Rabon Road
20 from Farrow Road. Actually, one of the two -- one, -- you
21 can go out Farrow, turn on Hardscrabble take you on past
22 H&J, you can turn right onto Sloan and -- you can turn from
23 Hardscrabble onto Rabon. You can also turn on the road
24 before the club from Hardscrabble and continue down and that
25 will intersect with Rabon Road. You can also get to Rabon

1 Road from Sloan Road.

2 Q Okay. And Sloan Road is depicted in State's Exhibit
3 No. 162, isn't it, right here?

4 A Yes.

5 Q Okay. So in order to get to Sloan Road you'd have to
6 take a right onto Hardscrabble from the club, go into the
7 direction towards North Brickyard, and Clemson, and then
8 turn right on North Brickyard Road and also get to Two
9 Notch, right?

10 A Well, actually, you could go left off Hardscrabble Road
11 turn left onto Hartin, turn left into Farrow Wood
12 Subdivision and take the back roads into Farrow Woods
13 subdivision and end up on Charlwood, which would dump you
14 out on to Sloan Road. So there are several ways. You could
15 also get to Rabon Road from the club by turning left on
16 Hardscrabble, turn left on William Hartin Road, continue
17 down William Hardin Road which would dump you onto Rabon
18 Road. So there are several ways to get to Rabon Road from
19 the club location by turning left or right.

20 Q In my attempt to orient this jury into the location of
21 the Blockbuster where the white Isuzu was pulled over --

22 A Yes, ma'am.

23 Q -- is the Blockbuster on Two Notch Road near Sandhills?

24 A No.

25 Q Is it near Target?

1 A No.

2 Q Is it closer in to Columbia?

3 A It is.

4 Q Is it near Wal-Mart?

5 A No. The old Wal-Mart.

6 Q Okay. What landmark is Blockbuster closest to in
7 regard to one of those larger stores?

8 A The old Wal-Mart.

9 Q And is there something across the railroad track that
10 would give somebody an indication of where that Blockbuster
11 is?

12 A A railroad track, the railroad track runs the entire
13 length of US 1.

14 Q Right. Near the Blockbuster. Is there an
15 intersection?

16 A Near the Blockbuster. I believe it would be near Polo
17 Road.

18 Q Polo Road.

19 A Yes, ma'am.

20 Q Is Polo Road depicted here?

21 A It is.

22 Q So that's where the Blockbuster is, Polo Road?

23 A I can't -- it's in this area. I can't remember if it's
24 inbound from Polo Road or outbound from Polo Road. But it's
25 right in this area.

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1 Q Okay. So did you get information about the last known
2 address of Luther Landrum?

3 A Information, we would have gotten from whatever was on
4 his driver's license, that's correct. I have listed in my
5 file, (inaudible).

6 Q What zip code is that?

7 A 29229.

8 Q Is that in the Northeast area?

9 A It is.

10 Q Did you ever go to Mr. Landrum's house?

11 A No. Mr. Landrum did not want to speak to me.

12 Q Do you know where Mr. Landrum's house is with respect
13 to Hardscrabble Road?

14 A I do not.

15 Q Did he ever tell you that he was going home from
16 Hardscrabble Road that night?

17 A Tell me?

18 Q Or anybody?

19 A I don't know.

20 Q Well, then you'd be surprised to know that this house
21 might be located near Clemson Road, right?

22 A Two Notch intersects with Clemson Road. That would be
23 a reasonable to believe he was on his way home, going Two
24 Notch towards US1, to Clemson Road.

25 Q Then wouldn't it also be unreasonable for him to turn

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1 left on Hardscrabble Road and travel all the way down to
2 Farrow Road and then take a left on Rabon Road and then take
3 a left and then travel all the way out Rabon Road, and then
4 turn towards Columbia on Two Notch?

5 A I don't know which way he went home that night. Maybe
6 he had to -- I don't know. Maybe he went somewhere else
7 before he went home. Maybe he went to the Waffle House. I
8 don't know.

9 Q Okay.

10 A I don't know what path Mr. Landrum took home from the
11 club that night.

12 THE COURT: Can y'all approach about lunch.

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

15 THE COURT: Ladies and gentlemen of the jury, we're
16 going to go ahead and take lunch now because obviously
17 there's going to be some more information coming from this
18 witness. I'll remind you not to discuss the case. I'll ask
19 you to report back to your jury room at 2:15.

20 (Jury out at 12:53 p.m.)

21 THE COURT: Mr. McRae, I'll remind you not to
22 discuss your testimony. You may step down.

23 MR. MCRAE: Thank you.

24 (Court at recess for lunch break)

25 (Court in session after lunch break.)

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1 THE COURT: Okay. Jurors, please.

2 (Jury in at 2:25 p.m.)

3 THE BAILIFF: The jury's all present, Your Honor.

4 THE COURT: Okay. Ms. Johns, you may resume your
5 questioning.

6 MS. JOHNS: Thank you, Your Honor.

7 DON MCRAE - CONTINUED CROSS-EXAMINATION

8 BY MS. JOHNS:

9 Q Okay. Let familiarize the jury again with who M.P.
10 Smith is; can you tell the jury?

11 A M.P. Smith was a deputy who worked for Richland County
12 Sheriff's Department at this time. During the time of this
13 incident.

14 Q Is he the officer that collected the bullet at the
15 hospital?

16 A He is.

17 Q Okay. And you spoke to Stephanie Boston, is that
18 correct, or you had somebody speak to Stephanie Boston?

19 A Stephanie Boston was interviewed during the course of
20 this investigation, yes, ma'am.

21 Q And there's a notation that she saw the fight earlier;
22 is that right?

23 A I'm sorry, ma'am?

24 Q That's a notation that she saw the fight only, in Mr.
25 Smith's report?

1 MS. SHIPLEY: Objection, Your Honor. This is
2 hearsay again. What a witness told another witness.

3 MS. JOHNS: Your Honor, again, it's not offered for
4 the truth of the matter asserted. This is a report that he
5 relied on -- didn't rely on, excuse me. But he did use as a
6 tool.

7 THE COURT: Okay. Well, establish that first,
8 because, are we talking about the same report?

9 MS. JOHNS: Well --

10 MS. SHIPLEY: Well, when Deputy Smith testified,
11 that would have been the time to ask him this.

12 MS. JOHNS: Well, Your Honor, cross-examination,
13 Your Honor, he stated he did use this incident report as a
14 tool.

15 THE COURT: Okay, well, there's several pages
16 you're referring to within the entire report, so let's make
17 it more narrow to him.

18 BY MS. JOHNS:

19 Q Do you have this report available to you?

20 A Which report?

21 Q The supplemental report of Mr. M.P. Smith?

22 A I do.

23 Q Okay. And there is a notation that Stephanie Boston
24 saw the fight only, right?

25 A It in there, yes.

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1 Q And there's another annotation of Verda Roberts that
2 says she was assaulted and did not see the shooting; is that
3 right?

4 A That's correct.

5 Q And there's a notation of Travis Malone that says he
6 drove the victim to the hospital; is that correct?

7 A That is correct.

8 Q And there's a notation of Timothy Weldon that says, saw
9 shooting; correct?

10 A That's correct.

11 Q And then there's Charlie Bates, who was in the car with
12 the victim?

13 A That's correct.

14 Q And lastly, Marcus Gordon, may have been grazed by
15 bullet?

16 A That is part of the annotation above his name. Yes.

17 Q Left the hospital?

18 A Yes, he did.

19 Q Checked himself out prior to M.P. Smith arrival?

20 A Correct.

21 Q Subject came back to hospital, was seen?

22 A Correct.

23 Q Doctor said he had a graze wound to his right forearm?

24 A That's correct.

25 Q And of these one, two, three, four, five, six people,

1 the only person your department didn't talk to is the
2 eyewitnesses, right?

3 A (No response.)

4 Q Timothy Weldon, saw the shooting.

5 A Again, that's it's annotated. Again, this is the
6 initial report.

7 Q Now, are you familiar with an incident report for a
8 crime was reported that on September 3, 2007, a subject by
9 the name of Norris brought a Tac 9 or Mac 10 into the
10 complainant's place of business; are you aware of that
11 report?

12 A I'm aware of the report. If you could provide that
13 report so I can refresh my memory.

14 Q Who's the complainant in that report, sir?

15 A I think the complainant is listed as Ricky Jacobs.

16 Q And where is his business located?

17 A 2820 Hardscrabble Road.

18 Q And what's the name of his business?

19 A Which -- he has -- H&J club or Chaser's Pub.

20 Q Okay. And there -- he was the complainant on September
21 3, 2007; is that right?

22 A He was.

23 Q And the complaint was that there was a subject that
24 brought a Tac 9 or a Mac 10 or a Tac 9 into his place of
25 business?

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1 A That's correct.

2 Q And you had benefit of this report, right?

3 A I was assigned this report. Yes, I was.

4 Q Okay. And did you go talk to Norris Bond about this?

5 A No, I did not.

6 Q Was there an arrest done about this?

7 A No, there was not.

8 Q Did you talk to Bryan Johnson about this?

9 A No, I did not.

10 Q Did you know that Brian Johnson and Norris Bond are
11 cousins?

12 A No, I did not. Not at the time of this report.

13 Q You had an opportunity to talk to Bryan Johnson after
14 that report was filed, didn't you?

15 A An opportunity to speak with him. Yes, I had an
16 opportunity to speak with him, however, I didn't in the fact
17 that in this report I did attempt to make contact with the
18 complainant in the incident report who -- and did not make
19 contact with me. Therefore, it is our protocol that if the
20 victim or we have a crime that was reported, but the victim
21 or complainant does not follow up with us, we do not
22 continue any investigation into that incident.

23 Q Okay. Let me see if I got this right. Ricky Jacobs,
24 is the complainant on this report?

25 A That's correct.

1 Q And he's reporting that somebody is bringing a Mac 10
2 or a Tac 9 into his place of business; correct?

3 A That's correct.

4 Q And we've seen a photograph of what that gun looks
5 like, have we not?

6 A This gun that was brought into this incident, no, we do
7 not have a picture of that gun.

8 Q Okay. Well, let me show you State's Exhibit No. 140,
9 and look at No. 18.

10 A Yes.

11 Q What kind of weapon is that?

12 A I'm not a weapons -- it's what I believe to be a Mac
13 10, M-11 type firearm. That's correct.

14 Q You're not familiar with this weapon?

15 A The type of firearm or weapons in general?

16 Q This type of firearm?

17 A Yes. I'm aware of what it's been called in this trial,
18 yes.

19 Q Okay. Is this close to a Tac 9, T-a-c 9?

20 A I would have no idea. I'm not a firearms expert.

21 Q Okay. Well, you knew enough about the firearm to bring
22 a picture of the firearm to Ricky Jacobs the morning of the
23 shooting, didn't you?

24 A That's correct, based on the -- based on the
25 information that was referred to me during the course of

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1 this investigation by our firearms expert.

2 Q Okay, and Ricky Jacobs is the one that gave you the
3 description of the firearm on June 30, 2007, right?

4 A That's correct.

5 Q And then on September 3, Ricky Jacobs being the
6 complainant again, not only gives you a description of the
7 weapon but tells you what kind of weapon it is, didn't he?

8 A State's it was a Tec 9; that's correct.

9 Q Or Mac 10?

10 A That's correct. And that's what's in the report, but
11 Ricky Jacobs never told me that in reference to that report,
12 because I never spoke to Ricky Jacobs in reference to that
13 report.

14 Q Okay, and the reason you didn't speak to Ricky Jacobs,
15 is what you're telling us today, is that he never called you
16 back?

17 A He never returned my calls in conjunction with that
18 case; that is correct.

19 Q Okay. All the information that pertains to this case
20 goes through you as the chief investigator, right?

21 A It's available to me, that's correct.

22 Q And you are the lead investigator in this case; is that
23 right?

24 A Yes.

25 Q And you're the one that would oversee the investigation

1 from it's inception through trial?

2 A Well, as I testified, we use everybody within the
3 department. I am not going to tell a crime scene
4 investigator how to collect evidence. I'm not going to tell
5 a crime scene investigator how to do their job. I'm not
6 going to tell a firearms expert how to do his job. I do
7 have access to everything. Everything is filtered through
8 me throughout the course of the investigation.

9 Q Just like the information that Brian Watson had brought
10 to your attention on May 19, 2009, right?

11 A (No response.)

12 Q Just like that information that was brought to your
13 attention?

14 A That information was actually given to me by his
15 lawyer.

16 Q And you acted upon that information?

17 A I did.

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

20 THE COURT: Okay. Redirect?

21 DON MCRAE - REDIRECT EXAMINATION

22 BY MS. SHIPLEY:

23 Q Investigator McRae, were you made aware, during your
24 investigation who of the witnesses inside of the club had
25 been contacted and given their rendition of what had

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1 occurred inside of the club?

2 A Yes.

3 Q And who were those witnesses?

4 A The witnesses Stephanie Boston, Verda Roberts, and
5 Charlie Bates, and basically all the people listed on his
6 follow up.

7 Q And besides Verda Roberts, Charlie Bates, Stephanie
8 Boston, who else was with them that night.

9 A Besides Stephanie Boston, Verda Roberts, and Charlie
10 Bates?

11 Q Yes. Who went to the club with them?

12 A Travis Malone and Mr. Goodwine.

13 Q And obviously Demuria Johnson?

14 A And Demuria Johnson, yes, ma'am.

15 Q So there was a party of six, correct?

16 A Correct.

17 Q Any mention by any of them that Timothy Weldon was a
18 part of their party?

19 A No.

20 Q Or the other gentleman, Marcus Gordon?

21 A No, ma'am.

22 Q And after these individuals, at least Verda Roberts,
23 Charlie Bates and Stephanie Boston provided statements, did
24 you, in this part of your investigation have a good grasp of
25 what had occurred inside?

1 A Yes.

2 Q You were asked about whether or not what was reported
3 to you in the course of your investigation when you first
4 arrived on the scene. Tell this jury during the course of
5 your investigation at the scene, what was reported as to how
6 many shots were fired from the Rodeo?

7 A One.

8 Q And in which direction?

9 A In the air.

10 Q And what was reported as to how many shots were fired
11 by the tan Suburban?

12 A Multiple.

13 Q And in which direction?

14 A Towards the direction of the club slash car wash.

15 Q And how many projectiles were recovered in the entire
16 case?

17 A Projectiles, three.

18 Q And one of them coming from the victim; correct?

19 A Correct.

20 Q How many shell casings were recovered at the scene?

21 A Ten.

22 Q And during the course of your investigation were you
23 made aware of the ballistic expert's analysis of the
24 evidence?

25 A I was.

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1 Q And did the number of shots reported from each vehicle
2 ever change?

3 A No.

4 Q And I believe you were asked by Mr. Swerling on cross-
5 examination about Mr. Jacobs statement?

6 A Yes.

7 Q Tell the jury what he did in his statement on the very
8 last page?

9 A On the very last page of Mr. Jacobs statement, Mr.
10 Jacobs statement, he made it clear to me that he did not see
11 any particular person shoot from the tan colored Suburban
12 but was positive that those shots did come from that
13 vehicle.

14 Q Now, I'm going to bring your attention to some
15 questions asked by Ms. Johns. Brian Watson, when was the
16 date that his name was first brought to your attention?

17 A May 18, 2009.

18 Q And after you interviewed Brian Watson who did you
19 interview next?

20 A Rashonda Simpson.

21 Q And who else were you going to go interview?

22 A After we interviewed Rashonda Simpson, we attempted to
23 interview Jarrell Dansby.

24 Q And did you interview him?

25 A Yes.

1 Q Why did you find the need in your investigation to
2 question these two people in addition to Mr. Watson?

3 A Because I wanted those two to cooperate or to made Mr.
4 Watson's statement to me credible. In other words, I wanted
5 to know that what he was telling me was the truth.

6 Q Do you have any personal knowledge as to whether nor
7 not a two truck driver got into that tan Suburban at Outback
8 Steakhouse?

9 A No. I don't know. They are able to jerk a vehicle
10 onto a flatbed and tow it without getting inside the
11 vehicle.

12 Q And I'm going to show you State's 163, and ask you if
13 you know that what is?

14 A It is the two slip, standard form, from the Richland
15 County Sheriff's Department.

16 Q And for which vehicle in particular?

17 A A tan Suburban.

18 Q Okay.

19 MS. SHIPLEY: Your Honor, at this time state would
20 seek to introduce 153 into evidence -- or 163.

21 MR. BAX: Can we approach, Your Honor?

22 THE COURT: Yes.

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

25 BY MS. SHIPLEY:

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1 Q Investigator McRae, on State's 163 for identification
2 purposes, how are you familiar with that document.

3 A It's the standard two slip used whenever Richland
4 County Sheriff's Department tows a vehicle.

5 Q And again, how long have you worked with the Richland
6 County Sheriff's Department?

7 A Since April, 2003.

8 Q And how many times have you seen a document like this?

9 A Multiple.

10 MR. SWERLING: Your Honor, I'd like to take the
11 witness on voir dire before she tries to admit that.

12 THE COURT: Okay.

13 MR. SWERLING: Outside the jury.

14 THE COURT: Sure. Okay. Ladies and gentlemen of
15 the jury please be excused. I'll remind you not to discuss
16 the case. We'll be with you shortly.

17 (Jury out at 2:40 p.m.)

18 MS. SHIPLEY: Your Honor, I had not finished laying
19 the foundation.

20 MR. SWERLING: Go ahead. I don't have any problem
21 if you want to try to lay a foundation. I just don't think
22 the document is admissible because he can't authenticate it.
23 He can't -- he doesn't know who that person is. If you want
24 to bring the person in, if you want to prove that somebody
25 didn't enter the vehicle that person has to be brought in.

1 MS. SHIPLEY: It doesn't -- under Rule 803 (6)
2 there's no requirement that the report be authenticated. It
3 states specifically any report, etcetera, made at or near
4 the time by or from information transmitted by a person with
5 knowledge and kept in the course of regularly conducted
6 business activity and if it was a regular practice of that
7 business activity to make the report as is shown by the
8 testimony of the source or other qualified witnesses unless
9 the source of information or method and circumstances of
10 preparation indicate a lack of trustworthiness, provided,
11 however, the subjective opinions and judgments found in
12 business records are not admissible. The term business as
13 used in the subsection includes businesses, institutions,
14 associations, professional occupations and callings of every
15 kind whether or not conducted for profit.

16 Your Honor, this is clearly a business record.

17 THE COURT: Okay. Lay your foundation with this
18 witness.

19 VOIR DIRE BY MS. SHIPLEY:

20 Q Are these forms the two slips, are they regularly kept
21 in the conduct of Richland Sheriff's Department activity?

22 A They are.

23 Q And every time a vehicle is towed by Richland County
24 Sheriff's Department is this form used?

25 A It is.

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1 Q And when is it filled out?

2 A Prior to the two truck taking the vehicle.

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

4 THE COURT: Yes.

5 BY MS. SHIPLEY:

6 Q And, again, can you repeat your answer, when is it
7 made?

8 A The officer fills the portions of the two slip out
9 prior to the tow truck arriving on the scene, and then the
10 tow truck driver signs for the vehicle.

11 Q And the information contained in the document, is this
12 pertain to a vehicle that you obtained a search warrant to
13 search the vehicle?

14 A It is.

15 Q And as lead investigator on the case are you in charge
16 of the entire case file for the case?

17 A I am.

18 Q And is that document contained in your case file?

19 A It is.

20 Q And does it appear altered in any way?

21 A No. It look like the standard filled out two slip.

22 Q And is it the regular practice of the Sheriff's
23 Department to make that report each time a car is towed?

24 A It is.

25 MS. SHIPLEY: Your Honor, I think I've laid the

1 foundation.

2 THE COURT: Okay. Any voir dire by any of the
3 defense?

4 VOIR DIRE BY MR. SWERLING:

5 Q Mr. McRae?

6 A Yes, sir.

7 Q This particular document, do you know who prepared it?

8 A I do not.

9 Q Do you know when it was prepared?

10 A It would have been prepared the day the vehicle was
11 taken from the Outback Steakhouse, which would have been
12 July 1.

13 Q Well, no, I'm not asking you generally, but do you know
14 when it was prepared?

15 A It is would have been filled out at the time the
16 vehicle was towed.

17 MS. SHIPLEY: Your Honor, if he could give him the
18 document so he can refer to it.

19 MR. SWERLING: We I will. I mean, I don't car.
20 I'm just looking at it and asking him if he knows.

21 BY MR. SWERLING:

22 Q Do you actually even know who filled out the document?

23 A I do not.

24 Q So the person who actually may have actually done the
25 towing may not be the person who actually filled out the

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1 document?

2 A (No response.)

3 Q You don't have any idea, do you?

4 A The person that actually did the towing?

5 Q Right. May not be the person who filled out the
6 document?

7 A An officer would have filled out the document, then the
8 tow truck driver, the driver of the vehicle that towed this
9 vehicle would have signed for the vehicle. So the officer
10 would have filled out the document and the tow truck driver
11 would have signed for the vehicle on this document. I hope
12 I'm answering --

13 Q So this was filled out by an officer?

14 A That's correct.

15 Q So where's the officer's name?

16 A As far as the person filling it out, there is no place
17 to -- Officers towing a vehicle -- can I borrow your
18 magnifying glass again?

19 Q My magnifying glass? Here's one.

20 A Lonnie Roberts was the tow --

21 Q That's the company.

22 A Right. The officer that would have filled this out
23 would have been Officer Kirkland.

24 Q Okay, but you don't know that he was the one that
25 filled it out?

1 A Right.

2 Q I guess that's what I'm asking, there's no way to --

3 A 100 percent sure that Kirkland filled this out? No.

4 Q Okay. And so we don't know that the person who filled
5 it out is the person -- we don't know if the officer is the
6 one that made the comment in here: Did not conduct inventory
7 due to search warrant being served on vehicle. We don't --

8 A An officer would have filled that out. That's one of
9 the blocks than an officer fills out. An officer. I can't
10 testify that it was particularly Kirkland, but --

11 Q Okay.

12 A -- it would have been an officer with a Richland County
13 Sheriff's Department who filled that block out.

14 Q And that should be relatively easy to find out, right?

15 A Kirkland would be able to say if he wrote that.

16 Q Okay. I mean, first of all, it's hard to read, too?

17 A It is.

18 Q And Lonnie Roberts is the name of the company. We don't
19 know if that's the individual --

20 A The tow driver?

21 Q Yeah?

22 A No, the only thing that would be listed on this report
23 would be the tow company; their address, phone number. But
24 their signature -- signatures are sometimes hard to make out
25 what they say.

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1 Q And what this does is that is doesn't answer the
2 question Ms. Shipley is asking you. It says: List all
3 valuable in the vehicle. And it says: Did not list
4 inventory due to search warrant being served on vehicle.
5 That does not indicate that the vehicle was not entered as
6 you said it was by the -- it probably would have been
7 entered by the tow truck driver?

8 A It does not state if the truck driver --

9 Q So this document does not speak to the question that
10 you were asked?

11 A Whether or not the --

12 Q Whether the tow truck driver entered the vehicle.

13 A And I believe my answer was I didn't know.

14 Q No. That's what you said before?

15 A Right.

16 Q And this doesn't in any way further that?

17 A No.

18 MR. SWERLING: I object.

19 THE COURT: Okay.

20 MS. SHIPLEY: Your Honor, just because he doesn't
21 think it furthers, it's relative to the question posed by
22 the defense on cross-examination. It's clearly documented
23 that police officers themselves wouldn't enter this vehicle,
24 much less would they let a civilian inside of the vehicle
25 because it's technically a crime scene. And Your Honor, 803

1 (6) is the hearsay exception where the declarant, Officer.
2 Kirkland is not required to come to court because he's
3 familiar -- Investigator McRae is familiar with the manner
4 in which these records are kept. How it's taken at the time
5 of the towing and filled out by the officer. And he was
6 able to identify, not that he had to, but he was able to
7 identify the officer.

8 THE COURT: Okay, but it will be a business record
9 conducted within the normal course of business.

10 MS. SHIPLEY: Correct.

11 THE COURT: We are establishing that this is not a
12 record of the tow company just placed into the file.

13 MS. SHIPLEY: Your Honor, if I can just let the
14 record reflect --

15 THE COURT: Do you see what I'm saying, the
16 distinction?

17 MS. SHIPLEY: Yes, ma'am, 163 --

18 THE COURT: It's not a record. Let me be clear.

19 MS. SHIPLEY: Yes, ma'am.

20 THE COURT: It's not a record by the tow company
21 placed into the file of the police officer.

22 MS. SHIPLEY: No, it's not.

23 THE COURT: Ask what business record it is. It's
24 got to be a regularly conducted business record of the
25 facility that we're talking about.

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1 MS. SHIPLEY: Yes, ma'am. And if I can just show
2 the document to you. This is entitled Richland County
3 Sheriff's Department Tow Receipt. And this is the document
4 they generate.

5 THE COURT: All right. Any further argument from
6 defense?

7 MR. SWERLING: Well, Judge, under the state's
8 theory, anything in Mr. McRae's file is admissible in
9 evidence, because it's part of his file, and that's just
10 opposite of what the rule allows. There has to be some
11 trustworthy -- any exception to the hearsay rule is based
12 upon trustworthiness, it make it a reliable and trustworthy
13 document. Investigator McRae in all honesty cannot say --
14 he said before the tow truck driver entered the vehicle, as
15 far as he knew. That was what the question was. No one has
16 ever contested whether an officer went in there. He said
17 they did not. That document is not being offered in any way
18 to show whether the tow truck driver went in the vehicle or
19 not. I mean, that does that say that. I says there was no
20 inventory. But it doesn't say no one entered the vehicle.

21 THE COURT: What's your purpose of admitting this?

22 MS. SHIPLEY: Your Honor, they got -- they asked
23 Investigator McRae in cross-examination that whether or not
24 the tow truck driver got into the vehicle. This document
25 clearly shows that not even officers got into the vehicle,

1 much less a tow truck driver would be permitted, because
2 this is a crime scene. The interior of that vehicle is a
3 crime scene. And so the state is allowed to put up evidence
4 to refute any innuendo or claims by the defense and under
5 the business exception rule we are permitted to do so.

6 MR. SWERLING: Well, Judge, the document is not
7 trustworthy because he cannot say who filled out the
8 document, who entered the information about whether or not
9 there was an inventory conducted. So it loses it's
10 trustworthy -- just because the document is in the police
11 file, if we allowed in every document in the police file we
12 might as well just abandon the trial because they could put
13 in all the statements, all his notes, all of everybody
14 else's notes, the hospital records. That's not what the
15 rule intended. This --

16 THE COURT: Well, under the rule any opinions or
17 conclusions wouldn't be allowed anyway. That's the purpose
18 of medical records and things of that nature of any
19 subjective opinion which could be conclusionary and hearsay
20 based on how you got to that opinion.

21 MR. SWERLING: But she can even authenticate who
22 filled out the document. And the document does not say what
23 Ms. Shipley wants it to say. It does not say the person who
24 towed the vehicle didn't enter the vehicle.

25 THE COURT: And it doesn't say that.

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1 MS. SHIPLEY: No, and I'm not seeking to introduce
2 that.

3 THE COURT: Okay.

4 MS. SHIPLEY: I'm seeking to show the jury that
5 officer did not even go into this vehicle and therefore --

6 THE COURT: Where does it say that that happened,
7 it just says did not conduct inventory.

8 MS. SHIPLEY: Conduct inventory, because Your
9 Honor, they didn't enter the car to --

10 MR. SWERLING: It doesn't say that.

11 THE COURT: It doesn't say did not enter the car.

12 MS. SHIPLEY: Did not conduct inventory. Well,
13 inventory is entering the car and doing an inventory.

14 THE COURT: Well, he can say that, testify to what,
15 give an explanation of that, but we can't read anything into
16 the wording of the document that's not there.

17 MS. SHIPLEY: Okay. I understand your point. It
18 did not -- list all valuables in the vehicle. And then it's
19 not a conclusion or opinion. It's a fact. Did not conduct
20 inventory due to search warrant being served on vehicle.

21 THE COURT: But who said that?

22 MS. SHIPLEY: Kirkland. He's the one that filled
23 out the tow slip.

24 MR. SWERLING: Well, Mr. McRae can't verify that it
25 was Kirkland that filled it out.

1 Ms. Shipley: This tow slip is fill out by the
2 officer that tows the car.

3 MR. SWERLING: He doesn't know that.

4 THE COURT: But your officer, Investigator McRae's
5 testimony had indicated he doesn't know who --

6 MS. SHIPLEY: Well, I'm not required to show who
7 the author of the record is, Your Honor. The rule doesn't
8 require that the person who wrote the document is required
9 to be identified. It simply says if it's a report that's
10 kept in the normal regular course of business or conducted
11 business activity and it was a regular practice of that
12 business activity, and if it was a regular business activity
13 to make that report then it's admissible. It's an exception
14 to the hearsay --

15 MR. SWERLING: Then you have to show
16 trustworthiness.

17 MS. SHIPLEY: Well, the judge --

18 MR. SWERLING: Not be able to identify who wrote
19 it, who put that information in the middle about whether or
20 not an inventory was done, and the fact that we're not
21 talking about whether the inventory was done we're talking
22 about whether the operator entered it. That does not speak
23 --

24 THE COURT: Okay, just give me a moment. Just let
25 me look at a couple of cases.

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1 MR. SWERLING: Judge, when you're ready I've got
2 one other observation. The state has always objected to
3 documents coming in from officer's files because it contains
4 other information and they don't ever allow something like
5 that in, so, I mean, I don't understand that they can now
6 argue in good faith that it's now admissible because it
7 happens -- the point is that they always object to it, and
8 law enforcement -- my experience is law enforcement
9 documents are generally not admissible.

10 MS. SHIPLEY: An incident report is not admissible,
11 however, --

12 MR. SWERLING: What's different in that?

13 MS. SHIPLEY: -- a record kept on how a vehicle
14 was towed -- because incident reports have subjective
15 opinions in them.

16 MR. SWERLING: Not all of them. They're just not
17 admissible. It also requires information transmitted by a
18 person with knowledge. We don't know who that is, and we
19 don't know what the basis of his knowledge is.

20 MS. SHIPLEY: It says or from people -- information
21 transmitted by --

22 Your Honor, if I may, Rule 803 (8) refers to incident
23 reports that Mr. Swerling -- that's a totally different rule
24 that applies to incident reports.

25 MR. SWERLING: Well, I don't see it -- excluding,

1 however, in criminal cases matters observed by police
2 officers and other law enforcement personnel.

3 MS. SHIPLEY: Exactly.

4 MR. SWERLING: The rule that she cites is --
5 excludes that.

6 MS. SHIPLEY: Right. Rule 803 (8) excludes
7 incident reports.

8 MR. SWERLING: No, but it also says excludes --

9 THE COURT: Well, both are subjective in nature,
10 anyway.

11 MS. SHIPLEY: Right.

12 THE COURT: That's the reason on that rule, because
13 the whole incident report is hearsay.

14 MS. SHIPLEY: In other words, Your Honor, this
15 document, it's not the officer fills it out. He's not
16 asking question of anybody. He's simply documenting what
17 car am I getting towed, the date, the time, who it's
18 registered to, who's going to tow it. And listing valuables
19 in the vehicles, typically they would put, you know, stereo,
20 blah, blah, whatever.

21 THE COURT: But this is kept in the regular course
22 of business, we're not just talking about this case? Is
23 this for --

24 MS. SHIPLEY: I asked the witness, Your Honor, I
25 proffered it from him that this is any time any car is towed

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1 by Richland County Sheriff's Department, this form is used.

2 MR. SWERLING: But the rule you refer to says you
3 cannot get into criminal cases, matters observed by police
4 officers, and other law enforcement personnel. I mean,
5 what they're seeking to do is get in a matter that is
6 observed by law enforcement -- I mean, that inventory wasn't
7 done. Of course, that might be the issue.

8 THE COURT: Well, I wouldn't consider that matters
9 observed by them. That's just -- to me it's a function.
10 Either they did this function or they didn't.

11 MS. SHIPLEY: Right.

12 THE COURT: He's the lead investigator on the file.
13 I'm going to consider it a business record. I know there'll
14 be objection but he's a qualified witness. I caution you,
15 Ms. Shipley. The words on the document. They say what they
16 say. It doesn't say anything about somebody exiting or
17 entering or whatever.

18 MS. SHIPLEY: Yes, ma'am.

19 THE COURT: Because somebody could exit or enter
20 and then not conduct something, too.

21 MS. SHIPLEY: Yes, ma'am.

22 THE COURT: So I'm going to caution you not to go
23 down that line.

24 MS. SHIPLEY: Thank you.

25 THE COURT: Okay.

1 MR. SWERLING: Judge, of course, in light of that,
2 I'd ask that my objection be contemporaneous when it's
3 offered.

4 THE COURT: Sure.

5 MR. SWERLING: I'd also ask, since the jury's not
6 in the room the follow up question what the tow truck
7 operation may or may not have done if the police officers
8 were not allowed to go in there. I would object.

9 MS. SHIPLEY: I'm not going to ask that.

10 THE COURT: Yeah, because if you weren't physically
11 there to actually observe an activity you can't speculate on
12 what they did or didn't do.

13 MR. MCRAE: Yes, ma'am.

14 THE COURT: Okay. Jurors, please.

15 (Jury in at 3:00 p.m.)

16 THE BAILIFF: The jury's all present, Your Honor.

17 THE COURT: Okay. Thank you. Continue.

18 MS. SHIPLEY: Thank Your Honor.

19 DON MCRAE - CONTINUED REDIRECT EXAMINATION

20 BY MS. SHIPLEY:

21 Q Investigator McRae, I had handed you Exhibit No. 163,
22 can you please identify that for the jury?

23 A That's the standard tow slip used by Richland County
24 Sheriff's Department.

25 Q Is that the tow slip used every time any car is ever

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1 towed by your agency?

2 A It is.

3 Q And is that a form that is used in conducting the
4 regular course of activities for the Sheriff's Department?

5 A It is.

6 Q And is that part of your case file as lead investigator
7 on this case?

8 A Yes, ma'am.

9 MS. SHIPLEY: Your Honor, at this time I would seek
10 to introduce 163 into evidence?

11 THE COURT: Okay. It's admitted.

12 (State's Exhibit No. 163, tow slip,
13 was marked and entered.)

14 BY MS. SHIPLEY:

15 Q Investigator McRae what is the name of the officer
16 listed as filling that out?

17 A The officer towing the vehicle is Officer Kirkland.

18 Q And what vehicle, again, are we referring to?

19 A We are referring to the tan in color Suburban.

20 Q And can you explain to the jury that when any private
21 property, such as a vehicle is being towed what procedures
22 normally are followed.

23 MR. SWERLING: Objection, Your Honor, he can't say
24 what was followed in this case.

25 MS. SHIPLEY: I'm just asking generally.

1 MR. SWERLING: I object, in this case.

2 THE COURT: Y'all approach.

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

5 BY MS. SHIPLEY:

6 Q Is there such a term as inventory?

7 A Yes.

8 Q And what is an inventory?

9 A An inventory of the vehicle is where we would inventory
10 anything of value, any valuables that was inside that
11 vehicle when we took possession of it?

12 Q And was an inventory done in this case dealing with the
13 tan Suburban?

14 A Not according to the tow slip, no.

15 Q And the report explains why?

16 A Correct.

17 Q And what is the reason?

18 A The reason is: Did not conduct inventory due to search
19 warrant being served on vehicle.

20 Q Thank you. Do you have any personal knowledge as to
21 whether or not a tow truck driver got into that vehicle?

22 A I do not.

23 Q And when a vehicle is being towed by the Sheriff's
24 Department is it -- describe the security that is provided.

25 MR. SWERLING: I object to that. He does not know

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1 what happened in this particular case. She's trying to get
2 what was supposed to have been done, but all they had to do
3 was bring the officer in.

4 MS. SHIPLEY: Your Honor --

5 THE COURT: Manage your case to the set of facts
6 that he has person knowledge of what happened in this case?

7 BY MS. SHIPLEY:

8 Q All right. Do you have personal knowledge as to
9 whether or not anybody entered that vehicle?

10 A I do not.

11 Q Now, as to the initial incident report that was
12 referred to by Ms. Johns on cross-examination is that
13 accurate?

14 A The initial incident report authored by whom?

15 Q Gregory Weldon?

16 A It has some accuracies in it, however total accuracy,
17 no.

18 Q Okay. What is the purpose of a criminal investigation?

19 A To determine the truth.

20 Q And did your investigation that revealed facts that
21 were different from the initial report?

22 A Yes, we did.

23 Q And did anywhere in that initial report does it
24 indicate that they returned to the scene?

25 A No.

1 Q When you first encountered Ricky Jacobs at the crime
2 scene you were asked by Ms. Johns whether or not the terms
3 Mac 10 or Tec 9 were used. What was the terminology that
4 was provided to you as far as the description of the weapon?

5 A From my first interview at the scene with Mr. Jacobs --

6 Q If --

7 A I found it. I found it.

8 Q Okay.

9 A He referred to it as an Uzi.

10 Q Now, as the lead investigator in this case, are you
11 aware of whether Sgt. Barnes actually interviewed Travis
12 Malone at the hospital?

13 A I am.

14 Q And again, where is Travis Malone, to your knowledge?

15 A To my knowledge he is either in Iraq or Afghanistan.

16 Q When you arrived on the crime scene, did you ever see
17 either suspect there?

18 A No.

19 Q And you were also shown a photograph about -- and the
20 question was posed as to whether or not the scene had been
21 secured upon your arrival.

22 A Yes.

23 Q I believe your answer was a patrol car was blocking the
24 road.

25 A Yes.

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1 Q As an experienced investigator when a patrol car
2 secures a road; what is that?

3 A Road block.

4 Q And are other people allowed on the scene at that
5 point?

6 A No.

7 Q You were also asked about a be on the lookout by Ms.
8 Johns?

9 A Yes, ma'am.

10 Q And did you contact the media about this matter?

11 A I believe we did, yes, ma'am.

12 Q And was it aired on the TV to your knowledge?

13 A I believe it was. I'm not 100 percent sure on that.

14 Q Explain what date it was that you obtained an arrest
15 warrant for Taurus Watts?

16 A July 1st.

17 Q And when was it that you saw him for the first time?

18 A When he turned himself in on July 3rd.

19 Q And what time was that on July 3rd?

20 A 7:40 p.m.

21 Q Did you -- explain your efforts to locate Mr. Watts
22 during that period of time from July 1st to July 3rd?

23 A We talked to several people. I mean, we talked to
24 several people in an effort to locate Mr. Watts.

25 Q And so did you just sit at home and wait on him to turn

1 himself in?

2 A No, ma'am.

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

4 Thank you. No further questions, your Honor.

5 THE COURT: Okay.

6 MR. SWERLING: I have some.

7 DON MCRAE - RECROSS EXAMINATION

8 BY MR. SWERLING:

9 Q Mr. McRae, the inventory search is when law
10 enforcement, when they're taking your vehicle, whether it's
11 on the road or at the Sheriff's Department compound,
12 documents what's inside the car.

13 A Correct.

14 Q And that's what inventory means, correct?

15 A Documents the valuables.

16 Q Contents?

17 A Contents.

18 Q Would that particular document that was introduced by
19 Ms. Shipley simply says there was no inventory?

20 A Correct.

21 Q It doesn't say it wasn't entered?

22 A Correct.

23 MR. SWERLING: Thank you.

24 MS. JOHNS: Very briefly, Your Honor.

25 DON MCRAE - RECROSS EXAMINATION

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1 BY MS. JOHNS:

2 Q You said that the initial incident report by the deputy
3 arriving first on the scene is incorrect?

4 A I didn't say it was incorrect. I said it contained
5 some information that proved not to be true, though our
6 course of our investigation.

7 Q Proven not to be true for Ricky Jacobs?

8 A Through the course of our investigation it was proven
9 to be not true.

10 Q Was it proven to be inconsistent; is that right?

11 A Inconsistent. Okay.

12 Q And that's inconsistent with what Ricky Jacobs told
13 you?

14 A I'm sorry?

15 Q And that would be inconsistent with what Ricky Jacobs
16 told you?

17 A Portions of this incident report, yes, ma'am.

18 Q Okay. So the purpose of the investigation is to
19 determine the truth?

20 A Yes.

21 Q And the truth is determined by you?

22 A Through our investigation, yes.

23 Q So then there's no purpose in this jury, right?

24 MS. SHIPLEY: Objection, Your Honor. That's
25 inappropriate.

1 THE COURT: Sustained.

2 MS. JOHNS: That's all the questions, Your Honor.

3 Nothing further.

4 THE COURT: Okay. Sir, you can step down.

5 MR. MCRAE: Thank you, Your Honor.

6 MS. MCDUFFIE: If it pleases the Court, Your Honor?

7 THE COURT: Yes.

8 MS. MCDUFFIE: State would call Investigator
9 Gallegos.

10 (WHEREUPON Gilbert Gallegos, was
11 sworn to tell the truth.)

12 THE CLERK: Thank you. Please have a seat in the
13 witness stand, give the court reporter your name.

14 MR. GALLEGOS: Investigator Gilbert Gallegos.

15 GILBERT GALLEGOS - DIRECT EXAMINATION

16 BY MS. MCDUFFIE:

17 Q Good afternoon, Investigator Gallegos. Could you tell
18 the jury where you're employed?

19 A The Richland County Sheriff's Department.

20 Q And how long have you been with the Sheriff's
21 Department?

22 A A little over seven years.

23 Q And please tell the jury what your duties are at the
24 Sheriff's Department?

25 A I'm assigned to investigations, primarily the major

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1 crimes unit. An assault squad and the homicide team.

2 Q And were you the secondary investigator on the case
3 we're here for today?

4 A Yes, ma'am.

5 Q And as the secondary investigator what is your role.

6 A My role is to assist with the investigation and also
7 the primary investigators duties, assist he or she in any
8 way.

9 Q And so lots of the investigation you and Investigator
10 McRae were present for?

11 A Yes, ma'am.

12 Q And there were some parts that you weren't present for
13 or he wasn't present for?

14 A Yes.

15 Q So we won't go back through everything that you did
16 together, but on June 30, 2007, did you have a chance to
17 come in contact with Earl Greene?

18 A Yes.

19 Q And where was that?

20 A That was at the 9800 block of Two Notch Road.

21 Q When the vehicle was stopped?

22 A Yes, ma'am.

23 Q And did you have a chance to come in contact with him
24 at any other time?

25 A Yes.

1 Q And when was that.

2 A At the Richland County Sheriff's Department
3 headquarters.

4 Q And what day was that one?

5 A The same -- the morning, July 1st.

6 Q And did you have a conversation with him?

7 A Yes.

8 Q And please don't say what your conversation was, but
9 based on that conversation how did your investigation
10 proceed?

11 A The primary direction of our investigation lead us to
12 the identification of the tan SUV and the occupants.

13 Q And on July 1, 2007, were you present when Tremaine
14 Wray was arrested?

15 A Yes.

16 Q Did you perform a search warrant on his home?

17 A Yes.

18 Q Please tell the jury what, if anything, in terms of
19 clothing removed from his home?

20 A There was no clothing taken from his residence.

21 Q Did you find anything to be of evidentiary value?

22 A No, ma'am.

23 Q And there was no clothing removed from his residence
24 pursuant to that search warrant?

25 A Correct.

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1 Q Did you also -- were you aware of whether investigators
2 went to 133 Ida Lane?

3 A Upon the arrest of Mr. Wray, myself and other officers
4 with the Sheriff's Department went to 133 Ida Lane in
5 reference to Taurus Watts arrest warrant.

6 Q And what, if anything did you learn after going to Ida
7 Lane?

8 A We made contact with his sister; she was home during
9 the attempt to serve the arrest warrant. She said she
10 hadn't been in contact with Mr. Watts for some days.

11 Q I'm sorry. Were you present --

12 MS. JOHNS: Your Honor, I object to the hearsay and
13 ask that it be stricken from the record.

14 MS. MCDUFFIE: Your Honor, I'll move on.

15 THE COURT: Okay.

16 BY MS. MCDUFFIE:

17 Q Were you present --

18 MS. JOHNS: Your Honor, I asked that it be stricken
19 from the record, the hearsay question.

20 THE COURT: Okay. What was your question?

21 MS. MCDUFFIE: My question was pursuant to the
22 investigation what did you then do.

23 MS. JOHNS: Your Honor, he said that his sister
24 said that she had not seen him in a couple of days. I asked
25 that that be stricken from the record. That's hearsay.

1 THE COURT: Okay. I'll strike that.

2 BY MS. MCDUFFIE:

3 Q Were you present when Tremaine Wray's vehicle was towed
4 from the Outback Steakhouse on July 1st?

5 A Yes, ma'am.

6 Q At any time did you see anyone enter that vehicle?

7 A No.

8 Q On July 1, after the arrest of Mr. Wray, what did you
9 precede to do in pursuit of your investigation?

10 A We tried a couple of different avenues trying to locate
11 Mr. Watts still, and also continued to speak to the
12 witnesses.

13 Q And did you have an chance to speak to Travis Malone?

14 A Yes, ma'am.

15 Q When was that?

16 A That was July 2nd.

17 Q And are you aware of his current location?

18 A Overseas.

19 Q And on July 3rd, did you encounter Mr. Taurus Watts?

20 A Yes.

21 Q And where was that?

22 A That was at the -- I received a phone call from
23 Investigator McRae that Mr. Watts turned himself in. He
24 lives closer to headquarter than I do, so it took me some
25 time to get there. But at that time I located Investigator

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1 McRae and Mr. Watts, Investigator McRae inside
2 investigation.

3 Q And are you aware of whether or not Mr. Watts had his
4 rights read to him or not?

5 A He came in at the tail end of the advisement.

6 Q And was he advised of his rights?

7 A Yes.

8 Q And what did you proceed to do at that time?

9 A At that time handcuffs were placed on Mr. Watts and he
10 was lead to the forensic section of our headquarters, which
11 is on the same floor in our building. That where we were
12 going to take him to get major case prints done, prints of
13 different angles of his hands.

14 Q And were you questioning him during that time?

15 A No, ma'am.

16 Q Did Mr. Watts say anything to you on July 3, 2007?

17 A Once we finally got to the forensic section of our
18 building. We waited for lab Investigator Oats (sp). I felt
19 it strange that the other parties involved --

20 MS. JOHNS: Your Honor, I object to what he felt.

21 THE COURT: Sustained. Listen to the questions.

22 BY MS. MCDUFFIE:

23 Q Please tell the jury what Mr. Watts said to you?

24 A Strange that all the other parties involved weren't
25 patted down, that his friends that attend the club are

1 normally patted down for weapons. And during the fight
2 inside the club, the other side pulled out weapons.

3 Q Did he say anything else to you?

4 A No, ma'am.

5 Q Did you ask him any questions?

6 A No, ma'am.

7 Q What happened after that?

8 A At the time, major case prints were taken, but also
9 photographs.

10 Q And are you aware of whether or not Mr. Watts has a
11 nickname?

12 A Yes. Trouble T.

13 MS. JOHNS: Your Honor, I object to that. I object
14 to that. I need to be hear outside the presence of this
15 jury.

16 THE COURT: You all approach first.
17 (Off the record bench conference with counsel and the
18 Court.)

19 THE COURT: Ladies and gentlemen of the jury, I'm
20 going to excuse you to your jury room. We have to take up a
21 matter of law. I remind you not to discuss the case?
22 (Jury out at 3:19 p.m.)

23 THE COURT: All right, Ms. McDuffie, where are you
24 going?

25 MS. MCDUFFIE: Your Honor, I believe that prior

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1 testimony elicited both on direct and cross examination from
2 the witness Jalicca Johnson that she said that T was not
3 Taurus Watts, however, she did make the statement to
4 Investigator McRae that T was Taurus Watts. That was
5 brought up during the testimony of Ms. Johnson. This
6 witness has independent knowledge or has see a tattoo on the
7 side of the defendant's arm that says, Trouble T, and I
8 would rely on State v. Day, which is cited at 341 SC 410,
9 which says that evidence concerning a defendants tattoo or
10 nickname is not prejudicial when it's used to prove
11 something such as identification.

12 MS. JOHNS: Your Honor, with regards to
13 identification of my client. There's nothing with regards
14 to the identification with Mr. Watts being at the scene of
15 the crime that he is referred to as T. First of all, that
16 implication, for example in previous cases is when somebody
17 can say the man had dread locks, shoulder length and he had
18 a tattoo on his arm that said T. That is not the case in
19 this situation.

20 THE COURT: Nobody is saying that somebody
21 identified him with a tattoo. What she is indicating or
22 what I understand her argument to be is that this witness
23 observed whatever he saw on Mr. Watts' body. She just wants
24 to make --

25 MS. JOHNS: And Your Honor I will object to that. I

1 will object to that under 403. Your Honor it is highly
2 prejudicial, it's not probative. It is not proof who he is.
3 Lisa Johnson on this witness stand said that she has never
4 referred to Taurus Watts as T. She's call him by his name,
5 Taurus all her life. She's never called him by the nickname
6 T. This is something that the state is trying to establish
7 because they saw tattoos. And I'll tell you how they got
8 those tattoos, Your Honor, they got those tattoos from ABC
9 Bonding records, and once they established those bonding
10 records were present and they had other information about
11 this tattoo down there and then they went down there and
12 took photographs of it so they could make him be T. They
13 can't make him be T because he has a tattoos. They can't
14 make him T because of what one witness says he is. And Lisa
15 Johnson says he is not T, that he has never been known as T
16 to her. So there is nothing in this record that says that
17 his nickname is T, and I object to this information coming
18 in and I'm also asking that his answer as Trouble T be
19 stricken from the record because the jury heard it.

20 MS. MCDUFFIE: Your Honor, I believe that the
21 testimony was that she said, no, it was not T and then it
22 was also brought out that she had told Investigator McRae
23 that it was T. Your Honor, these --

24 MS. JOHNS: That's incorrect.

25 MS. MCDUFFIE: -- this information was not

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1 obtained from --

2 THE COURT: Hold on.

3 MS. MCDUFFIE: -- through ABC Bonding, but rather
4 through this defendant's (sic) own observations and I can
5 show you a picture that was taken at the Sheriff's
6 Department when this officer was there.

7 THE COURT: Okay. When have you indicated the
8 picture was taken; was it the same day he turned himself in?

9 MS. MCDUFFIE: The same time he was fingerprinted
10 and pictures were also taken of it, Your Honor, of the
11 tattoos.

12 MS. JOHNS: Your Honor, they are trying to use this
13 nickname to identify my client as the man at the bar that
14 was hitting on Lisa Johnson, which she has denied. They
15 cannot use this information to further the identify of my
16 client.

17 THE COURT: I understand what you're saying on
18 that, I mean, one thing is for him to have an observation,
19 just generally, but if he has no way of connecting it up,
20 then that's the issue that she's indicating is prejudicial,
21 because then we're backdooring in this connection from a
22 witness who testified the way she testified.

23 MS. MCDUFFIE: And I believe the testimony was
24 also, Your Honor, that she did tell Mr. McRae was Taurus
25 Watts.

1 MS. JOHNS: No --

2 THE COURT: Testimony from who, though, because on
3 the stand she then indicated that this T person was the
4 person in the club.

5 MS. MCDUFFIE: And she also indicated that she did
6 tell that to Investigator McRae.

7 THE COURT: So in other words, on one line of
8 questioning said it one way and on another line said it
9 another way?

10 MS. SHIPLEY: And I believe her testimony --

11 MS. JOHNS: No, Your Honor, I think she's arguing
12 this.

13 THE COURT: Okay. Go ahead.

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

15 THE BAILIFF: May I approach Your Honor.

16 THE COURT: Go ahead and let them take a break, if
17 that's what you're going to ask me.

18 THE BAILIFF: Thank you.

19 MS. MCDUFFIE: I believe the testimony was that T
20 was Taurus Watts, but that was not the T she was -- in her
21 statement.

22 MS. JOHNS: No, Your Honor --

23 THE COURT: I know she said there was a T at the
24 club. Looking back at my notes. That the T that she meant
25 was the one who was at the club.

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1 MS. JOHNS: Your Honor, she said the man at the
2 club who was hitting on her introduced himself with
3 initials, one of them being T. I asked her is that Taurus
4 Watts. No. Is Taurus Watts known to you as T? No. Has he
5 ever been know as T to you the whole time you've known him?
6 No.

7 THE COURT: Okay. Anything further.

8 MS. MCDUFFIE: Your Honor, we'll just cite State v.
9 Day at 341 SC 410.

10 THE COURT: Okay. And then, now I'm hearing what
11 Ms. Johns said about the testimony, do you ever recall Ms.
12 Johnson ever specifically saying --

13 MS. MCDUFFIE: My -- my memory of her testimony was
14 that she did tell Investigator McRae that Taurus was T. I
15 do not -- I cannot say whether she connected it.

16 THE COURT: Okay. Fair enough. I'm on my fifth
17 legal pad. Let's see -- checking off who's testifying. Do
18 you know when she testified?

19 MS. MCDUFFIE: She would have been our fifth
20 witness, Your Honor.

21 THE COURT: Okay. Would that have been before or
22 after the Mr. Dansby?

23 MS. MCDUFFIE: Way before.

24 THE COURT: Okay.

25 MS. MCDUFFIE: Two days before.

1 THE COURT: After Stephanie Boston or Charlie
2 Bates?

3 MS. MCDUFFIE: After Stephanie Boston, after
4 Charlie Bates. Then it would have been James Lamont
5 Goodwine, and, I believe Lisa Johnson would have been next.

6 THE COURT: Okay. I have it. I see Goodwine.
7 Getting close. After Brian Johnson?

8 MS. MCDUFFIE: Before Brian Johnson.

9 THE COURT: Okay. Okay. I found it. Let me look.
10 Okay, she went a bar -- of course, the court reporters
11 notes would be the most accurate on her transcription, but
12 essentially what I wrote down was, Went to a bar and a man
13 made advances, quote T, short, five-six to seven, 140
14 pounds, short hair cut, white t-shirt. Dance floor. Some
15 guy came up to her. Motioned him not to talk to her.
16 Charlie said that was disrespectful and he threw a drink on
17 him. There isn't any more about T in the direct. Okay.
18 Apparently she had denied T as a reference to Taurus Watts,
19 and then on the cross it was indicated that, Don't remember
20 them, obviously referring to the police, asking her if
21 Taurus Watts was T. And then new person who asked her to
22 dance, quote T. Somebody she had know for 20 years. A
23 fight broke out between Charlie and T. T is the person who
24 make a move on her on the dance floor. So I don't know that
25 she was actually committed to an inference saying that T and

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1 Taurus Watts are the same person.

2 MS. JOHNS: That stands to reason, Your Honor.

3 She's know him for 20 years, and I asked her if Taurus Watts
4 was known as T. Then it's, No.

5 THE COURT: Okay, and I've got further or close to
6 there before Mr. Swerling got up. T is not Taurus Watts and
7 saw at all, and then police officer's notes are wrong.

8 MS. JOHNS: Your Honor --

9 THE COURT: I don't know that state ever got a
10 commitment for T, and then it unraveled in cross-
11 examination. I don't know that she ever said, although the
12 notes might reflect something like that.

13 MS. MCDUFFIE: Your Honor, you would still have her
14 be able to bring up that law enforcement did in fact learn
15 his nickname was T based on their observation and not go any
16 further as to tattoo or anything of that nature, Your Honor.

17 THE COURT: Okay.

18 MS. JOHNS: I don't know how --

19 THE COURT: How'd they learn he is T based on
20 observations?

21 MS. MCDUFFIE: They observed a tattoo on the side
22 of his arm.

23 THE COURT: Okay. What does that mean to them,
24 like, somebody else has to --

25 MS. MCDUFFIE: Your Honor, the jury --

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1 THE COURT: You know what I'm saying, because if
2 she's saying T is somebody else under oath, then the
3 indication by Ms. Johns is how do you make this be the T and
4 she said something else.

5 MS. MCDUFFIE: We're not trying to make him be the
6 T, but that Taurus Watts also goes by T, Your Honor.

7 MS. JOHNS: That's not true, Your Honor. And I
8 don't think Deputy Gallegos knows Taurus well enough --

9 THE COURT: Is there anything -- when you say he
10 goes by that based on the tattoo?

11 MS. MCDUFFIE: Based on -- Yes, ma'am.

12 THE COURT: Nothing else?

13 MS. MCDUFFIE: No ma'am.

14 THE COURT: Okay. I'm going to look at the case.
15 Okay.

16 (Pause.)

17 THE BAILIFF: The smokers are back, Your Honor.

18 THE COURT: Okay. Thank you.

19 Okay, Ms. McDuffie, just so that I'm clear, before I
20 render my decision. You are tell me that the way this
21 witness came to know this information is at the time of Mr.
22 Watts's arrest and booking, that the picture was taken at
23 that time?

24 MS. MCDUFFIE: That's right, Your Honor.

25 THE COURT: Not in reference to somebody telling

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1 him this information, to go look for this information. Just
2 by observation?

3 MS. MCDUFFIE: That's correct, Your Honor.

4 THE COURT: So there's nothing coming in about Lisa
5 Johnson through this witness or any reference of any other
6 person giving him any information?

7 MS. MCDUFFIE: No, ma'am.

8 THE COURT: All right. Ms. Johns, I understand
9 your argument. Is there anything else you want to add?

10 MS. JOHNS: No, Your Honor.

11 THE COURT: Okay. Based on the case of State v.
12 Day, I'm going to allow it in as a personal observation.

13 MS. JOHNS: Your Honor.

14 THE COURT: Yes.

15 MS. JOHNS: Let me just say this.

16 THE COURT: Okay.

17 MS. JOHNS: I would have thought the ruling would
18 have gone the other way, that's why I wasn't fighting.

19 THE COURT: Okay.

20 MS. JOHNS: But let me say this.

21 THE COURT: Okay.

22 MS. JOHNS: There is nothing from this case that
23 indicates that this tattoo is going to help the
24 investigators find who T is. So this information that they
25 received from observing Mr. Watts when he turned himself in,

1 has nothing to do with this case. This tattoo Trouble T,
2 has nothing to do with this case. She said that they had
3 information that my client, Mr. Watts, was known as T. They
4 haven't brought anything into this courtroom to say that he
5 is known as T. The only thing they're bring into this
6 courtroom is speculation from this officer, because this
7 officer had received information, hearsay information from a
8 bonding company. When they list somebody who's out on bond,
9 they will list the identifying characteristics. This
10 officer is making this tattoo fit to this case, which is not
11 relevant. Lisa Johnson has already denied knowing Taurus
12 Watts as T. She has denied that it was T, the person she
13 spoke with at the club with the initials is Taurus Watts.
14 This information is prejudicial and it's irrelevant. It
15 does not prove that Taurus Watts is T and that's what
16 they're trying to do through this witness, and they did not
17 have anything to do with identifying Mr. Watts as T with
18 whom this investigation has relied upon. I will object
19 under those grounds, Your Honor. It's irrelevant and it's
20 prejudicial.

21 THE COURT: Okay. Do go into that issue about --
22 as I'm re-reading this case, the reason why the Court in
23 State v. Day didn't allow it in is because they tried to
24 characterize or impugn the person?

25 MS. MCDUFFIE: In that case the tattoo was, Outlaw,

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1 and they tried to use outlaw as a --

2 THE COURT: Exactly.

3 MS. MCDUFFIE: And that is not at all what we are
4 trying to do here. Your Honor, the only question I had
5 asked this officer and the only question I will ask this
6 officer is, Based on his personal knowledge or observations,
7 does he know the nickname of Mr. Watts. That's the extent
8 of the questioning, Your Honor. I will not go into trying to
9 impugn this defendant's character or --

10 THE COURT: How will he know the nickname of him?

11 MS. MCDUFFIE: Your Honor, because he observed from
12 his observation of this defendant.

13 THE COURT: But how do we know that's a nickname?
14 I mean, that could be a child's name. And there's reasons
15 why people have tattoos. Just trying to take that leap, I'm
16 a little concerned there. I'm saying -- you're saying the
17 word, nickname, but --

18 MS. MCDUFFIE: Your Honor, there was also other
19 indications in their investigations that this defendant goes
20 by the nickname of T.

21 THE COURT: But that's what -- you were telling me
22 you were only trying to get it in under personal observation
23 and not bring it in under any other witnesses?

24 MS. MCDUFFIE: That's correct, Your Honor.

25 THE COURT: But --

1 MS. MCDUFFIE: This officer, through his
2 investigation learned that Taurus was also known by T.
3 However, Your Honor, that information was promulgated by
4 when he saw the tattoo on this defendant. He's not trying
5 to say what anyone else told him or anything else other than
6 his personal observation that that is the defendant's
7 nickname.

8 THE COURT: Okay. Well, put that against the case
9 of State v. Day in which particularly where it says it's not
10 prejudicial when used to prove something at issue in a trial
11 such as an identification of a defendant.

12 MS. MCDUFFIE: Your Honor, there has been multiple
13 -- I mean, lies have crossed on whether or not this
14 defendant's nickname is T. Lisa Johnson said yes and then
15 no and then she doesn't remember if she told that to law
16 enforcement or not, Your Honor.

17 THE COURT: Okay. But do we have it in evidence
18 right now that she told that to law enforcement at some
19 point in time. You see what I'm saying, because using this
20 witness to kind of corroborate some testimony, and when I
21 say testimony, sometimes you can get an answer on direct,
22 and then you can get a different answer on cross, but it's
23 still testimony, and the jury has to decide who to believe.
24 I'm indicating right now whether we have some testimony to
25 tie Taurus Watts to T. Because Trouble T, just as an

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1 identifying mark, I can't allow the link to be made that
2 it's a nickname, because people put their children's names
3 on their bodies, and then they have some experience in their
4 life and that's the characterization of what the tattoo is.
5 So you know, it's just stuff.

6 MS. JOHNS: Your Honor, here's my problem, too. I
7 can't, under the Sixth Amendment, cross-examine or have a
8 right to confront anybody from this case so far with regard
9 to whether or not Taurus Watts's nickname is T. It's just
10 something that they've heard from the streets. There's no
11 corroboration from any witness in this case and I know Mr.
12 Gallegos does not hang out with Taurus Watts, therefore he
13 would not know. So this testimony with regard to the
14 Trouble T tattoo is taken fully out of context with regard
15 to the observation to Mr. Watts tattoo at the station, and
16 my right to confront what they're trying to prove is
17 definitely barred, because I don't have anybody that I can
18 confront anybody about.

19 MS. MCDUFFIE: Your Honor, that argument, I believe
20 that tattoos and things of nature are not testimony. So
21 there are no Sixth Amendment issues whatsoever in terms of
22 --

23 THE COURT: Right. Well, you understand what I'm
24 saying. The -- I understand about for identification, so
25 tell me how this assists it the identification, because

1 that's what this case is talking about. I understood when
2 you said general, personal observation, but when linked to
3 nickname who gets to characterize it as a nickname, because
4 we don't know that that's a nickname without some testimony
5 on that issue. Who gets to characterize that?

6 MS. MCDUFFIE: Your Honor --

7 THE COURT: It's an observation. No doubt. It's
8 no different in saying height and weight in terms of
9 observation, but when we're going further to say that is the
10 nickname; who gets to say that?

11 MS. MCDUFFIE: I think that is for the jury -- I
12 think if this witness can testify that he observed that this
13 defendant characterized himself with this and whatever that
14 --

15 THE COURT: You can't say characterized. You can
16 say saw on body, if I let it in. That's the most he can
17 say. It can't be any judgments or opinions or conclusions
18 on the issue, if I let it in.

19 MS. MCDUFFIE: Your Honor, I believe the testimony
20 or the question was, do you have any knowledge of this
21 defendant's nickname and he said Trouble T.

22 THE COURT: But that nickname wouldn't be proper
23 because we don't know that it's a nickname. I understand
24 where you're trying to go, but we don't know that it's a
25 nickname.

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1 MS. MCDUFFIE: Your Honor, it would also be an
2 alias that's listed on this defendant's rap sheet. There
3 are many other areas that law enforcement has disposal to. T
4 is one of the aliases listed on this defendant's rap sheet.

5 THE COURT: Okay. Go back to earlier when you
6 talked about came into some knowledge during the
7 investigation, because none of that's been brought out.

8 MS. MCDUFFIE: Your Honor, Lisa Johnson told
9 Investigator McRae that Taurus Watts was T. On the stand,
10 she said -- I believe her testimony was she did not recall
11 telling Investigator McRae --

12 THE COURT: Okay, but then you had McRae up here
13 and we didn't even go into Taurus Watts and T.

14 MS. MCDUFFIE: That's correct, Your Honor.

15 THE COURT: Okay.

16 MS. JOHNS: Your Honor, here's my problem. I'm not
17 trying to confront the tattoo, I object to the tattoo coming
18 in. I'm not saying that the right to confrontation of the
19 tattoo, I'm saying I have the right to confront anybody who
20 testified in this case that says my client's nickname on the
21 streets is T, because there's not been anybody. Lisa
22 Johnson totally repudates it and says, No, I've never know him
23 as T. I've always know him as Taurus. So I believe, Your
24 Honor, the nickname issue is settled. The nickname issue is
25 settled. It's a characterization that has not been proven

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1 by anybody in this court so far, and I cannot confront
2 somebody that's going to come in here and say Mr. Watts's
3 nickname is T.

4 MS. MCDUFFIE: Your Honor, she --

5 MS. JOHNS: I'm sorry. I was not finished. Lisa
6 Johnson came in here and said --

7 THE COURT: I know her testimony. I wrote it down.

8 MS. JOHNS: So that's my issue with the nickname.
9 It's a characterization as been basically Lisa Johnson said,
10 no, I did not call him T, and the investigators think that I
11 called him T they're wrong. Basically, that's what the
12 testimony was. Now, in regard to the tattoo, the tattoo is
13 not an identifying characteristic, it's not a characteristic
14 feature --

15 THE COURT: Well, we can't use characteristic under
16 this case anyway.

17 MS. JOHNS: Right. When Ricky Jacobs was
18 identifying Taurus Watts, he does not say, by the way he has
19 a tattoo on him that says Trouble T. So the tattoo itself
20 -- if he had Outlaw written around his neck and somebody
21 identified him through that tattoo then that would be the
22 issue here, and that is not the issue here.

23 THE COURT: Okay. Do we have any information from
24 this witness that he followed the line of who T is?

25 MS. MCDUFFIE: Your Honor, this witness has

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1 information was told to him during the investigation that
2 Taurus Watts was T. I mean --

3 THE COURT: I know, but does he act on it. I mean,
4 we've got this witness on the stand. Not McRae, not CSI,
5 not somebody else. We've got this witness on the stand.

6 MS. MCDUFFIE: Your Honor, I believe acting on it
7 was the arrest. I mean, I don't know what you mean by acted
8 on it.

9 THE COURT: In other words, there's a bunch of
10 other information in the file and even McRae indicates he
11 relied on some stuff and didn't rely on other stuff. He
12 follow up on some stuff and didn't follow up on other stuff.
13 Because they have to figure out what they consider the leads
14 and that's person to person. So just to say that there is
15 some generic information in a file. We've got this witness
16 on the stand right now.

17 MS. MCDUFFIE: I believe, Your Honor, that this
18 witness would have relied on it in corroborating Lisa
19 Johnson when she told McRae that T was Taurus.

20 THE COURT: But we don't know.

21 MS. MCDUFFIE: Well, I haven't posed the question
22 to the witness --

23 THE COURT: Right.

24 MS. MCDUFFIE: -- I don't want to speculate as to
25 what he'd say.

1 THE COURT: Okay --

2 MS. JOHNS: Your Honor, she did pose the question
3 to the witness and she asked this witness what his nickname
4 was and he said, Trouble T. And that's not his nickname.
5 And they don't have anybody in here that can say it is.
6 They've already had Lisa Johnson up here. She says no.

7 MS. MCDUFFIE: Your Honor, the way this witness --
8 I mean, acted on it. I mean, he photographed the tattoos as
9 part of his investigation in the case.

10 THE COURT: I didn't hear. Sorry.

11 MS. MCDUFFIE: He had the lab make a photograph
12 just to memorialize it.

13 THE COURT: Okay, and this was based on your review
14 of the file in preparation of the case?

15 MS. MCDUFFIE: Correct.

16 THE COURT: Okay.

17 MS. JOHNS: Your Honor, the nickname prejudices my
18 client and it has not been shown that is his nickname. And
19 the tattoo prejudices my client, because the tattoo itself
20 is not an identifying feature for the identification of my
21 client, and Ricky Jacobs doesn't come in and say, by the
22 way, Taurus has a tattoo that says Trouble T. That's his
23 nickname. Ricky Jacobs took the stand and he didn't say
24 Taurus Watts's nickname was T. Brian Johnson too the stand
25 and he didn't say his nickname was T. Lisa Johnson took the

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1 stand and she didn't say his nickname was T. So they're
2 taking this Trouble T tattoo out of context.

3 THE COURT: Do you have anything else?

4 MS. MCDUFFIE: Your Honor --

5 THE COURT: I wasn't suggesting, I just didn't
6 know.

7 MS. MCDUFFIE: We just say that clearly it ended
8 that issue whether or not we think it's T, and all we're
9 asking the officer to do it testify as to his observation.

10 MS. JOHNS: An observation -- Your Honor, this
11 tattoo cannot be taken out of context and make this officer
12 say that his nickname was Trouble T unless he has
13 independent evidence of that and they don't.

14 MS. MCDUFFIE: It's his observation.

15 THE COURT: I totally understand the observation
16 argument. Where I'm grappling over this in my mind is
17 whether or not it then makes the leap for an identification
18 of a nickname without some other person identifying him as
19 such, because tattoos have many reason for why they're there
20 and who they are. In many cases it has nothing to do with
21 that person, it's an experience in life, as I indicated or
22 who the name of your child or who you think your mother is.
23 I mean all kinds of stuff. It's clear under the case that
24 it can be used for identification and so I have to think
25 through whether it would be used to identify him.

1 You all need to be at ease for a moment.

2 (Court in recess for short break.)

3 (Court in session after short break.)

4 THE COURT: All right. As State v. Day can be used
5 for purposes of identification, after extensive listening to
6 both sides of the argument it does not appear to be used for
7 purposes of identification. And so while it could be
8 relevant towards identification it doesn't seem to be used
9 that way. And I am going to find that it's prejudicial at
10 this point, because the other part of that that I just
11 thought about as I kind of took a walk is the fact that this
12 gentleman turned himself in. So it could have been a
13 different situation if the officers were looking for him and
14 then this was an identifying characteristic. So we just
15 never get to that this is an ID, and I certainly can have
16 the officer call it a nickname without some reference that
17 he knows that to be the case, because a tattoo in and of
18 itself is not a nickname. And I don't have any information
19 at this point that this officer relied on any T as part of
20 his investigation. So that would be the Court's ruling.

21 MS. JOHNS: Thank Your Honor.

22 MS. MCDUFFIE: Your Honor, we would ask to reserve
23 the right to -- that if the defense does put up a case and
24 it does become relevant --

25 THE COURT: Oh, absolutely. Jurors please.

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1 MS. JOHNS: Your Honor, may we approach?

2 THE COURT: Yes.

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

5 THE BAILIFF: Jury's all present, Your Honor.

6 (Jury in at 4:03 p.m.)

7 THE COURT: All right. Jurors, you are to -- I'm
8 striking from the record the last question and the last
9 answer and is not to be considered by you in any manner.

10 Oh, go ahead.

11 GILBERT GALLEGOS - CONTINUED DIRECT EXAMINATION

12 BY MS. MCDUFFIE:

13 Q Mr. Gallegos, you came in contact with Taurus Watts on
14 July 3, 2007?

15 A Yes, ma'am.

16 Q And please tell the jury what he told you?

17 A He found it strange --

18 MS. JOHNS: Your Honor, that is cumulative. It's
19 already been asked and answered.

20 MS. MCDUFFIE: Your Honor, I'll just re --

21 THE COURT: Let's go ahead. We've been out on
22 break for a little bit. I'll allow you to refresh.

23 A Found it strange that the other parties were all patted
24 down when they came in. That his friends are normally
25 patted down for weapons when they come to the club, and

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1 during the altercation inside the club the other side pulled
2 out weapons.

3 BY MS. MCDUFFIE:

4 Q And the individual who made that statement to you on
5 July 3, 2007, do you see him in the courtroom today?

6 A Yes, ma'am.

7 Q And please point him out to the jury?

8 A (Witness indicates.)

9 Q And what's he wearing?

10 A A white shirt with a red tie.

11 MS. MCDUFFIE: Your Honor, please let the record
12 reflect he has identified the defendant Taurus Watts.

13 THE COURT: So reflected.

14 MS. MCDUFFIE: Nothing further for this witness,
15 Your Honor.

16 THE COURT: Okay.

17 MR. SWERLING: I just have a couple of questions.

18 THE COURT: Sure.

19 GILBERT GALLEGOS - CROSS EXAMINATION

20 BY MR. SWERLING:

21 Q My understanding is that you did not see anybody at the
22 vehicle, but are you saying that nobody ever entered the
23 vehicle before it got down to the Sheriff's Department?

24 A At the time we were taking care of Mr. Wray and getting
25 everything situated and I never saw anybody go inside the

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1 vehicle.

2 Q But somebody could have at some other time?

3 A At some other time they could have.

4 Q And you actually went over to where the Isuzu was, when
5 it had been stopped with Landrum and Greene in it?

6 A Yes, sir.

7 Q Okay. And my understanding is Mr. Landrum, the fellow
8 with the dreads was just -- he was pretty loud and
9 boisterous and pretty agitated about being confronted by the
10 officers from Richland County concerning the events that
11 happened out there on the road, correct?

12 A Yes, sir.

13 Q And you even made a note about that?

14 A Yes, sir.

15 Q Did you try to pursue where the gun was that they used
16 to fire the weapon?

17 A No, sir.

18 Q But other officers were doing that; is that correct?

19 A Yes, sir.

20 Q And at the Richland County Sheriff's Department you
21 were the one that actually interviewed Greene or tried to
22 interview him.

23 A Yes, sir.

24 Q He was the driver? No, he was the passenger.

25 A Passenger, right.

1 Q And he wouldn't cooperate with you at all either; isn't
2 that true?

3 A He did an initial advise of rights and wrote a
4 statement.

5 Q Did either one of them, whether Landrum on the road or
6 Greene down at the Sheriff's Department, ever admit that
7 they even had a weapon?

8 A No, sir.

9 Q Did either one of them admit that they had a weapon in
10 the car at any time?

11 A I -- I never asked them if they had a weapon inside the
12 vehicle.

13 Q Well, obviously, y'all were curious about where the
14 weapon was because there were shells in the car and it was
15 reported that somebody had fired from that car; correct?

16 A Yes.

17 Q So obviously you didn't find a pistol in the car?

18 A We didn't find a pistol in the car.

19 Q And didn't find a pistol on the road, either?

20 A That's why we had deputies out looking for the pistol.

21 Q So whatever pistol was used in that connection with
22 them firing the shots, those 9 millimeter bullets that were
23 in the car, nobody knows where it was?

24 A The pistol?

25 Q Yes?

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1 A No, sir.

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

3 MS. JOHNS: No questions, Your Honor.

4 THE COURT: Okay. Sir, you may step down.

5 MS. MCDUFFIE: Your Honor, at this time, the State
6 of South Carolina rests.

7 THE COURT: Okay.

8 Ladies and gentlemen of the jury, the state has
9 concluded it's case in this matter, and as I indicated to
10 you early in the trial this will be a time for me to take up
11 some matters of law. Also take the opportunity to advise
12 the defendants of his rights so that they can make a
13 determination as to whether they wish to put up a case.

14 I'm going to ask you to go to your jury room --
15 actually because you've rested. And I'll have to do all
16 those things, I think I'm going to go ahead and conclude for
17 today unless there's an objection. Okay. And I'll go ahead
18 deal with all the matters of law and we'll continue here
19 working, and I'll have you report back to your jury room at
20 9:30 in the morning. Thank you all and have a good evening.

21 MR. SWERLING: May we approach -- before they go,
22 can I just ask something?

23 THE COURT: Okay. Just to make sure that we can,
24 as best as I can, we'll just ask you to come back at 10:00
25 and that way we can -- because I'm going to still stay here

1 and work with them, but just in case any last minute things
2 come up in the morning, to the extend that we'll do closing
3 arguments and the defense decides not to put up a case, that
4 gives the parties a chance to set up and we can go right
5 into the arguments. I remind you not to discuss the case
6 and I thank you for upholding your duties as jurors. Have a
7 great evening.

8 (Jury out at 4:10 p.m.)

9 THE COURT: Okay. Do we have any motions at this
10 time?

11 MR. SWERLING: Judge, on behalf of Mr. Wray, we ask
12 Your Honor to direct a verdict of not guilty to the charge
13 of murder. Taking all the evidence in the light most
14 favorable to the state, which the Court is required to do in
15 this situation, we submit that there's not sufficient
16 evidence by which a jury could find under reasonable doubt
17 that Mr. Wray was guilty, either as a principle in the case
18 or as a (inaudible) under the theory of accomplice
19 liability.

20 The evidence in the case has been at best, I would
21 submit to the Court, muddled as to actually was the shooter
22 in the case, between Mr. Wray and Mr. Watts. Even before
23 you get there would -- there is enough evidence in the case
24 to at least it raises a doubt as to which car was actually
25 firing the weapon, which car fired into the crowd.

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1 Judge, as you recall 911 -- oh, I'm sorry, dispatch
2 logs reflect that a square H -- is that tan -- white -- two-
3 tone car was identified in the dispatch logs, and then there
4 was also the white SUV -- whatever -- I'm sorry -- Nissan
5 Pathfinder were the only two vehicles that were identified
6 in that dispatch. In fact, there's a Suburban that's been
7 in question here that Mr. Wray and Mr. Watts were in was
8 never even identified as a suspect vehicle in the dispatches
9 that we had. In addition to that, Mr. Wray was never
10 actually put in the club by anybody except Mr. Jacobs and
11 the only information that we have that he was actually
12 approaching the club, Mr. Jacobs, I think has been
13 sufficiently impeached as to what he saw and what he
14 observed. We have all sorts of conflicting testimony about
15 what he told Mr. McRae at the scene concerning the Isuzu and
16 concerning what happened with the Suburban. We also have a
17 lot of conflicting testimony as to the shooting and where
18 the parties were. We also have the situation where the
19 majority of the shells were 9 millimeter Winchester Luger
20 bullets. Nothing like that was found in any search of Mr.
21 Wray or when they searched the vehicle or searched his
22 house. There was nothing in the vehicle or at his house or
23 no his person that indicated he ever had any 9 millimeter
24 shells. In fact, the only 9 millimeter shells in the case at
25 all were in the Isuzu, which is one of the vehicles that was

1 identified and was stopped by officers from the Sheriff's
2 Department. It had also fired a weapon in the case.

3 So it would be our position based on that that there's
4 insufficient evidence to submit the case to the jury.

5 In addition when we were getting ready to start this
6 case on May 18th, we did not have the testimony of Brian
7 Watson or Rashonda Simpson or Jarrell Dansby, but I submit,
8 Your Honor, based on Mr. McRae's own testimony, he wanted
9 Mr. Watson, when he took the statement from Mr. Watson he
10 took a statement from Rashonda Simpson and Jarrell Dansby to
11 corroborate what Mr. Watson was saying as to belief or
12 believability of what Mr. Watson was saying. And my
13 recollection from the testimony is that the three of them
14 gave completely contradicting testimony one with the other.
15 We have Mr. Watson saying all three of them disposing of the
16 gun. You have Ms. Simpson saying that her husband Dansby
17 and Watson went to dispose of the gun. And we have Mr.
18 Dansby saying that he didn't go, had no knowledge at all
19 about what happened to the gun, that Mr. Watson took it.
20 There's a lot of discrepancies as to what happened in the
21 back yard, whose house it took place at, whether it was
22 hammered or not. So submit that is not credible evidence,
23 either.

24 So I'd ask Your Honor to consider a directed verdict in
25 the case on behalf of Mr. Wray.

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1 THE COURT: Okay.

2 MS. JOHNS: Thank Your Honor. I would join in the
3 motion for directed verdict along with Mr. Swerling for his
4 client, Mr. Wray. I would move for a directed verdict on
5 behalf of my client, Mr. Watts for generally the same
6 reasons, Your Honor. It being, however, a little bit,
7 slightly different in that Mr. Watts was not driving the
8 vehicle. There is no connection that has been made that Mr.
9 Watts was with Mr. Wray that night and it's just pure
10 speculation from the standpoint of the fact in this record,
11 Your Honor. And not to belabor everything Mr. Swerling's
12 already presented to the Court, Your Honor, I'd would ask
13 that you find in the light most favorable to the state, that
14 the state has not met it's burden as to Mr. Watts, and ask
15 that the Court direct a verdict in his favor.

16 THE COURT: Thank you.

17 MS. SHIPLEY: Do you wish a response, Your Honor?

18 THE COURT: Yes.

19 MS. SHIPLEY: Your Honor, under the directed
20 verdict burden, the Court is to view the light of the
21 evidence and view in favor of the state. We have direct
22 evidence in this case from an eyewitness. All the matters
23 that were raised by Mr. Swerling deal with credibility,
24 which is clearly a jury issue. That the direct evidence is
25 that Taurus Watts was the one with the Uzi type firearm and

1 that he was seen getting into the passenger side. He is
2 know to the witness for multiple years, I believe 19 years.
3 We then also have him identifying Tremaine Wray in a
4 photographic lineup. He knew of him, had seen him before at
5 the club, however he was not exactly sure about his name.
6 He testified that because of his club he gets to know faces
7 and sometimes knows names or not. However, the testimony of
8 McRae that he continued to call about further updates and he
9 was able to get ultimately the name of Tremaine Wray was
10 provided, a photographic lineup was developed and the
11 witness positively identified both defendants without
12 hesitation.

13 Under the theory of hand of one, hand of all, they are
14 both guilty of murder, whether the defendant Watts handed
15 the gun to Tremaine Wray and had him fire where the gunshot
16 residue is or whether he leaned over himself while Mr. Wray
17 was busy driving the vehicle. Regardless they were aiding
18 and abetting one another. Either Wray was driving while the
19 shots were fired or Watts provided him the firearm to
20 conclude or to commit the act and spray the parking lot with
21 bullets. The testimony has been consistent that only one
22 shot was fired from the Rodeo up in the air, and multiple
23 shots were fired out of the tan Suburban. Gunshot residue
24 evidence corroborates that and supports that. As to the
25 shell casing found at the scene and the projectiles, it's

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1 clear that if the Rodeo only shot one time that it's not
2 responsible for the shot that killed Mr. Demuria Johnson
3 because three projectiles -- the gun had been fired at least
4 three times for Mr. Demuria Johnson's bullet, the gun, in
5 other words, that killed Mr. Demuria Johnson was fired at
6 least three times, and that is consistent with the evidence
7 at the crime scene. There were no other shell casings
8 belonging to any other type of firearm found at the scene.
9 And based on that, Your Honor, the fact that Ricky -- excuse
10 me, Brian Watson came forward at the last time this case was
11 called to trial. Obviously, that was thoroughly
12 investigated by law enforcement. Judge Manning granted a
13 motion by the state for continuance based on that
14 information, and that is also corroborated. He was not just
15 taken for his word, Your Honor, that he got this gun from
16 Jarrell who got it from Tremaine. He was corroborated as to
17 the guts of the story, that Tremaine brought a gun to
18 Jarrell, Jarrell called Watson over to get rid of it. And
19 when I asked the witness would Watson be telling the truth
20 or a lie if he testified he got rid of the gun, the witness
21 answered it would be the truth. So that also is a jury
22 question, Your Honor. And we would respectfully request
23 that you deny the motion made by the defendants.

24 THE COURT: Okay. At this juncture of the trial
25 the Court is just concerned as to whether or not there is

1 any direct or circumstantial evidence reasonable tending to
2 prove the guilt of the accused. It is not for the Court to
3 weigh any credibility issues or any conflicting evidence,
4 just whether or not the state has put forth some evidence on
5 each of the elements in the case, and I believe the state
6 has, and respectfully, the motions for directed verdict are
7 denied.

8 Now, we will proceed to whether or not the defense
9 wishes to put up a case. I'm going to ask for Mr. Tremaine
10 Wray to stand and also for Mr. Taurus Watts to stand. I'm
11 going to ask the court reporter to swear you in. I mean,
12 excuse me, the court clerk.

13 (WHEREUPON, Tremaine Wray, was
14 sworn to tell the truth.)

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

17 THE COURT: Okay. Gentlemen, keep standing,
18 please. I'm going to explain to you your rights with
19 respect to the trial, and just so that the record is clear,
20 I'm going to ask you questions. I'm going to ask Mr. Wray
21 to speak first and then Mr. Watts to speak second with
22 respect to answering my questions.

23 Both of you have been here throughout the trial; is
24 that correct?

25 MR. WRAY: Yes, ma'am.

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1 MR. WATTS: Yes.

2 THE COURT: And you've had the opportunity to see
3 the state put forward their case as well as your counsel put
4 forward or examine the witnesses and other evidence with
5 respect to this case; is that correct?

6 MR. WRAY: Yes, ma'am.

7 MR. WATTS: Yes.

8 THE COURT: Okay. We are now at the point in the
9 trial where the state has rested, which means they have
10 concluded their case and they do not intend to put forth any
11 further evidence in their case in chief.

12 So now it is up to you all with respect to your
13 decision as to whether you wish to testify and/or even put
14 up any evidence at this point in the trial; do you
15 understand that?

16 MR. WRAY: Yes, ma'am.

17 MR. WATTS: Yes.

18 THE COURT: So now the Court wishes to advise you
19 of your rights with respect to you putting up a case, as
20 well as for you testifying. Our Fifth Amendment essentially
21 says that no person shall be compelled in any criminal case
22 to be a witness against himself. So naturally the state
23 cannot require you to testify against yourself in their case
24 in chief; do you understand that?

25 MR. WRAY: Yes, ma'am.

1 MR. WATTS: Yes.

2 THE COURT: At this point, it is up to you as to
3 whether or not you wish to testify or put up a case. That
4 is your right to not testify against yourself, so it is your
5 right to determine if you wish to put up a case at all. The
6 jurors will be instructed that it is always the state's
7 burden of proof beyond a reasonable doubt that they have to
8 prove that you have, in fact, committed the offenses. In
9 that regard you are able to rely on whether or not they've
10 met that burden of proof at this trial; do you understand
11 that?

12 MR. WRAY: Yes, ma'am.

13 MR. WATTS: Yes.

14 THE COURT: So you don't have to put up any
15 evidence, and, in fact, the jury will be told that you do
16 not have to testify and they can not use against you the
17 fact that you did not testify at all. It cannot be
18 considered by them in any way during their deliberations
19 during this case; do you understand that?

20 MR. WRAY: Yes, ma'am.

21 MR. WATTS: Yes.

22 THE COURT: And that additionally they will be told
23 that you are presumed innocent until proven guilty by the
24 state by them submitting proof beyond a reasonable doubt; do
25 you understand that?

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1 MR. WRAY: Yes, ma'am.

2 MR. WATTS: Yes.

3 THE COURT: Okay. If you should decide to testify,
4 then you'll be subject to the same mannerisms as any other
5 witness in the case; do you understand that?

6 MR. WRAY: Yes, ma'am.

7 MR. WATTS: Yes.

8 THE COURT: More specifically, just as you heard
9 witnesses put up by the state, and your attorneys have had
10 the opportunity to cross-examine these witnesses, they would
11 cross examine them on whether or not they had any prior
12 criminal records, whether or not there was any bias or any
13 type of impeachable material to impugn their credibility, to
14 essentially try to make the jury question whether or not
15 they're believable. Just like they did that with those
16 witnesses, meaning your lawyers, the state has the
17 opportunity to do that with respect to you if you testify,
18 as well as your witnesses, and then the same way try to
19 object to any evidence or anything that you would try to put
20 in; do you understand that?

21 MR. WRAY: Yes, ma'am.

22 MR. WATTS: Yes.

23 THE COURT: So you are considered just like any
24 other witness in the case if you should testify just as you
25 have observed other witnesses testify in the case with

1 respect to how you should be handled on the stand; do you
2 understand that?

3 MR. WRAY: Yes, ma'am.

4 MR. WATTS: Yes.

5 THE COURT: Have you had the opportunity to discuss
6 with your attorney decisions and strategies in the case with
7 respect to whether or not -- how you wish to proceed.

8 MR. WRAY: Yes, ma'am.

9 MR. WATTS: Yes.

10 THE COURT: I'm not asking for your decision as you
11 will have the opportunity to make that decision overnight,
12 because we have already excused the jury, and even if you
13 put up a case it won't happen until tomorrow. So I'm not
14 asking you to make that decision because your attorneys will
15 have to meet with you and strategize as to whether or not
16 they wish to, but I just want to make sure that before now
17 you've had the opportunity to discuss some of those issues
18 with your attorney?

19 MR. WRAY: Yes, ma'am.

20 MR. WATTS: Yes.

21 THE COURT: Have you understood all of the Court's
22 discussions with you at this moment?

23 MR. WRAY: Yes, ma'am.

24 MR. WATTS: Yes.

25 THE COURT: Do you have any questions of me at this

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1 moment about your rights?

2 MR. WRAY: No, ma'am.

3 MR. WATTS: No.

4 THE COURT: And that you do understand, again, that
5 you are presumed innocent until proven guilty. State has to
6 prove you guilty beyond a reasonable doubt, but if you do
7 take the stand, it is right and privilege to do so, and you
8 will be treated like any other witnesses with respect to the
9 state questioning your credibility, as well as questioning
10 the credibility of any other witnesses that you might put
11 up?

12 MR. WRAY: Yes, ma'am.

13 MR. WATTS: Yes.

14 THE COURT: And I will remind you that the jury
15 will be told, and it's in the jury charge, and your lawyers,
16 I'm sure will go over that with you if they hadn't already,
17 that the jury will be told that you do not have to testify,
18 because that's your Fifth Amendment right to not testify.
19 The jury will also be told that they cannot consider, at
20 all, the fact that you did not testify. But, again, it's
21 your case, it's your ability to see how you wish to proceed.
22 I just have to inform you have a right to not do so, and
23 then it will be your election to do so if you wanted to
24 chose to do so; do you understand that?

25 MR. WRAY: Yes, ma'am.

1 MR. WATTS: Yes.

2 THE COURT: Is there anything that I've said that
3 you don't understand and that you wish me to go back over?

4 MR. WRAY: No, ma'am.

5 MR. WATTS: No.

6 THE COURT: Okay. Do you have any questions of me
7 at this time?

8 MR. WRAY: No, ma'am.

9 MR. WATTS: No.

10 THE COURT: Okay. I'm going to allow you to speak
11 with your attorneys. Consider yourself advised of your
12 right to testify or not testify or to not put up a case.

13 Ms. Johns?

14 MS. JOHNS: Yes, ma'am. I'm not sure whether you
15 covered the length of time and whether or not Mr. Watts had
16 enough time to consult with me in regards to his case.

17 THE COURT: Sure.

18 MS. JOHNS: And I think the Court should cover
19 that.

20 THE COURT: Sure. Okay.

21 Obviously, this case was set for trial in May, and now
22 it's been reset for trial due to circumstances that have
23 come out in the case. You've also been represented by your
24 respective attorneys for some time, but I want to make sure
25 you feel like you've had enough time to meet with your

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1 attorneys with respect to discussing these rights and other
2 issues with respect to this case. Do you feel like you
3 have, Mr. Wray?

4 MR. WRAY: Yes, ma'am.

5 THE COURT: Do you feel like you have, Mr. Watts?

6 MR. WATTS: Yes.

7 THE COURT: And do you feel like you've had the
8 ability to discuss and have enough time again to discuss any
9 issues that pertain to this case? Mr. Wray?

10 MR. WRAY: Yes, ma'am.

11 THE COURT: Mr. Watts?

12 MR. WATTS: Yes.

13 THE COURT: Okay. And then I'm going to give you,
14 again, overnight to discuss any issues, because I'm not
15 going to ask you for your answer at this point as to whether
16 or not you wish to put up a case. If you do not wish to put
17 up a case I'm instructing all parties to be ready for
18 closing arguments in the morning. If you decide you want to
19 put up a case, then we will be here and ready to receive
20 your case. The record will reflect that we started last
21 Monday in pre-trial. We're not into Tuesday of the next
22 week. And the court is available for however long it takes
23 because you all have exercised your constitutional right to
24 have a trial. The Court will accommodate you with respect
25 to what -- you know, those rights, and as long as I find the

1 evidence is admissible then we'll deal with it in that
2 regard. And so you have the opportunity to put up a case.
3 I will tell you this, to the extent that you do put up a
4 case the state then had the opportunity to reply to that
5 case, as well. So that's just one of the considerations
6 with respect to your discussions with your attorney tonight.
7 Okay. So again is there anything that you haven't understood
8 that I've said?

9 MR. WRAY: No, ma'am.

10 MR. WATTS: No.

11 THE COURT: Is there anything you wish to ask me at
12 this time?

13 MR. WRAY: No, ma'am.

14 MR. WATTS: No.

15 THE COURT: Okay. So I'm going to leave you back
16 to your attorneys to further discuss this issue. And I'll
17 hear your answer in the morning. Thank you.

18 MS. SHIPLEY: Thank Your Honor.

19 THE COURT: Oh, jury charge.

20 MS. MCDUFFIE: Yes, ma'am, Your Honor.

21 THE COURT: Okay. With respect to the jury
22 charges, we would respectfully ask that Your Honor charge
23 the jury on note taking, just as you did earlier in the
24 week, Your Honor.

25 THE COURT: On what?

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1 MS. MCDUFFIE: On note taking, just as you did
2 earlier in the week.

3 THE COURT: Okay.

4 MS. MCDUFFIE: And we would also ask for a charge
5 on transferred intent.

6 THE COURT: Okay.

7 MS. MCDUFFIE: Your Honor, the only other objection
8 we see at this point, I believe it's page -- the end of your
9 charge on Page 18 and also Page 22, the charge makes the
10 statement: You are required to find the defendant -- you
11 know, if the state hadn't proven -- you're required to find
12 the defendant not guilty. We also ask that if you find that
13 the state has proven beyond a reasonable doubt. You know
14 just add the reciprocal to Page 18, Your Honor.

15 THE COURT: Okay. I will do that with respect to
16 Page 18 and 22. I'll also deal with the note taking. I'm
17 sure there's no objection and then defense, do you have any
18 objection to transferred intent?

19 MR. SWERLING: Well, Judge I'm trying -- I mean,
20 the theory of the case was either the person was a principle
21 shooter or he's guilty of accomplice liability, so what
22 would be the basis for the transferred intent charge?

23 MS. MCDUFFIE: Your Honor, the specific intent --
24 I'm not speaking in terms of transferred intent in terms of
25 either of the defendant, rather in terms of the victim that

1 it didn't have to be the specific intent to kill the victim,
2 rather that -- because of their actions -- if they were
3 shooting at Charlie Bates and hit this victim, they did not
4 have to have the specific intent to kill this victim.

5 MR. SWERLING: You have to have -- there has to be
6 proof. Transferred intent does not apply to a situation
7 where someone is shot in that situation. Transferred intent
8 is a principle that would if evidence I intended to shoot A,
9 but I shot B, by mistake. There's no evidence of that in
10 the record, whatsoever.

11 MS. MCDUFFIE: Your Honor.

12 MR. SWERLING: This is not a transferred intent
13 case. This is a case where as a result of the conduct, the
14 shooting of that individual the jury can find malice
15 aforethought or not. This is not a transferred situation.
16 There's no evidence he was trying to shoot anybody else.

17 THE COURT: Under the charge. I was just looking
18 at that, it says the defendant with malice aforethought
19 attempts to kill another person, but by mistake injures or
20 kills a different person then the defendant still had the
21 intent to kill, and that the intent to kill is merely
22 transferred from the original person the defendant attempted
23 to kill to the actual person killed or injured.

24 MS. MCDUFFIE: Your Honor, I believe that that's
25 what the evidence has shown that Charlie Bates was the

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1 person who was in the fight and that the shots were fired at
2 that group, presumably at Mr. Bates. I believe Charlie
3 Bates himself thought that they, said that he thought they
4 were shooting at him, Your Honor.

5 THE COURT: Well, Mr. Bax points out to me in which
6 I, of course, concur, there's no evidence that Mr. Wray or
7 Mr. Watts were in it.

8 THE COURT: That Mr. Wray or Mr. Watts were in the
9 fight.

10 MS. MCDUFFIE: Your Honor, I believe Taurus Watts
11 statement is that during the fight the other side --

12 MR. SWERLING: That's not Mr. Wray.

13 MS. MCDUFFIE: Your Honor, that's Mr. Watts.

14 THE COURT: Right.

15 MS. JOHNS: That's not what he said, Your Honor.

16 MS. MCDUFFIE: I believe that was exactly what was
17 said to Investigator Gallegos, that during the fight the
18 other side pulled a gun.

19 MS. JOHNS: That doesn't mean that Mr. Watts was
20 involved in the fight. It means he was a witness to the
21 fight essentially. It doesn't mean he was involved in the
22 fight.

23 MS. MCDUFFIE: Your Honor, he obviously is putting
24 himself of the other side.

25 THE COURT: Okay. Anything further on that issue,

1 Ms. Johns?

2 MS. JOHNS: Which issue, Your Honor?

3 THE COURT: Transferred intent on the jury charge?

4 MS. JOHNS: Your Honor, I'm asking that if you're
5 going to give the transferred intent with regard to anybody
6 to attempt to kill somebody else and they don't kill that
7 person and they end up killing Demuria Johnson, I'd ask that
8 for an accident charge.

9 THE COURT: And then what do we have --

10 MS. MCDUFFIE: There was no accident whatsoever,
11 Your Honor.

12 MS. JOHNS: We don't need a transferred intent
13 charge.

14 MR. SWERLING: Well, that's my point. It's not
15 transferred intent. He either shot the guy or he didn't
16 shoot him. I don't think it's a transferred intent case.
17 He either shot him or he didn't shoot him. And if he did
18 shoot him, the jury can find malice. There's no evidence in
19 this case that he intended to shoot anyone in particular.

20 MS. MCDUFFIE: Your Honor, we would ask that --

21 MR. SWERLING: So --

22 THE COURT: Well, you started out the case about
23 shooting into the crowd in your opening.

24 MS. MCDUFFIE: If Your Honor, if the Court decides
25 not to charge transferred intent then we would ask that the

State v. Tremaine Wray & Taurus Watts 10/13/09

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1 specific intent to kill is not required.

2 THE COURT: Okay.

3 MR. SWERLING: No, well, you have to have criminal
4 intent.

5 MS. MCDUFFIE: Yes, ma'am, Your Honor, you do have
6 to have criminal intent, but that can also be shown by
7 conduct that's so reckless and such a disregard for human
8 life that death is a probable result of.

9 THE COURT: Okay. So I'm going with those --

10 MR. SWERLING: Judge, this is the law. When a
11 person doesn't act in the presence of or the with the
12 assistance of another -- when two or more people act on a
13 common plan or intent -- who act -- find them both guilty --
14 the hand of one is the hand of all. It is a -- it's just a
15 straight murder case. There's nothing magical about this
16 case whatsoever. There's no other theories. It's a either
17 you did the shooting or you were present aiding and abetting
18 during the shooting.

19 THE COURT: Okay. We're off the transferred
20 intent, you're on the specific intent right now?

21 MR. SWERLING: Yeah. I mean it's a -

22 THE COURT: What she's saying -- we all agree on
23 intent. I think where she's going is you don't have to have
24 specific intent to kill to get to a murder. That the
25 recklessness can -- a bullet hits a person and they thereby

State v. Tremaine Wray & Taurus Watts 10/13/09 200

1 die. It doesn't matter that you didn't intend to kill. You
2 shot into the crowd, so to speak.

3 MR. SWERLING: But it is a specific intent crime.
4 It's murder. You have to have the intent to kill or you
5 have to act under some other theory. In this case we have
6 someone firing into a crowd, according to the evidence in
7 the case.

8 THE COURT: And that leads you to, Ms. McDuffie,
9 what could be the inferred malice, then, correct, when you
10 say, when you referred to conduct showing total disregard
11 for human life?

12 MS. MCDUFFIE: Yes, Ma'am, but also in terms of the
13 intent, and I'd be happy to get Your Honor case law before
14 the morning, Your Honor, about specific intent to kill.

15 THE COURT: Okay. We'll look it up, as well.

16 MR. SWERLING: You have to act with malice
17 aforethought.

18 THE COURT: Okay. We're going to -- myself and the
19 clerk will stay here, so we'll look at that. If you've got
20 a case shoot us an email, because we want you all to know
21 before tonight as to that, so you'll get an email.

22 MS. MCDUFFIE: And Your Honor we will email you and
23 the defense with the case law.

24 THE COURT: All right, and we will email you all
25 back tonight so you may -- okay, before we stop, let's talk

State v. Tremaine Wray & Taurus Watts 10/13/09

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1 about defense any jury charge to be added or subtracted?

2 MR. SWERLING: Judge, unfortunately, I have not
3 even had a chance to look at it.

4 THE COURT: Okay. Okay. That's fine.

5 MR. SWERLING: Because we just got it this morning,
6 and, as you know, I had that lunch to go to.

7 THE COURT: Okay. Do this. Both sides just email
8 us by 8:30.

9 MS. SHIPLEY: By 8:30 tonight, Your Honor?

10 THE COURT: Yes.

11 MR. SWERLING: That's fine.

12 THE COURT: Any reason you need it by the morning,
13 that's fine, too. I just don't want to be coming in here
14 talking about it at 10:00.

15 MS. SHIPLEY: I agree. We should have it as soon
16 as possible.

17 THE COURT: Yeah. 8:30 in the morning in fine with
18 me. Let's do this. Y'all email by 8:00 in the morning,
19 8:00 a.m. because that gives us time, you know. I know you
20 have your thoughts on various things and I don't want to cut
21 you off from all of that. So just email us whatever cases or
22 issues you have by 8:00 a.m.

23 MS. SHIPLEY: 8:00 a.m. Thank you, Your Honor.

24 THE COURT: All right. Anything else?

25 MS. SHIPLEY: No, ma'am.

State v. Tremaine Wray & Taurus Watts 10/13/09

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1 THE COURT: Y'all have a good and restful evening.
2 (Court in recess for the evening at 5:05 p.m.)
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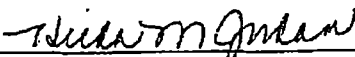
State v. Tremaine Wray & Taurus Watts 10/13/09

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CERTIFICATE

I, THE UNDERSIGNED HILDA M. JORDAN, CVR, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN COURT OF GENERAL SESSIONS FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 13TH DAY OF OCTOBER 2009.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.


HILDA M. JORDAN, CVR

COLUMBIA, SOUTH CAROLINA

MAY 23, 2010

WITNESSES

INV. DON MCRAE (RCSD)

ARREST WARRANT NUMBER

J557780

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

AUG 15 2007

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-40-5913

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

AUGUST TERM 2007

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THE STATE

vs.

TAURUS WATTS

Indictment for

MURDER

SC Code: 16-3-10

CDR Code: 0116

Class FEL/EXM(V)

After being fully advised as to my legal rights, I hereby waive presenting to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

1736
SOUTH CAROLINA
RICHLAND COUNTY
C.C.C.P.&G.S.
JUL 11 2007
OFFICE OF ORIGINAL FILED
CERTIFIED TRUE COPY

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on August 15, 2007, the Grand Jurors of Richland County present upon their oath:

MURDER

That Taurus Watts did in Richland County on or about June 30, 2007, feloniously, willfully and with malice aforethought, kill one Dumuria Johnson by means of a gunshot wound and that the said victim died as a proximate result thereof. All in violation of SC Code of Laws § 16-3-10

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Warren B. Giese, SOLICITOR

1738

COUNTY OF Richland

STATE

Taurus Watts vs.

AKA:

Race: BSex: M

Age: _____

DOB: 10/9/78 SS#: _____Address: 133 IDA LAKECity, State, Zip: COLUMBIA, SC 29203

DL# _____

SID# _____

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☒ PLEADS TO: Murderin violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant initial)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

William Shipley 15563 Taurus S. Watts
Solicitor SC Bar # Defendant

Attorney for Defendant

SC Bar # 15296WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 35 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ set by SCDPPPS _____

Attend Voc. Rehab. or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$ _____
\$14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ _____
\$14-1-211(A)(2) (DUI Surcharge)	\$100 \$ _____
\$56-5-2995 (DUI Assessment)	\$12 \$ _____
\$56-1-289 (DUI Breath Test)	\$500 \$ _____
\$35.13 (Public Def/Prob)	\$25 \$ _____
\$73.3, 1B TP (Law Enforce. Funding)	\$25 \$ _____
\$33.7, 1B TP (Drug Court Surcharge)	\$100 \$ _____
\$50-21-114(BUI Breath Test Fee)	\$50 \$ _____
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea \$ _____
3% to County (if paid in installments)	\$ _____
\$90.11 TP (SCCA Surcharge)	\$5 \$ _____
TOTAL	\$ _____

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ Beginning _____
\$ _____ paid to Public Defender Fund

Other: _____

\$25 \$ _____

☐ Appointed PD or appointed other counsel, \$35.13 TP☐ Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE Jue ChildsJudge Code: 2146Sentence Date: 10-15-09CERTIFIED TRUE COPY
ORIGINAL FILED,
Jeanette W. McBride
C.C.C.P.&G.S.RICHLAND COUNTY
SOUTH CAROLINA

FORM 5

2013CP#03226

STATE OF SOUTH CAROLINA)

COUNTY OF Richland)

Taurus Watts #324820)

Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2013 MAY 10 PM 3:37
 FILED
 RICHLAND COUNTY
 JESSICA W. MOORE
 C.P. & G.S.

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Institution
2. Name and location of Court which imposed sentence Richland Co. General Sessions
3. Name(s) of co-defendant(s) (if any) Tremain Wray
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007-GS-40-5913
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) October 15, 2009 35yrs.
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
 - (b) after a plea of not guilty xx
 - (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. SC Court of Appeals
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Affirmed
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. June 20, 2012
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. Rule 220(b)(1), SCACR
 - ii. _____
 - iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
 - (b) _____
 - (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective assistance of trial counsel
 - (b) Ineffective assistance of appellate counsel
 - (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) see attachment
 - (b) _____
 - (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
 - (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

Attachment

1. Applicant was denied the right to effective assistance of counsel guaranteed by the 6th & 14th Amendments to the US Constitution by trial counsel's failure to object to the State vouching for the credibility and veracity of its key witness during closing arguments.
2. Applicant was denied the right to effective assistance of appellate counsel guaranteed by the 6th & 14th Amendments to the US Constitution by appellate counsel failure to appeal the trial court's denial of Applicant's motion for direct verdict based on insufficient evidence to prove Applicant's guilt beyond a reasonable doubt for the charge of murder.
3. Applicant was denied the right to effective assistance of counsel by trial counsel failure to request a Frank's hearing to challenge the affidavit for the arrest warrant.
4. Applicant was denied the right to effective assistance of counsel by trial counsel failure to object and challenge the trial court's jury charge on the hand of one is the hand of all theory to the jury.

- (a) your arraignment and plea? xxx
 - (b) your trial, if any? xx
 - (c) your sentencing? xx
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? xx
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Theresa N. Johns 1720 Main St. Ste. 202 Cola, SC 29201
 - ii. Kathrine H. Hudgins SC Appellate Defense PO Box 11589
Columbia, SC 29211
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. trial and sentencing
 - ii. appeal of conviction
 - iii. _____
19. State clearly the relief you seek in filing this application:
conviction and sentence reversed and vacated
20. Are you now under sentence from any other court that you have not challenged?
N/A

STATE OF SOUTH CAROLINA

County of Richland

VERIFICATION

I, Taurus Watts #324820, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Taurus S. Watts

SWORN to and subscribed before me this 28th
day of May, 2013.

Susan H. Frye (L.S.)
Notary Public

My Commission Expires: _____
March 5, 2013

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

Taurus Watts #324820

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Taurus S. Watts
Applicant

SWORN or affirmed to and subscribed before me this

28th day of May, 2013.

Susan H. Dye
Notary Public

My Commission Expires
March 5, 2018

My Commission Expires: _____

RICHLAND COUNTY
FILED
2013 MAY 30 PM 3:37
JEANETTE W. McBRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
Taurus Watts, #324820,	)	
	)	2013-CP-40-3226
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the Application for post-conviction relief filed May 30, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was true bill indicted during the August 2007 term of the Richland County Grand Jury for Murder (2007-GS-40-5913). Theresa Johns, Esquire, represented Applicant. On October 5-9, 12-15, 2009, Applicant proceeded to a jury trial before the Honorable Michelle Childs, where he was convicted as indicted. On October 15, 2009, Judge Childs sentenced Applicant to thirty-five years imprisonment.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Katherine H. Hudgins, Esquire. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence on June 1, 2012. State v. Watts, No. 2012-UP-381 (S.C. Ct. App. June 20, 2012). The Remittitur was issued on August 10, 2012.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject convictions, Applicant's trial transcript, the Applicant's records

from the South Carolina Department of Corrections, and Applicant's appellate records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel; in that,
 - a. "Trial Counsel's failure to object to the State vouching for the credibility and veracity of its key witness during closing arguments."
 - b. "Trial Counsel failure to request a Frank's hearing to challenge the affidavit for the arrest warrant."
 - c. "Trial Counsel failure to object and challenge the trial court's jury charge on the hand of one is the hand of all theory to the jury."
2. Ineffective assistance of appellate counsel; in that,
 - a. "Appellate Counsel failure to appeal the trial court's denial of Applicant's motion for direct verdict based on insufficient evidence to prove Applicant's guilt beyond a reasonable doubt for the charge of murder."

Any claims not specifically enumerated in the Application or amendments will be opposed by Respondent at an evidentiary hearing, and Respondent will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCF.

III.

In his application, Applicant alleges ineffective of assistance of trial counsel. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's

conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of trial counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant also alleges ineffective assistance of appellate counsel. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S.

387 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Respondent contends that Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. Therefore, Respondent requests an evidentiary hearing on this allegation also.

V.

Each and every allegation contained within the Application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, Respondent requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: Megan E. Harrigan
ATTORNEY'S FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

December 11, 2013.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
	)	2013-CP-40-3226
	)	
TAURUS WATTS, #324820	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Anna R. Good, Esquire
Law Office of Anna Good, LLC
1720 Main Street, Suite 303
Columbia, South Carolina 29201

DATED this 11th day of December, 2013.


 Kelly Oppenheimer, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
 2013-CP-40-3226

Taurus Watts,
 SCDC # 324820,

Applicant,

vs.

State of South Carolina,
 Respondant.

AMENDED APPLICATION
 FOR POST CONVICTION RELIEF

RICHLAND COUNTY
 FILED
 2015 MAR 11 PM 3:27
 JEANETTE W. MCBRIDE
 C.C.P. & S.S.

Based upon further investigation and research, the Post-Conviction Relief Application filed on behalf of the above named Applicant is hereby amended as follows to include in addition to prior grounds stated in the original application for post-conviction relief:

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Ineffective assistance of trial counsel – trial counsel failed to call witnesses on the applicant's behalf;
- (b) Ineffective assistance of trial counsel—trial counsel failed to ask for a motion to sever;
- (c) Ineffective assistance of trial counsel—trial counsel failed to present a case/strategy based on Applicant and followed trial strategy of codefendant; and
- (d) Ineffective assistance of trial counsel—trial counsel failed to request a new juror.

[SIGNATURE ON NEXT PAGE]

O'NEIL, GOOD & LI, LLC

A handwritten signature in cursive script, reading "Anna R. Good". The signature is written in dark ink and is positioned above a horizontal line.

Anna Good, Esquire
Attorney for Applicant
PO Box 7284
Columbia, SC 29202
803-661-6758
803-403-8752 (fax)

Columbia, South Carolina
This 11th day of March, 2015

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Taurus Watts #324820,

Applicant,

vs.

State of South Carolina,

Respondent.

Docket No. 2013-CP-40-3226

AFFIDAVIT OF SERVICE BY MAIL

AMENDED APPLICATION FOR
POST-CONVICTION RELIEF

Alexandra M. Carlson, certifies that on the 11th day of March 2015, she served the Amended Application for Post-Conviction Relief on Clay Mitchell, Attorney for the Respondent, by placing a copy of the same in the U.S. Mail with due and proper postage attached thereto, addressed as follows:

Clay Mitchell
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

By:



Alexandra M. Carlson
Legal Assistant to Anna Good

O'NEIL, GOOD, & LI, LLC
P.O. Box 7284
Columbia, SC 29202
(803) 661-6758

Columbia, South Carolina
This 12 day of March, 2015

State of South Carolina)
)
County of Richland)

In the Court of Common Pleas
Fifth Judicial Circuit
2013-CP-40-3226

Taurus Watts,
Applicant,
vs.
State of South Carolina,
Respondent.

Transcript of Record

December 10, 2015
Columbia, South Carolina

B E F O R E:

The Honorable G. Thomas Cooper, Jr., Judge

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

Anna R. Good, Esquire
Attorney for the Applicant

J. Clay Mitchell, Esquire, Assistant Attorney General
Attorney for the Respondent

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

I N D E X

<u>Witness/Description</u>	<u>Page No.</u>

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Ray Weldon Gregory

Direct Examination by Ms. Good.. 25

Cross-examination by Mr. Mitchell. 29

Kamaleh Wilson

Direct Examination by Ms. Good.. 31

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Theresa Johns

Direct Examination by Mr. Mitchell.. 41

Cross-examination by Ms. Good. 65

Redirect Examination by Mr. Mitchell.. 73

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E X H I B I T S

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1 THE COURT: All right, Mr. Mitchell.

2 MR. MITCHELL: Thank you, Judge. May it please the
3 court? This is *Taurus Watts vs. The State of South*
4 *Carolina*, 2013-CP-40-3226. He was indicted August 2007 for
5 murder. He was represented on the charges -- charge by Ms.
6 Theresa Johns. It was, I think, about a five and a half
7 day trial in October of 2009 before Judge Childs. He was
8 convicted, sentenced to thirty-five years.

9 A notice of appeal was filed on his behalf and the
10 conviction was affirmed. Filed this application for
11 postconviction relief May 30, 2013. Ms. Anna Good was
12 appointed to represent Mr. Watts on this case.

13 There have been, I think, two or three separate
14 amended applications filed, detailed allegations that we'll
15 be going forward on today.

16 THE COURT: I'd like a copy of it.

17 MR. MITCHELL: Let's see if I've got one.

18 THE COURT: I don't see it in the packet.

19 MR. MITCHELL: It is in the packet?

20 THE COURT: No, I don't think so.

21 (A PAUSE.)

22 THE COURT: No, I don't see it.

23 MS. GOOD: You don't have either one?

24 THE COURT: All I've got is the first...

25 MR. MITCHELL: And, Judge, if you remember the last

T. WATTS - DIRECT EXAMINATION BY MS. GOOD

5

1 time Mr. Watts was before you July 14, 2015, and he
2 requested that Ms. Good be relieved, and that you granted
3 him, I believe, I think ninety days to either retain a
4 different attorney for them to go forward, or if not, then
5 go forward with Ms. Good. I think at this point that's
6 been resolved, and I think Mr. Watts is ready to go forward
7 today with Ms. Good, but I'll let her speak on that.

8 MS. GOOD: That's my understanding, Your Honor.

9 THE COURT: All right. We will proceed. Have you
10 finished your ---

11 MR. MITCHELL: Oh, yes, sir.

12 THE COURT: --- your opening?

13 MR. MITCHELL: That's all I've got..

14 THE COURT: Your opening presentation?

15 MS. GOOD: Call Taurus Watts, Your Honor.

16 THE COURT: All right. Come around, Mr. Watts.

17 TAURUS WATTS, BEING DULY SWORN,
18 TESTIFIES AS FOLLOWS:

19 THE COURT: Have a seat in the witness box. State
20 your full name for the record.

21 WITNESS: Taurus Sharif Watts.

22 DIRECT EXAMINATION BY MS. GOOD:

23 Q. Mr. Watts, you heard Mr. Mitchell state that Theresa
24 Johns was your attorney for this trial. Was she your
25 attorney the entire time?

T. WATTS - DIRECT EXAMINATION BY MS. GOOD

6

1 A. Yes.

2 Q. And about how many times did you meet with her prior
3 to getting ready for trial?

4 A. Several.

5 Q. And during that time, did you ever discuss strategy
6 with her about the trial and what your defense would be?

7 A. No.

8 Q. Did you ever discuss any witnesses that she could
9 potentially call on your behalf and whether to call them or
10 not?

11 A. Yes.

12 Q. Okay, and was it your intention -- speak up a little
13 bit just so the court reporter can hear you. Did you want
14 her to call witnesses during your trial?

15 A. Yes.

16 Q. Okay. I'm going to get to the actual trial itself
17 now. Prior to trial, prior to any pretrial motions, you
18 had jury selection. Did anything unusual happen during
19 jury selection?

20 A. Yes.

21 Q. Okay, and what was that?

22 A. Well, with several jurors was -- they was bias. You
23 had one juror that got caught during a break on the phone
24 saying that regardless of what -- that he was going to say
25 I was guilty automatic.

T. WATTS - DIRECT EXAMINATION BY MS. GOOD

7

1 Q. Okay, and was that juror questioned on the record?

2 A. Yes, he was questioned.

3 Q. Okay, and did he admit to saying that?

4 A. Yes.

5 Q. Okay, and he admitted to knowing about the case?

6 A. Not at, not at first. That what he told the judge,
7 but then afterwards, after the judge went over everything,
8 then he said it came back to him.

9 Q. Okay, and what was the result of that? Was the juror
10 struck, or was there an alternate put on? What was the
11 result of that juror?

12 A. I think the juror was, I think the juror was struck,
13 but it was during the middle of the trial, though.

14 Q. Okay, and did the issue ever come up if any of other
15 juror had overheard that conversation of -- if that
16 particular juror had spoke to any of the other jurors?

17 A. Yes.

18 Q. Okay, and did Ms. Johns ever move to strike the jury
19 for purposes of them having information outside of the
20 trial?

21 A. I think so.

22 Q. And if you don't remember, it's okay to say you don't
23 remember.

24 Pretrial -- you had a codefendant in your case,
25 correct?

T. WATTS - DIRECT EXAMINATION BY MS. GOOD

8

1 A. Yes.

2 Q. Who was your codefendant?

3 A. Tremaine Wray.

4 Q. Okay, and were y'all tried at the same time for this
5 case?

6 A. Yes.

7 Q. And who was his attorney?

8 A. Jack Swerling.

9 Q. Okay, and based on the evidence in this case, and not
10 to go into too much detail, but basically what was the
11 state's contention that you had to do with this case
12 compared to Tremaine Wray?

13 A. Really, they really didn't have one.

14 Q. And did most of the evidence in this case when it came
15 to the weapon and gunshot residue and everything have to do
16 with the codefendant?

17 A. Yes.

18 Q. Okay, and prior to trial, did Ms. Johns ever do a
19 motion to sever your trial from his so to have it
20 separately from Mr. Wray's trial?

21 A. No.

22 Q. Okay, and do you know why she didn't do that?

23 A. No.

24 Q. Would you have wanted her to do that?

25 A. Yes.

T. WATTS - DIRECT EXAMINATION BY MS. GOOD

9

1 Q. Okay. During the trial, there was one main witness
2 basically that testified that you were present at the scene
3 that night, correct?

4 A. Yes.

5 Q. And who was that?

6 A. Ricky Jacobs.

7 Q. Okay, and was he the one that called the police that
8 night?

9 A. No.

10 Q. Okay. Did the police talk to him that night?

11 A. Yes.

12 Q. Okay, and as the trial went on, did you know during
13 the trial regarding an officer by the name of Deputy Weldon
14 Gregory?

15 A. No.

16 Q. Okay. When did you first find out about Weldon
17 Gregory?

18 A. I think it was the state, their last witness, which
19 was Investigator Don McRae.

20 Q. Okay, and what was Deputy Weldon Gregory's role in
21 this case?

22 A. He was the -- when it all came out, he was, he was
23 actually the first officer on the scene of the crime.

24 Q. Okay, and did he do a report from when he was the
25 first one on the scene?

T. WATTS - DIRECT EXAMINATION BY MS. GOOD

10

1 A. Yes.

2 Q. And was his name on that report?

3 A. No.

4 Q. Okay. Did Ms. Johns ever track down the officer who
5 was the first one on the scene, Weldon Gregory, to find out
6 what he would have testified to?

7 A. No.

8 Q. And, in fact, that report indicated that Ricky Jacobs
9 never told Deputy Gregory that he saw anybody that night
10 and gave actually a different description of the car,
11 correct?

12 A. Yes.

13 Q. And what description of the car did he give?

14 A. A white SUV Rodeo.

15 Q. Okay, and ultimately in this case, and it came out
16 during the trial, there was a white Rodeo that was stopped
17 that night?

18 A. Yes.

19 Q. And not far from the scene?

20 A. Yes.

21 Q. Okay.

22 THE COURT: Now wait a minute. Did he, did Gregory,
23 testify?

24 WITNESS: No, sir.

25 BY MS. GOOD:

T. WATTS - DIRECT EXAMINATION BY MS. GOOD

11

1 Q. And were you aware of this report during the discovery
2 process and during the trial?

3 A. We had it, but it didn't have any officer name on it,
4 and I think by the time we got something else, the same
5 incident report, it had a different officer name on it.

6 Q. All right. During the trial -- kind of mentioned this
7 a little bit earlier. Prior to trial, did Ms. Johns do any
8 investigation on this case? Speak to witnesses?

9 A. Yes.

10 Q. And were there several witnesses or some witnesses
11 that you believe should have been called on your behalf?

12 A. Yes.

13 Q. And did you want to call witnesses on your behalf?

14 A. Yes.

15 Q. Did you discuss this with Ms. Johns?

16 A. Before.

17 Q. Okay, and ultimately she decided not to put up
18 witnesses, correct?

19 A. Yes.

20 Q. Did she talk to you about it during the trial or just
21 before?

22 A. During the trial.

23 Q. During the trial? Okay, and what did she indicate to
24 you that the reason for her not putting up the witnesses
25 were?

T. WATTS - DIRECT EXAMINATION BY MS. GOOD

12

1 A. I guess it's a strategy that her and Jack Swerling
2 came up with.

3 Q. So, she came up with it with Mr. Swerling?

4 A. Yes.

5 Q. Based on the fact that Deputy Gregory was not tracked
6 down, witnesses weren't called on your behalf, and you were
7 forced to be tried with Mr. Wray, do you believe that you
8 were prejudiced and the trial would have been different
9 if ---

10 MR. MITCHELL: Objection. Calls for a legal
11 conclusion.

12 THE COURT: That's all right. I'll let him answer.

13 BY MS. GOOD:

14 A. Yes.

15 Q. In fact, you wanted your trial separately?

16 A. Yes.

17 Q. Is there anything else that you'd like to tell the
18 judge that you believe Ms. Johns was ineffective for doing
19 during your trial?

20 A. Yes.

21 Q. Okay.

22 A. I believe that, like, at the end of trial, I believe
23 that she should have -- when they polled the jury, I
24 believe that she should have asked the judge to ask the
25 jury on what element that they find me guilty of, of

T. WATTS - DIRECT EXAMINATION BY MS. GOOD

13

1 murder, which she didn't do, which they just went with the
2 poll.

3 And then, you know, it's like -- I really believe that
4 that would have made a difference with separating us
5 because when I, when I finally looked at the motion of
6 discovery and, and got to see everything, the whole motion
7 of discovery was based on Mr. Wray. All the forensic
8 evidence, everything was just on Mr. Wray. It was just ---

9 THE COURT: Was he convicted?

10 WITNESS: Yes. He got more time than me, but it's
11 only, like, a five-year difference.

12 BY MS. GOOD:

13 Q. And they were saying that you were with him that
14 night, correct?

15 A. Yes. They was saying I was with him, which wasn't
16 true, and Ms. Johns had the witnesses that I actually went
17 with. You know, she talked to, like, one or two. She
18 couldn't find everybody, but she did get in touch with,
19 like, one or two of them. I know a couple of them was
20 standing her up. You know, kept telling her they'll meet
21 her, and then they didn't meet her.

22 But Mr. Wray, all they, all they said was -- the star
23 witness said that he seen me with him. He seen me with
24 him. Now, he say that the vehicle left and then came back,
25 but when he took the stand, it was a whole, totally

T. WATTS - DIRECT EXAMINATION BY MS. GOOD

14

1 different story. He never said that.

2 Q. And is that where Deputy Gregory would have come into
3 play as to what he said that night?

4 A. Yes. Deputy Gregory would have been a big issue
5 because you the first scene -- you the first officer on the
6 scene. This is the statement you gave. The statement you
7 gave Mr. -- Investigator McRae being, like, four hours
8 later, it was, like, the whole -- a whole nother day
9 really, a whole nother ---

10 THE COURT: You gave a statement?

11 WITNESS: I gave a statement.

12 BY MS. GOOD:

13 A. But that -- when, when they presented Mr. Gregory
14 incident report, they had the other officer, Mr. Galinski,
15 name on it, and when Ms. Johns brought it up to them, he
16 was, like, that's my name, but that's not my incident
17 report. I didn't do that. So, he was, like, the only
18 thing I did was -- went off -- well, he get -- off of the
19 BOLO, I guess, from Deputy Gregory and he pulled the
20 suspects over. What was given to Mr. Gregory, he, he took
21 chase with them and when he finally got them to pull over,
22 that's what he did, and he made his supplement report on
23 it. But that was a big issue right there. It's, like, not
24 knowing about Mr. Gregory period until after I done got
25 sentenced.

T. WATTS - CROSS-EXAMINATION BY MR. MITCHELL

15

1 THE COURT: Was notice of alibi filed?

2 MS. GOOD: Sir?

3 THE COURT: Was a notice of alibi filed?

4 MS. GOOD: No, sir.

5 THE COURT: All right.

6 MS. GOOD: No further questions. Answer any questions
7 that Mr. Mitchell may have for you.

8 CROSS-EXAMINATION BY MR. MITCHELL:

9 Q. Good morning, Mr. Watts.

10 A. Good morning.

11 Q. All right. So, Ms. Johns represented you the entire
12 time?

13 A. Yes.

14 Q. Through -- after you were charged, right?

15 A. No. After my charge.

16 Q. Okay, but leading up to trial, it was just Ms. Johns,
17 right?

18 A. Yes.

19 Q. Okay.

20 A. Yes.

21 Q. And then Mr. Wray was represented by Mr. Swerling. Is
22 that right?

23 A. Yes.

24 Q. Okay. Now, it was a bit -- it was a joint defense
25 really, wasn't it? I mean, you were -- you saw Ms. Johns

T. WATTS - CROSS-EXAMINATION BY MR. MITCHELL

16

1 working together with Mr. Swerling in putting the case
2 together, right?

3 A. During trial?

4 Q. During and before trial.

5 A. Not before trial.

6 Q. Not before trial?

7 A. No.

8 Q. You didn't see that, but ---

9 A. No, I didn't.

10 Q. But they were working together at the trial, right?

11 A. Yes.

12 Q. They had conversations back and forth?

13 A. Yes.

14 Q. About what was going on at the trial and how they
15 should proceed with different things, right?

16 A. Yes.

17 Q. And there were a lot of objections made by both sides
18 where they agreed they should both object, right?

19 A. Yeah.

20 Q. Joint objections?

21 A. Yes. Yes.

22 Q. And there was a pretty thorough investigation done
23 into the case by Ms. Johns. Isn't that right?

24 A. Yes.

25 Q. I mean, there was an investigator on the case, right?

1 A. Yes.

2 Q. And he'd interviewed a number of people?

3 A. Yes.

4 Q. Right, and these are people that you told -- you
5 talked to her about, too, right?

6 A. Some. Probably like a handful.

7 Q. So, she probably got some names from you and then got
8 some ---

9 A. Majority of the people I didn't even know. She had
10 talked to people I didn't even know.

11 Q. I mean, you were really charged under, it's the one
12 hand of one, hand of all, right? I mean, the state didn't
13 say, oh, Mr. Wray's the shooter, Mr. Watts was with him, or
14 Mr. Watts was the shooter or Mr. Wray was with you, right?
15 I mean, it was -- they didn't come out and argue which one
16 was the shooter. They said you're both culpable because
17 you were working together, right?

18 A. No. That's not how they came out.

19 Q. That's not how they came out?

20 A. No.

21 Q. How did they come out?

22 A. That's not how they charged me either.

23 Q. Well, I mean, it was the hand of one, hand of all
24 theory, though. I mean, they, they weren't ---

25 A. It didn't ---

T. WATTS - CROSS-EXAMINATION BY MR. MITCHELL

18

1 Q. --- saying ---

2 A. The hands of one, hands all theory didn't get brought
3 up till the closing argument of the trial.

4 Q. Okay. So, you didn't understand that you were charged
5 with murder along with Mr. Wray?

6 A. I felt like I was charged with murder by myself
7 because Mr. Wray was never implicated in nothing until --
8 when I find out about Mr. Wray is when I got the motion of
9 discovery.

10 Q. So, you didn't know anything about Mr. Wray being
11 charged ---

12 A. No.

13 Q. --- until you received discovery?

14 A. Until I received discovery, I didn't know nothing
15 about Mr. Wray being charged with the same crime that I
16 been convicted -- charged with because they made it look
17 like that I actually did this. And then when trial came
18 down, in closing argument they made it -- they put it as,
19 oh, now he didn't do it, but he was with him. So, you
20 know, that's how they do it.

21 Q. So, you were trying -- I mean, you were trying to
22 beat the murder charge, right? I mean, Mr. Jacobs gave up
23 your name. It was a little late, wasn't it? I mean, he
24 didn't ---

25 A. That's what I had my defense built on is me being the

1 principal and me beating a murder charge.

2 Q. Right.

3 A. Yes. Not me being somebody accomplice or with
4 somebody.

5 Q. I won't go too deep into this, but Mr. Jacobs, his
6 testimony was kind of all over the place. I mean, isn't
7 that right?

8 A. Well, the, the two, three times that he did take the
9 stand, yes, all this -- all along was different. Every
10 testimony was something new.

11 Q. So, you knew that Ms. Johns would attack his
12 inconsistent statements, right?

13 A. Yes, his credibility, yes.

14 Q. And that was -- that's, you know, a strong part of the
15 state's case. That's what the state relied on, on his
16 testimony mostly, right?

17 A. Yeah. When it came, when it came to my defense and
18 the case against me, that's all they had to rely on.

19 Q. So, you say, well, he's not believable. You can't
20 believe him. You can't convict on someone you can't
21 believe, right? I mean, along those lines?

22 (A PAUSE.)

23 Q. I mean, you talked about you didn't call any witnesses
24 in your case. Is that right?

25 A. Yes.

T. WATTS - CROSS-EXAMINATION BY MR. MITCHELL

20

1 Q. And you had discussions with Ms. Johns during trial
2 whether you would call witnesses or not?

3 A. I had discussions about witnesses from the beginning.

4 Q. And it was -- the decision was that you were not going
5 to call witnesses, right?

6 A. No. The decision was made by her.

7 Q. Well, her decision that she was not ---

8 A. Yes.

9 Q. --- going to call witnesses?

10 A. Yes.

11 Q. Okay, and that was part of her strategy in trying the
12 case, right?

13 A. Yes.

14 Q. And that was -- did you understand that as a decision
15 that she had discussed with Mr. Swerling as well?

16 A. No, I didn't understand it. It's a decision that you
17 and Mr. Swerling made together, but if she -- she is my
18 attorney, and so if she felt like -- if she thought it was
19 the best interest, you know what I'm saying? I, I'm not
20 the lawyer. So, you know.

21 Q. Mr. Wray didn't put up a case either. He didn't put
22 up witnesses in the case.

23 A. Mr. Wray didn't put up any witnesses either.

24 Q. And you talked a little bit about that report, but you
25 had had that report in discovery, Mr. Weldon Gregory's

1 report, in discovery prior to the trial, correct?

2 A. It was in discovery.

3 Q. Okay, and you had seen that before?

4 A. Seen it before but it just didn't have no officer
5 name. That part was cut off.

6 Q. It was just like the bottom line, right? It just --
7 kind of like a zigzag?

8 A. Yeah.

9 Q. You had a couple of states -- excuse me, a couple of
10 statements come in that you made. One of them was that you
11 thought it was strange that the other parties weren't
12 patted down at the door, right?

13 A. Yes.

14 Q. Something along those lines, and then something along
15 the lines of you thought you could beat the charge because
16 they couldn't find the weapon?

17 A. No. I never made no statement like that.

18 Q. You didn't make that statement?

19 A. No.

20 Q. But that, that was presented to the jury, though?

21 A. Yeah, from a snitch.

22 Q. Yeah. You ---

23 A. That's how they do it, you know?

24 Q. He was there ---

25 A. Somebody, somebody know you. They, they make up

T. WATTS - CROSS-EXAMINATION BY MR. MITCHELL

22

1 anything to beat they charge, you know?

2 Q. And Ms. Johns jumped on that, too, right?

3 A. Yeah, and Mr. Swerling, and he admitted to it.

4 Q. Well, he was in jail at the time, too, right?

5 A. Yeah, and he ---

6 Q. And he was wearing a ---

7 A. Yeah.

8 Q. --- jail ---

9 A. Yeah.

10 Q. --- handcuffs and everything?

11 A. He admitted to it.

12 Q. Okay.

13 MR. MITCHELL: One second, Your Honor.

14 (A PAUSE.)

15 BY MR. MITCHELL:

16 Q. You had discussions with Ms. Johns whether you wanted
17 to testify or not?

18 A. Yes.

19 Q. And you were advised by Judge Childs, you know, of
20 your right to testify or your right not to testify?

21 A. Yes.

22 Q. So, you were aware of that, right?

23 A. Yes.

24 Q. And you made the decision not to testify?

25 A. Yes.

T. WATTS - REDIRECT EXAMINATION BY MS. GOOD

23

1 MR. MITCHELL: All right, no further questions. Thank
2 you, Mr. Watts.

3 REDIRECT EXAMINATION BY MS. GOOD:

4 Q. Regarding your statements, when you gave statements to
5 law enforcement, did you ever admit to committing this
6 crime?

7 A. No.

8 Q. And Mr. Jacobs, the state's star witness, do you know
9 Mr. Jacobs?

10 A. Yes.

11 Q. Okay. He knows you by face?

12 A. Yes.

13 Q. You had -- what kind of relationship did you have with
14 Mr. Jacobs?

15 A. Me and Mr. Jacobs basically being, like, like, if you
16 hang out with a buddy. We've been like that for years.

17 Q. Okay.

18 A. Like, over twenty years.

19 Q. And during the trial and where we've been discussing
20 Deputy Gregory's report, he never mentions your name as one
21 of the suspects ---

22 A. Never.

23 Q. --- the first time he talks to somebody?

24 A. Never.

25 MS. GOOD: I'm going to mark this as Applicant's 1 for

T. WATTS - REDIRECT EXAMINATION BY MS. GOOD

24

1 identification at this point.

2 (REPORT MARKED AS APPLICANT'S EXHIBIT NUMBER 1 FOR
3 IDENTIFICATION.)

4 BY MS. GOOD:

5 Q. Do you recognize this?

6 A. Yes.

7 Q. What is this?

8 A. That's the statement that been made by Mr. Jacobs to
9 the first officer on the scene of the crime.

10 Q. Is that Deputy Weldon Gregory's report?

11 A. Deputy Gregory.

12 Q. Okay, and is his name at the bottom?

13 A. No.

14 MS. GOOD: For now I'll keep this as Applicant's 1,
15 Your Honor, until Deputy Gregory testifies.

16 THE COURT: Okay.

17 MS. GOOD: No further questions, Your Honor.

18 THE COURT: Redirect?

19 MR. MITCHELL: Nothing further.

20 THE COURT: Come down. You can have a seat back with
21 your lawyer.

22 (THE WITNESS EXITS THE STAND.)

23 MS. GOOD: At this time, we call Weldon Gregory.

24 RAY WELDON GREGORY, BEING DULY
25 SWORN, TESTIFIES AS FOLLOWS:

1 THE COURT: Have a seat in the witness box. State
2 your full name for the record.

3 WITNESS: Ray Weldon Gregory.

4 DIRECT EXAMINATION BY MS. GOOD:

5 Q. And, Mr. Gregory, where are you currently employed?

6 A. Summerton Police Department, Clarendon County.

7 Q. And back in 2007, where were you employed?

8 A. Richland County sheriff's office.

9 Q. And how much law enforcement experience did you have
10 at that time?

11 A. Right at, right at thirty years.

12 Q. And what were your duties at that time with the
13 Richland County Sheriff's Department?

14 A. I was working the area of -- the Two Notch Road area
15 at the time.

16 Q. And were you on patrol?

17 A. Yes.

18 Q. And on June 30th of 2007, do you remember responding
19 to a scene of a murder?

20 A. Yes, I do.

21 Q. And that's what we're here for today regarding Mr.
22 Watts and Tremaine Wray.

23 A. Yes.

24 Q. Okay, and were you the first one on the scene?

25 A. Yes, I was.

R. W. GREGORY - DIRECT EXAMINATION BY MS. GOOD

26

1 Q. And do you remember when you arrived on the scene what
2 you did?

3 A. Pretty much I tried to secure the scene best I could
4 until some other deputies got there, and that was the first
5 thing I did was make sure the scene was clear and secure.

6 Q. And did you speak with anybody when you were there?

7 A. I believe it was the owner of the club, I believe it
8 was, who I spoke with.

9 Q. Is that Ricky Jacobs?

10 A. Yeah, I -- yeah.

11 Q. I'm going to show you what's marked as Applicant's 1.
12 Do you recognize this?

13 A. Yes, I do.

14 Q. And what is that?

15 A. That is my report that I wrote the night of the
16 incident.

17 Q. And is it an accurate reflection of your report?

18 A. Yes, it is.

19 MS. GOOD: At this time, I'd like to enter Applicant's
20 1, Your Honor.

21 MR. MITCHELL: No objection.

22 THE COURT: Without objection.

23 (REPORT MARKED INTO EVIDENCE AS APPLICANT'S EXHIBIT
24 NUMBER 1.)

25 BY MS. GOOD:

1 Q. And is your name on that report?

2 A. No.

3 Q. Okay.

4 A. Apparently it got cut off when they made a copy of it
5 apparently.

6 Q. But you would have signed it at the bottom?

7 A. Oh yeah.

8 Q. And when you spoke with Mr. Jacobs that night, did he
9 indicate to you he knew who had done this?

10 A. He, he made -- he told me that two gentlemen had tried
11 to come in the club, and he told them that the club was
12 closed, and basically he told them that, you know, that he
13 was closing, and nobody else could come in.

14 Q. Did he give you their names?

15 A. Be honest with you, I don't remember.

16 Q. And on your report where it has suspect information,
17 is there anything written there?

18 A. It's just got unknown black male with dreadlocks in
19 his hair.

20 Q. And if he would have given you their names, would you
21 have written their names there instead of unknown?

22 A. Probably.

23 Q. Okay, and did he also give you a description of the
24 vehicle he believed that was shooting at the club that
25 night?

R. W. GREGORY - DIRECT EXAMINATION BY MS. GOOD

28

1 A. Yes, he did.

2 Q. And what was that description?

3 A. It was a -- what I wrote down is a -- they said it was
4 a white Nissan with, with black stripes down the side.

5 Q. And what did you do when you got that information?

6 A. I put that information out on the radio with a poss --
7 you know, told them it was a possible description of the
8 suspects that were involved in the shooting at H&J's.

9 Q. And was the vehicle found and pulled over?

10 A. It was told to me that some other deputies a few
11 minutes later had spotted that vehicle and stopped them.

12 Q. And, in fact, that wasn't any vehicle Mr. Watts was
13 in, correct?

14 A. I, I don't know. I didn't -- I never saw them.

15 Q. Okay, and prior to trial, were you ever given a
16 subpoena from the state to come testify?

17 A. No.

18 Q. Did you ever speak with anybody from the state?

19 A. Not -- talking about for the first trial?

20 Q. Yes.

21 A. No.

22 Q. Did Ms. Johns ever talk to you, Theresa Johns?

23 A. Not that I recall. I -- matter of fact, I didn't even
24 know that the trial had even went until...

25 Q. And if you had been subpoenaed to testify by either

1 the state or the defense, would you have testified as to
2 what you just testified today regarding your report?

3 A. Yes.

4 MS. GOOD: No further questions, Your Honor.

5 CROSS-EXAMINATION BY MR. MITCHELL:

6 Q. Good morning, Mr. Gregory.

7 A. How are you doing?

8 Q. So, you were the first officer on the scene?

9 A. Yes.

10 Q. After those two shots were fired, right?

11 A. Correct.

12 Q. This was around, like, 4 a.m?

13 A. Right. Around 4 a.m. in the morning.

14 Q. So, your, your duties there was just to secure the
15 scene? Is that right?

16 A. Right. When I got there, I pretty much secured the
17 scene. Make sure that it was still safe to, you know,
18 enter because at the time I didn't know if the shooters
19 were still there or they had gone.

20 Q. Had people dispersed when you go there, or was it
21 still ---

22 A. Oh, yeah, it was pretty much, pretty much clear of
23 people. Like I said, the club was, was closed at the time
24 when I got there.

25 Q. So, you weren't there to take anyone's statements in

R. W. GREGORY - CROSS-EXAMINATION BY MR. MITCHELL

30

1 an investigative role, right?

2 A. No.

3 Q. Okay. I mean, you put up a roadblock and blocked
4 off ---

5 A. Pretty much, yeah. Secured the, secured the area
6 because of some shell casings that was on the ground and to
7 keep traffic, you know, from going down that road the best
8 I could until, you know, like I said, some other deputies
9 got there to assist me.

10 Q. Everything that you learned from the scene, was that
11 in your report there?

12 A. Correct.

13 Q. And that was just the owner described a white SUV.
14 There was a white SUV, and that he did not let two ---

15 A. Right.

16 Q. --- black males into the club. Is that right?

17 A. Yeah. My, my report is basically -- is based on what
18 the, the witness or the complainant told me at the time at
19 the scene when I was there.

20 Q. And you didn't have any further role in ---

21 A. No. What -- you know, basically I just, like I said,
22 I was first officer on the scene. Secured the area. I
23 wrote the report. Waited for investigations to get there
24 and pretty much everything was turned over to the
25 investigators.

R. W. GREGORY - CROSS-EXAM / K. WILSON - DIRECT EXAM 31

1 Q. Have you testified for the defense in a criminal
2 prosecution?

3 A. Have I ever done it before?

4 Q. Yeah. Right. Just wondered that.

5 A. Yes. Yes.

6 MR. MITCHELL: All right, no further questions. Thank
7 you.

8 MS. GOOD: No further questions, Your Honor..

9 THE COURT: All right, you may come down.

10 Witness may be excused?

11 MS. GOOD: Yes, sir.

12 MR. MITCHELL: Yes.

13 THE COURT: Without objection. You're free to go,
14 sir. Thank you very much.

15 WITNESS: Thank you, sir.

16 (THE WITNESS EXITS THE STAND.)

17 MS. GOOD: Your Honor, the applicant calls Kamaleh
18 Wilson.

19 KAMALEH WILSON, BEING DULY SWORN,
20 TESTIFIES AS FOLLOWS:

21 THE COURT: Have a seat in the witness box. State
22 your full name for the record.

23 WITNESS: Kamaleh Lisette Wilson.

24 DIRECT EXAMINATION BY MS. GOOD:

25 Q. Ms. Wilson, can you spell your first name?

K. WILSON - DIRECT EXAMINATION BY MS. GOOD

32

1 A. K-A-M-A-L-E-H.

2 Q. Ms. Wilson, how do you know Mr. Watts?

3 A. We went to school together. I know him for a long
4 time.

5 Q. And I'm going to take you back to June 30, 2007. Do
6 you remember where you were that night, early-morning
7 hours?

8 A. Uh-huh.

9 Q. Where were you?

10 A. At the pub.

11 Q. Okay, and is that the H&J club?

12 A. Yes, ma'am.

13 Q. And do you recall what happened in the club that
14 night?

15 A. Yes. We was partying like we always do on the
16 weekend.

17 Q. And who's we?

18 A. Me, my sister-in-law, and everybody. We just go to
19 the pub. It's a neighborhood gathering.

20 Q. Okay.

21 A. Where we go to. So, I remember sitting at the DJ
22 booth. Like when you first walk in, that's the DJ booth,
23 and I remember, you know, it was crowded. Some folks was
24 walking in, was walking in the pub, and shortly, later a
25 fight broke out inside the pub, and a young man pulled out

1 a gun like just -- like that. So, everybody ran out the
2 pub. Who I was sitting with, we all got up, and we ran
3 straight out the door.

4 Q. And at this point, had you seen Taurus Watts at all?

5 A. No, ma'am.

6 Q. Okay.

7 A. We ran out of the door. I heard some gunshots. At
8 the time my kids' father, he was calling my name, looking
9 ---

10 Q. And who's your kids' father?

11 A. --- for me. Urain Wilson.

12 Q. Okay.

13 A. And I was, like, I'm over here, and he grabbed my
14 hand, and we ran across the street on Harold Street. And
15 when we got to Harold Street, we sat there for a minute,
16 and we just heard a whole bunch of gunshots, and we was
17 basically trying to get a head count. You know, like,
18 where's Trina and everybody else, and then all of a sudden,
19 Rick -- he was already across the street.

20 Q. And is Rick Ricky Jacobs?

21 A. Ricky Jacobs.

22 Q. Okay. So, he was already ---

23 A. He was already ---

24 Q. --- across the street when you got there?

25 A. --- across the street when we had made it across the

K. WILSON - DIRECT EXAMINATION BY MS. GOOD

34

1 street. He was there before us basically.

2 Q. So, when did gunshots break out? Once you were across
3 the street?

4 A. Uh-huh.

5 Q. Okay.

6 A. It was -- it just sounded like a war zone. You heard
7 gunshots and we started running, and then when we got
8 across the street, you still heard the gunshots, and we
9 waited till everything died down because we had to go back
10 over there because we was parked across the street.

11 Q. When you were across at Harold Street and you heard
12 all the gunshots, where were you?

13 A. It was probably, like, three cars because the pub is
14 always crowded. So, some people park on Harold Street, and
15 probably behind the third car.

16 Q. And so y'all were behind the car?

17 A. Uh-huh.

18 Q. Were you standing up, or were you crouching?

19 A. Kind of like crouched down because a bullet have a
20 name. So, we was...

21 Q. Okay. Was Mr. Jacobs with you?

22 A. Uh-huh. Ricky was there before us.

23 Q. Okay, and was he crouched down also?

24 A. Yes. We was just -- everybody was, like, in amaze.
25 He had conversation with us.

1 Q. And when you crouched down, could you see anything
2 that was happening on the road?

3 A. No, ma'am.

4 Q. Could you see any cars driving by?

5 A. No, ma'am.

6 Q. Could you see any people walking by?

7 A. No, ma'am.

8 Q. And after all the gunshot occurred, where did you and
9 Mr. Wilson and Ricky Jacobs go?

10 A. We went back across the street.

11 Q. So, he was with you the entire time?

12 A. Uh-huh.

13 Q. Okay, and that night, did you speak to any law
14 enforcement?

15 A. No, ma'am.

16 Q. Did you leave before they got there?

17 A. Yes, ma'am.

18 Q. And if anybody had come talk to you beforehand, did --
19 well, let me ask you. Did anybody come talk to you before
20 the trial of Mr. Watts?

21 A. No, ma'am.

22 Q. From the state?

23 A. No, ma'am.

24 Q. From the defense?

25 A. No, ma'am.

K. WILSON - DIRECT EXAMINATION / CROSS-EXAMINATION

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1 Q. If anybody would have come talked to you, would you
2 have stated what you've stated here today?

3 A. Yes, ma'am.

4 Q. And would you have come and testified at a trial?

5 A. Yes, ma'am.

6 Q. That Mr. Jacobs was with you the entire time?

7 A. Uh-huh.

8 Q. Okay, and there's no way he could have seen a car,
9 any ---

10 A. There's no way he could have seen anything. It's,
11 it's just no way.

12 Q. And to clarify, did you ever see Mr. Watts that night?

13 A. No, ma'am.

14 Q. And you would have known if you'd seen him?

15 A. Of course.

16 MS. GOOD: No further questions, Your Honor.

17 THE COURT: Cross-examination.

18 CROSS-EXAMINATION BY MR. MITCHELL:

19 Q. All right, Ms. Wilson, so you know Mr. Watts. Is that
20 right?

21 A. Yes, sir.

22 Q. You knew him well before all this happened, right?

23 A. Yes, sir.

24 Q. So, you were at this H&J club, right?

25 A. Yes, sir.

1 Q. With your friends having a good time?

2 A. Uh-huh.

3 Q. Drinking?

4 A. Yes, sir.

5 Q. Were you smoking?

6 A. Cigarettes.

7 Q. Cigarettes? No marijuana?

8 A. No, sir.

9 Q. Were others smoking marijuana?

10 A. No, sir.

11 Q. Were others in your group smoking marijuana?

12 A. No. We was inside the pub.

13 Q. Okay. So, this incident happened pretty late, right?

14 A. Yes, sir.

15 Q. It's was, like, 4 a.m?

16 A. I can't recall the time. After it happened, the pub
17 shut down, so.

18 Q. So, everyone rushed out of there when ---

19 A. Yes, sir.

20 Q. --- an individual pulled a gun, right?

21 A. Yes, sir.

22 Q. So at that point, you had not seen Mr. Watts, right?

23 A. No, sir.

24 Q. Okay, and then the individual pulled a gun in the
25 club, and everyone dispersed, right?

R. W. GREGORY - CROSS-EXAMINATION BY MR. MITCHELL

38

1 A. Yes, sir.

2 Q. And then you said when you went out of the club, Mr.
3 Jacobs was already across the street?

4 A. Yes, sir.

5 Q. And does he have a house over there or ---

6 A. Yes, he does.

7 Q. Is it his parents' house?

8 A. Uh-huh.

9 Q. Something along those lines?

10 A. Uh-huh.

11 Q. So, you knew that Mr. Jacobs had a house across the
12 street?

13 A. Uh-huh.

14 Q. So, he was already over there?

15 A. He was already over there.

16 Q. Across the street from the club?

17 A. That's right.

18 Q. When you came out of the club?

19 A. That's right.

20 Q. Okay, and you didn't talk to law enforcement or
21 anything like that?

22 A. No, sir.

23 Q. You didn't stick around to talk to ---

24 A. No, sir.

25 Q. --- law enforcement? Okay. You were just trying to

1 get out of there?

2 A. That's right.

3 Q. And you said there were multiple shots?

4 A. Yes, sir.

5 Q. Different sets. It was like ---

6 A. Uh-huh.

7 Q. --- three shots and then a little later some other
8 shots?

9 A. Uh-huh.

10 Q. So, you didn't know what was going on?

11 A. No.

12 Q. And at that time, you were with -- was it Mr. Urain
13 Wilson?

14 A. Yes, sir.

15 Q. Okay. That was your boyfriend or ---

16 A. Yes, sir.

17 Q. --- husband?

18 MR. MITCHELL: All right, no further questions. Thank
19 you.

20 REDIRECT EXAMINATION BY MS. GOOD:

21 Q. The fact that you were drinking, did that affect any
22 of your ---

23 A. No, ma'am.

24 Q. Okay. So, you know you saw Mr. Jacobs with ---

25 A. I know for a fact I seen Mr. Jacobs.

K. WILSON - REDIRECT EXAMINATION BY MS. GOOD

40

1 Q. And then you were just trying to get out of there
2 after the gunshot?

3 A. Yes, ma'am.

4 Q. Why is that?

5 A. Because your life was at stake. You just wanted to
6 get out of there.

7 Q. So, it wasn't that you didn't want to talk to law
8 enforcement?

9 A. Oh, no, no, it wasn't that.

10 MS. GOOD: No further questions, Your Honor.

11 THE COURT: All right, ma'am, you may come down.
12 Thank you.

13 WITNESS: You're welcome.

14 (THE WITNESS EXITS THE STAND.)

15 MS. GOOD: I have no objection to her being excused.

16 THE COURT: You can be excused, ma'am. You're free to
17 go. Thank you.

18 WITNESS: Thank you.

19 MS. GOOD: The applicant rests, Your Honor.

20 THE COURT: Any witnesses for the state?

21 MR. MITCHELL: Your Honor, the state calls Ms. Theresa
22 Johns.

23 THERESA JOHNS, BEING DULY SWORN,
24 TESTIFIES AS FOLLOWS:

25 THE COURT: Have a seat in the witness box. State

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1 your full name for the record.

2 WITNESS: I'm Theresa Johns, J-O-H-N-S.

3 MR. MITCHELL: Could I have one second, Your Honor?

4 (A PAUSE.)

5 DIRECT EXAMINATION BY MR. MITCHELL:

6 Q. All right, good morning, Ms. Johns.

7 A. Good morning.

8 Q. Thanks for being with us here today.

9 A. You're welcome.

10 Q. So, how did you get involved in Mr. Watts's case?

11 A. I'm not sure whether or not this was an appointed
12 case. I'm thinking that it might be, might have been.
13 It's not under a 608 contract; we had a different system
14 then.

15 Q. Right.

16 A. So.

17 Q. So, how long have you been practicing law?

18 A. Since 1990.

19 Q. 1990. Do you do mostly criminal defense work?

20 A. Yes, ninety-five percent.

21 Q. Is that, is that about the same percentage you've had
22 throughout your career?

23 A. Yes.

24 Q. So, Mr. Watts was represented by you, and then Mr.
25 Wray was represented by Mr. Swerling, correct?

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1 A. That's right.

2 Q. And did you work with Mr. Swerling in forming strategy
3 and preparing for trial in this case?

4 A. No, we didn't. We did in some respects, but it was
5 based on, on a factual investigation. Mr. Swerling's
6 office is upstairs from my office. I had a private
7 investigator; he had his own private investigator.

8 Q. Did you share information that the investigators came
9 up with, reports that they had written?

10 A. No, not, not too much, and even if we did, my
11 information about my client was have not reflected any
12 information about Jack's client.

13 Q. Okay.

14 A. So ---

15 Q. So, separate investigator, separate investigation?

16 A. Yes. We did collaborate because this was an unusual
17 event. The case was being called, and at some point when
18 we went to court the state moved for a continuance, and I
19 think that the state granted the -- I think the judge
20 granted the state's continuance. It was either for two
21 weeks or some short period of time based on new information
22 about the location of a gun. So, they wanted time to see
23 if they could find this gun.

24 Q. I believe y'all opposed that continuance at that
25 point?

1 A. Yes.

2 Q. Is that right?

3 A. Because it was a last-minute confession by somebody
4 who was incarcerated at the jail, and we didn't think it
5 was reliable, but the judge granted the continuance based
6 on their need.

7 Q. Towards the beginning of the trial, I think right
8 before the trial started, you stated something on the
9 record that all objections should be considered joint
10 objections. Do you recall that?

11 A. Yeah, I do.

12 Q. What was, what was the purpose of that?

13 A. Well, it's not very often, especially when you're in
14 private practice, that you are going to have a joint trial,
15 but the purpose of that is that when you have multiple
16 lawyers, the judge would need to have some sort of order.
17 Let the state present their case. If there's an objection,
18 is Mr. Swerling going to object, and then is Ms. Johns
19 going to have the same objection? So, the joint objections
20 were that if there was an objection to hearsay, the judge
21 didn't necessarily want Mr. Swerling to jump up to say
22 objection, hearsay, and then me join up -- jump up and say
23 objection, hearsay. So, it's more of a housekeeping kind
24 of thing.

25 Q. It wasn't like, you know, you only spoke to some

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1 arguments and he only spoke to others. I mean, I think
2 throughout the trial, most of the objections, arguments
3 were made from both ---

4 A. Yes.

5 Q. --- you and Mr. Swerling, right?

6 A. Yes.

7 Q. Okay.

8 A. And let me explain that a little bit further.

9 Q. Yeah. Sure.

10 A. If Jack Swerling was making an objection based on the
11 rules of evidence and that objection was ruled upon, there
12 was no need for me to then follow up with that.

13 Q. Make the same objection and have the same ruling?

14 A. Right.

15 Q. All right. Now since they were tried together, did
16 you consider a -- making a motion to sever the case where
17 the cases would be then tried separately?

18 A. I did, I did consider making a motion for severance,
19 and even more so I considered making a motion for severance
20 after the newly-discovered evidence was presented to the
21 court which warranted the judge giving them a continuance.
22 And I cannot tell you why I did not do that, but it should
23 have been done.

24 Q. So, you think, you think you should have moved for a
25 severance at that point?

1 A. Yes, and, in fact, our, our joint defense theory
2 became joint after the newly-discovered evidence was
3 presented to the court.

4 Q. Okay, and why is that?

5 A. Because there was information coming from somebody
6 that was housed at Alvin S. Glenn Detention Center about a
7 statement made by either his client or my client, and we
8 felt that that was unreliable, and we wanted to do
9 everything we could to keep the statement out.

10 Q. Okay. Now let's talk about moving to sever. Now,
11 this -- the evidence was -- would be identical in both
12 trials?

13 A. Some of it. Not -- the defense evidence wouldn't have
14 been.

15 Q. Defense evidence wouldn't have been. The state's
16 evidence would have been identical?

17 A. The state's theory was that these two guys were
18 together.

19 Q. And, I mean, it was a single murder, correct?

20 A. Right, with a single weapon.

21 Q. Single weapon. State alleged they were together?

22 A. Right.

23 Q. They alleged they were in this Suburban together?

24 A. Right.

25 Q. Correct?

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1 A. Yes.

2 Q. I mean, so it's the exact same case: two defendants,
3 one charge of murder. There was no *Bruton* issue, right? I
4 mean, no ---

5 A. Well, there wasn't because there, there wasn't
6 confessions or statements made.

7 Q. Nothing incriminating? No incriminating statements
8 made by either defendant?

9 A. Well, there was a new incriminating statement
10 allegedly made by Mr. Watts because he was the one from
11 which the jail house snitch came forward about the absence
12 of a gun.

13 Q. Not to anybody in an investigative role, though?

14 A. No.

15 Q. And kind of -- you talked about this a little bit.
16 It's kind of your testimony today that the evidence the
17 defense would have put up would have been different if he
18 were tried separately. Why is that?

19 A. Because based on the facts, even as presented by the
20 state, there was a large shootout at this club on
21 Hardscrabble Road and were, in my opinion, multiple
22 witnesses that I was seeking for Mr. Watts. I wasn't
23 seeking any witnesses for Mr. Wray because I didn't know
24 where Mr. Wray was. I didn't have a statement from Mr.
25 Wray that was presented by any investigator, and I wasn't

1 able to get any statements about Mr. Wray or from Mr. Wray
2 from his defense counsel.. So, where Mr. Watts was was
3 completely different than where Mr. Wray was during the
4 incident.

5 Q. What do you mean by that, very different?

6 A. Well, Mr. Watts says that he was not with Mr. Wray.

7 Q. Okay.

8 A. Mr. Wray never said Mr. Watts was. It was Ricky
9 Jacobs that said that these two men were together.

10 Q. So, really for all you know, Mr. Wray could have
11 eventually gave a statement against Mr. Watts?

12 A. But I would have received that in discovery.

13 Q. Right, but if tried separately, the investigation goes
14 forward, correct?

15 A. Right.

16 Q. It still doesn't change the testimony of Mr. Jacobs,
17 though, right? It's not that he saw one man, two men. He
18 says, he testified he knew Mr. Watts for years, had known
19 him for a long time. Said that's the guy I saw that night.
20 I mean, he knew Taurus Watts, correct?

21 A. Yes, he did.

22 Q. There was no question that Mr. Jacobs's testimony
23 applied directly to Mr. Wray's case?

24 A. Well, I think Mr. Jacobs had, I think Mr. Jacobs had
25 been influenced, quite frankly, by law enforcement, and I

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1 think that I brought that up.

2 Q. Well, he had given multiple statements, right?

3 A. Yes.

4 Q. He was all over the place.

5 A. Yes.

6 Q. He's saying one thing. He didn't even give the name
7 Taurus Watts the night of the incident, right?

8 A. Right.

9 Q. It had taken him the next day, I believe, when he
10 called Investigator McRae or -- forget who else it was, but
11 he then called the investigators and said I got a name for
12 you, Taurus Watts, right?

13 A. Right.

14 Q. But, you know, and you pointed that out. The whole
15 thing is that yeah, he's known this guy his whole life and
16 he's waiting a day to come up and say it. How can you
17 trust this man, right?

18 A. Right.

19 Q. I mean, this is very -- it's a -- you and Mr. Swerling
20 put on a thorough cross-examination of Mr. Jacobs. Is that
21 fair to say?

22 A. Yes, and hopefully ---

23 Q. That was part ---

24 A. --- hopefully with most of the other witnesses as
25 well.

1 Q. But Mr. Jacobs specifically because, I mean, that is
2 kind of the crux of -- partially the crux of the case,
3 right?

4 A. Yes.

5 Q. He's the one that put both defendants there, correct?

6 A. Yes.

7 Q. Okay, and I believe the cross-examination was over 200
8 pages almost?

9 A. Yes.

10 Q. Just Mr. Jacobs, right?

11 A. Right.

12 Q. So, your preparation in preparing for this trial, a
13 lot of your strategy is to say, you know, this guy is not
14 credible, correct?

15 A. Right.

16 Q. And that was argued to the jury. Is that right?

17 A. Yes.

18 Q. And also on the jail house snitch, I mean, it was --
19 and that's also who named Mr. Watts or -- you know, it
20 wasn't quite, you know, I went out there and killed these
21 guys. It's just that it was strange that the other guys
22 weren't patted down because there were two shooters, right?

23 A. There was probably more than two shooters.

24 Q. Okay. So, there were multiple shootings and ---

25 A. There was multiple evidence of other people being

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1 injured as well because of the blood spatter.

2 Q. And injured? Okay.

3 A. Yes.

4 Q. There's, you know, conflicting evidence on the car the
5 gunshots came from.

6 A. Right.

7 Q. Right? There was an Isuzu?

8 A. Right, and ---

9 Q. Which was ---

10 A. --- they found, found some ammunition in there, I
11 believe.

12 Q. And that was what Deputy Gregory just testified to,
13 right?

14 A. Yes.

15 Q. That he, he was given a description of a white Isuzu,
16 correct?

17 A. Yes, with black stripes, I think, double black
18 stripes.

19 Q. Double black stripes and then, you know, there was
20 information received that it was a Suburban that Mr. Wray
21 and Mr. Watts were allegedly in, right?

22 A. Yes.

23 Q. Okay. I mean, this all came out at trial, too. This
24 isn't, you know, something that wasn't brought out through
25 the evidence, right? I mean...

1 A. That's right.

2 Q. I mean, there's evidence that -- there's a lot of
3 testimony that this Isuzu, whoever was in that, had shot in
4 the air multiple times?

5 A. Yes.

6 Q. So, what do you think the overarching strategy going
7 into this case was for you and ---

8 A. For ---

9 Q. --- Mr. Watts?

10 A. For our part of this trial, the strategy was is that
11 Mr. Watts was well known at that pub because he lived in
12 that area. This isn't a large club on Two Notch Road.
13 This is back -- Hardscrabble next to a carwash, and on that
14 particular night or an event at that club on the weekend on
15 a Friday or a Saturday night, there would be -- and the
16 reason I know this is because I've been to the scene
17 several times. There would be so many cars either parked
18 at the club, parked at the carwash, parked down the
19 streets, parked down other streets that led to residences.
20 It was, it was really crowded.

21 So, one, the theory was is that if Mr. Jacobs had
22 known Taurus Watts most of his life, where Taurus Watts has
23 actually worked at the pub, there would be no reason for
24 Mr. Jacobs to not be able to identify Mr. Watts as (A)
25 being in the club and (B) being a shooter. I don't know

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1 how Mr. Jacobs was able to -- if, one, if Taurus Watts was
2 in the club, that's one thing.

3 Secondly, I don't know how Mr. Jacobs could say that
4 Mr. Watts was with Mr. Wray. If he had seen Mr. Watts with
5 Mr. Wray, I don't know why he wouldn't have told the police
6 that day one. So, that was basically the theory: that Mr.
7 Jacobs was being influenced.

8 And I, I tried to look. I looked to see if his ABC
9 license -- I investigated any complaints he may have had
10 against the club. I investigated whether or not he had any
11 private security over there that were law-enforcement
12 related. I, I looked at any type of issue that would be
13 able to show the jury that Mr. Jacobs was testifying not
14 based on what he saw but based on what the state wanted him
15 to see because he was protecting himself. He was either
16 protecting himself, or he was protecting somebody else in
17 the club or someone, and I needed, I needed credible,
18 validating witnesses to do that.

19 Q. So, you know, you'd want to present witnesses that
20 would have shown that Mr. Jacobs was essentially making
21 this up to appease some actor of the state?

22 A. Well, you have to get creative when you're a defense
23 lawyer. I, I don't know -- I won't know the truth about
24 the reason why Mr. Jacobs did that, but he had a
25 long-standing history at that club. In fact, during that

1 summer there was a previous shooting at the club, and I
2 don't know if they had threatened to take his license. I
3 was trying to find that out. I went to ALE. I couldn't
4 find anything that was filed, and I thought that Mr. Jacobs
5 had a motive to give them someone.

6 And I did talk to a lot of witnesses. However, they
7 were all lay witnesses. They were either customers at the
8 club, or they were people that, you know, knew or lived in
9 that neighborhood. And I can't really remember if there
10 was anybody independent like law enforcement ---

11 Q. Right.

12 A. --- that would have been able to state anything. So,
13 most of the people that I was able to talk to had been at
14 the club that night. And, of course, there's the issue of
15 their sobriety. There's the issue of it being 4 a.m., and,
16 you know, not all of them had clean records, so.

17 Q. So, you had talked to -- or at least your investigator
18 had talked to a number of these people, right?

19 A. My investigator and I also talked to these people.

20 Q. Who was the investigator? By chance do you...

21 A. He's a former Secret Service agent, and I'm drawing a
22 blank.

23 Q. Okay, I don't need the ---

24 A. Okay.

25 Q. I was just curious.

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1 So, you talked to these people and they had not given
2 you information that was -- you deemed helpful enough to
3 put on a case. Is that right?

4 A. No, it was helpful. It would have been helpful but,
5 you know, when you're, when you're talking about a scene
6 like that and you've got witnesses under subpoena and then
7 they're coming forward and they don't want to be there, and
8 they have a pending charge or they have a bench warrant
9 that's outstanding on them, it's difficult to get everybody
10 on the same page. So, I don't know how many witnesses I
11 ended up with out of dozens that I spoke with. But I
12 probably had four or five witnesses actually lined up to
13 testify.

14 Q. And you made the decision not to call any of those
15 witnesses, correct?

16 A. Right. Now, I will tell you this. Had I had a
17 separate trial from Tremaine Wray, I would have called them
18 because I think Mr. Watts wanted me to. But if we called
19 them, then we would have lost last argument. Mr. Swerling
20 didn't put up any evidence, and even when there were
21 documents that I thought perhaps should have been entered.
22 I think Mr. Swerling had, had perhaps persuaded me to think
23 differently. So, it was almost as if I gave up my strategy
24 to him. I felt cocounsel to him in a sense if that, if
25 that makes sense to you.

1 Q. I mean, it's still your decision where you went with
2 the case.

3 A. Right.

4 Q. Right? I mean ---

5 A. Yes.

6 Q. --- you say you felt cocounsel -- these are your
7 decisions, are they not?

8 A. They are.

9 Q. You made the decision not to put up these witnesses,
10 not to introduce these documents?

11 A. Yes.

12 Q. And that partially is so you could preserve the last
13 word, last closing, right?

14 A. Right.

15 Q. I mean, that was an important consideration for you,
16 wasn't it?

17 A. It always is.

18 Q. Because the last word, you think that could be
19 persuasive and really leave something with the jury when
20 you have the last opportunity to speak to them?

21 A. Yes, it, it does. I, I can't say that it always
22 works.

23 Q. I want to move to -- Mr. Gregory testified earlier.
24 You had that report; you had access to that report before
25 the trial. Is that right?

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1 A. Yes.

2 MR. MITCHELL: May I approach, Your Honor?

3 Q. I'll show you the report. It is Applicant's 1.

4 A. Yes.

5 Q. The information contained in that report is, you know,
6 kind of dispersed throughout other evidence as well. Is
7 that about right?

8 A. Yes.

9 Q. I mean, one of the things is that, oh, you know, Mr.
10 Jacobs did not come forward with names. I mean, that's
11 come out through other witnesses as well, right?

12 A. Yes.

13 Q. In your experience, is law enforcement usually helpful
14 witnesses to the defendants in ---

15 A. Not usually.

16 Q. There was -- excuse me. I guess, you know, and
17 there's a lot of talk about the gunshot residue throughout
18 the trial. Is that right?

19 A. Yes.

20 Q. And, you know, it turns out the expert couldn't even
21 say it was gunshot residue found on the Suburban Mr. Wray
22 and Mr. Watts were allegedly in, right?

23 A. Yes.

24 Q. There was just gunshot residue particle or
25 components. Is wasn't -- it didn't have the third, you

1 know, baronium [sic] or whatever it is?

2 A. Yes, that's right.

3 Q. There was gunshot residue on the Isuzu as well?

4 A. Yes.

5 Q. This came up very early, very early in this hearing.

6 The juror who came forward -- or the juror who came forward

7 and said that another juror was in the jury room and --

8 that was on a cell phone and said that I will -- you know,

9 something along the lines of I will find this person

10 guilty, you know, while on the phone talking, I guess, in

11 the jury auditorium. Is that right?

12 A. Yes.

13 Q. And then you and Mr. Swerling made the motion to have

14 that juror excluded, right?

15 A. Right.

16 Q. And the juror was brought out and Judge Childs

17 questioned him, and he denied making that statement but

18 then admitted that he'd heard about the case, correct?

19 A. Yes.

20 Q. Judge Childs checked his cell phone to see if any

21 calls had been made or gone out as well. Is that right?

22 A. I don't have a recollection of that, but that, that

23 sounds about right.

24 Q. But he was ultimately struck, right?

25 A. Yes. Well, he had been seated. So, he was

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1 substituted with an alternate.

2 Q. Right. So, an alternate was substituted, excuse me.

3 One of the allegations is that Mr. Watts was not asked
4 whether he wanted to testify on the record. Y'all had
5 those discussion towards the end of the trial I'm sure,
6 right?

7 A. Yes. Typically, normally, yeah.

8 Q. I mean, if he would have told you he wanted to
9 testify, it would have been his decision to do that, right?

10 A. Yes.

11 Q. Even if it was against your, you know, strong advice
12 one way or the other, right?

13 A. Right.

14 Q. Can you tell me about the joint defense a little bit
15 so that it became clear that each -- the joint -- that you
16 would be kind of putting up a similar defense or
17 essentially the same defense?

18 A. That they didn't do it?

19 Q. Right. Well, obviously, but a little more
20 specifically than that. That, you know, that the strategy
21 would be similar in attacking the witnesses, especially
22 Ricky Jacobs's credibility, and attacking the state's
23 evidence on the gunshot residue. That they could not prove
24 that, in fact, was a gun fired, right?

25 A. Right. I think we argued transfer, transfer of

1 gunpowder in some way.

2 Q. So, I mean, the defense with Mr. Wray's defense, Mr.
3 Wray's defense was essentially the same, the strategies
4 that go into the defense?

5 A. I don't know what Mr. Wray -- I don't know what he
6 would have said. I don't know what confidential
7 information he gave his lawyer. I don't know if they were
8 able to prove through witnesses that Mr. Wray was there. I
9 believe they did, but I can't, I can't consume what a
10 codefendant's defense will be if I'm more concerned about
11 what my client's defense would be. And if, if my client is
12 on trial and has entered a plea of not guilty, that's my
13 first concern. And if the jury finds that the codefendant
14 was, in fact, the shooter and did have a gun and did have
15 residue on his car -- I, I don't try to defend him, too. I
16 try to defend my client.

17 Q. And kind of in time, you didn't try to pin it on Mr.
18 Wray either, right?

19 A. Right.

20 Q. Testimony from the three witnesses who testified about
21 the disposal of the gun.

22 A. Right.

23 Q. Those were witnesses that implicated Mr. Wray?

24 A. That's right.

25 Q. Mr. Watts was not named, right?

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1 A. No, he wasn't.

2 Q. So, you ---

3 A. This was, this was information that I received two
4 weeks before trial.

5 Q. And that's kind of when the continuance came and the
6 search for a gun in the river with dive teams and whatnot?

7 A. Yes.

8 Q. Okay. So these witnesses, these three witnesses who
9 testified that Mr. Wray asked them to assist in disposing
10 of a gun that matched allegedly was ---

11 A. Yes.

12 Q. --- could have been used in the crime, right?

13 A. Yes.

14 Q. Some kind of Mac-10s, something like that, right?

15 A. Yes, sir.

16 Q. Okay, and that didn't -- you know, that -- it wasn't
17 -- none of that really implicated Mr. Watts in the disposal
18 of the gun, correct?

19 A. It didn't, but under the state's theory of the hand of
20 one is the hand of all, if they think that Mr. Wray did
21 something to try to cover up his wrongdoing, the fact that
22 Mr. Watts was sitting next to him, is implicated in that
23 action as well, I mean, that's just common sense. That's
24 what human behavior does. And, and because of this new
25 evidence, I should have -- I, I will say that I should have

1 strongly requested a severance motion because even ---

2 Q. Well, on what, on what grounds?

3 A. Well, even if it, even if it was believed that Mr.
4 Watts was with Mr. Wray that night, Mr. Watts didn't have
5 anything to do with, you know, hiding evidence or
6 concealing anything. He didn't -- it was not in his
7 control.

8 Q. So, you would have made the severance motion based on
9 the new evidence that Mr. Wray tried to dispose of a gun?

10 A. Yes, because they were saying it was that gun that was
11 in that Suburban where my client was seated in the
12 passenger seat that shot the victim, and I didn't have any
13 of that discovery prior to our initial trial date.

14 Q. Right.

15 A. This was only afterwards.

16 Q. You, you had no plans to make a severance motion?

17 A. I had thought about it. I don't think I had enough
18 time to really study it or put it into motion or file it as
19 a pretrial motion or -- that, that was the situation. It
20 was, it was a very chaotic four weeks.

21 Q. So, after the continuance was granted.

22 A. Yes.

23 Q. You did not move for a severance then, correct?

24 A. Right.

25 Q. Did you consider that?

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1 A. It did cross my mind, yes.

2 Q. Did it become more of a thought ---

3 A. Yeah, but I felt ---

4 Q. --- then?

5 A. I felt like I was already in the tumbleweeds at that
6 point; I felt like there was no stopping this train.

7 Q. You had already formed your strategy: let's go forward
8 with it at the trial, right? I mean, you didn't want to
9 rework the whole case on a different theory. Is that ---

10 A. Well, basically the reason why I, I glossed -- glazed
11 over it was because the trial had already been set. We
12 were ready to go, and then during this particular Monday, I
13 believe it was, when the witness downstairs made contact
14 with the solicitor's office about information about where
15 this gun, that threw this trial into overload. And it was
16 only until later during that week or the following week
17 that they presented the statements from the three witnesses
18 about the disposal of the Mac-10.

19 Q. Okay. Earlier you testified when that happened, you
20 thought the defenses aligned more so.

21 A. Before they -- before this other party was involved, I
22 thought that if they could put those two people in that
23 Suburban together with the hand of one is the hand of all
24 theory, it would have been more aligned. The only
25 difference is is that I would have presented evidence that

1 Mr. Watts did not come to that club with Mr. Wray. They
2 were not together. It was only after the shooting ---

3 Q. How, how did you plan to do that? Was Mr. Watts going
4 to testify at that point? I mean, is that ---

5 A. Well, Mr. Watts was, was considering testifying. I
6 don't think -- I don't remember what his record was, but,
7 you know, you have to discuss that with your client and see
8 if there's a benefit for you, you know, because he had
9 established relationships with people at that club. He had
10 friends that were there.

11 Q. But you weren't able to establish an alibi or anything
12 like that. I mean, you know, you put him up there and he
13 says I wasn't there, I wasn't with him, there's nothing
14 substantiating that that you came across. Is that right?

15 A. Well, there's two sets of -- there's two different,
16 different alibis in this case for me. One, is there -- do
17 I need an alibi for whether or not you were in the club
18 that evening, which wasn't going to help. And then after
19 the shootout, how do I establish an alibi for you after the
20 shootout because as Ms. Wilson said, everybody was running.
21 So, was he with ---

22 Q. But Jacobs's testimony -- Mr. Jacobs's testimony was
23 still there. I mean, you know, it's ---

24 A. Yeah.

25 Q. That's still consistent, correct?

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1 A. Yes.

2 Q. Your testimony today is that you think you should have
3 moved for a severance based upon the fact that there's
4 evidence tying Mr. Wray to the crime. I mean, evidence ---

5 A. Evidence ---

6 Q. --- that only ties the codefendant to the crime is
7 stronger against Mr. Wray than it is Mr. Watts?

8 A. Right, but if the jury believed that Mr. Wray and
9 Watts were together in a Suburban, then that evidence
10 against Mr. Wray, even though it only pertains to him,
11 would have cast a shadow upon Mr. Watts whether Mr. Watts
12 was with him or not.

13 Q. You know, I know I keep coming back to Mr. Jacobs.
14 So, isn't it true that Mr. Watts's name came up pretty late
15 or later than Mr. Wray's name, or was it the other way
16 around, if you recall?

17 A. I, I don't recall. I don't.

18 Q. So, the evidence was stronger that Mr. Wray was
19 actually at the club, right?

20 A. Yes.

21 Q. And turned out to be his Suburban, right?

22 A. Right.

23 Q. That's where the gunshot residue particles were found,
24 components were found, right?

25 A. Yes.

1 Q. That's also evidence that shows that it's more
2 incriminating to Mr. Wray than to Mr. Watts, right?

3 A. Yes.

4 MR. MITCHELL: No further questions.

5 CROSS-EXAMINATION BY MS. GOOD:

6 Q. Ms. Johns, just to pick up where he left off, the only
7 evidence in this case that Mr. Watts had anything to do
8 with this was Mr. Jacobs's, correct?

9 A. Yes.

10 Q. In fact, the car was Mr. Wray's, the gun disposal
11 information evidence was about Mr. Wray, correct?

12 A. Yes. That story was pertaining to Mr. Wray.

13 Q. And the Suburban was actually fingerprinted to see if
14 there were any fingerprints of Mr. Watts, and there were
15 none, correct?

16 A. Right.

17 Q. And based on all of that, you said you can't really
18 say why you didn't do a motion to sever, but you do think
19 at this point you should have done one?

20 A. Yes.

21 Q. Do you think it would have affected the outcome of the
22 trial? How would it have ---

23 MR. MITCHELL: Objection.

24 Q. --- changed your defense?

25 MR. MITCHELL: Calls for a legal conclusion.

T. JOHNS - CROSS-EXAMINATION BY MS. GOOD

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1 THE COURT: Don't have to shout. I'll allow it.

2 Go ahead.

3 BY MS. GOOD:

4 Q. How would you have changed your defense if it had been
5 a separate trial versus a joint trial?

6 A. Well, I spent a lot of time and effort gathering
7 witnesses that would support the fact that Mr. Watts was
8 not the hand of Mr. Wray. I did discuss whether or not Mr.
9 Watts was going to testify.

10 We were lined up to present a defense. It was only
11 until this interrupting with the newly-discovered evidence
12 that flipped the entire case upside down, and once -- I
13 can't speak for Jack Swerling, but once he had it in his
14 mind that we're going to need to preserve last argument, I
15 just submitted to that.

16 You know, I don't have a real, you know, academic
17 reason for doing that. You know, the case was one where it
18 was so full of surprises, I didn't know what was going to
19 come next. It was very chaotic, very. Every single day I
20 felt something new was being presented to us, and that's a
21 lot to take on when you're defending somebody for murder
22 under the theory of hand of one is the hand of all.

23 Q. And what witnesses did you have lined up? Do you
24 remember?

25 A. Yes. I had Ms. Wilson's husband, I believe. I had

1 several other witnesses that were at the club. I had
2 somebody, I believe he was in the Marines or in the service
3 in some way, and he had gotten hit by a bullet, but it
4 wasn't a bullet that came from the weapon that they were
5 attaching to these defendants who I spoke with. I had
6 about twelve witnesses that I had subpoenaed, and it broke
7 down to be about five, four, five, or six that I was
8 actually going to be able to use.

9 In fact, I think even in one of my arguments I may
10 have even pointed over to somebody that was in the
11 courtroom that I -- during cross-examination or something.
12 I put the witness on notice that, you know, I have somebody
13 here that might testify differently from you. Of course,
14 it was an objection, so -- but anyway, I, I did have people
15 there.

16 Q. And did Mr. Watts want you to call those witnesses?

17 A. He did.

18 Q. And you decided not to call them based on your
19 conversations with Mr. Swerling?

20 A. Yes.

21 Q. To go to the juror real quick, the juror had already
22 been seated. Had the trial started yet?

23 A. Repeat the question.

24 Q. The juror that got dismissed and the alternate put it,
25 had the trial already started?

T. JOHNS - CROSS-EXAMINATION BY MS. GOOD

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1 A. He was selected as a juror, and the alternates had
2 already been selected. I don't know when it was that the
3 information was obtained about his conduct. I can't
4 remember independently.

5 Q. And, in fact, the information was that he knew
6 something about this case and didn't disclose it, correct?

7 A. Yes.

8 Q. Was it ever questioned whether he said anything to any
9 of the other jurors in the jury room about the case?

10 A. Probably.

11 Q. Did you ever move to strike the jury altogether and
12 pick a new jury based on the fact that this juror had been
13 back there with the other jurors in the jury room?

14 A. No. I didn't do that.

15 Q. Did Mr. Swerling do that?

16 A. I don't recall.

17 Q. Because if he had done that, you had the joint
18 objections, correct?

19 A. Right. There were other jurors I was concerned about
20 as well.

21 Q. Deputy Gregory, you had the discovery, correct?

22 A. Yes.

23 Q. And you had this report that's in front of you,
24 correct?

25 A. Yes.

1 Q. Did you use that report when cross-examining Ricky
2 Jacobs?

3 A. I used this report primarily because the indication of
4 the suspect had dreadlocks.

5 Q. Okay, and did you know who had written that report?

6 A. I thought that Galinski had written it, but after
7 being in here today, I don't know exactly when it was that
8 the deputy was with or without the -- had, had already
9 moved on from the department or not. I didn't know.

10 Q. But, in fact, your investigation hadn't uncovered that
11 it was actually someone else?

12 A. No.

13 Q. And Ricky Jacobs, Mr. Mitchell talked to you about how
14 his statements were all over the place, correct?

15 A. Yes.

16 Q. You had spoken to Urain Wilson, which you just stated
17 was Ms. Wilson's husband. Did you ever speak with Ms.
18 Wilson?

19 A. No.

20 Q. Okay, and, in fact, if you had had the information
21 that she had testified to earlier regarding Mr. Jacobs
22 being with you, would that have changed the way you
23 cross-examined him?

24 (A PAUSE.)

25 Q. Would you have brought up the fact that somebody --

T. JOHNS - CROSS-EXAMINATION BY MS. GOOD

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1 she said he was with her instead of outside seeing who
2 shot?

3 A. Yes, I, I most likely would have because it would have
4 gone to his ability to observe, but at the, at the -- in
5 the same regard, though, if this witness that owned the
6 club, if Ricky who owned the club was able to see a Nissan
7 vehicle -- you know, I'm not sure in the testimony where it
8 was where he says he was when he saw the vehicle leave the
9 scene and, and fire a shot -- you know, I guess it kind of
10 would transfer into that, where he was during the
11 observation of the vehicle versus the observation of what
12 he saw when he was crouched down behind the other cars.

13 Q. And you stated it was after the first trial that was
14 set where the new information regarding the gun came about
15 that you changed your strategy for the defense, correct?

16 A. Yes.

17 Q. Up to that point had been pretty much a Chinese wall
18 between you and Mr. Swerling's office?

19 A. Yes.

20 Q. And after that when the joint defense came about, how
21 much contact did you have with Mr. Swerling regarding the
22 defense of the case?

23 A. In frequency or in time?

24 Q. Both.

25 A. Probably spoke with him at a two-week period maybe

1 four times, total of maybe forty-five minutes.

2 Q. And at that time, what did y'all decide the strategy
3 was going to be?

4 A. We didn't decide on a joint strategy at that time. I
5 was just, I was blown away by the fact that they -- they
6 being the state -- could find somebody to say that they
7 knew the location of this weapon that belonged to Mr. Wray,
8 and that they would be able to go and find Mr. Wray's
9 associates, family, or friends, whoever the three people
10 were, and bring them forward. I, I didn't know how that
11 pertained to my client.

12 Q. And that gun was never found, correct?

13 A. It was not, and let me add this. When those three --
14 when they found those three witnesses, those three
15 witnesses, based my recollection, never mentioned Taurus
16 Watts and that the gun was being disposed of days later.

17 Q. At what point during the trial did you determine that
18 you were going to concede to what Mr. Swerling was doing
19 and not call your witnesses or put up documents that you
20 thought should have been put into evidence?

21 A. Well, it was several times. Once was -- as, as you're
22 defending a trial with this magnitude, you have to assess
23 each witness as they come up. I thought that the
24 cross-examination of the pub owner wasn't bad. And if it's
25 not bad and then we're able to think about whether or not

T. JOHNS - CROSS-EXAMINATION BY MS. GOOD

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1 we are going to save our last argument, then I may have, I
2 may have agreed with that the entire time. But when the
3 witness came up who was obviously a drug addict who we -- I
4 thought that we did a pretty good job cross-examining him.
5 If it was just those two witnesses, then I would have
6 strategically said we don't need to put up a case because I
7 don't believe the jury's going to find you guilty based on
8 this testimony.

9 But when the case was supplemented by, you know, the
10 amount of evidence, the amount of blood, the people that
11 got hurt, and it just started building stronger even
12 without these two witnesses, I -- crossed my mind that, you
13 know, I should have filed for a severance. But when
14 you're, when you're in it, you know, it's too late, and I
15 had discussed this after the trial with Mr. Watts, and I
16 had discussed it with him during the trial.

17 Q. And at what point did you determine not to put up the
18 witnesses?

19 A. Probably during a break after the, after the state
20 rested its case because I had all of them under subpoena,
21 and they were there. They were ready to go. I think they
22 came two days in a row, but my counsel was not with Mr.
23 Watts. It -- where it should been. It should have been
24 with Mr. Swerling -- I mean, it was with Mr. Swerling, and
25 it should have been with Mr. Watts.

T. JOHNS - REDIRECT EXAMINATION BY MR. MITCHELL

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1 Q. And why did you make the decision not to call
2 witnesses? What did you base that on?

3 A. Losing last argument with Jack Swerling.

4 Q. And that was after discussing it with him?

5 A. Yes.

6 Q. That you decided?

7 MS. GOOD: No further questions, Your Honor.

8 REDIRECT EXAMINATION BY MR. MITCHELL:

9 Q. Clear one thing up, I guess. Mr. Jacobs's testimony
10 at trial -- okay, well, his statements before trial were
11 that he saw Mr. Wray at the club, right?

12 A. Yes.

13 Q. There's no mention of Mr. Watts, right?

14 A. No.

15 Q. But at trial, he then testified that Mr. Watts was
16 there as well, right?

17 A. Yes.

18 Q. So, that was something completely new to you and to --
19 I mean, just, he had not said before, right?

20 A. Right.

21 Q. So, that was the first time that someone put Mr. Watts
22 at the club, right?

23 A. Right.

24 Q. And going through whether to make this motion for
25 severance, I mean, your main consideration was losing last

T. JOHNS - REDIRECT EXAMINATION BY MR. MITCHELL

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1 argument. Was that fair to say?

2 A. Yes.

3 Q. And I know you testified that your consultations with
4 Mr. Swerling, that confirmed what you were thinking, or are
5 you saying that he persuaded you to adopt a strategy that
6 you were not willing to go forward on?

7 A. What I was thinking was presenting a defense.

8 Q. So.

9 A. Mr. Swerling's thinking was not presenting a defense.

10 Q. So then?

11 A. So, I submitted to not presenting a defense.

12 Q. You submitted to it? What do you mean by that?

13 A. Well, I felt like I was talked into it and, you know,
14 I mean ---

15 Q. Well, these are your decision.

16 A. They are.

17 Q. I mean.

18 A. I know and, you know, everybody knows Jack Swerling is
19 a great defense lawyer and, you know, he's -- he, he, he
20 knows what he's doing. I, I know what I'm doing. I've
21 done, I've done hundreds of trials. I've done murder cases
22 before. I've even won one or two, I mean, so -- but when
23 you're in the flow of a trial and, you know, you kind of
24 rely on each other as codefendants' counsel. And sure, I
25 could have said you know what? No way. I'm going to put

1 up a defense and ---

2 THE COURT: And what would have happened?

3 WITNESS: And then I would have put up a defense. Mr.
4 Swerling would have been able to cross-examine my
5 witnesses. The state would have been able to cross-examine
6 my witnesses, and the state would have put up the law.
7 Then I would've had to close, Mr. Swerling would've had to
8 close, and then the state would have the final closing.

9 THE COURT: In other words, he would lose it?

10 WITNESS: He would have lost it, too.

11 BY MR. MITCHELL:

12 Q. I understand, you know, the hindsight, but at the time
13 you felt that was the best -- in the best interest of Mr.
14 Watts. Isn't that right?

15 A. Just trying to be honest, I, I probably yielded to a
16 lot of emotion that was involved. What I should have done,
17 to be honest with you, as a good criminal defense lawyer is
18 consulted with Mr. Watts and ---

19 Q. Well, I understand what you should have done.

20 THE COURT: Sir, (A) don't argue with her and (B) you
21 interrupted her.

22 MR. MITCHELL: Yes, sir.

23 THE COURT: I want to hear her answer.

24 BY MR. MITCHELL:

25 A. I should have consulted with Mr. Watts and explained

T. JOHNS - REDIRECT EXAMINATION BY MR. MITCHELL

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1 to him the benefit of putting up a defense versus the
2 disadvantages of putting up a defense more clearly for him
3 and let him help me decide instead of letting Mr. Swerling
4 decide for us or persuade us. That was my -- one of my
5 mistakes, one of my mistakes in this trial.

6 Q. That wasn't quite my question. I guess my question
7 was that decision you made, you say it was not made in the
8 best interest of your client at that time without the
9 benefit of foresight?

10 A. I see what you're asking, and, and I want to be, I
11 want to be honest because it's important to me as well. I
12 -- as far as it being in the best interest of my client,
13 let me, let me, let me bifurcate this answer. Had Mr.
14 Watts had his own trial separate from Tremaine Wray, I
15 would have had absolutely no hesitation that I would have
16 put up a defense.

17 Now, the only thing that would have interfered with
18 that decision is if for some reason the state had presented
19 witnesses, including law enforcement, that clearly was
20 going to mess the case up for that, but I was prepared to
21 do so. And was it in his best interest to give up those
22 witnesses in his defense? At the time, I guess I thought
23 it was.

24 MR. MITCHELL: No further questions. Thanks.

25 WITNESS: Thank you.

1 THE COURT: Anything further?

2 MS. GOOD: No, sir.

3 THE COURT: You may come down.

4 This witness be excused without objection?

5 MR. MITCHELL: Yes, sir.

6 (THE WITNESS EXITS THE STAND.)

7 MR. MITCHELL: And the state has no further witnesses.

8 THE COURT: Any further witness on behalf of the
9 applicant?

10 MS. GOOD: No, sir.

11 THE COURT: All right. Thank you very much, counsel.
12 I'll expect proposed orders in twenty days, thirty days?

13 MR. MITCHELL: Is that Christmas?

14 THE COURT: Thirty days. All right, thank you very
15 much.

16 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 10TH DAY OF DECEMBER, 2015.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/ELIZABETH B. HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

JUNE 18TH, 2016

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Taurus Watts, #324820,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2013-CP-40-03226

ORDER OF DISMISSAL

JEANETTE W. MCBRIDE
C.C.P. & G.S.

2016 MAR -4 AM 11:00

RICHLAND COUNTY
FILED

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed May 30, 2013. Respondent filed a Return on January 9, 2014, requesting an evidentiary hearing be convened. Anna R. Good, Esquire, was appointed by the Richland County Clerk of Court. An evidentiary hearing was held on December 10, 2015, at the Richland County Courthouse. Applicant was present and represented by Counsel Good. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's trial counsel, Theresa N. Johns, Esquire, Former Deputy Weldon Gregory, and Kamaleh Wilson. The Court had before it the Richland County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, the trial transcript, and the appellate records.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was true bill indicted during the August 2007 term of the Richland County Grand Jury for Murder (2007-GS-40-5913). Theresa Johns, Esquire, represented Applicant. On October 5-9, 12-15, 2009, Applicant

proceeded to a jury trial before the Honorable J. Michelle Childs, where he was convicted as indicted. On October 15, 2009, Judge Childs sentenced Applicant to thirty-five (35) years' imprisonment.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Katherine H. Hudgins, Esquire. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence on June 1, 2012. State v. Watts, No. 2012-UP-381 (S.C. Ct. App. June 20, 2012). The Remittitur was issued on August 10, 2012.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Trial counsel was ineffective in:
 - a. Failing to present a defense on Applicant's behalf;
 - i. Former Deputy Weldon Gregory;
 - ii. Kamaleh Wilson;
 - b. Failing to make a motion to sever;
 - c. Failing to move to question members of the jury on their impartiality

II. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the transcripts, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the appellate records, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible. These credibility findings have been applied to the Court's findings and conclusions set forth below.



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Ineffective Assistance of Trial Counsel

Failing to present a defense on Applicant's behalf

Applicant alleges Counsel was ineffective in failing to present a defense on Applicant's behalf. Specifically, he argues Counsel did not call various witnesses to testify in his case in chief. Applicant also argues Counsel did not form a strategy specific to Applicant's case and just piggy-backed off of codefendant Tremaine Wray's counsel, Jack Swerling's, strategy.

Counsel testified that she decided not to present a defense because doing so would forfeit both defendants' right to last closing argument. She testified she conferred with Swerling who believed it would be best not to put up a defense case. Counsel explained that she now thinks she should have presented a defense. She also testified that she believed at the time that not presenting a defense was in Applicant's best interests.

As an initial matter, this Court can only address whether Counsel was deficient in failing to call witnesses or present evidence when those witnesses and evidence are presented. As discussed below, Applicant failed to produce any witnesses or evidence that would have likely changed the result of the trial. As to deficiency, this Court also finds Applicant's decision not to present a case reasonable under prevailing professional norms. "Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citations omitted). This Court recognizes that Counsel now believes that decision to be a mistake, but Counsel made a reasonable strategic decision at the time. While Applicant argues that Counsel put Wray's interests above his own, this Court finds otherwise and concludes that Counsel acted reasonably in all aspects of her representation. It was also not deficient to base the decision on

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whether the benefits of putting up a case outweigh the risk of losing last closing argument. See Abney v. State, 408 S.C. 41, 48, 757 S.E.2d 544, 547 (Ct. App. 2014) (Pieper, J., concurring) (Whether to preserve final closing argument is a strategic decision to be made by trial counsel.) (citation omitted). See also Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). The Court will now address both Kamaleh Wilson and Former Deputy Weldon Gregory's testimony and whether it would have likely had an effect on the result of the trial.

Kamaleh Wilson

Next, Applicant alleges Counsel was ineffective for failing to call Kamaleh Wilson to testify in his defense. At the hearing Wilson testified as to what her testimony would have been if she had been called at trial. Specifically, she testified that she was at the club where the shooting took place and did not see Applicant. She testified that she and her friends were at the club partying and drinking that night. She further testified that she saw Ricky Jacobs across the street from the club when the shooting occurred.¹ She testified she did not believe Jacobs was able to see the shooting from his vantage point.

This court finds Wilson's testimony not credible. This Court finds Wilson's testimony does no more than impeach Jacob's testimony. Counsel was able to fully impeach Jacobs on a number of occasions during cross-examination. Wilson's testimony would not have likely changed the result of the trial.

¹ Ricky Jacobs testified at trial that he saw Applicant with a gun in his hand as he was leaving the club. He also identified him and testified that he knew Applicant by name.

Former Deputy Weldon Gregory

First, Applicant claims Counsel was ineffective in failing to investigate and call Deputy Weldon Gregory as a witness in his defense. Gregory testified that he was in law enforcement for thirty (30) years and was with the Richland County Sheriff's Department when the incident took place in this case. He testified he was one of the first officers to arrive and that he was responsible for securing the scene. He also issued a report which was introduced at the hearing. He testified he briefly spoke to Jacobs who told him that two patrons were denied entry into the club. He testified he did not remember the names of those individuals but that they were driving a White Nissan. His report included a description of two vehicles involved in the shooting. He explained that he was not part of the investigation and that his only involvement was that night securing the scene.

After reviewing the entire record and testimony presented, this Court finds Applicant has failed to establish any deficiency of Counsel in failing to call Gregory. Counsel testified law enforcement officers are not usually helpful to defendants based on her experience. This Court finds Counsel was able to adequately cross examine Jacobs without calling Gregory as a witness. This Court finds Jacobs was thoroughly impeached during his testimony by Counsel and Swerling. This Court finds that Gregory's testimony added very little to the overall presentation and likely would have had no impact on the result of the proceeding. As discussed above, Counsel challenged the State's eyewitness Jacobs on virtually every aspect of his recollection. This Court is not convinced that testimony from Gregory would have had any impact on the jury's view of Jacobs or his credibility, much less the result of Applicant's trial. This allegation is denied and dismissed.

Failing to make a motion to sever

Applicant also alleges Counsel was ineffective in failing to move to sever Applicant's case from his codefendant Tremaine Wray. "Criminal defendants who are jointly tried [...] are not entitled to separate trials as a matter of right." State v. Dennis 337 S.C. 275, 281, 523 SE2d 173, 176 (1999) (citing State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998); State v. Holland, 261 S.C. 488, 201 S.E.2d 118 (1973); State v. Crowe, 258 S.C. 258, 188 S.E.2d 379 (1972)). "Charges can be joined in the same indictment and tried together where they 1) arise out of a single chain of circumstances; 2) are proved by the same evidence, 3) are of the same general nature; and 4) no real right of the defendant has been prejudiced." State v. Beekman 405 S.C. 225, 229, 746 S.E.2d 483, 486 (2013). A court should only grant a severance "when there is a serious risk that a joint trial would compromise a specific trial right of a co-defendant or prevent a jury from making a reliable judgment about a co-defendant's guilt." Id. at 282, 523 S.E.2d at 176.

This Court finds Counsel was not deficient in her decision to not move for a severance. Counsel testified that in hindsight, she believed she should have moved to sever the cases. Such self-proclaimed admissions, as made by Counsel, have been regarded with skepticism. Counsel's self-serving statements (I didn't research the law) need not be accepted as true. Dows v. Wood, 211 F.3d 480, 486 (9th Cir. 2000). Such hindsight opinions run afoul of the rule of contemporary assessment; Counsel certainly did not believe it at the time of trial. Hendricks v. Calderon, 70 F.3d 1032, 1039 (9th Cir. 1995). See also Rhoades v. Henry, 611 F.3d 1133, 1138 n.1 ("... it is all too easy" for counsel or a court "to conclude that a particular act or omission of counsel was unreasonable in the harsh light of hindsight," citing Bell v. Cone, 535 U.S. 685, 702, 123 S.Ct. 1843, 1854, 152 L.Ed.2d 914 (2002); Eberts v. Gaetz, 610 F.3d 415 (7th Cir. 2010) (an

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attorney's reflection about what should have been done after the fact is irrelevant to the question of ineffective assistance, which is why there is a presumption of reasonable, professional assistance); Miller v. Champion, 161 F.3d 1249, 1286 (10th Cir. 1998) (that counsel would have done something different in "hindsight" is unhelpful because that is the wrong test). The Supreme Court has held that an objective standard of reasonableness applies:

After an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. Strickland, however, calls for an inquiry into the objective reasonableness of counsel's performance, not counsel's subjective state of mind.

Harrington v. Richter, 131 S. Ct. 770, 790, 178 L. Ed. 2d 624 (2011).

This Court further finds no specific trial right was violated by trying Applicant and co-defendant Wray together. Furthermore, the incident clearly arose out of the same circumstances, the charges were proved by the same evidence, and the charges are of the exact same nature. Therefore, Applicant was not prejudiced by the joint trial with Wray. A cautionary instruction as to multiple defendants is sufficient to protect each co-defendant from prejudice that might result from a joint trial. See State v. Holland, 261 S.C. 488, 494, 201 S.E.2d 118, 121 (1973). Here, the trial court gave an instruction on the jury's duties regarding multiple defendants. (Trial Tr. Vol. XII, p. 156, lines 9-23). These instructions negated any prejudice that may have resulted from the joint trial. Furthermore, Applicant has failed to show that a motion for severance would have been successful. Accordingly, Applicant has failed to prove prejudice from Counsel's decision not to move for a severance. This allegation is denied and dismissed.

Failing to move to question members of the jury on their impartiality

Finally, Applicant alleges Counsel was ineffective in failing to question members of the jury on their impartiality after a juror was removed from the panel. At trial, Juror Number 89

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came forward and told Judge Childs that she overheard another juror saying that he would convict the defendant while on his cell phone. (Trial Tr. Vol. I, p. 50-67). The suspected juror was Juror Number 36. Judge Childs questioned him, and he denied using his cell phone. Judge Childs then inspected his cell phone and was unable to find any evidence of a call being received or made. (Trial Tr. Vol I, p. 63, lines 17-18). While speaking to Judge Childs, the juror admitted that he remembered hearing about this case in the news. The juror was then struck by Judge Childs and replaced with a newly selected juror.

This Court finds that Counsel's objection to the juror remaining on the panel was proper. However, Judge Child's questioning of Juror Number 36 was sufficient to relieve any concerns of whether any other jurors overheard the alleged exchange. In any event, Applicant has failed to provide the Court with any evidence that any juror did in fact hear Juror Number 36 or that they acted impartially. This allegation rests on speculation because no testimony was produced at the hearing. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) ("failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result."). This allegation is denied and dismissed.

All Other Allegations

As to any and all allegations that were raised in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application.

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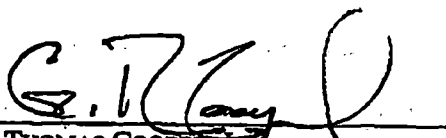
Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 3rd day of March, 2016.


G. THOMAS COOPER, JR.
Presiding Judge

COLUMBIA, South Carolina

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Applicant's
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12-10-15

RICHLAND COUNTY SHERIFF'S DEPARTMENT INCIDENT REPORT

AGENCY I.D.
SCO 400000

CASE NUMBER

0706 2770 30

NCIC

IND. E

EVENT	INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VIC	
	1. Homicide		☒ YES ☐ NO	☐ YES ☐ NO	63		☐ Individual ☐ Business ☐ Financial ☐ Government ☐ Religious ☐ Social Club ☐ Other ☐ Unknown ☐ Patient Care	
	2.		☐ YES ☐ NO	☐ YES ☐ NO				
VICTIM NO. 1	INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET AND NAME AND NUMBER)		SUBDIVISION		ZIP CODE		WEAPON TYPE	
	2820 Hardscrabble Rd. (H & J's)		Hardscrabble Rd.		29223			
	INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME	FAIR CLOCK	AREA
	063007	0412				063007	0412	2
	COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE	ETH.
	JACOBS, Ricky		ST		BOU	M	45	N
	ADDRESS		CITY	STATE	ZIP CODE			
	1548 LeVity St.		Columbia	SC	29203			
	VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE	ETH.
	H & J's				BOU			
SUBJECT NO. 1	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.			
	ADDRESS		CITY	STATE	ZIP CODE			
	2820 Hardscrabble Rd		Columbia	SC	29203			
	VISIBLE INJURY (VICT. 1) ☐ YES ☒ NO		EXPLAIN					
	VICTIM (NO. 1) USING: ALCOHOL ☐ YES ☒ NO ☐ UNK		DRUGS: ☐ YES ☒ NO ☐ UNK		TYPE			COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES ☒ NO
	☐ TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/PLASMT. ☐ OTHER ☐ ALONE ☐ ASSISTED							
	SUBJECT NO. 1	☐ SUSPECT	NAME (LAST, FIRST, MIDDLE)		RACE	SEX	AGE	ETH.
		☐ RUNAWAY	Unknown		M			
		☐ WANTED	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.					
		☐ WARRANT	Dead locks in Hair		NCIC NUMBER			
☐ ARREST		ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	
☐ JAIL		Unknown						
☐ SUMMONS		SUBJECT (NO. 1) USING: ALCOHOL ☐ YES ☒ NO ☐ UNK		ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO		DATE/TIME OF OFFENSE		
DRUGS: ☐ YES ☒ NO ☐ UNK		TOTAL # ARRESTED		DATE/TIME OF ARREST				
NARRATIVE		Compl states two Susp's attempted to enter the Club and Compl told Susp's HE was closed. Compl states one of the Susp's made a comment to the effect "I've got something for you." Compl states Susp's left the location and a few minutes later Compl states a white vehicle SUV with the Susp's in it began shooting toward the club. Compl described the vehicle possibly being a white Nissan with a black stripe down the side. Compl states Susp's fired over the top of the vehicle.						
	EVIDENCE NUMBER:		JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY		JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY			
	HOLD ROOM 1		EVIDENCE ROOM					
	SEIZED	5	BURNED	5	DAMAGED	5		
	SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ ADM. CLOSED ☐ UNRECOVERED		☐ ARRESTED UNDER 18	
	☐ YES ☒ NO		☐ YES ☒ NO				☐ EX-CLEAR UNDER 18	

1,845

AGENCY I.D.
SCO 400000RICHLAND COUNTY SHERIFF'S DEPARTMENT
SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER

NCIC

0706 2790 30

☒ OPTIONAL
REPORT
☐ MODIFIES
ORIGINAL☐ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 2 of 2 PAGES.

☐ FIELD CONTACT INFO

VICT. SUBJ. I.D. OVERFLOW	☒ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	D.O.B.			
	☒ VICTIM # 1	UNKNOWN												
	☒ SUBJECT # 1	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.								
	☐ RUNAWAY	close cut hair cut with striped shirt												
VICT. SUBJ. I.D. OVERFLOW	☐ WANTED	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE		EVENING PHONE				
	☐ WARRANT	UNKNOWN												
	☐ ARREST	☐ VICTIM NO. _____		☐ VISIBLE INJURY ☐ NO ☐ YES		☐ COMPLAINT OF NON-VISIBLE INJURIES ☐ NO ☐ YES		☐ VICTIM USING ALCOHOL ☐ NO ☐ YES ☐ UNK		☐ TWO-MAN VEHICLE ☐ DETECTIVE/PLASMT. ☐ ALD				
	☐ JAIL	☐ EXPLAIN:		☐ SUBJECT NO. _____		☐ USING ALCOHOL ☐ NO ☐ YES		☐ USING DRUGS ☐ NO ☐ YES ☐ UNK		☐ TYPE:				
VICT. SUBJ. I.D. OVERFLOW	☐ SUMMONS	☐ COMPLAINT		NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	D.O.B.	
	☐	☐ VICTIM # 2		UNKNOWN										
	☐	☐ SUBJECT # 2		HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.						
	☐	☐ RUNAWAY		ADDRESS										
VEH. GUN/ETC. 1	☐	☐ WANTED		UNKNOWN		CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE		EVENING PHONE		
	☐	☐ WARRANT												
	☐	☐ ARREST		☐ VICTIM NO. _____		☐ VISIBLE INJURY ☐ NO ☐ YES		☐ COMPLAINT OF NON-VISIBLE INJURIES ☐ NO ☐ YES		☐ VICTIM USING ALCOHOL ☐ NO ☐ YES ☐ UNK		☐ TWO-MAN VEHICLE ☐ DETECTIVE/PLASMT. ☐ ALD		
	☐	☐ JAIL		☐ EXPLAIN:		☐ SUBJECT NO. _____		☐ USING ALCOHOL ☐ NO ☐ YES		☐ USING DRUGS ☐ NO ☐ YES ☐ UNK		☐ TYPE:		

NARRATIVE

VEH. GUN/ETC. 1

PROPERTY EST.

VE

Homicide
2870 HARDSMABBLE Rd
D.C.P. Galinski spotted the Susp Vehicle on the 9814
Two Notch Rd where SUSP'S were detained.
Deputies were later notified of a victim transported to
Providence A.S. Hosp. with a gun shot wound.
M.D. Smith Resposed to Hospital.

EVIDENCE NUMBER:		JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY		JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY	
HOLD ROOM:	EVIDENCE ROOM				
STATUS		VIN AND/OR LICENSE NO.		BOAT HULL NO. AND/OR REG. NO.	
☐ STOLEN	☐ VEHICLE	SERIAL AND/OR OWNER APPLIED NO.		STATE	
☐ RECOVERED	☐ GUN	YEAR OF REGISTRATION		YEAR OF EXPIRATION	YEAR
☐ FOUND	☐ BOAT	MODEL		STYLE	COLOR
☐ TOWED	☐ LICENSE PLATE	NIC. NO.		DENOMINATION	ISSUER
☐ SUSPECT	☐ SECURITIES, STOCKS	MISCELLANEOUS		SECURITIES DATE	
☐ VICTIM	☐ ARTICLE				
EDGED	3	DAMAGED	2	BURNED	3
SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ ADM. CLOSED	
☐ YES ☐ NO ☐ NO		☐ YES ☐ NO ☐		☐ ARRESTED UNDER 18 ☐ EX-CLEAR LIMITED 18	