

STATE OF SOUTH CAROLINA

Volume I of II

IN THE SUPREME COURT

RECEIVED

Appeal from Dillon County

FEB 17 2016

Eugene C. Griffith, Jr., Circuit Court Judge

SC SUPREME COURT

JEREMY WRIGHT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001513

APPENDIX

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF DILLON	)	FOURTH JUDICIAL CIRCUIT
	)	
THE STATE	)	
	)	
PLAINTIFF	)	2007-GS-17-916
	)	2007-GS-17-917
VERSUS	)	
	)	MAY 18, 2009
JEREMY SAQUAN WRIGHT	)	MAY 19, 2009
	)	MAY 20, 2009
DEFENDANT	)	MAY 21, 2009
	)	

BEFORE
THE HONORABLE THOMAS A. RUSSO

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Attorneys for The State

Rosalind L. Sellers, Esquire
Attorney for the Defendant

Pamela Ozment-Cartee
Circuit Court Reporter

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NO COURT EXHIBITS

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VOIR DIRE

Case No.: 2007-GS-17-0916; 0117

Date: May 18, 2009

Plaintiff: The State

Attorney: Kernard Redmond, Esq.

Defendant: Jeremy Saquan Wright

Attorneys: Rosalind L. Sellers, Esq.
Tonya Copeland-Little, Esq.

Presiding Judge: Thomas A. Russo

Reporter: Pamela Ozment-Cartee

*****		***** STRIKES *****				
<u>JUROR #</u>	<u>JUROR NAME</u>	<u>RACE</u>	<u>SEX</u>	<u>COURT</u>	<u>STATE</u>	<u>DEFD</u>
129	Dorothy Pinkney	B	F		x	---
110	Marva McDaniels	W	F		✓	✓
032	Bobby Chavis	W	M		✓	✓
005	Sarah Baker	B	F		✓	✓
069	Wanda Hayes	W	F		✓	x
022	Teresa F. Brown	B	F		✓	✓
098	Chad Lockemy	W	M		✓	✓
109	Sheila F. McDaniel	W	F		✓	x
125	Cynthia A. Orr	W	F		✓	x
111	Baxley L. McIntyre	W	M		✓	x
147	Terence D. Stackhouse	B	M		x	---
112	Shaquenta M. McKellar	B	F		✓	✓
158	Betty J. Turbealle Jacobs	B	G		✓	x
040	Kellie R. Dickerson	B	F		✓	✓
055	Rodney S. Garriis	W	M		✓	x
128	LaToya D. Pernell	B	F		✓	✓
091	LaMonica R. Lampley	B	F		x	---
081	Jassamine R. Jackson	B	F		✓	✓
108	Mary A. McCray	B	F		✓	✓
086	Nicole L. Jones	W	F		✓	✓
065	Richard K. Harrison	W	M		✓	x
082	William K. Jackson	W	M		✓	x
090	Alexis I. Kopituk	W	F		✓	✓
031	Tony M. Caulder	W	M		✓	✓
150	Phyllis D. Stroud	W	F		✓	✓
	<u>ALTERNATES</u>					
135	Anthony A. Rogers	W	M		✓	x
163	Stephen M. Vipperman	W	M		✓	x
009	Dennis Berry	B	M		✓	✓
036	Matthew F. Finch	W	M		✓	✓

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1 (Whereupon, The Court begins these proceedings at
2 12:28 p.m. on May 19, 2009.)

-- DAY ONE OF TRIAL --

3
4 **THE COURT:** All right, ladies and gentlemen, we are
5 ready to draw our jury for the first case. Solicitor.

6 **MR. REDMOND:** May it please The Court, Your Honor.

7 **THE COURT:** Yes, sir.

8 **MR. REDMOND:** Before you at this time seated at the
9 defense table with the defense team is the Defendant, Jeremy
10 Wright on 2007-GS-17-916, being for charged with murder.

11 And also 2007-GS-17-917 for possession of a weapon during
12 commission of certain crimes.

13 The State is ready to proceed with the trial of this
14 case.

15 **THE COURT:** Thank You, sir. All Right, Ladies and
16 gentlemen, The State has called to trial --

17 **MS. SELLERS:** -- I'm sorry, Your Honor. May we
18 approach, Your Honor?

19 **THE COURT:** Yes, sure.

20 (Whereupon, a bench conference was held in the
21 presence of the jury but out of the hearing of the jury.)

22 **THE COURT:** All right. Ladies and gentlemen, The State
23 has called the case of The State of South Carolina verses
24 Jeremy Wright.

25 Now, let me make this clear, on Indictment 2007-GS-17-

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1 916, Mr. Wright is charged with the offense of murder, and
2 that Indictment states that Jeremy Wright in the County of
3 Dillon on or about June 17 of 2007 did feloniously, willfully
4 and with malice aforethought kill one Kelvin Dale Smalls by
5 means of shooting him and that the said Kelvin Dale Smalls did
6 die in Dillon County as approximate result thereof; all
7 against the peace and dignity of The State contrary to the
8 statute in certain cases a name is provided.

9 Also under Indictment 2007-GS-17-1917, Mr. Wright is
10 charge with possession of a weapon during the commission of
11 certain crimes under Section 16-23-490, and that Indictment
12 reads that Jeremy Wright did in the County of Dillon on or
13 about June 17, 2007 was in possession of and did visibly
14 display a firearm during the commission of a violent crime to
15 which an assault gun in violation of Section 16-23-460, Code
16 of Law of South Carolina, 1976, as amended; calling it the
17 peace and dignity of The State contrary to the statute as such
18 cases may have provided.

19 Now, ladies and gentlemen to these charges, Mr. Wright
20 has plead not guilty, and that plea of not guilty places the
21 burden on The State to prove guilt in this case. The
22 indictments and the allegations that are contained in these
23 indictments are not evidence of any of the allegations or the
24 facts that these indictments contain. These are not
25 evidence. This is simply the piece of paper that brings Mr.

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1 Wright into Court. The fact that Mr. Wright has plead not
2 guilty to these charges, places upon him the presumption of
3 innocence. As he sits here today at this time, he is to be
4 presumed innocent of these charges. And that presumption of
5 innocence will remain with him through the course of the trial
6 until or unless The State can prove guilt beyond a reasonable
7 doubt.

8 The State in this case, ladies and gentlemen, is
9 represented by the Solicitor's Office, and I am going to
10 recognize Mr. Redmond, and let him introduce himself.

11 **MR. REDMOND:** Thank you, Your Honor, may it please The
12 Court. Ladies and gentlemen, my name is Kernard Redmond. I
13 am Deputy Solicitor here in Dillon County. We serve the
14 Fourth Circuit, which comprises Dillon, Darlington, Marlboro
15 and Chesterfield County. Will Rogers, he is the Solicitor, I
16 work with him, also assisting my is going to be Shipp Daniel,
17 he is from Dillon, he is an assistant solicitor here. And it
18 is my pleasure to be here today.

19 **THE COURT:** Thank you, sir. Now, ladies and gentlemen,
20 is there any member of the jury panel who is related by blood,
21 connected by marriage or who has any close business or
22 personal relationship, or who has been represented by either
23 Mr. Redmond or Mr. Daniel, if so please stand. Thank you.
24 There are none.

25 And, Ms. Sellers, I am going to ask you -- Mr. Wright is

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1 represented by Rosalind Sellers, if you would introduce
2 yourself, and your client.

3 MS. SELLERS: May it please The Court. Good morning,
4 you all, my name is Rosalind Sellers. I am with the public
5 defender's office here. Also assisting me in this matter is
6 Tonya Copeland-Little, and this is Jerry Wright.

7 THE COURT: All right, thank you very much, ma'am.
8 Ladies and gentlemen, is there any member of the jury panel
9 who is related by blood, connected by marriage, or who has any
10 close personal, or business relationship --- Well there is
11 three of you, but with any of the defense counsel in this
12 case, if so, please stand, or who has been represented by any
13 of these individuals. Thank you. There are none.

14 Ladies and gentlemen, you just met and seen Mr. Wright,
15 Mr. Jeremy Wright. Is there any member of the jury panel
16 related by blood, connected by marriage who has any close
17 personal or business relationship with Mr. Wright, if so
18 please stand? Thank you. There are none.

19 Up, I'm sorry. There is someone. Sir, can I get your
20 name?

21 MR. GREEN: Alfred Green, Jr.

22 THE COURT: Okay. This is jury 59. Mr. Green, are you
23 related to Mr. Wright or you must know him?

24 MR. GREEN: I'm related to his cousin, I'm not sure but
25 I am related to his cousin.

19 Now, ladies and gentlemen, I have a list of witnesses
20 that are possible witnesses during the course of this trial.
21 These are potential witnesses. They may, or they may not
22 testify, during the course of this trial. But the question
23 that I just asked you with regards to Mr. Wright that question
24 applies to any of these witnesses. So, as I go through this
25 list of names, please listen carefully.

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1 The question is; is there any member of the jury panel
2 related by blood, connected by marriage, or who has any close
3 business or personal relationship with any of these witnesses?
4 If that question applies to you or applies to any of these
5 names that I am going to call out, I would ask that you please
6 stand. Now, it's a rather lengthy list of names so if you
7 hear a name that that question applies to you go ahead and
8 stand, but keep listening because it may be that you know more
9 than one of these individuals.

10 All right, these are possible of potential witnesses that
11 may testify during the course of this trial. James Campbell
12 --- and if any of these witnesses are in Court, I would ask
13 that you just stand when your name is called, face the jury
14 panel for a moment or so and then you may have a seat. All
15 right, James Campbell, Cliff Arnette, Vello --- is it, Paavel?

16 MR. REDMOND: Paavel.

17 THE COURT: Paavel. Edward Proctor. Maxie Rowell, Jr.

18 MR. REDMOND: Your Honor, Mr. Rowell is also known as
19 Leon.

20 THE COURT: Okay. Maxie Rowell, Jr., commonly known as
21 Leroy.

22 MR. REDMOND: Leon.

23 THE COURT: Leon. I'll get it right --- also known as
24 Leon Rowell. DeShannon Livingston, Tina McKinnon, Cory
25 Clark, Jimmy Manning, Chuck Willie Bellamy, Jimika Manning.

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1 Is it Tamisha Manning?

2 **MS. SELLERS:** Yes, Your Honor.

3 **THE COURT:** Tamisha Manning, Frank Clark, James German,
4 Thomas Willie McCall, LaRaphael Livingston, George Boatwright,
5 Clifton Crawslin, Randy McCullum, Sherika Robinson, Sonia
6 Sweeney and Atai Antoine Hayes. Okay.

7 **MR. REDMOND:** Your Honor, I think there was a Tavares
8 Owens, I'm not sure if you call it. I did not hear you call
9 Mr. Tavares Owens.

10 **THE COURT:** You know what, thank you. I missed that.
11 Tavares Owens. Thank you, Solicitor.

12 All right. Who on that list does that apply to you,
13 ma'am?

14 **JUROR:** The Livingston girl.

15 **THE COURT:** DeShannon Livingston?

16 **JUROR:** Yes.

17 **THE COURT:** All right. Are you related or just know
18 her?

19 **JUROR:** I just know her.

20 **THE COURT:** Okay. Ma'am, let me ask you this. The fact
21 that you know Ms. Livingston or whatever relationship that may
22 be, she is a potential witness in this case. If she were to
23 testify in this case would that in any way effect your ability
24 to be fair and impartial during the trial of this case?

25 **JUROR:** No, sir.

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1 **THE COURT:** All right. Thank you very much. I
2 apologize, can I get your name, please?

3 **JUROR:** Dorothy Pinkney.

4 **THE COURT:** All right, thank you very much, you may have
5 a seat.

6 **CLERK OF COURT:** Number 129, Your Honor.

7 **THE COURT:** Juror 129. Now, ladies and gentlemen, I am
8 going to ask you some additional questions to help to qualify
9 and determine your eligibility to serve on this case. Is
10 there any member of the jury panel or member or member of your
11 immediate family ever been a victim of violent crime, if so,
12 please stand?

13 **THE COURT:** Thank you, there are none. Oh, I'm sorry.
14 And, Mr. Green, I am going to let you have a seat because I
15 have already excused you from this case but it may be relevant
16 in another case so -- yes, ma'am, your name?

17 **JUROR:** Annie Vanderhall.

18 **THE COURT:** I didn't get your last name, ma'am?

19 **MS. VANDERHALL:** Vanderhall.

20 **THE COURT:** All right.

21 **CLERK OF COURT:** She is Number 162, Your Honor.

22 **THE COURT:** All right, Ms. Vanderhall, was it yourself
23 or a member of your family, ma'am?

24 **MS. VANDERHALL:** My family --- The State of North
25 Carolina is my original home and have family that was victim

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1 of crime in The State of North Carolina.

2 THE COURT: All right. What is your questions, ma'am?

3 MS. VANDERHALL: He was a victim of a crime in The State
4 of North Carolina.

5 THE COURT: Okay.

6 MS. VANDERHALL: And moved to South Carolina.

7 THE COURT: I understand. Now, this was a family
8 member?

9 MS. VANDERHALL: Yes.

10 THE COURT: All right. Well, let me ask you, Ms.
11 Vanderhall, the fact that you've had that event in your
12 family, would that in any way effect your ability to fair and
13 impartial to both The State as well the Defense, if you were
14 selected as a member of this jury?

15 MS. VANDERHALL: No sir, it would not.

16 THE COURT: All right. Thank you very much, ma'am, you
17 may have a seat.

18 All right, now, is there any member of the jury panel or
19 member of your immediate family ever been convicted of a crime
20 -- of a violent crime, if so please stand? Thank you. There
21 are none.

22 Is there any member panel or member of your family ever
23 been employed as a law enforcement officer or as any type of
24 law enforcement training, if so please stand?

25 All right, let me start in the front here. Yes, ma'am,

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14

1 your name?

2 MS. MCDANIEL: Sheila McDaniel.

3 THE COURT: If you know your number, let me have that as
4 well.

5 MS. MCDANIEL: Sheila McDaniel.

6 THE COURT: All right, Ms. McDaniel, give me a second.

7 CLERK OF COURT: 109, Your Honor.

8 THE COURT: All right, go ahead, Ms. McDaniel.

9 MS. MCDANIEL: I have a son-in-law as a police officer.

10 THE COURT: All right. And, ma'am, the fact that your
11 son-in-law is a law enforcement officer, would that in any way
12 effect your ability to be fair and impartial if you were
13 selected as a member of this jury?

14 MS. MCDANIEL: I wouldn't think so, but I know a lot of
15 police officers just from my work so I think I could be fair
16 and impartial.

17 THE COURT: All right, and that's -- And, let me say
18 this, ladies and gentlemen. Obviously, the process of
19 selecting the jury the goal is this. What we are trying to
20 find is we will try to find a group of people that can listen
21 to the evidence in a case give both The State and the Defense
22 a fair and impartial hearing, and to determine the facts of
23 the case based solely on the evidence as presented during the
24 course of the trial, and too not be affected by any other
25 things that may go on in our life. In other words, to decide

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1 this case based solely on the evidence that is presented
2 during the course of the trial, and be fair and even handed to
3 both The State and the Defense, that's the goal that we look
4 for. And you indicated Ms. --

5 MS. MCDANIEL: McDaniel

6 THE COURT: McDaniel that you could be fair and
7 impartial is that correct?

8 MS. MCDANIEL: Yes, sir.

9 THE COURT: All right, thank you, ma'am, you may have a
10 seat. Sir, your name?

11 MR. JACKSON: William Jackson.

12 THE COURT: All right, Mr. Jackson, give me one second,
13 let me find it here.

14 CLERK OF COURT: Number 82, Your Honor.

15 THE COURT: Mr. Jackson, how does that question apply to
16 you, sir?

17 MR. JACKSON: My father is a highway patrolman.

18 THE COURT: All right, sir. Now the fact that your
19 father is - works with the highway patrol, would that in any
20 way affect your ability to be fair and impartial, sir?

21 MR. JACKSON: No, sir.

22 THE COURT: All right, thank you, Mr. Jackson, you can
23 have a seat.

24 I am going to start on this side and work my way over.
25 Yes, ma'am, your name?

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1 MS. LAMPLEY: Lamonica Lampley.

2 CLERK OF COURT: Number 91, Your Honor.

3 THE COURT: All right, Ms. Lampley, how did that
4 question apply to you?

5 MS. LAMPLEY: My cousin is a police officer.

6 THE COURT: All right, your cousin is?

7 MS. LAMPLEY: Yes.

8 THE COURT: The fact that your cousin is a police
9 officer would that in any way affect your ability to be fair
10 and impartial if you were selected as a juror?

11 MS. LAMPLEY: No.

12 THE COURT: Thank you very much, ma'am, you can have a
13 seat.

14 Yes, ma'am?

15 MS. BETHEA: Yvonna Bethea. My husband is a
16 correctional officer with Dillon County and --

17 THE COURT: -- Out at the detention center?

18 MS. BETHEA: Yes.

19 THE COURT: Okay.

20 MS. BETHEA: I have an uncle who is a police officer.

21 THE COURT: All right. Ma'am, the fact that you have
22 those relationships in your family would that in any way
23 affect your ability to be fair and impartial?

24 MS. BETHEA: No.

25 THE COURT: Thank you, ma'am, you may have a seat.

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1 CLERK OF COURT: She was Number 15, Your Honor.

2 THE COURT: I'm sorry, juror 15. Yes, ma'am, your
3 name?

4 MS. PERNELL: LaToya Pernell.

5 THE COURT: All right, Ms. Pernell.

6 CLERK OF COURT: 128.

7 THE COURT: All right, how does that apply to you, Ms.
8 Pernell?

9 MS. PERNELL: I have two uncles which are both now
10 former cops, with the Dillon Sheriff's Department.

11 THE COURT: All right. The fact that you have those
12 uncles in your family and they use to work with the sheriff's
13 department, does that in any way affect your ability to be
14 fair and impartial if you were selected as a member of this
15 jury?

16 MS. PERNELL: No, sir.

17 THE COURT: Thank you very much, ma'am, you may have a
18 seat.

19 Yes, sir?

20 MR. ROGERS: My name is Anthony Rogers.

21 CLERK OF COURT: Number 135.

22 THE COURT: All right. Mr. Rogers?

23 MR. ROGERS: I am - was a city police officer in the
24 early 1980's in Marion County, and my brother-in-law has
25 retired, he use to be with the highway patrol in Chesterfield

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1 County.

2 THE COURT: All right, sir. And you no longer hold that
3 position, is that correct?

4 MR. ROGERS: No, sir.

5 THE COURT: All right. Sir, the fact that you had that
6 experience and you have that in your family, would that in any
7 way affect your ability to be fair and impartial should you be
8 selected as a member of this jury?

9 MR. ROGERS: It would have no effect.

10 THE COURT: Thank you very much, sir, you may have a
11 seat.

12 Yes, sir?

13 MR. ABRAHAM: James Abraham.

14 THE COURT: All right, Mr. Abraham.

15 MR. ABRAHAM: Number 1. I use to be a police in The
16 City of Dillon in 1975.

17 THE COURT: Okay. Would that in any way affect your
18 ability to be fair and impartial, sir?

19 MR. ABRAHAM: No, sir, it would not.

20 THE COURT: Thank you very much, Mr. Abraham, you can
21 have a seat.

22 Yes, ma'am?

23 MS. HAYES: Wanda Hayes.

24 THE COURT: Yes, Ms. Hayes?

25 MS. HAYES: My sister works for the Dillon County

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1 Detention Center.

2 THE COURT: Okay. And the fact that your sister is
3 employed out there would that in any way affect your ability
4 to be fair and impartial?

5 MS. HAYES: No, sir.

6 THE COURT: Thank you, ma'am, you may have a seat.

7 Ladies and gentlemen, is there any member of the jury
8 panel who is a member and contributes to a victim's rights
9 group? Some examples of those groups are MADD, SADD, CAVE,
10 any of those types of organizations, the Fraternal Order of
11 the Police, whatever, if so please stand? Thank you. There
12 are none.

13 Is there any member of the jury panel who knew or has a
14 relationship with any other member of the jury panel before
15 coming here today, if so please stand?

16 Okay. And I do realize that we the husband and wife
17 team. If I may, let me get your names.

18 MR. CAULDER: Tony Caulder.

19 MS. CAULDER: Connie Caulder.

20 THE COURT: All right. Mr. and Mrs. Caulder, you may
21 have a seat, because I know what that relationship is. And,
22 yes, ma'am, Ms. McDaniel, is that correct?

23 MS. MCDANIEL: I have been serving in Dillon County for
24 a long time, so I know a lot of people.

25 THE COURT: You just know a lot of people?

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1 MS. MCDANIEL: Yes, sir.

2 THE COURT: All right.

3 MS. MCDANIEL: Yes, sir. For having been serving in the
4 county for a period of time.

5 THE COURT: Not related to any of them just know them?

6 MS. MCDANIEL: I might be distantly related to a couple
7 for them, that's probably it.

8 THE COURT: All right. Thank you, Ms. McDaniel, you
9 may have a seat. Yes, ma'am, your name?

10 MS. OAKS: Cynthia Oaks, juror 125.

11 THE COURT: All right. Ms. Oaks, are you related to any
12 other members of the jury or --

13 MS. OAKS: I'm a cousin of Andrew Rogers.

14 THE COURT: Okay. All right, thank you, ma'am, you may
15 have a seat. And your name again, sir?

16 MR. ROGERS: I am Andrew Rogers.

17 THE COURT: And that's the relationship?

18 MR. ROGERS: I am related to --- we are distant cousins.

19 THE COURT: All right, thank you very much, you may have
20 a seat.

21 Yes, sir?

22 MR. STACKHOUSE: Terrance Stackhouse.

23 THE COURT: All right. Mr. Stackhouse, give me one
24 second. Yes, sir?

25 MR. STACKHOUSE: I am kin that's my brother, Vernon

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21

1 Stackhouse.

2 **THE COURT:** Okay, this is your brother?

3 **MR. STACKHOUSE:** Yes, sir.

4 **THE COURT:** All right. Then I will allow the two of you
5 to have a seat. And, Mr. Abraham.

6 **MR. ABRAHAM:** This is my cousin.

7 **THE COURT:** All right, and her name?

8 **MS. THOMPSON:** Cynthia Thompson.

9 **THE COURT:** All right, Ms. Thompson. You all are
10 cousins and know each other from that. All right, thank you
11 have a seat.

12 Yes, ma'am?

13 **MS. MCDANIELS:** Laurie McDaniels.

14 **THE COURT:** Yes, Ms. McDaniels?

15 **MS. MCDANIELS:** I am related to Tim Price.

16 **THE COURT:** Okay, all right. Thank you. You can have
17 a seat.

18 Is there any member of the jury panel who has served as a
19 member of a jury during the trial of a criminal case --- who
20 has actually served on a jury in a criminal case of a case
21 that actually went to trial, if so please stand?

22 **THE COURT:** All right. Ladies, I am going to get you
23 all, if you would, to come forward, because I have to ask you
24 another question regarding that service that I can't ask out
25 loud. So, if I could just get your name for the record.

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1 MS. KOPITUK: Alexis Kopituk.

2 THE COURT: During the course of that trial, did that
3 case actually go all the way to a verdict?

4 MS. KOPITUK: Yes.

5 THE COURT: Was it --

6 MS. KOPITUK: It was guilty on one charge and not guilty
7 on another charge.

8 THE COURT: So there were multiple charges?

9 MS. KOPITUK: Yes.

10 THE COURT: Let me ask you this. Would that experience
11 in any way prevent you from being fair and impartial?

12 MS. KOPITUK: No.

13 THE COURT: Thank you very much. You may have a seat.
14 Yes, ma'am. Your name?

15 MS. CAULDER: Connie Caulder.

16 THE COURT: The jury that you served on, did that case
17 actually go all the way or did it resolve?

18 MS. CAULDER: It went to a verdict.

19 THE COURT: And, was the verdict guilty or not guilty?

20 MS. CAULDER: Guilty.

21 THE COURT: On all counts?

22 MS. CAULDER: Yes.

23 THE COURT: Now the fact that you have had that
24 experience, would that in any way prevent you from being fair?

25 MS. CAULDER: No.

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1 **THE COURT:** Thank you, very much.

2 **CLERK OF COURT:** Cherie Berry, Juror Number 7.

3 **THE COURT:** All right. Ms. Berry, the case that you
4 served on, did it actually go all the way to a verdict, or did
5 it resolve?

6 **MS. BERRY:** It went to a verdict.

7 **THE COURT:** Was it a guilty or not guilty?

8 **MS. BERRY:** It was not guilty.

9 **THE COURT:** Was it multiple counts or just one count.
10 Do you recall?

11 **MS. BERRY:** I cannot remember. It was about seventeen
12 years ago.

13 **THE COURT:** Great. Would that experience in any way
14 affect your ability to be fair and impartial in this trial?

15 **MS. BERRY:** No, sir.

16 **THE COURT:** Thank you very much ma'am.

17 May I have your name?

18 **MR. GARRIS:** Mr. Buddy Garris, number 55.

19 **THE COURT:** The trial, that you served on, did it
20 actually go all the way to a verdict?

21 **MR. GARRIS:** He fine, he only pleaded guilty.

22 **THE COURT:** So, it did not make it all the way?

23 **MR. GARRIS:** No, sir.

24 **THE COURT:** The fact that you have had that experience
25 of serving on the jury, would that in any way affect your

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1 ability to be fair in this one?

2 MR. GARRIS: No, sir.

3 THE COURT: Great. Thank you, sir.

4 Yes, ma'am. May I get your name please?

5 MS. PICKNEY: Dorothy Pickney.

6 THE COURT: All right, Ms. Pickney. The case that you
7 went to, did it go all the way, or did it resolve?

8 MS. PICKNEY: Sir?

9 THE COURT: Did it go all the way to a verdict?

10 MS. PICKNEY: A verdict?

11 THE COURT: Do you recall if it was a guilty or not
12 guilty verdict?

13 MS. PICKNEY: Guilty.

14 THE COURT: Was the person charged with several counts
15 or just one?

16 MS. PICKNEY: I don't remember, it has been so long.

17 THE COURT: You just remember the guilty verdict?

18 MS. PICKNEY: Yes.

19 THE COURT: Would that in any way affect your ability to
20 be fair and impartial if you were selected to serve on this
21 jury?

22 MS. PICKNEY: No.

23 THE COURT: Thank you very much.

24 (PAUSE)

25 THE COURT: All right, I want to get a clarification.

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1 Mr. Abraham, can I ask you a question real quick, sir.

2 MR. ABRAHAM: Yes, sir.

3 THE COURT: When I ask the question about your
4 employment by law enforcement agency or whatever and I
5 appreciate your response, but it's also been brought to my
6 attention; do you also have a relative that works with the law
7 enforcement?

8 MR. ABRAHAM: Yes, sir, my brother Larry.

9 THE COURT: Okay.

10 MR. ABRAHAM: I'm sorry.

11 THE COURT: That's okay. That's all right. You were
12 probably --- and you know what, what you were probably were
13 responding to is whether or not you worked as law enforcement?

14 MR. ABRAHAM: Yes, sir.

15 THE COURT: All right. The fact that your brother works
16 in law enforcement, and again, keeping in mind what we are
17 trying to do, is we are trying to find fair and impartial people.
18 Would that in any way affect your ability to be fair and
19 impartial?

20 MR. ABRAHAM: No, sir.

21 THE COURT: Great. Thank you, sir, you can have a
22 seat.

23 All right, ladies and gentlemen, this case that we're
24 here about, it concerns events which occurred in the Oakland
25 area of Dillon County on June the 17th of 2007, over at the

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1 Blue Moon which was formerly known as the Club Makium. Is
2 there any member of the jury panel who has seen or heard
3 anything about this case before today, or who knows anything
4 about this case, if so please stand?

5 THE COURT: All right. Ma'am, I want to ask you, if you
6 would, to step up here. Let me ask you some further
7 questions if I could, please. Your name first?

8 MS. BROWN: Lillie Mae Brown.

9 THE COURT: Okay, Ms. Brown, what do you know about
10 this?

11 MS. BROWN: My boys hang with boy that got killed.

12 THE COURT: Okay. So they knew him?

13 MS. BROWN: Yes.

14 THE COURT: Were they there when it happened?

15 MS. BROWN: Yes.

16 THE COURT: Okay.

17 MS. BROWN: They was inside the club.

18 THE COURT: Did they know anything about the shooting
19 other than it happened?

20 MS. BROWN: -- They know the guy that over there that
21 did it, that's all.

22 THE COURT: All right. Well, let me ask you this. The
23 fact that you've got that knowledge and that relationship with
24 your sons and everything, would that in any way affect your
25 ability to be fair and impartial?

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1 MS. BROWN: No, sir.

2 THE COURT: Okay. You can hear the evidence and give
3 both, The State and the Defense, a fair trial?

4 MS. BROWN: Yes, sir.

5 THE COURT: Okay. Now this is what I need for you to do
6 for me, if you would. When you go back and have a seat, and
7 throughout the whole time we're here, it's important that you
8 don't talk to any other jurors about --

9 MS. BROWN: -- Okay. --

10 THE COURT: -- what you know, okay?

11 MS. BROWN: Okay.

12 THE COURT: All right, thank you, ma'am. You can have a
13 seat.

14 (Whereupon, a bench conference was held in the
15 presence of the jury panel.)

16 THE COURT: All right, ladies and gentlemen, and I think
17 I have one final question to ask you, but I will confer with
18 the attorneys before I shut the door on that.

19 My final question is simply this, and it's what I have
20 already told you, and that is that the purpose in any trial
21 regardless of what the charge is, regardless of whether it's a
22 criminal trial or a civil trial, we are looking for jurors
23 that can sit, hear the evidence, decide the evidence on the
24 evidence that was presented during the course of the trial,
25 and not be swayed by outside influences, and give both The

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1 State of South Carolina and the Defense at bar a fair and
2 impartial trial.

3 Is there any member of the jury panel who knows of any
4 reason that if you were selected to sit on this jury that you
5 would not be able to do that, if so please stand? All right.
6 Thank you. There are none.

7 Are there any further questions from The State?

8 MR. REDMOND: None from The State, Your Honor.

9 THE COURT: Any further questions from the Defense?

10 MS. SELLERS: None from Defense, Your Honor.

11 THE COURT: All right. Ladies and gentlemen, let me
12 explain to you how we go about pulling jurors in criminal
13 court. What we will do is, Madam Clerk has your names, and
14 you all are like we are down in Florence. I go to some
15 counties and they've got a computer program and that computer
16 program --- your names are listed, you got your jurors'
17 numbers and your names are listed, and that computer program
18 scrambles those names and randomly picks --- puts them in
19 another order. In Florence and Dillon, and places like where
20 I'm from Edgefield, we are a little bit less high tech, we use
21 a cigar box.

22 We are going to pull your name out of a box. Madam
23 Clerk has all your names in the box. They are just all in
24 there random. She will reach in and she will pull a name
25 out. Whatever name she pulls she will call that name. What I

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1 need you to do is if you hear your name called, please come
2 down to the front. I know this may make you feel a little
3 uncomfortable but don't let it, just come down to the front,
4 come right here in front of Madam Clerk, and then just face
5 the back of the courtroom --- just stand, face the back of the
6 courtroom. At that point, she will ask The State something
7 along these lines, a question similar to this. What says The
8 State? The State will then have the opportunity to say
9 either we excuse the juror, and if they do that then you will
10 go back and have a seat, or something along the lines of
11 present the juror. If The State presents the juror then
12 Madam Clerk will recognize the Defense and ask again, what
13 says the Defense. The Defense can either excuse you or they
14 can seat you. If they excuse you, of course, you will go have
15 a seat. If they seat you, you will come over and you will
16 have a seat in the juror box. And we will go through that
17 process until we've selected our juror. So, because of the
18 possibility that you may not go back to your seat, if your
19 name is called, please bring with you anything you brought to
20 Court with you, a pocketbook, a jacket, a book; whatever you
21 may have brought with you, bring that with you when you come
22 up, because it may be that you're not going to return to your
23 seat.

24 All right, is The State ready to pull the jury?

25 **MR. REDMOND:** The State is ready, Your Honor.

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1 THE COURT: Defense ready?

2 MS. SELLERS: Defense is ready, Your Honor.

3 THE COURT: All right, we are going to commence with
4 jury selection, ten and five.

5 JURY SELECTION

6 CLERK OF COURT: Number 129, Doris McPickney. What
7 sayeth The State?

8 MR. REDMOND: Please excuse, Ms. McPinkey from this
9 trial.

10 CLERK OF COURT: You are excused from the trial, thank
11 you.

12 Number 110, Barbara McDaniels. What sayeth The State?

13 MR. REDMOND: Please present Ms. McDaniels.

14 CLERK OF COURT: Defendant?

15 MS. SELLERS: Please excuse Ms. McDaniels.

16 CLERK OF COURT: You are excused, thank you.

17 Number 32, Bobby Chavis. What sayeth The State?

18 MR. REDMOND: Please present Mr. Chase.

19 CLERK OF COURT: Defendant?

20 MS. SELLERS: Please seat Mr. Chase.

21 CLERK OF COURT: Please have a seat in the jury box,
22 please, sir.

23 Number 5, Sarah Baker. What sayeth The State?

24 MR. REDMOND: Please present Ms. Baker.

25 CLERK OF COURT: Defendant?

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1 MS. SELLERS: Please seat Ms. Baker.

2 CLERK OF COURT: Please have a seat in the jury box, Ms.
3 Baker.

4 Number 69, Wanda Hayes. What sayeth The State?

5 MR. REDMOND: Please present Ms. Hayes.

6 CLERK OF COURT: Defendant?

7 MS. SELLERS: Please excuse Ms. Hayes.

8 CLERK OF COURT: You are excused, ma'am. Number 22,
9 Chlorissa Brown. What sayeth The State?

10 MR. REDMOND: Please present Ms. Brown.

11 CLERK OF COURT: Defendant?

12 MS. SELLERS: Please present Ms. Brown.

13 CLERK OF COURT: Have a seat in the jury box, Ms. Brown.
14 Number 98, Chad Lockemy. What sayeth The State?

15 MR. REDMOND: Please present Mr. Lockemy.

16 CLERK OF COURT: Defendant?

17 MS. SELLERS: Please seat Mr. Lockemy.

18 CLERK OF COURT: Have a seat in the jury box, please
19 sir.

20 Number 109, Sheila McDaniel.

21 MS. SELLERS: What number was that?

22 CLERK OF COURT: 109. What sayeth The State?

23 MR. REDMOND: Please present Ms. McDaniel.

24 CLERK OF COURT: Defendant?

25 MS. SELLERS: Please seat Ms. McDaniel.

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1 **CLERK OF COURT:** Please have a seat, Ms. McDaniel.
2 Number 125, Cynthia Officer Rash. What sayeth The
3 State?

4 **MR. REDMOND:** Please present Ms. Officer Rash.

5 **CLERK OF COURT:** Defendant?

6 **MS. SELLERS:** Please excuse Ms. Officer Rash.

7 **CLERK OF COURT:** . You are excused. Number 111, Maxine
8 McIntyre. What sayeth The State?

9 **MR. REDMOND:** Please present Ms. McIntyre.

10 **CLERK OF COURT:** Defendant?

11 **MS. SELLERS:** Please excuse Ms. McIntyre.

12 **CLERK OF COURT:** You are excuse. Number 147, Terence
13 Stackhouse. What sayeth The State?

14 **MR. REDMOND:** Please excuse Mr. Stackhouse.

15 **CLERK OF COURT:** You are excused, sir. Number 112,
16 Shaquinta McKeller. What sayeth The State?

17 **MR. REDMOND:** Please present Ms. McKeller.

18 **CLERK OF COURT:** Defendant?

19 **MS. SELLERS:** Please present Ms. McKeller.

20 **CLERK OF COURT:** Please have a seat in the jury box,
21 please, ma'am.

22 Number 158, Betty Turbeville-Jacobs. What sayeth The
23 State?

24 **MR. REDMOND:** Please present Ms. Turbeville-Jacobs.

25 **CLERK OF COURT:** Defendant?

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1 **MS. SELLERS:** Please excuse Ms. Jacobs.

2 **CLERK OF COURT:** You are excuse, ma'am. Number 40,
3 Kellie Dickerson. What sayeth The State?

4 **MR. REDMOND:** Please present Ms. Dickerson.

5 **CLERK OF COURT:** Defendant?

6 **MS. SELLERS:** Please seat Ms. Dickerson.

7 **CLERK OF COURT:** Please have a seat in the jury box,
8 please, ma'am.

9 Number 55, Rodney Garris. What sayeth The State?

10 **MR. REDMOND:** Please present Mr. Garris.

11 **CLERK OF COURT:** Defendant?

12 **MS. SELLERS:** Please excuse, Mr. Garris.

13 **CLERK OF COURT:** You are excused, sir. Number 128,
14 LaToya Purnell. What sayeth The State?

15 **MR. REDMOND:** Please present Ms. Purnell.

16 **CLERK OF COURT:** Defendant?

17 **MS. SELLERS:** Please seat Ms. Purnell.

18 **CLERK OF COURT:** Please have a seat in the jury box,
19 please, ma'am.

20 Number 91, Lamonica Lampley. What sayeth The State?

21 **MR. REDMOND:** Please excuse Ms. Lampley from this trial.

22 **CLERK OF COURT:** You are excused, ma'am. Number 81,
23 Jassamine Jackson. What sayeth The State?

24 **MR. REDMOND:** Please present Ms. Jackson.

25 **CLERK OF COURT:** Defendant?

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1 MS. SELLERS: Please seat Ms. Jackson.

2 CLERK OF COURT: Please have a seat in the jury box,
3 please, ma'am.

4 Number 108, Mary McCray. What sayeth The State?

5 MR. REDMOND: Please present Ms. McCray.

6 CLERK OF COURT: Defendant?

7 MS. SELLERS: Please excuse Ms. McCray.

8 CLERK OF COURT: You are excused, ma'am. Number 86,
9 Nicole Jones. What sayeth The State?

10 MR. REDMOND: Please present Ms. Jones.

11 CLERK OF COURT: Defendant?

12 MS. SELLERS: Please seat Ms. Jones.

13 CLERK OF COURT: Please have a seat in the jury box,
14 please, ma'am.

15 Number 65, Richard Harrison. What sayeth The State?

16 MR. REDMOND: Please present Mr. Harrison.

17 CLERK OF COURT: Defendant?

18 MS. SELLERS: Please excuse Mr. Harrison.

19 CLERK OF COURT: You are excused, sir. Number 82,
20 William K. Jackson. What sayeth The State?

21 MR. REDMOND: Please present Mr. Jackson.

22 CLERK OF COURT: Defendant?

23 MS. SELLERS: Please excuse Mr. Jackson.

24 CLERK OF COURT: You are excused, sir.

25 MR. REDMOND: Madam Clerk, I have the count as ten and

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1 three.

2 CLERK OF COURT: That is correct.

3 MR. REDMOND: Thank you.

4 CLERK OF COURT: Number 90, Alexis Kopituk. What sayeth
5 The State?

6 MR. REDMOND: Please present Ms. Kopituk.

7 CLERK OF COURT: Defendant?

8 MS. SELLERS: Please seat Ms. Kopituk.

9 CLERK OF COURT: Please have a seat in the jury box,
10 please, ma'am.

11 Number 31, Tony Caulder. What sayeth The State?

12 MR. REDMOND: Please present Mr. Caulder.

13 CLERK OF COURT: Defendant?

14 MS. SELLERS: Please strike Mr. Caulder.

15 MR. REDMOND: Your Honor, I think we are at the for
16 cause part for the defense --

17 THE COURT: All right, sir. Does Defense Counsel wish
18 to be heard on that?

19 MS. SELLERS: No, Your Honor, please seat Mr. Caulder.

20 THE COURT: All right. Thank you, sir, please have a
21 seat in the jury box.

22 CLERK OF COURT: Number 150, Phyllis Stroud. What
23 sayeth The State?

24 MR. REDMOND: Please present Ms. Stroud.

25 CLERK OF COURT: Defendant?

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1 MS. SELLERS: Please seat Ms. Stroud.

2 CLERK OF COURT: Please have a seat in the jury box,
3 please, ma'am.

4 THE COURT: Two alternates would be one and two of each.

5 CLERK OF COURT: Number 135, Anthony Rogers. What
6 sayeth The State?

7 MR. REDMOND: Please seat Mr. Rogers.

8 CLERK OF COURT: Defendant?

9 MS. SELLERS: Please seat Mr. Rogers.

10 CLERK OF COURT: Please have a seat, sir. Number 163,
11 Steven Benjamin. What sayeth The State?

12 MR. REDMOND: Please present Pastor Benjamin.

13 CLERK OF COURT: Defendant?

14 MS. SELLERS: Please excuse, Mr. Benjamin.

15 CLERK OF COURT: You are excused, sir. Number 9, Dennis
16 Berry. What sayeth The State?

17 MR. REDMOND: Please present Mr. Berry.

18 CLERK OF COURT: Defendant?

19 MS. SELLERS: Please seat Mr. Berry.

20 CLERK OF COURT: Please have a seat in our alternate
21 sitting, please, sir.

22 Number 46, Matthew Finch. What sayeth The State?

23 MR. REDMOND: I beg The Court's indulgence.

24 THE COURT: Yes, sir.

25 MR. REDMOND: Please present, Mr. Finch.

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1 **CLERK OF COURT:** Defendant?

2 **MS. SELLERS:** Please seat Mr. Finch.

3 **CLERK OF COURT:** Please have a seat in our alternate
4 seat, please, sir. Thank you.

5 **THE COURT:** All right. Are these any motions regarding
6 jury selection from The State?

7 **MR. REDMOND:** I beg The Court's indulgence, Your Honor.

8 **THE COURT:** Yes, sir.

9 **MR. REDMOND:** No motions from The State, Your Honor.

10 **THE COURT:** Any motions from regarding jury selection
11 from the Defense?

12 **MS. SELLERS:** No motions from Defense, Your Honor.

13 **THE COURT:** All right. Thank you very much. All
14 right, ladies and gentlemen, those of you in the balance of
15 the panel, I am going to excuse you for the balance of the
16 day. You got that call in number. Are they going to get
17 that call in number?

18 **CLERK OF COURT:** They have it.

19 **THE COURT:** Okay. Call that number if you would after
20 6:00 this evening. There will be instructions on there for
21 you. It may be that the instructions say call back after 6:00
22 tomorrow evening, or it may be come back in the morning. I
23 just don't know at this time what those instructions will be,
24 but please call that number after 6:00. Now, if you call the
25 number and get a busy signal just try again later. It is a

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1 recording so if you do like me sometimes, and you sit in your
2 chair and watch a late ball game and you fall asleep and you
3 wake up at 2:30 in the morning in the living room and you look
4 around and you go, oh, my gosh, I forgot to call. Don't
5 worry about it. Pickup the phone and call, you will get it.
6 But if you would, call that number after six and just follow
7 whatever instructions are on that recording.

8 So if everyone else will remain seated, ladies and
9 gentlemen, you are free to go. While they leave, let me come
10 down here and address you, ladies and gentlemen.

11 I apologize for taking you well past lunch. We are going
12 to break at this time and let you go to lunch. As a matter of
13 fact, let me correct that. I am going to give you a
14 different instruction. We are going to break at this time
15 and I am going to ask you if you'll just come back in the
16 morning and give you the balance of the afternoon off. I've
17 got a lot of matters that I need to pick up that don't involve
18 this case. I've got probation and other matters I need to
19 take up this afternoon so we are going to start this trial in
20 the morning. So if you would, I am going to excuse you for
21 the balance of the day as well. But you don't need to call
22 that number because, I am going to instruct you or ask you to
23 please be back here tomorrow morning at 9:30. So when you go
24 out I am going to get the Bailiff to, take you by the jury
25 room to show you where that is, and then when you come back in

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1 the morning; just come straight to the jury room.

2 Now, let me leave you with this instruction though, and I
3 don't know that I can stress to you how important this is.
4 As I told you, it is going to be your job to take the evidence
5 that is presented and to determine from that evidence what the
6 facts are in this case. It is imperative that you decide
7 this case solely based on the evidence that is presented
8 during the course of this trial. That is why it is so
9 important that when you leave here you have no conversation
10 with anybody about this case. You don't allow anyone to talk
11 to you about it. If someone comes up to you and tries to
12 talk to you, you let them know immediately that you are a
13 juror, and you're not allowed to talk about it. That should
14 end it. If it doesn't, you let me know who it is that is
15 trying to talk to you and I will make sure that it doesn't
16 happen again. Okay. That is the one thing.

17 The other thing is, when you go home there is going to be
18 questions that your love ones, family members, friends, are
19 going to want to know. Did you get picked for a jury? It's
20 fine to say, yes, I've been selected. I have to be back there
21 in the morning. But that is where you need to stop the
22 conversation. Please don't let it go any further. Then they
23 say, well, who is it, or what's the charge, or whatever.
24 Those things, although they may sound innocent, could actually
25 illicit a response that in some way could affect your ability

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1 to be fair and impartial. If you tell them who it involves,
2 or if you tell them where it happened, or if you tell them
3 what you know from today's hearing, could actually affect your
4 ability to be fair and impartial. So what I would ask you to
5 do is just please let them know you are on a case, you do have
6 to be back in the morning for that trial, and that you are not
7 allowed to say anything else and ask them politely to please
8 don't ask any more questions. You can tell them that when the
9 case is over you will tell them everything they want to know,
10 probably more than they want to know, but until that time, you
11 are not allowed to talk about it, okay. And it is very
12 important that you shield yourself from anything outside this
13 courtroom that involves this case. I have no idea --- I
14 don't know anything about the Dillon community, your media, I
15 don't know if there will be anything in the paper about it. I
16 don't know if there will be anything on television about it.
17 If there is, please don't read it if it's written, don't
18 listen if it's on the t.v., turn it off or turn the channel or
19 whatever. Take it very seriously, please. Your roll and
20 your duty in this case, and that is to decide this case solely
21 on the evidence that is presented during this trial and on
22 nothing else. Okay. So having --- One last thing. Try to
23 get a good night's sleep. Try to eat a good meal or whatever.
24 You wouldn't believe it, but jury service can be very tiring.
25 It's not from a muscular standpoint but it is from a mental

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1 standpoint. So when you come back in the morning try to be
2 well rested and ready to go to work if your schedule allows
3 you to do that.

4 Having said that, I am going to get everyone else to
5 remain seated and excuse you for the balance of the day. Ask
6 you to please be back in your jury room at 9:30 in the
7 morning. So as you file out, please go with the bailiff. He
8 will show you where that room is and then I will see you
9 tomorrow morning.

10 (Whereupon, the jury exits the courtroom at 1:50
11 p.m.)

12 **THE COURT:** All right, everyone is out. All right. I
13 apologize to everybody for taking us into the afternoon.

14 **MR. REDMOND:** I don't eat lunch anyway, Judge.

15 **THE COURT:** Well then we'll just stop right now. I
16 know you told me that and I appreciate that but others do, me
17 being included in that. We will break at this time for
18 lunch. I am going to ask that we reconvene at 3:15 and at
19 time we will --- Will we be ready to take up these matters or
20 do we need to do the probation first and then these matters?

21 **MR. REDMOND:** I think we should be in a position by then
22 to take up these matters.

23 **THE COURT:** Ms. Sellers, will we be ready at 3:15 to
24 take up the pre-trial matters?

25 **MS. SELLERS:** Your Honor, I may --- could use some

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1 additional time so we could do this, take these matters after
2 the probation hearing.

3 **THE COURT:** All right, let's do this. Let's do this.
4 Probation, y'all be ready to key it up at 3:15 and we will go
5 right into this probation matter when we come back after
6 lunch. Okay.

7 All right. Everybody, have a great lunch and we will be
8 at recess until 3:15.

9 (Whereupon, The Court stands in recess from 1:55
10 p.m. until 3:53 p.m.)

11 **THE COURT:** Thank you, ladies and gentlemen, please have
12 a seat. All right. We are going to take one witness on a
13 Motion, and let -- We are going to take one witness and let
14 him get back on the road, and then we are going to go to
15 Probation matters. Is Rosalind here?

16 **MS. SELLERS:** Yes, sir. We were waiting for my client.

17 **THE COURT:** Yeah. That is what i was going to do.

18 (PAUSE)

19 **MR. REDMOND:** If, it pleases The Court, Your Honor.

20 **THE COURT:** Yes, sir.

21 **MR. REDMOND:** The State would call Major Wes Jackson
22 with the ATF to the stand.

23 **THE COURT:** Agent Jackson, if you would come around to
24 be sworn.

25 **AGENT JACKSON:** Yes, sir.

AGENT JACKSON - DIRECT EXAMINATION BY MR. REDMOND

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WHEREUPON, AGENT WEST JACKSON**BEING DULY SWORN TESTIFIES AS FOLLOWS****AGENT JACKSON:** I do.

CLERK OF COURT: Please be seated in the witness box and state your full name for The Court, spelling your last name please.

MR. JACKSON: Sure. West H. Jackson, Jr. Last name spelling, J-A-C-K-S-O-N.

DIRECT EXAMINATION BY MR. REDMOND

Q. And, West, just to be clear, you spell your first name like the Wild West?

A. That is correct, right.

Q. Now, how long have you worked for ATF, West?

A. Ten years.

Q. Okay. And did you have the occasion to encounter, since we are outside the presence of a jury, did you, in fact, bring felony charges against the Defendant seated at the table?

A. I did.

Q. And was that case tried in Federal Court in January of 2007?

A. Yes, sir.

Q. And I think he was charged with under felony possession of a firearm and was declared an armed career criminal, if I remember correctly, is that right?

AGENT JACKSON - DIRECT EXAMINATION BY MR. REDMOND

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1 A. That is correct.

2 Q. And during the trial were there several items of evidence
3 that were introduced in the federal trial?

4 A. Yes, sir.

5 Q. Okay. And were some of those items bullets that were
6 brought back from Agent Paavell with SLED to the trial
7 there in Florence?

8 A. Yes, sir.

9 Q. Okay. And were there also photographs of the crime scene
10 that were taken that were also introduced into evidence
11 in the trial in Florence?

12 A. Yes, sir.

13 Q. Okay. And there were other items as well. I believe
14 there were diagrams as well that were introduced and I
15 think Agent Paavell also introduced his report, is that
16 correct?

17 A. That is correct.

18 Q. All right. Now, at the conclusion of the trial could you
19 tell The Court the protocol and your recollection of what
20 took place regarding the exchange of evidence. Let me
21 back up. I'll first ask you this. In Federal Court,
22 does the Clerk of Court actually maintain evidence after
23 a trial has been completed, even if there is a guilty
24 verdict?

25 A. Afterwards they do and then they turn it over.

AGENT JACKSON - DIRECT EXAMINATION BY MR. REDMOND

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1 Q. Then they turn it over. Could you explain that process
2 to The Court at this time?

3 A. Yes, sir. Your Honor, what takes place is the Clerk
4 after the trial then she will take possession of it, so
5 then she will give it over to the case agent. Being
6 myself, I was the case agent, however, some of the
7 evidence were housed with either SLED or the Sheriff's
8 Office. So at that point, I give all the evidence back
9 over to the county or either SLED. Not unless it was
10 evidence that I actually took possession of during the
11 point of the investigation which I did not.

12 **THE COURT:** If it's evidence you collected, you would
13 maintain that, but if it was evidence collected by another
14 agency it goes back to that agency?

15 **AGENT JACKSON:** That is correct.

16 **THE COURT:** Okay.

17 Q. (By Mr. Redmond) And was that protocol followed in this
18 particular case?

19 A. Yes, sir.

20 Q. At the conclusion of the case was the evidence turned
21 over by you to a Dillon County officer?

22 A. Yes, sir.

23 Q. Okay. Do recall who that officer was that you turned it
24 over to?

25 A. I'm not sure who it was. We had a little struggle in the

AGENT JACKSON - DIRECT EXAMINATION BY MR. REDMOND

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1 courtroom at that particular time, but I do --- I
2 remember giving it over to the proper --- to the proper
3 agency.

4 Q. And how many federal trials have you been involved in,
5 questamation? More than ten?

6 A. More than ten.

7 Q. More than twenty, probably?

8 A. More than ten, probably, I'm not sure how many.

9 Q. Between ten and twenty. And is that the protocol that is
10 followed in each case that you have done. You turn over
11 the evidence to the originating agents?

12 A. That is correct. Unless like I stated before, unless I
13 took possession of that evidence prior to.

14 Q. In other words, if there was a case involving a gun and
15 you were the one that actually collected the gun yourself
16 then you would hold onto that gun, is that correct?

17 A. That is correct.

18 Q. But if somebody else took it and you adopted the case
19 from another agency then the evidence would be turned
20 back over to that agency?

21 A. That is correct.

22 Q. Okay. And is that what happened here?

23 A. Yes, sir.

24 **MR. REDMOND:** Okay. Please answer any questions that
25 Ms. Copeland --

AGENT JACKSON - CROSS EXAMINATION BY MS. LITTLE

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1 Q. And I think I said it, but just to be clear. The
2 evidence in the Federal Trial was it introduced in that
3 trial. Was the evidence that we're referring to entered
4 introduced?

5 A. Yes, sir.

6 Q. Okay. And that was a jury trial?

7 A. That was a jury trial.

8 Q. Subject to cross examination?

9 A. That is correct.

10 MR. REDMOND: Okay. Please answer any questions that
11 Defense may have.

CROSS EXAMINATION BY MS. LITTLE

13 Q. Agent Jackson, you mentioned protocol would be to return
14 the property to the agency that made the case, is that
15 correct?

16 A. That is correct.

17 Q. So as part of your protocol would you normally get the
18 signature of the person you deliver that evidence to?

19 A. No ma'am, because actually most of the time they're right
20 there --- the officer is right there during the case.

21 Q. And if that officer was right there during the case would
22 you --- had you been with him during the case, would you
23 not remember his name?

24 A. We --- I work with so many of them, I'm not sure who it
25 was.

AGENT JACKSON - CROSS EXAMINATION BY MS. LITTLE

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1 Q. Okay. Well could you describe him to us, please?

2 A. Like I said, there is a lot of Counties or Sheriff's
3 Office --- officers that I work with, so I'm not sure
4 which one actually did what. At that point, like I said
5 we had a little struggle in the courtroom so that kind
6 of --

7 Q. Okay, so you can remember the struggle and you remember
8 directly after the struggle you handed this evidence over
9 that same day?

10 A. Yes, that is correct.

11 Q. And this happened --- Was this trial in 2008?

12 A. I'm not sure, two thousand --

13 Q. January of '08. And do you have any notes, would you
14 have kept any notes indicating what happened at that
15 trial or where you took the evidence?

16 A. No, ma'am.

17 Q. You wouldn't have any follow-up Investigative Report,
18 where you close your file and turn the evidence over to a
19 certain agency?

20 A. Well because it was never entered my agency as evidence
21 --- the --- When we adopt the case, we pretty much take
22 that particular case --- anything that the law
23 enforcement --- the Sheriff's Office may have, I ask them
24 to hold on to it. So they hold onto the evidence, so
25 then when we're ready for trial then we have them to

AGENT JACKSON - CROSS EXAMINATION BY MS. LITTLE

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1 bring it over. It stays in their possession at all
2 times until we go into the courtroom.

3 Q. Okay. And so immediately upon the end of the trial you
4 would give that back --- Would you normally give it back
5 to the lead investigator, or someone of authority at the
6 Sheriff's Office, or would you just give it to any old
7 deputy?

8 A. Well any old deputy is a deputy. He is a deputy. He is
9 a law enforcement officer that represent that county. So
10 if he's there representing that county then, yes, I can
11 give it back to that particular officer.

12 Q. Do you recall how long this trial lasted?

13 A. I'm not sure.

14 Q. But you can remember specific details about the scuffle,
15 what evidence was introduced. I believe you testified
16 that these items were introduced in Court?

17 A. Well I can remember certain things because of --- of how
18 long it lasted, I mean it took place back in 2008, I've
19 probably had numerous trials since then. But I can
20 remember the struggle, because your client, if he is your
21 client, he swung at one of the agents, and so that's
22 clearly I am going to remember that, clearly.

23 Q. But yet you don't remember what you did right after that?
24 Who you gave the evidence to?

25 A. Right.

AGENT JACKSON - CROSS EXAMINATION BY MS. LITTLE

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1 MS. LITTLE: I don't have any further questions.

2 MR. REDMOND: No redirect, Your Honor.

3 THE COURT: All right, thank you very much, sir. You
4 may step down.

5 AGENT JACKSON: Yes, sir.

6 THE COURT: All right.

7 MR. REDMOND: At this point and time unless there is any
8 objection, I think Agent Jackson needs to go forward with his
9 duties.

10 THE COURT: Sure. Any objection to Agent Jackson being
11 excused today?

12 (PAUSE)

13 MS. LITTLE: No objection.

14 THE COURT: Thank you, sir, you are free to go.

15 All right, and I think we discussed that once we got
16 Agent Jackson's testimony in, we'll recess this hearing and go
17 take probation matters, and give y'all an opportunity to,
18 continue working and then we'll have the balance of this and
19 other motions after that; is that correct?

20 MR. REDMOND: Yes, sir, Your Honor, that is my
21 understanding, Your Honor.

22 MS. SELLERS: Yes, Your Honor, that is correct.

23 THE COURT: All right, well, y'all are certainly welcome
24 to gather your things and move about wherever you need to go.

25 Let's go ahead and receive the probation matter.

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1 (Whereupon, this hearing stands down from 3:53 p.m.
2 until 4:36 p.m.)

MOTIONS

3
4 **THE COURT:** All right. We are back in the case against
5 Mr. Wright and the pre-trial matters that we're dealing with.

6 Let me ask y'all if you would, because I know we kind of
7 --- and I don't know that we took it out of order, but I know
8 we took just the testimony of Agent Jackson earlier and didn't
9 go any further, because we were just trying to get him out.
10 Have you got a list of what motions are we dealing with? What
11 pre-trial issues are we dealing with?

12 **MR. REDMOND:** I think the Defense --- I will yield to
13 the Defense. The State doesn't actually have any pre-trial
14 motions, but I will yield to the Defense.

15 **THE COURT:** All right.

16 **MR. REDMOND:** Agent Jackson was regarding, I think their
17 Motion to Suppress any evidence I guess given the lost
18 evidence, and I will yield to them on any other motions.

19 **THE COURT:** All right, Ms. Sellers?

20 **MS. SELLERS:** That is correct, Your Honor. It's just
21 our position that this evidence, the photographs of the bullet
22 and the shell casing that was retrieved from the victim's head
23 should be suppressed, because this information is highly
24 prejudicial, Your Honor.

25 And, Your Honor, it does violate my client's Fourteenth

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1 --- The due process rights --- his due process rights through
2 the Fourteenth Amendment, Your Honor.

3 The Solicitor has not been able to provide any additional
4 information from the photographs. I just received these
5 photos this morning, and we just have not had any opportunity
6 to have another expert to even analysis the photos themselves.

7 **THE COURT:** All right. Do you have anything that you
8 intend to put up?

9 **MS. SELLERS:** At this time, Your Honor, there is not
10 anything that we have to put up Your Honor, because I believe
11 we would need the SLED --- Mr. Paavel from SLED to come and
12 testify. We would just reserve our motion to be heard at that
13 time, since he is the actual person that took those photos.

14 **THE COURT:** If I'm not mistaking, and I want to use a
15 somewhat resent case, State verses Breeze, it indicates there
16 to establish a due process violation the Defense must
17 demonstrate one of two things. Either that The State
18 destroyed the evidence in bad faith, or if the evidence
19 possessed in an exculpatory value apparent before the evidence
20 was destroyed, and if the Defendant cannot obtain the evidence
21 of comparable value by any other means. So you certainly have
22 a showing that you have to show The Court to prevail on your
23 motion.

24 **MS. SELLERS:** Yes, Your Honor. And we believe that we
25 can establish that there was exculpatory value, because Your

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1 Honor, there were over five --- four to five different shell
2 casings. I believe, there were a total of thirty-three shell
3 cases that were actually recovered. The photos that we've
4 received only have one type of shell casing.

5 As we indicated, Your Honor, we have bullet fragments
6 from a Soviet caliber firearm. We have bullet fragments from
7 a .9 millimeter. We also have bullet fragments from a 380
8 auto-caliber, and also from a .45 auto, auto-caliber
9 cartridge. Your Honor, all the photos that we have received
10 specifically point or show that all the evidence, all the
11 bullets were from an automatic rifle, an assault rifle in that
12 position, Your Honor. And we believe that is because when Mr.
13 Wright was initially charged, and was sent to federal custody
14 for his trial. There was not a question as to if the bullet
15 that was received from the victim came from Mr. Wright's
16 weapon. The sole question from that report was whether or not
17 Mr. Wright possessed a gun, possessed any type of firearm.

18 Your Honor, based on the information that we have
19 received, we feel that it is highly prejudicial to present
20 this information to the jury, because again, they see no
21 pictures of any other shell casings other than the shell
22 casings that would fit a SK or an AK. There is eye witness
23 testimony, there were statements that were given the night the
24 incident took place that the gun could have been a AK-47 or an
25 SK. So, Your Honor, it is our position that if we were just

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1 to show the photos that we've received from SLED, Your Honor,
2 it would be highly prejudicial, it would cause the jury to
3 speculate, it would be in clear violation of Rule 403, and
4 this information will just confuse the jurors.

5 THE COURT: All right. Mr. Redmond.

6 MR. REDMOND: If it, please The Court, Your Honor. We
7 don't disagree that there were more than one gun being shot
8 that night. Here is the key thing and I think Ms. Sellers
9 mentioned it and it hit squarely on the head from The State's
10 position. This is a murder trial. The key part in this Your
11 Honor, and that is something that will be developed when Dr.
12 Proctor and Vello Paavel testify is that the bullets that we
13 do have fortunately have a picture of were the bullets that
14 were recovered from the victim's brain, and those were
15 obviously taken to SLED, and analyzed by Agent Paavel. He
16 would be able to testify what type of weapon those are fired
17 from.

18 Further, Your Honor, these items were tested. So again
19 that gets back to whether it's exculpatory. We're not
20 disagreeing that there was more than one shot fired. The
21 State is prepared to present evidence to explain how that all
22 took place, and it is actually --- the Defense has been
23 provided at The State's expense with the transcript from the
24 federal trial. In order out of fairness, Your Honor, I
25 provided that to them so that these things would be laid out,

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1 so there is no question that.

2 One. All these items were provided into evidence at the
3 federal trial.

4 Secondly, I would argue that the Defense has not made a
5 showing that they are exculpatory which as Breeze indicated is
6 one of the standards. Because again, just because there was
7 more than one shot fired this is a murder case. The one I am
8 concerned with is the one that came out of the victim. And
9 the evidence and the testimony will show and establish who had
10 the weapon that fired the bullet that ended up in the victim's
11 skull.

12 So with that, Your Honor, I think the Defense has failed
13 in that particular matter. I think the fact that we do have
14 photographs, we do have testimony, obviously I would have to
15 lay a foundation. I understand The Court is not telling me,
16 Mr. Redmond, you can merely go forward. I understand that I
17 will have to lay a foundation, and I fully intend to do so
18 through the witnesses that The State intends to proffer for
19 this trial.

20 So, we would respectfully request, that you deny this
21 Motion in limini, once the foundation is laid through the
22 witnesses regarding the photographs and the testing that was
23 done. I think that that will satisfy the standards to allow
24 us to go forward.

25 **THE COURT:** But if I were to do that then both of you

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1 understand that when we proceed in the morning --- Do you
2 intend to proffer these witnesses prior to the trial
3 beginning?

4 MR. REDMOND: I would --

5 THE COURT: -- My point is this. Until we rule on
6 those issues that is not going to be appropriate argument or
7 statements in your opening statements.

8 MR. REDMOND: I understand that. Usually I can tell
9 The Court that, because of that, just to give The Court
10 example. I think I was telling y'all back in chambers about a
11 case I had recently where it turns out there wasn't any DNA
12 that I could get into. Well, I didn't mention that, in my
13 opening statements because I've been around long enough know
14 sometimes you put your foot out, you put your neck out there
15 and then it gets chopped off.

16 THE COURT: And, you know, I am going to back up just
17 little bit. I guess I shouldn't say that it's not
18 appropriate. You can say what you want to say. It's liable
19 to come back and bite you.

20 MR. REDMOND: Exactly. Exactly.

21 THE COURT: Because, if you tell the jury about certain
22 evidence that you intend to put in and then it is kept out,
23 then Ms. Seller's, I'm sure, will beat you about your head and
24 shoulders with it at some appropriate time.

25 MR. REDMOND: And will probably enjoy doing so, Your

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1 Honor.

2 THE COURT: I would imagine. Well, it appears then at
3 this time that we're a little premature with regards to the
4 admissibility of this evidence. I do, at least at this stage,
5 and I am going to leave the door open for the Defense.

6 At this stage I don't find that there has been any
7 showing of due process violation to this point. It may be
8 that it is flushed out as we go into the case, and we do hear
9 from the witnesses, and we will deal with that at that time.
10 But at this point, based on what has been presented to The
11 Court, I do not find that the Defense has adequately
12 demonstrated that either of the prongs of bad faith or the
13 evidence possessing exculpatory value has been shown. And so
14 as I said, I am not closing the door to that argument later as
15 we flush that out.

16 MR. REDMOND: Thank you, Your Honor.

17 MS. SELLERS: Your Honor, there are a couple of other
18 motions that we have.

19 THE COURT: Yes, ma'am.

20 MS. SELLERS: I think we discussed, back in chambers
21 about the Motion to Sequester, The State's witnesses.

22 THE COURT: Yes.

23 MS. SELLERS: I believe that issue was addressed.

24 MR. REDMOND: And as long as it is reciprocal, no
25 objection, Your Honor.

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1 **THE COURT:** All right. What we'll do then is when we
2 being --- Now, keep in mind that when we're sequestering
3 witnesses that will be from the beginning so that even during
4 opening statements --- In other words, when we start the trial
5 any witnesses in this case will have to be outside the
6 courtroom and we will just bring them. Obviously, does not
7 include your leading investigating officer but everyone else.

8 **MR. REDMOND:** Thank you.

9 **MS. SELLERS:** And for clarification, who is the lead
10 investigator?

11 **MR. REDMOND:** Actually that would be Lieutenant
12 Campbell, but during the course of the trial Cliff Arnett ---
13 Captain Arnett assisted, but just out of an abundance of
14 caution Lieutenant Campbell will probably be in here, and once
15 Cliff Arnett testifies then --- And it's The Court's position
16 that once the witnesses testify that they are allowed to
17 remain in the courtroom.

18 **THE COURT:** Once a sequestered witness has been on the
19 stand and testified and cross examined, any objection to that
20 witness then remaining in the courtroom?

21 **MR. REDMOND:** That would be --- Your Honor, okay.
22 Thank you.

23 **MS. SELLERS:** I think I answered to quickly.

24 **MR. REDMOND:** No, no.

25 **MS. SELLERS:** Your Honor, there is another matter. We

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1 were told earlier that Mr. Jackson --- Mr. West Jackson with
2 the ATF, would provide us with a Miranda Waiver, and he would
3 possibly be called as a witness for The State. Your Honor,
4 today we have not received that information. We have not
5 received that Miranda Warning, and we just ask that any oral
6 statements given by my client should be suppressed.

7 **MR. REDMOND:** And I think Your Honor knows me well
8 enough that I believe in fairness, and the Defendant is
9 entitled to a fair trial as is The State. As a matter of
10 fact, Ms. Sellers and I have corresponded over the last couple
11 of weeks regarding just that, never got it. There were
12 statements given. I would not call them confessions, but
13 there were statements given. But out an abundance of
14 precaution I am not getting into that, not getting into any
15 statements that Defendant gave to law enforcement. Now he
16 made statements that night that we allege are admissible, but
17 not any statements that he gave to law enforcement --

18 **THE COURT:** -- So any statements that would be related
19 to Officer Jackson's gathering of Miranda Form. You are not
20 intending to go into that?

21 **MR. REDMOND:** That is correct because we never did get
22 that waiver so with that, I am not even --- that is a moot
23 point as far as The State is concerned. We will comply and
24 not get into that.

25 **THE COURT:** All right.

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1 **MS. SELLERS:** And, Your Honor, just a last matter, is
2 that we were given some photographs of the victim. Your
3 Honor, we do have a Pathologist Report, and I believe he is
4 going to come here and testify but I don't know exactly which
5 day. But, Your Honor, we just --- we believe that --- The
6 Solicitor has indicated that he does not anticipate using
7 these photographs. Your Honor, we would just like to note for
8 the record that we object to any of these photographs being
9 used. We would ask that these photographs to also be
10 suppressed, because, Your Honor, they are just highly
11 prejudicial. I believe he is going to have the doctor to come
12 in and speak as to the cause of death, and these photos will
13 not add or aid the jury in any way in determining the cause of
14 death.

15 **MR. REDMOND:** And, Judge, I don't disagree. The only
16 thing like I've already told her, if a door is open I will ask
17 to walk through it. But as it relates to me initiating that,
18 even though there is the Martucci Case that came down back in
19 September that is hovering around on some of these issues, I
20 don't think that we rise to that level at this point unless
21 there is something through the course of the defense that
22 comes up, and then I might ask The Court to allow it. But I
23 can tell The Court at this point it is not my intention to get
24 into those pictures based on the circumstances. I don't think
25 it rises to the standard of Martucci to be assisting in the

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1 testimony of any particular witness but I reserve the right to
2 change depending on what tactic the defense takes, but as far
3 as me initiating it, no, sir.

4 **THE COURT:** All right. At this point, Ms. Sellers, Mr.
5 Redmond does not intend to go into those photographs.

6 Anything further?

7 **MS. SELLERS:** And that concludes the motions from the
8 Defense at this time.

9 **MR. REDMOND:** Nothing from The State.

10 **THE COURT:** All right. Well, we got the jury returning
11 at 9:30. I would like for us to be ready to go at 9:30. Is
12 there anything --- I am going off this case for a moment --

13 Is there anything that we need to take up --- any
14 business we need to take up prior to that --- and not
15 necessarily in this case?

16 **MS. SELLER:** Just marking some exhibits, Your Honor.

17 **MR. REDMOND:** I was going to say if we could get here
18 earlier enough --

19 **THE COURT:** I would like for you to do that.

20 **MR. REDMOND:** We can do that.

21 **THE COURT:** But if y'all will go through the exhibits
22 with each other, let's get them premarked at least for
23 identification purposes if not possibly maybe some matters can
24 be stipulated to, if not that's fine, but at least let's get
25 them premarked in the morning if we can do that.

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1 **MR. REDMOND:** And I will be here --- and not speaking
2 for Madam Court Reporter, but just so she will know I will be
3 here usually by 8:00, 8:30 during a trial. And she's looking
4 at me like, yeah, right. And so I'm thinking --

5 **THE COURT:** It won't take long to get those --

6 **MR. REDMOND:** I'll be here though. I don't have a whole
7 lot of exhibits, so it shouldn't take too long.

8 **MS. SELLERS:** Your Honor, there is one additional
9 matter. It's --- I'm not sure if the Solicitor's Office
10 intends to use a photograph of an AK-47, or actually bring an
11 actual AK-47 in for demonstrative purposes.

12 **MR. REDMOND:** Yes, we intend --- And I think I had
13 mentioned this in pre-trial earlier. I do intend to bring an
14 AK --- I am not introducing it, because it's not the weapon.
15 But for demonstrative purposes I am at least planning on,
16 because as it was done in the federal trial that was actually
17 utilized for the witnesses, and for the benefit of the jury,
18 and I think it's allowed to be able to give them an
19 understanding of what type of weapon we are talking about.
20 Again, as long as the foundation is laid, and just from what I
21 have reviewed I feel confident that we can lay that
22 foundation.

23 **MS. SELLERS:** We just simply ask that we have an
24 opportunity to, you know, observe --

25 **MR. REDMOND:** -- Absolutely.

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1 **MS. LITTLE:** Before it's brought into the courtroom, we
2 would like to take a look at it.

3 **MR. REDMOND:** No objection at all. I will make sure ---
4 As a matte of fact, I have asked for it to be there first-
5 thing in the morning so that we could do just that.

6 **THE COURT:** And I hope I don't have to say the obvious.
7 No ammunition, and I want gun locks on it.

8 **MR. REDMOND:** And I am not pointing it. As a matter of
9 fact, Your Honor, I hate weapons so if I'm holding it --

10 **THE COURT:** But you're the worst kind. It's guys like
11 you that --

12 **MR. REDMOND:** Thank you, Judge.

13 **THE COURT:** I got a lot more confidence in someone who
14 knows how to handle a weapon rather than someone such as
15 yourself.

16 **MR. REDMOND:** Whether than an novelist.

17 **THE COURT:** Who would be brining it Mr. Redmond?

18 **MR. REDMOND:** Actually it is one --

19 **THE COURT:** SLED?

20 **MR. REDMOND:** No, it's actually a Dillon police officer.

21 **THE COURT:** One of the officers --- It just needs to
22 have a gun lock on it.

23 **MR. REDMOND:** Okay. I will be sure. I will call them
24 when we leave here and make sure it's locked.

25 **THE COURT:** Anything further?

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1 MS. SELLERS: Nothing further.

2 THE COURT: We will be in recess then til 9:30.

3 MR. REDMOND: Thank you, Your Honor.

4 THE COURT: We are going to start at 9:30 now so be
5 ready.

6 MR. REDMOND: I've got my witnesses here at 9:00.

7 (Whereupon, the courts concludes its business for
8 the day at 5:00 p.m.)

9 -- END OF DAY ONE OF TRIAL --

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1 (Whereupon, The Court begins its proceedings for the
2 second day of trial at 10:00 a.m. on May 19, 2009.)

3 -- DAY TWO OF TRIAL --

4 **THE COURT:** Good morning, ladies and gentlemen, please
5 have a seat.

6 Now let me ask you Solicitor and Ms. Sellers, did ---
7 have y'all gone through this transcript, because before you
8 get to the point that you are going to have someone take the
9 stand to read it, we talked about y'all going through it and
10 seeing if anything needed to be redacted. And I don't know
11 when at what point you would intend to try to use it. It may
12 be that we could take a recess and let you do that at that
13 time, but I don't know.

14 **MR. REDMOND:** It wouldn't be early on. I can tell The
15 Court that I will have at least five witnesses before I get to
16 that.

17 **THE COURT:** Would you anticipate getting to this today?

18 **MR. REDMOND:** Absolutely. I'm sure I'll get to it
19 today.

20 **THE COURT:** Okay. Sounds like it would be after lunch.

21 **MR. REDMOND:** Depending on how long cross examination is
22 I don't anticipate being to overly long on any of the
23 witnesses. I don't know how long cross might be.

24 **THE COURT:** Well, let me do this. Do you have --- and
25 I am just asking --- do either of you have someone who you

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1 would trust to be able to know what they were looking for to
2 be able to read through it to see if there is anything, you
3 know, while we are going forward. Anyone in your offices?

4 MR. REDMOND: We could do that, Judge. I could look
5 through it. There may be something from the defense
6 standpoint. I have read through it.

7 THE COURT: Well, I know you want the whole thing in. I
8 understand that. But Defense is not going --- And you know,
9 guys I am going over this with you there may be there is
10 absolutely nothing in there, that needs to be redacted. It
11 may be that nothing needs to be redacted. I just --- I don't
12 know because I haven't read it. I am going to let Marshall,
13 if he would like to, since he is probably going to be the
14 witness, let him read it. Anyway, I just wanted to bring that
15 to your attention so that it doesn't sneak up on is.

16 MS. SELLERS: Your Honor, I had a copy of the transcript
17 and we --

18 THE COURT: And, Rosalind, don't get me wrong. I don't
19 want to take the attention away but if you need somebody to be
20 paying attention to something here, I just didn't know if
21 y'all had somebody else that --- if there are any other
22 lawyers over here or whatever.

23 MS. SELLERS: Well not at this time, Your Honor, I
24 believe that Ms. Brown is in the ack working on pleas. I did
25 speak to the Solicitor about this matter early this morning

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1 and it's my preference that we address this matter after lunch
2 so we can both sit down and have a chance to discuss what may
3 be needed to be redacted if anything.

4 **MR. REDMOND:** And I have no problem with that, Judge.

5 **THE COURT:** And I'm not trying to dictate, Mr. Redmond,
6 the order of your witnesses at all. I want you to try the
7 case however you want to try it. So, if we do reach a point
8 that we feel we're going to reach before the lunch period, you
9 just let me know and we will take a recess and give you an
10 opportunity to do that.

11 **MR. REDMOND:** Yes, sir. And, Judge, as far as a
12 housekeeping matter --

13 **THE COURT:** Yes, sir.

14 **MR. REDMOND:** -- Before we went back we had a chance to
15 look through some exhibits, and I can put on the record the
16 exhibits --- Some of these exhibits are going to be dealt with
17 tomorrow, but the ones that I think that we can agree to, I
18 can go forward with Ms. Sellers here to make sure that I have
19 got it correct.

20 State's Exhibit Number 1, obviously is only for
21 demonstrative purposes. I am not planning on introducing
22 that, That's the --

23 **THE COURT:** Is that's the gun?

24 **MR. REDMOND:** One and 1-A, is the banana clip. Both of
25 those are for demonstrative purposes only.

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1 **THE COURT:** We'll deal with that in a minute, but go
2 ahead.

3 **MR. REDMOND:** And then I got State's Exhibit Number 2,
4 which is the diagram prepared by Cliff Arnett, my first
5 witness and the Captain with the Dillon Police -- excuse me,
6 The Dillon Sheriff's office.

7 State's Exhibit 3 is a triangulation regarding the bullet
8 locations as is State's Exhibit 4; and State's Exhibit 5,
9 again prepared by Captain Arnett.

10 Then we've got State's Exhibit 6, which is a listing of
11 the evidence that was collected at the crime scene and then
12 State's Exhibit Number 7, is again crime scene evidence that
13 was prepared by Captain Arnett.

14 State's Exhibit Number --- then we skip to State's
15 Exhibit Number 8 is --- We'll get into that that's actually
16 --- I've had that marked, that is the testimony of Mr. McCall
17 in the prior trial.

18 State's Exhibit Number 11, is a picture from the Blue
19 Moon.

20 Just so The Court will know the autopsy report is State's
21 Exhibit Number 9, and State's Exhibit Number 10.

22 SLED Firearms, I will dealing with those tomorrow.

23 That is why I skipped to State's Exhibit Number 11 which
24 is a picture of the Blue Moon sign.

25 State's Exhibit 12, is a picture of the Blue Moon from

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1 the front.

2 State's Exhibit 13, is a picture of the Blue Moon from
3 the front.

4 State's Exhibit 14, is a picture from the right side of
5 the Blue Moon with the bathroom being prominent in that
6 picture.

7 State's Exhibit 15, is a shot from the right side of the
8 club a little further away.

9 State's Exhibit 16, is a view of the left side of the
10 club.

11 Then State's Exhibit 17, is six envelopes that were
12 actually done by the Dillon Sheriff's office when evidence was
13 collected.

14 State's Exhibit 18, is six more envelopes with Dillon
15 County Sheriff's office at the time they collected evidence.

16 State's Exhibit 19, are one, two, three four, --- how
17 many is that --- fifteen brown envelopes --- small brown
18 envelopes with evidence that was collected.

19 State's 20, I'm not getting into right now, that will be
20 tomorrow.

21 State's 21, is a close up of 2-B, which is a fired
22 cartridge shell that was collected by Dillon County Sheriff's
23 office and they will be able to authenticate that.

24 And then finally State's Exhibit 22, is a picture of an
25 unfired bullet that is marked with an envelope number 6, also

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1 one of the item collected.

2 And finally State's Exhibit 28, Your Honor, is a picture
3 taken by Lieutenant Campbell with the Dillon County Sheriff's
4 Office at the time of a bullet hole in the car where the
5 victim was seated at the time he was shot.

6 Those would be the exhibits that The State anticipates
7 getting into today. I think most of those are without
8 objection and may be a couple of issues.

9 MS. LITTLE: We would just like to argue on the record
10 about these two, 21 and 22, State's 21 and 22. May we
11 proceed?

12 THE COURT: What are 21 and 22?

13 MS. LITTLE: Twenty One is a cartridge casing that was
14 found at the scene, just one of several. Twenty Two is a --

15 THE COURT: -- Another cartridge.

16 MR. REDMOND: It is an unfired --- that is an unfired --

17 MS. LITTLE: -- 7.62x39 cartridge. Your Honor, we would
18 object to these being admitted. They were several found.
19 They have pictures of envelopes of everything else. You know,
20 it would be highly suggestive to the jury, just to show these
21 two when, in fact, they are not showing all these other types
22 of casing that were fired that night.

23 I beg The Court's indulgence.

24 THE COURT: Let me ask you so that I get clarification.
25 State's 21 and 22 are the actual photographs of a casing and a

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1 bullet that were found at the scene that night?

2 MR. REDMOND: Actually. These are --

3 THE COURT: -- All right. So those aren't --- those
4 aren't like this is being used demonstratively, those were
5 found?

6 MR. REDMOND: Exactly. These were found.

7 THE COURT: All right, go ahead.

8 MS. LITTLE: Yes, Your Honor. We just believe that it
9 would be highly suggestive to the jury and the prejudicial
10 value would outweigh the probative effect. In fact, we argue
11 that it's not probative, Your Honor. Again, these are only
12 two out of some thirty-four different cartridges and items of
13 evidence that were found that night. There is going to be
14 testimony that there could have been as many as seven different
15 guns fired that night. There were five different types of
16 cartridges found total, maybe actually more, Your Honor.
17 Because, some were Russian made, some were Chinese made and
18 there is going to be evidence that there may have been five
19 different guns. We just believe that entering these photos
20 without photos of other casings found that night or bullets
21 would be highly prejudicial, and that the prejudicial value
22 would outweigh the probative effect. And also, Your Honor,
23 that this may confuse or mislead the jury because they won't
24 be getting a complete picture of evidence that was found that
25 night. You are singling these out because it's going to be

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1 their contention that this is the type of bullet that killed
2 the victim. Obviously, we're going to dispute that.

3 **THE COURT:** All right.

4 **MR. REDMOND:** Judge, I would just simply say that the
5 fact that we don't have all the evidence and I think she has
6 just eloquently stated what she could argue to the jury. The
7 fact is it doesn't matter whether I have all of it, I at least
8 have this that was collected at the scene that night. As we
9 discussed earlier, she is going to have more than ample
10 opportunity to discuss what we don't have or what we don't
11 have pictures of. I would say, that goes too not to
12 admissibility, but that goes to the weight of the evidence
13 which is, of course --- is up to the jury to decide. So I
14 think, you know, she eloquently stated what is a jury
15 argument, but for the purposes of admissibility, Your Honor, I
16 would just say that clearly those were --- There is no
17 question those were the bullets that were collected at the
18 scene that night, and so we would ask that they be introduced.
19 If they are not --- and just I guess to be on the safe side,
20 once I put the officers up they will be able to lay the
21 foundation for that. That they did collect --- that this was
22 collected at the scene, and then I think that will cure any
23 admissibility issues.

24 And do I understand the Defense is saying the rest of
25 these --- you do not object to --

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1 **MS. LITTLE:** -- We agreed that you were going to enter
2 these today?

3 **MR. REDMOND:** Yes. Not tomorrow, just today.

4 **MS. LITTLE:** Okay.

5 **THE COURT:** What we just went over on the record today,
6 there is not an objection other than to Number 21 and 22, is
7 that correct?

8 **MS. LITTLE:** That is correct, Your Honor.

9 **THE COURT:** All right. So those are in without
10 objection.

11 **WHEREUPON, STATE'S EXHIBIT**
12 **NUMBERS 2, 3, 4, 5, 6, 7, 8, 11,**
13 **12, 13, 14, 15, 16, 17, 18, AND**
14 **19 WERE MARKED AND ADMITTED INTO**
15 **THE RECORD.**

16 **THE COURT:** And now with regards to 21 and 22. Ms.
17 Little, I'm not --- I've tried to think of a situation whereby
18 --- I am not aware of any law that requires that The State put
19 in all the evidence that was collected at a crime scene. The
20 evidence that is being presented, as long as they can lay a
21 foundation, a proper foundation to establish that these were
22 in fact taken from the crime scene, and were properly tagged
23 and placed into the chain of evidence, I am going to deny your
24 Motion to Suppress those. I do think there are admissible.
25 Now whether or not the fact that The State has not put forth

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1 additional evidence that was collected is certainly fodder for
2 you to argue to a jury as well in cross examining any witness
3 that The State puts up regarding that, and certainly would
4 allow you great latitude to do that. But as far as regarding
5 the admissibility I don't think that that would affect the
6 admissibility. And assuming The State can --- And let me ask
7 this, based on my ruling. Do you still --- I guess you are
8 still going to want The State to put forth a proper foundation
9 for those so that you could cross examine?

10 **MS. LITTLE:** Yes, Your Honor.

11 **THE COURT:** So assuming The State can lay a proper
12 foundation then I will those in, of course, if they don't then
13 it will just be subject to be excluded based on without laying
14 a proper foundation.

15 **MR. REDMOND:** Thank you, Your Honor.

16 **THE COURT:** Okay.

17 **MS. LITTLE:** Thank you, Your Honor. Your Honor, just
18 one more.

19 **THE COURT:** Yes, ma'am.

20 **MS. LITTLE:** We would object to the use of the AK-47 and
21 the banana clip that the Defense has brought --- I'm sorry,
22 State has brought for demonstrative purposes.

23 Again, under Rule 403 argument, Your Honor, there is
24 going to be evidence at least four or five different types of
25 firearms could fire a 7.62x39 cartridge.

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1 Your Honor, we believe that with showing the gun is going
2 to be confusing to the jury, because there is not any evidence
3 that that is exactly the type of gun that was used that night.
4 We are afraid that the jury may be mislead. Also, the gun is
5 very intimidating looking, Your Honor. For public policy
6 reasons we would submit that it should be excluded from the
7 courtroom.

8 And again, in case I didn't make the argument, we also
9 believe it's highly prejudicial and that the prejudicial
10 value, the probative value would be out weighed by the
11 prejudicial nature of the gun.

12 **THE COURT:** All right. Mr. Redmond?

13 **MR. REDMOND:** Judge, usually when Defense makes the
14 argument that it is prejudicial, of course, the fact that
15 there is an indictment and he has been charged is prejudicial.
16 The issue is the probative value. There is going to be a ton
17 of testimony about it being an AK-47. Obviously, the rules
18 allow the jury to --- The State to present the demonstrative
19 evidence regarding what is being discussed. We are not
20 seeking to introduce it. It will be clearly stipulated that
21 it is not the murder weapon, in fact, we did not recover the
22 murder weapon. That will be stipulated. I will address that
23 in my opening statement. But for demonstrative purposes now I
24 think it's allowed.

25 Obviously, I will be very careful with that particular

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1 weapon. And we will not be excessive as it relates to that,
2 but will not be --- for lack of a better term, be unsafe with
3 it. But is locked by way, it is locked and the clip is
4 outside. The clip will not go back in there because of the
5 lock, so we made sure that all the safe guards were in place.
6 And so I would just simply say that I think clearly it is
7 allowed to be entered into demonstrative evidence.

8 **THE COURT:** All right, I am going to note Defense's
9 objection to the use of the rifle for demonstrative purposes,
10 however, I am going to overrule that objection. I don't see
11 where it's not --- I don't see it not being proper. It will
12 not be going --- I guess I should say I am going to allow him
13 to use for demonstrative purposes. It is not evidence, and it
14 will not be admitted into evidence; nor will it go back for
15 the jury to examine.

16 Now, having said that, Mr. Redmond, because it is for
17 demonstrative purposes, and I'm sure I don't need to this, I
18 am not going to allow the jury to examine it.

19 **MR. REDMOND:** That's fine. I will not present it to the
20 jury for examination.

21 **THE COURT:** All right.

22 **MS. LITTLE:** Your Honor, and when we get to that time in
23 the trial, of course, I will just make objection for the
24 record of previous reasons given to The Court.

25 **THE COURT:** What we will do is, when he --- because I do

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1 think your objections need to be contemporaneous. So when he
2 makes --- So when he goes to use that item if you would just
3 say we would like for you to note our objection.

4 **MS. LITTLE:** Okay, thank you, Your Honor.

5 **THE COURT:** And, I'll do that. Anything further before
6 we bring the jury in?

7 **MR. REDMOND:** Nothing further from The State, Your Honor

8 **MS. LITTLE:** No, Your Honor.

9 **THE COURT:** All right, let's ask the members of the jury
10 to join us, please.

11 (Whereupon, the jury enters The courtroom at 10:17
12 a.m.)

13 **PRELIMINARY REMARKS BY THE COURT**

14 **THE COURT:** All right. Good morning, ladies and
15 gentlemen, and I thank you for being here on time and for your
16 patience.

17 We didn't get started at 9:30 with you although we've
18 been here since 9:30. We took up some matters, some pre-trial
19 matters that in all candor just will allow the trial to run
20 more smoothly as far as fewer interruptions during the actual
21 trial itself. We took care of some matters in a pre-trial
22 fashion that would allow the trial to go more smoothly once we
23 get started. So, thank you for your patience in allowing us
24 to do that.

25 Ladies and gentlemen, we are now ready to begin the trial

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1 of the case of The State of South Carolina versus Jeremy
2 Wright. Before I begin or before we begin this trial I want
3 to tell you that this trial may be very different from what
4 you might expect or what you've been exposed to. Most people
5 don't have the opportunity to sit in a real trial such as you
6 having that opportunity this week. Most peoples experience
7 with regard to jury trials are whatever they've seen on
8 television, or in the movies, or they have read in books.
9 And, of course, as we all know that is Hollywood. Those
10 trials are always full high drama, intense action and riveting
11 circumstances.

12 Now during the course of this trial while any or all of
13 those things may occur during the course of this trial, what I
14 need for you to understand is that this trial is not for your
15 entertainment. This trial is a fundamental part of our
16 democracy. It is a search for the truth, in an effort to make
17 sure that justice is done between the parties that are before
18 The Court. Searching for the truth and making sure that
19 justice is done often times is very deliberate, sometimes
20 repetitive, and slow. Very much the opposite of what you've
21 seen in movies or television or what you've read in books.
22 This courtroom is a place of honor that is dedicated to the
23 protection and preservation of citizens rights, through what
24 many have called the greatest justice system ever created.
25 The attorneys that appear before you are advocates for the

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1 parties that they represent, but first and foremost they are
2 Officer's of this Court, sworn to uphold the integrity and the
3 fairness of our judicial system. You should expect them to be
4 professional, competent, and ethical in the representation of
5 their client's interest. It is their duty to help you in
6 your search for the truth.

7 Now in just a moment you are going to take an oath to try
8 this case and to reach fair and a just verdict. And so you
9 will be also expected to be professional, reasonable, and
10 ethical in the performance of your duties and I have
11 absolutely no doubt that you will do that, and I want to thank
12 you for your willingness to serve.

13 Now, before we go any further, I am going to ask you if
14 you would to give Madam Clerk your attention and she is going
15 to place you under your oath for service in this trial.

16 **CLERK OF COURT:** Ladies and gentlemen, please stand and
17 raise your right hand.

18 **WHEREUPON, THE JURY IS**

19 **SWORN AT 10:25 A.M.**

20 **CLERK OF COURT:** You can be seated.

21 **THE COURT:** Ladies and gentlemen, what I am going to
22 tell you at this time is intended to serve as an introduction
23 to the trial of the case. These remarks are not charge on the
24 law; however, I will instruct you on the law that is
25 applicable to this case at the end of this trial, before you

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1 retire to your jury room to deliberate and reach a verdict.
2 This is merely an explanation of the procedures that we are
3 going to follow during the course of this trial so that you
4 may better understand what is going on or what is happening
5 during the course of this trial.

6 How, the Defendant Mr. Wright is charged in this case as
7 I indicated to you earlier by an indictment that is filed with
8 The Court and he is before you on two indictments. The first
9 being the indictment on the charge of murder. The second
10 being an indictment on the charge of possession of a weapon
11 during the commission of a violent crime. The evidence of
12 these crimes I will explain to you later. These indictments,
13 ladies and gentlemen, are simply the charge by which this case
14 is brought into Court, and is not in any sense evidence of the
15 allegation that they contain. The Defendant has plead not
16 guilty to these indictments, and therefore The State has the
17 burden of proving each of the elements of these indictments
18 beyond a reasonable doubt. It will be your duty ladies and
19 gentlemen to decide whether or not The State has met that
20 burden. Your purpose as jurors is to find and to determine
21 the facts of this case. You are the sole judges of the
22 facts. If at any time I make any comment regarding the facts,
23 you must disregard those comments because I am not to have any
24 role in your decision on deciding what the facts are in this
25 case. You have to determine the facts from the testimony

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1 that you hear and any other evidence that may be introduced
2 during the course of this trial. It is up to you to
3 determine the inferences which you feel may be properly drawn
4 from that evidence. It is especially important that you
5 perform your duty of determining the facts diligently and
6 consciously, because ordinarily there is no way to correct an
7 erroneous determination of facts by a jury.

8 Now on the other hand and with equal emphasis the same
9 law that makes you the judges of the facts makes me the Judge
10 of the law. The law is given to you by The Court. It's the
11 only law that you are to consider. You must accept and
12 follow it even though you may disagree with it. Ladies and
13 gentlemen, I am not allowed to tell you what the facts are in
14 this case, and on the other had you are not allowed to
15 disagree with me about what the law is or what you think it
16 should be. Your job is to take the law as I give it to you
17 and apply to the facts as you find the facts to be from the
18 testimony of the witnesses and any other evidence that comes
19 into this case. After doing that, you will render you
20 verdict. A true and a just verdict under the solemn oath that
21 you have taken to work as a juror in this trial.

22 Now, until I advise you to begin your deliberations it is
23 very important that you have no conversation with anybody
24 about this case and about this evidence that is presented.
25 That includes, and this may sound odd, but that includes your

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1 fellow jurors. You are not to have any conversation about
2 this case amongst yourselves until we have completely finished
3 the case. All of the evidence is in. The lawyers have had an
4 opportunity to make their closing arguments, and that I have
5 charged on you on the law. Only then is it proper for you to
6 have discussion about the facts of this case. During the
7 course of this trial there will be opportunities for you leave
8 the courthouse, to go have lunch, and it is important that
9 while you are away from the courtroom that you have no
10 communication with anybody about this case. Now the lawyers
11 are very professional; they have done this for along time and
12 they know the rules. They understand that during the course
13 of this trial while this trial is proceeding, they are not
14 have any communication with you. So if you go to lunch and if
15 you're leaving the courthouse or coming back in, and you see
16 one of them outside or in the hallway or whatever if they
17 don't speak to you, or if they're not very friendly, please
18 don't take it personal. These are wonderful it's just they
19 know that while this case is going on, they're not to have any
20 contact with you, so please don't hold that against them in
21 any way.

22 During the trial also --- and I mentioned this to you
23 yesterday, please do not listen to or read any news reports
24 that may surface regarding this trial. I will be honest with
25 you. I am not aware that there are any. I don't think there

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1 is any reporters here in the courtroom, so I'm not aware that
2 there is anything that is going to be in the news, but if
3 there is it is very important that you stay clear of that and
4 avoid that. It is important that you keep an open mind and
5 that you do not decide any issue in this case until all of the
6 parties have made --- that presented any evidence that is
7 going to be presented, they've had an opportunity to make
8 their closing arguments, and that I have instructed you on the
9 law. It is your responsibility to determine the guilt or the
10 innocence of the Defendant. And your verdict must be based
11 solely on the evidence as it is presented during the course of
12 this trial and on the law as I instruct you.

13 In just a moment I will recognize Mr. Redmond as the
14 Solicitor for his opening statement. During that opening
15 statement he will explain to you what the issues are in this
16 case, or at least what he believes the issues are in this
17 case. When he is finished, I will recognize Ms. Sellers and
18 she will have an opportunity to also make an opening
19 statement, although she is not required to. What you need to
20 understand is this. That what the lawyers tell you in their
21 opening statements is not evidence. It is only their
22 contention as to what they believe the evidence is in this
23 case or what the evidence will show you. The evidence in this
24 case will be presented to you by the testimony of witnesses
25 who are sworn under oath and placed on the witnessed stand and

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1 questioned from the witness stand. That is evidence. Other
2 evidence maybe any exhibits which may come in during the
3 course of the trial. This is the evidence that is going to be
4 presented to you.

5 Now from time to time during the course of the trial you
6 may hear one of the attorneys say something along these
7 lines, excuse me, Your Honor, we have a matter of law we
8 need to take up with The Court, or Judge may we approach
9 the bench. During those times I might find it necessary to
10 ask you to step back into your jury room to leave the
11 courtroom for a moment, so that I can discuss a matter of law
12 with the lawyers. The reason that I might ask you to step out
13 of the courtroom is because at times when I am discussing a
14 matter of law with the attorneys it may be necessary for me
15 to make some comment about the facts in connection with a
16 ruling. Obviously, as I told you earlier I am not to have any
17 influence over you with regards to the facts of this case. So
18 to protect you from that I may ask you to step out of the
19 courtroom so that I can freely talk with the lawyers about
20 whatever issue I need to discuss with them.

21 Now, in determining what the true facts are in this case,
22 you have to decide whether or not testimony that you hear from
23 a witness is believable. It is going to be my responsibility
24 to rule as a matter of law as to whether certain testimony is
25 admissible at all but once testimony is admitted, whether or

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1 not you believe it is solely up to you to decide. In deciding
2 whether to believe a witness you have the right to consider
3 the interest of any witness, the bias of a witness, the
4 opportunity for the witness to have seen or heard the things
5 about which they testified to, the way a witness acts on the
6 witness stand. You have the right, ladies and gentlemen, to
7 consider anything that is in this record that will help you to
8 evaluate the testimony of the witnesses. That means it is
9 your duty to pay close attention to the witnesses, observe
10 those witnesses, listen to them, pay close attention to
11 lawyers and The Court. Please don't let your thoughts
12 wonder, but give strict attention to everything that goes on
13 during the course of this trial. If you do that, after the
14 testimony of the witnesses, the evidence has ended, the
15 lawyers have made their closing arguments to you, and then I
16 have charged you on the law, you will be in a position to
17 determine what the true facts are in this case and to render a
18 verdict that speaks the truth.

19 Now in just a moment I am going to recognize the
20 attorneys for their opening statements, but before I do that,
21 let me ask, are there any exceptions or objections from The
22 State with regards to The Court's opening comments?

23 **MR. REDMOND:** Not from The State, Your Honor.

24 **THE COURT:** Anything from the Defense?

25 **MS. SELLERS:** Nothing from the Defense, Your Honor.

OPENING STATEMENT BY MR. REDMOND

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1 **THE COURT:** Ms. Sellers, Mr. Redmond, could I get y'all
2 to step over here well quick. I need to you ask you one quick
3 thing and then we will get started.

4 (Whereupon, a bench conference was held in the
5 presence of the jury but out of the hearing of the jury.)

6 **THE COURT:** All right, ladies and gentlemen, please give
7 the attorneys your close and undivided attention. Mr.
8 Redmond, recognize yourself.

9 **MR. REDMOND:** Thank you, Your Honor, may it please The
10 Court.

11 **THE COURT:** Yes, sir.

12 **MR. REDMOND:** Ms. Sellers.

13 OPENING STATEMENT BY MR. REDMOND

14 Ladies and gentlemen, my name is again is, Kernard
15 Redmond. I am a Deputy Solicitor here for the Fourth Circuit
16 as I explained to you yesterday. Again, assisting me in this
17 trial will be, Assistant Solicitor Shipp Daniel who is from
18 here in Dillon. But this case isn't about us. That is my
19 introduction. You will get to hear enough from me as this
20 case goes forward.

21 This case is about an incident that occurred on the 17th
22 of June 2007. This case is about a young man, Kelvin Smalls,
23 who was out at the Blue Moon out on Harlees Bridge Road here
24 in Dillon County. This case is about the fact that he played
25 pool, left because he was tired, went to this car that was

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1 with some people he had rid with and wanted to go to sleep.
2 And that's when this case takes a tragic turn, because the
3 Defendant, seated right there with his attorney, Jeremy
4 Wright, and some friends decide they want to go to the Blue
5 Moon. And, here's the problem. They decide they want to go
6 to the Blue Moon and stir up some trouble. It had nothing to
7 do with Mr. Smalls. Again, minding his own business, playing
8 some pool, going outside to try to sleep, to take a nap. Then
9 Jeremy Wright comes with some friends. He decides that he
10 wants to get into the club. And you will hear testimony about
11 what transpired as he was trying to get into the club. And
12 what transpired once he got into the club, and then what
13 transpired when he came out. And I will just tell you
14 briefly, in an overview. The Defendant approaches the club,
15 the club owner tells him doesn't want him there. Defendant
16 ain't hearing that. So he goes on past him. He gets
17 searched by Maxie Rowell. You will hear from Mr. Rowell. He
18 goes into the club, not long after he gets into the club, he
19 gets involved in a fight inside the club. Comes out of the
20 club grabs an AK-47, goes back to the club. Sneaks inside the
21 club and then comes out and sprays the parking lot and that
22 area with bullets. Ladies and gentlemen, unfortunately, one
23 of those bullets struck Kelvin Smalls in the back of the head,
24 killed him right there at the scene. Kelvin Smalls had
25 nothing to do with any of this. But the Defendant with his

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1 malicious heart, bent on a mission, grabs that AK-47 and with
2 no regard for anyone or anything proceeds to spray multiple
3 bullets, and you will hear how many bullets were sprayed.
4 Subsequent to that, other gunshots were fired, but it is going
5 to be very important, and I ask you to listen very carefully
6 on when that occurred, because I would you submit to you that
7 is a very important part of this case.

8 You will also hear testimony from others regarding
9 evidence that was collected. You will hear from law
10 enforcement officers who will talk about the evidence that was
11 collected at the scene. I will tell you up front that the one
12 of thing that I hope you will find about me is that I am going
13 to be up front with you. Unfortunately, we will be able to
14 show you some photographs. We will be able to show you some
15 diagrams. But unfortunately, the evidence itself was
16 misplaced. The bullets were. But here's the thing. You
17 might be saying how is Kernard going to --- But here's the
18 thing. Fortunately, and you will hear testimony later in the
19 trial, they yielded a great value before they were lost and
20 that will be what helps turn this case. You will hear
21 testimony from individuals who will explain just what I have
22 laid out for you. And I will submit to you once that is all
23 laid out, once that picture is laid out you will agree with me
24 that, in fact The State has met its burden beyond a reasonable
25 doubt, because that is my burden. To prove to you, beyond a

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1 reasonable doubt that the Defendant committed this crime.

2 Now, beyond a reasonable doubt does not mean all doubt,
3 and at the end of the case, His Honor will instruct you on the
4 law. It means, beyond a reasonable doubt. And, again, when
5 you take the testimony that you hear in its entirety from
6 different vantage points at this location and then
7 subsequently, once the evidence was collected, once it was
8 taken to SLED. I will submit to you then you will not have a
9 reasonable doubt that it was, in fact, the Defendant, who
10 caused the death of Kelvin Smalls and caused the death
11 maliciously. Because you don't fire an AK-47 in a parking
12 lot, unless you are planning to kill somebody, especially in
13 the parking lot full of cars and people.

14 I don't know if the Defendant knew Kelvin Smalls, but it
15 doesn't matter. The fact is Kelvin Smalls --- if anybody is
16 innocent in this whole trial it is Kelvin Smalls, because he
17 was doing nothing but trying to take a nap.

18 Ladies and gentlemen, these cases are not easy to have to
19 go through because you are talking about the death of
20 someone's son, someone's brother, but it is a necessary thing
21 for us. And let me just stop here and say, thank you for your
22 willingness to serve, because I refer to the jury as the last
23 bastion of justice. If it were not for y'all, there is not
24 justice. You are the last bastion of justice. We bring the
25 charges. We present the case. And it is up to you to make

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1 the decision. This will not be along trial. In fact I would
2 anticipate, The State concluding its case tomorrow, so it's
3 not going to be a long trial. But just because it is not a
4 long trial does not mean that it is not an important trial.
5 This case is very important. Obviously, it is important to
6 the Defendant. He is entitled to a fair trial. It is
7 important to The State. It is important to the memory of
8 Kelvin Smalls because as I said, if anybody is innocent in all
9 of this, he would be the one that was innocent.

10 Now opening statements is just that, statements. I will
11 get more in detail in my closing argument and tie everything
12 up. But as you are listening to this case keep one thing
13 mind. And I know I don't have to tell you this. Along with
14 the evidence that is presented something else that you get to
15 take into the jury room with you, probably the most important
16 thing is your common sense. And once you hear all the
17 evidence and you put the facts that you've heard, the
18 testimony that you've heard, the evidence presented along with
19 your common sense, I submit to you, ladies and gentlemen,
20 there is but one conclusion that you can reach. That
21 conclusion would be that the Defendant is in fact guilty of
22 the murder of Kelvin Smalls.

23 Murder, to prove murder is the malicious taking of the
24 life from another. It is taking the life of another with
25 malice aforethought. And then, of course, he's also charged

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1 with possession of a weapon during a violent crime.

2 Once you hear everything, ladies and gentlemen, it will
3 be abundantly clear to you, I submit to you, that the
4 Defendant is guilty of this crime, of this heinous senseless
5 crime. Kelvin Smalls was taking a nap and gets hit in the
6 back of the head with a bullet from an AK-47.

7 You will be making the decision soon, ladies and
8 gentlemen. You will hear the testimony and I submit to you
9 that it will all be crystal clear by the time you hear
10 everything.

11 I thank you in advance for your attention and I look
12 forward to speaking with you again in my summation.

13 **THE COURT:** Thank you, Mr. Redmond. Ms. Sellers?

14 **MS. SELLERS:** May it please The Court?

15 **THE COURT:** Yes, ma'am.

16 **MS. SELLERS:** Ms. Redmond.

17 **MR. REDMOND:** Yes, ma'am.

18 **OPENING STATEMENT BY MS. SELLERS**

19 **MS. SELLERS:** Good morning. How are y'all? As you
20 heard yesterday, the Judge introduced myself and my
21 colleagues. I am Rosalind Sellers. I am the Assistant Public
22 Defender here in the Fourth Circuit. We handle cases in
23 Darlington, Dillon, Chesterfield and Marlboro County. Today
24 we have the honor of representing Mr. Jeremy Wright. I would
25 like for Mr. Wright to stand. I want you all to look at each

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1 other, because you are the sole trier of facts in his case.
2 You will determine if Mr. Wright is guilty or innocent. Mr.
3 Wright, you can have a seat.

4 I want to remind you quickly as to what the Judge spoke
5 to you about yesterday. He told you that Mr. Wright is
6 presumed innocent, and The State, that would be Mr. Redmond,
7 would have the burden, the sole burden of proving whether
8 Jeremy Wright is guilty of the crime that he has been charged
9 with. Mr. Redmond talked to you about evidence. He talked
10 to you about the incident that happened that night, and we are
11 just about to say that there was a shoot out. There was a
12 shoot out at the Blue Moon. It's not coincident that more
13 than more gun cartridge was found. It's no coincident that
14 there was more than one victim that night. I would submit to
15 you that once you evaluate all the evidence, every witness
16 that comes to this stand and testifies, you get the
17 responsibility of determining if that witness is telling the
18 truth or not. Mr. Redmond and I, we don't get to make that
19 decision. That's why we are here today.

20 Now you heard Mr. Wright is charged with murder, and as I
21 said The State as the burden. That's a heavy burden. They
22 have to prove beyond a reasonable doubt that Jeremy Wright
23 possessed a firearm, shot a firearm and the bullet that came
24 from that firearm was the bullet that killed Mr. Kelvin
25 Smalls. There is no question that this was a tragic incident.

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1 But we are here today to decide who actually killed Mr. Kelvin
2 Smalls.

3 Once you hear testimony of the Sheriff's Office you will
4 learn that there were several officers that responded. This
5 incident, I believe they got there around midnight. You will
6 hear that even the Sheriff himself came out to the scene. But
7 what you won't see are any actually photos of the crime scene.
8 You won't see any actually bullets, and more importantly you
9 will not see a weapon. You will not see the murder weapon
10 because they don't have it. They don't have the evidence.
11 They don't have the photos nor do they have the weapon. And
12 Mr. Redmond was very correct, it is not about us, because we
13 were not there on that night. Law enforcement was there.
14 They are the sole individuals that we have to rely on to
15 determine what actually happened that night. As I have just
16 told you, there are not photos of the crime scene. There is
17 no gun. There are not bullets that you will get to see, no
18 actual physical bullets. Now what you will learn through The
19 State's witnesses is that they were actually four to five
20 different guns shot that night. What you will learn is that
21 the bullet that was actually removed from the victim's head
22 could have been possibly fired by up to nine different guns.
23 But, yet, again, we have Jeremy Wright here who has been
24 charged with murder, and possession with a weapon during the
25 commission of a violent crime. You just heard the Solicitor

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1 say Jeremy Wright and friends were at this club, but yet today
2 Jeremy Wright sits here alone. He sits here alone, but it's
3 okay because we have you as the trier of facts. You all ---
4 We trusted you all will listen to the information that is
5 provided to you through the witness stand, and you will
6 determine what happened on that night.

7 So I submit that at the conclusion of all this evidence
8 The State will not be able to reach its burden. It is a
9 heavy burden. A very heavy burden. As the Judge indicated
10 earlier, we didn't even have to give an opening statement. We
11 have no burden. We don't have to prove anything. The State,
12 Mr. Redmond, has to prove everything. And I submit to you,
13 at the close of all of the evidence --- and you can't
14 deliberate, and the Judge will instruct you on the law. But
15 at the close of this case when the last person takes that
16 witness stand you will all go back and deliberate, and I
17 submit that you will not be able to find a verdict of guilt.

18 Thank you.

19 **THE COURT:** Thank you, Ms. Sellers. Mr. Redmond, you
20 may call your first witness.

21 **MR. REDMOND:** May it please The Court, The State would
22 first call.

23 **THE COURT:** Captain Arnett, if you would please come
24 around and be sworn sir.

25 **WHEREUPON, CLIFF ARNETTNE**

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BEING DULY SWORN TESTIFIES AS FOLLOWS

CAPTAIN ARNETTE: Yes, ma'am. I do.

CLERK OF COURT: Please have a seat in the witness box.
State your full name for The Court reporter. Spell your last
name, please sir.

CAPTAIN ARNETTE: My name is Cliff Arnette. Last name
spelled A-R-N-E-T-T-E.

DIRECT EXAMINATION BY SOLICITOR

Q. And Captain Arnette, by whom are you employed?

A. I am employed by Dillon County Sheriff's Office.

Q. And how long have you been so employed?

A. I am in my seventeenth year with the Sheriff's office.

Q. And do you work in investigations?

A. Yes, sir, I do.

Q. And did you work in investigations back in 2007, in June
of 2007 to be exact?

A. Yes, sir, I did.

Q. And during that time --- And I will just ask you this.
Have you had experience with the collection of evidence
and processing crime scenes?

A. Yes, I have.

Q. And how long have you worked in investigations prior to
this incident --- or up to this time total, how long have
you been investigations?

A. Up until this time now I have been in investigations ten

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1 years.

2 Q. Okay. Now did you respond to the Blue Moon formerly
3 known as Club Makium on June 17, 2007?

4 A. Yes, sir, I did.

5 Q. Okay. And could you tell the jury once you were
6 dispatched to the scene, what did you observe, what did
7 you do once you got to the scene?

8 A. Upon arriving on the scene there were several uniform
9 officers that were on the scene and also James Campbell
10 who was an investigator with the Sheriff's office. At
11 that time he was the lead officer on this case. He was
12 already on the scene upon me getting there. I got with
13 him and of course he briefed me of what was going on and
14 what he knew at the time upon me getting there.

15 Q Okay. And when you got there was the victim still at the
16 scene?

17 A. Yes, the victim was still at the scene.

18 Q. Okay. And we will, get into that a little bit later on.
19 So, once he advised you of what was going on could you
20 tell the ladies and gentlemen of the jury what then did
21 you proceed to do?

22 A. Okay. When I first I get there he was in the process of
23 beginning to photograph the crime scene and, of course,
24 he took a break from that when I get there and kind of
25 briefed me what was going on, and once he did so then he

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1 continued to photograph the scene as it was at that time.

2 Q. Okay. And did you aid in the collection of any evidence?

3 A. Yes, I did.

4 Q. Okay. And did you, I guess, did you do any kind of a
5 diagram or charts based on the scene as you helped
6 process it?

7 A. Yes, I did.

8 Q. And could you explain to the jury what did you do in
9 those regards?

10 A. Okay. What I did is I drew a rough sketch of the crime
11 scene to include this club building, items of evidence
12 that were there. I did a rough sketch of those items and
13 put it in a sketch on paper.

14 Q. Okay. And let me show you at this point and time, and
15 then I will ask you a little bit later, but could you
16 look at what's been marked as State's Exhibit 2 through
17 7. They are already in evidence. But I just want you to
18 look through them and tell me whether or not those are
19 accurate representations of the charts that you prepared?

20 A. Yes, they are.

21 Q. Now, could you tell the ladies and gentlemen of the jury,
22 --- Well, I will just ask you. Did you collect any
23 cartridges or shell casing from the scene that night?

24 A. There were cartridges and some unfired bullets that were
25 collected there that night.

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1 Q. Okay. And are those reflected on the diagram?

2 A. Yes, they are.

3 Q. And the locations that you found them are those reflected
4 on the diagram?

5 A. Yes, it is.

6 Q. All right. Let me just ask you, and this is a good
7 point to ask you to step down. I am going to show you
8 what has been marked at this point as State's Exhibit 11
9 through 16 and they are already in evidence. And let me
10 ask you to do this, if you could stand about right here,
11 and just go through, and just let the jury know what each
12 of those pictures represent.

13 A. This here is a picture representing the sign at the Blue
14 Moon Club. Now this photograph here was not taken that
15 night of course, it was taken later on.

16 This photograph here represents a picture of
17 the front of the Blue Moon Club.

18 This photograph here also represents the front
19 of the Blue Moon Club. It is just a closer shot.

20 This photograph here, is going to represent a
21 side of the building, and also that is going to be
22 some restrooms over here.

23 This here is just another side view, just at a
24 different angle.

25 This here would be a photograph representing

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1 the other side of the Blue Moon.

2 Q. Okay. Now, let me show you at this point what has been
3 marked as State's Exhibit 18, 19 and excuse me, 17, 18,
4 and 19 which are already in evidence. And I will just
5 ask you do you recognize those particular items?

6 A. Yes, sir, I do.

7 Q. Okay. Could you tell the jury what those items
8 represent?

9 A. Okay. This first one here, this is an evidence envelope
10 that we have at the Dillon County Sheriff's office. This
11 evidence envelope would have been used to collect
12 evidence there that night.

13 This is also another photograph of evidence
14 envelopes that we have at the Dillon County
15 Sheriff's office and they would be used that night
16 to collect evidence.

17 And here are some smaller brown envelopes that
18 we use that night to collect evidence.

19 Q. Now before we show the jury these, I want to show you
20 what has been marked, not yet in evidence, State's 21
21 and 22. Would you take a look at those, and let me know,
22 if you recognize those particular exhibits?

23 A. Yes, sir.

24 Q. Let me ask you a couple of foundation questions. Do
25 those pictures represent any items that you collected at

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1 the crime scene?

2 A. Yes, sir.

3 Q. Okay. And are --

4 A. Let me say this now, I want to make sure that everybody
5 understands. I didn't actually physically collect these
6 myself. I was there. James Campbell with the Sheriff's
7 office actually collected these items that we are
8 referring to.

9 Q. Okay.

10 MS. LITTLE: Your Honor, I object.

11 MR. REDMOND: I think I can ask a followup question.

12 THE COURT: All right. Let me get you to come up.

13 (Whereupon, a bench conference was held in the
14 presence of the jury but out of the hearing of the jury.)

15 Q. (By Mr. Redmond) Mr. Arnette, before we publish them to
16 the jury I've got a couple of more foundational questions
17 for you, sir.

18 A. Yes, sir.

19 Q. Were you present at the time the evidence was collected?

20 A. Yes, sir, I was.

21 Q. And did you, in fact, assist with --- before the evidence
22 was collected did you, in fact, assist with marking where
23 those items were?

24 A. Yes, I did.

25 Q. And are those reflected in the charts that you prepared

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1 that are already in evidence?

2 A. Yes, they are.

3 Q. Okay. And so, again, do you recognize those items based
4 on what you see as being evidence that you saw and
5 assisted with processing that night?

6 A. Yes, I do.

7 **MR. REDMOND:** Your Honor, at this point I would move to
8 admit.

9 **MS. LITTLE:** Your Honor, I would like to note my
10 previous objection.

11 **THE COURT:** All right. Objection is noted. Overruled.
12 I will allow those in.

13 **WHEREUPON, STATE'S EXHIBIT**

14 **NUMBERS 21 AND 22 WERE MARKED**

15 **AND ADMITTED INTO THE RECORD.**

16 **MR. REDMOND:** Okay.

17 Q. (By Mr. Redmond) Now, if you would, could you let the
18 jury know first what State's Exhibit 21 represents and
19 then State's Exhibit 22?

20 A. Okay. State's Exhibit 21, this here is a cartridge
21 casing also referred to as a fired bullet cartridge.

22 Q. And was that item --- was that one of the items that was
23 sent to SLED for analysis?

24 A. As far as I know, yes, sir, it was one of them.

25 Q. Okay. And tell me about State's 22.

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1 A. State's Exhibit Number 22 is an unfired bullet.

2 Q. And as far as you know that was also sent to SLED for
3 analysis?

4 A. As far as I know it was, yes, sir.

5 Q. Now, while you are still up, let's talk about --- We've
6 talked about the diagrams, and I am going to ask you
7 again to speak as loudly as you can. But I want you to
8 explain to the jury what State's Exhibit Number 2 is and
9 could you highlight what the importance of this exhibit
10 is?

11 A. Okay. This exhibit here is a sketch of the Blue Moon
12 Club that night. This would be the building, the block
13 building here. This here, one, two, three and four, that
14 is going to represent vehicles that were at the club that
15 night. There is a number of items of evidence here that
16 are smaller than this that is going to represent evidence
17 such as cartridge casing, fired, unfired bullets of
18 different caliber. This here is the highway. This is
19 Harllee Bridge Road right here. This here represents a
20 little dirt road located beside the club that goes over
21 to like some hog houses.

22 Q. Okay. And I believe that is also reflected in the
23 pictures as far as the different areas of the club that
24 you talked about, is that correct, in the picture you
25 took of the --

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1 A. -- That would be right.

2 Q. Okay. Now, could you explain to the jury then --- and
3 when we got number four, the vehicles that are labeled.
4 Could you tell the jury about the significance of those?

5 A. Okay. Well, these vehicles particularly were there at
6 the crime scene and were there at the crime scene in its
7 entirety. Of course, when I did this sketch, that is why
8 they are represented there. The one that is of most
9 significance is number four. That is going to be the
10 vehicle that the victim that the Solicitor has referred
11 to, Kelvin Smalls, was located in. This little area
12 right here represents the right rear passenger door being
13 open. That is what that represents there.

14 Q. And number three represents the vehicle that was next to
15 it?

16 A. That is correct. Number three represents the vehicle
17 that was located right next to this vehicle.

18 Q. All right. Now, let me show you what has been marked as
19 State's Exhibit 3, already in evidence. Now could you
20 explain --- And, I'll just put these each behind three,
21 four and five, up here behind each other so you can
22 explain to the jury the significance of this
23 triangulation that you did.

24 A. This first chart right here is a triangulation form that
25 I use. "A" represented here and "B" represented here.

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1 "A" is referring to the right corner of the building
2 standing in front of it facing it. And "B" is going to
3 represent the left corner of the building standing in
4 front of it facing it. Item One through Fourteen is
5 going to represent evidence. "A" and "B" each have a
6 measurement there as referred to as triangulation. We
7 use "A" and "B" as representation of the building to get
8 measurements in a triangulation form.

9 Q. Okay. You can proceed to State's Number 4.

10 A. Number 4 is going to basically the same. It's just
11 evidence continuation.

12 Q. Okay. And State's Exhibit Number 5.

13 A. Number 5 is basically going to be the same. It's just
14 evidence continuation.

15 Q. Okay. Now, I see where we're got these items numbered.
16 I am going to show you now State's Exhibit Number 6,
17 already in evidence, and could you explain the
18 significance of this in some detail?

19 A. Okay. The items of evidence that were listed on this
20 diagram here they are catalogued here as they were on
21 there, numbered and what type of evidence that it is.

22 Q. Okay. And let's go through this and just so we can make
23 clear what kind of bullets were --- what types of casings
24 the bullets were found. And could we just go through,
25 even though we've got it, but just go through for the

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1 record and explain to the jury, and use this diagram as
2 to where you found each of these items.

3 A. Okay. Number One is going to represent our evidence
4 marker --- Marker Number One, which was a cartridge
5 casing, a 7.62x39, that is going to right there.

6 Number Two is a cartridge casing 7.62x39 that
7 is going to be right here. When I get in here, you
8 may have to bear with my a little bit, looking at
9 me.

10 Number Three, a cartridge casing 7.62x39 that
11 will be right here.

12 Number Four, cartridge casing 7.62x39 that
13 would be right here.

14 Cartridge casing Number Five a 3192, that would
15 be right here.

16 Number Six, unfired bullet 7.62x39. Right
17 here, number Six.

18 Number Seven, a cartridge casing 45 auto, right
19 here.

20 Seven Eight, cartridge casing 380 auto, it was
21 a brand name of Winchester, Number Eight, right
22 here.

23 Number Nine, cartridge, 380 auto, Winchester
24 name brand.

25 Number Nine represented there.

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1 Number Ten, cartridge casing 7.62x39. Number
2 Ten right there.

3 Number Eleven, cartridge casing 7.62x39, Number
4 Eleven, represented here what would be the roadway.

5 Number Twelve, cartridge casing 7.62x39,
6 represented here Number Twelve, in the roadway.

7 Number Thirteen, cartridge casing 3192, Number
8 Thirteen, represented here.

9 Number Fourteen, cartridge casing 7.62x39,
10 Number Fourteen right there.

11 Number One-B, cartridge casing 7.62x39, One-B,
12 right here.

13 Q. And let me just stop you real quick. The 7.62x39, with
14 your experience in law enforcement I assume that you have
15 experience with weapons, firing weapons, and whatnot?

16 A. Somewhat. I am not an expert but I do have some
17 familiarization with them.

18 Q. And are you familiar with an AK-47?

19 A. I am.

20 Q. And is that the type of bullet that is fired from an AK-
21 47?

22 A. From my knowledge, that is correct? That is the type of
23 bullet fired from an AK-47 weapon.

24 Q. Okay. And you can continue. I interrupted you.

25 A. Okay, we were at Two-B, cartridge casing 7.62x39, Two-B.

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1 Number Three B, cartridge casing 7.62x39,
2 represented right here.

3 Number Four B, cartridge casing 7.62x39,
4 represented right, Four B.

5 Number Five B, cartridge casing 7.62x39,
6 represented right here, Number Five B.

7 Number Six B, cartridge casing 45 auto, Six B
8 represented right here.

9 Number Seven B, cartridge casing 45 auto, Seven
10 B represented right here.

11 Number Eight B, cartridge casing 45 auto, Eight
12 B represented here.

13 Number Nine B, cartridge casing 45 auto, Number
14 B, represented here.

15 Number Ten B, cartridge casing 380 auto, name
16 brand Winchester, Ten B represented here.

17 Number Eleven B, cartridge casing 7.62x39,
18 represented right here, Eleven B.

19 Number Twelve B, cartridge casing 380 auto,
20 name brand Winchester, Twelve B represented here.

21 Number Thirteen B, cartridge casing 3192,
22 Thirteen B represented here.

23 Number Fourteen B, cartridge casing 7.62x39,
24 Fourteen B represented right here.

25 Number Fifteen B, cartridge casing 7.62x39,

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1 represented right here, Fifteen B.

2 Number Sixteen B, cartridge casing 7.62x39,
3 Sixteen B represented right here.

4 Number Seventeen B, cartridge casing 9mm, which
5 is millimeter, Luger RP --- that is some kind of
6 stamping on the bullet, Number Seventeen B.

7 Number Eighteen B, cartridge casing 7.62x39,
8 Eighteen B represented.

9 Number Nineteen B, a broken pool stick, Number
10 Nineteen B represented right here.

11 Number Twenty B, cartridge casing 3192, Number
12 Twenty B, represented right here.

13 Q. Now, a lot of shells. What do you do know of a AK-47,
14 when it fires does it kick off the shells?

15 MS. LITTLE: Objection.

16 Q. I will lay a foundation. Have you ever fired an AK-47?

17 A. I have not.

18 Q. Have you ever seen an AK-47?

19 A. I have seen an AK-47.

20 Q. And when you seen that fired in your experience as an
21 investigator, do the shells kick out of the weapon as it
22 is being fired?

23 A. The shells do, eject out, yes.

24 Q. Okay. Now let me show you what has been marked as
25 State's Number 7. And could you explain to the jury

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1 what that represents?

2 A. Okay. Vehicle Number Four on the crime scene sketch
3 here is going to be the vehicle the victim was in. It
4 gives a description of the vehicle, and it had a South
5 Carolina tag of 392-WFA. It was a four-door Cadillac
6 Braun, blue in color. The right rear passengers' door
7 was open with the victim inside that is what represents
8 there as I said earlier. And we have some measurements
9 indicating here "B" is going to be this corner, "C" is
10 going to be in the area over hear near where the
11 restrooms were when I showed you those pictures and we
12 got measurements from those known fixed points to the
13 vehicle.

14 Q. Okay. Now, let ask you this and then I will have you sit
15 down. Let's go back to State's Exhibit 15 for a minute,
16 and that is just showing from the right side. So could
17 you give the jury --- And again, State's Exhibit 2 is not
18 to scale, correct?

19 A. It is not to scale.

20 Q. Okay. But could you, in showing them the picture about
21 what location did you find the victim's vehicle?

22 A. Okay. This is going to be to the side of the vehicle
23 --- I'm sorry, the side of the building right here which
24 is going to represent right in this area. This is going
25 to be the side with the restrooms which is going to

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1 represent this area right here. From that the point, the
2 vehicle the victim as in, and we've got reference points
3 from "B" which is right here; "C" which is right here to
4 here, to the vehicle which is Number Four, which would be
5 over in this area right here.

6 Q. Okay.

7 A. Approximately.

8 Q. And this parking lot --- And you can have a seat, thank
9 you. We aren't talking a huge area off the road, are we?

10 A. No, it's not far off the road.

11 Q. Okay. And, again, you assisted with the evidence. We
12 don't have that evidence as far as the bullets that were
13 collected, we don't have that evidence here today, is
14 that correct?

15 A. No, we do not.

16 Q. Okay. And was that evidence subsequently turned over to
17 another agency, and unfortunately we don't have it here
18 today, is that correct?

19 A. That is correct. That is evidence was turned over to
20 another agency.

21 Q. Okay. But you were able to take this information based
22 on what you saw at the scene that night, is that correct?

23 A. That is correct.

24 Q. And to the best of your knowledge did Investigator
25 Campbell carry the items to SLED --- the bullets to SLED

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1 for analysis?

2 A. To the best of my knowledge, yes, he did submit the items
3 of evidence to SLED.

4 Q. Okay. We talked a little bit about an AK-47 and since we
5 talked about that, if I could get you to reach right
6 there and --

7 MS. LITTLE: Objection, Your Honor.

8 THE COURT: All right. Overruled.

9 Q. Okay. And could you just tell the jury what is State's
10 Exhibit 1 and State's Exhibit 1-A?

11 A. This is here is referred to as an AK-47 assault rifle.
12 This here is a magazine also referred to as a banana
13 clip.

14 Q. Okay. And when we were talking about, when you testified
15 previously about the bullet, the 7.62x39 shell, is that
16 the weapon that you are referring to as being a weapon
17 that would fire that bullet?

18 A. Yes, that is correct.

19 Q. All right, thank you. And finally, did y'all ever
20 recover a murder weapon, in other words did y'all recover
21 the actual AK-47 involved in this incident?

22 A. We did not recover the murder weapon.

23 Q. But bullets and cartridges were recovered?

24 A. Bullets and cartridges were recovered.

25 Q. Bullets and cartridges were collected?

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1 A. That is correct.

2 Q. Okay. And, again, to the best of your knowledge James
3 Campbell took those items to SLED for SLED analysis?

4 A. To the best of my knowledge, that is correct.

5 **MR. REDMOND:** Okay, thank you. Please answer any
6 questions --

7 Q. Oh, jurisdiction, this incident occurred in Dillon
8 County?

9 A. Yes, it did occur in Dillon County.

10 **MR. REDMOND:** That is all the questions that I have.
11 Please answer any questions defense may have.

12 **CAPTAIN ARNETTE:** Yes, sir.

13 **THE COURT:** Ms. Little?

14 **MS. LITTLE:** Thank you, Your Honor.

15 **CROSS EXAMINATION BY MS. LITTLE**

16 Q. Investigator Arnette, good morning?

17 A. Good morning.

18 Q. And you are Captain, is that your correct title?

19 A. That is correct, yes, ma'am.

20 Q. Okay. Captain Arnette, I believe you testified that you
21 had been with the Sheriff's Department here in Dillon
22 about seventeen years now?

23 A. Going on seventeen years, yes, ma'am.

24 Q. So you're familiar with the Blue Moon Night Club or Club
25 Makium, aren't you?

CLIFF ARNETTE - CROSS EXAMINATION BY MS. LITTLE

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1 A. Yes, I am.

2 Q. And every been called to investigate trouble out there in
3 the past?

4 A. I have.

5 Q. Were you aware that at the Club Makium that is an
6 illegally operated bar? Are you aware they don't have a
7 liquor licence?

8 A. I'm not aware of that, no.

9 Q. So as working for the Sheriff's Office that wouldn't be
10 one of your duties to --

11 **MR. REDMOND:** -- Your Honor, I am going to object to
12 that. I now this is cross examination but I don't where this
13 is relevant as it relates to -- at this point I think it just
14 confuses the jury.

15 **THE COURT:** Ms. Little, I will allow it if you can show
16 some relevance.

17 **MS. LITTLE:** Thank you, Your Honor. Your Honor, I will
18 change the subject right now.

19 Q. I want to ask you about your sketch.

20 A. Okay. You need for me to get up or?

21 Q. Yes, please. Now, you testified --

22 **THE COURT:** Let me get y'all to this. It would be
23 helpful. Captain, if you would get on that side so you are
24 facing The Court reporter.

25 **CAPTAIN ARNETTE:** Okay.

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1 **THE COURT:** And then she will be able to pickup your
2 voice better.

3 **CAPTAIN ARNETTE:** Sure. That's fine.

4 **THE COURT:** Thank you, sir.

5 **Q.** Captain, you testified that this is not to scale, is that
6 correct?

7 **A.** That is not to scale, no.

8 **Q.** So, for example, is this the correct location where the
9 bathroom would be on the building?

10 **A.** It would be in approximate representation of where the
11 restrooms would be on the building.

12 **Q.** Okay. But agree that the restrooms could possibly be
13 down here closer to the road?

14 **A.** Well, I guess you could say that. I mean, it's, you
15 know within close proximity. I'm not really
16 understanding you.

17 **Q.** Are the rest of these also, just a close proximity, or
18 are these actually where you think that these things were
19 located that night?

20 **A.** This is a close proximity of where they were, because
21 this is not to scale. It is not an exact drawing of
22 this building or ground.

23 **Q.** Right. And while you are here, this Number Four here,
24 would be the vehicle that Mr. Smalls, the victim, was
25 located in?

CLIFF ARNETTE - CROSS EXAMINATION BY MS. LITTLE

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- 1 A. That is correct.
- 2 Q. And, was that vehicle pointed out towards Harllee Bridge
- 3 Road?
- 4 A. The front of the vehicle was pointed out to Harllee
- 5 Bridge Road.
- 6 Q. And the victim was in the back passenger seat of that
- 7 car?
- 8 A. That is correct.
- 9 Q. And the victim was shot in the back of the head, is that
- 10 correct?
- 11 A. That is my understanding.
- 12 Q. Now let me ask you this, when you were out there,
- 13 searching that night, did you all look back here, did you
- 14 all search back here?
- 15 A. I can't tell you how far back that I went or anyone else
- 16 went. I know within this general area, yes, but I can't
- 17 tell you exactly how far.
- 18 Q. Okay. So you can't tell me for sure whether you looked
- 19 for any evidence back here?
- 20 A. There was evidence looked for, but to my knowledge I
- 21 can't tell you how far back. Of course, indicated on my
- 22 drawing and the evidence that we did find there was none
- 23 noted in this area.
- 24 Q. Okay. So you're not sure you search it, but you didn't
- 25 find anything?

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1 A. I can't tell you how far back we went. I can tell you in
2 this general area we did but nothing was found.

3 Q. If this is your drawing, is there something located back
4 here?

5 A. There are more areas located behind this club here.

6 Q. Okay. And would there be a dumpster located about right
7 here, do you recollect?

8 A. If you are telling me there is, I can't say for sure from
9 my recollection. I can't remember.

10 Q. Here's what I am trying to get to. What about all this
11 area, the woods over here, was any of that area searched
12 that night?

13 A. I did not search the wooded area myself. I can't tell
14 you if anyone else did.

15 MS. LITTLE: Okay. All right. You can have a seat
16 now. I have some more questions for you.

17 Q. Now you mentioned photos were taken of the crime scene
18 the way it looked that night. Did you take any of those
19 photos?

20 A. I did not take any of those photographs.

21 Q. And that would have been Lieutenant Campbell?

22 A. That is correct.

23 Q. But it is true, you don't have any photos here to show
24 the jury?

25 A. I don't have any, no.

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1 Q. Okay. How long before --- How long did it take for you
2 to get there after the shootout that night?

3 A. I'm just guessing from the time that I was first called
4 and getting ready --- I would say thirty to forty-five
5 minutes, just guessing.

6 Q. Okay. And during that time are you aware that there were
7 people milling around outside?

8 A. I know that there were people there. I can't conclude --

9 Q. -- How many people were there when you arrived?

10 A. Number wise, I can't say. There was law enforcement
11 there. There were some people there, I can't give you a
12 number that were patrons of the club that night, and who
13 were witnesses and so forth, I can't give you a number.

14 Q. And, again, all the casings that you recovered, an
15 unfired bullet, a broken pool stick, do you have any of
16 that evidence to show the jury today?

17 A. I don't have any evidence, no.

18 Q. Do you know whether or not the Blue Moon Club had bullet
19 holes in it that night?

20 A. I do not remember any bullet holes.

21 Q. Okay. And can you tell the jury how many victims were
22 shot that night?

23 A. I know the victim Kelvin Smalls, and there was another
24 person that was also shot.

25 Q. Okay. And that would have been Ms. Manning?

CLIFF ARNETTE - CROSS EXAMINATION BY MS. LITTLE

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1 A. I think that's correct.

2 Q. Okay. And how many times was she shot?

3 A. My personal knowledge, I'm not sure not. I think just
4 once, but I couldn't say for sure. I don't know.

5 Q. Okay. And can you tell the jury anything about the type
6 of weapon or bullet that she was shot with?

7 A. To my knowledge, a bullet was not recovered, so therefore
8 I cannot say what type of bullet she was shot with.

9 Q. Now, and you might need to step back down. I'm sorry.
10 Car number three, which would have been directly to the
11 left and back behind car number four, can you describe
12 that car to the jury? What was car number three?

13 A. I don't have that information represented on here, so I
14 can't --- I just know it was a vehicle, and it was just
15 parked there, it was not really related to the crime. We
16 just represented because that vehicle stayed there
17 because it was in the crime scene.

18 Q. And were there bullet holes in that car?

19 A. To my knowledge, I'm not sure. I know some vehicle were
20 struck out there but other --

21 Q. -- Of the vehicles that were struck did you take any
22 photos of those vehicles or try to determine what kind of
23 weapon shot those vehicles?

24 A. I did not take any photographs of those vehicles, I think
25 maybe some other officers may have, but I did not

CLIFF ARNETTE - CROSS EXAMINATION BY MS. LITTLE

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1 personally.

2 Q. And do you know total how many other cars were shot?

3 A. Total number, I don't. I know there were other cars
4 parked shot, but I'm not sure number wise.

5 Q. Well as far as the blue Cadillac where Mr. Smalls was
6 located, did that car have more than one bullet hole in
7 it?

8 A. Without my memory being refreshed through photos I cannot
9 say for sure.

10 Q. Is there any way for you to tell from the evidence that
11 you collected how many weapons --- how many different
12 weapons were fired that night?

13 A. How many different weapons were fired that night, I can't
14 tell you that. I can give you a through the bullets we
15 collected how many different caliber bullets.

16 Q. Different caliber bullets?

17 A. Right.

18 Q. And isn't it true that different guns can shoot the same
19 caliber bullets?

20 A. That is correct. Some guns can shoot different calibers.

21 Q. And did you know --- Now, you had mentioned about
22 cartridges ejecting but, without having a weapon to fire
23 you can't say for sure which way a cartridge would eject
24 could you?

25 A. No, I can't stand here and tell you that.

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1 Q. And no weapons were recovered?

2 A. No weapon was recovered.

3 Q. Well who had the 380 --- shooting the 38 shooting that
4 night?

5 A. To my knowledge, I don't know.

6 Q. Who had the .9 millimeter Luger?

7 A. I don't know that either.

8 Q. Who was shooting the 45?

9 A. I don't know that either.

10 Q. Well did you participate in any search warrants or
11 anything or search the vehicles with anybody else that
12 was present that night?

13 A. I did not.

14 Q. So as part of your investigation you didn't interview
15 anybody to try to find out where those other weapons
16 were?

17 A. I was busy doing this crime scene type thing so therefore
18 I did not have time --- I know some people, some other
19 officers were talking to witnesses and what they, you
20 know, learned from that, you know, you would have to ask
21 them.

22 Q. But from your knowledge there wasn't a search for weapons
23 in the woods, or in the dumpster, or in that big sand
24 pile back there?

25 A. I did not search.

CLIFF ARNETTE - CROSS EXAMINATION BY MS. LITTLE

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1 Q. Okay. And going back to the victim, Mr. Smalls, do you
2 know if Mr. Smalls hands and cloths were checked for
3 gunshot residue that night or by SLED, do you know if
4 that was sent to SLED?

5 A. I can't answer that. That would be a question that you
6 would have to ask Mr. Campbell.

7 Q. Okay. And to the best of your knowledge were any
8 fingerprints taken or tried to be collected from any of
9 the casings that were recovered that night?

10 A. That would be something you would have to ask SLED. I am
11 sure they could give you that answer but they were sent
12 for any analysis that they could perform on the casings
13 that were collected.

14 Q. Okay.

15 **MS. LITTLE:** Beg The Court's indulgence. You can have
16 a sit.

17 **CAPTAIN ARNETTE:** Thank you.

18 **MS. LITTLE:** One moment, please.

19 **(PAUSE)**

20 Q. Do you know where or not --- Captain, do you know whether
21 or not the witnesses, and I know you didn't talk to all
22 the witnesses --- Did you know whether or not most of the
23 people out there were intoxicated?

24 A. I could not answer that questions correctly, I don't
25 know.

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1 Q. So basically you are telling us you don't know what kind
2 of guns were fired that night. You don't know who was
3 firing the guns from the evidence.

4 A. I can't tell you that; other witnesses can tell you that,
5 but I can't tell you that because I was not there when
6 the shooting occurred.

7 **MS. LITTLE:** Okay. All right. No further questions.

8 **MR. REDMOND:** No redirect, Your Honor.

9 **THE COURT:** Thank you, sir. You may step down.

10 **CAPTAIN ARNETTE:** Thank you.

11 **MR. REDMOND:** The State would next call James Campbell,
12 and ask that Mr. McCollum be seated right outside of the
13 courtroom as he will be the next witness called.

14 **THE COURT:** Mr. Campbell, please come forward and take
15 the oath of a witness.

16 **WHEREUPON, JAMES CAMPBELL,**

17 **BEING DULY SWORN TESTIFIES AS FOLLOWS**

18 **MR. CAMPBELL:** Yes.

19 **CLERK OF COURT:** Be seated. State your full name for
20 The Court. Spell your last name, sir.

21 **MR. CAMPBELL:** James Moses Campbell. C-A-M-P-B-E-L-L.

22 **DIRECT EXAMINATION BY MR. REDMOND**

23 Q. By whom are you employed with at this time?

24 A. Marlboro County Sheriff's Office.

25 Q. And in what capacity?

JAMES CAMPBELL - DIRECT EXAMINATION BY MR. REDMOND

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1 A. Criminal Investigations.

2 Q. And back in 2007 in June of 2007 did you work with Dillon
3 County Sheriff's Office?

4 A. I did.

5 Q. And in what capacity?

6 A. Criminal Investigations.

7 Q. And how long had you been with the Sheriff's Office total
8 up until going to Marlboro County?

9 A. Approximately twenty-three years, twenty-four.

10 Q. And how much of that time was as an investigator?

11 A. Approximately fourteen years.

12 Q. Okay. Now, let me direct your attention to the incident
13 that occurred at the Blue Moon on the seventeenth of June
14 2007. Do, you recall being dispatched out there?

15 A. Yes, sir.

16 Q. And could you tell the jury when you were dispatched to
17 the scene, tell us what occurred --- And I didn't ask you
18 this. Do you recall about what time y'all were
19 dispatched out there?

20 A. I think about midnight.

21 Q. Okay. And could you tell the jury what transpired from
22 the time you were dispatched, what did you do and
23 observe?

24 A. Well I basically after dispatched called me and told that
25 they had a shooting at the Blue Moon. I got up and I got

JAMES CAMPBELL - DIRECT EXAMINATION BY MR. REDMOND

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1 dressed. I went out to the Blue Moon. When I got there
2 I met with the officers that were on the scene when I got
3 there and basically asked them what they had and they
4 said they had shooting. From that point on I waited on
5 Captain Arnette to get there, and the Sheriff, and the
6 rest of 'um and we started processing the crime scene.

7 Q. Okay. Now did you observe the victim at that particular
8 time --- When you arrived on the scene did you observe
9 the victim, Kelvin Smalls?

10 A. I seen him --- he was laying in the car, yes, sir.

11 Q. Okay. And what was his condition in the car when you saw
12 him?

13 A. He was like laying in the back seat stretched out.

14 Q. And was he alive or dead?

15 A. He was dead.

16 Q. Okay. Did it appear that he had been shot?

17 A. Yes, sir.

18 Q. Now, let me go back to your working the crime scene.

19 Tell us what you did once Captain Arnette got there, tell
20 us what took place, what did y'all do?

21 A. We basically --- What we normally do first we would
22 photograph the crime scene. Basically we just go out and
23 photograph all parts of the crime scene and anything that
24 is inside the crime scene as far as evidence. We
25 photograph all that and we label it.

JAMES CAMPBELL - DIRECT EXAMINATION BY MR. REDMOND

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1 Q. Okay. Let me just stop you there and ask you this. With
2 the evidence that was collected including the photograph
3 were they given to another agency subsequent to your
4 investigations?

5 A. Yes, when I got my stuff I turned it over to somebody
6 else.

7 Q. Okay. And once it was turned over, was it lost after it
8 was turned over to another agency, the photographs and
9 other evidence that you examined, was it lost afterwards?
10 Well, let me ask you this. Based on your knowledge has
11 that evidence --- Do we have that evidence here today?

12 **MS. SELLERS:** Objection, Your Honor. This witness has
13 already testified he is no longer employed with the Sheriff's
14 Office so he would have no knowledge as to what they have in
15 custody at this time. That would call for speculation.

16 **THE COURT:** Okay.

17 **MR. REDMOND:** And, Your Honor, I can actually move on
18 because we have already, dealt with that with Captain Arnette.

19 **THE COURT:** Sustained.

20 Q. (By Mr. Redmond) Let's talk about you turning over the
21 evidence. When you collected the evidence did you ---
22 What did you do with the bullets that you recovered that
23 night?

24 A. We put them all into little envelopes. I kept them in
25 my patrol car that night after we finished up, and the

JAMES CAMPBELL - DIRECT EXAMINATION BY MR. REDMOND

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1 next morning I carry them to SLED.

2 Q. Okay. Now before you went to SLED did you receive any
3 other evidence from the autopsy?

4 A. Yes, sir.

5 Q. Okay. And, was that evidence from the autopsy bullet
6 fragments from the victim, Kelvin Smalls?

7 A. Yes, sir.

8 Q. Did you take those bullet fragments with the other
9 bullets you collected to SLED?

10 A. Yes, sir.

11 Q. Okay. Now, let me ask you to do this. If you wouldn't
12 mind stepping down, let's go through this chart. Now,
13 this chart was prepared by Captain Arnette. Does it, to
14 the best of your recollection, accurately depict where
15 the items of evidence that we are referring to were
16 collected?

17 A. Yes, sir.

18 Q. And let me how you State's Exhibit Number 6. State's
19 Exhibit Number 6, is a listing of the casings and other
20 evidence collected at the scene that night. Again, is
21 that an accurate representation of what was collected at
22 the scene that particular evening?

23 A. Yes, sir.

24 Q. All right. Now, I'm going to ask you to do this. Now, I
25 am showing you State's Exhibit Number 15, does that

JAMES CAMPBELL - DIRECT EXAMINATION BY MR. REDMOND

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1 accurately depict the Blue Moon Night Club?

2 A. Yeah, that is a picture of the Blue Moon Club.

3 Q. Okay. And State's Exhibit 16?

4 A. It is a side picture of the club.

5 Q. Okay. State's Exhibit 17. And I will give you 17 and
6 18. Do you recognize those two?

7 A. Yes, sir.

8 Q. Okay. Could you tell the jury what those represent?

9 A. These would have been evidence envelopes that Captain
10 Arnette would have put the shell casings in or myself.

11 Q. Okay. And let me show you what has been marked as
12 State's Number 19.

13 A. Those are envelopes where we pick up the shell casings
14 off the ground that night from different guns and put
15 them all in there.

16 Q. Okay. Now, let me show you what has been marked as
17 State's 21 that has an envelope marked Two-B on it. Is
18 that an item that was collected by you that night at the
19 Blue Moon?

20 A. Yes, sir.

21 Q. Show you State's 22 --

22 **MS. LITTLE:** Objection, Your Honor, previous objection.

23 **THE COURT:** All right, thanks. Overruled, but
24 admitted.

25 **MR. REDMOND:** Thank you, Your Honor.

JAMES CAMPBELL - DIRECT EXAMINATION BY MR. REDMOND

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- 1 Q. State's Exhibit Number 6, is that an item that was
2 collected at the scene that particular night at the Blue
3 Moon?
- 4 A. Yes, sir.
- 5 Q. Okay. And I said State's Exhibit 6, it's State's Exhibit
6 22 Item Number Six.
- 7 A. Yes, sir.
- 8 Q. Okay. Now let me show you one other picture that marked
9 as State's 28. Could you explain to the jury first of
10 all, did you take this picture?
- 11 A. Yes, sir.
- 12 Q. Okay. And could you tell the jury what State's Exhibit
13 Number 28 is?
- 14 A. This is a picture of the inside of the car where Mr.
15 Small was lying in the backseat.
- 16 Q. Okay. And with State's 28 when you refer to the bullet
17 hole, could you point out the bullet hole for the jury?
- 18 A. Right there. It's just a picture of the side door, the
19 inside of the car.
- 20 Q. Okay. And is that a picture that you took at the scene
21 that night once Mr. Small's body had been removed?
- 22 A. Yes, sir.
- 23 Q. Okay. And do you recall where Mr. Small's head was in
24 relation to this bullet hole?
- 25 A. It would have been laying --- It would have been laying

JAMES CAMPBELL - DIRECT EXAMINATION BY MR. REDMOND

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1 somewhere right in here.

2 Q. Okay.

3 A. This was the side door panel, he was laid over in car.

4 Q. Okay. Thank you. Let me show you again what has been
5 marked as State's Exhibit Number 2. Could you tell the
6 jury whether or not that was the only vehicle that had
7 been shot up, or were there other vehicles that had been
8 shot --- that had bullets that night?

9 A. Well, I can't really tell from this here. I can't really
10 tell from this here, because there were some vehicles
11 parked somewhere over here. I don't have the pictures so
12 I can't tell you actually where it was at.

13 Q. In other words, if you had the pictures you could show
14 what cars had been shot up, is that correct?

15 A. That is correct.

16 Q. Okay. But suffice to say were there other cars that had
17 bullets holes in them that night?

18 A. Yes, sir.

19 Q. All right. You can have a seat. I just have a few more
20 questions.

21 And, again, all the bullets that were
22 collected, did you take those bullets that were
23 collected, the cartridges, all this evidence
24 reflected here, was that taken to SLED for analysis?

25 A. Yes, sir.

JAMES CAMPBELL - CROSS EXAMINATION BY MS. SELLERS

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1 Q. For ballistics analysis. After the incident, or actually
2 after you arrived on the scene, at any time during your
3 investigation did you talk with any witnesses?

4 A. Yes, sir. I talked to several witnesses.

5 Q. Okay. And in talking with several witnesses, did you get
6 statements from some of them?

7 A. Yes, sir.

8 Q. Okay. And, did that aid you in your investigation, and
9 ultimately lead you to the arrest of Jeremy Wright, the
10 Defendant?

11 A. Yes, sir.

12 Q. Okay. And just for the record, seated at the Defense
13 table, is that the Defendant Jeremy Wright?

14 A. Yes, sir.

15 Q. Okay.

16 **MR. REDMOND:** I beg The Court's indulgence.

17 **(PAUSE)**

18 Q. That would be all the questions I have at this point.
19 Please feel free to answer any questions that Defense may
20 have.

21 **THE COURT:** Ms. Sellers.

22 **MS. SELLERS:** May it please The Court.

23 **CROSS EXAMINATION BY MS. SELLERS**

24 Q. Mr. Campbell, how are you going this morning?

25 A. Good, how are you doing.

JAMES CAMPBELL - CROSS EXAMINATION BY MS. SELLERS

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1 Q. I'm doing well, thank you. Now are you commonly referred
2 to the --

3 A. -- Yes--

4 Q. -- And you said you had been with the --- you were with
5 the Sheriff's Office for twenty-four years?

6 A. Approximately twenty-three, twenty-four.

7 Q. Twenty-four, twenty-two to twenty-four.

8 A. Twenty-three to twenty-four years.

9 Q. Okay. And you were the lead investigator on this case,
10 correct?

11 A. Yes, ma'am.

12 Q. Okay. So when you got to the crime scene were there
13 people milling about?

14 A. Do what now?

15 Q. Were there people walking around the crime scene?

16 A. Yes, ma'am.

17 Q. What area was taped off, if any?

18 A. The best I remember we taped off the front of the
19 building and the right side.

20 Q. Just the front of the building and the right side?

21 A. Yes, ma'am.

22 Q. And how far back to the right?

23 A. I would say no more than to the back corner of the
24 building.

25 Q. To the back corner of the building?

JAMES CAMPBELL - CROSS EXAMINATION BY MS. SELLERS

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1 A. Yes, ma'am.

2 MS. SELLERS: Your Honor, may I approach the witness
3 stand?

4 THE COURT: Yes, ma'am.

5 Q. I have what has been marked as State's Exhibit 12. You
6 said you recognize this photo, correct?

7 A. Yes, ma'am.

8 Q. Okay. Now, was there any portion of the front building
9 that was roped off?

10 A. We would had --- we would have had --- We would have
11 roped off right here in the front, from here to back up
12 in these woods and went cross that way and across the
13 front and around to the backside of the building.

14 Q. So would that would you have gone across the road?

15 A. No, ma'am, just in front of the building.

16 Q. Let me show you Exhibit Number 4 again. Now, how far
17 back, would you say, those woods are from the club?

18 A. Probably the distance of a football field.

19 Q. A football field. Now on that night how crowded was the
20 club; was it packed to capacity?

21 A. I can't answer that. When I got there everybody was
22 outside.

23 Q. Were you ever told that there were over three hundred
24 people there that night?

25 MR. REDMOND: Your Honor, I would object unless there is

JAMES CAMPBELL - CROSS EXAMINATION BY MS. SELLERS

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1 some other foundation or exception, I would say that is
2 hearsay as to what he was told by somebody else, and we don't
3 know who that somebody else was.

4 **THE COURT:** Sustained.

5 Q. (By Ms. Sellers) Did you take statements that night?

6 A. Yes, ma'am.

7 Q. Did you take notes that night?

8 A. No, ma'am.

9 Q. How did you remember who you spoke with?

10 A. Because I basically knew all of them.

11 Q. So you only went to the people that you knew?

12 A. Basically, yes.

13 Q. So, how many people would you say, were out there that
14 night when you arrived?

15 A. Probably a hundred.

16 Q. And how many of those hundred people did you speak with
17 on that night?

18 A. Probably talked to ten or twenty of 'um, but a lot of
19 them didn't see anything.

20 Q. A lot of them didn't see anything?

21 A. Said they were inside the club.

22 Q. Inside the club. And you said you talked to about ten to
23 twenty?

24 A. Probably.

25 Q. Could you recall the names of those ten to twenty people?

JAMES CAMPBELL - CROSS EXAMINATION BY MS. SELLERS

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1 A. No, ma'am.

2 Q. And did this happened over about two years ago, correct?

3 A. Yes, ma'am.

4 Q. Now on that night how many victims?

5 A. Ma'am?

6 Q. How many victims were there that night?

7 A. Well Mr. Smalls in the car, and as I understand that a
8 female had got hit that night.

9 Q. Did you ever go and speak with that female?

10 A. I didn't.

11 Q. But you were the lead investigator?

12 A. Right.

13 Q. Okay. Do you know how many time that female was shot?

14 A. No, ma'am.

15 Q. Do you know if there were any other cars that were shot
16 --- shot up during the shootout?

17 A. There were several cars that had bullet holes in 'um.

18 Q. Do yo know who owned those cars?

19 A. At the time when I got to the crime scene I photographed
20 the vehicles, and I photographed the license tag on each
21 vehicle, so we could always go back and run the license
22 tag number and determine who vehicle it is, I did that.
23 But as far as saying who vehicle is which I don't know
24 whose was which.

25 Q. So did you ever do a followup investigation --

JAMES CAMPBELL - CROSS EXAMINATION BY MS. SELLERS

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- 1 A. -- As far as --
- 2 Q. -- to find out who the vehicles belonged to?
- 3 A. The victims came to the Sheriff Office and filed a report
- 4 as to their vehicle being damaged.
- 5 Q. Every vehicle that was damaged they filed a report?
- 6 A. I don't know if all of them did, I know some of 'um came
- 7 up.
- 8 Q. But did you ever go and speak with all of these
- 9 individuals?
- 10 A. I spoke with them that night.
- 11 Q. Just that night, okay. And how many again of those
- 12 individuals were there?
- 13 A. Best I remember there were three or four more cars might
- 14 have been shot.
- 15 Q. Three or four more cars. Did you ever have the
- 16 opportunity to go down and talk to Ms. Judy Campbell?
- 17 A. Judy Campbell?
- 18 Q. Yes. Ms. Judy Campbell that lives almost to the North
- 19 Carolina line?
- 20 A. I don't remember talking to her.
- 21 Q. Do you remember getting a call from dispatch about Ms.
- 22 Campbell calling in reference to a car in her yard?
- 23 A. One of the other investigators might have went and talked
- 24 to her, I didn't.
- 25 Q. Now did you oversee this entire investigation?

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1 A. Me and the Captain were on all that weekend and it was
2 kind of like I was --- we was both on call and I was the
3 primary on call, and if we was hit with something major
4 then he will come out and that is what happened this
5 particular night. Both of us ended up coming out
6 working.

7 Q. Now you said something major, there was a major shootout,
8 so is it correct that the Sheriff also responded to this
9 call?

10 A. He did.

11 Q. Who else responded to this call?

12 A. Chief Deputy Pernell, Sergeant Archie Scott was out
13 there, Officer Josh Oak, may have been some more I can't
14 remember all of them.

15 Q. And do you recall any of those individuals taking notes?

16 A. I can't tell you what they did. I don't know.

17 Q. Okay. If I could have you step down for one moment,
18 please.

19 (PAUSE)

20 Q. Could you tell me for the record who collected bullet
21 one?

22 A. The best I can remember I think I collected all the
23 bullets, me and Cliff did together.

24 Q. So did you all pick them up together?

25 A. Yes, ma'am. One of us would pick them up and the other

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1 would put them in the envelope.

2 Q. Did you all take photographs at that time?

3 A. Yes, ma'am.

4 Q. Now how many shell casings did you find that night?

5 A. I think there was --- I think we collected five 45's ---
6 five 45 shell casings. I think there was four 380's.
7 There was a .9 millimeter. There was probably fifteen
8 to twenty rifle bullets.

9 Q. Rifle bullets?

10 A. Well I call them rifle bullets.

11 Q. Now we are going to refer to refer to State's Exhibit
12 Number 6 to reference Number Two. Now, would it be
13 correct to say that the 7.62x39 bullets, they were found
14 Eighteen B, Sixteen and Fifteen Fourteen. There are
15 four shell casings found, correct?

16 A. This one we --- find it a picture of it --- I don't know,
17 it was all laying out in the front of the place, as best
18 as I can tell you.

19 Q. But you do admit that all these bullets were fired from
20 various bullets --- various guns, correct?

21 A. Yeah.

22 Q. There are not from one specific weapon?

23 A. There was four or give different guns out there.

24 Q. Four or five different guns. And when we were talking
25 about the perimeter. You said you thought you blocked it

JAMES CAMPBELL - CROSS EXAMINATION BY MS. SELLERS

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1 off to the edge of the building?

2 A. The best I remember, yes.

3 Q. Did you ever have anyone look in the dumpster?

4 A. I didn't personally look in it.

5 Q. Did you ever instruct anyone to look in the dumpster?

6 A. As far as what?

7 Q. For a weapon?

8 A. No, ma'am.

9 Q. Did you ever recover a weapon on that night?

10 A. No, ma'am.

11 Q. And also it's not on the drawing, it's not on this sketch
12 but are there some --- if you refer to State's 12, isn't
13 there a picnic area back there with tables?

14 A. Seems like there was a table back there.

15 Q. Okay. Did anyone go underneath and check under the
16 tables for a weapon?

17 A. I didn't.

18 Q. Okay. Did you ever instruct anyone as the lead
19 investigator?

20 A. No, ma'am.

21 Q. Okay. Now, also from this scale here, you would also
22 agree that there were several rifles you said shot or
23 rifle casings here in the front portion of the club on
24 the roadway?

25 A. Yes, ma'am.

JAMES CAMPBELL - CROSS EXAMINATION BY MS. SELLERS

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1 Q. Do you know who was shooting the 380 that night?

2 A. No, ma'am, I don't know.

3 Q. Did you ever ask anyone who was shooting a 380?

4 A. No, ma'am.

5 Q. Did you ever find out who was shooting the .9 millimeter?

6 A. No, ma'am.

7 Q. What about that 31?

8 A. 31?

9 Q. Yes. There was shell casing found --- beg The Court's
10 indulgence.

11 (PAUSE)

12 Q. Now, Mr. Hoghead, were there multiple rifle casings that
13 night?

14 A. Yes, ma'am.

15 Q. And was it from different --- From your experience, with
16 twenty-four in crime investigations, criminal
17 investigations, could you say that there were multiple
18 rifles fired that night?

19 A. I don't what was fired that night. All I can tell you is
20 what we collected.

21 Q. What you collected. And did you search the trees?

22 A. No, ma'am.

23 Q. Why not?

24 A. I didn't see a need to search no trees.

25 Q. Okay. Were you looking for bullets?

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1 A. Basically when we go to a crime scene all you do is you
2 just look for evidence and the evidence that we located
3 and found that night was in front of the club.

4 Q. So the evidence that you saw what was in front of your
5 face that is where you stop, correct?

6 A. Yes, ma'am.

7 Q. So anything that could have been found was just obsolete
8 to you all?

9 A. I don't say it was obsolete. They just basically told us
10 somebody was out there shooting, and when we got to the
11 club and saw all the shell casings on the ground that's
12 pretty much what we processed.

13 Q. Did you ever hear that multiple guns were fired?

14 A. Yes, ma'am.

15 Q. Okay. Let me ask you a question. When you got to the
16 car, the vehicle in which the victim was found, did you
17 ever send his clothes off to SLED for any gun powder?

18 A. I don't recall if they sent the cloths off or not.

19 Q. Okay. But you were the lead investigator, correct?

20 A. Yes, ma'am.

21 Q. So you would have sent that information off?

22 A. Well, me or the Captain either one.

23 Q. You took all the information to SLED?

24 A. I took the evidence that we collected off the ground.

25 Q. Okay. You said that you kept that information in your

JAMES CAMPBELL - CROSS EXAMINATION BY MS. SELLERS

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1 car?

2 A. Yes, ma'am.

3 Q. Okay. Was there any --- Could that cause any
4 contamination of the evidence?

5 A. I don't see how it could.

6 Q. Was it warm during that time?

7 A. I can't remember.

8 Q. Was it not in June?

9 A. It was in June. I don't remember if it was warm that
10 night.

11 Q. Okay. Now is June typically hot in South Carolina?

12 A. Basically, yes, ma'am.

13 Q. Now, when we talk about the evidence that you did collect
14 could you tell me exactly how you collected each and
15 every casing, the method that you used?

16 A. The best I remember we took an ink pen --- we would take
17 an ink pen and like pick up each cartridge with an ink
18 pen and drop it in an envelope.

19 Q. Now, you say to the best that you can remember. Did
20 y'all have a policy in place for collecting evidence?

21 A. No ma'am, not as far as how you collect it, no, ma'am.

22 Q. And so in terms of how you collect evidence at each and
23 every crime scene would depend on the officer that was
24 collecting that evidence?

25 A. The way you collect evidence is you handle it as less as

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1 possible with your hands especially if you're trying to
2 get fingerprints off of it. You would try not to handle
3 it with your hand.

4 Q. Okay, let's think about this.

5 A. That's why we used an ink pen.

6 Q. Okay. Let's think about those fingerprints. Did you
7 ever find or recover any fingerprints off of any of the
8 shell casings?

9 A. I sent them to SLED. I didn't do none of that.

10 Q. Did you ask for that to be done?

11 A. I don't think so.

12 Q. Wouldn't that information be important?

13 A. Well if you had a fingerprint on the casings you could
14 determine --- it would tell you that they had their hands
15 on that bullet at some point.

16 Q. Exactly. Now let me ask you, in times of speaking with
17 my client, Mr. Wright, did you ever execute a search
18 warrant?

19 A. No, ma'am.

20 Q. Didn't Mr. Wright, actually come and turn himself into
21 you?

22 A. Yes, ma'am.

23 Q. Didn't he come asking if you were looking for him?

24 A. Yes, ma'am.

25 Q. You didn't have to go out and search for him, did you?

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1 A. No, ma'am.

2 Q. And how many days after this incident did he do that?

3 A. I want to say about two days.

4 Q. Two days. Let me ask you another question. You said you
5 took all the information into SLED on the same day?

6 A. The same day we got the autopsy report back, we carried
7 this stuff the same --- the day that I got it, I carried
8 it to SLED either the day I got it or the following day.

9 Q. Now didn't you make two trips to SLED?

10 A. I go to Columbia so much I can't remember.

11 Q. Okay. Was this a busy time for you?

12 A. Yes, ma'am.

13 Q. Were you investigating a lot of robberies and other
14 shootings?

15 A. There is something always going on. I can't tell you
16 exactly what all I was doing.

17 Q. Do you take notes during your investigations?

18 A. Sometimes, depends on what kind of case it is or what I'm
19 looking for.

20 Q. But in this murder case you didn't take any notes?

21 A. Not that I remember.

22 MS. SELLERS: Beg The Court's indulgence.

23 (PAUSE)

24 MS. SELLERS: I have not further questions for you, Mr.
25 Campbell, thank you.

JAMES CAMPBELL - REDIRECT EXAMINATION BY MR. REDMOND

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1 **MR. CAMPBELL:** Thank you.

2 **MR. REDMOND:** May it please The Court, Your Honor?

3 **THE COURT:** Yes, sir.

4 **REDIRECT EXAMINATION BY MR. REDMOND**

5 **Q.** I think I ask you earlier but I will ask you again. Were
6 you out there or were any of the officers out there when
7 this shooting happened?

8 **A.** No, sir.

9 **Q.** And in cases like this in your experience as an
10 investigator you collect evidence, but do you also look
11 for witnesses?

12 **A.** Yes, sir.

13 **Q.** And did you do that in this case?

14 **A.** Yes, sir.

15 **Q.** And, in fact, did you find some in this case?

16 **A.** Yes, sir.

17 **Q.** And, in fact you weren't asked about this, when you were
18 talking about taking notes. Did you take statements from
19 witnesses in this case?

20 **A.** Yes, sir.

21 **Q.** Okay. So there were witnesses. Were those witnesses out
22 there at the time this occurred? Without saying what
23 they said, we'll get to them later, but did those
24 witnesses give you information that aided in your
25 investigation?

JAMES CAMPBELL - REDIRECT EXAMINATION BY MR. REDMOND

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1 A. Yes, sir.

2 Q. Thank you. Now, let me ask you this, you were asked a
3 couple of questions about State's Exhibit 28 again. Let
4 me ask you to step down real quickly if you would. And I
5 am going to asks you to refer to State's Exhibit 28 and
6 State's 2, because you were asked about questions
7 regarding bullets and things like that. State's 28, this
8 bullet hole. Based on your --

9 MS. SELLERS: Objection, Your Honor. That would be
10 beyond the scope of cross. I never asked him about that
11 particular picture. I had the photo in my hand but I never
12 asked him anything about that.

13 MR. REDMOND: There was discussion as it relates to the
14 shooting that was occurring at the time that was actually
15 brought up on cross. There are certain I didn't --- I just
16 dealt with the collection of evidence.

17 THE COURT: I'll overruled the objection. It doesn't
18 preclude him from using a photo as long as he is referring to
19 testimony which was discussed during cross and that was the
20 bullets and the items found at the scene.

21 Q. (By Mr. Redmond) And let me just ask you this. How
22 long have you been an investigator?

23 A. Probably thirteen fourteen years.

24 Q. All right. And in your assessment of the crime scene you
25 were asked a lot of about why you didn't search back in

JAMES CAMPBELL - REDIRECT EXAMINATION BY MR. REDMOND

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1 the back. Where in your estimation was this bullet fired
2 from based on your experience in investigation?

3 A. It was fired from somewhere near the front of the club.

4 **MS. SELLERS:** Objection, Your Honor. That is just going
5 to cause for speculation, Your Honor. He does not have any
6 type of measurements or anything to aid in his opinion on this
7 matter.

8 **MR. REDMOND:** And, Your Honor, again, that is why I
9 asked him about his experience as an investigator. Thinking
10 he has been an investigator for this amount of time, and
11 further, it is clear what the implication is since they
12 brought it up on cross about not searching the back. That is
13 why I am bringing that up.

14 **THE COURT:** Y'all step up here for just a minute and let
15 me ask you a question.

16 (Whereupon, a bench conference was held in the
17 presence of the jury but out of the hearing of the jury.)

18 **THE COURT:** The objection is sustained.

19 Q. (By Mr. Redmond) Now in looking at this picture, again
20 based on your recollection, where was the victim's head
21 located when this picture was taken?

22 A. It would have been laying up against this back door. It
23 would have been the back right door of the vehicle.

24 Q. Would it have been in --- in pointing out on this State's
25 Exhibit Number 2, where would that have been the back

RANDY MCCOLLUM - DIRECT EXAMINATION BY MR. REDMOND

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1 rear door of the vehicle?

2 A. Right about here.

3 Q. And is this the front. --- What does this part of the door
4 represent?

5 A. Looks like it would be a knob that control the window and
6 the door lock.

7 **MR. REDMOND:** Okay. Thank you very much. That's all I
8 questions I have at this time.

9 **THE COURT:** Thank you, sir, you may step down.

10 **MS. SELLERS:** If I may, Your Honor.

11 **THE COURT:** All right.

12 **(PAUSE)**

13 **MS. SELLERS:** No further questions, Your Honor.

14 **THE COURT:** You may step down, sir.

15 **MR. REDMOND:** With The Court's permission, he works in
16 Marlboro County. I have no objection to Investigator Campbell
17 being release.

18 **THE COURT:** Any objections from Defense?

19 **MS. SELLERS:** No objection, Your Honor.

20 **THE COURT:** Thank you, sir. You are free to go.

21 **MR. REDMOND:** The State would next call Randy McCollum.

22 **RANDY MCCOLLUM,**

23 **BEING DULY SWORN TESTIFIES AS FOLLOWS**

24 **MR. MCCOLLUM:** Yes.

25 **CLERK OF COURT:** Please be seated. State your full name

RANDY MCCOLLUM - DIRECT EXAMINATION BY MR. REDMOND

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1 for The Court, spelling your last name, sir.

2 **MR. MCCOLLUM:** James Randy McCollum. McCollum

3 M-C - C-O-L-L-U-M.

4 **DIRECT EXAMINATION BY MR. REDMOND**

5 Q. Mr. McCollum, do you live in Dillon County?

6 A. Yes.

7 Q. And are you affiliated with Blue Moon, formerly Club
8 Makium?

9 A. Yes.

10 Q. And could you tell the jury how you are affiliated with
11 that particular establishment?

12 A. Oh, it's family owned and right now I am over and in
13 charge.

14 Q. And were you affiliated with the Blue Moon on the
15 seventeenth of June 2007?

16 A. Yes.

17 Q. Now let me start off asking this. On that particular
18 evening do you recall an incident or an encounter with
19 the Defendant?

20 **MS. SELLERS:** Objection, Your Honor.

21 **MR. REDMOND:** All right, I will rephrase it.

22 **THE COURT:** Sustained.

23 Q. Well, let me ask you this. On the seventeenth of June
24 2007 was there a shooting at your club?

25 A. Yes.

RANDY MCCOLLUM - DIRECT EXAMINATION BY MR. REDMOND

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1 Q. Did somebody get killed in the parking lot at your club?

2 A. Yes.

3 Q. Now, before that happened did you have an encounter with
4 the Defendant?

5 A. Yes.

6 Q. Did you see the Defendant that night?

7 A. Yes.

8 Q. And could you explain to the jury exactly what took place
9 when you first had contact with the Defendant. And, I
10 need to speak as loud as you can, okay.

11 A. Yes. Okay. He drove up. Him and three other --- two
12 other cars, he came up in the first car. Him and about
13 two more guys. And when they pulled up the guys that was
14 in the back car, I knew them. I told them a few weeks
15 before not to come back out there. That's when Jeremy
16 starting talking. Me and him just starting changing
17 words, changing words. I tried to get him to leave.

18 Q. Now, let me just stop you there. I need to know to the
19 best of your recollection what exactly the Defendant was
20 saying during this time that you were trying to get him
21 to leave?

22 A. Oh, he told me that I can't tell him what to do and
23 stuff like that. We just kept changing words. The whole
24 time I was trying to get him to leave.

25 Q. Okay. And then what happened during the time you were

RANDY MCCOLLUM - DIRECT EXAMINATION BY MR. REDMOND

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1 trying to get him to leave tell the jury what happened
2 after that?

3 A. Me and Jeremy we kept exchanging words and after a while
4 I went back to the other guys that came with him, and by
5 this time Jeremy got out the car and ran up to the door.

6 Q. Okay. Now before that time, do you recall him making any
7 reference to a nephew of yours?

8 **MS. SELLERS:** Objection, Your Honor, that would be
9 leading.

10 **MR. REDMOND:** I will rephrase it.

11 **THE COURT:** Sustained.

12 Q. Okay. I will ask it like this. Did the Defendant say
13 anything about anybody while you were encountering him?

14 A. He said that I'd like to leave. At first I didn't know
15 what he was talking about. But he said that y'all owed
16 us a body anyway.

17 Q. Okay. And who said that?

18 A. Jeremy.

19 Q. Okay. And he said this before he went to the Club?

20 A. Yes.

21 Q. Okay. Now tell us what happened after that?

22 A. Well when he got out the car, me and him we discussed and
23 we was just steady arguing, so he got out the car and
24 went towards the door. I went to talk to the other
25 people in the other car trying to get them to leave.

RANDY MCCOLLUM - DIRECT EXAMINATION BY MR. REDMOND

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- 1 Q. Okay.
- 2 A. And then after awhile a fight broke out and everybody
- 3 came running out. Then I went to the back to call 911.
- 4 Q. Okay. Now was Clifton Crosland right there, Clifton
- 5 Crosland in the area during the time you were having this
- 6 argument with the Defendant?
- 7 A. Yes, sir.
- 8 Q. Okay. And you said that you went --- Where did you go
- 9 when you went to call 911?
- 10 A. I went around back to the side of the club.
- 11 Q. Okay.
- 12 A. Called 911.
- 13 Q. And what --- Tell the jury, from that point forward what
- 14 transpired after that?
- 15 A. Well I went to the back and I was steady trying to call
- 16 them. Everybody was just quick out running. They was
- 17 just running every which way.
- 18 Q. And then did anything happen after that?
- 19 A. I heard a lot of shots go off.
- 20 Q. Okay. Now, you heard a lot of shots go off. Did you see
- 21 anything? Did you see --
- 22 A. -- I see people running.
- 23 Q. Okay. When you heard the shots --- and, I will ask you
- 24 like this; have you ever heard an assault rifle shot
- 25 before?

RANDY MCCOLLUM - DIRECT EXAMINATION BY MR. REDMOND

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1 A. Not --- not really.

2 Q. Okay. Have you ever heard a handgun shot before?

3 A. Yes, sir.

4 Q. All right. Did it sound like a handgun?

5 A. No, sir.

6 Q. Have you ever heard a shotgun before?

7 A. Yes, sir.

8 Q. Did it sound like a shotgun?

9 A. No, sir.

10 Q. Okay. If you can, how would you describe the shots that
11 you heard?

12 A. It was numerous of shots, twenty or more.

13 Q. Okay.

14 A. It was steady shooting.

15 Q. When you say steady like in a stream?

16 A. Yeah.

17 Q. Okay. Now at some point did you --- did you hear it ---
18 and I think I ask you this, but I will just make myself
19 clear. At the time you heard the steady stream of shots,
20 you didn't hear any shotgun or handgun shooting at that
21 time?

22 A. No.

23 Q. Okay. Now, did you actually see the Defendant again
24 after he went past you and went to the door?

25 A. No, sir.

RANDY MCCOLLUM - DIRECT EXAMINATION BY MR. REDMOND

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1 Q. Okay. Did you see the Defendant with a gun at that
2 particular time?

3 A. No, sir.

4 Q. But was the Defendant, was he nice, was he agitated, was
5 he in a bad mood?

6 MS. SELLERS: Objection, Your Honor. Calls for
7 speculation. He cannot say about what mood my client was in
8 at that time. He's not a psychologist.

9 MR. REDMOND: It goes to state of mind, Judge.

10 THE COURT: He can give his observations as to how the
11 Defendant was acting that evening.

12 Q. And I will just ask you this. Was the Defendant, would
13 you say he was upset about something, or was he angry
14 about something at the time?

15 A. He could have been a little angry. I couldn't really say
16 because I don't know.

17 Q. Now, you said y'all were arguing?

18 A. Yeah, we was discussing --- I tried to get them to leave
19 and they wouldn't leave.

20 Q. Okay. And was the Defendant involved in that
21 conversation?

22 A. He did all the conversation.

23 Q. The Defendant did all the talking?

24 A. Yes.

25 Q. Even though you had asked them to leave?

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1 A. Yes.

2 Q. Okay. After the shooting and after everybody --- after
3 everything took place, at that point, did you find out
4 that somebody had been shot and killed?

5 A. Yes.

6 Q. Okay. Did you actually see what had happened at the
7 time that person was shot and killed?

8 A. No, sir.

9 Q. Okay. Let me ask you to step down just a moment, and I
10 am going to show you what has been marked as State's 2 so
11 we can let the jury see about where you were located.
12 And this is State's Exhibit Number 2, and I think because
13 you don't speak as loud, I am going to stand right here
14 and I want you to stand over here and speak as loudly as
15 you can. But when the Defendant first came up could you
16 point to the jury where he was at the time he first came
17 up --- when you first encountered him?

18 A. They pulled up about long in here.

19 Q. Okay. Right in here?

20 A. Yes.

21 Q. Okay. Let me ask you to do this. Just tell me --- You
22 just tell me, I will mark it, you just tell me. Point
23 again about where the Defendant's car was when you first
24 saw him, right here?

25 A. Yeah, about here.

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1 Q. All right. And were you right there in that area with
2 him?

3 A. Yes.

4 Q. Okay. Now tell me then after the Defendant left and went
5 to the door where did you go after?

6 A. I came around back to the second and third car, talking
7 to the people that I told not to come out.

8 Q. Okay. And the second and the third car were park where?

9 A. Behind his car.

10 Q. They were parked behind his car?

11 A. Yeah.

12 Q. They were parked behind his car. Now, is this your car?
13 I meant to ask you. Where were you parked that night?

14 A. Right there.

15 Q. Okay. And do you know or remember where Dewey McCall had
16 parked that night?

17 A. He was parked on the side.

18 Q. Okay. That being one. That being two. The car that you
19 are referring to that came with the Defendant, were they
20 behind these cars or behind the Defendant's car, if you
21 recall?

22 A. If you're going by our car, he is right here.

23 Q. Okay.

24 A. There is one right there and one was right there.

25 Q. Okay. One car right here and then a car right here,

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1 okay. Is that about right?

2 A. Yes.

3 Q. And their car was back here so I am going to put their
4 car --- I am just going to draw this little arrow right
5 there to clarify that, okay. So their car was actually
6 right there, gotcha. Were did you go afterwards ---
7 after he left and went past you --- you were talking with
8 them?

9 A. Yeah.

10 Q. Where did you go after you left talking with them?

11 A. I went back and went around the back side trying to call
12 911.

13 Q. Okay. So where did you end up when the shooting started?

14 A. At the back of the store.

15 Q. You were at the back, somewhere in here?

16 A. Yes.

17 Q. I am going to put "RM" that is where you were when the
18 shooting started, okay. And let me show you what has
19 been marked as State's Exhibit 12, 13, 14, 15 and 16, and
20 let me ask you to look at those pictures real quick and
21 let me know when you are ready to answer a couple of
22 questions.

23 A. Yes, sir.

24 Q. Okay. Are those all accurate pictures of the club?

25 A. Yes, sir.

RANDY MCCOLLUM - CROSS EXAMINATION BY MS. SELLERS

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1 Q. And using this picture, I am going to show you State's
2 Exhibit, in particular, Number 16. Using this picture
3 could you tell the jury about where you were when you
4 heard the shots, using the picture?

5 A. At the back of the club.

6 Q. Okay, so you were at the back of the club?

7 A. Yeah.

8 Q. Okay. All right. You can have a seat, thank you. Is
9 there any doubt in your mind that it was Jeremy Wright,
10 who was the person that you had the argument with that
11 night?

12 A. No, sir.

13 MR. REDMOND: Beg The Court's indulgence. That's all
14 the questions that I have at this time. Please answer any
15 questions that Defense may have.

16 MS. SELLERS: May it please The Court?

17 THE COURT: Yes, ma'am.

18 **CROSS EXAMINATION BY MS. SELLERS**

19 Q. Good afternoon, Mr. McCollum.

20 A. Yes.

21 Q. How are you?

22 A. All right.

23 Q. Now isn't it true that you did not know Jeremy Wright
24 that night?

25 A. What do you mean not know him?

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1 Q. You didn't know him. Could you associate his face with
2 his name?

3 A. Yes.

4 Q. You knew Jeremy Wright that night?

5 A. Yes.

6 Q. Okay. And that night when you were speaking with his
7 friends weren't you trying to tell them not to come in
8 but not Jeremy Wright, correct?

9 A. Jeremy did all the talking for everybody.

10 Q. But you said when you approached the car you approached
11 the third car first, correct?

12 A. No. His car first.

13 Q. His car first?

14 A. Yes.

15 Q. Okay. Now you referred to the building, you say the
16 club, the store, what did you sell a lot out of that
17 building?

18 A. What you mean?

19 Q. What did you sell, if anything?

20 **MR. REDMOND:** Your Honor, again, as it relates to the
21 relevance of this in relation to this incident.

22 **THE COURT:** I am going to sustain unless you can show
23 some relevance.

24 **MS. SELLERS:** Yes, sir, I think I can.

25 Q. Would you say that many people were out there drinking

RANDY MCCOLLUM - CROSS EXAMINATION BY MS. SELLERS

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1 that night?

2 A. They probably was.

3 Q. Were? Okay. And did you provide alcohol?

4 A. No, ma'am.

5 Q. You never provided any alcohol?

6 A. No, ma'am.

7 Q. Okay. And how were you able to attract a large number of
8 people?

9 MR. REDMOND: Your Honor, again, I think she --

10 THE COURT: Y'all approach.

11 (Whereupon, a bench conference was held in the
12 presence of the jury but out of the hearing of the jury.)

13 THE COURT: Ladies and gentlemen, I am going to ask you
14 to step back to your jury room for just a few minutes. Let
15 me take up this matter of law. Now, listen, please do me a
16 favor --

17 Oh, I tell you what, hands on for one second. I am going
18 to get y'all to do me a favor while you are back there. Have
19 a seat for a second. I am going to need a foreperson for the
20 jury. Let me explain to you very briefly what the
21 foreperson's role is in a jury. A foreperson is just simply
22 the person who is the contact between the jury panel and The
23 Court. If the jury has any questions or anything like that
24 and needs to communicate with The Court the foreperson would
25 be the person that does that. Also the foreperson would be

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1 the person who once you begin your deliberations --- any time
2 you've got a group of people that are going to begin
3 conversation somebody needs to get it started, and so the
4 foreperson would say okay let's go ahead and start. I will
5 tell you that when you deliberate all of you must be present
6 so that if someone has to use the restroom and excuse
7 themselves the foreperson would say okay let's stop talking
8 about it until they return and then when they return let's
9 start back. The foreperson is a no more important --- is a
10 no more important member of the jury than any of you, because
11 what I will tell you is this. Your verdict must be unanimous.

12 All of you must agree on the verdict, so no persons' vote is
13 any more important than another persons. Having said all
14 these things, while I am taking up this matter of law and you
15 go back into your jury room, please have no conversation about
16 the case, but do me a favor and talk amongst yourselves and
17 nominate or elect a foreperson for your jury, okay. When you
18 have that individual elected or whatever if you would --- Do
19 they have paper and pencil, back there?

20 **CLERK OF COURT:** Yes, sir.

21 **THE COURT:** Just write the person's name, whoever is the
22 foreperson and pass that out to me. And then when you come
23 back in, the foreperson would occupy this seat where you are,
24 ma'am. Then the rest of you sit wherever you like.

25 Okay. So while I take up this matter go ahead and elect

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1 a person for the jury.

2 (Whereupon, the jury exits the courtroom at 12:21
3 p.m. The Court takes a brief recess.)

4 **THE COURT:** All right, Ms. Sellers may proceed by
5 proffering the testimony you wish to elicit.

6 Q. (By Ms. Sellers) Mr. McCollum, you said this business
7 has been in your family for over forty-years. So you
8 are the sole operator and owner of this business?

9 A. Yes.

10 Q. Where else are you employed?

11 A. At a pool room downtown.

12 Q. Pool room. Do you charge to get into the pool room?

13 A. No, ma'am.

14 Q. Okay. Is there a cover or a fee to get into your club?

15 A. No, ma'am.

16 Q. So how do you generate income?

17 A. Through sells and pool tables.

18 Q. And what do you sell?

19 A. Sodas, chips, cigarettes, cigars.

20 Q. Okay. An do you currently have a pending application or
21 are you trying to get your business licenses or your
22 alcohol license?

23 A. Alcohol and beer licence, yes.

24 Q. Okay. And how long have you been in the process of
25 obtaining that?

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1 A. About a year and a half.

2 Q. A year and a half. So pretty much almost shortly after
3 this incident occurred?

4 A. Yes.

5 Q. Okay. Now prior to that the club was Club Makium?

6 A. Yes.

7 Q. Did you ever try or attempt to get an alcohol or beer
8 license under that name?

9 A. They had beer license under that name.

10 Q. Okay. Was it ever suspended?

11 A. Not as far as I can remember.

12 Q. Okay. So you just stopped --- you just changed the club
13 name?

14 A. Yes.

15 Q. And stop serving alcohol at that time?

16 A. Yes.

17 Q. Okay. Is this a club, were many of your family members,
18 hang out?

19 A. Quite a few.

20 **THE COURT:** All right, Ms. Sellers, you are going to
21 need to get to the relevance to this charge. To your
22 client's charges.

23 Q. Do you think alcohol was being consumed by many of the
24 patrons that night?

25 A. They could because you're welcome to bring your own.

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1 Q. Okay. And so it is a possibility that many of the
2 people could have been intoxicated that night?

3 THE COURT: Objection.

4 MR. REDMOND: Objection, thank you, sir.

5 THE COURT: Objection. You are asking him to give
6 possibilities. He's not entitled to do that.

7 MR. REDMOND: And, Your Honor, the only reason I didn't
8 object at this point because it's a proffer, but --

9 THE COURT: -- Well, I understand it's a proffer but I
10 want to move on. I don't know where you are trying to go.
11 I do know where you are trying to go but you're not going
12 there.

13 MS. SELLERS: Okay.

14 Q. Is is your --- Was it your observation that anyone was
15 intoxicated that night or --

16 A. -- No, I can't say.

17 THE COURT: He testified that people were out there
18 that had been drinking. He just testified that he didn't
19 supply it.

20 MR. REDMOND: Obviously, this whole line of questioning
21 --- And I think that has already been established asked and
22 answered and this whole, other line of questioning obviously
23 I would object to that for the purposes of relevance.

24 THE COURT: I would sustain that unless you can give me
25 some reason why any of the questions that were just proffered

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1 are relevant.

2 MS. SELLERS: I believe it's relevant, Your Honor,
3 because this individual has testified that this club has been
4 in his family for over forty-years.

5 He has a pending alcohol licence. It has been held up
6 for a year and a half.

7 It is our position that he is spoken with by law
8 enforcement to cooperate fully with this investigation and
9 that would be a motive or bias --

10 THE COURT: -- Do you have anything, to substantiate
11 that at all, anything other than your belief?

12 MS. SELLERS: No, sir.

13 THE COURT: Then it is overruled. It's all improper.

14 MS. SELLERS: Thank you, Your Honor.

15 MR. REDMOND: Does that mean sustained then?

16 THE COURT: The objection is sustained to that line of
17 questioning.

18 Ladies and gentlemen, it's clear in the law that you can
19 certainly pursue avenues, but you have to have some basis and
20 fact for it. You can't just suspect it may be the case.

21 MS. SELLERS: Your Honor --

22 THE COURT: Let me --- Let me go a little further.
23 Let's say, and I am doing a hypothetical here. Let's say
24 that Mr. McCollum's place in the past was cited for ABC
25 violations. That has no relevance to this case. At least,

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1 not that I have been shown. You suspect from what you told
2 The Court, you suspect that he is cooperating with the law
3 enforcement and I really don't know why. You just suspect
4 he is other than he's just on the stand, but that is
5 speculation and suspicion with nothing to support it.

6 And so, therefore, all of that is objectionable and The
7 State has objected to that line of questioning, and I sustain
8 the objection.

9 **MS. SELLERS:** May we approach briefly, Your Honor, for
10 another matter?

11 **THE COURT:** You can approach or you can talk now. The
12 jury is not in here.

13 **MS. SELLERS:** We do have one area that we would like
14 impeach Mr. McCollum, and this information did derive from
15 the federal transcript.

16 I am a little unsure as to how we can --- I can go and
17 cross examine Mr. McCollum's information without him alluding
18 to the actual participation.

19 **THE COURT:** I am even more in the dark since I don't
20 know what you are talking about. What information, the jury
21 --

22 **MS. SELLERS:** In terms of his knowledge of Mr. Wright,
23 identifying Mr. Wright. There was some contrary information
24 provided during his federal testimony, contradictory
25 testimony provided, and we just to impeach him on that

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1 matter. But, again, we are not trying to open the door to
2 allowing the jury to know anything about the federal process.

3 **THE COURT:** Listen, let me make this clear. I have no
4 intention of this jury having information that Mr. Wright was
5 prosecuted, Federally, okay. I am going to protect that.
6 We are not going to do that. But if you want to impeach him
7 on some prior testimony, I think the only way you can
8 possibly do that is to ask generically have you given
9 sworn testimony in another matter involving Mr. Wright.
10 Answer, yes. Do you recall saying in that testimony and then
11 go forward with the impeachment process. I don't think
12 there is any way you can get around not at least referring to
13 another hearing, because you are wanting to impeach him with
14 the sworn testimony, correct?

15 **MS. SELLERS:** Correct.

16 **THE COURT:** But we certainly wouldn't allow it to go to
17 the level of that there was another trial, or that there was
18 a case in Federal Court. Solicitor, do you got --

19 **MR. REDMOND:** I was just going to ask as a housekeeping
20 matter, once y'all finish with this because I just thought
21 about the next witnesses' health situation regarding what The
22 Court's position is on lunch. I didn't realize --

23 **THE COURT:** We are going to go to lunch after the close
24 of this testimony.

25 **MR. REDMOND:** Okay, that's what I needed to know.

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1 THE COURT: Yes.

2 MR. REDMOND: Can I cut back --

3 THE COURT: -- You can send all your witnesses. Tell
4 them to be back whenever you want them back, but we will
5 probably start back at 2:30.

6 MR. REDMOND: Thank you. Your Honor, I'm sorry, but
7 he's got medication he needs to take.

8 THE COURT: It's all right. I understand.

9 Am I correct, Ms. Sellers, we are off that subject we
10 were on, and now this has to do with his identification of
11 this individual?

12 MS. SELLERS: Yes, Your Honor. We are not going to
13 address that issue at this time. We will get that
14 information from other witnesses.

15 THE COURT: Okay, all right. And if you need to though
16 just let me know, and we'll --- Guys I have no problem
17 sending the jury out, if we need to address issues, so just
18 let me know if you need that.

19 All right, we ready to bring the jury back in?

20 MR. REDMOND: State's ready, Your Honor.

21 MS. SELLERS: Yes, Your Honor.

22 THE COURT: All right, ask the jury to join us, please.

23 (Whereupon, the jury enters The courtroom at 12:39
24 p.m.)

25 THE COURT: All right, is it Ms. Kopituk.

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1 **MS. KOPITUK:** Yes, sir.

2 **THE COURT:** Thank you for your willingness to serve.
3 I usually say you either have my congratulations or my
4 sympathy, however you want to take it. But I do appreciate
5 your willingness to serve as the foreperson of the jury.

6 Ladies and gentlemen, I appreciate, again, your patience
7 as a panel to allow me, to take up this matter of law with
8 the attorneys and we have done that and now we are ready to
9 proceed.

10 If you recall, Ms. Sellers in the process of her cross
11 examination of the witness and she will now proceed with
12 that. Ms. Sellers, you may proceed.

13 **MS. SELLERS:** Thank you, Your Honor.

14 Q. (By Ms. Sellers) Now, Mr. McCollum, you testified you
15 never saw Jeremy Wright with the gun in his hand,
16 correct?

17 A. Yes.

18 Q. You never saw Jeremy Wright shoot any gun?

19 A. No.

20 Q. You heard multiple gunshots at one time?

21 A. Yes.

22 Q. Okay. Do you know how many guns you were hearing?

23 A. One as far as I know.

24 Q. Just one gun. But they were rapid?

25 A. Yes.

RANDY MCCOLLUM - CROSS EXAMINATION BY MS. SELLERS

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1 Q. Do you have any firearms training?

2 A. No.

3 Q. Okay. And did you fully cooperate with law enforcement
4 on this night?

5 A. Yes.

6 Q. Did you have many relatives that were at the club that
7 night?

8 A. Probably. There were a lot of people there.

9 Q. A lot of people. Did you recognize any of your family
10 and friends out there?

11 A. I'm quite sure there was some there.

12 Q. Okay. Was there ever a time when you tried to get
13 people to leave after this incident?

14 A. Leave the club?

15 Q. Yes, sir.

16 A. Not to my knowledge.

17 Q. Okay. Now you said some of your family members may have
18 been out there, correct?

19 A. Yes.

20 Q. And you cooperated fully with law enforcement?

21 A. Yes.

22 Q. Was there anybody in your family's vehicle shot?

23 A. Not as far as I know.

24 Q. Do you know if one of your nephew's vehicle was shot?

25 A. I don't know.

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1 Q. Okay. And, again, you never saw Mr. Wright with a
2 weapon?

3 A. No, ma'am.

4 MS. SELLERS: Okay. No further questions.

5 MR. REDMOND: No redirect, Your Honor.

6 THE COURT: Thank you very much, sir, you may step
7 down.

8 I don't know if I'm right or if that clock up there is
9 right. I've got a quarter til one.

10 MR. REDMOND: I've got a little short of a quarter til
11 one. I've got 12:44.

12 THE COURT: This is probably going to be a good time
13 break for lunch. I don't know if you've a twelve minute
14 witness but --

15 MR. REDMOND: No, sir, it would take probably a little
16 longer.

17 THE COURT: Considering the direct and cross would
18 probably run us well past one o'clock. I don't want to do
19 that to y'all again. So we are going to break at this time
20 for lunch.

21 Ladies and gentlemen, just like yesterday, when you left
22 the courtroom I would ask you to please have no conversation
23 about the case. Now you've begun to hear evidence. You've
24 heard evidence in the case. But it kind of like, Judge
25 Harwell out of Florence use to say it's like baking a cake.

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1 You can't bake a proper cake unless you have all the
2 ingredients. You can't do your job properly until you have
3 all the evidence in and you don't have that yet. So it's
4 not time to quote, bake the cake. It's time just to relax
5 and enjoy your lunch. When you come back just report back to
6 your jury room. I want to give you time. We'll start back
7 at 2:30. Well, I'll tell you what. Let me give you an hour
8 -- 2:15. If you would please be back in the jury room at
9 2:15 and that gives us about an hour and a half for lunch,
10 and we will resume the trial at that point.

11 If everyone else would please remain, and the jury
12 seated in the courtroom, members of the jury you are excused
13 for lunch. See you back at 2:15.

14 (Whereupon, the jury exits The courtroom at 12:45
15 p.m.)

16 **THE COURT:** Any matters we need to take up before we
17 recess?

18 **MR. REDMOND:** Nothing from The State, Your Honor.

19 **THE COURT:** Anything from the Defense?

20 **MS. SELLERS:** Nothing from the Defense, Your Honor.

21 **THE COURT:** Ladies and gentlemen, we will start back at
22 2:15.

23 (Whereupon, a recess was taken from 12:45 p.m.
24 until 2:39 p.m.)

25 **THE COURT:** Thank you. Please be seated. The State

CLIFTON CROSLAND - DIRECT EXAMINATION BY MR. REDMOND

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1 ready to proceed?

2 **MR. REDMOND:** The State is ready, Your Honor.

3 **THE COURT:** Defense ready?

4 **MS. SELLERS:** Defense is ready, Your Honor.

5 **THE COURT:** All right, please ask the jury to join us,
6 please.

7 (Whereupon, the jury enters The courtroom at 2:39
8 p.m.)

9 **THE COURT:** All right, ladies and gentlemen, everyone
10 had a good lunch and ready to go back to work.

11 Mr. Redmond, recognize you for your next witness.

12 **MR. REDMOND:** Thank you, Your Honor, may it please The
13 Court, Clifton Crosland.

14 **THE COURT:** All right, sir, if you would please come
15 around to be sworn.

16 **CLIFTON CROSLAND**

17 **BEING DULY SWORN TESTIFIES AS FOLLOWS**

18 **MR. CROSLAND:** I do.

19 **CLERK OF COURT:** Please be seated in the witness box
20 and state your full name for The Court, spelling your last
21 name.

22 **MR. CROSLAND:** Clifton Crosland.

23 **DIRECT EXAMINATION BY MR. REDMOND**

24 Q. And, Mr. Crosland, do you live here in Dillon County?

25 A. Yes, sir.

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1 Q. And where are you employed at this time?

2 A. Reflections.

3 Q. And in what capacity? What capacity are you employed at
4 Reflections?

5 A. Manager.

6 Q. Okay. And, Mr. Crosland, let me ask you if you were at
7 the Blue Moon, formerly known as Club Makium on June 17,
8 2007?

9 A. Yes.

10 Q. Okay. And let me ask you this. Do you recognize the
11 Defendant?

12 A. Yeah.

13 Q. Okay. Was he there on that evening?

14 A. Yeah.

15 Q. Okay. And I will get into more details on that in just
16 a minute. Do you recall the Defendant coming to the
17 Blue Moon on that particular evening?

18 A. Yes, sir.

19 Q. Okay. Could you tell the jury --- And, I am going to
20 need you to speak as loud as you can, and I want you to
21 tell the jury what happened when the Defendant arrived
22 at the night club?

23 A. When he got there about four car loads of people came
24 and the guy own the club, Randy McCullom --

25 Q. Okay. I am going to ask you do this if you can speak

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1 because the acoustics in here kind of --- to speak as
2 loud as you can. Now could you go ahead and start
3 over. Tell us what happened that evening.

4 A. Four car loads of people came up to the club and Randy
5 McCollum called me outside the club door to assist in
6 the crowd. And at that time Jeremy got in the car, you
7 know, ran towards him don't want him out there right
8 now, come back another time. And Jeremy said we want to
9 party out there like everybody else. Randy said we
10 don't want you out here right now, come back another
11 time. He said well if we can't party nobody is going
12 to party.

13 Q. Let me stop you there. Who said if we can't party
14 nobody is going to party?

15 A. Jeremy.

16 Q. Okay. You can continue.

17 A. Yeah. And at that time, you know what I'm saying, he
18 said, your nephew killed by homeboy so we owe you a
19 body. Do you know what I'm saying?

20 Q. Now let me stop you there. Who said that -- who said
21 --

22 A. -- Jeremy.

23 Q. Jeremy said if --

24 A. -- Yeah.

25 Q. -- Jeremy said, your nephew killed my cousin you owe me

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1 a body?

2 A. Uh-huh.

3 Q. Okay. Now continue.

4 A. Yeah. And Randy said, he don't knew nothing about that,
5 you know what I'm saying. Told him to leave. At that
6 time I started calling 911, because they were still
7 arguing.

8 Q. Okay.

9 A. When I came back over, you know what I'm saying, he
10 done left and went into the club. I didn't see him when
11 he went in but after that he ran back out and went to
12 the car you know and got the assault rifle --

13 Q. Okay, let me stop you right there. You said he went to
14 the car and got an assault rifle?

15 A. Yeah.

16 Q. Let me show you what has been marked as State's Exhibit
17 1 and 1-A.

18 MS. SELLERS: Objection, Your Honor, just let it be
19 known that we object to our previous objection.

20 THE COURT: All right. We are going to note your
21 objection to the use of the weapon as demonstrative purposes.

22 MR. REDMOND: Thank you, Your Honor.

23 THE COURT: It is overruled.

24 MR. REDMOND: Thank you, Your Honor.

25 Q. Do you recognize --- Well, let me ask you this. Does

CLIFTON CROSLAND - DIRECT EXAMINATION BY MR. REDMOND

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1 this look like the type of assault rifle that you saw
2 the Defendant carrying that night?

3 A. Somewhat, yeah.

4 Q. And what kind --- I'm sorry.

5 A. It was kind of dark, but yeah.

6 Q. Okay. His was dark. What kind of assault weapon was it
7 the best that you could tell?

8 A. Similar to that there.

9 Q. Okay. Did it have a banana clip with it?

10 A. Yes.

11 Q. Okay, thank you. Now, where were you when you saw the
12 Defendant coming back with the assault rifle?

13 A. On the left hand side of the building.

14 Q. Okay. Now, where was the Defendant coming from when you
15 saw him with the weapon?

16 A. The burgundy car.

17 Q. Okay. And where was that car parked?

18 A. Between both road, the dirt road and the paved road.

19 Q. Okay. Now, continue to tell us what happened. So you
20 saw him walking with the assault rifle?

21 A. Yes.

22 Q. Tell us --

23 A. -- Yeah, I went toward the back of the club and he went
24 on the other side of the club and that's where I heard
25 shooting going.

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1 Q. Okay. Did you actually see the shooting going on?

2 A. Naw.

3 Q. Okay. Is there any doubt in your mind that you saw a
4 weapon similar to that --

5 A. -- Yeah --

6 Q. -- being carrier by the Defendant.

7 A. Yeah.

8 Q. Okay. You are sure that that is what you saw?

9 A. Uh-huh.

10 Q. Now did -- excuse me. When you said you heard shots
11 fired were those shots fired --- Did you think those
12 shots were fired by an assault rifle?

13 A. At first --

14 Q. -- Okay --

15 A. -- third shots was.

16 Q. Okay. And then were there shots fired --- Well, let me
17 ask you this. So you hear the shots from the assault
18 rife, did those shots stop at some point?

19 A. Yeah.

20 Q. Okay. And was there a gap of a few minutes before you
21 heard more shots?

22 A. Give or take --

23 MS. SELLERS: Objection, Your Honor, he is leading the
24 witness.

25 MR. REDMOND: I'll rephrase.

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1 **THE COURT:** Sustained.

2 **Q.** After the shots stopped about how long was it to the
3 best that you can estimate between the assault rifle
4 stopping and then more shots being fired?

5 **MS. SELLERS:** Objection, Your Honor, he's already ask
6 and answered that question.

7 **MR. REDMOND:** Actually he didn't because she objected
8 and --

9 **THE COURT:** Overruled.

10 **MR. REDMOND:** Thank you.

11 **Q.** I'll ask it again. After the assault rifle stopped
12 shooting to the best that you can estimate, about how
13 long was it before you heard some more shooting taking
14 place?

15 **A.** Give or take minutes.

16 **Q.** I'm sorry, could you repeat it?

17 **A.** I said give or take a minute or so.

18 **Q.** Okay. So there was a gap of a minute or so before
19 there was more shooting?

20 **A.** Yeah.

21 **Q.** Okay, now the shooting that you heard after that, could
22 you tell what of guns were shooting?

23 **A.** Handguns. Handguns.

24 **Q.** Okay. So after the gap there were handguns that you
25 heard being shot?

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1 A. Yeah.

2 Q. Okay. Did you see when the Defendant left?

3 A. No.

4 Q. Okay. Excuse me. Now I am going to ask you, with The
5 Court's permission to step down. Let me show you this
6 diagram, State's 2. And I am going to ask you, now Mr.
7 Crosland, I am going to need you to speak loud. You
8 stand over on this side and I am going to need you to
9 speak loudly so that the court reporter can hear you
10 because you don't have the microphone in front of you.
11 If you could stand --- come over hear a little bit more,
12 thank you. Right here, so the jury can see. I think
13 everybody can see. I want to make sure everybody can
14 see.

15 Now, when you first saw the Defendant, when you
16 first saw him arguing with Randy, about where were y'all
17 at that point?

18 A. Over there by the door.

19 Q. Y'all were somewhere over in here, all right.

20 **MADAME COURT REPORTER:** Mr. Crosland, you got to speak
21 up, sir.

22 Q. Okay. I need you to scream, Randy, just scream, let it
23 out.

24 A. We were by the dirt road and the pave road.

25 Q. Okay. Now, after the Defendant --- And, you indicated

CLIFTON CROSLAND - DIRECT EXAMINATION BY MR. REDMOND

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1 the Defendant went into the club?

2 A. Yeah, he went toward the club.

3 Q. Toward the club. And where did you do when the
4 Defendant --

5 A. When he went into the club, I went to call 911 then. I
6 didn't know he went into the club.

7 Q. So where were you when you were calling 911?

8 A. I was right here.

9 Q. All right, right here?

10 A. Right.

11 Q. And I said Randy, I'm sorry, Cliff. All right, so you
12 were right there. So then where were you when you saw
13 the Defendant with the handgun --- excuse me, with the
14 assault rifle?

15 A. About right here.

16 Q. Okay.

17 A. Coming out some dirt road.

18 Q. He was coming back from --

19 A. That dirt road beside it, he was coming back this way,
20 toward the club.

21 Q. Okay. So he was coming back in this direction toward
22 the club?

23 A. Yeah.

24 Q. And about where was he when you actually made eye
25 contact with him and the assault rifle, where was the

CLIFTON CROSLAND - DIRECT EXAMINATION BY MR. REDMOND

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1 Defendant? Somewhere up in here?

2 (PAUSE)

3 Q. And I am going to put "CC" next to that, so we will know
4 that's where you saw, okay. Now, after the shooting --
5 excuse me, after you saw the Defendant with the rifle
6 where did you go after that?

7 A. I ran across to the back the club.

8 Q. So you went back to the back of the club. Okay. And
9 is that where you stayed until the shooting stopped?

10 A. Yeah.

11 Q. Now is that where you stayed until all the shooting
12 stopped, the first and second sets of shooting?

13 A. Yeah, uh-huh.

14 Q. Okay. Thank you, you can have a seat. And I am just
15 going to ask you to look through what has been marked as
16 State's Exhibit 11, 12, 13, 14, 15, and 16. If you
17 would just take a look at those and just let me know if
18 you recognize those photos?

19 A. Yeah.

20 Q. Okay. And are those pictures different shots of the --

21 A. Club.

22 Q. -- Blue Moon?

23 A. Uh-huh.

24 Q. Okay. And are those an accurate depiction of the Blue
25 Moon?

CLIFTON CROSLAND - CROSS EXAMINATION BY MS. SELLERS

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1 A. Yeah.

2 Q. Now, and I didn't ask you this and let me ask you this
3 in closing. When you heard the assault rifling firing
4 was that the only gun you heard firing off at that time?

5 A. Yeah.

6 Q. Okay. Please answer any questions that Defense has.

7 MS. SELLERS: May it please, The Court.

8 CROSS EXAMINATION BY MS. SELLERS

9 Q. Mr. Crosland, weren't you actually working at the club
10 that night?

11 A. Helping out.

12 Q. Okay. And how did you help out?

13 A. Parking cars and working inside making sure everything
14 was straight.

15 Q. Okay. Now when you said Randy got into an altercation
16 you were actually outside?

17 A. In the door of the club. He called me out when they
18 pulled up.

19 Q. Okay. Now, so it's your testimony that when you saw
20 someone --- an assault rifle you just stood and looked?

21 A. No, I was at the corner of the building I was calling
22 911.

23 Q. Did you run?

24 A. No.

25 Q. Did you try to walk away?

CLIFTON CROSLAND - CROSS EXAMINATION BY MS. SELLERS

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1 A. I walked to the back of the building.

2 Q. Okay. And didn't you actually end up behind the trash
3 can?

4 A. Yeah, back there.

5 Q. So you went past the building?

6 A. Give or take.

7 Q. Okay. And you were hiding behind the trash can?

8 A. I don't know --- I don't recall. I was behind the
9 building though.

10 Q. Okay. Do you recall running into the woods?

11 A. I ain't went in the woods.

12 Q. Okay. Do you ever recall running across the dirt road?

13 A. Nope.

14 Q. And you said you were parking cars?

15 A. Yeah.

16 Q. Now you and Randy friends?

17 A. Yeah.

18 Q. Now how long had you been working for Randy?

19 A. About a couple of weeks.

20 Q. Couple of weeks. Were you working anywhere else during
21 that time?

22 A. No.

23 Q. Okay. Do you still work with Randy from time to time?

24 A. Once in a while I help him.

25 Q. Okay. Have you and Randy talked about your testimony

CLIFTON CROSLAND - CROSS EXAMINATION BY MS. SELLERS

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1 today?

2 A. Nope.

3 Q. Okay. When is the last time you spoke with Randy?

4 A. Today.

5 Q. Today. How long ago did you speak with Randy?

6 A. This morning.

7 Q. And you never talked about your testimony at all?

8 A. No.

9 Q. Okay. Let me ask you, do you know if Randy's family
10 hangs out at the Blue Moon?

11 A. Yeah.

12 Q. Okay. Was many of his family members there on that
13 night?

14 A. I don't know his family members.

15 Q. You don't know his family members?

16 A. Not all of them.

17 Q. Not all of them. Did you see any of his family members
18 there?

19 A. Probably a brother or a cousin, something like that.

20 Q. What about a nephew?

21 A. Nephew probably was.

22 Q. Do you know if his nephew's car got shot?

23 A. Somebody car --- well, ah Juan --

24 Q. Do yo know if that was reported to law enforcement?

25 A. I don't know.

CLIFTON CROSLAND - CROSS EXAMINATION BY MS. SELLERS

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- 1 Q. Okay.
- 2 A. Everybody left.
- 3 Q. You left?
- 4 A. A lot of people left -- everybody left when they got
- 5 there.
- 6 Q. Can you explain the club situation to me or the setting
- 7 of the club that night?
- 8 A. It was packed.
- 9 Q. How packed would you say it was?
- 10 A. About a hundred and fifty people. A lot of people
- 11 outside though.
- 12 Q. A lot of people outside?
- 13 A. Uh-huh.
- 14 Q. Were a lot of people outside the entire time coming in
- 15 and out?
- 16 A. Yeah.
- 17 Q. Was the music really loud?
- 18 A. No.
- 19 Q. Was there any music?
- 20 A. There was music.
- 21 Q. Okay. Do you know if people were drinking?
- 22 A. Yeah.
- 23 Q. Do you know if they were drinking --- buying liquor in
- 24 the club?
- 25 A. They don't sell liquor.

CLIFTON CROSLAND - CROSS EXAMINATION BY MS. SELLERS

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1 Q. They don't sell liquor, okay. Is there a cover or a
2 charge to get into the club?

3 A. No.

4 Q. Okay. Does Randy provide free food or anything?

5 A. Sometimes food there.

6 Q. Is there any other type of entertainment in there?

7 A. No.

8 **MR. REDMOND:** Your Honor, I know this is cross
9 examination, but I don't know what the relevance is so I am
10 again, making an objection based on relevance, of course,
11 unless there is some foundation towards something relevant.

12 **MS. SELLERS:** We have the opportunity to cross examine
13 this witness, and to get his state of mind as to what the
14 atmosphere in the club was or the atmosphere of that location
15 was on that particular night.

16 **THE COURT:** All right. Overruled. Go ahead.

17 Q. So you said there were about three hundred people?

18 A. Around a hundred.

19 Q. A hundred --- a hundred people. Now is that the
20 typically the crowd?

21 A. No.

22 Q. There is usually more or less?

23 A. Less.

24 Q. Okay. And where are the people usually from --- are
25 they usually from Dillon or all over?

CLIFTON CROSLAND - CROSS EXAMINATION BY MS. SELLERS

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1 A. Different places.

2 Q. Okay. And do you work every Sat --- every Sunday night?

3 A. No.

4 Q. How often do you work there?

5 A. A couple of weeks sometimes. You know, whenever he need
6 me for something.

7 Q. Does he call you? Does he call you when he needs you?

8 A. Yeah.

9 Q. So he has your personal cell phone?

10 A. Yeah.

11 Q. Do y'all talk over the phone much?

12 A. No.

13 MS. SELLERS: Beg, The Court's indulgence.

14 (PAUSE)

15 THE COURT: Yes, ma'am.

16 Q. Mr. Crosland, what type of training, if any, have you
17 had with guns or firearm?

18 A. Uh?

19 Q. What type of training --- are you trained to handle a
20 firearm?

21 A. No.

22 Q. How do you have so much knowledge about firearms?

23 A. I seen a lot of them.

24 Q. When have you been around firearms?

25 A. My friends got a lot of guns and stuff.

CLIFTON CROSLAND - CROSS EXAMINATION BY MS. SELLERS

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1 Q. Your friends have a lot of guns?

2 A. Uh-huh.

3 Q. Were any of your friends there on that particular night?

4 A. No, not with guns.

5 Q. Not with guns?

6 A. I mean not with their own guns, do you know what I'm
7 saying? When I say my friends got a lot of guns,
8 they're older people, do you know what I'm saying? They
9 got their own gun recipe and be in the house and stuff.

10 Q. You said not with their own. Did any of your friends
11 have access to a gun that night?

12 A. No, my friends no whatnot.

13 Q. Okay. But you never saw Jeremy Wright with a gun?

14 A. Yeah.

15 Q. You never saw him shoot a gun?

16 A. No.

17 Q. You don't know where he went after you walked to the
18 back of the club, correct?

19 A. When he came toward the building, I went around the
20 building and I don't know where he went.

21 Q. Okay. And you just walked casually behind the building?

22 A. Yeah, I wasn't running.

23 Q. You weren't running, but you were calling 911?

24 A. Yeah, I called about three times.

25 Q. Okay. Did you ever get through to anyone?

CLIFTON CROSLAND - REDIRECT EXAMINATION BY MR. REDMOND

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1 A. Yeah.

2 Q. Okay. About what time was that?

3 A. Around ten, I believe.

4 Q. You said initially there were four car loads of people
5 that came up?

6 A. Yeah.

7 **MS. SELLERS:** No further questions. Thank you, Mr.
8 Crosland.

9 **MR. REDMOND:** A couple of redirect questions.

10 **THE COURT:** All right.

11 **REDIRECT EXAMINATION BY MR. REDMOND**

12 Q. Did you give a statement, a written statement to law
13 enforcement within a few days of the shooting?

14 A. Yeah.

15 Q. Okay. And that was written, you wrote out what you saw?

16 A. Uh-huh.

17 Q. And finally, and I did not ask you this, but after all
18 the shooting subsided did you actually go up and see the
19 fact that the victim had been shot and killed?

20 A. Yeah.

21 **MR. REDMOND:** That would be all the questions that I
22 have at this time, Your Honor.

23 **THE COURT:** Anything further? Thank you very much, sir,
24 you may step down.

25 **MR. REDMOND:** The State would next call Moxie Leon

M. LEON ROWELL - DIRECT EXAMINATION BY MR. REDMOND

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1 Rowell.

2 **MAXIE LEON ROWELL, JR.**

3 **BEING DULY SWORN TESTIFIES AS FOLLOWS**

4 **MR. ROWELL:** Yes, ma'am.

5 **CLERK OF COURT:** Please be seated in the witness box
6 and state your full name for The Court.

7 **MR. ROWELL:** My name is Maxie Leon Rowell, Jr.

8 **DIRECT EXAMINATION BY MR. REDMOND**

9 Q. And, Mr. Rowell, if I could get you to speak because of
10 the acoustics in here --- if I could get you to speak as
11 loud as you can so that the ladies and gentlemen of the
12 jury can hear you. Do you live here in Dillon County?

13 A. Yes, sir.

14 Q. And where are you employed at this time, Mr. Rowell?

15 A. Self employed.

16 Q. Okay.

17 A. But I help out at some clubs.

18 Q. Okay. And you do provide security?

19 A. Yes, sir.

20 Q. And were you prior law enforcement?

21 A. Yes, sir.

22 Q. And could you tell the jury a little bit about your law
23 enforcement background?

24 A. Started out in 1984, Mullins Police Department, Mullins,
25 South Carolina. 1986, Dillon Police Department, Dillon,

M. LEON ROWELL - DIRECT EXAMINATION BY MR. REDMOND

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1 South Carolina. Sheriff's Department 1998.

2 Q. Okay. And how long have you been out of law enforcement
3 now?

4 A. Ever since '89.

5 Q. Okay. Now, let me ask you this. On the seventeenth of
6 June 2007, were you working security at the Blue Moon
7 formerly known as Club Makium?

8 A. I help out out there at the Makium Club.

9 Q. Okay.

10 A. On some, Sundays.

11 Q. And were you out there on the seventeenth of June 2007?

12 A. Yes, sir.

13 Q. And do you recall at that particular time what
14 transpired?

15 A. Yes, sir.

16 Q. And could you tell the jury what transpired on that
17 particular day that causes us to be here today?

18 A. Yes, sir. I was working inside the club at the door
19 patting people down for weapons and people in line were
20 coming in.

21 Q. Okay. And did you encounter the Defendant?

22 A. Yes, sir, I did.

23 Q. And had you seen this Defendant before?

24 A. I don't remember seeing him, no, sir.

25 Q. Okay. But did you see him that night?

M. LEON ROWELL - DIRECT EXAMINATION BY MR. REDMOND

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1 A. Yes, sir.

2 Q. Okay. Is that the person you encountered that night?

3 A. Yes sir, that's him.

4 Q. Okay. And tell us about your encounter and what
5 transpired after that?

6 A. Okay. The Defendant, when he got to me, the young man,
7 I got ready to pat him down, he looked at me and he
8 said, What. And I said, What. He said, What. I said
9 look man, you've got to get patted down to get in the
10 club. So the young man behind him tapped him on the arm
11 and said look man let the man pat you down.

12 **MS. SELLERS:** Objection, Your Honor, hearsay.

13 **THE COURT:** Sustained to the comment of the other
14 individual.

15 Sir, you can testify to what the Defendant told you --

16 **MR. ROWELL:** Yes, sir. Yes, sir.

17 Q. So you were trying to pat him down. So just tell us
18 what the Defendant said at the time you were patting him
19 down prior to him entering the club?

20 A. After he said what, and I told him he had to get patted
21 down to come in the club. I patted him down, I got
22 finished patting him down, and he looked at me again and
23 walked close to me and he said, what. I said, what.
24 He walk on past me. Kept patting people down. A few
25 minutes after that a fight broke out. It was about ten

M. LEON ROWELL - DIRECT EXAMINATION BY MR. REDMOND

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1 feet past me toward the bar. They got to fighting.
2 People got to running. People tussling one another.
3 At that time, two --- that same man and another guy ran
4 outside the club. They ran out. The other parties they
5 grabbing one another, and stumbling, they make it out
6 the club. One bar stool went behind them, two pool
7 stick two or three. About that time everybody was out
8 that was fighting, so I walked to the door there picked
9 up the bar stool and put it back in the club.

10 Q. Let me ask you this. Did you see who the Defendant was
11 fighting with at any time?

12 A. Yes, sir.

13 Q. And could you tell the jury who you observed the
14 Defendant fighting?

15 A. He was fighting with a young man, last name Covington.

16 Q. Okay.

17 A. And another man he go by the name of Chopper.

18 Q. Okay. Now you can continue. So he was fighting
19 Chopper and Covington --

20 A. -- Yes, sir --

21 Q. -- inside the club and then, again, pick up where you
22 left off. What transpired at that point?

23 A. At that point I was picking up pool sticks standing
24 outside the club. Got the bar stool back in and had the
25 pool sticks in my hand, I was looking around. I saw

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1 two young men coming back up toward the club. One of
2 them had his hands like in front of him. I couldn't see
3 what it was, because it was dark. Was walking between
4 the cars --- They got in front of the cars the light of
5 club hit them, the man had a gun in his hand.

6 Q. Let me stop you right there. Now who was it that had
7 the gun in their hand?

8 A. The Defendant.

9 Q. Okay. Let me stop you right there. Let me show you
10 what has been marked as --

11 **MS. SELLERS:** Okay, Your Honor, I have to renew my
12 objection.

13 **THE COURT:** Sustained -- Excused me, overruled. I will
14 note your objection.

15 Q. And did you see what kind of weapon he had?

16 A. It was a rifle.

17 Q. I'm sorry.

18 A. It was a rifle type weapon.

19 Q. And does this look similar to the rifle that he had?

20 A. Yes, it looks similar to it.

21 Q. And did it have a banana clip on it?

22 A. Yes, sir.

23 Q. Okay, thank you. Now you see him --- Where were you
24 when you saw him walking up with the rifle?

25 A. I was standing outside the club to the right of the

M. LEON ROWELL - DIRECT EXAMINATION BY MR. REDMOND

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1 door.

2 Q. Okay. To the right of the door at the club?

3 A. Yeah.

4 Q. And tell me what happened next; you see walking up, what
5 transpired after once you saw him walking up?

6 A. Once I saw him, he got in front of the cars where the
7 light shined on him --

8 Q. Okay.

9 A. -- he was looking towards me, I was beside the door.
10 He said, Who gonna stop me? I didn't, say nothing.
11 Who gonna stop me? I didn't, say nothing. I took a
12 step to the left away from the door, and one of the
13 young men grabbed the handle of the door and opened it
14 and the Defendant stepped in with the gun. The second
15 young man stepped in behind him. I walked up another
16 ten feet, I got to the corner of the building --- Didn't
17 hear no gunshots go off. About that time, a couple of
18 second --- a couple of minutes, the door came opened.
19 The young man stepped back out.

20 Q. Now who stepped back out?

21 A. The Defendant.

22 Q. And did he have the rifle when he stepped back out?

23 A. He had the rifle in his hand.

24 Q. Okay. Now continue, so he stepped back out.

25 A. He stepped out he looked the opposite away from me like

M. LEON ROWELL - DIRECT EXAMINATION BY MR. REDMOND

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1 to the right. If you facing the club he stepped out
2 toward the left.

3 Q. Okay.

4 A. He didn't see anything over there. He started stepping
5 back towards the right and that's when I started
6 running.

7 Q. Okay. And where did you run?

8 A. I run to the back of the club.

9 Q. Okay. On the right side of the club?

10 A. On the right side of the club.

11 Q. Okay. And then what did you see, hear, observe at that
12 point?

13 A. After I started running, I heard gunshots go off. I
14 past three young ladies, I told them, man got a gun
15 around there, y'all better run, y'all better get it.
16 They kept running towards the front. I kept running
17 towards the back.

18 Q. Okay.

19 A. Gunshots were steady going on.

20 Q. Okay. Now what kind of --- You've got a law enforcement
21 background, what kind of gunshots was it that were going
22 off?

23 A. The gunshots sound like it was coming from a high-
24 powered rifle.

25 Q. Okay. And when you say high powered would that mean an

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1 assault rifle?

2 A. Assault rifle, military rifle.

3 Q. Okay. And did you hear any other guns going off at that
4 time other than that assault rifle?

5 A. No sir, I didn't.

6 Q. Okay. And based on your observation did it appear to
7 you, that that was the only gun being fired at that
8 time?

9 A. It appeared to me that that was the only gun that was
10 being fired at that time.

11 Q. Okay. Now, at some point did the shooting stops?

12 A. At some point the shooting did stop.

13 Q. Okay. And then tell us what happened from your
14 observations after the shooting stops?

15 A. After the shooting stop things got quite. Me and a few
16 more that was out there in the field, we got up and try
17 to make our way back up to the club where the club was
18 at. At that point you could hear people hollering and
19 some running, some women was crying, oh, I'm shot in the
20 back. Somebody in the car is shot. You heard stuff
21 like that.

22 Q. Now did -- and let me ask you this. Was the shooting
23 with the assault rifle was that the only shooting that
24 happened or was there some more shooting some point
25 after that?

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1 A. After the loud --- what I say come from an assault
2 rifle, after it stop a few minutes you heard some cars
3 speed off. Then you heard some other shots, but it
4 sound like a pistol, it wasn't as loud.

5 Q. Okay. Now I want to ask you going back to Chopper and
6 Covington. You were on the right side of the building,
7 did you see them at any point going in that direction?

8 A. Yes, sir.

9 Q. And could you tell the jury about what you observed
10 concerning Chopper and Mr. Covington?

11 A. When they ran out the door, they went towards the right
12 because that is where the majority of the cars were
13 parked at.

14 Q. Okay.

15 A. And they was --- when I stepped out putting the bar
16 stool in, I'm looking at people getting in cars,
17 cranking cars up, saying come on man let's go. We don't
18 know what he got let's got, let's get out of here.

19 Q. Now, let me ask you to step down for just a moment with
20 Court's permission, of course.

21 **THE COURT:** Yes, sir.

22 Q. And I am going to stand here and I want you to stand on
23 this side, but again I need you to speak as loudly as
24 you can on this side. If you could get on this side.
25 Now, when you first saw the Defendant --- when you first

M. LEON ROWELL - DIRECT EXAMINATION BY MR. REDMOND

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1 encountered him, I think you testified you were at the
2 door?

3 A. I was inside.

4 Q. You were inside. Tell me about where you were and I
5 will mark it for you.

6 A. Maybe six feet outside the club.

7 Q. Okay.

8 A. Right up in there.

9 Q. All right. I am just going to put --- and do you go be
10 Leon?

11 A. Yes.

12 Q. Okay, I'm putting "LR" for Leon Rowell. So, this is
13 when you first encountered him. The next time that you
14 --- and I guess you were inside at some point during the
15 fight?

16 A. Yes, sir.

17 Q. Where were you when you saw the Defendant coming up with
18 the assault rifle?

19 A. Okay, facing the club I was standing right here --

20 Q. Okay.

21 A. -- to the right of the door.

22 Q. All right. And where did you go ultimately end up after
23 you've testified that he went in, and then you --- where
24 did you go at that point, once he got past you where did
25 you go?

M. LEON ROWELL - DIRECT EXAMINATION BY MR. REDMOND

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1 A. When he got past me, I came right there to the corner.

2 Q. Okay. And then where did you go?

3 A. I stayed there a few minutes, then the Defendant come
4 back out.

5 Q. Okay. And where was he at the last time you actually
6 saw him before you ran off where was he when you saw
7 him?

8 A. The last time I saw him he was beginning to take the
9 step this way.

10 Q. Okay. And you were right here at that time?

11 A. Yes, sir.

12 Q. And where did you end up --- before the shooting
13 started where did you end up?

14 A. Before the shooting started?

15 Q. I mean once --- by the time the shooting started where
16 were you when the shooting started?

17 A. When the shooting start, I was about along up in here.

18 Q. Okay. And where did you ultimately end up?

19 A. Behind the club, there was a green dumpster behind the
20 club --

21 Q. Okay.

22 A. -- and I made it just behind the green dumpster.

23 Q. Okay. Just somewhere up in here. Now, where --- you
24 had indicated that Gregory Covington and Chopper had
25 run. Where did you see them and in what direction did

M. LEON ROWELL - DIRECT EXAMINATION BY MR. REDMOND

201

1 you see them run?

2 A. When they ran out the club and other people they came
3 this way --

4 Q. -- Okay.

5 A. Over here, and there were cars parked over in this area
6 here.

7 Q. Okay. And did you happen to see where or what car they
8 ended up going toward?

9 A. No, sir.

10 Q. Okay. But they were going in this direction. Just kind
11 of point out what the direction they were the last time
12 you saw them.

13 A. The last time I saw them they was somewhere in the area
14 over here.

15 Q. Okay. So this is where you saw Chopper and Covington.
16 And, again, these are the two people that you saw the
17 Defendant engaged in the confrontation with?

18 A. Yes, sir.

19 Q. All right. Okay, you can have a seat, thank you. Oh,
20 one more question. Based on what you observed
21 afterwards --- during the time and afterwards, did it
22 appear that the shots were coming in the direction of
23 the right side of the club?

24 A. Yes, sir.

M. LEON ROWELL - DIRECT EXAMINATION BY MR. REDMOND

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1 MR. REDMOND: Okay. Thank you. Beg The Court's
2 indulgence.

3 Q. I didn't ask you this. Real important. Did you see the
4 victim Kelvin Smalls that night?

5 A. Yes, sir.

6 Q. Okay. And could you tell the jury about the last
7 encounter you had with the victim before he was killed?

8 A. Yes, sir. He was playing pool with some of his
9 friends. He had been drinking a little bit. Whenever
10 he loose a game he would sit down he started going to
11 sleep. One of his friends walked up to him and said
12 man, wake-up. He woke up he said man I'm gonna let
13 y'all have it, man. I'm going to the car and take me a
14 nap. So when he got up, he was coming toward the door
15 I ask him I said you need some help getting out, he said
16 no I got it. He said, I'm just going to go in the car
17 and chill out a while. Take me a nap. I'm going to let
18 them have it.

19 Q. And was this before the Defendant arrived?

20 A. Yes, sir.

21 Q. And do you call about how long, if you can about how
22 long, before the Defendant arrived?

23 A. No, sir, I don't know how long it was.

24 Q. But it was before the Defendant arrived?

25 A. It was before the Defendant arrived.

M. LEON ROWELL - CROSS EXAMINATION BY MS. SELLERS

203

1 Q. And he was not --- was he involved in any confrontation
2 that you observed with the Defendant?

3 A. No, sir.

4 **MR. REDMOND:** Please answer any questions that Ms.
5 Sellers may have.

6 **MS. SELLERS:** May it please, The Court.

7 **THE COURT:** Yes, ma'am.

8 **CROSS EXAMINATION BY MS. SELLERS**

9 Q. Good afternoon, Mr. Rowell.

10 A. How you doing.

11 Q. If I could, I am going to have you step down with The
12 Court's permission.

13 **THE COURT:** Yes, ma'am.

14 Q. Now, I have just a few questions. Inside of this club
15 you said you perform security out here at the club,
16 correct?

17 A. I help them out occasionally.

18 Q. Now are you the only person that does any kind of
19 security?

20 A. No, there is one other guy, but sometimes when a lot of
21 people start to drive up somebody else park the people.

22 Q. Okay. And who is that other guy?

23 A. Mr. Clifton Crosland.

24 Q. Clifton Crosland?

25 A. Yes, ma'am.

M. LEON ROWELL - CROSS EXAMINATION BY MS. SELLERS

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1 Q. So this night when you were standing there were you
2 working the door by yourself?

3 A. I was at the door by myself.

4 Q. Okay. There was no one else at the door?

5 A. There was another guy in there. He'd be back and forth
6 to the back to the front, named Jim.

7 Q. Okay.

8 A. We call him JimBob.

9 Q. Now exactly where do you work the door at?

10 A. At that particular night I was in here, about six feet
11 in at the door.

12 Q. And how wide is the club would you say?

13 A. I really don't know.

14 Q. Would you say it you have to guestimate to the walls?

15 A. From the wall, maybe to the white line right there.

16 Q. This white line over here?

17 A. I would say so. It's wide enough when you come in,
18 there is, two full pool tables, there is a gap in
19 between.

20 Q. And isn't there a bar on one side as well?

21 A. The bar is right here.

22 Q. Okay.

23 A. This way like this.

24 Q. Okay. And what is in this little area here?

25 A. You have a pool table and you have some chairs over here

M. LEON ROWELL - CROSS EXAMINATION BY MS. SELLERS

205

1 and a bench right here.

2 Q. And then the dance floor is in the back?

3 A. In the back. And the dance floor back here and the
4 deejay booth right back here.

5 Q. Okay. Now --- You can have a seat, thank you. Now it
6 was crowded that night, wasn't it?

7 A. Ma'am?

8 Q. It was crowded that night?

9 A. It was not to crowded but had a pretty good bit of
10 people in it that night.

11 Q. There was a long line, right. You were checking a lot
12 of people?

13 A. I was checking a lot of people. Seeing like they come
14 in spells. You might have ten or fifteen at one time
15 come up.

16 Q. Okay. Do you recall anyone else that was out there that
17 night?

18 A. Yes, ma'am. The guy named JimBob I work with. The
19 barretter, J.D. The man that owed the club, Randy
20 McCollum.

21 Q. And those are the only other people that you knew of
22 that night that you can remember?

23 A. No, ma'am. Mr. Clifton Crosland, Chico Johnson, George
24 Boatwright, Ricks McCollum, Marcus McCollum, quite a few
25 people that I know.

M. LEON ROWELL - CROSS EXAMINATION BY MS. SELLERS

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1 Q. So a lot of McCollum's out there?

2 A. Yes, ma'am.

3 Q. Let me ask you. Now, you usually get to the club at
4 what time?

5 A. Sometimes I try to make it by 8:00, 8:30.

6 Q. 8:00, 8:30. And you check the door, that is what your
7 job title is?

8 A. Yeah, the majority of the time.

9 Q. But what time does the club actually open?

10 A. Actually open?

11 Q. Open up?

12 A. They may open about 12:00 or 1:00.

13 Q. Okay.

14 A. During the day.

15 Q. So between 12:00 and 8:00, 8:30 there is no one in there
16 doing security?

17 A. There is no one there doing security. It's like a
18 family business. You don't hardly have many people
19 during the day, day time. They mainly come at night and
20 stuff.

21 Q. Okay. So there is no one patting anyone down, between
22 those hours?

23 A. I don't be out there.

24 Q. Okay.

25 A. They may have somebody. His brother-in-law usually help

M. LEON ROWELL - CROSS EXAMINATION BY MS. SELLERS

207

1 him. Majority of the time when I get there, his
2 brother-in-law be at the door.

3 Q. Now let me ask you, how long have you been working at
4 the Blue Moon?

5 A. Well I don't really work for them, I just help him out
6 occasionally. I go out there mainly on Sundays.

7 Q. Do you get paid?

8 A. If he have a good night, he may throw me a little
9 something.

10 Q. Okay. But otherwise you just volunteer?

11 A. Right, sometimes.

12 Q. Now is that --- Do you usually hang out at the Blue
13 Moon?

14 A. Yes, ma'am.

15 Q. And would say you and Mr. McCollum are really good
16 friends?

17 A. Been knowing him quite a while.

18 Q. Okay. Now long have you known him?

19 A. All my life.

20 Q. All your life?

21 A. Yes.

22 Q. Did y'all grow up together?

23 A. We wasn't to far back from away from one another in
24 school. The area where I stayed from Little Rock, is
25 not to far from Oakland, so we basically been friends

M. LEON ROWELL - CROSS EXAMINATION BY MS. SELLERS

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1 all our lives.

2 Q. Okay. Now you talked about a fighting, and you
3 mentioned two names, Chopper and a Covington?

4 A. Yes, ma'am.

5 Q. What were they wearing that night?

6 A. To the best to my recollection may be either black pants
7 or blue jeans, black or red shirts, something like that.

8 Q. Okay. And could you describe how they looked? Either
9 one of them, Chopper.

10 A. Chopper is slim, a little taller than the Defendant.

11 Q. Light skin, dark skin?

12 A. A little dark.

13 Q. How was his hair that night?

14 A. I believe Chopper had dreads.

15 Q. Dreads?

16 A. Short dreads.

17 Q. Okay. Short dreads. And, Gregory Covington, I believe
18 you all said --- could you describe him, please.

19 A. Covington is about the same size as the Defendant and
20 the complexion is about the same.

21 Q. Okay. So they resemble each other, possibly?

22 A. No, ma'am, not really.

23 MR. REDMOND: Your Honor, without further foundation I
24 would say that is speculation as whether or not they knew
25 each other.

M. LEON ROWELL - CROSS EXAMINATION BY MS. SELLERS

209

1 MS. SELLERS: I didn't ask if they knew each other I
2 ask if they resemble each other.

3 MR. REDMOND: Oh, resemble, I'm sorry.

4 A. No, ma'am, they didn't resemble

5 Q. They don't?

6 A. No, ma'am.

7 Q. But the same height and the same complexion?

8 A. Basically the same height.

9 Q. Okay. But no resemblance?

10 A. Not to far apart and the weight may be the same.

11 Q. Now when the shootout started where did you run?

12 A. When the shootout started --- when the shooting started,
13 it wasn't a shootout.

14 Q. There was no shootout. They were not multiple gunshots
15 that night?

16 A. I heard guns after the loud gunshots were over.

17 Q. You heard guns?

18 A. Yes. After the loud gunshots was over then I heard some
19 other guns go off again.

20 Q. Now when you were hearing the guns go off could you tell
21 the type of guns they were?

22 A. No, ma'am, I couldn't tell, but it sounded smaller guns
23 may be like the type of a pistol.

24 Q. And you've mentioned that you were law enforcement ---
25 you've previously worked in law enforcement.

M. LEON ROWELL - CROSS EXAMINATION BY MS. SELLERS

210

- 1 A. Yes, ma'am.
- 2 Q. When did your career in law enforcement end?
- 3 A. I got back in law enforcement in '98.
- 4 Q. '98?
- 5 A. Yes, ma'am.
- 6 Q. And then you retired?
- 7 A. No, ma'am.
- 8 Q. Okay. You started moonlighting as a security guard?
- 9 A. No, ma'am.
- 10 Q. Okay, what happened?
- 11 A. I went to driving trucks.
- 12 Q. Driving trucks?
- 13 A. Yes, ma'am.
- 14 Q. Okay. Now you said you're self employed, where else do
- 15 you work at?
- 16 A. I help out at Reflections.
- 17 Q. Okay. And is that the same place where Mr. Crosland
- 18 works?
- 19 A. Yes, ma'am.
- 20 Q. And do you and Mr. Crosland speak, or talk frequently?
- 21 A. Yes, ma'am, we get along pretty good.
- 22 Q. Almost on a daily basis?
- 23 A. The days that I work.
- 24 Q. Okay. How often do you work there?
- 25 A. Two nights a week.

M. LEON ROWELL - CROSS EXAMINATION BY MS. SELLERS

211

1 MS. SELLERS: I beg The Court's indulgence.

2 (PAUSE)

3 Q. Mr. Rowell, let me just for clarification. You never
4 observed the shooting?

5 A. No, ma'am.

6 Q. And you said you ran towards the back of the club?

7 A. Yes, ma'am.

8 Q. Did you run behind the dumpster?

9 A. Behind the green dumpster.

10 Q. And who did you meet up there -- who did you meet at the
11 up there?

12 A. I met Mr. Randy McCollum.

13 Q. Anybody else?

14 A. And Clifton Crosland.

15 Q. Was there anyone else?

16 A. No, ma'am.

17 Q. Did y'all stay behind the dumpster?

18 A. We left the dumpster and went further on back. There is
19 a row of pine trees back there in the back of the lot.

20 Q. So you had to run --- you left --- you were situated
21 behind a metal dumpster?

22 A. Yes, ma'am.

23 Q. But you had to still run in the woods?

24 A. Yes, ma'am.

25 Q. Because there was more shooting, right?

M. LEON ROWELL - CROSS EXAMINATION BY MS. SELLERS

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1 A. No, ma'am.

2 Q. There was shooting with that rifle?

3 A. Yes ma'am, there was gunshots steady going off.

4 Q. Okay. But you didn't feel safe behind that metal
5 dumpster?

6 A. No ma'am, I felt like I needed to get as far as I could.

7 Q. Okay. But you said the shooting was coming from the
8 front, is that what you testified to?

9 A. Yes, ma'am.

10 Q. Okay. And you were in the back?

11 A. Yes, ma'am.

12 Q. Did you feel as if there were gunshots all around you?

13 A. No, ma'am.

14 Q. Okay. And you said you ran into the woods?

15 A. Yes, ma'am.

16 Q. How far back in the woods did you run?

17 A. Right there to the edge, got behind a tree.

18 Q. Got behind a tree?

19 A. Yes, ma'am.

20 Q. So you left a metal dumpster to hide behind a tree?

21 A. I got further back in the woods.

22 Q. Okay. Was there anyone else running?

23 A. There were other people running.

24 Q. Let me ask you about that fight. You said that a
25 couple of people ran of the club. How many people ran

M. LEON ROWELL - CROSS EXAMINATION BY MS. SELLERS

213

1 out?

2 A. I really don't know.

3 Q. Would it be more than twenty?

4 A. I really don't know, I can't say.

5 Q. Do you think the club kind of emptied out?

6 A. No, ma'am.

7 Q. There were still more people inside the club?

8 A. Yes, ma'am.

9 Q. But there were a couple of people that ran out?

10 A. Yes, ma'am.

11 Q. Okay. Now can you recall any other people that were
12 running out?

13 A. I don't know them. Was some girls, they ran out, some
14 other guys ran out.

15 Q. Okay. So as they were running out are you trying to
16 control the scene since you are security?

17 A. What I was trying to do, I was trying to --- I mean they
18 was trying to run out, I couldn't stop them.

19 Q. Okay.

20 A. So somebody ran out tripped over the barstool it ended
21 up outside. I got out, picked it up out of people way.
22 Some people fell.

23 Q. So there were people getting trampled as well?

24 A. No, ma'am.

25 Q. They weren't getting trampled?

M. LEON ROWELL - CROSS EXAMINATION BY MS. SELLERS

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1 A. Some people fell.

2 Q. When they fell did people did other people run over
3 them?

4 A. They fell the other ones beside them picked them up,
5 come on let's go. Nobody got stepped on.

6 Q. Okay. And you said this person fell, were they pushed
7 or did they just fall by the way?

8 A. They fell over the barstool.

9 Q. Okay. If I could have step down one more moment,
10 please. Now you said once the shooting started you
11 were over here about ten feet down here?

12 A. I was about right there.

13 Q. And did you walk back to the building or did you run
14 back?

15 A. I ran.

16 Q. Okay. How long did it take you to get back here?

17 A. It didn't take to long.

18 Q. Not to long because there gunshots everywhere, right?

19 A. No. The gunshots started going off after I got about
20 along up in here. It sounded like it was coming from
21 the same weapon.

22 Q. Okay.

23 A. And when I started running when I past those ladies I
24 just kept running.

25 Q. Okay, you can have a seat for me. Now, let me ask you,

M. LEON ROWELL - CROSS EXAMINATION BY MS. SELLERS

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1 in terms of your firearms training, are you certified as
2 a firearm experts?

3 A. No, ma'am.

4 Q. Do you have, of course with your years of experience in
5 law enforcement, do have a lot of experience with
6 assault rifles?

7 A. I have some experience.

8 Q. What about high powered rifles?

9 A. Assault rifle, high powered rifle, some experience.

10 Q. Okay. Just some experience?

11 A. Right.

12 Q. Okay. Could you tell the difference between an SK and a
13 AK?

14 A. Not really.

15 Q. You couldn't?

16 A. Not really.

17 Q. One more quick question. Did you know Mr. Wright prior
18 to this night?

19 A. No, ma'am.

20 Q. You couldn't associate a name with a face?

21 A. No, ma'am.

22 Q. But didn't you write a police statement?

23 A. Yes ma'am, I wrote a police statement.

24 Q. Were you ever given a photo lineup of Mr. Wright?

25 A. Yes, ma'am.

M. LEON ROWELL - REDIRECT EXAMINATION BY MR. REDMOND

216

1 Q. You did have a photo lineup?

2 A. Yes, ma'am.

3 Q. You were shown photos by whom?

4 A. Pictures by Mr. Campbell and one of the Federal Agents.

5 Q. Okay. And at that time did you identify Mr. Wright as
6 being the shooter?

7 A. Yes, ma'am.

8 Q. But you didn't see him shooting any guns did you?

9 A. No, ma'am.

10 **MS. SELLERS:** Okay. No further questions.

11 **MR. REDMOND:** Briefly, Your Honor, if it please The
12 Court.

13 **THE COURT:** All right.

14 **REDIRECT EXAMINATION BY MR. REDMOND**

15 Q. Did you see him with an assault rifle?

16 A. Yes, sir.

17 Q. Is there any doubt in your mind with everything else you
18 were asked did you see him with an assault rifle?

19 A. There is no doubt in my mind.

20 Q. And is there any doubt in your mind that it was the
21 Defendant that you saw?

22 A. There is no doubt in my mind that's the man.

23 Q. And did you give a written statement to enforcement
24 within a couple of days of this incident?

25 A. Yes, sir.

M. LEON ROWELL - RECROSS EXAMINATION BY MS. SELLERS

217

1 Q. And, again, when you were asked this about why you run
2 or whatnot. Is that similar to the gun that you saw?

3 A. That is similar to the gun I saw.

4 Q. Did you have anything --- Did you have a bullet proof
5 vest or anything that would have protected you from what
6 that gun could do to you?

7 A. No, sir, I didn't.

8 Q. And would that constitute the reason that you ran?

9 A. Yes, sir.

10 **MR. REDMOND:** Nothing further, Your Honor.

11 **MS. SELLERS:** Just a quick recross, Your Honor.

12 **RECROSS EXAMINATION BY MS. SELLERS**

13 Q. What time of night is this?

14 A. I really don't know the time all I know --

15 Q. Was it late?

16 A. It was night.

17 Q. It was night. Had you been drinking anything that
18 night?

19 A. No, ma'am, I don't drink.

20 Q. Okay. And was the weather clear --- was it raining that
21 night or anything?

22 A. It wasn't raining it was clear, but it was dark.

23 Q. It was dark?

24 A. Right.

25 Q. But you never saw the Defendant shooting or firing a

JAMES GERMAN - DIRECT EXAMINATION BY MR. REDMOND

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1 weapons, correct?

2 A. No, ma'am.

3 MS. SELLERS: No further questions, thank you.

4 THE COURT: Thank you, sir, you may step down.

5 MR. REDMOND: The State would next call James German.

6 **JAMES GERMAN**

7 **BEING DULY SWORN TESTIFIES AS FOLLOWS**

8 MR. GERMAN: Yeah.

9 CLERK OF COURT: Please be seated and state your full
10 name for The Court.

11 MR. GERMAN: James German.

12 **DIRECT EXAMINATION BY MR. REDMOND**

13 Q. And, Mr. German, I am going to ask you like everybody
14 else to speak as loudly as you can because the acoustics
15 here are sort of bad, and so that we can all hear what
16 you got to say, okay?

17 A. All right.

18 Q. Now, do you live here in Dillon County?

19 A. Yeah.

20 Q. And, again, I need for you to speak up. Do you live
21 here in Dillon County?

22 A. Yeah.

23 Q. And are you employed anywhere?

24 A. Yeah.

25 Q. And where are you employed, sir?

JAMES GERMAN - DIRECT EXAMINATION BY MR. REDMOND

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1 A. It's going to be Construction.

2 Q. Okay.

3 A. Ain't no certain places.

4 Q. And were you at the Blue Moon formerly known as Club
5 Makium on June 17, 2007?

6 A. Yes.

7 Q. And did you see the Defendant that particular evening?

8 A. Yes.

9 Q. Okay. Had you --- Did you know of the Defendant, in
10 other words would you know him if you saw him --- Did
11 you know him before this incident?

12 A. Yes.

13 Q. Okay. Now, I want you to tell the jury what happened,
14 what you observed on that particular evening involving
15 the Defendant.

16 A. Cars behind me pulled up in the truck I was sitting in.

17 Q. Okay.

18 A. The Defendant got out in the club, --- well they argued
19 behind me at first.

20 Q. Okay, now who is they arguing behind you?

21 A. Randy and I guess the Defendant.

22 Q. Okay.

23 A. They were arguing.

24 Q. Okay. And then what happened?

25 A. The dudes in the truck was George got out said he know

JAMES GERMAN - DIRECT EXAMINATION BY MR. REDMOND

220

1 the dude and was going to tell him to leave for somebody
2 get in trouble.

3 **MS. SELLERS:** Objection, Your Honor, that's going to be
4 hearsay.

5 **THE COURT:** Sustained.

6 Q. Just anything that anybody else said other than the
7 Defendant. If you heard the Defendant say something you
8 can say what he said, but nothing anybody else said.

9 A. Okay.

10 Q. So what else did you observe or hear from the Defendant
11 or see that night?

12 A. Well, he went in the club and they said they were
13 fighting. They came out.

14 Q. Okay. Now when he came out did you see when he came
15 out?

16 A. Yeah.

17 Q. Okay. Tell the jury what you saw once he came out?

18 A. He came and went to my left and he came back with the
19 gun.

20 Q. Okay. Who came back with the gun?

21 A. Jeremy.

22 Q. Okay. If I could, again --

23 **MS. SELLERS:** Objection again, Your Honor, just so that
24 it is so noted.

25 **THE COURT:** Sustain --- Overruled.

JAMES GERMAN - DIRECT EXAMINATION BY MR. REDMOND

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1 Q. And does this look similar to the gun that you saw the
2 Defendant with?

3 A. Yeah.

4 Q. And did it have a banana clip to it?

5 A. Yes.

6 Q. Okay. And where were you when you saw the Defendant
7 walk past you?

8 A. Sitting in the truck.

9 Q. Okay. And once you saw him walk past you tell, the
10 ladies and gentlemen of the jury, what you observed
11 after that?

12 A. When he walked back to me?

13 Q. Yes, after you saw him walking with the gun --- When you
14 first saw him with the gun from that point forward tell,
15 the ladies and gentlemen of the jury what you observed?

16 A. Well he walked towards the door a little bit --- the
17 steps are concrete like and he stepped on that then
18 backed off started shooting towards the right.

19 Q. Okay. And where were you when you started shooting?

20 A. In the truck.

21 Q. Okay. And what were you doing during the time he was
22 shooting?

23 A. Ducking.

24 Q. Okay. But did you see him shoot?

25 A. Yeah, I saw him shooting, yeah.

JAMES GERMAN - DIRECT EXAMINATION BY MR. REDMOND

222

1 Q. Okay. And did you see or hear any other shots during
2 the time he was shooting?

3 A. No, not right then.

4 Q. Okay. And when after --- Where was he standing when he
5 was shooting --- you mentioned going toward the right.

6 A. A little past the door.

7 Q. Okay. To the right of the door?

8 A. To the right of the door, yeah.

9 Q. Okay. And once he finished shooting, tell the jury
10 what you observed once he finished shooting?

11 A. He left --- Well he went back past me --

12 Q. Okay.

13 A. -- the truck to the left is when all the other guns
14 started going off, because everybody else start
15 shooting.

16 Q. Okay. Now at the time that after he left you said there
17 were other guns shooting?

18 A. Yeah.

19 Q. And was it immediate or was it a gap of a period of time
20 before the shots started?

21 A. Wasn't that long a gap.

22 Q. How long of a gap would you say it was?

23 A. I wasn't paying that no attention.

24 Q. But estimated, best that you can estimate?

25 A. About a minute or two.

JAMES GERMAN - DIRECT EXAMINATION BY MR. REDMOND

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1 Q. Okay. And so the shooting --- you see the Defendant
2 shooting is that clear?

3 A. Yes, sir.

4 Q. You saw him shooting to the right --

5 A. To the right.

6 Q. -- of the club. And then was it a minute or two of him
7 leaving that's when you heard more gunshots?

8 A. Yeah.

9 Q. Okay. So he's shooting, he finishes shooting, runs
10 past you gets in a vehicle, they leave, and a minute or
11 two after that you hear more shots?

12 A. Then the guns start going off.

13 Q. Let me ask you to step down, Mr. German if you would. I
14 am going to ask you to speak --- I am going to ask you
15 to stand right there like I am standing right here.
16 Stand right here and I again am going to ask you to talk
17 as loud as you can so Madam Court Reporter can hear what
18 you are saying.

19 Now, which car were you in -- you were in Dewey
20 McCall's car, right?

21 A. Yeah.

22 Q. And was that car parked in front of the club?

23 A. Yeah.

24 Q. Okay. So you were in this car or in that truck?

25 A. Yeah.

JAMES GERMAN - DIRECT EXAMINATION BY MR. REDMOND

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1 Q. Truck, I said car, truck.

2 A. Right.

3 Q. Now, at the time you first saw the Defendant where was
4 he when you I guess first saw the Defendant where was
5 he?

6 A. About right here.

7 Q. Okay. Somewhere up in this area?

8 A. Yeah.

9 Q. Behind the car?

10 A. Yes.

11 Q. Behind the truck?

12 A. Yeah.

13 Q. Now tell me, and just show me where you saw him --- you
14 saw him go to the club?

15 A. Right --

16 Q. -- go inside the club?

17 A. Right.

18 Q. All right. Then when you saw him come out the club
19 where did you see him go afterward when he came out the
20 first time?

21 A. That way.

22 Q. Okay. He came back and went this way. All right, so
23 then I am going to put --- All right, so he came, and
24 then when did you see him and where was he when you saw
25 him with the assault rifle?

JAMES GERMAN - DIRECT EXAMINATION BY MR. REDMOND

225

- 1 A. Right up in there.
- 2 Q. Okay. Right up in here all right. So then you saw him.
- 3 Okay. So now where was the last time you saw while he
- 4 was shooting? Where did he end up when you saw him
- 5 shooting?
- 6 A. I saw him about right up in there.
- 7 Q. Okay. You saw him to the right. Now were you looking
- 8 at him the entire time or were you ducking?
- 9 A. Ducking and looking at the same time.
- 10 Q. So you don't know if he went further right or not?
- 11 A. I don't know.
- 12 Q. All right. And when he walked right past you --- When
- 13 you said, he walked past you did he then come back and
- 14 go past you after he finished shooting?
- 15 A. Oh, yeah.
- 16 Q. Okay. And did he get back in his car or back into the
- 17 car or do you know?
- 18 A. I don't know, I really don't.
- 19 Q. Okay. All right. But after you saw him walk past you
- 20 that was the last time --- was that the last time you
- 21 saw him?
- 22 A. Yes.
- 23 Q. Let me ask you this. Is there any doubt in your mind
- 24 that you saw the Defendant firing that assault rifle?
- 25 A. Did I see him firing the assault rifle?

JAMES GERMAN - CROSS EXAMINATION BY MS. SELLERS

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1 Q. Yeah, did you see --

2 A. Yeah, I seen him firing it, yeah.

3 MR. REDMOND: Okay. Is there any doubt about you
4 seeing -- okay, thank you, you can have a seat. Please
5 answer any questions that Ms. Sellers may have.

6 MS. SELLERS: If it, please The Court.

7 **CROSS EXAMINATION BY MS. SELLERS**

8 Q. Now, Mr. German, you didn't see where the person with
9 the gun because you were ducking, correct?

10 A. Yeah.

11 Q. People were --- somebody was shooting --- people were
12 shooting, you tried to stay safe, right?

13 A. Yes.

14 Q. Now can you, if you could please step down again for me,
15 please. Now your truck is parked --- Mr. McCall's truck
16 is parked here, correct?

17 A. Yes.

18 Q. And you are where -- where are situated in this car?

19 A. In the passenger seat.

20 Q. The passenger seat. Now where did you park your car?

21 A. In the back.

22 Q. And why did you have to park your car in the back?

23 A. Because that's where I park at. Can't park too many
24 cars in the front.

25 Q. Okay.

JAMES GERMAN - CROSS EXAMINATION BY MS. SELLERS

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- 1 A. Park in the back.
- 2 Q. Were there more than two cars parked in the front?
- 3 A. Yeah.
- 4 Q. How many more cars would you say were parked in the
- 5 front?
- 6 A. I don't know all that.
- 7 Q. Would you say there was a lot of cars parked across the
- 8 front?
- 9 A. Yeah, there was a lot of cars there.
- 10 Q. Okay. But not just these two cars?
- 11 A. Uh-huh.
- 12 Q. Okay. Now how close was your car if at all, was it
- 13 parked on the right side?
- 14 A. No, it was parked in the back.
- 15 Q. Okay. And how many cars would you say were back here?
- 16 A. I don't know. I don't know. It was a lot of 'um.
- 17 Q. Okay. Now had you had anything to drink that night?
- 18 A. No, not yet.
- 19 Q. Okay, not yet. Okay. Did you -- you were going to go
- 20 to the club to get something?
- 21 A. Uh-huh.
- 22 Q. Now it was Sunday?
- 23 A. Yeah.
- 24 Q. So where were you going to get your alcohol?
- 25 A. He had liquor in the truck.

JAMES GERMAN - CROSS EXAMINATION BY MS. SELLERS

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1 Q. Oh, Dewey had --- Mr. McCall had liquor in the truck?

2 A. Yeah.

3 Q. Were you drinking?

4 A. No, I didn't get a chance to.

5 Q. Okay. And you said you saw Mr. Wright, he stayed here?

6 A. What you mean?

7 Q. When you said he came out with the weapon?

8 A. Yeah, he was up in that vicinity right there, yeah.

9 Q. Okay. And so you don't really know exactly when the
10 shooting started?

11 A. Not right off hand --- Yeah, somewhere up in there, but
12 I don't know exactly the spot, no, I don't know that.

13 Q. Okay. All right, you can have a seat. Now, how did
14 you realize or what made you pop your head up? How did
15 you know when to look?

16 A. How do I know what now?

17 Q. You said you were ducking?

18 A. Yeah.

19 Q. Ducking and diving?

20 A. Yeah.

21 Q. You didn't think to get out and run?

22 A. Not when somebody is shooting, no. You wouldn't
23 neither.

24 Q. But you thought to look up, right?

25 A. Yeah.

JAMES GERMAN - CROSS EXAMINATION BY MS. SELLERS

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- 1 Q. Okay. I can understand that. But you stayed pretty
2 low the entire time, right?
- 3 A. Yeah.
- 4 Q. Now did you hear multiple gunshots?
- 5 A. When?
- 6 Q. Did you hear multiple gunshots ever?
- 7 A. Yeah.
- 8 Q. Okay. And how long would you say the gunshots lasted?
- 9 A. I don't know I wasn't --- I don't know, a long time.
- 10 Q. A long time?
- 11 A. Yeah.
- 12 Q. Okay. And about how many weapons do you think were
13 being fired?
- 14 A. Pluph, A lot of them. I don't know.
- 15 Q. A lot of them?
- 16 A. Yeah.
- 17 Q. Okay. And --
- 18 **MS. SELLERS:** Beg The Court's indulgence.
- 19 **(PAUSE)**
- 20 **THE COURT:** Yes, ma'am.
- 21 **MS. SELLERS:** No further questions at this time.
- 22 **MR. REDMOND:** No redirect.
- 23 **THE COURT:** Thank you, sir, you may step down.
- 24 **MR. REDMOND:** The State would next call Jimmy Manning.
- 25 Your Honor, may we approach?

JIMMY MANNING - DIRECT EXAMINATION BY MR. REDMOND

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1 **THE COURT:** Yes, sir.

2 (Whereupon, a bench conference was held in the
3 presence of the jury but out of the hearing of the jury.)

4 **MR. REDMOND:** Mr. Manning, if you would step around to
5 the witness stand.

6 **JIMMY MANNING**

7 **BEING DULY SWORN TESTIFIES AS FOLLOWS**

8 **MR. MANNING:** I do.

9 **CLERK OF COURT:** Please be seated in the witness box
10 and state your full name for The Court.

11 **MR. MANNING:** Jimmy Manning.

12 **DIRECT EXAMINATION BY MR. REDMOND**

13 **Q.** And, Mr. Manning, you can have a seat.

14 **THE COURT:** Thank you, Mr. Manning, you may have a
15 seat, sir.

16 **Q.** And, Mr. Manning, I will ask you like I've ask everybody
17 else. I know in Court, when we get to Court we tend to
18 silence us a little bit, but I need for you speak as
19 loudly as you can, sir, that we can clearly hear what
20 you are saying, okay. Make sure you speak loudly and
21 clearly so we can hear and I will just ask you do you
22 live here in Dillon County?

23 **A.** Hamer.

24 **Q.** In Hamer, okay. Could I ask you to get a little closer
25 to the microphone if you could? Do you live in Dillon

JIMMY MANNING - DIRECT EXAMINATION BY MR. REDMOND

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1 County?

2 A. Yes.

3 Q. Okay. And are you employed at this time?

4 A. Yes.

5 Q. And could you tell the jury where you are employed?

6 A. Charles Crabb.

7 Q. Okay, Charles Crabb. And were you at the Blue Moon
8 formerly known as Club Makium on the seventeenth of June
9 2007?

10 A. Yes.

11 Q. Okay. And could you tell us --- Well let me ask you
12 this. Did you see the Defendant out there that night?

13 A. Yes.

14 Q. Did you know the Defendant before this evening?

15 A. Yes.

16 Q. And did you know him I believe through his family?

17 A. Yes.

18 **MS. SELLERS:** Objection, Your Honor, leading.

19 **THE COURT:** Sustained.

20 **MR. REDMOND:** Okay.

21 Q. And how did you know him, the Defendant?

22 A. By his uncle.

23 Q. By his uncle?

24 A. Yes.

25 Q. Okay. Now, did you see him out there that night?

JIMMY MANNING - DIRECT EXAMINATION BY MR. REDMOND

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1 A. Yes.

2 Q. And could you tell the jury, and again as loudly and as
3 clearly as you can, I need you to tell the jury what you
4 observed that particular evening that we are referring
5 to.

6 A. All right. I was working that night at the club and I
7 was working the parking lot and then the inside.

8 Q. Okay.

9 A. And I had went out and came back in and on the way going
10 back out again, I ask Leon what did he say.

11 Q. And when you say, you ask Leon what did he say who are
12 you referring to?

13 A. Jeremy.

14 Q. Okay. Let me stop you there. Did you see the Defendant
15 while he was being patted down by Leon?

16 A. No.

17 Q. Okay. Did you see them engaged in some conversation?

18 A. Yes.

19 Q. Okay. And is that why you ask him what was going on?

20 A. Yes.

21 Q. Okay. Now, continue. What transpired next?

22 A. He said, what you going to do? And so I started towards
23 Leon, I said young man, is you all right? He said yeah
24 he's all right. And some guys that was with him said,
25 go ahead, man, go on in. When they got in I was on my

JIMMY MANNING - DIRECT EXAMINATION BY MR. REDMOND

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1 way out, and I turned around and I said we'll I'm not
2 going out yet. So I started observing things. Then I
3 noticed he was walking towards --- in between the pool
4 tables, and about that time I turned around back towards
5 Leon, and I don't know if he hit someone by that time or
6 if someone had grabbed him and had him on the bar, and
7 was beating him on the head.

8 Q. Okay. Now let me stop you there. Who was --- When you
9 say beating him on on the head, was someone was beating
10 the Defendant on the head?

11 A. Yes.

12 Q. Okay. And continue with what you saw at that time.

13 A. I tried to see who it were, but I couldn't see. And
14 then I was going to try to push him off the bar, but I
15 didn't so I waited for a little while then I sort of
16 like grabbed and pushed both of them like y'all don't
17 need to be doing this in here. And then as he was
18 trying to get away and the dude is holding him and
19 beating him, some kind of way he got a loose and --

20 Q. And when you say he got a loose?

21 A. Jeremy.

22 Q. Okay.

23 A. And he was going towards the door, and some more guys
24 that were with him during that time they was fighting
25 too. And on the way out some dude had a pool stick, and

JIMMY MANNING - DIRECT EXAMINATION BY MR. REDMOND

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1 I said, ya'll man you can't hit that guy with that, but
2 by that time he was still trying to get out. So when
3 he got a loose, he finally went towards the door and I
4 was on my way towards the door. I don't know if he went
5 past me or what, and by that time some dude steps
6 towards the door with a shotgun, I said, yo'll, you
7 can't come in here with that.

8 Q. Now let me stop you there. Was the dude that approached
9 with a shotgun was that the Defendant that had the
10 shotgun?

11 A. No, it wasn't him.

12 Q. Okay. Now go ahead, what happened at that time with the
13 shotgun?

14 A. Then I tried to turn back around to go back in and they
15 pushed the door on me, and so they left me out on the
16 outside, and I heard somebody say somebody pop the
17 trunk, pop the trunk. By that time someone came
18 towards Jeremy, I don't know who it was --- all I know
19 when he grabbed --- when he went to grab the AK he
20 started saying --- he turned around and I started
21 getting out the way then.

22 Q. Let me stop you right there. If I could again, my
23 apologies, Madam Court Reporter --

24 MS. LITTLE: Please note our objection, Your Honor.

25 THE COURT: Yes, ma'am, it's noted.

JIMMY MANNING - DIRECT EXAMINATION BY MR. REDMOND

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- 1 Q. You said AK, does this look similar to the AK-47 you are
2 referring to that you saw that evening?
- 3 A. Yes.
- 4 Q. Okay. And did it have a banana clip?
- 5 A. A straight clip I think --
- 6 Q. Or can you recall?
- 7 A. I can't recall.
- 8 Q. But do you know it was an AK-47?
- 9 A. Yes.
- 10 Q. And did it look similar to this particular weapon?
- 11 A. Yes.
- 12 Q. Okay. Now Mr. Manning, you said that you saw him with
13 the AK, where were you when you first saw the Defendant
14 with the AK 47?
- 15 A. When I backed up on the corner of the building about
16 that time I was like trying to get out, but when he
17 grabbed the gun he went tap tap, and I backed out of the
18 way, and then by that time he just started popping.
- 19 Q. Okay.
- 20 A. The gun was carrying him when he was shooting it.
- 21 Q. And when you say carrying him, carrying him when he was
22 shooting what do you mean when you say that?
- 23 A. It's like carrying him.
- 24 Q. Okay.
- 25 A. Instead of him just holding it firm it was carrying him.

JIMMY MANNING - DIRECT EXAMINATION BY MR. REDMOND

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1 Q. Okay. I got you.

2 A. And he was just shooting it. I was saying, hey man why
3 is you doing this? Why is you doing this, man? But he
4 was still shooting and some guys in the car out, yo,
5 man, come on, man, come on. And I stood there. I just
6 stood there. I mean I couldn't move. I was --- I
7 couldn't go nowhere, I couldn't move. And then by that
8 time after he emptied the clip he turned around and he
9 went and got in the car and then he drove on off.

10 Q. Now after he drove off, could you tell the jury what
11 happened next. Once he drove off then tell me what you
12 did, what you observed?

13 A. All right. Well, he jumped in the car, and then
14 everybody started coming out the club.

15 Q. Let me correct myself. You said he jumped in the car.
16 I said, drove off. He got in the car and left?

17 A. Yes.

18 Q. Okay. Now, tell me again what did you observe, what was
19 going on after --- at the time and after you left?

20 A. During that time when he left they was coming out the
21 club, and I'd say about twenty, twenty-five people came
22 out, and then everybody was trying to run and get in
23 their car and leave. Then all at once little Jeremy
24 [sic] --- Gary said somebody killed my boy. I said man
25 ain't nobody killed nobody. He said yeah, man, he shot

JIMMY MANNING - DIRECT EXAMINATION BY MR. REDMOND

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1 my boy. I said man he did not shoot nobody. He said
2 yes he did. Then when he walked to the street and
3 turned back around he looked like he had Gary looked
4 like he had tears in his eyes.

5 Q. Now when you -- who is that you're saying look like they
6 had tears in their eyes?

7 A. Little Gary, German.

8 Q. German?

9 A. Yeah. He said yes he did kill my boy.

10 Q. Do you know German's last name?

11 A. Not right off.

12 Q. Okay. But that is fine, you know him by German?

13 A. Yes.

14 Q. So German said they killed my boy and then tell me what
15 happened next?

16 A. And then I said, no, man, he ain't killed nobody. You
17 know, he didn't shoot nobody because he was just
18 shooting. But then by that time he went toward the door
19 and I walked over --- I didn't go all the way over
20 there, about a distance, I know. Said, yeah he is, he
21 is dead. But I didn't know if he was dead, but he
22 slumped over. And that's when I said, woh he did kill
23 somebody. By that time, more gunshots --- more shots
24 started --- people started shooting then like in the
25 front and the back. I said, ya'll man, ya'll messing up

JIMMY MANNING - DIRECT EXAMINATION BY MR. REDMOND

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1 the crime scene. And I stood back and I kept turning
2 --- I kept turning cause I heard shots coming from
3 everywhere then all at once I say, hay --

4 Q. Let me be clear on something, Mr. Manning. Did you
5 observe, and you made the comment that you said, yeah,
6 he did kill him. Did you see the victim dead before
7 this second bunch of shots started going off?

8 A. Yes. I said he was slumped down.

9 Q. Okay. And at the time the Defendant was shooting, and
10 let me be clear on something else you saw him shooting
11 that AK-47, is that correct?

12 A. Yes.

13 Q. And by your own observation of seeing the Defendant
14 shooting, did you see or hear anyone else shooting while
15 the Defendant was shooting or was he the only person
16 shooting?

17 A. He was the only one shooting at that time.

18 MR. REDMOND: Beg The Court's indulgence.

19 (PAUSE)

20 Q. He was the only one shooting --- Was he the only one
21 shooting before you saw the victim slumped over in the
22 car?

23 A. Yes.

24 MR. REDMOND: That's all, the questions I have at this
25 time. Please answer any questions, I believe Ms. Little has.

JIMMY MANNING - CROSS EXAMINATION BY MS. LITTLE

239

1 MS. LITTLE: May it please The Court.

2 CROSS EXAMINATION BY MS. LITTLE

3 Q. Good afternoon, Mr. Manning. Mr. Manning, are you
4 related to Randy who runs the club?

5 A. Yes.

6 Q. And what is that relation?

7 A. Cousin.

8 Q. Now, I want to go back to the part of your testimony
9 when you say you saw someone come up to the door with a
10 shotgun, can you tell us who that was?

11 A. All I seen was the barrel pointing in my face, and I was
12 looking into the barrel and I couldn't see who it were.

13 Q. So you just saw the close up part of the barrel --

14 A. -- Yes.

15 Q. You couldn't see the person behind it?

16 A. No.

17 Q. But you're sure it wasn't the Defendant Jeremy. Didn't
18 you testify that it was not Jeremy who came --

19 A. -- Right.

20 Q. -- to the door with the shotgun?

21 A. Right, it was not him.

22 Q. Okay. Because, was he inside the club at the time?

23 A. He had to be coming out during that time, because
24 someone coming past me when I seen the shotgun.

25 Q. Okay. And back in the --- The fight broke out before

JIMMY MANNING - CROSS EXAMINATION BY MS. LITTLE

240

1 you saw the shotgun, is that correct?

2 A. Yes.

3 Q. And when the fight was going on I believe you said
4 somebody had my client --- You didn't see how the fight
5 started did you?

6 A. No.

7 Q. But my client was getting beat up?

8 A. Well the had him on the bar beating him up beside the
9 head and stuff.

10 Q. Okay. And who was the person who was beating him inside
11 the bar?

12 A. I don't know who that were.

13 Q. And did you see anybody inside the club with guns that
14 night?

15 A. Naw.

16 Q. And I believe you testified that my client was trying to
17 get loose while he was inside?

18 A. Yes.

19 Q. Okay. And sometime during that time someone came ---
20 You were at the door and someone came to the door with a
21 shotgun?

22 A. Yes.

23 Q. And you don't know who that person was?

24 A. Naw.

25 Q. Was it someone you would recognize from the club?

JIMMY MANNING - CROSS EXAMINATION BY MS. LITTLE

241

- 1 A. No.
- 2 Q. Okay. Did you ever see their face?
- 3 A. Naw.
- 4 Q. Okay. And you say it was a shotgun, are you sure it was
- 5 a shotgun?
- 6 A. Well it was a single barrel, a pretty big barrel.
- 7 Q. Okay. And did you see where that person went when they
- 8 left?
- 9 A. They went to the --- from where I was standing in the
- 10 inside they went towards the right.
- 11 Q. Okay. And once they got around the building would they
- 12 have been out of your line of sight?
- 13 A. Well that's --- I wanted to see where they went really,
- 14 but by the time when I got ready to go and see they
- 15 pushed me out the club.
- 16 Q. Okay. Then you were outside the club and I believe you
- 17 said when the shooting started you were backing up to
- 18 the corner of the building?
- 19 A. Yes.
- 20 Q. Is that correct? Did you go back behind the building?
- 21 A. No, I stood out in front of the building. I was a
- 22 little bit out in front of the building.
- 23 Q. Okay, so you weren't backed up to it, you were standing
- 24 right in front of it?
- 25 A. Yes.

JIMMY MANNING - CROSS EXAMINATION BY MS. LITTLE

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1 Q. And were you worried that you might get shot?

2 A. I was scared. I mean, I was out so far I couldn't move.

3 Q. Did you think about running behind the building?

4 A. Ducking too, yes.

5 Q. Did you duck at all or hit the ground?

6 A. No, I just stood there.

7 Q. Okay. And you testified that the gun you saw that
8 night, looked similar to the gun the Solicitor handed
9 you is that right?

10 A. Yes.

11 Q. And do you know for sure whether the gun you saw that
12 night was an AK?

13 A. Yes.

14 Q. Okay. Are you familiar with an SKS assault weapon?

15 A. Not really.

16 Q. Okay. So you wouldn't know the difference between an AK
17 and an SKS

18 A. With it in my hands, yes I could tell that.

19 Q. Okay. But that night you just say you saw a gun similar
20 to that, is that correct?

21 A. Yes.

22 Q. Do you know for sure if that was the type of gun you
23 saw?

24 A. Well this gun is a little bit older than --- The one I
25 seen was a little bit older than something similar to

JIMMY MANNING - CROSS EXAMINATION BY MS. LITTLE

243

1 --- It look a little bit older.

2 Q. Okay. And after the person with the shotgun went
3 outside, did you ever see them again?

4 A. Naw.

5 Q. Now, at what point did people begin running out the
6 club, was that during the fight or when the shooting
7 started, I'm trying to understand exactly what point
8 were people running out of the club that night?

9 A. Well they started running out after the shooting, is
10 when they started running out.

11 Q. Okay. All right. So you were outside when you say the
12 shooting took place, is that right?

13 A. Yes.

14 Q. Were there other people outside at the time?

15 A. Yes, yes people was out there but they was running.

16 Q. They were running?

17 A. Yes.

18 Q. Okay. And were people screaming?

19 A. Yes.

20 Q. Was it dark out there?

21 A. Well it wasn't that --- no, it was light out there.

22 Q. Okay. There are two lights in front of the club,
23 correct?

24 A. Yes, there are two of them, one on the back side and one
25 on the left side standing in front of the building.

JIMMY MANNING - CROSS EXAMINATION BY MS. LITTLE

244

1 Q. Now, the shot that you heard --- You say you heard some
2 other shots, and you say you think that was after
3 Jeremy left?

4 A. It was after he left.

5 Q. And during the time that you heard those shots you
6 didn't hear any other shots whatsoever?

7 A. Naw.

8 Q. How about shotgun blasts?

9 A. Naw.

10 Q. How many different types did you hear fire that night?

11 A. I'd say about --- after they had left about --- I don't
12 know, they were coming from different --- they was in
13 the back and the front.

14 Q. So people were shooting from the back of the club, the
15 front of the club?

16 A. Yes.

17 Q. And these were people that had been inside the club?

18 A. Yea --- I think the ones that came --- some of them that
19 came out, yeah.

20 Q. Did you see who was shooting that night?

21 A. Not really.

22 Q. So you can't tell anybody who was firing a weapon after
23 the Defendant left?

24 A. Naw, because I was turning. I was turning around
25 looking. They ride past they would shoot too.

JIMMY MANNING - CROSS EXAMINATION BY MS. LITTLE

245

1 Q. Okay.

2 A. But as soon as I hear one I would trying to look, then
3 by them pulling off, they was shooting while they
4 leaving.

5 Q. Okay. And these would have been other people that were
6 pulling off shooting and leaving?

7 A. Yes.

8 Q. Shooting out of their cars?

9 A. Yes.

10 Q. And which way were they shooting?

11 A. Up in the air.

12 Q. And so you don't know how many --- Approximately how
13 many shots do you think were fired that night; can you
14 give me an estimate?

15 A. What you mean?

16 Q. After you say the Defendant left and shots were being
17 fired, do you know how many shots were fired at that
18 time?

19 A. I'm not sure.

20 Q. Have you ever been out there before when there was
21 shooting going on?

22 A. Yes.

23 MS. LITTLE: Beg The Court's indulgence, please.

24 (PAUSE)

25 Q. Just one more thing, Mr. Manning. When you say later on

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1 at the club when you heard shots coming from the front,
2 coming from the back, were you able to tell, I guess
3 what type of guns were being fired?

4 A. Not really.

5 **MS. LITTLE:** No further questions, Your Honor.

6 **MR. REDMOND:** Your Honor, if I could ask the Defendant
7 to step down for a brief little redirect.

8 **REDIRECT EXAMINATION BY MR. REDMOND**

9 Q. You were asked about the direction that the person with
10 the shotgun went, so I am going to ask you to step down
11 because that made me realize I forgot a couple of
12 things.

13 I am going to ask you to stand right over here, Mr.
14 Manning. Right here, just stand like I am over here,
15 just stand right about here. And, I need you to speak
16 as loudly as you can since we don't have the comfort of
17 the microphone right there. This will not take too
18 long. Where were you, and we talked about you being
19 inside the club during the fight --- Were you inside
20 the club while the fight was going on?

21 A. Yes.

22 Q. And about where in the club was the fight going on?

23 A. About right up here in the bar.

24 Q. Right up here. All right. Let me put your initials
25 right here. All right. Now when you saw --- You saw

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1 the Defendant leave and you talked about seeing the guy
2 with the shotgun. Where were you at when you saw the
3 guy with the shotgun?

4 A. Right at the door.

5 Q. You were at the door, all right. And you said he went
6 to the right of the club?

7 A. Yes.

8 Q. And you said, you were trying to follow what he was
9 doing, and then where was the Defendant when you saw him
10 with the AK-47?

11 A. Sitting here.

12 Q. Okay. You saw him with the AK-47. And where did you go
13 from there when you saw him coming up with the AK-47
14 where did you go?

15 A. I went around this way, right up in there.

16 Q. Okay. And then you came this way, right here, up in
17 here?

18 A. Yes.

19 Q. Okay. And where did the Defendant go?

20 A. He was up in this area.

21 Q. Okay. Now did he go into the club, back into the club
22 at any point?

23 A. Naw.

24 Q. Okay. So, when he came in this direction, where was he
25 when you first saw him shooting?

JIMMY MANNING - REDIRECT EXAMINATION BY MR. REDMOND

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1 A. About right here --- I was right here and he was over
2 here. He was up in here.

3 Q. Okay. And did you see --- did he stayed there or did
4 he move off to the right, did you see?

5 A. He was moving when he was shooting.

6 Q. Okay. So he was shooting and moving.

7 MS. LITTLE: Objection. He didn't --- That's not where
8 he pointed that he moving to.

9 MR. REDMOND: He did, he said moving this way.
10 I'll ask him another question --

11 THE COURT: Let the witness show you.

12 Q. Tell me again what direction was he going when you --

13 A. He was moving up in here --

14 MS. LITTLE: I can't hear him.

15 THE COURT: All right, you need to speak up, sir.

16 Q. Speak up a little louder. He was moving --

17 A. He was moving towards this direction.

18 Q. Okay. Would that be towards the right of the club?

19 A. Yes.

20 Q. And where was the last place estimated, where was the
21 last place that you saw the Defendant as he was
22 shooting? I'll ask you like this. Go ahead. You can
23 --

24 A. He was right up in here.

25 Q. Okay. So you saw him last shooting up in here?

JIMMY MANNING - REDIRECT EXAMINATION BY MR. REDMOND

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1 A. Yes.

2 Q. Now how far did he end up getting before -- in other
3 words, how far to the right of the club did he get
4 before you started coming back, if you can remember?

5 A. Well, he came to this corner.

6 Q. To the corner of the club?

7 A. The corner --- not directly, right up in here to the
8 corner.

9 Q. Okay. So I am going to put like that. So about right
10 in here, so that way we will see that it was not quite
11 to the corner but right near the corner of the club?

12 A. Yes.

13 Q. And he was shooting to the right --

14 A. Uh-huh.

15 Q. When I say to the right he was shooting in this
16 direction?

17 A. Following toward this direction.

18 Q. Okay. Now, then you said he came back. Where did he
19 go when you saw him --- Did you see when he went past
20 you?

21 A. Yes.

22 Q. Okay. And where did he end up going?

23 A. Back towards --- there was a car parked up in here.

24 Q. Okay. Was the car parked somewhere to the left of the
25 club? I will just put somewhere up in here?

JIMMY MANNING - REDIRECT EXAMINATION BY MR. REDMOND

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1 A. It's a drive, a road like up in here.

2 Q. Okay. And he went past the club near where the road is?

3 A. Yes.

4 Q. All right. I will just do this. And when you say
5 somewhere up in there, are you sure exactly where he was
6 or was it somewhere in that area?

7 A. Well he went to the car.

8 Q. Yeah.

9 A. When he left, he went got in the car.

10 Q. Okay. And then did you see when they drove off?

11 A. Yes.

12 Q. Okay. And where did they drive off, do you remember
13 what direction?

14 A. They went towards the right.

15 Q. Okay. Headed back towards Little Rock?

16 A. Yes.

17 Q. Okay. All right.

18 **MR. REDMOND:** Beg The Court's indulgence. I think I've
19 made enough of a mess of the board.

20 You can have a seat, thank you, sir. That would be all
21 the questions I have.

22 **THE COURT:** Anything on cross?

23 **MS. LITTLE:** At this point, can I just clarify one
24 thing? Thank you, sir. And you can just say right down
25 here. And, which way would be better, him right here.

JIMMY MANNING - RECROSS EXAMINATION BY MR. LITTLE

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RECROSS EXAMINATION BY MS. LITTLE

Q. Now, sir, is it your testimony, I believe you said you were about here, did you ever see the Defendant come anywhere over here?

A. Naw.

Q. Okay. So you never saw him come around this right side of this building?

A. He didn't never go around.

MS. LITTLE: Okay. No further questions, thank you.

MR. REDMOND: Nothing further, Your Honor.

THE COURT: Thank you very much, sir, you can may step down.

MR. REDMOND: And, Your Honor, actually I noticed it's five after four, so I've only run five minutes over what I thought I would be able to present today, but the remaining of my witnesses will be tomorrow.

THE COURT: All right. Ladies and gentlemen, we are going to recess a little early for today. You have heard some of the evidence in the case but not all of it. The State has some additional witnesses they will call tomorrow. So we are going to excuse you to go home for the rest of the afternoon for whatever you want to do.

Again, it's very important, you have only heard some of the case, you haven't heard it all. Please have no conversation with anybody. Do not allow people to have

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1 conversation with you. As I told you earlier in my earlier
2 remarks, please do not form any opinions at this point. You
3 have no --- You do not have the complete picture yet. And I
4 hope you understand and you can see the importance of not
5 allowing anyone to have conversation with you outside this
6 courtroom, and not to allow yourself to consider anything
7 that is outside the evidence that is presented here. It is
8 very important that you confine your exposure to this case to
9 this courtroom when you are here in the jury box receiving
10 the evidence.

11 I would ask you if you please be back in the jury room
12 tomorrow morning at 9:30. We will get started hopefully on
13 time, I don't anticipate any problems. We should be able to
14 start on time so if you please be back at 9:30 in the
15 morning.

16 Everyone else will please remain seated in the
17 courtroom. Ladies and gentlemen, you are free to go for the
18 balance of the day.

19 (Whereupon, the jury exits the courtroom at 4:05
20 p.m.)

21 **THE COURT:** All right, is there anything we need to
22 take up before we adjourn for the afternoon.

23 **MR. REDMOND:** Nothing from The State, Your Honor.

24 **THE COURT:** Anything from the Defense?

25 **MS. SELLERS:** Nothing, Your Honor.

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1 **THE COURT:** All right, we will then reconvene in the
2 morning at 9:30.

3 **MR. REDMOND:** Thank you, Your Honor.

4 **MS. SELLERS:** Thank you, Your Honor. Your Honor, just
5 for clarification, did you say 9:30?

6 **THE COURT:** 9:30, Yes, ma'am.

7 (Whereupon, The Court concludes its business for
8 the day at 4:05 p.m.)

9 **-- END OF DAY TWO OF TRIAL --**

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1 (Whereupon, The Court begins its proceedings for
2 the third day of trial at 9:38 a.m. on May 20, 2009.)

3 -- DAY THREE OF TRIAL --

4 THE COURT: Good morning, ladies and gentlemen, I want
5 to tell you how much I appreciate everyone being prompt and
6 on time. I've talked to the people before that have been on
7 jury duty and probably the most common thing that comes up
8 when I talk to people about their experience on jury duty is
9 they say they feel like a yo-yo. Go out, come in, go out,
10 come in, and we do that a lot. You are were here on time
11 this morning, and we're ready to get started and here's what
12 I am going to have to share with you. I'm going to have to
13 send you out again. I am going to send you out now until
14 two o'clock. We've had a situation that has risen in the
15 Circuit here, that Chief Deputy Kinard Redmond needs to go
16 and handle. Has nothing to do with this trial. As a matter
17 of fact it's in another County, but it is a matter that needs
18 his attention, and it's just unavoidable. It came up
19 somewhat suddenly, but he is assured me that he thinks he can
20 go and take care of it and be back by 2:00. And so what we
21 are going to do I told him this is unusual, but it's not
22 unheard of to delay a trial for a period of time. I've had
23 trials I've had to delay for two days before because of
24 someone's wife passing away. But this is a situation that is
25 going to delay us just for this morning. And, again, I told

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1 him, I won't hold him to it but Mr. Redmond feels confident
2 that he will be back by 2:00 and be able to proceed at that
3 time. So, I am going to ask you to be back here at 2:00 and
4 we will proceed at that point.

5 Same instructions that you have every time you leave
6 here and that is, no conversation, and just don't allow
7 people to talk with you. Enjoy your morning and we will see
8 you back here at 2:00 and then we will proceed at that point.

9 Everyone, please remain seated, ladies and gentlemen, we
10 will see you at 2:00. Thank you.

11 (Whereupon, the jury exits The courtroom at 9:41
12 a.m.)

13 **THE COURT:** Any objections or exceptions from The State
14 with the regard to the comments to the jury?

15 **MR. DANIEL:** None from The State, Your Honor.

16 **THE COURT:** Anything from the Defense?

17 **MS. SELLERS:** None from the Defense.

18 **THE COURT:** All right. So we will be in recess
19 regarding this case, but let me ask you, Rosalind, have you
20 had an opportunity to think, or look into possible jury
21 charges?

22 **MS. SELLERS:** Yes, Your Honor.

23 **THE COURT:** Okay. Have you got anything in particular
24 that you want us to look at?

25 **MS. SELLERS:** There is one case that I have had printed

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1. out Your Honor, that I would like for you to look at.

2. THE COURT: Okay. Well, of course, we've got some
3. time now this morning for you to get that stuff to me.
4. Shipp, did Kinard have any opportunity, he may not have?

5. MR. DANIEL: I don't think they were there yet, Judge.

6. THE COURT: What I will do, and I'll tell y'all, this
7. might help y'all. Let me print out for you what I've got.
8. I am not saying it's all inclusive, it's not in final form,
9. but it is a good idea of what I've got, because it might help
10. you, prevent you from having to basically plow over old
11. ground, because it may be that what you want is in here. So
12. let me do that for you, and I will both of you copies of what
13. I've already prepared, which is as I said incomplete but it
14. will be something to work off of.

15. What we're going to do then this morning is we are going
16. to be kind of flying by the seat of our pants. We are going
17. to be a little bit more relaxed mode. Understanding mode.
18. Let people get stuff together. Y'all just let me know when
19. you have something if you have something.

20. MR. DANIEL: Judge, we've got some jail pleas that Mr.
21. Hayes is working on right now, and has been working on this
22. my Miesha of the public defender's office.

23. THE COURT: Okay.

24. MR. DANIEL: And I know he's calling her right now.
25. She is in Bennettsville. I don't know if she's going to be

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1 able to come here at this short notice. She honestly knew
2 nothing about this --- this morning.

3 **THE COURT:** Right. But --

4 **MR. DANIEL:** He's on the phone with her right now and
5 we're going to see if she can come over.

6 **THE COURT:** Well here's what we will do. We will
7 stand at ease then. Let y'all do what you need to do and you
8 let me know whenever you have something you need for us to
9 do.

10 **MR. DANIEL:** Thank you.

11 **MS. SELLERS:** Thank you, Your Honor.

12 **THE COURT:** But I'm going to go ahead --- Now, are your
13 offices here in The Courthouse?

14 **MR. DANIEL:** Ours is upstairs.

15 **MS. SELLERS:** It's right across the street.

16 **THE COURT:** Okay. What I was going to do is, I am
17 going to get this little thing right here I am going to put
18 it in here, get Marshall to --- I think Judge Lockemy's
19 secretary is going to print us out and I will print out two
20 copies of this and give it to you and y'all go take care
21 whatever you need to do, okay.

22 **MR. DANIEL:** Thank you.

23 **MS. SELLERS:** Thank you.

24 (Whereupon, The Court stands in recess from 9:55
25 a.m. until 1:53 p.m.)

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1 **THE COURT:** Thank you, ladies and gentlemen please
2 have a seat.

3 **MR. REDMOND:** May it please The Court Your Honor.

4 **THE COURT:** Yes, sir.

5 **MR. REDMOND:** I just want a couple of housekeeping
6 matters. Let me just first say I appreciate The Court
7 indulging me with the situation that arose late last night --

8 **THE COURT:** Sure.

9 **MR. REDMOND:** -- And, I had to deal with this morning.
10 And I do appreciate and apologize for any inconvenience that
11 may have caused The Court.

12 **THE COURT:** That is no problem.

13 **MR. REDMOND:** As a housekeeping matter, I think there
14 some exhibits that we can agree to at this point and time,
15 Your Honor. State's Exhibit Number 9, the pathology report
16 from Dr. Proctor who is here and prepared to testify. That
17 is State's 9. I think that's in without objection.

18 **MS. SELLERS:** Yes, Your Honor.

19 **THE COURT:** All right.

20 **MR. REDMOND:** And then we have State's Exhibit Number
21 Ten which is an enlargement of the SLED report done by Agent
22 Vello Paavel with SLED. Got that enlarged and I understand
23 there is no objection to this exhibit.

24 **THE COURT:** Is that correct?

25 **MS. LITTLE:** No objection.

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1 **THE COURT:** All right, without objection.

2 **MR. REDMOND:** So at this time I would move these two
3 items into evidence.

4 **THE COURT:** They are in without objection.

5 **WHEREUPON, STATE'S EXHIBIT**

6 **NUMBER 9 AND 10 WERE MARKED**

7 **AND ADMITTED INTO THE RECORD.**

8 **MR. REDMOND:** And this is probably for clarification
9 and I will ask the Defense, we had discussed State's Exhibit
10 --- if The Court will indulge me, State's Exhibit 20, 23, 24,
11 26, and 27, and 25, are not yet in evidence. They have been
12 marked. And I understand that the Defense may have
13 objections too at least one of the pictures. I was not
14 aware, and I didn't ask their position on the remaining on
15 the remainder of the pictures other than 25.

16 **THE COURT:** Why don't you and Ms. Little and Ms.
17 Sellers discuss it right there and if you have an objection
18 we will certainly entertain it.

19 **MS. LITTLE:** Your Honor, the only the picture that we
20 would object to would be State's Exhibit Number 25. May I
21 approach?

22 **THE COURT:** Yes, ma'am.

23 **MS. LITTLE:** This is a picture taken at SLED of the
24 bullet fragments that were removed from the victim's brain.
25 Again, it is shown on a page with two other bullets that were

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1 found at the crime scene. We object on a 403, grounds of
2 Rule 403 that this picture is more prejudicial than it is
3 probative.

4 Your Honor, there were several other bullets found at
5 the scene. This is suggested to the jury in that it puts
6 just this type of bullet in the grouping with the fragments,
7 and we would argue that they may be suggestive. We think
8 that the jury can reach its own conclusion after hearing all
9 the evidence. We would just object to that one photo.

10 THE COURT: Mr. Redmond?

11 MR. REDMOND: Your Honor, the only thing I would say is
12 that it would be clear in the testimony what the nature and
13 the purpose of those --- of that Exhibit is as it relates to
14 all the bullets being lined up.

15 In all do candor, rather than the laboring and beating a
16 dead horse, since those pictures with those bullets are in
17 other pictures that are in evidence, rather than wasting time
18 I don't have a problem just withdrawing that one and not
19 seeking too introduce that one.

20 THE COURT: All right, so the purpose of this photo is
21 to deal with these bullet fragments, and your point is that
22 you have other pictures that would enable you to do that?

23 MR. REDMOND: Exactly. We've got other pictures with
24 just the fragments that they don't object to --

25 THE COURT: All right.

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1 **MR. REDMOND:** -- and we've got 2-B and 6 already in
2 evidence so.

3 **THE COURT:** All right, well if are going to withdraw
4 that then there is no need to deal with objection it's
5 withdrawn.

6 **MS. LITTLE:** No argument. Okay.

7 **THE COURT:** Then the other pictures there are no
8 objections is that correct?

9 **MS. LITTLE:** No objection.

10 **THE COURT:** All right, so without objection those
11 remaining photographs are in evidence.

12 **MR. REDMOND:** Thank you, Your Honor.

13 **WHEREUPON, STATE'S EXHIBIT**
14 **NUMBERS 20, 23, 24, 25, 26 AND**
15 **27, AND 28 WERE MARKED AND**
16 **ADMITTED INTO THE RECORD.**

17 **MS. LITTLE:** Your Honor, we just have one additional
18 Motion.

19 **THE COURT:** Yes, ma'am.

20 **MS. LITTLE:** And this may be premature, Your Honor,
21 you may want to wait until after Agent Paavel testifies.

22 We are going to argue that our client's due process
23 rights are violated, because we don't have access to all the
24 evidence because some of the evidence was lost, and we
25 believe that evidence was exculpatory, and through research

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1 we do have some information that states that pictures are
2 inadequate to identify bullet shell casings and this is per
3 guidelines of the Association of Tool Marks and Firearm
4 Examiners. Our position is that --

5 THE COURT: Wait a minute. So you don't have a case
6 law to support that you just have that which clearly you can
7 use in cross examining any expert.

8 MS. LITTLE: Yes, sir. Yes, sir.

9 THE COURT: Okay, then that's fine. I just want to
10 make sure that there wasn't some case law I needed to review.

11 MS. LITTLE: No, Your Honor, I don't have any case
12 law.

13 THE COURT: Okay. Okay.

14 MR. REDMOND: Judge, just one last housekeeping matter
15 before we bring the jury out, and we discussed this in
16 chambers, but marked I think as State's 8, it's the
17 transcript for Thomas McCollum.

18 Quite frankly, that was done in anticipation of a
19 possibility of not getting James German, but since we did
20 they were both in the car. Their testimony is pretty much
21 cumulative.

22 THE COURT: -- Cumulative --

23 MR. REDMOND: And, therefore, Your Honor, rather than
24 the laboring and boring the jury, I would at this point
25 indicate to The Court, and I've already the Defense my

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1 intention not to have that read since we actually did have
2 Mr. German here in Court.

3 **THE COURT:** That's the deposition of Mr. McCollum?

4 **MR. REDMOND:** That is correct, Your Honor. No, Thomas
5 McCall. And I know the Clerk is disappointed in not being
6 able to give --- your law clerk is disappointed in not be
7 able to read that into evidence.

8 **THE COURT:** I just told Marshall, I said Mr. McCollum,
9 you are excused.

10 **MR. REDMOND:** Your Honor, other than that, The State is
11 ready to proceed.

12 **THE COURT:** All right. Anything before we bring the
13 jury out from the Defense?

14 **MS. SELLERS:** Nothing from Defense, Your Honor.

15 **THE COURT:** All right. Yes, would you please ask the
16 jury to join us.

17 (Whereupon, the jury enters The courtroom at 2:19
18 p.m.)

19 **THE COURT:** Thank you, ladies and gentlemen, again for
20 being prompt and timely in your comings and goings, and I
21 thank you for your patience in allowing us to take care of
22 matters that had nothing to do with this case, but that
23 needed attention.

24 Mr. Redmond has made it back as he indicated he would,
25 so we are now ready to proceed. If you would recall

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1 yesterday The State was still on their case and chief. So
2 at this time recognize Mr. Redmond for his next witness.

3 **MR. REDMOND:** May it please The Court, Your Honor.

4 **THE COURT:** Yes, sir.

5 **MR. REDMOND:** Next, The State would call Atai Hayes.

6 **THE COURT:** Sir, if you would please come around and
7 take the stand.

8 **ATAI ANTWAN HAYES,**

9 **BEING DULY SWORN TESTIFIES AS FOLLOWS**

10 **MR. HAYES:** Yes.

11 **CLERK OF COURT:** Please be seated and state your full
12 name for The Court, please, sir.

13 **MR. HAYES:** Atai Antwan Hayes.

14 **CLERK OF COURT:** You're going to have to speak up real
15 loud for us.

16 **THE COURT:** That's not working.

17 **MR. HAYES:** Atai Antwan Hayes.

18 **MR. REDMOND:** May it please The Court, Your Honor.

19 **THE COURT:** And, sir, if it will help and you, and you
20 don't have to bend way over there, but you can move your
21 chair number one. And, number two is, when you answer
22 questions from Mr. Redmond or from Ms. Sellers or whoever if
23 --- don't feel shy, holler out there to them, okay?

24 **MR. HAYES:** Yes, sir.

25 **THE COURT:** Don't worry about it, you're fine.

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DIRECT EXAMINATION BY MR. REDMOND

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2 Q. Mr. Hayes, do you live here in Dillon County?

3 A. Yes, sir.

4 Q. Okay. And like, His Honor, said, just let it out as I

5 have been telling witnesses don't hold back. The

6 acoustics here are bad so I need for you to talk as loud

7 as you can. Assume somebody is sitting in that back

8 row, and talk as loud as you can, okay.

9 A. All right.

10 Q. Okay. Are you employed at this time, Mr. Hayes?

11 A. Yes, I am.

12 Q. Okay. Where are you employed?

13 A. I am employed with Lee Colonies, they are calling me

14 probably like tomorrow for the job at Bojangles.

15 Q. At Bojangles, okay. Well congratulations on finding a
16 job. Let me go straight to June 17, 2007. Before I do
17 that, do you know the Defendant?

18 A. Yes, sir.

19 Q. Okay. And did you see the Defendant on the seventeenth
20 of June?

21 A. Yes, sir.

22 Q. And could you tell the jury where you first saw the
23 Defendant on the seventeenth of June?

24 A. At the Grand Prix.

25 Q. At the Grand Prix. And is that located here in Dillon?

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1 A. Yes, sir.

2 Q. In what part of Dillon is that located?

3 A. Riverdale.

4 Q. In Riverdale, okay. Now got up with him at the Grand
5 Prix. Could you tell the jury from the time you got up
6 with him at the Grand Prix, what did y'all do and where
7 did y'all go from there?

8 A. We was out there at the Grand Prix just skating around
9 and everybody decided to go out to Makiums.

10 Q. Okay. And when you say, Makium is that what is known as
11 the Blue Moon now?

12 A. Yes, sir.

13 Q. Okay. And were you riding in the car with the
14 Defendant?

15 A. Yes, sir.

16 Q. And could you tell the jury happened as y'all were
17 getting to and once got to the Blue Moon?

18 A. We left the Grand Prix and we met up at the Blue Moon.

19 Q. Okay.

20 A. And we was trying to find a parking area, but and they
21 was telling us we couldn't come into the club because
22 something must have went down the weekend before. So I
23 was like --- I was ready to go at that point then, but
24 we had pulled into the Blue Moon parking lot.

25 Q. Okay. And let me ask you this, Atai, how old are you

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1 at this time?

2 A. I'm nineteen.

3 Q. And how old were you at the time this happened?

4 A. About seventeen.

5 Q. Okay. Now so y'all were being told you couldn't go in
6 and you weren't really --- you didn't really want to go
7 in, but from that point forward --- Well let me just ask
8 you this. Was the Defendant, having an argument with
9 anybody out there that night?

10 A. Yes sir, the man that told us we couldn't come in.

11 Q. Okay. Did you know the man who was telling you that?

12 A. No, sir.

13 Q. Okay. Now then after that tell us what happened? Did
14 y'all leave, or did y'all end up going into the club?

15 **MS. SELLERS:** Objection, Your Honor, he is leading the
16 witness.

17 **THE COURT:** Sustained.

18 Q. Did you leave the club at that time?

19 A. No sir, we pulled into the parking lot.

20 Q. Okay.

21 A. We walked in --- I walked into the club to play pool.

22 Q. Okay. Now let me stop you there. Did you walk into
23 the club with anybody?

24 A. No, I walked into the club first and then that's when
25 D.K. and the boy was just walking behind us.

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1 Q. Okay. And did the Defendant end up going into the club
2 at any time?

3 A. Yes, sir, he came in last.

4 Q. Okay, he came in last after you were already in the
5 club?

6 A. Yes, sir.

7 Q. Okay. So then tell us what happened. Y'all got into
8 the club. Did you hear any discussion that the
9 Defendant had with the gentleman at the door?

10 **MS. SELLERS:** Objection again Your Honor, this would be
11 leading the witness.

12 **THE COURT:** Sustained.

13 **MR. REDMOND:** Well, Your Honor, if I may, I just ask
14 him was there any discussion, I didn't --- but I will
15 rephrase. I'll rephrase.

16 **THE COURT:** Go ahead.

17 Q. Did you hear the Defendant say anything that night prior
18 to y'all getting into the club, once y'all got the
19 premises?

20 A. No sir. It was just that we all went to the Blue Moon,
21 and we was trying to find a parking area and like there
22 was some side of the roads. We just parked on the side
23 of the road. That's when the men that directs the
24 traffic that comes into the parking lot and told us that
25 we couldn't come in, because something happened the

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1 weekend before.

2 Q. Okay.

3 A. So by that time we pulled into the Blue Moon parking
4 lot, and we pulled in any way and then that's when I got
5 out the car.

6 Q. Okay.

7 A. And then I was walking to the door. So he must not
8 recognize me as the one who drove by there because I
9 wasn't there at the time the weekend before.

10 Q. Okay. So you had already walked ahead?

11 A. Yes, sir.

12 Q. Okay. Now tell us again, so from that point forward
13 tell us what happened.

14 A. I walked into the club and then that's when the other
15 three fellows walked in behind me, D.K., J.Dub and
16 Clifford.

17 Q. Now who is J.Dub you just called --

18 A. That is German.

19 Q. Okay. And is that the Defendant?

20 A. Yes, sir.

21 Q. Okay. Go ahead and continue.

22 A. And then that's when there was a boy at the bar he was
23 standing on side of the bar, leaning over on the bar.
24 I had leaned against the wall by the pool tables so I
25 could play pool. Put my change on the table to play

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1 pool. That's when Jeremy and the boy leaning on the
2 side of the bar got into it.

3 Q. Okay, do you know who that boy was that he got into
4 with?

5 A. Them call him Chopper, that's all I know.

6 Q. All right.

7 A. I don't know nothing about him.

8 Q. Okay. Tell us what you saw after that. Jeremy and
9 Chopper get into a fight?

10 A. They got into a fight, this and that, and that's when he
11 went like I'll be back, I'll be right back, I'll be
12 right back. I'm going to snatch --- I'm going to get my
13 gun.

14 Q. Okay. Let me make sure I understood that. Who said,
15 I'll be back, I'll be back, I'm going to get my gun?

16 A. Jeremy.

17 Q. The Defendant?

18 A. Yes, sir.

19 Q. Okay. Now continue. So from that point forward tell us
20 what happened.

21 A. From that point forward that's when everybody was
22 leaking out the club and the ones that left out right
23 before he came he got to the car and get his gun so by
24 that time when he got the gun out the car and snatched
25 it from his brother --

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1 Q. Okay. Let me stop you there. So you said he got the
2 gun --- he got to the car and snatched the gun from his
3 brother?

4 A. Yes, sir.

5 Q. Okay. When you say snatch the gun if I could have
6 what's been marked as State's 1, and 1-A.

7 MS. SELLERS: Objection, Your Honor, from previously
8 reasons.

9 THE COURT: Objection is noted.

10 Q. Does this look similar to the weapon that you saw him
11 give -- B.K. give the Defendant?

12 A. Yes, sir.

13 Q. Okay. And did it have a banana clip?

14 A. Yes, sir.

15 Q. Okay. Thank you. Now, Atai, who is B.K.? Who is
16 B.K.?

17 A. It is the Defendant's brother.

18 Q. That's the Defendant's brother.

19 A. Yes, sir.

20 Q. Do you know his real name?

21 A. No, sir.

22 Q. Okay. But you know he is the Defendant's brother?

23 A. Yes, sir.

24 Q. Okay. Now, let me go back a little bit. You said they
25 get to the car and B.K. gives the Defendant a gun?

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1 A. He snatched his gun from B.K. B.K. was trying to keep
2 him from getting it. He snatched it from his brother.

3 Q. Okay. So the Defendant snatched the gun away from his
4 brother?

5 A. Yes, sir.

6 Q. Okay. So then tell us what happened after that?

7 A. He snatched his gun from his brother. He walked towards
8 the club door and kicks it open and points the gun
9 inside the club. But they kicked the door back closed,
10 so he backed off from the door and just went to the side
11 and cocked his gun and started shooting at the cars and
12 stuff. After he shot all the bullets out the gun he ran
13 to the car and by the time we got out the parking lot I
14 heard --- I can't say exactly who it was, but I heard
15 somebody say, he's hit, he's hit. He got shot and he's
16 dead. And by that time we left. Like I said I ain't
17 seen no more, or ain't hear or see no more guns being
18 going off until somebody came back and told me that
19 there was more shooting. Somebody else had got shot.
20 It was girl there or something, Tamika. I girl named
21 Tamika had done got shot out there so that's how I knew
22 there was more gunshots going off out there after we
23 left.

24 Q. Okay. Let me ask you this. When you at the time you
25 were you there who was the only person that you saw

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1 shooting a gun?

2 A. The Defendant.

3 Q. Did you see him shooting the gun?

4 A. Yes, sir.

5 Q. Where were you at the time he was shooting his gun?

6 A. I had gotten back in the car.

7 Q. Okay.

8 A. I got in the car.

9 Q. And is there any doubt in your mind that the Defendant
10 was shooting --- was the one shooting the gun?

11 A. Say it one more time.

12 Q. Is there any doubt in your mind that it was the
13 Defendant that was shooting that gun?

14 A. I know guarantee the Defendant shoot the gun.

15 Q. Did you say you would guarantee it was?

16 A. Yes, sir.

17 Q. Okay. And did --- excuse me. After y'all got in the
18 car, and did the Defendant get in the same car you were
19 in?

20 A. Yes, sir.

21 Q. And where were you and where was the Defendant when
22 y'all were getting in the car leaving the club?

23 A. I was in the back seat by the drivers side, and he was
24 in the passenger side.

25 Q. Okay. And what --- Did he have anything with him when

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1 he got in the car?

2 A. The gun. He had it down between his legs.

3 Q. Okay. And did he say anything as y'all were leaving?

4 A. He was like whatever went down, everybody just stay to
5 themselves, just stay to themselves --- I got it.

6 Q. If I could ask, with The Court's permission, for you to
7 step down, Atai. If you could step down from just a
8 moment. And I am going to have you looking at this
9 diagram, about where y'all parked, the car that you were
10 riding in with the Defendant, about where y'all parked,
11 what area were y'all parked in?

12 A. We was parked right here. Right on the side of the car,
13 on the dirt.

14 Q. Okay.

15 A. Right there on the side of the club by the door.

16 Q. Somewhere on the -

17 A. The dirt part of the road.

18 Q. So y'all were to the left of the club?

19 A. Going back towards --- the way to go back to the back of
20 the building.

21 Q. Okay. And let me ask you this. I am going to need you
22 to this, because we are going to have to go through this
23 again. Atai, I know you're young, and I know this is
24 not a fun experience, but I need you to like you're
25 yelling at me. Like I cannot hear you. You have to

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1 yell everything to me so that the ladies and gentlemen
2 on the jury can hear what you're saying. And I am going
3 to ask you to move up a tad closer. Now, scream it out
4 to me. What side of the club were y'all parked?

5 **MS. SELLERS:** Objection, Your Honor, it's already
6 answered that question.

7 **MR. REDMOND:** Well I don't know that anybody could hear
8 him, so that's why.

9 **THE COURT:** He's repeating the question because I
10 didn't hear a word he said.

11 **MS. SELLERS:** Okay.

12 **THE COURT:** So you got to speak loudly.

13 Q. Now, what side of the club were y'all parked?

14 A. We was parked on the side to where going back toward
15 Dillon, like going back home.

16 Q. Okay. And where were you at the time --- Were you in
17 the car at the time the shooting started?

18 A. Yes, sir.

19 Q. All right.

20 A. I ran back to the car and got in.

21 Q. And where did you see the Defendant when he was actually
22 shooting. You said he was shooting into the parking
23 lot. Where did you see the Defendant when he was
24 shooting into the parking lot?

25 A. He was standing over there like right between cars like

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1 parked, like right here's the door he was standing like
2 right here on the corner of the building.

3 Q. Okay.

4 A. -- standing back from the building.

5 Q. All right, and I am going to put --

6 A. And then there were cars parked going in a line, going
7 on down the side of the club, because the other side of
8 the club. I mean, he just pointed the gun and started
9 shooting at the cars that were on the side of the club.

10 **MR. REDMOND:** Okay. You can have a seat. Thank you.
11 Beg, The Court's indulgence for just a moment.

12 **(PAUSE)**

13 Q. And, again, I think you testified earlier that before as
14 y'all were pulling out of the parking lot what is it
15 that you heard?

16 A. I heard somebody yell out --

17 **MS. SELLERS:** Objection, Your Honor, that would be
18 hearsay.

19 **MR. REDMOND:** Actually, Your Honor, it is excited
20 utterance. It goes to several exceptions under the hearsay
21 rule, but especially excited utterance, presence sense
22 impression.

23 **THE COURT:** Come up here I want to talk to you real
24 quick.

25 (Whereupon, a bench conference was held in the

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1 presence of the jury but out of the hearing of the jury.)

2 **THE COURT:** I am going to overrule the objection, and
3 allow you to answer the question.

4 **MR. REDMOND:** Thank you, Your Honor.

5 Q. Atai, last question. Again I ask you. As y'all were
6 driving off from the Blue Moon night club after the
7 Defendant finished shooting, tell the jury what you
8 heard from the parking lot as y'all were riding off?

9 A. As we was riding off I heard somebody yell out, he's
10 dead, he's dead, he's dead, he got shot.

11 Q. Thank you. And at that time the only gunshots you had
12 heard were from the Defendant.

13 A. Yes, sir.

14 **MR. REDMOND:** Nothing further, Your Honor.

15 **MS. SELLERS:** May it please The Court.

16 **THE COURT:** Yes, ma'am.

17 **CROSS EXAMINATION BY MS. SELLERS**

18 Q. Good afternoon, Mr. Hayes, how are you?

19 A. All right.

20 Q. At the time you were seventeen years old?

21 A. Yes, ma'am.

22 Q. Was it usual for you to go out to clubs?

23 A. No, ma'am, partying age trying to be grown. Hanging out
24 with people, trying to fit in.

25 Q. And did you --- Had you been drinking at that time?

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1 A. No, ma'am.

2 Q. If you could, please step down for a moment. Now you
3 said initially on direct, if I understood you, that you
4 all parked on the dirt road, parked in the parking lot?

5 A. What I mean was, we parked right here on the side like
6 going back toward the home, because we was backed in
7 into the club so we was parked like I say kind of like
8 right in front of the building, backed in. We had
9 backed into the club.

10 Q. Okay.

11 A. We wasn't on the dirt road we was like on the grass part
12 of the club.

13 Q. So you would have been further up here?

14 A. Somewhere up in here. We was up in here.

15 Q. Now the dirt road is here?

16 A. Okay. We was parked up in here.

17 Q. So this is Harllee Bridge Road here. This is the dirt
18 road --

19 MR. REDMOND: Actually, Your Honor, I am going to
20 object because what she is pointing to is not the dirt road.
21 If she would look at the diagram the dirt road is actually to
22 the left of where she is pointing.

23 Q. So which part --- You said you were past the dirt road?

24 A. No, ma'am, we was inside --- we was parked inside the
25 parking lot. We turned inside the club to the drive way

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1 like you're coming from Dillon we turned in.

2 Q. So did you turn into the dirt road?

3 A. No, ma'am. We came in to the club. Like this it the
4 door to the club --

5 Q. Okay.

6 A. There's cars parked right here. There's cars parked on
7 this side of this side right here. We came in --- this
8 it the driveway, we pulled inside, but we backed into
9 the club, so we backed in and we was backed in towards
10 this way, the car coming out this way, to come out
11 towards the road like going back home because we was
12 backed into the club.

13 Q. Okay. Thank you. And the car again was parked where?

14 A. It was parked up in here, right up in here.

15 Q. Okay. You can have a seat, thank you. Now, Mr. Hayes,
16 you said you went in the club?

17 A. Yes.

18 Q. When the fight happened did many people run out?

19 A. When the fight was going on people was like gathering
20 around looking at the fight, really, until they heard
21 when he was yelling out, I'm going to get my gun, I'm
22 going to get my gun.

23 Q. How long would you say you were in the club?

24 A. We weren't even in the club probably fifteen minutes.

25 Q. Was the music playing?

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1 A. Yes, ma'am.

2 Q. How crowded was it?

3 A. It was real crowded.

4 Q. Over three hundred people?

5 A. By my estimating I could say, yeah, three hundred
6 people.

7 Q. Now were people milling outside --- Were people hanging
8 out outside to?

9 A. Yes, ma'am.

10 Q. Was there --

11 A. People were outside, all around the club.

12 Q. Okay. And you said people were all around the club?

13 A. Yes, ma'am, There was people in the back, the ones just
14 coming to the club and ones that were already out so
15 there were a lot of people out there.

16 Q. Now let me ask you. When you initially pulled up
17 everybody got out of the car?

18 A. No ma'am, when we first pulled up, I had got out the car
19 first.

20 Q. Okay.

21 A. And by the time I got out the car and got into the club
22 that's when they be getting out of the car.

23 Q. Okay. So you got out the car immediately?

24 A. I don't oh, no. we took and backed into the club. As
25 soon as we put the car in park and cut it off I got out.

1 Q. And you went inside the club?

2 A. Yes.

3 Q. So you don't know how soon Jeremy came into the club?

4 A. No ma'am, by the time I had already seen people I had
5 known, I was like shaking their hands and talking to
6 them. But by the time I turned my head around and
7 looked back towards the door I seen that's when they
8 was coming in, you know, they shake peoples hands they
9 know.

10 Q. Okay. And you said the music was really loud?

11 A. Yes, ma'am.

12 Q. Okay. And after the fight broke out people started
13 running everywhere?

14 A. Basically, people was running where the fight was. They
15 was looking at the fight.

16 Q. Okay. Just looking at the fight.

17 A. Yes, until they heard him say, I am going to get my
18 gun, I am going to get my gun. That's when most of the
19 people that really knew he was serious they --

20 MS. SELLERS: Objection.

21 MR. REDMOND: It's her witness.

22 MS. SELLERS: It's my witness, yes.

23 Q. And let me ask you, did you run out?

24 A. Basically I was --- To tell you the truth, I will still

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1 there. I was looking at the fight myself. When they
2 were fighting I was like sitting by the pool tables
3 about on the wall looking at the fight.

4 Q. You were looking at the fight?

5 A. Yes.

6 Q. Okay. Did Jeremy leave out before you left out?

7 A. No, ma'am, I was out first.

8 MS. SELLERS: I beg The Court's indulgence.

9 (PAUSE)

10 THE COURT: Yes, ma'am.

11 Q. Now, Mr. Hayes, I need you to step down one more time,
12 just for clarification. You all were parked somewhere
13 up on here, correct?

14 A. Yes.

15 Q. And you were in the backseat?

16 A. Yes, ma'am.

17 Q. All right, you can have a seat for me. I'm sorry. And
18 you said you saw Jeremy around here?

19 A. About from here --- Well, he was right here --- This is
20 the front door of the club. When he had those shots in
21 his face he walked from around --- got from in front of
22 the door to about right up in here, because there was
23 car parked right in front of it and that's when he just
24 shot all the cars that was standing in front of him.

25 Q. Okay. So he was around here?

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1 A. No, he was standing up in here.

2 Q. Right here.

3 A. Yes, ma'am.

4 Q. You can have a seat for me. Now did you do any ducking
5 that night?

6 A. Ma'am?

7 Q. Did you do any ducking?

8 A. Ducking, yes, that's why I jumped back in the car to
9 keep myself from getting shot myself, because basically
10 I didn't know who else was going to react to the gunfire
11 that was going off.

12 Q. So you were ducking the entire time?

13 A. No ma'am, but when the guns were going off --- When the
14 gun went off that he had, I ran back to the car. And I
15 was getting down myself so I wouldn't get hit cuz I
16 didn't know who else was going try to retaliate about
17 the other gunshots. The gunshots keep going off.

18 Q. So if you were running back to the car and ducking
19 yourself how could you see what he was doing?

20 A. Can I step down?

21 Q. Yes.

22 A. Because of the simple fact why I say that is, he's
23 standing right here. He's standing right here so by
24 people seeing the gun was pointed inside the club they
25 done shut the door in his face, so that's when he came

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1 right here. As soon as he started shooting the gun off
2 like this right there, I turned around and ran to the
3 car and got in the car where I was sitting at.

4 Q. So you didn't go into the car as soon as you saw him
5 with a gun?

6 A. No, see that's what I am telling you. See, when he
7 came out the club, when he said, I'm going to get my
8 gun, I'm going to get my gun. That's when he ran back
9 to the car. He snatched the gun from his brother. He
10 walked back towards the door and pointed it at the club.
11 Just like this right here.

12 Q. Did you accompany him back to the door?

13 A. No, ma'am.

14 Q. Okay.

15 A. He had the gun at the door like this right here. They
16 kicked the door in his face. I heard when the door shut
17 in his face. He backed off turned around and walked
18 toward the cars, and he looked just like this right here
19 and he started shooting his gun at all the cars.

20 Q. And let me ask you. You said when you heard the door
21 close, was the music playing?

22 A. Yes, ma'am. The music was playing but by us being
23 outside you can hear the door shut.

24 Q. Did the music ever stop playing that night?

25 A. No ma'am, until they --- it didn't stop playing --- I

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1 don't know, because basically when all the bullets was
2 gone out the gun, we all got back in the car and we
3 left.

4 Q. Now you --

5 A. -- So if they quit playing the music, I wouldn't know.
6 I wasn't there.

7 Q. All right. And you testified that that was the gun
8 similar?

9 A. Yes, ma'am.

10 Q. And were you familiar with guns?

11 A. Yes, ma'am.

12 Q. How are you familiar with guns?

13 A. Like I said, watching movies, video games, things like
14 that.

15 Q. Had you ever heard a gun up close in person?

16 A. Yes, ma'am. I seen plenty of guns up close.

17 Q. You've seen many of guns?

18 A. Yes, ma'am.

19 Q. Okay. You are afraid to how people were going to react,
20 so would you be surprised they were multiple guns out
21 there?

22 A. I wouldn't really be surprised because it was a night
23 club in the country, and people like that come out to
24 clubs like that they come bring a gun with 'um, because
25 they know how us people gets about anything, like when

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1 they get drunk some of them fighting, they will pull
2 guns out. So basically I knew it was multiple guns out
3 there. There had to be.

4 Q. Okay, so there was a shootout that night?

5 A. Yes. I heard --- Originally why I said it was a
6 shootout that night because I heard the next day --

7 **MR. REDMOND:** I object anything that incurred. That
8 as hearsay.

9 **MS. SELLERS:** Your Honor, he is just reiterating his
10 testimony that he presented on direct.

11 **MR. REDMOND:** And, Your Honor, but again and I don't
12 know what the nature of her question is as it relates to
13 hearsay, whether or not it's going to get any further than
14 that. I understood what he testified to on direct with no
15 problem, but I just don't know how far into it she's planning
16 on going.

17 **THE COURT:** The general question was, what did you
18 hear?

19 **MS. SELLERS:** Your Honor, I was asking him about was
20 there a shootout, and he was explaining how he knew that
21 there was a shootout that night.

22 **MR. REDMOND:** Your Honor --

23 **MS. SELLERS:** And this is information that he's already
24 testified to on direct.

25 **MR. REDMOND:** I would ask her if she could rephrase

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1 that question so that it's clear that based on his
2 observation was there a shootout, not based on what he heard.

3 **THE COURT:** And you're on cross, so you can ask leading
4 questions. So simply asking did you hear there was, that
5 would be improper and I would sustain the objection.

6 **MS. SELLERS:** Thank you, Your Honor.

7 Q. Mr. Hayes, did you hear there was a shootout that night?

8 A. Yes, I did.

9 Q. Did you also hear that multiple people were shot?

10 A. When I heard about the shootout I heard a girl had got
11 shot but I ain't hear about no multiple people. Because
12 see, by the time I was going to the store, somebody had
13 told me, a friend I know, had told me --

14 **MR. REDMOND:** Your Honor, I would object at this point.
15 I think it's --

16 **THE COURT:** Y'all come up here, please.

17 (Whereupon, a bench conference was held in the
18 presence of the jury but out of the hearing of the jury.)

19 **THE COURT:** Objection sustained.

20 Q. Mr. Hayes, did you hear there was a shootout?

21 A. Yes. Yes.

22 Q. And you said you were familiar with guns?

23 A. Yes, ma'am.

24 Q. Have you ever shot a gun?

25 A. No, ma'am, I ain't never shot --- I ain't never had one.

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1 Q. Have you ever held on before?

2 A. No, ma'ma.

3 MS. SELLERS: Beg The Court's indulgence.

4 (PAUSE)

5 Q. Mr. Hayes, you said you heard someone had gotten shot --
6 - you heard the yelling out?

7 A. Yes, ma'am, we was at the Blue Moon. By the time we got
8 out the parking lot that's when the gunshots started
9 they stopped, and they stop firing. I had heard
10 somebody say oh, he got hit, he got it, he's shot.

11 Q. You said that's when the gunshots had stopped firing?

12 A. Yes, ma'am, the gunshots had already stopped firing
13 after I heard a girl say that.

14 Q. But you never went to the police did you?

15 A. No, ma'am. The police came to me.

16 Q. And why didn't you go to the police?

17 A. Becuz, I felt like things that i hadn't did, I ain't had
18 no gun in my hand, I ain't shoot nobody, wasn't really
19 no need to go to the police.

20 Q. Okay. But you didn't make a statement until you were
21 threatened to be charged with the crime, is that
22 correct?

23 A. Yes.

24 Q. Were you ever charged with anything?

25 A. No.

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1 Q. No further questions for this witness.

2 MR. REDMOND: Redirect, Your Honor.

3 THE COURT: Yes, sir.

4 MR. REDMOND: May it please The Court.

5 REDIRECT EXAMINATION BY MR. REDMOND

6 Q. Atai, did you, again, I am asking you to be clear, did
7 you see or hear anybody else shooting while you were out
8 there?

9 A. No, sir.

10 Q. And up until the time you left, who was the only person
11 you saw or heard shoot?

12 A. The Defendant.

13 Q. Okay. Can you say from your own observation what
14 happened after y'all left the club?

15 A. No, sir.

16 Q. So, if there was a shootout or whatnot after you after
17 you left the club was there --- is there any way that
18 saw or heard anything?

19 A. No, sir.

20 Q. Okay. Now is what you are testifying today the truth as
21 it happened that night?

22 A. Yes, sir, that's the truth.

23 Q. And is it absolutely your testimony that it was the
24 Defendant firing the gun?

25 A. Yes, sir. I seen him with my eyes.

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1 Q. You saw it with your eyes. And is it again, your
2 testimony that you heard somebody say something to the
3 effect that he's shot, he's shot, he's dead after the
4 Defendant stopped shooting?

5 A. Yes, sir.

6 Q. As y'all were leaving the club?

7 A. As we were leaving the club.

8 **MR. REDMOND:** Nothing further at this time.

9 **MS. SELLERS:** Briefly. Your Honor.

10 **RECROSS EXAMINATION BY MS. SELLERS**

11 Q. Mr. Hayes, how did the police find out about you?

12 A. I guess somebody there that was at the club they know me
13 because I know that somebody --- a friend of my mom told
14 her that I was out there, that's how I got caught by my
15 mom. But I guess somebody that knows me out there at
16 the club and told the police --- gave a report that
17 about that I was in the car with them.

18 Q. Now do you know if anyone, or did the police ever come
19 and ask you if you shot the gun?

20 A. See when I was walking to the store like as I was
21 staying with friend, and we was walking to the store and
22 the police, it was Reggie and a West guy, a SLED agent,
23 they pulled up on me at the Pack-N-Snack and told me to
24 get in the car. So by the time, when I got in the car
25 they was talking about if you don't tell us what went

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1 down at the Blue Moon that last night you are going to
2 jail along with whoever else we get. So I told them
3 exactly what I know. That was after that day.

4 Q. And you never were arrested for anything?

5 A. No, ma'am.

6 MS. SELLERS: No further questions.

7 MR. REDMOND: Nothing further, Your Honor.

8 THE COURT: Thank you, sir. You may step down.

9 MR. REDMOND: May it please The Court, Your Honor. The
10 State would next call Dr. Proctor.

11 Please come forward and take the oath of a witness.

12 WHEREUPON EDWARD L. PROCTOR, MD

13 AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS

14 DR. PROCTOR: I do.

15 CLERK OF COURT: Please be seated in the witness box,
16 state your full name for The Court, spelling your last name.

17 DR. PROCTOR: Yes, ma'am. I am Edward LeRoy Proctor,
18 Junior. And, that is P-R-O-C-T-O-R.

19 VOIR DIRE EXAMINATION BY MR. REDMOND

20 Q. And, Dr. Proctor, it is good to see you again.

21 A. It is good to see you, sir.

22 Q. And, let me go through a few background questions, if i
23 may. You are self-employed?

24 A. Yes, sir.

25 Q. And, could you tell the jury a little bit about what it

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1 is that you do?

2 A. Yes, sir. I am a medical doctor. I am engaged in the
3 practice of pathology. I have been trained as a
4 surgical pathologist, a clinical pathologist, as well as
5 in the subspeciality of forensic pathology. I completed
6 my residence courtesy of the United States Army, and
7 have been in Myrtle Beach since 1986, and am Board
8 Certified by the Speciality Boards for all of those
9 specialities.

10 Q. Now tell us a little bit about your experience as a
11 medical doctor.

12 A. I have been actively practicing pathology as a Certified
13 Pathologist since 1986. I do forensic pathology for
14 Horry County, Georgetown County, and Dillon County, and
15 in the course of that time have probably done four or
16 five thousand forensic cases.

17 Q. And how many times would you say that you have had to
18 testify in Court as an expert in the field of forensic
19 pathology, guestimation?

20 A. Guestimation, probably three hundred --- two or three
21 hundred, thereabouts.

22 **MR. REDMOND:** Your Honor, at this time I would move
23 that Dr. Proctor be considered and qualified as an expert in
24 the field of forensic pathology.

25 **THE COURT:** All right.

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1 MS. LITTLE: Your Honor, just based on what I know of
2 Dr. Proctor and he has testified as an expert before in this
3 Court, Your Honor, without objection.

4 MR. REDMOND: Thank you.

5 THE COURT: All right.

6 DIRECT EXAMINATION BY MR. REDMOND

7 Q. Dr. Proctor, could you tell the jury whether or not you
8 conducted an examination of Kelvin Smalls on the
9 eighteenth of June 2007?

10 A. Yes, sir. I was contacted by Mr. Grimsley, the Dillon
11 County coroner, and we did an examination on June 18,
12 2007, yes, sir.

13 Q. And just as --- and I think most people know what an
14 autopsy is but just for the record and for the jury's
15 edification, could you briefly tell us generally what it
16 is that you do when you are performing an autopsy, what
17 is the purpose of an autopsy?

18 A. Yes, sir. When I am contacted in a forensic case by the
19 coroner, he is working with law enforcement trying to
20 solve a death that occurs under suspicious or unusual
21 circumstances. I was contacted by Mr. Grimsley and told
22 that there had been altercation and man was shot. So he
23 wanted me to do an autopsy to determine the cause and
24 hopefully the manner of the death. And a consequence of
25 his request, we do an external exam, we do a dissection

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1 where we actually open the body and look; we remove any
2 foreign projectiles or objects that are there. Then we
3 take samples for toxicological evaluation and once we
4 get all of that data together then we formulate a cause
5 of how the man died, and the manner of how he was
6 killed.

7 Q. And did you conduct such an examination in this case
8 involving Mr. Kelvin Smalls?

9 A. Yes sir, I did.

10 Q. And I will just ask you like this since you're the
11 expert and I am sure not, could you explain your
12 findings to the jury regarding this particular autopsy?

13 A. Yes, sir. My examination of Mr. Smalls revealed a
14 gunshot wound to his head. The entrance was within the
15 what is described as the right occiput, which is the
16 right posterior aspect of the skull. The projectile
17 entered the skull in this area, and passed from right to
18 left and superior, slightly interior at approximately 45
19 degrees. It struck the bony part of the skull on the
20 left side and the projectile was basically found, a
21 jacketed portion of a projectile and the distal lead
22 portion were found within the brain matter in the sort
23 of midline area of the brain.

24 Q. Were your findings that the cause of --- What were your
25 findings as to the cause of death?

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1 A. Well this projectile caused extensive damage to the
2 brain matter, caused multiple fractures of the basilar
3 skull. Was associated with bleeding into the head, and
4 the actual cause of death was the gunshot wound to the
5 head with excessive trauma to the brain.

6 Q. Now did you collect that particular bullet, the jacket
7 and the fragments that you described, did you collect
8 them?

9 A. Yes sir, I did.

10 Q. And were those given to the transport service in
11 accordance with your normal operating procedures?

12 A. Yes, sir. I think we may have had a chain of custody.
13 We had a document that I have stated these were
14 transferred under the chain of custody to investigative
15 authorities for Dillon County. Yes, sir.

16 Q. All right. Now I am going to show you what has been
17 marked as State's Exhibit Number 9, and if you would
18 just look at that and just answer this question. Is
19 that a true copy of the autopsy that you performed and
20 the report that you generated from that autopsy?

21 A. Yes, sir. It is.

22 Q. I want to also show you --- And, I apologize, Your
23 Honor. Permission to approach the witness.

24 THE COURT: Yes, sir.

25 Q. I want to show you what has been marked as State's

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1 Exhibit 26. Could you tell the jury what that picture
2 represents?

3 A. Yes, sir. This picture represents the jacketed portion
4 of the projectile removed from the brain, as well as the
5 projectile itself, and with that is the container in my
6 handwriting with the victim's name, the date, and my
7 initials.

8 Q. And your initials. And I will ask you this, that
9 picture, is that a picture of the evidence that you
10 collected from the autopsy of Kelvin Smalls?

11 A. Yes sir. It is.

12 Q. And is that the evidence that was then transported to
13 Dillon County authorities for submission for further
14 tests?

15 A. Yes, sir.

16 MR. REDMOND: Beg The Court's indulgence.

17 (PAUSE)

18 Q. And, again, just to make sure I'm clear. I think you
19 had demonstrated it, could you again highlight the path
20 of the bullet. And, actually, if I could ask you to
21 step down that might make it a little easier.

22 A. All right.

23 Q. And I hate for you to use your own head for this example
24 but at this point I think I will. Dr. Proctor, if you
25 would again demonstrate the path that the bullet took.

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1 A. The path entered the right occipital --- about I think I
2 can describe it, about four centimeters to the right of
3 the midline, just a couples of inches and about six
4 centimeters down, so three centimeters down; so it's in
5 the right posterior skull past right to left and
6 actually struck the skull in this area on the left side.

7 Q. Okay, thank you, sir, you can have a seat.

8 **MR. REDMOND:** Again, beg, The Court's indulgence.

9 **(PAUSE)**

10 **MR. REDMOND:** That's all, the questions I have. Please
11 answer any questions Defense may have.

12 **MS. LITTLE:** May it please The Court?

13 **THE COURT:** Yes, ma'am.

14 **CROSS EXAMINATION BY MS. LITTLE**

15 Q. Good afternoon, Dr. Proctor.

16 A. Hi.

17 Q. Dr. Proctor, you testified that you did an external
18 examination of the victim?

19 A. Yes, ma'am.

20 Q. And as part of your examination --- Let me ask you this.
21 When the victim arrived were hands bagged?

22 A. To my recollection, I don't know.

23 Q. You don't know?

24 A. I don't know.

25 Q. Okay. So you don't know whether they preserved any

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1 evidence that would have been found on his hands?

2 A. No, ma'am. I do not.

3 Q. And do you have any recollection as to whether or not
4 you examined his clothing?

5 A. I do not have recollection. I do not know what items
6 were there.

7 Q. Okay. Now part of your examination would be to check
8 for any other injuries or any markings on the victim's
9 body?

10 A. Yes, ma'am.

11 Q. And could you describe --- On your report you talk about
12 tattoos that were located on the victim?

13 A. Yes, ma'am.

14 Q. Do you need to refresh your memory or could you tell us
15 --

16 A. I've got --

17 Q. Could you tell the jury what tattoos and where they were
18 located?

19 A. Okay, there was a tattoo --

20 **MR. REDMOND:** Your Honor, again, I think this is a
21 situation where -- And again I know this is cross, but I'm
22 just curious as the relevance here.

23 **THE COURT:** Are you objection?

24 **MR. REDMOND:** I am objection, Your Honor, at this point
25 because I don't know if there is a foundation laid for its

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1 relevance as it relates to the cause of death.

2 THE COURT: How is this relevant to any issues?

3 MS. LITTLE: Your Honor, I will withdraw that line of
4 questioning.

5 THE COURT: All right.

6 Q. Dr. Proctor, did you take any blood samples for
7 toxicology on the victim?

8 A. Yes, ma'am.

9 Q. And did you actually do those tests?

10 A. No, ma'am. We send these under chain of custody to a
11 national testing lab that is called National Medical
12 Services, it's in Pennsylvania right outside
13 Philadelphia.

14 Q. Okay. And you found that to be a reliable company to
15 deal with?

16 A. Yes, ma'am. We do that on virtually all of our cases,
17 and this is also the company that the South Carolina
18 State Law Enforcement Division uses on occasion.

19 Q. And did you get that report back from toxicology?

20 A. Yes, ma'am. I do not have the official copy of that
21 report, but I do have the results stated in my autopsy
22 and they are stated here.

23 Q. Okay. And can you tell the jury what those results
24 were?

25 A. Yes, ma'am.

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1 MR. REDMOND: Your Honor, again, without there being
2 some relevance here, and again I know this is cross
3 examination but I don't know what the relevance --

4 THE COURT: It still has to be relevant.

5 MS. LITTLE: Your Honor --

6 THE COURT: What is the relevance of the issues in this
7 matter.

8 MS. SELLERS: Your Honor, I will withdraw that question
9 also.

10 THE COURT: All right.

11 MS. LITTLE: May I approach the witness?

12 THE COURT: Yes, ma'am.

13 Q. Dr. Proctor, I am going to show you what has marked as
14 Defense Exhibit 1 for identification purposes, and
15 rather than use your own head I am going to ask you if
16 you would to mark for the jury on here the approximate
17 location of the entrance wound.

18 A. Okay.

19 Q. Okay. You might want to stand up. Just show the jury
20 in general which direction it went, and then may be we
21 can do some sort of marking, approximately where it was
22 inside of the head.

23 A. Okay. This is this right posterior skull. The bullet
24 entered in this direction striking the bone it was sort
25 of a stellate wound there where the skin actually pulls

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1 apart from the bone, it passed right to left at
2 approximately 45 degrees coming through the brain
3 hitting the left side of the skull in the parietal area.
4 Once the major projectile hit the skull, it just sort of
5 knocked back over and it was found in the midline in the
6 mid portion of the brain up here. So basically the
7 bullet came here and ricocheted back.

8 Q. Okay. Thank you, Dr. Proctor.

9 **MS. LITTLE:** Your Honor, at this time I would move to
10 introduce this as an Exhibit for the jury.

11 **MR. REDMOND:** Absolutely no objection, Your Honor.

12 **THE COURT:** All right, is that Defense q?

13 **MS. LITTLE:** Yes, sir. Defense Exhibit 1.

14 **THE COURT:** All right, Defense Exhibit 1, without
15 objection.

16 **Whereupon, Defendant's Exhibit**

17 **Number 1 was marked and**

18 **admitted into the Record.**

19 **MS. LITTLE:** Beg The Court's indulgence for one moment.

20 **(PAUSE)**

21 **THE COURT:** Yes, ma'am.

22 **MS. LITTLE:** There further questions, Dr. Proctor.

23 **MR. REDMOND:** No redirect, Your Honor.

24 **THE COURT:** Thank you very much, Dr. Proctor, you may
25 step down, sir.

VELLO PAAVEL - VOIR DIRE EXAMINATION BY MR. REDMOND

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1 Any objection to Dr. Proctor, being excused?

2 **MR. REDMOND:** None, whatsoever.

3 **MS. LITTLE:** None from the Defense.

4 **MR. REDMOND:** The State would next call Vello Paavel to
5 the stand.

6 **WHEREUPON, VELLO PAAVEL**

7 **BEING DULY SWORN TESTIFIES AS FOLLOWS**

8 **MR. PAAVEL:** Yes, I do.

9 **CLERK OF COURT:** Please be seated in the witness box
10 and state your full name for The Court, spelling your last,
11 please sir.

12 **MR. PAAVEL:** My name is Vello Paavel. V-E-L-L-O
13 P-A-A-V-E-L.

14 **VOIR DIRE EXAMINATION BY MR. REDMOND**

15 **Q.** Agent Paavel, by whom are you employed?

16 **A.** I work with the South Carolina Law Enforcement Division,
17 which is commonly known as SLED. In particular I work
18 in the Forensic Services Laboratory in the Firearms
19 Department.

20 **Q.** And how long have you been so employed?

21 **A.** I've been at SLED for just over twenty two years.

22 **Q.** In what capacity in those twenty two years have you
23 worked at SLED?

24 **A.** I have been in the Firearms Department all of that time,
25 however, the first two years when I was in the Firearms

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1 Department my responsibility also included latent prints
2 and crime scenes. In 1989 the Firearms Department
3 separated into two units strictly firearms and tool
4 marks and latent prints and crime scene, and I have been
5 there since. I have been an examiner in that department
6 and then for the past two years I am the supervisor of
7 that department.

8 Q. Okay. And as far as your --- Let's go through your
9 background here. Could you tell the jury your
10 educational background, if you would, please, sir?

11 A. One of the requirements for working in the Forensic
12 Service Laboratory is some type of four year degree. I
13 attended the University of South Carolina. I have a
14 Bachelor of Science Degree, and I majored in Chemistry.
15 After I left the University, I did some local jobs. I
16 ultimately ended up at a gunshot in Columbia, where I
17 bought, sold, and repaired firearms, I worked there for
18 several years.

19 Then I worked at the Columbia Police Department and
20 Richland County Sheriff's Department for a total of six
21 and a half years. And then I started work at SLED in
22 1987, again, in the Firearms Department. During my
23 initial employment in the Firearms Department I had to
24 work under Court Qualified Examiners. I had to read
25 about latent prints, crime scenes, firearms, tool marks.

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1 I was tested on this information. I was allowed to help
2 examiners and assist them with preparing cases, and
3 after I successfully completed a training program, I was
4 allowed to work cases on my own.

5 I was also able to attend armor schools at various
6 --- ammunition --- Correction. firearms manufacturers.
7 And these armor schools further assisted me in learning
8 how firearms worked and determine whether or not
9 anything has been altered on the firearm or if they have
10 a problem. I also was able to attend the FBI school on
11 specialized technics in firearms identification.

12 However, the bulk of my training in the area of
13 firearms or tool mark identification, meaning the
14 microscopic comparisons of these markings came from
15 SLED, it is literally an on the job training where have
16 to work under the supervision of a qualified examiner
17 and literally look at thousands and thousands of
18 comparisons.

19 Q. Okay. And I think now you said you actually are now the
20 supervisor in that department?

21 A. That is correct, sir.

22 Q. Okay. Now --- And you probably covered it. Is there any
23 additional training or any additional experience that
24 you've had regarding your ability to be able to do
25 firearms analysis?

- 1 A. The training that I received at SLED plus my own, let's
2 call it a hobby type training, information that I
3 accumulated over the years. Firearms have been a hobby
4 of mine virtually all my life. I have attended, again,
5 the schools that SLED provided. I go to gun shows to
6 look at different types of firearms. I own firearms. I
7 shoot them. I also am a member of AFTE, Associates of
8 Firearm and Tool Mark Examiners which is a world wide
9 organization that promotes the exchange of information
10 between firearm and tool mark examiners. I am a member
11 of IAI, International Association for Identification
12 which again promotes the field to identification and to
13 exchange information and to learn about new techniques.
14 Our laboratory is a ASCLD accredited laboratory, which
15 is the Association of Crime Laboratory Directors. That
16 is pretty much the training that I have, sir.
- 17 Q. Well, let me ask you about your time being qualified as
18 an expert. If you can, tell us a range of a number of
19 times you've been qualified in Court as an expert in the
20 field of firearms analysis?
- 21 A. I've testified as an expert in Court at least three
22 hundred times, somewhere between three hundred and three
23 hundred and ten is the latest number that I can come up
24 with as an expert in firearm and tool mark
25 identification.

VELLO PAAVEL - DIRECT EXAMINATION BY MR. REDMOND

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1 MR. REDMOND: Your Honor, with that I would offer Agent
2 Paavel as an expert in the field of firearms analysis.

3 MS. LITTLE: Without objection.

4 THE COURT: Without objection.

5 DIRECT EXAMINATION BY MR. REDMOND

6 Q. Now sir, let's go to items that were submitted to in
7 this case. Were there items of evidence submitted to,
8 particularly bullets and whatnot by the Dillon County
9 Sheriff's office?

10 A. Yes, sir. Evidence was submitted to SLED for analysis
11 and I ultimately analyzed a large group of evidence.

12 Q. Okay. Now before we get into that; did you take
13 pictures of some of the items that you did examine?

14 A. Yes, sir, I did. I took overall photographs as a part
15 of the normal documentation procedure of virtually all
16 of the items, some of the items I took representative
17 photos of.

18 Q. Okay. And I am going to ask you if you could --- and
19 you don't have to step down at this point, I will just
20 ask you to look through State's Exhibits 20 through 27
21 and see if recognize those and let me know when you are
22 ready to answer a few questions.

23 A. All right, sir, bear with me. Sir, what I am doing is,
24 I am comparing the photograph that you handed me with
25 the thumbnail photographs that I have in my case file to

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1 confirm that these are my photographs.

2 (PAUSE)

3 A. Yes, sir, I recognize these.

4 Q. Okay.

5 A. What you handed are enlargements of photographs that I
6 took.

7 Q. Okay. And now I am going to ask you to step down just
8 for a moment if you would.

9 A. All right, sir.

10 Q. Now, could you just tell the jury and just go through
11 --- And I will you --- I will hold them up and we can go
12 through each of them. And just explain to the jury what
13 each of these pictures is.

14 A. This is simply a photograph of one of the containers
15 that the evidence was in. If you look over here there
16 is a bar code label up here, which has a laboratory case
17 number that is assigned to the evidence when the
18 evidence is submitted to SLED. It also has what you
19 will see is "C" with the pound sign and "A" that means
20 it's container number 'A' and it also has information
21 about the submitting agency.

22 Q. Okay. State's Exhibit 21.

23 A. This is a photograph of the container and one of the
24 cartridge cases or the cartridge case that was in the
25 container, and this again has the case number on it,

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1 which I placed on it, the item number and my initials.

2 Q. Okay. State's Exhibit 22.

3 A. Again, the container and an unfired cartridge that was
4 inside that container. It was one of the items that I
5 received.

6 Q. State's Exhibit 23.

7 A. This is an enlargement of the head or face of the
8 cartridge case. What it shows is a series of numbers
9 and characters, that is the head stamp, that is an
10 indicator of the caliber and the manufacturer of this
11 particular cartridge case.

12 Q. Okay. State's Exhibit 24.

13 A. Same thing. That is another one of the cartridge cases
14 that I examined. It also shows the caliber and --- I'll
15 turn it around so you can see it a little bit better.
16 It shows the caliber over here and the manufacturer
17 here. It also and like on the other one, this area here
18 is the primary and it has a primary impression or mark
19 on it.

20 Q. State's Exhibit 26.

21 A. This is a container and the items that were in it. This
22 is a fired bullet or the components of it. It consists
23 of the bullet jacket, a piece of lead that was actually
24 inside the bullet, and this large steel core that is
25 inside the bullet.

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1 Q. And let me ask you about State's Exhibit 26. Do you see
2 the container up on top of it?

3 A. Yes, sir.

4 Q. And could you explain the significance of that
5 container?

6 A. Normally when I see containers with names on it like
7 that it is usually from a victim, or it shows where the
8 projectile was found or located. So this name that you
9 see here was on here, this date was on here, and these
10 initials were here. I added the case number and my
11 initials in blue over here.

12 Q. So these fragments were taken out of this container?

13 A. Yes, sir.

14 Q. Okay. Thank you. And State's Exhibit 27.

15 A. That is the same items that you saw here, it's just an
16 enlargement of it, just to see the dimensions of it and
17 what they actually were.

18 Q. Okay. Thank you. You can have a seat Agent Paavel.
19 Now, let's talk about your analysis. First of all, did
20 you have all of the items --- Did you create a report of
21 your particular analysis in this case?

22 A. Yes, sir. I did.

23 Q. And when you did your assessment and report did you have
24 the actual evidence to be able to analyze and compile
25 your findings?

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1 A. Yes, sir. I had the evidence specimens, that way I could
2 document what they were. I could document their
3 condition, and also do microscopic comparisons where
4 necessary.

5 Q. Okay. Now, could you explain to the jury what findings
6 were as it relates --- Well I will just ask you this.
7 Did you find more than one caliber weapon, in the
8 evidence, that you examined?

9 A. What I found were evidence components that were fired by
10 different firearms.

11 Q. And that is from --

12 A. More than one caliber, yes, sir.

13 Q Okay. And we, will get into that with your report in
14 just a minute. Did you find different types of
15 cartridges that would go into a AK-47 or an SKS?

16 A. Yes, sir. There was an unfired cartridge or piece of
17 ammunition that was correct caliber to use in a AK-47 or
18 an AKA-47 variant or an SKS rifle.

19 Q. Okay. Now --- And I am just going to direct your
20 attention again, because we will get into the other
21 ones, but the one I am particular interested in,
22 State's Exhibits 26 and 27.

23 A. Yes, sir.

24 Q. In your report could you tell the jury what your
25 specific findings were as to that particular bullet,

1 those fragments, excuse me.

2 A. After I examined this item or these items and I rendered
3 a conclusion that these particular bullet fragments were
4 most consistent with what I would expect to find in a
5 bullet that I would find loaded in a 762x39 millimeter
6 Soviet Caliber Cartridge.

7 Q. And is that the type of --- Are those the type of
8 fragments from a bullet that could have been fired by an
9 AK-47 or an SKS?

10 A. Yes, sir.

11 Q. Okay. And let me talk about this for a minute. When we
12 talk about AK-47 and SKS; could you briefly explain to
13 the jury the differences and similarities as it relates
14 to an SKS and AK-47?

15 A. Let's go back to an SKS first because it was technically
16 developed a little bit earlier than an AK-47. Both of
17 these firearms were developed by the Soviets in the
18 1940's. The SKS is a semi automatic rifle. It fires a
19 762 by 39-millimeter Soviet Caliber Cartridge. The
20 original SKS firearm has a 10-shot magazine that
21 literally stays attached to the firearm and you normally
22 load it from the top. In this original military
23 configuration it has some time of bayonet attached to
24 it. Until say the late 1980's, early 1990's we didn't
25 see to many SKS's in the United States. You usually saw

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1 war trophy from Vietnam or things like that, but the
2 trade restrictions were eased about that time so quite a
3 few these firearms ended up in the United States. Same
4 thing with the AKA-47. Now the AK-47 ended up being
5 developed or released after the SKS. The SKS originally
6 is a semiautomatic rifle which means you pull the
7 trigger, you let the trigger go for each shot. The AK-47
8 the original firearm is a fully automatic firearm. Well
9 virtually none of those come in the United States
10 because of our federal laws. However, the manufacturer
11 of these firearms made semi automatic versions of these
12 AK-47's and they came into the United States and were
13 sold to a whole bunch of people. The AK-47 uses a
14 detachable or removable magazine that normally sticks
15 out the bottom of the firearm. Normally it is a thirty
16 or forty shot magazine, and a lot of times you will hear
17 people call them banana clips, or something because they
18 have this curved appearance. They are distinctly
19 different firearms in the way they work but depending on
20 how they configured they are made to look somewhat
21 similar under certain circumstances.

22 Q. Okay. Now let me know what has been marked as
23 State's Exhibit 1 and 1-A.

24 MS. LITTLE: Objection, Your Honor.

25 THE COURT: Overruled. Objection is noted.

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1 Q. And actually if I could I am going to just hand it to
2 the witness with The Court's permission and you can sit
3 it safely as you see fit since I don't like weapons.
4 Could you explain to the jury in your assessment what
5 kind of weapon would this be?

6 A. Hang on one moment, let me just make sure there nothing
7 at all in here.

8 Q. Okay. That's why I've been holding it so carefully.

9 A. This is a Chinese copy of an AK-47 rifle. This
10 particular one is made by an Norinco in China. The
11 controls that are here indicate that it is a
12 semiautomatic firearm. It does not have the controls
13 for fully automatic fire. It would use a magazine like
14 this, and you see it's a fairly large curve magazine,
15 which typically would be inserted in here where this
16 cable lock is present to secure the firearm.

17 Q. And let me just ask you this before I retrieve the
18 weapon. Would that weapon fire 7.62x39 cartridges?

19 A. Yes, sir, it would. In fact this particular one is
20 stamped with 762 or 7.62 millimeter by 39, which is the
21 762x39 millimeter Soviet Cartridge.

22 Q. Thank you, sir.

23 A. Yes, sir.

24 Q. Now before I have you step down one more time, and I
25 meant to ask you this earlier, can you explain to the

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1 jury briefly, but in as much detail as necessary; what
2 procedure do you use when you are determining --- How do
3 you go about making the findings that you do regarding
4 ballistics testings, if you could?

5 A. Depending on what piece of evidence I'm looking at. In
6 this case I did not have a firearm for comparison, I
7 simply had a fired bullet or fragmented bullet. I also
8 had fire cartridge cases. And just to make sure that
9 we're on the same sheet of music here, when I talk about
10 a bullet that's the projectile. That is the part that
11 comes out the end of the barrel and travels toward the
12 target. The piece of ammunition itself that is unfired
13 is known as a cartridge case --- I mean as a cartridge
14 rather. It is composed of a cartridge case, a bullet,
15 gun powder and a primer. When I do my examinations,
16 what I will be looking at, on a bullet, are the markings
17 that were left on the bullet as result of the bullet
18 traveling down a barrel. Most modern firearms, rifles
19 and pistols and revolvers have rifling inside the barrel
20 and rifling is series of helical grooves that are placed
21 inside the barrel. And when they make these helical
22 grooves it leaves raised areas called lands and when the
23 bullets go down the barrel those lands literally are
24 grabbing or engraving that bullet and causing the bullet
25 to spin, remember these are helical grooves which means

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1 they can either go clockwise or counter clockwise. The
2 purpose of rifling in a firearm is to cause the bullet
3 to spin so that the bullet will travel more accurately.
4 But again for me from the point of view of firearm and
5 tool mark identification, I am looking at the markings
6 that are left on that particular bullet so I can try to
7 determine whether it was fired by a particular firearm.

8 Now in this case, I didn't have a firearm so what I
9 have to do is examine the bullet and try to determine
10 what caliber the bullet is, and try to determine
11 possibly what type of firearm may have fired that bullet
12 based on the rifling characteristics that are present on
13 the bullet. In this case, this particular fragmented
14 bullet had a steel jacket that had a copper wash on it.
15 There was a small amount of lead present, which is
16 typical of what you see inside the core of a bullet and
17 it also had a steel core. Now this was a jacketed
18 bullet so what that means is it's a multiple piece
19 bullet. It as a core on the inside, in this case made
20 out of steel. It's normally surrounded by a little
21 layer of lead and then you have an external jacket which
22 in this case is a copper wash steel jacket. So what I
23 do is try to measure its dimensions, I try to determine
24 how many land and groove impressions are on the bullet.
25 Determine what directions they are going in, and measure

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1 those land and groove impressions and then based on that
2 I try to give a list of possible firearms that could
3 have fired that particular bullet based on the caliber
4 and based on those land and groove dimensions and
5 direction of twists.

6 Q. Now I am going to ask you to step down if you could.

7 A. Yes, sir.

8 Q. And your entire report is in evidence, by I am going to
9 actually start --- if you could step down here.

10 A. All right.

11 Q. I think Madam Court Reporter would prefer you on this
12 side possibly.

13 A. All right, sir.

14 Q. And then I am going to slide this a little closer the
15 jury. Now, if you could, I am going to ask you first of
16 all we talked about all of the evidence that you had
17 dealt with. If you would, could you explain the findings
18 that you had regarding the different types of bullets or
19 cartridges that you saw?

20 A. Do you want me to start with the bullet or the cartridge
21 casing, or which ever one?

22 Q. Actually if you would just go in accordance that might
23 be the easiest way.

24 A. In this particular incidence there were many fired
25 cartridge casing. Again, that is the container that is

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1 left over. That is the part that would have been
2 holding the bullet, the gun powder and the primer.
3 Typically with a semiautomatic firearm when you shoot it
4 every time you shoot the firearm, the bullet comes out
5 the barrel and a cartridge case is ejected or thrown out
6 the firearm. So I had many cartridge casings in this
7 particular case. First of all I had a 762x39 is last,
8 there were one, two, three, four, five 45 automatic
9 caliber cartridge cases. Those particular cartridge
10 cases were fired by one firearm. There were one, two,
11 three, four 380 auto caliber cartridge casings. Those
12 were fired by one firearm, but that means so far we've
13 got two distinctly separate firearms. We have a 45
14 caliber firearm and a 380 caliber firearm. There was a
15 9 millimeter Luger caliber cartridge casing which wasn't
16 fired by either of those firearms that fired the
17 previous cartridge casings, so now we have three
18 different firearms. Again, 380, 9 millimeter and 45
19 auto and now we get to the 762x39 cartridge casings and
20 this was the largest amount of cartridge casings.

21 Here, I can tell that four of them were fired by
22 one firearm. These were well marked, and I could tell
23 from the microscopic markings that they were fired by
24 one firearm.

25 Also I could tell that there were thirteen fired

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1 cartridges casings, 762x39 that were fired by one firearm.

2 There was another group of fired cartridge casings, one,
3 two, three, four, five of them that I couldn't tell whether
4 they were fired by one or more firearms. So the overall
5 result, and this may be a little bit confusing, these 762x39
6 caliber cartridge casings could have all been fired by one
7 firearm, or they could have been fired by multiple firearms.

8 Due to the fact that these cartridge casings were a
9 different construction, some of them were flask which is
10 normal, some of them were steel and those don't get marked as
11 well. I could not positively conclude whether they were all
12 fired by one firearm.

13 Q. Okay. But again it's possible that they were all fired
14 --

15 A. Yes, sir. There was nothing to indicate that they
16 weren't but I didn't have enough information to say that
17 they were.

18 Q. Understood.

19 A. Regarding the bullet or the projectiles, Item Three in
20 the report, again simply the examination revealed that
21 these particular items are most consistent with bullet
22 fragments I would expect to see, in a bullet, or from a
23 bullet that would be loaded in 762x39 millimeter Soviet
24 Caliber Cartridges. It had very limited markings on
25 that bullet jacket so that bullet jacket, so that both

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1 jacks may not be suitable for identification with a
2 specific firearm. So what that means is even if I had
3 the correct firearm, I might not be able to identify
4 that bullet to that firearm due to its damage condition
5 and the lack of markings.

6 Then also I provided a list of possible firearms
7 that could have fired this particular bullet based on
8 those rifling characteristics. Now this is not an all-
9 inclusive list. There may be other brands of firearms
10 that could have fired that particular bullet.

11 Q. Now let me show you just to clarify for the jury. I am
12 going to show you State's Exhibit 26 and 27. Are these
13 fragments what you are referring to in Item Three?

14 A. Yes, sir, that is what is depicted in this photograph.
15 The two photographs you have over there, and if you will
16 look on the container this is where I have my case
17 number, LOC-8948 and you see I3VP, VP is me. I3 is Item
18 Three. And again the L-07 is the laboratory case number.

19 Q. And since you are up here, I'll just ask you. With what
20 you found to be most consistent, the gun that I showed
21 you earlier, would that be the type of weapon that would
22 have fired the bullets that were taken from the body of
23 the victim?

24 A. This particular fragmented bullet could have been fired
25 from a firearm like that, yes.

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1 Q. And, again, the 762x39 millimeter shell, is that a
2 bullet --- a cartridge that would be fired by an AK-47?

3 A. Yes, sir.

4 Q. Is that a cartridge that can be fired by a 380?

5 A. No, sir.

6 Q. Is that a cartridge that can be fired by -- and I'll
7 just go down the list --- a 45 automatic?

8 A. No, sir.

9 Q. Is that a cartridge that can be fired by a 9 millimeter?

10 A. No, sir.

11 Q. So, would the 7.62 out of all of the different types
12 that you saw, an AK-47 or in that class of an AK-47, is
13 what will fire an 7.62x39 cartridge?

14 A. The 762x39 cartridges casings could have been fired an
15 AK-47 silent firearm, an SKS silent firearm, or possibly
16 some other firearm that I am not familiar with.

17 Q. Okay. But, again, it would not be fired by a 45?

18 A. No, sir. If you had a .45 automatic that is properly
19 chambered and no one has altered it, a .45 caliber
20 cartridge has a 45 or .45 inch diameter barrel on the
21 inside. This particular cartridge actually would not
22 fit properly into the chamber of a .45 caliber pistol
23 for it to work. The same with the 380 and the 9
24 millimeter. They simply would not work.

25 Q. Okay. Thank you, can you have a seat, Agent Paavel.

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1 MR. REDMOND: Beg The Court's indulgence. Your Honor,
2 that is all the questions I have at this time.

3 THE COURT: Cross?

4 CROSS EXAMINATION BY MS. LITTLE

5 Q. Good afternoon, Agent Paavel. Agent, you testified on
6 direct examination that you had taken photos of
7 virtually all of the evidence that was submitted to you,
8 is that correct?

9 A. I took photographs of all of it overall. Now some of
10 them, if you notice, I had the head stamps, I didn't
11 take pictures of the head stamps of everyone. I took
12 representative samples of the groups that I had.

13 Q. So, did you take photos of the .9 millimeter cartridge?

14 A. Yes, ma'am.

15 Q. The 380 automatic?

16 A. Yes, ma'am.

17 Q. And the 45?

18 A. Yes, ma'am.

19 Q. And to the best of your knowledge were those turned over
20 to the Solicitor's office?

21 A. Yes, ma'am. I believe they were.

22 Q. All the photos that you took?

23 A. I believe they were.

24 MR. REDMOND: Actually, Your Honor --

25 MS. LITTLE: May we approach.

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1 MR. REDMOND: Yes, we might need to approach.

2 THE COURT: All right.

3 MR. REDMOND: That's not true.

4 (Whereupon, a bench conference was held in the
5 presence of the jury but out of the hearing of the jury.)

6 THE COURT: Ladies and gentlemen, I am going to get you
7 to step back and it's time for a little break this afternoon.
8 Please have no conversation about the case and I will have
9 brought back out just shortly.

10 (Whereupon, the jury exits the courtroom at 3:45
11 p.m.)

12 THE COURT: All right, we are going to take a recess
13 allow Court personnel to stretch and use the restroom if they
14 need to or whatever. Can you get the lawyers to step back in.

15 (Whereupon, a recess was taken from 3:45 p.m. until
16 4:17 p.m.)

17 THE COURT: All right. Please have a seat. And, Has
18 anybody let Agent Paavel know that his pictures are being
19 copied?

20 MR. REDMOND: Oh, I did not know that.

21 THE COURT: They are just going to take those
22 photographs if it's okay --

23 MR. PAAVEL: Actually they can have them if they want
24 to because I can always duplicate those if you want to keep
25 those.

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1 **THE COURT:** Well I think he's already gone to copy them
2 so --

3 **MR. PAAVEL:** No one ask me that so I didn't --- If you
4 need them I can leave for them for you, whichever way you
5 want to do it.

6 **THE COURT:** All right, thank you very much, I
7 appreciate that. Let's ask the jury to join us, please.

8 (Whereupon, the jury enters the courtroom at 4:17
9 p.m.)

10 **THE COURT:** All right, ladies and gentlemen, if you
11 will recall when we took the break and took up that matter of
12 law Ms. Little was in the process of cross examining the
13 witness and we are going to pick up with her cross
14 examination. Ms. Little?

15 **MS. LITTLE:** Thank you, Your Honor.

16 **Q.** (By Ms. Little) Agent Paavel, who from the Dillon
17 County Law Enforcement submitted the evidence to you?

18 **A.** Bear with me, ma'am. The chain of custody that I have
19 indicates that Lieutenant James Campbell of the Dillon
20 County Sheriff's Office submitted this evidence to SLED,
21 in particular to Keranda Williams who was a forensic
22 technician at that time in the log in section, and then
23 I received it from Keranda Williams for a part of it.
24 Let me check the other container. The evidence was
25 submitted in two separate containers. The second

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1 container has a slightly different chain. It was
2 submitted on a different date. Lieutenant Campbell
3 again submitted it to SLED. Keranda Williams took
4 control of it. It was placed into an evidence locker
5 that is located in the Firearms Department and I took
6 it. No ma'am, correction. I am reading this wrong.
7 Keranda Williams took it, then it was put in the central
8 evidence which is firearm evidence intake storage, then
9 Forensic Technician Celena Kinard took and she gave it
10 to me.

11 Q. And can you give any explanation as to, why there were
12 two different submissions of evidence.

13 A. There was --- I don't know why they did that way.
14 Several of the items were submitted the first time, and
15 then I had a conversation with Lieutenant Campbell
16 giving him preliminary results of the items that I
17 examined and during that conversation apparently it came
18 up that there were more pieces of evidence that they had
19 not submitted and those were submitted on a later date.

20 Q. I understand. And could you give us the date the first
21 group was submitted and the second, please.

22 A. Yes, ma'am. The records indicate that on 6/20/2007 he
23 submitted certain items, and then on 6/25/2007 he
24 submitted additional items.

25 Q. So that would have been five days later?

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1 A. Yes, ma'am.

2 Q. Thank you, Agent.

3 MS. LITTLE: May I approach the witness, Your Honor.

4 THE COURT: Yes, ma'am.

5 Q. Let's change the line of question for a moment.

6 A. Yes, ma'am.

7 MS. LITTLE: Could I have the weapon --- And this was
8 previously entered by The State as State's Exhibit 1.

9 THE COURT: Woo Woo Woo Woo ---

10 MS. LITTLE: I'm sorry.

11 MR. PAAVEL: Why don't you let me have the --

12 MS. LITTLE: -- Actually, why don't I let you have the
13 clip.

14 MR. PAAVEL: Why don't I just hold on to it?

15 MS. LITTLE: I'm sorry, you hold on to that for us.

16 MR. PAAVEL: Okay.

17 MS. LITTLE: I'm so sorry.

18 MR. PAAVEL: That's all right.

19 Q. I would like to ---- Would you like to --- Can you
20 explain to the jury how a clip like this is loaded?

21 A. How do you --

22 Q. Yes, sir.

23 A. Yes, ma'am. Ladies and gentlemen, I am going to turn
24 this thing like this, that way we won't have any issues
25 with it.

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1 Q. I'm so sorry.

2 A. That's all right. It happens. Again, this particular
3 item is more correctly called a magazine. Many people
4 call them a clip. There is actually a technical
5 difference in it but this is a magazine. What you do is
6 take an unfired cartridge or piece ammunition and with
7 the bullet or the sharp end of the projectile or the
8 cartridge pointed in this direction you literally simply
9 press it down into the magazine. Now, this particular
10 magazine is a double column magazine which means the
11 cartridges are staggered in here. So as you push them
12 in here, one goes on one side and one goes on the other
13 and one goes on one and one goes on the other. This one
14 looks like it should hold approximately thirty rounds by
15 its size. But you are literally are pushing them down
16 into the magazine itself.

17 Q. Thank you, Agent.

18 A. Yes, ma'am.

19 Q. If you would hand the weapon back to the court reporter.

20 A. Yes, ma'am.

21 Q. Now Agent Paavel, you just showed the jury how a --- Not
22 a clip, a magazine would be loaded. Now let me ask you
23 this, when something is pushed down by a finger or a
24 thumb would that be a --- is that something that would
25 likely show a fingerprint or thumb print?

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1 A. Not likely it would but it could potentially show a
2 fingerprint, yes.

3 Q. Okay. And you gave the chain of custody there at SLED,
4 do you know whether or not these casings that were found
5 were submitted to TRACE or any other Department to see
6 if there were fingerprints?

7 A. To the best of my knowledge based on the chain that I
8 saw they came straight from Dillon County to the SLED
9 Log in area and ultimately ended up with me. They went
10 to a Forensics Technician, at one point who don't do
11 analysis they are responsible for simply moving evidence
12 around and logging in evidence. I don't see any latent
13 print examiner listed in this chain. Let me make sure.
14 No, that chain is the same and then I don't recall
15 noting that there were any sort of latent print material
16 such as fingerprint powder or cyanoacrylates present.

17 Q. So to the best of your knowledge they were never
18 submitted?

19 A. The best that I can tell based on the chain of custody
20 and my notes, there is no indication that these were
21 examined or latent prints or submitted to latent prints
22 at SLED.

23 Q. And just to be clear, a casing is that normally an item
24 that would be suitable to do a fingerprint analysis on?

25 A. Let me --- I use to do fingerprints when I first

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1 started. If you remember, I said when I first start in
2 the Firearms Department, we had crime scene latent
3 prints and firearms. I had limited success in finding
4 fingerprints on cartridge casings but we always looked
5 at them and processed for fingerprints because you just
6 don't know.

7 Q. So you don't whether they could have found fingerprints
8 or not?

9 A. I don't know. I don't know.

10 Q. Thank you. Now you testified earlier that in your
11 analysis you can come up with type of firearms may have
12 fired?

13 A. That is correct.

14 Q. So you can't say conclusively what firearm fired these
15 cartridge casings?

16 A. No, ma'am. Unless I have the correct suspect firearm
17 for comparison and there is enough information, enough
18 of these microscopic markings left on the bullet or the
19 cartridge case, I can't tell you positively which
20 firearm fired it. The list that I provide to the
21 investigators is based on the rifling characteristics,
22 the general characteristic. Again, the number of lands
23 and grooves, the direction of twists, the direction of
24 that twist, either left or right, and the caliber of the
25 bullet. I take that information and that literally is

1 plugged into an FBI provided data base, and it will
2 provide me a list of firearms that may have fired that
3 particular bullet based on those characteristics,
4 however this is not all inclusive. There may be others
5 that have the same rifling characteristics that simply
6 aren't in this data base.

7 Q. And the reason that you can't tell for sure is you don't
8 know that you have access to every type of weapon that
9 could fire this type of --- of weapon that could fire
10 this type of rifling characteristic?

11 A. I am certain that I don't have access to every single
12 type of firearm that has this rifling characteristic.

13 Q. But based on your analysis could you list out for the
14 jury what types of firearms you feel could have fired a
15 7.62x39?

16 A. Well, let's break down your question. Do you want me to
17 talk about firearms that are capable of firing 7.62x39
18 caliber ammunition, or are we talking about this Item
19 Three bullet with those rifling characteristics?

20 Q. I'm just talking about in general, what weapons could
21 fire a cartridge?

22 A. Well, the list I provided here to the contributor is a
23 list of firearms that could have fired this bullet based
24 on the rifling characteristics. I will read that list
25 and, then I will add other firearms that are capable of

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1 firing 762x39, but the would not necessarily by capable
2 of firing this particular bullet, because they have
3 different rifling characteristics so I kind of like to
4 have to make this in two steps.

5 Q. Okay. Thank you, Agent.

6 A. In regards to this Item Three, fragmented bullet, based
7 on the general rifling characteristics, I am going to
8 read it, and that is possible makes, and origins of
9 firearms that may have fired Item Three, include but may
10 not be limited to the following: Arsenal Brand which
11 is made in Bulgaria, B West which is an importer of all
12 types of former communist block country firearms, China,
13 Czechoslovakia, Modie, which is literally arsenal in
14 Egypt that manufactures this type of firearm. Norinco
15 which I mentioned earlier in China. Russia, Valmae
16 which is a finish manufacturèr, Yugoslavia, and looks
17 like I left one off, I have to had Romania. Any of the
18 former communist blocked countries that may SKS type
19 rifles and made AKA-47 type rifles converted their
20 production to semiautomatic type firearms, to sell to
21 the Americans after the fall of the Berlin Wall in the
22 fall of communism. They had to make money somehow and
23 they started provided ammunition and semiautomatic
24 firearms to the United States and others.

25 Now as a matter of type of firearms or brands of

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1 firearms that are capable of firing 762x39. Colt has a
2 firearm, Rugar makes a firearm, Olympic Arms makes a
3 firearm. I'm trying to think of a few more off the top
4 of my head. Those are the primary ones that I can just
5 think of off the top of my head. They are probably are
6 several others who makes firearms that will shoot a
7 762x39 caliber cartridge, but we have to differentiate
8 here that we are looking at a bullet with a particular
9 rifling characteristic and not simply a cartridge line.

10 Q. And so all these you listed could fire this type of a
11 bullet. Let me ask you this. If another type of a gun
12 had been modified or altered, do you have any way of
13 knowing whether any other types of guns could be
14 modified or altered to shoot this type of ammunition?

15 A. Well typically, again, this has to be two steps because
16 we're talking about ammunition, verses the bullet.
17 Because when I am talking about the bullet, the
18 projectile, we are talking about it traveling through a
19 barrel that has a particular type of rifling. That is
20 not something that can be just easily altered by folks.
21 I mean in this type of a firearm normally you don't have
22 firearms with interchangeable barrels and people don't
23 go around swapping or changing barrels. Normally, this
24 type of firearm the barrel is firmly affixed to the
25 receiver and stays in there so talking about modifying

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1 or altering a firearm to shoot 7.62x39 it's not a common
2 thing that occurs.

3 Q. Well, it's not common but is it possible?

4 A. Yes, it's remotely possible but it's not something that
5 I have encountered.

6 Q. And, so I believe you listed two different types of
7 weapons that could be considered consistent --- when you
8 mentioned all those, Arsenal, Bulgaria, B West, China,
9 all of these, you are saying to this jury could have
10 fired the bullets that you looked at?

11 A. Yes, that is based on the type of rifling that is found
12 in those gun barrels that are used by these particular
13 manufacturers or firearms that are imported by these
14 folks, or made in those countries. By looking at the
15 rifling characteristics on the bullets, this list gives
16 me a list of possible origins or manufacturers of
17 firearms that could have fired this particular bullet,
18 but obviously it doesn't give you the firearm.

19 Q. Exactly. And you were never given a firearm to make a
20 comparison from, is that correct?

21 A. That is correct.

22 MS. LITTLE: Beg The Court's indulgence for just a
23 moment.

24 (PAUSE)

25 Q. I believe on you direct examination you testified you

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1 couldn't tell for sure how many of these types of
2 weapons shot the 7.62x39 that night, is that correct?

3 A. Yes, ma'am, that is correct. I cannot positively tell
4 you, if you remember I believe, Mr. Redmond, we had the
5 chart up there and we were going through the list of
6 firearms and we had a 380, .9 millimeter, and the 45 and
7 I have the 762x39's. Again, I can tell that a certain
8 number of them are fired by one firearm, the individual
9 characteristics and microscopic markings that were
10 present on those cartridge casings were sufficient in
11 quantity and clarity that I could tell that they came
12 out of one firearm. Then there was another group of
13 four cartridge casings that I could tell were fired by
14 one firearm. Then I believe there were five other
15 cartridge casings that I can't tell how many firearms
16 were used to tell and then the finally conclusion is
17 that I cannot positively tell whether all of these came
18 from one single firearm, or came from multiple firearms.
19 And, again, the reason for it is I have different
20 construction and types of cartridges casings here. Some
21 of the are brass with nickel primers which usually get
22 marked very well. The others are steel or some sort or
23 iron alloy of some sort. Those are usually very hard
24 and those usually are not marked very well at well so I
25 didn't have enough markings or clear enough markings to

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1 determine, whether all of these came from one firearm or
2 from more than one firearm.

3 Q. Thank you, Agent. And Agent, when you have to examine
4 bullets or casings or fragments or cartridges --- I hope
5 I am listing all this properly, can you do that by
6 photos are do you need to have the actual items of
7 evidence?

8 A. We do our comparisons by examining the evidence specimen
9 itself. I have to have the evidence and that is what I
10 examined in this case. I examined pieces of evidence.
11 The items that I described were in my custody. I looked
12 at them. They were microscopically compared. The
13 results were verified by another examiner. We --

14 Q. And -- I'm sorry, go ahead.

15 A. We typically do not make comparisons or rendered
16 conclusions from photographs.

17 Q. So, would you agree that pictures are inadequate to
18 identify bullets or shell casings?

19 A. Well, when we are talking about identify, you can look
20 at a photograph, for instance, this is an accurate
21 representation of what I examined. I mean this is what
22 the item looked like, because I saw and I took this
23 photograph so I can use this to remind me of what this
24 item looked liked.

25 Now I could not look at this and try to do a

VELLO PAAVEL - CROSS EXAMINATION BY MS. LITTLE

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1 comparison with another fired bullet and say those two
2 were fired by the same firearm. I can't do that. I
3 can't do that, there is not enough information there for
4 me to do so.

5 Q. I understand. And, Agent Paavel, did you bring the
6 fragments and the evidence here with you today to show
7 this jury?

8 A. No, ma'am. I did not.

9 MS. LITTLE: I beg The Court's indulgence.

10 (PAUSE)

11 Q. Agent Paavel, the truth is you can't tell this jury what
12 type of gun fired these bullets can you?

13 A. With any reasonable certainty?

14 Q. Yes, sir.

15 A. No, I cannot tell you positively or with reasonable
16 certainty. I can provide a list of firearms that in my
17 experience and professional training are most likely be
18 the brands and types of firearms that could have fired
19 this particular bullet. However, without having the
20 firearms for comparison, I can't tell for certain.

21 Q. And you can't tell how many weapon were fired that
22 night?

23 A. Not without any degree of certainty. Obviously, there
24 was a 380 apparently was fired at some time, a .9
25 millimeter, a 45 and at least one 762x39.

VELLO PAAVEL - REDIRECT EXAMINATION BY MR. REDMOND

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1 Q. But possibly how many 762 by 39's could have been fired
2 that night -- different weapons could have fired those?

3 A. Well if we look at this in the largest group the fired
4 bullet fragments would have been fired by one firearm.
5 Then there was a group of four cartridge casings that
6 could have fired by technically another firearm. Then
7 there was a group of thirteen cartridge cases that could
8 have been fired by another firearm. And then there is
9 one, two, three, four, five other single cartridge
10 casings that I couldn't identify with each other so that
11 is another five. Those are the potential theoretical
12 number of firearms that could have fired them based on
13 the fact that my results were inclusive on these
14 cartridge casings, because I couldn't tell whether they
15 were fired by one or more than one firearm.

16 MS. LITTLE: Thank you, Agent Paavel, I don't have any
17 further questions.

18 MR. PAAVEL: Yes, ma'am.

19 **REDIRECT EXAMINATION BY MR. REDMOND**

20 Q. Let me just clarify that last point. You said you can't
21 say if it was fired by more than one firearm. Is it
22 possible talking about the 7.62x39 millimeter caliber
23 shells and cartridges that you examined, could they have
24 all been fired by the same firearm such as that?

25 A. Yes, sir, they all could have been fired by one firearm.

VELLO PAAVEL - REDIRECT EXAMINATION BY MR. REDMOND

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1 MR. REDMOND: Thank you, I have nothing further.

2 MS. LITTLE: No redirect.

3 THE COURT: Thank you very much, sir.

4 MR. PAAVEL: Thank you.

5 THE COURT: You may step down.

6 MR. REDMOND: Your Honor, with The Court's permission
7 we would ask that Agent Paavel by excused to return to
8 Columbia.

9 MS. LITTLE: No objection.

10 THE COURT: Thank you very much, sir.

11 MR. REDMOND: May we approach just a moment, Your
12 Honor?

13 THE COURT: Yes, sir.

14 (Whereupon, a bench conference was held in the
15 presence of the jury but out of the hearing of the jury.)

16 THE COURT: Ladies and gentlemen, just remain where you
17 are while the attorneys look over the evidence that we have
18 here to make sure we've got everything that has been admitted
19 to this point.

20 (PAUSE)

21 MR. REDMOND: Thank you, Madame Court Reporter. May it
22 please The Court, Your Honor.

23 THE COURT: Yes, sir.

24 MR. REDMOND: We that, we have confirmed that all The
25 State's evidence is in, so at this time The State

VELLO PAAVEL - REDIRECT EXAMINATION BY MR. REDMOND

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1 respectfully rests its case.

2 **THE COURT:** All right, thank you, sir. Ladies and
3 gentlemen, is twenty minutes to five so it's a little late in
4 the afternoon to start anything new so let me --- At the
5 close of The State's case I am required to send you out any
6 way to take up matters of law with the lawyers. What I am
7 going to do is I am going to excuse for the balance of the
8 day to go ahead and go home and I will take up those matters
9 of law with the lawyers the remaining time that we have this
10 afternoon so that in the morning we will have that done and
11 we can just begin the other phrase of the trial.

12 So please, if you would, have a good evening, get a good
13 night's sleep if you can. I don't anticipate any problems
14 starting at 9:30, so if you will be here at 9:30 we will get
15 started at that time.

16 Again, as always, please have no conversation about this
17 case with anyone, and not allow anyone to talk with you about
18 it. I don't know that there would be any coverage in the
19 paper or on the news, but if you see something put it down or
20 put it aside. If it's on the television please turn it off or
21 switch channels. Keep in mind how important it is that your
22 impressions of this case come solely from the evidence that
23 you've heard during the course of this trial and from no
24 where else. So keeping that in mind I am going to excuse you.

25 Everyone else please remained in the courtroom while the

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1 members of the jury are excused. I will see you at 9:30 in
2 the morning, ladies and gentlemen.

3 (Whereupon, the jury is excused from the courtroom
4 at 4:41 p.m.)

MOTIONS

5
6 **THE COURT:** All right, at this time I will be happy to
7 hear motions regarding any motions at the close of The
8 State's case.

9 **MS. LITTLE:** Yes, Your Honor. Your Honor, the Defense
10 moves for Direct Verdict at this time. We would state that
11 there is failure of competent evidence tending to prove the
12 charge in both of the indictments.

13 **THE COURT:** All right. Thank you, Ms. Little, I am
14 going to respectfully deny that motion.

15 Of course, as you know The Court is not concerned with
16 the weight of the evidence just the existence of evidence and
17 it does appear that there evidence in this case whereby a
18 reasonable jury could find a verdict here, and whatever
19 weight they give the evidence is clearly up to them. So, i
20 am going to respectfully deny your motion for Directive
21 Verdict at this time.

22 **THE COURT:** Anything further?

23 **MS. LITTLE:** No, Your Honor.

24 **THE COURT:** All right, let's talk --- Let me asks, Ms.
25 Sellers or Ms. Little, either one, does the Defense intend to

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1 put up a case in the morning?

2 MS. SELLERS: Yes, Your Honor, we will present --

3 THE COURT: And I am not asking for details. That's
4 fine. For my purposes, just to know you do intend to put up
5 something tomorrow.

6 MS. SELLERS: Yes, Your Honor.

7 THE COURT: Now let me ask you though, having asked
8 that and said that what I do need to know --- well I can
9 handle that tomorrow. I've talked with both of you about
10 request to charge, and I've given you not a completed
11 possibility not a final draft possibly or may be you do, I
12 don't know but I've given you a charge. Let me just ask you
13 to do this and I want try to illicit any particular response
14 from you other than let me ask you to take that this evening,
15 both sides, look it over; if there are any additions or
16 deletions or whatever, what I would like to do is go over
17 those first thing in the morning. I do, just so you will
18 know, I do send the charge back with the jury. I put it in a
19 notebook and the very charge that I read I send back to the
20 jury so I want to make sure we've got it like it needs to be
21 and I have time to put it together so is there any problem
22 with us starting at 9:00 with a basically a charge
23 conference.

24 MR. REDMOND: Absolutely none from The State, Your
25 Honor.

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1 **MS. LITTLE:** No problem, Your Honor, I may not be here
2 quite at 9:00, but Ms. Sellers will be here. I will be here
3 before 9:30.

4 **THE COURT:** All right. As long as someone is here to
5 represent either side so that we can look over and go over
6 any requests you may have to the charge that I have give you.

7 **MR. REDMOND:** And, Your Honor, if I could, one other
8 matter is that since in light of the fact that they intend to
9 call witnesses, I know they don't have to provide that, but
10 in the morning I do think if they're testifying I am entitled
11 to know whether or not they have criminal histories, and I
12 would ask that I be provided information so that I can get
13 those criminal histories.

14 **THE COURT:** We can do that tomorrow.

15 **MR. REDMOND:** It won't take five minutes so we can
16 everything in the morning.

17 **THE COURT:** Sure, that's fine. We will do that in the
18 morning.

19 Anything else that we can care of so that --- and I
20 would mention, and just for y'all's information --- I
21 appreciate everybody's cooperation. You guys have been very
22 cooperative, very professional, very timely. I do want to
23 get started at 9:30 if we can so is there anything else
24 keeping in mind also if something crops up you got to do it,
25 but right now as we stand here and you got some time here is

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1 there anything else this afternoon that we can take care of
2 to save us some time in the morning?

3 **MR. REDMOND:** And, Your Honor, and this is something
4 and I don't know obviously who their witnesses are and I
5 don't know how The Court proposes to do it, but if we did get
6 back in morning we probably going to have to do it anyway but
7 as far as querying the Defendant regarding his rights.

8 **THE COURT:** I am going to do that. What I felt like it
9 would be appropriate is to give you all the evening to
10 discuss that and talk, you know, with Mr. Wright about that.
11 I know you probably have but just wanted to kind of finalize
12 that decision and then before we begin in the morning before
13 we start back I will then what your decision is on that and
14 talk with Mr. Wright about it, okay.

15 **MS. LITTLE:** Thank you, Your Honor.

16 **MR. REDMOND:** Thank you, Your Honor.

17 **MS. SELLERS:** Thank you, Your Honor.

18 **THE COURT:** Anything further?

19 **MR. REDMOND:** Nothing further from The State, Your
20 Honor.

21 **MS. SELLERS:** Nothing from Defense.

22 **THE COURT:** The Court will be in recess until 9:00 in
23 the morning.

24 (Whereupon, The Court concludes its business for
25 the day at 5:05 p.m.)

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1

-- END OF DAY THREE OF TRIAL --

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1 (Whereupon, The Court begins these proceedings at
2 10:03 a.m. on May 20, 2009.)

-- DAY FOUR OF TRIAL --

3
4 **THE COURT:** Thank you, ladies and gentlemen, please
5 have a seat. The State ready to proceed?

6 **MR. REDMOND:** The State is ready, Your Honor.

7 **THE COURT:** Have you got your information?

8 **MR. REDMOND:** I know we had to go through the Probation
9 Officer, Agent Abraham, he has not gotten back with me. He
10 is on his way back, Your Honor.

11 **THE COURT:** He still has that. Rosalind, are y'all
12 ready to proceed?

13 **MS. SELLERS:** Yes, sir.

14 **THE COURT:** Please ask the jury to join, please.

15 (Whereupon, the jury enters the courtroom at 10:03
16 a.m.)

17 **THE COURT:** All right. Thank you, ladies and
18 gentlemen, welcome back this morning. If you will recall at
19 the close of day yesterday, Mr. Redmond and The State had
20 concluded their case and had rested so this time we will
21 recognize Ms. Sellers for your --- Oh, let me get y'all to
22 step up here real quick, I need to mention one thing.

23 (Whereupon, a bench conference was held in the
24 presence of the jury but out of the hearing of the jury.)

25 **THE COURT:** Y'all are going to have to pardon me and

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1 excuse me. I take full blame for this. There was a matter
2 that I had to take up with the lawyers before I brought you
3 out that I forgot to do, and I was about to recognize Ms.
4 Sellers for the Defense, it dawned on me that I hadn't done
5 this, and it is something I have to do outside of your
6 presence, so I am going to have to ask you to step back in
7 the jury room. It will not be long, it will short, and then
8 I will bring you back and we will proceed. I apologize.

9 (Whereupon, the jury exits the courtroom at 10:06
10 a.m.)

11 **THE COURT:** All right. And obviously -- And I
12 appreciate y'all understanding. I need to discuss with the
13 Defense, before we get started, since we have reached the
14 portion of the trial, where it's the Defense's side of the
15 case. Ms. Sellers, do you all intend to put up any evidence,
16 ma'am?

17 **MS. SELLERS:** Yes, Your Honor.

18 **THE COURT:** All right. Have you discussed with Mr.
19 Wright his constitutional rights regarding his right to
20 remain silent and his right to testify?

21 **MS. SELLERS:** Yes, sir.

EXAMINATION OF MR. WRIGHT BY THE COURT

22
23 **THE COURT:** All right. And, Mr. Seller --- excuse me,
24 Mr. Wright, if I could ask you some questions regarding that.
25 You have discussed, with Ms. Sellers, your rights

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1 regarding testifying in this matter, is that correct?

2 **MR. WRIGHT:** Yes, sir.

3 **THE COURT:** All right, sir. Now, and let me ask you
4 first, will you be testifying or not?

5 **MR. WRIGHT:** No, sir

6 **THE COURT:** All right. And what I want to help --- and
7 I know you've discussed this with Ms. Sellers, but, sir, you
8 understand that you certainly have the right to testify if
9 you wanted to. You understand that?

10 **MR. WRIGHT:** Yes, sir..

11 **THE COURT:** Okay. Now, however you are not required to
12 testify, and you've indicated that you do not intend to. You
13 understand that the fact that you have decided not to testify
14 that in light of that fact that when I instruct the jury on
15 the law, I will instruct the jury that it is your
16 constitutional right to remain silent, and that the fact that
17 you have asserted that right must not be considered by the
18 jury in any way. I would instruct them that you are not ---
19 or you do not have any burden in this case to prove anything,
20 that The State has the burden of proof. They are the ones
21 that have to present evidence. You don't have to do
22 anything. And the fact that you have chosen to remain
23 silent, I will instruct them that they are not even allowed
24 to talk about that in the jury room. You understand that?

25 **MR. WRIGHT:** Yes, sir.

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1 **THE COURT:** Okay. Now, when you were discussing with
2 Ms. Sellers whether or not to testify, did she inform you or
3 make it clear to you that if you did testify that you would
4 be subject to being cross examined by The State. Do you
5 understand that?

6 **MR. WRIGHT:** Yes, sir.

7 **THE COURT:** Okay. And I don't --- I don't know if you
8 have any prior criminal history or not, if you did, depending
9 on that history, there are certain crimes that if you have a
10 prior record for those crimes, The State would be able to ask
11 you about that, do you understand that?

12 **MR. WRIGHT:** Yes, sir.

13 **THE COURT:** Now they wouldn't be able to go into the
14 details, they simply would be able to ask you whether or not
15 you were convicted of those crimes. And as I said, I don't
16 know whether you have any past criminal history, but you do
17 understand that you would be subject to being cross examined
18 by The State?

19 **MR. WRIGHT:** Yes, sir.

20 **THE COURT:** Okay. Now, keeping in mind all these
21 things, and taking all of these things into account, your
22 decision not to testify --- and I realize you have talked
23 with your attorneys, they've given you their opinions, you've
24 talked about the strategy involved in that, but the final
25 decision obviously must be that of yourself. Is this decision

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1 not to testify your decision?

2 MR. WRIGHT: Yes, sir.

3 THE COURT: Did anyone talk you into it, did anyone
4 force you or coerce you into that decision?

5 MR. WRIGHT: No, sir.

6 THE COURT: All right, sir. That decision was of your
7 own free will?

8 MR. WRIGHT: Yes, sir.

9 THE COURT: All right, thank you very much. All right,
10 I appreciate y'all's accommodating me, getting that done.

11 All right, I am going to bring the jury in. Any
12 objection to the jury coming in?

13 MR. REDMOND: None from The State, Your Honor.

14 MS. SELLERS: When we get those records, we're ready.

15 THE COURT: While you all are doing that I am going to
16 have the jury come.

17 All right. Bring the jury in.

18 (Whereupon, the jury enters the courtroom at 10:13
19 a.m.)

20 THE COURT: Thank you, ladies and gentlemen, and I
21 apologize to you for my dropping the ball on that. But we
22 are ready to proceed and I will recognize Ms. Sellers for the
23 Defense. Ms. Sellers.

24 MS. SELLERS: The Defense calls Ms. DeShannon Livingston
25 to the stand.

DESHANNON LIVINGSTON - DIRECT EXAMINATION BY MS. SELLERS 349

1 **THE COURT:** All right. Is Ms. Livingston in The Court?
2 Are they going to bring her?

3 **MS. SELLERS:** She's outside.

4 **THE COURT:** All right. Sir, could you ask Ms. DeShannon
5 Livingston to come The Court, please.

WHEREUPON, DESHANNON LIVINGSTON**BEING DULY SWORN TESTIFIES AS FOLLOWS**

6
7
8 **MS. LIVINGSTON:** Yes, I do.

9 **CLERK OF COURT:** Please be seated and state your full
10 name for The Court, spelling your last name.

11 **MS. LIVINGSTON:** DeShannon Livingston. L-I-V-I-N-G-S-T-
12 O-N.

DIRECT EXAMINATION BY MS. SELLERS

13
14 **Q.** Good morning, Ms. Livingston.

15 **A.** Good morning.

16 **Q.** How are you?

17 **A.** Fine.

18 **Q.** Now, Ms. Livingston, can tell me who are employed by?

19 **A.** The U.S. Army.

20 **Q.** Okay. And how long have you employed by the army?

21 **A.** Almost three years.

22 **Q.** And what is your job title?

23 **A.** I am a unit supply specialist and armor.

24 **Q.** A unit supply specialist and what else is that?

25 **A.** Armor.

DESHANNON LIVINGSTON - DIRECT EXAMINATION BY MS. SELLERS 350

1 Q. Could you explain for jury the type of training that you
2 had to endure to become an armor?

3 A. You have to go through two weeks of training. You have
4 to have break down weapons, put them back together,
5 clean them. You also go to different areas ranges to
6 learn how to shoot and fire a weapon.

7 Q. Okay. And what type of weapons do you normally fire?

8 A. M-16's, M-4's, .9 mils, 249's, .50 cal, there is a lot
9 them.

10 Q. And when say a .9 mils what exactly type gun is that?

11 A. A .9 mil is like a handgun.

12 Q. Is that like a .9 millimeter?

13 A. Yes, ma'am.

14 Q. And how long have you been an armor?

15 A. Excuse me?

16 Q. How long have you been an armor?

17 A. Three years.

18 Q. Three years. All three years?

19 A. Yes.

20 Q. And where do you currently reside?

21 A. In Fayetteville, North Carolina.

22 Q. Okay. And are you active duty?

23 A. Yes, ma'am.

24 Q. And have you had a deployment --- have you been
25 deployed?

DESHANNON LIVINGSTON - DIRECT EXAMINATION BY MS. SELLERS 351

1 A. Yes, I have deployed for fifteen months. I left in 2007
2 and came back December of '08.

3 Q. And where was that deployment?

4 A. In Iraq.

5 Q. And could you tell the jury some of the services that
6 you encountered, or some of the situations you
7 encountered while in Iraq?

8 A. I went on various convoys. I really don't know if you
9 know what a convoy is, but like just like going out you
10 have to go on missions. You have to like be in full body
11 armor. Have all your weapons. You in like armor
12 trucks, like bullet proofed trucks and you go out in the
13 missions. For me, I would have to take supplies out to
14 the people that don't come back in.

15 Q. And did you ever experience or hear gunfire?

16 A. Yes.

17 Q. Now, being an armor in the military do you have to go
18 through any special trainings or any certifications?

19 A. Yes.

20 Q. Okay. And how often while you were deployed did you
21 have to do any type of firing?

22 A. Once a month.

23 Q. Okay. And could you explain to the jury what happened
24 each month?

25 A. Each month we would conduct a range, and at the range,

DESHANNON LIVINGSTON - DIRECT EXAMINATION BY MS. SELLERS 352

1 you know, for me I would pick up the ammo, because I
2 supplied everybody with the ammo. I would pick the ammo
3 up and issue out weapons, and go out there and if
4 anybody had a malfunction or anything during live fire,
5 I would assist them.

6 Q. And what type of weapons would they be firing?

7 A. Mainly M-16's, M-4's and .9 mils downrange.

8 Q. Now, Ms. Livingston, let me turn your attention to June
9 17, 2007. Did you have an opportunity to travel to the
10 Blue Moon Night Club?

11 A. Yes.

12 Q. On that night did you see Jeremy Wright?

13 A. Yes.

14 Q. Okay. Could you explain to the jury where you saw
15 Jeremy Wright at?

16 A. I seen him coming out of the club.

17 Q. Okay. And when he was coming out of the Club did you
18 hear any gunshots at that time?

19 A. No.

20 Q. How soon after he came out of the club --- Did you hear
21 any gunshots at the Blue Moon that night?

22 A. Yes.

23 Q. How soon would you say after you saw Jeremy Wright the
24 gunshots started?

25 A. Shortly, probably within a minute or so.

DESHANNON LIVINGSTON - DIRECT EXAMINATION BY MS. SELLERS 353

1 Q. And would you say it was one gun or multiple guns?

2 A. It was multiple guns.

3 Q. Okay. And from your experience in the military, what
4 type of weapons were there?

5 A. It was a few handguns. I know it like AKA's and maybe
6 some --- it was some smaller guns as well too.

7 Q. Okay. And is it your testimony that there were multiple

8 --

9 A. -- Yes --

10 Q. -- assault rifles being fired?

11 A. Yes. I could tell from a distance when I was leaving
12 the club, because I was one of the first ones to leave.

13 Q. Okay. So as soon as the shooting started you left?

14 A. Uh-huh.

15 Q. Okay. And how far down the road did you continue to hear
16 the shooting?

17 A. I heard the shooting until I was out of the range to
18 still hearing gun fire.

19 Q. Okay. And when you got further down could you hear the
20 gunshots clear?

21 A. Clear, yes, because when you are closer you can't really
22 tell. When you are from a distance, you can hear the
23 echo and you can tell different --- you can tell better
24 that it's a different sound then from being up on the
25 shot.

DESHANNON LIVINGSTON - DIRECT EXAMINATION BY MS. SELLERS 354

1 Q. Okay. And how far down --- Did you take --- Which
2 direction did you travel from the club?

3 A. If I am directly in front of the club, I kept straight
4 because I was pulling in front of the club actually
5 because I never got out of the car or anything, I just
6 kept straight down the road.

7 Q. And let me ask you, you were going toward Dillon?

8 A. Yes.

9 Q. Do you remember how far down the road you were before
10 you stopped hearing shots?

11 A. Maybe like --- Let me think, may be like a half of mile.

12 Q. Half of mile?

13 A. Yes.

14 Q. But you are sure you heard multiple assault rifles?

15 A. Positive.

16 Q. And at the same time was it a shootout, would you
17 describe it as a shootout?

18 A. Yeah, I would. There were a lot of guns shooting. It
19 sounded like the Fourth of July.

20 Q. It sounded like the Fourth of July?

21 A. Yeah.

22 **MS. SELLERS:** Beg, The Court's indulgence. No further
23 questions.

24 **MR. REDMOND:** May, it please The Court?

25 **THE COURT:** Yes, sir,

DESHANNON LIVINGSTON - CROSS EXAMINATION BY MR. REDMOND 355

CROSS EXAMINATION BY MR. REDMOND

Q. I think I heard you say --- Let me just first say being prior military myself, I congratulate and appreciate the work that you have done for our Country.

A. Thank you.

Q. And I am fully aware and appreciative of that. But as it relates to this incident, I thought I heard you say that you were in the car when the shooting started?

A. Yes.

Q. And you were turned --- You said you had pulled in and left went toward Dillon?

A. Yes.

Q. And you said you said you saw him --- At what point did you see the Defendant?

A. I seen him when he was coming out of the club.

Q. You saw him when he was --

A. -- I was parked directly in front of the club.

Q. Okay. You were parked in front of the club. You see him when he is coming out of the club. Did you see him again after that?

A. No.

Q. Okay. So, in essence, quite frankly, you can't really say what happened or who did what can you?

A. I'm not saying that. We're talking about --- She was asking about gunfire?

DESHANNON LIVINGSTON - CROSS EXAMINATION BY MR. REDMOND 356

1 Q. Yeah, exactly. But as far as who did what can you say
2 who did what?

3 A. Actually, no.

4 Q. You can't say he had an AK-47 that night, you didn't see
5 him did you?

6 A. No, I never seen him with a weapon.

7 Q. And, in fact, as soon as you said the shooting started
8 you were in your car when you saw him, right?

9 A. Yes.

10 Q. And as soon as the shooting started you went towards
11 Dillon?

12 A. Not immediately, I had to wait on some passengers to get
13 in the car, so it was probably a few minutes before I
14 took off.

15 Q. Okay, if it was a few minutes before you took off, but
16 then you're telling me you heard multiple gunshots but
17 yet you didn't see the Defendant with a gun?

18 A. No.

19 Q. But, you saw him in front of the club but you never saw
20 him again after that?

21 A. No.

22 Q. That is what you are testifying to?

23 A. That's what I am testifying.

24 Q. And you are here at the request of the Defense, right?

25 A. Correct.

DESHANNON LIVINGSTON - CROSS EXAMINATION BY MR. REDMOND

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1 Q. And, in fact, you know the Defendant, right?

2 A. Correct.

3 Q. And how long have you known the Defendant?

4 A. For a while.

5 Q. And when you say for a while, I need to get an idea when
6 you say a while how long?

7 A. Since I was younger.

8 Q. Okay. So y'all basically grew up together?

9 A. Not really, because actually I resided in New York.

10 Q. Okay. But are you all related in any way?

11 A. No.

12 Q. But how did you get to know him?

13 A. Because when I use to come visit my Grandma, I left
14 twice a year. Sometimes I would see him.

15 Q. Okay. And you said how long has this been?

16 A. Since I was younger.

17 Q. Okay. And how old are you now?

18 A. I am, in fact, twenty-three.

19 Q. Okay. So it's been more than fifteen-years?

20 A. Correct.

21 Q. Okay.

22 MR. REDMOND: Beg, The Court's indulgence.

23 (PAUSE)

24 Q. And just to be clear, you can't testify here as to who
25 did what, who had what weapon, or any of that, you just

SHERIKA ROBERSON - DIRECT EXAMINATION BY MS. SELLERS

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1 heard shooting?

2 A. Yes.

3 **MR. REDMOND:** I have nothing further at this time.

4 **MS. SELLERS:** No further questions. Defense would ask,
5 Your Honor, that she be excused from Court.

6 **THE COURT:** All right. Thank you very much. You may be
7 excused.

8 **MS. LIVINGSTON:** Thank you, sir.

9 **THE COURT:** You may call your next witness.

10 **MS. SELLERS:** Sheika Roberson. The Defense calls
11 Sheika Roberson.

12 **THE COURT:** All right, Ms. Sheika Roberson please.

13 **WHEREUPON, SHERIKA ROBERSON**

14 **BEING DULY SWORN TESTIFIES AS FOLLOWS**

15 **MS. Roberson:** Yes.

16 **CLERK OF COURT:** Please be seated and state your full
17 name for The Court, spelling your last name.

18 **MS. Roberson:** Sheika Monique Roberson. R-O-B-E-R-S-O-N.

19 **DIRECT EXAMINATION BY MS. SELLERS**

20 Q. Good morning, Ms. Roberson?

21 A. Good morning.

22 Q. How are you?

23 A. (No response)

24 Q. Ms. Roberson, do you reside in Dillon County?

25 A. Yes.

SHERIKA ROBERSON - DIRECT EXAMINATION BY MS. SELLERS

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1 Q. Okay. How long have you been a resident of Dillon
2 County?

3 A. Twenty --

4 Q. Twenty-one years?

5 A. For about twenty-one years, yes.

6 Q. Ms. Roberson, are you familiar with the Blue Moon Night
7 Club?

8 A. Yes.

9 Q. Or formerly Club Makium?

10 A. Yes.

11 Q. Did you have an opportunity to travel to that club on
12 June 17, 2007?

13 A. Yes.

14 Q. Okay. At that time did you observe Jeremy Wright ---
15 Did you see Jeremy Wright at the club?

16 A. I seen him twice.

17 Q. You saw him twice. At both times that you saw him, did
18 you ever see a gun in his hand?

19 A. No.

20 Q. Did you ever see him firing any shots?

21 A. No.

22 Q. While Jeremy Wright was in your sight, did you hear any
23 gunshots?

24 A. Yes.

25 Q. And what type of shots did you hear?

SHERIKA ROBERSON - DIRECT EXAMINATION BY MS. SELLERS

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1 MADAME COURT REPORTER: I can't hear her.

2 MR. REDMOND: I can't hear her.

3 Q. Ms. Roberson, if you could, speak up a little louder
4 because this court reporter she needs to be able to hear
5 what you are saying to type it so just speak up a little
6 louder.

7 A. All right.

8 Q. I'm sorry, Ms. Roberson, you said you did observe Mr.
9 Wright twice?

10 A. Yes, I seen him twice.

11 Q. Okay. And where did you observe him at, was this at the
12 club?

13 A. Yes. Both times at the door.

14 Q. Okay. One time he was at the door. And while he was at
15 the door did he ever have a gun in his hand?

16 A. No, ma'am.

17 Q. And you were explaining to me about the guns. Was it
18 multiple gunshots that you heard?

19 A. Yes, it was steady shots.

20 Q. It was what?

21 A. Steady shots.

22 Q. Steady shots, okay. And could you tell how many
23 gunshots it was?

24 A. No, there were multiple shots going on all at once.

25 Q. Okay. And at that time --

SHERIKA ROBERSON - DIRECT EXAMINATION BY MS. SELLERS

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1 **MR. REDMOND:** Your Honor, again, I couldn't hear her
2 answer to that question.

3 **THE COURT:** Ma'am, let me get you to do me a favor.
4 And this happens a lot, who aren't use to being in Court.
5 They get a little shy and timid. I need you to talk to Ms.
6 Sellers like she's across the football stadium full of
7 people, and it's the ball game and you've to holler
8 something to her. I need you to project out there. It's very
9 very important that all these individuals sitting here can
10 hear you, okay.

11 **MS. ROBERSON:** All right.

12 **THE COURT:** So please try to speak out, don't be shy.

13 **Q.** Ms. Roberson, you just testified that you heard multiple
14 gunshots, is that correct?

15 **A.** Yes.

16 **Q.** And did you know who was shooting?

17 **A.** No.

18 **Q.** But you never saw a gun in Mr. Wright's hand?

19 **A.** Both of the times I seen him, I never seen a gun.

20 **Q.** Okay. You say you saw him once a the door and where was
21 the second time you saw him?

22 **A.** Both times was at the door.

23 **Q.** Okay, both times. And did you have a chance to enter
24 the club that night?

25 **A.** I went in about probably about thirty minutes at the

SHERIKA ROBERSON - CROSS EXAMINATION BY MR. REDMOND

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1 most.

2 Q. Thirty minutes. Okay, and was it really crowded out
3 there that night?

4 A. It was a good little crowd.

5 Q. Okay. And were people in and outside of the club?

6 A. Yes.

7 Q. And are you familiar with the club?

8 A. Somewhat, yes.

9 Q. Okay. Thank you. Please answer that Mr. Redmond may
10 have for you.

11 **CROSS EXAMINATION BY MR. REDMOND**

12 Q. Now you said you don't know who was shooting?

13 A. No.

14 Q. Okay. Where were you when the shooting started?

15 A. Inside the club.

16 Q. Inside the club. You didn't see --- You didn't mention
17 anything about seeing the fight? Did you see a fight
18 out there that night?

19 A. No, I didn't see a fight, but I heard that one went on
20 but I didn't see for myself.

21 Q. You didn't see it, but yet you were inside the club?

22 A. Uh-huh.

23 Q. And you were inside the club each time you saw the
24 Defendant at the door. And how far away from the door
25 were you?

SHERIKA ROBERSON - CROSS EXAMINATION BY MR. REDMOND

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1 A. The first time I seen him, he was talking to a guy at
2 the door. I guess that's when they first got there. And
3 the second time I seen him was when everything broke out
4 and I was exiting the door. He was standing in the
5 door.

6 Q. He was standing in the door?

7 A. Uh-huh, but he didn't have a gun.

8 Q. Okay. Now if you were inside the club --- You did say
9 you were inside club, when the shooting started?

10 A. Uh-huh.

11 Q. So is it your testimony that he was at the door when the
12 shooting started?

13 A. The two times that I seen him --- I didn't see him
14 constantly through the club, I just seen him --

15 Q. Okay. So, basically you don't know what happened when
16 he left the door the second time?

17 A. No, because I left.

18 Q. And, of course, when the shooting started you pretty
19 much stayed inside, because the shooting was going on
20 outside, right?

21 A. Uh-huh.

22 **MR. REDMOND:** I have nothing further, Your Honor.

23 **THE COURT:** Anything further from this witness?

24 **MS. SELLERS:** Nothing further from this witness, Your
25 Honor.

TINA MCKINNON - DIRECT EXAMINATION BY MS. LITTLE

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1 **THE COURT:** Thank you very much, ma'am, you may step
2 down. You may call your next witness.

3 **MS. SELLERS:** Tina McKinnon, Your Honor. The Defense
4 calls Tina McKinnon.

5 **THE COURT:** Tina McKinnon..

6 **WHEREUPON, TINA MCKINNON**

7 **BEING DULY SWORN TESTIFIES AS FOLLOWS**

8 **MS. MCKINNON:** Yes, I do.

9 **CLERK OF COURT:** Please be seated in the witness box,
10 state your full name for The Court, spelling your last name.

11 **MS. MCKINNON:** Tina Louise McKinnon. M-C-K-I-N-N-O-N.

12 **DIRECT EXAMINATION BY MS. LITTLE**

13 **Q.** Good morning, Ms. McKinnon, do you live here in Dillon
14 County?

15 **A.** Yes, ma'am.

16 **Q.** And I want to ask you about some events that happened on
17 the night of June 17, 2007. Do you recall being at the
18 Blue Moon Night Club that night?

19 **A.** Yes ma'am.

20 **Q.** About what time did you get there?

21 **A.** About 7:00.

22 **Q.** Okay. And at some point --- Did you stay in the club
23 while you were there?

24 **A.** Yes, ma'am.

25 **Q.** So you didn't go in and out the club?

TINA MCKINNON - DIRECT EXAMINATION BY MS. LITTLE

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- 1 A. No, ma'am.
- 2 Q. And at some point that night, do you remember hearing
- 3 gunfire?
- 4 A. Yes, ma'am.
- 5 Q. Okay. Was the club crowded?
- 6 A. Yes, ma'am.
- 7 Q. Can you describe the gunfire to the jury?
- 8 A. It was more like a bunch of fireworks going off.
- 9 Q. Fireworks?
- 10 A. Yes, ma'am.
- 11 Q. Fireworks?
- 12 A. Yes, ma'am.
- 13 Q. And could you tell if there was one gun being shot or
- 14 more than one?
- 15 A. You could tell it was more than one gun.
- 16 Q. At the same time?
- 17 A. Yes, ma'am.
- 18 Q. Okay. Now do you know the Defendant, Mr. Jeremy Wright?
- 19 A. Yes, ma'am.
- 20 Q. Okay. Did you see him at the club that night?
- 21 A. No, ma'am.
- 22 Q. Okay. Did you see anybody at the club that night with a
- 23 gun?
- 24 A. No, ma'am.
- 25 Q. And all the shooting --- Could you tell where the

TINA MCKINNON - DIRECT EXAMINATION BY MS. LITTLE

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1 shooting was taking place?

2 A. It was like it was coming from different directions.

3 Q. Okay. Different directions, back of the club, the
4 front?

5 A. Yeah, from the back, from the side. I couldn't tell.

6 Q. Okay. But you felt at the time that there was more than
7 one gun being shot?

8 A. Okay.

9 Q. Now, what did you do during the gun fire?

10 A. I was ducking up under people.

11 Q. What was going on inside the club, were people running?

12 A. People were running.

13 Q. Okay. And was there a lot of noise?

14 A. Yes, ma'am.

15 Q. Okay. How long were you --- Can you tell us how long
16 the gun fire went on?

17 A. It was about twenty minutes, I know.

18 Q. Okay. Now after it was over, tell the jury what
19 happened next?

20 A. Well they had the club closed, they had them doors
21 closed. When all the guns stopped, I walked outside.
22 When I walked outside I heard Sherwin Williamton
23 (phonetic) say that he believe his homeboy got shot.
24 So, I went back inside the club and got my cousin,
25 Tamisha, because that was her baby father and I told her

TINA MCKINNON - DIRECT EXAMINATION BY MS. LITTLE

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1 to call little bit --- to call Sherwin Williamton and
2 ask him what he meant by one of his homeboy got shot. So
3 when she called his phone he told --

4 **MR. REDMOND:** Your Honor, I am going to object to
5 hearsay, at this point.

6 **THE COURT:** Sustained.

7 Q. Let me just direct your testimony. Tell us what
8 happened, when you went outside?

9 A. When I went outside I was ready to go to the car to
10 crank my car up, but I went back in and go get Tamisha
11 and tell her that I was ready go.

12 Q. Okay.

13 A. So when she came outside when I heard what he had said
14 she called his phone.

15 Q. Okay.

16 A. And she asked him --

17 **MR. REDMOND:** Your Honor, I am going to object, because
18 now we've got hearsay and more hearsay.

19 **THE COURT:** Sustained.

20 Q. Okay. Can you just tell us at some point did you
21 approach the car where the victim was?

22 A. Yes, ma'am, I did.

23 Q. Okay. Was the car door open or closed?

24 A. It was closed.

25 Q. Okay. And I hate to ask you this, but can you tell the

TINA MCKINNON - CROSS EXAMINATION BY MR. REDMOND

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1 jury, what you saw? Did you open the door?

2 A. Tamisha opened the driver side.

3 Q. Okay.

4 A. But I opened the side where he was at.

5 Q. Okay.

6 A. He was on the passenger side on right side, behind the
7 passenger seat. His head was tilted back. And when I
8 opened the door it was blood on the side of the door.

9 It was like a big ole clot just hanging from the back of
10 his head.

11 Q. Okay. So he was in the back seat on the passenger side?

12 A. Yes, ma'am.

13 Q. Okay. And he was still upright at that time?

14 A. Yes, with his head was just like this, just hanging and
15 it was just hanging from his head.

16 Q. Okay.

17 A. And then I dialed 911.

18 Q. I called 911?

19 A. Yes, ma'am, I did.

20 MS. LITTLE: Okay. Answer any questions, Mr.
21 Solicitor, has for you.

22 CROSS EXAMINATION BY MR. REDMOND

23 Q. You were inside the club during the shooting?

24 A. Yes, I was.

25 Q. SO you didn't see who was shooting or what was going on

TINA MCKINNON - REDIRECT EXAMINATION BY MS. LITTLE

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1 outside?

2 A. No, sir, I didn't.

3 Q. Let me show you what has been marked as State's Exhibit
4 Number 28. Did you see that --- You said that you
5 opened the car door, and you testified that you saw the
6 victim and whatnot, did you see or recognize what is in
7 that picture? Since you testified that you went to the
8 car, do see or recognize what is in that picture?

9 A. It's the blood on the side of the door, yes, I tell you
10 I seen the blood on the side.

11 Q. On the side of the door. Did you see that hole too?

12 A. No, I didn't see that hole.

13 Q. Okay. Is that a bullet hole?

14 A. I guess it's a bullet hole. It's a hole. I don't know
15 what kind of hole it is.

16 Q. Since you saw what was out there that night that's also
17 blood up against the side of the door, right?

18 A. Yes, it is.

19 Q. Okay. All right. But, if I remember your testimony
20 right, you just said you saw him up, up right when you
21 opened the door?

22 A. Yes, I did.

23 **MR. REDMOND:** Nothing further, Your Honor.

24 **REDIRECT EXAMINATION BY MS. LITTLE**

25 Q. Just briefly, now so the jury knows for sure I want to

TINA MCKINNON - REDIRECT EXAMINATION BY MS. LITTLE

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1 -- Your Honor, may I approach the witness?

2 **THE COURT:** Yes, ma'am.

3 Q. Can you come down here and show the jury where the car
4 was parked.

5 **MR. REDMOND:** Your Honor, and again, I don't know if
6 this was new matter from cross examination. I knew this
7 redirect but if it's addressing a new matter I don't have any
8 objection I just don't know at this point.

9 Q. Well, I tell you what, if you were looking at the club
10 which way was the car facing?

11 A. The front of the car was facing towards the road.

12 Q. It was facing towards the road. And he was in the back
13 seat of the car?

14 A. Yes, ma'am.

15 Q. And facing forward?

16 A. Yes, ma'am.

17 **MS. LITTLE:** No further questions.

18 **MR. REDMOND:** No recross, Your Honor.

19 **THE COURT:** Thank you, ma'am. You may step down.

20 **MS. SELLERS:** Your Honor, at time the Defense would
21 rest.

22 **THE COURT:** All right. Thank you very much, Ms.
23 Sellers.

24 Ladies and gentlemen, the Defense has rested their case.
25 At this time, I need to take up some matters of law with the

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1 attorneys, so I am going to ask you if you will step back
2 into the jury room. Have no conversation about the case.
3 We are not done yet. So, please continue to honor that
4 request and have no conversation about the case. Let me take
5 up these matters with the lawyers, and then we have reached
6 that portion of the trial where after I take up these matters
7 with the attorneys, then you will hear from the attorneys
8 regarding their closing arguments.

9 So, if you would, please go back to your jury room. Have
10 no conversation about the case.

11 (Whereupon, the jury exits the courtroom at 10:37
12 a.m.)

MOTIONS

13
14 **THE COURT:** All right, at this time I will take up any
15 motions at the close of all the evidence.

16 **MS. SELLERS:** Your Honor, at this time the Defense
17 would like to renew our motion previously made for a direct
18 verdict.

19 **THE COURT:** All right. I am going to respectfully deny
20 that.

21 Ms. Sellers, again, as I said earlier, I think the jury,
22 there are certainly questions of fact that a jury is going to
23 need to resolve regarding this case and whatever weight they
24 give to the testimony is certainly within their discretion as
25 opposed to The Courts. So I am going to respectfully deny

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1 that motion.

2 Anything further from the Defense?

3 **MS. SELLERS:** Nothing further, from Defense.

4 **THE COURT:** Anything from The State?

5 **MR. REDMOND:** Nothing, no rebuttal, Your Honor.

6 **THE COURT:** Okay, let's then talk about this charge.

7 Let me so I can get through some of the matters that I don't
8 think there is any objections or anything to.

9 Ms. Sellers, I made the change on page two where I ended
10 the first sentence with charges and then started the second
11 sentence as you requested on page two of the one that I past
12 out to you.

13 On the --- On your reasonable doubt request, I did put
14 that language in where I compared the civil burden to that of
15 a civil burden, I did put that in.

16 I also put in here opening paragraph for the murder
17 charge, defining what murder is. I have to put that in.

18 That is as far as I got in looking at these changes when
19 you rested. So -- But let me, say this. In looking at your
20 presumption of innocence charge, I believe that mine is very
21 similar, and I think it covers all the things that yours
22 covers. As a matter of fact, it may be verbatim, I don't
23 know.

24 Again, with the reasonable doubt, I did put in your
25 language comparing the two burdens of a civil and criminal.

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1 I'm not going to charge that language out of Victor v
2 Nebraska. Reason being, it is that our Supreme Court has
3 provided two --- what I would call two acceptable reasonable
4 doubt charges.

5 The first being that the reasonable doubt is the kind
6 that would cause a reasonable person to hesitate to act, and
7 the other one being proof beyond a reasonable doubt is proof
8 that leaves you firmly convinced.

9 Our Supreme Court has approved both of those charges,
10 and if you charge this Victor v Nebraska it is contrary to
11 that, because this says The Court must avoid defining what
12 reasonable doubt is. So that would run contrary. So the
13 rule of law in this state is the South Carolina Supreme
14 Court. I am going to charge the reasonable doubt charge that
15 I've given you.

16 I think your expert witness charge and mine although
17 they are not verbatim, they don't use the exact same words, I
18 think they cover the same information, and so I'm probably
19 going to go with what I have. I'm going with what I have
20 here.

21 Your charge regarding the Defendant not testifying, I
22 have that in here. That is language encompassed I think in my
23 charge that I passed up to you.

24 Unanimity of verdict. I do cover that with them, that
25 their verdict must be unanimous. All must agree. And so as

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1 far as those issues I think I've covered those.

2 If you have any objections I mean I certainly will
3 entertain those or any comments. But, I think my presumption
4 of innocent charges mirrors yours.

5 I've changed my reasonable doubt to include your civil
6 but Victor v Nebraska. I think our expert witness charges
7 cover the same thing. And I think everything is -- so --

8 Mr. Redmond, I have not found anything in my general
9 charges regarding transfer intent that would be different
10 from what Judge Anderson has provided, so I would charge
11 that.

12 **MR. REDMOND:** Thank you, Your Honor.

13 **THE COURT:** On transfer intent. Now having said these
14 things, and we are not done. But having said these things
15 please understand this, if you have any objection to anything
16 that I charge you -- you need to note that, and I will
17 certainly note it for the record.

18 The one issue we have to take up is this charge
19 regarding lost or destroyed evidence. I will hear from you
20 Mr. Redmond.

21 **MR. REDMOND:** May it please The Court, Your Honor. I
22 would actually, now that the evidence has concluded, I think,
23 one, there are two reasons.

24 One, for the record, other than my opening statement and
25 quite frankly that was made in anticipation of certain

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1 questions that were not asked, especially when Investigator
2 --- Captain Arnette was on the stand. So, thus as far as the
3 evidence, because the jury is instructed that arguments are
4 not evidence. Opening statements and arguments are not
5 evidence. So that being the case, it relates to what is in
6 evidence, there is nothing in evidence saying that it was
7 lost. The only thing that is in evidence, Dr. Paavel was
8 asked, did you bring those items today? He said, no, and
9 that was the end of that line of questioning. So, as it
10 relates to what is in the record, there is not anything in
11 the record. Be that as it may, even if were in the record, I
12 would argue the case State v Breeze which I have actually
13 submitted to The Court, the defense had a copy earlier in the
14 trial on the issue of the lost evidence and being able to go
15 forward.

16 Also in that case it stands for the principal that ---
17 And it also the Defense brought in the Kershaw County case, I
18 believe, the Kershaw County Board of Education case they
19 submitted asking for that particular charge. However, Breeze
20 specifically discusses the Kershaw charge and distinguishes
21 it because Kershaw was a civil case; here we are in a
22 criminal case. And in that case the trial judge did not
23 instruct on lost or misplaced evidence and The Court upheld
24 that decision by the trial Court, so we would respectfully
25 submit that for the reasons that I just outlined the Defense

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1 is not entitled to a charge on lost or misplaced evidence.

2 THE COURT: Ms. Seller.

3 MS. SELLERS: Beg, The Court's indulgence.

4 THE COURT: Yes, ma'am.

5 (PAUSE)

6 MS. LITTLE: Your Honor, without going back and
7 reviewing the record, we do recall we asked both Mr. Arnette
8 and Mr. Campbell if they brought their evidence to show the
9 jury. Your Honor, we would, of course, ask for the charge.
10 We were actually under the impression there was evidence.
11 And we ask, Your Honor, we feel like we have bent over
12 backwards not to, harp on the fact that this evidence lost.
13 We did that because nobody seems to know where the evidence
14 is. Their own agent that they put up there, frankly, Your
15 Honor, I did not think his testimony was forthright. Nobody
16 knows where the evidence is. I think as long as they can't
17 produce the evidence, then I think the jury can assume that
18 it was lost and we would argue for that charge.

19 THE COURT: I am going to respectfully deny the request
20 to charge that. It is not supported by the evidence in this
21 case, even if the Breeze case allowed it. There was
22 mentioned in Mr. Redmond's opening statement --- There was
23 mention in the Defense's opening statement regarding lost
24 evidence. And, I made it clear to the jury and I made it
25 clear it to them when we first started the case, and I am

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1 also made it clear to them in my closing charge on the law
2 that lawyers' comments, lawyers' arguments is not evidence,
3 they are not to be consider as evidence. And so therefore in
4 looking at the evidence in the case, the evidence in the case
5 does not support that charge. There was no testimony that
6 the evidence was lost or destroyed. There was testimony that
7 it wasn't brought to court. One simple question could have
8 clarified that. Did you loose the evidence or not? That
9 wasn't asked. It wasn't brought out. The comments were
10 simply, I turned the evidence over to another agency. That
11 was the end of that. Then one comment from the witness was,
12 did you bring that bullet into Court for the jury to see here
13 today? He responded, no I did not. No followup. Why didn't
14 bring it, or anything of that nature. So, there is just
15 nothing in the record that indicates evidence was lost or
16 destroyed, regardless of the fact that The State may tell The
17 Court right now in all candor that it is lost. That is not
18 before the jury.

19 Having said that, I think, The Court in Breeze, The
20 Court of Appeals in Breeze also distinguishes the fact of
21 using that charge --- although I think they stop short of
22 making that whole new case. They did state, and if I can find
23 it, I had it.

24 This was The Court in State versus Simmons, even rare
25 caution should be exercised by the Courts in permitting an

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1 adverse inference comment in criminal proceeding than in
2 civil proceedings. And it says that, even if we assume,
3 without deciding, the trial courts failure to give the
4 requested charge was erroneous, we conclude any such error
5 did not result in prejudice. We conclude any such error did
6 not result in prejudice. I think The Court is clear that
7 there is a definite distinction between criminal and civil
8 cases, and charges adverse inferences. And so I am going to
9 respectfully deny your request to charge that, however
10 certainly note your objection or exception to that rule.

11 Anything further from The State, regarding the charge?

12 **MR. REDMOND:** Nothing, further from The State, Your
13 Honor.

14 **THE COURT:** Now understanding that I made those changes
15 I talked, about and noted your exceptions to the ruling on
16 the lost or destroyed evidence charge; is there anything
17 further from the Defense regarding the charge?

18 **MS. SELLERS:** Nothing further, from the Defense, Your
19 Honor.

20 **THE COURT:** All right. Now, what I am going to do is
21 going to be at ease for a few moments, so we will be in
22 recess for about ten minutes.

23 What I am going to do is I am going to take this --- I
24 want to put this charge in file form, so I can give y'all a
25 final copy of it.

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1 So we will be in recess for about five or ten minutes.

2 (Whereupon, The Court was in recess from 10:50 a.m.
3 until 11:25 a.m.)

4 **THE COURT:** Is The State ready?

5 **MR. REDMOND:** The State is ready, Your Honor.

6 **THE COURT:** Ms. Sellers, you are ready?

7 **MS. SELLERS:** Yes, Your Honor.

8 **THE COURT:** All right, if everybody is ready, I am
9 going to have the jury brought out. Please lock the doors.

10 Ladies and gentlemen, we're about to get into closing
11 arguments. Once we begin closing argument all the way through
12 the jury charge no one is going to be allowed in or out of
13 the courtroom. So, if have to use the restroom and you don't
14 think you can make it for an hour, hour and a half you might
15 want to leave now.

16 All right, ask the jury to join us, please.

17 (Whereupon, the jury enters the courtroom at 11:25
18 a.m.)

19 **THE COURT:** All right, ladies and gentlemen, thank you
20 for that time that we needed to take up the matters at the
21 close of the case.

22 We have reached the portion of the trial, ladies and
23 gentlemen, where all of the evidence is in and the attorneys
24 now are going to have opportunity to address you, with what
25 is commonly referred to as closing arguments or final

CLOSING ARGUMENTS BY MS. SELLERS

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1 summation. As I told you when we started the trial what the
2 lawyers tell you in their opening statements or in their
3 closing arguments is not evidence, it is simply their
4 opportunity to talk to you about the evidence, to talk to you
5 about what they feel the evidence as shown. The evidence in
6 the case is what you have heard from the witnesses, and what
7 you had which has been admitted into evidence, and all of
8 these exhibits which have been admitted into evidence will be
9 sent back into the jury room with you when it is time for you
10 to deliberate.

11 So even though what the lawyers have to say to you, is
12 not evidence, it is certainly important, that you give them
13 your attention as they direct their closing arguments to you.

14 Once they have completed their arguments, ladies and
15 gentlemen, I will then give you the law that is applicable to
16 this case that you are to apply to the facts that you find
17 from the evidence in the case, and you will apply that law to
18 the facts and reach your verdict.

19 So, we are nearing the end but if you please give the
20 lawyers your undivided attention as they present their final
21 summation to you. All right, Ms. Sellers.

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22
23 **MS. SELLERS:** May it please The Court. Good morning.
24 Father's Day weekend 2007 was like the Fourth of July.
25 Fireworks going off everywhere, but it was actually gunshots.

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1 You have heard the testimony of The Dillon County Sheriff's
2 Office. You have heard the testimony of James Campbell. They
3 took pictures of the crime scene. They photographed the
4 evidence. They took pictures of everything that was out
5 there that night, but where it is. Where is the evidence?
6 They told you that they want you to convict this man of
7 murder, and also of having a weapon while in the commission
8 of a violent crime. I am going to ask Mr. Wright to stand
9 again. You are his juror. You have the final say. You can
10 have a seat, Mr. Wright, thank you.

11 The Judge has instructed you earlier that the verdict
12 says, to speak the truth. That is why we are here today to
13 find out what happened. You all get a chance to do that. No
14 one else --- After you all speak no one else speaks. You
15 have the final say.

16 The Judge is going to instruct you on the law, and he is
17 going to explain to you what reasonable doubt is. And you
18 have to convict --- In order to find Mr. Wright guilty of any
19 crime you have to find him guilty beyond a reasonable doubt.

20 Now, let's talk about the witnesses that came forward.
21 First, let's generalize them. The Makium Staff. That would
22 be Randy McCollum, Cliff Crosland, Mr. Rowell, Maxie Leon
23 Rowell and also that would be James German. All of them were
24 friends or either employed for Mr. McCollum. They all could
25 --- My client, Mr. Wright, here in the front, if he had a

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1 gun. They all couldn't hear in the front. But then let's
2 talk what SLED expert said. He told us there is a possibility
3 that over nine guns were being fired. When asked, if all the
4 bullets came from one gun, he said probably, it's a
5 possibility. Did they come from multiple guns? It's a
6 possibility. I will show what's been marked here as State's
7 Exhibit 10. All of these shell casings. You will have a
8 chance to go back into the jury room and look at all this
9 information, and you will see over and over again it is
10 inconclusive, inconclusive, inconclusive. Again, they took
11 pictures of all this information, where is it?

12 Let's talk about the actual murder weapon. We
13 understand that someone was killed on that day, and we are
14 not trying to minimize that fact whatsoever. Today we are
15 trying to find out who was responsible for putting the bullet
16 into that young man's head. Again, all the information that
17 you have received from SLED says inconclusive. They can't
18 tell you beyond a reasonable doubt, with absolute certainty,
19 that the bullets that were collected on that day were found
20 in that victim's head. The State has the burden. The Judge
21 is going to charge you on that. The State has the burden.
22 The burden of proof. They have to prove every element of
23 this crime beyond a reasonable doubt. We don't have a
24 burden. The Judge, is going to instruct you that the
25 indictment is just a mere allegation. It is just a mere

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1 charge. It doesn't mean anything. It's not fact. It's not
2 certain. They have to prove, beyond a reasonable doubt that
3 Mr. Wright committed this crime. And I would submit to you
4 they will not be able to meet that burden. They can't meet
5 the burden.

6 James Campbell came in and testified that he was the
7 lead investigator. First he told you that he sent all the
8 information to SLED on June 20. Well the SLED analysis gets
9 up here, and testifies to what? He didn't get everything at
10 one time. He got one submission date on June 20, had a brief
11 conversation or had a conversation with Mr. Campbell, none of
12 that information was disclosed. But I would wonder --- I
13 would be guessing if I were you all, I would want to know
14 what was that conversation. He testified that the
15 information was in his truck for two days, but he submitted
16 to everything to SLED on the twentieth. Again, the analysis
17 came here, the Analyst came and testified that there two
18 submissions. After that conversation he got some more
19 evidence, where did that evidence come from.

20 Cliff Arnette, with the Sheriff's Office, he also
21 testified that all the evidence was collected at one time.
22 They never testified that they went back to the crime scene,
23 gathered any additional evidence. Everything was collected
24 at once. But, again, there are two submission dates. What
25 was the conversation about after the first submission? And

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1 you will also have a chance to look at the actual SLED
2 reports. You will have a chance to look at the Autopsy
3 Report. But you will see that, again, the evidence is
4 inconclusive. It is inconclusive.

5 Now, with the evidence being stored in Mr. Campbell's
6 trunk, I would submit that, you know, it is a possibility
7 that some things fell out. After that second conversation,
8 he found some additional evidence. But I will ask you, what
9 still may be lying in the back of that trunk. Did they do a
10 detailed search of the trunk to put all the information to
11 make sure that it was tested?

12 Also, let's talk about Mr. Campbell. He says that Mr.
13 Wright turned himself in. Never had to, come look for him.
14 Now, if they were really thinking that my client killed
15 someone with an AK-47, that is a serious high-powered assault
16 rifle. But they never executed a search warrant. Never
17 looked for the gun. Never found the gun. Never went to his
18 house. Mr. Campbell testified to that. That is the lead
19 investigator. He also testified that night that he spoke
20 with people that he knew. Never took any notes. Never took
21 any notes. Never took a statement from a person. There were
22 no statements presented to you from the individuals on that
23 night. Wouldn't that be the best time to get the
24 information, when it's fresh in their memory? I asked Mr.
25 Campbell, were there multiple gunshots in the car? I don't

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1 recall. Well how many times was the car shot? I don't
2 recall. Were other cars shot? I don't recall. But, again,
3 you are going to use his information in deciding whether or
4 not this young man is guilty. And, again, you have to meet
5 that burden beyond a reasonable doubt.

6 You have heard testimony, that there were other cars
7 shot that night. Who were those people? Why weren't they
8 talked to on the scene, to give their account? What type of
9 gunshot to their vehicles? Who were they? Were they
10 involved in the shooting? Were they questioned? Were their
11 hands checked for gunpowder? We don't know. There are two
12 many loose holes in this story. We don't know. Again,
13 reasonable doubt. Reasonable doubt, because we are talking
14 about a murder trial. They want you to convict someone on
15 photographs. No gun. The entire time they spoke about the
16 gun they got to show you the AK-47 by the Clerk. But when
17 the fire expert got here, you heard about AK-47s and SKS. The
18 entire time it was an AK-47 until the expert got here. The
19 expert also again said that he doesn't know. He can't tell
20 conclusively, because he never had fired --- he never had the
21 gun to test. He also told you that you can't look at photos
22 of these bullets. You can't look at photos of these bullets,
23 to determine if they came from the same gun. He told you
24 that you would need the gun to see the different grooves and
25 the impressions that were being made, that would come out

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1 once the round came out of the gun. This is their expert.
2 This is their witness. Again, reasonable doubt. You never
3 heard anyone --- You heard James Campbell say that he spoke
4 with Mr. Wright. You never heard anyone say Mr. Wright made
5 a confession. As a matter of fact, the Judge is already
6 going to instruct you, that he has pled not guilty and The
7 State has the burden of proving guilty beyond a reasonable
8 doubt.

9 Now, we have Mr. James German. This is part of Mr.
10 McCollum's crowd. James German is in the front car. He tells
11 you that he is ducking but yet he can tell you everything
12 that is going around. If an AK-47 or any type of gun is
13 immediately beside you, isn't it your natural instinct to
14 duck? He just says, I was ducking because I didn't know if
15 anybody would turn around. So you can't duck and see at the
16 same time, or when you do think it is safe to duck, and what
17 was his answer. Well, wouldn't you, you would do the same
18 thing I was doing I was ducking, of course, that is the
19 natural reaction.

20 Let's talk about Mr. Rowell, the security guy. Now he
21 is former law enforcement. He is the only person that does
22 security. He gets there at 8:30. Who is in that club before
23 8:30? It's open. Who checks for weapons before 8:30m no one
24 could tell you. Who else worked at that club? Mr. Rowell
25 named about ten people who were out there that night. Yet,

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1 law enforcement --- he's former law enforcement, did he give
2 them that information. Why didn't they go talk to all the
3 individuals? Why is it only that they bring in individuals
4 that were friends with Mr. McCollum, or worked for Mr.
5 McCollum? Reasonable doubt, because it has to be proven
6 beyond a reasonable doubt.

7 Mr. Rowell also talked about a photo line up. He didn't
8 know my client, but he picked him out of a photo line up.
9 Where is that photo line up? Where is all this evidence? If
10 this was used in your investigation, both officers testified
11 that they submitted everything. They submitted all the
12 information that was used. Reasonable doubt.

13 Now let me turn your attention to State's Exhibit 16.
14 This is the photo of the Blue Moon. In this photo you will
15 see on the right side here is a trash can, a large metal
16 trash can. This is probably where they put all their trash
17 or whatnot. They have three hundred or people out there
18 throughout the weekend. Now Mr. Rowell said he ran to the
19 back of the building and was behind this trash can. Now,
20 again, this is law enforcement. He was behind the trash can.
21 It's metal. If someone was shooting, I would want to be
22 behind a metal trash can. I would submit that you'd prefer
23 to behind the metal trash can as opposed to a tree. But he
24 says that he ran further. He left the trash can, and he
25 ended up going all the way back behind the trash can into

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1 these woods. Now again, all testimony indicates that Mr.
2 Wright was in front of the club. In the front of the club.
3 In the front door. Mr. German said, he was at the front
4 door. Never left right in front of that visual of the front
5 door, the area of the front door. So why are you running if
6 you are behind the trash can behind the building. How are
7 the shots seeming to get closer to you that would cause you
8 to run, again to move from behind a metal trash can to go
9 into the woods?

10 Then we have Mr. Jimmy Manning, now his testimony was
11 interesting. Because, Mr. Manning testified that someone
12 came to the door with a shotgun. It wasn't my client but
13 someone came to the door with a shotgun, and they had to
14 close the door. Did that person going to shoot? Did that
15 person just say oh, I couldn't come in so I'll give up?
16 What was the need for the shotgun? Who was that person
17 looking for? Mr. Manning also put my client in front of the
18 building. Again, everyone puts him in front of the building.

19 Now, Crosland, Clifford Crosland, he helped park cars
20 that night, and he'll tell you when he saw my client going
21 into the club --- didn't see him with gun or anything, he
22 just casually started walking back to the back of the
23 building. Never saw him with the gun. Doesn't know who did
24 any shooting, but yet they testified, and The State is trying

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1 to use their testimony to convict my client. I submit they
2 do not --- they cannot prove this case beyond a reasonable
3 doubt.

4 Then you got Mr. McCollum. He owns the club. Mr.
5 McCollum even said I was there, I was out there. I saw Mr.
6 Wright. I never saw him with a gun. I never saw him shooting.
7 Never saw him with a gun. Never saw him shooting. And, it
8 is really important that you think about Mr. Atai Hayes.
9 Because this case isn't a game, but Mr. Hayes testifies that
10 law enforcement came and approached him. He was actually the
11 first person that they ever spoke with. Mr. Hayes was never
12 arrested. He was threatened. But you know Mr. Hayes was
13 trying to cover his behind. Was Mr. Hayes there? Was Mr.
14 Hayes the one with the gun? Why would law enforcement go and
15 ask him, did he have the gun? They approached him. But for
16 two days, two days after this incident --- I'm sorry, three
17 days after this incident, Jeremy Wright turns himself in. He
18 doesn't turn himself in because it's not under arrest, he
19 goes to see exactly --- he hears that they are looking for
20 him. He goes and asks questions. He goes to them. So you
21 mean to tell me three days the Dillon County Sheriff's Office
22 believes that a killer, is on the loose with an AK-47, and
23 they never go to his house. They never try to find him.
24 And, again, they never execute a search warrant. They never
25 try to get that gun off the street. It doesn't make sense.

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1 It's not adding up.

2 Now Mr. Hayes says that he was threatened. He was
3 threatened and, you know, he didn't do anything. He doesn't
4 know anything. But yet, you come in here and he testifies
5 that my client, Mr. Wright, had the gun. But you didn't know
6 anything, you didn't do anything that day. Doesn't that seem
7 convenient? Doesn't it seem a little ironic? Who called Mr.
8 Atai's name? Who lead law enforcement to Atai? Were people
9 that night mentioning his name? Were people calling his
10 name out that night? Oh, Mr. Hayes, he was telling us all
11 about the Blue Moon. It's a place where people have guns all
12 the time. You expect a shootout. You expect it to be like
13 the Fourth of July. He says that when he saw a gun he ran to
14 the car and started ducking, but yet he can testify that he
15 saw movement, that he saw my client in front of the door.
16 Again, like Mr. Green, if you ducking and you are hiding, how
17 can you really tell what is going on. How can you testify to
18 what when on that night? You were trying to save your life.
19 You were ducking and hiding, and that is what he was doing,
20 ducking and hiding.

21 The first question that was asked, do you have a job.
22 Yeah, I have a job. Where do you work? Oh, I've got to call
23 them tomorrow, I'm supposed to get a phone call. You get to
24 determine the weight of each witness's credibility. Not me,
25 not Mr. Redmond, you get to determine if these people came in

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1 here and were telling the truth. More importantly, you get
2 to determine if they've met their burden of proof beyond a
3 reasonable doubt. Beyond a reasonable doubt.

4 Then you have, again, the gentlemen that came and
5 testified from SLED. He gets one part of the evidence, does
6 his analysis, and makes a phone call. All of a sudden a new
7 bag of evidence pops up. He does this analysis, still
8 inconclusive. Still can't tell you if any gun, because he
9 didn't have the gun. He doesn't know what type of gun was
10 fired. All he can tell you is about ammunition. And, again,
11 even with ammunition, it doesn't match up. You will have the
12 opportunity to look through all this information. But,
13 again, over thirty-three shell casings found, nothing is
14 conclusive. They've even found a pool stick out, nothing
15 conclusive. The ballistic expert couldn't even tell you how
16 many guns were fired that night, he can only speculate. And
17 he can only speculate because you'll see with the SLED Lab
18 reports, there is something called that IBIS date base. And
19 that data base is what he uses. That is what he uses to
20 compare to see what type of gun could have fired the weapon.
21 Time and time, and time again you will see, not suitable for
22 identification or for entry into IBIS. Therefore, he doesn't
23 know, therefore, he doesn't know. He does not know. He
24 can't tell you beyond a reasonable doubt which gun was fired,
25 or what guns were fired.

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1 Let's talk about that gunshot. They had the pathologist
2 to come in and testify. The victim, shot here in the back of
3 the head. It goes up towards the left side ricochets off and
4 is found here. But, again, he is shot in the back of the
5 head.

6 What did Ms. McKinnon testify to? She was familiar with
7 the individual. She went out to the car to check on him.
8 She heard about what happened. She doesn't have a reason to
9 come in here. What is her bias? The State never asked her
10 anything about a bias. And what did she say. He was lying
11 upright.

12 Now remember, Lieutenant Campbell was not sure. Captain
13 Arnette was not sure. They couldn't recall whether that car
14 had multiple gunshots. They couldn't recall. They took
15 pictures that night. Aren't you all entitled to see the
16 information that they collected that night? It's not fair to
17 you all to put you in this situation. You deserve a better
18 investigation. Again, shot in the back of the head, sitting
19 upright. Reasonable doubt. Where are the pictures? It
20 would be so easy, easier for you all if you had some
21 information. The pictures, that you have here are not
22 pictures of the crime scene, these are pictures taken later.
23 How much later? This incident happened over two years ago,
24 and we're talking about a murder case. Two years ago, almost
25 two years ago. And in two years they couldn't give you a

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1 better investigation than this. I think you all deserve
2 more. And with this State's Exhibit here, State's Exhibit 2.
3 This is a pretty large building, and you can see from these
4 photographs here, State's Exhibit 16, it's a pretty large lot
5 --- a pretty large lot. By all accounts that night there
6 were people everywhere. There were gunshots everywhere. But
7 they only focused here. They only focus on the front of the
8 club. Like I said, Mr. Rowell, a former law enforcement
9 officer, hiding behind the trash can. He runs away into the
10 woods. Did they ever come back here? Did they ever process
11 the entire crime scene? You all were told that Chopper and
12 Covington ran over here behind the victim's car. Were they
13 the ones that came up with that shotgun? Did they have an
14 assault rifle that night? Why weren't they called to
15 testify? You identified their names. Why weren't they
16 called to testify? Did they ever come back here come back
17 here and check? Simple questions. Did they ever go and look
18 in the dumpster? Did they ever go and look under the picnic
19 tables?

20 Ms. Judy Campbell called 911. Did they ever go and speak
21 with her? Never went to go speak with her. She had a
22 vehicle in her front yard that doesn't belong to her shot up.
23 They never go and investigate that car. Whose car was that?
24 Was that person involved this incident? You don't know,
25 because the information that you have cannot allow you to

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1 make that type of decision. You all deserve a better
2 investigation.

3 Now as I said before, the Judge is going to charge you
4 on the law. He is going to tell you about reasonable doubt.
5 He is going to tell you that my client is innocent until The
6 State proves beyond a reasonable doubt that he is guilty.
7 They want to say --- They would have you to believe, The
8 State, that my client maliciously with malice and with
9 intent, killed Mr. Smalls. Can they prove that beyond a
10 reasonable doubt? Where is the murder weapon?

11 My favorite law professor, use to tell me that the devil
12 is in the details. I would ask you to look at the details.
13 Look at every single detail. The evidence that you have ---
14 what little evidence that you do have, look at that
15 information. Because when you seek your verdict, you are
16 seeking the truth, and that's all we're here for today. We
17 are here for the truth.

18 Like I stated earlier, this is a sad situation. A sad
19 situation for someone to die. But today we are here about
20 the truth. We are here about the truth. What is the truth?
21 In the days of CSI, how many shows are there now with CSI,
22 CSI New York, CSI Miami, we are not expecting CSI, we are
23 just expecting what they collected on that particular night.
24 Why isn't that information here? Why can't you see exactly
25 the car for yourself? Why can't you see how many other cars

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1 were shot up? Why is that information not being provided to
2 you? Why is there no murder weapon? But they want you to
3 convict someone of murder. It doesn't add up. The stories
4 just do not add up. And I submit that once the Judge has
5 given you the final charge, all your jury instructions, he is
6 going to talk you about that presumption of innocence. He is
7 going to talk to about that reasonable doubt. He is going to
8 talk to you about your duties, and that is really important
9 because as I stated earlier, you all have the final say.

10 After we sit down there is no more talking or listening
11 to you. We listen to what you all have to say. And we thank
12 you for your service. I know it's been a little
13 inconvenient. The weather hasn't been the best. But we do
14 thank you for your service. But our justice system would
15 not work, if it were not for individuals like you.

16 You heard from Ms. Livingston. She serves her Country
17 proudly. She's been to Iraq. For fifteen months she was
18 over in Iraq, so she knows the different sounds of firearms.
19 She has been to combat. She said she has been on convoys.
20 Going through the streets of Iraq. And what she compared June
21 17 to, like it was the Fourth of July. Like it was the Fourth
22 of July. This young lady has training in firearms ---
23 Training in firearms. This is what she does for a living.
24 She serves her country, just like you all are serving your
25 State, because that is how important jury duty is. It's a

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1 huge responsibility. And I thank you all for listening very
2 attentively.

3 Now what direct --- the Judge is also going to tell you
4 about the different types of evidence. Direct and
5 circumstantial evidence. There is no murder weapon. There
6 are no bullets. There are no statements from that night.
7 There were over three hundred people there, over three
8 hundred people at that club, all running out. Running
9 around. It was chaos. But yet we get four individuals to
10 come in to testify. Did they follow up with any
11 investigation? Did law enforcement follow up with any
12 investigation? They didn't talk to Ms. Campbell. She was
13 calling. Ms. McKinnon didn't say they spoke with her. They
14 didn't talk with Ms. Livingston. Where is the evidence?
15 Because, you all have the huge burden on your shoulders now.
16 Where is the evidence?

17 Again, Ms. McKinnon came and testified, this individual
18 was sitting upright. He was shot in the back of the head.
19 In the back of the head. Yet, his car was facing the road.
20 All testimony, what testimony there was that identified
21 Jeremy with the gun, says that he never left this area here,
22 never left this area. But this young man was shot in the
23 back of the head sitting upright in his car facing the road.
24 Reasonable doubt. Reasonable doubt. Reasonable doubt.

25 This is a murder trial. This is serious. Any trial is

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1 serious, but this is a murder trial. But this is what they
2 give you. This is what they give you to determine if a man is
3 innocent or guilty. Photographs. Photographs. And not even
4 photographs of the crime scene. This is all evidence. We
5 see the date on some of the photographs, 6/18/07. What else
6 did they take that day. Where is the evidence?

7 And you know Captain Arnette, when he testified about
8 this drawing he said you know it's not to scale meaning that
9 it is not accurate; this is just an approximation. This is
10 our estimate, our guesstimate of where everything is located,
11 but it's not to scale. But what he did say is this is where
12 we searched. What was roped off? I don't recall what was
13 roped off. You don't recall what was roped off. It's your
14 crime scene.

15 Now, Ms. McKinnon could have gone in that car, did go in
16 that car and see the victim. Who else went in the car? Who
17 else touched the car. Was anything ever processed? Any
18 evidence every processed for fingerprints. No fingerprints.
19 No fingerprints. Again, The State has the burden of proving
20 Mr. Wright guilty beyond a reasonable doubt. Any questions
21 that you have, it's not for us to answer; it's for The State
22 to answer. And I submit that once you go to that jury room
23 and begin deliberating, and you look at the SLED report and
24 you keep seeing the word inconclusive, inconclusive, not
25 suitable for the IS data base. Once you look at the

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1 photographs there. Once you play back in your mind the
2 testimony that you've heard from that witness stand. The
3 fact that the Defendant was shot in the back of the head.
4 His car is facing the road. I submit that you cannot come
5 back with a verdict of guilty for my client. The State has
6 not proven beyond a reasonable doubt. Again, they have the
7 burden.

8 The Judge is going to instruct you that Mr. Wright is
9 completely innocent until you all speak. He is completely
10 innocent. You are the ones with this decision. Again, I
11 feel as if you all --- I submit that you deserve a better
12 investigation than you received. It's been about two years
13 now. They called the case, and this is their investigation.
14 A two-year investigation. If you would call it an
15 investigation, because it seems like that night everything
16 stopped. Once they took the pictures everything stopped.
17 Didn't followup with anybody else, everything stopped. But
18 no gun. No murder weapon. No search warrant. No
19 confessions. But we were at the O. K. Correl, it was a
20 shootout. A shootout with multiple guns.

21 Mr. Hayes even told you this is the place where you
22 expect people to shoot guns. So it's not surprise that
23 everybody went and pulled out a gun. Nobody was surprised by
24 that fact. Hadn't been the first time at the club. It hadn't
25 been the first time there was a shootout there.

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1 I just ask that you replay all of the evidence in your
2 mind when you are in the jury room deliberating. Look at the
3 evidence. Look at where they say the shell casings were.
4 Look at the different types of guns that were fired. Look at
5 where all the shell casings were. You will have all this
6 information to compare. You will have this crime scene
7 evidence log here. All you will have to do is, match up the
8 bullets here. It's all numbered for you. It's all numbered
9 for you. And you will see, it is to much reasonable doubt.
10 It's reasonable doubt. They cannot eat the burden. Their
11 evidence, their witnesses are inconclusive. Again, we don't
12 have the burden to prove. This is a murder trial. The State
13 called the case. The State has the burden of proving my
14 client guilty beyond a reasonable doubt, and I submit to you
15 they have not done that today. They failed miserably.

16 Where is the evidence? Where is the evidence? You
17 heard Lieutenant Campbell talk about the Sheriff responded,
18 the coroner responded, several members of law enforcement
19 responded, but yet this is what you get. It was an important
20 case that night, but this is what you get. Photographs. No
21 gun. No followup investigation. It's important to my
22 client. It's important to you all, I'm sure. But it wasn't
23 important enough to them.

24 So I submit that at the conclusion of your deliberations
25 that you find my client not guilty, because the evidence has

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1 not presented to you. Listen to the Judge as he charges you
2 on the law. This is murder, murder, but you have
3 photographs, no evidence. You all deserved a better
4 investigation.

5 But I thank you for your time. I thank you for your
6 attention. And again, I submit that you will not, after
7 reviewing all the evidence, you will find my client not
8 guilty.

9 Thank you.

10 **THE COURT:** Thank you, Ms. Sellers.

11 **MR. REDMOND:** May it please The Court?

12 **THE COURT:** Yes, sir.

13 **CLOSING ARGUMENTS BY MR. REDMOND**

14 Ms. Sellers, ladies and gentlemen. Trial
15 strategy, defense trial strategy 101, if all else fails
16 put the police on trial. How many times did we hear in
17 that summation that you deserve better an
18 investigation? Now, what is deserved here is justice,
19 and that is what we are here for justice. And when all
20 else fails, let's put the police on trial.

21 And here's another thing that particularly bothers
22 me. Is that when certain things are skipped or
23 misrepresented --- And let me just clarify a couple of
24 thing. The Defense said, Investigator Campbell who
25 obviously is who they have tried to create reasonable

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1 doubt for you. Well he didn't do this, or he didn't do
2 that. Well I recall the witnesses testifying and I
3 recall Lieutenant Campbell testifying that he had
4 talked with witnesses, had gotten statements from
5 witnesses, and, in fact, those witnesses were here to
6 testify, and you heard from those witnesses but she
7 didn't tell you that. See I have a problem with trying
8 to create reasonable doubt. Because she is right, this
9 case is too important. It is too important for me, as a
10 prosecutor to sit, and let that stand. Because the
11 bottom line is, it's about justice. We've got a young
12 man, Ms. Viola Moultry, her son is dead. He was laying
13 asleep in the car dead. And to spend the majority of
14 time, again, putting the police on trial, let's move
15 away from that. Let's talk about what we actually do
16 have here. That is what this case is ultimately about.
17 So, let me clarify a couple of things that were
18 discussed. One of which is the murder weapon.

19 Well you heard Atai testify. Who was the last
20 person that had the murder weapon? Who left with the
21 murder weapon? And, it was two days later before he
22 turned himself in, as had been said. Well you know
23 that is a heck of a lot of time to get rid of a weapon.
24 And, is it uncommon out of the realm of possibility
25 that, in fact, in that time anybody who committed the

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1 acts that this Defendant did, is it really unreasonable
2 to believe that he would have gotten rid of that
3 weapon. So let's deal with that. We don't have the
4 murder weapon but the murder weapon was last seen with
5 Defendant as he left the scene of the murder of Kelvin
6 Smalls. That is one thing to clarify. Clarify
7 something else for you. Talked about the fact that ---
8 She talked about doing an examination based on
9 photographs. Come on ladies and gentlemen, Agent
10 Paavel testified, he had the actual exhibits. How
11 would he have been able to take pictures if he didn't
12 have the exhibits? Again, be careful about being
13 missing lead, and I would submit to you that is exactly
14 what the crux of that closing argument was, an exercise
15 in misleading you. You deserve better than that. You
16 deserve to be told the truth, and let's deal with that.

17 She didn't talk about the witnesses that we had.
18 Oh, she skipped over that fact, that, and to me this is
19 extremely important. Talk about a shootout, this, that
20 and the other thing. Ladies and gentlemen, the charge
21 is murder. It's not all this. There is one bullet.
22 One bullet fragment that ultimately I am concerned
23 with, because that is the bullet fragment that was
24 pulled out of the brain or what was left of the brain
25 of Ms. Moultry's son. That is what this case is about

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1 and this is ultimately what it comes down to. That is
2 the first thing.

3 The second thing is --- and it is interesting that
4 she talks about Ms. McKinnon, but she did not show you
5 State's Exhibit 24, and you will have it back there
6 with you. She didn't show you that. I know why, and I
7 wouldn't either.

8 Let's go over real quick what Dr. Proctor said.
9 The bullet enters in here. Let's imagine, ladies and
10 gentlemen, that this is the back seat of this vehicle.
11 This is the back seat. He is lying down asleep. The
12 bullet enters, it should have been shot in this
13 direction. And as Dr. Proctor testified, and you will
14 have this, the bullet ended up hitting going at a 45
15 degree angle hitting this part of the skull and then
16 ricocheting back into the middle. Well if you look at
17 45 degree angle that is a downward angle. The bullet
18 was being fired from this direction. Why do we know
19 that, because you talk about the pictures that had been
20 turned over to another agency as has been mentioned,
21 but we got this one, that shows you exactly where the
22 blood marks are. There is no picture of any window
23 sitting upright. You've got a bullet hole, and you've
24 got blood from the head and brain of Kelvin Smalls, and
25 you will have that with you to consider.

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1 And then talking about Ms. McKinnon, she said well
2 he was sitting upright when she got the --- the car
3 door was closed. He was sitting upright when she came
4 up there and saw him. But then she was inside the club
5 so, ladies and gentlemen, common sense. You mean to
6 tell me that even though she was inside the club during
7 the shooting. There are people outside. That is took
8 her from coming inside the club outside the club to
9 this car and that is when he was found outside in the
10 car. When you've heard testimony from other witnesses
11 that said immediately after the Defendant left that is
12 when it was discovered, that poor Mr. Smalls had been
13 killed. Her testimony makes absolutely zero percent
14 sense. Makes no sense whatsoever.

15 The other defense witnesses didn't see a thing
16 because they were either sitting in the car and I think
17 --- and I forget the soldier's name, but she testifies
18 that she's sitting out front and whatnot but that she
19 didn't see anything, but yet everybody else sees the
20 Defendant moving around in the front in the right part
21 of the club, but yet she supposedly parked up front
22 facing the club but she ain't seen nothing. Again,
23 those are things to consider as it relates to, how much
24 weight you want to put on the defense witnesses. And
25 the bottom line is, none of their witnesses saw

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1 anything. So let's talk about some witnesses that
2 actually saw something that is a value here.

3 Now, we put up witnesses in a ceratin order, sort
4 of like a chain. Let me talk about that real quick.
5 Circumstantial evidence. Circumstantial evidence is
6 evidence when, it is a series of events that leads to
7 the existence of a particular fact. Here you've got a
8 chain of events, or chain of vantage points, that leads
9 to the conclusion that the Defendant is the person that
10 killed Kelvin Smalls. Let's start with Randy McCollum.
11 And here's the thing, if these people were really
12 trying to construct something against this Defendant,
13 everybody would have said, oh yeah we saw him do this
14 that and the other thing. No, but we took it piece by
15 piece so let's start with first people, with Randy.
16 The Defendant approaches Randy, gets into a verbal
17 altercation with Randy McCollum. But here's the thing,
18 he sets the tone of this whole sad evening when he
19 said, you owe me a body. You owe me a body. That is
20 what he tells Randy. Clifton Crosland comes up here
21 and tells you he was standing right there, and heard
22 him say the same thing. You owe me a body. Your
23 cousin killed --- your nephew killed my cousin,
24 something like that. So we got this street justice
25 thing going on out here now. But Clifton also tells

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1 you that he sees him with the gun, and Clifton tells
2 you where he was when he saw the Defendant with the
3 rifle, and at that point he left, because he saw the
4 Defendant with an AK-47. Madam Court Reporter, if I
5 may. Thank you. Saw him walking up with a AK-47
6 similar to this. So, he goes back to where Randy is on
7 the left side of the club so he heard the shooting.
8 Now both of them tell you, the only shooting they heard
9 at first was from an assault rifle, then there were
10 other shots that were heard, that is what Clifton said.
11 Randy wasn't sure.

12 But then we call Maxie Leon Rowell to the stand.
13 And Leon dealt with the Defendant when he got to the
14 door. So, again, it's kind of taking it step by step.
15 So Leon deals with him when he gets to the door. He is
16 already giving him a hard time. He goes into the club.
17 Then this fight breaks out in the club and he sees the
18 Defendant engaged with two individuals, Chopper and a
19 Covington fellow. The Defendant leaves the club. He
20 then comes over in this direction. He sees the
21 Defendant walking up with again, with a rifle, AK-47.
22 He then starts heading toward the back on the right
23 side, but remember he told you, after the fight he saw
24 Mr. Covington and Chopper running in the direction that
25 the Defendant was ultimately firing. Well, kind of

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1 makes sense when you put, two and two together. He was
2 mad and he was looking for whoever he was fighting. I
3 mean that is just common sense. Again, I told you
4 earlier, you take your common sense in there with you.
5 He hears this assault rifle. And this is a trained law
6 enforcement officer. He hears an assault rifle that is
7 all he hears, one rifle shooting. So far you got three
8 witnesses that have heard that one shoot --- that one
9 rifle at first. Then there was a break and then there
10 were more gunshots. And, ladies and gentlemen, we
11 never told you, there weren't several shots, but here
12 is the thing. The assessment in this case is, at what
13 point were the multiple guns firing shots. And that is
14 where the importance of this line that I am drawing for
15 comes in. Because they did not occur until after the
16 victim was found dead. And we will get that in a
17 little while.

18 You heard from James German. James German was
19 right here. Saw the Defendant as he walked passed him
20 with the rifle, and then saw the Defendant as he made
21 his way to the right. So, Mr. German is the first
22 person that actually sees the path that the Defendant
23 is taking with the rifle. But here's the thing that is
24 important about Mr. German. He is the first person
25 that saw the Defendant firing the weapon. And remember

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1 both on direct and despite the Defense's attempts on
2 cross examination, he maintained and was adamant, I saw
3 him shooting the weapon. He saw him shooting the weapon
4 and he identified it again as weapon that was similar
5 to the weapon that we got marked at this time. But
6 then we go further. We then get to Jimmy Manning. And
7 Jimmy tells you that when he saw the Defendant with the
8 rifle, he saw him moving to the right, so that is two
9 people, that have seen him moving to the right. He
10 also tells you that he saw the Defendant shoot.
11 Something else he tells you that is important is ---
12 and both of them, both German and Jimmy Manning saw as
13 the Defendant went back to the vehicle and left. But
14 Mr. Manning tells you something else. Mr. Manning
15 remembers, James German was inside the vehicle, Mr.
16 Manning was outside of the vehicle over here, and he
17 heard talk about somebody being shot, somebody being
18 dead. So then he goes around and he actually saw the
19 victim. He made that clear. He was asked that both on
20 direct and cross several times that he heard someone
21 talk about the victim being shot, and he's killed,
22 because Mr. Manning was like ain't nobody dead at
23 first. Then as he approached the car, he actually was
24 able to see that in fact the victim was dead and he
25 told you saw him slumped. And then, this is where it

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1 gets important. This is when we get to narrowing this
2 down, reaching that particular conclusion. And then
3 afterwards is when these other guns starting shooting.
4 Up until that time every witness that testified told
5 you that there was only gun being fired. And in fact
6 James German and Jimmy Manning, up to that point, tell
7 you that the only person firing weapon was the
8 Defendant. Then Jimmy Manning tells you, he's sees the
9 victim dead, once the Defendant leaves, no other shots
10 had been fired at that point. And then after --- and
11 this makes sense, again, common sense, after it is
12 discovered that Kelvin Smalls is dead, that is when ---
13 pardon my French, all hell really broke loose as it
14 relates to all these other guns firing. Common sense,
15 ladies and gentlemen.

16 But then, and I regard this fellow in a sense he
17 was up front with you about needing to change his ways,
18 but the guts and courage that Atai Hayes had to come up
19 here before you, having ridden in the car with the
20 Defendant, having been told not to snitch. Now let's
21 think of it, common sense wise. I don't think the
22 Defendant is going to kill somebody and then say oh,
23 yeah, you all go feel free to tell everybody. I mean
24 what Atai told you makes perfect sense. Of course,
25 he's going to tell you, you all better not say nothing.

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1 But despite that, once he was approached by law
2 enforcement --- now he won't say anything at first, and
3 you are talking sixteen, seventeen-year-old kid. But
4 once he was confronted, we need to know what you know,
5 or else are you an accomplice to this. Like now, look,
6 I am going to tell you what I know, and he told you. But
7 here's the thing. What he told you actually is
8 corroborated by the other testimony that we've already
9 discussed. When you are looking at witnesses,
10 especially when you've several witnesses testifying,
11 you look at corroboration. Atai tells you that when
12 they got to the club he went in first. Told you about
13 the fight that broke out. Saw the fight. He then
14 leaves before the Defendant departs. Goes to the car.
15 Sees the Defendant snatch the gun from his brother as
16 his brother, the Defendant's brother, is trying to keep
17 him from getting to the weapon. The Defendant was hell
18 bent on getting a hold of that gun, and he was going to
19 spray who ever he needed to spray because at that point
20 he was over the top. Somebody was going to go down
21 because remember, they owed him a body. He was going
22 to get it tonight, and unfortunately, he collected. But
23 Atai tells you, and again, the Defendant as when he is
24 shooting, is moving to the right, this corner of the
25 building. You've got three witnesses now that have

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1 placed the Defendant at this corner of the building
2 that are watching him fire the weapon. And he is the
3 only one, firing the weapon. So, that is six witnesses
4 that have told you that there was only one weapon being
5 fired. And then Atai --- and this corroborates Jimmy
6 Manning. Atai, as he is with the Defendant leaving,
7 here's somebody saying he's dead, he's dead, or words
8 to that effect in saying that somebody is dead as they
9 were pulling off, which makes sense because if you look
10 at the pictures we're not talking about a large area
11 here. We really not talking about a whole large area
12 here. And so, of course, there is going to be
13 screaming. And so as has he is pulling off, he hears
14 this, the Defendant said, look don't snitch, you'd
15 better not say anything, and Atai didn't until he was
16 confronted by law enforcement. But, again, Atai also
17 told you he saw the Defendant as he was firing the
18 weapon, because he was in the car watching what was
19 going on and ducking. Ms. Sellers makes a deal about,
20 okay, well, if you're ducking how can you be ducking
21 and looking up. Is it uncommon to think that yes, you
22 are going to be ducking, but you also are going to try
23 to peek to see what is going on? Make sure whatever
24 that whatever is coming, isn't approaching you. And
25 then Atai told you that he was the only person firing a

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1 weapon, the Defendant was the only person firing the
2 weapon. So that's six witnesses that have told you that
3 there was only one gun being fired at the time prior to
4 the victim being found. And three of those witnesses
5 saw the Defendant as he was firing the weapon.

6 You know, ladies and gentlemen when I hear Ms.
7 Sellers talk about the fact that well, there is
8 nothing, there is nothing, you deserve better.
9 Lieutenant Campbell collected the evidence. And
10 remember, the key piece of evidence we are talking
11 about this case came out of the skull of the Kelvin
12 Smalls. And, so he in essence has served as a witness
13 in this case as well, because he helped preserve
14 evidence in his death because when Dr. Proctor
15 recovered that bullet, it was taken to Dillon County
16 Sheriff's Office and taken to SLED where Agent Paavel
17 examined it, and he talked to you about the
18 examination.

19 Now Ms. Sellers talks about the number of weapons
20 that were fired, but what she does not tell you is, and
21 you will recall it from the testimony, Agent Paavel was
22 specifically asked can a 7.629x39 millimeter cartridge
23 be fired from a 380? No. Can it be fired from a .45?
24 No. Can it be fired from a .9 millimeter? No. Can it
25 fired from AK-47, or an assault type rifle? Yes.

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1 Well, the Defendant had that weapon, okay. The
2 fragments that he was able to examine, and these are
3 his words, in his report, were most consistent with
4 having been part of a 7.62x39 millimeter, and he
5 explained that to you. So, the only person that was
6 shooting prior to the victim being found dead was the
7 Defendant, and the Defendant was firing an AK-47. And
8 the bullets that are most consistent with that --- the
9 fragments that are most consistent with the type of
10 cartridge that the fragments are most consistent with
11 are an AK-47. Out of all the weapons that were being
12 fired out there, it all comes back to this AK-47.

13 But then here's the other thing. She talked about
14 the fact that well, yeah, we don't know how many guns,
15 but do you remember that I specifically asked him,
16 because when you look at the report the other shells
17 that were out there, they could have all been fired by
18 the same weapon. He did not exclude them, but based
19 upon the characteristics and the conditions he could
20 not say conclusively, but at the same time he could not
21 exclude. Yes, they all could have been fired from the
22 same weapon. And, again, we've only heard the
23 discussion of one AK-47 out there, but keep in mind
24 with everything else I said remember this, it is clear
25 from the evidence and uncontradicted that, in fact, the

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1 victim was found after the AK-47 was fired, and after
2 the Defendant had left. That is when the victim was
3 found dead, and then the other shots started.

4 Ladies and gentlemen, yes, this is an important
5 case to everybody involved. The Defendant is entitled
6 to a fair trial. He's gotten a fair trial. The victim
7 is entitled to justice for what he lost. He lost the
8 remainder of his life. And what did he do? He went
9 to sleep. He was tired, gave up the pool game, and
10 went to sleep as Maxie Rowell told you. His last
11 encounter with the decedent, with the victim, he was
12 going to sleep, he was tired, went to the car and laid
13 down. And what did he get for that? Got a bullet in
14 the head. Ms. Moultry lost her son, because this
15 Defendant had to just go, I guess had to go show how
16 bad he was. Had to get that gun. He wasn't going to
17 get in a fight and let it end that. He was going to
18 come out here and he was going to reek havoc around
19 that particular establishment, and he succeeded. He
20 succeeded. But I will tell you this, ladies and
21 gentlemen, it didn't end there, it ends here, and it
22 ends today, and it ends with you. I told you that you
23 are the last bastion of justice in this system, and you
24 are.

25 And she mentioned something about CSI. This is

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1 not television. This is real life. Are there things
2 that you wish you had, obviously, but look at what we
3 do have. And the standard is, and His Honor will
4 instruct you, that that leaves you firmly convinced ---
5 She made a comment about absolute certainty. You won't
6 not see anything in there about absolute certainty, it
7 tells you, what leaves you firmly convinced. But I
8 will tell you this that using your common sense with
9 what we have heard from The State's witnesses, it is
10 clear, it is clear when she says there is no way that
11 you can't, that is offensive to you, ladies and
12 gentlemen. Yes there is a way that you can, and I just
13 told you how he can be found guilty. And, I, in fact,
14 just told you why he is guilty of killing Kelvin
15 Smalls. You owe me a body. You owe me a body. You
16 owe me a body.

17 Ladies and gentlemen, I would like to thank you
18 for your service in this particular case. It is not an
19 easy case to have to go through when you know that the
20 victim in this case didn't do a thing, didn't have any
21 beef with this Defendant. But yet we're sitting here
22 talking about him in the past tense, because of the
23 stupid, heinous, ridiculous and any other adjective
24 that you want to attach to it, actions of the
25 Defendant.

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1 Your service here is important and we thank you.
2 And I said again, you are the last bastion of justice.
3 We present the case to you. And I will submit to you
4 that with everything that you've heard, with everything
5 that you will have to take back with you, with all of
6 the exhibits, The State has met its burden. And, in
7 fact, there is plenty of evidence that you as a jury
8 should be able to find, and I submit will find the
9 Defendant was in fact guilty of taking the life of
10 Kelvin Smalls with malice aforethought.

11 Let me just make one other thing clear to you. You
12 are going to hear about transferred intent. The fact
13 that he didn't have a beef with Kelvin Smalls, and that
14 Kelvin Smalls was an unattended victim does not matter,
15 because there are two reason and two things you don't
16 get instructed on. One of those things is going to be
17 the fact of the murder, the taking the life of another
18 with malice aforethought. The use of a deadly weapon
19 can infer malice. The other thing is acting in such a
20 way where there is a reckless disregard for the safety
21 of others. Well, if you are spraying an AK-47 in a
22 parking lot I think that would qualify as reckless
23 discard for the safety of others. But then you also
24 look at the fact that when we talk about transferred
25 intent, and I'll give you an example. If Shipp is

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1 trying to shoot me, misses and hits The Court reporter,
2 just because I was his intended victim and he killed an
3 unattended victim, he is just as guilty of murder and
4 that intent for me transfers to her. So, I want to
5 clarity that, and, again, these will be in the Judge's
6 instructions.

7 I'm at my conclusion now, so you will be getting
8 the case shortly upon the Judge's instructions. But I
9 want you to remember the Defendant on this case
10 unfortunately was successful because he told, you owe
11 me a body. Ms. Moultry's son didn't owe him a thing.
12 But unfortunately Ms. Moultry's son is the one that
13 ended paying the debt to the Defendant. And, ladies
14 and gentlemen, you get to make up that debt on behalf
15 of the victim today.

16 I thank you, and I wish you God's speed in your
17 deliberations.

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18
19 **THE COURT:** All right, thank you, Mr. Redmond.

20 Ladies and gentlemen, you want to take a moment to
21 stand and stretch your legs you are welcomed to. I am
22 coming down here to give you the charge on the law and
23 I am coming down here for a couple of reasons, and
24 those reasons are simply this. When we started this
25 case, as I instructed you at the beginning of the case,

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1 you are the instructors of the law --- excuse me, of
2 facts. You are the judges of the facts. I am not to
3 have anything to do with the facts. That is your
4 realm. Now we have reached this portion of this case
5 where you and I are in this together. You are the
6 judges of the facts, and me as the Judge of the law.
7 And so it is appropriate, I think, that I come down
8 here to give you the law.

9 Now, Madam Forelady and ladies and gentlemen, I am
10 going to --- the charge that I am going to read you on
11 the law, I am going to read it verbatim so I don't miss
12 anything. And I am also going to send this notebook
13 back into your jury room so you will have the law in
14 the back with you when you retire to deliberate.
15 However, if you will please give me your attention, I
16 am going to charge you on the law that is applicable to
17 this case.

18 Madam Forelady and members of the jury, you have
19 heard the evidence and the arguments of both parties. I
20 will now explain to you the law which applies to this
21 action. The indictments charged the Defendant, Jeremy
22 Wright, with the offenses of murder and possession of a
23 weapon during the commission of a violent crime. I
24 remind you, that the fact that the Defendant was
25 arrested, charged, and indicted in this case is not

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1 evidence in this case, and it cannot be considered by
2 you as evidence of guilt in this case, nor does it
3 create any presumption or inference of guilt. The
4 indictments are simply the formal written instruments
5 which contain the charges made against the Defendant.
6 They are the formal documents by which this case is
7 brought into case. The Defendant has pled not guilty
8 to these indictments and to theses charges. That plea
9 put the burden on The State to prove the Defendant
10 guilty. A person charged with committing a criminal
11 offense in South Carolina is never required to prove
12 him or herself innocent.

13 I charge you that it is an important rule of law
14 that the Defendant in a criminal trial no matter what
15 the seriousness of the charge may be will always be
16 presumed innocent of the crime for which the indictment
17 was issued, unless guilt as been proved by evidence
18 satisfying you of that guilt beyond a reasonable doubt.
19 This presumption of innocence does not end when you
20 begin your deliberations, but it accompanies the
21 Defendant throughout the trial until you reach a
22 verdict of guilt based on evidence satisfying you of
23 that guilt beyond a reasonable doubt.

24 The presumption of innocense is not a mere legal
25 theory. It is not just a legal phrase, it is a

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1 substantial right to which every Defendant is entitled
2 unless you, the jury, are satisfied from the evidence
3 of the Defendant's guilt beyond a reasonable doubt.

4 So what is a reasonable doubt in the law. A
5 reasonable doubt is the kind of doubt that would cause
6 a reasonable person to hesitate to act. The State has
7 the burden of proving the Defendant guilt beyond a
8 reasonable doubt. Some of you may have served as
9 jurors in civil cases where you were told that it is on
10 necessary to prove that a fact is more likely true than
11 not true, such as by the greater weight or the
12 preponderance of evidence. In criminal cases The
13 State's proof must be more powerful than that, it must
14 be beyond a reasonable doubt. Proof beyond a
15 reasonable doubt is proof that leads you firmly
16 convinced of the Defendant's guilt. There are very few
17 things in this world that we know with absolute
18 certainty. And in criminal cases the law does not
19 require proof that overcomes every possible doubt. If,
20 based on your consideration of the evidence you are
21 firmly convinced that the Defendant is guilt of the
22 crimes charges you must find the Defendant guilt. If
23 on the other hand, you think there is a real
24 possibility that the Defendant is not guilty then you
25 must give the Defendant the benefit of the doubt and

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1 find him not guilty.

2 I remind you that during this trial you and I have
3 certain duties to perform. As the trial Judge, it is
4 my responsibility to preside over the trial of this
5 case and also have the duty to rule on the
6 admissibility of the evidence that is offered during
7 this trial. You are to consider the only competence
8 evidence that is before you. If there was any testimony
9 ordered stricken from the record in this case during
10 this trial, you would disregard that testimony. You
11 are to consider only the testimony which has been
12 presented from the witness stand, and any exhibits
13 which may have been a part of the record in this case,
14 and then any stipulations of counsel. I have the
15 additional duty, to charge you the law that is
16 applicable to this case. As the presiding Judge I am
17 the sole Judge of the law in the case and it is your
18 duties as jurors to accept and to apply the law as I
19 now state it to you. If you already have any idea as
20 to what the law is or what the law ought to be and it
21 does not agree with what I now tell you the law is you
22 must abandon your idea because you are sworn to accept
23 the law and apply the law exactly as I state it to you.
24 In every case that is tried in this Court before a
25 jury, you the jury, become the sole and exclusive judge

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1 of the facts in a case. A trial judge cannot intimate,
2 state, comment on, or make any statement to a trial
3 jury about the facts in a case. Since you the jury are
4 the sole judge of the facts in this case you are not to
5 infer from what I have said during the progress of this
6 trial in ruling upon the admissibility of evidence or
7 otherwise or anything that I say now during the course
8 of this instruction to you that I have any opinion
9 about the facts in this case. The law does not allow
10 me to have an opinion about the facts in this case.
11 This is a matter, solely for you the jury to determine.
12 As jurors, it is your duty to determine the effect, the
13 value, the weight and the truth of the evidence that
14 this presented during the course of this trial.

15 Now, there are two types of evidence which are
16 generally presented during a trial. There is direct
17 evidence and there is circumstantial evidence. Direct
18 evidence is the testimony of a person who claims to
19 have actual knowledge of a fact. It is evidence which
20 immediately establishes the main fact to be proven.
21 Circumstantial evidence is proof of a chain of facts
22 and circumstances indicating the existence of a fact.
23 It is evidence which immediately established the
24 collateral facts from which a main fact can be
25 inferred. Circumstantial evidence is based on

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1 inference, and not on personal knowledge or
2 observation. Now the law makes absolutely no
3 distinction between the weight or the value to be given
4 to either direct or circumstantial evidence, nor is a
5 greater degree of certainty required of circumstantial
6 evidence than of direct evidence. You should weigh all
7 of the evidence in this case. After weighing all of
8 the evidence, if you are not convinced of the guilt of
9 the Defendant beyond a reasonable doubt you must find
10 the Defendant not guilty. However, after weighing all
11 of the evidence, if you are convinced of the
12 Defendant's guilt beyond a reasonable doubt then you
13 would find the Defendant guilty. Necessarily, you must
14 determine the credibility of witnesses who have
15 testified during the course of this trial. Ladies and
16 gentlemen, credibility simply means believability. It
17 becomes your duty as jurors to analyze and to evaluate
18 the evidence and determine which evidence convinces you
19 of its truth. In evaluating eye witness testimony you
20 should remember that The State must prove the identity
21 of the Defendant as the person who committed the crime
22 beyond a reasonable doubt. In determining the
23 believability of witnesses who have testified in this
24 case you may believe one witness or several or several
25 witnesses over one. You may believe a part of a

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1 witness' testimony and reject the remaining part of
2 that testimony. You may believe the testimony of a
3 witness in its entirety or reject the testimony of a
4 witness in its entirety. You may consider whether the
5 witness has exhibited to you any interest or bias or
6 other motive in this case. You may also consider the
7 appearance and the manner of a witness while on the
8 witness stand.

9 Now the rules of evidence ordinarily do not permit
10 witnesses to testify to opinions or conclusions. There
11 is an exception to this rule that exists for witnesses
12 that we call expert witnesses. A witness who by
13 education and experience has become an expert in some
14 art, science, profession, or calling, may state an
15 opinion as to relevant and material matter in which the
16 witness claims to be an expert and may also state the
17 reasons for that opinion. Now you should consider an
18 expert's opinion received in this evidence in this case
19 and like any other evidence give it the weight that you
20 think it deserves. If you decide that the opinion of
21 an expert witness is not based on sufficient education
22 or experience, or if you conclude that the reasons
23 given in support of the opinion are not sound, or that
24 the opinion is out weighed by other evidence, you may
25 disregard the opinion entirely. However, if you find

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1 that the testimony is credible and supported then you
2 may accept it entirely. It is solely up to you to
3 decide what believability or what credibility to give
4 any testimony. An expert witnesses' testimony, is to
5 be given no greater weight than that of any other
6 witness simply because that witness is considered an
7 expert. Furthermore, you not required to accept an
8 expert's opinion even though it's not contradicted.

9 Now I instruct you, and I emphasize to you, that
10 the fact that the Defendant in this case did not
11 testify is not a factor to be considered by you in any
12 way in your deliberation and in your consideration on
13 the question of guilt or innocence of the Defendant. It
14 must not be considered by you in any manner whatsoever.
15 A Defendant has the constitutional right to remain
16 silent and the assertion of this right must not be
17 considered by you in your deliberations. I repeat,
18 under your oath you are not to draw any conclusions
19 whatsoever from the fact that the Defendant in this
20 case did not testify. The fact that this Defendant did
21 not testify should not even be discussed in the jury
22 room. The burden of proof, as I told you, is on The
23 State. The Defendant is not required to prove his
24 innocence. The burden of proof remains on The State to
25 prove guilt beyond a reasonable doubt.

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1 Now the Defendant in this case is charged with the
2 crime of murder. So what is murder? Murder is defined
3 as the willful, felonious killing of a human being by a
4 human being with malice aforethought, that malice being
5 either express malice or implied malice.

6 Now malice is hatred, ill will, or hostility
7 toward another person. It is the intentional doing of
8 a wrongful act without just cause or excuse, and with
9 the intent to inflict an injury or under the
10 circumstances that the law will infer, an evil intent.

11 Malice aforethought does not require that malice
12 exists for any particular time before the act is
13 committed. But malice must exist in the mind of the
14 Defendant just before and at the time that the act was
15 committed. Therefore, there must be a combination of
16 the previous evil intent and the act. Malice
17 aforethought may be expressed or inferred. These terms
18 express and inferred do not mean different kinds of
19 malice, but merely the manner in which malice may be
20 shown to exist. That is either by direct evidence or
21 by inference from the facts and circumstances which are
22 proved.

23 Express malice is shown when a person speaks words
24 which express hatred, or ill will for another, or when
25 a person prepared beforehand to do the act which was

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1 later accomplished. For example, lying in wait for a
2 person, or any other act of preparation going to show
3 that the deed was within the Defendant's mind would be
4 express malice.

5 Malice may be inferred from conduct showing a
6 total disregard for human life.

7 Inferred malice may also arise when the deed is
8 done with a deadly weapon.

9 A deadly weapon is any article, instrument or
10 substance which is likely to cause death or create
11 bodily harm. Whether an instrument has been used as a
12 deadly weapon depends on the facts and the
13 circumstances of each case. The following are just
14 some examples of instruments which may be considered as
15 deadly weapons. A pistol, a shotgun, a rifle, a
16 machine gun, a dirk or any weapon which will or is
17 designed or may be readily converted to expel a
18 projectile. A gun may be a deadly weapon even if it's
19 not operational.

20 Now, pursuant to the transferred intent doctrine,
21 if one person intends to harm a second person, but
22 instead unintentionally harms a third person, the first
23 person's criminal intent toward the second applied to
24 the third as well. Where a Defendant with malice
25 aforethought intends to unlawfully kill or seriously

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1 injure one person, but by mistake or inadvertence kills
2 a different person from the one he intended to kill the
3 law holds the Defendant responsible for his felonious
4 intent by merely transferring the intent from the
5 original person the Defendant attempted to kill to the
6 actual person that was killed. The party --- The party
7 --- Excuse me. If malice is found at the time of the
8 killing, even if a third party is killed rather than
9 the intended victim, the Defendant would be guilty of
10 murder. This concept is known as transferred intent.
11 Under this doctrine, the Defendant's intent to kill his
12 intended victim is said to be transferred to this
13 actual victim. The degree of guilt is the same as it
14 would have been if the attempt had resulted in the
15 death of the person at whom it was aimed.

16 Now the Defendant is also charged with possession
17 of a weapon during the commission of violent crime.
18 The State must prove beyond a reasonable doubt that the
19 Defendant was in possession of a firearm or visibly
20 displayed what appeared to be a firearm during the
21 commission of a violent crime. A firearm means any
22 machine gun, automatic rifle, revolver, pistol or any
23 weapon which will, is designed to or may be readily
24 converted to expel a projectile. In order find the
25 Defendant guilty of possession of a weapon during the

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1 commission of a violent crime you must first find the
2 Defendant guilty of either committing a violent crime
3 or attempting to commit a violent crime.

4 I charge you that the offense of murder is
5 classified as violent crime under our South Carolina
6 Codes of Laws.

7 Now, secondly, you would then need to find that
8 the Defendant was in possession of a weapon during the
9 commission of that violent crime.

10 Madam Forelady and members of the jury, as you
11 retire to begin your deliberations, I want to express
12 to you the hope that each of you will be mindful of the
13 importance of your responsibility. You are not called
14 upon to serve as jurors very often, and the proper
15 performance of the duty requires each of you to reach
16 the height of freeing your mind of all improper
17 influences. You and I are acting for this community
18 and that is why we must see to it that the trial is
19 fair and the verdict is just.

20 You have observed that the presiding officer of
21 this Court is always addressed as Your Honor. Now the
22 reason is not because of the person wearing this robe,
23 but that this Court is entrusted with the honor of this
24 community, the honor of this State and the honor of
25 this Country in seeking that every case that is tried

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1 here receives fair and impartial justice.

2 Now, you the jury, take into your care the
3 preservation of the honor of this Community, the honor
4 of this State and the honor of this Country. Please do
5 not get the idea that I am trying to intimate to you
6 how I might think you should decide this case, because
7 I have already told you under the laws of The State of
8 South Carolina, you the jury are the sole judges of all
9 questions of facts. It would be highly improper for me
10 to influence you in performance of that duty. But as
11 the presiding officer of this Court, I am vitally
12 concerned that whatever verdict you find, will be the
13 results of your going into the jury room, confining
14 your consideration to the evidence and to the law that
15 you have heard in this courtroom. Weighing it fairly
16 and impartially as I have ever confidence you will do.
17 Everyone is entitled to justice in this case, both The
18 State and the Defense. All are entitled to justice,
19 nothing more nothing less. Your verdict in this case
20 cannot be based on sympathy, compassion, emotion or
21 some other consideration that is not found to be in the
22 evidence. The Court is of the affirmed opinion that
23 whatever verdict you reach will represent truth and
24 justice for everyone who is involved in this case.

25 And, ladies and gentlemen, please understand and

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1 remember that your verdict must be unanimous. All of
2 you must agree on the verdict that you decide on.

3 Now, I am going to review you briefly the Verdict
4 Form. The Verdict Form is not a complicated form. It
5 is simply --- it has the caption of the case at the
6 top. And let me state this. The order in which, these
7 options appear on this form, have no significance. It
8 is just any time you have to list more than one item
9 you have to list one in front of the other, but that
10 has no significance at all. What you will do is you
11 will decide the facts in this case and apply the law
12 and then you will address each of the indictments.

13 As to the indictment for murder, the options are
14 simply either not guilty or guilty. And, Madam
15 Forelady, you will have the Verdict Form, and you will
16 just check whichever option the jury's verdict
17 reflects.

18 And then the other charge is possession of a
19 weapon during the commission of a violent crime.
20 Again, your options are either not guilty or guilty,
21 and you will reflect that on the Verdict Form.

22 Now, and let me say this, which I would think
23 would be obvious, but I don't want to assume anything.
24 You need to consider the indictment on murder first,
25 because if you find the Defendant guilty of murder you

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1 would then consider the second indictment which is the
2 possession of a weapon charge. If you find the
3 Defendant not guilty of murder then obviously you would
4 not consider or you would not be able to find guilty on
5 the possession charge, because as I instructed you in
6 the law the possession of a weapon charge requires that
7 the Defendant be convicted of a violent crime. So,
8 please if you would, consider the murder indictment
9 first and then consider the possession indictment if
10 that is appropriate.

11 I am going to have the Verdict Form, Madam
12 Forelady, in the front cover of this notebook, and this
13 notebook will come back into the jury room with you
14 when you receive the evidence.

15 Now what I am going to do is I am going to ask you
16 to step into your jury room. Let me talk with the
17 lawyers to make sure I have covered everything. If
18 there is anything that I didn't cover that I need to
19 cover, I will bring you back out and let you know what
20 that is. If I have covered everything then we will
21 gather all of these exhibit and we will --- I will just
22 tell you now the weapon will not come back into the
23 jury room, but all the other exhibits will then be sent
24 into the jury room. And, Madam Forelady, when you
25 receive this exhibits and this notebook that will be

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1 your que to being deliberations.

2 But, if you would, go back into your jury room,
3 don't talk about the case yet and let me verify with
4 the attorneys that I have covered everything, okay.

5 (Whereupon, the jury exits the courtroom at
6 12:55 p.m.)

7 **THE COURT:** Let me ask in regards on behalf of
8 The State are there any exceptions or objections to the
9 charge that was read to the jury?

10 **MR. REDMOND:** None from The State, Your Honor.

11 **THE COURT:** With regard to the Defense?

12 **MS. SELLERS:** None from the Defense, Your Honor.

13 **THE COURT:** All right. Let me tell you my
14 thought process, and that is, it is 1:00 or five till,
15 but it's right at. I am going to send the jury out to
16 lunch, but I am not going them just to go to lunch and
17 come back, I am going to send them with the deputies
18 and they are going to go to one place and eat. When
19 they return from lunch then we will send the items
20 back. They will return back into a small area and I'm
21 sure they're probably hungry. So, I am going to let the
22 alternates have the option to go to lunch or be
23 excused. They are going to be instructed during lunch
24 to not to have any conversation about the case. So is
25 there any objection to me allowing the alternates to be

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1 excused or to go?

2 **MR. REDMOND:** Since they haven't had the evidence
3 in there, my initial thought, Mr. Daniels confirmed it,
4 is just have the alternates, since you've instructed
5 does not started deliberating, just have the alternates
6 there just in case something happens during lunch,
7 somebody get sick or something.

8 **THE COURT:** And that's my thought is that --- So,
9 what you are saying is, don't make it an option send
10 the alternate to lunch?

11 **MR. REDMOND:** That would think that would be The
12 State's preference, Your Honor.

13 **MS. LITTLE:** We agree, Your Honor.

14 **THE COURT:** All right, let's do this, because it
15 will be a lot easier, because it's going to take a
16 minutes or two is that correct.

17 **CLERK OF COURT:** Yes, sir.

18 **THE COURT:** Let me bring the jury back out and
19 explain to them. Where are we sending them?

20 **CLERK OF COURT:** To the B & C Steakhouse.

21 **THE COURT:** B & C Steakhouse.

22 **CLERK OF COURT:** I have a room set up.

23 **THE COURT:** All right, let's bring the jury back
24 out here, and I will explain to them what we are doing.

25 (Whereupon, the jury enters the courtroom at

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1 1:00 p.m.)

2 **THE COURT:** All right, ladies and gentlemen, just
3 to make sure you got it, I thought I would read the
4 whole charge over to you again. Just kidding. Just
5 playing.

6 Here's what I think I am going to do. It is 1:00.
7 Lunch is on the County today. I am going --- They are
8 getting some vehicles together, and we are going to
9 send you over to the B & C Steakhouse for lunch. Have
10 whatever you want. It's a buffet so have whatever you
11 want, and just enjoy your lunch. What I need for you
12 to do for me though is this. Have no discussions about
13 the case. We are going to send you on to lunch, and we
14 are going to ask you when you get back from lunch, to
15 then begin your deliberations. So relax at lunchtime,
16 enjoy lunch, the County is going to take care of your
17 lunch for you, and then when you are done we will come
18 back, and at that point we will pass all the exhibits
19 into you and then you can begin your deliberations,
20 okay. So are we ready to exit out?

21 **CLERK OF COURT:** They have got the cars lined up.

22 **THE COURT:** All right, if you just follow the
23 bailiff and everything, they will get you situated in
24 the vehicles. Enjoy your lunch, please have no
25 conversation about the case.

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1 (Whereupon, the jury exits the courtroom at
2 1:05 p.m.)

3 **THE COURT:** All right, we will be in recess. I
4 don't know how long to tell you, at least an hour. It
5 will probably take them that long to go eat and then
6 come back. If the jury makes it back before we do,
7 which I hope that will not occur, but if they do just
8 ask them to relax, be patient but not to begin their
9 deliberations until they get the exhibits.

10 **CLERK OF COURT:** Okay.

11 **MR. REDMOND:** Your Honor, we were just talking
12 --- And, I don't have a problem if we were to let's say
13 the Clerk and everybody got back before we did. We
14 could the evidence, and I have the utmost faith in Pam
15 and in our court staff --

16 **THE COURT:** Well, go through the exhibits and
17 make sure that everything that is suppose to be here is
18 here. And then what we will do is we will take all of
19 that evidence --- the courtroom is going to be locked,
20 is that correct?

21 **CLERK OF COURT:** Yes, sir. I am going to take it
22 downstairs with me.

23 **THE COURT:** Yeah. And then what we will do is we
24 will stack all that up right here and then once the
25 jury has return, you are going to go with us.

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1 **(PAUSE)**

2 **THE COURT:** Let's go ahead and verify that we
3 have everything.

4 (Whereupon, a lunch recess was taken from
5 1:08 p.m. until 2:36 p.m.)

6 (The jury begins their deliberations at 2:36
7 p.m. and announces a verdict at 3:20 p.m.)

8 **THE COURT:** The alternates that they serve the
9 role, kind of like if you've ever played sport you
10 practice all week long and you do everything everyone
11 else has done and now here it is it's Saturday and
12 we're getting ready to kick off and the coach won't let
13 you play. And that's kind of the role of the alternate,
14 unfortunately. I hope you see though the importance of
15 having you here is that if any of the other members
16 taken ill, or for whatever reason couldn't go then you
17 would have had to step into their place and, of course,
18 to do that you would have had to hear everything and
19 been a part of all that. So, I thank you so much for
20 your service. They all seem to be healthy and ready to
21 go. I am going to excuse you for the balance of this
22 trial. You have completed your jury service. You don't
23 have to call back or come back. You all are going to
24 mail --

25 **CLERK OF COURT:** I've got the checks downstairs.

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1 If they will come downstairs -

2 THE COURT: Oh, if you go down you get paid today
3 and if you need a work excuse she will get that for you
4 to. Thank you all very much, gentlemen.

5 (Whereupon, the alternates were excused at
6 2:40 p.m.)

7 (Whereupon, The Court resumes its seating at
8 3:20 p.m.)

9 THE COURT: Thank you, ladies and gentlemen,
10 please have a seat.

11 Ladies and gentlemen, I'm informed that the jury
12 has reached a verdict in this trial, and I say this in
13 every case that I try whether it's a civil case or a
14 criminal case, whether it's a murder charge or a simple
15 possession of marijuana charge, it doesn't matter
16 because I think it applies in all cases that are tried
17 by a jury, and that is this. I sit here as you do, I
18 have no idea what the verdict may be. What I do know
19 is this, this jury has worked diligently all week long.
20 I've watched them throughout this trial. They have paid
21 attention. And their verdict --- They deserve to have
22 their verdict received with professionalism and in an
23 appropriate fashion. And what that means is, as I
24 indicated, regardless of what the verdict is I don't
25 expect there to be any outburst of emotions or any type

1 of show of --- and I am not cold, I'm not cold hearted,
2 you know, I know this is a very serious case for both
3 The State and for the Defense, and so I am not
4 expecting people to be robots, but I am expecting
5 people to be in control of their emotions.

6 So if you feel that you cannot do that, if you
7 feel that you cannot accept or at least receive the
8 jury's verdict in a professional fashion, then I am
9 going to ask you go ahead and leave the courtroom now
10 before we bring the jury in. And having said that,
11 since I have given people an opportunity to leave the
12 courtroom if they can't handle whatever the verdict may
13 be, I am going to expect everybody to comply with that
14 request, and if you don't then I am going to hold you
15 in contempt and send you down to the county lockup.

16 So the reason I say this and I say it in all my
17 trial is because of this. We must maintain the
18 integrity and the sanctity of the jury system, and
19 these twelve people deserve to have their verdict
20 received in a professional fashion, so that when they
21 are done they will not have had their verdict
22 questioned or commented on.

23 So having said that, is The State is ready to
24 receive the verdict from the jury?

25 **MR. REDMOND:** The State is ready, Your Honor.

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1 **THE COURT:** Is the Defense ready to receive the
2 verdict from the jury?

3 **MS. SELLERS:** The Defense is ready, Your Honor.

4 **THE COURT:** All right, if you would please ask
5 the members of the jury to join us..

6 (Whereupon, the jury enters the courtroom at
7 3:23 p.m.)

8 **THE COURT:** All right, Madam Forelady, has the
9 jury reached a unanimous verdict, ma'am?

10 **MADAM FORELADY:** We have.

11 **THE COURT:** All right, if you would please pass
12 that to the Madam Clerk. Thank you.

13 **(PAUSE)**

14 **THE COURT:** All right, Madam Clerk, if you
15 please publish the verdict of the jury.

16 **PUBLISHING OF THE VERDICT**

17 **CLERK OF COURT:** On, Your Honor's docket is The
18 State of South Carolina versus Jeremy Wright,
19 Indictments 2007-GS-17-916. We the jury, find the
20 Defendant Jeremy Wright, guilty of murder.

21 Possession of a weapon during the commission of a
22 violent crime, 2007-GS-17-917. We the jury, find
23 Jeremy Wright guilty of possession of a weapon during
24 the commission of a violent crime.

25 Signed May 21, 2009, Alexis Kopituk, Forelady.

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1 **THE COURT:** Thank you, ma'am. Ladies and
2 gentlemen of the jury, the verdict that was read by
3 Madam Clerk if this be your verdict, please raise your
4 right hand. Thank you very much.

5 Now, thank you all. You may have a seat. Ladies
6 and gentlemen, I want to thank you for your service
7 this week. I know that jury service is not convenient
8 to you. I know that every one of you have somewhere
9 else that you probably need to be or would like to be,
10 but I hope you do see how important it is that we have
11 members of the community that are willing to serve.

12 Your service is concluded for the week. We do not
13 have any other cases that we can fit in, in the
14 remaining time that we have this week, so you have
15 concluded your service. Now you earned an exemption
16 --- if you will remember back on Monday, was it Monday
17 or Tuesday that I spoke with you that State law only
18 requires that you serve on jury duty only once every
19 three calender years. So you served this year, 2010
20 and 2011 you have earned an exemption, so that if you
21 receive a notice for jury service for either this year
22 or those two years and you and you wish to exercise
23 that exemption, you may do so. You can be excused from
24 service. And keep in mind now that is only here in
25 Circuit Court, it doesn't apply for Magistrate Court

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1 and Federal Court.

2 Now, also let me mentioned to you that that is
3 just an exemption it doesn't mean you can't serve. If
4 you receive a Summons over the next couple of years,
5 and you wish to serve again you are certainly welcomed
6 to do so and I encourage you to do that.

7 Madam Clerk has your checks, and if you need a
8 work excuse she has that for you as well. What I am
9 going to do ladies and gentlemen, and you are done for
10 the week, so I am going to excuse you. I am going to
11 ask you to go back out to the jury room and she will
12 give you your checks.

13 I will tell this, and I tell all my juries this,
14 there is little bit of paperwork that we have to do for
15 just a moment, but then we are going to proceed to
16 sentencing. If you would like to be present for that,
17 if you would like to be hear for that after you receive
18 your paperwork, if you just want to go around and come
19 back you can have a seat, or if you wish you can come
20 have a seat back in the jury box. I will leave that up
21 to you. You are not required to, some jurors --- I use
22 to just excuse the jury. I would just tell them you are
23 excused, thank you for your service, and they felt like
24 they couldn't be here, they felt like they were being
25 asked to leave, and I had a couple of them make that

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1 comment to me. So every since then I always put the
2 jury know, that you've heard all the facts and the
3 evidence in this case, and you've reached a verdict
4 which I think speaks the truth, and you have the right
5 to be present through sentencing if you wish to be, but
6 you are certainly not required to, so if you wish to
7 leave you are free to go, if you would like to come
8 back in have a seat you are welcomed to that as well.

9 Having said that, ladies and gentlemen, thank you
10 for your service, and at least step out so you can get
11 your check and your paperwork, and then like I said, if
12 you want to come back in and have a seat, you are
13 welcome to do that, okay.

14 (Whereupon, the jury exits the courtroom at
15 3:29 p.m.)

16 **THE COURT:** Solicitor, you will prepare the
17 paperwork necessary for the sentencing.

18 **MR. REDMOND:** Yes, I have, I passed it to the
19 Defense, Your Honor.

20 Your Honor, just for the record, Ms. Sellers has
21 signed --- the Defendant my understanding is for this
22 purpose he does not have sign --

23 **THE COURT:** It's not required.

24 **MR. REDMOND:** It's my understanding he has chosen
25 not to sign them.

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1 **THE COURT:** Let me. --- And that's fine, you pass
2 that up. Let me ask of the Defense, entertain any
3 motions if there are any at close of the reading of the
4 verdict. Anything from the Defense before we proceed
5 to sentencing?

MOTIONS

6
7 **MS. LITTLE:** May we reserve our right to file a
8 motion within the next tens days, our post trial
9 motions or if you would just give me a few minutes I
10 can forward in just a few minutes, Your Honor.

11 **THE COURT:** Well, and I will give you whatever
12 time you need. I don't want to delay sentencing.

13 **MS. LITTLE:** I understand.

14 **THE COURT:** But I will certainly give you
15 whatever time you need to address The Court as far as
16 any motions.

17 So will we just remain at ease while you take care
18 of that.

19 **(PAUSE)**

20 **THE COURT:** Yes, ma'am.

21 **MS. LITTLE:** May it please, The Court. At this
22 time the Defense moves for a new trial in this case
23 based on the lack of competent evidence to support the
24 jury's verdict.

25 **THE COURT:** Thank you, Ms. Little. I am going to

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1 respectfully deny that motion. I think there was
2 evidence --- I think it was competent evidence whereby
3 a jury could reach the verdict that they reached. I
4 think this was really a case based on --- I think the
5 credibility and believability of the witnesses, and the
6 judgment of whether the witness is credible or
7 believable is a judgment that is left to the discretion
8 of the jury. I think it boils simply down to this that
9 if the jury did not believe The State's witnesses if
10 would have gone the other way, but they did believe
11 those State witnesses and it went the way it went, so I
12 am going to respectfully deny that motion.

13 All right. Anything further?

14 **MS. LITTLE:** No, Your Honor.

15 **THE COURT:** All right. Are you ready to proceed
16 to the sentencing.

17 **MS. LITTLE:** Your Honor, do you want us to come
18 forward for the sentencing or stand here?

19 **THE COURT:** You can stay there, that's fine.
20 Solicitor, is The State ready to proceed?

21 **MR. REDMOND:** The State is ready, Your Honor.

22 **THE COURT:** All right, I would be happy to hear
23 from The State with regard to sentencing.

STATEMENT OF THE SOLICITOR

24 **MR. REDMOND:** Thank you, Your Honor. May it
25

STATEMENT OF THE SOLICITOR

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1 please The Court.

2 And you heard me reference Ms. Viola Moultry in my
3 closing argument, and before I being, obviously, The
4 State is extremely sorrowful to her, on her behalf for
5 the loss that she has suffered. But I can tell you
6 that --- and this is no affront to other witnesses in
7 the many cases that I've handled, but this is one of
8 the most pleasant ladies I ever had the pleasure of
9 working with. She always has a kind word, and is
10 always encouraging, and it is a pleasure --- and I will
11 tell you something else about this young lady, she
12 drove from Hollywood, South Carolina, which you know,
13 Judge, is on the other side of Charleston, every day to
14 make sure she was here on time and was in Court before
15 I got here, and so that just shows the kind of
16 dedication and the type of the lady that she is, and am
17 more than anything happy for her with this outcome.

18 That said, Your Honor, just to cover his criminal
19 history. The Defendant is currently now serving a life
20 sentence that is under appeal with the Federal
21 Government on a felon and possession charge. He was
22 determined to be an armed career criminal in Federal
23 Court, and that issue is still under appeal. That
24 actually factors into the reason that I decided to go
25 forward with this case, because one, having practiced

STATEMENT OF THE SOLICITOR

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1 in the federal system for quite some time prior to my
2 coming back to the Solicitor's Office; and, two, based
3 on my discussions with the lead U.S. Attorney in this
4 case, if his appeal is granted on the issue of his
5 status as an armed career criminal his maximum penalty
6 then would be reduced to the maximum of ten years.
7 And, so that, quite frankly, along with my promise to
8 Ms. Moultry that I would see this through on the murder
9 charge, were the impetus of my decision to go forward
10 with this particular case despite his federal
11 conviction. And it is for that reason I am asking this,
12 Judge.

13 He was a felon in possession and his criminal
14 history in 2005 he received a two year suspended to two
15 year probation sentence for possession of crack here in
16 Dillon County.

17 Then in 2006, he got a possession with intent,
18 looks like --- a possession with intent to distribute
19 charge and was sentenced to eighteen months on that as
20 well as assault and battery of a high and aggravated
21 nature, if I am reading this correct, yes, eighteen
22 months. I'm sorry, he pled to possession and got
23 eighteen months. He pled to the possession of crack
24 second offense, got eighteen months. And then assault
25 and battery with a high and aggravated nature.

STATEMENT OF THE SOLICITOR

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1 Judge, the fact that he had weapon such as AK-47,
2 shooting out the way he did, with the disregard of
3 anyone is bad enough, justifies the sentence that he
4 got in Federal Court. But, the poignant part of this
5 case is the fact that we had a victim, as I indicated,
6 who was literally tired, had played pool, and decided
7 rather than stay inside was going to what was perceived
8 to be a safe location and lay down and take a sleep.
9 Quite frankly he probably never knew what hit him based
10 on what we've seen. That might be a fortunate thing.
11 I mean it appears that it was quick. But it is no less
12 poignant. And I think in this situation, because of
13 the --- and if Your Honor, paid attention to the case,
14 the nature of how this all transpired, the people at
15 the club tried to say, look, we don't want any trouble.
16 He insisted on brining trouble to that crowded area.
17 He did retrieve an AK, an assault rifle and then reeked
18 havoc, resulting in this murder. I think that this
19 situation would justify a consecutive sentence. And
20 the reason I say that is again. One, I don't know the
21 outcome of what is going to happened there. But I want
22 to make sure that the people of Dillon County, and the
23 people of The State of South Carolina insure that for
24 what happened on our charges, that this Defendant gets
25 what is due to him.

STATEMENT OF DEFENSE COUNSEL MS. SELLERS

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1 So, I am respectfully requesting that The State
2 impose a consecutive sentence, as it relates to the
3 federal charge.

4 Same incident, two separate charges and I think in
5 this situation we've for our charge a young man whose
6 life was cut, way too short for no reason, for no
7 reason. This is the epitome of an innocent bystander.

8 At the appropriate time, Your Honor, I would yield
9 to Ms. Moultry. I am sure she is going to want to
10 address The Court. But I would ask that The Court
11 consider a sentence such as that.

12 **THE COURT:** All right. Thank you, Solicitor. And
13 I would be more than happy to hear from Ms. Moultry in
14 just a moment, and anyone else who wishes to speak.

15 Ms. Sellers, I would be happy to hear from you
16 and, of course, if Mr. Wright would like to address The
17 Court, I would be happy to hear from him and then
18 anyone else if there is anyone else on his behalf I
19 would be happy to here from anybody.

STATEMENT OF DEFENSE COUNSEL MS. SELLERS

20
21 **MS. SELLERS:** Thank you, Your Honor. First off,
22 we would like to give our deepest condolences to the
23 Moultry family. Your Honor, this case was a very
24 interesting case from the start.

25 Jeremy Wright is twenty-three years of age. He is

STATEMENT OF DEFENSE COUNSEL MS. SELLERS

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1 a life long resident of Dillon, South Carolina. He is
2 very young in age, Your Honor, and as the Solicitor
3 indicated he is serving a life without parole sentence
4 in the Federal Penitentiary, and is being housed in the
5 Dillon Detention Center at this time.

6 **THE COURT:** Yes, ma'am.

7 **MS. SELLERS:** Your Honor, he does have a two-
8 year-old daughter, her name is Yejata. (Phonetic) We
9 do have here standing with him his cousin Tamika Wright
10 McCray and we also have a friend of Ms. Dometria Owens.
11 (Phonetic) They have the two-year-old daughter
12 together. Your Honor, we would ask that you run the
13 sentences concurrent, based on the facts presented in
14 this case we do respectfully --- We understand that the
15 jury has rendered a verdict. Your Honor, but based on
16 the nature of the case, the facts of the case, Your
17 Honor, we just ask that you run the sentences
18 concurrent.

19 Mr. Wright does not have --- He does not wish to
20 speak at this time to The Court, but he did want to
21 relay his deepest condolences to the family.

22 **THE COURT:** Thank you, Ms. Sellers. Is there any
23 one that would like to address The Court. No one is
24 required to, but I would be happy to hear from anybody
25 if they wish to.

STATEMENT OF VIOLA MOULTRY

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1 (PAUSE)

2 THE COURT: All right, Solicitor, I would be
3 more than happy to hear from Ms. Moultry and anyone
4 else that may wish to address The Court.

5 MS. MOULTRY: Good afternoon, Your Honor.

6 THE COURT: Good afternoon, Ms. Moultry.

7 STATEMENT OF MS. VIOLA MOULTRY

8 MS. MOULTRY: Thank you for the opportunity just
9 to tell Jeremy that I forgive him. I forgive him, and
10 I thought about it, and it was on me so hard last
11 night, Your Honor, that I felt so sorry for him. And I
12 do have compassion. And I say to you. To give your
13 heart to God, and you can be free in the spirit because
14 God love you.

15 He was my only son and it gets hard some time, but
16 as a mother you still got to go on. I say to the
17 family you be encouraged. My son left a daughter and a
18 son back here, and you know what I have done, Your
19 Honor, I bind with the mother to raise those children,
20 to try to keep them out of the streets.

21 THE COURT: How old was your son, ma'am?

22 MS. MOULTRY: My son was twenty-two when he got
23 killed. And I just want to say one more thing. I
24 appreciate everything that the Solicitor has done, both
25 of them. I kept in touch with them, but I want to say

STATEMENT OF VIOLA MOULTRY

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1 to you, Jeremy, have self-control. It is very
2 important. I've worked in places and they said they
3 didn't want me anymore, I didn't go back and retaliate,
4 because that is not right, Your Honor, if I say or do
5 anything wrong in The Court, you can tell me to get
6 out. I can't come back and hurt nobody. Self-control
7 is a small word, but it means a lot. And I say, thank
8 you, thank you so much. And I was praying that today
9 would be the last day, because it is so tiring driving
10 back and forth on the road.

11 THE COURT: Yes, ma'am.

12 MS. MOULTRY: So I thank you all very much. Thank
13 you.

14 THE COURT: Thank you for being here. And I am
15 so sorry for you needing to be here.

16 The tragic thing for me, my heart breaks because
17 we lost a young man, but we just didn't lose a young
18 man. We've lost two young men.

19 MS. MOULTRY: Yes.

20 THE COURT: We have families, families that
21 loved these two men. They care about them. Children
22 that are not going to have their fathers. And for
23 what. For cowardliness.

24 MS. MOULTRY: Yes.

25 THE COURT: What I heard in this courtroom this

STATEMENT BY MR. WRIGHT

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1 week, was about as cowardly a thing as I ever heard in
2 my life. You know when I was growing up if you got in
3 a scrap, you got your tail whipped, you got your tail
4 whipped. Most of the time we ended up being friends
5 after that, but if not we just got our tail whipped and
6 went home.

7 To come back with an automatic weapon and just
8 start unloading in a parking with people is just the
9 act of a coward. You are not man enough to take care
10 of yourself without an automatic weapon. You didn't
11 even come back --- I don't know if your intent was to
12 shoot the guys you got in the fight with or what. Our
13 young people today walking the streets, and they all
14 have guns, and it is just ridiculous.

15 **(PAUSE)**

16 **MS. SELLERS:** Your Honor, at this time would be
17 appropriate if my client would like to speak --- Would
18 like to, address The Court?

19 **THE COURT:** I have no problem I would be more
20 than happy to hear from either of Mr. Wright or anyone
21 on his behalf.

22 **STATEMENT BY MR. WRIGHT**

23 **MR. WRIGHT:** I want to apologize to the family,
24 for acting the --- Well, I am not saying that I did
25 anything, but I am sorry what happened to your son, and

STATEMENT BY MR. WRIGHT

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1 I want you to accept my apology. Ms. Moultry, I am
2 sorry what had happened or whatever --- I'm sorry it
3 happened to your son.

4 But to the Judge, you know, sir, I'm not no coward
5 because I never shot nobody or shot at nobody. And
6 then if I did do it I would've took a second time like
7 a man instead of apologizing accept consequences.
8 That's the only thing I have to say.

9 (PAUSE)

10 THE COURT: All right, sir. Ms. Moultry, I want
11 to thank you for displaying such a powerful Christian
12 attitude. I can't imagine sitting where you are, and
13 feeling as you do, but you certainly have blessed me
14 by your grace that you have shown to Mr. Wright.

15 I hope --- I come from a small town. Dillon is a
16 small community. I come from a small community. And I
17 just hope that the young people in this community learn
18 something from this, and put away the guns. It's okay
19 to have differences. It's okay not to agree with
20 people. It's okay, I guess to have enemies. Wouldn't
21 it be a wonderful world --- And don't get me wrong I
22 am not advocating fighting, but wouldn't it be a
23 wonderful world if we had difference with people, and
24 the only thing we did is we used our fists to settle
25 those differences, if we couldn't settle it any other

SENTENCE OF THE COURT

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1 way. In other words, if that was the worst thing that
2 happened, rather than people pulling out knives and
3 guns and taking lives.

4 I just want communities in South Carolina at least
5 in our jurisdiction of South Carolina to know that we
6 will not tolerate this kind of action. It is not
7 acceptable in any fashion.

8 Mr. Wright, I appreciate what you shared with The
9 Court and your position. I respect it.

10 However, the jury has spoken, and I am to be lead
11 and to be guided by the verdict of the jury. I never
12 criticize a jury's verdict, because it's their verdict,
13 and I respect that.

14 In my heart though I have an opinion, and in this
15 case in my heart I have absolutely believed that the
16 jury got it right regardless of what you told me,
17 although I respect your comments. I feel that the jury
18 was correct in the verdict that has been rendered.

SENTENCE OF THE COURT

19
20 **THE COURT:** With regard to Indictment 2007-GS-
21 17-916. The charge of murder.

22 The sentence of The Court is that you be committed
23 to The State Department of Corrections for remainder of
24 your natural life without the possibility of parole.

25 On Indictment 2007-GS-17-917. The sentence of The

SENTENCE OF THE COURT

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1 Court is that you be committed to The State Department
2 of Corrections for a period of five years.

3 Those two sentences are to run consecutive and to
4 run consecutive to the federal time that you received.

5 Good luck to you, Mr. Wright.

6 God Bless you, sir.

7 MR. REDMOND: Thank you, Your Honor.

8 MS. SELLERS: Thank you, Your Honor.

9 -- END OF TRANSCRIPT OF RECORD --

10 (Whereupon, this trial was completed at 4:57
11 on Thursday, May 21, 2009.)

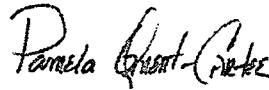
CERTIFICATE OF REPORTER

457

I, the undersigned, Pamela Ozment-Cartee, official court reporter for the Fourth Judicial Circuit 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 trial of the above captioned case, relative to appeal, in The Court of General Sessions, of Dillon County, South Carolina, on the 18th, 19th, 20th and 21st day of May 2009.

I further certify that I am neither, of kin, counsel, nor interest to any party hereto.

October 5, 2012



Pamela Ozment-Cartee
Circuit Court Reporter

07- 916 459
07- 911

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of DILLON)

2012-CP-17, 400

JEREMY WRIGHT 302369)

Full name and prison number, if any, of applicant)

v.)

State of S.C.)

Name of Respondent)

A CERTIFIED
TRUE COPY

APPLICATION FOR

POST-CONVICTION RELIEF

CLERK OF COURT
DILLON COUNTY

FILED
GIVEN T. HYATT
2012 SEP 10 AM 10:37
CLERK OF COURT
DILLON COUNTY

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 it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant 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 applicant was convicted.

1. Place of detention McCormick, SC 386 Redemption Way McCormick
SC 29899

2. Name and location of Court which imposed sentence DILLON S.C. 29536

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) S-706364 Murder

(b) S-706365 Poss weapon Viol CRIME

(c) _____

4. The date upon which sentence was imposed and the terms of the sentence:

(a) 5/21/09

(b) Life without parole

(c) 5 yrs

5. Check whether a finding of guilty was made
- (a) after a plea of guilty _____
 - (b) after a plea of not guilty ☒ _____
 - (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence? Yes,
Court of Appeals
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
 - i. Court of Appeals
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. denied
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. MAY 31, 2012
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. NA
 - ii. _____
 - iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) _____
 - (b) _____
 - (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
 - (b) Prosecutorial Misconduct
 - (c) Lack of evidence
 - (D) Tampering with evidence
 - (E) Appellate Counsel ineffective
 - (F) Break of Chain Custody
 - (G) Subject Matter Jurisdiction
 - (H) Brady material

2012-CP-17 400

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

- (a) Failure to present available evidence to support and Request a jury charge on Malice (2) Failure to object to the Courts improper/erroneous jury charge → Back
- (b) Failure to reinstruct the jury when state witness gave "Fake Evidence"
- (2) Lost Evidence "bad Faith" (3) Misleading the jury (4) Misplacing Evidence
- (c) Lost Evidence (2) Evidence wasn't present in court (trial)
- (D) Agent Vello PAAVCI had a Conversation with Lieutenant Campbell about certain evidence that was later

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law?

NO

- (b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

NO

- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)

NO

- (d) any other petitions, motions or applications in this or any other Court?

NO

12. If you answered "yes" to any part of (11), 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. _____

- 3) Failure to ^{move} ~~make~~ for a mistrial
- 4) Failure to object to hearsay testimony of law enforcement witness
- 5) Failure to make notice of a life sentence
- 6) Failure to request jury charge on lesser-included offenses
- 7) Failure to object to the trial judge's felony murder charge
- 8) Failure to investigate Prepare for Trial
- 9) Failure to ask law enforcement was evidence lost our destiny
- 10) Failure to address the court that Original statements was lost our destiny
- 11) Failure to Object to Arguments
- 12) Failure to Anticipate Charges in law or Possible outcomes
- 13) Failure to request a Preliminary Hearing
- 14) Failure to request a Continuance
- 15) Counsel failed to properly select a jury

(D) more evidence was submitted
(2) evidence lost our destiny ~~(2) evidence lost our destiny~~

(E) did not raise ineffectiveness assistance of trial counsel's

(F) All Agents testify that ^{evidence} was given to a Agent "what" Agent nobody knows

(2) NO Agents sign off the evidence when it was move to Agent to Agent

(G) IN This Case South Carolina Has improper Jurisdiction Based on The Rules of Defective Indictment Due to A Lack of Evidence Along with Improper Investigative Procedures,

(H) IN this Case South Carolina has improper Jurisdiction Based on the Rules of Defective Indictment Due to a "Lack of Evidence" Along with Improper Investigative Procedures.

I Gentry v. state 610 S.E. 2d 494 (2005)

Hudson v. Hudson, 349 SE 2d 341; Otten v. Otten, 337

S.E. 2d 207; to properly preserve all these issues

for and appeal see: Plyler v. state, 424 SE 2d 477

; Markar v. State, 653 SE 2d 266; Bostick v.

Stevenson. which the court will not review any issues
not ruled on also see 17-27-80.

(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. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NA

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) 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) Ineffective
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? Ms. Sellers / Ms. Little
- (c) your sentencing? Life without parole
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
Court of Appeals denied
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? NA

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. MS. Sellers / MS. Little
- ii. ~~Ar. Duke~~ Robert M. Dudele
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Trial
- ii. Court of appeals
- iii. _____

18. State clearly the relief you seek in filing this application.

~~Acquitted~~ Acquitted

19. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)
COUNTY OF Dillon)

VERIFICATION

I, Jeremy Wright, 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.

[Signature]

Sworn to and subscribed before me

This 10 day of August, 2012

Jeff Franklin L.S.

Notary Public for South Carolina

My Commission Expires 12-16-2019

FILED
GWEN T. HYATT
2012 SEP 16 AM 10:38
CLERK OF COURT
DILLON COUNTY

APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Jeremy Wright, 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 or 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 proceeding or give security therefor.

[Signature]
Applicant

Sworn to and subscribed before me

This 10 day of August, 2012

Jeff Franklin L.S.

Notary Public for South Carolina

My Commission Expires: 12-16-2019

A CERTIFIED
TRUE COPY
[Signature]
CLERK OF COURT
DILLON COUNTY

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DILLON	)	
	)	
	)	2012-CP-17-400
	)	
Jeremy Wright, 302369	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the Application for post conviction relief (PCR) filed September 10, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dillon County Clerk of Court. Applicant was indicted by the Dillon County Grand Jury for Murder (2007-GS-17-916), and possession of a weapon during commission of a violent crime (2007-GS-17-917). Rosalind Sellers, Esquire, represented Applicant.

On May 21, 2009, the Applicant was tried before a jury and convicted as indicted. The Honorable Thomas A. Russo sentenced Applicant to life without parole for the murder charge, five years to run consecutive on the weapon charge. Applicant filed timely Notice of Intent to Appeal and his appeal was denied. The Remittitur was sent June 15, 2012. Respondent reserves the right to amend and add further information upon receipt.

Attached herewith and incorporated herein are the records of the Dillon County Clerk of Court regarding the subject conviction, and Applicant's SCDC records, and if available, the transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

Applicant alleges a "Failure to present available evidence to support and request a jury charge on malice (2) failure to object to the court improper/erroneous jury charge, failure to reinstruct the jury when state witness gave "fake evidence." Lost evidence "bad faith" (3) misleading the jury (4) misplacing evidence lost evidence (2) evidence wasn't present in court (trial) (D) Agent Vello Paave had a conversation with Lieutenant Campbell about certain evidence a week later."

Respondent interprets Applicant's allegations as ineffective assistance of counsel.

III.

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, 80 L.Ed.2d 674. 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 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 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.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

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, the State requests that the Application be denied and the matter dismissed with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

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Assistant Attorney General

By: 
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January 18, 20123

STATE OF SOUTH CAROLINA)

COUNTY OF DILLON)

IN THE COURT OF COMMON PLEAS

2012-CP-17-0400

JEREMY WRIGHT, 302369)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

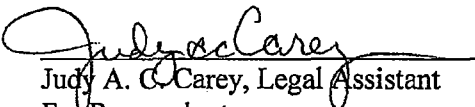
STATE OF SOUTH CAROLINA,)

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** of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Patrick J. Reilly, Esquire
The Reilly Law Firm, LLC
110 Ye Olde Kings Hwy
North Myrtle Beach SC 29582-3050

DATED this 18th day of January, 2013.


 Judy A. C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF DILLON) 2012-CP-17-0400

Jeremy Wright,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	
vs.	)	January 21, 2015
	)	
The State,	)	
	)	
Defendant.	)	

B E F O R E :

Honorable Eugene C. Griffith, Jr.
Darlington County Courthouse
Darlington, South Carolina

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

Tristan M. Shaffer, Esquire
Attorney for Plaintiff

Joshua L. Thomas, Esquire
Attorney for Defendant

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

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Wright v. State

3

1 (On the record, January 21, 2015.)

2 MR. SHAFFER: And Your Honor, before we begin this case,
3 I do want to put something on the record. Previously, we had
4 continued this case, and we had discussed getting an expert on
5 it, a ballistics expert, and after further research and
6 review, I, I decided as a matter of strategy not to request
7 that.

8 THE COURT: Okay. Fair enough.

9 MR. THOMAS: Yes, sir, brief introduction, Your Honor.
10 It's Jeremy Wright versus State of South Carolina, 2012-CP-17-
11 400. It's an August 2007 indictment for murder and possession
12 of a weapon during the commission of a violent crime. Mr.
13 Wright was represented on those charges by Tonya Copeland-
14 Little and Rosalind Sellers. He went to trial May 18th through
15 21st, 2009, was convicted as indicted. Judge Russo sentenced
16 him to life without parole on the murder charge, and a
17 consecutive five years on the possession of a weapon charge.
18 All of those are also to run consecutive to a federal life
19 sentence he also got arising out of this incident.

20 Rob -- Bob Dudek at Appellate Defense filed an appeal.
21 The Court of Appeals affirmed that in an unpublished opinion
22 2012-UP-334. Remittitur was returned in June 2012, and this
23 PCR was filed in September 2012, various allegations of
24 ineffective assistance of counsel and other prosecutorial
25 misconduct type issues. He is represented by Tristan Shaffer

Tonya Copeland-Little - Direct by Mr. Shaffer

4

1 who's present in the courtroom. We'll let him -- turn it over
2 to him. The State's ready to go forward.

3 THE COURT: All right.

4 MR. SHAFFER: Your Honor --

5 THE COURT: Is, is -- he's got a life without parole, but
6 it's consecutive to a life in federal court?

7 MR. SHAFFER: Yes, Your Honor.

8 THE COURT: Is he in federal custody or in state custody?

9 MR. SHAFFER: State custody, Your Honor.

10 THE COURT: Okay. All right. Let me hear from you.

11 MR. SHAFFER: Your Honor, at this time we'd call Tonya
12 Copeland-Little.

13 Whereupon, Tonya Copeland-Little was called to the stand,
14 duly sworn by the clerk and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. SHAFFER:

17 Q Good morning.

18 A Good morning.

19 Q You represented Mr. Wright; correct?

20 A It was Ms. Sellers' case and I assisted her, and so, yes,
21 I did represent him.

22 Q Okay. About how far into it did you get involved?

23 A When I got involved the trial had already been scheduled
24 and Roz had already met with him and talked to him, and I was
25 just asked to assist her with the defense trial.

Tonya Copeland-Little - Direct by Mr. Shaffer

5

1 Q Okay. Tell us a little bit about the allegations against
2 him.

3 A The allegations were that -- well, the State's case was
4 basically that he went to a club -- I call it the Blue Moon
5 Club -- that evening and that there were words exchanged with
6 him and the person at the door. They did not want him to come
7 in. Apparently at some point he did come in. There was a
8 fight at the bar. The State alleged that he made comments
9 that he was going to get a gun. They had witnesses that said
10 he went out to the car, snatched a gun from his brother and
11 tried to go back into the club, but they slammed the door shut
12 and then they said that he just basically started shooting
13 into the parking lot.

14 Q Okay. And --

15 A And then a person was in a car asleep in the parking lot
16 and he was hit and shot in the head and killed.

17 Q And more specifically, what, what kind of gun did they
18 allege that he had?

19 A It -- they alleged it was an AK or, well, it was an, an
20 assault rifle.

21 Q Okay. Did they recover the gun?

22 A No.

23 Q Okay. What was your trial strategy in this case?

24 A The trial strategy was basically that there was a
25 shootout that night, that there were multiple people there, it

1 was a bar, that many people were firing guns and that nobody
2 could prove that our client fired the gun that killed the
3 victim.

4 Q Okay.

5 A And that, again -- no, that's it.

6 Q And there were multiple shell casings; were there not?
7 Right?

8 A Yes. Multiple shell casings, and I think at least four
9 different types of weapons had been fired that night.

10 Q Okay.

11 A Or at the club at some point.

12 Q Now, because there were four different types of shell
13 casings, four different, I guess, shells that wouldn't go into
14 another gun; right, mutually exclusive shell casings?

15 A Right.

16 Q Okay. And did they -- they did not recover that assault
17 weapon; correct?

18 A Correct.

19 Q Did they recover any of the other guns?

20 A No.

21 Q To your recollection?

22 A No. Not that I recall.

23 Q What was the basis for them saying that the shell casing
24 that killed the person or the, the bullet that killed the
25 person came from the assault rifle?

Tonya Copeland-Little - Direct by Mr. Shaffer

7

1 A The -- I believe the fragments that were recovered from
2 the victim's brain matched the type of bullets that could be
3 fired from the assault weapon.

4 Q Okay. Now, during the trial of the case, did they
5 actually bring an assault weapon into the courtroom?

6 A They did over objection.

7 Q Okay. So Kernard brought in --

8 A I can't -- I think it was an S -- I can't remember if it
9 was an AK or an SK.

10 Q Okay.

11 A It was a, a type of weapon that could fire the 7.62 by 39
12 bullet.

13 Q Okay.

14 A And it did not go into evidence, but he used it for
15 demonstrative purposes.

16 Q Okay. And that was over objection?

17 A Yes.

18 Q Now, was there a plea offer made in this case ahead of
19 time? Do you recall?

20 A I don't recall, but I think Ms. Sellers can probably
21 answer that for you.

22 Q Okay. And I apologize. I actually got you all mixed up.
23 I thought you were lead on it for some reason.

24 A No.

25 Q Okay. No further questions at this time.

1 THE COURT: Mr. Thomas.

2 MR. THOMAS: Just briefly, Your Honor.

3 CROSS EXAMINATION

4 BY MR. THOMAS:

5 Q Ms. Little, how long had you been practicing law when
6 this case came about?

7 A This, this trial was in 2009; is that correct?

8 Q It was -- yes, May 2009.

9 A I had been practicing law for about three years.

10 Q And you were -- you obviously didn't come on until late
11 in the game --

12 A Correct.

13 Q -- as far as it was concerned? So in terms of your
14 meetings with Mr. Wright, what, what were your meetings with
15 Mr. Wright about? Did you ever meet with him?

16 A I think I met with him I think twice, I know at least
17 once at the detention center, and we had an investigator at
18 the time, Officer Goodman, and I'm pretty sure he was with me.

19 Q And just in your meetings with him, sort of what defense
20 strategy did you develop based upon his discussions? I mean,
21 was it that he wasn't there, self defense, anything like that?

22 A It wasn't -- I believe he never denied that he was
23 actually there that night, but he denied that he shot anybody
24 or had a weapon that night.

25 Q And so -- but there were, but there were at least --

Tonya Copeland-Little - Cross by Mr. Thomas

9

1 there were three older witnesses, right, there were the three
2 sort of club owners, the bouncers, the people that worked
3 there?

4 A Yes.

5 Q And on top of that, there were the other witnesses that
6 might have been in his party in the road?

7 A That's, that's correct.

8 Q At least one or two of those witnesses testified that
9 they saw the victim dead before they heard the other shots
10 fired?

11 A Yes. Before the second set of shots were fired.

12 Q Okay. So there's basically testimony that Mr. Wright --
13 they basically tried to kick him out of the club, and he said,
14 "If I can't party, nobody can party," something to that
15 effect?

16 A Something like that. Yes, sir.

17 Q And then proceeded to go get a, a -- an assault weapon
18 from his car, shoot into the parking lot, left and then other
19 shots were fired?

20 A Yes. There was supposedly a couple of minute break
21 between the initial shots and then when other shots started
22 being fired.

23 Q And you all objected to the use of that AK-47 as
24 demonstrative evidence?

25 A Yes. We did.

1 Q Thank you, Ms. Little. That's all I have.

2 A Thank you.

3 THE COURT: Anything else, Mr. Shaffer?

4 REDIRECT EXAMINATION

5 BY MR. SHAFFER:

6 Q Now, there was some discussion about a -- do you recall a
7 discussion about whether or not the, the club was licensed?

8 A Yes.

9 Q Okay. And was it licensed?

10 A It was not licensed.

11 Q What, what was the purpose of trying to bring that out?

12 A I believe Ms. Sellers was hoping to show some motive on
13 the part of the club owners to side with law enforcement in
14 their efforts to get their club licensed for -- to sell
15 liquor.

16 Q Okay.

17 A But we were not really able to go into that. Due to
18 objections we weren't able. We didn't have anything
19 substantial to back that up.

20 Q No further questions.

21 THE COURT: You may step down.

22 MS. SELLERS: May I be excused?

23 THE COURT: Sure.

24 MR. THOMAS: No objection.

25 MR. SHAFFER: I'd like to call Ms. Sellers.

Rosalind Sellers - Direct by Mr. Shaffer

11

1 Whereupon, Rosalind Sellers was called to the stand, duly
2 sworn by the clerk and testified as follows:

3 DIRECT EXAMINATION

4 BY MR. SHAFFER:

5 Q Ms. Sellers, you, you represented Mr. Wright; correct?

6 A Yes, sir.

7 Q All right. At the time this happened how long had you
8 been practicing law?

9 A Maybe a year and a half, two years.

10 Q Okay. And now, if you could, tell us a little bit about
11 your interaction with him prior to the, prior to the trial.

12 A Actual -- the interaction with Mr. Wright, at that time
13 he was detained at the detention center in Dillon. So it was
14 traditionally my pattern, because I was the public defender in
15 Dillon County, that I would go to the jail on Fridays and
16 typically talk with my clients. The first notations that I
17 have of meeting with Mr. Wright or that I see evident are
18 sometime back in August of 2008, and it's just standard each
19 Friday or every other week just going in to get an update,
20 talking with the client, meeting him to see exactly if he can
21 provide any assistance, and you know, defense strategies.

22 Q Was there any plea offer in this case?

23 A There was a plea offer to my knowledge, but that offer
24 was that he plead guilty to life.

25 Q Okay.

1 A And so, in essence, in his opinion, in my opinion, really
2 no deal, per se.

3 Q And they didn't put death on the table, obviously;
4 correct?

5 A No.

6 Q Okay. Did you ever advise him about the ability to throw
7 himself on the mercy of the court, essentially ask for
8 something less than life and plead guilty?

9 A Yes.

10 Q Okay. And was he inclined to do so?

11 A He was not inclined to do so at all.

12 Q Okay. Preparing this trial what was going to be your
13 defense?

14 A In preparing the trial and in speaking with Mr. Wright,
15 the only defense that we had at the time -- well, initially,
16 Mr. Wright denied that he was present at the scene, and then I
17 got a copy of his federal transcript, along with the
18 statements of the club owner and the bouncers, as well as one
19 individual that was in the car with Mr. Wright. We discussed
20 that, and he then said that, you know, he may have been there,
21 but he didn't shoot any gun. So he just still denied shooting
22 any type of weapon that night, and so, again, we discussed the
23 evidence or the individuals that were going to testify, and it
24 came -- well, he didn't tell me directly, but other
25 individuals stated that there were multiple people shooting

Rosalind Sellers - Direct by Mr. Shaffer

13

1 weapons that night and they believed that there were multiple
2 individuals shooting that type of weapon, the AK-47, and so
3 our strategy was that, yes, there were, there were shots
4 fired, but there was no information that could indicate that
5 the weapon or the bullet that came from Mr. Wright's weapon is
6 the bullet that killed Mr. Smalls.

7 Q Okay. Did you ever hire any ballistics expert or
8 anything like that?

9 A No. We didn't hire a ballistics expert.

10 Q Was there evidence available for you to hire a ballistics
11 expert?

12 A Looking back on it now, there is possibility, yeah, that
13 there was evidence available.

14 Q Okay. But there was also evidence lost; is that correct?

15 A There was evidence lost, but we did not realize that that
16 evidence was lost until the second day of the trial.

17 Q Okay. What evidence was that?

18 A There were bullets, the, the shell casings. Because
19 there was a federal trial, I'm not sure how long or how the
20 time period between the federal trial and the state trial, but
21 there was a period of time where the evidence from Dillon
22 County was transferred to Florence for the trial, for the
23 federal trial. I didn't have an opportunity to inspect any of
24 that evidence prior to it being transported to Florence
25 because I didn't have the case at that time. Well, we knew of

1 the evidence there in Florence County. We're talking with the
2 solicitor's office, as well as the U.S. Marshals, and one of
3 the agents over in Florence. They indicated that the evidence
4 will be brought back to Dillon County. There's never any
5 mention that there's missing evidence. In a nutshell, when
6 the items were brought back to Dillon County, the shell
7 casings were not there. We did have photographs of shell
8 casings, but to my memory, those photographs of those shell
9 casings were all of one particular weapon. It wasn't the
10 multiple shell casings.

11 Q And part of your defense, obviously, was that multiple
12 guns had been shot; correct?

13 A Correct. Yes.

14 Q Okay. And clearly there was not shell casings from some
15 of these other caliber weapons.

16 A There were no smaller -- to my knowledge, the photographs
17 that were introduced were only of AK-47 caliber casings.
18 There were no smaller, no like the 38 because we know a 38 was
19 also shot that night.

20 Q Uh-huh.

21 A There were no smaller casings to my knowledge.

22 Q Okay.

23 A So from my memory.

24 Q And do you think that hurt your case somewhat?

25 A Yes.

Rosalind Sellers - Direct by Mr. Shaffer

15

1 Q Okay.

2 A And that's why we objected.

3 Q And the Court obviously found that there wasn't a
4 problem; right?

5 A Correct.

6 Q And let them go forward?

7 A Correct.

8 Q The, the agent testified pretrial; right?

9 A Correct.

10 Q And what did he, he -- what was the substance of his
11 testimony as to why it had gotten lost?

12 A From my memory -- I have the transcript, but I haven't
13 read that portion again, but just from memory, there was
14 really no valid justification, just things happen in terms of
15 transition, you know, and actually, I don't believe he's the
16 person that may have handled the evidence from Dillon to
17 Florence. So I, I, I don't recall him giving any kind of
18 clear explanation as to why it was lost.

19 Q Okay. And there was some indication that perhaps I think
20 it was Mr. Campbell; right?

21 A James Campbell?

22 Q Yeah. That had at some point brought the evidence, that
23 it had gotten lost but then maybe somehow James Campbell also
24 had it at some point?

25 A Yeah. That's an issue as well because there was a

1 changing of the guards, basically, with our sheriff's
2 department, highly contested election, and there was some --
3 also some, some indication that maybe the -- some former
4 officers misplaced evidence intentionally. When they came in
5 and cleaned they threw out items that didn't -- they didn't
6 recognize were important. So there were a number of
7 allegations but nothing concrete to indicate exactly what
8 happened.

9 Q Okay.

10 A Many people though just passing the buck.

11 Q Okay. Now, there was a, there was a problem with a
12 witness, I mean, not a witness, a juror as well; correct? Do
13 you recall that?

14 A I don't recall the juror.

15 Q Okay. Do you recall -- do you have a copy of the
16 transcript up there?

17 A Yes.

18 Q Okay. Okay. I apologize. I'll withdraw that for now.
19 Now, did you object to them using -- Kernard brought in an AK-
20 47; right?

21 A Correct.

22 Q You objected to that; right?

23 A Correct.

24 Q Okay. Was that ever raised, was that raised on appeal?

25 A I'm not sure.

Rosalind Sellers - Direct by Mr. Shaffer

17

1 Q Did you have anything to do with the appeal?

2 A No. We just submitted that -- yeah. I just submitted
3 the packet on his behalf.

4 Q Okay. Fair enough. Now, if we could, page, turn to page
5 90, maybe 89 of the transcript.

6 A Okay.

7 Q This would be Mr. Redmond's opening statement; correct?

8 A Correct.

9 Q And on page 89, if you could look at it, look at line 22.
10 Can you read that out loud?

11 A You want me to start on 21 or --

12 Q Oh, 21, yes.

13 A Okay. "Conclusion would be that the Defendant is, in
14 fact, guilty of the murder of Kelvin Smalls."

15 Q Okay. Now, that's 89 you're looking at?

16 A I'm sorry. I'm sorry. "And let me just stop here and
17 say thank you for your willingness to serve because I refer to
18 the jury as the last bastion of justice."

19 Q Okay. And could you keep reading?

20 A "If it were not for you all there is not justice. You
21 are the last bastion of justice. We bring the charges. We
22 present the case, and it is up to you to make the decision.
23 This will not" --

24 Q Oh.

25 A Okay.

1 Q Did you find that objectionable at all?

2 A At the time I did not because I did not object.

3 Q Okay. Now, if you could turn to page 166, and actually,
4 if you could, go to the page before that, which is 165. Could
5 you review line 22 through the next page, line 11. You don't
6 have to read it. Just review it. What were you trying to do
7 in that situation?

8 A Mr. McCullum, who was the owner of the nightclub, had
9 testified previously in federal court. Just in reviewing the
10 transcript in federal court, along with some of the statements
11 and talking with Mr. McCullum, I thought that he contradicted
12 himself, and so we were just trying to find some ways to
13 impeach Mr. McCullum without disclosing to the jury that my
14 client was also prosecuted in federal court.

15 Q Okay. Did the, did the Court allow you to get into that?

16 A He allowed me to get into some of the issues, but not
17 great latitude --

18 Q Okay.

19 A -- regarding.

20 Q Do you think it would have been -- you should have been
21 able to introduce that for bias or --

22 A Not the, the fact -- I should have been able to cross
23 examine him and to impeach him on some issues, but no, my
24 client, there should have been no exposure whatsoever about my
25 client's federal --

Rosalind Sellers - Direct by Mr. Shaffer

19

1 Q Okay.

2 A -- prosecution.

3 Q But the, the Court limited your cross examination?

4 A Yes.

5 Q Okay.

6 A Of Mr. McCullum in reference to his licensing issues at
7 his club and the prior incidents at the club.

8 Q Now, there were at least two weapons there or could you
9 tell us about the, the different type of cartridges that were
10 used?

11 A The different type of cartridges, I don't recall
12 specifically the brand, but in essence, with the photographs,
13 for instance, that were introduced, they were all of the AK-
14 47ish type caliber, but may not have been from the same
15 companies.

16 Q 47, okay. I'm going to hand up just to help you refresh
17 your recollection the SLED report.

18 A Okay.

19 Q Now, there were several that were 7.62 by 39; right?

20 A Correct.

21 Q And that's what they're alleging shot the victim in this
22 case?

23 A That type of weapon, yes, that type of cartridge.

24 Q And there were multiple brands of that?

25 A Correct.

1 Q Is that correct? Okay. And so it's quite possible that
2 there would have been two AK-47s shot; right?

3 A Possibly, but --

4 Q There are two weapons that shoot 7.62 by 39?

5 A Possibly, but it was also, I think, introduced into
6 evidence that the same one gun could shoot multiple types of
7 cartridges.

8 Q Yes. So it's either/or; right?

9 A Yes.

10 Q And that was sort of the arguments that maybe it came
11 from a different gun?

12 A Yes.

13 Q Okay. There's also the cartridge cases that's 31 92;
14 right?

15 A I don't see the 31 92. What page is --

16 Q I'm looking at a different sheet of paper than yours.
17 Would you dispute that there was a cartridge listed 31 92 in
18 evidence?

19 A I can't recall.

20 Q Okay.

21 A Based on -- my information would be solely on what was in
22 the SLED report.

23 Q Okay. And you didn't hire any sort of expert; correct?

24 A No. We didn't hire any ballistics expert. We did have

Rosalind Sellers - Cross by Mr. Thomas

21

1 our investigator.

2 Q There were a bunch of 45s shot that night; right?

3 A Correct.

4 Q And there were also a bunch of 380s shot that night?

5 A Correct.

6 Q And a nine millimeter?

7 A Correct.

8 Q No further questions.

9 THE COURT: All right.

10 MR. THOMAS: May it please the Court?

11 THE COURT: Uh-huh.

12 CROSS EXAMINATION

13 BY MR. THOMAS:

14 Q Ms. Sellers, how many meetings do you think you had with
15 Mr. Wright before trial?

16 A Probably at least ten. I know I would meet with him at
17 least every other week, and like I said, I was at the
18 detention center quite often.

19 Q And so during all those meetings you had plenty of
20 opportunity to discuss the charges with him?

21 A Yes.

22 Q Did you get to share any of the -- what did you get in
23 discovery from the State because I know we're saying you
24 didn't have all the stuff, but what did you get from them?

25 A I got the incident reports. I got the warrants. I did

1 get statements from the -- some of the eyewitnesses. I got a
2 statement from Ontario Manning, I believe, that was in the
3 vehicle with Mr. Wright.

4 Q But you never got any actual physical evidence?

5 A No, no physical evidence until, again, the week of the
6 trial. There were photographs, but no physical evidence was
7 opened until the week of the trial.

8 Q Did you have those photographs before trial or at what
9 point do you remember getting those?

10 A I can't recall if we got all of the photographs,
11 including the, the bullets, but I know we'd gotten some
12 photographs of the crime scene that night, and then we also
13 even had somewhat of a graph that indicated where the bullets
14 or the shell casings were found, which helped us when we went
15 back out to the scene.

16 Q And if I --

17 MR. THOMAS: May I approach, Your Honor?

18 THE COURT: Uh-huh.

19 BY MR. THOMAS:

20 Q I'm just going to show you, just to refresh your
21 recollection, that is what was Exhibit Number 24 from the
22 trial.

23 A Okay.

24 Q After looking at that, do you remember now if there were
25 actually other cartridges that were found other than the 762s,

Rosalind Sellers - Cross by Mr. Thomas

23

1 | there were some nine millimeters found, other stuff?

2 | A Could have possibly been, but again, I don't recall.

3 | Q Did you have an opportunity to sort of go over with Mr.
4 | Wright all this evidence and all the discovery that you'd
5 | gotten?

6 | A Yes.

7 | Q And initially what was his version of events? What did
8 | he tell you was sort of his explanation for everything the
9 | first time you met with him?

10 | A Initially that he was not there.

11 | Q And then he eventually changed that story to, "Well, I
12 | was there, but I didn't do the shooting? I didn't shoot
13 | anybody?"

14 | A Towards the end, yes. That -- I don't even know if he
15 | ever came out and said that, "I was even there, just that I
16 | didn't do anything," and there, you know, these individuals
17 | did have some animosity with him, he's -- from some prior
18 | incidences that they've had.

19 | Q So safe to say your trial strategy was just basically say
20 | the State couldn't prove that he fired the gun that shot the
21 | victim; correct?

22 | A Correct.

23 | Q And you also, I think you went out and you found some
24 | witnesses who testified on Mr. Wright's behalf?

25 | A We did.

1 Q Said he hadn't -- they saw him with no gun, didn't see
2 him shooting it?

3 A Well, the, the one individual that I had to testify is
4 Ms. Livingston. She was a friend of Mr. Wright's, but she was
5 also in the armed forces at that time. She was in the
6 military. She didn't testify that she didn't see him with a
7 weapon, I don't believe, but she just testified to the fact
8 that there were multiple weapons, and from her weaponry
9 experience there were multiple weapons being fired and to her
10 it sounded as if there were multiple assault weapons being
11 fired.

12 Q And let's talk about that multiple assault weapons. Velo
13 Paavel from SLED is the person who analyzed all this evidence?

14 A I would have to check. I'm sorry. Was that Paavel or
15 Haval.

16 Q Paavel, I don't --

17 A P-A-A-V, yes.

18 Q Yeah. I'm not sure I know how to pronounce it either.

19 A Yes. That's correct.

20 Q I've read it a lot. So he's -- he did the forensic
21 analysis on the bullets?

22 A Correct.

23 Q And I think -- is it a fair summary of his testimony that
24 either a bunch of those bullets could have come from the same
25 gun or there could have been up to seven potential weapons

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1 that fired those 7.62 rounds? Does that sound about right?

2 A That's, that's correct.

3 Q And he actually tested the physical bullets themselves?

4 He didn't look at the pictures. He had the actual bullets

5 when he ran his tests. That was his testimony?

6 A Correct.

7 Q And then all that got lost after he testified?

8 A Correct.

9 Q And again, there were witnesses that testified for the
10 State who said they heard the assault weapon fire and then
11 they saw the victim dead and then they heard the, the small
12 handgun fire later? Was that sort of what some witnesses
13 recalled?

14 A The witnesses testified that Mr. Wright was the only
15 individual with an assault weapon and that he was the only
16 individual firing that weapon.

17 Q And then in terms of the -- Mr. Redmond's opening
18 statements, you said you didn't see anything objectionable at
19 the time?

20 A At the time I didn't I guess because that was
21 inexperience. Now looking back there would have been an
22 objection --

23 Q Okay.

24 A -- to the statement.

25 Q And then in terms of -- do you recall, I mean, let me

1 refresh you. Let me let you look at the page 90 again that
2 you've already read from.

3 A Okay.

4 Q If you would just read line 10 to yourself.

5 A Okay.

6 Q Mr. Redmond says something, maybe or maybe not
7 objectionable, didn't object at the time, but then he goes on
8 and he says that, "But what I say here isn't evidence."

9 A Correct.

10 Q Is that correct?

11 A Uh-huh.

12 Q And do you also recall Judge Russo telling the jury a
13 couple of different times that what the lawyers say in opening
14 and closing statements isn't evidence?

15 A Correct. Yes.

16 Q In terms of your defense strategy in this case, and would
17 you say that you were kind of faced with overwhelming evidence
18 against Mr. Wright in terms of the witness testimony at least?

19 A In terms of the witness testimony it was overwhelming
20 because it was very difficult. Although we believed that
21 there were multiple individuals firing an AK-47 or an assault
22 rifle, we didn't have any of those individuals to come forth
23 and counter that information.

24 Q And you had an investigator that went out and actually
25 talked to all these people that were there that night?

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1 A We did have investigator that worked with our office. I
2 know the investigator went out and spoke with the security
3 guards. We actually -- they were working at a strip club. So
4 we actually had to go in and speak with them, and we also
5 spoke with another individual that was struck by a gun, by
6 gunfire that night, a Jameka Green, I believe her name was.

7 Q And she was actually -- okay, she -- her -- she was never
8 brought up at this trial; correct?

9 A Correct.

10 Q But there was evidence that another person was shot that
11 night?

12 A Yes. And she was -- Ms. Green was the person that was
13 shot that night.

14 Q And then real quick, you objected to the use of the AK-47
15 as demonstrative evidence?

16 A Correct.

17 Q And you objected to -- you basically asked for them to,
18 to suppress all of the bullet and casing evidence because you
19 couldn't get the actual physical evidence?

20 A Correct.

21 Q And you also tried to cross examine the bar owners about
22 their licensing, and the Judge wouldn't let you?

23 A Correct.

24 Q Thank you, Ms. Sellers. That's all I have.

25 MR. SHAFFER: No further questions, Your Honor.

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1 THE COURT: All right. Ms. Sellers, you may step down.

2 A Thank you, Your Honor.

3 MR. SHAFFER: The Applicant calls Jeremy Wright.

4 Whereupon, Jeremy Wright was called to the stand, duly
5 sworn by the clerk and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. SHAFFER:

8 Q Mr. Wright, where are you from?

9 A Dillon, South Carolina.

10 Q And did you grow up in Dillon?

11 A Yes, sir.

12 Q Where are you currently housed at?

13 A McCormick Correctional Center.

14 Q Okay. And what sentence are you currently serving?

15 A A life sentence.

16 Q And that's in the state court?

17 A The state, yes, sir, and the federal.

18 Q Okay. So you have a federal life sentence as well?

19 A Yes, sir.

20 Q Okay. And tell us what the federal life sentence is for.

21 A The federal life sentence is based on where I possessed a
22 weapon.

23 Q Okay. And that's arising out of this incident?

24 A Yes, sir.

25 Q Okay. Now, prior to getting locked up, what did you do

Jeremy Wright - Direct by Mr. Shaffer

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1 for a living?

2 A What I do for a living. Well, I go work with my uncle.

3 Q What did you do for your uncle?

4 A Cut grass.

5 Q The night, the night that this happened where were you
6 at?

7 A The night when this happened, this occurrence happened?

8 Q Yeah.

9 A Well, I was, I was out there.

10 Q You were at the club?

11 A Yes, sir.

12 Q Okay. And you were eventually charged; right?

13 A Yes, sir.

14 Q You were appointed an attorney?

15 A Yes, sir.

16 Q Was Ms. Sellers your first attorney?

17 A I think Glenn Manning.

18 Q Okay. Did you ever see him?

19 A No, sir.

20 Q Did you see Ms. Sellers?

21 A Yes, sir.

22 Q About how long into being locked up did you -- is the
23 first time you saw Ms. Sellers?

24 A Till -- prior to this date?

25 Q Yeah.

1 A I ain't seen her since I left back then 2007 from the
2 courthouse.

3 Q Huh?

4 A I ain't seen her since I left my trial.

5 Q No. No. I apologize. Prior to your trial, how many
6 times did you see Ms. Sellers while she represented you?

7 A I seen, I seen her a few times.

8 Q Okay. What did you all talk about whenever she came to
9 represent you?

10 A Well, once like right before the trial started we started
11 -- they never come with no motion of discovery there. The
12 motion of discovery what they gave following statements, this
13 what they gave me, and that was about it, and she was telling
14 me hold on until they bring forward evidence.

15 Q Okay. This is what they gave you? They gave you a copy
16 of the statements; is that right?

17 A No. I didn't give no statements. That's what the
18 witness supposed to have gave, but you can't read none of the
19 statements what they got because they put -- they don't have
20 the written statements. I don't know what happened.

21 Q Did, did your federal attorney, did they let you see the
22 statements that were against you?

23 A Yes. They wasn't, they wasn't, they, they wasn't no
24 statements like this though. That was something from ATF but
25 they wasn't no statements like this. They were just a