

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2016-001067

Eugene Patterson.....Petitioner,

v.

State of South Carolina.....Respondent.

APPENDIX
VOLUME III OF IV

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1 the field of DNA analysis?

2 A Yes, I have.

3 Q And, approximately, how many times have you
4 been qualified as an expert in that area?

5 A Approximately, 30 times.

6 MS. CAMPBELL: Your Honor, at this time, we
7 offer him as an expert in DNA analysis.

8 THE COURT: Voir dire?

9 MR. SUTHERLAND: None from us, Your Honor.

10 MS. PAYNE: No, Your Honor.

11 THE COURT: He is so recognized. You may
12 continue.

13 BY MS. CAMPBELL:

14 Q Investigator, DNA can be a useful tool in
15 solving crimes; is that correct?

16 A Yes, it can.

17 Q And is it always -- in every criminal case, is
18 it always something that may be useful?

19 MR. SUTHERLAND: Your Honor, she's leading.

20 THE COURT: Don't lead.

21 BY MS. CAMPBELL:

22 Q In your experience, DNA's usefulness, does it
23 vary from case to case?

24 A It does. DNA, of course, is a specific
25 molecule individual. It identifies individuals, but

1 DNA may or may not be developed from items of
2 evidence. It may develop profiles that are not
3 probative to the case.

4 Q In this case, were you submitted certain items
5 of evidence to attempt to do DNA analysis on?

6 A Yes, I was.

7 Q And when I say, when you attempt to do DNA
8 analysis, are you able to get DNA from every piece
9 of evidence that's ever submitted to you?

10 A No.

11 Q Why not?

12 A There may not be enough DNA present or there
13 may be no DNA at all. A lot of the items that we're
14 submitted these days because of the sensitivity of
15 the testing involved, involves testing items that
16 may have been just touched by individuals. We do
17 not see the DNA. All we do is swab it, extract it
18 and see if there's any DNA present.

19 Q In this case, I believe that there were some
20 items, some ammunition and other items, that were
21 submitted to you that I want to talk about first?

22 A Yes, there were several items submitted
23 including ammunition.

24 Q And I believe those would be swabs from actual
25 ammunition; is that correct?

1 A Yes.

2 MR. SUTHERLAND: Your Honor, she's leading.

3 THE WITNESS: All of the --

4 THE COURT: Hold on, please.

5 State your questions in a nonleading fashion,
6 please.

7 MS. CAMPBELL: Yes, sir.

8 BY MS. CAMPBELL:

9 Q You can proceed.

10 A All of the items I received were swabs. They
11 were swabbed by crime scene personnel from various
12 items and submitted for DNA analysis.

13 Q And are you familiar with a man named Sam
14 Richards?

15 A Yes.

16 Q And is he qualified or does he often submit
17 swabs from items of evidence?

18 A Yes. He's an investigator in our crime scene
19 unit. He submits evidence very often to our
20 laboratory.

21 Q In this case, I want to refer to what's
22 referred on your report item number 22. What items
23 were submitted to you in that case?

24 A You want me to elicit all the items; is that
25 correct?

1 Q Starting with number 22 on your item number.

2 A Item number 22 is two swabs from nine
3 millimeter casings. Item 23, two swabs from .380
4 casings. Item 24, a swab from an unfired .380
5 cartridge.

6 Q Let me stop there. Those were items that were
7 found at the scene. Did you do any testing -- when
8 you talked about the two swabs from the nine
9 millimeter casings and the two swabs from the .380
10 casings, did you attempt to do any testing on those
11 items?

12 A No, I did not.

13 Q And tell this jury why you can't get DNA off
14 those items.

15 A Those are fired cartridge casings. We have had
16 experience in our laboratory and has been reported
17 in scientific literature that we do not get any
18 results from such items and so we do not waste time
19 and resources testing them.

20 Q So I'm going to show you what's been marked as
21 State's Exhibits Number 67 -- 66 through 70. These
22 are all fired cartridge casings. Would there be any
23 reason for you to attempt to get DNA from these
24 items?

25 A No.

1 Q The last item you mentioned was what item?

2 A A swab from an unfired .380 cartridge.

3 Q And what's the difference between -- what's the
4 difference between an unfired and a fired cartridge
5 casing?

6 A The fired cartridge casing no longer has the
7 bullet present and a cartridge is a complete --

8 Q What was the caliber of the unfired cartridge
9 casing?

10 A It was two swabs from nine millimeter casings
11 and two swabs from .380 casings.

12 Q And those were fired or unfired?

13 A Fired.

14 Q And you also mentioned an unfired. What was
15 it's --

16 A A .380 cartridge.

17 Q Did you attempt to get DNA from the swab taken
18 from the unfired cartridge casing?

19 A Yes, I did.

20 Q And what was your result?

21 A There was no DNA present on the unfired .380
22 cartridge.

23 Q Is that unusual?

24 A No, it's not unusual. It's a very small item.
25 Again, we're looking for possible skin cells that

1 may have been left by someone who handled it. It
2 would be completely dependent upon the person who
3 handled it. Some people shed their skin cells very
4 readily, other people may not. Items that are
5 touched is just simply a hit and miss type of guess
6 work as to whether or not DNA is there. We test it.
7 We examine it for DNA. If there's some there, we
8 try to develop a profile. If there's not, then we
9 stop at that point. In this case, there was no DNA,
10 so my report reflected the fact that there was no
11 DNA extracted from this item.

12 Q Did you also receive swabs from various items
13 from some money?

14 A Yes.

15 Q And what were those items?

16 A A swab from a dollar bill, a penny and five
17 quarters.

18 Q And when you examined the swabs from that
19 currency, what was the result?

20 A Either there was no DNA found or there was a
21 limited amount of DNA and no profile was developed.

22 Q And what does that mean when you have DNA, but
23 you can't develop a profile?

24 A There has to be enough DNA present to develop a
25 complete profile. Very often we get partial

1 profiles that are just not sufficient for a
2 comparison and we do not want to implicate or
3 anything like that with such a profile.

4 Q And, in this case, it was either you didn't
5 have anything sufficient to make an evaluation?

6 A That's correct. Either no DNA was found or
7 just a minimal amount and no profile.

8 Q Is that unusual?

9 A No.

10 Q Additional items that were submitted are swabs
11 -- I'm sorry for misstating that -- did you also get
12 a swab from a gum wrapper foil?

13 A I did.

14 Q And what was the result of that?

15 A There was DNA present on that and I developed a
16 full male DNA profile.

17 Q Were you able to identify it any further?

18 A No. Without running known samples to compare
19 it, then it would have -- no identification would be
20 made, but it was submitted to what we call the
21 combined DNA indexing system. It's a DNA data base
22 of all convicted felons in South Carolina and the
23 United States and it was compared to that data base
24 and no hits were obtained. In other words, it did
25 not match anybody in the data base.

1 Q And do you know what, if any, significance the
2 gum wrapper foil had in this case?

3 A I did not.

4 Q Did you also get a swab from a peach candy bag?

5 A Yes.

6 Q What was the result of that?

7 A A minimal amount of DNA, no profile was
8 developed, nothing of significance.

9 Q Did you also get a swab from the victim's cell
10 phone?

11 A I did.

12 Q What was the result of that?

13 A Not sufficient DNA for a profile.

14 Q Did you also get a swab from a black plastic
15 tray?

16 A I did.

17 Q What was the result?

18 A Insufficient DNA to develop a profile.

19 Q Finally, did you also get a swab from a plastic
20 Lipton bottle?

21 A I did and I obtained a complete female DNA
22 profile.

23 Q And, again, do you know what significance, if
24 any, the Lipton bottle had in this case?

25 A I do not.

1 Q You're familiar with crime scene
2 investigations?

3 A Somewhat.

4 Q And when a crime scene investigator goes to a
5 crime scene, do they investigate -- do they
6 collect -- how do they collect evidence?

7 A Usually they collect evidence -- anything that
8 they perceive as possible evidence, they would
9 collect.

10 Q And is it better to err to collect more or
11 less?

12 A More, obviously, because if you leave it and
13 it's gone when you come back, then it's of no value.
14 But if you collect -- most of the evidence that's
15 collected on a case is evidence that's probably not
16 used.

17 Q And these items from the crime scene and from
18 the victim, again explain why, on the fired
19 cartridge casings, you simply don't do the testing?

20 A Well, we did test them for a while, we never
21 got any results. And this is something that has
22 been addressed universally in the forensic field.
23 And other laboratories are reporting the same thing
24 that they're not getting anything. And so it's
25 become universally accepted until better procedures

1 or more sensitive testing is developed, that most
2 laboratories choose not to bother to test them. And
3 laboratories that do test them aren't getting any
4 results.

5 Q In some cases such as when a shooting is
6 involved, can the defendant's clothing be collected
7 later and perhaps have blood on it?

8 A Yeah.

9 Q Would you expect to find any DNA evidence from
10 the victim on the defendant's clothing if there's --

11 MR. SUTHERLAND: Your Honor, she's leading.

12 MS. CAMPBELL: Hypothetical.

13 THE COURT: You hadn't finished your question.

14 Go ahead.

15 BY MS. CAMPBELL:

16 Q Hypothetically speaking, if a person is shot
17 from a distance of, say, more than 15 or 20 feet,
18 would you expect to find any of the victim's DNA on
19 any of their clothing?

20 A No, I would not. I think common sense would
21 tell us that.

22 MS. CAMPBELL: Thank you.

23 THE COURT: Cross?

24 MR. SUTHERLAND: Please the Court.

25

CROSS-EXAMINATION

BY MR. SUTHERLAND:

Q Sir, is it Investigator Barron or Sergeant Barron?

A John Barron.

Q John Barron?

A That's correct.

Q Well, I'll call you sir. And just something that you said that interested me. Now, you said that you can't or that you don't test fired cartridges for DNA; do you recall that testimony?

A Not any longer. I said we did for a while when we started the laboratory. DNA testing has come a long way over the years, it's very sensitive and so that is a common piece of evidence. We tested for a while, never got any results and other laboratories in the United States were reporting the same thing. As a matter of fact, in some of the scientific literature, articles have been written saying that people aren't finding anything.

Q And why was that again, sir?

A Why?

Q Yes, sir.

A I don't know if I can explain exactly why there's no DNA present, but there's just not any

1 that we've been -- that scientists have experienced,
2 no DNA found on fired cartridge cases. It could
3 have something to do with the heat and the pressure
4 applied to it.

5 Q Well, I mean, somebody could conceivably --
6 well, I mean, if you don't know why, I was going to
7 say somebody could conceivably touch or handle these
8 things afterwards and the oil or sweat from their
9 fingers could get on there?

10 A Is it possible that someone handled it
11 afterwards?

12 Q Yes, sir.

13 A Probably possible, but I would think it would
14 be unlikely because they're thrown from the gun and
15 who knows where they land.

16 Q Yes, sir. And when you were speaking about
17 finding DNA on things like a .380 cartridge, it
18 would be where somebody may have been handling that
19 and potentially sweat or oils from the hand as they
20 might have been loading it into --

21 A Right. Any item that we touch, I mean we have
22 developed DNA profiles from checks, forged checks,
23 from fingerprints, from items, doorknobs, steering
24 wheels, things that you touch. If you shed enough
25 skin cells, and again that would be dependent upon

1 the individual because it's not going to be the same
2 for every individual, some people for some --
3 whatever reason will leave more skin cells which
4 have DNA in them. Every cell that has a nucleus in
5 your body has DNA and skin cells is one of those
6 cells.

7 Q So, conceivably, if someone has a fingerprint
8 that would be a smudge that might not be suitable
9 for a fingerprint examiner if those oils or the skin
10 cells are present there, you could conceivably get a
11 DNA match from a bad print?

12 A That's true.

13 MR. SUTHERLAND: I have no further questions of
14 this witness at this time, Your Honor.

15 THE COURT: Cross?

16 MS. PAYNE: No questions, Your Honor.

17 THE COURT: Redirect?

18 MS. CAMPBELL: No, sir.

19 THE COURT: Thank you, sir. You may step down.

20 Ladies and gentlemen, we'll take another ten
21 minute break. Don't discuss the case.

22 (The jury retires to the jury room.)

23 THE COURT: Court's in recess for ten minutes.

24 (Brief recess.)

25 THE COURT: Are you ready?

1 MS. CAMPBELL: Please the Court. Your Honor,
2 over the break, I was looking at some cases on
3 redacted statements, specifically they're -- and Ms.
4 Payne has a beautiful memo on it. It's my
5 understanding in reading -- and State versus
6 Fletcher is one of the more recent cases and I
7 happened to participate in that case, Your Honor.
8 In that case, I believe the judge had us actually
9 put in instead of the name of the person, you would
10 say like Joe and the other guy. Any physical
11 description, of course under Singleton, should be
12 deleted and I think we've done that, including the
13 reference to the nine millimeter.

14 However, Your Honor, the cases do hold, too, I
15 believe, that it also has to be able to make sense;
16 therefore, my only objection to removing the word
17 they, and I believe Ms. Payne would join with me on
18 this, is that it doesn't make anymore sense.

19 There's also a United States Supreme Court case
20 that says instead of leaving a blank or using the
21 word deletion, like deleted where the name was, that
22 you should put in some other misnomer, such as the
23 other guy or something of that nature. I don't
24 believe that's what defense counsel wants in this
25 case, and that's just me looking at the law quickly.

1 And I'm sure you know a lot more than I do, but my
2 understanding is I just can't give any physical
3 description or any kind of identifying factors to
4 the person.

5 However, to take out the word they, would take
6 it totally out of context and would, therefore, not
7 make any sense. The cases even address the fact
8 that although when you take the redacted confession
9 and couple it with other evidence, it may
10 inferentially implicate the defendant, that that is
11 kind of -- that that can happen. And that's me not
12 saying anything very well.

13 **THE COURT:** I understood you.

14 **MS. CAMPBELL:** Ms. Payne might be able to
15 address it a little better.

16 **MR. SUTHERLAND:** And, Your Honor, she had --
17 and I'm sorry it took me so long to read the case,
18 but I just don't read the case the same way. And I
19 told Ms. Campbell, it looks to me like that a
20 further -- that further redaction would be the
21 remedy to that.

22 I understand that she tried this case and there
23 was a substitute in language, but with respect to
24 the word they, that tells me it's a direct reference
25 to it would be him along with somebody else, but

1 that's the word they, those guys over there, they, ()
2 that is directly referring to him. I would just
3 like to have the word they redacted out of there.

4 I understand that they both want the plural in
5 there, you know, for their own reasons, but I don't
6 think that it's too much to ask, and I don't think
7 that it's too much to ask just to remove the plurals
8 in there in that respect, Your Honor.

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

10 **MS. PAYNE:** Thank you, Your Honor. May it
11 please the Court. Your Honor, in preparing for our
12 own -- the statement that we wanted redacted with
13 Eugene Patterson, I did prepare a memo in support of ()
14 it, Your Honor. And our understanding of Bruton is
15 that any physical descriptions referencing the name
16 of someone, that is when a redaction would be
17 necessary.

18 The cases further hold in Richardson v. Marsh
19 is a U.S. Supreme Court case, was, I believe, cited
20 -- either cited in Bruton or was a part of the
21 Bruton issue, was that a limiting instruction is the
22 necessary remedy when there is a reference that's
23 not a physical description or a name that may
24 inferentially link up the co-defendant in this case,
25 and that is exactly what's going on, that the they ()

1 is an inferential link to Mr. Patterson and
2 Mr. Feldman where it's not a direct physical
3 description and a direct name.

4 We would ask that the remedy in this case would
5 be a limiting instruction given by the Court. And
6 it wouldn't --

7 **MR. SUTHERLAND:** And, Your Honor, I mean I
8 believe that a limiting instruction would actually
9 draw attention to it. You know, my recollection,
10 and frankly -- my recollection of the Richardson
11 versus Marsh in, I recall, my read of it, was that
12 the requirement is the redaction of any reference to
13 the defendant, I believe that's the language, any
14 reference. And I would incorporate the word they
15 into a reference to the defendant. And their
16 holding was that as long -- in this inferential --
17 the inferences that they're speaking about, I don't
18 believe that that was from the particular -- the
19 particular words, the substance of the redaction.

20 I believe, sir, that the plural should be taken
21 out. I believe it's -- I believe it's fine under
22 Richardson and the case that I just reviewed with
23 Ms. Campbell. And then, again, I believe a limiting
24 instruction might draw attention to it. I mean, I
25 understand the case law about the obvious gaps is

1 from the United States Supreme Court is what Ms.
2 Campbell handed to me. Again, with my quick read of
3 that, then the better answer would be more redaction
4 rather than less, sir.

5 **THE COURT:** Yes.

6 **MS. PAYNE:** I just wanted to read a quote from
7 Richardson v. Marsh, Your Honor. It says, The
8 confrontation clause is not violated when a
9 defendant's name is redacted, but other evidence
10 links the statement's application to the defendant
11 when a proper limiting instruction is given. And,
12 furthermore, Richardson v. Marsh specifically
13 declined to extend Bruton rules to the situation
14 when a defendant's name or any reference to him is
15 redacted even though the statement's application
16 then is linked up by other evidence properly
17 admitted against the defendant.

18 **THE COURT:** Do y'all have the cases you're
19 talking about or the brief?

20 **MS. CAMPBELL:** Yes, sir. And I believe that's
21 a similar quote in State versus Garrett, which is a
22 Court of Appeals South Carolina case.

23 **MS. PAYNE:** Beg the Court's indulgence, we do
24 have it.

25 **MS. CAMPBELL:** This is Richardson versus Marsh,

1 State versus Fletcher and I'll hand up State versus
2 Garrett.

3 (Pause.)

4 MR. SUTHERLAND: May I approach, sir?

5 THE COURT: Yes, sir.

6 (Pause.)

7 THE COURT: We're going to have to break for
8 the day. Bring the jury in.

9 (The jury returns to the courtroom.)

10 THE COURT: Ladies and gentlemen, after we took
11 that recess, the attorneys raised a legal issue that
12 I need to address before the next witness testifies
13 and I've been trying to deal with this, but they've
14 handed me about a hundred pages of stuff to read and
15 we discussed this earlier in the week and I knew it
16 was coming up, I just didn't know when. So I'm not
17 going to keep you here while I try to read through
18 this. I'll read it tonight.

19 I'll need you back here in the morning at 9:30.
20 I'm going to talk with them about 9:15 and tell them
21 what I've decided, but I want you here at 9:30.

22 Based on what I've been told, my optimism about
23 finishing tomorrow is no longer in existence. We
24 will definitely be going into next week and I don't
25 know how far. I'm still hoping no further than

1 Tuesday. I'm going to try to avoid that for many
2 reasons, some of which involve having to reschedule
3 things that we specifically scheduled separately
4 from other court and some of which involves that we
5 have a conference next week that I'm required to
6 attend that I've already paid for and I won't get my
7 money back, so I've got a lot of incentive to finish
8 this thing, too. So we will work hard. We'll do
9 what we can, but I'm going to make sure above all
10 things that I do my job the best I can and give
11 everybody concerned a fair trial, including trying
12 to be receptive to your needs.

13 I don't do things with juries like bring you in
14 at eight o'clock in the morning and work you till
15 nine o'clock at night. I just don't think that's
16 fair to anybody. So if you would, please be in the
17 jury room in the morning at 9:30. Thank you.

18 (The jury was excused for the day.)

19 **THE COURT:** Did you say you had a brief?

20 **MS. PAYNE:** Not one that we are willing to hand
21 in at this time, Your Honor. And just to make
22 clear, we're not joining in on the State's motion.
23 We're making our own motion just for a limiting
24 instruction not for a redaction.

25 **THE COURT:** Okay.

1 MS. PAYNE: We did want to talk to the Court
2 about scheduling on our behalf, also.

3 THE COURT: Sure.

4 MS. PAYNE: I believe the State has indicated
5 at some point that they might end tomorrow.

6 MS. CAMPBELL: Yes. I mean, barring -- every
7 time we get rolling, though, we seem to -- we
8 anticipate between four and six more witnesses at
9 the most, Your Honor.

10 MS. PAYNE: I don't know if Mr. Sutherland
11 plans on putting up a case, we do at this point.
12 And Your Honor has also been inclined to allow the
13 jury to view the scene. We didn't know at what
14 point you would like to allow them to do that, as
15 well as we have one of our witnesses who's not going
16 to be available tomorrow afternoon as he's going out
17 of town. So we can do everybody but him.

18 THE COURT: Well, I don't recall too many cases
19 where I have read as much law as I've read on this
20 one. And I can go ahead and give you a little taste
21 of some of the things that I'm going to want to talk
22 to you folks about, but I suspect we may have to
23 talk about the law a good bit. So I really -- I
24 don't want to do anything to rush through the trial.
25 I don't want to do anything to cause the defense to

1 have to rush through anything. I'm perfectly
2 willing to accommodate you with your scheduling
3 needs.

4 I still am inclined to allow the jury to view
5 the scene. I don't know specifics about that. I
6 guess I need to find out who would be arranging that
7 for the county and, logistically, what all would be
8 entailed and what suits them better. We usually do
9 that at the very last thing, but that's not
10 necessarily always required. I have had a jury come
11 in like in the morning while we were talking about
12 law and let them go to the scene and then waited on
13 us to finish talking about law.

14 Do you have something else?

15 MS. PAYNE: Well, I was just going to let Your
16 Honor know that we have talked to Barbara Scott
17 before. We were going to let them know again that
18 we were kind of nearing the end of the case. I
19 believe it's on the party making the motion to kind
20 of get everything together, so we're trying to do
21 that as sufficiently as possible. The deputies also
22 contacted us about whether we would want our clients
23 to go. Obviously, we do not want our client to go
24 and we don't need to go. We just are asking that
25 the jury go. So we'll do everything we can to help

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STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

EUGENE D. PATTERSON,

APPELLANT

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V.

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① 1 Your Honor get it arranged.

2 THE COURT: Did you have something else?

3 MR. SUTHERLAND: Just, likewise, we don't want
4 Mr. Patterson out there in a police car and
5 everything, sir.

6 THE COURT: Well, generally nobody goes or just
7 the lawyers go. And if the lawyers go, they stand
8 off at a distance just so they can see if anything
9 arises that causes them concern, but I would say in
10 90 percent of the cases, the lawyers don't go. It's
11 fine with me if you do go, but if anyone goes, all
12 of you have to go. I don't ever recall a case where
13 we sent the defendants out.

14 I haven't heard all of the evidence by a long
15 shot, I understand that. I am not trying to create
16 problems. I've been wrestling with all of these
17 concepts of -- that I heard you all mention in the
18 opening statement that each of you gave.

19 The problem with a lot of this is,
20 unfortunately is a rather common problem, and that
21 is that the cases are decided based on what's
22 presented to the Court and they get presented in a
23 certain fashion. And if people are not very
24 specific in how they present things to the appellate
25 courts, the appellate court sometimes seem to adopt

1 some language that merges different concepts
2 together and it becomes difficult to separate those.
3 And then you'll eventually get an appellate court
4 opinion where after things have gotten kind of
5 muddled, they will step in and say this really
6 wasn't a case of X, it was a case of Y theory.

7 I'm really struggling with the aiding and
8 abetting, hand of one hand of all, accomplice
9 liability, things that were argued in the opening
10 statement. I have read the most recent cases all
11 the way back to whatever I could find till about
12 1920. And when you get back, particularly in those
13 old cases, I can tell you you can twist your mind
14 into a pretzel because they have language that does
15 seem to apply to a situation similar to the one
16 that's before the Court now and then you have to sit
17 there and try to figure out if, in reading this
18 language, I am twisting the language or if the
19 language is twisting me.

20 Generally, people that are aiding and abetting
21 and assisting each other are people who are
22 accomplices from which the term hand of one hand of
23 all typically stems, those people are acting in
24 concert. And I can twist logic around and twist
25 some reasoning around, but at first blush, reaction

① 1 is that these folks that are on trial here were not
2 acting in concert. And, again, I can make a logical
3 scenario where one could argue that they are acting
4 in concert, but it sort of twists the common
5 concepts of aiding and abetting and assisting each
6 other.

7 I've looked at other things. I've looked at
8 the felony murder rule and that one also is one that
9 there was a recent -- fairly recent pronouncement
10 that said that there was a reminder to the bench and
11 bar, which that's usually when the appellate court
12 comes in and says, okay y'all have been screwing
13 this up long enough, we're reminding you that this
14 doesn't mean what you've been saying it means, trial
15 courts. But I've been looking at that, I'm having
16 some difficulty with that.

17 Now, as far as the concept of malice, I don't
18 have much problem with that right now. As far as
19 the concept of one individual being found guilty of
20 murder and the other not, I don't have a problem
21 with that right now.

22 I guess what I need to tell y'all is that you
23 need to get your folks that you can working on
24 getting me cases that are similar in nature to the
① 25 one we have before us. I've even read lynching in

1 first degree cases where there's mob violence that
2 results in a death. I've read everything I could
3 think of and I need your help on these concepts of
4 how you can hold two people responsible for the
5 death of a person. I know you can. I know there
6 are many instances when you can. I've had trials
7 with instances where you can, but almost everything
8 you're going to find when you start looking this up
9 is going to be talking about people acting in
10 concert. So maybe what I'm thinking is twisted
11 logic is not twisted logic.

12 Those are the things that are concerning me.
13 Those are the things y'all need to be looking at and
14 any help you can give me, I'd appreciate it. Meet
15 me, please, at 9:15 in the morning. I'll read
16 through these cases you've handed up overnight and
17 I'll -- do you have the redacted -- can y'all make
18 me a copy of the redacted statement?

19 I think the term I had used earlier, and again
20 I don't have the statement in front of me, it's
21 been, what, an hour and a half, two hours ago that I
22 made that initial comment, was I was saying
23 something about using the term shots or shooter, it
24 may be plural, but if y'all have got case law, I'll
25 look at it and see what it says.

① 1 And if you said the shots were coming from a
2 particular direction, that takes any identification
3 out and if somebody's shooting or some ones are
4 shooting, it's the same concept as to the direction
5 of the shots and I thought maybe that might be a way
6 to cover it.

7 All right. 9:15 in the morning.

8 (Whereupon, the proceedings were concluded
9 for May 8, 2008.)

10 (The following proceedings were held on May
11 9, 2008.)

12 **THE COURT:** All right. I was given late
13 yesterday afternoon copies of cases, U.S. Supreme
14 Court cases of Richardson versus Marsh, which is at
15 107 SC 1702, it's a 1987 case, and then a 1998 case
16 of the U.S. Supreme Court, Gray versus Maryland,
17 which is 118 SC 1151.

18 I also was given some decisions of our state
19 appellate courts, State versus Evans is a 1994 case
20 of the Supreme Court of South Carolina, which is
21 cited at 450 S.E.2d 47, State versus Garrett is a
22 case from the South Carolina Court of Appeals, a
23 2002 case at 567 S.E.2d 523, and then State versus
24 Fletcher, an opinion of the South Carolina Court of
25 Appeals from 2005. Now, this copy I have states

①

1 that cert was granted and I didn't catch that until
2 just now, but anyway, the Court of Appeals decision
3 was from 2005. It's 609 S.E.2d 572. What happened
4 on cert?

5 MS. CAMPBELL: Your Honor, I believe -- did
6 they send it back -- that was my case and I believe
7 they sent it back without changing anything, but
8 I'll double check that before I represent that to
9 the Court completely. I know they haven't come
10 back.

11 THE COURT: Okay. I was also given -- I took
12 home with me to read last night the statement of
13 Andre Tayson Boone dated February 28th, 2007. The
14 copy I have the exhibit number's not visible, so...

15 COURT REPORTER: Exhibit 7.

16 THE COURT: It's Exhibit 7. I'm going to make
17 this ruling as short as I can make it. And I will
18 give you all a few minutes to digest the ruling.

19 Bruton versus United States, or U.S. versus
20 Bruton, I can't remember which it is right now,
21 stood for the proposition we talked about earlier in
22 the week in that the basic proposition very broadly
23 stated is that if you have a nontestifying
24 co-defendant in a case that the State has called
25 where they're trying more than one person at the

① 1 time, that the statement of that nontestifying
2 co-defendant cannot be admitted into evidence where
3 it implicates the other co-defendant because the
4 other co-defendant loses the right to cross-examine,
5 loses the right of confrontation, which is a
6 fundamental constitutional right in my view.

7 Now, the Richardson case came along thereafter
8 and interpreted -- it's Bruton versus United States,
9 I should have known that -- and it is widely cited
10 for the proposition that where a statement that
11 would otherwise be inadmissible under Bruton is
12 redacted, that the statement can be admitted even if
13 the statement taken in conjunction with other
14 evidence presented during the trial makes a linkage
15 between the defendant, co-defendant, in the trial
16 with a nontestifying co-defendant.

17 So as long as the statement itself does not
18 implicate the defendant who is raising the objection
19 under Bruton, the fact that other evidence in the
20 case may, by implication, make it, I think, even
21 fairly obvious that the person that is being
22 mentioned in the statement would be the objecting
23 co-defendant is still admitted.

24 The problem is that's not really what that case
25 says. You had a factual situation there where you

1 had three people in a car, two in the front seat,
2 one in the back. And the two in the front seat were
3 having a conversation. There was a statement given
4 about that conversation. In that statement, what
5 was presented to the jury redacted any mention of
6 the person in the back seat.

7 Now, her version was, and I don't recall if it
8 was in testimony that was presented in front of a
9 jury or testimony done in camera, I was reading this
10 stuff between 1:30 and 3:00 this morning, her
11 statement -- or her position was that she couldn't
12 hear that conversation because the radio was up so
13 loud, she couldn't hear it and she didn't know what
14 they were talking about, but she couldn't
15 cross-examine about the statement.

16 I fully understand why the U.S. Supreme Court
17 did what it did in Richardson because they deleted
18 all reference to her. There's no mention whatsoever
19 in the statement that she was in the car or even any
20 hint that there was a third person in the car. It
21 was only by that other evidence that came into the
22 trial that the jury knew that somebody else was in
23 that car.

24 Now, our appellate courts in South Carolina
25 have gone through and interpreted these things, and

①

1 I am convinced that the situation that I have before
2 me right now is much more akin to what the U.S.
3 Supreme Court dealt with in Gray versus Maryland.
4 In Gray versus Maryland, you had a situation where
5 they had a statement and they went through, they
6 being the law enforcement officers and the
7 prosecutor, went through and redacted references to
8 a co-defendant and then when it was presented to the
9 jury, the officer that was reading it used the word
10 deleted or blank and also used, I believe, pronouns.

②

11 There was one section of this opinion where the
12 -- in the Gray opinion, where they're talking about
13 Richardson and this is, I can't see exactly what
14 page it's on, I think it's 1155 where it said, The
15 court added, we express no opinion on the
16 admissibility of a confession in which the
17 defendant's name has been replaced with a symbol or
18 a neutral pronoun.

③

19 The Gray court distinguished Richardson because
20 the statement that was being discussed -- I'm sorry
21 -- the statement that was talking about what was
22 being discussed in the front seat of the car did not
23 directly accuse the person in the back seat of the
24 car at all. In fact, it never even acknowledged the
25 existence of anybody in the back seat of the car.

1 And then there's a discussion where the Supreme
2 Court is talking about the kind of and not the
3 simple fact of inference. And the fact that blanks
4 are present implicates, factually, the co-defendant.

5 To give you an example, they cite, Who was in
6 the group that beat Stacy? And the answer, Me,
7 deleted, deleted and a few other guys. And the
8 Supreme Court stated, Why could the witness not
9 instead have said in response to the question, who
10 was in the group that beat Stacy, me, just skip the
11 bank deleted, deleted and say, and a few other guys?

12 Now, the dissent took the majority of the task
13 on that. I think it was a six, three decision.

14 Now, yesterday you all handed up to me this
15 statement of Mr. Boone, Number 7. And you basically
16 said something to the effect that y'all had gone
17 through it, but you want to make sure I didn't have
18 any problems with it. Don't ask me that again. I
19 appreciate being involved in it and I know that was
20 a good motive, but having read these cases now, I
21 think it's pretty clear that I'm not involved in the
22 redaction and I'm not involved in what the Gray
23 court refers to as editing. So I'm just going to
24 rule on what's specifically put before me.

25 And, also, before I forget it, there was one of

1 these opinions where they were talking about, well
2 why was this not objectionable in such and such a
3 case, and the answer was, because the parties agreed
4 to it. So if y'all agree to it, it's fine with me.

5 And those things I was suggesting that when it
6 come to my mind in the way of what I think would be
7 editing as opposed to redaction, in my mind,
8 redaction, I haven't looked any of this up, but
9 redaction is talking about just taking things out.
10 Editing would include redaction, but it could extend
11 to other things like referring to Mr. Patterson as
12 the Crip -- I'm sorry, not Mr. Patterson --
13 referring to the person as the Crip.

14 I'm reading through this and in the first two
15 pages that were not redacted or edited in any way,
16 there's clearly reference to more than one person.
17 In the parts that are edited, there are blanks.
18 There are sections where there are deletions and
19 then the Crip is used. There are sections where
20 there is a singular followed by a plural that
21 doesn't match.

22 So here's my ruling, I told you I was going to
23 try to make it as short as I could and believe it, or
24 not that's about as short as I can make it, my
25 ruling is that the State cannot present in its case

1 in chief State's Exhibit Number 7 because of Bruton
2 violation.

3 Now, having said that, that doesn't mean the
4 statement may not ever come in. I don't know
5 whether Mr. Boone's going to testify or not. I
6 don't know if you all can go through further
7 redaction and come up with something.

8 Yes, ma'am.

9 MS. CAMPBELL: We may be able to do that if I
10 can talk to Mr. Sutherland and have a break, Your
11 Honor, because we were close.

12 THE COURT: Sure.

13 Now, they get into a whole lot of discussion in
14 these cases, the U.S. Supreme Court, and I'm not
15 being critical in any way of what they're doing.
16 They have a very difficult job. They get into a
17 whole lot of discussions about the practicality of
18 certain decisions. I'm not going to sit here and
19 comment on the practicality of how I think this
20 affects different things.

21 Right now I have a nontestifying co-defendant.
22 I don't know if that's going to be the situation
23 later. My suggestion to you is that I would
24 probably be fairly liberal to everybody in allowing
25 reopening depending upon how things progress because

1 I think it's unfair to the trial court to ask us to
2 make rulings in the abstract when the defense
3 doesn't have to disclose its hand. And, again, like
4 I said, Mr. Boone may well testify and this issue
5 may go out the window. I'm not suggesting he should
6 or he shouldn't, that's not my call, that's not his
7 lawyer's call, that's his call.

8 Now, I do want to, before I step off the bench
9 and give you all some time to talk, I made some
10 comments very late in the day yesterday about
11 concerns and I was only expressing to you that I
12 wanted you to do research when you had the
13 opportunity because I was having difficulty
14 understanding accomplice liability, hand of one hand
15 of all, aiding and abetting. I also think I told
16 you all that I had been reading on other concepts
17 like the felony murder concepts and other things. I
18 don't want anybody to misconstrue what I was saying.

19 If one gets into reading all those common law
20 reasoning that evolve through the English court
21 system into our court system about the felony murder
22 rule and why it was adopted and what was the effect
23 of it, you can still find both of these guys guilty
24 under the felony murder rule.

25 Now, I'm not saying that I have finished

1 reading all I want to read. I think England did
2 away with that at some point, but we still have it.
3 I just don't want y'all to be confused by those
4 comments, don't try to guess what I'm thinking
5 because I don't know what I'm thinking half the
6 time, all right. I'm just saying I want you all to
7 research those concepts so that when I do start to
8 throwing questions at you, I'm not hitting you cold.

9 All right. I'll give y'all about 15 minutes to
10 talk. Thank you.

11 (Brief Recess.)

12 THE COURT: All right. If I understand
13 correctly now, all parties have agreed to the
14 introduction of a redacted version of the statement
15 of the 28th.

16 MS. CAMPBELL: Yes, sir.

17 THE COURT: You all have to give me a couple of
18 minutes because I've got to do the limiting
19 instruction, I suppose.

20 MS. CAMPBELL: Yes, sir. It will be several
21 witnesses down the line, but, yes, sir.

22 THE COURT: Oh, it's several witnesses down the
23 line?

24 MS. CAMPBELL: Yes, sir. We have these three
25 witnesses before that.

1 **THE COURT:** Good. I'll work on that because
2 I've never actually had to give one before. I'm
3 assuming it'll be short. It'll just say you can't
4 hold this statement in any way against
5 Mr. Patterson.

6 **MS. CAMPBELL:** To be used against -- yes..

7 Judge, for the record, too, the one that you
8 took home last night, we have now marked a copy of
9 that as 7-A because there was a reference in the
10 testimony yesterday to the Exhibit 7. And then we
11 have substituted the new redacted one is now Exhibit
12 7. The one you looked at last night is Exhibit 7-A.

13 **THE COURT:** Thank you.

14 (State's Exhibit Number 7-A, statement of
15 Andre Tayson Boone, was marked for identification
16 purposes.)

17 **THE COURT:** Are you ready for the jury?

18 **MS. CAMPBELL:** The State's ready, Your Honor.

19 **MR. SUTHERLAND:** Yes, sir.

20 **MS. PAYNE:** Yes, Your Honor.

21 **THE COURT:** Bring them in, please.

22 (The jury enters the courtroom at 10:30
23 a.m.)

24 **THE COURT:** Ladies and gentlemen, I once again
25 misjudged the time I wanted to have you here so we

1 could start as soon as we could. I told you I had
2 to do some reading last night and I'm not trying to
3 evoke any sympathy. I just want you to know that I
4 hadn't been goofing around. I was reading law at
5 three o'clock this morning. It just took a little
6 while to go through this after we got back today.
7 So I've made my ruling and we're straight. We're
8 ready to continue with the presentation of the
9 evidence.

10 Call your next witness.

11 MS. CAMPBELL: May it please the Court. State
12 calls Doctor Clay Nichols.

13 CLAY ALLEN NICHOLS,
14 having been duly sworn, testified as follows:

15 THE CLERK: Have a seat in the witness box,
16 state your name for the record please.

17 THE WITNESS: Clay Allen Nichols,
18 N-I-C-H-O-L-S.

19 DIRECT EXAMINATION

20 BY MS. CAMPBELL:

21 Q Doctor Nichols, where are you employed?

22 A At Richland Memorial Hospital as the forensic
23 pathologist and chief medical examiner for Richland
24 County.

25 Q So you are the chief medical examiner for

1 Richland County?

2 A That's correct.

3 Q And what do your duties include as the chief
4 medical examiner?

5 A Essentially I perform autopsies of people who
6 die suspicious or unnatural deaths.

7 Q Can you tell this jury a little bit about your
8 education and training in the field of forensic
9 pathology?

10 A I received my Bachelor of Science degree from
11 the University of Oklahoma in 1981, received my M.D.
12 also from OEU (ph) back in 1985. After that I
13 entered the residency program in both anatomic and
14 forensic pathology at MUSC completing that in 1989.
15 From '89 to 2000, I was on the faculty as an
16 associate professor teaching pathology to medical
17 students, fellows, residents. In 2000, I entered
18 private practice here in Columbia at Richland
19 Memorial Hospital. I hold an unrestricted license
20 to practice medicine and surgery in the State of
21 South Carolina and I'm board certified in both
22 anatomic and forensic pathology.

23 Q And have you been qualified before as an expert
24 in forensic pathology?

25 A Yes, I have.

1 Q And, approximately, how many times have you
2 been qualified?

3 A Several hundred.

4 MS. CAMPBELL: Your Honor, at this time, we
5 offer him as an expert in forensic pathology.

6 THE COURT: Any voir dire of the witness?

7 MR. SUTHERLAND: None from us.

8 MS. EVERHART: None, Your Honor.

9 THE COURT: He is so recognized. You may
10 continue.

11 BY MS. CAMPBELL:

12 Q Doctor, you mentioned that you were board
13 certified in anatomical and forensic pathology.
14 What's the difference between those two fields?

15 A Anatomic pathology is a basic part of
16 pathology. It deals with the disease process of
17 tissues. During the training period for being an
18 anatomic pathologist, you learn how to do autopsies.
19 A forensic pathologist has an additional one to two
20 years of training in dealing with autopsies on
21 people who die suspicious or unnatural deaths.

22 Q Such as in homicides?

23 A That's correct.

24 Q I want to turn your attention back to February
25 19, 2007. Did you perform an autopsy on a young man

1 named Brian Wright?

2 A Yes, I did.

3 Q He was, I believe, 15 years old at the time?

4 A Yes, he was.

5 Q And were there other people present when you
6 were performing the autopsy?

7 A Yes.

8 Q And would that include personnel from the
9 Richland County Sheriff's Department?

10 A Yes.

11 Q As well as people to assist you?

12 A Yes.

13 MR. SUTHERLAND: Your Honor, she is leading.

14 THE COURT: State your questions in a
15 nonleading fashion, please.

16 MS. CAMPBELL: Yes, sir.

17 BY MS. CAMPBELL:

18 Q Tell this jury generally how you went about
19 performing the autopsy and what things you were
20 looking for?

21 A An autopsy begins with usually a phone call
22 where information's exchanged. The body is arranged
23 to be delivered to Richland Memorial Hospital. Once
24 the actual examination begins, we look at the body
25 for any sort of injury or other problem that could

1 contribute or cause the death. Then an internal
2 dissection is performed where all of the organs are
3 removed, they're inventoried, they're weighed, small
4 pieces of tissue are removed from each main organs
5 and submitted for microscopic examination and, at
6 the same time, blood and/or urine and soft tissues
7 are collected for toxicologic evaluation. At the
8 end, the microscopic slides come back, toxicology
9 comes back and a final report is issued.

10 Q You mentioned in the beginning that at first, I
11 believe you said, a phone call is placed and
12 information is obtained?

13 A Yes.

14 Q Is that a history you get?

15 A That's correct.

16 Q And is that important in kind of directing you
17 in what you need to look at?

18 A Yes.

19 Q You mentioned also that you first do an
20 external examination, is that correct, looking for
21 any kind of injury?

22 A That's correct.

23 Q And when you first saw Brian Wright, did you do
24 that external examination?

25 A Yes, I did.

1 Q What were your findings?

2 A The main finding that there was a distant
3 perforating gunshot wound to the right back of the
4 head at a distance of four inches from the top of
5 the head and one point five inches to the right of
6 midline. The wound is circular with a zero point
7 three inch diameter. An asymmetrical zero point two
8 inch abrasion border is present at the six o'clock
9 position. No soot or powder stippling is
10 identified. The bullet is found to enter the skull
11 at this site traveling upwards approximately 45
12 degrees, forward 80 degrees and to the left ten
13 degrees, ultimately exiting from the right forehead.
14 The exit wound is located one point five inches from
15 the top of the head and zero point five inch to the
16 right of midline. The wound is somewhat stellate,
17 which means it's irregular and star shaped, with
18 lacerated edges measuring zero point five by zero
19 point two inch...

20 THE COURT: Doctor, can you slow down a little
21 bit she has to take down everything you say and
22 particularly when you use medical terms, I think
23 it's hard for her to keep up, okay.

24 THE WITNESS: How far should I backup?

25 COURT REPORTER: Zero point five.

1 THE WITNESS: Okay. Zero point five by zero
2 point two inch. Along its course, the bullet causes
3 cerebral laceration with associated epidural,
4 subdural and subarachnoid hemorrhage, as well as
5 associated skull fractures. The bullet exited and
6 was not recovered. In addition, the eyelids were
7 markedly swollen and also there was a minor abrasion
8 to the knee.

9 BY MS. CAMPBELL:

10 Q So you noted a minor abrasion to the knee, I'll
11 talk about that first.

12 A The minor abrasion to the knee happened after
13 the deceased fell. It's known as an angle abrasion
14 because Brian did not live long enough to have a
15 significant reaction to the injury.

16 Q So that would have happened after he fell?

17 A Yes.

18 Q The gunshot wound you mentioned it entered in
19 what part of his head?

20 A The right back of the head, approximately here
21 (indicating).

22 Q And it exited where?

23 A Right forehead, approximately here
24 (indicating).

25 Q And during the course of your examination, I

1 believe you actually had to look at his brain and
2 everything?

3 A Yes, I did.

4 Q Were you able to find any projectile or any
5 fragments from a projectile near or around the wound
6 or in the head?

7 A No.

8 Q And you're familiar with the term a through and
9 through bullet wound?

10 A Yes.

11 Q And is that how this would be characterized?

12 A That's correct. The bullet entered and exited
13 and the bullet was not recovered nor were any
14 fragments recovered.

15 Q Could he have survived this wound?

16 A No.

17 Q In the course -- did you also do an examination
18 of his entire body?

19 A Yes.

20 Q And other than the abrasion to the knee, were
21 there any other significant findings as far as what
22 happened on that night?

23 A No.

24 Q Additionally, did you do any tests as far as
25 toxicology is involved?

- 1 A Yes, I did.
- 2 Q And tell the jury why you do that.
- 3 A Any time a person is suspected of being a
- 4 victim of a homicide, toxicologic studies are done
- 5 to see if any illicit substances or intoxicating
- 6 substances were present. And no significant
- 7 substance was identified in Brian Wright's body.
- 8 Q So no alcohol?
- 9 A No.
- 10 Q No drugs?
- 11 A No.
- 12 Q You mentioned during the course of describing
- 13 the wound, that there was, I believe you used the
- 14 word, stippling?
- 15 A Yes.
- 16 Q And you said that there was not any stippling
- 17 present?
- 18 A That's correct.
- 19 Q Or any -- did you say something else?
- 20 A Soot.
- 21 Q Soot?
- 22 A Yes.
- 23 Q How is that significant to you as far as where
- 24 the entry in the back of the head was?
- 25 A If the gun was close enough to Brian that when

① 1 the trigger was pulled, unburned gunpowder would
2 cause a salt and pepper stippling pattern around the
3 wound or if the gun were even closer, the stippling
4 would be concentrated as a soot-like pattern
5 indicating that the gun was several inches, if not,
6 at least several feet away from Brian's head when
7 the trigger was pulled and could be as far back as a
8 maximum firing range of that weapon.

9 Q So it could be anywhere from several inches
10 from his head to the maximum firing range?

11 A That's correct.

12 Q And I believe you characterized it as a distant
13 gunshot wound?

14 A That's what that means is a distant gunshot
15 wound.

16 Q You also talked about the path that the bullet
17 traveled through his brain causing all those words.
18 Is there an easier way to characterize that
19 basically?

20 A It caused significant brain and head injury.

21 Q Which ultimately caused his death?

22 A That's correct.

23 Q I'm going to show you what's been marked as
24 State's Exhibit 90. Is that a diagram that you
25 prepared for this case?

1 A Yes, I did.

2 MS. CAMPBELL: Your Honor, at this time, I'd
3 offer it into evidence.

4 THE COURT: Any objection?

5 MR. SUTHERLAND: No objection, Your Honor.

6 MS. EVERHART: No objection, Your Honor.

7 THE COURT: Mark it in evidence, please, ma'am.

8 (State's Exhibit Number 90, diagram,
9 admitted into evidence.)

10 BY MS. CAMPBELL:

11 Q The trajectory of the wound in this case, was
12 it a pretty straightforward trajectory through his
13 skull?

14 A Straight as in level?

15 Q No, sir, as in a straight path?

16 A Yes.

17 Q And I understand that you meant -- you
18 indicated that it went at a slight angle; is that
19 correct?

20 A That's correct.

21 MS. CAMPBELL: Your Honor, may the witness step
22 down?

23 THE COURT: Certainly.

24 (Witness leaves the witness stand.)

25 BY MS. CAMPBELL:

1 Q If you'll go over on that side and use this
2 perhaps. You mentioned that the entrance wound --
3 and how can you tell the difference between an
4 entrance and an exit wound?

5 A An entrance wound is circular. It is caused by
6 not the bullet just perforating through the skin,
7 but the bullet is actually spinning so it drills its
8 way through the skin and it leaves an abrasion
9 border, which was mentioned that there was an
10 abrasion border found at the six o'clock position
11 down here.

12 Exit wounds tend to be torn because when the
13 bullet exits the body, it is no longer in a level
14 trajectory where they're like this, it's now at an
15 angle tumbling, it's also been deformed. So when it
16 exits the body, there's an irregular wound there and
17 that's where I mentioned stellate.

18 So the bullet entered the back of the right
19 head here, exited on the right forehead here. It
20 went up at, approximately, a 45 degree angle and to
21 the left from back here towards the midline of the
22 forehead.

23 Now, this is with the body in what's known as
24 the anatomic position, which means the body by
25 definition is upright, the hands are forward, the

1 feet is forward, everything is like this. As you
2 can see that the trajectory of the bullet is going
3 up, that would put the gun right there on the floor
4 just about which would be very difficult from the
5 situation. And in order to get this into a proper
6 firing trajectory, I believe that Brian's head would
7 have to be ducked down forward to cause a level
8 trajectory through his head.

9 Q And from your findings or anything, can you
10 tell if Brian -- you mentioned it would be
11 consistent with him ducking down. Can you tell if
12 he was looking to the right or to the left of your
13 findings?

14 A No.

15 Q Either one of those could be possible?

16 A That's correct.

17 Q But it would be consistent with him ducking,
18 say, as if he heard gunfire?

19 A That's correct.

20 Q Once he sustained -- and this bullet went
21 through his skull here?

22 A Yes.

23 Q And exited through the skull again?

24 A Yes.

25 Q How would you characterize that type of

1

gunshot?

2 A That's what you called the through and through,
3 I call it the perforating. It goes out and the
4 bullet is not recovered.

5 Q How long would he have been able to continue to
6 function?

7 A That's a matter of speculation. He could have
8 dropped in his tracks or if he were indeed ducking
9 and running, his momentum could have carried him
10 several feet after he was shot.

11 Q And I want to show you while you're up here,
12 Doctor, State's Exhibit Number 14, which was a photo
13 taken at the scene.

14 A Yes.

15 Q Showing the position of the body?

16 A Uh-huh.

17 Q If he had been at this corner and been ducking
18 and running could his --

19 MS. PAYNE: Objection, Your Honor, leading.

20 THE COURT: It appears to be leading.

21 BY MS. CAMPBELL:

22 Q Can you say whether or not --

23 MS. PAYNE: Objection, Your Honor, speculation.

24

25 Q What can you say about how the body could have
ended up here?

1 A Once again, it's entirely possible that if
2 Brian were running with a full head of steam, that
3 it's possible that he could have been shot back here
4 in his momentum and a couple of extra steps have the
5 body here. Several people have been noted to
6 actually have more catastrophic injuries and have
7 typically lived for a lot longer and could have been
8 capable. Is it totally expected that that would
9 happen, no, but I cannot, with a reasonable degree
10 of medical certainty, exclude the fact that he was
11 not shot back here and staggered to this point while
12 running.

13 Q And, again, he could have dropped in his
14 tracks?

15 A Yes, he could have also dropped in his tracks.

16 Q And you can't say either way for sure?

17 A No, I cannot.

18 Q But either one is possible?

19 A Yes, it is.

20 Q Thank you, Doctor.

21 A (Witness resumes the witness stand.)

22 Q Doctor, during the course -- as a forensic
23 pathologist, you're somewhat familiar with types of
24 guns?

25 A Yes.

1 Q And are you familiar with a nine millimeter?

2 A Yes, I am.

3 Q Are you familiar with a .380?

4 A Yes, I am.

5 Q Are you familiar with a .32 caliber revolver?

6 A Yes, I am.

7 Q Of those, do you have an opinion, as a forensic
8 pathologist, which is the actual most powerful gun?

9 A I pick the nine millimeter. The .380's a very
10 similar gun. The .32 is a less powerful weapon with
11 less than penetrating power.

12 Q With less penetrating power?

13 A Yes.

14 Q Once the bullet entered the back of the head
15 and exited out the front, can you say where it went?

16 A No.

17 Q Could it have continued to travel?

18 A Yes. It will continue to travel until it runs
19 out of energy and falls to the ground or is embedded
20 in another object.

21 MS. CAMPBELL: Beg the Court's indulgence.

22 THE COURT: Yes, ma'am.

23 (Pause.)

24 MS. CAMPBELL: That's all I have. Thank you.

25 THE COURT: Thank you.

1 Cross?

2 MR. SUTHERLAND: Please the Court.

3 THE COURT: Yes.

4 CROSS-EXAMINATION

5 BY MR. SUTHERLAND:

6 Q Briefly, Doctor, you had testified earlier that
7 the distant perforating wound is outside the -- that
8 would be one outside the range where the contact
9 from the powder and the blast, in my terms, in
10 layman's term, outside of that range?

11 A Yes, that's correct.

12 Q So that would be anywhere between several
13 inches and it could be a thousand yards depending on
14 the --

15 A Depending on the gun, but also, such in this
16 case, physical circumstances will limit the firing
17 range of that weapon.

18 Q Yes, sir. And so where -- I mean, you've
19 evaluated the circumstances with the information
20 that's available to you. And there would be other
21 possible explanations for the degree of -- for the
22 degree of the angle other than perhaps ducking -- I
23 mean, there could be other possible explanations?

24 A There could be other possibilities, that's
25 correct.

①

1 MR. SUTHERLAND: Thank you, sir.

2 No further questions, Your Honor.

3 THE COURT: Cross?

4 MS. EVERHART: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MS. EVERHART:

7 Q Hi, Dr. Nichols?

8 A How are you doing today?

9 Q Doing fine. Thanks. You didn't have an
10 opportunity to go to the scene that night?

11 A No, I did not.

12 Q And you didn't have an opportunity to view how
13 the body was laying personally?

14 A That's correct.

15 Q You said the bullet entered, it was angled 45
16 degrees?

17 A Going upward with the body in the anatomic
18 position.

19 Q And that it was through and through?

20 A That's correct.

21 Q With this kind of wound, blood would have come
22 out at either end, correct?

23 A Yes.

24 Q And this bullet wasn't retrieved?

②

25 A No.

1 Q And today you discussed the possibility that
2 Brian could have dropped forward immediately or
3 taken a few steps forward, but this isn't in your
4 report?

5 A No. This is an issue that came up and that
6 type of issue is usually not in my report.

7 Q And you can't determine with reasonable medical
8 certainty which happened?

9 A That's correct. And I hope I explained that
10 clearly to the jury, either possibility of dropping
11 in his tracks or his momentum carrying him several
12 feet is a possibility.

13 MS. EVERHART: Nothing further, Your Honor.

14 THE COURT: Redirect?

15 MS. CAMPBELL: No, sir.

16 THE COURT: Any further questions of the
17 witness?

18 MR. SUTHERLAND: No, sir.

19 THE COURT: Thank you, Doctor. You may step
20 down.

21 THE WITNESS: Thank you, Your Honor. It's been
22 a pleasure.

23 Thank you, ladies and gentlemen.

24 MS. CAMPBELL: Your Honor, may he be excused?

25 THE COURT: Any objection to the witness being

1 released?

2 MR. SUTHERLAND: No objection, Your Honor.

3 MS. EVERHART: No, Your Honor.

4 THE COURT: You're free to go. Thank you, sir.
5 Call your next witness.

6 MS. CAMPBELL: The State calls David Collins.

7 DAVID COLLINS,
8 having been duly sworn, testified as follows:

9 THE CLERK: Have a seat in the witness box,
10 state your name for the record.

11 THE WITNESS: David Jay Collins, C-O-L-L-I-N-S.

12 DIRECT EXAMINATION

13 BY MS. CAMPBELL:

14 Q Investigator Collins, where are you employed?

15 A I'm employed with the Richland County Sheriff's
16 Department.

17 Q What do you do there, sir?

18 A I work in the forensic sciences laboratory as a
19 firearms and tool marks examiner.

20 Q Can you tell this jury a little bit about your
21 education and your training in that field?

22 A I received my bachelors degree from the Citadel
23 in 1984. I was employed at SLED in 1990 and entered
24 an on-the-job training program in firearms and tool
25 marks examination, that program lasted for

1 approximately three years.

2 After successfully completing that program, I
3 was certified by SLED as a firearms and tool marks
4 examiner and began working cases on my own and
5 testifying in court as an expert in that field.
6 I've also received continuing education and training
7 in my field since that time.

8 In 2002, I became employed by the Richland
9 County Sheriff's Department in order to establish
10 their firearms and tool marks examination
11 laboratory.

12 Q And have you been qualified in courts as an
13 expert in firearms and tool mark examination?

14 A Yes, I have. I've qualified in the state
15 courts of South Carolina in excess of 200 times in
16 that capacity. I've also qualified in the state
17 courts of Georgia, North Carolina, in the military
18 court system and in the federal court system.

19 MS. CAMPBELL: Your Honor, at this time, we'd
20 offer him as an expert in firearms and tool mark.

21 THE COURT: Do you wish to voir dire the
22 witness?

23 MR. SUTHERLAND: None from us, sir.

24 MS. PAYNE: No voir dire for this witness.

25 THE COURT: Thank you.

①

1 He is so recognized. You may continue.

2 BY MS. CAMPBELL:

3 Q Investigator, did you receive certain items
4 involving this case in order to do an evaluation?

5 A I did.

6 Q And some of those items prior to you getting
7 them, were they prepared by another person that was
8 working with you at the time?

9 A Yes. I had Investigator Amy Mauldin, she's now
10 Amy Webber, was working in the laboratory as a
11 trainee at that time. She was in the last stages of
12 her training. It was performing supervised case
13 work and preparation of evidence as part of her
14 training and she did work in this case as well.

○

15 Q And the information that she developed, such as
16 photographs and measurements I believe, did she turn
17 all of that information over to you prior to you
18 doing your examination?

19 A Yes.

20 Q I want to show you first some actual firearms
21 that you received in this case. The first thing I
22 want to talk about is State's Exhibit Number 82. Do
23 you recognize that?

24 A Yes. This is a revolver I examined in this
25 case. It bears my markings I placed on it at the

○

1 laboratory.

2 Q The next thing I want to show you is State's
3 Exhibit Number 88. Is that another item that was
4 provided for your examination?

5 A Yes. This is another revolver, a broken
6 revolver, that I examined in this case. And without
7 taking it out of the package, the package bears my
8 initials and seal when I sealed the evidence further
9 confirming that I have examined the evidence.

10 MS. CAMPBELL: Your Honor, at this time, we'd
11 offer State's Exhibit 88 into evidence.

12 THE COURT: Any objection?

13 MR. SUTHERLAND: None from us.

14 MS. PAYNE: Without objection, Your Honor.

15 THE COURT: Mark it in the record please,
16 ma'am.

17 (State's Exhibit Number 88, gun, admitted
18 into evidence.)

19 BY MS. CAMPBELL:

20 Q In addition to those two items, did you also
21 receive some shell casings and other ammunition?

22 A Yes, I did.

23 Q I want to show you what's been marked as
24 State's Exhibits 66 through 70 and ask you to look
25 at those.

1 A I apologize for the delay. We use a wax
2 compound to hold these items under a microscope in
3 the lab and the wax makes them stick to the inside
4 of the envelope.

5 Yes, I've examined all of these items. Each of
6 them are envelopes bearing markings that were placed
7 on the -- in the firearms laboratory and each
8 individual item is also marked as well.

9 Q And what are those items taking them by
10 caliber?

11 A We have a total represented in these envelopes
12 of four fired cartridge cases and one unfired
13 cartridge. In the fired cartridge casings, there
14 are two .380 caliber cartridge cases and two nine
15 millimeter Luger caliber cartridge cases. The
16 unfired cartridge case is a .380 auto caliber
17 cartridge.

18 Q You call those fired cartridge casings?

19 A Yes, ma'am.

20 Q And there were two nine millimeters, also?

21 A Two nine millimeters and two .380s, yes.

22 Q And I believe you mentioned one unfired?

23 A There's one unfired .380 auto caliber
24 cartridge.

25 Q And how are those identified?

1 A There's crime scene markings on the outside of
2 the container. There's markings that we placed on
3 them in the firearms laboratory. And they are
4 lettered -- those from the scene are lettered with
5 an A. There's one designated as C. There's one
6 that was labeled as being under a plate, et cetera.

7 Q Okay. And your information was those were
8 collected where?

9 A Those were collected at the crime scene from my
10 information.

11 Q And when you received those items from, she was
12 Mauldin at the time, now Ms. Webber, had they been
13 handled properly and were they properly turned over
14 to you?

15 A Yes, they were.

16 Q In addition to that, I want to show you what's
17 been marked as State's Exhibit Number 10 that's
18 already into evidence and let me ask you if
19 recognize those?

20 A Yes. I have examined these items. These three
21 envelopes contain three fired nine millimeter Luger
22 caliber cartridge casings.

23 Q Three -- what was the --

24 A They were nine millimeter Luger caliber.

25 Q And those were fired?

1 A Yes, they are.

2 Q And is there any information about who
3 collected those?

4 A There are initials on these packages that I
5 identify as being Zane Padgett's initials.

6 Q In addition, I show you what's been marked as
7 State's Exhibit Number 87, which is in evidence, ask
8 you to identify that.

9 A Yes, I can identify these two envelopes
10 containing a total of six fired cartridge casings.
11 Five of them are nine millimeter caliber, nine
12 millimeter Luger caliber rather, and one is a .380
13 auto caliber. These packages also bear my initials
14 and seals.

15 Q And the outside of this package does it
16 indicate where those items were collected?

17 A The package is labeled, Dead end on Meadow Lake
18 Drive.

19 Q Finally, I want you to look at State's Exhibit
20 89 for I.D. at this time. Do you recognize that?

21 A Yes. This is a -- based on my seal and
22 initials on the package and visual examination, this
23 is a bullet fragment that I examined in this case.

24 Q And is that an item that was also provided to
25 you and that you examined in this case?

1 A Yes.

2 MS. CAMPBELL: Your Honor, at this time, we'd
3 offer it into evidence.

4 MR. SUTHERLAND: No objection, Your Honor.

5 MS. PAYNE: Without objection.

6 THE COURT: Mark it in evidence, please.

7 (State's Exhibit Number 89, bullet fragment,
8 admitted into evidence.)

9 BY MS. CAMPBELL:

10 Q And does it indicate on the front there where
11 that item was recovered?

12 A The description of the item is indicated as,
13 One spent projectile, and then in parentheses, From
14 Tayson's explorer.

15 Q And, finally, did you also receive some
16 ammunition?

17 A I did.

18 Q And what caliber was it?

19 A I received a box of .32 auto caliber
20 ammunition. It contained 24 unfired cartridges and
21 one misfired cartridge.

22 Q I want to talk about the condition of the items
23 that you got. The condition of the nine millimeter
24 fired cartridge casings that were recovered from the
25 scene, I believe, by Mr. Allen and Mr. Padgett, what

1 was the condition of those when you received them?

2 A Those three fired cartridge casings were,
3 listed there with the initials Z.P., were in very
4 good condition as I received them and, also, the
5 same for the other two. They were all in good
6 condition.

7 Q And then the five nine millimeter cartridge
8 casings which came from Meadow Lake Drive, what was
9 the condition of those?

10 A Those were fairly badly damaged. They had been
11 out in the weather for a while. They had been
12 crushed and were aberrated in a manner that may be
13 consistent with having been stepped on or driven on
14 or having some other similar trauma happen to them.
15 Also, as a result of being out in the weather for
16 that period of time, they were heavily discolored
17 and tarnished.

18 Q Again, on the two .380 fired cartridge casings,
19 what was the condition of those from the scene?

20 A Those were also in very good condition.

21 Q And the one .380 that came from Meadow Lake
22 Drive?

23 A Was also damaged in a manner similar to that
24 with the nine millimeters from that location that
25 was just badly damaged and corroded and discolored.

1 Q Show you finally State's Exhibit Number 93 for
2 I.D. purposes, the ammunition you mentioned before.

3 A Yes. This is the box of ammunition that we
4 examined in the laboratory and this package also
5 contains a blue bandana.

6 Q You didn't do any testing on the blue bandana?

7 A No, nothing at all.

8 MS. CAMPBELL: Your Honor, at this time, we'd
9 offer State's Exhibit 93.

10 (Pause.)

11 MR. SUTHERLAND: Without objection.

12 MS. PAYNE: Without objection, Your Honor.

13 THE COURT: Mark it in evidence.

14 (State's Exhibit Number 93, box of
15 ammunition and blue bandana, admitted into
16 evidence.)

17 BY MS. CAMPBELL:

18 Q Did you ever actually receive a .380 that was
19 recovered in this case?

20 A No, ma'am.

21 Q The actual gun itself?

22 A No, I did not.

23 Q Did you ever actually receive the nine
24 millimeter that was recovered in this case?

25 A No, I did not.

1 Q You did, however, receive a .32?

2 A I did. I received a .32 caliber revolver.

3 Q As well as a .22?

4 A Yes, that is correct.

5 Q The .22 caliber revolver where I want to start,
6 I notice in the bag that it's in how many pieces?

7 A Two major components. This is actually not an
8 uncommon failure for this type of revolver, they are
9 fairly weak.

10 Q And is it operable?

11 A Not in its current condition, no, ma'am.

12 Q So could this gun fire any bullets?

13 A Not in its current condition, no, ma'am.

14 Q I want to turn to the .32, which is State's
15 Exhibit Number 82. Was it operable?

16 A Yes. As it was received, it was -- this
17 firearm was test fired in the laboratory
18 successfully.

19 Q And in relation to State's Exhibit Number 93,
20 which is the ammunition, would that ammunition work
21 in that gun?

22 A Referring to my notes, I do not see an
23 indication where .32 auto ammunition was used as the
24 ammunition that test fired this particular revolver.
25 This particular revolver is chambered for what is

1 known as .32 H and R Magnum caliber recognition.

2 .32 auto is a different caliber of cartridge.

3 However, it has been my experience in looking at
4 other firearms of this exact same make and model
5 that they will typically fire a .32 auto caliber
6 ammunition.

7 Q So that gun can fire this ammunition?

8 A Yes.

9 Q Tell me this just for the record, do all this
10 evidence that you got, it was all properly packaged
11 and turned over to you in a proper manner?

12 A Yes, it was.

13 Q What's the difference between a revolver and
14 what's known as a semiautomatic gun?

15 A From the standpoint of a, first, a crime scene
16 investigation (sic), the most significant difference
17 between the two is that a revolver when it is fired
18 does not automatically eject fired cartridge cases
19 from the gun. A semiautomatic firearm, if it's
20 properly functioning, will each time the gun fires
21 eject a fired cartridge casing at that location.
22 The revolver is loaded manually and is then -- once
23 it has been fired, must be manually opened and the
24 fired cartridge cases physically removed from the
25 gun by the operator.

1 Q And I'm going to hand you what's been marked as
2 State's Exhibit Number 82. Can you show the jury
3 what you're talking about?

4 A This particular firearm has a five shot
5 cylinder here on the side. This is where the
6 ammunition would be placed, one cartridge into each
7 of these chambers. In order to fire this gun, you
8 would load it, you would close the cylinder, and I
9 am assured that it is unloaded, and then you would
10 have two ways to fire the gun. You would either
11 pull the trigger all the way through (indicating),
12 which would turn the cylinder, if you can see the
13 cylinder rotate, until it aligns a chamber with the
14 hammer and then it drops the hammer. That's one way
15 of firing the gun, that's the double action. You
16 can also manually cock the hammer first and then
17 depress the trigger (indicating) causing the gun to
18 fire. This gun will fire up to five times before it
19 must be reloaded.

20 To unload it, you would then pull out on the
21 ejector rod which unlocks the cylinder. You may
22 then hinge the cylinder to the side. And to unload
23 it, typically, you would point the gun upward, press
24 down on this plunger, which would cause the fired
25 and any unfired cartridges or cartridge cases to

1 fall from the gun.

2 Q But if I were somewhere using a revolver that
3 the shell casings or cartridges, I think, fired
4 cartridge cases would not automatically eject?

5 A No, not from this type of firearm.

6 Q And is that different from a semiautomatic?

7 A A semiautomatic firearm by means of its design
8 automatically ejects the fired cartridge case from
9 the gun when it is fired.

10 Q And what's the caliber of that gun?

11 A This one is chambered in .32 H and R Magnum.

12 Q And, typically, when someone sees a revolver --
13 are you familiar with the term .357?

14 A Yes.

15 Q Is that a different kind of revolver?

16 A That is a much more powerful type of fire --
17 revolver, yes. It's a different caliber entirely,
18 yes.

19 Q But for someone who perhaps is not trained in
20 your area, they might refer to a revolver as a .357?

21 A They may.

22 Q What, if any, testing other than to see that it
23 was in working order -- you didn't receive any shell
24 casings or any projectiles that were able to be
25 compared to this gun?

1 A I received nothing that I could physically or
2 microscopically compare this firearm with. There
3 were no other fired components submitted to me that
4 were consistent with having been fired from this
5 gun.

6 Q Okay. And I'll get back to State's Exhibit 89
7 in a minute. Let me talk about the shell -- the
8 fired cartridge casings. I think they've been
9 referred to as shell casings as well?

10 A Many people refer to them in such a way, yes.

11 Q Is there any kind of testing you can do even if
12 a gun is not recovered, say, in a homicide case?

13 A Yes.

14 Q And tell this jury what kind of testing you
15 were able to do in this case?

16 A When I receive any type of evidence of this
17 nature or when the laboratory receives any type of
18 evidence such as this, the first thing that is done
19 is it is documented in notes and in photographs.
20 The notes would capture such information as any
21 markings found on them, manufacturer's markings, the
22 caliber of the ammunition.

23 And following that, we would then begin a
24 microscopic comparison of the items. What we're
25 looking for is microscopic defects that are left on

1 the surfaces of the cartridge cases or bullets, if
2 we have them, that may be unique to a particular
3 firearm.

4 When a firearm is manufactured, those
5 manufacturing processes that are used to form the
6 metal parts of the gun leave behind microscopic
7 defects. These defects are very random in their
8 nature and in their size and in their shape. And
9 when, for instance, a cartridge is fired in a gun,
10 there are various metal parts of the gun that come
11 into contact with it. The firing pin, the ejector,
12 the extractor, the chamber of the gun itself, the
13 breach face of the gun, that is the back of the
14 barrel against which the cartridge is resting, may
15 all mark the surface of the cartridge case in a way
16 that is unique to that particular gun. I like to
17 use the analogy that the gun may mark the cartridge
18 case in a manner that is similar to a fingerprint of
19 an individual, very unique.

20 Similarly, with a bullet, when a bullet travels
21 down the barrel of a gun, microscopic defects left
22 on the surface of the bullet in the form of scratch
23 marks will leave a pattern on that surface of that
24 projectile that may be unique to that particular
25 firearm. In the factory, they form spiralling

1 grooves called rifling in the barrel of many rifles
2 and handguns. This rifling process is what leaves
3 behind these microscopic defects.

4 So what we will do in the laboratory is
5 microscopically examine a cartridge case, in this
6 particular instance, with another cartridge case
7 under a comparison microscope that allows us to view
8 both items side by side at the same magnification
9 and look for areas where these transferred
10 individual characteristics may have been marked onto
11 the surface of that cartridge case. If I find
12 sufficient agreement, I will be able to render a
13 conclusion that that item had been fired -- those
14 two items had been fired in the same gun as opposed
15 to two different guns.

16 Q And in this case, taking the nine millimeter,
17 the two fired cartridge casings that you received
18 initially and then the three additional nine
19 millimeter fired cartridge cases that were marked
20 with Zane Padgett's initials, were you able to make
21 any determination as far as those five cartridge
22 casings found at the Waffle House?

23 A Yes. Microscopic comparisons of the five
24 cartridge cases that were recovered at the Waffle
25 House location confirmed that all five had been

1 fired by one gun.

2 Q So all five of these had been fired you say by
3 one gun. Is that the same gun?

4 A That is the same gun, yes.

5 Q And that -- those would be unique to that gun?

6 A Yes.

7 Q The additional five nine millimeter fired
8 cartridge casings that were provided to you from
9 Meadow Lake Drive, were you able to make any
10 determinations as to what gun fired those?

11 A The damaged condition of those cartridge cases
12 from Meadow Lake Drive made these types of
13 microscopic comparisons very difficult. However, I
14 was able to confirm that two of those cartridge
15 cases had been fired by the same gun that fired the
16 five from the Waffle House location. My comparisons
17 with the other three were inconclusive.

18 Q And when you say inconclusive, what does that
19 mean in layman's terms?

20 A In layman's terms, that simply means I could
21 not tell you if they were or were not fired by that
22 gun. There was definitely not enough information
23 for me to be able to say that they were, but there's
24 also not enough information or differences there for
25 me to say that they were not fired by the same gun.

1 Q So the five cartridge -- nine millimeter
2 cartridge casings from the scene were fired by?

3 A One gun.

4 Q And then two out of the three you were able to
5 make a determination were fired by?

6 A The two out of three also fired by the same
7 gun.

8 Q The same gun?

9 A Yes.

10 Q As far as the .380s, I believe, how many fired
11 cartridge casings did you get?

12 A From the --

13 Q From the scene?

14 A From the scene, there were two fired .380
15 cartridge cases and one unfired cartridge.

16 Q What, if any, determinations were you able to
17 make about those items that were provided to you
18 from the scene?

19 A With those items, I was able to conclude that
20 both of the fired cartridge cases from the scene had
21 been fired by one gun. An additional microscopic
22 comparison of those items with the unfired
23 cartridge, I was able to conclude that that unfired
24 cartridge had at one time been loaded into the same
25 gun as the two fired cartridge cases, that is

1 possible -- it's possible to determine that because
2 the loading process, loading the cartridge from the
3 magazine into the chamber and then extracting it
4 from the gun can also leave behind markings on that
5 cartridge that are unique to that gun.

6 Q So the .380s found from the scene are from one
7 gun?

8 A That is correct.

9 Q Can the .380s be from the same guns as the nine
10 millimeters?

11 A No, they cannot.

12 Q Explain to the jury why the caliber of the gun
13 is significant -- or the bullet.

14 A While it is sometimes possible to actually fire
15 a .380 cartridge in a nine millimeter firearm, in
16 this particular case, there were significant
17 differences between the marking characteristics of
18 the nine millimeter firearm that was used and
19 the .380, that I was able to tell that they were
20 fired from different guns.

21 Q So there were definitely two different guns
22 that left those shell casings?

23 A That's correct.

24 Q And could those shell casings have been left by
25 State's Exhibit 82?

1 A No. It's completely wrong caliber, that
2 ammunition simply will not fit in that gun.

3 Q Explain that.

4 A Both of these types of cartridges, the nine
5 millimeter Lugers and the .380 autos, use ammunition
6 that fires a bullet that's approximately point 352
7 to point 358 inches in diameter. This particular
8 firearm is about 60 thousandths of an inch smaller
9 chamber. Those simply will not fit in the chamber.

10 Q And in your experience, you're familiar with
11 nine millimeter guns?

12 A Yes.

13 Q And explain to this jury with a nine millimeter
14 or a .380, do both of those expel shell casings when
15 they're used?

16 A A properly functioning nine millimeter or .380
17 auto, semiautomatic pistol, will typically eject a
18 cartridge case when it is fired.

19 Q And at my request and the information that had
20 been provided to you, did you provide me with two
21 guns that would have been consistent with what was
22 used in these cases?

23 A I've provided two guns from my reference
24 collection in the laboratory that are the same
25 caliber and brand as I was requested to provide,

1 yes.

2 Q I want to show you first --

3 MR. SUTHERLAND: Your Honor, I do have an
4 objection at this point.

5 MS. PAYNE: We would join in.

6 MS. CAMPBELL: Demonstrative purposes only.

7 THE COURT: I don't know what the objection is.
8 Do I need to send the jury out?

9 MR. SUTHERLAND: I believe so, sir.

10 THE COURT: Ladies and gentlemen, don't discuss
11 the case.

12 (The jury retires to the jury room.)

13 THE COURT: Yes.

14 MR. SUTHERLAND: Sir, I do have an objection.
15 They have testimony from Mr. Collins who is an
16 expert in this area that these were nine millimeter
17 and .380 auto shells. As far as the probative value
18 of being able to wave these scary looking guns
19 around up there, sir, I just don't see where it
20 would be -- where it would outweigh the prejudice.

21 I mean, we've got his testimony that there were
22 the, I guess, the individual characteristics, or
23 they didn't get too much into it, but as far as his
24 expertise goes, his expert opinion, that these
25 are .380 and nine millimeter shells and that there

1 are certain matches. I just don't see where waving
2 these firearms around is going to do anything other
3 than perhaps intimidate the jury where there were no
4 firearms recovered in evidence. In other words, if
5 they were -- of course, if they were in evidence,
6 they could go in, but that's our objection, sir.

7 MS. PAYNE: We would just add on that his
8 involvement, Investigator Collins, with this case is
9 based on the shell casings and in no way had any
10 involvement with a nine millimeter or a .380 in this
11 case and we would just ask that his involvement and
12 his testimony be limited to that.

13 THE COURT: What is it you're trying to do, Ms.
14 Campbell?

15 MS. CAMPBELL: Your Honor, we're just trying to
16 show how the guns operate. We're going to be
17 talking about the strength of the gun, it's critical
18 to our case. The fact that we don't recover the
19 guns doesn't mean that the jury's precluded from
20 understanding how the gun works and, you know, the
21 workings of the gun itself. We're just using it for
22 demonstrative purposes. There's been much testimony
23 about the caliber of these guns.

24 THE COURT: What were you asking him?

25 MS. CAMPBELL: I was asking him about how the

1 guns work because there's been an issue about the
2 expelling of the shell casings, Your Honor, and how
3 that happens and how it can be held. I believe
4 Mr. Padgett was cross-examined extensively about
5 that.. And I think the jury has the right to know
6 how these guns work. And we will make it clear to
7 the jury these are not the guns.

8 MR. SUTHERLAND: If the implication is that
9 maybe somehow if this is prejudicial that the door
10 was opened to it, I mean, I cross-examined him about
11 his testimony. And Investigator Padgett testified
12 that they ejected back and to the right, back and to
13 the right. And so I asked him -- I don't see where
14 this would assist the jury in figuring anything out
15 when we didn't really demonstrate when we were
16 standing up there talking about it because I turned
17 around and I said, so if it was this way. It's just
18 demonstrating angles and everything.

19 I mean, they're just big 'ol guns, Your Honor,
20 and there's no need to be waving them around in
21 front of the jury. I mean, we've got his testimony
22 about the evidence that they recovered at the scene.
23 And I would -- I just wouldn't want them confused,
24 intimidated or otherwise to make a decision, some
25 sort of emotional decision with respect to any issue

1 in this case, sir.

2 THE COURT: Go ahead and ask him outside the
3 presence of the jury what it is you want to elicit.

4 EXAMINATION

5 BY MS. CAMPBELL:

6 Q You're aware of what caliber guns were used in
7 this case?

8 A Yes.

9 Q And at my request, did you provided me with a
10 nine millimeter, as well as a .380?

11 A I did.

12 Q And would it aid you in explaining to the jury
13 how the guns operate and how the shell casings are
14 expelled?

15 A It may.

16 Q And would it also aid you in explaining to the
17 jury about the power of each of these guns
18 relatively to each other?

19 A Visually, it would be difficult to actually
20 show the power of it because the power is more a
21 function of the ammunition than it is of the actual
22 firearm itself, but I could --

23 Q But as far as explaining how the guns
24 themselves work, would it aid you?

25 A I have done that before, yes.

1 THE COURT: So what is it you want him to do?

2 MS. CAMPBELL: Just show how each of these guns
3 work to the jury.

4 THE COURT: Fire the gun?

5 MS. CAMPBELL: Firing the gun and how the shell
6 -- more specifically how the shell casings are
7 expelled.

8 THE COURT: How is he going to fire a gun?

9 MS. CAMPBELL: He just did it with this one.

10 MR. SUTHERLAND: Four times I very nearly stood
11 up and objected, Your Honor, and perhaps I should
12 have, which would have set up something in advance
13 of this, but I just -- maybe if he'd done it the
14 fifth time, I probably should have done it the first
15 time I heard that click, sir.

16 MS. CAMPBELL: Our position is it's
17 demonstrative evidence as to the workings of the
18 gun. It's critical in this case as far as -- as
19 well as angles, Your Honor, where the guns were, how
20 they were being used, whether or not they, you know,
21 how they're fired and how they expel shell casings.

22 MR. SUTHERLAND: And people know that from
23 T.V., sir.

24 MS. PAYNE: Your Honor, I would just add for
25 the record purposes that even Investigator Collins

1 said it may help the jury and I think Your Honor's
2 questions also point out that they're not actually
3 going to get to see the power of these guns.

4 **THE COURT:** I hope not.

5 **MS. PAYNE:** We hope not either. I was cringing
6 a little every time he was playing with the other
7 one.

8 But, Your Honor, I think that it is absolutely
9 unnecessary for the actual gun to be presented. He
10 can stand up and talk about how the shell casings
11 are going to pop out. That's cumulative testimony
12 in itself because Investigator Padgett's already
13 testified to it.

14 **THE COURT:** All right. I'm ready to rule. The
15 Supreme Court of South Carolina has adopted certain
16 guidelines for use in handling firearms in a
17 courtroom. And under subsection (6), it reads as
18 follows:

19 A firearm is to be handled only by the barrel
20 and not to be pointed at any person in the
21 courtroom. The firearm will always be handled by
22 the barrel only unless otherwise ordered by the
23 trial judge. No firearm will be pointed at a jury,
24 judge, court personnel or spectators. Firearms will
25 always be pointed either at the ceiling or the

1 floor. He was pointing the other one at the floor.

2 However, if deemed valuable and necessary by
3 the judge, the gun may be pointed for demonstrative
4 purposes during testimony. Solicitors and defense
5 attorneys must obtain the permission of the judge
6 prior to such use for evidentiary purposes.

7 Such permission is denied because I don't deem
8 it valuable and necessary.

9 Thank you. Let's take a five minute break.

10 You can step down if you like. Don't discuss
11 your testimony.

12 (Brief recess.)

13 THE COURT: Anything else?

14 MS. CAMPBELL: Yes, sir. I want to apologize
15 to the Court about handling the gun without asking
16 permission first. I need to get a copy of that
17 rule.

18 THE COURT: Well, actually, there's a part of
19 that rule says I'm supposed to go over this with
20 y'all before we start the trial. So there's no
21 problem.

22 Let me just say if he wants to hold a gun down
23 by a barrel and if there is evidence that is
24 presented that all nine millimeters basically are
25 designed the same way and he wants to point to the

1 area and say, this is where the shell casings eject
2 or something like that, I don't have a problem with
3 that, but he cannot operate the mechanism of that
4 gun, okay.

5 MS. CAMPBELL: So we can use it for
6 demonstrative purposes?

7 THE COURT: If he lays that foundation that
8 this nine millimeter looks like every other nine
9 millimeter. And I don't know if that's true or not.
10 To be honest with you, I don't know enough about
11 guns to say.

12 MS. CAMPBELL: I would like to do that real
13 quick outside the presence of the jury and then it
14 will eliminate this --

15 THE COURT: If they don't have an objection, I
16 don't mind you talking to him and asking him.

17 Do y'all want her to do it on the record or
18 will y'all give permission for her just to talk to
19 him and see if she thinks she can lay that
20 foundation?

21 MS. PAYNE: I would prefer she do it on the
22 record.

23 THE COURT: Go ahead.

24 *****

25 *****

1 EXAMINATION

2 BY MS. CAMPBELL:

3 Q At my request, did you provide guns in this
4 case?

5 A I did.

6 Q Based on the information that was provided to
7 you, would these have been guns similar to the guns
8 that actually fired the weapons in this case?

9 A The firearms that I provided to you function in
10 a manner that is consistent with virtually all of
11 the semiautomatic pistols that we encounter.

12 Q Including the nine millimeter, as well as
13 the .380?

14 A The nine millimeter and the .380 as well.

15 Q And you can't say for sure that this is the
16 exact same gun, just that it's the same caliber,
17 same type gun?

18 A I know it's not the same guns that were used in
19 this crime.

20 Q It wasn't the same guns used; however, this
21 would be -- these would have the same mechanisms as
22 far as expelling shell casings?

23 A Functionally, they will be identical to any
24 other semiautomatic pistol of that type, yes.

25 THE COURT: Do y'all have anything on this?

1 Still object?

2 MS. PAYNE: Can we ask a question?

3 THE COURT: Sure.

4 EXAMINATION

5 BY MS. PAYNE:

6 Q Investigator Collins, does all nine millimeters
7 look the same?

8 A There are some cosmetic differences between
9 them. Functionally, they all work about the same
10 way as far as how the mechanism operates. However,
11 there are some cosmetic or visual differences
12 between some models.

13 Q So they don't all look the same?

14 A They do not all look the same.

15 Q And can you adequately tell the jury how the
16 shell casings expel without actually having one in
17 your hand?

18 A Without actually having the gun that was used
19 in this particular incident available to me for
20 testing, I cannot testify exactly in what direction
21 that the cartridge cases would eject. Typically,
22 they eject to the right. However, there are some
23 that may eject in the other direction. So I can't
24 testify with any degree of absolute certainty as to
25 which direction they would eject. I can merely

1 indicate where from the gun they would eject.

2 Q So from gun to gun, shell casings differ?

3 A They can -- the ejection pattern can differ
4 from one particular make and model of firearm even
5 of the same caliber to another.

6 Q So that gun will not expel --

7 THE COURT: I'm ready -- that's different than
8 I thought he would say and that tells you what I
9 know about guns. Even if the evidence is relevant,
10 I think 403 would apply and it would possibly
11 confuse the jury. All right, so the initial ruling
12 stands.

13 MS. CAMPBELL: There's another mess up I did.

14 MS. PAYNE: Before we get to that one, can we
15 have some sort of instruction to the jury because
16 she did put it in front of them and I don't know --

17 MS. CAMPBELL: I don't think I ever got it out
18 of the box.

19 MS. PAYNE: The box was open.

20 MS. CAMPBELL: But I don't think you can see
21 them.

22 MS. PAYNE: I think I have to have a curative
23 instruction for the appellate record.

24 THE COURT: Saying what?

25 MS. PAYNE: Disregard any showing -- I'm not

1 exactly sure, Your Honor.

2 MR. SUTHERLAND: Maybe disregard the
3 demonstration with the box. I don't know either.
4 But I would be inclined to -- I think probably the
5 first three jurors up there could have seen what was
6 in there.

7 MS. CAMPBELL: For the record, those were not
8 the guns used.

9 THE COURT: I don't mind telling the jury that
10 the guns that are in the courtroom are not
11 represented to be the guns that were used at the
12 scene that night, something along those lines, but
13 -- if you all fashion something you want me to
14 present to the jury, I'll consider it. I don't
15 really want to call anymore attention to it because
16 I didn't see him get the gun out and do anything
17 with it, but I'll be happy for you all to fashion
18 something and submit it.

19 MS. PAYNE: Okay. I think since you sustained
20 our objection, we just put that on the record. I
21 don't think a curative instruction will be
22 necessary.

23 MS. CAMPBELL: Your Honor, I have one other
24 screw up. When I was working with Doctor Nichols,
25 Ms. Payne brought it to my attention, I referenced

1 to State's Exhibit 14, which is not in evidence is
2 the one you disallowed. It was not intentional on
3 my part.

4 THE COURT: The jury didn't see it.

5 MS. PAYNE: She held it up in front of the jury
6 and pointed at it.

7 THE COURT: Let me see it.

8 MS. CAMPBELL: And I will hand up the one I
9 should have used, which is State's Exhibit Number 12
10 and State's Exhibit 16 are in. And I apologize to
11 the Court.

12 THE COURT: And is there an objection?

13 MR. SUTHERLAND: Yes, sir.

14 THE COURT: What's your objection?

15 MR. SUTHERLAND: Well, that we had gone over
16 this previously that that picture had been
17 intentionally excluded because of the prejudicial
18 effect that it might have on the jury, sir. And
19 with her having published it to the jury, I sort of
20 feel -- I feel a responsibility to move for a
21 mistrial on the basis of the publication of the
22 prejudicial photo, Your Honor.

23 MS. PAYNE: We would join in on that motion.
24 And we would also add that both myself and Ms.
25 Everhart are ineffective assistance of counsel

1 because we did not contemporaneously object. I
2 thought I heard 14, I didn't want to raise a huge
3 scene in front of the jury because of it.

4 THE COURT: Ms. Payne, let me ask you to do me
5 a favor.

6 MS. PAYNE: Yes, sir.

7 THE COURT: I'm going to try to say this as
8 nice as I can. Please quit telling me you're
9 ineffective. That's a different decision for a
10 different day depending on -- it bothers me because
11 it sounds like you're trying to build a PCR record.

12 MS. PAYNE: I understand the Court's concern,
13 but I have to do for Mr. Boone what --

14 THE COURT: No, ma'am, you do not. I think
15 that it borders on being unethical.

16 MS. PAYNE: Okay. I will stop, Your Honor.

17 THE COURT: It's not the first time it's
18 happened. It's happened numerous times before. It
19 happened one time down in Charleston with me with a
20 lady who got appointed on a case who had formerly
21 been a public defender and apparently didn't realize
22 she lost immunity whenever she went out on her own
23 practicing. And I eventually had to tell her that
24 she needed to notify her liability carrier.

25 Now, if you want to tell me that you should

1 have done this or shouldn't have done that, that's
2 fine, put on the record what you need to, but I
3 think it's improper to try to build a PCR record.

4 MS. PAYNE: I understand, Your Honor.

5 THE COURT: Go ahead -- and if that's what
6 you're not intending to do -- if you're not
7 intending to do that, I apologize to you. That's
8 about the third time you've said it.

9 MS. PAYNE: Yes, sir. I actually was just
10 telling the Court that because I should have
11 objected at the time that it was being presented to
12 Mr. Nichols -- Doctor Nichols.

13 THE COURT: Where was she -- where was the
14 doctor when this photograph was shown?

15 MR. SUTHERLAND: I was actually standing over
16 here.

17 THE COURT: Not y'all, where was the doctor?

18 MS. CAMPBELL: The doctor was right here in the
19 middle of the courtroom.

20 THE COURT: Six feet from the jury box?

21 MS. CAMPBELL: Yes, sir.

22 THE COURT: All right. The motion for a
23 mistrial is respectfully denied. If you've got
24 these photographs a foot from you, I can tell a
25 difference. If you've got them more than a couple

1 of feet, you can barely tell the difference between
2 them.

3 MR. SUTHERLAND: Thank you, Your Honor.

4 THE COURT: All right. I'll tell the jury if
5 they recall it, to disregard any reference in the
6 prior witness to Exhibit 14, it's not in evidence.

7 Okay. Bring in the jury.

8 (The jury returns to the courtroom.)

9 THE COURT: All right. Ladies and gentlemen,
10 the objection was sustained as to this witness.

11 And I need to go back to a reference that -- in
12 the previous witness, the doctor. There was a
13 mention of an Exhibit 14, that was inadvertent and
14 in error. 14 is not in evidence. They just said
15 the wrong number. A similar photograph is in that
16 has a different number. But all I can tell you is
17 disregard any reference to Exhibit 14, all right.
18 If you wrote anything down about Exhibit 14,
19 disregard that.

20 All right. You may continue, Ms. Campbell.

21 MS. CAMPBELL: Thank you.

22 BY MS. CAMPBELL:

23 Q We were talking about how a semiautomatic, such
24 as a nine millimeter, expel shell casings?

25 A Yes.

1 Q And can you explain to the jury does every nine
2 millimeter, is it a pistol?

3 A Semiautomatic pistol.

4 Q Semiautomatic pistol, does it expel the shell
5 casings in the same manner?

6 A There can be some slight differences between
7 them. Typically, most of them will eject to the
8 right, that is because most of them are designed --
9 the dominant -- I don't know how to put this -- most
10 people are right handed and so, therefore, you want
11 a firearm that ejects to the right. Someone who is
12 left handed, the way they hold a gun, ejecting to
13 the right might tend to throw the cartridge case
14 across their field of vision or somehow otherwise be
15 an issue. Some guns I have encountered in the past,
16 and quite frankly I cannot remember what brand or
17 model they were, due to make tend to eject to the
18 left or straight up or perhaps in some other unusual
19 direction.

20 But one of the more difficult things to
21 determine when you're looking at ejection patterns
22 is how the gun itself was held. You know, if you're
23 holding the gun upright as the gun is designed to be
24 held, it typically may eject to the right, but if
25 you turn the gun on its side, obviously it's going

1 to change the direction and the distance that it
2 will eject. And sometimes you see people these days
3 tend to sometimes turn the gun sideways when they
4 shoot it, so that can also affect where the
5 cartridge cases will end up.

6 The use of cartridge cases to determine the
7 location of a firearm in a particular area is useful
8 only in limited circumstances. They can determine a
9 general location, but a specific location can be
10 very difficult to determine.

11 Q How is a semiautomatic pistol, such as a nine
12 millimeter, loaded? You mentioned how a revolver is
13 loaded, how the shell cases are individually placed
14 in there, how is that different with a semiautomatic
15 gun?

16 A A semiautomatic firearm is typically loaded
17 from a magazine. A magazine is, in most
18 semiautomatic pistols, a box type structure with a
19 spring loaded plunger in it called a follower and
20 you would place individual cartridges in the
21 magazine until it is full. They will then be under
22 spring tension. And as the gun feeds one cartridge
23 into the chamber of the firearm, the next one is
24 forced up and ready to be loaded.

25 So as the gun cycles, as the slide comes to the

1 rear, it is pulling with it the fired cartridge case
2 that was just discharged. It gets to a certain
3 point and ejects that cartridge case from the gun
4 and as the slide begins to go back forward, it is
5 itself under spring tension, it takes the top
6 cartridge from the magazine and places it in the
7 chamber. All of this happens, essentially, in the
8 blink of an eye. It's very quick.

9 Q And with a nine millimeter semiautomatic
10 pistol, typically how many -- I call them bullets,
11 what do you call them?

12 A Cartridges.

13 Q Cartridges, can you put into a magazine?

14 A It can vary anywhere from six up to as many as
15 18 or 19.

16 Q Depending on the gun?

17 A Depending on the make and model of the firearm,
18 yes.

19 Q And if I have a gun that, say, holds 12 and I
20 put 12 in there, how does the mechanism work, so how
21 do I fire it? Do I have to stop and cock between or
22 how does that work?

23 A For your first shot, you -- once you take your
24 loaded magazine, you place it in the gun, the barrel
25 -- the chamber of the gun is empty, you'll have to

1 place the first cartridge actually in the chamber of
2 the gun in order to be ready to fire and that is
3 typically done by just drawing the slide to the rear
4 and releasing it, which takes the first round and
5 chambers it. Then if the safety mechanism is off,
6 if it has an external safety device, you would
7 simply pull the trigger and the gun will discharge.
8 The gun will fire once and it will continue to fire
9 one shot each time you pull the trigger until the
10 magazine is empty.

11 Q And how rapidly with a semiautomatic pistol can
12 you fire?

13 A That would be largely determined by the
14 shooter's -- individual's skill or motor function or
15 his ability -- how fast he can pull the trigger.

16 Q So as fast as he can pull the trigger?

17 A Yes. In my experience, you will not be able to
18 pull the trigger faster than the gun can operate.
19 So, typically, that is limited by the speed in which
20 the person can pull the trigger.

21 Q So if you heard the term rapid gunfire, is that
22 consistent with a semiautomatic?

23 A It may be, but there's some people that can
24 fire a revolver very quickly as well.

25 Q And that's what I was getting to. And someone

1 who knows what they're doing can fire a revolver
2 quickly, too?

3 A Very fast, yes.

4 Q I've been talking about a nine millimeter. As
5 far as a nine millimeter -- what's the difference
6 between a nine millimeter semiautomatic pistol and
7 a .380 semiautomatic pistol?

8 A If you were to look at the physical
9 characteristics of the guns, they may be the same
10 size or sometimes a .380 may be slightly smaller.
11 The .380 cartridge is typically a little shorter.
12 In Europe, it's actually known as the nine
13 millimeter short cartridge. So it is shooting a
14 bullet with the same diameter as the nine
15 millimeter. The primary difference being that it
16 typically shoots a bullet that's at least 20 percent
17 smaller in weight. It's a smaller -- it's a shorter
18 bullet, carries less weight and is fired at a lower
19 velocity.

20 So, therefore, a nine millimeter typically has,
21 if you were to look at the term power, nine
22 millimeters are a more powerful cartridge in that
23 they are firing a heavier bullet faster which tends
24 to create more damage to whatever they impact and
25 also tends to make them penetrate somewhat deeper.

1 However, the .380 auto is by no means an ineffective
2 or a nonpowerful cartridge.

3 Q And when you say, by no means ineffective,
4 nonpowerful, does the .380 have the power to do, say
5 in someone's skull, a through and through?

6 A I've seen it happen, yes.

7 Q And as far as firing ranges with these guns,
8 specifically as to the nine millimeter, then
9 the .380 and the .32, which gun would you consider
10 the most powerful?

11 A The nine millimeter.

12 Q And as far as the range it could shoot a
13 bullet, is it a matter of feet, yards?

14 A It would be hundreds of yards.

15 Q Hundreds of yards?

16 A Hundreds of yards, yes.

17 Q And, say, if something is at a distance, say,
18 of a hundred feet away, would it -- a nine
19 millimeter have the ability to do a through and
20 through?

21 A I would say it's possible, but a lot of it
22 depends on the type of ammunition used, the type of
23 bullet being used and other factors, but it would be
24 possible, yes.

25 Q And in your expert opinion as far as a .380,

1 which you say is little less powerful, are those
2 similar type guns, though?

3 A Similar type guns -- could you --

4 Q Is a .380 semiautomatic similar to a nine
5 millimeter semiautomatic?

6 A Functionally, they're very similar, yes.

7 Q And, again, depending on the type of
8 ammunition, the distance, different conditions, is
9 it capable of doing a through and through?

10 A I can't rule out the possibility.

11 Q And then you mentioned that the .32 would be
12 the least powerful of these weapons?

13 A Yes.

14 Q Again, depending on the ammunition and other
15 things and if it were closer, would it be possible?

16 A It would be significantly less likely, but I
17 can't rule out the possibility without actually
18 doing any kind of testing on that particular
19 ammunition.

20 Q But significantly less possible?

21 A With a .32, yes.

22 Q Revolver. And just for the record, are either
23 a nine millimeter or .380 a revolver?

24 A There are -- there is a nine millimeter
25 revolver manufacturer, at least there was at one

1 time, I'm not sure if they're still in production or
2 not, but there was at one time a nine -- at least
3 one, possibly two nine millimeter Luger caliber
4 revolvers.

5 Q But if a nine millimeter was fired there at the
6 scene and it was a revolver, would it leave shell
7 casings?

8 A Not unless the person stopped and manually
9 unloaded at the scene.

10 Q When a shell casing is ejected in either one of
11 these weapons, semiautomatic weapons, the nine
12 millimeter or the .380, can you tell this jury
13 exactly where the projectile is going to land?

14 A Based on the location of the fired cartridge
15 case, no.

16 Q And explain that to the jury, I think you
17 touched on it before about how the gun's held and
18 the angles.

19 A Without a known flight path of the bullet, that
20 is to say that unless you have the means of
21 determining an exact flight path along which the
22 bullet could have come, the location of a pile of
23 cartridge cases or a group of cartridge cases merely
24 indicates that a gun could have been fired in a
25 location if you -- close to that group of cartridge

1 cases.

2 If I were to fire in this direction, the
3 cartridge cases may end up here. However, if I were
4 to stand approximately where the Solicitor is and
5 fire in that direction, I may also place the
6 cartridge cases in the same location because they're
7 still located in the same relative position to the
8 shooter. We don't have an axis of the actual
9 trajectory of the projectile to work from to locate
10 those cartridge cases.

11 Q But if you were to find, say, a single
12 cartridge casing somewhere versus a group of
13 cartridge casings, does the group of cartridge
14 casings give you a little more information at least
15 to the general area?

16 A You're still able to say that the shooter was
17 in that general area, especially if that group of
18 cartridge cases is fairly closely related to one
19 another. What often happens with cartridge cases at
20 a crime scene is they get kicked, scuffed or
21 otherwise moved by foot traffic and so that,
22 therefore, may remove their significance or lessen
23 their significance in locating the shooter.
24 However, if they're all generally located in one
25 area, the chances of them getting kicked or scuffed

1 and all ending up at the same place is very remote
2 so that will be more useful to locate the general
3 area of the shooter.

4 Q And, again, you're talking about the general
5 area?

6 A Very general area, yes.

7 Q And you can't say exactly on what side of the
8 shell casings the person was when they were
9 shooting?

10 A Not without a trajectory line from a
11 projectile, no.

12 Q In a parking lot where there are, say, 40 to 50
13 people, many cars, how can that affect that -- say
14 that there are multiple shots more than five or six,
15 could that affect your ability to find a cartridge
16 casing?

17 A Oh, could greatly -- you could have actual
18 situations where people have actually picked up a
19 cartridge case and walked off with it without
20 realizing that perhaps they're taking evidence that
21 might be important. Cars leaving a scene have been
22 known to run over a cartridge case and actually have
23 the cartridge cases get stuck in the tread of a tire
24 and removed from the scene. They can get stuck in
25 the soles of your shoes like between the lugs of

1 boots and actually removed from the scene. So that
2 can -- the number of people in a scene, especially
3 until it comes under law enforcement control, can
4 have a negative effect on locating cartridge cases.

5 Q As far as the recovery, you're familiar with
6 the term projectile?

7 A Yes.

8 Q And that -- explain that one again to the jury.
9 I want to talk about that for a minute.

10 A A projectile is typically anything that comes
11 out of the barrel of the firearm. It can be a
12 bullet. It can be shotgun pellets or wad, related
13 to shotgun pellets or anything of that nature.

14 Q And the ability to recover a projectile, what
15 factors are significant, especially when there are
16 multiple guns shooting back and forth in a large
17 area?

18 A The first thing that I look for if I ever
19 respond to a crime scene to assist a crime scene
20 investigator is some sign of projectile impact or
21 damage that you can start from there. You might
22 find a hole in a window, you might find a dent in
23 some object or in case of a brick building, you
24 might find freshly broken brick, and then you tend
25 to look in that area for that projectile. If there

1 is nothing there to stop the projectile in flight,
2 it may go well outside the confines of the crime
3 scene and not be recovered.

4 Q In this case, did you actually visit the crime
5 scene, the Mobil Gas Station, several days after
6 this crime occurred?

7 A Yes. I responded to that location with some
8 crime scene personnel and some investigators several
9 days after the incident.

10 Q And that would be, I believe, Lieutenant
11 Padgett and other investigators?

12 A Yes.

13 Q And why did you go to the crime scene that day?

14 A Just to have -- simply another set of eyes to
15 be looking -- looking for a projectile.

16 Q I'm going to show you what's been marked and is
17 in evidence, which is State's Exhibit 41 and 42. Do
18 you remember looking in that area?

19 A Yes.

20 Q And what's in 41 and 42?

21 A This is a defect consistent with a bullet
22 impact or the passage of a high speed projectile in
23 the side of the gas station wall exterior. And one
24 of the pictures shows where one of the wall panels,
25 the metal panels has actually been removed in an

1 effort to try to locate the projectile.

2 Q And were you out there while they were trying
3 to locate the projectile?

4 A Yes.

5 Q And did you actually assist in that?

6 A I looked in there with them, yes.

7 Q And Lieutenant Padgett's already talked about
8 the trajectory of the projectile. What's this
9 material behind the panel that was actually removed
10 in State's Exhibit 42?

11 A Brick.

12 Q And were y'all able to recover the projectile
13 that day?

14 A No, we never found that projectile.

15 Q How can that happen?

16 A In situations such as this where you have two
17 different surfaces between which the projectile
18 should be, you have an outer wall and an inner wall,
19 once the bullet passes through the outer wall, it
20 may skip around inside that surface and end up some
21 place completely illogical. We looked everywhere we
22 possibly could and were unable to find it. Also, it
23 may strike something significantly stronger than the
24 bullet is, such as raw material, and actually
25 fragment itself into such small pieces that it's

1 unrecoverable.

2 Q And is that unusual?

3 A It's not unusual, no.

4 Q The bullet that actually penetrated Brian
5 Wright's skull -- and you didn't attend the autopsy
6 in this case?

7 A No, I did not.

8 Q Are you able to or anyone able to tell just
9 from a bullet hole, the caliber of the bullet that
10 caused that?

11 A That's more of a question for the pathologist.

12 Q In this case, you can't do that?

13 A I have nothing that would tell me the caliber
14 of the bullet, no.

15 Q And once that bullet, if it's a through and
16 through, exits the head, again it can continue to
17 travel?

18 A It can continue to travel a considerable
19 distance, yes.

20 Q You also received, I believe, in this case,
21 what's now into evidence as State's Exhibit Number
22 89; is that correct?

23 A That's correct.

24 Q And that is an actual projectile is it not?

25 A Yes. This is a portion of a fired bullet.

1 Q And is that unusual for you to only find a
2 portion?

3 A It's quite common that we receive merely
4 fragments of projectiles.

5 Q And, again, where does it say that projectile
6 was located?

7 A The envelope label indicates that it was
8 recovered from Tayson's Explorer.

9 Q And what's the condition of that projectile?

10 A It's damaged. It's not a complete projectile.

11 Q And does that limit what you were able to
12 determine?

13 A It does limit to a certain extent by what I'm
14 able to determine about it. I had nothing else to
15 compare it physically with microscopically. That
16 was the only projectile that I received in this
17 case. I was able to simply document its size, some
18 physical characteristics of it and determine
19 approximately what the -- what caliber it was
20 consistent to be.

21 Q And just for the record, if you've got a
22 projectile, you can't, say, compare it to a fired
23 cartridge casing of a nine millimeter or a .380?

24 A It has been done in some cases, but in this
25 particular case, there was not sufficient

①

1 information on the bullet to be able to perform that
2 type of analysis.

3 Q So what, if any, information are you able to
4 provide this jury as to what type gun could possibly
5 have fired this?

6 A Visual examination of that bullet revealed it
7 to be a copper jacketed lead bullet fragment, which
8 means it's a piece of lead with copper jacketing
9 material on it. And it was consistent, based on
10 measurements I was able to take from it, with being
11 from a -- what is a nominal .38 caliber projectile.

②

12 A .38 caliber would include several different other
13 actual calibers, if you will, of firearms, such as
14 nine millimeter Lugers, .38 Specials, .357 Magnums
15 or .380 autos.

16 Q And you didn't mention a .32 revolver, why is
17 that?

18 A The measurements of this particular fragment or
19 the portions I was able to examine indicate that it
20 is simply too large to have originated from a .32
21 caliber firearm.

22 Q And for the record, we have some .32 ammunition
23 there. A nine millimeter or a .380, is that
24 ammunition larger or smaller than this?

③

25 A It's larger.

1 Q So could a revolver, such as the one in
2 evidence, could it fire a .380?
3 A No.
4 Q Could it fire a .357?
5 A No.
6 Q A .38?
7 A No.
8 Q A nine millimeter?
9 A No.
10 MS. CAMPBELL: Beg the Court's indulgence.
11 THE COURT: Yes, ma'am.
12 (Pause.)
13 BY MS. CAMPBELL:
14 Q For the record, of the nine millimeter fired
15 cartridge casings found at the scene, how many guns
16 fired those?
17 A One.
18 Q And that would be the same gun?
19 A It's all one gun.
20 Q And as far as the .380's, as well as the
21 unfired cartridge case -- cartridge, I guess, could
22 you make any determinations about that?
23 A They were also fired by one gun and it's a
24 different gun than that fired the nine millimeter.
25 Q And the unfired thing had been loaded in that

①

1 same gun?

2 A It had been loaded into the same firearm as the
3 other .380 auto cartridge cases.

4 Q And for the record, the .380 found at Meadow
5 Lake Drive did not match?

6 A It was inconclusive.

7 Q You couldn't make any determinations about it?

8 A I could not make any determinations with it
9 compared with the other .380 cartridge cases.

10 Q And as far as the five nine millimeter
11 cartridge cases from Meadow Lake, what were your
12 determinations?

②

13 A Two of them had been fired by the same gun that
14 fired the cartridge cases from the scene and three
15 were inconclusive in its comparisons.

16 MS. CAMPBELL: Thank you, sir.

17 THE COURT: Cross?

18 MR. SUTHERLAND: Please the Court, sir.

19 THE COURT: Yes, sir.

20 MR. SUTHERLAND: Your Honor, may I approach the
21 witness?

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. SUTHERLAND:

③

25 Q Sir, I guess we can sort of start at the end

1 when y'all were talking about that bullet fragment.
2 And I remember Ms. Campbell was talking to you about
3 when y'all were looking for that particular one that
4 went through the side of the Mobil station.

5 A Yes.

6 Q And that there was a brick interior in there.
7 And you had said that, I mean, potentially, it could
8 have been somewhere illogical.

9 A It could be.

10 Q And, potentially, because it was a brick wall,
11 that it could have fragmented into small fragments
12 that you couldn't find.

13 A That's correct.

14 Q But an example would be the Ford Explorer here,
15 I mean that's a pretty tough set of materials, I
16 guess, you know, of a car. And this would be the
17 fragment from which you did the analysis; is that
18 correct?

19 A That's correct, yes.

20 Q And so that's the bullet fragment from which
21 you did the analysis. And the results that you
22 got -- you examined this and it appeared to be a .38
23 caliber projectile?

24 A Yes.

25 Q And the types of firearms that he listed,

1 a .357 Magnum. Now, there are three particular
2 kinds here. So, again, these are these -- all
3 right, there are class characteristics, subclass
4 characteristics?

5 A Yes.

6 Q And so that's where you were able to sort of
7 determine what the brands were, the makers?

8 A If I can step back for a minute, explain how I
9 do this. If you'll remember when I was initially
10 discussing comparisons of bullets with firearms, you
11 have these spiralling grooves called rifling that
12 are placed into the barrel of the gun. Different
13 manufacturers use a different number, different
14 numbers of rifling grooves. They have different
15 directions of twists and they can have different
16 dimensions. For instance, the depressed portions
17 may be of a certain width for one manufacturer and
18 wider for another.

19 What we have available to us is a data base
20 that's provided by the Federal Bureau of
21 Investigations, or FBI, and it has these general
22 rifling characteristics in it. So what we will do
23 in the laboratory is take measurements of the
24 projectile initially to determine what basic caliber
25 it is and then we will take actual measurements of

1 the impressions left by those rifling grooves on the
2 surface of the bullet. Those dimensions and the
3 directional twists combined with the other
4 measurements will give us, when placed into that
5 data base, a list of manufacturers that are known to
6 use those rifling characteristics. And from that,
7 we can provide the investigators a list of possible
8 brands of guns that they may be looking for in that
9 case.

10 This list is not intended to be all inclusive.
11 There may be additional firearms that would have the
12 same general rifling characteristics that simply
13 have not made it into the data base as of yet.

14 Q Okay. Thank you, sir. I understand it now for
15 sure. Now, the first brand was a Ruger .357 Magnum.
16 And the second was -- now I was stationed in
17 Germany, it's a Sport Wafon?

18 A That's right.

19 Q Okay. Which is Sport Wafon, that's how it's
20 spelled. And this looks like a Weihrauch, which is
21 wire ouch -- I'll just put -- and you had testified
22 that there may be some that aren't in the data base?

23 A That's correct.

24 Q And with respect to the .38 Special, and that's
25 the -- didn't that used to be the, sort of the

1 standard police firearm or something in the 80's?

2 A It was for many departments. And something to
3 remember in this particular case is the .38 Special
4 ammunition can be and often is fired in the .357
5 Magnum caliber firearms as well.

6 Q And that's, hence, the connection, the two
7 different types of firearms up here?

8 A Yes.

9 Q The first one is Burgo, and I'm not sure where
10 that's from, and Charter Arms?

11 A Yes.

12 Q And there's an EIG?

13 A Correct.

14 Q There's a Herbert Schmidt?

15 A Correct.

16 Q And there's a Liberty Arms, and then PIC, and
17 then RG Industries, and then a Rohm?

18 A Correct.

19 Q And then, potentially, stuff outside the data
20 base?

21 A That's right.

22 Q And then we've got the .380 auto. Now, here we
23 have Lorcin, Sterling Arms and a Talon and then the
24 little plus thing out there. And then we've got a
25 nine millimeter Luger. And we've got BJT.

1 A Correct.

2 Q Claridge, Cobra Enterprises and a Lorcin on
3 this side and then a Ruger, Standard Arms and a
4 Talon. And so, basically, what you are able to do
5 is to let the investigators on the case know that
6 there was a number of potential firearms for them to
7 be looking for in connection with this bullet
8 fragment here?

9 A That is correct.

10 Q Okay. I wanted to ask you about some of the
11 stuff that I remember reflected on some earlier
12 testimony and some stuff that was interesting. You
13 called it a slide. I'm not that familiar with
14 pistols, but with rifles. And if I were to pull a
15 charging handle back, which would be a slide on a
16 pistol, you know, from an AR-15?

17 A Yes, similar concept.

18 Q And there was already a round in the chamber,
19 that live round would eject out the side?

20 A That is correct. If you had a round in the
21 chamber of the firearm already and pull the slide to
22 the rear, it's going to extract that just as it
23 would a fired cartridge case and eject it from the
24 gun.

25 Q And not to stick it to Investigator Padgett,

1 but I had observed the evidence -- and, gosh, okay,
 2 well, what we had at a certain location, and I don't
 3 want anybody to take any -- just use your
 4 recollection about this -- in one spot, there was an
 5 unfired .380 cartridge and then a couple feet
 6 forward there were two spent cartridges and I know
 7 that there are other explanations for that, but the
 8 minute that I saw that, I said, Oh, well, you know,
 9 someone --

10 MR. GOLDBERG: Objection, is there a question?

11 THE COURT: Sir? I'm sorry?

12 MR. SUTHERLAND: I was saying that it is a
 13 question. Should I break it down some more, Your
 14 Honor?

15 THE COURT: It sounds to me like you're trying
 16 to testify. You need to ask a question. And you
 17 can't pit one witness against another, if that's
 18 where you're headed.

19 MR. SUTHERLAND: Yes, sir. And I withdraw that
 20 of the Padgett talk. I'm sorry.

21 BY MR. SUTHERLAND:

22 Q But the first -- it occurred to you in a
 23 pattern of evidence like that where you have the
 24 unfired cartridge here and then two spent shell
 25 casings when trying to figure out what was going on,

1 would it be one of the first things that occurred to
2 you that somebody took a firearm out that had a
3 round in the chamber and pulled the slide back and
4 then moved forward and fired a couple shots?

5 A As far as to whether -- trying to speculate as
6 to whether someone moved forward or not, I would
7 hesitate to do that, but finding a fired cartridge
8 case -- or finding an unfired cartridge at a scene
9 especially near other fired cartridge cases that
10 microscopically can be identified as coming from the
11 same gun, it would be -- one thing that would occur
12 to me as a possible explanation for that is that the
13 gun had been cleared of that unfired cartridge at
14 some point in time during the sequence. It could
15 have been before or after the other two were fired
16 or anywhere in between.

17 Q It could have been a misfire or some...

18 A Regarding the misfire...

19 Q And by that, I would mean when someone pulls a
20 trigger and it doesn't -- the projectile doesn't go
21 out the end clearing that, but that could be very
22 dangerous I do know.

23 A But there is no indication on this unfired
24 cartridge of there being an attempt to fire.

25 Typically a misfire like that, there would be a

1 firing pin impression on the primer of the cartridge
2 and the cartridge simply did not discharge. In this
3 case, there is no firing pin impression on the
4 cartridge.

5 Q So what you have, basically you have the
6 characteristics that you identified and you link
7 these together, so you said that's a possible
8 scenario?

9 A Possible, yes.

10 Q Okay. And you testified that there's certainly
11 distinctions between nine millimeter and .380
12 cartridges, but that they can be fired -- .380
13 cartridges could be fired from a nine millimeter
14 pistol?

15 A I have had numerous cases in the past where a
16 .380 cartridge was fired out of a nine millimeter
17 pistol. However, a physical examination of the .380
18 cartridge case after the fact would give you a
19 visual indication that that had happened. The nine
20 millimeter chamber is a little bit larger than a
21 .380 chamber, so the cartridge case tends to bulge
22 in the chamber and give you a very obvious
23 indication that that's what's happened.

24 Q Did we talk about the left-handed gun? I just
25 remember that was interesting when -- because you --

1 Ms. Campbell was, on direct examination, asking you
2 about the direction that the cartridges fly out and
3 you had mentioned that, I don't know if you saw
4 them, something about there could be some
5 left-handed guns that could come out the other way?

6 A Those type of firearms I was referring to are
7 not specifically designed for a left-handed shooter
8 when it comes to handguns. Although, they do make
9 some rifles and shotguns that are specifically
10 designed for left-handed shooters. There are some
11 what I consider to be unusually designed
12 semiautomatic pistols that will eject to the left or
13 up or in some other unusual direction. Merely, it's
14 a function of their design.

15 Q But, sir, I mean, your typical expectation
16 would be that a shell casing would be ejected to the
17 right?

18 A The majority of them that I encounter are, yes.

19 Q She did ask you a little bit about a means of
20 determining a flight path with respect to shell
21 casings and that I believe your answer was along the
22 lines of you need additional information?

23 A Correct.

24 Q If, say, there was something corroborating
25 where -- well, something that you examined at the

1 scene that you remember, you saw a hole in the side
2 of the station and y'all were able to put the little
3 straw out. And I don't know if it's called a straw?

4 A There are probes that we use and I do recall
5 that that was done with that particular hole.

6 Q And so then sort of walking back from that, and
7 if you do find something there, you know, grouped
8 together there, it's pretty good to put it together
9 that this is what happened?

10 A It gives you more information that you can sort
11 of tie it down a little bit tighter.

12 Q And similarly, although certainly not as
13 reliable as the forensic examination, if you had a
14 number of eyewitnesses that were saying that an
15 individual was firing that way and there were shell
16 casings found here, that would sort of
17 substantiate -- out here to the right, the
18 possibility that they were correct that someone was
19 shooting in that direction?

20 A It would be useful information, yes.

21 Q Okay. And your information that there was 40
22 to 50 people from the direct of Ms. Campbell?

23 A That's what I heard, yes.

24 Q And that there were many cars?

25 A Correct.

1 Q And, of course, the cars, when they're leaving,
2 I don't know if you know the factual scenario here,
3 I won't give it to you, but I mean if cars are
4 leaving and there are shell casings that can be
5 picked up in a tire?

6 A It may happen, yes.

7 Q And I believe you said people could get them in
8 their shoe?

9 A Correct.

10 Q And then -- so in a mass panic situation where
11 there are shell casings about, would you consider it
12 a likelihood that some may have been transferred to
13 people, cars, or at least the scene would have been
14 disturbed by --

15 A I will state that it would be a very safe
16 assumption that the scene had been disturbed to some
17 extent or may have been disturbed. However, I
18 cannot assign any likelihood that any of them would
19 have been picked up inadvertently and taken from the
20 scene.

21 Q Yes, sir, I understand. And until -- but
22 things begin to become more stable, you testified,
23 when law enforcement shows up and they begin to
24 establish control of who enters and who leaves the
25 scene?

1 A Yes.

2 MR. SUTHERLAND: Thank you, sir.

3 I have no further questions of this witness,
4 Your Honor.

5 THE COURT: Any cross-examination of this
6 witness?

7 MS. PAYNE: Yes, Your Honor. May it please the
8 Court.

9 THE COURT: Yes, ma'am.

10 CROSS-EXAMINATION

11 BY MS. PAYNE:

12 Q Investigator Collins, you initially did the
13 shell casing testing back on July 19th?

14 A That's when I issued the report.

15 Q Okay. So you might have done it before then?

16 A The actual examinations took place largely in
17 March.

18 Q In March?

19 A March and -- Investigator Mauldin's
20 participation started in March and I was doing it
21 along with her at that time. And there was a delay
22 in getting the actual report out, largely --
23 sometimes I don't issue a report immediately because
24 I'm waiting for the gun to actually be recovered and
25 submitted to me so that I could do the final

1 comparison, if you will, and tie these items to a
2 gun. Along that, about July we had not received a
3 gun, so I went ahead and issued a report.

4 Q So you started testing them about a month right
5 after this incident occurred?

6 A Yes. Actually I could -- the initial
7 examination started on March 11th.

8 Q When did you do the testing on the bullet
9 fragment?

10 A The bullet fragment I examined very recently.
11 The bullet fragment was examined on April 16th of
12 this year.

13 Q And you said that's the bullet fragment from
14 Tayson's truck?

15 A Tayson's truck, yes.

16 Q If someone is -- knows the difference between
17 guns, there is a difference between a .357 and
18 a .32?

19 A On close examination, it would be easier to
20 tell than from a distance, yes.

21 Q And, actually, a .357 is a high powered gun?

22 A Very high powered, yes.

23 Q A .357, a .38, a nine millimeter and a .380,
24 are they the same diameter?

25 A They're very similar. They're so close in

1 bullet diameter that if you were to try to make a
2 determination, you would need fine measuring
3 equipment to be able to make that determination.

4 Q And you have no idea how long these shell
5 casings were out at Meadow Lakes?

6 A No idea whatsoever.

7 Q But they were damaged?

8 A Yes.

9 Q And you have no idea who fired those shell
10 casings?

11 A No, I do not.

12 MS. PAYNE: No further questions, sir.

13 THE COURT: Redirect?

14 MS. CAMPBELL: Yes, sir.

15 REDIRECT EXAMINATION

16 BY MS. CAMPBELL:

17 Q She asked you about a .357 being a high powered
18 rifle. If someone identified this gun as a .357,
19 would they be correct or incorrect?

20 A That is not -- that would be incorrect as in --
21 that is not a .357 Magnum.

22 Q What caliber gun is this?

23 A It's a .32 H and R Magnum.

24 Q And of the three calibers we've been talking
25 about, the .380, the nine millimeter and the .32, is

1 this the least powerful, most powerful or in
2 between?

3 A It's the least powerful.

4 Q He drew up here, these are possibilities -- and
5 you mentioned the FBI gives you a list?

6 A (Witness nodded head.)

7 Q And as far as the projectile, which is State's
8 Exhibit Number 89, any one of those could have fired
9 these?

10 A That is correct. I can't --

11 Q Not all of those, fired this?

12 A It could have originated from either one of
13 those calibers or brands of firearms or one that is
14 not on the list. I simply cannot -- there's not
15 enough of information due to damage on this
16 particular projectile for me to be able to determine
17 with any degree of certainty which of these would
18 have done it.

19 Q And that includes a .380?

20 A That includes a .380, yes.

21 Q And from the crime scene, you received
22 ammunition from a .380?

23 A Yes.

24 Q But you can't make any comparisons of that
25 because of the damage to the bullet?

1 A The bullet damage is -- there's no way that I
2 can determine if that particular projectile
3 originated from any of the fired cartridge cases.

4 Q And the same thing, do you know how long this
5 spent projectile had been in Tayson Boone's
6 Explorer?

7 A No idea.

8 Q The .380s -- and he asked you about .380s and
9 nine millimeters can be fired from each other?

10 A .380s could be fired in a nine millimeter, but
11 you will not be able to fire a nine millimeter
12 conversely in a .380 because the dimensional
13 differences are such that it wouldn't fit in the
14 chamber.

15 Q But you mentioned you would be able to tell?

16 A In every case that I have seen where a .380 was
17 fired in a nine millimeter, there has been some
18 indication of it, yes.

19 Q And were these .380s fired by a nine millimeter
20 or a .380?

21 A They're all consistent with having been fired
22 from a .380 itself. There was no bulging or any
23 other damage consistent with having been fired in a
24 nine millimeter.

25 Q And, in this case, were the nine millimeters

1 fired by what type of a gun?

2 A The nine millimeters were consistent with
3 having been fired from a nine millimeter caliber
4 firearm.

5 Q Mr. Sutherland asked you about this live round
6 that had been chambered at one point?

7 A Yes.

8 Q No question about that. Are you familiar with
9 the term stove pipe?

10 A Yes.

11 Q What does that mean?

12 A A stove pipe is typically referring to a fired
13 cartridge case that has been partially ejected from
14 the gun and it is simply -- it is caught in the
15 mechanism and sticking out in the side of the
16 ejection port so it looks like a stove pipe.

17 Q And another term, can a gun get jammed
18 sometimes?

19 A That is what is commonly referred -- that is
20 one type of a ejection malfunction that is commonly
21 referred to as a jam.

22 Q And in order to remedy that, how -- what would
23 be the remedy to get the gun to become unjammed?

24 A Common remedy is to turn the gun to the side
25 and pull the slide to the rear which would free the

1 fired cartridge case to fire from the gun.

2 Q And could that be to an unfired cartridge
3 casing?

4 A If you had an unfired cartridge that was
5 similarly stuck in the mechanism of the gun, perhaps
6 didn't feed properly, that would be one method you
7 could use to clear that malfunction, yes.

8 Q So if a person is out there shooting and the
9 gun jams, in order to keep shooting, he could eject
10 that?

11 A He could, yes.

12 Q And that would be consistent with that one at
13 the scene, the unfired?

14 A That would be one possible explanation for
15 that, yes.

16 MS. CAMPBELL: That's all I have, Your Honor.

17 THE COURT: Recross?

18 MR. SUTHERLAND: No, sir.

19 THE COURT: Recross?

20 MS. PAYNE: Just briefly, Your Honor.

21 RECROSS-EXAMINATION

22 BY MS. PAYNE:

23 Q Investigator Collins, the bullet fragment that
24 was recovered from Tayson's truck could also be a
25 nine millimeter, correct?

1 A Yes, it could.

2 MS. PAYNE: No further questions.

3 THE COURT: You may step down. Thank you, sir.

4 Do you want to break for lunch now or do you

5 want to call the next witness?

6 MR. GOLDBERG: Your Honor, may we approach on a
7 scheduling issue?

8 THE COURT: Sure.

9 (Whereupon, a bench conference was held off
10 the record, in the presence of the jury, but out of
11 the hearing of the jury.)

12 THE COURT: Ladies and gentlemen, I'm advised
13 that before we can take the next witness, I have a
14 legal matter I have to address so we'll stay here
15 and do that, which means I'm going to give you a
16 longer lunch break. Be back at 2:00, okay. Thank
17 you. Don't discuss the case.

18 (The jury was excused for lunch.)

19 THE COURT: All right. You say we need a Neil
20 versus Biggers hearing on the next witness?

21 MR. GOLDBERG: Yes, sir.

22 THE COURT: Are you ready to proceed?

23 MR. GOLDBERG: Yes, sir.

24 THE COURT: Call your witness.

25 MR. GOLDBERG: State calls Tanesha Joe.

1 TANESHA JOE,
2 having been duly sworn, testified as follows:

3 THE CLERK: Have a seat in the witness box and
4 state your name for the record.

5 THE WITNESS: My name is Tanesha Joe.

6 DIRECT EXAMINATION

7 BY MR. GOLDBERG:

8 Q Tanesha, are you doing okay?

9 A Yes.

10 Q Little bit nervous about being here?

11 A (Witness nodded head.)

12 THE COURT: You have to say your answers. You
13 can't shake your head.

14 THE WITNESS: Yes.

15 BY MR. GOLDBERG:

16 Q You've got to make sure it's loud enough for
17 the court reporter to hear, okay? Were you at the
18 Waffle House last year when the shooting took place?

19 A Yes.

20 Q That Waffle House on Two Notch and I-20?

21 A Yes.

22 Q And when you were out there, did you have an
23 opportunity to see anyone with a gun?

24 A Yes.

25 Q And at some point thereafter, did you talk to

1 someone from the sheriff's department about that?

2 A Yes.

3 Q You gave a statement?

4 A Yes.

5 Q Did you describe to him what the person with
6 the gun looked like?

7 A Yes.

8 Q Was it a male or female?

9 THE COURT: Hold on a second. I can barely
10 hear you. What was your last answer?

11 THE WITNESS: Male.

12 BY MR. GOLDBERG:

13 Q And were they black, white, Asian?

14 A Black.

15 Q What, if anything, did you observe about what
16 they looked like?

17 A Their hair, they had long hair.

18 Q Long hair?

19 A Uh-huh.

20 Q How was the hair done?

21 A It was braided back and hanging down.

22 Q And can you describe where you were in relation
23 to the Mobil Gas Station or the Waffle House and
24 that general area?

25 A Yes. I was in a green Taurus on the passenger

1 side and the -- if you look to the right, the Mobil
2 station was on my left-hand side and the Waffle
3 House was on my right and we were driving towards
4 Columbiana Mall -- well, Columbia Mall.

5 Q So would it be fair to say the car you were in
6 was in between the Mobil and the Waffle House, is
7 that what you're saying?

8 A Yes, uh-huh.

9 Q And the Mobil was to the left and the Waffle
10 House was to the right?

11 A Yes.

12 Q And at what point did you see the man with the
13 gun?

14 A When we drove up and there was a crowd and then
15 that's when we heard the shots and then that's when
16 we drove off.

17 Q So at what point did you see him with the gun?

18 A What do you mean?

19 Q I'm saying in terms of was it when you drove
20 up, was it after you heard the shot?

21 A After I heard the shot.

22 Q You looked and you saw a man with a gun?

23 A (Witness nodded head.)

24 Q And was it Investigator McDaniels that you met
25 with from the sheriff's department?

1 A Yes.

2 Q You gave him a statement?

3 A Yes.

4 Q And did he show you a group of pictures?

5 A Yes.

6 Q And ask you to pick somebody out. Show you
7 what's been marked as State's 92 for I.D., take a
8 look at that. Do you recognize that?

9 A Yes.

10 Q Is that the lineup that he showed you?

11 A Yes.

12 Q And when he showed it to you, what did he say
13 to you about it?

14 A Can you identify the person that was at the
15 Waffle House...

16 COURT REPORTER: I didn't hear the last
17 statement.

18 BY MR. GOLDBERG:

19 Q Say it again for the court reporter.

20 A Can you -- are any of those boys on the paper
21 anyone you saw at the Waffle House with a gun.

22 Q And when he asked you that, what was your
23 response?

24 A I said that one (indicating).

25 Q Which one did you point to?

- 1 A Photo number four.
- 2 Q And did you mark that on the sheet somehow?
- 3 A Yes.
- 4 Q How did you do that?
- 5 A I circled it with my initials.
- 6 Q You put your initials by photo number four.
- 7 And that was on June 22nd of '07?
- 8 A I believe so.
- 9 Q And did you sign the document?
- 10 A Yes.
- 11 Q And when he was asking you about it, did he
- 12 suggest to you in any way who to pick?
- 13 A No, sir.
- 14 Q At all?
- 15 A No.
- 16 Q Did anyone in the room -- was it just the two
- 17 of you in the room?
- 18 A No, sir.
- 19 Q Did anyone else in the room suggest to you who
- 20 you should pick out?
- 21 A No, sir.
- 22 Q And the person that you picked out, why did you
- 23 pick him out?
- 24 A Because that's the one I saw.
- 25 Q That's the one you saw with the gun?

1 A (Witness nodded head.)

2 MR. GOLDBERG: That's all I have, Your Honor,
3 for this witness.

4 THE COURT: Cross?

5 MR. SUTHERLAND: None from us, sir.

6 MS. EVERHART: Yes, Your Honor. Thank you.

7 CROSS-EXAMINATION

8 BY MS. EVERHART:

9 Q Hi. What time were you at the Waffle House
10 that night?

11 A I'm really not sure because, I'm going to tell
12 the truth, I was drunk and high and I really don't
13 remember.

14 Q Okay. So you're not sure what time you
15 arrived?

16 A No.

17 Q Was it at night?

18 A Yes.

19 Q And you said you were in a cream car and y'all
20 pulled into the parking lot?

21 A Well, no, that wasn't -- I just didn't -- I
22 told that, that's what I told the investigator, but
23 -- because I didn't want to get in trouble with my
24 mom, but I was really in a green Taurus with another
25 guy.

1 Q All right. You were in a green Taurus. So in
2 the green Taurus, you pull into the Waffle House
3 parking lot?

4 A No, we never pulled in. We were driving
5 towards the mall.

6 Q So y'all were on Two Notch Road?

7 A Uh-huh.

8 Q Driving down Two Notch Road. And you never
9 entered the Waffle House parking lot?

10 A No.

11 Q At no point did you stop at the Waffle House?

12 A Well, we stopped, but we never drove into the
13 Waffle House or the gas station.

14 Q So you stopped on Two Notch --

15 THE COURT: I don't know what she said.

16 What did you say, ma'am?

17 THE WITNESS: I said we were driving past it,
18 but then we stopped. We never went into the gas
19 station or the Waffle House.

20 BY MS. EVERHART:

21 Q Did you pull in the parking lot?

22 A No.

23 Q So you stopped on Two Notch Road?

24 A (Witness nodded head.)

25 Q So y'all are at a full stop out on Two Notch

1 Road?

2 A (Witness nodded head.)

3 THE COURT: Is that a yes?

4 THE WITNESS: Yes.

5 BY MS. EVERHART:

6 Q And you were talking to people who were in the
7 parking lot?

8 A Yes.

9 Q And, at that point, you hear shots from the
10 parking lot?

11 A Yes.

12 Q And where did you say you saw the person
13 shooting?

14 A If I believe I'm right, on the Waffle House
15 side.

16 Q Okay. At the front of the parking lot?

17 A I'm not really sure.

18 Q You're not sure. So you're not sure if you saw
19 the shooter at the front or at the middle?

20 A No.

21 Q And it was at night?

22 A Yes.

23 Q But even though you don't know where the
24 shooter's located, you saw his face?

25 A (Witness nodded head.)

1

Q And you saw his hair?

2

A (Witness nodded head.)

3

Q And how long did you stay after you heard the

4

shots?

5

A We drove off as soon as we heard the shots.

6

Q Immediately. The shots went off, you saw the

7

shooter?

8

A Yes.

9

Q You saw his face in full detail?

10

A Yes.

11

Q And then drove off. And you met with the

12

police officer June 22nd, correct?

13

A Yes.

14

Q And you gave him your statement. And then you

15

did a photo lineup?

16

A Yes.

17

Q And that was while you were down at DJJ?

18

A Yes.

19

Q So June 22nd while you were incarcerated at

20

DJJ, you gave this statement?

21

A Yes.

22

MS. EVERHART: Beg the Court's indulgence.

23

THE COURT: Yes, ma'am.

24

(Pause.)

25

BY MS. EVERHART:

1 Q Before going to DJJ, were you out at Alvin S.
2 Glenn Detention Center?

3 A Yes.

4 Q Were you out there more than one time?

5 A No.

6 Q Just one time?

7 A Yes.

8 Q For how long?

9 A For maybe two days.

10 Q Two days. And then you were moved to DJJ?

11 A Yes.

12 MS. EVERHART: No further questions, Your
13 Honor.

14 THE COURT: Redirect?

15 REDIRECT EXAMINATION

16 BY MR. GOLDBERG:

17 Q She asked you about being in the jail. When
18 you were there, did you ever see the person that you
19 picked out of this lineup at the jail?

20 A I think I did. I believe so.

21 Q You think you did?

22 A Well, there was a lot of -- we couldn't really
23 see on that side, but there was a lot of them with
24 hair, so I'm really not sure.

25 Q So it might not have been?

1 A Yeah.

2 MR. GOLDBERG: I have no more questions.

3 THE COURT: Recross?

4 MR. SUTHERLAND: None from us, sir.

5 MS. EVERHART: No, Your Honor.

6 THE COURT: Thank you, ma'am. You may step
7 down.

8 Call your next witness.

9 MR. GOLDBERG: The State calls Investigator
10 McDaniels.

11 THE COURT: Come around, please. You've
12 already been put under oath?

13 THE WITNESS: Yes, sir.

14 THE COURT: You're still under oath.

15 WALTER SHAWN MCDANIELS,
16 having been previously duly sworn, resumed the
17 witness stand and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. GOLDBERG:

20 Q Investigator McDaniels, did you come in contact
21 with Tanesha Joe?

22 A Yes, I did.

23 Q And when was that?

24 A I was actually -- I made contact with her on
25 June 21st.

1 Q 2007?

2 A Yes, sir.

3 Q And where was it that you came in contact with
4 her?

5 A At the Midland's Evaluation Center within the
6 Department of Juvenile Justice.

7 Q And had you gone there to talk to her on a
8 number of matters?

9 A Yes, I did.

10 Q Did you talk to her about the shooting at the
11 Waffle House as well?

12 A Yes, I did.

13 Q And in connection with that, did you show her a
14 photo lineup?

15 A Yes, I did.

16 Q Show you what's been marked as State's 92, ask
17 if you recognize that?

18 A That's the photo lineup that I showed her.

19 Q And does it have your -- does it have your
20 signature on there?

21 A Yes. That is actually on June 22nd, that's the
22 next day. My initial contact with her was on June
23 21st.

24 Q When did you show her the lineup?

25 A June 22nd, 2007.

1 Q And can you tell the Judge how you presented
2 the lineup to her and what you said to her?

3 A I had advised her that I was going to show her
4 six photos. I asked her to look at each photo very
5 carefully to see if she actually saw anyone on that
6 -- amongst those photos that fit the same
7 description of the person that she saw with a gun on
8 the night in question.

9 Q And this was after you had already taken a
10 statement from her; is that right? Or, was it
11 during --

12 A It was actually during.

13 Q And what kind of a description had she given to
14 you about the person she saw with a gun?

15 A She had described his hairstyle.

16 Q How did she describe it?

17 A Said it was braided.

18 Q And based on showing her the lineup, did she
19 make a pick?

20 A Yes, she did.

21 Q And which picture did she select?

22 A She chose number four.

23 Q How did she mark that?

24 A She circled it and put her initials within the
25 circle. And she also -- after she signed the bottom

1 of it, it was witnessed by her mom as well.

2 Q Did she have any difficulty making that pick?

3 A No, she didn't.

4 Q Did you suggest to her in any way who to pick?

5 A No, sir.

6 Q Did anyone that was present suggest in any way
7 who she should pick?

8 A No, they did not.

9 MR. GOLDBERG: Those are all of my questions.
10 Thank you.

11 THE COURT: Cross?

12 MR. SUTHERLAND: None from us, sir.

13 MS. EVERHART: Yes, Your Honor.

14 CROSS-EXAMINATION

15 BY MS. EVERHART:

16 Q You said initially you had made contact with
17 her on June 21st?

18 A Physical contact, yes, ma'am.

19 Q What was that in regard to?

20 A Actually, I would have to take you back to June
21 15th. June 15th I have, Received information via
22 the Solicitor's office in reference to Ms. Joe
23 having information on another unrelated matter, one
24 that I was actually the lead investigator on at the
25 time.

1 Q So you were speaking to her about an unrelated
2 matter on the 21st?

3 A Right. This matter as well as the Waffle House
4 -- I mean, the Waffle House matter, as well as my
5 case.

6 Q How did the Waffle House matter come up?

7 A She actually wrote and she gave a statement
8 during her evaluation within MEC. And it was
9 actually during her evaluation the counselor wrote
10 down some of the things that she stated. I had
11 received a copy of that and within that, she
12 described being present at both the Waffle House
13 incident and how she made contact with several of my
14 primary suspects from my case.

15 Q And she referenced being there the night of the
16 shooting?

17 A She did.

18 Q And then you met with her on June 21st to
19 address that?

20 A Initially, I met with her on June 21st.

21 Q But she didn't make this statement until the
22 next day?

23 A Until June 22nd.

24 Q So what did y'all discuss June 21st?

25 A When I first made contact with her at MEC, she

1 stated that she was advised by a public defender not
2 to talk to me. I had explained to her that she was
3 -- if she was present, that she was basically a
4 witness. She agreed to -- she gave me a very
5 minimal amount of information with respect to both
6 incidents. I told her that I would make contact
7 with her mom in an effort to see if she would be
8 okay with that and she stated she would prefer that
9 her mom be present. At that time -- later on that
10 day rather, I went -- I made contact with Ms.
11 Bashiba Joe, which is Tanesha's mother and explained
12 to her the situation and she agreed to accompany me
13 while we went to MEC and interviewed Tanesha.

14 Q Did she give you minimal information because
15 you only asked minimal questions or she just didn't
16 have a lot to give you that first day?

17 A No. She just stated before we wrote anything
18 down, that's what I mean by minimum, she wouldn't
19 actually -- she didn't want to give a written
20 statement. She stated before she wrote anything
21 down or signed anything, she would prefer that her
22 mom be there, but she was willing to talk to me.
23 Again, that's when she advised me that the only
24 reason why she didn't want to sign anything is
25 because public defender -- her former public

1 defender, I believe it was Sara Smith, told her not
2 to talk to me if I came to talk to her.

3 Q And the day -- the next day when you came back
4 to talk with her and she made this statement, did
5 you say she made the statement first and then she
6 looked at the photo lineup or she looked at the
7 photo lineup while y'all were taking down the
8 statement?

9 A Generally, when we first meet with anyone, you
10 know, there is some dialogue, you know, with respect
11 to, you know, us conversing. It would be during the
12 actual conversation and the actual taking of the
13 statement.

14 Q So y'all were taking down the statement and you
15 showed her the photo lineup. And did you show her
16 just one photo lineup?

17 A Yeah, just one photo lineup.

18 Q And, at that point, she picked out Mr. Boone
19 and then continued with her statement?

20 A Yes.

21 MS. EVERHART: Beg the Court's indulgence one
22 moment.

23 THE COURT: Yes, ma'am.

24 (Pause.)

25 BY MS. EVERHART:

1 Q What was she incarcerated on, what kind of
2 charge?

3 A Give me one moment. She was only actually
4 adjudicated as a result of disturbing school.

5 MS. EVERHART: Nothing further, Your Honor.

6 THE COURT: Redirect?

7 MR. GOLDBERG: No, sir.

8 THE COURT: Anything else of the witness?

9 MR. SUTHERLAND: No, sir.

10 THE COURT: Thank you, sir. You may step down.

11 Any other witnesses on Biggers?

12 MR. GOLDBERG: No, sir.

13 THE COURT: Defense have any witnesses on this?

14 MS. EVERHART: No, Your Honor.

15 THE COURT: What's your position?

16 MS. EVERHART: Your Honor, we would argue that
17 the fact that in the process of making her
18 statement, she was shown the photo lineup would have
19 been suggestive, Your Honor. In her statement, she
20 gives basic description that she thought he had
21 braids or dreads. Clearly, all the gentlemen in the
22 picture do have braids and dreads.

23 Additionally, Your Honor, she admitted, when
24 she was speaking, that she did see Mr. Boone while
25 she was down at the jail. Your Honor, this

1 statement wasn't taken until June, much, what, four
2 months after this occurred.

3 Your Honor, in terms of whether or not she
4 could see anything that night, she stood -- she sat
5 on the stand and she said that she was drunk and
6 high that night, Your Honor, that she never even
7 entered the parking lot. She was actually going
8 down Two Notch Road and stopped, looked over,
9 shooting occurred, she can't tell you where in the
10 parking lot Mr. Boone would have been standing, but
11 she said she could fully see his face. Your Honor,
12 it sounds like they pulled off immediately.

13 She admitted to being a liar on the stand, Your
14 Honor. She told her mom she was there in a cream
15 colored car and that's what she told the police.
16 Today she admittedly said, I was lying. I didn't
17 want to get in trouble. I was actually in a green
18 car with some other guy.

19 Because she was drunk and high, she was not --
20 she can't place him anywhere in the parking lot.
21 She was actually out on the road and because she was
22 handed this picture of someone she knew months after
23 this occurred while she was incarcerated, in the
24 midst of giving her statement, I would argue -- and,
25 Your Honor, she has motive to help out the State as

1 well. She apparently is involved in other illegal
2 activities or has information about other illegal
3 activities. Your Honor, we would just argue that
4 this should be suppressed. The photo lineup should
5 not come in.

6 THE COURT: Yes, sir.

7 MR. GOLDBERG: Thank you, Your Honor. I would
8 take issue with the last statement that she had some
9 motive. She was never accused of anything involved
10 anywhere relating to this. She was simply a witness
11 to the case that night.

12 As far as the suggestiveness of giving her the
13 lineup while they were taking the statement, she
14 indicated she had not met him before, didn't know
15 him. She provided a description to Investigator
16 McDaniels. He then shows her the lineup. She
17 immediately selects him from the lineup. It was
18 consistent with what she said about his hairstyle.

19 In regards to the issue of whether or not he --
20 she saw him at the jail while she was at the jail, I
21 believe her first answer was yes. And then I
22 followed that up and I said, Was it possible it
23 wasn't him? And she said, Yes, there were a lot of
24 people with long hair there. And she wasn't very
25 clear on whether it was him or it wasn't him.

1 I think based upon the description she gave of
2 what she saw of him that night, how he looked, there
3 wasn't any suggestiveness involved, I don't think
4 showing her the lineup in the middle of taking the
5 statement is suggesting that someone in there was
6 the one that she saw. Your Honor, I'd actually hand
7 up the lineup to you if you would like to see it.

8 And in regard to the point about where he was
9 located in the parking lot or where she was located
10 in the parking lot, I believe she commented about
11 how she was on Two Notch Road and not even in the
12 lot. I mean, as Your Honor has heard, almost every
13 lay witness that has been called in this case there
14 has been some variance in their testimony. That
15 would be something she could be subjected to on
16 cross, believe that that would go towards the weight
17 of her testimony not the admissibility of it.

18 THE COURT: Anything else?

19 MS. EVERHART: Nothing further, Your Honor.

20 THE COURT: All right. You all had indicated
21 at the bench that there was some other issue related
22 to this witness. Is there another issue related to
23 this witness?

24 MS. EVERHART: Previously, Your Honor, this was
25 the witness that we had not been provided the

1 statement on. Your Honor, we did send out our
2 investigator to attempt to speak with her. Her
3 mother would not allow our investigator to speak
4 with her, but we did follow up on that, Your Honor.
5 And we are -- that's it, Your Honor.

6 MR. GOLDBERG: Your Honor, I would just add in
7 regards to that, the public defender's office did
8 represent Jerome Thompson who was charged in this
9 case until about, I believe, a week or two ago and
10 it was conflicted out. And I have a check list here
11 from December of '07 received by the PD's office
12 that includes in it Ms. Joe's statement and the
13 lineup. And it was sent at the same time that it
14 was sent to Mr. Sutherland, I believe, and to
15 Mr. Chaplain, Mr. Boone's attorney at the time.

16 MS. EVERHART: I did not represent
17 Mr. Thompson, so I would not have received...

18 THE COURT: All right. We all have our roles
19 to play. And I have before me a decision related to
20 Neil versus Biggers in camera hearing. As was noted
21 previously in the trial, the inquiry for the Court
22 under Neil versus Biggers is a two pronged inquiry.
23 The first prong being whether the identification is
24 the product of any improper suggestiveness on the
25 part of law enforcement. And there is no indication

1 in this record that the identification was the
2 product of any suggestiveness on the part of law
3 enforcement; therefore, I do not reach the second
4 prong related to reliability.

5 I note that the witness said that she was high
6 and I note that the witness said she was not in the
7 parking lot. I note that it was dark. All of those
8 things are matters for cross-examination.

9 I have to base the determination about
10 suggestiveness on what's been presented and based on
11 what's been presented, the Court finds a requisite
12 degree of proof has been established for the
13 admission of the photographic lineup if a proper
14 foundation is laid in front of the jury.

15 Court's in recess until two o'clock.

16 (Whereupon, there was a luncheon recess.)

17 **THE COURT:** Is the State ready?

18 **MS. CAMPBELL:** Yes, Your Honor, at this
19 juncture, it might be appropriate to take up, I
20 believe Ms. Payne had made a motion to suppress some
21 items of the search warrant. We're getting ready to
22 get into those witnesses.

23 Based on information that came out on
24 cross-examination with that last witness, I don't
25 believe she'll be taking the stand for the State.

1 **THE COURT:** Okay. So what's the motion?

2 **MS. PAYNE:** I'm not exactly sure what the State
3 is ready to put in, so -- our motion was to suppress
4 the items regarding the gang, the stuff that they
5 got from the search warrant at Meadow Lakes and I
6 believe we had already -- you had already ruled on
7 this, but I guess not.

8 **MS. CAMPBELL:** You said that it might be
9 appropriate to revisit it later in the case and I
10 may be misstating, Your Honor, if you ruled.

11 **MR. SUTHERLAND:** You mean further down the
12 road...

13 (Pause.)

14 **MS. CAMPBELL:** Your Honor, maybe you have
15 already ruled that no red clothes were coming in. I
16 don't mean to misrepresent.

17 (Pause.)

18 **THE COURT:** What is it you wanted to get in?

19 **MS. CAMPBELL:** Your Honor, specifically this
20 one I can limit it, I just wanted to get in a
21 photograph of the defendant himself. It was taken
22 the day he was arrested. But I want to make sure I
23 don't violate any rulings because I think you did
24 say we couldn't get in any red clothing.

25 But I would hand up State's Exhibit Number 55,

1 that was the defendant when he was being interviewed
2 and you can see the advice of rights next to him in
3 the office of Captain Smith. And I'm assuming --
4 that's how he appeared on the day and that would
5 just go, to some extent, to the fact that he was
6 cooperating freely and voluntarily, he was not
7 handcuffed and none of those things were going on.

8 THE COURT: Yes, ma'am.

9 MS. PAYNE: Your Honor, we would only object --
10 I don't remember what State's Exhibit it is.

11 THE COURT: 55.

12 MS. PAYNE: Yes, sir. On the basis, they've
13 already gotten the testimony in that he cooperated
14 freely and voluntarily, he was not handcuffed, he
15 gave -- went through the advice of rights form. I
16 think what more we're worried about is the
17 prejudicial effect of the fact that he is wearing a
18 red shirt which seems to be the common theme that
19 they're trying to get in and more support about the
20 search warrant issues that we had previously went
21 over with Your Honor when you had said, and your
22 ruling was, no mention of specific colors in front
23 of the jury. If it needs to be mentioned, do so
24 outside the presence of the jury. It has to be
25 something more than red.

1 **MS. CAMPBELL:** And based on cross-examination
2 of several witnesses as to whether or not her client
3 is actually a member of a gang, Your Honor, this
4 would -- which is in the statement, I believe she
5 did cross Investigator Roe on that issue, I know she
6 did extensively pretrial, and maybe we're
7 anticipating, but he is going to claim he is not a
8 member of a gang. However, there is information
9 from the search warrant and what he's wearing that
10 day, would be consistent with gang colors.

11 **MS. PAYNE:** My only rebuttal, Your Honor, is
12 that they're planning on putting Mr. Boone's
13 statement into evidence which clearly states as day,
14 the first question asked, Are you in a gang? Yes.
15 What gang? TTP. And they're putting that in, I
16 think, in cross-examination if he does take the
17 stand.

18 **THE COURT:** All right. If the purpose for this
19 is to show that he's wearing red, I would have to
20 exclude it under 403. I wore a red sweat shirt all
21 last week after I got home and I don't think anybody
22 accused me of being in any gang, might accuse me of
23 not washing my clothes enough, but they won't accuse
24 me of being in a gang.

25 The free and voluntariness of it -- I'm not

1 saying it can't come in, it doesn't seem to be
2 unduly prejudicial, but if you're going to use this
3 to say he was wearing red, that proves he's in a
4 gang, I just don't think you can make that leap
5 right now.

6 MS. CAMPBELL: And maybe it would be more
7 appropriate at a later time. I just didn't want to
8 do anything about --

9 THE COURT: I appreciate it.

10 MS. PAYNE: Your Honor, I would add -- I just
11 want to reiterate about the search warrant issue.
12 Anything that they took that was red, I believe Your
13 Honor had, we have it in our notes, that you had
14 suppressed all of that. The only thing that they
15 could get from that search warrant was the .22,
16 which is in evidence.

17 MS. CAMPBELL: Yes, sir. We understand your
18 ruling on that and I agree your position has not
19 changed.

20 THE COURT: All right. So are we ready for
21 another witness?

22 MS. CAMPBELL: Your Honor, you had asked about
23 some research. We did some preliminary last night,
24 I will do more over the weekend, if I can just hand
25 that up.

1 **THE COURT:** Sure.

2 **MS. CAMPBELL:** Your Honor, the only other
3 issue, I think, that would come up, and it might
4 just be prudent to go ahead and take it up, and
5 Mr. Sutherland and I don't mean to anticipate what
6 you're going to say, but I think he may have
7 something he needs to put on the record as well.

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

9 **MR. SUTHERLAND:** Your Honor, if I may, we have
10 another late breaking evidentiary issue. I met with
11 Investigator Ellis and Assistant Solicitor Goldberg
12 last Friday and we went through the exhibits of
13 evidence in this case. There was a box of materials
14 that were recovered pursuant to the search warrant.

15 Going through these materials, I asked them
16 about some drugs and that that wasn't going to --
17 they weren't going to use that. I asked them about
18 that there were a number of letters, pictures, all
19 kinds of things that we started going through them
20 and reading them individually. And I asked Mr.
21 Goldberg, Is there anything that we can do about
22 this? Mr. Goldberg told me that I will get you a
23 copy of anything that we intend to introduce at
24 trial.

25 Your Honor, I got the copies of these just

1 before the break. And, further, not having received
2 this information, I certainly would have taken after
3 the search warrant, sir. Again, maybe we can handle
4 this through 403 without having to try and figure
5 out -- go through another --

6 THE COURT: What is it?

7 MR. SUTHERLAND: Your Honor, may I hand this
8 stuff up? These are letters and drawings including
9 gang symbols, words about gangster, killer, trigger
10 man, various symbols. I believe they were all
11 written by a female that Mr. Patterson was seeing at
12 the time.

13 I don't know -- I guess they're going to say,
14 well there is an issue that may have been raised
15 about him being in a gang. I don't know that I said
16 the word gang in cross-examining anyone, I'm pretty
17 certain that I did from what I recall of the opening
18 statement, but only with respect to saying, you
19 know, that they're not monsters, that these are
20 kids.

21 I don't see what that would do but influence
22 the emotions of the jury. I don't see where it's
23 logically relevant to prove a fact at issue in this
24 trial. All I see is the potential for jurors
25 sitting back there and looking through these things

1 and acting emotionally, sir, and that would be my
2 403 argument, Your Honor.

3 THE COURT: Do y'all want to be heard on this?

4 MS. CAMPBELL: Your Honor, I believe it refers
5 -- it refers to be as a Folk in that information.
6 Those are gang signs. At the heart of this case,
7 Your Honor, anyway we can cut it is the fact that
8 these two groups, these two gangs go there for the
9 purpose of a fight, which escalates into a gun
10 fight, which causes the death of a 15 year old. And
11 the purpose for this and the whole motive for this,
12 I guess, is because the two rival gangs don't get
13 along.

14 You know, I'm not trying to attack his
15 character, however, an issue in this case is, you
16 know, the fact that each of these people are members
17 of a gang.

18 THE COURT: And who's going to establish that
19 this has any significance to the gang?

20 MS. CAMPBELL: Captain Smith has had
21 specialized training in that. And in it, he refers
22 to -- the word Folk is in the handwriting. It was
23 recovered at a search warrant of his house.

24 THE COURT: And why did y'all wait till the
25 fifth day of trial to give this to him?

1 MS. CAMPBELL: He had an opportunity, I
2 believe, to review everything on Friday, Your Honor.
3 I apologize. I was not present at that time and I
4 did not mean to withhold anything from him.

5 THE COURT: Anything else?

6 MR. SUTHERLAND: Your Honor, I was told, and I
7 guess, I detrimentally relied on the word that I was
8 given that anything would be provided to me by fax.
9 And I gave the fax number and I said, Fax any of
10 this stuff to me. I didn't get anything. I didn't
11 go after the search warrant and now they're giving
12 this stuff to me an hour before they intend to
13 introduce it and it's just not fair, sir.

14 THE COURT: I agree. It's excluded under Rule
15 403 and based on discovery violations.

16 MR. SUTHERLAND: Thank you, Your Honor.

17 THE COURT: Mark these as a court's exhibit.

18 (Court's Exhibit Number 6, documents, were
19 marked for identification purposes.)

20 THE COURT: Where are we now?

21 MS. CAMPBELL: We're good to go.

22 THE COURT: Okay. Everybody ready?

23 MR. SUTHERLAND: Yes, sir.

24 MS. EVERHART: Yes, Your Honor.

25 THE COURT: Bring in the jury.

1 (The jury returns to the courtroom.)

2 THE COURT: Call your next witness please,
3 Solicitor.

4 MS. CAMPBELL: May it please the Court?

5 THE COURT: Yes, ma'am.

6 MS. CAMPBELL: State calls Investigator Matt
7 Ellis.

8 THE COURT: Come around, please.

9 MATTHEW ELLIS,
10 having been duly sworn, testified as follows:

11 THE CLERK: State your name for the record,
12 please.

13 THE WITNESS: Matthew Ellis.

14 DIRECT EXAMINATION

15 BY MS. CAMPBELL:

16 Q Investigator Ellis, where are you employed?

17 A Richland County Sheriff's Department.

18 Q What do you do there, sir?

19 A I'm an investigator.

20 Q And what types of crimes do you investigate?

21 A I investigate armed robberies at this
22 particular point in my career.

23 Q Are you also involved in the investigation of
24 homicides?

25 A I do.

1 Q Can you tell this jury a little bit about your
2 training in the field of law enforcement?

3 A I've been to the Criminal Justice Academy
4 approximately ten years ago, completed that,
5 hired -- or was working with Forest Acres Police
6 Department for several years, had on-site training
7 there. I then came to the Richland County Sheriff's
8 Department became a regional investigator working
9 auto break-ins and shoplifting, misdemeanor crimes
10 for approximately two, three years, went through
11 several schools at the academy, investigative
12 courses and crime scene courses. In the last four
13 years, I think, I've been assigned to the criminal
14 investigative division. I've attended several
15 classes including homicide schools and classes of
16 that nature.

17 Q And how long have you actually been in law
18 enforcement?

19 A About ten years.

20 Q I want to turn your attention back to February
21 of 2007, specifically the early morning hours of
22 February the 19th, 2007. Did you receive a phone
23 call that night?

24 A I did.

25 Q And why were you getting a phone call that

1 night?

2 A I was the on-call homicide investigator. We
3 rotate this on a weekly basis. It just kind of
4 comes up at random through scheduling from the
5 supervisors in our division and that particular
6 night I was the individual who was on-call for a
7 homicide if one would happen.

8 Q And who actually made contact with you?

9 A I received a call from Sergeant McRoberts.

10 Q Without saying what he said, as a result of
11 that phone call, where did you go?

12 A I responded to the Waffle House on Two Notch
13 Road. I believe it's 7505 Dentsville area near
14 I-20.

15 Q And is that here in Richland County?

16 A That is.

17 Q The whole parking lot area, as well as the gas
18 station next door?

19 A Correct.

20 Q When you arrived at the scene, what did you
21 observe?

22 A When I arrived on the scene, I observed patrol
23 marked units, uniformed officers so to speak, on the
24 scene, the entire Waffle House parking lot secured
25 by crime scene tape, the Mobil Gas Station was

1 secured by crime scene tape to the point where I
2 actually had to park on the road. I also observed
3 -- when I pulled up, I could see -- as I was going
4 by the Waffle House, I could see that there was a
5 body laying in the parking lot of the Mobil Gas
6 Station, the corner closest to Two Notch and towards
7 the Waffle House.

8 Q And, approximately, what time of night was it
9 when you got there?

10 A I believe it was a little after one o'clock in
11 the morning, 1:05 is what my notes indicate.

12 Q Prior to entering the actual crime scene within
13 the tape, did you check with anyone?

14 A I did. It's normally my routine when I arrive
15 on a scene like this to check with the crime scene
16 unit, if he is already there. Obviously, they're in
17 charge of collecting the evidence there and I don't
18 want to contaminate anything. So I made contact
19 with him, asked was it okay if I entered the crime
20 scene and when he told me it was okay, I then
21 checked in with the individual who was handling the
22 crime scene log.

23 Q The investigator who was actually processing
24 the crime scene, what was his name?

25 A Investigator Allen.

1 Q Once you checked with Investigator Allen, did
2 he actually take you around and show you some of the
3 evidence that he had there at the scene?

4 A He did. There were two other investigators on
5 the scene prior to me and they gave me a quick
6 briefing on what they knew. And then I made contact
7 with Investigator Allen to find out what he had. He
8 walked me through the scene, showed me where he had
9 located some shell casings in the parking lot of the
10 Waffle House. There was a live .380 shell casing in
11 the Waffle House parking lot. There was two fired
12 shell casings, .380, in the Waffle House parking lot
13 and then he pointed out -- these were more in line
14 with a building, the middle of the building area,
15 and then there was two fired nine millimeter shell
16 casings towards the rear of the parking lot, the
17 rear of the building away from Two Notch Road.

18 Q I'm going to show you what's been marked as
19 State's Exhibits Number 19, 21, 23 and 25. Do you
20 recognize those?

21 A I do.

22 Q And what do those represent?

23 A This represent the -- 25, you can't -- it's
24 marked item D, you can't actually see the spent
25 casing in it, but it is -- I believe I recall item D

1 was a spent shell casing.

2 Q And I've got the close ups if you need to see
3 them.

4 A Right. The other three are spent -- two of
5 them are spent shell casings, one of them is the
6 live .380 round, all in front of the Waffle House
7 area near the door.

8 Q And were you also made aware that there was a
9 shell casing that was found, I think, actually in a
10 plastic plate?

11 A Right. I was actually shown the shell
12 casing --

13 Q Itself?

14 A Itself, correct.

15 Q Show you what's been marked as State's Exhibit
16 18. Is that a general overview of where the shell
17 casings were and the live round in front of the
18 building?

19 A This appears to show the .380 shell casings in
20 the parking lot.

21 Q I'm going to show you what's been marked for
22 I.D. purposes as State's Exhibit Number 65. When
23 Investigator Allen was walking you through the
24 scene, were you able to make your own observations
25 of where those items were located?

1 A I was.

2 Q And does State's Exhibit 65 -- it's not to
3 scale, correct?

4 A Correct. It indicates that.

5 Q Generally show where those items were located
6 in the parking lot that day?

7 A Correct.

8 Q Other than the plastic plate which had moved,
9 does that fairly and accurately represent that?

10 A Yeah. I saw the shell casings is what I paid
11 particular attention to because my first question
12 was asking about calibers.

13 MS. CAMPBELL: Your Honor, at this time, we'd
14 offer State's Exhibit 65 into evidence.

15 THE COURT: Any objection?

16 MR. SUTHERLAND: Without objection.

17 MS. EVERHART: No objection, Your Honor.

18 THE COURT: Thank you. Mark it in evidence,
19 please.

20 (State's Exhibit Number 65, diagram,
21 admitted into evidence.)

22 BY MS. CAMPBELL:

23 Q That night, did you assist in trying to find
24 any shell casings that may have been in that parking
25 lot area?

1 A Once Investigator Allen had shown me what he
2 had discovered and we'd walked through it, of course
3 it's dark outside, we attempt to try to locate any
4 further evidence that has not been found, these
5 items were already marked, so we knew where they
6 were. I particularly went, and through my law
7 enforcement career have known that people throw
8 things away, so I immediately checked the Waffle
9 House trash cans to see if there was any firearms,
10 casings, anything that I thought that could be
11 related to this apparent homicide at the time and I
12 was unable to find anything.

13 Q As one of the investigating officers actually
14 invest -- and, at this point, you determined it was
15 a homicide?

16 A There was a deceased individual on the ground
17 that appeared to have a gunshot wound.

18 Q With a gunshot wound?

19 A Correct.

20 Q So while you were investigating this homicide,
21 did you attempt to interview any witnesses there at
22 the scene?

23 A I did.

24 Q And were there any witnesses there at the scene
25 that had any -- or claimed to have any knowledge of

1 who was doing the shooting that night?

2 A There was -- on the scene, there was no
3 individual that I spoke to that had any knowledge of
4 who had shot.

5 Q And is that unusual?

6 A No. It's very likely, on the crimes that I've
7 responded to, that you actually have a witness or
8 the suspect still on the scene to tell you who it
9 is, sometimes you do, sometimes you don't, but more
10 than likely it's uncommon to have anybody there.

11 Q While you were there, did the family of the
12 victim show up?

13 A Actually, when I pulled up to the Waffle House,
14 I parked along the back side of the Waffle House,
15 there's actually a furniture store. And when I
16 pulled in there, I saw a group of people in the
17 furniture store -- outside the crime scene near the
18 furniture store. And during my preliminary talks
19 with other investigators there, it was told to me
20 that they thought that might have been the family of
21 the individual that was on the ground. So after I
22 looked into the trash can, asked a couple of other
23 investigators to do a couple other things, I
24 responded to make contact with that group of people
25 to try to determine if that was the family or not of

1 the individual that was on the ground.

2 Q And was, in fact, that the family?

3 A It was.

4 Q Was the coroner's office also on the scene that
5 night?

6 A The coroner's office came on the scene, I'm not
7 sure if they were there prior to me or right after I
8 got there, but they were on the scene and I was
9 advised that we needed to have somebody try to
10 identify the body. I was actually talking to
11 William Wright, who was the father, suspected father
12 of the individual there that had been shot. So I
13 asked him would he go over with me to try to make
14 this determination.

15 At that point in time, we checked in,
16 Mr. Wright checked in on the crime scene log, to the
17 best of my knowledge, and we walked over and he
18 viewed the individual that was lying on the ground
19 and gave us the affirmative that it was, in fact,
20 his son lying there on the ground.

21 Q And were you able to determine the age of the
22 victim?

23 A His father -- yes, he was 15.

24 Q And is Mr. Wright here in the courtroom today?

25 A He is.

1 Q And where is he seated?

2 A He's seated, I believe, that's the third row on
3 the end, green shirt on.

4 Q And he actually had to identify his son there
5 at the scene?

6 A He did have to identify the son on the scene so
7 we could have a positive I.D.

8 MR. SUTHERLAND: Your Honor, I'm sorry, it's
9 just exceedingly prejudicial to point out the family
10 of the victim. I'm sorry.

11 THE COURT: Say again.

12 MR. SUTHERLAND: I think it's exceedingly
13 prejudicial to point out the family of the victim to
14 the jury, sir.

15 MS. PAYNE: We would join in as well.

16 THE COURT: Well, the objection's not
17 contemporaneous. And I don't want y'all to go into
18 this any further.

19 MS. CAMPBELL: Moving along, Your Honor.

20 BY MS. CAMPBELL:

21 Q After he had been identified, did you then
22 attempt to make contact with witnesses that night?

23 A I did.

24 Q Having talked to several witnesses that night,
25 did you also come in contact with a young man named

1 Rob Portee?

2 A We did. I believe we -- on the scene, one of
3 the investigators had received some information.
4 And then later on that evening, I overheard our
5 dispatch put a call out to 406 Lock Leaven Drive, I
6 believe is how it's pronounced. It's in Richland
7 County. It's also in the, I guess, the borderline
8 of the Dentsville/Northeast area. And stated that a
9 Mr. Ron (sic) Portee wanted a deputy and an
10 investigator to come to his house because he was
11 receiving threatening phone calls.

12 Obviously hearing that, I immediately responded
13 to that address and made contact with Mr. Portee.
14 He was there, his mother was present and his
15 girlfriend.

16 Being that we had received his information
17 before this call came in as a possible suspect in
18 this case or somebody that was involved in it, I
19 asked Mr. Portee would he consent to search of his
20 room for any shell casings, firearms and so forth.
21 He agreed, signed a consent to search form. And I,
22 along with -- I had a uniformed officer with me also
23 who witnessed this, and we searched his room. We
24 didn't find anything. And Mr. Portee agreed to
25 accompany me back to my office to be interviewed in

1 reference to the incident.

2 Q To be clear, who contacted Mr. Portee? Did

3 y'all contact him?

4 A No, ma'am.

5 Q He contacted you?

6 A I'm not sure if he -- he called our dis -- I'm

7 not sure if it came in through 9-1-1 or if he just

8 called and got transferred to our dispatch, but they

9 actually -- our dispatch center put the call out for

10 an officer to respond to his house.

11 Q And that night did he accompany -- or did he

12 end up down at headquarters with you?

13 A He did.

14 Q And did you take a statement from him?

15 A I sure did.

16 Q What was his demeanor like?

17 A He was nervous.

18 Q You can't say what he said, did he give you

19 some information?

20 A He did.

21 Q After taking a statement from him, did you

22 follow up on anything else that night?

23 A I believe that morning, time I took him home

24 and came back, I think we were about -- it was --

25 sun was coming up and by that time, the

1 investigators are out working, we were pretty much
2 worn out so to speak.

3 Q So, at that point, are other investigators
4 involved in the investigation?

5 A Other investigators came in to take over the
6 investigation so we could go get some rest and be
7 able to work some that day. So we had several
8 people came in, Captain Smith and Major Stewart
9 responded in to assist with the investigation while
10 myself and Investigator Roe, who was assisting me in
11 the case, could catch some sleep, rest.

12 Q The next day, did you attempt to make contact
13 with a Corey Sanders?

14 A I did.

15 Q And what day would that have been on?

16 A Actually that was farther -- the next day I did
17 not, no, ma'am.

18 Q Had someone else tried to make contact with
19 Corey Sanders?

20 A That's correct. Captain Smith had attempted to
21 make contact with Mr. Sanders due to receiving his
22 name.

23 Q That day did you make contact with a Bryant
24 Hayes?

25 A I did not.

1 Q Did someone else make contact with Bryant
2 Hayes?

3 A Right. Captain Smith made contact with him.

4 Q Was he able to provide you any information?

5 A We were interested in talking to Mr. Hayes, his
6 name was provided to us, that the victim had been
7 with him earlier in the day prior to this incident,
8 so we were wanting to talk to him to see, you know,
9 if he was with the victim at the time because it was
10 still unclear who the victim was actually with. We
11 made contact with him and determined that he was not
12 with the victim at the time of the incident.

13 Q At the time of the incident?

14 A Correct.

15 Q Did you actually make contact with Corey
16 Sanders?

17 A At a later date, I did. I think the next day
18 the first involvement I had, I came back out a
19 little after 4:30 in the afternoon and I responded
20 back to the incident location. That night we had
21 made contact with the Waffle House about their video
22 equipment and were in the process of trying to
23 obtain that. I also wanted to check with the Mobil
24 Gas Station to see if they had video, so I responded
25 there and tried to make contact with them. I had to

1 leave a card for the manager or owner to call me.
 2 Also, while I was there, I kind of walked through
 3 the location some more and located what appeared to
 4 be two bullet holes in the side of the Mobil Gas
 5 Station closer to the Waffle House, which is
 6 actually on that end of the building is a liquor
 7 store, but it's all connected into one building.

8 Q And you said there were two bullet holes in the
 9 side?

10 A Correct.

11 Q Were you made aware of whether either one of
 12 those had anything to do with this case?

13 A I was told by the -- I was told that one of
 14 them was not related to this case.

15 Q And later, I believe, Lieutenant Padgett
 16 responded and he took over that investigation?

17 A Yeah. Several days later, I actually took
 18 Captain Smith back out. He wanted to see what I was
 19 talking about and to kind of go over the scene and
 20 stuff. We went back out there and then summonsed
 21 Lieutenant Padgett.

22 Q You mentioned that you were trying to obtain a
 23 video. Were you ever able to obtain any video from
 24 the Mobil Gas Station or that area?

25 A I received a call back from the owner stated

1 that it was turned off and they did not have any
2 video.

3 Q And I'll get back to the Waffle House video in
4 a minute. What's the next thing you actually did?

5 A We received the name of Dameon Dowling. I was
6 able to determine his address and responded to that
7 location and made contact with his mother. He was
8 not there. His mother was able to reach him by
9 telephone at a friend's house, I believe it was.
10 And he -- she went and picked him up and brought him
11 back. I explained to her why I wanted to talk to
12 her son. And he accompanied me back to the
13 sheriff's department to be interviewed.

14 Q And you were able to get a statement from him?

15 A I was.

16 Q And since taking that statement, have you been
17 able to make any contact with Mr. Dowling?

18 A I tried for the past several weeks to locate
19 him.

20 Q Was Sergeant McRoberts, Investigator Thompson
21 also taking statements from various people at this
22 point?

23 A They did. We had several people that actually
24 came to the office during the course of the
25 investigation when I was not there to take those

1 statements. And I believe McRoberts and Thompson
2 were on-call working those evenings and they took
3 the individuals' statements that came to our office.

4 Q And did that include Derrick Guilyard and Demon
5 Griffin?

6 A That's correct.

7 Q I want to turn your attention to the 20th of
8 February. Did you make contact with a Raymond
9 Asberry?

10 A I did.

11 Q And without saying what he said, were you able
12 to get a statement from him?

13 A I was.

14 Q Did you also, on that same day, make contact
15 with a confidential informant?

16 A I did.

17 Q And without saying what he said to you, did he
18 give you some additional information?

19 A He did.

20 Q Around four o'clock that afternoon, did you
21 also make contact with a Chad Robinson?

22 A Yes, ma'am.

23 Q And were you able to take a statement from him?

24 A I did.

25 Q Around 6:30 that night, did you make contact

1 with a Dennis Rowe?

2 A I did.

3 Q And, again, without saying what he said, did

4 you get some information from him?

5 A That's correct.

6 Q Moving on to the next day, February 21st of

7 2007, did you make contact with a woman known as

8 Duck, or Doneisha Smallwood?

9 A Her name had come up during the investigation

10 and I attempted to locate her at her school. At

11 that particular time, she was not in her class.

12 Q Okay. Later that morning, did you make contact

13 with another young woman?

14 A I did.

15 Q And who was that?

16 A Taneisha Outen.

17 Q Where did you make contact with her?

18 A Blythewood High School.

19 Q That day did you also go by the Waffle House

20 again?

21 A Yes.

22 Q And what was the purpose of you going by the

23 Waffle House that afternoon?

24 A To check back on the video, I had not heard

25 anything.

1 Q And that day did you receive a video from the
2 Waffle House?

3 A I did not. I'd been advised that it had been
4 picked up by an individual from, the way it sounded
5 to me, the corporation, Waffle House Corporation.
6 So I was provided phone numbers and so forth to make
7 contact with those individuals to try to retrieve it
8 from them.

9 Q I want to turn your attention to February 22nd
10 around 10:45 that morning. Were you able to conduct
11 an interview for Doneisha, or Duck Smallwood?

12 A I was.

13 Q And was she able to give you a statement in
14 this case?

15 A She did.

16 Q Later that day around 12:20, did you make
17 contact with another person that had come up during
18 the course of your investigation?

19 A I did. This was the actual time where I made
20 contact with Mr. Corey Sanders. I believe I picked
21 him up from his house.

22 Q Had he already been interviewed at that point?

23 A That's correct.

24 Q And this was the second interview?

25 A This was a reinterview. He had already been

1 interviewed by Captain Smith.

2 Q And why were you reinterviewing him?

3 A I believe there were some inconsistencies as to
4 individuals that he knew that were at the Waffle
5 House.

6 Q And did he come in on that day on the -- I
7 believe, that's the 22nd?

8 A Correct.

9 Q And was he able to give you some additional
10 information he omitted the first time?

11 A That's right.

12 Q That day did you make any attempts to get in
13 touch with Eugene Patterson?

14 A I did.

15 Q And why were you trying to get in touch with
16 Eugene Patterson?

17 A Because we had received information that Eugene
18 had arrived at -- came to the Waffle House in a
19 burgundy Malibu. However, we had received -- and we
20 had received several statements to that effect. And
21 the statements that -- they were refuting other
22 information.

23 Q Had Mr. Patterson at that point already given a
24 statement?

25 A Correct.

1 Q And in his statement, what kind of car did
2 Mr. Patterson say he was driving?

3 A It was a neon, I think it was green, yes, a
4 green neon.

5 Q So the purpose in you contacting him to get him
6 back in again was to?

7 A Try to determine, you know, we had statements
8 saying that he was in a burgundy Malibu. We didn't
9 quite understand why an individual, you know,
10 wouldn't tell us the truth about what kind of car
11 they were in.

12 Q And that day on the 22nd when you got in touch
13 with Mr. Patterson, did he agree to come in?

14 A At first.

15 Q And when did he indicate he would come in?

16 A The next day I believe a little after lunch,
17 two o'clock.

18 Q Did you receive a phone call back from Eugene
19 Patterson?

20 A Not long, just after he called me back and
21 advised me that he was going to be unable to attend
22 that interview.

23 Q That day did you get some more information
24 about the burgundy Malibu that had been seen at the
25 Waffle House that night?

1 A I did.

2 Q And, in fact, were you able to get a tag
3 number?

4 A I did. I received a tag number.

5 Q And did you try to get some information about
6 the owner of the tag number?

7 A I did.

8 Q And what information were you able to get?

9 A I received the tag number. I ran the tag
10 number through the DMV system and received the name
11 of Doris Hagood and received the address for -- in
12 Cameron, South Carolina. I then used that address
13 and Doris' driver's license number to research to
14 see if there was anybody else at that residence --
15 anybody else in South Carolina that used that
16 address on their driver's license. And I was able
17 to locate that an Oliver Feldman also used that
18 address.

19 Q And had the name Oliver come up during the
20 course of your investigation?

21 A It had.

22 Q Had the name Eugene Patterson come up during
23 the course of your investigation?

24 A It had.

25 Q And at this point, did the name Tayson Boone or

1 Andre Boone come up?

2 A Tayson had come up.

3 Q Tayson?

4 A Correct.

5 Q And for clarification, Andre Boone and Tayson
6 Boone are one and the same?

7 A That was determined, yes.

8 Q At this point, had you gotten a warrant for
9 Eugene Patterson?

10 A I believe the afternoon -- that afternoon after
11 I talked with Mr. Patterson, I obtained a warrant.

12 Q And what was that warrant for at that point?

13 A Obstruction of justice.

14 Q That evening did you become aware that
15 Mr. Patterson turned himself in?

16 A I did.

17 Q And who would have interviewed him that
18 evening?

19 A Sergeant McRoberts, once again, was still on
20 the evening shift. I believe Mr. Patterson turned
21 himself in -- after being advised that we had the
22 warrant, he turned himself in later that evening and
23 Sergeant McRoberts reinterviewed him again.

24 Q The next day, that would be February the 23rd
25 of 2007, did Investigator Roe make contact with

- 1 Eugene Patterson?
- 2 A He did.
- 3 Q And did he take another statement from him?
- 4 A I believe him and Captain Smith took a
- 5 statement from him.
- 6 Q And, again, as you're doing -- you're part of
- 7 this investigation. Are other officers also
- 8 interviewing people, gathering information?
- 9 A Correct.
- 10 Q And passing that along to everyone?
- 11 A Correct.
- 12 Q I want to turn your attention to February 26th
- 13 of 2007. Did you make contact with a Derrick
- 14 Guilyard?
- 15 A I did.
- 16 Q And why did you want to make contact with
- 17 Derrick Guilyard? Hadn't he already given a
- 18 statement?
- 19 A He had. He had come in and provided us a
- 20 statement as to a particular caliber of gun that had
- 21 been shot at the Waffle House. And from evidence
- 22 that was collected at the scene, we didn't think
- 23 that was the truth. So we wanted to reinterview him
- 24 to try to determine if he was lying to us or not.
- 25 Q Did he change his story about it being a .22?

1 A He did not.

2 Q At that time?

3 A No. I picked him up and brought him back to
4 our office once again and talked to him and his
5 story pretty much stayed the same. After that, I
6 drove him -- I actually asked him did he mind taking
7 me where he was during the incident at the Waffle
8 House because he had advised in his statements who
9 he was with and what kind of car they were in. So
10 we went to the Waffle House and he pointed out the
11 location where the truck, Ford Explorer, he was in
12 was parked and it was consistent with where shell
13 casings were recovered. So I thought, at that
14 point, he was telling the truth about where he was
15 parked.

16 Q About where he was parked?

17 A Yeah. He kind of corroborated where he was
18 parked by where the shell casings were and other
19 statements we'd received.

20 Q And you said it was where some of the shell
21 casings were recovered?

22 A Correct.

23 Q And what caliber were the shell casings where
24 he said the black SUV was parked?

25 A Nine millimeter.

1 Q That day did you also make a phone call to Rob
2 Portee?

3 A I did.

4 Q And what was the reason you were doing that?

5 A He had been reinterviewed again. In his first
6 statement, he had described an individual as being
7 -- shooting the gun in the back parking lot. I
8 believe he had kind of given a physical description
9 of him and a possible name that he thought. In his
10 second statement when that was taken, when he was
11 interviewed, it was not -- I believe he actually
12 kind of looked -- I believe in the second statement,
13 he identified the individual that was shooting the
14 gun and it was not clarified in the second statement
15 if the person he was identifying in the second
16 statement was, in fact, the person he described in
17 the statement I took from him the first time. So I
18 called him back to make sure that was one and the
19 same person and he did admit that it was the same
20 person.

21 Q And was he able to, without saying what name he
22 used, name the person?

23 A Correct.

24 Q Thank you. At this point, on February the
25 27th, did you prepare some search warrants?

1 A We did prepare search warrants.

2 Q And whose homes did you initially prepare
3 search warrants for?

4 A We prepared search warrants for the homes of
5 Jerome Thompson and Andre Tayson Boone's residence.

6 Q And was that based on, without saying what it
7 was, information you had gotten from witnesses in
8 this case?

9 A Witnesses.

10 Q And just for the jury's understanding, were the
11 witnesses forthcoming in this case?

12 A Some were and some, you know, some people don't
13 want to talk to us, you know. We just have to do
14 what we can to get information that we can receive
15 from witnesses and document it. Sometimes people
16 are forthcoming. Other times you can get the door
17 slammed in your face so to speak.

18 Q At this point, did you also get a warrant for
19 Oliver Feldman's arrest?

20 A We did. We also got a search warrant for his
21 -- after determining that the burgundy Malibu and
22 had a tag number and whose it was, I obtained a
23 search warrant for that vehicle, also.

24 Q On February 28th of 2007, did you participate
25 in the search warrant executed at Jerome Thompson's

1 house?

2 A That's correct.

3 Q And why were you searching Jerome Thompson's
4 house at that point?

5 A At that point in time, we had statements to the
6 fact that he was -- either had or was in possession
7 of a gun the night at the Waffle House.

8 Q Did you also have information about other
9 people being in possession of that same gun?

10 A Yes.

11 Q Or another person?

12 A Correct.

13 Q Did you, at that point, have a warrant for
14 Jerome Thompson?

15 A I did.

16 Q And what was that warrant for?

17 A Aggravated breach of peace.

18 Q And what was the basis of that warrant?

19 A For being in possession of the firearm during
20 this incident and -- or being in possession of the
21 gun for one and then receiving information from
22 where he was in the car he was associated with is
23 where some shots were coming from, so the warrant
24 was signed on him for that reason.

25 Q At the same time you're conducting this search

1 warrant, is the search warrant on Tayson Boone's
2 residence being executed?

3 A Yes. We did them at the same time.

4 Q And who participated in the search warrant of
5 Tayson Boone's house?

6 A Who did?

7 Q Who was the lead investigator?

8 A Captain Smith would have been on the scene
9 there.

10 Q That morning of the 28th, did you advise Jerome
11 Thompson of his rights?

12 A I did.

13 Q And did you then get a statement from him?

14 A Correct.

15 Q After getting a statement from him, did he sign
16 any types of consents to search?

17 A He did. He signed a consent to search for a
18 DNA swab and he also had signed an advice of rights.

19 Q Based on information Mr. Thompson gave you, did
20 you go to his house and search for certain items?

21 A I did.

22 Q And what were you searching for?

23 A Nine millimeter shell casings.

24 Q Were you able to find any?

25 A We were not. We used hands and metal detectors

1 and were unable to locate any.

2 Q March the 1st of 2007, did you meet, you and
3 Captain Smith, meet with various people in the
4 Solicitor's office?

5 A I did not, Captain Smith did.

6 Q Excuse me, Captain Smith.

7 A Correct.

8 Q And based on the information they gathered at
9 that point, were arrest warrants secured?

10 A Not right after the meeting they were not. We
11 had had a warrant out also on Oliver Feldman and we
12 had been attempting to locate him and learned that
13 he worked at Fort Jackson at the PX. So I obviously
14 responded there, tried to make contact with him, he
15 was not at work, he was scheduled to be there,
16 talked to the management, was able to get them to
17 call him to find out when he was going to be at
18 work, said that he'd be there later. My card was
19 left for the management to contact me upon his
20 arrival.

21 We were also working with the military police
22 or their investigative division at the Fort to
23 assist us with that. A couple hours later, I
24 received a call, I think it was around two o'clock,
25 from the individual that we were working with

1 advising me that Oliver had arrived at work and that
2 we needed to get there because he thought he was
3 getting ready to leave.

4 Q And were you all able to take Mr. Feldman into
5 custody that day?

6 A We did.

7 Q And who actually took him in custody?

8 A Captain Smith was -- I got the call. I advised
9 him that Oliver was there and he was closest to the
10 Fort. So he responded and got there before we did
11 and was able to take him into custody.

12 Q And that day you didn't actually advise him of
13 his rights, but he was advised of his rights?

14 A Correct.

15 Q And a statement was taken?

16 A That's right.

17 Q Did he also sign a consent to search for
18 certain items in his house?

19 A He did.

20 Q And what items were y'all looking for at his
21 house?

22 A He admitted that he was firing a .32 caliber
23 gun revolver at the Waffle House and told us that
24 the gun could be located at his residence -- or his
25 mom's house in Saint Matthews or Cameron and he

1 signed a consent to search. At which time, we
2 contacted the sheriff's department for that area.

3 Q Calhoun County?

4 A Calhoun County Sheriff's Department who
5 assisted us in making contact with them and we also
6 -- or Captain Smith had an investigator from our
7 agency to immediately head out to assist in that.

8 Q And I show you what's been marked as State's
9 Exhibit Number 93. Are those items that were
10 recovered from Feldman's residence by Calhoun
11 County?

12 A That's correct.

13 Q And, at first, were you able to locate the .32?

14 A We were not. The particular location where we
15 were told to look we were unable to find it there,
16 or the individuals searching were unable to find it.

17 Q But later were they able to -- did they come
18 into possession --

19 A I believe that Calhoun County got a call back
20 to go back and they were able to take it into
21 custody.

22 Q And I show you State's Exhibit Number 82. Is
23 that the pistol that was turned over ultimately to
24 y'all through Calhoun County Sheriff's Department?

25 A Yes.

1 Q And, again, that came from Oliver Feldman's
2 residence?

3 A That's correct.

4 Q I want to turn your attention to March the 2nd
5 of 2007. Did you get murder warrants in this case?

6 A I did. I actually -- upon interviewing Oliver
7 Feldman, he was advised what he was being charged
8 with and sent a -- when he was sent to jail on his
9 original warrant I had, he was also charged with the
10 murder.

11 Q So Oliver Feldman was the first person you
12 charged in this case with murder?

13 A That's correct.

14 Q On March the 2nd, did you get two additional
15 warrants for murder?

16 A I did.

17 Q Did you also get -- and who was those for?

18 A Andre Tayson Boone and Eugene Patterson.

19 Q Did you also get an additional pistol charge on
20 those?

21 A I believe I did.

22 Q And that would be possession of a pistol under
23 21?

24 A Correct.

25 Q Were both Mr. Boone and Mr. Patterson under the

1 age of 21?

2 A Yes.

3 Q That day did you also get a search warrant for

4 Eugene Patterson's house?

5 A I did. I got the arrest warrants and the

6 search warrants at the same time. They were signed

7 at the jail by Judge Shealy.

8 Q And was the search warrant executed that day?

9 A It was.

10 Q Were you all able to locate Mr. Patterson?

11 A Yes.

12 Q And where was he located?

13 A He was located at the residence to be searched.

14 It was 215 Saint Andrews Terrace.

15 Q Prior to him coming out of the house, did y'all

16 call for some back up units?

17 A I was not actually present at that time. I was

18 at the jail obtaining the warrants and the search

19 warrants, also had to serve the arrest warrants.

20 And while I was responding back to meet with Captain

21 Smith and I believe Sergeant Ewing, they called me

22 and advised me that they had located the residence

23 and needed me to get there with the search warrant

24 and arrest warrants because they had encountered a

25 situation there.

1 Q And did you ultimately provide them with a
2 search warrant and the arrest warrants?

3 A I did. I responded to the scene. When I got
4 there, I noted that there was an error that was
5 passed along when we actually obtained the search
6 warrant that the address on the search warrant that
7 we were given was 215 Broad River Terrace instead of
8 215 Saint Andrews Terrace. This was nothing more
9 than an error by the officer that obtained the
10 description of the residence. He just recalled and
11 told us Broad River instead of Saint Andrews. The
12 description all appeared to still be the same of the
13 location.

14 Seeing that that had happened, before I allowed
15 anybody to make entry into the residence, I
16 telephoned Judge Shealy back who had signed that
17 search warrant and advised him of that situation and
18 he told me to just annotate on the warrant the
19 correct address and to put a note on the cover that
20 I had spoke with him in reference to that, which was
21 all done.

22 Q So the judge actually authorized you to execute
23 the search warrant?

24 A That's correct. And at that point in time, I
25 also arrived with the arrest warrants.

1 Q Mr. Patterson was arrested that day?

2 A That's correct.

3 Q I want to turn your attention to March the 5th
4 of 2007. Did you again make contact with a Doneisha
5 Smallwood?

6 A I did.

7 Q And was she able to give you some information?

8 A We were trying to corroborate some other
9 witness statements and were provided her name as to
10 help out with that statement.

11 Q That morning did you also become aware that
12 Mr. Derrick Guilyard had been arrested for
13 obstruction of justice?

14 A I received a call from Sergeant Ewing advising
15 me that he arrested him on a warrant I had.

16 Q And was he able to give some additional
17 information about the type of weapon being used
18 around the black car that night?

19 A (No response.)

20 Q Did you also interview a Karleisa Brabham, I
21 believe?

22 A I'm sorry, I was --

23 THE COURT: Did you answer that last question?

24 THE WITNESS: No, sir, I'm sorry. I was trying
25 to...

1 **THE COURT:** Let me know when you get to a good
2 stopping point.

3 **MS. CAMPBELL:** You tell me, Judge. This is
4 fine.

5 **THE COURT:** Well, you need to answer that
6 question, the question preceding.

7 **THE WITNESS:** Yes, sir. It was in reference to
8 Guilyard, correct?

9 **BY MS. CAMPBELL:**

10 **Q** Yes, sir.

11 **A** And we did receive new information from him
12 after he was arrested.

13 **MS. CAMPBELL:** Thank you.

14 **THE COURT:** All right. Folks, we'll take a ten
15 minute break. Don't discuss the case. Thank you.

16 (The jury retires to the jury room.)

17 **THE COURT:** Witness may step down, but cannot
18 discuss the testimony with anyone. Thank you.

19 We'll be in recess for ten minutes.

20 (Brief recess.)

21 **THE COURT:** Bring in the jury.

22 (The jury returns to the courtroom.)

23 **THE COURT:** You may continue.

24 **MS. CAMPBELL:** Thank you, Your Honor.

25 **BY MS. CAMPBELL:**

- 1 Q Turning your attention to noon on March the
2 5th, did you make contact with Karleisa Brabham?
- 3 A I did.
- 4 Q Were you able to interview her?
- 5 A I did take a statement from her.
- 6 Q Later that afternoon, did you make contact with
7 William Kee, or also known as Bernard Kee?
- 8 A I did.
- 9 Q Did you take a statement from her?
- 10 A From him, that's correct.
- 11 Q That day did other investigators make contact
12 with Karmindae Leggett?
- 13 A That's correct.
- 14 Q And does he have a nickname?
- 15 A Bay.
- 16 Q Was a statement obtained from him?
- 17 A There is. There's also Brian Hayes had a
18 nickname of Bay Bay, that's not to be confused with
19 Leggett as being Bay. There was two different ones.
- 20 Q Turning your attention to March the 14th of
21 2007, did you interview Demon Griffin?
- 22 A I did.
- 23 Q Was he able to give you additional information?
- 24 A I believe he stuck to the same -- he kept the
25 same story he had when he was originally interviewed

1 when he came to our office on the 19th, I believe,
2 and was interviewed by Investigator Thompson.

3 Q And then on March the 15th of 2007, did you
4 make contact with a Randy Pollen?

5 A I did.

6 Q Was he able to give you any information about
7 the shooters?

8 A The shooters? No, ma'am.

9 Q And on that same date, Jonathan King?

10 A Correct.

11 Q Was he able to give you any information about
12 the shooters?

13 A No.

14 Q During the course of this investigation, did
15 you actually -- eventually get the video from the
16 Waffle House?

17 A I did.

18 Q And does it show the inside or the outside of
19 the Waffle House?

20 A The inside. It's actually a camera that would
21 be positioned close to Two Notch Road facing towards
22 the rear of the building just in the restaurant
23 eating area and it's more on the wall closest to
24 where like the Mobil station. So if you could draw
25 a picture of the Waffle House, it would be on the --

1 in the corner closest to Two Notch and the Mobil
2 station.

3 Q Closest to Two Notch and the Mobil station?

4 A Right, some where --

5 Q In the interior?

6 A In the interior mounted from above.

7 Q Were you able to get any information from what
8 went on in the parking lot from the video?

9 A I was not.

10 Q And I show you what's been marked as State's
11 Exhibit Number 94. Did you review that at my
12 request?

13 A I did.

14 Q And is that the video you were able to obtain
15 from that night?

16 A That's correct.

17 Q The time and date that's exhibited on this
18 video, is it slightly off?

19 A Yes. I recall that it was -- the time does not
20 quite match up, which is, as I stated before, I do
21 work robberies which deal with a lot of video from
22 those incidents, commercial businesses and so forth,
23 and that's pretty common for business' time on their
24 VCRs or time on that VCR not to be accurate with
25 real time.

1 Q However, does the video from the interior of
2 the Waffle House reflect that time period around
3 which the shooting occurred?

4 A It does. I mean, you can see a large group of
5 individuals that is consistent with statements
6 inside of the location.

7 MS. CAMPBELL: Your Honor, at this time, we'd
8 offer State's Exhibit Number 94 into evidence.

9 MR. SUTHERLAND: Is there a foundation?

10 THE COURT: You're asking me a question, I
11 don't --

12 MR. SUTHERLAND: Objection to foundation, Your
13 Honor.

14 THE COURT: What foundation problem?

15 MR. SUTHERLAND: That they didn't call anybody
16 from Waffle House who turned the video over to them.

17 THE COURT: Do y'all want to be heard?

18 MS. PAYNE: Beg the Court's indulgence.

19 (Pause.)

20 MS. EVERHART: Your Honor, we would join in on
21 the basis of foundation.

22 THE COURT: Ladies and gentlemen, step back in
23 the jury room, shouldn't take long. I'll get back
24 to you in a minute. Don't discuss the case.

25 (The jury retires to the jury room.)

1 **THE COURT:** Solicitor, do you want to be heard
2 on this?

3 **MS. CAMPBELL:** Your Honor, I believe the
4 testimony has been he made a request from the Waffle
5 House to get the video from the interior of the
6 Waffle House that night, that he was provided this
7 video, he has reviewed the video. This is the
8 footage that he was provided. He acknowledges the
9 time period is slightly off; however, he has
10 testified that this is the time period during which
11 the shooting occurred. I believe it would be
12 authenticated as far as he made the request to the
13 Waffle House and this is the footage that was
14 provided to him as a result of that.

15 **THE COURT:** Do you want to be heard any
16 further?

17 **MR. SUTHERLAND:** I believe as far as
18 authentication, I believe there's a case that's a
19 1987 case, State versus Rich about
20 authentication with that -- well, that's a
21 fingerprint case. That's just the argument that I
22 recall, Your Honor. I hadn't expected to make it.

23 **MS. EVERHART:** Your Honor, we haven't had a
24 chance to view this video. I'm not sure the time
25 span it's supposed to be over, but it lasts a little

1 over a minute. It's really, really fast. There's
2 some technical difficulties with it. Someone from
3 Waffle House may need to be here to explain those
4 difficulties.

5 MS. CAMPBELL: The version -- this is slowed
6 down, it lasts about eight minutes.

7 MS. EVERHART: Your Honor, we were never
8 provided a slowed down video.

9 MS. CAMPBELL: It depends on what kind of
10 machine you put it on.

11 MS. EVERHART: We met Friday -- two Fridays
12 ago, Friday before last, we asked again about the
13 video. I remember talking to Matt Ellis about it
14 and we were laughing about how it was so fast, you
15 can't really see anything and I said, yeah. We
16 watched it, it lasted about a minute. He was like,
17 yeah, that's how it is. And we were never told
18 there is a slower version of this.

19 MR. SUTHERLAND: And, Your Honor, I do recall,
20 I think I might have even told Investigator Ellis
21 that I had to get my mouse and I put it as slow as
22 my player would go and literally click, click,
23 click, click to try it and then people would just
24 shoot by, but it might have been Dan. But, again, I
25 mean, my position is with respect to the

1 authentication, sir. I mean, I would -- actually,
2 it would have been quite useful if I would have
3 known that there was an eight minute version of the
4 video to actually make some people out. I think --

5 MS. CAMPBELL: It's too blurry to see any
6 faces. You can just see generally people in the
7 Waffle House.

8 MS. EVERHART: Your Honor, we have no
9 foundation for the exact time frame of this video,
10 it was going so quickly. We're not sure exactly how
11 long it was supposed to go through and what times
12 the video is from.

13 MS. CAMPBELL: The times are on the video.

14 MS. EVERHART: Our video's a minute long.

15 MS. CAMPBELL: Your Honor, it's one of the time
16 lapse machines.

17 THE COURT: Okay. South Carolina Rules of
18 Evidence starting in Rule 1001 deals with writings
19 and recordings.

20 1002 provides, To prove the content of a
21 recording, the original is required except as
22 otherwise provided by the rules of the statute.

23 1003 deals with admissibility of duplicates.
24 And it states that a duplicate is admissible to the
25 same extent as an original unless, (1), there is a

1 genuine question raised as to the authenticity of
2 the original, or, (2), in the circumstances, it
3 would be unfair to admit the duplicate in lieu of
4 the original.

5 And then Rule 1004 deals with admissibility of
6 other evidence and the contents, which may or may
7 not apply to any of this.

8 What I think I have to let you all do is to
9 look at the video and see if any of those things
10 exist.

11 You can't discuss your testimony with anybody.

12 Tell the jury it will be about ten minutes.

13 Thank you.

14 (Brief Recess.)

15 **THE COURT:** Are there any issues?

16 **MS. EVERHART:** Your Honor, we have viewed this
17 and we would just simply like to argue this is not
18 an original, Your Honor, it is a duplicate. The
19 time stamp is supposedly off on this. It does
20 appear to be 15 or more minutes off. We don't have
21 anyone from the Waffle House to explain about the
22 time stamp.

23 Your Honor, it is time lapsed. We're not sure
24 how much time lapse is between the frames. We don't
25 have anyone to explain the lapse between the frames.

1 It's not accurate because of that time lapse.

2 Your Honor, we would argue that under Rule 401,
3 this is not relevant evidence. Relevant evidence is
4 evidence having any tendency to make the existence
5 of any fact that is of consequence to the
6 determination of the action more probable or less
7 probable than it would be without the evidence.

8 This is a camera taking photos of the inside of
9 the Waffle House, Your Honor. This incident
10 occurred outside of the Waffle House. So we would
11 argue that this should not come in. And, Your
12 Honor, you may want to view it yourself to determine
13 the relevance or the inexistence of relevance.

14 **THE COURT:** Well, there was a lot of testimony
15 about people going in and coming out of the Waffle
16 House, so I -- I haven't seen it, but I suspect it
17 may be a hard time on my part finding that it's not
18 relevant in some way. And, also, if it's -- see,
19 you all said you can't tell -- if I understood you
20 correctly, you said you can't tell people's faces.

21 **MS. CAMPBELL:** I cannot tell anyone's faces. I
22 don't know that anyone else represents they can.

23 **THE COURT:** I don't know if you can tell
24 anything like gang colors or anything like that.

25 Mr. Sutherland, do you have something you need

1 to put on the record?

2 MR. SUTHERLAND: Your Honor, I was just, in
3 response to Your Honor's query there, there's a
4 whole lot of gang colors. First, it's full of
5 people in red, then it's full of people in black and
6 then there's a little guy in blue running around in
7 there, but with respect to gang colors, there are a
8 lot of gang colors in the film. I mean, I
9 understand that my previous objection has been
10 overruled.

11 THE COURT: It was?

12 MR. SUTHERLAND: I thought you had overruled my
13 objection on the State versus Rich, sir, on the
14 foundation.

15 THE COURT: Did I rule?

16 MR. SUTHERLAND: Oh, I'm sorry, Your Honor.

17 THE COURT: I know I'm getting a little tired,
18 but I didn't think I had ruled. I thought I had
19 read a rule to you all to make sure you looked at it
20 and then I thought I had to give you an opportunity
21 to view it and then I was vainly hoping it wouldn't
22 be a problem, but I was wrong, but that's okay,
23 that's what I'm here for.

24 MR. SUTHERLAND: I'm sorry, Your Honor. I'm
25 about to fall over as well.

1 THE COURT: Do y'all want to be heard?

2 MS. CAMPBELL: No, Your Honor.

3 THE COURT: I'm not going to allow it.

4 MS. CAMPBELL: Your Honor, that's fine, but can
5 he just generalize as to was in the -- well, I think
6 he has so far, but just allow a little bit about
7 what was in the video that he reviewed?

8 THE COURT: I don't know. I have to rule on
9 each question.

10 MS. CAMPBELL: Okay. Thank you, Your Honor.

11 THE COURT: Now, I'm not saying it's excluded
12 in perpetuity. If there's a foundation argument,
13 y'all might be able to cure the foundation argument.
14 If there's some other argument, you may be able to
15 cure that by bringing somebody from Waffle House
16 who's in charge of maintaining those cameras or
17 something, but the ruling right now is it's not
18 admissible.

19 MS. CAMPBELL: Yes, sir. Your Honor, may I
20 just move this equipment out of the way so I don't
21 fall out of it?

22 THE COURT: Yes, I really wish y'all would.
23 Okay. Bring the jury back.

24 (The jury returns to the courtroom.)

25 THE COURT: The objection is sustained as to

1 the foundation not being present at this point for
2 the playing of the video tape and under Rule 101 --
3 1001 through 1004, as I indicated to you all during
4 the conference.

5 You may continue, Solicitor.

6 BY MS. CAMPBELL:

7 Q Were you able to ever recover any video from
8 the exterior of the Waffle House?

9 A I was not.

10 Q Were you able to recover any video from the
11 exterior of the Mobil Gas Station?

12 A I was not.

13 Q And was there any video that would show
14 anything to do with what actually happened in the
15 shooting?

16 A There was none that I recovered.

17 Q And in the video that you did receive, were you
18 able to identify anyone?

19 A I was not.

20 Q On March the 20th of 2007, did you make contact
21 with Sam and Quintez Clemons?

22 A I did.

23 Q Did you actually interview Mr. Samuel Clemons?

24 A I did.

25 Q I want to show you what's been marked as

1 State's Exhibit Number 81 for I.D. purposes. Do you
2 recognize that?

3 A I do. It's a photo lineup affidavit and a
4 photo lineup that I showed Mr. Clemons.

5 Q And when did you show that to him?

6 A March the 20th, 2007.

7 Q And where were y'all when you showed him that
8 lineup?

9 A At his apartment complex, the Landings at 3431
10 Covenant Road.

11 Q And who all was present when you were
12 interviewing Mr. Clemons and showing him that
13 lineup?

14 A It was just him and I.

15 Q And when you showed him that lineup, tell the
16 jury what, if anything, you said to him prior to
17 showing him the lineup?

18 A I had received information that talked to him
19 in reference to the incident that he was there and
20 present and could possibly identify individuals that
21 were there. So I went and interviewed him. And he
22 admitted to me that he did see an individual
23 shooting. So after he told me that and gave a brief
24 description, I showed him the photo lineup.

25 Q And when you showed him that photo lineup, did

1 it have any writing on it?

2 A It did not.

3 Q And, in fact, it's now attached to the
4 affidavit, but at the time you showed it to him, was
5 it just this set of pictures?

6 A It was just the set of picture -- the only
7 writing that was on it, you can see the one, two,
8 three, four, five, six, the numbers that are
9 handwritten, I placed those there for identification
10 purposes for when and if the individual would select
11 a picture, he could identify it by number.

12 Q And did you in any way influence his pick?

13 A I did not.

14 Q Who he recognized?

15 A I did not.

16 Q And when you showed him the photo lineup, tell
17 the jury what happened.

18 A He identified photograph number six. It was
19 circled and his initials and the date were placed by
20 that photo. He also signed the front page, which is
21 the affidavit of the photo lineup stating that he
22 selected photograph number six at the Waffle House
23 as shooting.

24 Q And the writing in the top part on State's
25 Exhibit Number 81, is that your writing?

1 A Yes, it's all my writing except for the
2 signature on the right-hand side of the page.

3 Q And you actually witnessed his signature?

4 A I did.

5 Q And that's down here?

6 A That's my notary, yes.

7 MS. CAMPBELL: Your Honor, at this time, we'd
8 offer State's Exhibit 81.

9 MR. SUTHERLAND: Other than my previous
10 objection, Your Honor.

11 MS. EVERHART: No objection.

12 THE COURT: Subject to previous objection, mark
13 it in evidence, please.

14 (State's Exhibit Number 81, photo lineup,
15 admitted into evidence.)

16 BY MS. CAMPBELL:

17 Q I show you State's Exhibit Number 81. Number
18 six in that photo lineup, who is that?

19 A That is a photograph of -- photo of Mr. Eugene
20 Patterson.

21 Q Eugene Patterson?

22 A Yes.

23 Q And is that the person that Samuel Clemons
24 recognized as, I believe, it says shooting that day?

25 A Correct.

1 Q And that was shown on March the 20th?

2 A That was shown on March the 20th. And the
3 incident we were talking about, which is indicated
4 on here, too, is the shooting at 7505 Two Notch Road
5 on February the 19th of 2007.

6 Q Finally, March the 22nd of 2007, did you make
7 contact with Sandra Boone?

8 A I did.

9 Q And I show you what's been marked as State's
10 Exhibit Number 89. Do you recognize that item?

11 A I do. This is a projectile -- I believe, Ms.
12 Boone actually came to our office and advised me
13 that this projectile had been recovered from
14 Tayson's Explorer.

15 Q And did she turn that over to you?

16 A She did.

17 Q Do you know how long that projectile had been
18 in the Explorer of your own personal knowledge?

19 A I do not.

20 Q In the course of your investigation, how would
21 you describe, as far as the number of people and the
22 events that were going on that night, how would you
23 describe it at the Waffle House that night, the
24 night of the shooting?

25 A The number of people based on the statements, I

1 think we took over 30 written statements, there's no
2 telling how many verbal statements that we might
3 have done, but lots of people described it as
4 chaotic, people just scattering after the fight and
5 the shots were fired, pretty chaotic there from what
6 witnesses state.

7 Q And we've gone over names of some of the people
8 that you've interviewed personally, other people
9 interviewed other people. Did everyone witness the
10 actual shooting or the shooters?

11 A No.

12 Q Did some people simply not want to come
13 forward?

14 A That's correct. And when we get names of
15 individuals, we try to base -- or prioritize them,
16 interview them based on what they know.

17 Q There's also some mention of some items you've
18 identified, shell casings and stuff, that were seen
19 at the crime scene. There was also like a bubble
20 gum wrapper maybe and a plastic bottle of some sort
21 that reflected. During the course of your
22 investigation, did those have anything to do with
23 this crime?

24 A They did not.

25 Q And the money and the candy wrappers, where

1 were those taken from?

2 A The victim.

3 Q The victim?

4 A The bottle and the gum wrapper never came up as
5 anybody stating that they had possession of them
6 during this incident.

7 Q The person that you know as Eugene Patterson,
8 do you see him here in the courtroom?

9 A I do.

10 Q Can you identify him?

11 A He's sitting in the middle table next to his
12 lawyer, I think it's a black jacket. He's the black
13 male sitting next to the lawyer with the tan shirt
14 on.

15 Q And Andre Tayson Boone, do you see him here in
16 the courtroom?

17 A He is.

18 Q Can you identify him for the jury?

19 A He's sitting at the far left table with his
20 counsel, three women. He is the male.

21 Q At that table?

22 A Correct.

23 MS. CAMPBELL: Your Honor, may the record
24 reflect he's identified the defendants?

25 THE COURT: Yes, ma'am, it's so noted.

1 MS. CAMPBELL: Thank you, sir.

2 THE COURT: Cross?

3 MR. SUTHERLAND: Please the Court.

4 THE COURT: Yes, sir.

5 CROSS-EXAMINATION

6 BY MR. SUTHERLAND:

7 Q Investigator Ellis.

8 A How are you doing, sir?

9 Q Doing well. Long week?

10 A I'd say.

11 Q Okay. I'm certainly not going to go through
12 all this stuff that you just went through. I mean,
13 y'all were working, you know, night and day trying
14 to get this thing solved; is that correct?

15 A Trying to solve the case.

16 Q Trying to solve the case?

17 A That's correct. That's our job.

18 Q I think you testified that you worked until the
19 sun came up and that you and Investigator Roe were
20 about to flake out. And then I think it was
21 Investigator Smith you said that came in to relieve
22 y'all?

23 A Yeah. I think it was around ten o'clock that
24 morning before I actually left the office, but, yes.

25 Q And just early on -- I guess, we'll just kind

1 of go through this without me referring to stuff too
2 much. You, you know, you arrived there, I'm not
3 going to go through all the securing the scene and
4 all this kind of stuff, but, you know, you start to
5 pick up information, you find out that there was a
6 fist fight and you find out that one person jumps in
7 to the fist fight, that another person jumps in,
8 that shots are fired, that more shots are fired,
9 everybody scatters and basically when y'all arrive,
10 y'all are left just to figure out what happened; is
11 that correct, sir?

12 A Pretty much.

13 Q I hadn't -- I do want to go over this stuff
14 because I do think it's important. This stuff, you
15 know, I've been mentioning the crime scene log a few
16 times and these --

17 MR. SUTHERLAND: I'm sorry, Your Honor. May I
18 approach the witness?

19 THE COURT: Sure.

20 BY MR. SUTHERLAND:

21 Q Now, at the top of the Richland County
22 Sheriff's Department Crime Scene Log, it states,
23 Anyone entering the crime scene must personally
24 complete the information below. And personally is
25 in bold; is that correct?

1 A Correct.

2 Q And then it says, No one, and it's underlined,
3 Is allowed in the crime scene until after the
4 initial approval of the senior crime scene
5 investigator in charge of the scene; is that
6 correct?

7 A Correct.

8 Q Okay. What time did you get there?

9 A 1:05.

10 Q That's what the log reflects. Now, you didn't
11 leave until 10:00. Is that what you said?

12 A No, I said I went home at 10:00.

13 Q Oh, you went home you went back to the office
14 after you --

15 A I had already interviewed Ron Portee and all
16 that before I left.

17 Q Okay. All right. But you didn't sign out of
18 the crime scene, did you?

19 A There's not a time noted of when I left. I can
20 tell you that I left just before that dispatch call
21 for Ron Portee.

22 Q Yeah, I'm sure.

23 A The scene was still secured when I left.

24 Q Are you aware of anybody, anybody that might
25 have entered that scene who wasn't present on the

1 crime scene log?

2 A When I was there, there was very few people
3 even in the scene. Investigator Allen was in the
4 scene, myself for a period of time, Roe and Baker
5 were the only ones in the scene when I was there
6 except for the point in time when I escorted the
7 victim's father to view the body.

8 Q And Investigator Allen -- well, initially --
9 what's the name of that officer down there at the
10 bottom?

11 A It says Officer J.A. Clarke.

12 Q Do you know that person?

13 A I do know that person.

14 Q But really you don't know when Investigator
15 Allen took over the crime scene log from him?

16 A I had other duties. I checked -- I advised
17 Investigator Allen that I was there and asked for
18 permission to come in and he granted it, so I came
19 into the scene.

20 Q And I wanted to talk to you about -- I mean, I
21 hate to be hopping around, but I think the way that
22 it sort of sounded to the jury about when y'all went
23 to serve the arrest warrant on Eugene at his house?

24 A Correct.

25 Q Just the way that it came across was, you know,

1 that they're calling for backup and all of this kind
2 of stuff, but, you know, actually that -- wait a
3 minute, you actually didn't get there, you just
4 heard the dispatch call, right? I'm sorry, were you
5 present at the scene to witness what happened as far
6 as them getting in there?

7 A I received a call from Sergeant Ewing telling
8 me in so many words to hurry up, that there was
9 problems. And so I immediately switched over, we
10 have multiple channels on our police radios, I
11 switched over to the Broad River area and I could
12 hear chaos of trying to find these individuals.

13 Q Okay. But you --

14 A Because they were going to the wrong location.
15 As I described on the search warrant, we had
16 indicated it was Broad River Terrace, which the --
17 Captain Smith and Sergeant Ewing were at Saint
18 Andrews Terrace.

19 Q So y'all had people potentially going this
20 way --

21 A Broad River Terrace, best of my recollection,
22 is down like River Drive, if I recall right. Saint
23 Andrews Terrace is out on the other side of Saint
24 Andrews Road on Broad River. So you're looking at a
25 mile or two miles separate -- you've got people

1 going up and down Broad River trying to find these
2 officers.

3 Q But you weren't there to personally observe
4 what they thought was going on and then what
5 actually was going on?

6 A No. I just got a call that it was urgent for
7 me to respond.

8 Q Okay. Good, good. Ms. Campbell had asked you
9 about a March 1st entry on your report about a
10 meeting. Do you know who was in that meeting on
11 March 1st?

12 A Is that the meeting with the Solicitor's office
13 that you're referring to?

14 Q Yes, sir.

15 A Allow me to flip to the 1st. I have in my
16 notes that Captain Smith presented our case that we
17 were working on to the Solicitor.

18 Q To the Solicitor?

19 A Which would be, I assume, Mr. Giese. I had
20 Meadors, who would be John Meadors, the assistant,
21 and Luck, who would be Luck Campbell.

22 Q All right. Are you -- let me look at what you
23 wrote down. You have your report in front of you.
24 After the word Luck, would you do me a favor and
25 read the next sentence?

1 A Just the next one?

2 Q Yes, sir.

3 A The next sentence I have after that is, They
4 determined, this was Captain Smith, Luck Campbell,
5 Mr. Meadors and Mr. Giese, They determined that
6 anyone that was shooting during the incident,
7 referring to the Waffle House incident, Will be
8 charged with murder.

9 Q Okay. And I'll let you go ahead and finish
10 that out there, just to the end of the paragraph.

11 A And then I have, the next sentence is, This is
12 based on mutual combat and transferred intent since
13 Wright, the victim, who I was referring to, Suffered
14 a through and through wound.

15 Q And, basically, this paragraph, this entry --
16 at the time you were preparing this report and doing
17 a million other things, this basically represents
18 the scope of your knowledge about whatever meeting
19 that took place?

20 A That was the information that was passed on to
21 me from the meeting that they had.

22 Q And do you know was this a law enforcement
23 meeting or...

24 A I don't understand your question.

25 Q What --

1 A Captain Smith was there, if that makes it a law
2 enforcement meeting.

3 Q But he was the only investigator that was
4 there?

5 A Yes. He had been working on the case ongoing
6 since the first day. He was very familiar with the
7 incident.

8 Q I got to make sure I don't miss anything. I
9 should bring this up. And it was after this meeting
10 that you all first secured the arrest warrant for
11 murder against Mr. Feldman and then followed by
12 that, against Mr. Boone and Mr. Patterson; is that
13 correct?

14 A After the meeting?

15 Q Yes, sir.

16 A It was after the meeting that Mr. Feldman was
17 arrested for the outstanding warrant and he
18 confessed to shooting and he was charged with
19 murder.

20 Q Right. It was --

21 A If that makes sense.

22 Q It was the shooting that was the basis of the
23 murder charge not that he had killed anyone, is
24 that...

25 A Yeah. He did not admit that he had knowledge

1 that he had hit anyone with his particular shots;
2 however, going back to the meeting that was held, I
3 guess he fell into the category of shooting a gun
4 out there.

5 Q Okay. And then following that within the next
6 12, 24 hours, some time the next day, that's when
7 the other -- when the other young fellows got
8 arrested; am I right about that? It was March 2nd?

9 A Let me just double check. Yes, the warrants
10 were signed on the 2nd.

11 MR. SUTHERLAND: I have no further questions of
12 this witness at this time, Your Honor.

13 THE COURT: Cross?

14 MS. EVERHART: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MS. EVERHART:

17 Q Hi.

18 A Hey.

19 Q I believe earlier you referred to what is now I
20 believe Court's Exhibit Number 65 (sic). And you
21 were at the Waffle House the night this occurred,
22 correct?

23 A Afterwards, yes, ma'am.

24 Q And you got a chance to see where Brian Wright
25 was laying?

1 A Uh-huh.

2 Q In this drawing of the Waffle House, the body
3 of Brian Wright is facing the wrong direction,
4 correct?

5 A Facing...

6 Q The feet of the body are in the wrong
7 direction?

8 A Yes, it's tilted the wrong -- tilted the wrong
9 -- facing head and feet way right, but are you
10 meaning --

11 Q Body is tilted?

12 A Right. It appears that that is -- yes, it's
13 inaccurate. It appears it's just where the body
14 was.

15 THE COURT: What number was that?

16 MS. EVERHART: That was 65.

17 BY MS. EVERHART:

18 Q And during the course of your investigation,
19 you learn that Brian was with a guy named Dennis
20 Rowe, correct?

21 A Correct.

22 Q And did Dennis Rowe testify this week?

23 A Did Dennis Rowe testify?

24 Q Uh-huh.

25 A I don't think so.

1 Q And you also talked to --

2 THE COURT: Did you answer that?

3 THE WITNESS: I said I didn't think so, sir.

4 THE COURT: I'm sorry. I couldn't hear you.

5 BY MS. EVERHART:

6 Q You also had the opportunity to talk with
7 Robert Portee?

8 A Yes.

9 Q And he did testify this week?

10 A Yes.

11 Q And you learned during the course of your
12 investigation, that he was with Glenn Wright and
13 Herbert Carter?

14 A Right.

15 Q And that they had been to the Windsor Lakes
16 party where there had been a shooting?

17 A Correct.

18 Q And then afterward they had gone to the Waffle
19 House?

20 A Right.

21 Q Did Glenn Wright or Herbert Carter ever
22 testify?

23 A I was unable to find Trey Carter. He refused
24 to come in.

25 Q You didn't have any way to get him in court?

1 A Say again.

2 Q You didn't have any way to get him into court?

3 A We attempted to get him into court.

4 Q Issued a subpoena?

5 A Ma'am?

6 Q Issued a subpoena?

7 A I believe he was. I'm not sure if it was
8 actually -- I know there was a subpoena served on
9 him -- I mean, issued for him. As far as the
10 service of it, I'm not sure. I know he was -- from
11 my understanding, from what I was told, he didn't
12 want to be a part of testifying.

13 Q And if one is issued a subpoena and they
14 refused to come, police officers could go arrest
15 them, correct?

16 A Correct.

17 Q And you mentioned today that you spoke to
18 Dameon Dowling, Raymond Asberry and a Taneisha
19 Outen?

20 A Uh-huh.

21 Q And did they testify this week?

22 A They have not been here. Some of those fall
23 under the same.

24 Q And I know we already mentioned the Windsor
25 Lakes party that occurred earlier. And I believe in

1 the course of your investigation, you learned that
2 several people who'd been in that party ended up at
3 the Waffle House that night?

4 A Correct.

5 Q Did y'all ever arrest anyone for that shooting?

6 A We did not.

7 Q But you did learn during the course of your
8 investigation, that it might have been Byron Morant?

9 A I think somebody stated it could have been.

10 Q And he was at the Waffle House later that
11 night?

12 A Byron? Correct.

13 Q And you learned during the course of your
14 investigation that Tyrone Johnson may have been
15 involved in the shooting at the Waffle House?

16 A Who?

17 Q Tyrone Johnson, T.J.?

18 A I don't recall anybody saying that he might
19 have been involved, but I recall somebody providing
20 a statement saying that he was there, but he left
21 prior to the fighting occurring.

22 Q And what about Quanterias (ph) Ford, that was
23 another name that was --

24 A Right. I believe he fell in that same as
25 leaving prior to the incident.

1 Q And you addressed earlier that February 27th
2 your office got an arrest warrant for Mr. Boone and
3 that charge was aggravated breach of peace. And I
4 believe this was based on the fact that you had
5 learned that he might have fired a pistol during the
6 incident; is that correct?

7 A We got them based on the fact that we had some
8 statements saying that they either had and/or were
9 firing a pistol at the location.

10 Q But he wasn't arrested for murder at that time?

11 A No, ma'am.

12 Q Now, you've told us all that you'd been in law
13 enforcement for about ten years?

14 A That's right.

15 Q And you've had a lot of special training?

16 A I've had some, I don't consider it lots.

17 Q You've been to classes?

18 A Yeah, I've been to some schools, yes.

19 Q Investigated a lot of different scenes?

20 A Correct.

21 Q And you know how important it is to be accurate
22 in your reports?

23 A Correct.

24 Q And you want to be thorough in your notes?

25 A Correct.

1 Q And you want to make sure that when you're
2 investigating a case, you do everything you can to
3 gather all the information possible?

4 A We try to do the best we can.

5 Q And that's because someone might end up going
6 to trial?

7 A It's very possible.

8 Q One of the important things you want to do in
9 your case is you want to talk to as many
10 eyewitnesses as possible; is that correct?

11 A You try to.

12 Q And that's because they might have seen
13 something really important; is that correct?

14 A That's possible.

15 Q And in this case, there were a lot of witnesses
16 at the scene; is that correct?

17 A Correct.

18 Q And one of those people may have seen someone
19 shoot a gun; is that correct?

20 A We got statements saying a lot of people saw
21 that.

22 THE COURT: Speak up please, I'm sorry. I
23 didn't hear you.

24 THE WITNESS: We had statements from a good bit
25 of people that said that.

1 BY MS. EVERHART:

2 Q And some of these witnesses might have seen
3 someone actually shoot Brian Wright?

4 A Nobody stated that, I mean --

5 Q That's a possibility?

6 A It was pretty consistent in what we had.

7 Q Did you happen to get a written statement from
8 Sylvester Boone who was there with Quintez Clemons?

9 A Say that one more time.

10 Q Did you get a written statement from Sylvester
11 Boone who was at the Waffle House with Quintez
12 Clemons?

13 A I did not.

14 Q Did you get a statement from Destiny Truesdale
15 who was with Ms. Brabham?

16 A I did not.

17 Q What about Cedric Ruff? He was there with
18 Raymond Asberry.

19 A He was. I attempted to interview him the day
20 that I interviewed Chad Robinson. I think they were
21 cousins. Chad had actually called me and came and
22 met with me. I had to pick him up at the mall, came
23 to my office, interviewed him. He tried to get
24 Cedric to talk to me and to meet us back when I
25 dropped him off. And Cedric refused to have any

1 part of my investigation.

2 Q Did you get a statement from Morgan Jackson who
3 was with Ms. Brabham?

4 A I did not.

5 Q How about Ivan Faust who was with Raymond
6 Asberry?

7 A I did not.

8 Q Brandon Hill? He was with Brian.

9 A I believe I remember talking to Brandon Hill,
10 but there was not a statement taken.

11 Q And Jaheem (ph) James who was with Brian, did
12 you get a statement?

13 A I did not.

14 Q Aaron Fisher, who was in the incident report,
15 did y'all get a statement from him?

16 A Aaron Fisher in the incident report? Is he one
17 of the individuals listed on the second page?

18 Q Yes.

19 A If I can refer back to the report?

20 Q (Ms. Everhart nodded head.)

21 A Some of these individuals, I was advised by the
22 officers on the scene, they talked to them and none
23 of them saw anything. They didn't have any
24 information to provide us.

25 Q Did you speak with Latifa Pelzer Martin who was

1 with Brian Wright that night?

2 A No, I did not.

3 Q And what about Tyrone Johnson?

4 A Tyrone Johnson, T.J.? I did speak with T.J.

5 Q And did you get a written statement from
6 Charles Williams who was with Corey that night?

7 A No.

8 Q How about to Toletta Archie and Deanna Archie
9 who were with Doneisha Smallwood?

10 A I tried to work that through Ms. Smallwood and
11 I was unable to get any cooperation on that.

12 Q And what about Janetha Boya (ph) who was with
13 Ms. Smallwood?

14 A The same situation.

15 Q And I know you addressed this earlier, but on
16 March 1st, you mentioned in your notes that there
17 was a meeting at the Solicitor's office and I
18 believe you said it involved Barney Giese?

19 A Correct.

20 Q And who's that?

21 A I didn't hear the --

22 Q Who is he?

23 A Who is he? The Solicitor, Fifth Circuit.

24 Q So he's the head guy?

25 A That's right.

1 Q And it involved John Meadors?'

2 A That's correct.

3 Q And who is that?

4 A Deputy Solicitor, second in charge..

5 Q And it involved Luck Campbell?

6 A Correct.

7 Q Prosecutor on the case?

8 A That's right.

9 Q And during that meeting --

10 MS. CAMPBELL: Objection, Your Honor. I mean,
11 I don't think he has any direct knowledge of the
12 meeting. At this point, I would object to hearsay.

13 MS. EVERHART: Your Honor, he's addressed it
14 today already and it is in his investigative report.

15 THE COURT: Was he at the meeting?

16 MS. EVERHART: I would like to address what
17 he's written in his notes in regard to that meeting.

18 THE COURT: Ladies and gentlemen, step in the
19 jury room. Don't discuss the case.

20 (The jury retires to the jury room.)

21 THE COURT: Yes, ma'am.

22 MS. EVERHART: Your Honor, I can word it a
23 different way. He did put it in his notes. I can
24 have him read it to the jury, if necessary.

25 THE COURT: What is it you want to ask him?

1 **MS. EVERHART:** That he wrote down -- during the
2 course of his investigation, he wrote down in his
3 notes that his office learned from that meeting that
4 it was determined that anyone who was shooting
5 during the incident would be charged with murder.

6 **MS. CAMPBELL:** It's also asked and answered,
7 Your Honor.

8 **THE COURT:** Well, it's asked and answered, but
9 it was a different defendant, so I think I have to
10 let her do it if that's the objection.

11 Bring the jury in.

12 I'm not ruling it's not hearsay.

13 **MS. CAMPBELL:** You're not ruling it's not
14 hearsay?

15 **THE COURT:** No.

16 **MS. CAMPBELL:** We initially objected on
17 hearsay.

18 **THE COURT:** I understand. It's already in the
19 record, so I'm going to let her ask it. You can't
20 go beyond what's already there, though.

21 (The jury returns to the courtroom.)

22 **THE COURT:** I'm not overruling the objection on
23 hearsay, but it's already in the record, so it's
24 merely duplicative. It can be asked one time. Go
25 ahead.

1 MS. EVERHART: Thank you, Your Honor.

2 BY MS. EVERHART:

3 Q Even though you weren't at the meeting that
4 took place in the Solicitor's office, you learned,
5 through the course of your investigation, that
6 anyone shooting during the incident could be charged
7 with murder?

8 A Correct.

9 Q And the theories behind that were mutual combat
10 and transferred intent?

11 A That's correct.

12 Q And this was because Brian suffered a through
13 and through wound?

14 A That's correct.

15 Q And that means the bullet exited and could not
16 be found?

17 A We had no projectile.

18 Q So y'all don't know what kind of bullet killed
19 Brian Wright?

20 A I don't know which particular one.

21 Q And you don't know who shot the bullet that
22 killed Brian Wright?

23 A I do not.

24 MS. EVERHART: No further questions, Your
25 Honor.

1 THE COURT: Redirect?

2 MS. CAMPBELL: Yes, sir.

3 REDIRECT EXAMINATION

4 BY MS. CAMPBELL:

5 Q You do know -- she asked you if you don't know
6 who shot the bullet, do you know if it was one of
7 three people?

8 A We had multiple statements of three individuals
9 that were shooting and identified.

10 Q And who were those three people?

11 A Oliver Feldman, Eugene Patterson and Andre
12 Tayson Boone.

13 Q She asked you about people that were left at
14 the scene, including I believe Walker, Jamal, Blayne
15 Riley, somebody named James, Brandon Hill, Aaron
16 Fisher, people like that. What information did you
17 get about whether or not they witnessed anything?

18 A The information I received from cousin Myrick
19 (ph), I would say, I think that's how you pronounce
20 his name, he advised me -- is who took down these
21 names when he responded to the scene that they did
22 not know anything, they claimed to be friends of the
23 victim, but they did not see anything that would be
24 -- of what took place.

25 Q She also went through a list of people that

1 were there, some of whom were in the Mobil parking
2 lot where Brian Wright was shot; is that correct?

3 A Correct.

4 Q And in that parking lot, did you interview
5 anyone or have any information that anyone who was
6 over in the parking lot at the gas station saw the
7 shooting?

8 A No.

9 Q She also asked you about people like Dennis
10 Rowe, Taneisha Outen, Byron Morant. Were they able
11 to give you any information about the identity of
12 any of the shooters that night?

13 A No.

14 Q She asked you about Dameon Dowling, Sylvester
15 Boone. Were they cooperative with you?

16 A Dameon Dowling originally was, but that changed
17 quickly. And the second name was --

18 Q Sylvester Boone.

19 A Sylvester Boone. I never had any personal
20 contact with him.

21 Q Who is Sylvester Boone related to?

22 A Tayson Boone.

23 Q She asked you about Destiny Truesdale. Who's
24 car was Destiny Truesdale -- who was she with that
25 night?

1 A I believe she was with Ms. Brabham.

2 Q Ms. Brabham?

3 A Yes.

4 Q And Ms. Brabham testified to what she knew?

5 A That's correct.

6 Q And she was the one that was able to provide
7 you information about anyone's identity?

8 A She was.

9 Q What about Doneisha Smallwood?

10 A Doneisha Smallwood was interviewed. She can't
11 be here, she was murdered.

12 MR. SUTHERLAND: Objection, Your Honor, it's
13 inflammatory.

14 MS. EVERHART: We would join in, Your Honor,

15 THE COURT: Sustained. Disregard the last
16 portion of the witness' statement.

17 MS. CAMPBELL: Your Honor, can I rephrase that?

18 THE COURT: Sure.

19 BY MS. CAMPBELL:

20 Q She's not able to be here today?

21 A She's not.

22 Q She's no longer alive?

23 A That's correct.

24 MR. SUTHERLAND: Your Honor, it's the same
25 issue that the implication, I guess -- or I just

1 wish they'd move away from this stuff.

2 THE COURT: Your objection is still that it's
3 inflammatory and it's excluded under 403?

4 MR. SUTHERLAND: Yes, sir.

5 THE COURT: Overruled.

6 MS. CAMPBELL: Thank you.

7 BY MS. CAMPBELL:

8 Q She's no longer alive?

9 A That's correct.

10 Q Some of the other people -- was people in this
11 investigation, be they Folk, Blood, Crip, whatever,
12 are they not wanting to cooperate with police?

13 A A lot of people were not wanting to.

14 Q You stated that you interviewed -- took written
15 statements from over 30 people. Did you make every
16 attempt to contact anyone that could possibly give
17 you credible information?

18 A I tried.

19 Q And that was done in this case?

20 A Yes.

21 MS. CAMPBELL: Thank you, sir.

22 THE COURT: All right. Recross?

23 MR. SUTHERLAND: Please the Court.

24 THE COURT: Yes, sir.

25 ****

RECROSS-EXAMINATION

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BY MR. SUTHERLAND:

Q Sir, Oliver Feldman told you that there were two guys in -- that there were two shooters; is that correct, initially or told y'all --

A That's what he had in his statement.

Q But then -- I mean, you heard him testify that after he reviewed the discovery --

MS. CAMPBELL: Objection, Your Honor. He can't comment on what he heard another witness testify to.

THE COURT: You need to rephrase your question. It sounds like it's going to be a pitting question. You can't pit one witness against another. You can rephrase your question.

MR. SUTHERLAND: Okay.

BY MR. SUTHERLAND:

Q But he told you that there were two shooters when y'all initially interviewed him; isn't that right?

A Correct.

Q You got reports -- or you suspected that Rob Portee discharged a firearm at one point?

A That I suspected?

Q You had information that Rob Portee discharged a firearm at one point during this investigation,

1 didn't you?

2 A I don't recall that without going back through
3 everything. I do recall individuals telling me that
4 they thought they saw him reaching for a gun, but
5 they never saw a gun, if that's what you're
6 referring to.

7 Q Are you aware that everyone thought he did it
8 at first and that's why he called y'all?

9 A He was receiving threatening phone calls.

10 Q You had testified earlier, though, that he
11 called y'all and said that people thought that he
12 was the shooter and he was receiving threats. He
13 testified to that earlier?

14 A Right.

15 Q Did you ever suspect that Brian Blackwell had
16 discharged a firearm?

17 A No, sir.

18 Q Did you ever give him a gunshot residue test?

19 A Brian Blackwell?

20 Q Yes.

21 A He did have one.

22 Q Are you aware that there are different people
23 saying there were different weapons -- there are
24 people that have different versions of what kind of
25 weapons were at the scene and how many and who had

1 how many? I'll give you an example. Oliver Feldman
2 had a .380 on his lap and he had a .357 Magnum. Do
3 you remember that testimony?

4 A I do, but I believe that was in the same car as
5 other individuals.

6 Q Anybody tell you that someone with -- or did
7 you have information or were you aware of
8 information that someone with pig tails was shooting
9 at the scene? That looked like they had pig tails,
10 does that ring a bell?

11 A Right. I'd have to review back to see if they
12 actually said he was shooting. I remember him being
13 at the back of a car and somebody standing beside
14 him. Do you want me to refer back?

15 Q Sure.

16 A Is that the portion of Trey Carter, is that
17 what you're referring to?

18 Q I'm asking you about the -- I'm not asking you
19 to say what somebody said. I'm asking you if you
20 investigated whether or not there was a pig tail
21 shooter at the incident?

22 A Well, I think that's coming from somebody's
23 statement and I would need to refer to that to
24 refresh my memory. We took like 32 written
25 statements. I just don't want to answer

1 incorrectly.

2 Q All right I'll withdraw that question. Did you
3 see -- what have -- have you seen Jerome Thompson's
4 mugshot from when he was arrested for these
5 offenses?

6 A I'm sure because I arrested him.

7 Q What's his hair look like?

8 A In the mugshot?

9 Q (Nodded head.)

10 A He has two balls up, described as Mickey Mouse
11 ears.

12 Q You can't sit here and say that there -- that
13 you know how many shooters there were. You know how
14 many shooters people are willing to tell you there
15 were that people can identify; is that correct?

16 A Most statements are all consistent that there
17 were three.

18 Q But you can't say that there weren't more
19 shooters?

20 A I can just say what the statements tell me. I
21 wasn't there.

22 Q Well, you can't say who killed Brian Wright?

23 A I've already stated that.

24 Q But y'all charged them with murder, charged
25 these boys with murder and you charged Oliver

1 Feldman with murder and you don't know who killed
2 Brian Wright?

3 A That's right.

4 Q And you had charged these boys with various
5 offenses, some of them involving discharging a
6 firearm prior to the March 1st meeting, but then
7 after the March 1st meeting, you started charging
8 people with murder when you had only charged them
9 with discharging -- an offense related to
10 discharging a firearm prior to the March 1st
11 meeting, that's correct?

12 A That is correct. During the course of
13 investigation, we had received enough information to
14 reach the probable cause status for those charges so
15 that's why those warrants were charged. During all
16 of the murder investigations I've been a part of, we
17 try to communicate back and forth with the
18 Solicitor's office because ultimately they're going
19 to be involved in these cases and that's where --

20 Q You ever talk --

21 MS. CAMPBELL: Objection, Your Honor, he has a
22 right to finish his answer.

23 THE COURT: Had you finished your answer, sir?

24 THE WITNESS: We meet with Solicitor's office
25 or communicate by phone on a regular basis to keep

1 them apprised of our investigation in case there's
2 any questions. And the reason there was no murder
3 charges -- murder warrants signed prior to this is
4 because, you know, my personal knowledge of laws is
5 not as great as the Solicitors of all the laws. I
6 collect all these statements and information of the
7 case and it was presented to them.

8 BY MR. SUTHERLAND:

9 Q Okay. So the answer to the question is yes
10 that where you were charging people with breach of
11 peace for discharging a firearm, after you met with
12 the head Solicitor of the Fifth Circuit, Deputy
13 Solicitor, First Assistant Solicitor, if she's a
14 deputy, I'm sorry, that's when you decided to charge
15 them with murder, correct?

16 A After the meeting is when, if you want to say,
17 we had the go ahead or whatnot to sign murder
18 warrants on the evidence that we had at the time.
19 We do not always have to get permission from the
20 Solicitor's office to do that. We do it, you know,
21 really to communicate back and forth and to make
22 sure that what we understand about what's going on
23 is the same thing that they will at this point in
24 time that we're sitting in today.

25 MR. SUTHERLAND: No further questions at this

1 time. Thanks, Your Honor.

2 THE COURT: Cross?

3 MS. EVERHART: Thank you, Your Honor.

4 RECROSS-EXAMINATION

5 BY MS. EVERHART:

6 Q You stated earlier that Byron Morant, you
7 learned he may have had a gun at that Windsor Lakes
8 shooting?

9 A Correct.

10 Q And he was at the Waffle House that night?

11 A Right.

12 Q But he was never charged with murder?

13 A He was never charged with murder?

14 Q He was not charged with murder?

15 A I don't think I have a statement saying that he
16 had a gun at the Waffle House.

17 Q And one of the reasons you talk to multiple
18 eyewitnesses, if they're available, is because
19 different people can see different things?

20 A They could.

21 Q During the course of your investigation, you
22 learned that Brian Wright may have entered the gas
23 station at some point that night?

24 A Correct.

25 Q And did you ever do any follow up with where he

1 was that night?

2 A As far as the clerk? I talked to the clerk.
3 The clerk really didn't remember. What I remember
4 the clerk telling me is at that point in time, there
5 were so many individuals around coming in and out,
6 that he wouldn't be able to know who was who. That
7 was another reason I had received that information
8 that I wanted the video from the Mobil station to
9 try to confirm what witnesses were telling me, which
10 I was obviously unable to get.

11 MS. EVERHART: Beg the Court's indulgence.

12 (Pause.)

13 MS. EVERHART: Nothing further. Thank you.

14 THE COURT: Anything further of this witness?

15 MS. CAMPBELL: No, sir.

16 THE COURT: Thank you, sir. You may step down.
17 Call your next witness.

18 MS. CAMPBELL: State calls Captain Stan Smith.

19 JAMES STANLEY SMITH,

20 having been duly sworn, testified as follows:

21 THE CLERK: State your name for the record,
22 please.

23 THE WITNESS: James Stanley Smith.

24 *****

25 *****

DIRECT EXAMINATION

1

2

BY MS. CAMPBELL:

3

Q Captain Smith, where are you employed?

4

A Richland County Sheriff's Department.

5

Q What do you do there, sir?

6

A I'm a captain in the criminal investigative

7

division. I supervise the murders and the armed

8

robberies primarily.

9

Q Can you tell this jury a little bit about your

10

background in law enforcement?

11

A I received a degree from the University of

12

South Carolina in 1983 in criminal justice. I

13

immediately secured a position with the Richland

14

County Sheriff's Department. I went to the Criminal

15

Justice Academy. I was in the uniform patrol

16

division for several years, took a test which

17

included a written and oral exam to make

18

investigator. I made investigator in 1987. I was

19

assigned to a property crimes unit for a number of

20

years. I went to numerous detective schools,

21

interview schools. I worked my first homicide in

22

1989 while in the property crimes unit and continued

23

to work property crimes and homicides throughout the

24

90's.

25

In 1997, I left the sheriff's department for a

1 period of time and went into the private sector for
2 several years, then I was in charge of contract
3 security guard company. I decided to come back to
4 the sheriff's department in '99. Since I've been
5 back, I came into an entry level position in sex
6 crimes. I worked sex crimes, armed robberies, was
7 promoted to sergeant in armed robbery in major crime
8 and I was promoted to lieutenant in major crime.

9 And several years ago, I was promoted to the
10 captain in major crime. Since I've been back, I've
11 supervised -- since I've been in the rank of
12 lieutenant and captain, I've supervised all
13 homicides in Richland County.

14 Q I want to turn your attention back to February
15 the 19th of 2007. Did you become involved in the
16 investigation involving the murder of Brian Wright?

17 A I did.

18 Q And when did you actually become involved?

19 A I received some -- every time there's a
20 homicide at night whether I come out or not, I
21 receive communication and I learned about it that
22 Sunday night or Monday morning. I actually became
23 personally involved in it that Monday morning about
24 nine o'clock.

25 Q So this event occurred around -- right around

1 midnight on that Sunday night going into Monday
2 morning?

3 A That's correct.

4 Q The next morning did you get briefed on what
5 investigators had --

6 A Yes. Investigator Ellis had been out during
7 the course of the night with Investigator Roe. I
8 think Major Stewart also came in, he's my direct
9 supervisor, he came in to assist. And we had a full
10 briefing that Monday morning around nine o'clock.

11 Q That morning did you become aware that two
12 gunshot residue kits had been done out of an
13 abundance of caution?

14 A I was.

15 Q And who were those on?

16 A I believe it was on a Robert Portee and
17 possibly a Blackwell subject.

18 Q And I show you what's been marked as State's
19 Exhibit 71. Is that standard practice for anyone
20 who may or may not be involved and is actually
21 available that night?

22 A If you can get to them within the first six
23 hours, yes, ma'am.

24 Q And those came back negative?

25 A Yes.

1 Q Did you ever develop any further information
2 that they had anything to do with the Waffle House
3 murder?

4 A No, ma'am.

5 Q That morning -- that day did you make contact
6 with any possible witnesses in the case?

7 A I did.

8 Q And tell the jury what you did briefly.

9 A We were advised in the briefing that various
10 individuals that the victim may have last been with,
11 one of them was a Ronald Rowe, we attempted to make
12 contact with him, I went by his residence, and a guy
13 by the name of Bryant Hayes from Faraway Drive, went
14 by his residence.

15 Q Were you able to make contact with them?

16 A Made contact with Bryant Hayes, I know, that
17 day.

18 Q Later that afternoon, did you make an attempt
19 to talk with a Monica Smith?

20 A I did.

21 Q And was she able to give you information about
22 a possible suspect in this case? You can't say what
23 she said.

24 A Yes.

25 Q Around noon that day, did you meet with a Corey

1 Sanders?

2 A I did.

3 Q And were you able to take a statement from him?

4 A I did.

5 Q Did Mr. Sanders admit to you that he was a
6 member of a gang?

7 A He did.

8 Q What gang was that?

9 A Blood.

10 Q Were you able to get information about some of
11 the shooters at that point from Corey Sanders?

12 A Yes.

13 Q Later that afternoon, did you make contact with
14 Raymond Asberry's mother?

15 A I did around 2:50 p.m.

16 Q And did you also learn some other names of
17 possible witnesses in the case that were related?

18 A Acquaintances of Mr. Asberry, that's correct.

19 Q On that first day, because this happened right
20 after midnight on the 19th; is that correct?

21 A Yes, ma'am.

22 Q Were statements taken from a number of
23 witnesses?

24 A There were.

25 Q And did that include Eugene Patterson?

1 A It did.

2 Q And Dameon Dowling?

3 A Yes, ma'am.

4 Q Derrick Guilyard?

5 A Yes, ma'am.

6 Q Demon Griffin?

7 A Yes, ma'am.

8 Q Raymond Asberry?

9 A Actually, some of those statements were taken
10 on the 20th.

11 Q The 20th?

12 A Yes, ma'am.

13 Q I'm sorry. Chad Robinson?

14 A Yes, ma'am.

15 Q Dennis Rowe?

16 A That's correct.

17 Q All those people had been interviewed and
18 statements taken by the 20th?

19 A That's correct.

20 Q Turning your attention to the morning of the
21 21st, did you meet with another witness?

22 A I met with Yatta Osby who had been in the
23 incident location that night.

24 Q And who was she with that night; do you
25 remember?

- 1 A She was with Doneisha Smallwood.
- 2 Q And what's Doneisha Smallwood's nickname?
- 3 A Duck.
- 4 Q Duck. And was she able to give you any
- 5 information about who was shooting?
- 6 A She provided some hearsay information about
- 7 someone having a weapon.
- 8 Q Did she directly see anybody shooting that
- 9 night?
- 10 A No.
- 11 Q But she was able to give you some additional
- 12 information that you followed up on later?
- 13 A Correct.
- 14 Q That same day did you talk to Taneisha Outen?
- 15 A I did.
- 16 Q And was she able to give you some information?
- 17 A She did.
- 18 Q And were you able to follow up on that later?
- 19 A Yes.
- 20 Q Did you become aware on the 22nd that Doneisha
- 21 Smallwood herself had been interviewed?
- 22 A I did.
- 23 Q And was there a good bit of information she was
- 24 able to give you?
- 25 A Yes. She provided a good number of names.

1 Q Also, on the 22nd, was a second interview
2 conducted with Corey Sanders?

3 A Around one o'clock that day, yes, it was.

4 Q And was he more forthcoming in that statement?

5 A Yes.

6 Q Is that unusual in cases such as this?

7 A Not at all. Many homicide cases will take one,
8 two, sometimes even three statements. Individuals,
9 especially in a case involving gang ramifications,
10 they're hesitant, they're scared and sometimes you
11 have to confront them with inconsistencies as you go
12 to get them to then tell you more. It's not unusual
13 at all.

14 Q And have you actually had special training as
15 far as gang crime is concerned?

16 A Yes, ma'am. I've had some training with regard
17 to gangs and I have a basic working knowledge of
18 some of the symbols and the different --

19 MR. SUTHERLAND: Your Honor, objection,
20 relevance.

21 THE COURT: Overruled.

22 MS. CAMPBELL: Thank you, Your Honor.

23 BY MS. CAMPBELL:

24 Q So is it unusual for people to be reluctant to
25 come forward with information?

1 A Not at all.

2 Q That afternoon did you also return back to the
3 scene where the crime occurred?

4 A I did.

5 Q And why did you go there?

6 A I had not had an opportunity as of yet to view
7 the scene and get a perspective as to the different
8 angles and I wanted Ellis to kind of take me through
9 it. At this point in time, as I am in a lot of
10 these homicide cases, I become sort of deeply
11 involved in it and I felt like I needed to do that.

12 Q While you were there, did you -- did Lieutenant
13 Padgett also show up at the scene that day?

14 A We summoned him to the scene.

15 Q And I want to show you what's been marked as
16 State's Exhibit Number 37. Do you recognize that?

17 A I do.

18 Q And what were those items?

19 A Those were some nine millimeter shell casings
20 that we -- that Investigator Ellis and myself found
21 in the rear of the lot where I believe some others
22 had been located. And with the benefit of daylight
23 and a closer look at it in the daylight, we found
24 those, several shell casings.

25 Q And is that unusual to go back to a scene and

1 find evidence that may not be readily apparent at
2 night?

3 A Not at all, especially something like a shell
4 casing.

5 Q And Lieutenant Padgett actually responded to
6 that scene that day and collected those?

7 A He did.

8 Q Did you also do an examination over at the
9 Mobil Gas Station?

10 A We did.

11 Q What did you observe on the side of the
12 building closest to the Waffle House?

13 A We had learned that there was a hole in the
14 wall there, Ellis had brought this to my attention.
15 And we specifically asked Lieutenant Padgett to
16 attempt to do what we call a trajectory analysis of
17 this particular hole. There was another hole in the
18 Waffle House building that had been pointed out to
19 us by the owners that was from an old shooting
20 incident and it was more at a direct angle so we
21 eliminated that one and focused on another one that
22 was pointed out to us as a fresh hole.

23 Q I show you what's been marked as State's
24 Exhibit Number 40 for what's in evidence. Do you
25 recognize that?

1 A Yes, ma'am.

2 Q And is that the actual hole you were talking
3 about being at an angle?

4 A Correct.

5 Q And Lieutenant Padgett was the one that
6 actually proceeded further in attempting to recover
7 a projectile from inside that --

8 A He did.

9 Q I believe Investigator Collins also came to the
10 scene that day?

11 A He did.

12 Q At that point, had Eugene Patterson been
13 interviewed?

14 A He had already been interviewed one time by
15 that point.

16 Q At that point?

17 A Yes, ma'am.

18 Q And, at that point, based on the information
19 you got from all the other witnesses, the crime
20 scene investigation and the autopsy, which had been
21 performed by then, too, did you think it was
22 appropriate to charge him with anything?

23 A Yes, ma'am.

24 Q And, at that point, what did you charge him
25 with?

1 A Obstruction of justice.

2 Q During the course of a murder investigation,
3 Captain, is it unusual for a person to be charged
4 with something such as obstruction of justice or
5 breach of peace of a high and aggravated nature as
6 you continue to gather evidence?

7 A It's not unusual at all.

8 Q Explain that to the jury.

9 A Going back to this issue with people not
10 telling the truth, sometimes it's because they're
11 scared, sometimes it's because they're involved,
12 especially with regard to the obstruction of justice
13 charge, there are other charges that we have like
14 misprision of felony where we'll charge someone
15 who's been questioned that has direct knowledge of
16 who did it. And in working the case and in trying
17 to get these people to talk with you and communicate
18 with you, it's not unusual to go ahead and charge
19 them.

20 Q And, at this point, you charged him with
21 obstruction of justice?

22 A That's correct.

23 Q Did you attempt to make contact with Eugene
24 Patterson?

25 A On the afternoon of the 22nd, I did try to make

1 telephone contact with Eugene. He had already come
2 in once so we felt like he would come in again.

3 Q And what happened when you made telephone
4 contact with Eugene Patterson?

5 A He hung up the phone on me.

6 Q Did you then call back?

7 A I called back and left a detailed message as to
8 the fact that we had an arrest warrant and he needed
9 to make arrangements to come on in.

10 Q Did you tell him what the arrest warrant was
11 for?

12 A Yes.

13 Q That evening did he turn himself in?

14 A He did come in and was interviewed by Sergeant
15 McRoberts.

16 Q The next day on the morning of the 23rd, was
17 Eugene Patterson interviewed for a third time?

18 A He was.

19 Q And why was that?

20 A With regard to some inconsistencies that were
21 still being deemed as being present with even his
22 second statement that he'd given to Sergeant
23 McRoberts the night before, the particular
24 inconsistency was the type of vehicle that he had
25 arrived at the Waffle House in that had been

1 specifically contradicted by at least three other
2 witnesses.

3 Q And, at that point, did he implicate other
4 people in the parking lot? You can't say who.

5 A He did.

6 Q But not himself?

7 A Himself as far as being with some other people
8 and at least one other person who was firing.

9 MR. SUTHERLAND: Objection, that's
10 nonresponsive as to whether he implicated himself,
11 Your Honor. The implication of the word implicated
12 as implicated himself in the fire fight, sir.

13 THE COURT: That's a matter for the jury to
14 interpret. The objection's overruled. Go ahead.

15 MS. CAMPBELL: Thank you.

16 BY MS. CAMPBELL:

17 Q On February 27th of 2007, did you make contact
18 with a Herbert Carter?

19 A I reviewed a statement that had been taken from
20 Herbert Carter.

21 Q Sorry. Based on all the information you had
22 gathered at that point, did you feel like it was
23 appropriate at that point to get some search
24 warrants and some additional arrest warrants?

25 A Yes, ma'am.

1 Q Tell the jury what the reasoning was behind
2 that and what you did.

3 A At that point in time, we had two individuals
4 identified as having been in the rear of the parking
5 lot that either had possession of a pistol or were
6 firing a pistol or in close proximity to where a
7 pistol was fired. By this time, we had identified
8 two separate and distinct shooting points, if you
9 will, at the front of the lot with regard to two
10 individuals who were firing and at the back of the
11 lot with regard to one individual that was firing.
12 The search warrants and arrest warrants were secured
13 on that morning, or that afternoon, with regard to
14 individuals in the rear of the parking lot.

15 Q And one of the individuals that actually was
16 identified as handling the gun was who?

17 A Jerome Thompson.

18 Q And the second individual that was actually
19 handing it and/or shooting the gun was who?

20 A Andre Tayson Boone.

21 Q And at that point, did you get search warrants
22 for both of their houses?

23 A We did.

24 Q That day were y'all able to identify, based on
25 information you had gotten from witness statements,

1 the person that was one of the shooters towards the
2 street, besides Mr. Patterson?

3 A Yes, ma'am, we did.

4 Q And who did you identify that as?

5 A Oliver Feldman.

6 Q Did you also secure a search warrant for his
7 vehicle?

8 A We did.

9 Q As well as an arrest warrant for him?

10 A We did.

11 Q Did you make contact with anybody at Fort
12 Jackson at that point?

13 A I did. I had a contact there by the name of
14 Roland Hill who I dealt with previously. And
15 anytime we have matters on Fort Jackson, it benefits
16 us to go through the MPs and I made contact with
17 Sergeant Hill.

18 Q I want to turn your attention to February 28th,
19 that morning. Did you assist in the execution of a
20 search warrant at Andre Tayson Boone's residence?

21 A I did.

22 Q And what neighborhood does he live in?

23 A Meadow Lakes.

24 Q And what was his actual address or what was his
25 street name?

- 1 A It was actually on Meadowbury Drive.
- 2 Q Was Tayson Boone there when y'all executed the
- 3 search warrant initially?
- 4 A He was not there when we first arrived.
- 5 Q Did you make contact with any family members?
- 6 A We made contact with his mother's cell phone
- 7 and she came back to the house with Tayson.
- 8 Q At that point, was Tayson Boone placed under
- 9 arrest?
- 10 A He was ultimately arrested, yes, ma'am.
- 11 Q While you were there in the house, did he give
- 12 y'all some information about a gun?
- 13 A Yes, ma'am. The search warrant was for any and
- 14 all firearms, it specifically alluded to a .22. We
- 15 received information then that possibly a .22 was
- 16 involved as far as the gun he had possession of.
- 17 And he directed us to the location of the .22.
- 18 Q And that was the original story about the .22?
- 19 A That's correct.
- 20 Q I show you State's Exhibit Number 88. Do you
- 21 recognize that?
- 22 A Yes, ma'am. That's the broken .22 revolver
- 23 that we located.
- 24 Q Was that the only gun that you were able to
- 25 locate at that house?

1 A That's correct.

2 Q In South Carolina, Captain, is it necessary to
3 register a gun in order to pass it from hand to
4 hand?

5 A It's not necessary to register a gun to pass it
6 hand to hand, no, ma'am.

7 Q And, in fact, the only record of any guns being
8 sold is, say, from the original?

9 A Correct. If you go to a store and buy a gun
10 through a licensed firearms dealer, there's a
11 record. There's plenty of other ways to acquire a
12 firearm with no paperwork whatsoever.

13 Q And that was going to be my next question.
14 What are other ways to acquire a firearm with no
15 record?

16 A Friend of yours selling it to you, you know,
17 swapping something for it, less than honest ways, if
18 you will.

19 Q While you were at the residence, did you note
20 an automobile in the driveway?

21 A I did.

22 Q I want to show you what's been marked as
23 State's Exhibits Number 51, 50 and 49. Do you
24 recognize those?

25 A I do.

1 Q And what do those show?

2 A By this time, we had learned through multiple
3 statements that Jerome and Tayson were in a black
4 Ford Explorer, dark Ford Explorer. And these are
5 pictures of the Explorer.

6 MS. CAMPBELL: Your Honor, at this time, we'd
7 offer them into evidence.

8 THE COURT: Is there any objection?

9 MR. SUTHERLAND: No objection from us, Your
10 Honor.

11 MS. EVERHART: No objection, Your Honor.

12 THE COURT: All right. Those need to be marked
13 in the record.

14 (State's Exhibit Numbers 49 through 51,
15 photographs, admitted into evidence.)

16 THE COURT: Ms. Campbell, do you have any idea
17 how much longer it will be with this witness?

18 MS. CAMPBELL: No, sir. I mean, I hope not
19 long. We do have the statement.

20 THE COURT: All right. Go ahead.

21 MS. CAMPBELL: Thank you, sir.

22 BY MS. CAMPBELL:

23 Q The automobile that's seen in these
24 photographs, did that become significant in your
25 investigation?

1 A Yes.

2 Q Once Mr. Boone was placed under arrest, was he
3 then transported back to headquarters?

4 A He was.

5 Q Who actually transported him; do you know?

6 A Investigator Roe.

7 Q And when Investigator Roe got him back to
8 headquarters, did you become aware whether or not he
9 advised him of his rights?

10 A I did become aware. I came soon thereafter and
11 Investigator Roe and Investigator Martin had begun
12 -- at least had advised Mr. Boone of his rights and
13 had begun talking to him.

14 Q Did you become involved in the interview of
15 Tayson Boone?

16 A I did.

17 Q And tell the jury how you became involved and
18 why you were actually assisting -- or actually took
19 over in that.

20 A I came back to the office and Investigator
21 Martin had another detail, I don't remember if it
22 was a subpoena to appear in court or what it was,
23 but he had to leave and I took over his position in
24 the interview process. During the course of that
25 interview, Sergeant Ewing and Investigator Ellis

1 came back to the sheriff's department from the
2 search warrant that they had conducted at Jerome
3 Thompson's house. And we received significant
4 information as a result of some interviews that they
5 had done with Mr. Thompson that changed the course
6 of our interview with Mr. Boone.

7 Q At that point -- up until that point even
8 though you found nine millimeter shell casings at
9 the scene, you were still focused on the .22?

10 A We had received statements, I believe, from
11 Guilyard, and I can't remember the other young man's
12 name, that there was a .22 that had been fired by
13 Tayson Boone.

14 Q And based on the information -- what
15 information was it that was -- explain to the jury
16 how that information got to Tayson?

17 A We received -- basically, we received
18 information that that was a contrived story about
19 the .22, that it was -- in reality, it was a nine
20 millimeter and that the story had been sort of in a
21 premeditated fashion carried out to try to limit
22 their responsibility in this thing.

23 Q And was that information related to Tayson
24 Boone after he'd been advised of rights and during
25 the course of his interview?

1 A It was.

2 Q And during the course of his interview, at any
3 time did Mr. Boone tell you he didn't want to talk
4 to you anymore?

5 A No, ma'am.

6 Q At any time did he ask for an attorney?

7 A No, ma'am.

8 Q Did he continue to cooperate with you?

9 A He did.

10 Q When he was given the information about -- from
11 Jerome Thompson about the nine millimeter, what
12 happened?

13 A He admitted that that was a lie with regard to
14 the .22 and that he indeed had a nine millimeter at
15 the Waffle House that night and then he proceeded to
16 tell us the rest of the story about his involvement
17 with regard to the nine millimeter and the shots
18 fired.

19 Q I'm going to show you a copy of State's Exhibit
20 Number 7, which is an eight page statement. Do you
21 recognize that?

22 A Yes, ma'am.

23 Q And is that a statement that you and
24 Investigator Roe took from the defendant, Andre
25 Tayson Boone, on that morning?

1 A It is.

2 Q And tell this jury simply how the process works
3 and how you take a statement and reduce it -- that
4 was actually typed written I believe; is that
5 correct?

6 A Yes, ma'am. In most instances, it's a question
7 and answer type statement. It's our policy at the
8 sheriff's department that we actually type or write
9 the statements based on the questions that we ask
10 and then type the responses.

11 Q And was that done in this case?

12 A Yes, ma'am.

13 Q And in there the information that's given --
14 the questions are posed by you?

15 A Myself and Investigator Roe.

16 Q And then the answers come from whom?

17 A Tayson Boone.

18 Q Once the statement is taken and completed, I
19 believe that eight page statement, does the
20 defendant, Andre Boone in this case, did he have the
21 right to review it?

22 A Yes. This is generally read back to him or if
23 he wants to read it, he can read it.

24 Q And that was done in this case?

25 A Yes, ma'am.

1 Q And when you take a statement, a written
2 statement such as that, does he acknowledge it in
3 any way that that's his statement and those were his
4 words?

5 A He does.

6 Q And how was that done?

7 A There are two places to sign on the statement
8 form with regard to the person giving the statement.
9 The first blank here is after a phrase that's in the
10 statement, I've made the foregoing statement freely
11 and voluntarily without the fear of threat, promise
12 or reward -- or hope of reward of any kind, there's
13 a place for him to acknowledge that there if that's
14 true.

15 There's a second blank at the bottom with
16 regard to the fact that I certify that I have read
17 or had read to me the statement, consisting of
18 however many pages the statement is, and a true copy
19 has been given to me, and it has a place for the
20 date. That's important to the fact that we give
21 them a copy at the end of the statement and that's
22 important so we don't ever want anyone to come back
23 and say that we altered a statement that they gave
24 us after they gave it. So they have a copy and we
25 have a copy.

1 Q And in this case, is that a copy of his
2 statement and the relevant portions as far as what
3 he said he did that night?

4 A I believe it is, yes, ma'am.

5 MS. CAMPBELL: Your Honor, at this time, we'd
6 offer State's Exhibit 7.

7 THE COURT: Subject to previous objection?

8 MR. SUTHERLAND: Yes, sir.

9 THE COURT: All right. Let me address the jury
10 just briefly. Ladies and gentlemen, there's about
11 to be admitted in the trial of this case evidence
12 related to an alleged statement given by the
13 Defendant Boone. At this point, I'm going to give
14 you what's known as a limiting instruction, which
15 means that this evidence is admitted for a limited
16 purpose. And if you use this statement for any
17 purpose, you can only consider it within the limited
18 purpose for which it is admitted.

19 The statement allegedly given by Mr. Boone to
20 law enforcement on February 28th, 2007, can only be
21 considered in this case against Mr. Boone, if you
22 consider it at all. What I'm trying to communicate
23 by that is you cannot consider it in any way against
24 the co-defendant, Mr. Patterson.

25 Now, when I instruct you on the law at the end

1 of the trial, I'm going to give you requirements
2 that the State has to meet and prove beyond a
3 reasonable doubt in order for you to consider any
4 statement given by someone to law enforcement while
5 in police custody. At this point, what I'm giving
6 you is this limiting instruction that if you ever
7 consider this alleged statement in any way, you
8 cannot consider this statement in any manner
9 whatsoever against the co-defendant, Mr. Patterson.
10 You can only consider this statement, if you deem it
11 appropriate to consider the statement, against the
12 defendant who is alleged to have made the statement
13 Mr. Boone.

14 All right. That's Number 7, mark it in the
15 record.

16 (State's Exhibit Number 7, statement of
17 Andre Boone, admitted into evidence.)

18 BY MS. CAMPBELL:

19 Q Just for the record, the statement -- this is a
20 copy of the statement with the information as far as
21 what he says he did that night?

22 A That's correct.

23 MS. CAMPBELL: Your Honor, permission to
24 publish?

25 THE COURT: Yes, ma'am.

1 MS. CAMPBELL: Thank you.

2 THE WITNESS: As was previously testified to,
3 there's a section at the top for the date and the
4 person's name and the advice of rights appears there
5 again. I won't go over all that again. Questions
6 are by Investigator Roe and Captain Smith, answers
7 by Andre Tayson Boone.

8 The first question: Tayson, are you in the
9 Blood's gang?

10 Answer: Yes.

11 Question: What sect are you in?

12 Answer: TTP, Tree Top Piru.

13 Question: Were you advised of your rights
14 previously?

15 Answer: Yes.

16 Did you waive, parentheses, give up your rights
17 and agree to talk to us?

18 Yes.

19 Have you been promised anything or threatened
20 in any way?

21 No.

22 We've asked you a series of questions this
23 morning about an incident at the Waffle House on Two
24 Notch Road that occurred on the early morning hours
25 of February 19th; is that correct?

1 Yes.

2 Have you been completely honest with us the
3 whole time this morning?

4 No.

5 What did you initially tell us about your
6 involvement in the incident at the Waffle House?

7 I said I was there to fight a boy named Dameon
8 who is a Folk. I saw a bunch of Folks pull up in
9 the Waffle House by the entrance and I saw some pull
10 up at the Mobil station. Some of them acted like
11 they were going for guns and some were running to
12 their cars like they were going to get guns. I told
13 you that I shot in the air with a .22 pistol that
14 you found in my house this morning. I said I shot
15 into the air to scare the Folks from coming at me,
16 in parentheses, and the guys I was with, with their
17 guys.

18 Question: What is the real truth?

19 Answer: The real truth is the .22 wasn't even
20 there that night. When we first got to the Waffle
21 House, Jerome Thompson, who I was with, didn't want
22 to take his nine millimeter inside. He left it in
23 my Explorer.

24 I saw my girlfriend Duck, parentheses, Doneisha
25 Smallwood, inside of the Waffle House. I also saw

1 some other Bloods like T.J., in parentheses, Tyrone
2 unknown last name, and Corey Sanders. We had then
3 gone outside and were sitting inside of my Explorer
4 at the back of the Waffle House parking lot. Jerome
5 was there then. Derrick Guilyard, William Kee and
6 Demon Griffin were also all in my car then, too.
7 All five of us had come together in my Explorer.
8 Duck was standing at the passenger side window
9 talking to us.

10 I had been talking to Duck for about five
11 minutes when I saw the first couple of cars pull
12 into the Waffle House parking lot. I then saw other
13 cars pull into the parking lot of the Mobil station.
14 Corey was also outside by then and was talking to
15 some girls. He yelled over to us that the people in
16 the cars were the Folks who we had been supposed to
17 fight earlier in the night.

18 We were supposed to have met up earlier at the
19 Waffle House by the Kangaroo. Then it changed to
20 the Wendy's by Spring Valley. The Folks never
21 showed up at either place. We were then supposed to
22 meet at the Waffle House on Hard Scrabble, but they
23 didn't show up there either. We later figured out
24 that they were leading us around just so they could
25 get up enough people to outnumber us. We figured

1 out that they were wasting time so that they could
2 get their group up.

3 Corey and a guy named Chad then started
4 fighting in the parking lot at the Waffle House.
5 Chad came up towards Corey from the Mobil where I
6 guess he had parked. Other Folks jumped in to help
7 Chad, that was when I ran up there to fight a guy
8 named Dameon who was right up there where Corey and
9 Chad were fighting. Dameon and I had a beef over
10 him punching me that previous Saturday night at the
11 Main Event Club. A guy wearing blue who had a
12 bandana over his face reached to his waistband as I
13 walked up. I think he was a Crip. He was light
14 skinned. He said, If you don't back the F up, I'm
15 going to shoot your ass. I saw the butt of a gun in
16 his waistband. I then backed up to my Explorer.

17 Jerome and them were standing in front of the
18 Explorer. I knew Jerome had the nine millimeter
19 with him. I asked Jerome for the gun. Jerome gave
20 me his nine millimeter. I then turned around and
21 faced the fight, which was still going on. I fired
22 it twice in the air. I then ran behind my Explorer
23 because I saw the Crip dude and another dude with
24 him begin to point their guns at my direction and
25 began to fire. When I got behind the Explorer, I

1 fired five more times. I fired at the Crip dude.

2 After I shot those five shots, I got into the
3 truck. William Kee, Derrick Guilyard and Demon
4 Griffin were already inside of my Explorer. The
5 passenger side door was still open. I started to
6 drive away when Jerome who also jumped into the
7 passenger side door. As we pulled out the back, I
8 could hear more shots being fired.

9 We made a left and went down Two Notch. We
10 turned by where Motel 6 is over the railroad tracks.
11 We ended up on Decker. Jerome wanted to be dropped
12 off on Decker. He took the nine millimeter with
13 him. I then took William Kee home over there by
14 Forest Acres. I then took Derrick and Demon home.
15 They are cousins and they were staying at Demon's
16 house on Scarsdale, in parentheses, in Meadow Lake,
17 that night.

18 Question: When did you find out that someone
19 had been killed during the incident?

20 Answer: Doneisha called me -- Doneisha called
21 and told me that about the time I was stepping into
22 my house that night.

23 Question: How did you feel then?

24 Answer: Doneisha was crying and was repeatedly
25 talking. I couldn't get any words in and I couldn't

1 understand all of what she was saying because she
2 was crying. I told her to call me back.

3 Question: Did you feel then that one of the
4 shots that you fired may have hit the boy?

5 Answer: I was worried about it so I asked her
6 where he'd been shot. At first, she told me he was
7 shot in the head. I then told her I wanted to know
8 where he'd been when he was shot not where on his
9 body he was shot. She said he was in front of the
10 Mobil station. I felt then that none of my shots
11 hit him because I was firing at the direction of the
12 Crip in the Waffle House parking lot. They were
13 also parked there and not at the Mobil. I had seen
14 them pull up and get out of their car when they
15 first got there. They were the first people who
16 pulled up when all of them, talking about the Folks
17 in parentheses, got there at the same time. They
18 were the only ones who actually pulled up into the
19 Waffle House parking lot. The rest of the Folks had
20' pulled up into the Mobil.

21 Question: When you fired, were you aiming the
22 pistol or simply firing at random towards that
23 direction?

24 Answer: I was aiming, but I was aiming over,
25 in parentheses, the Crip, head as if to say bullets

1 are coming your way.

2 Question: So you don't feel that any of the
3 shots you fired could have hit them?

4 Answer: No, not unless they jumped up.

5 Question: When you fired the shots you fired,
6 were other people running from the area of the fight
7 back towards the Mobil?

8 Answer: Yes, sir, but after the first two
9 shots that I fired up into the air, they had already
10 run back to the Mobil.

11 Question: How do you know that none of your
12 rounds didn't randomly hit any of those people who
13 were simply running in between?

14 Answer: There wasn't anyone in between the
15 Crip dude when I fired the first two shots.

16 Answer: What happened to the nine millimeter

17 -- Question: What happened to the nine millimeter?

18 Answer: Jerome had it the last time I saw it.
19 He said the next day that he was about to go get rid
20 of it by throwing it in the Broad River. We had
21 that conversation at the McDonalds where Duck works.
22 It is on North Main Street. Jerome told me that he
23 had hid it under the dog house in his back yard the
24 night after the incident. He has a pit bull.

25 Question: Did you see the boy fall when he was

1 shot?

2 Answer: No, sir.

3 Question: You never fired at any angle that
4 came close to the corner of the Mobil station?

5 Answer: No, sir. I wasn't worried about
6 anybody over there because the shots coming at me
7 weren't coming from that direction.

8 Question: What would you say if I told you
9 that there is a shot into the side of the Mobil
10 station, which came at an angle as if coming from
11 where you were parked and where the shell casings
12 from the nine millimeter was located?

13 His answer was: I guess it's possible that the
14 round in the side of the building might be the one
15 nine millimeter I fired because as I was running
16 back towards the back of the truck, I could see the
17 wall of the Mobil. I was running with the gun in my
18 hand and I quickly turned to fire after I took cover
19 behind my Explorer. When I fired that shot, it
20 wasn't well aimed. I then took better aim and fired
21 at that time Crip and the guy.

22 Question: Where (sic) the Crip standing at the
23 time?

24 Answer: In front of the Waffle House coming
25 towards me.

1 Question: That third shot would be the only
2 one that you think could have hit the Mobil station?

3 Answer: Yes. The other four went towards the
4 Crip.

5 Question: Can you be absolutely sure where
6 your rounds went?

7 Answer: Yes, sir.

8 Question: Why?

9 Answer: The way I was aiming, it was going
10 above Crip boy's head because they were coming at us
11 firing.

12 Question: Are you sure of the exact count,
13 parentheses, or number, of shots in each sequence
14 that you fired?

15 Answer: Yes, sir. The first two were shot
16 into the air that is when they started shooting and
17 running at us. I then ran back to take cover and
18 that is when I shot the one which may have --

19 **MR. SUTHERLAND:** Your Honor, I have a matter of
20 law, sir.

21 **THE COURT:** Ladies and gentlemen, please step
22 in the jury room. Don't discuss the case.

23 (The jury retires to the jury room.)

24 **MR. SUTHERLAND:** I'm sorry, sir.

25 (Pause.)

1 MS. CAMPBELL: I did ask him to review it
2 prior.

3 THE COURT: Well, let me just say for the
4 record, I read law till three o'clock in the
5 morning. I came in here and made a ruling. I ruled
6 that the statement could not come in. I was told
7 that you all had agreed to a redacted version of the
8 statement, that's the only reason it came in. So,
9 yeah, you're welcome to review it, but that's where
10 I was with the ruling. I'll give you about five
11 minutes, then you can let me know what's going on.

12 You can't discuss your testimony.

13 (Brief Recess.)

14 THE COURT: Are there any issues?

15 MR. SUTHERLAND: No, sir. Sorry, Your Honor.

16 THE COURT: That's all right. I'm advised
17 there are no issues to rule upon. Bring in the
18 jury.

19 (The jury returns to the courtroom.)

20 THE COURT: The objection's withdrawn. You may
21 continue, Ms. Campbell.

22 MS. CAMPBELL: Thank you, sir.

23 BY MS. CAMPBELL:

24 Q Going to start back at the line before you were
25 interrupted.

1 A The last question is, I believe: Are you sure
2 the exact count or number of shots in each sequence
3 that you fired?

4 Answer: Yes, sir. The first two were shot
5 into the air, that is when they started shooting and
6 running at us. I then ran back to take cover and
7 that is when I shot that one which may have hit the
8 Mobil. I then fired the next four at the people
9 shooting at me who were the Crip.

10 Question: Was anyone else firing from the
11 direction that your shots were being fired from?

12 Answer: I'm not sure, but I heard more shots
13 as I was getting into the truck. There was a black
14 Cadillac back there. The driver was this girl named
15 Karleisa. I think she goes to a district two
16 school. Duck knows her. I don't know who else was
17 in her car.

18 Question: Do you think if anyone was firing
19 from anywhere behind you or not -- do you know if
20 anyone, excuse me, was firing from anywhere behind
21 you or not?

22 Answer: I don't think so, but there were shots
23 being fired from somewhere when I was pulling off.
24 I don't know where they were coming from, but I sill
25 heard them.

1 Question: When you were taking cover and fired
2 that one shot, in parentheses, before that volley of
3 four that you say you fired at the Crip, were people
4 running back across the lot, parentheses, from the
5 area of the fight towards the Mobil station parking
6 lot?

7 I couldn't really tell. I was ducking and
8 dodging because those two boys were shooting and
9 coming at me.

10 Question: Have you assisted in your
11 explanation -- you have assisted in your explanation
12 by drawing a map today; is that correct?

13 And he indicated yes.

14 Question: And in that map, you pointed out
15 where you were, where the Crip, where this fight was
16 and other things of reference regarding this case;
17 is that correct?

18 Yes. I also pointed out the two buildings
19 where the Folks had parked, where I was parked,
20 where the Crip dude parked and the way I pulled off
21 after the shooting.

22 Question: What can you tell me about this
23 scheme to lie about the shooting?

24 Answer: After Derrick Guilyard left the
25 sheriff's department, he came, told Jerome and me

1 what he had told y'all. Derrick said he told
2 everything about the fight and all, me talking to
3 Duck and the five of us being together. He said the
4 only thing that he made up was the story about me
5 firing into the air with a .22. The plan was for me
6 and Jerome to tell that same story when we were to
7 be questioned.

8 Question: You knew you were going to be
9 questioned sooner or later?

10 Answer: Yes, sir.

11 Question: Is the .22 we found in your house,
12 the same .22 you were supposed to lie about?

13 Answer: Yes, sir.

14 Question: Did you even have that gun in your
15 possession that night?

16 Answer: No, sir.

17 Question: So you were basically looking to
18 fight Dameon all night; is that correct?

19 Answer: Yes. I was upset because he hit me
20 for no reason. He wanted for a fight to break out
21 in the club and he punched me when my attention was
22 on that fight. He waited -- excuse me -- for a
23 fight to break out in the club and punched me when
24 my attention was on that fight.

25 Question: Did you know about the beef between

1 Corey and Chad that was also brewing?

2 Answer: I didn't find out until we got to the
3 Wendy's that night after we left the Waffle House at
4 the Kangaroo. Corey was there and he told us that
5 he wanted to fight Chad. Corey said that Chad and
6 some of his boys tried to jump T.J. in the club the
7 same night me and Dameon got into it.

8 Question: When you got to the Waffle House
9 where the incident, talking about the shooting in
10 parentheses, ultimately happened, what was your
11 reason for showing up there?

12 Answer: I thought the fight was over because
13 they, in parentheses, the Folks, never showed up at
14 any place we went to meet them. I was there to talk
15 to Duck. I went there to talk to Duck.

16 Question: Had you ever fired the same nine
17 millimeter before?

18 Answer: Yeah, I fired it all the way in the
19 back of Meadow Lakes into the woods.

20 Question: Can you take us to show us the shell
21 casings which might still be there?

22 Answer: It was a long time ago, but they might
23 still be there. When I fired it then, it wasn't in
24 Jerome's possession. A guy named Gregory Davis had
25 it then. He's from Meadow Lakes. After that, it

1 was sold a couple times before Jerome got it.

2 Question: Where did the gun come from
3 originally?

4 Answer: Jerome stole it out of a barbecue
5 grill where a dude name Joshua had it hidden.
6 Joshua stays in Meadow Lakes on Atterbury. I don't
7 know where Joshua got it. I was with Jerome when he
8 stole it out of the grill.

9 Question: How did you know that he had it
10 hidden in the grill?

11 Answer: This girl named Raneeka Kelly who
12 stays next door to Joshua told us about where he hid
13 it.

14 Question: Did anyone else have a gun who was
15 in the car with you?

16 No was the answer.

17 Did Jerome ever display or point the nine
18 millimeter where others could see it in his hands?

19 Answer: He had it in his waistband so I guess
20 somebody could have seen him pull it out.

21 Question: Did you know the boy who got shot,
22 parentheses, named Brian Wright?

23 Answer: No, sir.

24 Question: Did you see anyone else with a gun
25 except the Crip?

1 Answer: No, but I heard other gunshots.

2 Question: Tayson, do you think it is possible
3 that one of your rounds that you fired may have hit
4 the boy?

5 Answer: If he wasn't by the Waffle House when
6 he got shot, I don't think it is possible that any
7 of my rounds hit him.

8 Question: Is there anything else you can tell
9 us which could shed some light on this shooting,
10 which we haven't specifically asked you about?

11 Answer: No.

12 Q Once he had given you that statement and you
13 had typed it in, did he then sign off on every page?

14 A He did.

15 Q And at any time -- when you were taking his
16 statement, was he handcuffed?

17 A No, ma'am.

18 Q Where was his statement taken?

19 A In my office at the sheriff's department.

20 Q Did you threaten him in any way to make him
21 talk?

22 A No, ma'am.

23 Q Did you promise him anything?

24 A No, ma'am.

25 Q Did you promise him an offer of leniency?

1 A No, ma'am.

2 Q Did you try to coerce him to make him talk to
3 you?

4 A No, ma'am.

5 Q And in your experience, was he voluntarily
6 talking to you giving his version of what happened?

7 A He was very forthcoming.

8 Q You mentioned that he also had a drawing. In
9 the statement, it references a drawing that he did
10 for you?

11 A Yes, ma'am.

12 Q And in that drawing, does he reference to where
13 he was standing that night?

14 A He did.

15 MR. SUTHERLAND: No objection from us, Your
16 Honor.

17 MS. EVERHART: No objection, Your Honor.

18 MS. CAMPBELL: 91, Your Honor.

19 THE COURT: Without objection, mark it in the
20 record.

21 (State's Exhibit Number 91, diagram,
22 admitted into evidence.)

23 BY MS. CAMPBELL:

24 Q I want to show you what's been marked as
25 State's Exhibit 91. Is that a copy of the actual

1 drawing he did for you?

2 A Yes, ma'am.

3 Q And on that drawing, does it show where his car
4 was parked?

5 A It does.

6 Q And is there any writing next to that?

7 A To the far right side of it, there is.

8 Q And what does it say?

9 A Well, he designates the Waffle House where that
10 is, which is to the right sort of, Kendra 21 and 22,
11 sister of Jerome.

12 Q And what is that information?

13 A What is the significance of that information?

14 Q Yes, sir.

15 A Kendra is Jerome's sister, who's boyfriend, I
16 believe, he put in his statement, is the one that
17 helped get rid of the nine millimeter.

18 THE COURT: He's the one what now?

19 THE WITNESS: Helped get rid of the nine
20 millimeter, Your Honor.

21 THE COURT: Thank you. I didn't understand
22 you. I'm sorry.

23 BY MS. CAMPBELL:

24 Q And underneath the Waffle House, does he
25 indicate where other people were located in the

1 Waffle House parking lot?

2 A Yes. He's designated Folk and Crip and a car
3 here, Two Notch Road would be right there.

4 Q And then over in front of the gas station, does
5 he indicate that certain people were over there?

6 A Again, he has symbols for cars that he
7 designates several cars, then he's got Folk.

8 Q And then I notice that there's a signature and
9 a date on this?

10 A Yes, ma'am.

11 Q And whose signature on that?

12 A Mr. Boone.

13 Q The area where he indicates he was shooting
14 that night, you're familiar with the crime scene,
15 reviewed that?

16 A Yes.

17 Q Were there any shell casings found in that
18 area?

19 A There were.

20 Q And what kind of shell casings were found
21 there?

22 A Nine millimeter.

23 Q Then down here, I believe, he's got the Folk
24 and the Crip and the car. And then he's got lines
25 going in between, what did that mean?

1 A He's showing the direction of gunshots coming
2 his way.

3 Q And in his statement, did he indicate that they
4 were coming towards him?

5 A Yes, ma'am.

6 Q And is that indicated here on the diagram?

7 A Yes, ma'am.

8 Q In that area in the front, more towards the
9 front of the parking lot, what kind of shell casings
10 were recovered?

11 A .380.

12 Q During the -- in giving you a statement, he
13 indicated that he had shot that gun before?

14 A Yes.

15 Q Did you follow up on that information?

16 A We did.

17 Q Tell this jury what you did.

18 A He had indicated in his statement he could take
19 us back to this area in the woods, which is at the
20 rear of their neighborhood, Meadow Lake
21 neighborhood, to show us where these shell casings
22 may be. And that's important because through my
23 knowledge and experience in working these cases, I
24 know that our ballistics examiner is capable of
25 doing a shell casing to shell casing match, which

1 would show a link to that particular weapon even
2 though we didn't have the gun. So he agreed to take
3 us out there and show us the back of Meadow Lakes
4 where they had fired the gun and we found some shell
5 casings.

6 Q And I show you State's Exhibit Number 87. Do
7 you recognize that?

8 A Yes, ma'am.

9 Q I believe they were five nine millimeter shell
10 casings recovered there and one .380?

11 A Yes, ma'am.

12 Q And who's the person that actually showed you
13 where those shell casings could be found?

14 A Andre Tayson Boone.

15 Q Once he had shown you where the shell casings
16 were and those were collected, did you then take him
17 back to the office?

18 A I believe we stopped and he got him a bite to
19 eat at that juncture, then I believe went back to
20 the office.

21 Q That afternoon did Tayson's father or
22 stepfather come to the office?

23 A He did.

24 Q And was he allowed to be with his son?

25 A He was.

1 Q I'm going to turn your attention to March the
2 1st of 2007. Did you have a meeting with my office
3 about this case?

4 A I did.

5 Q Is that unusual?

6 A It's sort of standard business.

7 Q And what was the purpose of that meeting that
8 morning?

9 A We felt like we had reached a point where we
10 needed to present the evidence that we had gathered
11 in this case for advisement as to the appropriate
12 charges, which is a routine thing that I do in
13 dealing with the Solicitor's office. The
14 Solicitor's office has the ultimate responsibility
15 of prosecuting the cases. At that time, though, in
16 any instance after we get -- we have a consult with
17 the Solicitor's office, we then have to secure an
18 arrest warrant and the facts have to be run by an
19 independent magistrate who has to determine if
20 probable cause is present before those warrants are
21 signed and that was done in this case.

22 Q In this case, there was some discussion about
23 what the appropriate charges would be?

24 A That's correct.

25 Q And, at this point, how many people had you

1 identified as the shooters out there at the scene
2 that night?

3 A Three.

4 Q The investigation continued over the next
5 several weeks into months, I believe?

6 A It did. I think statements were taken as far
7 as into the summer.

8 Q And ballistics information?

9 A Yes, ma'am.

10 Q Additional -- I believe you hadn't even
11 interviewed Feldman at this point?

12 A That's correct.

13 Q Bay?

14 A That's correct.

15 Q But, at that point, you had identified three
16 shooters?

17 A That's correct.

18 Q And who were those three?

19 A Oliver Feldman, Eugene Patterson and Andre
20 Tayson Boone.

21 Q The gunshot wound to Brian Wright's head was a
22 through and through?

23 A It was.

24 Q And was there any way for y'all, based on the
25 evidence that was there, to determine exactly who

1 killed Brian Wright, which gunshot actually killed
2 him?

3 A No way to determine which gunshot, no, ma'am.

4 Q What was the actual, and I believe you noted in
5 your -- the last sentence of that paragraph, what
6 actually caused the death of Brian Wright?

7 A The gun battle itself killed Brian Wright.

8 Q That same day or later that afternoon, did you
9 actually go and see Tayson Boone at Alvin S. Glenn?

10 A I did.

11 Q And what was the purpose in you doing that?

12 A The day before we had secured his statement,
13 there was an omission on my part, he was sworn to
14 it, but I did not notarize his statement and I
15 wanted to see that that was done appropriately. I
16 went to the Alvin S. Glenn Detention Center, the
17 juvenile wing, made contact with him, had a couple
18 of correctional officers there and actually note --
19 he swore to the statement again and I notarized it.

20 Q And you actually did the notarization on that?

21 A Yes. And I provided him with a copy at that
22 time.

23 Q And that's on State's Exhibit Number 7?

24 A Yes, ma'am. That's why the dates are
25 different. I believe it says March 1st at the

1 bottom and the date he signs it, I believe, is the
2 28th, that's the reason for that.

3 Q So it was notarized actually on the 1st, but he
4 actually signed it on the 28th?

5 A That's correct.

6 Q And who actually witnessed his statement?

7 A That was Roe, Investigator Roe.

8 Q That same day on March the 1st, were you
9 involved in the arrest of Oliver Feldman?

10 A I was.

11 Q And did you actually advise Mr. Feldman of his
12 rights?

13 A I did.

14 Q And where did that take place, sir?

15 A In my automobile when I transported him from
16 Fort Jackson.

17 Q Tell this jury after you advised him of his
18 rights in your automobile, is that unusual for you
19 to go ahead and advise a person of his rights orally
20 before you do a written form?

21 A It's not unusual at all, want to go ahead,
22 we're eager to begin talking with them about the
23 case.

24 Q And once you advised him of his rights, where
25 did you take him?

1 A I took him to the parking lot of the Waffle
2 House.

3 Q Why did you take him there?

4 A I wanted him to understand that we understood
5 what his role in this situation was at this
6 juncture. And I wanted to then elicit his -- or get
7 him to tell us about what his role in it was. And I
8 felt like a visit to the scene at that point would
9 help in that regard and it did.

10 Q Did he agree to talk to you?

11 A He did.

12 Q And, again, the same advice of rights that had
13 been done for the other defendants were done with
14 him?

15 A They were.

16 Q Once you got him back to the office, did you
17 then again advise him of his rights using the
18 written form?

19 A I did.

20 Q As in this case with Tayson Boone?

21 A Yes, ma'am.

22 Q Initially, did he give you some erroneous
23 information?

24 A He did initially give us some erroneous
25 information. Ironically, it was similar to the

1 erroneous information that we got from Tayson Boone.
2 It involved a .22. He said he had a .22 that night.

3 Q Once you got him back to the office and advised
4 him of his rights, did he then tell you what he
5 remembered from that night?

6 A He did.

7 Q And you actually took his statement?

8 A I did.

9 Q And you had an opportunity to review his
10 statement?

11 A Yes.

12 Q Had there been many questions about the fact
13 that he says that there were two shooters?

14 A Yes.

15 Q Does he identify -- was he ever able to say he
16 could identify who was shooting at the edge of the
17 parking lot?

18 A No.

19 Q And, in fact, what information was he able to
20 give?

21 A He provided consistent physical description and
22 clothing description of what he perceived at the
23 time he was given that statement to be two shooters.
24 And it was apparent -- it appeared to be consistent
25 at the time.

1 Q But he thought it was -- he thought they were
2 in different locations, so it was two shooters?

3 A That was his impression, yes, ma'am.

4 Q And the information that you got from Tayson
5 Boone, was he at two different locations when he did
6 the shooting?

7 A Yes, ma'am. He mentioned something involving a
8 Cadillac, being near a Cadillac and then back behind
9 the Explorer. And I believe that was the two
10 locations at the rear of the lot.

11 Q You can't say what he said, but did he also
12 give you information about who he was with?

13 A Yes.

14 Q And was he arrested for murder at that point?

15 A He was.

16 Q Did you make contact with Calhoun County
17 Sheriff's Department?

18 A I did.

19 Q And what was the purpose in that?

20 A To retrieve the .32 caliber pistol, which
21 ultimately we learned was the pistol that he had. I
22 sent a detective to Calhoun County that night based
23 on what we were told as far as the location. He was
24 unsuccessful in his attempts that night, but Calhoun
25 County got a call back, I believe, and the family

1 turned the pistol over.

2 Q I want to back up a minute. After the meeting
3 that we had when we talked about the possible
4 charges in this case.

5 A Yes, ma'am.

6 Q You mentioned that you then have to go to
7 another judge to actually get a warrant?

8 A That's correct.

9 Q So explain this so there's no misconception.
10 Can you just go out and sign a warrant and arrest
11 anybody you want?

12 A No, ma'am. We have to provide an affidavit
13 with probable cause in it to a magistrate, an
14 independent magistrate, for any arrest warrant
15 whether it be misdemeanor or felony before we can
16 obtain the arrest warrant.

17 Q And, in this case, was that done for all three
18 defendants?

19 A Yes, ma'am.

20 Q And did an independent judge or magistrate sign
21 off on those arrest warrants?

22 A Yes, ma'am.

23 Q After contacting Calhoun County, did y'all
24 ultimately retrieve the bandana and I believe a gun
25 from Oliver Feldman's house?

1 A We did.

2 Q And how did you get the information about where
3 that gun was?

4 A Well, originally, we were given a location by
5 Mr. Feldman and then again Calhoun County received a
6 call back from some of the family and they had found
7 it in another location.

8 Q But it was in his house?

9 A It was in the house, yes, ma'am.

10 Q In this case, did you ever recover the gun used
11 by Andre Boone or Eugene Patterson?

12 A No, ma'am.

13 Q Is that usual in a homicide case?

14 A It's very normal not to recover the weapon in a
15 homicide case. It's a plus for us if we do ever get
16 a weapon.

17 Q I want to turn your attention to the morning of
18 March the 2nd of 2007. At that point, did you
19 initiate a search for Eugene Patterson?

20 A Myself and Sergeant Ewing did, yes, ma'am.

21 Q And at, approximately, 10:30 that morning, what
22 were you doing?

23 A We actually went to a location, an address that
24 we had in the Broad River Road area. I had sent
25 Sergeant McRoberts, I believe, out to get a

1 description. And in a good faith error, he brought
2 back the description as being Broad River Terrace,
3 when in actuality it was Saint Andrews Terrace. We
4 were actually at Saint Andrews Terrace, but thought
5 we were at Broad River Terrace. By virtue of what
6 -- it was just a good faith mistake on his part.

7 Q And were steps taken to correct the search
8 warrant?

9 A Yes.

10 Q And that was done in this case?

11 A It was.

12 Q And a judge approved that?

13 A Yes, ma'am.

14 Q And what happened when you got to
15 Mr. Patterson's residence?

16 A When we got to his residence, we saw a vehicle
17 leave from the residence. We thought perhaps he
18 might be in that vehicle. We stopped it. I believe
19 it turned out to be a brother. At that point in
20 time, we felt like, based on the fact that we had
21 sort of tipped our hand, that we needed to approach
22 the residence if indeed he was inside so he would
23 possibly not be warned by the brother. We went and
24 knocked on the door of the residence and we heard a
25 good bit of commotion coming from inside, which we

1 didn't really understand at the time. It almost
2 sounded like someone was barricading themselves
3 inside and that was the reason for the previously
4 mentioned call for assistance. We felt like we
5 might have a barricade situation.

6 Q Ultimately, as y'all were out there for a
7 period of time, did someone emerge from the
8 residence?

9 A After a few minutes, the door sprung open and
10 there was, I don't know, about a five foot six
11 maintenance man standing there with, I believe, a
12 tool box in his hand. And we were startled that he
13 opened the door and he indicated to us that he had
14 been the one making the noise. He was repairing
15 some tiles. I believe he had to move a washing
16 machine inside and it made a good bit of noise.

17 Q And did y'all ask him whether or not he was
18 alone in the house?

19 A We asked him whether he was alone and he nodded
20 that he was not alone and we asked him was there a
21 rather large, you know, black male inside the
22 residence and he nodded that, yes, there was. And
23 at that point in time, I began to call Eugene out.

24 Q Did he come immediately out?

25 A Ultimately, he came out, not immediately, but

1 ultimately he came out.

2 Q And was he placed under arrest at that point?

3 A He was.

4 Q Did you then execute a search warrant?

5 A We did.

6 Q Were you able to locate the gun?

7 A No, ma'am.

8 Q I want to turn your attention to May the 5th of
9 2007. Did you come in contact with a Karmindae
10 Leggett?

11 A On March the 5th, yes, ma'am.

12 Q I said that wrong, didn't I?

13 A Yes, ma'am.

14 Q How do you say it?

15 A Karmindae.

16 Q Karmindae Leggett. Did he provide you with a
17 statement in this case?

18 A He did.

19 Q Was he able to give you information about the
20 weapons as well?

21 A Specific information, yes, ma'am.

22 Q Did he indicate whether or not he knew one of
23 the shooters?

24 A He did.

25 Q The second shooter across the parking lot --

1 excuse me -- he knew two of the shooters?

2 A He identified, yes.

3 Q And then there was the third shooter across the
4 parking lot?

5 A Correct.

6 Q Was he able to give you a description of that
7 shooter?

8 A Yes.

9 Q And, at that point, did you -- after taking his
10 statement or at some point during taking the
11 statement, did you show him a photo lineup?

12 A We did.

13 Q Did you feel it was necessary to show him a
14 photo lineup of Eugene Patterson or Oliver Feldman?

15 A No. He had been with them. He knew them.

16 Q And was he able to identify them by name?

17 A Yes.

18 Q But did you think it was necessary to show him
19 a photo lineup of Andre Tayson Boone?

20 A Yes. I believe we actually, just to confirm
21 identity so there was no miscue, we also showed him
22 lineups of the other two.

23 Q He didn't know him by name?

24 A Well, we showed him lineups on all three
25 actually. Again, the other two just to confirm

1 identity.

2 Q So you did show -- I apologize -- you showed
3 him all three?

4 A That's correct.

5 Q To confirm identities?

6 A Just to confirm identity even though he knew
7 them.

8 Q And when you showed him the lineup of Eugene
9 Patterson, who did he identify?

10 A He identified Eugene Patterson.

11 Q And when you showed him the lineup of Oliver
12 Feldman, who did he identify?

13 A He identified Oliver Feldman. I believe he
14 knew them by first name only.

15 Q And I want to show you what's been marked as
16 State's Exhibit Number 78. Do you recognize that?

17 A Yes, ma'am. That's the lineup that had
18 Mr. Boone's photograph in it.

19 Q And when you showed him that lineup, did it
20 have any writing on it like it does now?

21 A No, ma'am.

22 Q What, if anything, did you say to him when you
23 showed him the lineup?

24 A He knew he was being shown a lineup of the
25 person he was saying that shot in the rear of the

1 lot, that was on point, that was the reason for the
2 -- in producing this lineup. So we asked him if he
3 recognized anyone else he saw shooting in the lot
4 that night.

5 Q Was anyone else present when you showed him the
6 lineup?

7 A I don't believe so.

8 Q So when you showed him that lineup, did he look
9 at it?

10 A He did.

11 Q And what did he say?

12 A He pointed to photograph number four and said
13 that that was the individual he was referring to.

14 Q And that would be the individual where in the
15 parking lot?

16 A At the rear of the parking lot.

17 Q And did he memorialize that in any way?

18 A He circled it, initialed it and dated it.

19 Q And I notice that underneath there is a section
20 where it indicates which one he identified?

21 A Yes, ma'am.

22 Q And who filled out that section?

23 A I did.

24 Q And then whose signature is on there?

25 A Karmindae Leggett.

1 Q Did he also put in his address?

2 A He put in his address and phone number, yes,
3 ma'am.

4 MS. CAMPBELL: Your Honor, at this time, we'd
5 offer State's Exhibit 78.

6 MR. SUTHERLAND: Without objection from us.

7 MS. EVERHART: Your Honor, we just renew our
8 previous objections.

9 THE COURT: Is this the one that I said mark
10 for I.D. a while back?

11 MS. CAMPBELL: Yes, sir, until the officer...

12 THE COURT: I'm sorry? Is this the one I said
13 -- that you had offered and I said mark it for I.D.?

14 MS. CAMPBELL: I.D. at that point and then once
15 he testified.

16 THE COURT: Has he testified about the
17 foundational things?

18 MS. CAMPBELL: Yes, sir. Let me go back over a
19 couple things.

20 THE COURT: I don't think he had.

21 BY MS. CAMPBELL:

22 Q Basically when he gave you a statement, did he
23 see someone shooting towards where he was in the
24 parking lot?

25 A Yes.

- 1 Q Did he indicate whether or not he got a good
2 look at him?
- 3 A Yes.
- 4 Q Did he indicate where he was in the parking
5 lot?
- 6 A To the rear of the parking lot.
- 7 Q Did he give you a description, a general
8 description, of the person towards the rear of the
9 parking lot?
- 10 A Yes.
- 11 Q What was that description?
- 12 A It was a light-skinned black male, wearing
13 black. I don't recall whether he mentioned the hair
14 style or not. I'd have to have his statement.
- 15 Q Did he tell you at that point that he had seen
16 him on a prior occasion?
- 17 A I believe so. Again, I would have to refresh
18 myself with his statement.
- 19 Q And when you showed him this lineup, did you
20 tell him who to pick?
- 21 A No, ma'am.
- 22 Q Did you in any way influence his decision as to
23 who to pick?
- 24 A No, ma'am.
- 25 Q And when you showed him that lineup, did he

1 recognize someone?

2 A Yes.

3 Q Who did he recognize?

4 A Andre Tayson Boone.

5 Q And he marked it. What position in that
6 lineup?

7 A Photograph number four.

8 Q Then he went back and memorialized in the way
9 we just talked about?

10 A Yes, ma'am.

11 Q Was there any hesitation?

12 A No, ma'am.

13 MS. CAMPBELL: Your Honor, at this time, we'd
14 offer it into evidence.

15 THE COURT: All right. Just so I'm clear, and
16 I apologize, this person was not under arrest?

17 MS. CAMPBELL: No.

18 THE COURT: Not in custody?

19 MS. CAMPBELL: No. The person doing the
20 identification was not under arrest.

21 THE COURT: That's what I mean.

22 MS. CAMPBELL: Yes, sir, he was not under
23 arrest.

24 THE COURT: Okay. Well, you covered the one
25 question that I had. Subject to previous objection,

1 mark it in the record.

2 (State's Exhibit Number 78, photo lineup,
3 admitted into evidence.)

4 BY MS. CAMPBELL:

5 Q I want to show you State's Exhibit Number 79.
6 On that same afternoon, is that another photo lineup
7 you showed him?

8 A Yes, ma'am.

9 Q And when you showed that to Mr. Leggett, did
10 you go through the same series of questions?

11 A I did.

12 Q And did he indicate whether or not he
13 recognized anyone?

14 A He did.

15 Q And who did he recognize in that one?

16 A Eugene Patterson, who he refers to as Big Gene.

17 Q And did he memorialize that in any way?

18 A He did by the same method. He circled the
19 picture and put a date on it. He didn't actually
20 initial that one, but circled it and put a date on
21 it.

22 Q And that's who he knew as Big Gene?

23 A Yes.

24 Q Finally, I show you State's Exhibit Number 80.
25 Do you recognize that?

1 A I do. That's Oliver Feldman lineup. And he,
2 again, identified Oliver, put the date and circled
3 it and then referenced him by the first name of
4 Oliver.

5 Q There's been some question about a crime scene
6 log and whether or not it's okay to initial. Is
7 that customary to do that?

8 A It is.

9 Q And that was done in this case?

10 A Yes, ma'am.

11 Q There were -- have been estimates of how many
12 people were out there that night. Not everyone out
13 there was a gang member, were they?

14 A No, ma'am. I believe there were a lot of just
15 young people that had heard about this thing that
16 came to that location. Some of them may have been
17 there legitimately to eat.

18 Q And as far as the three defendants in this
19 case, were they identified with gangs?

20 A Yes, they were.

21 Q And what gang were each one identified with?

22 A Andre Tayson Boone, TTP, Bloods; Oliver
23 Feldman, Crip; and Eugene Patterson, Folk.

24 Q Brian Wright, who was 15 and out there that
25 night, he arrived in what area, in which parking

1 lot?

2 A He arrived from the direction of the Mobil
3 parking lot.

4 Q And do you know whether or not he -- he arrived
5 with people that were associated with Folks; is that
6 correct?

7 A Yes, ma'am.

8 Q Do you have any evidence he was in gang?

9 A No, ma'am.

10 MS. CAMPBELL: Beg the Court's indulgence.

11 THE COURT: Yes, ma'am.

12 (Pause.)

13 MS. CAMPBELL: Thank you, sir. Please answer
14 any questions the defense may have.

15 THE COURT: Cross?

16 CROSS-EXAMINATION

17 BY MR. SUTHERLAND:

18 Q Investigator Smith -- Captain Smith.

19 A Mr. Sutherland.

20 Q Let me just talk about some stuff that I --
21 talking about. With respect to talking to these
22 kids two and three times, I think you testified
23 earlier that -- you testified earlier that usually
24 they're more forthcoming by the second or third time
25 that you interview them; do you recall that

1 testimony?

2 A I said they can be. Often times you have to
3 interview them two or three times to get to the
4 point where they're -- sometimes you get them two or
5 three times and they don't provide any additional
6 information.

7 Q Now, would you say by the second or third time
8 you interview people, you've usually arrested them?

9 A Not always. I can't -- that's a case by case
10 call, I can't say that.

11 Q I didn't say not all, but I said usually that's
12 the case?

13 A I can't say that.

14 Q Let's look at the case here. You took a
15 statement from Eugene Patterson. He came in
16 voluntarily and he gave you a statement. And then
17 you found out that he was -- people were saying that
18 he was in a burgundy car instead of a green car, so
19 you arrested him and charged him with obstruction of
20 justice; is that correct, sir?

21 A It was particularly significant because by that
22 juncture, we had individuals saying that a person in
23 blue was firing and arrived in that burgundy car.
24 So it was not just -- it was not just not providing
25 information generally, it was specifically about a

1 possible shooter in the case and that was the
2 reason.

3 Q I guess the point that I'm trying to get to,
4 and it's late, I'm getting a little bit tired, you
5 -- these kids in these neighborhoods know that when
6 you're coming to talk to them, what do they expect
7 because -- I'm sorry, let me back up a little bit.

8 A Take your time.

9 Q Appreciate it. These kids in these
10 neighborhoods know basically to stay away from
11 y'all; isn't that correct?

12 A Not all of them. There are some that will
13 demonstrate some intestinal fortitude and they know
14 they need to do the right thing and will do it.
15 Some of them do, some of them don't.

16 Q Well, you call it intestinal fortitude, but
17 these kids are scared of you and they're scared to
18 tell you the truth because you arrest people right
19 in front of them everybody for things like the color
20 of a green car versus a burgundy car. I know you
21 testified that it was significant, but these kids,
22 talking about them like they're not forthcoming with
23 you, they're afraid of you; is that accurate?

24 A I think they're afraid of the people they're
25 telling on. If you're asking me for my opinion, I

1 believe they're afraid of the individuals that we're
2 asking them to --

3 Q Well, I'm not talking about this. I mean, I'm
4 talking about anything. I mean, kids run from you
5 on the street when you pull up to them, don't they,
6 for no reason?

7 A Not generally, no, sir. I don't recall any
8 running from me in this case. Your client didn't
9 want to come to the door, I don't know if that
10 counts.

11 Q Well, I think somebody was laying tile or
12 something out there and you had called back up and
13 told Ellis that it was urgent and everything. I
14 mean, you knew where he worked, couldn't you just go
15 pick him up at his work or you had already done that
16 before, hadn't you?

17 A We had already been by there that morning.

18 Q Okay. So he wasn't at DMH that morning?

19 A That's right.

20 Q But you feel like you -- well, I guess you got
21 a search warrant so you wanted to go and try to get
22 some evidence inside.

23 A We had a murder warrant forthcoming.

24 Q Well, then you had the murder warrant
25 forthcoming. And Ellis was -- you were out there

1 staking out his apartment while Investigator Ellis
2 was at the magistrate with the warrant affidavits?

3 A We didn't stake it out. We arrived and, again,
4 and saw a car leaving. We stopped the car, it was
5 his brother. We then went directly to the apartment
6 and knocked on the door.

7 Q Well, did you have -- now, wait, I thought, and
8 if I'm confused, you can square me away, I thought
9 the testimony from Ellis was that he was securing
10 the search warrant and the arrest warrant and that
11 y'all were waiting there, and maybe there might have
12 been other investigators' reports that weren't
13 proper standing reflected that; is that your
14 recollection?

15 A He was in the process of securing, I believe,
16 the arrest warrants and the search warrant while we
17 were looking for Mr. Patterson that morning, but I
18 believe we'd gone to the place of business before we
19 went, you know, because I believe it was a weekday
20 morning, we thought he'd be at work and then we went
21 to the secondary location.

22 Q And was that the South Carolina Department of
23 Mental Health?

24 A It was.

25 Q Now, you go in front of magistrates and you

1 swear out affidavits, you do, right, to get a
2 warrant, or other investigators?

3 A Yes, sir.

4 Q Do you -- you got your warrant -- you got the
5 murder warrant for this case -- or that was
6 Investigator Ellis, wasn't it?

7 A Yes, sir.

8 Q Okay. But you go to the Solicitor's -- you go
9 to the Solicitor's office all the time you say?

10 A I'm up here a good bit.

11 Q Well, I see you up here testifying and
12 preparing for court and everything.

13 A Yes, sir.

14 Q But your ordinary practice is just to gather
15 the information, present it to a magistrate and let
16 a magistrate judge whether or not there's probable
17 cause to arrest somebody. Is that your standard
18 practice?

19 A With regard to the murder cases, it's my
20 practice to consult with the Solicitor generally in
21 every case.

22 Q Consult with the Solicitor generally in every
23 case. Were you saying that you didn't have probable
24 cause to arrest these kids for anything but breach
25 of peace or obstruction of justice until you had the

1 meeting with the Solicitor's office? Did you go
2 there to confer with them or did you go there to get
3 a mechanism by which to charge them with murder?
4 You'd already charged them with breach of peace,
5 that's discharging the firearm, did you go to them
6 for the breach of peace?

7 A No, sir.

8 Q Okay. You didn't go to them for the breach of
9 peace, but you were investigating a murder?

10 A That's correct.

11 Q Okay. Did you go to them for the obstruction
12 charges?

13 A No, sir.

14 Q But you're investigating a murder?

15 A That's correct.

16 Q Okay.

17 A A murder charge is obviously a substantial
18 charge and I do consult with the Solicitor on most
19 every murder I'm involved in.

20 Q Could you get a warrant without meeting with
21 the Fifth Circuit Solicitor, Barney Giese, the
22 Deputy Solicitor, John Meadors, and Luck Campbell?
23 You went up there and you got -- I'm sorry, I'm
24 going to withdraw that.

25 MR. SUTHERLAND: Your Honor, beg the Court's

1 indulgence.

2 (Pause.)

3 MR. SUTHERLAND: Your Honor, if I may, I'd like
4 to mark this as -- I believe, it's my first exhibit,
5 I guess, for I.D. first to have him take a look at.

6 THE COURT: You can mark anything for I.D.

7 (Defendant's Patterson Exhibit Number 1,
8 blowup, was marked for identification purposes.)

9 BY MR. SUTHERLAND:

10 Q Sir, if you could -- I don't have any page
11 numbers on my version of your report, but I believe
12 it's page eight, let me make sure.

13 A Bottom of page six and top of page seven.

14 Q You're talking about this thing, March 1st?

15 A Yes, sir.

16 Q I got it page eight.

17 A It may have printed off differently, Mr.
18 Sutherland.

19 Q But you recognize this, though, as that
20 paragraph in your report?

21 A Yes, sir.

22 THE COURT: Get that easel. I don't know if
23 you're going to use it or not, but I just want to
24 help you, okay.

25 MR. SUTHERLAND: Thank you, sir. I'd like to

1 mark this for introduction to the jury, sir. He's
2 identified this as a paragraph in his --

3 MS. CAMPBELL: No objection.

4 THE COURT: Any objection?

5 MS. EVERHART: None, Your Honor.

6 (Defendant's Patterson Exhibit Number 1,
7 blowup, admitted into evidence.)

8 THE WITNESS: Would you like me to step down?

9 BY MR. SUTHERLAND:

10 Q Actually, I would not. I'm going to show it to
11 you. You've got the paragraph in your report there,
12 sir. Please take a look at that.

13 A Yes, sir.

14 Q Why don't you tell me you've -- after this
15 meeting with the Solicitors -- wait a minute, last
16 line, Ms. Campbell made a big deal about that. In
17 essence, the gun battle itself killed the victim?

18 A Yes, sir.

19 Q What do you mean in essence?

20 A Basically, what I mean is I had three
21 individuals that came to a fist fight carrying
22 firearms --

23 Q I'm asking you what in essence --

24 A I'm explaining that --

25 MS. CAMPBELL: Objection, Your Honor. He has a

1 right to answer.

2 THE WITNESS: I had three individuals --

3 THE COURT: Hold on, sir.

4 Did you want to be heard?

5 MR. SUTHERLAND: Your Honor, I'm asking him
6 what in essence means. I mean, not, you know, he
7 wants to go into some recitation of the facts. I
8 picked two words in this paragraph and I'm asking
9 him what they mean, that's all, sir.

10 THE COURT: Do you think you're answering his
11 question?

12 THE WITNESS: I was attempting to answer it,
13 Your Honor.

14 THE COURT: Go ahead.

15 THE WITNESS: In essence what I'm referencing
16 when I wrote that was that I had three individuals
17 that came to a fist fight, a premeditated fist
18 fight, that was supposed to be a fist fight, they
19 were armed. In my view, that demonstrated
20 premeditation. At some juncture in this fist fight,
21 one individual pulled out a firearm. There was
22 returned fire after shots were fired in the air that
23 were directed at that individual.

24 In the previous part of that paragraph shows
25 the phrase transferred intent. Those individuals

1 were shooting back at the person who first fired and
2 the person who first fired then changed his course
3 from firing into the air to back at those
4 individuals. And even though I wouldn't contend
5 that any of them meant to kill Brian Wright, Brian
6 Wright became the victim of all three of them's
7 intent in their firing methods and that is, in
8 essence, why the gun battle killed Brian Wright.

9 BY MR. SUTHERLAND:

10 Q Okay. I just asked you what in essence means.

11 A That was my explanation.

12 Q Okay. I hear you and I heard your explanation
13 before. Now, after lengthy review -- oh, wait, I'll
14 go ahead and go through this word by word.

15 THE COURT: Mr. Sutherland, move a little bit,
16 please.

17 MR. SUTHERLAND: Oh, I'm sorry.

18 BY MR. SUTHERLAND:

19 Q On the a.m. of March 1st, 2007, at
20 approximately 0930 hours, I.O., what's that?

21 A Investigating officer.

22 Q Is that you?

23 A Yes, sir.

24 Q Presented the case to Solicitor Giese, who's
25 that?

- 1 A That's the Solicitor of the Fifth Circuit.
- 2 Q Deputy Solicitor Meadors, who's that?
- 3 A He's the Deputy Solicitor of the Fifth Circuit.
- 4 Q First Assistant Luck Campbell, who's that?
- 5 A She'd be the young lady sitting at the table
- 6 right behind you.
- 7 Q Okay. After lengthy review and case analysis,
- 8 it was determined that probable cause. Probable
- 9 cause, what's that?
- 10 A Probable cause is a reason to believe.
- 11 Q That a crime was committed and that a person
- 12 committed that crime?
- 13 A That's correct.
- 14 Q Okay. Existed to charge anyone, what does that
- 15 mean?
- 16 A Anyone who was involved in the shootout at the
- 17 Waffle House.
- 18 Q Now, you had just told the jury when you were
- 19 explaining to them what in essence meant that people
- 20 came there for a fight. I don't remember how you
- 21 characterized it, but you said that people came
- 22 there armed and, therefore, that they're all
- 23 responsible for Brian's murder?
- 24 A No, sir, that's not what I said.
- 25 Q Just the shooters. What about the fighters?

1 Why not the fighters?

2 A I said those individuals who fired weapons at
3 one another, thereby demonstrating transferred
4 intent to kill one another caught Brian Wright in
5 the crossfire, that's what I said.

6 Q But you say anybody who's shooting?

7 A I said involved in the shootout at the Waffle
8 House. I'm not referencing someone who we may have
9 located that simply shot into the air, which we
10 didn't locate. I'm talking about individuals who
11 shot at one another.

12 Q Well, somebody -- I'll withdraw that, sir --
13 now, let me look at this here. Okay, the P.C., this
14 is the probable cause that we talked about?

15 A That's correct.

16 Q And this is the probable cause that didn't
17 exist prior to this meeting?

18 A No, sir, that's not accurate.

19 Q Well, if it's not accurate, why didn't you
20 arrest them until somebody told you what mutual
21 combat and transferred intent combined together
22 means?

23 A It says, Mr. Sutherland, probable cause
24 existed. It didn't say it existed after this
25 meeting. It says it existed.

1 Q Well, if it existed to arrest and charge these
2 boys with murder, why -- do you want murderers
3 running around? Why did you wait until after the
4 meeting?

5 A Again, we consult with the Solicitor's office
6 on most every murder case I'm involved in.

7 Q What's mutual combat?

8 A A gun battle.

9 Q I'm asking you what mutual combat is?

10 A In this case, it was a gun battle.

11 Q You're using legal theories in your probable
12 cause here and you got warrants, you secured
13 warrants based on those legal theories. Mutual
14 combat is a concept --

15 A In this particular instance, it was a gun
16 battle.

17 Q -- as you have here. Okay, what's mutual
18 combat?

19 MS. CAMPBELL: Objection, Your Honor, asked and
20 answered.

21 THE COURT: Do you want to be heard?

22 MR. SUTHERLAND: Your Honor he's saying the gun
23 battle is mutual combat. I'm asking him about his
24 legal expertise since he's using concepts.

25 THE COURT: I don't think they let but one

1 legal expert in the courtroom and that's me.

2 MR. SUTHERLAND: Oh, I'm sorry, sir. Can I
3 keep going?

4 THE COURT: You can ask him what he means by
5 those words, but I tell the jury what the law is.

6 MR. SUTHERLAND: Absolutely, sir, and I wasn't
7 trying to do that at all.

8 BY MR. SUTHERLAND:

9 Q Transferred intent, now I bet you get that one
10 right?

11 A I thought I got mutual combat right, but
12 transferred intent is when one person is, in this
13 case, shooting at someone else trying to kill them
14 and hit someone else by mistake.

15 Q Okay. Who was near Brian Wright to be the
16 target of any firearm that you might transfer the
17 intent from that victim to Brian Wright?

18 A Tayson Boone.

19 Q Somebody -- Tayson Boone was over at the Mobil
20 station with Brian Wright?

21 A Tayson Boone was between where Brian Wright ran
22 -- or the inside of where Brian Wright ran from the
23 fight to the Mobil station. And as Doctor Nichols
24 testified, and we had the benefit of that
25 information at the time, there's no guarantee he

1 fell right where he was shot, his momentum may have
2 carried him. So the person that your client was
3 shooting at is Tayson Boone, that's the transferred
4 intent.

5 Q And so you're saying -- okay, mutual combat is
6 the gun battle. And now you're saying that Brian
7 Wright was running in the parking lot?

8 A We know that he had approached the area of the
9 fight due to the statements. He had arrived --

10 Q I don't recall hearing any evidence --

11 A If you can let me finish.

12 Q Yes, sir.

13 A He had approached the area of where the fight
14 happened, we know that because that's why he arrived
15 with the people he was with. When the shots rang
16 out, that whole crowd ran towards the Mobil station.

17 Q Where did he get the candy?

18 A From the Mobil station. At some point in time,
19 when the shots ring out, when the smoke clears,
20 Brian Wright's laying dead in the Mobil station
21 parking lot. We don't know at what point he was
22 struck, what his exact location when he was struck,
23 his momentum could have carried him there, again as
24 Doctor Nichols testified to this morning.

25 Q What person shot him?

- 1 A The gun battle killed him.
- 2 Q Does a gun battle have a personality? Does it
- 3 have free will?
- 4 A In this case it had free will times three.
- 5 Q Does it have malice?
- 6 A In this case it did times three.
- 7 Q Can it walk?
- 8 A In this case it did times three.
- 9 Q Can it talk?
- 10 A Yes, sir, all three of them talked to us.
- 11 Q Can it chew gum?
- 12 A I don't know about that.
- 13 Q I've got to ask you about a couple other things
- 14 before I come back to this thing. Actually, you
- 15 already covered that on your own. I mean, this is
- 16 my point of concern, you go and you come in here,
- 17 you know, and you put in your investigative report,
- 18 these are your notes, this is your report, that the
- 19 probable cause, that the probable cause that these
- 20 boys are murderers is mutual combat and transferred
- 21 intent. Now, you call mutual combat a gun battle.
- 22 You really don't know what it is, do you?
- 23 A Well, I believe it to be the gun battle. I
- 24 haven't been to law school, I don't have the benefit
- 25 of that. I'm sure there's --

1 Q But you're going to charge somebody with
2 murder --

3 MS. CAMPBELL: Objection, Your Honor.

4 THE COURT: Yes, ma'am.

5 MS. CAMPBELL: He has the right to finish his
6 answer before he gets cut off.

7 THE COURT: Had you finished your answer, sir?

8 THE WITNESS: I was just explaining, Your
9 Honor, I don't -- I possibly don't have the benefit
10 of that exact legal definition, but my understanding
11 as it applies to the situation would be the gun
12 battle.

13 BY MR. SUTHERLAND:

14 Q You've been a police officer for how long, 30
15 -- 25 years is it?

16 A About that.

17 Q Well, I was 12 years old when you started that.
18 Now, I guess the key question that I've got here is
19 that if you're before a magistrate and you're
20 swearing that the basis -- and the magistrate
21 listens to you, he listens to your words, if
22 Investigator Ellis -- all right, never mind. I
23 think I'm about done with you for now sir. Thank
24 you.

25 THE WITNESS: Thank you.

1 THE COURT: Cross?

2 MS. EVERHART: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MS. EVERHART:

5 Q Hi, Captain Smith. How are you?

6 A Fine.

7 Q Good. You talked about being at the Boone
8 residence to issue a search warrant, correct?

9 A Yes, ma'am.

10 Q And you said Ms. Boone was cooperative with
11 you?

12 A She was.

13 Q And when you asked her to get Andre, she
14 brought him back?

15 A She did.

16 Q And when Andre got home, he was cooperative
17 with y'all?

18 A He was cooperative, yes, ma'am.

19 Q And he showed y'all where you could find the
20 broken .22 in his house?

21 A Yes, ma'am.

22 Q Now, was Andre ever charged with obstruction of
23 justice?

24 A I believe he was just charged with the
25 aggravated breach of peace.

1 Q And through the course of your investigation,
2 you learned that Andre Boone did not come to the
3 Waffle House with a gun in his possession?

4 A Constructive possession.

5 Q He wasn't carrying a gun on his person?

6 A One of his buddies was.

7 Q And when you took a statement from him, he was
8 cooperative with you during that statement?

9 A He was cooperative. He lied a little bit at
10 first, but he was cooperative.

11 Q And he volunteered the information about the
12 bullet casings out at Meadow Lakes?

13 A He did.

14 Q And he went out there with you?

15 A He did.

16 Q And showed y'all the general area?

17 A Yes, ma'am.

18 Q And when you talked with him, he indicated to
19 you that he had fired from the front of his
20 Explorer, initially, the two shots into the air?

21 A That's correct.

22 Q And ran to the back of the Explorer?

23 A That's my recollection.

24 Q And you mentioned talking with Oliver Feldman?

25 A Yes, ma'am.

1 Q And I believe you testified a little bit ago
2 that he drew a picture for you and it had two
3 shooters in that picture?

4 A Yes.

5 Q One located toward one side of the Waffle House
6 parking lot and one located toward the other?

7 A Depends on how you interpret the map. There
8 was one to the right, one to the left. And it was
9 my opinion at the time, if you're asking me for
10 that, that I knew we had this reference to this
11 Cadillac and a reference, I believe in her
12 statement, I don't remember her name that was
13 driving the Cadillac, that he fired and actually
14 bumped into their vehicle and I believe that vehicle
15 was to the right slightly and that's been my
16 interpretation.

17 Q And Oliver Feldman indicated that he fired back
18 to someone five feet from the corner of the Waffle
19 House?

20 A I don't recall that. I wouldn't think you
21 would misrepresent that.

22 Q Now, a little bit ago you testified that you
23 felt Brian Wright was in the cross fire?

24 A Yes, ma'am.

25 Q And he was found located in the Mobil station

1 parking lot?

2 A Yes, ma'am.

3 Q Now, you've been here the whole time from the
4 beginning?

5 A I have.

6 Q And have you heard any testimony about Brian
7 Wright running into the Mobil parking lot?

8 A No specific testimony, but I've heard testimony
9 about individuals running. And I don't -- I would
10 not -- circumstantially, if you will, I would think
11 he would be running with the rest of them when the
12 shots rang out.

13 Q But no specific?

14 A No, ma'am. I believe that's a common sense
15 situation.

16 Q And there's been a lot of talk about this
17 meeting, but the theories brought out at the meeting
18 that you had with the Solicitor's office were mutual
19 combat?

20 A Yes, ma'am.

21 Q And transferred intent?

22 A Correct.

23 Q And where does the hand of one, hand of all
24 come in?

25 A Well, I believe hand of one, if you're asking

1 for my opinion again, again I don't have the benefit
2 of law school, but the hand of one, hand of all
3 concept is the three of them were engaging in a
4 collective assault with intent to kill act. Even
5 though they were acting on different sides and in
6 concert with the assault with intent to kill act,
7 both sides, in my opinion would be that constitutes
8 hand of one, hand of all.

9 Q And Oliver Feldman and Eugene Patterson and
10 Andre Boone they were all charged with murder?

11 A Yes, ma'am.

12 Q And all three of them were indicted for killing
13 Brian Wright by means of shooting the victim?

14 A Yes, ma'am.

15 MS. EVERHART: Beg the Court's indulgence a
16 moment.

17 THE COURT: Yes.

18 (Pause.)

19 BY MS. EVERHART:

20 Q When all three of them were indicted, their
21 indictment reads that they feloniously, willfully
22 and with malice aforethought killed one Brian Wright
23 by means of shooting the victim, correct?

24 A I'll take your word for it.

25 Q No mention of mutual combat?

1 A I don't know. I don't have the indictment in
2 front of me.

3 MS. CAMPBELL: Objection, Your Honor. That's a
4 legal conclusion and not even right, appropriate, as
5 far as the indictment.

6 THE COURT: She can ask him what's in the
7 indictment.

8 If I can find them, I'll hand them to you.

9 MS. EVERHART: Thank you, Your Honor.

10 BY MS. EVERHART:

11 Q Do you see any mention of mutual combat in the
12 indictment?

13 A No, but -- I'm not anticipating your question,
14 but I see malice aforethought, kill, and I believe
15 that's the key element for murder.

16 Q Transferred intent?

17 A Well, for the charge of murder, it's malice
18 aforethought and kill and that's in the indictment.

19 Q But do you see transferred?

20 A No, ma'am.

21 Q Hand of one, hand of all?

22 A No, ma'am.

23 MS. EVERHART: No further questions, Your
24 Honor.

25 THE COURT: Redirect?

1 MS. CAMPBELL: No, sir.

2 THE COURT: Recross?

3 MR. SUTHERLAND: No, sir. Thank you, Your
4 Honor.

5 THE COURT: Thank you. You may step down.
6 Thank you, sir.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: Ladies and gentlemen, we're going
9 to recess until 9:15 a.m. Monday. I'll give you my
10 best guess right now, I don't think we're going to
11 finish on Monday. On Monday, I'll give you my best
12 guess about Tuesday, okay.

13 It's really important, folks, that you remember
14 all of those admonitions I gave you. And I need you
15 here in the jury room at 9:15 a.m. Monday morning.
16 And if you'd leave your notes with the bailiff. I
17 hope you have a very pleasant weekend. I look to
18 see you Monday morning. Thank you.

19 (Jury excused for the day.)

20 THE COURT: How many more State's witnesses do
21 you anticipate?

22 MS. CAMPBELL: We think, unless some epiphany
23 comes over the weekend, that we would be resting
24 first thing. I would like the weekend just to --
25 well, they're gone anyway, but I don't -- I hope I

1 can't think of anything else.

2 THE COURT: Okay. Are they still back there?
3 Tell them 9:30.

4 (Pause.)

5 THE COURT: You all try to let me know Monday
6 morning about the arrangements, what I need to do as
7 far as having the jury view the scene. We typically
8 do that after all of the evidence is in just because
9 of the practical concern that they might hear
10 something that they may want to look about when
11 they're out there and if they haven't heard all of
12 the evidence, they don't know to look for something.
13 I mean, I think that's kind of a remote possibility,
14 but I'd still prefer to do it last.

15 MS. PAYNE: Your Honor, the deputies have
16 informed us that the vans are ready downstairs,
17 whenever Your Honor is ready, they're ready and
18 we'll be good to go. I believe the State has
19 indicated they want to go to the scene, so I guess
20 we'll all go.

21 MR. SUTHERLAND: Yes, sir, me, too, I'll be
22 going out with them.

23 THE COURT: I missed that.

24 MR. SUTHERLAND: I'm, sorry, sir. She had said
25 that she wanted to go if the State was going and I

1 would go as well.

2 THE COURT: Okay. I'm not going to hold you to
3 it, but you still anticipate putting up a case,
4 putting up evidence?

5 MS. PAYNE: At this point, yes, Your Honor.

6 THE COURT: All right. Ladies and gentlemen,
7 court's in recess until 9:15.

8 (Whereupon, the proceedings were concluded
9 for May 9, 2008.)

10 (The following proceedings were held on May
11 12, 2008.)

12 (Defendant Boone's Exhibit Numbers 2 through
13 19 were marked for identification purposes.)

14 THE COURT: Is the State going to have any
15 further evidence?

16 MS. CAMPBELL: No, sir.

17 THE COURT: Do you want to go ahead and do the
18 motions now?

19 MR. SUTHERLAND: Yes, sir.

20 THE COURT: Okay. You want to start it off,
21 Mr. Sutherland?

22 MR. SUTHERLAND: Yes, sir. Renewing all of my
23 prior motions and objections to this point, sir. At
24 this point, I would make a motion to direct a
25 verdict in favor of Mr. Patterson. Any evidence

1 that they've offered has indicated that he was
2 shooting at a completely, if it's to be believed,
3 was shooting in a completely different direction
4 than the direction in which Brian Wright was found.

5 Further, sir, with respect to transferred
6 intent, it's actually our position that in order to
7 transfer intent, they would have to actually
8 identify the weapon and the shooter. The reasoning
9 behind that is in order for them to transfer the
10 malice from an intended target to an unintended
11 target, they first have to identify that intended
12 target. There's no testimony to this point --
13 actually, I do have a paper version, Your Honor.
14 May I approach, sir?

15 THE COURT: Sure.

16 MR. SUTHERLAND: Case law is attached.

17 That if they intend to argue transferred
18 intent, they have to establish that identity in
19 order to transfer the malice from the intended
20 target to the unintended target. There's no
21 evidence that has been introduced that he was firing
22 at anyone in the direction -- or anyone at the Mobil
23 station or in the direction of the Mobil station.

24 All of the evidence is, that they presented,
25 that they say that he was shooting at the back

1 corner of the Waffle House and then further over
2 here towards the area where the shots were coming
3 from later a little bit across the parking lot. I
4 mean, the space is probably about ten to 15 feet
5 between these two locations. The body was found
6 over here. Therefore, we would argue that they
7 could not prove transferred intent where they cannot
8 put an intended target in an area where the
9 unintended victim, Brian Wright, might be reached.

10 With respect to the hand of one, this -- I was
11 unable to find and I'm unaware of any precedent
12 where two people who were 50 to 60 feet apart at the
13 time of an incident acting in concert with one
14 another where they had never met, they've never
15 spoken with one another, they may have glanced at
16 each other during the course of this trial once or
17 twice, sir, under the theory of the hand of one, one
18 who joins with another to accomplish an illegal
19 purpose is liable criminally for everything done by
20 his confederate, and they use the word confederate,
21 incidental to the execution of the common design and
22 purpose. In order for someone to be a confederate, in
23 order for someone to have a common design or purpose
24 with another individual, they have -- they have to
25 have met, sir, and there has to have been some sort

1 of agreement. To admit evidence under this theory,
2 the existence of a common design and the
3 participation of the accused against whom the
4 evidence is offered, should first be shown.

5 Under accomplice liability, the person must
6 personally commit the crime or be present at the
7 scene of the crime and intentionally or, again,
8 through a common design, aid, abet or assist in the
9 commission of the crime through some overt act.
10 That's a citation of State versus Austin and State
11 versus Leonard, which were not included because this
12 is in sort of a group citation of one of the cases I
13 handed up, Your Honor.

14 To be liable as an aider or abettor, the
15 participant must be chargeable with knowledge of the
16 principal's criminal conduct, mere presence at the
17 scene is not sufficient to establish guilt as an
18 aider or abettor.

19 And, again, I would fall back to if they
20 intended to prove some sort of conspiracy, and this
21 is reflected in the transferred intent argument,
22 they need to have the identity of the person -- of
23 the person who shot Brian Wright. They need to have
24 the identity of the intended victim. They need to
25 identify the weapon. I believe that there was

1 testimony from their ballistics expert regarding a
2 fragment that was recovered of any different number
3 of weapons that could have fired this one particular
4 bullet.

5 Again, with mutual combat -- I mean, to that
6 part of their theory, there again needs to be some
7 sort of agreement. And there's a burden shifting
8 element with respect to self-defense, sir, that I
9 believe makes it necessary that the agreement be
10 claimed and that is in some of the case law which I
11 handed up.

12 And, lastly, with respect to felony murder, it
13 would be our position that the State announced to
14 the Court, they announced to the defendants, to
15 their counsel and they announced to the jury that
16 they were proceeding under the theory the hand of
17 one is the hand of all and that they should not be
18 allowed to sort of to change to felony murder at
19 this late date when they haven't introduced any
20 evidence to that effect or when they plainly
21 announced that they're proceeding under another
22 theory.

23 I actually provided another case, State versus
24 Yates, where the Solicitor and the defense attorney
25 had agreed on a particular charge charging felony

1 murder and the court ruled that because the State
2 had announced that it was proceeding under hand of
3 one versus hand of all, that the charge of felony
4 murder was improper because it did not state the law
5 of the case that was before the court.

6 So we would argue that the State is barred from
7 proceeding under the felony murder theory. And we
8 believe that State versus Yates actually is on point
9 with respect to this. They announced to everybody
10 in the world that they were proceeding under hand of
11 one is the hand of all and they should not be able
12 to argue something which they did not attempt to, or
13 they did not present and they did not inform the
14 Court or the attorneys or the jury the theory that
15 they were proceeding under.

16 And it all fall backs -- it all really falls
17 back to if they're alleging some sort of conspiracy,
18 they need coconspirators, they need a meeting, they
19 need a meeting of the minds with respect to that.
20 There's no indication that either of these
21 defendants knew one another; therefore, they could
22 not have met to conspire to come up with a scheme or
23 plan which -- that they would then execute that
24 resulted in the death of Brian Wright, sir. And
25 that's all from us at this time, Your Honor.

1 **THE COURT:** Thank you.

2 Do y'all have anything?

3 **MS. PAYNE:** Yes, sir, Your Honor. May it
4 please the Court.

5 Your Honor, we would first make a motion -- or
6 to renew all of the previous objections that were
7 overruled by the Court. Specifically, if Your Honor
8 would allow, I would enumerate the ones that you've
9 overruled, motion to suppress Andre Boone's
10 statement, which you ruled that statement was freely
11 and voluntarily; the motion to suppress any gang
12 references; motion to allow in picture number 13,
13 State's Evidence 13, which we objected to; I'm just
14 trying to hit the major ones, Your Honor; objecting
15 to Evidence Number 73, which is the red striped
16 shirt that was entered into evidence of Brian
17 Wright. We renew our previous objections to Eugene
18 Patterson's third statement under Bruton, Your
19 Honor. And I believe that rest of them were
20 sustained, Your Honor.

21 With respect to a motion for the directed
22 verdict, may I hand up...

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

24 **MS. PAYNE:** Your Honor, taking the -- viewing
25 the evidence in the light most favorable to the

1 State, the proper standard for a directed verdict
2 when relying on circumstantial evidence, as there
3 has been no direct evidence entered in this case
4 against Mr. Boone, the Supreme Court stated that the
5 judge is concerned with the existence or
6 nonexistence of evidence, not its weight. And
7 although he should not refuse to grant the motion
8 where evidence merely raises the suspicion that the
9 accused is guilty, it is his duty to submit the case
10 to the jury if there be any substantial evidence
11 which reasonably tends to prove the guilt of the
12 accused or from which his guilt may be fairly and
13 logically deduced. And that's in State v. Edwards,
14 which I did hand up to Your Honor.

15 It is our position, Your Honor, that the State
16 has not produced substantial circumstantial evidence
17 in this case, Your Honor. First of all, under
18 subsection (a) and under argument, the State cannot
19 show a common design or purpose under the hand of
20 one, hand of all theory, it is inapplicable to
21 Mr. Boone's case and the State is, therefore,
22 precluded from prosecuting under this theory. There
23 has been no evidence that there was a meeting of the
24 minds to join in, you must join in.

25 And there has been no evidence to further

1 entail that Mr. Patterson or Mr. Boone knew each
2 other prior to this incident at the Waffle House,
3 that they had any plan to engage in the gun battle,
4 as Captain Smith said.

5 Furthermore, Your Honor, the Supreme Court had
6 said under the hand of one, hand of all theory, one
7 who joins with another to accomplish an illegal
8 purpose is liable criminally for everything done by
9 his confederate incidental to the execution of the
10 common design and purpose. Well, there was no
11 common design and purpose in this, Your Honor,
12 whereas Mr. Boone shot two times into the air and
13 that is different than what any other co-defendant
14 in this case initially reacted to.

15 There is no history between these two
16 defendants under the mutual combat, mutual -- and
17 transferred intent theory that they went under.

18 Beg the Court's indulgence.

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

20 **MS. PAYNE:** Under the mutual combat theory, you
21 must have some sort of history of hostility, must
22 then agree to have a fight or a gun battle, there
23 was nothing of the sort.

24 I believe Captain Smith got on the stand and
25 testified on Friday late in the evening and said.

1 that they decided to go under mutual combat because
2 they all brought guns to a fist fight. Well, that's
3 inaccurate, Your Honor. Mr. Boone did not bring a
4 gun to a fist fight, Mr. Thompson did.

5 He said it was constructive possession. Well,
6 that's also inaccurate. If it's on the body of
7 somebody, you must prove that there's some sort of
8 knowledge or something of that sort. There's
9 nothing of that in this case to show that Mr. Boone
10 had any knowledge to show that Mr. Thompson had the
11 case -- or had the gun at this point. It wasn't
12 until, I believe the testimony by Mr. Thompson was,
13 when he was getting out of the car to go into the
14 Waffle House, that's when the nine millimeter was
15 produced and put back into the car.

16 Your Honor, under the transferred intent
17 theory, you must have the shooter and the intended
18 victim. We have neither one of those in this case.
19 We just have an unintended victim, therefore, that
20 would not apply in this case as well.

21 Furthermore, the malice element of murder has
22 not been met. The State has not introduced common
23 evidence of the crime of murder. The crime of
24 murder in the State of South Carolina is defined as
25 the killing of any person with malice aforethought

1 either expressed or implied. The State is unable to
2 show that Mr. Boone has satisfied the elements of
3 murder.

4 Malice is the wrongful intent to injure another
5 and indicates a wicked or depraved spirit intent on
6 doing wrong. Also, malice is said to be found in
7 the unlawful intention to kill. And then the legal
8 definition is any killing which is intentional and
9 which is neither excusable nor justifiable nor
10 mitigated by adequate legal provocation is with
11 malice aforethought and is murder.

12 As the facts have clearly shown, Mr. Boone
13 initially fired his gun into the air to end the
14 fight that had broken out. After these shots were
15 initially fired, that is when shots were returned
16 upon him and he hid behind his car and returned fire
17 over the heads of anyone else involved. And there
18 was testimony as to that, I believe Robert Portee
19 testified to that, Your Honor.

20 Furthermore, the physical evidence corroborates
21 the story that Mr. Boone was hiding behind his car
22 and was, therefore, not trying to kill anyone
23 directly. And the two shell casings found
24 corroborate the two shots up into the air.

25 Your Honor, it is our position that under the

1 clear law of South Carolina, a defendant is entitled
2 to a directed verdict when the State fails to
3 produce evidence of the offense charged.

4 Your Honor, we join in on Mr. Sutherland's
5 motion on the motion to deny a change of theory in
6 felony murder. Felony murder in this case does not
7 apply. The South Carolina criminal code on that in
8 sections two and three says, If two or more combined
9 together to commit an unlawful act, such as robbery,
10 in execution of that criminal act a homicide is
11 committed by one of the actors as a probable or
12 natural consequence of the acts done in pursuant to
13 the common design, all present participating in the
14 unlawful undertaking are as guilty as the one who
15 committed the fatal act.

16 Your Honor, there is not -- they did not
17 combine together. They did not have a common
18 design. And the probable or natural consequence has
19 not been shown in this case. It is not a natural or
20 probable consequence that when you shoot two times
21 up into the air, that someone is going to be
22 murdered, Your Honor.

23 Furthermore, the common purpose may not have
24 been to kill or murder, but was unlawful as for
25 instance to break in and steal, which is a joining

1 in together, a combining, and in the execution of
2 this common purpose, a homicide is committed by one
3 as a probable or natural consequence of the acts
4 done pursuant to the common design, then all present
5 participating in the unlawful common design are as
6 guilty as the slayer.

7 I believe this also goes on to state -- that
8 case states that, noted that the killing has no
9 connection with common purpose and did not ensue as
10 a probable result of attempt to execute it, then the
11 slayer alone is responsible for the killing. Test
12 is whether a homicide was committed in furtherance
13 of the plan was probable as a result of his
14 execution.

15 Your Honor, there has been no testimony that
16 they combined together. There is no testimony that
17 there was a common design. As we stated before,
18 there is no nexus between these two defendants.
19 They have to join in to join in, that's our
20 argument, Your Honor.

21 Furthermore, under the felony murder or the
22 hand of one, hand of all, in looking at the past
23 cases that have -- the Supreme Court has ruled on,
24 and these are cases where usually there's a chain of
25 two, two events, take for instance the armed robbery

1 where they go in to arm rob a convenience store and
2 in the course of that, a murder occurs and two
3 people are involved, everybody is charged with the
4 murder.

5 In this case, we have a chain of four. We
6 don't have Mr. Boone bringing a weapon to the fight.
7 We have him shooting two times into the air. We
8 have someone returning fire on him and then we have
9 the murder. There is a chain of four here instead
10 of a chain of two and there is no common design.

11 Beg the Court's indulgence.

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

13 (Pause.)

14 **MS. PAYNE:** Your Honor, we would just further
15 put on the record that the State is relying solely
16 on circumstantial evidence because it cannot put
17 forth any direct evidence as its own investigators
18 have attested. The State cannot put up any evidence
19 showing accomplice liability or any liability based
20 upon the theory of hand of one, hand of all
21 pertaining to Mr. Boone.

22 The identity of the shooters never -- of the
23 person who shot the fatal shot will never be known,
24 but this certainly does not provide competent
25 evidence of the crime of murder to survive Mr.

1 Boone's motion for a directed verdict under the
2 standards set forth in Edwards, but rather shows the
3 State has failed to competently produce evidence of
4 the offense charged. The circumstantial evidence in
5 this case does not rise to the level of substantial
6 circumstantial evidence, but rather merely raises a
7 suspicion of guilt and, therefore, it should not be
8 submitted to the jury, Your Honor.

9 THE COURT: Does the State wish to be heard?

10 MS. CAMPBELL: Just briefly, Your Honor. I
11 think you've heard the facts of the case. I won't
12 go over all of them.

13 I would point out that Andre Boone, one witness
14 did testify that as -- I think Mr. Portee testified
15 that as he approached Andre Boone, I believe he made
16 some phrase equating, I'm going to chunk at these
17 niggers tonight. Also, as far as Mr. Feldman, that
18 when another witness, I believe Mr. Corey Sanders,
19 approached, that he got his gun or made a gun sign
20 or had a gun out -- I'm sorry -- Patterson had his
21 gun out making a symbol like he was going to use the
22 gun that night.

23 Obviously, Your Honor, the reason we were able
24 to get in the fact that these two people were in
25 rival gangs was to show what their intent was.

1 Their intent was to go there that night to back up
2 their boys and both of them, further, took it one
3 step further. There were many, many people out
4 there that night. These are the three young men
5 that chose to use a weapon.

6 For Ms. Payne to say that Andre Boone didn't
7 know that there was a gun involved, the
8 co-defendant, Jerome Thompson, as well as Mr.
9 Boone's own statement, shows that he knew that the
10 gun was there and that when he went down to see that
11 his friend was getting beat up, or his co-Blood
12 member, whatever you might call it, he then returned
13 to the car and immediately asked for the gun, so
14 obviously he had the knowledge that it was there.
15 The fact that he had then shot up into the air at
16 first, he then subsequently shot into the crowd,
17 Your Honor, are theories.

18 We would rely on the case law we handed up on
19 Friday. I haven't had the chance to completely
20 review all their documents, Your Honor. I was just
21 handed those two items this morning. However, I
22 feel like in the record here, there is more than
23 enough circumstantial and direct testimony as far as
24 the guilt of either and/or both of these defendants.
25 Of course, ultimately that will be a decision for

1 the jury to make.

2 I understand their arguments. We do feel like
3 that there are several theories that do apply here.
4 And we have handed up case law that support us in
5 that situation. In reviewing Yates, I just haven't
6 had a chance to review all their case law, Your
7 Honor. However, I believe that we have more than
8 sufficient evidence to submit this case to the jury
9 on both defendants.

10 If you have any specific things you want me to
11 answer, I'll be glad to.

12 THE COURT: Thank you.

13 Anything else?

14 MR. SUTHERLAND: Not much further. My response
15 is they need -- they need to identify a shooter in
16 order to fit into these myriad of theories that
17 they're attempting to present to a jury. They need
18 to identify an intended victim, they're unable to do
19 that.

20 And as far as three people being identified as
21 shooters, there is testimony that shooting was
22 coming from two to three locations and that there
23 were at least three shooters, Your Honor.

24 And further, again, there was testimony that 21
25 different kinds of firearms could have fired the one

1 projectile that was recovered at that point.

2 Again, they are proceeding with these theories
3 in order to try and bolster a suspicion that one of
4 these individuals is guilty of murder, but they
5 can't extrapolate from that suspicion that there was
6 any sort of confederacy or common design between
7 them and we believe, Your Honor, that a directed
8 verdict would be just in this matter.

9 THE COURT: Anything else?

10 MS. PAYNE: Just briefly, Your Honor. We
11 would -- I reviewed the case law the State handed up
12 on Friday, Your Honor. And we would just argue that
13 that case law is clearly distinguishable from what
14 are the facts in our case here.

15 State v. Ward, they got together and to join
16 in, they both got in the back of the truck, they
17 pursued after the victim, again showing a common
18 design and plan.

19 In State v. Curry, it was the same thing, three
20 men joined together to sell marijuana to two people,
21 it's a drug deal gone bad, and one shoots the other
22 and they all three -- again, a common design or plan
23 exactly distinguishable from what we have here.

24 State v. Taylor is a mutual combat. Two men
25 got into a fist fight and it was like a mutual fist

1 fight. This is not what happened in this case.

2 I would strongly argue that the case law does
3 not support their theory and ask the Court to grant
4 a directed verdict as there's not substantial
5 circumstantial evidence in this case, Your Honor.

6 **THE COURT:** It's going to take me a while to
7 read through what's just been handed up to me, but
8 I've got a couple questions.

9 Mr. Sutherland, you're citing this Yates case
10 and you say that one of the basis for citing it is
11 that the State can't change theories in midstream.
12 And I'm looking to see...

13 **MR. SUTHERLAND:** Your Honor, did you want me to
14 point to the language, the specific language I was
15 speaking about in the case, sir?

16 **THE COURT:** Well, I'm looking on what's
17 indicated on here page six of 11, Appellant asserts
18 as an error the trial judge's refusal to charge
19 State's request number three concurring in by the
20 appellant which set forth a theory of felony murder.

21 Now, this paragraph comes after language in the
22 opinion in Yates which states that in South
23 Carolina, there is no distinction between murder and
24 felony murder. And what the Supreme Court stated
25 was that the State did not proceed on the felony

1 murder theory and the proposed charge was not a
2 correct statement of the law applicable to the case.
3 That was a capital case and they did allow a focus
4 on the determination in the sentencing phase, I
5 believe, of the fact that the fatal blow was not
6 struck by the defendant and that case was to Yates.
7 But is that the language you're relying on, what I
8 just cited?

9 MR. SUTHERLAND: Yes, sir. In particular there
10 was -- I believe it's on page 34 where the Court
11 noted that the State had elected to proceed under
12 the hand of one versus the hand -- the hand of one
13 is the hand of all versus other theories.

14 And I think it -- in my motion, I do note where
15 they said that they don't distinguish between murder
16 and felony murder. However, in this instance, the
17 State had elected to proceed under hand of one is
18 the hand of all. So when they come to that point,
19 and they mention it actually kind of early on, to
20 reflect on some further issues I believe in the
21 opinion, but I think this one in particular, it's on
22 -- I believe it's on page 38, I believe it's on page
23 38, where they say that when the defense and the
24 State both ask the Court to instruct the jury on
25 felony murder, the Court refused to do so because

1 the Court stated that the felony murder doctrine was
2 not a correct statement of the law as applied to the
3 case that was before the Court because the State had
4 decided to go forward under the hand of one is the
5 hand of all.

6 In other words, because of that election that
7 they made and because they notified the Court, the
8 defendants and the jury in that case that they were
9 proceeding in that fashion, that they couldn't go
10 back and request that the jury be instructed on
11 felony murder when they had proceeded under that
12 other theory.

13 And so it's -- the way that I read the case,
14 and I mean I was happy to find it, but I read it,
15 you know, three or four times, the subsequent
16 language in it was that where the State elects the
17 hand of one, hand of all, they can't come back later
18 on and attempt to get a felony murder, even in
19 conjunction with the agreement of the defense,
20 attempt to get a felony murder theory into the jury,
21 sir.

22 **THE COURT:** And, Ms. Payne, you were citing
23 something about subsection two and subsection three.
24 What were you talking about?

25 **MS. PAYNE:** I'm sorry, Your Honor. On our

1 argument on page 2 and 2-A, section A.

2 THE COURT: All right. I'm going to read
3 everything you all have supplied, but at this stage,
4 I'm going to deny the motions for a directed
5 verdict.

6 I read what had been supplied to me and looked
7 at that over the weekend and, obviously, I'll look
8 at this that's just been handed up today. And we're
9 still trying to get some resources that we don't
10 have a subscription for, but we're trying to get
11 them, one thing in particular.

12 And I don't know if I can explain to you what I
13 think is the applicable law right now. It's kind of
14 an evolving process.

15 I'm continuing to read and continuing to try to
16 put all of this into something that I can explain to
17 the jury, but right now the best version I can give
18 you is this. If you read these cases, you're going
19 to see that the appellate courts say repeatedly that
20 there has been a merging, a meshing of different
21 theories that really don't apply at times. That
22 because it sounds like it might involve the hand of
23 one is the hand of all, accomplice liability, aiding
24 and abetting, those sorts of theories, that the
25 trial court, sometimes the appellate court will get

1 off on that tangent when it's really not that theory
2 at all.

3 We have that statement, which was really
4 confusing me in the beginning, the statement itself
5 wasn't confusing, it's just that I lacked the
6 insight to be able to know what the Supreme Court
7 was saying and I'm still trying to figure it out in
8 depth. But our State Supreme Court has said, as was
9 just quoted in this Yates case, that in South
10 Carolina, there's no difference between the felony
11 murder rule and murder.

12 Now, here's how I'm boiling it down in my head
13 right now. I don't think you've got an accomplice
14 situation. I don't think you've got aiding and
15 abetting and assisting. What I think you've got is
16 a proximate cause issue. I think you've got two
17 people allegedly engaged -- three people allegedly
18 engaged in improper activity. And the question is
19 can you hold all three responsible when you don't
20 know which bullet went through Mr. Wright's head?

21 I think the answer to that question is, yes,
22 you can hold all three responsible, but I don't
23 think it's on the theory that they were joining
24 together as confederates or that they were in some
25 sort of common scheme, though I realize, going back

1 to that twisting logic around stuff I talked about
2 earlier and last week, that one can sit there and
3 think about a situation where you say, okay there
4 wouldn't be a gun fight except for the two of them
5 combining to do it, so they are acting in a
6 combination. The thing is I think that gets us
7 adrift of what the legal theory is.

8 To put this more in terms of what -- when I was
9 growing up, long before this gray hair on my head,
10 the thing that most kids got in trouble with was
11 drag racing, so I was thinking about when I was the
12 age of these folks. And if two people were drag
13 racing, even though they might not have intended,
14 say, meet me out at such and such place, just been
15 on a four lane highway and somebody pull up beside
16 you and start acting like young men tend to act
17 sometimes and next thing you know they're both
18 racing each other, there wasn't any preconceived
19 idea to do that, it's something that happened. And
20 then if one car strikes and kills a pedestrian, for
21 example, can both be responsible? I think the
22 answer is clearly yes.

23 But I really think that is more akin to an
24 aiding and abetting situation. I think that's where
25 you get adrift, but I still think that's a proximate

1 cause issue. The officer may have said it better
2 than any of us lawyers said, the gun battle is what
3 caused the death. So that's what I'm struggling
4 with.

5 There's one section in a book that I don't have
6 that costs \$150 and we're trying to find it so I
7 don't have to spend \$150 on a book. There's one
8 section that keeps being referred to that I want to
9 read. And I might, after being able to read it, be
10 able to explain this to you a little bit better, but
11 right now I believe the situation is that murder is
12 the unlawful killing of another human being with
13 malice aforethought expressed or implied. I usually
14 say expressed or inferred even though the statute
15 says implied. The malice can be inferred from the
16 use of a deadly weapon, it's not a presumption. And
17 I have to make it clear to the jury that that is an
18 evidentiary inference only. It can be accepted or
19 rejected depending on the jury's view of the
20 circumstances of the case.

21 The felony murder rule comes in to apply, as
22 I'm reading these South Carolina cases, on the issue
23 of malice. And I think the problem with the felony
24 murder rule is that when it evolved, it sort of was
25 a strict liability sort of situation where if

1 anybody was involved in a felony and a death ensued,
2 that was -- met the definition of murder, then --
3 well, actually some of them didn't even seem to
4 require that. It just seemed like if a death ensued
5 in the commission of a felony, you presumed malice
6 and that was murder.

7 Now, for obvious reasons, courts have backed
8 off of that. And the Common Law in England
9 completely said, We're not going to follow that rule
10 anymore, that's a ridiculous rule. So they've gone
11 to situations where they're engaged -- the
12 participants are engaged in some sort of inherently
13 dangerous activity that would reasonably and
14 probably lead to someone getting killed or seriously
15 injured.

16 But here's another distinguishing factor, and I
17 don't have it right in front of me so I'm probably
18 going to use the wrong language. The felony can't
19 be part of the killing itself. That's a poor way to
20 say it. So I'm sitting here thinking about pointing
21 and presenting. I don't know if pointing and
22 presenting could be the felony upon which to base a
23 felony murder rule. I don't know if lynching could
24 be.

25 Lynching is an unfortunate title of a statute

1 we have. I wish it was renamed because lynching has
2 other connotations that don't really apply.
3 Basically, most people refer to that as mob violence
4 now. There's an old common law about riot. It's
5 just when a mob of people get together and there's a
6 design to harm someone. We have two degrees of
7 lynching in this state, one, where the lynching --
8 the mob activity results in death, and the other
9 where it does not. But I don't know that that can
10 form a basis for felony murder.

11 And what I'm really trying to figure out right
12 now is whether I need to even get into that because
13 you've got malice inferred possibly from the use of
14 a deadly weapon.

15 It's a long winded explanation to tell you
16 where I am right now, but basically I think you have
17 more of a proximate cause issue, which is typically
18 something we struggle with in civil court not in
19 criminal court, but you have a proximate cause issue
20 and whether two people can be held responsible or
21 three people can be held responsible for the death
22 of an individual when clearly only one bullet struck
23 that individual. And, again, I think the answer to
24 that question is yes.

25 All right. The motions are denied at this

1 stage. You can renew your motions at the end of all
2 the evidence and I'll hopefully have had time to
3 read all your cases. And if there's anything that's
4 troubling to me or changes my mind, I'll let you
5 know. Well, I won't say hopefully, I will have read
6 the other cases by the time we get to that or I'll
7 wait until I finish before I hear your motions.

8 Okay. Mr. Patterson, Mr. Boone, I need to talk
9 to you folks now. I need your responses under oath
10 and I'm going to put you under oath in just a
11 minute. And I want to explain a few things to you
12 and then I've got to go over some things about your
13 rights. So I need each of you to raise your right
14 hand, let me place you under oath.

15 EUGENE PATTERSON,
16 having been duly sworn, testified as follows:

17 ANDRE TAYSON BOONE,
18 having been duly sworn, testified as follows:

19 THE COURT: Y'all can have a seat. Just speak
20 up so the court reporter can take down accurately
21 what we say.

22 Now, gentlemen, we've reached the stage of the
23 trial where the State has rested its case in chief.
24 And the next thing that would happen is that you are
25 given the opportunity to present evidence for the

1 jury to consider. Do you understand where we are in
2 the trial, Mr. Patterson?

3 DEFENDANT PATTERSON: Yes, sir.

4 THE COURT: Do you, Mr. Boone?

5 DEFENDANT BOONE: Yes, sir.

6 THE COURT: Now, in that regard, if you want to
7 testify, you certainly may testify. Do you
8 understand that, Mr. Patterson?

9 DEFENDANT PATTERSON: Yes, sir.

10 THE COURT: Do you understand, Mr. Boone?

11 DEFENDANT BOONE: Yes, sir.

12 THE COURT: But in a criminal court setting
13 like you're in now, nobody can force you to testify.
14 You have an absolute right to maintain your silence.
15 And if you choose not to testify, I'm going to tell
16 that jury that they cannot hold your silence against
17 you in any way. They can't discuss it when they're
18 deliberating on your case and it's not to enter
19 their mind in making the decision on whether you're
20 guilty or not guilty. Do you understand that,
21 Mr. Patterson?

22 DEFENDANT PATTERSON: Yes, sir.

23 THE COURT: Do you, Mr. Boone?

24 DEFENDANT BOONE: Yes, sir.

25 THE COURT: Now, this decision about whether

1 you testify or not is your decision to make and
2 yours alone. I expect that you might confer with
3 other people whose opinion you value on important
4 decisions, but it's your call to make. You're the
5 people on trial and each of you has to make the
6 decision for yourself. Do you understand,
7 Mr. Patterson?

8 **DEFENDANT PATTERSON:** Yes, sir.

9 **THE COURT:** Do you, Mr. Boone?

10 **DEFENDANT BOONE:** Yes, sir.

11 **THE COURT:** Now, as I understand it, there's no
12 prior criminal record that would subject either to
13 impeachment; is that right or wrong?

14 **MS. CAMPBELL:** Mr. Boone's only prior record,
15 Your Honor, I believe, is in juvenile court,
16 convictions in conjunction with these, which we
17 would not be going into. And I believe
18 Mr. Patterson's only prior record is a burglary
19 second conviction.

20 **THE COURT:** If he takes the stand, do you
21 intend to ask him about the burglary second?

22 **MS. CAMPBELL:** That would be the extent of what
23 we would think we would be able to get into.

24 **THE COURT:** What year?

25 **MS. CAMPBELL:** 2006.

1 **THE COURT:** Mr. Sutherland, do you want to be
2 heard on that? Do you want me to settle this
3 record?

4 **MR. SUTHERLAND:** I mean, Your Honor, I would
5 just say that I don't see where that would be
6 relative to his credibility. At the same time, I
7 think I can inform the Court now that Mr. Patterson
8 does not intend to testify.

9 **THE COURT:** Well, I have to operate under the
10 assumption that anybody can change their mind. And
11 he certainly may change his mind regardless of what
12 his decision is right now.

13 Rule 609 deals with impeachment by evidence of
14 conviction of a crime. And it states that where an
15 accused is the focus of the inquiry, that evidence
16 that an accused has been convicted of a crime that
17 carried the possibility of more than a year in
18 prison as punishment shall be admitted if the court
19 determines that the probative value of admitting
20 this evidence outweighs its prejudicial effect to
21 the accused.

22 There's a separate section dealing with crimes
23 of dishonesty or false statement. There's a time
24 limit of ten years. This is well within the time
25 limit.

1 I'm going to rule, Mr. Patterson, that I cannot
2 make a determination that the probative value of
3 admitting that evidence would outweigh the
4 prejudicial effect to you; therefore, if you do take
5 the stand, I'm not going to let them ask you about
6 that burglary second conviction. Do you understand
7 that?

8 **DEFENDANT PATTERSON:** Yes, sir.

9 **THE COURT:** Now, they tell me, Mr. Boone, that
10 you don't have any prior criminal record that they
11 would intend to ask you about if you took the
12 witness stand; do you understand that?

13 **DEFENDANT BOONE:** Yes, sir.

14 **THE COURT:** Now, Mr. Patterson and Mr. Boone,
15 you need to understand that while they cannot ask
16 you about a prior criminal record under these
17 rulings I've just made, there are mechanisms by
18 which somebody can get on the stand and open the
19 door. And you can talk to your lawyers more about
20 what that expression, Open the door, means, but
21 basically let me tell you what's happened in the
22 past.

23 I have gone through cases before where I made a
24 ruling just like I made in Mr. Patterson's case and
25 said, if he takes the stand, the State cannot ask

1 him about that prior conviction. And then that
2 person got on the stand and started testifying, he
3 said, I've never been in any trouble with the law.
4 Well, that's just a flat out lie and it opened the
5 door to ask that individual, well what about this
6 conviction for this offense on this date.

7 So you can open the door, but unless you open
8 the door, which is something you would have to do,
9 I'm not going to let the State ask either of you
10 about a prior criminal history. Do you understand
11 that, Mr. Patterson?

12 DEFENDANT PATTERSON: Yes, sir.

13 THE COURT: Do you understand that, Mr. Boone?

14 DEFENDANT BOONE: Yes, sir.

15 THE COURT: Today are either of you under the
16 influence of any kind of medicine or any substance
17 that adversely affects your thinking, Mr. Patterson?

18 DEFENDANT PATTERSON: No, sir.

19 THE COURT: Mr. Boone?

20 DEFENDANT BOONE: No, sir.

21 THE COURT: This decision that you made about
22 testifying or not testifying, and I don't need to
23 know what it is at this point, you can change your
24 mind, is it your decision and yours alone,
25 Mr. Patterson?

1 DEFENDANT PATTERSON: Yes, sir.

2 THE COURT: Mr. Boone?

3 DEFENDANT PATTERSON: Yes, sir.

4 THE COURT: Has anybody exercised any undue
5 influence over you to get you to testify or not
6 testify, Mr. Patterson?

7 DEFENDANT PATTERSON: No, sir.

8 THE COURT: Mr. Boone?

9 DEFENDANT BOONE: No, sir.

10 THE COURT: All right. Then what I'm going to
11 do is I'm going to make a finding that whatever
12 decision you've made is your decision, made of your
13 own free will, that you've made it freely,
14 knowingly, voluntarily and intelligently, that you
15 understand you have a right to testify, you have a
16 right not to testify. You understand that this
17 decision is yours to make and yours alone. You
18 understand that if you take the stand, I'm not going
19 to let the State ask you about a prior criminal
20 record.

21 Now, I'm not going to cover with you about
22 closing arguments because evidence has been
23 introduced by the defense and, therefore, the last
24 closing argument will go to the State.

25 You also understand that if you choose not to

1 testify, that I'm going to tell the jury that they
2 cannot hold your silence against you in any way at
3 all.

4 Mr. Sutherland, do you have evidence to
5 present? Do you need a chance to talk to your
6 client or anything?

7 **MR. SUTHERLAND:** We have nothing to present,
8 Your Honor.

9 **THE COURT:** Ms. Payne, as I understood it, you
10 all did intend to offer evidence. Do you need a
11 chance to talk to your client?

12 **MS. PAYNE:** We would like a chance to talk to
13 our client in light of your ruling.

14 **THE COURT:** Okay. We'll be at ease for a few
15 minutes.

16 (Brief Recess.)

17 **THE COURT:** Are you ready to proceed?

18 **MS. EVERHART:** Yes, Your Honor.

19 **THE COURT:** Are you going to offer any
20 evidence?

21 **MS. EVERHART:** Yes, Your Honor.

22 **THE COURT:** Are you going to offer any
23 evidence?

24 **MR. SUTHERLAND:** No, sir.

25 **THE COURT:** All right. Mr. Patterson, have you

1 decided not to testify?

2 DEFENDANT PATTERSON: Yes, sir.

3 THE COURT: That's your own decision made of
4 your own free will?

5 DEFENDANT PATTERSON: Yes, sir.

6 THE COURT: All right. Bring in the jury,
7 please.

8 (The jury enters the courtroom at 10:45
9 a.m.)

10 THE COURT: Ladies and gentlemen, thanks very
11 much for coming in. I met with the attorneys
12 beginning at 9:15 and we've been working this entire
13 time. I just badly misjudged how long that would
14 take. The first part of it didn't take very long,
15 that's what I knew about on Friday. We ran into
16 something that took a little bit longer.

17 All right. Does the State have any further
18 evidence to present?

19 MR. GOLDBERG: Please the Court, Your Honor,
20 the State rests.

21 THE COURT: I told you in my opening comments
22 to you that when the State rested, that I had to
23 confer with the attorneys about legal issues. We
24 went ahead and did that, so that's the second part
25 that I told you I didn't really know about on

1 Friday.

2 The State has rested. And the next thing that
3 we will do is we will give the defense the
4 opportunity to present evidence for you to consider
5 in deciding these cases. That doesn't change the
6 burden of proof in any way. The burden remains
7 entirely upon the State to prove the guilt of the
8 defendants beyond a reasonable doubt, but the
9 defendants are given the opportunity to present
10 evidence for you to consider in deciding whether the
11 State has proven that defendant guilty or failed to
12 meet the burden of proof.

13 And I apologize, I'm looking something up.

14 (Pause.)

15 **THE COURT:** So, Mr. Sutherland, does
16 Mr. Patterson have any evidence for the jury to
17 consider?

18 **MR. SUTHERLAND:** No, sir, the defense rests.

19 **THE COURT:** Thank you.

20 All right. Ladies and gentlemen, I have to
21 give you an instruction now. Please give me your
22 close attention.

23 I emphasize to you that the fact that
24 Mr. Patterson elected not to testify is not a factor
25 to be considered by you in any way in your

1 deliberations and in your consideration on the
2 question of whether he is guilty or not guilty.
3 Mr. Patterson's decision not to testify must not be
4 considered by you in any manner whatsoever against
5 him. An accused has a constitutional right to
6 remain silent and the assertion of that right cannot
7 be considered by you in your deliberations.

8 Under your oath, you are to reach no inference
9 and you are to draw no conclusion whatsoever from
10 the fact that Mr. Patterson elected not to testify.
11 His decision not to testify should not be discussed
12 by you in your deliberations. It should not enter
13 your mind at all in making the decision of whether
14 he is guilty or not guilty.

15 As I've told you, ladies and gentlemen, the
16 State has the entire burden of proof. The State has
17 to prove the case against Mr. Patterson beyond a
18 reasonable doubt and he has no obligation to prove
19 anything at all.

20 Does Mr. Boone wish to offer any evidence for
21 the jury to consider?

22 MS. EVERHART: Yes, Your Honor. The defense
23 would call Don Girndt.

24 *****

25 *****

1 DONALD C. GIRNDT,

2 having been duly sworn, testified as follows:

3 THE CLERK: Have a seat in the witness box.

4 State your full name for the record and spell your
5 last name, please.

6 THE WITNESS: Donald C. Girndt. Last name is
7 spelled, G-I-R-N-D-T.

8 DIRECT EXAMINATION

9 BY MS. EVERHART:

10 Q Hi, Mr. Girndt. How are you doing?

11 A Fine.

12 Q Why don't you tell the jury what kind of work
13 you do?

14 A I'm self-employed as a forensic consultant. I
15 specialize in areas of crime scene analysis, blood
16 stain pattern interpretation, fingerprint
17 identification and footwear identification.

18 Q And what kind of specialized training have you
19 had?

20 A Beg your pardon?

21 Q What kind of specialized training have you had?

22 A Well, I've been self-employed for about 13
23 years. Prior to that, I was an agent with the State
24 Law Enforcement Division. I was assigned to what's
25 referred to as the latent fingerprint and crime

1 scene section. In that section, we're charged with
2 documenting crime scenes, collecting evidence all
3 around the state and assisting other agencies in
4 preparing cases for court.

5 I've had numerous courses of fingerprint
6 identification, footwear identification, crime scene
7 analysis. I've tended schools for blood stain
8 pattern interpretation, Administrative Advanced
9 Fingerprint School, Southern Police Institute
10 Homicide School and just numerous other courses over
11 the years.

12 Q Have you ever testified as an expert in a trial
13 before?

14 A Yes. I've testified approximately 130 times in
15 courts of record in Maryland, North Carolina, South
16 Carolina, Georgia and the Federal District Court.

17 Q And you've been qualified as an expert in crime
18 scene photography?

19 A Well, crime scene analysis which includes crime
20 scene photography, yes.

21 Q And blood stain?

22 A And blood stain. All of the areas that I
23 mentioned, I've been qualified in at one time or
24 another.

25 MS. EVERHART: Your Honor, I would offer the

1 witness as an expert in crime scene interpretation.

2 THE COURT: Any voir dire?

3 MR. GOLDBERG: No, sir.

4 MR. SUTHERLAND: No, sir.

5 THE COURT: He is so recognized. You may
6 continue.

7 MS. EVERHART: Thank you, Your Honor.

8 BY MS. EVERHART:

9 Q When you were contacted by our office to review
10 a case, who compensates you for your services?

11 A Normally, it's paid through the state through
12 what's called the Office of Indigent Defense. It's
13 a state agency that's funded through the
14 legislature.

15 Q When you were contacted about this case, what
16 kind of material did we present you with?

17 A Normally, I ask to see incident reports, crime
18 scene reports, autopsy report, crime scene
19 photographs, sketches. I'm usually not interested
20 in things like phone records or health records, that
21 sort of thing, but just the core of the case.

22 Q And, in this case, did you have the opportunity
23 to view crime scene photographs?

24 A I did.

25 Q And what did you learn from those photographs?

1 A Well, specifically, the questions that was
2 asked about the photographs was based on the
3 groupings of some of the shell casings, would the
4 victim have been in the line of fire of where the
5 shell casings were grouped. And the specific shell
6 casings were -- that I was asked about, as you face
7 the Waffle House, they were far to the left and
8 behind the Exxon station, so those would not have
9 been in the line of fire for the victim at that --
10 where the shooter was standing at that time.

11 The other question I was asked specifically
12 about was the blood stain pattern interpretation
13 based on the victim. And the question was, how far
14 did the victim move or did the victim move? And it
15 appears from the photographs, based on the blood
16 stain pattern interpretation only, is that he did
17 not move very far, I would say, just a few feet and
18 collapsed. And it appears that he collapsed on his
19 face and didn't move after that, so -- and,
20 generally, we would say that you fall in the
21 direction that your momentum is carrying you and he
22 appears to be falling somewhat with his back toward
23 the Waffle House area. So I think it -- it's
24 consistent with what we see in the photographs of
25 the blood stain pattern.

1 MS. EVERHART: Beg the Court's indulgence.

2 (Pause.)

3 MS. EVERHART: No further questions, Your
4 Honor.

5 Please answer any questions you're asked.

6 THE COURT: Hold on a second.

7 Ladies and gentlemen, I need to ask you to step
8 out just a second. Don't discuss the case. You
9 won't be out long.

10 (The jury retires to the jury room.)

11 THE COURT: I need the attorneys to talk to my
12 law clerk over there.

13 (Pause.)

14 THE COURT: We'll be at ease for about 15
15 minutes..

16 You cannot discuss the case with anyone. Thank
17 you.

18 (Brief Recess.)

19 MS. EVERHART: If I may, before the jury comes
20 in, can we remove the ankle shackles?

21 THE COURT: I'm going to have him on the stand
22 when the jury comes in.

23 MS. EVERHART: I may need him to step down.

24 THE COURT: You think you need to have him step
25 down?

1 MS. EVERHART: If possible.

2 THE COURT: Well, do you think you do or you're
3 just telling me that?

4 MS. EVERHART: Yes, Your Honor. I was planning
5 to have him...

6 THE COURT: All right. Go ahead and take them
7 off.

8 (Pause.)

9 THE COURT: Bring in the jury.

10 (The jury returns to the courtroom.)

11 THE COURT: Ladies and gentlemen, before I
12 recognize the Solicitor for cross-examination, let
13 me go ahead and tell you this. I can tell already,
14 there's going to be some in and out today. There's
15 going to be some times when I'm going to have to ask
16 you to step in here just a few minutes and step out.
17 It's just logistics and how everything's coming
18 together. It doesn't have a thing to do with the
19 matter before you. Please, just bear with us. I
20 promise you I've given some thought to it and I'm
21 trying to do it the least inconvenient way for you,
22 but there will be some inconvenience, just bear with
23 us.

24 Cross-examination.

25 MS. CAMPBELL: May it please the Court.

1 THE COURT: Yes.

2 CROSS-EXAMINATION

3 BY MS. CAMPBELL:

4 Q Mr. Girndt, just so I get this correct, you
5 left SLED back in 1994?

6 A December of '94.

7 THE COURT: Speak up a little bit, please.

8 THE WITNESS: December of '94.

9 BY MS. CAMPBELL:

10 Q And the last time you actively worked with a
11 real crime scene was in '93 or before that?

12 A For an agency, yes.

13 Q Well, you aren't called out by any law
14 enforcement agencies to work crime scenes now, are
15 you?

16 A No.

17 Q And you're getting paid for your testimony here
18 today?

19 A Yes.

20 Q You get paid for your consultation?

21 A Yes.

22 Q How much do you get paid an hour?

23 A It's approved by the judge, \$150 an hour.

24 Q You get \$150 an hour?

25 A Uh-huh.

1 Q And how many hours have you put in this case?

2 A Maybe 20.

3 Q Twenty hours. So 20 times 150, how much are
4 you making for this case, not including your
5 testimony for today?

6 A Whatever the court approves, approximately
7 \$3,000.

8 Q When were you contacted by the public
9 defender's office in this case?

10 A A few months ago.

11 Q A few months ago?

12 A Uh-huh.

13 Q Would it be in the last month or two?

14 A I don't recall exactly.

15 Q Can you give me an idea?

16 A It was earlier this year.

17 Q Earlier this year?

18 A Uh-huh.

19 Q So you weren't contacted back in February of
20 2007?

21 A No.

22 Q Or March of 2007?

23 A No.

24 Q Or, for that matter, any time in 2007?

25 A No.

- 1 Q And not until the last couple months?
- 2 A That's right.
- 3 Q And you were asked to review some crime scene
- 4 photos; is that correct?
- 5 A Yes.
- 6 Q And I believe you stated that you were asked
- 7 two questions; is that right?
- 8 A Well, two areas specifically.
- 9 Q Okay. Two areas specifically. One was the
- 10 collection of gun shells, the spent shell casings?
- 11 A Well, the question was the area that the
- 12 casings were in, is that within view of where the
- 13 body was -- I mean, could you view where the body
- 14 was? And you could not, there's a building in the
- 15 way.
- 16 Q I guess I misunderstood. So where the body was
- 17 standing to where the shell casings for whom?
- 18 A From my understanding, for Mr. Boone.
- 19 Q Do you know what caliber shell casings those
- 20 were?
- 21 A I believe they were nine millimeter.
- 22 Q Did you actually look at the shell casings
- 23 themselves?
- 24 A No.
- 25 Q Did you review some photographs where the shell

1 casings were located?

2 A Yes.

3 Q And in reviewing those, do you remember seeing
4 State's Exhibit 39 and 46?

5 A Yes.

6 Q Did you review State's Exhibits Number 12 and
7 16?

8 A Yes.

9 Q And did you review State's Exhibits 47 and 37?

10 A Yes.

11 Q And to help orient the jury as far as State's
12 Exhibit Number 39, what does that show?

13 A It shows the side of the Exxon station that
14 faces the Waffle House.

15 Q And were you aware that there was a gunshot to
16 the side of that, a recent gunshot?

17 A There were two. There was one from a previous
18 incident and one from this incident.

19 Q From this incident. And you know Lieutenant
20 Padgett?

21 A Yes.

22 Q And he went out there and he actually, using a
23 dowel, which is a proper technique?

24 A Right.

25 Q Could show the trajectory of where that gunshot

1 to the very side was; is that correct?

2 A Yes.

3 Q And would you agree with me that that gunshot
4 into the side of that building was near the corner
5 of the Mobil Gas Station?

6 A It's near the corner, but it's not near where
7 the body was found.

8 Q And I'll get to that in a minute. It's near
9 this corner, right?

10 A Yes.

11 Q And you would agree with me when they put the
12 dowel in and the trajectory goes back, it goes back
13 right to the area where some of the nine millimeter
14 shell casings were found; is that correct?

15 A Yes.

16 Q And you can actually see in here, to orient
17 yourself, right here, what's that right there, just
18 to help orient the jury? You see a light pole?

19 A Yes.

20 Q It's in the very corner of State's Exhibit 37,
21 it's actually shown in State's Exhibit 47. So that
22 gunshot points right back to the area where the nine
23 millimeter shell casings were found?

24 A I'll agree with that. I don't think that was
25 an argument.

1 Q And were you provided witness statements in
2 this case to review?

3 A Yes.

4 Q And were you aware that there were a group of
5 young men, including Brian Wright, which went over
6 to the parking lot at the Waffle House?

7 A I didn't know they included Brian Wright.

8 Q Were you aware -- did they make you aware that
9 that group, when the gunshots starting coming up,
10 started running back towards the Mobil Gas Station?

11 A I don't know that I knew that. I knew there
12 were different shooters in different places, but I
13 don't know that I knew those facts.

14 Q Well, you just testified about how this body in
15 State's Exhibit 16 and 12 would have fallen straight
16 forward.

17 A Well, that would be consistent with him running
18 from that area into the Mobil station, yeah.

19 Q And would you agree that if you were running
20 from the Waffle House towards the Mobil station,
21 that you have to run past that corner where that
22 bullet was found that disintegrated, the bullet
23 hole; would you agree to that, sir?

24 A Not necessarily. Based on his injury, I
25 wouldn't think he would be able to run that far.

1 Q Are you a pathologist?

2 A No.

3 Q Are you a doctor?

4 A No.

5 Q Do you know Doctor Clay Nichols?

6 A Yes.

7 Q Do you know he's board certified in forensic
8 pathology?

9 A I'm basing that opinion on the blood stain
10 pattern interpretation. It starts in one place and
11 it ends very shortly after that. It starts, you can
12 see, between his legs and it ends where his head
13 hits the ground.

14 Q Do that again?

15 A The first blood that I see is between his legs.
16 And then when you roll him over, there's small drops
17 of blood and then he's collapsed on his head and
18 then the blood pools there. That's the only blood I
19 see, unless there's blood somewhere else.

20 Q That's right, blood pooling underneath him?

21 A Right.

22 Q Okay. We all agree the blood was pooling
23 underneath him, which would be consistent with him
24 having fallen in this area. Would you agree that
25 his feet are closer to the Waffle House than they

1 are to the Mobil Gas Station, point towards the
2 Waffle House?

3 A His feet are pointed in the general direction
4 of the Waffle House, yes.

5 Q And that his feet, if he is running forward --
6 and you can't tell this jury how he was holding his
7 head, can you?

8 A No.

9 Q You can't say if he was looking to the left
10 crouched down, looking this way crouched down or
11 straight forward, can you?

12 A No.

13 Q And doesn't that affect what happens?

14 A I'm just -- based on the blood stain pattern
15 interpretation.

16 Q And you would agree that once a person is shot
17 in the head, that they continue on for a number of
18 feet depending on the person, the type of gunshot
19 wound, the area of the brain it hits, all kinds of
20 factors, correct?

21 A Yes.

22 Q And you would agree that the corner of this gas
23 station is right here?

24 A Yes.

25 Q And you would agree his feet are a few feet in

1 from that?

2 A I think it's several feet.

3 Q Several feet, excuse me. As a crime scene
4 investigator, you would also agree, and in this case
5 when it's a through and through wound, the
6 projectile can continue to go for thousands of feet?

7 A Yes.

8 Q And the fact that the projectile was not found
9 inside that area where the obvious -- where the
10 dowel was put in, that's not unusual either, is it?

11 A I think that bullet was in there because it has
12 a bulged out seam and I don't know why it wasn't
13 recovered.

14 THE COURT: It has a what?

15 THE WITNESS: The bullet went into the wall and
16 traveled along the panel and apparently hit a seam
17 that was in there, so I don't think it got out of
18 there.

19 BY MS. CAMPBELL:

20 Q You don't think it got out of there. Do you
21 think it could have disintegrated once it got in
22 there?

23 A It could have gone into pieces, yeah.

24 Q Into pieces?

25 A Yeah, but I don't think -- I don't think it got

1 out of the building, though.

2 Q Oh, yeah, that's not my question. It could
3 have been pulverized in that area, though. Did you
4 go out to the scene and look for the bullet yourself
5 since you think it's in there?

6 A I didn't go look for the bullet. I mean, I
7 looked -- I could see where it hit.

8 Q And, sir, you worked crime scenes some 15, 20
9 years ago?

10 A Yes.

11 Q And did you recover a projectile in every crime
12 scene?

13 A No.

14 MS. CAMPBELL: Thank you, sir.

15 THE COURT: Do you have any questions of the
16 witness, Mr. Sutherland?

17 MR. SUTHERLAND: Just a couple, Your Honor.
18 Please the Court.

19 THE COURT: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. SUTHERLAND:

22 Q Sir, Ms. Campbell keeps talking about a
23 disintegrating bullet. My understanding is that you
24 reviewed the case file or the discovery you were
25 provided in this case?

1 A I don't know if I looked at all of it. I
2 looked at part...

3 Q You don't recall seeing anything in there about
4 bullets disintegrating?

5 A I didn't see anything, no.

6 Q And the last question. Your understanding from
7 what it was you were able to review, I'm not sure,
8 but I think you said autopsy reports and photos,
9 cause of death is a single gunshot wound to the
10 head; is that correct, sir?

11 A As I recall, yes.

12 MR. SUTHERLAND: No further questions, Your
13 Honor.

14 THE COURT: Redirect?

15 MS. EVERHART: Thank you, Your Honor.

16 REDIRECT EXAMINATION

17 BY MS. EVERHART:

18 Q You indicated that you had an opportunity to
19 view eyewitness statements in the discovery?

20 A Yes.

21 Q Do you remember reading anything in the
22 material that discussed what Brian Wright was doing
23 that night at the crime scene?

24 A No. Until this point, I just thought he was an
25 innocent bystander.

1 Q And you get paid regardless of what your
2 testimony is?

3 A Yes.

4 Q So you would have no reason to lie?

5 A No.

6 Q And have you ever worked for the Solicitor's
7 office in these kind of cases?

8 A Yes, I have.

9 MS. EVERHART: Thank you. No further
10 questions.

11 THE COURT: Recross?

12 RECROSS-EXAMINATION

13 BY MS. CAMPBELL:

14 Q You've never worked for this Solicitor's
15 office?

16 A I've got two letters of recommendations right
17 here from two past Solicitors, if you would like to
18 read them.

19 MS. CAMPBELL: Thank you.

20 THE COURT: Recross?

21 MR. SUTHERLAND: No, sir.

22 THE COURT: Thank you, sir. You may step down.

23 Any other witnesses?

24 MS. EVERHART: Yes, Your Honor. Your Honor,
25 the defense would call Andre Boone.

1 **THE COURT:** Mr. Boone, come around to the
2 bailiff, please.

3 ANDRE TAYSON BOONE,
4 having been duly sworn, testified as follows:

5 **THE CLERK:** Have a seat, state your full name
6 for the record.

7 **THE WITNESS:** Andre Tayson Boone.

8 DIRECT EXAMINATION

9 BY MS. EVERHART:

10 **Q** Hi, Mr. Boone. How are you doing today?

11 **A** I'm doing fine, ma'am.

12 **Q** Now, are you from Columbia?

13 **A** Yes, ma'am.

14 **Q** You grew up here?

15 **A** Yes, ma'am.

16 **Q** You have family here?

17 **A** Yes, ma'am.

18 **Q** Who?

19 **A** Mother, father, little brothers, older sisters,
20 cousins, aunties, nephews and nieces.

21 **Q** And what grade are you in?

22 **A** Tenth.

23 **Q** I'm going to -- I want you to let this jury
24 know what happened the night of February 18th of
25 2007, up until the morning hours of February 19,

1 2007, just let us know what you remember.

2 A I remember going to Meadow Lake, that's where I
3 stay at, driving my truck. Then I went -- Bernard,
4 William Kee was already in the truck with me. And
5 we went to pick up Jerome Thompson, Derrick Guilyard
6 and Demon Griffin. And we were supposed to go to a
7 party at Windsor Lakes, but when we got close to Two
8 Notch, I got a call from Byron Morant stating that
9 the party was shut down and he had shot it up. So
10 then he told us that everybody was --

11 MS. CAMPBELL: Objection, Your Honor, just to
12 hearsay.

13 THE COURT: Do you want to be heard?

14 MS. EVERHART: No, Your Honor.

15 THE COURT: Sustained.

16 BY MS. EVERHART:

17 Q Continue telling, don't say what people told
18 you.

19 A Yes, ma'am. That's when I was told that every
20 -- that we was going to meet up at the Kangaroo -- I
21 mean, the Waffle House by the Kangaroo on Two Notch,
22 so that's -- when we pulled up there, we was just
23 basically chilling. There was females there, we was
24 just basically talking to the females. That's when
25 a car rolled by and some words was exchanged and

1 that's when I was notified that that was the same --
2 the same dude that I had got into an altercation
3 with in the club, at the Main Event Club earlier. I
4 didn't know the dude at that time. I still didn't
5 know him. I was informed by Corey what his name
6 was. So that's when Corey called him and was like
7 -- the dude called Corey and told him to meet us
8 at --

9 MS. CAMPBELL: Objection, Your Honor, just to
10 hearsay.

11 THE COURT: Sustained.

12 THE WITNESS: That's when we was told to meet
13 at Wendy's --

14 MS. CAMPBELL: Objection, Your Honor.

15 THE COURT: Hold on just a moment.

16 Ask him your next question.

17 BY MS. EVERHART:

18 Q If you could, give more details about what
19 happened, but not focus on what people told you.

20 A Yes, ma'am.

21 Q But where you went and what occurred?

22 A Then we went to the Wendy's and waited there.
23 That's when I was informed about the Corey and Chad
24 beef going on.

25 MS. CAMPBELL: Objection, Your Honor, to what

1 he was informed of.

2 MS. EVERHART: Sir, I know you're nervous.

3 THE COURT: If you want to be heard on any of
4 these, let me know, okay.

5 MS. EVERHART: Yes, Your Honor.

6 THE COURT: Sustained.

7 THE WITNESS: After we sat at the Wendy's for
8 like 25, 30 minutes, we was informed -- well, we met
9 at the Waffle House on Hard Scrabble and we stayed
10 there for like five minutes. Corey and them went
11 into the gas station and got something, then we
12 left.

13 That's when I got a call from my girlfriend and
14 she wanted to see me at the Waffle House on Two
15 Notch by the Mobil. So that's when I went there and
16 I went into the Waffle House. I pulled up in the
17 parking lot and I pulled all the way in the back and
18 backed in and I went in and talked to her for some
19 time. That's when I went back outside because after
20 I finished talking to her, I was going to head home.

21 That's when she came out and she stood at my
22 passenger window and I talked to her like five, ten
23 minutes. That's when Corey was outside talking to
24 some females, that's when I seen him pick up the
25 phone, exchange a few words, then he hung up.

1 That's when he -- during this time, unknown cars was
2 pulling in, I didn't know who they was, was pulling
3 in and driving to the back.

4 That's when I seen Quintez Clemons stick his
5 hands up to one of the cars and then start talking
6 to them. That's when Samuel Clemons walked over
7 there and start talking to them. That's when the
8 car pulled off and parked up front and then that's
9 when Q.T. and Sam came back and told me that that
10 was their cousin, Bay.

11 MS. CAMPBELL: Objection, Your Honor, to what
12 they said.

13 THE WITNESS: That's when -- okay, then after
14 that was happening, like five, ten minutes later,
15 some more cars pulled in. That's when Corey was
16 tell -- that's when I seen dudes get out the car
17 from up front and that's when Corey told me, There
18 go the dude, Chad, and them.

19 Then that's when Corey went over, that's when
20 everybody start coming from the Mobil Gas Station.
21 Then that's when I seen Corey walk up there by
22 himself and start fighting Chad. And I seen they
23 was fighting one on one at first, but then I seen
24 more people start to getting -- getting jumping
25 Corey, that's when I spotted Dameon. Then I ran --

1 I went up to fight Dameon and then that's when the
2 light-skinned dude with the blue do-rag around his
3 face showed me the butt of his gun and told me if I
4 didn't back up, he was going to shoot my ass.

5 And that's when I -- first thing I thought,
6 like, if I don't stop this, somebody going to end up
7 getting hurt. So I knew the only way I probably
8 could stop it. So that's when I ran to Jerome
9 because I find out -- I didn't find out he had the
10 gun until after we got to the Waffle House because
11 he didn't want to bring it in and that's when he
12 took it off his waist and put it back in the car, so
13 that's when I found out he had a gun. So that's
14 when I went to him, asked him for the gun and that's
15 when I shot two times in the air just to stop the
16 fighting and everything so everybody can go home, so
17 Corey could stop getting beat up and everybody can
18 go home.

19 So after I shot two times in the air, that's
20 when the light-skinned dude with the blue rag around
21 his face and the dark-skinned dude with him start
22 firing back in my direction, that's when I just ran
23 and hid behind my truck. And that's when I tried --
24 I just fired above their hands just so they can stop
25 shooting at me and give me enough time to get --

1 everybody get in my truck and leave so the truck
2 won't get shot up on the way out.

3 So after I shot four times, I got in the truck
4 and was pulling off, that's when I realized my
5 passenger door was open and Jerome Thompson wasn't
6 in the car, that's when he ran and jumped in the car
7 and we pulled out the back and we headed down Two
8 Notch and we made a right by the Mobil.

9 That's when Jerome told me that he wanted to be
10 dropped off at, I think, the Burger King on Decker
11 and his sister was coming to get him, that's when he
12 took the nine millimeter back with him. And then
13 that's when I took Bernard William Kee home and then
14 I took Derrick and Demon home.

15 And as I was pulling in, when I got to my
16 house, I got a phone call from Doneisha and she was
17 telling me -- she was crying. And that's when I was
18 informed about what happened later after we left.

19 BY MS. EVERHART:

20 Q Now, I'm going to show you a photograph. Bear
21 with me one moment while I get this set up.

22 A Yes, ma'am.

23 Q This is an aerial photograph of the Waffle
24 House and the Mobil station. Does it look familiar
25 to you?

1 A Yes, ma'am.

2 Q And if I could have you step down and join me.

3 A (Witness leaves the witness stand.)

4 Q And I'm going to hand this pointer to you.

5 A Yes, ma'am.

6 Q When you pulled into the Waffle House that
7 night, where did you park?

8 A When I pulled in, we drove all the way to the
9 back. We parked right here (indicating).

10 Q And how did you park?

11 A I backed in. I backed in the truck right
12 there.

13 Q And then what did you do next?

14 A We got out and walked to the Waffle House and
15 stayed in there for like --

16 THE COURT: Speak up.

17 THE WITNESS: We stayed in there for like five,
18 ten minutes. I was talking to the females, that's
19 when I came back out, got back in my truck. And as
20 I was sitting in my truck, my girlfriend, Doneisha,
21 was standing at the passenger side.

22 BY MS. EVERHART:

23 Q Were there any other cars parked near you?

24 A The only car parked near me was the black
25 Cadillac. It was like -- it wasn't even parked in

1 there, it was parked this way, straight in this way.
2 It wasn't in a parking spot, it was straight in this
3 way.

4 Q And in what area did you see the fight take
5 place?

6 A The fight took place like right up in here.

7 Q And when you ran down to the fight, about how
8 far did you run down?

9 A I ran to about right here (indicating)..

10 Q And then what happened?

11 A That's when I -- when I ran right here, I shot
12 two times in the air to stop -- to break up the
13 fight because it seemed -- everybody -- basically
14 seemed like everybody came and was jumping on Corey.
15 And Corey -- and I never seen Rob Portee, but I know
16 they all just started jumping on Corey and it was
17 like between five of them. So I just ran right here
18 and just shot two times in the air to stop the fight
19 so Corey could get up and run and get to the car so
20 we all could leave. And I shot two times in the air
21 right here.

22 I ran back behind my truck and stood right
23 there, that's when the light-skinned dude and the
24 dark-skinned dude just start firing -- firing
25 towards this direction back here (indicating) and

1 that's when I just fired over their heads in this
2 direction because they was like right up in here,
3 and that's when I was firing in this direction over
4 their heads so they could stop shooting to give us
5 enough time for everybody to get in my truck so we
6 could pull away and get home safe without anybody in
7 my car getting hurt.

8 Q And how did you pull out?

9 A We pulled out the back right here (indicating),
10 right there that way.

11 Q Thank you. You can have a seat.

12 A (Witness resumes the witness stand.)

13 Q When you left that night, did you believe
14 anyone had been hurt?

15 A No, ma'am.

16 Q And how did you learn that someone had been
17 hurt?

18 A A phone call.

19 Q And when you talked with the police the first
20 time --

21 A Yes, ma'am.

22 Q -- what did they ask you about?

23 A Well, when they -- when I first pulled up at my
24 house, I had -- when I got out the car, officers --
25 I was put in handcuffs. And then one of the

1 officers kept telling me, Well I see you got on your
2 Blood colors or whatever. And I stated that I
3 wasn't in a gang. And he was like, That's bull
4 shit, the more you lie, it's just going to make it
5 harder on yourself. So that's when they asked me
6 about the gun. That's when I took them to the
7 little broke .22 I had in my house just to confirm
8 the story that Derrick wanted me to lie about. And
9 then after --

10 Q How did you learn about that story?

11 A After Derrick Guilyard had got questioned, he
12 came back and told me and Jerome if we get
13 questioned, this is the story we need to tell them
14 so we won't have to get into all of the involvement
15 about the case.

16 Q And when the police talked with you and they
17 told you about that story, were you honest with them
18 when confronted?

19 A Yes, ma'am.

20 Q And when did you tell them that you really had
21 a nine millimeter?

22 A They kept -- when they kept asking me did
23 Jerome have a nine millimeter and kept asking me
24 like, Well we got information stating Jerome had a
25 nine millimeter and he shot a nine millimeter,

1 that's when I told them, no, Jerome didn't shoot a
2 nine millimeter. And they kept asking me, Well are
3 you sure because we got a statement saying Jerome
4 shot a nine millimeter? That's when one of the
5 officers came back in and stated that Jerome
6 Thompson had done told him that he did indeed have a
7 nine millimeter, but he didn't shoot it. That's
8 when I told them that I had shot the nine millimeter
9 in the air.

10 Q And did they ask you about have you ever shot
11 that particular gun before?

12 A They asked did -- yes, ma'am.

13 Q And what did you tell them?

14 A I told them it was shot before in the back of
15 Meadow Lake. And they told me that if I can take
16 them to the shells, it will help clear me, it will
17 help clear me out the case.

18 Q And did you do that?

19 A Yes, ma'am.

20 MS. EVERHART: Beg the Court's indulgence one
21 moment.

22 (Pause.)

23 Q And when you were talking, you mentioned about
24 something that had occurred at the Main Event Club.
25 Can you tell me a little more about that?

1 A Yes, ma'am. It was --

2 MS. CAMPBELL: Objection, Your Honor. Does he
3 have personal knowledge of what happened at the
4 club? Was he there?

5 THE WITNESS: Yes, ma'am.

6 THE COURT: Hold on a second.

7 MS. CAMPBELL: I apologize. I'm sorry, Your
8 Honor.

9 THE WITNESS: Yes, ma'am.

10 It was one, I say, Friday. It was me, Jerome
11 Thompson, Derrick Guilyard, William Kee and we was
12 in the Main Event Club basically just chilling and
13 that's when a fight broke out to the right of the
14 club and that's when all the bouncers, the security,
15 went over there to break up the fight. And as I was
16 standing there watching the fight, a light-skinned
17 dude with braids came and he hit me on this side of
18 my face (indicating) and that's when we got into an
19 altercation, that's when we started fighting and we
20 was thrown out the club.

21 BY MS. EVERHART:

22 Q And you saw this gentleman at the Waffle House?

23 A Yes, ma'am.

24 Q Did you go to the Waffle House to get in a
25 fight?

1 A No, ma'am.

2 Q Why did you go to the Waffle House that night?

3 A I went -- after the first two -- after the
4 Wendy's and the Waffle House on Hard Scrabble, I
5 basically just forgot all about the fight. I really
6 wasn't worrying about it. So after I got a phone
7 call from Doneisha, she stated she wanted to see me
8 at the Waffle House on Two Notch. That's what the
9 reason -- that was the only reason I went to the
10 Waffle House on Two Notch to go see my girlfriend,
11 Doneisha.

12 Q And you've already talked a little bit about
13 the first fight going on at the Waffle House, but
14 when you went down there, what happened again?

15 A When I approached the fight to try to fight
16 Dameon, the light-skinned dude with the blue rag
17 around his face with braids showed me the butt of
18 his gun and told me that if I didn't back up, he was
19 going to shoot me -- he was going to shoot my ass.

20 Q How did that make you feel?

21 A I, basically, made me -- at that time, I didn't
22 know -- I thought it was just going to be a fight.
23 I thought I was going to be able just to fight
24 Dameon one on one and go home. So when he showed me
25 the gun, it basically made me feel kind of scared,

1 like somebody going to end -- if it don't stop now,
2 somebody really going to get hurt. So the only
3 thing I was trying to do is just to stop the fight
4 and get Corey and the rest of everybody out there I
5 came there with just to get away from the scene so
6 nobody can get seriously damaged because the way
7 that things was looking, looked like somebody was
8 going to get hurt. So the only thing I was trying
9 to do was just to stop the fight so they could stop
10 beating on Corey and he can get in his car and we
11 can leave.

12 Q Did you ever aim your gun at the guy in blue?

13 A No, ma'am, I never aimed. I never pulled a gun
14 and pointed it at anybody. It was always pointed in
15 the air.

16 Q Did you aim your gun at the other guy with him?

17 A No, ma'am.

18 Q Did you know either of the boys who were
19 shooting at you?

20 A No, ma'am.

21 MS. EVERHART: Beg the Court's indulgence.

22 THE COURT: Yes, ma'am.

23 (Pause.)

24 BY MS. EVERHART:

25 Q Andre, when you went to the Waffle House that

1 night, did you take a gun?

2 A No, ma'am.

3 MS. EVERHART: No further questions.

4 THE COURT: Cross-examination?

5 MS. CAMPBELL: Yes, sir.

6 CROSS-EXAMINATION

7 BY MS. CAMPBELL:

8 Q Just a little background. Were you enrolled at
9 school at that time or were you getting ready to get
10 enrolled at another school?

11 A I was enrolled at Richland Northeast, but I was
12 being transferred back to Keenan, W.J. Keenan.

13 Q That night you said that you were doing this --
14 how do you know Corey?

15 A I met Corey like a month or two -- some months
16 before. I met him at the football game.

17 Q Did he live in your neighborhood?

18 A No, ma'am.

19 Q Were y'all good friends?

20 A I'd talk -- we greeted each other every time we
21 see him, but we -- yeah, we wasn't good, good
22 friends, but we was friends.

23 Q And had y'all had a beef in the past?

24 A It really wasn't a beef. It was over a female.
25 He was dating a female previously, then she started

1 talking to me. We never got into it or nothing
2 about it.

3 Q And you're aware that Corey is a Blood?

4 A Yes, ma'am.

5 Q And you're in the Blood gang?

6 A No, ma'am, I was never initiated in a Blood
7 gang.

8 Q You were never initiated in a Blood gang?

9 A No, ma'am.

10 Q Do you remember back when you talked to the
11 police that day?

12 A Yes, ma'am.

13 Q And they read you your rights that day?

14 A I was not read my rights when I was put in
15 handcuffs at my house. I was basically -- I was put
16 in handcuffs and was just asked questions.

17 Q And do you remember getting your rights read to
18 you on the piece of paper you signed?

19 A Once I got to headquarters.

20 Q And, at that point, did they start asking
21 questions about what happened that night?

22 A No. The first question they asked me was I in
23 a gang.

24 Q And what did you tell them?

25 A I told them yes so I could get past that part

1 because that seem -- that's really -- if I would
2 have told them no, they would have just kept
3 thinking I was lying about everything else, so I
4 stated yes to that so I could get past that part and
5 tell the truth about what happened that night.

6 Q But, at that point, the first story you told
7 them wasn't the truth, was it?

8 A It was the truth, it was just the gun, telling
9 the description of a gun was not the truth.

10 Q Okay. So that's the only thing that was wrong
11 with your first story was the description of the
12 gun?

13 A Yes, ma'am.

14 Q And you just told this jury that the reason you
15 went there that night was to see your girlfriend?

16 A Yes, ma'am.

17 Q And do you remember telling the police about
18 why you went there that night?

19 A I told them I got a phone call from my
20 girlfriend.

21 Q Do you remember saying, I said I was there to
22 fight a boy named Dameon who was a Folk?

23 A They never asked -- they asked me which --

24 Q Do you want to look at your statement?

25 A No, ma'am, I know what it says. But did

1 they ever ask -- they never asked what specific
2 Waffle House. The reason I was out that night was
3 to go to a party. Then after seeing Dameon, I was
4 supposed to fight him at the Waffle House on Two
5 Notch, then at Wendy's, then at the Waffle House on
6 Hard Scrabble. After an hour and 30 minutes, I got
7 tired of it and got a phone call from my girlfriend
8 stating she was at the Waffle House on Two Notch,
9 that's the reason I went back to that Waffle House.
10 I was never told to meet Dameon and go back to the
11 Waffle House on Two Notch. I was never told that.
12 We never received a phone call telling me to meet at
13 the Waffle House on Two Notch.

14 Q So let me get this straight. You were out that
15 night to fight Dameon at another Waffle House?

16 A No, ma'am. I really came out to go to a party
17 that night. Just after not going to the party and
18 chilling at the Waffle House at the Kangaroo, by the
19 Kangaroo, that's when the altercation with Dameon
20 again started when he rode past and we exchanged a
21 few words with Corey and them. That's when Corey
22 stated that, That was Dameon, the dude that hit you
23 in the club.

24 Q So that night your testimony is to this jury
25 that you weren't looking for Dameon to fight Dameon?

1 A No, ma'am. I was never looking for Dameon that
2 night.

3 Q Do you know why you put that in your statement
4 to the police?

5 A No, ma'am. I told them -- I basically told
6 them that we never officially -- I never wanted to
7 go out. I never got in my truck to go out looking
8 for Dameon. I went out for a party. At the moment
9 the party had done got ended and when I went to the
10 Waffle House and came away, that's when Dameon came
11 out. And I was still upset that a stranger that I
12 don't know hit me in the club for a reason I don't
13 know, so when I was notified that was him, I wanted
14 to solve the problem. I wanted to really know why
15 he hit me and if he wanted to fight me. So that's
16 when I got into it and wanted to fight Dameon that
17 night.

18 Q Did you know Dameon was a Folk?

19 A No, ma'am.

20 Q Do you know why, when they asked you about your
21 involvement in the incident at the Waffle House, you
22 said, I was there to fight a boy named Dameon who
23 was a Folk?

24 A After being at the Waffle House at the
25 Kangaroo, that's when I was notified that Dameon was

1 a Folk. I never knew him before that. I never -- I
2 just seen him that night we got into it in the club.
3 I never knew his name, never knew what he was.
4 After Corey -- Corey had reached a previous beef
5 with Dameon, that's how he knew he was a Folk and
6 that's how Corey knew his name, that's when I was
7 informed that Dameon was a Folk and what his name
8 was.

9 Q You can explain it, but do you know why you
10 told the police that you were there to fight a boy
11 named Dameon who was a Folk?

12 A I really can't explain it. You -- in previous,
13 you see that I was really going to the Waffle House
14 to see my girlfriend, that was stated in the other
15 statements because we got a phone call saying that
16 her and her home girls was at the Waffle House on
17 Two Notch by the Mobil so that's why we went there.

18 Q You stated that once you got to the Waffle
19 House, you went inside for a little bit?

20 A Yes, ma'am.

21 Q Then you went back outside to your car?

22 A Yes, ma'am.

23 Q And you were talking to your girlfriend out
24 there?

25 A Yes, ma'am.

1 Q And Corey, who is also a Blood?

2 A Yes, ma'am.

3 Q Who you've known for about a month?

4 A Yes, ma'am.

5 Q Who you had a prior beef with?

6 A It really was no beef. We really never
7 exchanged words about it. He just was upset and he
8 never confronted me about it. I found out later on
9 from the girl that he was mad about it. I never
10 knew officially that there was a beef.

11 Q But that night you were there to protect him?

12 A No, I really wasn't there to protect him. He
13 was there at the time and he informed me that he
14 wanted to fight Chad at the time. I wasn't going to
15 let -- after I seen it wasn't a one-on-one, I didn't
16 want to see -- anybody that comes with me, I don't
17 want to see them get beat up by 10 to 15 dudes.

18 Q So Corey went with you that night?

19 A No, Corey did not ride with me that night.

20 Q Okay. So the people that were with you that
21 night were the people you really wanted to protect?

22 A Yes, ma'am.

23 Q And did you know they were in gangs?

24 A No. I knew some of them -- I knew they was
25 around it most of the time, but I never knew all of

1 them was initiated actually being in the gang. I
2 knew they was around it and they had some
3 confrontation with it.

4 Q So you're in the thing with five people
5 associated with gangs?

6 A All of them wasn't associated with gangs,
7 ma'am.

8 Q With the Bloods?

9 A The older ones was.

10 Q Do you know Derrick Guilyard?

11 A Yes, ma'am.

12 Q Jerome Thompson?

13 A Yes, ma'am.

14 Q Bernard Kee?

15 A Yes, ma'am.

16 Q They're Bloods?

17 A That's what I was -- I didn't never know they
18 was actually deep in the gang.

19 Q And you told the police that you were a Blood?

20 A That's to get past that part, that was the
21 first question they asked me.

22 Q In fact, you said you were a certain sect of
23 the Bloods. How did you know, if you aren't in the
24 Bloods, what a sect of the Bloods were?

25 A From being around it, from hearing in -- I went

1 to school and there's a lot of gang confrontation at
2 school, so I actually hear a lot of stuff.

3 Q And what is a Tree Top Piru?

4 A It's a sect from Bloods. It started -- from my
5 knowledge, from hearing about it, it was something
6 that came from California that really isn't real
7 down here.

8 Q It's not real down here?

9 A From what I was -- from being -- hearing about
10 it, people --

11 Q You just testified that there's a problem with
12 gangs at the schools, as well as everywhere else,
13 isn't it?

14 A Yes, ma'am.

15 Q And so the gangs are real?

16 A Yes, ma'am.

17 Q And the Tree Top Piru is a specialized part of
18 the Blood gang?

19 A If you say so. I really don't know because I'm
20 not in it to state that.

21 Q You just explained it to me, didn't you?

22 A I'm telling you what I knew about it from being
23 -- what I heard about it, basically.

24 Q You stated that y'all went back to your car.

25 Who all was in your car when the fight broke out

- 1 with Corey?
- 2 A Derrick Guilyard, Jerome Thompson, William Kee
- 3 and Demon Griffin.
- 4 Q And they were all riding around in your car,
- 5 right?
- 6 A Before the fight broke out, all of us was
- 7 sitting inside the car.
- 8 Q Sitting inside the car?
- 9 A Yes, ma'am.
- 10 Q And then you saw what happened to Corey, who's
- 11 a Blood member, who you've known for about a month,
- 12 right?
- 13 A I knew him longer than a month, ma'am.
- 14 Q I'm just quoting you. Who -- did he live in
- 15 your neighborhood?
- 16 A No. I seen him at a lot of places, ma'am.
- 17 Q At a football game?
- 18 A That's where I officially -- that's where I
- 19 originally met him at.
- 20 Q And this person gets into a fight. At what
- 21 point did you see Dameon Dowling who you've been
- 22 looking for all night to fight?
- 23 A After Corey and Chad, when they started
- 24 fighting one-on-one, that's when I seen Dameon step
- 25 from behind one of the dudes and that's when I went

1 to confront him.

2 Q And you went to confront Dameon?

3 A Yes, ma'am.

4 Q So you didn't go down there to help Corey?

5 A No, really -- no, ma'am, I went down there for
6 a one-on-one fight with Dameon.

7 Q And you mentioned that this fight is going on
8 in the middle of the parking lot, right?

9 A Yes, ma'am.

10 Q And you're coming from the back?

11 A Yes, ma'am.

12 Q There are a lot of people all around this going
13 on?

14 A Yes, ma'am.

15 Q And then you mentioned that there are two guys
16 that went and had parked in front of the Mobil?

17 A Yes, ma'am.

18 Q Who you're ultimately going to say shot at you,
19 right? They're the ones who shot at you.

20 A (No response.)

21 Q The guy with the blue?

22 A Oh, yes, ma'am.

23 Q And then the guy that was with him?

24 A Yes, ma'am.

25 Q And you said you went down there to confront

1 Dameon. How close to Corey and those did you get
2 before you went -- did you get close to Dameon?
3 A Actually, Dameon was -- the Crip dude was
4 standing, like, close by Dameon.
5 Q Was close by Dameon. And at that point, you
6 said that the Crip had a gun that you could see?
7 A Yeah, he --
8 Q And he said something to you?
9 A Yes, ma'am.
10 Q And, at that point, you got scared?
11 A Yes, ma'am.
12 Q So you ran back to your car?
13 A Yes, ma'am.
14 Q And your testimony here today is you only knew
15 about Jerome Thompson's gun when you pulled into the
16 Waffle House parking lot?
17 A Yes, ma'am. At the time, I didn't know he had
18 a gun on him. I didn't know until we got out the
19 car at the Waffle House and he pulled it out from
20 his waist and asked could he sit it in the car so he
21 won't --
22 Q Is Jerome a good friend of yours?
23 A Yes, ma'am.
24 Q And he's been a friend of yours for a long
25 time, right?

1 A Yes, ma'am.

2 Q More than a month?

3 A Yes, ma'am.

4 Q Any reason why Jerome would say he had the gun
5 in his lap the whole time y'all were riding around?

6 A No, ma'am. It wasn't on his lap.

7 Q So that's the first time you realized there's a
8 gun. So you go down there to confront the person
9 you'd been searching for all night to get into a
10 fist fight with, at which point you see someone pull
11 out a gun and you get scared so you run back to the
12 car?

13 A Yes, ma'am.

14 Q And, at that point, back in your car are all
15 your good friends?

16 A They wasn't in the car. They were standing out
17 -- Jerome was standing outside the car.

18 Q So, at that point, you want to get away from
19 this, there's a gun involved, right?

20 A Yes, ma'am.

21 Q And you know Jerome has a gun. So you
22 mentioned that you received a phone call that night,
23 right?

24 A (No response.)

25 Q You got phone calls that night?

- 1 A From Doneisha, my girl --
- 2 Q So you had your cell phone?
- 3 A Yes, ma'am.
- 4 Q So, at that point, did you call the police?
- 5 A No, ma'am.
- 6 Q Why not?
- 7 A Because my phone -- my battery actually had
- 8 went dead by the time we got there.
- 9 Q Your battery went dead by the time you got
- 10 there?
- 11 A And by the time --
- 12 Q Did you use Jerome's phone?
- 13 A No, ma'am.
- 14 Q What about Derrick's phone?
- 15 A No, ma'am.
- 16 Q What about Bernard's phone?
- 17 A I didn't know if they all had a phone.
- 18 Q Did you run into the Waffle House and call the
- 19 police? They had a phone.
- 20 A Ma'am, Corey would still have been getting beat
- 21 up by the time they got there. He could have been
- 22 seriously injured.
- 23 Q Did you leave? You'd seen a gun, you're
- 24 scared, you're scared for your friends' lives, did
- 25 you leave?

- 1 A No, ma'am, because Corey was still getting beat
2 up.
3 Q So your solution was to go and get a gun and
4 start shooting?
5 A No. My solution was to stop the fight.
6 Q So the reason you're testifying that you shot
7 the gun was to stop the fight?
8 A Yes, ma'am.
9 Q And so you shot it into the air?
10 A Yes, ma'am.
11 Q Knowing that someone else down there had a gun?
12 A Yes, ma'am.
13 Q And it never occurred to you that they might
14 shoot at you?
15 A No, ma'am. I just that --
16 Q That didn't occur to you?
17 A No, ma'am.
18 Q Then you said, before any shots -- this is your
19 testimony on direct, before any shots were fired,
20 you then run around to the back of your car?
21 A Yes, ma'am.
22 Q Once you shot the shots in the air to stop the
23 fight, why didn't you just jump into your car and
24 leave?
25 A They was still shooting -- as we were pulling

1 off, somebody could have -- if we would have tried
2 to roll off with shots still being fired at us,
3 that's kind of dangerous because one of us could
4 have got shot inside the car.

5 Q In your statement, you said as you pulled off,
6 the shots still were being fired, according to
7 your --

8 A Yes, ma'am.

9 Q So that was dangerous?

10 A No. I had to leave. After a while, I just --
11 I'd seen that bullets -- the shots weren't going to
12 be stopped, so I just hopped in my truck as quick as
13 I can. At that time, everybody was already in the
14 truck, so I was basically trying to -- getting in
15 the truck with all them in there.

16 Q Let me get one thing straight. Before, you
17 testified that you shot twice in the air and ran
18 around to the back of your truck and that's when the
19 shots started, that's what you testified to. Why
20 did you run around to the back of the truck? Why
21 didn't you run and get into your truck?

22 A Ma'am, when I reached my truck, shots -- a shot
23 had already been fired.

24 Q That's your testimony now?

25 A That's what I was stating on paper.

1 Q Then you testified that you shot how many times
2 after you got behind the truck?

3 A Three or four.

4 Q Three to four?

5 A Yes, ma'am.

6 Q And you mentioned, and you were very specific
7 about this, that you were shooting over people's
8 heads?

9 A Yes, ma'am.

10 Q And do you remember shooting over towards the
11 Mobil Gas Station?

12 A No, ma'am.

13 Q Did you tell the police that you could have
14 done that?

15 A They asked me, what if we told you a bullet
16 that came from -- that was directly lined up with
17 your -- with a nine millimeter shell was stuck in
18 the wall in the Mobil.

19 Q They also asked you if you'd ever shot that gun
20 before, right?

21 A Yes, ma'am.

22 Q And you took them to an area in Meadow Lake and
23 -- is it Meadow Lake?

24 A Yes, ma'am.

25 Q In the back of Meadow Lakes where you had shot

1 the gun before?

2 A They told me that if I showed them where the
3 shells was at, it'll help clear me out this case.

4 Q Why were you practicing shooting that gun?

5 A Ma'am, I wasn't practicing shooting the gun.

6 Q Okay. Why did you shoot the gun in the back of
7 Meadow Lakes?

8 A At the time, ma'am, I don't really know. It
9 was just, I was offered to shoot the gun in the air
10 and that's what I did, ma'am. It wasn't in my
11 possession.

12 Q Once you pulled off, were you pretty scared?

13 A Yes, ma'am, because shots were still being
14 fired.

15 Q According to you, shots were still being fired?

16 A Yes, ma'am.

17 Q But you just said it wasn't safe to pull off
18 while shots were being fired?

19 A After I shot three or four times and realized
20 they wasn't going to stop shooting and everybody was
21 in my car at the time, the best thing for me to do
22 was to get in the car and pull off.

23 Q And then I believe you testified that you did
24 pull off?

25 A Yes, ma'am.

1 Q Then you went back around the Waffle House?

2 A Yes, ma'am.

3 Q And then went back on to Two Notch?

4 A Yes, ma'am.

5 Q Right where -- next to where the car was parked
6 where those two guys were shooting at you?

7 A No, ma'am, we went around the back.

8 Q And came out on the other side of the Waffle
9 House?

10 A Yes, ma'am.

11 Q On Two Notch?

12 A Yes, ma'am.

13 Q You didn't go back to that area behind there?
14 That's what you just showed the jury.

15 A I showed back behind the Waffle House and we
16 was in -- ended up in another parking lot.

17 Q That would be the place next door?

18 A Yes, ma'am.

19 Q Let me show you this. Your testimony was you
20 went behind the parking lot?

21 A Yes, ma'am.

22 Q And then came out this way?

23 A No, ma'am. I went behind the parking lot and
24 went straight through there and came out this way,
25 ma'am.

1 Q Right here?

2 A Yes, ma'am.

3 Q And the people that were shooting at you were
4 parked right there?

5 A Yes, ma'am, but shots were still being fired,
6 so, basically, I didn't know where they was at at
7 the time.

8 Q What did you do with the gun after you finished
9 shooting at the people in the parking lot?

10 A I put it in the passenger seat.

11 Q And at that point as you pulled off, you
12 dropped off who first?

13 A Jerome Thompson.

14 Q Who next?

15 A William Kee.

16 Q Then where did you go?

17 A To Meadow Lake and took Demon and Derrick home.

18 Q And then you got a phone call from your
19 girlfriend, right?

20 A Yes, ma'am.

21 Q She was upset?

22 A Yes, ma'am.

23 Q And you mentioned that you wanted -- you were
24 desperate to know where the guy was when he got
25 shot?

1 A Yes, ma'am.

2 Q And at first, she told you, I think that he'd
3 been shot in the head. And you told her you didn't
4 care about that part, right?

5 A I didn't ask -- I didn't ask her that -- I was
6 like that's not the question I really wanted to know
7 about.

8 Q And what was the question you really wanted to
9 know about?

10 A Where was he standing.

11 Q And where did she tell you the body was when
12 she saw it?

13 A In front of the Mobil.

14 Q In front of the Mobil?

15 A Yes, ma'am.

16 Q I'm showing you State's Exhibit Number 39,
17 that's over that area where you shot?

18 A No, ma'am. The Crip dude and the other dude
19 wasn't standing over there, ma'am.

20 Q But you admitted to the police that when you
21 were running around, you were shooting and you could
22 have shot over there?

23 A I stated when I was running with the gun in my
24 hand, which was still being pointed up, I fired a
25 shot.

1 Q Why did you want to know specifically from your
2 girlfriend, if you're just shooting over people's
3 heads, why did you want to know specifically from
4 your girlfriend where the body was?

5 A I just wanted to know, ma'am, to tell you the
6 truth. I really wasn't worried about me doing it
7 because I know I was never aiming at anybody to
8 shoot them. I just wanted to ask -- I asked her,
9 being curious, wanting to know where the body was,
10 ma'am.

11 Q Do you remember being asked the questions, did
12 you feel that one of the shots you fired may have
13 hit the boy, and you answered, I was worried about
14 it?

15 A That's the same as being curious.

16 Q Do you know why when -- do you know who Rob
17 Portee is?

18 A Yes, ma'am.

19 Q And he's a Blood gang member?

20 A Yes, ma'am.

21 Q Do you know why you said something about, I'm
22 going to -- is it chunk --

23 MS. CAMPBELL: Beg the Court's indulgence. Let
24 me make sure I don't get the terminology wrong.

25 Q Why did you tell him that night prior to any

1 shooting that you were going to chunk at those
2 niggers?

3 A Ma'am, I never told Robert Portee I was going
4 to chunk at anybody, ma'am.

5 Q And he's a Blood -- he's an acquaintance of
6 yours?

7 A I know him. I don't really know him like that.
8 I just know him from seeing him prior sometimes.

9 Q So you're saying you didn't say that to him?

10 A No, ma'am. I never had a conversation with
11 Robert Portee that night.

12 Q And you would agree with me that Jerome is a
13 friend of yours?

14 A Yes, ma'am.

15 Q And, in fact, he's the one that you had to get
16 the gun from that night?

17 A Yes, ma'am.

18 Q And you even asked him and got the gun out from
19 him that night, didn't you?

20 A Yes, ma'am.

21 Q Do you remember the next day talking to him?

22 A Yes, ma'am.

23 Q Do you remember saying that you weren't sure
24 whether or not you had done it because of all the
25 shooting?

- 1 A No, ma'am.
- 2 Q Did you remember the next day telling your
3 friend, Jerome Thompson, that he wasn't sure, but he
4 more than likely did shoot the dude?
- 5 A No, ma'am, I never told him that.
- 6 Q Your testimony to this jury is that when you
7 ran behind your car, you were definitely shooting up
8 into the air?
- 9 A Yes, ma'am.
- 10 Q You weren't shooting back at the people that
11 were trying to shoot you?
- 12 A Ma'am, it was cars all lined up right there,
13 ma'am. If I was to aim down, it would have hit a
14 car, ma'am. It was cars still parked all around --
15 right along with me, ma'am, so I never aimed at
16 nobody. I was aiming in the air, ma'am.
- 17 Q I'm going to show you State's Exhibit Number
18 37. Do you recognize that?
- 19 A Yes, ma'am.
- 20 Q Is that the area where you were standing, not
21 exactly, but the area where you were standing when
22 you were doing some of the shooting?
- 23 A Yes, ma'am. My truck was parked right there.
- 24 Q It was parked right here in this white spot?
- 25 A No, ma'am, it was parked -- yes, ma'am.

1 Q Show me where.

2 A It was parked right here (indicating).

3 Q Where this car is?

4 A Yes, ma'am.

5 Q So your testimony to this jury is that's where
6 your car was parked is where my finger is, making
7 sure I'm right?

8 A Yes, ma'am, because I was standing on the back
9 left side of it -- on the back right side of it.

10 MS. CAMPBELL: Beg the Court's indulgence.

11 THE COURT: Yes, ma'am.

12 (Pause.)

13 BY MS. CAMPBELL:

14 Q Do you remember the police asking you
15 specifically about the shot that came from that area
16 over into the Mobil Gas Station?

17 A Yes, ma'am.

18 Q And you said at that point, When I fired that
19 shot, it wasn't well aimed?

20 A I told them it wasn't aimed at the dudes at the
21 -- I, basically, was stating it wasn't aimed at the
22 Crip dude and the dark-skinned dude with him.

23 Q Do you remember one of them asking you about
24 when you were taking cover and fired some shots,
25 whether or not people were running back and forth

1 and you said, I couldn't really tell, I was ducking
2 and dodging because those two boys were shooting and
3 coming at me?

4 A Yes, ma'am.

5 Q Do you know what happened to the gun?

6 A No, ma'am. From what --

7 Q Do you know why Jerome got rid of it?

8 A No, ma'am. He just say he didn't want it no
9 more. From my information, he told me he didn't
10 want it no more.

11 Q Do you remember telling him that you thought
12 you had a body on it?

13 A No, ma'am.

14 Q Just for the record, the police came and found
15 you; is that correct?

16 A No, ma'am. Actually, when my mother got the
17 phone call, we went back home to them.

18 Q And that's when they were already at your
19 house?

20 A Yes, ma'am.

21 MS. CAMPBELL: Thank you.

22 (Pause.)

23 THE COURT: Oh, I'm sorry. Are you through?

24 MS. CAMPBELL: Yes, sir, I'm sorry.

25 THE COURT: Any questions of the witness?

1 MR. SUTHERLAND: No questions.

2 THE COURT: Anything further of the witness?

3 MS. EVERHART: Yes, Your Honor. Thank you.

4 REDIRECT EXAMINATION

5 BY MS. EVERHART:

6 Q Andre, you testified that you didn't know Rob
7 that well; is that correct?

8 A No, ma'am.

9 Q You didn't come with him that night?

10 A No, ma'am.

11 Q You didn't talk with him that night?

12 A No, ma'am.

13 Q Originally, on this night, you said you went
14 out to go to a party?

15 A Yes, ma'am.

16 Q That party didn't happen because it was shot
17 up?

18 A Yes, ma'am.

19 Q So you went with your friends to the Kangaroo?

20 A Yes, ma'am.

21 Q And that's when you learned about the boy who
22 fought you at the Main Event?

23 A Yes, ma'am.

24 Q And you wanted to fight him?

25 A Yes, ma'am.

1 Q And you planned to go fight him at another
2 Waffle House?

3 A Yes, ma'am.

4 Q But that didn't happen?

5 A No, ma'am.

6 Q And you got a call from your girlfriend?

7 A Yes, ma'am.

8 Q She told you to come to this Waffle House?

9 A Yes, ma'am.

10 Q And that was why you were at this Waffle House
11 that night?

12 A Yes, ma'am.

13 Q When you got there, I believe you said you
14 didn't know Jerome had a nine millimeter with him
15 until y'all got out of the car?

16 A Yes, ma'am.

17 Q He didn't want to take it into the Waffle
18 House?

19 A No, ma'am.

20 MS. CAMPBELL: Objection, Your Honor, if she
21 can just let him testify -- leading, I'm sorry.

22 THE COURT: You're leading. State your
23 questions in a nonleading fashion, please.

24 MS. EVERHART: Thank you, Your Honor.

25 BY MS. EVERHART:

1 Q What did he do with that gun?

2 A He put it under his seat in back -- in my
3 truck.

4 Q Y'all went into the Waffle House?

5 A Yes, ma'am.

6 Q And you were in there how long?

7 A About ten minutes talking to Doneisha.

8 Q And then what happened then?

9 A That's when I got back to -- went back to the
10 car and we was planning on leaving because there
11 wasn't nothing else to do, that's when Doneisha came
12 out to the truck, started talking to me at the
13 passenger side.

14 Q And is that when you saw the fight?

15 A Yes, ma'am. After I was talking to her -- when
16 I was talking to her, that's when I seen the group
17 of dudes come to the Waffle House.

18 Q And did you see Dameon down at the fight?

19 A Yes, ma'am.

20 Q Is that why you went down there?

21 A Yes, ma'am.

22 Q When you got down there, you told the police
23 that you saw a guy in light blue flashing a gun at
24 you; is that correct?

25 A Yes, ma'am.

1 Q What did he say to you?

2 A He told me that if I didn't back my ass up, he
3 was going to shoot my ass.

4 Q How did that make you feel?

5 A I felt really scared because I know if this
6 would have kept going on, somebody was going to get
7 hurt. So I just wanted it to end as quick as
8 possible so we could leave.

9 Q So you were concerned something might happen to
10 you?

11 A Yes, ma'am.

12 Q You were concerned something might happen to
13 the people around you?

14 A Yes, ma'am.

15 Q And is that why you went back to your car and
16 grabbed Jerome's gun?

17 A Yes, ma'am.

18 Q How quickly do you think that happened, you
19 running back and grabbing the gun and shooting into
20 the air?

21 A Yeah, it happened within probably a minute.

22 Q Not very long at all?

23 A No, ma'am.

24 Q Did you have time to really think about what
25 you were doing?

1 A No, ma'am.

2 Q Would you say -- were you acting on emotion?

3 A Yes, ma'am.

4 Q After you fired in the air, you testified you
5 ran around to the back of your vehicle?

6 A Yes, ma'am.

7 Q You also testified that you shot over the other
8 cars parked out there?

9 A Yes, ma'am.

10 Q Were you aiming at anyone?

11 A No, ma'am.

12 Q What were you trying to do?

13 A Stop the fight, stop the shooting.

14 Q At any point while you were shooting out there,
15 did you try to hit the Mobil Gas Station?

16 A No, ma'am.

17 Q Do you think you might have hit one part of the
18 Mobil Gas Station?

19 A If I did, it was the only shot that -- when I
20 first came around the truck.

21 Q And why is that? How do you know where you
22 were aiming?

23 A Because I had the gun in my right hand and I
24 wasn't running with it down. And when I got around
25 the truck, I heard another shot, that's when I just

1 shot the gun.

2 Q And after that, that's when you aimed toward
3 Two Notch Road?

4 A Yes, ma'am, where the Crip dude and the other
5 dude was standing.

6 Q And you told that to the police, didn't you?

7 A Yes, ma'am.

8 Q At that time, did you see anyone standing in
9 the Waffle House parking lot where the fight had
10 taken place?

11 A No, ma'am.

12 Q So there was no one in that cross fire?

13 A No, ma'am.

14 Q Later, when the police came to your house with
15 a search warrant, what did they end up arresting you
16 for?

17 A I later found out that they arrested me for
18 breaching the peace of an aggravated nature and
19 unlawful carrying of a pistol under the age of the
20 21 and possession of a stolen pistol.

21 Q They didn't arrest you for murder?

22 A No, ma'am.

23 MS. EVERHART: Beg the Court's indulgence.

24 THE COURT: Yes, ma'am.

25 (Pause.)

1 BY MS. EVERHART:

2 Q That afternoon after you were arrested, you sat
3 down with the police, correct?

4 A Yes, ma'am.

5 Q And you gave them a statement?

6 A Yes, ma'am.

7 Q And they confronted you about the story about
8 the .22?

9 A Yes, ma'am.

10 Q Were you honest with them after that?

11 A Yes, ma'am.

12 MS. EVERHART: No further questions, Your
13 Honor.

14 THE COURT: Anything else of the witness?

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

16 (Pause.)

17 MS. CAMPBELL: Just a couple questions, Your
18 Honor.

19 RECROSS-EXAMINATION

20 BY MS. CAMPBELL:

21 Q Bloods and Folk don't get along?

22 A Sometimes they do, ma'am. Actually, Samuel
23 Clemons was affiliated with the Folks and I hung
24 with him a lot.

25 Q Okay. And Dameon Dowling was a Folk and you

1 didn't get along with him?

2 A Ma'am, I didn't know he was a Folk. I never
3 knew Dameon Dowling.

4 Q And that just ended up in your statement that
5 you knew out he was a Folk?

6 A I found out that night by Corey Sanders who
7 knew Dameon -- had a beef with Dameon previous.

8 Q So you would agree that Corey, who was a Blood,
9 and your group got along, and then Dameon was a Folk
10 and that other group at the Mobil Gas Station got
11 along?

12 A Yes, ma'am.

13 Q And when you saw a gun in an already volatile
14 situation, you thought that if you went and got a
15 gun and fired it into the air, it would help things?

16 A I thought it would diffuse the problem, diffuse
17 the fight, it would diffuse Corey from getting beat
18 up.

19 Q You were just threatened by someone, this is
20 your testimony, you just had someone threaten to
21 shoot you and your response was to go get a gun and
22 shoot?

23 A Yes, ma'am, to stop anybody else from getting
24 hurt.

25 Q And as you mentioned, when I asked you about

1 Bloods and Folks, you mentioned that Samuel Clemons
2 is a Folk?

3 A Yes, ma'am, from --

4 Q And you and he get along even though you're a
5 Blood?

6 A No, ma'am. You asked did Blood and Folks get
7 along and Samuel Clemons was with Jerome and all us
8 that night.

9 MS. CAMPBELL: Thank you, Your Honor. Nothing
10 further.

11 THE COURT: Anything else?

12 MR. SUTHERLAND: No, sir.

13 THE COURT: Anything else?

14 RE-REDIRECT EXAMINATION

15 BY MS. EVERHART:

16 Q When you fired that gun that night, did
17 everyone scatter?

18 A Yes, ma'am.

19 Q Is that what you wanted to happen?

20 A Yes, ma'am.

21 MS. EVERHART: No further questions.

22 THE COURT: Recross, re-recross?

23 MS. CAMPBELL: No, sir.

24 THE COURT: Thank you. You may step down.

25 All right. Do you anticipate any further

1 witnesses?

2 MS. EVERHART: No more, Your Honor. The
3 defense rests.

4 THE COURT: Do you anticipate any reply?

5 MS. CAMPBELL: I just need five minutes to talk
6 about it.

7 THE COURT: Do you still want to pursue your
8 motion about the scene?

9 MS. EVERHART: Yes, Your Honor.

10 THE COURT: Okay. Ladies and gentlemen,
11 Mr. Boone has now rested and the State has an
12 opportunity to present evidence in reply. They
13 can't go back through the whole case, they can only
14 respond to what might have been brought out during
15 today's presentations. I need to give them a little
16 bit of time to respond to that.

17 And I'm going to have you go to the scene.
18 They're going to take you by and feed you on the
19 way, so they'll take you to a restaurant. They're
20 taking you to Lizards Thicket. I hope you like
21 Lizards Thicket, but that's where they're going to
22 take you. Then they're going to take you to the
23 scene. I'll have some further instructions about
24 that before you go. I have to emphasize some things
25 to you, but right now I just need you to step in the

1 jury room while they have a chance to tell me if
2 there's any reply. Leave your notes in the
3 courtroom. Don't discuss the case.

4 (The jury retires to the jury room.)

5 THE COURT: We'll be at ease. Let me know as
6 soon as you decide.

7 (Brief Recess.)

8 THE COURT: Did you have something?

9 MS. CAMPBELL: The only thing we would -- that
10 I could possibly -- we have no reply testimony, Your
11 Honor, but the only thing that I don't know what's
12 appropriate at this point just because I've never
13 had this come up before, we did put in the redacted
14 version of the co-defendant's statement. And I
15 believe the reason you have to do that is because
16 there's no right to cross-examine.

17 At this point, the defense has had the
18 opportunity to cross-examine this defendant about
19 his statement. And I don't know if it's appropriate
20 at this point to put the entire statement in rather
21 than the redacted version that we agreed to earlier.
22 Or if I can just tell the jury that this is redacted
23 because you can only use it against him and -- I'll
24 leave it alone. Would you like me to leave it
25 alone?

1 **THE COURT:** The only statement that's in that's
2 redacted is Mr. Boone's?

3 **MS. CAMPBELL:** Yes, sir. I believe -- did we
4 redact --

5 **MR. SUTHERLAND:** Ours is to a degree.

6 **MS. CAMPBELL:** I think there's just a couple of
7 spaces in the third statement from Patterson. So
8 both of them have -- or if you're just going to do a
9 general charge that I can say, you know, the
10 redacted, because they can only be used against the
11 individual defendant.

12 **THE COURT:** I really don't think you're
13 supposed to comment on it being redacted. The
14 reason we go to such lengths to redact it so that it
15 doesn't call attention to the redaction is because
16 we don't call attention to the redaction.

17 **MS. CAMPBELL:** You're right.

18 **THE COURT:** I told you all earlier I don't ever
19 recall specifically having a Bruton issue of this
20 depth in a case. What I would have anticipated
21 would have been that while the Defendant Boone was
22 on the stand, that you all would have advised the
23 Court that you had a matter of law that you needed
24 to address. I would have sent the jury out. I
25 would then have made a ruling as to whether the

1 unredacted statement could be used to question the
2 witness and then -- of course, the Bruton issue
3 would be gone because the co-defendant Boone would
4 have testified.

5 Now, I told you all earlier, and I don't want
6 to mislead anybody, that I will be liberal about
7 allowing the matter to be reopened. So you all tell
8 me where you think we're going from here.

9 How much difference is it in the statement?
10 It's just the redaction of the name or the
11 identifying --

12 MS. CAMPBELL: It just says them shooting at
13 the Crip, where it's you said the Crip and Eugene.

14 MR. SUTHERLAND: And my concern is that I would
15 have had to actually open the door to this in
16 cross-examining Mr. Boone to the hearsay
17 identification that's contained within the
18 statement, sir. And I didn't feel that I should be
19 opening the door to that hearsay I.D. in order to
20 cross-examine him about hearsay I.D., and that's
21 what I expressed to Ms. Campbell, you know, I mean,
22 I have a deep concern about the hearsay
23 identification that's in the unredacted statement.
24 And where it wasn't brought up on direct or on
25 cross-examination by the other parties, I certainly

1 didn't want to open the door to it in that respect.

2 THE COURT: Anything else?

3 What's hearsay about it? You all have to
4 forgive me, I've just forgotten over the course of
5 the time.

6 MR. SUTHERLAND: I believe in his statement, he
7 says that he knows the person's name is Eugene
8 because Duck told him the person's -- or Doneisha
9 told him that the person's name is Eugene, not that
10 he knows him or anything, but just after the fact
11 that Doneisha Smallwood had told him that the name
12 of the person that he saw was Eugene.

13 THE COURT: So there's no objection now to
14 having the statement refer to the other person being
15 down there with the Crip firing?

16 MR. SUTHERLAND: I mean, I don't see -- I don't
17 see where, since he's already testified to that
18 effect, where I would have had the opportunity to
19 cross-examine him about the dark-skinned dude and so
20 forth, I don't see where that would be a problem
21 just with respect to the hearsay identification. I
22 mean, if Ms. Campbell wants to just let it go in as
23 it is, I mean I would be fine with that. I don't
24 think there's anything really more substantive to be
25 gained other than they were able to adduce by his

1 actual testimony.

2 (Pause.)

3 THE COURT: All right. Is there a motion?

4 MR. SUTHERLAND: Your Honor, I would move to
5 exclude the co-defendant's statement.

6 THE COURT: There's no need to move to exclude
7 it, it's not in. You mean exclude what's already in
8 or --

9 MR. SUTHERLAND: No, to exclude the unredacted
10 version of the co-defendant's statement based on
11 hearsay identifications.

12 THE COURT: There's no need for that, it's not
13 in.

14 Do you have a motion?

15 MS. CAMPBELL: I would move to put in the
16 unredacted statement now that the defendant has had
17 the opportunity to cross-examine the co-defendant.

18 THE COURT: All right. I'm not trying to be
19 coy, believe me. As this issue is presented to me,
20 the motion is denied. Make sure there's a copy of
21 the unredacted statement marked for identification
22 or as a Court's Exhibit.

23 Do you already have one?

24 COURT REPORTER: State's Exhibit 7-A I think --

25 MS. CAMPBELL: That one was partially redacted,

1 this is the unredacted.

2 THE COURT: Mark it as 7-B or something then.

3 (State's Exhibit Number 7-B, unredacted
4 statement of Andre Tayson Boone, was marked for
5 identification purposes.)

6 THE COURT: All right. So all of the evidence
7 is in, right? And as I understand it, the lawyers
8 want to go out when the jury goes out?

9 MS. CAMPBELL: Yes, sir.

10 MR. SUTHERLAND: Yes, sir.

11 THE COURT: Is that right?

12 MS. PAYNE: If the State wants to go, then
13 we'll go, too.

14 THE COURT: Bring the jury in.

15 (The jury returns to the courtroom.)

16 THE COURT: Ladies and gentlemen, the clerk is
17 going to administer an oath to these folks. And I
18 want you to listen to the oath that they take and
19 then I'm going to tell you some things about it, all
20 right.

21 All right. Madame Clerk.

22 THE CLERK: Raise your right hands.

23 (Whereupon, a bailiff and officers were duly
24 sworn by the Clerk of Court.)

25 THE COURT: All right. Y'all just step back,

1 let me talk to the jury a minute.

2 Basically, ladies and gentlemen, you just heard
3 them swear or affirm that they're going to make sure
4 that you don't talk about the case and that nobody
5 talks to you about the case.

6 Now, what's going to happen is that you're
7 going to be taken from here, and I don't know
8 exactly what route will be taken. I don't know
9 anything about the timing of anything. As a matter
10 of fact, I was under the impression they were going
11 to take you by the Lizards Thicket over here on
12 Elmwood on the way out, but I was wrong. There's
13 one out there apparently in the same vicinity as the
14 scene, so that's where you're going to eat.

15 So I'm going to let you folks decide whether
16 you want to eat before you look at the place or
17 after you look at the place, all right. You can't
18 talk about the case in any way, but you can talk
19 about whether you'd rather eat before or after.

20 When you get out there, you cannot talk to each
21 other about what you're seeing, same as you sitting
22 in that chair right there if I was able to bring
23 that place in and let you look at it right here.
24 You can't talk about it until you start your
25 deliberations and then you can talk about what you

1 saw out there. So you can't ask for clarification
2 from anybody.

3 They will take you out and put you out and you
4 can look as long as you like. When you're
5 satisfied, you get back in the van and when all of
6 you are back in the van, they'll leave. That's the
7 way it's going to work.

8 You can't talk about what you saw. And if
9 you're one of those people that talks out loud,
10 don't do it -- I'm sorry -- talk to yourself, if you
11 talk to yourself out loud, don't do that. You can't
12 talk about what you're seeing.

13 Now, I will allow the attorneys to go out
14 there, but they will have to be a distance from you.
15 They can't approach you or anything like that.
16 Nobody else can go out there.

17 All right. Any questions about the procedure?
18 They asked about your note pads. If you give the
19 bailiff your note pads before you go, he'll give
20 them to you when you get out there. When you get
21 back on the van, give them back to the bailiff, the
22 bailiff will give them to you when you get back
23 here, okay, the same as if you were taking a long
24 break in court.

25 All right. Folks, it probably is going to be a

1 few minutes before they take you downstairs, but if
2 you'll just wait in the jury room, they'll take you
3 out to the scene, take you to eat. Thank you.

4 (Whereupon, the jury leaves the courtroom
5 for lunch and to view the scene.)

6 **THE COURT:** I'm not worried about the
7 attorneys, but just so I make this comment
8 specifically on the record, I want the three sets of
9 attorneys to get in one place and stay together.
10 Y'all feel like you need to move around, all of you
11 need to move. And if you see any problem or
12 something that arises out there, that way I'll know
13 that all of you saw it from the same vantage point,
14 I won't have somebody saying something that somebody
15 else says they didn't see, okay.

16 Now, to the folks in the audience or anybody
17 who may be affiliated in any way with anyone in the
18 case, I don't want anybody contacted to say the
19 jury's going out to the scene. And if there's any
20 media people in here, I want you to come talk to me,
21 too, I don't think there are any.

22 I better not hear of any phone calls saying the
23 jury's going out to the scene to look around and
24 there will be some people out there when they get
25 out there. If anybody violates that, I intend to

1 cite them for contempt of court and appoint them a
2 lawyer and put them on trial. Now, I don't care if
3 that's victim's family, I don't care if that's
4 defendants' family, I don't care who that is. Let
5 these folks go out there, let them look around and
6 that will be the end of it, okay.

7 Do y'all need anything else?

8 OFFICER: No, sir.

9 THE COURT: Now, I need some way for you all to
10 communicate with the lawyers as to whether the
11 jury's going to eat first or they can follow you or
12 something. Y'all get together. If there's a
13 problem I need to address, I'll address it.

14 Court's in recess until the jury gets back.

15 (Whereupon, there was a luncheon recess at
16 1:02 p.m.)

17 THE COURT: All right. I intended to send the
18 jury home today and resume in the morning. You and
19 I, the attorneys and I, can stay and talk about the
20 law. I'll probably let the court reporter go home
21 since she's supposed to be on vacation. And I will
22 talk to you all about the law and then anything you
23 need to put on the record, we'll put on the record
24 in the morning.

25 Bring them back in, please.

1 (The jury returns to the courtroom at 4:00
2 p.m.)

3 THE COURT: Ladies and gentlemen, you now have
4 all of the evidence you're going to have to decide
5 these cases. There are two stages that remain in
6 this trial, the closing arguments and the charge.
7 The charge is where I tell you the law.

8 The Chief Justice has instructed us that absent
9 extremely extenuating circumstances, we are never to
10 start these last stages after four o'clock in the
11 afternoon and it's now a little after 4:00. And the
12 truth is we're not ready to start them anyway. The
13 lawyers and I have to discuss these legal issues and
14 I will tell you that this may take a good while.

15 So we're going to stay here and we're going to
16 continue to work. I'm going to let everybody else
17 go home and I'll work on this tonight, probably
18 e-mail it to them and meet them in the morning and
19 start with you all about 10:30, so you'll get the
20 case tomorrow. I think bringing you in any sooner
21 than that is way too optimistic. So you'll hear the
22 arguments and the law tomorrow and you'll get the
23 case probably around lunchtime.

24 I hope you have a pleasant evening. Remember
25 all of those admonitions and I look to see you

1 tomorrow at 10:30. Thank you.

2 (The jury was excused for the day.)

3 THE COURT: All right. Motions?

4 MR. SUTHERLAND: Yes, sir. Please the Court.

5 I'm renewing all my prior motions and objections.

6 Again, at this time, I would move for a directed

7 verdict, sir. There is no evidence in the record

8 that they've produced that would lead a reasonable

9 juror to conclude that Eugene Patterson murdered

10 Brian Wright, sir.

11 You know, revisiting briefly the earlier

12 arguments about the various legal theories that the

13 State's been proceeding under, we would again submit

14 to the Court that they should stick with what they

15 announced to the Court and the defense attorneys and

16 to the jury. And for them -- it does -- the theory

17 under which they're proceeding does substantially,

18 you know, affect the questions and the information

19 sought from each of their witnesses.

20 Again, the evidence that they have is that some

21 people are saying that Eugene Patterson fired

22 towards the back corner of the Waffle House and then

23 a parking place directly across from that a few feet

24 away. Brian Wright's body was found 90 degrees to

25 the left of this activity. They haven't produced

1 any witnesses that have said that he was firing in
2 that direction. It doesn't make any sense that he
3 would have been firing in that direction since
4 that's the direction into which his friends were
5 fleeing. Your Honor, I don't know what's -- as far
6 as if the State intends to sort of proceed on a
7 causal chain analysis.

8 I did, when Investigator Girndt took the stand,
9 I asked him what the cause of death was and it was a
10 single gunshot wound to the head of the victim. And
11 it's our position that evidence doesn't reflect upon
12 -- on the liability of Mr. Patterson. And really,
13 irrespective of any theories that they might choose
14 to interject into the proceedings at this time and
15 it's our sincere belief, sir, that we might be
16 entitled to a directed verdict based on what's been
17 presented in the record, sir.

18 THE COURT: Any other -- do y'all have any
19 motions?

20 MS. PAYNE: Yes, Your Honor. May it please the
21 Court. We would just like to renew our previous
22 objections that were overruled during the case, Your
23 Honor. And further go through our directed verdict
24 motion again, Your Honor, just viewing the evidence
25 in the light most favorable to the State, we do not

1 believe that they have set forth enough evidence to
2 go forward to the jury at this point, particularly
3 with the circumstantial evidence, Your Honor. We
4 have not been presented substantial circumstantial
5 evidence. I think it merely raises a suspicion as
6 to the guilt of Mr. Boone.

7 Your Honor, in going through our previous
8 arguments of the hand of one, hand of all and mutual
9 combat and transferred intent, that is what was
10 presented to the jury in the beginning of this case
11 -- at the beginning -- in openings, as well as
12 during cross-examination of both Investigator Ellis
13 and Captain Smith, Your Honor. Neither one of those
14 theories applies in this case as there is no
15 combination, or combining of the defendants in this
16 case, they didn't have a meeting of the minds, they
17 didn't join in.

18 Your Honor, furthermore, I believe there is
19 some indication about proximate cause. I would
20 agree with Mr. Sutherland the fact that there is not
21 a chain in this case, there are several breaks in
22 the chain and there is an additional chain that is
23 not before the Court today with Oliver Feldman.

24 Your Honor, we would just reiterate that there
25 is not substantial evidence in this case,

1 substantial circumstantial evidence in this case,
2 and there is no direct evidence in this case as we
3 cannot determine whose bullet took the life of Brian
4 Wright, which has been the ultimate issue in this
5 case that we've come back to time and time again.
6 Your Honor, we would ask the Court to issue a
7 directed verdict in this case.

8 I beg the Court's indulgence.

9 (Pause.)

10 MS. PAYNE: Your Honor, it would also be our
11 argument with the proximate cause issue that, and
12 this might be for a jury charge question, but I will
13 bring it up now, that, you know, with proximate
14 cause, you can't have two principals in that case --
15 beg the Court's indulgence -- one is a principal and
16 then one is a person aiding and abetting a
17 principal, a principal first and a principal second,
18 then we go into the intervening, superseding causes.
19 We don't know which one shot the bullet that killed
20 Brian Wright. We don't know which one was the
21 principal and which one was the aider and abettor at
22 this point.

23 We would just reiterate that neither of -- none
24 of those theories apply and ask the Court to grant a
25 directed verdict.

1 THE COURT: Where did you get that law from?
2 Are you talking about in an accomplice liability
3 context or in any context?

4 MS. PAYNE: Well, I think in this situation,
5 I'm not sure how the Court is -- that's kind of why
6 I wasn't sure if I should bring it up now or talk
7 about it when we go towards the law, but in this
8 case, if there is going to be accomplice liability,
9 we would argue, of course, that one would be the
10 principal first and one would be the aider and
11 abettor.

12 Also, Your Honor, you know, we looked over the
13 case law that the Solicitor handed up to the Court,
14 it went through specs, proximate cause, the 1923
15 Deschamps case, which is about the throwing of live
16 nuts onto the fertile soil of Sumter County, which
17 really doesn't apply in this case, but there's any
18 cause intervening between the first wrongful act and
19 the final injury which might reasonably have been
20 foreseen or anticipated.

21 Your Honor, in this case, you know, we have
22 several breaks in the chain. We have first Oliver
23 Feldman flashing a gun. Then we have Mr. Boone
24 shooting a gun up into the air. Is it foreseeable
25 -- obviously, it's not foreseen or anticipated. He

1 testified on the stand that he did not anticipate
2 that they would shoot directly back at him. He was
3 trying to end the fight.

4 Your Honor, then we have a break in the chain
5 with respect to Mr. Boone when there is fire back
6 from two people from the corner of the Waffle House.
7 It's just our position of this case that proximate
8 cause would not apply with respect to Mr. Boone,
9 Your Honor.

10 THE COURT: Thank you.

11 All right. I'll take the rulings under
12 advisement until I have a chance to read all of
13 those cases I told you I would read that you handed
14 up this morning. I don't anticipate a change in my
15 ruling.

16 All right. I need the attorneys to stay. If
17 you want your clients to stay, that's fine. If they
18 don't want to listen to all of this, I can sure
19 understand why. If they do want to listen to it,
20 that's fine.

21 Madame Court Reporter, I need you here at 9:15
22 in the morning, please.

23 We're going to do a conference on the law and
24 court's in recess until 9:15 a.m.

25 MS. PAYNE: I'm sorry, Your Honor.

1 THE COURT: Go ahead.

2 MS. PAYNE: Before the court reporter leaves, I
3 just need to make sure that the written motion that
4 I handed up with my directed verdict, we can make
5 that a part of the exhibit -- or the court record.

6 THE COURT: Sure.

7 MS. PAYNE: Thank you, Your Honor.

8 THE COURT: I'll put it in the file. I don't
9 know of any reason to make it an exhibit, but I'll
10 put it in the file.

11 MS. PAYNE: Okay. Thank you.

12 (Whereupon, the proceedings were concluded
13 for May 12, 2008.)

14 (The following proceedings were held on May
15 13, 2008.)

16 THE COURT: All right. Yesterday we stayed and
17 talked probably an hour and a half about the law
18 and, of course, none of that was on the record. I
19 indicated to the attorneys that I would work on a
20 proposed draft of the charge and e-mail it to them
21 and that they would have that by early this morning
22 and then we would meet and talk about the law.

23 The jury's coming in in about an hour. When
24 they do get here, we're going to their lunch orders,
25 so we've got a little over an hour to talk about the

1 law or as long as it takes really, if we need to
2 make the jury wait.

3 I expressed yesterday that in the reading that
4 I've done, and I've read dozens of cases and
5 commentaries from South Carolina Jurisprudence and
6 Criminal Law of South Carolina by Professor McAninch
7 and Gaston Fairey and Lee Coggiola and several
8 different charge books. I've done some Westlaw
9 research. My law clerk has been looking up things.
10 And that what is pretty apparent in all of this is
11 that a lot of these concepts overlap, the cases
12 recognize that.

13 There are some cases that seem to be based on
14 theories that some other commentators or other
15 courts have said really didn't need to be addressed
16 in a particular case. There'd be a mention of a
17 theory or a principle of law that really doesn't
18 jive with the theory that's being utilized in a
19 case.

20 And we've tried to work our way through all of
21 that and I know there's going to be disagreement
22 over the proposed charge and I have some issues that
23 I need to talk to you all about. So if you want me
24 to kick it off, I'll kick it off and ask you my
25 questions. If you want to comment first, then we

1 can deal with that.

2 Okay. I think from what I'm seeing, you all
3 want me to start.

4 MR. SUTHERLAND: Yes, sir.

5 THE COURT: The first question I have was about
6 the Bruton charge where I gave the jury the limiting
7 instruction during the trial that they could not
8 consider the statement of Mr. Boone in any way
9 against Mr. Patterson. Then later Mr. Boone did
10 take the stand, so he was subject to
11 cross-examination.

12 We've been at this a good while now and I want
13 to make sure I understand exactly what's been raised
14 and what hasn't been raised and what you all think I
15 need to do about that limiting instruction.

16 First of all, I was trying to remember if there
17 was ever a Bruton issue with regard to the
18 statements of Mr. Patterson. I went back and reread
19 those last night or yesterday afternoon. There were
20 three different statements by Mr. Patterson. I
21 don't remember having a specific hearing on Bruton.

22 MS. PAYNE: Your Honor, with respect to
23 Mr. Patterson's first and second statements, we did
24 not have a Bruton issue with that one. The third
25 one was redacted, therefore, the Bruton issue was

1 taken -- I mean, decided on because it was redacted.

2 THE COURT: So you're not asking for a charge
3 that the statement of Mr. Patterson could not be
4 used against Mr. Boone?

5 MS. PAYNE: We had handed up a limiting
6 instruction with respect to Mr. Boone and
7 Mr. Patterson's statement. However, you know, other
8 than that limiting instruction, I don't think that
9 there's any need to because any reference to his
10 physical description and/or his name has been taken
11 out of his statement.

12 THE COURT: But you are asking that I charge
13 the jury that any statement or confession by the
14 defendant Patterson cannot be used against Andre
15 Boone?

16 MS. PAYNE: Yes, sir.

17 THE COURT: Do y'all have something on that?

18 MS. CAMPBELL: No, sir. We would just ask that
19 the same limiting statement then be used for both of
20 them so that it just be made clear to the jury that
21 the statements are to be used against each
22 individual defendant to make it equal.

23 THE COURT: Do you want to be heard on that,
24 Mr. Sutherland?

25 I mean, I don't -- I've never been in a trial

1 where I had to withdraw a limiting instruction, but
2 I know a Bruton issue is different because it
3 depends -- it's based on the fact that the right of
4 confrontation may be denied and then later when that
5 defendant testified, then the cross-examination
6 issue went away.

7 MR. SUTHERLAND: And I'm sort of reiterating
8 what I had argued about, I believe it was yesterday,
9 sir, my days are getting kind of squished up, but
10 with respect to the hearsay identification, that it
11 was my belief that the redaction was still proper
12 because in order to cross-examine him about the
13 hearsay I.D. in his statement, I would have had to
14 open the door to a hearsay I.D. And so where it did
15 not come out on cross-examination, and I would have
16 objected to it certainly, but it is sort of a
17 confusing situation, but I'm comfortable with the
18 redacted statement and sort of with a status quo.

19 MS. PAYNE: Your Honor, and just to make it
20 easier, we don't necessarily have to have the
21 limiting instruction. I think the redaction of the
22 statement was our most important thing and that's
23 happened and that's what is in evidence. And if
24 it's easier for the Court, we can withdraw our
25 limiting instruction because I don't think it

1 actually goes to help or hurt Mr. Boone at this
2 point.

3 THE COURT: Anything else?

4 MS. CAMPBELL: Yes, Your Honor, except that
5 they have been given a limiting instruction, I don't
6 want to further confuse the jury. At this point, I
7 think we have the right to argue that you can use
8 the statements against -- Mr. Patterson's statements
9 can be used against Mr. Patterson, Mr. Boone's
10 statements can be used against Mr. Boone, and that's
11 the information that's been provided because the
12 statements are redacted. I mean, I'm not going to
13 refer to a redaction or anything, I'm just going to
14 refer to the manner in which they can be used.

15 THE COURT: Okay. I think I understand where
16 you all are. What I intend to do is to add
17 something to the fact that any statement or a
18 confession by one co-defendant can only be
19 considered by you as it pertains to that particular
20 co-defendant and not to the other co-defendant.

21 All right. The next issue that I wanted to
22 address with you was the State's request for a
23 charge under the felony murder doctrine. As you can
24 see from the charge, I did not include that in the
25 draft. And if I were to charge it, it would have to

1 be based on something, I guess, akin to lynching.

2 What concerns me about that is that I've
3 already included it in the draft more than one way
4 in which the jury may infer malice. They may infer
5 malice under the use of a deadly weapon, they may
6 infer malice from what is referred to as malignant
7 heart or a depraved heart analysis. I don't want to
8 confuse the jury and it seems a little bit confusing
9 to me and a little bit unfair to charge felony
10 murder in this particular case.

11 There's another side of me that's pulling very
12 strongly the other way. It was one of the first
13 things that popped in my head. If the pointing and
14 presenting is the underlying felony, I don't think
15 that's right because that's part of the act itself.
16 And with lynching, if that's the felony that's used,
17 there is a degree of lynching which involves the
18 death of someone during the commission of a mob
19 violence and, therefore, it concerns me that that
20 would allow you to take a statute that already
21 provides a remedy and -- a remedy for the specific
22 death, leapfrog it and go to murder. So I'm not
23 inclined to charge the felony murder doctrine, but I
24 want to give you all an opportunity to discuss it
25 with me and tell me where I'm wrong or where I'm

1 right.

2 Do y'all want to be heard from the State?

3 MS. CAMPBELL: Your Honor, I think that you
4 have provided in your charge other ways in which
5 malice can be inferred. And although we feel like
6 it would be an appropriate charge, we understand the
7 Court's ruling.

8 THE COURT: All right. Then I assume I don't
9 need to hear from the defense.

10 MR. SUTHERLAND: No, sir.

11 THE COURT: With regard to accomplice
12 liability, the hand of one is the hand of all, I've
13 already expressed to you all at various stages
14 during the trial my concern about that applicability
15 of that concept to this particular fact situation.

16 Now, at this point, I hope that anybody who may
17 review this record, reads this part and that when
18 they certify the record, they don't leave this out
19 because I've tried very hard to keep up with what's
20 been going on. This is the eighth day of the trial.

21 It seems like each one of these folks have
22 given three different statements minimum. And as a
23 trial judge, what I'm trying to do is do my job and
24 not exceed my role. So I'm trying to construe the
25 evidence to look for the existence of evidence and

1 I'm not able to pick and choose and decide who's
2 telling the truth, who's not telling the truth, what
3 weight to put on this, what weight to put on that.

4 Now, I was having a lot of difficulty
5 understanding accomplice liability because I was
6 thinking of it in terms of Mr. Boone and
7 Mr. Patterson. And they were not accomplices in any
8 scenario that I could construe in the traditional
9 meaning. They were participants in an activity that
10 is arguably very unlawful, but they were not acting
11 in concert except in some sort of strained way of
12 saying that you couldn't have a gun fight without
13 both of them being involved.

14 And yesterday I gave you all a drag racing
15 analogy that came to my mind that if two people just
16 are out on the road and all of a sudden, there's
17 really no preplanning, it just sort of happens that
18 they start racing one another and one strikes and
19 kills someone, I think both can be held criminally
20 responsible. But I don't really think that that's
21 accomplice liability and I think it is one of those
22 things that these commentators keep talking about
23 where we get into areas of the law that aren't
24 really applicable to the theories of law that we're
25 talking about to the jury.

1 Now, having said all of that as a preface,
2 yesterday in our conference that was not on the
3 record, a request was presented to me from the State
4 which refocused the acting in concert. And it was
5 saying, what about the connection between
6 Mr. Patterson and Mr. Feldman? And so I went home
7 last night and I put together a rough draft of the
8 hand of one is the hand of all. It's not included
9 in what I gave you all here and I'll tell you why.

10 I couldn't think of a scenario by which
11 Mr. Patterson could be liable under a hand of one is
12 the hand of all except if Mr. Patterson was shooting
13 a gun. And if Mr. Patterson was shooting a gun, I
14 don't see how the jury has any ability to determine,
15 if the two of them were in the same general
16 vicinity, that either Feldman's bullet struck
17 Mr. Wright or Mr. Patterson's bullet was the one
18 that struck Mr. Wright, I don't see how they can
19 make that distinction.

20 So if he's just present there at the scene, I
21 didn't hear any evidence about him aiding, abetting
22 and assisting in the commission of an offense except
23 through his firing of a weapon, too, he being
24 Patterson. And if that's the scenario, if that's
25 the only view of the facts that the jury could

1 determine, to give them a charge on the hand of one
2 is the hand of all is to invite them to speculate,
3 number one. And, number two, it seems that
4 Mr. Patterson would already be covered under a
5 finding of malice that would be allowable to the
6 jury if the jury determines that he acted with a
7 malignant heart or a depraved heart. So that's why
8 I left it out.

9 Do y'all want to talk to me about that?

10 MS. CAMPBELL: Just briefly, Your Honor. I do
11 believe that the testimony would have been that at
12 some point, Mr. Boone, and there are different
13 versions, you're right, Your Honor, and in this case
14 that's part of the problem, that Mr. Boone starts
15 shooting into the air or to wherever. At which
16 point, I believe the testimony, most of it, has been
17 that the two people who were seen earlier in the car
18 with the guns, went back to the car, got the guns
19 and then both of them started advancing in the
20 parking lot towards Mr. Boone's car shooting into --
21 and no one can say exactly what area, just the
22 general area they were shooting.

23 Our position would be that the two of them came
24 to the gun fight with their guns, that they had them
25 in their car, that once the initial fist fight

1 breaks out, that they are out there. At the point
2 that anyone shoots, they then immediately run to
3 their car to get their guns where, I think you find
4 it's appropriate at that point for them to have a
5 self-defense charge, our position would be it is not
6 self-defense, it would be they are acting together
7 and go back, at that point, both of them start
8 shooting.

9 I think the jury could determine, or may not
10 determine, but could determine that it's possible
11 that either one of their bullets are the bullet that
12 caused Brian Wright's death. Under the hand of one,
13 hand of all, if they are acting together, it matters
14 not which one of their bullets did it. That, I
15 think, is a reasonable inference and that was the
16 reason we were requesting it.

17 THE COURT: And I don't really disagree with
18 the last portion of what you said.

19 MS. CAMPBELL: I believe the ballistics, you
20 know, testified about the various strengths of the
21 gun and everything, but I think the testimony from
22 the pathologist and from the ballistics experts
23 were, you can't say which gun actually caused the
24 injury to Mr. Wright. And, therefore, we've charged
25 three people in this case as the three people we've

1 identified as shooters there. And under our theory,
2 especially the two that are acting together, it
3 would matter not which bullet should the jury be
4 able to come to some kind of decision and that would
5 be the reason for our request.

6 THE COURT: I know there can be alternative
7 theories and that's why I'm trying not to deprive
8 anyone of a charge to which they're entitled.

9 Some of these appellate court cases have gone
10 through and said, we've reviewed this and there's no
11 evidence of, say, self-defense, there's no evidence
12 of this, there's no evidence of that. And then
13 others have said very strongly that if there's any
14 evidence, you'll have to submit the issue to the
15 jury. Those two things are not in conflict, it just
16 seems that at some times they're going through and
17 cherry picking the evidence. I don't know that they
18 are or they aren't.

19 But back to my point, with a depraved heart,
20 it's not even necessary to show any intent to kill.
21 It's not necessary to show that there was even
22 malice toward a particular individual. The malice
23 can be inferred from the general malignancy and
24 malicious conduct that's so egregious that it
25 constitutes a complete lack of regard for human

1 life.

2 Now, what bothers me about the hand of one is
3 the hand of all is that it puts a jury in a position
4 where I don't know how they can possibly determine
5 that Mr. Patterson's bullet or his co-conspirator,
6 his accomplice, depending on your view,
7 Mr. Feldman's bullet was the one that killed
8 Mr. Wright. So it seems to me that what I'm telling
9 the jury is these two -- is what I would be telling
10 the jury is these two, Feldman and Patterson, are
11 linked together and it doesn't matter which one of
12 them fired the bullet that killed Mr. Wright. And
13 I'm already telling them that.

14 MS. CAMPBELL: Yes, sir, we understand.

15 THE COURT: Not only does it not matter which
16 of those two fired the bullet, it doesn't matter
17 which of the three fired the bullet. It still gnaws
18 at me because I understand that it's a possibility
19 -- I think it's a little bit confusing.

20 All right. The next thing I wanted to talk to
21 you all about is self-defense. And we had a lot of
22 discussion yesterday about this. And quite frankly,
23 some of this that you got in the charge is probably
24 a 180 from what I intended yesterday when I left
25 court.

1 As I told you, I generally just try to get in a
2 quiet place and think through these things. And
3 what the most recent cases I read have said is that
4 there was no evidence of self-defense, the jury
5 shouldn't have been instructed on it and things like
6 that, but then there's that long line of cases that
7 says if there's any evidence, any evidence of
8 self-defense, the trial judge submits it to the
9 jury.

10 Now, yesterday I expressed that I could see
11 Mr. Patterson having a claim of self-defense under
12 some view of the evidence much more than I could see
13 Mr. Boone having any claim of self-defense. And I
14 indicated to you all that the evidence seemed to be,
15 as far as Mr. Boone was concerned, that he went down
16 to where the fight was taking place, that a person,
17 presumably Mr. Feldman, at that point, had a gun in
18 his waistband, which would be contrary to what some
19 of the other testimony was about Mr. Patterson and
20 Mr. Feldman going to the car to retrieve guns after
21 the shooting started, but that's really an aside,
22 anyway that Mr. Boone goes down there, Mr. Feldman
23 shows him that gun and says, basically, you stay out
24 of this.

25 Whereupon, Mr. Boone turns and goes back to his

1 SUV, asks another person in the car for a gun, walks
2 around to the front of the SUV, fires two shots in
3 the air thinking, if I fire these shots in the air,
4 everybody will stop fighting and disperse. And what
5 he claims to his shock and amazement was that in
6 that group of people when two shots were fired in
7 the air, other people started shooting back. I
8 really think that it is a stretch for him to claim
9 self-defense.

10 With regard to defense of another, we discussed
11 the fact that if he were going to the defense of his
12 friend, under the existing law in South Carolina,
13 not the statutory law that I'm going to discuss with
14 you all in a minute, but under the existing law of
15 South Carolina, whether it's right or whether it's
16 wrong, I'm bound by it, that law states that in
17 order for somebody to claim defense of another, the
18 person whom they are defending, who this defendant
19 would be defending would have to be entitled to a
20 self-defense charge himself.

21 And I mentioned mutual combat and I was
22 mistaken. There has been changes in the law about
23 mutual combat, but it still can't get past that -- I
24 can't think of the gentleman's name right now, the
25 one that was fighting. Corey?

1 MS. PAYNE: Corey Sanders.

2 THE COURT: That Corey cannot be said to be
3 without fault in bringing on the difficulty. So I
4 don't see any way he would be entitled to a
5 self-defense charge that would negate Mr. Boone
6 being able to seek defense of another.

7 Now, I have decided for various reasons that
8 I'm going to charge self-defense as to both of these
9 defendants, and you have the proposed draft. I
10 can't really decide this issue on this procedural
11 difficulty I'm having that I'm about to announce,
12 but I will say that when I'm looking at trying to
13 interpret that line of cases and that line being
14 ones that say if there's any evidence at all of
15 self-defense, the trial judge has to submit that
16 issue to the jury, when I'm trying to interpret
17 that, I'm also trying to make sure, the overriding
18 thing is that I see that everybody gets a fair
19 trial, not a perfect trial, you're never going to
20 get a perfect trial out of me, but get a fair trial.

21 And one of the things that concerned me about
22 all that is there's never been a severance motion in
23 this case. And these two folks are on trial and if
24 I start telling that jury you can consider
25 self-defense with one of these co-defendants, but