

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

J. Mark Hayes, II, Circuit Court Judge

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S.C. Supreme Court

TREMAINE WRAY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLANT CASE NO. 2015-000758

APPENDIX

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INDEX

INDEX.....	i
PRE-TRIAL TRANSCRIPT DATED MAY 18-19, 2009.....	1
TRIAL TRANSCRIPT DATED OCTOBER 5, 2009.....	151
INDICTMENT AND SENTENCING SHEET	2050
APPLICATION FOR POST-CONVICTION RELIEF	2053
RETURN TO APPLICATION FOR POST-CONVICTION RELIEF	2064
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	2073
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED NOVEMBER 3, 2014	2079
RESPONDENT'S EXHIBIT NO. 1: SWERLING'S HANDWRITTEN NOTES LABELED "TIM WELDON".....	2312
RESPONDENT'S EXHIBIT NO. 2: MACDOUGALL INVESTIGATIVE NOTES/ MEMORANDUM PACKET.....	2314
RESPONDENT'S EXHIBIT NO. 3: CLARK MEMORANDUM OF INTERVIEW PACKET.....	2344
RESPONDENT'S EXHIBIT NO. 4: SLED GUNSHOT RESIDUE CORRECTED REPORT DATED OCTOBER 2, 2009.....	2365
RESPONDENT'S EXHIBIT NO. 5: MICRO ANALYTICAL PACKET, INCLUDING "QUESTIONS RELATED TO GUNSHOT RESIDUE ANALYSIS" AND THE CURRICULUM VITA OF JEFFREY M. HOLLIFIELD.....	2367
RESPONDENT'S EXHIBIT NO. 6: INVESTIGATOR MCRAE'S NOTES.....	2377
RESPONDENT'S EXHIBIT NO. 7: RICHLAND COUNTY SHERIFF'S DEPARTMENT INCIDENT REPORT HANDWRITTEN BY OFFICER WELDON GREGORY	2394
ORDER OF DISMISSAL	2396
RULE 59 (e) MOTION	2435

RETURN TO APPLICANT'S MOTION TO ALTER OR AMEND RULE 59 (e)	
.....	2437
MOTION TO AMEND RULE 59 (e).....	2443
ORDER DENYING RULE 59 (e).....	2460
PRO SE FILINGS (3).....	2465

State v. Tremaine Wray and Taurus Watts 10/8/09

109

1 A No.

2 MS. JOHNS: One moment, please, Your Honor..

3 That's all I have.

4 MS. MCDUFFIE: Briefly, Your Honor.

5 ANNA ELSEY - REDIRECT EXAMINATION

6 BY MS. MCDUFFIE:

7 Q Lt. Elsey, after you submitted the GSR kit to the
8 evidence room and the subsequent conversations you had with
9 SLED, you're not aware of whether the kit was sent back or

10 --

11 MR. BAX: Objection, Your Honor. Leading.

12 THE COURT: Sustained.

13 MS. MCDUFFIE: I'll rephrase the question.

14 BY MS. MCDUFFIE:

15 Q Lt. Elsey, you're not in charge of handling of the
16 evidence after it's submitted to the evidence room?

17 A Correct.

18 Q All right. You received back from SLED a report;
19 correct?

20 A Correct, through Investigator Reed-Enzor.

21 Q Are you aware of whether or not the kit itself was sent
22 back?

23 A Can you rephrase? I'm not sure.

24 Q Are you aware of whether SLED sent back a report or
25 sent back the kit that's in front of you?

1 A I'm not aware of the kit. All I know is the report
2 that I received.

3 Q All you received is the report?

4 A Correct.

5 Q And did you find any shell casings in the vehicle?

6 A No.

7 Q When you list the vehicle, the description on your
8 forms you list the license plate number?

9 A I do.

10 Q The VIN number?

11 A Yes.

12 Q And then you also list the make and model?

13 A Correct.

14 Q The year of the vehicle?

15 A Yes.

16 Q And then you also list color?

17 A Yes.

18 Q Why do you list all those factors?

19 A To be as complete as we can about the actual vehicle
20 that we process, and in this case if it's silver or tan, you
21 could still write that it's the same tag, the same VIN, same
22 make and model of the vehicle.

23 Q Because those are not subjective?

24 A Yes.

25 MS. MCDUFFIE: No further questions.

State v. Tremaine Wray and Taurus Watts 10/8/09

111

1 MR. BAX: Briefly.

2 ANNA ELSEY - RE-CROSS-EXAMINATION

3 BY MR. BAX:

4 Q Officer Elsey, just to clarify. Your testimony in
5 response to the solicitor's questions is that in between the
6 time when you first submitted the GSR kit and then received
7 a report back saying no analysis was done, and the point at
8 which the analysis was done, did you do anything further to
9 those sticky tabs; did you take them back out, did you add
10 any to them, did you take any more samples?

11 A No.

12 Q So there was absolutely nothing changed about that GSR
13 kit to your knowledge between the time that they said no
14 analysis and the time that they did any analysis?

15 A The last time I had contact with the kit was on July
16 12th, when I submitted -- yeah, July 12th, when I submitted
17 it, until today.

18 Q So the answer would be yes that you did not do anything
19 or have any contact or change it in any way between those
20 two times?

21 A That is correct.

22 Q And the vehicle here -- just very briefly -- it's
23 listed as a Chevy Suburban, that's a GMC vehicle; is that
24 correct?

25 A I believe so.

1 Q It is a GMC?

2 A Yes, it is.

3 Q Thank you.

4 MR. BAX: No further questions.

5 MS. JOHNS: Just one thing, briefly.

6 ANNA ELSEY - RECROSS-EXAMINATION

7 BY MS. JOHNS:

8 Q Ms. McDuffie asked you about subjectivity as to the
9 description of the vehicle; right, she did ask you that?

10 A In reference to the color?

11 Q Didn't she?

12 A Yes, she did.

13 Q Well, you photographed the door frame, in this
14 particular case, let me see if I can find it, which does not
15 refer to the color. Let me see -- it's in here somewhere.

16 A Are you looking for this one?

17 Q Yes, I am. State's Exhibit No. 39. Is there -- the
18 door frame there that gives you the VIN number?

19 A Yes.

20 Q Any reference to color there?

21 A Not that I see.

22 Q Okay. So it would be subjective, wouldn't it.

23 A Yes. I think that's what she was referring to is the
24 color.

25 Q All right. And it also says nothing about the --

State v. Tremaine Wray and Taurus Watts 10/8/09

113

1 that's okay. I'll withdraw that. Thank you.

2 MS. MCDUFFIE: I ask that the witness be excused,
3 Your Honor.

4 THE COURT: You can step down and be excused.
5 Thank you.

6 MS. SHIPLEY: Your Honor, may the lawyers approach?

7 THE COURT: Yes.

8 (Off the record bench conference with attorneys and the
9 Court.)

10 MS. SHIPLEY: Your Honor, state calls Tina Goff.

11 THE COURT: Ladies and gentlemen of the jury, Ms.
12 Goff will not be available as a witness today. A couple of
13 weeks ago, I took her testimony, because she's not available
14 this week, Ms. Shipley will read her testimony into the
15 record. You should pay just as much attention to that as if
16 she was here, because she was sworn and under oath at the
17 time of this testimony.

18 MS. SHIPLEY: Your Honor, my paralegal, Ms. Jones,
19 is going to read for Ms. Goff.

20 THE COURT: Okay. Great.

21 (The sworn and transcribed testimony of Tina Goff was read
22 into the record by Ms. Shipley and Ms. Jones, and is as
23 follows.)

24 TESTIMONY OF TENA GOFF:

25 Q Good afternoon, Ms. Goff.

1 A Good afternoon.

2 Q Ms. Goff, can you tell the Court where you are
3 employed?

4 A The Richland County Sheriff's Department.

5 Q How long have you worked there?

6 A Over 16 years.

7 Q And what are your duties and your title at the
8 sheriff's department?

9 A I am the evidence custodian. My job is to oversee and
10 supervise and train people who are staffing the evidence
11 room and to make sure that policies and procedures are
12 followed. To accept evidence, to log it in, and also to make
13 sure that the evidence is transported or chained over to the
14 appropriate labs or chemists or analyst, and to make sure
15 the evidence remains secure at all times.

16 Q Okay. And is that basically to maintain the chain of
17 custody on all items of evidence entered into your property
18 room?

19 A Yes.

20 Q Okay. I'm going to go ahead and bring your attention
21 to the case at hand. The Richland County case number of
22 0706279030. Did you have an opportunity to become involved
23 with the evidence with that case number?

24 A Yes.

25 Q Okay. Specifically, when was it that you came into

State v. Tremaine Wray and Taurus Watts 10/8/09

115

1 contact with items of evidence, first tell us which items of
2 evidence?

3 A The first time I got involved in this case, I accepted
4 the first four items into evidence from Investigator Don
5 McRae.

6 Q Okay. Back on June 30, 2007 -- I'm sorry. Can you
7 answer that.

8 A Back on June 30, 2007.

9 Q All right. And I'm going to go ahead and bring your
10 attention to the items of evidence in this issue. Actually
11 in this case. Did you have contact with Item Nos, 20, 21,
12 29 and 57?

13 A I'm sorry. I'm looking over my notes.

14 Q Yes, ma'am. Take your time.

15 A I did.

16 Q Okay. Item 20; can you please explain what that is?

17 A Item 20 is a GSR kit with the name of Earl J. Greene on
18 it.

19 Q Okay. And what is Item 21?

20 A A GSR kit with Luther Landrum's name.

21 Q Okay. And I'm going to show you what has been marked
22 State's No. 1 for purposes of identification; do you
23 recognize this item?

24 A I do.

25 Q And State's No. 1 for identification purposes, what

1 items are contained in that envelope?

2 A Items 20 and 21.

3 Q And that would be the GSR kit from one Earl Jerome
4 Greene and one Luther Landrum?

5 A Yes.

6 Q And do you see your initials on that package?

7 A Yes, I do.

8 Q And what date was that?

9 A July 25, 2007.

10 Q Okay, and what did you do with that item of evidence on
11 July 25, 2007?

12 A I took possession of it and transported it over to
13 SLED.

14 Q Okay. And while you had that item of evidence in your
15 possession did it appear to be tampered with in any way?

16 A No.

17 Q And when you had it in your possession to take it to
18 SLED did you tamper with it in any way?

19 A No.

20 Q Once you got to SLED, please explain the procedures you
21 are required to follow in order to allow them to accept your
22 evidence?

23 A The investigator who submitted the evidence has to fill
24 out some paper work for SLED, and when I log it out and when
25 I take it to SLED, I have to hand that paper work over to

State v. Tremaine Wray and Taurus Watts 10/8/09

117

1 the ladies in Log-In there. They log it in, and then they
2 have me with their evidence tape, seal the package again,
3 and put my initials and date and time on the date that I'm
4 actually dropping it or handing it to them.

5 Q And do you see that evidence tape on this package?

6 A I do.

7 Q Okay. Now, to bring your attention to the next item of
8 evidence in question. Item No. 29; did you have contact
9 with that item?

10 A I did. I took that to SLED, as well, on the 25th of
11 July, 2007.

12 Q I'm going to show you what has been marked State's
13 Exhibit No. 2 for identification purposes; do you recognize
14 that item?

15 A I do.

16 Q And what is in there?

17 A The GSR kit, a GPR kit for the 1999 silver Chevy
18 Suburban.

19 Q Okay. And do you see your initials on that item?

20 A I do.

21 Q And what day did you initial it?

22 A July 25, 2007.

23 Q Okay, and can you explain when you first received this
24 item from your property room did it appear to be tampered
25 with in any way?

1 A No.

2 Q And did you tamper with it in any way?

3 A No.

4 Q And once you got to SLED, what did you do with it?

5 A The same thing. Gave it to ladies in Log-In. They had
6 me put their yellow evidence tape on it. I initialed it and
7 dated it and gave it to them, and they accepted it in.

8 Q Okay. Can you explain the SLED request forms that are
9 filled out by the investigators; do they attach that SLED
10 request form to the item of evidence they need analyzed?

11 A Yes. When they submit it to our evidence room they
12 submit these forms already filled out by them, the
13 investigator, along with a copy of the incident report,
14 because these are required by SLED before they will take or
15 accept any evidence in.

16 Q Okay. The next item of evidence that you came in
17 contact with that you transported to SLED, I'll bring it to
18 your attention, Item No. 57; did you have contact with that
19 item?

20 A I did.

21 Q And what time or date did you receive it?

22 A I signed it out of the evidence room on January 25,
23 2008.

24 Q Okay. To transport it to SLED? Oh, I'm sorry. Okay.

25 A To transport it to SLED.

State v. Tremaine Wray and Taurus Watts 10/8/09

119

1 Q And I'm going to show you what has been marked State's
2 No. 3 for purposes of identification; do you recognize that
3 item?

4 A I do.

5 Q And do you see your initials on that item?

6 A Yes.

7 Q And is it covered a little bit by the SLED tape?

8 A The SLED tape and other tape, yes.

9 Q Okay. Can you tell what day it is that you initialed
10 that item?

11 A January 25, 2008.

12 Q Okay, and can you explain how do you identify the
13 contents of that item? Does an investigator, the person who
14 submits the item into the Richland County Sheriff's
15 Department property room, are they required to fill out a
16 property form?

17 A Yes. Well, now we have what we call evidence label
18 forms.

19 Q Okay.

20 A And this is a sticker form, and they fill out all the
21 blocks or lines that they have information on, and there is
22 a -- in the middle of it there's items contain the
23 description, and that is where they put a description of
24 what is in the sealed package.

25 Q Okay. Can you please read what is in that sealed

1 package on that label?

2 A One GSR kit for a 2001 Isuzu Rodeo.

3 Q And typically would you expect the Richland County
4 Sheriff's Department sticker from the property room to match
5 the same description?

6 A Yes.

7 Q And can you explain why it is that it is not matching
8 in this matter on this case or this item?

9 A I did not accept it in.

10 Q Who accepted it in?

11 A My partner, Will Cedarstaff.

12 Q Okay. How was it entered in your computer system?

13 A It was entered in as a GSR kit, Greene, Jerome.

14 Q Okay. And I'm going to show you a document; do you
15 recognize this document?

16 A I do. It is a copy of the SLED request form that I
17 signed when I took the evidence out to SLED.

18 Q Okay, and incidentally, did SLED assign an item number
19 to Richland County No. 57?

20 A Yes, it did.

21 Q What item number?

22 A No. 11.

23 Q Okay. And does that correspond with that form that I
24 just showed you?

25 A Yes, it does. On the second page the evidence tech

State v. Tremaine Wray and Taurus Watts 10/8/09

121

1 there wrote in No. 11.

2 Q Okay.

3 A The SLED item number.

4 Q And what was the description that was entered as Item
5 No. 11 at SLED?

6 A Tri-Tech GSR kit from 2001 Isuzu Rodeo.

7 Q Okay. And I'm going to bring to your attention to the
8 first page of that document, and what is the name of the
9 listed subject on that document?

10 A Greene, Jerome.

11 Q And how was Item No. 57 entered into the Richland
12 County Sheriff's Department System?

13 A As a GSR kit, Greene, Jerome.

14 Q Okay. And when you took all three items to SLED did
15 you then seal them to analyze?

16 A They were never opened. They were still in a sealed
17 state. We just add another seal to the SLED's required
18 yellow tape was put on it with my initials and date.

19 Q Okay. And so if an officer submits any evidence to the
20 property room are they required to seal it?

21 A Yes.

22 Q With one tape?

23 A Yes.

24 Q And what color is that tape?

25 A Red.

1 Q And is that the Richland County Sheriff's Department
2 tape used in sealing property at the evidence room?

3 A Yes.

4 Q And then SLED evidence tape; what is that?

5 A Yellow.

6 Q Okay. And do you see both yellow and red tape on these
7 items of evidence?

8 A Yes, I do.

9 Q I'm going to show you a document, marking it as Exhibit
10 No. 4, and so the document that I am showing you now is
11 marked State's Exhibit No. 4; is that correct?

12 A It is.

13 Q And once you submitted those items of evidence to SLED,
14 did that end your involvement with this case?

15 A It did.

16 Q And I'm going to show you the SLED chain of custody
17 real quick. Incidentally, I didn't ask you about the item
18 number assigned to State's No. 1. Did they assign a SLED
19 number to the items of evidence contained in State's No. 1?

20 A According to the SLED sticker that is on here, it is D.

21 Q Okay. I'm going to show you -- do you see your
22 signature on that document, the SLED chain of custody on the
23 bottom right corner?

24 A I do.

25 Q And do you see what is marked State's No. -- excuse me,

State v. Tremaine Wray and Taurus Watts 10/8/09'

123

1 SLED's No. 8?

2 A Yes.

3 Q What is that?

4 A One sealed envelope containing gunshot residue
5 described as one GSR kit from Greene.

6 Q Okay. And then I'm going to show you and see if you
7 recognize your signature at the top of this page?

8 A It is.

9 Q And what item is that for?

10 A No. 9.

11 Q And what is it described as by SLED?

12 A One sealed envelope containing gunshot residue
13 described as GSR kit from Landrum.

14 Q Okay. Lastly, do you see on State's No. 2, already an
15 assigned item number by SLED on that envelope?

16 A I do.

17 Q And what number did they assign to the GSR kit
18 belonging to the Tahoe or -- excuse me -- the 1999 Chevy
19 Suburban?

20 A No. 10.

21 Q Okay. And then you already covered Richland County's
22 57 is SLED No. 11; is that correct?

23 A It is.

24 Q Okay. And the initial -- excuse me -- and the
25 individual that received these items, Nos. 8, 9, and 10,

1 which were submitted on the same day to SLED, can you tell
2 us who that person is, according to the chain of custody on
3 July 25, 2007?

4 A Amy Stevens.

5 Q Okay. And then as to Item No. 57, who received that
6 from you?

7 A Ms. Karonda Williams (sp).

8 Q Okay.

9 MS. SHIPLEY: Your Honor, I have no further
10 questions at this time.

11 TINA GOFF - CROSS-EXAMINATION

12 BY MR. SWERLING:

13 Q Ms. Goff let me ask you -- I don't have a lot of
14 questions about 28, 21, and 29. Those were all turned into
15 the evidence room and then transported out to SLED by you on
16 July 25, 2007; correct?

17 A Yes.

18 Q Now, Item 57. When was the first time that anybody at
19 the sheriff's department realized that that had some
20 connection with this case?

21 A I can't answer that. I do not know.

22 Q Okay. When were you first made aware that that
23 particular item had something to do with this case?

24 A On January 25, 2008, when I signed it out to take it to
25 SLED.

State v. Tremaine Wray and Taurus Watts 10/8/09

125

1 Q Okay. And who asked you to sign it out?

2 A It would have been Investigator Bouknight.

3 Q Okay. And for what purpose, did you understand what
4 you were being requested to do other than to take it out to
5 SLED?

6 A No, sir. He just filled the SLED paper work and
7 provided a copy fo the incident report and his request that
8 it be taken to SLED.

9 Q Were you made aware of the significance of that
10 particular item No. 57?

11 A No.

12 Q Okay. Were you told what was in it?

13 A No.

14 Q Where was -- now, you actually worked in the evidence
15 room as well?

16 A Yes, sir.

17 Q Now, how is that logged into the evidence room; I mean,
18 when something is brought into evidence it has to be logged
19 in somewhere?

20 A Yes.

21 Q Okay. Where was that logged in, that particular
22 envelope Item No. 57?

23 A Depending on the nature of how it is received into the
24 evidence room, whether it is a person to person or hand to
25 hand transaction of if they place it in one of our temporary

1 storage lockers or drop box. Once it is given to us, we see
2 that it has been properly filled out and properly sealed.
3 We then take it to the actual evidence room itself. Where
4 we work it is called evidence office.

5 Q Right.

6 A And depending on how busy we are, how many cases we are
7 working with it would go into a stack or pile waiting for us
8 to log it in. Once we finish with one case, we just start
9 logging in the next case, and this is what happened with
10 this one.

11 Q Okay. And when was it actually logged in, then?

12 A It was logged in on January 7, 2008. Investigator
13 Bouknight turned it in, and Mr. Cedarstaff logged it in.

14 Q And do you know where that was between July 30, 2007
15 and January of 2008?

16 A I do not.

17 Q Where that particular document, I mean, that envelope,
18 where that envelope was?

19 A No, sir.

20 Q So you don't even know if it was in the evidence room?

21 A It wouldn't have been in the evidence room that long
22 without being logged in.

23 Q Well, maybe it would not have been in the evidence room
24 that long, so it did not come into the evidence -- well, do
25 you know when it came into the evidence room? Let me back

State v. Tremaine Wray and Taurus Watts 10/8/09

127

1 up a minute.

2 A It came into the evidence room and was accepted on
3 January 7, 2008.

4 Q Okay. Well that -- Okay, so the first time the
5 evidence room actually got physical possession of Item 57
6 was on January 25, 2008?

7 A January 7th.

8 Q I'm sorry. January 7, 2008. And then you were asked
9 to take it up to SLED subsequent to that?

10 A Yes.

11 Q And then you logged it in how?

12 A I did not log it in.

13 Q Okay. You know who did log it in?

14 A My partner, William Cedarstaff.

15 Q Okay. So that is what you -- all right, was any
16 explanation given to you as to where it had been from June
17 30, 2007, until January 7, 2008?

18 A No. I have no knowledge of where it was or that it
19 even existed.

20 Q Okay.. If anybody had come into the evidence room at
21 any time prior to January 8, 2008, and asked for all the
22 evidence in connection with this particular prosecution,
23 this particular envelope would not have been there; correct?

24 A That is correct.

25 Q It does not show up on any particular entry logs

1 dealing with this particular case; is that correct?

2 A That is correct.

3 Q Now, from what I understand and looking at the envelope
4 itself, it says it was logged in as from Greene, Jerome,
5 James?

6 A Jerome.

7 Q It doesn't -- where was that, did you log it in. I
8 don't remember which document that Vanessa was showing you?

9 A Again, I didn't log it in.

10 Q Okay. Do you have a document that shows that it was
11 logged in?

12 A The label itself that is on the package.

13 Q This is the document, itself. Okay. All right. So
14 this is 57, State's Exhibit No. 3, now; correct?

15 A Yes. It is our No. 57.

16 Q And it says on here GSR kit from 2001, Isuzu Rodeo;
17 correct?

18 A Yes.

19 Q Now, one of the forms that Ms. Shipley had showed us
20 before, and I think some of the questions she was asking you
21 only dealt with whether or not it showed how it was listed
22 Greene, Jerome?

23 A Yes.

24 Q Okay. It did not have on there Isuzu, it was a GSR kit
25 for an Isuzu. It said GSR kit, Greene, Jerome?

State v. Tremaine Wray and Taurus Watts 10/8/09

129

1 A That is what our evidence label says.

2 Q Okay. So somebody had picked up this particular --
3 well, let me back up a minute -- strike that. Who generated
4 this label?

5 A Our computer data base.

6 Q In your evidence room?

7 A Yes.

8 Q Okay. And what you would have gotten was the envelope
9 that was contained in here; correct?

10 A We received this manilla envelope sealed with this
11 label on it.

12 Q This is -- this was already in it -- well, when I say,
13 this, because the record won't reflect it, the gunshot
14 residue evidence collection kit from Tri-Tech, which has a
15 No. 11 on the back. I don't know what that signifies, but
16 this was contained in the manilla envelope or separated; was
17 this what was in the evidence room?

18 A This envelope came in sealed.

19 Q With this?

20 A With the GSR kit in it. I cannot testify that is the
21 actual evidence that was in here because I can't see through
22 the manilla envelope. I can only go by what the officers
23 have written on the sealed package.

24 Q Okay. So this envelope came sealed and you don't know
25 what was actually in it?

1 A This is true.

2 Q And until July 25 -- I'm sorry -- January 25, I think I
3 have the dates correct, when you took it out to SLED you
4 still did not know what was in it?

5 A That is correct.

6 Q And when you dropped it off at SLED, you still did not
7 know what was in it?

8 A That is correct.

9 Q Until today?

10 A Until today.

11 Q When this was opened?

12 A Yes.

13 Q So the first time that you've ever seen that it was a
14 gunshot residue kit that says, Greene, Jerome and it has got
15 some identifying mark like 11 on the back, would have been
16 today?

17 A Yes, sir.

18 TINA GOFF - CROSS-EXAMINATION

19 BY MS. JOHNS:

20 Q Thank you, Ms. Goff, I just want to clear up some
21 things. You said Deputy Bouknight, Investigator Bouknight
22 that brought you or brought Cedarstaff this Item No. 57,
23 right?

24 A Yes, ma'am.

25 Q Okay. And if he, if Bouknight brought it to the

State v. Tremaine Wray and Taurus Watts 10/8/09

131

1 evidence room and your partner, Cedarstaff, logged it in,
2 you really wouldn't have had any person knowledge of
3 receiving that would you?

4 A No, because I didn't receive it in.

5 Q Okay. What you did is your first connection with that
6 piece was on January 25 when you delivered it to SLED, is
7 that correct?

8 A Yes, ma'am.

9 Q Okay. When you delivered it to SLED, you left it with
10 SLED?

11 A I did.

12 Q Okay. And on your inventory that was printed in June,
13 2008, it is listed that Item No. 57 is still checked out?

14 A June of 2008?

15 Q Yeah, I believe that is the print-out date that I have
16 from your inventory list. It is at the very bottom. It
17 says -- sorry, March of '08. I know you have this, I just
18 wanted to help you refer to it. This is the print-out which
19 we received in discovery, which is the property report form
20 and when it was printed out was March 6, 2008, and on this
21 property report form it shows that a particular item is
22 still checked out?

23 A On your form it shows it as still checked out. But
24 Item 57 was brought back into evidence on August 20, 2008,
25 when it was brought back from SLED.

State v. Tremaine Wray and Taurus Watts 10/8/09

132

1 Q And did you bring it back from SLED to the evidence
2 room?

3 A I did not.

4 Q And are you familiar with all the evidence in this
5 case, as far as what is on the list; correct?

6 A Yes, ma'am.

7 Q And Deputy Bouknight, he did some other things into the
8 evidence room, right?

9 A I believe so. Yes.

10 TINA GOFF - REDIRECT EXAMINATION

11 BY MS. SHIPLEY:

12 Q Can you pull the contents out of the bag, State's No.

13 3. Okay, on that GSR kit is there a case number there?

14 A There is.

15 Q And can you please read it?

16 A 0706279030.

17 Q And can you please look at the label on 57, and see if
18 that matches the case number?

19 A It does.

20 Q And I noticed that the label says, point five-seven?

21 A Yes.

22 Q Is that how items are assigned items numbers, items of
23 evidence are assigned an item number?

24 A Through out date base in evidence, yes, ma'am.

25 Q Okay. So that would have been the last item in

State v. Tremaine Wray and Taurus Watts 10/8/09

133

1 evidence entered into the evidence for this case, correct?

2 A It was not the last item entered in.

3 Q What else is there?

4 A Items 58 and 59.

5 Q Which are?

6 A Half DNA card from Demuria Johnson.

7 Q From the victim, okay.

8 A And a VHS tape.

9 Q Okay. Item 57 is the last GSR item, correct?

10 A Yes.

11 Q And who filled out the form that is on the outside, the
12 Richland County/Evidence Property Form on the outside of
13 State's No. 3; who fills that out?

14 A In this particular case it would have been Investigator
15 Bouknight.

16 Q And was this a person to person transaction?

17 A Yes.

18 Q And did Investigator Bouknight sign it?

19 A He did.

20 Q And who signed it as receiving it?

21 A William Cedarstaff.

22 Q And is the date the same?

23 A Yes.

24 Q Okay, and again, how does Mr. Bouknight describe the
25 items contained?

1 A Item contained is one GSR kit from one 2001 Isuzu
2 rodeo.

3 Q And then on State's No. 4, who filled this out?

4 A Investigator Bouknight.

5 Q And is that the document that would -- copy of the
6 document that would have been attached to item of evidence,
7 State's No. 3?

8 A Yes.

9 Q On the second page of that document, State's No. 4,
10 what item is listed?

11 A Item No -- SLED Item No. 11, Tri-Tech GSR kit from 2001
12 Isuzu Rodeo.

13 Q And on the contents of State's No. 3 do you see an Item
14 No. 11 on the actual GSR kit?

15 A Yes. SLED put one of their labels on the bag, on the
16 pouch.

17 Q So SLED would have been the one to open the envelope to
18 find out what the contents are inside, correct?

19 A Yes.

20 Q And to analyze them?

21 A Yes.

22 Q And your duty is simply to maintain the chain of
23 custody from the sheriff's department to SLED, correct?

24 A Yes.

25 Q And to make sure that it is not tampered with in any

State v. Tremaine Wray and Taurus Watts 10/8/09

135

1 way?

2 A That is correct.

3 Q Had it been tampered with in any way, have you ever
4 been -- turned away -- let me start over. Had it been
5 tampered with in any way, have you ever been turned away by
6 SLED for any sort of evidence. In other words, my question
7 is, would SLED accept evidence from you if it appeared to be
8 tampered with in any way.

9 TINA GOFF - RECROSS - EXAMINATION

10 BY MR. SWERLING:

11 Q The number that Ms. Shipley was referring to at first,
12 which is the case number, where was that that we were
13 referring to?

14 A Agency case number on the front.

15 Q Okay. That is on the actual white envelope that had
16 the actual kit in it?

17 A Yes.

18 Q Okay. And then there's a corresponding number from
19 there to some other document?

20 A It is here on the evidence label.

21 Q So that is what the two -- Okay. I just wanted to make
22 sure that I understood where the numbers were.

23 A And then when it was entered in the computer generates
24 this bar code and assigns it an item number.

25 Q Okay. So all three of these items numbers are the

1 same?

2 A Yes.

3 Q And does that correspond with the case number that was
4 originally generated in this case or not; is it the same
5 case number that was generated in this case?

6 A For?

7 Q For the case itself?

8 A Yes.

9 Q And where is that; is that evidence sheet there?

10 A For Richland County it is here. For SLED, our case
11 number is here.

12 Q Okay.

13 A And then this is SLED's case number.

14 Q Right.

15 A Their lab number.

16 Q But on this particular data base property report, is
17 there a case number there, as well?

18 A Yes. It is here at the top. It says Property Report.

19 Q Okay.

20 A And then it is listed for every item because that is
21 part of the item number.

22 Q Okay. Just for clarification again. This is the case
23 number that was assigned when the case first happened?

24 A Yes.

25 Q Okay, and that number is followed all the way through?

State v. Tremaine Wray and Taurus Watts 10/8/09

137

1 A Yes, it is.

2 Q Up until Item No. 57, or SLED's 11, or Exhibit No. 3;
3 it's all the same?

4 A Yes.

5 (End of reading of testimony of Tina Goff.)

6 MS. SHIPLEY: Thank you, Your Honor.

7 Thank you, Ms. Jones.

8 THE COURT: Thank you. You may step down.

9 Okay. It's lunch time. Lunch is here so I'm going to
10 excuse you-all. You can take your comfort breaks as needed.
11 I remind you not to discuss the case. You will report back
12 promptly at 2:00 o'clock.

13 (Jury out at 1:01 p.m.)

14 THE COURT: Anything we need to take up at this
15 time?

16 MS. SHIPLEY: Nothing from the state.

17 THE COURT: Okay. We'll see you at 2:00.

18 (Court at recess for lunch break.)

19 (Court in session after lunch break.)

20 THE COURT: All right. Are we ready to proceed?

21 The witness is coming from upstairs?

22 MS. SHIPLEY: Yes, ma'am.

23 MR. BAX: In the meantime, can we approach briefly?

24 THE COURT: Sure.

25 (Off the record bench conference with counsel and the

State v. Tremaine Wray and Taurus Watts 10/8/09

138

1 Court.)

2 THE COURT: Are we ready for the jury?

3 MS. SHIPLEY: State's ready.

4 (Jury in at 2:05 p.m.)

5 THE BAILIFF: Your Honor, the jury's all present.

6 THE COURT: Thank you all. We are ready to
7 proceed.

8 State?

9 MS. MCDUFFIE: Your Honor, state would call
10 Rashonda Simpson.

11 (WHEREUPON, Rashonda Simpson was
12 sworn to tell the truth.)

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

15 MS. SIMPSON: Rashonda Miller.

16 RASHONDA SIMPSON - DIRECT EXAMINATION

17 BY MS. MCDUFFIE:

18 Q Good afternoon, Ms. Simpson. Ms. Simpson, where do you
19 currently live?

20 A At [REDACTED].

21 Q And where did you live the end of June 2007?

22 A [REDACTED].

23 Q And who was living there with you in June and July of
24 2007?

25 A Me my husband, Jarrell Dansby, and my two kids.

State v. Tremaine Wray and Taurus Watts 10/8/09

139

1 Q And are you still married to Jarrell Dansby?

2 A No.

3 Q And when did you separate from him?

4 A Two years ago, May. I can't think of the right date.

5 Q I'm going to show you what's been marked as State's
6 138, and ask you is you recognize this?

7 A Yeah.

8 MS. MCDUFFIE: Your Honor, we'd offer State's No.
9 138 into evidence.

10 THE COURT: Okay.

11 MR. SWERLING: No objection.

12 MS. JOHNS: No objection.

13 THE COURT: All right.

14 (State's Exhibit No. 138, photo 202
15 Haygood, was marked and entered.)

16 BY MS. MCDUFFIE:

17 Q Rashonda, can you show the jury which house is yours?

18 A (Indicating.)

19 Q Right there?

20 A (Nod affirmatively.)

21 Q And who lives here?

22 A My -- that's my mom's.

23 Q That's your mom's house?

24 A Uh-huh. (Affirmative response.)

25 Q And who lives here?

1 A My grandmother and my aunt.

2 Q Okay. So your whole family lives in this one area?

3 A Yeah.

4 Q And you were in the process of separating from Jarrell
5 Dansby in 2007?

6 A Uh-huh. (Affirmative response.)

7 Q And where were you employed in 2007?

8 A McDonald's.

9 Q And where are you currently employed?

10 A School District Two.

11 Q And what do you do for School District Two?

12 A Drive -- transportation.

13 Q I'm going to bring you back to the first weekend or
14 first of July, 2007. Do you recall coming home -- I'm
15 sorry. Did you come home from work at the beginning of July,
16 2007 and witness something?

17 A Yes.

18 Q And what did you see?

19 A Well, I got home from work, Jarrell's in the back yard.
20 I had talked to the kids for a little while, and then when I
21 went out I heard him digging something in the backyard. I
22 didn't know what it was and I started asking him, I was
23 like, what are you doing. And we began to argue because he
24 didn't want to tell me what he was doing.

25 Q And did you see what he was doing?

State v. Tremaine Wray and Taurus Watts 10/8/09

141

1 A It would appear that he was burying something.

2 Q And at that time did you know what he was burying?

3 A No.

4 Q What happened next?

5 A We had began arguing about what he was doing, because I
6 wouldn't go back I the house. And by that time, he was
7 fussing at me, telling me to go back in the house and he
8 began to pick up whatever he was digging and I noticed it
9 was a gun.

10 Q And do you remember what the gun looked like?

11 A No. I just seen that it was black. I don't know what
12 kind of gun it was or nothing.

13 Q Are you familiar with guns?

14 A No.

15 Q You don't know much about guns at all?

16 A No.

17 Q When you realized it was a gun, what did you then do?

18 A I started asking him because I knew what had happened
19 over the weekend with his cousin and I was like --

20 Q Let me stop you. Who is Jarrell's cousin?

21 A Tremaine Wray.

22 Q And do you know Tremaine Wray?

23 A Uh-huh. (Affirmative response.)

24 Q And do you see him in the courtroom today?

25 A Uh-huh. (Affirmative response.)

1 Q Can you please identify him for the jury?

2 A (Indicating.)

3 Q And how long have you known Tremaine?

4 A Years. We went to school together.

5 Q You said you knew what happened over the weekend, and
6 then you saw him burying the gun. What happened next?

7 A I began asking him, you know, is that the gun, the
8 murder weapon.

9 Q When --

10 MR. SWERLING: Objection. Something he said.

11 THE COURT: Thank you.

12 BY MR. MCDUFFIE:

13 Q Without saying what he told you, what happened next?

14 A He put it back in the bag, a black book bag.

15 Q Like a book bag a kid would take to school?

16 A Yeah, a regular book bag.

17 Q And what happened after that?

18 A He walked by the house and my uncle was outside and I
19 came out and saw him talking to my uncle.

20 Q And who's your uncle?

21 A Brian Watson.

22 Q And how long have you known Brian?

23 A My whole life.

24 Q And you saw Jarrell talking to Brian?

25 A Uh-huh. (Affirmative response.)

State v. Tremaine Wray and Taurus Watts 10/8/09

143

1 Q And so you saw Jarrell talking to Brian?

2 A Uh-huh. (Affirmative response.)

3 Q And what happened to that?

4 A I walked over there and they -- Brian was taking the
5 gun apart for Jarrell.

6 Q And what happened next?

7 A They put it in the black book bag, and they left home.

8 Q And whose car did they leave in?

9 A Mine.

10 Q And what kind of car was that?

11 A A Montero Sport.

12 Q And about how long did it take them before they
13 returned?

14 A Less than 45 minutes.

15 Q And did you -- when they returned home did you see the
16 gun or the black bag again?

17 A No.

18 Q When this incident happened, did you call the police?

19 A No.

20 Q Did you go report it to anyone?

21 A No.

22 Q When was the first time you told law enforcement about
23 this?

24 A When they came to my house.

25 Q And that was -- recently?

1 A Maybe three weeks ago, four week -- a month.

2 Q So within the last couple of months law enforcement
3 came to your house?

4 A They came to my house and -- well, they called me over
5 the cell phone and they told me they needed me for
6 questioning. I told them I didn't know what they was
7 talking about. And 30 minutes later they showed up at my
8 house.

9 Q And what happened after that?

10 A They said they had a statement from my uncle --

11 MR. SWERLING: Don't tell anything anybody said.

12 THE COURT: Sustained.

13 BY MS. MCDUFFIE:

14 Q Don't say what anyone told you.

15 A Okay.

16 Q After they came to your house, what happened next?

17 A I had to tell them what I know.

18 Q And is that what you did?

19 A Uh-huh. (Affirmative response.)

20 Q And you have three prior convictions for fraudulent
21 checks in 2008 and 2009?

22 A Yes.

23 Q And when the police came to your house in May 2009, you
24 told them about this incident, what you knew?

25 A Well, actually when they came I wouldn't talk to them.

State v. Tremaine Wray and Taurus Watts 10/8/09

145

1 My mom went and talked to a lawyer and we went over to my
2 lawyer's house.

3 Q So you went to your lawyer's house with the police?

4 A With the solicitor, a man who came with two officers.
5 We went to my lawyer house and I talked to them there. I
6 didn't talk to them at my house.

7 Q Okay, so you all went to your lawyers house?

8 A Uh-huh. (Affirmative response.) We drove separate
9 cars there.

10 Q And what's your lawyer's name?

11 A Nathaniel Roberson.

12 Q So y'all went to Mr. Roberson's house --

13 A Uh-huh. (Affirmative response.)

14 Q -- and you talked to police with your lawyer present?

15 A Uh-huh. (Affirmative response.)

16 Q And you gave them a written statement?

17 A Uh-huh. (Affirmative response.)

18 MS. MCDUFFIE: Beg the Court's indulgence.

19 BY MS. MCDUFFIE:

20 Q And after you told the police what had happened after
21 you talked to them about this incident, did anything else
22 happen after that?

23 A Oh, me and him, we fell out and my grandma got threats
24 from him.

25 Q And who is him?

1 A Jarrell Dansby.

2 MS. MCDUFFIE: Nothing further, Your Honor.

3 THE COURT: Okay.

4 RASHONDA SIMPSON - CROSS-EXAMINATION

5 BY MR. SWERLING:

6 Q Ms. Simpson, I'm Jack Swerling. How are you?

7 A Fine.

8 Q You've taken an oath, okay. Do you understand what
9 that means?

10 A Yes, I do.

11 Q And you understand that if you do not tell the truth.
12 under the oath that you took that you are subjecting
13 yourself to a charge of perjury?

14 A Uh-huh. (Affirmative response.)

15 Q And are you still telling the jury that what you just
16 told Ms. McDuffie is the truth?

17 A Uh-huh. (Affirmative response.)

18 Q And specifically that you did not get in a car and help
19 dispose of the gun?

20 A No, I didn't.

21 Q You did not?

22 A No.

23 Q So if somebody was saying that, they're not telling the
24 truth?

25 A Yes.

State v. Tremaine Wray and Taurus Watts 10/8/09

147

1 Q You are; is that right?

2 A Uh-huh. (Affirmative response.)

3 Q What is Brian Watson's relationship to you?

4 A He's my uncle. He's my mom's brother.

5 Q Mom's brother.

6 A Uh-huh. (Affirmative response.)

7 Q How old are you?

8 A 28.

9 Q Now, you filed a report -- well, actually I guess it
10 wasn't you that filed the report, but you're aware -- you
11 testified, I think, when Ms. McDuffie asked you that Mr.
12 Jarrell Dansby, who is the person you were married to?

13 A Uh-huh. (Affirmative response.)

14 Q Subsequent to this occasion, sometime around May 18 --
15 not subsequently, actually it was May 18, the same day that
16 you spoke to the police, correct --

17 A (No response.)

18 Q -- on that day he called and threatened you?

19 A No. He talked to my grandma. Him and my grandma
20 discussed -- I don't know anything about that --

21 Q Well, you just told Ms. McDuffie that you got a threat.

22 A No. I said my grandmother got a threat.

23 Q Your grandmother got a threat?

24 A Yes.

25 Q About you or herself?

1 A No, she got one from Jarrell. I didn't get a threat
2 from him. He threatened my grandmother. That's what I
3 said.

4 Q And you're aware that he did threaten your grandmother?

5 A Yes.

6 Q And that was if they cooperated, if you cooperated, if
7 Brian Watson cooperated in this case?

8 A Excuse me?

9 Q The threat was based upon them cooperating or if they
10 cooperated in this case?

11 A I don't know what the threat was based on. I said
12 Jarrell and my grandmother talked on the phone and I wasn't
13 there.

14 Q So you have no idea what the threat was related to?

15 A No.

16 Q But it was the same night that this happened?

17 A I don't know what night it was. It was in the daytime,
18 I believe, after all this stuff had happened he called my
19 grandmother and he talked to her. I wasn't there, and I
20 don't know what he told her.

21 Q All right. Where were you -- did you get a call from
22 Jarrell prior to finding out when you went home what he was
23 doing?

24 A Yes, I did.

25 Q And where were you at that time?

State v. Tremaine Wray and Taurus Watts 10/8/09

149

1 A At work -- No, he didn't tell me what he was doing. He
2 called me and asked me what time I was getting home from
3 work and I told him.

4 Q And what time did you tell him you got off?

5 A I think 4:00 or 5:00. I don't really remember.

6 Q All right. Where was he at the time he called; where
7 did he tell you he was?

8 A He was home, I believe.

9 Q And so you got home, and as I understanding what you're
10 saying is when you first got in and spoke with the kids you
11 went out back and you saw him burying something?

12 A Uh-huh. (Affirmative response.)

13 Q Okay. And that's when you had a conversation with him?

14 A Uh-huh. (Affirmative response.) It was more like
15 fussing. It was an argument.

16 Q You were arguing. All right. And as a result of that
17 argument, whatever he was burying in the backyard he picked
18 back up?

19 A Uh-huh. (Affirmative response.)

20 Q Is that right?

21 A Uh-huh. (Affirmative response.)

22 Q And you said you actually saw that it was a gun?

23 A Yeah, but I didn't see what kind of gun it was, which I
24 don't know anything about guns. But I know it was a gun,
25 but I don't know what kind it was.

1 Q You don't know what color it was?

2 A It was black.

3 Q Nobody in law enforcement ever showed you a photo
4 spread or a photo of a bunch of guns?

5 A They showed me a couple, but I don't know guns.

6 Q So you were not able to identify the weapon?

7 A Yeah. I showed them a gun that was similar to the one
8 I seen, but I told them I was not for sure it this was it,
9 because I wasn't up close to it, and I didn't see it.

10 Q So this was in May. You said you got home about
11 quarter to --

12 A I didn't say what time I got home.

13 Q Okay. What time did you get off?

14 A I can't remember. I told him I was getting off like
15 4:00 to 5:00. And I don't know the exact time that I got
16 home.

17 Q Is that normally the time when you get off?

18 A Yes. When I was working there.

19 Q So there would still be light out at that time?

20 A Uh-huh. (Affirmative response.) It was light out.

21 Q And you went out to the back yard it was still light
22 out?

23 A Uh-huh. (Affirmative response.)

24 Q Now, after he picked the gun back up out of the ground,
25 your uncle came over --

1 A No. He --

2 Q -- or next thing you saw he was talking to your
3 husband?

4 A No. When he picked the gun up he placed it in the book
5 bag, and he walked around our trailer and walked - my uncle
6 was sitting on the porch, and he walked to Brian under the
7 shed, they met under the shed. And he talked to him.

8 Q Where Brian lives?

9 A Uh-huh. (Affirmative response.)

10 Q So he walked over to Brian?

11 A Uh-huh. (Affirmative response.)

12 Q With the bag?

13 A Uh-huh. (Affirmative response.)

14 Q And how long were they over there talking?

15 A Probably about 30 to 45 minutes. But when he walked
16 over there, maybe about five to 10 minutes, I walked over
17 there.

18 Q And were you there when they were discussing the gun?

19 A They weren't discussing it when I walked over there.
20 When I walked over there Brian was taking the gun apart.

21 Q And how was he taking it apart?

22 A I can't remember. He was taking it apart. Hammer,
23 with a hammer.

24 Q He was doing it with a hammer?

25 A Yeah.

1 Q Now, I looked at your statement because I believe
2 that's what you told Ms. McDuffie, but there's nothing
3 concerning him taking it apart with a hammer. And I
4 certainly don't want to misrepresent -- but can you look in
5 your statement and find where you told the police he was
6 taking it apart with a hammer?

7 A Well, I might have left it out.

8 Q It's not in there?

9 A No.

10 Q Have you talked to Jarrell since this day?

11 A Oh, course, I've got three kids with him.

12 Q That's what I figured.

13 A Uh-huh. (Affirmative response.) Talk to him every
14 day.

15 Q And you've discussed this case?

16 A No, we don't talk about it.

17 Q So since May 18, when you were confronted by the police
18 and he was confronted by the police, you're telling the jury
19 y'all have never discussed this or the events of that
20 evening?

21 A We don't talk about it.

22 Q You're telling the jury that since May 18, you and he
23 have never discussed what happened that evening; that's what
24 I'm asking you?

25 A No. We talk about other things, but we don't talk

State v. Tremaine Wray and Taurus Watts 10/8/09

153

1 about the case at all; not in front of our kids.

2 Q So the answer to my question is you've never discussed
3 it?

4 A No. It's no.

5 Q Now, after a period of time where did they go and what
6 did they do?

7 A They got in my car and left. When they got back he
8 told me that Brian threw it in the river.

9 Q How long were they gone?

10 A 30 to 45 minutes, like I said.

11 Q Do you have any recollection of it, whatsoever?

12 A No.

13 Q Was it after dark when they came back?

14 A No.

15 Q Was it after dark -- I mean, do you have any idea?

16 A It was getting dark; it wasn't dark.

17 Q How long after you walked over to Brian's house did
18 they leave?

19 A About 15 minutes.

20 Q Who was driving?

21 A Jarrell.

22 Q And Brian is how old?

23 A I have no idea.

24 Q You don't know how old your uncle is?

25 A No.

1 Q He lives next door to you?

2 A He stays with -- by my mom with my grandmother.

3 Q Which is next door?

4 A No, it's a little bit -- it's not that far. My mom is
5 next door to me. A little bit up the road. We stay on land.

6 Q All right. Is he in his 20s, 30s, 40s?

7 A No. He probably late 30s.

8 Q Okay. So Jarrell gets in the car driving; it's your
9 car, right?

10 A It's our car.

11 Q You own it together?

12 A Uh-huh. (Affirmative response.)

13 Q Did you give me an estimate of how long they were gone?

14 A I just said 30 minutes.

15 Q Pardon?

16 A About 30 to 45 minutes.

17 Q 30 to 45 minutes? Do that's what you reckon it was at
18 that time?

19 A I can't give the exact time. I mean, this was years
20 ago. About 30 to 45 minutes.

21 Q So this is on May 18th. And after May 18th, -- I'm
22 sorry, May 18th was the first time you were asked to recall
23 this event; correct?

24 A I don't know.

25 Q May 18th was the day the police came out there?

1 A To my house?

2 Q To your house?

3 A No. The police came out to my house three weeks ago.
4 Three -- a month ago.

5 Q Could you look at your statement and tell me what date
6 is on there? It's down at the bottom.

7 A Down here?

8 Q Yes. May 18th?

9 A Uh-huh. (Affirmative response.)

10 Q Is that correct?

11 A Yes.

12 Q I'm sorry I can't hear you?

13 A Yes.

14 Q So they came out on May 18th and they were asking you
15 about events that took place some time maybe two years ago?

16 A Uh-huh. (Affirmative response.)

17 Q Is that right?

18 A Uh-huh. (Affirmative response.)

19 Q Do you even recall what date these events that you're
20 describing happened?

21 A I don't -- I mean, I don't remember.

22 Q That's all right. I'm just asking you.

23 A I don't know what date this accident happen. I just
24 know it was a couple of years ago. I told them I didn't
25 remember what -- you know, actually what day.

1 Q Do you remember what month it was?

2 A No.

3 Q Do you remember what season it was?

4 A I know it was kind of warm outside. I don't remember.

5 Q So two years later --

6 A All this stuff --

7 Q -- it's coming back and that was the first time you
8 talked about it?

9 A Uh-huh. (Affirmative response.)

10 Q And you haven't talked about it since with anyone?

11 A (No response.)

12 Q And you were asked to relate events that took place
13 whatever evening this was that you're describing?

14 A Uh-huh. (Affirmative response.)

15 Q So we have, as far as assisting the jury, you have no
16 way to tell the jury as to when these events took place?

17 A I mean, I just can't remember the exact date. I don't
18 remember. It was a couple of years ago.

19 Q Well, you had a problem, you said they just came out to
20 see you a couple of weeks ago for the first time, so your
21 time reference is pretty sordid, if May is just a couple of
22 weeks ago.

23 A Well, I mean, that's what it feels like, a couple of
24 weeks.

25 Q Well, when they came back, did Brian and Jarrell come

State v. Tremaine Wray and Taurus Watts 10/8/09

157

1 into the house; did you talk with them?

2 A Everybody went they own home.

3 Q Separate homes. Now, were you staying with Jarrell at
4 that time?

5 A We were staying together.

6 Q All right. Now, let's just jump forward whether it was
7 six month or a year or whenever it was, because we really
8 don't know, but what we do know is it was May 18th?

9 A Uh-huh. (Affirmative response.)

10 Q Now, when the police came out to see you what time was
11 it?

12 A It was late at night. When they first came?

13 Q Yes, ma'am.

14 A When they called me it was almost 11:00 o'clock at
15 night, I think. It was real late.

16 Q I'm sorry?

17 A It was almost 11:00 because by the time we got to the
18 lawyer house it was like midnight.

19 Q All right. They wanted to talk with you and you told
20 them you wanted to have the lawyer there. Actually you
21 wanted to come in the next day --

22 A Yeah. I didn't want them to come to my house because I
23 didn't know what they wanted or anything.

24 Q Okay.

25 A But they told me they was going to come.

1 Q And so as a result of that you arranged to meet down at
2 your lawyers house?

3 A No. They came -- before they came they said they would
4 be there in like 15 to 20 minutes. So when they got there,
5 my mom immediately called the lawyer and he told me to bring
6 them to his house. And we went to his house.

7 Q Y'all eventually arranged to meet down at your lawyer's
8 house about 12:00 o'clock at night?

9 A Uh-huh. (Affirmative response.)

10 Q And at that time they started asking you questions
11 about a particular weapon; is that right?

12 A Uh-huh. (Affirmative response.) They started asking me
13 questions about what I knew about what had happened.

14 Q And you gave a written statement to that effect on May
15 18th; is that correct?

16 A Uh-huh. (Affirmative response.)

17 Q Now, they told you that if you did not cooperate you
18 could be charged as an accessory after the fact; isn't that
19 true?

20 A They told me what -- well, really they told me and
21 Jarrell that --

22 Q Really the answer to the question is --

23 A -- they would -- I mean, it was different things that
24 they were saying. Like different charges, that the best is
25 for me to tell what happened.

State v. Tremaine Wray and Taurus Watts 10/8/09

159

1 Q They at least were telling you could be charged with
2 accessory after the fact of felony murder?

3 A Uh-huh. (Affirmative response.)

4 Q And up to 15 years in the penitentiary?

5 A Yeah.

6 Q And they told you you could be charged with other
7 offenses, as well?

8 A They named different things.

9 Q Conspiracy?

10 A I can't say --

11 Q Do you remember what the other charges were that they
12 threatened you with?

13 A I was -- I don't remember.

14 Q Well, you were a little nervous at that time, weren't
15 you, scared?

16 A Yes, I was.

17 Q You didn't want to go to jail?

18 A No.

19 Q And as a matter of fact, to this day, no one has ever
20 served you with a warrant have they?

21 A No.

22 Q No one has charged you with being an accessory after
23 the fact; isn't that right?

24 A No.

25 Q And was that deal cut that night that you were not

1 going to be charged?

2 A No. It wasn't a deal cut. They said -- I asked them
3 would I have to testify and he said that it probably want
4 even make it to trial. That they'll probably plea or
5 something. I didn't want to testify.

6 Q You didn't want to testify?

7 A No.

8 Q But you're here testifying?

9 A Yeah. I didn't ask to testify.

10 Q So they didn't tell you the truth?

11 A They told me they'd probably plea.

12 Q Right.

13 A Yeah.

14 Q But there's a trial going on?

15 A Yes, it is.

16 Q So they told you something that wasn't true; turned out
17 not to be true. Is that true?

18 A I was told that I probably would not have to testify.

19 Q So the answer to my question is; Yes, I was told
20 something that wasn't true?

21 A That's what they said.

22 Q And as a result of what they told you is what you gave
23 this statement?

24 A I know I gave the statement because I know the truth
25 about what happened.

State v. Tremaine Wray and Taurus Watts 10/8/09

161

1 Q Okay. Now, was Jarrell there at that time?

2 A No.

3 Q Where was Jarrell at that time that you gave this
4 statement?

5 A He was at home.

6 Q Did they -- when they called you did they also call
7 him?

8 A Like the next day, I believe.

9 Q Next day. Did they ask for him?

10 A Huh?

11 Q They didn't ask for him when they talked to you?

12 A Huh?

13 Q I'm talking about when they called you on the phone?

14 A No. They asked for me, for Rashonda.

15 Q Did you go back and tell Jarrell what happened when you
16 were over at Nathaniel Roberson's house?

17 A No. I told him that I had to go or he would -- the
18 people and my lawyer -- and that was it.

19 Q He wasn't curious as to what you had told them?

20 A I mean, we kind of got into an argument about it.

21 Q Well, did you discuss with him what you discussed with
22 the police?

23 A No, I didn't.

24 Q So he would not have had any idea according to your
25 testimony what --

1 A He already knew --

2 Q Let me ask my question.

3 A He already knew, because he got a phone call from
4 somebody. So he already knew what had happened.

5 Q Here's my question. Did you tell him what you had told
6 the police?

7 A No, I didn't.

8 Q And he didn't ask you?

9 A No.

10 Q And did you get a copy of your statement?

11 A Yes, I did.

12 Q Did you show it to Jarrell?

13 A No, I didn't.

14 Q Well, you took it home when you went home?

15 A Yeah. We weren't staying together. You heard me say
16 that we had been separated for two years.

17 Q Okay. So did you speak with him after you got done
18 with the police?

19 A Not --

20 Q How did you speak with him -- did you go see him?

21 A I saw him the next day because he had the kids.

22 Q Okay. Did you speak with him in person or did you
23 speak with him on the phone?

24 A I had to pick my kids up, so I saw him.

25 Q And did you, at that time, when you met him in person

State v. Tremaine Wray and Taurus Watts 10/8/09

163

1 you're saying you did not discuss the case or show him the
2 statement?

3 A No. We didn't -- we discussed it, but we didn't get
4 into details about what was said that night.

5 Q The night before?

6 A Yeah, when we talked to the lawyer and everything. He
7 knew that I had talked to them, the solicitor, he knew I had
8 went to my lawyer house, but everything stated, we did not
9 discuss. Like I said, we was fussing.

10 Q And about when did y'all separate. I'm not sure I got
11 that correct?

12 A Two years ago, right before all this stuff happened.

13 Q Pardon?

14 A Two years ago. May -- I don't know what date it was in
15 May. Almost three years.

16 Q Have you and Brian ever discussed, since May 18, 2009

17 --

18 A No.

19 Q -- what you discussed with the police?

20 A No.

21 Q Has Brian discussed with you what he told the police?

22 A No.

23 Q Has Jarrell discussed with you what he told the police?

24 A No. I told you no --

25 Q No. My other question was did you tell him.

1 A No.

2 Q Now, I'm asking you has Jarrell told you what he told
3 the police?

4 A No.

5 Q Have you ever seen a statement by Mr. Watson?

6 A No.

7 Q Have you ever seen a statement by Jarrell?

8 A Jarrell? No.

9 Q Did anybody in law enforcement indicate to you what one
10 of them has said, if anything?

11 A What my uncle said.

12 Q They did.

13 A When I first got picked up -- well, not picked up, when
14 they -- at first -- they told me why I was there.

15 Q So --

16 A Because they had got a statement from my uncle.

17 Q So you're aware of the fact that at the time they came
18 to see you they had a statement from your uncle already?

19 A Huh?

20 Q So you're aware that when they came to see you they had
21 a statement from your uncle already?

22 A No. When they called me on the phone they told me that
23 they had some information about me knowing about the murder
24 of such and such.

25 Q They had gotten that from your uncle?

State v. Tremaine Wray and Taurus Watts 10/8/09

165

1 A I didn't know -- on the phone, I didn't know until I
2 got over there and talked to them. I didn't know what had
3 happened.

4 Q So when you got over there and you talked to them they
5 told you the information came from your own uncle, is that
6 right?

7 A Yes.

8 Q Now, they must have asked you about the discrepancy
9 between what he told and what you told -- what you're saying,
10 is that he said -- and what was your answer?

11 MS. MCDUFFIE: Your Honor, objection. Pitting
12 witnesses.

13 MR. SWERLING: No. I'm actually asking her, Your
14 Honor, what her position is with respect to being in the car
15 when they dumped the gun. That's my question.

16 MS. MCDUFFIE: Your Honor, I believe the question
17 was he said.

18 BY MR. SWERLING:

19 Q Well, let me ask you something.

20 THE COURT: Thank you.

21 BY MR. SWERLING:

22 Q Did they tell you anything about what he said and you
23 being in the car?

24 A Yes.

25 Q When the gun was disposed of?

1 A Yes.

2 Q And you're telling the jury that your uncle did not
3 tell the truth about your being there?

4 MS. MCDUFFIE: Your Honor, objection.

5 MR. SWERLING: It's not pitting the witnesses. I
6 mean, first of all, there's no such ruling.

7 A No, because actually when I --

8 THE COURT: Hold on. He's entitled to know this.
9 Go ahead.

10 A When I talked to them I told them when they walked back
11 over there before they got the keys and stuff, I was
12 originally going with them. But no one would watch the kids
13 so I had to stay with the kids. I told everybody who I
14 talked to that the thing was I started off to go with them.
15 We started to pull out the driveway and I couldn't go because
16 the kids came out my mom's house and said no one would watch
17 them. So I go out the car and didn't go.

18 BY MR. SWERLING:

19 Q I'm sorry.

20 A Yeah, so I didn't go.

21 Q So you were in the car with them?

22 A In the car, yes.

23 Q I'm just making sure I understand and the jury
24 understands that when the police confronted you what your
25 uncle said that you were there when they disposed of the gun,

State v. Tremaine Wray and Taurus Watts 10/8/09

167

1 you said, your response was, well, originally you were going
2 to go and you got in the truck, but then you got out; isn't
3 that right?

4 A I told them I didn't go with them because I didn't have
5 nobody to watch the kids.

6 Q And obviously if you had been there when the gun was
7 disposed of that would have further incriminated you; isn't
8 that true?

9 A Probably.

10 Q Have you see Jarrell today?

11 A Today?

12 Q Yeah.

13 A No.

14 Q He's not up in the solicitor's office waiting with you?

15 A I haven't seen Jarrell.

16 Q Did you tell him to come to the trial?

17 A He knows.

18 Q And you have discussed it with him?

19 A Huh?

20 Q You haven't discussed with him what your testimony is
21 going to be?

22 A No. We don't talk about it.

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

24 THE COURT: Yes.

25 RASHONDA SIMPSON - CROSS-EXAMINATION

1 BY MS. JOHNS:

2 Q Ms. Simpson --

3 A Uh-huh. (Affirmative response.)

4 Q -- your uncle was arrested for armed robbery in
5 February of 2009 wasn't he?

6 A I guess. I don't know the exact dates, but he was
7 arrested for armed robbery.

8 Q And doesn't he live with your grandmother?

9 A He did.

10 Q Okay, and is that at [REDACTED]?

11 A Uh-huh. (Affirmative response.)

12 Q And you still live there, right?

13 A Uh-huh. (Affirmative response.)

14 Q And so you haven't seen him around lately, right?

15 A No.

16 Q So that's normal for you not to see your uncle around?

17 A I mean, he's in jail.

18 Q Okay. But you haven't seen him since he was arrested
19 for armed robbery; you mean that, right?

20 A Yes.

21 Q Okay. And he was arrested in February, 2009, right?

22 A I don't know exactly what month he was arrested, but
23 he's incarcerated.

24 Q All right. Is he still using drugs?

25 A I guess not. Can he use them in jail?

State v. Tremaine Wray and Taurus Watts 10/8/09

169

1 Q Did he use them before he went to jail?

2 A I guess. I never seen him do it.

3 Q Okay. Now, when you pointed out on this diagram -- do
4 you still have that pointer with you?

5 A Yes.

6 Q Where is it that you stay?

7 A About here.

8 Q All right.

9 A Right here.

10 Q And who's between the two of you?

11 A My mom.

12 Q Your mom. So your mom and Brian Watson are brother and
13 sister, correct?

14 A Uh-huh. (Affirmative response.)

15 Q So Brian's mother, your uncle Brian's mother is also
16 your grandmother, right?

17 A Uh-huh. (Affirmative response.)

18 Q So when was the last time that you talked to your uncle
19 Brian?

20 A Maybe when he was at Alvin S. Glenn, maybe about two
21 times.

22 Q When was the last time you saw him?

23 A Months ago.

24 Q Before his statement, right?

25 A Uh-huh. (Affirmative response.)

1 Q And when was the last time that you talked to your
2 grandmother about this gun?

3 A We don't talk about it.

4 Q Your grandmother and you do not talk about this gun?

5 A No, we sure don't.

6 Q And your grandmother and you did not discuss Brian's
7 statement?

8 A When all of it first happened, my grandmother went over
9 there with me. We don't talk about it.

10 Q She went over there where with you?

11 A To my lawyer house that night.

12 Q And this was subsequent to your uncle Brian's arrest
13 for armed robbery, right?

14 A It was months later.

15 Q Months later?

16 A Uh-huh. (Affirmative response.)

17 Q But before the police came to your house, right?

18 A Before the police came to my house, what?

19 Q Before the police came to you and started asking you
20 questions about a gun that has disappeared in a murder case.
21 You talked to your grandmother about it, didn't you?

22 A No.

23 Q You didn't?

24 A She didn't know anything about it.

25 Q She didn't know anything about it?

State v. Tremaine Wray and Taurus Watts 10/8/09

171

1 A No one knew.

2 Q No one knew?

3 A No.

4 Q So you're saying that the only person that knew was you
5 and Brian and your husband, Jarrell, right?

6 A Right. And a couple of his family members.

7 Q Whose family members?

8 A Jarrell.

9 Q What about your family members; didn't your grandmother
10 know about it?

11 A She didn't.

12 Q All right. This is the same grandmother that was
13 threatened; is that what you're saying?

14 A Uh-huh. (Affirmative response.)

15 Q Okay. Was it your uncle Brian that threatened her?

16 A No. It was Jarrell. I don't know what threat, how it
17 took place. Like I said, I wasn't there.

18 Q So you just heard about it?

19 A Yes.

20 MS. JOHNS: I have nothing further.

21 MS. MCDUFFIE: Nothing further from the state. May
22 this witness be excused?

23 THE COURT: Certainly. Ma'am, you can step down to
24 be excused.

25 MS. SHIPLEY: State calls Jarrell Dansby.

1 (WHEREUPON, Jarrell Dansby was
2 sworn to tell the truth.)

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

5 MR. DANSBY: Jarrell Dansby.

6 JARRELL DANSBY - DIRECT EXAMINATION

7 BY MS. SHIPLEY:

8 Q Good afternoon, Mr. Dansby. Mr. Dansby, can you tell
9 the jury a little bit about yourself, where are you from?

10 A Columbia, South Carolina. I'm a chef.

11 Q You're a chef. Where do you work?

12 A At Forest Lake County Club.

13 Q At Forest Lake County Club? And can you tell the jury
14 whether or not you're married or divorced or if you have any
15 kids?

16 A I'm separated. I've been separated and I got three
17 kids.

18 Q And who is your wife from whom you're separated?

19 A Rashonda Simpson.

20 Q And was that the lady that just walked out?

21 A Yes.

22 Q To bring your attention to the case at hand, tell the
23 jury how you are related to Tremaine Wray?

24 A My cousin.

25 Q And exactly who are your parents related?

State v. Tremaine Wray and Taurus Watts 10/8/09

173

1 A His mother and my mother are first cousins.

2 Q And your grandmothers were --

3 A Sister.

4 Q -- sisters?

5 A Yes.

6 Q And tell the jury did you see a lot of Tremaine growing
7 up?

8 A Yes. Either he was at our house or I was at his.

9 Q And do you consider him more like a brother than a
10 cousin?

11 A Yeah.

12 Q Is it easy for you to be here today, sir?

13 A No.

14 Q Did you really want to be involved in this?

15 A No.

16 Q Do recall being approached or contacted around May,
17 2009, about this case?

18 A Yes.

19 Q And specifically on May 20, 2009, do you recall having
20 an interview with law enforcement?

21 A Yes.

22 Q Do you recall meeting Investigator McRae who just left
23 the courtroom, but Investigator McRae?

24 A Yeah.

25 Q Where did you meet with law enforcement?

1 A My lawyer office.

2 Q And who is your lawyer?

3 A Todd Rutherford.

4 Q And do you recall whether or not you're attorney made
5 arrangements with law enforcement that you would cooperate?

6 A Yeah, at that time, he did.

7 Q Were you aware that they were going to seek a warrant
8 for your arrest?

9 A Yes.

10 Q For accessory after the fact of murder?

11 A Yes.

12 Q And what was your understanding with your arrangement
13 with your attorney and with law enforcement?

14 A If I cooperated they would resend the warrant.

15 Q And by cooperate, if you told the truth, they would
16 resend the warrant?

17 A Yes.

18 Q Did you agree to meet with law enforcement and your
19 lawyer?

20 A Yes.

21 Q And was that on May 20, 2009?

22 A Around there.

23 Q And who is your lawyer?

24 A Todd Rutherford.

25 Q Todd Rutherford. Do you recall the line of questioning

State v. Tremaine Wray and Taurus Watts 10/8/09

175

1 that you were asked by law enforcement at your attorneys
2 office?

3 A Yeah, pretty much.

4 Q And tell the jury what you were asked?

5 A Tremaine, how did I know Tremaine. Pretty much what
6 you just asked me, and then about the gun. They asked me
7 about the gun.

8 Q What about the gun?

9 A Did I receive the gun.

10 Q And what did you tell law enforcement?

11 A Yes.

12 Q And tell the jury -- do you remember the dates that he
13 gave you the gun?

14 A It was like Saturday before or after 4th of July. I
15 don't remember.

16 Q Either the Saturday before or the Saturday after the
17 4th of July?

18 A Yes.

19 Q Of what year?

20 A 2007.

21 Q And just to assist you with the dates, sir, I'm going
22 to show you a calendar on State's 139 of June and July 2007.
23 Does that reflect the dates of those months?

24 A Yes. I just remember it was close to 4th of July.

25 Q Okay.

1 MS. SHIPLEY: Your Honor, at this time, the state
2 seeks to introduce 139 into evidence?

3 MR. SWERLING: No objection.

4 MS. JOHNS: No objection.

5 THE COURT: It's admitted.

6 MS. SHIPLEY: Thank you.

7 (State's Exhibit No. 139, calendar, was
8 marked and entered.)

9 BY MS. SHIPLEY:

10 Q And so back in July of 2007, the 4th was a Wednesday,
11 correct?

12 A Yes.

13 Q And your testimony is that it was either the Saturday
14 before or the Saturday after July 4th?

15 A Yes.

16 Q Of the year 2007?

17 A Yes.

18 Q Where were you working back in that year?

19 A Columbia Country Club.

20 Q And where is Columbia County Club located?

21 A Blythewood.

22 Q Blythewood. Do you recall whether or not you were at
23 work that day?

24 A Yeah, I was at work.

25 Q And what time did you work until?

State v. Tremaine Wray and Taurus Watts 10/8/09

177

1 A Probably like about 4:00 or 5:00.

2 Q Was that your normal schedule back then?

3 A Yeah.

4 Q And so you would also works Saturdays?

5 A Yes.

6 Q Tell the jury how it was that you came into contract
7 with Tremaine?

8 A Uh --

9 Q Did he call you on his cell phone?

10 A I guess. I'm not really sure. He called me on my cell
11 phone. I didn't know where he was calling from.

12 Q And do you recall what your cell phone was back then?

13 A No, ma'am.

14 Q And do you recall what time he may have called you on
15 that day?

16 A Maybe around 1:00 o'clock.

17 Q Maybe around 1:00 o'clock?

18 A Right.

19 Q And I'm going to read some numbers off to you and ask
20 you if you recognize any of these numbers, okay.

21 A Okay.

22 Q [REDACTED] ?

23 A Mine.

24 Q Was that ever your number?

25 A Yes.

1 Q [REDACTED]? Does that ring a bell?

2 A (No response.)

3 Q [REDACTED].

4 A I wouldn't know. I've been through cell phones.
5 Rashonda, she was responsible for the phone bill, so we
6 pretty much changed phones every month.

7 Q Okay. So you honestly just don't know what number you
8 had?

9 A Yes.

10 Q Do you normally get those type of disposable cell
11 phones?

12 A Yes.

13 Q Pay for the minutes?

14 A Yes.

15 Q So you recall that one that day you got a call from
16 him?

17 A Yes.

18 Q And you were at work?

19 A Yes.

20 Q Tell the jury what happened next?

21 A He was like, he had to go to work. He didn't have time
22 to hide his gun. He didn't want his grandma to find it,
23 could he leave it at my house. I told him yes.

24 Q And back then were you living with Rashonda Simpson?

25 A Unfortunately.

State v. Tremaine Wray and Taurus Watts 10/8/09

179

1 Q And was that -- give us the address, please?

2 A [REDACTED].

3 Q And does this map, State's No. 138, does that show your
4 old house over here?

5 A Yes.

6 Q Where did Brian Watson reside?

7 A This house up here in the corner.

8 Q This house up in the front?

9 A Yes.

10 Q Okay, and who lived in this house?

11 A Rashonda's mother.

12 Q All right. And is there a shed between where Brian
13 Watson stayed and where you stayed?

14 A Yes.

15 Q And can you point that out to the jury on this diagram?

16 A (Indicating.)

17 Q And that's the shed?.

18 A Yes.

19 Q Okay. When you told Tremaine to go ahead and take it
20 to your house where did you instruct him to put it?

21 A He already knew. We used to -- I have like this little
22 underpinning to the mobile home, and we just stash -- speaker
23 boxes and pretty much anything.

24 Q And so were you home when he brought the gun over?

25 A No.

1 Q Now, when you saw you worked until about 4:00 or 5:00
2 that afternoon, by the way, where was Tremaine working back
3 then?

4 A Outback Steakhouse.

5 Q Outback Steakhouse?

6 A Yes.

7 Q And you know what time he had to report to work that
8 day?

9 A About 4:00 or 5:00. I'm not sure.

10 Q And so if he called you at 1:00 telling you he didn't
11 have time to get rid of it because he had to be at work, you
12 say you were at work when he dropped the gun off?

13 A Yes.

14 Q When you get home do you go look for the gun?

15 A No.

16 Q How is it that you find the gun?

17 A I mean, I knew it was back there. What brought it to
18 my attention was one of my friends called and was like did
19 you heard about the (inaudible).

20 Q And at that point what were -- were you aware of
21 anything that happened at the H&J?

22 A No.

23 Q And when you had this discussion -- you can't say what
24 your friend said, but as a result of that conversation did
25 you call Tremaine?

State v. Tremaine Wray and Taurus Watts 10/8/09

181

1 A Yes.

2 Q And tell the jury what you told Tremaine?

3 A I said, listen why did you bring this gun up here, they
4 just told me that you shot somebody last night at the club.

5 He said, no, I didn't. We began to argue. Sometimes I get a
6 little irate. I was yelling and I was screaming. He was

7 like, no, I ain't do nothing, don't worry about it. I was

8 like, man, you need to come get it. And he was like, man,

9 I'm sorry, for giving it to you if you going to act like this

10 when ain't nothing happened. I was like, well, you need to

11 come get it. And he was like, man, I got to go to work.

12 Q Do you remember asking him why he lied to you?

13 A Yeah.

14 Q And how did he respond?

15 A He didn't.

16 Q Do you recall giving a written statement back on May
17 20, 2009?

18 A Yes.

19 Q Would it help you to review your statement to help you
20 remember what you told police he told you when you asked him
21 why he lied to you?

22 A I didn't write it. They typed it.

23 Q Did you get a chance to review it before you signed it?

24 A No. I didn't say he started crying. I started crying.

25 Q You started crying?

1 A Yeah.

2 Q Who started apologizing?

3 A He did. And he was sorry for bring it up there because
4 I was acting like this.

5 Q Okay. Now, when you had this conversation with him did
6 your wife come home from work?

7 A Yes. Yes, she was there the whole time. Before I had
8 the conversation with him.

9 Q And tell the jury what you did with the gun as a result
10 of that conversation?

11 A Okay. Me and her was fussing about it. She was like,
12 why I let him bring it up here. I was like, I didn't. I was
13 like I'm going to call the police and then Brian came over
14 there. And he was like, no, don't call the police, I'll get
15 rid of it.

16 Q And by Brian, do you mean Brian Watson?

17 A Yeah.

18 Q Told you he'd get rid of it?

19 A Yeah.

20 Q Did you get a look at the gun?

21 A No.

22 Q You didn't look at the gun underneath the house?

23 A No. I showed Brian where it was at and that's it.

24 Q I'm going to direct you to your statement and ask you
25 if you recall telling the police about the gun?

State v. Tremaine Wray and Taurus Watts 10/8/09

183

1 A Yeah, that's what I said. I showed Brian where it was
2 at.

3 MR. SWERLING: Excuse me, can you tell me where
4 you're at --

5 MS. SHIPLEY: Yes. It's the second to last
6 sentence is the first paragraph of the first page of the
7 statement?

8 BY MS. SHIPLEY:

9 Q I'm sorry. Can you please repeat what you just said to
10 me?

11 A I said, yeah, that's exactly what I said. I went in
12 the back yard and showed Brian where it was at. I never saw
13 it was in a bag.

14 Q Isn't it true your statement says you never saw it
15 again?

16 A Yeah, I mean, I never saw the bag.

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

18 BY MS. SHIPLEY:

19 Q Do you remember being asked by law enforcement to
20 describe the gun, and were you able to describe the gun?

21 A No.

22 Q Did you know what kind of gun it was?

23 A I told them I had heard he had --

24 MR. SWERLING: Objection. He heard -- hearsay.

25 THE COURT: Sustained.

1 BY MS. SHIPLEY:

2 Q Did Tremaine tell you what kind of gun it was?

3 A No.

4 Q If you could, please refer to Page 2 of your statement
5 to refresh your memory right there.

6 A I said I heard it was a Mac. Like I said, she was
7 typing -- I didn't write that. She was typing. I didn't see
8 it, but I heard it was a Mac.

9 Q A Mac?

10 A Yeah.

11 Q Tremaine didn't tell you it was a Mac?

12 A No.

13 Q Do you recall going to the shed right over here on your
14 property to talk to Brian Watson about getting rid of the
15 gun?

16 A No.

17 Q So your testimony is you did not go to the shed to
18 destroy the gun with Brian Watson?

19 A No.

20 Q Your testimony is you did not see this gun at all that
21 day?

22 A No.

23 Q Did you see Brian get the gun from your back yard?

24 A I saw where it was at, and I saw it was n a bag. I
25 mean, I don't know what was in the bag, but I showed him

State v. Tremaine Wray and Taurus Watts 10/8/09

185

1 where the bag was and he got it. That was it.

2 Q And did you see where Brian went with it?

3 A No. He came back about an hour or an hour and a-half
4 later and told me don't worry about it.

5 Q Did he tell me where he disposed of it?

6 A No. Didn't ask him.

7 Q And so you are denying that you accompanied him to go
8 get rid of the gun?

9 A Oh, yeah.

10 Q And you're denying that you ever laid your eyes on the
11 gun?

12 A Yes.

13 Q Describe the bag for this jury?

14 A It was like a travel bag or a souvenir bag, a brown,
15 burlap bag.

16 Q A brown burlap bag?

17 A Yes.

18 Q Not a black book bag?

19 A No.

20 MR. SWERLING: Objection. That's leading.

21 THE COURT: Sustained.

22 BY MS. SHIPLEY:

23 Q And you indicated that you had a conversation with
24 Brian Watson when he returned?

25 A Yes.

1 Q How did Brian Watson get to -- how did he -- what
2 vehicle did he use?

3 A I don't know.

4 Q He didn't use your and Rashonda's Montero?

5 A No, not to my knowledge.

6 Q Well, where were you?

7 A I was at home. So was Rashonda.

8 Q And Mr. Watson, Brian Watson came back and told you he
9 had gotten rid of it?

10 A Yes.

11 Q And he didn't tell you where he had gotten rid of it?

12 A No.

13 Q How long did you say you think he was gone?

14 A About an hour or an hour and a-half.

15 Q So you did not see the gun at all that night; that's
16 your testimony?

17 A Yes, ma'am.

18 Q Do you remember finding out that law enforcement had
19 contacted Rashonda on May 18, 2009?

20 A Yes.

21 Q And do you recall calling Brian Watson's mother, her
22 grandmother?

23 A Yes.

24 Q And did you threaten her or her son Brian Watson?

25 A No, I didn't.

State v. Tremaine Wray and Taurus Watts 10/8/09

187

1 Q You did not?

2 A No.

3 Q So if she filed a police report about that, that would
4 be untrue?

5 A Yes.

6 Q Have you had an conversations with Tremaine Wray since
7 you talked to the police.

8 A No, ma'am. (Cell phone rings.)

9 Q Make sure your phone is off, please.

10 A No, ma'am.

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

12 BY MS. SHIPLEY:

13 Q Did you receive a letter from Tremaine?

14 A Yes.

15 Q And did you read it?

16 A No.

17 Q How long ago did you get it?

18 A Maybe three weeks, a month ago.

19 Q And have you spoken with him since you've given a
20 statement to police?

21 A No, ma'am.

22 Q And, again, he's like a brother to you?

23 A Yes.

24 MS. SHIPLEY: Nothing further, Your Honor.

25 THE COURT: Okay.

1 MR. SWERLING: Excuse me on minute, Your Honor. .

2 THE COURT: Sure.

3 JARRELL DANSBY - CROSS-EXAMINATION

4 BY MR. SWERLING:

5 Q Mr. Dansby?

6 A Yes, sir.

7 Q I'm Jack Swerling; how are you doing?

8 A I'm all right.

9 Q On May 18, you hear the police were investigating this
10 case with respect to you and Brian Watson and your wife; is
11 that correct?

12 A Yes, sir.

13 Q And on May 18, 2009, you received a call from some
14 folks in my office didn't you?

15 A Yes, sir.

16 Q And asked if you had any knowledge about this situation
17 at all?

18 A Yes, sir.

19 Q And you told them, no. Isn't that true?

20 A Yes, sir.

21 Q So when you spoke with police, I think it was a couple
22 of days earlier. I think it was on the 20th May 2009, all of
23 a sudden you had some knowledge about what had happened a
24 couple of years before; is that correct?

25 A Yes, sir.

State v. Tremaine Wray and Taurus Watts 10/8/09

189

1 Q So what you told the folks in my office was not true?

2 A That's right.

3 Q All right. So on May 18, did you get a call from your
4 wife or did your wife tell you that she had been confronted
5 by the police?

6 A Yes.

7 Q I don't know, maybe I'm confused at this point, but
8 were you and she living together?

9 A No.

10 Q But you were living together when the gun was at your
11 house?

12 A Yes.

13 Q When had you broken up, when had you separated?

14 A March of '08.

15 Q March of '08. So maybe a year, almost a year before --
16 after these events, but a year before you get the call?

17 A Yes.

18 Q But you did get a call on May 18th from her?

19 A Yes.

20 Q Telling you that the police were looking for you,
21 looking for her and looking for Brian Watson, or that they
22 had talked to Brian Watson?

23 A Yeah.

24 Q Is that right?

25 A Yes, sir.

1 Q And she told you at that point what the allegations
2 were; isn't that true?

3 A Yes.

4 Q And you got pretty upset didn't you?

5 A Yes.

6 Q And did you and she meet that night?

7 A No, sir. She came to pick up the kids. I had the kids
8 at my house. She came to pick up the kids.

9 Q Okay, and when she came to pick up the kids she had
10 been to the police the night before, correct?

11 A Yes.

12 Q And did she tell you she went down to the lawyers house
13 and gave a statement?

14 A Yes.

15 Q Did you go over her statement with her?

16 A No.

17 Q Did you discuss what she had told the police?

18 A No.

19 Q So when you -- at that point in time when you talked to
20 the police you had no idea what Rashonda had told the police?

21 A No. She told me she hadn't told the police anything.

22 Q She told you she hadn't told them anything?

23 A Yes.

24 Q Because she didn't know anything about it, either?

25 A Yes.

State v. Tremaine Wray and Taurus Watts 10/8/09

191

1 Q Is that right?

2 A Yes.

3 Q So she wasn't telling the truth, either?

4 A Correct.

5 Q According to her testimony and her statement; is that
6 right?

7 A Yes.

8 Q So if she told you she didn't know anything, then
9 certainly there would have been no reason to call her
10 grandmother and threaten her; correct?

11 A Yes.

12 Q And you're denying that, correct?

13 A Yes.

14 Q Are you denying that you ever threatened her?

15 A I never threatened her.

16 Q Because actually the complainant was Shonda Dansby.
17 Shonda is short for Rashonda?

18 A Yes.

19 Q And did you ever tell her or her grandmother, either
20 one of them, did you ever tell her or her grandmother on May
21 18, at 21:30, that would be about 9:30 in the evening. Did
22 you ever tell her or her grandmother to keep her mouth shut.
23 That complainant's brother Brian Watson is talking with
24 police concerning a murder investigation and is implicating
25 you. And that if you got involved in this matter he would

1 involve complainant as well --

2 A No.

3 Q And that you stated that when he catches up with Brian
4 Watson that he would bring him harm as well?

5 A No.

6 Q You never told anybody that?

7 A No.

8 Q And on May 19, in the morning, did you visit with
9 either Shonda Dansby or her grandmother and reiterate those
10 threats?

11 A No.

12 Q Where does her grandmother live?

13 A Next door, maybe 100 away from her.

14 Q Which was where you were living in June, 2007?

15 A Yes.

16 Q Where was Brian living?

17 A With them, I guess. I don't know. He had been in
18 Charlotte. I don't know if he was still in Charlotte.

19 Q What's Brian's relation to Shonda?

20 A Uncle.

21 Q Uncle. What's his relationship to her grandmother?

22 A Her son.

23 Q So Shonda's mother and Brian are brother and sister?

24 A Yes.

25 Q How old is Brian?

State v. Tremaine Wray and Taurus Watts 10/8/09

193

1 A I don't know. Maybe 35 or 36. I'm not sure.

2 Q How far would it be from where you were living to where
3 they were living?

4 A Like 100 yards.

5 Q 100 yards and that's it?

6 A Yes.

7 Q No houses in between?

8 A No. Well, it's one house but it sits back. Look out
9 the front door at Shonda's house and it goes straight to her
10 grandmother's.

11 Q Now, so the police started looking for you on the
12 evening of May 18?

13 A Yes.

14 Q And you were avoiding them; isn't that true?

15 A Yes.

16 Q You didn't want to talk to them?

17 A No.

18 Q But they caught up with you?

19 A Yeah.

20 Q And that was on May 20, 2009 at 2:30 in the afternoon;
21 correct?

22 A Yes, sir, that sounds right.

23 Q And you got a lawyer at that time?

24 A Yes, sir.

25 Q Where did the interview take place?

1 A At the lawyers office.

2 Q And you gave a statement?

3 A Yes.

4 Q You signed the statement?

5 A Yes.

6 Q You swore it was the truth?

7 A Yes.

8 Q Just like you're swearing before this jury today?

9 A Yes, sir.

10 Q All right, so you understand what the implications are
11 if you lie?

12 A Yes, sir.

13 Q You can be prosecuted for perjury with a penalty of up
14 to seven years in prison?

15 A Yes, sir..

16 Q Now, on May 18, 2009 -- or May 20, actually, 2009, is
17 that the first time you told anybody about the events that
18 took place on this evening that you say Tremaine came over to
19 your house?

20 A Yes, sir.

21 Q Since May 20, 2009, have you and Rashonda discussed
22 what you told the police or she told the police or your
23 testimony today?

24 A Yes, sir. Not in detail, but --

25 Q When did you do that?

State v. Tremaine Wray and Taurus Watts 10/8/09

195

1 A Soon as I left the lawyers office, I called her.

2 Q Called her and told her what you had told the police?

3 A Yes.

4 Q And did she tell you at that time what she told the
5 police?

6 A No. She didn't say anything.

7 Q So she was still denying it even after you told her?

8 A Yes.

9 Q Did you give her a copy of your statement to read?

10 A No.

11 Q All right. When after that, approximately, did you and
12 she talk about it again?

13 A Oh, I don't know. I'd say it was a couple of months.
14 Maybe like the end of August or something.

15 Q Where were you when you discussed it again?

16 A I don't know. Maybe on the phone when she called me.

17 Q And did you -- when you discussed the case you were
18 telling her what your version of the events were and did she
19 tell you what her version of the events were?

20 A No.

21 Q So she was still denying that she had one anything,
22 knew anything?

23 A Yes.

24 Q And you spoke with her again about it after that?

25 A Yes.

1 Q I assume from what you're telling me that you spoke to
2 her on several occasions about the events of this day back in
3 2007?

4 A Yes.

5 Q And you've discussed it with her in person?

6 A Yes, sir.

7 Q You've discussed it with her on the phone?

8 A Yes, sir.

9 Q She knows fully what your version of what you're
10 telling the jury today --

11 A Yes, sir.

12 Q -- or what you told the police?

13 A Yes, sir.

14 Q And up until today has she ever told you that she knew
15 anything?

16 A No.

17 Q She's always told you that she denied knowing anything?

18 A Yes. She didn't have nothing to say.

19 Q Nothing.

20 A Nothing.

21 Q When was the last time you spoke with her; today?

22 A Yeah, this morning.

23 Q This morning? Where up in the solicitor's office?

24 A No. She called and asked me what time did I have to be
25 in court.

State v. Tremaine Wray and Taurus Watts 10/8/09

197

1 Q So you all were speaking as early as today about the
2 case?

3 A Yes, she was asking what time I had to be here.

4 Q And had you spoken in the last few days?

5 A Yes. We speak everyday. We got kids.

6 Q About the kids, but sometimes in those conversations
7 you and she talked about this case?

8 A No, sir.

9 Q Never, other than the times you've just told us?

10 A Yes.

11 Q So on May 20, almost two years later was the first time
12 that you were asked to recall the two years before?

13 A Yes, sir.

14 Q Is that right?

15 A Yes, sir.

16 Q Now, you said you haven't talked to Tremaine since you
17 gave your statement?

18 A No.

19 Q But you did talk to him prior to that time?

20 A Yes, sir.

21 Q In fact you visited him down in the detention center
22 prior to giving the statement in May of 2009?

23 A Yes, sir.

24 Q Visited him on a couple of occasions; he's your cousin?

25 A Yes, sir.

1 Q But since May 20, there's been no contact between the
2 two of you?

3 A No, sir.

4 Q All right. So let's talk about May 20, for a minute
5 when you were talking to the police?

6 A All right.

7 Q At this point, your wife's telling you she didn't do
8 anything, she didn't tell them anything?

9 A Yes, sir.

10 Q You can't get in touch with Brian, correct?

11 A Correct.

12 Q Because you tried to get in touch with Brian?

13 A Yes.

14 Q You're trying to find out what Brian told the police?

15 A Yes.

16 Q Did you ever get in touch with him?

17 A No, sir.

18 Q I guess you were aggravated with him, mad with him?

19 A Yes, sir.

20 Q Because from what you were hearing he was implicating
21 you in something; is that right?

22 A Yes, sir.

23 Q All right. So you never did get to speak with him, but
24 you kept trying to get in touch with him?

25 A I didn't keep trying. I just -- Rashonda, she goes to

State v. Tremaine Wray and Taurus Watts 10/8/09

199

1 visit him all the time. I just told her to tell him to just
2 keep us out of this, you know what I mean. He's trying to
3 save hisself. Just keep us out of it.

4 Q And you said you told Rashonda to tell him that?

5 A Yes.

6 Q And -- but if he was telling the truth, then you were
7 telling him to not tell the truth?

8 A No.

9 Q Well, if you and he did something together, you were
10 telling him to keep you out of it, then you were telling him
11 not to tell the truth.

12 A Okay, I guess so.

13 Q And you never communicated a threat to him that you
14 would harm him if he implicated you?

15 A No, sir.

16 Q Never did. So May 20, you get confronted with the fact
17 that they got a warrant for you for accessory after the fact
18 of murder.

19 A Yes, sir.

20 Q Correct?

21 A Yes, sir.

22 Q And they told you they were going to serve that warrant
23 on you?

24 A Yes, sir.

25 Q And did you see a copy of the warrant?

- 1 A No, sir.
- 2 Q They showed it to you?
- 3 A No, sir.
- 4 Q Tell you it carried up to 15 years in the penitentiary?
- 5 A Yes, sir.
- 6 Q What other charges did they threaten you with?
- 7 A That was it.
- 8 Q Scare you a little bit?
- 9 A Oh, yes.
- 10 Q Didn't want to go to the penitentiary?
- 11 A No, sir.
- 12 Q Now, you worked out a pretty good deal, you and your
- 13 lawyer?
- 14 A Yes.
- 15 Q That if you gave them a statement and came into court
- 16 and testified they would withdraw the warrant?
- 17 A Yes, sir.
- 18 Q So you don't have anything hanging over you?
- 19 A No, sir.
- 20 Q And if you were an accessory to a murder you're not
- 21 going to get charged with because you're coming in here to
- 22 court today; correct?
- 23 A Correct, I guess.
- 24 Q I guess. Well, you know better than I do?
- 25 A All right.

State v. Tremaine Wray and Taurus Watts 10/8/09

201

1 Q Well, if you hadn't agreed to give them that statement
2 and come in here to court today you'd be charged with
3 accessory after the fact of murder; correct?

4 A Correct.

5 Q And you'd be on trial?

6 A Correct.

7 Q And the jury would be -- would say -- I mean, the
8 solicitor would say you did something wrong; is that right?

9 A Yes, sir.

10 Q But today, you're their witness?

11 A Yes, sir.

12 Q And they're not prosecuting you for what you did that
13 evening?

14 A No, sir.

15 Q Not prosecuting Rashonda either for what she did that
16 evening; correct?

17 A I guess.

18 Q As far as you know?

19 A As far as I know.

20 Q So the two of you get a free ride for giving a
21 statement and coming in here to Court, correct?

22 A Yes, sir.

23 Q Now, when you met with the investigators in the case
24 they did tell you what Brian said, didn't they?

25 A Yes.

1 Q They outlined it for you what he said?

2 A Yes.

3 Q And you agreed with some of it and disagreed with some
4 of it; right?

5 A Yes, sir.

6 Q And gave your own statement?

7 A Yes, sir.

8 Q I guess when you first went in there you probably
9 denied it to them, too, didn't you?

10 A Yes, sir.

11 Q So not only did you lie to whoever called you on the
12 phone or whoever else you were talking to you lied to the
13 police as well; is that right?

14 A Yes, sir.

15 Q You told them you didn't know anything about it?

16 A Yes, sir. Don't want to go to jail.

17 Q Pardon?

18 A Said I don't want to go to jail.

19 Q How long were you down there before you finally decided
20 to cooperate?

21 A Not long at all.

22 Q Not long at all?

23 A No. I talked to them and then I talked to my lawyer.
24 My lawyer told me it would be in my best interest.

25 Q Once you found out they would withdraw that warrant,

1 right?

2 A Yes, sir.

3 Q Fair enough. So when you gave a statement, you knew
4 what Brian was saying and they asked you about what Brian was
5 saying, and then you gave a statement about that, correct?

6 A Yes.

7 Q About the events?

8 A Yes.

9 Q Now, I guess I'm going to ask you a couple of
10 questions. Were you at the house when Tremaine came over
11 there?

12 A No.

13 Q You didn't know what time Tremaine went over to your
14 house?

15 A It had to be around 12:00 or 1:00.

16 Q Okay. What did Tremaine do with the gun, according to
17 you?

18 A Put it under the house.

19 Q Was the gun under the house when you came home?

20 A Yes.

21 Q And I believe you described it as being in a souvenir,
22 a brown travel bag or a souvenir weave bag, something like a
23 potato bag?

24 A Yeah.

25 Q So when you saw a potato bag, you're talking about the

1 kind of thing that's kind of mesh burlap kind of thing, but
2 you can see through it?

3 A No. It had a design on the front.

4 Q Okay. So it was a material like burlap --

5 A Yes.

6 Q -- brown weave, I guess we have some potato bags that
7 have openings in it, but this was a burlap, closed burlap,
8 correct?

9 A Yes.

10 Q And it was under your house. Now, how did you know it
11 was under your house, did he tell you it was under the house?

12 A Tremaine?

13 Q Yeah.

14 A Well, that's where I told him to put it. I knew that's
15 where it would be.

16 Q Okay. So you and he never had a discussion about
17 putting it under the house?

18 A No.

19 Q And so you just knew to go under the house that evening
20 or whenever you got home from work, and you just suspected it
21 would be there?

22 A Yes, sir.

23 Q He didn't tell you it was there, you didn't have to
24 tell him to put it there?

25 A Yes, sir.

State v. Tremaine Wray and Taurus Watts 10/8/09

205

1 Q It just happened; is that right?

2 A Yes, sir.

3 Q And how long after you spoke with him on the phone did
4 you get off?

5 A Maybe about three or four hours?

6 Q Now, we understand now you're remembering this two
7 years later?

8 A Yes, sir.

9 Q So was anybody home when you got home?

10 A No, sir. I believe the wife and kids were gone
11 somewhere.

12 Q Was Rashonda not working at that time?

13 A It was Saturday. She was off on the weekends.

14 Q So whatever day it happened she was not working?

15 A No.

16 Q She was just not there when you got home?

17 A Yes.

18 Q And how long after you got home did she get home?

19 A I don't know, maybe about 30, 40 minutes. I'm not
20 sure.

21 Q All right. And between the time that she got home --
22 between the time that you found the bag and she got home what
23 did you do with the bag?

24 A It was under the house. I never touched it until I got
25 the phone call. That's when I showed Brian where it was.

1 Like I said, me and her was arguing and he came over there
2 like, what's wrong. I told him to get out, and he asked me,
3 he said, man, tell me what's wrong. I told him. He said
4 he'd get rid of it.

5 Q So I guess -- Ms. Shipley asked you this, that bag
6 stayed under the house until Brian came?

7 A Yes.

8 Q The brown potato bag?

9 A Yes.

10 Q And did you -- you never looked inside the bag?

11 A No, sir.

12 Q You don't even know what was in the bag, do you?

13 A No, sir.

14 Q And you never -- I guess that means that you never
15 tried to bury what's in the bag, either?

16 A No, sir.

17 Q And I guess that means that when Rashonda came out you
18 wouldn't have unburied it or pulled it out of the ground?

19 A No, sir.

20 Q So if someone said that they'd be mistaken about that?

21 A Yes, sir. Extremely.

22 Q Can have -- obviously, not the same if it was under the
23 house or being put into the ground and being pulled out of
24 the ground, that's two different stories isn't it?

25 A Yes, sir.

State v. Tremaine Wray and Taurus Watts 10/8/09

207

1 Q Well, that obviously means the two of you didn't get
2 together and discuss what supposedly happened out there that
3 day?

4 A I guess so.

5 Q Because you got it under the house?

6 A Yeah.

7 Q And she had it in the ground, how do you explain that?

8 A She fabricated. She knows she's not telling the truth,
9 just like her uncle.

10 Q Okay. Did you go over to see Brian or did he come over
11 to see you?

12 A He came to see us. He always came to our house bumming
13 cigarettes.

14 Q So you didn't go over to his house that day and talk to
15 him about the gun?

16 A No, sir.

17 Q Well, when he came over, what was the purpose of him
18 coming over, bumming cigarettes?

19 A Yes, sir. And me and her was fussing about it, and he
20 asked what was wrong.

21 Q So you told him -- what did you tell him?

22 A I told him Tremaine had brought a gun and my home boys
23 had called and said he killed somebody. I didn't know what
24 to do. And I was going to call the police. He was like, no,
25 don't call the police, he would get rid of it.

1 Q So your version of the events was that you were going
2 to be the good samaritan and you were going to call the
3 police and tell them you had this bag, this brown potato bag?

4 A Yeah. I watch CSI all the time. I know what happens to
5 people, you know what I mean.

6 Q You like CSI?

7 A Yeah.

8 Q So do I. So you -- what you intended to do on the day
9 that he came over is you intended to go ahead and go to the
10 police?

11 A Yes.

12 Q But you never did?

13 A No.

14 Q And you never did for two years?

15 A No.

16 Q In fact, you never did ever?

17 A No.

18 Q They came to you?

19 A Yes.

20 Q And had they not come to you you never would have gone
21 to them?

22 A No, sir.

23 Q Never would have told this story?

24 A No, sir.

25 Q Never would have been in this courtroom?

State v. Tremaine Wray and Taurus Watts 10/8/09

209

1 A No, sir.

2 Q Never would have told the jury anything?

3 A No, sir.

4 Q So now what you're saying is Brian said to you, don't
5 do that?

6 A Yeah.

7 Q That he will get rid of it for you?

8 A Yes.

9 Q The two of you never discussed the two of you getting
10 rid of it together?

11 A No, sir.

12 Q And so I guess you're saying that you never took the
13 gun out of the bag and started banging it with a hammer or
14 trying to break it apart, or bend it, or bite it or whatever?

15 A No, sir.

16 Q Because you never saw the gun?

17 A No, sir.

18 Q So how long was Brian at the house before he left?

19 A Maybe about 10 to 15 minutes.

20 Q So you thought that was a pretty good idea when he said
21 he would get rid of the evidence in the case?

22 A Yes.

23 Q I mean, you didn't care, did you?

24 A No, I just wanted it away from me. I wasn't going to
25 jail for something I didn't have nothing to do with.

1 Q But your initial reaction was to go ahead and call the
2 police, but when Brian say, hey, you know, I can get rid of
3 it for you, you thought that was a pretty good idea?

4 A Yeah. He's a career criminal. I gave him the gun.

5 Q Career criminal. You said you watched CSI, that's not
6 the correct thing to do?

7 A No.. You see what happens when people do.

8 Q So when he said I'll get rid of it for you, where did
9 you go?

10 A I went in the house.

11 Q Well, where did he go?

12 A I don't know.

13 Q Well, how did he get the gun?

14 A I went back and showed him where it was.

15 Q And did you go under the house to get it?

16 A Yes, sir.

17 Q Prior to that had you gone under the house to retrieve
18 it?

19 A No.

20 Q So when did you find out it was under the house, when
21 Brian came or when you first came home?

22 A I knew it was under the house because I talked to
23 Tremaine.

24 Q I thought you said you didn't talk him about where it
25 was under the house because you knew it would be under the

1 house?

2 A I did. I talked to Tremaine. We always put everything
3 under the house. We always set thing up under the house,
4 like I said, speakers and all kind of stuff. Old furniture,
5 anything.

6 Q I think what you -- let me see if I understand what you
7 said. You said before that he never told you he put it under
8 the house, that's just where you always put things; is that
9 right?

10 A Right. That's what I just told you.

11 Q So my question is, when did you first go to see whether
12 or not this brown potato bag was under the porch, under the
13 house?

14 A With Brian.

15 Q With Brian?

16 A Yeah.

17 Q First time?

18 A First time.

19 Q And it was there?

20 A Yes.

21 Q And you went under the house and got it and you gave it
22 to Brian?

23 A Yes.

24 Q Now, did he tell you where he was going to dispose of
25 it?

- 1 A No, sir.
- 2 Q Did he tell you how he was going to dispose of it?
- 3 A No, sir.
- 4 Q Did you give him anything to dispose of it?
- 5 A No, sir.
- 6 Q He was just doing you a favor because he was a career
7 criminal?
- 8 A That's what he said.
- 9 Q Well, when he left the house, left your house, where
10 did he go?
- 11 A I don't know.
- 12 Q Did he have a vehicle?
- 13 A No, he didn't.
- 14 Q Is there a vehicle at that house?
- 15 A There was vehicles all up in there.
- 16 Q Rashonda had a vehicle, right?
- 17 A Yes.
- 18 Q What kind of vehicle did she have?
- 19 A A Montero.
- 20 Q What kind of vehicle is that; is it a sedan or an SUV?
- 21 A An SUV.
- 22 Q SUV. Okay.
- 23 A Yeah.
- 24 Q Did you get in car that night, the SUV?
- 25 A No, sir.

State v. Tremaine Wray and Taurus Watts 10/8/09

213

1 Q Did you drive away from the house --

2 A No, sir.

3 Q -- with Brian?

4 A No, sir.

5 Q Did he drive away from the house with you in the
6 vehicle?

7 A No, sir.

8 Q Do I understand correctly that at no time did you get
9 in the vehicle with Brian and go with Brian to dispose of the
10 gun, correct?

11 A No, sir.

12 Q And if somebody said that, that was not true?

13 A That's not true at all.

14 Q According to you -- you're saying that under oath?

15 A Yes, sir.

16 Q Is that right?

17 A Yes, sir.

18 Q And my understanding is that you didn't see him later
19 on, ever?

20 A Who?

21 Q I mean that night?

22 A Brian?

23 Q Yeah?

24 A Yeah, he came back and told me that I didn't have to
25 worry about that no more.

1 Q That he had gotten rid of it?

2 A Yeah.

3 Q Did he tell you where he had gotten rid of it?

4 A No, sir.

5 Q How long after he left did he come back?

6 A It was like an hour or an hour and a-half.

7 Q And how did he come back, did you see him, was he
8 driving, walking, was he on a bicycle?

9 A No. He knocked on the door.

10 Q That's how he --

11 A He said let me get a cigarette, and that's it.

12 Q And he didn't tell you where he did it, he just said
13 you don't have to worry about it any more?

14 A Yes, sir.

15 Q All right. So let me make sure I understand. You did
16 not go with him in the vehicle?

17 A No, sir.

18 Q To go dump the gun?

19 A No, sir.

20 Q You didn't get in the vehicle, you and Rashonda
21 certainly didn't get in the vehicle together and go with him
22 to get the gun?

23 A No, sir.

24 Q You never saw the gun, but you never even saw the
25 potato sack after you handed it to Brian, is that right?

State v. Tremaine Wray and Taurus Watts 10/8/09

215

1 A No, sir.

2 Q And in return for that story the police are not
3 prosecuting you for accessory after the fact, is that right?

4 A Yes, sir.

5 Q There's no question when you talked to Tremaine about
6 this incident when you got upset about it, that he said,
7 nothing happened. I didn't do anything. Isn't that true?

8 A Yes, sir.

9 Q Thank you.

10 MS. JOHNS: Your Honor?

11 THE COURT: Yes.

12 MR. JOHNS: Thank you.

13 JARRELL DANSBY - CROSS-EXAMINATION

14 BY MS. JOHNS:

15 Q Mr. Dansby, let me see if I got this straight, Okay.
16 You never saw the gun, correct?

17 A Correct.

18 Q You never laid eyes on it?

19 A Correct.

20 Q At any time?

21 A Correct.

22 Q And you still don't know what that gun looks like?

23 A Correct.

24 Q Is underneath the trailer -- it's underpinning, right?

25 A Yes, ma'am.

1 Q All right. Did you let your uncle Brian store his
2 stolen items from a burglary underneath there, too?

3 A Not that I know of, but he might have unknowing.

4 Q So it's a secret hiding place?

5 A Yes.

6 Q And the people that know about it are the people that
7 store things under there?

8 A Correct.

9 Q All right. So if Brian knew about this secret hiding
10 place he would have been able to hide things in there, too,
11 right?

12 A Yes, ma'am.

13 Q Now, is he still using drugs?

14 A Last time I see him.

15 Q He was?

16 A Yeah.

17 Q And you know he got arrested in February for two armed
18 robberies?

19 A Yes, I know.

20 Q Now, have you ever seen Brian Watson with a gun?

21 A No, I can't say I have.

22 Q You haven't?

23 A No.

24 Q Do you know -- well, let me put it to you this way --
25 you don't have any idea -- well, I'll go back one more step.

State v. Tremaine Wray and Taurus Watts 10/8/09

217

1 You really don't know what was in that bag, do you?

2 A No, ma'am.

3 Q Okay. And based on that, you really don't know if that
4 weapon was used at any time, correct?

5 A No, ma'am. Correct.

6 Q Okay. You don't know if the weapon was ever shot or
7 fired, correct?

8 A Correct.

9 Q And you don't know if that weapon, if it was a weapon,
10 was the weapon that was used in any homicide?

11 A No, ma'am.

12 Q You don't know if that weapon was used in any armed
13 robbery, right?

14 A Right.

15 Q You don't know if that weapon was stolen from a
16 burglary, you know nothing about the weapon, right?

17 A Right.

18 Q That's because you said you talked to your cousin,
19 Tremaine, and he told you he put something up underneath the
20 house, right?

21 A He said he was going to bring it up there.

22 Q But you didn't witness him doing that?

23 A No, ma'am.

24 Q And you don't know of anybody that did witness him
25 doing that, right?

1 A No, ma'am.

2 Q For all you know, it could have been Brian Johnson,
3 right?

4 A Right.

5 Q You said something earlier about trying to save
6 yourself, right?

7 A Right.

8 Q Okay. And when you said you tried to save yourself,
9 that means to keep yourself from harm, right?

10 A Yes, ma'am.

11 Q And you have three children, right?

12 A Yes, ma'am. One on the way.

13 Q So you have another child coming into this world?

14 A Right.

15 Q And you wouldn't want to see the mother of your child
16 go to jail would you?

17 A No.

18 Q And you as a father wouldn't want to be taken away from
19 your children ever would you?

20 A Definitely not.

21 Q And you work a steady job as a chef, is that right?

22 A Yes, ma'am.

23 Q In fact, you're taking off work to be here right now,
24 right?

25 A Yes, ma'am.

1 Q Okay. And you said also that Rashonda was known for
2 not telling the truth?

3 A Yes, ma'am.

4 Q Just like her uncle Brian?

5 A Yes, ma'am.

6 Q So the fact that you know that she doesn't tell the
7 truth, she could be lying about you?

8 A Yes.

9 Q And her uncle Brian could be lying about you as well?

10 A Yes.

11 Q And if your uncle Brian knows how to save himself then
12 he could tell us what he did with it?

13 A Yes.

14 Q Now, to be honest with you, in 2007, just to go through
15 it again, you did not see a gun?

16 A Right.

17 Q Right? You just heard about what happened at the club?

18 A Yes, ma'am.

19 Q You been to this club before?

20 A Plenty of times.

21 Q You drive an SUV?

22 A No, ma'am.

23 Q Does your wife drive an SUV?

24 A Yes, ma'am.

25 Q What color is it?

- 1 A Burgundy.
- 2 Q Not tan?
- 3 A No, ma'am.
- 4 Q Not silver?
- 5 A No, ma'am.
- 6 Q Does Brian have a driver's license?
- 7 A I doubt it.
- 8 Q Where was Brian that night?
- 9 A Don't know.
- 10 Q Brian ever been out to the club?
- 11 A Brian?
- 12 Q Yes?
- 13 A I'm pretty sure he has.
- 14 Q Been out with you?
- 15 A Not with me.
- 16 Q He lives with his mother?
- 17 A Yes.
- 18 Q And he's 35 years old?
- 19 A Yes.
- 20 Q And is he their only child, this grandmother,
- 21 grandfather that lives there?
- 22 A Yes.
- 23 Q He's a bum?
- 24 A Pretty much.
- 25 Q And you ever see Brian talk to his mother in a

1 derogatory manner?

2 A Yes, ma'am.

3 Q And describe that for me?

4 MS. SHIPLEY: Your Honor, I'm going to object.
5 What is the relevance of how this man speaks to his mother?

6 MS. JOHNS: Your Honor, the reason why it's
7 relevant is because there is a threat that had been
8 communicated that's been testified this afternoon and I --

9 THE COURT: You can verify that through Mr. Watson.

10 MS. JOHNS: Okay. Let me rephrase the question.

11 BY MS. JOHNS:

12 Q You witnessed Mr. Watson disposition?

13 A Yes.

14 Q And his behavior?

15 A Yes.

16 Q And his conduct, right?

17 A Yes.

18 Q And the way that he treats people. You've witnessed
19 that, right?

20 A Yes.

21 Q And would you agree with me that it is rude?

22 A Yes.

23 Q And it is ugly?

24 A Yes.

25 Q And --

1 MS. SHIPLEY: Your Honor, again, this is not
2 relevant to this witnesses testimony.

3 THE COURT: Approach.

4 (Off the record bench conference with counsel and the court.)

5 THE COURT: Objection sustained.

6 BY MS. JOHNS:

7 Q When did Brian call you and tell you that he was going
8 to turn in a weapon or testify about a weapon?

9 A He never did.

10 Q Okay. When did Rashonda tell you he was going to do
11 that?

12 A Say what? Repeat that?

13 Q Did Rashonda ever do that --

14 A No, ma'am.

15 Q -- did she ever tell you that she's going to tell the
16 truth about what happened?

17 A No. She called me when Brian got into some stuff.

18 Q Okay. Brian got into some stuff?

19 A Yes.

20 Q And Brian knows how to save himself, right?

21 A Yes.

22 Q Okay. And Rashonda's grandmother, who is Brian's mom,
23 has lived right -- 500 yards from each other?

24 A Correct.

25 Q Correct?

State v. Tremaine Wray and Taurus Watts 10/8/09

223

1 A Yes, ma'am.

2 MS. JOHNS: That's all I have, Your Honor. Thank
3 you.

4 THE COURT: Okay.

5 MS. SHIPLEY: May it please the Court, Your Honor?

6 THE COURT: Certainly.

7 JARRELL DANSBY - REDIRECT EXAMINATION

8 BY MS. SHIPLEY:

9 Q Mr. Dansby, I'm going to just ask you what was touched
10 on by the defense on your cross?

11 A Yes, ma'am.

12 Q I believe you were asked by Mr. Swerling, first of all,
13 as to when is the first time you had told anybody about what
14 had taken place either that Saturday before or the Saturday
15 after 4th of July, 2007; do you remember that question?

16 A Yes.

17 Q And what was your answer?

18 A When I talked to the police.

19 Q When you talked to the police on May 20th, when you
20 gave your statement?

21 A Yes, ma'am.

22 Q Did you ever discuss your statement with Rashonda?

23 A Not in detail.

24 Q And, in fact, she never discussed what statement she
25 provided to police to you, did she?

1 A No.

2 Q And in fact, I believe you answered Mr. Swerling that
3 she indicated to you that she never told the police anything?

4 A Yes.

5 Q And Mr. Swerling's office contacted you before law
6 enforcement, isn't that true?

7 A Correct.

8 MR. SWERLING: Well, Your Honor, I don't want to
9 mislead now. We'll bring it out through Mr. McRae, but we
10 were all made aware of that on May 18th.

11 BY MS. SHIPLEY:

12 Q Then my question is, you spoke with Mr. Swerling's
13 office before you spoke to the police, correct?

14 A Yes.

15 Q And also along the lines, you indicated what you
16 discussed with Rashonda Simpson about your statement, your
17 statement was given two days after he statement, correct?

18 A I don't know.

19 Q You didn't even know she gave a statement?

20 A Yes, ma'am.

21 Q And have you ever discussed your testimony or your
22 statement to the police with Brian Watson?

23 A No.

24 Q And he's been in jail since February of 2009, correct?

25 A Yes.

State v. Tremaine Wray and Taurus Watts 10/8/09

225

1 Q And first of all who involved you in this case; who
2 involved you in this case?

3 A Because he brought me the gun.

4 Q Who?

5 A Tremaine.

6 Q So Tremaine's the one that got you involved?

7 A Yeah.

8 Q Not Brian Watson?

9 MR. SWERLING: Your Honor, object to leading.

10 THE COURT: Sustained.

11 BY MS. SHIPLEY:

12 Q Did Brian Watson get you involved?

13 A No.

14 Q And you were advised by your attorney that it is in
15 your best interest to cooperate with the police?

16 A Yes.

17 Q And are you telling the truth?

18 A Yes.

19 Q Did Tremaine bring a gun to your house?

20 A Yes.

21 Q And although you're testifying you did not physically
22 see the gun, how -- who told you what object they were
23 bringing to your home?

24 A Tremaine.

25 Q And what did he tell you he was bringing to your home?

1 A His gun.

2 Q And who brought this gun to Brian Watson's attention?

3 A I did.

4 Q And isn't it true you knew it was wrong not to report
5 this to the police back then and you admit that, right?

6 A Yes, ma'am.

7 Q You were asked about what kind of car you drove or your
8 wife drove around that time. I believe Ms. Johns asked you
9 that?

10 A Yeah.

11 Q And what color car were you all driving then?

12 A Burgundy.

13 Q And what color -- what kind of car did Tremaine drive
14 back then?

15 A A Suburban.

16 Q What color?

17 A Gold.

18 Q And you had never seen Brian Watson with a gun before?

19 A No.

20 Q Would it be a truth or a lie for Brian Watson to say
21 that he got rid of the gun?

22 A Truth.

23 MS. SHIPLEY: No further questions.

24 MR. SWERLING: Can I follow up?

25 THE COURT: Yes.

State v. Tremaine Wray and Taurus Watts 10/8/09

227

JARRELL DANSBY - RECROSS EXAMINATION

BY MR. SWERLING:

Q Ms. Shipley said to you that you knew it was wrong not to tell the police at the time this happened, correct?

A Correct.

Q But you're on the stand right now telling the truth?

A Yes, sir.

Q Correct?

A Correct.

Q Your version of the truth is that the -- whatever was in that potato sack, you remember that?

A Yes, sir.

Q You never buried it?

A Correct.

Q You never picked it back up?

A Correct.

Q You never took it out of the bag?

A Correct.

Q You never discussed it with -- you were not holding it and discussing it with Rashonda at the time, at the same time, correct?

A Correct.

Q Is that right?

A That's right.

Q You never went over to Brian's house to help him get

1 rid of the gun, that you never helped destroy the gun?

2 A Correct.

3 Q That you never got in the vehicle with your wife or
4 Brian Watson?

5 A Correct.

6 Q To go ahead and dispose of the gun?

7 A Correct.

8 Q That's what you're telling this jury is the truth.

9 A Yes, sir.

10 Q Okay.

11 MS. JOHNS: Just a few things.

12 THE COURT: Sure.

13 JARRELL DANSBY - RECROSS-EXAMINATION

14 BY MS. JOHNS:

15 Q And the last time you saw that potato sack was when it
16 was in Brian Watson's hand, is that right?

17 A Yes, ma'am.

18 MS. JOHNS: That's all.

19 THE COURT: All right, sir, you can step down and
20 be excused.

21 MS. SHIPLEY: Your Honor, can he have his phone
22 back? Can he have it back now so he can leave?

23 THE COURT: That's fine.

24 MS. SHIPLEY: Your Honor, our next witness is going
25 to be lengthy. Can we take a break.

State v. Tremaine Wray and Taurus Watts 10/8/09

229

1 THE COURT: All right, ladies and gentlemen, I'll
2 excuse you to your jury room. I remind you not to discuss
3 the case.

4 (Jury out at 3:44 p.m.)

5 THE COURT: All right. You all are at ease.

6 Oh, you-all had asked me earlier about Mr. Watson's
7 prior record and the pending arm robberies and I believe all
8 of those various crimes come in because the state is not
9 objecting to those. There is an objection to the probation
10 revocation. While the Rule 609, I believe it is, does talk
11 about convictions it refers to crimes punishable for over a
12 year. So to the extent that any party is able to also able
13 to mention the crime that also fits under that rule, you can
14 also mention what punishment was given. So I'm going to take
15 the position that the punishment includes whether it was
16 probation or not because if the punishment, if you had a
17 crime punishable for more than a year and then you got
18 probation, I'm sure that would have been brought out by
19 either party in that regard. And so the fact that what
20 happened with the crime, probation and then therefore
21 subsequent revocation of a probationary sentence. I think
22 that's relevant. I think that also fits under the
23 computation clause as well. And then with respect to the '98
24 shoplifting, that's the one that's over the 10 years, right?

25 MR. SWERLING: That's correct.

State v. Tremaine Wray and Taurus Watts 10/8/09

230

1 MS. SHIPLEY: Yes, ma'am. That's from 1998.

2 THE COURT: And you've already got other
3 shipliftings in as well, right?

4 MS. SHIPLEY: Yes.

5 THE COURT: Okay. And what's the rationale for one
6 on that one?

7 MR. SWERLING: Well, I think the cases say that one
8 of the things that go beyond 10 years, there's the subsequent
9 history of an individual, and while I think the rule is
10 intended to protect somebody who was law abiding for 10
11 years. But here you have an individual who's been on a crime
12 spree repetitively for over the years. So I think the rule
13 does not shield him and should not shield him. And it just
14 shows he repetitive criminal conduct.

15 MS. MCDUFFIE: Well, Your Honor, the defense is
16 also -- or any party seeking to introduce a conviction is
17 required to give the person 10 days notice, and the defense
18 has not done that in this case, Your Honor.

19 MR. SWERLING: Well, I gave Ms. Shipley notice.

20 MS. MCDUFFIE: Mr. Swerling gave us notice on the
21 convictions of Ricky Jacobs, however, he did not give us --

22 MR. SWERLING: Well, I did this morning.

23 MS. MCDUFFIE: Your Honor, that's not sufficient.

24 THE COURT: Okay. Yeah, the rule does indicate the
25 time period.

State v. Tremaine Wray and Taurus Watts 10/8/09

231

1 MS. JOHNS: I'd ask you wave the rule under these
2 circumstances we were getting ready for trial, and this is
3 our third time.

4 MS. MCDUFFIE: Your Honor --

5 MS. JOHNS: This is new evidence that came in then.

6 MS. MCDUFFIE: Which is way more than 10 days, Your
7 Honor.

8 MS. JOHNS: Well -- as far as being provided his
9 full criminal record, Your Honor, I think --

10 MR. SWERLING: I beg to differ with everybody. The
11 rule doesn't say I have to give 10 days notice.

12 THE COURT: It didn't say -- it says, notice.
13 Right.

14 MR. SWERLING: Notice.

15 THE COURT: Okay. Let me look at it.

16 MR. SWERLING: I mean, the purpose of notice is to
17 give them a fair opportunity to contest the use of the
18 evidence. So you're talking about one shoplifting charge in
19 this criminal history. Your Honor, I'll abide by whatever
20 your ruling is, but notice can be at any time as long as it's
21 fair notice.

22 THE COURT: Okay. It is --

23 MS. MCDUFFIE: I'm sorry, Your Honor, it's not 10
24 days, but it is written notice and we have not received that.

25 THE COURT: You have not received written notice?

1 MS. MCDUFFIE: No, ma'am, Your Honor.

2 THE COURT: Okay. They're going to hold you to the
3 technicality on that.

4 MR. SWERLING: Okay. All right.

5 THE COURT: I'm going to rule with the state on
6 that issue. There's plenty of other things in there.

7 MS. SHIPLEY: He'll have a field day with this
8 witness, Your Honor.

9 THE COURT: Right. Okay. All right. You all be
10 at ease for at least 15 minutes.

11 MS. JOHNS: Thank Your Honor.

12 (Court in recess for short break.)

13 (Court in session after short break.)

14 THE COURT: Thank you. Are we ready to proceed?

15 MS. MCDUFFIE: Your Honor, we just have a minute?

16 THE COURT: Right. Just tell me when you're ready.

17 MS. SHIPLEY: Watch your step going down these
18 stairs. Have a seat in the witness stand.

19 THE COURT: Is the jury ready? Jurors, please.

20 MS. SHIPLEY: And we'll need him sworn while he's

21 --

22 THE COURT: Absolutely.

23 MS. SHIPLEY: Thank you.

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

25 (Jury in at 4:13 p.m.)

State v. Tremaine Wray and Taurus Watts 10/8/09

233

1 THE COURT: Okay. State please call your next
2 witness.

3 MS. SHIPLEY: Your Honor, at this time the state
4 calls Brian Watson.

5 THE COURT: Okay.

6 (WHEREUPON, Brian Watson was sworn
7 to tell the truth.)

8 THE CLERK: Thank you. Would you state your name
9 for the record, please?

10 MR. WATSON: Brian L. Watson.

11 THE CLERK: Thank you.

12 BRIAN WATSON - DIRECT EXAMINATION

13 BY MS. SHIPLEY:

14 Q Good afternoon, Mr. Watson.

15 A Good afternoon.

16 Q Mr. Watson, can you tell the jury where you're from?

17 A Blythewood, [REDACTED].

18 Q And are you neighbors with a woman named Rashonda
19 Simpson?

20 A Yes.

21 Q And who is Rashonda Simpson to you?

22 A She's my niece.

23 Q And who did you live with at [REDACTED]?

24 A With my mother and father.

25 Q And I'm going to show you a diagram and ask you if this

1 is an accurate reflection of your family property, just to
2 orient you, that would be the main street, Haygood Road. Do
3 you see your residence on this --

4 A That's my house. (Indicating.)

5 Q That's your house?

6 A Uh-huh. (Affirmative response.)

7 Q Okay, and is there a back porch to that house?

8 A Yes, there is.

9 Q Okay. And where does Rashonda Simpson live?

10 A Right here. (Indicating.)

11 Q All right. And who lives in this house?

12 A Jackie Simpson, her mother, my sister.

13 Q Your sister. And what is this building right here?

14 A It's a shed.

15 Q And what's kept in that shed?

16 A A boat, well, two boats actually, and a lawn mower,
17 some yard equipment.

18 Q Okay. And do you have a view from this back porch to
19 Rashonda's house?

20 A Yes.

21 Q And do you know who Rashonda Simpson is married to?

22 A Yes. Jarrell Dansby.

23 Q And how long have you known Jarrell Dansby?

24 A For quite a while, a few years.

25 Q Ever since he's been married to your niece?

State v. Tremaine Wray and Taurus Watts 10/8/09

235

1 A Yes, uh-huh. (Affirmative response.)

2 Q Tell the jury a little bit about yourself. Did you
3 ever finish school?

4 A Yeah.

5 Q How far did you go in school?

6 A I finished high school and then had a couple years of
7 college.

8 Q And obviously you are not an inmate, correct?

9 A Yes.

10 Q Tell the jury a little bit about your criminal history?

11 A I've been arrested several times for shoplifting, for
12 drug possession, for check forgery. Things of that nature.

13 Q I'm going to go through them one by one, okay?

14 A Okay.

15 Q On November 4, 1999, isn't it true that you were
16 convicted of eight counts of forgery and shoplifting?

17 A Yes.

18 Q And on April 22, 1999 -- and by the way, for the
19 forgery, eight counts and shoplifting you were placed on
20 probation?

21 A Yes.

22 Q Because that was your first -- never mind. You got
23 probation for those offenses, right?

24 A Yes.

25 Q And on April 22, 1999, you were convicted of

1 shoplifting?

2 A Yes.

3 Q And then on May 3, 2000, you were convicted of burglary
4 third degree, petit larceny, financial transaction card
5 theft, two times for two counts. Financial transaction card
6 fraud, two counts, and you were revoked on your previous
7 probationary sentence at that time?

8 A Yes.

9 Q And placed in prison for a period of time?

10 A Yes.

11 Q Then on June 5, 2003, you were convicted of possession
12 of crack cocaine, three counts; is that correct?

13 A Yes.

14 Q And along with a fraudulent check?

15 A Yes.

16 Q And you were sent to prison for four years?

17 A Yeah.

18 Q And then on August 29, 2006, you were convicted of
19 shoplifting again?

20 A Yes.

21 Q And now, tell the jury what you're in jail for?

22 A I'm incarcerated for arm robbery.

23 Q And how many counts?

24 A Two.

25 Q Tell the jury what penalty is for arm robbery in South

State v. Tremaine Wray and Taurus Watts 10/8/09

237

1 Carolina?

2 A Ten to 30 years.

3 Q And so you are facing two separate 10 to 30 year
4 sentences?

5 A Yes.

6 Q A potential maximum sentence of 60 years; is that
7 correct?

8 A Yes.

9 Q Have you and the state of South Carolina entered into
10 any sort of plea negotiations in exchange for your testimony?

11 A No.

12 Q And are you represented by a lawyer?

13 A Yes.

14 Q And who is your lawyer?

15 A Russell Brown.

16 Q And do you see Mr. Brown in the courtroom?

17 A Yes.

18 Q Can you point him out for the jury?

19 A Over there. (Indicating.)

20 Q The gentlemen right there with -- who's raising his
21 hand?

22 A Yes, ma'am.

23 Q And obviously you're not testifying out of the goodness
24 of your heart, correct?

25 A No.

- 1 Q You're hoping for leniency --
- 2 A Yes.
- 3 Q -- from the judge that sentences you or leniency from
- 4 the prosecutor prosecuting you?
- 5 A Yes.
- 6 Q There have been no promises whatsoever as to what your
- 7 fate is?
- 8 A No.
- 9 Q And your criminal history reflects a lot of -- explain
- 10 to the jury what led you to become a criminal from finishing
- 11 high school and a couple years of college?
- 12 A Drug addition, drug habit.
- 13 Q And what addition do you have?
- 14 A Cocaine, and crack cocaine.
- 15 Q How long have you been an addict?
- 16 A Several years.
- 17 Q And have you ever worked?
- 18 A Yeah.
- 19 Q What kind of work have you done?
- 20 A Restaurant industry, mostly, cook, cooking. Some
- 21 carpet installation.
- 22 Q And back on June of 2007, where were you residing?
- 23 A At [REDACTED].
- 24 Q And you indicated earlier, obviously, you know Jarrell
- 25 Dansby. Did you know any of his family members?

State v. Tremaine Wray and Taurus Watts 10/8/09

239

1 A No, not really.

2 Q What do you mean by that?

3 A I'd met a couple of them at family functions, but other
4 than that, no.

5 Q Had you ever met Tremaine Wray?

6 A No.

7 Q Now, did you witness some things on June 30, 2007?

8 A Yes.

9 Q Okay. And you -- the things that you witnessed and the
10 things you participated in, tell the jury when was the first
11 time that you came forward or notified anybody about what you
12 knew from that date?

13 A That would be in May of this year.

14 Q Okay. Who did you tell that you knew something about
15 what happened that day?

16 A My attorney.

17 Q Mr. Russell Brown?

18 A Yes.

19 Q And can you explain how you communicated with your
20 attorney about information you had concerning this case?

21 A He came to Alvin S. Glenn Detention Center.

22 Q And you were incarcerated there at the time?

23 A Yes.

24 Q Where are you incarcerated now?

25 A At Fairfield County Detention Center.

1 Q And what information did you relay to your lawyer?

2 A That I had information concerning the murder that
3 occurred on Hardscrabble Road, the location of the murder
4 weapon.

5 Q And did you go into a lot of detail in a letter to your
6 lawyer?

7 A Yeah.

8 Q And do you know what your lawyer did with that
9 information?

10 A Apparently, he contacted the solicitor's office.

11 Q And were you ever questioned by law enforcement?

12 A Yes.

13 Q Tell this jury what made you come forward?

14 MS. JOHNS: Your Honor, I object.

15 MR. SWERLING: Can we approach?

16 THE COURT: Sure.

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

18 THE COURT: Ladies and gentlemen, we need to take
19 up a matter of law. I'll excuse you to your jury room and
20 we'll be with you shortly.

21 (Jury out at 4:32 p.m.)

22 THE COURT: Okay.

23 MS. MCDUFFIE: Your Honor, in terms of Mr.
24 Swerling's request for a letter, Rule 5 applies to material
25 or things in possession of the state or an agent of the

State v. Tremaine Wray and Taurus Watts 10/8/09

241

1 state. The state has never seen that letter nor do we have
2 possession of it. Further, Mr. Swerling -- Ms. Shipley and I
3 were speaking to Mr. Swerling --

4 THE COURT: Okay. Just so the record is clear
5 because the sidebar conference was not on the record, just
6 indicate what letter you're referring to?

7 MS. MCDUFFIE: The letter the defendant just
8 testified he sent to his lawyer notifying him about the
9 information that he had about this incident, Your Honor.

10 THE COURT: Okay.

11 MS. MCDUFFIE: Further, we made Mr. Swerling aware
12 of that a couple weeks ago after we learned that information

13 --

14 THE COURT: And you're indicating -- I'm sorry,
15 you're indicated the state has not --

16 MS. SHIPLEY: We've never seen this letter, never
17 had it in our possession.

18 THE COURT: Okay.

19 MR. SWERLING: I wasn't suggesting you did. I was
20 just suggesting that he's referred to it now in his testimony
21 and I think we should be entitled to get it. Frankly, I was
22 not going to do it, this letter, but now that he's mentioned
23 it. I think up until that point, it was a question of
24 whether or not we're entitled to it, but at this point he's
25 referred to it, he's sent the document to his lawyer. And

1 he's testifying so there's no privilege any more.

2 THE COURT: Okay. Mr. Brown, you want to shed any
3 light on it?

4 MR. BROWN: I don't think they need the letter.
5 That's a letter between attorney and client. I don't know --
6 Immediately when Mr. Watson informed me I informed the
7 solicitor. I don't see where it sheds any light as far as
8 the defendants here.

9 THE COURT: Okay, let me ask you this, are you
10 indicating there may be other things in the letter, too,
11 regarding the relationship?

12 MR. BROWN: Between --

13 THE COURT: No, between Mr. Watson and yourself?

14 MR. BROWN: I would have to look over that letter
15 again. He wrote two or three letters involving different
16 things.

17 THE COURT: Okay.

18 MR. BROWN: Now, there are some things about his
19 involvement in the crime that he's alleged to committed.

20 THE COURT: Right.

21 MS. SHIPLEY: Which we have not gone into at all.

22 MR. SWERLING: And I'm not interested in that.

23 THE COURT: Right.

24 MR. SWERLING: Just as it relates to this case, I'm
25 asking that he produce it. We could also ask, are you

State v. Tremaine Wray and Taurus Watts 10/8/09

243

1 willing to waive the privilege?

2 MS. MCDUFFIE: Your Honor --

3 THE COURT: Well, he would need to have his lawyer
4 advise him on that issue.

5 MR. SWERLING: That's all right.

6 MS. MCDUFFIE: Your Honor, Mr. Brown, as an officer
7 of this court, would have a duty if a crime had been
8 committed such as perjury, to bring it to the court's
9 attention. I believe that was the --

10 MR. SWERLING: Well, let's put it this way. I'm
11 not so sure that that would be the case, but I would ask Your
12 Honor to review it In Camera to see if there's any
13 evidentiary value to the letter, if there's anything that was
14 exculpatory or inconsistent to what he testifies to and so
15 that would be a compromise, and I'd ask the Court to do that?

16 MS. SHIPLEY: Do you have the letter here?

17 MR. BROWN: I may. I may.

18 THE COURT: Okay. The other -- go ahead.

19 MS. JOHNS: And Your Honor, while we're on that
20 topic, I think that if the Court is so inclined to let us see
21 the letter, the Court can obviously redact portions of the
22 letter not having to do with the case at hand, and I think we
23 should we should be entitled under the Sixth Amendment right
24 to confrontation --

25 THE COURT: Okay.

1 MR. SWERLING: What I'd be particularly interested
2 in, Your Honor, is prior inconsistent statements that could
3 be used to impeach him.

4 THE COURT: Sure.

5 MR. SWERLING: I don't think it's out of the
6 precedent that the Judge take that In Camera and review it
7 and make that interpretation and seal it.

8 THE COURT: Okay.

9 MS. SHIPLEY: Your Honor, I think then it would be
10 appropriate for you to hear the testimony and then review the
11 letter and if there's anything inconsistent then you can make
12 your decision.

13 THE COURT: All right. Okay.

14 MS. SHIPLEY: We, at least, could proceed with the
15 direct.

16 THE COURT: Sure.

17 MS. SHIPLEY: Okay.

18 THE COURT: Mr. Watson, we need to make sure that
19 you do not make any mention of either one of these gentlemen,
20 Mr. Tremaine Wray or Mr. Taurus Watts being incarcerated.
21 The jury does not have that information and we are very --
22 you know, comfortable with making sure they do not see them
23 with any restraints on them, to give them a fair trial.

24 MR. WATSON: Okay.

25 THE COURT: So any questions that mention

State v. Tremaine Wray and Taurus Watts 10/8/09

245

1 information about where you saw them, you are never to
2 mention that it could have been at any period of
3 incarceration, whether it's a holding cell or it's in a van,
4 whether it's anything to do with any period of confinement.

5 MR. WATSON: I understand.

6 THE COURT: Okay.

7 MS. SHIPLEY: Could we refer to the courthouse?

8 THE COURT: Sure.

9 MS. SHIPLEY: If I could explain to the Court. He
10 had them in the holding cell on March 16, 2009, at Alvin S.
11 Glenn. He was supposed to come for a hearing that day, a
12 Schmerber Hearing and never got transported. Could we just
13 refer to it as encountered him at the courthouse?

14 MS. JOHNS: That wouldn't be actually correct.

15 MS. SHIPLEY: Well, how do you explain, how do you
16 explain where he saw them?

17 THE COURT: You can say that you saw them -- is the
18 place necessary?

19 MS. MCDUFFIE: Your Honor, he's been incarcerated
20 since February, so we can't really --

21 THE COURT: Oh, because you're talking about a
22 particular date?

23 MS. MCDUFFIE: Yes, ma'am.

24 THE COURT: Okay. I got you.

25 MS. SHIPLEY: Yeah, because he's been locked up

1 since February of '09. That came out in Ms. Johns --

2 MS. JOHNS: If I may suggest this to the Court, can
3 you say that I ran into one or the other during a court
4 proceedings? Could have been at the jail, could have been
5 here. Mr. Watts was ready to go to trial in March, and
6 that's when the encounter happened, back in March.

7 THE COURT: Okay.

8 MS. SHIPLEY: And then he sees them again when he's
9 being prepared to to the Sheriff's Department from the jail,
10 he encounters them coming back and it's either -- about their
11 case getting continued on May 18.

12 MR. SWERLING: Well, first of all, as far as I
13 understand the encounter conversation was between him and Mr.
14 Watts.

15 THE COURT: Watts. It is.

16 MR. SWERLING: So I -- certainly Mr. Wray doesn't
17 need to be mentioned.

18 THE COURT: He certainly doesn't need to be
19 mentioned, but I didn't know what information she was
20 soliciting from him when we got that far, when that came up..
21 Obviously, that wouldn't be relevant at all. I just wanted to
22 caution that --

23 MS. SHIPLEY: All right. I think we can just say,
24 did you run into them, have a conversation with them. We're
25 not going to say where.

State v. Tremaine Wray and Taurus Watts 10/8/09

247

1 MR. WATSON: Okay.

2 MR. SWERLING: What I'm saying is since we're still
3 -- Wray was not in the conversation. He did not say
4 anything. I don't think he needs to be mentioned.

5 THE COURT: Yes. You don't need to use the word,
6 them.

7 MS. SHIPLEY: But he was there.

8 MR. SWIRLING: But he didn't say anything.

9 MS. SHIPLEY: It's relevant because when he first
10 reported the case, he isn't familiar with Tremaine Wray's
11 name. He thought it was Dansby. But then he sees Tremaine
12 and he's like, yeah, that's him. That's who I saw at the
13 trailer.

14 THE COURT: Okay.

15 MS. SHIPLEY: So it's relevant that he sees him and
16 then puts it together.

17 MR. SWERLING: Well, he doesn't have to say in the
18 relationship of the conversation. He can say I saw Mr. Wray
19 -- I won't challenge it.

20 THE COURT: Okay.

21 MR. SWERLING: If he saw him on another occasion
22 and realized that was Tremaine Wray not Jarrell Dansby.

23 THE COURT: Okay. But Ms. Johns is suggesting
24 about Mr. Watts at a court proceeding?

25 MS. SHIPLEY: That's why I'm -- we can say court

1 proceeding.

2 THE COURT: Do you understand that, sir?

3 MR. WATSON: Yes, ma'am.

4 THE COURT: As to Mr. Watts, you indicating that it
5 happened at a court proceeding, that's where you ran into
6 him.

7 MR. WATSON: Okay.

8 THE COURT: As to Mr. Wray, you're never mentioning
9 where.

10 MR. WATSON: Okay.

11 THE COURT: Okay. We're all ready to proceed?

12 MS. SHIPLEY: Yes, ma'am.

13 THE COURT: Bring the jurors.

14 (Jury in at 4:32 p.m.)

15 THE BAILIFF: Jury is all present, Your Honor.

16 THE COURT: Okay. State you can proceed.

17 MS. SHIPLEY: Thank Your Honor.

18 BRIAN WATSON - CONTINUED DIRECT EXAMINATION

19 BY MS. SHIPLEY:

20 Q Mr. Watson, I was asking you why you decided to come
21 forward in May of 2009, about the information you had
22 concerning this case, this murder. Tell the jury why you
23 decided to come forward so long -- later?

24 A Well, I had actually -- I mean, the information -- I
25 mean, I actually had forgotten about it, really. It was two

State v. Tremaine Wray and Taurus Watts 10/8/09

249

1 years earlier. Then in March I ran into Mr. Watts and we had
2 a discussion about what was going on. He was about to go to
3 trial for this crime. And just relayed some information to
4 me that the solicitor's office really didn't have any
5 evidence on him, that he was going to get away with this.
6 That all the solicitor's office had was one witness who saw
7 him with the gun.

8 Q One witness that saw him what?

9 A With the gun.

10 Q Did he talk about any forensic evidence with you?

11 A Yeah. He said they didn't have any gunshot residue.

12 Q And were you -- first of all, when the incident
13 happened on June 30, 2007, you were not incarcerated,
14 correct?

15 A No.

16 Q And were you familiar with what had happened at the H&J
17 on Hardscrabble?

18 A Yeah.

19 Q Had you been to that club before?

20 A Yes. Several times.

21 Q And are you familiar with who owns and operates that
22 night club?

23 A Yeah.

24 Q And who is that?

25 A Rick.

1 Q Rick. Did you ever talk to Rick, Ricky Jacobs about
2 what you knew about this case?

3 A No.

4 Q Excuse me?

5 A No.

6 Q Okay. So when you see him and he tells you this, that
7 was in March of 2009?

8 A Yes.

9 Q Why'd you wait two months to come forward in May of
10 2009?

11 A Honestly, I really don't know. It just came to me one
12 day, you know, that I was myself in trouble and wanted some
13 leniency and then on the other hand, it's a murder. Somebody
14 got killed. And I don't know, you shouldn't be able to get
15 away with that.

16 Q And so you're doing this to help yourself out?

17 A Yes.

18 Q And you actually have a conscience, too?

19 A Yes.

20 MR. SWERLING: Objection. He may, but she doesn't
21 need to lead him.

22 THE COURT: Sustained.

23 BY MS. SHIPLEY:

24 Q Do you have a conscience?

25 A Yes.

State v. Tremaine Wray and Taurus Watts 10/8/09

251

1 Q And so did your attorney make arrangements for you to
2 meet with law enforcement about this?

3 A Yes.

4 Q And do you remember being taken to the sheriff's
5 department for questioning?

6 A Yes.

7 Q What date was that; do you recall?

8 A (No response.)

9 Q If I showed you your statement would that help you
10 remember?

11 MS. JOHNS: Your Honor, I think he's trying to
12 answer. She's not giving him time.

13 THE COURT: Okay.

14 A May -- um -- May 16, or 18, maybe. I'm not -- I can't
15 remember, exactly.

16 MS. SHIPLEY: Now, Your Honor, can I show him the
17 statement. He says he can't remember.

18 THE COURT: Okay.

19 MS. SHIPLEY: Thank you.

20 BY MS. SHIPLEY:

21 Q First of all, look at this document, and tell me if you
22 recognize it?

23 A Yes.

24 Q What is it?

25 A It's my statement.

1 Q And can you see what date and time you gave that
2 statement?

3 A Yes.

4 Q What date and time?

5 A It was May 18 at 21:10 hours.

6 Q 21:10; is that military time?

7 A Yes.

8 Q And do you know military time?

9 A No, I don't.

10 Q But it was at night?

11 A The evening.

12 Q And do you recall that when you gave your statement,
13 the first thing the officers asked or told you, do you recall
14 whether they discussed your pending charges with you?

15 A Yeah, they did.

16 Q Did they make you any promises whatsoever about your
17 pending charges?

18 A none whatsoever.

19 Q And what information about this murder did you provide
20 to law enforcement at that time?

21 A Location of the murder weapon and how it came to be in
22 my possession?

23 Q Okay. Tell the jury what you remember about how you
24 came into possession of the murder weapon?

25 A All right. It was on Sunday, I guess, June 30th. I

State v. Tremaine Wray and Taurus Watts 10/8/09

253

1 was at my house and I remember it was late afternoon or early
2 afternoon. I looked out the back door and there was a big
3 truck at my niece's house, a big SUV. A little while later,
4 Jarrell Dansby called me and asked me to come over there to
5 the house, to Shonda's house. He said he needed my help with
6 something. So I went over there and he showed me a book bag.

7 Q And describe this book bag?

8 A It was a black book bag, a Jansport.

9 Q A Jansport book bag?

10 A Jansport. It had a little brown tag on it.

11 Q And he had it in his possession?

12 A Yes.

13 Q And did you look inside the bag?

14 A Yes.

15 Q Tell the jury what you saw?

16 A A Mac 10 gun.

17 Q And some jurors may not be familiar with a Mac 10 gun.

18 I'm going to show you State's 140, and ask you if you
19 remember officers showing you a line up of weapons for you to
20 identify what you saw?

21 A Yes.

22 Q You recall seeing that?

23 A Yes.

24 Q Did you identify the type of gun you saw?

25 A Yes.

1 Q And did you circle it?

2 A Yes.

3 Q And did you sign your name by it?

4 A Yes.

5 MS. SHIPLEY: Your Honor, at this time the state
6 seeks to introduce 140 into evidence.

7 MR. SWERLING: No objection.

8 MS. JOHNS: No objection, Your Honor.

9 THE COURT: Okay. Admitted.

10 (State's Exhibit No. 140, gun line
11 up, was marked and admitted.)

12 BY MS. SHIPLEY:

13 Q And if you could, flip back to the weapon that you
14 identified.

15 A (Witness complies.)

16 Q And you know that to be a Mac 10?

17 A Yes.

18 MS. SHIPLEY: May I publish this to the jury, Your
19 Honor?

20 THE COURT: You may.

21 BY MS. SHIPLEY:

22 Q Now, on that Mac 10 that you identified, did you tell
23 the investigators any distinguishing information about the
24 gun, did it look any different from that picture?

25 A Yes, it did. I did not have the collapsible shoulder

State v. Tremaine Wray and Taurus Watts 10/8/09

255

1 stop or the hand strap.

2 Q So now -- shoulder stop or the hand strap?

3 A Yes.

4 Q And what color was it?

5 A Black.

6 Q Tell the jury what you decided to do with Mr. Dansby
7 regarding the gun?

8 A We decided to get rid of it, to throw it in the creek.

9 Q And did you do anything to that weapon before you left
10 to go get rid of it?

11 A Yes. Yes, we did.

12 Q Okay. Explain that to the jury; where did you go?

13 A Well, first of all, we were in the backyard, in Jarrell
14 and Rashonda's backyard.

15 Q And do you recall where the book bag came from in the
16 backyard?

17 A Well, Jarrell brought the book bag out of the house
18 with the gun in it.

19 Q Okay. So the gun was inside the house and Jarrell came
20 outside the house --

21 MR. SWERLING: Objection.

22 MS. SHIPLEY: Oh, I'm sorry, Your Honor, let me
23 rephrase the question.

24 THE COURT: Okay.

25 MS. SHIPLEY: We have to do everything step by step

1 so everybody understand everything.

2 BY MS. SHIPLEY:

3 Q When you -- first of all, who called you to come over?

4 A Jarrell.

5 Q Did you go over?

6 A Yes.

7 Q What happened when you got there?

8 A Well, he came out of the house with a book bag, and we
9 walked around to the back of the house. And he showed me the
10 book bag and told me to look inside it.

11 Q And at that time, what happened next?

12 A I looked in it and it was a Mac 10, and he said I need
13 to get rid of this. Initially, he wanted to bury it in the
14 backyard. I told him that wasn't a good idea, that we needed
15 to take it somewhere. He was concerned that I might actually
16 sell the gun. It was in perfect condition. There was
17 nothing wrong with it. So he decided to get a hammer and we
18 banged it up.

19 Q And where did you bang it up?

20 A In the backyard there.

21 Q And would you have gotten -- sold that weapon?

22 A Yeah. Yeah.

23 Q Why would you have sold it?

24 A You know, it was worth a lot of money.

25 Q And why did you need money?

State v. Tremaine Wray and Taurus Watts 10/8/09

257

1 A Drugs.

2 Q And at that point did you damage the weapon?

3 A Yes.

4 Q Who hit it with the hammer?

5 A We both did.

6 Q Were there two hammers, one hammer?

7 A One hammer.

8 Q You took turns?

9 A Yes.

10 Q Where was Ms. Simpson during this time?

11 A She was in the house.

12 Q And were her children home?

13 A Um -- no, I think they were at her mother's.

14 Q Which is next door?

15 A Yeah.

16 Q Tell the jury what y'all did next with this gun?

17 A Okay. After that we put it back in the book bag, and
18 Jarrell went inside to get Rashonda to drive us to go get rid
19 of it. So we drove down Langford Road and there's a creek on
20 Langford Road and we were going to stop there, but I can't
21 remember exactly why we didn't, but I believe there was
22 traffic behind us and we couldn't pull over. So we proceeded
23 to another location, another creek that was by my mother's
24 church. I don't even remember the name of the road. But
25 that's where I got out of the truck. I told them to drive up

1 the street, and they drove up and I ran down and threw the
2 gun and the clip in the creek.

3 Q What car were you traveling in?

4 A His and Shondra's red truck. A red SUV.

5 Q And you don't recall the name of this street with the
6 creek?

7 A Um --

8 Q Could you give directions to how you got there?

9 A Yeah. We went up Langford Road, we took a right and
10 then a left, another quick right and then another right. And
11 that's the road that the creek's on.

12 Q And do you know what county that's in?

13 A Kershaw County.

14 Q Kershaw County. What town is nearby; what town is it
15 in?

16 A Pontiac.

17 Q And on that road are there two creeks?

18 A Yeah.

19 Q And do you recall which of the two --

20 A The first one.

21 Q The first one. I'm going to show you what's been
22 marked as State's 141, and it's kind of dark, so I'll ask you
23 if you recognize the street names, first of all?

24 A Yes.

25 Q You do.

1 A Yeah.

2 Q Can you see faint creeks on this map in the general
3 area. I can't show it to you, but you show me?

4 A I'm guessing. This is very dark. So I'm guessing here
5 and here. (Indicating.)

6 Q Okay.

7 MS. SHIPLEY: Your Honor, at this time state seeks
8 to introduce 141 into evidence?

9 MS. JOHNS: I don't know that he has been
10 successfully identify the creek. So I don't think that the
11 diagram is helpful.

12 THE COURT: Lay a little bit more foundation.

13 MS. SHIPLEY: Okay.

14 BY MS. SHIPLEY:

15 Q Did you take law enforcement to these potential areas?

16 A Yes.

17 Q Now, after you gave your statement at the Richland
18 County Sheriff's Department, you indicated that you -- where
19 did you go from there with the sheriffs?

20 A We proceeded to Langford Road.

21 Q And so on the night of May 18, 2009, you led
22 investigators to the creek where you got rid of the gun?

23 A Yes.

24 Q And tell the jury again how did you get rid of the gun,
25 explain where it was?

1 A Okay. Like I said, I got out of the truck, told them
2 to drive up the street. I walked down under the bridge, took
3 the gun and clip out of the book bag, tossed the gun into the
4 creek and I tossed the clip into the creek, and just left the
5 book bag under the bridge.

6 Q And do you know how deep the water is in that location?

7 A Not very deep. Maybe a foot.

8 Q And did you ever go back to that location at any time
9 afterward to get it back?

10 A No.

11 Q Would you have been able to put it back together and
12 sell it?

13 A No.

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

15 BY MS. SHIPLEY:

16 Q Do you recall when you took the police to the first --
17 to the bridges that night and you had some confusion as to
18 which one it was?

19 A Yes.

20 Q Explain that to the jury?

21 A Well, it had been two years, and initially I thought it
22 was the first bridge on Langford Road, and then I remembered
23 -- the first place we went was the first bridge on Langford
24 Road, then I remembered that wait a minute, I think it's the
25 one by my mom's church. So then I proceeded to tell them

State v. Tremaine Wray and Taurus Watts 10/8/09

261

1 that, you know, I think it was the other one. So we went to
2 that one.

3 Q Okay. And when you got rid of the gun that day, how
4 were the lighting conditions, was it dark or light outside?

5 A It was raining, a rainy afternoon. It was daytime,
6 though.

7 Q Daytime. So it was light out?

8 A Yes.

9 Q And when you went with law enforcement that light
10 explain what the lighting conditions were like?

11 A It was late afternoon.

12 Q Okay. At that point, tell the jury --

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

14 BY MS. SHIPLEY:

15 Q Do you remember any more details about the big SUV you
16 saw parked over at Jarrell's house?

17 A No. I don't. Just that I hadn't seen it before.
18 That's what initially sparked my curiosity. I didn't know
19 who's truck it was.

20 Q And do you remember details about the clip; do you know
21 how many rounds it would have held?

22 A It was a 30 round clip.

23 Q And after you threw the gun into the creek you said you
24 left the book bag there?

25 A Yes.

1 Q What happened next?

2 A I walked back up from under the bridge, got in the
3 truck with Jarrell and Rashonda and we drove back to the
4 house.

5 Q And did you know whether or not this gun had been
6 involved in a shooting?

7 A Well, Jarrell had told me that --

8 MR. SWERLING: Objection. Hearsay.

9 BY MS. SHIPLEY:

10 Q Don't say anything. Of your own personal knowledge,
11 did you have any personal knowledge of whether or not this
12 gun had been involved in any incident?

13 A 100 percent personal knowledge, no.

14 Q Okay.

15 A I suspected, but no.

16 MR. SWERLING: Objection. Move to strike.

17 THE COURT: Sustained.

18 BY MS. SHIPLEY:

19 Q And when you ran into Mr. Watts at the court
20 proceeding, had you known him from before?

21 A Yes.

22 Q Tell the jury how long you had known him for?

23 A For a few years. I was actually pretty good friends
24 with one of his cousins who introduced us.

25 Q And is Haygood Road near Hardscrabble Road?

State v. Tremaine Wray and Taurus Watts 10/8/09

263

1 A Not right next to it, but not very far.

2 Q How long of a drive do you think it would take to leave
3 your house on Haygood Road and get to the Hardscrabble Road.

4 A About 10 minutes.

5 Q And so was the club considered a neighborhood bar, your
6 neighborhood bar?

7 A Well, not so much my neighborhood, but the surrounding
8 area, Washington Heights, the area over there, yeah.

9 Q Did you -- had you heard, since you live in the area,
10 about the shooting at the club on Hardscrabble Road?

11 A Yeah.

12 Q Did you know any details about the shooting?

13 A No.

14 Q Did you know what, if any, evidence law enforcement
15 collected at the scene?

16 A No.

17 Q Did you know about any evidence law enforcement
18 collected from the vehicle?

19 A No.

20 Q And did you know Tremaine's last name when you were
21 trying to give your lawyer information?

22 A No.

23 Q What did you think his last name was?

24 A I thought it was Dansby, as well.

25 Q Like Jarrell Dansby?

1 A Yes.

2 Q And the person that you are referring to as Tremaine,
3 do you see him in the courtroom today?

4 A Yes.

5 MR. SWERLING: Objection. He hasn't identified
6 him.

7 MS. SHIPLEY: Your Honor, he was talking about this
8 -- I'll just move on, Your Honor.

9 MR. SWERLING: He didn't observe anything that
10 night.

11 THE COURT: That's correct.

12 BY MS. SHIPLEY:

13 Q The person that you know as Taurus Watts, do you see
14 him in the courtroom today?

15 MS. JOHNS: Your Honor, same objection.

16 MS. SHIPLEY: Your Honor, he just testified that
17 he's known him for five years.

18 MS. JOHNS: Your Honor, he's not identified him as
19 the perpetrator of the crime. He's identifying him because
20 he knows him. He's already testified to that.

21 MS. SHIPLEY: He's allowed to explain who he is
22 referring to, Your Honor.

23 THE COURT: As to that testimony. Not as a
24 perpetrator of the crime.

25 MS. SHIPLEY: No, no. I'm not saying that.

State v. Tremaine Wray and Taurus Watts 10/8/09

265

1 BY MS. SHIPLEY:

2 Q The person that you had a conversation with at the
3 proceeding in the courtroom, do you see him in the courtroom
4 today?

5 A Yes.

6 Q And please point him out for the jury?

7 A (Indicating.)

8 Q And who is that?

9 A That's Taurus Watts.

10 Q Thank you. Please answer any questions from the
11 defense.

12 MR. SWERLING: May we approach the bench?

13 THE COURT: Yes.

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

15 THE COURT: All right. With respect to the side bar
16 rulings, I'm ruling with the state that defense cannot go
17 into the matters that were discussed.

18 BRIAN WATSON - CROSS-EXAMINATION

19 BY MR. SWERLING:

20 Q Hello, Mr. Watson.

21 A Hello.

22 Q How are you doing?

23 A Okay.

24 Q How old are you?

25 A I'm 37.

1 Q I'm going to go back to 2000 or something like that,
2 your criminal history, November 14, 1999?

3 A Yes.

4 Q Ms. Shipley was asking you a bunch of questions about
5 your charges. It appears you're a one man crime spree. Is
6 that true?

7 A I wouldn't put it in those words.

8 Q Pardon?

9 A I would say that, no.

10 Q Well, would you say that Richland County is a lot safer
11 since you're in jail?

12 A Safer as in how, sir?

13 Q Well, you're off the street.

14 A So what are you safer --

15 Q We're safer because you're off the street.

16 A Well, that's your opinion.

17 Q Well, I'm asking you, you're a man of conscience?

18 A No, I don't believe so.

19 Q You don't believe so. All right. The thing that took
20 you off the street were two arm robberies, correct?

21 A Correct.

22 Q And right now you are looking at punishment, if you get
23 a conviction for two arm robberies you're looking at 10 to 30
24 years, correct?

25 A Correct.

State v. Tremaine Wray and Taurus Watts 10/8/09

267

1 Q And that is a no paroleable offense, correct?

2 A Correct.

3 Q So if you got 30 years you're going to wind up doing 26
4 and a-half or 26, correct?

5 A Correct.

6 Q And there could be anywhere in that range?

7 A Correct.

8 Q And you've got quite a history here of coming into
9 court, getting a break, going back out and getting in trouble
10 again, correct?

11 A Correct.

12 Q So there's a good chance that you go to court and get
13 convicted or pled guilty, you're going to get the book thrown
14 at you, correct?

15 A Correct.

16 Q And you don't want to go to jail for 25 years do you?

17 A Nope.

18 Q And that not only is a non-paroleable offense, but it's
19 a strike is, isn't it?

20 A I don't --

21 Q A strike is if you get another conviction like an arm
22 robbery it life in prison. You understand that?

23 A Yeah.

24 Q Your lawyer certainly discussed that with you, didn't
25 he?

1 A I don't know if we've discussed that.

2 Q Well, you certainly know what life without parole
3 means, don't you?

4 A Yeah, I know what that means.

5 Q And when did you get arrested on these charges?

6 A February.

7 Q And, of course, you have not been to court on those
8 charges?

9 A No.

10 Q You're not going to go to court until after these
11 charges, whatever you're doing today is disposed of, correct?

12 A Correct.

13 Q And I think you said that you had this epiphany in
14 March of 2009, that you needed to help the state because you
15 had a conscience?

16 A I didn't say that.

17 Q Well, I thought you said you had a conscience?

18 A Yes, but I didn't say that in those words.

19 Q Well, you may not have used those words, but words are
20 words. You indicated you had a conscience which was one of
21 the reason you wanted to come forward and cooperate, isn't
22 that what you said?

23 A Yeah.

24 Q Well, for two years, wherever that little conscience is
25 in your head, it wasn't there, was it?

State v. Tremaine Wray and Taurus Watts 10/8/09

269

1 A Well, I actually wasn't living in South Carolina for
2 most of those two years.

3 Q Well, you certainly were living there when you accepted
4 this weapon that you said, weren't you?

5 A Yes, I was.

6 Q And you didn't give a damn about it the night that this
7 happened, did you?

8 A (No response.)

9 Q You disposed of that gun quickly, didn't you?

10 A Yes.

11 Q And so there was no conscience there that night, was
12 there?

13 A No.

14 Q You were getting rid of what -- could have been a
15 murder weapon, correct?

16 A Yes.

17 Q When did you leave South Carolina?

18 A Shortly after that, actually. I believe in July or
19 early August of '07.

20 Q Okay. So for two years you still didn't call the
21 police? I mean, just because you were out of town, if your
22 conscience was bothering you you couldn't have called the
23 police, correct?

24 A Correct.

25 Q You've heard of the telephone, correct?

1 A Correct.

2 Q So there was no need or purpose or drive to go ahead
3 and call the police to tell them what you had done, this
4 awful thing that you and Jarrell and Rashonda had done, isn't
5 that true?

6 A That's true.

7 Q But when you started figuring the angles on this thing
8 when you got arrested -- when was it, February of '09?

9 A February.

10 Q Let's see. I'm looking at 30 years. I'm looking maybe
11 at 60 years. I'm looking at a no-paroleable offense. I'm
12 looking at a strike. I'm looking at if I ever get in trouble
13 again, which is -- I think is a 90 percent chance of it,
14 isn't it, that you could go to jail for life without parole.
15 That's what you were thinking wasn't it?

16 A That and the fact that if I came here and told the
17 truth about what I knew then yeah, I might get leniency.

18 Q But that's my point.

19 A Yeah.

20 Q That's what you were trying to get. You weren't trying
21 to appease any conscience, you were trying to get leniency,
22 correct?

23 A Somewhat, yes.

24 Q And what happened was in March when you made this
25 decision, you didn't come forward right away either, isn't

State v. Tremaine Wray and Taurus Watts 10/8/09

271

1 that true?

2 A That's true.

3 Q I mean there needed to be some wheeling and dealing and
4 some discussion back and forth between you and your lawyer.
5 You waited another 60 days until May, May 18th was the first
6 time that Mr. McRae ever interviewed you, isn't it?

7 A Yes.

8 Q Now, no one in state had not made a deal with you of
9 giving you any kind of promise of years or charge, but when
10 you freely and candidly admit to this jury that you're hoping
11 to get a break?

12 A Yes.

13 Q And you want the biggest break you can get?

14 A Yes.

15 Q And you'd like to go home, if you could?

16 A Yes.

17 Q And you're not going to get that break, you're not
18 going to get any break unless and until you testify in this
19 case, isn't that true?

20 A Testify and tell the truth. Yes.

21 Q Tell the truth, based upon what you put in your
22 statement?

23 A No, based upon what happened.

24 Q All right. And we're going to get into that. You
25 understand what an oath means, right?

1 A Yes, I do.

2 Q You understand you took an oath the night you made the
3 statement, you understand you took an oath today on the
4 Bible, you understand you're representing to the jury that
5 what you're telling them today is the truth?

6 A Yes.

7 Q Let me ask you something. You've got eight counts of
8 forgery, signed instrument, whatever instruments where you
9 forged somebody else's name, correct?

10 A Yes.

11 Q A shoplifting, another shoplifting, a burglary. Is
12 that a house?

13 A No.

14 Q Petit larceny, a theft. Financial credit card theft,
15 financial transaction theft. Two of those. Financial
16 transaction credit card fraud. Two of those. And then you
17 got your probation revoked, correct?

18 A Correct.

19 Q You got five years. You get a break in 1999 and get
20 probation. You come back in 2000 -- well, actually you didn't
21 even wait until 2000. In April of 1999, you went ahead and
22 stole something, correct?

23 A (No response.)

24 Q Shoplifting is stealing?

25 A Yeah, I understand that. The dates, I'm not sure if

State v. Tremaine Wray and Taurus Watts 10/8/09

273

1 those are right.

2 Q April 22, 1999, is when you went to court and pled
3 guilty to it.

4 A Okay.

5 Q You got another break then, but in May 2000, somebody
6 went ahead and put you in prison, correct?

7 A Correct.

8 Q And you got five years. Now, every one of those crimes
9 with the exception of maybe the burglary indicates that you
10 are dishonest; correct?

11 A Correct.

12 Q You lied, didn't you?

13 A Yes.

14 Q You lied when you put down someone else's name on an
15 instrument?

16 A Yes.

17 Q You lied or you're being dishonest when you steal?

18 A Yes.

19 Q When you use a financial credit card for theft or for
20 fraud, and there are four of those, that's lying and stealing
21 as well, isn't it?

22 A Yes, it is.

23 Q June 5, 2003, you wind up with three counts of crack
24 cocaine?

25 A Yes.

1 Q You get four years for that, and a check, which is
2 another crime of dishonesty; you agree with that?

3 A Yes.

4 Q And you still continue on your crime spree. June of
5 '06, you get another shoplifting charge. Stealing again,
6 correct?

7 A Correct.

8 Q And now you got -- Let's see, that was in June of '06,
9 and now you get two arm robberies in February of '09. You
10 don't stop do you?

11 A Yes.

12 Q You hadn't stopped. The only reason you stopped is you
13 hadn't had a chance to do anything since you've been in jail
14 in February, isn't that true?

15 A I don't know.

16 Q Well, your history indicates that doesn't it?

17 A (No response.)

18 Q Your history indicates that you're do anything you need
19 to do, isn't that true?

20 A I guess.

21 Q You guess so. It's hard to dispute that, isn't it?

22 A It's hard to dispute that.

23 Q Forgeries and credit card theft and fraud. So you will
24 lie when it's to your advantage.

25 A (No response.)

State v. Tremaine Wray and Taurus Watts 10/8/09

275

1 Q When you get something out of it, isn't that true?

2 A Actually, I think that signing a check and forging a
3 name and getting on the stand and telling a lie, I think
4 that's two different things. I did those crimes, I forged
5 those names, but today, I'm not lying.

6 Q Well, I understand. But what are the signs, what are
7 the indications, what should the jury look for in determining
8 when you're lying?

9 A I can't answer that. I'm not a psychologist.

10 Q But you lied here the last 10 years. All your crimes
11 involve lying, dishonesty, gaining something.. Isn't that
12 true?

13 A Yes.

14 Q So I'm asking you, how dose the jury measure, how do
15 they determine whether you're telling the truth or not, just
16 because you say so?

17 A No, but looking at the evidence, I suppose.

18 Q Well, we'll look at the evidence in a minute. So
19 nobody's told you what you're going to get, but we all agree
20 that you're looking for leniency and you'll take as little as
21 you can get?

22 A Yes.

23 Q You'll go through with this trial, you're go through
24 with your testimony and some day at some point you'll be
25 called to reckon all this; isn't that right?

1 A Yes.

2 Q And you want the solicitor to stand up in front of a
3 judge and tell the judge that you cooperated, don't you?

4 A Yes.

5 Q And obviously if your testimony is some assistance in
6 getting a conviction that enhances your credibility, that
7 enhances your value to the state, doesn't it?

8 A Yes.

9 Q All right. So Mr. McRae, he comes down and talks to
10 you in May of 2009, and you make this revelation to him. My
11 understanding is you had told him you had forgotten all about
12 it. Now, is that what you're telling the jury, that you had
13 forgotten all about it?

14 A That it was out of my mind. Yes, it was.

15 Q Well, having it out of your mind and forgetting about
16 it are two different things. So I'm asking you did you forget
17 about the fact that you're telling the jury now that you
18 helped dispose of what you say is a murder weapon?

19 A Forget in the actual sense of the word, no, I never
20 forgot it, but it was completely out of my mind. I was living
21 in Charlotte, North Carolina at the time it initially
22 happened, and it just was not at the front of my mind, no.

23 Q Was not at the front of your mind until you realized
24 you were looking at 60 years, right?

25 A Yeah.

State v. Tremaine Wray and Taurus Watts 10/8/09

277

1 Q Is it true or not? It's true. That's when you started
2 remembering again?

3 A No. It was actually, it was in March when it all came
4 to me.

5 Q March. So you started recalling what happened two
6 years ago, and you said it happened on June 30. You have no
7 idea what day it was do you? Ms. Shipley said it was June
8 30, but you don't know what day?

9 A It was a Sunday.

10 Q A Sunday. Were you told it was a Sunday?

11 A No. In my statement I said it was on a Saturday or a
12 Sunday. But when I later thought about it, it was a Sunday?

13 Q Well, let's go through what you told --

14 A June 30 was on a Sunday.

15 Q Pardon?

16 A June 30 was on a Sunday.

17 Q What did you do, check a calendar?

18 A Yes, I did.

19 Q I figured you did. By the way, do you ever talk to
20 Jarrell Dansby about this case, since June of 2007?

21 A No.

22 Q Never. Never had a discussion about what happened that
23 ill-fated evening?

24 A A discussion, no.

25 Q Never talked about what you said or what you were going

1 to say?

2 A In reference to what?

3 Q This case.

4 A In reference to Jarrell Dansby?

5 Q Yes.

6 A No.

7 Q Did you show him your statement?

8 A No.

9 Q Did he show you his statement?

10 A No.

11 Q He continued to live over there for a period of time
12 after this June event, did he not, in 2007?

13 A Yeah.

14 Q Well, let me ask you --

15 A I'm not sure, sir. I moved away.

16 Q Well, you --

17 A From July until early August of '07

18 Q You moved away in July or early August of '07. You
19 just moved up the road to Charlotte. You obviously came back
20 to visit your family. Are you going to sit there and tell
21 this jury that whenever you came back to Columbia during that
22 period of time you and Jarrell never talked about this case?

23 A No, we didn't, and I came back to Columbia precisely
24 once on Christmas.

25 Q Well, what about your niece?

1 A Did we ever talk about it?

2 Q Yeah.

3 A No.

4 Q Did you ever show her your statement?

5 A No.

6 Q Did you show her your statement?

7 A No.

8 Q And when you would communicate with the family -- this
9 is your niece, right?

10 A Yes, it is.

11 Q You and her mother -- what's the relationship?

12 A Her mother is my sister.

13 Q Your sister. Of course, you'd never lie on her would
14 you?

15 A Would I what, now?

16 Q Lie

17 A No.

18 Q But you certainly would talk to her, wouldn't you?

19 A Yeah, we've talked a couple of times, but not
20 concerning this case.

21 Q Let me ask you something, is that logical that you and
22 your niece would have never talked about what you told the
23 police that night?

24 A Well, see, sir, the only time I've spoken to my niece
25 -- she has a collect call block on her phone, so I've spoken

1 to her maybe twice during this whole thing.

2 Q But you've spoken to her?

3 A To say, hey, how you doing and how are the kids, yeah.

4
5 Q And she knew you were cooperating?

6 A Yeah.

7 Q And you knew she was cooperating?

8 A I had no idea what she told them.

9 Q You didn't know she gave a statement?

10 A Yeah, I knew she gave a statement, but she in no way
11 told me what she said on that statement, in no way.

12 Q When was the last time you saw her?

13 A I don't remember, exactly.

14 Q Did she ever come and visit you?

15 A At Richland County, yeah. Before any of this came
16 about, yes.

17 Q What do you mean before?

18 A Before any of this came about.

19 Q When is before?

20 A Before May.

21 Q Before May?

22 A Yeah.

23 Q How many times did she come and visit you at Richland
24 County?

25 A Two, maybe three times.

State v. Tremaine Wray and Taurus Watts 10/8/09

281

1 Q And you-all never discussed what happened back in '07?

2 A No, absolutely not. None whatsoever.

3 Q And since May of 2009, you have not talked to her on
4 the phone?

5 A Yeah, once or twice.

6 Q Well, if the phone's blocked, you got through somehow?

7 A From my mother's house. She'd be over at my mother's
8 house and those were the two times I talked to her.

9 Q And you and she never discussed this case --

10 A No.

11 Q -- or the fact that the trial was coming up?

12 A Just that Jarrell was threatening me. That was the
13 only thing we talked about the case. Specifics, none at all.

14 Q He threatened to hurt you?

15 A Yeah.

16 Q Harm you?

17 A Uh-huh. (Affirmative response.)

18 Q But in those discussions there was no discussions about
19 the details --

20 A None whatsoever.

21 Q So you didn't talk with any of them from June of '07 --
22 except for conversations you talked about at the jail and the
23 phone calls you had with your niece and the couple of times
24 you spoke with Jarrell, but in none of those conversations
25 have you discussed this case.

1 A None.

2 Q What you told the police is that you saw a big truck at
3 the house. You didn't testify, you didn't tell the police
4 that you knew anything about who was driving it?

5 A No.

6 Q And my understanding is, and you correct me if I'm
7 wrong about anything I say, okay, but you said that Jarrell
8 called you when you were over at -- whose house was it?

9 A My mother's house.

10 Q Your mother's house. And he said, he told you that he
11 needed help?

12 A Yeah.

13 Q He did not come over to your house?

14 A No, he called.

15 Q So he never presented himself at the house over there
16 and said some discussion about this gun and about how to get
17 rid of it?

18 A No, that occurred in his backyard.

19 Q But you're saying is he was the one that initiated the
20 conversation --

21 A Yeah.

22 Q -- to you --

23 A Yes.

24 Q -- that he needed some help in getting rid of the gun?

25 A Yeah.

State v. Tremaine Wray and Taurus Watts 10/8/09

283

1 Q And that was done at his house, not your house?

2 A Not at my house.

3 Q And so you had come over there as a result of his phone
4 call to you. Was Rashonda in the house?

5 A Yeah, she was in the house.

6 Q And you said the kids were not there?

7 A I don't remember correctly --

8 Q What time was it?

9 A It was afternoon.

10 Q What time?

11 A I have no idea what time it was.

12 Q And did you talk about this in front of Rashonda?

13 A No. It was me and Jarrell.

14 Q And you were outside when you were talking about it?

15 A Yes.

16 Q And he said he needed your help, and said that you
17 needed to help him; that's what you described?

18 A He said he needed my help. Yeah.

19 Q And this object -- where did it come from? I believe
20 you told Ms. Shipley that he went in the house and got it?

21 A Yeah, he went in and got a book bag. Came back out,
22 opened the book bag, and said, look at this.

23 Q All right. That's all I wanted to ask you. I'm kind
24 of slow. I wanted to go through the particulars, all right?

25 A Yeah.

1 Q He gets it out of the house, comes out with a book bag.

2 I think you called it a Jansport?

3 A Jansport.

4 Q A Jansport book bag, a pretty distinctive book bag,
5 right?

6 A Not particularly. It's a regular book bag. It has a
7 little round label that says Jansport on it.

8 Q And he got that out of the house; is that right?

9 A Yes.

10 Q Comes outside and you're all standing in the backyard.

11 A No. We're in the front yard this time.

12 Q Now you're in the front yard?

13 A We walked around.

14 Q You walked around?

15 A Yeah.

16 Q And from what I understand, you opened it up; is that
17 right?

18 A Yeah, I believe so.

19 Q Can you remember or not?

20 A Vaguely, sir.

21 Q And you --

22 A There was a book bag handed to me and whether I
23 unzipped the zipper or it was already opened, there was a Mac
24 10 inside it. That I know for sure.

25 Q All right.

State v. Tremaine Wray and Taurus Watts 10/8/09

285

1 A If I said that in my statement then that --

2 Q But no matter what, you opened it up and you looked
3 inside; is that what your testimony is?

4 A Yes.

5 Q And you could tell it was a gun with a clip?

6 A It's a pretty distinctive weapon.

7 Q Okay. You obviously know weapons?

8 A I've had experience. I used to work at a pawn shop
9 that dealt with guns, yes.

10 Q You've had some experience with guns?

11 A Yeah, I used to work in a pawn shop that dealt with
12 selling guns.

13 Q Arm robbery, too?

14 A No, actually, I don't have experience with arm robbery
15 with guns.

16 Q Well, whatever it may be.

17 A That's alleged.

18 Q So you look in there and you see this gun. And
19 obviously, Jarrell must have seen it, too, correct?

20 A Correct.

21 Q And I think you put in your statement and I know this
22 probably offends you and it was a terrible event but you told
23 Mr. McRae it took you back?

24 A Yeah, I mean, somebody handed me a book bag and said
25 look inside it, there's a Mac 10 inside it, yeah.

1 Q The guy who's been in trouble in and out for 10 years
2 and you're taken aback?

3 A Yes, I was. And those crimes that I was in trouble for
4 those 10 years there was never any involvement with any
5 weapons. So I guess I was when I saw a Mac 10 inside a book
6 bag.

7 Q That concerned you, correct?

8 A Yes.

9 Q And when Jarrell told you that he wanted to go to law
10 enforcement to turn the weapon in you told him, no, you don't
11 do that. I'll get rid of it. Isn't that what you said?

12 A Absolutely not.

13 Q No?

14 A No.

15 Q You're kidding me?

16 A He never made any mention of going to law enforcement
17 with anything.

18 Q Well, who's the one that said about getting rid of the
19 gun?

20 A Jarrell.

21 Q Oh, it wasn't you. He was the one that said about
22 getting rid of the gun?

23 A He said he needed my help getting rid of this gun.

24 Q So you're telling the jury he would never have said I
25 want to go to law enforcement and you stopped him from going

State v. Tremaine Wray and Taurus Watts 10/8/09

287

1 to law enforcement.

2 A Stopped him from -- no, absolutely not.

3 Q But you were going to sell it?

4 A I might have. No, I never said I was going to.

5 Q But you would have?

6 A I don't know.

7 Q It was in good shape?

8 A Good shape.

9 Q But then you went ahead and you got a hammer?

10 A No. Jarrell got a hammer.

11 Q He got a hammer. And it was over at your house, at
12 your house that you destroyed this weapon, isn't it?

13 A No. It was in Jarrell's back yard. Sitting on some
14 wood, I believe was back there -- no, it was a camper shell
15 in his back yard. It's probably still there right now.

16 Q And both of you banged the gun; is that right?

17 A Yes, that's true.

18 Q What was the purpose of banging the gun?

19 A It was his idea, so I wouldn't go back and get it and
20 sell it.

21 Q Oh, it was his idea?

22 A Yeah.

23 Q When did you tell Rashonda about that?

24 A About what?

25 Q About banging the gun?

1 A When did I tell her that?

2 Q Yeah, in one of your conversations?

3 A No.

4 Q So the banging of the gun with the hammer was done at
5 his house, not at your house?

6 A My father was at home at his shed during this whole
7 time, because Jarrell kept looking around the house making
8 sure he wasn't walking over. So, no, it definitely wasn't
9 done at my house.

10 Q Nothing was done at your house?

11 A Nothing at all.

12 Q At all. Well, let me ask you something, I thought the
13 gun was buried in the back yard?

14 A You thought the gun was buried?

15 Q That was my understanding, am I wrong?

16 A Yes, you are wrong.

17 Q So it was not buried?

18 A Where did you get that from, sir?

19 Q I can't tell you.

20 A Okay. No, the gun was not buried, to my knowledge,
21 anyway, and when I saw it, it had no dirt on it, none,
22 whatsoever.

23 Q None?

24 A None.

25 Q In the house?

State v. Tremaine Wray and Taurus Watts 10/8/09

289

1 A When I saw it in the back yard.

2 Q So then -- how long was it from the time you got there
3 and the time you banged up the gun until the time you left;
4 an house, three hours, 10 minutes?

5
6 A 15, 20 minutes, 30 minutes, tops.

7 Q Now, you put the gun back in the bag, right?

8 A Yeah.

9 Q And you got your niece?

10 A He got her. He went in the house and got her. She
11 came out and jumped in the truck.

12 Q Well, but you were in agreement to doing it?

13 A Yes.

14 Q Let's see -- we put the gun back in the book bag and he
15 went and got my niece, Rashonda, and we got in her truck and
16 drove up Langford Road and got to the bridge. So let me ask
17 you something, I thought you were the guy who took the truck,
18 isn't that true? Aren't you the person that got in the truck
19 and drove up to the bridge on Langford Road and dumped the
20 gun?

21 A That's comical to me, sir. My niece has never let me
22 -- I didn't even have a license at that time. So, no, I
23 didn't drive anything nowhere.

24 Q So that couldn't have been?

25 A Absolutely, wouldn't have been.

1 Q So you didn't get in Rashonda's truck and drive off
2 with Jarrell?

3 A No.

4 Q Or by yourself?

5 A No.

6 Q And go ditch the gun?

7 A No.

8 Q Well, now, obviously the next question begs this, did
9 Rashonda get in the truck?

10 A She drove.

11 Q She drove? She drove the truck?

12 A Uh-huh. (Affirmative response.)

13 Q Now, you're implicating your niece right now in helping
14 you dispose of the weapon?

15 A She drove the truck.

16 Q Now, if there's evidence that she stayed at the house
17 and didn't get in the truck that's not true?

18 A No, that's not true.

19 Q And if there's evidence that Jarrell went with you or
20 didn't go with you -- well, let me ask you this, all three of
21 you went?

22 A All three of us went.

23 Q So if there's any evidence that contradicts that,
24 that's not true?

25 A No, it's not.

1 Q By the way, don't look over there, okay?

2 A What?

3 Q So Rashonda gets in the truck, she's driving. She
4 knows you're going to ditch that gun, correct?

5 A Yeah. Correct.

6 Q Where were you sitting?

7 A Back seat.

8 Q Well, let me ask you something. If you were going to
9 go ahead and take care of the gun and ditch it, you didn't
10 tell Jarrell that you were going to take care of it and left
11 him there?

12 A No.

13 Q So you were in the backseat, right?

14 A Right.

15 Q And if you were going to get rid of it why did you have
16 to have Jarrell and Rashonda there?

17 A Because I didn't have a license. I didn't have
18 anything -- a car -- to get rid of it.

19 Q So you didn't have a car. One of them had to drive,
20 but all three of you went; right?

21 A Right.

22 Q You drove up Langford Road, and what time of day was it
23 at this point?

24 A Afternoon, still, sir.

25 Q It was the afternoon?

1 A Uh-huh. (Affirmative response.)

2 Q When you say the afternoon, that gives me a wide range
3 there. What do you mean?

4 A I have no idea exactly what time it was. I can't tell
5 you the time. I know it was afternoon, and it was drizzling
6 outside.

7 Q Well, let me ask you something. You are disposing of a
8 weapon; correct?

9 A Uh-huh. (Affirmative response.)

10 Q You want to make sure the police don't find the weapon;
11 correct?

12 A Correct.

13 Q And so you throw it under a bridge; is that right?

14 A Yes.

15 Q You threw it in the middle of the creek under the
16 bridge; correct?

17 A Correct.

18 Q You were the one that got out of the vehicle and did
19 that?

20 A Correct.

21 Q Now, what I understand you said is that Rashonda, you
22 told Rashonda and Jarrell to drive up the street and come and
23 pick you back up in a few minutes.

24 A Because there was no place to pull over on the shoulder
25 of the road.

- 1 Q So that's what they did?
- 2 A That's what they did.
- 3 Q They knew what you were doing?
- 4 A Yes.
- 5 Q Well, you were all riding together?
- 6 A Yes.
- 7 Q Now, so I guess when -- if someone said 20 minutes or
- 8 30 minutes later you came back to the house, knocked on the
- 9 front door and you said, it's taken care of, you don't have
- 10 to worry about it any more. That would not be true either?
- 11 A No.
- 12 Q When you started talking to the police you obviously
- 13 had some conversations with Rashonda on the 18th before or
- 14 right afterwards, you let her know what you were doing,
- 15 didn't you?
- 16 A Actually, no, I didn't.
- 17 Q Who did you let know?
- 18 A My mother.
- 19 Q Your sister?
- 20 A No. I called my mother to get Rashonda's cell phone
- 21 number for Officer McRae to get in touch with her. I didn't
- 22 talk with her that night.
- 23 Q You talk with her the next day?
- 24 A No.
- 25 Q So you never told her what you were doing?

1 A No, I didn't.

2 Q Well, how did you find out that Jarrell was threatening
3 you?

4 A My mother. After the officers called her and got in
5 contract with him, my mom.

6 Q So your communications were through your mother?

7 A There were no communications.

8 Q Well, you said --

9 A My communications with my mother, yes.

10 Q Let me ask you something. A Mac 10, which is what you
11 described with a 30 caliber clip --

12 A 30 round clip.

13 Q -- 30 round clip. Sorry, thank you for correcting me.
14 I don't know guns very well, like you. You identified that
15 one, No. 18, right?

16 A Yes.

17 Q That's different than 17 or any of these other pistols,
18 correct?

19 A Yes.

20 Q This is a Mac 10?

21 A Yes, it is.

22 Q Because you got those in the pawn shop?

23 A No, I mean --

24 Q That's how you knew it?

25 A That's how I knew a Mac 10. No. I mean, I've seen

State v. Tremaine Wray and Taurus Watts 10/8/09

295

1 them on TV, movies. Lots of people know what a Mac 10 is,
2 sir.

3 Q Well, Mr. Watson, I wish you the best of luck.

4 THE COURT: Ms. Johns.

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

6 BRIAN WATSON - CROSS EXAMINATION

7 BY MS. JOHNS:

8 Q So Mr. Watson, you're trying to tell this jury right
9 here, that Jarrell Dansby, your niece's husband or ex-
10 husband, a man with no prior record is going to call you up
11 through your mother and threaten you?

12 A Yes.

13 Q That's what you're saying; right?

14 A Yes.

15 Q Now, let me ask you a couple of things before I get
16 this laptop going over here. You were having a pretty good
17 life up until February of 2009, weren't you? I mean, didn't
18 you go to rehab, the reason why you went to Charlotte?

19 A No. It wasn't rehab.

20 Q Have you ever tried that?

21 A Yes.

22 Q Didn't work, did it?

23 A No.

24 Q Okay. So you have a problem don't you?

25 A Yes.

1 Q And your problem is addiction, isn't that right?

2 A Yes.

3 Q And your addiction drives you, doesn't it?

4 A To what?

5 Q It drives you, it makes you make decisions, doesn't it?

6 A Yeah, sometimes.

7 Q And it controls you, does it not?

8 A Sometimes.

9 Q And whenever you can't get your fix because of your
10 addiction you will do whatever it takes to get that high
11 again, won't you? That's what addiction is, right?

12 A Yes.

13 Q For example, like Mr. Swerling had said, you'd steal
14 for it, would you not?

15 A Yes.

16 Q And you would forge checks and lie about who you were
17 to get money, right?

18 A Yes.

19 Q And on and on and one for the past few years you were
20 driven not by doing the right thing, but by your addiction,
21 right?

22 A Yes.

23 Q And you notice there's a pattern to your 10 year
24 behavior, since you went to high school and had some college.
25 Something happened, didn't it, after college?

State v. Tremaine Wray and Taurus Watts 10/8/09

297

1 A Yes.

2 Q You tried crack cocaine and you were addicted weren't
3 you?

4 A Yes.

5 Q And nothing would stand in your way of getting high
6 again would it?

7 A That's not true.

8 Q No. Well, then, why don't you explain it to me?

9 A I don't think I can explain it to you?

10 Q Well, then tell me why you stole, tell me why?

11 A On occasion, yes, to purchase drugs.

12 Q Okay, and is that why you took somebody else's
13 signature and put it on a document --

14 A Yes.

15 Q -- to get money --

16 A Yes.

17 Q -- to buy drugs?

18 A Uh-huh. (Affirmative response.)

19 Q Right?

20 A Absolutely.

21 Q And then after that you broke into something --

22 A Yes.

23 Q -- so that you could go sell it so that you could pay
24 for your addiction, isn't that right?

25 A Yes.

1 Q And then after that, what happened, what was the
2 charge? I mean, I'm starting to lose track here. Burglary,
3 the forgeries, the shopliftings, the burglaries, the petit
4 larceny -- Oh, don't forget about those -- I don't know, Visa
5 cards, American Express cards. Somebody else's credit cards
6 you stole, right?

7 A (No response.)

8 Q Two of them. Two of the. Right?

9 A Actually, no, I didn't steal them.

10 Q Oh, well, you were charged and you pled guilty to it,
11 right?

12 A Yep.

13 Q But if you didn't do it you wouldn't admit to it, would
14 you?

15 A (No response.)

16 Q Would you?

17 A Actually, in that case, I did.

18 Q You did in that case. So you, under oath, in front of
19 a judge, that you did something when, in fact, you didn't?
20 Is that what you want me to believe, sir?

21 A You believe what you like, ma'am.

22 Q That's what happened, right, because you're sitting
23 here now telling us that you didn't do it. Right?

24 A I used the credit cards. The credit cards --

25 Q You did use the credit cards?

State v. Tremaine Wray and Taurus Watts 10/8/09

299

1 A Yes. I did not deny using those credit cards. The
2 fact of where I got them was in question. I did not steal
3 the credit cards.

4 Q Oh, okay. I'm glad you clarified that. You used
5 somebody else's credit cards --

6 A Yes.

7 Q -- to get money to serve your addiction, right?

8 A Yes.

9 Q Now, whose fault is it that you're addicted to crack
10 cocaine?

11 A It's mine.

12 Q It's your's? It's all your's?

13 A Yes.

14 Q Whose fault is it that you stole those cards or used
15 the cards, whose fault is that?

16 A Mine. My fault.

17 Q And after that -- let me make sure that you didn't
18 plead guilty to something else you didn't do. In 2006, you
19 got popped for shoplifting, stealing?

20 A Yes.

21 Q And you went all the way from shoplifting, which is
22 stealing, to now two serious, most serious pending, arm
23 robbery charges?

24 A Yes.

25 Q That's pretty serious, isn't it?

1 A Yes.

2 Q When you make a jump from crack cocaine, fraudulent
3 checks, stealing, credit cards to arm robbery. That's pretty
4 serious isn't it?

5 A Yes.

6 Q And you know what, you've been in prison twice, isn't
7 that right?

8 A Yes.

9 Q And you know how to calculate time, don't you, that's
10 something that you learn while you're in prison, don't you?

11 A Yes.

12 Q Now, when you learn how to calculate time, you know 85
13 percent of 10 years is don't you?

14 A Just about.

15 Q Tell me what it is?

16 A Eight years and some odd months.

17 Q 85 percent is eight and a-half years, 8.5 years. Am I
18 wrong; is that about right?

19 A That's right.

20 Q Okay. And that's the minimum sentence that you can get
21 right?

22 A Yes.

23 Q That's the minimum, that is statutorily the least
24 amount of time that you can get for armed robbery, right?

25 A Yes.

State v. Tremaine Wray and Taurus Watts 10/8/09

301

1 Q And armed robbery involves a victim, does it not?

2 A Yes.

3 Q And so does shoplifting, correct?

4 A Yes.

5 Q And so does forgery?

6 A Yes.

7 Q And the only thing that doesn't involve a victim,
8 possibly, is your possession of crack cocaine, three counts.
9 Does that involve a victim?

10 A No.

11 Q No, it doesn't. That was all your fault, right?

12 A All my fault.

13 Q Now, you're 35 years old?

14 A 37.

15 Q Okay. 37. Well, you were 35, then, two years ago,
16 right?

17 A Yes.

18 Q And you're living in your mother's house?

19 A Yep.

20 Q And you are unemployed?

21 A Yes.

22 Q Okay. And something had to have happened to you to
23 make you turn to drugs. Was that because you felt a little
24 left out?

25 A No.

1 Q Well, you had every opportunity in the world. High
2 school, you graduated, you went to college. Something
3 happened, right. Do you know what it is?

4 A Experimenting with drugs.

5 Q Okay. And you admit that when you experiment with
6 drugs that you do not have the ability to control yourself,
7 do you?

8 A No.

9 Q The drug controls you, doesn't it?

10 A Yes.

11 Q Now, is it fair to say that since your arrest in
12 February of 2009, you haven't had the ability to get high?

13 A Nope.

14 Q Right?

15 A Correct.

16 Q That kind of makes you feel a little dysfunctional at
17 first doesn't it?

18 A No.

19 Q Okay.

20 A Actually, it doesn't.

21 Q It frees you, does it not? It frees your mind, does it
22 not?

23 A Yes, I guess.

24 Q Because you can't get high, now you can start thinking,
25 right?

State v. Tremaine Wray and Taurus Watts 10/8/09

303

1 A (No response.)

2 Q Because you weren't able to think before because you
3 were being controlled by drugs; is that fair?

4 A (No response.)

5 Q Is that fair to say?

6 A Yes.

7 Q So your habit's been clear since February 2009, right?

8 A Yes.

9 Q Now, let me ask you something, you being a veteran of
10 trouble. When you're incarcerated at a county facility, can
11 you make a collect call to a cell phone?

12 A No.

13 Q Can you make a collect call to a land line?

14 A Yes.

15 Q When you make a collect call to a land line, let me ask
16 you this, [REDACTED]. That's your mother's phone number, isn't
17 it?

18 A Yes.

19 Q And in order to talk to your mom you have to call
20 collect don't you?

21 A Yes.

22 Q And every time you call collect from the detention
23 center there's an automated voice that's been taped that
24 says, this is a warning, your telephone call is being
25 recorded, right?

1 A Uh-huh. (Affirmative response.)

2 Q Do you remember having a telephone conversation with
3 your mother about Rashonda?

4 A (No response.)

5 Q Do you remember?

6 A Well, I'm sure I've had conversation with my mother --

7 Q About Rashonda?

8 A -- about Rashonda, yes.

9 Q Right. And do you particularly remember a conversation
10 you had with your mother about whether or not your mother had
11 spoken to Rashonda yet about this case. Not your case. This
12 case right here. Have you not had a conversation with your
13 mother about --

14 A Had she spoken to her about this case?

15 Q Yes.

16 A Yeah, I probably have had a conversation with her.

17 Q You just told Mr. Swerling that you never communicate

18 --

19 A No, I told Mr. Swerling that I never communicated with
20 my niece. Oh, I'm sorry.

21 Q -- told Mr. Swerling that you did not use your mother
22 as a vehicle to communicate with Rashonda, did you not?

23 A Well, ma'am, I'm not understanding your question.
24 Asking my mother if she's talked to Rashonda, that's not
25 communicating anything from me to her or her to me.

State v. Tremaine Wray and Taurus Watts 10/8/09

305

1 Q Well, let me ask you this, specifically, then, do you
2 remember making a phone call on April 15, to your mother,
3 collect?

4 MS. SHIPLEY: Your Honor, may we have a copy of
5 this?

6 MS. JOHNS: Your Honor, I'm not ready to put it in.
7 I'm referring to my notes. This is work product.

8 MS. SHIPLEY: It's discovery, if she's going to use
9 it for impeachment. We're entitled to know what she's using
10 to impeach a witness.

11 MS. JOHNS: No, Your Honor. This is my attorney
12 work product. And --

13 MS. SHIPLEY: It's a transcript of a phone call
14 that we don't have in our possession.

15 THE COURT: Do you-all intend to have some more
16 redirect?

17 MS. SHIPLEY: Yes, ma'am.

18 THE COURT: Okay. I think we're going to need to
19 resume in the morning. Because the jurors --

20 MS. JOHNS: Your Honor, then I'll provide this to
21 them if I need to.

22 THE COURT: All right. Let do that. Would you-all
23 like to start at 9:00 again tomorrow. Okay.

24 Ladies and gentlemen, you are excused for the evening.
25 I'll remind you not to discuss the case. Report back to your

State v. Tremaine Wray and Taurus Watts 10/8/09

306

1 jury room at 9:00 a.m. tomorrow.

2 (Jury out for the evening at 5:42 p.m.)

3 THE COURT: Anything that we need to take up this
4 evening?

5 MS. JOHNS: Yes, Your Honor. I'd ask you admonish
6 this particular witness.

7 THE COURT: Sir, I'm going to remind you that you
8 are still under oath. So you cannot talk about your
9 testimony to anyone. You are still under oath just as if you
10 were testifying here. So you cannot discuss your testimony
11 with anyone, okay?

12 MR. WATSON: Okay.

13 THE COURT: All right. And I need the solicitor's
14 office to make sure that he will be here at 9:00.

15 MS. SHIPLEY: Your Honor, you need to instruct the
16 deputies.

17 THE COURT: Whatever needs to be done so that he
18 will be here and available by 9:00 a.m., to be ready to
19 testify. So whatever authority I need to give to the jail, to
20 get him here early.

21 Ms. MCDUFFIE: Your Honor, our witness is in
22 Fairfield County.

23 THE COURT: Okay. Then you need to make some
24 alternative arrangements in that regard?

25 MS. SHIPLEY: Yeah. It's a 45 minute drive, so he

State v. Tremaine Wray and Taurus Watts 10/8/09

307

1 will have to leave early. He can't go to the Alvin S. Glenn
2 Detention Center. He's been threatened.

3 THE COURT: Okay. Okay, but I'm just saying do
4 you-all have the ability to contact the warden or whomever --

5 MS. SHIPLEY: We'll take care of it, Your Honor.
6 If we need a court order, I'll let you know.

7 THE COURT: Right. Okay.

8 (Court in recess for the evening at 5:46 p.m)

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State v. Tremaine Wray and Taurus Watts 10/8/09

308

CERTIFICATE

I, THE UNDERSIGNED HILDA M. JORDAN, CVR, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 8TH DAY OF OCTOBER, 2009.

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

HILDA M. JORDAN, CVR

COLUMBIA, SOUTH CAROLINA

MAY 23, 2010

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

STATE OF SOUTH CAROLINA)
PLAINTIFF,)
VS.) 07-GS-40-5913
TREMAINE WRAY AND TAURUS WATTS,) 07-GS-40-5914
DEFENDANT.)
VOLUME 5

OCTOBER 9, 2009
COLUMBIA, SOUTH CAROLINA

TRANSCRIPT OF RECORD

B E F O R E:

THE HONORABLE MICHELLE CHILDS, JUDGE, AND A JURY

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

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

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

ATTORNEY FOR DEFENDANT WATTS
THERESA JOHNS, ESQUIRE

HILDA M. JORDAN, CVR
CIRCUIT COURT REPORTER

I N D E XWITNESS/DESCRIPTION PAGE NO.

STATE'S CASE IN CHIEF

TESTIMONY IN ORDER OF APPEARANCE

BRIAN WATSON CROSS..... 37

MOTION FOR MISTRIAL 44

PROFFER 66

BRIAN WATSON REDIRECT..... 84

BRIAN WATSON RECROSS..... 96

BRIAN WATSON RECROSS..... 100

STAN SMITH DIRECT..... 103

PATRICIA REED-ENZOR DIRECT..... 119

PATRICIA REED-ENZOR CROSS..... 187

PATRICIA REED-ENZOR CROSS..... 192

PATRICIA REED-ENZOR REDIRECT..... 209

BAILIFF JR 220

CLAY NICHOLS DIRECT..... 228

CLAY NICHOLS CROSS..... 234

State v. Tremaine Wray & Taurus Watts 10/9/09

3

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

	ID	ENTERED
1		
2		
3	State's Exhibit No. 148	87
4	State's Exhibit No. 142	91
5	State's Exhibit No. 147	111
6	State's Exhibit No. 143	112
7	State's Exhibit No. 144	112
8	State's Exhibit No. 145	112
9	State's Exhibit No. 146	112
10	State's Exhibit No. 48	123
11	State's Exhibit No. 49	123
12	State's Exhibit No. 50	123
13	State's Exhibit No. 115	124
14	State's Exhibit No. 87	126
15	State's Exhibit No. 88	126
16	State's Exhibit No. 89	126
17	State's Exhibit No. 90	126
18	State's Exhibit No. 91	126
19	State's Exhibit No. 92	126
20	State's Exhibit No. 93	127
21	State's Exhibit No. 94	127
22	State's Exhibit No. 95	127
23	State's Exhibit No. 96	127
24	State's Exhibit No. 97	127
25	State's Exhibit No. 98	127

State v. Tremaine Wray & Taurus Watts 10/9/09

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

	ID	ENTERED
1		
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3	State's Exhibit No. 99	127
4	State's Exhibit No. 100	127
5	State's Exhibit No. 101	127
6	State's Exhibit No. 102	127
7	State's Exhibit No. 103	127
8	State's Exhibit No. 104	127
9	State's Exhibit No. 105	128
10	State's Exhibit No. 106	128
11	State's Exhibit No. 107	128
12	State's Exhibit No. 108	128
13	State's Exhibit No. 109	128
14	State's Exhibit No. 110	128
15	State's Exhibit No. 111	128
16	State's Exhibit No. 112	128
17	State's Exhibit No. 113	128
18	State's Exhibit No. 119	129
19	State's Exhibit No. 122	139
20	State's Exhibit No. 117	142
21	State's Exhibit No. 121	143
22	State's Exhibit No. 68	145
23	State's Exhibit No. 69	145
24	State's Exhibit No. 70	145
25	State's Exhibit No. 71	145

State v. Tremaine Wray & Taurus Watts 10/9/09

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

	ID	ENTERED
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3	State's Exhibit No. 71	145
4	State's Exhibit No. 72	146
5	State's Exhibit No. 73	146
6	State's Exhibit No. 74	146
7	State's Exhibit No. 75	146
8	State's Exhibit No. 76	146
9	State's Exhibit No. 77	146
10	State's Exhibit No. 78	146
11	State's Exhibit No. 79	146
12	State's Exhibit No. 80	146
13	State's Exhibit No. 81	146
14	State's Exhibit No. 82	146
15	State's Exhibit No. 83	146
16	State's Exhibit No. 84	146
17	State's Exhibit No. 85	147
18	State's Exhibit No. 86	147
19	State's Exhibit No. 52	155
20	State's Exhibit No. 53	155
21	State's Exhibit No. 54	155
22	State's Exhibit No. 55	155
23	State's Exhibit No. 56	156
24	State's Exhibit No. 57	156
25	State's Exhibit No. 58	156

State v. Tremaine Wray & Taurus Watts 10/9/09

6

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

	ID	ENTERED
1		
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3	State's Exhibit No. 59	156
4	State's Exhibit No. 60	156
5	State's Exhibit No. 61	156
6	State's Exhibit No. 62	156
7	State's Exhibit No. 63	156
8	State's Exhibit No. 64	156
9	State's Exhibit No. 65	156
10	State's Exhibit No. 66	156
11	State's Exhibit No. 67	156
12	State's Exhibit No. 123	174
13	State's Exhibit No. 137	176
14	State's Exhibit No. 156	177
15	State's Exhibit No. 1	186
16	State's Exhibit No. 157	211
17	State's Exhibit No. 152	227
18	State's Exhibit No. 153	227
19	State's Exhibit No. 154	227
20	State's Exhibit No. 155	227
21	State's Exhibit No. 151	231
22	Court's Exhibit No. 4	72

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State v. Tremaine Wray & Taurus Watts 10/9/09

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CERTIFICATE PAGE 238

1 THE COURT: Keep your seats. Okay. Everybody in
2 place. Once we hear from the jurors then we will proceed
3 on. Let's try to do the same thing, break around 1:00 for
4 lunch and then just proceed on to whatever we can get done
5 today.

6 I explained to them, with permission of all counsel,
7 about them having to work until Monday or Tuesday so
8 everybody will be lining up their issues. I do have one
9 juror who has an interview in Greenville on Tuesday, but I
10 told her to call and if she needs Court assistance from my
11 law clerk or me, then I'll take care of that. The other one
12 is child care, they're trying to make alternate
13 arrangements.

14 When I was in there they asked me a couple of
15 questions. I'm going to put that on the record and I'll
16 tell you what I told them once they come out. And they'll
17 knock on the door, and I think we'll be ready.

18 MS. SHIPLEY: Your Honor, if I may.

19 Ms. Johns, were you planning to show the jury a
20 transcript?

21 MS. JOHNS: Nope.

22 MS. SHIPLEY: Okay.

23 THE COURT: Okay. Then you -- Oh, I was going to
24 ask you, you mentioned a DVD yesterday. So that's all set
25 up. Okay. And then any issues with respect to the cross-

State v. Tremaine Wray & Taurus Watts 10/9/09

9

1 examination, you-all discussed how that might play out in
2 terms of whether or not you're going to use any of this?

3 MS. JOHNS: Yes.

4 THE COURT: Well, if it's impeaching she doesn't
5 have to show it to you ahead of time until he is impeached,
6 but then you-all discussed with me at side bar that she --

7 MS. JOHNS: I gave them a recording.

8 THE COURT: Okay, great. So you're fine.

9 MS. SHIPLEY: We have had a chance to listen to all
10 that.

11 THE COURT: Okay. But is it transcribed as well?

12 MS. JOHNS: I did. I sat up all night doing that.

13 THE COURT: Okay.

14 MS. SHIPLEY: And also if she's planning to play
15 the recording, she's going to have to introduce it into
16 evidence.

17 MS. JOHNS: No. If he denies it then I don't have
18 to go into his answer.

19 THE COURT: Right.

20 THE COURT: Wait a minute. If he denies it --

21 MS. JOHNS: If he denies it, then I don't have to
22 go into that.

23 THE COURT: You don't have to go into that?

24 MS. JOHNS: Right.

25 THE COURT: But what she's saying is if you play it

1 you have to introduce it into evidence.

2 MS. JOHNS: It's just like a prior inconsistent
3 statement, --

4 THE COURT: Right.

5 MS. JOHNS: -- Your Honor, it was written --

6 MS. MCDUFFIE: Your Honor, but what's she doing is
7 offering extrinsic evidence to impeach him with the prior
8 inconsistent statement, and in order to offer intrinsic
9 evidence she has to offer the evidence, I mean, putting it
10 in, Your Honor. She can't play something for the jury and
11 then not put it into evidence.

12 MS. JOHNS: Your Honor, if he makes a statement --

13 THE COURT: You will need to, of course, inform
14 them of the substance, the time, the place. All of that.

15 MS. JOHNS: Yes, ma'am.

16 THE COURT: Then ask him about it to give him a
17 chance to admit or deny. If he admits it then he cannot be
18 impeached, but if he denies it, then you tell him about
19 that, you know, give him the opportunity -- but what they're
20 interested in is if you're going to then play that, that the
21 jury would have the opportunity to consider that. So --

22 MS. MCDUFFIE: If she's going to play it, it needs
23 to be offered into evidence.

24 THE COURT: Right.

25 MS. JOHNS: Judge, for example, if a witness makes

State v. Tremaine Wray & Taurus Watts 10/9/09

11

1 a written statement --

2 THE COURT: Right.

3 MS. JOHNS: -- and I ask him something from the
4 written statement and he denies that, then he's subject to
5 impeachment. So if he denies that, then I can offer a
6 portion of what he said to the jury to show that he's
7 unreliable or he's -- without offering the document, just
8 like --

9 MS. MCDUFFIE: Your Honor, she is using extrinsic
10 evidence to impeach. She didn't say did you make the
11 statement and he says no, and then she had to chose whether
12 or not to impeach him with the intrinsic evidence. And then
13 in order to do that that must be admitted.

14 THE COURT: Well, extrinsic evidence of such is
15 admissible.

16 MS. MCDUFFIE: Exactly. So if she's going to offer
17 it, Your Honor, it would need to be entered into evidence.
18 I mean, we can't just play a tape and not have it in
19 evidence.

20 THE COURT: I see what you're saying, because
21 generally you're just talking about the statements
22 themselves and offering it to him, but not just letting a --
23 so to speak, go forward.

24 MS. MCDUFFIE: Exactly.

25 MS. SHIPLEY: This is a recording, Your Honor, not

1 a written statement.

2 THE COURT: Right.

3 MS. SHIPLEY: So --

4 THE COURT: And one in which the solicitor doesn't
5 know about.

6 MS. JOHNS: Your Honor, we need to decide this
7 before this jury comes in here.

8 THE COURT: Absolutely.

9 MS. JOHNS: There is no difference between a
10 written prior inconsistent statement and a recorded prior
11 inconsistent statement. And I should be allowed to go into
12 the portions of that statement that are inconsistent.

13 THE COURT: Of course. Nobody is disputing that.
14 The issue is whether or not it should be admitted, and it
15 says, extrinsic evidence of such is admissible. The state,
16 what I'm hearing -- which means that one party or the other
17 could offer it, but it doesn't mean that it has to go in.
18 But I think what the difference you're making is that she
19 can't just play a recording that's not going to get to the
20 jury.

21 MS. MCDUFFIE: Exactly.

22 THE COURT: And I'll agree that the difference in a
23 written one is that we can narrow the -- we can know exactly
24 what you're going to read from a deposition page as opposed
25 to playing a narrative tape, and I don't know if you've

State v. Tremaine Wray & Taurus Watts 10/9/09

13

1 spliced the tape, so to speak.

2 MS. JOHNS: Well, Your Honor, I have -- as lengthy
3 as these conversations are, as you might well know --

4 THE COURT: Right.

5 MS. JOHNS: -- I have taken a portion that I
6 believe would be impeachable and have narrowed that down as
7 to the technology of me being able to get it right to that
8 digital portion, just like their video tape. I don't have
9 the ability to do that. We could -- I don't intend to offer
10 all these conversations into evidence. There are a lot of
11 conversations on there that I'm not going to use.

12 THE COURT: Well, how are you going to get to where
13 they are, in other words --

14 MS. JOHNS: Well, they're separated by date and
15 time.

16 THE COURT: Okay. So you know which ones you're
17 going into?

18 MS. JOHNS: Yes.

19 THE COURT: Okay, and you would take him to those
20 dates and times?

21 MS. JOHNS: Yes.

22 MS. MCDUFFIE: Your Honor, what Ms. Johns is trying
23 to do is play something that's not properly in evidence in
24 order to impeach a witness. I mean, we can just throw a
25 video up and make a jury watch it for two hours, and then

1 not put it into evidence. That's not proper.

2 THE COURT: Right.

3 MS. JOHNS: They can -- they can enter it.

4 THE COURT: You can enter it, as well.

5 MS. MCDUFFIE: But Your Honor, she -- you cannot
6 play something before the jury unless it's in evidence.

7 MS. JOHNS: Or it's impeachable statement --

8 MS. MCDUFFIE: And she must --

9 MS. JOHNS: -- prior inconsistent statement made
10 by a witness, the jury can hear that. And that's what I'm
11 planning to do.

12 MS. MCDUFFIE: It has to be in evidence, and she
13 must offer it --

14 MS. JOHNS: I'm not using it as evidence. I'm
15 using it to impeach this witness.

16 MS. MCDUFFIE: She's using extrinsic evidence for
17 impeachment, Your Honor.

18 MS. JOHNS: It's not intrinsic evidence.

19 MS. MCDUFFIE: Well, then it's not admissible.

20 MS. JOHNS: It's not extrinsic evidence. It's an
21 impeachable statement.

22 MS. SHIPLEY: Your Honor, under Rule 613, it's
23 clear that if he denies making the statement then the
24 defense is entitled to offer intrinsic evidence to impeach
25 him. Again, offer extrinsic evidence. It's evidence that

State v. Tremaine Wray & Taurus Watts 10/9/09

15

1 is not on the record, it's not in evidence. It's extraneous
2 to this proceeding. Therefore, she has to offer it into
3 evidence.

4 THE COURT: Well, it says extrinsic evidence of
5 such is admissible. That does not say shall be admissible.

6 MS. MCDUFFIE: You, as the judge, do not have to
7 let the recording or statement or whatever into evidence,
8 I'm mean, that's your providence as a judge. But before
9 something is allowed to be played in front of a jury it must
10 be entered into evidence. We're not saying Ms. Johns has to
11 enter it. If she wants to play it, she has to enter that
12 tape into evidence.

13 MS. JOHNS: Your Honor --

14 THE COURT: Well, I do agree that you can't just
15 carte blanche just let something to play and play on. There
16 has to be some control in here.

17 MS. JOHNS: Right. Well, admitting it into
18 evidence, Your Honor, is different. What I'm doing is just
19 like any other written statement. You can ask the witness a
20 question and if they deny it, you can take the prior
21 inconsistent statement -- and what I intend to do with this
22 recording is to --

23 THE COURT: Date and time --

24 MS. JOHNS: -- establish date and time, bring up
25 subject matter and if he denies, and I'm not saying he's

1 going to --

2 THE COURT: Right.

3 MS. JOHNS: -- but if he denies it, then I should
4 be able to play that portion of those recordings to show
5 that the statement is inconsistent, and it is admissible.

6 THE COURT: Wait. What she's saying is no
7 different -- no distinction where you read just that portion
8 that was inconsistent, and then allow that person --

9 MS. MCDUFFIE: She's saying did you say to witness
10 X the sky was blue on whatever day.

11 THE COURT: Right.

12 MS. MCDUFFIE: So that statement is now in the form
13 of a question out there. That is introducing extrinsic
14 evidence.

15 THE COURT: Well, first of all, he admits or
16 denies.

17 MS. MCDUFFIE: Absolutely.

18 THE COURT: If he admits it --

19 MS. MCDUFFIE: Absolutely, then --

20 THE COURT: -- but then he denies it, she will
21 potentially show him the deposition page and line and let
22 him read and say is this your answer on that day.

23 MS. MCDUFFIE: If she says does this refresh your
24 memory or is this your answer --

25 THE COURT: Right.

State v. Tremaine Wray & Taurus Watts 10/9/09

17

1 MS. MCDUFFIE: -- and he says no. Then she would
2 have to offer that and admit it into evidence.

3 MS. JOHNS: Then I would say, in this particular
4 case, Mr. Witness you are aware of your conversations with
5 so-and-so on such a date and such-and-such time with your
6 mother or your father or friend. At such time he would say,
7 yes, I do remember that. Do you remember saying, XYZ. No,
8 I didn't say that, no, I don't remember.

9 THE COURT: Right. Right.

10 MS. JOHNS: So it will be the same.

11 MS. MCDUFFIE: Well, if she says to him her one
12 question -- but when you -- I mean, if he was to deny his
13 deposition or deny what he said, the extrinsic evidence
14 would be to offer that document into evidence, which is the
15 exact same thing you're doing when you play the tape. So if
16 she just says --

17 THE COURT: We don't always offer the deposition or
18 whatever in. You read from it, but you don't always offer
19 it.

20 MS. MCDUFFIE: So you can say didn't you say, blah,
21 blah, blah. But then she can say -- and then she can read
22 from her transcript --

23 THE COURT: Right.

24 MS. MCDUFFIE: -- of what she's reading, but then
25 to go one step further, and actually -- you know, it's the

1 same thing as handing the deposition out to the jury. I
2 have no problem with her orally saying didn't you whatever.

3 THE COURT: Exactly.

4 MS. MCDUFFIE: But when she goes to play a tape or
5 hand a deposition to him. That's exactly --

6 THE COURT: Well, I think why we're at a
7 crossroads, is that they, the state, has not had a chance to
8 see what the tape is. And so to them, to play something
9 that may not be as precisely what you're asking is the
10 problem.

11 MS. JOHNS: I can provide them with my work that I
12 did last night until 2:00 a.m. I'll forego the work product
13 value of that and give that to them to let them know this is
14 what I'm going to use. That's all I can do at this point.

15 THE COURT: And I think you don't have a choice
16 because we can't play something that they haven't seen and
17 then try to un-ring the bell later. I think that's why
18 we're at a crossroads.

19 MS. JOHNS: Well, Your Honor, I still think that I
20 should be able to play the recording.

21 THE COURT: I'm not saying that you wouldn't, but
22 we don't have a way, myself included, to know what's going
23 to be on there without you sharing with them the document,
24 the precise --

25 MS. MCDUFFIE: Your Honor, regardless of whether

State v. Tremaine Wray & Taurus Watts 10/9/09

19

1 this is shared or not, we are still in the position that if
2 you play something in front of the jury, then that can't be
3 done unless it's offered into evidence. I mean, I just --

4 THE COURT: Because it's a recording as opposed to
5 reading aloud, that's your objection?

6 MS. MCDUFFIE: Right. Absolutely, Your Honor.

7 THE COURT: Okay.

8 MS. MCDUFFIE: That is not a question -- it does
9 not -- I mean, she's offering evidence when she plays that
10 recording. As impeachable evidence that must be entered --

11 THE COURT: Right.

12 MS. MCDUFFIE: -- before it can be played in front
13 of the jury.

14 THE COURT: Okay, let's see if we can get that --

15 MS. JOHNS: And Your Honor, I think they're trying
16 to confuse the issue of it because it is a little out of the
17 ordinary to have recordings, but it -- even during their
18 case in chief, while we had a statement of a witness, a
19 prior statement of a witness, when we offered portions of
20 that statement through a denial or admission of a witness,
21 we don't have an obligation to introduce it. They can
22 introduce the whole statement if they want to. But we don't
23 have to do that. All we have to do is say, did you say on
24 October -- and they said, no. And then we say, does this
25 refresh your memory. We don't have to refresh your memory.

1 We can say, is this your statement. Yes. And didn't you
2 say -- we don't have to refresh memory. That's not what we
3 have to do. I don't have to refresh his memory. I can just
4 plain go out there and impeach him with a prior inconsistent
5 statement that's recorded. It's just a little more
6 difficult because it's recorded.

7 THE COURT: Right.

8 MS. MCDUFFIE: But, Your Honor, Ms. Johns is going
9 to impeach -- our question, nothing we say is in evidence.
10 This is not a question. This is something that is outside
11 anything which is coming out of our mouths. This is
12 something that the jury is hearing. It's not a question by
13 an attorney. It's a tangible object, like a statement,
14 that, you know, is being played or is being produced for the
15 jury. You can't play something for the jury that's not in
16 evidence.

17 MS. JOHNS: I don't think that they understand.
18 This is the same thing.

19 MS. MCDUFFIE: Then why can't she just orally say
20 it and not play the recording?

21 MS. JOHNS: Your Honor, because I didn't create --
22 I didn't create this but through that. That's the
23 authenticity of the prior inconsistent statement.

24 MS. MCDUFFIE: Exactly.

25 MS. JOHNS: It's not what I created.

State v. Tremaine Wray & Taurus Watts 10/9/09

21

1 MS. MCDUFFIE: Exactly.

2 MS. JOHNS: So I can play that portion of what he's
3 denying, and I'll do the best to get to where it needs to
4 be.

5 THE COURT: Okay, well, share that document with
6 the state.

7 MS. SHIPLEY: Your Honor, it would be like a 911
8 call.

9 THE COURT: Right.

10 MS. SHIPLEY: A tape recording. State would never
11 be permitted to just play a 911 recording without offering
12 that tape into evidence to play it in front of the jury.

13 MS. JOHNS: The issue of a 911 tape is used for a
14 different purpose, and there would be no need for them not
15 to offer it into evidence. They're not going to offer a 911
16 tape into evidence when defense counsel is up there and got
17 the 911 operator on the witness stand and they're trying to
18 impeach the 911 operator. That would make sense.

19 This is used for a different purpose.

20 MS. SHIPLEY: Your Honor --

21 MS. JOHNS: This is a credibility issue. This is a
22 witness credibility issue. This is not putting a 911 tape
23 out there to prove a fact.

24 MS. SHIPLEY: Evidence is evidence, Your Honor.
25 When you try to introduce an item for a jury to hear, and

1 it's not from a written statement or an oral statement, but
2 it is a recording, then it is an item, a tangible item of
3 evidence, like a 911 cassette tape, where you are offering a
4 statement whether it's to impeach or not, is evidence. And
5 the rule says if he denies whatever is in that conversation,
6 that she is permitted to use extrinsic evidence to impeach
7 him. And extrinsic evidence means an item of evidence that
8 you would introduce in order to publish it in front of a
9 jury.

10 Just like a photograph. I would never be allowed to
11 show a jury a photograph and publish it to them unless I had
12 entered it into evidence.

13 MS. JOHNS: Your Honor, the 911 call or the
14 photograph, Your Honor, is being used in a case for an
15 entirely different reason than what these recordings are
16 being used for.

17 THE COURT: The thing is, we don't know what the
18 recordings say. We have no way of knowing at this point if
19 they go beyond what you're trying to do that is impeaching
20 evidence. So that's where they -- a document or a video
21 then --

22 MS. JOHNS: Well, Your Honor, they are what they
23 are. And I just received this two days ago, and I've done
24 my best --

25 THE COURT: Okay.

State v. Tremaine Wray & Taurus Watts 10/9/09

23

1 MS. JOHNS: -- to do what I could do to provide
2 that to the state. I know we don't have the time for them
3 to go and listen to all those.

4 THE COURT: Right. If you'd give them the document
5 they can at least be guided as to where you're going with
6 the question because I can't just let a video be played
7 carte blanche -- without --

8 MS. JOHNS: It's a recording.

9 THE COURT: -- the recording, without having a
10 specific section like you would referred to like in a
11 deposition or something. I mean, that's what we're trying
12 to do, not risk --

13 MS. JOHNS: Right.

14 THE COURT: So if you'll give them that, and we can
15 kind of be guided by it and before we allow it to be played,
16 we're probably going to have further discussion on this.

17 MS. JOHNS: Okay.

18 THE COURT: Okay. All right. Anything further?

19 MS. SHIPLEY: No, Your Honor.

20 THE COURT: All right.

21 Jurors, please.

22 MS. JOHNS: Your Honor, if I could just have a
23 minute?

24 MS. SHIPLEY: Your Honor, she's asking for a
25 minute.

1 THE COURT: Okay.

2 MS. JOHNS: So I can get these passed out to the
3 other parties.

4 MS. MCDUFFIE: Your Honor, we would also rely on
5 State v. Sierra. And that case --

6 THE COURT: State v. what?

7 MS. MCDUFFIE: Sierra. It's cited at 337 S.C. 368.
8 In that case the prosecutor -- the witness made a statement
9 to the prosecutor and the prosecutor then tries to impeach
10 the witness with the witnesses on prior inconsistent
11 statement to the prosecutor. The Supreme Court said that
12 that was improper. That the attorney could not do that and
13 that the solicitor would have to withdraw from the case and
14 testify in order to get that -- proof of that prior
15 inconsistent statement in. The prosecutor himself had to be
16 called as a witness and that proof had to be offered in that
17 manner, which is the same thing Ms. Johns is doing here.

18 There must be some intrinsic evidence entered in order
19 to impeach the witness.

20 MS. JOHNS: He's not my witness, Your Honor.

21 MS. MCDUFFIE: Your Honor, it doesn't matter whose
22 witness it is.

23 THE COURT: It doesn't matter. Any party can
24 impeach a witness.

25 MS. JOHNS: Any party can, Your Honor, but in that

State v. Tremaine Wray & Taurus Watts 10/9/09

25

1 particular case when the state used, tried to use a prior
2 inconsistent statement of their own witness, because they
3 became a witness to it. You can understand the logic of
4 why they then wanted the solicitor to be a witness. Not
5 here.

6 MS. MCDUFFIE: Your Honor, she's using the
7 recording in the place. It must be entered in if she's
8 going to play it for the jury. Just like the prosecutor put
9 himself, you know, testified or proved it through themselves
10 after the question. There must be proof for intrinsic or
11 evidence entered.

12 And, Your Honor, what is it she's trying to introduce?

13 THE COURT: Well, this isn't introduced. This is
14 her summary. Telling us what it's about. These are --
15 explain what's on here. How did you do your recording?

16 MS. JOHNS: Your Honor, when you receive a -- from
17 Richland County, the RCH01, I don't know what the 01
18 indicates or what the 38 indicates. It may be the recording
19 device that's recording it. And then you have a date, and
20 it's usually 2009, which is 2, 0, 0, 9. 1, 3, 09, and then
21 you'll have the time. I wasn't able to get the time on each
22 and every one of these --

23 THE COURT: But you got the date. That's fine.

24 MS. JOHNS: It is here --

25 THE COURT: Okay.

1 MS. JOHNS: It's here. It's long, but it's
2 military time.

3 THE COURT: That's okay, because we know where he
4 is. It's not a matter of showing he's at a particular
5 place. Is that fine?

6 MS. MCDUFFIE: No, ma'am, Your Honor. First, I
7 would argue authenticity. The last call on here is July 7th
8 of '09. This defendant was not housed in Alvin S. Glenn on
9 July 7th of '09.

10 MS. JOHNS: Well, then, she can listen to the whole
11 recording and determine that for herself right now.

12 THE COURT: How do you know that?

13 MS. MCDUFFIE: Your Honor, because we had him
14 transferred out of Alvin S. Glenn on May 19, 2009.

15 MS. JOHNS: Well, it could have been a clerical
16 error on my part, Your Honor. I can look at this right now
17 and tell you.

18 THE COURT: Well, let's move beyond that right now.

19 MS. SHIPLEY: We're talking about several phone
20 calls, Your Honor. There --

21 THE COURT: Well, she's no going to ask him about
22 all of these. A lot of these are not even relevant to this
23 case.

24 MS. MCDUFFIE: Well, which ones is she going to ask
25 about?

State v. Tremaine Wray & Taurus Watts 10/9/09

27

1 MS. JOHNS: Well, let's start with the 7/7/09,
2 first, and they can tell me whether or not this is --
3 doesn't belong here.

4 THE COURT: But, is this even relevant to --

5 MS. JOHNS: Your Honor, I was just following up --

6 THE COURT: I know, but I'm just saying if it's not
7 relevant then we waste time trying to --

8 MS. MCDUFFIE: Well, if she's not going to play it
9 in front of the jury then we have no issue with it.

10 THE COURT: Right.

11 MS. JOHNS: Your Honor, we have several issues
12 going on here. I just need to know procedurally how to
13 handle it. Are we going to deal with whether or not he was
14 in jail on 7/7/09 and made this recording or should I go on?

15 THE COURT: Well, if you're going to use that line
16 of questioning.

17 MS. JOHNS: No.

18 THE COURT: Okay, then it's not relevant.

19 MS. JOHNS: I'm not going to use that one.

20 One more minute, Your Honor.

21 THE COURT: Are we ready?

22 MS. SHIPLEY: No. Your Honor, we're not clear on
23 which calls she's going into. There's about 30 calls on
24 different dates.

25 MS. JOHNS: I'll try to clarify that for you on the

1 break. I've got it by date.

2 MS. SHIPLEY: I don't see the call that she
3 referred to yesterday about April 15, 2009 on here, either.

4 MS. JOHNS: Well, it's probably in this stack.
5 I have these ready.

6 THE COURT: Okay. Here's what I believe the ruling
7 is going to be. When you have extrinsic evidence, for
8 example, a deposition, we can go specifically to the
9 question and we can know the exact answer because you can
10 offer the person an opportunity to discuss date, place,
11 time. Did they make the statement or not. If they admit
12 if, of course, there is no impeachment. You're beyond that.
13 But if they deny it, then you can go exactly to what was
14 your question and read that question into the record, say,
15 was this your answer. Weren't you under oath then. What's
16 the difference between now -- that statement and this
17 statement. But we know the exact question and we know the
18 exact answer.

19 Based on what you're giving us, at least on this first
20 summary we wouldn't know that, and so that's the problem
21 that I have hesitation about and you would have to, then,
22 allow this in to have the jury know exactly what was said.
23 That's the distinction between a deposition or something
24 else when you read the exact question and the exact answer,
25 not a summary of something. That's why the tape is a

State v. Tremaine Wray & Taurus Watts 10/9/09

29

1 distinction for y'all purposes.

2 MS. JOHNS: Your Honor, I --

3 THE COURT: And I've got your transcript, but you
4 know --

5 MS. JOHNS: I have taken the transcript -- I have
6 taken -- prepared a done transcript --

7 THE COURT: Okay.

8 MS. JOHNS: -- of all these particular calls that
9 I think might be an issue.

10 THE COURT: Okay.

11 MS. JOHNS: Okay. And --

12 THE COURT: And let them look at them and --

13 MS. JOHNS: I did --

14 THE COURT: -- and see to the extent that they know

15 --

16 MS. JOHNS: I had these when I came in. I can go
17 make copies.

18 THE COURT: Okay. Because I would agree with a
19 summary that there's more to the exact answer. That
20 wouldn't be fair.

21 MS. JOHNS: That's fine. That's what I was using,
22 but I'm getting copies of what I've been about to --

23 THE COURT: And I've only got this two-page
24 document. Is there more?

25 MS. JOHNS: Yes, Your Honor. This May 15, 2009.

1 There are more.

2 THE COURT: Okay.

3 MS. JOHNS: There are lots more.

4 MS. MCDUFFIE: Your Honor?

5 THE COURT: Yes.

6 MS. MCDUFFIE: In State v. Sierra, cited at 337
7 S.C. 368, the Supreme Court quotes, leading questions are
8 permissible on cross-examination, but the examiner is not
9 allowed to testify or introduce evidence through themselves.

10 THE COURT: Well, you were out of the room when I
11 made my attempt at ruling. Which essentially says if you
12 have a deposition question and you've already given the
13 person a chance to admit or deny, we would know the exact
14 question, we would know the exact answer. And that's the
15 portion that's before the jury so most times it's not
16 admitted because we read into the record the exact question,
17 the exact answer.

18 Here we don't know what that is, and it's just a
19 recording that's going on that will have some other
20 utterances, perhaps, and so that's the reason I hesitate to
21 not require -- I mean, that's the reason why I'm more
22 inclined to let it in. We don't have that exact lines in
23 any transcript here so that we can narrow our scope if
24 there's other utterances that take it out of the context of
25 what she is asking.

State v. Tremaine Wray & Taurus Watts 10/9/09

31

1 MS. JOHNS: Your Honor, I've been practicing law
2 for a very long time. I don't intend to unhand this in any
3 way.

4 THE COURT: We're not suggesting that at all.
5 We're just saying that we can narrow the scope whenever it's
6 written document because there's an exact question, there's
7 an exact answer, and that is all that the jury hears.

8 MS. JOHNS: Right.

9 THE COURT: There are no other utterances outside
10 those lines and that's the problem where I see the state is
11 trying to say, we need to contain this.

12 MS. JOHNS: Right. And usually when there's an
13 audio recording, Your Honor, and a prior inconsistent
14 statement is made in that audio recording, I think that --
15 you know, the rule doesn't change. It's not that because
16 it's an audio recording verses a written recording --

17 THE COURT: I'm not saying that, but here's the
18 distinction. When the person is given an opportunity to be
19 impeached or not, they are limited in scope with what the
20 questioning is. So you may not be impeaching him if you
21 don't ask him the exact question that was asked of him at
22 the prior time. And the recording may be different than
23 what you ask him on stand, and so therefore, how can he be
24 impeached because the questions aren't the same?

25 MS. JOHNS: Well, I think the way we should handle

1 this, then, is to allow me to ask the question, wait for the
2 witness to answer. Then we have to play the recording, and
3 maybe we should send the jury out, play the recording so
4 that they know that this was the answer --

5 THE COURT: Right.

6 MS. JOHNS: -- that I was intending to get from
7 this witness.

8 THE COURT: Sure.

9 MS. JOHNS: And then bring the jury back in to
10 listen.

11 THE COURT: And we can take it from there, but you
12 understand what my position is. We have to contain it to
13 the narrow question and answer. The witness may not recall
14 it the way you asked it, because that's not the way he said
15 it or whatever, but it has to be the specific question asked
16 and answered. That's the only way it can be impeached is if
17 you specifically ask something and you answered a certain
18 way, and that answer is different today. But it has to be a
19 specific question.

20 MS. SHIPLEY: And if I can just clarify what the
21 question is, because my notes from yesterday at the end of
22 the cross-examination before we broke, was that on April 15,
23 2009, did he talk to his mom, and use his mom as a conduit
24 to contact Rashonda.

25 MS. JOHNS: Okay.

State v. Tremaine Wray & Taurus Watts 10/9/09

33

1 THE COURT: That's fine, and there's no April 15th
2 on her --

3 MS. SHIPLEY: I don't see April 15th on this
4 either.

5 THE COURT: And then the transcript you just gave
6 us says May 15th.

7 MS. JOHNS: Your Honor, I have lots more. I mean,
8 I asked that question I had to go back over here pick up my
9 paper work, look through it. That's when we broke.

10 THE COURT: That's okay. That's fine.

11 MS. JOHNS: So I'll withdraw that question.

12 THE COURT: Okay. That's fine.

13 MS. SHIPLEY: So we're not going into the
14 conversation on April 15th?

15 MS. JOHNS: Your Honor, when my paralegal gets
16 back, I'll hand them everything that I've got that I intend
17 to use.

18 THE COURT: Are we ready to resume now?

19 MS. JOHNS: Well, they want to see that before we
20 get started, right?

21 MS. SHIPLEY: I'm sorry, what?

22 MS. JOHNS: You wanted to see the rest of them that
23 I'm going to use.

24 MS. SHIPLEY: We actually are entitled to that
25 under the rule, too.

1 MS. JOHNS: They're not entitled to that under the
2 rules, this is not evidence that I intend to introduce.
3 This is impeachable material which they had access to, as
4 well.

5 MS. SHIPLEY: Well, playing it in --

6 MS. JOHNS: It's not discoverable.

7 MS. SHIPLEY: -- front of a jury for them to hear
8 is evidence.

9 THE COURT: Well, I've already ruled that that's
10 different because it's not a deposition transcript where we
11 can go by question and line.

12 Ms. Shipley, Mr. Bax and Ms. Johns, step up here.

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

14 THE COURT: For our purposes right now, because
15 obviously you've transcribed yourself, you'd be asking him
16 questions, you give him an opportunity to answer, and then
17 you would refer to him a date, ask a specific question off
18 of your recordings, give him a chance to answer. To the
19 extent the answer is not correct, then we would take up the
20 issue is we're going to play the tapes.

21 Okay. I say that to say that we can move on, because
22 the state will be directed to the lines and the questions.
23 No tape will be played at this time. She will just give him
24 a chance to answer, because we would have to get to that
25 portion of the tape anyway.

State v. Tremaine Wray & Taurus Watts 10/9/09

35

1 MS. SHIPLEY: Your Honor, some of the conversations
2 that are transcribed, and from what I, an gather right now,
3 is going into the details of his pending charge. That's not
4 admissible.

5 MS. JOHNS: Well, I won't use that.

6 THE COURT: She's indicated she won't do that, and
7 they indicated that they weren't going to do that.

8 All right. Jurors, please.

9 (Jury in at 9:45 a.m.)

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

11 THE COURT: Thank you, ladies and gentlemen of the
12 jury, for your patience. I do want to put a couple of
13 things on the record so I can inform the attorneys what I've
14 spoken with you about.

15 First of all, I did indicate in your jurors room that
16 you would be going into Monday, perhaps, Tuesday. Then I
17 did advise anyone about making any potential arrangements to
18 be attempted, then if you have any issues that you would
19 inform the Court, and, of course, I would use my office to
20 assist you in that regard.

21 I was only informed of one situation where one juror
22 has an interview out of this county on Tuesday. She's going
23 to call that employer to see if that can be rescheduled, and
24 then if the Court needs to step in, I'll be happy to assist
25 her in that regard.

1 A couple of jurors may have some childcare issues.
2 They'll work on that.

3 Another question that came to me from the jury was
4 whether or not if they got the case would the alternates
5 participate in deliberations. I told them no, that the
6 alternates are here and should be listening intently,
7 because sometimes we have to let alternates step into the
8 main jury panel, but they do not participate in
9 deliberations. Deliberations are only by 12 people.

10 Another question that was postured to me was whether or
11 not, because I had indictments, did they participate in any
12 regard, such as looking at the indictment. And I separated
13 the process that a Grand Jury deals with an indictment just
14 to see if there's sufficient evidence to bring a case to
15 trial, but the defendants have indicated and pled not
16 guilty. So they are here exercising their constitutional
17 right to a jury trial. And their guilt or innocence would
18 then be determined by this particular jury, but the
19 indictment is simply the formal instrument by how this case
20 gets brought to a trial, and it's not for your consideration
21 at all in the evidence of this case.

22 If the jury could indicate whether or not the Court's
23 conversations with you went beyond any of that; does anybody
24 recall anything else?

25 Okay, the jurors are indicating in the negative.

State v. Tremaine Wray & Taurus Watts 10/9/09

37

1 I just wanted to place that on the record.

2 Just to further emphasize on the Grand Jury issue, the
3 state through the Richland County Solicitor's Office, the
4 way that decision works is that there's a whole separate
5 jury for that, and the state puts forth it's evidence and it
6 might be through an officer who testifies, and that's it.
7 So all they do is indicate whether or not there's sufficient
8 evidence. That's what that Grand Jury votes on. Defense
9 never participates in that issue, because all they're doing
10 in determining if there is enough evidence to bring a case
11 to trial, and then you-all make that ultimate determination
12 by determining guilt or innocence.

13 So I just wanted to make that distinction just because
14 that question was asked, so I don't have any people still
15 kind of speculating about issues.

16 Okay. Thank you.

17 Ms. Johns, are you ready to continue with the
18 examination of the witness?

19 MS. JOHNS: Yes, ma'am, Your Honor.

20 BRIAN WATSON - CONTINUED CROSS-EXAMINATION

21 BY MS. JOHNS:

22 Q Now, Mr. Watson, we left off yesterday on cross-
23 examination, and I don't exactly know where we left off, but
24 let me see if I can re-assimilate what happened or what your
25 testimony was yesterday.

1 First of all, you said that when you left with this
2 black book bag from your house or from Jarrell's house that
3 you couldn't have driven because you didn't have a driver's
4 license; is that right?

5 A That was one of the reasons, and I didn't have a car,
6 as well.

7 Q You didn't have a car, but you did get a car at some
8 later point, did you not?

9 A Yeah.

10 Q When did you get that car, sir?

11 A The car that I own now?

12 Q I guess so?

13 A November of last year, maybe.

14 Q November of last year. Okay. So when you were telling
15 this jury that it would have been impossible for you to have
16 driven anywhere, that wasn't exactly true, was it?

17 A At that time, yes.

18 Q Okay. You're saying back in 2007 -- we're not trying to
19 mislead this jury in any way, what we're saying is back in
20 2007, you did not have a car; is that correct?

21 A No.

22 Q That's not correct?

23 A No. That is correct. I did not have a vehicle, access
24 to a vehicle on that day.

25 Q Okay. You didn't have a vehicle, let me just start

State v. Tremaine Wray & Taurus Watts 10/9/09

39

1 with that. No, I did not have a vehicle on that day; is
2 that correct?

3 A No, I did not have a vehicle on that day.

4 Q So the answer is yes?

5 A (No response.)

6 Q Is that correct? No, you did not have a vehicle on
7 that day?

8 A That's correct.

9 Q Thank you. Did you have a driver's license?

10 A No.

11 Q On that day you did not have a driver's license?

12 A No, ma'am. On that day I did not have a driver's
13 license.

14 Q Had you ever had a driver's license before that day?

15 A Yes.

16 Q Okay. So you had the ability to drive, you had the
17 skills, you had a driver's license before, but your driver's
18 license was under suspension; is that your testimony today?

19 A Yes.

20 Q Now, does your dad have a car?

21 A Yes.

22 Q What kind of car does he have?

23 A It's a truck.

24 Q What kind of truck is that?

25 A It's a Dodge.

1 Q A Dodge what?

2 A A Dodge Dakota.

3 Q And does your mother have a car?

4 A Yes.

5 Q What kind of car does she have?

6 A An Acura.

7 Q Okay. Now, you were arrested in February of 2009,
8 right?

9 A Yes.

10 Q I know Mr. Swerling had gone over it a little bit with
11 you, but you said this occurred on a Sunday two years ago?

12 A Yes.

13 Q And during that first year from 2007 to 2008, did you
14 call law enforcement at any time?

15 A No.

16 Q Did you have any conversations with Shonda about this
17 at any time?

18 A No, not that I remember.

19 Q Did you talk to Jarrell about it at any time?

20 A No, not that I remember.

21 Q Okay. Now, let's start talking about when you started
22 remembering this. When you were arrested in February of
23 2009, did you remember this case?

24 A No, it really wasn't on my mind.

25 Q No, it wasn't on your mind. Did you remember the gun?

State v. Tremaine Wray & Taurus Watts 10/9/09

41

1 A As I said, the whole case wasn't on my mind then.

2 Q Okay. And it was at some point when you -- well, you
3 say you've known my client, Taurus Watts for five years; is
4 that right?

5 A Yeah.

6 Q Okay. How did you know him?

7 A Well, actually, he used to come to my apartment with
8 his cousin, Brian Morris.

9 Q Oh, okay. That's his cousin? Coming to your
10 apartment; where was your apartment?

11 A On Broad River Road, Green Oaks Apartments. He was
12 over there several times, actually.

13 Q Okay. Well, you've seen him at a court proceeding
14 right?

15 A (No response.)

16 Q You've seen him before since you've been arrested,
17 right?

18 A Yeah.

19 Q Okay. Now, at that time, you didn't recognized him?

20 A Yes, I recognized him.

21 Q Okay. And that was back in March; is that right?

22 A Yes.

23 Q Okay. And did you tell anybody you recognized him in
24 March?

25 A Tell anybody? I don't understand the question? Tell

1 who?

2 Q Tell anybody. Yo, man, I saw Taurus today in Court.

3 A No.

4 Q Okay. Who is Jarrell's cousin?

5 A Who's Jarrell's cousin?

6 Q Who's Jarrell's cousin?

7 A Mr. Wray.

8 Q Tremaine Wray?

9 A Yes.

10 Q Okay. And you know Tremaine, don't you?

11 A I know of him. I don't personally know him.

12 Q But you've met him before, right?

13 A In the holding tank I met -- oh --

14 Q You met him before, but you knew him before. You knew
15 him, you knew of him, didn't you?

16 A Knew of him. Yes.

17 Q And you knew that he was Jarrell's cousin, didn't you?

18 A Did I know he was Jarrell's cousin; yes.

19 Q And when you saw him what date was that?

20 A It was in March, the same day I saw Mr. Watts.

21 Q Okay. Now, when you saw them in March did you call the
22 Richland County Sheriff's Department about them?

23 A Nope.

24 Q Okay. Did you call your mother about them?

25 A No.

State v. Tremaine Wray & Taurus Watts 10/9/09

43

1 Q Okay. Did you call Shonda about them?

2 A No.

3 Q You didn't call anybody about them, did you?

4 A No.

5 Q Okay. Well, isn't this true, that it wasn't until you
6 found out they weren't going to plead, they were going to
7 trial, you called somebody; isn't that right?

8 A No. I don't think that was the exact circumstances of
9 my deciding to come forward with this information.

10 MR. SWERLING: May we approach?

11 THE COURT: Yes.

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

14 THE COURT: Ladies and gentlemen of the jury, I
15 need to send you to your jury room for just a moment. I
16 remind you not to discuss the case. We'll be with you very
17 shortly. Something has just come up.

18 (Jury out at 10:00 a.m.)

19 (A short break was taken.)

20 (Court in session after short break.)

21 THE COURT: Thank you. Jurors, please.

22 MR. SWERLING: Did you want me to put it on the
23 record now? I'm sorry, I thought that's why --

24 THE COURT: We can do that now, In Camera.

25 Hold the jury.

1 MS. SHIPLEY: Hold the jury.

2 MR. SWERLING: I'm sorry.

3 THE COURT: That's okay. Makes sense. We should
4 have done it then. Makes sense. Let's just go ahead and do
5 it now.

6 MR. SWERLING: Judge, the response to the question
7 about seeing Mr. Wray. The witness volunteered -- and he
8 kind of blinked when he did it, I think he realized he said
9 it, he said something he was instructed not to, was that he
10 saw them in the holding tank.

11 We've taken a lot of precautions to not let the jury
12 know that these individuals here are incarcerated, even to
13 the extent of trying to come up with a scenario where he
14 identified Mr. Watts in another location. So I didn't bring
15 up the question. And to protect my client's interest. I
16 have to move for a mistrial, because it was injected into
17 the trial that my client was incarcerated at the same time
18 this person was incarcerated. It's no other way you could
19 have them in a holding tank together and particularly
20 egregious because it is somewhere around the March time
21 frame. So the time that he says that he decided to come
22 forward. So that would have been March, April, or May.

23 THE COURT: All right. Ms. Johns?

24 MR. SWERLING: That indicates my client was
25 incarcerated.

State v. Tremaine Wray & Taurus Watts 10/9/09

45

1 MS. JOHNS: Your Honor, not only that, but I think
2 the Court should consider this in this motion for a
3 mistrial. When this witness said that he looked directly at
4 the table of Tremaine Wray, Jack Swerling, Arie Bax. And he
5 smiled and kind of flinched. He knew that it was wrong when
6 he said that, and then when I asked him about my client, he
7 further went on to say that's the same time I saw Tremaine
8 Wray, and I think he purposely did that. And I want the
9 Court to consider that because he was admonished yesterday.

10 THE COURT: What was your question?

11 MS. JOHNS: My question was did you meet my client
12 at a court proceeding, and he said yes. And then I asked
13 him if he knew Tremaine Wray, and he said, yeah, I saw him
14 in the holding tank. Smiled, looked over and when kind of
15 like, oops. And then when I tried -- I paused for a minute
16 to wait for an objection from Mr. Swerling, and it didn't
17 come. So I thought I would go on further and talk and move
18 along, and then I asked him about my client again, and he
19 said, that's the same time I saw Mr. Wray. Which was two
20 questions after that.

21 THE COURT: Okay.

22 MS. JOHNS: I was trying to void it.

23 MS. SHIPLEY: Your Honor, this came from her asking
24 the witness, did you know Tremaine Wray personally. He
25 said, no, not personally. Have you met him before? And

1 she's asking these questions. Yeah, I met him before in the
2 holding tank. Well, I met him -- and then she said what
3 day. The same day I met Taurus Watts, Mr. Watts. She asked
4 him, did you know him as Jarrell's cousin? Yes.

5 These are questions prompted by her, Your Honor. This
6 is -- she's alleging the witness purposely answered the
7 holding tank when she was asking him where he had met him
8 before. And in order for this to have any prejudicial, have
9 any prejudicial affect on the case, I would rely on State
10 verses Crawley (sp), and that case, Your Honor, the witness
11 stated the defendant called him from the jailhouse. Here
12 it's merely a holding tank. The jury doesn't necessarily --
13 that doesn't necessarily say jail, Your Honor. Where the
14 witness was vague in providing those particulars regarding
15 the defendant's connection with the jail. She could have
16 been visiting someone else in jail rather than having him
17 incarcerated herself. In this case, Your Honor, they're not
18 sure where defendant's have to remain before a case is
19 called. I mean, it's not -- he did not say jail, he did not
20 -- it was not prejudicial.

21 MS. JOHNS: I did not provoke the answer, Your
22 Honor.

23 MS. SHIPLEY: And furthermore, there's no
24 contemporaneous objection.

25 MS. JOHNS: I did not provoke that answer, Your

State v. Tremaine Wray & Taurus Watts 10/9/09

47

1 Honor.

2 MR. SWERLING: It might make it easier. Could we
3 just ask the court reporter just read back that question.

4 THE COURT: Sure.

5 MR. SWERLING: The question was asked and he
6 responded and there was no opportunity to object before he
7 responded. I didn't know what he was going to say.

8 COURT REPORTER: This will take just a second to
9 drop down, Your Honor.

10 THE COURT: Sure.

11 MS. SHIPLEY: Your Honor, when she finds it, can we
12 listen for the word tank, if he even said tank. I think all
13 he said was holding. What's that got to do with jail.

14 THE COURT: Okay.

15 (The record is played back.)

16 COURT REPORTER: Is that okay?

17 MR. SWERLING: I heard it.

18 COURT REPORTER: I'm sorry?

19 MR. SWERLING: Did you need time to go back on the
20 record?

21 COURT REPORTER: No. We're back on. It
22 automatically goes back on.

23 And I apologize. I normally have speakers.

24 THE COURT: It's okay.

25 MR. SWERLING. So the question was asked, do you

1 know Tremaine and he said, I know of him. And then have you
2 seen him before, which certainly wouldn't have drawn out the
3 response he saw him in the holding tank. That's something
4 that he brought out. Certainly I don't -- Ms. Johns --
5 intended that to come out, but I do think it's prejudicial.
6 Holding cell can only have one meaning, that he was
7 incarcerated at the time. So holding cell has to be
8 somewhere that Mr. Tremaine Wray was as well.

9 MS. SHIPLEY: He said holding tank.

10 MR. SWERLING: Holding tank.

11 MS. SHIPLEY: There's a difference between cell and
12 tank. Crawley refers to a case where the judge refused to
13 grant a mistrial when the witness said that the defendant,
14 at trial, was calling from the jailhouse. In that case, the
15 judge refused to grant a mistrial and that was affirmed on
16 appeal. We also rely on State verses Howard, cited at 374
17 S.E. 2nd 284, which is a 1988 case. The factors that the
18 court is supposed to consider in ordering a mistrial based
19 on improperly admitted testimony include: 1. The character
20 of testimony; 2. The circumstances under which it was
21 offered; 3. The nature of the case; 4. Other testimony in
22 the case.

23 Your Honor, in State verses Howard, a co-defendant
24 referenced another possible murder committed by the
25 defendant at trial, and in that case a mistrial was not

State v. Tremaine Wray & Taurus Watts 10/9/09

49

1 warranted when the judge admonished the jury to disregard
2 anything concerning anything like that. Any error in
3 failing to grant a mistrial is harmless since the record
4 clearly supported the defendant's conviction.

5 And so, Your Honor, in this case the character of the
6 testimony, it was said in passing, where have you
7 encountered, seen him before. The very next question he's
8 referring to Taurus Watts, and how he knows him. The
9 circumstances under which it was offered. I would like the
10 record to reflect that this was pursuant to a cross-
11 examination question. And asking him if he had met anybody
12 or seen him since he had been arrested. It's clear during
13 direct examination that this witness was in jail, and has
14 remained in jail since his date of arrest.

15 So the state submits that when you play with fire you
16 might be burned.

17 And then other testimony in the case. Your Honor, the
18 witnesses before had already spoken about how the case was
19 coming up for trial, court proceedings. And again, the jury
20 doesn't know what a holding tank is. We can't speculate
21 that they understand the criminal justice system and know
22 what our lingo is in the courthouse when we talk about
23 holding cell, a holding tank. He never once uttered the
24 word jail and incarceration. And pursuant to State verses
25 Crawley, the Court did not commit an error by refusing to

1 grant a mistrial. Mistrial should be granted in a most --
2 should not be granted in every single case where incompetent
3 evidence is received and later stricken out. Instructions
4 to this regard questionable evidence usually cures any
5 errors and omission. A defendant must show both error and
6 resulting prejudice to be entitled to a mistrial. That's
7 pursuant to State verses Creme, which is at 489 S.E. 2nd,
8 478.

9 And, again, no contemporaneous objection was made at
10 the time the statement was made.

11 THE COURT: Okay. Anything further from either
12 defense counsel?

13 MR. SWERLING: There could not have been an
14 objection made because I have a right to rely on the fact
15 that he's going to abide by the Court's instructions. So
16 there would be reason for me to believe he was going to say
17 he was in the holding tank or holding cell. I waited the
18 next couple of questions to see if we can correct the
19 situation. It did not. So that's when I approached the
20 bench. That's all I can say. I tried not to draw attention
21 to it and to see if it corrected the situation.

22 MS. JOHNS: That's exactly what I was trying to do,
23 Your Honor, and then this witness took it one step further
24 in saying the same place he saw Mr. Wray, which then implies
25 holding tank, which is only two questions after that.

State v. Tremaine Wray & Taurus Watts 10/9/09

51

1 THE COURT: Based on the arguments by counsel, I'm
2 going to decline a mistrial.

3 I'm going to instruct you again.

4 MR. WATSON: Yes, ma'am.

5 THE COURT: There will be no references to any
6 periods of incarceration. Do you understand that?

7 MR. WATSON: Yes, ma'am.

8 THE COURT: Okay. And you're under oath; you
9 understand that?

10 MR. WATSON: Yes, ma'am.

11 THE COURT: And you understand the ramifications of
12 this?

13 MR. WATSON: Yes, ma'am.

14 THE COURT: It is a court order, and I can hold you
15 in contempt for that situation; do you understand that?

16 MR. WATSON: Yes, ma'am.

17 THE COURT: As to the jurors. I can ask them to
18 disregard that question, but again, it could bring emphases
19 to it.

20 MS. JOHNS: I don't need an instruction. In my
21 view it's not curative.

22 THE COURT: Okay.

23 MR. SWERLING: Judge, I'm not asking for an
24 instruction.

25 THE COURT: Okay.

1 Jurors, please.

2 (Jury in at 10:26 a.m.)

3 THE BAILIFF: Jurors are present, Your Honor.

4 THE COURT: Okay. Ms. Johns, you may resume your
5 examination.

6 MS. JOHNS: Thank Your Honor. May it please the
7 Court.

8 BRIAN WATSON - CONTINUED CROSS-EXAMINATION

9 BY MS. JOHNS:

10 Q Mr. Watson, do you recall meeting with police officers
11 from the Richland County Sheriff's Department in the month
12 of March, 2009?

13 A Excuse me. Could you repeat the question, please?

14 Q Do you remember meeting with Richland County Sheriff's
15 Office deputy or investigator in the month of March, 2009?

16 A No.

17 Q Do you remember at any time when the Sheriff's Office
18 and the Solicitor's Office had filed a motion for you to
19 come to courthouse, in March of 2009?

20 A Yes, if you're referring to a hearing that I had to
21 attend?

22 Q Yes, sir.

23 A Yes. Yes, ma'am.

24 Q And at that time you had an opportunity to talk to the
25 investigator or deputy; did you not?

State v. Tremaine Wray & Taurus Watts 10/9/09

53

1 A No.

2 Q You did not have the opportunity to talk to the deputy?

3 A To which deputy are you referring?

4 Q When you came here for your hearing, did you have an
5 opportunity to talk with a deputy that had personal contact
6 with you?

7 A Deputy, no.

8 Q An investigator?

9 A No.

10 Q A forensic officer?

11 A No.

12 Q You did not? You deny that?

13 A In March?

14 Q Okay, sir. How about February, March, April, or May?

15 A A forensic -- no, ma'am.

16 Q Okay. Do you remember giving a DNA test this year?

17 A Oh. Yes. Yes, ma'am.

18 Q Okay, sir. When was that?

19 A That was in March. A swab was taken from my cheek. I
20 had no idea that you were talking about my case.

21 Q Well, that was one of the opportunities when you got to
22 meet with one of the officers from the Richland County
23 Sheriff's Office, right?

24 A Yes.

25 Q Okay. And during this particular proceeding, and you

1 already said he swabbed your mouth for a DNA sample, right?

2 A Yes.

3 Q So he had an opportunity to have personal contact with
4 you, right?

5 A He walked up and said he was going to take a swab, and
6 I put a swab in my mouth, and that was it.

7 Q All right. Do you remember who that officer was, who
8 that investigator was?

9 A Investigator Eisenhower.

10 Q Right. Eisenhower. Do you remember having a
11 conversation with your mother about this officer or
12 Investigator Eisenhower getting this from you?

13 MS. SHIPLEY: Objection, Your Honor, relevance.
14 She's going into the pending charges.

15 MS. JOHNS: Your Honor, I'm going to tie it up
16 here. I'm just going to lay a foundation for his
17 opportunity.

18 THE COURT: Okay, just make sure we stick to this
19 case, not his case.

20 MS. JOHNS: Yes, ma'am.

21 A Could you repeat the question, please?

22 BY MS. JOHNS:

23 Q Remember having a conversation with your mother about
24 Investigator Eisenhower and you and your meeting that day?

25 A About our meeting; no, I don't.

State v. Tremaine Wray & Taurus Watts 10/9/09

55

1 Q Well, let me ask you this, you had an opportunity to
2 talk with an investigator with the Richland County Sheriff's
3 Office in March of 2009; correct?

4 A Yes.

5 Q Okay. And at this particular meeting or hearing where
6 he was taking a DNA sample from you, you didn't tell him
7 about this gun?

8 A One second, ma'am. It wasn't a meeting. When he took
9 the sample from me, I was already on the bus, the van, to go
10 back to Alvin S. Glenn Detention Center --

11 Q Okay.

12 A -- and he walked outside and they brought me back off
13 of the van, and I stood on the back steps of the van, and he
14 said he needed to get the swab before I left, and he stuck
15 the swab in my mouth, and he left. There was no
16 conversation at all.

17 Q No conversation, at all?

18 A No conversation at all, except for I need to get a swab
19 from you, Mr. Watson. Okay. He put it in my mouth, he took
20 it out and walked away.

21 Q Your testimony is no conversation at all?

22 A Other than I need to get a swab from you, Mr. Watson.
23 No, there was no conversation.

24 Q Well, then, why did you tell your mother that you had
25 talked to the cop about getting your car back; that's what

1 you told her, wasn't it, when you got back to where ever you
2 were going? You called her?

3 A Okay. I'm mistaken. I did ask when my car would be
4 released. And he said when my case was taken care of.

5 Q Okay. So you at least had that conversation, right?

6 A Yes, I did.

7 Q And you didn't take that opportunity to tell
8 Investigator Eisenhower, you know what, Investigator
9 Eisenhower, I've got something for you. I know where a
10 murder weapon is?

11 A No, I didn't.

12 Q Did not. Now, in March of 2009, sir, how many times
13 did Shonda Dansby or Shonda Simpson visit you at the jail?

14 A Maybe three times.

15 Q Three times?

16 A Maybe three times. I'm not 100 percent sure.

17 Q Okay, sir. Did she ever put money in your canteen
18 account?

19 A No.

20 Q What about in April, your niece, Shonda Simpson, how
21 many times did she visit you?

22 A The total amount of times she's visited me is three,
23 maybe four, the entire time I've been incarcerated.

24 Q Oh, so the entire time?

25 A Yes.

State v. Tremaine Wray & Taurus Watts 10/9/09

57

1 Q So --

2 A I don't know if exactly all three of those visits came
3 in March or not, but three or four times at the most, is
4 what I've seen her since I've been incarcerated.

5 Q When's the last time you've seen her?

6 A I don't recall.

7 Q You don't recall?

8 A No, I don't.

9 Q Are you still there?

10 A Where?

11 Q At Alvin S. Glenn Detention Center?

12 A No, I'm not.

13 Q Okay. Where are you?

14 A I'm in Fairfield County.

15 Q And how long have you been in Fairfield County?

16 A Since September.

17 Q Do you have charges over there, sir?

18 A No, I don't.

19 MR. SWERLING: Your Honor, can I approach?

20 THE COURT: Yes.

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

23 BY MS. JOHNS:

24 Q Did Shonda ever visit you in Fairfield County?

25 A No.

1 Q You cannot remember the last time she visited you in
2 Richland County, right?

3 A No, not specifically.

4 Q What about April 7, 2009, do you remember Shonda coming
5 out to visit you then?

6 A I don't remember the specific date, but if that's
7 what's on record.

8 Q Okay. You don't remember specifically that date?

9 A Correct.

10 Q But she did come visit you sometime -- three times, and
11 this could be one of those times; correct?

12 A Correct.

13 Q And when she came to visit you what name did she come
14 under?

15 A Rashonda Simpson.

16 Q Rashonda Simpson; is that your testimony?

17 A That's what I assume. I'm not sure, exactly.

18 Q All right, sir, well, don't you have to fill out a
19 visitor request form?

20 A Yes.

21 Q You do?

22 A Yeah.

23 Q And that means you have to know the name of the person
24 visiting you; is that right?

25 A Yes.

State v. Tremaine Wray & Taurus Watts 10/9/09

59

1 Q And you didn't know her name?

2 A Either Simpson or Dansby.

3 Q Okay. So you put either Simpson or Dansby for a
4 visitor?

5 A If I'm not mistaken, I believe I did write Rashonda
6 Dansby on the visitation slip, but she showed her -- her
7 name was still had Simpson on her identification or
8 something of that nature.

9 Q What about in March, do you remember her visiting you
10 in March?

11 A Not specifically.

12 Q Well, let me ask you this, isn't it true that when you
13 asked -- gave the jail a request for visitor, there are
14 certain things you have to do, correct? One, you have to
15 know their names, right?

16 A Yes.

17 Q Two, you have to block off the particular time for them
18 to come, right?

19 A Yes.

20 Q And three, it has to be one of your visitation dates?

21 A Yes.

22 Q Right. And visitation days are Tuesday, Thursday, and
23 Sunday for you back then, right?

24 A Yes.

25 Q Okay. And your conversations with your mother would

1 have included telling people what time you signed them up
2 for, isn't that right?

3 A Actually, no. It was reversed. My mother told me what
4 time to sign them up for.

5 Q Okay. So your mother -- so you would call your mother;
6 is that correct?

7 A Yes.

8 Q And you would either call your mother on a pay-tell
9 communications card or a pre-paid card or you'd call her
10 collect, right?

11 A No. It was only collect.

12 Q Only collect. Okay.

13 A That's the only way you can call from Richland County
14 is collect.

15 Q Okay. Then you would call her collect?

16 A Yes.

17 Q And she would then talk to you, and you would tell her,
18 I want somebody to come and see me?

19 A No. She would say, for instance, Rashonda said put her
20 down for such-a-such day and time.

21 Q Okay. And you did that?

22 A Yes.

23 Q And do you remember the first time you did that?

24 A I don't remember any specific dates, no.

25 Q And let me bring you back to March 31, 2009. Do you

State v. Tremaine Wray & Taurus Watts 10/9/09

61

1 remember telling your mother that Shonda was going to come
2 visit you?

3 A Not specifically.

4 Q So you may have?

5 A I may have.

6 Q Okay. And do you remember asking your mother, did
7 Jarrell's cousin, what happened in his trial. Do you
8 remember saying that?

9 A Yes, I do, actually.

10 Q Okay. And would you agree that if I had records that
11 it would be March 31, at 3:13 p.m.?

12 A Possibly. I can't say for sure.

13 Q And do you remember calling your mother and asking if
14 they had gone to trial yet?

15 A Yes, I believe I did. I remember that.

16 Q And do you remember whether or not this conversation
17 you had on -- well, this conversation that you had with your
18 mother occurred before or after you gave your statement
19 about this gun to the investigators here in this case?

20 A Before.

21 Q Before. So you were talking to your mother about
22 Shonda coming to visit you, correct?

23 A (No response.)

24 Q And you were talking to your mother about whether
25 Jarrell's cousin had gone to trial yet; correct?

1 A Yes.

2 Q And you were also talking to your mother about wanting
3 to know what happened in their trial; didn't you?

4 A Yes. If she knew an outcome, I wanted to know if they
5 had gone to trial yet.

6 Q Right. And this was in March, right?

7 A Yes.

8 Q Okay. So in March of 2009, you still didn't call the
9 police, Mr. Watson, did you, about this gun?

10 A No.

11 Q No. Do you remember having a conversation with Shonda
12 while you were on one of your visits to the jail about
13 keeping your story straight?

14 A No.

15 Q No?

16 A No.

17 Q All right. Well, let me ask you this, do you remember
18 telling Shonda to tell the police that you beat the gun with
19 a hammer?

20 A No, I don't specifically telling her that.

21 Q Okay. Do you remember telling Shonda to tell the
22 police that it was in a Jansport book bag?

23 A No.

24 Q No. Would you admit, Mr. Watson, that when Rashonda
25 Simpson Dansby came out to the jail and had a conversation

State v. Tremaine Wray & Taurus Watts 10/9/09

63

1 with you, that y'all had a real good talk. You really don't
2 remember what you talked about do you?

3 A We talked about several things not of consequence.

4 Q Nothing of consequence, like whether or not the weapon
5 was beat with a hammer, right? You don't remember.

6 A I don't remember that conversation.

7 Q You may have?

8 A I don't remember that conversation.

9 Q And nothing of consequence such as Jarrell having a gun
10 that belonged to a murder; you didn't talk about that, did
11 you?

12 A No, we didn't talk about that.

13 Q You never talked about that, right? Right?

14 A No, we didn't talk about that specifically.

15 Q And you talked about whether or not Jarrell's cousin
16 had gone to trial, though hadn't you?

17 A I believe I may have asked her that.

18 Q Okay. And you asked her as early as March 31,
19 potentially, you said, right?

20 A Possibly.

21 Q And this was two months before you gave your statement;
22 right?

23 A Yes.

24 Q And you had employed a lawyer at that time, had you
25 not?

1 A Yes.

2 Q And you had requested that the lawyer do certain things
3 for you, right?

4 A Such as?

5 Q Such as get discovery?

6 A Yes.

7 Q Get you a bond reduction?

8 A Yes.

9 Q Right. Stop the DNA, right?

10 A Yes.

11 Q Okay. And you took the opportunity, did you not,
12 through the vehicle of your mother, your father, your niece,
13 Rashonda Simpson, and your lawyer to come up with this
14 story, amazingly on May 18, did you not?

15 A Absolutely not. I didn't come up with any story. What
16 happened is what happened.

17 Q Well, let me ask you about another story, Mr. Watson.
18 You do know that all the telephone calls outgoing from the
19 jail can be recorded, right?

20 A Yes, as well as the visits.

21 Q Tell me one day, one day, one conversation that you had
22 with your mother about her being threatened; one day, give
23 me one?

24 A Give you one. I believe it was the day or maybe the
25 day after I initially gave my statement to Officer McRae.

State v. Tremaine Wray & Taurus Watts 10/9/09

65

1 Q What date is that?

2 A If I gave a statement on May 18, May 19, possibly, that
3 Jarrell had called her, had called their house and just
4 threatened my safety.

5 Q That would be May 19?

6 A Possibly.

7 Q Or May the 20, correct?

8 A Correct.

9 Q Or May 21?

10 A No, I believe it was the next day.

11 Q Good. We've narrowed it down. And what was it that
12 you told her, specifically?

13 A I don't remember.

14 Q You don't remember?

15 A No, I don't.

16 MS. JOHNS: I'm just checking my records, Your
17 Honor.

18 Your Honor, at this time, I think we need to take this
19 up outside the presence of the jury, based on the objections
20 fo the state earlier.

21 THE COURT: Okay.

22 Ladies and gentlemen, I'm going to send you to your
23 jury room. I'll remind you not to discuss this case.

24 I'm going to give you an assignment. Hold on. I'm
25 going to ask for you-all to select a foreperson. You cannot

1 have it be either one of the alternates. The foreperson
2 would be in charge that if the case gets to you-all as
3 jurors, filling out the verdict form and just basically
4 organizing your discussions around deliberations. It has no
5 greater weight in terms of any votes or any substantive
6 matters with respect to your deliberations.

7 Let the bailiff know about it. Put the foreperson's
8 number on a piece of paper and then send that back to me.

9 (Jury out at 10:48 a.m.)

10 THE COURT: Okay.

11 MS. JOHNS: Your Honor, I'd like to do a little bit
12 of proffer before I play this --

13 THE COURT: Sure.

14 MS. JOHNS: -- to be sure we're on the same page.

15 PROFFER:

16 BY MS. JOHNS:

17 Q Mr. Watson, you made a collect phone call on March 19,
18 2009; is that right?

19 A Possibly.

20 Q Okay. And you said it was either the day you gave your
21 statement or the day after you gave your statement, but it
22 was not the 20th?

23 A As far as my memory serves me, yes.

24 Q Okay. And in this conversation that you told your
25 mother that you had received a threat?

State v. Tremaine Wray & Taurus Watts 10/9/09

67

1 A No. My mother said that Jarrell called her.

2 Q Okay. So your mother said that Jarrell called you?

3 A Called her.

4 Q Called her, and threatened her?

5 A Threatened me through her.

6 Q And threatened you?

7 A Yes.

8 Q And she didn't have a visit on March 19th, did she?

9 A (No response.)

10 Q Your mother did not have a visit on March 19th, did
11 she?

12 A No.

13 Q This is through a telephone call?

14 A It's through a telephone.

15 Q Okay.

16 Ms. Johns: Your Honor, I'd offer for the purposes
17 of this hearing, a phone call on March 19, 2009 at 12:50 --

18 MS. SHIPLEY: I'm sorry to interrupt. Ms. Johns,
19 are you talking about March 19th or May 19th?

20 MS. JOHNS: I'm sorry?

21 MS. SHIPLEY: Because May 19th is the day after he
22 gave a statement to the police and --

23 MS. JOHNS: I'm sorry. You're right.

24 MS. SHIPLEY: I don't see a log for that, either.

25 MS. JOHNS: I know. I didn't print all of them

1 out.

2 BY MS. JOHNS:

3 Q Mr. Watson, are you sure that you had a telephone
4 conversation with your mother the day of your statement or
5 the day after?

6 A From Alvin S. Glenn. I believe it was the day after.

7 Q What about the --

8 A Or possibly -- it may have been the day of. I don't
9 know. I can't remember.

10 Q Okay. The date of your statement is May 18th?

11 A Yes.

12 Q Well, then you'll be surprised to know there aren't any
13 phone calls from May 18th --

14 MS. SHIPLEY: Your Honor, this is not how you do
15 prior inconsistent statements.

16 MS. JOHNS: Your Honor, I'm not trying to offer
17 anything at this time. I'm still trying to establish a
18 foundation.

19 THE COURT: Okay.

20 MS. JOHNS: I mean, I had the date wrong to begin
21 with because I had March down here, but it is May.

22 THE COURT: Okay.

23 MS. JOHNS: So I just checked my records. There
24 isn't anything for May 18, 19.

25 THE COURT: Okay.

State v. Tremaine Wray & Taurus Watts 10/9/09

69

1 MS. MCDUFFIE: Your Honor, for purposes of the
2 state -- and in the interest of this -- this defendant was
3 moved from Alvin S. Glenn on May 19, 2009, early that
4 morning. He was taken to the Kershaw County Detention
5 Center, Your Honor. So it would be the state's position
6 that it would be improper for her to question about why
7 there were no calls made from Alvin S. Glenn on that day.

8 MS. JOHNS: Well, then, Your Honor, I would proffer
9 this particular recording that says it was July 7, 2009.
10 Wait a second. And I guess I'll have to bring somebody in
11 from Alvin S. Glenn Center to prove that.

12 MS. MCDUFFIE: Yes, Your Honor, we would require
13 that.

14 THE COURT: Okay, you don't have, in the packet
15 that you've given us then July 7, 2009; is that correct?

16 MS. JOHNS: Your Honor --

17 THE COURT: She doesn't have it in the packet that
18 she gave us --

19 MS. JOHNS: -- I did not include a transcript of
20 that, but now this is not being offered for what the
21 telephone call is, but just that there is a telephone call
22 on July 7, 2009.

23 THE COURT: Okay, well --

24 MS. SHIPLEY: Well, she can play it, and ask him if
25 that's his voice, because I assure you, Your Honor, he was

State v. Tremaine Wray & Taurus Watts 10/9/09

70

1 not in the Alvin S. Glenn Detention Center on that date. He
2 was in Kershaw County Detention Center.

3 THE COURT: On July 7?

4 MS. SHIPLEY: Yes, he was in Kershaw until
5 September --

6 THE COURT: I want to make sure we're talking about
7 the same thing. Okay. Go ahead.

8 MS. JOHNS: Okay.

9 (Tape recording of phone call was played out of the presence
10 of the jury.)

11 BY MS. JOHNS:

12 Q So you had a conversation with your mother on July 7,
13 2009?

14 A Yes.

15 Q And you were back down at Alvin S. Glenn Detention
16 Center awaiting a bond hearing?

17 A Yes.

18 Q And during that conversation did you discuss your fear
19 of being in fear of somebody threatening you?

20 A I was in -- held in segregation. So, no, I wasn't
21 around any other inmates.

22 Q All right.

23 MS. JOHNS: That's all I have on this question,
24 Your Honor. I think you can bring the jury back in.

25 MS. SHIPLEY: Are we going to play this, because

State v. Tremaine Wray & Taurus Watts 10/9/09

71

1 it's completely irrelevant.

2 MS. JOHNS: No.

3 THE COURT: Okay.

4 MS. JOHNS: I'm not playing that.

5 THE COURT: Okay. But I'm just trying to figure
6 out where we're going with this, because he -- I haven't
7 found an impeachment yet. He's not recalling certain dates
8 or either you don't have the tape of that date.

9 MS. JOHNS: Your Honor, I have all the tapes.

10 THE COURT: Okay.

11 MS. JOHNS: Okay.

12 THE COURT: From Alvin S. Glenn?

13 MS. JOHNS: Previously, I was looking at this, and
14 I thought it said May 19 on here, but it was March 19.

15 THE COURT: Okay.

16 MS. JOHNS: And then the state said it was
17 impossible for him to have a collect call because he's been
18 in Fairfield County the whole time, and I had one from July
19 7. And now that's clarified that he was over at our
20 detention center to be brought over here for a bond hearing.

21 THE COURT: Okay.

22 MS. MCDUFFIE: Your Honor, we also would ask that
23 Ms. Johns not go into -- or insinuate that it was -- that
24 he's lying about the threat to -- you know that phone call
25 that was played, it's not on her records, and was not housed

1 at Alvin S. Glenn at that time.

2 MS. JOHNS: Your Honor, this is cross-examination.
3 I should be able to ask him about that threat as much as I
4 want to.

5 THE COURT: Okay. That's fine. I think what she's
6 indicating, don't insinuate that there's a call on a certain
7 day if you don't have the call.

8 MS. JOHNS: Okay, I won't, but --

9 MS. MCDUFFIE: If she did not have a call from
10 Alvin S. Glenn, then it did not happen, Your Honor.

11 MS. JOHNS: She --

12 MS. MCDUFFIE: That's the Rule 3.3.

13 MS. JOHNS: And I didn't know that, Your Honor. I
14 just got this yesterday.

15 THE COURT: Okay. I think we're all saying the
16 same thing.

17 MS. JOHNS: Okay. You know, she know that she can
18 get up here and redirect and she can straighten it out. For
19 her to say that I'm trying to violate something on purpose
20 is not true.

21 THE COURT: No. I want a clarification is that
22 we're not talking about a call that's not in the log.
23 You're asking about the call on a certain day and you don't
24 have it in a log, when you just indicated to the Court that
25 you have everything.

State v. Tremaine Wray & Taurus Watts 10/9/09

73

1 MS. JOHNS: I will clear that up, Your Honor.

2 THE COURT: All right.

3 Jurors, please.

4 THE BAILIFF: Four of them have gone out to smoke.

5 THE COURT: Okay. We'll all take about 10 minutes.

6 (Court in recess for short break.)

7 (Court in session after short break.)

8 THE COURT: All right. Thank you-all. Is
9 everybody ready to proceed?

10 MS. SHIPLEY: Yes, ma'am.

11 THE COURT: Bring the jury, please.

12 (Jury in at 11:19 a.m.)

13 (Jury note passed to the Court.)

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

15 THE COURT: Thank you Juror No. 218 for taking
16 responsibility of foreperson.

17 COURT REPORTER: I believe that's No. 4.

18 THE COURT: Thank you.

19 (Court's Exhibit No. 4, Note naming No.
20 218 foreperson, was marked and entered.)

21 THE COURT: Okay, you may continue, Ms. Johns.

22 MS. JOHNS: Thank Your Honor. May it please the
23 Court.

24 BRIAN WATSON - CONTINUED CROSS-EXAMINATION

25 BY MS. JOHNS:

1 Q Mr. Watson, do you remember receiving money from
2 Shonda, do you not?

3 A No.

4 Q Okay. Do you remember telling your father that Shonda
5 was going to give you \$20 and so he could go ahead and send
6 you \$20.

7 A Yes, but she never did.

8 Q So she was visiting you on a regular basis and you
9 expected her to give your dad money?

10 A She came and saw me three or possibly, at the most,
11 four times.

12 Q Okay. Now, do you remember an occasion in May, May 9,
13 2009, where you called up your parents house and
14 specifically asked if they had spoken to Shonda for you?

15 A I don't recall that.

16 Q Okay. And you don't recall having that conversation or
17 you don't recall it being May 9th?

18 A I don't remember saying that specifically.

19 Q Okay. Do you ever remember having a conversation with
20 your parents about them talking to Shonda for you?

21 A Have I asked have they spoken with Rashonda, yeah, I'm
22 sure I have.

23 Q Okay. And do you remember asking your mother is
24 Rashonda had told them about the boys going to trial?

25 A If she had gotten any information on whether or not

State v. Tremaine Wray & Taurus Watts 10/9/09

75

1 they had gone to trial, yes, I remember that.

2 Q Okay. And you were very interested in the boys going
3 to trial weren't you?

4 A Yes. I was going to come forward with this
5 information.

6 Q And this was on May 9th, with your mother and father,
7 which was prior to your statement; isn't that correct?

8 A Yes.

9 Q You've written several letters to several different
10 people concerning when Taurus Watts and Tremaine Wray were
11 going to go to trial, did you not?

12 A Several letters to several different people, no.

13 Q Okay. Well, you wrote letters to your mother, then,
14 your mother and father?

15 A Actually, no.

16 Q Okay. Did you write or communicate with them in any
17 way wanting them to get you an answer about when these boys
18 were going to go to trial?

19 A Yes.

20 Q Do you remember a telephone call on March 31st, when
21 you asked your mother if Jarrell's cousin had gone to trial?

22 A No, I don't remember it.

23 Q Do you remember having a conversation with her about
24 Jarrell's cousin, period?

25 A Well, no, but if there was a conversation it consisted

1 of asking if he had gone to trial.

2 Q Okay. And this was on March 31st, on or about?

3 A I don't remember.

4 Q Now, you're not sure of Shonda coming to visit you, as
5 far as how many times; you're not sure of that, right?

6 A Three or four.

7 Q And you're not sure about how many times you had a
8 conversation with your parents about getting word to Shonda
9 to come see you, right? You don't remember that for sure?

10 A No.

11 Q And you don't remember how many times you discussed
12 Jarrell and his cousin going to trial, those boys, is what
13 you called them?

14 A There was no discussion of them going to trial. It
15 consisted of asking if they had gone to trial already or
16 not.

17 Q And asking -- did you talk to Shonda about them boys
18 going to trial?

19 A Yes.

20 Q And you're not sure of that, but you think so, right?

21 A Yeah.

22 Q You think so. All right. Now, let's get to your
23 statement. Mr. Watson, you had gotten in touch with your
24 investigator in your case through your attorney on May 18,
25 2009; isn't that right?

State v. Tremaine Wray & Taurus Watts 10/9/09

77

1 A Yes.

2 Q And you gave a statement on that date around 11:00
3 o'clock at night; is that correct?

4 A I'm not sure of the time, but, yeah, on that date.

5 Q And you took a field trip on that date with some
6 investigators?

7 A Yes.

8 Q Was that during the day or during the night?

9 A It was evening.

10 Q Okay. Was it light outside or was it dark?

11 A It was light when we left, it was dark when we
12 returned.

13 Q And in your statement that you provided to the
14 investigators you said that you were sure it was under the
15 first bridge, didn't you?

16 A No. I said it was under the bridge.

17 Q The bridge.

18 A Yeah. I was confused as to which bridge. There were
19 two locations that I showed them.

20 Q So you were confused?

21 A I was confused as to which location was the actual spot
22 where I threw the weapon. It was two years prior.

23 Q The first bridge that you took them to you told them
24 you were sure of that, right?

25 A I said I was sure it was one of those bridges, yes.

1 Q And they didn't find anything under that first bridge,
2 did they?

3 A No, they didn't.

4 Q And you took them to the second bridge?

5 A Well, no. I took them to both bridges on the same day.

6 Q And when you got to the second bridge you said, no, I
7 don't think it's this bridge, I think it's the first bridge,
8 right?

9 A Yes.

10 Q You were sure of that at that time, weren't you?

11 A Well, no. If I was sure, ma'am, I wouldn't have taken
12 them to both locations. I was confused as to which location
13 I actually dumped the weapon at. It was two years prior to
14 this, and we looked at both locations before I dumped the
15 weapon.

16 Q Right. And it's your fault that it was two years later
17 wasn't it?

18 A Yes, I guess.

19 Q It was your fault that it was two years, right?

20 A Yes.

21 Q Because you had the information the whole time?

22 A Yes.

23 Q That's what you want this jury to believe, right?

24 A Yes.

25 Q And having this information the whole time, it was your

State v. Tremaine Wray & Taurus Watts 10/9/09

79

1 responsibility, your responsibility to get that information
2 to the police, right?

3 A I suppose.

4 Q And you only did it when it was convenient for you,
5 right?

6 A Right.

7 Q And when it did become convenient for you, in February
8 you didn't say anything to anybody, in March you didn't say
9 anything to anybody, April, you didn't say anything to
10 anybody, and the whole time you're sitting there jittery
11 about when are these boys going to trial. You didn't even
12 know their names.

13 A I knew Taurus's name.

14 Q You didn't even know Jarrell's cousin's name, right?

15 A At that time, no.

16 Q Okay. In fact, you say on your testimony that you when
17 you looked out your parents house that you lived in, you saw
18 a truck over there?

19 A Yes.

20 Q You didn't see Tremaine over there did you?

21 A No, I did not.

22 Q You don't know whose truck that was?

23 A Nope.

24 Q It wasn't yours?

25 A No, it wasn't.

1 Q It wasn't the burgundy Montero that you never drove?

2 A No.

3 Q You didn't see anybody over there?

4 A No, I didn't see him.

5 Q You didn't see him go into Jarrell's house?

6 A I did not see Tremaine Wray at Jarrell's house.

7 Q But you said that you went over to Jarrell's house that
8 afternoon?

9 A Yes.

10 Q And you stated that Jarrell was at home?

11 A Yes, he was.

12 Q So he wasn't working; is that correct?

13 A He wasn't working at that time.

14 Q Okay, and that was in the late afternoon, right?

15 A It was in the afternoon.

16 Q And your little niece, Shonda, she was there, too?

17 A Yes, my niece was there, too.

18 Q Okay. She's younger than you?

19 A Yes.

20 Q Your niece, Shonda?

21 A Yes.

22 Q Rashonda, Shonda for short, right?

23 A Yes.

24 Q Okay. This is the same Shonda that I'm referring to
25 that had visited you in the jail on at least three

State v. Tremaine Wray & Taurus Watts 10/9/09

B1

1 occasions, maybe four?

2 A Yes.

3 Q This is the same Shonda that you had discussions with
4 your mother about whether or not these boys had been to
5 trial?

6 A Asking that question, ma'am, I don't think that --

7 Q That's okay, Mr. Watson, I'll withdraw that question.
8 Okay.

9 A Okay.

10 Q So Shonda was there as well?

11 A Yes.

12 Q Okay. And you're saying that you took this gun out of
13 a black book bag, right?

14 A Yes.

15 Q And you took it into the back yard of Shonda's house?

16 A Rashonda and Jarrell's trailer, yes.

17 Q Trailer. Excuse me. You took it in the back yard of
18 Shonda's trailer, right?

19 A Yes.

20 Q Well, it's not Jarrell's trailer, is it?

21 A I don't know the situation.

22 Q You don't know? He was living there at the time?

23 A Yes.

24 Q But he's not living there now?

25 A Not that I know of.

1 Q Okay. And you take this weapon and did you take it
2 apart?

3 A No, we didn't take it apart.

4 Q You didn't take it apart, okay. But you took a hammer,
5 right?

6 A Jarrell and I did, yes.

7 Q Okay. Did you both have to carry the hammer, sir?

8 A No. Actually, Jarrell went and got the hammer.

9 Q Okay. He went and got the hammer from where?

10 A From his house.

11 Q So Jarrell went and got a hammer from his house?

12 A Yes.

13 Q And y'all went into Jarrell's backyard, correct?

14 A We were already in the backyard.

15 Q Well, Jarrell wasn't there when he went to get the
16 hammer?

17 A No, ma'am. He left to go get the hammer.

18 Q And then when he came back you were waiting in the
19 backyard?

20 A Yes.

21 Q Okay. And while you were waiting in the backyard and
22 Jarrell went to get the hammer, you went over to an old
23 camper shell, you said?

24 A That's where we were sitting.

25 Q You were sitting on the camper shell?

State v. Tremaine Wray & Taurus Watts 10/9/09

83

1 A Yes. In the backyard.

2 Q In the backyard?

3 A Yeah.

4 Q Okay. You didn't happen to take Mr. McRae over to that
5 trailer to show him the camper shell did you?

6 A No.

7 Q Okay. You didn't take him over to show him that inside
8 there, that's where Jarrell got a hammer for me to smash the
9 weapon, right?

10 A No.

11 Q You didn't take him to your backyard to see if there
12 were any holes dug back there, did you?

13 A For any holes dug? No.

14 Q Yes, for any of your weapons.

15 A For any of my weapons. I don't have any weapons.

16 Q Of course, not.

17 Ms. Shipley: Your Honor, I'm going to object to
18 the comment.

19 THE COURT: Sustained.

20 BY MS. JOHNS:

21 Q Mr. Watson, truth of the matter is you're just looking
22 out for yourself, right?

23 A That's your opinion.

24 Q It's not my opinion, sir, it's my question?

25 A Am I looking out for myself, yes.

1 Q There's no explanation why it took you so long to come
2 forward with this information; right?

3 A No.

4 MS. JOHNS: Beg the Court's indulgence, Your Honor.
5 Thank you. I have nothing further.

6 THE COURT: Okay. Ms. Shipley?

7 MS. SHIPLEY: Thank Your Honor.

8 BRIAN WATSON - REDIRECT EXAMINATION

9 BY MS. SHIPLEY:

10 Q Mr. Watson, the very last question you were asked by
11 Ms. Johns concerning your motives for coming forward, was I
12 believe the question she posed to you was: You have no
13 explanation why it took so long to come forward with this
14 information. Is that correct?

15 A Yes.

16 Q Do you recall what your answer was?

17 A Yes.

18 Q Sir, isn't it true that you weren't sure whether or not

19 --

20 MR. SWERLING: Objection, Your Honor, leading.

21 BY MS. SHIPLEY:

22 Q When did you find out this case had not yet gone to
23 trial?

24 A In March.

25 Q I'm going to play for you what's been marked as State's

State v. Tremaine Wray & Taurus Watts 10/9/09

85

1 No. 150. Do you recall having a conversation on May 15,
2 2009, at 9:23 p.m. concerning whether or not your mother had
3 found out from Shonda whether the case had gone to trial
4 yet?

5 A Do I remember specifically, no.

6 Q And if you heard your voice, would it help to refresh
7 your memory?

8 A Yes.

9 MS. SHIPLEY: Your Honor, state seeks to introduce
10 150 at this time.

11 MS. JOHNS: What date is that?

12 MS. SHIPLEY: May 15, 2009 at 9:23 p.m., 21:23 army
13 time.

14 (Recorded call played.)

15 MS. SHIPLEY: Your Honor, technical difficulties.

16 (Recorded call playing.)

17 (Recorded call stopped.)

18 MS. SHIPLEY: Beg the Court's indulgence, Your
19 Honor. I'll get the right one on.

20 THE COURT: Sure.

21 MS. SHIPLEY: Your Honor, for purposes of evidence,
22 we are going to clarify that State's 150 should reflect May
23 15, 2009 at 21:23 hours. And we will burn that conversation
24 onto a CD and introduce that at a later time. That is the
25 only call we're seeking to introduce. We are not seeking to

1 introduce all the calls.

2 THE COURT: Certainly.

3 (Recorded call played.)

4 (Recorded call stopped.)

5 BY MS. SHIPLEY:

6 Q Mr. Watson, now that you've heard the conversation on
7 May 15, 2009, at 21:23 hours, I'm going to ask you again,
8 when did it become aware to you that the case had not been
9 to trial?

10 A Then.

11 Q Right then?

12 A Yes.

13 Q And I'm going to show you your statement. Tell the
14 jury what is the date of your statement?

15 A May 18th.

16 Q And what time did you give that?

17 A At 21:10.

18 Q And are you familiar with military time?

19 A No, actually, I'm not.

20 Q Did you have any visits from Shonda between May 15,
21 2009, and May 18, 2009?

22 A No.

23 Q I'm going to show you what's been marked 148. Do you
24 recognize that?

25 A Yeah.

State v. Tremaine Wray & Taurus Watts 10/9/09

87

1 Q Do you see your handwriting on it?

2 A Yes.

3 Q What is it?

4 A It's a visitation list, visitation request.

5 Q Okay. And who did you authorize to visit you?

6 A Rashonda.

7 MS. SHIPLEY: Your Honor, at this time we seek to
8 introduce 148 into evidence.

9 MR. SWERLING: No objection.

10 (State's Exhibit No. 148,
11 visitation log, was marked and entered.)

12 BY MS. SHIPLEY:

13 Q Do you see Rashonda Simpson or Shonda Dansby's
14 signature on that log?

15 A Yes.

16 Q Okay. What date did she visit you that time?

17 A That is April 7th.

18 Q Okay, and I'm going to ask you to flip to the third
19 page?

20 A Okay.

21 Q And did she visit you again?

22 A Yes.

23 Q And tell the jury what date she visited you?

24 A This is on April 19th.

25 Q Of 2009?

1 A 2009.

2 Q And so you only had two visits from her in the month of
3 April or two visits, period, from her?

4 A Yes.

5 Q And again the date that you found out that the case had
6 not been to trial was when?

7 A It was in May.

8 Q May 15, the date of that conversation?

9 A Yes.

10 Q Were you interested -- tell the jury why you wanted to
11 know if it had gone to trial or not?

12 A Well, because I had that information about the murder
13 weapon, and if it had already gone to trial, it would be
14 irrelevant.

15 Q You testified -- or you were asked on cross-examination
16 about whether or not you were allowed to legally drive in
17 South Carolina on the date of this dumping of the weapon,
18 June 30, 2007, correct?

19 A Correct.

20 Q Was your license to drive suspended or not?

21 A Yes, it was.

22 Q I'm going to show you State's 149, and ask if you can
23 identify that for the jury?

24 A That's my three-year driving record.

25 MS. SHIPLEY: And Your Honor at this time the state

State v. Tremaine Wray & Taurus Watts 10/9/09

89

1 seeks to introduce this exhibit into evidence, let me see
2 the number --

3 MS. JOHNS: I object, Your Honor. I don't think
4 that's a record with his signature on it. It might be his
5 record, but I don't think he generated that record.

6 MS. SHIPLEY: Your Honor, he's laid the foundation
7 that this is his driving record for the last three years.

8 MS. JOHNS: I don't have any objection to him
9 saying his license was suspended. I don't think that needs
10 to be in evidence.

11 THE COURT: Well, we don't have anybody to
12 authenticate the record.

13 MS. SHIPLEY: I'll just move on, then.

14 MS. JOHNS: Okay.

15 BY MS. SHIPLEY:

16 Q On your driving record that is State's 149 for
17 identification purposes only, can you look in June 2007, and
18 see if you see a date where your license was suspended?

19 A Where my license was suspended?

20 Q Is there a date on June 2007, on that record, that
21 indicates your license was suspended?

22 A Yes.

23 Q And please tell the jury what date your driving record
24 indicates your license was suspended?

25 A June 9, 2007, suspension begins.

1 Q Okay. Thank you. You were asked on cross-examination.
2 about whether or not this incident happened on a Saturday or
3 Sunday; do you recall that?

4 A Yes, I believe so.

5 Q What did you write in your statement about what day it
6 was?

7 A That is was a Saturday or a Sunday. It was rainy
8 outside.

9 Q So you don't know if it was a Saturday or a Sunday. It
10 was either one?

11 A Yes.

12 Q You were also asked about whether or not you were
13 describing to the jury on cross-examination about how they
14 dropped you off, correct, at the bridge?

15 A Yes.

16 Q And tell the jury again why they didn't just pull over?

17 A Because there's not really a shoulder on the road where
18 you can pull over.

19 Q I'm going to show you what's been marked State's 142,
20 and ask you if you can recognize the picture?

21 A Yeah, I believe that's the bridge on Cherokee.

22 Q On Cherokee?

23 A Yes.

24 MS. SHIPLEY: Your Honor, the state seeks to
25 introduce 142 into evidence at this time.

State v. Tremaine Wray & Taurus Watts 10/9/09

91

1 MS. JOHNS: No objection.

2 THE COURT: Admitted.

3 (State's Exhibit No. 142, photo
4 bridge, was marked and entered.)

5 MS. SHIPLEY: May I publish it to the jury?

6 THE COURT: You may.

7 BY MS. SHIPLEY:

8 Q And so there was no room on the shoulder to pull over?

9 A Correct.

10 Q For them to wait for you?

11 A Correct.

12 Q When you discovered that the case had not yet been to
13 trial, you were willing to come forward?

14 A Yes.

15 Q And when you met with the Sheriff's Department had you
16 discussed, on May 18, 2009, had you ever spoken to Jarrell
17 Dansby about this?

18 A No.

19 Q Had Jarrell Dansby ever visited you at the Richland
20 County Jail?

21 A Never.

22 Q And the times that Ms. Rashonda Simpson visited you in
23 April of 2009, before you ever knew whether the case had
24 gone to trial, did you discuss the case with her, at all?

25 A No.

1 Q But you wanted her to find out --

2 MR. SWERLING: Objection, Your Honor.

3 BY MS. SHIPLEY:

4 Q What did you want her to find out for you?

5 A Whether it had gone to trial.

6 Q And have you ever seen, heard, read, Rashonda Simpson's
7 statement that she provided to the police in this case?

8 A No.

9 Q Have you ever seen, heard, or read the statement that
10 Jarrell Dansby provided to the police in this case?

11 A No.

12 Q The day after you gave a statement to the Richland
13 County Sheriff's Department, so that would be May 19, 2009,
14 where were you then incarcerated?

15 A At Alvin S. Glenn.

16 Q And when did you get -- move to another location?

17 A It was on that day.

18 Q On May 19th or that night?

19 A That evening.

20 Q Okay. And so there -- never mind. When did it come to
21 your attention and how did it come to your attention, that
22 your mother had been threatened by Jarrell Dansby.

23 MS. JOHNS: Your Honor, object to the form of the
24 question.

25 MS. SHIPLEY: It's not leading.

State v. Tremaine Wray & Taurus Watts 10/9/09

93

1 MS. JOHNS: I just want -- I don't want it to be a
2 double question. I want one question.

3 THE COURT: Okay.

4 BY MS. SHIPLEY:

5 Q Okay. Tell the jury when it was brought to your
6 attention that your mother had been threatened by Jarrell
7 Dansby?

8 A Um -- I don't exactly remember when it was brought to
9 my attention. I know that I was moved that next day, and --

10 Q Well, if you don't remember that, do you recall who
11 told you?

12 A I believe it was my mother. I mean, I'm not exactly
13 sure. I don't know. I can't remember, actually.

14 Q And the night of May 18, 2009, you took -- which -- how
15 many bridges did you take investigators to?

16 A Two.

17 Q And when you gave the statement to investigators on May
18 18, 2009, did you provide them with Rashonda Simpson's
19 information and contact information?

20 A Yes.

21 Q And were you able to provide them with contact
22 information for Jarrell Dansby?

23 A No.

24 Q I'm going to bring your attention back to June 30,
25 2007. You never saw Tremaine --

1 MR. SWERLING: Objection.

2 BY MS. SHIPLEY:

3 Q Did you ever see Tremaine Wray at Jarrell and
4 Rashonda's house?

5 A No.

6 Q Who told you he'd been there?

7 MR. SWERLING: Objection. That's hearsay.

8 THE COURT: You-all approach.

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

11 THE COURT: Objection sustained.

12 BY MS. SHIPLEY:

13 Q Who gave you the gun to get rid of?

14 A Jarrell.

15 Q Jarrell Dansby?

16 A Yes.

17 Q And did you get rid of the gun?

18 A Yes.

19 MR. SWERLING: Your Honor, this is -- state can't
20 just go into direct examination again.

21 THE COURT: Redirect only on what occurred on re-
22 cross. On the cross, excuse me, not the re-cross.

23 BY MS. SHIPLEY:

24 Q When did you become interested on whether or not this
25 case had gone to trial yet?

State v. Tremaine Wray & Taurus Watts 10/9/09

95

1 A After March.

2 Q After March. After you saw Mr. Watts?

3 A Yes.

4 MS. SHIPLEY: Beg the Court's indulgence?

5 THE COURT: Sure.

6 BY MS. SHIPLEY:

7 Q And had you been using any crack cocaine since you'd
8 been incarcerated?

9 A No.

10 Q Since February of 2009?

11 A No.

12 MS. SHIPLEY: That's all I have, Your Honor.

13 MR. SWERLING: I just have a couple.

14 THE COURT: Yes, sir.

15 BRIAN WATSON - RE-CROSS EXAMINATION

16 BY MR. SWERLING:

17 Q State's Exhibit No. 148, has the visiting log for
18 Rashonda Simpson to come see you, I'm sorry, Rashonda Dansby
19 coming to see you; is that correct?

20 A Yes.

21 Q One was on April 7 and the other was -- there was
22 another one on April 19?

23 A Yes.

24 Q Both of those are subsequent to the time that you got
25 interested in the case; isn't that true?

1 A Yes.

2 Q Okay. Your niece is down there visiting you at the
3 jail; correct?

4 A Yes.

5 Q And you got interested in the case then; correct?

6 A Yes.

7 Q You told us you were interested in the case then?

8 A Yes.

9 Q Your niece is down there on two occasions subsequent to
10 that and prior to May when you came forward and gave the
11 statement; correct?

12 A Yes.

13 Q Are you telling these folks here that you didn't
14 discuss with your niece what happened on or about June 30,
15 2007?

16 A Yes. That is exactly what I'm telling you. No
17 discussion at all.

18 Q Okay. You never told her you were interested in trying
19 to help yourself on this case, and told her --

20 A No.

21 Q -- and reviewed with her --

22 A No.

23 Q Excuse me.

24 THE COURT: He has to finish the question and then
25 you can answer it.

State v. Tremaine Wray & Taurus Watts 10/9/09

97

1 BY MR. SWERLING:

2 Q And reviewed with her the events of that evening?

3 A No.

4 Q Just want to reiterate something about this gun where
5 you stood and threw it. I didn't quite understand your
6 answers to Ms. Johns and she was asking you whether you were
7 sure about the bridge, okay. And you kept saying I told
8 them it was one of two bridges; correct?

9 A (No response.)

10 Q Is that what your answer was?

11 A Yes.

12 Q Okay. Look at your statement, okay. Right here.
13 Question: The bridge that you took myself, Sgt. Faust and
14 your attorney tonight, is this the location where you threw
15 the gun? What's your answer.

16 A Absolutely.

17 Q There was no doubt in that answer was there?

18 A No. And there still is none, sir. I took Lt. Faust
19 and the other officer and my lawyer to the bridge on that
20 evening.

21 Q Which was absolutely the bridge where you threw the
22 gun?

23 A (No response.)

24 Q That's what you told them.

25 A Yes.

1 Q Isn't that true?

2 A Yes.

3 Q So there was no doubt in your mind, as you told Ms.
4 Johns it was, you told them that the bridge that you took
5 them to was absolutely the bridge?

6 A Well, I took them to both bridges.

7 Q That's not what I'm asking. Let's go through it one
8 more time.

9 A Okay.

10 Q The bridge that you took yourself, Sgt. Faust, and your
11 attorney tonight is this the location where you threw the
12 gun. Answer: Absolutely. The bridge.

13 So you may have taken them to two bridges that night,
14 but you definitely told them which one it was, and it was
15 the first bridge that you went to originally; that's what
16 you told them, absolutely?

17 A Well, I may have mis-spoken because at the same time I
18 was absolutely certain then I wouldn't have taken them to
19 the second bridge.

20 Q Then why did you put in the statement absolutely?

21 A I --

22 Q You dump a weapon under a bridge you represented to the
23 police was absolutely the bridge, you did it. Now, you're
24 telling these folks you're not really sure. This was under
25 oath, too. Got it?

State v. Tremaine Wray & Taurus Watts 10/9/09

99

1 A Yes.

2 Q Now, Ms. Shipley was also asking you about you didn't
3 have a driver's license in June of 2007. So I guess that
4 means you can't drive; right?

5 A Which means I didn't have a driver's license.

6 Q Which means you can't drive?

7 A I didn't have a driver's license.

8 Q Well, that has not stopped you before. You have been
9 convicted on at least three occasions of driving under
10 suspension prior to June of 2002; isn't that true?

11 A Yes.

12 Q Let's see -- Driving under suspension, May 7, 1996.
13 Driving under suspension, July 14, 1997. Driving under
14 suspension, August 22, 2005.

15 You don't care whether you have a license or not when
16 you get behind the wheel, do you?

17 A I actually have to have a car to drive.

18 Q That's not my question. Having a license makes no
19 difference to you about whether you drive a car; isn't that
20 true?

21 A Yes.

22 Q That was an easy question, right. You will drive a car
23 even when your license is under suspension, as you have in
24 the past, and your license was under suspension on June 30,
25 2007, you would not have hesitated to drive a vehicle if you

1 had access to one; isn't that true?

2 A I can't answer that. I don't know.

3 Q But you've done it in the past?

4 A I've done it in the past, yes.

5 MR. SWERLING: That's all I have.

6 MS. JOHNS: Very, very briefly, Your Honor.

7 BRIAN WATSON - RE-CROSS EXAMINATION

8 BY MS. JOHNS:

9 Q Remember this conversation you had with your mother
10 about Shonda and when the boys were going to go to trial.
11 You remember that, right? I mean, some of it, some of your
12 conversations with your mom and dad were played?

13 A Yes.

14 Q Okay. And do you recall your mom asking why you wanted
15 to know?

16 A Yes, I do.

17 Q And you didn't answer her, did you?

18 A No, I didn't.

19 Q Because of why; you were saving Jarrell?

20 A What?

21 Q You were saving Jarrell?

22 A No, I didn't want to involve her at that time.

23 Q You were saving Shonda, because she's your niece?

24 A No, because I didn't want to involve my mother.

25 Q And isn't your mother the great-grandmother of Jarrell

State v. Tremaine Wray & Taurus Watts 10/9/09

101

1 and Shonda's children?

2 A Yes.

3 Q So actually the person who should be getting credit for
4 your testimony, actually, you should be getting credit four
5 times. You should be given credit --

6 MS. SHIPLEY: Your Honor, is there a question?

7 MS. JOHNS: Yes, I have a question.

8 BY MS. JOHNS:

9 Q You've had credit for a conviction in this case with
10 Tremaine Wray, you want credit for that, right?

11 A (No response.)

12 Q You want to be credited for your testimony today
13 against Tremaine Wray, right?

14 A Yes.

15 Q Okay. And you want to be credited for testimony
16 against Taurus Watts, as well, right?

17 A Yes.

18 Q And, shoot, you might as well add Jarrell to that. You
19 want to get credit for telling the police about your nephew-
20 in-law, about his accessory to the fact -- for accessory for
21 murder, you want credit for that, too?

22 A (No response.)

23 Q Answer the question.

24 A No.

25 Q You're going to come in here and testify against him

State v. Tremaine Wray & Taurus Watts 10/9/09

102

1 when he gets an accessory to murder, you're going to testify
2 against him, too?

3 A Possibly.

4 Q Okay, and what about your niece Rashonda, Rashonda
5 Simpson. You didn't even know her last name was Dansby-
6 Simpson. You're going to testify against her and have her
7 spend 15 years in jail for accessory to murder?

8 A (No response.)

9 Q Are you?

10 A No.

11 Q That's what I thought.

12 Ms. Johns: Nothing further.

13 THE COURT: All right, sir, you can step down and
14 be excused.

15 MR. SWERLING: Judge, could we approach for a
16 moment?

17 THE COURT: Sure.

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

20 THE COURT: All right. He will be excused, subject
21 to recall.

22 All right. State you can go on with your next witness.

23 MS. SHIPLEY: State calls Capt. Stan Smith.

24 (WHEREUPON, Stan Smith was sworn to
25 tell the truth.)

State v. Tremaine Wray & Taurus Watts 10/9/09

103

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

3 MR. SMITH: James Standim Smith, S-t-a-n-d-i-m.

4 STAN SMITH - DIRECT EXAMINATION

5 BY MS. SHIPLEY:

6 Q Capt. Smith, can you please tell the jury where you're
7 employed?

8 A I'm employed by the Richland County Sheriff's
9 Department.

10 Q And how long have you worked there?

11 A I started in June of 1984.

12 Q And when you first started out there what were your
13 duties and how did you progress through the department?

14 A I started out as a uniform patrol officer answering
15 calls on the street. In 1987, under then Sheriff Frank
16 Powell, I was promoted to Investigator. I worked with the
17 investigator section, working property crimes, burglaries
18 and that kind of thing. In the early '90s I shifted to some
19 degree and worked violent crimes in conjunction to working
20 property crimes and became involved in murders during that
21 time frame. I left the Sheriff's Department for a couple of
22 years in the late '90s. I went into the private sector and
23 came back in late '99. Since I've come back, I've worked in
24 the sex crimes, armed robberies, and, now, I have the rank
25 of Captain, and I'm over the unit that handles homicides and

1 violent crimes.

2 Q And so would you be Investigator McRae's supervisor?

3 A Yes.

4 Q And are you familiar with a Sgt. Faust, Scott Faust?

5 A I am.

6 Q Okay. And is he also in your homicide unit or violent
7 crime unit?

8 A At the time of this incident he was not actually in my
9 unit, but he was a supervisor within the ranks of
10 investigations.

11 Q Now, as a supervisor over homicides at the Sheriff's
12 Department, do your officers, investigators on cases brief
13 you as to events and progress in their investigations?

14 A Yes. Sometimes I'm directly involved in the
15 investigations, myself. And other times, as in this case, I
16 got more of a briefing type thing as it went along as they
17 were working the case.

18 Q And I'm just going to go ahead and bring your attention
19 to the case at hand. When was it that you actually got
20 involved in this case?

21 A Other than briefing capacity and advisory capacity, I
22 actually became involved in this case in May of '09.

23 Q And what exact date was that?

24 A May 18th.

25 Q How did you become involved?

State v. Tremaine Wray & Taurus Watts 10/9/09

105

1 A I received a phone call --

2 MR. SWERLING: Not going into anything that was
3 said, Your Honor. I don't have any problem with Capt. Smith
4 saying how he got involved, without the hearsay.

5 THE COURT: Sustained.

6 BY MS. SHIPLEY:

7 Q Okay. How were you involved?

8 A I received a call from assistant solicitor, Luck
9 Campbell regarding some information she had received from an
10 attorney here in Richland County.

11 Q And which attorney was that?

12 A It was Russell Brown.

13 Q And did you have direct contract with Russell Brown?

14 A I did then have direct contact with Russell Brown about
15 his information.

16 Q And the information, were you asked to follow up on
17 certain things?

18 A Yes.

19 Q Okay. As a result of getting information from Russell
20 Brown, what specifically did you research?

21 A I researched -- I tried -- the information was about a
22 case. And it was termed to be a cold case.

23 Q And what's a cold case?

24 A A cold case is an unsolved case, typically referred to
25 with murders. We refer to that as a cold case.

1 Q Okay.

2 A And the information was about allegedly a cold case,
3 and with the names that had been provided it didn't ring a
4 bell for me, because I'm also over the cold case unit. A
5 particular geographical area was also described. We did
6 have a cold case in this particular area.

7 Q And what area is that?

8 A The Hardscrabble, Farrow Road area.

9 Q Okay.

10 A We did have a cold case in that area, and I was pretty
11 familiar with --

12 MR. SWERLING: Your Honor, I don't mean to
13 interrupt, but this is not relevant to this case. Whether
14 it was cold -- cold case is another case that's unsolved,
15 nobody has been charged. It has nothing to do with this
16 case. So I'd object to any -- it's not relevant.

17 MS. SHIPLEY: Your Honor, I'm getting there.

18 THE COURT: Okay.

19 MS. SHIPLEY: We have to explain how he got from A
20 to B.

21 THE COURT: Okay. That's fine.

22 MS. SHIPLEY: Thank you.

23 BY MS. SHIPLEY:

24 Q Now --

25 THE COURT: Without any information about another

State v. Tremaine Wray & Taurus Watts 10/9/09

107

1 case?

2 MS. SHIPLEY: No.

3 THE COURT: Okay.

4 BY MS. SHIPLEY:

5 Q And so as a results of -- did you -- were you able to,
6 with the information that you were provided, first of all,
7 what suspect name were you provided?

8 A I was provided the name of Torrence or Torres.

9 Q And how was it -- what was your understanding of the
10 spelling of that?

11 A Torrence, I would think would be spelled, T-o-r-r-e-n-
12 c-e.

13 Q And the other one?

14 A Torres, from my understanding is Spanish, would be T-o-
15 r-r-e-s. And I was unfamiliar with that, either one of
16 those names at the particular case that I had in mind.

17 Q And was there another name that was supplied?

18 A The name, Dansby was also provided.

19 Q Which one?

20 A Dansby. And that was also foreign to me.

21 Q And were you able to figure out what information, what
22 case this really pertains to?

23 A Yes. As I began looking at other cases, I realized
24 this was the possibility of a solved case. And then that's
25 when it hit on it. It wasn't a case that was scheduled for

1 trial, the trial was forthcoming, and then I realized it was
2 the case that is before us today.

3 Q Okay. And as a result did you make contact with the
4 solicitors office about the witness who had come forward?

5 A Yes, I did.

6 Q And did you make arrangements for your homicide team to
7 meet with that witness?

8 A Yes. Sgt. Faust was the -- this information, by this
9 time, sort of late in the course of that day. Sgt. Faust
10 was the evening supervisor that came on. That's how he
11 became involved in this. And when I realized which case it
12 was, I knew Investigator Don McRae was my lead detective on
13 this case, so I involved in, at this point, as well.

14 Q And at that point, did you instruct them to make
15 contact with the witness?

16 A I did.

17 Q And what was the witnesses name?

18 A The witnesses name was Brian Watson.

19 Q At that point, did you -- when did you become involved
20 again, other than directing your officers to -- or
21 investigators to meet with this witness; when did you
22 participate in the investigation again?

23 A I turned it over to them that afternoon, and then I
24 became involved in it again the following morning.

25 Q And would that have been the morning of May 19 --

State v. Tremaine Wray & Taurus Watts 10/9/09

109

1 A Yes.

2 Q -- 2009?

3 A Yes.

4 Q And explain how you were involved on May 19, 2009?

5 A The witness was able to point out a couple of
6 locations, and Sgt. Faust had the Richland County Sheriff's
7 Department Uniform Division, contacted them to secure those
8 areas overnight. I became involved the next morning by
9 physically going to the locations and viewing them myself.
10 I was also involved in contacting the dive team --

11 MR. SWERLING: Your Honor, object to anything
12 further, because that will all involve hearsay information
13 he got from other people.

14 BY MS. JOHNS:

15 Q Did you actually go --

16 THE COURT: Go ahead.

17 BY MS. SHIPLEY:

18 Q Did you actually go to the bridge?

19 A Yes.

20 Q Okay.

21 MR. SWERLING: No, I'm not objecting to that --

22 THE COURT: Right.

23 MR. SWERLING: -- if he went to the bridge. I'm
24 objecting to any conversations he had with anybody else
25 about the bridge.

1 THE COURT: Conversations --

2 MS. SHIPLEY: Yes.

3 BY MS. SHIPLEY:

4 Q So did you go to the bridge, to two bridges?

5 A I actually went to three bridge.

6 Q Three bridges?

7 A Yes, ma'am.

8 Q And I'm going to show you what's been marked as State's
9 No. 124, already.

10 First of all, where was the location of the first
11 bridge?

12 A The first bridge was on Langford Road, which is a road
13 that comes right out of the town of Blythewood and cuts back
14 over towards, Pontiac, towards Kershaw County.

15 Q And where were the locations of the other two bridges?

16 A Come down Langford Road where it dead ends, make a
17 right, and you went up, I think, about a-half mile and turn
18 on Cherokee Boulevard. And those other two bridges were off
19 Cherokee.

20 Q And how, what was the proximity of those two bridges
21 from Cherokee; how close were they?

22 A They were -- the two bridges on Cherokee were less than
23 a hundred yards apart from one another.

24 Q I'm going to show you what's already in evidence, 142,
25 and ask you if you recognize that bridge, that bridge?

State v. Tremaine Wray & Taurus Watts 10/9/09

111

1 A Yes. I believe this would be the first bridge that you
2 would come to if you were coming from Langford.

3 Q Okay. And is that on Cherokee Road?

4 A Yes.

5 Q Okay. I'm going to show you what's been marked as
6 State's 147, and ask you if you recognize that bridge?

7 A Yes. This bridge would be the bridge if you were
8 traveling this way, this bridge would be the next bridge
9 coming away from Langford Road.

10 MS. SHIPLEY: Your Honor, at this time we seek to
11 introduce 147 into evidence.

12 MS. JOHNS: I don't have an objection.

13 MR. SWERLING: No objection.

14 THE COURT: Okay. It's admitted.

15 (State's Exhibit No. 147, photo of
16 bridge, was marked and entered.)

17 BY MS. SHIPLEY:

18 Q And I'm going to show you 143, 145, 146, and 144, and
19 ask you if you recognize those photos?

20 A This is the second bridge from the side. That would be
21 143. I believe this is another shot from the other side,
22 No. 145, of the second bridge. No. 146, I believe is also
23 the second bridge. And I believe that's part of the creek
24 that runs under the second bridge, I believe, 144.

25 MS. SHIPLEY: Your Honor, we seek to introduce 144,

1 143, 145, and 146.

2 MS. JOHNS: No objection.

3 THE COURT: All right. Those will be admitted.

4 (State's Exhibit No. 143, photo of
5 bridge, was marked and entered.)

6 (State's Exhibit No. 144, photo of
7 bridge, was marked and entered.)

8 (State's Exhibit No. 145, photo of
9 bridge, was marked and entered.)

10 (State's Exhibit No. 146, photo of
11 bridge, was marked and entered.)

12 BY MS. SHIPLEY:

13 Q I'm going to show you 143. Did you make any
14 observations about the bridge on Langford Road?

15 A Yes, I did.

16 Q And tell the jurors what your observations were?

17 A The bridge was new or had -- obviously, there had been
18 a bridge there before, because the road was all -- but the
19 bridge, itself, was new. And it was pretty evidence that it
20 was new.

21 Q Okay, and I'm going to show you 143. Is that depicted
22 in that photograph?

23 A Yes. In 143, I apologize. That is Langford Road.

24 Q Did you follow up to find out when recent construction
25 had taken place at that bridge?

State v. Tremaine Wray & Taurus Watts 10/9/09

113

1 MR. SWERLING: That's exactly what I've objected
2 to. It can only come from a hearsay source as to what took
3 place out there, if anything. So I object to it.

4 MS. SHIPLEY: Pursuant to his investigation, he's
5 allowed to --

6 MR. SWERLING: Not hearsay. He's not allowed to
7 bring in hearsay.

8 MS. SHIPLEY: When an investigator investigates a
9 case he can --

10 THE COURT: Go into information that he's relying
11 on. We don't -- in other words, it's not for the matter
12 asserted, --

13 MS. SHIPLEY: Yes, ma'am.

14 THE COURT: -- but just to indicate follow up to
15 certain facts.

16 You all approach. Just let me see where you're going.
17 (Off the record bench conference with counsel and the
18 Court.)

19 MR. SWERLING: Your Honor, if you'll note my
20 objection.

21 THE COURT: Absolutely.

22 MS. JOHNS: And Your Honor, if you will also, just
23 for the record, we started this case three days ago. The
24 objections that I made and the objections that Mr. Swerling
25 made, I want them to be reflected that we are joining the

1 objections.

2 THE COURT: Certainly. We've indicated that.
3 Okay.

4 And essentially, I will just instruct the witness not
5 to go into the hearsay testimony about anything that was
6 specifically said to him. Ms. Shipley has been cautioned
7 about that as well, but there will be times when you will
8 get information in which you relied on a certain information
9 to then do your information. I want to just caution that.

10 All right. Ms. Shipley.

11 BY MS. SHIPLEY:

12 Q Captain, based on your observations of the first bridge
13 on Langford Road, what agency did you contact?

14 A DOT, Department of Transportation.

15 Q And based on your investigation of that first bridge,
16 had it been -- describe what had been recently constructed
17 or reconstructed?

18 A In late 2007.

19 Q Pursuant to your observation to the area where the two
20 bridges on Cherokee Road are did you observe any
21 construction around them?

22 A On Cherokee?

23 Q On Cherokee?

24 A No, ma'am.

25 Q Did you observe any construction near the first bridge

State v. Tremaine Wray & Taurus Watts 10/9/09

115

1 or housing development?

2 A There was a housing development that had begun to be
3 created there adjacent to the bridge.

4 Q And pursuant to your observation of this housing
5 development potentially being under construction, what
6 agency did you contact?

7 A I contacted the -- there was a sign out front, and I
8 was able to contact a La Casa Development Company that was
9 affiliated with, according to the sign, was an attempt to
10 create a subdivision. Obviously, the work had begun on the
11 subdivision and the work had ended for some reason, because
12 it's not -- there wasn't the first house built in it. The
13 roads and infrastructure looked like it had been laid out.
14 This abutted the back side of that Langford Road bridge.

15 Q Now, at that point, did you instruct your -- any group
16 of your Sheriff's Department to go search for the weapon?

17 A Yes, that had been done previously.

18 Q Okay. Tell the jury when that happened?

19 A That had been done the night before or the morning --
20 during the course of the night we reached out to the dive
21 team supervisors.

22 Q The dive team?

23 A Yes. And they were actually on the scene when I
24 arrived that morning, at Langford Road, already.

25 Q And as supervisor over this entire investigation, at

1 this point, on May 18, was the dive team able to complete
2 their search the night of May 18?

3 A No, they were not?

4 Q And why not?

5 A Because the night hour -- you can look -- a search like
6 this during the daylight hours, obviously, for obvious
7 reason, that's why the investigator, Sgt. Faust, had sought
8 to have the scenes protected overnight by deputies.

9 Q And were both locations, Cherokee Road and Langford
10 Road, secured?

11 A Yes.

12 Q When you arrived the following morning, did you see the
13 dive team there?

14 A The dive team was already present at the Langford Road
15 bridge, and when I went to inspect the Cherokee Boulevard
16 bridge one of my detectives was actually at that location,
17 Brady Spears (sp) was present watching those bridges.

18 Q And what was your observations as far as what the dive
19 team was doing under the bridges of Cherokee Road?

20 A They were doing what they refer to as a line search.
21 The water, in this case, was not deep enough where they
22 actually had to use their equipment to breath, but they were
23 wearing their wetsuits and they were -- they set out a line
24 and then work either side of the line, and it helps them
25 mark where they are, and search both side of the line. Move

State v. Tremaine Wray & Taurus Watts 10/9/09

117

1 the line down, and work both sides of the line. And move
2 the line down. It's a way of performing what other people
3 may refer to as a grid search to make sure you cover each
4 step of the way. In this case, they had to dig some degree
5 down in the silt, to make sure, because over time, erosion
6 and that kind of thing could have concealed a weapon. So
7 they were sticking their hands in the water, in the silt, in
8 the mud, and doing their line search as they proceeded down
9 the creek.

10 Q And were you briefed on whether or not they were
11 successful in locating a weapon under any of those bridges?

12 A They were unsuccessful.

13 Q They were unsuccessful?

14 A Yes, ma'am.

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

16 BY MS. SHIPLEY:

17 Q And based on your observations and your experience as a
18 crime scene investigator with the Sheriff's Department, and
19 your information that you had had involving this case, how
20 much time had passed from the time it had been dumped and
21 the time that you searched for it, your unit searched for
22 it?

23 A It was approximately 2 years.

24 Q And based on your experience were you surprised --

25 MR. SWERLING: Objection. That's not an

State v. Tremaine Wray & Taurus Watts 10/9/09

118

1 appropriate question. Surprised. He can't speculate as to
2 what happened. I mean, the guy said he threw it in. They
3 didn't find it. So I mean, it's gotta stay with that.

4 THE COURT: And you've got the time period, so
5 let's move on, okay.

6 MS. SHIPLEY: Thank you.

7 BY MS. SHIPLEY:

8 Q And on Cherokee Road, while you were present there,
9 describe for the jury the volume of traffic on that road?

10 A It's not heavy there. Lots of trucks come along. Some
11 residents in the area. There was a steady flow, but not a
12 heavy volume. There's a good bit of activity, people live
13 in that area, and when I was there several large trucks came
14 through.

15 Q Thank you very much, Capt. Smith.

16 MR. SWERLING: I have no questions of Capt. Smith.

17 MS. JOHNS: I have no questions of Capt. Smith.

18 THE COURT: Sir, you may step down and be excused.

19 MS. SHIPLEY: Your Honor, may we approach?

20 THE COURT: Sure.

21 MS. SHIPLEY: For a scheduling matter.

22 THE COURT: Okay.

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

25 MS. SHIPLEY: State calls Investigator Patricia

State v. Tremaine Wray & Taurus Watts 10/9/09

119

1 Reed-Enzor, Your Honor.

2 THE COURT: Okay. Thank you.

3 (WHEREUPON, Patricia Reed-Enzor was
4 sworn to tell the truth.)

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

7 MS. REED-ENZOR: Patricia Reed-Enzor.

8 PATRICIA REED-ENZOR - DIRECT EXAMINATION

9 BY MS. SHIPLEY:

10 Q Investigator -- can I just call you Investigator Reed?

11 A That's fine, ma'am.

12 Q Investigator Reed, can you tell the jury where you're
13 employed?

14 A Richland County Sheriff's Department.

15 Q How long have you worked there?

16 A I've worked here since September, 2001. It would be
17 about eight years.

18 Q When you first started off with the Richland County
19 Sheriff's Department, explain how you worked with them, what
20 did you do for them?

21 A I started out as a line unit. And because a crime
22 scene investigator, and now I'm an investigator with the
23 Sheriff's Department.

24 Q And when did you become a crime scene investigator?

25 A I began in August , 2005.

1 Q Can you tell the jury a little bit about your
2 educational background and your experience and training in
3 investigating crime scenes?

4 A Yes, ma'am. I have a four-year degree with the
5 University of South Carolina. I also went through the basic
6 law enforcement academy to become a patrol officer. I also
7 have a specific education that I had to have in order to
8 become a crime scene investigator. I have had courses in
9 crime scene reconstruction, blood pattern analysis,
10 photography techniques, forensic photography. Also, there
11 is an extensive program that the Sheriff's Department puts
12 you through, on the job training, I think you could call it.
13 It actually took up to two years for me to complete this
14 program.

15 Q And while you're employed at the Richland County
16 Sheriff's Department in the crime scene unit, do other
17 people train you, in on the job training sort of scenario?

18 A Yes, ma'am.

19 Q And explain how long you do that before you got to
20 process your own crime scenes?

21 A Approximately, six months.

22 Q Now, today you're an actual investigator. You've been
23 promoted to investigator?

24 A Yes, ma'am, I have.

25 Q I'm going to bring your attention --

State v. Tremaine Wray & Taurus Watts 10/9/09

121

1 MS. SHIPLEY: Your Honor, at this time, state seeks
2 to introduce Investigator Reed-Enzor as an expert in the
3 field of crime scene investigations.

4 THE COURT: Any objections?

5 MR. SWERLING: No.

6 THE COURT: Okay. Any objections, Ms. Johns?

7 MS. JOHNS: No, Your Honor.

8 THE COURT: Okay. Thank you. So qualified.

9 MS. SHIPLEY: Okay. Thank you.

10 BY MS. SHIPLEY:

11 Q Investigator Reed, I'm going to bring your attention to
12 the case at hand. Did you respond to a homicide stemming
13 from the club on Hardscrabble Road on June 30, 2007?

14 A Yes, ma'am, I did.

15 Q Can you tell the jury what time it was that you
16 arrived?

17 A Yes. I arrived at 5:10 in the morning on June 30th.

18 Q Tell the jury a little bit about your observations when
19 you got there?

20 A When I arrived it was a cloudy morning, it was still
21 dark. The deputies had already secured the scene with crime
22 scene tape. There were multiple shell casings in the road.
23 The first thing I do when I get to a crime scene is observe
24 what is going on. I had to walk the area. It was a pretty
25 large area. We had to -- after the area was secure, I had

1 to walk the roadway to begin with first, because we were
2 worried about when we go to a crime scene that evidence is
3 perishable, you could say. I wanted to make sure everything
4 couldn't be damaged with other vehicles and people walking
5 around. That's why things are always secured so people
6 can't damage it. So secure it, observe it, and I had to
7 photograph it.

8 Q And prior to your arrival, are you aware of what time
9 the first dispatch call was made in this case?

10 A No, I'm not. I know I was requested at 4:40 in the
11 morning, but I don't know when the first units arrived.

12 Q Okay. By the time you got there they had already
13 secured the scene?

14 A Yes, ma'am.

15 Q I'm going to show you some photographs, 49, 50, and 48,
16 and ask if you recognize those photos?

17 A I took those photographs.

18 Q You took those photographs?

19 A Yes, ma'am.

20 MS. SHIPLEY: Your Honor, at this time we would
21 seek to introduce those photographs into evidence.

22 MR. SWERLING: Let me just make sure which ones
23 they are.

24 MS. SHIPLEY: Sure. Nos. 48, 49, and 50.

25 MR. SWERLING: No objection.

State v. Tremaine Wray & Taurus Watts 10/9/09

123

1 MS. JOHNS: No objection.

2 THE COURT: Okay. Those will be admitted.

3 (State's Exhibit No. 48, photo, was
4 marked and entered.)

5 (State's Exhibit No. 49, photo, was
6 marked and entered.)

7 (State's Exhibit No. 50, photo, was
8 marked and entered.)

9 BY MS. SHIPLEY:

10 Q The photographs, 48, 49, 50; what area of the crime
11 scene does that depict?

12 A No. 48, is the front area that shows part of the car
13 wash and part of the front area of the club. No. 49, shows
14 the very front part of the club and part of the vehicle.
15 No. 50, is when I first got there and it was still dark.
16 It's very hard to see, but it also shows the same area.

17 Q And in addition to the parking lot of the bar and car
18 wash being secured, was the roadway secured?

19 A Yes. On either side of the roadway, it was also
20 secured.

21 Q Okay. I'm going to bring your attention to State's
22 Exhibit No. 7, just for purposes of your testimony now. Do
23 you -- can you tell the jury sort of where you recall the
24 crime scene tape on the road?

25 A I can't recall exactly, but I do know at least on the

1 opposite side -- this would have been --

2 Q Would you prefer -- did you make a crime scene sketch
3 of this area?

4 A Yes, I did.

5 Q I'm going to show you what's been marked as State's
6 115. Do you recognize this sketch?

7 A That is my sketch.

8 Q You prepared this?

9 A Yes, I did.

10 MS. SHIPLEY: Your Honor, at this time state seeks
11 to introduce 115 into evidence.

12 MR. SWERLING: No objection.

13 MS. JOHNS: No objection.

14 THE COURT: It will be admitted.

15 (State's Exhibit No. 115, sketch,
16 was marked and entered.)

17 BY MS. SHIPLEY:

18 Q If you could use this pointer and sort of orient the
19 jury as to where you made your observations about the crime
20 scene?

21 A Okay. This is the car wash area, here. This is where
22 the club was. I do recall that the crime scene tape was
23 passed this area, here, that's passed the car wash, because
24 I had originally parked my vehicle passed here to get
25 through the scene. I recall the crime scene tape was across

State v. Tremaine Wray & Taurus Watts 10/9/09

125

1 the roadway, passed here initially.

2 Q And those are depicted in 48, 49, and 50; correct?

3 A That is correct.

4 MS. SHIPLEY: May I publish those photos to the
5 jury, Your Honor?

6 THE COURT: You may.

7 BY MS. SHIPLEY:

8 Q Tell the jury, as a crime scene investigator, what is
9 the first thing you do when you get to a crime scene?

10 A Make sure the scene is secure.

11 Q And then after you make sure the scene is secure, what
12 do you do next?

13 A Photograph.

14 Q And did you photograph this entire, all the parts that
15 are depicted in that exhibit right there?

16 A Yes, ma'am.

17 Q Were both the bar area and the car wash considered
18 crime scene?

19 A Yes, ma'am.

20 Q Can you tell the jury how you approach a crime scene
21 where there are two different buildings involved?

22 A One at a time.

23 Q One at a time. So do you refer to one as a primary
24 scene and the other as a secondary scene?

25 A Yes, ma'am.

1 Q Can you tell the jury what you did first in this case?

2 A First I approached was the JD's club. Well, correction
3 I had to handle the roadway, first.

4 Q Okay. Now, tell the jury what you did as far as the
5 roadway?

6 A The first thing I did was mark each shell casing as it
7 was located with evidence markers.

8 Q Okay. I'm going to show you a stack of photos, 87
9 through 113. I'll ask you to go through those, please, and
10 see if those are the photos you took that night?

11 A Yes, ma'am, they are.

12 MS. SHIPLEY: Your Honor, at this time the state
13 would seek to introduce 87 through 113 into evidence.

14 THE COURT: Okay. They will be admitted.

15 (State's Exhibit No. 87, photo, was
16 marked and entered.)

17 (State's Exhibit No. 88, photo, was
18 marked and entered.)

19 (State's Exhibit No. 89, photo, was
20 marked and entered.)

21 (State's Exhibit No. 90, photo, was
22 marked and entered.)

23 (State's Exhibit No. 91, photo, was
24 marked and entered.)

25 (State's Exhibit No. 92, photo, was

State v. Tremaine Wray & Taurus Watts 10/9/09

127

1 marked and entered.)
2 (State's Exhibit No. 93, photo, was
3 marked and entered.)
4 (State's Exhibit No. 94, photo, was
5 marked and entered.)
6 (State's Exhibit No. 95, photo, was
7 marked and entered.)
8 (State's Exhibit No. 96, photo, was
9 marked and entered.)
10 (State's Exhibit No. 97, photo, was
11 marked and entered.)
12 (State's Exhibit No. 98, photo, was
13 marked and entered.)
14 (State's Exhibit No. 99, photo, was
15 marked and entered.)
16 (State's Exhibit No. 100, photo,
17 was marked and entered.)
18 (State's Exhibit No. 101, photo,
19 was marked and entered.)
20 (State's Exhibit No. 102, photo,
21 was marked and entered.)
22 (State's Exhibit No. 103, photo,
23 was marked and entered.)
24 (State's Exhibit No. 104, photo,
25 was marked and entered.)

1 (State's Exhibit No. 105, photo,
2 was marked and entered.)

3 (State's Exhibit No. 106, photo,
4 was marked and entered.)

5 (State's Exhibit No. 107, photo,
6 was marked and entered.)

7 (State's Exhibit No. 108, photo,
8 was marked and entered.)

9 (State's Exhibit No. 109, photo,
10 was marked and entered.)

11 (State's Exhibit No. 110, photo,
12 was marked and entered.)

13 (State's Exhibit No. 111, photo,
14 was marked and entered.)

15 (State's Exhibit No. 112, photo,
16 was marked and entered.)

17 (State's Exhibit No. 113, photo,
18 was marked and entered.)

19 MS. SHIPLEY: And we'd also seek to introduce --

20 BY MS. SHIPLEY:

21 Q Did you prepare another diagram of the location of
22 where you found all the shell casings?

23 A Yes, ma'am, I did.

24 Q Is that depicted in State's No. 119?

25 A Yes, ma'am, it is.

State v. Tremaine Wray & Taurus Watts 10/9/09

129

1 MS. SHIPLEY: Your Honor, may I then introduce
2 State's 119 into evidence?

3 THE COURT: It's admitted.

4 (State's Exhibit No. 119, diagram,
5 was marked and entered.)

6 MS. SHIPLEY: Permission for the witness to step
7 down, Your Honor?

8 THE COURT: Yes.

9 BY MS. SHIPLEY:

10 Q Investigator Reed-Enzor, I'm going to have you go
11 through each photograph, since I've blurred the numbers, I'm
12 going to have you document on this board, 119, how you
13 labeled each shell casing.

14 Starting with State's No. 87, can you tell the jury,
15 and show that to them, what that depicts?

16 A This is photograph number 87. If I can orient myself
17 to it.

18 Q Can you see --

19 A I'm trying to orient myself to it. This would be
20 viewing it, actually looking this way down the street.

21 Q All right. And so on State's 87, do you see Items 1
22 and 2 on there?

23 A Yes, I do.

24 Q And is No. 88 a close up of Items 1 and 2.

25 A It is Items 1 and 2.

1 Q Okay. Show the jury where Items 1 and 2 are located on
2 your diagram?

3 A One and two are right here.

4 Q Okay. If you could just write that on there for the
5 jury.

6 A (Witness complies.)

7 Q Okay, 1 and 2. Now, I'm going to show you what's been
8 marked State's No. 89. Is that a close up of where you
9 found Items 1 and 2?

10 A That is correct.

11 Q And, again, these are shell casings?

12 A Yes, ma'am, they are.

13 Q And that's State's 89?

14 A Yes, ma'am.

15 Q State's 90, do you see what is behind, in the
16 background of shots, 1 and 2?

17 A Yes, it is. It's the car wash.

18 Q And so State's 1 and 2 would have been -- or Items 1
19 and 2 would have been in close proximity to the car wash?

20 A Yes, ma'am.

21 MS. SHIPLEY: Your Honor, may I publish No. 90 to
22 the jury?

23 THE COURT: Yes.

24 BY MS. SHIPLEY:

25 Q And what is depicted in State's No. 91 and 92?

State v. Tremaine Wray & Taurus Watts 10/9/09

131

1 A These are close up photographs of shell casings number
2 1, and shell casings number 2.

3 Q Okay.

4 MS. SHIPLEY: Your Honor, may I publish these to
5 the jury?

6 THE COURT: Yes.

7 BY MS. SHIPLEY:

8 Q What is depicted in State's No. 93?

9 A Evidence markers No. 3 and No. 4.

10 Q And do you see that on your diagram?

11 A Three and No. 4.

12 Q So on State's No. 119, if you could just write the
13 numbers in, please.

14 A (Witness complies.)

15 Q And what's the name of the street?

16 A Goodrich.

17 Q Goodrich.. Okay. And are those shell casings depicted
18 in State's 93 and 94?

19 A Yes, they are.

20 Q And in 95 and 96, are these close ups of 3 and 4?

21 A Yes. Those are close ups of shell casings in 3 and 4.

22 Q Okay.

23 MS. SHIPLEY: Your Honor, may I publish these to
24 the jury as well?

25 THE COURT: Yes.

1 BY MS. SHIPLEY:

2 Q Okay. If you could go to the next shell casings that
3 you located and counted?

4 A Number 5.

5 Q Okay. Do you see number 5 in State's 97?

6 A Yes, I do. Shell casing number 5.

7 Q Can you please just kind of -- that's number 5. All
8 right. And if you could stand back so the jurors could see
9 a little bit better.

10 Number 5, again, that's on the right side of the road,
11 correct?

12 A Yes, right side of the road, corner or Goodrich.

13 Q All right. And that's depicted in 97, correct?

14 A That's correct, in 97.

15 Q And is it depicted in 98?

16 A Yes, ma'am.

17 Q Okay. And is 99, what is that a picture of?

18 A It's a close up of shell casings in number 5.

19 Q Number 5. Okay. What is the -- I'm going to show you
20 State's 110, what does that depict?

21 A Item No. 6.

22 Q Okay. Do you see that on State's 119?

23 A I do.

24 Q If you could just clear that up for us. Thank you.

25 And I'm going to show you 100, 101, and 102. And ask you if

State v. Tremaine Wray & Taurus Watts 10/9/09

133

1 you could go through these and see if you recognize those
2 pictures.

3 A That would be number 6, and that's also number 6.

4 Q Okay. From a different vantage point.

5 A From a different vantage point.

6 Q And what's in the last photo?

7 A A close up of number 6.

8 Q And that's State's 102?

9 A State's 102, yes, ma'am.

10 Q What is the -- I'm going to show you 103, and ask you
11 if you recognize that?

12 A I do. That's evidence marker number 7.

13 Q And do you see that on your diagram?

14 A I do.

15 Q And do you -- is that depicted in State's 103, marker
16 7?

17 A Yes, ma'am.

18 Q And so far we've been in sequence; 1, 2, 3, 4, 5, 6, 7?

19 A Yes, ma'am.

20 Q The next one, State's 104, do you see another marker in
21 that photograph?

22 A I do. That is marker number 10.

23 Q And tell the jury why it skipped from number 7 to
24 number 10?

25 A Because often when I go from one crime scene to the

1 other, sometimes evidence markers are lost or left behind.

2 In this case some sequential numbers were lost, so I went to
3 the very next one I had. So that's why it skips from number
4 7 to number 10 in here.

5 Q And there's no shell casings numbers 8 and 9, you just
6 didn't have the markers?

7 A I just didn't have the markers.

8 Q Okay. And are numbers 10 and 7 depicted in 104?

9 A Yes, ma'am, 7 and 10 are both in that photograph.

10 Q And I'm going to show you State's 106. Is that also
11 numbers 7 and 10, just at a different vantage point?

12 A Yes, ma'am.

13 Q And again, are these all -- where are they -- in
14 proximity to -- on this road where are the majority of the
15 shell casings being found?

16 A Close to the car wash.

17 Q I'm going to show you State's 107, this is just a close
18 up of number 10, correct?

19 A That is correct.

20 Q I'm going to show you what's in 108. Do you recognize
21 that?

22 A Yes. Evidence marker number 11.

23 Q And where is that located on this diagram?

24 A Right here.

25 Q And if you could, just mark it with your marker. And

State v. Tremaine Wray & Taurus Watts 10/9/09

135

1 Is that shell casing number 11 also located in that picture,
2 109?

3 A It is, right here.

4 Q And what is in the background of that shell casing?

5 A It is the car wash.

6 Q And in State's 110, is that a close up of 11?

7 A Yes, ma'am, it is.

8 Q And I'm going to show you 111, State's 111, and ask you
9 if you see the following -- another marker?

10 A Yes, I do.

11 Q And what marker is that?

12 A It is marker 13.

13 Q Okay, and if you could mark that on your diagram. And
14 did you have a marker 12 anywhere?

15 A No, I didn't. That one was also lost.

16 Q And State's 111, 112, and 113, do those all go -- what
17 do those show pictures of?

18 A That is marker 13, and then a close up of evidence
19 marker number 13.

20 Q Okay. Thank you, ma'am. Please have a seat.

21 A Thank you.

22 Q So after you found the shell casings and labeled them
23 by number and photographed them, what is the next step for a
24 crime investigator, what do you do next with these items of
25 evidence?

1 A I collect them.

2 Q Okay. And how do you make sure that you know --

3 A Well, actually, before I collect them, I measure them.

4 Q You measured them. Okay. And what was the point of
5 measurement?

6 A I actually used triangulation. I took two frame points
7 of reference to triangulate their measurements, and then
8 measure them, and then we collected them.

9 Q Okay. So does State's No. 119, accurately depict the
10 shell casings --

11 A Yes, ma'am.

12 Q -- and their distance from one another?

13 A Yes, ma'am.

14 Q After you measured them, what did you do next?

15 A Then I collected them.

16 Q And how to you insure that you don't put shell casing
17 number six with shell casing number one?

18 A Package them separately in a small envelope with the
19 evidence marker on that small evidence envelope.

20 Q Okay. I'm going to ask you to look into the contents
21 of 122, and ask you if you recognize that; and I'm going to
22 ask you to do the same with --

23 A This I didn't package, but I was told that it was
24 repackaged.

25 Q I'm going to show you State's 122 or 121; do you see

State v. Tremaine Wray & Taurus Watts 10/9/09

137

1 your handwriting on that?

2 A Yes. This is my handwriting.

3 Q And did you initially package all the shell casings
4 together?

5 A Yes, I did.

6 Q And if you could go through the -- after analysis the
7 shell casings were put in that other envelope?

8 A Yes.

9 Q Tell the jury -- how did you package each shell casing?

10 A I packaged them individually with the evidence marker
11 on the outside of each envelope and sealed each envelope
12 individually, and then put each of those separately into
13 this envelope, specifically, sealed it, and submitted it.

14 Q Okay. Now, when you filled out your evidence form on
15 the front, tell the jury how you divided up the shell
16 casings?

17 A I divided them out into six 9 millimeter Winchester
18 Luger, and then I did evidence markers 10, 11, 13, 7, 3, 2,
19 and 5.

20 Q Okay. And so you said you put down six, was that the
21 correct count?

22 A Actually, no. I made an error. Actually, it was
23 supposed to be seven.

24 Q Okay. But on your label did you write down -- did you
25 write down seven shell casings?

1 A (No response.)

2 Q In other words, did you document that you had one, two,
3 three, four, five, six, seven shell casings in there, but
4 you just wrote down six --

5 A Right.

6 Q -- on the label?

7 A That's correct. I made an actual error on the number,
8 but I had the correct evidence marker number on there.

9 Q Okay. And again the -- for the benefit of the jury,
10 which items are labeled first on your evidence package?

11 A Number 10, 11, 13, 7, 3, 2, and 5.

12 Q Okay. That's one, two, three, four, five, six, seven
13 shell casings, correct?

14 A That is correct.

15 Q And tell the jury what make and model the shell casings
16 were?

17 A Winchester Luger.

18 Q Okay. And then what is the next item of evidence that
19 you labeled on your form?

20 A Three 9 millimeter RP Luger.

21 Q Okay. And which bullets were those, shell casing, I
22 mean?

23 A Number 6 --

24 Q Uh-huh. (Affirmative response.)

25 A -- 1 and 4.

State v. Tremaine Wray & Taurus Watts 10/9/09

139

1 Q Okay. So a total of three --

2 A Nine millimeter.

3 Q -- shell casings. And they were what kind of make and
4 model?

5 A RP Luger.

6 Q RP Luger?

7 A Yes, ma'am.

8 Q And, again, the caliber of all these shell casings is
9 what?

10 A Nine millimeter.

11 Q All right.

12 A And also submitted in the same were two projectiles.

13 Q Okay. I'm going to get to that next.

14 A Okay.

15 MS. SHIPLEY: Your Honor, at this time, the state
16 would seek to introduce the State's 122.

17 Your Honor, State's 122, for the record, contains shell
18 casings 3, 5, 7, 10, 11, and 13 in one envelope, and 2 in a
19 separate envelope.

20 BY MS. SHIPLEY:

21 Q And so --

22 MS. JOHNS: No objection.

23 MS. SHIPLEY: I'm sorry.

24 THE COURT: It's admitted.

25 (State's Exhibit No. 122, shell

1 casings, was marked and entered.)

2 MR. SWERLING: I don't have any objection. I'd ask
3 if she could open up one of those packages.

4 MS. SHIPLEY: She did --

5 BY MS. SHIPLEY:

6 Q Can you open --

7 MR. SWERLING: The one with the casings.

8 MS. SHIPLEY: Sure.

9 BY MS. SHIPLEY:

10 Q Go to State's 122 and look at any one of those shell
11 casings, and pull it out.

12 A (Witness complies.)

13 Q And that is the shell casing?

14 A That is the shell casing, yes, ma'am.

15 Q And in your experience as a crime scene investigator,
16 in case the jury is unfamiliar, what is a shell casing?

17 A The shell casing is a bullet that's been fired.

18 Q A bullet that's been fired?

19 A Yes, ma'am.

20 Q And all of those shell casings that you have labeled in
21 your envelope, are they photographed in all the pictures
22 that the jury just saw?

23 A Yes, ma'am.

24 Q Okay. Put it back in there.

25 A (Witness complies.)

State v. Tremaine Wray & Taurus Watts 10/9/09

141

1 MR. SWERLING: Can I see that one, Investigator.

2 MS. REED-ENZOR: This is number 13.

3 MR. SWERLING: Yeah. I just wanted to take a look
4 at it.

5 A I've broken the seal on that so I need to mark that.

6 BY MS. SHIPLEY:

7 Q That's okay.

8 A Okay.

9 MR. SWERLING: You can give me the bag, too. Just
10 keep it together. I just want to look at it.

11 BY MS. SHIPLEY:

12 Q You indicated earlier that you also collected, in
13 addition to these shell casings --

14 A Yes, ma'am.

15 Q -- that you located some projectiles?

16 A Yes, ma'am.

17 Q Can you tell the jury what projectiles are?

18 A Projectiles are the -- the -- I'm sorry, my brain is
19 not working all of a sudden. It's the end of the bullet
20 part, not the fired --

21 Q Not the casing?

22 A Yes. Not the casing. I'm sorry.

23 Q And a projectile, does that mean that the bullet has
24 been fired?

25 A Yes, ma'am.

1 Q Okay. I'm going to show you what's been marked as
2 State's 117, and ask you if you recognize this?

3 A Yes, ma'am. That's the other -- yes, ma'am.

4 Q And what is it?

5 A It's a sketch.

6 Q And did you prepare this sketch?

7 A Yes, ma'am, I did.

8 Q And in this sketch, did you document where the
9 projectiles that you found were located at the crime scene?

10 A Yes, I did.

11 MS. SHIPLEY: Your Honor, at this time state seeks
12 to introduce 117 into evidence.

13 BY MS. SHIPLEY:

14 Q And again, preparing this exhibit for the jury, the
15 letters got blurred, so if you would please step down --

16 MS. SHIPLEY: Your Honor at this time, we'd
17 introduce it into evidence.

18 MR. SWERLING: No objection.

19 THE COURT: Okay. It's admitted.

20 (State's Exhibit No. 117, diagram,
21 was marked and entered.)

22 BY MS. SHIPLEY:

23 Q If you could show the jury where you were able to find
24 the projectiles?

25 A (Indicating.)

State v. Tremaine Wray & Taurus Watts 10/9/09

143

1 Q Which one is that?

2 A It's projectile marked X.

3 Q Okay, and if you could just put an X next to that so we
4 won't forget that.

5 A (Witness complies.)

6 Q And the next projectile?

7 A I.

8 Q Okay. Thank you, ma'am. I'm going to show you State's
9 121. And if you could just go through the envelopes that
10 are in 121.

11 A Yes, ma'am.

12 Q Okay. What is in 121, which shell casings --

13 A Which ones are actually in here?

14 Q Yes, ma'am?

15 A Number 1, number 6, number 4, projectile, I India, and
16 X, X-ray.

17 MS. SHIPLEY: Your Honor at this time we seek to
18 introduce one envelope containing all of those shell casings
19 and projectiles in 121.

20 MR. SWERLING: No objection.

21 THE COURT: Admitted.

22 (State's Exhibit No. 121, shell
23 casings and projectiles, was marked and entered.)

24 BY MS. SHIPLEY:

25 Q I'm going to ask you to pull out India, I, India

1 projectile and show it to the jury.

2 A (Witness complies.)

3 Q Okay. And that is the projectile that comes out of a
4 bullet when it's fired?

5 A Yes, ma'am.

6 Q All right. Thank you. All right. And on State's 117,
7 I don't believe I went into, what is that a depiction of,
8 what is that a diagram of?

9 A That is the actual car wash, the first two stalls.

10 Q Okay. And where was the projectile I located?

11 A The second stall.

12 Q Excuse me. Projectile X, where was that located?

13 A X is the second stall.

14 Q Okay.

15 A We're talking about the stalls that are closest to H&J.

16 Q Okay. So stall number one is depicted at 115, over
17 here?

18 A Yes, ma'am.

19 Q And where is projectile I located; in stall number one?

20 A Stall number one.

21 Q Okay. So these were found at the car wash; correct?

22 A Yes, ma'am.

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

24 BY MS. SHIPLEY:

25 Q Okay, now after you photographed and collected the

State v. Tremaine Wray & Taurus Watts 10/9/09

145

1 shell casings from the road, you also indicated you found
2 projectiles in the car wash; correct?

3 A Yes, ma'am.

4 Q Did you take pictures of the car wash?

5 A Yes, ma'am.

6 Q And I'm going to show you what's already been
7 previously marked, State's 68 through 86, and ask you if you
8 recognize those?

9 A Yes, ma'am. I took those photographs.

10 Q And what do they all show?

11 A All photographs of the two stalls at the car wash.

12 Q Okay.

13 MS. SHIPLEY: Your Honor, at this time we seek to
14 introduce 68 through 86.

15 MS. JOHNS: No objection, Your Honor.

16 MR. SWERLING: No objection.

17 THE COURT: Okay. Those will be admitted.

18 (State's Exhibit No. 68, photo car
19 wash, was marked and admitted.)

20 (State's Exhibit No. 69, photo car
21 wash, was marked and entered.)

22 (State's Exhibit No. 70, photo car
23 wash, was marked and entered.)

24 (State's Exhibit No. 71, photo car
25 wash, was marked and entered.)

- 1 (State's Exhibit No. 72, photo car
- 2 wash, was marked and entered.)
- 3 (State's Exhibit No. 73, photo car
- 4 wash, was marked and entered.)
- 5 (State's Exhibit No. 74, photo car
- 6 wash, was marked and entered.)
- 7 (State's Exhibit No. 75, photo car
- 8 wash, was marked and entered.)
- 9 (State's Exhibit No. 76, photo car
- 10 wash, was marked and entered.)
- 11 (State's Exhibit No. 77, photo car
- 12 wash, was marked and entered.)
- 13 (State's Exhibit No. 78, photo car
- 14 wash, was marked and entered.)
- 15 (State's Exhibit No. 79, photo car
- 16 wash, was marked and entered.)
- 17 (State's Exhibit No. 80, photo car
- 18 wash, was marked and entered.)
- 19 (State's Exhibit No. 81, photo car
- 20 wash, was marked and entered.)
- 21 (State's Exhibit No. 82, photo car
- 22 wash, was marked and entered.)
- 23 (State's Exhibit No. 83, photo car
- 24 wash, was marked and entered.)
- 25 (State's Exhibit No. 84, photo car

State v. Tremaine Wray & Taurus Watts 10/9/09

147

1 wash, was marked and entered.)

2 (State's Exhibit No. 85, photo car

3 wash, was marked and entered.)

4 (State's Exhibit No. 86, photo car

5 wash, was marked and entered.)

6 MS. SHIPLEY: Your Honor, may Ms. Reed-Enzor step
7 down to show the jurors these photos?

8 THE COURT: Yes.

9 MS. SHIPLEY: Thank you.

10 BY MS. SHIPLEY:

11 Q Okay, if you could just stand in front of the jury and
12 speak up for the court reporter. Go through each photograph
13 and orient them as to your diagram?

14 A This photograph here --

15 Q And I'll hand them to you so you don't have to carry
16 all of them.

17 All right, what's in State's 68?

18 A This is a photograph right here, the two yellow posts
19 were right in front here. You can see these front two
20 evidence markers, and kind of an outline of the other
21 evidence markers, and you can also see evidence marker X, as
22 well.

23 Q And I notice that your markers in the car wash are
24 alphabetical; why is that?

25 A I was trying to differentiate between the other ones

1 that I had already collected in front.

2 Q So you wouldn't confuse them?

3 A Yes, ma'am.

4 Q And State's 69; what does that show?

5 A This is the same but a little bit further out, so you
6 can see a little bit better from a further standpoint.

7 Q All right. And State's 70; what does that show?

8 A More of this stall number one.

9 Q Okay.

10 A Also, you can see the void --

11 Q And we'll get to that. Did you notice anything on the
12 floor in that stall?

13 A Yes, I did.

14 Q What did you notice?

15 A I noticed bloodstains.

16 Q Bloodstains?

17 A Yes, ma'am.

18 Q And are those what the markers are marking?

19 A Yes. Bloodstains along with the projectiles.

20 Q With the two projectiles?

21 A Yes, ma'am.

22 Q And State's 71; what's that?

23 A The markers were marking the bloodstains. That's a
24 droplet of blood.

25 Q Okay. And that's B?

State v. Tremaine Wray & Taurus Watts 10/9/09

149

1 A B.

2 Q Okay. If you need the benefit of your diagram --

3 A Yeah, let me get that real quick.

4 Q -- because it's so blurry. Go ahead and get that.

5 Okay. Show the jury where B is located on your
6 diagram?

7 A (Witness complies.)

8 Q And it was one droplet of blood?

9 A Yes, ma'am.

10 Q And in State's 72; what other exhibits do you see in
11 your stall?

12 A Right here.

13 Q Okay. And is that blood?

14 A Yes, ma'am.

15 Q And do you see that in this exhibit, No. 73.

16 A I also do here.

17 Q Okay. And the next item that you documented; on 74 do
18 you see T?

19 A Yes.

20 Q Okay, right there. Go ahead and put a T next to it.

21 A (Witness complies.)

22 Q And, again, is that blood?

23 A Yes, ma'am.

24 Q State's 75; do you see U?

25 A Yes, blood.

1 Q Also blood. M?

2 A That was also a large pool of blood.

3 Q Okay. And you said M was a larger pool of blood?

4 A Yes, ma'am.

5 Q W?

6 A Yes, ma'am. That also appears to be blood.

7 MS. JOHNS: Your Honor, for the record, could the
8 solicitor state the exhibit number?

9 MS. SHIPLEY: Sure. 77 depicted W, Your Honor.

10 MS. JOHNS: Thank you.

11 MS. SHIPLEY: And 76 was M.

12 BY MS. SHIPLEY:

13 Q And State's 78; what does that show?

14 A That also shows a large pool of blood. Also appears to
15 be some transfer type stains.

16 Q Okay. And what do you mean by transfer type stains?

17 A Possibly from shoe impressions or someone appeared to
18 be walking through the blood.

19 Q And if you could just show the jury -- that is W right
20 there?

21 A That is W right there.

22 Q Okay. And what's depicted in 79?

23 A 79 is S, and it's also appears to be blood.

24 Q And can you show -- mark that with an S?

25 A (Witness complies.)

State v. Tremaine Wray & Taurus Watts 10/9/09

151

1 Q Thank you. State's 80?

2 A Is Q. Also appears to be a bloodstain.

3 Q Okay. State's No. 81?

4 A 81 is evidence marker N, and that's blood, and also a
5 transfer stain, which appears to be a shoe pattern.

6 Q Someone stepping in it?

7 A Stepping in blood and walking through it.

8 Q State's 82?

9 A 82 is also a large pool of blood.

10 Q Okay. What's the letter in there?

11 A It's L evidence marker.

12 Q Okay. And in State's 83; what does that show, what
13 vantage point does that show?

14 A That shows this part of the stall, the right side.

15 Q Okay. Now, if you would explain to the jury what you
16 were referring to as the void earlier?

17 A What I was referring to as a void was when you look at
18 this you see blood on the right side, you see blood on the
19 left side, but you do not see any blood in the center. What
20 that means is that something was sitting here during the
21 incident. And what I inferred is that it was possibly a
22 vehicle that was sitting here. So that's a void.

23 Q Okay. And State's 85; do you see that on your diagram?

24 A That is H.

25 Q Okay.

- 1 A And that is also blood.
- 2 Q And so on this diagram, so no one's confused, all of
3 the letters that are not circled are blood, and these two
4 items that are circled are the projectiles?
- 5 A Yes, ma'am.
- 6 Q Okay. State's 84 and 86, do you those depict -- what
7 do those depict?
- 8 A The projectiles.
- 9 Q Okay. And what in State's 84?
- 10 A I, India.
- 11 Q Okay. And that's --
- 12 A A projectile.
- 13 Q You show them there?
- 14 A I, and that's in stall number one.
- 15 Q And X, as in x-ray, is a projectile, and that's in
16 stall number two.
- 17 Q Okay. Thank you, ma'am. In State's No. 69, what
18 appears to be behind the car wash right here?
- 19 A Well, my vehicle that you can see, but you can also see
20 a fence and a wooded area.
- 21 Q Okay, if you don't mind -- you said a fence and a
22 wooded area?
- 23 A Yes, ma'am.
- 24 Q Okay. And then you said a wooded area; correct?
- 25 A Yes, ma'am.

State v. Tremaine Wray & Taurus Watts 10/9/09

153

1 Q And I'm going to show you State's 68, and see if you
2 can tell whether that fence appears to be secure?

3 A Yes, ma'am, it is secure.

4 Q Okay. Thank you. Now, after you photographed the car
5 stall, numbers one and two, and collected and diagramed
6 everything, can you tell the jury what it is that you did
7 with all of these swabs of blood?

8 A The blood?

9 Q Yes, ma'am.

10 A I took some swabs.

11 Q Okay. And do you recall specifically which ones you
12 took?

13 A Yes, ma'am. I took swabs of evidence of -- evidence L
14 and M. I took samples from both of those.

15 Q Okay. And so the jury understands, you said you took
16 swabs from L and M?

17 A That is correct.

18 Q And when you -- I'm going to show you State's 123, and
19 ask you if you can open that up and tell us what's inside of
20 it?

21 A (Witness complies.) Two swabs from evidence markers L
22 and M. And also evidence markers C, D, E, F, and G, and
23 they were collected from in front of 2820.

24 Q Okay, and so for purposes of this diagram, so that we
25 can complete it --

- 1 A Right.
- 2 Q -- you indicated that there was L and M?
- 3 A Yes, ma'am.
- 4 Q Is that correct?
- 5 A That is correct.
- 6 Q Put that marker here. So L and M were swabbed -- for
- 7 what purpose?
- 8 A I submitted to DNA to see if they knew whose blood it
- 9 was. If they had someone to compare it to.
- 10 Q For DNA?
- 11 A For DNA.
- 12 Q And then, again, on State's No. 117, I and X are the
- 13 projectiles?
- 14 A Yes, ma'am.
- 15 Q Okay. Now, you indicated -- you read off some other
- 16 letters, and using State's 115, can you show the jury where
- 17 it is that you noticed other blood swabbed?
- 18 A You want to know where I collected it from or --
- 19 Q Yes, ma'am?
- 20 A I collected it from C.
- 21 Q Okay, and do you see C on State's 115?
- 22 A I do.
- 23 Q And we don't need to fix -- is that blurry to you?
- 24 A No.
- 25 Q Okay.

State v. Tremaine Wray & Taurus Watts 10/9/09

155

1 A I collected C, Charlie, from D, E, F, and G.

2 Q All right. I'm going to show you what's already been
3 pre-marked, State's 52 through 67, and ask you if you could
4 please go through those and see if you took those pictures?

5 MS. SHIPLEY: And Your Honor feel free to interrupt
6 me once lunch arrives.

7 THE COURT: Sure.

8 MS. SHIPLEY: Thank you.

9 A Yes, ma'am, I took those pictures.

10 MS. SHIPLEY: Your Honor, at this time state seeks
11 to introduce numbers 52 through 67. And we have shared this
12 with defense, already.

13 MS. JOHNS: No objection, Your Honor.

14 MS. SHIPLEY: No objection.

15 Your Honor, this would be a perfect time to break if
16 you --

17 THE COURT: Okay. All right. Those will be
18 admitted.

19 (State's Exhibit No. 52, photo, was
20 marked and entered.)

21 (State's Exhibit No. 53, photo, was
22 marked and entered.)

23 (State's Exhibit No. 54, photo, was
24 marked and entered.)

25 (State's Exhibit No. 55, photo, was

1 marked and entered.)
2 (State's Exhibit No. 56, photo, was
3 marked and entered.)
4 (State's Exhibit No. 57, photo, was
5 marked and entered.)
6 (State's Exhibit No. 58, photo, was
7 marked and entered.)
8 (State's Exhibit No. 59, photo, was
9 marked and entered.)
10 (State's Exhibit No. 60, photo, was
11 marked and entered.)
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13 marked and entered.)
14 (State's Exhibit No. 62, photo, was
15 marked and entered.)
16 (State's Exhibit No. 63, photo, was
17 marked and entered.)
18 (State's Exhibit No. 64, photo, was
19 marked and entered.)
20 (State's Exhibit No. 65, photo, was
21 marked and entered.)
22 (State's Exhibit No. 66, photo, was
23 marked and entered.)
24 (State's Exhibit No. 67, photo, was
25 marked and entered.)

State v. Tremaine Wray & Taurus Watts 10/9/09

157

1 MS. SHIPLEY: Thank Your Honor.

2 THE COURT: Okay. Lunch is here. You-all can step
3 to your jury room. I remind you not to discuss the case.
4 You are to report back at 2:20.

5 (Jury out at 1:20 p.m.)

6 THE COURT: As for the witness, you'll be able to
7 step down, but I remind you that you're still under oath,
8 and you're not allowed to discuss your testimony.

9 Anything to be taken up?

10 MS. SHIPLEY: No, ma'am, Your Honor.

11 MR. SWERLING: Nothing, Your Honor.

12 THE COURT: Okay. That's fine.

13 MS. SHIPLEY: We'll start back at 2:20, okay.

14 (Court in recess for lunch break.)

15 (Court in session after lunch.)

16 MS. SHIPLEY: Your Honor, we have an expert who is
17 flying out on Sunday.

18 THE COURT: Okay.

19 MS. SHIPLEY: For the whole next week. So we'd
20 like to know if the defense would stipulate to the results
21 of the DNA. Ms. Johns indicated --

22 THE COURT: He's here today, though?

23 MS. SHIPLEY: Yes.

24 THE COURT: How long is her going to take?

25 MS. SHIPLEY: I don't know.

1 THE COURT: Okay.

2 MR. SWERLING: We would stipulate.

3 MS. SHIPLEY: If your Honor --

4 MR. SWERLING: That's fine. I'm comfortable --
5 we're going to stipulate. There's just some other areas of
6 blood that we want to make sure that at least have
7 information stipulated as well..

8 MS. SHIPLEY: Absolutely. The entire report.

9 THE COURT: Would you, because he's here, just like
10 to take him out of turn, just because --

11 MS. MCDUFFIE: He's not here.

12 MS. SHIPLEY: He's not here, presently, Your Honor.

13 THE COURT: Oh. I understand.

14 MS. SHIPLEY: He's on standby. I wanted to finish
15 Reed-Enzor --

16 THE COURT: Sure.

17 MS. SHIPLEY: Then we have Dr. Nichols that we've
18 got to call.

19 THE COURT: Right.

20 MS. SHIPLEY: And then wanted to see if we could
21 fit him in.

22 THE COURT: Okay, but you all agree on the
23 stipulation?

24 MS. SHIPLEY: You want to just put it on the
25 record.

State v. Tremaine Wray & Taurus Watts 10/9/09

159

1 THE COURT: Just put it on the record so that it's
2 clear to the jury.

3 MS. SHIPLEY: Your Honor, the results of the DNA
4 report that was issued by Dr. Grayson Amick with the
5 Richland County Sheriff's Department indicates that no --
6 that a DNA is from an unknown male on Item labeled B on
7 State's Exhibit 115, and that is an I Love Jesus baseball
8 cap. On a broken piece of cell phone, which is not labeled
9 on the diagram with a letter, but it clearly documented on
10 State's 115, that is a piece of a cell phone and no DNA was
11 extracted from that. Then we have Item No. C, which is
12 right in front of the door to the H&J club and that one was
13 no DNA profile developed. Then Items D, E, F, G; those are
14 blood droplets in front of the business depicted on State's
15 115. Those are all DNA profile developed from an unknown
16 male. And then lastly, Items labeled L and M, which are
17 blood in stall number one of State's 115, are the DNA match
18 to Demauria Johnson, our victim.

19 Do y'all agree with that?

20 MS. JOHNS: I do. I have no objections.

21 MS. SHIPLEY: Okay.

22 THE COURT: Anything you wish to add for
23 stipulation, Ms. Johns? You need to verbally speak yes.

24 MS. JOHNS: (No response.)

25 MR. SWERLING: Anything you want to add?

State v. Tremaine Wray & Taurus Watts 10/9/09

160

1 THE COURT: Anything you want to add to the
2 stipulations, Ms. Johns? You just shook your head. I need
3 a verbal answer.

4 MS. JOHNS: No, Your Honor.

5 THE COURT: Mr. Swerling?

6 MR. SWERLING: No. She covered it. Ms. Shipley,
7 we talked --

8 THE COURT: Okay. That's fine. All right. I just
9 wanted to stipulate on the record now so y'all won't have
10 any questions later.

11 Okay.

12 MR. SWERLING: Judge, the other issue that we had
13 talked about at side-bar, and didn't get on the record, was
14 when Capt. Smith was testifying about information he gave
15 all the resources for the construction and repair of the
16 bridge in that area, we object that it was hearsay.

17 THE COURT: Okay.

18 MR. SWERLING: And the objection was overruled, so
19 you allow us to put that on the record at the appropriate
20 time.

21 THE COURT: Okay. Anything else?

22 MR. SWERLING: One other thing, Mr. Wray, I don't
23 know who was bringing him down the hall, but he said that
24 there were two jurors coming down the hall and saw him
25 walking down the hall in restraints.

State v. Tremaine Wray & Taurus Watts 10/9/09

161

1 MS. SHIPLEY: Your Honor, the bailiff that was
2 outside actually wouldn't even let me in the hallway until
3 the jurors cleared to the jury room. And then as I was
4 walking down I did see them being led out of the little
5 elevator room, and I want like that, and apparently it was
6 cleared, that the bailiff had already gotten the juror in.

7 THE COURT: Okay.

8 MS. SHIPLEY: Maybe we should ask the bailiff.

9 THE COURT: We have to be extremely careful around
10 the courthouse.

11 MR. SWERLING: He said it was after that, actually.
12 He remembers seeing two jurors. One was an Afro-American
13 woman with a white purse.

14 MS. SHIPLEY: I don't know about that.

15 MR. SWERLING: And some braids in her hair.

16 THE COURT: Okay. One moment.

17 MR. SWERLING: Judge, we're trying --

18 THE COURT: Sure. I'm trying to think about it,
19 too.

20 MR. SWERLING: Could we find out who the deputy was
21 and what they saw?

22 THE COURT: Right. Okay.

23 All right. And just state your name for the record?

24 OFFICER WARDLEY: Officer Wardley. As we come
25 around and come down the hallway --

1 THE COURT: And when you say come down the hallway

2 --

3 OFFICER WARDLEY: -- come down the elevator.

4 THE COURT: -- what area?

5 OFFICER WARDLEY: From the holding cell.

6 THE COURT: Okay.

7 OFFICER WARDLEY: It was cleared. The bailiff and
8 on one else was in the hallway. As we get here to the door,
9 within 10 or 20 feet of the door --

10 THE COURT: And you're talking about the door to
11 the courtroom?

12 OFFICER WARDLEY: -- the door to the courtroom,
13 two jurors turned the corner. I'm sure they seen the
14 jurors, but I'm not sure whether or not the jurors seen
15 them.

16 THE COURT: Okay. And I appreciate that. That's
17 fair enough.

18 MR. SWERLING: Just so -- the reason -- just to get
19 it on the record. Did one of the bailiffs see it, as well?

20 MS. SHIPLEY: He's outside.

21 THE BAILIFF: From what I could see, they were
22 standing up against the wall. This door was standing open
23 and I'm not sure they could even see it. They could see
24 their head or something, but they couldn't see anything
25 else, because they were way down the hall, this door was

State v. Tremaine Wray & Taurus Watts 10/9/09

163

1 open, and the two defendants were against the wall, here.

2 So the door would shield them.

3 MR. SWERLING: The door would?

4 THE BAILIFF: This door would shield them, because
5 it was standing open.

6 THE COURT: Okay.

7 MS. JOHNS: And also, Your Honor, I would just like
8 to put on the record that the jurors door was open during
9 the last few minutes of their lunch, the last 20 minutes,
10 actually.

11 THE COURT: The last 20 minutes of their lunch?

12 MS. JOHNS: 20 minutes that doors been open. I
13 witnessed that as well, because I was back there.

14 THE COURT: Well, that part, I did let them go out
15 and have comfort needs. I told them we would all have lunch
16 and we were confined, but I didn't make them stay in their
17 room.

18 MS. JOHNS: Well, the door was open.

19 THE COURT: Okay.

20 MS. JOHNS: And usually the door is closed, but the
21 door was open.

22 THE COURT: Okay.

23 MS. JOHNS: And that was probably a problem.

24 THE COURT: Okay.

25 MS. JOHNS: And --

1 THE COURT: Well, let me say this before we deal
2 with the ruling. As to the deputy staff, obviously, they
3 have to make, you know, very hard precautions. It's a
4 little more difficult when we're in this courtroom because
5 when we're in 2A we just have an exit door. But we need to
6 make sure that, obviously, there is no indication of the
7 defendants being restrained or incarcerated. I know you all
8 are calling each other down the hall, but you also need to
9 have somebody at the door that the jurors come through, and
10 they cannot come in, period, at all, until there's been a
11 clearance one way or the other. So you don't even have a
12 stop/start situation in that regard.

13 During the breaks, the ones that I've allowed, smokers
14 or whoever to leave out, I do know the door is open in that
15 regard, but I think Ms. Johns might be just trying to make
16 sure that -- we know there's a lot of courthouse talk that
17 just comes along the halls so the jurors door needs to be
18 closed regardless of who's on one side of the other of the
19 juror door, because there's just things said in the hall,
20 just generally, it could be about another case, but they
21 don't need any extraneous information that they might then
22 bring into this matter.

23 MR. SWERLING: Your Honor, just so -- I know the
24 deputy very well.

25 THE COURT: Sure.

State v. Tremaine Wray & Taurus Watts 10/9/09

165

1 MR. SWERLING: For a long time. I'm sure this was
2 a totally inadvertent situation and nobody obviously
3 intended for that to happen. I know him very well.

4 I guess I have to preserve the record for my client --

5 THE COURT: Sure.

6 MR. SWERLING: -- and the fact that he has been
7 seen not only in the back with deputies, but in shackles.
8 The possibility exist that they know he's in custody and
9 that would prejudice them, and I move for a mistrial.

10 If Your Honor denies that, I would probably ask the
11 Court to give some sort of instruction. But in the first
12 instance I would ask for that, because we've been trying to
13 jealously guard that.

14 THE COURT: Absolutely. And we've got the
15 information from deputies and bailiffs and essentially the
16 courthouse personnel, but the indication is just not knowing
17 whether the juror saw that and the only way to know that is
18 to question the jurors, and, of course, that brings the
19 information to light. The other thing is that in
20 questioning them that, of course, the court could instruct
21 that when you have a person who is on trial the court has to
22 maintain separateness between the parties and that is why
23 the parties are escorted by deputies, and let them know that
24 that's our procedure.

25 MR. SWERLING: Through the back hall?

1 THE COURT: Through the back hall.

2 MR. SWERLING: That is exactly what we were just
3 talking about.

4 THE COURT: Yeah. Through the back hall and that
5 is our procedure in court as to any defendant. Just to let
6 them know that that is a process by which the court does,
7 that they are in plain clothes. I don't know that anybody,
8 again, saw the leg restraints. We can't know that unless we
9 ask the jurors and mention that issue.

10 MR. SWERLING: Judge, may we do this. If you're
11 going to deny the motion. Let the jury come out, see if he
12 can identify which one it was and then at the next break to
13 inquire of those jurors whether they saw that, and then just
14 admonish them not to discuss that with the jury, and that it
15 should never enter into their deliberations.

16 THE COURT: Sure.

17 MR. SWERLING: And then explain to the entire jury
18 that if they see the defendants in the back hall it's only
19 because the procedure we use in the court here to separate
20 the parties.

21 THE COURT: Okay.

22 MS. SHIPLEY: And, Your Honor, if I may. There was
23 two jurors; is that correct, Mr. Wray?

24 MR. WRAY: Yes.

25 MS. SHIPLEY: We do also have two alternates.

State v. Tremaine Wray & Taurus Watts 10/9/09

167

1 MR. SWERLING: Yeah. I mean --

2 THE COURT: In terms of your saying that --

3 MS. SHIPLEY: Yes, ma'am. A mistrial would be just
4 extreme for -- if we can, first of all, figure out whether
5 they saw anything.

6 THE COURT: Right.

7 MS. SHIPLEY: And rather than declaring a mistrial
8 to replace them.

9 THE COURT: All right. Right now we'll proceed
10 along to give your client to identify them confidentially to
11 you. Okay.

12 MS. JOHNS: And, Your Honor, I join that and I will
13 also take the court's instruction on the identify.

14 THE COURT: All right. Thank you all.

15 Jurors, please.

16 MS. MCDUFFIE: Your Honor, before we bring the
17 jurors in, just for the record. State's Exhibit No. 150,
18 the CD we have replaced it with the CD with only one hole
19 that was played in evidence.

20 THE COURT: Okay. Thank you. Make sure that one's
21 moved in in case the other one didn't get in.

22 COURT REPORTER: That was State's Exhibit No. 150?

23 MS. SHIPLEY: Your Honor, can we not worry about
24 150 until we're sure we've got it right?

25 THE COURT: Sure.

1 Okay. Parties ready?

2 MS. SHIPLEY: Yes, ma'am.

3 THE COURT: Jurors, please.

4 MS. SHIPLEY: Your Honor, you mind if I also go
5 through the stipulation of the chain of custody and then you
6 explain stipulation.

7 THE COURT: Not at all.

8 MS. SHIPLEY: Thank you.

9 (Jury in at 2:50 p.m.)

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

11 THE COURT: Thank you.

12 MS. SHIPLEY: Thank you, Your Honor. Please the
13 Court.

14 PATRICIA REED-ENZOR - CONTINUED DIRECT EXAMINATION
15 BY MS. SHIPLEY:

16 Q Investigator Reed-Enzor, I'm going to ask you if you
17 could look through State's 52 through 67, which are in
18 evidence, and publish them to the jury one at a time, and
19 explain what each photograph depicts on your diagram. If
20 you could just publish it when you're done. Pass them the
21 photo. And please refer to each exhibit by their number.

22 A State's Exhibit No. 52; is a photograph of the front of
23 the club. That will just be a frontal view of the club.
24 State's Exhibit No. 53; is a close up photograph of the club
25 front right corner. This area right here. State's Exhibit

State v. Tremaine Wray & Taurus Watts 10/9/09

169

1 No. 54; photograph of this vehicle at the corner of the
2 building. No. 55 is a closer up photograph of the gray
3 Mercury. No. 56; shows evidence marker B. Right here,
4 which is a ball cap. It has I heart or I Love Jesus ball
5 cap. And this is a close up photograph of evidence marker
6 B. This is also evidence marker 58; a close up photograph
7 frontal picture of an blue Astro Van and also evidence
8 marker D and C. I believe are -- bloodstains. And this is
9 No. 59; is a close up of evidence marker C. Number 60 is
10 going to be a closer up of C. State's Exhibit 61; evidence
11 marker D, a closer up view of the bloodstain. State's
12 Exhibit 62; is evidence marker E, right here, which is also
13 a bloodstain. State's Exhibit 63; closer up view of
14 evidence marker E, bloodstain. State's Exhibit 64; which is
15 evidence marker F, which was recovered right here. It is
16 also a bloodstain. Evidence marker 65 is going to be a
17 close up of the same bloodstain. That is marker F. State's
18 Exhibit 66 and 67; evidence marker G, which was right on the
19 other side of the brick wall. It's also a bloodstain.

20 Q Thank you, Investigator Reed-Enzor. Now, I noticed on
21 your diagram, State's 115, that you have some keys on the
22 left side?

23 A Yes.

24 Q Can you explain for the jury that that mark each letter
25 of what each letter depicts in the diagram?

1 A Yes, ma'am, it does.

2 Q I also noticed some numbers next to, for instance, B,
3 baseball cap, 50.1/37.1?

4 A Yes, ma'am.

5 Q What are those?

6 A Those are measurement reference points. When I
7 collect, before I collected these items I marked them with
8 the different evidence markers and then I used two points of
9 reference. And then I measured for each one. Triangulation
10 is what we call it in crime scene. It's just that I have to
11 actually go back to the crime scene even this many years
12 later, I can take those evidence markers, get out my
13 measuring device and actually place those evidence markers
14 exactly back where they were those years later. Exactly to
15 the point where I collect them from, based on those
16 measurements.

17 Q Okay. And so next to each item of evidence depicted in
18 State's Exhibit No. 115, do you have those measurements
19 listed?

20 A Yes, I do.

21 Q Okay. Thank you.

22 A You're welcome.

23 Q Now, Investigator Reed-Enzor, can you tell the jury
24 whether or not you swabbed any of the A, B, C, D, E, F, G,
25 or L, M, for DNA?

State v. Tremaine Wray & Taurus Watts 10/9/09

171

- 1 A Yes, ma'am, I did. I swabbed C, D, E, F, and G.
- 2 Q Okay. So on State's 115, C, D, E, F, and G?
- 3 A Yes, ma'am.
- 4 Q And on State's 117, did you swab any on here?
- 5 A Yes, ma'am, I did. I swabbed L and M.
- 6 Q Okay. And do you see those on this diagram?
- 7 A Yes, ma'am.
- 8 Q And I'm going to get your to write down next to that,
- 9 DNA, so we'll remember that.
- 10 A (Witness complies.)
- 11 Q Maybe in parenthesis below it?
- 12 A (Witness complies.)
- 13 Q Can you see? I'm sorry?
- 14 A Yeah, I can't.
- 15 Q Okay. And if you could do the same with C, D, E, F,
- 16 and G, that you swabbed for DNA?
- 17 A. (Witness complies.)
- 18 Q Thank you, ma'am. Now, I'm going to show you what's
- 19 been marked as State's 123 at this time and ask if you
- 20 recognize the contents?
- 21 A Yes, ma'am, those are the swabs I collected on the
- 22 scene.
- 23 Q And can you explain to the jury how it is that you
- 24 collect the DNA swab?
- 25 A Yes, ma'am.

1 Q And you're welcome to open it up to show them how you
2 do it?

3 A I won't open it all the way because blood is a
4 hazardous material, I guess you could say. But when you're
5 out on the crime scene you're either dealing with a wet
6 blood or -- blood can either be wet or if it sat for a while
7 it could be dry. If it's wet it's very simple how you do
8 it. Inside this box is kind of like a q-tip, like at your
9 doctor's office if you have strep. Those long q-tips with
10 the wooden thing. They make you gag. Well, you take the
11 end if it's wet blood, you dab it in the blood. You try not
12 to talk or anything else so you don't put your DNA in it,
13 because you don't want your DNA mixed in with somebody else,
14 because that just wouldn't be professional and you don't
15 want to do that. So you dip it in -- you stick in the box,
16 you allow it to dry, and you put it in a paper type envelope
17 like this, and you submit it for DNA. If it would be wet --
18 excuse me. If it's dry you have a distilled sterile water
19 solution that you would actually put droplets of water on
20 the end of your q-tip, and then you would just gently rub it
21 into the dried blood and the you would gently moisten the
22 blood and then you would put this in the field box so it
23 stays -- without cross-contamination, is what we call it.
24 And then you would submit it.

25 Q And do you label those boxes as to which area

1 everything was collected?

2 A Yes, I do. On here I marked C, this is what I
3 collected from C. I dated it, put my initials on it.

4 Q And do you -- this is probably a stupid question, but
5 do you wear gloves when you process a scene?

6 A Absolutely. Yes.

7 Q And what's the purpose of you wearing gloves?

8 A Well, first of all, I don't know if there's any blood
9 -- I don't want to get something on -- and I also don't want
10 to get my DNA onto contaminate the sample so it's not a good
11 sample.

12 Q Okay. And you indicate you put each q-tip in its own
13 box so that you won't cross-contaminate?

14 A That is correct.

15 Q Did you do that for every single item on this diagram,
16 as well as Items L and M on State's 117?

17 A Yes, ma'am, I did.

18 Q Okay. And then once you put them in the boxes, you
19 indicated you put them in an envelope?

20 A Yes.

21 Q All right. Then on State's 123, the actual main
22 envelope, did you document what you put in there?

23 A Yes, I did.

24 Q And explain to the jury the procedures that you have to
25 follow when you entered these items into evidence at your

1 property room at the Sheriff's Department?

2 A You have to place the envelope -- first of all, you
3 have to address the envelope stating specifically what you
4 have, so evidence when they get it they can itemize -- so
5 they know what they have. So before you can actually enter
6 it. You have to place it in an envelope, you seal it, you
7 date it, and put your initials on it. No one else can
8 tamper with it. Before they can even receive it into
9 evidence they have to make sure it hasn't been tampered
10 with. So it's in my chain of custody, meaning no one else
11 has touched it but me. Then I place it either in a drop box
12 that is secure that no one else can get into or I have to
13 actually physically hand it to someone in evidence and they
14 take control of it.

15 Q Okay, and on this particular item --

16 MS. SHIPLEY: Your Honor, at this time the state
17 seeks to introduce 123 into evidence.

18 MR. SWERLING: No objection.

19 MS. JOHNS: No objection.

20 THE COURT: It's admitted.

21 (State's Exhibit No. 123, evidence
22 envelope with DNA swabs, was marked and entered.)

23 MS. JOHNS: Thank Your Honor.

24 BY MS. SHIPLEY:

25 Q And specifically on 123, how did you fill out the

State v. Tremaine Wray & Taurus Watts 10/9/09

175

1 packaging?

2 A I completed it, and I submitted it on July 1, at 5:00
3 o'clock in the morning, and I put it by drop box. There's a
4 place to check on here so that we will know how we did it.
5 I checked on here by drop box.

6 Q And if I may handle it just a minute. State's 123, do
7 you see your initials on the tape?

8 A I do.

9 Q Okay. And then once you entered it into evidence does
10 Richland County Sheriff's Department have their own DNA lab?

11 A Yes, they do.

12 MS. SHIPLEY: And, Your Honor, at this time, the
13 state would like to put on the record that all the parties
14 have stipulated that the chain of custody for State's 123,
15 the DNA swabs, and also State's 122, and 121, the
16 ballistics, that the chain of custody was properly
17 maintained by the Richland County Sheriff's Department.

18 MS. JOHNS: That is correct, Your Honor.

19 MR. SWERLING: Yes.

20 THE COURT: Okay.

21 MS. SHIPLEY: And, also, Your Honor, I would like
22 to put this on the record at this time, the results of the
23 DNA analysis, as the parties have stipulated to the results.

24 THE COURT: Okay.

25 MS. JOHNS: No objection, Your Honor.

1 THE COURT: Okay.

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

3 BY MS. SHIPLEY:

4 Q And before I forget, you indicated that you collected a
5 broken cell phone, and an I Love Jesus baseball cap?

6 A Yes, ma'am.

7 Q I'm going to show you State's 137, do you recognize
8 that?

9 A Yes, ma'am, I do.

10 Q What is it?

11 A The ball cap, the I Love Jesus baseball cap and also I
12 collected a broken piece of a Motorola cell phone, also.

13 Q Okay. Thank you. And are those items depicted in the
14 photos we've already shown the jury?

15 A Yes, ma'am.

16 Q Okay.

17 MS. SHIPLEY: Your Honor, at this time the state
18 seeks to introduce 137 into evidence.

19 MR. SWERLING: No objection.

20 MS. JOHNS: No objection.

21 THE COURT: So entered.

22 (State's Exhibit No. 137, baseball
23 cap and piece of cell phone, was marked and entered.)

24 MS. SHIPLEY: Your Honor, at this time, if I may
25 tell the jurors the conclusion of the DNA results?

State v. Tremaine Wray & Taurus Watts 10/9/09

177

1 THE COURT: Certainly.

2 MS. SHIPLEY: According to the DNA expert at the
3 Richland County Sheriff's Department, the baseball cap, I
4 Love Jesus, which I believe is number B?

5 A Yes. It's B.

6 MS. SHIPLEY: DNA is from an unknown male.

7 According to the report, the broken piece of cell phone, no
8 DNA extracted. According to the DNA report, Item C, no DNA
9 developed. No DNA profile developed. Marker D, DNA profile
10 developed is from an unknown male. Marker E, DNA profile
11 developed is from an unknown male. Marker F, DNA profile
12 developed is from an unknown male, and item marker G, DNA
13 developed is from an unknown male.

14 And on State's 117, marker L, DNA matches Demuria
15 Johnson. Marker M, DNA matches Demuria Johnson.

16 Your Honor, may I now introduce the summary, state's
17 156, into evidence?

18 THE COURT: Yes.

19 MS. JOHNS: No objection.

20 (State's Exhibit No. 156, DNA
21 analysis summary, was marked and entered.)

22 BY MS. SHIPLEY:

23 Q Now, you're not a ballistics expert; correct?

24 A That is correct.

25 Q So when you collected the shell casings and the

1 projectiles, does the Richland County Sheriff's Department
2 have its own ballistics lab?

3 A Yes, ma'am.

4 Q And are you familiar with the analyst that analyzed the
5 evidence that you collected from this crime scene?

6 A Yes.

7 Q And who would that be?

8 A David Collins.

9 Q David Collins?

10 A Yes, ma'am.

11 Q Now, based on -- once you concluded photographing and
12 collecting all of that, tell the jury how long this whole
13 process takes?

14 A It took several, several hours.

15 Q How long do you think you were out at the scene?

16 A Until a little bit before 9:00 o'clock in the morning.

17 Q And, again, just remind what time you got there?

18 A At 5:00 o'clock in the morning.

19 Q Now, do you recall while you were out on the scene
20 giving instruction to a deputy who had made a stop with two
21 suspect, what to do with those two suspects, as far as
22 gunshot residue is concerned?

23 A Yes. I told them to -- yes, I told them to secure
24 their hands to make sure they did not wash their hands. To
25 secure them as best as possible and that I would be up there

State v. Tremaine Wray & Taurus Watts. 10/9/09

179

1 as soon as I could.

2 Q And do you recall telling them to bag their hands, if
3 they had bags?

4 A Yes.

5 Q And in the alternative, if they did not have bags, what
6 did you instruct them to do?

7 A To handcuff them.

8 Q And what else; not to wash their hands?

9 A Yeah, not to wash their hands.

10 Q Did you get an opportunity to do a gunshot residue kit
11 on those two suspects?

12 A Yes, I did.

13 Q And can you tell the jury who those suspects are?

14 A Yes. An Earl Greene and a Luther Landrum.

15 Q And I noticed you mis-spelled the name on your report.
16 How did you spell it on your report?

17 A A Lether (sp) Landrum.

18 Q And what did you mean to type?

19 A Luther Landrum.

20 Q Luther?

21 A Yes.

22 Q And tell the jury how you go about performing a gunshot
23 residue kit on a person's hands. They've heard about cars,
24 what about hands?

25 A Hands. We have a gunshot residue kit that's put

1 together that SLED provides for us. It includes tabs that
2 are like sticky pads and then we have chemical testing.
3 They are plainly labeled what we are supposed to do with
4 them. The little sticky tabs are marked front of the hand,
5 back of the hand, generally. You take the tabs and you just
6 dab the top of the hands, the palm of the hand, another
7 separate tab. The back of the hands, the palms of the
8 hands. You do that with both sides, and then there's a
9 chemical that you put on q-tips, short q-tips, and you do
10 that on either side -- well, you also have a control, which
11 you pick a certain body part that basically under the
12 circumstances of what it was, would not have been exposed to
13 any gunshots. I typically, always pick the right side of
14 the body. If we're doing hands, I try to do the calf. You
15 know, whatever body part that would be the control, and I
16 would swab that with the same chemical solution and submit
17 those.

18 Q And are you a gunshot residue expert?

19 A No, ma'am.

20 Q Do you know why it's necessary to get a control swab?

21 A Just -- no, not really.

22 Q And you didn't analyze the gunshot residue kits in this
23 case?

24 A No, ma'am.

25 Q Okay. I'm going to show you what's been marked State's

State v. Tremaine Wray & Taurus Watts 10/9/09

181

1 Exhibit No. 1, and ask you if you can identify the contents
2 in that package?

3 A These are the kits that I submitted and the envelope
4 that I submitted to evidence.

5 Q And do you see your handwriting on that?

6 A Yes, ma'am, I do.

7 Q What time did you fill it out, put it into evidence?

8 A On July 1, 2007 at 5:00 o'clock in the morning, by drop
9 box.

10 Q Drop box. And what time did you actually collect the
11 GSR kit?

12 A I collected it at 9:00 o'clock in the morning on June
13 30th.

14 Q June 30th at 9:00 a.m.?

15 A Yes.

16 Q Can you tell the jury your experience on a time limit
17 for a GSR kit?

18 A They prefer it to be done within six hours of the
19 incident.

20 Q Okay. And who's they?

21 A Experts in the field.

22 Q Okay. And so you collected it at 9:00 a.m.?

23 A Yes, ma'am.

24 Q Okay, and if you could pull out those contents, please?

25 A (Witness complies.)

1 Q And demonstrate to the jury, if you couldn't mind how
2 you collected the samples from each suspect? And by the
3 way, did you fill out the information on the outside of the
4 GSR kits?

5 A Yes, ma'am, that's my handwriting.

6 Q And did you put a case number and so forth?

7 A Yes, ma'am, I did.

8 Q And when you collect the GSR kit and put it in the
9 envelope what are you required to do?

10 A Also seal the outside envelope with the red tape.

11 Q The red tape. Does the red tape come with the kit?

12 A Yes, it does.

13 Q And what are you required to do when you seal it with
14 red tape?

15 A Initial it.

16 Q Initial it. And did you do so in this case?

17 A Yes, ma'am.

18 Q Okay. And if you could demonstrate for the jury the
19 contents.

20 A SLED takes out the chemical q-tip part --

21 Q Okay.

22 A -- but I can demonstrate the sticky tab part.

23 Q And which one are we handling right now?

24 A Landrum, the one I mis-spelled the first name, I have
25 Lether, L-e-t-h-e-r, instead of Luther. As I was saying, it

State v. Tremaine Wray & Taurus Watts 10/9/09

183

1 basically is -- it says right back, right palm, left palm,
2 left back. You would -- this is my left hand. Looks like a
3 sticky little part here. You would take the left back of
4 your hand, and you would take it and just dab it all over
5 the back of the hand. I mean, I go from about right here
6 all the way up and just keep coming. I mean, I dab it all
7 over the back of the hand.

8 Q And do you do so for each --

9 A Each.

10 Q -- the right palm and --

11 A Yes. And like I do with any other thing, any other
12 collection, I wear gloves so there's no cross-contamination
13 between anything I touch before I touch the other person.
14 And I do that with all four of the sticky tabs, and then you
15 go back and you use the chemical solution, and there's
16 little vials in which you place that.

17 Q With the chemical solution?

18 A With the chemical solution. And then you do the
19 control swab.

20 Q Okay. And you said SLED, obviously, already analyzed
21 this, correct?

22 A Yes.

23 Q And how do you know they already analyzed it?

24 A It's marked with SLED tape with their evidence, SLED
25 Forensic Service with their date and their initial.

1 Q And there's a lab number on there?

2 A There's a lab number.

3 Q What's the lab number?

4 A L07-09-678#9.

5 Q So that's Item No. 9 for SLED?

6 A Yes.

7 Q Okay. If you could just put everything back together.

8 And so Luther Landrum's GSR is No. 9, according to SLED, for
9 their records?

10 A For their records.

11 Q And what is Earl Greene's?

12 A He's No. 8.

13 Q No. 8. Okay. And, again, do you see your initials on
14 the red tape that comes with the kit?

15 A I do.

16 Q And while this was in your possession and custody and
17 control, did you tamper with it in any way?

18 A No, ma'am.

19 Q And what time did you put it in the Richland County
20 evidence room and what date?

21 A On July 1st.

22 Q And explain for the jury what -- where these items were
23 from 9:00 o'clock June 30, 2007 until 5:00 a.m. July 1,
24 2007?

25 A In my evidence locker at the Richland County Sheriff's

State v. Tremaine Wray & Taurus Watts 10/9/09

185

1 Department in our forensic lab.

2 Q And is your forensic lab secure?

3 A Yes, ma'am, it is.

4 Q And is your locker secure?

5 A Yes, ma'am.

6 Q And who are the only people who have access to your
7 locker?

8 A Myself and my immediate supervisor.

9 Q And when you log that into evidence did it appear to be
10 tampered with in any way?

11 A No, ma'am.

12 Q And does it indicate who received it from the drop box?

13 A Yes, it does. Curtis Burnett on July --

14 Q The same date?

15 A Same date, about three hours later, 8:00 o'clock in the
16 morning.

17 Q Okay. From the drop box?

18 A From the drop box.

19 MS. SHIPLEY: Your Honor, at this time the parties
20 have stipulated as to the internal chain of custody. We've
21 put Tena Goff's testimony on record that she took that item
22 SLED Nos. 8 and 9 to SLED, which is --

23 BY MS. SHIPLEY:

24 Q By the way, what is Richland County's number?

25 A Richland County's case number?

1 Q The item number for Richland County?

2 A 20 and 21.

3 Q Who's is 20?

4 A 20 is Earl Greene.

5 Q And 21?

6 A Is Lether, Luther Landrum.

7 Q Okay. Thank you.

8 MS. SHIPLEY: -- and so the parties stipulate to
9 the chain.

10 THE COURT: Okay.

11 BY MS. SHIPLEY:

12 Q And just so you can explain to the jury, what is chain
13 of custody?

14 A Chain of custody just states that it was in my
15 possession first, and then it goes to another person's
16 custody so we can explain who had their hands on it.

17 Q And so you have identified the contents, your initials.

18 MS. SHIPLEY: And so at this time we would
19 introduce State's No. 1 into evidence.

20 MS. JOHNS: No objection.

21 THE COURT: Okay. Admitted.

22 (State's Exhibit No. 1, GSR kits
23 for Landrum and Greene, was marked and entered.)

24 MS. SHIPLEY: Beg the Court's indulgence?

25 THE COURT: Certainly.

State v. Tremaine Wray & Taurus Watts 10/9/09

187

1 MS. SHIPLEY: Thank you. No further questions,
2 Your Honor.

3 THE COURT: Okay.

4 PATRICIA REED-ENZOR - CROSS-EXAMINATION

5 BY MR. SWERLING:

6 Q Hey.

7 A Hi.

8 Q When -- what time did you get out to the scene? You
9 may have said it but what does the log say?

10 A Yes, sir. It's 5:10 in the morning.

11 Q And the area was secure at that time?

12 A Yes, sir.

13 Q Which one has the shells -- here it is. Okay. I'm
14 just going to make it easy -- this is State's 119. What
15 areas -- by the way, did you do the search for the casings
16 and the projectiles by yourself or did anybody assist you?

17 A I had assistance.

18 Q Okay. And you just described the area that you were
19 looking for these casings and projectiles?

20 A We looked -- it's hard to see on here, but we looked --
21 I guess on the arial view we looked way -- several buildings
22 on either end of this.

23 Q This is State's --

24 A We looked in a large area. We looked like on several
25 buildings on either side of the case wash and H&J, including

1 the parking lots and several buildings on either side. I
2 had help of a crime scene investigator --

3 Q Okay.

4 A -- and several deputies.

5 Q So there were a number of areas searched?

6 A Yes, sir.

7 Q And I believe some of the projectiles were even found
8 over here, according to the diagram?

9 A Yes, sir.

10 Q And were there any notes that you have that would
11 reflect the boundaries of where you searched?

12 A Just a couple of them.

13 Q What about behind the car wash?

14 A We did not find any projectiles or shell casings out
15 there.

16 Q You did -- you did look behind here?

17 A We did look.

18 Q Did you go behind the fenced area that was reflected in
19 State's Exhibit 68 and 69?

20 A We did not find anything there. I looked --

21 Q Did you -- you looked behind the car wash, that's 68
22 and 69. Did you go beyond the fence to look, as well?

23 A (Indicating.) We looked here. First we were
24 concentrating in this general area. We looked back up in
25 here. We looked around in here. We kind of looked in this

State v. Tremaine Wray & Taurus Watts 10/9/09

189

1 general area, but I personally didn't walk this area here.

2 No, sir.

3 Q Okay. And looking at this diagram, but where's Farrow
4 Road, if you're looking at that?

5 A Farrow is this direction.

6 Q With respect to the gunshot residue on Landrum and
7 Greene?

8 A Yes, sir.

9 Q When you got there, where were they; were they at the
10 detention, Sheriff's Department, already?

11 A They were at headquarters.

12 Q And where were they located?

13 A I do not know where they were located in the building.

14 Q Did you actually swab their hands, though?

15 A I swabbed their hands.

16 Q Were they together or were they separate when you
17 swabbed their hands?

18 A They were brought in to me separately.

19 Q Okay. So you don't know where they were, they were
20 brought to you?

21 A They were brought to me.

22 Q Okay. And were they -- were their hands bagged or were
23 they in handcuffs or were they just walking without any kind
24 of restraint or bags?

25 A I don't recall any -- I know when they were brought

1 into me their hands were bagged. They were brought into me
2 separately. I don't recall if they were handcuffed. I know
3 that they had to be un-handcuffed to be brought to me, I
4 mean, for me to actually do the test, but I don't recall if
5 they were handcuffed in front of me or not -- un-handcuffed,
6 I should say, in front of me.

7 Q But you recall their hands being bagged?

8 A Yeah.

9 Q Do you have a note that reflects that?

10 A No, but I remember telling them to do those --

11 Q Right, but just because you told them to do it doesn't
12 mean it was done?

13 A No, but I do recall that they were bagged. But I don't
14 recall if they had their handcuffs on or off; does that make
15 sense.

16 Q Yeah. I guess I'm just wondering, do you have any
17 notes --

18 A No, I don't.

19 Q -- that would indicate that their hands were bagged
20 when they were brought in?

21 A No, I don't.

22 Q Excuse me, one moment. If you saw them when their
23 hands were bagged, you don't know when the bags were put on?

24 A No, I was not there.

25 Q But you do have an independent recollection of their

State v. Tremaine Wray & Taurus Watts 10/9/09

191

1 hands being bagged --

2 A I do.

3 Q -- when you took the swab. Okay. Now, on the blood,
4 you've identified there were identifiable blood profiles,
5 DNA profiles developed, but they were unknown individuals;
6 is that correct?

7 A I don't know anything about the DNA profiles.

8 Q Well, just what Ms. Shipley was asking you from State's
9 Exhibit No. 156; you collected all of these swabs; correct?

10 A That is correct.

11 Q And two of them matched Demauria Johnson?

12 A Yes.

13 Q One, two, three, four, five, came from a male who has
14 not been identified; is that correct?

15 A (No response.)

16 Q According to this?

17 A According to this chart, yes, sir.

18 Q And those were the swabs that you collected. I know
19 you don't do that DNA --

20 A Right.

21 Q -- but according to the exhibit that's in here --

22 A Yes, sir.

23 Q -- there are five swabs that you collected, which were
24 blood, which was male blood, but not identified to any
25 particular individual?

1 A No.

2 Q But not Demauria Johnson, according to this chart?

3 A According to that chart, no, sir.

4 Q Okay. Thank you.

5 MS. JOHNS: Thank Your Honor. May it please the
6 Court?

7 THE COURT: Sure.

8 PATRICIA REED-ENZOR - CROSS-EXAMINATION

9 BY MS. JOHNS:

10 Q Investigator, would you please explain for the jury
11 what a crime scene log-in sheet is?

12 A A crime scene log-in sheet is where -- it's started
13 when you have a crime scene. It controls people coming in
14 and out of the crime scene. So it makes a record of who is
15 coming in or out.

16 Q Okay. Can you attest to the accuracy of the crime
17 scene log-in sheet, yourself?

18 A It was -- I can pull this up --

19 Q Well, I guess my question, while you look for that, is
20 that unless you're at the crime scene yourself --

21 A Uh-huh. (Affirmative response.)

22 Q -- you can't attest to whether or not there was
23 somebody else on the crime scene or not, can you?

24 A I can only attest to when I was there.

25 Q Right. And you're the one that provides this, right?

State v. Tremaine Wray & Taurus Watts 10/9/09

193

1 A I didn't hear what your question was?

2 Q You're the one that provides the log-in crime scene
3 sheet at the crime scene; is that correct?

4 A No, I don't. They already have it before I arrive
5 there.

6 Q Okay. Who provided the crime scene log-in sheet for
7 this particular case?

8 A It was probably there already in discovery. I'm not
9 sure.

10 Q No. I'm talking about who provided this log-in sheet
11 for this particular crime scene. Who made people sign in
12 and out?

13 A It was already started by Gregory at 4:45 in the
14 morning.

15 Q Okay. Deputy Gregory?

16 A Yes. I got there at 5:10, so he would have already
17 started it.

18 Q Okay. So based on this crime scene log then, you are
19 saying because the first person's name on there is W.
20 Gregory that he must have been the first one on the scene?

21 A No. I'm saying that he started the crime scene log.
22 When I arrived there he said he had secured the scene and
23 that he had started the crime scene log. So I have to take
24 his --

25 Q Right.

1 A -- that that was true.

2 Q Okay. And you note on this crime scene log-in sheet
3 that it says 4:45; is that right?

4 A That's what it says, yes, ma'am.

5 Q And is the next name on that crime scene log-in sheet
6 the name Ricky Jacobs?

7 A Yes, ma'am.

8 Q Okay. And does it state that it's the club owner?

9 A Yes, ma'am. But what a crime scene log is, is once the
10 crime scene is secure. It doesn't mean when the incident
11 occurs. Once we secure the scene when we find out what's
12 going on, when we take people out of it. That's when we
13 secure a scene. It's not necessarily when everybody's
14 there.

15 Q Right.

16 A I mean, we can't secure it when everybody is running
17 around.

18 Q Right.

19 A So once we take control of a situation we're supposed
20 to start this.

21 Q So once the crime scene is secured you begin the log-in
22 sheet, or somebody --

23 A Someone whoever --

24 Q -- begins the log-in sheet. It doesn't have to be the
25 responding deputy. It could be somebody communicates the

State v. Tremaine Wray & Taurus Watts 10/9/09

195

1 crime scene is secure and you're starting a log-in sheet;
2 right?

3 A Yes, ma'am.

4 Q And you arrived at what time in the morning, five-
5 something?

6 A 5:10 --

7 Q I'm sorry. It's on here.

8 A -- on my documentation.

9 Q 5:10?

10 A 5:10 is what I have in my documentation.

11 Q So as far as you giving any independent testimony here
12 today about anything that happened before you got there, you
13 can't tell us that, can you?

14 A No, ma'am.

15 Q Now, also, would you explain to the jury what a
16 forensic science division request form is?

17 A That's when an officer or another unit requests that we
18 do something for them.

19 Q Okay. And did you do a gunshot residue request on
20 three individuals?

21 A Did I do one on --

22 Q Did you request it? I didn't ask you if you did it, I
23 just asked you if you requested a gunshot residue test done
24 on three individuals?

25 A In reference to this case?

1 Q Yes.

2 A I don't recall what you're asking me.

3 Q An analysis for gunshot residue, isn't that what this
4 form is?

5 A (No response.)

6 Q You collected the gunshot residue from Mr. Greene and
7 Mr. Landrum; is that correct?

8 A Correct.

9 Q And there was a third individual, right?

10 A Right.

11 Q That you have on your request form, Demuria Johnson;
12 right?

13 A Okay. I'm not actually the one that does the forms.
14 Someone else does it and then requests me to do it. So
15 actually another deputy requested this to be done.

16 Q All right. I see. Okay.

17 A And it's Investigator McRae.

18 Q All right. And he requests you to do a GSR, gunshot
19 residue test on Mr. Greene, Mr. Landrum, and Mr. Johnson?

20 A Okay. When these things are filled out you can also
21 put the victims information on here.

22 Q Okay. So --

23 A That's what was done on here.

24 Q So the request for GSR kit is -- doesn't really have
25 any meaning?

State v. Tremaine Wray & Taurus Watts 10/9/09

197

1 A I'm saying that I would not have been the person to do
2 the GSR because I didn't do that autopsy.

3 Q Okay. And how certain are you of the fact that you
4 state from your own independent recollection that Mr. Greene
5 and Mr. Landrum had their hands bagged, because throughout
6 all of your documentation of that?

7 A I'm fairly -- I'm certain.

8 Q You're certain?

9 A I'm certain.

10 Q Okay. Now, you stated on your cross-examination with
11 Mr. Sterling that you did a wide scope of searching for any
12 evidence that would add to this case all down Hardscrabble
13 Road, is that correct?

14 A Yes, ma'am.

15 Q And you said it was several buildings beyond the club?

16 A Yes, ma'am.

17 Q And you went in both directions; is that right?

18 A That's correct.

19 Q Okay. Did you search for these items through some sort
20 of metal detecting device?

21 A No.

22 Q Okay. Did you search through these -- did you search
23 this area through what we would call a grid pattern search?

24 A We did it with several deputies. It's a type of grid
25 pattern search. We had about two or three -- it was myself

1 -- about three of us did it in a straight line search.

2 Q Okay. So there were three of you that covered how much
3 space, do you think?

4 A When we did the roadway search it was myself, and
5 Padgett and -- what was the name of the officer -- Gregory.
6 I'm not real good with distance. We took turns from about
7 this wall, maybe -- about where that podium is. And then we
8 went from where that podium is -- we took another turn from
9 the podium -- about two different time at that distance.
10 And then we went -- we did it twice.

11 Q Okay. So you're grid pattern search --

12 A Was a straight line search.

13 Q A straight line search. Okay, let's use this roadway
14 for an example then. A grid pattern search means that you
15 have one on this line, one on this line and one on the other
16 line and you walk straight?

17 A Yes. And then we -- from here -- we did that several
18 times. So we would go from here to here. (Indicating.)

19 Q Okay.

20 A Here to here. Here to here. Here to here. We did that
21 several times, walking straight. Walked straight, walked
22 straight, walked straight. (Indicating.)

23 Q Okay. And would you agree that you covered at least
24 from the convenience store where the gas pumps were --

25 A We did it way past the convenience store.

State v. Tremaine Wray & Taurus Watts 10/9/09

199

1 Q Okay.

2 A We did like two or three buildings this way.

3 (Indicating.)

4 Q Okay. Well, if there aren't any building past this way
5 then you wouldn't have searched it?

6 A No.

7 Q The wooded area?

8 A There was something past this up here. I mean, I can't
9 recall what it was, but we went past here, because -- I
10 can't remember what the investigator told me, but something
11 happened over on this side. So we wanted to search past
12 over here. I can't recall what was on that side of the
13 building. But I know we searched the roadway and the other
14 side of that building. I just don't recall how far we
15 searched on the other side of that building.

16 Q Okay. Well, I don't know if this is a very good
17 depiction, but State's No. 54 shows that there not a
18 building beyond that; is there? Let me see if I can find
19 something better.

20 A I don't remember what was on the other side, but we
21 searched on the other side of there.

22 Q And you went all the way back to the fence, but not all
23 the way behind the car wash, which is depicted in State's
24 No. 64?

25 A No.

1 Q Now, what kind of illumination device did you use when
2 you did this search?

3 A We had several flashlights, and we had a -- it started
4 getting sunlight, luckily, towards the end of it, but at the
5 beginning of it -- well, I had what we call the Big D
6 flashlight, and we had some large mag light flashlights.

7 Q Did each of you have a flashlight?

8 A Yes.

9 Q Did you have more than one flashlight per person?

10 A I had three flashlights. So I was giving out some of
11 my flashlight. But I have a large flashlight that the lab
12 uses. It's just a little bit more than a regular type
13 flashlight.

14 Q And you had one flashlight in your hand?

15 A I had more than one flashlight in my hand.

16 Q Okay.

17 A Because I'm trying to mark things at the same time.

18 Q Just to kind of give the jury an idea of how you would
19 do it. Would you kind of put one underneath your arm, would
20 you hold one in one hand and one in the other. How would
21 you do that if you had more than one flashlight?

22 A Actually the Big D flashlight has a strap.

23 Q Okay.

24 A So I would be searching with that and I would have a
25 smaller one. So I would do that so that it would illuminate

State v. Tremaine Wray & Taurus Watts 10/9/09

201

1 kind of like a circle around me. And the other one, I would
2 be kind of like sweeping with. Does that make sense?

3 Q Yeah. Now, I'm going to refer to State's Exhibit No.
4 109. Is that representative of the lighting when you got to
5 the crime scene?

6 A When we first arrived, it was. And that's why we were
7 using that kind of a halo effect.

8 Q Uh-huh. (Affirmative response.)

9 A I guess I should try to explain, because I don't know
10 if I'm explaining myself appropriately. When we started
11 doing the overall -- before I leave a crime scene, I don't
12 really know if I'm explaining correctly, but before I would
13 leave a crime scene at all, I want to make sure I don't
14 leave anything. So at the end of the pictures you see it's
15 very light and it's very clear. So I don't leave a crime
16 scene until I get everything. So the last minutes to the
17 last good 30 minutes is when I'm making sure I don't leave
18 anything. So it's very light and it's very clear, and
19 that's when I'm darn sure I'm not going to leave anything
20 behind. So we found most of the evidence, 90 -- well, 100
21 percent of it before it got completely light. We did the
22 rest of the search, most of it, myself, at the very end when
23 it was light.

24 Q Would you agree with me that there are a couple of dirt
25 roads that spin off of Hardscrabble Drive. And let me just

1 put this up for you. And you've got this road over here
2 that's Goodrich Street. You've got his road over here that
3 is Summercrest Road, right?

4 A Yes.

5 Q Okay. When you did your grid search, you and the three
6 people, you went over into the shoulder of the road; is that
7 correct?

8 A We didn't actually go over into the road, we kind of
9 walked around them.

10 Q Okay. Did you go over to the shoulder of the road on
11 Hardscrabble Road, did you grid search down all the way, did
12 you look back there on Goodrich Street or Summercrest of the
13 road up here by Mr. Jacobs father's house?

14 A No.

15 Q Did you search anywhere around Mr. Jacobs father's
16 house, which is the house sitting on this corner?

17 A No.

18 Q Okay. Would it be accurate to say there were a number
19 of cars that were parked in this Summercrest area and Amoco
20 station area when you got to the crime scene?

21 A There were some vehicles there.

22 Q And some of them were civilians and some of them were
23 police officers, correct?

24 A Yes.

25 Q Did you find any projectiles that had been compressed

State v. Tremaine Wray & Taurus Watts 10/9/09

203

1 by a tire vehicle or something like that that you remember?

2 A Projectiles or the --

3 Q Sorry. The shell casings.

4 A Yes, some of them had been damaged.

5 Q Okay. And were those shell casings that were damaged
6 still in the road or were they off the road?

7 A I don't know. I know I collected them all, but I don't
8 know which ones were damaged and which ones were not.

9 Q Okay. Let's focus our attention on the -- so the only
10 shell casings that you observed were along the road?

11 A Yes. Along and beside the road.

12 Q Which is near the car wash area?

13 A Yes, ma'am.

14 Q Okay. Now, let's see -- there are so many pictures.
15 I'm going to show you what's been marked as State's Exhibit
16 No. 70. Can you see that. No. 70, that depicts, I guess,
17 it would be stall number one, that you have up there on your
18 arial sketch?

19 A Yes, ma'am.

20 Q Which would be this stall right here?

21 A Yes, ma'am.

22 Q And that's the stall where you found the blood,
23 correct?

24 A That's correct.

25 Q All right. Would you tell the jury what's in the

1 middle of that stall right there on the ground?

2 A A water vent -- water drain.

3 Q Drain?

4 A A drain.

5 Q Which would make sense, because it's a car wash, right?

6 A Yes, ma'am.

7 Q So tell me how you pulled up this drain right here and
8 looked in there for any evidence, a projectile or shell
9 casings or anything like that?

10 A I didn't physically pull it up. I did get on my hands
11 and knees with that big flashlight and I didn't see anything
12 in it.

13 Q All right. What about stall number two, stall number
14 three, and stall number four?

15 A I didn't pull them up. It was covered by a vehicle
16 because of the void.

17 Q I'm talking about stall number two. Did you pull up
18 the grate?

19 A No, ma'am.

20 Q And stall number three, did you pull up the grate in
21 there?

22 A No.

23 Q Or number four?

24 A No.

25 Q Now, would it be fair to say that a shell casing is a

State v. Tremaine Wray & Taurus Watts 10/9/09

205

1 cylinder type of shape, kind of round; it has the ability to
2 roll?

3 A Yes, ma'am.

4 Q All right. Now, there was another sketch done by you.
5 Let me see if I can find it. Okay. I'm referring to
6 State's Exhibit No. 117. Let me hold this up for you. You
7 were talking about the void being this area right here.
8 Underneath the void there was a grate in this stall, and
9 there was a grate in each stall. So the blood that was
10 found at the scene started out, H, I, J. See, you have
11 these arrows right here?

12 A Yes.

13 Q What do those arrows indicate?

14 A General direction of the blood pattern.

15 Q Okay. So you're saying the blood spatter pattern shows
16 that an individual may have been on this side of the void
17 and walked around this side; correct?

18 A Walked or ran.

19 Q Or ran?

20 A Or whatever. It appears to be -- if I looked at the
21 photographs I could explain it even better, but generally
22 speaking, you can tell by blood pattern by the direction of
23 the blood splatter.

24 Q The way the blood hits the ground?

25 A Absolutely. That person was going in that general

1 direction.

2 Q Now, do you have any indication as to whether or not
3 there was -- you did test for DNA on I that you have
4 circled?

5 A No.

6 Q L, that you have DNA by it, and M that you have DNA by
7 it?

8 A Right.

9 Q And you didn't check the rest of these did you?

10 A No, I did not.

11 Q Okay. So as far as the possibility of it being
12 somebody else's blood, we don't know that for sure?

13 A No.

14 Q Okay. And you don't know for sure somebody else was
15 hit if they were started on the left side of the void,
16 whether they could have gone around to this side of the void
17 because you didn't do blood spatter analysis; right?

18 A I looked. There was no indication that blood went in
19 any other direction. I looked very carefully.

20 Q Okay. So as far as the blood spatter is concerned,
21 when we talk about that we talk about the direction that the
22 drop shots towards when it hits the ground or hits the wall
23 or hits an object?

24 A Yes, ma'am.

25 Q And you're saying that the pattern went back towards

State v. Tremaine Wray & Taurus Watts 10/9/09

207

1 the fence, back towards the fence and around?

2 A Generally speaking.

3 Q Now, with regards to the walls of any of the stalls,
4 did you check for any bullet damage to any of these walls?

5 A I did. I didn't see any.

6 Q Okay.

7 A There was a little bit of scratching on one, but I got
8 another investigator to look and it looked, appeared to be
9 old damage.

10 Q And how about the concrete, were you able to look at
11 the concrete and tell if there was any ricochet?

12 A I did and there was none.

13 Q No ricochet?

14 A No, ma'am.

15 Q Okay.

16 MS. JOHNS: Beg the Court's indulgence, Your Honor.

17 THE COURT: Certainly.

18 BY MS. JOHNS:

19 Q Did you analyze any -- do a request for any analysis of
20 any of the projectiles for the presence of human blood?

21 A No, I did not.

22 Q And lastly. I wanted to ask you this, when you did the
23 DNA markers in front of the club, which is H&J, but C, D, F,
24 G, you did an analysis and I don't know if that's the right
25 word or not, but you did a profile on those bloodstains,

1 right?

2 A I didn't do a profile.

3 Q Okay. Well, you did collect samples.

4 A I collected, yes, ma'am.

5 Q And you know that the samples from C, D, F, and G were
6 not of the same person as the L and M?

7 A That's what the report said. An unidentified male, I
8 think.

9 Q Okay.

10 A I believe.

11 Q Okay. And do we know whether or not the other
12 bloodstain, there was not a profile done to know whether or
13 not that could have come from the same person or a different
14 person?

15 A I don't know.

16 Q Did you request anything more than what you collected?

17 A I just submit it, and DNA evaluates what needs to be
18 done with it.

19 Q I guess I'm not being very clear with my question, and
20 I apologize for that. When you did a collection of a swab
21 or a bloodstain, you did the swabs and then you sent them in
22 for a DNA analysis; right?

23 A What I do as a crime scene investigator is I collect.

24 Q Right.

25 A I don't decide what gets --

State v. Tremaine Wray & Taurus Watts 10/9/09

209

1 Q Okay.

2 A -- gets analyzed or not.

3 Q Okay. So you did the swabs on C, D, E, F, G?

4 A Yes, ma'am.

5 Q And you did a swab for L, and you did a swab for M?

6 A Yes, ma'am.

7 Q Okay. You didn't do a swab for anything else?

8 A No, ma'am.

9 Q And my point is, do we know from a report that you may
10 have received as a response to any request you may have
11 asked for DNA or somebody else may have, whether or not C,
12 D, E, and F would have been from two different males or one
13 males, because they're unknown?

14 A I don't know that. I didn't get any report.

15 Q All right. That's all I have. Thank you.

16 PATRICIA REED-ENZOR - REDIRECT EXAMINATION

17 BY MS. SHIPLEY:

18 Q As a crime scene investigator in charge for this case,
19 do you have access for reports for GSR and DNA and so forth?

20 A No, ma'am.

21 Q Who did the letters and reports go to?

22 A The lead criminal investigator on the case.

23 Q And I guess I actually summarized this -- Items 19.1
24 through 19.5, do you see the result next to each one?

25 A 19.1 is no DNA profile developed.

1 Q Okay, and what marker is that on your chart?

2 A C.

3 Q Okay. So no DNA on C?

4 A Developed.

5 Q And then D, E, F, and G. I'm going to share with you
6 the official DNA report, that was a summary done by me.

7 19.2 through 19.5?

8 A Is an unknown male.

9 Q All right. So those are all one unknown male; correct?

10 A Yes.

11 Q 19.2, 3, 4, and 5?

12 A Yes.

13 Q One unknown male; correct?

14 A Yes.

15 Q Okay. Thanks. You were asked on cross-examination by
16 Ms. Johns whether or not you received a forensic science
17 division request form to do GSR kits on three individuals;
18 correct?

19 A Yes.

20 Q I'm going to show you this document, and ask you if you
21 recognize it?

22 A I have my initials on the bottom so I had to have
23 received it.

24 Q Okay. And who fills it out on the top?

25 A The investigator requesting the document, which was

State v. Tremaine Wray & Taurus Watts 10/9/09

211

1 Investigator McRae.

2 Q Okay. Let me mark this as an exhibit, please. And did
3 you say you saw your initials on that?

4 A Yes.

5 MS. SHIPLEY: Your Honor, at this time the state
6 seeks to introduce 157.

7 MS. JOHNS: No objection.

8 THE COURT: Okay. Admitted.

9 (State's Exhibit No. 157, DNA
10 request forms, was marked and entered.)

11 BY MS. SHIPLEY:

12 Q I'm going to direct your attention to the top of that
13 form. Say the names that are listed for this jury?

14 A Demuria Johnson.

15 Q And next to his name is there a box?

16 A Yes.

17 Q And what are the boxes?

18 A Victim or subject.

19 Q And how is his name checked off?

20 A Victim.

21 Q And what is the next name?

22 A Something Greene. I can't read the handwriting beside
23 it.

24 Q Okay. And, again, is there a box next to that name?

25 A Subject.

1 Q And what's the next name?

2 A Luther Landrum.

3 Q And is there a box next to that name?

4 A Subject.

5 Q Checked off as subject?

6 A Yes.

7 Q And then read the request form below there?

8 A Need GSR completed on both subjects.

9 Q Both subjects; not on the victim, correct?

10 A Correct.

11 Q You were also asked on cross-examination about the
12 directional -- I believe you used the term, a general
13 directionality of the blood spatter in the stall?

14 A Uh-huh. (Affirmative response.)

15 Q And you indicated you would benefit from a photograph?

16 A Yes, ma'am.

17 Q I'm going to show you a photograph so you can explain
18 it to the jury using the photograph.

19 MS. SHIPLEY: Beg the Court's indulgence, Your
20 Honor. It's in here somewhere.

21 THE COURT: Sure.

22 BY MS. SHIPLEY:

23 Q I guess this one would be the best photo. I'm showing
24 the beginning -- what exhibit is that that I just handed
25 you?

State v. Tremaine Wray & Taurus Watts 10/9/09

213

1 A No. 77.

2 Q Okay. Does that assist you a bit to explain to the
3 jury the directionality you were explaining to the jury?

4 A I does a little bit.

5 Q Okay.

6 A May I --

7 Q Yes, please do. If you can show that?

8 A This is State's Exhibit No. 77. Not a close up view,
9 but -- it shows markers Q, S, W, and M. It should be -- Q,
10 W, S and put it in relation to this -- and then M.

11 Basically, when the blood hit the ground or any contact
12 surface your -- the point of the tail of the drop -- if
13 blood hits a surface and it goes straight down, it's going
14 to be a round circle. It's going to be completely round.
15 If it's in motion when it hits the surface, it's going to
16 have a like a tear drop. The direction of the point of the
17 tail goes in the direction that the blood or the person is
18 moving in when it hits. When you look at the overall
19 pattern you can almost see it. If you pass that around.
20 It's kind of hard to see because I don't have a close up
21 picture of it, but if you look at the blood, just generally
22 looking at it, you can kind of see that it's -- all the
23 patterns are kind of moving in that certain direction.
24 Almost like an arrow pointing that when that person was
25 shot, that person was moving around. You an almost see it.

1. Very good example right here when you're looking at W.

2 Q And where is W on this diagram, just to orient them?

3 A W is right here. This was towards the end, when that
4 person got into that vehicle and left the scene right there.
5 In W, right before he got into -- the scene, if you look at
6 those blood spots, that spatter, you might be able to see.
7 You might be able to see it, it's taken me quite a few years
8 of education and instructors. There are classes, to learn
9 this, but with that blood pattern, it was very easy to see
10 that, that circular motion.

11 Q And in your experience and training, what is your
12 opinion as to the travel of this blood?

13 A The general direction is that he was struck by a
14 projectile in this direction right here. It took just a
15 moment to start bleeding. You had a large area of blood in
16 this area here. He started to move. There's another large
17 puddle here where he hesitated. He got into a vehicle here,
18 and he left the scene.

19 Q Thank you very much, investigator. And the last
20 question I have for you, ma'am, is when you are getting
21 ready to clear your crime scene what is the very last thing
22 you do before you leave?

23 A I call it the final walk-thru. In a house a burglary
24 scene, a murder scene, is when I put my hands in my pocket
25 and I look around. In a larger scene it's -- you put your

State v. Tremaine Wray & Taurus Watts 10/9/09

215

1 hands in your pocket again, you walk around. It just takes
2 you longer. The last thing I do is to forget something or
3 leave something behind. Especially in this case where
4 someone has lost their life. I would never want to leave a
5 scene and find that something was left there.

6 Q And did you do so in this case?

7 A Yes, I did.

8 Q And what were the lighting conditions then?

9 A It was a bright day. It was still slightly overcast,
10 but I could see plainly. It was plenty of light.

11 Q Thank you very much.

12 THE COURT: Any re-cross?

13 MR. SWERLING: No.

14 MS. JOHNS: No, ma'am.

15 THE COURT: Okay. Thank you, ma'am, you can step
16 down and be excused.

17 MS. SHIPLEY: Your Honor, may we take a brief
18 break?

19 THE COURT: Yes.

20 MS. SHIPLEY: Thank you.

21 THE COURT: Ladies and gentlemen of the jury, we're
22 going to take a short break. I remind you not to discuss
23 the case.

24 (Jury out at 3:46 p.m.)

25 THE COURT: Let's discuss this other issue that we

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MR. SWERLING: Mr. Wray believes it is the woman with the braided hair and white blouse.

Here's my suggestion. Of course, we made the motion --

THE COURT: And I'll talk to you about the motion. Under State v. Moore, jurors were standing in the hallway when defendants were brought in and saw them in shackles somewhat. And essentially it occurred in Richland County and the judge essentially said that because of how our courthouse is structured, that you're going to walk the hall and may see defendants in another courtroom that are shackled because they are coming up for bond hearing or coming up for a plea or whatever, and then you're going to see some that are not perhaps in restraints. That's the case in Richland County, essentially. And if that's the case it takes every jury, and appellate court has said that that is extreme and that essentially we could do a cautionary instruction to indicate that the deputies are responsible for securing person within the courthouse and it is basically within their discretion how we deal with that, especially when we're in a case with murder or what have you. That has nothing to do with the actual confines of the courtroom, and how our proceedings are conducted in here.

MR. SWERLING: Judge, I think just so the record is clear, whether the bailiff was outside and saw the incident,

State v. Tremaine Wray & Taurus Watts 10/9/09

217

1 if he could come in and give Your Honor a statement under
2 oath as to what he saw. I'm going to ask Mr. Wray. We've
3 already heard from the deputy. I'd just like to have it on
4 the record --

5 THE COURT: Sure.

6 MR. SWERLING: -- to show what exactly happened
7 out there.

8 THE COURT: Sure.

9 MR. SWERLING: And we'll go from there.

10 THE COURT: Okay.

11 MR. SWERLING: Understand, I'm not blaming anyone.

12 THE COURT: Oh, we're not -- none of us are. But I
13 just have the issue about the precautionary instruction
14 about just under these circumstances has to be mindful, and
15 everybody has to be looking around to make sure that the
16 situations do not occur.

17 MS. SHIPLEY: And I understood that there were two.
18 I only heard a description of one.

19 MR. SWERLING: Well, he cannot say who the other
20 one is. So we'll take it one step at the time.

21 THE COURT: Sure.

22 MR. SWERLING: I'll ask Your Honor to require that
23 juror, if she saw anybody in the hallway when she was coming
24 back, and if she said so, maybe she can identify who it was.

25 THE COURT: Okay.

1 MR. SWERLING: I'm just trying to kind of take it
2 one step at the time.

3 THE COURT: Okay, and not specifically mention
4 either one of these gentlemen when you ask her did she see
5 them?

6 MR. SWERLING: Well, it depends what we find out.

7 THE COURT: Okay.

8 MR. SWERLING: I'm suggesting we just do the people
9 who actually saw it first, and then we'll talk about the
10 juror.

11 THE COURT: Okay.

12 MS. SHIPLEY: And, Your Honor, if the defendant
13 can't even identify which juror it was --

14 THE COURT: Just one.

15 MS. SHIPLEY: Oh, he can?

16 MR. SWERLING: Just one.

17 MS. SHIPLEY: One, though, not both?

18 MR. SWERLING: Right.

19 THE COURT: That just gives an indication if she
20 saw something.

21 MS. SHIPLEY: Okay.

22 THE COURT: But who is the other court personnel
23 involved?

24 MS. SHIPLEY: I don't recall his name off the top
25 of my head but --

State v. Tremaine Wray & Taurus Watts 10/9/09

219

1 THE BAILIFF: I was down the hall. J.R. was up here
2 and outside. He's the one that let them in the door.

3 THE COURT: Okay.

4 THE BAILIFF: He has to be outside the door to let
5 them in.

6 THE COURT: Okay.

7 THE BAILIFF: So he couldn't see what was going on
8 in the back hall until they got --

9 THE COURT: Well, let's make sure.

10 THE BAILIFF: -- and I think he may have called
11 them back once he saw what was going on, he may have called
12 them back.

13 THE COURT: Well, okay. We need him so that he can
14 indicate whatever he saw.

15 THE BAILIFF: He just left to take the smokers.

16 THE COURT: Okay. Well, be at ease. And we'll do
17 it right before --

18 MR. SWERLING: Just get it on the record --

19 THE COURT: Absolutely.

20 MR. SWERLING: -- nobody's getting blamed.

21 THE COURT: Absolutely. Be at ease for --

22 MS. JOHNS: Your Honor, just so the record is
23 clear, after discussion with my client, he says it's the
24 same juror, as well.

25 THE COURT: Okay. Thank you.

1 MS. JOHNS: And he can't identify another person
2 other than the one.

3 THE COURT: Okay. All right. You-all be at ease
4 for about 10 to 15 minutes.

5 MR. SWERLING: Can you --

6 THE COURT: Yes. Let's get an idea of how long
7 we're going.

8 MS. SHIPLEY: Your Honor, we've got Dr. Nichols and
9 that's it for the day.

10 THE COURT: Okay.

11 (Court in recess for short break.)

12 (Court in session after short break.)

13 THE COURT: Jurors please.

14 MS. MCDUFFIE: Your Honor, don't we have something
15 to put on the record.

16 THE COURT: Yes. I'm sorry. Hold them.

17 THE CLERK: Which bailiff do you need?

18 THE COURT: J.R.

19 THE CLERK: Well, that's J.R. right there.

20 THE COURT: Yeah.

21 Ms. Tull, swear him in, please.

22 (The bailiff's full name was never given.)

23 (WHEREUPON, Bailiff J.R, was sworn
24 to tell the truth.)

25 THE CLERK: Please have a seat.

State v. Tremaine Wray & Taurus Watts 10/9/09

221

1 THE COURT: All right, sir. You're responsible for
2 the panel of jurors throughout the trial?

3 THE BAILIFF R.J.: Yes, ma'am, I am.

4 THE COURT: Okay, and then today I would say after
5 lunch or sometime during the lunch break, where was your
6 actual post with respect to the jurors?

7 THE BAILIFF J.R.: My actual post. I wasn't
8 setting with the jurors, Your Honor.

9 THE COURT: Okay. But, I mean, did you have any
10 responsibility for checking them in as they came back --

11 THE BAILIFF J.R.: Yes, ma'am. I was at the door
12 letting them in.

13 THE COURT: Okay. At any point, while you were at
14 the door letting them in, did you see either one of the
15 defendants here?

16 THE BAILIFF J.R.: When I let the two in, Your
17 Honor --

18 THE COURT: Okay.

19 THE BAILIFF J.R.: -- I was in front, and as I
20 turned the corner I saw them bringing two prisoners up, and
21 so I threw up my hands and I said, y'all, got to go back.

22 THE COURT: And when you say, y'all, are you
23 referring to the jurors?

24 THE BAILIFF J.R.: There was two, two ladies. I
25 believe they were both black ladies. One had -- when you

1 were a little girl --

2 THE COURT: Braids?

3 THE BAILIFF J.R.: Yes, ma'am.

4 THE COURT: Okay. And once you told them to stop,
5 did you look further down the hallway?

6 THE BAILIFF J.R.: I put them back against the door
7 and then I went to the hall and when it was clear, I told
8 them it was okay to come.

9 THE COURT: Okay. When you say clear, what do you
10 mean by that?

11 THE BAILIFF J.R.: I mean that the prisoner had
12 been brought in this door.

13 THE COURT: Okay. All right.

14 Further questioning?

15 MR. SWERLING: Just -- when you saw the prisoners
16 coming down the hall how far were they, approximately?

17 THE BAILIFF J.R.: The prisoner?

18 MR. SWERLING: Yeah.

19 THE BAILIFF: I would say the prisoner was probably
20 six feet before you get to this door.

21 MR. SWERLING: Which one was it; was it one of
22 these?

23 THE BAILIFF J.R.: Yes. It was the one with the
24 glasses.

25 MR. SWERLING: Mr. Wray?

State v. Tremaine Wray & Taurus Watts 10/9/09

223

1 THE BAILIFF J.R.: Yes, sir.

2 MR. SWERLING: And the juror was how far down the
3 hall when you saw them, was it towards the end?

4 THE BAILIFF J.R.: They were behind me, sir. And
5 they had just come in the door, and as I turned the corner I
6 saw it and one of them had someone had bought them a new
7 pocketbook, that's the reason she went out. She had been in
8 and she went back out to go see someone out front. And they
9 were both looking at the pocketbook, but they did not see
10 anyone coming up the hall.

11 MR. SWERLING: And when you say the door, just so
12 the record's clear, you're talking the door from the lobby?

13 THE BAILIFF J.R.: Yes, sir.. The private door that
14 comes into the judge's quarters, yes, sir.

15 MR. SWERLING: And that's where you were stationed?

16 THE BAILIFF J.R: Yes, sir.

17 MR. SWERLING: And that's -- I would say, maybe, 60
18 or 70 feet from the jury room down to that hallway?

19 THE BAILIFF J.R.: Yes, sir.

20 MR. SWERLING: Okay. So that's the door you're
21 talking about?

22 THE BAILIFF J.R.: Yes, sir.

23 MR. SWERLING: Not the jury room door?

24 THE BAILIFF J.R.: No, sir.

25 MR. SWERLING: All right. Okay.

1 THE COURT: Any further question by any other --

2 MS. JOHNS: Yes, Your Honor.

3 THE COURT: Yes.

4 MS. JOHNS: Did the juror see Mr. Watts?

5 THE BAILIFF J.R.: No, ma'am.

6 MS. JOHNS: Okay. Did you make eye contact with
7 Mr. Watts?

8 THE BAILIFF J.R.: I saw -- I didn't make eye
9 contact with him, but since I've been here all week and seen
10 him sitting there with the suit that he's wearing, I knew
11 that it was him, but I was ahead of the two jurors.

12 MS. JOHNS: I'm talking about my client?

13 THE BAILIFF J.R.: No, no. I did not see him.

14 MR. SWERLING: I just want to clarify something.
15 Was this door open to the jury room?

16 THE BAILIFF J.R.: I'm not sure, sir.

17 MR. SWERLING: The courtroom. I mean the door to
18 the courtroom?

19 THE BAILIFF J.R.: No, sir, I do not know because I
20 was -- I was stationed at the door letting the jurors in out
21 there.

22 MR. SWERLING: When you came -- when you started
23 walking you could see him coming along the wall here or down
24 the hallway with Mr. Wray?

25 THE BAILIFF J.R.: I just recognized his suit and

State v. Tremaine Wray & Taurus Watts 10/9/09

225

1 knew who he was. But this door right here, it was open. I
2 told you --

3 MR. SWERLING: It was open into the courtroom?

4 THE BAILIFF J.R.: Yes, sir. You couldn't tell if
5 he was wearing gloves or you know.

6 MR. SWERLING: That's what I wanted to say. When
7 you were looking down the hallway could you see whether or
8 not Mr. Wray was restrained or not?

9 THE BAILIFF J.R.: No, I could not, because this
10 door was open.

11 MR. SWERLING: All right. The jurors were behind
12 you?

13 THE BAILIFF J.R.: Yes, sir.

14 MR. SWERLING: And y'all had just come in from that
15 door and were turning down the hall.

16 MR. SWERLING: That's good. Thank you.

17 THE COURT: Okay. All right, sir, you can step
18 down. Thank you.

19 All right. Jurors, please.

20 Do you need anything on that issue?

21 MR. SWERLING: No, Your Honor.

22 THE COURT: At least I'll let you take it up, but
23 we can go ahead and -- I'm not making you waive anything.

24 MR. SWERLING: At this point I think I can settle
25 it.

1 THE COURT: Okay.

2 MR. SWERLING: We're not going to ask that the
3 juror be brought out.

4 THE COURT: Okay.

5 MR. SWERLING: That's with the consent of Mr. Wray
6 and Mr. Bax had talked to him about it, and so we're
7 satisfied at this point. We may ask you on Monday to give
8 the jury a cautionary charge on how procedures are in the
9 courthouse, but I'd like to think about it over the weekend.

10 THE COURT: Sure.

11 MS. MCDUFFIE: Your Honor, before we bring the jury
12 in, which the state does seek to introduce 152, 153, 154,
13 155, which have been shown to the defense. I believe Mr.
14 Swerling has no objection.

15 MR. SWERLING: Judge, for some reason or other I
16 just don't like autopsy photos and I don't know that they're
17 probative in this case. There's no challenge as to the
18 cause of death or where the wound is or -- that document is
19 probably not going to get me to ask any questions the way I
20 think about it right now. Since it's not an issue, I don't
21 see any purpose in showing an autopsy photo, especially with
22 a dowel through the leg. The only thing it can do is
23 prejudice my client. So I'll argue under Rule 402, it's not
24 probative. If you find it probative, relevant, I'd ask you
25 to exclude it under 403.

State v. Tremaine Wray & Taurus Watts 10/9/09

227

1 MS. MCDUFFIE: Your Honor, we do have to prove the
2 cause of death in this case, as we would in any murder case.
3 The pictures with the dowel through the wound are probative,
4 Your Honor, because the doctor will testify as to the
5 directionality of the injuries, which one of the injuries is
6 the exit wound and how it traveled through the leg.

7 THE COURT: Okay. And I see that 152 and 155 show
8 the wound, but 154 does not. Do you need that as well?

9 MS. MCDUFFIE: Your Honor, that is showing the
10 injuries and the other one without the dowel would be
11 showing --

12 THE COURT: Okay. I'll allow it in. Okay.

13 MR. SWERLING: Your Honor, would you allow our
14 objection to be contemporaneous when they're all --

15 THE COURT: Absolutely.

16 Okay. Jurors, please.

17 (State's Exhibit No. 152, autopsy
18 photos, was marked and entered.)

19 (State's Exhibit No. 153, autopsy
20 photos, was marked and entered.)

21 (State's Exhibit No. 154, autopsy
22 photos, was marked and entered.)

23 (State's Exhibit No. 155, autopsy
24 photos, was marked and entered.)

25 (Jury in at 4:18 p.m.)

State v. Tremaine Wray & Taurus Watts 10/9/09

228

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

2 THE COURT: Okay. You continue with your next
3 witness.

4 MS. MCDUFFIE: State calls Dr. Clay Nichols.

5 (WHEREUPON, Clay Nichols, was sworn
6 to tell the truth.)

7 THE CLERK: Thank you. Have a seat in the witness
8 box and state your name for the record.

9 DR. NICHOLS: Clay Alan Nichols, N-i-c-h-o-l-s.

10 CLAY NICHOLS - DIRECT EXAMINATION

11 BY MS. MCDUFFIE:

12 Q Good afternoon, Dr. Nichols.

13 A Good afternoon.

14 Q Where are you currently employed?

15 A I am the Chief Medical Examiner for Richland County,
16 and I'm also a staff pathologist for Richland Memorial
17 Hospital and Baptist Hospital.

18 Q Please tell the jury a little bit about your education
19 and background in forensic pathology?

20 A I received my bachelor's of science degree --

21 MR. SWERLING: Your Honor, in order to expedite
22 things I know the doctor and am very aware of him. I will
23 stipulate to his qualifications as a forensic pathologist.

24 MS. JOHNS: And I'm very aware of Dr. Nichols as
25 well, and I will also stipulate to his qualifications. I

State v. Tremaine Wray & Taurus Watts 10/9/09

229

1 don't think there would be any challenge.

2 THE COURT: Okay.

3 MS. MCDUFFIE: Your Honor, we would offer Dr.
4 Nichols as an expert in the field of forensic pathology.

5 THE COURT: So qualified by this court.

6 DR. NICHOLS: Thank Your Honor.

7 BY MS. MCDUFFIE:

8 Q Dr. Nichols, did you have a chance to perform an
9 autopsy on Demuria Johnson on June 30, 2007?

10 A Yes, I did.

11 Q What time did you perform that autopsy?

12 A 9:00 o'clock in the morning.

13 Q And where was that autopsy performed?

14 A Over at Richland Memorial.

15 Q Please tell the jury of your findings in the autopsy of
16 Demuria Johnson?

17 A The pertinent finding was that there was a distant
18 perforating gunshot wound to the lateral or outside aspect
19 of the left leg at a distance of 49 inches from the top of
20 the head. The gunshot entrance wound is circular measuring
21 0.40 inch in diameter, and asymmetrical abrasion border
22 measuring 0.3 inch at the 10:00 o'clock position present.
23 There was no soot or powder stippling around the wound. The
24 bullet was found to enter the soft tissue at the back of the
25 left leg at this site, traveling slightly upward and

1 forward, exiting the medial aspect of the lower portion of
2 the left leg at a distance of 48 inches from the top of the
3 head. The exit would have lacerated edges and measured 0.6
4 by 0.3 inch in diameter. Along its course, the bullet
5 lacerated the left popliteal artery. Hemorrhage is
6 identified in the surrounding soft tissue and the bullet
7 exits and is not recovered. Essentially the bullet entered
8 the side of the left leg, traveled across the back of the
9 left leg and came out the middle part of the left leg,
10 lacerating the major artery.

11 Q I'll show you State's Exhibit 151, can you please mark
12 the injury on it for the jury?

13 A Sure. Do you want me to step down or --

14 Q Yes, please.

15 DR. NICHOLS: Your Honor, is it okay to step down?

16 THE COURT: Yes, you may.

17 DR. NICHOLS: Okay. Thank you.

18 A Essentially, the bullet entered the left leg here. The
19 bullet entered here, went across here. There's some
20 mediation, but essentially left to right lacerating at the
21 back of the leg, the popliteal artery. And he died
22 essentially of bleeding to death from that lacerated artery.
23 The bullet exited and as such was not recovered.

24 MS. MCDUFFIE: Your Honor, at this time state would
25 offer State's Exhibit 151.

State v. Tremaine Wray & Taurus Watts 10/9/09

231

1 MS. JOHNS: No objection.

2 MR. SWERLING: No objection.

3 THE COURT: Admitted.

4 (State's Exhibit No. 151, autopsy
5 photo, was marked and entered.)

6 BY MS. MCDUFFIE:

7 Q Dr. Nichols, when you said a distal gunshot wound,
8 please describe what you meant by that?

9 A What I meant by that is that the muzzle of the gun was
10 far enough away from the victim's skin so when the trigger
11 was pulled the only thing that struck the body was the
12 bullet itself. Any unburned gunpowder or soot dissipated
13 before it struck the skin. Roughly, without testifying
14 again, that's approximately 18 to 24 inches away from the
15 skin when the trigger was pulled. It can be as far back as
16 the maximum firing range of the weapon. Once again, it's
17 very individualized, depending on the kind of gun and the
18 ammunition used. You need a test firing of that weapon with
19 that ammunition in order to determine exactly what the
20 minimal distance was.

21 Q So the gun was as far as the gun could properly fire to
22 up to 18 to 24 inches from the victim?

23 A That's correct.

24 Q I'm going to show you State's Exhibit 152, 153, 154,
25 and 155, and ask you if you recognize those pictures and if

1 they would aid in your testimony?

2 A Yes, I do, and yes, they would.

3 MS. MCDUFFIE: Your Honor, at this time we'd offer
4 State's 152 to 155.

5 THE COURT: Admitted --

6 BY MS. MCDUFFIE:

7 Q Please tell the jury what's in State's 155?

8 A No. 155 shows the path of the gunshot wound from the
9 outside way to the inside part of the way and you can see
10 there is a plastic probe passed through there indicating the
11 tract of the bullet. I think that's probably the best
12 photograph showing the actual path of the bullet. No. 154,
13 is a closer view of the entrance wound. You still have the
14 plastic dowel, but that's clearly the entrance wound. No.
15 153, looks like the exit wound, and No. 152, once again,
16 another view of the path of the bullet.

17 Q And this would be the inside of the leg and that would
18 be the outside of the leg?

19 A Correct.

20 Q Dr. Nichols did you also receive a toxicology report on
21 the victim in this case.

22 A Yes, I did.

23 Q And please tell the jury what the victim's toxicology
24 report stated.

25 A In all cases of homicides and unnatural death,

State v. Tremaine Wray & Taurus Watts 10/9/09

233

1 toxicology is performed. In this particular case the
2 pertinent finding was that a minimal amount of blood alcohol
3 present -- I'm looking for -- I believe a blood alcohol of
4 0.063 percent, which for most driving purposes is under
5 legal intoxication.

6 Q And Dr. Nichols, the artery that this struck in the
7 victims leg, was this a major artery?

8 A Yes, it is. It supplies the entire lower leg.

9 Q And once this artery was pierced by the bullet, about
10 how long would it take for a person to bleed out?

11 A It takes minutes. Even though this is a major artery,
12 it's on the smaller side. Depending on how quickly EMS or
13 other emergency personnel can arrive and provide the
14 appropriate aid, start IVs, four or five minutes is all it
15 would take to bleed out from a wound like that.

16 Q And Dr. Nichols, please tell the jury again, your
17 findings as to the cause of death of Demuria Johnson?

18 A Specifically, Demuria Johnson died as a result of
19 exsanguination due to the distant perforated gunshot wound
20 to the back of his left leg. Exsanguination means he bled
21 to death.

22 Q And Dr. Nichols, I believe you said the bullet was not
23 recovered?

24 A That's correct.

25 Q And this was a through and through shot?

1 A That's correct.

2 Q And when you began your autopsy on Mr. Johnson, was he
3 clothed?

4 A (No response.)

5 Q I'll rephrase the question. Had he already been treated
6 at Providence Northeast Hospital?

7 A Yes. I was looking for my evidence transfer paragraph.
8 He was already treated, which meant, more than likely his
9 clothes would have been cut off.

10 Q And you were not aware of whether or not the projectile
11 was recovered or not from that clothing at Providence?

12 A I did not recover, and whether or not a projectile was
13 recovered, I have no knowledge of that.

14 Q Thank you. No further questions.

15 MR. SWERLING: No questions.

16 THE COURT: Okay.

17 CLAY NICHOLS - CROSS-EXAMINATION

18 BY MS. JOHNS:

19 Q Dr. Nichols --

20 A Yes, ma'am.

21 Q Would you agree that there was a determination made by
22 you regarding gunshot residue on this individuals hands?

23 A No. I did not do that.

24 Q Okay. There is a box that you checked that you got
25 some information that perhaps the victim didn't have a gun.

State v. Tremaine Wray & Taurus Watts 10/9/09

235

1 Do you remember writing that?

2 A No, I do not. Do you have that particular note?

3 Q You're right. It's not there. Dr. Nichols, I'm sorry.

4 A Wrong medical examiner.

5 MS. JOHNS: Nothing further, Your Honor.

6 THE COURT: Okay.

7 MS. MCDUFFIE: No further questions. I'd ask that
8 he be excused?

9 THE COURT: You may be excused.

10 DR. NICHOLS: Your Honor, it's a pleasure.

11 THE COURT: Any other witnesses for the state
12 today?

13 MS. MCDUFFIE: Not today, Your Honor.

14 THE COURT: All right. Okay. We will report back
15 on Monday at 9:30. I'll remind you not to discuss the case.
16 Do not read anything about it, listen to anything about it.
17 Do not even discuss the subject matter of the case. Please
18 don't do anything because we need to make sure that you keep
19 your conversations confined to this courtroom and only
20 discuss the case at the time of your entering into your
21 deliberations.

22 You all have a safe weekend.

23 (Jury out at 4:30 p.m.)

24 THE COURT: Anything to be taken up at this time?

25 MS. SHIPLEY: No, Your Honor.

1 MR. SWERLING: No.

2 THE COURT: All right. We'll start Monday at 9:30.

3 I know I have statuses, but if you all need anything just
4 let me know.

5 MS. SHIPLEY: I did have one matter to bring to
6 your attention.

7 THE COURT: Sure.

8 MS. SHIPLEY: Ms. Johns asked me to research the
9 drug conviction on Mr. Watts, and it was in Transfer Court,
10 so the state does not intend to use it.

11 THE COURT: Mr. who?

12 MS. SHIPLEY: Watts.

13 THE COURT: And do you have any other records from
14 witnesses for Monday?

15 MS. SHIPLEY: No. The rest of the witnesses are
16 law enforcement or expert witnesses.

17 THE COURT: Okay. All right.

18 MS. MCDUFFIE: Your Honor, just in terms of
19 scheduling purposes, we received an email -- I understand
20 jury qualifications are in here Monday morning?

21 THE COURT: They won't be. They're next door. I
22 wanted you all to have the same set-up. You can leave
23 everything here.

24 All right. Thank you all.

25 MS. SHIPLEY: Thank Your Honor. Have a good

State v. Tremaine Wray & Taurus Watts 10/9/09

237

1 weekend.

2 MS. JOHNS: Thank you.

3 (Court in recess at 4:50 p.m.)

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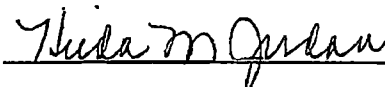
State v. Tremaine Wray & Taurus Watts 10/9/09

238

CERTIFICATE

I, THE UNDERSIGNED HILDA M. JORDAN, CVR, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 9TH DAY OF OCTOBER, 2009.

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



HILDA M. JORDAN, CVR

COLUMBIA, SOUTH CAROLINA

MAY 23, 2010

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

STATE OF SOUTH CAROLINA)
PLAINTIFF,)
VS.) 07-GS-40-5913
TREMAINE WRAY AND TAURUS WATTS,) 07-GS-40-5914
DEFENDANT.)
VOLUME 6

OCTOBER 12, 2009
COLUMBIA, SOUTH CAROLINA

TRANSCRIPT OF RECORD

B E F O R E:

THE HONORABLE MICHELLE CHILDS, JUDGE, AND A JURY

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

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

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

ATTORNEY FOR DEFENDANT WATTS
THERESA JOHNS, ESQUIRE

HILDA M. JORDAN, CVR
CIRCUIT COURT REPORTER

I N D E XWITNESS/DESCRIPTION PAGE NO.

STATE'S CASE IN CHIEF

TESTIMONY IN ORDER OF APPEARANCE

MICHAEL MOSKAL DIRECT..... 21

MICHAEL MOSKAL CROSS..... 82

MICHAEL MOSKAL CROSS..... 116

MICHAEL MOSKAL REDIRECT..... 130

MICHAEL MOSKAL RECROSS..... 134

MICHAEL MOSKAL RECROSS..... 137

DAVID COLLINS DIRECT..... 143

DAVID COLLINS CROSS..... 162

DAVID COLLINS CROSS..... 179

DAVID COLLINS REDIRECT..... 185

DAVID COLLINS RECROSS..... 186

DON MCRAE DIRECT..... 189

PROFFER 204

State v. Tremaine Wray & Taurus Watts 10/12/09

3

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

	ID	ENTERED
State's Exhibit No. 150		4
State's Exhibit No. 160		62
State's Exhibit No. 161		62
State's Exhibit No. 162		212
State's Exhibit No. 141		236
Court's Exhibit No. 5		142

CERTIFICATE PAGE 243

State v. Tremaine Wray & Taurus Watts 10/12/09

4

1 THE COURT: Anything we need to take up?

2 MS. SHIPLEY: Yes, ma'am, Your Honor. I took the
3 opportunity to review the -- State's 150, the recorded
4 conversation between Brian Watson and his mother on May 18,
5 2009, at 21:23 hours and we were able to confirm that that
6 is on this disk.

7 THE COURT: Okay.

8 (State's Exhibit No. 150, CD,
9 was marked and entered.)

10 MS. SHIPLEY: Also, Your Honor, state would request
11 when the jurors come in that you explain to them what a
12 stipulation is.

13 THE COURT: Sure.

14 MS. SHIPLEY: And also what an expert witness is,
15 because this morning it's going to be all experts.

16 THE COURT: All right. Thank you.

17 MS. SHIPLEY: Thank you, Your Honor.

18 THE COURT: Anything further?

19 MS. JOHNS: Your Honor, I would think the expert
20 witness would be at the jury charge?

21 THE COURT: It will be.

22 MS. JOHNS: I didn't want to take up more time than
23 we needed to.

24 THE COURT: It won't take but a second.

25 Okay. Jurors, please.

State v. Tremaine Wray & Taurus Watts 10/12/09

5

1 MR. BAX: Your Honor, if I may before they bring
2 the jurors out?

3 THE COURT: Yes. You-all always do that to me.

4 MR. BAX: I know. It just crossed my mind -- I
5 apologize.

6 THE COURT: Hurry and catch them.

7 MR. BAX: I apologize. My fault. I'll catch them,
8 Your Honor.

9 THE COURT: Okay.

10 MR. BAX: The state's next witness, which I
11 believe, is Michael Moskal with the state law enforcement
12 division.

13 THE COURT: Yes.

14 MR. BAX: The defense would have a matter of law
15 outside the presence of the jury. Maybe we should handle
16 that before we bring them out?

17 THE COURT: Okay.

18 MR. BAX: And that way we can save a little bit of
19 time. I apologize for that. If that's their first
20 witness. If it's not, then we can move on.

21 MS. SHIPLEY: It is our first witness.

22 THE COURT: Okay. Go ahead. I'm ready.

23 MR. BAX: Your Honor, at this time the defense
24 would object to the admission of the gunshot residue
25 evidence that Mr. Moskal will be testifying to. The

1 objection would be based on Rule 403, Your Honor, and it
2 maybe that the solicitor wants to put Mr. Moskal up for a
3 Proffer, but generally the reason why, Your Honor, is based
4 on a number of cases. State v. Council at 515 S.E. 2d, 508.
5 Also, State verses Ramsey at 515 S.E. 2d at 294 and I have
6 the cite here for that, the general ruling is that even if a
7 particular kind of scientific evidence is considered to be
8 reliable under Rule 702, the Court must still make a
9 determination if its probative value is outweighed by its
10 prejudicial effect under Rule 403. And in this particular
11 case, Your Honor, I'll allow state to request proffer it
12 they would like. The results of the gunshot residue test of
13 the 1999 Chevy Suburban, and that's how it's listed here in
14 the report, is actually not that any gunshot residue was
15 found, only that round lead particles, as it says here, are
16 one of the components of gunshot residue was found. So
17 basically the test was negative. It's not what it says, but
18 the SLED protocols, you have to find three elements in
19 presence in order for gunshot to be considered gunshot
20 residue. That's lead, particularly rounded lead particles,
21 the elements of barium and antimonium. In this case, by his
22 own results, there were insufficient amounts of barium or
23 antimony found, in fact, practically none. That's why the
24 results do not say GSR found. The test here, I think, is
25 specifically under 403, that the potential for prejudicial

State v. Tremaine Wray & Taurus Watts 10/12/09

7

1 effect, as well as the --

2 THE COURT: Back me up one second.

3 MR. BAX: Yes, ma'am.

4 THE COURT: What is it that you anticipate that he
5 is going to opine as an expert?

6 MR. BAX: I anticipate that he is going to opine
7 that there was a number of rounded lead particles found in
8 -- through his examination of the tab taken by the CSI that
9 we've already heard from in this trial, that some rounded
10 lead particles were found and that those rounded lead
11 particles are indicative of gunshots being fired in and
12 around these inanimate objects that was collected from the
13 steering wheel, the door, so on and so forth, because
14 rounded lead means that that lead was molten at some point.
15 However, by their own protocols gunshot residue cannot be
16 indicated by a tester unless all three elements are present,
17 and --

18 THE COURT: Okay.

19 MR. BAX: -- and they aren't present here.

20 THE COURT: Okay. So -- Okay, if you say that he
21 is going to opine that there's rounded lead particles found,
22 that is separate and apart from finding gunshot residue; is
23 that -- I guess, Ms. Shipley, we should go to you to see
24 what you tend to offer of the expert.

25 MS. SHIPLEY: Thank Your Honor.

1 First of all, I'd like to cite State verses Gary White.
2 That's one recent case where Judge Barber actually tried
3 that case and allowed a Don Tracker to testify as to his
4 opinion under Rule 702. And so I don't have the cite with
5 me, Your Honor, but it is a recent case decided where if
6 there's any expertise, training experience --

7 THE COURT: Right.

8 MS. SHIPLEY: -- to assist the trier of fact, then
9 it is admissible.

10 THE COURT: Okay, but I guess what I -- we all
11 understand expert testimony. What I'm trying to get at is
12 what are you trying to offer him for?

13 MS. SHIPLEY: Your Honor, he's an expert in gunshot
14 residue analysis --

15 THE COURT: Okay. Even if he's an expert in that
16 he will be limited to what -- did he do this test?

17 MS. SHIPLEY: Yes, ma'am, he did everything --

18 THE COURT: So the testimony would be limited to
19 whatever the findings were?

20 MS. SHIPLEY: Correct. And he --

21 THE COURT: Testify --

22 MS. SHIPLEY: He will testify that he found, on
23 several locations, inside of the 1999 Chevy Suburban --

24 THE COURT: Okay, go head.

25 MS. SHIPLEY: -- he will testify that in several

State v. Tremaine Wray & Taurus Watts 10/12/09

9

1 locations, concentrated in the driver's side of the Chevy
2 Suburban that he found round lead particles, which in his
3 expert opinion is a component of gunshot residue and is
4 consistent with someone firing a firearm within the driver's
5 side of the car.

6 THE COURT: Okay. Then if he's limited to what he
7 actually found. I mean, he can't say he found gunshot
8 residue. He has to be limited to what was actually found,
9 then why couldn't you just cross him on that issue.

10 MS. SHIPLEY: Exactly.

11 MR. BAX: Well, Your Honor --

12 THE COURT: He can't -- only confirm what he found.

13 MR. BAX: Well, Your Honor, as I've said, in this
14 particular situation I'm not intending on arguing right now
15 under 702 that gunshot residue is not reliable, but don't
16 hold me to that. I'm intending to argue that in other
17 cases.

18 THE COURT: Okay.

19 MR. BAX: One thing, there's a lot of literature
20 coming out of the American Academy of Forensic Sciences in
21 particular, a lot of these things, especially when you use
22 words, it's consistent with, are misleading to the jury.
23 There's a CSI effect in what they hear is forensic evidence
24 of higher probative value than what is actually presented.
25 That's what they interpret because you've got someone with

1 the onus, the mantel of expert, who stands up before them
2 and says he found this.

3 THE COURT: If he says consistent with, as an
4 expert, if that is what his terminology is, and that is a
5 scientific terminology, then what is wrong with that. I
6 mean, you still have the ability to cross him. He can't
7 give us something false, and he cannot speculate. And he
8 cannot, you know, make interpretation of things he doesn't
9 have within his expertise, and he's limited to whatever he
10 actually found.

11 MS. SHIPLEY: Exactly.

12 THE COURT: He's not going to be speculating and
13 all of that.

14 MS. SHIPLEY: Everything that Mr. Bax is raising is
15 perfect cross-examination questions.

16 MR. BAX: Your Honor, and I'm going to pass up a
17 recent case Justice Beatty offered, State verses Jones.
18 And, of course, some of this is vanity on my part because I
19 tried this case. I think it is particularly probative in
20 that -- now, in this particular case Justice Beatty and the
21 Court as a whole found the science is unreliable, however,
22 one of the things they specifically talked about in this
23 case was the test, in this case, this was barefoot insole
24 impression evidence, that, at best, even if you stripped
25 away any of the non-applicable statistical analysis that

State v. Tremaine Wray & Taurus Watts 10/12/09

11

1 they did in that particular case, the best that they could
2 say is consistent with. And the Court takes specific issue
3 with that because of the fact that you get someone up there
4 and they discuss that, that is an expert and they go through
5 a curriculum vitae, and they're given the power to give
6 their opinion to a jury and yet the best they can do is
7 consistent with, which leave a large window open. And in
8 that particular situation they have ruled in State verses
9 Jones that it is not admissible, both because of the fact
10 that it didn't -- 702, but also because it does not pass the
11 403 balancing test. They discuss the balancing test on Page
12 14, Footnote 6, and I apologize first and foremost, there's
13 no numbered pages on this. This was the copy that was sent
14 to me after the case was decided, PDF from the appellate
15 defender.

16 THE COURT: But they're saying barefoot impression
17 analysis in some instances was not yet a reliable science.

18 MR. BAX: Well, they determined later on that it
19 will not become that way. In fact, based on the Court's
20 ruling and the concurring opinion it says it will not be
21 admissible at any further trials, Justice Pleicones says
22 that.

23 THE COURT: But we're not tampering on something
24 that is new and novel, though?

25 MR. BAX: That is correct, and what I wanted to

1 point out to you was the fact that on the 403 balance test
2 the problem is when all they can say is, number one, all I
3 found was one out of three, and number two, it's only
4 consistent with. They cannot say anything more definitive
5 that that, then it's not probative to this jury. All it is
6 is misleading and prejudicial. We can stipulate that there
7 was no GSR found in either one of the vehicles in this case.
8 Basically, what they're going to take -- where no GSR was
9 found and they are going to turn it into something more than
10 that.

11 MS. SHIPLEY: Your Honor, barefoot impressions
12 verses gunshot residue analysis that has been tried and
13 tested in the courts of this state. There's a huge
14 difference, Your Honor. There is scientific reliable that
15 this SLED agent will testify to about how he performed his
16 analysis in a chemical laboratory. That there are protocols
17 that he must follow. How he analyzed each item of evidence
18 to make sure the instruments of evidence were used properly.

19 Your Honor in State v. Jones -- or Council, it cites
20 that the technique must be published and peer reviewed.
21 Your Honor, his testimony will be that he doesn't issue a
22 report until the peer review. That the method that has been
23 applied to this type of evidence. This is been a recognized
24 science in criminal courts for a while, a long time, and
25 that the methods be consistent with recognized scientific

State v. Tremaine Wray & Taurus Watts 10/12/09

13

1 laws and proceedings. Again, Your Honor, there is a special
2 laboratory at SLED for gunshot analysis. It's so
3 specialized that -- Richland County Sheriff's Department
4 doesn't even have a lab. They send everything that deals
5 with GSR to SLED.

6 So Your Honor, there is a big difference between a
7 barefoot impression verses a recognized field of science as
8 gunshot residue analysis.

9 Now, the next problem that Mr. Bax is arguing is
10 probative verses prejudicial effect. The testimony has been
11 from the beginning of this trial that shots were fired from
12 a vehicle traveling down Hardscrabble Road.

13 We have an eye-witness that says that it was coming out of
14 the driver's side. We have other eye-witnesses that were
15 taking cover said, at least two of them, Lamont Goodwine,
16 James Lamont Goodwine and Stephanie Boston, that the shots
17 were coming from the road. All of this testimony is
18 necessary and probative for this jury to understand what the
19 scientific findings were when the car was analyzed. And so
20 the state submits that the probative effects certainly
21 outweighs any prejudicial effect to the defense. They have
22 the opportunity to cross-examine this expert witness and go
23 into the fact that only lead was found and whether or not
24 barium or antimonium was found. That's for them to cross-
25 examine this witness, but for Your Honor to exclude the

1 entire testimony and his opinion that would say that this is
2 more consistent with a firearm being fired from this
3 vehicle. That is not prejudicial to the defense in any way.

4 THE COURT: Okay. Anything further?

5 MR. BAX: Yes. Two things, Your Honor. Number
6 one, peer review and the scientific method, checking, that's
7 happened in gunshot residue is as to a full result. There's
8 not science out there that says, well, if all you find is
9 one component you can come into court and talk about that
10 because of scientific reliability. That's not what the peer
11 review is about. The protocols from their own lab manual
12 gives -- you have to find all three, and that is what the
13 scientific review is across the board, that if -- in order
14 to have a reliable result, in order to have something that
15 is considered reliable science, you have to have all three
16 of the elements. And there is no peer review out there that
17 says, well, you find one, that's good enough, go on into
18 court and testify as to it. There's nothing like that. For
19 example, two things in addition. The FBI is not even doing
20 this anymore, Your Honor. They're not even doing gunshot
21 residue at all any more because of the fact that they have
22 so many reliability problems, and they have so many
23 credibility problems, and because it's not probative. On
24 top of that, Your Honor, in this particular case the expert
25 didn't even test it the first time around because of

State v. Tremaine Wray & Taurus Watts 10/12/09

15

1 secondary transfer. And what he will testify to, I would
2 presume, is that whatever results he gets from an inanimate
3 object, he cannot tell the difference about how it got
4 there. So its probative value goes down and down and down.

5 You've only got one of the three elements here, not all
6 three. You've got an inanimate object where you cannot tell
7 when it was deposited, no way scientifically for them to
8 know when it was deposited there. It can be there
9 theoretically indefinitely. You only can have -- inanimate
10 objects you don't have anybody -- you don't have it coming
11 off of anybody's hands or clothing. So the probative value
12 in this particular case goes down, and if you look at all
13 those factors, in fact, they didn't even test the first time
14 around because of his belief that its secondary transfer.

15 So I think that this really, all it is is there to
16 bolster the state's case.

17 THE COURT: We're saying two different things. One
18 is whether tied to gunshot residue, but the second thing
19 that you're pointing out is the inanimate object as to where
20 it came from.

21 MS. SHIPLEY: Your Honor, these are perfect
22 questions that Mr. Bax can raise in his cross-examination.
23 It's -- this is not going towards admissibility or not. He
24 can -- and first of all, the timing. This should have been
25 raised in pre-trial, but -- so that we would have an

1 opportunity to go into the further.

2 But, Your Honor, according to the report, and according
3 to my expert, when there is one of three particles present
4 he is allowed to give an opinion about that. It's got to be
5 a round particle of lead for him to give an opinion that it
6 is consistent with a firearm being fired from within the
7 vehicle.

8 THE COURT: And when you say one of three, he's
9 basing his ability to testify on what, then?

10 MS. SHIPLEY: Your Honor, his training -- he is
11 prepared to testify the fact that he found one -- in one of
12 the samples.

13 THE COURT: You're saying that that's the
14 scientific technology that --

15 MS. SHIPLEY: Yes, ma'am.

16 THE COURT: -- that allows one out of three?

17 MS. SHIPLEY: Yes, ma'am. That -- he said that --

18 THE COURT: Okay.

19 MS. SHIPLEY: -- out of --

20 THE COURT: And you're saying his field allows him
21 to do that?

22 MS. SHIPLEY: Yes, he is permitted to come into a
23 court of law and tell, swear under oath, that it is
24 consistent with a firearm being fired from within --
25 wherever the area it may be found. That he doesn't need all

State v. Tremaine Wray & Taurus Watts 10/12/09

17

1 three. He can rely on one of the three as long as that
2 particle is round.

3 THE COURT: And we're not talking about him
4 identifying anybody --

5 MS. SHIPLEY: No, ma'am.

6 THE COURT: -- just whether or not this comes from
7 gunfire?

8 MS. SHIPLEY: Yes, ma'am.

9 THE COURT: And Your Honor, at the beginning of
10 this trial there was witness testimony that the shots were
11 fired -- through Mr. Jacobs -- that it was fired from the
12 driver's side of the 1999 Chevy Suburban. From Stephanie
13 Boston and James Lamont Goodwine that shots came from the
14 road. And so Your Honor, this is corroborating evidence. It
15 is extremely probative to the state's case.

16 THE COURT: Does he take it further to say the type
17 of gun and --

18 MS. SHIPLEY: No. He can't identify what type of
19 gun, he can't identify who fired the gun.

20 THE COURT: It's just a matter that a gun was --

21 MS. SHIPLEY: Was fired from inside the car.

22 THE COURT: Okay. Wait, say that last part?

23 MS. SHIPLEY: That a firearm -- consistent with a
24 firearm being fired from within the car.

25 THE COURT: Okay. Now, tell me about the from

1 within the car, part, though?

2 MS. SHIPLEY: Because when you have gunshot residue
3 inside the driver's area --

4 THE COURT: Oh, I see what you're saying.

5 MS. SHIPLEY: -- that's consistent when someone
6 has fired a gun from that area.

7 THE COURT: Okay.

8 MS. SHIPLEY: And also as to whether or not you can
9 date it, that's a perfect question for Mr. Bax to ask on
10 cross-examination. It's still extremely probative to the
11 state's case, and any probative value certainly outweighs
12 any prejudicial effect that the defense may argue.

13 THE COURT: Okay, any final remarks?

14 MR. BAX: Yes. Two final remarks, Your Honor, and
15 I'll make it brief. Number one, they can certainly proffer,
16 if they would like, as I said, before, but Your Honor,
17 there's nothing in the field that says if you find round
18 lead particles. There's nothing in the field that says
19 that. And number two, there is absolute -- I would
20 certainly object if this expert is -- attempts to get on the
21 stand and say that this is consistent with a gun being fired
22 inside of the car, because there is absolutely no way to
23 tell if a round lead particle on an inanimate object got
24 there by direct deposit or secondary transfer and you cannot
25 tell the difference. You cannot.

State v. Tremaine Wray & Taurus Watts 10/12/09

19

1 MS. SHIPLEY: The issue that they're raising about
2 the secondary transfer. It came out, I think through Anna
3 Elsey that she called him and said, hey, why didn't you
4 analyze the 1999 GSR kit for the Chevy Suburban, and he was
5 relying on the initial police report that only mentioned the
6 Isuzu -- a white Nissan Pathfinder Isuzu Rodeo, and in that
7 case the evidence was that someone fired a shot from outside
8 the vehicle. So in his opinion, he assumed since there's no
9 mention of a '99 Suburban in the report that it must have
10 been some sort of secondary transfer situation, and they
11 don't analyze that. They don't -- it's not probative,
12 however, when she advised by the crime scene investigator,
13 no, it was after this initial police report further
14 investigation was done and it revealed that this is actually
15 the vehicle where the shots came from. That is, it was fired
16 from the driver's side. And based on that updated
17 information he then goes and proceeds to analyze the Chevy
18 Suburban, the 1999 Chevy Suburban, and that's how we get to
19 this point.

20 THE COURT: I'm going to allow it in.

21 MS. SHIPLEY: Thank you.

22 THE COURT: All right. Jurors, please.

23 (Jury in at 10:08 a.m.)

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

25 THE COURT: Thank you. Good morning ladies and

1 gentlemen of the jury. I hope you all had a nice and
2 restful weekend. And we are ready to continue on with the
3 trial.

4 I do want to make a couple of remarks to you-all.
5 There are certain stipulations that you've head coming into
6 the record, and essentially that's an agreement or an
7 admission or a concession by both parties that they have met
8 on the issue and there is certain evidence that they've
9 stipulated to, and you've head some of that read into the
10 record. So you should accept that as a fact. That is not
11 something you should quibble over in terms of your jury
12 deliberations as to other evidence in which you have to
13 decide what to believe or who to believe or what's credible
14 or not or whatever. Those stipulations are agreed upon by
15 the parties, so accept those as true.

16 Today you're also going to hear, and you've head before
17 from some expert witnesses. And essentially an expert
18 witnesses testimony is somebody who by virtue of the
19 education, experience, essentially will render an opinion
20 about a particular issue in a case. You will be instructed
21 at the conclusion of the case that an expert's testimony is
22 to be give no more credibility other than what you deem so
23 to any other witness. It's just that when we say that word,
24 that by education or training or certain type of experience
25 that they are render an opinion on an issue that perhaps a

State v. Tremaine Wray & Taurus Watts 10/12/09

21

1 lay witness could not do because they don't have that
2 training, experience or particular education on the
3 particular issue that would qualify them with respect to
4 their expertise.

5 Thank you all.

6 State.

7 MS. SHIPLEY: Thank Your Honor. At this time,
8 state called Agent Michael Moskal.

9 (WHEREUPON, Michael Moskal was
10 sworn to tell the truth.)

11 THE CLERK: Thank you. Please have a seat in the
12 witness stand, and state your full name for the record, and
13 spell your last name.

14 MR. MOSKAL: Michael Moskal. M-o-s-k-a-l.

15 MICHAEL MOSKAL - DIRECT EXAMINATION

16 BY MS. SHIPLEY:

17 Q Agent Moskal, can you please tell this jury where
18 you're employed?

19 A I'm currently employed by the South Carolina Law
20 Enforcement Division, commonly known as SLED, and I'm
21 assigned to the trace evidence department.

22 Q And can you tell the jury what the trace evidence
23 department consist of?

24 A In trace evidence we analyze evidence that is normally
25 too small to see with the naked eye, and we use high-tech

1 microscopes and sensitive instrumentation to see and to
2 analyze this material. It's going to include things like
3 gunshot residue, when a gun has been fired, the material is
4 deposited. Glass from a breaking and entering. The glass
5 shatters, it may wind up on a suspects clothing, some left
6 at the scene. We can compare those and say that they are
7 consistent with each other. We can do paints from hit and
8 runs. We can do bank dyes and duct tape and a couple other
9 types of materials.

10 Q And one of the items that you covered was gunshot
11 residue, was that correct?

12 A Yes, ma'am.

13 Q And can you tell this jury about your background,
14 training in the field, especially focusing on gunshot
15 residue?

16 A Yes, ma'am. I have a chemistry degree, a bachelor's in
17 science from the College of Charleston. I taught chemistry
18 for seven years at Summerville High School. And following
19 that point I was hired by SLED. When I began working for
20 SLED, I went through a six month intensive in-house training
21 comprised of reading journal articles, books on
22 instrumentation, having lectures on how these things, how
23 the instruments work. Received some training on firearms,
24 how they produce gunshot residue. Instructions on how to
25 analyze it, how to properly report it. At the end of that

State v. Tremaine Wray & Taurus Watts 10/12/09

23

1 in-house training, I was given a mock case where I had to
2 work it up and write a report and defend it in a mock trial.
3 Once I successfully completed that I was qualified by SLED
4 to analyze gunshot residue and to testify in court.

5 Q And how long have you been analyzing gunshot residue?

6 A For a little over three years, now.

7 Q And approximately how many gunshot residue analyses
8 have you done?

9 A I've done probably about 400 cases involving GSR, and
10 each case has anywhere from one to 10 kits to come in. So
11 I've done thousands of GSR kits at this point.

12 Q And can you tell the jury whether or not you've ever
13 testified as an expert in the field of gunshot residue
14 analysis in a South Carolina court of law?

15 A I testified eight times in a South Carolina court of
16 law and one time in federal.

17 Q And each time you were qualified as an expert?

18 A Yes, ma'am.

19 MS. SHIPLEY: Your Honor, at this time we would
20 introduce Agent Michael Moskal as an expert in the field of
21 gunshot residue analysis.

22 MR. BAX: No objection.

23 THE COURT: Okay. He'll be admitted and so
24 qualified in this court.

25 BY MS. SHIPLEY:

1 Q Now, if you could, just teach all of us, what is
2 gunshot residue?

3 A When a weapon is fired, gunshot residue comes out of
4 it, and that's going to include everything inside that
5 weapon. It can be dirt, it can be grease from prior
6 cleanings, it can be left over lead that's left in the
7 barrel. It's also going to include burnt and unburnt
8 particles of gun powder, but what we specifically look for
9 in our lab are three components that are inside the primer
10 of that cartridge when it's fired, and those three
11 components are lead, barium, and antimonium. When that
12 weapon is fired there's a tremendous amount of pressure and
13 temperature in there. So when that primer explodes all of
14 those materials are instantly vaporized and they cool down
15 really, really quickly, and all of those materials come
16 together, and they have the ability to form a round particle
17 that contains those three elements, lead, barium, and
18 antimonium, but you also get some other things mixed in
19 there. You may get some round lead and some other particles
20 as well, but we especially look for a combination of the
21 three.

22 Q I'm going to show you State's 159, and ask you if you
23 recognize this?

24 A Yes, ma'am.

25 Q What is that?

State v. Tremaine Wray & Taurus Watts 10/12/09

25

1 A This is the picture depicting a cloud of smoke or plume
2 of smoke that is produced when a weapon is fired.

3 Q And did you bring that to court to aid in your
4 testimony?

5 A Yes, ma'am, I did.

6 MS. SHIPLEY: Your Honor, at this time, we would
7 seek to introduce 159.

8 MR. BAX: Object, Your Honor.

9 MS. JOHNS: Your Honor, I object.

10 THE COURT: Excuse me.

11 MS. JOHNS: I object.

12 THE COURT: Let me see what that is?

13 MS. SHIPLEY: And if I may qualify?

14 THE COURT: Sure.

15 BY MS. SHIPLEY:

16 Q And this is not any evidence from this case; correct?

17 A No, ma'am, it is not.

18 THE COURT: Okay, you all approach, please.

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

21 THE COURT: Objection sustained.

22 MS. SHIPLEY: Beg the Court's indulgence, Your
23 Honor.

24 Your Honor, may the agent step down from the witness
25 stand?

1 THE COURT: Absolutely.

2 MS. SHIPLEY: Thank you.

3 BY MS. SHIPLEY:

4 Q Agent Moskal, I hope you're an artist. We're going to
5 need you to draw how gunshot residue is expelled from a
6 pistol of any caliber.

7 A I am not an artist so please forgive me on this part.
8 Now, you can imagine a person's hand would be holding this.
9 The gunshot residue is going to come out of any opening on
10 that weapon. The biggest opening is typically going to be
11 the mussel end, and you may have, depending on the type of
12 weapon you're talking about, whether it's a revolver or a
13 semi-automatic. Revolvers are going to have a cylinder gap.
14 An area around where the cartridge cases are held is open.
15 At that point, you'll get some gunshot residue coming out
16 that surrounds the area, like that. You're also going to
17 get gunshot residue to be expelled forward, and it expands
18 out in an area like that so that anything that in the
19 vicinity of that weapon when it is fired is going to have
20 the likelihood of these materials depositing on that area.

21 Q And can you explain for the jury which area, if a
22 firearm was fired, any caliber, where you would expect to
23 find it?

24 A Depending on the type of weapon you were looking at, or
25 the caliber of weapon, the amount of gunshot residue that is

State v. Tremaine Wray & Taurus Watts 10/12/09

27

1 produced is going to vary. Smaller calibers produce or have
2 the ability to produce lesser amounts of gunshot residue.
3 The higher the caliber they have the ability to produce more
4 and more gunshot residue. That also is going to determine
5 how far that cloud projects. Smaller weapons are not going
6 to send those particles out as far. Larger weapons are
7 going to have the ability to sent that out much farther.
8 Okay. So that's going to determine how far they send, but
9 generally speaking everything in a two -- two foot range is
10 likely to have some of this material land on it.

11 Q And would that include the hand of the person who is
12 firing the firearm?

13 A Yes, ma'am, it can include the hand, it can include the
14 sleeves, if they're wearing long-sleeve or short-sleeve
15 shirts. The sleeve and chest area. Anything in the
16 vicinity of that weapon when it is fired has the ability or
17 is likely that these materials can land on it.

18 Q And what about the area in which the firearm is fired?

19 A Anything in that area is likely to have gunshot residue
20 land on it.

21 Q Okay. Thank you. Please have a seat. Now, can you
22 tell a juror, the jury how long gunshot residue evidence
23 lasts?

24 A Gunshot residue is a very fragile type of evidence.
25 It's like if you were cooking and you had flour on your

1 hands, every time you walk around the room or you touch
2 something that material begins to disappear. That's kind of
3 how gunshot residue is. The other thing that happens is
4 that our bodies naturally absorbs those materials, and so
5 what we find is that for a living person doing kind of
6 secretarial work where not using their hands and brushing
7 their hands on a lot of materials, we find that it lasts for
8 a period of six hours.

9 Q And for that six hour period would it be probative in
10 your field of science to perform a gunshot residue kit on
11 somebody after that window of time?

12 A No. No, ma'am. For a living person if the GSR kit is
13 collected after that six hour period our protocol is not to
14 analyze it because our testing has shown that it is not
15 present at that period.

16 Q And can you tell the jury how gunshot residue reacts,
17 if you will, on a person verses an object?

18 A On an inanimate object the gunshot residue can remain
19 there indefinitely as long as somebody doesn't clean it off
20 or it's not cleaned off in some form.

21 Q And so for a person, can you tell the jury within a six
22 hour window what things to look for as far as the activities
23 of that person in considering the presence of gunshot
24 residue?

25

State v. Tremaine Wray & Taurus Watts 10/12/09

29

1 A When an officer collects a GSR kit there is a piece of
2 paper in there that they fill out to give us information.
3 It includes things like whether this person has washed their
4 hands. So we kind of like to know if they've washed their
5 hands, if it's been raining outside. Any type of activity
6 like that, any fluid running across the hands, those are
7 going to begin to diminish the amount of gunshot residue
8 that could be present, so those are the things that we look
9 to know.

10 Q Did you have an opportunity to analyze evidence for
11 this case?

12 A Yes, ma'am, I did.

13 Q And can you please tell the jury what the lab number is
14 for SLED?

15 A The SLED lab number for this case is L07-09678.

16 Q Okay.

17 MR. BAX: Your Honor, at this point I would object
18 to this is based upon -- preserve the issue based on all my
19 previous objections.

20 THE COURT: Certainly. The Court will stand by its
21 ruling.

22 MR. BAX: And run throughout the testimony about
23 the results of the test?

24 THE COURT: Absolutely.

25 MR. BAX: Okay. Thank Your Honor.

State v. Tremaine Wray & Taurus Watts 10/12/09

30

1 MS: JOHNS: And Your Honor, I would join in that
2 objection.

3 THE COURT: Okay. Thank you. Okay.

4 BY MS. SHIPLEY:

5 Q Agent Moskal, please tell the jury, first of all, how
6 items of evidence are brought to SLED for analysis from all
7 the different agencies in this state?

8 A We do gunshot residue analysis for any state agency or
9 any police department in this state. They'll have an
10 officer who brings it to our log-in technicians at SLED.
11 The log-in technicians assign it a lab number, they assign
12 it an individual items numbers to each piece of evidence
13 that is submitted. At that point, it is submitted to our
14 computer system. Then in the trace department we have a
15 technician who goes down to log-in, the evidence is
16 transferred from the evidence custodian to our technician.
17 Our technician brings it upstairs to our laboratory. At this
18 point she prepares a little bit of paper work for me and
19 then transfers the items to me.

20 Q And tell the jury when it the first time, what item you
21 first analyzed in this case?

22 A Can you repeat that one?

23 Q Yes. Tell the jury which item of evidence pertaining
24 to this case did you analyze?

25 A In this case, I analyzed four items of evidence.

State v. Tremaine Wray & Taurus Watts 10/12/09

31

1 Q Okay. And beginning with the first item of evidence,
2 what was that?

3 A The first item in this case was my Item No. 8.

4 Q SLED's No. 8. Okay.

5 A And that was labeled as one GSR kit from Earl J.
6 Greene.

7 Q And what is the next items of evidence?

8 A Item No. 9.

9 Q Okay.

10 A That's labeled as one GSR kit from Lether (sp) Landrum.

11 Q And the next item of evidence?

12 A My Item No. 10.

13 Q And what is that?

14 A GSR samples from 1999 Chevrolet Suburban.

15 Q And what's the tag on that?

16 A SC tag [REDACTED].

17 Q [REDACTED] [REDACTED] [REDACTED]?

18 A Correct.

19 Q All right. When did you first receive these articles

20 --

21 A I have one more.

22 Q Oh. Go ahead and tell me about that?

23 A Item No. 11. GSR samples collected from a 2001 Isuzu
24 Rodeo.

25 Q Okay. Tell the jury which items did you received first

1 in this case and when you received it?

2 A May I refer to my notes?

3 Q Absolutely.

4 A Item No. 8, the GSR from Earl J. Greene, I received on
5 7/31/07.

6 Q Okay.

7 A Item No. 9, GSR kit from Landrum, also received on
8 7/31/07.

9 Q Okay.

10 A Item No. 10, the Chevy Suburban, in initially received
11 on 7/31/07.

12 Q And when did you receive the items for SLEDs No. 11,
13 the GSR for the 2001 Isuzu Rodeo?

14 A The Isuzu Rodeo I received on 1/28/08.

15 Q And tell the jury when you receive items of evidence,
16 all of these items of evidence were they properly sealed and
17 submitted into SLED's custody?

18 A Yes, ma'am, they were.

19 Q And you have access to the chain of custody internally
20 for SLED; correct?

21 A Yes, ma'am, I do.

22 Q Tell the jurors who prepares these items of evidence
23 for you to begin your analysis?

24 A Our evidence technician in the trace department, Lisa
25 McReynolds.. She goes downstairs, picks the evidence up from

State v. Tremaine Wray & Taurus Watts 10/12/09

33

1 the log-in technicians, brings it up to me. She gets them
2 prepared for analysis and then transfers them to my custody.

3 Q And is she trained in this field?

4 A Yes, ma'am, she is trained in this field. She also
5 goes through proficiency testing to make sure that she is
6 proficient in what she does.

7 Q All right. And when the technician prepares the items
8 of evidence for you, can you tell them how she breaks it
9 down for you?

10 A Yes, ma'am.

11 Q Start with No. 8.

12 A When Lisa goes downstairs and gets the items they come
13 to her, they're generally going to be in an envelope or a
14 box, something similar to this. They will be sealed on the
15 top. They will have a SLED seal with the initials of the
16 agency officer who brought it to us. She examines that to
17 make certain that it is dated and sealed, it's dated. Once
18 she has identified that, she opens the seal and she pulls
19 the GSR kit out. In a case like this where there are
20 multiple items in there, she is going to look at how they're
21 itemized in our computer system, and she would put them in
22 that order. So she would look at Earl J. Greene's GSR kit
23 and place it in front of Luther Landrum's GSR kit and in
24 front of the Chevy Suburban. Once she's done that, she's
25 going to look at the individual kits and also make certain

1 that each individual kit has been sealed, dated, and
2 initialed. Once that has been identified, she begins to
3 open them up one kit at a time. When she opens the GSR kit,
4 it's going to have seven items in there. The first one
5 she's going to look at is a GSR information sheet. Now,
6 it's going to include the name of the officer who collected
7 kit, it's going to have a place to write the name of the
8 person the GSR kit was taken from. It's going to have a
9 place where you can indicate where the person was left-
10 handed or right-handed, if the officer had the ability to
11 know at the time of the collection. The important thing
12 that we look for in addition to some activities at the time
13 of the shooting, is the incident date and time, and the time
14 of collection, and the date the collection was taken. That
15 way we know it was within our six hour period. If it is
16 within that six hour period on a living person, then she is
17 going to pull the remainder of the items out of there. When
18 a GSR kit is collected, they collect samples from four areas
19 of the hand. They're going to take a sample from the right
20 palm, the right back, the left palm, and the left back. The
21 first thing they're going to do is take a little tab that
22 has a double sided sticky tape on it. And they're going to
23 take each one of those which is labeled from the
24 manufacturer for each one of those four areas and they're
25 going to take that sticky tab and dab it all over that

State v. Tremaine Wray & Taurus Watts 10/12/09

35

1 person's hand basically until it begins to lose adhesion.
2 And then they seal it up and stick it into the envelope.
3 Once they've done that four areas, the kit also has cotton
4 swabs and a dilute solution of nitric acid. The officer
5 will then take those cotton swabs and swab each of those
6 four areas with two cotton swabs, place those cotton q-tips
7 into test tubes labeled appropriately for each one of those
8 four areas. And then they do a control swab, so that we can
9 get background levels off of a person, and those are
10 generally taken in an area not likely to be exposed during
11 the time of a shooting, like lower back underneath a shirt
12 or maybe the back of a calf. She'll pull those out and then
13 she prepares them for me, and she also writes down
14 information on an information sheet for us, indicating a
15 name, as it is written on the GSR kit information sheet. A
16 lot number for that GSR kit and any important information.
17 Sometimes officer re-label where it says right palm, they
18 might scratch through that and put something else that
19 they've collected from a different place. So she looks for
20 any pertinent information that I need to know.

21 Q And who issues these Tri-Tech GSR Kits?

22 A SLED offers the Tri kit, combo kit as a free service to
23 any agency in the state that wants them, but there are
24 agencies that choose to go and purchase their own?

25 Q And does Richland County Sheriff's Department use the

1 SLED issued kits?

2 A They use the Tri-Tech kits, yes.

3 Q Okay. Now, you indicated that when you evaluate or you
4 look over the information sheet that's included in the GSR
5 kit. Did you have an opportunity to look over the GSR kit
6 as to Earl Jerome Greene?

7 A Yes, ma'am, I have.

8 Q And in that sheet did it indicate whether the person
9 had washed his hands?

10 A It -- for Earl Greene it indicates that he has not
11 washed his hands.

12 Q And how does that assist you in the field of gunshot
13 residue?

14 A Just if somebody's washed their hands the likelihood of
15 us to be able to get gunshot residue off of their hands is
16 really limited, because, again, anytime you have flowing
17 materials going across your hands it's going to remove those
18 particles.

19 Q And what time does it indicate that his gunshot residue
20 kit was collected?

21 A It was collected at 6/30/07 at 09:20 a.m.

22 Q And what time do your records reflect the incident
23 occurred?

24 A The incident is indicated as occurring at 6/30/07, at
25 04:15 a.m.

State v. Tremaine Wray & Taurus Watts 10/12/09

37

1 Q And so was this done within the six hour window that
2 you require?

3 A Yes, ma'am, this was in the six hour window.

4 Q And I'm going to go ahead and move to sample number
5 nine, item -- SLED No. 9, and tell the jurors if that was
6 collected within the six hour period or not?

7 A The GSR kit on Luther Landrum was also collected within
8 the six hour window.

9 Q And again did it indicate on the report whether or not
10 his hands had been washed or --

11 A It indicated that his hands had not been washed.

12 Q Now, ideally when someone is first apprehended, what
13 would -- as a GSR expert what would you prefer seeing done
14 with the suspect?

15 A The sooner the GSR kit can be collected the better our
16 likelihood of being able to get GSR on those hands if the
17 person had shot. So in an ideal situation the GSR kit would
18 be collected instantaneously, but these officers were under
19 extreme pressure and hectic conditions, and often times it
20 just is impossible. So sometimes it's collected at the
21 scene and sometimes it's collected at the police station.
22 Just depending on the situation.

23 Q And what if bags were not available to the officer, but
24 yet was still collected within the six hour window?

25 A We will still analyze those.

1 Q Tell the jurors how it is that you analyze gunshot
2 residue belonging to people?

3 A When we analyze a GSR kit from a person. I talked
4 about the two parts, I talked about the cotton swabs that we
5 swab over the hands. And the tabs that we've taken and
6 dabbed across the hands until the sticky has been removed.
7 When we analyze these we're going to analyze the cotton swab
8 first, and what the cotton swabs are used for is to get a
9 quantity of those three elements; lead, barium, and
10 antimony, that are present on a person's hands. Based on
11 some in-house research that we have, we have a threshold
12 where we know if there's a certain amount of those three
13 elements together that this is consistent with or indicative
14 of a weapon having been fired or somebody handling or being
15 in the vicinity of a weapon when it was fired. So when the
16 analyze those cotton swabs, if they reach that threshold we
17 have the ability to then look at the second portion, the
18 particle lifts, and we take those to a high-tech, a very
19 powerful microscope where we can look at these individual
20 particles to determine if each individual particle itself
21 contains those three elements or not.

22 Q And so when you deal -- do you have to analyze a GSR
23 kit collected from a person differently from an object like
24 a vehicle?

25 A On a vehicle, no, ma'am. The analysis is the same.

State v. Tremaine Wray & Taurus Watts 10/12/09

39

1 What's different is that sometimes the agencies may not do
2 the cotton swabs on the vehicles. Sometimes they do,
3 sometimes they don't. That's the only difference in how it
4 would be analyzed.

5 Q And the fact that they do it differently for vehicles,
6 does that effect the results?

7 A Does not affect the results.

8 Q All right. Please tell the jurors exactly what you did
9 in analyzing SLED's No. 8, which is the GSR kit for Earl
10 Jerome Greene?

11 A For Earl J. Greene, we analyzed the cotton swabs first.
12 And what we found was the amounts of material there did not
13 meet that threshold and so we stopped with the cotton swab
14 portion.

15 Q And so when you say it did not meet the threshold, what
16 is your result?

17 A The result on that is the quantities of metals found do
18 not indicate the presence of gunshot residue.

19 Q Does that mean both the back of the hand and the palms
20 of both hands?

21 A Yes, ma'am, all four areas.

22 Q And so, again, the terminology that you just used, the
23 quantities --

24 A The quantities of metals found do not indicate the
25 presence of gunshot residue.

1 Q Do not what?

2 A Do not indicate --

3 Q The presence --

4 A -- of gunshot residue?

5 Q Okay. Can you explain to the jury why a control swab
6 is taken from an individual?

7 A A control swab is taken because those three elements
8 that we look for, lead, Barium, and antimonium can be found
9 on somebody for reason that have nothing to do with a weapon
10 being discharged. For instance, barium is found in powders.
11 So anybody that's been around baby powder, or some make-up
12 items, they're likely to have some barium on them. Lead is
13 also found in some areas. It may be on fishing weights. It
14 can be in some cheap Christmas lights. It can be found if
15 somebody's smoldering (sic). The antimonium is found fire
16 retardants and leathers. So there is a possibility of
17 people having -- or an object having those three elements on
18 it in ways that had nothing to do with a firearm being
19 discharged. So what we do is we look to see what the
20 background levels are on a person and then we subtract those
21 from the levels that we find in their hand.

22 Q And was that done in the case of SLED's No. 8, the GSR
23 kit for Earl Greene?

24 A Yes, ma'am, it was.

25 Q And, again, your result of that?

State v. Tremaine Wray & Taurus Watts : 10/12/09

41.

1 A For Greene or Landrum?

2 Q For Greene?

3 A Again, for all four areas for Greene, the quantities of
4 metals found did not indicate the presence of gunshot
5 residue.

6 Q Now, I'm going to pose a hypothetical to you.

7 A Okay.

8 Q If a person witness, sees an individual fire a pistol,
9 unknown caliber one time out of a moving vehicle --

10 MS. JOHNS: Your Honor, I object. Her hypothetical
11 when she's dealing with an expert witness, Your Honor. It
12 has to be a hypothetical that is not factually related to
13 this case. She is trying to get him to testify to a
14 particular fact in this case and render an opinion in a
15 particular fact in this case using a hypothetical.

16 THE COURT: You-all approach.

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

19 THE COURT: Objection sustained with a limited
20 cautionary ruling.

21 BY MS. SHIPLEY:

22 Q Agent Moskal, if a person is seeing -- this is a
23 hypothetical question -- if a person is seen firing a weapon
24 outside of a moving vehicle, what would your expectation be
25 as far as finding GSR on that person's hand, in your field

1 of expertise?

2 A All the testing has been evaluated with a person
3 standing still and shooting. There has been no
4 documentation that I know of, of somebody shooting and
5 running in a vehicle and running. So the idea is that when
6 a weapon is fired all of those materials are going to
7 deposit on things below them and around them. It would be
8 possible that if somebody were firing --

9 MR. BAX: Your Honor, I'd like to object at this
10 point. May we approach?

11 THE COURT: Okay.

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

14 THE COURT: Objection sustained.

15 BY MS. SHIPLEY:

16 Q In your expert opinion would wind effect the deposit of
17 gunshot residue?

18 A Yes, ma'am. The presence of wind could effect how
19 gunshot residue is deposited.

20 Q Now, let's move to SLED No. 9.

21 A Yes, ma'am.

22 Q And, again, that's the GSR kit, misspelled Lether,
23 Luther Landrum. Tell the jury -- first of all, what
24 measures do you take to insure the integrity of your
25 analysis between tests on different items of evidence?

State v. Tremaine Wray & Taurus Watts 10/12/09

43

1 A We do two things with the way the instrument is set up
2 to analyze. First thing is we run a test at the beginning
3 of each sample. We run a calibrated standard to make
4 certain that the instrument is reading the proper amount of
5 each of those three elements that we're looking for, and
6 that is run before each hit goes onto the instrument. The
7 other thing that we do is we run multiple kits at a time,
8 and so between each kit we will run a blank so that we know
9 definitely there is no carryover from one kit to the next.

10 Q And did you do so in this case?

11 A Yes, ma'am.

12 Q And the next item of evidence that you analyzed, could
13 you please explain how you went about doing that?

14 A Item No. 9, the GSR kit from Lether Landrum, we also
15 ran the cotton swabs to begin with to look at what the
16 levels of the three elements would be, and the three
17 elements did not reach our threshold. So we stopped at that
18 analysis, which the result for the four areas, the right
19 palm, the right back, the left palm and the left back for
20 Lether Landrum would be that the quantities of metals found
21 did not indicate the presence of gunshot residue.

22 Q And GSR is short for gunshot residue?

23 A Yes, ma'am, it is.

24 Q I'm going to show you what's been marked State's No. 1,
25 and ask you to look at the contents?

1 A Yes, ma'am.

2 Q And are those the items -- what are they, first of all?

3 A State's Exhibit No. 1, is an envelope that we received
4 at SLED, and it contains Items No. 8 and 9. The GSR kits
5 from Earl J. Greene and Lether Landrum.

6 Q And before you analyzed these items did they appear to
7 be tampered with in any way?

8 A No, ma'am.

9 Q And once you complete these analyses on these of
10 evidence are you done with these particular items of
11 evidence?

12 A Yes, ma'am, I am.

13 Q If you could put that back.

14 A (Witness complies.)

15 Q Thank you, sir.

16 A Yes, ma'am.

17 Q Now, what is the date of your report that contains your
18 findings as to Greene and Landrum GSR kits?

19 A The report issued for Greene and Landrum is August 20,
20 2007.

21 Q Okay. August 20, 2007?

22 A Yes, ma'am.

23 Q Tell the jury when you are preparing to analyze items
24 of evidence what, if anything, are you relying on in making
25 your determination of whether it would be probative to

State v. Tremaine Wray & Taurus Watts 10/12/09

45

1 analyze?

2 A We look at the information sheet that I talked about a
3 little while ago that talks about the incident time and time
4 of collection. We look at that on a GSR kit. But we also,
5 sometimes, look at the incident report to gather information
6 from that. Especially when inanimate objects are involved.

7 Q And, in this case, did you have access to the initial
8 police report issued in this case?

9 A Yes, ma'am, I did.

10 Q And can you please refer to it?

11 A Yes, ma'am.

12 Q And tell the jury in your initial report that you were
13 given, who is the complainant on that?

14 A The listed complainant is Deputy Galinski.

15 Q And did you have any conversations with Deputy Galinski
16 prior to analyzing the evidence?

17 A No, ma'am, I did not.

18 Q And are you aware of whether or not he even went to the
19 crime scene in this case?

20 A No, ma'am, I am not.

21 Q And in that report, what does it appear that it lists
22 Deputy Galinski reporting?

23 A He is listed at the top of this or towards the top of
24 this page as being the complainant.

25 Q Do you see the name Ricky Jacobs anywhere on there?

1 A No, ma'am, I do not.

2 Q And, again, how many pages is the initial report?

3 A The initial report -- what I have is two pages.

4 Q And in the report what is the description of the
5 vehicle?

6 A The description of the vehicle is -- complainant
7 described the vehicle as possibly being a white Nissan --

8 MS. JOHNS: Your Honor, I object to him reading
9 from it. It's not in evidence.

10 MS. SHIPLEY: Your Honor, inadmissible evidence
11 such as hearsay is admissible under Rule 703.

12 THE COURT: To the extent that he's relying on the
13 information that he's --

14 MS. SHIPLEY: And I can lay a foundation, Your
15 Honor.

16 THE COURT: Okay.

17 BY MS. SHIPLEY:

18 Q Please proceed?

19 A Complainant described the vehicle as being a white
20 Nissan with black stripe down the side.

21 Q Okay. And is there any mention of a tan 1999 Chevy
22 Suburban anywhere in this initial report?

23 A No, ma'am, there is not.

24 Q And based on that, tell the jurors what, if anything
25 you did to analyze the gunshot residue kit from the 1999

State v. Tremaine Wray & Taurus Watts 10/12/09

47

1 Chevy Suburban, Item No. 10 for SLED?

2 A There was no indication in the incident report of the
3 Chevy Silverado listed here had any --

4 Q What kind of car?

5 A -- I'm sorry, the Chevy Suburban.

6 Q Okay.

7 A I apologize. The Chevy Suburban had anything to do
8 with this incident. So I did not analyze the GSR kit
9 collected from the Suburban.

10 Q And in your report dated August 20, 2007, what
11 explanation do you provide as to why you did not analyze
12 initially, SLED No. 10, the GSR kit for the Chevy Suburban?

13 A In the report I indicated that I did not analyze it due
14 to secondary transfer.

15 Q Can you explain for this jury what secondary transfer
16 is?

17 A Let's say I was to shoot a weapon and the GSR particles
18 landed on my hands, and I were to touch this counter top or
19 I were to go out the back door and touch the door knob. Any
20 of the GSR particles could possibly go from my hand to the
21 counter top or to my hand from the door knob. That is what
22 we refer to as secondary transfer.

23 Q And is it SLED's protocol to analyze that type of
24 transfer?

25 A No, ma'am, we do not analyze evidence for secondary

1. transfer.

2 Q And so on the August 20, 2007 report, did you indicate
3 on the report that no analysis was performed?

4 A In the report from the 20, yes, ma'am, I did.

5 Q Okay. Explain for the jurors when you are issuing
6 reports do you send a copy of the report to the law
7 enforcement agency that submitted it, these items of
8 evidence?

9 A Yes, ma'am.

10 Q Okay.

11 A When the agency submits the evidence they fill out some
12 paper work. At the top of the paper work is a name, is a
13 place for the name of the officer submitting it, an address
14 for them to fill in, and that's who I submit a copy of that
15 report to, as well put a copy into my case file.

16 Q Okay. And in this case who was your first report
17 addressed to?

18 A My first report was issued to P. Reed-Enzor.

19 Q Okay. Tell the jurors whether or not you received --
20 whether or not you were contracted by anyone at the Richland
21 County Sheriff's Department after you issued your first
22 report?

23 A Yes, ma'am. After I issued this first report I
24 received this report from Anna Clemmons discussing why I had
25 not analyzed the GSR on the Chevy Suburban.

State v. Tremaine Wray & Taurus Watts 10/12/09

49

1 Q And what date did you receive word from Ms. Clemmons,
2 also knows as Anna Elsey.

3 A She contacted me on 8/28/07.

4 Q Is it common or uncommon for you to have further
5 contact with a law enforcement agency submitting items of
6 evidence to your agency?

7 A It's very common for them to call and ask questions
8 about a report.

9 Q Okay. And your conversations with Ann Clemmons Elsey
10 on August 28, 2007, what did you do as a result of speaking
11 with her?

12 A As a result of speaking with Anna Clemmons, she had
13 more information since the time of that incident report that
14 I received indicating that a weapon had actually been
15 discharged inside that vehicle, and so --

16 Q Which vehicle?

17 A The Chevy Suburban.

18 Q Okay.

19 A And so with the extra information that I had from her
20 on the 28th it was decided that I would re-run or I would
21 actually run that GSR kit from the Chevy Suburban, based on
22 the new information.

23 Q And if you could glance at the chain of custody for
24 SLED No. 10, did it at any time leave your agency at any
25 time since the date that it was brought to you until the

1 time that you analyzed it?

2 A No, ma'am, it did not.

3 Q It remained at SLED?

4 A It remained at SLED.

5 Q Now, at that point, explain to the jury, based on the
6 update in the information that you received from Ms.

7 Clemmons can you explain how it is that you go about
8 analyzing gunshot residue for a vehicle as opposed to a
9 person?

10 A With this kit on the GSR from the Chevy Suburban they
11 only did the particle lift portion. And so that goes
12 straight to our powerful microscope. It goes on there and
13 it's automated on there. On this one they did about 12
14 stubs from various locations on the Suburban.

15 Q And I'm going to show you what has been marked State's
16 No. 2, and ask you if you recognize it?

17 A These are particle lifts. Yes, ma'am. I recognize
18 this.

19 Q And do you see your initials on it?

20 A Yes, ma'am, I do.

21 Q And is that the same kit that you analyzed in this case
22 on the '99 Chevy Suburban?

23 A Yes, ma'am.

24 Q Tell the jurors how it is that you -- first of all,
25 before you even began the analysis did you take measures to

State v. Tremaine Wray & Taurus Watts 10/12/09

51

1 ensure that your instruments were free of any prior exams
2 and there would be no cross-examination?

3 A Yes, ma'am. The process has a -- it has a vacuum
4 pulled on it, so that if any particle were to come off the
5 stubs they're vacuumed and they are pulled to the top so
6 that there is no cross-contamination from one particle to
7 the other. In addition, with this case having so many
8 particle lifts in it, it tied up the instrument all by
9 itself. So there were no other cases run along with this
10 one.

11 Q And explain for the jurors and list, if you will, every
12 items that was contained in the GSR kit for the '99 Chevy
13 Suburban?

14 A May I read from my notes on that one?

15 Q Absolutely.

16 A The GSR kit from the Chevy Suburban has lifts labeled
17 from door frame A, from door handle, door A. The door frame
18 of door B, the door handle of door B. The door frame of
19 door C, the door handle of door C. The door frame of door
20 D, the door handle of door D. The gearshift, the exterior
21 of the glove box, the top of the center console, and the
22 steering wheel.

23 Q And I'm going to show you State's No. 158, and ask you
24 if you recognize this?

25 A Yes, ma'am.

1 Q And does this accurately summarize the parts of the
2 interior that you analyzed and the results that you reached?

3 A Yes, ma'am.

4 MS. SHIPLEY: Your Honor, at this time the state
5 seeks to introduce 158 under Rule 1006.

6 MR. BAX: Your Honor, we would object to it. It's
7 obviously not a document prepared by the expert. It is a
8 summary that's prepared by the solicitor's office. I think
9 it can be used for demonstrative purposes, but I don't think
10 it can be introduced since it's not documented.

11 MS. SHIPLEY: Under Rule 1006, there is no
12 distinction made as to who prepared the item as long as it
13 summarizes the testimony, and it is admissible into
14 evidence.

15 MR. BAX: Well, Your Honor, the problem is that
16 this is blown up and it's been altered. It's more than just
17 a summary of his results. So --

18 THE COURT: Let me see you-all.

19 MS. JOHNS: And in addition, Your Honor, this is
20 not something that we received in discovery.
21 (Off the record bench conference with counsel and the
22 Court.)

23 THE COURT: Ladies and gentlemen of the jury, we
24 need to take up a matter of law. I'm going to excuse you to
25 your jury room, and I'll remind you not to discuss the case.

State v. Tremaine Wray & Taurus Watts 10/12/09

53

1 (Jury out at 11:07 a.m.)

2 THE COURT: Okay. Mr. Bax, your objection?

3 MR. BAX: Your Honor, my objection is that the
4 summary of the results, number one, is unnecessary, based on
5 the fact that the witness himself prepared in his documents
6 a summary of those findings right there, and they're quite
7 clear. It's two different sheets, Your Honor, I'm getting
8 those out of my notebook to show them to you now.
9 Obviously, I've got some highlighting on mine, so it's not
10 something we can use. There is a significant portion that
11 is left out.

12 So our objection would be based on two-fold. Number
13 one, the rule the solicitor has stated specifically talks
14 about a summary of voluminous documents, which we don't have
15 here, clearly. And second of all, Your Honor, it is an
16 inaccurate representation of the results in this case, and
17 that inaccuracy is clearly misleading to the jury, because
18 as the solicitor it merely summarizes the positive results.
19 It does not summarize the negative results in this case. It
20 does not report those out, so it is not -- it basically does
21 not reflect accurately the findings of this witness.

22 If I may approach?

23 THE COURT: Yes.

24 MR. BAX: I don't know if these have been passed up
25 to you already.

1 THE COURT: Okay. I'm looking at it.

2 MR. BAX: Your Honor, the basic point here that in
3 addition to the fact that it's really unnecessary based on
4 the fact that you have the results right there in two
5 documents. It also, it basically misleads the jury because
6 it leaves out critical information that would be -- that is
7 going to be there, it needs to be there for a jury to be
8 able to make a determination.

9 Obviously, I do have the ability to cross-examine in
10 this case, but if they're going to have something blown up
11 and in writing that doesn't have the information that I need
12 to ask about, then that's inaccurate and misleading to the
13 jury.

14 THE COURT: Okay. State?

15 MS. SHIPLEY: Your Honor, Agent Moskal has Page 22
16 through 43 of his bench notes that go into specific detail
17 about what analysis he performed, that's in my count 21
18 pages worth of stuff that I'm trying to summarize on one
19 chart to break it down to this jury. I'm going to hand up
20 to the Court the results of his report for the 1999 Chevy
21 Suburban. You're welcome to look at every item that was
22 listed in his report and the results of those items.

23 THE COURT: Okay.

24 MS. SHIPLEY: And so you see, Your Honor, he lists
25 every items that did come back positive for round lead

State v. Tremaine Wray & Taurus Watts 10/12/09

55

1 particles and the conclusion is round lead particles is one
2 component of gunshot residue. That is his conclusion as to
3 each item.

4 I was getting ready to ask him whether or not in his
5 report he lists things that are negative. And his answer
6 will be no, I don't list things that are negative for no GSR
7 found, but in summarizing it on State's 158, for there's all
8 these pages plus the report summarized in one clear and
9 concise chart, and I haven't even gotten a chance to go into
10 the fact that it indicates one round lead particle. It
11 clearly does not say antimony and barium as the defense is
12 indicating.

13 So Your Honor, under Rule 1006, we have clearly
14 established that the volumes of documents and that this is a
15 summary of all the voluminous documents involved.

16 THE COURT: Okay. Is this summary going beyond the
17 two pages that you also gave me -- no, that defense counsel
18 gave me.

19 MS. SHIPLEY: That's included in here.

20 THE COURT: Okay, but what's different from the two
21 pages? What else is in the twenty-some-odd pages you
22 indicated?

23 MS. SHIPLEY: His findings on how much barium and
24 antimony was on each --

25 THE COURT: But they're indicating that that's not

1 on the chart. In other words, what is summarized in the
2 chart, because the first hurdle for the state to get over is
3 the voluminous writing that is so broad and expansive that
4 it will be easier for the jury to look at a more, succinct
5 document than to just receive the report?

6 MS. SHIPLEY: Well, Your Honor, I don't believe the
7 rule said that it's got to be two pages or 50 pages. It
8 says --

9 THE COURT: Voluminous.

10 MS. SHIPLEY: -- yes, Your Honor, and we have
11 condensed all of his bench notes and every article that he
12 analyzed and each results. For instance, Page 37, door
13 handle B and his result, and look at all that information
14 that he's going to go into one at a time with each of these.
15 I just haven't had a chance to get into all of that. But
16 he's going to go -- break down each area processed -- I
17 mean, Your Honor, this is simply to assist the jury because
18 there's so many areas covered in his report.

19 THE COURT: Okay, you understand what I'm saying.
20 I'm trying to distinguish that we're not talking about two
21 pages that you did blow up, because that's not what Rule
22 1006 was intended -- if it's something more than that --

23 MS. SHIPLEY: In preparing that with my co-counsel
24 it was based on the voluminous bench notes.

25 THE COURT: Okay. You understand what I'm saying?

State v. Tremaine Wray & Taurus Watts 10/12/09

57

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MS. SHIPLEY: Yes, ma'am.

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THE COURT: The distinction is that the jury can look at two pages and don't need for you to summarize, because we have to get beyond that it's not essentially an argument by counsel on the board, that it is actually a summary of documents so voluminous that you're trying to make it easier or assist the trier of fact.

MS. SHIPLEY: Well, then, I guess I'll just use it for demonstrative purposes, Your Honor.

THE COURT: Well, I haven't ruled, but I was just saying that I want to make sure there's a distinction between those because it's only two pages that are put on the board and that does not typify the rule.

MR. BAX: Well, Your Honor, my understanding, to point this out, those are his summaries of his results. Those are his summaries right there that lists all the information, and I think it's specifically for that purpose to summarize. So basically there's no need for a second summary done by someone else when he's got his own summary, and it's only two pages. Right there in front of you.

MS. JOHNS: Additionally, my objection is that the summary prepared by the state, that she intends to introduce is incomplete. It doesn't have everything in there that summarizes --

THE COURT: And when you say everything in there,

1 you're talking about the various particles?

2 MR. BAX: Correct.

3 THE COURT: Like he says round particles were found
4 then indicate what those were. That's fair.

5 MS. SHIPLEY: Well, that's not in his summary
6 either, Your Honor.

7 MR. BAX: It is actually in his summary. If you
8 look in any of the places where he indicated round lead
9 particles it also as a part of that grid where at the top of
10 that grid it has either barium or antimonium, it has a zero
11 next to it. So there are portions of that that not included
12 in that summary.

13 At this point, defense would object to the admission of
14 that whether it be demonstrative or otherwise because of the
15 fact that it does not include all the information, when they
16 clearly have something right there --

17 THE COURT: Well, demonstrative would be a
18 different argument, because anything demonstrative they can
19 demonstrate and then it's just their argument as to what
20 they plan on showing a picture or however they want to
21 demonstrate. Okay.

22 MS. SHIPLEY: I don't see any indication of barium
23 on the summary.

24 THE COURT: Why don't you show that to me. What is
25 this unique mixture single ICP? What is that on the

State v. Tremaine Wray & Taurus Watts 10/12/09

59

1 summary; what is that?

2 MR. BAX: If I may approach?

3 THE COURT: Sure, and then you can show me what you
4 were referring to.

5 MR. BAX: I'm just looking here to orient myself.
6 Unique -- right through here. That is an indication of
7 whether or not the particle has all three elements in it;
8 lead, barium, and antimonium. So you've got that. Number
9 one, if you've got a mixture that's not unique, in other
10 words, has two instead of all three. Finally, you have
11 single, which means, did I find a single one of those
12 elements, and that's what indicated here. Single would be
13 round lead without the other elements. Three round lead
14 particles. Then ICP data, to be perfectly frank, I have no
15 idea what that is. Because it's N/A across the sheet I
16 didn't really go into that.

17 THE COURT: Because he put non-applicable.

18 MR. BAX: Non-applicable, exactly right. But that
19 is my understanding, but certainly you can ask the expert if
20 I'm stating that correctly or not.

21 THE COURT: Okay.

22 And, sir, on this two page sheet that has been shown to
23 me by defense counsel, did he correctly indicate how you
24 were summarizing the particles?

25 MR. MOSKAL: Yes, ma'am. The unique means that it

State v. Tremaine Wray & Taurus Watts 10/12/09

60

1 has all three particles of it, the three components of it.
2 The mixture would mean a combination, the single is the one.

3 THE COURT: Okay.

4 Given what I've heard here I'm not going to allow it in
5 as a summary, because I do feel like the other indication
6 from his summary -- we're talking about particles, what's in
7 or what's out, and I've also allowed him to testify as an
8 expert to the earlier issues objected to by the defense
9 about one of three being in there but still being able to
10 make a conclusion based on his scientific training as to
11 whether or not gunshot residue was there. I think to give
12 the jury the full picture, that they're entitled to know
13 what was in or out of the particle. In terms of
14 demonstrative, that's another matter.

15 MS. SHIPLEY: Your Honor, if I could have a five
16 minute break, my paralegal is going to blow up those two
17 documents that the Court --

18 MR. SWERLING: Can we take a break?

19 THE COURT: Yes, you all can take your break now,
20 too. Five or ten minutes or so.

21 (Court in recess for short break.)

22 (Court in session after short break.)

23 THE COURT: Please take your seats. Are we ready
24 to proceed?

25 MS. SHIPLEY: Yes, ma'am.

State v. Tremaine Wray & Taurus Watts 10/12/09

61

1 THE COURT: Okay.

2 MS. SHIPLEY: Just for the record, Your Honor,
3 we're preparing the summary and we are going to be using
4 State's 160 and 161.

5 THE COURT: Are there any objections?

6 MR. BAX: We have stated our objections, already.
7 So we don't have any objections to that, Your Honor.

8 THE COURT: Okay. Thank you.

9 All right. Jurors, please.

10 MR. BAX: And Your Honor, just preserving our
11 initial objection to the overall testimony.

12 THE COURT: Sure.

13 MR. BAX: Bearing that in mind.

14 THE COURT: Sure. Okay.

15 (Jury in at 11:36 a.m.)

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

17 THE COURT: Okay. You can resume your examination.

18 MS. SHIPLEY: Thank Your Honor.

19 MICHAEL MOSKAL - CONTINUED DIRECT EXAMINATION

20 BY MS. SHIPLEY:

21 Q Agent Moskal, we left off where you were summarizing
22 each item of evidence that you analyzed from the 1999, Chevy
23 Suburban GSR kit?

24 A Yes, ma'am.

25 Q Did you prepare some summaries of your own in your

1 bench notes that reflect each item and what you found?

2 A Yes, ma'am. I did.

3 Q And I'm going to show you State's No. 160, and 161, and
4 ask if you recognize this?

5 A Yes, ma'am, I do.

6 Q And what these?

7 A They appear to be copies of my two pages of bench
8 notes.

9 Q Okay.

10 MS. SHIPLEY: Your Honor, at this time, state seeks
11 to introduce 160 and 161 into evidence.

12 MS. JOHNS: No objection, Your Honor.

13 MR. BAX: Subject to prior objections, nothing
14 further.

15 THE COURT: Admitted.

16 MS. SHIPLEY: Thank you, Your Honor.

17 (State's Exhibit No. 160, bench
18 notes, was marked and entered.)

19 (State's Exhibit No. 161, bench
20 notes, was marked and entered.)

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

23 THE COURT: Yes, you may, sir.

24 BY MS. SHIPLEY:

25 Q Agent Moskal, I'm going to ask you to explain for the