

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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1 jurors, going item by item, on your summaries here, exactly
2 what you did in analyzing each item?

3 A Okay. The microscope we used to analyze the particles
4 will only hold six lifts at a time. So the 12 lifts that
5 came in are broken down into two sets of six by random.
6 This one came in as being identified as a lift from door
7 frame A. Second one was door frame B, drivers door side.
8 Door frame C, front passenger door. Door frame D, passenger
9 side, rear. Top of center console, exterior glove box.
10 Those are what each of the particle lifts were.

11 Q And where do you get the information about the location
12 of where the GSR sample was collected?

13 A Outside of the particle lift -- the particle lift
14 itself comes inclosed in a plastic container and there is a
15 label from the agency as to where they collected those
16 samples.

17 Q Okay. Explain exactly what your procedures are in
18 analyzing each item of evidence?

19 A Okay. The way the microscope works, it's automated.
20 It runs by itself once we do -- once we set it up. We put
21 these six samples in there and it takes up to about six
22 hours for each sample to run. This is one of those things
23 where we set it up and let it go overnight. It takes that
24 little tab, and it breaks it down into grids, and it goes
25 grid by grid looking for elements. The kind of elements

1 that we're looking for; lead, barium, and antimonium. There
2 are a couple of other things it's going to look for, but
3 those are primarily the things that are important to us.

4 When it finds one, it saves that location coordinate
5 Saves that location so that the following morning when I go
6 in to see what it found I can go back to that coordinate
7 where it says it found, possibly, a piece of lead, or a
8 piece of barium, or a piece of antimonium. And I can go
9 back and I can actually look at that particle and I can see
10 whether it's round, whether it's irregular shaped. And I
11 can also look at it to see whether that single particle
12 contains the three elements that we're looking for; lead,
13 barium, and antimonium. And so when I go back and I go to
14 those spots, I look at the picture, and if it's round, I
15 know it contains those elements. I notate it. If it
16 contains all three elements and it's not round I will notate
17 it as well.

18 Q And tell the jurors again the difference between round
19 and not round?

20 A Okay.

21 Q I mean, scientifically.

22 A Scientifically. Round means its kind of spherical,
23 round like the earth is round. It may have some divots in
24 it somewhat like a golf ball. But the overall shape of it
25 is going to round. Now, if the side is flattened, or it has

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1 jagged points in it, that's what we consider to be non-
2 round, and so it would not be included as a round particle.

3 Q And you are only looking for round particles, correct?

4 A As far as the three component particles; we will look
5 for non-round particles, but we won't report on them unless
6 we have round particles to go along with it.

7 Q Okay. Now, going first to the driver's door frame.
8 Tell the jurors what your results?

9 A Okay. My results for the driver's door frame A, is
10 that as far as the three components of round particles
11 unique, I did not find any. A mixture, it can have lead and
12 barium, it can have lead and antimonium. Barium and
13 antimonium. Any combination of those three elements, I did
14 not find them. What I did find were three round lead
15 particles from that particle lift from the driver's door
16 frame.

17 Q And finding three lead particles; what does that mean,
18 in your expert opinion?

19 A Three lead particles by itself -- what's important here
20 is the combination of everything I've got on this case. Not
21 just necessarily the particle lifts from the door frame by
22 itself. If all I had was this three round particles or two
23 or one without much more to go with, that could be secondary
24 transfer, it could mean it could come from another way other
25 than a weapon being fired in that vehicle. But the

1 combination of everything together is going to give me a
2 picture.

3 Q Okay, then, if you could explain your findings as to
4 each items of evidence you analyzed on this page, No. 160?

5 A And in the last column here, I was going to talk about
6 this ICP data. Those are the results from the cotton swabs,
7 and the GSR kit from the Chevy Suburban did not have cotton
8 swabs. So that's why we have an N/A here because those were
9 not submitted. They were not collected.

10 Q And does that effect the results in any way?

11 A No, ma'am, it does not.

12 Q Okay. So proceed to the next one?

13 A Okay. Driver's door frame B, driver's side door frame,
14 I did find one particle that had the three elements; lead,
15 barium, and antimonium, but it was not a round shape. So by
16 itself without another round particle I would not have been
17 able to report on that. I did not find any other mixtures.
18 I did find three round lead particles on that area. The
19 driver's door frame C, front passenger door, I did not find
20 any round or non-round particles containing lead, barium, or
21 antimonium.

22 Q And so your finding is?

23 A That those came back negative with no gunshot residue
24 found.

25 Q Okay.

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1 A The door frame, D, passenger side rear. Again, I did
2 not found any round particles. So the results for that are
3 going to be no gunshot residue found. The top of the center
4 console I found three round lead particles. So the results
5 there are going to be round lead particles found. And the
6 exterior of the glove box, did not find any lead particles,
7 and so the results there are going to be no gunshot residue
8 found.

9 Q And the glove box is located where?

10 A Typically it's going to be on that passenger side.

11 Q And let's move to State's 161?

12 A State's 161, again, this is the next set of six set of
13 particle lifts. Door handle A, driver's door handle, I
14 found two round lead particles. So for that area round lead
15 particles are found. The door handle, B, rear driver's side
16 door handle, I did not find any round particles, so no GSR
17 found. Door handle C, passenger front door handles, no
18 three components, no round particles. So again no gunshot
19 residue found. Door handle D, passenger rear door handle,
20 no round components, so no gunshot residue found. On the
21 steering wheel, I found three round lead particles, so round
22 lead found. On the gear shift, I found two round lead
23 particles, and so the results of that area are round lead
24 particles found.

25 Q Okay. Thank you, sir. You were explaining to the

1 jury that you have to take all results into account,
2 correct?

3 A Yes, ma'am.

4 Q And explain why that's important?

5 A That's important because like you're talking about
6 secondary transfer a little while ago, if I were to shoot a
7 weapon and I had gunshot residue particles on my hand and I
8 touched this area I could leave some of that gunshot residue
9 from my hand on this counter or on the door knob when I walk
10 out.

11 The secondary transfer typically is not a large
12 quantity. It's also typically in areas that you really
13 touch inside that vehicle. Those areas by themselves are
14 typically areas that would lead me in that direction, but
15 when we start looking at the door frames and other areas,
16 and we look at the total amount of particles found here, it
17 starts to give you a picture that it could possibly have
18 been a weapon fired inside that driver's area.

19 Q And so based on your expertise in this field, explain
20 again the three elements or components of gunshot residue?

21 A The three elements, again, are lead, barium, and
22 antimonium, and we look, in this case, to see that they are
23 round particles.

24 Q And so you don't even consider the non-round particles,
25 right?

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1 A We don't consider the non-round particles by themselves
2 in this analysis.

3 Q And your expert opinion as to your findings on all
4 these different areas and the driver's side area of the
5 vehicle, what is your conclusion?

6 A My conclusion is that what I have here is consistent
7 with a weapon having been fired in that driver's area of the
8 car.

9 Q Now, the fact that you found some on the center
10 console, does that change your opinion in any way?

11 A No, ma'am. That center console is right there beside
12 the driver, and that can be considered part of that
13 passenger area.

14 Q And I also noticed you had some round particles found
15 of the rear driver's side door of the vehicle, correct?

16 A Yes, ma'am.

17 Q Let's say the driver's window, front driver's window is
18 open and a firearm is fired, can you explain how it's
19 possible or how it's possible for GSR to travel to the rear
20 of the vehicle?

21 A Again. That whole wind that we talked about earlier,
22 if you shoot a weapon, that wind does have the ability to
23 blow some of those particles around a little bit. That
24 could have possibly blown back to that rear window.

25 Q Now, the fact that you did not locate antimonium or

1 barium, does that change your conclusions in any way?

2 A No, ma'am.

3 Q Now, explain for the jurors the sources of lead, the
4 possible sources of lead?

5 A The possible sources of lead you can get from fishing
6 weights, you can get from smelting, you can get from some
7 cheap Chinese Christmas lights, but, again, those are going
8 to be areas where they don't come out as a round particle or
9 they come out as really, really, large. One of the things
10 that I talk about when talking about GSR is that typically
11 these particles are in a range of one to 10 microns. When
12 you get to the particles from gunshot residue they are going
13 to end up at one to 10 microns. When you get the lead
14 particles out of lead weights and Christmas lights, they are
15 typically larger particles, well over that 10 micron range.

16 Q And so is it your opinion to a reasonable degree of
17 scientific certainty that the person driving this vehicle
18 was not fishing?

19 A No, ma'am.

20 Q How about hanging Christmas lights around his area of
21 the vehicle?

22 MR. BAX: Objection, Your Honor. May we approach?

23 THE COURT: Yes.

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

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1 THE COURT: Overruled, with that limiting
2 instruction.

3 BY MS. SHIPLEY:

4 Q And so, the likelihood, if I may, of these lead
5 particles being left by the sources you testified to
6 earlier; Christmas light, fishing weights, and so forth, are
7 these consistent with the round particles you located from
8 these items of evidence?

9 A Based on the sizes of what I found, no, ma'am.

10 Q And in your expert opinion, is it possible for -- I'm
11 going to pose a hypothetical to you. If there were two
12 people traveling in a vehicle and one is driving. Is it
13 possible for the other individual to fire a weapon and leave
14 GSR on the driver's side area of the car?

15 A Yes, ma'am, I believe that could be possible.

16 MS. JOHNS: Your Honor, I object. I think it's
17 outside his area of expertise.

18 MS. SHIPLEY: Your Honor, he testified it was on
19 the console, as well.

20 MS. JOHNS: Your Honor --

21 MS. SHIPLEY: This is completely appropriate.

22 MS. JOHNS: -- I don't know how this witness --
23 no.

24 THE COURT: Okay. Come forward, come forward.

25 MS. JOHNS: He's --

1 THE COURT: You don't need to be argumentative in
2 front of the jury. Come forward.

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

5 THE COURT: Objection sustained.

6 BY MS. SHIPLEY:

7 Q All right, and just last time, your final conclusion.
8 Is it consistent or inconsistent for these round lead
9 particles -- what is your conclusion?

10 A My conclusion, based on everything I found here is that
11 a weapon was fired in the vicinity of that passenger area?

12 Q Which area?

13 A The driver's side area.

14 Q Okay.

15 A The driver's side.

16 Q Okay. Thank you. Please have a seat.

17 A Yes, ma'am.

18 Q Now, explain for the jury when you were analyzing those
19 specific 12 particle lifts from the 1999 Chevy Suburban,
20 whether or not you received some more evidence from the
21 Sheriff's Department involving this case?

22 A Yes, ma'am. Very shortly after completing the GSR kit
23 on this Chevy Suburban, I also received another kit from an
24 Isuzu Rodeo.

25 Q And can you tell the jurors the date that you received

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1 it or when was it first brought to the SLED and did when did
2 you get it?

3 A It was logged into log-in at SLED on January 25, 2008,
4 and then I received it on January 8, 2008.

5 Q And I'm going to show you what's already in evidence as
6 State's No. 4, and ask you if you've familiar with this
7 document?

8 A Yes, ma'am.

9 Q And what is it?

10 A This is a log-in sheet that the evidence technicians in
11 log-in fill out, and it's on the computer for us to be able
12 to get along with the evidence that we receive.

13 Q Okay. And how is the item described on that form?

14 A The item description for No. 11 is one Tri-Tech GSR kit
15 from a 2001 Isuzu Rodeo.

16 Q Okay. And is there a subject listed on the first page,
17 and if so, please read it exactly as written?

18 A Yes, ma'am, there is. The subject is Greene, Jerome.

19 Q Okay. Now if State's --

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

21 THE COURT: Certainly.

22 BY MS. SHIPLEY:

23 Q I'm going to show you State's No. 3, and ask you if you
24 recognize that?

25 A Yes, ma'am, I do.

1 Q And do you see your initials on there?

2 A Yes, ma'am, I do.

3 Q And tell the jury, is it common or uncommon in your
4 experience to receive additional items of evidence from
5 agencies?

6 A It's common to receive additional evidence, sometimes a
7 year or two years later.

8 Q And there was testimony earlier about that item there,
9 the 2001 Isuzu Rodeo was kept in an evidence locker from --
10 the date of collection, June 30, 2007 until it was put in
11 the Richland County property room on January 7, 2008. Could
12 you explain for the jury whether that effects the integrity
13 of the evidence in any way?

14 A No, ma'am. Once the GSR -- once the hands have been
15 swabbed and the particle lifts have been collected, they are
16 on those cotton swabs and they are on those particle lifts,
17 and so they are going to remain on those materials until
18 those materials are altered in some way.

19 Q Okay, now, bringing your attention -- what item number
20 was assigned to the 2001 Isuzu Rodeo by SLED?

21 A Item No. 11.

22 Q And did you analyze the lifts or swabs from that item?

23 A I analyzed the cotton swabs on Item No. 11.

24 Q Okay. Can you just explain to the jury what you did to
25 analyze SLED No. 11, the 2001, Isuzu Rodeo,

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1 A Okay. The cotton swabs are treated with a nitric acid
2 solution. They are in individually labeled test tubes, the
3 right palm, the right back, the left palm, the left back.
4 Each one of them has an acid solution added to them and they
5 are placed onto our instrument an inductive coupled mass
6 spectrometer. Basically it's a big bean counter, and it's
7 going to tell us what the quantity of lead, barium, and
8 antimonium are on each one of those sections.

9 Q And explain for the jurors the contents of the GSR kit
10 for the 2001 Isuzu Rodeo. How was it broken up; how were
11 the swabs taken?

12 A I received four swabs from the Rodeo. I received a
13 swab from the driver's door, the passenger's door, the
14 driver's roof and the passenger's roof.

15 Q And the person who collected those items, would they
16 not be familiar with where they collected it?

17 A I would imagine. I can't testify as to what they did,
18 but I would imagine they knew where they collect it.

19 MR. BAX: Objection, Your Honor. He can't testify
20 to that, he just said so. Anything past that is not proper.

21 THE COURT: Sustained.

22 BY MS. SHIPLEY:

23 Q Now, when you received these items did they appear to
24 be tampered with in any way?

25 A No, ma'am, they were not.

1 Q And, again, tell the jurors, was this -- the way these
2 cylinders were labeled and collected, did that appear to
3 come from a person or an object?

4 A The appeared to come from an object. They were re-
5 labeled. When Tri-Tech produces these test tubes, they have
6 a label on there for the right palm, right back, left palm,
7 left back, because that generally is what is collected, but
8 when an agency collects it from some other area that's not
9 one of those four, they will oftentimes scratch through
10 there and write on there, or they actually will make up
11 their own labels and attach it to this test tube.

12 Q And can you examine Item No. 11, and see how that was
13 labeled?

14 A What they did was they took and put a piece of paper
15 with -- I can't tell if it's handwritten or copied on there,
16 but they have re-written on here and taped it to the
17 container the areas of the driver's door, the passenger
18 door, the driver roof and the passenger roof.

19 Q Okay. On this particular collection were cotton swabs
20 and particle lifts collected?

21 A No, ma'am, this kit was simply the particle lifts.

22 Q Okay, and if you could explain to the jury what
23 analysis you performed on the 2001 Isuzu Rodeo?

24 A Let's back up.

25 Q Which one were you looking at?

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1 A Okay. Those were -- okay. I'm sorry. On the Isuzu
2 Rodeo I did receive both the particle lifts and the cotton
3 swabs.

4 Q Okay. So cotton swabs and particle lifts were done on
5 the Isuzu Rodeo?

6 A Yes, ma'am.

7 Q And particle lifts only were done on the Chevy
8 Suburban?

9 A Correct.

10 Q Okay. Explain for the jury what procedures you
11 followed in order to analyze the 2001 Isuzu Rodeo?

12 A Okay. With the Isuzu Rodeo, since I had the swabs and
13 the particle lifts, I started with the swabs first to see if
14 they met our threshold. The cotton swabs on the Isuzu Rodeo
15 four areas that I mentioned, the driver's door, driver's
16 roof, passenger door, and passenger roof, the quantities on
17 those four areas did not meet our threshold.

18 Q And when that analysis is done what is your conclusion,
19 if the threshold is not satisfied what is your conclusion?

20 A If the threshold is not satisfied the conclusion is
21 that the quantities of metals found do not indicate the
22 presence of gunshot residue.

23 Q And you're finding that the quantities found did not
24 indicate the presence of gunshot residue; what does that
25 mean in your expert opinion?

1 A That is consistent with a weapon not having been fired
2 or that it was removed by some other source:

3 Q And so you can only testify to your results, correct?

4 A Correct.

5 Q And is that negative?

6 A That is a negative results.

7 Q And is that the same as to Greene and Landrum?

8 A Yes, ma'am, it is.

9 Q And you cannot date when these particles were left, can
10 you?

11 A Not on an inanimate object.

12 Q And explain why not on that verses a human?

13 A Again, on a human the particles are only going to
14 remain for up to a six hour period. So if I find it on a
15 living person's hands, I know that they were around that
16 weapon, whether handling it or in the vicinity when it was
17 fired, within that six hour window. On an inanimate object,
18 since it remains until some outside source removes it there
19 is no way to determine when it was placed there.

20 Q Now, once you completed your analysis on the 2001,
21 Isuzu Rodeo, did you issue a report?

22 A Yes, ma'am, I did.

23 Q And what is the date of your report?

24 A My date on the Item No. 11, the Isuzu Rodeo, is March
25 4, 2008.

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1 Q Okay. And what about the Chevy Suburban?

2 A The Chevy Suburban was also issued on March 4, 2008.

3 Q And so you reported both together?

4 A Yes, ma'am, I did.

5 Q And in your reports do you list all the items that were
6 negative as to the '99 Chevrolet Suburban?

7 A No, ma'am, I do not.

8 Q And how do you list it?

9 A In the Item No. 10, the Chevrolet Suburban, I listed
10 the areas that had a positive result, the ones that had
11 round lead particles.

12 Q And as to the findings on the March 4, 2008, how did
13 you phrase your results in that report?

14 A For the Chevrolet Suburban --

15 Q No. Now, I'm actually moving on to Item 11?

16 A Okay. Item 11, the Isuzu Rodeo?

17 Q Yes. How did you phrase your report?

18 A I phrased my findings as the samples collected from the
19 Isuzu Rodeo, no gunshot residue was found.

20 Q Now, did you have an opportunity to review all your
21 bench notes and your reports in preparation for trial?

22 A Yes, ma'am, I did.

23 Q And did you make a correction as to the 2001 Isuzu
24 Rodeo terminology?

25 A Yes, ma'am, I did.

1 Q Okay, explain that for the jury?

2 A The result I put on the Rodeo on the first time, on the
3 March 4 report, stated no gunshot residue found. In our
4 lab, we recognize that as being a result of taking it to the
5 microscope and actually looking at the round particles, and
6 looking to see if it contains all three of them. In looking
7 back through the report, I had not actually taken it to the
8 microscope. All I had done was gotten the swabs. So the
9 report should have gone out the quantities found did not
10 indicate gunshot residue, because all I had looked at was
11 the quantity of those three elements.

12 Q Just so the jury is clear. The initial report says,
13 what?

14 A The initial reports says no gunshot residue found.

15 Q And because you were -- because the cotton swabs did
16 not meet the threshold you then did what?

17 A Once I knew -- once I realized it had been an
18 inappropriate response on there, I started the procedures
19 for writing a corrected report.

20 Q And did you do so?

21 A Yes, ma'am, I did.

22 Q And what is the date of your corrected report?

23 A The date of my corrected report is October 2, 2009.

24 Q And the way it should have been phrased in your March
25 2008 report was quantities of metals found do not indicate

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1 the presence of gunshot residue?

2 A Yes, ma'am. Actually, the word is detected, but yes,
3 ma'am.

4 Q Detected. Okay. Does that change in any way the
5 results that you came to back in March of '08?

6 A It's still consistent with a negative results.

7 Q Still consistent with a negative result. And did that
8 in any way alter, change in your answer, conclusion, effect
9 in any way your conclusions as to the 1999 Chevy Suburban?

10 A Not at all with the Chevy Suburban, no, ma'am.

11 MS. SHIPLEY: Beg the Court's indulgence, Your
12 Honor?

13 THE COURT: Yes.

14 BY MS. SHIPLEY:

15 Q On State's No. -- the form that was submitted with that
16 exhibits --

17 A Eleven?

18 Q Yes. I believe it was No. 4, Exhibit No. 4? Anyhow --
19 well, if you could refer to the form that was submitted
20 along with the 2001 Isuzu Rodeo, second page, top right
21 corner, there appears to be some initials?

22 A State's Exhibit No. 4.

23 Q Oh, you found it. Okay.

24 A Upper right hand corner?

25 Q Yes, sir.

1 A Appears to be K.M.W.

2 Q And if could refer to your chain of custody log, who is
3 K.M.W?

4 A K.M.W. should be Karhonda M. Williams.

5 Q Okay. And that is the person that accepted this item
6 of evidence?

7 A Yes, ma'am. That is the evidence custodian who logged
8 that in to our evidence.

9 MS. SHIPLEY: Beg the Court's indulgence, Your
10 Honor.

11 THE COURT: Sure.

12 BY MS. SHIPLEY:

13 Q And can you explain for the jury whether or not the
14 more times a firearm -- let me just start from the
15 beginning. Does gunshot residue come out of the weapon each
16 time you fire it?

17 A Yes, ma'am, gunshot residue will come out of a weapon
18 each time it's fired. And then the more times you fire the
19 more gunshot residue has come out. So you have a higher
20 likelihood of having it deposited on the area around it.

21 MS. SHIPLEY: Thank Your Honor. I have no
22 further questions.

23 THE COURT: Okay.

24 MR. BAX: Please the Court, Your Honor.

25 MICHAEL MOSKAL - CROSS-EXAMINATION

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1 BY MR. BAX:

2 Q Good afternoon, Mr. Moskal.

3 A Yes, sir.

4 Q I'm just looking to make sure I knew where we were
5 here. There's a number of things I want to cover here, so
6 if I speak too fast, let me know --

7 A Yes, sir.

8 Q -- and I will rephrase or I'll ask it again, so we're
9 clear. You testified about your findings based upon evidence
10 or things that were collected and submitted to you by a local
11 agency; is that correct?

12 A Yes, sir, I have.

13 Q So just to make sure that we're clear with the jury
14 here today, you were not present at the scene, you were not
15 part of any crime scene investigation, you were never at the
16 locations involved with this case?

17 A No, sir, I was not.

18 Q Did you ever visibly look at any of these vehicles or
19 people that this GSR was supposedly taken from?

20 A No, sir, I have not.

21 Q Was there any photographs submitted with the materials
22 that were sent to you for testing?

23 A Not with my evidence. There could have been some
24 submitted, but I haven't seen any.

25 Q So you haven't seen any?

1 A No, sir.

2 Q Now, let's talk a little bit here specifically about
3 the vehicles. You were actually asked or submitted a GSR
4 kits from a couple of different vehicles; is that correct?

5 A That is correct.

6 Q But that was submitted at different time; is that
7 right?

8 A Yes, sir.

9 MR. BAX: And, Your Honor, a moments indulgence. I
10 need to locate an item marked for ID only.

11 BY MR. BAX:

12 Q What sort of documentation do you receive along with
13 the kit to tell you what they're requesting you to do?

14 A When the agency brings in the evidence to log in, they
15 fill out some paper work. There is going to be a form that
16 they fill out that has a place for the agency name, the name
17 of the officer who is submitting it, the date. We will get
18 the local agency's lab number, sometimes. The date of the
19 incident, a place where they fill out who the subject was,
20 if they know who the victims were, if they have an ID for
21 them. It also come with a page where the do an item by item
22 description and give it an item number. And then there's
23 also, sometimes, but not all the times, an incident report
24 with it as well.

25 Q Let me hand you what had been marked as Defendant's for

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1 ID Only, and see if you can just -- tell me if you recognize
2 that?

3 A Yes, sir.

4 Q And that is a form that's included with the kit that's
5 actually filled out by the collecting agency and the
6 collecting agent; is that correct?

7 A That is correct.

8 Q Okay. And do you see there, this was a request for a
9 test on gunshot residue -- gunshot residue collecting kit
10 taken from a vehicle; is that correct?

11 A That is correct.

12 Q And does it indicate there that is a silver Chevrolet
13 Suburban, comma, 1999?

14 A It indicates it's a silver Chevrolet Suburban, 1999, SC
15 tag, [REDACTED], and what appears to be a vin number, [REDACTED],
16 possibly [REDACTED].

17 Q And is there a portion on that form at the bottom that
18 gives some information about the shooting that supposedly
19 occurred?

20 A Yes, sir. It indicates the time of the shooting and
21 the time of the collection.

22 Q And on that form, it also indicates that they write
23 down something about the place that it happened. What does
24 it say there?

25 A It indicates outdoors from vehicle.

1 Q So it has outdoors/from vehicle; is that correct?

2 A Yes, sir.

3 Q And that is the form that came with the kit --

4 A Correct.

5 Q -- when you first received this; is that correct?

6 A That is correct.

7 Q Now, I wanted to ask you a couple of questions. Now,
8 on your direct testimony, you testified that there was an
9 initial report or police report that was provided to you
10 along with the kits that you looked at that report prior to
11 your testing; is that correct?

12 A That is correct.

13 Q And on that report I believe you testified there was a
14 description of a white vehicle, a white SUV, and then it
15 describes possibly a Nissan, and that there were suspects
16 that then began shooting towards the club; is that correct?

17 A That is correct.

18 Q Now, based on that, you testified that when you first
19 received this evidence that you declined to analyze the kit
20 from the Chevrolet Suburban due to secondary transfer;
21 correct?

22 A That is correct.

23 Q And that is something that you reported out on your
24 first report that came out August 20, 2007; is that right?

25 A (No response.)_

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1 Q Item No. 10?

2 A August 20, 2007; correct.

3 Q And you testified that you formulated that -- well, let
4 me ask you this, this was an opinion about the quality of
5 the evidence based on the information you were provided;
6 correct?

7 A It was based on the incident report stating that it was
8 a possible white Nissan.

9 Q Okay. But it was also based on the fact that there was
10 an allegation in that report that the shooting happened
11 somehow outside of the vehicle?

12 A Correct. Those two things together.

13 Q And you determined that due to secondary transfer, no
14 analysis performed, and that basically was saying that due
15 to the fact that somebody could shoot outside the car and it
16 could rub off of them onto that car you weren't going to do
17 the test; is that correct?

18 A That is correct.

19 Q Is that -- Is that a rule, is that something that's in
20 your protocols when it comes to secondary transfer?

21 A Yes, sir.

22 Q So that is something that you have guidelines on that
23 says you have the situation where the gunshot residue could
24 have been deposited through secondary transfer no analysis
25 will be performed; correct?

1 A If we do not have an indication of a weapon being fired
2 in that area, and it appears they're looking for secondary
3 transfers, we will not analyze it.

4 Q Because such evidence would not be probative because of
5 the fact that you would not be able to tell where it came
6 from, it's been transferred from something else; correct?

7 A Correct, and there's no data to support how much was
8 transferred at that point.

9 Q Now, let me ask you this, when it comes to an inanimate
10 object, when you're looking at the tabs, and the big
11 microscope is gridding that surface is there any difference
12 in your results as far as what you see in that microscope
13 and what the elements read out on the sheet between
14 something picked up from secondary transfer and something
15 that was directly deposited on that inanimate object?

16 A If I had something from secondary transfer there would
17 be no way to tell the difference.

18 Q So there would be absolutely no difference if that
19 particle or that number of particles was deposited on a
20 steering wheel or an inanimate object through secondary
21 transfer rubbing on it or a direct deposit falling from the
22 air?

23 A A single particle of GSR is going to be round and
24 contain those three elements, and there's no way for me to
25 tell on a single particle whether it would have come from

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1 secondary-transfer or a shooting, at that point.

2 Q No way to tell the difference between secondary
3 transfer and something that came from a shooting; is that
4 your testimony?

5 A For a single particle, yes.

6 Q Now, in this particular situation, after conducting
7 that initial examination you went ahead and analyzed some of
8 the other items, and sent your report back, and then after
9 that you had a conversation, I believe you testified to with
10 Sgt. Anna Clemmons with Richland County Sheriff's
11 Department; is that correct?

12 A That is correct.

13 Q She's now known as Sgt. Anna Elsey?

14 A Okay.

15 Q In reference to that did you also receive an email from
16 Ms. Clemmons on September 12?

17 A I did.

18 Q Let me hand this up to you and see if you recognize it?

19 A Yes, sir.

20 Q Is that a copy of that email?

21 A It appears to be a copy of my email; yes, sir.

22 Q All right. Now, you had formed the opinion that this
23 was a secondary transfer issue, and then you had a
24 conversation with Sgt. Clemmons and also received an email,
25 and then afterwards an analysis was performed; is that

1 correct?

2 A That is correct.

3 Q And you testified that it was decided that the analysis
4 should be performed; is that correct?

5 A That is correct.

6 Q And you've testified that it was decided that the
7 analysis should be performed; is that correct?

8 A That is correct.

9 Q Does that indicate that there were more people involved
10 than just you in making that decision?

11 A It was my -- as the analyst in this case, it was my
12 decision, but I discussed it with the other analysts in the
13 lab; yes, sir.

14 Q Including your supervisor?

15 A Including my supervisor.

16 Q Mr. Moskal, what changed between the time that you made
17 the decision not to analyze the secondary transfer due to
18 the lack of probative value of that and the time that you
19 did the analysis and sent the second report?

20 A When Anna Clemmons contacted me she stated that there
21 were other facts that the initial incident report I received
22 didn't indicate. And so when she gave me an updated
23 incident report it indicated that a fire -- a weapon had
24 been fired inside that vehicle, which now made it a primary
25 source for gunshot residue.

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1 Q. And did there -- was there anything that changed, was
2 there any new science that was created within the time they
3 submitted the test initially and the time that you analyzed
4 it after that discussion that would allow you to tell the
5 difference between secondary transfer of particles and
6 direct deposit particles?

7 A No, sir, there was not.

8 Q So there was no change in that?

9 A No, change.

10 Q So you still would not be able to tell the difference
11 today?

12 A Between something that came directly from the weapon
13 and secondary, no, sir, not based on a single particle.

14 Q Now, I think there's some things that need to be
15 addressed, as well, with the Chevy Suburban, actually, it's
16 a GMC Suburban, but you can put that aside. There were no
17 swabs taken; is that correct, because on State's 160 and
18 161, you testified under the column labeled ICP Data there
19 is an N/A, which I would assume means non-applicable?

20 A That is correct.

21 Q Okay, and that was because there were no swabs provided
22 in that kit?

23 A Correct.

24 Q Okay. And isn't it true, Mr. Moskal that the swabs are
25 actually very sensitive, the chemical presumptive tests

1 involved in the swabs is very sensitive?

2 A The swabs are going to pick up anything that you have
3 on your hands; that is correct.

4 Q And there were swabs done, as you testified before on
5 the Isuzu Rodeo, so it can be done on an inanimate object
6 was well; correct?

7 A Can be, yes, sir.

8 Q And your testimony and your results that you're
9 presenting to the jury is that every time the swabs were
10 done you didn't go any further in this case, but the one
11 time swabs weren't done you did go further and you found a
12 few particles; is that correct?

13 A That is correct.

14 Q Now, obviously, as you've testified you've got some
15 pretty fancy equipment that you use in order to do these
16 tests and to look at these particles and I think a lot of
17 that is because we're talking about something on the
18 microscopic scale; is that correct?

19 A That is correct.

20 Q So this is not material that can be seen by the naked
21 eye?

22 A Correct.

23 Q Okay. And that goes especially for people collecting,
24 they just have to try and think of where it could be and put
25 those little stickies there because they can't see it,

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1 correct?

2 A Correct. And based on incident reports and eye
3 witnesses.

4 Q And whatever the eye witnesses have said in the case?

5 A Correct.

6 Q Whatever credibility may be assigned to them; is that
7 correct?

8 A That's correct.

9 Q Now, in your results from your testing the Chevy
10 Suburban in this case you've testified that there's a number
11 of things listed here in your results that you look for; is
12 that right?

13 A (No response.)

14 Q Let me just put this up here. You have a number of
15 columns across here; is that correct?

16 A That is correct.

17 Q I didn't mean to mark on that; I'm sorry. And that
18 includes number one, unique. And you've testified that
19 unique means finding a particle that has all three of the
20 elements in it; is that right?

21 A And it's round.

22 Q And it's round, exactly. It has to have that fourth --
23 it has to be round, because here you're got a non-round?

24 A Correct.

25 Q Which is not considered gunshot residue?

1 A By itself, no, sir.

2 Q And then you have a mixture, where there's two of the
3 three?

4 A That is correct.

5 Q And then you have a single?

6 A Yes, sir.

7 Q And in this particular case the only thing you find
8 that you've listed out in your results other than no GSR
9 found is one. You don't have any mixture, you don't have
10 any unique; is that correct?

11 A That is correct.

12 Q Okay. And these particles -- let me ask you this,
13 you've testified that they are generally in a range to one
14 to 10 microns. Can you explain a little bit to the jury
15 what that means?

16 A What that means is a micron is about 1 times 10 to the
17 ninth of a meter. So basically that means you use zero,
18 then a decimal and then you go over nine places for your 1.
19 So it is that portion of a meter, so it is something that is
20 really microscopic.

21 Q And because you're talking about something that
22 extremely microscopic the crime scene investigators with the
23 local agency or whoever collects and they use those sticky
24 tabs, there are virtually thousands, possibly millions of
25 particles that can be picked up by those sticky tabs; is

1 that correct?

2 A It can pick up thousands of particles; yes, sir.

3 Q Okay. And out of those thousands of particles on the
4 12 different tabs that were collected from this GMC
5 Suburban, I believe I see on 16 were found to be round lead
6 particles; is that correct?

7 A That is what I issued or that is what I wrote down on
8 the summary. Once we find enough to make a conclusion we do
9 not have to go in and look at every single particle. Once
10 we got enough to establish our result we can stop at that
11 point.

12 Q But you also looked at each of the sticky tabs that
13 were taken, a total of 12 in this case; is that correct?

14 A That is correct.

15 Q All from the same vehicle?

16 A From the same vehicle.

17 Q And you've only listed down 16 particles; is that
18 correct?

19 A That is correct.

20 Q How many round lead particles do you have to have for
21 your protocol?

22 A Per protocol we have to have two particles, whether
23 it's a round three components or the round lead, but we have
24 to have at least two reportable particles and I always go
25 the extra stuff and get a third one in there.

1 Q So in some of these there's not three, is that correct,
2 in some of these you don't find the full three round
3 particles on each of these tabs; is that correct?

4 A That's correct.

5 Q I see two right there and two right there; right?

6 A Yes, sir.

7 Q And that means you weren't able to find a third one,
8 right?

9 A No third one, but it was enough for the protocol.

10 Q It was enough for the protocol, but you couldn't find
11 that third one, right?

12 A Correct.

13 Q Now, is there a universal standard in the scientific
14 realm for the number of particles that would be required or
15 is that something that is set up by each agency to test?

16 A That is set up by each agency to test.

17 Q Okay. Now, just to make sure that we're very clear,
18 does lead by itself indicate gunshot residue?

19 A No, sir. Lead by itself does not indicate gunshot
20 residue.

21 Q What you would really like to have is a rounded lead
22 particle or more that contains all three of those elements;
23 correct?

24 A Correct. The most conclusive finding you could find
25 would be a round three component particle. It would be

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1 round and it had lead, barium and antimony on it. But you
2 don't always get that when you test for GSR.

3 Q So your testimony with the solicitor was not quite
4 accurate a minute ago when said -- she asked you if finding
5 barium and antimony would change your results and you said
6 no, but now you're saying yes in a way it would change your
7 result because it would be more definitive. That would be
8 the most definitive you could have as a GSR tester; is that
9 correct?

10 A My results, my conclusion, I believe, is what she
11 referred to when she asked was that consistent with a weapon
12 being fired from the passenger seat -- or from the driver's
13 seat and I said yes. Now, if I had found barium and
14 antimony I would be more conclusive in the fact that I had
15 actually found gunshot residue.

16 Q So your words here today are more conclusive, and
17 that doesn't mean to you a different result, when you say
18 more conclusive that doesn't mean to you a different result?

19 A It's a little stronger, but it still indicates to me
20 that a weapon was fired in that area, yes.

21 Q So just to be clear you've testified that -- well, let
22 me ask you this, your results on the report that's been
23 referenced here was that rounded lead particles were found,
24 just one component of gunshot residue. That's what you list
25 in your results; is that correct?

1 A That is correct.

2 Q Okay. So that would definitely be something that would
3 change is any of the other elements required for gunshot
4 residue, any of those two other elements; correct?

5 A I would have been able to report gunshot residue in the
6 report, correct.

7 Q And you did not report gunshot residue in this report
8 for the Chevy Suburban did you?

9 A No, sir, I did not.

10 Q Because you did not find all that you needed to find in
11 order to make that finding based on your protocol?

12 A To make a finding, but not to make a conclusion;
13 correct.

14 Q Now, you've also testified about the fact that there
15 are some other sources that one can get rounded lead
16 particles, I'm not even talking about just lead, I'm talking
17 about rounded lead particles. I believe you testified that
18 soldering or smoldering --

19 A Yes, sir.

20 Q -- can produce that because the lead becomes molten as
21 you use it to solder with?

22 A It will give you round --

23 Q It will give you round lead particles, correct?

24 A Yes, sir.

25 Q And additionally isn't it true that fire works can also

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1 produce and been found to produce round lead particles?

2 A I have not see where they produce the lead. I believe
3 they have stromium and some other elements, but I have not
4 see where they have lead.

5 Q And isn't it true also that brake pads can produce
6 rounded lead particles as well, coming in contact with brake
7 pads?

8 A Yes, sir.

9 Q And we've talking about attached on a vehicle; is that
10 correct?

11 A Yes, sir.

12 Q And is this the 1999, according to the records that you
13 have; is that correct?

14 A That is correct.

15 Q GMC or Chevy Suburban?

16 A Chevy Suburban, yes, sir.

17 Q And this was in 2007?

18 A Correct. When I received it and analyzed it.

19 Q When you received it in 2007?

20 A It was 2007.

21 Q So isn't it possible that anyone doing work on the
22 brake pads, especially on a car like this, you could have
23 resulted in round lead particles being found in the interior
24 driver's area of a car?

25 A Typically, those areas that you get it off of the brake

1 pads are going to be bigger, if you get round ones. These
2 were very small particles and they were very round.

3 Q Well, and that's -- you said typically, but that's not
4 always the case, right, there's exceptions to that rule;
5 right?

6 A There are exceptions.

7 Q Okay. And you only found, especially in some of these
8 that we talked about, two round particles; is that correct?

9 A In --

10 Q In the size range that you're talking about?

11 A In two of the locations, yes, sir.

12 Q And let me ask you this, did you look at any round lead
13 particles that were less than 10 microns?

14 A I did not report or document any of those, no, sir.

15 Q Do you recall seeing them?

16 A I don't recall, no, sir.

17 Q Now, let me move on to the other vehicle, here. You
18 testified that, well, number one, the Isuzu Rodeo that you
19 tested, that will be Item 11 in your second report and also
20 in your third report, as -- it came to you sometime later;
21 is that correct?

22 A That is correct.

23 Q And you testified that that difference of seven plus
24 months would not necessarily compromise the integrity of the
25 samples; is that correct?

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1 A That is correct.

2 Q Would that hold true if the samples were not sealed, in
3 other words, if they were open and they could be gotten in
4 to?

5 A If they were not sealed that would not have held true,
6 but this evidence was sealed and intact when we received it.

7 Q Well, it was sealed when you got it?

8 A Correct.

9 Q And the envelope was sealed, so on and so forth?

10 A Yes, sir.

11 Q If there was some time during that seven months or some
12 large portion where the envelopes weren't sealed, isn't it
13 true that you can pull those vials out and unscrew them,
14 right?

15 A I -- that is true, but I can't testify as to what
16 happened to it before I received it.

17 Q Let me you just asked you, based on those Tri-Tech
18 kits; you obviously are familiar with those; correct?

19 A Yes, sir.

20 Q And obviously the envelope that they're in is sealed
21 when it comes to you; correct?

22 A Correct?

23 Q Is the individual vials themselves, are they sealed in
24 some way, is there tape wrapped around them?

25 A Yes, sir. When you shut those you know they're shut,

1 and we always document whether they are opened jars or if
2 there's anything absolutely not consistent with what we
3 normally get in we document those in our notes.

4 Q And, of course, you can only document the state they
5 were in when you received them; is that correct?

6 A That's correct.

7 Q So you can't say when the tape was placed on the
8 envelopes, vials or any of that?

9 A On the GSR kits they dated it. Yes, I can tell when it
10 was sealed.

11 Q Now, in your testimony, you testified that you had that
12 initial incident report that described that white SUV or
13 possibly a Nissan with a black stripe, and based on that
14 incident report that you received you decided not to test
15 the vehicle that you had, but the vehicle that you had at
16 the time was the Suburban; isn't that right?

17 A That's correct.

18 Q Okay. Later on you were sent the kit for this white
19 with a black stripe Isuzu Rodeo, which is similar in make
20 and shape to a Nissan Pathfinder; correct?

21 A Correct.

22 Q But you tested it didn't you?

23 A I did.

24 Q So something that you had determined based on the
25 incident report, the allegations was the secondary transfer

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1 that you weren't supposed to do based on your protocol, you
2 did go on and test later on; is that correct?

3 A Can you rephrase that?

4 Q You made a determination that the white SUV was not
5 something that you were going to test based on your own
6 protocols due to secondary transfer; is that correct?

7 A That is correct, based on the incident report that I
8 had initially.

9 Q Okay. Obviously, we've gone through the fact that you
10 were provided some additional information, as to the
11 Suburban; correct?

12 A As to the Suburban, yes, sir.

13 Q But later on, you received a kit for the white Isuzu?

14 A Correct.

15 Q And you still tested it despite the fact that you had
16 determined based on that incident report that you received
17 earlier that it was not probative to test it?

18 A The incident report stated that a weapon had been fired
19 over the Isuzu, and it was my understanding from the crime
20 scene that the firing of the weapon had been discharged
21 around that Isuzu. I never questioned secondary transfer at
22 all on the Isuzu Rodeo.

23 Q But you testified that you relied on this report in
24 making the decision about not making the secondary transfer?

25 A On the Chevrolet.

1 Q So your feeling was they had sent you information about
2 a white Isuzu and then sent you a kit for a Chevy Suburban;
3 and that's why you felt that it was secondary transfer?

4 A Correct, on the Chevrolet.

5 Q And it was not because the shots were said to have
6 happened outside the vehicle?

7 A It was a combination of those two things on the
8 Chevrolet, yes.

9 Q Because I believe you did testify that the allegation
10 in the report was that shots were fired outside the vehicle
11 was why you determined it shouldn't be tested for secondary
12 transfer; correct?

13 A It was the secondary transfer and there was nothing
14 indicating in the initial report that a weapon had been
15 fired in or around the Chevrolet Suburban.

16 Q Well, that wasn't your testimony originally. Your
17 testimony originally, was it not that it was fired outside
18 of the vehicle; is that correct?

19 A It indicates here that it was fired over --

20 Q I'm asking you if that was your original testimony.

21 MS. SHIPLEY: Your Honor, may the witness please
22 finish his answer before he's interrupted.

23 MR. BAX: I just wanted to clarify my question.

24 THE COURT: You can say yes or no to his question
25 and then you can explain.

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1 A Can you restate the question?

2 BY MR. BAX:

3 Q The question was your original testimony here today was
4 that you did not test initially because the allegation
5 within this incident report was that the gun was fired
6 outside the vehicle; correct?

7 A Incorrect. There were two reasons I did not test it
8 initially. One, was because the Chevy had nothing to do
9 with the initial incident report, and, two, it said the
10 weapon had been fired over the car.

11 Q Now, let's move on to -- well, let me ask you this, in
12 the Isuzu there was these swabs taken; correct?

13 A Correct.

14 Q And they were taken -- well, let me ask you this; they
15 were taken, do you recall how many swabs were provided to
16 you with that kit?

17 A In the Isuzu Rodeo swabs were collected from four
18 areas.

19 Q And when you do this -- I've been calling it a
20 presumptive test, it might not be the correct terminology
21 for that. When you do the test on the swabs, do you do each
22 one individually?

23 A Yes, sir. Each area is done individually.

24 Q And the results here, based on your protocols,
25 indicated that you wanted to go on past that, correct?

1 A On the Isuzu Rodeo; correct.

2 Q So you did not test the sticky tabs?

3 A I did not on the Isuzu Rodeo, no.

4 Q Okay. And just to make sure that we're clear, you
5 didn't do any kind of swab test on the Chevy Suburban or the
6 GMC Suburban?

7 A They were not submitted.

8 Q So you went on to test the sticky tabs for particles?

9 A That's all I had. Yes, sir.

10 Q Now, you also had the opportunity to do some GSR
11 testing on some actual individuals. In this case it was, as
12 we've written up here, the solicitor has written up here,
13 Earl J. Greene and Lether Landrum; is that correct?

14 A That is correct.

15 Q And in that case, once again, swabs were taken, and
16 that was the first thing you did was test the swabs?

17 A Correct.

18 Q And as a result of what you got from your testing you
19 did not move on and look at the particle tabs; is that
20 correct?

21 A That is correct.

22 Q Now, you testified you had this six hour window, and
23 that's a protocol that's created by SLED; is that correct?

24 A That is correct.

25 Q And that's individual to agencies as well, there's no

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1 universal standard across the board; is that correct?

2 A It's generally accepted between a four and six hour
3 window.

4 Q Four and six, so there are some agencies that will not
5 test an individuals test after four hours; is that correct?

6 A I believe so, yes, sir.

7 Q Now, you testified that you were given information that
8 they did not wash their hands. That was written on the
9 sheet; is that correct?

10 A Correct.

11 Q And that's all that you have to go by; correct?

12 A That is correct.

13 Q Well, were you given any information about whether or
14 not these individuals had their hands bagged as soon as they
15 were detained; is there anything in there that provided that
16 information?

17 A No, sir, there's no note on here as to whether either
18 one of the individuals were bagged.

19 Q Okay. But you do have an indication, and I think you
20 testified to this, they indicate the amount of time that
21 they were -- the amount of time between the time the test
22 was taken and I believe you testified that Mr. Greene was
23 collected at 9:20 a.m.; is that correct?

24 A That is correct.

25 Q And I believe that Luther Landrum was within the six

1 hour window, but you didn't testify as to the time. Can you
2 give us the time there on Mr. Landrum?

3 A Yes, sir, I can. It was 09:15 a.m.

4 Q 09:15. So they were taken within five minutes of each
5 other by the same person; correct?

6 A Correct.

7 Q And so it must not take a long time to take these?

8 A A couple minutes, yes, sir.

9 Q Now, you were not provided this information, however,
10 would the fact that the hands weren't bagged at all have any
11 impact about the credibility or excuse me, the reliability
12 of the test in this case?

13 A The fact that they were not bagged?

14 Q Not bagged?

15 A No, sir. I testified that GSR is a fragile material
16 and that anything you put your hand in your pocket, you're
17 rubbing your hair; any type activity you do is going to
18 diminish them. No, sir, it does not effect the integrity of
19 this case.

20 Q Well, you just testified that wiping them on things,
21 sweating and having some contact with something else,
22 another object, can deteriorate the sample and make it go
23 away?

24 A Correct.

25 Q So but the individuals in this case did not have their

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1 hands bagged, were sweating, were kept outside for a number
2 of hours just standing and then were sat on their hands in
3 the back of a police car in cuffs for about an hour or so
4 being removed several times with no bags. Would that effect
5 the reliability of the tests?

6 A It can effect the results, yes. But if I had a
7 positive results for GSR it's a positive result for GSR and
8 that doesn't change.

9 Q But you didn't have a positive result for GSR on these
10 cases; isn't that correct, these two individuals, Mr. Green
11 and Mr. Landrum?

12 A That is correct.

13 Q So the way that those kinds of things, sweating,
14 wiping, fluids, bathroom breaks with no bags and no
15 supervision, that's -- the way that's effected if someone
16 had GSR is it goes away; correct?

17 A That is possible.

18 Q It doesn't go the other way, you don't go in the
19 bathroom and come out with GSR if you didn't go in with a
20 pistol; right?

21 A Correct.

22 Q All right.

23 MR. BAX: A moment's indulgence.

24 BY MR. BAX:

25 Q One other thing I want to cover about the Chevy

1 Suburban, and really just about any inanimate object is that
2 you really can't tell a difference on your microscope
3 between a particle that was deposited on that inanimate
4 object directly from gunfire or through secondary transfer;
5 correct?

6 A When I get a single round particle I can't tell whether
7 it came directly or indirectly.

8 Q Okay. And isn't it true that you cannot tell from your
9 testing, at all, when that particle was deposited on that
10 inanimate object?

11 A I cannot.

12 Q So there is no way scientifically for you to tell
13 whether it's the round particle whether it be lead or all
14 three, it's been there for any number of days, weeks,
15 correct?

16 A No, sir, I cannot.

17 Q And I think you've already testified, if I recall, that
18 on an inanimate object, baring any serious friction or
19 something else, these particles can exist theoretically,
20 indefinitely?

21 A That's correct.

22 Q And finally, about Mr. Landrum and Mr. Greene, you
23 testified that the six hours was the mark. How many hours
24 based on what you have there were lapsed between the time of
25 the incident and the time they were tested?

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1 A Right around the five hour mark for each of them.

2 Q So they were right up to the five hour mark; right?

3 A Yes, sir.

4 Q And that's within a four to six hour range?

5 A That is.

6 Q But not over six?

7 A Not over six.

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

9 THE COURT: Sure.

10 MR. BAX: Thank Your Honor.

11 BY MR. BAX:

12 Q A few more brief questions, and then I'll be finished
13 with you for now, Mr. Moskal. Number one, going to some of
14 these issues that we've talked about, especially this
15 secondary transfer. Secondary transfer can occur between
16 clothing and an inanimate objection, correct?

17 A Yes, sir.

18 Q As well as if someone has gunshot residue on their
19 hands and touches an inanimate object it can transfer there,
20 as well?

21 A Correct.

22 Q So if there are individuals that were in and around a
23 particular area, like a driver's seat door, gear shift,
24 steering wheel, that had gunshot residue on their clothing
25 or their hands prior to you -- prior to them taking little

1 sticky tabs, those particles could come from that transfer;
2 correct?

3 A That is possible.

4 Q And you wouldn't be able to tell the difference;
5 correct?

6 A Not on a single particle.

7 Q Those particles, this is one other thing, you can't
8 tell the caliber, you can't tell the type of gun that this
9 comes from; correct?

10 A No, sir, I cannot.

11 Q All right. Let me ask you this, in your testing
12 procedures, is there something that's contained within your
13 procedures and your protocol where if you test a sticky tab
14 and you find a round lead particle that you don't indicate a
15 result that's reported out. In other words, that you
16 indicate there's a negative testing?

17 A If I only found one round lead particle that would be
18 an inconclusive result. Which is why I need to two to be
19 able to confirm it.

20 Q You need the two. You need at least two. Now, and I
21 think that I've covered this, but I want to make sure that
22 I've --

23 A I'm sorry. There's one other option, too, is if I had
24 a positive result on the cotton swabs, the ICP, and I had
25 one round lead particle, then I could report one round lead.

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1 But I have to have the two pieces confirming each other.

2 Q Okay. So if you had the swab --

3 A If I had a swab that was positive, then I'd report a
4 single round lead, but if I only have the one round lead
5 particle and nothing else, then that's inconclusive.

6 Q Okay. Well, let me ask you this, in speaking to the
7 swabs, hypothetically, if you had swabs, just like with the
8 Isuzu, if they had come out negative, those swabs, you would
9 not have moved onto the tabs in the Suburban as well;
10 correct?

11 A That's correct.

12 Q And finally, just to make sure that we're clear on
13 this. You had in that information that was provided
14 initially, that we just talked about, the form, the gunshot
15 analysis information form. You had information that
16 indicated outdoor/from vehicle; correct?

17 A On which vehicle?

18 MS. SHIPLEY: Objection, Your Honor, this has been
19 asked and answered.

20 MR. BAX: Your Honor, I want to cover something
21 additional about that form.

22 THE COURT: Okay. Go ahead.

23 MR. BAX: And it's a question that I had not asked
24 yet.

25 THE COURT: Okay.

1 BY MR. BAX:

2 Q I'm referring to what I had showed you marked for ID
3 Only as No. 2.

4 A This right here.

5 Q Okay. And that's a form that was filled out by the
6 crime scene investigator from the Richland County Sheriff's
7 Department; correct?

8 A Yes, sir.

9 Q And you -- and that was the information that you still
10 had when there was the determination made to test this
11 Suburban; correct?

12 A With the initial --

13 Q No. This initial information is what you had; correct?

14 A For the initial report, yes, sir. I had this and the
15 incident report.

16 Q So it's your testimony that the additional information
17 that you received after conversations with Sgt. Clemmons was
18 contradictory to that and caused you to go back and test
19 this?

20 A The additional information changed that initial
21 incident report I had, which caused me to go back and run
22 the Chevy Suburban.

23 Q Well, this form is just to the Chevy Suburban; correct?

24 A Correct.

25 Q Is there any Isuzu listed on this form?

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1 A No, sir, there is not.

2 Q And the shooting information portion of this form it's
3 -- it doesn't list any other vehicle does it?

4 A No, sir, it does not.

5 Q So the information that you were provided at a later
6 time contradicts this form; correct?

7 A Not with the from vehicle portion, no.

8 Q Well, there's also something that says outdoors; is
9 there not?

10 A Yes, sir, there is.

11 Q So it contradicts that, does it not?

12 A Lots of times when initial incident reports are made
13 they have no gathered all the facts. At the course of their
14 investigations they uncover other issues that change that
15 initial incident report.

16 Q I understand that, Mr. Moskal. Let me ask it again.

17 A Okay.

18 Q Okay. Regardless of what they uncovered, does it
19 contradict that report about outdoors?

20 A A portion of it, yes.

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

22 THE COURT: Certainly.

23 MR. BAX: No further questions at this time.

24 THE COURT: Okay.

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

MICHAEL MOSKAL - CROSS-EXAMINATION

1
2 BY MS. JOHNS:

3 Q What is it in that incident report that made you say
4 I'm not going to run a test on the GSR kit that we received
5 from the deputies from the Sheriff's Department. What's in
6 that incident report, look at it, tell me?

7 A In regards to which GSR kit?

8 Q The Suburban.

9 A Okay. The initial incident report. I will read this.
10 May I read this?

11 Q You can look at it. I just want to know what you had
12 when you initially got the requisition for --

13 A The initial incident report states a weapon was fired
14 over the top of a possible white Nissan.

15 Q Okay. Now, what in that incident report says not to
16 test any evidence that is submitted to you? What's in
17 there, it says that?

18 A There's nothing in there that says do not test it.
19 That came from my protocols.

20 Q Okay. And so when you made a decision not to test if
21 based on secondary transfer, that was your protocol, right?

22 A Yes, ma'am.

23 Q And you based that solely upon the incident report?

24 A Yes, ma'am, that's the information I had to go on for
25 the case.

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1 Q And what about this requisition form; does that mean
2 anything to you?

3 A I don't know anything about a requisition form.

4 Q Let me see -- it's a requisition form that says -- it's
5 from the Sheriff's Department and it lists a silver
6 Chevrolet Suburban. Does anything in that requisition right
7 there say don't test it, because it could be secondary
8 transfer?

9 A No, ma'am.

10 Q Okay.

11 A But it refers to a Chevy Suburban, and the incident
12 report referred to a white Nissan, and so what was on that
13 and what was in the incident report did not indicate to me
14 that they were the same -- that that vehicle was associated
15 with the shooting.

16 Q Of course. Which is why we're here, because --

17 MS. SHIPLEY: Objection, Your Honor.

18 BY MS. JOHNS:

19 Q You didn't even have --

20 THE COURT: Sustained. Go ahead.

21 BY MS. JOHNS:

22 Q You didn't even have a requisition form to test a white
23 Nissan Pathfinder or a white Isuzu Rodeo with a black
24 stripe. You didn't have a requisition form for that, did
25 you?

1 A Not at the initial log in of evidence, no, ma'am.

2 Q So back in July, August 2007, you must have been
3 completely confused, as well, right; based on the incident
4 report?

5 A It did not match the incident report. So I sent it out
6 with no analysis performed.

7 Q And, in fact, you didn't have anything regarding a
8 white Nissan Pathfinder or a white Isuzu Rodeo until January
9 of 2008; isn't that correct?

10 A Correct.

11 Q And then you did have a GSR kit that you say you
12 received this GSR kit from the Isuzu Rodeo, and it was the
13 kit itself, the little sticky tabs, right?

14 A On which kit?

15 Q On the Isuzu Rodeo, there are four sticky tabs?

16 A The Isuzu Rodeo had the cotton swabs and the sticky
17 tabs.

18 Q Okay.

19 A It had both.

20 Q So when was the cotton swabs submitted; do you remember
21 that?

22 A It was submitted as a single kit and they were on the
23 Isuzu Rodeo, Item No. 11, was submitted to SLED on January
24 25, 2008.

25 Q Okay. So you're saying that now that some cotton swabs

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1 that were submitted along with Tri-Tech sticky tabs?

2 A The cotton swabs are a portion of the Tri-Tech kit.

3 Q Okay. So the sticky tabs don't mean anything to this
4 case do they?

5 A I did not analyze them, no, ma'am.

6 Q Okay. Now, what about you did swabs for the Suburban?

7 A No, ma'am. On the Chevy Suburban the only thing that
8 was submitted were the sticky tabs.

9 Q So no swabs were submitted for the Suburban, right?

10 A On the Suburban, no, ma'am.

11 Q And you just said that swabs are part of Tri-Tech GSR
12 kit for the Rodeo, right?

13 A Yes, ma'am.

14 Q But they were not part of the kit for the Suburban,
15 correct?

16 A Correct.

17 Q When was the transfer of powder, when did the transfer
18 of powder occur in the Suburban?

19 A (No response.)

20 Q Do you know?

21 A I cannot tell you when the GSR or when the round lead
22 particles -- correction -- the components of gunshot
23 residue, I cannot tell you when they were deposited inside
24 the Chevy Suburban.

25 Q When did you test a white cloth or white rag for any

1 kind of particles in this case?

2 A In this case?

3 Q Yes, sir.

4 A A white rag?

5 Q A white cloth of any kind for GSR particles?

6 A I do not remember testing a white cloth in this case.

7 Q Well, if you had information that a gun was wrapped in
8 a white cloth and fired, you had that cloth --

9 A No, ma'am --

10 Q -- and you had a requisition form?

11 A I do not have that cloth.

12 Q Well, you would have tested it, if you had a
13 requisition form, right?

14 A If it had been submitted I would evaluated the
15 situation to determine whether I would test it. Yes.

16 Q Okay. Now, you say that this diagram up here is a
17 diagram of the way the gun powder resonates, I guess?

18 A I had picture that depicts it better, but that's as
19 good as I could draw.

20 Q Okay. And that sufficiently shows how gun powder is
21 disseminates after a gun is fired?

22 A Yes, ma'am.

23 Q Now, these are just clouds, and it's -- and you said
24 something about wind earlier?

25 A Yes, ma'am.

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1 Q And the wind can take that puff of smoke, it can blow
2 it in any direct, can it not?

3 A It can potentially change the direction a little bit,
4 yes, ma'am.

5 Q Okay. What about the clothes that were seized out of
6 Mr. Wray's house, did you ask to do a gun powder residue
7 testing on --

8 MS. SHIPLEY: Your Honor, may we approach?

9 A I test what's submitted.

10 THE COURT: Yes.

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

13 BY MS. JOHNS:

14 Q What about the clothes that were submitted from Mr.
15 Watts' house?

16 A I don't have any clothes that were submitted from Mr.
17 Watts' house.

18 Q Okay, now you had mentioned that you are with the trace
19 department within SLED; is that correct?

20 A That is correct.

21 Q Okay. And you obviously run analysis for any
22 department that would as you that's an agency of South
23 Carolina, correct?

24 A Correct.

25 Q Okay. And that includes all 46 counties?

1 A Yes, ma'am.

2 Q And when you are obtaining these tests for trace
3 evidence; is that all you do is trace evidence?

4 A Yes, ma'am. I work in the trace evidence department.
5 Currently, I am trained in doing gunshot residue and
6 acellerants.

7 Q Acellerants?

8 A Yes, ma'am.

9 Q Well, can you tell me who does hair and fiber?

10 A Hairs are not done in trace any more.

11 Q Okay.

12 A We do fibers in trace.

13 Q Okay. Well, where is hair done?

14 A Hair is done in DNA.

15 Q Okay. So you don't -- in trace evidence now you don't
16 -- if you find a collection of hair or even a sample of hair
17 you don't analyze it?

18 A No, ma'am.

19 Q Okay. And DNA, you say it goes to DNA?

20 A Yes, ma'am.

21 Q Okay. And what about the science of hair as a non-
22 identifiable source, like for example, if you have a piece
23 of hair that has gunpowder in it would you then identify
24 that part in hair that was collected?

25 A We would have to evaluate that on a situation by

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1 situation basis.

2 Q Okay. What if hair had been cut and it needed to be
3 analyzed as to whether it was cut or pulled out of
4 somebody's head; who does that?

5 A I don't know.

6 Q How many thousands of particles were tested in this
7 case?

8 A (No response.)

9 Q You found 16, I know?

10 A Yes, ma'am.

11 Q How many thousands were actually found?

12 A In regards to which item?

13 Q In the Suburban.

14 A Ma'am?

15 Q In the Suburban.

16 A In the Suburban. Pardon me for just a minute.
17 Throughout the Suburban I would need a calculator to add
18 everything up, but there were thousands of particles
19 collected on the Suburban.

20 Q Is it more than 5,000, do you think?

21 A It's probably close, yes, ma'am.

22 Q About 5,000, that would be a good estimate; right?

23 A Yes, ma'am.

24 Q Out of 5,000 particles you have 16?

25 A I have 16 round particles of lead.

1 Q Out of almost 5,000 you have 16?

2 A Sixteen round particles of lead.

3 Q But -- excuse me. Out of almost 5,000 you have 16
4 round particles --

5 A Yes, ma'am.

6 Q -- of lead?

7 A Of lead.

8 Q And do you know when the time it was the owner of this
9 vehicle changed the brake pads on that vehicle?

10 A No, ma'am, I do not.

11 Q Well, what about when -- what about batteries, do they
12 have lead in them?

13 A Some batteries, yes, ma'am.

14 Q Okay. And isn't barium in paint and cosmetics; you
15 said?

16 A Definitely in cosmetics, the paint I'm not sure.

17 Q All right. Ball bearings, is that lead also, ball
18 bearings?

19 A Some could be, yes, ma'am.

20 Q If you only detect lead you cannot definitely say the
21 lead originated from gun powder, can you?

22 A No, ma'am, but what I have here is consistent in the
23 entirety of the case around the Chevy Suburban is consistent
24 with a gunshot being fired in that vicinity.

25 Q But you can't rule out the changing of a brake pads can

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1 you?

2 A No, ma'am.

3 Q Okay. Now, you talked about this transference a lot
4 when you were testifying. The transference of gun powder or
5 lead, I should be more specific, can occur from touching a
6 weapon in a particular case and then going over and then
7 reaching for a door handle when getting into a car could
8 transfer; could it not?

9 A Yes, ma'am, it can.

10 Q It can also transfer in a number of different ways.
11 Things that don't necessarily have to be --

12 A (No response.) I don't --

13 Q Lead particles can transfer from somebody's hand to an
14 inanimate object?

15 A Yes, ma'am, they could.

16 Q And you don't have any independent knowledge of how the
17 lead particles got into the Suburban, do you?

18 A Based on the size of these particles --

19 Q Let me rephrase my question.

20 MS. SHIPLEY: Your Honor, let him finish the answer
21 please?

22 MS. JOHNS: He's not answering my question, Your
23 Honor.

24 THE COURT: Finish the question and then at the end
25 yes or no, and you can explain your answer.

1 MR. MOSKAL: Yes, ma'am.

2 BY MS. JOHNS:

3 Q There is no -- you have no independent knowledge of how
4 these lead particles got into the Suburban; correct?

5 A No, but based on the size of these particles, and the
6 quantities and where they are, it's more consistent with a
7 weapon being fired in that driver's seat than anything else?

8 Q And you have no independent knowledge when, if every, a
9 gun was ever fired?

10 A Based on my data to me, I have enough data to say that
11 a weapon was fired in that area.

12 Q That a weapon was fired in that area?

13 A Yes, ma'am.

14 Q So you are ruling out other sources then?

15 A In my opinion, it's more consistent with that. Yes.

16 Q So then you are ruling out any other source?

17 A I can't rule it out, but it is more consistent in my
18 opinion.

19 Q Okay. So you're not ruling out other sources?

20 A No, ma'am.

21 Q But you're still saying that your opinion is consistent
22 with what you think the truth is, right?

23 A Correct.

24 Q What makes the four to six hours on somebody's hands
25 magical in a scientific case?

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1 A Testing.

2 Q It does? It makes it magical?

3 A In-house testing has shown that at the end of that six
4 hour period those particles are no longer on their hands?

5 Q Okay. So this is a testing that is secure in some
6 ways. It's like an experiment?

7 A Yes, ma'am.

8 Q Okay. And what happens when -- is six hours some sort
9 of magic?

10 A What we have found is that a body naturally absorbs
11 those materials and if somebody is not doing any excessive
12 work, sweating, washing their hands, rubbing their hands on
13 their pockets, doing those types of things. Just normal
14 clerical type activities, those particles remain on a
15 person's hands up to six hours.

16 Q Okay. And what does your independent testing
17 experiment show when somebody is, for example, outside
18 sweating?

19 A Any type of activity that has fluids moving across the
20 hands is going to begin losing those particles

21 Q Okay. What the magical hour for the removing of those
22 particles when one is sweating on July 1, in South Carolina?

23 A There is no way for me to know how long it would take
24 for somebody to remove it.

25 Q It can be different, can it not?

1 A Yes, ma'am.

2 Q And each individual circumstances can be different,
3 correct?

4 A Correct.

5 Q For example, just the mere fact that somebody was
6 handcuffed verses somebody that was not handcuffed; that can
7 make a difference; correct?

8 A They could have the ability that their hands were
9 cuffed, yes, ma'am.

10 Q And if their hands were not bagged and their hands were
11 sweaty to begin with, and then they are placed in the back
12 of the patrol car with their hands behind them, the fact
13 that their hands had contact with their clothing or the
14 interior of the car, that would have an effect on that?

15 A They could begin to remove those particles, yes, ma'am.

16 Q So you cannot come into this court and say that the two
17 suspects for which you received GSR kit from, one Jerome
18 Greene and the other one Luther Landrum, you cannot say with
19 any scientific degree of certainty whether or not they shot
20 a firearm, right?

21 A No, ma'am.

22 Q And you cannot say with any scientific certainty that
23 Mr. Watts fired a weapon can you?

24 A I don't have anything at all regarding Mr. Watts, no,
25 ma'am.

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1 Q And what about Mr. Wray?

2 A I don't have anything at all about Mr. Wray.

3 Q So basically your testimony to this jury, most of these
4 late couple of hours, comes down to you can't say if my
5 client shot a firearm?

6 A I have no items of evidence for your client, no, ma'am.

7 Q And you cannot say that Jerome Greene or Luther Landrum
8 did not shoot a firearm?

9 A No, ma'am, I cannot.

10 Q You cannot tell me the source to a degree of scientific
11 certainty, where the lead particles, the 16 out of almost
12 5,000, you can't tell me where they originated, can you?

13 A I can give you my conclusion as to how I looked at
14 everything.

15 Q I understand. You've already testified to that. But
16 you can't give this jury the source of that original lead
17 particle that you found in the Suburban, can you?

18 A I cannot tell you 100 percent where it came from, but
19 based on my experience with thousands of GSR kits, I can
20 tell you that is it consistent with a weapon being fired.

21 Q Sir, you cannot rule out another source of lead can
22 you?

23 A No, ma'am, I cannot.

24 Q And you cannot tell this jury when the lead particle
25 was deposited can you?

1 A No, ma'am.

2 Q How long could the lead particles have been on the
3 Suburban prior to your testing?

4 A Those particles on an inanimate object will remain
5 indefinitely until some outside force washes them off and
6 removed them.

7 Q So the lead particles that you found could have been
8 deposited by whoever had contact with that vehicle; correct?

9 A Correct.

10 MS. JOHNS: Beg the Court's indulgence, Your Honor.

11 THE COURT: Certainly.

12 MS. JOHNS: Thank you, Mr. Moskal, nothing further.

13 MR. MOSKAL: Yes, ma'am.

14 THE COURT: Okay.

15 MS. SHIPLEY: Very brief, Your Honor.

16 MICHAEL MOSKAL - REDIRECT EXAMINATION

17 BY MS. SHIPLEY:

18 Q You were asked about secondary transfer by the defense
19 in both of their cross-examinations, and every time you
20 answered it appeared you always qualified your answer by
21 saying, for a single particle. Is that correct?

22 A Yes, ma'am.

23 Q Explain what you mean by that?

24 A What I mean is a round particle containing those three
25 elements, lead, barium, and antimonium, is going to look the

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1 same whether it comes directly out of that weapon or whether
2 it comes out of that weapon and lands on somebody's clothing
3 or it deposits upon an object of furniture, whether it comes
4 from the weapon onto their hands and then deposits onto that
5 object. It looks the same. It has the same chemical
6 compositions. I cannot look at one piece and tell the
7 difference. However, when I get an entire case in and I
8 look at the entirety of the facts and the entirety of the
9 data I received on that GSR kit, I begin to draw some
10 conclusions about what the entirety of it means.

11 Q And so State's 160 and 161, the several different areas
12 that you documented on this report, is that what assisted
13 you in making your conclusion?

14 A That's what assisted me in making my conclusions, yes,
15 ma'am.

16 Q And how many GSR kits have you analyzed?

17 A Thousands.

18 Q You indicated in both direct and cross that GSR is very
19 fragile; is that correct?

20 A That's correct.

21 Q I'm going to ask you a question. You were asked by the
22 defense about GSR, someone firing the gun and then getting
23 into their car and putting their hand on the steering wheel
24 and transferring the GSR from their hand to the steering
25 wheel. If a person continues to drive that vehicle and rub

1 their hands and turning left and turning right and just
2 driving five times a week to work, would you expect that
3 sort of continued use of the steering wheel to effect the
4 GSR on the steering wheel?

5 MR. BAX: Objection, Your Honor. That hypothetical
6 is too speculative, it goes on for too long. There's no
7 specific question there because it's covering the whole
8 area.

9 MS. SHIPLEY: Your Honor --

10 MR. BAX: It has no relevant --

11 MS. SHIPLEY: -- they're the ones that raised it.

12 THE COURT: I'm going to sustain it.

13 MS. SHIPLEY: Your Honor, it's a hypothetical.
14 Under Rule 703, I'm allowed to ask hypothetical questions.

15 THE COURT: But I guess what I'm trying to get it
16 is that you've got several facts in there. Can you break it
17 up for the situation and not the whole?

18 MS. SHIPLEY: Sure.

19 THE COURT: Okay.

20 MS. SHIPLEY: I'll just --

21 BY MS. SHIPLEY:

22 Q If you use an item or an object several times that
23 possibly had GSR on it at one point, would that effect the
24 particles, the fragile -- on that object?

25 A Yes, ma'am. If an object had GSR on it the more it was

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1 handled, the more it was used, those particles would begin
2 to remove from that, from that object.

3 Q And then you were asked whether or not you had any
4 samples from Mr. Watts and Mr. Wray. If a person is not
5 arrested until 24 hours after a shooting would you even
6 analyze their kits?

7 A No, ma'am. If a person was arrested 24 hours after the
8 time of the shooting we would not analyze it because even if
9 we found something on that person we could not tie it back
10 to the shooting that had occurred 24 hours prior. It would
11 mean that they had fired or been around something since that
12 incident. So there would be no way to tie it back to the
13 actual crime or the actual time of the event.

14 Q And you were also asked whether you were given
15 photographs or any statements and witnesses and so forth,
16 correct?

17 A Yes, ma'am.

18 Q And so you never -- you don't know who the witnesses
19 are in this case?

20 A No, ma'am, I do not.

21 Q You don't know what they say?

22 A No, ma'am, I do not.

23 Q What they reported?

24 A No, ma'am.

25 Q And lastly, what was your conclusion as to the GSR kit

1 for Earl Greene?

2 A My conclusion to the GSR kit for Earl Greene is that
3 quantities of metals detected did not indicate the presence
4 of gunshot residue.

5 Q And as to Luther Landrum?

6 A The quantities of metals did not indicate the presence
7 of gunshot residue.

8 Q As to the Isuzu Rodeo?

9 A As to the Isuzu Rodeo, I found 16 round --

10 Q I'm talking about the Isuzu Rodeo.

11 A Oh, the Isuzu Rodeo. I'm sorry.

12 Q Yes, sir.

13 A The Isuzu Rodeo quantities of metals found did not
14 indicate the presence of gunshot residue.

15 Q And lastly the Chevy Suburban?

16 A On the Chevy Suburban I found a total of 16 round lead
17 particles, which are a component of gunshot residue.

18 Q And what is your conclusion based on your findings from
19 your scientific examinations?

20 A Based on my conclusions a weapon was fired in the
21 vicinity of the driver's seat in the Chevy Suburban.

22 Q Thank you. No further questions.

23 MR. BAX: Briefly, Your Honor. Thank you.

24 MICHAEL MOSKAL - RE-CROSS EXAMINATION

25 BY MR. BAX:

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1 Q Isn't it true that your finding is actually consistent
2 with a weapon being fired in that area; is that correct?

3 A It's consistent with, yes, sir.

4 Q You just said that your finding is a weapon was fired
5 in that area. You can't say that can you?

6 A I'm sorry. It is consistent with, in my opinion it
7 happened, yes, sir.

8 Q And it is consistent with those particles being
9 transferred or those particles also coming from other
10 sources; correct? Consistent with?

11 A (No response.)

12 Q It could happen, correct, because that's what
13 consistent with means; correct?

14 A That is what consistent with means.

15 Q Okay. Thank you. Let me ask you this, what date was
16 the original requisition, what was that date and how was it
17 dated?

18 A The original items were submitted to SLED on -- let me
19 find my log-in sheet.

20 Q Sure.

21 A The original items were submitted to SLED on 7/25/07.

22 Q July 25, 2007; correct?

23 A That is correct.

24 Q And finally you testified that your decisions on
25 testing were not based on a witness account. You testified

1 you had an incident report that you look at prior to making
2 those decisions; correct?

3 A In regards to which --

4 Q Well, for example, the Chevy Suburban. It was there
5 for all of it, the incident report from Officer Galinski,
6 who testified before; correct?

7 A The initial report was based on my incident report,
8 yes.

9 Q And so you based your decisions on that; correct,
10 initially?

11 A Initially, yes, sir.

12 Q And then that incident report was relaid what witnesses
13 had relaid to the officers; correct?

14 A I can't speak to how he got that.

15 Q But it does have things in there about witnesses saw --

16 MS. SHIPLEY: Your Honor, he can't answer that.

17 THE COURT: Sustained.

18 MR. BAX: Your Honor.

19 THE COURT: He can't speak to it -- you're asking
20 what's in the report?

21 MR. BAX: What's in the report.

22 THE COURT: Oh, what's in the report. That's okay.

23 MR. BAX: If you'll give me a moment here.

24 BY MR. BAX:

25 Q So it states, the complainant states; is that correct,

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1 that's what it says?

2 A It does say that, yes, sir.

3 Q Complainant stated so on and so forth; correct?

4 A Correct.

5 Q So you were basing in part on what the complainant said
6 in this situation; correct?

7 A I was basing in on the incident report, yes, sir.

8 Q Thank you. No further questions.

9 MS. JOHNS: Very briefly.

10 MICHAEL MOSKAL - RE-CROSS EXAMINATION

11 BY MS. JOHNS:

12 Q Gunshot residue is very fragile?

13 A Yes, ma'am, it is.

14 Q And you said earlier in your testimony that when you
15 transfer a particle that particle can be left indefinitely;
16 is that right?

17 A Until removed by an outside source. Yes.

18 Q Okay. And so let me rephrase the question. When a
19 particle transfers from one object to an inanimate object it
20 can remain indefinitely; correct?

21 A Yes, ma'am.

22 Q How long is indefinitely?

23 A Until it's removed from an outside source.

24 Q And it also means forever; correct?

25 A Yes, ma'am.

1 Q And with regards to results of Jerome Greene, you have
2 no idea how his hands were kept from the time that -- well,
3 you just don't have any idea do you?

4 A I was not given that information, no, ma'am.

5 Q Okay. You weren't given an incident report were you;
6 about how his hands were kept were you?

7 A No, ma'am.

8 Q And you were not given any kinds of reports with
9 regards to Luther Landrum, the driver of this car; were you?

10 A No, ma'am.

11 Q Okay. And did you rely on anything else, any other
12 Richland County Sheriff's Office report or anything else in
13 your decision to run tests on these on any of these kits?

14 A On which kits specifically?

15 Q Did you receive any information about Earl Greene?

16 A I received with Earl Greene, I received a GSR kit and
17 the incident time it was collected, and as long as I have
18 those two things and it's within the six hour window, I have
19 the protocol -- yes, ma'am.

20 Q So you had information, you had some information from a
21 requisition form that accompanied the kit --

22 A Yes, ma'am.

23 Q -- for Earl Greene, right?

24 A Yes, ma'am.

25 Q And you also had the same thing on Luther Landrum;

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1 right?

2 A Yes, ma'am.

3 Q And you had a requisition form for a silver Chevy
4 Suburban; right?

5 A Yes, ma'am.

6 Q And in addition to the requisition form you had an
7 incident report?

8 A Yes, ma'am.

9 Q And you didn't have anything else with regards to that
10 Suburban?

11 A Not initially, no, ma'am.

12 Q Okay, and sometime subsequent to that you received more
13 information about the Suburban; is that right?

14 A Yes, ma'am.

15 Q And, in fact, when you received that information you
16 decided to do that test; right?

17 A Yes, ma'am.

18 Q And of the 5,000 particles you found 16; correct?

19 A Yes, ma'am.

20 Q And you can't say when those 16 particles were
21 deposited into that Suburban, can you?

22 A No, ma'am, I cannot.

23 Q Okay. And with regard to the Isuzu Rodeo, did you
24 receive any other information with regard to the requisition
25 of that Isuzu Rodeo; what did you rely on?

1 A I relied on my conversations with Anna Clemmons to run
2 that; yes, ma'am.

3 Q Okay. So when you did the test on the Isuzu Rodeo it
4 was based solely on what Anna Clemmons told you; is that
5 correct?

6 A Yes, ma'am.

7 Q And was in January 2008; right?

8 A January 2008 is when I received the Isuzu Rodeo; yes,
9 ma'am.

10 Q That's all I have. Thank you.

11 THE COURT: Okay. Sir, you can step down and be
12 excused.

13 MR. MOSKAL: Thank you.

14 MS. SHIPLEY: Your Honor, our next witness is
15 pretty lengthy.

16 THE COURT: Okay. We're talking a break. Don't
17 worry.

18 All right, ladies and gentlemen of the jury I'm going
19 to excuse you to lunch. It's 1:30-ish now. I'll ask you to
20 report back at 2:45.

21 And then I'll see the attorneys. If you all could be
22 in here by 2:40 if there's anything we need to put on the
23 record. We will start back promptly at 2:45.

24 Thank you all. I remind you not to discuss the case.
25 (Jury out at 1:32 p.m.)

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1 (Court in session after lunch break.)

2 THE COURT: Anything we need to take up before we
3 bring the jury in?

4 MS. MCDUFFIE: Your Honor, our next witness is
5 David Collins and depending on how long he takes,
6 Investigator McRae will be after that.

7 He's next door testify in another trial.

8 THE COURT: Okay.

9 MS. MCDUFFIE: It should only take, they said, 15
10 minutes if that long.

11 THE COURT: Who, your expert is here now?

12 MS. MCDUFFIE: Don McRae.

13 THE COURT: Oh, I see.

14 MS. MCDUFFIE: Our next witness is the expert.

15 THE COURT: Oh, okay.

16 MS. SHIPLEY: And Your Honor, I wondered if you've
17 had a chance to look over the new decision --

18 THE COURT: I'm looking at it. I'm 3/4 through.

19 MS. SHIPLEY: Apparently it only applies to cases
20 where they assert self-defense or defense or others or heat
21 of passion.

22 MR. SWERLING: Is that the new case?

23 THE COURT: Yes. And I've reading half-way
24 through, but that's the cases they're citing. But yeah.

25 MR. SWERLING: I haven't had a chance to read it.

1 THE COURT: It's a very interesting opinion and
2 well written.

3 Okay, anything further from defense?

4 MR. SWERLING: No, ma'am.

5 THE COURT: I just got a note from the jury that
6 they need to leave by 5:30. Okay.

7 (Court's Exhibit No. 5, note from
8 jury, was marked and entered.)

9 THE COURT: Are we ready now?

10 MR. BAX: Defense is ready, Your Honor.

11 THE COURT: Okay. Jurors, please.

12 (Jury in at 2:51 p.m.)

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

14 THE COURT: Ladies and gentlemen of the jury, I
15 know sometime last week I dealt with you-all about whether
16 you thought I had a watch, you know, that was correctly
17 keeping time. And I clarified that I did, but we'd have
18 some touch and go times with the trial. Now, I know you're
19 wondering whether or not I have windows in my office. I
20 noticed that it was raining outside for your lunch today.
21 But lunch will be saved for the time that you'll be
22 deliberate because otherwise the county will be after me for
23 providing lunch on a daily basis during the trial. They
24 want to make sure I'm not trying to prolong it because I'm
25 getting to eat free, as well. So that was just fate, I

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1 guess, today that that occurred that way. So I apologize
2 that you had to go in the rain to get lunch today.

3 So we are ready to continue with the trial.

4 State call your next witness.

5 MS. MCDUFFIE: State would call David Collins.

6 (WHEREUPON, David Collins was sworn
7 to tell the truth.)

8 THE CLERK: Thank you. Please have a seat in the
9 witness stand and state your name for the record.

10 MR. COLLINS: My name is David J. Collins.

11 DAVID COLLINS - DIRECT EXAMINATION

12 BY MS. MCDUFFIE:

13 Q Good afternoon, Investigator Collins. Where are you
14 currently employed?

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

17 Q And what are your duties with the Richland County
18 Sheriff's Department?

19 A I am a firearms and tool marks examiner at our forensic
20 services laboratory.

21 Q And how long have you been with the Richland County
22 Sheriff's Department?

23 A I started with the Richland County Sheriff's Department
24 in September of 2002.

25 Q And please tell the jury a little bit about your

1 education and training in the field of firearms and tool
2 marks?

3 A As for my education, I have a bachelor's degree from
4 the Citadel 1984. Regarding firearms identification I went
5 to work at SLED in 1990, the State Law Enforcement Division
6 where I was hired as a firearms and tool marks examiner
7 trainee. After completing that training program which lasts
8 for approximately two and a-half to three years, I was
9 certified by SLED as a firearms examiner and began case
10 work.

11 MR. SWERLING: I'll stipulate to his
12 qualifications.

13 THE COURT: Okay. Thank you.

14 MS. JOHNS: I will, also, Your Honor.

15 THE COURT: All right. Then tender him
16 specifically as an expert on the record.

17 MS. MCDUFFIE: Your Honor, at this time I'd offer
18 Investigator Collins as an expert in firearms and tool marks
19 examination.

20 THE COURT: Okay. Thank you. Without objection,
21 admitted.

22 BY MS. MCDUFFIE:

23 Q Investigator Collins, did you have an occasion to
24 examine evidence in Richland County case number 070627900?

25 A I did.

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1 Q And please tell the jury what evidence you examined?

2 A I received a total of three fired projectiles. One was
3 listed as my Item 1, it was a fired bullet jacket. Item No.
4 2, was another fired bullet jacket. Item No. 5 on my report
5 is one fired bullet, which was recovered from the hospital,
6 according to the notes. Items 3 and 4 in total comprise of
7 10 fired 9 millimeter Luger caliber cartridge cases.

8 Q And so you examined 10 fired cartridge cases and three
9 projectiles?

10 A That's correct.

11 Q Let's first start with the three projectiles you
12 examined in this case. Can you please tell the jury what
13 those pieces of evidence were, what those projectiles were?

14 A The first thing that I do when I receive any type of
15 evidence such as this in the laboratory, is I take notes
16 just as to its condition, physical description, weigh it,
17 measure it. From that type of information I can often
18 determine what caliber the projectile might be. In my
19 initial examinations of these items I was able to determine
20 one of them was most consistent with being a fired 9
21 millimeter caliber projectile. That would be my Item 5.

22 Q Your Item 5, is that what's contained in State's
23 Exhibit No. 135?

24 A This package bears my markings and my initials where I
25 sealed it. If you would like me to open it I would, but

1 otherwise, I'll state this appears to be Item 5, based on
2 the markings on the container.

3 Q And this would be the projectile from where, according
4 to your notes?

5 A According to my notes, Item 5 was recovered from the
6 pants leg from the victim at the hospital.

7 Q So the projectile recovered from the pants leg of the
8 victim at the hospital is most consistent with what caliber
9 of ammunition?

10 A 9 millimeter Luger.

11 Q And did you also examine projectiles marked with
12 evidence markers S and I?

13 A I did.

14 Q And what, if anything, did you determine about the
15 bullet recovered from the hospital and the two projectiles
16 recovered at the crime scene?

17 A Following my initial examination and noting the items I
18 then performed a microscopic comparison of these items under
19 what we call a comparison microscope. This enables me to
20 view both items side by side under magnification, and what
21 I'm looking for are marks that were left by the barrel of
22 the firearm from which these bullets were fired. When the
23 firearm is manufactured there's various parts in the
24 manufacturing process that will leave behind microscopic
25 defects on the metal surfaces of the gun. One of these

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1 areas of interest is in the barrel of the firearm. There
2 are spiral grooves called rifling that are placed in the
3 barrel to cause the bullet to spin as it leaves the barrel,
4 and it does stabilize it in flight. As the bullet passes
5 through the barrel of the firearm these grooves are going to
6 be leaving scratch marks and other engravings on the surface
7 of the bullet.

8 Now, the pattern of these scratch marks is what we look
9 for under the microscope, and we look for matching patterns
10 that would be sufficient for us to return them whether or
11 not that bullet was fired from the same firearm as the other
12 bullet.

13 In this particular case, I performed these microscopic
14 comparisons of the bullet from the pant leg, versus the
15 other two bullet jackets that were submitted to me and I was
16 able to determine that all three of them had been fired by
17 one gun.

18 Q Now, Investigator Collins, these -- the bullet from the
19 victim's pant leg and the bullet from the two other
20 projectiles from the scene, were these bullets in perfect
21 condition?

22 A Not at all. They were somewhat damaged as I received
23 them.

24 Q And how does a bullet become damaged, what are some of
25 the factors that can be attributed to that?

1 A What one has to consider when one looks at a bullet is
2 it's traveling very fast, typically, when they strike
3 something. And the harder the material that it strikes the
4 more damage it's going to sustain.

5 Jacketed bullets are by definition are typically a soft
6 lead core surrounded by thin plating of copper material.
7 The copper material is thin and doesn't prevent the bullet
8 from being deformed, and the lead is a very soft material,
9 so it tends to be deformed very easily. Soft as a relative
10 term as a metal.

11 When a bullet strikes a hard object. It could be bone,
12 it could be metal, any type of hard material it can be
13 damaged. It can be torn, it can actually come apart, this
14 is what happened in the case of the two bullet jacket
15 fragments that I received; they were actually just portions
16 of a bullet. They weren't the entire bullet. So it's not
17 unusual at all for us to be examining parts of a bullet and
18 not entire bullet.

19 Q Even though you did not have the entire bullet, only
20 portions of the bullet, were you still able to reach a
21 conclusion as to the weapon that fired the two projectiles
22 from the scene and the one from the victim at the hospital?

23 A Once I had made the determination that all three of
24 these projectiles and projectile fragments has been fired
25 from one gun, and then there's another phase of the

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1 examination where I actually take measurements of the
2 rifling impressions of the surface of the projectile. When
3 you know the caliber of the projectile, you can then
4 determine the number of rifling grooves that the
5 manufacturer placed in the barrel, which direction to they
6 twist, right or left, and then take measurements of those
7 impressions so that you can get an idea of what the
8 manufacturer's specifications are for that barrel, we can
9 put that information into a computer database and that will
10 produce for us a possible list of brands of firearms,
11 sources of firearms that could have fired those particular
12 projectiles. And I did that in this case.

13 Q And please tell the jury what your findings were as to
14 the source of possible firearms that fired the three
15 projectiles in this case?

16 A The list that was produced by this database was fairly
17 lengthy. There were a total of, by my count, I listed 49
18 different brands, I believe, on the report.

19 Q And among the 49 different brands that you listed on
20 the report, is one of those Cobray?

21 A Yes.

22 Q Is another FNJ?

23 A Yes.

24 Q And is another SWD?

25 A Yes.

1 Q You also examined -- I'm sorry, let me back up for a
2 second. The marks that you were describing to the jury that
3 you were looking, the lands and the grooves, and the right
4 turn characteristics, can those be made by an external
5 source other than the firearm?

6 A There can be other markings that will be on the surface
7 of the bullet as a result of striking something. We call
8 that accidental characteristics. The markings that are left
9 by the barrel on the bullet to a trained firearm examiner
10 are very readily recognizable as being distinct from
11 accidental characteristics.

12 Q So the accidental characteristics are not a factor in
13 your determination as to whether or not the same weapon
14 fired these three projectiles?

15 A In this case, they bore no impact on my examination,
16 but they can be in some cases so severe as to prevent me
17 making that type of determination because they would occlude
18 marks that I need to be looking at under the microscope.
19 But in this particular case they didn't have any impact.

20 Q And you also mentioned to the jury that you examined 10
21 shell casings in this case; is that correct?

22 A That's correct.

23 Q I'm going to show you what's in evidence as State's
24 Exhibit 122 and State's Exhibit 121, and ask you if you
25 recognize those shell casings?

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1 A This package, in addition to the two fragments that I
2 also examined contains three envelopes that are sealed. The
3 seals bear my initials and the date that I sealed them. The
4 markings on these indicate that these packages contain three
5 of the 10 fired cartridges.

6 Q Investigator Collins, if I can get you to open one up
7 and show it to the jury, please.

8 A (Witness complies.) That's one fired cartridge case.

9 Q And you said that they were divided up, three shell
10 casings and seven shell casings when you received them from
11 evidence?

12 A When I received them they had been itemized prior to my
13 having received them, and they were divided into two groups.
14 One contained three shell casings and the other contained
15 total of seven, I believe.

16 Q And how were those groups sorted or determined?

17 A They were sorted by brand.

18 Q And did that -- is brand any factor in your analysis or
19 determination of results in this case?

20 A In this particular case the brand name issue didn't
21 play a significant role. Sometimes you'll have some
22 cartridge made by one manufacturer that when fired by a gun
23 will mark differently than those that are from a different
24 manufacturer, due to some differences in the metallurgy
25 composition. A harder cartridge case material is easier to

1 be marked by firing than the soft one. In this particular
2 case, I didn't notice a difference.

3 Q And this case, what were the two manufacturers of the 9
4 millimeter Luger ammunition?

5 A Winchester and Remington, I believe.

6 Q And it was -- all the cartridge cases were 9 millimeter
7 Luger caliber ammunition?

8 A That is correct.

9 Q Can the same -- can different brands of ammunition be
10 loaded into the same gun?

11 A In some cases, yes.

12 Q Can different brands of 9 millimeter --

13 A I'm sorry, can you -- I don't know if I heard that
14 question correctly?

15 Q Can different brands of the same caliber ammunition be
16 loaded into the same gun?

17 A Oh, yes.

18 Q So it's possible for both Remington and Winchester to
19 be loaded into one gun?

20 A Yes, very easy.

21 Q Is that common?

22 A It's very common that we receive ammunition from
23 different manufacturers that were loaded in the same gun in
24 an incident.

25 Q And how common is Winchester 9 millimeter Luger

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1 ammunition?

2 A Winchester is one of the most popular brands of 9
3 millimeter ammunition, as it Remington.

4 Q And where can someone purchase those brands of
5 ammunition?

6 A Any well stocked gun shop would have them in stock.
7 Right now you probably couldn't find them just about
8 anywhere, because there's such a shortage of ammunition, but
9 at the time of this incident you could have found them in
10 any gun shop, you could have found them in any convenience
11 stores, including Wal-Mart.

12 Q And Investigator Collins, did you then examine the 10
13 gun shell casings in this case?

14 A I did.

15 Q And please tell the jury how you examine these shell
16 casings?

17 A The shell casings are examined the same way the
18 projectile is. When I receive the items in the laboratory,
19 I examine them physically. I'm looking for any signs of
20 damage. I'm making notes as to the head stamp marks which
21 tell me what brand of ammunition they are. Then I move on
22 to another microscopic comparison. What I'm doing, again,
23 is looking for microscopic marks that were left by the
24 firearm that fired the particular cartridge cases. And
25 different parts of the firing mechanism of the gun can leave

1 and will leave microscopic defects on the surface on the
2 cartridge case in much the same way that a barrel marks a
3 bullet. So what I'm doing again is I'm looking for the
4 matching characteristics. In this particular case there
5 were several areas of interest on these cartridge cases.
6 There is the firing pin impression, which is created by the
7 firing pin of the gun, the ejector mark, which is created by
8 the ejection at the firing and then chamber marks that were
9 created by the rear portion of the barrel. All three of
10 these areas left marks of interest on these cartridge cases.

11 I --

12 Q I'm sorry to interrupt you. Please describe for the
13 jury the marks left by the firing pin on the cartridge cases
14 in this case?

15 A In this particular case the firing pin left a somewhat
16 unusual mark. Most 9 millimeter Luger firearms leave sort
17 of a hemispherical or circular firing pin impression. There
18 are some other brands of firearms that leave a unique shape
19 firing pin impression, and this is one of those. The firing
20 pin impression in this particular case was somewhat
21 rectangular in shape. It was surrounded by a raised area on
22 the primer which was caused by the primer material being
23 forced under pressure into the firing pin aperture of the
24 gun, which leaves a sort of donut shaped raised area with
25 the firing pin impression in the middle of it.

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1 Q And please tell the jury what, if any, conclusion that
2 lead you to draw about the make of gun that fired these two
3 shell casings.

4 A Based on that firing pin impression it was most
5 consistent with having been produced by what is known as an
6 M-11 type firearm. Most specifically those that were
7 produced by SWD and perhaps other manufacturers. M-11 style
8 firearms have been produced by different manufacturers over
9 the years.

10 Q And please describe for the jury what an M-11 style
11 firearm is?

12 A M-11 is a type of semi-automatic pistol. It -- the
13 history of the firearm design goes back several decades to
14 what was originally designed by the Military Armor
15 Corporation of Texas. That firearm was -- the original
16 design was known as the Mac 10 style firearm and was
17 originally chambered in 45 auto caliber. Over time the
18 design was slightly changed and was modified and because
19 available in other calibers as well. Such as 9 millimeter
20 and 380 auto. And there -- as I said before there have been
21 various manufacturers that have made this model over time,
22 and I believe it's still under -- still being manufactured
23 by another company today.

24 Q How common is it for you to see or for you to receive
25 evidence where your conclusion is that it was fired by M-11

1 type firearm?

2 A It's not as common now as it used to be several years
3 ago. You used to see a lot of M-11 style firearms back in
4 the late 1990s, but we haven't see on in some time, now.

5 Q Let me show you what's in evidence as State's Exhibit
6 No. 140. If you could show the jury the firearm that you
7 are referring to as an M-11?

8 A An M-11 style firearm would be represented by No. 18.

9 Q And the back portion on the back of the gun; what is
10 that?

11 A There is a -- well, some of these firearms will have
12 like a folding butt stop mechanism on them. Typically,
13 they're seen more commonly on the original Mac style
14 firearms. And most of the ones that I've seen come through
15 the laboratory, historically, have not had that butt stop on
16 it.

17 Q And does that butt stop effect the ability of the gun
18 to operate in any way?

19 A No. It's simply a means to stabilize the firearm.

20 Q And Investigator Collins, you said earlier the 10 shell
21 casings, in your opinion, were all fired by the same weapon?

22 A Yes.

23 Q And that is an M-11 style weapon?

24 A Yes. The firing pin impressions on those cartridge
25 cases, all of them are consistent with being produced by an

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1 M-11 style firearm.

2 Q Hypothetically, Investigator Collins, if these shell
3 casings were left in the a roadway is there anything that
4 could effect the marks on these shell casings that would
5 effect your determination in this case?

6 A It is possible if they had stayed there long enough and
7 were run over by a number of vehicles that they could be
8 damaged to a point that it would make my determinations
9 impossible or difficult to reach. In this particular case,
10 although, some of these cartridge cases did display some
11 damage from, such as being crushed or some abrasion that
12 would be consistent with being run over or stepped on.
13 Something similar. That type of damage did not effect my
14 ability to reach my conclusions in this case. The areas
15 that I need to examine microscopic were not significantly
16 effected.

17 Q Investigator Collins, can you explain to the jury how a
18 shell casing is ejected from a weapon?

19 A In the case of a semi-automatic pistol or any type of
20 semi-automatic firearm when the gun is fired the discharge
21 occurs and the slide or the bolt mechanism of the gun then
22 comes back mechanically. This happens automatically. The
23 shooter doesn't have to do anything. It happens very
24 quickly, virtually in the blink of an eye. As the bolt
25 comes back it extracts the cartridge case from the chamber

1 of the firearm and then it reaches a certain point and there
2 is an ejector mechanism that throws it clear of the gun.
3 This is what you might see on television when someone fires
4 a gun you might see the cartridge case come out of the
5 ejection point of the gun, but it tends to fly in something
6 of an arc and lands on the ground nearby. That will happen
7 each time the trigger is pulled on the firearm until the
8 shooter stops shooting or the firearm is empty.

9 Q And does an M-11 fire and eject it's cartridge cases?

10 A If it's functioning properly, yes.

11 Q And how often or how fast can an M-11 type firearm be
12 fired?

13 A Virtually, as quickly as you can pull the trigger.
14 Normally the mechanism will cycle faster than a person can
15 -- the person typically won't be able to pull the trigger
16 twice faster than the gun can operate, so usually it's as
17 fast as you can pull the trigger.

18 Q And explain for the jury -- let me rephrase the
19 question. Can you base on the type of weapon used in this
20 case, can you tell where the cartridges would have ejected
21 or which direction they would have ejected or anything about
22 the ejection pattern?

23 A The ejection port on an M-11 style firearm is on the
24 right side of the firearm, which means the cartridge case
25 would -- if the gun's being held in the proper method, which

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1 is vertically, the grip in your hand, it should eject from
2 the right of the gun. They -- as to how far forward, back
3 or how far to the side they will eject I would not be able
4 to determine that without actually testing the gun under
5 controlled conditions to see how far it does -- if you
6 change any of these characteristics, the angle of the gun --
7 you see people sometimes that like to hold a gun sideways,
8 that can change those characteristics of the gun.

9 Q And were you aware there were also three 9 millimeter
10 Luger caliber ammunition rounds and a 39 special live round
11 found in a white Isuzu Rodeo in this case?

12 A I became aware of that at some point in time.

13 Q What type of gun would a 38 special round commonly be
14 fired from?

15 A Commonly a 39 special round would be fired from a
16 revolver.

17 Q And do revolvers eject the shell casings.

18 A Not automatically. A revolver would have to be opened,
19 typically the cylinder open or the ejection gate opened
20 manually by the shooter, and that particular cartridge
21 manually removed.

22 Q So it does not automatically expel the cartridge case?

23 A No. A revolver does not automatically eject the
24 cartridge case.

25 Q And Investigator Collins, can you -- from the shell

1 casings that you found -- that were given to you in this
2 case, could you please tell the jury your conclusions, once
3 again, on the shell casings that you examined?

4 A All of the submitted cartridge cases that I examined,
5 all 10 of them were fired by one gun, and the gun that fired
6 them was most consistent with that being an M-11 style
7 firearm.

8 Q So the three projectiles were fired from one gun?

9 A The three projectiles were fired from one gun, the 10
10 cartridge cases were fired from one gun.

11 Q Can you say whether or not the projectiles were fired
12 from the cartridge cases?

13 A In this particular case I could not do that
14 determination unless I had that firearm submitted to me.

15 Q And did you have any firearms submitted to you on this
16 case?

17 A No, I did not.

18 Q Can you say that the projectiles were not fired from
19 those shell casings?

20 A No, I cannot. It is -- that type of projectile could
21 have been fired from those cartridge cases. I did not have
22 any need to connect the two, so I didn't.

23 Q Would it make any difference in your analysis whether
24 or not the bullets that were used were full metal jacket or
25 not?

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1 A Not in this particular case, no.

2 Q Can you explain to the jury what full metal jacket is?

3 A The full metal jacket projectile is the bullet that has
4 the whole front portion of it, the entire side and the nose
5 area of the bullet, which is known as the ogive, are
6 completely encased in a jacketing material. In this
7 particular case is like a cooper alloy material. A jacketed
8 hollow point would have a hole or cavity in the nose of the
9 bullet that is designed to cause the bullet to expand upon
10 impact.

11 Q And Investigator Collins, can you tell, based on these
12 shell casings whether or not that case at one point in time
13 carried a bullet with a full metal jacket or with a non-
14 jacketed bullet?

15 A In some instances that can be done, but in this case
16 that was not. The cartridge cases that were submitted to me
17 were the type based on their brand and based on their
18 construction could have at one time been loaded with either
19 style bullet.

20 Q And to summarize for the jury, there was no weapon
21 presented to you to compare to anything in this case; is
22 that right?

23 A No. Not at all.

24 Q And the three projectiles, please tell the jury your
25 conclusion as to them?

1 A They were all fired from one gun.

2 Q And as to the 10 shell casings found on the roadway,
3 what was your conclusion as to them.

4 A They were all fired from one gun, as well.

5 MS. MCDUFFIE: Nothing further, Your Honor.

6 MR. SWERLING: Thank you.

7 THE COURT: Sure.

8 DAVID COLLINS - CROSS-EXAMINATION

9 BY MR. SWERLING:

10 Q How are you doing?

11 A Good afternoon.

12 Q I've just got a couple of questions and maybe just
13 focus in on a couple of things that Ms. McDuffie was asking
14 you. First of all, from what I understand from you
15 projectiles themselves have got somewhere like 49 possible
16 manufacturers; is that right?

17 A Yes, that's correct.

18 Q And when you look at the casings themselves, then you
19 were able to narrow it down to the M-11 type weapons; is
20 that correct?

21 A That is correct.

22 Q Okay. Now, the other thing, as I understand is we
23 can't say one and two are the fired projectiles; right?

24 A Fired bullet jackets, right.

25 Q Jackets. And five was a fired bullet?

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1 A It was more intact. There was enough left to be able
2 to call it a bullet as opposed to a bullet fragment.

3 Q Okay. So that was the one taken from the pants leg of
4 the victim in this case?

5 A That was what was indicated to me.

6 Q But what you're saying is you can't say, without having
7 the weapon you cannot say that the jackets and the fired
8 bullet from the victims pants actually came from the same
9 gun as the cartridges -- I'm sorry, that the casings came
10 from?

11 A That is correct.

12 Q So the jackets and the fired bullet all come from one
13 weapon, and the cartridges, shell casings that were found
14 all came from one weapon, but we can't say it was the same
15 weapon?

16 A That's correct.

17 Q Now, this particular type of weapon, I was looking at
18 18, of course, that's the one that was circled, right. Kind
19 of easy to identify. Okay. But that has a stock on the
20 end?

21 A That particular photograph, that one does, yes.

22 Q Okay. What -- does that give a pretty good kick?

23 A It's not a very significant recoil. In the 9
24 millimeter version of this firearm, it's a fairly heavy
25 pistol for a semi-automatic pistol. And it doesn't really

1 have a strong kick.

2 Q Okay. So it doesn't have the kick of a more powerful
3 weapon?

4 A A relative term, yes.

5 Q A relative term. Okay. That particular weapon with
6 the stock on it, could you theoretically, could you fire
7 that with one hand or would you need necessarily -- would it
8 require two hands?

9 A Either way, with or with out the stock you could fire
10 it with one hand.

11 Q So it could be one hand or two hands?

12 A That's correct.

13 Q Now, the M-11, I think Ms. McDuffie mentioned there
14 were three manufacturers, when in actuality there are more?

15 A There have been more over time. I have not actually
16 examined all the different types of M-11s. I have not had
17 them submitted to me in case work. I have seen the three
18 that were mentioned, the Cobray, the FNJ and the SWD, I have
19 seen a fair number of those.

20 Q All of them are listed in the 49 of the ones that you
21 can identify as having fired 9 millimeter projectiles
22 similar to No. 1, 2 and 5?

23 A That's correct.

24 Q Let me ask you a little bit about ammunition.
25 Winchester and Remington ammunition, there's cheaper

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1 ammunition out there on the market, is there not?

2 A Yes.

3 Q Okay. These are fairly -- a gun enthusiast would go
4 get a -- somebody who had the money would buy usually a
5 Winchester or a Remington type bullet, would they not?

6 A I don't know if I would go so far as to say that.
7 Winchester, Remington, and a third major manufacturer of
8 ammunition in the United States, which is Federal, all make
9 a lower price point ammunition that is commonly sold very
10 competitively with the other less expensive brands.

11 Q All right, these particular ones that you saw where do
12 they fall; are they the more expensive or the less
13 expensive?

14 A It would be -- I can't state for a fact that they're
15 not premium grade ammunition. There's not enough
16 information based on their physical characteristics for me
17 to say either way. Some of their higher end ammunition of
18 all the manufacturers comes in a different form. Sometimes
19 it's nickel plated or something to indicate that it is more
20 of a premium grade ammunition. But that is not necessarily
21 to say that ammunition of this type isn't premium grade,
22 because they do make ammunition with a standard brass
23 cartridge case that is on the higher end. So there really
24 isn't enough information for me to look at the cartridge
25 cases and determine what price point this would have been

1 sold at.

2 Q Okay. So you're saying Winchester and Remington make a
3 more economical shell?

4 A Yes.

5 Q But they both make a high end bullet, so what you're
6 saying is you cannot tell from those casings or the
7 projectiles whether it was a higher or lower end bullet?

8 A That right -- the projectiles being full metal jacket,
9 typically when you see full metal jacket it is going to be
10 on the lower end of the price relative to all the types of
11 ammunition sold in that caliber. When you start talking
12 about premium ammunition you start talking about higher
13 grade jacket, hollow point style ammunition. And typically
14 you don't see full metal jacket ammunition sold at the
15 higher price.

16 Q That's where I was trying to go to see if we could
17 narrow this down a little bit. The casings themselves you
18 can't tell, but on the projectiles you can. You can tell
19 that the full jacket, what would be a lower price or more
20 economical type bullet than the ones with the hollow point
21 or other types; correct?

22 A Usually, the full metal jacket is sold at a lower price
23 point than a jacketed hollow point.

24 Q Okay. So today it narrows the field as to whether or
25 not we're talking about an economical type of cartridge as

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1 opposed to a premium cartridge?

2 A Yes.

3 Q Okay. Now, you were just talking about a jacketed
4 bullet is a bullet that has a jacket over it as opposed to a
5 hollow; correct?

6 A The entire bullet does not need to be encased in a
7 jacketed material to be considered full metal jacket. The
8 rear portion maybe exposed lead or not jacketed, however,
9 the front portion of the bullet, the part -- what some
10 people call the nose of the projectile, the correct term is
11 the ogive, back down the bearing surface to the base would
12 be fully encased in jacketed material.

13 Q Okay, and there are other types of bullets as well,
14 you've got the hollow points and you have the full jacket,
15 and there are other types of bullets as well in the 9
16 millimeter family?

17 A Yes. You would have a variety of different types of
18 bullets from full metal jackets, jacketed hollow point
19 ammunition and in some cases jacketed in soft point
20 ammunition with has the exposed lead nose, but no point.

21 Q So would it be fair to say, I mean, I have no idea, but
22 are there five different types of bullets themselves dealing
23 with the projectile portion of the bullet; would there be
24 five or more?

25 A I wouldn't think there's -- I would have to stop and

1 think and count how many possible varieties of 9 millimeter
2 ammunition there are. 9 millimeter is a very common type of
3 ammunition. It's been a military ammunition for various
4 armies since shortly after the turn -- shortly after 1900.
5 So there have been various types of ammunition that have
6 been produced over the years. Typically, the three that we
7 see are full metal jacket, jacketed hollow point, and
8 sometimes jacketed soft point ammunition.

9 Q So generally -- this period in time we're talking about
10 at least three?

11 A At least three.

12 Q That are more common?

13 A That's right.

14 Q And the ones that you examined, the projectiles, one
15 marked X and one marked I and then one from the pants leg,
16 those were jacketed 9 millimeter bullets; is that correct?

17 A There was jacketing there. Two of them -- my Item 5
18 and Item 2 were definitely consistent with the full metal
19 jacket style of projectile. I don't have in my notes about
20 the other item, my Item 1, because it was damaged to the
21 extent that I didn't make a note of it.

22 Q Your report indicates that one was a 15 bullet jacket
23 fragment, and then No. 2 says 15 bullet jacket I.

24 A Yes, sir.

25 Q So it's not distinguished on the report itself, they're

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1 both indicated as jacketed bullets; correct?

2 A They're both fragments of jacketed bullets, yes.

3 Q And Winchester has a WIN in front of it, right?

4 A On the head stamp of the cartridge case. Typically, it
5 may have a WIN or may have some other marks. Winchester has
6 used different marks over the years.

7 Q Okay, and Remington has what?

8 A RP.

9 Q And we're talking about the head stamps. Do you have
10 one of those bullets here, one of those 9 millimeter
11 casings?

12 A (Witness opens envelope with casings.)

13 Q Okay, if you could just step down one minute so you can
14 show the jury this.

15 A (Witness complies.) Okay.

16 Q First of all, the projectile if the portion that comes
17 out of here, right?

18 A That's right. The projectile would have initially been
19 loaded into this as one unfired cartridge. It would have
20 been in the cavity that you see here on the cartridge case.

21 Q And when you turn it on the back, and we've been
22 talking about firing pin markings. That's on the rear part
23 of the cartridge case; is that correct?

24 A The firing pin impression is actually centered somewhat
25 because --

1 Q Show them down here --

2 A There's a small disc that you may see in the center,
3 which is the primer itself, and the firing pin impression is
4 the indentation that is in the center.

5 Q That's the marking that gives you the identifying
6 characteristics of that particular weapon; is that correct?

7 A Some of them.

8 Q Some of them. Okay. This is what is generally found
9 after a weapon is fired, especially the semi-automatic
10 weapon like the M-11 type of weapon; is that correct?

11 A This is what would have been ejected from the ejection
12 port of the firearm.

13 Q And this gets kicked out of the right side of the
14 weapon?

15 A That's correct.

16 Q Would you just show the jury -- now, we're talking
17 about the head stamp. That's that portion on the rear?

18 A Right here around the perimeter, around the cartridge
19 case, you can see writing the manufacturer stamps onto the
20 base of the cartridge. It's called a head stamp. The head
21 stamp carries typically two pieces of information. It's
22 going to show the caliber or the brand.

23 Q What does that say?

24 A It says WIN 9 millimeter Luger.

25 Q 9 millimeter Luger. Okay. And can you -- before you

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1 sit down could you find the one that says RP in there. The
2 Remington. I think there's a -- It would be 146. Which
3 number is that?

4 A It's my Item 4.2, it's one of the Item 4 cartridges,
5 and this would be the one that came from the envelope marked
6 4, from the crime scene.

7 Q So we have -- we know we have seven 9 millimeter Luger
8 stamped with -- head stamped with WIN 9 millimeter; correct?

9 A Yes.

10 Q And then we have three stamped -- and if you'll just
11 show the jury the difference?

12 A The primary difference is RP, it also says 9 millimeter
13 Luger. The other physical difference is that the primer
14 itself is a nickel plated metal instead of a brass metal.
15 It's simply the manufacturers choice as to materials they
16 use in these cartridges.

17 Q Okay. You can put those back.

18 A (Witness complies.)

19 Q So you have seven stamped WIN 9 millimeter Luger and we
20 have three stamped RP; is that correct?

21 A Yes, that's correct.

22 Q All of those can be fired out of a 9 millimeter gun,
23 that's what that is, it's 9 millimeter ammunition?

24 A This Luger 9 millimeter ammunition could be fired in
25 any firearm that is chambered to accept 9 millimeter

1 ammunition.

2 Q By the way, a 39, you said is usually a revolver type
3 weapon?

4 A Usually.

5 Q Usually. A revolver is the gun or weapon with the
6 cylinder, is that correct, as opposed to a semi-automatic
7 that ejects the bullets?

8 A That is correct. The revolver would have the cylinder
9 which serves basically as the magazine, and is also part of
10 the firearm. A 39 special revolver will usually have a five
11 or six chamber cylinder giving a maximum capacity of five or
12 six shots. There are some strange esoteric brands that may
13 contain more, but most of them contain five or six?

14 Q A 38 is a fairly common revolver; is it not?

15 A Yes.

16 Q And with a revolver the cartridges are not ejected when
17 the gun is fired?

18 A That is correct.

19 Q The barrel rolls to the next one and it appears under
20 the hammer?

21 A The cylinder indexes each individual cartridge in turn
22 under the barrel where it's fired.

23 Q Okay, and after you've shot the six or whatever number
24 it's going to be in that particular cylinder then you empty
25 it?

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1 A You can stop and empty it at any point. Typically
2 you'd stop -- you have to stop and physically open some part
3 of the firearm to get the empty cartridge cases out?

4 Q That's right, you have to manually have to do that?

5 A That is correct.

6 Q All right, now, let me ask you to take a look at
7 State's Exhibit No. 120. There's three bullets in there;
8 correct? Could you take a look at it and determine whether
9 or not there are three bullets in there. Those are unfired
10 rounds. One I think is a 38?

11 A We have one --

12 Q Could you just maybe come down here and show the jury
13 what we're talking about.

14 A (Witness complies.) There are a total of four unfired
15 cartridges. Three unfired 9 millimeter Luger caliber
16 cartridges and one unfired 38 special caliber cartridge.

17 Q Now, that 38, when you're talking about a full metal
18 jacket verses a hollow point; what is that?

19 A This is a hollow point bullet. It's actually not a
20 jacketed hollow point bullet, this is a lead hollow point
21 bullet so it doesn't have a jacket around it. So what
22 you're looking at is purely a lead projectile. It's the
23 portion you see extended beyond the end of the cartridge
24 case. The bullet would actually be seated down -- it's
25 probably seated a fair distance down inside the cartridge

1 case.

2 Q So when you were talking about the difference between a
3 jacketed bullet and a hollow point bullet, this is an
4 example of a hollow point bullet but with a lead projectile?

5 A That's right.

6 Q And that's fired from a 38, which is generally a
7 revolver with a cylinder?

8 A That's correct.

9 Q And could you take a look these here. Could you tell
10 the jury -- that's 9 millimeter ammunition, is it not?

11 A All three of these are 9 millimeter.

12 Q Okay. Could you tell the jury what's on the head stamp
13 of each one of those bullets? I got a magnifying glass and
14 I still couldn't read it.

15 A I'm starting to get that way. Two of them are
16 Winchester brand, they have that WIN 9 millimeter Luger, and
17 the third one is the Federal brand, it's FC the Federal
18 Cartridge Company, 9 millimeter.

19 Q So I don't want to put words in your mouth, but two of
20 those bullets they have jackets, jackets on them?

21 A All three of the 9 millimeter Luger caliber projectiles
22 are full metal jacket. See, there's no hollow cavity in the
23 nose and they are fully encapsulated.

24 Q Okay. So two of the bullets out of -- what exhibit is
25 that?

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1 A This is Exhibit 120.

2 Q Exhibit No. 120. This is 120, and these were bullets
3 out of the Isuzu. Ms. McDuffie ask you if you were made
4 familiar later on as to whether or not other bullets were
5 recovered?

6 A That's correct.

7 Q Okay. Just take my word, these are out of the Isuzu,
8 okay.

9 A Okay.

10 Q All right. And there's an RP 38 special, that's the
11 weapon, the larger bullet is an RP; is that correct?

12 A This is Remington right there.

13 Q Okay. Remington. Two of them are WIN Winchester and
14 one is a Federal.

15 A That's correct.

16 Q So we've got all three manufacturers?

17 A That's correct.

18 Q Okay. You can put those back in there.

19 A (Witness complies.)

20 Q That's 120?

21 A Yes, sir.

22 Q Okay. This is 122, which contained the projectiles in
23 the cases you've been talking about; right?

24 A It contains some of them. It contains the seven fired
25 Winchester brand 9 millimeter Luger cartridge cases that are

1 manufactured by Winchester.

2 Q Those are the ones you examined?

3 A Some of the ones I examined.

4 Q Some of the ones you examined?

5 A Yes. You also had the three Remington brands that were
6 packaged separately.

7 Q Okay, but they're all the same exhibit, I think, aren't
8 they?

9 A This is Exhibit No. 121.

10 Q Okay. I'm sorry. These are -- well, something. It
11 says repackaged. That's what got me confused.

12 A These were all received by me in the laboratory within
13 this package initially. As I was going to send a
14 representative of all the fired cartridge cases to SLED to
15 be entered into the database so we could potentially see if
16 that firearm had been used in another event. I was required
17 to remove the items I was going to send to SLED and then
18 repackage them, which is why you got two separate groups.

19 Q Okay. I wanted to make sure I understood. So between
20 the two exhibits, that's --

21 A 122.

22 Q -- 122, and this is 121?

23 A Yes.

24 Q These are the bullets and shell casings, projectiles
25 and shell casings that you were asked to examine that came

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1 out of the roadway?

2 A That is correct. And the one projectile from the
3 hospital.

4 Q The pants leg.

5 A Yes, sir.

6 Q Let me ask you this, from what I understand from what
7 you just testified to, the seven of the cartridges that you
8 found or came off the roadway and you determined coming from
9 one weapon, marked Winchester 9 millimeter Luger, are the
10 same bullets that we just looked at in Exhibit No. 120,
11 coming out of the Isuzu?

12 A They are the same caliber and the same brand.

13 Q Well, and so is nothing different between the bullets
14 that were found, the cartridges that were found out on the
15 roadway and the ones that were found in the Isuzu; is that
16 correct?

17 A That's correct.

18 Q The jacketed 9 millimeter Winchester Luger bullets?

19 A The -- those from the crime scene were the same caliber
20 and type as those from the Isuzu. The projectiles, two of
21 them may be, based on their construction with full metal
22 jacket projectiles, which is also represented the type of
23 bullet that was found -- the cartridges in the Isuzu.

24 Q That was my next question.

25 A But as far as whether they're the same or not, I can't

1. tell you if they're exactly the same due to the damaged
2. condition of the projectiles.

3. Q Sure. But it's the projectiles consistent with the
4. ammunition that you find in Exhibit No. 120?

5. A It could be, yes.

6. Q Consistent?

7. A Consistent based on the fact that they're full metal
8. jacket projectiles.

9. Q Right. And the ammunition in 120 is head stamped and
10. has the same characteristics as in Exhibit 121 and 122;
11. correct?

12. A The three 9 millimeter cartridge cases that you
13. indicated were taken from the Isuzu have the same head
14. stamp, same brand, same caliber as seven of the fired
15. cartridge cases that were recovered at the crime scene.

16. Q That's only two; correct?

17. A Oh, I'm sorry. Two. You're correct. The third one
18. was a Federal brand which was not similar to anything that
19. was recovered from the crime scene.

20. Q So the long and short of it is this, at the end of the
21. day, Exhibit No. 120, which were the bullets that came out
22. of the Isuzu are the same type of ammunition as far as
23. characteristics are concerned and head stamp is concerned
24. from seven of the cartridges that came off the road?

25. A That's correct.

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1 Q There are no differences between the ammunition of
2 those seven fired cartridges and two of the bullets out of
3 the Isuzu?

4 A No, physical characteristics that I could tell that
5 were different between the ones from the crime scene, the
6 seven ones from the crime scene and two of the ones from the
7 Isuzu.

8 Q Okay. Thank you.

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

10 THE COURT: Yes.

11 DAVID COLLINS - CROSS-EXAMINATION

12 BY MS. JOHNS:

13 Q Mr. Collins, in your direct examination you said that
14 the Mac 11 was most consistent with --

15 A The M-11?

16 Q M-11 firearm most consistent with the markings that you
17 found on the shell casings; is that fair?

18 A That's correct.

19 Q Consistent with what?

20 A Virtually, all the other 9 millimeter firearm cartridge
21 cases that I've examined.

22 Q So did you assist n the preparation of State's Exhibit
23 No. 140?

24 A No, ma'am. Today is the first day that I've seen this.

25 Q So when you referred to State's Exhibit No. 140, which

1 is the photograph of all the weapons and you said that it's
2 most consistent with No. 18?

3 A That's correct.

4 Q You did not assist in the preparation of this display
5 of these firearms, did you?

6 A No, I didn't.

7 Q Out of the 28 firearms listed in here, would any of
8 your finding be consistent with any other firearms in here?

9 A The firing pin impressions that were found on the
10 cartridge cases would not be consistent with any of the
11 ones, would not have been produced by any of these firearms
12 other than the one, potentially, No. 18. Some of the
13 firearms indicated in this photograph are not even 9
14 millimeter.

15 Q Right.

16 A And some of them are not -- different caliber, and some
17 are different types of firearms that would not even eject a
18 cartridge case. The only firearm here that would produce a
19 firing pin impression similar to what I found on the cases
20 would be represented by a gun that looks similar to No. 18.
21 There is nothing on this No. 18 photograph for me to tell
22 exactly what brand of firearm that could be. At this point
23 in time, it might be important for me to interject that some
24 M-11 firearms product a circular or normal looking firing
25 pin impression. So not even -- the range of possible

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1 firearms that could produce that firing pin impression is
2 even narrower than what I might have indicated earlier. Not
3 all M-11s produce a rectangular firing pin. It's only a
4 very short range of production that they were able to do
5 that.

6 Q All right. And in your -- in State's Exhibit No. 140,
7 some of these firearms appear as revolvers, right, with a
8 cylinder?

9 A That is correct.

10 Q Okay. And if you have a revolver with a cylinder it
11 would not project a projectile; right?

12 A It would -- the projectile would come from the barrel
13 of the gun. The cartridge would not be ejected from the
14 gun.

15 Q A cartridge case would not shoot out of the gun after
16 the gun was fired in a revolver; correct?

17 A That's correct.

18 Q Now, is there any other type of gun that these shell
19 casings might have been fired from other than your Mac 11 or
20 your M-11?

21 A As it is impossible for me to have examined cartridge
22 cases from every 9 millimeter Luger caliber production
23 that's been made, I cannot state for a fact that there's no
24 other firearm out there that would -- that could not have
25 produced this firearm -- this firing pin impression.

1 Q All right.

2 A The fact -- well, I based my conclusions on is my
3 training and experience and all the other M-11s that I have
4 looked at in the past and the fact that no other firearm
5 that I have examined has produced that firing pin impression
6 on a cartridge case. There recently a discussion about this
7 in our industry and somebody was asking about -- submitted a
8 photograph of this type of firing pin impression and it was
9 interesting to see that other firearms examiners all across
10 the country, this was subsequent to this case, all agreed
11 that it was an SWD or similar type M-11 firing pin
12 impression. So apparently no other firing pin examiner had
13 looked at that photograph, submitted a result different than
14 an M-11.

15 Q Okay. Now, you had an opportunity to meet with other
16 investigators in this case on July 2, 2007, at the morning
17 meeting at the sheriff's Department. Do you recall if your
18 notes would reflect that you had a meeting with them?

19 A I don't have that in my notes, but it's quite possible
20 that I attend that meeting.

21 Q Okay. When you received this information, you received
22 the shell casings from the roadway, the bullets from the
23 Isuzu, and the projectiles; do you recall the date of your
24 report?

25 A My report is dated July 12, 2007. My examination of

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1 the items I received occurred on June 30, 2007, and the
2 subsequent days. It started on June 30.

3 Q Your examination started on June 30?

4 A That's correct.

5 Q And your report was complete on July 12, 2007?

6 A That is correct.

7 Q Did you have the benefit of the information from the
8 eye-witnesses at any time?

9 A I have heard references to eye-witness statement at
10 some point in time during this. I do not remember if it was
11 before or after I issued my report.

12 Q Okay. And let me ask you, there were seven shell
13 casings, I'm sorry, 10 shell casings found on the roadway;
14 is that right?

15 A That is correct.

16 Q Okay. And there were three projectiles found at the
17 scene of the crime; correct?

18 A Two at the scene of the crime, I believe, ma'am, and
19 one at the hospital. So we have a total of three.

20 Q So we have 10 shell casings, we have two projectiles at
21 the scene and one projectile at the hospital, based on what
22 you know?

23 A Based on what I've examined, yes.

24 Q So if you subtract the two projectiles found at the
25 scene, that would leave 9, minus the one that might have

1 come from the hospital. That leaves seven projectiles out
2 there somewhere?

3 A That would be a logical statement, yes, ma'am.

4 Q And we don't have any idea where they might be; they
5 weren't submitted to you, right?

6 A That is correct.

7 Q And now I'm going to show you what's been marked as
8 State's Exhibit No. 136. Can you tell me whether or not
9 after examining that item, were they submitted to serology?

10 A I -- no, I cannot tell you what further examination was
11 done beyond my examination of this item, but it was not
12 requested by myself that any further examination be done.

13 Q Okay. Did you examine that item which was the -- I
14 guess bullet or projectile at the hospital, did you examine
15 that item under the microscope?

16 A I performed a stereoscopic examination of the item,
17 yes.

18 Q Okay. Once you returned that item to this evidence
19 bag, you don't know what happened to it after that?

20 A Once I returned it to the bag it was -- it would have
21 been sealed and beyond that point, other than the fact that
22 it was stored, I have no indication that anything was done
23 to it.

24 Q Okay. If somebody was to take that one projectile that
25 came from the hospital, would you agree that it was

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1 flattened on one side?

2 A Yes, it is.

3 Q Would that indicate that maybe it hit a hard object at
4 one time?

5 A That could account for the damage, yes.

6 Q Okay. And we don't know what that hard object might
7 have been?

8 A We do not.

9 Q Okay.

10 MS. JOHNS: That's all. Thank you.

11 THE COURT: Okay.

12 DAVID COLLINS - REDIRECT EXAMINATION

13 BY MS. MCDUFFIE:

14 Q Please look at Exhibit No. 136, Investigator Collins,
15 could that bullet be flattened from hitting, for example,
16 bone?

17 A I can't rule out that possibility.

18 Q And how far can an M-11 fire, how far can that gun
19 expel a projectile?

20 A That -- the distance that that firearm could shoot a
21 projectile, I would have to determine through a software
22 based calculations. It would be many hundreds of yards.

23 Q And Investigator Collins, can one gun fire both 38
24 special ammunition and 9 millimeter Luger ammunition?

25 A None that I've ever intended.

1 Q And how common is Winchester 9 millimeter Luger brand
2 ammunition?

3 A It's very popular.

4 Q Any idea about how many units are produced?

5 A I would have to say probably around --

6 MR. SWERLING: Your Honor, unless there's some
7 basis for a foundation it's speculation. I object.

8 THE COURT: Sustained.

9 MR. SWERLING: We understand it's common.

10 BY MS. MCDUFFIE:

11 Q Please tell the jury where you can purchase this
12 ammunition?

13 A Any well stocked gun shop would have it in stock,
14 should have Winchester brand name in stock as well as
15 others. And I've seen it for sale at Wal-Mart and other
16 retail stores.

17 Q And you mentioned earlier that right now there's a
18 shortage of ammunition in most retailers?

19 A Yes.

20 Q Was that the case in 2007?

21 A No.

22 MS. MCDUFFIE: Nothing further, Your Honor.

23 MR. SWERLING: Just one --

24 DAVID COLLINS - RE-CROSS EXAMINATION

25 BY MR. SWERLING:

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1 Q You indicated when I was asking you the question about
2 lead projectiles; is that correct, that the 38 has a lead
3 projectile?

4 A The 38 special caliber cartridge that you presented --
5 it does have a lead projectile. It does not have any cooper
6 jacketing or other jacketing material.

7 Q So that is another brand or another type of bullet that
8 has only the lead projectile, not a jacketed -- it's not a
9 jacketed nor is it hollow; is that correct?

10 A (No response.)

11 Q I mean, another type or a fourth type of cartridge?

12 A There's a different type of projectile in that
13 cartridge than what we were discussing the 9 millimeters.

14 Q Correct. And is that cheaper; is just the lead without
15 the jacket, is that a cheap type of ammunition?

16 A It may or may not be. This particular case, because I
17 don't know exactly what line of ammunition it came from from
18 the factory I don't want to speculate as to whether it's a
19 high end or low end.

20 Q And we know 38s are not fired out of 9 millimeters?

21 A That is correct.

22 Q And nobody is suggesting it. Thank you.

23 MS. JOHNS: Nothing further, Your Honor.

24 THE COURT: Okay. Sir, you can step down and be
25 excused.

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1 It's right at an hour, so we'll take a short break.

2 And I remind you not to discuss the case. You-all can be on
3 a short comfort break.

4 (Jury out at 3:53 p.m.)

5 THE COURT: Is there anything we need to discuss
6 now?

7 MR. SWERLING: No. Can I -- actually, it's not
8 about the merits of the trial. I mean there's nothing.

9 (Court in recess for short break.)

10 (Court in session after short break.)

11 THE COURT: Thank you. Please take your seats.

12 Any issues we need to take up?

13 MS. SHIPLEY: Your Honor, can I just have one
14 second. I'm just trying to organize my exhibits.

15 THE COURT: Sure.

16 MS. SHIPLEY: Thank you very much, Your Honor. I
17 appreciate it.

18 THE COURT: Okay. Thank you. Jurors please.

19 (Jury in at 4:15 p.m.)

20 THE BAILIFF: The juries all present, Your Honor.

21 THE COURT: Okay. Thank you. State you may
22 continue.

23 MS. SHIPLEY: Thank you, Your Honor. At this time
24 the state calls Investigator Don McRae.

25 (WHEREUPON, Don McRae was sworn to

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1 tell the truth.)

2 THE CLERK: Thank you. Please have a seat in the
3 witness box and state your name for the record.

4 MR. MCRAE: Don McRae, M-c-R-a-e.

5 DON MCRAE - DIRECT EXAMINATION

6 BY MS. SHIPLEY:

7 Q Investigator McRae, can you please tell this jury where
8 you're employed?

9 A I'm currently employed with the Richland County
10 Sheriff's Department.

11 Q How long have you been employed there?

12 A I've been employed with the Richland County Sheriff's
13 Department since April of 2003.

14 Q And tell the jury a little bit about what your duties
15 are and what you do on a day-to-day basis.

16 A I'm currently assigned to the criminal investigative
17 division, major crimes unit. My primary duties are to
18 investigate robberies and homicides. Homicides that occur
19 within Richland County. I have investigated burglaries,
20 property crimes, financial crimes. I was also a call taking
21 road deputy for approximately three years prior to being
22 promoted to criminal investigative division.

23 Q And so as a road deputy you're familiar with the role
24 of people like Deputy Galinski?

25 A I am.

1 Q And when you were a road officer were you in charge of
2 conducting criminal investigations in homicide cases?

3 A No, ma'am.

4 Q Tell the jury what training and experience you have in
5 investigating criminal homicide cases?

6 A Since being promoted to criminal investigative division
7 I've been to several classes on interview and interrogation.
8 I've been to classes on community policing. I've attended
9 one homicide conference in Las Vegas, Nevada, which
10 encompasses several other agencies across the United States,
11 investigators from across the United states. I've also had
12 training in, as I said, interview and interrogation and
13 leadership classes. Several other classes since I've been
14 employed with the Richland County Sheriff's Department.

15 Q Please tell the jury how does it work at the Sheriff's
16 Department, when do you get assigned to a case?

17 A Initially what will happen is when someone calls 911 or
18 when someone calls for the police services of the Richland
19 County Sheriff's Department, the first person sent out to
20 the location will be what we call a road deputy. That road
21 deputy will take basic information and should not go into
22 any great detail; just take the basic facts. He will take
23 that on what we call an incident report. That incident
24 report will be forwarded up to criminal investigative
25 division, CID is what we call it. Once it's forwarded it to

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1 CID, it will be assigned to a particular investigators.

2 Q And I'm going to bring your attention to the case at
3 hand. Tell the jurors exactly when you became involved in
4 this case?

5 A On June 30, 2007, at 5:08, I was notified of a homicide
6 that occurred at the H&J club at 2820 Hardscrabble Road, in
7 Richland County. That particular evening I was on what we
8 call on-call. Approximately, every eight weeks we go on a
9 on-call cycle where we will remain available for calls for a
10 24 hour period through seven days. And at this particular
11 time I was on-call, and I was also on-call as primary
12 homicide, which means if there was a homicide within
13 Richland County during this time period I would respond and
14 be responsible for investigating that particular crime.

15 Q And imagine since you were on-call at 5:08, were you
16 awakened by this call?

17 A I was.

18 Q And how long did it take you to get to the crime scene,
19 as a result?

20 A I was notified at 5:08, and I arrived at approximately
21 5:40 in the morning.

22 Q Okay. And when you arrived, tell the jury what you
23 want to do, the first thing you want to do as an
24 investigator on the scene?

25 A Well, the first thing that I do is I look and see, make

1 sure that the scene is secure. In our training of deputies
2 we want to make sure that when they respond to an incident
3 like this they have two initial responsibilities. The first
4 responsibility is officer safety. We don't want someone to
5 be in there, we want to make sure that they are trained to
6 make sure that they are safe within that location. The
7 second responsibility that we train and tell the road
8 deputies is to secure the scene.

9 Q Okay. Was that done in this case?

10 A It was.

11 Q So you don't know exactly the time that it was secured
12 do you?

13 A I do not.

14 Q And would that be on the crime scene log?

15 A It should.

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

17 A If I could expound on that?

18 BY MS. SHIPLEY:

19 Q Sure.

20 A Once the scene is secure, the crime scene log, which is
21 a log of everybody entering and exiting the crime scene, is
22 started by that deputy or deputies that secure that scene.

23 Q Okay. I'm going to show you a document and see if you
24 recognize it; do you recognize that?

25 A I do. This is the crime scene log that would have been

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1 started by the deputies that secured the scene. And the
2 first person on this crime scene log is a Gregory, W.
3 Gregory, and he, his time in was 4:45.

4 Q Okay. And are you familiar with what time dispatch was
5 called to the scene?

6 A We received the call, according to the initial incident
7 report that was provided by the road officer, we received
8 the call -- well, the call was dispatched at 4:12 a.m.

9 Q Okay. And is Deputy Weldon Gregory employed by the
10 Sheriff's Department any more?

11 A He is no longer employed with Richland County Sheriff's
12 Department.

13 Q Now, I want to bring your attention to once you arrived
14 to the scene, tell this jury who do you meet with first?

15 A Initially when I arrive to a scene of such magnitude,
16 the first people that I'm going to talk to is I'm going to
17 see whether members of CID are there. I'm also going to
18 meet with the deputies that arrived on the scene first. Get
19 from they've been told from them and basically talk a look
20 at the scene, just basically see what I'm going to deal
21 with, see what I have to deal with.

22 Q And when you arrived, describe the scenario for this
23 jury?

24 A At my time of my arrival I meet with Sgt. Barnes, who
25 is my sergeant over the lead on-call investigators. Then

1 there were still several patrons at the club. There was
2 still some heavy traffic within the parking lot area.
3 Several on-lookers on the scene.

4 Q And tell the jury did you eventually come in contact
5 with Ricky Jacobs?

6 A I did. I met with Ricky Jacobs just shortly after I
7 arrived on the scene and began a conversation with Mr.
8 Jacobs and the fact that I knew Mr. Jacobs as the owner of
9 the bar.

10 Q And describe for the jury his demeanor with you when
11 you first were talking to him at the scene?

12 A Initially, Mr. Jacobs was hesitant in speaking with me.
13 I felt --

14 MR. SWERLING: Objection.

15 THE COURT: Sustained.

16 BY MS. SHIPLEY:

17 Q Just your observations at this time?

18 A My observations of Mr. Jacobs was, he was hesitant to
19 answer any questions at this time.

20 Q And describe for the jury whether there were other
21 people around?

22 A There were.

23 Q Tell the jury whether or not you asked Ricky Jacobs to
24 show you around?

25 A I did.

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1 Q And tell them where he took you?

2 A Mr. Jacobs, once I pulled him off a little bit more to
3 the side --

4 MS. JOHNS: Your Honor, I object to this line of
5 questions also, because if he's going to go into what he
6 thinks might have happened or what he thinks -- so if he
7 wants to answer the question where did you take -- where did
8 Ricky Jacobs take you, I think he should respond to that
9 question.

10 MS. SHIPLEY: That was my question.

11 THE COURT: Sir, direct your answer directly to
12 her.

13 MR. MCRAE: Yes, ma'am.

14 A Mr. Jacobs took me across the street from the club
15 where he had parked his car that evening.

16 BY MS. SHIPLEY:

17 Q What did you ask of him from there?

18 A I asked him to provide me with the sequence of events
19 of what transpired that night.

20 Q And once you were away from all -- explain how his
21 demeanor changed.

22 A It was. Mr. Jacobs became cooperative, he began
23 answering all my questions as they were asked.

24 Q Okay. Now, you were present when Mr. Jacobs testified,
25 correct?

1 A I was.

2 Q And you were able to hear his testimony?

3 A I did.

4 Q And providing you information about the subjects, was
5 he able to provide a name to you that morning?

6 A He did.

7 Q And what name was that?

8 A He gave a first name of Taurus.

9 Q And did he also provide a description?

10 A He did.

11 Q And what was that description?

12 A He gave me a description of the person he knew as
13 Taurus as a black male, subject five-ten to six-foot in
14 height, 150 to 160 pounds. He stated subject was wearing a
15 white t-shirt.

16 MS. JOHNS: Your Honor, I object to hearsay.

17 MS. SHIPLEY: Your Honor, the witness has already
18 testified.

19 MS. JOHNS: What Mr. Jacobs told him. I mean he's
20 already testified. The only thing he has to say about
21 Jacobs is hearsay.

22 MS. SHIPLEY: Your Honor, the witness --

23 MR. SWERLING: Jacobs didn't testify.

24 MS. SHIPLEY: Ricky Jacobs testified.

25 MR. SWERLING: Ricky Jacobs testified, but not as

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1 to what she's asking. It doesn't remove the hearsay.

2 THE COURT: Right.

3 BY MS. SHIPLEY:

4 Q Did you hear Mr. Jacobs being questioned on his direct
5 examination and his cross-examination about the hair style
6 of Taurus?

7 A I did.

8 Q And what was the hair style that was provided to you?

9 MR. SWERLING: Your Honor, this is -- you can't --
10 what she's trying to do is try her case back through Mr.
11 McRae. You can't do that. I object to that. I mean, he
12 testified. The jury heard him, and I don't why we're going
13 back through this about descriptions and what was said. I
14 mean, if she wants --

15 MS. SHIPLEY: May we approach, again?

16 THE COURT: Sure.

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

19 THE COURT: Objection sustained.

20 BY MS. SHIPLEY:

21 Q At this point in your investigation were you also
22 provided a description of a second individual with Taurus?

23 A I was.

24 Q Okay. Based on your descriptions you were provided,
25 tell the jury what you did next?

1 A Based on the information that I had obtained from Mr.
2 Jacobs the next thing -- could you rephrase that?

3 Q Yes, sir. Was Mr. Jacobs able to provide you with
4 information as to whether or not he was familiar with
5 Taurus.

6 A He did.

7 Q And what kind of information did you rely or need from
8 him to pursue your investigation?

9 A Mr. Jacobs provided information to me that the subject
10 that he referred to as Taurus would usually hang around E.L.
11 Hunter Road. He would also stay off the dirt road off of
12 E.L. Hunter Road. Fortunately, being familiar with that
13 area I actually patrolled that area as a road deputy
14 earlier, as I told you I was a road deputy. I also knew
15 that being in and around that area that many of the patrons
16 that went to H&J club lived within the Washington Heights
17 subdivision, which is just down Hardscrabble Road across
18 Farrow Road. Myself and Investigator Gallegos went and
19 looked through that area looking for the description of the
20 vehicle that Mr. Jacobs provided us.

21 Q Okay. Now, what -- describe the two different vehicles
22 that Mr. Jacobs gave to you?

23 A The first -- one of the vehicles that Mr. Jacobs
24 described to me was a white, in color, Isuzu Rodeo. That
25 was the first vehicle that he described to me. The second

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1 vehicle was a tan, in color, Suburban.

2 Q So at 5:40-ish that morning he referred to both types
3 of vehicles to you?

4 A I remember -- yes. Yes.

5 Q Now, did he indicate to you how many shots were fired
6 from each vehicle that he witnessed?

7 A He did.

8 MR. SWERLING: Well, that's prior --

9 MS. SHIPLEY: I'm not asking --

10 MR. SWERLING: -- consistent statements and I
11 object to that. It's not proper. You can't go into -- she
12 cannot go into prior consistent statements on behalf of
13 anyone.

14 MS. SHIPLEY: Your Honor, pursuant to his
15 investigation. He's allowed to testify as to what he was
16 familiar with as far as --

17 MR. SWERLING: But that has the effect of
18 establishing prior consistent statements.

19 THE COURT: Hold on a second. Hold on a second.

20 Ladies and gentlemen, I need for you to step to your
21 jury room one moment. We need to clear this up. I'll
22 remind you not to discuss the case.

23 (Jury out at 4:32 p.m.)

24 THE COURT: All right. As I understand the defense
25 counsel objection, what we're essentially trying to avoid is

1 the witnesses, as the investigator, not basically go back
2 through any statements made by Mr. Jacobs from which Mr.
3 Jacobs did testify because then that would be considered
4 hearsay statements?

5 MR. SWERLING: Your Honor, there are several
6 different objections. One that Your Honor just stated. The
7 second thing is only thing Ms. Shipley and the state can go
8 into bringing out through Mr. McRae statements of Mr. Jacobs
9 made or any other witnesses made which amount to prior
10 consistent statements to show that they made those
11 statements at the time of the event.

12 THE COURT: Well, the one thing and you can respond
13 to this too, is that her entitlement to get from this
14 officer what information he relied on so that he can act
15 upon in his investigation. And there's going to be some
16 line in there just because you've got to allow him to say
17 which might be inconsistent with what was on the stand. But
18 it's not offered for the truth, but just to say that this
19 was what was given to me and this is how he then carried out
20 his investigation based on this set of information.

21 MR. SWERLING: But it has the effect of having this
22 witnesses testify to a prior consistent statement of Mr.
23 Jacobs which enhances his credibility in violation of 801.
24 I mean, I -- as a result of the information you got from Mr.
25 Jacobs, what did you do, without going into what Mr. Jacobs

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1 said. The only thing they can go into with this witness, I
2 believe, I'm submitting to the Court --

3 THE COURT: Sure.

4 MR. SWERLING: -- is prior inconsistent statements
5 made by any of the witnesses, but the state and the defense
6 is prohibited from going into prior consistent statements.
7 So letting Mr. McRae testify as to what Mr. Jacobs told him
8 on that evening amounts to letting the state get into prior
9 consistent statements. But if Ms. Shipley says, as a result
10 of the description of the vehicle he gave you, what did you
11 do. Well, that's not objectionable.

12 THE COURT: Yeah, not stated that way, but then,
13 what's she's trying to get it is what was the description of
14 the vehicle. So because you have to understand why he went
15 after this car verses this car.

16 MR. SWERLING: With respect to the vehicle I don't
17 have a whole lot --

18 THE COURT: Two vehicles, right.

19 MR. SWERLING: -- but when you get into some of the
20 other things I do have an objection to, because he was
21 pretty well impeached, you know, as to a lot of things he
22 said. And this witness is not the person who can come in
23 and testify about what he told them either.

24 MS. SHIPLEY: Your Honor, under Rule 801 (d),
25 statements which are not hearsay, I'm allowed to go with

1 statements that are inconsistent with the declarant's
2 testimony. I'm also allowed to go into consistent with the
3 declarant's testimony and his offer to rebut and express an
4 implied charge against declarant in recent fabrication.

5 (Reading.)

6 Mr. Swerling went ad nauseam with Ricky Jacobs how he
7 is now, for the very first time, in front of this jury the
8 shot was fired after the U-turn.

9 THE COURT: But -- but -- Mr. Jacobs isn't on the
10 stand.

11 MR. SWERLING: That's true. That's good. If you
12 want to go there, I'll go there. If you want to go into
13 what he told Mr. McRae, that's fine. I'm allowed to do
14 that.

15 MS. SHIPLEY: Well, I am, too, Your Honor, under
16 Rule 901 (d) I'm allowed to go into that and then obviously
17 the one part identification made of a person after -- and
18 then that would be the extend that the state would go into
19 it.

20 MR. SWERLING: The only thing you can go into --
21 State verses Sauls, which is a case that I tried, or
22 actually did the appeal and then tried, which says it has to
23 be a recent fabrication or allegations of recent
24 fabrication. The only things that Mr. Jacobs was asked
25 about about recent fabrications were the direction that the

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1 Isuzu went after the shots were fired, where the Isuzu was
2 in the parking lot, the fact that his car was across the
3 road and he brought it over there, back over to the place
4 before the shots were fired. And the fact that Mr. Wray was
5 in the club.

6 Now, if Ms. Shipley has information that this witness
7 -- 35 pages of his reports is not in there. So that would
8 be the only thing that I think she can go into to try and
9 rebut recent fabrication. But -- I've noticed that Mr.
10 McRae has nowhere in his notes that Mr. Jacobs ever said any
11 of the things I did on cross-examination ad nauseam.

12 MS. SHIPLEY: All right, Your Honor, I think I can
13 just wrap it up.

14 THE COURT: Okay.

15 MS. SHIPLEY: I can say you heard Mr. Jacobs
16 testify, everything you heard him testify to is that
17 consistent with what he told you except for the sequence of
18 events around the U-turn.

19 THE COURT: Well -- he testified on direct one way
20 and then there were certain issues that he testified on
21 cross one way. So when you say how he testified --

22 MS. SHIPLEY: Right. The only issue that was
23 brought up was whether or not he ever said anything about
24 seeing Tremaine Wray inside, that's different. And the --
25 whether he shot first and then did the U-turn or did the U-

1 turn and then fired.

2 THE COURT: Right.

3 MS. SHIPLEY: The white Isuzu Rodeo. Those are the
4 only two things that were different.

5 THE COURT: Okay.

6 MS. SHIPLEY: So I think just to move on --

7 THE COURT: Okay.

8 MS. SHIPLEY: -- allow the state to go there and
9 move on.

10 THE COURT: Do you have any objection to that?

11 MR. SWERLING: Well, it depends on what she's going
12 to ask.

13 THE COURT: Okay.

14 MS. SHIPLEY: Well, what I propose ---and I can
15 proffer that right now.

16 THE COURT: Yeah, that would be better, so we all
17 don't have to --

18 MS. SHIPLEY: Thank you.

19 PROFFER:

20 Q Investigator McRae, you were present for the testimony
21 of Rick Jacobs; correct?

22 A I was.

23 Q And what is the only thing different in his testimony
24 verses what he told you on June 30, 2007?

25 A The only thing that I could recall being different was

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1 the time, the sequence of events concerning the white Isuzu
2 Rodeo, whether it made the U-turn first and then shot one
3 time in the air or if it shot one time in the air and then
4 made the U-turn.

5 Q And what about the indication on his direct or cross-
6 examination of seeing Tremaine Wray there that night?

7 MR. SWERLING: No, no. He had seen Tremaine in the
8 club.

9 BY MS. SHIPLEY:

10 Q Okay, seeing Tremaine in the club that night?

11 A I don't recall what he said about seeing Tremaine in
12 the club that night on his direct or his cross.

13 Q Oh, you don't remember his testimony.

14 MS. SHIPLEY: Then I won't ask him about that.

15 That's the extent of the questions, Your Honor.

16 THE COURT: Okay.

17 MR. SWERLING: That was --

18 MS. SHIPLEY: He doesn't recall what the witness
19 testified to about seeing Mr. Wray there that night, so I
20 won't ask him about that, but he's obviously clear about the
21 fact that the only difference in his testimony verses --

22 MR. SWERLING: No, he can't. I object. He can't
23 testify the only difference --

24 THE COURT: Right.

25 MR. SWERLING: -- because --

1 THE COURT: Because they have to recall the whole
2 direct, cross, redirect, recross and so forth. The jury has
3 to do that. So he couldn't be the one to make that
4 distinction. The jury has to figure it all out. But just
5 don't use only difference.

6 MS. SHIPLEY: Okay.

7 BY MS. SHIPLEY:

8 Q Was his testimony different as to the sequence of
9 events pertaining to the Isuzu shooting?

10 A Yes.

11 MS. SHIPLEY: That's it.

12 BY MS. SHIPLEY:

13 Q What did he testify to in his statement verses what he
14 testified to, so the jurors understand?

15 A The white Isuzu Rodeo as far as when it made the --
16 whether it made the U-turn first and then shot one time in
17 the air or whether it shot one time in the air and then made
18 the U-turn.

19 MS. SHIPLEY: Okay.

20 MR. SWERLING: I guess what I'm trying to figure
21 out is what is the purpose of the -- under what rule does
22 the state have the right to bring that out? I mean, that's
23 cross-examination.

24 MS. SHIPLEY: 801

25 MR. SWERLING: Under what theory?

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1 MS. SHIPLEY: Excuse me, 801 (d)(1)(a).

2 MR. SWERLING: That's 801 who?

3 MS. SHIPLEY: 801 --

4 MR. SWERLING: (d)(1)(a)?

5 MS. SHIPLEY: (d)(1)(a). Prior statement, prior
6 witness. The declarant who testifies at the trial is
7 subject to cross-examination, which was done here,
8 concerning his statement and his statement is inconsistent
9 with the declarant's testimony.

10 MR. SWERLING: So you want to bring out from this
11 witness what your witness was inconsistent about; is that
12 right?

13 MS. SHIPLEY: Pursuant to his investigation, he
14 relied on things that were relaid to him by Ricky Jacobs.

15 MR. SWERLING: Okay, if you want to bring out
16 something that's inconsistent that's okay.

17 THE COURT: Okay.

18 I'm sorry, Ms. Johns?

19 MS. JOHNS: Your Honor, if I may, just to be clear
20 before the jury gets out here?

21 THE COURT: Sure.

22 MS. JOHNS: I don't want this witness to conclude
23 whether or not Ricky Jacobs testimony --

24 THE COURT: He can't do that.

25 MS. JOHNS: -- is consistent with what --

1 MR. SWERLING: Your Honor, you've ruled that he
2 can't do that.

3 THE COURT: Right.

4 MS. SHIPLEY: Your Honor, just out of an abundance
5 of caution, I'm moving on.

6 THE COURT: Okay. Well, you can only talk about
7 what was relevant to this investigation, but not to the
8 extent that it's going to require us redoing Ricky Jacobs,
9 so to speak.

10 MS. SHIPLEY: Yes, ma'am.

11 THE COURT: Because they are entitled to remember
12 the direct, the cross, the redirect, the recross, and all of
13 that, and make their determination as to what to believe,
14 and that's what the jury charge will tell them to do.

15 But he does get to go into what he's relying on for
16 purposes of the investigation because you're not admitting
17 it for the truth, but how he heard it and reacted to it.

18 MS. SHIPLEY: Right. For instance: Did he show you
19 where each car was located when they fired the shot.

20 MR. SWERLING: That's not hearsay. That's not what
21 I'm objecting to.

22 THE COURT: Okay.

23 MR. SWERLING: Judge, one other thing while we're
24 out, the jury's out. Mr. McRae, I've known him a long time.
25 He would not do it intentionally, but I just want to make

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1 sure that we're all on the same page. I don't want anybody
2 to testify that Mr. Wray -- his rights.

3 MS. SHIPLEY: We're not going there.

4 THE COURT: Okay.

5 MR. MCRAE: I understand. I understand.

6 MR. SWERLING: Okay. I just wanted to make sure.
7 I knew you wouldn't do it intentionally.

8 MS. SHIPLEY: No problem.

9 MR. MCRAE: Yes, sir.

10 MS. SHIPLEY: The only thing we're going to touch
11 on, Your Honor, is that he did advise Watts of his rights
12 and the only relevant -- we're not going to go into the --
13 is to show the voluntariness of the statement Watts made
14 later on.

15 THE COURT: And that was also not objected to
16 earlier.

17 MS. JOHNS: I don't object to that, Your Honor, so
18 I don't know why the implication of his rights would even
19 matter. I have no objection to what he said to Investigator
20 McRae.

21 THE COURT: All right.

22 MS. SHIPLEY: Okay, so I don't need to go into all
23 that. If she's not going to raise that it was involuntarily
24 made?

25 MS. JOHNS: No. And I haven't. I would have at

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1 pre-trial. I have not done that.

2 THE COURT: Okay. And then I don't have anything
3 on Mr. Wray?

4 MR. SWERLING: There is none.

5 MS. SHIPLEY: Okay. Thank Your Honor.

6 THE COURT: Jurors, please.

7 (Jury in at 4:44 p.m.)

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

9 THE COURT: Okay. Thank you-all. You can
10 continue.

11 DON MCRAE - CONTINUED DIRECT EXAMINATION

12 BY MS. SHIPLEY:

13 Q Investigator McRae, I left off asking you whether or
14 not you had Mr. Jacobs show you around --

15 A Yes.

16 Q -- is that correct?

17 A That is correct.

18 Q Did he show you around?

19 A He did.

20 Q And specifically where did he take you to show you what
21 he witnessed?

22 A He showed me where he observed the tan Suburban parked
23 that evening. He also showed me where the white Isuzu Rodeo
24 was parked that evening.

25 Q And did he show you where the vehicles were located

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1 when the shots were fired --

2 A He did.

3 Q -- the tan vehicle. All right. Based on your
4 conversation with Ricky Jacobs, did you begin looking for a
5 Chevy Suburban?

6 A We did.

7 Q And tell this jury where you went first?

8 A The first place we went, we went to the neighborhoods
9 in and around the club. We went down E.L. Hunter Road. We
10 went off of the dirt road off of E.L. Hunter Road, which is
11 all the way at the end of E.L. Hunter. It's called
12 Ballington Road. Ballington Road circles back around back
13 to Hardscrabble Road. We also rode through Washington Park
14 to include Briarcliff, Briarcliff Street, Briarcliff.

15 Q Okay. I'm going to show you what's been marked as
16 State's 162, and do you recognize this?

17 A I do.

18 Q What is it?

19 A It's a map which depicts Hardscrabble Road, Farrow
20 Road, Briarcliff. It also indicates some of the other
21 streets that run off of Hardscrabble Road in and around H&J
22 club.

23 MS. SHIPLEY: Your Honor, at this time, state would
24 seek to introduce 162 into evidence?

25 MR. SWERLING: No objection.

1 MS. JOHNS: No objection.

2 THE COURT: Admitted.

3 (State's Exhibit No. 162, map, was
4 marked and entered.)

5 BY MS. SHIPLEY:

6 Q And in case some of the jurors are unfamiliar with this
7 side of town, can you use this point and just show them
8 where H&J is?

9 A Okay. Can I step down?

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

11 THE COURT: Yes.

12 A This is Hardscrabble Road here. Hardscrabble Road runs
13 all the way, actually, all the way to Langford Road.
14 Hardscrabble -- right here is Farrow Road. Hardscrabble
15 continues on and ends on Wilson Boulevard, this way.
16 (Indicating.) The club -- this is going to be -- I can't
17 think of the name of the road. There's a Dollar General
18 right here. The club is going to be right in here.

19 BY MS. SHIPLEY:

20 Q Okay. And if you could just kind of circle the general
21 area?

22 A (Witness complies.) Let's see, the club is going to be
23 somewhere in this area right here.

24 Q All right. And if you could also write down on this
25 map, No. 162, where is Washington Heights?

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

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

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

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

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

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

23 A (Witness complies.)

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

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

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

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

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

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

14 Q Was it private?

15 A It was.

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

18 A I would have needed a search warrant.

19 Q And did you have one at this time?

20 A I did not.

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

23 A Yes, ma'am. To the right of the tan Suburban, which
24 was backed in -- the tan Suburban was backed in like this.
25 There was a red Pontiac Grand -- A Pontiac Grand Am that was

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

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

6 A I did.

7 Q And what tag number was that?

8 A The tag was a South Carolina tag, [REDACTED]. And
9 phonetically, [REDACTED].

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

12 A That is correct.

13 Q Where was the other one?

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

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

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

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

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

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

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

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

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

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

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

19 A I did.

20 Q And tell the jury exactly what this entailed?

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

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

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

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

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

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

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

17 THE COURT: Correct.

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

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

21 MR. MCRAE: Yes, Your Honor.

22 THE COURT: Okay.

23 BY MS. SHIPLEY:

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

1 A I did.

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

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

9 Q Where was Mr. Jacobs seated?

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

13 Q And describe the windows on your pickup truck?

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

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

18 A At least 50 feet.

19 Q Okay.

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

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

24 A Shoot one time in the air.

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

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

3 A Yes.

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

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

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

10 A Those were the only two found.

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

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

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

21 A I did.

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

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

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

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

4 A Yes.

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

6 A Yes.

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

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

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

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

16 BY MS. SHIPLEY:

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

18 THE COURT: Thank you.

19 BY MS. SHIPLEY:

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

22 A Not to my knowledge.

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

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

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

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

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

9 BY MS. SHIPLEY:

10 Q Did you go to the car wash?

11 A I did.

12 Q And what did you observe there?

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

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

21 A I did.

22 Q And what time was that?

23 A At approximately 9:15 that morning.

24 MS. SHIPLEY: Your Honor, now, based on 801

25 (d)(1)(a) or (d)(1)©.

1 BY MS. SHIPLEY:

2 Q What information --

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

5 MS. SHIPLEY: Sure.

6 BY MS. SHIPLEY:

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

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

11 Q And as to the driver?

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

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

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

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

4 BY MS. SHIPLEY:

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

7 MR. SWERLING: That's hearsay.

8 THE COURT: You all approach.

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

11 THE COURT: All right. Overruled.

12 BY MS. SHIPLEY:

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

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

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

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

21 Q And were you able to locate one?

22 A I did.

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

24 A He listed an address as [REDACTED].

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

1 you see that Ida Lane on there?

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

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

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

9 THE COURT: Yes, you may.

10 A It was right here.

11 BY MS. SHIPLEY:

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

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

16 MS. SHIPLEY: He just did.

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

20 MS. SHIPLEY: May we approach?

21 THE COURT: Yes, you may.

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

24 THE COURT: All right. Overruled.

25 BY MS. SHIPLEY:

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

3 A I did.

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

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

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

15 A I did.

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

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

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

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

25 THE COURT: Okay.

1 BY MS. SHIPLEY:

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

4 A I did.

5 Q And what address was listed for him?

6 A [REDACTED].

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

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

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

13 A I did. That tag returned to one Nellie Walker Wray of
14 [REDACTED].

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

16 A I did.

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

18 A I did.

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

22 A (No response.)

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

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

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1 Outback Steakhouse on Two Notch Road.

2 Q And did you go to the Outback Steakhouse?

3 A I did.

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

6 A Not at the time.

7 Q On July 1, 2007?

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

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

13 A I did.

14 Q And was he able to identify each one?

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

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

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

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

25 MS. SHIPLEY: Thank you, Your Honor.

1 BY MS. SHIPLEY:

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

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

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

8 A I did.

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

11 A We went back to the Outback Steakhouse.

12 Q What did you do when you got there?

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

18 Q And was that without incident?

19 A Without incident.

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

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

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

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1 A I did.

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

5 A Yes.

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

8 A Yes.

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

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

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

14 A I was.

15 Q Okay.

16 A David Collins attended the briefing.

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

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

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

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

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

9 Q And he had turned himself in?

10 A To turn himself in. Yes.

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

12 A Correct. The warrant is served on him.

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

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

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

20 A No.

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

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

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

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

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

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

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

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

15 A She did.

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

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

22 Q And did she?

23 A She did.

24 Q And please describe for this jury her demeanor?

25 A Based on --

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1 MR. SWERLING: Relevance.

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

4 THE COURT: Yes.

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

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

9 BY MS. SHIPLEY:

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

12 A I did.

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

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

16 Q Sure.

17 A May 18, 2009?

18 Q Yes, sir.

19 A Okay.

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

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

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

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1 individual by the name of Brian Watson?

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

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

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

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

11 A No, ma'am.

12 BY MS. SHIPLEY:

13 Q Did you meet with Mr. Watson?

14 A Yes, ma'am.

15 Q When did you meet with Mr. Watson?

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

17 Q Who was present with him?

18 A His attorney.

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

21 A I did.

22 Q And was this all orally at the time?

23 A Initially, yes.

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

1 A He took me to two separate locations.

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

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

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

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

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

13 BY MS. SHIPLEY:

14 Q And ask if you recognize those?

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

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

20 A It is.

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

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

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

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

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

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

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

12 A I do.

13 Q And what does it depict?

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

16 Q And do you see those on this exhibit?

17 A I do.

18 Q Describe the quality?

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

22 Q Okay.

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

25 MR. SWERLING: No objection.

1 MS. JOHNS: Without objection.

2 THE COURT: Okay. Admitted.

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

5 BY MS. SHIPLEY:

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

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

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

10 THE COURT: Yes, you may.

11 BY MS. SHIPLEY:

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

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

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

19 A That's correct.

20 Q Closest to the church?

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

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

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1 A (Witness complies.) Thank you.

2 Q Describe the lighting conditions for this jury?

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

7 Q Did you contact the dive team?

8 A I did.

9 Q And did they respond?

10 A They did.

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

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

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

17 A The first location --

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

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

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

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

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

6 A Approximately, 9:10 p.m.

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

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

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

16 A We did.

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

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

22 MR. SWERLING: Your Honor --

23 THE COURT: Sir, just answer the question.

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

25 THE COURT: Thank you.

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1 A Could you ask me again?

2 BY MS. SHIPLEY:

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

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

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

8 --

9 MR. SWERLING: Objection, Your Honor.

10 Can we approach.

11 THE COURT: Sure.

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

14 THE COURT: Hold on, hold on.

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

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

19 BY MS. SHIPLEY:

20 Q What name did you provide Rashonda Simpson?

21 A Tremaine Wray.

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

24 A She became very up --

25 MR. SWERLING: Describe her to me.

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

2 THE COURT: Right.

3 MR. MCRAE: I am.

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

5 Go ahead.

6 MR. MCRAE: Okay.

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

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

13 THE COURT: Okay.

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

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

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

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

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

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

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

2 MR. MCRAE: Yes, ma'am.

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

6 MR. MCRAE: Yes, ma'am.

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

11 MR. MCRAE: Yes, ma'am.

12 THE COURT: Okay.

13 MS. SHIPLEY: Thank Your Honor.

14 THE COURT: Anything else at this time?

15 MS. SHIPLEY: No, Your Honor.

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

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

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

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

1 anything.

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

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

7 THE COURT: Sure.

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

12 THE COURT: Okay. That's fine.

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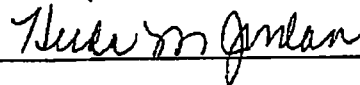
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CERTIFICATE

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

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



HILDA M. JORDAN, CVR

COLUMBIA, SOUTH CAROLINA

MAY 23, 2010

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

STATE OF SOUTH CAROLINA)

PLAINTIFF,)

VS.)

TREMAINE WRAY AND TAURUS WATTS,)

DEFENDANT.)

07-GS-40-5913

07-GS-40-5914

VOLUME 7

OCTOBER 13, 2009
 COLUMBIA, SOUTH CAROLINA

TRANSCRIPT OF RECORD

B E F O R E:

THE HONORABLE MICHELLE CHILDS, JUDGE, AND A JURY

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

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 JACK SWERLING, ESQUIRE
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 THERESA JOHNS, ESQUIRE

HILDA M. JORDAN, CVR
 CIRCUIT COURT REPORTER

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

ID ENTERED

State's Exhibit No. 163

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Court's Exhibit No. 6

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

3 MS. SHIPLEY: Yes, ma'am.

4 THE COURT: Okay.

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

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

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

11 MS. SHIPLEY: Yes, ma'am.

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

16 MS. SHIPLEY: Okay.

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

22 MS. SHIPLEY: Okay.

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

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

3 MS. SHIPLEY: Okay. Thank Your Honor.

4 THE COURT: Defense?

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

11 THE COURT: Right.

12 MR. SWERLING: Well --

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

18 MS. SHIPLEY: Okay.

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

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

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

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

7 MS. SHIPLEY: Okay. Thank Your Honor.

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

9 MS. SHIPLEY: Yes, ma'am.

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

12 MR. BAX: Thank you.

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

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

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

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

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

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

25 THE COURT: Okay.

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

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

4 MS. SHIPLEY: Okay. Thank you.

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

10 Juror, please.

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

13 (Court's Exhibit No. 6, note from
14 jury, was marked and entered.)

15 (Jury in at 9:39 a.m.)

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

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

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

22 Ms. Shipley.

23 MS. SHIPLEY: Thank you, Your Honor.

24 DON MCRAE - CONTINUED DIRECT EXAMINATION

25 BY MS. SHIPLEY:

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

4 A Yes, ma'am.

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

7 A I do.

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

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

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

15 A To Ricky Jacobs.

16 Q And did you observe him review those photos?

17 A I did.

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

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

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

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

25 Q And who is No. 4?

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

3 Q And who is picture No. 6 of?

4 A Taurus Watts.

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

8 A (No response.)

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

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

11 Q Okay.

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

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

18 A Yes, ma'am.

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

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

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

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

3 A I did.

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

5 A Yes, ma'am.

6 Q Did you write the license tag down?

7 A I did.

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

10 A Yes.

11 Q And who was the car registered to?

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

14 Q And what was that address?

15 A [REDACTED].

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

17 A I was.

18 Q And how were you familiar with it?

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

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

24 A Yes, ma'am.

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

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

4 Q Is that the vehicle that you observed back into [REDACTED]
5 [REDACTED]?

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

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

11 A No, ma'am.

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

14 A Murder.

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

17 A As --

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

21 THE COURT: Y'all approach.

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

24 THE COURT: Objection sustained.

25 BY MS. SHIPLEY:

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

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

4 Q And why not?

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

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

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

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

13 A That is correct.

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

17 A I do.

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

20 A Yes, ma'am.

21 Q And what did you brief her?

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

25 Q And what was that?

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

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

8 A Yes, ma'am.

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

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

13 Q And who was that attorney?

14 A Nathaniel Roberson.

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

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

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

24 A Myself and Investigator Gallegos did.

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

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1 Simpson, what did you guys do next?

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

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

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

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

14 A No.

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

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

19 Q After the fact of what?

20 A Murder.

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

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

23 Q And why is that?

24 A I --

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

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

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

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

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

10 A We did.

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

13 A It would have been May 20, 2009.

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

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

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

20 A I was.

21 Q And what was the result?

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

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

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

2 A No.

3 Q Darius White?

4 A No.

5 Q Brian Morris?

6 A No.

7 Q Uraime (sp) Wilson?

8 A No.

9 Q Darian Gordon?

10 A No.

11 Q Marion Jacobs?

12 A No.

13 Q Maurice Cunningham?

14 A No.

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

16 Your Honor, that is all I have.

17 THE COURT: Okay.

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

19 THE COURT: Certainly.

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

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

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

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

4 MR. MCRAE: Yes, ma'am.

5 (Pause.)

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

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

9 (Court in recess for short break.)

10 (Court in session after short break.)

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

12 THE COURT: All right. Jurors, please.

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

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

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

17 MR. SWERLING: Thank you.

18 DON MCRAE - CROSS-EXAMINATION

19 BY MR. SWERLING:

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

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

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

24 A I was.

25 Q So basically you were coordinating the investigation

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

3 A That is correct.

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

9 A Yes, sir.

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

13 A That is correct.

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

20 A That is correct.

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

23 A Yes.

24 Q And you had investigators working on that?

25 A Yes.

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

5 A That's correct.

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

9 A Yes.

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

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

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

23 A Seven years.

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

25 A Yes, sir.

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

7 A (No response.)

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

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

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

15 A No, I did not say that.

16 Q No, but I'm asking you?

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

21 Q Well, he would be a witness?

22 A Yes.

23 Q And he's the owner?

24 A Yes.

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

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

5 A That's correct.

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

7 A To my knowledge that is correct.

8 Q Two years after the event?

9 A That is correct.

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

15 A That Mr. Wray said that?

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

17 A Yes, sir.

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

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

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

24 A That's correct.

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

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

5 A (No response.)

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

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

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

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

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

17 A Correct.

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

22 A Yes.

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

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1 speaking of?

2 A Mr. Wray, no he did not.

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

5 A No.

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

8 A Yes.

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

11 A Correct.

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

17 A Yes.

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

20 A Other than his testimony.

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

22 A That is correct.

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

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

4 A Yes.

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

7 A Yes.

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

12 A As far as --

13 Q This investigation?

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

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

18 A With my case notes.

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

23 A Prior to seeing --

24 Q Mr. Wray in the parking lot?

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

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

5 A I spoke with him, yes.

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

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

10 Q Right there in front of the club?

11 A Right, and then --

12 Q Then y'all went across the street?

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

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

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

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

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

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

24 A Yes.

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

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

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

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

6 A At the location, yes.

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

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

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

11 A Hours?

12 Q Well, what time did you get there?

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

14 Q 5:40 in the morning?

15 A Yes, sir.

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

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

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

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

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

6 A Correct.

7 Q And would you point that out?

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

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

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

21 A The Suburban was under the canopy.

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

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

1 roadway, same vicinity, same area.

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

3 A Sure. In my opinion.

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

9 A Yes, sir.

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

14 A I understand.

15 Q Where was it?

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

17 Q Right.

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

20 Q Okay.

21 A I mean --

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

23 A Yes, sir.

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

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

3 A (No response.)

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

7 A I don't believe so.

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

10 A Yes, sir.

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

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

16 BY MR. SWERLING:

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

18 A That's correct.

19 Q -- being fired out a window?

20 A That's correct.

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

25 A While the Isuzu was stationary?

1 Q Yeah.

2 A No.

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

5 A Repeat -- I --

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

9 A That he --

10 Q That is inconsistent with what he told --

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

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

17 A No, he never told me that.

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

20 A Yes.

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

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1 left on Hardscrabble Road, correct?

2 A Correct.

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

5 A That's correct.

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

10 A (No response.)

11 Q Doesn't it say parking lot?

12 A (No response.)

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

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

15 Q Exit out of the parking lot?

16 A And turned left onto Hardscrabble Road. Yes.

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

19 A Correct.

20 Q And exited left on Hardscrabble Road?

21 A Correct.

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

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

1 Road. That's correct.

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

5 A (No response.)

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

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

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

11 A Not in my notes.

12 Q Well, it's not there --

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

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

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

21 Q Pardon?

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

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

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

6 A No.

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

8 A Not to me.

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

11 A Correct.

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

21 A No.

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

1 A Correct.

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

6 A Correct.

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

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

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

12 A Correct.

13 Q For identification purposes?

14 A Correct.

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

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

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

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

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

24 A No.

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

1 were their hands handcuffed?

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

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

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

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

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

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

12 A Not all units, no.

13 Q Well, investigators?

14 A No.

15 Q Crime scene people?

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

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

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

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

1 get off the hands?

2 A Yes.

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

5 A Correct.

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

8 A According to our witness, yes.

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

10 A No, they were not.

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

13 A Yes, sir.

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

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

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

21 A No.

22 Q They were agitated?

23 A Very agitated.

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

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1 Greene?

2 A Yes.

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

5 A One time, yes, sir.

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

9 At that point, did you ask them?

10 A Yes.

11 Q Okay. And did they respond?

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

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

16 THE COURT: Okay.

17 A Did they respond?

18 BY MR. SWERLING:

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

21 A No.

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

24 A Correct.

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

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

5 A Same bullets matching --

6 Q Matching manufacturer -- Winchester --

7 A Same manufacturer.

8 Q -- 9 millimeter Luger --

9 A Same manufacturer.

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

12 A Yeah. Same type of readily available ammunition.

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

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

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

19 A (No response.)

20 Q That was what y'all were speculating?

21 A Common sense would lead you to believe that.

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

25 A We did.

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

5 A Correct.

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

8 A Yes.

9 Q And you didn't find it?

10 A No.

11 Q You never found the gun?

12 A No.

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

14 A A short period of time.

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

17 A (No response.)

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

20 A Right.

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

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

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

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

4 A Yes.

5 Q Where are the gas pumps?

6 A Under the blue canopy.

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

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

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

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

15 Q This right here.

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

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

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

21 Q By the gas pumps?

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

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

25 A Correct.

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

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

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

8 A Correct.

9 Q Opposite direction of the Suburban?

10 A Correct.

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

16 A Correct.

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

20 A Correct.

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

22 A Correct.

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

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

1 told me that night.

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

6 A Correct.

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

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

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

13 A No.

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

15 A (No response.)

16 Q Inside the Isuzu?

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

18 Q Yeah.

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

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

21 A No.

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

24 A No.

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

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1 minutes before they followed the Suburban down, correct?

2 A Correct.

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

6 A Correct.

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

10 A Not that wording, no.

11 Q Never said it at all?

12 A No.

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

14 A Correct.

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

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

20 Q Eyewitness? I mean you agree?

21 A I agree.

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

24 A Yes.

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

1 A The afternoon. Yes.

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

3 A No.

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

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

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

10 A Correct.

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

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

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

17 A Yes.

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

21 A Yes.

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

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

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

4 Q That morning?

5 A Yes.

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

7 A Yes.

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

9 A Yes.

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

13 A Correct.

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

16 A Yes.

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

18 A Correct.

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

23 A Correct.

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

1 A In his statement?

2 Q Yes.

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

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

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

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

12 A Correct.

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

17 A Right, and --

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

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

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

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

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

6 BY MR. SWERLING:

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

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

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

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

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

16 A Okay.

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

18 A Yes, it did.

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

20 A It said that at the beginning.

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

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

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

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

6 A Yes.

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

12 A Correct.

13 Q Correct?

14 A Correct.

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

19 A Which part of the statement?

20 Q That's the first part.

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

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

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1 in the air?

2 A Correct.

3 Q That what it says?

4 A Yes.

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

8 A Yes.

9 Q No three or four minute delay?

10 A No.

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

13 A No.

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

16 A Correct.

17 Q Behind the SUV; correct?

18 A Correct.

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

20 A Correct.

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

23 A I assume yes.

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

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

4 A Correct.

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

7 A Correct.

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

11 A Correct.

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

17 A While it's parked.

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

23 A Correct.

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

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1 A Correct.

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

6 A No.

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

11 A He was never asked.

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

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

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

15 A And --

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

19 A Correct.

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

25 A Where at?

1 Q In your investigative notes.

2 A Can you state the question again?

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

8 A Correct.

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

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

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

19 A No. No.

20 Q And there was never a gun found?

21 A No.

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

24 A Correct.

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

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1 custody for that incident, I believe you said?

2 A Yes.

3 Q At the Outback Steakhouse?

4 A Correct.

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

8 A Correct.

9 Q How did you gain access to the Suburban?

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

13 Q Somebody got access into the Suburban?

14 A Yes.

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

17 A Correct.

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

20 A Correct.

21 Q And people did go into the Suburban?

22 A Well, we took --

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

24 A Go in the vehicle?

25 Q Somebody had to enter the Suburban?

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

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

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

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

11 A Who?

12 Q The two truck driver?

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

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

18 A I think it was July 1st.

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

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

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

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

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

3 A Correct.

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

6 A Correct.

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

9 A No.

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

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

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

15 A Yes.

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

18 A Correct. Locker, security locker.

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

21 A Yes.

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

25 A I would hope so.

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

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

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

7 A No.

8 Q You don't do that.

9 A No.

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

12 A No.

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

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

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

22 A If I can recall his testimony, correct.

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

25 A Okay.

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

2 A Correct.

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

5 A Correct.

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

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

12 Q Not important.

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

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

21 A Indoor/outdoor shooting?

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

25 A (No response.)

1 Q Well, I don't want --

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

4 MR. SWERLING: Well, it does.

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

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

8 Okay.

9 BY MR. SWERLING:

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

12 A Correct. Outdoors from vehicle.

13 Q Outdoors/from vehicle.

14 A Outdoors/from vehicle.

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

19 A Correct.

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

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

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1 Q Well --

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

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

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

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

15 A That is what -- yes.

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

17 A (No response.)

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

21 A No.

22 Q Never found that gun, either?

23 A No.

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

1 A The weapon was not found.

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

5 A Pretty much, yes.

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

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

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

13 A No.

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

16 A Correct.

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

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

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

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

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

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1 A He had the information he provided us?

2 Q Well, he --

3 A He made the decision.

4 Q He remembered at that time?

5 A Yes.

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

8 A Correct.

9 Q In March, March 15th?

10 A Correct.

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

13 A Correct.

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

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

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

18 A Correct.

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

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

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

1 A Correct.

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

3 A Mr. Watson?

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

5 A Yes.

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

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

9 Q And she didn't get charged?

10 A No.

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

13 A Correct.

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

16 A I would.

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

19 A Correct.

20 Q He cooperated, correct?

21 A Correct.

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

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

2 A Jans.

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

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

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

7 A Okay.

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

10 A Threw it under the bridge, correct.

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

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

15 Q Did anybody ask about that?

16 A No.

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

19 A Could not locate it.

20 Q Did you try to locate it?

21 A No.

22 Q Did y'all go to the area in the back yard where Ms.

23 Simpson said they were digging, where Mr. Dansby didn't say

24 they were digging, but Ms. Simpson said they were digging,

25 did you go to that yard and find out what they were digging?

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

3 Q Did you get the hammer?

4 A No.

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

9 A No. No.

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

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

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

17 A Okay.

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

19 THE COURT: Sure.

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

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

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

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

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1 minutes.

2 (Court in recess for short break.)

3 (Court in session after short break.)

4 THE COURT: Jurors, please.

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

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

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

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

11 DON MCRAE - CROSS-EXAMINATION

12 BY MS. JOHNS:

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

16 A I was.

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

19 A Yes, ma'am.

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

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

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

25 A An officer responding to the scene?

1 Q A deputy, a first responder?

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

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

6 A Correct.

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

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

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

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

15 Q Do you know what his call sign was?

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

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

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

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

22 A That's correct.

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

25 A Yes, ma'am.

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

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

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

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

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

11 A Correct.

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

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

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

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

21 Q Subjects. Excuse me. Subjects.

22 A Yes. Subjects.

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

25 A Correct.

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

4 A Yes.

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

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

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

11 A Yes.

12 Q Okay. The suspects then began shooting towards the --

13 MS. SHIPLEY: Objection. She's reading from the
14 transcript or the report. She should pose a question.

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

16 THE COURT: Thank you.

17 BY MS. JOHNS:

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

20 A Correct.

21 Q And later returned; is that right?

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

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

25 A Yes.

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

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

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

8 THE COURT: Okay. Thank you.

9 BY MS. JOHNS:

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

12 A I don't -- no.

13 Q No?

14 A No.

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

17 A It is.

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

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

21 Q Okay.

22 A Yes.

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

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

1 this report?

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

4 MR. MCRAE: Okay.

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

7 BY MS. JOHNS:

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

10 A Yes.

11 Q And later returned?

12 A It does not state that.

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

15 A Yes.

16 Q And a few minutes later --

17 A Yes?

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

19 MS. SHIPLEY: Objection.

20 Q -- with the suspects in it.

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

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

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

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1 THE COURT: Objection sustained.

2 BY MS. JOHNS:

3 Q Investigator McRae?

4 A Yes, ma'am.

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

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

9 Q You used it?

10 A It was a tool of the investigation.

11 Q Correct. So it was a tool --

12 A Yes.

13 Q -- used in your investigation?

14 A Correct.

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

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

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

20 A Yes.

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

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

1 revealed that that did not occur.

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

3 A I did.

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

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

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

7 MS. SHIPLEY: Your Honor --

8 THE COURT: Answer the question and then --

9 MR. MCRAE: Yes, ma'am.

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

11 BY MS. SHIPLEY:

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

14 A It does contain information.

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

17 A One of the suspects in this vehicle, yes.

18 Q And it states Suspect No. 1, dread locks in hair; isn't
19 that right?

20 A That was inside this particular vehicle, yes.

21 Q Okay. Does it say what vehicle it was?

22 A It states a white vehicle, SUV.

23 Q Is that listed as an SUV vehicle?

24 A Listed as a vehicle --

25 Q Yes, sir. On Page 2, where it says vehicle, gun, etc.

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1 Is it listed as a vehicle?

2 A No.

3 Q Okay. So it's not listed as a vehicle.

4 A (No response.)

5 Q It's not listed as a vehicle; isn't that correct, on
6 this form.

7 A In the narrative it's listed as a white vehicle. The
8 officer did not list that vehicle in on Page 2, which is not
9 required.

10 Q Okay. Not required. So you knew there was a white
11 vehicle involved; fair to say?

12 A Involved with --

13 Q A shooting?

14 A -- the incident, yes.

15 Q And you do know that this information that you use as a
16 tool indicates that the vehicle was possible a white Nissan
17 with a black stripe; correct?

18 A Yes.

19 Q And it states that a Suspect No. 2, fired over the top
20 of the vehicle.

21 MS. SHIPLEY: Objection. Hearsay, again.

22 MS. JOHNS: I'll rephrase the question, Your Honor.

23 THE COURT: Thank you.

24 BY MS. JOHNS:

25 Q Information that you did not rely upon but used as a

1 tool, based on that information that you received there was
2 information that somebody shot over the top of a white
3 vehicle; right?

4 A According to this initial incident report, yes.

5 Q Now, that was at 4:15 a.m.; right?

6 A That is the time that Deputy Gregory arrived. It was
7 sometime between 4:15 his time of arrival and 6:30 a.m., his
8 time of departure.

9 Q And you also had a Sgt. Barnes come to the scene?

10 A Yes, Sgt. Barnes was on the scene.

11 Q And Sgt. Barnes was on the scene prior to your arrival;
12 isn't that correct?

13 A I do not know. I do not recall Sgt. Barnes time of
14 arrival, but if my memory serves me right upon my arrival he
15 is who I met with. So it would be fair to say he was there
16 upon my arrival.

17 Q So he was already there, right?

18 A Correct.

19 Q And both you and Sgt. Barnes had an opportunity to talk
20 to Ricky Jacobs, didn't you?

21 A I did. Opportunity, Mr. Barnes was there so yes.

22 Q I don't want to be difficult.

23 A I'm trying to answer your questions as best to my
24 ability.

25 Q And I'm trying to ask them the best way I can.

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1 A I understand.

2 Q You and Eric Barnes together spoke with Ricky Jacobs,
3 right?

4 A Yes.

5 Q And as a tool, you know that Sgt. Barnes had also
6 filled out some field notes?

7 A That's correct.

8 Q And in his field notes he states --

9 MS. SHIPLEY: Objection. Hearsay.

10 MS. JOHNS: I'll withdraw that, Your Honor.

11 THE COURT: Thank you.

12 BY MS. JOHNS:

13 Q In these notes you were aware there was a suspect
14 involved that had dread locks; right?

15 A A suspect from this vehicle that had dread locks, yes.

16 Q Okay. Now, you want to tell me where it says this
17 vehicle because I don't see it in here?

18 A It is not contained in Eric Barnes file. But it is in
19 the initial incident report.

20 Q And whose incident report is that?

21 A Weldon Gregory.

22 Q Well, I've moved beyond that now. I'm on Sgt. Barnes,
23 okay?

24 A Okay.

25 Q Now, did you use Sgt. Barnes follow up investigation as

1 a tool in this particular investigation?

2 A No.

3 Q You've not?

4 A No.

5 Q Okay. So what Sgt. Barnes says is meaningless to you?

6 A I did not say that.

7 Q But you're not using it as a tool?

8 A I'm using his input, but to use that particular
9 document in my -- that document was probably not authored
10 until after the incident was investigated.

11 Q So would you agree with me that Sgt. Barnes has an
12 independent memory of what happened --

13 A Probably.

14 Q -- the morning of June 30?

15 A I would.

16 Q Sgt. Barnes says that there was --

17 MS. SHIPLEY: Objection. He just testified he did
18 not rely on Sgt. Barnes notes.

19 THE COURT: Okay. Ms. Johns, I need you to ask him
20 a question and not state what's in the report to him. Allow
21 him to respond to the question and then to the extent that
22 you need to refer to the report then do so.

23 MS. JOHNS: Yes, Your Honor.

24 BY MS. JOHNS:

25 Q The initial information received was that there was a

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1 single subject; isn't that right?

2 A A single subject?

3 Q Well, let me just ask you this. When you received the
4 information, information was received that a suspect had
5 gone to his vehicle and got an Uzi type weapon from the
6 passenger side; is that what the information is in this
7 case?

8 A There was information to this case that a witness had
9 observed a subject trying to enter the club from the parking
10 lot with what appeared to be, according to this, an Uzi type
11 firearm.

12 Q Okay. And there was information that the subject had
13 an Uzi type weapon wrapped in a white towel?

14 A White towel or white t-shirt; that's correct.

15 Q And the white towel information you say you received
16 from Ricky Jacobs; is that right?

17 A That's correct.

18 Q And you agree that you were with Eric Barnes when
19 initial contact was made with Ricky Jacobs; isn't that
20 right?

21 A Whether or not -- Mr. Barnes and I were both at the
22 location at the same time, but I don't know that initial
23 contact was made while he was standing right next to me.
24 Could have been. Could not have been. I mean, I don't
25 know.

1 Q Mr. McRae, do you have any independent memory of your
2 initial contact with Ricky Jacobs on the morning of June 30,
3 2007?

4 A I do, but I cannot tell you whether or not. --

5 Q Okay. I withdraw that question.

6 A Okay.

7 Q Based on your independent recollection of meeting with
8 Ricky Jacobs on June 30, 2007, in the early morning hours
9 did you take a statement from him immediately?

10 A Did I take a statement from him immediately?

11 Q Yes?

12 A Verbal comments, yes. But a formal statement, no.

13 Q Do you have your field notes with you, Investigator
14 McRae?

15 A I do.

16 Q Your handwritten notes?

17 A No.

18 Q You didn't take any handwritten notes?

19 A Yes. Once I transcribe my handwritten notes to my
20 permanent investigative file my handwritten notes are not
21 saved.

22 Q Do you know where your handwritten notes are?

23 A I do not.

24 Q Now, based on your assignment as the lead investigator
25 on this case did you also send another investigator down to

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1 the hospital to speak to potential witnesses there?

2 A I believe that the other investigator was already sent
3 to the hospital by Sgt. Barnes.

4 Q So Sgt. Barnes had some input as to how this
5 investigation should be followed up?

6 A Every investigator who works this case would have had
7 input. We work as a team, not one person independently
8 responsible -- not -- not that one person is not
9 responsible, but we all have input and we all direct, if I
10 may say, the course of the investigation.

11 Q So the answer is yes?

12 A To -- restate your question?

13 Q To Sgt. Barnes going down to the hospital?

14 A Sending someone. Not Sgt. Barnes going. Sgt. Barnes
15 sent. Yes.

16 Q So Sgt. Barnes sent someone down to the hospital --

17 A Yes.

18 Q -- correct?

19 A Yes. That would have been -- yes.

20 Q And you work as a team?

21 A We work as a team, yes.

22 Q And you also had somebody down at the hospital by the
23 name of Michael Smith; is that right? I'm sorry, M.P.
24 Smith?

25 A M.P. Smith. Yes. That would have been Doc Smith.

1 Q I'm sorry.

2 A Doc, D-o-c Smith.

3 Q Oh.

4 A That's what we call him.

5 Q That's a nickname?

6 A Yes.

7 Q And were you privileged to the incident report that he
8 prepared?

9 A I am.

10 Q Did you use this as a tool in your investigation?

11 A As a tool. It is part of the investigation, yes.

12 Q And do you recall, can you see there is a name down
13 there, Travis Malone; is that right? Page 2?

14 A Page 2 of Mr. Smith's report?

15 Q Yes, sir. Page 2. Travis Malone.

16 A Oh, his investigative file. Yes.

17 Q See the name Travis Malone?

18 A Yes, I do.

19 Q Did he get a statement from Mr. Malone?

20 A I believe a statement was taken from Mr. Malone. I'd
21 need to see it to refresh my memory.

22 Q Would you be surprised to know there was not a
23 statement taken from Mr. Malone?

24 A No.

25 Q Okay. And what about Timothy Weldon?

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1 A Not, I don't know.

2 Q Do you see Timothy Weldon?

3 A I do.

4 Q Do you have a statement from Mr. Weldon?

5 A No.

6 Q Weren't these two people at the hospital?

7 A I believe so, yes.

8 Q Okay. And being at the hospital they are potential
9 witnesses, right?

10 A They are.

11 Q And they're potentially eyewitnesses, too, aren't they?

12 A Yes.

13 Q Okay. You got a statement from Timothy Weldon did you?

14 A No.

15 Q And you have his address in here at Winnsboro; isn't
16 that right?

17 A P.O. Box.

18 Q Okay. And there is a phone number; is there not?

19 A Yes. There is.

20 Q Okay. Can you look at your investigative report and
21 tell me when and what day you called Mr. Weldon?

22 A I didn't.

23 Q You didn't?

24 A No.

25 Q Did you assign anybody to call him?

1 A Not to my recollection, no.

2 Q You didn't think talking to Timothy Weldon was
3 important either?

4 A I didn't -- I don't know if it wasn't important, but it
5 did not get done.

6 Q Well, wasn't he part of the party?

7 A I don't know. I can't sit here and tell you whether he
8 was part of the party or not.

9 Q Well, his name was written down?

10 A Well, that doesn't make him part of the party.

11 Q Would it make him a potential witness?

12 A It does.

13 Q Do you have any reason why you didn't talk to him?

14 A No, I do not.

15 Q Did you ever try?

16 A No, I did not.

17 Q Do you know of anybody that ever asked him if he was an
18 eyewitness?

19 A I do not recall, no.

20 Q Do you want to look at your notes to see if you, at any
21 time, asked about Timothy Weldon?

22 A I don't recall.

23 Q Well, you talked to Verda Roberts, you had somebody
24 talk to Verda Roberts, and Stephanie Boston?

25 A Yes, ma'am.

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1 Q And Charlie Bates, right?

2 A Right.

3 Q And what about Marcus Gordon; did you ever assign
4 anybody to talk to Marcus Gordon?

5 A No.

6 Q Well, wasn't he injured in this mayhem, chaos?

7 A May have been grazed.

8 Q May have been grazed. Did you talk to him?

9 A No.

10 Q You have no idea what his story is?

11 A I don't know if he has a story.

12 Q Well, it says may have been grazed?

13 A Yes, ma'am.

14 Q Well, he's a potential victim isn't he?

15 A He is.

16 Q And this mention of him being grazed is where, right
17 forearm?

18 A Right forearm; that's correct.

19 Q And to the best of your knowledge do you know whether
20 or not he was at the club?

21 A I do not know.

22 Q You don't know?

23 A No.

24 Q Well, is there a reason why you didn't talk to Mr.
25 Gordon?

1 A No.

2 Q Do you think you could find Mr. Gordon?

3 A I don't know.

4 Q What about Mr. Weldon?

5 A I don't know.

6 Q Do you who that man is right there? Stand up for me.

7 MS. SHIPLEY: Objection, Your Honor. It's
8 inappropriate.

9 THE COURT: That's correct.

10 MS. JOHNS: I'll withdraw that, Your Honor.

11 BY MS. JOHNS:

12 Q Truth is, Mr. McRae, you didn't talk to many of the
13 witnesses who were at the club, at all?

14 A Many of the witnesses did not want to talk to me.

15 Q Okay.

16 A There were, as earlier testimony states, there were 40
17 to 50 people inside that club that were potential, as you
18 stated, eyewitnesses that did not talk to me.

19 Q Well, you had Mr. Gordon at the hospital that was a
20 potential victim; you didn't want to talk to him?

21 A And I believe Mr. Gordon checked himself out of the
22 hospital before the reporting officer was able to speak with
23 Mr. Gordon.

24 Q Well, somebody talked to him long enough to get his
25 information; is that fair to say?

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1 A That's fair to say, but obviously there was not enough
2 time in between the time that he left because he checked
3 himself out of the hospital.

4 Q Well, you had all of his information didn't you?

5 A Ma'am?

6 Q You had all of his information didn't you?

7 A Yes.

8 Q Okay. Are you aware of a person by the name of Mr.
9 Goodwine?

10 A Yes.

11 Q Okay. And he didn't want to speak to you either did
12 he?

13 A I don't know if he wanted to speak to us or not. We
14 attempted to talk to him. We left a business card and he
15 never returned the call. I cannot state under oath whether
16 or not my information was given to Mr. Goodwine.

17 Q Okay. And you had to hunt him down, though, didn't
18 you?

19 A Hunt him down. I went to his home.

20 Q I'll withdraw the hunting down, but you did make
21 efforts to go to his home somewhere in Orangeburg; right?

22 A St. Matthews, yes, I did, along with Investigator
23 Gallegos.

24 Q Okay. And you made several attempts to get in touch
25 with him didn't you?

1 A No. I made one attempt.

2 Q Well, you left your information. You just testified to
3 that, right?

4 A I'm sorry?

5 Q You left your information with his family?

6 A Yes.

7 Q Okay. And he never called you back?

8 A No.

9 Q And he didn't show up until last week, correct?

10 A That's correct.

11 Q Now, regarding witnesses that did not want to speak
12 with you, I want to show you what's marked as State's
13 Exhibit No. 53, and tell me there's a window there; is that
14 Taurus Watts standing in that window?

15 A I'm sorry?

16 Q Is that Taurus Watts standing in that window?

17 A In which window ma'am.

18 Q In the window of the club?

19 A Well, ma'am, do you have a magnifying glass? I can't
20 see that far.

21 Q Well, there is a person standing there, is there not?

22 A I can't identify who that person is.

23 Q Well, do you see a person there?

24 A No.

25 Q You don't see a person there?

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1 A No. Do you have a magnifying glass?

2 Q Okay. Under ICE you cannot determine and distinguish
3 that that's a human being?

4 A No.

5 Q Okay.

6 MS. JOHNS: May I publish, Your Honor?

7 THE COURT: Is this already in evidence?

8 MS. SHIPLEY: It is, but he should be given an
9 opportunity -- Mr. Swerling has a magnifying glass.

10 THE COURT: Okay.

11 MR. SWERLING: I just always happen to have one.

12 THE COURT: Okay.

13 (Magnifying glass and photo passed to Mr. McRae.)

14 A You said where?

15 BY MS. JOHNS:

16 Q Under the word, ICE?

17 A The word ICE. I see a subject there. I see a person
18 there, but I can't tell you who he is.

19 Q So then for me to ask you who it is wouldn't help you
20 at all?

21 A No.

22 MS. JOHNS: May I publish this to the jury, Your
23 Honor?

24 THE COURT: This is already in evidence?

25 MS. JOHNS: Yes, ma'am.

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1 THE COURT: Okay. That's fine.

2 THE COURT: What's the exhibit number?

3 MS. JOHNS: No. 53, Your Honor.

4 THE COURT: Okay. Thank you.

5 BY MS. JOHNS:

6 Q After looking at State's No. 53, he's looking out the
7 window; is that fair to say?

8 A Yes.

9 Q And he looks like he interested in what's going on;
10 isn't that right?

11 A But I don't know what's going on in that picture. I
12 mean, the crime scene is there, but I can't tell if I'm
13 there or not. I'm not in the photo.

14 Q Okay. Now, based on the information that you received
15 from Ricky Jacobs, did you do a search of all SUVs in that
16 zip code area?

17 A A search of all SUVs in that zip code would have been
18 against the law.

19 Q It would have been?

20 A To search all SUVs in that zip code, ma'am, to do a
21 search I would have needed a search warrant, and to get a
22 search warrant would have taken probable cause.

23 Q No. I'm just asking if you went to one of your data
24 banks to see about all the SUVs in that zip code area. Did
25 you go to a data base and look for all tan in color SUVs?

1 A No.

2 Q That were registered in that area?

3 A No.

4 Q What about white Nissan Pathfinders, did you do that?

5 A No. It would have been an exercise in futility.

6 Q Well, you have access to DMV, do you not?

7 A Yes, but that would have been an exercise in futility.

8 There was no point in attempting to locate every SUV within

9 that area and try to locate them. That would not have been

10 a meaningful use of my time or the department's assets.

11 Q Okay. Well, you had a couple of SUVs parked right out
12 in front of the business; did you not?

13 A Yes.

14 Q Did you obtain who the owner of those SUVs were?

15 A Again, I don't know if those SUVs were parked out
16 there. I don't know if I was still there. I don't know.

17 Q You don't know --

18 A And the information that we had on the SUV was that it
19 had departed the area. So why would I be concerned with an
20 SUV that was still there when the information had said that
21 the SUV had left?

22 Q I don't know, Mr. McRae. I'm just asking?

23 A I don't know either.

24 Q Okay. But you didn't did you?

25 A No. There was no point.

1 Q So if an SUV would have left and came back you wouldn't
2 have --

3 A There was no information in our investigation that
4 stated that SUV came back.

5 Q I didn't mean to interrupt you. Go right ahead. What
6 were you saying?

7 A I didn't have any information that an SUV left and came
8 back.

9 Q Yeah. Went to -- in stead you used your time in the
10 department to ride around in the Briarcliff Road
11 neighborhood, right?

12 A Based on my experience and the knowledge of that
13 neighborhood, I knew that patrons of that club lived in the
14 Washington Height area and that area in and around the club.
15 Therefore, in my experience in law enforcement and being a
16 criminal investigator, that was a smart piece of
17 departmental assets and my time.

18 Q What about Timothy Weldon, Winnsboro, South Carolina.
19 He doesn't live in that neighborhood?

20 A No, he does not.

21 Q What about Stephanie Boston, Charlie Bates, they don't
22 live in that neighborhood? You talked to them.

23 A No, but we had direct information that they were
24 involved in the fight at the club, and at the time they were
25 willing to talk to us.

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1 Q So one, you have to be willing --

2 A No.

3 Q -- to talk to you?

4 A I did not say that.

5 Q Well, I'm just trying to get it straight for the jury.
6 That's all.

7 A I understand that. But I did not say that you had to
8 be willing to talk to me.

9 Q Okay. Well, you said that based on --

10 A I said that these individuals were willing to talk to
11 me.

12 Q So you had individuals that were willing to talk to
13 you?

14 A And I had some individuals that were not willing to
15 talk to me.

16 Q And one of them was Lamont Goodwine, not willing to
17 talk to you; is that right? He's not willing to talk to
18 you?

19 A He didn't not talk to us that night. No.

20 Q And he lives in St. Matthews, right?

21 A That's correct.

22 Q And he did not live in those neighborhoods did he?

23 A No, he did not, nor did most of the party that night.

24 Q Okay. So when you say that based on your information
25 about that neighborhood, that really doesn't mean anything

1 in this case because people came from everywhere, right?

2 A To include Washington Heights area and the area in and
3 around Farrow Road.

4 Q So you took the information from one witness and you
5 drove around Washington Heights looking for SUVs, right?

6 A I did not say I took information from a witness. I
7 used my experience and my knowledge of the area and took
8 that upon my own to look around the area for a tan in color
9 SUV.

10 Q Okay.

11 A A tan in color Suburban, to be more specific.

12 Q Right. In Washington Heights, is that right?

13 A In and around Washington Heights and Farrow Road and
14 Hardscrabble Road area, yes.

15 Q Okay. And you just happened upon three SUVs in the
16 Washington Heights area; right?

17 A Two.

18 Q What about the champagne Navigator?

19 A It's not a tan Suburban, is it, ma'am?

20 Q I don't know. I think --

21 A You just said it was champagne --

22 Q -- well, it's a champagne Navigator. You did see a
23 champagne Navigator in the Washington Heights area, didn't
24 you?

25 A But we had information it was a tan in color Suburban.

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1 Q Okay.

2 A I mean, there were probably other tan in color SUVs in
3 the area that I paid no attention to, also.

4 Q So there were a lot of SUVs in that area, then?

5 A I did not say that. I said probably more than one tan
6 in color Navigator that paid no attention to because the
7 investigation revealed it was a tan in color Suburban.

8 Q Okay. In fact, the vehicle, even in this case is not
9 tan, it's silver, isn't it?

10 A I believe we all agree that that is subjective because
11 I have seen the photos from when that search warrant that
12 was conducted on that vehicle. There are pictures that make
13 that vehicle look white. There are pictures that make that
14 vehicle look tan. It would depend on how, A) The sun is
15 hitting it, and B) The area where the vehicle is at.

16 Q So, let me see if I've gotten this investigation
17 straight. Now, you went to the Washington Heights area
18 before you went to the location where the white Isuzu was
19 pulled over; isn't that right?

20 A That's correct, because I did not have that
21 information. For some reason I did not get that information
22 until we had returned from the Washington Heights area.

23 Q Okay. And would you agree -- well, why don't you just
24 tell the jury when you did go to the scene where the white
25 Isuzu Rodeo with the black stripe had been pulled over; what

1 time was that?

2 A I don't recall the exact time. It was probably about
3 6:20 to 6:30. I don't know.

4 Q Between your time of arrival --

5 A Yes, ma'am.

6 Q -- which was 5:40 a.m.?

7 A Yes, 20 minutes til 6:00.

8 Q Twenty minutes to 6:00?

9 A That's correct.

10 Q Until the estimated time of arrival at the location
11 where the white Isuzu Rodeo had been pulled over?

12 A Approximately, 40 minutes. Yes, ma'am.

13 Q So about 40 minutes, you went through the Washington
14 Heights area?

15 A That's not the only thing that I did. That's not the
16 only thing that I testified that I did. I met with Doc
17 Barnes, I met with Ricky Jacobs. I believe I also testified
18 under cross from Mr. Swerling, I walked the area and made
19 sure the area was secure. So in 40 minutes, give or take a
20 few minutes, yes, that's what I did.

21 Q And what you also did is that you also drove through
22 the Washington Heights area looking for tan SUVs?

23 A That's correct.

24 Q Now, at that time you had no idea that Tremaine Wray
25 drove a tan SUV, did you?

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1 A No.

2 Q But you just happened to be looking for a tan SUV?

3 A We had information that the rounds were fired from a
4 tan Suburban, yes, ma'am.

5 Q So anybody that drives a tan Suburban therefore must
6 live in Washington Heights?

7 A No, ma'am. Again, I go back to tell you that I picked
8 that area because based on my experience of the area and the
9 fact that I patrolled that area and the fact -- I'm going to
10 back up. I have something I do not want to state. Based on
11 my experience I know the people that live in that area go to
12 the club. So it was an educated --

13 Q Educated what?

14 A -- guess.

15 Q Okay.

16 A That the tan Suburban that we were looking for may have
17 been in the Washington Heights Farrow Road area.

18 Q Do you have the benefit, obviously, I'm asking for the
19 benefit of the jury.

20 A Sure.

21 Q Do you have radio contact with the department during
22 this entire investigation?

23 A Actually, that is too broad of a question if I may
24 explain.

25 Q Okay.

1 A We have -- for the Richland County Sheriff's Department
2 we have one, two, three, -- six channels for all of Richland
3 County. The Washington Heights area is in Region 3,
4 therefore my radio would have been on channel 3. At the
5 location of what that white Rodeo was pulled over would have
6 been in Region 2, therefore those deputies would have been
7 transmitting on tac 2 not tac 3, which was the tac that I
8 was on.

9 Q Okay. Now, based on that information that you received
10 you learned that there was more than 20 shots fired; isn't
11 that right, more than 20 shots fired?

12 A I don't recall being give a number of more than 20.

13 Q Well, if that came over the radio call you'd say that's
14 what it was, right?

15 A Ma'am, that call went out for the officers to respond.
16 I was still asleep.

17 Q Then you would have been asleep also when there was a
18 call that there was a box Chevy --

19 MS. SHIPLEY: Objection, Your Honor.

20 Q -- seen there?

21 MS. SHIPLEY: The witness testified he did not hear
22 it. He had no person knowledge of it.

23 MS. JOHNS: He didn't say that he didn't have
24 information about other --

25 THE COURT: You can ask the question and then he

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1 can let you know what he has a response to.

2 BY MS. JOHNS:

3 Q Were you aware of a call coming across the radio that
4 described a box Chevy, two-tone leaving the area?

5 A I don't recall.

6 Q Do you recall hearing a white Pathfinder coming across
7 at 4:15 a.m.?

8 A Again, ma'am, I was asleep. I was not notified of this
9 incident until 5:08.

10 Q Okay. So I'm going to show you a document that
11 involves the 911 call log. So the first incident on that
12 call log at 5:08 a.m. is well after they had the Isuzu
13 stopped, isn't it?

14 A What, I'm sorry?

15 Q It's well after they had the Isuzu stopped?

16 A No. Can you restate your whole question for me,
17 please?

18 Q After 5:08 when you got your initial call --

19 A Yes.

20 Q -- and you had the privilege of listening to your radio
21 calls, the Isuzu Rodeo had already been stopped, right?

22 A Ma'am, as I have already testified. I was on tac 3.
23 The Isuzu Rodeo, that whole stop would have been transmitted
24 over tac 2.

25 Q So your answer is no. You did not know about it?

1 A My answer is no. And I've already testified about it,
2 because we went to Washington Heights first.

3 Q Okay.

4 A And I do believe I stated under this line of
5 questioning that there was some confusion between that
6 vehicle being stopped and myself being notified of that
7 stop.

8 Q So the first radio call that you were aware of that
9 there was a signal 18 at 5:16 a.m.?

10 A I don't know if I was aware of that call or not.
11 There's a lot of traffic transmitted over that radio that I
12 don't recall.

13 Q All right. When you arrived at the crime scene, had
14 the crime scene already been taped off?

15 A Yes.

16 Q I'm going to show you State's Exhibit No. 94. Do you
17 see any tape in that photograph?

18 A It's a dark photograph. Let me orientate myself to
19 this. I do see a police car blocking the road. I can make
20 out some lights down at the other end, but I -- without the
21 proper lighting I can't tell if there's any tape down there.
22 And I can't even see where the club and the car wash is in
23 that.

24 Q You can't make out where the club or the car wash is in
25 that photo?

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1 A It's a street -- the angle of the shot is down
2 Hardscrabble Road. I mean, I have no idea where the club is
3 in that photo. No.

4 Q Okay. Well, the angle of the shot is down Hardscrabble
5 Road and do you see any lights down that road?

6 A I see several lights.

7 Q Okay. Do you see vehicles down that road?

8 A I see several lights.

9 Q Can you tell whether or not they're vehicles?

10 A No.

11 Q So do you know if that's what Ricky Jacobs saw?

12 A I'm sorry?

13 Q Do you know what Ricky Jacobs saw?

14 A I don't know what Ricky Jacobs saw. I wasn't there
15 when Ricky Jacobs saw that he saw.

16 Q Okay. Did you talk to the DJ in this club?

17 A No.

18 Q I'll show you State's Exhibit No. 46, do you know who
19 this is?

20 A I believe that that -- I believe that that's Luther
21 Landrum.

22 Q In this picture, State's Exhibit No. 46, does this
23 person have dread locks?

24 A Yes.

25 Q Was he the driver of the Isuzu Rodeo with the black

1 stripe?

2 A He was.

3 Q Did his automobile, the white Isuzu Rodeo with the
4 black stripe down the side have ammunition in it?

5 A It did.

6 Q And was that ammunition consistent with the ammunition,
7 well, the shell casings, the cartridges that were found at
8 the scene?

9 A Was it consistent with, it was the same brand. Yes.

10 Q Now, you stated on direct examination that Mr. Watts
11 lived down on Ida Lane, according to State's Exhibit No.
12 162?

13 A I never stated where Mr. Watts lived.

14 Q You said the information that you received regarding
15 Mr. Watts shows his last known address as Ida Lane?

16 A That's correct.

17 Q And who lives at that address on Ida Lane?

18 A Who lives at that address on Ida Lane, I have no idea
19 who lives at that address on Ida Lane. The information gave
20 an address.

21 Q Gave an address --

22 A I do not know who else lives at that location.

23 Q Did you ever find out?

24 A No.

25 Q So if his mother lives there would that mean anything

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1 to you?

2 A Well, would it mean anything to me, how? Okay, his
3 mother lives there.

4 Q Well, that was the last known address for him?

5 A That was the last known address, yes.

6 Q Well, did you go there and try to talk to her?

7 A No.

8 Q Okay.

9 A She wasn't a witness in a crime, so why would I go
10 speak to her?

11 Q Well, that's his last known address, sir, you would
12 have gone there to look for him, right?

13 A Would I have gone down to look for him once he's
14 wanted?

15 Q Somebody had --

16 A Once a warrant is issued, sure.

17 Q I'm just asking Mr. McRae. I'm just asking if you went
18 there?

19 A No.

20 Q You did not?

21 A No.

22 Q You didn't assign anybody to go there, did you?

23 A There was no purpose to go there --

24 Q I didn't ask you if there was a purpose. I asked you
25 if you assigned anybody to go there.

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1 MS. SHIPLEY: Your Honor, can he explain.

2 THE COURT: He can answer yes or no and explain you
3 answer.

4 A No. I did not assign anybody to go there because there
5 was no need for anybody to go there until after a warrant
6 was obtained for Mr. Watts' arrest. There would have been
7 no reason for an investigator to go to Mr. Watts' address
8 prior to that.

9 BY MS. JOHNS:

10 Q Okay. And this Ida Lane is not in Washington Heights,
11 is it?

12 A No.

13 Q But you went to Washington Heights without a warrant,
14 didn't you?

15 A We went to Washington Height in the vicinity of
16 Hardscrabble Road for another purpose. We went to search
17 for a tan in color Suburban.

18 Q Okay. But you didn't go look for a tan in color
19 Suburban on Ida Lane?

20 A No.

21 Q Okay. Now, when did you get a search warrant for Ida
22 Lane?

23 A I didn't.

24 Q So you never went to search the house?

25 A No.

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1 Q Did you ever find a gun related to Taurus Watts?

2 A No.

3 Q What about a white in color t-shirt?

4 A No.

5 Q Did you ask permission to go search for items like that
6 from this house?

7 A No.

8 Q Okay. Didn't you testify at sometime during this trial
9 that my client, Mr. Watts, had turned himself in to the
10 Sheriff's Office?

11 A He did.

12 Q Okay. And you had already issued a warrant for his
13 arrest on July 1, 2007, didn't you?

14 A That's correct.

15 Q And you already published information about him being
16 wanted through the Sheriff's Department, did you not?

17 A Published information through the Sheriff's Department,
18 yes.

19 Q Okay. And that's called a BOLO, right?

20 A Yes.

21 Q Be on the lookout for?

22 A That's correct.

23 Q And the information that you were looking for in
24 wanting to arrest him, you had already circulated that
25 information; is that fair to say?

1 A That's fair to say.

2 Q So when Mr. Watts voluntarily came into the Sheriff's
3 Department to turn himself in, that would be something you
4 would be interested in, I mean, you were there right?

5 A I think once I found out he was at the Sheriff's
6 Department, correct.

7 Q And you saw him at the Sheriff's Department, didn't
8 you?

9 A Saw him at the Sheriff's Department?

10 Q Yes, sir.

11 A Yes.

12 Q And for all you know, he was there voluntarily, right?

13 A As far as I know, yes.

14 Q Well, he didn't show up to the lobby with cuffs on did
15 he?

16 A No.

17 Q Okay. Now, I think Mr. Swerling touched on this a
18 little bit, and I just want to make sure that I'm not
19 missing anything. You know this trial was scheduled for May
20 18, 2009 of this year, right?

21 A That's correct.

22 Q And that is the same date that Mr. Brian Watson got in
23 touch with you at the Department, correct, through his
24 lawyer?

25 A Through his attorney, correct.

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1 Q All right. You didn't hear anything else about Mr.
2 Watson prior to that date wanting to get in touch with you
3 about this case did you?

4 A No.

5 Q Now, did you ask Mr. Watson how long he had known
6 Taurus Watts?

7 A I believe I did. Let me check my notes. I did.

8 Q And he had know him for a while, had he not, almost
9 five years?

10 A That's correct.

11 Q He knew his cousin, Brian Morris, right?

12 A I'm sorry?

13 Q He also testified that he knew my client's cousin,
14 Brian Morris?

15 A That's correct.

16 Q Okay. He didn't volunteer any information from
17 February to May 2009 about Brian Morris to you, did he?

18 A No.

19 Q In fact, that May 19 was the first time you heard from
20 Brian Watson about is case; right?

21 A That's correct.

22 Q And there is actually no issue with the fact that Brian
23 Watson knew who his niece was married to, right?

24 A I'm sorry?

25 Q There's no discrepancy that Brian Watson knew to whom

1 his niece was married to, right?

2 A Correct.

3 Q So all along his arrest for armed robbery in February
4 to May 19, 2009, you would agree that Brian Watson knew to
5 who his niece was married to, Jarrell Dansby, right?

6 A Correct.

7 Q You didn't receive any information prior to the May 19
8 date that you needed to talk to Jarrell Dansby did you?

9 A Prior to May 18, no.

10 Q Now, with regard to this Isuzu Rodeo, let's go back to
11 that for a little bit.

12 A Okay.

13 Q What route did that Isuzu Rodeo take when it left
14 Hardscrabble Road?

15 A I would have no idea.

16 Q All right. Well, there was some information that you
17 received from Deputy Galinski, did you not, that he saw the
18 car on Rabon Road?

19 A That's correct.

20 Q And he did a U-turn, the deputy did a U-turn on Rabon
21 Road to follow the white Isuzu Rodeo, is that right?

22 A That's correct.

23 Q And where is Rabon Road in relation to Hardscrabble
24 Road?

25 A There are -- in relation to Hardscrabble Road?

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1 Q Yes.

2 A It's out on Farrow Road maybe a mile or a mile and a-
3 quarter.

4 Q In State's Exhibit No. 162, let's try to keep this away
5 from the court reporter, where would Rabon Road be located?

6 A Farrow Road runs here, Hardscrabble runs here. Farrow
7 Road -- Rabon Road would be down in here off of Farrow Road.

8 Q Okay, and does Rabon Road connect with another major
9 road?

10 A Rabon Road is probably three or four miles and runs in
11 between Two Notch and Farrow Road.

12 Q Okay. Runs between Two Notch and Farrow Road. Can you
13 get to Rabon Road from Two Notch then?

14 A Can you get from Rabon Road from Two Notch?

15 Q You're on Two Notch, can you get to Rabon Road?

16 A Sure.

17 Q And you can get to Rabon Road from Farrow Road, as
18 well, is that right, Farrow Road being this right here?

19 A There's actually two ways you can get to Rabon Road
20 from Farrow Road. Actually, one of the two -- one, -- you
21 can go out Farrow, turn on Hardscrabble take you on past
22 H&J, you can turn right onto Sloan and -- you can turn from
23 Hardscrabble onto Rabon. You can also turn on the road
24 before the club from Hardscrabble and continue down and that
25 will intersect with Rabon Road. You can also get to Rabon

1 Road from Sloan Road.

2 Q Okay. And Sloan Road is depicted in State's Exhibit
3 No. 162, isn't it, right here?

4 A Yes.

5 Q Okay. So in order to get to Sloan Road you'd have to
6 take a right onto Hardscrabble from the club, go into the
7 direction towards North Brickyard, and Clemson, and then
8 turn right on North Brickyard Road and also get to Two
9 Notch, right?

10 A Well, actually, you could go left off Hardscrabble Road
11 turn left onto Hartin, turn left into Farrow Wood
12 Subdivision and take the back roads into Farrow Woods
13 subdivision and end up on Charlwood, which would dump you
14 out on to Sloan Road. So there are several ways. You could
15 also get to Rabon Road from the club by turning left on
16 Hardscrabble, turn left on William Martin Road, continue
17 down William Hardin Road which would dump you onto Rabon
18 Road. So there are several ways to get to Rabon Road from
19 the club location by turning left or right.

20 Q In my attempt to orient this jury into the location of
21 the Blockbuster where the white Isuzu was pulled over --

22 A Yes, ma'am.

23 Q -- is the Blockbuster on Two Notch Road near Sandhills?

24 A No.

25 Q Is it near Target?

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1 A No.

2 Q Is it closer in to Columbia?

3 A It is.

4 Q Is it near Wal-Mart?

5 A No. The old Wal-Mart.

6 Q Okay. What landmark is Blockbuster closest to in
7 regard to one of those larger stores?

8 A The old Wal-Mart.

9 Q And is there something across the railroad track that
10 would give somebody an indication of where that Blockbuster
11 is?

12 A A railroad track, the railroad track runs the entire
13 length of US 1.

14 Q Right. Near the Blockbuster. Is there an
15 intersection?

16 A Near the Blockbuster. I believe it would be near Polo
17 Road.

18 Q Polo Road.

19 A Yes, ma'am.

20 Q Is Polo Road depicted here?

21 A It is.

22 Q So that's where the Blockbuster is, Polo Road?

23 A I can't -- it's in this area. I can't remember if it's
24 inbound from Polo Road or outbound from Polo Road. But it's
25 right in this area.

1 Q Okay. So did you get information about the last known
2 address of Luther Landrum?

3 A Information, we would have gotten from whatever was on
4 his driver's license, that's correct. I have listed in my
5 file, (inaudible).

6 Q What zip code is that?

7 A [REDACTED]

8 Q Is that in the Northeast area?

9 A It is.

10 Q Did you ever go to Mr. Landrum's house?

11 A No. Mr. Landrum did not want to speak to me.

12 Q Do you know where Mr. Landrum's house is with respect
13 to Hardscrabble Road?

14 A I do not.

15 Q Did he ever tell you that he was going home from
16 Hardscrabble Road that night?

17 A Tell me?

18 Q Or anybody?

19 A I don't know.

20 Q Well, then you'd be surprised to know that this house
21 might be located near Clemson Road, right?

22 A Two Notch intersects with Clemson Road. That would be
23 a reasonable to believe he was on his way home, going Two
24 Notch towards US1, to Clemson Road.

25 Q Then wouldn't it also be unreasonable for him to turn

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1 left on Hardscrabble Road and travel all the way down to
2 Farrow Road and then take a left on Rabon Road and then take
3 a left and then travel all the way out Rabon Road, and then
4 turn towards Columbia on Two Notch?

5 A I don't know which way he went home that night. Maybe
6 he had to -- I don't know. Maybe he went somewhere else
7 before he went home. Maybe he went to the Waffle House. I
8 don't know.

9 Q Okay.

10 A I don't know what path Mr. Landrum took home from the
11 club that night.

12 THE COURT: Can y'all approach about lunch.

13 (Off the record bench conference with counsel and the
14 Court.)

15 THE COURT: Ladies and gentlemen of the jury, we're
16 going to go ahead and take lunch now because obviously
17 there's going to be some more information coming from this
18 witness. I'll remind you not to discuss the case. I'll ask
19 you to report back to your jury room at 2:15.

20 (Jury out at 12:53 p.m.)

21 THE COURT: Mr. McRae, I'll remind you not to
22 discuss your testimony. You may step down.

23 MR. MCRAE: Thank you.

24 (Court at recess for lunch break)

25 (Court in session after lunch break.)

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1 THE COURT: Okay. Jurors, please.

2 (Jury in at 2:25 p.m.)

3 THE BAILIFF: The jury's all present, Your Honor.

4 THE COURT: Okay. Ms. Johns, you may resume your
5 questioning.

6 MS. JOHNS: Thank you, Your Honor.

7 DON MCRAE - CONTINUED CROSS-EXAMINATION

8 BY MS. JOHNS:

9 Q Okay. Let familiarize the jury again with who M.P.
10 Smith is; can you tell the jury?

11 A M.P. Smith was a deputy who worked for Richland County
12 Sheriff's Department at this time. During the time of this
13 incident.

14 Q Is he the officer that collected the bullet at the
15 hospital?

16 A He is.

17 Q Okay. And you spoke to Stephanie Boston, is that
18 correct, or you had somebody speak to Stephanie Boston?

19 A Stephanie Boston was interviewed during the course of
20 this investigation, yes, ma'am.

21 Q And there's a notation that she saw the fight earlier;
22 is that right?

23 A I'm sorry, ma'am?

24 Q That's a notation that she saw the fight only, in Mr.
25 Smith's report?

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1 MS. SHIPLEY: Objection, Your Honor. This is
2 hearsay again. What a witness told another witness.

3 MS. JOHNS: Your Honor, again, it's not offered for
4 the truth of the matter asserted. This is a report that he
5 relied on -- didn't rely on, excuse me. But he did use as a
6 tool.

7 THE COURT: Okay. Well, establish that first,
8 because, are we talking about the same report?

9 MS. JOHNS: Well --

10 MS. SHIPLEY: Well, when Deputy Smith testified,
11 that would have been the time to ask him this.

12 MS. JOHNS: Well, Your Honor, cross-examination,
13 Your Honor, he stated he did use this incident report as a
14 tool.

15 THE COURT: Okay, well, there's several pages
16 you're referring to within the entire report, so let's make
17 it more narrow to him.

18 BY MS. JOHNS:

19 Q Do you have this report available to you?

20 A Which report?

21 Q The supplemental report of Mr. M.P. Smith?

22 A I do.

23 Q Okay. And there is a notation that Stephanie Boston
24 saw the fight only, right?

25 A It in there, yes.

1 Q And there's another annotation of Verda Roberts that
2 says she was assaulted and did not see the shooting; is that
3 right?

4 A That's correct.

5 Q And there's a notation of Travis Malone that says he
6 drove the victim to the hospital; is that correct?

7 A That is correct.

8 Q And there's a notation of Timothy Weldon that says, saw
9 shooting; correct?

10 A That's correct.

11 Q And then there's Charlie Bates, who was in the car with
12 the victim?

13 A That's correct.

14 Q And lastly, Marcus Gordon, may have been grazed by
15 bullet?

16 A That is part of the annotation above his name. Yes.

17 Q Left the hospital?

18 A Yes, he did.

19 Q Checked himself out prior to M.P. Smith arrival?

20 A Correct.

21 Q Subject came back to hospital, was seen?

22 A Correct.

23 Q Doctor said he had a graze wound to his right forearm?

24 A That's correct.

25 Q And of these one, two, three, four, five, six people,

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1 the only person your department didn't talk to is the
2 eyewitnesses, right?

3 A (No response.)

4 Q Timothy Weldon, saw the shooting.

5 A Again, that's it's annotated. Again, this is the
6 initial report.

7 Q Now, are you familiar with an incident report for a
8 crime was reported that on September 3, 2007, a subject by
9 the name of Norris brought a Tac 9 or Mac 10 into the
10 complainant's place of business; are you aware of that
11 report?

12 A I'm aware of the report. If you could provide that
13 report so I can refresh my memory.

14 Q Who's the complainant in that report, sir?

15 A I think the complainant is listed as Ricky Jacobs.

16 Q And where is his business located?

17 A 2820 Hardscrabble Road.

18 Q And what's the name of his business?

19 A Which -- he has -- H&J club or Chaser's Pub.

20 Q Okay. And there -- he was the complainant on September
21 3, 2007; is that right?

22 A He was.

23 Q And the complaint was that there was a subject that
24 brought a Tac 9 or a Mac 10 or a Tac 9 into his place of
25 business?

1 A That's correct.

2 Q And you had benefit of this report, right?

3 A I was assigned this report. Yes, I was.

4 Q Okay. And did you go talk to Norris Bond about this?

5 A No, I did not.

6 Q Was there an arrest done about this?

7 A No, there was not.

8 Q Did you talk to Bryan Johnson about this?

9 A No, I did not.

10 Q Did you know that Brian Johnson and Norris Bond are
11 cousins?

12 A No, I did not. Not at the time of this report.

13 Q You had an opportunity to talk to Bryan Johnson after
14 that report was filed, didn't you?

15 A An opportunity to speak with him. Yes, I had an
16 opportunity to speak with him, however, I didn't in the fact
17 that in this report I did attempt to make contact with the
18 complainant in the incident report who -- and did not make
19 contact with me. Therefore, it is our protocol that if the
20 victim or we have a crime that was reported, but the victim
21 or complainant does not follow up with us, we do not
22 continue any investigation into that incident.

23 Q Okay. Let me see if I got this right. Ricky Jacobs,
24 is the complainant on this report?

25 A That's correct.

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1 Q And he's reporting that somebody is bringing a Mac 10
2 or a Tac 9 into his place of business; correct?

3 A That's correct.

4 Q And we've seen a photograph of what that gun looks
5 like, have we not?

6 A This gun that was brought into this incident, no, we do
7 not have a picture of that gun.

8 Q Okay. Well, let me show you State's Exhibit No. 140,
9 and look at No. 18.

10 A Yes.

11 Q What kind of weapon is that?

12 A I'm not a weapons -- it's what I believe to be a Mac
13 10, M-11 type firearm. That's correct.

14 Q You're not familiar with this weapon?

15 A The type of firearm or weapons in general?

16 Q This type of firearm?

17 A Yes. I'm aware of what it's been called in this trial,
18 yes.

19 Q Okay. Is this close to a Tac 9, T-a-c 9?

20 A I would have no idea. I'm not a firearms expert.

21 Q Okay. Well, you knew enough about the firearm to bring
22 a picture of the firearm to Ricky Jacobs the morning of the
23 shooting, didn't you?

24 A That's correct, based on the -- based on the
25 information that was referred to me during the course of

1 this investigation by our firearms expert.

2 Q Okay, and Ricky Jacobs is the one that gave you the
3 description of the firearm on June 30, 2007, right?

4 A That's correct.

5 Q And then on September 3, Ricky Jacobs being the
6 complainant again, not only gives you a description of the
7 weapon but tells you what kind of weapon it is, didn't he?

8 A State's it was a Tec 9; that's correct.

9 Q Or Mac 10?

10 A That's correct. And that's what's in the report, but
11 Ricky Jacobs never told me that in reference to that report,
12 because I never spoke to Ricky Jacobs in reference to that
13 report.

14 Q Okay, and the reason you didn't speak to Ricky Jacobs,
15 is what you're telling us today, is that he never called you
16 back?

17 A He never returned my calls in conjunction with that
18 case; that is correct.

19 Q Okay. All the information that pertains to this case
20 goes through you as the chief investigator, right?

21 A It's available to me, that's correct.

22 Q And you are the lead investigator in this case; is that
23 right?

24 A Yes.

25 Q And you're the one that would oversee the investigation

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1 from it's inception through trial?

2 A Well, as I testified, we use everybody within the
3 department. I am not going to tell a crime scene
4 investigator how to collect evidence. I'm not going to tell
5 a crime scene investigator how to do their job. I'm not
6 going to tell a firearms expert how to do his job. I do
7 have access to everything. Everything is filtered through
8 me throughout the course of the investigation.

9 Q Just like the information that Brian Watson had brought
10 to your attention on May 19, 2009, right?

11 A (No response.)

12 Q Just like that information that was brought to your
13 attention?

14 A That information was actually given to me by his
15 lawyer.

16 Q And you acted upon that information?

17 A I did.

18 MS. JOHNS: I don't have anything further, Your
19 Honor.

20 THE COURT: Okay. Redirect?

21 DON MCRAE - REDIRECT EXAMINATION

22 BY MS. SHIPLEY:

23 Q Investigator McRae, were you made aware, during your
24 investigation who of the witnesses inside of the club had
25 been contacted and given their rendition of what had

1 occurred inside of the club?

2 A Yes.

3 Q And who were those witnesses?

4 A The witnesses Stephanie Boston, Verda Roberts, and
5 Charlie Bates, and basically all the people listed on his
6 follow up.

7 Q And besides Verda Roberts, Charlie Bates, Stephanie
8 Boston, who else was with them that night.

9 A Besides Stephanie Boston, Verda Roberts, and Charlie
10 Bates?

11 Q Yes. Who went to the club with them?

12 A Travis Malone and Mr. Goodwine.

13 Q And obviously Demuria Johnson?

14 A And Demuria Johnson, yes, ma'am.

15 Q So there was a party of six, correct?

16 A Correct.

17 Q Any mention by any of them that Timothy Weldon was a
18 part of their party?

19 A No.

20 Q Or the other gentleman, Marcus Gordon?

21 A No, ma'am.

22 Q And after these individuals, at least Verda Roberts,
23 Charlie Bates and Stephanie Boston provided statements, did
24 you, in this part of your investigation have a good grasp of
25 what had occurred inside?

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1 A Yes.

2 Q You were asked about whether or not what was reported
3 to you in the course of your investigation when you first
4 arrived on the scene. Tell this jury during the course of
5 your investigation at the scene, what was reported as to how
6 many shots were fired from the Rodeo?

7 A One.

8 Q And in which direction?

9 A In the air.

10 Q And what was reported as to how many shots were fired
11 by the tan Suburban?

12 A Multiple.

13 Q And in which direction?

14 A Towards the direction of the club slash car wash.

15 Q And how many projectiles were recovered in the entire
16 case?

17 A Projectiles, three.

18 Q And one of them coming from the victim; correct?

19 A Correct.

20 Q How many shell casings were recovered at the scene?

21 A Ten.

22 Q And during the course of your investigation were you
23 made aware of the ballistic expert's analysis of the
24 evidence?

25 A I was.

1 Q And did the number of shots reported from each vehicle
2 ever change?

3 A No.

4 Q And I believe you were asked by Mr. Swerling on cross-
5 examination about Mr. Jacobs statement?

6 A Yes.

7 Q Tell the jury what he did in his statement on the very
8 last page?

9 A On the very last page of Mr. Jacobs statement, Mr.
10 Jacobs statement, he made it clear to me that he did not see
11 any particular person shoot from the tan colored Suburban
12 but was positive that those shots did come from that
13 vehicle.

14 Q Now, I'm going to bring your attention to some
15 questions asked by Ms. Johns. Brian Watson, when was the
16 date that his name was first brought to your attention?

17 A May 18, 2009.

18 Q And after you interviewed Brian Watson who did you
19 interview next?

20 A Rashonda Simpson.

21 Q And who else were you going to go interview?

22 A After we interviewed Rashonda Simpson, we attempted to
23 interview Jarrell Dansby.

24 Q And did you interview him?

25 A Yes.

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1 Q Why did you find the need in your investigation to
2 question these two people in addition to Mr. Watson?

3 A Because I wanted those two to cooperate or to made Mr.
4 Watson's statement to me credible. In other words, I wanted
5 to know that what he was telling me was the truth.

6 Q Do you have any personal knowledge as to whether nor
7 not a two truck driver got into that tan Suburban at Outback
8 Steakhouse?

9 A No. I don't know. They are able to jerk a vehicle
10 onto a flatbed and tow it without getting inside the
11 vehicle.

12 Q And I'm going to show you State's 163, and ask you if
13 you know that what is?

14 A It is the two slip, standard form, from the Richland
15 County Sheriff's Department.

16 Q And for which vehicle in particular?

17 A A tan Suburban.

18 Q Okay.

19 MS. SHIPLEY: Your Honor, at this time state would
20 seek to introduce 153 into evidence -- or 163.

21 MR. BAX: Can we approach, Your Honor?

22 THE COURT: Yes.

23 (Off the record bench conference with counsel and the
24 Court.)

25 BY MS. SHIPLEY:

1 Q Investigator McRae, on State's 163 for identification
2 purposes, how are you familiar with that document.

3 A It's the standard two slip used whenever Richland
4 County Sheriff's Department tows a vehicle.

5 Q And again, how long have you worked with the Richland
6 County Sheriff's Department?

7 A Since April, 2003.

8 Q And how many times have you seen a document like this?

9 A Multiple.

10 MR. SWERLING: Your Honor, I'd like to take the
11 witness on voir dire before she tries to admit that.

12 THE COURT: Okay.

13 MR. SWERLING: Outside the jury.

14 THE COURT: Sure. Okay. Ladies and gentlemen of
15 the jury please be excused. I'll remind you not to discuss
16 the case. We'll be with you shortly.

17 (Jury out at 2:40 p.m.)

18 MS. SHIPLEY: Your Honor, I had not finished laying
19 the foundation.

20 MR. SWERLING: Go ahead. I don't have any problem
21 if you want to try to lay a foundation. I just don't think
22 the document is admissible because he can't authenticate it.
23 He can't -- he doesn't know who that person is. If you want
24 to bring the person in, if you want to prove that somebody
25 didn't enter the vehicle that person has to be brought in.

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1 MS. SHIPLEY: It doesn't -- under Rule 803 (6)
2 there's no requirement that the report be authenticated. It
3 states specifically any report, etcetera, made at or near
4 the time by or from information transmitted by a person with
5 knowledge and kept in the course of regularly conducted
6 business activity and if it was a regular practice of that
7 business activity to make the report as is shown by the
8 testimony of the source or other qualified witnesses unless
9 the source of information or method and circumstances of
10 preparation indicate a lack of trustworthiness, provided,
11 however, the subjective opinions and judgements found in
12 business records are not admissible. The term business as
13 used in the subsection includes businesses, institutions,
14 associations, professional occupations and callings of every
15 kind whether or not conducted for profit.

16 Your Honor, this is clearly a business record.

17 THE COURT: Okay. Lay your foundation with this
18 witness.

19 VOIR DIRE BY MS. SHIPLEY:

20 Q Are these forms the two slips, are they regularly kept
21 in the conduct of Richland Sheriff's Department activity?

22 A They are.

23 Q And every time a vehicle is towed by Richland County
24 Sheriff's Department is this form used?

25 A It is.

1 Q And when is it filled out?

2 A Prior to the tow truck taking the vehicle.

3 MS. SHIPLEY: Beg the Court's indulgence.

4 THE COURT: Yes.

5 BY MS. SHIPLEY:

6 Q And, again, can you repeat your answer, when is it
7 made?

8 A The officer fills the portions of the two slip out
9 prior to the tow truck arriving on the scene, and then the
10 tow truck driver signs for the vehicle.

11 Q And the information contained in the document, is this
12 pertain to a vehicle that you obtained a search warrant to
13 search the vehicle?

14 A It is.

15 Q And as lead investigator on the case are you in charge
16 of the entire case file for the case?

17 A I am.

18 Q And is that document contained in your case file?

19 A It is.

20 Q And does it appear altered in any way?

21 A No. It look like the standard filled out two slip.

22 Q And is it the regular practice of the Sheriff's
23 Department to make that report each time a car is towed?

24 A It is.

25 MS. SHIPLEY: Your Honor, I think I've laid the

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1 foundation.

2 THE COURT: Okay. Any voir dire by any of the
3 defense?

4 VOIR DIRE BY MR. SWERLING:

5 Q Mr. McRae?

6 A Yes, sir.

7 Q This particular document, do you know who prepared it?

8 A I do not.

9 Q Do you know when it was prepared?

10 A It would have been prepared the day the vehicle was
11 taken from the Outback Steakhouse, which would have been
12 July 1.

13 Q Well, no, I'm not asking you generally, but do you know
14 when it was prepared?

15 A It is would have been filled out at the time the
16 vehicle was towed.

17 MS. SHIPLEY: Your Honor, if he could give him the
18 document so he can refer to it.

19 MR. SWERLING: We I will. I mean, I don't car.
20 I'm just looking at it and asking him if he knows.

21 BY MR. SWERLING:

22 Q Do you actually even know who filled out the document?

23 A I do not.

24 Q So the person who actually may have actually done the
25 towing may not be the person who actually filled out the

1 document?

2 A (No response.)

3 Q You don't have any idea, do you?

4 A The person that actually did the towing?

5 Q Right. May not be the person who filled out the
6 document?

7 A An officer would have filled out the document, then the
8 tow truck driver, the driver of the vehicle that towed this
9 vehicle would have signed for the vehicle. So the officer
10 would have filled out the document and the tow truck driver
11 would have signed for the vehicle on this document. I hope
12 I'm answering --

13 Q So this was filled out by an officer?

14 A That's correct.

15 Q So where's the officer's name?

16 A As far as the person filling it out, there is no place
17 to -- Officers towing a vehicle -- can I borrow your
18 magnifying glass again?

19 Q My magnifying glass? Here's one.

20 A Lonnie Roberts was the tow --

21 Q That's the company.

22 A Right. The officer that would have filled this out
23 would have been Officer Kirkland.

24 Q Okay, but you don't know that he was the one that
25 filled it out?

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1 A Right.

2 Q I guess that's what I'm asking, there's no way to --

3 A 100 percent sure that Kirkland filled this out? No.

4 Q Okay. And so we don't know that the person who filled
5 it out is the person -- we don't know if the officer is the
6 one that made the comment in here: Did not conduct inventory
7 due to search warrant being served on vehicle. We don't --

8 A An officer would have filled that out. That's one of
9 the blocks than an officer fills out. An officer. I can't
10 testify that it was particularly Kirkland, but --

11 Q Okay.

12 A -- it would have been an officer with a Richland County
13 Sheriff's Department who filled that block out.

14 Q And that should be relatively easy to find out, right?

15 A Kirkland would be able to say if he wrote that.

16 Q Okay. I mean, first of all, it's hard to read, too?

17 A It is.

18 Q And Lonnie Roberts is the name of the company. We don't
19 know if that's the individual --

20 A The tow driver?

21 Q Yeah?

22 A No, the only thing that would be listed on this report
23 would be the tow company; their address, phone number. But
24 their signature -- signatures are sometimes hard to make out
25 what they say.

1 Q And what this does is that is doesn't answer the
2 question Ms. Shipley is asking you. It says: List all
3 valuable in the vehicle. And it says: Did not list
4 inventory due to search warrant being served on vehicle.
5 That does not indicate that the vehicle was not entered as
6 you said it was by the -- it probably would have been
7 entered by the tow truck driver?

8 A It does not state if the truck driver --

9 Q So this document does not speak to the question that
10 you were asked?

11 A Whether or not the --

12 Q Whether the tow truck driver entered the vehicle.

13 A And I believe my answer was I didn't know.

14 Q No. That's what you said before?

15 A Right.

16 Q And this doesn't in any way further that?

17 A No.

18 MR. SWERLING: I object.

19 THE COURT: Okay.

20 MS. SHIPLEY: Your Honor, just because he doesn't
21 think it furthers, it's relative to the question posed by
22 the defense on cross-examination. It's clearly documented
23 that police officers themselves wouldn't enter this vehicle,
24 much less would they let a civilian inside of the vehicle
25 because it's technically a crime scene. And Your Honor, 803

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1 (6) is the hearsay exception where the declarant, Officer
2 Kirkland is not required to come to court because he's
3 familiar -- Investigator McRae is familiar with the manner
4 in which these records are kept. How it's taken at the time
5 of the towing and filled out by the officer. And he was
6 able to identify, not that he had to, but he was able to
7 identify the officer.

8 THE COURT: Okay, but it will be a business record
9 conducted within the normal course of business.

10 MS. SHIPLEY: Correct.

11 THE COURT: We are establishing that this is not a
12 record of the tow company just placed into the file.

13 MS. SHIPLEY: Your Honor, if I can just let the
14 record reflect --

15 THE COURT: Do you see what I'm saying, the
16 distinction?

17 MS. SHIPLEY: Yes, ma'am, 163 --

18 THE COURT: It's not a record. Let me be clear.

19 MS. SHIPLEY: Yes, ma'am.

20 THE COURT: It's not a record by the tow company
21 placed into the file of the police officer.

22 MS. SHIPLEY: No, it's not.

23 THE COURT: Ask what business record it is. It's
24 got to be a regularly conducted business record of the
25 facility that we're talking about.

1 MS. SHIPLEY: Yes, ma'am. And if I can just show
2 the document to you. This is entitled Richland County
3 Sheriff's Department Tow Receipt. And this is the document
4 they generate.

5 THE COURT: All right. Any further argument from
6 defense?

7 MR. SWERLING: Well, Judge, under the state's
8 theory, anything in Mr. McRae's file is admissible in
9 evidence, because it's part of his file, and that's just
10 opposite of what the rule allows. There has to be some
11 trustworthy -- any exception to the hearsay rule is based
12 upon trustworthiness, it make it a reliable and trustworthy
13 document. Investigator McRae in all honesty cannot say --
14 he said before the tow truck driver entered the vehicle, as
15 far as he knew. That was what the question was. No one has
16 ever contested whether an officer went in there. He said
17 they did not. That document is not being offered in any way
18 to show whether the tow truck driver went in the vehicle or
19 not. I mean, that does that say that. I says there was no
20 inventory. But it doesn't say no one entered the vehicle.

21 THE COURT: What's your purpose of admitting this?

22 MS. SHIPLEY: Your Honor, they got -- they asked
23 Investigator McRae in cross-examination that whether or not
24 the tow truck driver got into the vehicle. This document
25 clearly shows that not even officers got into the vehicle,

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1 much less a tow truck driver would be permitted, because
2 this is a crime scene. The interior of that vehicle is a
3 crime scene. And so the state is allowed to put up evidence
4 to refute any innuendo or claims by the defense and under
5 the business exception rule we are permitted to do so.

6 MR. SWERLING: Well, Judge, the document is not
7 trustworthy because he cannot say who filled out the
8 document, who entered the information about whether or not
9 there was an inventory conducted. So it loses it's
10 trustworthy -- just because the document is in the police
11 file, if we allowed in every document in the police file we
12 might as well just abandon the trial because they could put
13 in all the statements, all his notes, all of everybody
14 else's notes, the hospital records. That's not what the
15 rule intended. This --

16 THE COURT: Well, under the rule any opinions or
17 conclusions wouldn't be allowed anyway. That's the purpose
18 of medical records and things of that nature of any
19 subjective opinion which could be conclusionary and hearsay
20 based on how you got to that opinion.

21 MR. SWERLING: But she can even authenticate who
22 filled out the document. And the document does not say what
23 Ms. Shipley wants it to say. It does not say the person who
24 towed the vehicle didn't enter the vehicle.

25 THE COURT: And it doesn't say that.

1 MS. SHIPLEY: No, and I'm not seeking to introduce
2 that.

3 THE COURT: Okay.

4 MS. SHIPLEY: I'm seeking to show the jury that
5 officer did not even go into this vehicle and therefore --

6 THE COURT: Where does it say that that happened,
7 it just says did not conduct inventory.

8 MS. SHIPLEY: Conduct inventory, because Your
9 Honor, they didn't enter the car to --

10 MR. SWERLING: It doesn't say that.

11 THE COURT: It doesn't say did not enter the car.

12 MS. SHIPLEY: Did not conduct inventory. Well,
13 inventory is entering the car and doing an inventory.

14 THE COURT: Well, he can say that, testify to what,
15 give an explanation of that, but we can't read anything into
16 the wording of the document that's not there.

17 MS. SHIPLEY: Okay. I understand your point. It
18 did not -- list all valuables in the vehicle. And then it's
19 not a conclusion or opinion. It's a fact. Did not conduct
20 inventory due to search warrant being served on vehicle.

21 THE COURT: But who said that?

22 MS. SHIPLEY: Kirkland. He's the one that filled
23 out the tow slip.

24 MR. SWERLING: Well, Mr. McRae can't verify that it
25 was Kirkland that filled it out.

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1 Ms. Shipley: This tow slip is fill out by the
2 officer that tows the car.

3 MR. SWERLING: He doesn't know that.

4 THE COURT: But your officer, Investigator McRae's
5 testimony had indicated he doesn't know who --

6 MS. SHIPLEY: Well, I'm not required to show who
7 the author of the record is, Your Honor. The rule doesn't
8 require that the person who wrote the document is required
9 to be identified. It simply says if it's a report that's
10 kept in the normal regular course of business or conducted
11 business activity and it was a regular practice of that
12 business activity, and if it was a regular business activity
13 to make that report then it's admissible. It's an exception
14 to the hearsay --

15 MR. SWERLING: Then you have to show
16 trustworthiness.

17 MS. SHIPLEY: Well, the judge --

18 MR. SWERLING: Not be able to identify who wrote
19 it, who put that information in the middle about whether or
20 not an inventory was done, and the fact that we're not
21 talking about whether the inventory was done we're talking
22 about whether the operator entered it. That does not speak
23 --

24 THE COURT: Okay, just give me a moment. Just let
25 me look at a couple of cases.

1 MR. SWERLING: Judge, when you're ready I've got
2 one other observation. The state has always objected to
3 documents coming in from officer's files because it contains
4 other information and they don't ever allow something like
5 that in, so, I mean, I don't understand that they can now
6 argue in good faith that it's now admissible because it
7 happens -- the point is that they always object to it, and
8 law enforcement -- my experience is law enforcement
9 documents are generally not admissible.

10 MS. SHIPLEY: An incident report is not admissible,
11 however, --

12 MR. SWERLING: What's different in that?

13 MS. SHIPLEY: -- a record kept on how a vehicle
14 was towed -- because incident reports have subjective
15 opinions in them.

16 MR. SWERLING: Not all of them. They're just not
17 admissible. It also requires information transmitted by a
18 person with knowledge. We don't know who that is, and we
19 don't know what the basis of his knowledge is.

20 MS. SHIPLEY: It says or from people -- information
21 transmitted by --

22 Your Honor, if I may, Rule 803 (8) refers to incident
23 reports that Mr. Swerling -- that's a totally different rule
24 that applies to incident reports.

25 MR. SWERLING: Well, I don't see it -- excluding,

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1 however, in criminal cases matters observed by police
2 officers and other law enforcement personnel.

3 MS. SHIPLEY: Exactly.

4 MR. SWERLING: The rule that she cites is --
5 excludes that.

6 MS. SHIPLEY: Right. Rule 803 (8) excludes
7 incident reports.

8 MR. SWERLING: No, but it also says excludes --

9 THE COURT: Well, both are subjective in nature,
10 anyway.

11 MS. SHIPLEY: Right.

12 THE COURT: That's the reason on that rule, because
13 the whole incident report is hearsay.

14 MS. SHIPLEY: In other words, Your Honor, this
15 document, it's not the officer fills it out. He's not
16 asking question of anybody. He's simply documenting what
17 car am I getting towed, the date, the time, who it's
18 registered to, who's going to tow it. And listing valuables
19 in the vehicles, typically they would put, you know, stereo,
20 blah, blah, whatever.

21 THE COURT: But this is kept in the regular course
22 of business, we're not just talking about this case? Is
23 this for --

24 MS. SHIPLEY: I asked the witness, Your Honor, I
25 proffered it from him that this is any time any car is towed

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1 by Richland County Sheriff's Department, this form is used.

2 MR. SWERLING: But the rule you refer to says you
3 cannot get into criminal cases, matters observed by police
4 officers, and other law enforcement personnel. I mean,
5 what they're seeking to do is get in a matter that is
6 observed by law enforcement -- I mean, that inventory wasn't
7 done. Of course, that might be the issue.

8 THE COURT: Well, I wouldn't consider that matters
9 observed by them. That's just -- to me it's a function.
10 Either they did this function or they didn't.

11 MS. SHIPLEY: Right.

12 THE COURT: He's the lead investigator on the file.
13 I'm going to consider it a business record. I know there'll
14 be objection but he's a qualified witness. I caution you,
15 Ms. Shipley. The words on the document. They say what they
16 say. It doesn't say anything about somebody exiting or
17 entering or whatever.

18 MS. SHIPLEY: Yes, ma'am.

19 THE COURT: Because somebody could exit or enter
20 and then not conduct something, too.

21 MS. SHIPLEY: Yes, ma'am.

22 THE COURT: So I'm going to caution you not to go
23 down that line.

24 MS. SHIPLEY: Thank you.

25 THE COURT: Okay.

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1 MR. SWERLING: Judge, of course, in light of that,
2 I'd ask that my objection be contemporaneous when it's
3 offered.

4 THE COURT: Sure.

5 MR. SWERLING: I'd also ask, since the jury's not
6 in the room the follow up question what the tow truck
7 operation may or may not have done if the police officers
8 were not allowed to go in there. I would object.

9 MS. SHIPLEY: I'm not going to ask that.

10 THE COURT: Yeah, because if you weren't physically
11 there to actually observe an activity you can't speculate on
12 what they did or didn't do.

13 MR. MCRAE: Yes, ma'am.

14 THE COURT: Okay. Jurors, please.

15 (Jury in at 3:00 p.m.)

16 THE BAILIFF: The jury's all present, Your Honor.

17 THE COURT: Okay. Thank you. Continue.

18 MS. SHIPLEY: Thank Your Honor.

19 DON MCRAE - CONTINUED REDIRECT EXAMINATION

20 BY MS. SHIPLEY:

21 Q Investigator McRae, I had handed you Exhibit No. 163,
22 can you please identify that for the jury?

23 A That's the standard tow slip used by Richland County
24 Sheriff's Department.

25 Q Is that the tow slip used every time any car is ever

1 towed by your agency?

2 A It is.

3 Q And is that a form that is used in conducting the
4 regular course of activities for the Sheriff's Department?

5 A It is.

6 Q And is that part of your case file as lead investigator
7 on this case?

8 A Yes, ma'am.

9 MS. SHIPLEY: Your Honor, at this time I would seek
10 to introduce 163 into evidence?

11 THE COURT: Okay. It's admitted.

12 (State's Exhibit No. 163, tow slip,
13 was marked and entered.)

14 BY MS. SHIPLEY:

15 Q Investigator McRae what is the name of the officer
16 listed as filling that out?

17 A The officer towing the vehicle is Officer Kirkland.

18 Q And what vehicle, again, are we referring to?

19 A We are referring to the tan in color Suburban.

20 Q And can you explain to the jury that when any private
21 property, such as a vehicle is being towed what procedures
22 normally are followed.

23 MR. SWERLING: Objection, Your Honor, he can't say
24 what was followed in this case.

25 MS. SHIPLEY: I'm just asking generally.

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1 MR. SWERLING: I object, in this case.

2 THE COURT: Y'all approach.

3 (Off the record bench conference with counsel and the
4 Court.)

5 BY MS. SHIPLEY:

6 Q Is there such a term as inventory?

7 A Yes.

8 Q And what is an inventory?

9 A An inventory of the vehicle is where we would inventory
10 anything of value, any valuables that was inside that
11 vehicle when we took possession of it?

12 Q And was an inventory done in this case dealing with the
13 tan Suburban?

14 A Not according to the tow slip, no.

15 Q And the report explains why?

16 A Correct.

17 Q And what is the reason?

18 A The reason is: Did not conduct inventory due to search
19 warrant being served on vehicle.

20 Q Thank you. Do you have any personal knowledge as to
21 whether or not a tow truck driver got into that vehicle?

22 A I do not.

23 Q And when a vehicle is being towed by the Sheriff's
24 Department is it -- describe the security that is provided.

25 MR. SWERLING: I object to that. He does not know

1 what happened in this particular case. She's trying to get
2 what was supposed to have been done, but all they had to do
3 was bring the officer in.

4 MS. SHIPLEY: Your Honor --

5 THE COURT: Manage your case to the set of facts
6 that he has person knowledge of what happened in this case?

7 BY MS. SHIPLEY:

8 Q All right. Do you have personal knowledge as to
9 whether or not anybody entered that vehicle?

10 A I do not.

11 Q Now, as to the initial incident report that was
12 referred to by Ms. Johns on cross-examination is that
13 accurate?

14 A The initial incident report authored by whom?

15 Q Gregory Weldon?

16 A It has some accuracies in it, however total accuracy,
17 no.

18 Q Okay. What is the purpose of a criminal investigation?

19 A To determine the truth.

20 Q And did your investigation that revealed facts that
21 were different from the initial report?

22 A Yes, we did.

23 Q And did anywhere in that initial report does it
24 indicate that they returned to the scene?

25 A No.

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1 Q When you first encountered Ricky Jacobs at the crime
2 scene you were asked by Ms. Johns whether or not the terms
3 Mac 10 or Tec 9 were used. What was the terminology that
4 was provided to you as far as the description of the weapon?

5 A From my first interview at the scene with Mr. Jacobs --

6 Q If --

7 A I found it. I found it.

8 Q Okay.

9 A He referred to it as an Uzi.

10 Q Now, as the lead investigator in this case, are you
11 aware of whether Sgt. Barnes actually interviewed Travis
12 Malone at the hospital?

13 A I am.

14 Q And again, where is Travis Malone, to your knowledge?

15 A To my knowledge he is either in Iraq or Afghanistan.

16 Q When you arrived on the crime scene, did you ever see
17 either suspect there?

18 A No.

19 Q And you were also shown a photograph about -- and the
20 question was posed as to whether or not the scene had been
21 secured upon your arrival.

22 A Yes.

23 Q I believe your answer was a patrol car was blocking the
24 road.

25 A Yes.

1 Q As an experienced investigator when a patrol car
2 secures a road; what is that?

3 A Road block.

4 Q And are other people allowed on the scene at that
5 point?

6 A No.

7 Q You were also asked about a be on the lookout by Ms.
8 Johns?

9 A Yes, ma'am.

10 Q And did you contact the media about this matter?

11 A I believe we did, yes, ma'am.

12 Q And was it aired on the TV to your knowledge?

13 A I believe it was. I'm not 100 percent sure on that.

14 Q Explain what date it was that you obtained an arrest
15 warrant for Taurus Watts?

16 A July 1st.

17 Q And when was it that you saw him for the first time?

18 A When he turned himself in on July 3rd.

19 Q And what time was that on July 3rd?

20 A 7:40 p.m.

21 Q Did you -- explain your efforts to locate Mr. Watts
22 during that period of time from July 1st to July 3rd?

23 A We talked to several people. I mean, we talked to
24 several people in an effort to locate Mr. Watts.

25 Q And so did you just sit at home and wait on him to turn

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1 himself in?

2 A No, ma'am.

3 MS. SHIPLEY: Beg the Court's indulgence.

4 Thank you. No further questions, your Honor.

5 THE COURT: Okay.

6 MR. SWERLING: I have some.

7 DON MCRAE - RECROSS EXAMINATION

8 BY MR. SWERLING:

9 Q Mr. McRae, the inventory search is when law
10 enforcement, when they're taking your vehicle, whether it's
11 on the road or at the Sheriff's Department compound,
12 documents what's inside the car.

13 A Correct.

14 Q And that's what inventory means, correct?

15 A Documents the valuables.

16 Q Contents?

17 A Contents.

18 Q Would that particular document that was introduced by
19 Ms. Shipley simply says there was no inventory?

20 A Correct.

21 Q It doesn't say it wasn't entered?

22 A Correct.

23 MR. SWERLING: Thank you.

24 MS. JOHNS: Very briefly, Your Honor.

25 DON MCRAE - RECROSS EXAMINATION

1 BY MS. JOHNS:

2 Q You said that the initial incident report by the deputy
3 arriving first on the scene is incorrect?

4 A I didn't say it was incorrect. I said it contained
5 some information that proved not to be true, though our
6 course of our investigation.

7 Q Proven not to be true for Ricky Jacobs?

8 A Through the course of our investigation it was proven
9 to be not true.

10 Q Was it proven to be inconsistent; is that right?

11 A Inconsistent. Okay.

12 Q And that's inconsistent with what Ricky Jacobs told
13 you?

14 A I'm sorry?

15 Q And that would be inconsistent with what Ricky Jacobs
16 told you?

17 A Portions of this incident report, yes, ma'am.

18 Q Okay. So the purpose of the investigation is to
19 determine the truth?

20 A Yes.

21 Q And the truth is determined by you?

22 A Through our investigation, yes.

23 Q So then there's no purpose in this jury, right?

24 MS. SHIPLEY: Objection, Your Honor. That's
25 inappropriate.

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1 THE COURT: Sustained.

2 MS. JOHNS: That's all the questions, Your Honor.
3 Nothing further.

4 THE COURT: Okay. Sir, you can step down.

5 MR. MCRAE: Thank you, Your Honor.

6 MS. MCDUFFIE: If it pleases the Court, Your Honor?

7 THE COURT: Yes.

8 MS. MCDUFFIE: State would call Investigator
9 Gallegos.

10 (WHEREUPON Gilbert Gallegos, was
11 sworn to tell the truth.)

12 THE CLERK: Thank you. Please have a seat in the
13 witness stand, give the court reporter your name.

14 MR. GALLEGOS: Investigator Gilbert Gallegos.

15 GILBERT GALLEGOS - DIRECT EXAMINATION

16 BY MS. MCDUFFIE:

17 Q Good afternoon, Investigator Gallegos. Could you tell
18 the jury where you're employed?

19 A The Richland County Sheriff's Department.

20 Q And how long have you been with the Sheriff's
21 Department?

22 A A little over seven years.

23 Q And please tell the jury what your duties are at the
24 Sheriff's Department?

25 A I'm assigned to investigations, primarily the major

1 crimes unit. An assault squad and the homicide team.

2 Q And were you the secondary investigator on the case
3 we're here for today?

4 A Yes, ma'am.

5 Q And as the secondary investigator what is your role.

6 A My role is to assist with the investigation and also
7 the primary investigators duties, assist he or she in any
8 way.

9 Q And so lots of the investigation you and Investigator
10 McRae were present for?

11 A Yes, ma'am.

12 Q And there were some parts that you weren't present for
13 or he wasn't present for?

14 A Yes.

15 Q So we won't go back through everything that you did
16 together, but on June 30, 2007, did you have a chance to
17 come in contact with Earl Greene?

18 A Yes.

19 Q And where was that?

20 A That was at the 9800 block of Two Notch Road.

21 Q When the vehicle was stopped?

22 A Yes, ma'am.

23 Q And did you have a chance to come in contact with him
24 at any other time?

25 A Yes.

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1 Q And when was that.

2 A At the Richland County Sheriff's Department
3 headquarters.

4 Q And what day was that one?

5 A The same -- the morning, July 1st.

6 Q And did you have a conversation with him?

7 A Yes.

8 Q And please don't say what your conversation was, but
9 based on that conversation how did your investigation
10 proceed?

11 A The primary direction of our investigation lead us to
12 the identification of the tan SUV and the occupants.

13 Q And on July 1, 2007, were you present when Tremaine
14 Wray was arrested?

15 A Yes.

16 Q Did you perform a search warrant on his home?

17 A Yes.

18 Q Please tell the jury what, if anything, in terms of
19 clothing removed from his home?

20 A There was no clothing taken from his residence.

21 Q Did you find anything to be of evidentiary value?

22 A No, ma'am.

23 Q And there was no clothing removed from his residence
24 pursuant to that search warrant?

25 A Correct.

1 Q Did you also -- were you aware of whether investigators
2 went to [REDACTED]?

3 A Upon the arrest of Mr. Wray, myself and other officers
4 with the Sheriff's Department went to [REDACTED] in
5 reference to Taurus Watts arrest warrant.

6 Q And what, if anything did you learn after going to Ida
7 Lane?

8 A We made contact with his sister; she was home during
9 the attempt to serve the arrest warrant. She said she
10 hadn't been in contact with Mr. Watts for some days.

11 Q I'm sorry. Were you present --

12 MS. JOHNS: Your Honor, I object to the hearsay and
13 ask that it be stricken from the record.

14 MS. MCDUFFIE: Your Honor, I'll move on.

15 THE COURT: Okay.

16 BY MS. MCDUFFIE:

17 Q Were you present --

18 MS. JOHNS: Your Honor, I asked that it be stricken
19 from the record, the hearsay question.

20 THE COURT: Okay. What was your question?

21 MS. MCDUFFIE: My question was pursuant to the
22 investigation what did you then do.

23 MS. JOHNS: Your Honor, he said that his sister
24 said that she had not seen him in a couple of days. I asked
25 that that be stricken from the record. That's hearsay.

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1 THE COURT: Okay. I'll strike that.

2 BY MS. MCDUFFIE:

3 Q Were you present when Tremaine Wray's vehicle was towed
4 from the Outback Steakhouse on July 1st?

5 A Yes, ma'am.

6 Q At any time did you see anyone enter that vehicle?

7 A No.

8 Q On July 1, after the arrest of Mr. Wray, what did you
9 precede to do in pursuit of your investigation?

10 A We tried a couple of different avenues trying to locate
11 Mr. Watts still, and also continued to speak to the
12 witnesses.

13 Q And did you have an chance to speak to Travis Malone?

14 A Yes, ma'am.

15 Q When was that?

16 A That was July 2nd.

17 Q And are you aware of his current location?

18 A Overseas.

19 Q And on July 3rd, did you encounter Mr. Taurus Watts?

20 A Yes.

21 Q And where was that?

22 A That was at the -- I received a phone call from
23 Investigator McRae that Mr. Watts turned himself in. He
24 lives closer to headquarter than I do, so it took me some
25 time to get there. But at that time I located Investigator

1 McRae and Mr. Watts, Investigator McRae inside
2 investigation.

3 Q And are you aware of whether or not Mr. Watts had his
4 rights read to him or not?

5 A He came in at the tail end of the advisement.

6 Q And was he advised of his rights?

7 A Yes.

8 Q And what did you proceed to do at that time?

9 A At that time handcuffs were placed on Mr. Watts and he
10 was lead to the forensic section of our headquarters, which
11 is on the same floor in our building. That where we were
12 going to take him to get major case prints done, prints of
13 different angles of his hands.

14 Q And were you questioning him during that time?

15 A No, ma'am.

16 Q Did Mr. Watts say anything to you on July 3, 2007?

17 A Once we finally got to the forensic section of our
18 building. We waited for lab Investigator Oats (sp). I felt
19 it strange that the other parties involved --

20 MS. JOHNS: Your Honor, I object to what he felt.

21 THE COURT: Sustained. Listen to the questions.

22 BY MS. MCDUFFIE:

23 Q Please tell the jury what Mr. Watts said to you?

24 A Strange that all the other parties involved weren't
25 patted down, that his friends that attend the club are

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1 normally patted down for weapons. And during the fight
2 inside the club, the other side pulled out weapons.

3 Q Did he say anything else to you?

4 A No, ma'am.

5 Q Did you ask him any questions?

6 A No, ma'am.

7 Q What happened after that?

8 A At the time, major case prints were taken, but also
9 photographs.

10 Q And are you aware of whether or not Mr. Watts has a
11 nickname?

12 A Yes. Trouble T.

13 MS. JOHNS: Your Honor, I object to that. I object
14 to that. I need to be hear outside the presence of this
15 jury.

16 THE COURT: You all approach first.

17 (Off the record bench conference with counsel and the
18 Court.)

19 THE COURT: Ladies and gentlemen of the jury, I'm
20 going to excuse you to your jury room. We have to take up a
21 matter of law. I remind you not to discuss the case?
22 (Jury out at 3:19 p.m.)

23 THE COURT: All right, Ms. McDuffie, where are you
24 going?

25 MS. MCDUFFIE: Your Honor, I believe that prior

1 testimony elicited both on direct and cross examination from
2 the witness Jalicca Johnson that she said that T was not
3 Taurus Watts, however, she did make the statement to
4 Investigator McRae that T was Taurus Watts. That was
5 brought up during the testimony of Ms. Johnson. This
6 witness has independent knowledge or has see a tattoo on the
7 side of the defendant's arm that says, Trouble T, and I
8 would rely on State v. Day, which is cited at 341 SC 410,
9 which says that evidence concerning a defendants tattoo or
10 nickname is not prejudicial when it's used to prove
11 something such as identification.

12 MS. JOHNS: Your Honor, with regards to
13 identification of my client. There's nothing with regards
14 to the identification with Mr. Watts being at the scene of
15 the crime that he is referred to as T. First of all, that
16 implication, for example in previous cases is when somebody
17 can say the man had dread locks, shoulder length and he had
18 a tattoo on his arm that said T. That is not the case in
19 this situation.

20 THE COURT: Nobody is saying that somebody
21 identified him with a tattoo. What she is indicating or
22 what I understand her argument to be is that this witness
23 observed whatever he saw on Mr. Watts' body. She just wants
24 to make --

25 MS. JOHNS: And Your Honor I will object to that. I

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1 will object to that under 403. Your Honor it is highly
2 prejudicial, it's not probative. It is not proof who he is.
3 Lisa Johnson on this witness stand said that she has never
4 referred to Taurus Watts as T. She's call him by his name,
5 Taurus all her life. She's never called him by the nickname
6 T. This is something that the state is trying to establish
7 because they saw tattoos. And I'll tell you how they got
8 those tattoos, Your Honor, they got those tattoos from ABC
9 Bonding records, and once they established those bonding
10 records were present and they had other information about
11 this tattoo down there and then they went down there and
12 took photographs of it so they could make him be T. They
13 can't make him be T because he has a tattoos. They can't
14 make him T because of what one witness says he is. And Lisa
15 Johnson says he is not T, that he has never been known as T
16 to her. So there is nothing in this record that says that
17 his nickname is T, and I object to this information coming
18 in and I'm also asking that his answer as Trouble T be
19 stricken from the record because the jury heard it.

20 MS. MCDUFFIE: Your Honor, I believe that the
21 testimony was that she said, no, it was not T and then it
22 was also brought out that she had told Investigator McRae
23 that it was T. Your Honor, these --

24 MS. JOHNS: That's incorrect.

25 MS. MCDUFFIE: -- this information was not

1 obtained from --

2 THE COURT: Hold on.

3 MS. MCDUFFIE: -- through ABC Bonding, but rather
4 through this defendant's (sic) own observations and I can
5 show you a picture that was taken at the Sheriff's
6 Department when this officer was there.

7 THE COURT: Okay. When have you indicated the
8 picture was taken; was it the same day he turned himself in?

9 MS. MCDUFFIE: The same time he was fingerprinted
10 and pictures were also taken of it, Your Honor, of the
11 tattoos.

12 MS. JOHNS: Your Honor, they are trying to use this
13 nickname to identify my client as the man at the bar that
14 was hitting on Lisa Johnson, which she has denied. They
15 cannot use this information to further the identify of my
16 client.

17 THE COURT: I understand what you're saying on
18 that, I mean, one thing is for him to have an observation,
19 just generally, but if he has no way of connecting it up,
20 then that's the issue that she's indicating is prejudicial,
21 because then we're backdooring in this connection from a
22 witness who testified the way she testified.

23 MS. MCDUFFIE: And I believe the testimony was
24 also, Your Honor, that she did tell Mr. McRae was Taurus
25 Watts.

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1 MS. JOHNS: No --

2 THE COURT: Testimony from who, though, because on
3 the stand she then indicated that this T person was the
4 person in the club.

5 MS. MCDUFFIE: And she also indicated that she did
6 tell that to Investigator McRae.

7 THE COURT: So in other words, on one line of
8 questioning said it one way and on another line said it
9 another way?

10 MS. SHIPLEY: And I believe her testimony --

11 MS. JOHNS: No, Your Honor, I think she's arguing
12 this.

13 THE COURT: Okay. Go ahead.

14 MS. MCDUFFIE: Beg the Court's indulgence.

15 THE BAILIFF: May I approach Your Honor.

16 THE COURT: Go ahead and let them take a break, if
17 that's what you're going to ask me.

18 THE BAILIFF: Thank you.

19 MS. MCDUFFIE: I believe the testimony was that T
20 was Taurus Watts, but that was not the T she was -- in her
21 statement.

22 MS. JOHNS: No, Your Honor --

23 THE COURT: I know she said there was a T at the
24 club. Looking back at my notes. That the T that she meant
25 was the one who was at the club.

1 MS. JOHNS: Your Honor, she said the man at the
2 club who was hitting on her introduced himself with
3 initials, one of them being T. I asked her is that Taurus
4 Watts. No. Is Taurus Watts known to you as T? No. Has he
5 ever been know as T to you the whole time you've known him?
6 No..

7 THE COURT: Okay. Anything further.

8 MS. MCDUFFIE: Your Honor, we'll just cite State v.
9 Day at 341 SC 410.

10 THE COURT: Okay. And then, now I'm hearing what
11 Ms. Johns said about the testimony, do you ever recall Ms.
12 Johnson ever specifically saying --

13 MS. MCDUFFIE: My -- my memory of her testimony was
14 that she did tell Investigator McRae that Taurus was T. I
15 do not -- I cannot say whether she connected it.

16 THE COURT: Okay. Fair enough. I'm on my fifth
17 legal pad. Let's see -- checking off who's testifying. Do
18 you know when she testified?

19 MS. MCDUFFIE: She would have been our fifth
20 witness, Your Honor.

21 THE COURT: Okay. Would that have been before or
22 after the Mr. Dansby?

23 MS. MCDUFFIE: Way before.

24 THE COURT: Okay.

25 MS. MCDUFFIE: Two days before.

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1 THE COURT: After Stephanie Boston or Charlie
2 Bates?

3 MS. MCDUFFIE: After Stephanie Boston, after
4 Charlie Bates. Then it would have been James Lamont
5 Goodwine, and, I believe Lisa Johnson would have been next.

6 THE COURT: Okay. I have it. I see Goodwine.
7 Getting close. After Brian Johnson?

8 MS. MCDUFFIE: Before Brian Johnson.

9 THE COURT: Okay. Okay. I found it. Let me look.

10 Okay, she went a bar -- of course, the court reporters
11 notes would be the most accurate on her transcription, but
12 essentially what I wrote down was, Went to a bar and a man
13 made advances, quote T, short, five-six to seven, 140
14 pounds, short hair cut, white t-shirt. Dance floor. Some
15 guy came up to her. Motioned him not to talk to her.
16 Charlie said that was disrespectful and he threw a drink on
17 him. There isn't any more about T in the direct. Okay.
18 Apparently she had denied T as a reference to Taurus Watts,
19 and then on the cross it was indicated that, Don't remember
20 them, obviously referring to the police, asking her if
21 Taurus Watts was T. And then new person who asked her to
22 dance, quote T. Somebody she had know for 20 years. A
23 fight broke out between Charlie and T. T is the person who
24 make a move on her on the dance floor. So I don't know that
25 she was actually committed to an inference saying that T and

1 Taurus Watts are the same person.

2 MS. JOHNS: That stands to reason, Your Honor.
3 She's know him for 20 years, and I asked her if Taurus Watts
4 was known as T. Then it's, No.

5 THE COURT: Okay, and I've got further or close to
6 there before Mr. Swerling got up. T is not Taurus Watts and
7 saw at all, and then police officer's notes are wrong.

8 MS. JOHNS: Your Honor --

9 THE COURT: I don't know that state ever got a
10 commitment for T, and then it unraveled in cross-
11 examination. I don't know that she ever said, although the
12 notes might reflect something like that.

13 MS. MCDUFFIE: Your Honor, you would still have her
14 be able to bring up that law enforcement did in fact learn
15 his nickname was T based on their observation and not go any
16 further as to tattoo or anything of that nature, Your Honor.

17 THE COURT: Okay.

18 MS. JOHNS: I don't know how --

19 THE COURT: How'd they learn he is T based on
20 observations?

21 MS. MCDUFFIE: They observed a tattoo on the side
22 of his arm.

23 THE COURT: Okay. What does that mean to them,
24 like, somebody else has to --

25 MS. MCDUFFIE: Your Honor, the jury --

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1 THE COURT: You know what I'm saying, because if
2 she's saying T is somebody else under oath, then the
3 indication by Ms. Johns is how do you make this be the T and
4 she said something else.

5 MS. MCDUFFIE: We're not trying to make him be the
6 T, but that Taurus Watts also goes by T, Your Honor.

7 MS. JOHNS: That's not true, Your Honor. And I
8 don't think Deputy Gallegos knows Taurus well enough --

9 THE COURT: Is there anything -- when you say he
10 goes by that based on the tattoo?

11 MS. MCDUFFIE: Based on -- Yes, ma'am.

12 THE COURT: Nothing else?

13 MS. MCDUFFIE: No ma'am.

14 THE COURT: Okay. I'm going to look at the case.
15 Okay.

16 (Pause.)

17 THE BAILIFF: The smokers are back, Your Honor.

18 THE COURT: Okay. Thank you.

19 Okay, Ms. McDuffie, just so that I'm clear, before I
20 render my decision. You are tell me that the way this
21 witness came to know this information is at the time of Mr.
22 Watts's arrest and booking, that the picture was taken at
23 that time?

24 MS. MCDUFFIE: That's right, Your Honor.

25 THE COURT: Not in reference to somebody telling

1 him this information, to go look for this information. Just
2 by observation?

3 MS. MCDUFFIE: That's correct, Your Honor.

4 THE COURT: So there's nothing coming in about Lisa
5 Johnson through this witness or any reference of any other
6 person giving him any information?

7 MS. MCDUFFIE: No, ma'am.

8 THE COURT: All right. Ms. Johns, I understand
9 your argument. Is there anything else you want to add?

10 MS. JOHNS: No, Your Honor.

11 THE COURT: Okay. Based on the case of State v.
12 Day, I'm going to allow it in as a personal observation.

13 MS. JOHNS: Your Honor.

14 THE COURT: Yes.

15 MS. JOHNS: Let me just say this.

16 THE COURT: Okay.

17 MS. JOHNS: I would have thought the ruling would
18 have gone the other way, that's why I wasn't fighting.

19 THE COURT: Okay.

20 MS. JOHNS: But let me say this.

21 THE COURT: Okay.

22 MS. JOHNS: There is nothing from this case that
23 indicates that this tattoo is going to help the
24 investigators find who T is. So this information that they
25 received from observing Mr. Watts when he turned himself in,

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1 has nothing to do with this case. This tattoo Trouble T,
2 has nothing to do with this case. She said that they had
3 information that my client, Mr. Watts, was known as T. They
4 haven't brought anything into this courtroom to say that he
5 is known as T. The only thing they're bring into this
6 courtroom is speculation from this officer, because this
7 officer had received information, hearsay information from a
8 bonding company. When they list somebody who's out on bond,
9 they will list the identifying characteristics. This
10 officer is making this tattoo fit to this case, which is not
11 relevant. Lisa Johnson has already denied knowing Taurus
12 Watts as T. She has denied that it was T, the person she
13 spoke with at the club with the initials is Taurus Watts.
14 This information is prejudicial and it's irrelevant. It
15 does not prove that Taurus Watts is T and that's what
16 they're trying to do through this witness, and they did not
17 have anything to do with identifying Mr. Watts as T with
18 whom this investigation has relied upon. I will object
19 under those grounds, Your Honor. It's irrelevant and it's
20 prejudicial.

21 THE COURT: Okay. Do go into that issue about --
22 as I'm re-reading this case, the reason why the Court in
23 State v. Day didn't allow it in is because they tried to
24 characterize or impugn the person?

25 MS. MCDUFFIE: In that case the tattoo was, Outlaw,

1 and they tried to use outlaw as a --

2 THE COURT: Exactly.

3 MS. MCDUFFIE: And that is not at all what we are
4 trying to do here. Your Honor, the only question I had
5 asked this officer and the only question I will ask this
6 officer is, Based on his personal knowledge or observations,
7 does he know the nickname of Mr. Watts. That's the extent
8 of the questioning, Your Honor. I will not go into trying to
9 impugn this defendant's character or --

10 THE COURT: How will he know the nickname of him?

11 MS. MCDUFFIE: Your Honor, because he observed from
12 his observation of this defendant.

13 THE COURT: But how do we know that's a nickname?
14 I mean, that could be a child's name. And there's reasons
15 why people have tattoos. Just trying to take that leap, I'm
16 a little concerned there. I'm saying -- you're saying the
17 word, nickname, but --

18 MS. MCDUFFIE: Your Honor, there was also other
19 indications in their investigations that this defendant goes
20 by the nickname of T.

21 THE COURT: But that's what -- you were telling me
22 you were only trying to get it in under personal observation
23 and not bring it in under any other witnesses?

24 MS. MCDUFFIE: That's correct, Your Honor.

25 THE COURT: But --

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1 MS. MCDUFFIE: This officer, through his
2 investigation learned that Taurus was also known by T.
3 However, Your Honor, that information was promulgated by
4 when he saw the tattoo on this defendant. He's not trying
5 to say what anyone else told him or anything else other than
6 his personal observation that that is the defendant's
7 nickname.

8 THE COURT: Okay. Well, put that against the case
9 of State v. Day in which particularly where it says it's not
10 prejudicial when used to prove something at issue in a trial
11 such as an identification of a defendant.

12 MS. MCDUFFIE: Your Honor, there has been multiple
13 -- I mean, lies have crossed on whether or not this
14 defendant's nickname is T. Lisa Johnson said yes and then
15 no and then she doesn't remember if she told that to law
16 enforcement or not, Your Honor.

17 THE COURT: Okay. But do we have it in evidence
18 right now that she told that to law enforcement at some
19 point in time. You see what I'm saying, because using this
20 witness to kind of corroborate some testimony, and when I
21 say testimony, sometimes you can get an answer on direct,
22 and then you can get a different answer on cross, but it's
23 still testimony, and the jury has to decide who to believe.
24 I'm indicating right now whether we have some testimony to
25 tie Taurus Watts to T. Because Trouble T, just as an

1 identifying mark, I can't allow the link to be made that
2 it's a nickname, because people put their children's names
3 on their bodies, and then they have some experience in their
4 life and that's the characterization of what the tattoo is.
5 So you know, it's just stuff.

6 MS. JOHNS: Your Honor, here's my problem, too. I
7 can't, under the Sixth Amendment, cross-examine or have a
8 right to confront anybody from this case so far with regard
9 to whether or not Taurus Watts's nickname is T. It's just
10 something that they've heard from the streets. There's no
11 corroboration from any witness in this case and I know Mr.
12 Gallegos does not hang out with Taurus Watts, therefore he
13 would not know. So this testimony with regard to the
14 Trouble T tattoo is taken fully out of context with regard
15 to the observation to Mr. Watts tattoo at the station, and
16 my right to confront what they're trying to prove is
17 definitely barred, because I don't have anybody that I can
18 confront anybody about.

19 MS. MCDUFFIE: Your Honor, that argument, I believe
20 that tattoos and things of nature are not testimony. So
21 there are no Sixth Amendment issues whatsoever in terms of

22 --

23 THE COURT: Right. Well, you understand what I'm
24 saying. The -- I understand about for identification, so
25 tell me how this assists it the identification, because

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1 that's what this case is talking about. I understood when
2 you said general, personal observation, but when linked to
3 nickname who gets to characterize it as a nickname, because
4 we don't know that that's a nickname without some testimony
5 on that issue. Who gets to characterize that?

6 MS. MCDUFFIE: Your Honor --

7 THE COURT: It's an observation. No doubt. It's
8 no different in saying height and weight in terms of
9 observation, but when we're going further to say that is the
10 nickname; who gets to say that?

11 MS. MCDUFFIE: I think that is for the jury -- I
12 think if this witness can testify that he observed that this
13 defendant characterized himself with this and whatever that
14 --

15 THE COURT: You can't say characterized. You can
16 say saw on body, if I let it in. That's the most he can
17 say. It can't be any judgments or opinions or conclusions
18 on the issue, if I let it in.

19 MS. MCDUFFIE: Your Honor, I believe the testimony
20 or the question was, do you have any knowledge of this
21 defendant's nickname and he said Trouble T.

22 THE COURT: But that nickname wouldn't be proper
23 because we don't know that it's a nickname. I understand
24 where you're trying to go, but we don't know that it's a
25 nickname.

1 MS. MCDUFFIE: Your Honor, it would also be an
2 alias that's listed on this defendant's rap sheet. There
3 are many other areas that law enforcement has disposal to. T
4 is one of the aliases listed on this defendant's rap sheet.

5 THE COURT: Okay. Go back to earlier when you
6 talked about came into some knowledge during the
7 investigation, because none of that's been brought out.

8 MS. MCDUFFIE: Your Honor, Lisa Johnson told
9 Investigator McRae that Taurus Watts was T. On the stand,
10 she said -- I believe her testimony was she did not recall
11 telling Investigator McRae --

12 THE COURT: Okay, but then you had McRae up here
13 and we didn't even go into Taurus Watts and T.

14 MS. MCDUFFIE: That's correct, Your Honor.

15 THE COURT: Okay.

16 MS. JOHNS: Your Honor, here's my problem. I'm not
17 trying to confront the tattoo, I object to the tattoo coming
18 in. I'm not saying that the right to confrontation of the
19 tattoo, I'm saying I have the right to confront anybody who
20 testified in this case that says my client's nickname on the
21 streets is T, because there's not been anybody. Lisa
22 Johnson totally repudates it and says, No, I've never know him
23 as T. I've always know him as Taurus. So I believe, Your
24 Honor, the nickname issue is settled. The nickname issue is
25 settled. It's a characterization that has not been proven

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1 by anybody in this court so far, and I cannot confront
2 somebody that's going to come in here and say Mr. Watts's
3 nickname is T.

4 MS. MCDUFFIE: Your Honor, she --

5 MS. JOHNS: I'm sorry. I was not finished. Lisa
6 Johnson came in here and said --

7 THE COURT: I know her testimony. I wrote it down.

8 MS. JOHNS: So that's my issue with the nickname.
9 It's a characterization as been basically Lisa Johnson said,
10 no, I did not call him T, and the investigators think that I
11 called him T they're wrong. Basically, that's what the
12 testimony was. Now, in regard to the tattoo, the tattoo is
13 not an identifying characteristic, it's not a characteristic
14 feature --

15 THE COURT: Well, we can't use characteristic under
16 this case anyway.

17 MS. JOHNS: Right. When Ricky Jacobs was
18 identifying Taurus Watts, he does not say, by the way he has
19 a tattoo on him that says Trouble T. So the tattoo itself
20 -- if he had Outlaw written around his neck and somebody
21 identified him through that tattoo then that would be the
22 issue here, and that is not the issue here.

23 THE COURT: Okay. Do we have any information from
24 this witness that he followed the line of who T is?

25 MS. MCDUFFIE: Your Honor, this witness has

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1 information was told to him during the investigation that
2 Taurus Watts was T. I mean --

3 THE COURT: I know, but does he act on it. I mean,
4 we've got this witness on the stand. Not McRae, not CSI,
5 not somebody else. We've got this witness on the stand.

6 MS. MCDUFFIE: Your Honor, I believe acting on it
7 was the arrest. I mean, I don't know what you mean by acted
8 on it.

9 THE COURT: In other words, there's a bunch of
10 other information in the file and even McRae indicates he
11 relied on some stuff and didn't rely on other stuff. He
12 follow up on some stuff and didn't follow up on other stuff.
13 Because they have to figure out what they consider the leads
14 and that's person to person. So just to say that there is
15 some generic information in a file. We've got this witness
16 on the stand right now.

17 MS. MCDUFFIE: I believe, Your Honor, that this
18 witness would have relied on it in corroborating Lisa
19 Johnson when she told McRae that T was Taurus.

20 THE COURT: But we don't know.

21 MS. MCDUFFIE: Well, I haven't posed the question
22 to the witness --

23 THE COURT: Right.

24 MS. MCDUFFIE: -- I don't want to speculate as to
25 what he'd say.

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1 THE COURT: Okay --

2 MS. JOHNS: Your Honor, she did pose the question
3 to the witness and she asked this witness what his nickname
4 was and he said, Trouble T. And that's not his nickname.
5 And they don't have anybody in here that can say it is.
6 They've already had Lisa Johnson up here. She says no.

7 MS. MCDUFFIE: Your Honor, the way this witness --
8 I mean, acted on it. I mean, he photographed the tattoos as
9 part of his investigation in the case.

10 THE COURT: I didn't hear. Sorry.

11 MS. MCDUFFIE: He had the lab make a photograph
12 just to memorialize it.

13 THE COURT: Okay, and this was based on your review
14 of the file in preparation of the case?

15 MS. MCDUFFIE: Correct.

16 THE COURT: Okay.

17 MS. JOHNS: Your Honor, the nickname prejudices my
18 client and it has not been shown that is his nickname. And
19 the tattoo prejudices my client, because the tattoo itself
20 is not an identifying feature for the identification of my
21 client, and Ricky Jacobs doesn't come in and say, by the
22 way, Taurus has a tattoo that says Trouble T. That's his
23 nickname. Ricky Jacobs took the stand and he didn't say
24 Taurus Watts's nickname was T. Brian Johnson too the stand
25 and he didn't say his nickname was T. Lisa Johnson took the

1 stand and she didn't say his nickname was T. So they're
2 taking this Trouble T tattoo out of context.

3 THE COURT: Do you have anything else?

4 MS. MCDUFFIE: Your Honor --

5 THE COURT: I wasn't suggesting, I just didn't
6 know.

7 MS. MCDUFFIE: We just say that clearly it ended
8 that issue whether or not we think it's T, and all we're
9 asking the officer to do it testify as to his observation.

10 MS. JOHNS: An observation -- Your Honor, this
11 tattoo cannot be taken out of context and make this officer
12 say that his nickname was Trouble T unless he has
13 independent evidence of that and they don't.

14 MS. MCDUFFIE: It's his observation.

15 THE COURT: I totally understand the observation
16 argument. Where I'm grappling over this in my mind is
17 whether or not it then makes the leap for an identification
18 of a nickname without some other person identifying him as
19 such, because tattoos have many reason for why they're there
20 and who they are. In many cases it has nothing to do with
21 that person, it's an experience in life, as I indicated or
22 who the name of your child or who you think your mother is.
23 I mean all kinds of stuff. It's clear under the case that
24 it can be used for identification and so I have to think
25 through whether it would be used to identify him.

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1 You all need to be at ease for a moment.

2 (Court in recess for short break.)

3 (Court in session after short break.)

4 THE COURT: All right. As State v. Day can be used
5 for purposes of identification, after extensive listening to
6 both sides of the argument it does not appear to be used for
7 purposes of identification. And so while it could be
8 relevant towards identification it doesn't seem to be used
9 that way. And I am going to find that it's prejudicial at
10 this point, because the other part of that that I just
11 thought about as I kind of took a walk is the fact that this
12 gentleman turned himself in. So it could have been a
13 different situation if the officers were looking for him and
14 then this was an identifying characteristic. So we just
15 never get to that this is an ID, and I certainly can have
16 the officer call it a nickname without some reference that
17 he knows that to be the case, because a tattoo in and of
18 itself is not a nickname. And I don't have any information
19 at this point that this officer relied on any T as part of
20 his investigation. So that would be the Court's ruling.

21 MS. JOHNS: Thank Your Honor.

22 MS. MCDUFFIE: Your Honor, we would ask to reserve
23 the right to -- that if the defense does put up a case and
24 it does become relevant --

25 THE COURT: Oh, absolutely. Jurors please.

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1 MS. JOHNS: Your Honor, may we approach?

2 THE COURT: Yes.

3 (Off the record bench conference with counsel and the
4 Court.)

5 THE BAILIFF: Jury's all present, Your Honor.

6 (Jury in at 4:03 p.m.)

7 THE COURT: All right. Jurors, you are to -- I'm
8 striking from the record the last question and the last
9 answer and is not to be considered by you in any manner.

10 Oh, go ahead.

11 GILBERT GALLEGOS - CONTINUED DIRECT EXAMINATION

12 BY MS. MCDUFFIE:

13 Q Mr. Gallegos, you came in contact with Taurus Watts on
14 July 3, 2007?

15 A Yes, ma'am.

16 Q And please tell the jury what he told you?

17 A He found it strange --

18 MS. JOHNS: Your Honor, that is cumulative. It's
19 already been asked and answered.

20 MS. MCDUFFIE: Your Honor, I'll just re --

21 THE COURT: Let's go ahead. We've been out on
22 break for a little bit. I'll allow you to refresh.

23 A Found it strange that the other parties were all patted
24 down when they came in. That his friends are normally
25 patted down for weapons when they come to the club, and

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1 during the altercation inside the club the other side pulled
2 out weapons.

3 BY MS. MCDUFFIE:

4 Q And the individual who made that statement to you on
5 July 3, 2007, do you see him in the courtroom today?

6 A Yes, ma'am.

7 Q And please point him out to the jury?

8 A (Witness indicates.)

9 Q And what's he wearing?

10 A A white shirt with a red tie.

11 MS. MCDUFFIE: Your Honor, please let the record
12 reflect he has identified the defendant Taurus Watts.

13 THE COURT: So reflected.

14 MS. MCDUFFIE: Nothing further for this witness,
15 Your Honor.

16 THE COURT: Okay.

17 MR. SWERLING: I just have a couple of questions.

18 THE COURT: Sure.

19 GILBERT GALLEGOS - CROSS EXAMINATION

20 BY MR. SWERLING:

21 Q My understanding is that you did not see anybody at the
22 vehicle, but are you saying that nobody ever entered the
23 vehicle before it got down to the Sheriff's Department?

24 A At the time we were taking care of Mr. Wray and getting
25 everything situated and I never saw anybody go inside the

1 vehicle.

2 Q But somebody could have at some other time?

3 A At some other time they could have.

4 Q And you actually went over to where the Isuzu was, when
5 it had been stopped with Landrum and Greene in it?

6 A Yes, sir.

7 Q Okay. And my understanding is Mr. Landrum, the fellow
8 with the dreads was just -- he was pretty loud and
9 boisterous and pretty agitated about being confronted by the
10 officers from Richland County concerning the events that
11 happened out there on the road, correct?

12 A Yes, sir.

13 Q And you even made a note about that?

14 A Yes, sir.

15 Q Did you try to pursue where the gun was that they used
16 to fire the weapon?

17 A No, sir.

18 Q But other officers were doing that; is that correct?

19 A Yes, sir.

20 Q And at the Richland County Sheriff's Department you
21 were the one that actually interviewed Greene or tried to
22 interview him.

23 A Yes, sir.

24 Q He was the driver? No, he was the passenger.

25 A Passenger, right.

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1 Q And he wouldn't cooperate with you at all either; isn't
2 that true?

3 A He did an initial advise of rights and wrote a
4 statement.

5 Q Did either one of them, whether Landrum on the road or
6 Greene down at the Sheriff's Department, ever admit that
7 they even had a weapon?

8 A No, sir.

9 Q Did either one of them admit that they had a weapon in
10 the car at any time?

11 A I -- I never asked them if they had a weapon inside the
12 vehicle.

13 Q Well, obviously, y'all were curious about where the
14 weapon was because there were shells in the car and it was
15 reported that somebody had fired from that car; correct?

16 A Yes.

17 Q So obviously you didn't find a pistol in the car?

18 A We didn't find a pistol in the car.

19 Q And didn't find a pistol on the road, either?

20 A That's why we had deputies out looking for the pistol.

21 Q So whatever pistol was used in that connection with
22 them firing the shots, those 9 millimeter bullets that were
23 in the car, nobody knows where it was?

24 A The pistol?

25 Q Yes?

1 A No, sir.

2 MR. SWERLING: That's all I have.

3 MS. JOHNS: No questions, Your Honor.

4 THE COURT: Okay. Sir, you may step down.

5 MS. MCDUFFIE: Your Honor, at this time, the State
6 of South Carolina rests.

7 THE COURT: Okay.

8 Ladies and gentlemen of the jury, the state has
9 concluded it's case in this matter, and as I indicated to
10 you early in the trial this will be a time for me to take up
11 some matters of law. Also take the opportunity to advise
12 the defendants of his rights so that they can make a
13 determination as to whether they wish to put up a case.

14 I'm going to ask you to go to your jury room --
15 actually because you've rested. And I'll have to do all
16 those things, I think I'm going to go ahead and conclude for
17 today unless there's an objection. Okay. And I'll go ahead
18 deal with all the matters of law and we'll continue here
19 working, and I'll have you report back to your jury room at
20 9:30 in the morning. Thank you all and have a good evening.

21 MR. SWERLING: May we approach -- before they go,
22 can I just ask something?

23 THE COURT: Okay. Just to make sure that we can,
24 as best as I can, we'll just ask you to come back at 10:00
25 and that way we can -- because I'm going to still stay here

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1 and work with them, but just in case any last minute things
2 come up in the morning, to the extend that we'll do closing
3 arguments and the defense decides not to put up a case, that
4 gives the parties a chance to set up and we can go right
5 into the arguments. I remind you not to discuss the case
6 and I thank you for upholding your duties as jurors. Have a
7 great evening.

8 (Jury out at 4:10 p.m.)

9 THE COURT: Okay. Do we have any motions at this
10 time?

11 MR. SWERLING: Judge, on behalf of Mr. Wray, we ask
12 Your Honor to direct a verdict of not guilty to the charge
13 of murder. Taking all the evidence in the light most
14 favorable to the state, which the Court is required to do in
15 this situation, we submit that there's not sufficient
16 evidence by which a jury could find under reasonable doubt
17 that Mr. Wray was guilty, either as a principle in the case
18 or as a (inaudible) under the theory of accomplice
19 liability.

20 The evidence in the case has been at best, I would
21 submit to the Court, muddled as to actually was the shooter
22 in the case, between Mr. Wray and Mr. Watts. Even before
23 you get there would -- there is enough evidence in the case
24 to at least it raises a doubt as to which car was actually
25 firing the weapon, which car fired into the crowd.

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1 Judge, as you recall 911 -- oh, I'm sorry, dispatch
2 logs reflect that a square H -- is that tan -- white -- two-
3 tone car was identified in the dispatch logs, and then there
4 was also the white SUV -- whatever -- I'm sorry -- Nissan
5 Pathfinder were the only two vehicles that were identified
6 in that dispatch. In fact, there's a Suburban that's been
7 in question here that Mr. Wray and Mr. Watts were in was
8 never even identified as a suspect vehicle in the dispatches
9 that we had. In addition to that, Mr. Wray was never
10 actually put in the club by anybody except Mr. Jacobs and
11 the only information that we have that he was actually
12 approaching the club, Mr. Jacobs, I think has been
13 sufficiently impeached as to what he saw and what he
14 observed. We have all sorts of conflicting testimony about
15 what he told Mr. McRae at the scene concerning the Isuzu and
16 concerning what happened with the Suburban. We also have a
17 lot of conflicting testimony as to the shooting and where
18 the parties were. We also have the situation where the
19 majority of the shells were 9 millimeter Winchester Luger
20 bullets. Nothing like that was found in any search of Mr.
21 Wray or when they searched the vehicle or searched his
22 house. There was nothing in the vehicle or at his house or
23 no his person that indicated he ever had any 9 millimeter
24 shells. In fact, the only 9 millimeter shells in the case at
25 all were in the Isuzu, which is one of the vehicles that was

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1 identified and was stopped by officers from the Sheriff's
2 Department. It had also fired a weapon in the case.

3 So it would be our position based on that that there's
4 insufficient evidence to submit the case to the jury.

5 In addition when we were getting ready to start this
6 case on May 18th, we did not have the testimony of Brian
7 Watson or Rashonda Simpson or Jarrell Dansby, but I submit,
8 Your Honor, based on Mr. McRae's own testimony, he wanted
9 Mr. Watson, when he took the statement from Mr. Watson he
10 took a statement from Rashonda Simpson and Jarrell Dansby to
11 corroborate what Mr. Watson was saying as to belief or
12 believability of what Mr. Watson was saying. And my
13 recollection from the testimony is that the three of them
14 gave completely contradicting testimony one with the other.
15 We have Mr. Watson saying all three of them disposing of the
16 gun. You have Ms. Simpson saying that her husband Dansby
17 and Watson went to dispose of the gun. And we have Mr.
18 Dansby saying that he didn't go, had no knowledge at all
19 about what happened to the gun, that Mr. Watson took it.
20 There's a lot of discrepancies as to what happened in the
21 back yard, whose house it took place at, whether it was
22 hammered or not. So submit that is not credible evidence,
23 either.

24 So I'd ask Your Honor to consider a directed verdict in
25 the case on behalf of Mr. Wray.

1 THE COURT: Okay.

2 MS. JOHNS: Thank Your Honor. I would join in the
3 motion for directed verdict along with Mr. Swerling for his
4 client, Mr. Wray. I would move for a directed verdict on
5 behalf of my client, Mr. Watts for generally the same
6 reasons, Your Honor. It being, however, a little bit,
7 slightly different in that Mr. Watts was not driving the
8 vehicle. There is no connection that has been made that Mr.
9 Watts was with Mr. Wray that night and it's just pure
10 speculation from the standpoint of the fact in this record,
11 Your Honor. And not to belabor everything Mr. Swerling's
12 already presented to the Court, Your Honor, I'd would ask
13 that you find in the light most favorable to the state, that
14 the state has not met it's burden as to Mr. Watts, and ask
15 that the Court direct a verdict in his favor.

16 THE COURT: Thank you.

17 MS. SHIPLEY: Do you wish a response, Your Honor?

18 THE COURT: Yes.

19 MS. SHIPLEY: Your Honor, under the directed
20 verdict burden, the Court is to view the light of the
21 evidence and view in favor of the state. We have direct
22 evidence in this case from an eyewitness. All the matters
23 that were raised by Mr. Swerling deal with credibility,
24 which is clearly a jury issue. That the direct evidence is
25 that Taurus Watts was the one with the Uzi type firearm and

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1 that he was seen getting into the passenger side. He is
2 know to the witness for multiple years, I believe 19 years.
3 We then also have him identifying Tremaine Wray in a
4 photographic lineup. He knew of him, had seen him before at
5 the club, however he was not exactly sure about his name.
6 He testified that because of his club he gets to know faces
7 and sometimes knows names or not. However, the testimony of
8 McRae that he continued to call about further updates and he
9 was able to get ultimately the name of Tremaine Wray was
10 provided, a photographic lineup was developed and the
11 witness positively identified both defendants without
12 hesitation.

13 Under the theory of hand of one, hand of all, they are
14 both guilty of murder, whether the defendant Watts handed
15 the gun to Tremaine Wray and had him fire where the gunshot
16 residue is or whether he leaned over himself while Mr. Wray
17 was busy driving the vehicle. Regardless they were aiding
18 and abetting one another. Either Wray was driving while the
19 shots were fired or Watts provided him the firearm to
20 conclude or to commit the act and spray the parking lot with
21 bullets. The testimony has been consistent that only one
22 shot was fired from the Rodeo up in the air, and multiple
23 shots were fired out of the tan Suburban. Gunshot residue
24 evidence corroborates that and supports that. As to the
25 shell casing found at the scene and the projectiles, it's

1 clear that if the Rodeo only shot one time that it's not
2 responsible for the shot that killed Mr. Demuria Johnson
3 because three projectiles -- the gun had been fired at least
4 three times for Mr. Demuria Johnson's bullet, the gun, in
5 other words, that killed Mr. Demuria Johnson was fired at
6 least three times, and that is consistent with the evidence
7 at the crime scene. There were no other shell casings
8 belonging to any other type of firearm found at the scene.
9 And based on that, Your Honor, the fact that Ricky -- excuse
10 me, Brian Watson came forward at the last time this case was
11 called to trial. Obviously, that was thoroughly
12 investigated by law enforcement. Judge Manning granted a
13 motion by the state for continuance based on that
14 information, and that is also corroborated. He was not just
15 taken for his word, Your Honor, that he got this gun from
16 Jarrell who got it from Tremaine. He was corroborated as to
17 the guts of the story, that Tremaine brought a gun to
18 Jarrell, Jarrell called Watson over to get rid of it. And
19 when I asked the witness would Watson be telling the truth
20 or a lie if he testified he got rid of the gun, the witness
21 answered it would be the truth. So that also is a jury
22 question, Your Honor. And we would respectfully request
23 that you deny the motion made by the defendants.

24 THE COURT: Okay. At this juncture of the trial
25 the Court is just concerned as to whether or not there is

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1 any direct or circumstantial evidence reasonable tending to
2 prove the guilt of the accused. It is not for the Court to
3 weigh any credibility issues or any conflicting evidence,
4 just whether or not the state has put forth some evidence on
5 each of the elements in the case, and I believe the state
6 has, and respectfully, the motions for directed verdict are
7 denied.

8 Now, we will proceed to whether or not the defense
9 wishes to put up a case. I'm going to ask for Mr. Tremaine
10 Wray to stand and also for Mr. Taurus Watts to stand. I'm
11 going to ask the court reporter to swear you in. I mean,
12 excuse me, the court clerk.

13 (WHEREUPON, Tremaine Wray, was
14 sworn to tell the truth.)

15 (WHEREUPON, Taurus Watts, was sworn
16 to tell the truth.)

17 THE COURT: Okay. Gentlemen, keep standing,
18 please. I'm going to explain to you your rights with
19 respect to the trial, and just so that the record is clear,
20 I'm going to ask you questions. I'm going to ask Mr. Wray
21 to speak first and then Mr. Watts to speak second with
22 respect to answering my questions.

23 Both of you have been here throughout the trial; is
24 that correct?

25 MR. WRAY: Yes, ma'am.

1 MR. WATTS: Yes.

2 THE COURT: And you've had the opportunity to see
3 the state put forward their case as well as your counsel put
4 forward or examine the witnesses and other evidence with
5 respect to this case; is that correct?

6 MR. WRAY: Yes, ma'am.

7 MR. WATTS; Yes.

8 THE COURT: Okay. We are now at the point in the
9 trial where the state has rested, which means they have
10 concluded their case and they do not intend to put forth any
11 further evidence in their case in chief.

12 So now it is up to you all with respect to your
13 decision as to whether you wish to testify and/or even put
14 up any evidence at this point in the trial; do you
15 understand that?

16 MR. WRAY: Yes, ma'am.

17 MR. WATTS: Yes.

18 THE COURT: So now the Court wishes to advise you
19 of your rights with respect to you putting up a case, as
20 well as for you testifying. Our Fifth Amendment essentially
21 says that no person shall be compelled in any criminal case
22 to be a witness against himself. So naturally the state
23 cannot require you to testify against yourself in their case
24 in chief; do you understand that?

25 MR. WRAY: Yes, ma'am.

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1 MR. WATTS: Yes.

2 THE COURT: At this point, it is up to you as to
3 whether or not you wish to testify or put up a case. That
4 is your right to not testify against yourself, so it is your
5 right to determine if you wish to put up a case at all. The
6 jurors will be instructed that it is always the state's
7 burden of proof beyond a reasonable doubt that they have to
8 prove that you have, in fact, committed the offenses. In
9 that regard you are able to rely on whether or not they've
10 met that burden of proof at this trial; do you understand
11 that?

12 MR. WRAY: Yes, ma'am.

13 MR. WATTS: Yes.

14 THE COURT: So you don't have to put up any
15 evidence, and, in fact, the jury will be told that you do
16 not have to testify and they can not use against you the
17 fact that you did not testify at all. It cannot be
18 considered by them in any way during their deliberations
19 during this case; do you understand that?

20 MR. WRAY: Yes, ma'am.

21 MR. WATTS: Yes.

22 THE COURT: And that additionally they will be told
23 that you are presumed innocent until proven guilty by the
24 state by them submitting proof beyond a reasonable doubt; do
25 you understand that?

1 MR. WRAY: Yes, ma'am.

2 MR. WATTS: Yes.

3 THE COURT: Okay. If you should decide to testify,
4 then you'll be subject to the same mannerisms as any other
5 witness in the case; do you understand that?

6 MR. WRAY: Yes, ma'am.

7 MR. WATTS: Yes.

8 THE COURT: More specifically, just as you heard
9 witnesses put up by the state, and your attorneys have had
10 the opportunity to cross-examine these witnesses, they would
11 cross examine them on whether or not they had any prior
12 criminal records, whether or not there was any bias or any
13 type of impeachable material to impugn their credibility, to
14 essentially try to make the jury question whether or not
15 they're believable. Just like they did that with those
16 witnesses, meaning your lawyers, the state has the
17 opportunity to do that with respect to you if you testify,
18 as well as your witnesses, and then the same way try to
19 object to any evidence or anything that you would try to put
20 in; do you understand that?

21 MR. WRAY: Yes, ma'am.

22 MR. WATTS: Yes.

23 THE COURT: So you are considered just like any
24 other witness in the case if you should testify just as you
25 have observed other witnesses testify in the case with

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1 respect to how you should be handled on the stand; do you
2 understand that?

3 MR. WRAY: Yes, ma'am.

4 MR. WATTS: Yes.

5 THE COURT: Have you had the opportunity to discuss
6 with your attorney decisions and strategies in the case with
7 respect to whether or not -- how you wish to proceed.

8 MR. WRAY: Yes, ma'am.

9 MR. WATTS: Yes.

10 THE COURT: I'm not asking for your decision as you
11 will have the opportunity to make that decision overnight,
12 because we have already excused the jury, and even if you
13 put up a case it won't happen until tomorrow. So I'm not
14 asking you to make that decision because your attorneys will
15 have to meet with you and strategize as to whether or not
16 they wish to, but I just want to make sure that before now
17 you've had the opportunity to discuss some of those issues
18 with your attorney?

19 MR. WRAY: Yes, ma'am.

20 MR. WATTS: Yes.

21 THE COURT: Have you understood all of the Court's
22 discussions with you at this moment?

23 MR. WRAY: Yes, ma'am.

24 MR. WATTS: Yes.

25 THE COURT: Do you have any questions of me at this

1 moment about your rights?

2 MR. WRAY: No, ma'am.

3 MR. WATTS: No.

4 THE COURT: And that you do understand, again, that
5 you are presumed innocent until proven guilty. State has to
6 prove you guilty beyond a reasonable doubt, but if you do
7 take the stand, it is right and privilege to do so, and you
8 will be treated like any other witnesses with respect to the
9 state questioning your credibility, as well as questioning
10 the credibility of any other witnesses that you might put
11 up?

12 MR. WRAY: Yes, ma'am.

13 MR. WATTS: Yes.

14 THE COURT: And I will remind you that the jury
15 will be told, and it's in the jury charge, and your lawyers,
16 I'm sure will go over that with you if they hadn't already,
17 that the jury will be told that you do not have to testify,
18 because that's your Fifth Amendment right to not testify.
19 The jury will also be told that they cannot consider, at
20 all, the fact that you did not testify. But, again, it's
21 your case, it's your ability to see how you wish to proceed.
22 I just have to inform you have a right to not do so, and
23 then it will be your election to do so if you wanted to
24 chose to do so; do you understand that?

25 MR. WRAY: Yes, ma'am.

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1 MR. WATTS: Yes.

2 THE COURT: Is there anything that I've said that
3 you don't understand and that you wish me to go back over?

4 MR. WRAY: No, ma'am.

5 MR. WATTS: No.

6 THE COURT: Okay. Do you have any questions of me
7 at this time?

8 MR. WRAY: No, ma'am.

9 MR. WATTS: No.

10 THE COURT: Okay. I'm going to allow you to speak
11 with your attorneys. Consider yourself advised of your
12 right to testify or not testify or to not put up a case.

13 Ms. Johns?

14 MS. JOHNS: Yes, ma'am. I'm not sure whether you
15 covered the length of time and whether or not Mr. Watts had
16 enough time to consult with me in regards to his case.

17 THE COURT: Sure.

18 MS. JOHNS: And I think the Court should cover
19 that.

20 THE COURT: Sure. Okay.

21 Obviously, this case was set for trial in May, and now
22 it's been reset for trail due to circumstances that have
23 come out in the case. You've also been represented by your
24 respective attorneys for some time, but I want to make sure
25 you feel like you've had enough time to meet with your

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1 attorneys with respect to discussing these rights and other
2 issues with respect to this case. Do you feel like you
3 have, Mr. Wray?

4 MR. WRAY: Yes, ma'am.

5 THE COURT: Do you feel like you have, Mr. Watts?

6 MR. WATTS: Yes.

7 THE COURT: And do you feel like you've had the
8 ability to discuss and have enough time again to discuss any
9 issues that pertain to this case? Mr. Wray?

10 MR. WRAY: Yes, ma'am.

11 THE COURT: Mr. Watts?

12 MR. WATTS: Yes.

13 THE COURT: Okay. And then I'm going to give you,
14 again, overnight to discuss any issues, because I'm not
15 going to ask you for your answer at this point as to whether
16 or not you wish to put up a case. If you do not wish to put
17 up a case I'm instructing all parties to be ready for
18 closing arguments in the morning. If you decide you want to
19 put up a case, then we will be here and ready to receive
20 your case. The record will reflect that we started last
21 Monday in pre-trial. We're not into Tuesday of the next
22 week. And the court is available for however long it takes
23 because you all have exercised your constitutional right to
24 have a trial. The Court will accommodate you with respect
25 to what -- you know, those rights, and as long as I find the

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1 evidence is admissible then we'll deal with it in that
2 regard. And so you have the opportunity to put up a case.
3 I will tell you this, to the extent that you do put up a
4 case the state then had the opportunity to reply to that
5 case, as well. So that's just one of the considerations
6 with respect to your discussions with your attorney tonight.
7 Okay. So again is there anything that you haven't understood
8 that I've said?

9 MR. WRAY: No, ma'am.

10 MR. WATTS: No.

11 THE COURT: Is there anything you wish to ask me at
12 this time?

13 MR. WRAY: No, ma'am.

14 MR. WATTS: No.

15 THE COURT: Okay. So I'm going to leave you back
16 to your attorneys to further discuss this issue. And I'll
17 hear your answer in the morning. Thank you.

18 MS. SHIPLEY: Thank Your Honor.

19 THE COURT: Oh, jury charge.

20 MS. MCDUFFIE: Yes, ma'am, Your Honor.

21 THE COURT: Okay. With respect to the jury
22 charges, we would respectfully ask that Your Honor charge
23 the jury on note taking, just as you did earlier in the
24 week, Your Honor.

25 THE COURT: On what?

1 MS. MCDUFFIE: On note taking, just as you did
2 earlier in the week.

3 THE COURT: Okay.

4 MS. MCDUFFIE: And we would also ask for a charge
5 on transferred intent.

6 THE COURT: Okay.

7 MS. MCDUFFIE: Your Honor, the only other objection
8 we see at this point, I believe it's page -- the end of your
9 charge on Page 18 and also Page 22, the charge makes the
10 statement: You are required to find the defendant -- you
11 know, if the state hadn't proven -- you're required to find
12 the defendant not guilty. We also ask that if you find that
13 the state has proven beyond a reasonable doubt. You know
14 just add the reciprocal to Page 18, Your Honor.

15 THE COURT: Okay. I will do that with respect to
16 Page 18 and 22. I'll also deal with the note taking. I'm
17 sure there's no objection and then defense, do you have any
18 objection to transferred intent?

19 MR. SWERLING: Well, Judge I'm trying -- I mean,
20 the theory of the case was either the person was a principle
21 shooter or he's guilty of accomplice liability, so what
22 would be the basis for the transferred intent charge?

23 MS. MCDUFFIE: Your Honor, the specific intent --
24 I'm not speaking in terms of transferred intent in terms of
25 either of the defendant, rather in terms of the victim that

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1 it didn't have to be the specific intent to kill the victim,
2 rather that -- because of their actions -- if they were
3 shooting at Charlie Bates and hit this victim, they did not
4 have to have the specific intent to kill this victim.

5 MR. SWERLING: You have to have -- there has to be
6 proof. Transferred intent does not apply to a situation
7 where someone is shot in that situation. Transferred intent
8 is a principle that would if evidence I intended to shoot A,
9 but I shot B, by mistake. There's no evidence of that in
10 the record, whatsoever.

11 MS. MCDUFFIE: Your Honor.

12 MR. SWERLING: This is not a transferred intent
13 case. This is a case where as a result of the conduct, the
14 shooting of that individual the jury can find malice
15 aforethought or not. This is not a transferred situation.
16 There's no evidence he was trying to shoot anybody else.

17 THE COURT: Under the charge. I was just looking
18 at that, it says the defendant with malice aforethought
19 attempts to kill another person, but by mistake injures or
20 kills a different person then the defendant still had the
21 intent to kill, and that the intent to kill is merely
22 transferred from the original person the defendant attempted
23 to kill to the actual person killed or injured.

24 MS. MCDUFFIE: Your Honor, I believe that that's
25 what the evidence has shown that Charlie Bates was the

1 person who was in the fight and that the shots were fired at
2 that group, presumably at Mr. Bates. I believe Charlie
3 Bates himself thought that they, said that he thought they
4 were shooting at him, Your Honor.

5 THE COURT: Well, Mr. Bax points out to me in which
6 I, of course, concur, there's no evidence that Mr. Wray or
7 Mr. Watts were in it.

8 THE COURT: That Mr. Wray or Mr. Watts were in the
9 fight.

10 MS. MCDUFFIE: Your Honor, I believe Taurus Watts
11 statement is that during the fight the other side --

12 MR. SWERLING: That's not Mr. Wray.

13 MS. MCDUFFIE: Your Honor, that's Mr. Watts.

14 THE COURT: Right.

15 MS. JOHNS: That's not what he said, Your Honor.

16 MS. MCDUFFIE: I believe that was exactly what was
17 said to Investigator Gallegos, that during the fight the
18 other side pulled a gun.

19 MS. JOHNS: That doesn't mean that Mr. Watts was
20 involved in the fight. It means he was a witness to the
21 fight essentially. It doesn't mean he was involved in the
22 fight.

23 MS. MCDUFFIE: Your Honor, he obviously is putting
24 himself of the other side.

25 THE COURT: Okay. Anything further on that issue,

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1 Ms. Johns?

2 MS. JOHNS: Which issue, Your Honor?

3 THE COURT: Transferred intent on the jury charge?

4 MS. JOHNS: Your Honor, I'm asking that if you're
5 going to give the transferred intent with regard to anybody
6 to attempt to kill somebody else and they don't kill that
7 person and they end up killing Demuria Johnson, I'd ask that
8 for an accident charge.

9 THE COURT: And then what do we have --

10 MS. MCDUFFIE: There was no accident whatsoever,
11 Your Honor.

12 MS. JOHNS: We don't need a transferred intent
13 charge.

14 MR. SWERLING: Well, that's my point. It's not
15 transferred intent. He either shot the guy or he didn't
16 shoot him. I don't think it's a transferred intent case.
17 He either shot him or he didn't shoot him. And if he did
18 shoot him, the jury can find malice. There's no evidence in
19 this case that he intended to shoot anyone in particular.

20 MS. MCDUFFIE: Your Honor, we would ask that --

21 MR. SWERLING: So --

22 THE COURT: Well, you started out the case about
23 shooting into the crowd in your opening.

24 MS. MCDUFFIE: If Your Honor, if the Court decides
25 not to charge transferred intent then we would ask that the

1 specific intent to kill is not required.

2 THE COURT: Okay.

3 MR. SWERLING: No, well, you have to have criminal
4 intent.

5 MS. MCDUFFIE: Yes, ma'am, Your Honor, you do have
6 to have criminal intent, but that can also be shown by
7 conduct that's so reckless and such a disregard for human
8 life that death is a probable result of.

9 THE COURT: Okay. So I'm going with those --

10 MR. SWERLING: Judge, this is the law. When a
11 person doesn't act in the presence of or the with the
12 assistance of another -- when two or more people act on a
13 common plan or intent -- who act -- find them both guilty --
14 the hand of one is the hand of all. It is a -- it's just a
15 straight murder case. There's nothing magical about this
16 case whatsoever. There's no other theories. It's a either
17 you did the shooting or you were present aiding and abetting
18 during the shooting.

19 THE COURT: Okay. We're off the transferred
20 intent, you're on the specific intent right now?

21 MR. SWERLING: Yeah. I mean it's a -

22 THE COURT: What she's saying -- we all agree on
23 intent. I think where she's going is you don't have to have
24 specific intent to kill to get to a murder. That the
25 recklessness can -- a bullet hits a person and they thereby

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1 die. It doesn't matter that you didn't intend to kill. You
2 shot into the crowd, so to speak.

3 MR. SWERLING: But it is a specific intent crime.
4 It's murder. You have to have the intent to kill or you
5 have to act under some other theory. In this case we have
6 someone firing into a crowd, according to the evidence in
7 the case.

8 THE COURT: And that leads you to, Ms. McDuffie,
9 what could be the inferred malice, then, correct, when you
10 say, when you referred to conduct showing total disregard
11 for human life?

12 MS. MCDUFFIE: Yes, Ma'am, but also in terms of the
13 intent, and I'd be happy to get Your Honor case law before
14 the morning, Your Honor, about specific intent to kill.

15 THE COURT: Okay. We'll look it up, as well.

16 MR. SWERLING: You have to act with malice
17 aforethought.

18 THE COURT: Okay. We're going to -- myself and the
19 clerk will stay here, so we'll look at that. If you've got
20 a case shoot us an email, because we want you all to know
21 before tonight as to that, so you'll get an email.

22 MS. MCDUFFIE: And Your Honor we will email you and
23 the defense with the case law.

24 THE COURT: All right, and we will email you all
25 back tonight so you may -- okay, before we stop, let's talk

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1 about defense any jury charge to be added or subtracted?

2 MR. SWERLING: Judge, unfortunately, I have not
3 even had a chance to look at it.

4 THE COURT: Okay. Okay. That's fine.

5 MR. SWERLING: Because we just got it this morning,
6 and, as you know, I had that lunch to go to.

7 THE COURT: Okay. Do this. Both sides just email
8 us by 8:30.

9 MS. SHIPLEY: By 8:30 tonight, Your Honor?

10 THE COURT: Yes.

11 MR. SWERLING: That's fine.

12 THE COURT: Any reason you need it by the morning,
13 that's fine, too. I just don't want to be coming in here
14 talking about it at 10:00.

15 MS. SHIPLEY: I agree. We should have it as soon
16 as possible.

17 THE COURT: Yeah. 8:30 in the morning in fine with
18 me. Let's do this. Y'all email by 8:00 in the morning,
19 8:00 a.m. because that gives us time, you know. I know you
20 have your thoughts on various things and I don't want to cut
21 you off from all of that. So just email us whatever cases or
22 issues you have by 8:00 a.m.

23 MS. SHIPLEY: 8:00 a.m. Thank you, Your Honor.

24 THE COURT: All right. Anything else?

25 MS. SHIPLEY: No, ma'am.

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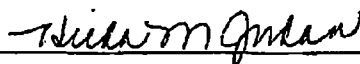
THE COURT: Y'all have a good and restful evening.

(Court in recess for the evening at 5:05 p.m.)

1 CERTIFICATE

2 I, THE UNDERSIGNED HILDA M. JORDAN, CVR, OFFICIAL COURT
3 REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF
4 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
5 TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
6 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF
7 THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN COURT OF GENERAL
8 SESSIONS FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 13TH
9 DAY OF OCTOBER 2009.

10 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL,
11 NOR INTEREST IN ANY PARTY HERETO.

12
13
14 

15 HILDA M. JORDAN, CVR

16
17
18 COLUMBIA, SOUTH CAROLINA

19 MAY 23, 2010
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24
25

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) FIFTH JUDICIAL CIRCUIT
 COUNTY OF RICHLAND)

STATE OF SOUTH CAROLINA)
)
 PLAINTIFF,)
) 07-GS-40-5913
 VS.) 07-GS-40-5914
)
 TREMAINE WRAY AND TAURUS WATTS,)
)
 DEFENDANT.) VOLUME 8
)
)
)
)
)
)

OCTOBER 14, 2009
 COLUMBIA, SOUTH CAROLINA

TRANSCRIPT OF RECORD

B E F O R E:

THE HONORABLE MICHELLE CHILDS, JUDGE, AND A JURY

A P P E A R A N C E S:

ATTORNEYS FOR THE STATE:
 VANESSA SHIPLEY, ESQUIRE
 JOANNA MCDUFFIE, ESQUIRE

ATTORNEY FOR DEFENDANT WRAY
 JACK SWERLING, ESQUIRE
 ARIE BAX, ESQUIRE

ATTORNEY FOR DEFENDANT WATTS
 THERESA JOHNS, ESQUIRE

HILDA M. JORDAN, CVR
 CIRCUIT COURT REPORTER

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1 THE COURT: Okay. Parties are you sufficiently set
2 up for your closing?

3 MS. SHIPLEY: Yes, ma'am. State's ready.

4 THE COURT: Okay. Check whatever evidence they
5 need to use and all that.

6 And then Ma'am Clerk do you have all evidence recorded
7 in. And of course we'll check -- you and the court
8 reporter.

9 COURT REPORTER: We've got it all, we just have to
10 double check the numbers.

11 THE COURT: But you've got it all filled out?

12 COURT REPORTER: As far as I'm concerned,
13 everything's in the courtroom.

14 THE COURT: Okay.

15 COURT REPORTER: We've been very careful, and
16 Joanna has helped me keep up with the numbers.

17 THE COURT: Great. All right.

18 Okay, are the parties ready to proceed?

19 MS. SHIPLEY: Yes, ma'am.

20 THE COURT: Ms. Johns?

21 MS. JOHNS: Yes, Your Honor.

22 THE COURT: Okay. We had lots of discussion in
23 chambers this morning about the various jury charges. I
24 believe we've resolved our issues there, but after closing
25 they will put on the record what the combined effort of the

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1 parties was with respect to the charges. One other thing we
2 need to discuss is this case was indicted as a murder
3 charge, and it's my understanding that the defense is
4 requesting a charge for voluntary manslaughter. If the
5 defense would put on the record with respect to the evidence
6 that would support such a charge?

7 MR. SWERLING: You want to do it now?

8 THE COURT: Yes.

9 MR. SWERLING: Judge, first of all, I'd like to say
10 I've talked to my client about that and my client wishes for
11 me to go ahead and as that that charge be submitted to the
12 jury; is that correct, Mr. Wray?

13 MR. WRAY: Yes, sir.

14 THE COURT: Okay.

15 MR. SWERLING: Secondly, Judge, the way this case
16 has been presented is there was a fight in the club and
17 somehow or another the fight in the club was connected to
18 the shooting that took place outside the club, which
19 resulted in the death of Demuria Johnson. Even though Mr.
20 Wray does not -- there was no testimony Mr. Wray was
21 actually in the fight, Mr. Jacobs has put him inside the
22 club. And there's been testimony from several witnesses,
23 like from Charlie Bates, Verda Johnson, Stephanie Boston,
24 who were also said it seemed like it was them against the
25 club. So the jury can reasonably infer from that that Mr.

1 Wray was involved in a fight -- Mr. Watts's remarks that
2 were testified to at the end of the case by Mr. Gallegos,
3 would put him in the club, and possibly the jury could
4 conclude from that they were involved in the fight, and as a
5 result of the fight they went out, armed themselves and then
6 shot back into the club. That, we believe would support a
7 charge of manslaughter. It would be sufficient legal
8 provocation. It all happened very quickly. The issue is if
9 there was sufficient time for cooling off is a jury
10 question. Cooling off is held to be as much as several
11 hours, and depends on the facts and circumstances of the
12 case. Here these individuals, according to testimony, were
13 in the parking lot. Mr. Jacobs saw them coming in. Mr.
14 Watts pulled a gun. Leaving thereafter they got in the car.
15 He was closing the club because of the fight. They get in
16 the truck. They go down left on Hardscrabble Road and start
17 firing. So cooling off would certainly be a question for
18 the jury.

19 THE COURT: Okay. And I know the state, in
20 chambers, strenuously objected. Is there anything else that
21 you would like to add?

22 MS. SHIPLEY: We would just like it noted on the
23 record that we object.

24 THE COURT: Okay. And I believe that with respect
25 to any type of charge that once requested the Court has to

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1 just look at it if there is any evidence on that issue,
2 however slight. And so appropriately I would have to charge
3 in this case at the request of the defense, because it's
4 not, again, conflicting evidence or credibility of witnesses
5 or anything. So if there's any evidence at all on that
6 issue that could lead to an inference then the Court would
7 have to charge it. So with that in mind --

8 MR. SWERLING: Judge -- I'm sorry, go ahead.

9 THE COURT: I was just going to say, with that in
10 mind, are we ready to proceed?

11 MR. SWERLING: Yes, but just to add into that, the
12 case that just came down on Monday, State verses Belcher.
13 The implication is the malice charge would not longer be
14 appropriate.

15 THE COURT: Okay, and that is --

16 MR. SWERLING: From --

17 THE COURT: -- malice inferred from the use of a
18 deadly weapon based on Belcher, and with voluntary
19 manslaughter with defense being put up that language will be
20 stricken from the murder jury charge.

21 MS. SHIPLEY: And my understanding from Belcher is
22 that the state is still allowed to argue it to the jury.

23 THE COURT: All right. Are we ready to proceed,
24 then?

25 MS. SHIPLEY: Yes, ma'am.

1 THE COURT: Okay. Parties have had a chance to
2 prepare in anticipation of this ruling?

3 MS. SHIPLEY: Yes, ma'am. I'm ready.

4 THE COURT: All right. Then --

5 MS. MCDUFFIE: Your Honor, are you going to have
6 the defense rest on the record?

7 THE COURT: Oh, please, yes. Yes, absolutely.

8 MR. SWERLING: Judge, for purposes of -- I'm sorry.

9 THE COURT: That's okay.

10 MR. SWERLING: For purposes of the record, since
11 we're going to rest, I'd just ask you to -- I'd like to
12 renew the motions that were made at the end of the state's
13 case and have them entered also when we rest, and just
14 whatever argument I make at the end of the state's case just
15 adopt that and incorporate it in as if we made -- renewed
16 those motions at the end of our case.

17 THE COURT: Okay. All right. Ms. Johns?

18 MS. JOHNS: Yes, Your Honor. I would join in that
19 motion, as well, Your Honor, for the directed verdict. And
20 also I apologize to the Court, Your Honor, I just came back
21 from defense table and was looking over my preparation from
22 last night and when the state said that they wanted it on
23 the record that they rest, I then reminded myself that there
24 have been a number of stipulations in this case. One of them
25 being that Mr. Johnson, the victim in this case, had some

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1 drugs on his person. I am going to mention that in closing.
2 I don't know whether the Court wants to charge the
3 definition of stipulation, but I think it would be important
4 as there was not just one, there were a number of them in
5 this case. And I do believe it is in Judge Anderson's
6 charge --

7 THE COURT: It is. I'll be happy to do that.

8 MS. JOHNS: Thank you.

9 MS. MCDUFFIE: No objection.

10 MS. SHIPLEY: No objection.

11 THE COURT: All right. And then the Court's going
12 to stand by its prior ruling so that the case will go to the
13 jury. Okay.

14 Jurors, please.

15 (Jury in at 11:15 a.m.)

16 THE BAILIFF: Jury's all present, Your Honor.

17 THE COURT: Thank you ladies and gentlemen for your
18 patience throughout this trial. We have now come to the
19 point of the trial where the case will be handed to you and
20 we will go on to closing arguments. I do want you to know,
21 again, we did work late last night, and, in fact, the
22 lawyers were giving me emails as late as 1:00 o'clock in the
23 morning. So we were dealing with those issues again this
24 morning. So again, I appreciate your patience. Please do
25 not hold any of that against the lawyers. We have all been

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1 working very diligently on the various breaks. The lawyers
2 at this time will have the opportunity to present closing
3 arguments to you.

4 I will remind you that closing arguments are not
5 evidence. You will need to recall the evidence that was
6 testified to on the witness stand or the evidence that will
7 actually be handed to you at the conclusion of the case.
8 They are, however, at this point allowed to refresh your
9 memory with respect to the evidence of this over a week's
10 long trail and then also draw any reasonable inferences, of
11 course, to try to persuade you to their side of the case.
12 Please direct your attention appropriately as you have
13 throughout the case.

14 At this time before we proceed, defense, do you want to
15 rest on the record?

16 MR. SWERLING: Your Honor, we rest.

17 THE COURT: Okay. So the defense does not intend
18 to put up a case. Which then we means we're at the
19 conclusion of the case, so now we go into the closing
20 arguments. Okay.

21 MS. SHIPLEY: Was that as to both parties?

22 MS. JOHNS: Yes, Your Honor.

23 THE COURT: Yes. Thank you.

24 MS. JOHNS: We rest of behalf of Defendant Watts.

25 THE COURT: Thank you.

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1 MS. SHIPLEY: May it please the Court, Your Honor.

2 THE COURT: Yes.

3 MS. SHIPLEY: Mr. Swerling, Mr. Bax, Ms. Johns.

4 Good morning, ladies and gentlemen.

5 When Demuria Hank Johnson woke up on the morning of
6 June 29, 2007, he had no idea that that would be the last
7 24-hours of his life. He had plans that night to go out
8 with his best friend, Travis Malone, who was about to be
9 deployed to Iraq and to bid him farewell. The night was
10 planned to go to Stephanie Boston's house to have some
11 drinks, play some cards. And while they were there they
12 decided to go to the H&J club. And that decision proved to
13 be a fatal on for Mr. Hank Johnson.

14 He had never been there before. He didn't know that
15 the regulars at this club are thick as thieves. That they
16 will lie to protect one another, they will fight to protect
17 one another, and they will kill.

18 What kind of people does it take to pack an M-11 semi-
19 automatic weapon for a night out on the town. It takes
20 people who have malice in their hearts and their minds. It
21 takes people who have a reckless disregard for the safety
22 and lives of others. And to point an M-11 into a crowd of
23 people and pull the trigger 10 times, at least, reeks of
24 malice. What kind of people are they, ladies and gentlemen?
25 People like Taurus Watts and Tremaine Wray.

1 I want to thank you so much for the attention you've
2 shown to both sides in this case. I know it's been a long
3 trial for everybody in this courtroom. I also want to thank
4 you on behalf of Hank Johnson's family. A lot of times in
5 murder cases everybody gets go developed and enthraled in
6 what witnesses are saying and what evidence is collected,
7 and you forget that a human being has lost their life. And
8 Mr. and Mrs. Johnson are not in this courtroom, because they
9 just couldn't bear any more.

10 MR. SWERLING: Objection, Your Honor. That's
11 outside the record.

12 THE COURT: Sustained.

13 MS. SHIPLEY: His sister is present in the
14 courtroom ladies and gentlemen. She is present to hear the
15 closing arguments and to see that justice is done for Hank
16 Johnson.

17 The procedure for closing argument, ladies and
18 gentlemen, are that the state gets to argue first. We get
19 to discuss the law that applies to this, and apply the fact
20 as we see it, and apply it to the law, and argue our
21 position and our theories behind our case.

22 I'm going to begin, ladies and gentlemen, by telling
23 you what the law is that applies to this case. However, as
24 I begin, I want you all to remember that I don't wear the
25 black robe. Judge Childs wears the black robe and if I say

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1 anything different from what she instructs you, take the law
2 as she charges it to you. She is the expert in the law and
3 I am by no means trying to deceive you or mislead you or
4 make a mistake, but she is the law as you are the judges of
5 the facts.

6 The first thing I'm going to discuss with you ladies
7 and gentlemen, because of the actions of the defendant
8 Tremaine Wray and Taurus Watts on the early morning hours of
9 June 30, 2007, they were both charged with the crime of
10 murder. And I'm going to go into explaining the theory of
11 hand of one, hand of all. But for purposes of now, the
12 state of law for murder in South Carolina, 16-3-10, is the
13 unlawful killing of another with malice aforethought, either
14 express or implied. Malice aforethought is a term of art, a
15 legal term. It is basically not an afterthought, it's a
16 forethought. In South Carolina we do not have to prove
17 premeditation. We don't have to prove that anybody got in
18 bushes and lied awake to kill and they planned it for any
19 significant period of time. Malice aforethought can be a
20 second before the fatal blow. It can be the moment the
21 trigger is pulled on a weapon. Ladies and gentlemen, as I
22 indicated to you, malice is the intent that people have on
23 their minds when they commit the crime of murder. Criminal
24 intent is a mental state. A conscious wrong-doing. Did
25 they know it was wrong to point a semi-automatic weapon into

1 a crowd of people and pull the trigger? Wrong knowing. It
2 is up to you to determine what the defendants intended to do
3 based on the circumstances that existed.

4 Criminal intent can arise from action or failure to
5 act. It can arise from negligence or recklessness or an
6 indifference to duty or to consequences that is considered
7 by the law to be the equivalent of criminal intent.

8 The state has the burden of proof to prove criminal
9 intent and I submit to you pointing a semi-automatic weapon
10 into a crowd clearly is wrong-doing.

11 As I indicated earlier malice is a legal term. Some
12 definitions that I'm going to go over with you so you all
13 understands what it means for purposes of this case. Malice
14 indicates formed purpose and design to do a wrongful act
15 under circumstances that exclude any legal right to do it.
16 Malice is a term of art that imparts wickedness and excludes
17 just cause or excuse. It is something that springs from
18 wickedness, from depravity, from a depraved spirit, from a
19 spirit bent on mischief, and from not having a regard for
20 the social obligations or the obligations which rests upon
21 mankind.

22 Now, that was a pretty big mouthful, and so to bring it
23 down for you, ladies and gentlemen, I've done some research
24 on different definitions.

25 Ladies and gentlemen, you do not have to have specific

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1 intent in order to find someone guilty of murder. In other
2 words there is no requirement that the defendant
3 specifically intended to kill Demuria Johnson on June 30,
4 2007. A general intent is sufficient. General intent may
5 be demonstrated by acts and conduct from which a jury may
6 naturally and reasonably infer intent. So again, ladies and
7 gentlemen, is it reasonable to conclude that when you point
8 a semi-automatic weapon and pull the trigger 10 times into a
9 crowd that someone might be hit and someone might die.

10 General intent. Intent may be proved with the evidence
11 of the character or the means or instrument used.

12 Instrument. M-11. Likewise the manner in which the
13 instrument was used. Pointed it into a crowd of people and
14 pulling the trigger. The purpose to be accomplished. And
15 the resulting injuries may also prove intent. There is no
16 question that Demuria Johnson died from his injuries.

17 Malice may be inferred from the evidence of the intent
18 to kill. The intent to do serious bodily harm, a depraved
19 or malignant heart, use of a deadly weapon, commission of a
20 felony, gross recklessness that it tantamount to an intent
21 to kill can be inferred from the surrounding circumstances.

22 MR. SWERLING: Your Honor, I hate to interrupt the
23 argument, but I think that's inconsistent with what Your
24 Honor's going to charge on malice.

25 THE COURT: Okay. And as she indicated earlier,

1 what I charge is the law, and the law that you must go by.

2 MS. SHIPLEY: And, Your Honor, under State v.
3 Belcher I'm allowed to argue that.

4 Malice does not necessarily require ill will towards
5 the person injured. It signifies rather a general malignant
6 recklessness of the lives and safety of others or a
7 condition of the mind that shows a heart regardless of
8 social duty and fatally bent on mischief. How more fatally
9 bend on mischief than pointing a semi-automatic weapon into
10 a crowd and pulling the trigger at least 10 times? And
11 again, the fact that there is no ill will shown directed
12 specifically to Demuria Johnson is not required for the
13 state prove at all. It does not require that specific
14 intent toward that specific victim. It's a general -- we're
15 going to show you you don't mess with us -- and spraying the
16 public in the crowd with bullets.

17 Judge Childs, as the judge of the law is going to
18 instruct you on the law of voluntary manslaughter. And just
19 to make simple, murder is the killing of another human being
20 with malice aforethought. Voluntary manslaughter, which is
21 a lesser included offense, is killing another human being
22 without malice. And that is a charge that you will be able
23 to consider at well. I don't want you to think that because
24 I am going to read you the law that is my position. My
25 position is this is murder, this is malice reeking in this

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1 case. But because she's going to charge it, I want to go
2 ahead and explain it to you.

3 Voluntary manslaughter, like I said, is killing another
4 human being without malice. So if you find no malice, you
5 may consider this offense. Voluntary manslaughter is the
6 unlawful killing of a human being in the sudden heat of
7 passion upon sufficient legal provocation. Heat of passion
8 alone will not suffice to reduce murder to voluntary
9 manslaughter. Both heat of passion and sufficient legal
10 provocation must be present at the time of the killing. The
11 sudden heat of passion upon sufficient legal provocation
12 which mitigates a felonious killing to manslaughter while it
13 need not be through reason entirely or shut out knowledge of
14 volition must be of such that would naturally disturb the
15 sway or reason and render the mind of an ordinary person
16 incapable of reflection and produce what according to human
17 experience may be called uncontrollable to do violence.

18 Now, when I explain this law, I typically use the
19 scenario where a husband comes into his house from work and
20 finds his wife in bed with another man, grabs his gun and
21 shoots the man. Heat of passion.

22 Murder is the cold killing, the cold blooded killing of
23 another human being. Voluntary manslaughter is a hot
24 blooded, you're in the heat of passion.

25 Ladies and gentlemen, if you want to consider this not

1 only do you have to find that there was heat of passion,
2 that the defendants were acting in the heat of passion, that
3 they were riled up, but also that they had sufficient legal
4 provocation that they were legally provoked, and ladies and
5 gentlemen, words alone is no sufficient legal provocation.
6 People defending others is not sufficient legal provocation.

7 Now, you were briefly told in opening statements by Ms.
8 McDuffie the theory that applies in South Carolina cases
9 where you have two defendants charged with murder, and one
10 obviously is the trigger man. And I wanted to explain to
11 you the law in South Carolina as to the hand of one is the
12 hand of all.

13 If a crime is committed by two or more persons who are
14 acting together it the commission of an offense, the act of
15 one is the act of both or all. Two people can be guilty of
16 killing another or murder when only one of the two had a
17 pistol and only one bullet. If both are together, acting
18 together, assisting each other in the commission of the
19 offense, the law says that under those circumstances the act
20 of one is the act of all, and it is sometimes said that the
21 hand of one is the hand of all.

22 So you can, just off the bat, you know that Taurus
23 Watts was seen with an M-11 weapon getting into the
24 passenger side and you know that Tremaine Wray is driving.
25 As he drives he's assisting in letting Taurus spray the

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1 parking lot. Or you may find that Taurus handed Tremaine
2 the firearm and in handing him he's assisting, aiding,
3 abetting him in completing this crime.

4 When you spray a parking lot with bullets that has a
5 bunch of people in it, this law applies; accomplice
6 liability. If two or more combine together to commit an
7 unlawful act and a crime is committed by the actors as a
8 probable and natural consequence of the acts done in
9 pursuance of the common design, all present and
10 participating in the unlawful undertaking are as guilty as
11 the one who committed the act. So if you find, ladies and
12 gentlemen, that is was a natural and probable consequence,
13 that someone might have gotten struck by one of those 10
14 bullets and that someone may have died as a result of those
15 10 bullets, then ladies and gentlemen, that is a natural and
16 probable consequence of their actions.

17 The common purpose may have not included or may have
18 not been involved in the killing and the murder of anyone,
19 but if in executing this common design and purpose, and if
20 it were unlawful, and in the execution of this common
21 purpose a homicide is committed by one of the confederates
22 or one of the associates and you, the jury, determine from
23 the proof beyond a reasonable doubt that the homicide was a
24 probable or natural consequence of the acts which were done
25 in pursuance then all who were present either actually or

1 constructively in participating in the unlawful common
2 design are as guilty as the slayer himself.

3 What does that all mean? Well, ladies and gentlemen,
4 you may find from the evidence when they were spraying the
5 parking lot they were just going to show those people you
6 don't come into our turf and mess with one of our own.
7 We're going to scare you and make sure you never come back
8 here again. And they wanted to spray the parking lot and
9 not intent to kill, actually shoot somebody. Well, ladies
10 and gentlemen, when you do that a bullet can ricochet. You
11 heard from David Collins, firing range of an M-11 is several
12 hundred feet. Someone is going to get hit, that's a natural
13 and probable consequence of doing so. And so you are
14 responsible for your actions under our laws. And if you're
15 someone and aiding and abetting them or assisting them, or
16 either handing them the firearm or you're driving and
17 allowing them to fire over you. Ladies and gentlemen, that
18 is guilty -- you are as guilty as the other one under hand
19 of one is the hand of all.

20 Now, I indicated to you that murder is the killing of
21 another human being with malice aforethought. Voluntary
22 manslaughter is the killing of a human being without malice.
23 The state of South Carolina, as every state in this country,
24 has the burden of proof. We have to prove each element of
25 the law beyond a reasonable doubt.

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1 Now, reasonable doubt, ladies and gentlemen, is what
2 you find to be reasonable. You have a reasonable
3 explanation or not, but there is case law that assists in
4 explaining to jurors what it means. Proof beyond a
5 reasonable doubt is proof that leaves you firmly convinced
6 of the defendant's guilt. There are very few things in this
7 world that we know with absolute certainty, and in criminal
8 cases the law does not require proof that overcomes every
9 possible doubt. So ladies and gentlemen, you don't have to
10 be absolutely certain. We're not required to prove that.
11 It's proof beyond a reasonable doubt. Firmly convinced. If
12 based on your consideration of the evidence if you are
13 firmly convinced that the defendant is guilty of the crime
14 charged, you must find him guilty. If, on the other hand,
15 if you think there is a real possibility that he is not
16 guilty, you must give him the benefit of the doubt and find
17 him not guilty.

18 So how does the state go about proving the elements of
19 reasonable doubt? Well, we use testimony, exhibits. You've
20 been here for a week and a-half and you're very familiar,
21 you're practically experts at it with what type of evidence
22 exists.

23 There's two kinds typically introduced. Direct
24 evidence. Those are the eyewitnesses, what they hear, what
25 they see, what they smell, what they taste, what they feel.

1 So that's when you hear from Ricky Jacobs, Stephanie Boston,
2 Verda Roberts, Charlie Bates, Lamont Goodwine. Those are
3 direct eyewitnesses.

4 Circumstantial evidence. And I thought at school that,
5 aw -- they just had a circumstantial case, that that's a
6 weak case. Well, under the law in South Carolina that's not
7 true. Both direct and circumstantial evidence have the same
8 weight, are both equal under the law and it's to be given
9 the weight that you determine to give it. Guess what,
10 ladies and gentlemen, circumstantial evidence examples: DNA,
11 gunshot residue, ballistics. It's basically when you have a
12 chain of circumstances without eyewitnesses that lead to
13 only one reasonable conclusion. And a quick example is that
14 we know that that is Demuria Johnson's DNA, and so is that.
15 So we know that the directional pattern, he ran around here,
16 although no one came into court and testified to that. You
17 can make a reasonable conclusion by the chain of
18 circumstances that that occurred even though no one actually
19 came in and said, I think he ran around the car, because it
20 was so chaotic. They were all dodging bullets, taking
21 cover. Ladies and gentlemen they are both equal under the
22 law. The most critical issue in this case ladies and
23 gentlemen is the credibility of the witnesses because you
24 are all wearing black robes individually and collectively,
25 just like Judge Childs is wearing her black robe, you all

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1 are wearing black robes as well, because you are the judges
2 of the fact. It is up to you to determine what happened on
3 June 30, 2007. It is up to you to determine, who do we
4 believe. Judge Childs is going to instruct you, that you
5 don't have to believe everything that a person says, you can
6 believe all of what a person says or you can believe part of
7 what a person says. It's up to you to use your common
8 sense, your ability from your life's experiences to know
9 when someone is telling the truth or not. Using all of
10 those tools, you use that to judge the credibility of the
11 witnesses.

12 There are other factors that you can consider in
13 judging the credibility of the witnesses. Their demeanor on
14 the witness stand. I mean that there's no accident that
15 this witness box is right here in front of this jury box,
16 because you are supposed to have first advantage of
17 examining someone when they're testifying. Was the witness
18 forthright or hesitant. Was the testimony of the witness
19 consistent and I'm going to get into that in further detail
20 as I go through the testimony of the witnesses. Was the
21 testimony of the witnesses corroborated. That's a big one in
22 this case, ladies and gentlemen. Corroboration is all over
23 the place in this case. Did the witness have a reason to be
24 biased or prejudiced. And I'm going to get into more of
25 that when I discuss the different witnesses who testified.

1 I'm going to leave this over here so you guys won't forget
2 about these factors.

3 The state called several witnesses in this case over
4 the last week and a-half. And I'm going to go and briefly
5 touch on them. And, again, if say anything about the facts
6 that's different from your memory, I'm not trying to mislead
7 you. It's been a long trial. You all took some notes. You
8 have your own memory, so you have to go by what you
9 remember. In preparing for today's closing argument last
10 night, I went through, to show you, to make a point, of how
11 consistent the witnesses at the crime scene were that night.

12 Verda Roberts, Stephanie Boston, Charlie Bates, and
13 Lamont Goodwine. Can everyone see? When you deal with
14 eyewitnesses, ladies and gentlemen, let's say we were in a
15 civil case in a car accident at some intersection and you've
16 got someone on each corner of that intersection, and then
17 you get them to testify. Well, they're going to remember
18 different things, because we're human beings and we all
19 perceive things differently. We remember details
20 differently, and I submit to you that if their stories were
21 identical that would raise a red flag. But the fact that
22 the details are different, but the guts, the skeleton of
23 their story is the same that shows the credibility of their
24 testimony because they are consistent.

25 They all went to the H&J. Charlie and Lisa were on the

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1 dance floor. Fight broke out between Charlie and a guy with
2 dreads. Who was identified by Stephanie and Verda as this
3 man, who came in here and admitted that's him, Bryan
4 Johnson. Lisa Johnson confirmed that that was him.
5 Remember. She told you, first of all that it was -- and I'm
6 going to get into her more, but she confirms that he got
7 involved in the fight. She denies seeing him hit a woman in
8 the face. It was them against the whole bar. Ladies and
9 gentlemen, these people had never been -- with the exception
10 of Stephanie, who would go there from time to time. The
11 rest of them hadn't been there before. Travis Malone or
12 Hank Johnson, Lamont Goodwine, they had never been there
13 before. Charlie Bates may have been there a few times with
14 Lisa when they dated off and on, but he's not a regular. He
15 didn't know everybody in there. It was them against the
16 whole bar. Those witnesses are not coming in here and
17 identifying Taurus Watts and Tremaine Wray, those are the
18 people that shot at us and killed our friend. They're not,
19 because they didn't see. They're being honest about that.
20 It was them against the whole bar. Because they're
21 unfamiliar with everybody in the whole bar, they don't know
22 who was ganging up on them. After the fight broke out
23 Charlie was bleeding from the lip. That's corroborated.
24 Y'all heard them testify that they met around this general
25 area and that he was bleeding profusely from his lip. And

1 ladies and gentlemen, D, E, F, and G are the same unknown
2 male. They get outside heading towards the car wash to
3 their cars when shots are fired at them from the road. They
4 are having to take cover behind the vehicles, and remember
5 the vehicle, the white Envoy driven by Ms. Verda Roberts was
6 parked first and then Travis's rental car was parked behind
7 it. And that's the car where Charlie and Travis and Hank
8 were riding in. Lamont said no one was firing from that
9 patio. Remember there's a patio back here. And look,
10 ladies and gentlemen, if you're firing what's going to block
11 you? The wall at the car stall. Consistent with evidence
12 at the scene. Charlie and Lamont said it's the same gun.
13 To them it sounded like the same gun and it was multiple
14 shots. They could remember how many because it was too
15 fast. Verda and Stephanie believed it was more than one gun,
16 but they can't say how many was fired from each gun. And,
17 again, ladies and gentlemen, it is chaotic. Verda said that
18 her brother jumped on top of her. It's chaotic. They take
19 cover behind the cars in the stall and then Hank is hit.
20 Verda doesn't recall or realized that he was hit, but
21 everybody else testified that they knew he was hit. They
22 leave and they meet at the Waffle House. Travis is not
23 familiar with this side of town, didn't realize there was a
24 hospital right there. So Verda says, come on, let's go.
25 And they go and they take Hank to the hospital because he's

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1 bleeding profusely, and you heard Dr. Nichols testify how
2 quickly he would have bleed out from that artery being
3 struck. Four to five minutes max.

4 Oh, by the way, before I continue Mr. Swerling did ask
5 Mr. Bates on cross-examination, I don't know when he said
6 it. I don't know to whom he said it, but he did say to
7 someone by Mr. Swerling to talk to him. Isn't it true that
8 you said that someone fired from behind? Well, I'm going to
9 show you State's No. 72. Remember I showed this photograph
10 to Investigator Reed-Enzor and I asked her about the fence,
11 how it was locked secured. She couldn't even get back there
12 to look for projectiles. So ladies and gentlemen,
13 obviously, the shots were not coming from behind. It's a
14 locked facility. But, again, I'm not saying Mr. Bates is
15 lying. It was confusion, it was chaos. The skeleton of
16 their story and their testimony is consistent. And, again,
17 that's one of the factors you may consider in determining
18 the credibility of a witness.

19 The next witness to testify, Lisa Johnson, and on this
20 one, ladies and gentlemen, pay close attention to the
21 factors dealing with bias, having a reason, stake in the
22 case. Taurus Watts is her nephew's uncle. So basically the
23 way I understand it is her brother has a child with a woman
24 and that woman has a brother, that brother is Taurus Watts.
25 They are related not by blood but by marriage or some sort

1 of relationship. They're related. Okay. Keep that in the
2 back of your mind to determine whether she has a reason to
3 be biased and favor him. She has known Bryan Johnson for a
4 long time. They live on the same street. She lives on
5 Briarcliff. I believe -- I don't remember how long she's
6 lived there, but it's been a long time. Same street as
7 Tremaine Wray that he lives on, on Briarcliff in Washington
8 Heights neighborhood. She goes to the pub at 3:00 a.m. in
9 the morning on June 30. She parked by the phone booth,
10 which is not show on this exhibit, but in this general area
11 right there. She goes to the front door, she goes through
12 security. And, by the way, Verda, Stephanie, Charlie, all
13 of them testified that they were searched for weapons going
14 into that place, that they used metal detectors going into
15 that place, and she corroborates it. Sees Charlie,
16 Stephanie, and Verda and she meets Travis, Hank, and Lamont
17 for the first time on the patio. She then says she goes
18 inside to buy a drink at the bar. And she's approached by
19 someone who introduced himself as T. T-something, I believe
20 she said. Five-six, five-seven, 140 pounds, low haircut,
21 white t-shirt, name T. Charlie is standing beside her or
22 behind her and this individual approaches and she waves him
23 away. Charlie feels disrespected. He throw a drink in that
24 person's face, and according to Lisa Johnson, that's when
25 Bryan Johnson gets involved and yells: Hey, that's my home

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1 boy. Bryan Johnson knows who that was. Things then go
2 crazy, according to Ms. Johnson. And she didn't even see
3 Verda get hit. Everybody else saw Verda get hit. Like
4 Bryan Johnson, her buddy who lives up the street from her.
5 But, you know, Bryan was just trying to break it up. That
6 was his role in this whole thing. And so she's pulling him
7 back. But he's not really involved but she has to hold him
8 back so much that he comes out of his shirt. And don't
9 forget about what Ricky Jacobs said about him, he was the
10 loudest of them all. She's getting ready to leave the bar
11 when she hears shots, too fast to count. Now, this is very
12 telling about Ms. Johnson, and the people, how tight they
13 were in that community and how they will stick up for one
14 another. Question in her written statement: Who else was in
15 the bar when you left, and her answer on June 30, 2007, was:
16 Brian, meaning Bryan Johnson, Chris, meaning Chris Crosby,
17 and a handful of people. She never once mentions Taurus,
18 not once. But then she comes into this courtroom and on
19 cross-examination she says oh, and Taurus, yeah, that's the
20 ticket. She then also denies telling Investigator McRae
21 that she came back on July 6, 2007, at 5:15 p.m. and told
22 him that Taurus Watts goes by T.

23 Bryan Johnson. Again, ladies and gentlemen, reason to
24 be biased, prejudiced? Has been friends with Taurus and
25 Tremaine. They all grew up together. He is friends with

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1 Lisa Johnson. They live on the same street that he does and
2 so does Tremaine. Goes to the H&J -- oh, by the way, before
3 -- I have to remember to tell you this -- I'm so sorry to
4 back track. Lisa Johnson, and when I asked her: You were
5 not cooperative with the police that night were you? She
6 says that she is just upset with them because they woke up
7 her little boy. She doesn't seem to have a problem leaving
8 him home alone at 3:00 in the morning. Does that appeal to
9 your common sense. She's trying to protect her nephew's
10 uncle.

11 MS. JOHNS: I hate to interrupt during an argument.
12 She arguing facts that are not in evidence. And I'd asked
13 that the jury be instructed that they are to remember their
14 own notes.

15 THE COURT: The jury --

16 MS. SHIPLEY: I already told them that, Your Honor.

17 THE COURT: They will remember their own -- but the
18 lawyers are entitled to draw reasonable inferences.

19 MS. SHIPLEY: I'm allowed to draw a reasonable
20 inferences from the evidence that's on the record.

21 All right. So Bryan Johnson gets to the H&J on June
22 30th. Doesn't remember what time, apparently. Denies
23 seeing Taurus and Tremaine there. Oh, and by the way, Lisa
24 said that Taurus -- now, she's changing her story and saying
25 that he was definitely inside. So is he there or is he not?

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1 You know, y'all grew up together. Is he there or is he not.
2 He even confirms that he was checked by security, that there
3 was a metal detector. He denies starting the fight, even
4 though he is identified by Stephanie and Verda. Stephanie
5 knew him. Denies coming out of his shirt when Lisa is
6 holding him back. He denies punching Verda. Everything in
7 self-serving in this testimony. Sees one of the guys from
8 the other side with a 25 caliber gun 30 feet away in the
9 dark. He didn't know what color it was either. I forgot to
10 put that on the board. I mean, does that appeal to your
11 common sense, that a person was holding it to their side. So
12 I don't know how far 30 feet is, but in the dark, in a
13 nightclub? Anyhow, he remains -- he hears several shots
14 fired outside. Remains inside the bar after the shots and
15 that's confirmed by Jacobs. He's not going to make him sit
16 outside when shots are being fired, even though he wants to
17 ban him from his nightclub. He allows him to stay there for
18 his safety and the safety of others in there. He leaves in
19 a blue Chevy HHR with Darius White and he said it was Darius
20 White that started it with Charlie Bates and that Charlie
21 threw the drink in Darius White's face, contradicting
22 Stephanie, Verda and Charlie. Says Taurus and Tremaine were
23 not there, yet asked by defense: What did Taurus hair look
24 like that night and he answers: Low haircut. During his
25 cross-examination. So was he there or not. He denies

1 speaking with Tremaine at all that night when I asked him.

2 And then I asked him for his cell phone number: [REDACTED]

3 [REDACTED]. What's important about that? At 4:12 dispatch gets a
4 call, shots fired, shots fired. Multiple calls were coming
5 in at 4:12 a.m. Who is Tremaine Wray calling at 4:14 a.m.,
6 his buddy of Bryan Johnson, who is in the middle of the
7 fight. Smack in the middle, but apparently they don't talk
8 very long or talk at all. I don't know, you can look at the
9 duration of the call. But then, do they talk again? Look
10 at their cell phone records. 4:35 a.m. Tremaine Wray is
11 calling Bryan Johnson back again. Wonder why he's so
12 curious to talk to Bryan Johnson that early in the morning.
13 Did I hit anybody, man, did you see that. Did you see what
14 I did for you, buddy? That conversation lasted almost one

15 --

16 MR. SWERLING: Was that something that was in the
17 record? I mean, I object to that.

18 MS. SHIPLEY: Your Honor, I'm allowed to make a
19 reasonable inference as to the evidence on the record. I
20 already told them I don't know what they talked about.

21 MR. SWERLING: There's on inference to be drawn
22 from phone calls -- see what I did for you, buddy? I mean
23 that's just -- I object to that. That's not even an
24 inference that could be drawn from a phone call.

25 MS. SHIPLEY: I have cell phone records that he

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1 placed the call, Your Honor. I'm speculating and the jurors
2 know that.

3 THE COURT: Okay. Sustained.

4 MS. SHIPLEY: Obviously, we don't know what the
5 conversation consisted of but is it a reasonable inference
6 to be drawn that again at 4:35 for one minute and 54 seconds
7 there's a phone call placed between Tremaine Wray and Bryan
8 Johnson, the guy that was pretty much the cause of the
9 fight. And it's up to you to decide. You're the judges of
10 the fact. And that's why I brought out his cell phone
11 number.

12 I'm going to skip Ricky Jacobs because he's the most
13 important witness in this case, because no one else has
14 identified the shooter, the shooters.

15 Brian Watson. He testified that it was either a
16 Saturday or Sunday in June of 2007. And just so everyone is
17 on the same page, this incident happened on June 30, 2007,
18 which was a Saturday. Remember he lives across -- on the
19 same property, but across from his cousin or his niece. He
20 lives here and this is where Jarrell and Rashonda were
21 living back in 2007. He says he sees a big SUV parked at
22 their house. Doesn't remember the color or anything like
23 that, the make. It's a big SUV consistent with a tan
24 Suburban. Does not see who was in the vehicle. In other
25 words, he did not see Tremaine. Question, ladies and

1 gentlemen, if he's going to come in here and lie, why not
2 make it really good and tell y'all he say Tremaine get out
3 of his tan Suburban SUV. Because he did not see it, ladies
4 and gentlemen. So he doesn't see Tremaine at that time.
5 Later on, he gets a call from Jarrell to come help him get
6 rid of something. So he goes over there. Jarrell is coming
7 out of the trailer with a black book bag. Rashonda stays
8 inside with the children, the kids. They go to the back
9 yard of the trailer, in this general area, and at that point
10 he looks inside the bags and see what he knows to be, from
11 the street or the movies, a Mac 10 and a long clip.

12 Now, whether he unzips the bag or Jarrell unzipped the
13 bag -- that was a big cross-examination point -- he doesn't
14 remember. But he looked in the bag and he saw what he
15 recognizes as a Mac 10 with a very long clip. Jarrell is
16 worried that Watson is going to try to sell this gun because
17 it's in good condition. And he is admitting that he is a
18 crack addict and that he probably would have gone back and
19 tried to sell it for crack. That's being forthright.

20 Now, Jarrell gets a hammer, as a result of being
21 worried that -- you might sell my cousins gun that was used
22 in a murder, we don't need that, so let's damage it.
23 Jarrell gets a hammer and they take turns hitting the gun,
24 damaging it. Then the gun is put back in the black book
25 bag. They all get in the -- all three of them. He says it

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1 was Rashonda and Jarrell and him get into her red SUV, which
2 is really a burgundy Montero Sport, and drive to Langford
3 Road bridge first, but a car was coming. So two years later
4 when he takes investigators there, ladies and gentlemen, he
5 doesn't remember that a car was coming. Then he remembers
6 and takes them that very night to the second bridge on
7 Cherokee Road, the closest one to his momma's church that
8 was ruined by a tornado. They drive to the second bridge
9 located closest to the church on Cherokee Road. He tells
10 them to drive on because there's no shoulder to pull on.
11 Well, this is 142, and this is that bridge, and there is no
12 shoulder to pull on. There is a guardrail on both sides. He
13 then goes underneath the bridge and he then takes the Mac 10
14 and the clip and he throws it into the creek. And then he
15 comes back up, they pick him up and they go home.

16 Now, remember, ladies and gentlemen, on cross-
17 examination a big deal was made about, you put in your
18 written statement that you were absolutely sure that that
19 was the bridge that he threw the gun under. Well, remember
20 ladies and gentlemen, at this point, when he's meeting with
21 investigators on May 18, 2007, he's meeting with them and
22 they're verbally getting information from him. Nothing's in
23 writing yet. After he tell them what he knows verbally,
24 they take him out to the location and he shows them where to
25 go. He takes them to the first bridge that someone was

1 coming -- oh, that's right, so we have to go to the other
2 bridge. And then he comes back to the Sheriff's Department
3 and gives his statement around 9:30 p.m. and ladies and
4 gentlemen, that is when Investigator McRae asked him: How
5 certain are you that this is the bridge? And his answer at
6 that point is: Absolutely. Okay, ladies and gentlemen, he
7 was referring to the first bridge in his statement. The
8 first bridge closest to the church, right there on State's
9 141. He was not referring to the Langford Road bridge.

10 Now, remember, I asked Investigator McRae, well why did
11 you go looking for Jarrell Dansby and Rashonda Simpson.
12 He's a crack-head. He's a criminal. He's got a long
13 criminal history. We're not going to take his word for it.
14 Investigator McRae said, I wanted to corroborate it. I
15 wanted to speak to more people to make sure he was telling
16 the truth. We're not going to just take Brian Watson's word
17 for it. So who did they go interview? First they go to
18 Rashonda Simpson's house. They call. She says, can I come
19 in tomorrow. No, this is really important. Because the
20 trial had started that day, ladies and gentlemen. So she
21 said, fine. They come over, the minute they say Tremaine
22 Wray's name -- you heard Investigator McRae say that her
23 demeanor changed. She acted nervous and wanted her lawyer.
24 She then cooperates and tells the investigators she got home
25 from work and finds Jarrell burying something in the

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1 backyard. They argue and Jarrell digs up the gun and she
2 sees him put it in a black book bag. The gun was black.
3 She's not familiar with guns. She doesn't have a clue what
4 kind of gun it was. Jarrell walks over to his grandmother's
5 house, again, that's where Brian Watson was living back
6 then, to get Brian and she sees him by the shed taking the
7 gun apart. At that point, she says Jarrell and Brian get
8 into her burgundy Montero Sport and leave. She was in the
9 car initially and then she said, well, I got to get out
10 because the kids are running out of grandmomma's house and I
11 needed to go take care of them. She, obviously, is trying
12 to minimize her role, ladies and gentlemen.

13 And this is a perfect example of a witness where the
14 judge is going to instruct you that you can believe part of
15 what a witness say, all of what a witness says, or none of
16 what a witness says. And ladies and gentlemen, it's clear
17 that she's trying to distance herself from that gun. I
18 mean, it doesn't take a rocket scientist. The bottom line
19 is she is corroborating the fact that she saw a gun and that
20 Brian Watson went and got rid of it. And again their were
21 making a big deal about well, she visited you -- didn't she
22 visit you on April 7 and April 19, and remember, it wasn't
23 until May 18, 2009, that he knew for sure that the case had
24 not gone to trial yet and it wasn't too late for him to try
25 to help himself on his armed robbery charges. In fact,

1 what's the point in coming forward. It's too late. I mean,
2 he's a criminal. He's looking out for himself. Why's he
3 going to come forward if it's too late. He's not going to
4 get any help on his charges or help himself on his charges.
5 That's how criminals behave.

6 However, isn't it telling how Rashonda Simpson's
7 behavior, her demeanor changed when the name Tremaine Wray
8 is brought to her attention on the night of May 18, 2009.
9 What does that tell you, ladies and gentlemen, her change in
10 demeanor. Oh, this is what you're here about. That.

11 Oh, I almost forgot these two things. Ladies and
12 gentlemen, after they got corroboration from Rashonda
13 Simpson, they didn't stop there. They went to find Jarrell
14 Dansby. And they were having trouble finding him, and law
15 enforcement knew that he was aware that they were looking
16 for him. And they got a warrant for his arrest, and they
17 made arrangements to have him come in, just tell us what
18 happened and they rescinded the warrant for accessory after
19 the fact of murder for getting rid of Tremaine Wray's gun.
20 When he gives his statement on May 20, 2009, two days after
21 Rashonda and Brian, remember I asked Mr. Dansby, did
22 Rashonda tell you what she had told police. And he said she
23 told him she didn't tell them anything, that she didn't give
24 them a statement. And then obviously we know from Brian
25 Watson that he never visited -- there's no evidence that he

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1 ever visited him in the jail, and he ever says I never
2 visited Brian Watson in the jail.

3 He recalls it was either the Saturday before or after
4 the 4th of July of 2007. Again, 4th of July was a Wednesday
5 that year. So either before -- that's the date of our
6 murder or after. Obviously, it's too late then. He gets a
7 call from Tremaine, 12:30 in the afternoon. And remember I
8 asked him all those cell phone numbers, because I looked at
9 Tremaine Wray's cell phone records and there are several
10 numbers. In fact, I invite you to go through this with a
11 fine-tooth comb, because you'll see a lot of activity on his
12 cell phone at all hours of the night on that day of June
13 30th from about 4:00 o'clock to about 9:00 o'clock. He's
14 on his phone a lot. So he thinks it was 12:30. He used to
15 get those cell phones, the disposable kind. So he doesn't
16 remember his number. There are several calls being placed
17 around that time on Tremaine Wray's cell phone. And that's
18 on the records.

19 Now, remember this, Tremaine Wray's first cousin, they
20 are like brothers. They grew up together. How clear was it
21 that he did not want to be in this courtroom to take that
22 witness stand. He gets a call and says Tremaine wanted to
23 bring over his gun because he didn't want his grandmother to
24 find it. Well, if you didn't do anything wrong with the gun
25 why would it be bad for your grandmother to find it. Not at

1 home when Tremaine hides it in the underpinning of the
2 trailer. And again an example of distancing yourself from
3 something really, that you know is wrong, that is illegal.
4 So yeah, I just told him to go to the house and put it under
5 the underpinning, secret hiding place. Then he gets a call
6 from a friend about the shooting at the club, so Jarrell
7 calls Tremaine back upset that he brought the gun to his
8 house when it was used like that. He says Tremaine says
9 he's sorry and cries. He can't come get the gun right now
10 because he has to go to work. So that's when Brian comes
11 over and Jarrell tell him about the gun and that he will all
12 the police.

13 Again, self-serving. He had no intention of calling
14 the police. It's like his brother. I'll protect him.
15 Brian stated he would just rid of it for him. He and Brian
16 went to the underpinning and pulled out the potato bag. And
17 I mean of what kind of book bag it was that Rashonda and
18 Brian Watson are consistent on -- come on -- a potato bag.
19 He never looked inside that bag? Again, distancing himself
20 from it. He just gives it to Brian and Brian leaves alone
21 with the gun and gets rid of it. He denies ever speaking to
22 Brian Watson or Rashonda Simpson about this ever again, and
23 that was confirmed by both of them. I asked him at the end,
24 because he was telling us how Brian Watson was a liar. I'm
25 not here to defend Brian Watson, but I'm telling you, ladies

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1 and gentlemen, this is important, because as much of a liar
2 that Jarrell Dansby thinks Brian Watson is, I flat out asked
3 him, tell this jury would Brian Watson be telling a truth or
4 a lie if he said he got rid of Tremaine Wray's gun. And
5 what was his answer: The truth. Who got you involved in
6 this case? Tremaine.

7 Judge Childs is going to instruct you about eyewitness
8 testimony, and because we have Ricky Jacobs who has come
9 here and taken the witness stand and taken an oath to tell
10 the truth and has identified Taurus Watts and Tremaine Wray,
11 we have to establish that his identification of them is
12 reliable so that you can bank on it.

13 The number one factor. The opportunity to view the
14 defendant at the time of the crime. You heard how the over
15 hanging of the gas pumps is well lit. There are photographs
16 and I'm not going to bore you with them, but just look at
17 them. It's a well lit area. The parking lot is well lit.

18 The witnesses degree of attention. Well, he's telling
19 them the club's closed. And he's walking -- they're walking
20 towards each other. The club is closed due to the fight.
21 He sees them get into the tan Suburban, and, by the way, I
22 forgot to tell you that Jarrell Dansby says Tremaine Wray
23 drives a tan Suburban. He would know. It's his first
24 cousin, it's like his brother. He tells you, Ricky Jacobs,
25 that while he's passing -- walking to go get his car from

1 his dad's driveway like he does every time that he closes
2 down for the night, that he passes the passenger side of the
3 tan Suburban and what does he see Taurus Watts with, a gun.
4 All he could see was the long clip and the barrel because
5 the rest of it was covered in some white clothing of some
6 sort. But that brought his attention, that caught his
7 attention. And remember he's crossing the street keeping an
8 eye on that tan Suburban and as he does, ladies and
9 gentlemen, that's when he witnesses the shots coming out of
10 the driver's side.

11 The accuracy of the witness's prior description of the
12 defendant. Whether Taurus Watts had twists, dreads, or
13 short, low hair cut. There is no question that Ricky Jacobs
14 has known him for 19 years. He frequents the club, he's
15 from the same neighborhood, they all know each other. He
16 just doesn't remember, he testified that he knew it was
17 Taurus and he didn't want to tell Mr. McRae that in front of
18 all the other on-lookers because they're all friends of
19 Taurus's so until they crossed the street, that's when he
20 said Taurus. That night at 5:40-ish a.m. in the morning.
21 Same with Mr. Wray. I've seen him before in the club.
22 Don't remember his name. But he's a nightclub owner. He
23 sees lots of regulars all the time. Knows people by face,
24 some by first name only, some by the whole name. The level
25 of certainty that he's presented at the time these

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1 photographs lineups, you hear Investigator McRae, he said he
2 immediately identified both Taurus Watts and Tremaine Wray
3 in those pictures and Investigator McRae did not suggest to
4 him in any way, fashion or form which one to pick. And the
5 time between the crime, which is June 30, 2007, at
6 approximately 4:15 a.m. and the time of the confrontation,
7 meaning when was he shown the photographic lineup? July 1
8 at 1:15 p.m. Barely 24-hours away.

9 Now, Ricky Jacobs gave a written statement on July 1,
10 2007. Investigator McRae admits he didn't ask him about
11 anything that happened inside of the bar. He wanted to know
12 what he saw outside. What did you witness about the
13 shooting. Verda, Stephanie, Charlie, Travis, and Lamont.
14 They were all there inside. They were able to provide
15 enough information to McRae about what occurred inside.
16 Ricky begins his testimony by saying he was working the bar
17 when a fight breaks out by the door to the deck, okay.
18 Ladies and gentlemen, the door to the deck is in this
19 general vicinity, and the deck is pretty big in the back.
20 The dance floor, he said, was near the back door. He sees
21 Brian Johnson and new faces, like Charlie, like Lamont, like
22 Hank, like Travis. And that Johnson was in the middle of
23 it. He was the loudest. And he eventually gets banned by
24 Ricky Jacobs. Closing down the bar because of the fight. I
25 mean, is that a lie because he didn't say that to

1 Investigator McRae on June 30. I mean, wasn't it self-
2 explanatory why he was closing down.

3 There was a melee in his nightclub. A guy came in to
4 get his mother. Obviously, that would have been Charlie
5 because his momma got hit in the face. Leaves security to
6 watch the bar and he leaves to go get his car from his dad's
7 house across the street. And by this point he says the
8 music is turned off and the lights are turned on. And he
9 says he goes across the street every time he closes down to
10 get his car because he parks there so he won't take
11 customer's parking spaces. He see a man with a red shirt
12 backing out of the bar with a gun. He never sees him shoot
13 it. He is walking across the parking lot by the gas pumps.
14 He sees Taurus Watts and Tremaine Wray walking towards the
15 bar.

16 Now, at this point, ladies and gentlemen that's when
17 his statement, his written statement begins when he was
18 walking across the street to get his car because he was
19 closing down for the night and that's when he encounters
20 Taurus Watts and Tremaine Wray. He does not include in his
21 written statement anything about the fight inside, but
22 Investigator McRae already testified that he never was
23 asked. So that doesn't make Mr. Ricky Jacobs a liar. He
24 has known Taurus Watts for 19 years, has seen Tremaine Wray
25 before in the bar and he knew his face. Had seen both of

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1 them inside the bar earlier. He doesn't remember when. I
2 mean, he's a nightclub owner. There's a lot of people
3 coming and going through his nightclub. He told them that
4 they were closing and Taurus mumbled something. They turned
5 around and walked back to the car by the gas pumps. He saw
6 them getting into a tan Suburban. Tremaine was the driver,
7 Taurus was the passenger. Had to pass the passenger side of
8 the tan Suburban and sees Taurus with a black gun wrapped in
9 some white clothing, but couldn't see it. Had a short
10 barrel and a long clip. Keeps watching the tan Suburban as
11 it drives down Hardscrabble. As he reaches the middle of
12 the street, he hears several shots fired and sees flash from
13 the mussel from the driver's side of the tan Suburban
14 towards the crowd at the car wash. Cannot say who fired the
15 shots because the car was too far. He then testified that
16 he saw two guys by the Rodeo. The driver had dreads, the
17 passenger has a low haircut and a pistol smaller than the
18 gun Taurus had.

19 Now, notice here, ladies and gentlemen, I put an
20 asterisk there, and I'll get back to that, again. Parks his
21 car in front of the bar. I put an asterisk there. After
22 the tan Suburban fires several shots towards the car the
23 white Isuzu Rodeo pulls a U-turn and the passenger shoots
24 one time up in the air by the car wash and continues down
25 Hardscrabble Road towards Farrow Road. Again, I put an

1 asterisk there. I'll get back to that.

2 Didn't call 911. Was busy making sure his customers
3 were safe. Didn't talk to responding officers because they
4 were busy securing the crime scene. Talks to McRae when he
5 arrives and explains what he witnesses, once again, out of
6 earshot of all the on-lookers, he tells him Taurus had a
7 gun. Identifies occupants of the white Rodeo as the same he
8 had witnessed firing one shot in the air. Gives a written
9 statement on July 1 at 1:15 and in his statement, the very
10 last thing, because Mr. Swerling was right. In his
11 statement it does say Tremaine shot several rounds.
12 Tremaine did this --

13 Ladies and gentlemen, he corrected that that day on
14 July 1, 2007. The very last sentence in his statement says:
15 Whoa, whoa, whoa, I'm not saying I saw Tremaine. It was too
16 far away, it came out of the driver's side. He corrected
17 that that day. He positively identifies both defendants in
18 the photographic lineups. He identifies the M-11, what he
19 referred to as an Uzi. And what is different about this
20 picture, what is different in this picture? It did not have
21 that shoulder stock on the back. I'm just going to leave
22 this for a second here. Most importantly he does not know
23 Brian Watson. And I asked Brian Watson if he had ever
24 spoken to Ricky Jacobs. No. Why is that important, ladies
25 and gentlemen, because I left that picture there for a

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1 second, for a reason. Look at the gun that Brian Watson
2 identified as having gotten rid of on June 30, 2007. The
3 very same weapon that Tremaine Wray brought to Jarrell
4 Dansby and he got rid of. And what does Brian Watson
5 testify about this weapon, ladies and gentlemen, the one
6 that he referred to as a Mac 10 from the movies? It did not
7 have a shoulder stock on it. Those are details that only
8 people that actually saw it would know. Ricky Jacobs
9 testimony, what he witnessed is corroborated by what the
10 other witnesses said. For instance, when Stephanie, and
11 Verda, and Lamont said the shots were coming from the road?
12 Well, that's consistent with him saying that he saw this tan
13 Suburban shooting from the road towards the car wash. Not
14 only is he corroborated by other witnesses, he's
15 corroborated by forensic scientific evidence that does not
16 lie. Ballistics. Ten shell casings found along the
17 roadway. The majority of them concentrated by the car wash.
18 There're on the side of the road -- you heard people were
19 getting in their cars and driving and you heard from Reed-
20 Enzor that some of the casings were damaged. But you also
21 heard from Collins that that would not in any way to effect
22 his ability to look at the firing pin impression on the end.
23 And just to save some time, I'm only going to show you one,
24 but all this is going back with you to the jury room. You
25 can look at each one by yourselves. This is the shell

1 casings, No. 13. It doesn't appear to be damaged, but some
2 of them might be bent a little bit from being run over by
3 cars, but the fact that a car runs over a shell casing,
4 ladies and gentlemen, this is what's important at the end.
5 The firing pin impression that's a little square,
6 rectangular impression at the base of this bullet. That's
7 what David Collins relied on in analyzing this evidence.
8 And he testified it in no way made his -- impaired his
9 ability to analyze the evidence. We've got 10 shell casings
10 found at the scene. Seven of them are Winchester and three
11 of them are Rp, Remington. They're all 9 millimeter Lugers.
12 They matched one gun. One gun. How many shots did Ricky
13 Jacobs say came out of the tan Suburban? Several. How many
14 did he say came out of the Isuzu Rodeo. One. There were not
15 other shell casings found at the scene belonging to another
16 gun. So how do we explain that? Is it reasonable to
17 conclude that perhaps because there was a 38 caliber bullet
18 found in the passenger seat of the white Isuzu Rodeo that a
19 revolver was used to fire up in the air. Is that a
20 reasonable conclusion, because there is no shell casings
21 from a different gun.

22 And remember, ladies and gentlemen, revolvers do not
23 expel or eject their shell casings. He says that M-11 leave
24 very unique firing impressions. Most consistent with M-11
25 produced by SWD, Cobray and FNJ. M-11 is an uncommon

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1 weapons. He does not see them often. The location of the
2 shell casings, again, I already went over that, were along
3 the roadway in front of the car wash. And remember people
4 are driving because they're trying to get away from there.

5 Can't predict how a shell casing will be expelled and
6 land. They cylinder, they're going to roll. Once they're
7 shot they come out to the right. So obviously the shell
8 casings fired out of the driver's side of the tan Suburban
9 the firearm had to be out far enough for the shell casings
10 to be expelled onto the street. However, once it hits the
11 street, they'll bounce, they'll roll. They're cylinder.
12 Cars were driving over them, moving them around.

13 They're concentrated around where Ricky Jacobs said he
14 saw the tan Suburban fire multiple shots. It corroborates
15 him.

16 Then, what do we have at the crime scene? Two
17 projectiles that are found in the car stalls. Remember X is
18 over here in this general area and I is around here. X and
19 I are projectiles, and when Hank was taken to the hospital
20 and he didn't make it, you heard from Deputy Smith say that
21 while the nurse was taking his clothes off I saw the
22 projectile fall from his pant leg and I picked it up and
23 kept it in my custody for analysis, put it in the evidence
24 room for analysis. And lo and behold, it matches, came from
25 the same gun. So what does that -- just do the math. If

1 the Isuzu Rodeo fired one time in the air, but yet you have
2 three projectiles that match, well, clearly you can exclude
3 the white Isuzu Rodeo, okay. It's simple math. Common
4 sense. You use deductive reasoning.

5 What else corroborates it? That it's most consistent
6 with a 9 millimeter, the three projectiles, and the rifling
7 characteristics are consistent with SWD, Cobray, FNJ among
8 other 9 millimeter gun manufacturers. And he did say there
9 were like 40 or something, but he couldn't exclude those.
10 No other projectiles found at the scene. You heard him
11 testify about the firing range of an M-11, how it's several
12 hundreds of feet.

13 And, again, I showed you that picture of the secured
14 fence. You heard Reed-Enzor say that she didn't go back
15 there and look for projectiles. There was a secured fence.
16 And if they can't get back there, obviously, someone else
17 can't get back there and shoot in the other direction
18 towards the call stall.

19 The DNA corroborates Ricky Jacobs. How does it do
20 that, because he said that the car was firing towards the
21 car wash, and we know that the first evidence of any blood
22 belonging to Mr. Johnson is over here. So he is well into
23 the stall. If it's coming from the patio -- the wall is
24 blocking. You can't shoot through a brick, cement wall.
25 The wall is blocking.

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1 So we know from Dr. Nichols that he would start
2 bleeding immediately, profusely. He would have very little
3 time to live. And that he then runs and gets in the car.

4 And you heard about the void evidence. But regardless,
5 ladies and gentlemen, it corroborates Ricky Jacobs that the
6 shots were being fired at the people in the car wash.

7 What else corroborates it? The GSR evidence. Luther
8 Landrum was the driver. What did Ricky Jacobs say? He's
9 not the shooter from that car, the Isuzu Rodeo. Negative
10 for GSR. That's consistent. Earl Greene, the passenger,
11 witnessed shooting one time up in the air with his arm out
12 the window, and I specifically asked the GSR expert, Michael
13 Moskal, does wind effect it, because it's fragile, gunpowder
14 residue is fragile and a moving vehicle, wind, you shoot,
15 you're not going to have GSR on your hands or on the roof
16 where it was swabbed. Exterior passenger roof. That is
17 corroboration of Ricky Jacobs, because he said he had his
18 hand out the window, pointed up in the air and fired one
19 time.

20 And what's important ladies and gentlemen is every time
21 you fire a bullet and you pull the trigger, GSR comes out
22 each time. So the more you shoot, the more you're going to
23 have. The evidence in the 1999 Chevy Suburban, and here I
24 put a little cheat-sheet for myself, so I wouldn't forget to
25 go over this.

1 Now, on my way to work this morning, I was so scared I
2 was going to be late, because there was accidents all over
3 the place. I don't know what it is about rain, but
4 approaching -- I live out at the lake, I'm approaching St.
5 Andrews Road and I'm stuck in traffic and I'm terrified to
6 be late for Judge Childs. So I'm looking and I see a tow
7 truck backing up to a car that had been in a wreck and pull
8 it up onto the back of its truck, onto the bed of its truck
9 without ever getting inside the car. And I said, wow, this
10 is a coincidence.

11 Ladies and gentlemen, they want you to believe that the
12 tow truck driver got into the is '99 Chevy Suburban, I will
13 bring your attention to State's 163. List all valuables in
14 the vehicle. Did not conduct inventory due to search
15 warrant being served on vehicle. So if officers are going
16 to treat it like a crime scene, you think they are going to
17 let a tow truck driver get inside? Let's say the tow truck
18 driver did get inside -- well, the only reason the tow truck
19 driver would get inside the car is to change the gear to
20 neutral, perhaps. I'm not familiar with it. Use your
21 common sense. But you'd have to open the door, get inside,
22 put his hands on the gear shift, put it in neutral. Then he
23 would be done and he'd shut the door, right? Well, why do
24 we have GSR on the driver's side rear door frame? There's
25 no reason for a tow truck driver to get in the back seat of

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1 a car when he's going to tow it. There's no reason for
2 that.

3 Well, ladies and gentlemen, remember I asked Agent
4 Moskal, is it consistent and possible when you are firing a
5 firearm out of a moving vehicle, outside a window, for GSR
6 to come back to the backseat, and he said, yes. That's how
7 it got there.

8 Now, the defense is going to go on about the fact that
9 there's three round particles of lead only and none of the
10 barium and antimonium. And expert witnesses are basically
11 just like any other witness. You ask yourself if Agent
12 Moskal was lying or telling the truth about his findings.
13 And his ultimate conclusion, ladies and gentlemen, is that
14 the evidence is most consistent with a firearm being fired
15 from the driver's side area. So we've eliminated brake pads
16 as a source, and the tow truck driver. And we've eliminated
17 cheap Chinese Christmas lights. And we've eliminated the
18 fact that no one was fishing with lead weights in that car,
19 then use your common sense, and that corroborates Ricky
20 Jacobs, as well. Forensic evidence does not lie.

21 There's a lot to cover, and I'm terribly sorry this is
22 such a long closing argument. I hate to be long, but I have
23 to explain the procedures. I won't get to come back up here
24 and reply to anything defense says in closing arguments. So
25 I have to have a crystal ball to anticipate what they're

1 going to tell you in their closing arguments. These are
2 just things that I came up with. I may not cover all of
3 them, and if I don't just think and ask yourselves what
4 would Ms. Shipley say in response to that. Forget what I
5 say, what does the evidence say. That's what's important.

6 Defense strategy. Attack Ricky Jacobs. He has
7 motivation to lie or to cooperate with the police, because
8 back in 1989, he had some sort of ABC liquor license
9 violation or he was open after hours. But he's going to
10 implicate two innocent men for murder? Does that appeal to
11 your common sense? And if anything, ladies and gentlemen,
12 he's losing business by coming forward. He's lost Bryan
13 Johnson as a customer. He's lost Tremaine Wray, he's lost
14 Taurus Watts, he's lost Lisa Johnson. He's certainly lost
15 the party that was with Hank that night. None of them have
16 been back to this bar since. If anything his business is
17 being effected, he's in it for money, and there goes all
18 those sources of money. So I submit to you, ladies and
19 gentlemen, he had no motivation to cooperate with the
20 police. He's telling the truth. There's no evidence of any
21 bad blood between he and the defendants. Focus about the
22 history of the bar since the 1980s. Obviously, claim that
23 they didn't -- that he did not see Tremaine and Taurus there
24 that night at all. It must have been a mistaken identity,
25 even though he's known them. Or point to some pictures,

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1 some person so far away under an ICE sign and say that's Mr.
2 Watts. But if he did see them they were just merely
3 present. They were not working and assisting with one
4 another. You can't impute what Tremaine did or what Taurus
5 did to the other. They're just merely present. Focus on a
6 white Nissan Pathfinder with a black stripe.

7 I asked Deputy Galinski, and everyone knows what they
8 look like, Isuzu Rodeos are very similar in model as white
9 Pathfinder, and it's a white SUV with a black stripe. It's
10 clearly the white Rodeo Isuzu. It's just smoke and mirrors
11 to distract you.

12 Focus on the GSR kit for the Isuzu Rodeo in a closet,
13 as it was referred to, a closet, you know, with people's
14 clothes and shoes. Not an evidence locker that is
15 maintained in a locked fashion with only the lab technician
16 and his direct supervisor having access to it. In a locked
17 laboratory in a Sheriff's Department. There's a difference
18 in being in a closet in your home verses a locked evidence
19 locker in a locked and secure crime lab unit in a Richland
20 County Sheriff's Department. You heard from Agent Moskal,
21 the fact that it was stored for seven months, and
22 Investigator Bouknight told you that that's not -- he should
23 have put it in the same day with the rest of it. It was
24 behind a box with his diluted solutions and whatever he had
25 in there. Mistakes happen. We're human beings. Law

1 enforcement are human beings, as well. But you heard from
2 Agent Moskal, once it's collected and on that sticky tab
3 it's not going anywhere. It will not degrade. Smoke and
4 mirrors.

5 Focus on the fact that Landrum and Greene's hands not
6 bagged. Well, why even talk about Landrum. We know he
7 didn't fire a shot. Attack Brian Watson. Obviously, no one
8 in here is going to want Brian Watson over for dinner,
9 right. I certainly don't. But when he tells you that Mr.
10 Watts and he ran into one another and Mr. Watts tells him,
11 I'm going to get away with it. I'm going to get away with
12 it. All they have is an eyewitness. No gun, no GSR.

13 Well, isn't that interesting. That just happens to be
14 the evidence in this case, and how would Brian Watson know
15 that unless it came from the source. And no GSR was
16 collected on Taurus and Tremaine because they were not
17 apprehended until after 24 hours. Tremaine Wray was
18 arrested on July 1, in the evening hours, afternoon hours.
19 Taurus was arrested July 3, at 7:40 p.m.

20 They attacked Investigator McRae for failing to
21 interview Marcus Gordan and Timothy Weldon, but it's
22 apparently the fact that he interviewed Stephanie and --
23 these witnesses were interviewed; Stephanie, and Verda, and
24 Charlie, at the hospital. Timothy Weldon and Marcus Gordon
25 were not part of their party. And there's just so many

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1 details as to what happened.

2 This is what happened. A drink was thrown in his face,
3 this guy punched me. I identified him in a photographic
4 lineup and -- I mean, what else is there to talk about the
5 fight. And obviously the fight led to the shooting. It's
6 not like they were having tea at the H&J club on June 30,
7 and for no reason they're being shot at. It's clearly
8 related.

9 Then ladies and gentlemen, they don't attack the crime
10 scene investigator at all. I was pleasantly surprised.
11 Because what is there to argue with. It is meticulously
12 documented, meticulously collected. There's nothing to
13 attack. And it what it is. Everything was found where it
14 was.

15 And again, I'm anticipating. No gun. We know that
16 Wray gave his gun to Jarrell, his first cousin. And if he
17 had time to get rid of his gun, to dispose of his gun,
18 what's to say that he didn't have time to get in his tan
19 Suburban and if there happened to be any shell casings from
20 the firing of the gun, that he got rid of those, too, before
21 he went to work at the Outback. And I already covered that.
22 And it is a tan Suburban, silver or tan? That's another
23 thing I wanted to bring to your attention. Here's the Isuzu
24 Rodeo, looks like a Nissan Pathfinder with a black stripe.
25 Here is the Chevy Suburban, GMC makes -- they own Chevrolet.

1 This is the car, okay, ladies and gentlemen. This
2 photograph was brought to the attention of one of the
3 witnesses about this tan SUV in the parking lot. Well, I'm
4 not an expert on models and makes and so forth, but that
5 appears to be a Tahoe. This appears to be a Suburban, made
6 by the same company, but look at it closely. This is more
7 square. I mean, obviously this is not the same truck
8 because it was already gone. This car was witnessed back at
9 the grandmother's house at [REDACTED]. It's not the
10 same car. Smoke and mirrors.

11 And the last thing I can think of, ladies and
12 gentlemen, is if they did it, then it was in the heat of
13 passion. To mitigate the crime of murder to voluntary
14 manslaughter. So really if you believe Ricky Jacobs that he
15 saw Taurus and Tremaine, well, they were just merely
16 present. But if that doesn't work it was in the heat of
17 passion.

18 We know that they were involved. Taurus Watts tells
19 Gallegos: It's strange why the other side -- all right, so
20 we're on sides -- involved were not patted down. He and his
21 friends were always checked for weapons, during the fight.
22 Obviously you're there if you're saying during the fight the
23 other side pulled out firearms. So he's placing himself
24 inside the bar during the fight. It took security a while
25 to close down. They had an opportunity to go outside to

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1 Tremaine's car and go get the Mac 10 or the M-11, whatever,
2 and then try to work their way back in. I mean, they had
3 the time. It wasn't the fight ended and the shots
4 immediately started. There was time.

5 Ladies and gentlemen, I'm going to wrap it up now.
6 It's been long enough. Taurus Watts said in March of 2009
7 that he was going to get away with it.

8 MS. JOHNS: Your Honor, she's got that displayed
9 right there in quotation marks and I don't know if that's
10 appropriate because this is just the testimony of a witness,
11 and it's not recorded and I think she's using that quotation
12 mark improperly.

13 MS. SHIPLEY: Your Honor, it's in evidence.

14 THE COURT: Okay. If it's in evidence, you all can
15 call it exactly what it is. If it's not a direct quote that
16 you all recall then don't accept it as such.

17 Go ahead.

18 MS. SHIPLEY: March 2009, he told Brian Watson,
19 that he was going to get away with it.

20 Ladies and gentlemen, on behalf of the state of South
21 Carolina, on behalf of the Johnson family, we're asking you
22 to hold them accountable for their reckless disregard for
23 the safety of everyone in that parking lot and taking the
24 life of Demuria Johnson. We ask that you hold them
25 accountable and you find them both guilty of murder.

1 Thank you.

2 THE COURT: We're going to take a short break,
3 because I don't know how long the other might be. You all
4 are reminded not to discuss the case until it's given to
5 you.

6 (Jury out at 12:35 p.m)

7 THE COURT: You all be at ease for about 15
8 minutes.

9 (Court at recess for short break.)

10 (Court in session after short break.)

11 THE COURT: Do you have that note from the jury
12 marked as a Court's Exhibit.

13 COURT REPORTER: Yes, ma'am. That's Court's No. 6.

14 (Court's Exhibit No. 7, jury note,
15 foreman, No. 218, Harry R. Patterson, Jr.)

16 THE COURT: Are you all ready?

17 MS. SHIPLEY: Yes, ma'am.

18 MS. JOHNS: Defense is ready.

19 THE COURT: All right. Jurors, please.

20 (Jury in at 12:55 p.m.)

21 THE BAILIFF: Jury's all present, Your Honor.

22 THE COURT: Ms. Johns, you may proceed with your
23 closing argument.

24 MS. JOHNS: Thank Your Honor. May it please the
25 Court.

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1 Ladies and gentlemen, I represent Taurus Watts in this
2 case.

3 We've come to that part in the trial where Taurus Watts
4 sits here, still innocent, based on the presumption of his
5 innocence. You, right now, don't have any choice, based on
6 your oath, you have to presume him innocent. At this very
7 moment, as if he was sitting with you. As if each and every
8 one of you had him cloaked in a robe of righteousness where
9 this robe protects him from any presumption of guilt. This
10 robe protects him from any attacks on Taurus Watts.

11 Right now, ladies and gentlemen, I'm going to do the
12 best that I can do to help your recollection of the facts of
13 this case. One thing that I think is very important, and
14 the Judge will instruct you that in each and every case
15 where we have a defendant that has pled not guilty is two
16 words that you can use and take with you throughout this
17 trial and those two words are not guilty. And that's what
18 Taurus Watts is saying as he sits next to me. That's what
19 Taurus Watts said on the day that he was arrested. That's
20 what Taurus Watts has said on the day that he turned himself
21 in to the Richland County Sheriff's Department.

22 MS. SHIPLEY: Objection. Facts not in evidence.

23 THE COURT: You all should recall only the facts
24 that are in evidence.

25 MS. JOHNS: A presumption of innocence involves two

1 words, not guilty. You must presume him innocent. The
2 virtue of him sitting in a courtroom exercising his right to
3 a jury trial, he is saying I am not guilty. He's been
4 saying that since the day he turned himself in. You can
5 take that any way you want to. That's what he says and
6 that's what we're going to go with.

7 This has been a long case, and I will just try to
8 highlight some issues that I think are very important to Mr.
9 Watts.

10 On June 30, 2007, it's 4:00 a.m. you had people from
11 St. Matthews who drove all the way into Columbia, up North
12 Main Street to drink, play cards, and eventually go out to a
13 club. Those people were Verda Roberts, Stephanie Boston,
14 Travis Malone, James Lamont Goodwine, and Demuria Johnson.

15 Now, you heard from the testimony from the witnesses
16 that were here, which was Lamont Goodwine, Stephanie Boston,
17 Verda Roberts and Charlie Bates, that they were drinking.
18 They had been drinking. They were drinking over at one of
19 the ladies house over off North Main, and what compelled
20 them to jump in a car and drive all the way across town to
21 Hardscrabble Road? Well, it's easy. It's easy to determine
22 why they did that. They did that because Charlie Bates
23 wanted to go over there to run into Lisa Johnson. You know,
24 surely this relationship that as tumultuous was something
25 that he was interested in, and that was his reason for going

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1 over there.

2 When they arrived, the state stipulated that there had
3 been drinking -- and, well, I'll get to that in a minute.
4 When they had arrived Lisa Johnson shows up. It's 3:00
5 o'clock in the morning. And you heard Charlie Bates say on
6 the witness stand that he had been told that Lisa was there.
7 And that was his interest. And regardless of what Lisa did
8 or what time she got there, it's no fault of hers that this
9 fault broke out. I mean, just because she happened to be
10 the subject of someone's affection does not in and of itself
11 indicate that she should be at fault for anything. In fact,
12 she was trying to prevent anything from happening.
13 Regardless of what she was seeing, who she was dating it
14 doesn't matter what her intentions were, but Charlie Bates
15 after drinking for several hours, whether that be at this
16 club or whether that be at one of his sister's mother's
17 house somewhere off North Main, he had been drinking. And
18 we all know what happens when you start to drink and you mix
19 alcohol, drugs, love, music, dancing and females. Everybody
20 established a little bit of pride and that's exactly what
21 Charlie Bates did that night. He was establishing his
22 pride, and in the end what happened was somebody got
23 offended and it resulted in a fight. There is no dispute
24 whatsoever that Charlie Bates got hit in the face. There's
25 no dispute about Bryan Johnson being involved. There was no

1 dispute about who was there and who Lisa Johnson met. We're
2 not trying that part of the case. I think that we can all
3 concede that there was a fight. However, this fight is what
4 led to the chaos in this club. And what you had to do is
5 although the investigation in this case led to statements by
6 every party that had come with Demuria Johnson that night,
7 that is not complete. Just receiving statements from them
8 does not complete the investigation, because if their
9 statements alone completed the investigation we would have
10 proof alone beyond a reasonable doubt that a fight occurred.

11 That's not why we're here. We're not here to determine
12 if a fight occurred. We're here to determine who shot
13 Demuria Johnson. Plain and simple. Who shot him. And it's
14 your job to determine who that person was. It's not your
15 job to speculate as to why, the people in the fight, whether
16 or not there was corroborating forensic evidence. That's
17 not your job to determine the level of scientific certainty
18 in this case.

19 Your job is to figure out who shot Demuria Johnson.
20 That is just as plain and just as simple as I can make it
21 for you. And if you determine that my client, Taurus Watts,
22 shot Demuria Johnson, then you would have no choice, after
23 determining whether or not it was beyond a reasonable doubt
24 to convict him. I'm not going to get up here and, as the
25 state has submitted to you, cause a lot of smoke and mirrors

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1 for you. That's not my job. My job is to get up here and
2 tell you what highlights reasonable doubt in this case.
3 That's not smoke and mirrors, ladies and gentlemen. That's
4 everybody's right to come in here to court and determine
5 whether the 12 of you can agree on who shot Demuria Johnson.

6 And what we have to look at, we have to look at all the
7 facts, and after looking at all of the fact, we then have to
8 determine if reasonable doubt exists, because if reasonable
9 doubt exists in any of your minds, then you must
10 collectively agree to that and come back with a verdict of
11 not guilty of Taurus Watts. It's not smoke and mirrors.
12 I'm not trying to make you do something that you're not
13 inclined to do. I just want you to use your common sense in
14 this case and you establish that there's reasonable doubt in
15 this case, you should have no problems coming back into this
16 courtroom and rendering a verdict of not guilty, because
17 that is what the law is. The law is that if you have a
18 doubt for which you can state a reason, that's what your
19 duty is.

20 Now, what I'm going to do is have you look at these two
21 exhibits right here. This is the arial view of the club. I
22 want you to look at this arial view of the club, and I want
23 ask yourself whether or not the eyewitness testimony from
24 Ricky Jacobs is believable. I'm not coming in here saying
25 that Ricky Jacobs is a liar. I don't know Ricky Jacobs. I

1 can't tell you that. But I want you to look at this, and I
2 want you to determine whether or not his testimony is
3 believable, therefore reliable.

4 It's easy to see, we've all determined this through
5 witnesses, the exhibit shows Hardscrabble Road and the blue
6 rooftop indicates the store that is connected to the H&J
7 club or Chaser's pub. It's been established that the canopy
8 that extends from the blue rooftop and goes out towards the
9 roadway and to the right covers up gas pumps that were no
10 longer working, at this particular time. I want you to then
11 establish in your minds it being dark. And when Mr. Jacobs
12 is inside his club, which is over here on the corner, which
13 includes this back deck. You're going to have to walk
14 through his testimony and you're going to have to determine
15 whether or not he had an opportunity to view the defendant
16 at the time of the crime. There is evidence that says that
17 Taurus Watts was at the club. You're going to have to make
18 a determination as to whether or not that evidence is true.
19 If you determine that evidence is true, that Mr. Watts was
20 at the club, you're going to have to look at Ricky Jacobs
21 testimony and then determine number one, his opportunity to
22 view the defendant at the time of the crime. Not at the
23 time he was in the club, but at the time of the crime. Was
24 the crime a shooting, a murder. What was Ricky Jacobs
25 opportunity at the time of the crime to view Mr. Watts.

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1 Okay. We already know, and we've already established, had
2 been there for 34 years. That he's known Taurus Watts for
3 20 years. That Taurus Watts's mother used to cook in this
4 little area, Granny's Home Cooking, right here between the
5 store and the club. His mother used to work there. Worked
6 for his father, Eugene Jacobs, and worked for him. So he's
7 known Mr. Watts for 20 years. There's no question that he
8 knew Mr. Watts on June 30, 2007. There's no doubt about him
9 knowing Mr. Watts. There's no doubt knowing that if he's to
10 see Mr. Watts over a 20 year period and in 2007 sees Taurus,
11 he's going to recognize Taurus. He's going to know who
12 Taurus is. That's common sense. That's the kind of common
13 sense I'm asking you to trust. You have to trust your
14 common sense.

15 Second thing that you have to determine is Mr. Jacobs,
16 what was his degree of attention in this particular case.
17 All right. What that means is take the circumstances that
18 was given in this case with regard to what was going on in
19 that club and determine whether Mr. Jacobs degree of
20 attention was to the level that he could remember Taurus
21 Watts and saw him at the time of the crime. Not at the time
22 that he was in the club, not at the time that he was, you
23 know, talking to somebody, not at the time that he was
24 walking out, not at the time that he was getting into any
25 vehicle. Because the state hasn't established what vehicle.

1 Ricky Jacobs said he got into a tan Suburban. And look at
2 the degree of attention that Ricky Jacobs had to give to
3 Taurus Watts at the time of the crime.

4 Now, briefly let me go over this with you again. There
5 is a fight in the bar. There are major punches being
6 thrown. You heard Charlie Bates had his lip fall open. You
7 had testimony that Verda Roberts and Stephanie Boston were
8 throwing beer bottles at people. You had testimony from
9 Investigator McRae that there was a Marcus Gordon, who was
10 at the hospital, who may have been grazed by a bullet. You
11 had testimony in there that there was a bouncer in there
12 that was trying to break up the fight. You had Bryan
13 Johnson who was trying to break up the fight. You had a man
14 who was backing out of the club with a gun. Okay. You had
15 chaos, as it's been described, in this club. So these are
16 the circumstances that Ricky Jacobs is operating under, and
17 what he does is he leaves from behind the bar. He goes and
18 tells the DJ to kill the music. And once the music is
19 killed the lights come on, and what does Mr. Jacobs do? He
20 goes and he gets Sherman, who is one of his bouncers and
21 security officers, who is patting down people, takes him off
22 the door, puts him behind the bar, and Ricky Jacobs goes to
23 get his bar. As he does every night when he closes. That
24 was his testimony. So Ricky Jacobs is going to leave the
25 interior of his club in this kind of chaos. And you heard

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1 him on the witness stand. He's the one that said that he
2 saw somebody standing in his doorway with a gun.

3 He's the club owner. He's been in business all these
4 years. I mean, he is open every night of the week at least
5 until 2:00 a.m., and on this particular night, which was a
6 Friday night, he leaves the bar open longer because the law
7 permits it. So he takes one of his security officers off
8 the door and he puts him behind the bar, and then he walks
9 to go get his car. When he goes to get his car, you have to
10 imagine the walk with him. He has to go from the front of
11 his club all the way past Granny's Home Cooking kitchen,
12 through this area before you get to the canopy. Walk
13 through the canopy, walk past the canopy. Continue walking
14 towards his father's house. The two phone booth thing to
15 his right. Walk towards the road. Watch for traffic.
16 Cross over the first lane. Watch for traffic in the other
17 direction. Cross over that lane, and get somewhere up here
18 where his father's house is to get his car, because that's
19 important to him.

20 And guess who's inside the bar taking care of things,
21 behind the bar watching his money? His security officer.
22 His bouncer. Sherman, Kelly, somebody. Those two people he
23 named as employees. So one of his bouncers in the bar
24 taking care of the money, who's watching the bar. And you
25 heard Lisa Johnson say you had to pay \$5.00 to get in and

1 they wanted females and they pat people down. That's
2 important. I think that's a good business thing. When
3 you've got a club open until 4:00 a.m., that's a good thing
4 to do. That is taking care of your patrons, it's taking
5 care of your business. It's making sure that you can
6 continue to stay open so you can continue to make income,
7 because if things like this continue to happen you will
8 eventually be closed down, and you had to do what you have
9 to do as an owner of a business like that to prevent
10 anything from happening.

11 So you got to walk with Ricky Jacobs all the way to his
12 car, which is at his father's house on this corner right
13 here. Now, you have to also visualize that he had just
14 closed the club down. There were 40 or 50 people inside
15 this club. They didn't take the bus to come to this
16 location. They didn't take a field trip on some Greyhound
17 bus. They got there in automobiles. So you can imagine how
18 many cars were at this location prior to anybody from
19 forensics showing up to take these photographs. You have to
20 imagine how are those 40 or 50 people going to get from the
21 club to their homes? And you have to imagine all the cars
22 that were parked in this area. And you heard testimony, all
23 along Goodrich, all along parts of this road, up in front of
24 this -- it was so bad that the owner of this house had to
25 ask permission to post signs for no parking, because he

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1 didn't own this road. This road is owned by the state.
2 This road is not owned by any private individual. So the
3 parking at this club was so bad that he had to get special
4 permission to do that. When you've got cars parking over
5 here at this car wash, all through these bays, all through
6 here, and sometimes even over here where this barber shop
7 is. Down these roads, down the road his father lives on,
8 down Summercrest Road. You have to navigate through those
9 obstacles.

10 So under the circumstances you have to look at Ricky
11 Jacobs degree of attention to what he says he eye witnessed
12 at the time of the crime. Thirdly, the accuracy of the
13 witnesses prior description of the defendant. We don't even
14 need to get there, because he knew him for 20 years. Why
15 are we wasting all this time on the description of the
16 defendant. When? At the time of the crime, not the time he
17 was in the club. The time of the crime. And what does he
18 say he sees? He says he sees my client with a gun. That's
19 pretty serious. When he sees him with this gun, how do you
20 know it's Taurus Watts? Because I'm trying to give the
21 investigators a full description of who it was. I gave them
22 height, I gave them weight, I gave them what he was wearing,
23 I gave them a hair choice. What was that? A low hair cut.
24 A dread lock hair cut. A twist hair cut. Why does that
25 matter, if he knows Taurus Watts, a description is

1 irrelevant with regard to who he saw. Is there any doubt in
2 your mind that he saw Taurus Watts that night? No. Move on
3 to the next step. Is there any doubt in your mind that he
4 saw Taurus Watts at the time of the crime? Ask yourself
5 that. Go through number two. There's no question that he
6 knows Taurus Watts. He can pick Taurus Watts out of all of
7 us sitting here in the courtroom. He could see him down at
8 a grocery store in this neighborhood and know that was
9 Taurus Watts. He knew his mother. So it's almost a waste
10 of time for it, because he knew the defendant. So the
11 description of him doesn't matter. What does matter to him,
12 however, is whether or not he saw Taurus with a gun, and
13 ladies and gentlemen, seeing somebody with a gun and seeing
14 somebody shoot a gun are completely different accusations.
15 So the accuracy of the witness prior description. This
16 description is important because he describes Taurus Watts
17 with a gun. How does he describe Taurus Watts with gun? He
18 describes Taurus Watts with a gun that was wrapped in some
19 white towel or shirt or something. Because at one point he
20 said that his hand was covering the gun. That his hand was
21 covering a pistol that is that size. And when asked on
22 cross-examination he said, no, no, I can't say that for
23 sure, because all I saw was the clip and the barrel. The
24 barrel, you can see a barrel? It's shorter than the end of
25 this pen, the barrel. So he sees a clip. Is there any doubt

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1 that he saw a gun that night? Maybe. Maybe, he did see a
2 gun, but the gun was wrapped in something white. Okay. And
3 if that gun was wrapped in something white, who was holding
4 that gun.

5 So that's the only reason why number three is important
6 is because of the description of Taurus holding the gun, and
7 when you think about that go back and see the circumstances
8 that were surrounding that. Level of certainty. Level of
9 certainty. Certainly he is certain about who Taurus Watts
10 is. Level of certainty about a gun. He can come in here
11 and testify, but you, as jurors, are charged with deciding
12 based on the degree of attention and the opportunity to view
13 the defendant at the time of the crime, everything that was
14 going on from his walk from this door all the way to his
15 father's house. And then getting into his car and driving
16 back to the front of his club. That was his testimony. So
17 level of certainty.

18 Now, he already tells you that he saw somebody backing
19 out of the club with a handgun. Did he describe that gun
20 for you. Did he tell you what that gun looked like? You
21 know he had an opportunity to go through a number of guns
22 because we're looking right here at State's Exhibit No. 140,
23 and we have automatic guns, we have revolvers. We have six
24 on one page, six on another. A little tiny gun. Ones with
25 long barrels, ones with long barrels. Some semi-automatics,

1 some automatics. And you know what, just in case we threw
2 some rifles in here as well, just in case. Just in case,
3 okay, because definitely you can see a barrel on a rifle.
4 So throw those in here -- I'm sorry, two pages of rifles.
5 So you know, you have to think about those things, ladies
6 and gentlemen.

7 And number five, think about the time between the crime
8 and the identification. Why spend all this time on --
9 between the crime and the ID? I mean, if he knew it was
10 Taurus Watts, it was Taurus Watts. The state wants to
11 allege that the reason that he didn't come off with Taurus's
12 name is the very beginning is because there were people
13 around. What does he care if there were people around. He
14 runs this place. He tells people when they are allowed to
15 come in when they are not allowed to come in. He tells them
16 whether they can come in, if they can have a drink, how much
17 it's going to cost them to get in there. He tells Kelly
18 what to do. He tells the lady to charge \$5.00. The
19 identification of Taurus Watts has always, always been un-
20 controverted. The time between the crime and the
21 identification merely because he didn't want to say anything
22 to anybody else? Why? I mean, he has the ability to bar
23 people, to ban people from the bar. Why does he care
24 whether or not somebody hears him say, I know it was Taurus
25 Watts? Well, it might have been because he had been working

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1 12, 14, 18 hours. You know, his bar opens at 4:00 o'clock
2 in the afternoon. This was 4:00 o'clock in the morning.
3 Maybe it's because he knew Officer McRae and he wanted to
4 tell Officer McRae everything he knew because he didn't want
5 to get shut down. I don't know what his motive was to wait
6 to say, oh, I saw Taurus Watts with a gun. Why doesn't he
7 tell anybody. Because if you're trying to run a legal
8 business and something like this happens and you are certain
9 it's Taurus Watts, what do you care. Call the police. Call
10 911 and say, hey, this is so-and-so at the H&J club. I have
11 to call in a shooting. And his reason was -- for not
12 calling 911 was he didn't have his phone on him. Well, he
13 could have borrowed somebody's phone. If you're an eye
14 witness. He could have gone back into the bar and called
15 from the phone in the bar. You could have called the
16 Sheriff's Department and specifically asked for Mr. McRae.
17 There are a lot of things you could have done, but you did
18 not do, and now you want a jury sitting on the trial in the
19 State verses Taurus Watts to believe the reason you didn't
20 say his name at the beginning is because you didn't want
21 anybody to hear you. How about this, how about just call
22 911 and say there's been a shooting or there's been gunfire
23 at my place of business. Can you please come down here and
24 help me because I have one of my two bouncers behind the bar
25 watching the money and I can't control the crowd. Is that

1 reasonable to think that somebody might do that after 34
2 years of business. You heard Mr. McRae, he had patrolled
3 this area even when he was on the road, no problem. So the
4 time between the crime and the ID means nothing.

5 So when the state presents this to you and says that
6 Ricky Jacobs is an eye witness to this crime. We can agree
7 that he is working the bar when the fight breaks out by the
8 door to the deck area, the dance floor. See Bryan Johnson.
9 Closing down bar because of fight. Guy came in to get his
10 mother. This is from Ricky Jacobs. These were new faces or
11 did Charlie Bates go in to get his mother. Why didn't know
12 that?. Did he knew Charlie Bates. Did he know Lisa Johnson,
13 did he know Stephanie Boston, did he know Verda Roberts?

14 Well, I'm going to tell you that seven days ago or
15 eight days ago when Stephanie Boston and Verda Roberts took
16 the stand they said that they would speak to the owner every
17 time they would go in there.

18 Guy came in to get his mother. Did he say it was
19 Charlie Bates? No. Did he say it was Demuria Johnson
20 coming back in there with a gun because his friend got in a
21 fight? No. But he does know there was a fight.

22 Leaves security to watch bar and leaves to go get his
23 car from his dad's house from across the street. Here we
24 go. Leaves to go get his car from his dad's house across
25 the street.

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1 Just like I said, you're going to have to look at this
2 and walk with him to determine whether or not he was an eye
3 witness. He sees a man with a red shirt backing out of the
4 bar with a gun. But he never sees him shoot. Of course, he
5 never sees him shoot, do you know why? Because he's walking
6 away from the door of the bar to his father's house to get
7 his car, and he's going in this direction. He's not looking
8 behind him. Walking through parking lot through gas pumps
9 and sees Taurus Watts and Tremaine Wray walking towards bar.

10 So he's walking through the parking lot by the gas
11 pumps and see Tremaine Wray and Taurus Watts walking towards
12 the bar. Didn't he say that Tremaine Wray was inside the
13 bar? Now, he's got him walking towards the bar. Where is
14 his testimony that he saw Taurus Watts leaving the bar?
15 Never. You have to question that one. Has known Taurus for
16 19 years, awesome. We don't have to establish an
17 identification. No height, no weight.

18 Seen Tremaine in the bar before, knew his face. I'm
19 not going to comment on that. I'm going to let his lawyer
20 do that.

21 Had seen at least Taurus inside the bar earlier. Good.
22 Still doesn't have him leaving the bar. Told him that they
23 were closing and Taurus mumbled something. Well, if Taurus
24 is inside the bar while this fight is going on, and the
25 music is killed and the lights come on. He already knows it

1 closing. He doesn't need to be told it's closing.

2 They turned around and walked to their car by the gas
3 pumps. Is there any information that this is Taurus's car,
4 at all? Is there any testimony in this trial at all, other
5 than Ricky Jacobs, that puts Taurus Watts, my client, in a
6 vehicle, any vehicle. Rodeo Isuzu, Envoy, HHR, any of the
7 other vehicles that were seen at this location such as the
8 Tahoe at the gas pumps. Is there any testimony or evidence
9 that has come in this court that says Taurus Watts got in
10 any vehicle other than Ricky Jacobs. And does he say whose
11 vehicle that he got into? No. He just says, got into their
12 car.

13 Tan Tahoe right here at the scene. Whose car is that?
14 I don't know. Didn't matter. Already got a name. Taurus
15 Watts. We're just going to go with that. Let's just go
16 with that.

17 Saw them getting into this tan Suburban. Let's go with
18 this tan, okay, because I know that's important. The reason
19 it's important is that you heard Investigator McRae on the
20 stand say, well, you know, looking at the pictures it could
21 have been silver, tan, gold, white. Is that good enough for
22 you? Are you satisfied with that? Are you satisfied with
23 it being one of those four colors? Because if you are you
24 have to weigh that with your own common sense as responsible
25 doubt. You have four color choices, and the kind of vehicle

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1 that they got into, alleged by the state.

2 Black gun wrapped in white clothing. Had to pass
3 passenger side of Suburban and see Taurus Watts with a black
4 gun wrapped in white cloth. Black gun wrapped in white
5 clothing. Didn't have to see him. That's what he testified
6 he saw. Past the passenger side. Where did he say that the
7 car that was being driven by Tremaine Wray was parked? Over
8 here in this area. And if you pull into that area how can
9 you pass by the passenger side, because if you're walking
10 from the club across the street to go get your car while a
11 fight is going on, you're going to look over here past the
12 passenger side door.

13 Now there's been some testimony that maybe the car
14 wasn't over here, it was over here somewhere, near the phone
15 booths. So what does that mean? Does that mean he saw
16 Taurus Watts get into a car over here near the store and
17 then he went to go get his car and by the time he got back
18 from getting his car and coming back down here, then he sees
19 Taurus Watts -- or he sees Tremaine Wray in the driver's
20 seat. Was that five or ten minutes? How long is it going
21 to take you to go from this door all the way across the
22 street to your daddy's house, which by the way is not
23 depicted in this photograph. I don't know if they couldn't
24 get it or the satellite image or not. All this right here
25 they had room, but they didn't put that on here, because,

1 you know, that was just going to be testimony.

2 But how long does it take to walk from here, see a guy
3 backing out of the bar with a gun with a red shirt on. Go
4 through the gas pumps. Witness somebody getting into the
5 passenger side of a tan vehicle. Go across here. All the
6 way to your daddy's house. Jump into your Dodge, Chrysler
7 Charger, which means you had to get in the car and lost line
8 of sight. And then, -- oh, I forgot. Had to wait for
9 traffic because people were leaving. Then get into your
10 car, pull up to the road, wait for traffic, take a right and
11 then pull it into the club. Five, 10 minutes. How long
12 does it take one to do that?

13 So if he saw Taurus Watts get into the vehicle out of
14 those five to 10 minutes it took him to go get his car, when
15 did he see that happen? Well, he claims that he saw that
16 before he saw the Isuzu. And I'm going to put a star by
17 that because I'm going to come back to it. Which is wrapped
18 in white clothing, and he could see that it had a long
19 barrel and a long clip. He keeps watching the tan Suburban
20 as it drives down Hardscrabble. Ask yourself, using your
21 common sense, if that's possible, if that's probable, if you
22 can believe Ricky Jacobs. Now, I'm not saying he's lying
23 under oath or anything like that, but you'd certainly want
24 to get it right because we don't want our bar closed. But
25 it says -- let me repeat it again. Keeps watching the tan

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1 Suburban as it drives down Hardscrabble.

2 So here's his testimony. Fight in the bar -- leaves
3 the bar, sees a guy backing out with a gun, continues to
4 walk back past him. Has to walk all the way to the gas
5 pumps. He claims that he sees Taurus Watts with a black gun
6 wrapped in white clothing. As he's passing them or coming
7 towards them he says, man, we're closed. Taurus mumbled
8 something, and he sees him get into the passenger side of a
9 tan Suburban over here. And he continues to walk. The
10 whole time he's walking, what is he doing? Walking towards
11 his father's house. He's going to keep an eye on this tan
12 Suburban the whole time, to see what's going on with the tan
13 Suburban or is it such common place that guns are brought to
14 this club that he didn't think twice about it and just went
15 on to his car. Nonetheless, certainly by the time he gets
16 to the road or get up near the road, he's got to stop
17 looking at the tan Suburban to cross the road. Even if he's
18 walking backwards he's going to have to stop and look before
19 he crosses that road, especially on this night because it
20 was so chaotic and people were scrambling and people were
21 leaving.

22 So as far as him keeping an eye on this tan Suburban
23 just use your common sense on that one. I'm not going to
24 beat that down in any way.

25 As he reaches the middle of the street he hears several

1 shots fired and he sees flash mussel from the driver's side
2 of the tan Suburban towards the crowd at the car wash.
3 Cannot say who fired the shots because the car was too far
4 away because he is over here when he's crossing the road and
5 he's claiming the tan Suburban is way down here, or here, or
6 at the end of the club, or at the car wash or maybe over
7 here making a U-turn, but he says, honestly, it's too far
8 away.

9 I showed you State's No. 53, yesterday. It's in this
10 pile somewhere, but I'm going to hold up 94 right now and
11 it's already getting a little bit of daylight. Tell me, how
12 are you going to see a vehicle on this side of Hardscrabble
13 Road getting in your car, all the way down here and tell me
14 what color it is. How are you going to do that? Well, I'll
15 tell you how you're going to do that, because you have four
16 paint colors to chose from. You can choose tan, you can
17 choose white, you can choose silver, and you can chose gold.
18 And it's not even a Suburban. It's made by GMC. Why do we
19 keep calling it a Suburban?

20 Now, he can't see. He's already told you that he can't
21 see. Now, when he tells you that he can't see, then you
22 have to look back and you have to ask yourself again about
23 opportunity to view the defendant at the time of the crime.

24 State wants to have it both ways. They want you to
25 believe that Taurus Watts is the shooter, and if you don't

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1 believe he's the shooter, they want Tremaine Wray to be the
2 shooter.

3 Then he says he saw two guys by the Rodeo and the
4 driver had dreads. The passenger had a low hair cut and
5 have a pistol. What did the pistol look like? I don't know.
6 I didn't have enough choices to choose from. Was it black?
7 I don't know. Was it silver? I don't know, I don't
8 remember.

9 So once again, you have Ricky Jacobs with another
10 opportunity to ask for assistance from local law enforcement
11 and he chooses not to. Second, third gun -- excuse me --
12 third gun he sees. Still no 911. But he's able to tell law
13 enforcement that the pistol was smaller than the gun Taurus
14 had. We don't know that. Sure it's consistent with the
15 rest of the witnesses that were in here, but that doesn't
16 mean anything, because we have no idea what kind of pistol
17 it was. If he can't pick it out of that four pages of
18 examples of guns.

19 Then he pulls up and he parks in front of the bar. I
20 want you to look through each and every one of these
21 photographs, and I want you to show me where in any of these
22 photographs that you see a Dodge Charger? Just asking.
23 Pulled up in front of the bar and he stayed there until
24 McRae comes out and talks to him, once, twice -- what does
25 it matter.

1 The CSI team was already on the scene and we know that
2 because the CSI team is the team that took the photographs
3 and his car is not there. And where could it have been,
4 because we know he was in the investigator's truck riding
5 around looking for Tremaine Wray's tan Suburban over in
6 Washington Heights because that's the only place in Columbia
7 where people own tan Suburban's. So he could be driving
8 his Charger to go to the bank drop off or anything like that
9 to take care of his business, but we know his car was not
10 parked in front of the bar. So when you use your common
11 sense think about that. Think, well, if he could make a
12 mistake about walking across the street and getting into his
13 car and driving it across the street to the club, surely he
14 could be making a mistake about the identification of
15 somebody holding a gun or the gun itself. Surely that could
16 be a mistake. So parks his car in front of the bar.
17 Nothing on that.

18 After the tan Suburban, down the street, and after he
19 parks his car in front of the bar, see fires -- the tan
20 Suburban fires several shots towards the car wash and the
21 white Isuzu Rodeo pulls a U-turn and the passenger shoots
22 one time, just one time in the air. And that's real
23 important for the state, because certainly if you have a
24 semi-automatic pistol that carries 9 millimeter bullets, you
25 can only shoot it once, and the only reason we know that is

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1 because you have Ricky Jacobs that says so. Does that makes
2 sense to you, somebody's going to have one of those cowboy
3 moments and they're going to shoot out the side passenger
4 window of a vehicle and it has to be only one time. I mean,
5 if they're doing it at all they're either going to shoot at
6 somebody or shoot for the thrill of it. Who knows, but
7 that's real important to the state.

8 And I submit to you that there is nothing else that
9 says it was only one shot. If it was an automatic pistol or
10 an automatic M-10 that the Isuzu was shooting from that's
11 consistent with the state's theory. Consistent with. The
12 fact that there was a gunshot from the Isuzu Rodeo itself is
13 consistent with the guys in the Rodeo being the shooter.

14 Now, don't take my word for it, because we all know
15 that forensic science does not lie. We all know it's from
16 the same gun. We don't know if it's from a revolver, but
17 let me point you to this as a potential reason -- If
18 somebody is shooting an automatic weapon and they're leaning
19 out the passenger side of their Isuzu Rodeo and they're
20 shooting over the top of the Isuzu Rodeo where do you think
21 those shell casings are going to fall? Are they going to
22 fall on the road. Are they going to fall on the side of the
23 road, the shoulder of the road. Are they going to fall on
24 the roadway and roll over to the car wash side. Are they
25 going to roll over to the other side where the houses were?

1 We don't know where they're going to fall. We don't
2 know if the Isuzu Rodeo was even in the correct lane,
3 because we already know he's driving recklessly. He id a U-
4 turn on Hardscrabble Road. And by this time, I guess, Ricky
5 Jacobs is already back at the club, I guess. I don't know.

6 So if you can look at the steps that CSI did and you
7 can determine for yourself where the shell casings fell on
8 the road, and I don't know if you can draw from this or not,
9 but you'll have this back there with you. Here's Goodrich
10 Road, here's the residences, there's the car wash. One,
11 two, three, four, five, six, seven -- 10, 11. Who knows?
12 Who knows whether or not the shots fired from the passenger
13 side door, whether it was leaning out of over the top of the
14 Isuzu Rodeo, whether it was from the driver's door -- where?
15 It doesn't tell you anything about who did the shooting.

16 But what we do have is a clear picture of an Isuzu
17 Rodeo with guess what? Ammunition in the car. You know,
18 take a closer look at this because a picture tells a
19 thousand words, right. It can tell you what color a vehicle
20 is; we know that. But there are other things in this
21 picture that you may draw from, if you would like. And I'm
22 asking you to, I'm not going to point out to you any
23 conclusions that you may draw. But this is the passenger
24 seat, and who's sitting the passenger seat? Jerome Greene.
25 And Jerome Greene had a weapon, a pistol. Was it a

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1 revolver? I don't know. Was it a M-11. I don't know. It
2 looks smaller than the one Taurus had, but Taurus, they
3 don't have any ammunition connected to Taurus. They don't
4 have a gun connected to Taurus. They don't even have a car
5 connected to Taurus.

6 Didn't call 911. Was busy making sure customers were
7 safe. I submit to you that that is probably not true. But
8 what he was interested in was not his customers but the
9 almighty dollar. If he was concerned about his customers he
10 would have called the police as soon as he saw that man
11 backing out of the bar with that gun. He would have had
12 that guy out of the bar, he would have locked all of his
13 doors, he would have gone and he would have gone and found a
14 phone and he would have pushed 911, please come and help me.
15 I just saw a guy leave my business that had a gun. But he
16 was too busy making sure his customers were safe? No. No.
17 Cannot be believed. Didn't talk to responding officers
18 because they were busy securing the crime scene. Well, you
19 know there was testimony there was an officer on the scene
20 at 4:15. And Deputy Gregory who doesn't work for them
21 anymore, but you know what? He made an error in his report,
22 so it's just discounted. Talks to Investigator McRae when
23 arrives and explains what he witnessed. You know what time
24 Investigator McRae arrived at the scene? 5:08. Do you know
25 what time this happened? 4:12. And hour after this happens

1 he finally decides he's going to say something to somebody.
2 And do you know why he said something at all, because he was
3 asked. That's why. Explains what he witnessed, but he was
4 explaining -- he had an obligation to explain everything.
5 And he chose not to, and there are reasons for that? Well,
6 he didn't answer that question because he was never asked.
7 Then he IDs the occupants inside the white Rodeo that he
8 witnessed shooting one shot into the air. You saw the video
9 of this one -- you saw his demeanor on the video. I don't
10 have to get into that for you. I don't have to subject you
11 to that when we can clearly see it on the video.

12 So he's in Investigator McRae's truck and he's ridden
13 with Investigator McRae over to Tremaine Wray's house to
14 look for a Suburban or he has not. But at some point he
15 ends up going all the way out Polo Road. Polo and Two
16 Notch. Polo Road and Two Notch, right here. That's where
17 he goes with Investigator McRae. Not to ID the person in the
18 Suburban. Because they already knew it wasn't a tan
19 Suburban on Polo Road at Blockbuster. They already knew it
20 was an Isuzu Rodeo, and you know what, they look just like
21 Nissan Pathfinders, don't they. And they're white. And it
22 has a black stripe down the side of it. So when he takes a
23 moment out of his busyness and gets into the car and travels
24 all the way to Polo Road, he does that to identify the two
25 occupants of the Isuzu Rodeo. Does he identify them? I

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1 don't know. Did he identify them as the shooter? I don't
2 know. Is that the one that shot one time? I don't know. I
3 guess that's the passenger. He's in the passenger seat so
4 therefore he must be the passenger. The shooter had dread
5 locks. The shooter was driving and had dread locks and
6 Ricky Jacobs saw multiple flashes coming from the driver's
7 side and it's Luther Landrum. And not only that, but
8 according to Luther Landrum and Jerome Greene when they get
9 out of the club and they go down Hardscrabble Road, they
10 make a U-turn and come back down Hardscrabble and then cut
11 up Rabon Road. Now, the reason we know about Rabon Road is
12 because Officer Galinski said they were on Rabon Road. And
13 guess where they live? Way over here. And why were they
14 going this way to go all the way home. Who did they drop
15 off? How many people were in their car? Who was it that
16 leaned out the window and shot towards the car wash in that
17 white Isuzu Rodeo with a black stripe that looks like a
18 Nissan Pathfinder. Who did they drop off down that way. It
19 looks like to me that whoever was driving at the time was
20 headed home because he took a right down Hardscrabble Road
21 going towards his house. And all of a sudden, he says, oh,
22 yeah, I need to drop my friend off. So he makes a U-turn
23 and he comes back down Hardscrabble Road, turns left on
24 Farrow, takes a left up Rabon Road and ends up getting
25 chased and stopped all the way down here. Do you think they

1 had an opportunity to get rid of a third person or fourth
2 person?

3 Calls McRae, now he's got the civic duty. Now he's
4 starting to call McRae when he couldn't call 911 before.
5 Too busy counting money. Couldn't call McRae before, but
6 now he calls McRae with more information about the
7 defendants. I don't know. You use your common sense. Now,
8 he's got a conscience? Or was he made to call him? Was he
9 supposed to call him? Did he volunteer to call him? Did he
10 have to call him? He knew Taurus Watts the whole time.

11 Gives a written statement at 1:15 and corrects, Tremaine did
12 the shooting. Do you know what, it just doesn't jive, you
13 know, now to say he saw Taurus with a gun wrapped in a white
14 cloth but it was the driver -- it came from the driver's
15 side. It's just not consistent with what our theory of the
16 case is going to be so let's get that straightened up.

17 So now Tremaine did the shooting is not correct, not a
18 possibility, so what we're going to do now is since you said
19 you saw Taurus with the gun, we're going to have Taurus
20 getting in the passenger side and muzzle fire coming from
21 the driver's side, so that when you're in a GMC Suburban
22 with a console in the middle you have to literally cross
23 over the console and lean into the driver and lean out the
24 window far enough in front of this driver to shoot a gun
25 where the shell casings are spit out to the right in the air

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1 so it can be Taurus Watts. That makes sense because you saw
2 him with a gun. Positively IDs both defendants. Well
3 that's not hard to do especially when you've know somebody
4 for 20 years. IDs weapon. Well, guess what? No one ID'd
5 the weapon before that, right? They had Collins come in
6 here, and Collins said that after the shell casings it was
7 more than likely or consistent with an M-11. But you heard
8 David Collins on the stand say that ammunition could be
9 fired from 49 different guns. That's okay, though, because
10 it's most consistent with. Makes it look ugly, makes it
11 look dangerous. I have a clip. Let's go with that. Okay.

12 Does not know Brian Watson. Well, you know what,
13 that's his fault. Because Brian Watson knows the H&J club,
14 in fact, he knows it so well that when I said something
15 about being at the club he corrected me, he corrected me.
16 He said: That's the pub. It's the pub. Have you been there
17 before? Yes. So you know what, if Jacobs didn't know
18 Watson that's Jacobs fault, because Watson had been there
19 many times. He knows that whole area up there. In fact
20 that's where he lives. At 37 years old living with his
21 mother. Cracked out. Knows the ins and outs of creeks, and
22 rivers, and water, and guns, because he used to work in a
23 pawn shop. So he knows guns. And he doesn't know anything
24 about Taurus Watts and this case. Well, you know what,
25 that's not what his testimony said. He said that he knew

1 Taurus Watts that he'd know him for five years because
2 Taurus had gone to his apartment before with his friend
3 Brian Morris, and the whole reason that Brian sat up there
4 in the jail since his two arrests on armed robbery charges
5 and kept his mouth shut is because I couldn't remember what
6 his name was. Well, you knew enough about Brian Morris and
7 that's his cousin. Why didn't you just call somebody and
8 say, hey, I'm in jail on armed robbery. I would like to get
9 a free ride. I don't remember Taurus's name but I do
10 remember his cousin's name, it's Brian Morris. If you get
11 in touch with Brian Morris he will for sure know who Taurus
12 Watts is. But he knew that. No. In fact, he was probably
13 so addicted to crack cocaine that it didn't clear his head
14 for months. Then when he sees Taurus Watts. All of a
15 sudden he remembers Taurus Watts. But what is it that he
16 remembers about Taurus Watts? Didn't he say that he saw
17 Taurus Watts in some court in March? He sees Taurus Watts
18 in court in March and what happens? Nothing. Until he
19 starts calling looking for Shonda. Okay. So Shonda comes
20 down there a couple of times. They talk. They get their
21 story straight. She is the mother of these children that's
22 fathered by Jarrell Dansby. Why didn't he say, you know
23 what, I'm down here on a couple armed robbery charges. I'm
24 looking for a sweet deal. Go talk to Jarrell Dansby.
25 Nonetheless, he didn't know anything about Taurus Watts. He

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1 knows nothing about him holding a gun. He knows nothing
2 from anything that Tremaine Wray may have said to him about
3 Taurus Watts owning a gun. He's admitted to you that he's
4 addicted to crack cocaine. He's admitted to you that he
5 would do anything, anything for that drug. And that means
6 anything, because he needs it. He needs it bad. And I want
7 you -- you'll have that back there, this little CD, and it
8 has the recording on it that he has with his mother and
9 father, and look how that -- treats his parents. Listen to
10 that. So the fact that Jacobs does not know Brian Watson
11 means absolutely nothing.

12 THE COURT: I think this would be a good time to
13 take a break. Do you have that much more?

14 MS. JOHNS: I don't have that much more.

15 THE COURT: Okay.

16 MS. JOHNS: About 10 minutes.

17 THE COURT: Okay. We'll do that, and then we'll
18 take a break and have lunch between the next closing
19 argument. Okay.

20 MS. SHIPLEY: Your Honor, if I may. She may not
21 write on that.

22 MS. JOHNS: I'm not going to.

23 MS. SHIPLEY: Okay. Thanks.

24 MS. JOHNS: I know that they reuse these. I'm not
25 going to write on the wall.

1 THE COURT: Okay.

2 MS. JOHNS: So where are we now with the reasonable
3 doubt. We went through a long list of what Ricky Jacobs,
4 what the might have seen, what he thinks he remembers, about
5 him not calling 911, on and on and on. The proof beyond if
6 further than a reasonable doubt is proof that leaves you
7 firmly convinced that there is no doubt, firmly that there
8 is no reasonable doubt of the defendant's guilt, which is my
9 client, Taurus Watts. There are very few things that we
10 know with absolute certainty. In criminal cases the law
11 does not require proof that overcomes every possible doubt.
12 Every possible doubt. Every possible doubt? Is that the
13 requirement now? No. You have to have a reasonable doubt.
14 Reasonable. If based on your consideration of the evidence
15 you're firmly convinced that the defendant is guilty of the
16 crime charged, you must find him guilty. On the other hand,
17 there's a real possibility that he's not guilty you must
18 give Taurus the benefit of that doubt.

19 Now, let me recap something for you. These people, the
20 six people go to this bar and they run into Lisa Johnson, a
21 fight occurs. Brian Watson clearly was involved in the
22 fight.

23 MS. SHIPLEY: Objection. That's not in evidence.

24 THE COURT: Sustained to the extent that they are
25 to recall the facts that are in evidence.

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1 MS. JOHNS: I'll rephrase that.

2 Bryan Johnson admits on the stand that he tried to
3 break up the fight. Admitted from the stand is Charlie
4 Bates, he gets hit in the face. Lisa tells you that Bryan
5 Johnson with dread locks comes out of his shirt. And so
6 when you see Ricky Jacobs outside and you walk the path that
7 Ricky Jacobs is walking and you see somebody with a white
8 cloth that is wrapped around a black gun, you have to ask
9 yourself if that person was Bryan Johnson. That, ladies and
10 gentlemen along leads you to reasonable doubt. And this is
11 something that you cannot ignore, because it was a white
12 cloth that he's got a gun wrapped in or maybe it's his hand
13 because there's evidence that there's blood outside the
14 front door of that club. And Bryan Johnson has had an
15 opportunity to go get a weapon and go back in so he can
16 finish his business is something you can consider. I'll
17 tell you something else you can consider, you should
18 consider we've got forensic evidence that does not lie.
19 Well, maybe it doesn't but does it tell the whole truth?
20 There were 5000 particles that was used -- gunpowder -- out
21 of a GMC Suburban, and you know what out of all of them
22 tested under the protocol -- they just ran these under a
23 microscope. After a swab and out of 5000 particles guess
24 how many they came up with? 16.

25 They can't even put Taurus Watts in the car of that GMC

1 Suburban, and out of those 5000 particles they get 16. None
2 of the 16 particles are near the passenger side of the car,
3 and there was no white cloth found, and Bryan Johnson came
4 out of his shirt. And I ask you that when you consider
5 whether or not reasonable doubt exists I'd like for you to
6 look at this, because this is real evidence. This is not
7 microscopic evidence. This is evidence that you can see,
8 that you can touch, that you can feel, that you can smell,
9 if you want to. And this evidence was found in the car that
10 was driven at the time by Luther Landrum and his passenger
11 Jerome Greene. So all the scientific evidence, if it's not
12 done correctly doesn't mean anything, but this evidence
13 right here is real.

14 I'm going to ask you, ladies and gentlemen, to consider
15 every single reasonable doubt that the state has
16 conveniently listed for me. Because every single one of
17 those in addition to what I've just told you, and I'm going
18 to ask you to use your common sense when you go back to that
19 jury room you think about Taurus Watts, and you think about
20 what Ricky Jacobs single accusations and you will have to
21 tell yourself, you will have to consider a doubt of which
22 you can state are reasonable. Thank you.

23 THE COURT: Thank you, Ms. Johns.

24 Ladies and gentlemen of the jury, we're going to take a
25 lunch break now. I remind you that you have not been handed

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1 the case for your deliberations. So you can absolutely not
2 discuss the case in any shape, form, or fashion in any
3 regard.

4 We will just take a 45 minute break, and you all can
5 exercise any comfort needs, but I remind you strictly and
6 absolutely do not discuss this case.

7 Thank you all.

8 (Jury out at 2:13 p.m.)

9 (Court at recess for lunch.)

10 (Court in session after lunch.)

11 THE COURT: Okay. Are we ready -- jurors, please.

12 (Jury in at 3:07 p.m.)

13 THE BAILIFF: The jury's all present, Your Honor.

14 THE COURT: Thank you. Mr. Swerling.

15 MR. SWERLING: Please the Court.

16 THE COURT: Yes, sir, for your closing argument.

17 MR. SWERLING: Mr. Foreman, ladies and gentlemen,
18 good afternoon. I hope you had a good lunch.

19 I know that you are anxious to get back to your
20 everyday activities and relieve yourself of this
21 responsibility. But I got to tell you that I and I know all
22 these participants here appreciate the sacrifice you've made
23 over the last eight days of this trial, and it is a
24 sacrifice, and we respect the fact that you had to give up
25 family and work to come here and this is a sacrifice, a

1 necessary sacrifice because someone from the public, from
2 the community has to sit in judgment between the state of
3 South Carolina and the defendant that is charged with any
4 crime and make a decision, a rational decision as to whether
5 or not the state has proven their guilt beyond a reasonable
6 doubt.

7 When we went through, last Monday, it seems a long time
8 ago, you remember there were a number of questions that were
9 asked of you and then people were called up to the front and
10 state had an opportunity to object and excuse certain jurors
11 and defense had an opportunity to excuse certain jurors, and
12 the Court had the right to excuse certain jurors. What we
13 were trying to get was we were trying to get a jury that has
14 no preconceived opinions, no interest, no bias, no motives
15 other than to seek justice. And that is what, in fact, what
16 we want to do in this courtroom. The oath that you took
17 requires that if the state has proven this case beyond a
18 reasonable doubt you have to find one or more of the
19 defendants guilty. However, same oath that you took
20 requires, demands that if you have a reasonable doubt after
21 going into the jury room and deliberating and discussing
22 this case then you have to find and resolve that doubt in
23 favor of the of the particular defendants. That is done
24 every day in every courtroom throughout every state in this
25 union. And it is the best system that still exists on the

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1 face of the earth in resolving disputes between people who
2 are accused of a crime and the state of South Carolina.

3 Now, that's why you are here. You have that role. You
4 are sitting in between the state and the person accused of a
5 crime in making that decision without any outside influences
6 or bias. And we are all satisfied in that jury selection
7 process. That we have the best jury that can be seated to
8 resolve this case, because you are the people that we agreed
9 could sit on this jury. So we all have that faith in you.
10 We've watched you for the last eight days, probably just
11 like you've watched us. And trying to see whether you're
12 paying attention or not, taking notes or not and absolutely.
13 Every person in this jury has been intent on listening to
14 the evidence, taking notes, still listening as of this
15 morning as the lawyers were making their legal arguments to
16 you. And I appreciate that.

17 There is in law -- and I'm going to touch very briefly
18 on it, because I don't have to repeat, don't want to repeat
19 some things that Ms. Shipley said or that Ms. Johns said.
20 But we have certain principles that guide us in how we
21 decide cases and resolve disputes. One is, a defendant, any
22 defendant, no matter if it's a shoplifting case or a
23 homicide case, enjoys the presumption of innocence. We are
24 one of the few nations on the face of the earth that has
25 that presumption of innocence. That presumption of

1 innocence is so powerful, so strong in our laws that it
2 stays with a person accused of a crime throughout the trial,
3 even right now the law says that you have to presume those
4 fellows innocent. The only time that you can resolve that
5 against them and find them guilty is if you go in the jury
6 room and after you deliberate and review the evidence,
7 examine everything the state has presented, only then, if
8 you resolve beyond a reasonable doubt that the state has
9 proven their guilt is that robe of righteousness and
10 presumption of innocence removed from a defendant. That
11 presumption of innocence in and of itself is enough to have
12 a jury acquit an individual because it requires the state to
13 prove beyond a reasonable doubt.

14 Now, you heard some of the lawyers talk about
15 reasonable doubt, and the Judge is going to give you the
16 legal definition of reasonable doubt. And here's what it
17 is, simply. Every day -- not every day, but in the
18 important affairs of your life you have to make decisions
19 which effect you, your spouse, your children or your
20 parents. You have to make important decisions. I'm not
21 talking about whether to go to Public's or go to Food Lion
22 or whether or not to go to the movies. I'm talking about
23 important affairs in your life. You will consider and
24 evaluation and discuss with other people the pros and the
25 cons of whether you should take that particular action, and

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1 if you have a doubt you still may go ahead and do it,
2 because sometimes, whatever it may be, impulsive behavior or
3 we want something and we go ahead and do it or somebody
4 wants something and they go ahead and do it. But in the
5 courtroom, if you have any doubts upon you can base a
6 reason, it's not that easy, because the law requires you to
7 come into this room and say not guilty. That is what you
8 are required to do. So if you have at the end of this case,
9 when you go into the jury room and you believe that the
10 state has failed to prove guilty beyond a reasonable doubt,
11 and you hesitate, you have a doubt, a real doubt about
12 something that has been presented in this case or not
13 presented because doubt can come from evidence and the lack
14 of evidence. Then you have to resolve that doubt in favor
15 of the individual who is accused of the crime. It's got to
16 be that. Because by doing that you protect the innocent
17 people -- every single time a case is held, every time
18 someone is charged that right has to exist. You can't make
19 an exception. We never make an exception.

20 Now, one thing I want to talk about combining
21 reasonable doubt and the presumption of innocence is that
22 the burden of proving a case is solely on these folks over
23 here. And by the way, we all know each other. We see each
24 other all the time. We're going to be in this courtroom
25 next week or the week after, and I think this case has been

1 tried extremely civilly, there is no animosity. We may
2 object and we may say something, but believe me, folks,
3 that's just the courtroom. Outside the courtroom it's not
4 that way.

5 But what I'm asking you to consider is this. They have
6 the burden of proof, the law says they have the burden of
7 proof. None of these guys here, no defendant, has to come
8 forward and prove that they didn't do something, because the
9 lawyers and the judges going back to old England decided,
10 you know what, it is difficult if not impossible to prove
11 you are innocent. So we require the state, whether it's the
12 state or federal government or whatever law enforcement
13 agency or prosecuting office, they have to come into court
14 and prove guilt beyond a reasonable doubt, and if they don't
15 then the person is entitled to an acquittal. And they have
16 to do that right now, at the end of their case. At the end
17 of the time they present evidence, they have to convince you
18 beyond a reasonable doubt of the guilt of either one of
19 these defendants and if they did not, we still have the
20 right to rely on that doubt, the presumption of innocence
21 and ask you for an acquittal. And that's why the law never
22 requires the defendant, any defendant in any case to come
23 forward and offer testimony, because we have a right to rely
24 on the failure of the state to prove guilt beyond a
25 reasonable doubt. The failure of the state to prove

1 reasonable doubt. And I'll get into a few of those things
2 in a little bit. I'm not going to rehash everything, but I
3 would like to highlight a few things for you.

4 Another principle of law in South Carolina is if a
5 defendant, a person accused of a crime offers no evidence,
6 then they have the right to address you last. You see, in
7 every case, since the state has the burden of proof and if
8 the defendant presents evidence then they have the right to
9 close, to argue to you last. To hear what the defense has
10 got to say. Ms. Shipley was saying, I've got to anticipate
11 what the defense is going to say. Well, if we present any
12 evidence whatsoever, they don't have to anticipate. They
13 get up to speak after we speak and can respond. The only
14 time that a defense or a defendant or a lawyer for them or a
15 person accused of a crime has a right to address a jury last
16 is when there's no evidence presented. So those are the
17 decisions that are made by lawyers, strategic decisions for
18 one reason or another, but it also has to do with whether or
19 not the state has proven guilt beyond a reasonable doubt,
20 and we submit to you they have not.

21 They charged these two folks with murder. Judge will
22 tell you what the instructions are and murder gets fairly
23 lengthy, but here's what it comes down to. Murder is the
24 killing of another individual with malice aforethought.
25 It's an intentional act, and state has to prove malice, they

1 have to prove that a person acted with malice aforethought.
2 It has to prove beyond a reasonable doubt that a person had
3 a criminal intent. The state has all those burdens of
4 proof, and the defense has none. All the elements of
5 murder, as the Judge will define them to you, must be proven
6 to you beyond a reasonable doubt. Every single element.
7 And if the state does not prove any one of those elements
8 then the person accused of a crime is entitled to an
9 acquittal and a verdict of not guilty.

10 Now, murder can be committed in one of two ways. You
11 can either be the person that does the act that takes
12 someone's life in which case you are considered a principal
13 and responsible for the acts that you committed, if the
14 state proves it beyond a reasonable doubt. Or you can be
15 convicted under a theory of aiding and abetting or what we
16 call accomplice liability. I'm giving a lot of legal terms
17 and I apologize for it, but the Judge will explain all
18 these, too, but you can convict somebody of murder as a
19 principal if you find beyond a reasonable doubt that they
20 were not the one that did the shooting, but they were
21 present aiding and abetting and committed some act to
22 further that crime. Mere association, mere presence, mere
23 knowledge of a crime is not enough. The state's got to
24 prove whether someone did it beyond a reasonable doubt or
25 they acted as the hand of one, hand of all, that they were

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1 present, aiding and abetting and committing some act in
2 furtherance of it.

3 So that is the burden that they have to prove, that is
4 the burden that they have to overcome. We submit to you
5 that they have not done that in either case, because there's
6 reasonable doubt in this case, throughout the case, and in a
7 moment I'll be getting to the issues that I'd like you to
8 consider. Before I get there, though, but one of the way
9 that you evaluate the witnesses that have testified in a
10 case is to determine whether or not those witnesses has been
11 consistent with other statements orally or written that
12 they've given, because a person telling the truth can only
13 tell it one way. There's only one way to tell the -- I
14 agree with what Ms. Shipley said. There are four people
15 standing on the four corners and a traffic accident, someone
16 is going to see something different. The light maybe green,
17 maybe yellow. Someone maybe wearing a red tie, a yellow tie.
18 But guess what, the essential issues involved there really
19 can't be any deviation from. The truth is the truth. You
20 cannot deviate from the truth. You can -- everybody can see
21 something differently, observe something differently, or
22 hear something differently, but the acts that people do has
23 got to be consistent on each occasion. It also has to be
24 consistent with what other people are saying. For example,
25 you can determine the credibility of a witness if you can

1 find that that person was consistent with other witnesses,
2 but you can find against that witness if you find that that
3 person was inconsistent with other witnesses testimony, or
4 inconsistent with the facts of the case. It's solely for
5 your to decide. Solely. Nobody makes a decision on the
6 facts of the case, except you. Nobody determines the
7 credibility of a witness except you. That is your sole
8 providence. We're the lawyers. We're the advocates. We're
9 in the advocating position over here and over here. The
10 Judge is the judge of the law, but you are the judges of the
11 facts. No one can ever argue with your determination of the
12 fact, but please when you go in to determine those facts,
13 remember the presumption of innocence and how strong it is.
14 The burden of proof is on the state. It is not on the
15 defendant to come forward. How to determine the credibility
16 of the witnesses and how to go ahead and weigh that, because
17 what happens is we take 13, 14 people from the community
18 with no legal training and tell you to go back in the jury
19 room and tell you to decide if someone is guilty of murder
20 or not. It is difficult. It is difficult. But there are
21 these cardinal principles that I've just talked about which
22 should be applicable in the case that you should consider
23 and that I know you will consider.

24 Now, let's talk about some of the evidence in the case
25 that I'm going to ask you to consider.

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1 First of all, let's talk about Tremaine Wray for a
2 minute. The state does not have to prove motive. Well,
3 what is motive. There is no motive. What motive would
4 Tremaine Wray possibly have, beyond sheer speculation, as
5 Ms. Shipley said, I took care of that guy for you. Where is
6 that in the case? Where's the evidence of that? That's
7 what people do. They throw that in there for you to
8 consider. They throw that against the wall and hope
9 something sticks. Tremaine Wray had no motive to hurt
10 anyone. No motive, and that is a fact I would submit to you
11 raises the reasonable doubt in this case. No motive. Why
12 would he want to hurt anybody. Did you hear anything in the
13 case, any evidence in this case that would indicate that
14 Tremaine Wray wanted to hurt somebody? Absolutely not.
15 There is none.

16 Now, let's talk about Tremaine Wray from another
17 aspect. He's is supposed to have been in a vehicle where a
18 Mac-10 or Mac-11 or whatever they are, fired bullets at the
19 club. Well, they went to his house. They found nothing.
20 They didn't find a garment of clothing that they could test
21 or did test to see whether or not there was any gunshot
22 residue. They took nothing out of there. Guess what also
23 they didn't find in any of Tremaine Wray's possessions,
24 whether it be the house or his vehicle? A 9 millimeter
25 bullet. There is none. They don't have it. They're

1 concerned about it, and they have been concerned about it
2 because of the other evidence in this case. So you have
3 Tremaine Wray who does not have any 9 millimeter bullets,
4 has no motive, was not at the club, ladies and gentlemen,
5 and we'll discuss that in a moment. Was not in the club.
6 So what would be the motive. So what would be the motive.
7 Why would he want to hurt anybody. Now, you can go into
8 that jury room and you can make some conclusion, draw some
9 conclusion as to why Tremaine Wray, on the evidence in the
10 case, not on speculation in the case, but on the evidence in
11 the case beyond a reasonable doubt why Tremaine Wray would
12 want to hurt somebody. He has no criminal intent. He has
13 to act intentionally and with criminal intent. If you can
14 go in there and find it, find it. But I submit to you it's
15 not there.

16 Now, I'd like to talk to you a little bit about some of
17 the witnesses in the case. And basically a couple of
18 different ones.

19 Verda Roberts. I have nothing against her. And by the
20 way, there's no question that Demuria Johnson was killed.
21 Nobody is up here arguing that he wasn't killed or that's
22 not an issue in the case. He was killed that night by a
23 gunman. The question is who fired the gun. Have they
24 proven beyond a reasonable doubt that he did it, or he did
25 it? Absolutely not. Absolutely not.

1 Verda Roberts said that she believed that there was
2 more than one shot, more than one gun. Not sure. Obviously
3 it was chaos. I agree with what Ms. Shipley said. She
4 identified Bryan Johnson as an individual who had dreads who
5 was involved or around the argument. Involved or around the
6 argument. Person with dreads. You know who he is. He's
7 been identified. The photograph number is No. 4 and you've
8 seen him on the witness stand. Everybody identifies Bryan
9 Johnson, no magic there. Verda Roberts described what
10 happened in the club. Stephanie Boston described what
11 happened in the club as they perceived it. Stephanie Boston
12 described that individual as well. Bryan Johnson. Name
13 keeps coming up. The man with dreads. The man that she
14 said, right, whatever your notes are. You reflect on what
15 you remember, because I agree with what Ms. Shipley said,
16 there's no way that I can remember everything that happened
17 in the last eight days and if I do misstate something it is
18 totally inadvertent, but I submit to you, she said that she
19 believed he was the one in the altercation or in the fight.
20 And she said, remember her testimony, that the person who
21 was in the altercation that she identified in No. 4, or
22 around the altercation was the same one responsible for the
23 shooting. I haven't heard anybody mention that.

24 Charlie Bates, another one of that group. I have no
25 axe to grind with any of those folks. Charlie Bates said he

1 saw Mr. Johnson in or around this argument. The man with
2 dreads. Charlie Bates said that he believed that the person
3 involved in the fight was the person who was responsible for
4 the shooting. He was not asked that by Jack Swerling, he
5 was asked that by law enforcement. That didn't come from me
6 and it did not come from Ms. Johns, but law enforcement. He
7 described an individual in the club with dreads with a black
8 and red or black and white shirt, which will become
9 important in a little bit. And Charlie Bates said, I could
10 not tell where those shots were coming from. I thought they
11 were coming from behind me on the patio. Well, Ms. Shipley
12 pointed out that there a fence there, but there's a big gap
13 between the back of the car wash and the fence from which
14 somebody could have fired into the car wash. So I don't
15 know the significance of that that there's a fence there,
16 because no one's ever argued they had to go beyond the
17 fence. If could have been right behind the car wash. But
18 Charlie Bates gave testimony to that effect. And you've got
19 to listen to all the testimony, all the testimony.

20 Then you have Mr. Goodwine. The guy that didn't
21 cooperate that night and the guy they could never find.
22 Guess what he does, too. He identifies Mr. Johnson, as
23 well, No. 4, in the photo, as being the person right there
24 with Verda and Charlie Bates and everybody else. He
25 identifies him, as well. He doesn't know where the shots

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1 were coming from. That's not important. What's important
2 is this, Verda Roberts, Stephanie Boston, Charlie Bates, and
3 James Goodwine who were outside with Demuria Johnson and
4 Travis Malone when the shooting started. Not one of those
5 individuals have identified Tremaine Wray as being in that
6 club. Not one.

7 Now, the state would like you to believe that every one
8 of those witnesses just said that everybody in the club was
9 involved in the fight. That's nonsense, because you
10 remember the cross-examination they said, well, we can't say
11 everybody. It seemed like everybody was involved. Well,
12 did you hear one person, one person, say that that fellow
13 was in the club, of those four people? No. No one has
14 every identified Tremaine Wray as being in the club except
15 Ricky Jacobs and I'll deal with him in a minute.

16 But what is significant, also, about those four people,
17 they are the people outside. They're the ones with Demuria
18 Johnson and Travis Malone, and guess what? Not one of those
19 individuals has come into the courtroom and said that the
20 gunfire came from a vehicle going down Hardscrabble Road.
21 Not one of the. Now, that's important. That's reasonable
22 doubt, because they're the ones outside. They're the ones
23 being shot at, and not one of them says to you that the
24 shots were coming from a vehicle driving down Hardscrabble
25 Road. They never identified any vehicle in this case. They

1 don't know, a lot of times, where the shots were coming
2 from, but they said they thought they were coming from
3 behind. And where was Mr. Johnson shot? In the back. I'd
4 ask you to consider that when you determine looking at
5 reasonable doubt.

6 Lisa Johnson. Lisa Johnson told you, and she actually
7 was the one the one that kind of put this thing together
8 about who was who and, you know, who this individual was and
9 who that individual was and sort of explained how the
10 argument started, because two guys were trying to hit on
11 her; Charlie and this other guy with dreads. And she didn't
12 want to be bothered by either one of them. That didn't have
13 anything to do with Tremaine Wray. And everyone started
14 arguing and a person threw a drink on another, and somebody
15 said something to this one, and all of a sudden, you had a
16 fight going on in the club. Lisa Johnson was a witness for
17 the state. She is a witness for the state, folks. She
18 comes in here and tells you that she heard somebody in the
19 club say, he's fixing to shoot. In the club. He is fixing
20 to shoot. She also describes a person that she knew -- I
21 believe it was her -- as Chris. Turns out his real name is
22 Bryan Johnson, No. 4. Bryan Johnson. Lisa, state's own
23 witness never puts Tremaine in the club. She don't have any
24 evidence that she said that he was in the club.

25 And then Bryan Johnson, who the state says, well, you

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1 know, there's a lot of phone calls between him and Tremaine
2 Wray. Well, folks, they're friends. And you look at this
3 phone bill they introduced into evidence and all this
4 suspicious activity going on at 4:00, 5:00 o'clock in the
5 morning. You look at a couple days before that and you see
6 whether or not it's the same activity on the phone as it is
7 on the morning of June 30. Dozens and dozens of phone
8 calls. Bryan Johnson was on the witness stand. Did the
9 state asked him what -- Tremaine Wray, if they ever got in
10 touch with each other, did they ever talk to each other,
11 what were their conversations about? No. They just want to
12 throw it on the wall and hope something sticks. There is no
13 evidence in this record that support a conversation as the
14 state alleged, I took care of that for you. That's just
15 nonsense. Nonsense. Now, Bryan Johnson, he told you,
16 state's witness, he told you that he saw somebody in the
17 club from the party who had a 25 automatic. It's a small
18 gun, and he believed it was a 25 automatic. Remember that?
19 Okay. He also said that that person -- forget whether they
20 search people or not because you heard testimony of how
21 people kind of go in and out, but Bryan Johnson told you
22 that a person had a pistol in their hand and injected that
23 into to the fight. He never said that Tremaine Wray was
24 there. He is the state's witness in this case that they put
25 up on the stand.

1 Also, I would like to remind you that Bryan Johnson,
2 the guy that everybody's identified in that altercation,
3 fight, whether he was standing by or intercepting or
4 whatever he was doing was a guy with dreads and was involved
5 right in the middle of this thing, and he never said that
6 Tremaine Wray was in the club. Never said it.

7 And Lisa Johnson, and Bryan Johnson never said that any
8 shots were being fired for any vehicle on the road.

9 So you have -- that's six people, state's six witnesses
10 that do not have -- Verda Roberts, Stephanie Boston, Charlie
11 Bates, Lisa Johnson, Bryan Johnson and Mr. Goodwine. Nobody
12 says they saw Tremaine Wray and nobody saw anybody firing
13 from a vehicle on Hardscrabble Road.

14 Who is the only person who has Tremaine Wray in the
15 club? Ricky Jacobs. He's got a little bit of criminal
16 history there, and you can consider that, the Judge will
17 tell you that. He owns the club. It's 4:00 o'clock in the
18 morning. Who knows that he was doing. He's in the club.
19 He does say that he observed the altercation and it was
20 getting out of hand, so he closed the place down.

21 Folks, who does he see in the altercation? Bryan
22 Johnson. No. 18 -- I mean, I'm sorry, No. 4. Bryan
23 Johnson, again. In fact, he was so upset with Bryan Johnson
24 that he barred him from the club. He also testified that he
25 saw an individual -- by the way, this is a place that

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1 searches people when they come in -- he saw an individual
2 exiting the door, exiting with a pistol in his hand. He
3 also, I believe, said that person had dread locks. He also
4 said that that person had the shirt was red and white or
5 black. You go back in your notes and listen to the
6 testimony or review the testimony with the other jurors, but
7 he had Bryan Johnson involved there, the loudest, the most
8 boisterous. He has somebody exiting the building with a
9 pistol, backing out of the building, and he has someone
10 outside the building that he says he didn't know who it was,
11 was saying, you step outside and we'll handle it. You step
12 outside and we'll handle it. That is not attributed to
13 either one of these individuals. Not at all. So you have a
14 lot of things going on in this place that you have to
15 consider and weigh to determine whether or not there's
16 reasonable doubt.

17 Bryan Johnson testified that he came out of the place
18 -- and folks, let me just say this, Mr. McRae, I've know him
19 for a long time. It's hard for me to believe, I don't
20 disbelieve his testimony, but it's hard for me to believe
21 that no one at the Richland County Sheriff's Department
22 between June of 2007 and last week ever discussed with Ricky
23 Jacobs what happened inside the club. Does that appeal to
24 your common sense. This is a guy who witnessed the fight.
25 This is the guy who threw Bryan Johnson out. This was the

1 guy who was making identifications, people exiting the club
2 with a gun, people saying step outside and handle it, and no
3 one talks to him about it until last week? Because Mr.
4 McRae told you in all candor, in all honesty, this is the
5 first time I heard that. Does that make sense? The first
6 time you hear something is September, October 2009, when the
7 event took place in June of 2007. Folks, you know why
8 nobody ever heard it, because it's completely made up.
9 Ricky Jacobs never said at any time until you heard it on
10 the witness stand that Tremaine Wray was in the club. And
11 by the way, I don't want to forget this, remember who came
12 into the club -- well, remember who left with Bryan Johnson?
13 Norris Bond and Darius White. And remember who walked into
14 the club on September 2007 with a Mac-9 or a Mac-10, I'm not
15 sure which one it was and a report was made to the Richland
16 County Sheriff's Department? Bryan Johnson and Norris Bond.
17 Isn't that a big coincidence in this case; isn't it? The guy
18 that runs throughout all these things and walks into the
19 club in September 2007 and is barred forever. Little bit of
20 a connection there. That's for you to decide. Not for me.
21 That's for you to decide.

22 So we have Ricky Jacobs. Ricky Jacobs tells you that
23 he walks outside and he sees Taurus Watts and Tremaine Wray.
24 I'm not going to get into all that. You've heard it all
25 before. But that's the first time he ever says he saw