

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 Tremaine Wray. First time. Tremaine Wray is coming in the
2 club. He had nothing to do with what happened inside the
3 club. And he's walking past, he sees this pistol, and
4 Taurus Watts, spoke -- Ms. Shipley spoke to you about that,
5 and I'm not going to rehash that, but he says as he's
6 walking past the Suburban it pulls out, makes a left on
7 Hardscrabble Road and he sees somebody firing from the
8 driver's side of that vehicle towards the club. He's the
9 only one who sees it. The only one. Nobody else outside
10 that club has ever seen that SUV, GMC driving down the road
11 firing shots. No one. 40 to 50 people in the club, no one
12 has seen it except Ricky Jacobs. He says it goes down the
13 road and takes off. And -- you know, it gets kind of
14 interesting sometimes. In his statement, on two occasions,
15 which he denied and said Mr. McRae wrote it down wrong, but
16 on two occasions in the statement he said I saw Tremaine
17 Wray firing out of the SUV. Well, then Mr. McRae, good
18 investigator that he is, at the end of the statement on the
19 last page that Ms. Shipley keeps referring to, says wait,
20 you're behind the vehicle, you're down the road, how could
21 you tell who's shooting? Well, I couldn't. It was too far
22 away. So this rehabilitation that the state talks about was
23 not his rehabilitation, it was Mr. McRae asking him a
24 question at the end because he already said, he committed
25 that he'd seen Tremaine Wray outside firing from that car,

1 and he knew, Mr. McRae know that nobody would believe that.

2 It was dark, it was down the road, and it was too far.

3 Ricky Jacobs also testified to you that as he was
4 walking past this area up here, right up here, he saw an
5 Isuzu, a white Isuzu that everybody knows what that is by
6 now, here. He saw the white Isuzu, the guy sitting in it
7 with a small pistol. Smaller than the one he'd seen. Well,
8 guess what? He never told anybody about that until last
9 week either. Not once. You haven't heard anybody get on
10 the witness stand and say, oh, he told me that. You were
11 the first people to ever hear that. Guess what else you're
12 the first people to hear? Remember when he testified and
13 Ms. Shipley and Ms. Johns have gone through this, that the
14 Isuzu -- I mean, the SUV Suburban pulls out and goes left,
15 and that this particular car, the Isuzu, which is up in this
16 corner, now, according to him, starts to go right, turns
17 left -- three to four minutes later, and goes down
18 Hardscrabble Road and fires one bullet. And in between that
19 time, he crosses across the street. He gets his car and has
20 enough time to park it back over here in front of the club.
21 Three to four minutes. Well, guess what's wrong with that?
22 You're the first people to ever hear that, too. Because no
23 one else has ever gotten on this witnesses stand and said
24 that he said that before, either.

25 These folks were not over here. On cross-examination

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1 you heard me ask Mr. McRae, ultimately, he had to admit that
2 Jacobs said the Isuzu was near the gas pumps. Right near
3 the vicinity of the Suburban. And Ricky Jacobs, every time
4 he was spoken to either orally or in his statement said that
5 when the Suburban made a left turn the Isuzu started to go
6 right and shots were fired from the Suburban, according to
7 Ricky Jacobs. A shot was fired from the Isuzu and the Isuzu
8 made a U-turn and went down Hardscrabble Road. Immediately
9 after the shot from the Suburban. At no time prior to last
10 week did Ricky Jacobs ever tell anybody that that Isuzu
11 fired the shot going down here. He has always maintained in
12 all of his statements up until last week when he testified
13 that the shot was fired here as the Isuzu was supposed to be
14 turning right, and then immediately followed the Suburban
15 down the road after the shots. Now, how do you get that
16 wrong? I mean, I agree, again, with Ms. Shipley, that
17 people get things differently, but how do you get that
18 wrong? You can't. It's a completely different set of
19 facts. Whether or not he moved his car and had three to
20 four minutes to move his car under the canopy between the
21 time the shots were fired from the Suburban and the time the
22 shot was fired from the Isuzu is just a completely different
23 story. And you know why it's a completely different story,
24 because just like Tremaine Wray being in that club, it's
25 made up. It's made up. It's a lie. Now, I have no idea why

1 Mr. Jacobs would lie, but folks, when you go back there you
2 determine, you weigh his credibility as to what he saw,
3 based upon the clear implication he gave Detective McRae on
4 two or three occasions about how that Isuzu fired a shot and
5 then made a U-turn, and was under or near the gas pumps.
6 There was no other way. It was immediately followed. No
7 three to four minutes. You try and square that, along with
8 the testimony where he said Tremaine Wray was in the club.
9 Nonsense.

10 Now, he did say there was a shot fired from the Isuzu
11 and the Isuzu was stopped. What's interesting about a shot
12 being fired from the Isuzu and nobody wants to really
13 address or explain is that according to Mr. Collins, all the
14 cartridges out on the road came from one gun. But we know
15 that at least two guns were fired. In fact, we know from
16 witnesses that there was more than one gun being fired. But
17 we do know the Isuzu fired a weapon. Mr. Jacobs said it did
18 that night. Where's the cartridge from the Isuzu? I'll
19 tell you where the cartridge from the Isuzu is, the
20 cartridge from the Isuzu is just as likely a cartridge
21 laying on the road as it was from the Suburban that the
22 state is trying to get you to buy into.

23 Why do I submit that the Isuzu is a target for you to
24 look at and raises a reasonable doubt in this case? When
25 the BOLO went out or the dispatch went out they weren't

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1 looking for any tan Suburban. The only two vehicles that
2 were mentioned on the dispatch were the box like two-toned
3 Chevy and the Pathfinder. And that's what Deputy Galinski
4 saw going down Rabon Road. No Suburban was ever mentioned.
5 Do you know why? Because the Suburban wasn't firing any
6 bullets. They stopped the car. They get Mr. Landrum out,
7 who was the driver, and, by the way, has dread locks. And
8 they get Mr. Greene out, who's supposed to be the one that
9 fired the shot. And Mr. Greene and Mr. Landrum react. They
10 are boisterous, they are acting up. They will not discuss
11 anything that happened in the car. Where's the gun? They
12 don't talk about the gun. They don't admit they had a gun.
13 They denied they had a gun. Well, Mr. Jacobs said they
14 fired a gun. Well, folks, think about this for a minute.
15 If they fired a shot, then why did they get rid of the gun?
16 Why did they dump the gun on the side of the road? The
17 police would never find it. That's not a surprise, it's a
18 long distance, but doesn't that raise in your mind that a
19 reasonable doubt as to who was firing toward the club
20 because the guys in the Isuzu are driving down Rabon Road.
21 They're supposedly shooting out of the car across --
22 remember Deputy Galinski said that wasn't in my report, but
23 he acknowledges the report says the person was firing over
24 the roof. Why would you dump the gun if you didn't do
25 anything? But what's interesting about this is Landrum and

1 Greene, they said, no, we didn't have a gun. We didn't do
2 anything. And they were let go. They're taken down to the
3 Sheriff's Department, they're being boisterous, they won't
4 talk, they won't discuss anything, won't even admit that
5 they had a gun, but they have nothing to hide, supposedly.
6 But they were hiding something. They tossed the gun that
7 night driving off Hardscrabble Road. And guess what? Guess
8 who is sitting on ammunition? Mr. Greene. When you go
9 through this, the photographs, State's Exhibit No. 19, Mr.
10 Greene is sitting right there. And I'm not going back
11 through this. You've heard a lot of testimony about this,
12 Ms. Johns has referred to it and Ms. Shipley has referred to
13 it. There are two 9 millimeter bullet jackets, full jackets
14 that are in that cab. There are the only two 9 millimeter
15 bullets found in this case, and they're not just not 9
16 millimeter bullets, they are Winchester 9 millimeter, and
17 they're not only 9 millimeter bullets, they are full
18 jacketed Winchester 9 millimeter bullets. And it is such a
19 coincidence, it is a real coincidence in this case, that the
20 bullets out on the side of the road in front of the club are
21 Winchester 9 millimeter full jacketed bullets. Reasonable
22 doubt? That's a reasonable doubt.

23 The police can't find the gun. They guys are out there
24 with their hands behind their back. Nobody bags their hands
25 to preserve gunshot residue. You've heard about gunshot

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1 residue, how it can fall off, you can sweat it off, you can
2 rub it off. That's why they bag hands. These guys were out
3 there for a couple of hours on the road, their hands not
4 bagged. And then they go down there and I think it was Ms.
5 Reed-Enzor, she does the GSR, sends it out, no GSR. No GSR.
6 No gunshot residue. Surprise. They dump the gun, they're
7 sitting out there on bullets. And the Isuzu is processed as
8 well. The Isuzu was processed by Mr. Bouknight.

9 Now, folks, I can understand mistakes. Nobody -- I can
10 understand mistake particularly, because I make mistakes, a
11 lot of them. But an experienced law enforcement officer
12 with a GSR kit for that Isuzu puts it in locker in the
13 evidence room and forgets about it. That just doesn't make
14 sense. And forgets about it for seven months, and it's not
15 even sent off for analysis for seven months. But everybody
16 -- you heard Mr. McRae say, that's not the way we do it. We
17 get evidence we turn it into the evidence room. All the
18 evidence in this case was turned in by July 12, but not the
19 GSR kit for the Isuzu.

20 Well, I'm not going to discuss much more about it, but
21 I think the Isuzu for you is a central issue in this case
22 that the state would like to ignore. They just want to pass
23 it by. The connections in this case to that Isuzu are
24 dramatic and they are very difficult to overcome.

25 Now, you have, also, you have the Suburban is

1 processed. There's no question it was seized at the Outback
2 Steakhouse. It was no question that it was towed into the
3 Sheriff's Department, and there was no question that Mr.
4 McRae said, we probably got the keys and the driver entered
5 the vehicle to go ahead and put it in possession to be
6 towed.

7 Well, folks, I don't know what happened out there. I
8 have no idea what happened, but based upon what you heard
9 from the GSR analysis anybody entering that vehicle could
10 taint the vehicle. The only thing they have on this
11 receipt, two receipt that indicates that somebody was not in
12 the vehicle it says no inventory was preformed. It does not
13 say that nobody went into the vehicle, and how easy would it
14 have been, ladies and gentlemen, and have the officer who
15 filled this out and approved this, how easy would it have
16 been to bring him in here to tell you that. They didn't do
17 that. It is their burden of proof.

18 So you have the Suburban processed, you have the road
19 being processed, you have the GSR off the two, Landrum and
20 Greene, the guys who were really being a problem, and you
21 have the Isuzu.

22 Now, let's talk about the road for a second. Ms. Reed-
23 Enzor, she was the one that came out here and examined the
24 road. Here's what I'm going to ask you to consider about
25 this. The shell casings out there were clearly Winchester

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1 full jacketed 9 millimeter shell casings as they are in the
2 Isuzu. The description -- the only person who describes the
3 Suburban firing shots towards the club, the only person,
4 says it was driving down Hardscrabble Road towards Farrow
5 Road. And the person, whoever it was on the driver's side,
6 firing from the driver's side window.

7 My contention, ladies and gentlemen, I submit from the
8 evidence is that is a reasonable inference to be drawn that
9 it was not coming from the Suburban, may not have been
10 coming from the Isuzu, but it was coming from someone who
11 was in and around this area. Why do I say that? Because
12 you have one, two, three, four, five, six -- and you look at
13 this picture over here, this is State's 93, which kind of
14 better describes it even though it's dark. But you've got
15 six shell casings on the right hand side of the road.
16 Whoever is firing the bullets is going down Hardscrabble
17 Road this way. The testimony is they were firing out of the
18 driver's side of the car. How did they shell casings get
19 over here? You know how they get over there? Because
20 somebody was firing in this vicinity. I don't care what
21 David Collins said, and he didn't -- he didn't address this
22 particularly. There is a trajectory, you can go ahead with
23 that kind of gun will shoot a good distance. Remember what
24 he said, it ejects out of the right hand side. It can go to
25 the right, it can go to the left, it can go lower. But

1 firing out of the left side of the car, you can't put them
2 over here. It doesn't make any sense, and no one's come in
3 here and explained that to you. There were cars riding down
4 and they may have driven over them and damaged them. Well,
5 that may be truth, but they'd be in the roadway. If
6 somebody drives over a shell and crushes it and damages it,
7 it's in the roadway. It's not laying all the way over on
8 the other side of the car, the passenger side of the car
9 going down Hardscrabble Road.

10 You are being asked to speculate so much about what
11 happened out there that night. You're also being asked to
12 assume two different things. One is that the gun was far
13 enough out of the left side of the vehicle that ejected the
14 bullets outside, but not inside the cab. And it also was
15 far enough outside that it also deposited what they call
16 indications of gunshot residue inside the cab. Now, as I
17 understood what Ms. Shipley was arguing about the Isuzu, Mr.
18 Moskal was saying, well the gun was up in the air so the
19 wind could effect that. Well, folks, if you're driving down
20 Hardscrabble Road and you've got this Mac-10 sticking out
21 far enough so that it can eject shells out the right hand
22 side how do these gunshot residue characteristics get inside
23 the cab? The same principles of physics would apply to the
24 Suburban as they would they Isuzu.

25 Well, you had -- I've gone through the crime scene

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1 processing, the scene was being processed. We talked about
2 Ms. Enzor. We talked about Mr. Collins. All these 10 shell
3 casings that came from one gun. The projectiles came from
4 one gun, but he can't say they came from the same gun.
5 That's just something for you to consider. But that doesn't
6 matter to us because we say they didn't come from any gun in
7 that Suburban.

8 Now, let me talk about Mr. Moskal for a minute.
9 Because we don't have any dispute about what Dr. Nicholson
10 and Tena Goff said, but we do have some dispute about what
11 Mr. Moskal said. The gunshot residue expert. First of all,
12 the GSR kit for the Suburban is sent out there to SLED in
13 July. He determines on his own based upon information that
14 he said he had that it was secondary transfer. Now, you've
15 never seen that information, but he made a decision that
16 SLED will not allow him to go ahead and do a GSR kit on that
17 Suburban because of secondary transfer. It was good enough
18 in July not to go ahead and do gunshot residue, but let's
19 come back in January or March of 2008, and let's go ahead
20 and do it. He also testified about the Isuzu. That he
21 didn't find any characteristics there. He didn't find any
22 characteristics on Landrum or Greene. Well, the Isuzu kit
23 wasn't even sent out until January. The kit from Landrum
24 and Greene came without their hands even being bagged. You
25 know that they fired a shot, so they must have something on

1 them. Magic. Magic.

2 What did he say about what was in the car? He said
3 there were characteristics of gunshot residue. There's
4 three basic elements. There's lead, barium and antimonium.
5 What did he find? There were no swabs submitted on the
6 Suburban, which is important in another respect, but he did
7 the sticky tabs, examined the sticky tabs. And he said he
8 would have expected over 5000 particles of lead on the
9 sticky tabs. How many were there? 16. 16. He also said
10 he found no barium or antimonium. Here's the gunshot
11 residue worksheet. Two of the basic ingredients for gunshot
12 residue were not found in the Suburban. Two were not found.
13 The one that was found was a very low concentration.
14 Expecting over 5000, but only getting 16. So what was his
15 conclusion? I can't tell you there gunshot residue in that
16 vehicle. What I can tell you is what I found is consistent
17 with gunshot residue, but there's all sorts of other reasons
18 that lead particles can get in a vehicle. First of all,
19 someone could have gotten in that vehicle at anytime after
20 firing a shot and possibly left those elements in the
21 vehicle. When you get in the vehicle you would be moving it
22 around. Remember what he said? You'd be moving it around
23 every time you got in the vehicle. It could come from other
24 things, make-up, ball bearing, fishing equipment, brakes,
25 ball bearings. All sorts of other things can bring those

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1 same elements as in the gunshot residue which would have
2 been in the cab.

3 But ladies and gentlemen, what's important to them,
4 according to them, they did those sticky tab analysis they
5 only found one out of three elements in gunshot residue and
6 what they did find was in low concentration so much so that
7 he could not call it gunshot residue. And the state wants
8 you to convict Tremaine Wray and/or Taurus Watts on that
9 kind of evidence.

10 Remember what he also said about the Isuzu? Well, we
11 did the swabs. The swabs didn't have any of the elements on
12 them so we never went ahead and did the sticky tabs. Isn't
13 it interesting on the Suburban they never did any swabs?
14 That he would have gone ahead and done the swabs first,
15 because presumably if you looked at the swabs and they were
16 negative, he would never have examined the sticky tabs.
17 Some interesting things for you to think about in this case.

18 Let me finish up here. I know y'all will be happy
19 about that. Lawyers talk.

20 Let me talk to you about Brian Watson, Rashonda Simpson
21 and Jarrell Dansby just a moment. This case is two years
22 old, June of '07. You got a guy sitting in jail on two
23 armed robbery charges looking at 60 years. No parole. No
24 parole. This is a guy who has been through the system over
25 many, many years. He is a liar, he is a thief, and he's a

1 cheat. He's got eight counts of forgery, fraudulent
2 transactions with credit cards. He's got burglary. He's
3 got crack cocaine. Driving under suspension. He's got --
4 and the driving under suspension I throw in there because
5 remember he said he wouldn't drive because I didn't have a
6 license. This guy is a career criminal. The day he was
7 arrested, in February of 2009, the crime rate in Richland
8 County the crime rate went down 20 percent. He is a thug.
9 He belongs in jail. But let's -- he know how to work the
10 system. He knows that if I come up with some information
11 that will help them, they will help me. No, there's no
12 express agreement, but there's an understanding by him that
13 he will benefit by it. And in March of 2009, he says he
14 runs into Taurus Watts and Taurus Watts makes this statement
15 to him and he decides at that point that maybe I can turn
16 this to my advantage. Well, folks, if he ran into Taurus
17 Watts and Taurus Watts discussed in any way what he was
18 charged with it's not unusual for people who are accused of
19 crimes to discuss the evidence against them. So Brian
20 Watson could have become fully aware of the evidence in this
21 case as a result of his conversation that he said with
22 Taurus Watts about what the evidence was in this case. And
23 if you don't think that happens, I'm telling you.

24 So on March 18, he has this revelation he forgot, he
25 forgot about for two years. I forgot about it. So on March

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1 18, he starts thinking about the wheels and how they're
2 going to turn. So what he does, he's having a bunch of
3 conversations with his family. With Rashonda Simpson. We
4 didn't make those records up. And he waits two months until
5 May 18, the day the trial is supposed to start in this case.
6 The day. You talk about a guy manipulating this system.
7 Knowing how to manipulate the system? He comes forward on
8 the day this trial is supposed to start and says, hey, I've
9 got information about that case. I've got information.

10 Ladies and gentlemen, he had information. He probably
11 got it when he was discussing with Mr. Watts, if you believe
12 his testimony, when he was discussing with Mr. Watts. He
13 got information of what he was accused of. And he was
14 accused of having a Mac-10. Brian Watson knows the angles
15 and he knows how to beat the system. You talk about a guy
16 knowing how to best the system, that's the man.

17 So he takes them out at 9:30 at night he takes them out
18 of three different bridges. Which by the way, you'll just
19 have to evaluate the testimony as to whether or not he was
20 absolutely certain as to which bridge it was, and then he
21 was wrong. Absolutely certain. But you know what the
22 bottom line of all that is? They didn't find a gun. There
23 is no gun. Not only is there no gun, no bag, because he
24 didn't throw the bag away. No hammer. No testimony that
25 went away. They didn't examine anything to support his

1 testimony, but they did go talk to Rashonda and Jarrell to
2 corroborate what he said. Well, let's talk about that for a
3 minute. What did Brian Watson tell you? Well, I got a call
4 from my nephew, Jarrell Dansby. He asked me to come up to
5 the house. I came up to the house and he told me, I've got
6 this gun here and I need to get rid of it, but really, I'm
7 thinking about going to law enforcement. That's what
8 Jarrell Dansby said. I'm thinking about going to law
9 enforcement. And according to Brian Watson he says that
10 Jarrell Dansby said he wanted to get rid of the gun. Well,
11 we have a little bit of a discrepancy there. He also says
12 that they went ahead and they hammered the gun a little bit.
13 That is was in a black Jansport bag, and that when they
14 hammered it a little bit they put it back in the bag, and
15 Rashonda, he and Jarrell went down the road to the bridges
16 and dumped the gun. Rashonda, Jarrell and him.

17 Now, there are some discrepancies of what he described
18 and what we'll get into in just a moment about what Rashonda
19 said and what Jarrell said. But remember this, he said
20 Rashonda and Jarrell got in the vehicle with him and drove
21 him down there and he dumped the gun. That Jarrell called
22 him and ask him to talk to him about this gun and Jarrell
23 wanted to go ahead and get rid of the gun, that's what his
24 testimony was. His testimony was he never discussed it with
25 his niece, he never discussed it with anybody, but you know

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1 better than that. He was talking to her in the jail, he was
2 talking to her on the phone, he was talking to his family on
3 the phone.

4 So the state goes ahead with this liar, cheat, burglar
5 and every other thing, and they say, well, let's go talk to
6 Rashonda. And they grab Rashonda at 12:00 o'clock at night
7 and tell her, listen we can charge you with a crime and if
8 you don't cooperate we're going to charge you with a crime.
9 And don't worry you're not going to have to testify in this
10 case because they're going to take a plea. That's what she
11 testified to. And she says, lo and behold, and there was a
12 discrepancy about whether she was at work that day or
13 whether she not at work and she was away with the kids. I'm
14 not even going to go into that. But she said that Brian and
15 Jarrell went out -- they got together, she saw them talking
16 somewhere in the back. She saw something about destroying
17 or hammering the gun or whatever else she said. Guess what?
18 That's the first time she ever said that. No one has ever
19 heard that until you heard it the other day, and what's
20 important about that? That's an issue that was not in her
21 statement, she never told anybody at law enforcement about
22 it, but all of a sudden since May 18, she becomes aware of
23 that after she made her statement. On May 18 or the morning
24 of May 19, she happens to throw that in? Trying to
25 corroborate a little bit. You think she had enough

1 information from her uncle or anybody else as to what they
2 were looking for.

3 Now, Ms. Shipley remembers it a little bit differently
4 than I do, and as I told you, you remember it the way you
5 have written down in your recollection in your memory. He
6 said a black Jansport bag. It's my recollection in the
7 testimony and we even have a little dispute among us, that
8 she never said it was a black Jansport bag. She said she
9 saw the gun, and it was a black gun. You recall what the
10 testimony was. You look at your notes. I'm not
11 representing one way or the other, but I'm just asking you
12 to consider that. Because frankly at this point I don't
13 recall. But what is important as this is that Jarrell
14 Dansby comes in and he says, I walked down to my uncles
15 house, and I tell him about this gun. I'm going to go ahead
16 and go to law enforcement, but he says, no, I'll get rid of
17 it. And he says at that point that Brian takes the gun. He
18 gets in Rashonda's car and he goes and he comes back and he
19 says it's taken care of.

20 Now, Jarrell says he knew nothing about the digging and
21 the burying the gun and digging the gun back up that
22 Rashonda was talking about. He knew nothing about what
23 Brian was saying about he and Rashonda got in the vehicle
24 with him and drove down and got rid of the gun. He knew
25 nothing about what Rashonda was saying that he and Brian got

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1 in the car and drove away. So you've got three different
2 stories about who got drove the car away and got rid of the
3 gun. You've got Brian saying it was all three. You've got
4 Rashonda saying it was Brian and Jarrell. And you've got
5 Jarrell saying I don't know what you're talking about. I
6 didn't even see the gun, it was under the house. Brian says
7 he got it from the house. Rashonda says, I wasn't much near
8 where the gun was. I didn't want to have anything to do
9 with it. I didn't get in the car, they did.

10 That's what I'm talking about the truth. The truth can
11 only have one version. We're not talking about minor
12 discrepancies in this case, we're talking about major
13 discrepancies in this case, and why is that important?
14 Because maybe the central issue here is the gun, but all of
15 these other issues that we're talking about are not just
16 observations and conclusions. They are actual facts that
17 these three people can't get together on. And will you
18 telling the truth those facts are going to be consistent
19 with each other.

20 Brian, if he's telling the truth and he came up to the
21 house and Jarrell got the gun from the house and came out
22 with a black Jansport bag, then that's the truth. If
23 Rashonda says, no, that's not what happened. I came home
24 and saw him burying the gun. I told him to dig it up. He
25 and my uncle went ahead and got rid of it. Jarrell's saying

1 I don't know what they're talking about. It was a brown
2 bag, it was a potato bag. It was a burlap bag. Completely
3 different bag. Never buried. Not from the house, under the
4 house.

5 Ladies and gentlemen, when people get together on a
6 story, they never anticipate that they're going to get
7 cross-examined about it. They never think about that. They
8 don't go through their testimony and that's why the classic
9 sign that someone is lying is that you have such
10 discrepancies in the testimony. Not just minor
11 discrepancies, major discrepancies in this case about those
12 three people. None of them are telling the truth. Jarrell
13 Dansby told you he wouldn't believe his own wife.

14 Folks, you consider what those three people said. You
15 decide if in the important affairs of your life you would
16 rely on what those three people said. You decide if the
17 truth is as different as they said it was. Or could be as
18 different as they said it was, and I submit to you that it
19 could not be. It is not credible. You would not rely on
20 that in the important decisions in your life.

21 Now, Ms. Shipley said that scientific evidence does not
22 lie. It does not lie. Well, to an extent it does not lie.
23 But what is a problem with scientific evidence is the
24 gathering of the evidence and the analysis of the evidence,
25 and the later technology that comes about. And to the

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1 extent that people have relied on scientific evidence for
2 years, because the state argues that all the time and people
3 have been convicted, later on a new technology is developed
4 and those people are exonerated. DNA, how many people have
5 you heard get exonerated when the state relied on it.
6 Absolute proof. Scientific evidence does not lie to go
7 ahead and get a conviction. Gathering analysis and later
8 technology. Scientific evidence may not lie, but it is not
9 foolproof.

10 November 22, 1963, John F. Kennedy was shot and he was
11 killed. Some of you may remember that. I was a junior in
12 high school. I was standing on a street corner in ????? New
13 Jersey. I heard it on the radio and it was etched in my
14 life for the rest of my life. I will never forget that
15 moment. That was almost 50 years ago. Do you know that
16 today the scientific evidence that Ms. Shipley says doesn't
17 lie, today, after every major sound expert in the world,
18 every expert video expert in the world, every major crime
19 scene investigator, millions of dollars, the Warren
20 Commission, almost 50 years later there is an argument as to
21 whether or not Lee Harvey Oswald acted alone from the Book
22 Depository and fired one shot or whether or not he fired two
23 shots or whether or not he fired three shots or whether
24 there was somebody on the bank there, outside the Book
25 Depository who is also shooting. Scientific evidence, 50

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1 years we're still arguing about the same thing. That's not
2 something I made up. You know, every once in a while
3 somebody comes up with this theory about what happened that
4 day. Maybe some day we'll know, but you know what?
5 Scientific evidence doesn't know everything, and can't draw
6 absolute conclusions about anything.

7 Thank you so much for your attention. I am sorry, but
8 I went farther than I thought I was going to. It's a long
9 case. It's been eight days. I apologize to you. If
10 there's anything I've done during the course of this trial
11 to aggravate you a little bit or you think he's popping up
12 too much or I don't know why he's objecting. It's all part
13 of what we have to do. We would do it for anybody charged
14 with a crime, anywhere. We have to be zealous advocates.
15 We do and they do. But you know what? This is not like a
16 contest between the state and the defense. It's not like a
17 football game or a baseball game where we as Americans, we
18 like a winner where somebody has to win and somebody has to
19 lose. We like final decisions. It's not like that, because
20 in a courtroom in this state and this country, when the jury
21 speaks the truth, which is what Verdicto means, or verdict
22 means, the Latin term is Verdicto. When the jury speaks the
23 truth we all win. Everybody wins. There is no victory for
24 one side or the other. It's for both sides because all
25 anybody ever asks of a jury is to come in and speak the

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1 truth. Speak the truth.

2 If you hesitate, if you have a reasonable belief about
3 what the state has proven in this case or not proven in this
4 case and you've examined the evidence as we've reviewed it
5 with you and you have that reasonable doubt which we submit
6 you should and you would. We ask you for a verdict of not
7 guilty.

8 I thank you very much for all your attention, all your
9 patience, and all your curtsies over the last eight days.

10 Thank you.

11 THE COURT: Thank you very much.

12 Ladies and gentlemen of the jury, take a short break
13 and then the Court will be charging you on the law.

14 I remind you not to discuss the case.

15 (Jury out at 4:20 p.m.)

16 (Jury in at 4:35 p.m.)

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

18 THE COURT: I would state for anyone in the
19 courtroom that I'm going to be charging on the law at this
20 point. We always secure the courtroom so that no one to go
21 in or out. While we didn't want the jury distracted at all
22 through the trial, this is very important because at this
23 point you are actually deciding the case. I do realize that
24 I earlier a juror who had a note about time constraint.
25 We're going to go ahead and give you the case and then we'll

1 just bring you back in the morning to conclude any
2 deliberations should you choose.

3 All right. Please pay attention to me.

4 Defendant Tremaine Wray and Defendant Taurus Watts are
5 charged with murder.

6 Now, Mr. Foreperson and members of the jury, you have
7 heard the evidence and the arguments of the parties. I will
8 now explain to you the law which applies to this action.

9 I remind you that during this trial you and I have
10 certain duties to perform. As the trial judge it is my
11 responsibility to preside over the trial of this case and I
12 have the duty to rule on the admissibility of the evidence
13 offered during this trial. You are to consider only the
14 competent evidence before you. If there was any testimony
15 ordered stricken from the record in this case during the
16 trial you must disregard that testimony. You are to
17 consider only the testimony which has been presented from
18 this witness stand, any exhibits which have been made a part
19 of the record in this case and any stipulations of counsel.
20 A stipulation is an agreement, admission or concession made
21 in judicial proceedings by the parties thereto or their
22 attorneys. Stipulations are binding upon those who make them. A
23 stipulation is an agreement, an understanding. The Court
24 and the jury must accept stipulations as binding upon the
25 parties. If counsel for the parties have stipulated to any

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1 fact or any fact has been admitted by counsel you will
2 regard that fact as being conclusively proved as to the
3 party or parties making the stipulation or admission.

4 I have the additional duty to charge you with the law
5 applicable to this case. As the presiding judge I am the
6 sole judge of the laws of this case and it is your duty as
7 jurors to accept and apply the law as I now state it to you.
8 I you already have an idea what the law is and it does not
9 agree with what I now tell you the law is you must abandon
10 your prior ideas because you are sworn to accept and apply
11 the law exactly as I state it to you.

12 In every case tried in this court before a jury a jury
13 becomes a sole and exclusive facts in a case. A trial judge
14 cannot intimate, state, comment on or make any statement to
15 a trial jury about the facts of a case, since you the jury
16 are the sole judge of the facts in this case you are not to
17 infer from what I said during the progress of this trial in
18 ruling upon the admissibility of evidence or otherwise or
19 anything that I now say during the course of this
20 instruction to you that I have any opinion about the facts
21 in this case. The law does not allow me to have an opinion
22 about the facts in this case. This is a matter solely for
23 you the jury to determine. As jurors it is your duty to
24 determine the effect, value, weight, and truth of the
25 evidence as presented during this trial

1 The indictment charges the defendants with the offense
2 of murder. I remind you that the fact that a defendant was
3 arrested, charged, and indicted in this case is not evidence
4 in this case and cannot be considered by you as evidence of
5 guilt in this case, nor does it create any presumption or
6 inference of guilty. The indictment is simply the formal
7 instrument made against each defendant. It is the formal
8 document by which this case is brought into this court.
9 Each defendant has pled not guilty to these indictments that
10 those pleas put the burden of proof on the state to prove
11 each defendant guilty.

12 A person charged with committing a criminal offense in
13 South Carolina is never required to prove himself innocent
14 no matter how grave or serious the offense with which they
15 are charged, a defendant is presumed to be innocent unless
16 and until the state has established guilt beyond a
17 reasonable doubt. This presumption of innocence is legal
18 proof of innocence and does not end when you begin your
19 deliberations, but it accompanies a defendant throughout the
20 trial until you reach a verdict of guilt satisfying you
21 beyond a reasonable doubt. The presumption of innocence is
22 like a robe of righteousness placed about the shoulders of
23 the defendant that remains with the defendant until it has
24 been stripped from the defendant by evidence satisfying you
25 of a defendant's guilt beyond a reasonable doubt. The

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1 presumption of innocence is a substantial right to which
2 every defendant is entitled and remains with the defendant
3 unless and until you are the jury are satisfied from the
4 evidence of the defendant's guilt beyond a reasonable doubt.

5 Each defendant is charged with murder. The state must
6 prove beyond a reasonable doubt that a defendant killed
7 another person with malice aforethought. Malice is hatred,
8 ill will or hostility towards another person. It is the
9 intentional doing of a wrongful act without just cause or
10 excuse. Malice does not necessarily require ill will toward
11 the person injured but rather signifies a general malignant
12 recklessness of the lives and safety of others or a
13 condition of the mind that shows a heart, regardless of
14 social duty and fatally bent on mischief. Specific intent
15 to kill is not required. Malice aforethought does not
16 require that malice exist for any particular time before the
17 act is committed, but malice must exist in the mind of a
18 defendant just before and at the time the act is committed.
19 Therefore, there must be a combination of the previous evil
20 intent and the act. Malice aforethought may be expressed or
21 inferred. These terms, express and inferred do not mean
22 different kinds of malice, but merely the manner in which
23 malice may be shown to exist. Malice may be shown to exist
24 either by direct evidence or circumstantial evidence.
25 Express malice is shown when a person speaks words which

1 express hatred or ill will for another or when a person
2 prepared beforehand to do the act, which was later
3 accomplished.

4 For example, lying in wait for a person or any other
5 acts of preparation going to show that the deed was within a
6 defendant's mind would be express malice. If facts are
7 proved beyond a reasonable doubt sufficient to raise an
8 inference of malice to your satisfaction this inference
9 would be simply an evidentiary fact to be taken into
10 consideration by you, the jury, along with other evidence
11 in his case and you may give it such weight as you
12 determine it should receive.

13 In order to establish criminal liability, criminal
14 intent is required. What does criminal intent mean in the
15 law. Criminal intent is a state of mind which operates
16 jointly with an act or omission in the commission of a
17 crime. Criminal intent is a mental state of conscious
18 wrong-doing. Criminal intent include those consequences
19 which include A, represent the very purpose for which an act
20 is done or B, are known to be substantially certain to
21 result regardless of ones desire. Intent may be shown by
22 acts and conduct of a defendant and other circumstances from
23 which you may naturally and reasonably infer intent.
24 Criminal intent must be proven by the state beyond a
25 reasonable doubt. Motive is not an element of murder and

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1 therefore the state need not prove motive to support a
2 murder conviction. Although the state is not required to
3 prove motive, the presence or absence of this evidence of
4 motive may be considered by you in determining whether there
5 is criminal intent to commit murder. Criminal intent is
6 always a matter that must be determined by the jury from the
7 circumstances surrounding the situation. There is no way to
8 prove intent to a mathematical certainty. There is no way
9 science can dissect a person's brain and determine what the
10 person had in mind. So the law says that criminal intent
11 may be inferred from the circumstances show to have existed.

12 This is how you make a determination of whether or not
13 the element requiring intent was present. It is not
14 necessary to establish intent by direct and positive
15 evidence, but intent may be established by inference in the
16 same way as any other fact by taking into consideration the
17 acts of the parties and all the facts and circumstances of
18 the case. If facts are proved beyond a reasonable doubt
19 sufficient to raise an inference of intent to your
20 satisfaction, this inference would be simply an evidentiary
21 fact to be taken into consideration by you, the jury, along
22 with other evidence in the case and you may give it such
23 weight as you determine it should receive. Criminal intent
24 is a mental state, a conscious wrong-doing. It is up to you
25 do determine what the defendant intended to do based on the

1 circumstances show to have existed beyond a reasonable
2 doubt.

3 If you find the state has failed to prove beyond a
4 reasonable doubt that a defendant committed murder, you may
5 consider whether the state has proved beyond a reasonable
6 doubt that a defendant committed voluntary manslaughter.
7 Voluntary manslaughter is a lesser included offense of
8 murder. To prove voluntary manslaughter the state must
9 prove beyond a reasonable doubt that a defendant took the
10 life of another in the sudden heat of passion based on
11 sufficient legal provocation. Both heat of passion and
12 sufficient legal provocation must be present at the time of
13 the killing to constitute voluntary manslaughter. Sudden
14 heat of passion may, for a time, effect a person's self-
15 control and temporarily disturb a person's reason. The
16 sudden heat of passion must be the type that would make an
17 ordinary person unable to coolly reflect on his actions and
18 would produce an uncontrollable impulse to do violence.
19 Sufficient legal provocation must be the type that would
20 make a person of ordinary reason and caution become enraged
21 and lose control temporarily. The provocation needed for
22 voluntary manslaughter must come from some act of or related
23 to the victim. Words alone however vulgar or insulting are
24 not enough to be legal provocation. The words must be
25 accompanied by some overt act threatening at which could

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1 have produced the sudden heat of passion. If the heat of
2 passion of passion had cooled or if there was enough time
3 between provocation, if any, and the killing, for the
4 passion of a reasonable person to cool, the killing would
5 not be voluntary manslaughter.

6 In deciding whether a reasonable person would have had
7 enough time to cool off, you should consider all the
8 circumstances surrounding the killing. You may consider the
9 nature of the provocation, if any, a defendant's mental and
10 physical state and the circumstances and relationships
11 between the parties.

12 An issue in this case is the identification as the
13 person who committed the crime charged. The state has the
14 burden of proving identity beyond a reasonable doubt. You
15 must be satisfied beyond a reasonable doubt of the accuracy
16 of the identification of a defendant before you convict a
17 defendant. Identification testimony is an expression of
18 belief or impression by a witness. You must determine the
19 accuracy of the identification of the defendant. You must
20 the believability of each identification witness in the same
21 ways as any other witness. You may consider whether the
22 witness had an adequate opportunity to observe the offender
23 at the time of the offense. This will be effected by things
24 like how long or short a time was available, how far or
25 close the witness was, the lighting conditions and whether

1 the witness had a chance to see or know the person in the
2 past.

3 Once again, I instruct you the burden of proof on the
4 state extends to every element of the crime charged, and
5 this specifically includes the burden of proving beyond a
6 reasonable doubt the identity of the defendant as the person
7 who committed the crime. If, after examining the testimony,
8 you have a reasonable doubt as to the accuracy of the
9 identification you must find that defendant not guilty. If
10 you find, however, the state has proved the identity beyond
11 a reasonable doubt you must find that defendant guilty.

12 When a person does an act in the presence of and with
13 the assistance of another the act is done by both. Where
14 two or more people acting with a common plan or intent are
15 present at the commission of a crime it does not matter who
16 commits the crime, all are guilty. The hand of one is the
17 hand of all. Present means to be sufficiently near to aid
18 and abet and assist in the commission of the crime. Intent
19 is also a necessary element for there must have been a
20 common design or intent to commit the crime and a crime must
21 have been committed pursuant to that plan with the person
22 aiding and abetting by some overt act. The state must prove
23 beyond a reasonable doubt by competent evidence the theory
24 of the hand of one is the hand of all. To be guilty of a
25 crime a person must personally commit the crime or be

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1 present at the scene of the crime, aid or abet or assist in
2 the commission of that crime through some overt act. To be
3 guilty as an aider and abetter, a person must have knowledge
4 of the criminal conduct of the person that actually commits
5 the crime. The mere presence of a defendant where a crime
6 has occurred or the mere association by a defendant when
7 people who have committed a crime is insufficient proof that
8 the defendant has committed a crime. Evidence that an
9 individual is present at the time a crime is committed is
10 not in and of itself sufficient proof that the individual
11 committed a crime. There mere knowledge that another person
12 is going to commit a crime even when the defendant is
13 present when the crime is committed is not sufficient to
14 convict a defendant as a principal. The burden is on the
15 state to prove every element of the crime charged. If you
16 find after reviewing all the evidence that the state has
17 proved a defendant was only present at the scene of a crime
18 or associated with a person who commits a crime or had mere
19 knowledge that a person was going to commit a crime and that
20 the state has not proved beyond a reasonable doubt any
21 participation in the crime, as I have defined that to you
22 then you are required to find that defendant not guilty.
23 If, however, you find that the state has proved
24 participation in the crime, as I have defined that to you,
25 then you are required to find that defendant guilty.

1 The state has the burden of proving the defendant
2 guilty beyond a reasonable doubt. The state is required to
3 prove every element of the charge against the defense by
4 evidence which satisfies each of you of the guilt of the
5 defendant beyond a reasonable doubt. A defendant is not
6 required to prove his innocence. The burden of proving a
7 defendant guilty beyond a reasonable doubt always remains
8 upon the state of South Carolina.

9 Some of you may have served as jurors in civil cases
10 where you were told that it's only necessary to prove that a
11 fact is more likely true than not true, such as the greater
12 weight or the preponderance of the evidence.

13 In criminal cases the state's proof must be more
14 powerful than that. It must be beyond a reasonable doubt.
15 A reasonable doubt is the kind of doubt that would cause a
16 reasonable person hesitate to act. The term reasonable
17 doubt should be given it's plain and ordinary meaning.
18 There are very few things in this world that we know with
19 absolute certainty. And in criminal cases the law does not
20 require proof that overcomes every possible doubt.

21 If, based on your consideration of the evidence, you
22 are firmly convinced that a defendant is guilty of the crime
23 charged, you must find him guilty. If, on the other hand,
24 you conclude there's a real possibility that he is not
25 guilty, you must give the particular defendant the benefit

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1 of the doubt and find that defendant not guilty.

2 There are two types of evidence generally presented
3 during a trial; direct evidence and circumstantial evidence.
4 Direct evidence is the testimony of a person who asserts or
5 claims to have actual knowledge of a fact, such as an eye-
6 witness. It is evidence that immediately establishes the
7 main fact to be proved. Circumstantial evidence is proof of
8 a chain of facts and circumstances indicating the existence
9 of a fact. The law makes absolutely no distinction between
10 the weight or value to be given to either direct or
11 circumstantial evidence. Nor is a greater degree of
12 certainty required of circumstantial evidence than of direct
13 evidence.

14 You should weigh all the evidence in the case. After
15 weighing all the evidence if you are not convinced of the
16 guilt of the defendant beyond a reasonable doubt, you must
17 find that defendant not guilty. If, on the other hand,
18 after weighing all the evidence you are convinced of the
19 guilt of the defendant beyond a reasonable doubt you must
20 find that defendant guilty.

21 Necessarily, you must determine the credibility of
22 witnesses who have testified in this case. Credibility
23 simply means believability. It becomes your duty as jurors
24 to analysis and to evaluate the evidence and determine which
25 evidence convinces you of its truth.

1 In determining the credibility of witnesses who have
2 testified in this case you may believe one witness over
3 several other witnesses or several witnesses over one
4 witness. You may believe only a part of the testimony of
5 one witness and reject the remaining part of the testimony
6 of that same witness. You may believe the testimony of a
7 witness in it's entirety or reject the testimony of a
8 witness in it's entirety. You may consider whether any
9 witness has exhibited to you any interest, bias, prejudice,
10 or other motive in this case. You may also consider the
11 appearance and manner of a witness on the witness stand.

12 The rules of evidence ordinarily do not permit
13 witnesses to testify to opinions or conclusions. An
14 exception to this rule exists for witnesses we call expert
15 witnesses. A witness who by education and experience has
16 become expert in some art, science, profession or calling,
17 may state an opinion as to relevant and material matters in
18 which the witness claims to be an expert and may also state
19 the reasons for the opinion. You should consider an expert
20 opinion received in evidence in this case and like any other
21 evidence give it the weight you think it deserves. If you
22 decide that the opinion of an expert witness is not based on
23 sufficient education and experience or if you conclude that
24 the reasons given in support of the opinion are not sound,
25 or that the opinion is outweighed by other evidence you may

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1 disregard the opinion entirely. And expert witness's
2 testimony is to be given no greater weight than that of
3 other witnesses simply because the witness is an expert.
4 Further you are not required to accept an expert's opinion
5 even though it is not contradicted.

6 The testimony of a witness may be discredited or
7 impeached by showing the he or she previously made
8 statements that are inconsistent with his or her present
9 testimony. The earlier contradictory statements are
10 admissible only to impeach the credibility of the witness
11 and not to establish the truth of the statement.

12 It is the province of you, the jury to determine the
13 credibility, if any, to be given the testimony of a witness
14 that you have determined to have given a prior inconsistent
15 statement. There has been evidence presented that witnesses
16 have made prior statements which are not consistent with the
17 witnesses present testimony. You may use this evidence to
18 decide whether to believe the witness. You may also use
19 evidence of the earlier contradictory statements to
20 determine the truth of those statements. It is up to you to
21 decide whether to believe the earlier statements or to
22 believe the testimony given at trial. If a witness is shown
23 to have knowingly testified untruthfully concerning any
24 material matter you may consider this in determining whether
25 to trust the witnesses testimony as to other matters. You

1 may reject all the testimony of that witness or give all or
2 part of the testimony the weight you think it deserves.

3 A person who has a past criminal record is competent to
4 testify during a trial. A past record does not effect the
5 ability of that witness to testify. The past record may
6 only be considered by you, if at all, in determining the
7 witnesses believability. Remember, you are the sole judges
8 of the facts in this case, and the believability of any and
9 all of the witnesses.

10 I instruct you and emphasize the fact that a defendant
11 did not testify is not a factor to be considered by you in
12 any way in your deliberations and in your consideration of
13 the question of the guilt or innocence of that defendant.
14 It must not be considered by you in any manner whatsoever.
15 I repeat, under your oath, you are to draw no conclusion
16 whatsoever from the fact that a defendant did not testify.
17 The fact that a defendant did not testify should not even be
18 discussed in the jury room. The burden of proof, as I have
19 stated to you, is on the state. A defendant is not required
20 to prove his innocence. The burden of proof remains on the
21 state to prove guilt beyond a reasonable doubt.

22 Statements alleged to have been made by defendant Watts
23 have been admitted into evidence in this case. While the
24 Court has determined that the statements are admissible, I
25 instruct you that you make the ultimate decision whether or

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1 not defendant Watts made the statements. If defendant Watts
2 did make the statements, you must determine whether the
3 statements were made by defendant Watts voluntarily and of
4 his own free will. This means that statements were not
5 caused by pressure, force, fear, threats, coercion, or
6 intimidation, or by hope or a promise of leniency or a
7 reward of any kind. In determining whether the statements
8 were voluntary you should consider both the characteristics
9 of defendant Watts and the details of the questioning.

10 Some of the factors that you must consider are the age
11 of the defendant, the defendant's education or lack of
12 education, the defendant's mental ability or capacity, the
13 defendant's IQ or intelligence, the defendant's background
14 and environment, the place and length of detention, the
15 nature of the questioning. And if you find that the
16 defendant was questioned by the police the advice or lack
17 thereof to the defendant of his constitutional rights,
18 including, but not limited to the right to remain silent,
19 that any statement could be used against him in a court of
20 law. The right to have a lawyer present. That if he could
21 not afford a lawyer, a lawyer would be appointed to
22 represent him without any cost, and that he could stop
23 making a statement at any time. You must carefully consider
24 all of the surrounding circumstances before you give any
25 weight to an alleged statement. The state has the burden of

1 proving beyond a reasonable doubt that the alleged
2 statements were voluntary. If you determine they were you
3 may give the statements any further consideration that you
4 deem proper. You must decide what weight, if any, should be
5 given to the alleged statement. If you determine the
6 alleged statements were not the free and voluntary
7 statements of defendant Watts, you should not consider the
8 statements at all.

9 I charge you that there are two defendants in this
10 case. The case of each defendant and the evidence and the
11 law concerning that defendant should be considered
12 separately and individually. Your verdict does not have to
13 be the same for both defendants. The fact that you may find
14 one defendant guilty or not guilty should not control your
15 verdict as to the other defendant. When more than one
16 person is charged with a crime, if the evidence warrants it
17 you may convict one and acquit the other, or you may acquit
18 both or you may convict both. It will depend upon your view
19 of the testimony and the evidence. You must take each
20 defendant and consider the evidence as to that defendant and
21 my instructions to you on the law. You will then write a
22 separate verdict of guilty or not guilty for each individual
23 defendant.

24 Now, finally, your notes should be used only as an aid
25 to your memory and should not be allowed to take precedence

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1 over your independent memory of facts. The notes are only
2 for your personal use in refreshing recollection of the
3 evidence. When in deliberations at the end of the case do
4 not rely on the recollections of a juror who took notes
5 about the testimony of a witness solely because the juror
6 took notes. You should not be unduly influenced by the
7 notes of other jurors. As we all know, notes can be wrong.
8 Notes are not entitled to any greater weight than each
9 jurors memory of the evidence. Those jurors who did not
10 take notes should rely on their independent recollection of
11 the evidence and not be influenced by the fact that another
12 juror has taken notes.

13 Keep in mind that every word spoken in the courtroom is
14 recorded verbatim. And can be replayed for you during
15 deliberations if necessary. If there is a discrepancy
16 between a jurors recollection of the evidence and a jurors
17 notes, you the jury, should request a read back of the
18 record. The court's transcript prevails over a jurors
19 notes. Your notes are not a substitute for the official
20 record or the governing principles of law, which I charge to
21 you now.

22 After you have completed your deliberations the bailiff
23 will deliver your notes to me and they will be destroyed.

24 Your verdict cannot be based on sympathy, passion,
25 prejudice, emotion or any other consideration not evidence

1 in this case. It is mandated that your verdict be
2 unanimous. There cannot be any split or divided vote in any
3 form or fashion, such as eleven to one, ten to two or nine
4 to three. Each of you must agree. Please do not sign the
5 verdict form until every juror agrees.

6 Now, Mr. Foreperson, you will have two verdict forms
7 that will go back with you. The first one indicates that
8 each defendant is charged with murder, and you will
9 indicate: We the jury unanimously find the defendant guilty
10 or not guilty.

11 If you find the defendant guilty on murder, then you
12 stop in your deliberations, because if you recall voluntary
13 manslaughter is a lesser included charge of murder. So if
14 you don't find -- find not guilty on murder, then you go to
15 a consideration of voluntary manslaughter and you find
16 guilty or not guilty. You sign and date the verdict form in
17 that regard. Again, there are two verdict forms for each
18 defendant.

19 I will say this. It says guilty and not guilty. There
20 is no order, it's just G comes before N. That's the reason
21 it's on the verdict form in that regard. You will take the
22 verdict forms with you, and then you have to wait until we
23 bring all this evidence into you. We have determined that
24 all the evidence is here. Soon as the verdict form and the
25 evidence comes into the jury room you are free to do your

State v. Tremaine Wray & Taurus Watts 10/14/09

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1 deliberations.

2 Alternates. You will not be participating in the
3 deliberations. I'd ask that you remain with us for now,
4 until further instruction, but you will not go into the jury
5 room to deliberate at this time.

6 The other things is all 12 jurors must always be in the
7 jury room for deliberations. So to the extent you decide to
8 take an breaks from deliberations you must stop discussing
9 the case and wait until all the other jurors come back into
10 the jury room and then resume your deliberations.

11 Thank you all. I'm going to recess to your jury room,
12 and alternates, you will follow the bailiff, but you will
13 not go into the jury room.

14 (Jury out at 5:20 p.m.)

15 THE COURT: All right. Any exceptions to the jury
16 charge?

17 MS. MCDUFFIE: Not from the state.

18 MR. SWERLING: Judge, the only ones would be that
19 we've repeated during the pre-trial.

20 THE COURT: Okay.

21 MR. SWERLING: Which were already put on the
22 record.

23 THE COURT: Okay.

24 MR. SWERLING: Nothing additional.

25 THE COURT: Nothing official.

State v. Tremaine Wray & Taurus Watts 10/14/09

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1 MS. JOHNS: I join that, Your Honor.

2 THE COURT: Thank you, very much.

3 Okay. My computer clock says 5:21. And that will be
4 the time that the jury will be getting the evidence.
5 Bailiff will take the jury forms. I will not have the
6 indictments go back to the jurors.

7 THE BAILIFF: Is this all --

8 THE COURT: I will ask the clerk to help check the

9 --

10 THE STATE: That's been done.

11 COURT REPORTER: All the evidence has been counted
12 and checked off. And your time starts at 5:21?

13 THE COURT: Yes.

14 (Evidence taken to jury room at 5:21 p.m.)

15 COURT REPORTER: And due to the fact that I had
16 issues with the computer last night when I was trying to
17 download the files, and again this morning when I got here,
18 I have the entire weeks record. I have no clue what we'll
19 put it on, but here it is.

20 THE COURT: Okay.

21 COURT REPORTER: It's all the CDs from the entire
22 trial.

23 THE COURT: Okay. Great. I appreciate that.

24 All right, you can be at ease.

25 (Court in recess for deliberation at 5:22 p.m.)

State v. Tremaine Wray & Taurus Watts 10/14/09

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1 (Court in session with note from jury at 5:35 p.m.)

2 THE COURT: Okay. All parties in place. We just
3 got a note from the jury that says: Judge Childs, can we
4 begin our deliberations on tomorrow, due to the lateness of
5 the evening. Juror No. 218. P.S. We also need audio visual
6 equipment and writing material.

7 And my answer will be yes, because it is the lateness
8 of the hour. It's been a long extensive case. So to be
9 fair to both side to be fresh, we want them to have full
10 ability to deliberate. So I'm going to bring them back in
11 and remind them not to discuss the case over night.

12 Jurors, please.

13 Just to make sure, Mr. Swerling's email to us about
14 your request for jury charge will be made a Court's Exhibit,
15 as well.

16 MR. SWERLING: Well, it wasn't meant to be that.

17 THE COURT: Okay. I won't then.

18 MR. SWERLING: It was just to give you some notice.

19 THE COURT: Okay.

20 (Jury in at 5:36 p.m.)

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

22 THE COURT: Thank you ladies and gentlemen of the
23 jury. I got your note, and I'm going to, of course, approve
24 your request. I thank you for all your time that you've
25 spent on this case and I'm glad that you're taking your role

1 seriously as jurors and want to have fair deliberation time.
2 Is 9:00 o'clock okay to meet back in the morning? Okay. We
3 will have your audio visual in there and there will be
4 snacks and, you know, anything that you need within reason
5 for comfort. And so you all can begin your deliberation in
6 the morning. I remind you you cannot discuss the case,
7 again, as I gave you cautionary instructions at the
8 beginning. Don't even discuss what kind of case you're
9 involved in, absolutely nothing. Don't read anything in the
10 paper, news media outlets, just anything. So that you can
11 be fair and only -- you're deliberating upon evidence in
12 this courtroom.

13 Alternates, I'd like for you to come back in the
14 morning just on some off-chance that one of our regular
15 jurors is not here. And then you'll wait around a little
16 bit for further instructions from me in the morning.

17 Thank you all.

18 (Jury out at 5:37 p.m.)

19 THE COURT: Bailiff's will request that the juror
20 room will be locked or Madam Court Report do you need to
21 receive it back; how do you do that?

22 COURT REPORTER: No, ma'am. The clerk and I
23 generally -- she tells me what to do with it.

24 THE COURT: Okay. It will be locked in with
25 courtroom security procedures. I recommend that the clerk

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1 handle that.

2 THE CLERK: I'll take care of it.

3 THE COURT: All right. And I'm directing that the
4 clerk have the audio visual and tablets and pads already in
5 there before they get here, because I remember last time we
6 had to look for some.

7 THE CLERK: Yes, ma'am.

8 THE COURT: Okay. Thank you.

9 MS. SHIPLEY: Do we have to be in the courtroom at
10 9:00 or just go to --

11 THE COURT: No. They can just go to deliberations.
12 You all can just leave cell phone numbers with us if
13 something comes up. I understand some of you might have
14 appointments or what have you. My general practice is if
15 there's a note, I will call you all, make you all aware of
16 it. I try to just write a note back to them without
17 bringing them back here every time. So that will help you
18 wherever you are. And we'll use our communicative devices.

19 Be at ease.

20 (Court's Exhibit No. 8, request to begin deliberations in
21 the morning, was marked and entered.)

22 (Court's Exhibit No. 9, request to charge, was marked and
23 entered.)

24 (Court's Exhibit No. 10, request to charge, was marked and
25 entered.)

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1 (Court's Exhibit No. 11, charge, was marked and entered.)

2 (Court in recess for the day at 5:40 p.m.)

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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 14TH DAY OF OCTOBER 2009.

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

HILDA M. JORDAN, CVR

COLUMBIA, SOUTH CAROLINA

MAY 23, 2010

WITNESSES

INV. DON MCRAE (RCSD)

ARREST WARRANT NUMBER

J557781

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

AUG 15 2007

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-40-5914

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

AUGUST TERM 2007

91

THE STATE

vs.

TREMAINE WRAY

Indictment for

MURDER

SC Code: 16-3-10

CDR Code: 0116

Class FEL/EXM(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL
JAN 15 2008
C.C.C. P.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on August 15, 2007, the Grand Jurors of Richland County present upon their oath:

MURDER

That Tremaine Wray did in Richland County on or about June 30, 2007, feloniously, willfully and with malice aforethought, kill one Dumuria Johnson by means of a gunshot wound and that the said victim died as a proximate result thereof. All in violation of SC Code of Laws § 16-3-10

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Warren B. Giese
Warren B. Giese, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE

VS.

AKA:

Race: Black Sex: Male Age: 30DOB: 11/11/78Address: COLUMBIA, SCCity, State, Zip: COLUMBIA, SCDL#: 1A063SID#: 11063In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Murderin violation of 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC winner 1st or Lawd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Stand Jury, (defendant initial)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST:

Jeanette W. McBride
SolicitorSC Bar # 11063Freddie Wray
DefendantJames H. Hays
Attorney for DefendantSC Bar # 5157WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 40 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or paymentof \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-136.
SPECIAL CONDITIONS:☐ RESTITUTION: ☐ Deferred ☐ Def. Waiver Hearing ☐ Ordered

PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:

\$14-1-206 (Assessments 107.5%)	\$
\$14-1-211(A)(1) (Conv. Surcharge)	\$100
\$14-1-211(A)(2) (DUI Surcharge)	\$100
\$56-5-2995 (DUI Assessment)	\$12
\$56-1-289 (DUI Breath Test)	\$500
\$35.13 (Public Def/Prot)	\$25
\$73.3, 1B TP (Law Enforce. Funding)	\$25
\$33.7, 1B TP (Drug Court Surcharge)	\$100
\$50-21-114(BUI Breath Test Fee)	\$50
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (If paid in installments)	\$
\$90.11 TP (SCCJA Surcharge)	\$5
TOTAL	\$

Court Reporter: H. Jordan

Clerk of Court/ Deputy Clerk

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 07 -GS- 40-5914AW#: J557781Date of Offense: June 30, 2007S.C. Code §: 16-3-10CDR Code #: 0116

SENTENCE SHEET

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve WE beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ Beginning _____
\$ _____ paid to Public Defender Fund

Other: _____

_____ \$25 \$

☐ Appointed PD or appointed other counsel, \$35.13 TP☐ Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE James H. HaysJudge Code: 2176Sentence Date: 10-15-09

50185236

2053
S FINE

FORM 5

2012 CP4007909

STATE OF SOUTH CAROLINA

COUNTY OF Richland

Tremaine Wray #337442
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR
POST-CONVICTION REVIEW

RICHLAND COUNTY
FILED
2012 NOV 29 PM 2:18
JENNIFER W. MCDRIDE
CLERK, C.R. & G.S.

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Correctional Institute
2. Name and location of Court which imposed sentence Richland County / Court of General Sessions
3. Name(s) of co-defendant(s) (if any) Taurus Watts
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007-GS-40-5914 (Murder)
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) October 15, 2009 ; 40 years
 - (b) Murder; Forty Years

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. The South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. August 8, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unknown
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: See Attachment

- (a) _____
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. _____
- ii. _____
- iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

- (b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Because they were not appropriate issues for direct appeal.

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? N/A
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- i. Jack B. Swerling 1720 Main Street, Suite 301 Columbia, SC. 29201
 - ii. Arie Bax
 - iii. Elizabeth-Franklin-Best, Dayne Phillips 1330 Lady Street, Suite 401 Columbia South Carolina 29
- (b) the proceedings at which each such attorney represented you:
- i. Trial
 - ii. Trial
 - iii. Direct Appeal, Direct Appeal

19. State clearly the relief you seek in filing this application:

Vacated and/or New Trial

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Therese Wray

SWORN to and subscribed before me this 26
day of Nov, 2012

Joyce L Young (L.S.)
Notary Public

My Commission Expires: 10 11 2021

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Theraine Wynn

Applicant

SWORN or affirmed to and subscribed before me this
26 day of Nov, 2012

Joyce L Young
Notary Public

My Commission Expires: 10/11/2021

RICHLAND COUNTY
 FILED
 2012 NOV 29 PM 2:18
 JEANNETTE W. MCBRIDE
 C.C.P. & G.S.

10/11 Grounds For Relief With Supporting Facts

10(a) Applicant was denied the right to effective assistance of counsel, guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution by Trial Counsel failure to request a hearing pursuant to Franks hearing by making a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth was included by the affiant in the affidavit in support of the search warrant.

11(a) In both affidavits in support of the search warrants for the vehicle and the home of the Applicant. The Affiant used false statements in both affidavits by using the term "witnesses" which falsely establishes that several witnesses or more than one witness identified the alleged vehicle; identified the Applicant as the driver of that vehicle; identified that shots came from that vehicle; and have named the Applicant in sworn statements. These witnesses do not exist. There was only one sole alleged witness in the entire case who claimed to have eyewitnessed the crime.

11(b) which is a critical factor in determining the sufficiency of the affidavit to establish probable cause. Counsel should have objected to the incomplete ruling and requested the Court to give a ruling on the specific factor that the affidavit containing mere conclusory statements, gave the magistrate no basis to make a judgment regarding probable cause.

10(c) Applicant was denied the right to effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution and South Carolina law was violated as a result of counsel's failure to object to the trial court's incomplete ruling on the unidentified witness statement, not being included in the affidavit.

11(c) Applicant's trial counsel argued several different issues pertaining to the insufficiency of the affidavit in one argument. However, the Court gave an incomplete ruling, because the Court did not address this critical factor. Trial Counsel should have objected to the incomplete ruling

10(e) Applicant was denied the right to effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution and South Carolina law was violated as a result of counsel's failure to object to the trial court's incomplete ruling on the affidavit not establishing probable cause because the affidavit did not reveal the identity of the unidentified witness.

11(e) Applicant's trial counsel argued several different issues pertaining to the insufficiency of the affidavit in the argument. However, the Judge gave an incomplete ruling due to the fact that she did not address this critical issue. Trial Counsel should have objected to the incomplete ruling and requested the Court to give a ruling on the specific factor that the affidavit did not reveal the identity of the unidentified witness.

10(f) Trial Court erred when it denied Applicant's motion to suppress illegally obtained evidence based on warrant that did not meet the constitutional

Cover Letter

Tremaine Wray
 386 Redemption Way
 McCormick, S.C. 29899

Dear Honorable Jeanette W. McBride

Please file for original copy of Post-Conviction Application along with a copy of the Grounds For Relief With Supporting Facts. I do not have post-conviction counsel at this time. Further, I do not have access to funds for expert and investigative services, or any ability to conduct an investigation. Given these limitations, I cannot provide further information regarding additional claims for post-conviction relief, although I believe there are other viable post-conviction claims available to me. With the exception of the specific issues included in this application at this time, I do not waive the attorney-client privilege to any extent, and I request that my trial counsel not provide any portion of my files to any representative of the attorney general's office outside the scope of these specific claims. Requesting a clocked/dated certified stamp copy to be returned to the Applicant.

S/ Tremaine Wray

Tremaine Wray #337442
 386 Redemption Way
 McCormick, S.C. 29899

C.C. T.W.

C.C. _____

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

WRAY Tremain -
00337442,

2012CP4007909

Applicant,

V.

RETURN

State of South Carolina,

Respondent.

Respondent, State of South Carolina, making its Return to the application for post-conviction relief (PCR) filed November 29, 2012, would respectfully show this Court:¹

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was true bill indicted at the August 2007 term of the Richland Grand Jury for Murder (2007-GS-40-5914).² He was represented by Jack B Swerling, Esquire, and Arie Bax, Esquire, on the charge(s). On October 5, 2009, Applicant proceeded to jury trial before The Honorable J. Michelle Childs.³ On October 15, 2009,

¹<http://www4.rctgov.us/publicindex/PICaseDetails.aspx?County=40+&Casenum=2012CP4007909&CourtType=G&CaseType=Civil&CourtAgency=40002>

² <https://sword.doc.state.sc.us/scdc-public/inmateDetails.do?id=+00337442>

³ Applicant was tried with co-defendant Taurus Watts (2007-GS-40-5913).

Applicant was found guilty as indicted and sentenced to forty (40) years imprisonment.

Direct Appeal

A notice of appeal was filed on Applicant's behalf and a direct appeal was perfected. He was represented by Elizabeth Franklin-Best of the South Carolina Office of Appellate Defense on the appeal. By order of the South Carolina Court of Appeals dated August 8, 2012, Applicant's convictions and sentences were affirmed. The remittitur was issued August 27, 2012.

The application for post-conviction relief (PCR) was filed November 29, 2012.

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, and the trial transcript, and Applicant's applicable direct appeal files.⁴ Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

III.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following:

⁴ The Respondent will utilize the Record on Appeal if the direct appeal was an Anders appeal.

10(a) Applicant was denied the right to effective assistance of counsel, guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution by Trial Counsel failure to request a hearing pursuant to Franks hearing by making a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth was included by the affiant in the affidavit in support of the search warrant.

11(a) In both affidavits in support of the search warrants for the vehicle and the home of the Applicant. The Affiant used false statements in both affidavits by using the term "witnesses" which falsely establishes that several witnesses or more than one witness identified the alleged vehicle; identified the Applicant as the driver of that vehicle; identified that shots came from that vehicle; and have named the Applicant in sworn statements. These witnesses do not exist. There was only one sole alleged witness in the entire case who claimed to have eyewitnessed the crime.

11(b) which is a critical factor in determining the sufficiency of the affidavit to establish probable cause. Counsel should have objected to the incomplete ruling and requested the Court to give a ruling on the specific factor that the affidavit containing mere conclusory statements, gave the magistrate no basis to make a judgment regarding probable cause.

10(c) Applicant was denied the right to effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution and South Carolina law was violated as a result of counsel's failure to object to the trial court's incomplete ruling on the unidentified witness statement, not being included in the affidavit.

11(c) Applicant's trial counsel argued several different issues pertaining to the insufficiency of the affidavit in one argument. However, the Court gave an incomplete ruling, because the Court did not address this critical factor. Trial Counsel should have objected to the incomplete ruling

10(e) Applicant was denied the right to effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution and South Carolina law was violated as a result of counsel's failure to object to the trial court's incomplete ruling on the affidavit not establishing probable cause because the affidavit did not reveal the identity of the unidentified witness.

11(e) Applicant's trial counsel argued several different issues pertaining to the insufficiency of the affidavit in the argument. However, the Judge gave an incomplete ruling due to the fact that she did not address this critical issue. Trial Counsel should have objected to the incomplete ruling and requested the Court to give a ruling on the specific factor that the affidavit did not reveal the identity of the unidentified witness.

10(f) Trial Court erred when it denied Applicant's motion to suppress illegally obtained evidence based on warrant that did not meet the constitutional

IV.

For the purposes of this Return, Respondent interprets each of Applicant's allegations to be claims of ineffective assistance of counsel. Respondent contends Applicant's trial counsel rendered adequate assistance and provided representation

within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for

counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing be held to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. Respondent therefore requests this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, Rebecca A. Roser, Esquire, Esquire regarding when the hearing should be set.⁵

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney
General

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Assistant Attorney General

By: 
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February 19, 2013

⁵ The current PCR Roster for the 5th Circuit is available at <http://www.scag.gov/criminal-litigation/postconvictionrelief>

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

WRAY Tremaine -
00337442,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

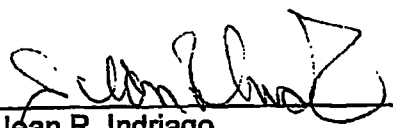
2012CP4007909

CERTIFICATE OF SERVICE

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the a letter in the above-captioned matter on the following person(s) by routing the same to the United States mail, postage prepaid:

Rebecca A. Roser, Esquire, Post Office Box 944 , Columbia, SC 29202

DATED February 22, 2013.



Jean R. Indriago
Legal Assistant

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Tremaine Wray, #337442,

Plaintiff,

v.

State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

Case No.: 2012-CP-40-02909

Amended Application for Post-Conviction Relief

RICHLAND COUNTY
FILED
2014 JUL -7 PM 3:05
JEANETTE W. MCBRIDE
C.P. & G.S.

Applicant Tremaine Wray and co-defendant Taurus Watts were tried by a jury for the murder of Dumuria Johnson on October 5-15, 2009. The nine-day trial in Richland County was before the Honorable J. Michelle Childs. Jack Swerling, Esquire, and Arie Bax, Esquire, represented Applicant and Teresa Knox, Esquire, represented Watts. Solicitors Vanessa Shipley and Joanna McDuffie prosecuted the case on behalf of the State. On October 15, 2009, both defendants were convicted of murder. Wray was sentenced to forty years. Applicant appealed this conviction to the Court of Appeals and was represented by Elizabeth A. Franklin-Best, Esquire. The Court of Appeals affirmed in an unpublished order dated August 8, 2012.

Applicant Tremaine Wray, by and through his court-appointed attorney, hereby amends his application for Post-Conviction Relief to assert that he is entitled to relief based on the following grounds¹:

¹ These amended grounds are in addition to those previously set forth or any that may arise at the hearing on this matter.

I. Trial counsel was deficient in failing to call at least three additional witnesses, including a refuting GSR expert, the initial responding officer Weldon Gregory, and eyewitness Timothy Weldon. Such deficiency prejudiced Applicant, depriving him of a fair trial.

a. Failure to call a refuting GSR expert witness

- i. Trial counsel was ineffective in failing to call an expert to refute the improper testimony and conclusions presented by the state's gunshot residue expert.
- ii. Trial counsel could have called a GSR expert to conclusively refute the statement that GSR was in Wray's car.
- iii. See e.g. Ard v. Cato, 372 S.C. 318, 642 S.E.2d 590 (2007) in which Court held counsel ineffective for not adequately developing and presenting GSR evidence.

b. Failure to call initial responding officer Weldon Gregory

- i. Trial counsel was ineffective in not calling to the stand the initial responding officer to the scene who authored the handwritten incident report.
- ii. Weldon Gregory's incident report and testimony would have contradicted the state's eyewitness Ricky Jacobs. At the scene Ricky Jacobs told Officer Weldon Gregory that the suspects in the white car shot towards the club. Then Ricky Jacobs told Officer McCrae that the suburban was the car that shot towards the club. At trial Ricky Jacobs said that he had only spoken to one officer, and neglected to reveal that he had spoken to Weldon Gregory.

c. Failure to call eyewitness Timothy Weldon

- i. Timothy Weldon saw the shooter with dreads in a white car. He saw shots coming from the drivers' side of a white car. He also saw a second car fire shots, but thought the first one fired toward the club. This corroborates Ricky Jacob's initial statement to Weldon Gregory that the shots came from the white car, not the tan Suburban.
- ii. He and a friend were leaving when fight broke up. He saw someone in the car wash with a pistol, and also said he saw the shooter's face.

II. Trial Counsel was deficient in failing to object and therefore preserve for appeal the state vouching for the credibility of a witness during closing argument. But for this failure to object, the jury may have been instructed to disregard the State's vouching for the witness or the Applicant would have been able to assert the State's error in his appeal.

- a. One of the core functions of the jury is to determine the credibility of a witness, and a solicitor vouching for a witness conveys the impression to the jury that they do not need to do that job because the solicitor has evidence known by the prosecution which supports conviction.
- b. Therefore, trial counsel's failure to object during the State's closing argument when the State said, "He's telling the truth" in closing arguments at the trial was substantial error which prejudiced Applicant. R. V. 8, P. 54.

III. Trial counsel was ineffective in not interviewing or investigating the initial responding officer to the scene Weldon Gregory and his handwritten police report. The officer had

evidence favorable to Applicant and not discussing it with him before trial prejudiced Applicant such that he did not receive a fair trial.

- a. Weldon Gregory was the first officer to arrive to the crime scene and was the first officer to interview Ricky Jacobs, which was approximately one and a half hours before Officer Don McRae arrived to the scene and interviewed Jacobs.
- b. Jacobs told Gregory that two suspects attempted to enter the club and he told them it was closed. He said one of the suspects made a comment to the effect "I've got something for you." The suspects left and then drove by in a white vehicle SUV shooting towards the club. He described the vehicle possibly being a White Nissan with black stripe down the side. He said Suspect 1 had dreadlocks in his hair and Suspect 2 had a close haircut with striped shirt. This description matches the two people who were later pulled over and found to have shell casings in the car matching those found in the road at the crime scene.

IV. Applicant was denied the right to a fair trial by the State's submitting discovery evidence without the authoring officer's name on it in violation of Brady.

- a. State did not reveal the name of the initial responding officer to the scene, Officer Weldon Gregory, because his name was cut off of the bottom of his police report which was disclosed to trial counsel. The omission deprived trial counsel of the opportunity to interview the initial responding officer.
- b. Weldon Gregory took the initial statement from eyewitness Ricky Jacobs, and this initial statement is a different version of events than Ricky Jacobs testified to on the stand. Because the statement contradicts Jacobs' trial testimony and

implicates the white car, not Applicant's tan Suburban, the evidence was material and favorable to Applicant.

- c. According to Brady v Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963), even in the absence of a specific request, the prosecution has a constitutional duty to turn over exculpatory evidence that would raise a reasonable doubt about the defendant's guilt. See also Riddle v. Ozmint (finding that if Brady violation occurred, PCR must be granted).

V. Appellant counsel was ineffective in not raising on appeal that the trial was tainted by the improper GSR testimony and improper conclusions drawn by state's expert testimony. Applicant was denied the opportunity to present this argument to the Court of Appeals, and had it been presented the Court would have found the testimony improper and/or deficient.

- a. Trial counsel properly objected to the GSR testimony at trial, and therefore the issue was properly preserved for review.
- b. Improper comments and arguments that the tan Suburban was positive for GSR infected the trial with unfairness that made the resulting conviction a denial of due process. This also resulted in a false corroboration of Ricky Jacob's testimony regarding gunfire coming from the Suburban, and the Court of Appeals erroneously cited to GSR in its decision upholding the verdict against Wray:

The murder weapon was never found, but the information provided by the club owner was consistent with other details discovered by police. These details included (1) *the location of gunshot residue on the vehicle in which Wray and Watts were riding*, (2) two projectiles from the car wash stall and one projectile recovered from the victim's clothing, and (3) shell casings found at the crime scene.

State v. Wray, 2012-UP-477 (S.C. Ct. App. August 8, 2012) (emphasis added).

VI. Trial counsel was ineffective for failing to impeach the State's eyewitness Ricky Jacobs with the report of the responding officer, Weldon Gregory, which contradicted his testimony. This deficiency prejudiced Applicant such that he did not have a fair trial.

- a. Ricky Jacobs testified said he only talked with one officer, but he had also spoken to Officer Weldon Gregory just after the shooting.
- b. Jacobs told Weldon Gregory that the shots came from the white car. Then he told the other officer and testified at trial that the shots came from tan suburban.

Because Applicant was denied the right to a fair trial based upon the grounds listed above, he requests his sentence be vacated or he be granted a new trial.



Marshall Coleman Newton
ROBINSON, MCFADDEN & MOORE, P.C.
Post Office Box 944
Columbia, SC 29202
(803) 779-8900

July 7, 2014

State of South Carolina)
)
 County of Richland)

In the Court of Common Pleas
 Fifth Judicial Circuit
 2012-CP-40-7909

Tremaine Wray,)
)
 Applicant,)

vs.)

Transcript of Record

State of South Carolina,)
)
 Respondent.)

November 3, 2014
 Columbia, South Carolina

B E F O R E:

The Honorable J. Mark Hayes, II, Judge

A P P E A R A N C E S:

L. Marshall Coleman Newton, Esquire
 Attorney for the Applicant

Megan E. Harrigan, Esquire, Assistant Attorney General
 James C. Mitchell, III, Esquire, Assistant Attorney General
 Attorneys for the Respondent

Elizabeth B. Harris, CVR-M
 Circuit Court Reporter

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1 MS. HARRIGAN: May it please the court?

2 THE COURT: Yes, ma'am.

3 MS. HARRIGAN: Your Honor, I'm Megan Harrigan on
4 behalf of the Attorney General's office, along with
5 co-counsel Clay Mitchell.

6 This is *Tremaine Wray vs. The State of South Carolina*,
7 docket number 2012-CP-40-6124. Mr. Wray was indicted
8 during the August 2007 term of the Richland County grand
9 jury for murder. He was represented by Jack B. Swerling
10 and Arie Bax. On October 5 through 15, 2009, Mr. Wray
11 proceeded to a jury trial before the Honorable J. Michelle
12 Childs, where he was convicted as indicted. Judge Childs
13 sentenced Mr. Wray to forty years' imprisonment for murder.

14 A notice of appeal was filed, and an appeal was
15 perfected on Mr. Wray's behalf by appellate defender
16 Elizabeth Franklin-Best. Following briefing and argument,
17 the South Carolina Court of Appeals affirmed Mr. Wray's
18 conviction and sentence. The remittitur was sent on August
19 27, 2012.

20 Mr. Wray filed a timely application for
21 post-conviction relief on November 29, 2012. The state
22 made its return on February 19, 2013, requesting that an
23 evidentiary hearing be held. On July 7, 2014, applicant
24 through his appointed counsel, Marshall Newton, filed an
25 amended application alleging the following grounds:

1 ineffective assistance of trial counsel for failure to call
2 a gunshot residue expert; ineffective assistance of trial
3 counsel for failure to call the initial responding officer,
4 Weldon Gregory; ineffective assistance of counsel for
5 failure to call eyewitness Timothy Weldon; ineffective
6 assistance of counsel for failure to object to vouching
7 during the state's closing argument; ineffective assistance
8 of counsel for failure to interview or investigate
9 responding officer Weldon Gregory; a *Brady* violation for
10 the state submitting the initial police report with the
11 officer's name cut off at the bottom; ineffective
12 assistance of appellate counsel for failure to raise the
13 gunshot residue expert testimony issue from trial; and
14 ineffective assistance of trial counsel for failing to
15 impeach Ricky Jacobs with the initial police report by
16 Weldon Gregory.

17 At this time, I'll turn it over to Mr. Wray's counsel.

18 THE COURT: Thank you, ma'am.

19 Yes, ma'am.

20 MS. NEWTON: Thank you, Your Honor. May it please the
21 court? I'm Marshall Newton; I'm here for Mr. Wray today.

22 That was a good, good procedural background history of
23 this case. As for the factual history, it was -- the
24 underlying incident was in June 2007, a murder at the H&J
25 Club on Hardscrabble Road. The person was murdered by

1 shots that came from a car driving by. People had left the
2 club because of a fight inside the club. There was
3 testimony that two cars drove by. One fired a shot into
4 the air; one car fired shots into the club.

5 The -- there were several witnesses, a lot of
6 witnesses at the trial. It was a lengthy trial. Most of
7 the witnesses testified about what happened in the club and
8 what happened in the -- and who was in the fight, involved
9 with the fight. There was only one eyewitness who
10 testified as to the shots that were fired from the car
11 which murdered the -- which caused the death of the person,
12 Mr. Johnson.

13 COURT REPORTER: Speak up, please.

14 MS. NEWTON: The, the -- one eyewitness's name was Mr.
15 Ricky Jacobs. He was the owner of the club, the H&J Club.
16 He initially spoke to the first officer, Mr. Weldon
17 Gregory. You'll hear from Mr. Gregory today, the
18 responding officer, first responding officer to the scene.
19 Mr. Gregory did not testify at the trial, but you will hear
20 from him today and he will explain his report to us.

21 His report actually identifies an Isuzu car as the
22 shooter towards the club. This is exculpatory to my
23 client. My client was in the -- was in a Suburban or it
24 was found that he was in the Suburban which fired towards
25 the club. Just -- there's conflicting testimony and Mr.

1 Gregory did not present that at the trial.

2 My client was arrested and his car was tested.

3 Another big issue we'll go into is the gunshot residue that
4 was tested in my client's car. The results of that test
5 were that there was no gunshot residue, but the state's
6 expert about the GSR at the trial, he concluded that though
7 there was no gunshot residue, the presence of some
8 particles are consistent for gunshot residue.

9 The result of this, it caused prejudice to my client
10 because in the end, the Court of Appeals ends up citing
11 gunshot residue in the car as a corroborating fact towards
12 my client's guilt in affirming their decision. That's the
13 ultimate prejudice that is shown through the gunshot
14 residue testimony.

15 And I believe that is most of the relevant history of
16 the facts, and my client will go through everything in
17 detail. So, unless there's anything else, I would like to
18 call him at this time.

19 THE COURT: Just one question. You're also contesting
20 appellate counsel?

21 MS. NEWTON: Yes, Your Honor.

22 THE COURT: Okay. Tell me what -- tell me the grounds
23 for that one.

24 MS. NEWTON: Well, that is also related to the gunshot
25 residue. It is our contention that it -- that issue could

1 have been appealed to the Court of Appeals. That it could
2 have been argued that the appellant -- the trial counsel
3 should have called their own GSR expert, or trial counsel
4 didn't object in the correct way, didn't cross-examine the
5 GS -- state's expert vigorously enough because, as I said,
6 the state's expert, although they did admit there was no
7 gunshot residue, they still concluded that what they found
8 was consistent with a gun being fired, which ultimately the
9 Court of Appeals relied upon and called it gunshot residue
10 even though it was not.

11 THE COURT: Okay.

12 MS. NEWTON: And that issue was -- that issue from the
13 court -- that Court of Appeals opinion was not appealed to
14 the Supreme Court.

15 THE COURT: Okay. So, you want to call your first
16 witness?

17 MS. NEWTON: Yes, Your Honor. I'd like to call Mr.
18 Tremaine Wray.

19 THE COURT: Mr. Wray, come on up.

20 APPLICANT: Your Honor, may I address the court before
21 I take the stand?

22 THE COURT: Yes, sir.

23 APPLICANT: I just want to put on the record that my
24 -- Rebecca A. Rosen was appointed to represent me initially
25 in my PCR case. Ms. Newton has, like I said, represented

1 me ever since, and I had several witnesses that I need
2 subpoenaed to testify at this hearing pursuant to *Madison*
3 *vs. State* since the burden is on me, the applicant, to
4 prove the claims of my -- in my allegations.

5 And I had requested that she motion for additional --
6 far as to hire an investigator to locate these witnesses,
7 and that, that has not happened. And I had my family
8 members try to locate these witnesses through Google and
9 Facebook and was unsuccessful. I was able to obtain phone
10 numbers for two of the witnesses and Mr. Weldon Gregory.
11 That had come from family members being able to get an
12 address on him.

13 And I'm unable to prove my claims that my attorney was
14 ineffective for failure to -- failing to call these
15 witnesses to testify at my, at my trial, and I'm unable to
16 establish prejudice for counsels' failure to take all these
17 witnesses at my trial, and I cannot testify to what these
18 witnesses would have testified had they been called because
19 it would be purely speculative.

20 THE COURT: Okay.

21 APPLICANT: And I wanted to know if I can get a
22 continuance to locate these witnesses to subpoena them to
23 the, to the PCR hearing.

24 THE COURT: You want to speak with your lawyer?

25 APPLICANT: Yes, sir.

1 THE COURT: Go ahead.

2 (COUNSEL CONFERS WITH APPLICANT.)

3 MS. NEWTON: Your Honor, I can respond to that and you
4 can rule on his request, if that's okay.

5 THE COURT: Okay.

6 MS. NEWTON: I believe the witnesses he's referring
7 to, Timothy Weldon, Brian Morris, Marian Jacobs.

8 I spoke with one of the witnesses, Brian Morris; he is
9 in California. He gave me some information that I did not
10 feel was necessary for this hearing. I could not locate
11 the others. I sent subpoenas out to them and could not
12 locate them; my process server could not locate them. I do
13 have Mr. Weldon Gregory here to testify today, and we have
14 a gunshot residue expert here to testify today.

15 I do not feel the others are necessary for this
16 hearing. I think Mr. Swerling will also testify that he
17 has spoken to some of those witnesses, and he will have
18 some testimony regarding that.

19 THE COURT: All right.

20 MS. HARRIGAN: The state would object to a continuance
21 at this time. This is been set for a date certain at this
22 time; this has been set for date certain two months. The
23 matter's been pending for almost two years. I believe in
24 my conversations with opposing counsel that she has made
25 efforts to track these people down, and unfortunately some

1 witnesses are out of state or unable to be located.

2 Additionally, through exhibits respondent intends to
3 introduce, trial counsel did make an effort or did speak to
4 some of these people, and the information was ultimately
5 not exculpatory for Mr. Wray or helpful, and that will be
6 introduced through various investigative reports that we
7 hope to have come in through Mr. Swerling or Mr. Bax.

8 THE COURT: Okay. All right. I would not grant the
9 request for a continuance. We're going to proceed on, and
10 if the other two witnesses, if they can still be located
11 while this proceeding goes on by the subpoenas, and I'm
12 sure that they would honor those subpoenas and show up, but
13 we'll, we'll go ahead and proceed. Thank you, sir.

14 MS. NEWTON: Thank you, Your Honor. At this time,
15 I'll call Mr. Wray to the stand.

16 THE COURT: Just come right up here, sir.

17 (A PAUSE.)

18 APPLICANT: Your Honor, Your Honor, I have these
19 statements that I want to submit as evidence to support my
20 claims. May, may I do that the proper way, Your Honor?

21 THE COURT: All right, if, if you would, sir, you will
22 take the stand. Let your lawyer ask you questions.

23 APPLICANT: Yes, sir.

24 THE COURT: And y'all make reference to those
25 documents. She can make the presentation of those into

T. WRAY - DIRECT EXAMINATION BY MS. NEWTON

13

1 evidence.

2 APPLICANT: Okay.

3 BAILIFF: You can set these here if you'd like.

4 TREMAINE WRAY, BEING DULY SWORN,

5 TESTIFIES AS FOLLOW:

6 CLERK OF COURT: Please have a seat and state your
7 name for the record.

8 THE COURT: Just have a seat in that chair. Pull the
9 chair up to the microphone, if you would.

10 APPLICANT: Okay.

11 THE COURT: The lady beside you is the court reporter.
12 She's taking down everything that's said, so please speak
13 up so that both she and I and all the lawyers can hear you.
14 And if ever during this process you cannot hear one of the
15 lawyers asking the questions, just let us know and I'll
16 have them speak up, okay?

17 APPLICANT: All right. Thank you.

18 MS. NEWTON: Thank you, Your Honor.

19 DIRECT EXAMINATION BY MS. NEWTON:

20 Q. Tremaine, I would like to go through a couple of
21 initial questions with you that we've discussed several
22 times. First of all, will you explain to us what the --
23 what is the relief that you're seeking here today?

24 A. I'm seeking to have my case overturned and vacated and
25 requesting a new trial or to, to -- reduction of sentence

T. WRAY - DIRECT EXAMINATION BY MS. NEWTON

14

1 or be released.

2 Q. And do you understand that if you had a new trial, you
3 would face your original charges all over again?

4 A. Yes, ma'am.

5 Q. And do you understand that if you were convicted a
6 second time, you could potentially face greater time in
7 jail?

8 A. Yes, ma'am.

9 Q. And considering all that, do you still wish to go
10 forward today?

11 A. Yes, ma'am.

12 Q. Okay. Could you please give us a little bit of back
13 -- background and history about yourself? How far did you
14 go in school and where you grew up just briefly?

15 A. Well, I grew up in Columbia, South Carolina, on
16 Hardscrabble Road in Washington Heights. I graduated from
17 high school, then two-year college at Denmark Technical
18 College.

19 Q. And what did you study in college?

20 A. Barbering.

21 Q. Did you work as a barber?

22 A. No, ma'am.

23 Q. Tell us a little bit about where you worked just prior
24 to this incident.

25 A. I worked at Outback Steakhouse as a cook making 11.50

T. WRAY - DIRECT EXAMINATION BY MS. NEWTON

15

1 an hour.

2 Q. Okay. Well, let's turn to your PCR issues; I want to
3 walk through them and let you explain them.

4 A. Okay.

5 Q. The first one we can talk about was the failure of
6 your trial counsel to call certain witnesses.

7 A. Okay.

8 Q. One piece of that that has a lot of issues is the
9 failure of trial counsel to call Mr. Weldon Gregory.

10 A. Yes, ma'am.

11 Q. Could you explain to us who was Mr. Gregory and why
12 was he important?

13 A. Mr. Gregory was the first officer to the scene of the
14 crime when shots were fired from a vehicle towards the
15 victim where the victim was injured, and he died later on
16 of those gunshot wounds. And he interviewed Mr. Jacobs,
17 which is the sole eyewitness in this, in this case.

18 Q. And are you looking at ---

19 A. Ma'am?

20 Q. --- one of your exhibits?

21 A. Yes, ma'am. I'm trying to make sure I get everything
22 together. It's kind of hard.

23 Q. Is that what you're looking for?

24 A. Oh, okay, I got that. I got that. That's, that's my
25 Exhibit A.

1 Q. Okay, use this.

2 A. Thank you.

3 Q. Could you explain to us what that exhibit is that you
4 would like to have entered?

5 A. This is a handwritten incident report with -- without
6 a name on it, and it has Ricky Jacobs as the complainant.
7 It has his address, his age, his telephone number. Has
8 identification of the suspects unknown, dreadlocks, and
9 hair. Can I read it in the record?

10 Q. Well, just explain it. We'll have Mr. Gregory read
11 it.

12 A. Okay.

13 Q. In the record.

14 A. Well, this is the, the handwritten incident report
15 that was turned over in discovery without, without a name
16 attached it, and it has Ricky Jacobs as the complainant.
17 It doesn't have the responding officer's name on it because
18 it was cut off at the bottom. And this incident report
19 actually identifies other suspects and another vehicle
20 that's committed this crime that I've been convicted of. Q.

21 Are you identified in that report?

22 A. No, ma'am.

23 Q. How do you know who authored that report?

24 A. Excuse me?

25 Q. How do you know who wrote that report?

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1 A. The first time I found out about this report was
2 during the testimony of the head investigator over this
3 entire case, which was Investigator Don McRae, which was
4 towards the end of my trial. That was, that was the first
5 time I ever found out about this person.

6 Q. So, you did not know the author of that report before
7 your trial?

8 A. No, ma'am. Actually, not only was this submitted. I
9 have an Exhibit B which is a typewritten version which was
10 supposed to be the same as that handwritten version, and
11 Mr. Jacobs's name was deleted off of there and replaced the
12 name, with Deputy Galinski, and the responding officer at
13 the bottom of this page was Deputy Ryan Galinski also, and
14 -- but the body of it was the same. The information
15 contained in it was the same, but this was also turned over
16 in, in discovery, and this was what was interjected into my
17 trial. And this was also used to assist the GSR expert in
18 his determination to test my vehicle and the white Isuzu.

19 MS. HARRIGAN: Your Honor, if the state could see a
20 copy of that? I don't believe we've seen a copy of the
21 document, the typed one he's referring to.

22 (A PAUSE.)

23 BY MS. NEWTON:

24 Q. Now, let's get back to the handwritten document. Did
25 your attorneys investigate the -- that document and who

1 wrote that document?

2 A. No, ma'am.

3 Q. Okay, and was there exculpatory information in that
4 document?

5 A. Yes, ma'am.

6 Q. And what was it?

7 A. Well, could I start with what, what actually -- what
8 -- when the eye witness, his testimony and his statement
9 was that two suspects attempted to enter to the club. He
10 said those two suspects was myself and Mr. Watts, my co-
11 defendant, and that my co-defendant, Mr. Watts, made a
12 comment to the effect, I've got something for you, and that
13 we went to my vehicle, and a few minutes later we drove by,
14 and gunshots came out of the driver's side area of my
15 vehicle.

16 But in this, in this document, Officer Gregory
17 interviewed Mr. Jacobs at the scene of the crime and wrote
18 this handwritten incident report which states that:

19 The complainant states that two suspects
20 attempted enter -- to enter the club, and
21 complainant told suspects he was closed.
22 Complainant states one of the suspects made a,
23 made a comment to the effect I've got something
24 for you. The complainant states suspects left
25 the location and a few minutes later, complainant

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1 states a white vehicle SUV with the suspects in
2 it begin shooting towards the club. Complainant
3 described the vehicle possibly being a white
4 Nissan with a black stripe down the side.
5 Complainant states subject -- suspect number two
6 fired over the top of the vehicle.

7 And he describes the driver as having dreadlocks in
8 his hair, the passenger as having a close haircut with a
9 striped shirt.

10 But he testified at trial that it was a tan Suburban
11 that did the shots toward -- begin shooting towards the
12 club and....

13 Q. So, according to the handwritten incident report, who
14 did the shots -- or who fired shots?

15 A. The suspects in the white SUV.

16 Q. And was that your car that they were referring to?

17 A. No, ma'am.

18 Q. Okay. I believe you said this, but did your trial
19 counsel speak to the author of that report before the
20 trial?

21 A. No, ma'am.

22 Q. And did your trial counsel use that report to impeach
23 Mr. Jacobs at your trial?

24 A. No, ma'am. No, ma'am, he did not.

25 Q. Did -- would you explain to us about Mr. Jacobs's

1 testimony at your trial and how that handwritten report
2 would have affected that if you had it?

3 A. Yes, ma'am.

4 Q. Tell us what Mr. Jacobs testified to at your trial.

5 A. Okay. Ricky Jacobs testified consistently under oath
6 that Mr. Watts and I attempted to enter the club. He told
7 us he was closed. Mr. Watts made a comment to the effect
8 I've got something for you. He testified that we got into
9 my champagne-colored Suburban. Shots came from the
10 driver's side of the vehicle, could have come from the rear
11 window, in the direction of the club/carwash. He said, he
12 testified that Mr. Watts had dreads in his hair.

13 And after that, he saw a white Isuzu Rodeo SUV with
14 two guys in it pull out down towards Farrow Road, the same
15 direction as my tan Suburban. And once the vehicle reached
16 the club/carwash the passenger got out, sat up on the door
17 of the car, and fired a shot one time straight up in the
18 air, therefore excluding these suspects and their vehicle
19 of the crime and excluding gunshots from this vehicle as
20 the shots that would have wounded the victim. But unknown
21 to the jury, this was Mr. Jacobs's second version or
22 account of the events of the shooting that he had told
23 Officer Don McRae when he arrived to the scene
24 approximately a hour and thirty minutes later.

25 Q. So, Mr. Jacobs's testimony at the trial implicated you

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1 and your co-defendant. Is that correct?

2 A. Yes, ma'am.

3 Q. But his testimony -- or his, his scene of events in
4 the handwritten report, who does that implicate?

5 A. Implicates the suspects in the, in the white SUV.

6 Q. Okay, a different set of suspects?

7 A. Yes, ma'am.

8 Q. So, could this handwritten report, if it had been used
9 by your trial counsel, affected your trial?

10 A. Yes, ma'am.

11 Q. And how would it have been helpful to you?

12 A. It would have revealed -- excuse me. Yes, there is a
13 reasonable probability that the results of the trial would
14 have been different because Mr. Gregory's testimony and
15 police report would have revealed to the jury that Mr.
16 Jacobs's initial statements to the police implicated the
17 white SUV vehicle and the suspects rather than me and Mr.
18 Watts and my vehicle, therefore establishing to the jury
19 that Mr. Jacobs changed the direction of the shots from
20 this white vehicle from initially being fired over the top
21 of the vehicle towards the club to one time straight up in
22 the air.

23 Also, that he initially stated to Officer Gregory that
24 the two suspects that tried to enter the club, and he told
25 the suspects to -- he told the suspects he was closed, and

1 one of the suspects made a comment to the effect I've got
2 something for you were the suspects from the white SUV.
3 But he then changed his story and stated to Officer Don
4 McRae that myself and Mr. Watts attempted to enter the
5 club, and he told us he was closed and that Mr. Watts made
6 the comment to the effect I've got something for you.

7 Officer Gregory's testimony and police report would
8 have manifested to the jury that Mr. Jacobs gave perjured
9 testimony on the stand by testifying under oath that he
10 never told any uniformed officer what he saw that night,
11 and that he never provided any descriptions of any
12 vehicles, nor explained what he observed to law enforcement
13 because when the first officer pulled up, he just wanted to
14 secure the street, the street looking for shells. And he,
15 he stopped traffic on both sides in the business of
16 securing the crime scene, roping off the area.

17 Q. And none of this information was presented at the
18 trial?

19 A. No, ma'am.

20 Q. Okay. Let's move on to this same report, but tell us
21 how there was a discovery violation ---

22 A. Yes, ma'am.

23 Q. --- involved in this report.

24 A. Okay.

25 APPLICANT: I beg the court's indulgence for a second.

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1 (A PAUSE.)

2 BY MS. NEWTON:

3 Q. Okay, I'll repeat the question. Can you please
4 explain to us about why this -- there was a discovery
5 violation in this handwritten report?

6 A. Yes. I was denied my right to a fair, fair trial in
7 violation of the fifth and fourteenth amendments to the
8 United States Constitution and the corresponding provision
9 of the South Carolina Constitution, laws, and statutes,
10 which denied my due process by the state submitting
11 discovery evidence without the authoring officer's name on
12 it in violation of *Brady vs. Maryland*.

13 Q. So this report, this handwritten report was disclosed
14 to your attorney, but what was the -- what was missing?

15 A. The officer, the officer's name. The state, the state
16 did not reveal the name of the initial responding officer
17 to the scene, Officer Ray Weldon Gregory, because his name
18 was cut off the bottom of this police report which was
19 disclosed to the defense. And the omission deprived the
20 defense of the opportunity to interview the initial
21 responding officer, and had the effect of preventing me
22 from presenting such evidence as I possessed in defense of
23 the accusations against me.

24 This undisclosed evidence also revealed that the
25 prosecution introduced trial testimony that it knew or

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1 should have known was perjured and which was exculpatory
2 and impeachable material evidence.

3 Q. So, was your trial counsel able to talk to the author
4 of this report?

5 A. No, ma'am.

6 Q. Because they did not know who the author was?

7 A. No, ma'am. Actually, actually my, my attorney used
8 the -- this, this false incident report that was created,
9 the typewritten version with Ryan Galinski's name on it,
10 but Ryan Galinski had his own supplemental report.

11 Q. So, your trial counsel relied upon an incident report
12 that was not from the initial responding officer?

13 A. No, ma'am. This was, this was a false document
14 because this, this officer never responded to the scene.
15 And this right here places him to -- at the scene, and he
16 is the complainant on this. Deputy Galinski is the
17 complainant and also the reporting officer. And his
18 testimony was that -- when he was presented this incident
19 report and questioned by my attorney and also my, my
20 co-defendant's attorney, because we had the joint trial, he
21 testified that he's never, ever seen this report before.
22 And that is not a report that he submitted, and that was
23 submitted by someone else, but his name is on it, but
24 that's, that's not his report. And he also said that
25 wasn't his handwriting when he was showed the handwritten

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1 incident report also.

2 Q. And what is the significance in the typewritten
3 report?

4 A. The typewritten report was just -- well, according to
5 the Investigator Don McRae's testimony, it said the
6 typewritten incident report was the original incident
7 report from the responding officer.

8 Q. And who does it identify?

9 A. It identifies a Deputy Galinski, Ryan Galinski.

10 Q. And who does that identify as the shooters towards the
11 club?

12 A. Also the complainant in -- I mean the, the suspects in
13 the white SUV, the body of it is the same. It's the same
14 as the one in the handwritten incident report. It has the
15 same information in the body, but the complainant's name is
16 switched and the reporting officer's name is changed to Mr.
17 Ryan Galinski, but he was never at the scene.

18 Q. Okay. Let's move on to the -- to another ground why
19 the trial counsel is not effective, and that is the gunshot
20 residue.

21 A. Okay.

22 Q. Did your trial counsel call a gunshot residue expert?

23 A. No, ma'am.

24 Q. At your trial?

25 A. No, ma'am.

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1 Q. Did your trial counsel object when the state's expert
2 concluded that there was -- that round lead particles were
3 consistent with a gun being fired in your car?

4 A. No, ma'am, and I want, I want to go deeper in that.
5 Let me, let me find this exhibit. That's my Exhibit,
6 Exhibit K.

7 (A PAUSE.)

8 Q. Explain, explain how this, how this GSR prejudiced you
9 at the trial.

10 A. Okay. I was denied my right to effective assistance
11 of counsel as guaranteed by the sixth and fourteenth
12 amendments to the United States Constitution and the
13 corresponding provisions of the South Carolina
14 Constitution, laws, and statutes by Mr. Swerling and Mr.
15 Bax's failure to object to misleading and prejudicial
16 statements during the expert witness testimony while giving
17 his opinion and conclusion from the actual forensic
18 evidence.

19 They did not object when the expert during his
20 testimony stated repeatedly that his findings were
21 consistent with a weapon having been fired in the driver's
22 side area of my vehicle, and that his conclusions is that a
23 weapon was fired from my vehicle. And this prejudiced me
24 because it did not accurately, accurately reflect his
25 report under Rule 6 of chemical analysis, Rules of Criminal

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1 Procedures. It also prejudiced me, prejudiced me because
2 the jury used his expert opinions and conclusions in their
3 decisions and deliberations to come back with a verdict
4 against me.

5 He also could not even reach that opinion because the
6 results of his report does not meet the protocol or
7 threshold that is required for him to reach in order to be
8 able to give an opinion of a weapon possibly being fired
9 from my vehicle because it did not contain the three, the
10 three required components: lead, barium, and antimony.

11 Q. And we're going to have an expert explain that to us,
12 but what is the conclusion of the report as to GSR?

13 A. Well.

14 Q. The state's report.

15 A. My Exhibit K ---

16 Q. Was there present -- was GSR present?

17 A. No. Gunshot residue was not present, present in order
18 for him to give that opinion.

19 Q. And did the state represent that gunshot residue was
20 present at your trial?

21 A. Yes. They argued throughout my trial from start to
22 finish that my, my vehicle was, was positive for gunshot
23 residue.

24 Q. Did the state call the round -- the presence of the
25 round lead particles gunshot residue at your trial?

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1 A. That's what they represented to the jury. They misled
2 and confused the jury that the sixteen round lead particles
3 found in my vehicle were positive for gunshot residue,
4 which was basically the smoking gun that a weapon was fired
5 from my vehicle to support, to corroborate Ricky Jacobs's
6 testimony.

7 Q. Okay, and you were prejudiced by that by the
8 impression that was left that there was GSR when there
9 really was not?

10 A. Yes.

11 Q. I'm going to hand you the -- this is in the record.
12 It's the Court of Appeals opinion from your case. It's an
13 unpublished opinion number 2012-UP-477 filed August 8,
14 2012.

15 A. Yes, ma'am. That's my Exhibit I.

16 Q. If you could please read to us where it's underlined
17 in that opinion.

18 A. The murder weapon was never found, but the
19 information provided by the club owner was
20 consistent with other details discovered by
21 police. The details included the location of
22 gunshot residue in the vehicle in which Wray and
23 Watts were riding, two projectiles from the
24 carwash stall, and one projectile recovered from
25 the victim's clothing -- excuse me -- and the

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1 shell casings found at the crime scene.

2 Q. So, the Court of Appeals affirmed your conviction, and
3 what's the significance of that citation that you just
4 read?

5 A. Because gunshot residue was found in my vehicle, and
6 it was consistent with the information that the club owner
7 provided.

8 Q. And was gunshot residue found in your vehicle?

9 A. No, ma'am. There was -- my, my vehicle tested
10 negative for gunshot residue.

11 Q. Okay. Thank you. Let's continue on with that. Let's
12 talk about your appellate counsel issues; they were also
13 based on gunshot residue. You just read from the Court of
14 Appeals opinion. Did you speak with your appellate
15 attorneys?

16 A. Yes, ma'am.

17 Q. About the gunshot residue issue?

18 A. Yes, ma'am. I spoke with Ms. Franklin-Best, and I
19 actually asked her to raise this claim and she, she refused
20 to raise the claim. She said she already had her issues,
21 her three issues she wanted to raise.

22 Q. Was there a claim preserved by your trial counsel to
23 appeal surrounding the GSR?

24 A. Yes. Mr. Arie Bax initially objected to the GSR
25 evidence being admitted and the GSR expert testifying right

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1 before the state was going to put him up to testify at my
2 trial.

3 Q. And he objected to all of the GSR state's witness
4 coming, the expert, based on what?

5 A. Based on he, he cited, he cited that it was based on
6 *State vs. Ramsey* and *State vs. Council*, which the, the
7 probative value would be outweighed by its prejudicial
8 effect.

9 Q. Right, and did you ask your appellate attorney to
10 appeal that issue?

11 A. Yes, I did.

12 Q. Was it properly preserved?

13 A. Yes, I did.

14 Q. And did you appeal it?

15 A. No, ma'am. No, ma'am, she didn't appeal it.

16 Q. Okay, and then you just read from the Court of Appeals
17 opinion they did affirm, and partially based on the
18 presence of GSR, correct?

19 A. Yes.

20 Q. When you received that opinion, did you discuss it
21 with your appellate attorneys?

22 A. By that, by that time she wasn't representing me
23 anymore. Dan Phillips was representing me.

24 Q. Dan Phillips was representing you?

25 A. Yes, because they had a oral argument in -- on my

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1 appeal.

2 Q. And did you ---

3 A. On one of, on one of the issues.

4 Q. Did you discuss the opinion with Dan Phillips?

5 A. Yes, I did, but he didn't, he didn't really know what
6 I was talking about.

7 Q. Did you ask them to file an appeal to the Supreme
8 Court?

9 A. Well, I asked -- I told him, I told him that I wanted
10 to do that, but he told me that -- he, he said I'm not
11 supposed to tell you this, but they really -- the Court of
12 Appeals -- I mean, the Supreme Court basically affirms what
13 the, what the Court of Appeals does. So, I would, I would
14 suggest that you go straight to PCR to raise your issues,
15 all the issues you want to raise.

16 Q. So ---

17 A. And that, and that's what I did.

18 Q. So, whose decision was it to not appeal based on the
19 GSR, appeal the Court of Appeals opinion based on the
20 gunshot residue?

21 A. It was Dan Phillips because Ms., Ms. Best wasn't --
22 she was already gone.

23 Q. Okay. Do you have anything to add about the gunshot
24 residue testimony?

25 A. Yes.

1 (A PAUSE.)

2 A. Yes, the gunshot residue could not be indicated by the
3 test unless all, all three of the required elements, which
4 was lead, barium, and antimony, was present at one time.
5 And SLED has a threshold that, that if they'll -- they find
6 these three elements together, that that is consistent with
7 or indicative of a weapon being fired in high or at
8 elevated levels because the low levels could mean the
9 particles had come from other environmental factors.

10 And during the objection to the admission of the
11 gunshot residue evidence that the expert witness would be
12 testifying to, Mr. Bax specifically stated to the trial
13 court judge that, quote:

14 I will certainly object if this expert attempts
15 to get on the stand and say that it's, it's
16 consistent with a gun being fired inside of that
17 car because there is absolutely no way to tell if
18 a round lead particle on an inanimate object got
19 there by direct deposit or secondary transfer,
20 and you cannot tell the difference. You cannot.

21 And that's my Exhibit M. But during the testimony,
22 Mr. Bax and Mr. Swerling failed to object to the expert
23 witness every time he stated repeatedly in giving his
24 opinion and conclusions that one out of the three required
25 components of gunshot residue was consistent with a weapon

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1 being fired from the driver-side area of my tan Suburban
2 and that a weapon was fired from my -- from the driver-side
3 area of my vehicle.

4 In item 6 I've highlighted -- and this is my Exhibit
5 K. I'm just going -- I would just like to read in the
6 record all -- yeah, every time he made those conclusions.
7 On page 69, lines 6 and 8, he stated:

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

11 Q. You're reading from the state's gunshot residue expert
12 testimony?

13 A. Yes. I'm reading from the trial, the trial
14 transcript, but I've, I've, I've highlighted his, his
15 conclusions.

16 Q. Okay.

17 A. He was also questioned on line 25:

18 Now, the fact that you did not locate antimony or
19 barium, does that change your conclusions in any
20 way?

21 He answered: No, ma'am.

22 And page 72, lines 10 through 15, he stated that:

23 My conclusions, based on everything I found here,
24 is that a weapon was fired in the vicinity of
25 that driver-side area.

1 On page 97, lines 10 through 15, he, he states that:

2 My results, my conclusions, I believe, is that

3 what she referred to ---

4 He's being questioned by Mr. Bax.

5 --- is what she referred to when she asked that

6 the, that -- is that consistent with the weapon

7 being fired in the passenger seat or from the

8 driver's seat? And I said yes. Now, if I had

9 found barium and antimony, I would be more

10 conclusive in the fact that I had actually found

11 gunshot residue.

12 Q. Okay.

13 A. Page 124, lines 22 through 24, he states:

14 What I have here is, is consistent in the

15 entirety of the case around the Chevy Suburban as

16 consistent with the gunshot being fired in that

17 vicinity.

18 He says in page 126, lines 10 through 13, he said:

19 Based on my data, to me, I have enough data to

20 say that a weapon was fired in that area.

21 Page 129 he says: I can tell you that ---

22 Lines 19 to 20, he says:

23 I can tell you that it is consistent with the

24 weapon being fired.

25 Page 134, lines 20 and 21:

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1 Based on my conclusions, a weapon was fired in
2 the vicinity of the driver's seat in the Chevy
3 Suburban.

4 Mr. Bax asked him page 135, lines 1 through 7, he
5 said:

6 Isn't it true that your finding is actually
7 consistent with the weapon being fired in that
8 area? Is that correct?

9 His answer: It is consistent with, yes, sir.

10 Question: You just said that your finding is a
11 weapon was fired in that area. You can't say
12 that, can you?

13 His answer was: I'm sorry. It is consistent
14 with. In my opinion, it happened, yes, sir.

15 That was at least thirteen times that he stated that
16 my vehicle was -- that, that, that the findings of my
17 vehicle was consistent with a weapon being fired in my
18 vehicle. And if both, both of my trial counsels would have
19 objected to the expert witness misrepresentation of the
20 facts, this could have prevented the jury from hearing and
21 considering these misleading and prejudicial opinions and
22 conclusions from the state's expert witness which not only
23 bolstered the case state's key witness credibility as well
24 as his testimony, but which was crucial to -- which was
25 crucial to the state's case, but also assisted the jury in

1 their decisions and deliberations to come back with a
2 verdict against me.

3 Q. Okay, and we're going to have an expert explain that
4 gunshot residue to us next, so we'll move on to another
5 ground, the failure of your trial counsel to object to the
6 state vouching for the credibility of the witness.

7 A. Yes.

8 Q. In the closing argument.

9 A. Yes. Give me one second.

10 Q. What witness was it that you're referring?

11 A. The state's key witness, Ricky Jacobs.

12 Q. And why was Mr. Jacobs's testimony so important?

13 A. Because he was the only, only eyewitness in this
14 entire case and his -- he was basically -- he, he made the
15 case against, against myself and Mr. Watts.

16 Q. The only eyewitness to ---

17 A. The only ---

18 Q. --- this would be ---

19 A. The only alleged eyewitness to the crime. Excuse me.
20 I'm sorry, but the only alleged eyewitness to the crime.

21 Q. To the shooting?

22 A. Yes.

23 Q. Other witnesses who testified, what did they testify
24 about?

25 A. They testified about the fight.

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1 Q. The fight?

2 A. That happened, that happened inside the club.

3 Q. Inside the club?

4 A. Yes, ma'am.

5 Q. Did any of those witnesses identify you?

6 A. No. No one identified myself and Mr. Watts but Mr.
7 Jacobs.

8 Q. Did any of those witnesses say that you were in the
9 club that night?

10 A. No, ma'am. Only, only Mr. Jacobs.

11 Q. Did anybody say you were involved with a fight that
12 night?

13 A. No, ma'am. No, no one what -- whatsoever.

14 Q. So, why is it important that the state -- why was it
15 prejudicial to you that the state vouched for the
16 credibility, credibility of Mr. Jacobs?

17 A. Well -- excuse me.

18 (A PAUSE.)

19 A. Oh, yeah. It was in, it was in the state's closing
20 arguments that they vouched for his credibility.

21 Q. And I have the volume 8 of your transcript, the
22 closing argument by the state.

23 A. Yes.

24 Q. If you want to read that from the record, just the
25 underlined parts, red.

1 A. Okay. It says it says:

2 So I submit to you, ladies and gentlemen, he had
3 no motivation to cooperate with the police. He's
4 telling the truth. There is no evidence of any
5 bad blood between he and the defendant.

6 Q. And that's the state talking about Ricky Jacobs?

7 A. Yes.

8 Q. Is that correct?

9 A. Yes, ma'am.

10 Q And did any of your trial counsel object to that
11 statement?

12 A. No, ma'am. The prejudice clearly flowed from Mr.
13 Swerling's erroneous failure to object to the state's
14 closing argument vouching for the credibility of the
15 eyewitness credibility as Mr. Jacobs was the state's key
16 witness, and his credibility was crucial to the state's
17 case. And I'm not sure about if I can cite cases to
18 support my, my allegations.

19 Q. Sure.

20 A. I cite *Gilchrist vs. -- Gilchrist, Gilchrist vs.*
21 *State*, 565 S.E. 2d at 281. I also cite *State vs. Kelly*,
22 540 S.E. 2d at 861, and *Matthews vs. State*, 565 S.E. 2d at
23 766, and in that case it holds:

24 Improper of vouching occurred when the
25 prosecution placed the state's prestige behind

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1 their key witness by making assurances of the
2 witness veracity. Therefore, the prosecutor
3 vouched for the credibility of the state's key
4 witness by expressing or implying her personal
5 opinion concerning this witness's truthfulness.
6 And the jury could have perceived the solicitor
7 held the opinion the witness was, in fact,
8 telling the truth. Because a jury must make its
9 own assessment on the credibility of the
10 witnesses, it is inappropriate for the state to
11 assure the jury of a government witness's
12 credibility.

13 And it says:

14 Trial counsel was deficient for failing to
15 object, and trial counsel cannot assert trial
16 strategy as a defense for failing to object to
17 the comments which constituted an error of law
18 and are inherently prejudicial.

19 Q. Okay. Thank you. Let's move on to your other issues.
20 You wanted to explain that -- why trial counsel was
21 deficient in issues surrounding the search and the arrest
22 warrants.

23 A. Yes, ma'am. Excuse me one second.

24 (A PAUSE.)

25 A. Okay.

1 Q. Could you walk us through those arguments, please?

2 A. Yes, ma'am. I was denied the right to effective
3 assistance of counsel as guaranteed by the sixth and
4 fourteenth amendments to the United States Constitution and
5 the corresponding provision of the South Carolina
6 Constitution, laws, and statutes by Mr. Swerling's failure
7 to request a hearing pursuant to -- *Franks* hearing to make
8 a substantial preliminary showing that false statements
9 knowingly and intentionally or with reckless disregard for
10 the truth was included by the affiant, Don McRae, and the
11 affidavit in support of the search warrants and both
12 affidavits in support for my vehicle and for my home.

13 The affiant used false statements in both -- excuse me
14 -- in both affidavits by using the term witnesses, which
15 falsely established that several witnesses or more than one
16 witness identified the alleged vehicle, identified me as
17 the driver of that vehicle, identified that shots came from
18 that vehicle, and have named me in sworn statements. These
19 witnesses do not exist. There was only one sole witness in
20 this entire case who claimed that I have eyewitnessed a
21 crime.

22 I have exhibits, Exhibit P.1 and P.2, which are the --
23 a copy of the search warrants and the -- for my vehicle and
24 the home.

25 Mr. Swerling knew that Ricky Jacobs was the only

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1 witness and these other witnesses did not exist. During my
2 motion to suppress, Mr. Swerling had -- did not request a
3 *Franks* hearing, but instead he argued the fact that the
4 affidavit referred to witnesses, but none of those
5 witnesses were identified, nor was the witnesses'
6 reliability established or underlying basis for how those
7 witnesses knew the information. And that's in transcript
8 volume 1, pages 150 through 168 and transcript volume 2,
9 pages 6 through 33.

10 Mr. Swerling should have requested a *Franks* hearing to
11 establish to the court that Mr. McRae knowingly included
12 false statements in the affidavit. And with the
13 affidavit's false material set the warrants aside, the
14 affiant's -- the affidavit's remaining content is
15 insufficient to establish probable cause.

16 And Mr. Swerling's failure to request a *Franks* hearing
17 and argue these facts to the court prejudiced me for these
18 reasons. It prejudiced me because the fruits of this
19 illegal search could have and should have been suppressed,
20 and a jury would not have heard the misleading and
21 prejudicial testimony of the state's expert witness
22 pertaining to the -- pertaining to the forensic evidence
23 that was used to assist the jury in their decisions and
24 deliberations to come back with a verdict against me.

25 It also prejudiced me in my direct appeal in that it

1 was part of the facts and circumstances in the Court of
2 Appeals opinion to affirm the trial judge's admission of
3 the evidence that -- also to affirm my conviction. See --
4 I have Exhibit I, which is -- which states by the Court of
5 Appeals, quote:

6 According to the affidavit, several witnesses saw
7 the vehicle to be searched leaving the crime
8 scene and identified it as the vehicle from which
9 several rounds were fired. None of the witnesses
10 were confidential informants. Finally, although
11 the affidavit did not include the names of the
12 witnesses, and noted that the witness who
13 identified the occupants of the vehicle had also
14 given a separate -- a separate statement to law
15 enforcement.

16 The affiant knew when these false statements were made
17 that he did not have reasonable grounds for believing them
18 because those witnesses did not exist. The false
19 statements in the affidavit for my vehicle were, quote:

20 Witnesses did identify the above-listed vehicle
21 leaving the incident location and firing several
22 shots from his vehicle. The vehicle was spotted
23 by investigators at the residence of one of the
24 suspects identified by witnesses as the driver of
25 the vehicle that fired the shots at the incident

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1 location.

2 See Exhibit P.1. The false statements in the
3 affidavit for my home were:

4 Witnesses did identify Tremaine Wray as the
5 driver of the suspect vehicle that was identified
6 by witnesses as the vehicle that the shots were
7 fired from. Witnesses have named Tremaine Wray
8 in sworn statements. Investigators have seen a
9 tan Suburban and -- excuse me. Investigators
10 have seen a tan in color Suburban parked at the
11 residence which is the same type and color
12 vehicle witnesses have, have described as the
13 suspect vehicle that the shots were fired from.

14 And that's my exhibit P.2.

15 When read in context, read in context with the
16 remainder of each affidavit, these false statements provide
17 false corroborating evidence of information and
18 conclusions. These knowingly false statements made the --
19 made by the affiant misled the magistrate in his evaluation
20 to believe that similar or identical information was
21 obtained by independent sources, these witnesses.

22 Also, these false statements made by the affiant
23 misled the magistrate in his evaluation to believe that the
24 informant's conclusions were corroborated and that the
25 informant's information were corroborated. The false

1 corroboration is part of the magistrate's determination of
2 the sufficiency of the affidavit for a search warrant and
3 the finding of probable cause. And I, and I cite the
4 *United States vs. Spock*, 518 F. 2d at 866, searches and
5 seizures, to support my claim and it states:

6 In determining sufficiency of affidavit for
7 search warrant, there are two types of
8 corroborating evidence. The first is
9 corroboration of an informant's conclusions; the
10 second is corroborations of information provided
11 by an informer. The distinction is rarely
12 clear-cut, and the same information may be
13 corroborated in both senses.

14 It also states that:

15 There are two types of corroborating evidence.
16 The first type of corroboration is based on the
17 premise that when similar or identical
18 information is obtained from independent sources,
19 each supports the other, and it is more likely
20 that the conclusions are true than if the
21 information is only provided by one source.

22 And there are no other witnesses in this, in this case
23 that, that, corroborated Mr. Jacobs's information that the
24 affiant used to establish probable cause for the search
25 warrants for my vehicle and my home.

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1 Q. Okay. Thank you. You have a couple more issues, so
2 let's move on to those.

3 A. All right.

4 Q. Which one do you want to go to next?

5 A. I'm going to go to -- excuse me one second.

6 (A PAUSE.)

7 A. All right, I was denied my right to a fair trial and
8 to derived of -- and deprived of liberty without due
9 process in violation of the fifth and fourteenth amendments
10 to the United States Constitution and the corresponding
11 provisions of the South Carolina Constitution, laws, and
12 statutes by the prosecuting authorities' knowing
13 presentation of false or perjured material testimony, and
14 by its failure to correct Ricky Jacobs, the state's sole
15 eyewitness, false or perjured testimony while testifying
16 against me and eliciting the truth which requires that my
17 conviction and sentence be vacated or that I be granted a
18 new trial.

19 At my 2009 trial, Ricky Jacobs was asked more than
20 once whether he had spoken to any uniformed law
21 enforcement, enforcement officers about what he had
22 eyewitnessed when they first arrived to the scene. Did he
23 provide descriptions of any vehicles? Was the first time
24 he explained what he observed was to Investigator Don
25 McRae? Was Investigator McRae the only person that he

1 spoke with that night and so forth. That's my exhibit F,
2 his testimony pertaining to this, to this issue.

3 Ricky Jacobs denies speaking with any -- anyone other
4 than Investigator Don McRae about what he had witnessed,
5 neglecting to mention the version of the shooting that he
6 had given to Officer Ray Weldon Gregory, and also
7 neglecting to mention that he had ever spoken to this
8 officer about this case or any other law enforcement
9 officers whatsoever other than investigator Don McRae.

10 The solicitor, knowing this testimony to be false,
11 failed to correct Ricky Jacobs's perjured trial testimony.
12 The solicitor's office capitalized on this perjured
13 testimony and thought it important to highlight and
14 establish to the jury during closing arguments that Ricky
15 Jacobs, quote:

16 Didn't call 911 because he was making sure his
17 customers were safe. That he did not talk to any
18 responding officers because they were busy
19 securing the crime scene. That the first and
20 only time he explained what he witnessed was to
21 Investigator McRae when he arrived to the scene.

22 See transcript volume 8, page 46, lines 2 through 5.

23 The testimony was false. Ricky Jacobs had, in fact,
24 make contact with a uniformed officer about what he had
25 eyewitnessed.

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1 Q. Now, let me interrupt you for a second. The prior
2 testimony you're saying that was, that was different from
3 Mr. Jacobs's testimony, are you referring to the
4 handwritten incident report we discussed earlier?

5 A. Yes, ma'am.

6 Q. Was that ---

7 A. Yes, ma'am. Okay, that is my Exhibit F, but this,
8 this officer was Deputy Ryan -- I mean, excuse me, this
9 officer was Deputy Ray Weldon Gregory. Deputy Gregory was
10 the first officer to arrive to the scene which, in fact,
11 was approximately an hour and thirty minutes before
12 Investigator Don McRae arrived to the scene. So, the first
13 time Mr. Jacobs explained what he observed was actually to
14 this officer, Deputy Ray Weldon Gregory, and not
15 Investigator Don McRae.

16 Mr., Mr. Jacobs provided descriptions of the vehicle,
17 and the suspects, and the direction of shots from this
18 vehicle to this officer. He describes the vehicle being a
19 white SUV, possibly a white Nissan. He describes the two
20 suspects as one having dreadlocks in his hair and the other
21 one having a close haircut with a striped shirt. These
22 were the two suspects he originally said attempted to enter
23 the club, and he told them the club was closed, and one of
24 his suspects made a comment to the effect I've got
25 something for you. He describes the direction of the shots

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1 from this white SUV with the two suspects in it as being
2 fired over the top of the vehicle towards the club.

3 The state knew this testimony was false because they
4 submitted discovery evidence of the handwritten incident
5 report without the authoring officer's name on it, with
6 Ricky Jacobs as the complainant providing the information
7 to this responding officer, and the state -- which the
8 state knew the whole time was Officer Gregory, and which
9 they kept his name hidden from defense until they finally
10 decided to reveal it to the, to the defense through the
11 testimony of Investigator Don McRae towards the end of my
12 trial. That is my Exhibit G, Don, Don McRae's testimony
13 pertaining to Weldon Gregory.

14 They also created an alternate typed incident report
15 which is the false version of my Exhibit A.1, which is the
16 handwritten incident report. And that's my Exhibit B, the
17 typewritten false version with Ricky Jacobs's name
18 eliminated and replaced with the name Deputy Ryan Galinski
19 as the complainant. And at the bottom of the typewritten
20 report the responding officer as also office -- as also
21 being Deputy Ryan Galinski, which deceivingly separates
22 Ricky Jacobs from any association whatsoever with Ray
23 Weldon Gregory.

24 Mr. Jacobs's perjury was material to the outcome of
25 the trial, of the trial. He doubled the force of the

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1 state's evidence by perjuring himself before the jury.
2 This testimony, coming as it did from a witness who was
3 presumably, presumably without motive to lie, was
4 devastating to the defense. If the state would have
5 corrected Mr. Jacobs's perjured testimony and elicited the
6 truth, this may have fatally undermined his credibility
7 before the jury. It may have been a crucial bit of
8 evidence in the minds of the jurors which caused them to
9 discount his entire testimony in this case.

10 Q. Okay, I think we, we understand the -- that portion of
11 Ricky Jacobs. Let me ask you a couple of questions to
12 clarify.

13 A. Excuse me. I wanted to read the relevant parts of his
14 testimony on, on his direct and then on his cross. In his
15 direct examination, this, this, this was questioned by the
16 solicitors and is answered by him. Question: When police
17 initially arrived ---

18 MS. HARRIGAN: Your Honor, if we could get that page
19 cite so the court and ---

20 APPLICANT: Okay.

21 MS. HARRIGAN: --- the state can follow along.

22 APPLICANT: It's, it's, it's volume 3, page 52.

23 THE COURT: Yes, sir. If you would, I know you're
24 reading a lot from notes, and any time that you come across
25 something that is referenced in the trial transcript, if

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1 you would just tell us, and that way we can make notes
2 and ---

3 APPLICANT: Okay. I'm sorry, Your Honor.

4 THE COURT: --- review it later.

5 BY MS. NEWTON:

6 A. Yes, I'm starting at volumes 3, page 52, lines 12
7 through 13; at 20, lines 20 through 25; page 53, lines 1
8 through 3; page 53, lines 6 through 13; and lines 14
9 through 19, and lines 22 through 23, and that's on the --
10 his direct examination. Okay.

11 Question: When police initially arrived, did you
12 make contact with them?

13 Answer: Yes, I did.

14 Question: And did you provide descriptions of
15 both vehicles to law enforcement?

16 Answer: No, because when the police officer came
17 up, he just wanted to secure the -- what was
18 going on because he said evidence might be
19 tampered or cars ran over it. So, he stopped
20 traffic on both sides.

21 Question: Okay.

22 Answer: And had them go around so when he got
23 out, the sergeant just started handling, handling
24 that.

25 That answer was false and known to be so by the

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1 prosecutor.

2 Question: And he -- and eventually did you make
3 contact with an officer about what you had
4 witnessed?

5 Answer: Yes.

6 Question: All right, and did you recall if that
7 was a uniformed officer?

8 Answer: No. The officer that I talked to,
9 Officer McRae.

10 Question: Investigator McRae?

11 Answer: Investigator McRae, yes.

12 That answer was false and known to be so by the
13 prosecutor.

14 Question: And so the first time you explained
15 what you observed was to Investigator McRae?

16 Answer: Yes.

17 Question: And the other officers were concerned
18 with the crime scene?

19 Answer: Right. Yes.

20 These answers were false and known to be so by the
21 prosecution.

22 Question: Did you provide descriptions of the
23 car, however?

24 MS. HARRIGAN: Your Honor, I would object to his
25 commentary in between his reading. There's nothing in

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1 there that this was known to be a lie by the prosecutor.

2 THE COURT: All right, sir, as you are reading the
3 testimony, just read the testimony.

4 APPLICANT: Yes, sir. Yes, sir.

5 THE COURT: Thank you.

6 APPLICANT: Okay.

7 BY MS. NEWTON:

8 A. Question: Did you provide descriptions of the
9 car, however?

10 Answer: No because, like I said, when the first
11 officer pulled up, he just wanted to secure the
12 street looking for shells.

13 Okay, I'm about to go to his cross-examination. This
14 is volume 3, pages 121, lines 9 through 25; and pages 122,
15 lines 4 through 6. This is cross-examination by Ms.
16 Theresa Johns.

17 Question: Okay. Now when the police arrived, you
18 didn't go to the police officer to tell them what
19 you saw, did you?

20 Answer: I went to the police officer, but he said
21 that there was, that there was somebody had got
22 killed. I didn't know that, so it was like he
23 wanted to secure the street to check for shells.

24 Question: So, when the officer arrived on the
25 scene, you didn't tell him what you saw, did you?

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1 Answer: I went to talk to him. He told me to
2 step back.

3 Question: Somebody got killed?

4 Answer: Yeah. He told me that. I was, like,
5 someone was shot, and I didn't know someone was
6 shot. The officer told me that.

7 Question: So, then you went back in the business,
8 right?

9 Answer: Right. I told him I would be over here
10 if he wanted to talk to me.

11 So, basically the issue is not why Ricky Jacobs failed
12 to tell the truth. Rather, it is why the solicitor, who
13 knew Ricky Jacobs's testimony to be false, failed to
14 correct it. And I, I state *Riddle vs. Ozment*, 631 S.E. 2d
15 at 70 to support this argument, and also *Napoo vs. People*
16 *of The State of Illinois*, 79 Supreme Court at 1173, and
17 *Tapia vs. Tansey*, 112 Supreme Court at 115, and that is the
18 conclusion of that argument.

19 Q. So, to summarize that argument, did the state have
20 different versions of Jacobs's testimony in its possession,
21 the state's ---

22 A. Yes.

23 Q. Yes?

24 A. Yes. They, they knew Ricky Jacobs had, in fact,
25 talked to another officer, and that officer was Officer

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1 Weldon, Weldon Gregory.

2 Q. Did the state ask him about the contradicting reports
3 that -- of that night?

4 A. Excuse me?

5 Q. At trial, did the state ask Mr. Jacobs about his two
6 different versions of the story?

7 A. No, ma'am. They only presented one version, which is
8 the version he testified to that he talked to Mr. Don McRae
9 about.

10 Q. Did your attorney ask Mr. Jacobs about the two
11 different versions of his, his story?

12 A. No, ma'am.

13 Q. Okay. Thank you. I believe you have one more issue,
14 the hand of one, hand of all objection, or lack of
15 objection ---

16 A. Actually, I have ---

17 MS. HARRIGAN: The state would object that we were not
18 put on notice that that was an allegation that would be
19 raised today.

20 APPLICANT: I amended that.

21 THE COURT: All right. We'll go ahead and let him
22 present it.

23 (A PAUSE.)

24 BY MS. NEWTON:

25 A. Yes, I was denied ineffective assistance of counsel as

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1 guaranteed by the sixth and fourteenth amendments to the
2 United States Constitution and the corresponding provisions
3 of the South Carolina Constitution, laws, and statutes from
4 Mr. Swerling's failure to object to the and challenge the
5 alternate theory of the hand of one is the hand of all
6 under accomplice liability being charged to the jury as an
7 alternate basis for conviction in the first-murder case.

8 Basically the state presented to the jury that myself
9 and Mr. Watts attempted to enter club -- enter the club.
10 Mr. Jacobs told us the club was closed. That we turned
11 around and went to my vehicle. That Mr. Watts a gun in his
12 hand, and that after we were leaving the scene, Mr. Watts
13 -- well, they actually presented two theories. They said
14 either -- they told, they told the jury that either you
15 could find that Mr. Watts passed the gun to Mr. Wray and
16 had him fire where the gunshot residue was, or you could
17 find that Mr. Wray leaned back and let Mr. Watts fire over
18 him to support the hand of one, hand of all theory.

19 But there was insufficient evidence that I personally
20 committed this crime or that I, through a common design,
21 through a common design aided or assisted in the
22 commission, commission of the crime through some overt act
23 under the accomplice liability theory. And I cite *State*
24 *vs. Ward*, 649 S.E. 2d at 145, and that basically mirrors
25 this case with -- but there was testimony that one of the

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1 victims -- one of the -- there was testimony that one of
2 the defendants had actually fired the gun, and then they
3 decided -- they, they believed that the other person aided
4 and abetted that person because they were all involved in
5 the fight that happened inside the club prior to the
6 shooting.

7 There was no evidence presented whatsoever by the
8 state that a gun, that a gun or weapon had ever been in my
9 possession on the night of this incident.

10 There was insufficient evidence of my co-defendant's
11 guilt for first-degree murder because the state did not
12 present any direct or circumstantial evidence to reasonably
13 prove which co-defendant harmed the victim. I cite, I cite
14 *State vs. Lang*, 749 S.E. 2d at 165, and it states that:

15 The state has the burden of proof -- the burden
16 of proving beyond a reasonable doubt the identity
17 of the defendant as the person who committed a
18 crime charged.

19 I also want to use the analysis of the Supreme Court
20 in *State vs. Hepburn*, opinion number 27336, and they held:

21 While undoubtedly present at the scene, the only
22 inference that could be drawn from the state's
23 case is that one of the two co-defendants
24 inflicted the victim's injuries but not appellate
25 harmed victim.

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1 The state did not put forth -- put forward sufficient
2 direct or circumstantial evidence of my guilt. I also cite
3 *State vs. Lewis* at 743 S.E. 2d at 129.

4 Mr. Swerling's failure to object and challenge the
5 hand of one, hand of all theory under accomplice liability
6 being charged to the jury prejudiced me because the
7 evidence presented did not support the charge. And,
8 therefore, the jury should not have been able to convict me
9 under this theory in which they did. It also prejudiced me
10 because the state never showed either one of the
11 co-defendant's participation in the crime, and never
12 established a principal in order to allow the jury to
13 determine whether or not the other co-defendant aided and
14 abetted the person.

15 Using the -- under the charge in this case, the jury
16 was faced with a difficult factual question as to the
17 identity of the principal. Could have resolved the issue
18 by convicting both defendants to ensure conviction of the
19 principal, and the charge must clearly explain to the jury
20 that that is not permissible. I say State -- I cite *State*
21 *vs. Lennock*, 355 S.E. 2d 270, to support, to support that,
22 that claim.

23 Q. Okay. Thank you, Mr. Wray. I don't think I have any
24 more questions for you. Did you have anything else you
25 wanted to add?

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1 A. Yes, ma'am. Well, a few of them was dealing with the
2 witnesses, but since I couldn't, I couldn't get them here,
3 I've got to skip those, got to skip those. Yes, yes, yes.
4 Excuse me one second. There's more evidence. I need to
5 submit that.

6 (A PAUSE.)

7 BY MS. NEWTON:

8 A. Yes, I was denied the right to effective assistance of
9 counsel as guaranteed by the sixth and fourteenth
10 amendments to the United States Constitution and the
11 corresponding provision of the South Carolina Constitution,
12 laws, and statutes by Mr. Swerling and Mr. Bax's failure to
13 object to the state's improper comments and arguments that
14 my tan Suburban was positive for, for GSR, which so
15 infected my trial with unfairness ---

16 COURT REPORTER: Slow down, please.

17 APPLICANT: Oh. I'm sorry.

18 COURT REPORTER: Repeat that last sentence.

19 APPLICANT: Okay.

20 BY MS. NEWTON:

21 A. I'm going to start with Mr. Swerling's and Mr. Bax's
22 failure to object to the state's improper comments and
23 arguments that my tan Suburban was positive for GSR, which
24 so infected my trial with unfairness that it made the
25 resulting conviction a denial of due process.

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1 Both trial counsels' failure extremely prejudiced me
2 because the jury used forensic evidence in their
3 deliberations to come back with a verdict against me. See
4 Exhibit L, which is -- let me get to Exhibit L right quick.

5 Q. Mr. Wray, I believe we've gone through a lot of the
6 GSR. Is there anything new you want to add?

7 A. Yeah. This is, this is new. This is new. The state
8 used and produced untruthful forensic evidence to the jury
9 in their opening arguments that, quote: You will -- excuse
10 me. This is transcript volume 2, page 49, lines 19 through
11 21.

12 Q. What was that page again, Mr. Wray?

13 A. It was page 49, lines 19 through 21. This is in their
14 opening arguments. They stated, quote:

15 You will hear from Michael Moskal as well, a
16 trace expert in gunshot residue at SLED. He will
17 tell you how the defendant's car was positive for
18 gunshot residue.

19 Next is transcript volume 8, page 52, lines 23 and 24
20 at the state's closing arguments. Quote:

21 Well, why do we have gunshot residue on the
22 driver side rear door frame?

23 This is page 53, lines 3 through 7. Quote:

24 Well, ladies and gentlemen, remember I asked
25 Agent Moskal is it consistent and is it possible

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1 when you are firing a firearm out of a moving
2 vehicle outside a window for gunshot residue to
3 come back to the back seat?

4 And he said: Yes, that's how it got there.

5 See volume 8 page 53, lines 11 through -- 11 through
6 15 and lines 19 through 20. Quote:

7 You ask yourself if Agent Moskal was lying or
8 telling the truth about his findings and his
9 ultimate conclusions, ladies and gentlemen, is
10 that the evidence is most consistent with the
11 firearm being fired from the driver's side area,
12 and that corroborates Ricky Jacobs as well.

13 Forensic evidence does not lie.

14 Excuse me. The state also argued this forensic --
15 false forensic evidence results to the trial court judge in
16 their arguments against the defense and our motion to
17 suppress, our motion to suppress hearing, the fruits of the
18 search. See transcript volume 2, page 11, lines 8 through
19 10. Quote:

20 Your Honor, they were seeking forensic evidence
21 related to the shooting which included gunshot
22 residue which was connected in this case and
23 which turned out to be positive.

24 Also see volume 2, page 12, lines 5 through 8. Quote:

25 The word is likely that evidence of the shooting

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1 would be found in his vehicle, whether it be
2 gunshot residue or ballistics, and in this case
3 there was gunshot residue.

4 The state also argued this in their arguments against
5 the defense objecting to the admission of the gunshot
6 residue evidence that the witness would be -- that the
7 witness that -- Mr. Moskal would be testifying to, and this
8 is the exchange between the court and the solicitor.

9 Ms. Shipley: And so, Your Honor, this is
10 corroborating evidence. It is extremely
11 probative to the state's case.

12 The court.

13 Excuse me. I've got to let y'all know where I'm at.
14 This is volume 6, transcript volume 6, page 17 and 18,
15 lines 14 to 25 and lines 1 through 7.

16 Quote by Ms. Shipley: And so, Your Honor, this is
17 corroborating evidence. It is extremely
18 probative to the state's case.

19 The Court: Does he take it further to say what
20 type of gun?

21 Ms. Shipley: No. He cannot identify what type of
22 gun. He can't, he can't identify who fired the
23 gun.

24 The Court: It's just a matter that a gun was.

25 Ms. Shipley: Was fired from inside the car.

1 The Court. The Court: Okay. Wait. Say the
2 last part.

3 Ms. Shipley: That a firearm consistent with the
4 firearm being fired from within the car.

5 The Court: Okay. Now tell me about the firearm
6 within the car part, though.

7 Ms. Shipley: Because when you have gunshot
8 residue inside the driver's side area.

9 The Court: Oh, I see what you're saying. That's.

10 Ms. Shipley: That's consistent when someone has
11 fired a gun from that area.

12 The Court: Okay.

13 The state also argued the untrue forensic evidence
14 results in their arguments against me in my motion for a
15 directed verdict, and also to support their hand of one,
16 hand of all theory, and also falsely corroborate their key
17 witness Ricky Jacobs. See transcript volume 7, page 184,
18 lines 13 through 18.

19 Quote: Under the theory of hand of one, hand of
20 all, they are both guilty of murder whether the
21 defendant Watts handed that gun to Tremaine Wray
22 and had him fire where the gunshot residue is, or
23 whether he leaned over himself while Mr. Wray was
24 busy driving the vehicle.

25 This is lines 21 through 24, volume 7, page 184.

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1 Quote: The testimony has been consistent that
2 only one shot was fired from the Rodeo up in the
3 air, and multiple shots were fired out of the tan
4 Suburban. Gunshot residue evidence corroborates
5 that and supports that.

6 Both of my counsels were very deficient in failing to
7 object to these untrue facts. The state should have never
8 been allowed to falsely argue and present to the trial
9 court judge and to the jury that my vehicle was positive
10 for gunshot residue.

11 I have an Exhibit O where the state's expert, the
12 state's expert had printed out that there was no gunshot
13 residue found in the white SUV when he did his forensic
14 results, and I would like to go to that right quick and
15 that, that's concludes this argument.

16 (A PAUSE.)

17 Q. Is it your, is it your argument with this, this
18 section that your counsel should have objected ---

19 A. Yes, ma'am.

20 Q. --- each time the state ---

21 A. The state ---

22 Q. --- called it ---

23 A. The state ---

24 Q. --- gunshot residue?

25 A. The state argued that and, and presented to the jury

1 that my vehicle was positive.

2 Q. And your counsel should have objected to that?

3 A. Yes, ma'am. This is volume 6, page 79, lines 16
4 through 25, and this is when he is basically explaining
5 that he did -- this is right before trial, two days before
6 trial. He explained that he phrased his report wrong. It
7 says:

8 Okay, item 11, the Isuzu Rodeo.

9 Question: Yes. How did you phrase your report?

10 Answer: I phrased my findings as the samples
11 collected from the Isuzu Rodeo, no gunshot
12 residue was found.

13 Question: Now, did you have an opportunity to
14 review all your bench notes on your reports in
15 preparation for trial?

16 Answer: Yes, ma'am. I did.

17 Question: And did you make a correction as to the
18 2001 Isuzu Rodeo terminology?

19 Answer: Yes, ma'am. I did.

20 Page 80, lines 1 through 19 and lines 22 through 25.

21 Question: Okay, explain for -- that for the jury.

22 Answer: The results I put on the Rodeo on the
23 first time on the March 4th report stated no
24 gunshot residue found. In our lab, we recognize
25 that as being a result of taking it to the

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1 microscope and actually looking at it -- at the
2 round lead particles and looking to see if it
3 contains all three of them. In looking back
4 through the report, I had not actually taken it
5 to the microscope. All I had done was gotten the
6 cotton swabs. So, the report should have gone
7 out the quantities found did not indicate gunshot
8 residue because all I had looked, looked at was
9 the quantity of those metals.

10 Question: Just so the jury is clear, the initial
11 report says what?

12 Answer: The initial report says no gunshot
13 residue found.

14 And because you were -- because the cotton swabs
15 did not reach the threshold, you then did the
16 what?

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

20 And then he goes on to say that that doesn't, that
21 doesn't change his, his findings for my Suburban. But this
22 part of his testimony when he's explaining what a result
23 for no gunshot residue found as him actually taking it to
24 the microscope, seeing if it contained those three
25 elements, that's exactly the test, the test results that he

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1 did on my vehicle. He took it to the microscope to see if
2 it contained those three elements, and it did not. So,
3 what should have, should have been reported was that no
4 gunshot residue was found just like he explained at -- in
5 this, in this right here, but he didn't do that.

6 Q. And just to clarify, which part, which -- what was the
7 Isuzu Rodeo? What was the significance of the Isuzu Rodeo?

8 A. The Isuzu Rodeo, that was -- excluded that as, as the
9 possible vehicle that could have -- the shots came from
10 that could have wounded the victim.

11 Q. So, the Isuzu Rodeo was not your car?

12 A. No, ma'am. The Isuzu Rodeo was not my car.

13 Q. Do you have any additional ---

14 A. Yes, ma'am.

15 Q. --- grounds?

16 A. Yes, ma'am.

17 MS. HARRIGAN: The state would object again for the
18 record to any additional grounds that we weren't on notice
19 for. We were only put on notice for the allegations set
20 forth in the pro se application and after counsel was
21 appointed, the allegations in the amended application.

22 THE COURT: All right, we ---

23 APPLICANT: Your Honor.

24 THE COURT: --- don't know what they are yet. So,
25 he's going through his papers.

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1 (A PAUSE.)

2 APPLICANT: Your Honor, with my, my attorneys' failure
3 to investigate, I -- by, by being questioned, I wasn't
4 allowed to show how there was a reasonable probability that
5 the balance of evidence would have shifted in my favor, and
6 I have exhibits showing that the -- there were other
7 evidence that, that showed that the white, that the white
8 SUV committed this crime. That there was shell casings
9 found in his vehicle that were consistent with the shell,
10 the shell casings recovered at the crime scene. They were
11 the same head stamp, the same name brand. The bullets were
12 the same as, as the projectiles found at the scene, and
13 also the bullet that was recovered from the victim, and I
14 have these exhibits.

15 MS. HARRIGAN: Your Honor, the state would object to
16 that and object to these exhibits that he's referring to.
17 This is not a ground that we were put on notice for, and
18 we've never seen these exhibits before, and I don't believe
19 he has an expert here to testify to that. He's not, he's
20 not been admitted as an expert to this, and we'd object to
21 him going into this line of testimony.

22 APPLICANT: Well, Your Honor, that's ---

23 THE COURT: All right, let me hear from your lawyer.

24 MS. NEWTON: Your Honor, the state is right that we
25 did not include this in the amended application.

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1 APPLICANT: Well, this is to the failure to
2 investigate. This is from the motion of discovery, and
3 also I have testimony ---

4 THE COURT: Tell you what we'll do it. Let me step
5 down for a couple of minutes. You and your lawyer speak
6 because ---

7 APPLICANT: Yes, Your Honor.

8 THE COURT: --- y'all can't -- it's, it's generally
9 not a good idea for a client and a lawyer to have
10 conversations on the record ---

11 APPLICANT: Okay ---

12 THE COURT: --- with recording and everybody.

13 APPLICANT: Yes, sir.

14 THE COURT: Okay, and then y'all decide of that
15 paperwork that he has, y'all decide what needs to actually
16 get in, and then show it to the state. Let them take a
17 look at it and then see if it is coming in.

18 APPLICANT: I have a question, Your Honor.

19 THE COURT: You want to ask your lawyer? You need to
20 ask your lawyer your question.

21 APPLICANT: I wanted permission. I can give them a
22 copy. I have a copy ---

23 THE COURT: All right ---

24 APPLICANT: --- for all ---

25 THE COURT: --- let me step down.

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1 APPLICANT: Okay. Okay.

2 THE COURT: You can have that conversation with your
3 lawyer.

4 APPLICANT: Okay. Yes, sir.

5 THE COURT: Okay? We'll take a short break.

6 MS. NEWTON: Thank you, Your Honor.

7 (OFF THE RECORD.)

8 (COPY OF NOTES MARKED AS STATE'S EXHIBIT NUMBER 1 FOR
9 IDENTIFICATION.)

10 (INVESTIGATIVE REPORT MARKED AS STATE'S EXHIBIT NUMBER
11 2 FOR IDENTIFICATION.)

12 (INTERVIEW TRANSCRIPT MARKED AS STATE'S EXHIBIT NUMBER
13 3 FOR IDENTIFICATION.)

14 (SLED REPORT MARKED AS STATE'S EXHIBIT NUMBER 4 FOR
15 IDENTIFICATION.)

16 (SUGGESTED QUESTIONS MARKED AS STATE'S EXHIBIT NUMBER
17 5 FOR IDENTIFICATION.)

18 (INCIDENT REPORT MARKED AS STATE'S EXHIBIT NUMBER 6
19 FOR IDENTIFICATION.)

20 (INCIDENT REPORT MARKED AS STATE'S EXHIBIT NUMBER 7
21 FOR IDENTIFICATION.)

22 THE COURT: Have y'all been able to go through the
23 papers?

24 MS. NEWTON: I think so, Your Honor. We just have one
25 more, one more issue that my client would like to add.

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1 THE COURT: Okay.

2 APPLICANT: Your Honor, I have one more issue. If I
3 could confer with my, my attorney? I'm still confused on,
4 on something.

5 THE COURT: You want to ask her?

6 APPLICANT: I've asked her.

7 (COUNSEL CONFERS WITH APPLICANT.)

8 APPLICANT: Well, Your Honor, I asked her about my
9 exhibits that I wanted to turn in to support my claims, as
10 exhibits to support my claims, and she notified me that I
11 couldn't turn them and because I didn't ---

12 THE COURT: No, sir ---

13 APPLICANT: --- submit to the state ---

14 THE COURT: Sir, if you would, the conversations you
15 and your lawyer have are confidential.

16 APPLICANT: Uh-huh.

17 THE COURT: And if you start talking about those types
18 of conversations, it may, in what we say in the legal
19 profession, open the door to problems that maybe she's
20 trying to prevent that may be problems that you don't
21 foresee.

22 APPLICANT: Yes, sir. I just wanted to know if I
23 could submit these in at the end of, of, my last argument.

24 THE COURT: Your lawyer will make the decision.

25 APPLICANT: Okay. Thank you. All right.

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1 BY MS. NEWTON:

2 A. I was denied the right to effective assistance of
3 counsel as guaranteed by the sixth and fourteenth
4 amendments to the United States Constitution and the
5 corresponding provisions of the South Carolina
6 Constitution, laws, and statutes by trial counsels' failure
7 to object to the state using the fruits of the search to
8 bolster their argument for finding of probable cause and to
9 show pre-existing probable cause.

10 The state, during their motion to suppress hearing,
11 argued detailed information that was not revealed to the
12 magistrate and also used the fruits of the search to
13 bolster their argument for a finding of probable cause.
14 See transcript volume 2, page 11, lines 8 through 10; page
15 -- volume 2, page 12, lines 5 through 8, and that's it.

16 THE COURT: What was that last page number?

17 APPLICANT: The last page number was page 12, lines 5
18 through 8, and I read these into, into the record where
19 it's just, it's just two, two different lines. It says,
20 quote: Your Honor, they were seeking forensic ---

21 MS. HARRIGAN: Your Honor, the state -- the record
22 speaks for itself.

23 APPLICANT: Okay. So ---

24 MS. HARRIGAN: We'd object to ---

25 APPLICANT: All right. All right. So ---

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1 MS. HARRIGAN: --- him reading it in another time.

2 BY MS. NEWTON:

3 A. All right, I cite, I cite *United States vs. Taylor*,
4 931 F. supplement at 1447, which states that:

5 It is also elementary that the facts necessary to
6 demonstrate probable cause are closer to the time
7 before or at the time of the prospective search.

8 It also states at search and seizures, key number
9 40.1:

10 Fruits of search cannot be used to bolster
11 arguments for finding of probable cause, and it
12 is generally not permissible for prosecuting
13 authorities to use fruits of search to show
14 pre-existing probable cause.

15 The arguments regarding the fruits of the search was
16 largely, largely irrelevant to the issue of probable cause
17 and, therefore, my counsels were deficient for failing to
18 object to the state using the fruits of the search to
19 bolster their argument for a finding of probable cause.
20 And my counsels' failure to object prejudiced me because it
21 resulted in me losing my argument during my motion to
22 suppress the fruits of the search, which in turn allowed
23 the state's presentation of the confusing, misleading
24 representations of the gunshot residue forensic evidence
25 that was used against me to the trial judge and to the

1 jury, which the jury used to come back with a verdict
2 against me. And this denied me my due process right to a
3 fair trial. That's the last, that's the last argument.

4 MS. NEWTON: Okay. Thank you, Mr. Wray.

5 APPLICANT: All right.

6 MS. NEWTON: You will have some questions from the
7 state. If you will, please answer those.

8 MR. MITCHELL: Your Honor, we have a witness, Ms.
9 Franklin-Best. She has some scheduling issues with us, and
10 she asked that we take her testimony out of turn. So, I
11 leave it up to you whether you want to do her testimony
12 now, and we'll come back to his cross-examination, or
13 whether go ahead with the cross now and then do her
14 testimony directly afterwards.

15 MS. NEWTON: Your Honor, I don't have an objection to
16 her testifying out of turn.

17 THE COURT: Okay.

18 All right, sir, then what we'll do is I'll let you
19 step down, but, sir, you're in the process of giving your
20 testimony.

21 APPLICANT: Yes, sir.

22 THE COURT: And so that means that you cannot have any
23 discussions with anyone about the substance of your
24 testimony. The fact that your lawyer is not going to be
25 talking to you about what you did or didn't say or advise

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1 you of what to do or not to do on cross-examination, do not
2 interpret that her not speaking with you about that as
3 being something negative. It's just that you're in the
4 process of giving testimony. So, you cannot talk to your
5 lawyer about that at this juncture.

6 APPLICANT: Yes, sir.

7 THE COURT: We're going to bring in somebody else
8 right now, okay?

9 APPLICANT: Okay.

10 THE COURT: But you may step down.

11 APPLICANT: All right.

12 THE COURT: You can take all these papers with you.

13 APPLICANT: All right.

14 (THE WITNESS EXITS THE STAND.)

15 MR. MITCHELL: Your Honor, the state calls Ms.
16 Elizabeth Franklin-Best.

17 THE COURT: Ma'am, just come right over here. Let the
18 clerk swear you in.

19 ELIZABETH FRANKLIN-BEST, BEING
20 DULY SWORN, TESTIFIES AS FOLLOWS:

21 CLERK OF COURT: Have a seat.

22 DIRECT EXAMINATION BY MR. MITCHELL:

23 Q. Good afternoon, Ms. Franklin-Best. How long have you
24 been practicing law?

25 A. About fourteen, thirteen years. Fourteen years.

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1 Q. What percentage of your practice revolves around
2 criminal work?

3 A. These days, probably about seventy percent.

4 Q. Now, is that mostly criminal defense?

5 A. Yes.

6 Q. Where are you currently employed?

7 A. I'm with the law firm of Blume, Norris, and Franklin-
8 Best.

9 Q. Prior to that, where were you working?

10 A. I was at the South Carolina Commission of Indigent
11 Defense in the Appellate Division.

12 Q. So, how did you become involved in Mr. Wray's case
13 here today?

14 A. It was assigned to me through just sort of the normal
15 course of, of working there.

16 Q. Have you had an opportunity to review any files or
17 briefs that you filed in this case?

18 A. I, I briefly reviewed the materials this morning.

19 Q. Okay. Let me get a little background on your normal
20 procedure of things I'm going to be asking you about.

21 A. Okay.

22 Q. How do you decide which issues to raise in a brief or
23 a direct appeal case specifically?

24 A. I mean, I'll read the record. I will look for issues
25 that I believe were preserved. I will sometimes raise

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1 issues that are not preserved if I think they are
2 particularly meritorious. And generally, I mean, I'm
3 looking for violations of -- I mean, any, any sort of issue
4 that I can raise on behalf of a particular defendant, I
5 will raise that issue.

6 Q. So, you're searching mostly for meritorious issues,
7 but ---

8 A. I will raise -- I mean, there's really a hierarchy. I
9 mean, under *Anders*, for example, the *Anders* procedure,
10 those are filed in cases where there are just no --
11 patently frivolous claims. I generally do not file *Anders*
12 briefs. I generally find whatever kind of issues I can and
13 raise those issues.

14 Q. What is your duty regarding which issues you do raise?

15 A. I don't, I don't understand.

16 Q. Well, let me rephrase that. Do you have a duty to
17 raise any specific issues on appeal, or is that more
18 discretionary with you, with individual ---

19 A. I mean, I have a duty to ---

20 Q. --- appellant's counsel?

21 A. --- raise any meritorious issues that may exist in, in
22 a case.

23 Q. All right, turning to specifically this case, you
24 raised three issues on appeal?

25 A. Correct.

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1 Q. And those three issues were the ones you thought were
2 most meritorious?

3 A. I mean, I thought they were potentially meritorious.
4 I did not believe that any issue was patently frivolous.

5 Q. So, these three issues specifically, you went through
6 the record and decided that they were the best issues in
7 this case?

8 A. Yes.

9 Q. After your review of the record?

10 A. Yes.

11 Q. Did you consider the admissibility of the gunshot
12 residue testimony?

13 A. I do not recall specifically why that -- why I did not
14 brief that issue.

15 Q. So, you, you -- applicant is alleging that you were
16 ineffective for failing to raise that issue. Is that
17 something...

18 A. If I could just sort of back up? I mean, the ---

19 Q. Yeah. Sure.

20 A. The law, the law is pretty clear on, on this kind of
21 claim. I mean, there, there can be no strategic reason for
22 failing to raise a meritorious claim. So, if, in fact,
23 that particular claim is properly preserved and is
24 meritorious, then I can't, you know, sit up here and say
25 that there was some strategic reason why I didn't brief it.

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1 All I can say is that at the time that I did the brief, for
2 whatever reason, I did not decide that that was a
3 meritorious issue.

4 Q. Okay. Issue number one, that goes straight to the
5 search warrant issued in this case.

6 A. If you say so. I, I do not have a copy of it in front
7 of me, but...

8 Q. Okay.

9 A. But, okay, search warrant issue.

10 MR. MITCHELL: May I approach, Your Honor?

11 THE COURT: Sure.

12 BY MR. MITCHELL:

13 Q. Showing you what's in the record as the final brief of
14 appellant.

15 A. Okay.

16 Q. Written by you. If you could just refer to those
17 three while -- throughout this testimony?

18 A. Okay.

19 Q. The first issue raised was the search warrant issue.

20 A. Correct.

21 Q. And in that, you argued that the court erred in
22 allowing evidence to come through -- that was obtained
23 through that search warrant.

24 A. Yes. I mean, I say that the warrant lacked probable
25 cause.

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1 Q. Okay. So, the warrant lacked probable cause, and you
2 thought that was a potentially meritorious issue?

3 A. Correct.

4 Q. Okay. Do you remember why specifically you ---

5 A. I do ---

6 Q. --- thought, you thought that?

7 A. I do not at this point without rereading the
8 transcript.

9 Q. Okay.

10 A. I can't tell you.

11 Q. But search warrants in general, that's -- if you can
12 challenge the evidence in the case, is that usually
13 something you look to do?

14 A. I mean, sure.

15 Q. So, that was argued and raised on appeal because it
16 was preserved by trial counsel below?

17 A. I haven't looked at the opinion. If the issue was not
18 preserved, the Court of Appeals opinion would say that this
19 issue was not properly preserved.

20 Q. On the second issue is a motion for mistrial.

21 A. Correct.

22 Q. The court erred in not granting the motion for
23 mistrial. Is that right?

24 A. Correct.

25 Q. And third issue, whether the court erred in granting

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1 the state's motion to continue the case. Is that right?

2 A. Correct.

3 Q. Going back to the gunshot residue, if that was
4 something you thought was meritorious, would you have
5 raised that in this case?

6 A. Yes.

7 Q. So, it was your professional decision not to raise
8 that?

9 A. At the time that I wrote the brief, that ---

10 Q. Time you wrote the brief?

11 A. --- is correct.

12 Q. And that there were other issues that were carrying
13 more merit in your eyes at the time. Is that right?

14 A. That's true. I mean, yes, but, I mean, I would not
15 have failed to raise a meritorious issue just because I
16 raised other potentially meritorious issues.

17 Q. Just because you raised three issues, that wouldn't
18 have stopped you from raising two other issues?

19 A. Correct.

20 Q. There's no number on how many you would raise. Is
21 that right?

22 A. Yes.

23 MR. MITCHELL: One second, Your Honor.

24 (A PAUSE.)

25 MR. MITCHELL: No further questions from the state.

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1 Please answer any questions counsel has for you.

2 CROSS-EXAMINATION BY MS. NEWTON:

3 Q. I just have a couple of questions. Do you, do you
4 recall reviewing the gunshot residue testimony when you are
5 drafting this appeal?

6 A. I mean, vaguely. I mean, when I was reading the, the
7 case this morning, it -- I, I remembered the issues, yes.

8 Q. Did you discuss the appeal with Mr. Wray that you were
9 drafting?

10 A. I know that I did because I recall speaking with Mr.
11 Wray on several occasions. I do not have any specific
12 recollection of discussing that. We may have, but I just
13 don't remember.

14 Q. Is it your opinion -- I think you just testified that
15 you probably didn't raise the GSR issue because there was
16 -- you decided it was not meritorious?

17 A. That would be the only reason why I would not have
18 raised it.

19 Q. Do you think that that -- those GSR issues were
20 properly preserved?

21 A. I don't recall without reading the transcript again; I
22 can't recall.

23 Q. Would one reason you didn't raise those issues be
24 because they weren't preserved ---

25 A. I mean, that ---

E. FRANKLIN-BEST - CROSS-EXAMINATION BY MS. NEWTON

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1 Q. --- properly?

2 A. --- would be a reason not to raise an issue.

3 Q. Do you recall receiving the opinion from the Court of
4 Appeals?

5 A. Not off the top of my head, no. I know there is an
6 opinion, but I did not review that prior to today.

7 Q. So, did you discuss the opinion citation to gunshot
8 residue ---

9 A. I don't recall.

10 Q. --- with applicant? Okay.

11 MS. NEWTON: I believe that's all the questions I have
12 for you.

13 WITNESS: Okay.

14 MS. NEWTON: Thank you.

15 WITNESS: Thank you.

16 THE COURT: Any redirect limited to what she went
17 into?

18 MR. MITCHELL: Nothing further.

19 THE COURT: Thank you, ma'am.

20 WITNESS: And thank you for taking me out of...

21 THE COURT: Any reason why the witness cannot be
22 excused?

23 MR. MITCHELL: No, that's fine. She can be excused.

24 THE COURT: Thank you, ma'am. You may be excused.

25 WITNESS: Thank you.

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1 (THE WITNESS EXITS THE STAND.)

2 THE COURT: All right, the lawyers want to come
3 forward?

4 (OFF-THE-RECORD BENCH CONFERENCE.)

5 THE COURT: All right, sir, come back around.

6 (WHEREUPON, APPLICANT RESUMES THE WITNESS STAND.)

7 THE COURT: Mr. Wray, I need to remind you that you
8 remain under oath. Do you understand that?

9 APPLICANT: Yes, sir. Okay.

10 CROSS-EXAMINATION BY MR. MITCHELL:

11 Q. Good afternoon, Mr. Wray.

12 A. Good afternoon.

13 Q. All right, this incident occurred June 30, 2007. Is
14 that right?

15 A. Yes, sir.

16 Q. And that was the early morning of June 30, excuse me,
17 2007?

18 A. Yes, sir.

19 Q. And you were arrested July 1, 2007. Is that correct?

20 A. Yes, sir.

21 Q. So, just a day later?

22 A. Yes, sir.

23 Q. I mean, two days later?

24 A. Yes, sir.

25 Q. And you were originally represented by the public

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1 defender's office. Is that right?

2 A. Yes. Danielle Payne.

3 Q. Who's that? I'm sorry.

4 A. Danielle Payne.

5 Q. Okay, and then you -- were you appointed your new
6 attorneys, or did you hire them yourself?

7 A. Well, when, when Danielle Payne was representing me,
8 the last time I spoke to her, she came to visit me at Alvin
9 S. Glenn Detention Center. And she told me the last time I
10 spoke to her, she told me she had information that wouldn't
11 ---

12 Q. Well, hold on. Was Mr. Swerling and Mr. Bax, were
13 they appointed or were they ---

14 A. No. They didn't come until -- I, I was assigned
15 Nicole Singletary, and then I obtained those two.

16 Q. Okay.

17 A. Yes.

18 Q. Both hired by you. Is that right or ---

19 A. Yeah. They, they were hired by me.

20 Q. Okay.

21 A. But Nicole Singletary was court appointed when
22 Danielle Payne just, just left. Vanished.

23 Q. I understand. I understand.

24 All right, when you met with your attorneys, you
25 discussed different defenses that you could raise. Is that

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1 right?

2 A. Yes, sir.

3 Q. You went, you went over the allegations, what the
4 state was charging you with, with your attorneys. Is that
5 right?

6 A. Yes. Just, I was, I was -- I, I caused the gunshot
7 that caused the victim's death.

8 Q. Right.

9 A. Yes.

10 Q. And your lawyers went over that, and you were charged
11 with murder. Is that right?

12 A. Yeah, I was charged with first-degree murder.

13 Q. Okay. Now Mr. Gregory, Officer Gregory, he was the
14 first responder to the scene. Is that right?

15 A. Yes, sir, but we did not know that at the time.

16 Q. Right. You know that now?

17 A. Yes, sir.

18 Q. Going through the trial?

19 A. Yes, sir.

20 Q. And he wasn't an investigator. He was just a
21 responding officer at that time, right?

22 A. From my understanding, he was the road deputy.

23 Q. Okay. So, he was just the first one there?

24 A. Yes, sir, the first one responded to the scene.

25 Q. Okay.

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1 A. Yes, sir.

2 Q. So, he, he issued a report. Is that right?

3 A. Yes, sir.

4 Q. And then he issued a supplemental report. Is that
5 right?

6 A. No, sir.

7 Q. There were multiple reports that you were talking
8 about earlier with you -- when you were talking about --
9 earlier with your attorney, wasn't there?

10 A. Yes, sir.

11 Q. Okay, and one of them was Mr. Gregory's report?

12 A. Yes, sir.

13 Q. Is that right?

14 A. The incident report was Mr. Gregory's report.

15 Q. Okay, the incident report, and then ---

16 A. Incident report.

17 Q. --- there was two separate, two other reports, two
18 separate reports you are also talking about earlier, right?

19 A. Yes, sir. There was another incident report which was
20 supposed to be a typewritten version of that handwritten
21 incident report with the ---

22 Q. One, one says supplemental, one says initial report,
23 right?

24 A. No, sir. There's also the supplemental. The
25 supplemental is actually Ryan Galinski's actual report that

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1 he did submit.

2 Q. Okay.

3 A. He did ---

4 Q. So, you do know ---

5 A. --- the supplemental on Two Notch Road.

6 Q. Right. There's a handwritten one, there's a typed
7 one?

8 A. Yes, a handwritten one, there's a typewritten one,
9 then there's a supplemental that corroborates the
10 handwritten one.

11 Q. Okay.

12 A. Okay.

13 Q. Now, the one that Mr. Gregory submitted was the one
14 without the signature at the bottom?

15 A. Yes, sir.

16 Q. Okay. Now, the whole report was there. It was just
17 missing the bottom, like, the last little inch of the
18 report. Is that right?

19 A. It was missing the reporting officer's name and ---

20 Q. But it just cut off the reporting officer's name.

21 A. Also ---

22 Q. The copy that you received. Is that right?

23 A. That and also the, the approving officer, officer and
24 also the, the investigator over the case.

25 Q. Okay. So, that's just the bottom, the little part of

T. WRAY - CROSS-EXAMINATION BY MR. MITCHELL

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1 the page?

2 A. Yes, the ---

3 Q. Is that what you're saying?

4 A. --- bottom, the bottom.

5 Q. The substance of the report was all -- there was
6 nothing wrong with that, was there?

7 A. The complainant and the narrative.

8 COURT REPORTER: Repeat that, please.

9 A. The complainant and the narrative, the complainant's
10 information and the narrative.

11 Q. Okay. Right. So, that's the only problem you had
12 with that report. It was just that it cut off the name of
13 the responding officer. Is that right?

14 A. As far as that being the only?

15 Q. Well, as far as the *Brady* violation that you were
16 alleging.

17 A. Yeah.

18 Q. Isn't that right? That was your argument earlier,
19 that ---

20 A. It was ---

21 Q. --- because that name was cut off, that that was a
22 *Brady* violation. Is that right?

23 A. Yeah, that and him not being revealed to the defense
24 that this person exists.

25 Q. Okay. Okay. Moving on to Mr. Jacobs's testimony.

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1 A. Yes, sir.

2 Q. He gave a statement the day after to Mr. -- to the
3 investigator. Isn't that right?

4 A. Actually, he gave a statement that night, an hour or
5 thirty minutes later to Investigator Don McRae at the
6 scene.

7 Q. Right.

8 A. Then he gave another statement. Mr. McRae made sure
9 that he obtained a written statement from him to the
10 version he told Investigator McRae at the scene.

11 Q. Okay. So, he gave multiple statements?

12 A. Yes. He gave one at the scene and he then -- then the
13 -- two days later, he came to Mr. McRae's -- well, to the
14 Richland County Sheriff's Department headquarters. He ---

15 Q. He gave another statement.

16 A. --- gave a written statement.

17 Q. Okay, and then he testified at trial. Is that right?

18 A. And then he testified at trial, yes, sir.

19 Q. So, he had really three statements now. Like, three
20 different statements kind of?

21 A. Well, three, three different times that he discussed
22 it, yes, sir.

23 Q. Exactly. That's a better way to phrase it. So, in,
24 in those statements, he said he saw an Isuzu Rodeo and a
25 tan Suburban. Is that right?

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1 A. Yes. In the version to Mr. McRae, he has two
2 vehicles.

3 Q. Okay. So, in his version to the investigator the
4 night of the incident is when he said he saw an Isuzu and
5 tan Suburban. Is that right?

6 A. Yes. It was a tan Suburban van he saw.

7 Q. Okay. He said he saw both of those there?

8 A. Yes ---

9 Q. Now ---

10 A. --- sir.

11 Q. --- your attorney cross-examined him on all of these
12 issues. Is that right?

13 A. Ah.

14 Q. I thought -- let me take that back. Your attorney
15 cross-examined Mr. Jacobs on his prior statements. Is that
16 right?

17 A. Yes. Yes.

18 Q. So, he went through and pointed out differences in
19 those statements. Is that right?

20 A. Actually, the only impeachment that he, that he did
21 was basically Mr. Jacobs changing the fact that at the
22 scene he says that after the gunshots came from my vehicle,
23 the white SUV turned immediately behind my vehicle and
24 fired one shot in the air. And then on the stand he says
25 that after the shots were fired from my, my Suburban, that

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1 he managed to walk across the street, get his car because
2 his -- it's his father's house. It's parked across the
3 street from the club, and he drove back around and parked
4 his car into the parking lot. And then the white SUV came
5 and shot one time in the air once he got in the car.

6 Q. Okay.

7 COURT REPORTER: Sit back from the microphone. Your
8 voice is getting distorted.

9 Q. So, your attorney did go through and cross-examine Mr.
10 Jacobs on his prior statements. Is that right?

11 A. Yes, sir, but not to the full extent.

12 Q. Okay, but that was -- I mean, he went through this
13 thing. He cross-examined -- your attorney Mr. Swerling
14 cross-examined Mr. Jacobs for, I think, about fifty pages
15 of the transcript. Is that about right? Does that sound
16 right to you?

17 A. I didn't count the pages, but...

18 Q. I mean, did you -- would you consider that an
19 extensive cross-examination?

20 A. Just, just on that issue and basically the issues with
21 him, just the issues with him with the vehicle, the white,
22 the white Isuzu.

23 Q. So.

24 A. The time frame of the one shot in the air.

25 Q. Right, and he was cross-examined on the time, right?

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1 A. Yes.

2 Q. He was cross-examined to what action -- what he
3 actually saw. He was questioned on that, right?

4 A. He was, he was questioned on the fact that at trial,
5 he -- it was the first time he tried to place myself and
6 Mr. Watts inside the club because his prior, his prior
7 statements was only -- started about him approaching us
8 outside of the club.

9 Q. Right.

10 A. He tried to place us inside the club.

11 A. He saw you, his testimony was he saw you outside the
12 club?

13 A. Yes, sir.

14 Q. And that was after a fight broke out inside the club,
15 right?

16 A. Yes, sir, and then ---

17 Q. He told y'all that he was about to close the club?

18 A. Yes, sir, and then that Mr. Watts made a comment to
19 the effect I've got something for you.

20 Q. Okay.

21 A. Yes, sir.

22 Q. Now, your attorney cross-examined him on those certain
23 things there, right?

24 A. Yes, sir.

25 Q. Of what, of what he told the officers?

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1 A. Of what he, of what he told -- excuse me -- of what he
2 told Investigator McRae.

3 Q. Right.

4 A. Exclusively, yes, sir.

5 Q. All right, moving to the gunshot residue.

6 A. Yes, sir.

7 Q. Mr. Bax, Mr. Bax handled that portion of the
8 cross-examination. Isn't that right?

9 A. Yes, sir.

10 Q. He cross-examined the expert witness, state's expert
11 witness in this case, right?

12 A. Yes, sir.

13 Q. Now, he initially objected to that evidence even being
14 presented to the jury, didn't he?

15 A. Right at the time that, that the state was getting
16 ready to ---

17 Q. Right ---

18 A. --- present him as the next witness.

19 Q. Before the expert testified, he objected to that
20 testimony even being allowed at all. Is that right?

21 A. He, he -- yes, he objected to the, the probative value
22 versus the prejudicial ---

23 Q. Right.

24 A. --- effect.

25 Q. Okay.

T. WRAY - CROSS-EXAMINATION BY MR. MITCHELL

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1 A. Yes.

2 Q. So, there was an objection made on the gunshot residue
3 testimony from the expert before he testified?

4 A. Yes.

5 Q. And that was denied, right?

6 A. Yes, sir.

7 Q. Because, because the expert did testify?

8 A. Yes, sir.

9 Q. All right. Now, the expert testified that there was
10 components of gunshot residue found?

11 A. No. He testified that there were round lead
12 particles, which was only one component of the three
13 required components of ---

14 Q. Right, and his testimony was that there were lead
15 particles found inside of that vehicle, inside of your
16 vehicle. Is that right?

17 A. Yes, sir. Only one of the ---

18 Q. Okay.

19 A. --- the required ---

20 Q. One and three. So, there's three of them.

21 COURT REPORTER: Wait, please, for the witness to
22 finish answering.

23 APPLICANT: Yeah.

24 MR. MITCHELL: I apologize.

25 THE COURT: She can only take down one at a time.

T. WRAY - CROSS-EXAMINATION BY MR. MITCHELL

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1 BY MR. MITCHELL:

2 A. Yes.

3 Q. So.

4 A. Yes, one out of the required three, which is SLED's
5 protocol.

6 Q. Okay. So, and he testified there was lead particles
7 present in your Suburban, right?

8 A. Yes. Sixteen total.

9 Q. And then that he concluded that it was likely that a
10 gun was shot, right?

11 A. Well, he concluded that, that it was most consistent
12 with a weapon being fired, and also that a weapon was
13 fired.

14 Q. Okay.

15 A. He concluded both.

16 Q. So, he concluded that there was a weapon fired and
17 that there were lead particles found consistent with ---

18 A. A weapon being fired gunshot.

19 Q. --- residue, right?

20 A. Well, no, not, not gunshot residue but from weapon
21 being fired from my Suburban.

22 Q. Okay.

23 A. The driver's side.

24 Q. And your attorney Mr. Bax cross-examined the expert on
25 that issue?

1 A. Yes, sir.

2 Q. And he went through -- excuse me. Yes, so that
3 cross-examination went through the different elements of
4 that gunshot residue. Isn't that right?

5 A. Yes, sir.

6 Q. And you went -- and Mr. Bax went through the lead
7 particles. Is that right?

8 A. Yes, sir.

9 Q. And that that -- and the expert gave some different
10 testimony where he said it was consistent with a gun, and
11 then I think he said something along the lines that he
12 concluded that a gun was fired or that it was likely fired,
13 right?

14 A. No, that it was consistent with.

15 Q. Right.

16 A. Yes, sir.

17 Q. It was -- so, it was inconsistent or consistent? I'm
18 sorry? What did you say?

19 A. It was con -- it was consistent, yes.

20 Q. Okay. Right. So, that was his testimony?

21 A. Yes, sir, and that it was.

22 A. You testified earlier that you thought your vehicle
23 tested negative for gunshot residue.

24 A. Yes, sir.

25 Q. Okay. Now, that's not, that's not entirely true it

T. WRAY - CROSS-EXAMINATION BY MR. MITCHELL

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1 was negative for gunshot residue. There was gunshot
2 residue components found, right?

3 A. No, sir, because when you have the -- in order to find
4 a conclusion of gunshot residue being found, you have to
5 have all three of those elements ---

6 A. Okay. You're right.

7 A. --- present, yes.

8 Q. But there were lead particles found on the driver's
9 side door. Isn't that right?

10 A. The driver's side door frame, yes, sir.

11 Q. Okay. This was all presented to the jury, right?

12 A. Yes, sir.

13 Q. And the cross -- and your attorney cross-examined that
14 expert on these findings?

15 A. Yes, sir.

16 Q. All right. All right. Now, your direct appeal case.

17 A. Yes, sir.

18 Q. Your attorney just testified in that, but one of the
19 issues on appeal was the -- whether there was sufficient
20 probable cause in the search warrant. Isn't that right?

21 A. Yes, sir.

22 Q. Here?

23 A. On, on the face of the affidavit, yes, sir.

24 Q. Okay, and that, that was the issue on -- one of -- the
25 number one issue on appeal that was raised by your

1 appellate attorney. Isn't that right?

2 A. Yes, sir.

3 Q. And the court, the Court of Appeals affirms your
4 conviction, right?

5 A. Yes, sir.

6 Q. The Court of Appeals did not find any error, any --
7 did not find any error by the trial court in allowing
8 evidence to come through that search warrant. Is that
9 right?

10 A. Yes, sir.

11 Q. Now, there was a hearing at the very beginning where
12 counsel objected and moved to exclude all fruits from that
13 search warrant. Isn't that right?

14 A. Yes, sir.

15 Q. And then the judge went through and found that
16 affidavit was sufficient.

17 A. On its face, yes, sir.

18 Q. So, found that the affidavit was sufficient and there
19 was sufficient probable cause in executing that search
20 warrant. Isn't that right?

21 A. Yes, sir.

22 Q. Okay. Now, you had some problems with the search
23 warrant, and it was whether there were witnesses or
24 witness. Isn't that right?

25 A. Yes, the term being plural instead of singular, yes,

T. WRAY - CROSS-EXAMINATION BY MR. MITCHELL

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1 sir.

2 Q. Okay. So besides that, they did have a witness saying
3 these things. It's just it's your position that they did
4 not have multiple witnesses?

5 A. Yes. That this information was provided by only one
6 source.

7 THE COURT: Mr. Wray, again the court reporter is
8 asking you to step back a bit.

9 APPLICANT: Oh, I'm sorry.

10 THE COURT: See, when your mouth is that close to the
11 microphone, your words get blurry, and I'm having problems
12 hearing you.

13 APPLICANT: Oh. I'm sorry. Is it just fine, though,
14 right here?

15 THE COURT: If you'll speak up, yes.

16 APPLICANT: Okay. Okay.

17 BY MR. MITCHELL:

18 A. Could you repeat the question, please?

19 Q. I think that's all I have there. Well, see, just --
20 we covered that part.

21 A. Okay.

22 Q. So, you also took issue that Mr. Jacobs said that he
23 only talked to Officer -- or to Investigator McRae. Is
24 that right?

25 A. Yes, sir.

T. WRAY - CROSS-EXAMINATION BY MR. MITCHELL

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1 Q. And you took issue with that because you thought he
2 talked to the responding officer as well. Is that right?

3 A. Yes, sir, he did.

4 Q. Okay, and that was brought out in the
5 cross-examination of Mr. Jacobs also, wasn't it?

6 A. Cross-examination, did they talk to any, anybody else?
7 Yes, sir.

8 Q. But he -- that he had talked to the first responder,
9 right?

10 A. Yes, sir.

11 Q. All right. He had talked to him about getting the
12 scene cleared and getting -- making sure the evidence was
13 preserved at that point, right?

14 A. Yeah. He said that's all that officer was concerned
15 with. That the officer didn't want to speak to him.

16 Q. Okay. So, he did say during the trial testimony that
17 he did talk to that initial responding officer, Mr.
18 Gregory, right?

19 A. No. He said that when the first officer pulled up, he
20 just was worried about securing the scene.

21 Q. Right, and that's who ---

22 A. And he told, he told them to step back.

23 Q. And that's ---

24 A. That someone was shot.

25 Q. And that's who Mr. Jacobs talked to, right? He talked

T. WRAY - CROSS-EXAMINATION BY MR. MITCHELL

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1 to him, and he talked to Mr. McRae. Is that ---

2 A. Yes. He talked to him an hour and thirty minutes
3 before Mr. McRae arrived.

4 Q. Okay. Now, it's the state's theory in this case that
5 you or your co-defendant must have fired the gun that
6 killed the victim in this case. Isn't that right?

7 A. Yes, sir.

8 Q. And there was some -- there was a lot of
9 circumstantial evidence in this case. Isn't that right?
10 It wasn't a whole lot of direct evidence.

11 A. No, sir.

12 Q. But there was some circumstantial evidence?

13 A. Yes, sir.

14 Q. Okay, and the state presented that, along with
15 evidence against your co-defendant?

16 A. Yes, sir.

17 Q. Isn't that right? So, it was the state's theory that
18 one of y'all must have fired that gun that killed the
19 victim?

20 A. Yes, based, based on Ricky Jacobs's second version of
21 the shooting, yes, sir.

22 Q. Okay. Now, that's the hand of one, hand of all, isn't
23 it?

24 A. Yes, sir. That's the hand of one, hand of all.

25 Q. Okay.

T. WRAY - REDIRECT EXAMINATION BY MS. NEWTON

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1 A. Yeah.

2 Q. Were you familiar with that going into the trial?

3 A. No, sir. I had no idea about, about that.

4 Q. So, you -- it's your testimony your attorney never
5 advised you that you could be charged with murder even if
6 you were not the one who pulled the trigger?

7 A. No, sir. I was never advised of that.

8 Q. Okay.

9 MR. MITCHELL: Your Honor, that's all the questions I
10 have.

11 THE COURT: Any redirect based on what he went into?

12 MS. NEWTON: I do have one brief question to verify.

13 THE COURT: Okay.

14 REDIRECT EXAMINATION BY MS. NEWTON:

15 Q. I think you said this, but just to make sure. Did,
16 did your trial counsel cross-examine Mr. Jacobs as to the
17 initial report he gave to Officer Weldon Gregory?

18 A. No, ma'am, because we didn't, we didn't know that he
19 existed.

20 MS. NEWTON: Okay. Thank you.

21 THE COURT: All right, sir, thank you. You may step
22 down.

23 (THE WITNESS EXITS THE STAND.)

24 THE COURT: Lawyers approach a moment.

25 (OFF-THE-RECORD BENCH CONFERENCE.)

W. GREGORY - DIRECT EXAMINATION BY MS. NEWTON

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1 THE COURT: All right, we're going to step down for an
2 hour. We'll come back at 2:15.

3 (OFF THE RECORD.)

4 THE COURT: Is the applicant ready? Is the applicant
5 ready to call their next witness?

6 MS. NEWTON: Yes, Your Honor.

7 THE COURT: Yes, ma'am.

8 MS. NEWTON: We're going to change order a little bit.
9 We're going to call Mr. Weldon Gregory at this time.

10 THE COURT: Sir, just come right up here. We'll let
11 the clerk of court swear you in.

12 WELDON GREGORY, BEING DULY SWORN,
13 TESTIFIES AS FOLLOWS:

14 CLERK OF COURT: Please have a seat. State your name
15 for the record.

16 DIRECT EXAMINATION BY MS. NEWTON:

17 Q. Mr. Gregory, thank you for being here today to
18 testify. Could you give us a little bit of introduction to
19 yourself and background for the court and your background
20 with the Richland County police department and relevant
21 work history?

22 A. I started with Richland County Sheriff's Department in
23 1989, and I retired in 2008 from the Richland County
24 Sheriff's Department, where I was retired as a master
25 deputy with the sheriff's office.

W. GREGORY - DIRECT EXAMINATION BY MS. NEWTON

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1 Q. Okay, and do you remember what you did on the night of
2 June 30, 2007?

3 A. Yes, I do. I, I received a call. We were dispatched
4 about, I guess, around 4:00 that morning. Shots being
5 fired at the H&J Club on Hardscrabble Road and when I
6 arrived, pretty much I was the first officer on the scene.
7 Pretty much secured the area of anything and then -- until
8 other, some other deputies got there.

9 Q. Okay, and at the time of the trial of this event of
10 Mr. Wray in October 2009, did you work for Richland County
11 Sheriff's Department?

12 A. 2009? No. I, I retired in October 2008.

13 Q. Retired. You may have said this, but how long did you
14 work there?

15 A. Right at almost twenty years.

16 Q. Okay, and when you typically responded to a scene,
17 what was your protocol in terms of ---

18 A. Basically secure the area, make sure it was safe.

19 Q. Okay. Did you typically write a report of what you
20 observed?

21 A. Yes, I did.

22 Q. And when did you write -- when did you usually create
23 that report, at the scene or later?

24 A. No. I actually wrote, I actually wrote this one at
25 the scene after other officers and everybody got there.

W. GREGORY - DIRECT EXAMINATION BY MS. NEWTON

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1 Q. Okay, and this is the handwritten report we have
2 referred to earlier my client testified about. Here's a
3 copy. Do you recognize this report?

4 A. Yes, I do. That's the one I wrote the night of the
5 shooting.

6 Q. And is it an accurate reflection of what you wrote
7 that night?

8 A. Yes, it is.

9 MS. NEWTON: At this time, we'd like to move this into
10 evidence, Your Honor.

11 MS. HARRIGAN: No objection from the state, and the
12 state actually premarked it for the ease of this court.

13 THE COURT: All right. What is it marked?

14 MS. HARRIGAN: It's premarked Respondent's Exhibit
15 Number 7.

16 THE COURT: Respondent's 7, okay.

17 MS. NEWTON: Okay. Thank you.

18 (INCIDENT REPORT MARKED INTO EVIDENCE AS STATE'S
19 EXHIBIT NUMBER 7.)

20 BY MS. NEWTON:

21 Q. So, this is your report from the incident. Could you
22 read the contents to us, the...

23 A. Once I, once -- like I said, once everything had sort
24 of calmed down a little bit, I went and talked with the
25 club owner, Mr. Jacobs, and asked him did he see what

1 happened, and basically he told me that:

2 The complainant, the complainant states that the
3 two suspects attempted to enter the club and the
4 complainant ---

5 Which is Mr. Jacobs.

6 --- told suspects he was closed. Complainant
7 states one of the suspects made a comment to --
8 made a comment to the effect that I've got
9 something for you. Complainant states suspects
10 left the location and a few minutes later,
11 complainant states a white vehicle SUV with the
12 suspects in it began shooting toward the, toward
13 the club. The complainant ---

14 Mr. Jacobs.

15 --- described the vehicle possibly being a white
16 Nissan with a black stripe down the -- around the
17 side. Complainant states that one of the
18 suspects fired over the top of the vehicle toward
19 the club.

20 Q. And is there a second page?

21 A. Yeah. This, the second page was, was done by Deputy
22 Galinski. It was after -- if I'm not mistaken, once I put
23 out a description of the vehicle, he stopped the vehicle on
24 the 98 -- the 9800 block of Two Notch Road where the
25 suspects were detained and deputies were notified the

W. GREGORY - DIRECT EXAMINATION BY MS. NEWTON

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1 victim -- of a victim which was transported to Providence
2 Northeast and dropped off at the hospital where Master
3 Deputy Smith responded to the hospital.

4 Q. Okay. Is this a fair and accurate representation of
5 what Mr. Jacobs told you that evening?

6 A. Yes, it is.

7 Q. And who did Mr. Jacobs identify did the shooting
8 towards the club?

9 A. He didn't give me the names at that time, but he said
10 it was the two gentlemen that he would not let into the
11 club.

12 Q. Okay, and did he tell you what, what they were
13 driving?

14 A. Not until after the, the shooting occurred.

15 Q. And what did he say that this...

16 A. Said it was a white -- he said it was possibly a white
17 Nissan with a black stripe down the side, and then that's
18 when apparently Deputy Galinski stopped that car after I
19 put out the description. He stopped a car fitting that
20 description out on Two Notch Road in the 9800 block.

21 Q. Okay. Did Mr. Jacobs tell you anything about a tan
22 Chevy Suburban?

23 A. Not that I recall.

24 Q. What about anything about the applicant, Mr. Tremaine
25 Wray?

W. GREGORY - DIRECT EXAMINATION BY MS. NEWTON

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1 A. No. He didn't mention any of that. Apparently he,
2 you know, might have mentioned it to the investigators, but
3 basically what I wrote is what he told me.

4 Q. Okay, and you were the first person to speak to him,
5 right?

6 A. Right.

7 Q. Mr. Jacobs?

8 A. Correct.

9 Q. And you were the first officer at the scene, correct?

10 A. Correct.

11 Q. And you testified that you -- when did you create this
12 report?

13 A. The night of the shooting, which I turned it over to
14 investigator after I finished writing it, but which
15 investigator, I don't remember which one I gave it to.

16 Q. And you created it at ---

17 A. At the scene.

18 Q. --- at the time? At the scene?

19 A. Right, because we got -- because after -- once I wrote
20 this, that's when I had received a message that the
21 individual had passed away at the hospital, and then I
22 wrote my report up.

23 Q. Okay, and is that how you knew it was a homicide?

24 A. Yes, ma'am.

25 Q. Do you have any -- do you remember anything else about

W. GREGORY - DIRECT EXAMINATION BY MS. NEWTON

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1 that evening?

2 A. That's pretty much -- like I said, the only thing I
3 did was we secured the scene and, you know, we went from
4 there, did what we had to do.

5 Q. How long were you at the scene approximately?

6 A. I left probably -- according to my report it was like
7 -- I got there at 4:15 in the morning and I left at 6:30.

8 Q. Okay. Did you have any interaction with the incident
9 after that?

10 A. No.

11 Q. You didn't help the investigator beyond ---

12 A. Uh-huh. It was all turned over to investigations, and
13 they handled everything from there.

14 Q. Have you been contacted about this incident since the
15 -- since it occurred?

16 A. No.

17 Q. Did the state ever call you about the trial?

18 A. No.

19 Q. Did the -- Mr. Wray's attorneys, Mr. Swerling or Mr.
20 Bax, call you before the trial?

21 A. No.

22 Q. Were you subpoenaed?

23 A. First I heard about it was when you contacted me, when
24 I ---

25 Q. When I called you?

W. GREGORY - DIRECT EXAMINATION / CROSS-EXAMINATION 110

1 A. When you called me.

2 Q. So, you were not able -- you were not asked or able to
3 testify because no one called you?

4 A. Correct.

5 Q. To the initial trial?

6 A. Correct.

7 Q. And the -- we discussed earlier that the -- your name
8 was cut off the bottom of this, but you did identify that
9 this was your handwriting, this is your report ---

10 A. Yeah.

11 Q. --- right?

12 A. That's my handwriting.

13 Q. Okay. Just doesn't have your name at the bottom.

14 A. Yeah. Apparently they -- when the copy was made, that
15 was just cut off when the copy was made.

16 Q. Yes, sir.

17 MS. NEWTON: I believe that's all the questions I
18 have. Thank you.

19 MS. HARRIGAN: May it please the court?

20 CROSS-EXAMINATION BY MS. HARRIGAN:

21 Q. Mr. Gregory, how long did you speak with Mr. Jacobs at
22 the scene?

23 A. You know, I really don't know how long I talked to
24 him, but basically I talked to him long enough to get the
25 details for, for my report.

W. GREGORY - CROSS-EXAMINATION BY MS. HARRIGAN

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1 Q. When you say details for your report, you're talking
2 about this short narrative on the two-page document,
3 correct?

4 A. Right.

5 Q. Do you have any other information or any recollection
6 of information you received from Mr. Jacobs other than
7 what's in this report?

8 A. No.

9 Q. And I believe you testified your primary role was to
10 secure the scene, correct?

11 A. Right.

12 Q. What did that involve?

13 A. Basically just securing the scene. Letting nobody,
14 you know, tamper with any evidence if there was anything
15 around. Being a shooting, you know, if there was any shell
16 casings on the ground or whatever, make sure nobody
17 disturbed anything until other deputies got there to help
18 secure the area. And once, like I said, once we got it
19 secured is when I talked, talked to Mr. Jacobs and got the
20 description, kind of a basic description.

21 Q. And you're not an investigator, correct, or you
22 weren't at the time?

23 A. No.

24 Q. Correct? Have you ever been an investigator for
25 Richland County Sheriff's Department?

W. GREGORY - CROSS-EXAMINATION BY MS. HARRIGAN

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1 A. No.

2 Q. How soon thereafter did other deputies arrive from
3 your department?

4 A. It wasn't too long; I couldn't give you approximate
5 time, but it wasn't too long after I got there.

6 Q. Could you give the court an estimate? Was it half an
7 hour or more like ten minutes?

8 A. Oh, no. It's probably two or three minutes probably.

9 Q. And you remained on the scene approximately from 4:15
10 until 6:30?

11 A. Correct.

12 Q. Do you recall how many times you spoke with Mr.
13 Jacobs?

14 A. No, I don't remember.

15 Q. And Investigator McRae was the chief investigator on
16 this case, correct?

17 A. I'm assuming he was, yeah.

18 Q. And you have no other information that's not included
19 in your brief narrative, correct?

20 A. Correct.

21 Q. Can you describe the scene when you arrived for the
22 court?

23 A. Well, I mean, like I said, it was 4:00 in the morning.
24 Pretty much everybody was gone from there. Apparently, you
25 know, when the shots were, you know, fired it just --

W. GREGORY - CROSS-EXAMINATION BY MS. HARRIGAN

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1 everybody scattered probably but there, there was just a
2 few, few people there, some of the employees but other than
3 that, no. I think that was pretty much it.

4 Q. You don't recall other people being there, perhaps
5 people still in the club or patrons?

6 A. If there was -- I think there was some over there in
7 the carwash area, but I, like I said, I, I, I can't
8 remember.

9 MS. HARRIGAN: Movement's indulgence.

10 Q. Was it a hectic scene when you arrived?

11 A. Not that I recall.

12 Q. And the information you had was that shots were fired
13 from at least one party?

14 A. Right.

15 Q. And when did you learn it was a homicide?

16 A. After I received information from my -- from one of
17 the deputies that went to the hospital.

18 Q. Do you recall whether that was before or after you had
19 received the statement from Mr. Jacobs?

20 A. It was after.

21 Q. And you testified that Mr. Jacobs told you that the
22 shooters were the ones -- the two that he said he wouldn't
23 let in the club, correct, and he didn't give you names or
24 any description?

25 A. Correct. He said, he said it was the two that he

W. GREGORY - CROSS-EXAMINATION BY MS. HARRIGAN

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1 wouldn't -- he turned down because he was closed. He told
2 them that he'd closed the club up.

3 Q. Did he tell you what time he closed the club?

4 A. I don't remember. All -- like I said, we got, we got
5 a call about 4, about 4:12 that morning. So, it had to be
6 somewhere right around 4:00 probably, if not a little
7 before.

8 Q. So, you arrived approximately three minutes after you
9 first received the call from dispatch?

10 A. Correct.

11 Q. And to the best of your recollection, it was a calm
12 scene and that almost everyone was gone already?

13 A. Yep. I mean, like I said, when I got there, I pretty
14 much secured the area. Didn't let nobody through or out,
15 you know, drive through the -- you know, up down the road.
16 And far as I could tell, it wasn't that many people out
17 there from what I can remember.

18 Q. And to secure the area, you said you didn't let drive
19 -- people drive through. Did you set up road blocks?

20 A. I blocked off one side of the road and, of course, I,
21 I got out of my car to keep, you know, the traffic from
22 coming down.

23 Q. And I believe you testified before, but your primary
24 duty was securing the scene, not taking statements ---

25 A. Right.

W. GREGORY - CROSS-EXAMINATION / REDIRECT EXAMINATION 115

1 Q. --- from people, correct?

2 A. Just securing the scene, right.

3 Q. So, your primary function wasn't to investigate this
4 case or to take statements from any witnesses, correct?

5 A. Not at, not at the time. It was just basically to
6 secure the scene until I got some help there.

7 Q. Do you know what time Investigator McRae arrived at
8 the scene?

9 A. No, I don't.

10 MS. HARRIGAN: No further questions. Thank you.

11 THE COURT: Any redirect on anything she went into?

12 MS. NEWTON: Just a moment, Your Honor.

13 REDIRECT EXAMINATION BY MS. NEWTON:

14 Q. Your primary duty, you testified your primary duty is
15 not to take statements, but that doesn't affect the, the
16 statement you did take.

17 A. No. Well, this isn't really a statement. It's just
18 a, it's just a, a report to, to the facts of what was told
19 to me.

20 Q. And does it accurately reflect what was told to you?

21 A. Correct. Yes.

22 MS. NEWTON: Thank you.

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

25 Any reason why the witness cannot be excused?

K. FITE - VOIR DIRE EXAMINATION BY MS. NEWTON

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1 MS. HARRIGAN: No, Your Honor.

2 THE COURT: Thank you, sir. You may be excused.

3 WITNESS: All right. Thank you.

4 (THE WITNESS EXITS THE STAND.)

5 THE COURT: Applicant ready to call their next
6 witness?

7 MS. NEWTON: Yes, Your Honor. Applicant calls Mr.
8 Kelly Fite.

9 THE COURT: Sir, come on around up, let the clerk of
10 court swear you in.

11 KELLY FITE, BEING DULY SWORN,

12 TESTIFIES AS FOLLOWS:

13 CLERK OF COURT: Please have a seat. State your full
14 name for the record.

15 VOIR DIRE EXAMINATION BY MS. NEWTON:

16 Q. All right, Mr. Fite, thank you for being here today.
17 If you would, please give us a little bit of your
18 background and explain your employment history and why
19 you're here today, why I asked you to be here today.

20 A. I have an advanced degree in chemistry. I worked at
21 the GBI, Georgia Bureau of Investigation, crime laboratory
22 for thirty-one years. I'm retired. I now work for both
23 prosecutors and defense.

24 Q. Okay, and when you were working at the GBI, what did
25 you do there?

K. FITE - VOIR DIRE EXAMINATION BY MS. NEWTON

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1 A. I was the supervisor of the firearms unit.

2 Q. And what did your job entail? What did your job
3 entail there?

4 A. Working cases. Carried a full case load and
5 supervising the other people that worked in the firearms
6 unit, which included the GSR unit.

7 Q. And what kind of educational background and training
8 do you have in the gunshot residue area?

9 A. Just the BS degree in chemistry.

10 Q. How do you study and learn about gunshot residue?

11 A. Well, it was an evolving process. First the organic
12 chemistry in college, and then coming to the crime
13 laboratory and working with the GSR guys, and then being
14 their supervisor and peer reviewing their cases.

15 Q. Okay. Have you ever testified as an expert in the
16 field of gunshot residue?

17 A. Many times.

18 Q. And approximately how many?

19 A. A hundred.

20 Q. And those, you've been -- have you been testifying in
21 South Carolina courts?

22 A. In GSR? I don't think so.

23 Q. And have you in the state of Georgia?

24 A. Yes.

25 Q. And you were qualified as an expert in those

K. FITE - VOIR DIRE EXAMINATION BY MS. HARRIGAN

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1 instances?

2 A. Yes.

3 MS. NEWTON: Your Honor, I would like to ask that Mr.
4 Fite be allowed to give his expert testimony in the field
5 of gunshot residue.

6 MS. HARRIGAN: If I could do some brief voir dire,
7 Your Honor?

8 THE COURT: Yes, ma'am.

9 VOIR DIRE EXAMINATION BY MS. HARRIGAN:

10 Q. Mr. Fite, when did you retire from GBI?

11 A. In 1999.

12 Q. And what have you been doing since then to remain
13 active in the field?

14 A. The same thing I was doing before I left the crime lab
15 except I work for the defense and the prosecution.

16 Q. Where is your lab currently located?

17 A. In my house.

18 Q. You just have a separate portion of your home that you
19 use as a lab, or could you expound on that?

20 A. I just have the basement dedicated to that.

21 Q. When was the last time you testified as an expert
22 regarding gunshot residue in court?

23 A. Probably a couple of months ago.

24 Q. Have you ever been offered as an expert but not
25 admitted or found unqualified?

K. FITE - DIRECT EXAMINATION BY MS. NEWTON

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1 A. No.

2 MS. HARRIGAN: Moment's indulgence, Your Honor.

3 (A PAUSE.)

4 MS. HARRIGAN: No further questions, Your Honor. No
5 objection to his admittance as an expert in gunshot
6 residue.

7 THE COURT: All right, then counsel may proceed as
8 requested. He'll be qualified as an expert in gunshot
9 residue.

10 MS. NEWTON: Thank you, Your Honor. DIRECT
11 EXAMINATION BY MS. NEWTON:

12 Q. Mr. Fite, have you reviewed the gunshot residue test
13 that was done on the -- Mr. Tremaine Wray's vehicle, his
14 tan Suburban in this case?

15 A. Yes, I did.

16 Q. Okay, and this has been entered as an exhibit.

17 MS. HARRIGAN: They have all been premarked. It
18 hasn't been introduced yet. It was premarked as
19 Respondent's Exhibit Number 4.

20 MS. NEWTON: Okay.

21 BY MS. NEWTON:

22 Q. I show you Respondent's Exhibit 4.

23 MS. HARRIGAN: And no objection from respondents as it
24 being introduced as an exhibit.

25 THE COURT: All right. It will be admitted as, as

K. FITE - DIRECT EXAMINATION BY MS. NEWTON

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1 Respondent's 4.

2 (SLED REPORT MARKED INTO EVIDENCE AS STATE'S EXHIBIT
3 NUMBER 4.)

4 BY MS. NEWTON:

5 Q. And what are the results of that gunshot residue test?

6 A. Round lead particles are found but no gunshot residue
7 was found.

8 Q. Okay, and I have the more lengthy report that I
9 believe you have reviewed as well just if you need to
10 refresh your memory. Could you please just walk us through
11 some of this, explain some of the scientific part of
12 gunshot residue and just with -- you want to -- what is
13 gunshot residue?

14 A. Well, there's two kinds of gunshot residue. One kind
15 of gunshot residue is produced by the consumption of the
16 gunpowder in the fire which produces nitrates and nitrites.

17 The second thing and the most important thing about
18 determining who fired a shot or where the shot was fired
19 from is the primer residue. It's the residue coming from a
20 primer of the cartridge, and it contains lead styphnate,
21 barium nitrate, and antimony sulfide. These three
22 compounds with the -- lead styphnate being the most
23 important because it has the most oxygen atoms in it.

24 Q. Okay.

25 THE COURT: I'm sorry, which did he say was the most

K. FITE - DIRECT EXAMINATION BY MS. NEWTON

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1 important?

2 MS. NEWTON: Lead.

3 THE COURT: Lead, okay.

4 BY MS. NEWTON:

5 Q. Could you explain that a little more, why the lead is
6 more important?

7 A. It's -- it has more, more oxygen in it, so it allows
8 the fire to get hotter and, and burn quicker and which
9 ignites the powder quicker and also, you know, allows it to
10 adhere to the barium and antimony atoms.

11 Q. Okay. With respect to gunshot residue, what happens
12 when a bullet is fired, a gun is shot?

13 A. Well, the firing pin comes out and strikes a primer,
14 primer and this primer mixes the shot sensitive. That is
15 when the firing pin hits it, it starts the fire. The
16 gunpowder almost immediately goes from a solid to a gas,
17 and it -- in doing this, it has to occupy a volume much
18 larger than the cartridge case, and it just pushes the
19 bullet out to the cartridge case down the barrel of the
20 gun, seeking to expand to its maximum size.

21 Q. And what is the purpose of testing for gunshot
22 residue?

23 A. Okay, the first kind of gunshot residue, the burning
24 powder, is a muzzle-to-target distance. How far was the
25 gun from the target when it was fired, and you look at the

1 nitrates and nitrites and if they're there, then you shoot
2 the gun and duplicate that pattern with the same ammo and
3 tells you how far the gun was from the target.

4 The second one is the gunshot residue on the shooter's
5 hands. That's what the test is mainly based on. This is
6 the primer residue. The scientist is looking for, for
7 barium and antimony and lead. And usually it's the lead
8 particle because there's more lead in the, in the primer
9 adhered to the nitrate of the barium -- or the antimony in
10 the barium.

11 Q. And you referred to testing on a hand. Can the
12 testing be done on any type of object?

13 A. Well, any time a firearm is fired, the nitrates and
14 nitrites from the powder are at the scene as far maybe 10
15 or 12 feet away from the gun. The GSR -- the barium, lead,
16 and antimony -- it's closer and usually that's what you
17 look for on a shooter's hands to determine if they shot the
18 gun. But it is outside -- it, it forms a small pattern out
19 in front of the gun.

20 Q. Okay. Must all three of those be present to suggest
21 the weapon's fire -- been fired, the lead, the barium, the
22 antimony?

23 A. State that again.

24 Q. Does the lead, barium, and, and antimony, do all three
25 of those have to be present?

K. FITE - DIRECT EXAMINATION BY MS. NEWTON

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1 A. They have, they have to be bonded together. You have
2 a -- the lead, which is, is, is important. And if you have
3 the lead particle with barium or antimony or both, then you
4 can say it's gunshot residue. With just one of these, the
5 lead with one of them, it's usually referred to as
6 association with gunshot residue is what the crime labs
7 refer to it as. And if it has both the lead, barium, and
8 antimony on this particle, it's usually referred to in the
9 crime lab report as characteristic of gunshot residue.
10 And the reason they say characteristic is because they
11 found other sources where you have lead particles that have
12 some barium and antimony attached to it.

13 Q. Okay. So if you could explain that again, that the --
14 there are three requirements, but -- and then if the lab
15 finds all three, then they can ---

16 A. They say it's characteristic of gunshot residue.

17 Q. And if the lab found -- finds two of the three
18 elements?

19 A. They say it's associated with GSR.

20 Q. Okay, and what if a test finds one of those three GSR
21 elements?

22 A. Well, if you just find round lead particles, I don't
23 know of a crime lab that I've been around in the South that
24 would call that gunshot residue.

25 Q. Okay, and at what level must these be present? How

1 many ---

2 A. Well, I mean, in, in ---

3 Q. --- round lead particles?

4 A. --- in this case where we have a number of round lead
5 particles, that means you have more samples. If none of
6 those samples have the other two elements in them, then
7 that makes it less likely that's gunshot residue.

8 Q. Okay, and these individual elements -- the lead,
9 barium, and antimony -- they are present together in GSR,
10 but where else can they come from?

11 A. One source is brake dust where a certain kind of brake
12 pads, when they are applied, they, they form particles with
13 these three elements in them. And that's, and that's why
14 crime labs went from saying if you had three particles
15 together, it was gunshot residue. And then they all
16 started to say it's characteristic because they know
17 there's at least one other source that you have us get the
18 same results.

19 Q. Is this in your field, a trend in your field that --
20 the way they phrase that result of the test? Is that what
21 you're referring to, the wording they were -- the wording
22 used of a test results from yes, there is GSR to yes, it's
23 characteristic of GSR?

24 A. Is it -- state that question again.

25 Q. Is that a -- are you referring to a trend in the

K. FITE - DIRECT EXAMINATION BY MS. NEWTON

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1 gunshot residue field as to how to interpret these tests?

2 A. No. I'm, I'm going to leave that to the, to the GSR
3 scientists and let them name it like they want to, but
4 that's how they have it named at this point, and I don't --
5 there, there's not a crime lab around that calls a round
6 lead particle GSR.

7 Q. Okay and, and if you only detect lead, can you say
8 where the lead came from?

9 A. Well, you looked for a source, I'm sure, but I don't
10 think you could say where it came from.

11 Q. And what types of sources ---

12 A. I don't know.

13 Q. --- can lead come from?

14 A. I don't -- I'm sure welding, soldering, things of that
15 type where you have heat would be a place to look, but I'm
16 not positive on that being a source.

17 Q. And what is the significance of round lead as opposed
18 to just ---

19 A. Well, it's just like anything else. That's the
20 smallest shape it can get in, okay? When it's hot and it
21 starts to cool, it goes to the smallest shape that it can
22 get in to preserve itself and to do that, it goes into a
23 small, round ball.

24 Q. What is the time frame for collecting GSR for a sample
25 to test?

K. FITE - DIRECT EXAMINATION BY MS. NEWTON

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1 A. Well, when I was, when I was at the crime lab, we said
2 if -- we're talking gunshot residue on hands. That a
3 person fired a gun and at the time he fired the gun, he got
4 gunshot residue on his hands, if he went through the normal
5 movements of living for two hours, that you would expect it
6 to be negative.

7 Q. Two hours, and what about on an inanimate object?

8 A. Well, why you say that about a human is because he's
9 going through the normal movements of living: hands in the
10 pockets, touching things. I would expect you would be
11 depending on the half-life of the, of the lead for how long
12 it'd be there.

13 Q. Okay. Can the gunshot residue be wiped or washed away
14 on an inanimate object?

15 A. It could be, yes.

16 Q. Can you explain a little bit about GSR being
17 transferred among objects or among hands?

18 A. I don't -- I can't do that, no.

19 Q. Well, can, can GSR be transferred from ---

20 A. Certainly. It's, it's, it's solid. It's small. It
21 could, it could be transferred, yes.

22 Q. And can it be transferred from a hand to an inanimate
23 object such as a steering wheel?

24 A. I would suspect that, but I, I wouldn't, I wouldn't
25 say that's for sure, no.

K. FITE - DIRECT EXAMINATION BY MS. NEWTON

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1 Q. Okay. Turning to this case specifically, you said you
2 have reviewed the gunshot residue test of the 1999 tan
3 Suburban?

4 A. Yes.

5 Q. Did you see any evidence of these -- owner of the
6 Suburban firing a weapon the night of this incident?

7 A. No.

8 Q. And what was the result of, of this test, the
9 Suburban?

10 A. They collected a number of samples of different
11 things.

12 Q. And in particular, what was found that the expert at
13 the trial was interested in?

14 A. The round lead particles.

15 Q. And as you mentioned earlier, can the round lead
16 particles come from more than gunshot residue?

17 A. Yes.

18 Q. Yes. Can you tell where these round lead particles
19 came from?

20 A. No.

21 Q. Can you tell when these round lead particles were
22 deposited?

23 A. No.

24 Q. So, they could have been there before the incident or
25 after the incident?

1 A. Yes.

2 Q. Were these lead particles deposited by Mr. Wray?

3 A. I don't know.

4 Q. And with regards to the sample that was taken and
5 tested, you reviewed the test results. Could this test
6 have been done by a separate lab? Could this test have
7 been done, a separate test being done from the same sample?

8 A. Are you talking about this crime lab ---

9 Q. Yes.

10 A. --- report?

11 Q. Yes.

12 A. Sure.

13 Q. So.

14 A. The same instruments are used throughout. You know,
15 the SEM is used and if the operators are competent, you
16 should get the same results.

17 Q. Okay. Now, you heard the testimony earlier that
18 during the trial, the state's expert testified that the
19 round lead particles were consistent with GSR. Is it your
20 opinion that the, that the report you reviewed is
21 consistent with gunshot residue?

22 A. If he says it's consistent with gunshot residue, I
23 would probably disagree with him.

24 Q. Okay. So, the presence of one element of the gunshot
25 residue, what does that signify to you?

K. FITE - DIRECT EXAMINATION / CROSS-EXAMINATION

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1 A. What the element is.

2 Q. Would you say it's consistent with gunshot residue?

3 A. No.

4 Q. Would you call it gunshot residue?

5 A. No.

6 Q. Would you say that this finding is consistent with
7 firing a gun?

8 A. No.

9 Q. Is it correct to say that the round lead particles, is
10 it correct to say that round lead particles show that a gun
11 was fired from the driver's side of the car?

12 A. I wouldn't say that.

13 Q. So, if you had been called to testify at this original
14 trial, would you have concluded that the test is consistent
15 with a gun being fired?

16 A. No.

17 Q. Okay. You have anything else to add to help us
18 understand the gunshot residue test?

19 A. No, ma'am.

20 MS. NEWTON: I think that's all the questions I have.

21 Thank you.

22 CROSS-EXAMINATION BY MS. HARRIGAN:

23 Q. Good afternoon, Mr. Fite.

24 A. Hi.

25 Q. What material did you review in this case? Can you

K. FITE - CROSS-EXAMINATION BY MS. HARRIGAN

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1 can, you show me what materials you were provided by Mr.
2 Wray's counsel?

3 A. I don't have all of them here. I, I, I looked at the
4 crime lab report. I looked at the report on the Suburban.

5 Q. When you say crime lab, lab report, can you show me
6 exactly what that is? I don't know that the state has a
7 copy of that, and I want to make sure we're looking at the
8 exact same thing.

9 A. It's the one issued on October the 7th -- 2, 2009.

10 MS. HARRIGAN: May I approach, Your Honor?

11 THE COURT: Yes, ma'am.

12 BY MS. HARRIGAN:

13 Q. So, beyond the report that has been admitted as
14 Respondent's Exhibit Number 4, which is what you looked at,
15 what else beyond this three-page -- really only one-page
16 document; there's no information on those other pages --
17 were you provided by Mr. Wray's counsel?

18 A. I have -- had other things. I didn't bring them with
19 me.

20 Q. Do you know what they were?

21 A. The incident report.

22 Q. Which incident report? There's been multiple.

23 A. Several of them.

24 Q. Which ones?

25 A. I don't ---

K. FITE - CROSS-EXAMINATION BY MS. HARRIGAN

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1 Q. You have that written down?

2 A. No. I don't know.

3 Q. How were these provided to you? The state is just
4 trying to figure out what you were shown before your
5 testimony here today and what you based your opinion on.

6 A. I based my opinion basically on this crime lab report,
7 but ---

8 Q. That's the one-page ---

9 A. --- also on the, the test on the Suburban.

10 Q. Do you have a copy of that test on the Suburban?

11 A. No.

12 Q. What in the -- if you don't have a copy of it, how are
13 you basing your testimony on ---

14 A. I have a copy, but I didn't bring it with me.

15 Q. What particularly from this report are you using to
16 form your opinion that the SLED analyst's conclusion is
17 different than yours?

18 A. Of this, of this crime lab report?

19 Q. Yes. You testified that there was a analysis done in
20 the lab from the Suburban, and that's what you're basing
21 your opinion on. What particularly in that report are you
22 basing your opinion on?

23 Q. Well, on this one right here. Round lead particles,
24 round lead particles on the Suburban also.

25 Q. Yes, sir. How were you -- and please correct me if

K. FITE - CROSS-EXAMINATION BY MS. HARRIGAN

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1 I'm wrong. We're looking at Respondent's Exhibit Number 4,
2 and it says round lead particles are one of the components
3 of gunshot residue, correct?

4 A. It is.

5 Q. And this doesn't say on here that gunshot residue was
6 found in the car. It just says round lead particles are
7 one of the components of gunshot residue, correct?

8 A. Right.

9 Q. And you would agree that round lead particles are one
10 of the components of gunshot residue, correct?

11 A. Yes.

12 Q. And I believe you testified before that that was
13 actually the most important particle in looking for gunshot
14 residue, correct?

15 A. Well, lead, yes. You, you need the lead because,
16 first of all, there's more of it and it has -- it's hotter
17 because it has more oxygen where it came from.

18 Q. And I believe you testified that there's other ways to
19 get round lead particles, including brake dust and
20 smoldering, as well as transfer, correct?

21 A. Yes.

22 Q. Are there any other ways that you can find round lead
23 particles?

24 A. Not that I know of.

25 Q. Have you ever heard of from cheap Chinese fireworks?

K. FITE - CROSS-EXAMINATION BY MS. HARRIGAN

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1 A. No.

2 Q. Or creating your own fishing lures? You've never
3 heard of those in your thirty years of gunshot residue?

4 A. No.

5 Q. And you testified that not a crime lab in the South
6 would say that this is characteristic of gunshot residue,
7 correct?

8 A. Right. That's what I said.

9 Q. But you've testified that you've never worked on or
10 testified as an expert on a South Carolina case with
11 results from SLED, correct?

12 A. Right.

13 Q. Where else across the South have you testified as an
14 expert related to gunshot residue?

15 A. Georgia, Tennessee. I believe I had a case in
16 Alabama.

17 Q. So, when you're making that broad generalization, it's
18 based on no cases in South Carolina and three other states,
19 correct?

20 A. Right, and based on the scientific knowledge these
21 people have, and they all go to schools concerning GSR so
22 that they -- across the country, they can give results that
23 are the same and accurate. And, you know, you don't have
24 one state that's saying round lead particles are, are
25 gunshot residue and then another state saying that a round

1 lead particle with one of these component -- one other
2 component is positive. They all will say the same thing
3 now. If, you know, if they belong to scientific
4 organizations or they attend seminars and, and talk to each
5 other about this, about what they find, then they all give
6 basically the same answer on the materials that they find
7 in these cases.

8 Q. And again, Respondent's Number 4 just says round lead
9 particles are found, and those are one of the components of
10 gunshot residue, correct?

11 A. Yep.

12 Q. Respondent's Number 4 doesn't say that gunshot residue
13 was detected. There is no positive result for gunshot
14 residue based on Respondent's Number 4, correct?

15 A. Right.

16 Q. Did you -- what else did you review? Did you read the
17 trial testimony of the SLED expert in this case?

18 A. No.

19 Q. Did you review the cross-examination from Mr. Wray's
20 counsel of the gunshot residue expert?

21 A. No.

22 Q. Did you review co-counsel Theresa Johns's
23 cross-examination of the state's gunshot residue expert?

24 A. No.

25 Q. So, to the best of your recollection, it was

K. FITE - CROSS-EXAMINATION BY MS. HARRIGAN

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1 Respondent's Number 4 and then some other report that you
2 don't have with you, and you can't point to anything ---

3 A. Well, you know ---

4 Q. --- further today?

5 A. You look at, you look at the evidence examined and,
6 and evidence collected and the crime lab reports, and
7 that's what I was looking for.

8 Q. What particularly, what evidence did you find from
9 these crime scene reports that tells you that it's not
10 characteristic of gunshot residue?

11 A. Well, if I have a Suburban and I get a number of round
12 lead particles that have nothing else associated with them
13 like antimony or barium, then it's pretty conclusive that
14 it's not gunshot residue because, you know, you have so
15 many samples that are negative. And, you know, if you
16 consider that positive, then, you know, you have a problem.

17 Q. But again you didn't review the testimony of the SLED
18 expert, correct?

19 A. That's correct.

20 Q. And all you have is the report that says that it's one
21 component of gunshot residue, correct, and this report
22 doesn't say it was positive for gunshot residue.

23 A. Right.

24 Q. Correct?

25 A. One component.

K. FITE - CROSS-EXAMINATION BY MS. HARRIGAN

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1 Q. One component. Do you disagree that round lead
2 particles are a component of gunshot residue?

3 A. No.

4 Q. And you testified to the court it's one of the most
5 important particles of gunshot residue, correct?

6 A. It's, it's seen together, the barium and antimony.

7 Q. And again in this report, it doesn't mention anything
8 about barium or antimony ---

9 A. No.

10 Q. --- correct? Is it possible to find minute amounts of
11 barium and antimony and not have them reported in an
12 official report generated such as Respondent's Number 4?

13 A. Well, you don't know how, how this test went. You
14 don't know what they did, when they searched the car, what
15 their search techniques were. So, I can't comment on that.

16 Q. And again, you didn't review any of this raw data or
17 testing of components that SLED tested, any of the samples,
18 did you?

19 A. No.

20 Q. And you testified that your formal opinion is that the
21 state's expert testifying that the round lead particles
22 were consistent with a gun being fired is not your opinion,
23 correct?

24 A. That's not my opinion.

25 Q. Why is it not your opinion?

K. FITE - CROSS-EXAMINATION BY MS. HARRIGAN

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1 A. There's nothing to go with it. What else you going to
2 -- what are you going to call it? You can't call it
3 gunshot residue. It has no barium or antimony with it.
4 Round lead particles, the only thing you have.

5 Q. But you would concede that round lead particles are
6 one of the, as you testified, one of the most important
7 parts of gunshot residue, correct?

8 A. That's correct.

9 Q. You testified that there is no evidence that a driver
10 -- that the driver of this car fired, fired a weapon,
11 correct?

12 A. I don't -- in the, in the things I read, no.

13 Q. And again, you don't -- you can't provide the court
14 with an example of what you read today, correct?

15 A. That's right.

16 Q. So, what is your testimony today based on if you don't
17 have any of this material with you?

18 A. I'm, I'm looking at these reports only, and I'm not
19 seeing barium, antimony, and lead together.

20 Q. And again ---

21 A. On any of it.

22 Q. --- just Respondent's Number 4 is all you're looking
23 at today?

24 A. I'm talking about that, yes.

25 Q. What, what else are you looking at to base your

1 testimony off of today because all I'm hearing is this one
2 page.

3 A. The one page and the Suburban search.

4 Q. Can you expound what you mean by Suburban search?

5 A. The, the, the samples they took from the Suburban were
6 examined and nothing was hooked up with the lead, round
7 lead particle.

8 Q. And round lead particles were found in a variety of
9 different areas in the Suburban, correct? The rear
10 driver's side, the front driver's side door, the console,
11 the steering wheel, correct?

12 A. Yes.

13 Q. In your expert opinion, if that's consistent with a
14 gun being fired, how do you suggest, based on your
15 expertise, that these round lead particles showed up in the
16 car?

17 A. I wouldn't make a suggestion.

18 Q. You mentioned that brake dust and smelting can cause
19 these round lead particles. What else?

20 A. I'm sure there's other things. You mentioned Chinese
21 fireworks. I didn't know about that.

22 Q. And again, you've never worked with anyone in SLED
23 before from their gunshot residue department, correct?

24 A. That's correct.

25 Q. How do you stay up-to-date in the science since you

K. FITE - CROSS-EXAMINATION BY MS. HARRIGAN

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1 retired in 1989?

2 A. Well, I hang out with several scientists that still
3 work. I was peer reviewing at Atlanta PD's lab two years
4 ago. And now when I get to labs to examine evidence for
5 the defense, I always talk to the people in the GSR units
6 just to see if everything -- they're giving the same
7 answers as other labs are.

8 MS. HARRIGAN: Moment's indulgence, Your Honor.

9 Q. You said that the time to test gunshot residue samples
10 from the hand is only two hours according to the GBI,
11 correct?

12 A. That was when I was working, and that was on the
13 hands.

14 Q. Are you aware of what SLED's guidelines are?

15 A. No.

16 Q. How long can you test for gunshot residue on an
17 inanimate object such as a car?

18 A. What's nature going to do to help or hinder this?

19 Q. So, no timeline based on your expertise is ---

20 A. If it's, if it's, if it's covered, none.

21 Q. Do you know when this sample was taken in this case?

22 A. No.

23 Q. You testified that, I believe, secondary transfer
24 could also lead to round lead particles.

25 A. Yes.

K. FITE - CROSS-EXAMINATION / REDIRECT EXAMINATION 140

1 Q. Correct? Is there anything, based on your limited
2 review of materials in this case, that would suggest that
3 secondary transfer is what caused the round lead particles
4 here?

5 A. No.

6 Q. So, your ultimate conclusion is just you don't know
7 how these came here, correct?

8 A. That's correct.

9 Q. And that round lead particles are, based on your
10 testimony, probably the most important component of gunshot
11 residue, correct?

12 A. Yes.

13 MS. HARRIGAN: No further questions, Your Honor.

14 THE COURT: Any redirect limited to what she went
15 into?

16 MS. NEWTON: Your Honor, one question just to clarify.

17 REDIRECT EXAMINATION BY MS. NEWTON:

18 Q. In your expert opinion, are the results of this
19 gunshot residue test consistent with a weapon being fired?

20 A. No.

21 MS. NEWTON: Thank you.

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

23 WITNESS: Thank you.

24 THE COURT: Any reason why this witness cannot be
25 excused?

A. BAX - DIRECT EXAMINATION BY MS. HARRIGAN

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1 MS. NEWTON: No. Your Honor.

2 MS. HARRIGAN: No objection.

3 THE COURT: Sir, you may be excused. Thank you for
4 coming.

5 WITNESS: Thank you, sir.

6 (THE WITNESS EXITS THE STAND.)

7 MS. NEWTON: Your Honor, the applicant doesn't have
8 any more witnesses.

9 THE COURT: All right.

10 MS. HARRIGAN: The state would call Mr. Arie Bax to
11 the stand.

12 THE COURT: Come around, sir.

13 ARIE BAX, BEING DULY SWORN,

14 TESTIFIES AS FOLLOWS:

15 WITNESS: My name is Arie Bax, last name is spelled
16 B-A-X.

17 DIRECT EXAMINATION BY MS. HARRIGAN:

18 Q. Good afternoon, Mr. Bax.

19 A. Good afternoon.

20 Q. Thank you for coming up for this purpose today.

21 A. Certainly.

22 Q. How long have you been practicing law?

23 A. Little over ten years.

24 Q. And where are you, where are you presently employed?

25 A. Presently employed with the Fourteenth Circuit Public

A. BAX - DIRECT EXAMINATION BY MS. HARRIGAN

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1 Defender's Office, specifically Beaufort County branch.

2 Q. Where have you -- what percentage -- so, currently one
3 hundred percent of your work is criminal defense, correct?

4 A. Currently one hundred percent of my practice is
5 criminal defense.

6 Q. Do you have any other background in criminal law?

7 A. Yes, ma'am. I started out in your job, so sorry about
8 that; I understand the pain. I did work as an assistant
9 attorney general handling post-conviction relief cases on a
10 variety of circuits for a number of years under Attorney
11 General McMaster. I then went out into employment with the
12 Lexington County Public Defender's Office, where I was
13 their lead trial attorney for about two and a half years.
14 Then after that, I went out into private practice, and I
15 had an office that I rented from Mr. Swerling.

16 Q. Is that how you became associated with this case?

17 A. That's correct. Mr. Swerling and myself had been
18 colleagues and friends for many years, starting from my
19 days as an assistant attorney general handling cases. In
20 fact, in York County is how we first met. Was, was
21 involved in a PCR there.

22 When I was renting space from Mr. Swerling, he had a
23 number of murder cases during that period of time, and I
24 offered my assistance to help out, and he was aware of my
25 background in dealing with forensics especially, and was

A. BAX - DIRECT EXAMINATION BY MS. HARRIGAN

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1 happy to have my help dealing with the forensics in this
2 case.

3 Q. So, would you say that was your main role in the case,
4 not only as second chair, but you handled the experts for
5 ballistic, gunshot residue, et cetera?

6 A. That's correct. I primarily focused on the gunshot
7 residue. I was prepared to handle also the ballistics
8 expert, but Mr. Swerling decided to handle Mr. Collins. I
9 believe he was familiar with Mr. Collins. And, and the
10 firearm or the toolmark examination and, and, and
11 ballistics evidence really helped Mr. Wray, and there
12 really wasn't much the state could use out of that.

13 Q. Did you consult with any gunshot residue experts while
14 defending Mr. Wray?

15 A. I did.

16 Q. Do you recall who that expert was?

17 A. I believe also ultimately Mr. Hollifield is, is who we
18 utilized in that period of time. We started out with a
19 general crime scene analyst expert. I forget his last
20 name. My apologies, but when we started getting into kind
21 of the nitty-gritty of gunshot residue examination and
22 analysis, he referred us to Mr. Hollifield because that was
23 kind of outside his specific expertise.

24 Mr. Hollifield was great; I had no problems with him.
25 I consulted with him many times getting ready for trial.

A. BAX - DIRECT EXAMINATION BY MS. HARRIGAN

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1 We communicated via phone, we communicated via email, and
2 we exchanged information via fax and email as well. And
3 then Mr. Hollifield was present during the relevant
4 portions of the trial here in Richland County. He provided
5 me with several lists of suggested questions for the
6 state's expert.

7 MS. HARRIGAN: Your Honor, may I approach?

8 Q. When you talk about questions that Mr. Hollifield
9 prepared for you, I'm going to hand you what's been marked
10 for identification only as State's Exhibit Number 5. Is --
11 do you recognize that document?

12 A. Yes. I haven't looked at this in quite a while, but
13 this is -- or this is a copy of, of the questions that Mr.
14 Hollifield sent me as just suggested questions to be
15 prepared for when cross-examining the state's expert. And
16 I specifically remember it because now I remember how badly
17 he misspelled my name on the fax.

18 MS. HARRIGAN: State would move to introduce
19 Respondent's Exhibit Number 5 into evidence.

20 MS. NEWTON: No objection.

21 THE COURT: Without objection. Is it respondent or
22 state's?

23 MS. HARRIGAN: State. Sticker says the state. I'm
24 sorry.

25 THE COURT: It will be State's 5.

A. BAX - DIRECT EXAMINATION BY MS. HARRIGAN

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1 MS. HARRIGAN: I have a courtesy copy for Your Honor.

2 (LIST OF SUGGESTED QUESTIONS MARKED INTO EVIDENCE AS
3 STATE'S EXHIBIT NUMBER 5.)

4 BY MS. HARRIGAN:

5 Q. And were these questions helpful in preparing for your
6 cross-examination of the state's expert?

7 A. They were. I had done an extensive amount of research
8 on gunshot residue prior to this trial. I had handled
9 gunshot residue in the past in doing trials in Lexington
10 County, but I think I'd gotten the most detail about it
11 during this trial, and I recall using those questions as a
12 basis for how I both attacked the state expert's testimony
13 on cross, as well as my motion in limine to suppress that
14 evidence.

15 Q. And you did make a motion to suppress this evidence
16 before the state's expert, correct?

17 A. I did.

18 Q. What argument did you make on behalf of Mr. Wray?

19 A. The argument I made on behalf of Mr. Wray, and let me
20 say this. I'm, I'm a big fan of Judge Childs. She's a
21 friend and, and a respected colleague, and we still
22 communicate regularly even though she's on the federal
23 bench. However -- and she knows this as well -- I disagree
24 with her ruling on this because I believe that it was a
25 good argument and an argument that I've made in other

A. BAX - DIRECT EXAMINATION BY MS. HARRIGAN

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1 cases, and that was because the state's expert could not
2 actually say that he found gunshot residue. He could only
3 say that he found one component and by his own protocols,
4 that prohibited him from making a positive report. He did
5 not actually find what it is that he was looking for. And
6 as a result, the only thing he could say -- and I think it
7 was even a stretch, to be honest with you -- was consistent
8 with.

9 And I certainly don't disagree with Mr. Fite. In
10 fact, Mr. Fite and I are acquainted with each other; we've
11 worked together in the past. I don't necessarily agree
12 with Agent Moskal's testimony that it's consistent with,
13 but that's what he was willing as an expert witness to get
14 up there and say.

15 But as far as suppression is concerned, I argued not
16 only the *Council* case, and I think the other one was
17 *Ramsey*, but I also argued *State vs. Jeffrey Johns*, the most
18 recent one because I actually was involved in trying that
19 death penalty case the second time around in front of Judge
20 Jefferson, and it had just recently been overturned on
21 appeal at the Supreme Court level. And I specifically
22 remember Justice Beattie had authored that opinion, and
23 I've actually-- I had spoken with him about that opinion
24 after the fact. And I argued as well that my reading of
25 that case was not only that the court needs to be a

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1 gatekeeper against what is referred to as junk science, but
2 also a gatekeeper against findings that are not strong
3 enough to testify beyond consistent with.

4 There was language in that case specifically talking
5 about the fact that if the only thing you can say is
6 consistent with, it really should not be admitted because
7 you have someone, someone on the stand who's been granted
8 the status of expert witness who's giving testimony to a
9 jury, and that grants a level of -- I don't know how you
10 say it. It grants a level of weight, an implied weight to
11 that testimony that I don't think should be given to just
12 consistent with and just one component.

13 So, I argued that, and of course Mr. Wray was
14 absolutely correct. I argued under Rule 403 that because
15 he could not be more sure than that, because he could not
16 give an actual positive, that the testimony should be ruled
17 inadmissible in its totality.

18 Q. And that ultimately was denied by Judge Childs?

19 A. That's correct.

20 Q. Do you recall her giving any limitations to the state
21 as to what a SLED agent could testify to?

22 A. Well, not really specifically enumerated restrictions.
23 She did comment on the fact. You know, she asked questions
24 during that motion in limine of the state as to what they
25 intended to elicit, and I think that the court was

A. BAX - DIRECT EXAMINATION BY MS. HARRIGAN

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1 concerned that they weren't going to elicit more than what
2 his science could back up.

3 Specifically, they talked about consistent with
4 firing, and I think this was a part of the testimony that
5 Mr. Wray quoted, consistent with firing a weapon from the
6 car. And I argued in response to that and, and he -- I was
7 going to object to this, but he didn't actually go into it
8 after the motion in limine. Agent Moskal could not testify
9 specifically that it was consistent with a gun being fired
10 from the car. He could only testify that it was consistent
11 with a firearm being discharged in the vicinity of that
12 car.

13 One of the areas that I attacked specifically in
14 cross-examination and I brought up during the motion in
15 limine briefly was the fact that initially Agent Moskal did
16 not test the GSR that was sent to him. The reason he did
17 not test it was based on the initial incident report he
18 received, as well as the location. His protocols stated if
19 the gunshot residue they're looking for is most likely the
20 result of secondary transfer, their protocols indicated
21 they weren't going to test for it.

22 So, his initial reaction to being sent those gunshot
23 residue test kits from the 1999 Suburban -- I believe it
24 was a Chevy -- was to not test it. And it was, in fact,
25 not until several months before the first time we tried to

A. BAX - DIRECT EXAMINATION BY MS. HARRIGAN

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1 try this case that, you know, there was a series of email
2 communications between solicitor and sheriff and then from
3 the sheriff to SLED that made him change his mind and
4 decide to run the tests on the samples taken from the
5 Suburban.

6 Q. And you highlighted this during your motion in limine
7 and during cross-examination, correct?

8 A. Yes, I did.

9 Q. Was your expert, Mr. Hollifield, present for the
10 motion in limine?

11 A. He was.

12 Q. Was he present for the state's expert and your
13 cross-examination of the state's expert?

14 A. He was.

15 Q. Turning to your cross-examination of Agent Moskal --
16 is that pronounced correctly?

17 A. I think that's correct.

18 Q. What were you able to -- were you able to get him to
19 admit that secondary transfer was a possibility for how
20 these round lead particles arrived in the car?

21 A. Absolutely. Agent Moskal was very forthcoming, I
22 felt, and that was a big part of our decision not to call
23 Hollifield during the defense's case because he did not try
24 to obfuscate or hide the fact that he could not say for
25 sure that these rounded lead particles were even from a

A. BAX - DIRECT EXAMINATION BY MS. HARRIGAN

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1 gun. He did testify it's consistent with a firearm being
2 discharged in the vicinity of that vehicle's driver-side
3 door. But he also testified that it was consistent with
4 other sources of round lead particles.

5 Q. And what were some of those?

6 A. I went through it with him. I did, I did ask him
7 about brake dust. I asked him about -- he said he hadn't
8 heard about the fireworks thing either, and I'd actually
9 found that in my research. So, we went through those
10 areas. We went through soldering or smoldering, depending
11 on how you talk about it, as also being a source.

12 I did ask him specifically about brake dust because
13 this was a car, and during his testimony he did claim that
14 typically rounded lead particles that come from work on
15 brakes or from brakes being used were generally a little
16 bit bigger than the particles he found. He said the
17 particles that he was talking about were roughly 10 microns
18 in diameter, which is incredibly small. But he also did
19 admit on my cross that, that is -- as a general rule, the
20 rounded lead particles from brake dust are bigger, but it's
21 not always that way, and that rounded lead particles of a
22 10 micron size can come from bake dust -- brake dust,
23 excuse me.

24 Q. You testified that he was very forthcoming during your
25 cross-examination of him, correct?

A. BAX - DIRECT EXAMINATION BY MS. HARRIGAN

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1 A. I felt so.

2 Q. More so than when you crossed other GSR experts?

3 A. Yes, more so than, than GSR experts I've dealt with
4 even in the recent past. I dealt with a gunshot residue
5 expert that was -- SLED agent who recently retired in a
6 trial only about forty-five days ago, and I believe that
7 that expert patently lied to me on the stand.

8 Q. So, you felt you were able to get beneficial testimony
9 for Mr. Wray based on your cross-examination of Agent
10 Moskal?

11 A. I believed that and also that was confirmed for me by
12 Mr. Hollifield. Mr. Hollifield assured me during the
13 breaks as well as after Agent Moskal's testimony that he
14 would not be able to testify to anything different from
15 what Agent Moskal testified to.

16 There was a discussion before, during, and after the
17 agent's testimony about whether there would be a benefit in
18 calling Agent Holli -- or, excuse me, Mr. Hollifield; he
19 was not working for any law enforcement agency at that time
20 -- to the stand during the defense's case.

21 Q. You testified that there was a discussion before,
22 during, and after. Who was a party to this discussion?

23 A. Myself, Mr. Hollifield, Mr. Swerling all weighed in on
24 it and then at the end, you know, we, we gave our
25 recommendations that we didn't really believe Mr.

A. BAX - DIRECT EXAMINATION BY MS. HARRIGAN

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1 Hollifield's testimony would be necessary to Mr. Swerling,
2 and he agreed with us. And we, of course, left it open in
3 case something changed between then and the end of the
4 trial, but nothing came up that changed that decision.

5 Q. Did you discuss this with Mr. Wray?

6 A. Mr. Wray was present. I mean, this was all
7 discussions had right there at the defense table, and I
8 believe I did talk to him about it, yes.

9 MS. HARRIGAN: Moment's indulgence, Your Honor.

10 (A PAUSE.)

11 BY MS. HARRIGAN:

12 Q. What materials did you provide your expert, Mr.
13 Hollifield, with before trial? I know it's been quite a
14 few years, but do you have any recollection?

15 A. My recollection is that I provided him with most of
16 the incident reports authored by pretty much everybody. It
17 was a fairly thick packet that I, that I sent to him, as
18 well as the, you know, the reports from the SLED laboratory
19 concerning the results of Agent Moskal's testing as to GSR.

20 I also sent him chain of custody documents for this
21 evidence because there was an issue of spoliation that I
22 wanted to go into, which I was able to go into with Agent
23 Moskal, as well as with one of the law enforcement agents
24 who was responsible for having the gunshot residue test
25 kits in his possession for a period of time.

A. BAX - DIRECT EXAMINATION BY MS. HARRIGAN

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1 Q. Do you recall which sample that spoliation was in
2 regards to, whether it was the Suburban or the Isuzu?

3 A. I think, I, I -- my recollection was it was, it was
4 the Suburban or both, but I don't clearly recall. I
5 reviewed the gunshot residue testimony in anticipation of
6 today's hearing, and I briefly reviewed the testimony of
7 that officer, but I don't recall specifically whether it
8 was mentioned that it was just the Suburban or both.

9 Q. If the record reflects that it was only in regards to
10 the Isuzu, would you have any reason to dispute that?

11 A. No, I would not.

12 Q. Do you recall whether gunshot residue tests were taken
13 from any suspects in this case?

14 A. There were, there were collection kits done on two
15 other suspects who were eventually, you know, let go by law
16 enforcement, not considered suspects. It was a Luther
17 Landrum, and I forget the name of the other gentleman off
18 the top of my head. They were the drivers of the white
19 Isuzu that was pulled over near Two Notch Road, I think off
20 of Raybon Road.

21 And there was quite a bit of, I think, analogy and in
22 evidence, and, and I felt like we did a good job. Mr.
23 Swerling especially did a good job bringing this out that
24 these two individuals matched the description initially
25 given by the, the witness in the case. And there was

A. BAX - DIRECT EXAMINATION BY MS. HARRIGAN

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1 ammunition found in their car that matched the ammunition
2 that was supposedly used in this case that resulted in the
3 death of Mr. Johnson.

4 They did do GSR kits on them, but they did not do
5 those kits until several hours later. It was roughly about
6 five hours later, if I recall from my cross-examination,
7 and they never bagged their hands, which is contrary to
8 their protocol when it comes to gunshot residue, and I was
9 able to get that out from their expert as well. The fact
10 that their hands not being bagged, the fact that they were
11 sweating and moving around, the fact that they were cuffed
12 behind their back and were sat on their hands all in the
13 interim period before the tests were collected could affect
14 whether any gunshot residue that was there had been rubbed
15 off.

16 Q. Do you recall whether there were samples taken from
17 the actual Isuzu Rodeo itself?

18 A. I believe there were, and I think those tests came up
19 negative, but that's just my recollection.

20 MS. HARRIGAN: Your Honor, may I approach?

21 THE COURT: Yes, ma'am.

22 BY MS. HARRIGAN:

23 Q. I hand you -- here's a copy of State's Exhibit Number
24 4. If you'll look at that to refresh your recollection and
25 see whether -- what the report was in regards to the 2001

A. BAX - DIRECT EXAMINATION BY MS. HARRIGAN

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1 Isuzu Rodeo.

2 (A PAUSE.)

3 A. Yes. That refreshes my recollection. It indicates,
4 and I recall this, that, that they tested samples from the
5 Isuzu Rodeo, and they just report out that there was no
6 gunshot residue found.

7 Q. Do you recall any testimony -- and I know it's been a
8 few years -- from where witnesses said the shooter in the
9 Rodeo was positioned within the car?

10 A. I, I recall one thing saying that potentially a
11 shooter had kind of somehow gotten outside of the window
12 and put a hand over the top of the Rodeo and fired over top
13 of the, of the Rodeo almost as if he were sitting on the
14 window of the door. I don't recall any other positions
15 that they alleged.

16 Q. Do you recall how many shots were alleged to have been
17 fired from the Rodeo?

18 A. No.

19 Q. Do you recall how many shots were alleged to have been
20 fired from the Suburban?

21 A. I don't, I don't remember a specific number. I mean,
22 there was an allegation it was an automatic weapon, and
23 just a lot of shots is the only thing I recall.

24 MS. HARRIGAN: Moment's indulgence, Your Honor.

25 (A PAUSE.)

A. BAX - CROSS-EXAMINATION BY MS. NEWTON

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1 BY MS. HARRIGAN:

2 Q. And to the best of your recollection and your review
3 of the cross-examination, you were able to get Agent Moskal
4 to concede that secondary transfer was the reason it wasn't
5 tested, the Suburban wasn't tested in the beginning?

6 A. That's correct.

7 Q. And that it was the possible source of these round
8 lead particles?

9 A. That's correct.

10 MS. HARRIGAN: No further questions, Your Honor.
11 Thank you.

12 THE COURT: Ma'am.

13 CROSS-EXAMINATION BY MS. NEWTON:

14 Q. Hi, Mr. Bax. I'm Marshall Newton. I'm sorry we
15 didn't have a chance to meet, but thank you for being here.

16 A. No problem. Good afternoon.

17 Q. Now, I wanted to ask you a few things. You testified
18 that you disagreed with Judge Childs's ruling on the
19 gunshot residue testimony being exhibit -- being admitted?

20 A. That's correct.

21 Q. Did you discuss this with Mr. Wray, whether that could
22 be an appellate ground for him?

23 A. I recall that it was mentioned to him in the lead up
24 to the trial that I was going to object to it and try to
25 keep it out. I don't recall if we used the specific words

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1 of appeal. I do remember that just in our general
2 discussion with Mr. Wray, Mr. Swerling and I both indicated
3 to him that, you know, our objections were both to try and
4 keep evidence out that we felt shouldn't come in, but also
5 to preserve those issues for appeal. I know that was a
6 general discussion we had. I don't recall if I
7 specifically recall it in reference to the GSR or not.

8 Q. So, in your opinion that you -- was the admission of
9 the gunshot residue preserved for appeal?

10 A. In my opinion, it was preserved for appeal. You know,
11 the contemporaneous objection rule is a sticky one, and I
12 don't frankly like it as an attorney because it, it implies
13 that you have to be sitting on the edge of your seat ready
14 to jump up like a jack-in-the-box every time a particular
15 word may be mentioned.

16 But based on the fact that -- and there was a
17 strategic reason for this. I waited to make that objection
18 immediate -- until immediately prior to the state's attempt
19 to introduce that evidence. I think that makes it
20 contemporaneous, one. And number two, you know, I, I can
21 see where Mr. Wray sees this testimony, and I certainly
22 don't blame him for that, you know.

23 The expert, in my opinion, was dancing around the idea
24 of trying to say gunshot residue. I think, based on what I
25 recall from reviewing the transcript and from what I recall

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1 of trying the case, he was making sure to say consistent
2 with. He was making sure to say vicinity or area of the
3 driver seat. In my looking back at it, I don't recall a
4 specific incident where he said gunshot residue was found.
5 I don't think he ever said that in front of the jury
6 because if he had, I believe I would have objected. I
7 think he consistently said consistent with.

8 Now, I think there might have been a few times that
9 Vanessa Shipley got gunshot residue out, and I -- you know,
10 to some degree we expected that, but at -- you know, as I'm
11 sure you're aware, you know, attorney statements are not
12 evidence, and there's certain battles you have to pick when
13 it comes to objecting to closing arguments.

14 But in my remembrance, he never got close enough to
15 saying something that was not actually found for me to
16 object any further than what I already did.

17 Q. Okay. Well, you were here this morning when Mr. Wray
18 testified. He read, he did read where the state at least
19 two times called the evidence gunshot residue. Do you
20 recall your objecting to that statement by the state?

21 A. I, I don't have a specific recollection to that. The
22 other thing, of course, is, you know, we had the -- we had
23 two attorneys at the table, and I'm always mindful of the
24 one attorney, one -- one witness, one attorney rule. I
25 knew I was handling Agent Moskal. So, any failure to

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1 object during his testimony would be my responsibility.
2 But any time that Ms. Shipley, you know, testified about or
3 made statements about GSR, if it wasn't on an expert that I
4 was handling, I know that Jack would make a reasoned
5 decision about whether it was worth it or not to object to
6 those statements.

7 We knew that the prosecution was going to try to turn
8 that evidence from something that wasn't good enough into
9 evidence of guilt. But there's a strategic reason why you
10 don't necessarily jump up and down every single time if
11 they make a mischaracterization, and I left that up to
12 Jack.

13 Q. Another thing Mr. Wray read into the record this
14 morning was the, the several instances where Agent Moskal,
15 the state's expert, referred to the particles as being
16 consistent with firing a gun, like you said, sort of
17 dancing around that. Did you object to his saying that the
18 results were consistent with firing a gun?

19 A. I did not during his testimony. I still believe that
20 my motion in limine immediately prior preserved that issue.
21 I specifically addressed with Judge Childs that I felt that
22 the terminology of consistent with was not warranted by
23 what he had and not enough to be admissible.

24 And on top of that, during that testimony I was also
25 aware of the fact and was able to elicit on

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1 cross-examination that the definition of consistent with
2 that he was going with was is it possible. And I remember,
3 you know, and I've read it in the transcript specifically
4 saying when you say consistent with, you mean it could be
5 there from being fired from a firearm. It could also be
6 there from secondary transfer from somebody who touched it
7 and left it there. It could also be from another source
8 such as brake dust or cheap fireworks or smoldering or
9 soldering.

10 So, I felt that when you take in combination the
11 motion in limine to exclude and the language I used in
12 arguing against it, along with the fact that he did agree
13 and I was able to get out on cross that his definition of
14 consistent with is basically within the realm of physically
15 possible, that it was enough.

16 Q. You testified that you had the assistance of Mr.
17 Hollifield, who had been a gunshot residue expert. Did you
18 -- Mr. Hollifield did not testify as an expert, did he?

19 A. No, he did not, and as I testified to earlier, you
20 know, it was a decision that was made, you know, as, as a
21 defense team. Part of the reasoning there was the fact
22 that as a trial attorney, you know, I have certainly run
23 across this time and time again, and I know Mr. Swerling
24 has even more than I have, what we refer to as the CSI
25 effect. Jurors are looking at forensic evidence and they,

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1 and they like forensic evidence in many instances.

2 But at the same time, especially when a defense expert
3 is put on the stand, jurors expect some kind of aha moment.
4 They expect some kind of, well, you know -- it was nice to
5 hear Mr. Fite say I would have testified differently, but
6 basically Mr. Hollifield informed us that he really would
7 not be able to testify any -- in any way significantly
8 different from what Agent Moskal testified to.

9 In my recollection, I think he would have said, you
10 know -- his testimony that this is not gunshot residue is
11 correct. It is not gunshot residue. It is merely one
12 component of gunshot residue. And, based on his definition
13 of consistent with, he said he may not necessarily have
14 been willing to get on the stand and testify this is
15 consistent with gunshot residue. But at the same time, he
16 would have had to have answered the question is it possible
17 that these rounded lead particles came from a firearm being
18 fired, and he would've had to say yes.

19 So, we had gotten everything that we felt needed to be
20 put on the record from the SLED agent, and putting Mr.
21 Hollifield up to be -- basically confirm everything that we
22 had already gotten from the state's expert may have had
23 negative returns.

24 Q. And did you ask Mr. Wray about whether he wanted the
25 expert, Mr. Hollifield, to testify?

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1 A. I recall informing him and that he was aware of what
2 we were doing, and I'm sure Mr. Wray has probably learned a
3 lot more about gunshot residue, you know, since that trial
4 because it has been a number of years. I don't recall him
5 having a lot of input on it at the time, though.

6 MS. NEWTON: Thank you. I don't think I have any
7 further questions.

8 THE COURT: Any redirect limited to what she went
9 into?

10 MS. HARRIGAN: No, Your Honor.

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

12 WITNESS: Thank you.

13 MS. HARRIGAN: Your Honor, we'd ask that this witness
14 be excused.

15 THE COURT: Any reason why the witness cannot be
16 excused?

17 (A PAUSE.)

18 THE COURT: Any reason why the witness cannot be
19 excused?

20 MS. NEWTON: No, Your Honor.

21 THE COURT: Thank you, sir. You may be excused.

22 WITNESS: Thank you very much.

23 THE COURT: Yes, sir.

24 (THE WITNESS EXITS THE STAND.)

25 MS. HARRIGAN: Your Honor, the state's final witness

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1 is Mr. Jack Swerling.

2 THE COURT: All right. All right, the court reporter
3 needs a quick break. So, everybody stretch your legs.
4 We'll be right back.

5 (OFF THE RECORD.)

6 THE COURT: While it's on my mind, before we close the
7 record, be sure you're straight with what has and has not
8 been admitted since we're not doing them numerically.

9 WITNESS: Good afternoon, Judge. I'm having a little
10 problem with my back, so I may have to stand up a little
11 bit.

12 JACK B. SWERLING, BEING DULY

13 SWORN, TESTIFIES AS FOLLOWS:

14 THE COURT: If you need to stand, you may stand.

15 DIRECT EXAMINATION BY MS. HARRINGTON:

16 Q. Good afternoon, Mr. Swerling.

17 A. Good afternoon.

18 Q. How long have you been practicing law?

19 A. Since 1973, forty-one years.

20 Q. What percentage of your practice is criminal defense
21 work?

22 A. Pretty much ninety-five percent. I do take, do take a
23 couple other cases, but I usually associate other counsel,
24 so I'd say it's very limited to five percent.

25 Q. And are you in private practice?

1 A. I am.

2 Q. Were you retained in this case?

3 A. Well, Ms. Wray, his grandmother, was a client of mine
4 when I was -- started with Senator Isadore Lourie and she
5 asked me to help her out, help Tremaine out and so for a
6 very, very modest fee, I agreed to do it. Of course, that
7 doesn't affect the way I handled the case, but his
8 grandmother and I go a long way back, some forty years.
9 So, I guess the answer is I was retained to some extent.

10 Q. Were you Mr. Wray's first attorney?

11 A. No. I think he had a public defender first or
12 appointed counsel. I'm not -- I don't remember exactly. I
13 believe it was a public defender.

14 Q. When you took over this case, did you have access to
15 public defenders' files?

16 A. Yes.

17 Q. Including any investigative notes they may have in the
18 file?

19 A. Oh, yes. Yes.

20 Q. Do you recall whether or not an investigator had been
21 employed on this case by the public defender's office?

22 A. Well, I think Larry McNeely, who is a former captain
23 with the sheriff's department, road captain, was their
24 investigator at that time. He was employed by the public
25 defender's office, I believe. Not -- it wasn't outside.

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1 Q. And you were here for the testimony of Arie Bax,
2 correct?

3 A. That's correct.

4 Q. How did it come about that he was co-counsel on this
5 case?

6 A. My office, there's about six lawyers that rent from me
7 on the third floor across the street, and so periodically
8 some of them ask me to get involved in the case, and
9 sometimes I ask them to get involved in a case. So, it's
10 not unusual for one of those lawyers, who all do criminal
11 work, to become involved in, associate on a case.

12 Q. Was this the first case you tried with Mr. Bax?

13 A. Frankly, I really don't know. I mean, I've known Mr.
14 Bax for a long time because I've been in this chair when he
15 was the attorney general handling post-convictions.

16 Q. Would you agree with his recitation that he primarily
17 dealt with ballistics and gunshot residue and other experts
18 of that sort?

19 A. Yeah. We sort of divided it up. You know, part of
20 the forensic issue and factual issues, and then he had some
21 experience in that area. So, the expert that we got was
22 someone that I was familiar with from SLED, a former SLED
23 examiner, Jeff Hollifield. And we also had Donald Kern,
24 who was a former crime scene agent at SLED who I've used on
25 a number of occasions, and I can't tell you the folks he

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1 worked on, but he also looked at the case. And then we
2 also hired another investigator, McDougall, David
3 McDougall.

4 Q. And Mr. McDougall was an investigator in this case,
5 correct?

6 A. Yes, he was.

7 MS. HARRIGAN: Your Honor, may I approach?

8 THE COURT: Yes, ma'am.

9 BY MS. HARRIGAN:

10 Q. Mr. Swerling, I'm going to hand you what's been
11 premarked as Defendant's Exhibit Number 2 and ask you if
12 you recognize this.

13 A. Yeah. These are series of reports that we got from
14 Mr. McDougall that were turned over to you and turned over
15 to counsel for Mr. Wray that I had. I don't know if it's
16 all of them, but that is a series of reports from Mr.
17 McDougall and his investigation.

18 Q. Is this ---

19 A. Conducted a number of interviews. Let's see. He
20 lists eleven on the front, interviews.

21 MS. HARRIGAN: At this time, the state would move to
22 introduce State's Number 2 into evidence.

23 MS. NEWTON: Without objection.

24 THE COURT: Without objection, State's 2.

25 (INVESTIGATIVE REPORT MARKED INTO EVIDENCE AS STATE'S

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1 EXHIBIT NUMBER 2.)

2 BY MS. HARRIGAN:

3 Q. And, Mr. Swerling, if you'll briefly look at this?

4 Does this also summarize some of the notes from Mr.

5 McNeely's report as well?

6 A. Well, I had summaries of Mr. McNeely's stuff.

7 (A PAUSE.)

8 A. Yeah. I mean, he apparently -- looks like he

9 summarized not only some of McNeely's stuff but also Gary

10 Clark, who Theresa Johns hired as an investigator. So, we

11 had lots of investigators working on this case at one time

12 or another.

13 Q. You mentioned Gary Clark. Who was he again?

14 A. I think Theresa Johns employed him as Watts's

15 investigator.

16 MS. HARRIGAN: And, Your Honor, if I may approach?

17 Q. I'm going to hand you what's been premarked as State's

18 Exhibit Number 3. Do you recognize this packet of

19 documents?

20 A. Looks like a series of interviews by Mr. Clark.

21 Let me just give you a little bit of background. Ms.

22 Johns and I have known each other for many, many years and

23 she occupies an office on the second floor of our building

24 across the street. So, she and I -- since a lot of the

25 issues were the same between the two defendants, we worked

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1 together on the case to the extent that we could. We
2 shared reports between each other and information; we
3 actually divvied up a little bit of the trial strategy.
4 So, she and I worked closely together.

5 MS. HARRIGAN: At this time, the state would move to
6 introduce State's Exhibit Number 3, the memorandum, the
7 interview by Gary Clark, into evidence.

8 MS. NEWTON: No objection.

9 THE COURT: Without objection.

10 (INTERVIEW TRANSCRIPT MARKED INTO EVIDENCE AS STATE'S
11 EXHIBIT NUMBER 3.)

12 BY MS. HARRIGAN:

13 Q. So, it looks like, based on response to State's
14 Exhibit 2 and Number 3, at least three different
15 investigators talked to witnesses and investigated this
16 case on behalf the two co-defendants, correct?

17 A. That's correct, and also we went out. I mean, there
18 were people we spoke to as well. Some Dave interviewed.
19 Others we thought were necessary to interview in the case.

20 Q. Have you had an opportunity to review the amended
21 allegations filed by counsel for Mr. Wray before coming to
22 testify today?

23 A. Yes. It's the only thing I didn't bring here. I'm
24 sorry.

25 Q. No. Certainly. I just want to see if you had looked

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1 at those before. Do you recall an allegation in regards to
2 a Timothy or a Tim Weldon?

3 A. Yeah, I do.

4 Q. I'm going to hand you what's been premarked as State's
5 Exhibit Number 1. Do you recognize this document?

6 A. Yes. That is my, my handwriting, which most people
7 couldn't read, but let me just give you a little bit of
8 background.

9 I have tried somewhere I guess in the neighborhood of
10 a hundred murder cases and many other types of cases.
11 Probably handled well in excess of two hundred, two hundred
12 and fifty and what, what we do is we do our investigation.
13 We make -- I generally like to go ahead as we're getting
14 ready for trial, after we interviewed everybody, got our
15 forensic people together, start putting together things in
16 notebooks, which is what I did in this case. And, you
17 know, everything is indexed nicely. Every statement they
18 made, all contradictory statements they made plus, you
19 know, direct and cross-examinations.

20 So, this represents what is something typical from my
21 notebooks. This one happens to be in my handwriting, but
22 it is Tim Weldon, and what I like to do in my
23 cross-examinations, I like to have everything that a
24 witness said to everybody they said it to, whether it's
25 oral or written. So, Exhibit Number 1 is my handwritten

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1 note which was under tab 43 of my notebook for Tim Weldon.
2 And what I have here, looks like slight summary of each --
3 of everything he told to Mr. Clark, Ms. Johns's
4 investigator, and Mr. McDougall, who was our investigator,
5 Mr. McNeely, who was the public defender's investigator, so
6 that when I cross-examined him, I'd have all three
7 statements that he's made.

8 MS. HARRIGAN: The state would move to introduce
9 State's Exhibit Number 1 into evidence at this time.

10 MS. NEWTON: No objection.

11 THE COURT: Without objection, State's 1.

12 (COPY OF NOTES MARKED INTO EVIDENCE AS STATE'S EXHIBIT
13 NUMBER 1.)

14 BY MS. HARRIGAN:

15 Q. Mr. Swerling, can you summarize the anticipated
16 testimony of Tim Weldon with inconsistencies that you
17 highlighted for cross-examination of him based on these
18 three interviews?

19 A. Yeah. I wouldn't -- first of all, didn't think Mr.
20 Weldon was a reliable witness. But second of all, we
21 thought he hurt Mr. Wray. He had told Mr. Clark -- well,
22 first of all, let me get Mr. McDougall; I'll work back in
23 time -- that the shooter was a tall guy with dreads who had
24 been fighting at the club. Then he told Mr. Clark that he
25 had seen Brian Johnson, a fellow whose name came up during

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1 the course of the trial. He ID'd him from a picture, and
2 he told Mr. Clark that he saw him outside, and he was:

3 Saw outside the guy with dreads who later got
4 shot. Pacing carwash.

5 Oh, yeah, there was, and there was testimony about
6 somebody shooting near the carwash with a Desert Eagle.

7 Saw white Suburban driving down the road. Driver
8 fired ten or eleven rounds and doing the shooting
9 was Brian Johnson and he had dreads.

10 Of course, Brian Johnson was nowhere in any of the
11 vehicles, and he saw an Isuzu fire a shot, and he with
12 Marcus to the hospital, I guess where the deceased was.

13 He told Mr. McNeely that the person driving the
14 Expedition had dreads and took -- looked like the guy in
15 the fight. And when he was shown a photograph of Mr.
16 Watts, who was the co-defendant in the case, he identified
17 him as being the one who had the dreads and who was in the
18 fight. So, obviously that would not have been favorable
19 information because it would have ID'd the passenger of Mr.
20 Wray's car as being the one who was in the fight in the
21 club and also with the shooter, and is the guy driving the
22 Expedition, which was wrong anyway. So, he would, I mean,
23 he would not have been a reliable witness, and he would not
24 have been a favorable witness, in all candor.

25 Q. Based on this information from these three different

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1 investigators, did you make a strategic decision not to
2 call Timothy Weldon as a witness?

3 A. Correct. I would not have called this witness. Still
4 wouldn't call him as a witness today.

5 Q. Do you recall testimony earlier today about your
6 failure to call Brian Morris as a witness, or have you
7 heard that name before in your review for your testimony
8 today?

9 A. Brian Morris? I am sorry. I didn't...

10 Q. If you look at Respondent's -- or State's Exhibit
11 Number 2, McDougall's report, please, and turn to page -- I
12 apologize. They're not all listed. I counted it; I
13 believe it's page number 8 from the beginning.

14 A. Let me -- if you would?

15 MS. HARRIGAN: If I can approach for a moment, Your
16 Honor?

17 THE COURT: Yes, ma'am.

18 BY MS. HARRIGAN:

19 A. Yeah. I'm just looking at my notebook. Brian Morris
20 it is?

21 Q. Yes.

22 A. Okay, I see it. Would you bear with me one second?

23 (A PAUSE.)

24 A. Correct. I actually interviewed him myself.

25 Q. Can you ---

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1 A. According to my handwritten notes.

2 Q. --- summarize for the court what -- your interview of
3 him?

4 A. My personal interview with him was on October 7, 2009.
5 When was -- the trial was October 13th. So, he was in a
6 holding cell downstairs. I went up and asked him if I
7 could talk to him, and he indicated to me that he gave the
8 law enforcement a false name. He was playing poker and
9 wasn't aware of a fight in the club. He stayed until about
10 9:30 a.m. He saw Mr. Wray and Mr. Watts in the club and
11 saw them outside when people were leaving.

12 That's, that's what I have in my -- as a result of my
13 interview. That was pretty much it, I think, and he did
14 not recognize -- for some reason he saw the defendants in
15 the club, and then he said he didn't recognize the
16 defendant, which must have been Mr. Wray I was writing
17 about.

18 Q. If you look at State's Exhibit Number 2, please, the
19 McDougall interview reports, and turn to page 8.

20 A. Number 2, page 8?

21 Q. Right there.

22 A. Okay.

23 Q. If you'll review that page to yourself? Does it
24 appear that McDougall interviewed Mr. Morris?

25 A. Right. Brian Morris told Clark. This would have been

1 Clark.

2 Q. Does it indicate on here whether or not he would have
3 been a beneficial witness for your client?

4 A. Yeah. No, I was saying he told Mr. Clark this. This
5 is a summary of what he told Mr. Clark, I believe, Ms.
6 Johns's investigator. He told Clark that he was part of a
7 conversation with Ricky Jacobs at H&J Club around 7 a.m. on
8 the morning of June 30th. This would've been three to four
9 hours after the shooting. Jacobs told the group that
10 someone had been shot at the carwash next door. Jacobs
11 said he was across the street when the shooting started and
12 that Watts and Wray had started the shooting. He had
13 numerous arrests for PWID, crack, guns, and assault. That
14 was Mr. Clark's interview.

15 Q. If you'll now turn to State's Exhibit Number 3 and
16 turn to page 9? I believe it's the interview of Brian
17 Morris dated February 14, 2008.

18 THE COURT: What page?

19 MS. HARRIGAN: I believe is number 8, Your Honor.
20 They're not labeled. It's the February 14, 2008, interview
21 of Brian Morris, the interview with Brian Morris with his
22 date of birth.

23 WITNESS: 9.

24 MS. HARRIGAN: I apologize, Your Honor. It's page
25 number 9.

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1 BY MS. HARRIGAN:

2 Q. If you'll review that briefly to yourself? I have a
3 question about that, particularly if you'll look at the
4 fourth paragraph beginning with: He saw Brooks Boyle.

5 (A PAUSE.)

6 A. Yes. Okay.

7 Q. Does this -- is this consistent with what you just
8 read from State's Exhibit Number 2, that Mr. Morris would
9 not have been a beneficial witness for Mr. Wray, as he
10 indicated him and his co-defendant were firing the shots?

11 A. Well, he said that -- here what he said was to Mr.
12 Clark that he saw Watts and Wray leave in a Suburban,
13 observed them turn on Hardscrabble toward Farrow, and then
14 a minute later heard gunfire emanating from the front end
15 of the club, left front end of the club adjacent to
16 carwash. He heard six or seven different weapons firing.
17 He believed there was -- there were as many as forty shots
18 fired. He heard semi-automatic fire. That's what he said
19 there.

20 Q. If you'll turn to the next page, which I believe is
21 10, and look at that page briefly to yourself, particularly
22 the last paragraph on the bottom.

23 (A PAUSE.)

24 A. Yeah. Morris identifies copies of three letters dated
25 August 13th, 26th, and 30th of 2007 that he had written to

1 Taurus Watts, the co-defendant, regarding page 1 of the
2 August 13th letter. Morris stated:

3 I saw you pushing Shon Wray back from the front
4 door. He had plastic gloves on; there was some
5 type of gun in his hand. Morris advised in
6 clarification that Charman is actually Tremaine
7 Wray. Morris further advised that with
8 reflection and passage of time, he's recanting
9 the statement that Wray wore plastic gloves and
10 had a gun in his hand.

11 Regarding page 2 of the letter August 26th:

12 I told you in the letter that you didn't have a
13 gun but Tree. Morris advised that Tree refers to
14 Tremaine.

15 Tremaine Wray.

16 Further reiterated his retraction.

17 So, I mean, he's not a reliable witness. I didn't
18 call him then; I wouldn't call him now.

19 Q. And again, that was a strategic decision made after
20 reviewing investigative reports from your investigator and
21 your co-counsel's investigator?

22 A. Yes, strategic decision in favor of Mr. Wray.

23 Q. Backing up a little bit, did you file any *Brady* or
24 Rule 5 motions in this case?

25 A. Always.

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1 Q. Do you believe you were given all pertinent materials
2 in response to your motion from the solicitor's office?

3 A. I have no reason to believe then or today that I did
4 not get all of those.

5 Q. Can you describe your working relationship with the
6 solicitor's office?

7 A. It's very good. I have had a working relationship
8 with them for over forty years. Many of the people that I
9 have employed over the last forty years have come from the
10 solicitor's office, people I have tried cases against,
11 including my former partners Joe McCullough and Dick
12 Harpootlian. So, I always have had a good relationship
13 with the solicitor's office.

14 Q. If you needed anything additional or had any problems
15 with the discovery that you received, do you ever receive
16 any hesitance from the solicitor's office with them sending
17 it over or clarifying any of your discovery?

18 A. I mean, I've never had a problem. If I thought that I
19 was entitled to something that they, that they didn't have,
20 or there was a question about whether they had it or not, I
21 mean, I would just file a motion if I needed it.

22 MS. HARRIGAN: Your Honor, if I may approach?

23 Q. I'm going to hand you, it's already been moved into
24 evidence as Respondent's Number 7. Do you recognize that
25 document?

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1 A. Yes. This is in -- both you and counsel for Mr. Wray
2 both got this out of my notebook, tab 3 where I have all
3 the incident reports.

4 MS. HARRIGAN: Your Honor, do you have a courtesy copy
5 of that already?

6 THE COURT: Is that the handwritten statement?

7 MS. HARRIGAN: Yes, Your Honor. It was introduced as
8 State's Number 7.

9 BY MS. HARRIGAN:

10 Q. Do you notice the portion at the bottom, Mr. Swerling,
11 that appears to be cut off?

12 A. Yes, and it's cut off in my notebook as well.

13 Q. Do you recall whether or not it was cut off when you
14 received it?

15 A. No, I don't. I don't know if it was cut off when I
16 received it, or if it was cut off in my copier. I mean, I
17 have no idea. I couldn't, I could not possibly tell you.

18 Q. Do you recall whether or not you called over to the
19 solicitor's office and asked for a full copy in this case?

20 A. I have no recollection of whether I did or I didn't.
21 I mean, I can't believe that I would not have followed up
22 if I couldn't read somebody's name if I felt it was
23 relevant or important. So, could I? Seven years ago or
24 more, is it? Yeah, it's over seven years ago when I got
25 involved in the case. I just can't tell you.

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1 Q. Based on your standard course of dealing in the past
2 forty years with the solicitor's office, do you believe
3 this to be a violation of *Brady vs. Maryland*?

4 A. No. I mean, It wasn't like they were concealing
5 something, I don't believe in my opinion. It just means
6 that somebody's name was in the copier. Either through
7 their office or my office, didn't get the whole thing
8 copied. But, I mean, to me a *Brady* violation would be
9 failure to turn over something. I mean, they did turn over
10 a report. That's for, that's for the judge to decide, but
11 I did, I did not see it as a *Brady* violation.

12 Q. Do you recall how many reports were issued from the
13 early morning hours of this incident?

14 A. Well, there were several. I mean, Mr. Gregory's,
15 there was Mr. Galinski's. Seems like there was one --
16 there were a couple of supplemental reports, and I have it
17 in my notebook over there. And then of course there was an
18 extensive report from Investigator McRae and also from Eric
19 Lawrence, who were the first two investigators on the
20 scene. They got there somewhere, I believe -- I've been
21 reading it over. They got there at 5:40.

22 MS. HARRIGAN: Your Honor, we approach?

23 Q. I'm going to hand you what's been premarked as State's
24 Exhibit Number 6 and ask if you recognize this.

25 A. That's Don McRae's investigative summary starting at

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1 5:08 when he got notified of a homicide at H&J Club.

2 Q. And was this document in your file, or is it currently
3 in your file?

4 A. Yes, that one's in my file.

5 MS. HARRIGAN: State ---

6 A. And I cross-examined Mr. McRae extensively on it.

7 MS. HARRIGAN: The state would seek to introduce this
8 as State's Exhibit Number 6.

9 MS. NEWTON: No objection.

10 THE COURT: Without objection, State's 6.

11 (INCIDENT REPORT MARKED INTO EVIDENCE AS STATE'S
12 EXHIBIT NUMBER 6.)

13 BY MS. HARRIGAN:

14 Q. Does this state when Mr. McRae first came to the H&J
15 Club to respond to the shooting?

16 A. I think, as I said, I think he got the call at 5:08,
17 and he arrived there at 5:40.

18 Q. Do you recall what time the shooting occurred?

19 A. Somewhere in the neighborhood of 4:00 in the morning.
20 Let me see. Well, that's probably somewhere in his report
21 I just gave you back, the handwritten incident report.
22 Indicates at 4:12 the shooting took place. Well, the
23 incident took place.

24 Q. Was Investigator McRae the chief investigator handling
25 this case?

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1 A. Yes. Investigator Barnes was there, Sergeant Barnes,
2 and then Mr. McRae. Mr. McRae became -- excuse me -- the
3 chief detective on the case.

4 Q. One of the central allegations is that you should have
5 called various witness or used various documents to impeach
6 the state's witness for Ricky Jacobs. What was your
7 strategy for handling Mr. Jacobs on cross-examination?

8 A. Well, here's the overall case. I mean, the overall
9 case was that there was the first call out. The first call
10 that went out was for a white Isuzu, and that car was
11 stopped, I think Mr. Bax said, on Two Notch Road. And then
12 sometime after that when -- I think even Deputy Galinski
13 testified there was another call went out for a tan
14 Suburban. The Isuzu was stopped. They did not find the
15 Suburban right away, but clearly -- it's in the record.
16 It's in the trial, but Ms. Johns did a very good
17 cross-examination as well of Mr. McRae that the Isuzu was
18 the first thing that was reported over the air, and then
19 the tan Suburban.

20 And, by the way, both vehicles, according to Mr.
21 Jacobs, fired shots. He said the tan Suburban was the one
22 that Mr. Wray was driving, fired several shots. The Isuzu
23 he identified as firing one shot but, yeah, and that was
24 consistent with what Mr. Gregory has in his report, that
25 the Isuzu was the first car reported over the air and the

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1 vehicle was stopped. Mr. McRae, I guess, got there. Call
2 went out for a Suburban as well. And, by the way, in Ms.
3 Johns's examination of Don McRae, she brings out evidence
4 from this report and also Mr. Galinski's report about the
5 initial identification.

6 If I can clarify something? Again, we're talking
7 about the trial was five years ago. So, I mean, my
8 decisions that I made, I can only tell you from things I
9 experienced. Some I remember; some I don't remember
10 exactly what was going on.

11 But Mr. Wray was not identified by Mr. Jacobs that
12 night, which we thought was interesting because Mr. Wray
13 was known to -- Mr. Wray and his family was known to Mr.
14 Jacobs, but he did not give his name. He didn't give a
15 name to Investigator McRae until the next day.

16 He did mention -- initially he did not identify Mr.
17 Watts. In fact, you know, in the examination,
18 cross-examination he said he wanted to be sure. He was
19 looking, you know, at what was going on there. But
20 according to Mr. McRae, he took him to the side and told
21 him that the person's name was Taurus. He did not give him
22 a last name. Again, although he knew Mr. Watts some period
23 of time, too -- they were frequent people in the club.

24 It appears from the way we divided the
25 cross-examination, is the only thing I can think of, I

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1 picked up -- my focus with Don McRae and Mr. Jacobs was
2 when Mr. McRae took over the investigation. And, of
3 course, referring back to the Isuzu, we stayed heavily on
4 the Isuzu as well.

5 But Ms. Johns found, because he had actually named Mr.
6 Watts -- actually, he had named Taurus -- she concentrated
7 on the initial reports, and that's reflected in Mr. McRae's
8 cross-examination starting on page 73. So, she emphasized,
9 I think, a little bit more because he had actually made a
10 -- he gave Taurus's name to Mr. McRae when he got there.
11 She concentrated more on the earlier reports where he did
12 not name Mr. Watts. I concentrated on him not providing
13 the name of Mr. Wray to Mr. McRae, to -- yes, Don McRae
14 that night.

15 Q. And would you agree it appears from a review of the
16 file and the transcripts that earlier on Mr. Jacobs gave
17 Mr. Wray's name -- or Mr. Watts's name, then later on gave
18 Tremaine's first, and it wasn't until a few days later or
19 certainly at least that evening when he gave a full name
20 for your client, correct?

21 A. Well, yeah. It wasn't until the next day. In other
22 words, it was an initial, on-the-spot interview that Mr.
23 McRae got a little bit more information. But he -- and the
24 reason I would have stayed away from it, as far as I'm
25 thinking now, is that he did not identify Mr. Wray that

1 evening the first time he had the opportunity to talk with
2 Mr. McRae, and that's what I pointed out.

3 I believe that he didn't -- he was supposed to meet
4 him the following day at the sheriff's department and he
5 didn't show up, and Mr. McRae had to go looking for him,
6 and it was only then that he mentioned Tremaine. So,
7 that's what I was concentrating on. And then he didn't
8 mention Tremaine Wray until some other time when he started
9 what he said was putting it together, which we thought that
10 was ludicrous because he knew the Wray family and he had
11 seen Tremaine on other occasions.

12 Q. And there was some testimony from Mr. Jacobs as well
13 as Investigator McRae that Mr. Jacobs that actually known
14 the co-defendant Mr. Watts's family for more than twenty
15 years, and his mother worked at one of Mr. Jacobs's
16 businesses, correct?

17 A. I remember him saying he knew the Wray family. I
18 remember the Wray family. I don't recall about, you know,
19 Watts's family, but he knew Watts. He did know Tremaine
20 Watts -- I mean, Taurus Watts. That I know. I recall
21 that. It's in the record clearly.

22 Q. Do you recall who went first during your
23 cross-examination of Ricky Jacobs, whether it was Ms. Johns
24 or yourself?

25 A. I'm sorry.

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1 Q. Volume number 3. They're not paginated. It includes
2 the testimony of ---

3 A. Yeah. That fine. Actually, she did. You know, when
4 you have -- one of things I can't stand when I'm trying a
5 case with somebody else is that both people get up and ask
6 the same questions. It becomes repetitive and boring, and
7 you lose, you lose a lot in your cross-examination if both
8 people are asking the same question. So, what we try to
9 do, what I always try to do when I'm trying a case with co-
10 counsel is try to divide up who's going to ask what portion
11 of the cross-examination. So ---

12 Q. Did you do that here with Ms. Johns?

13 A. Yeah. Clearly we did.

14 Q. Do you recall -- have you had an opportunity to review
15 any of the transcript before coming and testifying today?

16 A. Yes.

17 Q. Do you recall the court even commenting that she
18 appreciated that it wasn't duplicative, that you had split
19 that up?

20 A. Yeah. I think I do remember that. I didn't read it,
21 but now that you mention it, I remember hearing that. And
22 that's, that's just something that I always tried to do.
23 Really I find that juries get really bored, and the judges
24 appreciate if you don't duplicate your questions.

25 Q. Do you recall how long Ms. Johns's cross-examination

1 of Ricky Jacobs was?

2 A. Well, I think I heard somewhere like fifty pages.

3 Mine may have been a little bit longer. You know,
4 fifty-five pages or something like that. So, it was some,
5 over a hundred pages of cross-examination.

6 Q. Would you agree with the classification that it was
7 a thorough cross-examination both by Ms. Johns and
8 yourself?

9 A. Yes. I think Ms. Johns did an excellent job in the
10 case. And I, one of the things that I pride myself in more
11 than anything, any aspect of the trial is my preparation of
12 it and doing cross-examination. That's my personal
13 favorite part of a trial, and so I spend a lot of time on
14 cross trying to get people in a position of contradicting
15 themselves, what they didn't tell the investigator, what
16 they should have told the investigator, and how they --
17 what they've said may contradict other testimony, and what
18 they said may contradict the physical evidence in the case.
19 So, I really spend a lot of time preparing
20 cross-examination, and this case was no different.

21 Q. Would you agree that Mr. Jacobs was an important
22 witness for the state?

23 A. Sure.

24 Q. Did you spend a significant amount of time preparing
25 your cross-examination of---

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1 A. Absolutely.

2 Q. --- Mr. Jacobs, and does your file reflect that?

3 A. My file reflects it, and it's been provided to
4 everybody for open inspection.

5 Q. During your cross-examination, you had Mr. Jacobs
6 admit to numerous inconsistencies, correct?

7 A. Yes, ma'am.

8 Q. Do you recall what some of those inconsistencies were?

9 A. I can go through them. Kind of make a little bit of
10 an outline here so I can speed it along. You know, first
11 of all, obviously what we just talked about, the fact that
12 he did not identify Tremaine Wray until the next day. That
13 his initial report on the 30th, he spoke with him twice
14 that morning, but he didn't identify Tremaine Wray even
15 though he knew him. I pointed out -- now again, some of
16 these points that I'm making are developed in the
17 transcript over a period of pages, but I'm going to
18 highlight them.

19 There was a big issue about whether or not he had ever
20 said that Tremaine Wray and Taurus Watts were in the club,
21 and so we spent a good time, a good amount of time around
22 page 131 talking about whether or not he had ever told
23 anybody before that they were in the club. Got him to
24 admit on that same page that the first time he'd ever told
25 anybody that they were in the club was the day of trial,

1 which was a couple of years later. So, that's always what
2 my favorite cross-examination questions: when did you first
3 tell everybody, particularly law enforcement and the
4 solicitor's office, about something you testified. And
5 when they say today, I mean, I think that's good
6 impeachment evidence.

7 Q. Do you recall what his response was for why he hadn't
8 told anyone previously that your client and his
9 co-defendant were in the club?

10 A. I know he said a number of occasions. I can't tell
11 you exactly this is the one, but I know a number of
12 occasions he said nobody asked me, and there's something
13 else there. I mean, he gave all sorts of reasons, but I
14 remember one of his big answers was nobody asked me that
15 question.

16 Q. Did that appear evasive to the jury, do you believe?

17 A. Well, I think so when somebody says nobody asked me.
18 I mean, obviously if they were in the club and there was a
19 fight in the club and the fight immediately preceded or
20 within -- I wouldn't say immediately but shortly after that
21 there was somebody seen exiting the club with a gun, there
22 was somebody seen in the carwash with a gun, there was --
23 the Isuzu had a gun. According to him, the Suburban had a
24 gun. That there was a fight, I would think that the fact
25 that there was a fight in the club would have been very

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1 important, especially because Brian Johnson was reported to
2 have been in the fight. So, you know, we were trying to
3 throw off on anybody we could: Brian Johnson, the Isuzu,
4 the guy at the carwash with the Desert Eagle, anybody we
5 could, you know, create some doubt to or with.

6 He said on page 130 that he didn't remember much about
7 the, much about what happened in the club. And when I
8 asked him, I was asking him about specifics about them
9 being in the club. He couldn't answer any of the
10 questions: where they were, what they do, and what were
11 they wearing, what time he saw them in the club. So, I
12 think he had been impeached on that issue.

13 On 135: When you spoke with McRae that night, you gave
14 a description but no name. And the reason he said he
15 didn't give a name, one of the answers he gave around page
16 135 was he didn't get a good look at the people. So, I
17 thought that was pretty significant. But he would
18 recognize them again and page 136, the first time he
19 mentioned Tremaine was the next day. He agreed that he did
20 not tell them until the next day a name.

21 Page 137, he didn't tell McRae names that night,
22 particularly Mr. Wray. There was some confusion about
23 whether or not he ever said Taurus or not. I think that he
24 was sufficiently impeached about that.

25 Then there was this big -- around page 138, the court

1 can take a look and you can take a look at it. There was a
2 big discrepancy about when he saw something in Taurus
3 Watts's hand. On one occasion -- I can't remember whether
4 it was his statement to McRae or his statement for the
5 jury. On one occasion he said that when they approached
6 the club, he had something in his hand wrapped in a white,
7 some white cloth. Then he either testified or was in a
8 statement that he didn't see that gun -- what he was
9 alluding to was a gun in this white cloth -- until he told
10 them they couldn't get in the club again. And they went
11 back to the truck and Taurus Watts had something in his
12 hand. That he said I've got something for you. So, there
13 was a bit of discrepancy about when he saw that particular
14 pistol. And there was also a discrepancy as to really
15 whether he really saw a pistol at all, a weapon. But again
16 when you're cross-examining somebody, you look for these
17 little pearls, and that was one of them. So, that's around
18 140 about, the issue about the gun being wrapped in white
19 clothing.

20 144, he established he did not know when defendants
21 left the club. Again, he couldn't give a lot of
22 information about that. We did, I did emphasize that he
23 had originally said that there was a guy walking out the
24 door of the club with a gun that was not Tremaine Wray or
25 Taurus Watts. And as I just said before, there was a guy

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1 with a gun at the carwash which was not supposed to be
2 them.

3 What was interesting was that he had never told McRae,
4 which I brought out around page 149, that he had never
5 said, told anybody else -- I mean, I'm sorry. He had never
6 told McRae that anyone else had a gun. Now I think that as
7 I'm reading my notes that he was now saying that there were
8 two other people with guns.

9 Q. That he had only disclosed or had the epiphany of the
10 first time on the stand?

11 A. Correct. Yeah, because he never -- my notes reflect
12 on page 149 that:

13 Fact of the matter is you did not tell Mr. McRae
14 that anyone else had a pistol that night. You
15 did not tell him that morning, and you did not
16 tell him on July 1st there was somebody else
17 exiting the club with a pistol, and it was a guy
18 with braids.

19 So, we went back and forth on that and he said: Well,
20 I mentioned it to Mr. McRae. And I said: Yes, you did.
21 And he said: Yes, sir. I said: Did you put it in a written
22 statement? Answer: He didn't ask me. So, I mean, that was
23 inconsistent right there, and he began -- I thought he had
24 been impeached pretty well on that.

25 There was this whole colloquy going back and forth

1 about it. On the next day when he gave his statement, he
2 said he could tell that Tremaine Wray was driving the car
3 and firing the gun. And then, then it was a question that
4 he couldn't identify who was the one. He backed off from
5 saying Tremaine Wray was the one who was firing the gun
6 because he was -- and this all came out through
7 cross-examination. He was standing behind the vehicle.
8 Couldn't tell who was firing except that it was coming the
9 driver's side. Couldn't tell whether it was coming from
10 the front window of the driver's side or the rear window of
11 the driver's side.

12 What's important about that and why I felt that that
13 was some good impeachment evidence, he originally says it
14 was Tremaine Wray and then when he's pinned down to it, he
15 backs off and says, well, I don't know who it was. Just
16 the driver.

17 The other thing that was important is that the
18 vehicle's going down the road this way. There's the club
19 over here, and this was a semi-automatic weapon, so it
20 means it was ejecting from the left. So, you would expect
21 the shell casings to go to the left on the left-hand side
22 of the road or at least to the middle of the road. Well,
23 the shell casings were all found on the right side of the
24 road. So, we thought that was a good point that we were
25 making.

1 Then there was a whole series of questions about when
2 he saw the pistol in the hand of the guy, the guy in the
3 Isuzu and I think we got him, got him pretty screwed up
4 between what he had told Mr. McRae and what he was telling
5 the jury. He couldn't describe the gun. I think one time
6 he said he saw it when he walked past the car, and he saw
7 the guy holding it in his lap.

8 Then there was a discrepancy that I explored around
9 page 165 between, the events between the car Mr. Wray had
10 and the Isuzu. There was a -- and this is a whole series
11 of questions, took on several pages, but -- and I, again, I
12 don't remember which one was in the statement, which was
13 the trial testimony. But at one time he was saying that
14 the Isuzu was directly behind the Suburban, and the shots
15 were fired immediately after. Within a minute after the
16 shots were fired out of the Suburban, they were fired from
17 the Isuzu. Then it was changed. One time he said that the
18 Isuzu did a U-turn, and the shot was fired after the U-turn
19 was made. Another time he said that the shot was fired
20 before the Isuzu made the U-turn. So, I explored that very
21 thoroughly, I believe, on cross-examination in the trial.

22 There was another big area that we talked about where
23 he was located, how he could tell who was shooting in the
24 car, and again got him to say that he was behind the
25 Suburban.

1 Q. There was some discrepancy that he was walking to his
2 father's house to look ---

3 A. Yeah.

4 Q. --- at a car, correct?

5 A. He had said some different things about that, too.
6 One occasion he said he'd walked across the street and then
7 brought his father's car back to the club. And then there
8 was another occasion where he said -- when he didn't say
9 that. So, you know, his positioning here became a big
10 issue, and I believe that was thoroughly explored. And
11 that was, what you're referring to, is about going over to
12 his father's house to get his car to bring it back to the
13 club. So, that was, I believe, was very thoroughly
14 explored.

15 There was a discrepancy -- well, I'm sorry. I already
16 said when the Isuzu actually fired the shot from the
17 statement and his testimony, when they fired the shot.

18 He actually -- page 174 after working him over pretty
19 well, I believe -- of course, this is why I like
20 cross-examination. We went through a whole bunch of
21 repeating some of these things. Then I said: Mr. Jacobs,
22 you really have no idea what happened out there that night.
23 And his answer, answer was: Okay, no. So, you know, that's
24 some pretty good stuff to take to the jury and discuss. He
25 didn't have any idea what happened out there.

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1 Pointed at the fact that he didn't show up for Mr.
2 McRae. When he had an appointment to do that, he was
3 actually sleeping, and so he was really into this thing.
4 Didn't even report to the sheriff's department.

5 Told McRae that the defendant was shooting. Then he
6 backed off again, saying he could not see that. And then
7 he started saying that, when I was putting out to him that
8 -- about this discrepancy, this particular discrepancy
9 about the shooting, he said McRae got it wrong. So, he
10 started blaming the detective about how -- what he wrote in
11 the statement.

12 And then let me just see this. I asked him.
13 Sometimes I get away with it; sometimes I don't.

14 How does the jury know when you're telling the
15 truth? Was it on July 1st or the morning of June
16 30th, or is it now, or how do they know?

17 And he said: I guess by the evidence.

18 And I said: Pardon?

19 And he said; I guess by the evidence.

20 And I questioned: Well, you've been giving
21 conflicting evidence. You agree that?

22 Answer: Yes.

23 You agree you lied in the statements?

24 Answer: No, I didn't lie in the statements, sir.

25 Well, you obviously, you couldn't see Tremaine

1 shooting in the crowd. So, it's a lie, isn't it?

2 And then he said: I didn't see him.

3 If you say something of under oath and it's not
4 true, it's a lie, isn't it?

5 Yes, it is.

6 So, we went, we just went back and forth on that, and
7 I kept trying to get him to say that he agreed he had been
8 lying on some of these occasions.

9 Q. He admitted several times he wasn't forthright with
10 law enforcement?

11 A. Well, he wasn't forthcoming. He tried to characterize
12 it one way; I was trying to characterize it another way.
13 Let me just see here. He agreed that what some of the
14 things he testified to were not what was written down by
15 Mr. McRae, and that's what I, you know, pointed that out.
16 I think he tried to say that Mr. McRae just didn't get it
17 right.

18 So, you know, to me it was -- you know, I went after
19 every little pearl I could find on cross-examination with
20 him, and I do believe that's the way I would cross-examine
21 him again. And I believe it was thorough and impeached him
22 on what we could.

23 Q. The incident report that's been discussed before that
24 has the bottom missing, State's Exhibit Number 7, do you
25 believe the pertinent information from here, you were able

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1 to impeach Mr. Jacobs on while he was on the stand about
2 his very ---

3 A. Well, I think -- yeah. I mean, I think, here's how I
4 think it was impeached. First of all, Mr. Gregory was the
5 first officer on the scene. Admittedly, he was trying to
6 secure the scene. Mr. McRae came shortly thereafter.
7 There's no question the record reflects and the jury knew
8 that the only car they were looking for initially was the
9 Isuzu, and the Isuzu was actually stopped. Mr. Landrum and
10 Mr. Green were in the Isuzu. There were some shell casings
11 in there. Of course they didn't find a gun, but at some
12 point shortly after that, they started looking for the
13 Suburban which was being driven by Tremaine, and Taurus
14 Watts was in it. So, clearly it was out there that the
15 only car, the first car that was reported as firing shots
16 was the Isuzu because that's the car that was stopped.
17 That's the car that Galinski was looking for, and then they
18 started looking for the Suburban when Mr. McRae got there.

19 I think we brought it out. I think Ms. Johns focused
20 more on Mr. Gregory than I did because again, there was a
21 reason for that. The -- Watts was being identified as
22 Taurus that night to Mr. McRae. My client wasn't being
23 identified at all. So, we had sort of different, you know,
24 had sort of different things we were trying to bring out.
25 But you can see her cross-examination of Mr. McRae about

1 the information that Mr. Gregory had is, is clearly there.
2 So, I don't think there's any question about the fact that
3 everybody knew that the initial report was the Isuzu.

4 Q. Do you recall whether or not Galinski testified at
5 trial?

6 A. He did, and again he said the report that came out
7 over dispatch was, you know, a white Isuzu, and then he
8 heard later on they were looking for the Suburban, later on
9 meaning some time within a relatively short period of time.

10 Q. Do you believe there's any pertinent information from
11 Respondent's 7 that was omitted because you didn't call
12 Weldon Gregory?

13 A. No. I mean, I think it was a red herring. I mean, we
14 got it out that the Isuzu was the thing that he initially
15 reported, and they stopped the Isuzu. But he told McRae
16 that it was a Suburban that was also there and they were
17 both there. And so, I mean, the client, my client was not
18 being identified. So, I really thought what I needed to go
19 after was what Jacobs was telling McRae. Ms. Johns went
20 over, apparently from cross-examination here, went more
21 with what Greg -- he failed to tell Gregory, Mr. Weldon.

22 And I don't, in the end, I don't think it really meant
23 anything because the fact of the matter is that when McRae
24 was the investigator on the scene, he immediately told him
25 that there was -- a Suburban was involved, but he didn't

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1 give an identification of Mr. Wray. So, I wasn't, I wasn't
2 going to just chase rainbows. I needed to go after
3 something that I thought was real material to me.

4 Q. And you didn't feel that Weldon Gregory would be that
5 for the defense's case?

6 A. Well, I mean, I didn't think that I needed to go any
7 further than I did. I concentrated on what I wanted to
8 concentrate on, what I thought was relevant and important
9 for Mr. Wray. Ms. Johns concentrated a little bit more on
10 the initial reporting, but all in all in the end -- again,
11 everybody knew that the Isuzu was the car that originally
12 went out on the dispatch to go ahead and stop, and they
13 did. Then dispatch went out on the Suburban. So, I don't
14 know that the fact that he did not -- calling Mr. Gregory
15 to say that the Isuzu, it was a white Isuzu. We know it
16 was a white Isuzu, and that he didn't give a description of
17 the individuals. Well, we know he didn't give a
18 description. So, that came out through other people.

19 Q. Do you typically call law enforcement officers in the
20 defense's case?

21 A. Very rarely. I mean, not that -- you know, I've been
22 doing this a long time. I don't normally put up law
23 enforcement officers because there's good things that come
24 out of their testimony, and there's bad things that come
25 out of their testimony. And I'd rather put up witnesses

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1 that I know are going to stay with what I want them to stay
2 with and what I expect them to stay with. So, I don't
3 normally call them.

4 I like to cross-examine them more, and that's what
5 happened here with Galinski and McRae and any of the other
6 officers who testified. I bring out what I want through
7 their cross-examination.

8 Q. Regarding the allegations involving gunshot residue,
9 were you present for Mr. Bax's testimony before?

10 A. Yeah. I thought he did an excellent job in
11 cross-examination.

12 Q. And you would agree that that was his primary role was
13 to deal with the gunshot residue at the ---

14 A. Yeah. He spent a lot of time on it doing the research
15 and talking to Mr. Hollifield, who was there. As I recall,
16 Mr. Hollifield was there for some of the trial, probably
17 during that testimony. I've known Jeff for a while. I
18 have a lot of confidence in him, and he is used by the
19 defense bar and prosecution. Of course they have SLED to
20 draw from, but he worked at SLED and no question about his
21 qualifications.

22 Q. And your best recollection is that Mr. Hollifield was
23 present for the pertinent parts of the trial?

24 A. Mr. Bax reminded me that he was present. Frankly,
25 it's very difficult for me to recall -- I've tried a lot of

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1 cases since then -- exactly when he was present, but he
2 reminded me that he was.

3 MS. HARRIGAN: Moment's indulgence.

4 Q. Mr. Swerling, do you have a copy of the transcript up
5 there with you?

6 A. Yes. I have a couple. Well, I have several volumes
7 of it.

8 Q. Do you have volume number 8?

9 A. Volume 8? Yes, I do. Also volume 4 at the Brian
10 Watson point, but volume 8, yes. Oh, you talking about the
11 vouching?

12 Q. Yes, the allegation regarding vouching.

13 A. What page is that again?

14 Q. Page 54. The lines that Mr. Wray takes issue with, I
15 believe, start on 18 and go through to 21. If you'll
16 briefly review that yourself.

17 A. Yeah. I've read it the last few days. I very rarely
18 object in closing argument unless there's an obvious
19 misstatement or maybe for some tactical reasons or
20 strategic reasons.

21 Anyway, what she said here, what Ms. Shipley said here
22 is something I say repetitively during the course of a
23 closing argument. What she said was:

24 So, I submit to you, ladies and gentlemen, he had
25 no motivation to cooperate with the police. He's

1 telling the truth.

2 I say just the opposite about the witnesses that I
3 believe. You can't say I believe, but you can say I submit
4 if the person's not telling the truth. I probably did that
5 several times during my closing argument. I don't believe
6 that's a Golden Rule violation.

7 Q. And that would be your strategic reason for not
8 objecting to ---

9 A. Right.

10 Q. --- that portion?

11 A. Right. I mean, she said I submit which, my
12 understanding in forty years of trying cases, is that
13 that's the way people present: I submit to you. So, and
14 he's telling the truth. I say just the opposite many
15 witnesses. He's not telling the truth.

16 Q. And I apologize. I believe I cut you off when you
17 were referencing volume number 4, the testimony of Brian
18 Watson. Is anything that ---

19 A. Yeah. This was, actually this was a nightmare. We
20 were getting ready to start the trial, maybe a month or two
21 before this. I'm not sure where, but -- and again I may
22 not -- I'm sketchy about it.

23 But Taurus Watts was in a van or at the jail or a
24 holding cell with Brian Watson, and Brian Watson was in
25 jail as well. Brian Watson knew Wray and Watts, and Brian

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1 Watson came up with that -- two years after the fact, he
2 remembered being asked to dispose of the weapon in this
3 case. And the -- I think we object -- we did object, I
4 think, to a continuance in the case because what, what the
5 state wanted to do, Watson reported that the gun in a bag
6 had been thrown into the river somewhere. I don't remember
7 exactly where, and anyway, they got, they got -- the case
8 was postponed.

9 The divers were out looking for this weapon where
10 Brian Watson said the weapon was, and it was either a Tech
11 9 or a Mack 9. I can't remember exactly what it's called,
12 but ---

13 Q. Do you recall approximately when the continuous motion
14 was made?

15 A. I think it was the day we were starting trial, and
16 maybe a of couple days before when this information became
17 known to the state.

18 Q. You'd already picked a jury at that time, correct?

19 A. You know, I'll have to take your word if it was. I
20 just remember it was just not a very good time.

21 Q. And ---

22 A. And it seems like we were in court. I did not -- I
23 don't know whether we picked a jury or not, but I remember
24 it was -- we were getting ready to start a trial, and it
25 came up. Did we actually pick the jury? Do we have that?

1 Q. If the transcript from the 18th and 19th indicates
2 that a jury was selected when the state made a continuance
3 motion and you objected on the record, you would agree with
4 that?

5 A. I, I would. I would agree with that, yeah. I mean, I
6 do remember we were getting ready to start the trial. I
7 clearly remember that, and I remember my throat fell into
8 my stomach when I found out that somebody may have known
9 where the weapon was, and that kind of altered the whole
10 case.

11 So, I mean, the long and short of it was that Brian
12 Watson, who was obviously trying to -- you know, remembered
13 something two years later. He was in jail, but he told a
14 story that the gun was brought over to Roshonda Simpson's
15 house and that Roshonda Simpson and Jarrell Dansby got in
16 touch with him to help dispose of the gun that Tremaine
17 Wray had left there, according to Jarrell Dansby which
18 unfortunately Mr. Wray's cousin. So, we'd have to prove
19 that his cousin was lying. But the testimony was through
20 the three of these witnesses that Mr. Wray had brought this
21 gun over there to get rid of it because he didn't have time
22 to get rid of it. He had to go to work.

23 Now, the good part about it for us as far as
24 cross-examination, Roshonda Simpson, Jarrell Dansby, and
25 Brian Watson were all telling different stories. There was

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1 a -- one of them was saying the gun was buried under the
2 house. Another was saying it was buried in the yard. One
3 was saying it was buried in one kind of bag; another was
4 saying it was buried in another kind of bag. One was
5 saying that they smashed the gun up. The others were
6 saying they didn't smashed the gun up. One was saying that
7 three of them went to dispose of the gun near the river,
8 and somebody else was saying that only one of them went to
9 take the gun.

10 So, you know, it obviously was not good testimony for
11 us because it showed that Tremaine had brought the gun over
12 there, but I thought we were able to really cross-examine
13 them and show all the inconsistencies. I think the record
14 will reflect the cross-examination of the three witnesses
15 by predominantly me.

16 Q. Despite the wildly different stories from three
17 witnesses, they all were clear that Mr. Wray had brought
18 the gun over for ---

19 A. Well, I think the only one who knew that he brought it
20 over was Jarrell, and then Jarrell told Roshonda, and then
21 they told Brian, but again the damning part of it was that
22 Jarrell was his cousin. And -- but I really think, I felt
23 pretty good at the end of cross-examining the three of them
24 about the inconsistencies, which were really glaring
25 inconsistencies in their story. That we had, we tried --

1 we neutralized it as much as we could, but you can't say
2 that it didn't have an impact on the case.

3 And, by the way, I don't know if I said it, but they
4 never found the gun, which we also brought out through Mr.
5 McRae that they took -- he took Brian Watson to several
6 different locations and several different bridges, several
7 different streams and rivers in Columbia and they couldn't,
8 they couldn't come up with it. So, yeah, the absence of
9 the gun as well as the cross-examination I thought helped a
10 lot, but again after what, what weight the jury gave it,
11 it's hard to say. So, it was a gun that they said they
12 were given by Tremaine Wray.

13 Q. You were here earlier today for Mr. Wray's testimony
14 regarding the hand of one, hand of all allegation, correct?

15 A. Yes.

16 Q. Do you believe there was evidence to support a charge
17 on hand of one, hand of all?

18 A. Sure. I mean, the evidence is that somebody in the
19 Suburban -- in the driver's side, according to the evidence
20 -- was firing a weapon and one was a passenger. Well,
21 whether the weapon was being fired from the passenger's
22 side or the driver's side, you know, you get, you get the
23 charge of hand of one is the hand of all, accomplice
24 liability. Plus you also ask for the other charges that go
25 along with accomplice liability: mere presence, mere

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1 association, mere knowledge. So, I mean, I don't know how
2 that would not be an appropriate charge, frankly. I mean,
3 I'm not sure how it would not.

4 Q. You, you did ask for the other charges such as mere
5 presence and the charges you just said?

6 A. I usually do, and I haven't read the charge in a
7 while. You know, if there's an accomplice liability
8 charge, I believe I would have, but somebody was firing the
9 gun and somebody was not firing the gun and they were both
10 in the vehicle. So, it seems like it would be an
11 appropriate charge, but I'm not the judge.

12 Q. Turning to the final issue brought up by Mr. Wray
13 regarding the search warrant, do you recall moving to
14 exclude evidence gathered from the search warrant?

15 A. Yes, I do, and I was frankly really trying to follow
16 what they were saying. The search warrant was litigated
17 pretty extensively in volume 1, at the end of volume 1.
18 Also into volume 2 of the transcript.

19 And we argued -- I mean, the way I usually start off
20 on a search warrant issue is, is everything you told the
21 magistrate contained in the affidavit? Is there anything
22 that you -- is not in the affidavit that you, that you told
23 the magistrate? The reason I do that is to lock in so that
24 under *State vs. Sax*, they can't come up with oral
25 supplementation.

1 And so that was how I handled that. You know, was
2 everything you said in the affidavit? And then we argued
3 about the affidavit, argued about whether there was
4 probable cause or not, whether it was a general warrant or
5 not, whether it was particularized to or not. You know,
6 basic arguments, reliability, and there was arguments back
7 and forth about the law. So, it seems to me that it was
8 pretty well covered, and I think the record would speak to
9 that.

10 Q. And again you objected on two different grounds:
11 that witnesses were listed with no other identifying
12 information, and the description of property was vague
13 and ---

14 A. Oh, yeah. Yeah. yeah. I pointed that all out.

15 Q. Do you have a copy of volume number 9, the thinnest
16 volume?

17 A. I do not have it. It's over there somewhere.

18 (A PAUSE.)

19 MS. HARRIGAN: Your Honor, may I approach?

20 THE COURT: Yes, ma'am.

21 BY MS. HARRIGAN:

22 Q. I'm handing you volume number 9 dated October 15,
23 2009. If you'll flip to page -- it looks like it's the
24 record on appeal. Number's at the top, 1986. Does that
25 contain the search warrant in this case, that and the few

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1 accompanying pages after it?

2 A. Yes.

3 Q. And if you could particularly point to the arguments
4 you made for the court? With description of property,
5 you'd agree that it was in regards to the vague term of et
6 cetera on 18?

7 A. Yeah:

8 Any forensic evidence related to the murder of
9 Dumuria Johnson, evidence included by not limited
10 to blood, hair, fiber, fingerprints, et cetera,
11 any and all potential relevant evidence which
12 would aid in the investigation of the murder
13 outlined in the attached affidavit.

14 Q. And then the affidavit is on the last page, correct?

15 A. That's on the next page.

16 Q. And again you objected to witnesses without any other
17 identifying information?

18 A. Yeah. I mean, a witness identified the driver and
19 passenger. So, I mean, I did argue about that. Still
20 think it was a good argument.

21 Q. And that was preserved in volume number 1 of the
22 transcript?

23 A. One and two.

24 Q. One and two?

25 A. I think it carried over to volume 2, the actual

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1 argument, but the -- the end of volume 1 and the beginning
2 of volume 2.

3 Q. And that issue was preserved and raised on appeal
4 based on your review of ---

5 A. Far as I got.

6 Q. --- Mr. Wray's appeal record?

7 MS. HARRIGAN: Moment's indulgence, Your Honor.

8 (A PAUSE.)

9 BY MS. HARRIGAN:

10 Q. Mr. Swerling, is there any other pertinent information
11 you'd like to provide to the court in regards to these
12 allegations as set forth in his amended application or that
13 Mr. Wray testified to today?

14 A. I mean, no. I think in -- I believe that we gave this
15 case everything that we could with the investigation, with
16 the experts, with the preparation, and the actual trial
17 itself. I can't think of anything that I would do
18 differently, should have done, or should not have done.

19 It's unfortunate that Mr. Wray was convicted. I
20 thought we had made some compelling arguments for
21 reasonable doubt, and I really don't like the fact that a
22 client of mine is serving a forty-year sentence. That's --
23 I'm not the jury. I'm the lawyer, and I think we did
24 everything we could on his behalf.

25 MS. HARRIGAN: No further questions, Your Honor.

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1 CROSS-EXAMINATION BY MS. NEWTON:

2 Q. Hey, Mr. Swerling.

3 A. Hey.

4 Q. Thanks for being here today. I have a few questions
5 to follow up on your testimony.

6 A. Okay.

7 Q. We've talked about this handwritten incident report
8 quite a bit. Do you agree that this handwritten report
9 includes an eyewitness account, the eye -- eyewitness
10 account of Mr. Jacobs that identifies two people other than
11 Mr. Wray and his co-defendant?

12 A. He identifies two people in a Isuzu. He doesn't
13 identify them as different people, I don't think.

14 Q. Well, let me rephrase. It doesn't identify Mr. Wray
15 or Mr. Watts?

16 A. No.

17 Q. Correct?

18 A. And nobody, nobody at the trial identified -- let me,
19 let me put it this way. Mr. Tremaine Wray was not
20 identified by Mr. Jacobs that night either to anybody,
21 including Mr. McRae, Investigator McRae.

22 Q. And do you agree that Mr. Jacobs's statement in that
23 report is that the Isuzu shot into the club and that that
24 statement contradicts later statements he gave?

25 A. Well, shot into the club? Yeah. I mean, but shot?

1 Yeah, that's always been there. There's no question the
2 Isuzu shot. That was told to Mr. Gregory and told to Mr.
3 McRae as soon as he became lead investigator on the scene.
4 There has never been any dispute that the Isuzu fired a
5 shot. So, so I don't know that it's inconsistent, but he
6 also identified the Suburban shot as well when he spoke
7 with Mr. McRae.

8 Q. But he didn't identify the Suburban initially?

9 A. No, not that night, and I don't think -- I think
10 that's clear from the trial.

11 Q. Okay.

12 A. Not from Mr. Gregory's testimony because he didn't
13 testify, but it's clear from the trial that the Isuzu was
14 the vehicle that he identified initially.

15 Q. Okay. Did you investigate who wrote that handwritten
16 report initially?

17 A. You know, I cannot tell you. I have no recollection
18 at all about that particular report except it's in my
19 notebook, and whether we got the name before the trial, I
20 just, I can't recall.

21 Q. Okay.

22 A. I would think that I would have asked somebody whose
23 report it was, but again we had Mr. Galinski's report,
24 which is pretty much looking for the Isuzu. So, I mean, I
25 can't say. I mean, I'd just be pulling something out of

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1 the air if I told you I did when I didn't.

2 Q. Isn't Deputy ---

3 A. I think I did.

4 Q. Isn't Deputy Galinski's report different from the
5 handwritten report?

6 A. Well, it's -- different in what way?

7 Q. Isn't it different in the -- who it identifies, the
8 car that shot into the club?

9 A. It identifies the Isuzu. I mean, again, I don't --
10 there's no dispute that the Isuzu fired a shot. You know,
11 the dispute is whether or not, as in Mr. Gregory's report,
12 it fired into the club. He did fire a shot, so that's
13 clear.

14 And I really thought going into and trying to say what
15 Mr. Gregory was saying really was just not -- we had all
16 that other information about not identifying Mr. Wray. Mr.
17 -- they were looking for an Isuzu at first. So, that's
18 clear that they were looking for an Isuzu. And then of
19 course when Mr. McRae showed up with Mr. Barnes, the
20 Suburban became the focus is what -- but I would expect
21 every incident report to have some variations in it.

22 Q. Right. Right, and, and splitting hairs a little bit
23 here, but the -- but this handwritten report does say the
24 Isuzu fired into the club.

25 A. Right.

1 Q. A later report says the Isuzu was the one that fires
2 into the air.

3 A. Fired in the air. Now, I guess I made, I assume, a
4 strategic decision at that point to follow the path of
5 questioning that I did. And having tried probably
6 somewhere around a hundred murder cases, sometimes you make
7 the call, and we always have to make a call.

8 In this particular case, I didn't use Mr. Gregory. I
9 didn't call Mr. Gregory. I didn't use it, but I felt that
10 the information came out, maybe with the exception of fired
11 in club, fired in the air. There's no question the Isuzu
12 fired a shot, and there's no question the Isuzu was the
13 vehicle stopped first. It was the only information they
14 had. But there's also no question that when Mr. McRae
15 interviewed Mr. Jacobs, he identified the Suburban as also
16 firing shots. So, I concentrated on what I thought was
17 very important.

18 Q. And you did cross-examine Mr. Jacobs vigorously as you
19 cited the differences of his inconsistencies, but did you
20 actually ask him about that initial report?

21 A. I asked him what he was, what -- I concentrated on
22 McRae.

23 Q. On what he told Investigator McRae?

24 A. Right.

25 Q. But you did not ask him what he told ---

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1 A. No, I don't believe I did.

2 Q. --- Mr. Weldon Gregory, who was the initial responding
3 officer?

4 COURT REPORTER: Excuse me. I need you to keep your
5 voice up, please. Repeat that last sentence.

6 BY MS. NEWTON:

7 A. I did not identify. I didn't ask him about Mr.
8 Gregory.

9 Q. Mr. Gregory. Did you ask him about Mr. Gregory's ---

10 A. No, I did not. As I said, I think it came out in
11 other ways, with the exception of the thing about firing
12 into the club. I just did not. In the scheme of things, I
13 thought that was a minor point.

14 Q. Okay.

15 A. Especially a witness who just was reporting a shooting
16 and it was chaos out there. From what I understood, there
17 was chaos. I don't know if I agree with Mr. Gregory
18 totally. That's, there's a shooting. There were people
19 being described under the carwash, people backing out of
20 the door with a gun, the fight in the club, going back and
21 forth across the street. So, I think that's a little
22 chaotic.

23 Q. But you never spoke to Mr. Gregory about this?

24 A. Not that I recall.

25 Q. Okay. On to the gunshot residue issues, you and Mr.

1 Bax testified that you had Mr. Hollifield, the gunshot
2 residue expert, at the trial but you did not call him to
3 refute the state's expert, correct?

4 A. Correct.

5 Q. And did you discuss that with Mr. Wray?

6 A. I couldn't tell you whether we did or we didn't. I
7 would normally do that, but I, I did not -- I had nothing
8 -- well, I shouldn't say that. I had a lot to do with it,
9 but I didn't have anything to do with the
10 cross-examination. Mr. Bax did the cross-examination.

11 We, I'm sure, made the decision together not to call
12 him after speaking with him. You know, I would think that
13 we mentioned it to Mr. Wray, but I can't think if I did or
14 not. I normally would.

15 Q. Okay.

16 A. Not, why not to call a specific witness. You know, I
17 usually try to get the client involved in something like
18 that.

19 Q. And then just to clarify the last part of the
20 testimony where the -- where you discussed how the trial
21 was continued at the last minute with Mr. Watson and other
22 witnesses.

23 A. Yes.

24 Q. But just to clarify. Was a weapon ever found in this
25 case?

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1 A. No. I said that there was no weapon found.

2 Q. And despite -- that was despite a dive team searching
3 several creeks and...

4 A. Yeah. I wasn't going to go out there and look.

5 Q. Yeah.

6 A. No. I mean, that's exactly what happened. I mean, it
7 was, it was an unfortunate turn of events because it
8 happened on the day we were starting the trial when Watson
9 comes forward with this. And, you know, I thought we did
10 everything we could to impeach Watson and Jarrell and
11 Roshonda and I thought, I thought we did a pretty good job
12 of that.

13 MS. NEWTON: I believe that's all the questions I
14 have. Thank you.

15 THE COURT: Any redirect limited to what she went
16 into?

17 MS. HARRIGAN: Yes. Very briefly, Your Honor.

18 REDIRECT EXAMINATION BY MS. HARRINGTON:

19 Q. Mr. Swerling, do you have a copy of Respondent's
20 Number 7 up there, or State's Number 7, the handwritten
21 incident report?

22 A. Yes.

23 Q. If you'll look at that and read the narrative to
24 yourself, please.

25 (A PAUSE.)

J. SWERLING - REDIRECT EXAMINATION BY MS. HARRIGAN 218

1 A. Yeah. What's -- I'm sorry. Looking at it, I mean,
2 the first part of that was consistent with what he told
3 McRae.

4 Q. And it says in here that: The complainant states
5 suspect number two fired over the top of the vehicle.
6 Correct? At the bottom part of the narrative, the last
7 sentence on the first page?

8 A. Yeah, you're right. He does not say fired at the
9 club. So, I was just kind of -- I thought that the counsel
10 was representing what was actually in there, but that's
11 not. It does say shooting toward the club in the sentence
12 before that but then said: Over the top of the vehicle.

13 Q. And it doesn't say anywhere in here that shots were
14 fired into the club, just shooting towards the club,
15 correct?

16 A. Towards, towards.

17 Q. And again: Complainant states suspect number two fired
18 over the top of the vehicle. Correct?

19 A. Correct. Yeah. You know, now that I see this also,
20 and this could have been a factor, too. And again, it's --
21 you know, the trial was five years ago. You have to
22 forgive an old man, but it says that:

23 The suspect attempted to enter the club and
24 complainant says -- told suspects he was closed.
25 Complainant states one of the suspects made a

1 comment to the effect I've got something for you.

2 I'll tell you what's significant about that is that's
3 also what he told McRae about Watts and Wray. That they
4 tried to come in the club, he wouldn't let them in, and
5 then they -- that Watts said I've got something for you.
6 So, in one way this kind of corroborates a little bit what
7 he told McRae, and that might have been a problem that we
8 saw at that time going into that.

9 Q. And again it says a white vehicle SUV, correct? It
10 never says Isuzu Trooper?

11 A. It doesn't say -- I don't -- you know, it says a white
12 Nissan with a black stripe.

13 Q. Further down, do you see a few lines up where it says:
14 Complainant states a white vehicle SUV?

15 A. Yeah, white SUV, right, and to me, I never -- I don't
16 know that I -- an Isuzu, I guess some people call it an
17 SUV. I don't know. A Suburban is an SUV to me.

18 Q. And it was also a light-colored Suburban, correct?

19 A. Right, and I do remember that being a concern. When
20 you say white, are you talking tan? Are you talking about
21 white? It's 4:00 a.m. in the morning.

22 I mean, I -- let's put it this way. There was
23 obviously a reason why I didn't, wouldn't have explored
24 this myself, although I do think Ms. Johns explored it.
25 But one of the reasons is it seems like it's also in some

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1 way corroborating what he told McRae about saying I've got
2 something for you. That's what he told McRae. So, this
3 would have been, this would have been consistent with what
4 he told McRae. So, that would have been, you know, a red
5 flag for me as well at that time, I believe.

6 Q. And it states a Nissan, correct, but it doesn't state
7 Trooper Isuzu or Chevy Subaru, correct? It just ultimately
8 gets ---

9 A. Right.

10 Q. --- the make wrong for the car?

11 A. And unfortunately I just can't really speak to it.

12 MS. HARRIGAN: No further questions, Your Honor.

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

14 (THE WITNESS EXITS THE STAND.)

15 THE COURT: Any reason why this witness can't be
16 excused?

17 MS. HARRIGAN: No, Your Honor.

18 THE COURT: Thank you, sir. You may also be excused.

19 MS. HARRIGAN: And, Your Honor, if I may have a moment
20 to check to see if the seven exhibits were introduced all
21 as state's exhibits?

22 (A PAUSE.)

23 MS. HARRIGAN: And that's the state's case, Your
24 Honor.

25 THE COURT: You have anything in reply?

1 MS. NEWTON: Your Honor, we don't have anything in
2 reply. I, I have a couple of brief words we could say.

3 THE COURT: All right. Be more than happy to hear
4 from you.

5 MS. NEWTON: Okay. I know we're at the end of the
6 day, and I -- we don't need to go back through the facts of
7 the case or the, the -- our grounds here. I think we
8 covered the grounds. Appreciate everyone's attention all
9 day.

10 I do just want to emphasize to the court we have only
11 discussed a little bit at the beginning this actual
12 prejudice that befalls to my client, and that is really the
13 most important thing here.

14 As to the deficient handling of the gunshot residue,
15 the effect of that really was that the state's expert
16 witness, his, his testimony was bolstered because the state
17 several times throughout the trial called it gunshot
18 residue. The expert himself said the lead particles were
19 consistent with the gun being fired, and the presentation
20 of those lead particles really was a lot stronger than just
21 saying there were lead particles.

22 And, and the ultimate result of that, of, of that GSR,
23 those mistakes that we allege are -- is that the Court of
24 Appeals relied upon that. They cite as a corroborating
25 factor in their affirming the trial court that there was

1 presence of gunshot residue. We think that that's
2 definitely evidence of how my client was prejudiced.

3 And as to the failure to call the initially responding
4 officer, we've talked about that handwritten report a lot,
5 and it's in evidence, and I believe you have a copy. It
6 contradicts the only eyewitness to this, to this crime, the
7 only eyewitness to the shooting, and it -- and he was not
8 asked about that report specifically. He was
9 cross-examined vigorously on other matters, but Mr. -- the
10 person who wrote that report, Mr. Gregory who testified
11 today, he was never consulted during the initial trial. He
12 was never allowed to give that initial statement of Mr.
13 Jacobs. So, we believe that that was also prejudicial to
14 my client, and ultimately those failures resulted in his
15 being unable to have a fair trial.

16 MS. HARRIGAN: Briefly in response, Your Honor.
17 Addressing the failure to call a gunshot residue expert,
18 the state would submit that Mr. Bax and Mr. Swerling's
19 performance was not deficient. They retained an expert.
20 He helped prepared them for trial. Additionally, he sat
21 through the motion in limine to exclude the testimony and
22 the cross-examination and direct examination of the state's
23 expert. That their performance was not deficient in that
24 regard.

25 Furthermore, the state would submit no prejudice can

1 be shown. Wray's own expert today conceded that the most
2 important component of gunshot residue was found in
3 multiple locations in the car. And most telling, he could
4 not state what he was basing his expert opinion on today,
5 what documents he relied on, or other materials he received
6 that he was basing his expert testimony on. And the state
7 would submit, with all due respect to him, that he
8 ultimately is not credible. He couldn't tell the court
9 what he was basing any of his expert opinions on.

10 Turning to the allegations regarding the Weldon
11 Gregory report, we had testimony from Mr. Swerling that
12 he'd already gotten all pertinent information in through
13 cross-examination of Jacobs, the testimony of McRae, and
14 other law enforcement officers. The state would submit
15 there is no deficiency in that regard. Mr. Swerling set
16 forth a strategic reason why he traditionally in his
17 forty-year career does not like to call law-enforcement
18 officers, and that pertinent information came in through
19 other means. And that no prejudice can be shown because
20 all pertinent information did come in through other means.

21 Additionally, there are several things highlighted by
22 Mr. Swerling during redirect from State's Exhibit Number 7
23 that are troublesome that could have actually bolstered the
24 state's case if he'd relied upon this document or called
25 Mr. Gregory.

1 Turning to the *Brady* violation allegation in regards
2 to State's Exhibit Number 7, the state would submit there
3 is no *Brady* violation. There's no evidence that this was
4 material or material for impeachment purposes or that the
5 state intentionally withheld the officer's name from the
6 bottom of this report.

7 Mr. Swerling testified he has an excellent working
8 relationship with the solicitor's office. He easily could
9 have called over there and received this information, and
10 he does not believe, based on his recollection, that this
11 was intentionally withheld from Mr. Wray or the defense
12 team.

13 Turning to the allegations for failure to call
14 eyewitness Timothy Weldon, I think on two fronts it's
15 speculation at best what Mr. Weldon would have testified to
16 because Mr. Wray did not present him here today.
17 Therefore, there can be no prejudice shown. Furthermore,
18 if you look at State's Exhibit 1, State's Exhibit 2, and
19 State's Exhibit 3, Mr. Weldon was interviewed by at least
20 three different people, possibly four, and there were
21 strategic reasons why he was not called. Same in regards
22 to Mr. Morris. There was also testimony as to why he was
23 not called and, it was a strategic decision that was made.

24 In regards to the allegation regarding vouching for
25 the credibility of a witness, that portion is in volume

1 number 8 of the transcript. The court can review it on its
2 own, but the state would submit that that does not amount
3 to vouching. You had testimony from Mr. Swerling that in
4 his forty-year career, he often makes arguments to that
5 regard, and the state would submit that the state -- the
6 case law in South Carolina does not support that that is
7 improper vouching made on behalf of the state.

8 Regarding the allegation that appellate counsel was
9 ineffective for failing to raise the improper gunshot
10 residue testimony, this allegation is somewhat curious
11 because in one regard, Mr. Wray is alleging that his
12 counsel didn't do enough in regards to gunshot residue.
13 And on the other hand, he's saying, well, it was preserved
14 and my appellate counsel.

15 The state submits that it can't be both. The state
16 submits that it was properly preserved by Mr. Wray's
17 counsel, by Mr. Swerling and Mr. Bax, and that the
18 testimony of appellate counsel shows she raised the issues
19 she believed to be meritorious. There was -- her standard
20 practice is to raise all meritorious issues. She, in
21 review of the transcripts, did not find that to be a
22 meritorious issue to raise. Furthermore, case law in South
23 Carolina cites that appellate counsel is not required to
24 raise every meritorious issue on appeal. They're allowed
25 to select from the ones that they find most meritorious.

1 And so based on all those reasons, the state would
2 submit this application should be denied in whole. The
3 applicant has not met its burden of proof.

4 THE COURT: Let me ask you about that last one.
5 Appellate counsel, though, stated that she did not review
6 very much prior to this hearing. And if I recall her
7 testimony correctly, her statement to this court was that
8 her duty as appellate counsel is, is to raise all issues
9 that she sees are meritorious. And that her reason, as I
10 understood her testimony correctly, her reason that she
11 gave us today, the fact that it was not raised is because
12 her standard practice is to raise all meritorious defenses.
13 So, she must have thought that it was not meritorious
14 because she had no opinion on whether or not it was
15 preserved or not preserved because she could not recall.

16 MS. HARRIGAN: Yes. I believe that was the testimony.
17 She says that she does not like to raise *Anders*, does not
18 like to file *Anders* briefs. She will work hard to find any
19 issues that she believes are meritorious to raise; she
20 tries to raise all meritorious issues. However, case law
21 in South Carolina is that counsel cannot be ineffective for
22 not raising a meritorious issue when other meritorious
23 issues are raised.

24 THE COURT: Regardless of how strong that meritorious
25 issue may be that was not raised?

1 MS. HARRIGAN: I don't believe we had any testimony
2 from ---

3 THE COURT: I'm asking a question. You've made the
4 general statement as to what the case law is. Now I'm
5 asking a general statement as well. You want to talk about
6 the details of what I heard? I didn't hear very much from
7 appellate counsel.

8 MS. HARRIGAN: Certainly, Your Honor.

9 THE COURT: She gave me -- she stated what her duty
10 was. She stated what her opinion was about her duty, and
11 then she said I really don't recall anything about the case
12 because I didn't look at it very much before I came in
13 here.

14 MS. HARRIGAN: Certainly, Your Honor. I think that
15 appellate counsel has a duty to raise the most meritorious
16 issues she sees. She did raise three distinct issues, and
17 her testimony was, I believe, that she had no independent
18 recollection, but those must have been the three most
19 meritorious issues when she reviewed it back in 2009.

20 THE COURT: Well, Mr. Bax stated that he felt like
21 that that issue, that the judge was wrong.

22 MS. HARRIGAN: Yes, Your Honor.

23 THE COURT: And he seemed to be quite adamant on that
24 position. So, I'm going to be taking a look at that issue.

25 I think that this appellate issue presents a, probably

1 a little bit of problems for both sides because applicant
2 could not say, to be successful on appellate issue, that
3 the trial attorneys were deficient in not preserving a
4 record on that issue. And at the same time, the state
5 cannot argue that the applicant's attorneys at trial didn't
6 do something. Therefore, it's not properly preserved.

7 I have to go on what I heard from appellate counsel,
8 and appellate counsel came in here and stated what her duty
9 was, which is to raise all meritorious issues. That was
10 her testimony, and so I have to view that duty from what
11 she testified to.

12 MS. HARRIGAN: Your Honor, with all due respect, I do
13 believe that that is a -- Ms. Franklin-Best's testimony was
14 an incorrect standard of the law in South Carolina. I
15 don't believe she has a duty to raise -- under South
16 Carolina law, I think we're -- I can't think of a case
17 right off the top of my head, but I'd be more than happy to
18 provide one for the court and opposing counsel. The -- our
19 Supreme Court or Court of Appeals has never held that
20 appellate counsel has a duty to raise, raise every single
21 meritorious issue.

22 THE COURT: Okay, but the lawyer who handled the
23 appeal stated what her duty was ---

24 MS. HARRIGAN: Certainly, Your Honor.

25 THE COURT: --- in this courtroom, okay? So, that is

1 how I believe I have to view what she did is based on what
2 she says she did. And I just didn't hear very much from
3 appellate counsel to give me guidance.

4 MS. HARRIGAN: Certainly, Your Honor.

5 THE COURT: She had not even looked at the opinion
6 that was issued. So, I have to now take a look at this
7 through my eyes.

8 MS. HARRIGAN: Certainly.

9 THE COURT: Based on what I heard. It is what it is,
10 you know?

11 You want to argue the appellate issue because you
12 didn't raise it in your closing. You didn't say very much
13 about the appellate issue.

14 MS. NEWTON: Well, yes, Your Honor. I, I think that
15 just in general the whole gunshot residue expert, I mean,
16 the whole, the whole issue in relation to the GSR, and
17 that's what we tried, tried to kind of muddle through and
18 explain to the court.

19 We agree with Mr. Bax that, that, that testimony
20 should have been excluded. And as he stated, he thinks the
21 trial judge was wrong.

22 I've spoken to Ms. Franklin-Best, and she does not
23 recall why they chose not to appeal that. We think it was
24 a good appellate issue, and my client says he did want that
25 appealed.

1 THE COURT: Well, let me ask you this.

2 MS. NEWTON: But it was not.

3 THE COURT: If at a PCR level the judge decides that
4 maybe appellate counsel should have done something
5 differently and that issue should have been addressed, that
6 doesn't entitle, if I understand you correctly -- please
7 correct me if I'm wrong -- that does not entitle the
8 applicant to a new trial.

9 MS. HARRIGAN: Your Honor, it actually does. There is
10 no way to just go and have him have a new direct appeal.
11 The relief would be for a new trial.

12 THE COURT: Even though there was no error made? Even
13 though I could not find any error made at trial?

14 MS. HARRIGAN: Yes, Your Honor. If, if the court was
15 to find that appellate counsel was ineffective, the relief
16 would be for a new trial. However, the standard has to be
17 not only that you show prejudice by that had appellate
18 counsel raised that issue in a meritorious brief, that it
19 would have warranted reversal from the appellate court.

20 And the state would submit even if there is
21 insufficiency, based on Ms. Franklin-Best's testimony,
22 which the state still submits is an incorrect standard of
23 law, there would be no prejudice because that issue would
24 not have been successful on appeal.

25 I understand that Mr. Bax testified that he believes

1 the testimony should have been excluded. I believe that's
2 why defense counsel makes motions to exclude in limine and
3 objects all the time: because they don't believe it's
4 proper. But it's a very stringent standard before
5 appellate courts and for leave to be granted, it would have
6 had to have merit on appeal.

7 THE COURT: So at this level, I have to actually --
8 if, in fact, I think that that might be an issue that I --
9 that there was a mistake made, I actually have to review
10 that issue, though, in the light of sitting as an appellate
11 court, what would the Supreme Court have ruled if they had
12 given the opportunity to address that issue?

13 MS. HARRIGAN: The case law does state that to show
14 prejudice, it would have had to be meritorious on appeal,
15 and the only relief unfortunately is to remand for an
16 entire new trial, not just to re, redo the appellate
17 process.

18 THE COURT: So, if I understand you correctly, the
19 prejudice prong of a PCR is, on that topic, is measured by
20 what the appellate court would have done?

21 MS. HARRIGAN: Yes, Your Honor.

22 THE COURT: Is that -- you agree with that?

23 MS. NEWTON: Yes, Your Honor.

24 THE COURT: Okay. Okay. Anything else?

25 MS. HARRIGAN: If Your Honor would like any sort of

1 memorandum of law on that issue from state or Mr. Wray's
2 counsel, I'd be more than happy to provide it.

3 THE COURT: Well, it's a voluminous record, so I'm not
4 going to be making any decisions real soon. So, if y'all
5 -- I don't need anything extensive, but if y'all have
6 something in your data banks already that you can cut and
7 paste and just give me some statement on that law, I'll be
8 more than happy to receive it.

9 MS. HARRIGAN: Certainly, Your Honor. Thank you.

10 THE COURT: All right, anything else?

11 MS. NEWTON: Not from applicant.

12 THE COURT: All right.

13 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 3RD DAY OF NOVEMBER, 2014.

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

S/ELIZABETH B. HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

JULY 19TH, 2015

Tim Weldon
TAB 43

To Clark 3/6/68

Saw Brian Johnson fighting (like
from picture)

Saw outside the guy with deeds
who later got shot during car
wash with a Desert Eagle

Saw White Schuman driving down
road - Devin fired 10-11 rounds
during the shooting was Brian
Johnson. He had deeds.

Saw 12mm fire shot

Went with Marvin to the hospital

To Mr. Dowd 3/24/69

Shooter was the tall guy with
deeds who had been fighting in
the club

To McNeely 4/28/06

Saw a guy Taller than him
6'1", wearing a white
T-shirt and dreadlocks

Large Guy 200-225, 5'11" with
dreadlocks holding a .40 caliber

Saw Ford Expedition (white) -
Shots fired from driver side

Only saw a white jeep also
firing a gun

Guy driving expedition had dreadlocks
and looked like guy in fight.
I'd watch photo of guy in
dreadlocks who was in fight



Information Services LLC

PRIVATE INVESTIGATIONS

TO: Arie Bax
Jack Swerling

FROM: David B. Mac Dougall

RE: The State v. Tremaine Wray

**INCIDENT
DATE:** June 30, 2007

CHARGES: Murder

**REPORT
DATE:** March 7, 2009

Pursuant to your request a defense investigation was undertaken on behalf of your client, Tremaine Wray.

INTERVIEWS

Numerous interviews with the following individuals were conducted by me. Interview Reports for each is enclosed.

1. Tremaine Wray; client/suspect.
2. Nellie Wray; client's grandmother.
3. Daryl Wray; client's uncle.
4. Ronald Wray; client's uncle.
5. Ricky Jacobs; key witness to shooting.
6. Darius White; witness to some of the events of June 30th.
7. Norris Bond; witness to some of the events of June 30th.
8. Charlie Bates; witness to some of the events of June 30th.
9. Verda Roberts; witness to some of the events of June 30th.
10. Brian Kenneth Johnson; possible witness to the events of June 30th.
11. Meria Davis; mother of client's child.

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The State v. Tremaine Wray

March 7, 2009

I reviewed several interviews conducted by Lawrence Mc Neely of the Richland County Public Defender's Office. That office originally represented Tremaine Wray.

Mc Neely took a statement from Timothy Weldon who is listed by the Richland County Sheriffs Department as one who "*saw shooting*".

On April 28, 2008 Weldon, who was incarcerated, told Mc Neely he saw a guy 5'11" 200 plus pounds, dark skin and *dreads in his hair* standing near the first bay of the carwash holding a "40 caliber". This guy was hollering and you could tell he was *pissed off at some unknown person*.

Based on a photograph presented to Weldon by Mc Neely he identified Taurus Watts as one of the subjects involved in the club fight.

Statements given to Mc Neely by Ron Wray, Daryl Wray, Neile Wray, Kasondra Roper, Deneshia Fulton, Brian Morris and Tyheem Shell were reviewed by me. No investigative leads or new information was garnered.

Although Brian Johnson's November 28, 2007 statement to Mc Neely differs from what Johnson told on February 27, 2009 I found nothing of value to the defense. I suspect Johnson did not give either of us a truthful account.

Nika Hunter is a cousin to Daryl and Ron Wray. She was not present at the club but was told by "*James Connelly*" that he saw Taurus firing into a crowd and Tremaine firing in the air. I have not seen the name James Connelly or a statement from him in the discovery. I conducted no investigation to locate him.

I attempted to interview several witnesses or potential witnesses. Among them was Lisa Johnson who is not cooperating.

One of the Richland County Sheriffs Department reports lists Julicca "Lisa" Johnson's cell phone number as [REDACTED].

Page 3

The State v. Tremaine Wray

March 7, 2009

A portion of a 2004 custody action brought by the father of Julicca "Lisa" Johnson's son, Antonio Crosby was copied and accompanies this report. It provides some background information on Lisa Johnson.

My efforts to interview the following people continue.

- Lisa Johnson; witness to some or all of the events of June 30th.
- Maurice Cunningham, friend of Tremaine Wray's and possible witness.
- Allen Watts, friend of Tremaine Wray's and cousin of Taurus Watts, possible witness.
- Luther Landrum, passenger in the Rodeo from which a shot was fired.
- Earl Jerome Green, driver of the Rodeo from which a shot was fired.

A limited background investigation of The State's key witness, Ricky Jacobs, was conducted by me. This is reflected in a separate report that accompanies this report.

I will continue my attempts to contact with Ricky Jacobs to have him sign a statement prepared from my interview with him.

CORONER'S REPORT and INFORMATION

I noted a few items of interest in the Coroners report and notes.

1. The victim was 67 inches tall and weighed 190 pounds.
2. The victim had dread locks and a full beard.
3. The toxicology showed the victim with a blood alcohol level of .063%.
4. The toxicology showed the victim's his urine alcohol level as .125%.
5. The victim's system was negative for drugs.
6. The victim was pronounced dead at 5:05 am by Dr. Michael Taillon.
7. The victim died of Exsanguination due to a gunshot wound on his back left leg.
8. Victim had *blunt trauma to forehead* which was attributed to a fall in trauma room.
9. A "*plastic bag containing multiple baggie individually wrapped containing green plant like material appearing to be marijuana and baggets (sic) individually packed with white powder substance and a large wad of cash [\$94.00]*" was found on the victim.
10. A single *Levitra* pill was found wrapped in tin foil in victim's wallet.

All contraband and cash was turned over to the Richland County Sheriffs Department.

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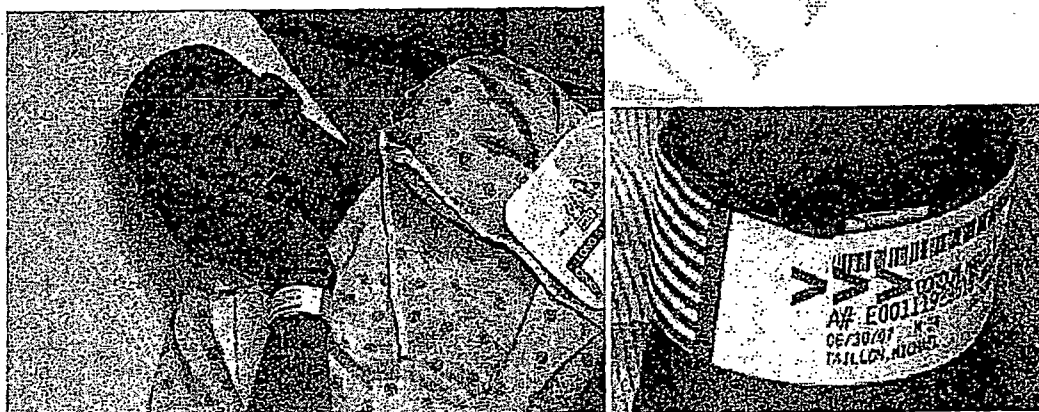
The State v. Tremaine Wray

March 7, 2009

RICHLAND COUNTY SHERIFFS DEPARTMENT

Crime Scene photographs

Among the crime scene photographs is one of an unidentified *victim* I believe is Marcus Gordon. He appears to have a two inch scratch on his arm. He was treated by Dr. Michael Taillon. Gordon was with Timothy and Derrick Weldon at the club



Drug Analysis

Melissa Horne of the Richland County Sheriffs Department Drug Identification Section tested the drugs taken from the deceased and determined them to be:

- 3.29 grams of cocaine in twelve bags;
- 11.51 grams of marijuana in twelve bags.

Page 5

The State v. Tremaine Wray

March 7, 2009

Laboratory Analysis

SLED did an analysis of samples collected from the 1999 Suburban (Tremaine Wray's) and found *round lead particles* that are *one of the components of gunshot residue*.

The SLED analysis of the samples collected from the 2001 Rodeo (Green & Landrum) was negative for gunshot residue.

Due to Don Gimdt being retained by your office as a crime scene and forensic expert I did no further examination of the forensic evidence.

911 Calls

During my review of the 911 calls I noted that one caller describes a vehicle leaving the scene as "*one of them old cars...one of them Chevrolet Caprice...box Chevy... two tone...Blue and black.*"

This call came from a nearby resident who was returning home after taking his wife to work. He is not identified by name, address or telephone number.

This reference to *box Chevy*, as is also noted in the CAD Report, is obviously not the Suburban. This man makes no mention of a Suburban during his call.

The State Newspaper

Two news articles relating to a previous incident at 2820 Hard Scrabble Road were located.

1. On June 13, 2007 this article appeared.

A third man was arrested Tuesday in connection with the June 3 fatal shooting of a man on Westbridge Drive in Richland County, Sheriff Leon Lott said. Louis Sanders, 36, is charged with murder in the death of 32-year-old Israel Cannon.

Cannon was shot after a dispute between the men and Cannon's wife at a club on Hard Scrabble Road, deputies said.

Garry Bernard Green, 36, and Justin Chadwick Green, 25, have previously been charged with murder.

Page 6

The State v. Tremaine Wray

March 7, 2009

2. On June 5, 2007 this article appeared.

Two men accused of shooting a man to death over the weekend after an argument at a club on Hard Scrabble Road turned themselves in to police Monday.

Garry Bernard Green, 36, and Justin Chadwick Green, 25, are each charged with murder, according to arrest reports. Israel D. Cannon, 32, died from a gunshot to his head, Richland County Coroner Gary Watts said. He had been shot multiple times. The Greens are at the Alvin S. Glenn Detention Center, Richland County Sheriff Leon Lott said Monday.

Police are searching for a third person who might have witnessed the shooting.

SUMMARY

From the information I have gathered combined with that of the Richland County Sheriffs Department and Lawrence Mc Neely it appears to me that this situation started with two men (Darius White and Charlie Jacobs) vying for the attention of a girl (Lisa Johnson).

Machismo evolved into punches being traded which developed into a bar room brawl involving the non-lethal use of weapons. There is no credible evidence any gunshots were fired in the club.

An intoxicated Taurus Watts obtained a gun from Tremaine Wray's Suburban brandishing it as he strutted throughout the parking lot at 2820 Hard Scrabble. Wray drove Watts away in his vehicle and as they passed the club/carwash area someone fired a semi-automatic weapon out the driver's side of Wray's Suburban.

I found no one who can offer first hand testimony as to who fired the weapon or that either Wray or Watts admitted as to who was the shooter.

Interestingly no one I spoke with has been notified of the trial date or received a Subpoena.

My investigation will continue and I welcome your suggestions, thoughts and directions.

Information Services LLC

PRIVATE INVESTIGATIONS

TO: Arie Bax
Jack Swerling

FROM: David B. Mac Dougall

RE: The State v. Tremaine Wray

INCIDENT
DATE: June 30, 2007

CHARGES: Murder

REPORT
DATE: May 1, 2009

Pursuant to your request my defense investigation on behalf of your client, Tremaine Wray, continued.

Outback Steakhouse, 7611 Two Notch Road, Columbia, South Carolina.

Four interviews were conducted with persons working at the Outback Steakhouse when Tremaine Wray was arrested.

Mark Donnelly was the manager at the time however; he did not witness the search of Wray's Suburban by the sheriff's department.

Donnelly did confirm that employees were instructed to park their vehicles in the parking lots adjacent to Outback and not near the restaurant.

Interviews Reports for three other Outback employees are enclosed.

Page 2

The State vs. Tremaine Wray

May 1, 2009

Gary W. Clark, Sr. - Private Investigator

The interviews conducted by Gary Clark, the Private Investigator working for Taurus Watts counsel, were reviewed.

I found the following points noteworthy:

Urain Wilson told Clark that he and Ricky Jacobs walked away from the club down a dirt road across the street from the club. Wilson heard shooting from three or four different weapons.

Wilson says shooting was still going on when the first deputy arrived. *[This is suspect since there is nothing in the police reports or CAD report verifying this].*

Wilson has been arrested numerous times for PWID crack and assorted other misdemeanors.



Timothy Weldon told Clark that he saw the shooters face and it was "the tall guy with dreads who had been fighting in the club". He may be referring to Brian Johnson. *This is more detailed than what he told me.* My Interview Report for Weldon is enclosed.

Brian Morris told Clark that he was part of a conversation with Ricky Jacobs at H & J Pub around seven am on the morning of June 30, 2007. This would have been three to four hours after the shooting. Jacobs told the group that someone had been shot at the car wash next door. Jacobs said he was across the street when the shooting started and that *Watts and Wray had started the shooting.*

Page 3

The State vs. Tremaine Wray

May 1, 2009

Morris has numerous arrests for PWID crack, guns and assault.



Landon Monroe is the half brother of Taurus Watts. Monroe told Clark that shortly after the shooting he called Tremaine Wray's cell phone to check on Taurus. For reasons unknown he did not have Taurus' cell number. Monroe said Tremaine was "*extremely upset...almost incoherent...he sounded frantic*".

Monroe quotes Tremaine as saying, "*Just tell Taurus to stick with the story*".

Monroe has numerous arrests including for weapons, carjacking, resisting arrest with deadly weapon and drug possession.



Within a week of the shooting Monroe had a conversation with Brian Johnson during which Johnson stated he saw Tremaine Wray firing a gun out the driver's side window of the vehicle he was driving. He was wearing a plastic glove and firing in the direction of the car wash. Norris Bond, also part of this conversation, agreed with Johnson.

Page 4

The State vs. Tremaine Wray

May 1, 2009

Landon Monroe told Clark that in June 2007 his cell phone number was [REDACTED]
According to cell phone records Tremaine Wray's phone was connected to [REDACTED] on
June 30, 2007 at:

- 3:31 am for twenty (20) seconds;
- 4:44 am for seven (7) seconds;
- 4:46 am for one minute and forty four (1:44) seconds.

Video

The video from the dashboard camera in Deputy Galinski's car details the apprehension of Luther Landrum and Earl Green. At the time of these arrests deputies thought they were the shooters.

I have reviewed and analyzed this video. My report is enclosed.

Conclusion

After review of this report and the accompanying documents advise what additional investigation will be needed.

Information Services LLC

PRIVATE INVESTIGATIONS

INTERVIEW REPORT

The State of South Carolina vs. Tremaine Wray

TREMAINE WRAY

I met with Tremaine Wray at the Alvin S. Glenn Detention Center. He provided contact information for some people he hopes will be able to assist in his defense.

Tremaine offered the following account of events on the early morning of June 30, 2007.

He arrived at H & J Pub at 1:43 am. This is based on a cell phone call he made to Deneshia Fulton at the time. Inside he spoke with Maurice Cunningham and/or Allen Watts

Tremaine sat at the bar most of the time and was unaware of the fight until it was nearly over. He had no confrontations or problems with anyone at the club.

Tremaine saw Brian Johnson involved in the fight with a guy he believes was "D. White" a/k/a Darius White.

To end the fight the shooting victim (Johnson) pulled out what Tremaine describes as a *derringer* and waved it around to separate the fighting factions. Tremaine left the club and went to his Suburban. As he got in preparing to leave Taurus (Watts) walked up and asked for a ride. Tremaine knew Watts but says they are not close friends.

Tremaine drove away with Taurus in the vehicle. He made no mention of the shooting or Taurus having a gun. I did not push him on this.

While in the Alvin S. Glenn Detention Center, both are in dorm M, Taurus told Tremaine that prior to the fight at H & J Pub he (Taurus) had been introduced to the victim (Johnson), his friends and family.

Taurus told Tremaine and "Urain" (sp?) stated that he was with Ricky Jacobs at the time of the shooting and Ricky *did not see it*. Theresa Johns is supposed to be planning to Subpoena "Urain". Tremaine had no additional identifier information for this subject.

A Corrections Officer at Alvin S. Glenn Detention Center told Tremaine that he knew a girl who was at the club at time of the shooting. She has not been interviewed by the police. I explained to Tremaine that it is *very important* that he get identifier information for this woman so I can interview her. As of the date of this report he has not provided any information.

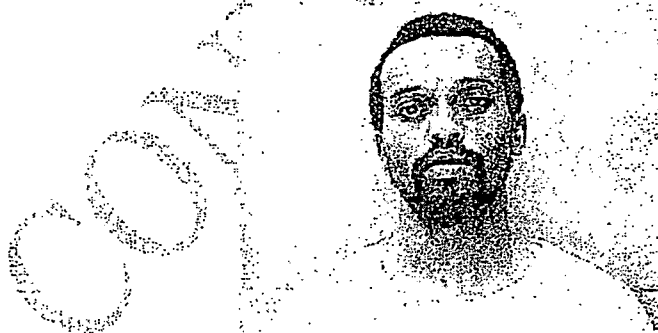
When I suggested that Ricky Jacobs may be a snitch (due to several of his drug charges being dropped) Tremaine immediately agreed.

Tremaine says that cars parked along Hard Scrabble Road on the grass between the street and the car wash would have blocked the line of sight between a vehicle on the road and the victim making it impossible for anyone in his Suburban to shoot anyone in the car wash.

Tremaine and Taurus Watts saw the victim and Charlie Bates in the (H & J) parking lot waving guns around. No one will admit this to the police.

Tremaine contends that one of the witnesses identifying Taurus Watts from a photo lineup that showed Watts with dreads. Tremaine says Watts had short hair on June 30, 2007.

Watts booking report from July 1, 2007 was obtained.



After being shot in 2006 Tremaine met with Vanessa Shipley, the prosecutor handling the case against shooter.

Notebook

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PRIVATE INVESTIGATIONS

INTERVIEW REPORT

The State of South Carolina vs. Tremaine Wray

Defendant NO

NORRIS BOND

SCDC #329894

Kirkland Correctional Institution

Columbia, South Carolina

Norris Bond was interviewed on Friday March 6, 2009 at Kirkland Correctional Institution where he is serving ten years for Assault with Intent to Kill and Trafficking Cocaine.

Bond was given one of my business cards as well as a complete explanation as to the purpose of my interview.

Bond is from and grew up in Washington Heights (Briercliff Drive area). He knows most of the people from the area including Tremaine Wray and Taurus Watts. Bond was born in 1979.

Bond, his home girl "Asia", Brian Johnson and Little Boo (Darius White) arrived at H & I (Pub) about midnight on June 30, 2007. They danced, drank, socialized and had a good time. Bond did not see Tremaine Wray or Taurus Watts in the club but concedes they could have been there.

A fight started when a young, black, male with corn row braids threw a drink in Boo's (Darius White) face. Bond does not know who this was but surmises it may have been the shooting victim.

Bond took "Asia" outside to get away from the fight. They were standing near the store front when Bond saw Tremaine (Wray) and Taurus (Watts) talking in the parking lot. Taurus walked to the Suburban and came back with a black gun. Taurus, who Bond describes as being drunk,

walked around the lot *talking shit*. It appeared to Bond that Taurus was angry about the drink being thrown in *Boo's* face.

Within five minutes Tremaine got in the driver's seat and Taurus in the passenger's seat and they drove away. They came back and stopped in the roadway in front of the club.

Bond saw an arm and hand holding a gun stuck out the driver's side window. The hand was wearing a white latex glove. Several shots were fired at random in the direction of the club and then the Suburban took off.

Bond can not say if the shots were fired by Tremaine or Taurus. He agrees that a passenger could have leaned over the driver and stuck the gun out the window.

Bond left the club with Asia, Brian Johnson and *Little Boo* (White). They drove directly to Brian Johnson's home in Briercliff. Johnson and White got out of the vehicle. While Bond was talking with them the Suburban arrived with Tremaine driving and Taurus in the passenger's seat.

Referring to the shooting at the club Bond asked them "*What the fuck were you doing?*" Although they talked a lot neither Tremaine nor Taurus offered an explanation or answer for what had happened. Neither admitted to being the shooter. After ten or fifteen minutes Tremaine and Taurus left.

Bond does not recall that he or Brian Johnson received a cell phone call from Tremaine that morning.

Bond has not seen nor spoken with Tremaine or Taurus since that night.

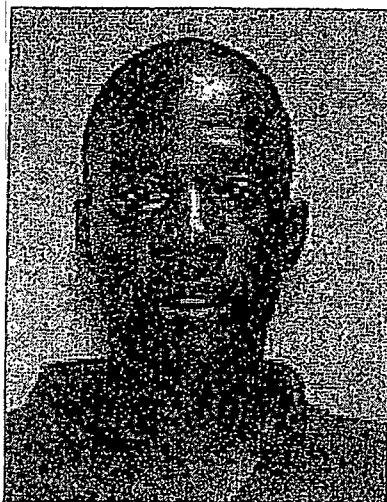
During my interview Bond was very careful in choosing his words sometimes asking me what I had been told. He eventually opened up and seemed to be offering an accurate recollection of the events he witnessed.

I believe he is honest up to the point where he had a post shooting conversation with Tremaine and Taurus. The indication Bond gives, but will not state, is that Taurus may have admitted to being the shooter or Bond can identify Taurus as the shooter.

While he never saw it Bond says the word on the street was that Tremaine Wray carried a Mac 10 or Tec 9.

I asked Bond if he would be willing to testify to what he saw. He is hesitant but agreed to call me and let me know. I explained that if we called him it would be to help Tremaine.

Bond was never interviewed about this shooting by the police although, he admits, they are very familiar with him.



Norris Bond

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PRIVATE INVESTIGATIONS

INTERVIEW REPORT

The State vs. Tremaine Wray

JENNIFER "GWEN" VAN TOORENBURG

[REDACTED]
Columbia, South Carolina 29229
[REDACTED]

Gwen Van Toorenborg was interviewed by telephone at her place of employment, Outback Steakhouse on Two Notch Road in Columbia.

Gwen was working the day Tremaine Wray was arrested at Outback. The police came in with weapons drawn asking for Tremaine. He was working in the back of the restaurant where they were directed. Once he was arrested Wray was removed from the building. Gwen has no idea what happened after that. She did not see them searching Wray's vehicle.

Gwen confirmed that employees are directed to park their vehicles in an adjacent lot when working.

Interviewed by:



David B. Mac Dougall
Private Investigator
SLED PDC #0381

Information Services LLC

PRIVATE INVESTIGATIONS

INTERVIEW REPORT

The State vs. Tremaine Wray

TIMOTHY WELDON

Winnsboro, South Carolina
[REDACTED]

Timothy Weldon was interviewed by telephone on March 24, 2009. Weldon, who had recently been released from the South Carolina Department of Corrections, was living in Winnsboro.

Weldon acknowledged that he was present at the H & J Club on Hardscrabble Road on June 30, 2007. He was there with three friends (*homeboys*) from Winnsboro. He did not know anyone at the club beyond his friends.

When a fight broke out inside the club Weldon left. In the parking lot he noticed a "*dude with a gun*". He does not know who it was. A few minutes later someone on the roadway fired shots from a vehicle in Weldon's direction. He heard bullets whiz by but he was not hit. He doesn't know who fired the shots.

NOTE: During Weldon's interview with Gary Clark [Private Investigator for Watts] a year before this interview, Weldon provided a more detailed description of the shooter. He described the shooter as the "*tall guy with dreads who had been fighting in the club*".

Interviewed by:



David B. Mac Dougall
Private Investigator
SLED PDC #0381

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PRIVATE INVESTIGATIONS

Neteboard

INTERVIEW REPORT

The State of South Carolina vs. Tremaine Wray

TIMOTHY WELDON
Winnsboro, South Carolina

Timothy Weldon is noted on the Richland County Sheriffs Department incident report as one who "saw shooting". I located no police statement by Weldon in the discovery.

It was learned that Lawrence Mc Neely of the Richland County Public Defender's Office had interviewed Weldon while he was incarcerated in the South Carolina Department of Corrections. Since this interview Weldon has been released.

I reviewed the statement Weldon made to Mc Neely on April 28, 2008 at Mac Dougall Correctional Institution.

Two items of interest are highlighted in the attached copies.

Notebook

Information Services LLC

PRIVATE INVESTIGATIONS

INTERVIEW REPORT

The State of South Carolina vs. Tremaine Wray

BRIAN KENNETH JOHNSON

[REDACTED]
Columbia, South Carolina
[REDACTED]

Brian Johnson was interviewed by telephone on February 27, 2009. Johnson was previously interviewed by Lawrence Mc Neely of the Richland County Public Defenders Office. What Johnson told Mc Neely differs from what he told me.

Johnson denies ever speaking with the police about this incident even though he is identified in the discovery. The police mistakenly thought he was "Boo".

Cell phone records show that at 4:14 am a call was placed from Tremaine's cell phone to [REDACTED] [Johnson's number then and now]. This call lasted only 6 seconds indicating there was no answer. At 4:35 am another call was placed from Tremaine's cell phone to [REDACTED] lasting two minutes indicating a conversation took place.

Johnson recalled seeing Tremaine at the club earlier that night but denies having any telephone conversations with him that morning. He does not know why Tremaine would have called him at four in the morning.

Since Johnson was leaving when a fight broke out he kept going and did not witness or involve himself in the fight. He denies seeing or having any first hand knowledge of the shooting.

Johnson has not spoken with Tremaine or Taurus Watts since they were arrested.

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PRIVATE INVESTIGATIONS

N/B

INTERVIEW REPORT

The State of South Carolina vs. Tremaine Wray

DARYL WRAY

Daryl Wray, Tremaine's uncle, was interviewed by telephone on February 25, 2009. He related the following events from July 1, 2007.

On that Sunday Daryl received a call telling him Tremaine was involved in a shooting. Daryl left work and went to his mother's house where he found her distraught over the same rumor. Daryl planned to call Leon Lott if there was any truth to the rumor. He felt that was better than Tremaine getting caught on the street.

Daryl and his mother went in to Tremaine's room and woke him. Daryl asked Tremaine about the shooting. Tremaine denied any knowledge of it which surprised Daryl since everyone on the street (and TV news) was talking about it. In spite of the denial Daryl felt that Tremaine knew something and was not being totally honest. [Daryl was reluctant to tell me this]

Daryl offered to call someone who could help Tremaine but the offer was denied. Tremaine took a shower and left for work.

Daryl, who has known Ricky Jacobs since they were ten years old, found Ricky at the (H & J) Club. Ricky told him that Tremaine was involved in the shooting and may have been the shooter.

Ricky said there had been a fight in the club but Tremaine was not there. When Tremaine arrived Taurus got in the vehicle with him. After a few minutes Taurus got out with a 9mm in his hand and asked Ricky, "Where's the mother fucker now". Taurus walked around the parking lot asking people "where they at now, I'm ready for them now". Ricky told Taurus they were gone

Page 2

Daryl Wray interview

February 25, 2009

and he should leave. Taurus got in Tremaine's truck and as they pulled off someone started firing out the driver's window.

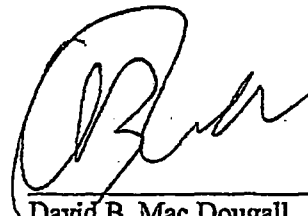
Ricky told Daryl the fight in the club involved Brian Johnson and the shooting victim. Taurus got upset when he found out about the fight and started running his mouth.

Daryl believes the H & J is a *cover* for cocaine dealing. The whole Jacobs family is involved including Ricky's brother, *Bill*. They have been moving large quantities for a long while.

Daryl denied ever telling the Sheriffs Department investigator that *Tremaine was acting strange*.

Daryl was and remains cooperative. He has not been contacted by the police or prosecution since July 2007 but agreed to call me if he is contacted or subpoenaed.

Interviewed by:



David B. Mac Dougall
Private Investigator
SLED PDC #0381

Information Services LLC

PRIVATE INVESTIGATIONS

INTERVIEW REPORT

The State of South Carolina vs. Tremaine Wray

CHARLIE LORENZO BATES

[REDACTED]
Columbia, South Carolina
[REDACTED]

Charlie Bates was interviewed at his home on Friday March 6, 2009. Charlie was given an explanation of our representation of Tremaine Wray and the reason for my interview.

We reviewed the only statement Charlie gave the police. He has heard from no one since that day.

Charlie agreed with most of what was in his statement although he disputes his description of the two *dudes* that were looking at him and started the fight. The tall one was closer to five feet ten inches (5' 10") than six feet two inches (6' 2") as described in the statement. The second subject was shorter and stockier than the other.

We looked at the original booking photograph of Tremaine Wray but Charlie did not recognize him. Charlie thought he had seen the man in Watts July 2007 booking photograph but could not identify Watts as one of the men that started the club fight.

Charlie recalled that he had gone to the club (H & J) with his mother, Verda Roberts, her sister and brother Travis, "Hank" (the victim) and one other man.

Charlie was dancing with Lisa (Johnson), who he has known for years, when a *dude* he did not know approached him. When the *dude flared up* (Uncle) Travis stepped in and pushed Charlie out of the way. When the fight started Charlie got a cut on his upper lip which he (and the doctor

that stitched it) thinks was made by some kind of blade. Charlie has no idea who cut him or with what type weapon.

Charlie says a lot of people were involved in the fight. A more accurate description may be a "brawl".

Charlie's recollection of the events from the beginning of the fight until he got to the car is sketchy. The six (6) of them (Verda, her sister, Travis, Hank, the male and Charlie) decided to leave. They had parked their two cars in a wash bay at the carwash next to the club. Verda's Envoy had been pulled straight into the bay with the front end extending beyond the edge of the bay. Travis' sedan (with Alabama registration) was parked directly behind the Envoy. They were parked perpendicular to Hard Scrabble Road.

When he got to the car Charlie heard several shots being fired. Based on the sound and the *flashes* he saw Charlie believes the shots were fired from the back of the club or the club patio on the back of the building.

During this interview Charlie kept saying *he is sure* the shots were fired by the guys that started the fight. When I asked if he saw the shooter(s) Charlie said, "*No*". Later he again stated that he did not see the shooter but *thought* it was the same guys involved in the club fight.

Travis, Hank (the victim) Charlie and the other male got into Travis' car. Verda and her sister got in the Envoy. While there were a few other cars in the carwash parking lot they had no difficulty driving out. They headed toward the hospital when they realized Hank had been shot.

Charlie was and remains cooperative and provided with his contact number.

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Notebook

INTERVIEW REPORT

The State of South Carolina vs. Tremaine Wray

DARIUS WHITE

[REDACTED] Rd
Columbia, South Carolina
[REDACTED]

Darius White was interviewed by telephone on February 27, 2009. Tremaine Wray gave me White's name as a possible witness to some of what occurred at H & J Pub prior to the June 30, 2007 shooting. White was twenty six years old at the time of this incident.

White told me he, not Brian Johnson, is known as "Boo".

White confirmed that prior to the shooting he saw Tremaine Wray at the H & J Pub. There was nothing out of the ordinary with Tremaine. That was his only encounter with Tremaine that night.

White knows Taurus Watts and spoke with him at the club that night but did not see Watts involved in any altercations.

White was talking with Lisa Johnson when a *dude* threw a drink in his face. They fought until someone he thinks was one of the *dude's* homeboy's pulled a gun. White described it as a small black .22 caliber pistol. That brought the fight to an end. *The dude* and the subject with the gun left the club with a group of about eight or nine people. White did not know any of these people and never saw them again.

White was in the club when the shooting took place and denies any first hand knowledge of what happened outside.

White was and remains cooperative.

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Notbook

INTERVIEW REPORT

The State of South Carolina vs. Tremaine Wray

MERIA DAVIS
[REDACTED]

Columbia, South Carolina
[REDACTED]

Meria Davis is the mother of Tremaine's child. Although Meria is now dating another man she is still concerned about Tremaine and plans to attend his trial.

Meria has never discussed the shooting with Tremaine before or after his arrest although she has visited him in jail.

In June 2007 Meria was pregnant with Tremaine's child. They were not getting along very well and were constantly arguing.

She could not recall any specific conversations she had with Tremaine on the morning of June 30th. She could not even confirm that they spoke that morning. She had a prepaid cell phone and does not recall the number.

On Sunday, July 1, 2007 she went to Tremaine's where they argued. This was shortly before he left for work. They did not discuss the shooting and she did not know he was a suspect. When she left she was upset believing they were over as a couple.

On that night's 11 pm news she saw that Tremaine had been arrested for murder. That was the first she knew of his involvement.

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Noted

INTERVIEW REPORT

The State of South Carolina vs. Tremaine Wray

RONALD WRAY

Ronald Wray is the son of Nellie Wray and uncle of Tremaine. He has no direct knowledge of this incident and knows little about the people involved.

Ronald has known Ricky Jacobs for years. He has heard that Ricky was being overly cooperative with law enforcement in hopes of taking some of the heat off his club due to the large number of problems at the club. He has heard that the club is a *haven for drug dealers*.

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N. J. K. K.

INTERVIEW REPORT

The State of South Carolina vs. Tremaine Wray

NELLIE WRAY

Nellie Wray is the grandmother of Tremaine Wray. In June 2007 he lived with her.

While the Richland County Sheriff's Department searched her home she was talking with Investigator Mc Rae. This was after Tremaine had been taken arrested.

Mc Rae told her that Tremaine *didn't fit that profile* referring to the type of person who would commit such a crime. Mc Rae told her there was a lot of shooting at the crime scene and that it looked like a shoot out.

The night of the shooting Tremaine left about 11:30 pm to drive his girlfriend home to West Columbia. He stopped at the club on his way home.

She describes Tremaine as being a *quiet* person who worked all the time.

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PRIVATE INVESTIGATIONS

INTERVIEW REPORT

The State vs. Tremaine Wray

MAURICE CUNNINGHAM

[REDACTED]
Columbia, South Carolina
[REDACTED]
[REDACTED]

On April 17, 2009 Maurice Cunningham was interviewed at the Outback Steakhouse where he is employed.

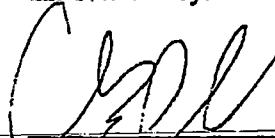
Cunningham grew up in Washington Heights and has known Taurus Watts and Tremaine "Tree" Wray most of his life. He speaks well of his long time friend "Tree".

Cunningham confirmed that he had spoken with a private investigator a year ago. We reviewed the *Memorandum of Interview* prepared by Gary W. Clark, Sr. generated following his interview with Cunningham on April 11, 2008. Cunningham agreed that the report was accurate.

Cunningham confirmed that the man he saw on the dance floor at H & J with a small handgun had "long dreads". Cunningham does not know who it was but confirmed it *was not* Taurus Watts. Cunningham does not know who shot the victim.

On the day Tremaine was arrested Cunningham was not at work when the police arrived. Since he does not drive he is not sure of the policy regarding where employees were supposed to park their cars.

Interviewed by:



David B. Mac Dougall
Private Investigator
SLED PDC #0381

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PRIVATE INVESTIGATIONS

INTERVIEW REPORT

The State vs. Tremaine Wray

MARION JACOBS

[REDACTED], Columbia
Columbia, South Carolina 29203
[REDACTED]

Marion Jacobs was interviewed at the Outback Steakhouse on Two Notch Road. He recalled being present at Outback when the police arrested Tremaine Wray.

Jacobs recalled that Wray's Suburban was parked away from the restaurant but not hidden. Employees park behind or away from the restaurant to allow customers the better parking spots.

Jacobs saw five to ten deputies *all over* Wray's Suburban searching through it. Jacobs had nothing to do with the arrest or search of the vehicle.

Jacobs, who does not frequent clubs, was not present at the time of the shooting at H & J. He knows nothing about it beyond what he has heard.

Interviewed by:



David B. Mac Dougall
Private Investigator
SLED PDC #0381

MEMORANDUM OF INTERVIEW

File Name: WATTS, TAURUS

DATE: March 12, 2009
TIME: 3:15 pm
PLACE: [REDACTED]
Columbia, SC 29209

INTERVIEWEE: [REDACTED] URAIN WILSON

BY: Gary W. Clark, Sr.

On March 12, 2009 Urain Wilson was interviewed at his parents home regarding an altercation and subsequent shooting at the H&J Club 2820 Hardscrabble Rd. Columbia, SC during the AM hours of June 30, 2007. Urain stated substantially as follows:

He arrived at the club on Friday June 29, 2007, accompanied by his girlfriend Kamaleh Wilson. Sometime during the early morning hours of Saturday June 30, 2007 a fight broke out in the club. A guy with dreads that he did not know, pulled a gun and was trying to get his friends out of the club who were involved in the fight. He was waving the gun around and backing them toward the front door.

He and Kamaleh left the club and went outside. When the people who had fought came out he heard one of them say "we about to shoot this mother-fucking place up". He saw the guy with the pistol strike June (aka Catfish) in the face with his pistol, near the front door.

He and Kamaleh followed Ricky Jacobs, the club owner, across Hard Scrabble road and down the dirt road across from the club. He believes this is Harold Rd. It is the road that runs beside Jacobs' parents' house. The three of them went far enough down the road that they could not see down Hard Scrabble in the direction of Farrow Rd. Additionally, there were a lot of trees and shrubberies, and a house between them and area of the Car Wash. However, they could see the front of the club. They saw the 'bouncer' Sherman firing his gun somewhat wildly. He had a revolver. He seemed to be chasing and/or shooting at Brian Johnson. Johnson was running away from the club. He heard shooting from three or four different weapons. Gunfire was still happening when the first police car pulled up. He saw the officer in the car leaning over to stay low and using his radio. More police cars showed up and the shooting stopped. They thought it was safe then so he and Jacobs walked back across the street to the club.

He had been with Jacobs from the time they left the club. Jacobs did not encounter Taurus Watts in the parking lot. Taurus had short hair that evening. At some time in the distant past he had had dreads, but he had long since cut his hair short. Jacobs knows Taurus very well and has known him for many years. He did not see Taurus with a weapon and Taurus was not involved in the fight.

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MEMORANDUM OF INTERVIEW

File Name: WATTS, TAURUS

DATE: March 12, 2009
TIME: 2:15 pm
PLACE: [REDACTED]
Columbia, SC 29228

INTERVIEWEE: Brook Boyles

BY: Gary W. Clark, Sr.

On March 12, 2009 Brook Boyles was interviewed at his parent's residence regarding his knowledge of Taurus Watts. Boyles stated substantially as follows:

He has been a friend of Taurus Watts for years. During, he believes the summer months of 2006, he drove Taurus to 'Killian's Barber Shop' for a hair cut. At the time, Taurus had dreads. He has maintained his association with Taurus to date and Taurus has never let his hair grow back long.

When he saw a news broadcast on television after the shooting at the 'Pub', he saw a picture of Taurus who they said was wanted for questioning. The picture was an old photo showing Taurus with dreads. He wondered why they were showing such an old photo when Taurus had long since cut his hair short.

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MEMORANDUM OF INTERVIEW

File Name: WATTS, TAURUS

DATE: March 9, 2008
TIME: 3:50 pm
PLACE: Alvin S. Glenn Detention Center (RCDC)
201 John Mark Dial Dr.
Columbia, SC 29209
INTERVIEWEE: DARIEN D. GORDON, DOB: [REDACTED]
BY: Gary W. Clark, Sr.

On March 9, 2008 Darien D. Gordon was interviewed at the Richland County Detention Center, dorm 'Y', regarding an altercation and subsequent shooting at the H&J Club 2820 Hardscrabble Rd. Columbia, SC during the AM hours of June 30, 2007. Gordon stated substantially as follows:

He is a resident of Winnsboro, South Carolina. On Friday June 29, 2007 he, his brother Marcus Gordon, and their friends Timothy Weldon and Derrick Weldon drove to Columbia, SC to celebrate Marcus' birthday. They traveled in Marcus' car which Marcus drove. As he recalls they went directly to "The Pub" on Hardscrabble Road. They did not go there to meet anyone, just to hang out. He does not recall at what time they arrived, however, it was late in the evening. Once at "The Pub" the four of them sat in the area with stools and chairs, just drinking and chilling.

Sometime well after midnight a fight occurred. The music stopped playing and the house lights were turned on. He saw two guys fighting in the dance area. Also, there were a couple of women involved who appeared to be helping the 'dudes' they were with. He didn't see any guns and the fight only lasted for about one and one-half to two minutes. He did not know the people who were fighting, but he does not that Watts was not involved in the fight. Once the fight ended, the people involved and some other patrons exited through the front door.

Fairly quickly, a black male, fairly heavy set and bald, who usually worked behind the counter at "The Pub" was standing in the front doorway as other patrons were headed toward that exit. He believes this guy is the owner of "The Pub". This individual was blocking the exit, trying to close the door. He was telling everyone "Don't go out"! Gordon was located near the 'DJ' booth; he could see and hear this individual quite well. Gordon heard gunfire from outside "The Pub". The people who had headed for the front door immediately turned around and were ducking for cover. The dude who had closed the door remained inside.

Gordon headed for the rear exit that opens onto the patio. He led the way, his brother Marcus was followed. He does not know where Timothy and Derrick Weldon were located at that time. They got separated in the crowd. He (Gordon) went through the back door onto the patio. There were perhaps ten people on the patio when he stepped through the

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exit. Everyone was on their stomachs trying to obtain cover. Immediately as he exited he heard four more shots. He heard Marcus scream. He turned around and Marcus was lying on his back on the patio deck, shaking. He (Gordon) called out for help. One of the bouncers and a customer who said he was a nurse's aide came to help Marcus. He (Gordon) was scared and crying. He was very concerned about his brother. He didn't know whether he had been shot. Gordon believes he used Marcus' cell phone to try and call their mother, but he is not sure. He doesn't recall seeing any blood on Marcus. Someone (unknown) called for an ambulance.

He did not see Timothy and Derrick Weldon again until the ambulance arrived. The three of them watched as the crew loaded Marcus into the ambulance. The crew would not let him (Gordon) ride in the ambulance with Marcus. Gordon and the Weldons rode in Marcus' car, following the ambulance to Providence Hospital. The ride took only a couple of minutes. The ambulance beat them to the hospital. Marcus was already inside.

Once inside the hospital he (Gordon) saw people who had been at "The Pub". They said that their friend had been shot. Gordon did not know any of these people. He did not see the wounded guy, but his blood was all over the floor. Gordon was very concerned about his brother and not paying attention to much of anything else.

About ten to fifteen minutes after he got to the hospital, the police arrived. The police talked with the friends of the shooting victim. They did not talk with him (Gordon). Sometime later Saturday morning, he believes his wife came to pick him up. He believes Timothy and Derrick Weldon drove Marcus' car back to Winnsboro. Either Marcus later told him that the shooting victim had died, or he heard it on the news.

The only person he saw at "The Pub" that evening, that he knew, was Taurus Watts. He saw Taurus Watts inside the club when he (Gordon) and his party arrived. Gordon knew Watts from previously having lived in the same neighborhood. They exchanged greetings and went their separate ways. He doesn't recall seeing Watts later and doesn't know if Watts was with other people that evening. He does know that Watts was not involved in the fight that took place at "The Pub".

Gordon identified a photograph of Watts taken by Richland County Sheriff's Department personnel when he was taken into custody on July 3, 2008. Gordon said that Watts' haircut, as he appears in this photograph is consistent with his hair length when he saw him at "The Pub" on Friday June 29, 2007. Watts did not have dreads when he (Gordon) saw him at "The Pub".

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MEMORANDUM OF INTERVIEW

File Name: WATTS, TAURUS

DATE: April 11, 2008

TIME: 3:40 pm

PLACE: [REDACTED]

Columbia, SC 29223

INTERVIEWEE: MAURICE G. CUNNINGHAM, DOB: [REDACTED]

BY: Gary W. Clark, Sr.

On April 11, 2008, Maurice Cunningham was interviewed at his residence regarding an altercation and subsequent shooting at the H&J Club 2820 Hardscrabble Rd. Columbia, SC during the AM hours of June 30, 2007. Cunningham stated substantially as follows:

He arrived at the Pub on Friday June 29, 2007 around 11:00PM. He caught a ride with someone who dropped him off, but he does not recall that person's name. He began an evening of drinking, socializing, and dancing. Everything was fine and everyone was having a good time.

He saw Tremaine Wray enter the club by himself around midnight. Wray told him that he had to leave kind of early because he had to work on Saturday. He asked Wray to give him a ride. Around 2:30AM he asked Wray if he was ready to leave; he wanted to go home early himself, he had to be at work at 8:00AM. Wray had been drinking and told him that he would leave around 3:30AM.

Sometime, he believes around 3:00AM a fight broke out in the club. It started on the dance floor. A girl named Lisa was on the dance floor with, I believe, "Boo". Lisa's boyfriend, some guy about 5'9", medium complexion, low hair cut and wearing a basketball team cap, got jealous and threw a drink in Boo's face. Boo is young, 5'8", stocky a light complexion and very low hair.

Punches were thrown and Brian Johnson intervened to break up the fight. He thinks he was at the club that evening with Boo. Lisa and two other women were trying to break up the fight. He saw one of the women sliding backwards across the floor. Some guy about 5'9" with shoulder length dreads, 180-185 pounds and a dark complexion came rushing up from the rear deck. His friend, the guy who got jealous and threw the drink was on the floor. This guy was trying to help him get up. This guy pulled a shiny, small pistol, maybe a .22 caliber. He believes he held it in his right hand. He was waving the gun at the crowd telling everyone to stay back or he'd shoot them.

Customers backed up and away from the fight. He looked toward the front door and saw Wray run out the door. That was the last time he saw him that evening. He had seen Taurus Watts earlier in the evening talking and socializing with different people. Neither Watts nor Wray had anything to do with the fight.

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He believes Ricky Jacobs, the club owner told the people fighting that they had to leave. Lisa and her group left. Brian Johnson was beside him in the club after the fight ended. Jacobs followed Lisa and her group outside. Jacobs stayed inside the club near the front door. He thinks Boo left the club.

About ten minutes after Lisa and her group left, he heard gunfire. There were two sets of fire, the first sounded like a small caliber handgun, perhaps 3 or 4 shots. The second set of fire totaled as many as 20 shots and was a heavier caliber. He went into the bathroom for safety because the bathroom walls are brick constructed. He stayed in the bathroom for several minutes.

A couple of women were shouting that someone on the rear deck had been shot. He called out to Jacobs who went to the deck to check on the guy. A guy he didn't know was lying on the deck, twitching (shaking). It turned out he wasn't shot, but had some type of seizure.

Around 4:45AM he got a ride with Mike Davis. Wray was already gone and wasn't available to give him a ride. Wray was at work at the Outback restaurant Saturday morning. He asked Wray what happened to him the night before and he responded that he had gone home. Wray was his same old self, cracking jokes and laughing.

He didn't learn that someone had gotten shot until he saw the evening news around 6:00PM Saturday. He heard they were looking for a tan vehicle. Wray's vehicle is a tan Suburban. He had been parked out front of the Pub that Friday evening. Wray's was the only tan vehicle he saw that evening. He knows that Wray shot up a Pizza Hut some time ago. He has never been into guns and didn't see anyone with a gun at the club that evening except the guy with dreads.

Watts was wearing a baseball cap that evening at the club. He does not recall noticing if Watts had short hair or dreads.

Jacobs was at the bar when Wray went out the front door. It was about 10 minutes after Wray left when Lisa and her crew left the club. He has heard that Jacobs does drugs but he does not know that to be true.

The bouncer at the club was a short, stock guy with dreads. He and Jacobs were out front. Jacobs was outside the front door. He believes they were watching whatever was going on outside. He heard that the dude with the dreads that had a gun 'pistol whipped' someone, but he didn't see this happen.

Ricky Jacobs knows Taurus Watts and Tremaine Wray very well and has known them for many years. Likewise, he has known Jacobs for years.

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MEMORANDUM OF INTERVIEW

File Name: WATTS, TAURUS

DATE: February 14, 2008
TIME: 8:15 am
PLACE: Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669
INTERVIEWEE: BRIAN MORRIS, DOB: [REDACTED]

BY: Gary W. Clark, Sr.

On February 14, 2008 Brian Morris was interviewed at the Perry Correctional Institution regarding an altercation and subsequent shooting at the H & J Club 2820 Hardscrabble Rd. Columbia, SC during the AM hours of June 30, 2007. Morris stated substantially as follows:

He arrived at the H & J Club around 10:30 - 11:00 pm on Friday June 29, 2007 and remained there until 9:00 - 9:30 am Saturday June 30, 2007.

He went to the club by himself. He was drinking and playing electronic poker at a machine located in the club. Sometime, he believes, around 2:45 - 3:00 am, he noticed a disturbance in the club. He didn't see a fight, but he saw people moving toward the exits. He stopped playing poker and left the club through the kitchen. Once outside he encountered Taurus Watts and Tremaine Wray. Wray was heading toward the club but Watts met him (Wray) and encouraged him back, away from the club, saying, "Come on"! He never saw either Watts or Wray with a gun or any type of weapon. Watts and Wray headed toward Wray's gold-in-color Chevrolet Suburban. This vehicle was parked at the far end of the club parking lot near the old telephone. He did not see Ricky Jacobs, the owner of the H & J Club in the parking lot, nor did he see Jacobs interact with Watts or Wray.

He saw Brooks Boyles, a friend of his, in the pool hall portion of the club. He entered the pool hall and saw Watts and Wray leave in the Suburban. He observed them turn onto Hardscrabble Road headed toward Farrow Road. Approximately one minute later, he heard gunfire emanating from the left front end of the club, adjacent to the car wash. He heard six or seven different weapons firing. He believes there were as many as forty shots fired. He heard semi-automatic fire. From his vantage point in the pool hall he saw people in front of the club running, diving, and crawling; all moving away from the direction of the car wash.

He believes Jacobs was in the club, behind the bar, when the fight occurred. Bouncers Kelly (LNU) and Jeff (LNU) were also in the club. He (Morris) saw Ryan Williams, a friend of Jacobs, seated in the bar area, when he (Morris) left through the kitchen. The fight took place about 20 feet from where he had been playing poker. He believes Williams was one of the people he saw crawling in the parking lot to escape the gunfire.

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The police came to the club sometime between 4:00 – 5:00 am on Saturday June 30, 2007. The police took contact information from everyone in the club. [He provided bogus identifying information.] Jacobs' mother or grandmother runs the kitchen. She was present when the police arrived and talked with the police. He (Morris) observed the crime scene officers taking photographs and picking up shell casings at the car wash, in front of the club, and near the front door to the club. He believes there were a lot of shell casings. Additionally, outside the kitchen door, across the speed bump, he observed, he believes, a red-in-color Nissan. He saw blood drops near this vehicle, and observed the police take a sample of the blood.

About thirty minutes after the shooting he saw a friend of his, Calista McKenzie and her cousin Marisa depart from the car wash in Marisa's car. He believes they may have been at the car wash when the shooting occurred.

Around 7:00 am on Saturday June 30, 2007 he (Morris), Jacobs, Williams, Boyles, and a couple of other people were sitting in the club. Jacobs told us, "Some dude got shot in the car wash parking lot". That was when I learned that someone had been shot. Jacobs told him (Morris) that he had been across the street from the club when the shooting started. Jacobs said that Watts and Wray had started the shooting. He (Morris) looked at Jacobs in disbelief.

Morris later heard that Jacobs did not immediately identify Watts and Wray to the police; and that he only provided their names later when pressured. Jacobs has known Watts since he (Watts) was a teenager. Watts' mother used to work in the kitchen at the club. Besides, Watts is a frequent patron of the club.

At some later date (unrecalled), Watts told him (Morris) that after he and Wray left the club, they heard gunfire and turned around, heading back toward the club to see what was going on. However, they didn't go all the way back and turned onto another street. They then continued to where Watts had been earlier in the evening.

Subsequent to the incident (date not recalled), "Moe" (name not known), a friend of his (Morris), told him that he had been beside the guy that got shot at the car wash. "Moe" said that the guy fell on him when he got hit and got blood on him. "Moe" also said that the guy who was shot had a gun and was waving it around. He (Moe) did not say whether the guy was firing his gun. However, "Moe" said that gunfire from several directions was focused on the guy who was shot.

He (Morris) was told by another friend, "Dre" (Andrew Wilson), that a bouncer at the club named "Sherman" had shot the guy, or at least was shooting at him. "Dre" identified "Sherman" as a black male with dreads.

Morris identified copies of three letters, dated August 13, 26, and 30, 2007, respectively, that he had written to Taurus Watts. Regarding page one of the August 13 letter, Morris stated, "I saw u pushing charman Ray back from the front door. He had plastic gloves on with some type of gun in his hand..." Morris advised, in clarification, that "charman" is actually "Tremaine Wray". Morris further advised that with reflection and the passage of time, he recants his statement that Wray wore plastic gloves and had a gun in his hand. Regarding

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page two of his letter dated August 26, Morris stated, "I told u in the letter, that u didn't have a gun, but tree did". Morris advised that "tree" refers to Tremaine Wray. He further reiterated his retraction of his statement that Wray had a gun.

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MEMORANDUM OF INTERVIEW

File Name: WATTS, TAURUS

DATE: March 6, 2008
 TIME: 10:50 am
 PLACE: Kirkland Correctional Institute
 4344 Broad River Road
 Columbia, SC 29210
 INTERVIEWEE: TIMOTHY D. WELDON, [REDACTED]
 BY: Gary W. Clark, Sr.

On March 6, 2008 Timothy D. Weldon was interviewed at the Kirkland Correctional Institute regarding an altercation and subsequent shooting at the H&J Club 2820 Hardscrabble Rd. Columbia, SC during the AM hours of June 30, 2007. Weldon stated substantially as follows:

He is a resident of Winnsboro, South Carolina. On Friday June 29, 2007 he and his brother, Derrick Weldon accompanied Marcus and Darien Gordon to Columbia, SC. It was Marcus' birthday and they were going to celebrate. They rode in Marcus' car which Marcus drove. At around 10:00 – 11:00 pm they arrived at a club in Columbia named "Evolutions". They stayed there for about one and one-half to two hours. Once they left "Evolutions" they went straight to the H & J Club on Hardscrabble Road. There were about thirty people there when they arrived. They drank and danced until well into Saturday morning.

Around, he believes, sometime between 3:00 – 4:00 am Saturday morning, he heard a lot of arguing. He heard angry shouting and saw pitchers flying through the air. He saw two guys fighting. One was tall, at least 6'2", and dark skinned. Weldon identified a photograph of Brian Johnson as the individual he saw fighting. He did not see anyone in the club with a firearm.

When the fighting started, he and his brother Derrick went outside. Marcus and his brother, Darien stayed inside the club. He saw the guy with dreads, who later got shot, pacing at the car wash next door to the club. Marcus had parked his car near Hardscrabble Road, near the brick wall that divides the club from the car wash. The guy with dreads was holding what Weldon believes was a 'Desert Eagle' pistol in his right hand. Weldon did not see anyone with the guy at that time. He (Weldon) and his brother were near Marcus' car.

Weldon and his brother were only eight to ten feet away from the guy pacing with the pistol. They were afraid he might start shooting so they moved away from there, relocating behind the brick wall that divides the car wash from the day care center next door. While behind this cover Weldon tried to contact Marcus' cell phone. Marcus had the keys to the car.

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Weldon and his brother stayed behind the wall for a number of minutes until they were confident that things had settled down. They then began slowly moving back toward the club, using cars parked at the car wash as cover. Weldon observed a white-in-color Suburban or Expedition "creeping" down Hardscrabble Road toward Farrow Road. This vehicle sped up then slowed again. Weldon and his brother took cover behind cars parked inside a bay at the car wash. He saw the driver of the white vehicle turn his body toward the driver's side door, partially leaning out of the window, extending his right hand out of the driver's side window. This individual held a gun in his right hand and fired ten or eleven shots, aiming toward where the guy with dreads and the 'Desert Eagle' had been pacing. Weldon said that he could not see the guy pacing at that time because he (Weldon) had taken cover behind a car. However, the white vehicle was in front of the car wash while the driver was shooting. Weldon saw the shooter's face and said that he, the shooter was the tall guy with dreads who had been fighting in the club (Brian Johnson). Weldon said that he had seen this individual's face clearly in the club because they turned up the lights when the fight started. Weldon said that the shooter was wearing a white 'crew neck' tee shirt and not hat. He added that he did not see any jewelry on this individual. Weldon said that the shooting started about fifteen to twenty minutes after he and his brother left the club. Weldon does not know if the guy with the 'Desert Eagle' fired his weapon. He did not see this individual again.

Weldon said that there was a white-in-color jeep type vehicle driving down Hardscrabble Road behind the white Suburban/Expedition. He is not sure, but he believes that someone in this second vehicle also fired a weapon. Weldon said that both vehicles continued driving toward Farrow Road.

Once they were confident it was safe, Weldon and his brother headed back to the club. They did not see the guy with the 'Desert Eagle'. They went to the back of the club, on the patio. When they arrived, Marcus was lying on the deck having a seizure. Marcus' brother Darien was with him. His initial concern was that Marcus had been shot. Marcus later told him that he heard a bullet whiz past his head when he stepped through the door.

An ambulance transported Marcus to a nearby hospital. He (Weldon), his brother and Marcus' brother Darien rode to the hospital in Marcus' car. When they arrived at the hospital he (Weldon) saw three or four guys and at least one woman waiting on the guy who got shot. He learned that they had transported the victim to the hospital. There was blood all over the emergency room floor. The guy who had been in the fight with the tall guy with dreads was one of the people waiting on the victim. This guy's face was all messed up from the fight. He (the guy) asked Weldon and his brother (Derrick) if they had been the ones shooting.

While at the hospital, Weldon was contacted by a deputy with the Richland County Sheriff's Department. The deputy asked him what kind of vehicle he saw. Weldon told him he saw a white Expedition and a white jeep. The deputy did not ask him for any more details regarding the fight or shooting and he didn't volunteer any information.

Weldon, his brother Derrick and Darien Gordon were at the hospital for several hours, waiting on Marcus. The three of them returned to Winnsboro, Marcus remained as a patient. Weldon did not know if anyone else was injured at the club that evening. He learned on the Saturday night news that the guy who had been shot later died.

Weldon was shown a photograph of Taurus Watts and said that he may have seen him standing at the bar that evening. He also said that he may have been throwing \$1 bills on the dance floor. However, Weldon said that Watts was not involved in either the fight or the shooting.

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MEMORANDUM OF INTERVIEW

File Name: WATTS, TAURUS

DATE: March 1, 2008

TIME: 1:45 pm

PLACE: [REDACTED]
Columbia, SC 29180

INTERVIEWEE: MARCUS D. GORDON, DOB: [REDACTED]

BY: Gary W. Clark, Sr.

On March 1, 2008 Marcus D. Gordon was interviewed regarding an altercation and subsequent shooting at the H&J Club 2820 Hardscrabble Rd. Columbia, SC during the AM hours of June 30, 2007. Gordon stated substantially as follows:

He arrived at the H & J Club in Columbia between 10:00 and 11:00 pm on Friday June 29, 2007. He rode with his brother, Darien Gordon. They met his girlfriend's (Courtney Perry) half-brothers Timothy Weldon ("Necktie") and Jonathan Weldon ("Marshall") at the club. June 29th was his (Marcus Gordon) birthday. This visit to the club was his birthday celebration. However, because he was going to drive home, he had no alcohol that evening.

Sometime during the early morning hours of Saturday June 30, 2007, a fight broke out in the club. He and his party were on the dance floor when the fight took place. He did not actually see who was fighting, but he saw a black male with long dreads, accompanied by two women, leaving the club. The male held an inverted beer bottle, in his hand, by the neck.

As he and his brother (Darien Gordon) were exiting the club the shooting started. He was just ahead of his brother. He stepped out the front door of the club and pivoted to his left. He was headed toward the car wash located next door to the club where they had parked their car. Immediately, as he turned, he heard a bullet whiz past his left ear. He did not see who fired the shot, however, considering his position and direction of travel, the shot originated from the car wash next door. He was not struck by the bullet. However, his brother later told him that he blacked out and fell backward striking his head on the asphalt. His brother also told him that he had some type of seizure and actually bit his own tongue, causing some bleeding in his mouth.

When he awoke he was on a bed in the hospital. He does not remember anything else regarding the shooting or his transport to the hospital. He believes he was at the Providence NE Hospital. When he awoke he had an IV in his arm. His attending physician (unknown) told him that his blood pressure was very high and that he had a slight concussion. This physician also told him that he had run an EKG, blood tests and had taken x rays, but had no explanation as to why he blacked out and had the seizure or why his blood pressure was so high.

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His brother told him that two guys had been shot at the club and that one of them had died. His brother (Darien Gordon), "Necktie" and "Marshall" all accompanied him to the hospital. "Necktie" and "Marshall", he believes, remained outside while his brother was inside with him. His brother later told him that they had seen a black-in-color Ford Explorer, with 20" rims, peel away from its' parking spot at the end of the car wash nearest the club, shortly after the shot that missed him was fired. His girlfriend came to pick him up and they left the hospital around 9:00 am Saturday June 30, 2007.

He has not been contacted by the Richland County Sheriff's Department regarding the incident at the club.

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MEMORANDUM OF INTERVIEW

File Name: WATTS, TAURUS

DATE: February 6, 2008
TIME: 9:15 am
PLACE: Alvin S. Glenn Detention Center (RCDC)
201 John Mark Dial Dr.
Columbia, SC 29209
INTERVIEWEE: TAURUS WATTS, DOB: [REDACTED]
BY: Gary W. Clark, Sr.

On February 6, 2008 Taurus Watts was interviewed at the Richland County Detention Center, dorm 'M', regarding an altercation and subsequent shooting at the H&J Club 2820 Hardscrabble Rd. Columbia, SC during the a.m. hours of June 30, 2007. Watts stated substantially as follows:

He has frequented the H & J Club (also known as Chasers Pub) located at 2820 Hardscrabble Rd Columbia, SC on a regular basis since its opening. On the evening of Friday January 29, 2007 he went to the club as a routine party night. The evening began at his Aunt Betty Mae Telford's house located at [REDACTED]. He was joined there by Demetrius 'Dee' (LNU), Tatia Hearn, and 'Red' (name unknown), 'Dee's date. They all left his aunt's house at approximately 10:15 - 10:30 p.m. They rode in 'Red's gold-in-color Altima which she drove directly to the club. The drive only took a few minutes.

When they arrived at the club they went through the usual security at the front entrance. Kelly (LNU), who he (Watts) believes is a former Probation Officer, and Sherman (LNU) were Security Guards working that evening. They were 'wanded' by the security guards prior to entry. It is customary for the Security Guards to 'wand' and/or frisk all patrons prior to their entry into the club. Once you enter the club, you pay your cover charge, usually collected by Kelly. On the evening of June 29, 2007 Jeff (LNU) was working as the bartender.

(1) 'Dee', 'Red', Tatia and he staked out a corner of the bar located near the bathrooms and exit to patio. This was their spot which at which they remained throughout the evening, drinking and dancing on the nearby dance floor. He and his friends consumed six or seven pitchers of 'Absolute' Vodka during their stay at the club. He was wearing black "Dickies" trousers, a black and white "Raiders" jersey, white "Nike" shoes and a black and white "Raiders" cap. His hair was cut short. In the past he had worn dread locks but he chopped them off in February 2006 to win a \$100 dare.

He first saw Lisa Johnson that evening, he believes, around 1:30 a.m. on June 30, 2007. She

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and a friend came up to the bar near him to order drinks. Lisa introduced him to her friend, Charlie Bates. There were five or six other people with Lisa and Bates that evening. His conversation with Lisa and Bates was very cordial. While Lisa and her group waited on their drinks, they all chatted. Once they received their drinks, Lisa and her group left and went somewhere else in the club. (2)

At, he believes, around 2:30 a.m. on June 30, 2007 Brian 'King B' Johnson and two other black males, (FNU) 'Boo' White and Norris 'Black Boy' Bond approached him at the bar. They seemed somewhat hyper and wound tight. He thought they might be under the influence of a narcotic, but he did not know if that was the case. They talked for a while, and then they drifted away mingling with the crowd. He has known Johnson most of his life. Johnson's father is a retired law enforcement investigator, perhaps a SLED Agent. His name is also Brian Johnson. Brian 'King B' Johnson has never gone by the nickname "Boo". (3)

A short time later he observed Lisa Johnson and Charlie Bates on the dance floor. Brian went up to Lisa and hugged her. As he hugged her, he felt her up, grabbing her buttocks. He did this in front of Bates. Brian and 'Boo' were together; Bond was standing at the bar. Lisa protested Brian's fondling, advising that she was with someone else. Bates exclaimed, "That's my lady, she's with me!" Brian's response was basically, "fuck you!" At that point, Bates threw his drink at Brian. He (Watts) was close enough that some of the drink splashed onto his right front shoulder. After Bates threw his drink, he threw a punch at Brian. Brian and 'Boo' fought with Bates and another black male, possibly Bates' uncle. Bond headed for the front door as soon as the fight started. Bates got knocked to the floor. From nowhere a friend of Bates came to his aid. He was a heavy set, dark skinned, black male with long dread locks. He (Watts) believes this individual was wearing red 'Dickies' pants, a red and black shirt, and a red fitted baseball cap with some kind of black emblem on the front above the bill. This guy jumped into the middle of the fight, holding a chrome pistol (.22 or .25 cal.) in each hand. He waved the pistols in a threatening manner at everyone, saying "Get Back! I'll shoot you, I will!" Bates got up off of the floor, and he, his uncle and his friend with the pistols, backed their way to the front door and out of the club. He (Watts) did not know this individual's name, but he later learned that he was Dumuria Johnson, the one who got shot later that evening. (4)

He observed a woman he believed to be Bates' mother come up behind Brian and hit him in the head with a beer bottle. Brian turned around and punched her in the face like she was a guy. She slid across the floor. (5)

Once the guns came out, everyone in the club dashed for the exits. There were maybe 200 people in the club. He got separated from his three friends. He went out the front door looking for his friends but did not see them. He does not know if the security guards were inside the club when the fight took place, but no club employee tried to stop the fight. When he got outside, both security guards were already in the parking lot. From the parking lot, he saw Charlie Bates and his friends next door at the car wash. The car wash was very well lighted. Someone in Bates' group had struck a club patron in the face. He did not know (6)

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who the guy was but they had knocked him down. As this individual was getting up he (Watts) saw blood about his nose and mouth.

He started toward the right side of the club near the old telephone, where 'Red' had parked her car upon arriving at the club. Then he spotted his friend Tremaine 'Tree' Wray in front of the club talking with people in the middle of the parking lot. He had seen him in the club earlier that evening but had not had a chance to speak with him. He asked 'Tree' to give him a ride to his aunt's house. 'Tree' agreed. 'Tree' and he are lifelong friends. He calls him 'Tree' as a nickname for Tremaine. 'Tree' stays with his grandmother at [REDACTED]. 'Tree' was driving his beige-in-color Chevrolet Suburban. (8)

As he and 'Tree' were going to 'Tree's Suburban, they saw Ricky Jacobs, owner of the H & J Club. Jacobs is a distant cousin of Watts. Watts has known Jacobs all of his life. Jacobs was across Hardscrabble Rd. on a dirt road near the driveway to a private residence. He was with a black male named Ryan (LNU), a former friend of his (Watts) sister, Shona Watts. He (Watts) threw up a peace sign and yelled "I'll see ya, cuz". He suspects that Jacobs was doing cocaine (toot) because Jacobs has a cocaine addiction. (9)

'Tree' pulled onto Hardscrabble Rd passing in front of the club and past the car wash. There were two vehicles behind them that had come down the hill on Hardscrabble. He did not see what type of vehicles they were, but they had not come from the club. He saw Brian walking down the sidewalk headed back to the club. As they passed the car wash, Bates and his group were still at the car wash. Other people leaving the club were walking to their vehicles parked at the car wash. He and 'Tree' had the windows up with, he believes, the air conditioning running. He recalls that the music was playing loudly and that 'Tree' may have had his televisions playing. He did not hear any gunfire. Neither he nor 'Tree' fired a weapon at anyone. He did not have a weapon with him, and to his knowledge, neither did 'Tree'. If he had brought a weapon to the club with him, it would have been in the gold Altima in which he arrived, because he was wanded before entering the club. He does not now, nor has he ever owned a Mac 10 or 11. He is not sure what those weapons are but, believes they are something like an Uzi. (10)

'Tree' owned a .45 cal. Pistol until he fired it, he maintains accidentally, while in the parking lot of the Bi-Lo on Raburn Rd. during, he (Watts) believes, 2003. 'Tree' is currently on probation as a result of that incident. To his (Watts) knowledge, that is the only trouble with the law in which 'Tree' has ever been involved. As they were driving to his (Watts) aunt's house, 'Tree' was drinking a soda. 'Tree' drove straight from the club to his (Watts) aunt's house before 3:00 a.m. 'Tree' said that he was going home. That is the last time he saw 'Tree' on June 30, 2007. (11)

When he arrived at his (Watts) aunt's house, she was asleep. However, 'Dee', 'Red', and Tatia were already there. They were on the front porch. Tony 'Dual T' Telford was on the porch as well. Antonio Rish and 'Boo' pulled up at his aunt's house just ahead of him (Watts) and 'Tree'. 'Boo', who had been at the club, said he called his older brother Antonio to come pick him up when the fight started. While on his (Watts) aunt's porch, they heard

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one gunshot from the direction of the club. While at his aunt's house, 'Catfish' (name unknown) drove up in his pickup truck. He had come from the club. He was asking us if we had a gun. He was bleeding about the nose and mouth and said, "They slapped me with a gun". He (Watts) assumed that Bates' group at the car wash had struck 'Catfish', as 'Catfish's injuries were similar to those of the unidentified man he (Watts) had seen as he and 'Tree' passed the car wash after leaving the club. They also saw blue lights on police vehicles on I-77 and heard their sirens. They talked about the fight for about 15 minutes. 12

'Dee', 'Red', 'Boo' and he (Watts) left his aunt's house in 'Red's gold Altima. 'Red' was driving. They drove to Brian Johnson's house to drop off 'Boo'. Brian and Norris were standing near the street in front of his house. Brian told them that following the fight, he had returned to the club. He said that he was behind the club standing on the patio and was nearly struck by a gun shot that had to have been fired from the back of the car wash. He (Watts) ragged on Norris for running out on Brian and 'Boo' when the fight started. They all talked for about 10 minutes after which 'Dee', 'Red' and he (Watts) continued on to the residence of Latosha Goins at [REDACTED]. Goins is the mother of his (Watts) child. While enroute, he telephoned Goins using 'Dee's cell phone to let her know he was on his way. He arrived, he believes, between 3:15 - 3:30 a.m. and spent the remainder of the night. 13

His mother telephoned him on the evening of Saturday June 30th. She told him that she had heard there had been a fight and shooting at the club the night before and that he and a couple of other neighborhood boys (not named) were involved. He confirmed that there had been a fight but that he was not involved. He further advised that he knew nothing about a shooting. He also received a call from 'Tree' who told him that he heard that someone at the club had been shot after they (Watts and 'Tree') had left.

On the afternoon of Sunday July 1, 2007 his brother Landon Monroe told him that he (Watts) and 'Tree' were suspects in the shooting. He (Watts) telephoned 'Tree's grandmother who advised that 'Tree' had already been arrested and that the police had searched her house.

He was not aware that the police were looking for him until his brother told him he had seen an old picture of him (Watts) on television news. He never had any intention of leaving town; he didn't do anything to necessitate leaving. On July 3, 2007 when he learned that the police went to his mother's house looking for him Watts made arrangements to turn himself in to the Richland County Sheriff's Department. He had his sister take him to the residence of Willie Crosby in Elgin, SC. He then had Crosby drive him to the Sheriff's Office located on Two-Notch Rd. He had difficulty convincing several different officers that he was Taurus Watts because they had the old photo of him when he had dread locks.

Deputies finally told him that he was wanted for questioning. They said that they knew he (Watts) had done nothing wrong, but they knew Tremaine Wray had given him a ride from the club. They wanted him to admit that Wray had done the shooting. When he said that he didn't know anything about a shooting they called dispatch to have a deputy obtain an arrest warrant from a magistrate. Deputies then transported Watts in a paddy wagon to Huger

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Street where he waited for about 30 -45 minutes until a deputy came out and served him with an arrest warrant charging him with murder.

He learned from review of materials provided him that Earl Jerome Green and Luther C. Landrum were in a white Rodeo that was suspect in the shooting incident. He knows who Green is, but is not sure if he has ever met Landrum. He asked deputies why he and Wray were in jail and Green and Landrum were free. Deputies told him that Green and Landrum were under investigation. He does not know if Green and Landrum were involved in the shooting, but he did not see Green in the club or anywhere else on June 29th or 30th, 2007.

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MEMORANDUM OF INTERVIEW

File Name: WATTS, TAURUS

DATE: February 28, 2008

TIME: 6:00 pm

PLACE: [REDACTED]
Columbia, SC 29209

INTERVIEWEE: LONDON J. MONROE, DOB [REDACTED]

BY: Gary W. Clark, Sr.

On February 28, 2008 Landon J. Monroe was interviewed regarding an altercation and subsequent shooting at the H&J Club 2820 Hardscrabble Rd. Columbia, SC during the AM hours of June 30, 2007. Monroe stated substantially as follows:

He is the half brother of Taurus Watts. He went to the H&J Club during the early AM hours of Saturday June 30, 2007. He is not certain as to his arrival time, however, he went there alone. He was there for about one to two hours when he was joined by Shanta Harrison, his girl friend. They left the club shortly after her arrival. They went directly to Harrison's residence.

Perhaps 15 - 20 minutes after they arrived at Harrison's residence his cell phone began ringing. The first couple of callers advised they heard someone at the club had been shot. They were checking on his safety because they knew he had been at the club. Subsequent callers told him that someone at the club had been killed. The last callers told him they heard that Taurus and Tremaine Wray had killed someone.

He didn't have Watt's cell phone number so he couldn't call him. However, since Watts had been linked to Wray in the calls he received, he telephoned Wray's cell phone. He does not recall the time of his call. He spoke with Wray for a few minutes. Wray was extremely upset and not responsive to his (Monroe's) questions. Monroe wanted to know if Watts was okay and if he was with Wray. The best answer he received was that Watts was okay. Monroe told Wray that people were saying that he and Watts had killed someone at the club. He asked Wray if he had shot anyone. Wray was almost incoherent. He never answered one way or another as to whether or not he shot anyone. He sounded frantic; he told Monroe that he couldn't talk then, that he would call him back. Wray ended the conversation.

Wray called him on his cell phone [REDACTED] several times later Saturday morning. Each time the calls were very brief and Wray was frantic. Wray asked Monroe what he was hearing. Monroe asked Wray several times if he had shot anyone. Wray responded, "Just tell Taurus to stick with the story!" Monroe emphatically asked him, "What story? Did y'all kill someone?" Wray did not answer the question, but reiterated "Just tell Taurus to stick with the story!" Wray would end one call and call back a short while later saying much the same, clearly upset and unresponsive to Monroe's questions.

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Later during the day on Saturday June 30, 2007 he talked again with Wray, by telephone. He is not sure, but he believes this conversation took place between 12 noon and 4:00 pm. He asked Wray what he had done with his gun. Wray responded that he didn't know. Wray said that he had to work that day and that he thought he was going to be arrested. Wray worked at the 'Outback' restaurant located on Two-Notch Road. He did not meet with Wray that day.

During the early afternoon on Saturday, Monroe was driving to the residence of Latosha Goins (Watts' fiancé) to meet with Watts. While enroute, he observed Wray driving his Suburban in the direction of Blythewood. He (Monroe) knows that Wray has a cousin who lives in Blythewood and speculated that Wray might have been taking his gun to that cousin. Wray's cousin's name is "Jerrell" (LNU). Monroe does not know his address, but stated that "Jerrell" is a light skinned Black male with a full mustache, beard, and long braids. He further identified "Jerrell" as being about 6' tall, 185 #, and 28-30 years old.

When he arrived at Goins' residence he had Watts step outside with him. Monroe asked Watts if he shot anyone or fired a weapon the night before. Watts emphatically said no Monroe asked him why he had gotten messed up with Wray. Watts told him that he had needed a ride home. Watts said that he had gone to the club Friday night with Tatia, "Dee" and "Red". Monroe asked Watts if Wray had shot anyone, but, he (Watts) would not give Monroe a straight answer. Watts just emphatically repeated, "All I can tell you is I ain't shot nobody"!

Sometime during the week following the shooting at the club, he spoke with Brian Johnson and Norris Bond. Johnson told him that he had been at the club on Saturday June 30, 2007. He (Johnson) said that he saw Tremaine Wray driving down Hardscrabble Road from the club with his left arm extended from the driver's side window. Johnson continued that Wray was wearing a white glove and holding a gun in his hand. Johnson said that Wray was firing the gun in the direction of the car wash. Monroe said that Bond spoke up several time during Johnson's description of events, adding his (Bond's) verification and validation.

He knows that Wray owns a 'Mac 11' firearm. He also knows that Wray had owned another 'Mac' in the past but that it was not in very good condition. He does not know when or from whom Wray acquired the 'Mac' he presently owns. He suspects that it was purchased "on the street". He believes Wray's 'Mac' is a semi-automatic. Monroe said that Wray always had this gun with him and that he (Monroe) had seen it on numerous occasions. Monroe added that he did not see this weapon on the evening of the shooting. Finally, Monroe said that Wray was very proud of his 'Mac' and routinely wore a plastic (rubber) glove whenever he handled the gun.

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SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



REGINALD I. LLOYD
Director

Anna Clemens
Richland County Sheriff's Department
P.O. Box 143
Columbia, SC 29202

TRACE EVIDENCE
October 02, 2009
SLED LAB: L07-09678
Your Case No: 0706279030
Incident Date: 6/30/2007
[V] Burnuria Johnson
[S] Earl Green
[S] Lether Landrum, Jr.

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Reginald I. Lloyd, Director
South Carolina Law Enforcement Division

CORRECTED REPORT

ITEMS OF EVIDENCE:

Item: 10 GSR samples collected from a 1999 Silver Chevrolet Suburban

RESULT:

In the samples collected from the Chevrolet Suburban, round lead particles were found on the samples labeled "Driver's Door Frame", "Driver's Side Rear Door Frame", "Top of Center Console", "Driver's Door Handle", "Steering Wheel" and "Gear Shift". Round Lead particles are one of the components of gunshot residue.

Item: 11 GSR samples collected from a 2001 Isuzu Rodeo

RESULTS:

The quantities of metals detected did not indicate the presence of gunshot residue.



2366

Oct 02 2009 2:43PM Trace Evidence SLED

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SLED LAB No. L07-09678
October 02, 2009

Page 2 of 2

Michael Moskal

Michael R. Moskal
Forensic Scientist

Micro Analytical

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Mauldin, SC 29662

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Telephone (864) 631-2224
Cell Phone [REDACTED]

FAX

Date: 3-13-09 Time: 11:10 am

To: Reenie Bax

Fax: 803-799-4059

Phone:

From: Jeff Hollifield
Micro Analytical
110 East Butler Road, Suite 1
Mauldin, SC 29662

7 pages including cover sheet

Comments: GSR questions for SLED expert

Jeff Hollifield
Chemical Microscopist

Micro Analytical

Forensic Services
Small Particle Analysis

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Questions Related to Gunshot Residue Analysis

State's Expert (Michael Moskal)

General Questions

What is gunshot residue?

Gunshot residue (GSR) is a mixture of gunprimer and gunpowder originally enclosed with the bullet in an unfired cartridge. It is composed of various inorganic salts (lead styphnate, barium nitrate, and antimony sulfide) and organic compounds containing nitro groups (eg. nitrocellulose, nitroglycerine, etc.).

With respect to GSR, what happens when a gun is fired?

When a weapon is fired, the gunprimer and gunpowder ignite, burn, emit gases, and propel the bullet from the chamber. Burned and unburned residues remaining from the primer and powder are then deposited on anything that is relatively close to the gun, including the hands of a shooter, gloves of a shooter, shirt of a victim, hair of a victim, etc.

What is the purpose of collecting GSR samples from an individual's hands?

To determine whether the individual fired a weapon or handled a dirty weapon.

When you perform the lab test for GSR, what are you actually looking for?

The presence of 3 metals.....lead (Pb), barium (Ba), antimony (Sb).

Is it necessary that all three metals be present to suggest that an individual fired a weapon?

Yes

Why?

Because these metals can originate from other items in the environment. (example: lead is in solder and batteries, barium is in paint and cosmetics, antimony is in batteries, brake pads, ball bearings, etc.)

If you only detect lead (Pb), can you say definitively that the lead originated from gunshot residue?

No. It is a component of GSR, but it can originate from other sources.

So, if you find only lead (without barium and antimony), you don't know that the lead necessarily came from gunshot residue?

No.

If an individual has not fired a weapon and has not recently washed his or her hands, would you expect to find at least some low level of antimony and/or lead and/or barium?

Yes, because these metals are present (in low levels) in the environment.

When all three metals are detected, is it important that they are present in elevated levels?

Yes.

Why?

Because high or elevated levels are more consistent with someone having fired a weapon. Low levels of the metals are more consistent with the residue coming from other environmental factors.

What would be considered an elevated level for lead?

200 parts per billion (ppb)

What would be considered an elevated level for barium?

200 ppb

What would be considered an elevated level for antimony?

20 ppb

Time of Collection

Is it important that the GSR samples be collected within a certain time frame?

Yes

Why?

Because the GSR can be wiped away or worn off gradually over time from normal daily activity.

What is the time frame within which the samples should be taken?

Approximately 6 hours

Were the samples from the individuals taken within 6 hours in this case?

Yes, according to the GSR collection sheets.

If the GSR particles can be worn off gradually from daily activity, could low levels of GSR or low levels of lead indicate that the individual fired a gun more than 6 hours before the time of collection?

Yes, that's one possibility.

If an individual washes his or her hands, is the GSR material washed away?

Yes. The GSR would most likely be completely gone, and the quantities of metals detected would be zero. Not even low levels would be present.

If EMS uses an alcohol swab or inserts an IV into a patient's hand, could this affect the level of GSR on the hand?

Yes. Any activity or handling of the hand can reduce the levels of GSR. If the hand were swabbed with alcohol, it could actually remove the GSR.

Can the presence of blood on the hands affect the GSR levels?

Yes. Blood is composed mostly of water, so the GSR particles can be washed away to some degree if blood is present.

Transfer of GSR

Is it possible to transfer GSR from one hand to another or from one object to another?

Yes.

If someone picks up or handles a dirty/fired weapon, would you expect to detect GSR on the individual's hand(s)?

Yes, the levels would be similar to that expected on a shooter's hands, but it would only be detected on the palm(s) of the hand(s).

Can GSR be transferred onto and from inanimate objects such as a steering wheel or gear shift?

Yes. GSR can be transferred from one object to another via intermediate objects. This is called secondary transfer.

If a law enforcement officer handles a fired weapon or even his or her own issued service weapon, is it possible for the officer to contaminate the hands of an individual while collecting GSR samples or to transfer GSR to a vehicle they are processing?

An officer should wash his or her hands before collecting GSR samples. Also, it is good practice to wear protective gloves while collecting samples to prevent contamination.

Subjects' Hands (Earl Green and Lether Landrum)

Based on the analysis of the subjects' hands in this case, are the levels of lead positive or negative?

Negative

Barium?

Negative

Antimony?

Negative

Is there any indication that either of these individuals fired a weapon?

No

Was a GSR test performed on the hands of Wray?

No

Why not?

Because he was not considered a suspect or was not detained until sometime later. It was too late to perform a GSR test.

So there is no evidence that Wray fired a weapon on the night of the incident?

No

Vehicle (Suburban)

Were GSR samples collected from a 1999 Suburban?

Yes

What was found on these samples?

Round lead particles.

(According to the report, round lead particles were found. Based on the raw data, lead, barium, and antimony were found. There are many particles present.)

Do you know for a fact that these lead particles are from GSR, since lead is present in other common objects?

Yes, I am sure that the lead found is from GSR because the lead particles are round and spherical as from a molten source.

Do you have any way of knowing WHEN the lead particles were deposited in the vehicle?

No

How long will lead or any metal from GSR remain on an inanimate object?

Indefinitely. It will remain until it is washed off.

So the lead in the vehicle could have been deposited sometime before the incident or after the incident before the samples were collected?

Yes

Do you know when the vehicle was last washed before the incident?

No

How long before the incident could the lead particles have been there?

Indefinitely

Do you know that the lead found in the vehicle was deposited by Wray?

No

Could the lead have been deposited by someone else?

Yes, possibly

There is no way to determine who deposited the lead, is there?

Only someone who had access to the vehicle.

Did police officers have access to the vehicle?

Did the police process the vehicle at some point?

Did the police officers remove their weapons before entering the vehicle?

Could the lead in the vehicle be from secondary transfer and not necessarily from a weapon being fired inside the vehicle?

Yes

You don't know how or when the lead was deposited in the vehicle, do you?

No

Wray

Curriculum Vita

Jeffrey M. Hollifield

110 East Butler Road, Suite I
Mauldin, SC 29662Telephone: (864) 631-2224
Cell: [REDACTED]Opt for
N/BEmployment

1997-present	Micro Analytical Chemical Microscopist (Owner)	Greenville, SC
1998-present	Greenville Technical College Adjunct Chemistry Instructor (Physical Science Dept.) Adjunct Forensics Instructor (Criminal Justice Dept.)	Greenville, SC
2007-present	Southern Wesleyan University Adjunct Forensics Instructor (Physical Science Dept.)	Greenville, SC
1999-2000	Wellman, Inc. Research & Development (part time)	Charlotte, NC
1986-1996	S.C. Law Enforcement Division	Columbia, SC
1989-1996	Criminalist in Trace Evidence Lab	
1986-1989	Criminalist in Drug Identification Lab	

Education

1996-1997	McCrone Research Institute M.S. Chemical Microscopy	Chicago, IL
1984-1986	Furman University M.S. Chemistry	Greenville, SC
1980-1984	Furman University B.S. Chemistry	Greenville, SC

Continuing Education

1988	FBI Academy "Analysis of Paints and Plastics"	Quantico, VA
1989	New York State Police "Col. Henry F. Williams Homicide Seminar"	Albany, NY
1990	Tracor Northern "Scanning Electron Microscopy"	Madison, WI
1990	Virginia Polytechnic Institute "Thermal Analysis"	Blacksburg, VA
1994	Clemson University "Fundamentals of Textiles"	Clemson, SC
1994	Southern/Southwestern Associations of Forensic Scientists "Statistics for Forensic Scientists"	Little Rock, AK
1994	Southern/Southwestern Associations of Forensic Scientists "Lamp Filament Analysis"	Little Rock, AK
1994	Southern/Southwestern Associations of Forensic Scientists "Soils Analysis"	Little Rock, AK
1999	SC Insurance Fraud Investigators "Insurance Fraud Training Seminar"	Columbia, SC

Law Enforcement Training

1986	SC Criminal Justice Academy	Columbia, SC
1986	Greenville County Law Enforcement Center Forensics Internship	Greenville, SC

McCrone Research Institute Courses

1990	Scanning Electron Microscopy
1991	Applied Polarized Light Microscopy
1993	Paint Microscopy
1996	Photomicrography
1996	Fusion Methods
1996	Microscopy of Illicit Drugs and Excipients
1996	Microscopy for Art Conservators
1996	Microchemical Methods
1996	Comparative Microscopy of Soils
1996	Crystal Morphology and Optics
1996	Sample Preparation and Manipulation of Particles
1997	Microscopy of Botanical Traces
2000	Food Microscopy

Publications / Papers

Duckett, L.M., Hollifield, J.M. and Patterson, C.S. "Osmotic Coefficients of Aqueous CaCl_2 Solutions from 3 to 12 m at 50 degrees C," Journal of Chemical and Engineering Data 1986, 31, 213-214.

Hollifield J.M. "Isopiestic Study of Osmotic Pressures of Transition-Metal Chlorides and Perchlorates at 50 degrees C and 75 degrees C," Masters Thesis, 1986.

Hollifield, J.M. "Analysis of Unaltered Bulk Evidence Made Possible Through Use of Instrument Features," Southern Association of Forensic Scientists Meeting, September 7, 1990.

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Polaski, T. and Hollifield, J.M. "A Computer Program for the Double Variation Method," Micro Notes 2000 1997, 1, 27-29.

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Hollifield, J.M. "Identification and Differentiation of Baby Formulas Using PLM," (abstract) The Microscope 1998, 46, 234.

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Hollifield, J.M. "Molecular Weight Determinations; Classical Techniques applied to Forensic Samples," (abstract) The Microscope 2000, 48, 146-147.

Hollifield, J.M. "Vapor Analysis; Microscopical Methods," (abstract) The Microscope 2001, 49, 188.

Hollifield, J.M. "Differentiation of 50 Paint Pigments Using Spot Tests and Microcrystalline Tests," (abstract) The Microscope 2002, 50, 139.

Hollifield, J.M. "Characterization of Squaric Acid Precipitates," The Microscope 2003, 51, 81-103.

Hollifield, J.M. and Garrison K.P. "Conveying Technical Information to the Lay Client," (abstract) The Microscope 2003, 51, 172.

Hollifield, J.M. "Applications and Specificity of Microcrystal Tests," (abstract) The Microscope 2004, 52, 166-167.

Hollifield, J.M. "Optical Characterization of GHB and a Copper Precipitate," (abstract) The Microscope 2004, 52, 170-171.

Hollifield, J.M. "Trace Evidence and Chemical Analysis," Criminal Law: Experts, Experts and More Experts 2004, Chapter 2, 1-8.

Hollifield, J.M. "Applications and Specificity of Microcrystal Tests," The Microscope 2005, 53, 39-40.

Hollifield, J.M. "Flow Chart for Rapid Identification of Inorganic Compounds Using PLM," The Microscope 2005, 53, 99-105.

Hollifield, J.M. "Allotropes and Polymorphs; The Importance of Geometry," (abstract) The Microscope 2007, 55, 112.

Published Book Reviews

Contrast Techniques in Light Microscopy, The Microscope, 1996, 44, 211-212.

Advances in Acoustic Microscopy, The Microscope, 1997, 45, 65-66.

Lectin Histochemistry; A Concise Practical Handbook, The Microscope, 1997, 45, 66-67.

Coatings Encyclopedia Dictionary, The Microscope, 1997, 45, 69.

Introduction to Immunocytochemistry, The Microscope, 1998, 46, 36-37.

Forensic Interpretation of Glass Evidence, The Microscope, 2001, 49, 55-56.

Current Methods in Forensic Gunshot Residue Analysis, The Microscope, 2002, 50, 55-56.

Characterization and Failure Analysis of Plastics, Modern Microscopy Journal, 2005.

Guest Lecturer in Forensic Microscopy

University of South Carolina	Columbia, SC	April 6, 1999
Institut für Toxikologie	Kiel, Germany	July 7, 1999
American Chemical Society	Southeast Texas	April, 2001
Furman University	Greenville, SC	October 8, 2003
Erskine College	Due West, SC	September 9, 2004
SC International Assoc. of Identification	Columbia, SC	September 23, 2004
Institute of Continuing Legal Education	Atlanta, GA	October 21, 2004
University of South Carolina	Columbia, SC	March 24, 2005
University of South Carolina	Columbia, SC	February 14, 2006
American Chemical Society	Columbia, SC	February 22, 2006
Greenville Technical College	Greenville, SC	February 24, 2006
University of South Carolina	Columbia, SC	October 23, 2006
Converse College (ACS)	Spartanburg, SC	February 13, 2007
University of South Carolina	Columbia, SC	February 22, 2007
Converse College (CSI Camp)	Spartanburg, SC	June 14, 2007
University of South Carolina	Columbia, SC	November 6, 2007
Eastern Analytical Symposium	Somerset, NJ	November 14, 2007
University of South Carolina	Columbia, SC	November 11, 2008

Professional Associations

State Microscopical Society of Illinois
 Circuit Speaker for American Chemical Society
 Advisory Board VP for BioTech Program at Greenville Technical College

Incident Type: Homicide
Incident Location: H&J Pub
2820 Hardscrabble Road
Columbia, SC 29223

Victim: Johnson, Dumuria
[REDACTED]

Reporting Inv: Inv. Don McRae - LEO

06-30-07 0508: I/O notified of a homicide at H&J Pub, located at 2820 Hardscrabble Road, Columbia, SC by Sgt. Eric Barnes. Sgt. Barnes notified I/O that the victim had been at the club and was shot leaving the club in the parking lot at the car wash next door to the club.

0540: I/O arrived on scene and met with responding deputies and Sgt. Barnes. I/O was informed that the victim had left the club and gunfire rang out from a vehicle. I/O met with Ricky Jacobs, the club owner. His information is as follows:

Jacobs, Ricky
[REDACTED]
Columbia, SC 29203
[REDACTED]

Mr. Jacobs informs I/O that the club was closing down and the club patrons were on their way out the door. He also informs I/O that he was walking across the parking lot to get his vehicle and move it up towards the door. He said that he always moves his vehicle to the door at closing time. Mr. Jacobs said that on his way to his vehicle, there were 2 B/M subjects walking towards the door. He informed both subjects that the club was closed. Mr. Jacobs said that the subject who he spoke to said "That's fine I got something for you" Mr. Jacobs said that the two subjects (Described Below) went back to their vehicle, a Tan in color, Suburban. Mr. Jacobs then said he saw subject #1 reach into the vehicle and pull out what appeared to be some type of pistol. He told I/O that subject #1 had the gun wrapped in some type of white clothing, but he could see the barrel and a long clip in the gun. Mr. Jacobs told I/O that he thought the gun resembled an "OOZIE". Mr. Jacobs said that both subjects got into the vehicle (Subject #1 into the passenger front side, and Subject #2 got into the drivers side of the vehicle) Mr. Jacobs described that he was walking backwards attempting to keep an eye on the subjects as they drove out of the parking lot, turned left onto Hardscrabble Road towards Farrow Road. Once the vehicle reached the corner of the club and about to the Car Wash next door, he observed and heard numerous gunshots fired from the tan in color Suburban.

Subject #1 - Front Passenger

Black Male

5'10" - 6'00"

150-160 lbs

Subject was wearing a White Tee shirt and jeans.

Subject had twists in his hair

Subject #2

Black Male

Did not get a real good look at this subject, but has seen him in the club before.

Mr. Jacobs told I/O that he would be able to identify the subjects if seen again.

I/O and Mr. Jacobs walked over to where his vehicle was parked prior to the shooting. After I/O and Mr. Jacobs were away from onlookers and other people, Mr. Jacobs told I/O that he did know the first name of the subject who he saw had the gun. Mr. Jacobs told I/O that the person who had the gun was a subject by the name of Taurus. Mr. Jacobs did not know the full name of Taurus but told I/O that he would call I/O if he could remember any further details of the two subjects in the tan suburban.

Mr. Jacobs told I/O that Taurus usually hangs around the E.L. Hunter Road area. Mr. Jacobs thinks that he may stay on the dirt road off of E.L. Hunter Road. Mr. Jacobs also informed I/O that Taurus goes to the Townsman Club off of Hardscrabble Road.

Mr. Jacobs showed I/O where the tan suburban was parked and where the white Isuzu Rodeo was parked. Mr. Jacobs also showed I/O the direction and location of where each of these two vehicles went and where the vehicles were at the time the shots were fired from each vehicle.

Mr. Jacobs said that he also observed another vehicle that was parked in the same vicinity as the Suburban exit out of the parking lot; turn left on to Hardscrabble Road. Mr. Jacobs said that the passenger of this vehicle pulled an unknown type pistol and fired one shot into the air. Mr. Jacobs said that this vehicle was a White in color, Isuzu Rodeo.

Region 2 deputies stopped the Isuzu Rodeo vehicle later in the morning. The vehicle was spotted on Rabon Road just prior to Two Notch Road. Deputy Galinski turned around on the vehicle and stopped the vehicle at [REDACTED] Road. Deputies arrested the subjects inside the vehicle for SPMJ and Open Container of Beer. I/O was notified that the vehicle had been stopped.

The subjects in the vehicle were identified as:

Driver:

Landrum, Luther Centural Jr.

[REDACTED]
Columbia, SC 29229

B/M 601 / 230 BLK / BRO

DOB: [REDACTED]

Passenger:

Green, Earl Jerome

[REDACTED]
Columbia, SC 29229

B/M 507 / 145 / BLK / BRO

DOB: [REDACTED]

I/O and Mr. Jacobs went to the location of where the vehicle was stopped. I/O had the subjects step out of the vehicle for identification by Mr. Jacobs. Mr. Jacobs identified Mr. Landrum as the driver of the vehicle and also identified Mr. Green as the passenger. Mr. Jacobs told I/O that this vehicle was at the opposite end of the bar when the shots were fired from the tan suburban. Mr. Jacobs also informed I/O that the passenger was the person who fired the rounds from the white rodeo. Mr. Jacobs said that the passenger held a pistol outside the window and fired one shot straight up into the air after numerous rounds were fired from the tan SUV.

Mr. Jacobs continued to explain that the white Isuzu Rodeo had originally came out of the parking lot of the club, up by the gas pumps, and started to turn right, (the opposite direction of the tan suburban) and then after the passenger fired one shot in the air, the driver of the white Rodeo did a U-turn on Hardscrabble Road and traveled down Hardscrabble towards Farrow Road, (the same direction the tan suburban traveled).

Region 2 deputies transported the subjects from the white Isuzu Rodeo to RCSD headquarters for investigators to interview.

I/O returned to the incident location with Mr. Jacobs. Mr. Jacobs agreed to come into RCSD headquarters at 1600 to give investigators his statement concerning the incident. I/O gave Mr. Jacobs a business card with I/O information, including I/O cell phone number. I/O informed Mr. Jacobs to call if he remembered any more information concerning the incident.

I/O and Investigator Gallegos drove down Hardscrabble Road in an attempt to locate a tan in color suburban in the neighborhoods of Washington Heights and

E.L. Hunter Road. While on Breircliff Road I/O's noticed 2 vehicles matching the description given by the witness as the vehicle the numerous rounds came from.

The first vehicle was a tan in color suburban backed in the front yard at [REDACTED]. I/O was unable to get the license tag from the vehicle due to the vehicle being backed into the yard; the plate was not visible from the street. In the driveway at this location, was a Pontiac Grand Am with a SC tag [REDACTED].

The second vehicle that was located that matched the description was also a tan in color suburban. This vehicle did have a U-haul trailer attached to the vehicle. This vehicle was located at [REDACTED].

Investigators drove through the other neighborhoods looking for a vehicle that matched the description given by witnesses but investigators were unable to locate any other vehicles matching the description given.

I/O's returned to the incident location to look over the scene an additional time and to meet with lab units to see the progress of processing the scene. I/O walked to the parking lot of the club and found laying in he parking lot a cell phone. I/O notified lab units of the cell phone for documentation and collection. The cell phone appeared to have been dropped by someone.

I/O walked through the parking lot of the club looking at the scene. I/O found some blood drops outside the front door of the club. Mr. Jacobs told I/O that one of the club patrons had fallen in the chaos after the shooting a cut his forehead when he fell to the ground.

I/O walked to the car wash next door and looked for any additional crime scene. Inside the first stall of the car wash, the closest stall to the club was several large pools of blood and a copper jacket of a bullet. I/O notified the lab unit of the blood and copper jacket. There also were some blood drops in the parking lot of the car wash. Lab investigator also processed the parking lot of the car wash.

I/O spoke to the owner of the car wash, Mr. Johnson who resides across the street from the car wash. Mr. Johnson told I/O that he was woke up by the gunfire. Mr. Johnson said that he did not see the shooting and by the time he looked outside the crown was leaving the area.

Johnson, Nathaniel

[REDACTED]
Columbia, SC 29223

B/M

DOB: [REDACTED]

I/O returned to RCSD Headquarters to interview the subjects from the white Isuzu Rodeo.

I/O returned to RCSD headquarters and was informed that Mr. Landrum was in the "D" cell and Mr. Green was on the bench. I/O went to the "D" cell to speak to Mr. Landrum. Mr. Landrum told I/O that he did not wish to speak to investigators about anything. I/O attempted to inform Mr. Landrum that we just wanted to talk to him about what he had seen at the club earlier in the morning. Mr. Landrum would not cooperate with I/O and refused to be interviewed.

Investigator Gallegos interviewed Mr. Earl Green. (See Inv. Gallegos Follow-up)

I/O drafted a Search Warrant on the white Isuzu Rodeo for possible evidence in the vehicle related to the passenger shooting in the air.

R850 deputies took both subjects from the Isuzu Rodeo to ASGDC on the traffic charges made. No additional charges were filed against either subject in the white Rodeo concerning the incident at the club at this time.

0915: I/O receives a call from Mr. Jacobs. Mr. Jacobs informs I/O that the last name of the individual who goes by Taurus and was the passenger in the tan suburban is Watts or Watson. Mr. Jacobs also informed I/O that the driver of the suburban is named Tremaine. Mr. Jacobs did not know the last name of the driver Tremaine, but said that he would keep I/O informed of any additional information that he remembers.

1130:

Sgt. Barnes informs I/O that Investigator Gallegos and Investigator Scott are on their way back to RCSD Headquarters with Jalicca Johnson. Ms. Johnson is one of the club patrons who observed the fight inside the club. This fight is what is believed to have led up to the shooting outside.

Investigator Scott and Investigator Gallegos interview Ms. Johnson. (See Scott and Gallegos follow-ups for details of the interview)

I/O looked up Taurus Watts in the jail database to see if there was any person in the database with this name. I/O locates Taurus Sharif Watts who lists his address in the database as [REDACTED]. This location is just down the road from the club. I/O runs Mr. Watts' criminal history and learns that Mr. Watts has been charged and convicted of other criminal activity to include violent crimes. I/O develops a 6-picture photo line-up with Mr. Watts in it. I/O will show the line-up to Mr. Jacobs when he returns to give his statement this afternoon.

I/O looks up the first name Tremaine in the jail database in an attempt to identify the driver of the tan suburban. I/O looks at Tremaine Wray who was in the database. I/O notices that the contact address listed in the jail database is [REDACTED]. This address is also one of the addresses that I/O and Investigator Gallegos see a tan in color suburban parked in the driveway. This vehicle is however backed into the front yard and I/O is unable to get the license plate off of

the vehicle. There is however a Pontiac in the driveway with a tag of [REDACTED]. I/O runs this tag in NCIC and finds it to be registered to one Nellie Walker Wray of [REDACTED], Columbia, SC [REDACTED]. I/O constructs another 6-picture photo line-up with Tremaine Wray in the array. I/O will show this line-up to Mr. Jacobs when he returns to give his statement to investigators.

I/O researches all available means to include the possible locations / addresses of the possible suspects.

1300:

I/O receives a phone call from RCSD Desk Sgt. The desk Sgt. tells I/O that there is a Sgt. White with the City of Columbia Police Department that may have some information on the case at H&J Pub. I/O is given the number to contact Sgt. White. I/O calls Sgt. White who informs I/O that he has a confidential informant who says that they have information concerning the incident. Sgt. White tells I/O that his informant has connections to the Washington Heights area and that the informant was in the Washington Heights area today and that she had information from people who were present at the club earlier this morning when the incident occurred. The informant told Sgt. White that the people who were responsible for the shooting were Tremaine Wray and Taurus Watts. The informant told Sgt. White that the shooting was over a fight that had occurred inside the club just prior to the club closing and that Tremaine was the shooter in the incident. The informant also told Sgt. White that Tremaine Wray works at Outback Steakhouse on Two Notch Road and that he was there and the tan suburban that was used in the shooting was parked in the Home Depot parking lot between the Outback Steakhouse and the Microtel Hotel.

I/O asks Sgt. White if this informant would be willing to talk to investigators concerning the information that they may have. Sgt. White said that he would call the informant and call I/O back.

I/O and Investigator Gallegos go to the Outback Steakhouse to look for the vehicle that the informant says belongs to the suspect Tremaine Wray that is suppose to be parked in the Home Depot parking lot. I/O's see a tan in color suburban parked in the Home Dept parking lot. This vehicle matched the description of the vehicle used in the shooting at the club. I/O obtains the SC tag information on the vehicle. The tag is [REDACTED]. I/O runs the vehicle through dispatch and finds that the vehicle returns to a Nellie Walker Wray, [REDACTED] Drive, Columbia, SC 29203. The vehicle is a 1999 GMC suburban VIN: [REDACTED]. This vehicle is the vehicle that I/O and Investigator Gallegos found earlier backed into the yard at [REDACTED] while looking for vehicle matching the description of the vehicle used in the shooting.

Sgt. White called I/O back and said that the informant would meet with investigators but would only meet if Sgt. White could be present during the interview. I/O agreed and it was set for Sgt. White and the informant to meet at RCSD headquarters at 5:00 pm on 6-30-07.

I/O received a call from Ricky Jacobs, the bar owner who said that he had some more information on the case. He said that the last name of the driver was Wray. Mr. Jacobs told I/O that he thinks that Mr. Wray lives in the Washington Heights area. I/O told Mr. Jacobs that I had some photo line-ups to show him when he came in at 3:00 pm. Mr. Jacobs asked if he could come in at 5:00 pm because he has not gotten much sleep. He told I/O that a lot of people have called him and came to his residence wanting to know information about the shooting. I/O agreed with Mr. Jacobs and said that we would meet at 5:00 pm. I/O informed Investigator Gallegos about the change in time for Mr. Jacobs.

I/O continues to locate possible witnesses in the incident. I/O reviews the paperwork from the other investigators that took statements at the scene, or at the hospital immediately after the incident.

1731 I/O takes statement from Confidential Informant.

I/O calls Ricky Jacobs who was suppose to be at RCSD at 5:00 pm to give his statement to investigators. I/O left messages on Mr. Jacobs cell and home phone. I/O and Investigator Gallegos search all known locations for Mr. Jacobs and are unable to locate Mr. Jacobs.

I/O and Investigator Gallegos return to headquarters to review case and current statements. I/O and Gallegos make plan of action for tomorrow and prepare briefing for CID supervisors.

2100 I/O secure for the day.

7-01-07: 0700: I/O receives a call from Ricky Jacobs. Mr. Jacobs informs I/O that he did not get out of bed until early this morning and that he kept getting disturbed at his residence. Mr. Jacobs said that he went and got a hotel room last night and shut his phone off. Mr. Jacobs said that he would be in the office at 1:00 pm this afternoon to give his statement.

Mr. Jacobs also informs I/O that he heard that Tremaine works at Outback Steakhouse and that he was at work yesterday afternoon. I/O tell Mr. Jacobs that he needed to be on time for his interview and that if he was going to be late he needed to call me and let me know.

1315: Ricky Jacobs arrives at RCSD headquarters for his interview.

I/O interviews Mr. Jacobs. Mr. Jacobs is the owner if the club and who was present at the club at the time the shooting took place. Ricky tells I/O that he was walking out to his vehicle that was parked across the street from the club. Mr. Jacobs told I/O that he always pulls his vehicle to the front of the club when they are getting ready to close. Mr. Jacobs told I/O that on his way across the street,

when he got about to the gas pumps he observed Taurus Watts walking in the direction of the club. Mr. Jacobs also said that walking towards the club was Tremaine Wray. Mr. Jacobs told I/O that when he got close to the subjects he informed Taurus that the club was closed. Mr. Jacobs told I/O that at this time, both subjects turned around and headed back to their vehicle. Mr. Jacobs also told I/O that after he told Taurus the club was closed, Taurus said something to the effect "That's OK I got something for you." Mr. Jacobs also informed I/O that in the hands of Taurus was some type of firearm wrapped in some type of white clothing, maybe a Tee shirt. Mr. Jacobs described the gun to the I/O. I/O shows Mr. Jacobs a picture of a MAC-10, based on the preliminary report given to I/O by Ballistic Expert Investigator Collins. Mr. Jacobs identifies the MAC-10 as the same type gun that Taurus had in his hands. Mr. Jacobs was a little taken back by this remark and the gun that Taurus had in his possession, so as he was walking towards his vehicle he turned around and watched both subjects as they got into their vehicle. Mr. Jacobs described the vehicle as a tan in color Suburban with stock wheels and tires. Mr. Jacobs told I/O that he watched Taurus Wray get into the front passenger door and Tremaine Wray get into the driver's seat. Mr. Jacobs said that the tan suburban pulled out of the parking lot and turned left onto Hardscrabble Road. The vehicle was driving towards Farrow Road, and as it passed the club and was about at the car wash he observed shots being fired from the driver's side window. Mr. Jacobs described the shots as many and very fast. Mr. Jacobs then said the suburban continued down Hardscrabble Road towards Farrow Road.

Mr. Jacobs also described another vehicle in the parking lot that was initially parked in the same area as the tan Suburban. This vehicle was a white in color Isuzu Rodeo. There were also two black males in this vehicle. Mr. Jacobs said that this vehicle pulled out of the parking lot and was turning left onto Hardscrabble Road. As this vehicle was leaving the parking lot, the shots were fired from the tan suburban. Mr. Jacobs said that immediately after the tan suburban fired the rounds near the car wash, the passenger of the white rodeo leaned out of the front passenger window and fired some type of handgun straight up into the air. Mr. Jacobs said that at the time the shot in the air was fired from the Rodeo, the Rodeo was at the far end of the parking lot away from the car wash. Mr. Jacobs told I/O that the Rodeo started to turn right on Hardscrabble Road, but after the passenger fired one time in the air, the vehicle did a U-turn on Hardscrabble Road and drove towards Farrow Road on Hardscrabble Road. I/O showed Mr. Jacobs two six-picture line-ups. The first line-up had Tremaine Wray in the array. Mr. Jacobs picked Tremaine Wray as the driver of the tan suburban that fired the shots. The second line-up had Taurus Watts in the array. Mr. Jacobs picked Taurus Watts as the passenger of the tan suburban. Mr. Jacobs also identified Taurus Watts as the subject he told the club was closed, the subject who remarked to him "That's OK I got something for you", and the subject who was carrying the gun wrapped in some type of white clothing. I/O concluded the interview with Mr. Jacobs. Mr. Jacobs told I/O that he was to meet with the Captain and Lieutenant of Region 2, sometime next week. I/O

suggested to Mr. Jacobs that he install cameras on his property and inside the club. I/O told Mr. Jacobs that cameras might suppress some of the incidents inside the club.

I/O obtained arrest warrants on Taurus Wray and Tremaine Watts for Murder. I/O also obtained two Search Warrants, one for the tan in color suburban that investigation revealed is the vehicle that Tremaine Wray uses and is described by witnesses as the vehicle used in the shooting. The second Search Warrant is for [REDACTED], Columbia, SC 29203. This is the residence of Tremaine Wray. I/O was unable to get a current address on Taurus Watts. The last known address on Mr. Watts is [REDACTED], Columbia, SC 29203. This residence is his mothers' home and I/O is not sure if Mr. Watts is still currently living there.

1545: I/O calls Region 2 road supervisor and requests for assistance in serving the arrest warrants on Tremaine Wray at Outback Steakhouse. I/O requests assistance from K-9 and evening shift investigators. I/O schedules a brief at RCSD headquarters upstairs in CID at 1600.

I/O briefs the procedures for the serving of the arrest warrant at Outback Steakhouse on Two Notch Road. RCSD members present to serve the warrant are 4 uniformed deputies from Region 2, Investigators Gallegos, Ellis, Cataldo, and Jones from the fugitive team.

1630: I/O takes Tremaine Wray into custody without incident at Outback Steakhouse on Two Notch Road. I/O informed Mr. Wray that he was under arrest for murder. The tan in color suburban that the suspect is driving and investigators believe was used in the homicide was towed to RCSD headquarters and placed into the garage for processing by lab investigators.

Mr. Wray's vehicle was placed into the garage at RCSD headquarters for processing. I/O gave Search Warrant for this vehicle to lab investigator Bouknight.

I/O and Investigator Gallegos took Mr. Wray back to RCSD headquarters for an interview.

Investigator Gallegos, other investigators from CID, and road units from Region 3 went to serve the Search Warrant on [REDACTED]. This is the current residence of the suspect. Tremaine Wray. (See Gallegos Follow-up)

1700: I/O and investigator Ellis take Mr. Wray into Capt. Smith's office for interview. Mr. Wray was read his Miranda Rights, which he signed and waived and agreed to speak with investigators. I/O began interview with general conversation. Mr. Wray appeared to be nervous and as I/O began questioning Mr. Wray about the incident at the club, he denied any involvement in the incident. I/O began to hint at some of the witness statements and other pieces of the sequence of events the

investigation has revealed, Mr. Wray said that he wished to have a lawyer present during the interview.

I/O terminated the interview with Mr. Wray. Investigator Ellis served the murder warrant on Mr. Wray. RCSD Desk Sgt. was notified that the suspect was ready for transportation to ASGDC. I/O notifies the family of Dumuria Johnson that Tremaine Wray is in custody and that there is still one subject at large, Taurus Watts.

2030: R850 transported suspect to ASGDC

2100: Investigator Gallegos informed I/O earlier in the day that he had received a call from Darrell Wray, the uncle of Tremaine Wray, that he thinks that the second suspect in the homicide is attempting to leave town with help from his half brother Landon Monroe.

I/O and Investigator Gallegos go to the Greyhound Bus Station and speak with the person inside the ticket booth. I/O shows the employee at the bus station the BOLO on Taurus Watts and a picture of Landon Monroe. The employee tells I/O that she has not seen Taurus at the station, but did however think that Landon's picture looked familiar. I/O asked her to watch out for both subjects and if she saw either subject at the bus station I/O asked her to call 911.

2345: I/O returned to RCSD Headquarters to wrap up for the day

07-02-07: 0830: I/O briefed the investigation so far. CID personnel present were Capt. Smith, Investigator Gallegos, Lt. Padgett (lab), David Collins (ballistics), and I/O.

Lt. Padgett briefed the progress in the lab and evidence collected at the scene. David Collins briefed the ballistic findings from the shell casings recovered from the crime scene. Investigator Collins confirmed that the shell casings were all fired from the same firearm and gave I/O a list of possible firearms. Collins told I/O that the gun was a type of MAC-10 firearm, and listed possible manufacturers.

I/O briefed the investigation to date.

Investigator Gallegos

I/O and Investigator Gallegos return to the Greyhound Bus station to ensure that they still have the BOLO on Mr. Watts and that Mr. Watts or his half brother Landon has purchased a bus ticket. I/O speaks with several employees at the bus station and they still have the BOLO and picture of Landon with instructions to call I/O if either show up at the bus station

I/O and Investigator Gallegos went to ABC Bonding, 1525 Taylor Street to speak with Tommy, one of the bondsmen at ABC. Tommy gives I/O's all the paperwork in Taurus Watts file.

I/O and Investigator Gallegos return to RCSD headquarters and research the subjects listed on all the bonding paperwork for Taurus Watts. I/O prints the subjects that are in the jail database and soon learns of a subject Lauren Stuckey who is an acquaintance of Landon Monroe. Lauren Stuckey is currently detained at ASDGC for trafficking cocaine charges. I/O makes arrangements to have Ms. Stuckey picked up from ASGDC in the morning.

1945: I/O receives a call from Ricky Jacobs. Mr. Jacobs informs I/O that he just received a phone call from an unknown female that tells him that Taurus wants to meet him at the club to talk about the shooting. Mr. Jacobs tells I/O that he is on his way to the club to see if Taurus is at the club. I/O attempts to discourage Mr. Jacobs from going to the club. Mr. Jacobs says that he is not going to be intimidated by this guy. Mr. Jacobs says that he will call me on my cell when he gets to the club and if Taurus arrives at the club.

I/O calls Sgt. Barnes and informs him that I/O needs to round up some night shift investigators to go near the club to wait on Mr. Jacobs phone call. I/O briefs Sgt. Barnes on the information given to I/O by Mr. Jacobs. I/O, Sgt. Barnes, Investigator Harris, several K-9 and narcotics officers meet at Mt. Pilgrim Baptist Church to wait to see if Taurus Watts arrives at the club.

I/O briefs the officers and waits for Mr. Jacobs phone call.

Narcotics officers call a CI to go into the club who knows Taurus Watts. Taurus is known on the street as "TEE". The CI goes into the club and waits for Taurus to show.

Mr. Jacobs calls I/O; Taurus Watts is not at the club and does not know if he is actually going to show up. I/O tells Mr. Jacobs that officers are in the area and to call I/O if Taurus shows at the club. Narcotics Agents think that Taurus may be at a nearby crack house. Narcotics officers contact CI inside the club and have him walk to the known crack house to see if Taurus is at this location.

I/O and Officers wait for Mr. Jacobs to call and for the CI to inform officers if Taurus is at the crack house.

CI calls narcotics officers back and tells them that TEE is not at the location. I/O calls Mr. Jacobs back at approximately 2200 to see if he has any further information. Mr. Jacobs tells I/O that Mr. Watts has not shown, nor has he received any calls about the meeting.

2200: I/O secures all officers and secures for the day

07-03-07

08:30 I/O briefs Capt. Smith on the investigation to date.

Investigator Gallegos picks up Lauren Stuckey from ASGDC and brings her to RCSD Headquarters. I/O and Investigator Gallegos interview Ms. Stuckey in depth as to the habits, location, acquaintances, and possible activities of Landon Monroe. Ms. Stuckey knows Landon Monroe by name and sight. Stuckey and Monroe have been in a relationship off and on now for several months. Ms. Stuckey informed I/O that she has bonded Monroe out of jail in the past. Ms. Stuckey said that Landon would know where Taurus is and that if Landon had the opportunity he would help Taurus get out of town if necessary.

I/O continued to question Ms. Stuckey on friends of Landon and of Taurus. She provided I/O with the following information:

- "Black" - Hangs out with Landon
- "Polar Bear" Hangs out with Landon and lives in Washington Heights
- "Brian" (Light Skinned) Lives with "Polar Bear"
- "Big Dave" Identified as Dave Wilson who lists an address on his SCDL as [REDACTED] in Washington Heights. Ms. Stuckey said that Mr. Wilson now lives in the new subdivision off Hardscrabble Road. Ms. Stuckey pointed out the house, which is located in Jasmine Place subdivision.
- "Big Chris" Identified as Christopher Crosby who lists his address on his SCDL as [REDACTED], Columbia, SC
- Denise McKenzie - This is one of Taurus' Childs mother. Ms. Stuckey does not know where she is currently living, but she does think that she stays somewhere in Highland Forest in Region 3 area. Ms. McKenzie lists an address of [REDACTED], Columbia, SC [REDACTED] on her SCDL. Ms. McKenzie has been known to help Taurus on other occasions. Ms. Stuckey did tell I/O that she believes that Denise would let Taurus stay at her house in an attempt to evade arrest.
- Latosha Goins - Ms. Goins resides at [REDACTED] in Hollywood Hills. I/O is familiar with Ms. Goins in the fact that she had information in the homicide that originated at H&J club on 6-3-07. Ms. Goins also has a child by Taurus Watts.

I/O spoke with Ms. Stuckey concerning locations that Landon and Taurus may go to evade law enforcement. Ms. Stuckey told us that Taurus might be at one of his baby mother's residences.

Ms. Stuckey told I/O that the current vehicle that Landon was using was a Silver PT Cruiser. She said that Denise had rented the vehicle for him, but she did not know what rental company the car was from.

Ms. Stuckey informed I/O of a female by the name of Denise Geter who will rent vehicles for Landon to drive. Ms. Stuckey told I/O that Landon never rents a vehicle himself but has this female rent his vehicles for him. She also said that if

Denise can't get him a vehicle, Landon would use other crack heads to rent a vehicle for him.

Ms. Stuckey also informed I/O of Landon's drug partner who is known as "Karate Kid". Ms Stuckey went around town with I/O's and pointed out the following locations for I/O. The first location was "Karate Kid" "Karate Kid lives at [REDACTED], Columbia, SC 29223. When I/O's drove past the residence at [REDACTED] there was a silver in color Chrysler PT Cruiser parked in the front yard at the residence of "Karate Kid" I/O took down the license plate number of the vehicle SC [REDACTED] I/O ran the tag through dispatch and it returned to:

2004 Chrysler PT Cruiser
Maddox Neal & Day Inc
810 Dutch Square Blvd
Columbia, SC 29210

I/O is familiar with this company from cases in the past. The company is U-Save Auto Rental on Dutch Square Blvd. I/O called the manager (Derrick) who I/O has worked with in the past. Derrick gave I/O the information on the person who is currently renting the vehicle. The person is Denise Geter. Derrick told I/O that she has had the vehicle since June 15, 2007 and is paid through 7-4-07.

I/O continued to drive Ms. Stuckey around so she could point out different location to I/O that she thinks Landon or Taurus may be at. She took us to "Big Dave's" house that is located in Jasmine Place Subdivision. The address is [REDACTED]. She believes that Landon may take Taurus there also.

Ms. Stuckey also showed I/O the two trailers that are off of E.L. Hunter on Ballenton Road. These two trailers are locations that Taurus has been known to stay at.

Ms. Stuckey tells I/O that Landon may also put Taurus up at the Comfort Inn Hotel on Two Notch Road, just behind Lizards Thicket by I-20. Ms. Stuckey said that there is a female who works at this hotel who goes by the name of "Mafia" who works at this Comfort Inn. Ms. Stuckey identified this person as Ashton Watts. Ms. Stuckey believes that Ashton Watts is some type of kin to Taurus and Landon, but is not sure of how.

Ms. Stuckey took I/O's to drug users homes that she knows Landon supplies crack and cocaine to. The addresses are:

- [REDACTED] in the Summit. There was a vehicle in the driveway at this location. The tag on the vehicle was an Alabama Tag of [REDACTED]. This tag returns to a 2002 white in color Toyota that is registered to a Annie Kennon.
- [REDACTED]. Ms. Stuckey told I/O that this is the house where a dude named Buck lives. Buck is a crack head that Landon supplies to. Landon has been known to stay at this residence in the past.

- Ms. Stuckey also took I/O to a house on Old Percival Road behind Martin's Grocery Store. This is the residence of "Rudy" who is also a crack head that Landon supplies. Ms. Stuckey said that "Rudy" owns the Ford Excursion that Landon was arrested in the last time that Landon was arrested.
- Ms. Stuckey also took us by a house on Ida Lane that is the residence of Travis. Travis is another acquaintance of Landon.

Ms. Stuckey told I/O that if we wanted to locate Landon the residences and locations that she showed us will be our best chance of catching Landon. Ms. Stuckey wanted us to know that Landon will know where Taurus is. She said if we get Landon we will get Taurus.

I/O returned to RCSD headquarters with Ms. Stuckey. I/O ran down the information that she provided us. I/O provided lunch for Ms. Stuckey. I/O returned Ms. Stuckey to ASGDC after she had an opportunity to eat lunch.

On the way back to RCSD Headquarters I/O called Investigator Abraham of the narcotics unit and requested to get the warrants that he had on Landon Monroe. Investigator Abraham said that he would bring the warrants to RCSD and give the warrants to I/O

Investigator Gallegos returns to [REDACTED] to see if the Silver PT Cruiser is still at the residence. I/O remains at headquarters to wait on the warrants and to assemble enough personnel to do the warrants.

Investigator Gallegos meets Investigator Abraham at Williams Brice to get the warrants from him. I/O assembles investigators and line units from Region 2 to meet at a church at Percival Road and Alpine in the vicinity of the location of [REDACTED]. I/O and other investigators along with K-9 Units assemble and I/O briefs the situation.

All units go to [REDACTED] and outside there is a white male. I/O gets out with this subject. The subject is identified as William Thurman Hill who has a SCDL with the address of [REDACTED], Columbia, SC 29223. I/O questions this subject about Landon and of Taurus Watts. This subject denies knowing either person. Mr. Hill is extremely intoxicated and is becoming totally uncooperative with I/O. I/O runs the subject for warrants in house and NCIC. The subject returns clear. I/O completed an FCC on Mr. Hill and let him go. Investigator Gallegos gets out with the resident who is identified as Lou Antione Lighty aka "Karate Kid" Mr. Lighty allows investigators to enter his residence and tell I/O that Landon just left the residence. Mr. Lighty did not know where he was going. I/O asked Mr. Lighty if he knew the location of Taurus Watts. Mr. Lighty denied knowing the location of Taurus. Mr. Lighty did tell I/O that he had heard that his family had gotten him an attorney and that Taurus was going to turn himself in tonight. I/O informed Mr. Lighty that if he saw or knew the location of Taurus Watts, to call I/O or 911 immediately. Mr. Lighty agreed.

Investigators and road units leave the residence and as we are driving down the road Investigator Gallegos tells I/O that he saw a Silver in color PT Cruiser parked in a driveway just down the road from Mr. Lighty's residence. I/O's drive to check the locations on Ballenton Road, another location that Landon is known to frequent. I/O continues on to see if the PT Cruiser is at one of these locations while other investigators stand-by at the Exxon Station at Hardscrabble and Farrow Roads. The PT Cruiser is not at either of the locations on Ballenton Road. I/O secures all other investigators.

I/O returns to RCSD Headquarters and Investigator Gallegos returns to the previous location on Marburn to see if the PT cruiser was the same as the one that was at [REDACTED].

Investigator Gallegos calls I/O and says that the PT Cruiser down the road is the vehicle that Landon Monroe has. I/O gathers evening shift investigators and deputies from Region 2 and we meet with Investigator Gallegos at the church at Alpine and Percival Roads. By the time we get to the location and brief new officers, the PT Cruiser had left the new location.

I/O and Investigator Gallegos return to RCSD Headquarters and review the investigation to date.

1900: I/O secures for the day.

1940: I/O is called at home by RCSD Desk Sgt. I/O is told that Taurus Watts is in the lobby at Headquarters. I/O calls Investigator Gallegos and returns to RCSD Headquarters to take Mr. Watts into custody.

20:00 I/O arrives at RCSD Headquarters and takes Taurus Watts into custody in the lobby. Christopher Crosby is in the lobby with Mr. Watts. Mr. Watts is taken upstairs to CID for an interview. Mr. Watts is read his Miranda Rights. Mr. Watts signs that he understands his rights but will not waive his rights. Mr. Watts hands I/O a piece of paper with the name of his lawyer George McEleven and his phone number [REDACTED]. Mr. Watts invokes his right to a lawyer at 2016.

I/O terminates the interview. Investigator Gallegos takes Mr. Watts to the lab for Major Case Prints. I/O completed arrest report and R850 transports the suspect to Warrant Division to pick up the warrant on Mr. Watts. R850 serves the warrant on Mr. Watts and transports him to ASGDC.

2100: I/O secures for the evening. Both subjects Tremaine Wray and Taurus Watts are in custody for the murder of Durnuria Johnson. I/O contacts the victim's father to notify him if the arrest of Taurus Watts.

07-04-07

8:30 - 1700 I/O reviews case file and completes some paperwork on the case.

07-05-07

08:30: I/O briefs Capt. Smith on the progress and status of the case to date.

I/O and Investigator Gallegos depart Columbia for St. Matthews, SC to locate a potential witness that was at the club with the victim. This subject was identified at the hospital, but was upset and unruly at the hospital. The witness is identified as James Lamont Goodwine. Mr. Goodwine was uncooperative with law enforcement. I/O tracked the subject down and located an address of [REDACTED], St. Matthews, SC. I/O and Investigator Gallegos spoke with investigators and officers of the Calhoun County Sheriff's Office. The officers were familiar with the witness and gave I/O's directions to his house.

I/O's arrive at the witness's residence and speaks with a family member. This person did call his wife in an attempt to locate Mr. Goodwine. The family member was able to contact his wife, but she never called back with the number and he did not know James' cell number. I/O gave this family member a business card and asked him to give it to James and to have James call I/O as soon as possible. I/O told the family member that we need to see James only as a witness and that he needed to do this for his friend who was shot and killed.

I/O and Investigator Gallegos returned to Columbia and returned to RCSD Headquarters.

I/O reviewed case file and worked on investigative follow-up.

1715: I/O interviewed Verda Roberts who is the subject who was assaulted inside the club. This assault is what led to the shooting incident after the club had closed down. Verda explains how Jalicca Johnson knew all the subjects who were inside the club. Ms. Roberts believes that she knows the subject who was fighting with her son Charlie Bates. Ms. Roberts continues to explain in her statement the sequence of events that led up to the fight inside the club. Ms. Roberts cannot identify the subject who hit her or the subjects that came to assist the subject who hit her, but Ms. Roberts is sure that Jalicca Johnson (Lisa) knows them all.

07-06-07

I/O is wrapping up the case. I/O informs Capt. Smith that there are a few other people that need to be interviewed and I/O will be working on locating these people over the next few days. Both subjects are in custody and that the bond setting for the two will be on 7-09-07 @ 1000 am at 1701 Main Street.

I/O calls Jalicca Johnson (Lisa) and leaves a voice message on her answering machine to call I/O back as soon as possible. Ms. Johnson calls I/O back and asks her to come into the office at 5:00 pm

17:15: Jalicca Johnson comes into the office and I/O attempts to get Ms. Johnson to tell the truth in identifying the subjects involved in the fight. Ms. Johnson tells I/O that she does list some people that were at the club. One person she tell I/O

that was at the club is Taurus Watts. Ms. Johnson says that she knows him as "TEE". I/O attempts to get Ms. Johnson to tell I/O the truth, but Ms. Johnson is protecting the persons that were involved in the bar fight which ultimately resulted in the shooting outside the club. Ms. Johnson became more and more defiant and then shut down and stopped answering I/O's questions. I/O warned Ms. Johnson about protecting individuals, not telling everything she knows, and lying to investigators in a homicide investigation. I/O asked Ms. Johnson one more time the names of the subjects who were involved in the fight. She again refused saying she did not know. I/O had Investigator Gallegos walk Ms. Johnson down to the lobby to leave, not having probable cause to charge her with a crime.

I/O reviewed Case File and worked on follow-up

17:00 I/O secured for the day.

07-09-07 08:30 I/O working on wrapping up case file.

11:15: Bond Hearing held on both defendants.

Taurus Watts: Waived Bond

Tremaine Wray: Waived Bond

I/O is informed that the defense attorney for Taurus Watts may allow and interview of his client.

07-10-07 I/O reviewed case file and worked on follow-up

I/O request phone records on Tremaine Wray's cell phone. Suncom Cell phone [REDACTED] through the Solicitor's Office.

07-11-07 I/O reviewed case file and worked on follow-up

RICHLAND COUNTY SHERIFF'S DEPARTMENT INCIDENT REPORT

AGENCY I.D.
SCO 400000

CASE NUMBER

0706 2790 30

NCIC

INQ. E

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VIC	
1. <u>Homicide</u>		☒ YES ☐ NO	☐ YES ☒ NO	<u>B3</u>		☐ Individual ☐ Business ☐ Firearm ☐ Government ☐ Religion ☐ Other ☐ Unknown ☐ Police C	
2.		☐ YES ☐ NO	☐ YES ☐ NO				
3.		☐ YES ☐ NO	☐ YES ☐ NO				
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET AND NAME AND NUMBER)							
<u>2820 Hardscrabble Rd (H & J's)</u>				SUBDIVISION <u>SW 1/4</u>	ZIP CODE <u>29223</u>	WEAPON TYPE	
INCIDENT DATE <u>063007</u>	24 HR. CLOCK <u>0412</u>	TO DATE	24 HR. CLOCK	DISP. DATE <u>063007</u>	DISP. TIME <u>0412</u>	TIME ARRIVED <u>0415</u>	DEPART TIME <u>0630</u>
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE) <u>JACOBS, Ricky</u>		RELATIONSHIP TO SUBJECT <u>ST</u>	RESIDENT ☒ YES ☐ NO	RACE <u>Bm</u>	SEX <u>M</u>	AGE <u>43</u>	ETH. <u>N</u>
ADDRESS <u>[REDACTED]</u>		CITY <u>Columbia</u>	STATE <u>SC</u>	ZIP CODE <u>29203</u>	DAYTIME PHONE <u>[REDACTED]</u>		
VICTIM'S NAME (LAST, FIRST, MIDDLE) <u>H & J's</u>		RELATIONSHIP TO SUBJECT <u>1</u>	RESIDENT ☒ YES ☐ NO	RACE <u>Bm</u>	SEX <u>M</u>	AGE <u>[REDACTED]</u>	ETH. <u>[REDACTED]</u>
HEIGHT <u>[REDACTED]</u>		WEIGHT <u>[REDACTED]</u>	HAIR <u>[REDACTED]</u>	EYES <u>[REDACTED]</u>	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		
ADDRESS <u>2820 Hardscrabble Rd</u>		CITY <u>Columbia</u>	STATE <u>SC</u>	ZIP CODE <u>29203</u>			
VISIBLE INJURY (MCT. 1) ☐ YES ☒ NO		EXPLAIN					
VICTIM (NO. 1) USING: ALCOHOL ☐ YES ☒ NO ☐ UNK.		COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES ☒ NO					
TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/SPLASMT. ☐ OTHER ☐ ALONE ☐ ASSISTED		J-Thru Jurisdiction S-State O-Out of State U-Un					
SUSPECT NAME (LAST, FIRST, MIDDLE) <u>Unknown</u>		RACE <u>Bm</u>	SEX <u>M</u>	AGE <u>[REDACTED]</u>	ETH. <u>[REDACTED]</u>	DATE OF BIRTH <u>[REDACTED]</u>	HEIGHT <u>[REDACTED]</u>
WARRANTED <u>Dreadlocks in Hair</u>		NCIC NUMBER					
ARREST <u>Unknown</u>		CITY <u>[REDACTED]</u>	STATE <u>[REDACTED]</u>	ZIP CODE <u>[REDACTED]</u>	LOCATION NO.		
SUMMONS <u>[REDACTED]</u>		SUBJECT TWO: USING: ALCOHOL ☐ YES ☒ NO ☐ UNK.		ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO		DATE/TIME OF OFFENSE	
DRUGS: ☐ YES ☒ NO ☐ UNK.		TYPE		TOTAL # ARRESTED		DATE/TIME OF ARREST	
Compl states two Susp's attempted to enter the Club and Compl told Susp's HE was closed. Compl states one of the Susp's made a comment to the effect "I've got something for you." Compl states Susp's left the location and a few minutes later Compl states a white vehicle SUV with the Susp's in it began shooting toward the club. Compl described the vehicle possibly being a white Nissan with a black stripe down the side. Compl states Susp's fired over the top of the vehicle.							
EVIDENCE NUMBER		JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY			JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY		
HOLD ROOM 1		EVIDENCE ROOM					
SEIZED	\$	BURNED	\$	DAMAGED	\$		
SUBJECT IDENTIFIED ☐ YES ☒ NO		SUBJECT LOCATED ☐ YES ☒ NO		☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER	
						☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVE	

AGENCY I.D.
 DO 400000

 RICHLAND COUNTY SHERIFF'S DEPARTMENT
 SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER

NCIC

0706 2790 30

☒ OPTIONAL REPORT ☐ MODIFIES ORIGINAL		☐ SUPPLEMENTAL REPORT ☐ CASE STATUS CHANGE		☐ ADDITIONAL VICTIMS ☐ ADDITIONAL OFFENDERS		☐ ADDITIONAL STOLEN PROPERTY ☐ ADDITIONAL RECOVERED PROPERTY		PAGE <u>2</u> of <u>2</u> PAGES. ☐ FIELD CONTACT INFO	

VICT./SUBJ. I.D. OVERFLOW VICT./SUBJ. I.D. OVERFLOW VICT./SUBJ. I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)			VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	D.O.B.	
	☐ VICTIM #	<u>Unknown</u>							<u>BA</u>				
	☒ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.							
	☐ RUNAWAY	<u>close cut hair cut with striped shirt</u>											
	☐ WANTED	ADDRESS			CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE		EVENING PHONE		
☐ WARRANT	<u>Unknown</u>												
☐ ARREST	☐ VICTIM NO. ☐ VISIBLE INJURY ☐ NO ☐ YES EXPLAIN:			COMPLAINT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES		VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK. DRUGS: ☐ NO ☐ YES TYPE:		☐ TWO-MAN VEHICLE ☐ DETECTIVE/SPLASMT. ☐ ALO ☐ ONE-MAN VEHICLE ☐ OTHER ☐ ASS					
☐ JAIL	☐ SUBJECT NO. ☐ USING ALCOHOL: ☐ NO ☐ YES USING DRUGS: ☐ NO ☐ YES TYPE:												
☐ SUMMONS													
☐													

VICT./SUBJ. I.D. OVERFLOW VICT./SUBJ. I.D. OVERFLOW VICT./SUBJ. I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)			VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	D.O.B.	
	☐ VICTIM #	<u>Unknown</u>											
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.							
	☐ RUNAWAY												
	☐ WANTED	ADDRESS			CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE		EVENING PHONE		
☐ WARRANT	<u>Unknown</u>												
☐ ARREST	☐ VICTIM NO. ☐ VISIBLE INJURY ☐ NO ☐ YES EXPLAIN:			COMPLAINT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES		VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK. DRUGS: ☐ NO ☐ YES TYPE:		☐ TWO-MAN VEHICLE ☐ DETECTIVE/SPLASMT. ☐ ALO ☐ ONE-MAN VEHICLE ☐ OTHER ☐ ASS					
☐ JAIL	☐ SUBJECT NO. ☐ USING ALCOHOL: ☐ NO ☐ YES USING DRUGS: ☐ NO ☐ YES TYPE:												
☐ SUMMONS													
☐													

NARRATIVE NARRATIVE NARRATIVE	<u>Homicide</u> <u>2870 Hardscrabble Rd</u> <u>Det. Galinski spotted the Susp Vehicle on the</u> <u>Two Notch Rd where SUBJS were detained.</u> <u>Deputies were later notified of a victim transported to</u> <u>Providence H.S. Hosp. with a gun shot wound.</u> <u>M.D. Smith responded to Hospital.</u>											

VEH./GUN/ETC. 1 VEH./GUN/ETC. 1 VEH./GUN/ETC. 1	EVIDENCE NUMBER:			JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY			JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY		
	HOLD ROOM			EVIDENCE ROOM					

PROPEL. & EST. PROPEL. & EST. PROPEL. & EST.	STATUS		TYPE		VIN AND/OR LICENSE NO.				BOAT HULL NO. AND/OR REG. NO.			
	☐ STOLEN	☐ VEHICLE			SERIAL AND/OR OWNER APPLIED NO.				STATE			
	☐ RECOVERED	☐ GUN			YEAR OF REGISTRATION		YEAR OF EXPIRATION		YEAR		MAKE	
	☐ FOUND	☐ BOAT			MODEL		STYLE		COLOR		BRAND NAME	
	☐ TOWED	☐ LICENSE PLATE			NIC. NO.		DENOMINATION		ISSUER		SECURITIES DATE	
☐ SUSPECT	☐ SECURITIES, STOCKS											
☐ VICTIM	☐ ARTICLE											
SEIZED		DAMAGED		BURNED								

LIVE LIVE LIVE	SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ ADM. CLOSED		☐ ARRESTED UNDER 18		☐ EX-CLEAR UNDER 18	
	☐ YES ☐ NO		☐ YES ☐ NO		☐ UNFOUNDED		☐ ARRESTED 18 AND OVER		☐ EX-CLEAR 18 AND OVER	

REASON FOR EXCEPTIONAL () FARRANT () OFFENSE DEATH () NO PROSECUTION () EXTRAJURISDICTION () VICTIM DECLINED COOPERATION () PREMISE NO HISTORY

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Tremaine Wray, #337442,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2012-CP-40-07909

ORDER OF DISMISSAL

2017 FEB 12 10:11:34
FILED
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed November 29, 2012. Respondent made its Return on February 19, 2013, requesting an evidentiary hearing be held. Thereafter, Applicant, through his counsel, filed an amended application on July 7, 2014. An evidentiary hearing into the matter was convened November 3, 2014, at the Richland County Courthouse. Applicant was present at the hearing and was represented L. Marshall Coleman Newton, Esquire. Respondent was represented by Assistant Attorney Generals Megan E. Harrigan and J. Clayton Mitchell of the South Carolina Attorney General's Office. Following the hearing, this Court requested post-hearing memorandum from both parties solely addressing the allegation of ineffective assistance of appellate counsel. After reviewing these memorandums and all testimony and other evidence presented at the hearing, along with a review of all records provided to the Court, this Court finds that there are no constitutional deprivations or other grounds on which to grant relief and is denying and dismissing this application with prejudice.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Richland County

MA

Clerk of Court. Applicant was indicted during the August 2007 term of the Richland County Grand Jury for Murder (2007-GS-40-05914) along with co-defendant Taurus Watts for the shooting death of Dumuria "Hank" Johnson. Jack B. Swerling, Esquire (hereinafter "Swerling"), and Arie D. Bax, Esquire (hereinafter "Bax"), represented Applicant. On October 5-15, 2009, Applicant proceeded to a jury trial before the Honorable J. Michelle Childs. The State was represented by Assistant Solicitors Vanessa C. Shipley and Joanna A. McDuffie of the Fifth Circuit Solicitor's Office. The jury convicted Applicant as indicted and Judge Childs sentenced him to forty years imprisonment.¹

A notice of appeal was filed and an appeal was perfected on Applicant's behalf by Appellate Defender Elizabeth A. Franklin-Best of the South Carolina Commission on Indigent Defense - Division of Appellate Defense. Following briefing and argument, the South Carolina Court of Appeals affirmed Applicant's conviction and sentenced by unpublished opinion. State v. Wray, 2012-UP-477 (S.C. Ct. App. filed August 8, 2012). The Remittitur was issued on August 27, 2012.

In his amended application for post-conviction relief, Applicant alleged the following specific allegations:

1. Ineffective assistance of trial counsel for failure to call as gunshot residue expert to refute the State's expert;
2. Ineffective assistance of trial counsel for failure to call initial responding officer Weldon Gregory;
3. Ineffective assistance of trial counsel for failure to call eyewitness Timothy Weldon;
4. Ineffective assistance of trial counsel for failure to object to the State's vouching for the credibility of a witness during its closing argument;
5. Ineffective assistance of trial counsel for failing to interview or investigate the initial responding officer Weldon Gregory or his handwritten police report;

¹ The jury similarly convicted Applicant's co-defendant Watts and Judge Childs sentenced him to thirty-five years imprisonment.

6. Brady violation against the State for its submission of the handwritten report of Officer Gregory with his name cut-off of the bottom;
7. Ineffective assistance of appellate counsel for failure to raise issues regarding gunshot residue in Applicant's appellate brief; and
8. Ineffective assistance of trial counsel for failure to impeach State's witness Ricky Jacobs with Officer Gregory's report.

Applicant proceeded forward on these grounds as listed in his amended application at the evidentiary hearing.

SUMMARY OF FACTS ADDUCED AT TRIAL

On the early morning of June 30, 2007, Applicant Tremaine Wray and his co-defendant Taurus Watts fired multiple shots outside of the H & J Club in Richland County, fatally wounding Dumuria "Hank" Johnson. Johnson suffered a single gunshot wound to his left leg. (Tr. Vol. V p. 229-230). The bullet lacerated the left popliteal artery. (Tr. Vol. V p. 230). Johnson died as a result of bleeding to death from the lacerated artery. (Tr. Vol. V p. 230).

On June 29, 2007, the victim Dumuria "Hank" Johnson travelled with his friends Travis Malone and Lamont Goodwin from St. Matthews to Columbia. (Tr. Vol. II p. 203-04). The group was meeting with Travis' sisters Verda Roberts and Stephanie Boston, and Travis' nephew Charlie Bates to celebrate Travis' upcoming deployment to Iraq. (Tr. Vol. II. pp. 70-72, 109, 204). After spending a few hours at Stephanie's house, the group decided to go to the H & J Club, a bar in northeast Columbia. (Tr. Vol. II pp. 109-10, 134-35, 205). The group travelled in two vehicles. Verda and Stephanie rode in Verda's white GMC Envoy; Travis, Charlie, Lamont, and the victim rode in a vehicle Travis had rented for the weekend. (Tr. Vol. II pp. 73, 111, 137-38, 205-06). They parked in a car wash stall near the bar. Verda parked in the front of the stall and Travis parked behind her. (Tr. Vol. II pp. 75, 110, 111, 136-37, 225).

While inside the club, Charlie ran into his ex-girlfriend, Jalicca "Lisa" Johnson. (Tr. Vol. II pp. 78-79, 112, 140-41, 244-45). At some point during the evening, Charlie and another club

patron were involved in an altercation revolving around Lisa Johnson. (Tr. Vol. II pp. 79-80, 112-14, 123, 142-44, 155-577, 207, 246). A fight inside the club ensued. (Tr. Vol. II pp. 79-81, 112-14, 145-46, 157-58, 171-73, 207, 226-27, 246-48; Vol. III p. 7-9). Verda testified that it felt like her group was fighting for their lives to get out of the club, and it was like the whole club was against them. (Tr. Vol. II p. 80). Charlie also testified that it appeared the whole club was fighting against their group. (Tr. Vol. II p. 146).

The Shooting

The group escaped from the inside of the club. (Tr. Vol. II pp. 80-81, 146). Verda testified the victim was standing outside against a wall and was urging them to run. (Tr. Vol. II pp. 81, 102). As they were running, they reached a small brick wall between the club and the car wash. (Tr. Vol. II p. 81). Verda testified that as they arrived at the brick wall, she heard shots. (R. p. 331). She then jumped across the brick wall, ran to her vehicle, and opened it up. (Tr. Vol. II p. 81). However, she did not get into the vehicle immediately because she was afraid of being shot. (Tr. Vol. II p. 81). Verda also noted that her brother jumped on top of her to protect her. (Tr. Vol. II p. 81).

Stephanie testified that as they were leaving the club, Hank got out of the car. (Tr. Vol. II p. 114). He was standing beside the car and they were walking towards him. (Tr. Vol. II p. 114). As they were getting into the cars, Stephanie heard gunshots. (Tr. Vol. II p. 114-15). She recalled they were coming from the front. Stephanie jumped into the car. She recalled hearing Hank saying he was hit. (Tr. Vol. II p. 115). Stephanie testified that Charlie, Lamont, and Travis put Hank into the car. (Tr. Vol. II p. 115).

Charlie testified that he ran into Hank as they were leaving the club. (Tr. Vol. II p. 146). He noted that it looked like Hank was coming from the car. (Tr. Vol. II p. 146). As they started

making their way back to the vehicles, Charlie heard gunshots. (Tr. Vol. II p. 147). Charlie indicated that when the shots were fired, Verda and Stephanie were by her vehicle, while he, Lamont, and Hank were by Travis' vehicle. (Tr. Vol. II p. 147). Charlie remembered helping Hank open Travis' door. (Tr. Vol. II p. 148). Charlie initially jumped into the front of the car, and then into the back seat. (Tr. Vol. II p. 148). He recalled that Hank jumped into the front seat and said that he had been hit. (Tr. Vol. II p. 148). Lamont eventually got into the car. (Tr. Vol. II p. 149). Charlie also noted that Travis had covered Verda. (Tr. Vol. II p. 149).

Lamont testified that as they were heading back towards the cars, he heard gunshots coming from the road. (Tr. Vol. II p. 208). He did not see who was shooting. (Tr. Vol. II p. 209). He could not say how many shots were fired. (Tr. Vol. II pp. 209, 222). He indicated it sounded like one gun, but he was not sure how many weapons were fired. (Tr. Vol. II pp. 210, 222).

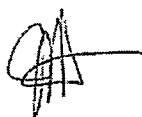
Verda testified that she heard more than five shots, and more than one gun was fired. (Tr. Vol. II pp. 88-89, 92). She did not see who was shooting. (Tr. Vol. II p. 92). Stephanie testified she heard at least three shots, but she did not know exactly how many were fired. (Tr. Vol. II p. 117). She did not see who was shooting. (Tr. Vol. II p. 117). She also indicated she thought more than one gun was being fired. (Tr. Vol. II p. 117-18). Charlie did not recall how many shots were fired. (Tr. Vol. II p. 151). He said at the time that it was ten or more shots. (Tr. Vol. II p. 152). Charlie also could not tell where the bullets were coming from. (Tr. Vol. II p. 148).

After they stopped hearing shots, Verda told everyone to get into a vehicle and go. (Tr. Vol. II p. 82). The group planned to meet and regroup at a local Waffle House. (Tr. Vol. II p. 82). When the group arrived at Waffle House, Travis informed his sisters that Hank was shot. (Tr. Vol. II p. 82, see Tr. Vol. II, pp. 115, 149-50, 209-10). The group then drove to Providence Northeast Hospital. (Tr. Vol. II pp. 83, 116, 150, 210).

Lisa testified that she heard gunshots as she was getting to the kitchen door of the club. (Tr. Vol. II p. 250). She could not say how many shots she heard because they were too fast. (Tr. Vol. II p. 252). One witness indicated that neither Applicant nor Watts were inside the club during the fight. (Tr. Vol. III pp. 9-10, 13). However, Lisa Johnson testified she thought she saw Watts inside the club that night/early morning. (Tr. Vol. II pp. 293, 300). Ricky Jacobs also indicated that he saw both Applicant and Watts inside the club that night, although this was information he had not mentioned prior to his trial testimony. (Tr. Vol. III. pp. 74-375, 128, 133-32).

Ricky Jacobs, the owner of H & J club, testified that after the fight, he closed the club early. (Tr. Vol. III p. 35). He had the DJ stop the music and turned the lights up. (Tr. Vol. III p. 35). Jacobs then walked outside and headed across the street to move his car. (Tr. Vol. III p. 35-36). As he walked under the canopy where the old gas pumps were at the convenience store beside the club, Jacobs saw Watts and Applicant walking towards the club. (Tr. Vol. III p. 37). Jacobs told the two men that the club was closing, and there was no need for them to go back. (Tr. Vol. III p. 38). He noted that Watts said okay, and turned around to leave. (Tr. Vol. III p. 38). Jacobs then observed Watts walking towards a tan or champagne colored Suburban. (Tr. Vol. III p. 39). Both Applicant and Watts got into the Suburban, with Applicant getting into the driver's seat. (Tr. Vol. III p. 38, 185). Jacobs noted that he had seen Applicant drive that vehicle before. (Tr. Vol. III p. 39-40).

Jacobs saw Watts had a black gun, and Watts' hand was covered in cloth. (Tr. Vol. III pp. 40-41, 185). Jacobs testified that Watts said "I've got something for that" to Jacobs when Jacobs saw the gun. (Tr. Vol. III p. 140). Jacobs was able to identify the type of gun in court. (Tr. Vol.



III p. 41-42). Jacobs also identified Applicant and Watts in photographic lineups, and identified the Suburban in a photo. (Tr. Vol. III pp. 54, 57, 58-60, 67-68; Tr. Vol. VI p. 225-28).

Jacobs testified that the Suburban pulled out and headed down Hardscrabble Road towards Farrow Road. (Tr. Vol. III p. 42, 185). He heard a shot, and then heard rapid fire. (Tr. Vol. III pp. 42-43, 185-86). He could not tell how many shots were fired. (Tr. Vol. III p. 43). He saw the shots were being fired from the driver's side of the Suburban. (Tr. Vol. III pp. 44, 185-86). They were being fired towards the club. (Tr. Vol. III pp. 44, 185-86). He could not see who was shooting. (Tr. Vol. III pp. 44, 185-86). Jacobs then saw a white Isuzu Rodeo leave the scene. (Tr. Vol. III p. 46). He saw two guys in the Rodeo. (Tr. Vol. III p. 47). Jacobs indicated the passenger of the Rodeo sat up on the door, and then shot a pistol into the air one time. (Tr. Vol. III pp. 48-49, 159-60, 163, 190).

The Police Investigation

An Isuzu Rodeo was pulled over by law enforcement shortly after the shooting. (Tr. Vol. III p. 200-06). The two occupants were identified by Jacobs as being the ones in the Isuzu Rodeo that left the club parking area after the Suburban. (Tr. Vol. III p. 55; Tr. Vol. VI p. 216-18). Swabs were taken from the vehicle and tested for gunshot residue; no gunshot residue or any component thereof was found in this vehicle. (Tr. VI p. 72-80).

A projectile was recovered from the victim at the hospital. (Tr. Vol. III pp. 253-55, 258, 259). Round lead particles, a crucial component of gunshot residue was recovered from various locations inside of Applicant's Suburban. (Tr. Vol. IV pp. 70-73, 117-18; Tr. Vol. VI p. 59-67). SLED Agent Michael Moskal testified that the gunshot residue components found were consistent with a weapon being fired from the driver's area of the Suburban. (Tr. Vol. VI pp. 69, 72, 97, 134).



While the murder weapon was not recovered by law enforcement, three witnesses testified about the disposal of the firearm. (See Tr. Vol. V: pp. 102-118).² Rashonda Simpson, who was married to Applicant's cousin, testified that on July 1, 2007, she got into an argument with her husband, Jarrell Dansby, because he was digging a hole in their backyard to purportedly bury the murder weapon. (Tr. Vol. IV p. 138-141). She later saw Dansby walk over to her uncle, Brian Watson. (Tr. Vol. IV pp. 142,151). Simpson testified that Watson took the gun apart. (Tr. Vol. IV pp. 143, 151-52). Watson and Dansby then put the gun back into a book bag and left home. (Tr. Vol. IV. p. 143). When they returned approximately forty-five minutes later, they did not have the book bag or the gun. (Tr. Vol. IV. pp. 143, 153-54). Simpson also noted that Dansby informed her that they had thrown the gun into a river. (Tr. Vol. IV p. 153).

Dansby testified that on the Saturday either before or after July 4, 2007, Applicant asked if he could hide his gun at Dansby's house because Applicant did not have time to hide it from his grandmother. (Tr. Vol. IV p. 177-78). Dansby was not home when Applicant left the gun in the underpinning of Dansby and Simpson's trailer. (Tr. Vol. IV p. 177-180). Dansby testified that he thought about calling the police regarding the gun, but Watson talked him out of it. (Tr. Vol. IV p. 182). Dansby indicated he never actually saw the gun; instead, he showed Watson where it was hidden. (Tr. Vol. IV pp. 182-83, 215). Watson got the bag with the gun inside and left. (Tr. Vol. IV p. 185). Watson returned between one hour and one and one-half hours later, and Watson told Dansby not to worry about the gun. (Tr. Vol. IV pp. 185, 213). Dansby testified that he did not go with Watson to get rid of the gun, and he did not ask Watson where he

² These witnesses were not located until the start of Applicant's original trial date in trial in May of 2009, when Brian Watson, contacted the solicitor's office and indicated that he had information regarding the disposal and location of the murder weapon. Based on this information, the court granted the State's motion for continuance over Applicant's objection to allow the State additional time to locate the murder weapon. Despite numerous attempts and tactics, including a dive team, the murder weapon was never found.

disposed of the gun. (Tr. Vol. IV pp. 185, 214). Dansby did note that Watson confirmed he got rid of the gun. (Tr. Vol. IV p. 186).

Watson testified that on June 30, 2007, Dansby came to him and asked for assistance. (Tr. Vol. IV pp. 252-53, 1071, 1092). Watson went over to Dansby's home, and Dansby showed Watson a Mac 10 gun that was inside a book bag. (Tr. Vol. IV pp. 253, 256). Watson indicated that Dansby wanted assistance in getting rid of the gun. (Tr. Vol. IV p. 256). They banged on the gun with a hammer. (Tr. Vol. IV p. 256-57, 287). Watson testified that Dansby got Simpson to drive the two to get rid of the gun. (Tr. Vol. IV pp. 257-58, 290-91). Watson testified that he threw the gun and the clip into a creek. (Tr. Vol. IV p. 258).

Law enforcement did recover seven nine-millimeter Winchester Luger shell casings and three nine-millimeter RP Luger shell casings from the crime scene. (Tr. Vol. V p. 12-23). Two projectiles were recovered from the car wash stalls by the club. (Tr. Vol. V p. 143-44). There were also several bloodstains in the area. (Tr. Vol. V p. 148-51). All three projectiles, (i.e. the one recovered from the victim and the two found at the scene) were determined to be fired by the same gun. (Tr. Vol. V p. 143-68; Tr. Vol. VI p. 160, 161-62). Also, all ten shell casings recovered from the crime scene were fired by the same gun. (Tr. Vol. VI p. 156, 160, 161-62). David Collins, the firearms and toolmarks examiner, testified that the firing pin impressions on the casings were consistent with an M-11 type firearm, which he referred to as a MAC 10 styled weapon. (Tr. pp. 1506-07). Collins could not tie the shell casings to the recovered projectiles because no weapon was provided for comparison. (Tr. Vol. VI p. 160-61).

SUMMARY OF TESTIMONY PRESENTED AT THE HEARING

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from initial responding officer Weldon Gregory and Firearms Examiner Kelly Fite. Respondent

presented testimony from trial counsels Jack B. Swerling and Arie D. Bax and appellate counsel Elizabeth A. Franklin-Best. Also before this Court were the following exhibits introduced by Respondent:

1. Respondent's Exhibit No. 1: Swerling's Handwritten notes labeled "Tim Weldon";
2. Respondent's Exhibit No. 2: MacDougall Investigative Notes/Memorandum Packet;
3. Respondent's Exhibit No. 3: Clark Memorandum of Interview Packet;
4. Respondent's Exhibit No. 4: SLED Gunshot Residue Corrected Report dated October 2, 2009
5. Respondent's Exhibit No. 5: Micro Analytical Packet, including "Questions Related to Gunshot Residue Analysis" and the Curriculum Vita of Jeffrey M. Hollifield;
6. Respondent's Exhibit No. 6: Investigator McRae's Notes; and
7. Respondent's Exhibit No. 7: Richland County Sheriff's Department Incident Report handwritten by Officer Weldon Gregory.

Applicant testified first on his own behalf. He testified that he is a high school graduate with two years of vocational school training and that he was employed as a cook at Outback Steakhouse when he was arrested. He testified that he was arrested at work within a few days of the shooting and charged with "first degree murder." He testified that he was originally represented by the Richland County Public Defender's Office, but retained Jack Swerling soon thereafter. He testified that he discussed the charges, the facts of the case, possible defenses, and the evidence with Swerling.

He testified that he believes there was "a lot of circumstantial evidence" was presented at trial, but that he should not have been convicted due to a lack of direct evidence. He testified that because of this, the credibility of many of the State's witnesses was of paramount importance, including the initial officers arriving on the scene and eyewitness Ricky Jacobs. He testified that

he wanted counsel to highlight inconsistencies of and between these witnesses during cross-examination and that he does not think counsel did this adequately. He also testified that he wanted initial responding officer Weldon Gregory to testify as to inconsistent statements Jacobs provided immediately following the shooting, but that he was not called as a witness. He elaborated that perhaps Gregory was not called as a witness because his name was cut-off from the bottom portion of his initial report provided by the State, which he described as a discovery violation. (See Respondent's Exhibit No. 7). However, Applicant did acknowledge that Swerling did vigorously cross-examine the State's witnesses, including Ricky Jacobs, and succeeded in getting Jacobs to admit to several inconsistencies.

Applicant testified that he wanted counsel to retain a gunshot residue expert to refute the testimony of the State's gunshot residue expert. He testified that he wanted counsel to object to any testimony by the State's expert, SLED Agent Michael Moskal, and that he feels that counsel was ineffective for not preventing Moskal from testifying. He elaborated that since no gunshot residue was found in the car, but rather, only round lead particles, Moskal should not have been allowed to testify that his findings were consistent with a gun being fired from Applicant's car. Applicant testified that Moskal's testimony mislead the jury into thinking that the sixteen round lead particles found in his tan suburban were gunshot residue. He testified that this problem was so apparent that the Court of Appeals opinion cited the presence of gunshot residue as corroborating evidence affirming his conviction. Applicant testified that that his appellate counsel was also ineffective for failing to raise the gunshot residue issue during his appeal. Applicant did acknowledge that trial counsel objected to the testimony of the State's gunshot residue expert and that the Court limited Moskal as to what findings he could testify.



Applicant testified that trial counsel was also ineffective for failing to object to the State's vouching of State's witness Ricky Jacobs during closing argument. (See Tr. Vol. VIII p. 54 line 20: "He's telling the truth.") Applicant elaborated that this comment was prejudicial to his case because Jacobs was the only eyewitness to the shooting and that this inappropriately inflated his credibility. Applicant also testified that trial counsel was ineffective for failing to object to the accomplice liability jury instruction and for failing to challenge evidence seized in violation of his constitutional rights.

Following Applicant's testimony, Applicant appellate counsel, Elizabeth Franklin-Best, testified. She testified that she was formerly an Appellate Defender with the South Carolina Commission on Indigent Defense – Division of Appellate Defense and that she represented Applicant in this capacity. She testified that she has been practicing law for fourteen years and the vast majority of her practice is criminal defense, including appellate defense. She testified that she reviewed materials, including her brief, momentarily before taking the stand. She testified that her standard practice when she takes on a case for appellate representation is to read the entire record and determine what issues are preserved and meritorious. She testified that her personal standard is to only file meritorious, non-Anders briefs and that she believes she has a duty to raise all meritorious and preserved issues on appeal, regardless of the strength of the issue. She testified that she raised three issues in Applicant's brief and does not believe that any of these three issues are "patently frivolous." She testified that she does not recall why she elected not to raise the gunshot residue issue on Applicant's appeal, although she did speculate that it must have been because she did not believe the issue was meritorious at the time she filed her brief or she believed it was not preserved for appellate review. She elaborated that she would have raised this issue if she thought it had any merit whatsoever based on her personal standards.

Following Franklin-Best's testimony, Applicant presented testimony from Weldon Gregory. Gregory was formerly employed by the Richland County Sheriff's Department and retired in 2008 after nearly twenty years in law enforcement. He testified that he was the first responder on the scene shortly after the shooting. He testified that he received a call over dispatch shortly after four a.m. that there were shots fired and the H&J Club and that he arrived a few minutes later. He testified that his sole involvement with this case was to secure the scene immediately upon arrival and had no investigative or other role in this case. He testified that he prepared a short, handwritten report of the incident, which he read into the record. (See Respondent's Exhibit No. 7). He testified that the report does not provide any names or descriptions of the shooters beyond that they were the two patrons denied entry into the H&J Club earlier. He testified that the information in the report came from speaking with the club's owner, Ricky Jacobs. He testified that the report includes a description of two vehicles involved in the shooting. He testified that he only spoke with Jacobs briefly and that his primary concern was securing the scene, not investigating the shooting. He testified that he was on the scene for approximately two hours. He testified that numerous deputies and other members of law enforcement arrived at the scene within "two to three minutes" of his arrival and handled the investigation and other aspects of the case. He testified he retired from the Richland County Sheriff's Department before Applicant's trial and was not contacted by either counsel for the State or Applicant prior to trial. He testified that he would have been willing to testify for either State or Applicant if requested. He testified that he has no other information regarding this case beyond the short narrative included in his incident report.

Next, Applicant presented testimony from firearms examiner Kelly Fite. Fite retired from the Georgia Bureau of Investigations in 1999 after thirty-one years as Firearms Crime Scene

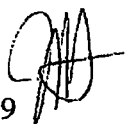
Reconstruction Expert and Firearms Examiner, where he routinely tested for and analyzed gunshot residue. He has his Bachelors of Science with a major in chemistry from Berry College. Fite testified that he has been admitted as an expert in gunshot residue analysis more than one-hundred times, although he has never testified in South Carolina. Although retired, Fite testified that he has a laboratory in his basement and works privately as an expert in various states in the southeast. This Court admitted Fite as an expert in gunshot residue analysis.

Fite testified that he was retained by Applicant's counsel to review Applicant's case and give his expert opinion regarding gunshot residue. He testified that he received any information he had on the case from Applicant's post-conviction relief counsel and a cursory review of the transcript and other documents. However, Fite could not recall what documents he reviewed, but did acknowledge that he did not test or view any of the physical evidence, including gunshot residue swabs and samples. He did recall reviewing a copy of the corrected and final SLED gunshot residue report for Applicant's car after being shown a copy of the report. (See Respondent's Exhibit No. 4). He testified that he did not speak to the State's gunshot residue expert, the expert privately retained by trial counsel, or anyone from the South Carolina Law Enforcement Division (hereinafter "SLED"). Additionally, Fite testified that he has had no interaction with SLED, either on this case or any other, and that he is unfamiliar with any of its protocols, guidelines, or procedures.

Fite testified that gunshot residue is comprised of the particles: lead, antimony, and barium. He testified that due to the high heat and pressure exerted when a gun is fired, the lead particles become rounded. Fite testified that these round lead particles are the most important component of gunshot residue and are what is generally looked for first by analysts. He testified that because only round lead particles were found, but no antimony or barium, an examiner

should not classify such a finding as positive for gunshot residue. He testified that the SLED report and testimony of SLED Agent Moskal that "round lead particles are one of the components of gunshot residue" is correct and also agreed that the detection of round lead particles is consistent with a weapon being fired. However, he testified that the presence of round lead particles alone does not necessarily mean that a gun was fired and that he thinks that Agent Moskal's testimony indicating the round lead particles are consistent with a weapon being fired could mislead or confuse the jury. He testified that he would not have used this classification. Fite testified that he personally would only testify that test results are consistent with gunshot residue if he found two of the three required elements present. He testified that round lead particles can be created by other scenarios, including: handling brake dust, cheap holiday lights, or fireworks; transference from another object; or smelting lead (such as to make one's own fishing lures). He did acknowledge that finding round lead particles in those other circumstances is rare and the most common cause of these particles is from firing a weapon. He acknowledged that he does not know how the round lead particles were deposited into Applicant's vehicle and could not rule out that a gun was fired in Applicant's vehicle.

Following Fite's testimony, Respondent presented testimony from trial counsel Bax. Bax testified that he has been practicing law since 2004 and his practice has been comprised of almost exclusively criminal defense work. He testified that he has extensive trial experience, including his former role as the lead trial attorney for the Lexington County Public Defender's Office. He testified that he was second chair on Applicant's case and was asked to assist with the case by Swerling. He elaborated that he was renting office space from Swerling at the time and had previously assisted Swerling with other cases. He testified that although he assisted and was involved with all components of the case, his primary role on the defense team was to handle the



ballistics, gunshot residue, and other technical aspects of the defense. He testified that this included investigating and retaining possible experts. Bax testified that he had a breadth of prior experience handling forensics and felt comfortable being responsible for these parts of Applicant's case. He testified that he retained a tool marks expert and ballistics expert but both were of limited assistance because the murder weapon was never recovered.

Bax testified that he initially retained a crime scene investigative analyst and expert to assist with Applicant's defense. Bax testified that at this expert's recommendation, he also retained a specialized gunshot residue expert, Jeffrey M. Hollifield. (See Respondent's Exhibit No. 5). He testified that Hollifield was incredibly helpful and that he consulted with Hollifield numerous times prior to trial. He elaborated that Hollifield was beneficial in preparing for his cross-examination of the State's expert witness Moskal and even sent him an outline of possible questions which he used as a basis for his own questioning. (See Respondent's Exhibit No. 5).

Bax testified that Hollifield was also present in the courtroom for the relevant portions of Applicant's trial, including the motion in limine to exclude testimony for SLED Agent Moskal. He testified that he moved to suppress testimony regarding gunshot residue because the State's expert did not find gunshot residue and could not conclusively state that a gun was fired in Applicant's car. He explained that because only round lead particles were found, but not the remaining two elements of gunshot residue (barium and antimony), any testimony that the results were consistent with a gun being fired would be inaccurate. He testified that he was well prepared for this motion and had favorable case law to support suppression based on the court's role as a gatekeeper to exclude unreliable scientific testimony. He testified that he also argued that the evidence should be suppressed based on testing irregularities making the results inherently unreliable. He testified while he has the utmost respect for the trial court, he was

surprised by her Honor's denial of his motion in limine and disagreed with the ruling. He testified that she did limit Moskal's testimony somewhat, ruling that he could only testify that round lead particles were found and the significance of this finding, but not that gunshot residue was found in the car or that a weapon was definitively fired from the car. He testified that because this motion was made directly prior to Moskal's testimony, it was a contemporaneous objection and thereby preserved for appellate review. He testified that Moskal never testified that gunshot residue was found and was very careful to testify within the trial court's parameters.

Bax testified that he was well prepared for his cross-examination of Moskal based on his work with gunshot residue on prior cases and the assistance on Hollified. He elaborated that he was able to get Moskal to admit to numerous other ways that the round lead particles could have ended up in the car, including secondary transfer. He testified that Moskal was very forthcoming on cross-examination, yielding beneficial results for Applicant. He testified that he was able to get Moskal to admit that: he could not conclusively state that gunshot residue was found; the two other components of gunshot residue has not been found; he could not conclusively state that a weapon had been fired in the car; the round lead particles could have come from a source other than a firearm; and there were inconsistencies in the testing procedures. He testified that following his cross-examination of Moskal, the defense team conferred with Hollified and determined that it was not necessary to call Hollified as a defense expert witness. He testified that Hollified felt (and the defense team agreed) that Bax had been able to extract the beneficial testimony Hollified would have provided through the cross-examination of Moskal and it was unnecessary to call Hollified to the stand to provide cumulative testimony that would not have significantly differed from Moskal's testimony. He testified that Applicant was present for this discussion and in agreement with decision.

Following Bax's testimony, lead trial counsel Swerling testified. He testified that he has been practicing law for over forty-one years and his practice is almost exclusively criminal defense work. He testified that he has known Applicant's grandmother, a former client, for over forty years and that he agreed to take Applicant's case "for a very modest fee." He testified that Applicant had previously been represented by the Richland County Public Defender's Office and he was given a copy of the file when he assumed representation of Applicant. Swerling testified that he asked Bax, who was renting office space from him at the time and with whom he had previously worked, to act as second chair. He testified that it is not uncommon for him to ask another attorney to associate as second chair, particularly on a murder case where trial is anticipated. He testified that he knew Bax had vast experience in handling forensics, and therefore, Bax took the lead on ballistics, gunshot residue, and other forensic aspects of the case.

Swerling testified that Don McRae, an investigator from the public defender's office, had already started working on the case and he was given access to those investigative memorandums. (See Respondent's Exhibit No. 6). Swerling testified that Applicant's co-defendant was represented by Theresa Johns, with whom he had previously worked and had a good relationship. He testified that there were several issues in common for the two defendants and he and Johns worked together when they could for the mutual benefit of their respective clients. He testified that he also had access to the investigative notes from the investigator Johns employed, Gary W. Clark, Sr. (See Respondent's Exhibit No. 3). Swerling testified that he also retained his own private investigator, David B. MacDougall, with whom he had previously worked. (See Respondent's Exhibit No. 2). He testified that it was very beneficial to have access to interviews and memorandum from three different investigators in addition to the State's

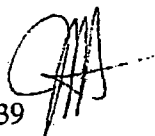
discovery because it allowed him to see if any witnesses changed their version of events and use any discrepancies to Applicant's benefit during cross examination.

Swerling testified that he has enjoyed an exceptionally good relationship with the Fifth Circuit Solicitor's Office for the last forty years. He testified that he thinks he was provided with the appropriate discovery materials in Applicant's case, and that if he did not think so, he would have called the solicitor's office to get any missing documents or other evidence. He followed-up that in the rare instance where this was not successful, then he would have filed an appropriate motion to rectify the purported discovery violation. In response to Applicant's allegation that the State committed a discovery violation for providing the handwritten report of initial responding officer Weldon Gregory with his name cut off from the bottom, Swerling testified that this does not amount to a discovery violation. He elaborated that he is not sure if the copy Applicant received is the original copy he received in discovery with the name omitted or if the original copy was in full and the name was later cut off through later copying. He testified that if he received the document with the name omitted, he likely would have called the prosecuting assistant solicitor and either asked for a full copy or who wrote the report, although he has no independent recollection at this time whether he did. He testified that regardless, the missing name is not particularly helpful to Applicant, as he would not have called Gregory as a witness at trial. He testified that it is extremely risky to call a member of law enforcement as a defense witness, as the witness is often hostile and uncooperative and the testimony is more harmful than helpful to a defendant. In the present case, he testified that he was able to impeach the State's chief witness Ricky Jacobs with so many other inconsistencies that there simply was no need to impeach him with testimony from Gregory. Additionally, Swerling testified that the report is devoid of substantive information and that Gregory's primary role at the scene was security and

preservation, not investigation, highlighting a lack of subject descriptions in Gregory's report. He testified that he was able to better impeach Jacobs with the numerous other police reports that were prepared with an investigative focus.

Swerling testified that he is meticulous in his trial preparation, including organizing all aspects of the case, including all potential witnesses, into individual tabs in large trial notebooks. He testified that he makes these sections from potential State and defense witnesses and includes any and all information on the subject comprised from all investigative reports and discovery. He testified that he made such a tab for Timothy Weldon, the potential witness included in Applicant's allegations who was present at the club the night of the shooting, which appeared to be "Tab 43" based on his review of his file. (See Respondent's Exhibit No. 1). He testified that within this tab is a handwritten summary of information gathered on Weldon, including from the various investigators who interviewed him. Swerling testified that he made a strategic decision not to call Weldon as a witness because he did not think Weldon was reliable or beneficial to Applicant. He elaborated that Weldon would have likely been a harmful witness to Applicant because the descriptions of the shooter that Weldon provided matched Applicant's co-defendant and Applicant's vehicle. He testified that he still agrees with his strategic decision not call Weldon as a witness after reviewing his file and the trial transcript.

Swerling also testified that he also would not have called Brian Morris as a witness for similar reasons. He testified that Morris gave law enforcement a false name and reported that he saw Applicant and his co-defendant both inside and outside the club and that Applicant had a gun with either plastic gloves or wrapped to conceal his hands. He also testified that Applicant had a prior record that would have been used for impeachment. He testified that Morris would have been an unreliable and harmful witness to Applicant and he made a strategic decision not to



call Morris. He testified that he still stands by this decision after reviewing his file and the trial transcript.

Swerling testified that Ricky Jacobs was an important witness for the State and he was well prepared for his cross-examination of Jacobs. He testified that his standard practice for cross-examination is to prepare an outline of questioning and key points he needs to elicit from a witness. He testified that his cross-examination of Jacobs was extensive, spanning more than fifty-five pages in the trial transcript, following lengthy questioning co-defendant Watts' counsel Johns. He testified that he does not like to ask the same questions on cross-examination that co-counsel has already asked, so he avoided duplicative questions and subjects already covered successfully by Johns. He testified that he was able to use several documents to impeach Jacobs, including previous statements given to law enforcement, police reports, and investigative reports. He testified that he was able to get Jacobs to admit to numerous inconsistencies, including: his location during the shooting; the timeline of before, during, and after the shooting; whether Applicant and his co-defendant said anything to him as they were walking first towards, then away from the club; how long he had known Applicant and his co-defendant; whether other club patrons had guns; and whether Applicant or his co-defendant had a gun and if it was concealed or wrapped in any manner. He testified that Applicant admitted he was not forthright with law enforcement and that his story changed several times in several different ways. He testified that co-defendant Watts' counsel fully questioned Jacobs about his first report to Gregory that shots were fired from a white Isuzu SUV and how it was inconsistent with his later reports. He testified that he was also able to elicit from Jacobs that he claimed to have known Applicant and his family for more than twenty years but failed to provide law enforcement with Applicant's

name until late the next day. He testified that he was able to show the jury that Jacobs was evasive, if not a liar, and not to be believed, which was beneficial to Applicant.

In regards to the allegation that he was ineffective for failing to object to the State's vouching for its witness during closing arguments, Swerling testified that he very rarely object during closing arguments unless there is an obvious misstatement or has a tactical reason. He testified that he does not believe that the prosecutor's statement was improper and therefore did not object. He testified that this is a common statement to make during closing argument, he makes such statements frequently, and such statements do not amount to vouching. Regarding jury instruction allegations, Swerling testified that he thinks that the "hand-of-one, hand-of-all" jury instruction given by the trial court was appropriate given the facts of the case and therefore, did not object to it. He testified that he requested a jury instruction on mere presence. Regarding search warrant allegations, Swerling testified that he moved to exclude evidence gathered from the search warrant, which was fully litigated and ruled upon by the trial court. He testified that this was on the record and preserved for appellate review. In response to Applicant's allegations involving gunshot residue, Swerling testified that he was present for Bax's testimony and in agreement fully.

Following all testimony presented and brief summations by counsel, this Court asked both parties to submit memorandum addressing the ineffective assistance of appellate counsel issue raised by Applicant. Respondent's memorandum was submitted on November 4, 2014. Applicant's memorandum was submitted on November 17, 2014.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety, including the post-hearing memorandums provided by both parties, and hear the testimony presented at the post-

conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. This Court notes that it finds trial counsels to be both candid and credible in their testimony. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Trial Counsel

Applicant has asserted numerous allegation of ineffective assistance of trial counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. An applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that,

but for counsel's unprofessional errors, the result of the proceeding would have been different."

Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

After careful review based on the standard discussed above, this Court finds that Applicant has failed to carry his requisite burden in this action. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of trial counsel.

Ineffective Assistance of Trial Counsel for Failure to Call a Gunshot Residue Expert

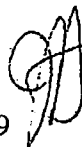
Applicant asserts that trial counsel was ineffective for failing to call a gunshot residue expert to testify at trial to refute the State's expert, SLED Analyst Michael Moskal. Applicant alleges that because gunshot residue was not found in his vehicle, but only round lead particles, Moskal's testimony to the jury was incorrect and misleading and his trial counsel should have called their own expert to refute Moskal. Applicant argued that the Court of Appeals opinion, which incorrectly states gunshot residue was found in his car, is evidence of the prejudice he suffered. In support of this allegation, Applicant presented firearms analyst Kelly Fite, who was admitted as an expert and testified that he did not agree with Moskal's characterization that the round lead particles were consistent with a weapon being fired from Applicant's vehicle. Mr. Fite disagreed with the testimony as an ultimate conclusion that the round lead particles were consistent with a gun being fired.³

After reviewing all testimony presented, both at trial and during the post-conviction relief hearing, this Court finds that Applicant has failed to meet his requisite burden of proof in regards to this allegation. First, the Court finds that Applicant has failed to establish any deficiencies in trial counsel's representation. The uncontroverted testimony presented reveals that trial counsel retained and consulted extensively with gunshot residue expert Jeffrey Hollifield prior to and

³ This Court notes that Fite agreed with all of Moskal's underlying testimony, including that round lead particles are a crucial component on gunshot residue and their presence can indicate that a weapon has been fired, he appeared to just take issue with the way Moskal presented this information to the jury, as discussed above.

during Applicant's trial. This testimony is supported by evidence presented during the evidentiary hearing. (See Respondent's Exhibit No. 5). Hollifield not only reviewed the forensic aspects of Applicant's case, but helped prepare trial counsel (both of whom were already well-versed in gunshot residue evidence) for cross-examination of State expert Moskal. Hollifield was present during Applicant's trial and conferred with the defense team and Applicant about whether he should testify based on the testimony already extracted from Moskal, much of which was favorable to Applicant. Trial counsel testified that the defense team and Applicant made a strategic decision not to call Hollifield based on their combined experience and their expert's recommendation which all agreed that his Hollifield's testimony would largely be duplicative. The record and testimony also show that trial counsel moved to exclude the gunshot residue testimony, preserved the issue for appeal, and objected when appropriate. Based on the foregoing, this Court finds that trial counsel's performance in regards to the gunshot residue aspects of Applicant's case went well-above the professional standards required and Applicant had failed to establish any deficiency of counsel.

Additionally, this Court finds that Applicant has also failed to meet his requisite burden regarding prejudice stemming from this alleged deficiency. As discussed above, the gunshot residue expert Applicant presented at the evidentiary hearing was unpersuasive and not of much substantive benefit to Applicant's case. Fite was unable to recall what materials he had reviewed or how he formed his expert opinions, and his testimony generally relied on conclusory statements without any documentation to support his propositions. This Court finds that Applicant has not established any resulting prejudice from the alleged deficiency of trial counsel for failing to call an expert to testify at trial. Therefore, this Court finds that Applicant has failed



to establish both of the requisite prongs entitling an applicant to relief and denies this allegation with prejudice.

Ineffective Assistance of Trial Counsel for Failure to Investigate or Call Weldon Gregory as a Defense Witness and/or Impeach Ricky Jacobs with Gregory's Report⁴

Applicant asserts that trial counsel was ineffective for failing to investigate initial responding officer Weldon Gregory and for failure to call him to testify. Applicant also asserts that trial counsel was ineffective for failing to impeach State's witness Ricky Jacobs with the initial handwritten incident report prepared by Gregory. Gregory, a former Sheriff's Deputy with the Richland County Sheriff's Department, retired in 2008 after nearly twenty years in law enforcement and was the first responder on the scene following the shooting. Gregory prepared a short, handwritten report after the incident, introduced as Respondent's Exhibit No. 7. Applicant alleged that trial counsel was ineffective for failing to call Gregory as a defense witness to refute and impeach the State's eyewitness, Ricky Jacobs. In support of this allegation, Applicant presented testimony from Gregory and relied upon Gregory's handwritten incident report.

After reviewing the entire record and testimony presented, this Court finds that Applicant has failed to establish any deficiency of trial counsel in regards to his allegations involving Weldon Gregory. Trial counsel testified that as a general rule, he does not like to call members of law enforcement as defense witnesses because it is more harmful than helpful to defendants based on his more than forty years of experience. Additionally, he testified that he was able to successfully cross-examine Jacobs without calling Gregory as a defense witness and was able to impeach Jacobs with other documents and testimony, including Gregory's incident report, although not all documents were admitted into the record at trial. This Court agrees with trial

⁴ In his amended application, Applicant lists this as three separate allegations (See Allegation No. 2, 5, and 8). As each pertain to the same subject matter and general allegation, all three will be addressed together in the same section.

counsel's assessment as Jacobs was thoroughly examined as to his recollection of events and his identification of Applicant and his co-defendant. Therefore, this Court finds that trial counsel's performance was not deficient and that Applicant has failed to meet his burden of proof.

Furthermore, this Court finds that Applicant has also failed to show any resulting prejudice from this alleged deficiency. This Court finds that Gregory's testimony added very little to the overall presentation and likely would have had no impact on the result of the proceeding. As discussed above, trial counsel challenged the State's eyewitness Jacobs on virtually every aspect of his recollection. This Court is not convinced that testimony from Gregory would have had any impact on the jury's view of Jacobs or his credibility, much less the result of Applicant's trial. Consequently, this Court finds that Applicant has failed to prove the requisite prejudice necessary for relief. Based on the foregoing, this Court finds that Applicant has failed to establish either of the required prongs needed for relief and that this allegation must be denied and dismissed with prejudice.

Ineffective Assistance of Trial Counsel for Failure to Call Timothy Weldon

Applicant asserts that trial counsel was ineffective for failing to call Timothy Weldon as a defense witness at his trial. Weldon, a patron present at the club the morning of the shooting, gave various statements to investigators but was not called as either a State or defense witness. Applicant alleges that trial counsel was ineffective for failing to call Weldon as a witness because he would have presented favorable testimony. Applicant failed to present Weldon as a witness or offer any evidence as to what his testimony might have been at trial. Therefore, as a preliminary matter, this Court finds that this allegation must fail. See Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998) (The applicant failed to establish prejudice resulting from trial counsel's alleged ineffectiveness in failing to call witness who purportedly would have

corroborated applicant's version of events; because applicant neither produced witness at the evidentiary hearing nor offered her testimony in some other manner consistent with rules of evidence, but rather, testified himself as to what witness's testimony would have been, witness's "testimony" was purely speculative.)

Additionally, this Court also finds that this allegation must fail because Applicant has failed to show any deficiency in trial counsel's performance. Trial counsel testified that Weldon was interviewed by all three investigators and gave information that was not only inconsistent but also damning to Applicant and his co-defendant. Trial counsel testified that he made a strategic decision not to call Weldon based on his previous statements and his assessment that Weldon would be an unfavorable witness for Applicant. This Court finds that this strategy was valid and prudent based on all testimony presented, and therefore, that trial counsel's performance was not deficient. See Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011) ("[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel. The validity of counsel's strategy is viewed under an 'objective standard of reasonableness.'" Lounds v. State, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008)). Based on the foregoing, this Court finds that this allegation must be denied and dismissed with prejudice.

Ineffective Assistance of Trial Counsel for Failure to Object to Vouching

Applicant asserts that trial counsel was ineffective for failing to object to the State's vouching for the credibility of eyewitness Ricky Jacobs during its closing. The particular comment which Applicant finds objectionable is: "He's telling the truth." (Tr. Vol. VIII p. 54 line 20). Applicant alleges that because Jacobs was a crucial witness for the State, this comment impermissibly bolstered the State's case and caused him irreparable prejudice. Trial counsel

testified that this comment was not improper and does not amount to vouching, and therefore, he did not object. This Court agrees with trial counsel's assessment.

A solicitor may argue the credibility of the State's witnesses if the argument is based on the record and its reasonable inferences. Matthews v. State, 350 S.C. 272, 276, 565 S.E.2d 766, 768 (2002) (citing State v. Caldwell, 300 S.C. 494, 388 S.E.2d 816 (1990)). A solicitor may not vouch for the credibility of a State's witness based on personal knowledge or other information outside the record. State v. Kelly, 343 S.C. 350, 540 S.E.2d 851 (2001). Vouching for a witness based on outside material conveys the impression to the jury that the solicitor has evidence not presented to the jury but known by the prosecution which supports conviction and is impermissible. Id.

This Court finds that this comment amounts to arguing the credibility of the State's witness based on fact in the record, particularly when read in conjunction with the comments immediately prior and after the sentence in question. As this comment was not impermissible vouching, this Court finds that trial counsel was not deficient for failing to object and that this allegation must be denied and dismissed with prejudice.

Brady Violation by the State regarding Gregory's Incident Report

Applicant asserts that the State committed a discovery violation under Brady v. Maryland, 373 U.S. 83 (1963) by providing defense counsel with initial responding officer Weldon Gregory's incident report with his name omitted from the bottom of the report. In support of this allegation, Applicant relied upon a photocopy of the report, introduced and admitted as Respondent's Exhibit No. 7, which appears to have a small portion of the bottom of the report missing, including the author's name. Applicant asserts that the State intentionally

supplied the report without Gregory's name to prevent defense counsel from learning his identity and calling him as an impeachment witness to refute Jacobs' testimony.

Trial counsel testified that he cannot recall if he received Gregory's incident report with the bottom portion cut off or if the omission came from later copying of the document. He testified that he has an exceptionally good working relationship with the solicitor's office and if he thought that any document or portion of a document had been omitted from discovery, or any other discovery violation had occurred, he would contact the solicitor's office to rectify the problem and file a motion if necessary. He testified that even if he had received the document with the portion missing, he does not think that this amounts to a discovery violation and that he easily could have found the author of the report.

"The Brady disclosure rule requires the prosecution to provide to the defendant any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment." Hyman v. State, 397 S.C. 35, 45-46, 723 S.E.2d 375, 380 (2012) (citing Porter v. State, 368 S.C. 378, 384, 629 S.E.2d 353, 356 (2006)). Brady evidence is either favorable exculpatory evidence or favorable impeachment evidence. Porter, 368 S.C. at 384, 629 S.E.2d at 356 (citing United States v. Bagley, 473 U.S. 667, 676 (1985)). "Materiality of evidence is determined based on the reasonable probability that the result of the proceeding would have been different had the evidence been disclosed to the defense." Id. (internal citations omitted). A "reasonable probability" is demonstrated when the suppression "undermines confidence in the outcome of the trial." Id. (quoting Bagley, 473 U.S. at 678). The State must disclose Brady evidence even when a criminal defendant does not specifically request the evidence. Id. (citing United States v. Agurs, 427 U.S. 97, 107 (1976)). Tantamount to any Brady claim is the withholding of evidence. Hyman, 397 S.C. at 46, 723 S.E.2d at 381.



This Court finds that Applicant has failed to satisfy his burden of establishing that a discovery violation pursuant to Brady occurred. Initially, this Court notes that Applicant is unable to establish that the State withheld any evidence. The document in question was turned over to the defendant and was located in trial counsel's file. Trial Counsel was unsure if the document had been turned over with the bottom portion omitted or if subsequent reproduction by copy machine had created the omission. Regardless, trial counsel testified that he easily could have discovered who the author of the report was if the report came to him in its present condition. This Court finds that the State did not withhold evidence. Furthermore, this Court notes that Applicant has also failed to show that this document is material for impeachment purposes. As discussed earlier, the testimony presented by Gregory added very little if anything to Applicant's case and likely would have not had an impact on his trial. Trial counsel thoroughly cross-examined and impeached the State's eyewitness without the need to call a member of law enforcement as a defense witness. Based on the foregoing, this Court finds that Applicant has failed to establish any Brady violation and that this allegation must be denied and dismissed with prejudice.

Ineffective Assistance of Appellate Counsel for Failure to Raise Gunshot Residue⁵

Applicant alleges that appellate counsel was ineffective "in not raising on appeal that the trial was tainted by the improper GSR testimony and improper conclusions drawn by the state's expert testimony." See Amended Application for Post-Conviction Relief filed July 7, 2014. At the post-conviction relief hearing, testimony was taken from former Appellate Defender

⁵ This issue was troubling to this court due to the overstated gunshot residue evidentiary summary made in the Court of Appeal decision when it upheld the conviction:

"The murder weapon was never found, but the information provided by the club owner was consistent with other details discovered by police. These details included (1) **the location of gunshot residue on the vehicle in which Wray and Watts were riding**, (2) two projectiles from the car wash stall and one projectile recovered from the victim's clothing, and (3) shell casings found at the crime scene."

State v. Wray, 2012-UP-477 (S.C. Ct. App. August 8, 2012) (emphasis added).

Elizabeth Franklin-Best, who represented Applicant during his appeal. This Court finds that Applicant has failed to establish his burden of both deficiency of appellate counsel and requisite prejudice entitling him to relief and that this allegation must be denied and dismissed with prejudice.

A defendant is entitled to effective assistance of appellate counsel. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004), citing Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). To prevail on a claim of ineffective assistance of appellate counsel, an applicant must establish both deficiency and prejudice. Southerland, 337 S.C. at 616, 524 S.E.2d at 836. If an applicant can establish both deficiency according to professional norms and prejudice to the extent that he would have been successful on appeal, he is entitled to a new trial. See Ezell v. State, 345 S.C. 312, 316, 548 S.E.2d 852, 854 (2001); Southerland, 337 S.C. 615-16, 524 S.E.2d at 836. See also Simpkins v. State, 303 S.C. 364, 401 S.E.2d 142 (1991) (post-conviction relief of a new trial granted based on appellate counsel's failure to raise an issue on appeal that constituted reversible error).

"Although it is possible to bring a successful ineffective assistance of appellate counsel claim based on failure to raise a particular issue on direct appeal, the Supreme Court has reiterated that it is 'difficult to demonstrate that counsel was incompetent.'" United States v. Mason, No. 3:06-607-CMC, 2012 WL 5845807 at *1 (D. S.C. Nov. 19, 2012) (quoting Smith v. Robbins, 528 U.S. 259, 288, 120 S. Ct. 746, 765 (2000)). While appellate counsel is required to provide effective assistance of counsel, "appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990), citing Jones v. Barnes, 463 U.S. 745 (1983). "For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every 'colorable'

claim suggested by a client would disserve the very goal of vigorous and effective advocacy . . .” Jones, 463 U.S. at 754. Additionally, our Supreme Court has expressly rejected the notion that appellate counsel has an obligation to raise all meritorious issues on appeal. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004). “Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome.” Smith v. Robbins, 528 U.S. at 288, 120 S. Ct. at 765 (quoting Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986)).

“To establish prejudice relating to the actions of appellate counsel, Defendant must establish a reasonable probability that, but for his counsel's unreasonable failure to include a particular issue on appeal, he would have prevailed on his appeal.” United States v. Mason, 2012 WL 5845807 at *1 (citing Smith v. Robbins, 528 U.S. at 285-86, 120 S. Ct. at 764).

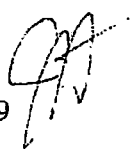
Applicant's appellate counsel, Elizabeth Franklin-Best, testified at the evidentiary hearing. She testified that she has been practicing law for fourteen years and a vast majority of her practice is criminal defense. She testified that she is currently in private practice, but that she was an Appellate Defender at the South Carolina Commission on Indigent Defense – Division of Appellate Defense when she was appointed to represent Applicant on his appeal. She testified that she briefly reviewed the materials before her testimony, but could not independently recall what issues she raised in her brief or the contents of the South Carolina Court of Appeals' decision. She testified that she did not review the transcript or read her brief in anticipation of her testimony.

She testified that her standard practice when receiving an appellate case is to read the entire record and determine what issues are preserved for appellate review. She testifies that she then determines which issues appear to have merit and might be successful on appeal. She

testified that she feels her duty is to raise any and all meritorious issues on appeal, regardless of the strength of the issue. After reviewing her brief while on the witness stand, she testified that she raised three issues in Applicant's appeal, all of which she thought were meritorious at the time. She testified that she has no recollection as to why she did not raise the gunshot residue issue, but since she generally raises all issues she believes to be meritorious, she concluded that she must have determined the issue was not meritorious at the time. She reiterated that she would have raised the gunshot residue issue if she believed it to be meritorious at the time

Applicant's trial counsel Bax, testified that he primarily handled the gunshot residue portion of Applicant's case. He testified that he made a *motion in limine* to exclude testimony from the State's GSR expert, SLED Agent Moskal, arguing to the trial court that the evidence would be more prejudicial than probative under Rule 403, SCRE, because only one component of gunshot residue (round lead particles) was found in Applicant's car. He testified that the court denied his motion and allowed the State to present Agent Moskal, who testified that round lead particles were consistent with a weapon being fired. He testified that Agent Moskal was very careful in his testimony, only stating that the round lead particles were consistent with a gun being fired, but never testifying before the jury that gunshot residue was found. He testified that he believes he preserved the issue for appellate review because his *motion in limine* was immediately preceding Agent Moskal's testimony. He testified that he believed the trial court erred in allowing Agent Moskal's testimony, but did not express an opinion as to whether the issue would have been successful on appeal.

This Court finds that Applicant has failed to establish the requisite deficiency of appellate counsel or prejudice entitling him to relief. First, this Court finds that Applicant has failed to show that appellate counsel's performance was deficient, where there is no standard requiring



appellate counsel to brief every possible meritorious issue and counsel appropriately raised three stronger, meritorious issues on Applicant's behalf. Second, this Court finds that Applicant has failed to establish prejudice, as there is no reasonable likelihood that he would have prevailed on appeal had the gunshot residue issue been raised.

Both the United States Supreme Court and the South Carolina Supreme Court have consistently ruled that appellate counsel has no duty to raise all meritorious issues on appeal. See Jones, 463 U.S. 745; Smith, 528 U.S. at 288; Tisdale, 357 S.C. 474, 594 S.E.2d 166. In the present case, appellate counsel reviewed the record and determined what issues could be raised based on both preservation and merit. While she had no independent recollection as to why she did not raise the gunshot residue issues, she testified that she must have not thought the issue had merit at the time. When appellate counsel reviews all possible issues and elects to raise those issues she deems most meritorious, she has performed in accordance with professional standards and is not deficient.

Despite appellate counsel's claim that she personally raises every issue with any possible merit, regardless of the strength of the claim, on appeal, that is simply not the standard in which this Court is required to analyze such claims of ineffective assistance of appellate counsel. Such a standard "would disserve the very goal of vigorous and effective advocacy . . ." Jones, 463 U.S. at 754. As appellate counsel raised three meritorious issues on appeal, her performance was in accordance with professional norms and this Court finds that this allegation must be denied.

Additionally, this Court finds that Applicant has failed to establish any prejudice from counsel's alleged deficiency, as there is no reasonable likelihood that he would have prevailed on appeal had gunshot residue been raised. Given the testimony of the eyewitness Jacobs, as well as other evidence which circumstantially linked him to the crime, Applicant probably would have

been convicted without the presentation of the gunshot residue witness. At trial, Applicant moved to exclude the gunshot residue testimony based on Rule 403, SCRE, arguing that the prejudicial effect of Moskal's testimony outweighed its probative value. Tr. Vol. VI pp. 5-19. After listening to argument from the State and Applicant, the trial court allowed the testimony evidence to be presented to the jury. The trial court's decision was not based on a "clear abuse of discretion" and would be upheld on appeal. See State v. Lyles, 379 S.C. 328, 665 S.E.2d 201 (2008) ("The trial judge's decision regarding the relevancy of evidence should only be overturned for a clear abuse of discretion.")

The admission or exclusion of evidence is left to the sound discretion of the trial judge. State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002); State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001). A court's ruling on the admissibility of evidence will not be reversed on appeal absent an abuse of discretion or the commission of legal error which results in prejudice to the defendant. State v. Hamilton, 344 S.C. 344, 543 S.E.2d 586 (Ct. App. 2001); State v. Mansfield, 343 S.C. 66, 538 S.E.2d 257 (Ct. App. 2000). An abuse of discretion occurs when the trial court's ruling is based on an error of law. State v. McDonald, 343 S.C. 319, 540 S.E.2d 464 (2000); State v. Mattison, 352 S.C. 577, 575 S.E.2d 852 (Ct. App. 2003).

All relevant evidence is admissible. State v. Aleksey, 343 S.C. 20, 538 S.E.2d 248 (2000); Rule 402, SCRE. Under Rule 401, SCRE, evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy. State v. King, 349 S.C. 142, 561 S.E.2d 640 (Ct.App.2002); see also Rule 401, SCRE ("Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."); In the Matter of the Care and Treatment of Corley, 353 S.C. 451, 577

S.E.2d 451 (2003) (evidence is relevant if it tends to establish or make more or less probable the matter in controversy).

"Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." Rule 403, SCRE; see also State v. Cooley, 342 S.C. 63, 536 S.E.2d 666 (2000) (although evidence is relevant, it should be excluded where danger of unfair prejudice substantially outweighs its probative value). A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. Hamilton, 344 S.C. at 357, 543 S.E.2d at 593. The appellate court's review of a trial court's decision regarding Rule 403, SCRE, pursuant to the abuse of discretion standard and are obligated to give great deference to the trial court's judgment. Id. at 358, 543 S.E.2d at 593. See Aleksey, 343 S.C. at 35, 538 S.E.2d at 256 (trial judge is given broad discretion in ruling on questions concerning relevancy of evidence, and his decision will be reversed only if there is a clear abuse of discretion).

In this case, the evidence presented by the State was clearly relevant. Applicant was charged with murder and an eyewitness testified that he saw Applicant shooting out the driver's side window of his vehicle. The State presented evidence that round lead particles, a crucial component of gunshot residue, were found in multiple locations of the driver's side of Applicant's vehicle. As the State properly noted during the *motion in limine*, Applicant's arguments for suppression based on prejudice were appropriately addressed through cross-examination of the State's witness, not through suppression. Therefore, the trial court properly allowed the evidence to be presented to the jury. See State v. Lyles, 379 S.C. 328, 339, 665 S.E.2d 201, 207 (Ct. App. 2008), citing State v. Slocumb, 336 S.C. 619, 633, 521 S.E.2d 507, 514 (Ct.App.1999) ("[G]iven these reports were relevant and the subject of proper cross-

examination, we cannot say the trial judge abused his discretion in finding the probative value of this testimony outweighed the danger for unfair prejudice.") The trial judge's ruling on the issue was an evidentiary ruling, and this Court cannot find that the judge abused her discretion in allowing that information admitted as evidence. As the trial court's ruling was not an abuse of discretion amounting to an "exceptional circumstance," this Court finds that its ruling would have been upheld on appeal. See Lyles, supra. Thus, this Court finds that Applicant cannot establish any requisite prejudice because he would not have prevailed on appeal had the gunshot residue issue been raised. Therefore, this Court finds that Applicant has failed to establish both deficiency and prejudice in regards to the allegation that appellate counsel was ineffective for failing to raise the gunshot residue issue in his appeal. This allegation is denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's

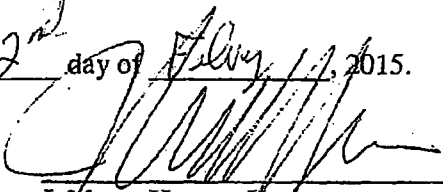


behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. this application for post-conviction relief is denied and dismissed with prejudice; and
2. the Applicant remain remanded to the custody of the State.

AND IT IS SO ORDERED this 2nd day of February, 2015.



J. MARK HAYES, II
Presiding Judge
Fifth Judicial Circuit

Clumbey, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Tremaine Wray, #337442,

Plaintiff,

v.

State of South Carolina,

Defendant.

) IN THE COURT OF COMMON PLEAS

) Case No.: 2012-CP-40-07909

) **MOTION TO ALTER OR AMEND**
) **JUDGMENT PURSUANT TO RULE**
) **59(e), SCRPC**RICHLAND COUNTY
FILED
JANETTE W. HCBRI
C.C.P. & G.S.
FEB 24 PM 3:45

Pursuant to Rule 59(e), SCRPC, Plaintiff Tremaine Wray moves the Court to enter or amend its order denying his post-conviction relief application and reconsider the same.

The order denying Plaintiff's PCR was filed on February 12, 2015 and received by Plaintiff's counsel on February 17, 2015.



Marshall Coleman Newton
Rebecca A. Roser
ROBINSON, MCFADDEN & MOORE, P.C.
Post Office Box 944
Columbia, SC 29202
(803) 779-8900

Counsel for Plaintiff

February 24, 2015

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Tremaine Wray, #3337442

Plaintiff,

v.

State of South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS

Case No.: 2012-CP-40-07909

CERTIFICATE OF SERVICE

RICHLAND COUNTY
FILED
2015 FEB 24 PM 3:45
JEANETTE W. MCBRIDE
C.P. & G.S.

This is to certify that I, Amy A. Kirby, paralegal with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person named below the **Plaintiff's Motion to Alter or Amend Judgment** in the foregoing matter by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

The Honorable J. Mark Hayes, II
Circuit Court Judge
180 Magnolia Street
Spartanburg, SC 29306

And by hand delivering the same to the following:

Megan E. Harrigan, Esquire
J. Clayton Mitchell, Esquire
South Carolina Attorney General's Office
Rembert C. Dennis Building
1000 Assembly St.
Columbia, SC 29201

Dated at Columbia, South Carolina this 24th day of February, 2015.

Amy A. Kirby
Amy A. Kirby

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2012-CP-40-7909

Tremaine Wray, #337442,
Applicant,

**RETURN TO APPLICANT'S MOTION
TO ALTER OR AMEND JUDGMENT
PURSUANT TO RULE 59(e), SCRC**

v.

State of South Carolina,
Respondent.

RICHLAND COUNTY
FILED
2015 MAR -3 AM 10:16
JEANETTE W. HIGDON
C.C.P. & S.

This matter comes before the Court by way of the Applicant's "Motion to Alter or Amend Judgment Pursuant to Rule 59(e), SCRC," served on Respondent on February 24, 2015. Respondent would submit the following:

PROCEDURAL HISTORY

Applicant was indicted during the August 2007 term of the Richland County Grand Jury for Murder (2007-GS-40-05914) for the shooting death of Dumuria "Hank" Johnson; co-defendant co-defendant Taurus Watts was indicted similarly. Jack B. Swerling, Esquire, and Arie D. Bax, Esquire, represented Applicant. On October 5-15, 2009, Applicant proceeded to a jury trial before the Honorable J. Michelle Childs. The State was represented by Assistant Solicitors Vanessa C. Shipley and Joanna A. McDuffie of the Fifth Circuit Solicitor's Office. The jury convicted Applicant as indicted and Judge Childs sentenced him to forty years imprisonment.¹

A notice of appeal was filed and an appeal was perfected on Applicant's behalf by Appellate Appellate Defender Elizabeth A. Franklin-Best of the South Carolina Commission on Indigent Defense – Division of Appellate Defense. Following briefing and argument, the South Carolina Court of Appeals affirmed Applicant's conviction and sentenced by unpublished opinion. State v.

SCANNED

Wray, 2012-UP-477 (S.C. Ct. App. filed August 8, 2012). The Remittitur was issued on August 27, 2012.

Applicant filed an application for post-conviction relief on November 29, 2012. Respondent made its Return on February 19, 2013, requesting an evidentiary hearing be held. Thereafter, Applicant, through his counsel, filed an amended application on July 7, 2014. In his amended application for post-conviction relief, Applicant alleged the following specific allegations:

1. Ineffective assistance of trial counsel for failure to call as gunshot residue expert to refute the State's expert;
2. Ineffective assistance of trial counsel for failure to call initial responding officer Weldon Gregory;
3. Ineffective assistance of trial counsel for failure to call eyewitness Timothy Weldon;
4. Ineffective assistance of trial counsel for failure to object to the State's vouching for the credibility of a witness during its closing argument;
5. Ineffective assistance of trial counsel for failing to interview or investigate the initial responding officer Weldon Gregory or his handwritten police report;
6. Brady violation against the State for its submission of the handwritten report of Officer Gregory with his name cut-off of the bottom;
7. Ineffective assistance of appellate counsel for failure to raise issues regarding gunshot residue in Applicant's appellate brief; and
8. Ineffective assistance of trial counsel for failure to impeach State's witness Ricky Jacobs with Officer Gregory's report.

An evidentiary hearing into the matter was convened November 3, 2014, at the Richland County Courthouse. At the hearing, Applicant proceeded forward on these grounds as listed in his his amended application at the evidentiary hearing. Applicant was present at the hearing and was represented L. Marshall Coleman Newton, Esquire. Respondent was represented by Assistant

¹ Applicant's co-defendant Watts was also convicted and sentenced to thirty-five years imprisonment.

Attorney Generals Megan E. Harrigan and J. Clayton Mitchell of the South Carolina Attorney General's Office.

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from initial responding officer Weldon Gregory and Firearms Examiner Kelly Fite. Respondent presented testimony from trial counsels Jack B. Swerling and Arie D. Bax and appellate counsel Elizabeth A. Franklin-Best. Also before this Court were the following exhibits introduced by Respondent:

1. Respondent's Exhibit No. 1: Swerling's Handwritten notes labeled "Tim Weldon";
2. Respondent's Exhibit No. 2: MacDougall Investigative Notes/Memorandum Packet;
3. Respondent's Exhibit No. 3: Clark Memorandum of Interview Packet;
4. Respondent's Exhibit No. 4: SLED Gunshot Residue Corrected Report dated October 2, 2009
5. Respondent's Exhibit No. 5: Micro Analytical Packet, including "Questions Related to Gunshot Residue Analysis" and the Curriculum Vita of Jeffrey M. Hollifield;
6. Respondent's Exhibit No. 6: Investigator McRae's Notes; and
7. Respondent's Exhibit No. 7: Richland County Sheriff's Department Incident Report handwritten by Officer Weldon Gregory.

Following the hearing, this Court requested post-hearing memorandum from both parties solely addressing the allegation of ineffective assistance of appellate counsel. After reviewing these these memorandums and all testimony and other evidence presented at the hearing, along with a review of all records provided to the Court, this Court found that there were no constitutional deprivations or other grounds on which to grant relief and denied and dismissed this application with prejudice. This Court signed an Order of Dismissal on February 2, 2015, which was filed with with the Richland Country Clerk of Court on February 12, 2015.

APPLICANT'S MOTION

Applicant's counsel received this Court's Order of Dismissal on February 17, 2015. Thereafter, Applicant moved to alter or amend the Order of Dismissal pursuant to Rule 59(e), SCRPC. This motion was served on February 24, 2015 and received by Respondent on February 25, 2015. In this motion, Applicant fails to state what the Court overlooked or misapprehended in its Order. Applicant also fails to state with any specificity what he wishes to be altered or amended in the Order. Applicant does not state any supporting case law or other authority to support his motion. Therefore, Respondent interprets Applicant's motion to be a request for the Court to reconsider its ruling and grant him post-conviction relief. Such a request is more properly addressed through the appellate process, not a motion to alter or amend pursuant to Rule 59(e), SCRPC. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e), SCRPC, motion is to preserve issues raised to but not ruled upon by the trial court). Therefore, Respondent submits this motion should be denied and dismissed.

Furthermore, Respondent submits that this Court's Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976), and Rule 52(a), SCRPC. In its Order, this Court properly ruled on all issues raised by Applicant and Applicant has failed to state what, if any, issues he raised but were not ruled upon by this Court. As Applicant has failed to raise an allegation that was properly raised but not ruled upon by this Court, Respondent submits that this motion should be denied and dismissed.

CONCLUSION

Based on the foregoing, Applicant's motion should be denied and dismissed. Additionally, as Additionally, as Applicant has failed to state what, if any, issues were raised but not ruled upon,

Respondent requests that this motion be summarily dismissed without a hearing. See Rule 59(f), SCRCP (allowing a court, in its discretion, to consider a post-hearing motion based upon the motion and return submitted by the parties and the post-conviction relief file, and rule without a hearing if such a hearing will not aid the court in reaching its decision.)

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

MEGAN HARRIGAN JAMESON
Assistant Attorney General

BY:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

2/27, 2015.

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

2012-CP-40-7909

TREMAINE WRAY, #337442)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

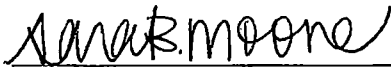
Respondent.)

RICHLAND COUNTY
FILED
2015 MAR -3 AM 10:18
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return to Applicant's Motion to Alter or Amend the Judgment Pursuant to Rule 59(e), SCRCP** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Lilian Marshall Coleman Newton
Robinson McFadden & Moore, PC
Post Office Box 944
Columbia, SC 29202**

DATED this 27th day of February, 2015.



Sara B. Moore, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Tremaine Wray, #337442,

Case No.: 2012-CP-40-07909

Plaintiff,

v.

State of South Carolina,

Defendant.

**MOTION TO SUPPLEMENT OR
AMEND PLAINTIFF'S PREVIOUSLY
FILED MOTION TO ALTER OR
AMEND JUDGMENT PURSUANT TO
RULE 59(e), SCRPC**

2015 MAR 3
JEANETTE C. BRIDE
RICHLAND COUNTY
FILED
PM 4:05

Pursuant to Rule 15, SCRPC, Plaintiff Tremaine Wray moves the court to permit him to supplement or, in the alternative, amend his previously filed motion to alter or amend judgment. Plaintiff's original Rule 59(e) motion was filed on February 24, 2015. Mr. Wray wishes to supplement or, in the alternative, amend the filed Rule 59(e) motion with the following, all of which are stated upon information and belief:

Mr. Wray's due process rights to a fair trial were violated in violation of the Fifth and Fourteenth Amendments to the United States Constitution and South Carolina Constitution. Common law and statutes were violated. [Mr. Wray alleged that] prosecutorial misconduct occurred when the prosecution failed to correct false or perjured testimony given by their sole key witness. Mr. Wray contends the remedy for these violations is that his conviction and sentence be vacated or he be granted a new trial. The facts and law provided in support are as follows:

The State's eyewitness, Ricky Jacobs testified that he saw gunfire coming from the Applicant's tan suburban and toward the club/car wash; he testified that, after the shots were fired from the tan suburban, the passenger in the white sport utility vehicle

fired one shot straight up in the air. This is also the version that he told Investigator McRae. Applicant contends that Ricky Jacobs falsely testified as follows:

- a.) That he had not spoken to anyone other than Investigator McRae about what he witnessed,
- b.) That when the Police initially arrived, he did not tell any Uniformed Officer what he saw. (See Trans. Vol. 3, p. 53, lines 6-13, p. 121, lines 9-14),
- c.) That he did not provide descriptions of any vehicles to this Officer. (See Vol 3, p. 52, lines 20-25; p. 53, lines 20-23),
- d.) That he did not provide descriptions of any suspects to this Officer,
- e.) That, when the police first arrived, the Responding Officer only focused on securing the crime scene and refused to speak with him, by repeatedly instructing him to step back (See Vol. 3, p. 52, lines 22-25; p. 53, lines 2-3, lines 21-23; p. 121, lines 9-25),
- f.) That the first time he explained what he observed was to Investigator McRae (See Vol. 3, p. 53, lines 14-16), and
- g.) That the only person he spoke with that night/morning was Investigator McRae (See Vol. 3, p. 122, lines 4-6).

The State's case rested on the eyewitness testimony of Ricky Jacobs and Applicant contends that the Prosecution knew Ricky Jacobs' testimony to be false, and failed to correct it. This false evidence not only bore upon the witness's credibility, it bore directly upon the defendant's guilt.

See Napue v. People of State of Ill., 360 U.S. 264, 79 S.Ct. 1173 (holding that the prosecutions knowing use of false evidence violates due process, regardless of whether the evidence goes to a substantive issue or merely the witness' credibility. It is of no consequence that the falsehood bore upon the witness' credibility rather than directly upon the defendant's guilt. A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth.); *See also Tapia v. Tansy*, 926 F.2d 15554, 1563.

The Applicant contends the Solicitor's Office capitalized on this false or perjured testimony and thought it important to highlight and establish to the jury during closing argument that "Ricky Jacobs didn't call 911 because he was making sure his customers were safe. That he did not talk to any Responding Officers because they were busy securing the crime scene. That the

first and only time he had explained what he had explained what he witnessed was to Investigator McRae when he arrived to the scene." (See Vol. 8, p. 46, Lines 2-5).

See U.S. v. Salameh, 152 F.3d 88 (Due process bars a prosecutor from making use of false evidence, and a conviction may not stand if such evidence could in any reasonable likelihood have affected the judgment of the jury. U.S.C.A. Const. Amend. 5, 14).

The Applicant presented direct testimony at his PCR hearing from Officer Ray Weldon Gregory. Officer Gregory testified that he was the First Officer to arrive to the scene. He also testified that he is the Reporting Officer who authored the 'anonymous' Handwritten Incident Report, in which he authenticated through his PCR testimony. He also testified that he did interview "The Bar Owner (Ricky Jacobs)" as to what he eyewitnessed and Ricky Jacobs provided him with this statement at the scene, which is contained in his Police Report. Officer Gregory's PCR testimony and his Handwritten Police Report confirmed and established proof that:

1) Ricky Jacobs did in fact speak to someone else other than Investigator McRae about what he had witnessed.

2) that when the Police initially arrived; he did in fact tell this Unformed Officer what he saw.

3) that he did provide descriptions of the vehicle to this Officer which was an White (SUV), possibly a nissan.

4) that he did in fact provide descriptions of two suspects to this Officer; and these suspects were a completely different set of suspects, which Ricky Jacobs had originally identified to this Officer as doing this shooting.

5) that the first time he explained what he observed was actually to this Officer Ray Weldon Gregory; and not to Investigator McRae as he falsely testified to on the stand.

6) That Investigator McRae was not the only person that he spoke with that night/morning; as he falsely testified to on the stand. He actually spoke to Officer Ray Weldon Gregory; approximately 1 hr. 30 mins. before he spoke to Investigator McRae.

7) that he never mentioned or described a Tan or Champagne Colored Suburban (SUV) at all, in his original version that he had given to this Officer while he was explaining what he saw.

8) that he never implicated nor described Mr. Wray or Mr. Watts at all, in his Original Statement to Officer Gregory, as the Suspects who began shooting toward the Club/Carwash; even though he stated in his testimony that he had known Mr. Wray and

Mr. Watts for years.

9) That Ricky Jacobs had in fact changed the direction of shots from this White vehicle as initially being "fired over the top of the vehicle; towards the club" to "this White vehicle firing one shot, straight up in the air"; which is the version that he told Investigator McRae and is the only version that he testified to.

10) That Ricky Jacobs had actually given an initial statement to Officer Ray Weldon Gregory at the scene, and then later had given a second statement to Investigator Don McRae; which manifested that he had actually given two different versions of the shooting to two different Officers.

See RIDDLE v. OZMINT, No. 26153, May 22, 2006- SC Supreme Court (holding; State was obligated to correct (Key Witness') false testimony in capital murder trial that he had not spoken to anyone other than that police officer to whom he had given initial statement, when solicitor knew that (Key witness') had given second statement to police...) (the issue is not why (Key Witness') failed to tell the truth: rather, it is why the solicitor, who knew (Key Witness') testimony to be false, failed to correct it.) See also ____ 110k 2036 K. Duty to correct false or perjured testimony. Formerly 110k 706(2) S.C. 2006.

See the relevant parts of Ricky Jacobs false/perjured, material testimony on Direct Examination:

See Vol. 3, p. 52, Lines 12-13, 20-25, p. 53, Lines 1-3.

See Vol. 3, p. 53, Lines 6-13, 14-19, 20-23.

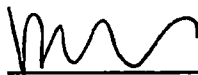
See the relevant parts of Ricky Jacobs false/perjured, material testimony on Cross Examination:

See Vol. 3, p. 121, Lines 9-25.

See Vol. 3, p. 122, Lines 4-6.

Due Process is violated when prosecutor, although not soliciting false evidence from government witness allows it to stand uncorrected when it appears, and this principle applies even though testimony goes only to credibility of the witness. U.S.C.A. Const. Amend. 5, 14. People of the Territory of Guan v. Palomo, 115 S.Ct. 750.

The text of this motion was drafted by Mr. Wray and is being submitted by his counsel in the form of a motion to supplement or, in the alternative, amend. Mr. Wray's original handwritten motion, on which this motion is based, is attached as Exhibit A and incorporated; because that motion is written in pencil, a photocopy of it is attached as Exhibit B and incorporated. To the extent anything in the original Rule 59(e) motion or in this current motion contradicts alters the text of the Exhibits, I understand Mr. Wray's intention is for the Exhibits to control.



Marshall Coleman Newton
 Rebecca A. Roser
 ROBINSON, MCFADDEN & MOORE, P.C.
 Post Office Box 944
 Columbia, SC 29202
 (803) 779-8900

Counsel for Plaintiff

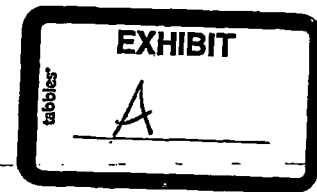
March 26, 2015

I certify only that I consulted with Megan Harrigan Jameson, Assistant Attorney General for the State of South Carolina, prior to filing this motion and she, on behalf of the State of South Carolina, does not object to the same being filed.



Rebecca Roser

RICHLAND COUNTY
 FILED
 2015 MAR 26 PM 4:05
 JEANNETTE W. MCBRIDE
 C.C.P. & G.S.



Applicant's due process rights to a fair trial was violated, in violation of the Fifth and Fourteenth Amendments to the United States Constitution and South Carolina Constitution, Laws and Statutes, due to Prosecutorial Misconduct, when it failed to correct knowingly false or perjured testimony given by their (Sole Key Witness); and not eliciting the truth, which requires his conviction and sentence to be vacated or be granted a new trial.

The State's Key Eyewitness testimony was that he saw gunfire coming from the Applicant's Tan Suburban, toward the club/carwash. He testified that after the shots were fired from the Tan Suburban, the passenger in the White SUV fired, one shot, straight up in the air. This is also the version that he told Investigator McRae.

Applicant contends that Ricky Jacobs, who appeared as the State's Sole Eyewitness against him, falsely testified:

- 1) that he had not spoken to anyone other than Investigator McRae about what he had witnessed.
- 2) that when the Police initially arrived he did not tell any Uniformed Officer what he saw. (See Vol. 3, p. 53, Lines 6-13, p. 121, Lines 9-14.)
- 3) that he did not provide descriptions of any vehicles to this Officer. (See Vol. 3, p. 52, Lines 20-25, p. 53, Lines 20-23.)
- 4) that he did not provide descriptions of any suspects to this Officer.
- 5) that when the Police first arrived, the Responding Officer only →

this false or perjured testimony and thought it important to highlight and establish to the jury during closing arguments that "Ricky Jacobs didn't call 911 because he was making sure his customers were safe. That he did not talk to any Responding Officers because they were busy securing the crime scene. That the first and only time he had explained what he had explained what he witnessed was to Investigator McRae when he arrived to the scene." (See Vol. 8, p. 46, Lines 2-5.)

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- 10) that Ricky Jacobs had actually given an initial statement to Officer Ray Weldon Gregory at the scene, and then later had given a second statement to Investigator Don McRae, which manifested that he had actually given two different versions of the shooting to two different Officers.

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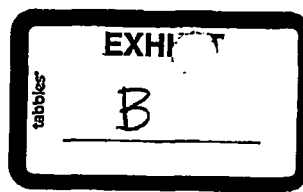
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12-15-2014

I, Tremaine Wray #337442 do intend to Appeal,
the PCR Judge decisions.

Tremaine Wray



COPY

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The Applicant contends that the Prosecution knew Ricky Jacobs testified to be false, and failed to correct it.

This false evidence not only bore upon this witness' credibility, it bore directly upon the defendant's guilt.

See Napue v. People of State of Ill. 360 U.S. 264, 79 S.Ct. 117 (holding, The prosecution's knowing use of false evidence violates due process, regardless of whether the evidence goes to a substantial issue or merely to the witness' credibility. It is of no consequence that the falsehood bore upon the witness' credibility rather than directly upon defendant's guilt. A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth.); See also, Tapia v. Tansy, 926 F.2d 1554, 1563

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1) Ricky Jacobs did in fact speak to someone else other than

~~Investigator McRae about what he had witnessed.~~

- 2) that when the Police initially arrived, he did in fact tell this Uniformed Officer what he saw.
- 3) that he did provide descriptions of the vehicle to this Officer which was an White (SUV), possibly a nissan.
- 4) that he did in fact provide descriptions of two suspects to this Officer, and these suspects were a completely different set of suspects, which Ricky Jacobs had originally identified to this Officer as doing this shooting.
- 5) that the ~~first time~~ he explained what he observed was actually to this Officer Ray Weldon Gregory, and not to Investigator McRae as he falsely testified to on the stand.
- 6) that Investigator McRae was not the only person that he spoke with that night / morning, as he falsely testified to on the stand. He actually spoke to Officer Ray Weldon Gregory, approximately 1 hr. 30 mins. before he spoke to Investigator McRae.
- 7) that he never mentioned or described a Tan or Champagne Colored Suburban (SUV) at all, in his original version that he had given to this Officer while he was explaining what he saw.
- 8) that he never implicated nor described neither Mr. Wray nor Mr. Watts at all, in his Original Statement to Officer Gregory, as the Suspect who began shooting toward the Club / Carwash, even though he stated in his testimony that he had known Mr. Wray and Mr. Watts for years.
- 9) that Ricky Jacobs had in fact changed the direction of the shots from this White vehicle as initially being "fired over

the top of the vehicle, towards the club" to "this White vehicle firing one shot, straight up in the air", which is the version that he told Investigator McRae and is the only version that he testified to.

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See RIDDLE v. OZMINT, No. 26153, May 22, 2006 - SC Supreme Court (holding, State was obligated to correct (Key Witness) false testimony in capital murder trial that he had not spoken to anyone other than that police officer to whom he had given initial statement, when solicitor knew that (Key Witness) had given second statement to police...)(the issue is not why (Key Witness') failed to tell the truth: rather, it is why the solicitor, who knew (Key Witness') testimony to be false, failed to correct it.), See also ~~4~~ 110K 2036 K. Duty to correct false or perjured testimony.

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See the relevant parts of Ricky Jacobs false / perjured, material testimony on Cross Examination:

See Vol.3, p.121, Lines 9-25.

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Due Process is violated when prosecutor, although not soliciting false evidence from government witness allows it to stand uncorrected when it appears, and this principle applies even though testimony goes only to credibility of the witness. U.S.C.A. Const. Amend. 5, 14. People of the Territory of Guam v. Palomo, 115 S.Ct. 750.

12-15-2014

I, Tremaine Wray #337442 do intend to Appeal,
the PCR Judge decisions.

Tremaine Wray

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Tremaine Wray, #3337442

Plaintiff,

v.

State of South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS

Case No.: 2012-CP-400790

CERTIFICATE OF SERVICE

RICHLAND COUNTY
FILED
MAR 26 3 14 PM
JANET M. MCBRIDE
C.C.P. & G.S.

This is to certify that I, Amy A. Kirby, paralegal with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person named below the **PLAINTIFF'S MOTION TO SUPPLEMENT OR AMEND HIS PREVIOUSLY FILED MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO RULE 59(e), SCRC** in the foregoing matter by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

The Honorable J. Mark Hayes, II
Circuit Court Judge
180 Magnolia Street
Spartanburg, SC 29306

And by hand delivering the same to the following:

Megan E. Harrigan, Esquire
J. Clayton Mitchell, Esquire
South Carolina Attorney General's Office
Rembert C. Dennis Building
1000 Assembly St.
Columbia, SC 29201

Dated at Columbia, South Carolina this 26th day of March, 2015.


Amy A. Kirby

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Tremaine Wray, #337442,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2012-CP-40-7909

**ORDER DENYING MOTION
TO ALTER OR AMEND JUDGMENT
PURSUANT TO RULE 59(e), SCRPC**

2015 MAR 27 AM 11:06
JEANETTE W. McBRIDE
CLERK
RICHLAND COUNTY
FILED

This matter comes before this Court by way of Applicant's "Motion to Alter or Amend Judgment Pursuant to Rule 59(e), SCRPC," asking this Court to alter or amend its Order of Dismissal denying Applicant post-conviction relief.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant was indicted during the August 2007 term of the Richland County Grand Jury for Murder (2007-GS-40-05914) for the shooting death of Dumuria "Hank" Johnson; co-defendant Taurus Watts was indicted similarly. Jack B. Swerling, Esquire, and Arie D. Bax, Esquire, represented Applicant. On October 5-15, 2009, Applicant proceeded to a jury trial before the Honorable J. Michelle Childs. The State was represented by Assistant Solicitors Vanessa C. Shipley and Joanna A. McDuffie of the Fifth Circuit Solicitor's Office. The jury convicted Applicant as indicted and Judge Childs sentenced him to forty years imprisonment.

A notice of appeal was filed and an appeal was perfected on Applicant's behalf by Appellate Defender Elizabeth A. Franklin-Best of the South Carolina Commission on Indigent Defense - Division of Appellate Defense. Following briefing and argument, the South Carolina Court of

Appeals affirmed Applicant's conviction and sentenced by unpublished opinion. State v. Wray, 2012-UP-477 (S.C. Ct. App. filed August 8, 2012). The Remittitur was issued on August 27, 2012.

Applicant filed an application for post-conviction relief on November 29, 2012. Respondent made its Return on February 19, 2013, requesting an evidentiary hearing be held. Thereafter, Applicant, through his counsel, filed an amended application on July 7, 2014. In his amended application for post-conviction relief, Applicant alleged the following specific allegations:

1. Ineffective assistance of trial counsel for failure to call as gunshot residue expert to refute the State's expert;
2. Ineffective assistance of trial counsel for failure to call initial responding officer Weldon Gregory;
3. Ineffective assistance of trial counsel for failure to call eyewitness Timothy Weldon;
4. Ineffective assistance of trial counsel for failure to object to the State's vouching for the credibility of a witness during its closing argument;
5. Ineffective assistance of trial counsel for failing to interview or investigate the initial responding officer Weldon Gregory or his handwritten police report;
6. Brady violation against the State for its submission of the handwritten report of Officer Gregory with his name cut-off of the bottom;
7. Ineffective assistance of appellate counsel for failure to raise issues regarding gunshot residue in Applicant's appellate brief; and
8. Ineffective assistance of trial counsel for failure to impeach State's witness Ricky Jacobs with Officer Gregory's report.

An evidentiary hearing into the matter was convened November 3, 2014, at the Richland County Courthouse. At the hearing, Applicant proceeded forward on these grounds as listed in his amended application at the evidentiary hearing. Applicant was present at the hearing and was represented L. Marshall Coleman Newton, Esquire. Respondent was represented by Assistant Attorney Generals Megan E. Harrigan and J. Clayton Mitchell of the South Carolina Attorney General's Office.

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from initial responding officer Weldon Gregory and Firearms Examiner Kelly Fite. Respondent presented testimony from trial counsels Jack B. Swerling and Arie D. Bax and appellate counsel Elizabeth A. Franklin-Best. Also before this Court were the following exhibits introduced by Respondent:

1. Respondent's Exhibit No. 1: Swerling's Handwritten notes labeled "Tim Weldon";
2. Respondent's Exhibit No. 2: MacDougall Investigative Notes/Memorandum Packet;
3. Respondent's Exhibit No. 3: Clark Memorandum of Interview Packet;
4. Respondent's Exhibit No. 4: SLED Gunshot Residue Corrected Report dated October 2, 2009
5. Respondent's Exhibit No. 5: Micro Analytical Packet, including "Questions Related to Gunshot Residue Analysis" and the Curriculum Vita of Jeffrey M. Hollifield;
6. Respondent's Exhibit No. 6: Investigator McRae's Notes; and
7. Respondent's Exhibit No. 7: Richland County Sheriff's Department Incident Report handwritten by Officer Weldon Gregory.

Following the hearing, this Court requested post-hearing memorandum from both parties solely addressing the allegation of ineffective assistance of appellate counsel. After reviewing these memorandums and all testimony and other evidence presented at the hearing, along with a review of all records provided to the Court, this Court found that there were no constitutional deprivations or other grounds on which to grant relief and denied and dismissed this application with prejudice. This Court signed an Order of Dismissal on February 2, 2015, which was filed with the Richland Country Clerk of Court on February 12, 2015.

On February 24, 2015, Applicant served his "Motion to Alter of Amend Judgment Pursuant

to Rule 59(e), SCRCP" on Respondent and this Court. Respondent filed its Return on or about February 27, 2015, asking that this motion be summarily dismissed without argument, citing its lack of specificity, supporting authority.

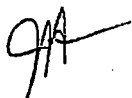
FINDINGS OF FACT AND CONCLUSION OF LAW

This Court finds that Applicant failed to state what the Court overlooked or misapprehended in its Order or how the Order should be altered or amended. Additionally, this Court notes that Applicant does not state any supporting case law or other authority to support his motion. Therefore, this Court agrees with Respondent's interpretation that Applicant's motion is a request for the Court to reconsider its ruling and grant him post-conviction relief. This Court finds that such a request is more properly addressed through the appellate process, not a motion to alter or amend pursuant to Rule 59(e), SCRCP. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e), SCRCP, motion is to preserve issues raised to but not ruled upon by the trial court). Therefore, this Court finds that this motion must be denied and dismissed.

Additionally, this Court's Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRCP. Having carefully reviewed the entire record in this matter, this Court finds that no basis for altering or amending is prior ruling.¹ Therefore, this Court hereby denies the Applicant's Motion in its entirety, and affirms the previous Order of Dismissal.

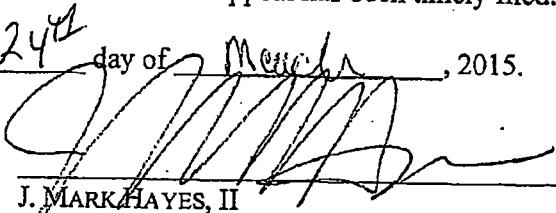
This Court notes that if the Petitioner desires to secure appellate review of this Order and the Order of Dismissal, a notice of appeal must be filed and served within thirty days of the service of this Order. Petitioner is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court

¹ The Court, in its discretion, has considered this matter based upon the motions submitted by the parties and the post-
Page 4 of 5



Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

AND, IT IS SO ORDERED this 24th day of March, 2015.


J. MARK HAYES, II
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina

conviction relief file, since oral argument will not aid the Court in reaching its decision. See Rule 59(f), SCRCP.

Cover Letter

11-7-2014

Tremaine Wray #337442
386 Redemption Way
McCormick, S.C. 29899

RICHLAND COUNTY
FILED
2014 DEC -3 PM 4:42
JEANETTE W. MCBRIDE
C.C.P. & G.S.

Case No.: 2012-CP-40-07909

Dear Honorable Jeanette W. McBride

Enclosed please find my Motion which has been forward to Counsel for the Applicant Tremaine Wray #337442 requesting Counsel to file within the Clerk Of Court of Richland County.

Please send these Exhibits, and all other paperwork enclosed, to Judge Hayes. Requesting a clocked/dated stamped copy to be returned to me, the Applicant and please find a copy of proof of service showing that the respondents has been served by United States Mail.

Sincerely

S/ Tremaine Wray #337442

CC: T.W.
CC: M.C.N
CC: M.E.H
CC: J.H

SCANNED

State of South Carolina

County of Richland

Tremaine Wray, #337442,
Applicant

v.

State of South Carolina

Respondent

In The Court OF Common Pleas

Case No. : 2012-CP-40-07909

These are the briefs of all grounds for relief available to me (The Applicant) that I'm raising in my Original, Supplemental, or Amended Application; pursuant to §17-27-90 grounds for relief. I ask that Each and every issue raised in the Post-Conviction Relief application and any amendment thereof, at the hearing, to be addressed in the "Order" of the court to be issued at the conclusion of the Evidentiary Hearing in this matter.

Issue 1:

I was denied the right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution Laws and Statutes by Mr. Swerling's failure to investigate potentially exculpatory information in the police report, and to interview and subpoena Officer Ray Weldon Gregory, to testify pursuant to his police report and to authenticate his handwritten police report and verify that he is the officer who prepared the report.

- a. **Weldon Gregory was the first officer to arrive to the crime scene and was the first officer to interview Ricky Jacobs, which was approximately one and a half hours before Investigator Don McRae arrived to the scene and interviewed Jacobs.**
- b. **Jacobs told Gregory that two suspects attempted to enter the club and he told them it was closed. He said one of the suspects made a comment to the effect "I've got something for you". The suspects left and then drove by in a white vehicle SUV shooting towards the club. He described the vehicle possibly being a white Nissan with a black stripe down the side. He said Suspect 1 had dreadlocks in his hair and Suspect 2 had a close haircut with a striped shirt. This description matches the two people who were later pulled over and found to have shell casings in the white SUV vehicle matching those found in the road at the crime scene.**

Issue 2:

My Due Process rights were violated due to prosecutorial misconduct and I was deprived of liberty without Due Process in violation of the Fifth and Fourteenth Amendments of the United States Constitution and the corresponding provisions of the South Carolina Constitution Laws and Statutes, by prosecuting authorities knowing presentation of false or perjured material, testimony and by its failure to correct Ricky Jacobs (the state's sole eyewitness) false or perjured testimony while testifying against me, and eliciting the truth which requires that my conviction and sentence be vacated or be granted a new trial.

- a. **At trial, Ricky Jacobs was asked more than once whether he had spoken to any uniformed Law Enforcement Officers about what he had witnessed when they first arrived to the scene. Ricky Jacobs had lied in denying speaking with anyone other than Investigator Don McRae about what he had witnessed, neglecting to mention that he did give an initial version of the shooting to an uniformed officer and refused to tell the truth and apprise the jury of his original version of the shooting that he had provided to the uniformed officer, Deputy Ray Weldon Gregory. The Solicitor, knowing his testimony to be false or perjured, failed to correct Ricky Jacobs' perjured trial testimony.**
- b. **The issue is not why Ricky Jacobs failed to tell the truth: Rather; it is why the Solicitor, who knew Ricky Jacobs' testimony to be false, failed to correct it.**

- c. According to Riddle v. Ozmint 369 S.C. 39, 631 S.E. 2d70 (S.C. 2006) (the Solicitor's office violated petitioner's due process rights when it failed to correct misstatements by (key witness) while testifying against petitioner. State was obligated to correct (key witness') false testimony in the murder trial that he had not spoken to anyone other than that police officer to whom he had given initial statement, when Solicitor knew that (key witness) had given second statement to police.) See also Napue v. Illinois, 360 U.S. 264, 79 S.Ct. 1173 (finding that it is established that a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment. The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears. It is of no consequence that the falsehood bore upon the witness' credibility rather than directly upon defendant's guilt. A lie is a lie, no matter what its subject, and if it is in anyway relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth.)

Issue 3:

I was denied my Due Process right to fair trial, in violation of the Fifth and Fourteenth Amendments to the United States Constitution, and the corresponding provisions of the South Carolina Constitution Laws and Statutes, by the State's submitting discovery evidence without the authoring officer's name on it in violation of Brady.

- a. State did not reveal the name of initial responding officer to the scene, Officer Ray Weldon Gregory, because his name was cut off of the bottom of his police report which was disclosed to the defense. The omission deprived the defense of the opportunity to interview the initial responding officer and had the effect of preventing me from presenting such evidence as I possessed in defense of the accusation against me. This undisclosed evidence also revealed that prosecution introduced trial testimony that it knew or should have known was perjured, and which was exculpatory and impeaching, material evidence.
- b. Ray Weldon Gregory took the initial statement from eyewitness Ricky Jacobs, and this initial statement is a different version of the events of the shooting that Ricky Jacobs testified to on the stand. Because the statement contradicts Jacobs' trial testimony and implicates the white SUV and not my tan suburban and it implicates a different set of suspects that committed this crime, the evidence was material and favorable to me and the defense.
- c. According to Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963), even in the absence of a specific request, the prosecution has a constitutional duty to turn over exculpatory evidence that would raise a reasonable doubt about the defendant's guilt. See Kyles v. Whitley, 514 U.S. 419, 115 S.Ct. 1555; California v. Trombetta 461 U.S. 479, 104 S.Ct. 2528; Napue v. Illinois, 360 U.S. 269-272, 79 S.Ct. 1173. See also Riddle v. Ozmint (finding that if Brady violations occurred, PCR must be granted).

Issue 4:

I was denied the right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendment to the United States Constitution and the corresponding provisions of the South Carolina Constitution, Laws and Statutes for Mr. Jack B. Swerling, failing to impeach the State's eyewitness Ricky Jacobs with the report of the responding officer, Weldon Gregory, and by his failure to move to admit the police report into evidence as part of my defense as an official report excepted from the hearsay rule under Federal Rule of Evidence 803 (8)(c). Pursuant to Rule 803; "factual finding resulting from an investigation made pursuant to authority granted by law" may be admissible against the government in criminal proceeding notwithstanding the hearsay rule, "unless the sources of information or other circumstances indicate lack of trustworthiness." Police reports may be appropriately admitted on behalf of a defendant if the provisions of this rule are satisfied.

- a. Ricky Jacobs testified and said he only talked with one officer, but he also had spoken to Officer Weldon Gregory just after the shooting.
- b. Jacobs told Weldon Gregory that the shots came from the white SUV. Then he told the other officer, Inv. Don McRae, and testified at trial that the shots came from a tan suburban.
- c. See U.S. v. Badey 147 Fed. Appx. 338 C.A. 4 (N.C.) , 2005

Issue 5:

I was denied the right to effective assistance to counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution, Laws and Statutes by Mr. Jack B. Swerling's failure to object to the state vouching for the credibility and veracity of the state's sole eyewitness. Mr. Swerling was also deficient, by failing to preserve this issue for appeal, in failing to object.

- a. One of the core functions of the jury is to determine the credibility of a witness, and a solicitor vouching for a witness conveys the impression to the jury that they do not need to do that job because the solicitor had evidence known by the prosecution which supports conviction.
- b. Therefore, trial counsels failure to object during the State's closing argument when the State said, "He's telling the truth" in closing arguments at the trial was substantial error which prejudiced applicant.

- c. See Gilcrest v. State, 565 S.E. 2d 281 (S.C. 2002) (Because a Jury must make its own assessment on the credibility of witnesses, it is inappropriate for the State to assure the Jury of a government witness' credibility). Also See Matthews v. State, 565 S.E.2d 766 (S.C. 2002); State v. Kelly, 540 S.E. 2d 861 (2001).

Issue 6:

I was denied the right to effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendment to the United States Constitution and the corresponding provisions of the South Carolina Constitution, Laws and Statutes by Jack B. Swerling and Mr. Arie Bax failure to object to the State's improper comments and arguments that my tan suburban was positive for GSR which so infected the trial with unfairness that it made the resulting conviction a denial of Due Process.

- a. Both trial counsel's failure to object; extremely prejudiced me because the Jury used this false forensic evidence in their decisions and deliberations to come back with a verdict against me.
- b. This false presentation of (gunshot residue) forensic evidence, which was used against me as proof that I committed this crime, ('the smoking gun', so to speak) and which was used to establish my guilt: **1) it misled the Trial Judge. 2) It misled the Jury. 3) It bolstered the States' argument against the Defense Objection to the admission of the gunshot residue evidence. 4) It bolstered the State's argument against me in my Motion of Suppress Hearing. 5) It bolstered the State's argument to support their "Hand of One, Hand of All" theory against me and my co-defendant. 6) It also bolstered the State's argument against my Motion for a Directed Verdict. 7) It also improperly bolstered the State's key witness (Ricky Jacobs) credibility.**
- c. This also resulted in false corroboration of Ricky Jacobs' testimony regarding gunfire coming from my tan suburban, and the Court of Appeals erroneously cited to '**gunshot residue**' in its decision upholding the verdict against me:

The murder weapon was never found, but the information provided by the club owner was consistent with other details discovered by police. These details included **(1) the location of gunshot residue on the vehicle in which Wray and Watts were riding, (2) two projectiles from the car wash stall and one projectile recovered from the victim's clothing, and (3) shell casings found at the crime scene. (See State v. Wray, 2012-UP-477(S.C. Ct. App. August 8, 2012) Exhibit I.**

- d. See Ard v. Cato, 372 S.C. 318, 642 S.E. 2d590 (2007). Held counsel ineffective in not adequately developing and presenting GSR evidence

Issue 7:

I was denied the right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution by Mr. Jack B. Swerling and Mr. Arie Bax failure to object to the improper, misleading, and prejudicial statements given by the state's GSR expert during his testimony, while giving his opinion and conclusion from the actual forensic evidence results.

- a. Both of my Trial Counsels did not object when the State's Gunshot Residue Expert Witness, during his testimony, stated repeatedly that **his findings were consistent with a weapon having been fired in the driver's side area of my vehicle**, and that **his conclusion is that a weapon was fired from my vehicle**, in giving his opinion and conclusion, which extremely prejudiced me. The jury used this expert's opinion and conclusions in their decisions and deliberations to come back with a verdict against me.
- b. The gunshot residue expert 'could not' reach that opinion because the results of his report from my vehicle, does not meet their (S.L.E.D.'s) protocol and threshold, that is required for him to reach, in order to be able to give an opinion and conclusion of a weapon being fired from my vehicle.
- c. There is no way to tie the round lead particles to the actual crime and there is no way to tie the round lead particles to the actual time of the event. Both of my Trial Counsel's failure to object allowed the State to manipulate the facts of the gunshot residue tests results to the Trial Court and to the Jury, by allowing the State to falsely argue and present to the Trial Judge and to the Jury that my vehicle tested positive for GSR, when in fact it was negative for gunshot residue.

Issue 8:

I was denied the right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendment to the United States Constitution and the corresponding provisions of the South Carolina Constitution, Laws and Statues by Mr. Jack B. Swerling's failure to call a refuting Gunshot Residue expert witness.

- a. Mr. Swerling was ineffective in failing to call an expert to refute the improper testimony and conclusions presented by the State's Gunshot Residue Expert.

- b. Mr. Swerling could have called a GSR expert to conclusively refute the statement that Gunshot Residue was in my tan suburban.
- c. See Ard v. Cato, 372 S.C. 318, 642 S.E. 2d 590 (2007) in which court held counsel ineffective for not adequately developing and presenting Gunshot Residue evidence.

Issue 9:

I was denied the right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendment to the United States Constitution and the corresponding provisions of the South Carolina Constitution, Laws and Statutes by Mr. Jack B. Swerling's failure to request a hearing, pursuant to Frank's hearing, by making substantial preliminary showing that false statements knowingly and intentionally, or with reckless disregard for the truth was included by the Affiant (Investigator Don McRae) in both Affidavits in support of the search warrants for my vehicle and my home.

- a. Mr. Swerling should have requested a Frank's Hearing, to establish to the court that the Affiant intentionally and knowingly included false statements in the Affidavit. With the Affidavit's false material set to one side, the Affidavit's remaining content is insufficient to establish probable cause.
- b. His failure prejudiced me because the fruits of this illegal search could have and should have been suppressed, and the Jury would not have heard the misleading and prejudicial testimony of the State's GSR expert that was used to assist the Jury in their decisions and deliberations to convict me. It also prejudiced me in my Direct Appeal in that it was part of the facts and circumstances in the Court of Appeal's opinion to affirm the Trial Judge's admission of the GSR evidence; and also to affirm my conviction. See Exhibit I, Court of Appeals Per Curium, which states "According to the Affidavit, (1) several witnesses saw the vehicle to be searched leaving the crime scene and identified it as the vehicle from which several rounds were fired." "None of the witnesses were confidential informants;" "Finally, although the Affidavit did not include the names of the witnesses, it noted that the witness who identified the occupants of the vehicle had also given a separate statement to law enforcement."
- c. When read in context with the remainder of each Affidavit; these false statements provide false corroborating evidence of information and conclusions. These knowingly false statements made by the Affiant misled the magistrate in his evaluation to believe that similar or identical information was obtained by independent sources. "These witnesses". See United States v. Spach, 518 F.2d at 866.

Issue 10:

I was denied the right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution, Laws and Statutes by Mr. Jack B. Swerling's failure to request a hearing pursuant to Frank's Hearing by making substantial preliminary showing that police deliberately omitted facts with intent to make, or in reckless disregard of whether they thereby made the affidavit for the search warrant misleading and if omitted information would have been included in the affidavit; the information would render affidavit insufficient to support finding probable cause.

- a. Police omitted facts in search warrant affidavit which were material finding probable cause and these omitted facts misled the issuing Judge in making probable cause determination.
- b. These omitted facts would have cast doubt upon existence of probable cause, if this information were included. Mr. Swerling's failure to challenge omitted evidence by the police, prejudiced me because it resulted in the warrant not being voided and the fruits of the search not being excluded or suppressed. If Mr. Swerling would have challenged the omitted information by the police, this may have entitled me to an Evidentiary Hearing on Motion To Suppress To Challenge the validity of search warrant on grounds of **material omissions** so that I could make a substantial showing that the Affiant intentionally or recklessly omitted facts required to prevent technically true statements in Affidavit from being misleading.
- c. See Miller v. Prince George's Cnty, Md., 475 F.3d at 627, 628 (4th Cir. 2007); See also United States v. Stanert, 762 F.2d at 781,776 (the Affiant intentionally or recklessly omitted facts required to prevent technically true statements in Affidavit from being misleading. By Affiant (Don McRae) reporting less than the total story: the Affiant (Don McRae) manipulated the inferences that the Magistrate would have drawn, which allowed the Judge to be misled in such manner that could strip the probable cause requirement of all real meaning.) See also U.S. v. Colkley 899 F.2d at 297 (4th Cir. 1990); and Franks v. Delaware, 98 S.Ct. at 2676.

Issue 11:

I was denied the right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution, Laws and Statutes by Mr. Jack B. Swerling's failure to request a hearing, pursuant to Frank's hearing, by making substantial preliminary showing that Police deliberately omitted material facts with intent to make, or in reckless disregard of whether they

thereby made the **arrest warrant** affidavit misleading to the magistrate and if omitted information would have been included, the information would render the affidavit insufficient to support finding of probable cause.

- a. The omitted information is that this same exact witness, whom is the only source of the information that was provided to the Affiant, gave another version of this same crime to a different officer, describing a different vehicle and implicating a different set of suspects that he identified, which made his information unreliable and misleading to the magistrate judge by the Affiant's material omissions.
- b. The Affiant (Inv. Don McRae) failed to inform the magistrate judge of material facts he knew would **negate** or **defeat** probable cause.
- c. See U.S. v. Colkley, 899 F.2d. at 297 (4th Cir. 1990); United States v. Stanert, 762 F.2d at 781, 776; Miller v. Prince George's Cnty., Md. 475 F.3rd at 627, 628 (4th Cir 2007); Frank v. Delaware 98 S.Ct. at 2676.

Issue 12:

I was denied the right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution, Laws and Statutes by Jack B. Swerling's failure to object to the State using the fruits of the search to bolster their argument for finding of probable cause and to show pre-existing probable cause.

- a. The State, during my Motion To Suppress the fruits of search, argued detailed information that was not revealed to the Magistrate and also used the fruits of the search to bolster their argument for a finding of probable cause. (See Transcript Vol. 2, p.11, Lines 8-10; p. 12, Lines 5-8)
- b. The arguments regarding the fruits of the search are largely irrelevant to the issue of probable cause, and therefore Mr. Swerling was deficient for failing to object to the State using the fruits of the search to bolster their argument for finding of probable cause. His failure to object prejudiced me, because it resulted in me losing my argument during my Motion to suppress the fruits of the search, which in turn allowed the State's presentation of confusing, misleading, representations of Gunshot Residue forensic evidence against me.
- c. See United States v. Taylor, 931 F. Supp. At 1447 (it is also elementary that the facts necessary to demonstrate probable cause are frozen to the time before or at the time of the prospective search) (Searches and Seizures Key #40.1 Fruits of search cannot be used

to bolster argument for finding of probable cause, and it is generally not permissible for prosecuting authority to use fruits of search to show pre-existing probable cause.)

~~_____ denied the right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution, Laws and Statutes by Mr. Jack B. Swerling's failure to subpoena and produce the testimony of a favorable witness _____ and applicant was prejudiced from this witness' failure to testify at trial.~~

~~_____ saw the shooter with dreads in a white SUV. He saw gunshots coming from the driver's side of a white SUV vehicle. He also saw a second vehicle fire shots, but thought the first one fired toward the club. This independently corroborates Ricky Jacobs's initial statement to Weldon Gregory that the shots came from the white SUV towards the club/carwash, not the tan suburban.~~

~~_____, _____, and _____, and _____' friend from Chicago known only as _____ were out celebrating _____' birthday. That was the first time he had been to the club and didn't see anyone that he knew. He doesn't know any of the people that were arrested as a result of the shooting. They were leaving after a fight broke out. He saw someone, dark skin, with dreads in his hair, and holding a 40 cal. Pistol, and he also said he saw the shooter's face.~~

Issue 14:

I was denied my right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution, Law and Statutes by Mr. Jack B. Swerling's failure to object to and challenge "The Hand of One, Hand of All" theory being charged to the Jury.

- a. There was no evidence that established that there was a common design or plan between myself and Mr. Watts, or that myself and Mr. Watts shared the same criminal intent, to admit evidence under "The Hand of One, Hand of All" theory.
- b. There was no evidence presented whatsoever, by the State, that a gun or weapon had ever been in my possession on the night of the incident. The State also failed to prove my participation in the crime also needed to admit evidence under "The Hand of One, Hand of All" theory.

All" theory. To admit evidence under the "Hand of one, Hand of All" theory, the existence of the common design and the participation of the accused against whom the evidence is offered should first be shown. The evidence presented by the State failed to prove that I personally committed the crime that I, through a common design, aided or assisted in the commission of the crime through some **overt act** under the accomplice liability theory. The only evidence that the State established was that I was the driver of my vehicle and that I drove my vehicle that night.

The "**preparation**" for commission of an offense consists in devising or arranging the means or measures necessary for commission of the crime, while an "**attempt**" or "**overt act**" is the direct movement toward the commission, after the preparations are made. State v. Quick, 19 S.E. 2d 101, 199 S.C. 256, Crim. Law 26, 44.

- c. Mere presence at the scene of crime and knowledge that a crime is being committed are not sufficient to make a defendant a participant in a crime.

Evidence of mere presence at the scene of the crime and nothing more to show participation of a defendant in the illegal act, is insufficient to support a conviction. See Shirley v. State 304 S.E. 2d. 468; Huncke v. State 137 Ga. App. 299, 300, 223 S.E. 2d 492 (1976).

d. **Concerns Related to Proving the Identity of the Principal**

Because our cases were tried jointly, I necessarily merged the evidence presented as to myself and Mr. Watts into one discussion. The State did not present substantial circumstantial evidence to prove identity, whether it was myself or co-defendant who inflicted the injury that caused the victim's death. The State did not prove that I or co-defendant aided and abetted the other in committing crime. See State v. Lane, 406 S.C. 118, 121, 749 S.E. 2d 165, 167 (Ct. App. 2013) ("The State has the burden of proving beyond a reasonable doubt the identity of the defendant as the person who committed the crime or crimes".)

Utilizing the analysis of the Supreme Court in State v. Hepburn, Op. No. 27336 (S.C. Sup. Ct. filed Dec 11, 2013) (Shearouse Adv. Sh. No. 52 at 40) ("While undoubtedly present at the scene, the only inference that can be drawn from the State's case is that one of the two [co-defendants] inflicted the victim's injuries, but not the Appellant harmed victim. Thus, the State did not put forward sufficient direct or circumstantial evidence of Appellant's guilt."; Lewis, 403 S.C. at 354-56, 743 S.E. 2d at 129 (reversing the defendant's convictions when the State failed to offer any direct evidence or substantial circumstantial evidence of the defendant's guilt and the defendant's involvement amounted to mere presence at the scene).

~~I was denied the right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and the corresponding provision of the South Carolina Constitution, Laws and Statutes by Mr. Jack B. Swerling's failure to subpoena and produce the testimony of a favorable witness [REDACTED] and I was prejudiced from the witness' failure to testify at trial.~~

- ~~a. Marian Jacobs was the Manager at the Outback Steakhouse and was present when police arrested me. Mr. Jacobs states that he saw five to ten deputies "all over Wray's suburban" searching through it. Mr. Jacobs had nothing to do with the arrest or search of the vehicle.~~
- ~~b. This is extremely important because it tainted any evidence that may have been found in my suburban; in this case, the round lead particles. My suburban was technically part of the crime scene, and it was tampered with. This may have provided an alternative to the Jury on how these 16 round lead particles may have gotten into the suburban.~~
- ~~c. The State Prosecutor's both argued and presented to the Judge and Jury that my suburban was never entered until it arrived at the garage of the Richland County Sheriff's Department by Anna Clemmons.~~
~~This information may also have gotten the GSR analysis of the suburban suppressed and the Jury would not have heard the misrepresentation of the Gunshot Residue Evidence.~~

~~I was denied the right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution, Law and Statutes by Mr. Jack B. Swerling's failure to subpoena and produce the testimony of a favorable witness [REDACTED] and I was prejudiced from the witness' failure to testify at trial.~~

~~[REDACTED] would have testified to what he eye witnessed on the night/morning of the crime. He describes someone who pulled out a gun inside the club and pointed it at people, and that the same person still had that gun with him when that person got to his car which was parked at the carwash. [REDACTED] also identified someone shooting from in front of the club in the direction of the carwash.~~

Issue 17: Amended

I was denied the right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of

the South Carolina Constitution, Laws and Statutes by Mr. Jack B. Swerling and Mr. Arie Bax's failure to object to the Trial Court **improperly** allowing the admission of the scientific evidence without considering several factors for the admission of scientific evidence under **Rule 702** and determining that or if this evidence is relevant, reliable, and helpful to the Jury. Then balancing and making a determination whether or not the probative value of the evidence is outweighed by its prejudicial effect, under **Rule 403, SCRE**.

- a. Pursuant to Rule 702, South Carolina Rules of Evidence (SCRE), in order for the evidence to be admissible, the trial judge **must determine** the scientific evidence will assist the jury, the expert witness is qualified, the evidence is relevant, and the underlying science is reliable. The trial judge should determine the reliability of the underlying science by using the following factors: **(1)** the publication and peer review of the technique; **(2)** prior application of the method to the type of evidence involved in the case; **(3)** the consistency of the method with recognized scientific laws and procedures; **(4)** the quality control procedures used to ensure reliability; **(5)** the rate of error of a particular technique.
- b. Further, even if the evidence is admissible under Rule 702, SCRE, the trial judge **must determine** if its probative value is outweighed by its prejudicial effect under Rule 403, SCRE. Once evidence is admitted under these standards, the jury may give it such weight as it deems appropriate.
- c. See **State v. Ramsey, 550 S.E. 2d.294 (S.C. 2001); State v. Council 515 S.E. 2d.508 (S.C. 1999).**

Issue 18: Amended

I was denied the right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution by Mr. Jack B. Swerling's failure to object to the Trial Court's ruling that the search warrant was supported by probable cause and ^{but} ~~there~~ valid, ^{fore} not by limiting itself to an examination of the affidavit before the magistrate.

- a. Evidence at the **Suppression Hearing** arguably showed that the police had, had probable cause to search my home and vehicle, although the circumstances that allowed the police to reach such a conclusion were for the most part **not revealed to the Magistrate at the time the search warrant was issued.**

- b. A probable cause Affidavit for a Search warrant **cannot be rehabilitated after the fact, stated otherwise**, a search warrant is valid only if probable cause has been shown to Magistrate, and an inadequate showing may not be rescued by Post Search Testimony on information known to the searching officer at the time of the search.
- c. See **Rice v. Wolff**, 513 F.2d at 1280 (1975) Searches and Seizures Key # 3.6 (2)
- d. The State Trial Court on Motion to Suppress and the South Carolina Court of Appeals "affirming" the Trial Court's ruling, had ruled that the Search Warrant was supported by probable cause and therefore valid. In considering that probable cause had been shown, the Trial Court **did not limit itself to an examination of the Affidavit before the Magistrate.**
Rather, the Trial Court relied, in part at least, upon testimony brought forth at the Suppression Hearing, the arguments made by the State, facts and circumstances of detailed information manifested to the Trial Court Judge, but not revealed to the Magistrate at the time the search warrant was issued.
See Transcript Vol. 2, p. 9, Line 14-24; p. 10, Lines 6-9; p. 12, Lines 18-25, and p. 13, Line 1; p. 13, Lines 11-12, p. 31, Lines 8-9.
See also Transcript Vol1, pgs. 71- 131, pgs. 10-168; Vol. 2, pgs. 6-33.

Issue 1

"First Prong"

I was denied my right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, Federal Constitution and the corresponding provisions of the South Carolina Constitution, Laws and Statutes by:

[Mr. Jack B. Swerling's failure to investigate potentially exculpatory information in police report¹ and to interview and subpoena officer (Ray) Weldon Gregory Vol.1, p.18, Line 7, to testify pursuant to his police report² and to authenticate this police report and verify that he is the officer who prepared the report³].

(See Washington v. Smith 48 F.Supp.2d at 1149, Criminal Law— Defense counsel's failure to investigate potentially exculpatory information in police report was a constitutionally deficient performance. Const. Amend. 6.; Criminal Law— 641.13 (2.1) Even if individual acts or omissions of defense counsel are not so grievous as to merit a finding of prejudice, their cumulative effect may be substantial enough to support a finding of prejudice, thus warranting relief for ineffective assistance of counsel. Const. Ament. 6.; Criminal Law— 641.13 (6) Failure to investigate can be enough in some instances to constitute ineffective assistance to counsel. Const. Amend. 6.).

Officer Weldon Gregory was the first police Officer to arrive to the crime scene and was the first officer to interview Ricky Jacobs (The State's Sole Eyewitness) which was approximately one and a half hours before Officer Don McRae arrived to the scene and interviewed Mr. Jacobs.

This police report included statements made to Officer Weldon Gregory, at the scene, by the Complainant Ricky Jacobs. Ricky Jacobs stated to Officer Weldon Gregory that two suspects attempted to enter the club and (he) told the suspects that he was closed. (He) stated one of the suspects made a comment to the effect "I've got something for you". The suspects left the location and a few minutes later, a white SUV, with the suspects in it began shooting towards the club. (He) described the vehicle possibly being a white Nissan with a black stripe down the side. (He) stated that suspect #2 fired over the top of the vehicle. (He) described suspect #1 as having dreadlocks in his hair, and suspect #2 as having a close haircut with a striped shirt.

Because of Mr. Swerling's unprofessional errors; the Jury never knew that this police report even exists. And the material information in this police report is a first account of version of the shooting that Ricky Jacobs provided to Law Enforcement about what he had allegedly eye witnessed; providing a description of only one vehicle being involved and describing an entirely different set of suspects. (He) provided this information minutes after the crime was committed; when it was fresh on his mind.

[He never described a tan or champagne colored suburban being involved, nor implicated me or my co-defendant whatsoever to this Officer.].

However, Ricky Jacobs testified consistently, **under oath**, that Mr. Watts and I attempted to enter the club and he told us he was closed. That Mr. Watts made a comment to the effect "I've got something for you". That we got into a tan or champagne colored Suburban. That shots came from the driver's side of the vehicle (could have come from the rear window **See Vol.3, p. 158, Lines 2-9.**), in the direction of the club/ carwash. That Mr. Watts had dreads in his hair. After that, he saw a White Isuzu Rodeo (SUV) with two guys in it, pull out, down towards Farrow Road (same direction as the tan suburban) and once the vehicle reached the club/ carwash, the passenger got out—sat up on the door of the car and fired a shot, one time, straight up in the air (**Vol.3, p.48, Lines 24-25; p.49, Line 1**); therefore excluding these suspects and their vehicle of the crime and excluding the shots from this vehicle as the shots that would have wounded the victim.

Unknown to the Jury, this was actually Ricky Jacobs second version or account of the events of the shooting, that he told Officer Don McRae when he arrived to the scene approximately 1 hrs. 30 minutes later.

[This testimony, coming as it did from the State's Key Witness who was presumably without motive to lie, was devastating to the defense.]. (See White v. Godinez 143 F.3d p.1056).

Now, this next portion of his testimony is where the defense could have **established perjury** and also would have provided a crucial basis for the defense in attacking and sufficiently impeaching The State's Key Witness Ricky Jacobs, veracity, credibility, and the reliability of his identifications of the suspects and descriptions of the vehicle that he implicates shooting towards the club/carwash. This is a portion of his testimony on direct examination between him and the solicitor, Ms. Vanessa Shipley; that I'm now going to read into the record. (**See Exhibit F Trans. Vol.3, p.52, Lines 12-25; 53, Lines 1-23.**)

Question.... Answer....

Now, I'm also going to read into the record; his testimony on cross-examination by Ms. Johns. (**See Exhibit F Trans. Vol.3, p. 121, Lines 9-25; p.122, Lines 1-14.**)

Question.... Answer....

"Second Prong"

Mr. Swerling's performance prevented crucial evidence from being presented. If it not had been for Mr. Swerling's unprofessional errors, there is a reasonable probability that the results of the trial would have been different because Officer Weldon Gregory's testimony and police report would have revealed to the Jury that Ricky Jacobs initial statements to the police implicated the white SUV vehicle and suspect; rather than me and Mr. Watts and my vehicle; therefore establishing to the Jury that Mr. Jacobs changed the direction of the shots from this white vehicle from initially being "fired over the top of the vehicle; towards the club"; to "one time, straight up in the air". Also that he initially stated, to Officer Weldon Gregory, that the two suspects that tried to enter the club, and he told suspects he closed; and one of the suspects made a comment to the effect "I've got something for you" were the suspects from

the white vehicle SUV; 'but he then' changed his story and stated to Officer Don McRae that myself and Mr. Watts attempted to enter the club; and he told us he was closed; and that Mr. Watts made a comment to the effect 'I've got something for you'.

Officer Gregory's testimony and police report would have manifested to the Jury that Mr. Jacobs gave **perjured testimony** on the stand by testifying, **under oath**, that he never told any uniformed officers what he saw that night. That he never provided descriptions of any vehicles or cars; nor explained what he observed to any Law Enforcement Officer because when the first officer pulled up, he just wanted to secure the street, looking for shells. That the officer stopped traffic on both sides, and was busy securing the scene, roping off the area. That he went to talk to this officer, but the officer told him to step back--somebody got killed. That he told the officer that he would be over at the business if he wanted to talk to him.

Mr. Jacobs also testified, **under oath**, that the first time he ever explained what he observed was to Investigator McRae. He also testified that the only person that he spoke with that night/morning was Inv. Don McRae.

[Well, if this testimony were true; then how do you explain this handwritten police report from Officer Weldon Gregory?]

This would have raised extremely important questions for the Jury to consider during their decision and deliberations, such as, for example:

- 1) Why did Mr. Jacobs change his story?
- 2) Why did Mr. Jacobs lie on the stand, under oath, about telling Officer Weldon Gregory what he allegedly observed; and deny providing descriptions of the vehicle and the suspects:
- 3) Why did he change the direction of the shots from this white (SUV) vehicle? So on and so forth

Officer Weldon Gregory's missing testimony would have presented a theory of the case that would have exonerated my vehicle and directly contradicted the prosecution's evidence.

The Jury might well have viewed the otherwise impeachable testimony of the State's Key Witness in a different light. Ricky Jacobs' testimony no longer would have been fatal to the defense. This missing testimony also would have had a direct bearing on Ricky Jacobs's veracity; a witness upon whose testimony the State depended on to secure a conviction.

(See Montgomery v. Peterson 846 F.2d p.415, also see Nealy v. Cabana, 764 f.2d at 1180; prejudice component satisfied where missing testimony directly contradicted the prosecution's evidence).

The State also bolstered this **perjured testimony** and capitalized by arguing to the Jury in their closing arguments that Ricky Jacobs, Quote: "Didn't call 911. Was busy making sure his customers were safe. Didn't talk to responding officers because they were busy securing the crime scene. Talks to McRae when he arrives and explains what he witnessed" ... See Trans. Vol. 8, p.46. Lines 2-5.

(Because there was no physical evidence connecting me with the crime, the eyewitness identification of me and my vehicle at the crime scene was the cornerstone of the State's case in chief. Given the importance of eyewitness identification to my case, Mr. Swerling did not perform as a reasonable attorney practicing under prevailing professional norms. See Bryant v. Scott 28 F.3d at 1418).

Officer Weldon Gregory's testimony would have also changed the 'entire' evidentiary picture. It is reasonably probable that the balance of evidence would have shifted in my favor and established reasonable doubt; and here's how:

The information in this police report, which was provided by Ricky Jacobs, was (independently) corroborated by police officers who responded to a shots fired call and spotted the subject vehicle that fit the description of the vehicle leaving the crime scene of shots fired.

When the police officers pulled over the white in color SUV vehicle; the driver was a black male with dreads in his hair and the passenger was a black male with short hair and was wearing a yellow shirt with stripes, therefore 'matching' the description given by Ricky Jacobs at the incident location.

(So Officer Weldon Gregory couldn't have written down this information wrong, because it was independently verified by other officers. See Exhibit A¹, A², A³.).

So police officers ordered the driver and passenger out of the vehicle and detained them; while a thorough search of the vehicle was made for a gun.

The passenger was found to be sitting on several rounds of ammunition when he was removed from the vehicle.

This is very significant because, the majority of the shell casings, at the scene of the crime, were found on the right side of the roadway also corroborating the handwritten incident report that the passenger in the white SUV vehicle was shooting over the top of the vehicle, towards the club/carwash. The State however falsely argued to the Jury, during their closing arguments, that the majority of the shell casings found on the side of the road along the roadway were concentrated by the carwash, which would be the left side of the road. (See Trans. Vol.8, p.47, Lines 12-18).

Now See Exhibit C which are crime scene photos of the shell casings in the roadway that were recovered; and it is also my supportive evidence showing that the majority of the shell casings were found on the right side of the road, and showing where the club/carwash is.

The shell casings found in this vehicle basically 'matched' the shell casings recovered from the roadway at the scene of the murder (See Exhibit D¹, D², which are photos of the white SUV vehicle and the shell casings found in the passenger seat, that the passenger was sitting on when he was removed from the vehicle. Also see Exhibit E, Ballistics Expert Testimony, I'm now going to read into the record, Vol. 6, pgs. 159, 160; Line 25, Lines 1-14; p. 163, Lines 12-16; p.177, Lines 6-23, pgs. 178, 179; Lines 9-25, Lines 1-7.

This information was also corroborated by the 911 transcript; in which the only vehicle described was a White Pathfinder and a two-toned Box Chevy. There is no mention of a tan or champagne colored suburban (SUV) at all in the 911 transcript. (See Exhibit A³) (See Washington v. Smith 48 F.Supp. 2d at 1165 which states, - A jury may find evidence sufficient to create a reasonable doubt as to guilt, even if it finds such evidence to be marginally less credible than that presented by the State. Reasonable doubt is the criminal defendant's holy grail.)

There are several reasons that Officer Weldon Gregory was needed to authenticate this police report and to verify that he is the officer who prepared the report which are:

- 1) If you look at this handwritten incident report, which is **Exhibit A¹**, you can see that the reporting officer's **Name** is mysteriously missing from this document.
- 2) The **only way** that his name was ever attached to this handwritten police report; which was also the **first time**, "ever", that his name was, "ever", attached to this handwritten police report; was through the testimony of Investigator Don McRae on the witness stand towards the end of the trial. (See Exhibit G., Trans. Vol. 6, p. 193, Lines 1-12; Vol. 7, pgs. 66-76; p. 143 Lines 11-25; p.147, Lines 2-23).
- 3) This was the first time that it was revealed to the defense, that this police report was actually generated by an officer by the name of Deputy Weldon Gregory, which is proof that my attorney, Mr. Swerling, failed to investigate this potentially exculpatory information in this police report.
- 4) It establishes that the prosecution had knowledge of, and was in possession of, this **officer's name** which was favorable, material evidence that was undisclosed to the defense and was suppressed by the State which constituted a **Brady violation**.
- 5) Someone from the Richland County Sheriff's Department or Solicitor's Office generated the fake incident report which is a typewritten false, altered version of Officer Weldon Gregory's handwritten incident report, in which it contains '**material alterations**' which makes this an Inauthentic Police Report, which was deceitfully constructed and caused an significant change in its legal meaning and effect. It was made with the intent to deceive and was "**interposed**" into my trial, which was crucial to my defense. (See Exhibits B, H, J).

These are my Documents/Evidence/Exhibits that I'm introducing into evidence to support my claims:

- **Exhibit A¹, A², A³ = A¹: Handwritten Incident Report**
A²: Ryan Galinski Supplemental Report
A³: 911 Transcripts
- **Exhibit B= Typewritten false/ altered police incident report**
- **Exhibit C= Crime scene photos of shell casings**
- **Exhibit D= White SUV vehicle/ shell casings found on passenger seat 'matching' the shell casings recovered from the crime scene. (Photos)**
- **Exhibit E= Ballistics expert testimony (David Collins) pertaining to shell casings found in white SUV, having the same head stamp, caliber, name brand, and same 'specific' types of bullets recovered at the crime scene and from the victim (full metal jacket).**
- **Exhibit F= Ricky Jacobs perjured testimony; Vol. 3, pg. 52. Lines 12-25; p.53, Lines 1-23; p. 121, Lines 19-25; p. 122, Lines 1-14.**
- **Exhibit G= Investigator Don McRae's testimony (pertaining to the name of Weldon Gregory and his police report)**
- **Exhibit H= State's GSR expert Michael Moskal testimony (pertaining to the false incident report that was used to assist him in his GSR analysis and was interjected into my trial).**
- **Exhibit I= S.C. Court of Appeals (Unpublished Opinion)**
- **Exhibit J= Deputy Ryan Galinski's testimony pertaining to the handwritten incident report with no name on it and the false typewritten incident report with his name on it as the Complainant and the reporting officer, which was not his and his actual Supplemental Report.**

- **Exhibit K= Michael Moskal's misleading, confusing, and prejudicial testimony, opinions and conclusions.**
- **Exhibit L= Solicitors'/ Prosecutorial misconduct, depriving me of Due Process by falsely arguing, representing, and presenting that my suburban was positive for Gunshot Residue.**
- **Exhibit M= Objection to GSR Evidence and Expert's testimony, citing State v. Ramsey, 550 S.E. 2d294 (S.C. 2001); State v. Council, 515 S.E. 2d508 (S.C. 1999).**
- **Exhibit N= Arie Bax's questions to GSR analysis.**
- **Exhibit O= Explaining what negative GSR result is, using the particle lift (SEM) Scanning Electron Microscope test, which was actually what was done on my vehicle and what should have been reported as the same result from my vehicle.**
- **Exhibit P¹= Affidavit/ Search warrant for vehicle.**
- **Exhibit P²= Affidavit/ Search warrant for home/ residence.**
- **Exhibit Q= Arrest warrant/ Affidavit**
- **Exhibit R= Supplemental report/ witnesses at hospital. Potential eyewitness that 'saw shooting', Timothy Weldon.**

Exhibit A

1

2488

RICHLAND COUNTY SHERIFF'S DEPARTMENT INCIDENT REPORT

AGENCY I.D.
SCO 400000

CASE NUMBER

NCIC

INQ. E

0706 2790 3a

EVENT	INCIDENT TYPE				COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VIC					
	1. Homicide				☒ YES ☐ NO	☐ YES ☐ NO	63		☐ Individual ☐ Business ☐ Financial ☐ Government ☐ Religious ☐ Other ☐ Unknown ☐ Police C					
	2.				☐ YES ☐ NO	☐ YES ☐ NO								
VICTIM NO. 1	INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET AND NAME AND NUMBER)				SUBDIVISION		ZIP CODE		WEAPON TYPE					
	2820 Hardscrabble Rd (H & J's)				Subdiv. 11114		29223							
	INCIDENT DATE		24 HR. CLOCK		DATE		24 HR. CLOCK		DISPATCH DATE/TIME 24/HR CLOCK					
	063007		0412						DISPATCH TIME					
									TIME ARRIVED					
									DEPART TIME					
									AREA					
									GR					
	COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE	ETH.	DAYTIME PHONE			
	JACOBS, Ricky				51	☒ JOU	B	M	43	N				
ADDRESS				CITY	STATE	ZIP CODE								
				Columbia	SC	29203								
VICTIM NO. 1	VICTIM'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE	ETH.				
	H & J's				1	☒ JOU								
	HEIGHT				WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.						
	ADDRESS				CITY	STATE	ZIP CODE							
	2820 Hardscrabble Rd				Columbia	SC	29203							
	VISIBLE INJURY (VICT. 1) ☐ YES ☒ NO EXPLAIN				COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES ☒ NO									
	VICTIM (NO. 1) USING: ALCOHOL ☐ YES ☒ NO ☐ UNK DRUGS: ☐ YES ☒ NO ☐ UNK TYPE:													
	☐ TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/SPLASMT. ☐ OTHER ☐ ALONE ☐ ASSISTED				J-This Jurisdiction S-State O-Out of State U-Un									
	SUBJECT NO. 1	☒ SUSPECT	NAME (LAST, FIRST, MIDDLE)				RACE	SEX	AGE	ETH.	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR
☐ RUNAWAY		Unknown				B	M							
☐ WANTED		FACIAL HAIR, SCARS TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.				NCIC NUMBER								
☐ WARRANT		Dreadlocks in Hair												
☐ ARREST		ADDRESS				CITY	STATE	ZIP CODE		LOCATION NO.				
☐ JAIL		Unknown												
☐ SUMMONS		SUBJECT (NO. 1) USING: ALCOHOL: ☐ YES ☐ NO ☒ UNK				ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO		DATE/TIME OF OFFENSE		DATE/TIME OF ARREST				
DRUGS: ☐ YES ☒ NO ☐ UNK TYPE:				TOTAL # ARRESTED										
Compl states two Susp's attempted to enter the Club and Compl told Susp's HE was closed. Compl states one of the Susp's made a comment to the effect "I've got something for you" Compl states Susp's left the location and a few minutes later Compl states a white vehicle SUV with the Susp's in it began shooting toward the club. Compl described the vehicle possibly being a white Nissan with a black stripe down the side. Compl states Susp's fired over the top of the vehicle.														
PROPERTY EST.		EVIDENCE NUMBER:				JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY				JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY				
	HOLD ROOM 1				EVIDENCE ROOM									
	SEIZED \$				BURNED \$				DAMAGED \$					
	SUBJECT IDENTIFIED ☐ YES ☒ NO				SUBJECT LOCATED ☐ YES ☒ NO				☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED					
NATIVE					☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER				☐ EX-CLEAR UNDER 16 ☐ EX-CLEAR 18 AND OVE					

AGENCY I.D.
SCO 400000

**RICHLAND COUNTY SHERIFF'S DEPARTMENT
SUPPLEMENTAL INCIDENT REPORT**

CASE NUMBER

NCIC

0706 5790-30

☒ OPTIONAL REPORT ☐ MODIFIES ORIGINAL		☐ SUPPLEMENTAL REPORT ☐ CASE STATUS CHANGE		☐ ADDITIONAL VICTIMS ☐ ADDITIONAL OFFENDERS		☐ ADDITIONAL STOLEN PROPERTY ☐ ADDITIONAL RECOVERED PROPERTY		PAGE <u>2</u> of <u>2</u> PAGES. ☐ FIELD CONTACT INFO	

VICT./SUBJ. I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)			VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	D.O.B.
	☒ VICTIM # <u>1</u>	<u>Unknown</u>							<u>Blk</u>			
	☒ SUBJECT # <u>1</u>	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.						
	☐ RUNAWAY				<u>close cut hair cut with striped shirt</u>							
	☐ WANTED	ADDRESS			CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE		EVENING PHONE	
☐ WARRANT	<u>Unknown</u>											
☐ ARREST	☐ VICTIM NO. <u> </u> VISIBLE INJURY ☐ NO ☐ YES EXPLAIN:			COMPLAINT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES		VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK. DRUGS: ☐ NO ☐ YES TYPE:		☐ TWO-MAN VEHICLE ☐ DETECTIVE/SPLASMT. ☐ ALSO ☐ ONE-MAN VEHICLE ☐ OTHER ☐ ASS				
☐ JAIL	☐ SUBJECT NO. <u> </u> USING ALCOHOL: ☐ NO ☐ YES USING DRUGS: ☐ NO ☐ YES TYPE:											
☐ SUMMONS												
☐ _____												

VICT./SUBJ. I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)			VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	D.O.B.
	☒ VICTIM # <u>2</u>	<u>Unknown</u>										
	☐ SUBJECT # <u> </u>	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.						
	☐ RUNAWAY											
	☐ WANTED	ADDRESS			CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE		EVENING PHONE	
☐ WARRANT	<u>Unknown</u>											
☐ ARREST	☐ VICTIM NO. <u> </u> VISIBLE INJURY ☐ NO ☐ YES EXPLAIN:			COMPLAINT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES		VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK. DRUGS: ☐ NO ☐ YES TYPE:		☐ TWO-MAN VEHICLE ☐ DETECTIVE/SPLASMT. ☐ ALSO ☐ ONE-MAN VEHICLE ☐ OTHER ☐ ASS				
☐ JAIL	☐ SUBJECT NO. <u> </u> USING ALCOHOL: ☐ NO ☐ YES USING DRUGS: ☐ NO ☐ YES TYPE:											
☐ SUMMONS												
☐ _____												

NARRATIVE	<u>Homicide</u> <u>2870 HANDSCRABBLE RD</u> <u>Det. Galinski spotted the Susp Vehicle on the 9814</u> <u>Two Notch Rd where SUBJ'S were detained.</u> <u>Deputies were later notified of a victim transported to</u> <u>Providence M.S. Hosp. with a gun shot wound.</u> <u>M.D. Smith responded to Hospital.</u>											

VEH./GUN/ETC. 1	EVIDENCE NUMBER:		JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY		JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY	
	HOLD ROOM I:	EVIDENCE ROOM				

PROPERTY EST.	STATUS		TYPE		VIN AND/OR LICENSE NO.		BOAT HULL NO. AND/OR REG. NO.	
	☐ STOLEN	☐ VEHICLE			SERIAL AND/OR OWNER APPLIED NO.		STATE	
	☐ RECOVERED	☐ GUN			YEAR OF REGISTRATION		YEAR OF EXPIRATION	
	☐ FOUND	☐ BOAT			MODEL		STYLE	
	☐ TOWED	☐ LICENSE PLATE			NIC. NO.		DENOMINATION	
	☐ SUSPECT	☐ SECURITIES, STOCKS			ISSUER		SECURITIES DATE	
	☐ VICTIM	☐ ARTICLE			MISCELLANEOUS			
	SEIZED		DAMAGED		BURNED			

☐ SUBJECT IDENTIFIED ☐ YES ☐ NO ☐ NO		☐ SUBJECT LOCATED ☐ YES ☐ NO ☐ NO		☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER	

Exhibit A

2

RICHLAND COUNTY SHERIFF'S DEPARTMENT SUPPLEMENTAL INCIDENT REPORT

AGENCY I.D.
SC001 400000

CASE NUMBER

0706279030

NCIC

IND ENT

☐ ORIGINAL REPORT	☒ SUPPLEMENTAL REPORT	☐ INVESTIGATIVE FOLLOW UP	☐ ADDITIONAL STOLEN PROPERTY	PAGE 1	OF 1	PAGES
☐ MODIFIES ORIGINAL	☐ CASE STATUS CHANGE		☐ ADDITIONAL RECOVERED PROPERTY			

VICT / SUBJ I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT			RES	RACE	SEX	AGE	DATE OF BIRTH	E
	☐ VICTIM #	GREEN, EARL JEROME		1	2	3	J	B	M	24	~~06/30/07~~	N
	☒ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.						
	☐ RUNAWAY	507	145	1	2							
	☐ WANTED	ADDRESS		CITY		STATE	ZIP CODE	DAY PHONE		EVENING PHONE		
☐ WARRANT			COLUMBIA		SC	29229						
☒ ARREST	VISIBLE INJURIES: ☒ NO ☐ YES		COMPLAINANT OF NON-VISIBLE INJURIES: ☒ NO ☐ YES		VICTIM USING ALCOHOL: ☐ NO ☐ YES ☒ UNK		☐ TWO-MAN VEHICLE ☒ ONE-MAN VEHICLE		☐ DET./SPASMT ☐ ALONE			
☒ JAIL	EXPLAIN:		☒ NO ☐ YES		DRUGS: ☐ NO ☒ YES		TYPE: ☐ E ☐ UNK		☐ ASSISTED ☐ OTHER			
☒ SUMMONS	USING ALCOHOL: ☐ NO ☒ YES		USING DRUGS: ☐ NO ☒ YES		TYPE: ☐ E ☐ UNK							

VICT / SUBJ I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT			RES	RACE	SEX	AGE	DATE OF BIRTH	E
	☐ VICTIM #	LANDRUM, LUTHER CENTURAL JR		1	2	3	J	B	M	22	~~06/30/07~~	N
	☒ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.						
	☐ RUNAWAY	601	230	1	2	TAT LEFT UPPER ARM OF TWO THEATRE MASKS, PERM. GOLD TEETH						
	☐ WANTED	ADDRESS		CITY		STATE	ZIP CODE	DAY PHONE		EVENING PHONE		
☐ WARRANT			COLUMBIA		SC	29229						
☐ ARREST	VISIBLE INJURIES: ☒ NO ☐ YES		COMPLAINANT OF NON-VISIBLE INJURIES: ☒ NO ☐ YES		VICTIM USING ALCOHOL: ☐ NO ☐ YES ☒ UNK		☐ TWO-MAN VEHICLE ☒ ONE-MAN VEHICLE		☐ DET./SPASMT ☐ ALONE			
☐ JAIL	EXPLAIN:		☒ NO ☐ YES		DRUGS: ☐ NO ☒ YES		TYPE: ☐ E ☐ UNK		☐ ASSISTED ☐ OTHER			
☒ SUMMONS	USING ALCOHOL: ☐ NO ☒ YES		USING DRUGS: ☐ NO ☒ YES		TYPE: ☐ E ☐ UNK							

HOMICIDE/TRAFFIC/DRUG OFFENSE
2820 HARDCRABBLE/9800 TWO NOTCH
06/30/07

NARRATIVE

DEPUTY GALINSKI WAS RESPONDING TO A SHOTS FIRED CALL WHEN THE SUBJECT VEHICLE PASSED ON RABON RD. APPROACHING TWO NOTCH RD. THE SUBJECT VEHICLE FIT THE DESCRIPTION OF THE VEHICLE LEAVING THE CRIME SCENE OF SHOTS FIRED WHERE ONE PERSON WAS INJURED ON HARDCRABBLE RD. THE VEHICLE DESCRIBED WAS A WHITE SUV WITH BLACK STRIPING DOWN THE SIDES. DEPUTY GALINSKI TURNED AROUND ON THE VEHICLE AT RABON AND TWO NOTCH AND BEGAN TO FOLLOW THE VEHICLE NORTH ON TWO NOTCH RD. AFTER NOTIFYING DISPATCH, DEPUTY GALINSKI CONDUCTED A TRAFFIC STOP ON THE SUSPICIOUS VEHICLE AT THE BLOCK OF TWO NOTCH ALONG WITH DEPUTY BRANTLEY AND SEVERAL OTHER DEPUTIES. THE DRIVER AND PASSENGER WERE ORDERED OUT OF THE VEHICLE AND DETAINED WHILE AN EXIGENT SEARCH OF THE VEHICLE WAS MADE FOR A GUN. THE PASSENGER WAS FOUND TO BE SITTING ON SEVERAL ROUNDS OF AMMUNITION WHEN HE WAS REMOVED FROM THE VEHICLE. THE SUBJECTS WERE FRISKED WHERE THE DRIVER, MR. LUTHER, WAS FOUND TO HAVE ON HIS PERSON IN HIS RIGHT POCKET A SMALL PACKAGE OF ALUMINUM FOIL CONTAINING A QUANTITY OF GREEN LEAFY SUBSTANCE BELIEVED TO BE MARIJUANA. AN OPENED 12OZ. CAN OF BUD LIGHT WAS FOUND IN THE VEHICLE IMMEDIATELY BEHIND THE PASSENGER'S SEAT IN POSSESSION OF MR. GREEN. BOTH SUBJECTS WERE ARRESTED, MARANDIZED AND TURNED OVER TO INVESTIGATORS. EVIDENCE WAS PLACED INTO RCSD EVIDENCE. VEHICLE WAS TOWED BY PUFF HOWARD'S TO RCSD HQ FOR FURTHER INVESTIGATION. WHEN QUESTIONED ABOUT WHERE THE SUBJECT'S WERE COMING FROM, THE DRIVER, MR. LUTHER, STATED THEY WERE LEAVING HARDCRABBLE RD. DEPUTY GALINSKI DOES HAVE AUDIO AND VIDEO OF THE TRAFFIC STOP.

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY				JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY			
PROPERTY	STATUS	TYPE	VIN AND/OR LICENSE NO.		BOAT HULL NO. AND/OR REG. NO.		
	☐ STOLEN	☒ VEHICLE					
	☐ RECOVERED	☐ GUN	SERIAL AND/OR OWNER APPLIED NO.		STATE		
	☐ FOUND	☐ BOAT			SC		
	☐ TOWED	☐ LICENSE PLATE	YEAR OF REGISTRATION		YEAR OF EXPIRATION	YEAR	MAKE
	☒ SUSPECT	☐ SECURITIES, STOCKS			2001	ISUZU	TYPE
	☐ VICTIM	☐ ARTICLE	MODEL		STYLE	COLOR	BRAND NAME
			RODEO		SUV	WHITE	CALIBER
NIC. NO.		DENOMINATION		ISSUER		SECURITIES DATE	
MISCELLANEOUS							
SEIZED	\$	BURNED	\$	DAMAGED	\$		

NARRATIVE	☐ ACTIVE	☐ ADM. CLOSED	☐ ARRESTED UNDER 18	☐ EX-CLEAR UNDER 18
	☐ UNFOUNDED	☒ ARRESTED 18 AND OVER	☐ EX-CLEAR 18 AND OVER	
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUST.			
S. NO.	REPORTING OFFICER(S)	DATE	S. NO.	APPROVING OFFICER

2492

RICHLAND COUNTY SHERIFF'S DEPARTMENT

SUPPLEMENTAL INCIDENT REPORT

AGENCY I.D.
SCORI 400000

CASE NUMBER

0706279030

NCIC

IND EWT

☐ ORIGINAL REPORT ☒ SUPPLEMENTAL REPORT ☐ INVESTIGATIVE FOLLOW UP
☐ MODIFIES ORIGINAL ☐ CASE STATUS CHANGE

☐ ADDITIONAL STOLEN
PROPERTY
☐ ADDITIONAL RECOVERED
PROPERTY

PAGE 1 OF 1 PAGES

VICT / SUBJ I. D. OVERFLOW	☒ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)				VICTIM RELATIONSHIP TO SUBJECT			RES	RACE	SEX	AGE	DATE OF BIRTH	ET			
	☐ VICTIM #	DEPUTY GALINSKI, R.J.				ST			1	2	3	J	W	M	28	02/28/88	N
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.											
	☐ RUNAWAY	50	9	180	3	1											
	☐ WANTED	ADDRESS				CITY		STATE	ZIP CODE		DAY PHONE		EVENING PHONE				
	☐ WARRANT					COLUMBIA		SC	29223								
	☐ ARREST	VISIBLE INJURIES: ☒ NO ☐ YES				COMPLAINANT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES		VICTIM USING ALCOHOL: ☒ NO ☐ YES ☐ UNK		☐ TWO-MAN VEHICLE		☐ DET./SPASMT					
	☐ JAIL	EXPLAIN:				☒ NO ☐ YES		DRUGS: ☒ NO ☐ YES ☐ UNK		☒ ONE-MAN VEHICLE		☐ ALONE					
	☐ SUMMONS	USING ALCOHOL: ☐ NO ☐ YES						TYPE: ☐ UNK		☐ ASSISTED		☐ OTHER					
	☐	USING DRUGS: ☐ NO ☐ YES						TYPE: ☐ UNK									

VICT / SUBJ I. D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)				VICTIM RELATIONSHIP TO SUBJECT			RES	RACE	SEX	AGE	DATE OF BIRTH	ET		
	☐ VICTIM #								1	2	3					
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.										
	☐ RUNAWAY															
	☐ WANTED	ADDRESS				CITY		STATE	ZIP CODE		DAY PHONE		EVENING PHONE			
	☐ WARRANT							SC								
	☐ ARREST	VISIBLE INJURIES: ☐ NO ☐ YES				COMPLAINANT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES		VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK		☐ TWO-MAN VEHICLE		☐ DET./SPASMT				
	☐ JAIL	EXPLAIN:				☐ NO ☐ YES		DRUGS: ☐ NO ☐ YES ☐ UNK		☐ ONE-MAN VEHICLE		☐ ALONE				
	☐ SUMMONS	USING ALCOHOL: ☐ NO ☐ YES						TYPE: ☐ UNK		☐ ASSISTED		☐ OTHER				
	☐	USING DRUGS: ☐ NO ☐ YES						TYPE: ☐ UNK								

HOMICIDE/TRAFFIC/DRUG VIOLATION
2820 HARD SCRABBLE RD./9800 TWO NOTCH RD
06/30/07

WITNESSES AT THE SCENE OF THE SHOOTING REPORTED THE SUBJECT VEHICLE AS A WHITE IN COLOR SUV WITH TWO BLACK MALES, THE DRIVER HAVING DREDS IN HIS HAIR AND THE PASSENGER WITH SHORT HAIR WEARING A YELLOW SHIRT WITH STRIPES. THE WITNESSES ALSO STATED THAT THE PASSENGER WAS THE SUBJECT WHO WAS SHOOTING THE GUN. WHEN DEPUTY GALINSKI MADE THE TRAFFIC STOP ON THE SUSPICIOUS VEHICLE THE DRIVER WAS A BLACK MALE WITH DRED HAIR AND THE PASSENGER WAS A BLACK MALE WITH SHORT HAIR AND WAS WEARING A YELLOW SHIRT WITH STRIPES. THE DRIVER OF THE SUBJECT VEHICLE DID STATE THAT THEY HAD JUST LEFT THE HARDSCRABBLE RD. AREA PRIOR TO BEING STOPPED BY DEPUTY GALINSKI.

PROPERTY	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY				JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY							
	STATUS		TYPE		VIN AND/OR LICENSE NO.				BOAT HULL NO. AND/OR REG. NO.			
	☐ STOLEN		☐ VEHICLE									
	☐ RECOVERED		☐ GUN		SERIAL AND/OR OWNER APPLIED NO.				STATE			
	☐ FOUND		☐ BOAT		YEAR OF REGISTRATION				YEAR OF EXPIRATION		MAKE	
	☐ TOWED		☐ LICENSE PLATE		MODEL		STYLE		COLOR		BRAND NAME	
	☐ SUSPECT		☐ SECURITIES, STOCKS		NIC. NO.		DENOMINATION		ISSUER		SECURITIES DATE	
	☐ VICTIM		☐ ARTICLE		MISCELLANEOUS							
	SEIZED		\$		BURNED		\$		DAMAGED		\$	

ADMINISTRATIVE	☐ ACTIVE ☐ ADM. CLOSED		☒ ARRESTED UNDER 18		☐ EX-CLEAR UNDER 18	
	☐ UNFOUNDED		☐ ARRESTED 18 AND OVER		☐ EX-CLEAR 18 AND OVER	
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUST					
	S. NO.	REPORTING OFFICER(S)	DATE	S. NO.	APPROVING OFFICER	DATE
	1360	Galinski, Ryan	06302007		Gore, James	06302007
		FOLLOW UP INVESTIGATION		S. NO.	OFFICER	DATE
		☐ YES ☐ NO				

Exhibit A

S

**COLUMBIA-RICHLAND COMMUNICATIONS**

"We will be there when you need us the most"

REQUEST FORMDate: 7/11/2007Name: INV. G. GALLEGOType: K Address: 2820 HARD SCRABBLE Inc. Date: 6/30/2007Incident Type: HOMICIDE Incident Time: ✓Documents: Describe Needed Info: ALL 911 CALLS OF SHOTS FIREDAND SUBJECTS HIT ARE NEEDED FOR 2820 HARD SCRABBLE RD.
IN REGARDS TO THE HOMICIDE THAT OCCURRED ON 6/30/2007Address: 2820 HARD SCRABBLE RD. Date From: 6/30 to 6/30

Additional Comments: I WOULD LIKE THE 911 TAPE(S) FOR THE
HOMICIDE THAT OCCURRED AT 2820 HARD SCRABBLE RD.
CASE# 07062790-30. PLEASE INCLUDE ALL CALLS RELATED
TO THIS INCIDENT. IF YOU HAVE ANY QUESTIONS REGARDING
MY REQUEST PLEASE CALL ME AT 574-3014. THANK YOU!

Failure to pickup documents after notification will result in all information being erased or discarded. Request can be faxed or sent via inter office mail to the attention of Judy G. Spell, Director.



A National Accredited Communications Agency

1800 Laurel Street / Columbia, SC 29202

5623 TWO NOTCH ROAD
COLUMBIA, SC 29223
Phone: 803-576-3014 / 803-576-3000
Fax: 803-576-3190
E-mail: ggallegos@rcsd.net

**RICHLAND COUNTY
SHERIFF'S
DEPARTMENT/
INVESTIGATIONS**

Fax

To: Supervisor Elron Davis (Columbia-
Richland Communications)

From: Inv. Gilbert Gallegos

Fax: 733-8603

Date: July 11, 2007

Phone: 544-9006

Pages: 2

Re: Case#07062790-30

CC: N/a

☐ Urgent ☒ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

•Comments: Mr. Davis can you please call upon receipt of this fax. I can be reached at 518-3819.

CLOSED INCIDENT REPORT

Incident #: L228 Case #: 070602790 MI #: 070233511
 Agency Name: Richland County SD Date/Time Rcvd: 06/30/07 04:12:26
 Receive Source: E Oper ID: CPD1
 Municipality: RI RICHLAND COUNTY Alarm: 01 Disp Code: 8
 Current Location: 2820 HARD SCRABBLE RD ,RI RI Comm/Alias:
 Original Location: 2820 HARD SCRABBLE RD ,RI RI

Grid	Zone	Area	Dist	Apt.	Priority	Prev. Pri.
756A	3A3	S1	R3	66891	1	

Routed 06/30 04:13:24 Dispatched 06/30 04:14:13 Enrouted 06/30 04:14:21 Arrived 06/30 04:15:03 Cleared 06/30 08:21:11

Current CFS 75F SHOTS FIRED Orig 75F Upd. 1 Upd. 2 Upd. 3 Upd. 4

CALLER/SUBJECT

Name: CC Phone: H [REDACTED] W(803)
 C/S: C Addr: [REDACTED] e sector/PJ
 Act: COM City: COLUMBIA ST: SC Zip: 29201-
 Sex: Race: DOB: Driver's License:
 State: Year:

COMMENTS

Date	Time	Oper.	CC	Comment
06/30/07	04:12	CPD1	CT	MORE THAN 20 SHOTS FIRED.
06/30/07	04:12	CPD1	CT	HEARD BUT NOT SEEN
06/30/07	04:14	RCSD4	DP	Res: R226 Disp
06/30/07	04:14	RCSD4	DP	Res: R221 Disp
06/30/07	04:14	RCSD4	EN	Res: R221
06/30/07	04:14	RCSD4	EN	Res: R226
06/30/07	04:14	RCSD3	CO	ANOTHER CALL / BOX CHEVY SCENE / TWO TONE / LEAVING AREA
06/30/07	04:15	RCSD4	AR	Res: R221
06/30/07	04:15	RCSD4	CO	96 WHITE PATHER FINDER
06/30/07	04:16	RCSD4	DP	Res: R964 Disp
06/30/07	04:16	RCSD4	EN	Res: R964
06/30/07	04:16	RCSD4	DP	Res: R966 Disp
06/30/07	04:16	RCSD4	EN	Res: R966
06/30/07	04:16	RCSD4	EN	Res: R964
06/30/07	04:17	RCSD4	AR	Res: R226
06/30/07	04:17	RCSD4	CO	SIG 18
06/30/07	04:17	CPD4	CO	RECIEVED MULTIPLE CALLS REF TO THIS
06/30/07	04:18	RCSD4	CO	RABON/TWO NOTCH
06/30/07	04:18	RCSD4	CO	WHITE PATHFINDER OUT BOUND TWO NOTCH
06/30/07	04:20	RCSD4	CO	9600 TWO NOTCH
06/30/07	04:20	RCSD4	CO	OUT BOUND
06/30/07	04:20	RCSD4	CO	POLO /TWO NOTCH

Incident # L228

Page Number 2

DETAIL (continued)

Date	Time	Oper.	CC Comment
06/30/07	04:22	RCSD4	AP Res: R964
06/30/07	04:22	RCSD4	AP At:10000 TWO NOTCH RD
06/30/07	04:22	RCSD4	AP Res: R226
06/30/07	04:22	RCSD4	AP At:10000 TWO NOTCH RD
06/30/07	04:22	RCSD4	AP Res: R221
06/30/07	04:22	RCSD4	AP At:10000 TWO NOTCH RD
06/30/07	04:23	RCSD1	AP Res: R226
06/30/07	04:23	RCSD1	AP At:9814 TWO NOTCH RD
06/30/07	04:23	RCSD1	AP Res: R221
06/30/07	04:23	RCSD1	AP At:9814 TWO NOTCH RD
06/30/07	04:23	RCSD4	CO 10-69
06/30/07	04:23	RCSD4	CO 2 TIMES
06/30/07	04:24	RCSD4	CO <u>SHELL CASING IN VEHICLE</u> * 12 minutes after the crime at 4:12 6/30/07
06/30/07	04:40	RCSD4	DP Res: R211 Disp
06/30/07	04:40	RCSD4	AR Res: R211
06/30/07	04:33	RCSD2	CT *****REPORT ONLY ***** // PROVIDENCE NORTH EAST ER RM 10
06/30/07	04:33	RCSD2	CT 10-19 W/ NURSING SUPERVISOR//
06/30/07	04:38	RCSD2	CO POSS SHOT IN CHEST // FAMILY ONSCENE //VICTIM NAME VERNON
06/30/07	04:38	RCSD2	CO JOHNSON
06/30/07	04:41	RCSD4	CO SUBJ WAS 10-75
06/30/07	04:41	RCSD4	CO AT H & A J'S
06/30/07	04:41	RCSD4	CO H & J'S
06/30/07	04:42	RCSD4	CO ALSO ANOTHER SUBJ WAS 10-76
06/30/07	04:58	RCSD4	LI 07181L228 linked to 07181L240
06/30/07	05:00	RCSD3	DP Res: R683 Disp
06/30/07	05:00	RCSD3	AR Res: R683
06/30/07	05:16	RCSD4	CO SIG 18
06/30/07	05:27	RCSD4	CO VICTIM IS 10-7
06/30/07	05:42	RCSD1	DP Res: R733 Disp
06/30/07	05:46	RCSD3	AR Res: R733
06/30/07	06:31	RCSD4	EP Res: R226
06/30/07	06:31	RCSD4	EP At:HQ
06/30/07	06:31	RCSD4	EP 73274 BEG MILEAGE
06/30/07	06:39	RCSD4	AR Res: R226
06/30/07	06:39	RCSD4	AR 73280 ENDING MILEAGE
06/30/07	06:39	RCSD4	AP Res: R226
06/30/07	06:39	RCSD4	AP At:HQ
06/30/07	06:53	RCSD4	DP Res: R244 Disp
06/30/07	06:53	RCSD4	AR Res: R244
06/30/07	06:54	RCSD3	CL Finish/Clear Resource Number: R683
06/30/07	06:58	RCSD4	CL Finish/Clear Resource Number: R221
06/30/07	08:08	RCSD4	CL Finish/Clear Resource Number: R226
06/30/07	08:08	RCSD4	CL Finish/Clear Resource Number: R211
06/30/07	08:21	RCSD4	CL Finish/Clear Resource Number: R964
06/30/07	08:21	RCSD4	CL Finish/Clear Resource Number: R966
06/30/07	08:21	RCSD4	CL Finish/Clear Resource Number: R733
06/30/07	08:21	RCSD4	CL Finish/Clear Resource Number: R244

NARRATIVE

Narrative entered by PID RCSD4 on 06/30/07 at 04:22:26
 LMPD812. TO: CLMPD812-28938 20070630 04:18:59 001EEA759E

DM: DMV- [REDACTED] 04:18:59 20B200268C

00 [REDACTED] VALIDATION [REDACTED] TAG EXP [REDACTED] DECAL EXP [REDACTED]

01 ISU SU RODEO VTN [REDACTED]

INVESTIGATOR'S RECEIPT: Tear along perforated line and retain for your records.

Case Number: 07062790-30

Evidence Bag Sealed by: D. H. KAE

Date Sealed: 1-17-07

Description of Enclosed Evidence: 911 TAPE

Exhibit

B

2500

Mar 18 2008 9:10AM Trace Evidence SLED

803-896-7346

P.5

RICHLAND COUNTY SHERIFFS
DEPT
SCM400000

INCIDENT REPORT

INFORMATION
ONLYCASE NUMBER
0706278030

407-09678

INC. No. 3
ENTD. No.

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. CSA. MURDER & NON-NEGLIGENT MANSLAUGHTER		☒ YES ☐ NO	☒ YES ☐ NO	BARNIGHT CLUB/LOUN		☒ Individual Business ☐ Financial Inst ☐ Government ☐ Rail, Orgn ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.
2.		☒ YES ☐ NO	☒ YES ☐ NO			
3.		☒ YES ☐ NO	☒ YES ☐ NO			
INCIDENT LOCATION (SUBMISSION, APARTMENT AND NUMBER, STREET NAME AND NUMBER) 2820 HARDCRABBLE RD, H&J'S, COLUMBIA, SC				ZIP CODE 29223	WEAPON TYPE	
INCIDENT DATE 06/30/2007	24 HR. CLOCK 04:12	TO DATE 06/30/2007	24 HR. CLOCK 04:12	DISP. DATE	DISP. TIME	LOCATION NO. 5
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE) DEPUTY GALINSKI		RELATIONSHIP TO SUBJECT ST		RESIDENT J	RACE/SEX W M	AGE 28
ADDRESS 5623 TWO NOTCH RD.		CITY COLUMBIA		STATE SC	ZIP CODE 29223	LOCATION NO.
VICTIM'S NAME (LAST, FIRST, MIDDLE) JOHNSON, DUMURIA, KEYON		RELATIONSHIP TO SUBJECT RU		RESIDENT S	RACE/SEX B M	AGE 28
HEIGHT 508	WEIGHT 172	HAIR 1 BLACK	EYES 2 BROWN	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		
ADDRESS		CITY ST MATTHEWS		STATE SC	ZIP CODE 29155	LOCATION NO.
VIOLENCE (MURDER) ☒ YES ☐ NO ☐ EXPLAIN				COMPLAINANT OF ANY NON-VIOLENCE ☐ YES ☒ NO		
VICTIM ☒ USING ALCOHOL ☐ YES ☐ NO ☐ UNK ☐ DRUGS ☐ YES ☐ NO ☐ UNK ☐ TYPE						
TWO MAN/VEH ☐ ONE MAN/VEH ☐ DEFECTIVE PLASMT ☐ OTHER ☐ ALONE ☐ ASSISTED ☐				*J-This Jurisdiction. S-State. O-Out of State. U-Unknown.		
☒ SUSPECT	NAME (LAST, FIRST, MIDDLE) GREEN, EARL, JEROME		RACE/SEX B M	AGE 24	ETH. N	DATE OF BIRTH
☐ RUNAWAY	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		HEIGHT/WEIGHT 507 145		HAIR BLK	EYES BRO
☐ WANTED	ADDRESS		CITY COLUMBIA		STATE SC	ZIP CODE 29229
☐ ARREST	SUBJECT ☒ USING ALCOHOL ☐ YES ☐ NO ☐ UNK ☐ DRUGS ☐ YES ☐ NO ☐ UNK ☐ TYPE		ARRESTED NEAR OFFENSE SCENE ☒ YES ☐ NO ☐ TOTAL # ARRESTED 3		DATE/TIME OF OFFENSE 06/30/2007 04:12:00	
☐ JAIL	DATE/TIME OF ARREST 07/03/2007 20:00:00		DATE/TIME OF OFFENSE 06/30/2007 04:12:00		DATE/TIME OF ARREST 07/03/2007 20:00:00	
☐ SUMMONS	DAY OF THE WEEK S M T W T F S UNK		HOW REPORTED A- OFFICER DISPATCHED ON CALL B- REPORT TAKEN BY PHONE C- COMPLAINANT WALKED IN		OFF. FACTOR A- RESISTANCE/HOSTILITY B- WEAPON C- UNFOUNDED CALLS D- MENTAL SUBJECT	
HOMICIDE						
COMPLAINANT STATED TWO SUSPECTS ATTEMPTED TO ENTER THE CLUB AND COMPLAINANT TOLD SUSPECTS HE WAS CLOSED. COMPLAINANT STATED ONE OF THE SUSPECTS MADE A COMMENT TO THE EFFECT, "I'VE GOT SOMETHING FOR YOU." COMPLAINANT STATES SUSPECTS LEFT THE LOCATION AND A FEW MINUTES LATER, COMPLAINANT STATES A WHITE VEHICLE (SUV) WITH THE SUSPECTS IN IT BEGAN SHOOTING TOWARD THE CLUB. COMPLAINANT DESCRIBED THE VEHICLE POSSIBLY BEING A WHITE NISSAN WITH A BLACK STRIPE DOWN THE SIDE. COMPLAINANT STATES SUSPECT #2 FIRED OVER THE TOP OF						
JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY				JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY		
TYPE (GROUP)						TOTAL VALUE
STOLEN						0
DAMAGED						0
BURNED						0
RECOVERED						0
SEIZED						0
SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		S. F.	☒ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED	☒ ARRESTED UNDER 18 ☐ EX-CLEAR UNDER 18
REASON FOR EXCEPTIONAL CLEARANCE 1. ☐ OFFENSE DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JAMES LENO CUSTODY						
REPORTING OFFICER(S) Galinski, Ryan		DATE 06/30/2007	UNIT NUMBER 1380	APPROVING OFFICER Gore, James		DATE 06/30/2007
FOLLOWUP INVESTIGATION ☒ YES ☐ NO		OFFICER MORAE, DON		DATE 06/30/2007 06:30:00		UNIT NUMBER 1202

weldon Gregory