

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Honorable L. Casey Manning, Circuit Court Judge

LOUIS SANDERS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000591

APPENDIX

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OF SOUTH CAROLINA
COUNTY OF RICHLAND

) COURT OF GENERAL SESSIONS
)

2007-GS-40-6002
2008-GS-40-6331

State of South Carolina

)

vs.

)

TRANSCRIPT OF RECORD
(Trial)

)

)

Louis Sanders and
Justin Green,

)

)

)

Defendants.

)

July 28, 29, 30, 31; August 1, 2008
Columbia, South Carolina

BEFORE:

THE HONORABLE G. THOMAS COOPER, JR., JUDGE

APPEARANCES:

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Monday, July 28, 2008

(WHEREUPON, State's Exhibit No. 1 is marked for identification.)

(WHEREUPON, State's Exhibit No. 2 is marked for identification.)

(WHEREUPON, State's Exhibit No. 3 is marked for identification.)

(WHEREUPON, Court's Exhibit No. 1 is marked for identification.)

THE COURT: State ready to proceed?

MS. SHIPLEY: Yes, sir, Your Honor.

THE COURT: Defense ready to proceed?

MS. EVERHART: Yes, Your Honor.

MR. SWERLING: Yes, sir.

THE COURT: All right. I have -- Solicitor, call your case.

MS. SHIPLEY: Thank you, Your Honor. At this time the State calls the case of The State of South Carolina vs. Louis Sanders, indictment 2007-GS-40-6002 for the charge of murder; and indictment on Justin Green, 2008-GS-40-6331, accessory after the fact of murder.

THE COURT: All right. Any matters of a pre-trial nature that need to be taken up at this time?

1 **MS. EVERHART:** Yes, Your Honor. I didn't know
2 if you wanted to take up our request for a
3 continuance at this time or wait until after the jury
4 selection.

5 **COURT REPORTER:** I can't hear her.

6 **MS. EVERHART:** I'm sorry. I didn't know if Your
7 Honor wanted to take up our request for a continuance
8 at this time or to wait until after the jury
9 selection.

10 **THE COURT:** Well, not knowing what the basis for
11 the motion is, there's no sense in selecting a jury
12 if the case is going to be continued. So I would
13 assume we should take that up first. Are you
14 prepared to make that motion?

15 **MS. EVERHART:** Yes, Your Honor, I am. First I
16 would just like to put on the record that we ask that
17 this be done ex parte if at all possible. It deals
18 with defense strategy. That would be the reason.

19 **THE COURT:** All right. Does it have anything to
20 do with discovery or anything the State may have
21 done?

22 **MS. EVERHART:** No, Your Honor. It has to do
23 with a witness issue --

24 **THE COURT:** All right.

25 **MS. EVERHART:** -- that we would want to call.

1 **THE COURT:** All right.

2 **MS. SHIPLEY:** May we inquire as to which
3 witness, Your Honor? Is it a State's witness?

4 **THE COURT:** I don't know.

5 **MS. EVERHART:** Your Honor, he doesn't appear to
6 be on the witness list for the State.

7 **MS. SHIPLEY:** Then, Your Honor, if we're not
8 calling a witness, then what --

9 **THE COURT:** Let me deal with it.

10 **MS. SHIPLEY:** Okay.

11 **THE COURT:** Just approach the bench, defense
12 counsel only. Let me just find out what this is all
13 about and then I'll decide whether we do it ex parte
14 or not ex parte.

15 (Whereupon, a bench conference is had)

16 **THE COURT:** All right. I'm going to deal with
17 that issue but not right this minute. Any other
18 motions that need to be taken up prior to jury
19 selection?

20 **MR. O'NEIL:** Yes, your Honor. As it relates to
21 Mr. Louis Sanders --

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

23 **MR. O'NEIL:** -- we would have a motion to sever
24 the joint trial of Mr. Louis Sanders and Mr. Justin
25 Green, Your Honor.

1 **THE COURT:** And what's the reason for that?

2 **MR. O'NEIL:** As Your Honor is aware, it's the
3 standard for severance whether or not a substantial
4 trial right of the defendant would be impaired by a
5 joint trial, whether or not a jury could come to a
6 reliable decision with a joint trial. Our argument I
7 guess is two-fold, Your Honor, and kind of centers
8 around the Bruton issues in this case, Your Honor.

9 **THE COURT:** All right.

10 **MR. O'NEIL:** Mr. Justin Green has been tried
11 along with Mr. Louis Sanders, Your Honor. And
12 Mr. Justin Green gave a statement to law enforcement.
13 As a co-defendant in this case, law enforcement would
14 be able to go into Mr. Justin Green's statement as an
15 admission against him during the trial. And some
16 sort of Mr. Justin Green's statement would be allowed
17 to be placed in evidence by the State in the State's
18 case in chief, Your Honor, either redacted, either
19 the State's proposed redacted version or Mr. Louis
20 Sanders' proposed redacted version or some
21 combination of the two, Your Honor.

22 Our first concern is that any version of
23 Mr. Justin Green's statement that gets into evidence
24 and then when it's Mr. Justin Green's turn to
25 actually put up evidence, if he elects to take the

1 stand, at that point the State has been allowed to
2 impermissibly bolster Mr. Justin Green's statement by
3 both allowing him to testify in this trial and
4 allowing his witness statement to come in evidence,
5 Your Honor.

6 If Mr. Louis Sanders had a trial without
7 Mr. Justin Green being tried with him and Mr. Green
8 was called as a witness, his statement, his witness
9 statement, his prior witness statement would not
10 allow there to be into evidence, Your Honor. He
11 would be course allowed to testify, but his witness
12 statement wouldn't be allowed to come in, Your Honor.
13 By trying them both together, the State is allowed to
14 bolster Mr. Green's testimony and by allowing him to
15 testify and have his statement in, Your Honor.
16 That's our first argument.

17 **MR. SWERLING:** Judge, could I just interject
18 something?

19 **THE COURT:** Sure.

20 **MR. SWERLING:** I didn't know you were going to
21 argue the severance motion at this point.

22 **THE COURT:** I didn't either.

23 **MR. SWERLING:** Okay. But I just wanted you to
24 understand just so you'll know for planning purposes,
25 that's going to be an extended argument on both

1 sides. And --

2 **THE COURT:** So you want one, too?

3 **MR. SWERLING:** Well, I do, but I have completely
4 different grounds than they do. And I think in order
5 for us to hear the severance motion, we're going to
6 have to go through this whole redacted statement
7 issue. And I just didn't know how you wanted to deal
8 with the jury on that.

9 **THE COURT:** Well, at this point that's my
10 primary concern.

11 **MR. SWERLING:** I see that as the real meat of
12 the pre-trial motions.

13 **THE COURT:** All right. I'm releasing the jury
14 until 2:30. All right. Mr. Swerling, is it my
15 understanding you're now joining, just for the
16 parameters, the motion to sever?

17 **MR. SWERLING:** Yes, sir.

18 **THE COURT:** Okay.

19 **MR. SWERLING:** And I have a separate ground.

20 **THE COURT:** I understand.

21 **MR. SWERLING:** Okay.

22 **THE COURT:** Now, let's just address the Sanders
23 motion at this time. All right. The Sanders motion
24 is based on Bruton. And he says that any reference
25 in even a redacted statement is prejudicial and

1 impairs his right to a full and fair defense. What's
2 the State's position?

3 **MS. SHIPLEY:** Your Honor, I'm going to rely on
4 State vs. Walker which is cited in 623 SE2d 122. In
5 that case, Your Honor, two defendants were tried
6 simultaneously by the State. The fact that those two
7 defendants even had antagonistic defenses did not
8 entitle them to a severance. They were tried
9 jointly.

10 Any mention of one another in any statements
11 would be redacted. Therefore, there are no Sixth
12 Amendment violations. And, in fact, in this case,
13 what makes it more unique, should Mr. Justin Green
14 decide to testify, he would be subject to cross
15 examination by the attorneys for Mr. Sanders and
16 there would be no Sixth Amendment issue.

17 If he decided not to testify, there still would
18 be no mention of Mr. Sanders in any portion of
19 statements that we would introduce in our case in
20 chief. So the Bruton case law has long stood that
21 you can try two co-defendants simultaneously as long
22 as you redact the statements. And if the Court feels
23 that a curative instruction is appropriate, then he
24 we could handle that at that time.

25 **MR. O'NEIL:** And, Your Honor, just so the Court

1 is clear about my argument. My argument is not
2 solely based on Bruton. My argument is basically
3 that by trying them together, even a redacted
4 statement of Mr. Justin Green is bolstering his later
5 testimony, Your Honor. If Mr. Green was called as a
6 witness, let's say Mr. Sanders was tried alone and
7 Mr. Green was called as a witness, his physical
8 statement given to police officers would never be
9 actually entered into evidence. But by trying them
10 both together, they're allowed to get both his
11 physical written statement in either its original or
12 its redacted form into evidence and allow Mr. Green
13 would be allowed to testify, Your Honor. And that's
14 impermissible.

15 **THE COURT:** No. If that were the case, you'd
16 never be able to try two defendants together.

17 **MR. O'NEIL:** Well, Your Honor, our argument is
18 that it's bolstering, Your Honor.

19 **THE COURT:** I understand what you're saying.

20 **MR. O'NEIL:** But I don't know if that's been
21 squarely addressed by any appellate court or not, the
22 bolstering issue, Your Honor.

23 **THE COURT:** Well, I don't know if it's been
24 addressed either. I just believe that there is no
25 prohibition against trying two defendants together

1 even if they gave statements. And as long as Bruton
2 is complied with, then that seems to end the matter
3 as far as I know.

4 **MR. O'NEIL:** Well, Your Honor, I guess the other
5 point of Bruton is that if we enter a redacted
6 statement of Justin Green into evidence and then Mr.
7 Green takes the stand, at that point we have to
8 impeach -- we may have to impeach him with his prior
9 original statement. And at that point, Your Honor,
10 we're going to have a redacted version of Mr. Green's
11 statement into evidence, maybe his original statement
12 into evidence and also him testifying at that point,
13 Your Honor. I think this all causes confusion to the
14 jury as to what Mr. Green is actually testifying to
15 and what he told law enforcement on the day he gave a
16 statement.

17 **THE COURT:** All right.

18 **MS. SHIPLEY:** Your Honor, that can simply be
19 handled by my asking him on cross examination, isn't
20 it true you gave this statement to law enforcement on
21 June 18th, 2007 and this is in its proper form? Yes.
22 And due to legal matters beyond anyone's control the
23 prior statement was admitted.

24 I mean, Your Honor, this is not a novel issue.
25 Co-defendants can choose to testify in their own

1 defense in cases where they are tried jointly with
2 their co-defendants. And that is the whole purpose
3 of cross examination. Mr. O'Neil can attempt cross
4 examination of Mr. Justin Green all he wants 'til
5 he's blue in the face about which statement was
6 provided as long as he doesn't mislead the jury.

7 **THE COURT:** All right. Mr. Swerling.

8 **MR. SWERLING:** Judge, my situation is completely
9 different actually. They have given you a copy of
10 what they propose is the redacted statement of Justin
11 Green.

12 **THE COURT:** I have the original statement, the
13 redacted State's statement and the redacted statement
14 of Louis Sanders.

15 **MR. SWERLING:** The redacted statement of Louis
16 Sanders? I don't have that.

17 **THE COURT:** What?

18 **MR. O'NEIL:** You have the redacted statement as
19 relates to Louis on behalf of Louis Sanders I think
20 instead of Justin Green's statement.

21 **THE COURT:** I'm sorry. Yeah. I'm sorry. It is
22 Justin Green's statement provided to the Court by
23 Louis Sanders.

24 **MR. SWERLING:** Judge, frankly, I haven't had a
25 chance to go through that statement.

1 **THE COURT:** I haven't either.

2 **MR. SWERLING:** Let me just say that just
3 historically this situation, Mr. Green was arrested
4 for murder. And on June 18th, 2007 he along with
5 Betsy Franklin of my office at that time went down
6 and gave a statement to cooperate with the
7 authorities. That statement is what you have before
8 you, the original statement on June 18th, 2007.

9 We made a conscious decision at that point to
10 cooperate with law enforcement. There had been some
11 discussions a few days before that about recommending
12 a favorable bond if he was going to cooperate, and he
13 did go down and cooperate. And this statement is
14 complete cooperation on his part. If you read the
15 statement, he goes into exactly what everybody did in
16 this case, Garry Green and his brother, what he did
17 in this case, what Louis Sanders did in this case.
18 Not only does he go into great detail about what Mr.
19 Sanders does; he identifies Mr. Sanders when the
20 officers ask him to do it.

21 This situation that occurred on June 3rd
22 occurred at a club. There was sort of a -- something
23 happened out in the parking lot. There was a
24 commotion out in the parking lot. And the reason I'm
25 giving you this, Your Honor, is so you can understand

1 the context of why this is so important for us to be
2 able to get in the original statement.

3 In this parking lot Mr. Sanders is described by
4 Ms. Bowers and Ms. Goins as having been the agitator,
5 the antagonist, the protagonist, whatever you want to
6 call it. He was fighting with the girls. He was
7 fighting with Ms. Cannon, okay, arguing with them.
8 He had started that in the club.

9 Those two young ladies, Goins and Bowers,
10 identified Mr. Sanders, the co-defendant in this
11 case, as being the person in the club who was
12 agitating them, trying to hit on them, trying to get
13 their phone numbers. And this continued out in the
14 parking lot.

15 According to Ms. Bowers and Ms. Goins, Mr.
16 Sanders was the one that was fighting with Ms. Cannon
17 who was another witness in this case whom you will
18 hear from. And Ms. Cannon and Mr. Sanders had gotten
19 into some verbal altercation that got to a very high
20 pitched level at which point Mr. Sanders takes a
21 pistol and shoots past Ms. Cannon ears and knocks her
22 down. She goes down, passes out as a result of that.

23 Now, Mr. Justin Green never knew Mr. Sanders
24 prior to that evening. He met him at the club when
25 he went to visit his brother, Garry Green, who is a

1 witness in the case. And Garry Green knew Mr.
2 Sanders.

3 At the point when the pistol was fired, Justin
4 was driving his Volvo, his brother got in the car and
5 Mr. Sanders jumps in the car. He was not going to be
6 with Justin. Justin had no plans to be with him. He
7 didn't bring him there. He wasn't going to take him
8 home.

9 Justin leaves the area. He's driving away. And
10 at some point he realizes there's a car behind him.
11 He pulls in the Charleswood Subdivision. Mr. Sanders
12 and Garry Green get out of the car. Garry Sanders
13 (sic) tells him to leave. He tells him to get out of
14 here. He starts driving down Westbrook Road in the
15 Charleswood Subdivision; and Mr. Cannon, the deceased
16 in this case, hit his vehicle, pushed him into a yard
17 there.

18 At that point Mr. Sanders comes up on the
19 vehicles and executes, executes Mr. Cannon. There
20 was no preplan. He had nothing to do with it.
21 Nothing was in his mind. The last thing in the world
22 he wanted to be involved in that night was a shooting
23 or either an altercation.

24 After Cannon, I mean after Cannon is dead and
25 Mr. Sanders walks up and actually shoots him in the

1 head, Sanders jumps in the car again. And he's got a
2 pistol. He's just killed somebody. He's just
3 executed somebody. And he tells him where to go.
4 "You drop me off at my girlfriend's house." And this
5 guy is scared to death. He has no choice. He
6 doesn't know what to do. So he drives away with
7 Sanders and his brother in the car, takes the
8 directions from Sanders as to how to get to this
9 Winslow Subdivision, drops him off, and that's his
10 involvement in the case. Now, why he's even here I
11 don't know, but that's his involvement in the case.

12 So what's really important about this case is
13 that he's charged as an accessory. He was charged
14 with murder on June 18th when he gave this statement.
15 But now the State indicted him last week as an
16 accessory after the fact. His defense is going to be
17 that I was not involved in any of this. I was not
18 involved in the altercation with Sanders in the
19 parking lot. I was not involved in the shooting in
20 the parking lot. I didn't invite him in my car. He
21 jumped in my car. When he get down to Westbridge he
22 executes Mr. Cannon. I had nothing to do with that,
23 not involved in that whatsoever, and I am ordered to
24 take him to his house. He had an absolute duress and
25 accessory defense on his part. What else was he

1 supposed to do?

2 Now, the way the State has presented this
3 statement to you takes out all the cooperation he
4 gave on June 18th, 2007. And you just have to look
5 at it and see. The original statement, Judge, says:
6 "I showed you six pictures this morning and you
7 picked out number 3. Is that correct?"

8 Answer: "Yes."

9 "Who is the person in picture number 3?"

10 Answer: "Mr. Sanders."

11 "How do you know Mr. Sanders?"

12 "I know his name from the paper and television."

13 "Was Mr. Sanders with you on June 3rd, 2007 at
14 the club?"

15 "Yes, sir. He was there but not with me."

16 They don't want that in at all. They're taking
17 that out at all.

18 Then you go down, Judge, into the body of it
19 where it starts, says: "Tell me what happened at the
20 H&J club."

21 You get down to the -- they're saying as they
22 are speaking -- and this is about midway down, Judge.
23 They want this deleted. As they are speaking Mr.
24 Sanders is talking with --

25 **THE COURT:** You keep referring to "they".

1 **MR. SWERLING:** The State --

2 **THE COURT:** All right.

3 **MR. SWERLING:** -- as "they", because they're in
4 the Bruton situation.

5 **THE COURT:** Right.

6 **MR. SWERLING:** As they are speaking, Mr. Sanders
7 is talking with two other females. "The crowd
8 consists of Mr. Sanders, Mr. Cannon, myself and my
9 brother."

10 They want that deleted and they want reference
11 to another person. That's all they want in there,
12 another person. But my client cooperated with
13 Investigator McRae and told them who it was and
14 identified him.

15 If you go down further, it says in the original
16 statement: Mr. Sanders had this conversation going
17 on in the club. I mean, I'm sorry. "He had a
18 conversation going on and a shot was fired. I saw
19 Mr. Sanders' hand in the air."

20 Now, they want to take that out. I mean, my
21 client is cooperating with them and they want to go
22 ahead and take that out. That is my defense, that he
23 made complete cooperation on June 18th. They want it
24 here to say: My brother was stepping in as a
25 conversation going on. They don't even want to say

1 that Mr. Sanders had the conversation going on.

2 And, Judge, I'll tell you that Ms. Goins and Ms.
3 Bowers are going to describe the confrontation and
4 the conversation between Pam Cannon and Mr. Sanders,
5 not my client. So they want to take that out. That
6 is really to the heart of my defense, that Mr.
7 Sanders was the one out in the parking lot causing
8 all the problems.

9 Then they get down here, and it says: "I saw
10 Mr. Sanders' hand in the air." Why shouldn't my
11 client be allowed to present that to the jury, that
12 he told police on June 18th a year ago that he saw
13 this guy shoot the gun in the air?

14 If you go down further, he says right there, he
15 said, "I get in the car." And this is the original.
16 "My brother gets in the passenger's seat and Mr.
17 Sanders gets in the rear driver's seat." They don't
18 want that in there. I mean, that's part of the
19 reason why he had Sanders in the car in the first
20 place, because he jumped in the car.

21 "At what point did you meet Mr. Sanders?"

22 "I met him that night at the club."

23 I mean, isn't that important for Mr. Green's
24 case, to point out the fact that he never knew Mr.
25 Sanders, the person who shot and killed Mr. Cannon

1 until that night?

2 If you go down further to: "Tell me what
3 happened after you turned right on Hard Scrabble
4 Road", it says down there, in the original statement
5 it says: "Garry and Mr. Sanders felt it best to get
6 out of the car."

7 Mr. Sanders said it was best to get out of the
8 car along with Garry. They want to have there
9 another person, like he's hiding something. If you
10 read this statement where it's another person, it is
11 as if he is hiding the identity of the individual,
12 which is exactly what they're alleging by charging
13 him with an accessory after the fact, that he was
14 trying to aid this guy in being concealed to avoid
15 detection, avoid prosecution.

16 And when he goes in there to give them this
17 statement, now they're trying to say and they're
18 trying to offer the statement to this jury that
19 basically is concealing his identity.

20 If you go down a little bit further, and this
21 again gets to a very important part for our defense,
22 it shows --

23 **THE COURT:** What page are you on?

24 **MR. SWERLING:** We're going down to the end of
25 that second big paragraph, Judge, which is on page 4.

1 **THE COURT:** All right. Go ahead.

2 **MR. SWERLING:** The original statement says: "As
3 I am moving my car, my brother jumps in the car and
4 Mr. Sanders jumps in the car." This is after the
5 shooting. He tells the police that Sanders jumped in
6 his car again. They want to have in there another
7 person jumps in the car.

8 And then here is where -- I mean, this really
9 gets me. This gets bad for us. They want to
10 eliminate: "Who was giving you directions to this
11 location?" This is completely eliminated. "Who was
12 giving you directions to this location?"

13 "Mr. Sanders."

14 "When you arrived at the location Mr. Sanders
15 was guiding you to, who got out of the car?"

16 "Mr. Sanders and my brother, Garry." None of
17 this is in the statement whatsoever.

18 Then you get down to: "What time did you drop
19 Mr. Sanders and your brother off?" And all they want
20 to have in there is "then". Now they've completely
21 eliminated this that he told the police on June 18th,
22 2007: "Did you see anyone holding a gun when the
23 shots were fired?"

24 "Yes. Mr. Sanders was holding the gun." They
25 have that completely deleted.

1 This is on page 5. "What is being said in the
2 car after the shooting?"

3 "They're giving me directions to the location.
4 I was mainly concentrating on driving. I was pretty
5 shaky."

6 Unless you put in there that Mr. Sanders was the
7 one giving him directions and not some other person,
8 it is going to the very heart of his defense.
9 Frankly, Judge, I put it out here that this is the
10 situation. He is charged as being an accessory. The
11 situation we have is that he had no choice.

12 A man had just executed somebody. He jumps in
13 the car with a pistol and tells him to take him to
14 his girlfriend's house. He goes in and he identifies
15 the guy and gives all the information the police
16 could possibly want in this case. He was
17 cooperating. They liked him that day. They wanted
18 him that day.

19 But now what they want to do is come in on last
20 Thursday and charge him as an accessory after the
21 fact. And because they want to try the case together
22 to protect Mr. Sanders' rights to a fair trial,
23 they're redacting all the important information from
24 his statement.

25 And, Judge, if in fact -- I will tell the Court,

1 I mean, it would be a denial of our Sixth Amendment
2 confrontation right, a denial to his effective
3 assistance of counsel under the Fifth Amendment to
4 not allow me to cross examine Mr. McRae about
5 everything in this statement, including the identity
6 of Mr. Sanders.

7 So we need to protect his rights but we need to
8 protect his rights. And that's why severances are
9 allowed. They're not a whole lot of ground here, but
10 they are allowed when have you situations like this.
11 We're not talking about antagonistic defenses only.
12 We're talking about going to the very heart of the
13 defense of this young man.

14 Now, in addition to that, Judge, just a couple
15 of other things. We also have a statement of Anthony
16 Smith that they intend to introduce who is a cell
17 mate, some snitch down at the jail who is referring
18 to Mr. Green. I haven't seen that statement at all
19 but I understand they want to introduce that.

20 **THE COURT:** Which Mr. Green?

21 **MR. SWERLING:** Pardon?

22 **THE COURT:** Which Mr. Green?

23 **MR. SWERLING:** It implicates Mr. Green and Garry
24 Green. There is a statement that Sanders roommate
25 gave about Sanders. They intend to introduce that in

1 the case as well.

2 **THE COURT:** I haven't seen it.

3 **MR. SWERLING:** They haven't given it to me
4 either.

5 **MS. SHIPLEY:** Yes, we did.

6 **MR. SWERLING:** No. I have the statement, not
7 the redacted statement. I don't have the proposed
8 redacted statement. I have the statement. Obviously
9 that's why I know it's prejudicial.

10 **THE COURT:** I don't know. What's that
11 statement?

12 **MS. SHIPLEY:** That's the cell mate we discussed
13 in chambers with the attorneys for Mr. Sanders.

14 **THE COURT:** Well, I haven't seen any statement.

15 **MS. SHIPLEY:** We have not given it yet. We were
16 going to call that witness and proffer his testimony.
17 You wanted his testimony proffered.

18 **THE COURT:** Well, I did. But I didn't know
19 there was -- I don't recall what you said. If
20 there's a statement --

21 **MS. SHIPLEY:** Well, I was just going to handle
22 it when we called him to proffer his testimony.

23 **THE COURT:** Well, what does it say?

24 **MS. SHIPLEY:** That there are two brothers. He
25 doesn't know their names, but there's a younger

1 brother and an older brother. We do plan on
2 redacting the statement to prevent any mention of
3 older or younger brothers in the statement that
4 Mr. Smith gives.

5 **THE COURT:** All right. Well, let me hear you.

6 **MR. SWERLING:** There's a couple of other things,
7 Your Honor. He's charged with murder. That in and
8 of itself is not -- he's charged with an accessory
9 after the fact. Sanders has got an extensive
10 criminal history. He has none, never been in trouble
11 before in his life.

12 As I said, he did not know him before the
13 evening of June 3rd, only had met him that night. So
14 there was obviously no familiarity between the two.
15 Yes, I guess there are to some extent antagonistic
16 defenses because as far as we're concerned he's a
17 killer. Okay. We're not. We left the scene with
18 him because he forced us to. So I guess there are
19 antagonistic defenses.

20 We also, as we said, we have a statement. As I
21 understand it, Mr. Sanders made some statements as
22 well. I don't know if they're going to go into that
23 or not. But he did not identify Mr. Green. There
24 was a phone call that the State intends to introduce
25 between Mr. Sanders and Lashonda Downing where he is

1 intimidating her and obstructing justice and telling
2 her not to talk to the authorities. That carries
3 over as prejudice to him.

4 If that statement comes in redacted as it is,
5 it's going to force me to have to call Mr. Green to
6 testify in this case, and he will not be able to
7 assert his right under the Fifth Amendment not to
8 testify. But if that statement comes in in the form
9 that it's in, he has no choice but to get up on the
10 stand. He's being forced to testify which is exactly
11 what the Fifth Amendment says he's not required to
12 do.

13 And again, as I said, Your Honor, it is
14 basically eliminating, hampering, tying our hands on
15 the fact that he cooperated fully and that he
16 operated under duress and necessity in this case.

17 So, Judge, I think that in this particular case,
18 even though these severances are not favored, there
19 is a basis for it under the Constitution. There's a
20 basis for it under the case law. And in this
21 particular case, you have a very unique circumstance
22 where the statement they intend to propose actually
23 affects a substantial trial right that Mr. Green has.
24 And that is the criteria under Walker and every other
25 severance case. If it affects one of his trial

1 rights, then a severance should be granted.

2 Just because they want to try the cases together
3 does not mean that Mr. Green should have to stand
4 trial with Mr. Sanders under the circumstances that
5 have been described in his records.

6 **THE COURT:** All right. The State's position.

7 **MS. SHIPLEY:** Your Honor, we are calling to
8 testify Garry Green who is the defendant, Justin
9 Green's, brother. And everything that was mentioned
10 in Justin Green's statement in its original form to
11 law enforcement is exactly what Garry Green is going
12 to be testifying to when he testifies in the State's
13 case in chief. And he will be subject to cross
14 examination by both parties. He will be testifying
15 that Louis Sanders was the shooter, and his testimony
16 will be corroborated by an independent witness who
17 saw the shooting.

18 **THE COURT:** So why do you need Justin Green?

19 **MS. SHIPLEY:** Excuse me?

20 **THE COURT:** So why do you need Justin Green?

21 **MS. SHIPLEY:** We are trying Justin Green. My
22 point is Mr. Swerling can get in all that information
23 through Garry Green. In order to establish his
24 defense of duress, he won't be forced or required to
25 have Mr. Justin Green testify because Garry Green who

1 was there with both parties will be able to testify
2 to exactly what was said in Justin Green's statement
3 in its original form to law enforcement. So as a
4 result, Mr. Justin Green does not have to say a word
5 because everything he told law enforcement on the
6 date of his original statement is coming in through
7 his brother.

8 **THE COURT:** Why do you need Justin Green's
9 statement?

10 **MS. SHIPLEY:** Well, then it would look even more
11 inappropriate for the defense if we don't use Justin
12 Green's statement, because then at that point they'll
13 claim that, oh, well, now a right is being deprived
14 because you're claiming he never even gave a
15 statement. We have left -- in the redacted form we
16 have left every single mention of Louis Sanders with
17 the exception of his name, we've inserted the term
18 another --

19 **THE COURT:** That's to Louis' benefit, not to Mr.
20 Green's benefit.

21 **MS. SHIPLEY:** Right. But Mr. Green -- let me
22 explain, Your Honor. There were a few things that
23 were -- that are actually in the redacted statement
24 that Mr. Swerling overlooked. What it comes to like
25 most importantly is -- beg the Court's indulgence --

1 The crowd consists of another person, Mr. Cannon,
2 meaning the victim, myself and my brother and three
3 females. "I involved myself with my brother's
4 conversation just a little. I guess that was what I
5 was saying was upsetting the female that Garry was
6 talking with. At this point the conversation began
7 to escalate to more than a conversation. It went to
8 a disagreement between myself and the female. My
9 brother was stepping in as a mediator. At this time
10 I felt the disagreement was nothing serious. We have
11 our conversation going on and a shot is fired. I saw
12 another person's hand in the air when it was fired
13 and I saw something in his hand but was unsure of
14 what it was. After the shot is fired, a few minutes
15 my brother said it was time to leave. Before the
16 shot I had started my car. We go ahead and jump into
17 the car. I get in the driver's seat. My brother
18 gets into the front passenger's seat and another
19 person gets in the rear driver's seat. We leave the
20 parking lot and turn on Hard Scrabble Road."

21 "At what point did you meet up with another
22 person?"

23 "I was inside the club and my brother introduced
24 him to me."

25 So right there it's clear that this is the first

1 time he's meeting Mr. Sanders.

2 Also, in the previous paragraph that I read it's
3 clear that he was not the one that had the firearm
4 that was discharged and that he was not even a part
5 of that conversation.

6 At this point he says on page 3 of the redacted
7 version of the statement: "I continued down the
8 street." This is in the middle of the last
9 paragraph. "Garry and another person asked them to
10 get out of the car. They both get of the car and my
11 brother tells me to leave. I make a turn and I
12 didn't make it very far. The truck peels off from
13 the stop sign and turns right also following me. I
14 placed my car in the road so that the truck can get
15 by me. That was unsuccessful, and I was hit in the
16 rear by the truck and pushed into one of the houses.
17 At this point Mr. Cannon gets out of the car and
18 begins yelling at me, saying, 'what's going on,
19 what's going on?' And my response to him was, 'I
20 don't know. You tell me.' At this point I hear a
21 shot and I see Mr. Cannon on the ground. My brother
22 Garry has made his way over to me and is telling me
23 to back the car up to move Mr. Cannon's car so I can
24 get out. While I'm moving my car there is a second
25 shot. I am moving my car. My brother jumps in the

1 car and another person jumps in the car. We make our
2 way out of the subdivision and we head towards
3 Charlotte on 77."

4 And then it talks about ending up in the
5 subdivision.

6 "When you arrived" --

7 **THE COURT:** Let me ask you this, Ms. Shipley.

8 **MS. SHIPLEY:** Yes, sir.

9 **THE COURT:** Is what Mr. Swerling told the Court,
10 is that actually true in terms of this defendant's
11 cooperation, that once I guess he knew there was a
12 potential warrant for his arrest that on the advice
13 of counsel and with counsel he went to the police and
14 gave this statement? Is that correct?

15 **MS. SHIPLEY:** June 3rd he was arrested, and his
16 brother, Garry Green, gave a statement on June 3rd
17 where --

18 **THE COURT:** They bonded out.

19 **MS. SHIPLEY:** No. Actually they remained
20 incarcerated. And then on June 7th Garry Green with
21 his attorney, Mr. Delgado, gave a statement
22 identifying who the shooter was. Because originally
23 the brother, Garry Green, was not identifying who the
24 shooter was but had mentioned another person being in
25 the car in addition to his own brother being the

1 driver. So that was -- on June 7th, four days after
2 the shooting, the shooter is identified. Well, then
3 this defendant, Mr. Justin Green, remained
4 incarcerated, and his attorney, Mr. Swerling,
5 asked --

6 **THE COURT:** Had he had counsel up until that
7 time?

8 **MS. SHIPLEY:** He invoked on June 3rd and never
9 gave a statement. And so, as a result --

10 **MR. SWERLING:** He did not have counsel.

11 **THE COURT:** He did not have counsel.

12 **MR. SWERLING:** Not that day.

13 **MS. SHIPLEY:** He was not retained at that point.
14 Eventually he retains counsel and they asked to talk
15 to the Sheriff's Department. And after that is done
16 a bond hearing is held and the defendant received a
17 \$75,000 surety bond and bonded out.

18 **MR. SWERLING:** So the answer to your question
19 is, yes, he cooperated on June 18th, 100 percent.

20 **THE COURT:** Well, I'm asking her what you told
21 me is a -- I trust what you say.

22 **MS. SHIPLEY:** Well, he didn't cooperate
23 initially, Your Honor. So that's my point.

24 **THE COURT:** Four days later.

25 **MS. SHIPLEY:** No. 15 days later he cooperates.

1 So initially, no, he didn't cooperate. But
2 eventually his attorneys tell him to cooperate.

3 **THE COURT:** When he had counsel.

4 **MS. SHIPLEY:** He had counsel present when they
5 are interviewing him.

6 **THE COURT:** Once he had counsel.

7 **MS. SHIPLEY:** Uh-huh (affirmative). Once he had
8 counsel he cooperated and gave the statement in its
9 original form. First it was given orally here at the
10 courthouse and then it was given in writing later
11 that day. His attorney, Betsy Franklin, who worked
12 with Mr. Swerling at the time was present for the
13 entire written statement. And then eventually, Your
14 Honor, he was being transported back to the jail by
15 Investigator McRae, and the defendant agreed to show
16 Investigator McRae the route he took when giving the
17 defendant, Sanders, and his brother, Garry, a ride to
18 the Winslow Subdivision..

19 **THE COURT:** All right.

20 **MR. O'NEIL:** Your Honor, I apologize. Just so
21 the Court has a complete picture of the severance
22 motion, we intend to ask on Mr. Sanders' benefit to,
23 one, cross examine Justin Green about his pre-trial
24 silence for those 15 days; and, two, go into his
25 pre-trial detention for the fact that he was actually

1 detained in the same facility with his brother, Garry
2 Green, and had the opportunity to conversate with his
3 brother, Garry Green, Your Honor.

4 **MR. SWERLING:** Judge, just all due respect, they
5 can't cross examine him about his right to invoke.

6 **THE COURT:** I know. Well, we're getting it on
7 the record.

8 **MS. SHIPLEY:** That's a Doyle issue.

9 **THE COURT:** That's a Doyle issue.

10 **MR. O'NEIL:** Your Honor, it maybe will go easier
11 for Mr. Green, but it's also Mr. Sanders' right to
12 confrontation and his confrontation clause issue as
13 well, Your Honor.

14 **MR. SWERLING:** Judge, I'm not trying to protect
15 Mr. Sanders, but I don't know if they've thought
16 about this. But here is the bottom line. They may
17 be able to Brutonize the statement, but that should
18 not stop me from cross examining these officers about
19 everything that Justin Green did and said.

20 **THE COURT:** Well, that's always a problem. When
21 you do, to use your term, "Brutonize a statement", it
22 still leaves the question open about cross
23 examination, what evidence you can go into even
24 though you've got a redacted statement. All right.

25 **MR. SWERLING:** It's just too hard for me go

1 back, Judge.

2 **THE COURT:** I understand. Well, I'll get one of
3 those little podium things. You can just stand up
4 the whole time. Anything further from the State?

5 **MS. SHIPLEY:** Your Honor, the fact that there is
6 no prejudice shown by Mr. Swerling on behalf of Mr.
7 Green because his duress can still be -- his defense
8 of duress can still be extracted from the State's
9 witnesses such as Garry Green, Investigator Donald
10 McRae and Sergeant --

11 **THE COURT:** May be extracted.

12 **MS. SHIPLEY:** On cross examination then he could
13 ask them isn't it true that he was with a person who
14 was armed and just executed.

15 **THE COURT:** I don't know that that's going to
16 happen, but that's --

17 **MR. SWERLING:** Judge, could I respond to that?
18 That's exactly the problem. That's exactly the
19 problem. Why should I have to -- why shouldn't he be
20 able to exploit the fact that he cooperated as his
21 defense in this case of necessity?

22 **THE COURT:** I understand. Anything further?

23 **MS. SHIPLEY:** No, sir, Your Honor.

24 **THE COURT:** I'm going to grant the motion. Here
25 is -- you know, you're referring me to Walker. And

1 Walker says: "There can be no clearly defined rule
2 in determining when a defendant is entitled to a
3 separate trial because the exercise of discretion
4 means the decision must be based on just and proper
5 consideration of the particular circumstances which
6 are presented to the court in each case.

7 "A severance should be granted only when there
8 is a serious risk that a joint trial would compromise
9 a specific right of a co-defendant or prevent the
10 jury from making a reliable judgment about the
11 co-defendant's guilt.

12 "A trial judge must act cautiously in allowing a
13 joint trial. The judge must carefully consider
14 problems that may arise from a joint trial, such as
15 redacted statements, and must assure protection of
16 each defendant's Constitutional right to confront
17 witnesses against him.

18 "These antagonistic defenses do not necessarily
19 constitute required prejudice. More importantly, a
20 trial judge has the discretion to determine whether
21 Walker should have been granted a separate trial
22 based on the evidence."

23 In that case Judge Hayes ruled that there was
24 not. But those people, those two defendants were
25 charged with murder, and they had antagonistic

1 defenses. I think that counsel has shown sufficient
2 reason, both the defendant, Sanders, and the
3 defendant, Green, have shown sufficient reasons why
4 this case should be severed. And the case goes
5 forward as to Louis Sanders by himself at this time.
6 Any reason why the state cannot proceed with the
7 trial of Louis Sanders?

8 **MS. SHIPLEY:** No. There is no reason.

9 **THE COURT:** All right. Are we ready?

10 **MS. SHIPLEY:** We're ready.

11 **THE COURT:** Okay. Anything? Now, I've got a
12 continuance motion from the defendant, Sanders.

13 **MS. SHIPLEY:** Well, your Honor, if you're
14 inclined to continue one trial, then I will move on
15 to the other.

16 **THE COURT:** I haven't even heard it yet.

17 **MS. SHIPLEY:** Okay. I'm sorry. I didn't mean
18 to interrupt.

19 **THE COURT:** I'm not trying to do anything other
20 than hear it. And continuances are not favored as
21 the State is ready to proceed. So I'm ready to hear
22 that.

23 Now, there appear to be -- just, Ms. Everhart,
24 other than the motion for continuance, the motion to
25 sever, your motion to sever is granted also. Is that

1 correct? I mean, that's the heart of your motion.

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

3 **THE COURT:** All right. Now, what other motions,
4 just for the record, do you need heard pre-trial?

5 **MS. EVERHART:** Your Honor, just for the record,
6 some of these can be handled very quickly. I believe
7 we've discussed previously with the State that they
8 would not be bringing up reference to any drugs found
9 in Louis Sanders' residence. We did have that on our
10 list for a motion to suppress any drugs found. They
11 indicated they weren't bringing that up. If that is
12 still the case, we can remove that.

13 **MS. MCDUFFIE:** That's correct, Your Honor.
14 We're not bringing that up.

15 **THE COURT:** That's not applicable.

16 **MS. EVERHART:** Your Honor, they also have agreed
17 that they would not bring forth any references to the
18 Fay Ray murder. And as long as that is still
19 correct --

20 **THE COURT:** Is that correct?

21 **MS. MCDUFFIE:** Yes, Your Honor.

22 **MS. EVERHART:** And we also had a motion to limit
23 shackling. We also discussed that previously. And I
24 do --

25 **THE COURT:** Well, I have conferred with law

1 enforcement. And he is restrained as law enforcement
2 has suggested. And I have no reason to change that
3 arrangement at this time unless somehow you can show
4 it's prejudicial.

5 **MS. EVERHART:** No, Your Honor. We're happy with
6 the practice and the restraints.. So we can also
7 remove that.

8 **THE COURT:** All right.

9 **MS. EVERHART:** And of course we can easily just
10 have our motion to renew discovery, just find out if
11 there was anything that came in over the weekend.

12 **MS. SHIPLEY:** No, Your Honor, nothing else.

13 **THE COURT:** All right. Knocking them off in a
14 hurry.

15 **MS. EVERHART:** And, Your Honor, we would make a
16 motion to sequester the witnesses as well. I believe
17 after talking to the State they would not be opposed
18 to having the eye witnesses sequestered. I'm sure
19 they would want law enforcement.

20 **MS. SHIPLEY:** And the only exception, Your
21 Honor, would be Pam Cannon who is the wife of the
22 deceased.

23 **THE COURT:** Pam Cannon?

24 **MS. SHIPLEY:** Pam Cannon.

25 **THE COURT:** Cannon?

1 **MS. SHIPLEY:** Uh-huh (affirmative). And then
2 obviously our chief investigator, Sergeant Scott
3 McDonald, and Investigator Don McRae.

4 **THE COURT:** Would Ms. Cannon be one of your
5 first witnesses?

6 **MS. SHIPLEY:** Yes, sir.

7 **THE COURT:** All right. I'll allow her to stay
8 in the courtroom.

9 **MS. SHIPLEY:** And, Your Honor, there's a
10 possibility we'll be adding Justin Green to the
11 witness list. If he could add him just to the
12 State's witness list, please.

13 **THE COURT:** I assume subpoenas are about to be
14 issued.

15 **MS. SHIPLEY:** Yes, sir. And lastly, Your Honor,
16 on the State's witness list you'll see there's three
17 names of employees with the Fifth Circuit Solicitor's
18 Office. We'd ask that they not be sequestered. They
19 work with me. One of them is going to have to read
20 in a transcript of testimony of a Tena Goff who
21 testified.

22 **THE COURT:** They're not witnesses, are they?

23 **MS. SHIPLEY:** They're not witnesses. But one of
24 them will be used to read the testimony into the
25 record.

1 **THE COURT:** Readers. Okay. No problem with
2 that.

3 **MS. EVERHART:** And, Your Honor, in regard to the
4 other motions, I do believe they need to be heard. I
5 believe the only one that we need to have --

6 **THE COURT:** What about evidence of flight?

7 **MS. EVERHART:** We would like to make a motion on
8 that at the appropriate time.

9 **THE COURT:** Okay. Well, all right. That
10 leaves, suppress the gun case. Number 2, number 6,
11 number 7, number 9, number 12 and number 13.

12 **MS. EVERHART:** And with regard to number 7, that
13 was the Bruton argument, Your Honor.

14 **THE COURT:** Okay.

15 **MS. EVERHART:** So I believe that would be
16 settled as well.

17 **THE COURT:** That would be what?

18 **MS. EVERHART:** That would be settled as well.

19 **THE COURT:** Somebody said there was a Denno.

20 **MS. SHIPLEY:** Yes, sir.

21 **MS. EVERHART:** My understanding is that's the
22 State's Denno issue.

23 **MS. SHIPLEY:** Yes. We have a Jackson vs. Denno.
24 We're prepared to proceed.

25 **THE COURT:** Wait a minute. Hold on.

1 **MS. SHIPLEY:** As to statements made by Louis
2 Sanders to law enforcement.

3 **THE COURT:** Well, they haven't moved to suppress
4 them.

5 **MS. SHIPLEY:** I know, Your Honor. But typically
6 I move forward whether they want to suppress it or
7 not to protect the record.

8 **THE COURT:** Well, I'm just trying to get a list
9 of pre-trial matters. Well, let's see if we can lump
10 these -- all right. Any particular order you want to
11 hear these matters?

12 **MS. EVERHART:** Your Honor, we prefer to address
13 the motion for a continuance first.

14 **THE COURT:** All right. Let's do that.

15 **MS. EVERHART:** And, Your Honor, if my client
16 could have a few minutes, I believe he needs to --

17 **THE COURT:** All right. Let's just try to set a
18 tentative schedule here. Just hold on a minute. I'm
19 going hear this motion for a continuance, and that
20 will be done in camera. And we'll take our lunch
21 break after that. We'll reconvene at 2:00. And I
22 don't know if we'll get the jury this afternoon or
23 not, but we'll try. Or we may -- why don't we just
24 pick the jury and then send them home and we use the
25 rest of the afternoon to go through these motions.

1 That will give the State an opportunity to regroup
2 and get prepared to move forward. Let's do that at
3 this time.

4 **MS. SHIPLEY:** And the jury is coming back at
5 2:30. Is that correct?

6 **THE COURT:** The jury is coming back at 2:30.

7 **MS. SHIPLEY:** Okay.

8 **THE COURT:** Well, maybe we'll just go ahead and
9 pick them at 2:30 and then hear the motions. How
10 about that?

11 **MS. SHIPLEY:** That's fine.

12 **THE COURT:** All right. Good.

13 **MS. SHIPLEY:** Thank you, Your Honor.

14 **THE COURT:** All right. Let's clear the
15 courtroom, please, except for the bailiffs, law
16 enforcement and the defendant. We'll reconvene at
17 2:00.

18 **MS. SHIPLEY:** The defendant needs to stay for
19 this motion, right?

20 **DEPUTY:** Yeah. He's coming right back.

21 **THE COURT:** Ms. Shipley, who is running this
22 courtroom?

23 **MS. SHIPLEY:** They brought it to my attention.
24 I'm not trying to run your courtroom, Judge. They
25 were worried.

1 **THE COURT:** As I always say, the court reporter
2 needs a bathroom break.

3 (Whereupon, a break is taken)

4 **THE COURT:** All right. This is a motion for a
5 continuance by the defendant, Louis Sanders. You may
6 proceed, Ms. Everhart.

7 **MS. EVERHART:** Thank you, Your Honor. May it
8 please the Court. Your Honor, Thursday of last week
9 after we met with you in chambers I came back down to
10 my office to find a Firearms Trace Summary Report
11 delivered by the Solicitor's Office.

12 **THE COURT:** Firearms Trace ...?

13 **MS. EVERHART:** Summary Report.

14 **THE COURT:** Summary. Okay.

15 **MS. EVERHART:** From the Department of Justice,
16 Bureau of Alcohol, Tobacco, Firearms and Explosives.
17 It appears to be tracking information. Earlier in
18 this case a search warrant was issued and the search
19 warrant was for my client's house. In the house they
20 found a gun cleaning kit in a gun case and there was
21 a serial number on the gun case. They plugged in
22 this serial number; it appears in this firearms
23 report, and it came back that the registered gun
24 owner was a Kyle D. Edward Bostic out of
25 Indianapolis, Indiana, and that he had purchased this

1 gun February 15th, 2007 from a pawn shop.

2 Your Honor, I sent the solicitor an e-mail and
3 asked them to give me any statements from this
4 gentleman about the gun.

5 **THE COURT:** What's his last name?

6 **MS. EVERHART:** Bostic, B-O-S-T-I-C. His first
7 name is Kyle. And they indicated to me that
8 obviously this gun got down here to South Carolina
9 sometime after February of 2007, that they didn't
10 have any statements and possibly were not calling him
11 as a witness. I immediately called my Investigator
12 and gave her all this information so she could try to
13 contact Mr. Bostic to see what he had to say about
14 the gun.

15 **MR. O'NEIL:** Your Honor, I would pass this
16 report to Your Honor so Your Honor can see it.

17 **MS. EVERHART:** Within about an hour my
18 investigator was able to track down a telephone
19 number for this gentleman. He still lives at the
20 same residence. He told her he has never gotten a
21 phone call from anyone with the Solicitor's Office
22 but the gun is still in his possession. It has
23 always been in his possession. He purchased it from
24 a pawn shop in Indiana in February of 2007 without a
25 case. It didn't have a case.

1 After talking with the solicitor on Friday it
2 appeared that they might possibly with calling
3 someone from Alcohol, Tobacco and Firearms to verify
4 that this search was done, the insinuation being that
5 they might be arguing that my client had access to
6 the weapon that was in this gun case and that could
7 possibly be the weapon used in this crime. It is a
8 9-millimeter and the gun at the crime was a
9 9-millimeter. Your Honor, both my investigator and I
10 have talked --

11 **THE COURT:** A 9-millimeter would fit in that
12 case?

13 **MS. EVERHART:** Yes, Your Honor. And the serial
14 number --

15 **THE COURT:** Was the gun ever recovered in this
16 case?

17 **MR. O'NEIL:** No, Your Honor. The actual case
18 had a serial number on it that corresponds to the
19 9-millimeter that Mr. Bostic bought. So the case is
20 the case for the 9-millimeter Mr. Bostic owns. The
21 case that was found in Mr. Sanders' house is the case
22 that belongs to the gun that Mr. Bostic bought.

23 **THE COURT:** All right. So if you just
24 theoretically suppress the gun case, you don't have
25 an argument. Is that right?

1 **MR. O'NEIL:** Yes, Your Honor.

2 **MS. EVERHART:** Theoretically. And, Your Honor,
3 I will say that we did contact Mr. Bostic. Initially
4 he was very agreeable to coming down here and
5 testifying. We have purchased a plane ticket for
6 him. I talked with his mother on Saturday. She was
7 irate, honestly believes that he will somehow be
8 arrested if he comes to the state of South Carolina.

9 If the State were going to go into this
10 information about the gun cleaning kit and the gun
11 case, we would need to put him up. And in that case
12 we would need to get him down here by a subpoena,
13 which my understanding is it's somewhat difficult to
14 get one out of state and that might be a lengthy
15 process. But, Your Honor, we would need him here to
16 refute anything they put up about this kit.

17 **THE COURT:** Have you informed the State about
18 this conversation with Mr. Bostic?

19 **MS. EVERHART:** No, Your Honor, I did not. They
20 had his contact information and they provided me with
21 his address and told me they knew he was still in
22 Indiana.

23 **THE COURT:** And they knew in an affidavit form
24 that -- just bear with me because I'm not familiar
25 with all the facts in this case. But if they had an

1 affidavit from him that it never left his possession,
2 wouldn't that suffice for the fact that the gun case
3 would have to stand alone? I mean -- well, this
4 pistol has not been recovered.

5 **MS. EVERHART:** No, Your Honor.

6 **MR. O'NEIL:** No, Your Honor. And it's our
7 understanding there are shell casings recovered both
8 at the pub and the incident location of the actual
9 shooting; of the actual murder. I'm sorry, Your
10 Honor. All the 9-millimeter shell casings and the
11 shell casing at the pub matched the shell casings at
12 the actual shooting location.

13 **THE COURT:** That doesn't prove anything, does
14 it?

15 **MR. O'NEIL:** No, Your Honor. But it's a
16 9-millimeter that's the inference they want to use.

17 **THE COURT:** How many 9 millimeters are out there
18 on the street?

19 **MR. O'NEIL:** A lot, Your Honor. I'm sure that
20 that would be an argument, Your Honor. But I think
21 the jury would be left with the inference that they
22 didn't recover the gun from Mr. Sanders. It's a gun
23 case for a 9-millimeter gun at Mr. Sanders'
24 residence. And they would kind of infer at that
25 point that he somehow disposed, I mean, got rid of

1 the gun by unlawful means, Your Honor, trying to hide
2 the murder weapon in this case, Your Honor, because
3 he has the case, sir.

4 **THE COURT:** Well, but there's no -- I realize
5 the link to the gun, I mean, between the gun case and
6 the gun. I don't see why -- I mean, just kind of
7 thinking this thing out out loud why they can't show
8 there was a gun case there to show that -- if there
9 was -- I mean, I don't know about the search; I'm not
10 getting into that at this point -- why they couldn't
11 show there was a gun case there and show that the
12 shell -- and the gun case fits the 9-millimeter and
13 shells were recovered from a 9-millimeter at the
14 scene doesn't have anything to do with this
15 particular gun.

16 **MR. O'NEIL:** Well, Your Honor, the case matched
17 the gun.

18 **THE COURT:** I know that.

19 **MS. EVERHART:** It's the exact same serial
20 number. Our argument of course at that point would
21 be we'd want to bring Mr. Bostic down and say, well,
22 no matter what, it wasn't the gun that came in this
23 case.

24 **THE COURT:** So what? I mean, I don't see that
25 that's relevant or prejudicial. I understand what

1 you say you want to do. But to that, even if you do,
2 I'd say so what. It doesn't mean he couldn't have
3 had another 9-millimeter.

4 **MR. O'NEIL:** But our argument was that he didn't
5 have access to a gun. This case will show that he --

6 **THE COURT:** Whoa. Whoa, whoa, whoa, whoa. If
7 there's a case there, there's a case there. I mean,
8 I don't see how you -- I mean, if there is a lawful
9 search warrant and there is a gun case found in his
10 residence, there's a gun case found in his residence,
11 I mean, whether there's a gun in it or not. And I
12 don't know what it looks like, but if it fits a
13 9-millimeter, I mean, it's not just a holster.

14 If it's some kind of -- there may be a lot of
15 gun cases where the case and the serial number of the
16 gun don't match. I mean, you can buy a case at a
17 pawn shop and you may be able to buy a case and a
18 9-millimeter that fits the case at a pawn shop and
19 the serial numbers don't match. So, I don't see -- I
20 mean, I'm trying to find how it prejudices your
21 client not to have Mr. Bostic here.

22 **MR. O'NEIL:** Your Honor, I guess our position
23 would be that at that point there is no evidence that
24 Mr. Sanders purchased any other gun, purchased this
25 case with a different gun. The only -- the whole --

1 **THE COURT:** I don't know if he even had a gun.
2 You know, I'm not sure somebody didn't hand him a
3 gun. I don't know anything about those facts. But
4 my point is -- or at least I'm trying to understand
5 your point -- it seems to me that if there is a gun
6 case and it's got a number on it and it doesn't match
7 the 9-millimeter -- I mean, any 9-millimeter could
8 have been in that case. I don't see where it has to
9 match the number on the actual 9-millimeter. If your
10 man in Indiana says he bought it at a pawn shop, he
11 bought it at a pawn shop.

12 **MR. O'NEIL:** Yes, Your Honor. But the jury
13 is --

14 **THE COURT:** He didn't necessarily buy it with a
15 case.

16 **MR. O'NEIL:** The jury is never going to -- as it
17 stands right now without Mr. Bostic or an affidavit
18 from Mr. Bostic, the jury is never going to know
19 that. All the jury is going to know is that this gun
20 case was found in Mr. Sanders' residence at that
21 point.

22 And not only that. They're bringing in the ATF
23 guy to come in and say that some guy in Indiana
24 bought a gun that matched this case. And the jury is
25 left with the inference at that point that somehow

1 the gun got stolen from Indiana and wound up down
2 here in Mr. Sanders' possession which was used in
3 this crime. And that specifically is not the case.
4 It's one thing to say --

5 **THE COURT:** Do they have an ATF guy on the list?

6 **MR. O'NEIL:** ATF guy. On the second page they
7 list ATF Special Agent --

8 **THE COURT:** Well, we may be able to deal with
9 this as an evidentiary matter, but I don't think it's
10 grounds for a continuance. I'm not going to continue
11 the case.

12 **MS. EVERHART:** Thank you, Your Honor.

13 **THE COURT:** All right. Let's reconvene at 2:00
14 and we'll see how far we can get with the remaining
15 motions.

16 **MR. O'NEIL:** Thank you, Your Honor.

17 **THE COURT:** We'll stand at ease until 2:00.

18 (Whereupon, a lunch break is taken)

19 (WHEREUPON, State's Exhibit No. 4 is marked for
20 identification.)

21 (WHEREUPON, State's Exhibit No. 5 is marked for
22 identification.)

23 **THE COURT:** All right. The State ready to
24 proceed?

25 **MS. SHIPLEY:** Yes, sir, Your Honor.

1 **THE COURT:** Defense ready to proceed?

2 **MR. O'NEIL:** Yes, Your Honor.

3 **THE COURT:** All right. During the in camera
4 motion for continuance I heard the defendant's motion
5 to continue and denied the motion. So we can begin
6 with -- I think the jury is not coming back until
7 2:30. So, Ms. Everhart, you may proceed in whatever
8 order you wish to proceed with your remaining
9 motions.

10 **MS. EVERHART:** Thank you, Your Honor. May it
11 please the Court. First we would just bring to the
12 Court's attention the motion to suppress the gun
13 cleaning kit and the gun case from being introduced
14 as evidence.

15 **THE COURT:** Okay.

16 **MS. EVERHART:** I have talked with the solicitor
17 about the fact that Mr. Bostic does still have this
18 gun. It's my understanding they aren't going to
19 attempt to say the gun with the same serial number
20 was the gun involved in this case.

21 Your Honor, we would just ask that the gun
22 cleaning kit and the gun case that were found in the
23 house through the search warrant that that
24 information not come in on the basis that it's more
25 prejudicial than probative in this case, that the

1 jury might be led to believe that the existence of
2 that gun kit means that -- I'm sorry -- the gun case
3 means that the gun indicates it was just used in this
4 crime. And no gun was recovered.

5 **THE COURT:** That's just a 403 motion at this
6 point?

7 **MS. EVERHART:** Yes, Your Honor.

8 **THE COURT:** Solicitor.

9 **MS. SHIPLEY:** Your Honor, this is a murder case.
10 So clearly, number two, item number 2 that was seized
11 in the residence, meaning the white power cocaine --

12 **THE COURT:** Hold it. Whoa, whoa. What is item
13 number 2?

14 **MS. SHIPLEY:** On the search warrant return, Your
15 Honor.

16 **THE COURT:** Well, I don't have it. Why don't
17 you say on the record --

18 **MS. SHIPLEY:** Yes, sir.

19 **THE COURT:** -- that number 2 on the search
20 warrant return list is ...

21 **MS. SHIPLEY:** Yes, sir. The following items
22 were seized from the residence of Louis Sanders on
23 one 12th, 2007 at 1:15 in the afternoon. A mirror
24 with a black frame from the den area on the shelf on
25 the left wall. That's number 1.

1 **THE COURT:** I don't need the entire list. Let's
2 just deal with this one.

3 **MS. SHIPLEY:** Number 2 was a razor with white
4 powder. Number 3 was the Fire Star gun case from a
5 rear bedroom located in the closet. And number 4 was
6 a Hopps cleaning kit for a gun that was also seized
7 in the same back room. And then another bag of
8 marijuana was seized.

9 Your Honor, we are not planning to introduce any
10 evidence of the mirrors or the razors with powder on
11 them because that clearly is prejudicial and not
12 probative. However, when it comes to the gun cases
13 and the cleaning kit, we believe that that is
14 probative in this case.

15 **THE COURT:** Well, let me ask you this. Is it a
16 gun kit for a 9-millimeter?

17 **MS. SHIPLEY:** The case is for -- has a
18 handwritten note on it that says Fire Star and it's
19 got a serial number on it that's handwritten. And
20 apparently that gun is a 9-millimeter that was
21 purchased by an individual named Kyle Bostic who
22 lives up in Indiana. And he still has the gun
23 according to the defense. We have an ATF agent
24 that's been trying to get in touch with Mr. Bostic to
25 confirm this. But I will take Ms. Everhart's word

1 for it because they have spent \$900 to fly him in to
2 say that.

3 **THE COURT:** Right. I understand.

4 **MS. SHIPLEY:** But as far as a cleaning kit, Your
5 Honor, that can clean any type of gun, and I think
6 that's relevant.

7 **THE COURT:** It's relevant because a gun was
8 used.

9 **MS. SHIPLEY:** And a gun is the murder weapon in
10 our case.

11 **THE COURT:** And it was a 9-millimeter.

12 **MS. SHIPLEY:** Yes, sir.

13 **THE COURT:** And the 9-millimeter would fit this
14 gun case.

15 **MS. SHIPLEY:** Correct.

16 **THE COURT:** And you can clean a 9-millimeter
17 with a Hopps cleaning kit.

18 **MS. SHIPLEY:** That's correct.

19 **THE COURT:** All right. So it's probative. Is
20 that right?

21 **MS. SHIPLEY:** It is probative.

22 **THE COURT:** It outweighs its prejudicial value.

23 **MS. SHIPLEY:** That is the State's position.

24 Yes, sir.

25 **THE COURT:** Anything else?

1 **MS. SHIPLEY:** Under rule 403, no.

2 **THE COURT:** Thank you. The motion is denied.
3 Next motion. It's probative. It's just probative.
4 It's very probative. And they found it I assume with
5 a legal search warrant.

6 **MS. SHIPLEY:** Yes, sir.

7 **THE COURT:** Next.

8 **MS. EVERHART:** Thank you, Your Honor. The next
9 one we had was the Biggers issues, and Mr. O'Neil is
10 addressing that.

11 **MR. O'NEIL:** Your Honor, I think initially there
12 were five photo line-ups that were done in this case,
13 five photo line-up's that identify Mr. Sanders, Louis
14 Sanders in this case. Actually I think a total of 20
15 were actually done, but only five identify Mr.
16 Sanders.

17 **THE COURT:** Now, wait a minute. Five photo
18 line-ups.

19 **MR. O'NEIL:** That identify Mr. Sanders.

20 **THE COURT:** With six photographs on each
21 line-up?

22 **MR. O'NEIL:** Yes, Your Honor. Five standard
23 six-pack photo line-ups that identify --

24 **THE COURT:** So there are five line-ups and his
25 picture was identified in all five?

1 **MR. O'NEIL:** Yes, Your Honor.

2 **THE COURT:** All right.

3 **MR. O'NEIL:** Of those five, I've talked with the
4 State. I think those five, one was done by Justin
5 Green. One was done by Kim Bowers.

6 **THE COURT:** Who is that? She is one of the
7 witnesses?

8 **MR. O'NEIL:** Kim Bowers is a witness in this
9 case. Justin Green of course was a co-defendant.
10 Garry Green is a witness, Your Honor. He did one.
11 And there were two additional photo line-ups done by
12 Samantha Goins and Latasha Goins. They were not eye
13 witnesses to the crime.

14 **THE COURT:** Samantha Goins.

15 **MR. O'NEIL:** Yes, Your Honor. Latasha Goins.

16 **THE COURT:** Wait a minute. Two Goins?

17 **MR. O'NEIL:** Yes, Your Honor.

18 **THE COURT:** All right.

19 **MR. O'NEIL:** They were not eye witnesses to the
20 crime, Your Honor. I think --

21 **THE COURT:** Let me ask you this. Did any of
22 these five witnesses know the defendant, Louis
23 Sanders?

24 **MR. O'NEIL:** Garry Green knew Mr. Sanders. I
25 think to the extent that the McLeod case requires,

1 Your Honor, I think we concede that point. Yes, Your
2 Honor. I think we concede that point.

3 **THE COURT:** How about Justin?

4 **MR. O'NEIL:** Justin, Your Honor, we don't
5 concede that point, Your Honor.

6 **THE COURT:** He didn't know him?

7 **MR. O'NEIL:** No, Your Honor. As I understand
8 it, he didn't know him. I think in his own testimony
9 he said the first time he met him was that day at the
10 club.

11 **THE COURT:** All right.

12 **MR. O'NEIL:** So until that is established on the
13 under a prior witness statement --

14 **THE COURT:** So you need a Biggers on Justin.

15 **MR. O'NEIL:** Yes, Your Honor.

16 **THE COURT:** How about this Bowers?

17 **MR. SWERLING:** I think the State said that they
18 don't intend to introduce Mrs. Bowers' pre-trial
19 identification of Mr. Sanders. So if they don't --

20 **THE COURT:** So she's not going to do an
21 in-court --

22 **MS. SHIPLEY:** Your Honor, she doesn't actually
23 sign her name with 100 percent certainty saying that
24 Mr. Sanders is the man she saw fire the gun at the
25 club earlier, like Pam Cannon said. She just says

1 I'm pretty sure that's him. So we don't feel like we
2 have enough basis to ask her to identify him in
3 court.

4 **THE COURT:** All right. So bowers is not going
5 to do an in-court?

6 **MS. SHIPLEY:** No.

7 **THE COURT:** How about Justin?

8 **MS. SHIPLEY:** Justin will -- if we can take that
9 up when we call him to testify.

10 **THE COURT:** All right. Let's just -- Garry,
11 they've already conceded he knows him, he doesn't
12 need a Biggers.

13 **MS. SHIPLEY:** Right.

14 **THE COURT:** Goins. Goins number one.

15 **MS. SHIPLEY:** We're not calling either of the
16 Goins sisters, Your Honor. They were not even at the
17 scene that night. They know the defendant from the
18 neighborhood.

19 **THE COURT:** Well, they testified they know him.

20 **MS. SHIPLEY:** Right.

21 **THE COURT:** But they can't testify what he did
22 because they weren't there.

23 **MS. SHIPLEY:** They weren't there that night.

24 **THE COURT:** All right. So the only ones we're
25 concerned about are Justin and Bowers. Is that

1 right?

2 **MR. O'NEIL:** But they don't plan on using the
3 in-court ID for Bowers or the out-of-court ID for
4 Bowers. So it will just be Justin Green at this
5 point.

6 **THE COURT:** Oh. You're not going to use Bowers?

7 **MS. SHIPLEY:** Your Honor, as far as I know, in
8 her statement where she signed the affidavit, she
9 puts down I'm pretty sure it's number 2. Well,
10 number 2 is Mr. Sanders' photograph. Now, she could
11 come in here and see Mr. Sanders and remember him
12 from that night. Well, in that case we would seek an
13 in-court ID, but we'll bring that to the Court's
14 attention. But as far as we know for now --

15 **THE COURT:** Justin --

16 **MS. SHIPLEY:** -- Kim Bowers cannot identify the
17 defendant with 100 percent certainty.

18 **THE COURT:** So Justin is the only one that
19 can --

20 **MS. SHIPLEY:** Yes, sir.

21 **THE COURT:** -- in-court identify him.

22 **MS. SHIPLEY:** Yes.

23 **THE COURT:** And that's based on an out-of-court
24 identification.

25 **MS. SHIPLEY:** Yes, sir.

1 **THE COURT:** And the question then becomes
2 whether that's suggestive or not.

3 **MS. SHIPLEY:** Correct.

4 **THE COURT:** Okay.

5 **MR. O'NEIL:** And, Your Honor, just so the record
6 is clear on Kim Bowers, it's my understanding from
7 reading discovery from one of the investigator's
8 notes that she was between -- when they showed her
9 the line-up that included Louis Sanders, she was
10 between Louis Sanders and another individual. So --

11 **MS. SHIPLEY:** Right. That was in the
12 investigator's notes. That would be Sergeant
13 McDonald's notes.

14 **THE COURT:** If that's true, then she's probably
15 not going to do an in-court.

16 **MS. SHIPLEY:** However, in the actual affidavit,
17 Your Honor, she writes: "I'm pretty certain this is
18 the one who fired the gun by Pam Cannon's head."

19 **THE COURT:** Well, you know, "pretty certain" --

20 **MS. SHIPLEY:** Right.

21 **THE COURT:** -- probably doesn't get it.

22 **MS. SHIPLEY:** I understand.

23 **THE COURT:** So you want to do a Biggers on
24 Justin?

25 **MR. O'NEIL:** Yes, Your Honor.

1 **THE COURT:** Well, I don't know if we can do it
2 now.

3 **MS. SHIPLEY:** I have excused him until tomorrow.

4 **THE COURT:** Right.

5 **MS. SHIPLEY:** And also just for the record so
6 that the defense is aware of what the State has
7 offered Mr. Green, Justin Green, for his testimony,
8 we are dismissing all the charges against him.

9 **THE COURT:** All right. Now, all right. So we
10 need to do a Biggers when he is available.

11 **MS. SHIPLEY:** Yes, sir.

12 **THE COURT:** Before he testifies. All right.
13 Okay. Ms. Everhart.

14 **MR. O'NEIL:** Your Honor, I think our next motion
15 would be to exclude some of the photographs from the
16 crime scene and autopsy. I don't know if those
17 photographs have been pre-marked --

18 **MS. SHIPLEY:** Your --

19 **MR. O'NEIL:** As of yet, Your Honor.

20 **MS. SHIPLEY:** I'm sorry, Mr. O'Neil. We were
21 going to do that once we got done picking the jury,
22 Your Honor.

23 **MR. SWERLING:** Your Honor, we can do that at
24 another time.

25 **THE COURT:** And next motion.

1 **MR. O'NEIL:** Your Honor, our next motion would
2 be to suppress the testimony regarding Louis Sanders'
3 tattoos.

4 **THE COURT:** What's the testimony?

5 **MR. O'NEIL:** Your Honor, the State may want to
6 proffer that testimony. But it's my understanding
7 from reading discovery that Mr. Sanders -- that Garry
8 Green is going to testify that he thought Mr. Sanders
9 had one teardrop tattoo as of January 3rd, 2007, Your
10 Honor. I think at this point Mr. Sanders has four
11 teardrop tattoos all unfilled in.

12 **THE COURT:** All unfilled in.

13 **MR. O'NEIL:** Yes, Your Honor. And I think the
14 State intends to proffer an expert to say what the
15 meaning of those tattoos, teardrop tattoos are, Your
16 Honor. And Mr. Secor actually is involved in arguing
17 that motion for the defense.

18 **THE COURT:** How about it, Mr. Secor?

19 **MR. SECOR:** Thank you, Your Honor.
20 Preliminarily, it could be argued --

21 **MS. SHIPLEY:** Your Honor, I hate to interrupt
22 you. We're not going to seek that testimony. We've
23 confirmed that Mr. Garry Green only noted one tattoo
24 on his cheek of a teardrop, and it does appear that
25 he has four at this time. So the only thing we would

1 ask is that Mr. Green be permitted to identify him as
2 he remembers him which is with one teardrop tattoo.
3 We do not plan to call an expert to testify --

4 **THE COURT:** As to what the tattoo means.

5 **MS. SHIPLEY:** -- as to what it means. Exactly.
6 Because we can only --

7 **THE COURT:** Does that satisfy your argument?

8 **MR. SECOR:** Based on the case law that I have
9 read, it can certainly be admissible for purposes of
10 identification. So we don't have any problem with
11 that.

12 **THE COURT:** Thank you very much.

13 **MS. SHIPLEY:** Thank you.

14 **MR. O'NEIL:** Your Honor, just one point on that
15 issue. I don't think it's necessary for Mr. Garry
16 Green to testify as to whether or not Louis Sanders
17 had a teardrop tattoo on his face. I think he's
18 known Mr. Sanders. They wouldn't need to ask him
19 that. That particular part of the identification I
20 think is more prejudicial than it is probative of
21 anything.

22 **THE COURT:** Why?

23 **MR. O'NEIL:** Your Honor, I think the teardrop
24 tattoo kind of misnomers, it's kind of out there in
25 public knowledge. I think --

1 **THE COURT:** You sure I don't have one?

2 **MR. O'NEIL:** Your Honor, I could have one, as
3 anybody knows at this point. But I think that ID is
4 kind of out there in the public, that a teardrop
5 tattoo kind of equates to somebody who --

6 **THE COURT:** Show me a case.

7 **MR. O'NEIL:** Yes, Your Honor.

8 **THE COURT:** Show me a case.

9 **MR. O'NEIL:** A case that --

10 **THE COURT:** Says teardrop testimony, a teardrop
11 tattoo is evidence of something that is prejudicial.

12 **MR. O'NEIL:** I could show you State v. Kristy
13 Liberty that's at the Court of Appeals at this point,
14 Your Honor, for review by the Court of Appeals. But
15 I think that was arguing in that case that the
16 teardrop tattoo actually meant the defendant had
17 committed a murder.

18 **MS. SHIPLEY:** Your Honor, if I may? In that
19 case Judge Johnson allowed it in because they were
20 able to account for what each teardrop representing
21 each victim that he killed. So we're not going there
22 with that. We're just going to ask Garry Green to
23 describe him as he did to the investigators. And all
24 he is going to say is he's, you know, five-eight or
25 whatever he said, 160 pounds, black male and has a

1 tattoo of a teardrop on his face. That's it.

2 **THE COURT:** Okay. Well, let's let him proffer
3 that testimony when he is called. I'm not convinced,
4 unless you can show me something, that says that
5 testimony of the existence of a teardrop, that alone
6 is more prejudicial than probative. Of course I
7 don't know whether it's probative of anything either
8 other than identification.

9 **MR. O'NEIL:** I guess I ought to say, Your Honor,
10 it's not probative of identification. He knows Mr.
11 Sanders. He doesn't need to tell the jury that he's
12 seen him with a teardrop on his face to actually
13 identify him.

14 **THE COURT:** Okay. I'll think about it. If
15 you've got anything you want to submit to me I'll
16 read it.

17 **MR. SECOR:** Thank you, Your Honor.

18 **THE COURT:** And finally, is there evidence of
19 flight?

20 **MR. O'NEIL:** Yes, Your Honor.

21 **THE COURT:** Why should that testimony be
22 excluded?

23 **MR. O'NEIL:** Your Honor.

24 **THE COURT:** Go ahead.

25 **MR. O'NEIL:** It's my understanding this offense

1 occurred on June 3rd, 2007. It's my understanding
2 that according to the State Mr. Sanders may have had
3 two contacts with law enforcement. I think they
4 claim that on June 4th when they came to arrest Garry
5 Green in this case, Your Honor, that Louis Sanders
6 was at the residence where Mr. Garry Green was at and
7 may have looked out the window and saw the police at
8 that point. They arrested Garry Green on June 4th at
9 that time.

10 **THE COURT:** They didn't even see him at that
11 time.

12 **MR. O'NEIL:** No, Your Honor. There was not an
13 arrest warrant out for Louis Sanders. He was not
14 even a suspect at that point, Your Honor. Garry
15 Green consequently gives a statement on June 7th that
16 implicates Louis Sanders. The next time Louis
17 Sanders makes contact with law enforcement is
18 June 12th. They come to the residence. They search
19 the residence. It's empty. I think they look in the
20 attic of the residence and find Mr. Louis Sanders in
21 the attic of the residence, Your Honor. And that's
22 the flight evidence I think that the State wants to
23 introduce.

24 **THE COURT:** That he's in the attic?

25 **MR. O'NEIL:** Yes, Your Honor.

1 **THE COURT:** Well, he was in the attic, wasn't
2 he? Or was he?

3 **MR. O'NEIL:** Your Honor, we would take -- it's a
4 given that he was in the attic, Your Honor, for just
5 argument purposes. But our point is that even if he
6 was in the attic, it's not admissible evidence of
7 flight, Your Honor.

8 **THE COURT:** How about evidence of hiding?

9 **MR. O'NEIL:** It's still not evidence of hiding
10 either, Your Honor. Because I did look at the case
11 law. I think it's State v. Padgett. And I would
12 pass that up to Your Honor.

13 **THE COURT:** Sure.

14 **MR. O'NEIL:** That is 369 SC 201.

15 **THE COURT:** All right.

16 **MR. O'NEIL:** And, Your Honor, I think in the
17 analysis of evidence of flight, I think it's actually
18 page 4 of this, Your Honor, it says: "The critical
19 factor in inadmissibility of evidence of flight is
20 whether under the totality of evidence creates an
21 inference that the defendant had knowledge that he
22 was being sought by the authorities."

23 And the next paragraph talks about flight
24 evidence is relevant when there is a nexus between
25 the flight and the offense charged, Your Honor.

1 Your Honor, I think there is going to be no
2 evidence that Mr. Sanders knew law enforcement was
3 either seeking him generally or seeking him
4 specifically for the murder of Mr. Cannon in this
5 case, Your Honor. I think the court has laid out in
6 the Padgett case that there has to be some kind of
7 nexus between the flight and the defendant's
8 knowledge of even being sought for this particular
9 charge. And without evidence that he knew he was
10 being sought for this particular charge, Your Honor,
11 I think it's inadmissible to allow evidence that he
12 was actually in the attic because there's no evidence
13 that he actually knew he was being charged for the
14 actual case of murder. There is no testimony --

15 **THE COURT:** It doesn't say he has to know. It
16 says creates an inference that the defendant knew.

17 **MR. O'NEIL:** Yes, Your Honor. And I don't think
18 there is going to be any evidence that creates an
19 inference that he knew he was being sought for these
20 charges.

21 **THE COURT:** Okay.

22 **MR. O'NEIL:** There was no prior direct or even
23 indirect contact with Mr. Louis Sanders and law
24 enforcement prior to them finding him in the attic.

25 **THE COURT:** How about contact with members of

1 the community? I don't know. I mean, people telling
2 him, the cops are after you, you've got to hide. I
3 mean, presenting testimony to that effect, that would
4 be certainly create an inference.

5 **MR. O'NEIL:** Yes, Your Honor. We can see that's
6 testimony -- if there is that testimony, that would
7 of course change our analysis, Your Honor. But it is
8 our position that there is no such testimony.

9 **THE COURT:** Okay. Let me hear from the State.

10 **MS. SHIPLEY:** Thank you, Your Honor. We have a
11 witness by the name of Michelle Jackson whose home
12 the defendant and Garry Green were hiding in when the
13 law enforcement went to Garry Green's residence.
14 Garry Green's residence --

15 **THE COURT:** Wait a minute. Hold it. Whose
16 residence?

17 **MS. SHIPLEY:** Okay. Garry Green, he has a mom
18 who is remarried to a guy named Mr. Culler, William
19 Culler. They live at [REDACTED] William Harden Road. Right
20 nextdoor to [REDACTED] William Harden Road where Garry
21 Green's mom and step dad live is a woman by the name
22 of Michelle Jackson. And she lives at [REDACTED] William
23 Harden Road. It's right nextdoor.

24 On June 3rd, 2007, the same day of the shooting,
25 investigators had gotten a description of Garry Green

1 and they were able to confirm that the owner of the
2 H&J club where Garry Green lived. At that point they
3 go to this residence and find --

4 **THE COURT:** Which residence is that?

5 **MS. SHIPLEY:** [REDACTED] William Harden Road.

6 **THE COURT:** [REDACTED]

7 **MS. SHIPLEY:** Yes, sir. Looking for Garry
8 Green. Well, it turns out that while they're at
9 Garry Green's residence, Mr. Sanders and Garry are
10 hiding in Michelle Jackson's house. And she is going
11 to testify that there are police officers going to
12 Garry's mama's house and that the defendant and Garry
13 were looking out the window watching them.

14 **THE COURT:** Was she there?

15 **MS. SHIPLEY:** Yes. She was there. She is
16 friends with both of them. In fact, she is friends
17 with the defendant and Garry Green. It was not that
18 unusual for them to be there together. Now,
19 officers --

20 **THE COURT:** So she testifies that Green and
21 Sanders witnessed police at the Hardens' house.

22 **MS. SHIPLEY:** At Garry Green's mother's house
23 which is [REDACTED] William Harden Road.

24 **THE COURT:** I'm sorry. And what's her name?
25 Okay. Go ahead.

1 **MS. SHIPLEY:** All right. So then the police are
2 told by Garry Green's mother that he's not home. So
3 they tell her, well, let him know we're looking for
4 him, we need to talk to him. So they leave. They
5 leave an officer by the name of Investigator Morris
6 Davis behind to surveil the residence to make sure if
7 Garry Green does show up everyone else is notified
8 and they can come in and question him.

9 Well, lo and behold, while the officers are not
10 even to headquarters they get a call from
11 Investigator Morris Davis saying that Garry Green
12 just left the residence at [REDACTED] William Harden Road
13 and is now at his mom's house at [REDACTED] William Harden
14 Road.

15 So as a result, Investigator McRae returns to
16 the residence and makes contact with Garry Green in
17 front of Garry Green's mother's house which is at [REDACTED]
18 William Harden Road. Investigator McRae is going to
19 testify that as he is talking to Garry Green in the
20 front of [REDACTED] he notices a black male with braids
21 staring out through the house window or doorway of
22 [REDACTED] William Harden Road. And he confirms with Garry
23 Green later on that indeed was Mr. Sanders watching
24 his co-defendant getting hauled off by police.

25 **THE COURT:** So Garry Green tells the

1 policeman --

2 **MS. SHIPLEY:** Right.

3 **THE COURT:** -- that that is Louis Sanders?

4 **MS. SHIPLEY:** That the man that was in the house
5 staring at him getting hauled off by police is his
6 co-defendant, Mr. Sanders.

7 **THE COURT:** Okay.

8 **MS. SHIPLEY:** So that's on --

9 **THE COURT:** So you have two witnesses.

10 **MS. SHIPLEY:** -- June 3rd. Yes, sir. That's on
11 June 3rd. Actually three: Michelle Jackson, Garry
12 Green and Investigator Don McRae.

13 **THE COURT:** Okay. I wasn't counting the police
14 officer.

15 **MS. SHIPLEY:** After that, Your Honor, June 7th
16 is when Garry Green identifies the shooter. On
17 June 7th warrants are issued for the arrest of Louis
18 Sanders for murder. Backtracking back to June 3rd,
19 2007 when Garry Green is taken in for questioning,
20 his brother and Garry are both arrested that day for
21 murder, and it's on the news that they have both been
22 arrested for murder involving the case that initiated
23 at the H&J club and eventually ended up at William
24 Harden Road on Westbridge Road. Westbridge Road,
25 Your Honor.

1 **THE COURT:** Television?

2 **MS. SHIPLEY:** Television. WLTX had news
3 clippings about it, Your Honor.

4 **THE COURT:** Okay.

5 **MS. SHIPLEY:** But it was on the media, either --
6 yeah. WLTX has a website, and that's where I found
7 it. And there is discovery that refers to it as
8 well. But they don't make any mention of Louis
9 Sanders on June 3rd. But it is the fact is Justin
10 Green and Garry Green are arrested for murder and
11 it's broadcast all over the media for the incident
12 dealing with June 3rd, 2007 at the H&J. And also,
13 according to the WLTX website, the last thing says:
14 "Detectives say a third arrest could come in this
15 case." So that's all on June 3rd. All right. Now,
16 June --

17 **THE COURT:** Now June 7th.

18 **MS. SHIPLEY:** June 7th is when Garry Green
19 then --

20 **THE COURT:** But the police thing -- I mean, the
21 television thing is June 7th. I thought that's what
22 you said.

23 **MS. SHIPLEY:** No. It was the day they were
24 arrested.

25 **THE COURT:** I thought you said that was

1 June 7th.

2 **MS. SHIPLEY:** I'm not sure of the date. But
3 regardless, before this defendant is arrested for
4 murder, it's in the media, Your Honor.

5 **THE COURT:** All right. That's true.

6 **MS. SHIPLEY:** Okay. So then on June 7th is when
7 he's identified as the shooter by Garry Green and
8 warrants are issued for his arrest for murder. The
9 warrants are given to the Richland County fugitive
10 team who works close and hand-in-hand with SLED to
11 apprehend Mr. Sanders.

12 At this point, Your Honor, we have an
13 investigator with the fugitive time by the name of
14 Jerry Hall who is prepared to testify that he staked
15 out the defendant's mother's house at [REDACTED] Torrowood
16 Drive and that he had made contact with the
17 defendant's mother about Louis Sanders' whereabouts
18 and she denied knowing where her son was.

19 On June 12th, 2007, while Investigator Jerry
20 Hall is surveilling Mr. Sanders' residence, he sees
21 the defendant and his mother pull up in a car to [REDACTED]
22 Torrowood. He sees them get out of the car and enter
23 the residence. At that point he drives slowly away
24 around the block and he parks his car positioned
25 between two houses so that he can see and keep an eye

1 on the defendant's residence where he lives with his
2 mother. And in the meantime he calls for backup.

3 SLED units arrive and the Richland County
4 fugitive units arrive to back him up, and they all
5 knock on the door together. They set up parameters.
6 They knock on the door together at the defendant's
7 residence house, and no one comes to the door. Well,
8 they have in their possession a warrant for murder
9 which entitles them to break in to find the suspect.

10 So they go inside and they made contact with the
11 mother in the hallway and she denies knowing where
12 her son is. At that point they clear the residence
13 on the first floor and then they realize that he had
14 to be hiding somewhere in the house. So they go up
15 into the attic and they find him in the attic. He is
16 ordered to come down from the attic and he refuses to
17 do so. He ends up being pulled down by law
18 enforcement. And so Jerry Hall will testify to all
19 that.

20 This is classic evidence of flight. The
21 defendant had knowledge from his own mother, it could
22 be inferred, when police are coming by her residence
23 asking for the whereabouts of her son. And these are
24 fugitive team investigators, Your Honor. So he has
25 knowledge that he is wanted, and then he hides when

1 they come to his door, announce who they are, and
2 they knock on the door announcing who they are and
3 then he hides in the attic.

4 **THE COURT:** All right. Mr. O'Neil.

5 **MR. O'NEIL:** Your Honor, just as it relates to
6 the June 4th evidence when Mr. Green was sought by
7 law enforcement and it is alleged that Mr. Sanders
8 was in the house, first of all, Mr. Sanders of course
9 disputes any I guess evidence that he was actually
10 with Mr. Green or the other Mr. Green during this
11 incident. But either way, Your Honor, at that point
12 Mr. Sanders was not even a suspect. When that
13 contact occurred between Mr. Green on June 4th, 2007,
14 Mr. Sanders was not a suspect by law enforcement.

15 **THE COURT:** What difference does that make?

16 **MR. O'NEIL:** That contact with law enforcement,
17 his contact with law enforcement on June 4th does not
18 indicate that he had any knowledge he was being
19 sought by law enforcement for a murder because he
20 wasn't a suspect on June 4th.

21 **THE COURT:** How would he know he was a suspect
22 or not know he was a suspect?

23 **MR. O'NEIL:** When they issued an arrest warrant
24 for him or when the police contacted him to tell him
25 he is wanted for this crime, Your Honor.

1 **THE COURT:** Did they do that?

2 **MR. O'NEIL:** Not on June 4th. The only
3 evidence --

4 **THE COURT:** Did they ever talk to him, tell him
5 he was wanted?

6 **MR. O'NEIL:** No, Your Honor.

7 **THE COURT:** Oh. I didn't think so.'

8 **MR. O'NEIL:** Never spoke a word to Mr. Sanders
9 telling him he was a suspect in this case, Your
10 Honor.

11 **THE COURT:** Right. Okay. That's not the
12 question, whether they -- go ahead.

13 **MR. O'NEIL:** I think, Your Honor, the question
14 is under the totality of the circumstances whether or
15 not it raises an inference that he had knowledge that
16 he knew he was being sought for this crime. I think
17 the only piece of information the State has proffered
18 so far is that Morris may have talked to Mr. Sanders'
19 mother and said that he was being sought for some
20 crime. Although I'm not even sure whether or not
21 they said that law enforcement in the person of
22 Morris said that he was being sought for this murder.

23 But in regards to that, that's the only evidence
24 the State has proffered so far that Mr. Sanders may
25 or may not have been aware that he was being sought

1 for a crime by the time the police barged into his
2 residence on June the 12th, Your Honor.

3 Mr. Sanders disputes the fact that his mother
4 was even there during this incident. But I just say
5 that.

6 **THE COURT:** They said there was TV news only?

7 **MR. O'NEIL:** Yes, Your Honor.

8 **THE COURT:** That they had arrested two people
9 and that they were looking for a third person.

10 **MR. O'NEIL:** That somebody else may be arrested.
11 But that doesn't give Mr. Sanders knowledge that he
12 was going to be arrested, especially since he denies
13 even being at this incident location to start with,
14 Your Honor.

15 **THE COURT:** All right. I'll look at that.
16 Anything further on this issue?

17 **MS. SHIPLEY:** Yes, sir. We rely on State vs.
18 Pagan where all we are required to show is that the
19 defendant had knowledge that he was being sought
20 after by authorities; and based on the circumstances,
21 the totality of the circumstances, the fact that he
22 sees his co-defendant getting hauled off by police,
23 then police officers are coming to his house and
24 telling his mother, asking his mother where he is and
25 then he then hides in his attic when police announce

1 that they are there, those are all items that the
2 State believes the Court should consider in
3 determining under the totality of the circumstances
4 whether he was aware that he was wanted. Also not to
5 mention the fact that it was on the news that Justin
6 and Garry Green had both been arrested for murder.
7 So that is the basis for our argument.

8 **THE COURT:** All right. Do you want to hand that
9 up?

10 **MS. SHIPLEY:** Yes, sir.

11 **THE COURT:** Or give me the citation, one of the
12 other.

13 **MS. SHIPLEY:** 631 SE2d.

14 **THE COURT:** Hold on. Hold on. That's the same
15 case?

16 **MS. SHIPLEY:** The State vs. Pagan.

17 **MR. O'NEIL:** Yes.

18 **THE COURT:** I've got it.

19 **MS. SHIPLEY:** Yes. The same case.

20 **THE COURT:** I've got it. I've got it. All
21 right. That's your final motion other than --

22 **MS. SHIPLEY:** We have the Jackson v. Denno.

23 **THE COURT:** -- Jackson v. Denno?

24 **MR. O'NEIL:** Yes, sir.

25 **THE COURT:** Let's go ahead and pull this jury.

1 **MS. SHIPLEY:** Yes, sir.

2 **THE COURT:** Any objection?

3 **MS. SHIPLEY:** No, sir.

4 **MR. O'NEIL:** Your Honor, we also had a
5 photograph motion as well, Your Honor.

6 **THE COURT:** Do what?

7 **MR. O'NEIL:** A motion to limit some of the crime
8 scene photos.

9 **THE COURT:** Oh, yeah. I know that. After we
10 get the jury we'll do that.

11 **MS. SHIPLEY:** Your Honor, the voir dire that was
12 handed to me by the defense is acceptable to the
13 State with the exception of one of their questions
14 goes into significant detail about the facts in this
15 case. And I believe that --

16 **THE COURT:** I'm going to tell them about the
17 facts in this case.

18 **MS. SHIPLEY:** Through the indictment should be
19 sufficient is what I'm saying, if we could just
20 publish the indictment.

21 **THE COURT:** Well, I need to tell them where it
22 took place. I need to tell them where it took place.

23 **MS. SHIPLEY:** Yes, sir. I have no objection to
24 where it took place. But they go into some of the
25 facts of the case.

1 **THE COURT:** I'll do it.

2 **MS. SHIPLEY:** Okay.

3 **THE COURT:** I'll take care of it.

4 **MS. SHIPLEY:** Thank you.

5 **THE COURT:** Ten and five, folks?

6 **MS. SHIPLEY:** Yes, sir.

7 **MR. O'NEIL:** Yes, sir.

8 **THE COURT:** Bring the jury.

9 **MS. SHIPLEY:** Also, Your Honor, we would request
10 reciprocal questions.

11 **THE COURT:** You'll get them.

12 **MS. SHIPLEY:** Thank you.

13 (Pause)

14 **THE COURT:** Can you cut this witness list down?

15 **MS. MCDUFFIE:** Yes, sir, Your Honor.

16 **MS. SHIPLEY:** Don't forget to add the other
17 person on the list.

18 **THE COURT:** I mean, before the jury gets here,
19 is there any way to strike some of these that may
20 have been with regard to the other co-defendant?

21 **MS. MCDUFFIE:** No, sir.

22 **MS. SHIPLEY:** No, sir. Just out of an abundance
23 of caution.

24 (Pause)

25 **THE BAILIFF:** The jury is all present, Your

1 Honor.

2 **THE COURT:** Thank you very much. Good
3 afternoon, ladies and gentlemen. Welcome again.
4 This is the court of General Sessions. I explained a
5 little bit about that to you this morning. So those
6 of you who are selected on this jury in the case
7 we're about to start will be sitting on a criminal
8 jury.

9 Now, I'm going ask you -- as I told you this
10 morning, I'm going ask you several more questions to
11 see if you know anybody that's involved in this case
12 or have any connection with it or know anything about
13 the case.

14 And if you do, if you have to respond or if you
15 respond to any of the questions, I'm going to ask you
16 to stand and tell me your juror number. Now, the
17 reason for that is that some jurors feel a little bit
18 uncomfortable, in criminal court especially, giving
19 their names. So we've done this many times before
20 and feel jurors feel more comfortable just giving us
21 their juror numbers. So you'll be known by your
22 number. If you don't know your number you might look
23 at your jury badge to find out what your number is so
24 that if you do respond to any of these questions I
25 ask you, please respond by your jury number.

1 Now, I'm going tell you something about the case
2 in just a minute. I'm going to introduce the people
3 that will be actually involved in the trial in just
4 minute. But as you know, I introduced this morning
5 to you Mr. Giese who is the chief prosecutor of the
6 Fifth Judicial Circuit. Now, he will not actually be
7 trying this case today. Two of the deputy solicitors
8 will be trying the case. And they are Ms. Vanessa
9 Shipley and Ms. Joanna McDuffie. If you'll stand and
10 face the jury, please.

11 I'll ask if any member of the jury panel is
12 related by blood or marriage or connected by marriage
13 or employment or a close personal acquaintance of
14 either Ms. Vanessa Shipley or Ms. Joanna McDuffie.
15 If so, please stand. Anybody know either of these
16 two attorneys? All right.

17 Any member of the jury panel have any connection
18 either by blood or marriage or employment or a close
19 personal acquaintance with Mr. Barney Giese, the
20 actual solicitor in this circuit who I identified to
21 you this morning? Anybody know or have any
22 connection with Mr. Giese? Yes, sir. And your
23 number, please?

24 **JUROR:** 11.

25 **THE COURT:** Number 11. And what is your

1 connection, sir?

2 **JUROR:** He represented me one time.

3 **THE COURT:** Okay. Mr. 11 -- you have to get
4 used to that, too. It's hard for me to do it. How
5 long ago, Mr. 11?

6 **JUROR:** Ten years, something like that.

7 **THE COURT:** Ten years ago. All right. Would
8 that fact in any way interfere with your ability to
9 give both the State and the defendant a fair and
10 impartial trial in this case?

11 **JUROR:** Probably so.

12 **THE COURT:** All right. I'll talk to you about
13 that in just a minute. Thank you very much, Mr. 11.
14 Anybody else? Any member of the jury panel know
15 anybody, have any connection with anybody or a family
16 member that works in the Solicitor's Office here in
17 either Richland or Kershaw County? Any member of the
18 jury panel?

19 All right. Let me take that one step further.
20 Any member of the jury panel or any member of your
21 family involved in law enforcement? Because the
22 Solicitor's Office frequently has a lot of contact
23 with law enforcement and, in effect, they prosecute
24 cases that -- Law and Order -- I mean, Law and
25 Order -- I mean that law enforcement makes the cases

1 and then the State's attorney or the solicitor
2 prosecutes those cases.

3 So I need to know if any member of the jury
4 panel or any member of their family is involved with
5 law enforcement. And that could mean anything from
6 the City of Columbia Police Department, the City of
7 Forest Acres, the Richland County Sheriff's
8 Department, SLED, State Law Enforcement Division, the
9 FBI, any military police force, anything, any type of
10 law enforcement agency that either you or your family
11 are involved in. Any member of the jury panel? Yes,
12 sir. Your number, please?

13 **JUROR:** 90.

14 **THE COURT:** 9?

15 **JUROR:** 9-0. 90.

16 **THE COURT:** Oh. 90.

17 **JUROR:** Yes, sir.

18 **THE COURT:** I didn't have a 9 on my list. All
19 right, sir. And what --

20 **JUROR:** My aunt was a Columbia City police
21 officer. I believe she is retired now though.

22 **THE COURT:** All right. Your aunt?

23 **JUROR:** Yes, sir.

24 **THE COURT:** Let me just ask the State. Is this
25 a county case or a city case?

1 **MS. SHIPLEY:** County, Your Honor.

2 **THE COURT:** And your aunt's name was what?

3 **JUROR:** Tammy Blevins.

4 **THE COURT:** Okay. Mr. 90, would that fact in
5 any way interfere with your ability to give both the
6 State and the defendant a fair and impartial trial in
7 this case?

8 **JUROR:** No, sir.

9 **THE COURT:** Thank you very much, sir. Anybody
10 else? Yes, ma'am. And your -- she is --

11 **JUROR:** 161.

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

13 **JUROR:** My husband is currently employed with
14 the Sheriff's Department.

15 **THE COURT:** With what?

16 **JUROR:** With the Richland County Sheriff's
17 Department.

18 **THE COURT:** Your husband is?

19 **JUROR:** Yes, sir.

20 **THE COURT:** And his name is ...?

21 **JUROR:** Darryl Price.

22 **THE COURT:** Have I ever seen him?

23 **JUROR:** He is located here in the courthouse.

24 **THE COURT:** I know him. Ms. Price. I'm sorry.
25 I'm sorry. Ms. 161. I messed up already. I told

1 you it was hard for me. Ms. 161, would that fact in
2 any way interfere with your ability to give both the
3 State and defendant a fair and impartial trial in
4 this case?

5 **JUROR:** It could.

6 **THE COURT:** I understand. Thank you very much.
7 Yes, sir.

8 **JUROR:** 25.

9 **THE COURT:** Mr. 25. Yes, sir.

10 **JUROR:** I am a retired Columbia police officer.

11 **THE COURT:** Columbia police officer? How long
12 have you been retired?

13 **JUROR:** I retired four years ago. I served 34
14 years.

15 **THE COURT:** All right. Mr. 25, would that fact
16 in any way interfere with your ability to give both
17 the State and defendant a fair and impartial trial in
18 this case?

19 **JUROR:** No, sir.

20 **THE COURT:** Thank you very much. Anybody else?
21 Yes, ma'am. In the front row.

22 **JUROR:** My father.

23 **THE COURT:** Hold it.

24 **JUROR:** I'm number 32.

25 **THE COURT:** 32?

1 **JUROR:** Yes.

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

3 **JUROR:** My father was formerly with the City of
4 Columbia as a police officer.

5 **THE COURT:** City of Columbia?

6 **JUROR:** Correct.

7 **THE COURT:** Is he retired now or deceased?

8 **JUROR:** Deceased.

9 **THE COURT:** All right. How long ago was that,
10 ma'am?

11 **JUROR:** Oh, gosh. It's been a while.

12 **THE COURT:** 20 years?

13 **JUROR:** Yeah. Ten.

14 **THE COURT:** All right. Ms. 32, would that fact
15 in any way interfere with your ability to give both
16 the State and the defendant a fair and impartial
17 trial?

18 **JUROR:** No.

19 **THE COURT:** Thank you very much, Ms. 32. Yes,
20 ma'am.

21 **JUROR:** 105.

22 **THE COURT:** 105. Yes, ma'am.

23 **JUROR:** My brother-in-law, Mark Jones.

24 **THE COURT:** And where is he employed?

25 **JUROR:** I think it's Lexington.

1 **THE COURT:** Lexington?

2 **JUROR:** Yes, sir.

3 **THE COURT:** Okay. Ms. 105, would that fact in
4 any way interfere with your ability to give both the
5 State and the defendant a fair and impartial trial in
6 this case?

7 **JUROR:** No, sir.

8 **THE COURT:** Thank you very much, Ms. 105.
9 Anybody else? All right. I'll take it sort of one
10 step further. Any member of the jury panel a regular
11 contributor to or supporter of groups which have as
12 their primary function the assistance or support of
13 law enforcement?

14 Let me give you some examples. Mothers Against
15 Drunk Driving or Students Against Drunk Driving or
16 the Sheriff's Association or Citizens Against
17 Violence or the Troopers Association or any of these
18 groups, Sister Care; any of these groups that have as
19 their primary purpose the support of law enforcement
20 or victims and victims' rights.

21 In other words, some people volunteer for these
22 groups. Some make contributions to these groups. We
23 just need to know if you are in either of those
24 categories, whether you volunteer or support them
25 financially. Any member of the jury panel that

1 regularly; you know, not all the time necessarily,
2 but supports these groups. And, yes, ma'am. In the
3 back, your number?

4 **JUROR:** 24.

5 **THE COURT:** 24. Yes, ma'am.

6 **JUROR:** I support financially Sister Care.

7 **THE COURT:** Sister Care. All right. Anybody
8 else?

9 **JUROR:** Number 60.

10 **THE COURT:** Number 60.

11 **JUROR:** I also support Sister Care.

12 **THE COURT:** Yes. Somebody raised their hand.
13 Yes, ma'am.

14 **JUROR:** Number 131.

15 **THE COURT:** 131.

16 **JUROR:** I support Sheriff's Association.

17 **THE COURT:** Okay. Anybody else? Nobody gives
18 any money to the Troopers Association?

19 **JUROR:** Not any more. I have in the past.

20 **THE COURT:** Well, tell me your number, please.

21 **JUROR:** 83.

22 **THE COURT:** 83.

23 **JUROR:** Yes. And I've given money probably to
24 Sister Care and the Troopers Association before.

25 **THE COURT:** You're the only one here that's

1 given money to the Troopers Association? Whoa now.
2 Everybody starts to stand up. Ms. 83. Let me finish
3 with Ms. 83.

4 **JUROR:** 83.

5 **THE COURT:** You gave money to the Troopers
6 Association. Did you get the sticker to go on the
7 back of your car?

8 **JUROR:** I have in the past.

9 (Note - the above juror who just interrupted and
10 spoke is juror number 1)

11 **THE COURT:** Well, hold it. Wait a minute. Wait
12 a minute. Wait a minute. One at a time. Did you
13 get a sticker to go on the back of your car?

14 **JUROR:** I don't have it on.

15 **THE COURT:** Do what?

16 **JUROR:** I don't have it on there.

17 **THE COURT:** You didn't put it on?

18 **JUROR:** They send that.

19 **THE COURT:** Yeah. And you don't put it on?

20 **JUROR:** (Shakes head negatively).

21 **THE COURT:** Did you ever get a ticket?

22 **JUROR:** Have I ever gotten a ticket? Yes, sir.

23 **THE COURT:** Well, ...

24 **JUROR:** That would help?

25 **THE COURT:** That's what I'm trying to tell you.

1 You got the message now.

2 **JUROR:** I guess it would be better to put it on.

3 **THE COURT:** I'm sure they will appreciate it.

4 Thank you very much, Ms. 83. Now, anybody else?

5 Yes, ma'am. With the yellow shirt.

6 **JUROR:** 39. And I have given to the Troopers
7 Association.

8 **THE COURT:** What number?

9 **JUROR:** 39. And I have given to the Troopers
10 Association in the past. And, yes, I have the
11 stickers on my car.

12 **THE COURT:** You all know I don't really know
13 that. I just -- yes, sir. With the black shirt.
14 And the lady in the red. Yes, sir. With the black
15 shirt.

16 **JUROR:** Number 1.

17 **THE COURT:** Number 1.

18 **JUROR:** I have in the past.

19 **THE COURT:** Troopers?

20 **JUROR:** Troopers Association.

21 **THE COURT:** All right. And the lady with the
22 red dress. Number?

23 **JUROR:** 124. I have in the past, the Troopers,
24 in another county.

25 **THE COURT:** That's all right. They'll take your

1 money. Anybody else? Yes, sir. In the back.

2 **JUROR:** 94.

3 **THE COURT:** 94.

4 **JUROR:** Sister Care. And I'm sure the Troopers
5 Association at one time or another.

6 **THE COURT:** All right. Thank you very much,
7 sir. Anybody else? Yes, sir.

8 **JUROR:** 140.

9 **THE COURT:** 140.

10 **JUROR:** And, Your Honor, this has to do with
11 what you were doing before. My wife's uncle is a
12 Highway Patrolman. He lives in another community.

13 **THE COURT:** In South Carolina?

14 **JUROR:** Yes, sir.

15 **THE COURT:** He works for the Highway Patrol?

16 **JUROR:** Yes, sir.

17 **THE COURT:** That's your wife's uncle. All
18 right. Let me ask you this, Mr. 140. Would that
19 fact in any way interfere with your ability to give
20 both the State and defendant a fair and impartial
21 trial?

22 **JUROR:** No, sir.

23 **THE COURT:** Thank you very much. Anybody else?
24 Any member of the jury panel or any member of
25 your family employed by the state Attorney General's

1 Office? Let me ask you that. Any member of the jury
2 panel?

3 All right. Ladies and gentlemen, the defendant
4 in this matter today is Mr. Louis Sanders. Mr.
5 Sanders, if you'd stand and face the jury, please. I
6 need to know if any member of the jury panel is
7 related by blood, connected by marriage or employment
8 or a close personal acquaintance of Mr. Louis
9 Sanders? If so, please stand. Anybody know Mr.
10 Sanders?

11 Mr. Sanders is represented in this matter today
12 by three attorneys practicing law here in Richland
13 County, Ms. Camille Everhart, Mr. Deon O'Neil and
14 Mr. Cayce Secor. Any member of the jury panel
15 related by marriage or employment or a close personal
16 acquaintance of either Ms. Everhart, Mr. O'Neil or
17 Mr. Secor? If so, please stand. Anybody know these
18 attorneys? Thank you.

19 All right, ladies and gentlemen. What I hold in
20 my hand is what's known as an indictment. This is a
21 document that brings the case into court. It's the
22 formal legal document by which a case gets started in
23 our court system. I'm going to tell you a little bit
24 about it and I want to know if you know anything
25 about it. But it's not evidence of anything.

1 Any individual in this courtroom in the state of
2 South Carolina, in this United States is presumed
3 innocent of the charges brought by the State until
4 proven guilty beyond a reasonable doubt to a jury.
5 So we can't convict somebody with a piece of paper.
6 It's important that you understand that.

7 So when I tell you what the case is about, I'm
8 going to find out if you know something about it, but
9 I don't want you to take anything from this
10 indictment as to the guilt or innocence of the
11 defendant.

12 Now, the defendant is charged in this indictment
13 with murder, in that on or about June 3rd, 2007;
14 that's a little over a year ago, the defendant
15 willfully and with malice aforethought killed Israel
16 Cannon -- Israel Cannon; I want you to remember that
17 name -- by means of a gunshot wound and that Mr.
18 Cannon died as a result of that gunshot wound.

19 Now, this event, incident alleged to have
20 happened as I said on June 3rd of 2007 at or
21 around -- is it the 300 block of Westbridge Road?

22 **MS. SHIPLEY:** Yes, sir.

23 **THE COURT:** Is that correct? Here in Richland
24 County. I don't know where all of you live, but some
25 of you may live next to this. It's my understanding

1 that there was some press coverage of this event when
2 it took place. And I'm not sure which outlet the
3 press coverage was from, but it apparently made the
4 news.

5 So I need to know -- and this is going to be --
6 I want you to just -- if you know something about it
7 or heard something about it or saw on the news, I'm
8 just going to ask you to stand and I'm going to ask
9 you -- after you stand I'll ask you to come up here
10 and tell me about it. Because if you know something
11 about it, I'd rather you not tell everybody in the
12 audience what you know about it. I hope you
13 understand that. So I'll let you come forward and
14 tell me what, if anything, you know about it.

15 So the question is: Does any member of the jury
16 panel know anything about, even if you read it, even
17 if you saw it on television and that was the end of
18 it; anybody know anything about this alleged event?
19 Anybody? Was it television that carried the story?

20 **MS. SHIPLEY:** WLTX carried it, Your Honor.

21 **THE COURT:** Okay.

22 **MS. SHIPLEY:** Channel 19.

23 **THE COURT:** All right. Does that jog anybody's
24 memory?

25 Okay. Has any member of the jury panel had any

1 had any discussions with anybody about this case or
2 about the events that occurred, if indeed they did
3 occur, on June 3rd, 2007? Any member of the jury
4 panel had any conversations, somebody walked in at
5 work and said something happened in their
6 neighborhood, something like that? Any member of the
7 jury panel have any reference since that occurred?

8 All right. Now, let me ask, ladies and
9 gentlemen, because this is what's alleged to have
10 happened, it's classified as a violent crime, I need
11 to ask if any member of the jury panel or any member
12 of your family has ever been the victim of a violent
13 crime.

14 And I'm not going to ask you too much about it
15 because sometimes these things are pretty personal
16 and pretty sensitive. But I do need to know if any
17 member of the jury panel has ever or any member of
18 your family has ever been the victim of a violent
19 crime. If so, please stand. Now, let's just start
20 with the lady with the black blouse on. And your
21 number, please?

22 **JUROR:** 114.

23 **THE COURT:** Yes, ma'am. You or a member of your
24 family?

25 **JUROR:** Myself.

1 **THE COURT:** All right. How long ago?

2 **JUROR:** Seven years.

3 **THE COURT:** All right. Can you tell me just
4 briefly what it was?

5 **JUROR:** Sure. I was working as a pharmacist and
6 a gentleman entered the store and was shooting. So
7 he was charged with assault and battery with intent
8 to kill.

9 **THE COURT:** Is that matter resolved now?

10 **JUROR:** Yes.

11 **THE COURT:** Ms. 114, would that fact in any way
12 interfere with your ability to give both the State
13 and the defendant a fair and impartial trial in this
14 case?

15 **JUROR:** No, sir.

16 **THE COURT:** All right. Thank you very much,
17 Ms. 114. Yes, ma'am.

18 **JUROR:** 88.

19 **THE COURT:** Yes, ma'am, Ms. 88.

20 **JUROR:** My husband was a victim.

21 **THE COURT:** How long ago?

22 **JUROR:** In 2005.

23 **THE COURT:** 2005. Of what type of crime?

24 **JUROR:** Murder.

25 **THE COURT:** Murder. Was that in Richland

1 County?

2 **JUROR:** Yes, it was.

3 **THE COURT:** Is that matter resolved at this
4 time?

5 **JUROR:** No.

6 **THE COURT:** All right. Ms. Hill -- I'm sorry.
7 Ms. 88. I beg your pardon. Would that fact in any
8 way interfere with your ability to give both the
9 State and the defendant a fair and impartial trial?

10 **JUROR:** No.

11 **THE COURT:** Thank you very much, ma'am. With
12 the blue blouse on.

13 **JUROR:** Number 33.

14 **THE COURT:** 93?

15 **JUROR:** 33.

16 **THE COURT:** 33. Yes, ma'am.

17 **JUROR:** My uncle was a victim of murder in '97.

18 **THE COURT:** In '97?

19 **JUROR:** (Nods head affirmatively).

20 **THE COURT:** Would that fact in any way interfere
21 with your ability to give both the State and the
22 defendant a fair and impartial trial?

23 **JUROR:** Yes.

24 **THE COURT:** Thank you very much, Ms. 33. Yes,
25 ma'am. In the blue blouse.

1 **JUROR:** 187.

2 **THE COURT:** 187. Yes, ma'am.

3 **JUROR:** My son was shot in 2007.

4 **THE COURT:** In 2007?

5 **JUROR:** Yes.

6 **THE COURT:** All right. In Richland County?

7 **JUROR:** Yes.

8 **THE COURT:** Did he survive it?

9 **JUROR:** He survived.

10 **THE COURT:** All right. Has that matter

11 concluded at this time?

12 **JUROR:** No, it's not concluded.

13 **THE COURT:** All right. Ms. 187, would that fact

14 in any way interfere with your ability to give both

15 the State and the defendant a fair and impartial

16 trial in this case?

17 **JUROR:** I think it would.

18 **THE COURT:** Thank you very much, ma'am. Yes,

19 sir.

20 **JUROR:** 163. I had a brother who was stabbed.

21 **THE COURT:** Was that here in Richland County?

22 **JUROR:** No. This was elsewhere.

23 **THE COURT:** All right. And how long ago?

24 **JUROR:** About 20, 25 years ago.

25 **THE COURT:** All right. Would that fact in any

1 way interfere with your ability to give both the
2 State and the defendant a fair and impartial trial?

3 **JUROR:** I think so.

4 **THE COURT:** Thank you very much, Mr. 163. The
5 gentleman with the green shirt.

6 **JUROR:** Number 58.

7 **THE COURT:** All right, Mr. 58.

8 **JUROR:** My brother was the victim of armed
9 robbery on two occasions. On one occasion he was
10 shot at. This occurred in the middle 1970's.

11 **THE COURT:** All right. Is that in Richland
12 County?

13 **JUROR:** Yes, sir.

14 **THE COURT:** All right. Mr. 56 (sic), would
15 that --

16 **JUROR:** Excuse me. 58.

17 **THE COURT:** I'm sorry. 58. Would that fact in
18 any way interfere with your ability to give both the
19 State and the defendant a fair and impartial trial?

20 **JUROR:** No, sir.

21 **THE COURT:** Thank you very much, Mr. 58.

22 **JUROR:** Number 39.

23 **THE COURT:** Yes, ma'am, Ms. 39.

24 **JUROR:** And my father was killed in 1987 in
25 North Carolina.

1 **THE COURT:** In North Carolina?

2 **JUROR:** Yes, sir.

3 **THE COURT:** Was that a homicide?

4 **JUROR:** Yes.

5 **THE COURT:** Ms. 39, would that fact in any way
6 interfere with your ability to give both the State
7 and the defendant a fair and impartial trial in this
8 case?

9 **JUROR:** No. I didn't even know my father then.
10 I was young.

11 **THE COURT:** What year was it?

12 **JUROR:** '87.

13 **THE COURT:** Okay. Yes, sir. Number again?

14 **JUROR:** Number 1.

15 **THE COURT:** I ought to be able to remember that,
16 shouldn't I? Yes, sir, Mr. Number 1.

17 **JUROR:** We had a niece that was murdered. But
18 that's been over 15 years. And I had a first cousin
19 that was murdered.

20 **THE COURT:** First cousin?

21 **JUROR:** Yeah. It's been over 20 years ago.

22 **THE COURT:** Were those in Richland County?

23 **JUROR:** A niece in North Carolina. A cousin in
24 Richland County.

25 **THE COURT:** The cousin was in Richland County?

1 **JUROR:** Yeah.

2 **THE COURT:** Mr. 1, would that fact in any way
3 interfere with your ability to give both the State
4 and defendant a fair and impartial trial?

5 **JUROR:** No.

6 **THE COURT:** Thank you very much, sir. Yes, sir.
7 Your number, please?

8 **JUROR:** 213. My sister's name was Sandra.

9 **THE COURT:** Sir?

10 **JUROR:** My sister's name was Sandra. It was
11 '89.

12 **THE COURT:** 1989?

13 **JUROR:** Yes. She was murdered.

14 **THE COURT:** Where?

15 **JUROR:** Living in New York.

16 **THE COURT:** New York. Mr. 213, would that fact
17 in any way interfere with your ability to give both
18 the State and the defendant a fair and impartial
19 trial in this case?

20 **JUROR:** No, sir.

21 **THE COURT:** Thank you very much, Mr. 213.

22 All right, ladies and gentlemen. I'll turn that
23 around and ask if any member of the jury panel or any
24 member of your family has been accused of committing
25 a violent crime? Now, by that I mean to the point

1 that law enforcement was involved, not just somebody
2 getting angry and saying something. Any member of
3 the jury or any member of your family been accused of
4 committing a violent crime? If so, please stand.
5 Number, please.

6 *JUROR:* Number 175.

7 *THE COURT:* 175. Yes, sir.

8 *JUROR:* I was accused of murder.

9 *THE COURT:* How long ago?

10 *JUROR:* 1971.

11 *THE COURT:* 1971. That matter is obviously
12 resolved. Is that correct?

13 *JUROR:* Yes, sir.

14 *THE COURT:* All right, sir. Mr. 175, would that
15 fact in any way interfere with your ability to give
16 both the State and the defendant a fair and impartial
17 trial?

18 *JUROR:* No.

19 *THE COURT:* Thank you very much. Yes, ma'am.
20 And your number?

21 *JUROR:* Juror 209.

22 *THE COURT:* 209?

23 *JUROR:* Right.

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

25 *JUROR:* I have a brother that was accused of a

1 violent crime in 2000.

2 **THE COURT:** In the year 2000?

3 **JUROR:** Right.

4 **THE COURT:** You say several crimes?

5 **JUROR:** A violent crime.

6 **THE COURT:** A violent?

7 **JUROR:** A violent.

8 **THE COURT:** Oh, a violent. All right. I'm
9 sorry. Ms. 209, is that matter resolved at this
10 point?

11 **JUROR:** Yes.

12 **THE COURT:** It is?

13 **JUROR:** Yes.

14 **THE COURT:** Was that in Richland County?

15 **JUROR:** Yes.

16 **THE COURT:** Okay. But it's over now?

17 **JUROR:** Yes.

18 **THE COURT:** All right. Thank you very much.

19 Oh, let me ask you; Ms. 209, would that fact in any
20 way interfere with your ability to give both the
21 State and the defendant a fair and impartial trial in
22 this case?

23 **JUROR:** No.

24 **THE COURT:** Thank you very much, ma'am. And
25 your number again?

1 **JUROR:** 33.

2 **THE COURT:** Ms. 33.

3 **JUROR:** My uncle is serving time now for
4 attempted murder.

5 **THE COURT:** Now, let me just get it straight.
6 That's a different uncle?

7 **JUROR:** Yes. A different uncle.

8 **THE COURT:** A different uncle. All right. And,
9 Ms. 33, you've already told me you would have
10 difficulty sitting on this case?

11 **JUROR:** Yes.

12 **THE COURT:** Thank you very much, Ms. 33.
13 Anybody else?

14 All right, ladies and gentlemen. Has any member
15 of the jury panel ever testified in a criminal
16 prosecution case? Any member of the jury panel ever
17 testified in a criminal prosecution case? Yes, sir.
18 Just your number, please.

19 **JUROR:** 58.

20 **THE COURT:** 58. Mr. 58, were you called by the
21 State or by the defendant?

22 **JUROR:** By the State.

23 **THE COURT:** All right. Would that fact in any
24 way again interfere with your ability to sit and
25 render fair and impartial judgment?

1 **JUROR:** No, sir.

2 **THE COURT:** Thank you very much. Anybody else?

3 **JUROR:** 25.

4 **THE COURT:** Mr. 25, were you called by the State
5 or by the defense?

6 **JUROR:** I have been called by both sides.

7 **THE COURT:** By both sides. In your position as
8 a city policeman?

9 **JUROR:** Yes, sir.

10 **THE COURT:** Again just for the record, would
11 that fact in any way interfere with your ability to
12 give both the State and the defendant a fair and
13 impartial and trial?

14 **JUROR:** No, Your Honor.

15 **THE COURT:** Thank you very much. Anybody else?
16 Yes, ma'am.

17 **JUROR:** When I worked as a teller --

18 **THE COURT:** Number?

19 **JUROR:** 124.

20 **THE COURT:** 124.

21 **JUROR:** When I worked as a teller at a bank, I
22 don't know whether it's criminal or civil, I had to
23 testify.

24 **THE COURT:** Well, if you were a teller at a
25 bank --

1 **JUROR:** It was about a fraud case.

2 **THE COURT:** Ma'am?

3 **JUROR:** Bad check, fraud case.

4 **THE COURT:** Oh, I see. I see. I thought you
5 meant the other kind of bad case. Okay. Ms. 24,
6 would that fact in any way interfere with your
7 ability to give both the State and the defendant a
8 fair and impartial trial?

9 **JUROR:** No, sir.

10 **THE COURT:** Thank you. Anybody else?

11 Any member of the jury panel have any, shall I
12 say, strong aversion to guns or weapons or people
13 that own guns or weapons? Any member of the jury
14 panel feel that they would be so influenced by the
15 fact that the defendant may or may not have owned a
16 gun that they could not render a fair and impartial
17 verdict in this case? Any member of the jury panel
18 have those kind of feelings about guns or gun
19 ownership that would interfere with your ability to
20 give both the State and defendant a fair and
21 impartial trial?

22 All right. Ladies and gentlemen, I know this
23 gets a little tedious, but I'm going to read a list
24 of witnesses to you. These witnesses may or may not
25 testify. And it's a rather lengthy list. And I'm

1 not certain, because I don't know any more about the
2 case than you do at this point, how many of these
3 witnesses will be called. But we do need to know if
4 you're related to any of these people or if you have
5 a -- these people are your close personal
6 acquaintance or you have some other connection with
7 any of the following witnesses.

8 And the question is the same as to all
9 witnesses. Any member of the jury panel related by
10 blood, connected by marriage or employment or a close
11 personal acquaintance of any one of the following.
12 And if any of the witnesses are here, if you'll
13 please stand and be identified so the jury can see
14 you.

15 Garry Green. Michelle Wilson Jackson. Most of
16 these witnesses are probably scheduled to be here at
17 some time during the trial, so that's why they're not
18 all here today. Investigator Dave McRoberts with the
19 Richland County Sheriff's Department. And the next
20 probably ten or fifteen names I'm going read are with
21 the Richland County Sheriff's Department.

22 Investigator Dave McRoberts, Captain Stan Smith,
23 Sergeant Walter McDaniels, Investigator David Goff,
24 Dr. John Barron, Investigator Benjamin Bolding, David
25 Collins, Investigator Scott Faust, Investigator Brent

1 Tavenner, Sergeant Jimmy White, Investigator Zane
2 Padgett, Investigator Travis Holdorf, Gregory M.
3 Shaw, Investigator Ray Livingston, Deputy William
4 Kirkland, Deputy Larry Payne, Investigator Don McRae.
5 Yes, sir. Your number, please?

6 *JUROR:* 44.

7 *THE COURT:* And, Mr. 44, you know Mr. McRae?

8 *JUROR:* Mr. Payne.

9 *THE COURT:* I'm sorry. Mr. Payne. And how do
10 you know him?

11 *JUROR:* Just growing up in Richland County.

12 *THE COURT:* Sir?

13 *JUROR:* Just from here in Richland County.

14 *THE COURT:* Okay. Did you go to school with
15 him?

16 *JUROR:* Yes, sir. High school.

17 *THE COURT:* Okay. Do you have any other contact
18 with him, socially or business or anything like that?

19 *JUROR:* No, sir.

20 *THE COURT:* All right, sir. Let me ask you
21 this. Mr. 44, would that fact in any way interfere
22 with your ability to give both the State and the
23 defendant a fair and impartial trial?

24 *JUROR:* No, sir.

25 *THE COURT:* All right. Thank you very much,

1 sir. Investigator Don McRae. I'm sorry. I just did
2 that. Deputy --

3 **MS. SHIPLEY:** Zajdel.

4 **THE COURT:** -- Zajdel, Richland County Sheriff's
5 Department. Investigator Morris Davis, Investigator
6 Scott McDonald, Investigator Brien Gwynn, Bryan
7 Jones, Investigator James Boland, Investigator Tai
8 Jordon. Female, is it not?

9 **MS. SHIPLEY:** Male.

10 **THE COURT:** It's a male?

11 **MS. SHIPLEY:** (Nods head affirmatively).

12 **THE COURT:** Investigator Holly Wagner. That's a
13 female?

14 **MS. SHIPLEY:** That is a female.

15 **THE COURT:** Tena Goff, investigator Stan
16 Richards, Investigator Harold Bouknight, Investigator
17 Patricia Reed-Enzor, Investigator Trisha Collins,
18 Angel Hollis. Hue Tang with the State Law
19 Enforcement Division.

20 Karonda Williams with DHEC. Nikki Perry of
21 SLED. Amy Stephens, SLED. Selena Kinard, SLED. Ila
22 Simmons, SLED. Lisa McReynolds, SLED. Gerald Walls,
23 Richland County Sheriff's Department. Vince Goggins.

24 Sir, what do you want?

25 **UNKNOWN PERSON:** I'm with the P.D.'s office.

1 **THE COURT:** Would you please step outside? I'm
2 sorry. Vince Goggins, Richland County Sheriff's
3 Department. Robert Johnson, Richland County
4 Sheriff's Department. Special Agent Brian Mein,
5 Alcohol, Tobacco and Firearms. Investigator Jerry
6 Hall, Richland County. Captain Brian Redmond with
7 the Richland County Detention Center. Dr. Clay
8 Nichols. That's Palmetto Richland Hospital, Memorial
9 Hospital.

10 Phillip Pittman with the Coroner's Office.
11 Natasha Phelps with the Coroner's Office. Jim Reese
12 with the Coroner's Office. David Burns with the
13 Coroner's Office. Cathy Rawls with the Coroner's
14 Office.

15 Anthony Percell Smith. Latasha Goins,
16 G-O-I-N-S. Samantha Goins, Carolyn Culler, Glenn
17 Green, William Culler, Rick Jacobs, Melissa Capel,
18 Eric Johnson. Kimberly Bowers, although she also may
19 be known as Kimberly Patton. Kimberly Goins. Pamela
20 Cannon. Keith Eubanks, Tracey Caldwell, Jamal Baker,
21 Alex Williams.

22 Ricardo Guilbert. James Jolly with the EMS.
23 Margaret Harris. I'm sorry. Do you know Mr. Jolly?

24 **JUROR:** I think he's an employee of mine.

25 **THE COURT:** Okay. You think he's an employee?

1 *JUROR:* I think he is an employee of mine.

2 *THE COURT:* All right. Well, --

3 *JUROR:* That name sounds familiar.

4 *THE COURT:* All right. And what's your number,
5 please?

6 *JUROR:* 115.

7 *THE COURT:* 115?

8 *JUROR:* Yes.

9 *THE COURT:* And -- well, let me just ask, what
10 is your business?

11 *JUROR:* Palmetto Golden Farms.

12 *THE COURT:* Okay. And he may be full time or
13 part time?

14 *JUROR:* He was a full-time employee.

15 *THE COURT:* He was?

16 *JUROR:* Yes.

17 *THE COURT:* Okay. He was an employee. Okay.
18 All right. Thank you very much, Mr. 115.

19 Margaret Harris with EMS. Don Lital or Latelle
20 (phonetic) with the Coroner's Office. William B.
21 Patterson, Lashonda Downing, Maria Jackson, Erin
22 Hurley. Investigator Cataldo with Richland County.
23 Curtis Burnett with the Richland County Sheriff's
24 Department. William Cedarstaff, Richland County
25 Sheriff's Department.

1 Jennifer Blair with 911. Timothy Brown with
2 911. Cynthia Jones, an employee of the Fifth Circuit
3 Solicitor's Office. Ms. Jones is here. Marina
4 Bender. And Investigator Mark Wesley, Richland
5 County -- I'm sorry -- fifth Judicial Solicitor's
6 Office. Justin Green.

7 Ladies and gentlemen, I've got two lists. Some
8 of these, I can't actually tell which ones I've
9 already called out because I've called out so many.
10 So I'm going to call the second list. There may be
11 some duplicates on this list, but just bear with me.

12 Elizabeth Cook, Jamal Baker, Tracey Caldwell,
13 Natalie Casey, Kyle Bostic, Jason Azarigin or
14 something very close to that. Ricky Jacobs, Shirley
15 Sanders, Dante Sanders, William Patterson, Melissa
16 Capel or Caypel (phonetic).

17 All right. Ladies and gentlemen of the jury
18 panel, now knowing what you know about this case and
19 the persons that I've identified to you and after the
20 questions that I've asked of you, I'm going to ask
21 just a general broad question. Does any member of
22 the jury panel -- now, Ms. 33, you've already told me
23 the way you feel -- any member of the jury panel know
24 of any reason, any reason why he or she could not sit
25 in this case, render a fair and impartial verdict,

1 listen to both the State's case, the defense case, my
2 instructions to you on the law of the state of South
3 Carolina and render a fair and impartial verdict?
4 Any member of the jury panel feel that they could not
5 do that? And, Mr. 11?

6 **JUROR:** Number 11.

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

8 **JUROR:** My dad just got sentenced to eight
9 years.

10 **THE COURT:** I'm sorry?

11 **JUROR:** I said my dad just got sentenced to
12 eight years recently.

13 **THE COURT:** Oh.

14 **JUROR:** And it's just a bad taste in my mouth.

15 **THE COURT:** Okay. Well, you didn't tell me when
16 I -- okay. How long ago was that?

17 **JUROR:** About a couple of months ago.

18 **THE COURT:** Oh. All right. Well, if you'd told
19 me that earlier, I'd have told you the same thing I
20 told Ms. 33. That was in Richland County?

21 **JUROR:** (Nods head affirmatively).

22 **THE COURT:** All right. Thank you very much, Mr.
23 Beck, Mr. Number 12 (sic). Thank you. Anybody else?

24 **JUROR:** Number 133.

25 **THE COURT:** 133.

1 **JUROR:** Correct.

2 **THE COURT:** Let me just get your name. Just a
3 minute.

4 **JUROR:** Okay.

5 **THE COURT:** All right. Yes, sir.

6 **JUROR:** I would rather tell you off the record
7 that I feel my opinion the reason why I couldn't
8 serve.

9 **THE COURT:** Okay. Just come on up here. Just
10 come on up.

11 (Whereupon, a side bar conference off the record
12 is had)

13 **THE COURT:** Anybody else?

14 **JUROR:** I don't now if -- number 39 -- if this
15 is the time to ask this or not.

16 **THE COURT:** Sure.

17 **JUROR:** But I have some mandatory travel next
18 week.

19 **THE COURT:** For your job?

20 **JUROR:** Yes. Will the case go beyond this week?
21 That's where I have a concern.

22 **THE COURT:** Okay. I think we can take care of
23 that, Ms. 39. Thank you.

24 **JUROR:** All right.

25 (Whereupon, a bench conference is had)

1 **THE COURT:** Anything else from the State?

2 **MS. SHIPLEY:** No, sir, Your Honor.

3 **THE COURT:** Anything else from the defense?

4 **MS. EVERHART:** Nothing, Your Honor.

5 **THE COURT:** All right. Madam Clerk, give us a
6 jury, please.

7 **THE CLERK:** Ladies and gentlemen of the jury
8 panel, as I call your number, please come to the
9 microphone located here at the center. At the
10 microphone please restate your number and your place
11 of occupation. Juror number 223.

12 (White male)

13 **JUROR:** 223, and I'm a student at the Medical
14 University of South Carolina.

15 **THE CLERK:** What says the State?

16 **MS. SHIPLEY:** Please present the juror.

17 **THE CLERK:** What says the defense?

18 **MS. EVERHART:** Please seat this juror.

19 **THE CLERK:** Please have a seat in the jury box.
20 Juror number 31.

21 (Black female)

22 **THE COURT:** Where are you employed?

23 **JUROR:** I am not employed right now.

24 **THE COURT:** Unemployed?

25 **JUROR:** Yes.

1 **THE COURT:** All right. Thank you, ma'am.

2 **THE CLERK:** What says the defense?

3 **MS. SHIPLEY:** Please excuse the juror.

4 **THE CLERK:** Please return to the back of the
5 courtroom. Juror number 131.

6 (White female)

7 **JUROR:** Number 131. I'm employed at National
8 Health Care.

9 **THE CLERK:** What says the State?

10 **MS. SHIPLEY:** Please present the juror.

11 **THE CLERK:** What says the defense?

12 **MS. EVERHART:** Please dismiss this juror.

13 **THE CLERK:** Please return to the back of the
14 courtroom. Juror number 135.

15 (Black male)

16 **JUROR:** Juror number 135. I work for Colonial
17 Life as a systems analyst.

18 **THE CLERK:** What says the State?

19 **MS. SHIPLEY:** Please present the juror.

20 **THE CLERK:** What says the defense?

21 **MS. EVERHART:** Please seat this juror.

22 **THE CLERK:** Please have a seat in the jury box.
23 Juror number 40.

24 (White female)

25 **JUROR:** Number 40. I work at St. Joseph's

1 School.

2 **THE CLERK:** What says the State?

3 **MS. SHIPLEY:** Please present the juror.

4 **THE CLERK:** What says the defense?

5 **MS. EVERHART:** Please excuse this juror.

6 **THE CLERK:** Please return to the back of the
7 courtroom. Juror number 184.

8 (Black male)

9 **JUROR:** 184, employed at Shaw Flooring.

10 **THE CLERK:** What says the State?

11 **MS. SHIPLEY:** Please present the juror.

12 **THE CLERK:** What says the defense?

13 **MS. EVERHART:** Please seat this juror.

14 **THE CLERK:** Please have a seat in the jury box.
15 Juror number 178.

16 (White male)

17 **JUROR:** 178. Moncrief Army Hospital.

18 **THE CLERK:** What says the State?

19 **MS. SHIPLEY:** Please present the juror.

20 **THE CLERK:** What says the defense?

21 **MS. EVERHART:** Please seat this juror.

22 **THE CLERK:** Please have a seat in the jury box.
23 Juror number 105.

24 (Black female)

25 **JUROR:** I'm employed with Indy Diagnostic

1 Services.

2 **THE CLERK:** What says the State?

3 **MS. SHIPLEY:** Please present the juror.

4 **THE CLERK:** What says the defense?

5 **MS. EVERHART:** Please dismiss this juror.

6 **THE CLERK:** Please return to the back of the

7 courtroom. Juror number 68.

8 (Black female)

9 **JUROR:** 68. I'm a contract engineer at AT&T.

10 **THE CLERK:** What says the State?

11 **MS. SHIPLEY:** Please present the juror.

12 **THE CLERK:** What says the defense?

13 **MS. EVERHART:** Please seat this juror.

14 **THE CLERK:** Please have a seat in the jury box.

15 Juror number 24.

16 (White female)

17 **JUROR:** 24. English professor at Columbia

18 College.

19 **THE CLERK:** What says the State?

20 **MS. SHIPLEY:** Please present the juror.

21 **THE CLERK:** What says the defense?

22 **MS. EVERHART:** Please dismiss this juror.

23 **THE CLERK:** Please return to the back of the

24 courtroom. Juror number 121.

25 (Black female)

1 **JUROR:** 121. Hollowback Pharmaceutical.

2 **THE CLERK:** What says the State?

3 **MS. SHIPLEY:** Please seat the juror.

4 **THE CLERK:** What says the defense?

5 **MS. EVERHART:** Please seat this juror.

6 **THE CLERK:** Please have a seat in the jury box.

7 Juror number 59.

8 (Black female)

9 **JUROR:** Juror number 59, Ft. Jackson Hospital of
10 the Moncrief Army Hospital.

11 **THE CLERK:** What says the State?

12 **MS. SHIPLEY:** Please present the juror.

13 **THE CLERK:** What says the defense?

14 **MS. EVERHART:** Please seat this juror.

15 **THE CLERK:** Please have a seat in the jury box.

16 Juror number 185.

17 (Black male)

18 **JUROR:** 185, Columbia Fire Department.

19 **THE CLERK:** What says the State?

20 **MS. SHIPLEY:** Please present the juror.

21 **THE CLERK:** What says the defense?

22 **MS. EVERHART:** Please seat this juror.

23 **THE CLERK:** Please have a seat in the jury box.

24 Juror number 6.

25 (White male)

1 **JUROR:** Number 6, South Carolina DHEC.

2 **THE CLERK:** What says the State?

3 **MS. SHIPLEY:** Please present the juror.

4 **THE CLERK:** What says the defense?

5 **MS. EVERHART:** Please excuse this juror.

6 **THE CLERK:** Please return to the back of the
7 courtroom. Juror number 45.

8 (Black female)

9 **JUROR:** 45, Wrights-Brook Elementary.

10 **THE CLERK:** What says the State?

11 **MS. SHIPLEY:** Please present the juror.

12 **THE CLERK:** What says the defense?

13 **MS. EVERHART:** Please seat this juror.

14 **THE CLERK:** Please have a seat in the jury box.
15 Juror number 1.

16 (Black male)

17 **THE CLERK:** Place of occupation.

18 **JUROR:** School District One, property
19 accountant.

20 **THE CLERK:** What says the State?

21 **MS. SHIPLEY:** Please present the juror.

22 **THE CLERK:** What says the defense?

23 **MS. EVERHART:** Please dismiss this juror.

24 **THE CLERK:** Please return to the back of the
25 courtroom. Juror number 50.

1 (White female)

2 **JUROR:** Number 50, school administrator and
3 teacher.

4 **THE CLERK:** What says the State?

5 **MS. SHIPLEY:** Please present the juror.

6 **THE CLERK:** What says the defense?

7 **MS. EVERHART:** Please excuse this juror.

8 **THE CLERK:** Please return to the back of the
9 courtroom. Juror number 90.

10 (White male)

11 **JUROR:** Number 90, state printing.

12 **THE CLERK:** What says the State?

13 **MS. SHIPLEY:** Please present the juror.

14 **THE CLERK:** What says the defense?

15 **MS. EVERHART:** Please seat this juror.

16 **THE CLERK:** Please have a seat in the jury box.
17 Juror number 171.

18 (White female)

19 **JUROR:** Number 171, Ed Robinson Dry Cleaning.

20 **THE CLERK:** What says the State?

21 **MS. SHIPLEY:** Please present the juror.

22 **THE CLERK:** What says the defense?

23 **MS. EVERHART:** Please seat this juror.

24 **THE CLERK:** Please have a seat in the jury box.
25 Juror number 225.

1 (Black female)

2 **JUROR:** 225, Richland School District One
3 professor.

4 **THE CLERK:** What says the State?

5 **MS. SHIPLEY:** Please present the juror.

6 **THE CLERK:** What says the defense?

7 **MS. EVERHART:** Please seat this juror.

8 **THE CLERK:** Please have a seat in the jury box.

9 **THE COURT:** Two alternates.

10 **THE CLERK:** Juror number 176.

11 (White female)

12 **JUROR:** Number 176. Retired school teacher.

13 **THE CLERK:** What says the State?

14 **MS. SHIPLEY:** Please present the juror.

15 **THE CLERK:** What says the defense?

16 **MS. EVERHART:** Please excuse this juror.

17 **THE CLERK:** Please return to the back of the
18 courtroom. Juror number 163.

19 (White male)

20 **JUROR:** 163. Computer Sciences Corporation.

21 **THE CLERK:** What says the State?

22 **MS. SHIPLEY:** Please present the juror.

23 **THE CLERK:** What says the defense?

24 **MS. EVERHART:** Please excuse this juror.

25 **THE CLERK:** Please return to the back of the

1 courtroom. Juror number 182.

2 (White female)

3 **JUROR:** 182, Richland School District Two.

4 **THE CLERK:** What says the State?

5 **MS. SHIPLEY:** Please present the juror.

6 **THE CLERK:** Does the defense challenge for
7 cause?

8 **MS. EVERHART:** No.

9 **THE CLERK:** Please have a seat in the jury box.
10 Juror number 175.

11 (White male)

12 **JUROR:** 175, business owner, driving truck.

13 **THE CLERK:** What says the State?

14 **MS. SHIPLEY:** Please excuse the juror.

15 **THE CLERK:** Please return to the back of the
16 courtroom. Juror number 88.

17 (White female)

18 **JUROR:** Number 88. I am an exterminator. Of
19 roaches. I want to make that clear.

20 **THE COURT:** Well, if you said that in New York,
21 you'd probably have a different connotation.

22 **THE CLERK:** Does the State challenge for cause?

23 **MS. SHIPLEY:** No, ma'am. Please seat the juror.

24 **THE COURT:** All right. Go ahead.

25 **THE CLERK:** What says the defense?

1 **MS. EVERHART:** Please seat this juror.

2 **THE CLERK:** Please have a seat in the jury box.

3 **THE COURT:** All right. Any objections to the
4 jury selection process from the State?

5 **MS. SHIPLEY:** None from the State, Your Honor.

6 **THE COURT:** From the defense?

7 **MR. O'NEIL:** No, Your Honor.

8 **THE COURT:** All right. Remaining members of the
9 jury panel, obviously you were not called and
10 selected on this case. So I'm going to release you
11 for the afternoon, ask you to be back in the -- do
12 you want them back tomorrow or call in? Should they
13 call in?

14 **THE CLERK:** Maybe they should check downstairs.

15 **THE COURT:** Yeah. Just return to the jury
16 assembly room and they'll give you further
17 instructions. I don't know if there's another case
18 that's going to start tomorrow, but it will probably
19 be in the civil courts since this case is just
20 getting started.

21 Before you leave I want to thank you for coming.
22 I want to tell you, and I'll tell these jurors before
23 it's over, but I'll tell you before you leave now,
24 this system can do without me; this system can do
25 without these lawyers; it can cannot do without you.

1 You're such an important part of the judicial system
2 not only of this county but this state and this
3 nation. Your service is so important, or it was so
4 important to the founding fathers of this country
5 that they into the Constitution put the jury system
6 because they believed, and we still believe, that
7 it's the fairest way to settle these disputes in our
8 country.

9 Your service is vitally important to the
10 administration of justice in this county. I want you
11 to know that, and I want you to know that everybody
12 associated with the court system is appreciative of
13 your being here today. So thank you very much.
14 You're now excused to go back, return to the jury
15 assembly room for further instructions.

16 All right, ladies and gentlemen of the jury.
17 We're not going to start the case this afternoon.
18 It's 4:00, and there are a number of legal matters I
19 need to take up with the attorneys before we start.
20 So I'm going to dismiss you now for the afternoon.
21 Tomorrow I'm going to ask you to return at 9:30 at
22 which time we'll start the trial.

23 Now, I'm going to ask you to return to your jury
24 room. Now, the bailiffs are going to show you, these
25 two gentlemen that are working with the court system

1 here today, they're going to show you where your jury
2 room is. And in the morning when you return I'll ask
3 you to return to the jury room, not to the jury
4 assembly room downstairs because then we'll just have
5 to come see if we can find you. So if you will come
6 back upstairs to the third floor, to this jury
7 assembly room, we would appreciate it.

8 I'm going to ask you to do something when you
9 return to the jury room in the morning. Certainly
10 you need to sort of mingle a little bit, get to know
11 each other. I'm going to ask you to select one of
12 your members -- it cannot be one of the last two
13 ladies chosen because those are going to be our
14 alternates -- but one of your members to be the
15 foreperson of this jury.

16 It can be -- it doesn't matter who it is. I
17 always tell jurors the foreperson doesn't get paid
18 any more than anybody else. But that person will
19 take the seat where the gentleman on the front row is
20 seated with the light blue shirt and will maintain
21 that seat throughout the trial.

22 The rest of the seats don't have any names on
23 them, obviously. So I want to you sit where you're
24 most comfortable, where you can see what takes place
25 here. If you have a hearing problem, for example,

1 you may want to sit on the front row so that you can
2 hear everything that goes on. But just I want you to
3 be comfortable when you take your seats in the jury
4 room (sic).

5 I'm going to ask you to not discuss this case
6 over the evening hours with anyone. I don't think --
7 well, I'm pretty sure that there's no press here. So
8 I don't think there is going to be any press or
9 newspaper reports of what's going on up here in this
10 courtroom this week, but there could be.

11 But in any event, I'm going to ask you not to
12 discuss this case with anyone. That would include
13 your family and friends, because you never know when
14 you mention something like this, somebody is going to
15 have something to say. And you are the jurors. You
16 are the ones that are going to hear all the evidence.
17 You're going to be asked to make a decision. And
18 that decision should be uninfluenced by what anyone
19 else might tell you or have to say about the case.

20 I know it's very tempting to go home and say, oh,
21 I got selected to sit on a murder case. The next
22 question is what is that case about, who is involved.
23 And it gets into a discussion, and that would be
24 inappropriate for you to discuss the case prior to
25 your actually hearing the case. And I'm going to ask

1 you only to discuss it in the jury room with your
2 fellow jurors.

3 Now, I'm going to ask you when you return to the
4 jury room not to even start talking about it now
5 because you haven't heard any of the evidence that's
6 going to be presented. So if you'll do those things
7 for me, I would appreciate it. If you'll let the
8 bailiff know who you've selected to be your
9 foreperson, we'll receive that information.

10 And the last thing I'm going to ask you to do is
11 have a pleasant evening. We'll see you at 9:30 in
12 the morning at which time we'll begin the trial.
13 Thank you very much.

14 (Jury out at 3:57 p.m.)

15 **THE COURT:** All right, counsel. Let's go ahead
16 with the Denno motion, I mean the Denno hearing.
17 Yes, sir.

18 **MR. O'NEIL:** Your Honor, could we have a
19 five-minute bathroom break for my client's benefit?

20 **THE COURT:** For what?

21 **MR. O'NEIL:** My client's benefit.

22 **THE COURT:** Are you sure it's for your client's
23 benefit?

24 **MR. O'NEIL:** Yes, Your Honor.

25 **THE COURT:** Well, John Meadors is not even in

1 here. All right. Let's take a few minutes and we'll
2 relax and then we'll come back. And I want to go
3 through Jackson v. Denno and the -- well, I guess
4 that's maybe all we can do this afternoon. I'm not
5 sure. Stand at ease for ten minutes.

6 (Whereupon, a break is taken)

7 (WHEREUPON, State's Exhibit No. 6 is marked for
8 identification.)

9 (WHEREUPON, State's Exhibit No. 7 is marked for
10 identification.)

11 (WHEREUPON, State's Exhibit No. 8 is marked for
12 identification.)

13 (WHEREUPON, State's Exhibit No. 9 is marked for
14 identification.)

15 (WHEREUPON, State's Exhibit No. 10 is marked for
16 identification.)

17 (WHEREUPON, State's Exhibit No. 11 is marked for
18 identification.)

19 (WHEREUPON, State's Exhibit No. 12 is marked for
20 identification.)

21 (WHEREUPON, State's Exhibit No. 13 is marked for
22 identification.)

23 (WHEREUPON, State's Exhibit No. 14 is marked for
24 identification.)
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1 (WHEREUPON, State's Exhibit No. 15 is marked for
2 identification.)

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4 identification.)

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6 identification.)

7 (WHEREUPON, State's Exhibit No. 18 is marked for
8 identification.)

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10 identification.)

11 (WHEREUPON, State's Exhibit No. 20 is marked for
12 identification.)

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14 identification.)

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16 identification.)

17 (WHEREUPON, State's Exhibit No. 23 is marked for
18 identification.)

19 (WHEREUPON, State's Exhibit No. 24 is marked for
20 identification.)

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22 identification.)

23 (WHEREUPON, State's Exhibit No. 26 is marked for
24 identification.)

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1 (WHEREUPON, State's Exhibit No. 27 is marked for
2 identification.)

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4 identification.)

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6 identification.)

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8 identification.)

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10 identification.)

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12 identification.)

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14 identification.)

15 (WHEREUPON, State's Exhibit No. 34 is marked for
16 identification.)

17 (WHEREUPON, State's Exhibit No. 35 is marked for
18 identification.)

19 (WHEREUPON, State's Exhibit No. 36 is marked for
20 identification.)

21 **THE COURT:** Counsel, let me see you at the
22 bench, please.

23 (Whereupon, a bench conference is had)

24 **THE COURT:** All right, Solicitor. Are you ready
25 to proceed?

1 **MS. SHIPLEY:** Yes, Your Honor.

2 **THE COURT:** Call your first witness.

3 **MS. SHIPLEY:** Thank you, Your Honor. The State
4 calls Investigator Don McRae.

5 DON MCRAE, after being duly sworn, testifies as
6 follows:

7 **THE CLERK:** Please have a seat. State your full
8 name for the record.

9 **WITNESS:** Investigator Don McRae, the Richland
10 County Sheriff's Department.

11 DIRECT EXAMINATION

12 **BY MS. SHIPLEY**

13 **Q** Investigator McRae, could you please relate to the
14 Court where it is you're employed?

15 **A** Currently employed with the Richland County Sheriff's
16 Department, the major crimes unit.

17 **Q** And what are part of your duties at the major crimes
18 department?

19 **A** Currently my major duty is to investigate robberies
20 that occur within our jurisdiction. I'm also
21 occasionally assigned as primary in homicide cases.

22 **Q** And how long have you been with the Sheriff's
23 Department?

24 **A** I've been employed with the Sheriff's Department now
25 just over five years.

1 Q And prior to that did you have any law enforcement
2 experience?

3 A Within the military, yes.

4 Q And are part of your duties to interview suspects
5 that you come across in investigating crimes?

6 A It is..

7 Q And could you please relay to the Court what training
8 you received in order to obtain statements from
9 suspects?

10 A Basic interview and interrogation classes put on by a
11 former agent of the FBI. I've been through that
12 class. Training through the academy, the police
13 academy here in South Carolina.

14 Q And how many people do you believe you have
15 interviewed and advised them of their Miranda
16 warnings in your five years here in Richland County?

17 A Over 100.

18 Q So you have a lot of experience doing it as well. Is
19 that correct?

20 A I do.

21 Q I'm going to bring your attention to the case that
22 we're all here for, State vs. Louis Sanders. Do you
23 recall coming in contact with Louis Sanders?

24 A I do.

25 Q Can you please tell Judge Cooper about the

1 circumstances of your encounter, where you were,
2 approximately what time of day it was?

3 **A** I can. Your Honor, on June the 12th at approximately
4 11:30 in the morning I was notified by members of our
5 fugitive team that the team was located at [REDACTED]
6 Torrowood in Richland County which was the last known
7 address of Louis Sanders, the defendant, and had
8 located him inside the residence.

9 I was currently at the headquarters at that
10 time. I departed headquarters to meet with members
11 of the fugitive team and SLED officers at that
12 location. Once I arrived on the scene I was told
13 that Mr. Sanders had retreated to the attic of the
14 house and that officers are inside the residence
15 attempting to place Mr. Sanders under arrest.

16 **Q** About how long did it take once you were notified
17 that he was in custody?

18 **A** Once I arrived on the scene, I stood outside for
19 probably five to seven minutes, maybe as long as ten
20 minutes. After about that length of time, I was
21 notified that Mr. Sanders was in custody.

22 **Q** And at that time was there anyone else who was at his
23 residence?

24 **A** There was. There was a female who was later
25 identified as a Natalie Casey who we were told was

1 the girlfriend of Louis Sanders.

2 Q Now, at that point what did you instruct officers to
3 do with Mr. Sanders once he was placed under arrest?

4 A I asked -- they brought Mr. Sanders out to the street
5 level, out to the street. At that time I asked
6 officers to transport Mr. Sanders to the Richland
7 County Sheriff's Department for an interview.

8 Q And at that point did you -- by the way, what was he
9 charged with and arrested for?

10 A Murder.

11 Q In which case?

12 A The murder of Israel Cannon.

13 Q Okay. Now, once you had him brought to headquarters,
14 can you please explain for the Court approximately
15 what time it was that you began your interview of the
16 defendant?

17 A At approximately 12:45 p.m. myself and Investigator
18 Goff began the interview with Mr. Sanders. As with
19 any interview that I do, I begin by reading the
20 subject his Miranda rights due to the fact he was in
21 custody and was not free to leave.

22 Q All right. And do you have the advice of rights
23 form, the original? I'm going to show you what's
24 been marked State's No. 6 for identification
25 purposes?

1 **A** This would be the standard advice of rights form used
2 by the Richland County Sheriff's Department informing
3 subjects that are in custody and not free to leave of
4 their Miranda rights.

5 **Q** Okay. Could you go over this form as you did with
6 Mr. Sanders back on June 12th, 2007 at 12:45 p.m.?

7 **A** Due to the fact that, you know, after five years you
8 begin to get a pattern the way that you do things, I
9 always begin by filling in the top portion of the
10 form. This top portion consists of the person's name
11 that's being interviewed, the location of the
12 interview, the officers present, the date, and the
13 current time.

14 **Q** Okay. And who is being interviewed according to this
15 form?

16 **A** Louis Sanders.

17 **Q** And where was he being interviewed?

18 **A** At 5623 Two Notch Road in Columbia, South Carolina,
19 which is Richland County Sheriff's Department
20 headquarters.

21 **Q** All right. And who is present at this time?

22 **A** Myself and Investigator David Goff.

23 **Q** Okay. And again, the date and time?

24 **A** His Miranda would have been began being read on
25 June 12th, 2007 at 12:45 p.m.

1. Q Okay. Investigator McRae, please go over this advice
2 of rights form as you did with Mr. Sanders?

3 A Your Honor, there are two parts to this form. The
4 first part is just the standard Miranda warning. The
5 bottom portion of the form is the waiver of his
6 Miranda rights. On the left of each warning is a box
7 which I habitually check after I've read to the
8 defendant or the person I'm questioning and get an
9 affirmative that they understand it.

10 Q All right. And so what is the first box that you
11 check off? And when did you check that off?

12 A Okay. I would have checked it off after I would have
13 read the right to the defendant. That first question
14 or the first statement is: "Before we ask you any
15 questions you must understand your rights."

16 Q What happened next?

17 A I would have checked -- I would have ensured that the
18 person that I'm interviewing would have understood
19 that.

20 Q And did Mr. Sanders indicate he understood it?

21 A He did.

22 Q As a result of him indicating he understood it, what
23 did you do?

24 A I checked the box.

25 Q What's the next line?

1 **A** The next block would say: "You have the right to
2 remain silent." Again I would ask the defendant if
3 he understood his right to remain silent. He would
4 give me an affirmative response. Therefore, I would
5 check the box.

6 **Q** Okay.

7 **A** I would continue on down the form in the same manner.
8 The next line is: "Anything you say can be used
9 against you in court." I would wait for an
10 affirmative response and then check the block.

11 "You have the right to talk to a lawyer for
12 advice before we ask you any questions and to have a
13 lawyer with you during any questioning." I would
14 wait for an affirmative response from the defendant
15 and check the block.

16 "If you cannot afford a lawyer, one will be
17 appointed for you before any questioning if you
18 wish." Again wait for an affirmative response and
19 check the block.

20 "If you decide to answer questions now without a
21 lawyer present, you still have the right to stop
22 answering at any time. You also have the right to
23 stop answering at any time until you talk to a
24 lawyer." Again wait for an affirmative response and
25 check the block.

1 Q Now, after you waited for affirmative responses and
2 checked each box as you went over his rights, did you
3 also ask him whether he understood all his rights?

4 A I did.

5 Q As a result of that, did you have him sign confirming
6 that he understood his rights?

7 A I did.

8 Q And did you witness that signature?

9 A I did.

10 Q Who else witnessed it?

11 A David Goff.

12 Q Now, after you advised him of his rights, did you
13 inquire whether he wanted to give up or waive those
14 rights?

15 A I did.

16 Q Could you please go over that portion of the form?

17 A The bottom part of the form is the waiver of his
18 Miranda rights. I would again read the paragraph
19 which states: "I have read this statement of my
20 rights and understand what my rights are. I am
21 willing to talk and answer questions. I understand
22 and know what I am doing. No promises have been made
23 to me and no pressure or coercion of any kind has
24 been used against me."

25 Q Did you have to explain any of those words to Mr.

1 Sanders?

2 **A** I did. In my experience I've realized that
3 "coercion" is a word that many people do not
4 understand the meaning of. At that point I would
5 underline the word "coercion" and explain the
6 definition of coercion to the defendant.

7 **Q** And what was your definition of coercion to this
8 defendant?

9 **A** Basically I like to just bring it down to the
10 simplest matter that I can. My basic explanation to
11 anybody that I interview that I have Mirandized is:
12 I have not pressured you; in other words, I am not
13 holding a gun to your head forcing you to answer my
14 questions.

15 **Q** Okay. By the way, where in the Sheriff's Department
16 were you when this statement was being -- when he was
17 being advised of his rights initially?

18 **A** This form would have been filled out on the second
19 floor of the Sheriff's Department, normally inside --
20 I believe that we were inside Captain Stan Smith's
21 office at this time.

22 **Q** And can you describe Captain Stan Smith's office to
23 Judge Cooper, please?

24 **A** Captain Smith's office is probably maybe a 12-by-12
25 office with a desk, some bookshelves, some file

1 cabinets inside that office. It does have a window
2 that you can look out. However, there are blinds.
3 They are typically closed during an interview and the
4 door is typically closed.

5 Q Okay. And you indicated Mr. David Goff was with you
6 during this time?

7 A That is correct.

8 Q And the defendant remained in custody or handcuffs at
9 this time?

10 A I don't recall if this particular defendant actually
11 remained in cuffs. Normally we'll relax the cuffs
12 once we get them in there just to put them at ease.
13 And, you know, there's -- you know, they're upstairs
14 at the Sheriff's Department. So --

15 Q Okay. Now, what is the point of having two
16 individuals in the room at that time?

17 A Two individuals, basically for my safety. Also if
18 there's any admission, there's another investigator
19 that can testify to those admissions.

20 Q Okay. Did you go over any of his educational
21 background with him, whether or not he had had
22 anything alcoholic to drink or whether he was under
23 the influence of any illegal drugs?

24 A Those are standard questions that I would begin a
25 conversation with. They usually break the ice.

1 Q Okay. And at that point were you satisfied that Mr.
2 Sanders had a high enough education to understand the
3 questions you were asking him?

4 A I did.

5 Q And do you remember what grade he told you he
6 completed?

7 A I believe it was the tenth or the eleventh grade.

8 Q And did he indicate whether or not he took any exit
9 exams?

10 A Not to me.

11 Q Later on to someone else?

12 A Later on probably to another investigator.

13 Q Now, once you advised Mr. Sanders of his rights, did
14 Mr. Goff leave and someone else come into the office?

15 A He did.

16 Q Okay.

17 A At this time Sergeant McDonald who is now Lieutenant
18 McDonald would have completed the interview of
19 Ms. Natalie Casey. And Lieutenant McDonald came in
20 the office. And at this point Investigator Goff got
21 up and left the room, leaving only myself and
22 Lieutenant McDonald in the interrogation -- in the
23 room. We typically do that. We didn't want to
24 intimidate Mr. Sanders in any manner.

25 Q Okay. At that point do you recall whether or not Mr.

1 Sanders was asked in further detail about his
2 educational background?

3 A He was.

4 Q Okay. And if you could relay that to the Court?

5 A Lieutenant McDonald would ask Mr. Sanders his
6 educational level, which he would reply he finished
7 the tenth or the eleventh grade to the best of my
8 memory.

9 Q Did he indicate whether or not he had completed and
10 passed a GED exam?

11 A I believe he did.

12 Q Did he indicate whether or not he was under the
13 influence of any alcohol or drugs?

14 A Mr. Sanders would deny being under the influence of
15 any alcohol or any drugs.

16 Q Okay. In fact, did he relay when was the last time
17 he had consumed anything alcoholic to drink?

18 Lieutenant McDonald was present, correct?

19 A Yes, ma'am.

20 Q Okay. All right. Going back to -- at that point
21 could you please relate to the judge, once the
22 defendant was Mirandized, advised of his rights and
23 waived those rights, did you begin to question him?

24 A We did.

25 Q And could you please relay to Judge Cooper how it is

1 that you began discussing the case with him?

2 **A** After Lieutenant McDonald had come into the office
3 and introduced himself, we began discussing the case
4 with Mr. Sanders. Mr. Sanders would immediately deny
5 any involvement with the incident. However, Mr.
6 Sanders would admit being at the club, the location
7 where the incident began that evening, that early
8 morning/evening, early morning timeframe. He would
9 admit being at the club and hanging out with Garry
10 Green.

11 Mr. Sanders would not recall being with Justin
12 that evening, Justin Green that evening. Sanders
13 would continue to say that he was at the club until
14 closing and that he heard three to four shots while
15 he was in the parking lot.

16 Sanders would tell me that he got a ride from
17 the club by a person nobody known to him only as
18 Twan. Mr. Sanders told myself and Lieutenant
19 McDonald that Twan drove him to his baby's mother's
20 house in the Winslow Subdivision. At this time
21 Sanders would give the name of Lashonda Dowling,
22 that's D-O-W-L-I-N-G, as his baby's mother.

23 Sanders said that he got into an argument with
24 Ms. Dowling and left the residence and then walked to
25 ■ William Harden Road. Sanders continued to tell

1 myself and McDonald that he arrived at the house on
2 William Harden around 8 a.m. and left between 12 and
3 1 p.m. He would admit that Garry Green was at the
4 house also. I would also ask him if he remembered
5 seeing myself at the residence when I was at the
6 Green residence to pick up Garry. Mr. Sanders would
7 deny seeing me at the residence.

8 Garry Green would later confirm that Sanders was
9 the subject who was at [REDACTED] William Harden. While I
10 was at the front, parked out front of that residence,
11 I could see a figure. I could not make out a
12 particular person, but I could tell there was a
13 person with dreads or twists in their hair because it
14 would flop out and I could see the hair dangling when
15 I returned.

16 Q All right. And did he agree to put -- or did he
17 agree to come back after you questioned him? Did he
18 agree to submit actually to a polygraph examination?

19 A He did.

20 Q All right. And obviously during the trial we would
21 not refer to that --

22 A Yes, ma'am.

23 Q -- in that manner. But if you could, please relay to
24 the Court what exactly he was asked during that
25 portion of the interrogation?

1 **A** The relevant questions that were asked during that
2 examination were: Were you present when that man was
3 shot; did you shoot that man; and do you know where
4 the gun is now that was used to shoot that man?

5 **Q** And his answers to each question was what?

6 **A** No.

7 **Q** All right. And was there another follow-up question
8 asked of Mr. Sanders at that time concerning a black
9 Volvo?

10 **A** There was.

11 **Q** Okay. And please relay for the judge what exactly he
12 was asked concerning a black Volvo?

13 **A** He was asked if he was in the passenger seat of a
14 black Volvo earlier that morning. Mr. Sanders would
15 admit being in a back passenger seat of a black Volvo
16 earlier that morning drinking a beer. He would
17 also --

18 **Q** What else did he say?

19 **A** I'm sorry.

20 **Q** What else did he say?

21 **A** He would also state that he did not leave in that
22 vehicle.

23 **Q** And did he indicate how long it was that he remained
24 at the club after the shots were fired?

25 **A** Mr. Sanders would state that he left the club about

1 five minutes after the shot was fired. Mr. Sanders
2 would also say that he left with Twan who drives a
3 black and gray Cutlass. Mr. Sanders would continue
4 to deny being involved in this case in any manner.
5 Mr. Sanders was also asked if knew the victim's wife,
6 a Ms. Pamela Cannon. Mr. Sanders would deny any
7 knowledge of a Pamela Cannon.

8 Q Approximately how long did this interview last?

9 A Mr. Sanders was interviewed at 12:40 -- or his
10 Miranda was read at 12:45 p.m. I believe that around
11 5:30 p.m. Mr. Sanders would be taken to Alvin S.
12 Glenn Detention Center and booked in on his charges.

13 Q And for a homicide investigation, is that in your
14 experience a lengthy time of questioning?

15 A Quite the contrary. It's rather short. It was only
16 a short period of time if you take into consideration
17 the length of the polygraph examination.

18 Q And also during this time was the defendant deprived
19 at any time for a use of the bathroom, water, food?

20 A Absolutely not.

21 Q Did he ever ask for water or food?

22 A I don't recall right now if he did. However, it
23 would have been provided for him.

24 Q And is it unusual if someone asks you; in your
25 experience, if someone you're interrogating asks you

1 for something to eat or drink, what would you do?

2 **A** We have a canteen upstairs in our investigative area.
3 There's vending machines in there, candy bars, potato
4 chips, soda machines, Coke. There is also a water
5 cooler upstairs that we would get them basically
6 whatever they desire that was available to us.

7 **Q** Okay. Did you at any time or did Investigator -- did
8 you witness Investigator McDonald at any time make
9 any promises to the defendant in order to get his
10 statement?

11 **A** No, ma'am.

12 **Q** Did you or Investigator McDonald threaten him in any
13 way in order to get his statement from him?

14 **A** Absolutely not.

15 **Q** Beg the Court's indulgence. And at any time during
16 this questioning did the defendant invoke any of his
17 rights such as his right to remain silent or his
18 right to an attorney?

19 **A** No, ma'am.

20 **MS. SHIPLEY:** That is all from the State, Your
21 Honor.

22 **THE COURT:** Cross examination.

23 **MS. EVERHART:** Thank you, Your Honor.

24 CROSS EXAMINATION

25 **BY MS. EVERHART**

1 Q Hi, Investigator McRae.

2 A Hey.

3 Q About how long was he in custody before he made a
4 statement?

5 A Before he made a statement? I mean, we began talking
6 immediately after the advice of rights was taken. It
7 can take usually about 15, 20 minutes to make sure
8 that Miranda is understood. So 1, 1:05 maybe.

9 Q And how long was it since he had been placed under
10 arrest and transported?

11 A He was transported immediately after he was taken
12 into custody. I arrived on the scene -- or I'm
13 notified that he's at [REDACTED] Torrowood. I would just --
14 based on the two times that I have being 11:30 that I
15 I'm notified and at 12:45 when the advice of rights
16 is given, no more than an hour.

17 Q Do you know if he was questioned at his house at all,
18 or was he just --

19 A No. He was arrested and brought out to me due to the
20 fact that I was on the scene. Those officers knew
21 that I was standing out in the street waiting for him
22 to be taken into custody.

23 Q And I believe you said that he was with you all from
24 around 12:45 to 5. How long of that was in Captain
25 Smith's office?

1 **A** Total time in Captain Smith's office? The advice? I
2 don't know what time -- hold on. Maybe I can find
3 it. He was read his Miranda at 12:45. The polygraph
4 began at 2:05. So that would have been just over an
5 hour and 15 minutes.

6 **Q** And you said he did not ask for a lawyer at any time?

7 **A** No, ma'am.

8 **Q** And I believe you mentioned he may have been
9 restrained with handcuffs. Would he have been
10 restrained in any other manner?

11 **A** No. Just the handcuffs.

12 **MS. EVERHART:** Beg the Court's indulgence one
13 moment. No further questions for this witness.
14 Thank you.

15 **THE COURT:** Anything further?

16 **MS. SHIPLEY:** No, Your Honor.

17 **THE COURT:** All right, sir. You may come down.
18 Next witness.

19 **MS. MCDUFFIE:** The State would call Lieutenant
20 Scott McDonald.

21 SCOTT MCDONALD, after being duly sworn,
22 testifies as follows:

23 **THE CLERK:** Please have a seat. State your full
24 name for the record.

25 **THE COURT:** Did you put the advice as a Court's

1 Exhibit?

2 **MS. MCDUFFIE:** I didn't, Your Honor.

3 **THE COURT:** Is there another?

4 **MS. SHIPLEY:** Would you like another copy, Your
5 Honor?

6 **THE COURT:** No. Was there another statement?

7 **MS. MCDUFFIE:** No, sir, Your Honor.

8 **THE COURT:** Is there a written statement over
9 than the advice of rights?

10 **MS. MCDUFFIE:** No, sir, Your Honor; only an oral
11 statement.

12 **THE COURT:** All right.

13 DIRECT EXAMINATION

14 **BY MS. MCDUFFIE**

15 **Q** Please state your name for the record.

16 **A** Scott McDonald.

17 **Q** Lieutenant McDonald, where are you employed?

18 **A** Richland County Sheriff's Department.

19 **Q** And what are your duties with the Sheriff's
20 Department?

21 **A** To help supervise -- I'm in the major crimes unit.
22 To help supervise the investigation of all aggravated
23 assaults, home invasions, armed robberies, assault
24 and battery with intent to kills, and homicides.

25 **Q** And were those relatively the same duties you had on

1 June the 12th, 2007?

2 A Right. I was actually a sergeant then, but basically
3 the same duties.

4 Q And did you have a chance to come in contact with
5 Louis Sanders on June the 12th?

6 A Yes, I did.

7 Q And can you tell the Court when and where that was?

8 A That was at the Richland County Sheriff's Department.
9 I was notified by Investigator McRae that Mr. Sanders
10 was in custody and he would be coming in shortly to
11 the Sheriff's Department along with a Ms. Natalie
12 Casey. Upon Ms. Casey's arriving, I interviewed her
13 first to see if she could shed any information that
14 might assist us in the interview with Mr. Sanders.

15 Q And after you finished with Ms. Casey, what did you
16 then do?

17 A I then joined Investigator McRae who I'd been working
18 on this case with in Captain Smith's office. I
19 confirmed that they had given him his written Miranda
20 rights and that he understood them.

21 Q And I'm sorry to interrupt you. I'm going to show
22 you what's been marked as State's Exhibit 6. Do you
23 recognize that?

24 A Yes. This is the advice of rights and the waiver of
25 rights form that had been filled out prior to my

1 arrival.

2 Q And you said you confirmed that. How did you do
3 that?

4 A I looked at it to make sure it had been done and then
5 I asked Mr. Sanders if he understood his rights, and
6 I also asked him a few more questions before we got
7 started with the interview.

8 Q And what questions were those?

9 A How far he went in school. He indicated the tenth
10 grade but he did have his GED certificate. I asked
11 him if he could read and write, which is something
12 typical I ask to find out whether everyone can read
13 and write. He stated to me he could read; he could
14 write. And I asked him if he'd had any drugs or
15 alcohol in the last 24 hours. He indicated he'd had
16 five beers the preceding evening.

17 Q And based on your training and your experience, did
18 Mr. Sanders appear to be under the influence?

19 A No, he did not.

20 Q Did he appear to understand your questions?

21 A Yes, he did.

22 Q Did he answer appropriately?

23 A Yes, he did.

24 Q And you asked him if he had waived his rights on that
25 form?

1 **A** That's correct.

2 **Q** And what did he indicate to you?

3 **A** He had.

4 **Q** And what happened after that?

5 **A** Investigator McRae and myself began discussing the
6 case with him. And, you know, he totally denied any
7 involvement in this incident. We started laying out
8 some of the facts of the case, some of the
9 information we had come across so far in the
10 investigation. He would adamantly deny any
11 involvement in the shooting at the club or later of
12 the victim in this case.

13 **Q** Did he say that he was at the pub that night?

14 **A** He did admit to being at the pub that night and he
15 does remember hanging out with Mr. Garry Green. He
16 said he didn't remember Justin Green. He states he
17 was there around closing time, until around closing
18 time, and he was outside in the parking lot when he
19 heard three to four shots fired.

20 **Q** And how did he say that he left the pub?

21 **A** He said he got a ride with a guy, with a friend of
22 his, acquaintance known only as Twan who drives a
23 black Cutlass and that Twan had dropped him off at
24 his baby's mama's house in the Winslow Subdivision.

25 **Q** Did he give that individual's name?

- 1 **A** Yeah. He gave us the name of Lashonda Dowling.
- 2 **Q** And did he say how he got from her residence that
- 3 morning?
- 4 **A** He stated he walked from the Winslow Subdivision down
- 5 to [REDACTED] William Harden Road, which is quite a little
- 6 hike.
- 7 **Q** And did he say how long it took him or what time he
- 8 got there?
- 9 **A** He said sometime around 8:00 that morning.
- 10 **Q** And how long did he say he was at William Harden
- 11 Road?
- 12 **A** He stayed there 'til about 12 or 1:00 that day he
- 13 said. He remembers seeing Garry Green while he was
- 14 there.
- 15 **Q** And did he remember seeing the officers while he was
- 16 at the location?
- 17 **A** He said he did not.
- 18 **Q** And would he admit to being in Justin Green's car
- 19 this evening?
- 20 **A** He would. He remembers sitting in the back and
- 21 having a beer in the car.
- 22 **Q** Okay. Did he say at that point whether or not he
- 23 left with him?
- 24 **A** He stated he did not leave with him.
- 25 **Q** Okay. And then was there a polygraph administered

1 later that day?

2 A Yes, there was.

3 Q And did Mr. Sanders consent to taking that polygraph?

4 A Yes, he did.

5 Q And what was asked him during that polygraph?

6 A I don't have the exact questions the polygraph
7 operator gave. I think we have a report with that on
8 there. But to my recollection, something to the
9 effect of, did you shoot the man on Westbridge? Do
10 you know where the gun is? Were you present during
11 the shooting? Do you know who shot the man?
12 Questions of that sort.

13 Q And did ask you Mr. Sanders to give a written
14 statement?

15 A Prior to the polygraph we had, traditionally we take
16 a written statement from a suspect if he's willing to
17 give one. We give that to the polygraph operator to
18 go off of in addition to the incident report or the
19 reports.

20 Q And did Mr. Sanders indicate that he wanted to put
21 his statement down in writing?

22 A He refused to put it down in writing.

23 Q He said that he would continue to answer questions
24 orally?

25 A Just orally and basically to the point of the

1 questions that I just mentioned. He wouldn't go into
2 anything else.

3 **Q** Okay. And did Mr. Sanders say anything else that
4 afternoon? Let me rephrase the question. Was Mr.
5 Sanders asked if he knew Pam Cannon?

6 **A** Yes, he was. I asked him if he knew Ms. Cannon, and
7 he indicated he did not know Ms. Cannon.

8 **Q** At any point during this, was Mr. Sanders denied
9 food, water, access to the restroom?

10 **A** No, he wasn't.

11 **Q** Were any promises or threats made towards Mr.
12 Sanders?

13 **A** No.

14 **Q** Any coercion?

15 **A** No.

16 **Q** At any point in time did Mr. Sanders say that he no
17 longer wished to speak with you all?

18 **A** No.

19 **Q** Did he ask for a lawyer at any point in time?

20 **A** No, he didn't.

21 **Q** And what would you have done if he had?

22 **A** We would have ceased the interview at that point.

23 **MS. MCDUFFIE:** Nothing further, Your Honor.

24 **THE COURT:** Cross examination.

25 **MS. EVERHART:** Thank you, Your Honor. We'd have

1 no questions for this witness.

2 **THE COURT:** You may come down, sir. Thank you
3 very much. Next witness.

4 **MS. SHIPLEY:** That's all the witnesses for the
5 State, Your Honor.

6 **THE COURT:** All right. Any witness for the
7 defense?

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

9 **THE COURT:** All right. Any argument?

10 **MS. EVERHART:** No, Your Honor. We do not have
11 any objection. We have no motions to make at this
12 point regarding the statement.

13 **THE COURT:** Nevertheless, I do find it's a
14 voluntary statement. I find that it's admissible.
15 Whether the jury believes it or not is up to them.
16 All right. Now, as I understand it, that leaves the
17 issue of flight and the tattoos. Is that where we
18 are?

19 **MS. MCDUFFIE:** And also the photos, Your Honor.

20 **THE COURT:** And the photos. All right. Let's
21 take a look at the photos. Can we do that? Can you
22 agree on the photos?

23 **MR. O'NEIL:** Your Honor, we previously looked at
24 some of the photos.

25 **MS. SHIPLEY:** I believe you don't object to any

1 of the crime scene photos. Is that correct? But you
2 have some issues with the autopsy photos?

3 **MR. O'NEIL:** Some of the crime scene photos.
4 Yes, ma'am.

5 **THE COURT:** Well, let's go ahead. Let's do it.

6 **MS. SHIPLEY:** Should we approach to show you the
7 photographs?

8 **THE COURT:** That's probably the easy way.

9 **MS. SHIPLEY:** Okay. Let's be up here so Jenny
10 can hear us.

11 **THE COURT:** Let Jenny mark them.

12 **MS. SHIPLEY:** Oh, they've already been marked.
13 I'm going to show Judge Cooper 7 through 16 that have
14 been premarked for purposes of identification. And
15 these are photographs from the autopsy.

16 **THE COURT:** 7 through what?

17 **MS. SHIPLEY:** 7 through 16.

18 **THE COURT:** 16. Does the State wish to offer
19 these?

20 **MS. SHIPLEY:** Yes, sir. We met with Dr. Clay
21 Nichols on Friday.

22 **THE COURT:** This is the autopsy.

23 **MS. SHIPLEY:** Autopsy. And these are the photos
24 out of many photos. There are several more that we
25 do not intend to introduce. These are the ones that

1 Dr. Nichols indicated he would need in order to
2 explain his findings during the autopsy.

3 **THE COURT:** Is there any doubt about cause of
4 death?

5 **MS. SHIPLEY:** No, sir. But there is information
6 that only the killer would know about the shots
7 fired.

8 **THE COURT:** Mr. O'Neil, is this --

9 **MR. O'NEIL:** Your Honor, I don't object to
10 everything you have in your hand. If I see what you
11 have in your hand, I can tell you what I object to.

12 **MS. SHIPLEY:** Come on up.

13 **THE COURT:** I thought you knew they'd been
14 marked.

15 **MR. O'NEIL:** They've just recently been marked.

16 **THE COURT:** 7.

17 **MR. O'NEIL:** No objection.

18 **THE COURT:** 7 is without objection. 8. 8
19 without object.

20 **MR. O'NEIL:** Object.

21 **THE COURT:** 9.

22 **COURT REPORTER:** You need to speak out so I can
23 hear you, please.

24 **MR. O'NEIL:** I object to State's Exhibit 9.

25 **THE COURT:** 10.

1 **MR. O'NEIL:** I object to State's Exhibit 10.

2 **THE COURT:** 11.

3 **MR. O'NEIL:** No objection.

4 **THE COURT:** Without objection. 12.

5 **MR. O'NEIL:** No objection.

6 **THE COURT:** Without objection. 13.

7 **MR. O'NEIL:** Objection..

8 **THE COURT:** Sir?

9 **MR. O'NEIL:** Objection.

10 **THE COURT:** All right. Just so the court
11 reporter can hear you. 14.

12 **MR. O'NEIL:** Objection.

13 **THE COURT:** I don't know what that is.

14 **MS. SHIPLEY:** It's the skull.

15 **THE COURT:** It's during the autopsy.

16 **MS. SHIPLEY:** And just for the benefit of the
17 Court, this is important for Dr. Nichols' testimony.

18 **THE COURT:** That's the hole in the skull.

19 **MS. SHIPLEY:** Yes. Well, it's the sooting of --

20 **THE COURT:** This is objectionable?

21 **MR. O'NEIL:** That one as well.

22 **THE COURT:** 15.

23 **MR. O'NEIL:** Objection.

24 **THE COURT:** All right. 16.

25 **MR. O'NEIL:** No objection. And also objection

1 to State's 30.

2 **THE COURT:** And that's crime scene.

3 **MS. SHIPLEY:** That's crime scene. Your Honor,
4 the significance of that is that we have the burden
5 of proving the facts of this case and that this
6 killing was not motivated by robbery. If you can see
7 in State's 30, there's money coming out of the
8 victim's pocket and he's got a gold chain on still.
9 This is just to refute any allegations that this was
10 a --

11 **THE COURT:** Well, there's an objection.

12 **MS. SHIPLEY:** He objects to it.

13 **THE COURT:** We'll have to deal with that. All
14 right. Photographs 9, 10, 13, 14 and 15, they are
15 subject to the defendant's objection and will be
16 admissible only if Dr. Nichols -- he needs to review
17 them prior to his testimony, and only if he says they
18 are necessary to show something. I mean, I don't
19 know what he is going to say. But I'll rule on them
20 at that time. I can't rule on them now because I
21 don't know what he's going to say, how relevant they
22 are or whether they're necessary or not.

23 **MR. O'NEIL:** Yes, sir.

24 **THE COURT:** And I understand your objection,
25 that they're too graphic and perhaps might incite the

1 jury.

2 **MR. O'NEIL:** Yes, Your Honor.

3 **MS. SHIPLEY:** Thank you, Your Honor.

4 **THE COURT:** So mark these objections to these.

5 **MS. SHIPLEY:** I'll mark them.

6 **THE COURT:** As to -- do you have any other crime
7 scene photographs?

8 **MS. SHIPLEY:** Do you have any objections to the
9 rest of the crime scene photographs?

10 **MR. O'NEIL:** Oh, yes. The other crime scene
11 photos? Do I have any objection to the other crime
12 scene photographs?

13 **THE COURT:** The other ones other than No. 30.
14 You stated your objection to No. 30.

15 **MS. SHIPLEY:** Your Honor, he's reviewed the
16 crime scene photos that the State intends to
17 introduce, and he has no objection to them except for
18 No. 30.

19 **THE COURT:** Okay. Well, let me see those
20 because it may be a duplicate of 30. It was raining?

21 **MS. SHIPLEY:** It was raining. Good observation.

22 **THE COURT:** The clothes are wet. What do you
23 mean? There's mud puddles in the street. Oh, that's
24 a beauty. All right. It appears that there is no
25 objection from the defendant as to 32 and 35. They

1 are somewhat duplicative of 30. They show the
2 victim's position I guess when law enforcement
3 arrived. Now, as to 30, what's the difference -- I
4 mean, you've got three photographs of the victim.

5 **MS. SHIPLEY:** Your Honor.

6 **THE COURT:** There are three victim's, the
7 position of his body when law enforcement arrived or
8 when law enforcement took these pictures. The
9 objectionable photograph is -- why is -- you said
10 something about money coming out of his pocket. Tell
11 me what makes this one any more admissible than the
12 other two if there are no objections to them. I
13 mean, it's somewhat of a -- I've seen worse. But why
14 is the State offering 30?

15 **MS. SHIPLEY:** Again, Your Honor, we have the
16 burden of proof in this case. And even though motive
17 is not an element that we have to prove, we have to
18 show to this jury that this case was not motivated by
19 other means or motives such as armed robbery, that
20 this was an altercation, stemming from an altercation
21 from an earlier event and that it ended up at this
22 incident location where he was shot and killed. He
23 was not robbed. He still has his money on him. He
24 still has his gold chain on him.

25 Those items right there, the money and the gold

1 chain, are not depicted in the other photographs that
2 you pointed out where the victim's body is shown.
3 Your Honor, the purpose of the other photographs is
4 in order to orient the jury as to where in the
5 cul-de-sac his body was found. And so you'll notice
6 in one photograph there is a background of a chain
7 link fence gate, and then in the other one there is a
8 house. So it shows where -- those are being
9 introduced for a totally different purpose.

10 **THE COURT:** Mr. O'Neil.

11 **MR. O'NEIL:** Your Honor, we have no plans of any
12 allegation that there was any kind of robbery or any
13 kind of robbery gone bad. Furthermore, if we did
14 have plans to do that, I don't think those photos are
15 probative of this not involving that. All those
16 photographs show is that he had money hanging out of
17 his pocket and a gold on. But regardless, Your
18 Honor, we have no plans to make indication this was a
19 robbery gone bad. And at that point I think those
20 photos don't have any probative value. The reason
21 why the State wants them is to show that this was not
22 a robbery.

23 **MS. SHIPLEY:** I would like the record to reflect
24 that this photograph in question does not even depict
25 the injuries to our victim.

1 **THE COURT:** Well, it's certainly --

2 **MS. SHIPLEY:** It's just him lying in a --

3 **THE COURT:** Well, there is certainly blood
4 that's visible behind the victim's head. Well, as I
5 say, I've seen worse. I'll admit them.

6 **MS. SHIPLEY:** Thank you.

7 **THE COURT:** I don't think it's so graphic as to
8 taint the jury one way or the other. It's the
9 victim's body. The victim's body ends up in the
10 photographs and ends up in front of the jury.

11 **MS. SHIPLEY:** We've covered all the photographs
12 that the defense took issue with. The rest of them
13 they do not object to.

14 **MR. O'NEIL:** Your Honor, I think one autopsy
15 photo we can address without Dr. Nichols, the picture
16 of the victim with his hands bagged. That has
17 nothing to do with the autopsy.

18 **MS. SHIPLEY:** Yeah. He said those were
19 subject -- let me show you the ones that are subject
20 to your objections.

21 **MR. O'NEIL:** No. What I'm saying is, I don't
22 think the reason the State wants that picture --

23 **THE COURT:** So Nichols doesn't have anything to
24 do with the hands bagged.

25 **MR. O'NEIL:** Yes. That's my understanding.

1 **MS. SHIPLEY:** Oh, yes. That's correct. This is
2 for Investigator Harold Bouknight's benefit. He was
3 the investigator --

4 **THE COURT:** What's he going to say?

5 **MS. SHIPLEY:** -- that collected the gunshot
6 residue from our victim's hands and that the victim's
7 hands were bagged and he then took the bags off.

8 **THE COURT:** So why have you got to show them?

9 **MS. SHIPLEY:** To corroborate. Any time a
10 photograph corroborates a witness, it's admissible.

11 **THE COURT:** Let me see it again. Well, it shows
12 more than bags.

13 **MS. SHIPLEY:** If we crop it, would that be
14 acceptable?

15 **THE COURT:** It's a lot more than just bagged
16 hands. I might grant that motion.

17 **MS. SHIPLEY:** Okay. I'll pull it, Your Honor.

18 **MR. O'NEIL:** That's it. Your Honor, I think the
19 rest of them have to be evaluated in the context of
20 Dr. Nichols.

21 **THE COURT:** From Dr. Nichols' testimony, and
22 we'll do that in camera, let them make the proffer
23 and see what he has to say. I don't know.

24 **MR. O'NEIL:** Yes, sir.

25 **MS. SHIPLEY:** Thank you, Your Honor.

1 **THE COURT:** It probably has something to do with
2 the closeness of the barrel to the wound. All right.
3 Other than the evidence of flight, anything else that
4 needs to be taken up at this time prior to trial?

5 **MS. SHIPLEY:** I think they had the tattoo
6 incident they would like to address.

7 **THE COURT:** I don't know.

8 **MR. O'NEIL:** I thought, I guess it was just at
9 this point where they wasn't going into evidence of
10 the teardrop tattoo.

11 **MS. SHIPLEY:** We agreed we're not going to call
12 a tattoo expert to come testify about its meaning.
13 But then Mr. O'Neil indicated despite the fact --

14 **THE COURT:** It's Mr. O'Neil's motion, not yours.

15 **MS. SHIPLEY:** Okay. I agree with Mr. Secor that
16 it is relevant and admissible. The case law supports
17 that.

18 **THE COURT:** Anything further on this issue?

19 **MR. O'NEIL:** I guess we first need to decide
20 what issue we're talking about. Are we talking about
21 the tattoos in general, or are we talking about Garry
22 Green's mention of Mr. Sanders having a tattoo and
23 his identification of those things? That's my
24 question.

25 **MS. SHIPLEY:** My question of Mr. Garry Green

1 will be, in your statement to Investigator --

2 **THE COURT:** Let me ask you this. Didn't you say
3 he knows him?

4 **MS. SHIPLEY:** Yes, sir.

5 **THE COURT:** Why does he have to say he has a
6 tattoo?

7 **MS. SHIPLEY:** Because initially when he was
8 trying to protect Mr. Sanders because he was scared
9 of him, he only gave a description of him, would not
10 give his identity. He gave a fictitious name as
11 Flash. We have to show --

12 **THE COURT:** And what did he say about Flash?

13 **MS. SHIPLEY:** That Flash is -- beg the Court's
14 indulgence.

15 **THE COURT:** Did he say Flash had a tattoo.

16 **MS. MCDUFFIE:** No, sir, Your Honor, he didn't.

17 **THE COURT:** He did not?

18 **MS. MCDUFFIE:** He did not.

19 **MS. SHIPLEY:** He did not.

20 **MS. MCDUFFIE:** He described Flash as "a black
21 male, five-ten, 130 to 140 pounds, median brown-skin,
22 I think he was wearing a hat."

23 **THE COURT:** Okay. So if he knows the guy, why
24 does he have to say he has a tattoo?

25 **MS. SHIPLEY:** Because it's prejudicial. I'm

1 kidding.

2 **THE COURT:** Do you want that on the record?

3 **MS. SHIPLEY:** No. You can strike that, Jenny.

4 **THE COURT:** Well, I mean, that is probably the
5 only reason to say it.

6 **MS. SHIPLEY:** It just goes to his accuracy of
7 describing the person.

8 **THE COURT:** He knows the guy. He knows him.

9 **MS. SHIPLEY:** Okay.

10 **THE COURT:** I wouldn't tell anybody about your
11 tattoo. I'd say I know her. Okay. I don't see it
12 as necessary.

13 **MS. SHIPLEY:** Okay.

14 **THE COURT:** Mr. Green can say he knows him, and
15 that's all he has to say. But we'll look at the
16 flight issue. Mr. O'Neil, Ms. Everhart, somebody
17 handed me up this record. Do you want to make that a
18 Court's Exhibit or you're just showing it to me?

19 **MR. O'NEIL:** Yes, Your Honor. We can make it a
20 Court's Exhibit.

21 (WHEREUPON, Court's Exhibit No. 2 is marked for
22 identification.)

23 **THE COURT:** It's the FBI or ATF record.

24 **MS. SHIPLEY:** The ATF record. Yes, sir. Your
25 Honor, for purposes of opening statements, how should

1 we refer to this evidence of flight?

2 **THE COURT:** I'll tell you in the morning.

3 **MS. SHIPLEY:** Okay.

4 **THE COURT:** Anything further?

5 **MS. SHIPLEY:** Nothing from the State, Your
6 Honor.

7 **MS. EVERHART:** Nothing further.

8 **THE COURT:** We'll stand at ease until 9:30.

9 (Whereupon, the proceedings are concluded for
10 the day, to be reconvened tomorrow morning)

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Tuesday, July 29, 2008

(WHEREUPON, State's Exhibit No. 37 is marked for identification.)

THE COURT: Okay. The State ready to proceed?

MS. SHIPLEY: Your Honor, we are. We just wanted to bring to the Court's attention that Investigator McRae was doing a little research last night and realized that he had interviewed juror number 121, Veronica Mack, who is an inspector at Hollowmack. Or I can't make out my handwriting.

THE COURT: Hollowback.

MS. SHIPLEY: Thank you. Your Honor, she apparently lived in a neighborhood where an unrelated homicide took place and all neighbors were interviewed in that case. But he did not remember her. Obviously she didn't remember him during voir dire. He did stand up and turn and look at everybody. We just wanted to bring that to your attention and the defense attention that Investigator McRae asked her a few questions.

THE COURT: How long ago?

MS. SHIPLEY: Do you recall when it was?

INVESTIGATOR MCRAE: It would have been --

THE COURT: Just approximately.

INVESTIGATOR MCRAE: That homicide happened in

1 October of 2507, Your Honor.

2 **THE COURT:** Any problem from the defense?

3 **MS. EVERHART:** No, Your Honor.

4 **THE COURT:** Anything further from the State?

5 **MS. SHIPLEY:** No, Your Honor.

6 **THE COURT:** The State ready to proceed?

7 **MS. SHIPLEY:** Yes, sir.

8 **THE COURT:** The defense ready to proceed?

9 **MS. EVERHART:** Yes, Your Honor.

10 **THE COURT:** All right. I have been advised that
11 Karl Horn, juror number 223, has been selected as the
12 foreperson of the jury.

13 With regard to the issue of evidence of flight,
14 I have reviewed State v. Pagan. Now, Pagan was a
15 case where the flight involved a flight from a blue
16 light which the court said -- well, it's a second
17 charge, and that in that case the court ruled
18 evidence of flight should be excluded when the flight
19 is clearly linked to a separate offense for which the
20 defendant is not on trial. So that's a little bit
21 different situation than we've got here.

22 I find that there was at least an inference that
23 the defendant knew that he was being sought by the
24 police, and I'll allow the evidence that the State
25 put forward that he was located in the attic of the

1 home at [REDACTED] or 213?

2 **MS. SHIPLEY:** [REDACTED] Torrowood.

3 **THE COURT:** Okay. A different address. Okay.
4 What's the address?

5 **MS. SHIPLEY:** 320 Torrowood.

6 **THE COURT:** All right. I'll allow it. Anything
7 further before we bring the jury?

8 **MS. SHIPLEY:** Nothing from the State, Your
9 Honor.

10 **MS. EVERHART:** Nothing from the defense.

11 **THE COURT:** Bring the jury. Bring the jury.
12 I'm going to allow the jury to take notes.

13 (Jury in at 9:40 a.m.)

14 **THE BAILIFF:** The jury is present, Your Honor.

15 **THE COURT:** Thank you very much. Good morning,
16 ladies and gentlemen. Mr. Horn, I appreciate your
17 willingness to serve as foreperson of the Grand Jury
18 (sic). And it's mighty convenient. You just don't
19 even have to move your seat, do you, move your
20 position on the jury?

21 All right, Madam Clerk. Swear the jury.

22 (Whereupon, the jury is sworn)

23 **THE CLERK:** You may be seated.

24 **THE COURT:** All right, ladies and gentlemen.
25 Now, before we actually start with the opening

1 statements and the testimony I want to just take a
2 few minutes to discuss a few matters of procedure
3 with you so you'll understand what may be taking
4 place from time to time and sort of give you some
5 parameters as to what you're about to witness.

6 You received your oath as jurors in this case
7 and we're ready to begin the trial. I want to take a
8 few minutes to explain the process of the trial so
9 you will know what is expected of you, what your role
10 is, what my role is, and what the role of the
11 attorneys is in this case. My purpose in doing so is
12 to do my best to put you at ease in what I am sure is
13 an unfamiliar setting to most if not all of you.

14 There is only one charge in this case. In this
15 court a charge of a criminal law violation is
16 presented, as I told you earlier, by what is known as
17 an indictment. As I say, there's only one indictment
18 in this case, and that is for murder. But please
19 remember that an indictment is not evidence of any
20 kind whatsoever. An indictment is merely a document
21 containing a specific charge against a particular
22 individual. And I reiterate that the indictment is
23 not evidence of any kind.

24 Now, please do not infer during this
25 conversation I'm having with you that I have any

1 facts about the case or what your verdict should be.
2 You are to determine the innocence or guilt of the
3 defendant based on the evidence that will be
4 introduced during the trial of this case. I have no
5 opinion about the facts in this case which I may
6 share with you. In fact, the Constitution of the
7 state of South Carolina provides in part that a trial
8 judge shall make no comment or statement to a trial
9 jury about the facts of the case.

10 Consequently, do not infer from anything that I
11 might say or do in any instruction or anything else
12 that I might say during the course of this trial in
13 ruling upon the admissibility of evidence or
14 otherwise that I have any opinion about the facts in
15 this case. You and you alone must determine the
16 facts in this case. You are the sole and exclusive
17 judges and finders of fact in this case.

18 While you and you alone determine the facts of
19 the case from the evidence, I am the judge of the
20 law, and you are required to accept and apply the law
21 precisely as I state it to you.

22 Now, let me remind you of two legal principles
23 that we will follow during the course of this case.
24 One is the legal yardstick you will use in judging or
25 measuring the evidence in this case. That legal

1 yardstick is known as the burden of proof. And in
2 this case the burden of proof is on the State to
3 prove the guilt of the defendant beyond a reasonable
4 doubt. Should the State fail to meet that burden of
5 proof with respect to this particular charge, it
6 would be your duty to find the defendant not guilty
7 with respect to that particular charge.

8 There is absolutely no burden whatsoever on the
9 defendant to prove or disprove anything. There is no
10 burden on the defendant to testify or present any
11 evidence because the burden is and remains at all
12 times on the State to prove guilt beyond a reasonable
13 doubt.

14 If you remember my earlier comment when I
15 addressed the entire jury venire concerning the
16 presumption of innocence, it's a cardinal and
17 fundamental rule that a defendant will always be
18 presumed innocent of the crime or crimes for which he
19 has been indicted. The presumption of innocence is
20 not some simple legal theory or simple legal phrase.
21 It is a substantial right to which any accused,
22 including this defendant, is entitled.

23 As we begin the trial your role lies essentially
24 in the oath which you just took, part of which
25 requires you to well and truly try the case. Your

1 oath requires you to find facts to find the truth
2 from the evidence presented to you during the course
3 of this trial. You are not to consider anything that
4 you may read or hear about this case outside the
5 courtroom, whether before or during the trial. You
6 must make your determination as to facts of this case
7 based only on the evidence presented during the
8 course of the trial.

9 Now, what is evidence? In South Carolina
10 evidence comes from three sources. The most common
11 example of evidence is the testimony of witnesses.
12 The witnesses will testify from this witness stand
13 which is seated directly to your left. You will see
14 and you will hear, you will observe these witnesses,
15 including the demeanor of these witness as you
16 determine the credibility of each witness.

17 The second source of evidence known in the law
18 is what we call an exhibit. An exhibit may be a
19 photograph or a chart or a diagram or the like. An
20 exhibit is a tangible document with an exhibit label
21 attached to it. At the end of the case when you
22 retire to your jury room to begin your deliberations,
23 all of the exhibits received in evidence will go with
24 you to the jury room.

25 Now, the third source of evidence is what we

1 call a stipulation. There may or may not be any
2 stipulations in this case. As the name implies, a
3 stipulation is basically an agreement between the
4 parties as to the existence of a certain fact. If
5 there is such a stipulation, you would be required to
6 accept that stipulation as conclusively determined
7 for the purposes of this trial without the necessity
8 of any additional evidence. So, ladies and
9 gentlemen, that's what evidence is: Testimony,
10 exhibits and any stipulation.

11 As the trial judge I will preside over the trial
12 of the case, rule on the admissibility of evidence
13 and at the end of the case I will charge you on the
14 law of the state of South Carolina as I applies to
15 this case.

16 Now, please understand what I tell you is not
17 evidence. By the same token, what these fine
18 attorneys tell you is not evidence. The attorneys
19 will make opening and closing statements, but those
20 statements are not evidence. The attorneys ask
21 questions of witnesses but the questions are not
22 evidence. It is the responses of the witnesses to
23 those questions which constitute evidence. The
24 attorneys further facilitate the introduction and the
25 receipt of exhibits.

1 Now, Ladies and Gentlemen, you and I do not ask
2 questions of witnesses and we do not offer any
3 exhibits. Your duty is to listen openly and honestly
4 to the evidence, keep an open mind. Do not form any
5 conclusions or judgments prematurely. Do not form
6 any conclusions or judgments until you have received
7 and considered all of the evidence, the arguments of
8 the attorneys and my final charge to you on the law
9 as it applies to this case.

10 Consistent with your oath, do not discuss this
11 case even with your fellow jurors or with anyone else
12 during the course of the trial. The first
13 opportunity you will have to discuss this case is at
14 the end of the trial when I authorize you to begin
15 your deliberations. I trust you will honor my
16 instructions and your oath in that regard.

17 Now, let's look briefly for a moment at the
18 trial process. Each side may make an opening
19 statement to you. After the opening statements we'll
20 begin with the receipt of evidence. The State goes
21 first and presents evidence. The State goes first
22 because the State brought the charges and it has the
23 burden of proof. After we've heard and received the
24 evidence from the State, the same opportunity is
25 given to the defendant, bearing in mind however there

1 is absolutely no burden on the defendant to present
2 any evidence at all.

3 Once we have received all of the evidence in the
4 case, each side is permitted to make a final argument
5 or summation to you, after which I will charge you on
6 law applicable to this case. It is at that point at
7 the end of the trial when you will be permitted to
8 begin your deliberations.

9 Now, just a couple of housekeeping matters. We
10 generally run court for about an hour and a half to
11 two hours between breaks. Things normally happen
12 during the trial of a case which require us to
13 deviate sometimes from a normal schedule. For
14 example, we will break when you need a break. So if
15 during the trial of the case you need take a break,
16 just raise your hand, get my attention, and we'll
17 take a break.

18 Also legal questions come up from time to time
19 which may require me to send you back to the jury
20 room more frequently than I would like. And I will
21 apologize right now up front for that, but that's
22 just part of trying a case.

23 Also if you can't hear a particular witness,
24 myself or one of the attorneys, let us know so that
25 we can speak up more clearly. And if your view of an

1 exhibit is obstructed for any reason, let us know.
2 We can correct that. If you need to bring something
3 to my attention during the course of the trial,
4 please notify one of the bailiffs. And if you do
5 need to contact me during the course of the trial for
6 any reason, it may be necessary for the bailiff to
7 require you to put such concern or question in
8 writing so that we will have a record of it. If you
9 do have any questions or concerns which you need to
10 bring to my attention, I will respond as quickly as I
11 can to the extent the law permits me to do so.

12 I want to thank you for your kind attention. I
13 trust you will give the same kind and undivided
14 attention to these fine attorneys and the parties in
15 this case.

16 Now, I have provided you with note pads and
17 pencils. I don't know how complex the case will be,
18 but sometimes jurors feel comfortable being able to
19 take notes and use them at some point at a later time
20 to assist in their memory. I do caution you that if
21 you make notes, they're for your benefit and your
22 benefit only. They're not to be used to try to
23 convince somebody that you took a better note than
24 they did or you remember something that they don't
25 remember. They're for your own memory during the

1 course of the deliberation process that you will
2 eventually enter into. So if you will respect that
3 caution, I will appreciate it.

4 All right. We'll now begin with the opening
5 statements. Solicitor, you may make your opening
6 statement.

7 **MS. MCDUFFIE:** Good morning. During the early
8 morning hours of June 3rd, 2007, the defendant, Louis
9 Sanders, executed Israel Duane Cannon. Earlier that
10 evening Mr. Cannon who was known to all his friends
11 as Duane, his wife, Pam, and other friends were at
12 the H&J pub on Hard Scrabble Road to celebrate Pam's
13 birthday.

14 Also at the H&J pub that evening was the
15 defendant, Mr. Sanders. He was there with his
16 friend, Garry Green, and Garry's younger brother,
17 Justin Green. During the course of the evening some
18 words were exchanged between Ms. Cannon and the
19 defendant's group. The bar closed down and everyone
20 headed outside and words continued to be exchanged
21 between Ms. Cannon and the defendant's group.

22 Finally Ms. Cannon said, "How are you going to
23 try and pick up a woman when you're driving your
24 mama's Volvo?" And, ladies and gentlemen, that's all
25 it took. The defendant ran up behind Ms. Cannon,

1 pulled out a gun and fired it at her head. The
2 bullet missed but Ms. Cannon passed out and fell to
3 the ground. Her husband and others around her
4 thought she had been shot. Mr. Cannon jumped in his
5 white Tahoe and took off after the defendant in the
6 black Volvo he was in.

7 That black Volvo was driven by Justin Green. In
8 the front seat was Garry Green, and the defendant was
9 in the back. Justin drove through some residential
10 areas, turned onto Charleswood Road. On Charleswood
11 his brother, Garry, told him to stop the car and let
12 him and the defendant out. Garry did not want to get
13 his little brother into trouble. So Garry and the
14 defendant got out of the car on the corner of
15 Charleswood and Woodbridge Road.

16 Justin then turned right onto Woodbridge Road,
17 and as he is driving down Woodbridge Road, his car is
18 hit from behind by the victim's white Tahoe.
19 Justin's car goes into a yard and the victim's car is
20 right behind his. The victim gets out of his car and
21 says, "What's going on? What's going on?" Justin
22 replies to him, "I don't know. You tell me."

23 The next thing that happened is that the
24 defendant walks up to Mr. Cannon, Mr. Cannon who is
25 standing outside of his car, Mr. Cannon who is

1 unarmed, and the defendant says to Mr. Cannon, "This
2 is what's up" and shoots him in the face. Mr. Cannon
3 stands there for a moment and then falls to the
4 ground. The defendant walks over to Mr. Cannon who
5 is lying on the ground defenseless, unarmed and
6 dying, puts the gun to Mr. Cannon's head and executes
7 him.

8 Ladies and gentlemen, my name is Joanna
9 McDuffie, and I along with Vanessa Shipley represent
10 the State of South Carolina as assistant solicitors
11 for the Fifth Judicial Circuit. It is our job to
12 prosecute all crimes that occur in Richland and
13 Kershaw Counties.

14 As a result of Mr. Sanders' actions on June the
15 3rd of 2007, he is charged with murder. Murder is
16 the unlawful killing of another with malice
17 aforethought either express or implied. Malice is a
18 legal term of art. What it basically means is
19 hatred, ill will, a heart devoid of social duty and
20 bent on mischief.

21 Malice can be express which would be, for
22 example, me coming up to you and saying, "I'm going
23 to kill you" and then following through with that
24 act. Or it can be implied from the use of a deadly
25 weapon. Ladies and gentlemen, I submit to you that

1 malice is when you shoot an unarmed man in the face,
2 walk up to his dying body and then execute him. That
3 is malice.

4 We as the State have the burden of proof in this
5 case, just as we do in every criminal prosecution.
6 It is our duty to prove that the defendant committed
7 the crimes that we allege he did beyond a reasonable
8 doubt.

9 Ladies and gentlemen, proof beyond a reasonable
10 doubt is proof that leaves you firmly convinced of
11 the defendant's guilt. It is not absolute certainty
12 of guilt. And we are not required to produce proof
13 that overcomes every possible doubt. If at the end
14 of this case you are firmly convinced of the
15 defendant's guilt, you must find him guilty.

16 Now, I've gone over the law a little bit that
17 applies in this case, but Judge Cooper is the judge
18 of the law in this case. If I or opposing counsel
19 says anything that contradicts Judge Cooper, please
20 take the law as the judge gives it.

21 However, just as he is the judge of the law in
22 this case, you, ladies and gentlemen, are the judges
23 and the triers of fact. It is your job to determine
24 if the defendant committed the offense that we, the
25 State, allege he did. You determine the defendant's

1 guilt by weighing the evidence in this case. That
2 evidence will mainly come in two forms, first the
3 physical evidence introduced as exhibits during the
4 trial; and, second, the testimony of the witnesses
5 under oath from the witness stand.

6 During this trial you will hear from Pam Cannon
7 who is the wife of Mr. Cannon. Pam will tell you
8 about the events that occurred at the H&J pub that
9 night, how she made a comment to the defendant's
10 group and heard a gunshot and the next thing she knew
11 she woke up lying on the ground never to see her
12 husband again.

13 You'll hear from Kim Goins and Kim Bowers. Both
14 of them were with Mr. Cannon and Mrs. Cannon that
15 evening. They will tell you about the events that
16 occurred at the H&J club, how a man with long hair,
17 with dreads, ran up behind Ms. Cannon and fired a
18 shot at her head and then how Mr. Cannon jumped in
19 his Tahoe and took off after them.

20 You will hear from Keith Eubanks who lives on
21 Westbridge Road who heard the commotion in the
22 street, went and looked out his front door and
23 watched as the victim was executed by a man with long
24 hair. You'll hear him describe what happened that
25 night on Westbridge Road.

1 You will hear from Justin and Garry Green.

2 Justin and Garry were the only two people that were
3 with the defendant all evening. They were with him
4 at the H&J pub. They were with him in the black
5 Volvo as it drove through the neighborhood. They
6 were with him in the cul-de-sac as Mr. Cannon was
7 executed, and they were with him as the Volvo left
8 Westbridge Road.

9 You will hear from Lashonda Downing. Lashonda
10 is the mother of Mr. Sanders' child. You will hear
11 her tell you how he was dropped off at her house
12 early the morning of June 3rd, 2007, how he and Garry
13 were there, he was banging on the door trying to get
14 in. She'll tell you about what happened after he got
15 in her house.

16 You will hear from her mother, Maria Jackson,
17 who will describe a frantic phone call she got from
18 her daughter that morning asking her to come pick her
19 up because of what happened in the home that morning.

20 You will hear from officers at the Richland
21 County Sheriff's Department who will detail their
22 investigation for you and the evidence that they
23 collected. You will hear about shell casings that
24 were found at the H&J club that matched those of the
25 shell casings lying next to the victim's body on

1 Westbridge Road.

2 You'll hear from a ballistics expert who will
3 tell that the shell casing at the H&J pub was fired
4 from the same gun as those on Westbridge Road.

5 You'll hear from a SLED analyst who will tell
6 you about paint scrapings taken from the back of
7 Justin Green's black Volvo that are consistent with
8 the paint on the victim's white Tahoe.

9 And finally you will hear from Dr. Clay Nichols,
10 a pathologist at Palmetto Richland Memorial Hospital.
11 Dr. Nichols performed the autopsy on Mr. Cannon. He
12 will describe the injuries and wounds suffered by Mr.
13 Cannon. He will tell you about how Mr. Cannon was
14 shot in the face and then shot execution style in the
15 head and that either shot could have been lethal.

16 Ladies and gentlemen, it is up to you to
17 determine the truth, and that is what we are here for
18 today. That's why I ask after viewing all the
19 evidence, hearing all the testimony and applying the
20 law to that evidence and that testimony to return a
21 verdict against the defendant of guilty for the
22 charge of murder. Thank you.

23 **THE COURT:** Counsel. Mr. O'Neil.

24 **MR. O'NEIL:** Thank you, Your Honor. May it
25 please the Court. On June 2007 there were three

1 individuals charged with murder, three individuals
2 charged with the murder of Israel Cannon. Today,
3 July 29th, 2008, there is only one person on trial
4 for the murder of Israel Cannon.

5 What has transpired in those 13 months? I'll
6 tell you what. Those three people who were charged
7 with murder were Justin Green, Garry Green and Louis
8 Sanders. Today Justin Green and Garry Green have
9 agreed to testify against Louis Sanders.

10 Justin Green went from being charged with murder
11 to accessory after the fact, and because of his
12 testimony, all of his charges are going to be
13 dropped.

14 Garry Green went from being tried or accused of
15 murder to being allowed to plead to accessory after
16 the fact in exchange for his testimony. Justin Green
17 and Garry Green are making Louis Sanders their
18 personal scapegoat.

19 Now, the story of the scapegoat comes from
20 Biblical times. Back then religion was very
21 important to the people of those days. And they had
22 religious ceremonies, dealt with a lot of festivals
23 and a lot of holidays. And probably the most
24 important festival, the most important holiday was
25 yom kippur which is known as the Day of Atonement.

1 On that day the people would bring two goats in
2 front of the high priest. And the high priest would
3 select upon those two goats, choose one of those two
4 goats to be what later became known as a scapegoat.
5 And the high priest would lay the sins of the people
6 on the head of that goat and banish that goat out
7 into the wildness, no water, no food, banish him out
8 to die. This became known as the Day of Atonement.

9 What's important about the Day of Atonement is
10 what the word "atonement" means. Atonement does not
11 mean to cleanse or eliminate. Atonement means to
12 cover. Justin Green and Garry Green are using Louis
13 Sanders to cover for their own sins.

14 Now, there's only really one issue here in the
15 case. Nobody disputes the fact that Israel Cannon
16 was killed on June 3rd of 2007. The only issue for
17 you 12 to decide is who shot and killed Israel
18 Cannon. Was that person Louis Sanders? The answer
19 to that question is no.

20 Now, Ms. McDuffie told you a little bit about
21 the facts, but let me put everything in context here.
22 The victim, Mr. Cannon, and his wife, Ms. Bowers and
23 Ms. Goins were all at the club. Now, when you listen
24 to the State and listen to the facts, ask yourself
25 does that make sense? Why would Louis do what they

1 said he did?

2 They want you to believe, one, that Louis was
3 arguing with Pam Cannon, a woman you will learn he
4 doesn't know, that he shot at Pam Cannon, who Pam
5 Cannon herself does not even remember, that he jumped
6 in a car with Justin Green and Garry Green who he
7 didn't come to the club with, who Justin Green will
8 say that he never even met Louis Sanders 'til that
9 day, that he wasn't at the club with Mr. Sanders,
10 that he was being chased by a man named Israel Cannon
11 who he doesn't know, that he was -- the car he was in
12 was rammed by Israel Cannon, but Justin Green was
13 driving that car and Justin Green owned that car, and
14 that he shot Israel Cannon. He is not Justin Green's
15 brother. Why would he have shot Israel Cannon if
16 Israel Cannon was chasing Justin Green?

17 Now, there are going to be a lot of witnesses in
18 this case. You heard the list that the judge gave
19 you before. Let's talk about only the significant
20 ones. Let's talk about the people who were at the
21 H&J pub that day.

22 First of all is Kim Bowers. She is going to
23 tell you that she saw a man with dreads arguing with
24 Pam Cannon, and this same man with dreads was the
25 same man inside the club who was trying to pick them

1 up.

2 You will learn that when police investigated
3 this case, they came across many other people who had
4 dreads: Eric Sanders, Ricardo Guilbert and Alice
5 Williams.

6 You will hear from Latasha Goins and Kimberly
7 Goins. Kimberly Goins was there at the club that
8 night. And she says she saw a guy with dreads
9 talking with Pam, arguing with Pam and maybe shot the
10 gun at Pam's head.

11 You will also learn that the police showed Kim
12 Goins a photo line-up that had Louis Sanders' picture
13 in it, and she could not identify Louis Sanders. She
14 could not identify Louis Sanders.

15 You will hear from Pam Cannon herself, the lady
16 who the State says Louis Sanders shot a gun at, right
17 near her head. And you will hear from investigators
18 that Pam Cannon says she didn't even remember a guy
19 being there with dreads, that she doesn't remember
20 talking to a guy with dreads, she certainly don't
21 remember a guy with dreads shooting at her.

22 Let's look at the three witnesses at the crime
23 scene itself that day, three witnesses in the
24 cul-de-sac. You're going to hear from Keith Eubanks.
25 He said firstly he saw a man with short hair, maybe

1 bald hair and a man with long hair. When asked by
2 the 911 people to describe the man with long hair,
3 the word he used with Blowout. And you'll hear the
4 911 tape. Listen to the 911 tape. The word he used
5 was Blowout. He says he knew the man had long hair
6 because he saw it flapping when he was running.

7 At first Keith Eubanks said he saw a man with
8 long hair fire the first shot, and then the guy with
9 the short hair or bald head fire the second shot.
10 And then he changed his story. Remember the
11 conditions that day. It was raining. It was dark.
12 It was early in the morning. And Mr. Eubanks' house
13 was several feet away.

14 Then you will hear from Mr. Eubanks' nephew,
15 William Patterson. He also lived in the cul-de-sac.
16 He will tell you that he didn't even get a good look
17 at the guy with the long hair. And then you will
18 hear from Elizabeth Capel. She lived in the
19 cul-de-sac as well. And she will tell you that she
20 only saw one man night, one black male.

21 Look for any physical evidence that they bring
22 forth for you to look at today that ties Louis
23 Sanders to the crime scene. There will be no
24 physical evidence that ties Louis Sanders to the pub
25 that night, no fingerprints, no footprints, no DNA.

1 When you look at the physical evidence from the crime
2 scene, there will be no evidence that ties Louis
3 Sanders to the cul-de-sac that day, no physical
4 evidence, no fingerprints, no footprints, no DNA.

5 They want to claim that Louis Sanders was in a
6 car with Garry Green and Justin Green. Look at the
7 physical evidence from the car. There will be no
8 evidence that links Louis Sanders to that car, no
9 fingerprints, no DNA, no items Mr. Sanders left in
10 that car. Only Justin Green and Garry Green try to
11 make Louis Sanders their scapegoat.

12 So who are the State's star witnesses? They
13 have three possible witnesses. You may hear from
14 Anthony Smith. He was a roommate of Louis Sanders.
15 Anthony Smith is a career criminal, a snitch, a
16 government informant.

17 He will tell you that he was with Louis Sanders
18 and while he was with Louis Sanders, Louis Sanders
19 had a copy of all the information concerning his
20 case, a copy of all the police reports, all the
21 witnesses' statements, all of what the prosecution
22 had done in this case. Louis Sanders had a copy of
23 that when Anthony Smith was his roommate.

24 Anthony Smith will want to tell you that Louis
25 Sanders read from that discovery to him; he knows

1 what Louis Sanders did because Louis Sanders told
2 him. Ask yourself where is Anthony Smith getting his
3 information from? Did Louis Sanders tell him that,
4 or did Anthony Smith read information? Judge his
5 credibility. Mr. Smith has pending charges of his
6 own. He is using Louis Sanders as his personal
7 scapegoat.

8 Who is their other main witnesses? Garry Green.
9 Garry Green was arrested for this very same murder on
10 June 4th, 2007. The State arrested and confined
11 Mr. Garry Green and accused him of murder. This is
12 the guy they want you to believe his story today.
13 Since then they have reduced the charges and given
14 him a deal in exchange for his testimony.

15 Now, you will learn that Mr. Garry Green gave at
16 least three witness statements in connection with
17 this case. And Mr. Garry Green will get on this very
18 stand, put his hand on this Bible and tell you that
19 he lied on at least two of those statements. He will
20 tell you that these are lies.

21 And he wants you to believe that he was scared
22 of Louis Sanders and that's why he lied. Look at
23 what Garry Green did on the night of this incident,
24 what he will tell you out of his very own mouth he
25 did. Are those the actions of a person who was

1 scared of Louis Sanders? He will tell you himself he
2 jumped out of the car with Louis Sanders when he
3 wants you to believe that he was scared of Louis
4 Sanders.

5 He will tell you that he ran up to the incident
6 where the wreck occurred with Louis Sanders. He
7 wants you to believe that he's scared of Louis
8 Sanders. He will tell you that after the incident he
9 got back in the car with Louis Sanders, but he wants
10 you to believe that he's scared of Louis Sanders.

11 He will tell you that not only did he get back
12 in the car with Louis Sanders, that he drove off to
13 another location and was dropped off you with Louis
14 Sanders. Yet he wants you to believe he was scared
15 of Louis Sanders. He will tell you that while at the
16 location, he stayed at that location for the better
17 part of a day with Louis Sanders. But he wants you
18 to believe that he's scared of Louis Sanders.

19 The first time Garry Green mentions that Louis
20 Sanders was the shooter in this case was at his bond
21 setting. When he was in this courtroom and the judge
22 would have to make a decision about whether or not
23 Garry Green was going to stay in jail to await his
24 trial or be out on bond, and that's when he fingered
25 Louis Sanders. Garry Green was making Louis Sanders

1 his personal scapegoat.

2 And then you will hear from Garry's brother,
3 Justin. Justin was charged with murder, this very
4 same murder on June 4th, 2007. He didn't make a
5 statement to law enforcement until June 18th of 2007,
6 over two weeks.

7 He is going to get try to convince you that he
8 was scared of Louis Sanders. But look at his actions
9 after this murder. Are those the actions of a man
10 who was scared of Louis Sanders?

11 Justin Green was scheduled for trial with Louis
12 Sanders on yesterday. Justin Green went from being
13 charged with murder on June 4th, 2007 to being
14 offered accessory after the fact. Not only was he
15 offered accessory after the fact, he was offered
16 misprisonment of felony, all lesser charges than
17 murder.

18 But today, he will testify today. In exchange
19 for his testimony, the State has agreed to dismiss
20 every single charge against Justin Green, the same
21 person that they had indicted for murder. Justin
22 Green is using Louis Sanders as his personal
23 scapegoat.

24 Now, there is a reason you 14 people were chosen
25 here today. Over 200 people were summoned for jury

1 duty today. You 14 were chosen because we knew you
2 could decide this case not on emotion but on
3 evidence. Your job here today is to make sure that
4 the State does their job. Your job is to hold the
5 State to their burden.

6 Now, the judge talked you about two important
7 precepts we have here in court. One is presumption
8 of innocence. People are presumed innocent when they
9 walk into this courtroom. Just because a person is
10 arrested doesn't mean they are guilty.

11 I was watching the news the other day and I saw
12 when they had arrested two individuals charged with
13 doing the robberies wearing wigs. And I saw people
14 said they were so happy and glad those people were
15 off the street. Those people are presumed innocent.
16 Just because you're arrested doesn't mean you're
17 guilty.

18 A prime example, listen to the State of South
19 Carolina. They arrested Justin Green and Garry Green
20 for murder, but they're going to tell you that those
21 people are not guilty now. Just because you're
22 arrested doesn't mean you're guilty.

23 Louis Sanders is presumed innocent. And they
24 have to prove him guilty beyond a reasonable doubt.
25 That's the highest burden we have in our judicial

1 system. It's higher than the civil side because on
2 the civil side there's only money involved. But here
3 on the criminal side a person's liberty is involved.

4 Don't let Justin Green and Garry Green make
5 Louis Sanders their personal scapegoat. Find Louis
6 Sanders not guilty. Thank you.

7 **THE COURT:** Mr. O'Neil.

8 **MR. O'NEIL:** I'll get it, Your Honor.

9 **THE COURT:** All right, Solicitor. Call your
10 first witness.

11 **MS. SHIPLEY:** The State calls Pam Cannon.

12 PAMELA CANNON, after being duly sworn, testifies
13 as follows:

14 **THE CLERK:** Please have a seat. State your full
15 name for the record.

16 **WITNESS:** I'm Pamela Cannon.

17 DIRECT EXAMINATION

18 **BY MS. SHIPLEY**

19 **Q** Ms. Cannon, can you please tell the jury where it is
20 you were born and raised?

21 **A** Here in Columbia, South Carolina.

22 **Q** Okay. Can you pull that microphone up to you? I'm
23 having a difficult time hearing you. We've got to
24 make sure everyone hears you. Okay? You said --
25 what was your answer?

1 **A** Here in Columbia, South Carolina.

2 **Q** Okay. And where did you go to high school?

3 **A** Spring Valley High School.

4 **Q** What do you do for a living?

5 **A** I'm a payroll human resources manager.

6 **Q** And for which company?

7 **A** Capitol Hyundai, Capitol Chevrolet, under Sonic
8 Automotive, Inc.

9 **Q** And how long --

10 **COURT REPORTER:** I'm sorry. I didn't hear it.
11 I didn't hear the end of your employment.

12 **A** Under Sonic Automotive, Inc.

13 **Q** How long have you had that job for?

14 **A** It's about a little over two years.

15 **Q** Okay. I'm going to ask you a little bit about your
16 marital history. How long were you married to Duane
17 Cannon, Israel Duane Cannon?

18 **A** 12 years. About 12 years.

19 **Q** 12 years? Did you and Duane have any children
20 together?

21 **A** Not together, no.

22 **Q** Do you have a child from a previous relationship?

23 **A** Yes.

24 **Q** And who are these people over here?

25 **A** These are my family. Those are Israel, Duane's

1 parents, his cousins, his aunts, people that go to
2 church with him, my mother-in-law, my brother.

3 Q What did Duane do for a living?

4 A He was a truck driver.

5 Q And how long did he do that?

6 A Seven, eight, maybe ten years.

7 Q For the majority of your marriage?

8 A Yes.

9 Q And how did you meet Duane?

10 A At a gas station.

11 Q And you struck up a conversation. Explain how it is
12 you all met?

13 A Well, he was on the phones and I had went in the
14 store to get some items. And he stopped me when I
15 got back to the car and asked me what my name was and
16 could he have my phone number, you know, how most
17 conversations go on. We exchanged phone numbers, and
18 that was that.

19 Q And then you got married shortly thereafter?

20 A Yes.

21 Q I'm going to bring your attention to the night of
22 June 2nd, 2007, Saturday night. Do you recall what
23 you were doing that night?

24 A Yeah. Celebrating my birthday.

25 Q And when is your birthday?

1 A May 31st.

2 Q And who all was with you when you went out for your
3 birthday that night?

4 A Well, when we started at Chili's, it was Israel, Kim
5 Bowers, Kim Goins, Brandie Robinson. It just a whole
6 host of people at the bar.

7 Q Was there a guy named Brandon Johnson with you as
8 well?

9 A Not at Chili's.

10 Q Not at Chili's? And what did you do at Chili's?

11 A We drank, sat at the bar and drank and ate.

12 Q And you ate also?

13 A Yeah.

14 Q After you went to Chili's -- which Chili's was it?

15 A The one on Two Notch Road.

16 Q After you went to Chili's on Two Notch Road, where
17 did you go as a group next?

18 A To Essence on Two Notch Road.

19 Q What is Essence?

20 A It's a club. It's where you can go and dance and
21 drink.

22 Q Okay.

23 A Social club.

24 Q And how long -- what time do you think it is you got
25 to Essence club?

- 1 **A** I'm not real sure what time we got there.
- 2 **Q** Okay.
- 3 **A** I'm not real sure. I was drinking, and I'm not sure
4 of the time.
- 5 **Q** All right.
- 6 **A** But I know we made it there.
- 7 **Q** And how long did you stay? Did you stay at Essence
8 Club long?
- 9 **A** We stayed until it closed.
- 10 **Q** And do you remember what time they usually close
11 or --
- 12 **A** Maybe 1 or so in the morning. I don't know.
- 13 **Q** All right. After Essence Club, where did you go?
- 14 **A** Somehow it was decided that we were going to stop by
15 the pub.
- 16 **Q** The pub?
- 17 **A** Yeah.
- 18 **Q** And is that the H&J club on Hard Scrabble Road?
- 19 **A** Yes.
- 20 **Q** And can you describe for the jury if they might not
21 be familiar with this area, where exactly on Hard
22 Scrabble Road is the H&J club?
- 23 **A** I don't know. It's right by the gas station. It's
24 one gas station on Hard Scrabble Road and --
- 25 **Q** What street intersects it?

1 **A** I have no clue.

2 **Q** It is near the Farrow Road side or Clemson Road side?

3 **A** It's more toward the Farrow Road side.

4 **Q** Okay. And are you familiar with this club?

5 **A** Yeah.

6 **Q** And you call it the pub?

7 **A** Yes.

8 **Q** Would you consider yourself a regular at the pub?

9 **A** Yeah. I was.

10 **Q** How often would you go to the pub?

11 **A** Before that day I hadn't been there in a while. But

12 before, it was usually a regular thing. On a

13 Saturday night or so we would go out there.

14 **Q** Okay. Who all would go out there?

15 **A** Sometimes me and Duane. Sometimes me and Kim Bowers.

16 Just going out to hang out and dance and have some

17 drinks.

18 **Q** Did you become familiar with other patrons of the

19 pub?

20 **A** Oh, yeah.

21 **Q** And by becoming familiar, did you recognize them by

22 face?

23 **A** Uh-huh (affirmative).

24 **Q** Did you necessarily know their names?

25 **A** No.

1 Q I'm going to bring your attention; can you describe
2 for the jury once you got to the H&J pub, what is it
3 you did inside?

4 A From what I remember, we walked in to go get on the
5 dance floor to dance, but the floor was wet. Because
6 we had on heels and we were about to fall. So we
7 grabbed the first table to the right to sit down.

8 Q And who all sat down at the table?

9 A Me, Kim Goins and Kim Bowers.

10 Q And do you recall how long it was that you were in
11 the club?

12 A No. I don't.

13 Q Do you remember what time the club closed that night?

14 A No. I don't.

15 Q What time -- when the pub closes, what does the owner
16 or the people who run the pub do to let everybody
17 know it's time to close, it's time to leave?

18 A They shut the lights on.

19 Q Do you recall the lights coming on?

20 A Yeah.

21 Q And when the lights came on, can you describe for the
22 jury what you remember happening next?

23 A I just remember trying to exit and arguing with
24 someone back and forth.

25 Q Okay. And when you were leaving, do you remember

1 breaking a beer bottle?

2 **A** No.

3 **Q** When you ended up in the parking lot, can you
4 describe for the jury what you remember happening in
5 the parking lot?

6 **A** I remember walking toward my car --

7 **Q** Okay.

8 **A** -- and making the statement of, "You're trying to
9 pick girls up driving your mama's Volvo." That's
10 last thing I remember saying.

11 **Q** All right. I'm going to stop you there for one
12 second. I'm going to show you what's been marked
13 State's No. 37. Have you seen this diagram before?

14 **A** Yes.

15 **Q** And does this accurately depict the pub on Hard
16 Scrabble Road?

17 **A** Yes.

18 **MS. SHIPLEY:** Your Honor, at this time we would
19 submit State's Exhibit 37 into evidence.

20 **MR. O'NEIL:** Without objection.

21 **THE COURT:** No without objection.

22 (WHEREUPON, State's Exhibit No. 37 is admitted
23 into evidence.)

24 **Q** I'm going to put it up here. And if you could please
25 orient the jury using this pointer. And speak up.

- 1 Okay? Point to the jury where the entrance to the
2 pub is?
- 3 **A** It's over here. It's over here.
- 4 **Q** Okay. So it's on the front side of this building?
- 5 **A** Yeah.
- 6 **Q** Okay. Does this deck belong to the pub?
- 7 **A** Yes.
- 8 **Q** Okay. Is there a different business next to the pub?
- 9 **A** It's a gas station.
- 10 **Q** Okay. And is this the cover to the gas pumps?
- 11 **A** Yeah. I would imagine. I've never seen it from the
12 top. But, yeah.
- 13 **Q** All right. What are these objects on the right?
- 14 **A** Some phones.
- 15 **Q** All right. Are those phone booths?
- 16 **A** Yes.
- 17 **Q** Okay. Describe for the jury what you remember that
18 night when you're leaving the pub?
- 19 **A** I remember going toward my vehicle which was parked
20 here.
- 21 **Q** Okay. And what kind of vehicle were you driving? Or
22 who was driving that night?
- 23 **A** My husband.
- 24 **Q** Duane?
- 25 **A** Mm-hmm (affirmative).

- 1 Q And what kind of vehicle was it?
- 2 A It's a 1999 Tahoe.
- 3 Q And what color?
- 4 A It was white.
- 5 Q Excuse me?
- 6 A White.
- 7 Q White in color?
- 8 A Mm-hmm (affirmative).
- 9 Q All right. And you remember parking around that
- 10 corner of Bethel Camp Road and Hard Scrabble Road?
- 11 A Yeah.
- 12 Q Were the other girls that were with you, that being
- 13 Kim Bowers and Kim Goins, were they driving?
- 14 A Yes.
- 15 Q Their own cars?
- 16 A Yes.
- 17 Q All right. Do you recall where they parked?
- 18 A I think Kim Goins was parked right behind the Tahoe,
- 19 and Kim Patton was parked behind Kim Goins.
- 20 Q Okay. And Kim Patton is also Kim Bowers?
- 21 A Yes, ma'am.
- 22 Q That was her maiden name?
- 23 A Yeah.
- 24 Q Now, describe for the jury, as you're leaving the
- 25 club what you remember and who you were directing the

1 conversation to?

2 A I just remember directing the conversation to one of
3 the guys in the black Volvo, going towards the black
4 Volvo.

5 Q Did you recognize anybody standing by that black
6 Volvo?

7 A Garry.

8 Q And at the time did you know his name?

9 A No.

10 Q Describe what Garry looks like for this jury?

11 A He's a kind of heavy set guy with a really round
12 face.

13 Q Okay. And is he someone you'd recognize from
14 frequenting the pub?

15 A Yes.

16 Q Did you see him or did you hug Mr. Garry Green that
17 night?

18 A Yeah. He knew --

19 Q As an acquaintance?

20 A Yeah. He knew my husband and I.

21 Q What side of the Volvo did you see Mr. Garry Green?
22 Now that you know his name, what side of the car was
23 he at?

24 A On the passenger's side.

25 Q All right. Who were you directing your comments to

1 about driving your mama's Volvo?

2 **A** The guy that was getting on the -- that was getting
3 in on the driver's -- that was standing by the
4 driver's side of the vehicle.

5 **Q** Do you recall what he looked like?

6 **A** He was just a tall, brown-skinned male.

7 **Q** Okay. Do you recall approximately how tall he was?

8 **A** No. I'm short. So everybody is taller than me. He
9 just was tall.

10 **Q** Can you describe his build?

11 **A** Skinny.

12 **Q** Okay. And you are not sure which side, which door he
13 was getting into on the driver's side, but he was on
14 the driver's side?

15 **A** Yeah.

16 **Q** Do you recall having any comments or making any
17 comments to anyone else in the parking lot?

18 **A** No.

19 **Q** When you made that comment about driving your mama's
20 Volvo, what happened next that you remember?

21 **A** I was getting up off the floor, off the ground by the
22 phones covered in sand, missing my shoes, tasting
23 gunpowder.

24 **Q** You tasted gunpowder?

25 **A** Mm-hmm (affirmative).

1 Q Were you knocked unconscious, or did you faint?

2 A I don't know which one it was, but I was out.

3 Q Do you recall hearing a loud noise in your ear?

4 A No. I don't recall hearing the loud noise. I just
5 remember waking up with my -- not being able to hear
6 out of my ear.

7 Q Which ear was it?

8 A My right ear.

9 Q And describe for this jury what was going on with
10 your right ear?

11 A Later I found out that my eardrum was blown.

12 Q Did you have to go seek medical attention for your
13 eardrum?

14 A Yes.

15 Q How long did you have to go to see doctors for that?

16 A I went to see the doctor. He told me to give it a
17 month or two. He didn't want to do surgery, give it
18 a month or two to heal.

19 Q Did it eventually heal on its own?

20 A Yeah.

21 Q When you came to, can you estimate where in the
22 parking lot you were when you came to?

23 A Right here.

24 Q All right. By the pay phones?

25 A Yes.

1 Q Who was with you when you came to?

2 A Kim Goins.

3 Q Describe Kim's demeanor?

4 A She was crying and hitting me and holding me and
5 saying, "wake up, wake up, get up, wake up."

6 Q Was she upset?

7 A Yes.

8 Q What did she say to you?

9 A I asked her what happened.

10 MR. O'NEIL: Objection, Your Honor.

11 THE COURT: Sustained.

12 MS. SHIPLEY: Excited utterance.

13 THE COURT: I don't know that.

14 MS. SHIPLEY: Your Honor, she said she was
15 excited and upset.

16 THE COURT: She was?

17 MS. SHIPLEY: No, no. The witness who was
18 holding her, Ms. Kim Goins.

19 THE COURT: I'll allow it. Go ahead.

20 Q Ms. Goins was upset. Is that correct?

21 A Yes.

22 Q Describe for the jury what it is she told you when
23 you came to and she was holding you?

24 A She told me that the guy with the dreads ran up and
25 shot at me.

1 Q And did she tell you where Duane went?

2 A Yeah. I asked her. I said, "Well, where is Duane?"

3 And she said he went behind the guys in the Volvo.

4 Q Did she say whether or not the guy with the dreads
5 who shot at your head, what car he got into?

6 A She said he got in the car with the Volvo.

7 Q The black Volvo?

8 A Yeah.

9 Q Did she say what Duane instructed her to do?

10 A She stayed with me.

11 Q Did she indicate whether or not your husband thought
12 that you had been shot in the head in that parking
13 lot?

14 A Yeah. She said, "He thought you were shot."

15 Q Who followed after Duane?

16 A Kim Bowers.

17 Q Why did Kim Bowers follow after Duane?

18 MR. O'NEIL: Objection.

19 THE COURT: Speculation.

20 Q Okay. You don't know why she went?

21 A Hmm-mm (Negative).

22 Q Was she there when you woke up?

23 A No.

24 Q What did you and Kim Goins begin to do when you
25 realized Duane was following these guys in the black

1 Volvo?

2 A We started trying to call his cellphone.

3 Q Did he answer his cellphone?

4 A No.

5 Q Where was your cellphone?

6 A In his pockets.

7 Q Where was your ID?

8 A In his pockets.

9 Q Is that normal for him to hold all your things?

10 A Yes.

11 Q When you go out with him?

12 A When I'm drinking, he always holds my things.

13 Q Okay. What did you and Kim Goins decide to do when
14 Duane would not answer his phone?

15 A We thought maybe he went home. So we decided to go
16 home.

17 Q And where did you live at the time?

18 A 1313 Killian Loop.

19 Q Is that in this general area?

20 A Not too far from the area.

21 Q Okay. Describe for this jury what it was that
22 happened when you were in route to your house to find
23 Duane there?

24 A We were pulled over on my street by a police officer.

25 Q And do you know why the police officer pulled you

1 over?

2 A No.

3 Q Who was driving?

4 A Kim Goins.

5 Q Okay. When you were pulled over by this police
6 officer on Killian Road, what did you report to him?

7 A That I had been shot at at a pub and I was looking
8 for my husband.

9 Q And when you told this officer that you had been shot
10 at at the pub and that you were looking for your
11 husband, what did he instruct you to do?

12 A To get in the back of his car.

13 Q And did you get in the back of his patrol car?

14 A Yes.

15 Q And where did he take you?

16 A Down to the police station.

17 Q Would that be the Richland County Sheriff's
18 Department on Two Notch Road?

19 A Yes.

20 Q And did Kim Goins follow you there?

21 A Yeah. She was instructed to follow.

22 Q When you got to the headquarters, do you remember
23 what happened next?

24 A We was taken in and questioned.

25 Q Do you recall who questioned you first?

1 A No.

2 Q Do you recall Investigator Don McRae?

3 A Yes.

4 Q Do you recall Sergeant Scott McDonald?

5 A Yes.

6 Q Do you remember giving them oral statements at
7 headquarters about what had happened at the pub?

8 A Yes.

9 Q Did they tell you that they had found your husband?

10 A No.

11 Q And basically what you just testified to to this
12 jury, is that what you described to Investigator
13 McRae and Scott McDonald at headquarters?

14 A Yes.

15 Q You provided -- did you recall providing them with
16 descriptions of who you recall being around this
17 black Volvo?

18 A Yeah.

19 Q And, in fact, you describe -- do you recall the
20 description you provided about the person that you
21 recalled seeing there before?

22 A Yeah.

23 Q And what did you describe the person that you had
24 seen before? How did you describe him?

25 A Round faced, kind of chubby guy, kind of heavy set

1 guy.

2 Q Excuse me?

3 A Kind of heavy set guy, round face.

4 Q Did you recall giving them a height and approximate
5 weight?

6 A I don't recall.

7 Q Did you describe his complexion to the officers?

8 A I don't remember. But I know his complexion.

9 Q But you did provide that to them?

10 A Yes. I think I did.

11 Q Did you provide an approximate age?

12 A Yeah.

13 Q Do you recall what the age was of the person you
14 remembered seeing around before?

15 A 22, in his twenties or something.

16 Q Okay.

17 **MS. SHIPLEY:** Your Honor, under a prior
18 inconsistent statement, I am going to provide what
19 she provided to Investigator McRae to refresh her
20 memory.

21 **THE COURT:** Do you have a statement?

22 **MS. SHIPLEY:** Yes, sir, Your Honor.

23 Q Ms. Cannon, could you just read that last paragraph
24 to yourself and refresh your memory of the
25 description you provided that night?

1 **A** Okay.

2 **Q** Does that ring a bell?

3 **A** Yes.

4 **Q** Does that help refresh your memory?

5 **A** Yeah.

6 **Q** You were under the influence when you provided this
7 information, correct?

8 **A** Yes.

9 **Q** What is it that you described? How is it that you
10 described the person that you had seen before?

11 **A** With the round face, five-five, goatee.

12 **Q** The goatee?

13 **A** Mm-hmm (affirmative).

14 **Q** What about his complexion?

15 **A** Light.

16 **Q** Light complexion?

17 **A** Mm-hmm (affirmative).

18 **Q** How often do you think you had seen this individual
19 before at the pub?

20 **A** Twenty.

21 **Q** Twenty times?

22 **A** Yeah.

23 **Q** Okay. Do you recall giving the description to the
24 police about the other person you saw on the driver's
25 side of the black Volvo?

- 1 **A** Yeah. Tall, skinny, dark skinned, in his twenties
2 kind of.
- 3 **Q** Okay. After you got done describing and giving as
4 much information as you could to the investigators,
5 did they inform you of anything?
- 6 **A** Not at that moment.
- 7 **Q** Did they take you to a waiting area?
- 8 **A** Yes.
- 9 **Q** Eventually did they notify you of your husband's
10 death?
- 11 **A** Yes.
- 12 **Q** What did you do next after you learned that your
13 husband had been killed?
- 14 **A** I started crying. I fell to the floor and started
15 crying.
- 16 **Q** Did you get a ride home from there?
- 17 **A** Yeah. My brother came and picked me up.
- 18 **Q** Do you ever recall seeing a third individual around
19 the Volvo that night?
- 20 **A** No.
- 21 **Q** Did you ever recall seeing anyone with either braids
22 or dreadlocks around the Volvo that night?
- 23 **A** Definitely not dreads.
- 24 **Q** You don't remember?
- 25 **A** No.

1 Q Do you recall the officers asking you to come back on
2 June the 4th, 2007, which would have been Monday?

3 A Yes.

4 Q To come and give a written statement?

5 A Yeah.

6 Q And in that written statement do you recall providing
7 a few more details of what happened that night since
8 you were now a little more alert and aware?

9 A Yeah.

10 Q And I'm going to show you a document and ask you if
11 you recognize it. Do you recognize that document?

12 A Yes.

13 Q And what is that?

14 A My statement.

15 Q And how many pages long is it?

16 A Three.

17 Q And is that the statement you gave to the police on
18 June 4th, 2007?

19 A Yes.

20 Q Do you recall being shown some pictures when you came
21 to headquarters on June 4th, 2007?

22 A Yes.

23 (WHEREUPON, State's Exhibit No. 38 is marked for
24 identification.)

25 **THE BAILIFF:** Your Honor, some of the jurors say

1 they are not able to hear the witness.

2 **THE COURT:** Thank you.

3 **Q** Ms. Cannon, pull that mike right up to your mouth.

4 Okay?

5 **A** Okay.

6 **Q** It's really important that everyone hears you. I'm
7 going to show you what's been marked State's 38 and
8 ask you if you recognize this document?

9 **A** Yes.

10 **Q** Okay. And what is that?

11 **A** It's a line-up.

12 **Q** And did you identify anyone in that line-up?

13 **A** Yes.

14 **Q** Which picture?

15 **A** Number 2.

16 **Q** And who is that?

17 **A** Garry.

18 **Q** Is that the person that you had seen frequenting the
19 pub prior to that night?

20 **A** Yes.

21 **Q** Okay. Is that the person -- where was he standing in
22 relation to the black Volvo?

23 **A** On the passenger's side.

24 **MS. SHIPLEY:** Your Honor, we would admit No. 38
25 into evidence at this time.

1 **MR. O'NEIL:** No objection.

2 **THE COURT:** Without objection.

3 (WHEREUPON, State's Exhibit No. 38 is admitted
4 into evidence.)

5 **Q** Were you shown some more photographs that day?

6 **A** Yes.

7 **Q** Were you able to identify anyone else?

8 **A** No.

9 **Q** Whose car was it, the Tahoe? Who drove that car?

10 **A** Me.

11 **Q** Were there any firearms in that car?

12 **A** No.

13 **Q** Did Duane have any firearms on him that night?

14 **A** No.

15 **Q** Was there any damage on your Tahoe?

16 **A** No.

17 **Q** Were you asked to go back to the Richland County
18 Sheriff's Department later on for more questioning?

19 **A** Yes.

20 **Q** And do you recall what exactly you were asked when
21 you returned a couple of weeks later?

22 **A** No.

23 **Q** Do you recall being confronted by the Sheriff's
24 Department about information they had gained
25 concerning a relationship between Duane and your

1 cousin, Kim Goins?

2 **A** Yes.

3 **Q** That would be Kim Goins who was out with you that
4 night?

5 **A** Yes.

6 **Q** And had you suspected something was going on between
7 the two of them?

8 **A** Yes.

9 **Q** Do you recall being questioned about whether or not
10 you knew the third person at the vehicle, the guy
11 with dreads?

12 **A** Yes.

13 **Q** And do you know anybody that night with dreads?

14 **A** No.

15 **Q** Was there anyone else with dreads that night that
16 talked to you that night?

17 **A** No.

18 **Q** You don't even remember seeing anyone with dreads
19 that night. Is that correct?

20 **MR. O'NEIL:** Objection, Your Honor. Leading.

21 **MS. SHIPLEY:** I'll rephrase, Your Honor.

22 **Q** Do you even remember seeing anyone with dreadlocks
23 that night?

24 **A** No.

25 **Q** Or braids or plaits?

1 **A** No.

2 **Q** And you don't know this man, Louis Sanders?

3 **A** No.

4 **Q** Had you provided Kim Goins -- did you get her a job?

5 **A** I did.

6 **Q** Prior to this event?

7 **A** Yes.

8 **Q** And are you still her boss?

9 **A** Yes.

10 **Q** She still keep her job despite what you found out
11 about her and Duane?

12 **A** Yes.

13 **Q** What was the last thing you remember Duane telling
14 you that night?

15 **A** At Essence that he loved me very much after he gave
16 me the rose.

17 **Q** Thank you. No further questions, Your Honor.

18 **THE COURT:** Cross examination.

19 **MR. O'NEIL:** Thank you, Your Honor.

20 CROSS EXAMINATION

21 **BY MR. O'NEIL**

22 **Q** Good morning, Ms. Cannon.

23 **A** Good morning.

24 **Q** Just a few questions for you. You remember talking
25 to Garry that evening, correct?

- 1 **A** I spoke with him.
- 2 **Q** And this is the individual, Garry, that you remember
- 3 talking to?
- 4 **A** Yes, sir.
- 5 **Q** I think you actually hugged Garry on your way out the
- 6 club?
- 7 **A** Yes.
- 8 **Q** And you said there was another guy with Garry?
- 9 **A** Yes, sir.
- 10 **Q** A tall, skinny guy?
- 11 **A** Mm-hmm (affirmative). Yes, sir.
- 12 **Q** I think you used the words dark skinned?
- 13 **A** Dark skinned. Darker, yeah.
- 14 **Q** I guess dark skin is kind of a relative term. Would
- 15 you consider yourself dark skinned?
- 16 **A** No, sir.
- 17 **Q** Was he lighter or --
- 18 **A** He was darker than me.
- 19 **Q** He was darker than you?
- 20 **A** Yes.
- 21 **Q** But that person was not Louis Sanders?
- 22 **A** I don't know.
- 23 **Q** He wasn't as light as Louis Sanders is? He was
- 24 darker than Louis Sanders?
- 25 **A** He was just darker than me.

1 Q Darker than you?

2 A Right.

3 Q He didn't have dreads?

4 A No, he did not have dreads.

5 Q And you understand the difference I guess between
6 dreads and corn rows?

7 A Yes, I do.

8 Q And what Louis Sanders has, those aren't dreads?

9 A No.

10 Q Those are corn rows?

11 A That's correct.

12 Q Okay. In fact, I think you say you don't even
13 remember talking to a guy with dreads at all?

14 A I don't.

15 Q You don't remember a guy with dreads shooting at you?

16 A No, sir.

17 Q You don't even remember being shot at all I think you
18 said. Is what you're testifying to?

19 A No, sir.

20 Q You don't remember a third person being with Garry
21 and the other person with Garry?

22 A No, sir.

23 Q You just remember two people?

24 A Yes, sir.

25 Q And I think you said your husband knew Garry?

1 **A** Yes, sir.

2 **Q** And of course you knew Garry?

3 **A** Yeah.

4 **Q** You all kind of regular at the H&J?

5 **A** Yes, sir.

6 **Q** It's kind of a small establishment?

7 **A** Yeah.

8 **Q** A lot of regulars?

9 **A** Yes, sir.

10 **Q** Pretty much everybody knows each other?

11 **A** Yes, sir.

12 **Q** You don't know Louis Sanders?

13 **A** No, sir.

14 **Q** You don't recognize him from that night at the pub?

15 **A** No, sir.

16 **MR. O'NEIL:** Beg the Court's indulgence, Your
17 Honor.

18 **THE COURT:** Sure.

19 **MR. O'NEIL:** No further questions, Your Honor.

20 **THE COURT:** Redirect?

21 **MS. SHIPLEY:** No, sir, Your Honor.

22 **THE COURT:** All right. You may come down,
23 ma'am. Thank you very much.

24 **WITNESS:** Thank you.

25 **THE COURT:** Next witness.

1 **MS. EVERHART:** Your Honor, may we take a brief
2 recess?

3 **THE COURT:** Approach the bench.

4 (Whereupon, a bench conference is had)

5 **THE COURT:** All right, ladies and gentlemen.
6 Let's take a short morning break. I'm going to ask
7 you not to discuss the case among yourselves while
8 you're in the jury room. Just relax a few moments.
9 We've been going since about 9:30. It's probably
10 time to take a break. So you're excused to go to
11 your jury room. Just relax for a few minutes. And
12 we'll try to correct the sound system while you're in
13 the jury room.

14 (Jury out at 11:00 a.m.)

15 **THE COURT:** All right. We'll stand at ease for
16 about ten minutes.

17 (Whereupon, a break is taken)

18 **MS. SHIPLEY:** Your Honor, could we ask the
19 defense to remove the scapegoat poster? That's
20 inappropriate. We would be glad to put a picture of
21 Mr. Cannon and face it that way, too.

22 **THE COURT:** Turn it around.

23 **MR. O'NEIL:** Yes, Your Honor.

24 (Jury in at 11:20 a.m.)

25 **MS. MCDUFFIE:** Your Honor, my we approach

1 briefly?

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

3 (Whereupon, a bench conference is had)

4 **THE COURT:** Call your next witness.

5 **MS. MCDUFFIE:** The State calls Kim Goins.

6 KIMBERLY R. GOINS, after being duly sworn,
7 testifies as follows:

8 **THE CLERK:** Please have a seat. State your full
9 name for the record.

10 **WITNESS:** Kimberly Renee Goins.

11 DIRECT EXAMINATION

12 **BY MS. MCDUFFIE**

13 **Q** Good morning, Ms. Goins.

14 **A** Good morning.

15 **Q** Ms. Goins, can you please tell the jury where you're
16 employed?

17 **A** Capitol Hyundai.

18 **Q** If you could move that microphone to you a little
19 bit.

20 **A** Capitol Hyundai.

21 **Q** And how far did you go in school?

22 **A** I graduated high school.

23 **Q** And where do you currently live?

24 **A** 9401 Wilson Boulevard.

25 **Q** On Wilson Boulevard?

1 **A** Mm-hmm (affirmative).

2 **Q** And back in June of 2007 where did you live?

3 **A** June 2007?

4 **Q** Around the time of this incident.

5 **A** 1315 Killian.

6 **Q** On Killian Loop?

7 **A** Mm-hmm (affirmative).

8 **Q** And if you can just speak up because we want to make
9 sure the jury can hear you.

10 **A** 1315 Killian.

11 **Q** Were you with Pam Cannon and Duane Cannon on the
12 night of June the 2nd, 2007?

13 **A** Yes.

14 **Q** And why were you with them?

15 **A** We were celebrating Pam's and Kim's birthdays.

16 **Q** And that would be Kim Bowers?

17 **A** Yes, ma'am.

18 **Q** And where did you all go that evening?

19 **A** We went to Chili's, a nightclub called Essence and a
20 nightclub called a pub.

21 **Q** And how were you getting to each of these places?

22 **A** I drove my own car.

23 **Q** What kind of car did you have?

24 **A** A '95 Buick Regal.

25 **Q** Okay. And you went to H&J pub with Pam Cannon and

- 1 Duane Cannon?
- 2 A Yeah. And Kim. Yeah.
- 3 Q And Kim Bowers?
- 4 A Yes.
- 5 Q And was Eric Johnson there, too?
- 6 A Yes.
- 7 Q And what happened when you all got to the club?
- 8 A We got to the club. We went in and I slipped and
- 9 fell. So I sat down.
- 10 Q Where did you slip and fall?
- 11 A On the dance floor.
- 12 Q Why did you slip and fall?
- 13 A Someone had wasted beer or something on the floor.
- 14 Q And so then what did you all do after you fell?
- 15 A Me, Pam, Kim Bowers, we sat at a table at the pub.
- 16 Q And after you're sitting at the table, what, if
- 17 anything, happened then?
- 18 A A guy comes up to us, makes a statement, trying to
- 19 get our phone numbers or whatever. And everybody was
- 20 like, you know, we're here to have a good time.
- 21 We're not trying to get phone numbers.
- 22 Q And he was trying to pick you all up?
- 23 A Yeah.
- 24 Q And what did this guy look like?
- 25 A About five-nine, brown skinned.

1 Q What kind of hair did he have?

2 A He had long hair.

3 Q What do you mean by long?

4 A Shoulder length. It's longer than long hair. It
5 came to his shoulders about right here.

6 Q Was it styled any certain way?

7 A To me it looked like dreads, but not the locked
8 dreads; the dreads that you can put in your hair that
9 twist.

10 Q So it was in some sort of dreads or twists?

11 A Yes.

12 Q What did the ends look like?

13 A It was kind of curly at the ends.

14 Q And then what happened after this guy came and tried
15 to pick you all up?

16 A I really don't remember. I remember the lights being
17 cut and then that's a signal for the pub to be
18 closed. So --

19 Q Do you remember a beer bottle breaking?

20 A Yeah. I remember a beer bottle being broken, but I
21 don't know why.

22 Q Do you know who broke the beer bottle?

23 A No.

24 Q You don't remember?

25 A No.

1 Q So after the beer bottle broke, what happened then?

2 A Lights came on at the pub. Everybody was getting
3 their things to get ready to go.

4 Q And did you leave the pub?

5 A Yeah. We went outside in the parking lot.

6 Q Who did you leave the pub with?

7 A Me, Pam, Kim and Duane and Eric.

8 Q Eric was still with you?

9 A Yeah.

10 Q And then I'm going to show you your statement you
11 gave to police right after this incident happened on
12 June the 4th. Do you recognize this?

13 A Yes, ma'am.

14 Q I ask you to read the bottom part and see if that
15 refreshes your memory right here. Just read that to
16 yourself. So you all left the club, up and left the
17 pub?

18 A Mm-hmm (affirmative).

19 Q And then what happened?

20 A We're out in the parking lot. A guy, I don't
21 remember who, made a statement and, you know, was
22 like, "Okay, it's time for everybody to go, let's
23 go." And he made the statement to Pam. And Pam made
24 a statement to him, like she said that, you know,
25 "You're trying to pick somebody up and you're still

1 driving your mom's Volvo." And it just escalated
2 from there.

3 Q Okay. I'm going to show you State's Exhibit 37 which
4 is on the wall right here. Do you recognize this?

5 A Yes.

6 Q What is that a picture of?

7 A The pub and the parking lot.

8 Q I will just hand this to you. If you will just point
9 out some things for me. Do you remember where you
10 were parked that evening?

11 A I was parked right here.

12 Q And what is that close to, or what are those objects
13 right there?

14 A The phone booths.

15 Q Phone booths. Do you remember where Pam and Duane
16 were parked?

17 A Right up here above the phone booths.

18 **COURT REPORTER:** Above the what?

19 A Phone booths.

20 Q And so you all left the club and Pam made some
21 comment about driving a Volvo?

22 A Uh-huh (affirmative).

23 Q And what happened after that?

24 A A guy said, "You'd better shut your" -- can I curse
25 -- "fucking mouth." And everybody was like, okay,

1 it's time to go, let's get in our car, let's go. And
2 all of sudden the guy runs up and I hear this loud
3 bang and Pam falls to the ground.

4 Q And did you see the guy that ran up behind Pam?

5 A Yeah. But, you know, I didn't get a good look at
6 him.

7 Q Do you remember anything about the way he looked?

8 A That he was -- he was slender but he wasn't small.
9 He looked like he were about 170 pounds, long hair.

10 Q He wasn't bald?

11 A No.

12 Q He had hair?

13 A Yes.

14 Q What kind of hair?

15 A Again, it could have been braids or drop braids or
16 dreadlocks.

17 Q So some sort of braids or dreadlocks in his hair?

18 A Yeah.

19 Q What happened after you saw him shoot at Pam?

20 A Duane told me to stay with Pam. He got in his -- in
21 the truck and followed the guys because after the
22 shot the guy runs towards the car. I don't know if
23 he got into the driver's side or passenger's side. I
24 don't know.

25 Q What kind of car was that that he ran to?

1 **A** A black midsized car.

2 **Q** And Duane then did what?

3 **A** He followed the car. Kim Bowers, she followed Duane.

4 **Q** So Duane is following a black midsized car?

5 **A** Yes.

6 **Q** And Kim Bowers is following Duane?

7 **A** Yeah.

8 **Q** And what are you doing while this is going on?

9 **A** At this time Pam is still passed out on the ground
10 and I get her up off the ground and try to get her in
11 my car.

12 **Q** Were you upset at this point in time?

13 **A** Yeah.

14 **Q** And were you able to wake Pam up and get her up?

15 **A** Yeah. A guy came up to me and Pam, and we said that
16 Pam had just got shot at and I was just trying to get
17 her in the car so we could leave.

18 **Q** And did he help you get Pam up?

19 **A** Yes.

20 **Q** And was Pam missing some things when she fell down?

21 **A** She had dropped a ring, like a pinkie ring, and he
22 were (sic) trying to find that. We found her ring
23 and we got in my car and left.

24 **Q** What did Pam look like when she got into your car?

25 **A** Well, we both were muddy because we were on the

1 ground, and Pam didn't have on any shoes.

2 Q So Pam wasn't wearing any shoes?

3 A No.

4 Q She was muddy and you were muddy?

5 A Uh-huh (affirmative).

6 Q And had you been drinking that evening?

7 A Yes.

8 Q So you got Pam in your car and what happened next?

9 A We were trying to -- Pam's cellphone was in the
10 truck, so I used my cellphone to try to call Duane
11 because we didn't know where he was. So we thought
12 maybe he had went home. So --

13 Q Did Duane ever answer the phone calls?

14 A No.

15 Q And then what happened?

16 A We got to Killian Loop. And as soon as we got to
17 Killian Loop, we were pulled over by the police
18 officer.

19 Q By a Sheriff's Deputy?

20 A Yeah.

21 Q What did you tell that deputy?

22 A That Pam had just got shot at. She didn't have her
23 ID because it was in the truck. And he told us to
24 follow him to the police station.

25 Q He asked you to follow in your car?

1 **A** Yeah. Pam was in his car. He was -- he put Pam in
2 his car and told me to follow him to the police
3 station.

4 **Q** And then do you remember going to the Richland County
5 Sheriff's Department on Two Notch?

6 **A** Yes.

7 **Q** And do you remember meeting with the investigators,
8 McRae and McDonald?

9 **A** Yes.

10 **Q** And do you remember giving them an oral statement
11 that morning?

12 **A** Yeah.

13 **Q** Do you remember describing what the individuals
14 looked like that you saw at the H&J pub?

15 **A** Yes.

16 **Q** And what did those individuals look like?

17 **A** A midsize guy, like five-seven, five-ten,
18 170 pounds, light brown with long hair, possibly
19 dreads.

20 **Q** Dreads? Or could you have possibly said Geri curled
21 hair?

22 **A** Yeah.

23 **Q** What did you mean by that?

24 **A** That it was curly. It didn't look like the ends of
25 his hair was curly.

1 Q So it was in some sort of braids or dreads and then
2 the ends were curled?

3 A Yeah.

4 Q And is this the person that you saw shoot at Pam?

5 A Yes.

6 Q Then you saw that person get into the black midsized
7 car?

8 A Yes.

9 Q And you saw Duane take off after the car?

10 A Yes.

11 Q Did you see anyone else that evening that you
12 described to the police?

13 A I don't remember.

14 Q Did you see someone you described as overweight or
15 heavy set?

16 A Yes.

17 Q Do you know who that person is or was?

18 A No.

19 Q And then what happened after that?

20 A We were sitting at the police station. After I guess
21 a couple of hours they came in and told us that Duane
22 was dead.

23 Q And what happened after they told you that?

24 A A lady came in. I don't know her name. I guess she
25 works down to the department. She came in. She

1 talked to Pam and she talked to me, and basically
2 that's all that happened.

3 Q And then did you go home?

4 A Yes. I went home. Yeah, I went home. And then
5 after that I left and went to my mom's place.

6 Q Then the next day did you go down to the Sheriff's
7 Department and give a written statement?

8 A A written statement?

9 Q Or did they type a statement while you --

10 A They typed a statement, yes.

11 Q And do you remember giving that statement?

12 A Yes.

13 Q Do you remember describing the man you saw as having
14 dreads?

15 A Yes.

16 Q And do you remember whether or not you told the
17 police that Eric Johnson was at the pub when the
18 shooting happened?

19 A No. He had already left by this time.

20 Q So the only people that you were with when it
21 happened was who?

22 A Me, Pam, Duane and Kim Bowers.

23 Q And did the police show you some photos to try and
24 identify people out of?

25 A Yes.

1 Q And were you able to identify anyone out of all the
2 photos?

3 A No.

4 Q Did you get called back to go to the police station
5 about a week or two later?

6 A Yes.

7 Q And did you give another statement to the police?

8 A Yes.

9 Q And at that time had the police done some
10 investigation and found out that you were having an
11 affair with Duane Cannon?

12 A Yes.

13 Q And did they tell you that they were going to tell
14 Pam that?

15 A Yes.

16 Q And did you also tell the police that you heard some
17 rumors at that time?

18 A Yes.

19 Q What sort of rumors were those?

20 MR. O'NEIL: Objection, Your Honor.

21 THE COURT: Sustained.

22 Q Did Pam confront you about having an affair?

23 A Yes.

24 Q And Pam had employed you?

25 A No.

1 Q Or she'd gotten you your job?

2 A Yes.

3 Q And do you still have that job?

4 A Yes.

5 Q And do you remember telling the police that you heard
6 someone shouting something?

7 MR. O'NEIL: Objection, Your Honor. Leading.

8 THE COURT: That's leading. Just rephrase your
9 question.

10 Q Did you hear anyone say anything at the H&J pub that
11 evening?

12 A Yes.

13 Q What did you hear?

14 MR. O'NEIL: Objection, Your Honor. Hearsay.

15 THE COURT: Sustained.

16 MS. MCDUFFIE: Your Honor, we're not offering it
17 for the truth of the matter asserted.

18 THE COURT: I don't know.

19 MR. O'NEIL: Your Honor, can we take this up
20 outside --

21 THE COURT: Sure.

22 MS. SHIPLEY: Can we approach, Your Honor?

23 THE COURT: Approach the bench.

24 (Whereupon, a bench conference is had)

25 MS. MCDUFFIE: Nothing further from this

1 witness, Your Honor.

2 **THE COURT:** Cross examination.

3 **MR. O'NEIL:** Thank you, Your Honor.

4 CROSS EXAMINATION

5 **BY MR. O'NEIL**

6 **Q** Ms. Goins.

7 **A** Yes.

8 **Q** I think you said the guy who came up to you all's
9 table that morning I guess --

10 **A** Yes.

11 **Q** -- had dreads?

12 **A** Yes.

13 **Q** And those were words you used, were dreads?

14 **A** Yes.

15 **Q** I think he was trying to pick up you and Ms. Cannon
16 up, trying to get your numbers?

17 **A** Yes.

18 **Q** And this guy with dreads, he talked to Kim Bowers or
19 Kim Patton as well?

20 **A** I don't remember.

21 **Q** Do you remember writing in your statement that he
22 talked to Kim, Kim Bowers anywhere?

23 **A** He come to the table. I don't remember if they
24 exchanged words or anything like that.

25 **Q** Do you remember saying that he talked to Kim Bowers

1 on the outside of the club?

2 A Yes.

3 Q So he talked to Kim Bowers on the outside of the
4 club?

5 A Yes.

6 Q You said the same guy with dreads talked to
7 Ms. Cannon on the outside of the club?

8 A They exchanged words. They didn't have a
9 conversation.

10 Q They were arguing back and forth?

11 A Yes.

12 Q And then you said this same guy with dreads was
13 actually the guy who shot at Ms. Cannon outside the
14 club?

15 A Mm-hmm (affirmative).

16 Q And you went on to specifically describe what type of
17 dreads they were. Is that correct?

18 A Yes.

19 Q You said they was well kept dreads?

20 A Mm-hmm (affirmative).

21 Q And they were about shoulder length?

22 A Yes.

23 Q Hanging down in his face?

24 A No.

25 Q To the side of his face?

- 1 **A** Back.
- 2 **Q** Back like this?
- 3 **A** Yeah.
- 4 **Q** And you said this man that had dreads was like in his
5 mid twenties?
- 6 **A** Yes.
- 7 **Q** And you say you don't remember him having any facial
8 hair?
- 9 **A** No. I don't remember no facial fair.
- 10 **Q** And I think you said you went back to the police
11 station the day after the incident after you got a
12 little bit of rest?
- 13 **A** Mm-hmm (affirmative).
- 14 **Q** I think on that day I think the police showed you a
15 total of four photo line-ups?
- 16 **A** Yeah. I don't remember how many. Yeah.
- 17 **Q** I think in two of those line-ups you couldn't
18 identify anybody, correct?
- 19 **A** Yes.
- 20 **Q** And one of those themselves went between number 2 and
21 number 5?
- 22 **A** Yes.
- 23 **Q** And the other one, I think you went between number 1
24 and number 5?
- 25 **A** Yeah. I guess.

1 Q And then I think the police brought you back in on
2 June the 7th to look at another line-up?

3 A Mm-hmm (affirmative).

4 Q Do you know whether or not that line-up had Louis
5 Sanders in it or not?

6 A I don't remember.

7 Q Do you remember talking to one of my investigators, a
8 Ms. Elizabeth Cook?

9 A Mm-hmm (affirmative).

10 Q An investigator from my office?

11 A Yes.

12 Q Do you remember her showing you a line-up with Louis
13 Sanders in it?

14 A No.

15 Q Do you remember her showing you a line-up though?

16 A Yeah.

17 Q You couldn't pick anybody out of the line-up she
18 showed you?

19 A No.

20 Q And I think you say you don't remember who broke the
21 bottle that day?

22 A No. I didn't remember who broke it.

23 Q You don't remember putting in your statement that Pam
24 Cannon broke the bottle?

25 A I said the bottle was broken.

1 Q You don't remember who broke it?

2 A No.

3 Q If I showed you your statement, would that refresh
4 your memory about what you said?

5 A Yes.

6 Q Let me let you look at your statement for a second.
7 Just read it to yourself.

8 A It's not in this statement.

9 Q It's not?

10 A (Shakes head negatively).

11 Q Would you pay attention to the last two sentences of
12 the first paragraph?

13 A Oh, okay. Yeah.

14 Q That refreshes your memory?

15 A Mm-hmm (affirmative).

16 Q So did you remember saying that Pam broke the bottle?

17 A Yeah. It's in my statement.

18 MR. O'NEIL: Beg the Court's indulgence. No
19 further questions for this witness, Your Honor.

20 THE COURT: Redirect?

21 MS. MCDUFFIE: Briefly, Your Honor.

22 REDIRECT EXAMINATION

23 BY MS. MCDUFFIE

24 Q Ms. Goins, is there any doubt in your mind that the
25 man you saw shoot by Pam's head then got into the

1 black midsized car?

2 **A** No. There is no doubt.

3 **Q** And is that the reason why Duane was following that
4 car?

5 **A** Yes.

6 **MR. O'NEIL:** Objection, Your Honor.

7 **THE COURT:** Well, the milk is spilled. So,
8 overruled.

9 **MS. MCDUFFIE:** Nothing further, Your Honor.

10 **THE COURT:** Any recross?

11 **MR. O'NEIL:** Beg the Court's indulgence, Your
12 Honor.

13 **THE COURT:** Sure.

14 **MR. O'NEIL:** No further questions, Your Honor.

15 **THE COURT:** All right. You may come down,
16 ma'am. Thank you very much.

17 **MS. MCDUFFIE:** Your Honor, we would ask that
18 this witness is subject to being recalled and not to
19 be excused at this time.

20 **THE COURT:** All right. Next witness.

21 **MS. SHIPLEY:** The State calls Kim Bowers.

22 KIMBERLY BOWERS, after being duly sworn,
23 testifies as follows:

24 **THE CLERK:** Please have a seat. State your full
25 name for the record.

1 **WITNESS:** Kimberly Bowers.

2 DIRECT EXAMINATION

3 **BY MS. SHIPLEY**

4 **Q** Good morning, Ms. Bowers.

5 **A** Good morning.

6 **Q** Ms. Bowers, do you also go by Kim Patton?

7 **A** That's my maiden name.

8 **Q** Maiden name. Okay. Ms. Bowers, can you please tell
9 the jury where you were born and raised?

10 **A** Columbia, South Carolina.

11 **Q** And where did you go to high school?

12 **A** I graduated, went to Richland Northeast, graduated
13 from Lexington High School.

14 **Q** From Lexington?

15 **A** Mm-hmm (affirmative).

16 **Q** And what do you do for a living?

17 **A** I am a manager at a Check Casher.

18 **Q** How long have you been doing that?

19 **A** Total, probably about 11 years.

20 **Q** And how is it that you became friends with Pam Cannon
21 and Duane Cannon and that group of friends?

22 **A** Me and Pam worked together at Target. That was about
23 15, 16 years ago.

24 **Q** And so you knew Pam pretty much the entire time she's
25 been married to Duane?

1 **A** Yes, ma'am.

2 **Q** I'm going to bring your attention to the night of
3 June 2nd, 2007. Do you remember what you were doing
4 with Pam Cannon and Duane Cannon that night?

5 **A** Yes. We had went out celebrating her birthday. Her
6 husband does that every year for us, takes us out for
7 her birthday. We went to Chili's and went to a few
8 other places.

9 **Q** Do you remember who all was with you when you started
10 your evening at Chili's?

11 **A** It was me, Pam, her cousin, Kim Goins, Duane and
12 Duane's cousin, E.J.

13 **Q** E.J., is that Eric Johnson?

14 **A** Yeah.

15 **Q** Okay. Now, from Chili's, did you go to -- where did
16 you go next?

17 **A** We went to --

18 **Q** Did you go straight to the H&J club, or did you stop
19 somewhere along the way?

20 **A** No. We went to another club. I can't remember the
21 name of the club right now. It's off of Two Notch
22 though.

23 **Q** So you stopped at one location though?

24 **A** Yes, ma'am.

25 **Q** So from there where did you go?

- 1 **A** We went to the pub or H&J's.
- 2 **Q** That's about what everybody calls it? The pub?
- 3 **A** Yes.
- 4 **Q** Had you been there before that night?
- 5 **A** Yes.
- 6 **Q** Approximately how many times do you think you'd been
- 7 there?
- 8 **A** Over the years, many, many times.
- 9 **Q** So did you consider yourself a regular at this pub?
- 10 **A** Yes.
- 11 **Q** As being a regular, were you familiar with other
- 12 regulars at the pub?
- 13 **A** Yes.
- 14 **Q** Do you remember what time it was that you got to the
- 15 pub?
- 16 **A** It had to be around 3 a.m., 3:30 a.m. It was pretty
- 17 late.
- 18 **Q** So that would bring us into the day of June the 3rd?
- 19 **A** 3rd, yes.
- 20 **Q** 3:30 in the morning hours?
- 21 **A** Yes.
- 22 **Q** And that would be a Sunday. Is that correct?
- 23 **A** Yes.
- 24 **Q** Tell the jury what it is -- when you all arrived at
- 25 the pub what you all did?

1 **A** We went inside. We had a few drinks. I remember I
2 had been drinking quite a bit. But I remember we
3 were on the dance floor dancing. We were approached
4 by a guy. And I remember trying to tell him I'm
5 married, you know, kind of leave us alone, get away.

6 **Q** Can you describe this man for the jury?

7 **A** He was a black male, had like dreads or like
8 individual braided hair in his hair.

9 **Q** What kind of length would you describe his hair to
10 be?

11 **A** As I recall, I would say like right in here below
12 like his ears.

13 **Q** Okay. And did you notice anything else about him?
14 How old would you think he was?

15 **A** I would say in his middle thirties.

16 **Q** Okay. And do you remember anything about the
17 complexion of his skin?

18 **A** Brown skinned. I mean, he wasn't dark skinned or
19 light skinned but just brown skinned.

20 **Q** Okay. Do you remember anything else about him? His
21 height and weight?

22 **A** Height, maybe about five-eight, maybe 170 to
23 180 pounds.

24 **Q** When he approached you, who were you with on the
25 dance floor?

1 **A** It was -- from what I remember, it was me, Pam and
2 Kim on the dance floor.

3 **Q** Can you describe the lighting in the bar around the
4 dance floor?

5 **A** It's not good. It's real dim, dark lighting.

6 **Q** Okay. How long do you think you had this
7 conversation with this man? Had you ever seen him
8 before that night?

9 **A** No, ma'am.

10 **Q** How long do you think this conversation lasted on the
11 dance floor?

12 **A** I wouldn't say over five, ten minutes, ten minutes at
13 the most. I don't even think we stayed at the club,
14 you know, over 15 minutes. So 15 to 20 minutes at
15 the most.

16 **Q** All right. And again, what was the nature of the
17 conversation on the dance floor?

18 **A** Well, I felt that he was approaching us trying to hit
19 on us. I don't remember exact conversation.

20 **Q** Do you recall whether you told him you were married?

21 **A** Yes. I remember saying, "I'm married."

22 **Q** And what about Pam Cannon?

23 **A** I don't remember what she said. I know that they had
24 a few words on the dance floor. I don't recall what
25 the words were about, but they had a few words back

1 and forth. We were basically just trying to get him
2 out of our face.

3 Q All right. Do you recall whether you -- eventually
4 you, Kim and Pam Cannon sat down at a table?

5 A I don't remember sitting down. I remember walking up
6 to the table from the dance floor. It's right there.
7 I remember walking up there, but I can't remember
8 like us actually sitting down.

9 Q Okay. You indicated earlier in your testimony that
10 you were there about 15 to 20 minutes max that
11 morning?

12 A Right.

13 Q What made you all leave?

14 A The club I believe was making us leave because there
15 was an altercation between Pam and this guy inside
16 the club.

17 Q Do you remember what Pam did in order to bring it to
18 the attention of the establishment at the bar?

19 A No, ma'am. I don't remember.

20 Q All right. What, if anything, did the light turn on
21 indicating it was time that the bar was closing? Or
22 how did you know it was closing?

23 A From that night, I don't remember. I know being
24 there on other occasions when they were getting ready
25 to close, the lights would come on.

1 Q All right. But did you eventually leave the pub?

2 A Yes, ma'am.

3 Q Please describe for the jury where it is you ended up
4 after walking outside of the pub?

5 A When we walked out the pub, we were walking up the
6 sidewalk in front of the club. We spoke to a
7 gentleman we knew from the club previously, Garry,
8 and I saw this guy, the same guy that was in the club
9 speaking with Garry.

10 Q Which guy? What kind of hair did he have?

11 A With the dreads or braids or whatever.

12 Q Okay. You indicated that you saw him on the sidewalk
13 talking to Garry. Is that --

14 A I saw him speak to Garry on the sidewalk.

15 Q Can you just using this pointer on State's 37 show
16 the jury where the sidewalk is located so we all know
17 what you're talking about?

18 A The sidewalk is like right in this area underneath.
19 It goes underneath there.

20 Q All right. And I'm going to point over here. Is
21 that a continuation of that sidewalk?

22 A Yes.

23 Q All right. Using this pointer show the jury where
24 you believe it was that you witnessed Garry and the
25 man with the dreadlocks or braids talking to him?

1 **A** I want to say like right in this area because we came
2 out the door and we were headed down this way. We
3 were parked over here in this area.

4 **Q** Did you see the individual you know as Garry standing
5 near a vehicle?

6 **A** At that point I didn't see him standing near a
7 vehicle. When we keep walking down here, this guy,
8 the same guy from in the club, was talking to me like
9 right in this area. There was a vehicle, if I
10 remember, like in this area, correctly.

11 **Q** All right. And what kind of vehicle was it?

12 **A** I don't remember seeing the type of vehicle it was.

13 **Q** Okay. So you continued to have a conversation with
14 the man with the dreadlocks and/or braids in the
15 parking lot?

16 **A** Yes, ma'am.

17 **Q** All right. Would that be -- what are these items
18 over here? What are those?

19 **A** Those are pay phones.

20 **Q** And was that -- in relation to the pay phones, show
21 the jury where you believe it was you were having the
22 conversation with the man that had dreads or braids?

23 **A** Like around in this area.

24 **Q** Okay. And where was the man that you know as Garry
25 to be? Where was he standing?

1 **A** Well, I remember talking to him here, but I think as
2 we were all -- I'm not for sure, but I know he was
3 like coming the same direction everybody was going,
4 like in that same direction towards where the
5 vehicles were.

6 **Q** Do you remember where you were parked?

7 **A** I was parked like in this area.

8 **Q** All right. And what about Duane and Pam Cannon?
9 Where did they park their Chevy Tahoe?

10 **A** Their Chevy was pointed out like in this area.

11 **Q** Okay. Describe for the jury what you witnessed as
12 you're all walking and you're talking to the man with
13 the dreads or braids?

14 **A** I remember talking with him briefly and I remember
15 him and Pam were still going back and forth. I
16 remember him saying something about, you know, what's
17 up with your friend's mouth or whatever. And I was
18 trying to explain to him that we were out having a
19 good time, it was her birthday. And I remember him
20 or her saying a statement something about driving
21 your mother's Volvo, you know, back and forth. They
22 were just going back and forth arguing outside the
23 club, too. And as we were walking, I was walking off
24 from him trying to catch up with Pam and then, I
25 remember seeing like a movement of just somebody like

1 pulling something up and I --

2 Q Pulling something up from where?

3 A Just like out the pocket; or, I mean, I didn't see
4 exactly where. It was like I was walking off from
5 him but just saw an arm movement.

6 Q Okay.

7 A And at that point I heard a gun like click.

8 Q And it clicked. Is that firing? Or describe it.

9 A No. Like if you're cocking a gun or something.

10 Q Okay.

11 A I heard the cock of a gun at that point.

12 Q Okay.

13 A And then we were walking off. And I would say we
14 were --

15 Q Feel free to use the pointer.

16 A I would say we were like walking. You know, I heard
17 the click in this area. As we were walking like in
18 this area, I heard the gun was fired at that point.

19 Q And do you recall seeing who did -- who fired the
20 gun?

21 A I remember seeing the same guy. He was the one with
22 the movement. I don't remember seeing the actual gun
23 in his hand but I remember seeing him with the
24 movement and heard the thing click. At that point it
25 was like we were trying to get out of there.

1 Q Okay. And what happened when you heard a gun go off?

2 A Pam hit the ground and passed out.

3 Q What was going on in your mind? What did you believe
4 happened to Pam?

5 A I felt that she was shot.

6 Q What about the other people around? What about Duane
7 and Kim Goins? What did --

8 A Kim immediately, you know, went to the ground with
9 her and was trying to make sure she was all right. I
10 saw Duane run and jump in the Tahoe. And this was
11 after the car that these guys were in had went out of
12 the parking lot. And I saw him get in the Tahoe and
13 take off. And I went and got in my car and took off
14 after him, you know.

15 Q So just to backtrack, you said that after Kim -- the
16 gun was fired by Kim's -- what part of her body was
17 the gun fired at?

18 A By Pam?

19 Q By Pam.

20 A It was like inbetween where we were walking, with her
21 ear, near her head.

22 Q Into her ear?

23 A Near her ear.

24 Q After you saw her drop to the ground, where did you
25 see the individual with the dreads and/or braids go

1 to?

2 A Well, I didn't see exactly, but I saw immediately
3 after that a car shoot out of the parking lot and
4 take off. And they turned to the right outside, out
5 of the pub parking lot.

6 Q Can you show the jury what direction they turned to
7 get out of there?

8 A They went this way.

9 Q Okay. And did you get a good look at the car?

10 A No, ma'am.

11 Q But did you hear Pam making fun about the car?

12 A Yeah. I heard her say something about, you know,
13 driving your mother's Volvo.

14 Q When you witnessed Duane get in his Tahoe, what
15 direction did Duane turn?

16 A He went in the same direction, out to the right of
17 the club.

18 Q And then what did you do next?

19 A I went after him the same direction, out the right of
20 the club, hopefully trying to stop him from whatever
21 was going through his head. By the time I reached
22 the intersection, the next intersection where the
23 stop light was, I lost sight of him.

24 Q Okay. What did you decide to do once you lost sight
25 of him?

1 **A** I panicked and kept straight up Hard Scrabble and
2 went home.

3 **Q** And what do you mean you panicked? What was going on
4 through your mind?

5 **A** Everything with -- I had been drinking all night
6 long. Everything was just too much. It just felt
7 like I just needed to get home.

8 **Q** By the time that you -- did you know whether or not
9 Kim -- that Pam had been shot or not when you were in
10 the car?

11 **A** I wasn't sure. No, ma'am.

12 **Q** Were you scared?

13 **A** Very.

14 **Q** The man that you recall seeing around at the pub
15 before and that you saw talk to the guy with the
16 dreads and/or braids on the sidewalk, can you
17 describe him for this jury?

18 **A** About five-eight, 200 pounds.

19 **Q** Can you describe his build for the jury?

20 **A** It's like stocky built.

21 **Q** Okay. Do you recall anything distinctive about his
22 teeth?

23 **A** He has a small little gap inbetween his two front
24 teeth.

25 **Q** Do you remember getting called by the police that

1 same morning, early morning hours?

2 A Yes, ma'am.

3 Q And did you come and give a statement to the police?

4 A Yes, ma'am.

5 Q After you saw the man with the dreads and/or braids
6 run up to you and Pam and then hear a gunfire, do you
7 recall if anyone said anything to him coming from the
8 direction of the vehicle?

9 MS. EVERHART: Objection, Your Honor.

10 THE COURT: Sustained.

11 MS. SHIPLEY: Okay.

12 Q Did you ever see who was driving the vehicle, the car
13 that the shooter got into?

14 A No, ma'am.

15 Q Did you ever see the person that you know as Garry in
16 the vehicle?

17 A Inside the vehicle, no. I just remember like him
18 walking in that area where the vehicle was.

19 Q Okay. When you went to the Richland County Sheriff's
20 Department, that was on June 3rd, you gave an oral
21 statement, correct?

22 A Yes, ma'am.

23 Q Were you asked to return and give a written
24 statement?

25 A Yes.

1 Q And on June 4th of 2007, did you give a written
2 statement?

3 A Yes.

4 Q And I'm going to show you a document and ask you if
5 you recognize it?

6 A Yes, ma'am.

7 Q How many pages long it is?

8 A Three.

9 Q And is that the statement you gave on June 4th?

10 A Yes, ma'am.

11 Q Were you also asked if you would identify for the
12 police the individual that you knew as Garry?

13 A Yes, ma'am.

14 Q I am going to show you ...

15 (WHEREUPON, State's Exhibit No. 39 is marked for
16 identification.)

17 Q I am going to show you what's been marked State's 39
18 and ask you if you recognize this?

19 A Yes, ma'am.

20 Q And what is that?

21 A That's a photo line-up to identify Garry.

22 Q Okay. And what picture is he in this photo line-up?

23 A Number 2.

24 MS. SHIPLEY: Your Honor, at this time the State
25 would seek to introduce No. 39 into evidence.

1 **MS. EVERHART:** No objection.

2 **THE COURT:** Without objection.

3 (WHEREUPON, State's Exhibit No. 39 is admitted
4 into evidence.)

5 **Q** And you put initials and so forth by his face?

6 **A** Yes, ma'am.

7 **Q** And you sign it?

8 **A** Yes, ma'am.

9 **MS. SHIPLEY:** Your Honor, my may I publish this
10 to the jury?

11 **THE COURT:** Certainly.

12 **Q** Do you recall whether anyone was talking to Garry
13 from your group, whether Duane or Pam, anyone talked
14 to Garry that night?

15 **A** From what I recall, we all spoke to him. He was a
16 regular at the club. We always spoke to him.

17 **Q** Was there any beef between Pam Cannon and Garry Green
18 that night?

19 **A** No, ma'am.

20 **Q** Do you also remember being shown other photos that
21 June 4th, 2007?

22 **A** Yes, ma'am.

23 **Q** And were you able to identify anybody else in those
24 photos?

25 **A** June 4th. No.

1 Q Okay. And then do you recall being asked to come
2 back on June the 12th of 2007 for further questioning
3 at the -- or you might have been approached by either
4 one of these gentlemen, McRae or McDonald?

5 A Mm-hmm (affirmative).

6 Q Do you recall making contact with them again?

7 A Yes.

8 Q All right. And that would have been -- excuse me --
9 on June the 6th?

10 A 6th.

11 Q Do you recall what the nature of the questions were
12 that was asked of you on June the 6th, 2007?

13 A Not right offhand.

14 Q If I showed you that document, would it help refresh
15 your memory?

16 A Okay. Yeah. I recall it.

17 Q What exactly was asked of you concerning this
18 statement?

19 A It was basically asking if the guy that we were
20 talking to or having problems with in the club was
21 the same guy that was outside of the club.

22 Q And so you're asked whether the individual that was
23 harassing you guys on the dance floor in here was the
24 same guy that fired the gun over here?

25 A Yes, ma'am.

1 Q And what was your response to that?

2 A Yes.

3 Q Thank you. Did you have any other problem with any
4 other black male with dreads or braids that night?

5 A No, ma'am.

6 Q Do you recall that on June the 7th, 2007 you were
7 shown some more photographs by Investigator McDonald
8 and Investigator McRae?

9 A Yes.

10 Q And I'm going to show you the document. Do you
11 recall being shown that?

12 A Yes.

13 Q Okay. And what were you asked concerning these set
14 of photos?

15 A I was asked if any of those were the guy that shot
16 the gun and I had conversation with in the club.

17 Q Okay. And so these photos did not contain Garry
18 Green's photo. It contained somebody else. Is that
19 correct?

20 A That's correct.

21 Q Do you remember where it was that you were when you
22 were shown these photos? Did you come to
23 headquarters, or do you recall where you were?

24 A I believe I met them somewhere.

25 Q And did they suggest to you in any manner to pick

1 anyone in these photos?

2 **A** No.

3 (WHEREUPON, State's Exhibit No. 40 is marked for
4 identification.)

5 **MR. O'NEIL:** May we approach, Your Honor?

6 (Whereupon, a bench conference is had)

7 **THE COURT:** All right, ladies and gentlemen. I
8 need to take up a matter of law. As I told you at
9 the beginning of the trial, I may have to put
10 something on the record with regard to some evidence
11 that the attorneys want to offer at this time. So
12 I'm going to ask you to go to the jury room for just
13 a minute. Let me get this straightened out. The
14 reason for that is we need to get it on the record,
15 make a permanent record of my ruling. So there is
16 some contention about this issue. So let me try to
17 get to the bottom of it. And just relax for a
18 minute. We'll call you when we're ready.

19 (Jury out at 12:10 p.m.)

20 **THE COURT:** Proffer the evidence.

21 **MS. SHIPLEY:** Thank you.

22 DIRECT EXAMINATION

23 **BY MS. SHIPLEY**

24 **Q** Ms. Bowers, were you then contacted on June the 7th,
25 2007 by investigators with the Sheriff's Department

1 to meet them at a mutually agreed upon location?

2 A Yes.

3 Q And did they show you an array of photos?

4 A Yes.

5 Q And I'm going to show you a document that's been
6 marked as State's Exhibit No. 40 and ask you, is that
7 the document that they showed you on June 7th, 2007?

8 A Yes, ma'am.

9 Q When they handed the photos to you, that document,
10 what exactly did they ask you to do in relation to
11 those photos?

12 A They said to take a look at them and see if I could
13 identify anyone out of them that would have been that
14 guy from the night.

15 Q Okay. And so they showed you those photos and asked
16 if you would identify the shooter?

17 A Yes.

18 Q And did they suggest to you in any manner whether or
19 not the shooter's photograph was among those?

20 A No, ma'am.

21 Q In fact, did they make any guarantees that the
22 photograph of the shooter would be among those?

23 A No.

24 Q Now, did you examine that photographic line-up?

25 A Yes.

1 Q And can you tell the judge which photograph you came
2 to?

3 A Photo number 2.

4 Q And did you bring it to the attention of the
5 investigators that photo number 2 looked familiar to
6 you?

7 A Yes.

8 Q Can you describe exactly what about photo number 2
9 made you identify it?

10 A Just like his facial features through here.

11 Q Okay. Now, were you asked to sign the affidavit at
12 the bottom of the photographic line-up indicating
13 that that is who you picked?

14 A Yes. But I didn't feel, you know, completely
15 comfortable saying, because his hair was -- seemed
16 different to me from that night. I don't know if it
17 was some hair that was loose or not braided, straight
18 back like it is in this photo or not.

19 Q Okay. And so as a result, you were reluctant to sign
20 your name to that document. Is that correct?

21 A Yes.

22 Q And underneath or above your signature on that
23 document, can you please read for the judge what it
24 states?

25 A "I am pretty sure this is the person I was talking to

1 and fired a shot near Pam Cannon."

2 Q And does it give you the number then?

3 A Yes. Number 2.

4 Q Number 2. The person that you saw fire the gun near
5 Pam Cannon's head, that you were speaking to in the
6 parking lot, are you able to identify him today?

7 A Yes.

8 Q You are?

9 A (Nods head affirmatively).

10 Q And how do you know -- could you please identify the
11 individual?

12 A The gentleman with the white shirt on and a tie.

13 Q Now, the fact that he is seated there in court, does
14 that tell you in any manner that that's him? What
15 makes you think that's him?

16 A I just remember the face. It's like the face just
17 came back.

18 THE COURT: Say that. I didn't hear you.

19 A I remember the face.

20 Q Is there any doubt in your mind that that's the same
21 person that you were talking to in the parking lot?

22 A No. There's no doubt.

23 Q Did these officers suggest to you in any way again in
24 those photos who to pick out?

25 A No.

1 **MS. SHIPLEY:** That's all from the State, Your
2 Honor.

3 **THE COURT:** Cross examination.

4 **MR. O'NEIL:** Your Honor, is this a quasi Biggers
5 hearing? I'm not sure exactly what the evidence is.

6 **THE COURT:** Yep. It sure is. It just
7 transformed itself into a Biggers hearing.

8 **MS. EVERHART:** So I need to address only the
9 Biggers issues rather than the full cross?

10 **THE COURT:** We'll address everything if you have
11 an objection to the in-court identification.

12 CROSS EXAMINATION

13 **BY MS. EVERHART**

14 **Q** Now, the afternoon you met with the investigator at
15 Columbia Place Mall, you told that investigator that
16 you would not be able to identify for sure the person
17 number 2 was, the individual?

18 **A** I explained to him that the hair seemed different
19 from that night, the facial features.

20 **Q** And you couldn't do that because you had had a lot to
21 drink that night?

22 **A** On that -- not that night that I met him.

23 **Q** Not the day at the mall. The night back at the H&J
24 pub.

25 **A** Oh, yeah. Yeah.

1 Q And on June 4th you had been given a photo line-up as
2 well? Several photo line-ups?

3 A June 4th, yes.

4 Q And one of the photo line-ups he gave you, you picked
5 two individuals out?

6 A Right.

7 Q And you said that those two individuals could have
8 also been the person you were talking with who shot
9 in the parking lot?

10 A I said on one picture it's like the forehead
11 resembled the guy. On the other picture it was the
12 nose region.

13 Q So there are three people you've picked out of photo
14 line-ups that could have been the guy you were
15 talking with that night?

16 A I didn't pick those three -- I mean, those two guys.
17 I said that would be most likely. But their face
18 didn't ring a bell to me.

19 Q Beg the Court's indulgence. I believe you testified
20 that you weren't at the club very long that night?

21 A Correct.

22 Q And you might have had as little as five minutes to
23 spend with the guy with dreads that you were talking
24 with?

25 A It could have been five maybe. I mean, he approached

1 me in the club and then outside of the club.

2 Q The club is pretty dark?

3 A Yes.

4 Q And you're surrounded by a lot of people?

5 A Yes.

6 Q There was music?

7 A Yes.

8 Q Lots of people dancing?

9 A It wasn't a whole lot of people dancing. But, I
10 mean, we were on the dance floor.

11 Q People drinking?

12 A (Nods head affirmatively).

13 Q And you described this gentleman having the dreads or
14 twisty braids?

15 A It wasn't like full dreads or braids. I remember
16 it's like he had braids but it's like some were
17 shorter than others. Some were hanging like back
18 here.

19 Q Some of the braids were shorter than others?

20 A It seemed like it, like right in here.

21 Q And you gave a statement the following day to the
22 police in regard to who you may have seen at the club
23 that night, the gentleman you were talking with.

24 Dreads?

25 A Yes.

1 Q And then four days later, three days later, three to
2 four days later, you gave another statement to the
3 police and you picked out another individual in a
4 photo line-up?

5 A On this paper, yes.

6 Q Beg the Court's indulgence one more minute. About
7 how much did you have to drink that night?

8 A Quite a bit.

9 Q Quite a bit? Can you give an approximate estimation?

10 A I don't really recall how -- I mean, we -- maybe
11 about eight to ten mixed drinks.

12 Q Enough that you could feel it?

13 A Oh, yeah.

14 Q You were drunk?

15 A Mm-hmm (affirmative).

16 Q Beg the Court's indulgence. And this was around 4 in
17 the morning?

18 A Yes.

19 Q How long had you been up that day?

20 A I don't remember. I think we met earlier, like
21 around 5 and ate dinner and then --

22 Q When was the last time you went to sleep?

23 A To sleep?

24 Q To sleep. To bed.

25 A It would have been the -- I guess Friday night.

1 **MS. EVERHART:** Your Honor, I don't have anything
2 further for the witness. But I assume we need the
3 officer for the Biggers?

4 **MS. SHIPLEY:** Could I do some redirect, Your
5 Honor?

6 **THE COURT:** Sure.

7 **MS. SHIPLEY:** Thank you.

8 REDIRECT EXAMINATION

9 **BY MS. SHIPLEY**

10 **Q** I believe your testimony was you were reluctant to
11 put your signature down because his hair looked
12 different in State's No. 40. Is that correct?

13 **A** Mm-hmm (affirmative).

14 **Q** All right. Isn't it true you were also shown a set
15 of photos, two other sets of photographs with people
16 with dreadlocks and/or braids on June 4th? And I'm
17 going to show you these two documents and ask you if
18 you recognize them?

19 **A** Yes.

20 **Q** All right. And I'm going to have them marked just
21 quickly so we can distinguish between the two.

22 (WHEREUPON, State's Exhibit No. 41 is marked for
23 identification.)

24 (WHEREUPON, State's Exhibit No. 42 is marked for
25 identification.)

1 Q All right. So State's 41, were you shown these
2 photos by the investigators?

3 A Yes.

4 Q Okay. And that's the same day you gave your
5 statement to the police?

6 A Yes. On the 4th.

7 Q June 4th?

8 A Mm-hmm (affirmative).

9 Q And in those photos, were you asked to identify the
10 shooter?

11 A Yeah. I was asked if I could identify the shooter.

12 Q If you could identify anyone with dreads or braids?

13 A Mm-hmm (affirmative).

14 Q And what was your response in the bottom? What did
15 you indicate and sign at the bottom?

16 A I picked number 2 and 5 as the most likely.

17 Q Okay. And then you signed it?

18 A Mm-hmm (affirmative).

19 Q All right. But you did not identify them, correct?

20 A No, ma'am.

21 Q Then I'm going to show you State's 42 and ask you if
22 you were shown those photographs on June the 4th as
23 well?

24 A Yes.

25 Q And what were you asked to do with those sets of

1 photos?

2 **A** To identify the shooter.

3 **Q** And what was your response at the bottom of that?

4 **A** I could not make ID of any of these.

5 **Q** And did you sign it?

6 **A** Yes.

7 **Q** So in total you were shown an array of three sets of
8 photographic line-ups with different individuals with
9 braids and corn rows. Is that correct?

10 **A** Yes.

11 **Q** On June the 7th when you were shown State's No. 40,
12 which one did you indicate on that one?

13 **A** Number 2.

14 **Q** Back inside the club, how long do you think you were
15 inside that club?

16 **A** I mean, 20 minutes at most.

17 **Q** Okay. How long do you think you were on the dance
18 floor?

19 **A** No more than ten.

20 **Q** Speak up for the judge. Okay?

21 **A** No more than ten.

22 **Q** And when the man with the dreads and/or braids came
23 up to you on the dance floor, how close did he get to
24 you?

25 **A** I don't really remember, but I felt it was pretty

1 close. I remember being like close with Pam, you
2 know, Kim. It was like we were in a little circle.
3 But pretty close.

4 Q I'm going to walk up to you and when I get to you as
5 close as he was to you on the dance floor, you tell
6 me when to stop. Okay?

7 A Probably like right there.

8 Q In this area?

9 A Yes, ma'am.

10 Q And how many feet do you think it is between you and
11 me right now?

12 A No more than two.

13 Q Two feet?

14 A (Nods head affirmatively).

15 Q Again, the lighting was not that great inside,
16 correct?

17 A Correct.

18 Q But could you still make out his face at two feet
19 away from you?

20 A Yes.

21 Q How long do you think he hung out with you on the
22 dance floor trying to get your number?

23 A I felt the whole time we were there.

24 Q Okay. And then once the lights go on and everyone is
25 ordered out of the club, you testified in front of

1 the jury that you're out here and he's still trying
2 to pick you up. Is that correct?

3 **A** Correct.

4 **Q** Describe the lighting conditions in the parking lot
5 for the judge?

6 **A** There is like I think one main light out there. It's
7 not real bright but, I mean, you can see pretty good.

8 **Q** Okay. When you are talking to him in the parking
9 lot, was the lighting condition then well or poor?

10 **A** I would say it was well. I mean, it wasn't really
11 poor.

12 **Q** Okay. How close to you was he in the parking lot?
13 And again, we're going to do the same experiment and
14 you tell me when to stop. Okay?

15 **A** At least like, yeah, right there.

16 **Q** Okay. So two feet again?

17 **A** Or closer.

18 **Q** Or closer?

19 **A** Yeah.

20 **Q** And did you have any difficulty seeing his face?

21 **A** No, ma'am.

22 **Q** Was he wearing a disguise?

23 **A** No, ma'am.

24 **Q** And he was talking to you?

25 **A** Yes.

1 Q Were you responding to his questions?

2 A I remember saying to him, you know, just because Pam
3 kept arguing with him and he said something about
4 what's up with your girl's mouth, and I remember
5 saying -- I don't remember what all our conversation
6 was about, but I remember saying to him, you know,
7 we're just out here having a good time. It's her
8 birthday.

9 Q How long do you think this conversation is taking in
10 the parking lot when you are trying to tell him to
11 calm down, that you all are just out trying to have a
12 good time?

13 A Five minutes or less.

14 Q Okay. And you had never seen him before that night?

15 A No, ma'am.

16 Q And when is the next time you've seen him?

17 A Today.

18 Q Is there any doubt in your mind it's the same man
19 from the club that night?

20 A No.

21 MS. SHIPLEY: Your Honor, I think I've covered
22 the factors for the Court.

23 THE COURT: Anything further of this witness?

24 MS. EVERHART: Yes, Your Honor. Just a few more
25 questions.

RECROSS EXAMINATION

BY MS. EVERHART

Q I'm a little confused. You stated that you were at the club for roughly around 20 minutes?

A Yes.

Q And a little bit ago I asked you how long you had been on the dance floor with this individual, and you said around five?

A Five to ten minutes.

Q And when Ms. Shipley just asked you again, you said probably the whole time, all 20 minutes with this individual?

A No. I mean, we were at the club a total of no more than 20 minutes. I was approached on the dance floor by him. I remember vaguely like leaving off the dance floor. I don't know if we went to sit down. I can't remember if we sat down at the table or what.

Q And did you see anything about this murder on the news?

A I don't remember.

Q You didn't read anything in the paper about it?

A No.

MS. EVERHART: Beg the Court's indulgence a moment. No further questions for this witness, Your Honor.

1 **THE COURT:** All right.

2 **MS. SHIPLEY:** We'll call the officer if you want
3 to hear from the officer.

4 **THE COURT:** I sure do.

5 **MS. SHIPLEY:** Could you step down for a minute,
6 please, Ms. Bowers?

7 **WITNESS:** Okay.

8 **THE COURT:** To stay?

9 **MS. SHIPLEY:** Yeah. She's not done.

10 **THE COURT:** Have a seat.

11 **MS. MCDUFFIE:** The State calls Officer Scott
12 McDonald.

13 SCOTT MCDONALD, after being duly sworn,
14 testifies as follows:

15 **THE CLERK:** Have a seat in the witness stand.

16 **THE COURT:** Before you do that, just approach
17 the bench for a minute, counsel.

18 (Whereupon, a bench conference is had)

19 DIRECT EXAMINATION

20 **BY MS. MCDUFFIE**

21 **Q** Officer McDonald, did you have a chance to meet with
22 Kim Bowers on June the 7th of 2007?

23 **A** Yes, I did.

24 **Q** And why did you meet with her that day?

25 **A** We had gotten new information after interviewing

1 Garry Green, taking a statement from him about the
2 shooter in this case.

3 Q And you got a name of a suspect?

4 A The name of Louis Sanders.

5 Q And did you develop a photo line-up with Louis
6 Sanders' picture in it?

7 A Yes, I did.

8 Q How did you develop that line-up?

9 A Used a database within the Sheriff's Department.
10 This was actually a driver's license photo I believe.
11 And put all the candidates in that photo line-up,
12 similar characteristics to Mr. Sanders.

13 Q What sort of characteristics does the software use or
14 did you input?

15 A Well, it has different characteristics. I was
16 looking for a black male with facial hair, mustache,
17 like a goatee type beard, corn rows or braids in the
18 hair.

19 Q And are those all things that Louis Sanders has in
20 State's Exhibit 40?

21 A Yes, he does.

22 Q And you met with Ms. Bowers to show her that line-up?

23 A Yes, I did.

24 Q What did you do when you met with her?

25 A We made plans to meet in the Columbia Mall parking

1 lot. She was out and about I think in her vehicle
2 and I was leaving headquarters and that's where we
3 agreed to meet. We were on the back side of the mall
4 in the parking lot. I asked her to take a look at
5 this photo line-up, see if she could identify anyone
6 that may have been involved in the shooting that
7 night.

8 Q Did you suggest a person to pick out of that line-up?

9 A No, I didn't.

10 Q Did you lead her to a certain photograph in any way?

11 A No, I did not.

12 Q Did you ask her to look more closely at one
13 photograph than another?

14 A No, ma'am.

15 Q At no time did you suggest any one person to pick out
16 of this line-up?

17 A No.

18 Q And what did Ms. Bowers tell you?

19 A She kept remarking about picture number 2. I advised
20 her to continue to study this and look at all the
21 pictures. She kept coming back to picture number 2
22 though. She had looked at one other candidate. I'm
23 not sure which one that was at this point. But she
24 kept coming back to number 2. And I said, "Well, is
25 this the one you're identifying?" She says, "I just

1 can't be 100 percent sure", because, you know, she
2 had a lot to drink that night, she didn't feel
3 comfortable saying 100 percent.

4 **Q** So instead you wrote what at the bottom of the page?

5 **A** What I did was put what she told me. "I'm pretty
6 sure this is the person I was talking to and fired a
7 shot near Pam Cannon."

8 **Q** Did you suggest in any way to pick that photo out of
9 the array?

10 **A** No, I didn't.

11 **MS. MCDUFFIE:** Nothing further.

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

13 **MS. EVERHART:** Thank you, Your Honor.

14 CROSS EXAMINATION

15 **BY MS. EVERHART**

16 **Q** The photo line-up you showed her, was it in color, or
17 was it black and white?

18 **A** It was black and white.

19 **Q** And you testified that she couldn't tell you for
20 certain it was number 2?

21 **A** Not with 100 percent clarity, but she kept coming
22 back to the picture, felt she was pretty sure that
23 was the person, just couldn't be 100 percent.

24 **Q** There was another individual that she was coming to
25 as well?

1 **A** When she first looked at it she went to number 2 and
2 one of the other individuals in the line-up and then
3 discounted him and came back to number 2.

4 **Q** And you didn't write down which one?

5 **A** I didn't have documented who that other person was
6 due to her keep coming back to number 2 here and she
7 finally settled on number 2 as the one she was pretty
8 sure.

9 **Q** And you didn't note on the bottom anywhere she was
10 waffling at some point between two individuals?

11 **A** Not -- she was waffling early on, but by the
12 conclusion of studying it, she was set on number 2.

13 **Q** Absolutely, definitely set; or still wasn't quite
14 sure, couldn't say for 100 percent certainty?

15 **A** Couldn't say 100 percent but was pretty sure. Like
16 we've got documented here, she was pretty sure.

17 **Q** And at no time did you point anyone out or make any
18 suggestions?

19 **A** No.

20 **MS. EVERHART:** Beg the Court's indulgence one
21 minute. Your Honor, we don't have anything further
22 for this witness.

23 **THE COURT:** Anything further?

24 **MS. MCDUFFIE:** Nothing further from this
25 witness, Your Honor.

1 **THE COURT:** You may come down. All right. Any
2 objection to the in-court identification by the
3 witness?

4 **MS. EVERHART:** Your Honor, we would argue that
5 the in-court identification is based on her
6 out-of-court identification where she had an
7 opportunity to view this line-up. As you heard
8 through the testimony, she indicated she was not
9 100 percent positive that the individual she was
10 picking out, number 2, was the individual involved.

11 State v. Johnson says reliability is a lynchpin
12 in determining the admissibility of identification
13 testimony. She clearly stated to the Court that she
14 at that time was not 100 percent sure that that
15 individual was the one she was talking to, and the
16 officer has testified she also told this to him.

17 **MS. MCDUFFIE:** Your Honor, we would argue that
18 under State v. Washington which is 323 S.C. 106 the
19 court was asked to look at the issue where the victim
20 was 99 percent sure that the defendant was the
21 perpetrator and said that he best resembles the
22 perpetrator. In that case the court allowed the
23 identification as it was phrased in those uncertain
24 terms.

25 We would argue hat this follows right along.

1 She says she was almost positive but just couldn't be
2 quite sure and now that she is sure that he is
3 sitting over there. We would also argue what defense
4 just said would go to the weight and not the
5 admissibility of this identification.

6 **MS. EVERHART:** Your Honor, just for the record,
7 we're objecting not to the out-of-court --

8 **COURT REPORTER:** I didn't hear you. I'm sorry.

9 **MS. EVERHART:** For the record, we're objecting
10 not to the out-of-court but the in-court. But
11 nothing further on the issue.

12 **THE COURT:** Well, did she say that this was the
13 first time she had seen him today?

14 **MS. SHIPLEY:** Since that night is the first time
15 she'd seen him. In other words, she did not see him
16 on the news or in the media.

17 **THE COURT:** If she had not gone through a photo
18 line-up process, she could have identified him in
19 court today as the first-time identification without
20 a Biggers hearing?

21 **MS. SHIPLEY:** Correct.

22 **THE COURT:** Without having to meet the Biggers
23 factors. Now, the fact that she did go through an
24 out-of-court identification process, the question in
25 my mind becomes, was that process unduly suggestive,

1 first, and then what is the -- just looking at the
2 totality of the circumstances, what's the reliability
3 of the out-of-court identification? The in-court
4 identification seems positive. The out-of-court
5 identification is subject to some question.

6 But it seems to me that that goes to the weight
7 of the identification and the certainty or
8 uncertainty with which the out-of-court
9 identification is made. I think it's admissible and
10 meets the admissibility threshold. Whether that
11 out-of-court identification was credible, reliable, I
12 think that's a weight issue and not an admissibility
13 issue.

14 Certainly the condition of the witness when she
15 met the defendant is subject to cross examination,
16 subject to a credibility analysis in front of the
17 jury. If it's reliable or not reliable, she
18 describes somewhat -- I may use the word loosely --
19 offensive behavior on behalf of the person in the
20 club which would give rise to some degree of
21 attention that she wouldn't have ordinarily given to
22 somebody that was just passing by.

23 It was a close encounter. She was shown three
24 different line-ups from which she could not identify
25 anybody with a degree of certainty, that she

1 identified the defendant in the third line-up. And
2 even though she doesn't positively identify; in other
3 words, with no doubt, the level of certainty that she
4 displayed at the line-up, photo line-up is certainly
5 subject to question and whether or not it's reliable,
6 I don't think that's for me to decide. That's for
7 the jury to decide.

8 But the fact that she makes an in-court
9 identification and has a demonstrated level of
10 certainty, a greater level of certainty now that she
11 sees the defendant firsthand I think makes it
12 admissible. So I'm going to allow the in-court
13 identification. Bring the jury, please.

14 (Jury in at 12:38 p.m.)

15 **THE BAILIFF:** The jury is present, Your Honor.

16 **THE COURT:** Thank you. All right. You may
17 continue.

18 **MS. SHIPLEY:** Thank you, Your Honor.

19 DIRECT EXAMINATION

20 **BY MS. SHIPLEY**

21 **Q** We were talking about State's Exhibit No. 40 that was
22 shown to you on June the 7th, 2007, correct?

23 **A** Right.

24 **Q** And again, you met Investigator Scott McDonald at a
25 remote location agreed upon by both you and he for

1 you to view photos. Is that correct?

2 **A** Correct.

3 **Q** And in State's 40, is that the document that he
4 showed you?

5 **A** Yes.

6 **Q** On June 7th?

7 **A** Yes.

8 **Q** Now, in that document, tell the jury what it is
9 Mr. McDonald asked you to do?

10 **A** To identify the shooter from the night at the club.

11 **Q** Okay. Which photograph did you pick but without
12 certainty? Describe exactly what you did.

13 **A** I went straight -- it's like number 2 came straight
14 out at me. And I kept looking at him. I told him
15 that I felt his hair was a little different on that
16 night but I was pretty sure this was the guy that I
17 had conversation with at the club and that the
18 incidents occurred in the parking lot.

19 **Q** As a result, when you pointed out photo number 2 to
20 Investigator McDonald, did you sign the bottom of
21 that document?

22 **A** Yes.

23 **Q** And tell the jury what is stated above your
24 signature?

25 **A** "I am pretty sure this is the person I was talking to

1 who fired a shot near Pam" Shannon. I mean Cannon.

2 I'm sorry.

3 Q Now, going back to the night of June the 3rd, 2007 or
4 the early morning hours, again, how long do you think
5 you were inside of the pub?

6 A No more than 20 minutes.

7 Q And of those 20, approximate 20 minutes, how long do
8 you think you were on the dance floor?

9 A No more than like five or ten minutes.

10 Q All right. While on the dance floor describe for the
11 jury how close it is that that individual with the
12 dreads and/or braids came up to you? How close?
13 Now, you stop me when I get to you. Okay?

14 A Like at least that close.

15 Q All right. How many feet are between you and me in
16 your estimation?

17 A Less than two.

18 Q Less than two feet. Okay. You indicated in your
19 testimony earlier that the lighting was pretty poor
20 inside. Is that correct?

21 A Correct.

22 Q Did you have any problems seeing his face at this
23 distance?

24 A No.

25 Q All right. How long was he standing near you while

1 you were on the dance floor?

2 **A** It seemed like the entire time. I mean, I would say
3 five or ten minutes.

4 **Q** Okay. So the entire time you are on the dance floor
5 he is that close to you?

6 **A** Yes.

7 **Q** All right. And you're having a conversation with
8 him. Is that correct?

9 **A** I don't remember the conversation. I remember
10 saying, "I'm married." I did have a lot to drink
11 that night.

12 **Q** Okay. Now, after the club closes down and you all go
13 out to the parking lot, your testimony earlier was
14 you began talking to him again in the parking lot.
15 Is that correct?

16 **A** Yes. Like as we were walking down the sidewalk.

17 **Q** Okay. So you walked together side-by-side or all of
18 you?

19 **A** I don't remember walk -- it was like everybody was
20 leaving out at the same time and it's like he was
21 just I guess in that group. And we ended up, once we
22 got over to the side, we were just having a little
23 conversation again.

24 **Q** I'm just going to ask you to point for the jury where
25 it was that you were having the conversation with him

1 in the parking lot?

2 A Like in this area.

3 Q Okay. Now, describe for the jury the lighting
4 conditions in the parking lot?

5 A There is one main light. It's pretty good lighting.
6 It's not excellent but it's pretty good lighting.

7 Q Is it better than inside the pub?

8 A Yes.

9 Q How close was the guy with the dreadlocks and braids
10 to you when you're talking to him in the parking lot?
11 You stop me when I get to that distance. Okay?

12 A (Nods head affirmatively). Like that close.

13 Q Is that a little closer than this?

14 A Maybe closer.

15 Q So again, what is your estimation of this distance?

16 A Less than two feet.

17 Q Less than two feet?

18 A (Nods head affirmatively).

19 Q Now, how long do you believe you spoke to this man in
20 the parking lot?

21 A Five minutes or less.

22 Q Now, did you have any difficulty seeing his face?

23 A No.

24 Q All right. Going back to June the 4th when you went
25 to headquarters and gave your written statement, do

1 you remember the investigators showing you two sets
2 of other pictures with people who have dreadlocks
3 and/or braids in them?

4 **A** Yes.

5 **Q** I'm going to show you State's No. 41 and 42 and ask
6 you if you recognize those documents?

7 **A** Yes.

8 **Q** And what are they?

9 **A** Photo line-ups of the possible shooter.

10 **Q** Okay. Were you able to identify anybody in either
11 State's No. 41?

12 **A** No. I picked two guys as most likely but just
13 because of like features in their face.

14 **Q** But they were not the shooter?

15 **A** Not the shooter.

16 **Q** And did you sign stating so?

17 **A** Yes.

18 **Q** That it was between those two most likely?

19 **A** Yes.

20 **MS. SHIPLEY:** All right. Your Honor, at this
21 time we'd seek to introduce No. 41.

22 **THE COURT:** Over the defendant's objection, it's
23 admitted.

24 (WHEREUPON, State's Exhibit No. 41 is admitted
25 into evidence.)

1 **MS. SHIPLEY:** There was an objection?

2 **MS. EVERHART:** No objection.

3 **THE COURT:** Oh. I'm sorry. There was no
4 objection to that photograph. I beg your pardon.

5 **Q** And when the officers showed you State's No. 41, did
6 they suggest to you in any manner whether or not the
7 shooter was indeed in fact among those photos?

8 **A** No.

9 **Q** Did you see the picture of the shooter in these
10 pictures?

11 **A** No.

12 **Q** Now I'm going to move on to State's 42 and ask you if
13 you recognize that?

14 **A** Yes.

15 **Q** And what were you asked to do pertaining to that
16 exhibit?

17 **A** To identify the shooter.

18 **Q** Now, what were you able to do with this set of
19 photos?

20 **A** I could not make any identification on these.

21 **Q** All right. So you did not see a picture of the
22 shooter among those six?

23 **A** No.

24 **MS. SHIPLEY:** At this time we would seek State's
25 No. 42 into evidence.

1 **THE COURT:** Without objection?

2 **MS. EVERHART:** No objection.

3 **THE COURT:** Without objection.

4 (WHEREUPON, State's Exhibit No. 42 is admitted
5 into evidence.)

6 **Q** So on June 4th you're shown two line-ups, a total of
7 12 faces, correct?

8 **A** Mm-hmm (affirmative).

9 **Q** June 4th or June 7th you're shown these photos?

10 **A** Correct.

11 **Q** Now, again, tell the jury why it is that you did not
12 sign and say with absolute certainty that number 2
13 was the shooter?

14 **A** I felt that the night of the incident his hair was in
15 a different manner. His face stood out but his hair
16 was different and I just wasn't 100 percent sure.

17 **Q** And so the facial features were the same; however,
18 the hair was different?

19 **A** Yes.

20 **Q** Okay. You have been in this courtroom for about an
21 hour and a half. I am just estimating. The man that
22 you saw in the club on the dance floor, in the
23 parking lot and then firing a shot at Pam's head, do
24 you see him in the courtroom today?

25 **A** Yes.

1 Q Please point him out for this jury?

2 A It's the gentleman in the white shirt with the tie.

3 MS. SHIPLEY: Your Honor, please let the record
4 reflect that that is the defendant, Louis Sanders.

5 THE COURT: The record will reflect the witness
6 identified the defendant.

7 MS. EVERHART: Your Honor, just for the record
8 we lodge our objection.

9 THE COURT: Yes. Over the objection of the
10 defendant.

11 Q And do you see that man among these photos?

12 A Photo number 2.

13 MS. SHIPLEY: Photo number 2. At this time the
14 State would seek to introduce state No. 40 into
15 evidence.

16 THE COURT: Over the defendant's objection.

17 (WHEREUPON, State's Exhibit No. 40 is admitted
18 into evidence.)

19 Q And that's the man right there?

20 A Yes.

21 Q Is there any doubt in your mind that the man seated
22 right there is the same man that you were talking to
23 in the parking lot and that fired the shot by Pam
24 Cannon's head?

25 A There is no doubt.

1 **MS. SHIPLEY:** I have no further questions, Your
2 Honor.

3 **THE COURT:** Cross examination.

4 **MS. EVERHART:** Thank you, Your Honor.

5 CROSS EXAMINATION

6 **BY MS. EVERHART**

7 **Q** Hi, Ms. Bowers.

8 **A** Hi.

9 **Q** On the night you were at the club, you were in there
10 partying with your friends and you had been drinking?

11 **A** Correct.

12 **Q** About how much had you had to drink that night?

13 **A** Maybe like eight or nine mixed drinks.

14 **Q** So you were pretty well intoxicated?

15 **A** Correct.

16 **Q** And there were a lot of people in that club?

17 **A** I don't recall a whole lot, but it was a few people,
18 yeah.

19 **Q** And it was pretty dark?

20 **A** Yes.

21 **Q** You were there for about 20 minutes?

22 **A** Correct.

23 **Q** And during that time you've testified that for at
24 least five of those minutes you were talking to an
25 individual with dreads or twisty braids?

1 **A** At least, yes.

2 **Q** And these braids could have been in different
3 lengths?

4 **A** I don't know if it was like how sometimes people are
5 getting their hair unbraided, out or something. As I
6 recall, it just seemed like it was in different
7 lengths.

8 **Q** And you also testified that the individual you were
9 talking to had some kind of altercation with Pam
10 Cannon?

11 **A** Correct.

12 **Q** Did she break a bottle around that time?

13 **A** I don't remember a bottle breaking.

14 **Q** Later on you testified that you were out in the
15 parking lot at the H&J pub and you were talking with
16 this individual again?

17 **A** Correct.

18 **Q** And you testified today that while you were out there
19 he was having an altercation with Pam Cannon?

20 **A** Correct.

21 **Q** I was a little confused. Did you just say that she
22 was saying something to him about his mother's Volvo?

23 **A** About driving his mother's Volvo or something, yes.

24 **Q** And you testified that you didn't actually see him
25 pull out a gun?

1 **A** Not -- I didn't see the gun, no.

2 **Q** You heard a click and then a shot?

3 **A** A shot. Correct.

4 **Q** Did you happen to get his name?

5 **A** No.

6 **Q** And I believe you also testified that you didn't
7 remember seeing anyone else with Garry out there near
8 the car?

9 **A** No.

10 **Q** You also indicated today that this individual, the
11 one with dreads that you were talking to in the club,
12 is definitely the same individual that was outside
13 talking to Pam?

14 **A** Correct.

15 **Q** And you were given an opportunity on the 4th of June
16 to view some photo line-ups. That day you were given
17 12 different pictures to look at?

18 **A** Correct.

19 **Q** Out of these 12 there were two individuals that you
20 indicated could have possibly been the gentleman you
21 were talking with and the possible shooter?

22 **A** I said they resembled the shooter. Things of each
23 one of them resembled the shooter.

24 **Q** And then four days later you were given an
25 opportunity to view another photo line-up?

1 **A** Correct.

2 **Q** And in this photo line-up you waffled between a
3 couple of individuals?

4 **A** I don't recall waffling. I may have said that
5 another guy looked familiar, but it was that one
6 photo, number 2, that I picked out on that one.

7 **Q** And when you picked it out you testified still at
8 that time you could not be 100 percent certain this
9 was the individual?

10 **A** Correct.

11 **Q** As a matter of fact, when you picked him out of the
12 photo line-up you indicated to the police officer
13 that you were intoxicated that night and could not be
14 sure?

15 **A** Yes.

16 **Q** Beg the Court's indulgence one moment. Do you happen
17 to remember what the guy you were talking to was
18 wearing that night?

19 **A** No, ma'am.

20 **Q** And this was around 4 in the morning, correct?

21 **A** Correct.

22 **Q** How long had you been up that day?

23 **A** Probably about 12 Saturday. I mean ...

24 **Q** So you had been up a really long time?

25 **A** (Nods head affirmatively).

1 Q And you'd had around eight to ten drinks?

2 A (Nods head affirmatively).

3 Q You were also shown a line-up of the individual now
4 known as Garry?

5 A Correct.

6 Q And you indicated to the police that he may have been
7 the one driving the vehicle?

8 A I didn't see anyone driving the vehicle.

9 Q I believe you've had an opportunity to view the photo
10 line-up you were handed with Garry in it?

11 A Correct.

12 Q And if you could read over the statement written on
13 the line-up describing Garry?

14 A Read over it?

15 Q To yourself.

16 A Uh-huh (affirmative).

17 Q Are you certain you didn't say he was driving the
18 vehicle?

19 A I don't remember him driving the vehicle that night.
20 I remember them being in the vehicle or, you know,
21 seeing them go to the vehicle.

22 Q Beg the Court's indulgence one moment. You had the
23 opportunity to make two statements to the police
24 about this event, correct?

25 A Mm-hmm (affirmative).

1 Q And at no point in your statements did you ever say
2 you were only two feet away from this individual?

3 A No. I don't think they ever asked if I was.

4 MS. EVERHART: No further questions, Your Honor.

5 THE COURT: Any redirect?

6 MS. MCDUFFIE: Just briefly, Your Honor.

7 REDIRECT EXAMINATION

8 BY MS. MCDUFFIE

9 Q On cross examination Ms. Everhart asked you about the
10 number of people in the club when you all got there.
11 Can you describe for the jury how many people -- was
12 the club packed? Or describe the capacity in the
13 club?

14 A I don't remember, you know, a whole bunch of -- you
15 know, I've been in there before where you couldn't
16 move through there. But it wasn't like that. It
17 wasn't a whole bunch of people in there.

18 Q All right. Did you have any difficulty finding a
19 table to sit at?

20 A No.

21 Q How many guys with dreadlocks and/or braids tried
22 hitting on you that night?

23 A One.

24 Q You were also asked about how much you had to drink
25 that night. Can you tell the jury what time it was

1 that you and Pam and Duane and Kim Goins all went
2 out?

3 **A** We got together I'd say about 4 or 5 that afternoon.

4 **Q** And where did you meet?

5 **A** We met at Chili's.

6 **Q** Did you eat?

7 **A** Yes.

8 **Q** All right. And how many drinks do you think you had
9 that entire time, from 5:00 or so until this incident
10 happened around 4 in the morning?

11 **A** Eight to nine.

12 **Q** Eight to nine liquor drinks?

13 **A** Mm-hmm (affirmative).

14 **Q** Okay. Now, again, the reason why -- I think you've
15 got the exhibit, State's No. 40. Here it is. The
16 reason why you don't sign and say this is him
17 100 percent sure, why?

18 **A** Because of how his hair was. It just seemed on that
19 night his hair was a little different.

20 **Q** You're also asked by the defense on cross examination
21 that you did not put in your written statement how
22 many feet the individual was standing from you on the
23 dance floor. Do you remember that question?

24 **A** Correct.

25 **Q** Did they ask you how many feet --

1 A No.

2 Q -- he was standing from you? Okay. Now, this club,
3 it doesn't appear to be -- it doesn't take up this
4 whole building, does it?

5 A Oh, no. Not at all.

6 Q Describe the size of this club for the jury?

7 A The club is approximately like in this area.

8 Q Okay. So not even the entire --

9 A Because some of this is bar and some of this is
10 restaurant.

11 Q Okay. So in this building right here, not with the
12 blue roof, but this building, how much of it is the
13 club?

14 A Probably like this, this much.

15 Q Okay. So about half of that side?

16 A Yes.

17 Q All right. And how big would you say the dance floor
18 is?

19 A It's not big at all. Half of that.

20 Q Okay. You were asked about who was driving and so
21 forth. I'm going to show you your statement that you
22 provided on June the 6th, ask you just to read the
23 question and answer so that the jury understands the
24 context?

25 A "Did you see the black male that Pam Cannon made the

1 company to about driving his mother's Volvo?" "No, I
2 did not."

3 **Q** Okay. So you're not sure if Ms. Cannon was directing
4 the comment about driving the mama's Volvo to Mr. --

5 **MS. EVERHART:** Objection. Leading.

6 **THE COURT:** Leading.

7 **Q** Okay. How many individuals total did you see around
8 the black Volvo?

9 **A** I recall seeing two.

10 **Q** Did you see anybody in the driver's seat of the
11 Volvo?

12 **A** I didn't see anyone.

13 **Q** You were also asked about whether or not you actually
14 saw the gun. Was there anyone else standing near Pam
15 Cannon when the shot was fired? Any other males?
16 Any other people?

17 **A** No. Not that I recall.

18 **MS. SHIPLEY:** That's all, Your Honor.

19 **THE COURT:** Anything further?

20 **MS. EVERHART:** Just briefly.

21 RECROSS EXAMINATION

22 **BY MS. EVERHART**

23 **Q** After Pam fell, how long was it before the car pulled
24 out of the parking lot?

25 **A** What car? Which car? The Volvo?

1 Q The Volvo.

2 A Immediately.

3 Q Pretty immediately?

4 A Mm-hmm (affirmative).

5 Q Within seconds?

6 A Seconds, yes.

7 Q The photo line-up where you selected Garry Green out
8 of, you had an opportunity to review that entire
9 line-up?

10 A Correct.

11 Q And you had an opportunity to sign it?

12 A Correct.

13 Q Please read the portion of the Volvo -- the portion
14 of the statement describing Garry Green?

15 A The portion of the statement describing Garry? You
16 mean where it says: "Picked out number 2 which is
17 the black male who was with the group arguing with
18 Pam"? I can't read that. I didn't read that when I
19 signed it. And drove.

20 Q So you were saying it says that he drove the Volvo?

21 A I -- I signed that, but I don't remember reading that
22 it says he drove the Volvo. I didn't see who drove
23 the Volvo. I don't even remember seeing the Volvo.

24 Q No further questions. Thank you.

25 **THE COURT:** All right. You may come down,

1 ma'am. Thank you very much.

2 **MS. SHIPLEY:** Your Honor, may this witness be
3 excused?

4 **THE COURT:** Without objection? Without
5 objection. Again, don't discuss this case over the
6 lunch hour. We'll give you enough time, about an
7 hour and 15 minutes. Okay. Good. See you at 2:15.
8 Thank you very much.

9 (Jury out at 1:00 p.m.)

10 **THE COURT:** All right. We'll stand at ease
11 until 2:15.

12 (Whereupon, a lunch break is taken)

13 (WHEREUPON, State's Exhibit No. 43 is marked for
14 identification.)

15 (WHEREUPON, State's Exhibit No. 44 is marked for
16 identification.)

17 **THE COURT:** Is the State ready to proceed?

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

19 **THE COURT:** Defense ready to proceed?

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

21 **MS. SHIPLEY:** Your Honor, just one matter. One
22 of our witnesses this afternoon is Keith Eubanks. I
23 have handed up to the Court a transcript of his 911
24 call. I have shared it with the defense, even played
25 the 911 call. I do not believe they have an

1 objection to the transcript being handed out to the
2 jurors when the call is being made in the courtroom.
3 And we would then admit the tape into evidence and
4 not plan on introducing the transcripts into
5 evidence.

6 **MS. EVERHART:** Yes, Your Honor. That's
7 satisfactory.

8 **THE COURT:** No problem?

9 **MS. EVERHART:** No problem.

10 **THE COURT:** All right. Bring the jury, please.
11 (Jury in at 2:24 p.m.)

12 **THE BAILIFF:** The jury is present, Your Honor.

13 **THE COURT:** All right, ladies and gentlemen. I
14 hope you had a pleasant lunch. We're now ready to
15 continue with the trial. Solicitor, call your next
16 witness.

17 **MS. MCDUFFIE:** The State calls Gregory Shaw.

18 GREGORY M. SHAW, after being duly sworn,
19 testifies as follows:

20 **THE CLERK:** Thank you. Have a seat in the
21 witness stand and give the court reporter your name.

22 **WITNESS:** Gregory Matthew Shaw.

23 DIRECT EXAMINATION

24 **BY MS. MCDUFFIE**

25 **Q** Good afternoon, Mr. Shaw. Where are you currently

- 1 employed?
- 2 **A** Currently employed with Verizon or Verizon Wireless.
- 3 **Q** What do you do for them?
- 4 **A** Sales.
- 5 **Q** And back in June of 2007, where were you employed?
- 6 **A** At the Richland County Sheriff's Department.
- 7 **Q** And what were your duties with the Richland County
- 8 Sheriff's Department in June of 2007?
- 9 **A** Patrolling Region Two.
- 10 **Q** Where is Region Two?
- 11 **A** The borders are from like Fontaine all the way down
- 12 Clemson Road.
- 13 **Q** And is the Northeast, Hard Scrabble, Farrow Road in
- 14 part of Region Two?
- 15 **A** Yes, ma'am.
- 16 **Q** And were you working the early morning hours of
- 17 June 3rd, 2007?
- 18 **A** Yes, ma'am.
- 19 **Q** Did you have the occasion to be called out to the 300
- 20 block of Westbridge Road?
- 21 **A** I did.
- 22 **Q** And what was that in response to?
- 23 **A** That night?
- 24 **Q** Yes, sir.
- 25 **A** Shots fired and someone on the ground.

1 Q So what did you observe when you arrived at 300
2 Westbridge Road?

3 A There was an individual laying in the middle of the
4 road of the cul-de-sac.

5 Q And did you approach the individual?

6 A I did.

7 Q And what did you determine at that time?

8 A Myself and EMS responded about the same time. And
9 when we approached him, he was pronounced dead on the
10 scene.

11 Q Was anyone else on the scene before you arrived
12 there?

13 A EMS.

14 Q They arrived --

15 A We were simultaneously arriving at the same time.

16 Q After you and EMS observed that the victim was dead,
17 what did you then do?

18 A I set up the perimeter.

19 Q Describe for the jury what setting up the perimeter
20 is?

21 A Basically just crime tape a significant distance
22 apart so no one can enter or exit without permission.

23 Q And the purpose of that is to do what?

24 A To make sure that nothing has been tampered with.

25 Q I'm going to show you what's been marked as State's

1 Exhibits 21, 22, 23, 26 and 32. Are these a fair and
2 accurate depiction of what you saw on June 3rd, 2007?

3 **A** Yes.

4 **MS. MCDUFFIE:** Your Honor, at this time we would
5 offer State's 21, 22, 23, 26 and 32 I believe without
6 objection.

7 **MS. EVERHART:** No objection, Your Honor.

8 **THE COURT:** Without objection.

9 (WHEREUPON, State's Exhibit No. 21 is admitted
10 into evidence.)

11 (WHEREUPON, State's Exhibit No. 22 is admitted
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 23 is admitted
14 into evidence.)

15 (WHEREUPON, State's Exhibit No. 26 is admitted
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 32 is admitted
18 into evidence.)

19 **Q** Mr. Shaw, can you pull these pictures up and read off
20 the number, describe for the jury what's in each of
21 these pictures?

22 **A** Sure.

23 **THE COURT:** You can come down if you want to.

24 **Q** If you'd just keep your voice up so the jury can hear
25 you.

1 **A** This is Exhibit --

2 **THE COURT:** Sir. Sir.

3 **Q** Face the jury.

4 **A** What number?

5 **Q** That's 32.

6 **A** 32 right here is basically the victim laying on the
7 ground. The SUV, the white SUV right there was on
8 when I arrived on the scene. It was up on the yard a
9 little bit. It had ran into the fence.

10 **Q** So the vehicle was running?

11 **A** Yes, ma'am.

12 **Q** And what were the weather conditions that evening?

13 **A** Rainy, very rainy.

14 **Q** And that was State's Exhibit 32?

15 **A** This is 26. This is another side picture of the SUV.
16 If you observe right there, the front tire was flat a
17 little bit and it had ran into this pole.

18 **Q** What is that across the SUV?

19 **A** That is the crime scene tape.

20 **Q** And did you set that crime scene tape up?

21 **A** I did.

22 **Q** And that's State's 26?

23 **A** This is 23. This is another picture of the crime
24 scene tape surrounding the cul-de-sac as well as some
25 of the -- let's see -- there is some evidence on the

1 ground that we have marked.

2 Q And that's State's 23.

3 A This is 22. This is another side of the SUV with the
4 crime scene tape all the way around. This is 21.
5 This is actually my patrol car over here. We had set
6 up a perimeter so no one could come in, along with
7 another view of the crime scene tape.

8 Q Thank you. You may have a seat back up on the
9 witness stand. Mr. Shaw, from the time that you
10 arrived on the scene that morning, was the crime
11 scene secured?

12 A Yes, ma'am.

13 Q And when you left the crime scene, did you leave it
14 in the control of another deputy?

15 A I did.

16 Q And the crime scene was secured the entire time you
17 were there?

18 A Yes, ma'am.

19 Q Was the victim's body removed while you were there?

20 A Yes, ma'am.

21 MS. MCDUFFIE: Nothing further, Your Honor.

22 THE COURT: Cross examination.

23 MS. EVERHART: Your Honor, we have no questions
24 for this witness. Thank you.

25 THE COURT: All right. The witness may come

1 down. You're excused. Without objection?

2 **MS. EVERHART:** Without objection.

3 **THE COURT:** Without objection, the witness is
4 free to go. Sir, thank you very much. Next witness.

5 **MS. SHIPLEY:** The State calls Keith Eubanks.

6 KEITH EUBANKS, after being duly sworn, testifies
7 as follows:

8 **THE CLERK:** Thank you. Have a seat in the
9 witness stand and give the court reporter your name.

10 DIRECT EXAMINATION

11 **BY MS. SHIPLEY**

12 **Q** Mr. Eubanks, can you please state your name for the
13 record?

14 **A** Keith Eubanks.

15 **Q** Mr. Eubanks, where are you from?

16 **A** I'm from Columbia.

17 **Q** And where do you live in Columbia?

18 **A** 204 Westbridge Road.

19 **Q** How long have you resided there?

20 **A** About two years.

21 **Q** And are you from the Columbia area, born and raised
22 here?

23 **A** Yes.

24 **Q** What do you do for a living?

25 **A** Insurance broker.

1 Q And how long have you been doing that?

2 A 18 years.

3 Q Do you have any background in the military?

4 A No.

5 Q Did you have a friend with you on June 3rd who was in
6 the military?

7 A Yes.

8 Q Okay. I'm going to bring your attention to the night
9 or early morning hours of June 3rd, 2007. Can you
10 tell the jury what it is that you were doing that
11 night?

12 A I was up talking with my friend who visited me from
13 Virginia. He was on his way to a school for
14 ministry. And he was there the day before. We were
15 up late playing chess actually.

16 Q Okay. And this was at your residence on Westbridge
17 Road?

18 A Yes.

19 Q Can you tell the jury, just orient them, how it is --
20 what area Westbridge Road is? What are the main
21 roads that intersect near your house?

22 A Rabon Road and Flora Drive and back to Two Notch.

23 Q Okay. And is Hard Scrabble Road in the general
24 vicinity?

25 A Oh, yes. About a mile, two miles away.

1 Q I'm going to show you a diagram that has been marked
2 State's 43. Do you recognize this?

3 A Yes.

4 Q And does that accurately depict your street?

5 A Yes.

6 Q Westbridge Road?

7 A Yes.

8 MS. SHIPLEY: Your Honor, we would seek to
9 introduce 43 into evidence at this time.

10 THE COURT: Any objection?

11 MS. EVERHART: No objection.

12 THE COURT: Without objection.

13 (WHEREUPON, State's Exhibit No. 43 is admitted
14 into evidence.)

15 Q Sir, I'm going to hand a pointer to you -- here it
16 is -- and ask you if you could just use this pointer
17 and describe for jury where it is you live. Where is
18 your house located on that diagram?

19 A Okay. I think I'm right here.

20 Q Okay. Bear with me one second. I need to write your
21 number on there. 204 you said?

22 A Yes.

23 Q Okay. Thank you. And you are Mr. Eubanks. Tell the
24 jury, when you were talking with your friend and you
25 were awake, approximately what time was it that you

1 heard something unusual?

2 **A** Around 4; 3:30, 4, somewhere around that time.

3 **Q** Okay. What is it that you heard?

4 **A** The sounds of cars in the neighborhood speeding.

5 **Q** And what kind of sounds were you hearing that made
6 you think they were speeding?

7 **A** Like somebody was swerving.

8 **Q** All right. Could you hear tires or anything or
9 revved engines? What was it that you heard?

10 **A** I heard the engine roar and I heard -- it sounded
11 like maybe the tires was making a certain type of
12 noise, too.

13 **Q** When you heard the cars making noise, what did you
14 do?

15 **A** I looked outside to see what it was and I saw the two
16 vehicles parked in the lady's yard in the little
17 cul-de-sac area.

18 **Q** Before you get there, sir, where were you in your
19 house when you went to look and see what was going on
20 outside?

21 **A** The living room.

22 **Q** Were you at a window or a door, or where were you?

23 **A** You mean when I look outside?

24 **Q** Yes, sir.

25 **A** I was at the door.

1 Q Okay. So did you actually open your door to look
2 outside?

3 A Yes, I did.

4 Q Did you take any steps outside of your house to look
5 further?

6 A I opened up the screen door and looked.

7 Q But you stayed close to home. Is that correct?

8 A Yes.

9 Q Using that pointer, sir, could you please tell this
10 jury where it is you saw these two vehicles end up?
11 Here you go, sir. Use this pointer, please.

12 A Let me see. I think it was up in here somewhere like
13 that. I can't tell which one of the houses it is,
14 but I think it's -- I think it's maybe this. No.
15 This house right here.

16 Q Okay.

17 A Right.

18 Q So it ended up around the vicinity of that residence?

19 A Right.

20 Q And you mentioned a cul-de-sac, correct?

21 A Right.

22 Q Now, I notice that the street turns. That is the
23 cul-de-sac you're referring to?

24 A Right.

25 Q On State's No. 43?

- 1 **A** Right.
- 2 **Q** Where does this street lead to if you go out that
- 3 way?
- 4 **A** It leads to Folkstone.
- 5 **Q** Folkstone. Okay. And which direction were the cars
- 6 coming from when you heard them?
- 7 **A** This direction here.
- 8 **Q** Okay. And what's that street right there in the
- 9 bottom right-hand corner?
- 10 **A** Charleswood.
- 11 **Q** What kind of cars did you notice when you heard the
- 12 noise?
- 13 **A** A white SUV.
- 14 **Q** Okay.
- 15 **A** And a dark colored car, looked like a Volvo. I
- 16 wasn't sure what it was, but it looked like a Volvo.
- 17 **Q** But it was a small sort of sedan looking car?
- 18 **A** Right.
- 19 **Q** Okay. Did you see them at all driving down the road,
- 20 or were they already stopped at the end of the
- 21 cul-de-sac?
- 22 **A** They were -- basically they were just pulling up in
- 23 the yard.
- 24 **Q** Okay. What happened after you noticed the cars at
- 25 the end of the cul-de-sac?

1 **A** Well, the cars, nobody got out them cars when I first
2 looked. I didn't see anybody get out their cars. I
3 just saw the cars up in the yard. And then I noticed
4 two males. One had long hair. The other one had
5 really short hair. And both of them are walking real
6 fast in the direction where the two cars were
7 located.

8 **Q** Okay. And can you tell the jury where you saw them
9 walking from? Which direction were they coming from?

10 **A** I saw them walking from Charleswood direction going
11 towards the cars parked in the yard.

12 **Q** Okay. So just so we're all clear, if you could use
13 your pointer, show the jury where it was that you saw
14 them walk from?

15 **A** I saw them up in here and they started walking that
16 direction.

17 **Q** So you witnessed them walk past your residence at
18 that time?

19 **A** Yes.

20 **Q** And do you know if they saw you?

21 **A** I don't think they did.

22 **Q** When they walked by your house?

23 **A** I don't think they did. I mean, initially I didn't
24 think nothing of the two. I mean, they're walking to
25 a car up in the yard. I didn't know what it all

1 related to until after, you know, at that point.

2 Q So describe for the jury again the individuals that
3 you see walking past your house on this street in a
4 fast fashion?

5 A One had -- like I said, one had short hair, was kind
6 of stout, a little bigger than the other one who had
7 long hair who looked real slim.

8 Q So the one with long hair was slim and the one with
9 short hair was stout?

10 A Yeah. Well, he was -- he had size to him.

11 Q Okay. And describe what happened when they walked
12 past your house. Where did they go?

13 A They went to where the two cars were parked in the
14 yard.

15 Q Okay. When they got there did you hear -- did you
16 see anyone get out of the cars at the end of that
17 cul-de-sac?

18 A No. I don't recall the driver of the vehicle in the
19 dark colored car going anywhere. I think from what I
20 recall the driver of the SUV was standing by his
21 vehicle.

22 Q So he got out of his own car?

23 A Yes, ma'am.

24 Q Where was he standing when you noticed him outside of
25 his SUV?

1 **A** Initially he was standing near the door. He kind of
2 went towards the back when the other two gentlemen
3 came up.

4 **Q** And so at this point these two gentlemen are walking
5 down the street and you've got the man in the SUV
6 outside of his car. What happened next?

7 **A** For a few minutes or so it looked like they were just
8 talking and then --

9 **Q** Was it a pleasant conversation or was it a heated
10 conversation?

11 **A** I couldn't tell. I didn't hear a lot of noise.

12 **Q** Okay.

13 **A** I didn't hear a lot of noise. I could barely hear
14 them saying whatever. But they were all standing,
15 the two guys walking and the gentleman at the SUV.

16 **Q** Did you ever see the guy of the dark small car get
17 out at all?

18 **A** No. I don't recall him getting out the car.

19 **Q** Okay. What happened next?

20 **A** I noticed some movement and I noticed the defendant
21 guy who had the long hair, I noticed his arm went up
22 and a shot was fired. But I didn't clearly see, you
23 know, if that was him. I just know his arm went up.
24 A shot was fired. I seen the flight from the little
25 flash of light in the air. I noticed the dead guy a

1 few seconds walk forward and fell to the ground.

2 Q Okay. So which guy's hand went up like so?

3 A The guy I noticed, it was the slim guy with the long
4 hair.

5 Q The guy with the long hair?

6 A Right.

7 Q When you saw his hand go up, could you see what was
8 in his hand from where you're standing at your house?

9 A No, I couldn't see what was in his hand.

10 Q Do you remember what the weather was like in those
11 early morning hours? What was the weather like
12 outside?

13 A I mean, the weather was clear from what I could
14 recall. But it did start raining. It started
15 raining because I can remember the gentleman that was
16 shot on the ground, he was laying there for a long
17 time. That disturbed me that he was laying there all
18 that time and it was raining. So I do remember that.

19 Q Now, you couldn't make out what was in the man who
20 was holding up his hand with the long hair. But what
21 was it that you told this jury just a second ago?
22 What did you see and hear? What did you see coming
23 from his hand when you heard a shot?

24 A I just noticed when he held his hand up a shot was
25 fired and I saw a flash of light.

1 Q You saw a flash?

2 A Right..

3 Q In his hand?

4 A Correct.

5 Q What happened to the person from the SUV when that
6 happened?

7 A A few seconds later I saw him move, go forward and
8 fell in the street. And from what I could see he was
9 on the ground moaning or whatever because his head
10 was moving back and forth.

11 Q All right. After you hear the first shot, what is
12 going on with the small darker car?

13 A It -- that car pulled out, pulled out the yard.

14 Q Okay. So it was still stuck in the yard during the
15 first shot?

16 A Right.

17 Q And after the first shot it's finally getting loose
18 from the yard?

19 A Some kind of way. I couldn't figure out how that
20 happened though. But I just know it got loose and
21 backed out the yard.

22 Q When his car got loose, where did the other -- first
23 of all, what happened after the first shot? What did
24 the guy with the short hair who had some size to him
25 as you described him, what did he do after the first

1 shot?

2 A It looked like I saw his hands, like he did this
3 here, like he couldn't believe what had just took
4 place.

5 Q Okay. So you hear a gunfire. You see a flash coming
6 from the hand of the man with the long hair. And
7 after that you see the short guy or the guy with the
8 short hair go like so?

9 A Well, I seen the guy with the long hair, his hand go
10 up, and I seen a flash of light. It appeared to look
11 like it was coming from his hand.

12 Q Okay.

13 A And the guy with the short hair, he raised his hands
14 up like, I can't believe you, you know, what just
15 happened.

16 Q Okay. And then after this took place, the small
17 colored vehicle, the dark colored small car was able
18 to get loose?

19 A Yes. Some kind of way, yes.

20 Q Where did the guy with the short hair go?

21 A He got in the car on the passenger's side.

22 Q On the passenger's side?

23 A Right.

24 Q What did the guy with the long hair do?

25 A Well, initially he was going to the car as well; took

1 a few steps toward the car, then he turned around and
2 came back to the guy laying on the ground. He leaned
3 over him and shot him in his forehead.

4 Q How far was the gun from the man's forehead?

5 A Just above it. From what I could see, it was near
6 his temple, near his forehead, very close from what I
7 could see.

8 Q All right.

9 MS. SHIPLEY: Your Honor, may I ask this witness
10 to step down to demonstrate what he observed for the
11 second shot?

12 THE COURT: Go ahead.

13 Q Mr. Eubanks, can you step down.

14 (Witness complies)

15 Q Thank you, sir. Pretend that the body is over here
16 on the ground. And if you could become oriented this
17 way?

18 A Okay.

19 Q Describe for the jury how it is, the movements you
20 saw of the man with the long hair, what were his
21 movements like when he fired the second shot?

22 A Well, initially he was going to the vehicle and he
23 turned around; and this guy here, he did this right
24 here and he fired a shot.

25 Q And then after he did that, where did he go?

1 **A** To the vehicle.

2 **Q** Do you remember what car door he got into in that
3 vehicle?

4 **A** I didn't pay much attention at that point.

5 **Q** Please have a seat, sir. Thank you. You had
6 indicated earlier that the man from the white SUV
7 after he got shot the first time, describe what was
8 going on with his body?

9 **A** When he was shot the first time?

10 **Q** After the first time, what was he doing on the
11 ground?

12 **A** From what I could see, like he was in pain, moaning,
13 because I seen his head moving.

14 **Q** Okay.

15 **A** And it seemed like I heard a little bit of sounds he
16 was making. I wasn't sure if that was him or not.

17 **Q** Then after the second shot, what did you observe of
18 his body?

19 **A** He shook for about two seconds and then his body went
20 numb.

21 **Q** Okay. How much time passed between the first shot
22 and the second shot?

23 **A** Maybe a minute or less. Less than a minute.

24 **Q** Okay. I am going to when that clock strikes 30
25 seconds at 6, you stop me when it's shot number two.

1 Bam. Go.

2 (Pause)

3 A Right about now.

4 Q 17, 18 seconds. Is that right?

5 A About right I guess.

6 Q What direction did the small dark car leave in?

7 A Towards Folkstone.

8 Q Okay. And if you wouldn't mind using your pointer,
9 show the jury what direction that is?

10 A This direction.

11 Q Okay. Did you ever see the man from the SUV charge
12 at anybody? Did you ever see him with a gun that
13 night?

14 A No. No.

15 Q He didn't have a gun?

16 A No. I didn't see no gun.

17 Q And did he move from the side of his car?

18 A No.

19 Q Once you witnessed this murder, what did you do next?

20 A Well, at first when he first got shot, because my
21 friend is in the military, I said, "Man, I think
22 somebody just got shot." And then while I'm talking
23 to him, I seen the guy fall to the ground. He said,
24 "Are you serious?" I said, "Yeah." He said, "Man,
25 oh, man. I came here to visit you." He said, "I've

1 been in the military 20 years. I went to Jabutie,
2 and I ain't never even seen nobody get killed." He
3 said, "I come over here and somebody is getting
4 murdered, man?" His first thing, "Well, I've got to
5 leave in the morning, man." So that's when I said,
6 "I need to call the police." And he was saying,
7 "Well, close the door, man. You don't know what this
8 shooting escalated from." Because we thought it
9 might have been drug related or something. So that's
10 when I called the 911.

11 Q Okay. And did you have an opportunity to hear your
12 voice on the 911 call?

13 A Yes, I did.

14 Q And is that your voice?

15 A Yes.

16 **MS. SHIPLEY:** Your Honor, at this time the State
17 is introducing State's No. 44 into evidence.

18 **THE COURT:** Without objection?

19 **MS. EVERHART:** Without objection.

20 (WHEREUPON, State's Exhibit No. 44 is admitted
21 into evidence.)

22 **MS. SHIPLEY:** And, Your Honor, as I reported to
23 the Court and to the defense, we do have a transcript
24 to assist the jurors with the call. All right, Your
25 Honor. At this time I will play State's No. 44 in

1 evidence.

2 (Whereupon, the tape is played for the jury)

3 Q Mr. Eubanks, do you recall deputies coming to your
4 house that night?

5 A Yes, I do.

6 Q And were you reluctant to speak to them that evening?

7 A Yes.

8 Q And why is that?

9 A Because I didn't know the nature of the crime, what
10 brought it about. So I didn't want, you know,
11 bringing trouble to my house, because I have kids and
12 a wife.

13 Q And do you remember giving your name and phone
14 number, instructing the officers to call you if they
15 wanted to talk to you?

16 A Yes.

17 Q Did you in fact talk to an investigator with the
18 Richland County Sheriff's Department over the phone?

19 A Yes. Briefly.

20 Q Briefly?

21 A Mm-hmm (affirmative).

22 Q And do you remember his name by any chance?

23 A McRae.

24 Q McRae?

25 A McRae, yeah.

1 Q Okay. Are you sure it wasn't McDonald?

2 A Okay. Initially it was McDonald.

3 Q Okay.

4 A The tall guy.

5 Q Him right there with the white shirt?

6 A Yes.

7 Q Okay.

8 A Okay.

9 Q Now, when you speak to him on the phone -- you later
10 met him, right?

11 A Right.

12 Q You didn't know what he looked like when you spoke to
13 him?

14 A Right.

15 Q You said you had a very brief conversation?

16 A On the phone.

17 Q Did you make arrangements with the investigator to
18 come to headquarters to give a written statement?

19 A Yes.

20 Q All right. Do you remember providing a written
21 statement to the police on June the 7th of 2007?

22 A Yes, I do.

23 Q And I'm going show you this document and ask you if
24 you recognize it. Is that your statement, sir?

25 A Yes, it is.

1 Q How many pages long is it?

2 A Three.

3 Q Now, do you remember giving that statement to
4 Investigator McRae on June the 7th, 2007?

5 A Yes.

6 Q And in that statement did you tell him that you were
7 unsure as to which one of the two fired the second
8 shot?

9 A No. That's not what I meant.

10 Q Okay.

11 A I think that was misunderstood from the first shot
12 that he fired.

13 Q Can you explain that for this jury?

14 A Well, I couldn't say clearly who fired the shot in
15 the yard because it was sort of dark. I just seen
16 the gentleman with the long hair arm go up and a shot
17 was fired. But --

18 Q When you saw his arm go up, what did you see coming
19 from his hand?

20 A I saw some light near his hand, a flash of light near
21 his hand.

22 Q Did anyone's hands go up at that time when you heard
23 that shot?

24 A I didn't see nobody else's hand.

25 Q So please continue with your explanation.

1 **A** But I did clearly see, because I did clearly see as
2 far as the gentleman being in the center of the road,
3 the additional. I saw that because they were
4 lying -- where he was laying and where the person had
5 come up to the body to shoot him.

6 **Q** For the second shot?

7 **A** Right. I saw that.

8 **Q** And can you for the jury's benefit point out where
9 you believe the light source is on that cul-de-sac?

10 **A** Right about here.

11 **Q** Okay.

12 **A** And the guy was there.

13 **Q** All right. Now, in your statement, were you provided
14 an opportunity to go over your statement and make any
15 changes to it before signing it? Do you remember the
16 investigator saying read your statement and if it's
17 accurate sign it?

18 **A** Yes.

19 **Q** Okay.

20 **A** I remember that.

21 **Q** Did you thoroughly read your statement before you
22 signed it?

23 **A** I believe I did.

24 **Q** I'm going to direct your attention to page number 2,
25 the very last question on page number 2. Do you

1 recall being asked who shot the second shot, fired
2 the second shot and what your answer is? And you're
3 welcome to tell the jury what you answered.

4 **A** Well, as far as my statement goes, you know, that I
5 know the guy with the long hair fired both shots. I
6 was not certain if he fired both shots, but I know
7 for a fact the second shot was fired by him. And
8 once again, I was pretty certain he fired the first
9 shot because the guy with the short hair, his hands
10 went up when the shot was fired, like I can't believe
11 what just happened.

12 **Q** Okay. Do you also remember being asked what the guy
13 with the long hair was wearing?

14 **A** Yes.

15 **Q** What was he wearing?

16 **A** I believe he was wearing a horizontal shirt, a white
17 shirt with some stripes in it and a pair of baggy
18 pants. I couldn't tell if they were blue jeans or
19 what that was. That's what I recall. And he had
20 long hair.

21 **Q** And do you recall being asked whether or not you
22 remembered what the guy with no hair or short hair,
23 the stockier of the two, was wearing?

24 **A** No. I can't recall what he was wearing.

25 **Q** Okay. When you said earlier you heard conversation

1 going on between the man at the SUV and the two men
2 that walked past your house in a fast manner, in your
3 observations who escalated the events in that
4 cul-de-sac?

5 **A** The guy with the long hair.

6 **Q** Do you know anybody named Justin Green or Garry
7 Green?

8 **A** No, I don't.

9 **Q** Do you have any dog in this fight?

10 **A** No.

11 **MS. SHIPLEY:** I have no further questions of Mr.
12 Eubanks, Your Honor.

13 **THE COURT:** Cross examination.

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

15 CROSS EXAMINATION

16 **BY MS. EVERHART**

17 **Q** Hi, Mr. Eubanks. How are you?

18 **A** Good.

19 **Q** Good. I'm just going to ask you a few questions.

20 Now, you said this occurred around 4:00 that evening?

21 **A** No. That morning.

22 **Q** 4:00 in the morning?

23 **A** Right.

24 **Q** And you were playing chess with a friend?

25 **A** A friend, yes.

1 Q Had you been to sleep yet at all that night?

2 A No. I was up real late that night.

3 Q For about how long had you been up?

4 A Well, after that I didn't go to sleep. I stayed up
5 the next day.

6 Q When had you gotten up that morning?

7 A About 10. The morning before?

8 Q Mm-hmm (affirmative).

9 A 10. About 9:30, 10:00.

10 MR. O'NEIL: Your Honor, I'm sorry. I can't
11 hear the witness.

12 A About 9:30 or 10:00.

13 Q Now, your house is about 200 feet away from the
14 cul-de-sac?

15 A That's about right. 200 feet.

16 Q It was dark that night, correct?

17 A Yes.

18 Q And sort of rainy?

19 A Well, during that time it hadn't started raining
20 like. It was like might have had a little bit of
21 mist out there, a little bit of mist, but it wasn't
22 really raining yet.

23 Q Did you happen to notice which way the individual who
24 came out of the SUV was facing when he was shot?

25 A When he was shot, I know the parties were facing each

1 other. Let's say you get out your vehicle, if this
2 is the door to the driver's side, he was facing the
3 gentlemens (sic), the two guys walking over to him.
4 Like I was standing here, like this here facing you.
5 I think they were in front of him. So somehow that's
6 why when I heard the sound of the gun I didn't notice
7 at that time someone got shot. But a few seconds
8 later I noticed the guy walked, took a few steps
9 forward and fell to the ground. And that's when I
10 stated to my friend, "I can't believe I think
11 somebody just got shot." That's when I called the
12 police.

13 Q Did your friend happen to give a statement to the
14 police that night?

15 A No. Because we had just finished playing chess and
16 he was saying, "I have to leave. I think I might
17 leave early tomorrow, so I'm going to go ahead and
18 lay down some." He was laying on the sofa when I was
19 standing in the door. I was telling him everything.
20 He couldn't believe it. So that's when he told me to
21 close the door. But I never did close the door. I
22 kind of like had the door open still looking out the
23 corner of the door watching what was going on.

24 Q So he laid down after the incident, right?

25 A I turned the light off. That's what I did. I turned

1 the light off and looked out the corner of the door.

2 Q And he's in the military?

3 A Yeah. He's in the military, yeah.

4 Q And you got up and you demonstrated for us how the
5 individual who shot the second shot approached the
6 person lying on the ground?

7 A Yes.

8 Q You said they approached like this?

9 A No. They turned sideways, kind of like turning
10 sideways like this here.

11 Q With their right hand?

12 A With their right hand, yes.

13 Q And when you called 911, you told them that one of
14 the guys had hair?

15 A Right.

16 Q But that this was a Blowout?

17 A Like I said, I think it was a Blowout because I just
18 noticed something bouncing on his head. He didn't
19 have a hat on. So I couldn't tell if he had hair
20 Blowout or if he had plaits. But I knew his hair was
21 bouncing. So I knew it was long hair. So I said a
22 guy --

23 Q So it was bouncing freely above his head?

24 A I could just see freely hair moving on the top of his
25 head when he was walking. I just seen hair moving on

1 his head.

2 Q And I believe you testified that you did have the
3 opportunity to speak with Investigator McDonald on
4 the phone, correct?

5 A Yes.

6 Q And during your conversation with him, I believe you
7 said that you heard a crash initially?

8 A Yeah. Well, first I heard the cars speeding and then
9 I heard it sound like the tires were skidding,
10 skidding. That's when I looked outside and seen
11 these cars up in the lady's yard. And it looked like
12 the black car was hemmed in by the white car, by the
13 SUV.

14 Q So you didn't actually hear a crash?

15 A No, I didn't hear a crash. I just heard the sound of
16 tires sliding or whatever.

17 Q And I believe that you also indicated to Investigator
18 McDonald that the long haired guy you saw got into
19 the vehicle and another man got out and walked up and
20 did the second shot?

21 A No.

22 Q No. You did not indicate that? I apologize.

23 A No. You said that the guy with long hair got into
24 the vehicle with the guy with the short hair?

25 Q (Nods head affirmatively).

1 **A** No.

2 **Q** And you said you did have the opportunity to review
3 your written statement?

4 **A** Yes.

5 **Q** But that you did not state you were unsure who fired
6 the second shot?

7 **A** Right. That's correct.

8 **Q** You testified today that you can't say for certain
9 who actually fired the first shot?

10 **A** Right. Because you couldn't see. The only thing I
11 seen was his arm go up. But it was dark where they
12 was standing at. So I only seen that his arm went
13 up, the shot was fired, and I saw the gentleman took
14 a few steps forward and fall to the ground.

15 **MS. EVERHART:** Beg the Court's indulgence one
16 minute. No further questions from this witness.
17 Thank you.

18 **THE COURT:** Redirect?

19 **MS. SHIPLEY:** Yes, sir, Your Honor.

20 REDIRECT EXAMINATION

21 **BY MS. SHIPLEY**

22 **Q** You were just asked by Ms. Everhart concerning the
23 first shot?

24 **A** Yes.

25 **Q** Whose arm was up when the first shot was -- when you

1 heard the first shot?

2 **A** The gentleman with the striped shirt on.

3 **Q** And how did his hair appear?

4 **A** He appeared to have long hair.

5 **Q** Okay. So the man with the long hair had his underarm
6 up when you saw the first shot, correct?

7 **A** I just seen like his shirt. I seen his arm go up. I
8 heard a shot fired.

9 **Q** When you heard the shot, what again did you see
10 coming from his hand?

11 **A** What I saw near his hand was a light, like a little
12 flash of light.

13 **Q** Okay. Are you familiar with firearms, sir?

14 **A** Not really.

15 **Q** You're not?

16 **A** No. Not really.

17 **Q** I'll wait to ask the ballistics expert then.

18 **A** Good.

19 **Q** And again, you're 200 -- I believe you said 200 feet
20 away from this circle. Is that correct? Or how many
21 feet? 200 yards or feet?

22 **A** About 200 feet.

23 **Q** 200 feet. So this is a very close cul-de-sac,
24 correct?

25 **A** Yes.

1 Q However, it was dark outside, right?

2 A Yes.

3 Q So that is why you can't identify the person with the
4 long hair, can you?

5 A No, I cannot.

6 Q And you didn't know any of those people in the
7 cul-de-sac the early morning hours of June 3rd, 2007?

8 A No, I didn't.

9 Q Thank you, Mr. Eubanks.

10 THE COURT: Anything further?

11 MS. EVERHART: Nothing further.

12 THE COURT: All right. You may. Come down,
13 sir. Thank you very much. May this witness be
14 excused?

15 MS. SHIPLEY: Please, Your Honor.

16 THE COURT: Without objection. Next witness.

17 MS. MCDUFFIE: The State calls Rick Jacobs.

18 RICKY JACOBS, after being duly sworn, testifies
19 as follows:

20 THE CLERK: Thank you. Have a seat in the
21 witness stand and give the court reporter your name.

22 WITNESS: Ricky Jacobs.

23 DIRECT EXAMINATION

24 BY MS. MCDUFFIE

25 Q Good afternoon, Mr. Jacobs. Mr. Jacobs, where are

1 you employed?

2 **A** I'm self-employed with Heartchasers, Incorporated.

3 **Q** And what do you do?

4 **A** I own a restaurant and bar.

5 **Q** And what's it called?

6 **A** It's Chaser's Pub on Hard Scrabble Road.

7 **Q** And is Chaser's also known as the H&J pub or just the
8 pub?

9 **A** Just the pub. Yes.

10 (WHEREUPON, State's Exhibit No. 45 is marked for
11 identification.)

12 **Q** I show you what's been marked as State's Exhibit
13 No. 45. Do you recognize this?

14 **A** Yes.

15 **Q** Would it aid in your testimony? Is it a fair and
16 accurate depiction?

17 **A** Yes.

18 **MS. MCDUFFIE:** Your Honor, the State would offer
19 Exhibit 45.

20 **MR. SECOR:** No objection, Your Honor.

21 **THE COURT:** Without objection.

22 (WHEREUPON, State's Exhibit No. 45 is admitted
23 into evidence.)

24 **Q** Please tell the jury what this is a picture of?

25 **A** This is the bar and this is the restaurant entrance.

1 Q And what's right here? What's right next to it?

2 A It's a store, a convenience store.

3 Q And are there gas pumps at that convenience store?

4 A Yes. There's gas pumps, yes.

5 Q And were at your bar on the night of June the 2nd
6 into the morning of June the 3rd?

7 A Yes.

8 Q 2007?

9 A Yes.

10 Q Do you remember that night?

11 A Yes.

12 Q Do you know Garry Green?

13 A Yes.

14 Q Did you see Garry Green at the pub that evening?

15 A Yes. That night, yes, I did.

16 Q And do you know the defendant, Louis Sanders?

17 A Yes.

18 Q And did you see him at the pub that evening?

19 A Yes. He was there.

20 Q And do you know Justin Green?

21 A No. I don't really know Justin.

22 Q Did you see any of the events that occurred outside
23 the pub that evening?

24 A No, ma'am. I was inside doing my paperwork.

25 Q You didn't hear any shots fired?

1 **A** No, I didn't hear any shots. I was inside in my
2 office doing my paperwork at the time.

3 **Q** Did you see anything when you were leaving?

4 **A** I seen some ladies on the side of the road when I was
5 leaving to go to my car. They were standing out. It
6 looked like they were waiting on a ride or something.

7 **Q** Did the police contact you the next morning?

8 **A** Yes, ma'am, they did.

9 **Q** Was that the first time you heard about the shot that
10 was fire in the parking lot?

11 **A** Yes, ma'am. It was.

12 **Q** Did the police ask you if you knew of any of your
13 patrons that drove a black Volvo?

14 **A** Yes.

15 **Q** And what did you tell them?

16 **A** I know two personally, Garry Green and Jan Moore.

17 **Q** And who was the second one?

18 **A** Jan Moore.

19 **Q** Please describe who Jan Moore is?

20 **A** She is about 63 years old, retired military, Sergeant
21 Major.

22 **Q** She's a female?

23 **A** Yes, she is.

24 **Q** Was she at your bar that evening?

25 **A** No, ma'am.

1 Q And did the police also ask you if there were any
2 people there with dreadlocks that evening?

3 A Yes. They sure did.

4 Q And were there people with dreadlocks there that
5 evening?

6 A Yes, there were.

7 Q And what did you tell the police?

8 A That there was a gentleman there that had dreadlocks
9 that had like a Red Robin uniform on.

10 Q Red Robin, the restaurant?

11 A Yes. Restaurant on Sandhill. And he was in the bar.
12 I was serving him personally, so I knew he was there.
13 And there was another guy there, but I didn't really
14 know him. And that was basically it.

15 Q So those were the only other people with dreadlocks
16 that you didn't know there that evening?

17 A Yes, ma'am.

18 Q And that's what you told the police?

19 A That's what I told them.

20 MS. MCDUFFIE: Nothing further from this
21 witness, Your Honor.

22 THE COURT: Cross examination.

23 MR. SECOR: Thank you, Your Honor.

24 CROSS EXAMINATION

25 BY MR. SECOR

- 1 Q How are you, Mr. Jacobs?
- 2 A Fine. How are you?
- 3 Q Good. Just a couple of questions for you.
- 4 A Okay.
- 5 Q I think you spoke to the police on a couple of
- 6 different occasions, right? More than once?
- 7 A Yes.
- 8 Q Yeah. And at the time that you spoke to them, I
- 9 assume that you understood the fact that they were
- 10 trying to find out who had fired the shot in the
- 11 parking lot at your pub, right?
- 12 A Right.
- 13 Q Okay. And they had given you a description to some
- 14 extent of who they were looking for?
- 15 A Right.
- 16 Q And the information they give you was a black male
- 17 with dreads or braids --
- 18 A Braids.
- 19 Q -- of some sort?
- 20 A Exactly.
- 21 Q And so at the time that you're relying to them who
- 22 you think that might be, you know they're looking for
- 23 a shooting suspect?
- 24 A Yes. I was aware.
- 25 Q And you're trying to give them a description of the

1 person who you think most likely fits that
2 description?

3 A Pretty much.

4 Q Who was at your bar that night?

5 A Yes, sir.

6 Q Okay. And you described to them a gentleman who had
7 dreads or braids, a black gentleman who was wearing
8 some sort of a shirt that you could remember?

9 A Uniform, yes.

10 Q And he had come into the bar that night with a group
11 of people that were regulars at your pub?

12 A Right. Regulars.

13 Q And you knew those people to work at Red Robin, at
14 least the people that he was with?

15 A Right.

16 Q Okay. And one of them was a white female I believe.
17 Is that correct?

18 A Three of them were white females.

19 Q Oh. All three of them were white?

20 A No, not all three. Three white females were with him
21 with a group of others.

22 Q And this person that you had described to them that
23 you thought fit the description of this subject had
24 come with these people, right?

25 A Right.

1 Q Beg the Court's indulgence for just a moment.

2 Mr. Jacobs, just to reiterate, you did know Louis
3 Sanders on this date, June 3rd, '07, right?

4 A Yes.

5 Q And when the police came to you describing to you
6 somebody they were looking for as a possible shooting
7 suspect and they gave you a description they had, you
8 didn't give them the name Louis Sanders. Is that
9 right?

10 A No, I didn't. That's right. No.

11 MR. SECOR: Thank you, Your Honor. Nothing
12 further. Thank you, Mr. Jacobs.

13 THE COURT: Redirect?

14 REDIRECT EXAMINATION

15 BY MS. MCDUFFIE

16 Q Mr. Jacobs, did you know who was involved in this
17 shooting?

18 A No. Not at the time. I had no idea.

19 Q And were you trying to give the police as many
20 details on as many people as you could to help them
21 out?

22 A Yes.

23 Q And do you remember what color the Red Robin uniforms
24 were?

25 A Burgundy shirt.

1 Q Thank you. Nothing further.

2 THE COURT: Anything?

3 MR. SECOR: No, Your Honor. Thank you.

4 THE COURT: All right. You may come down, sir.

5 MS. MCDUFFIE: I ask the witness be excused.

6 THE COURT: May the witness be excused? Without
7 objection. Next witness.

8 MS. SHIPLEY: The State calls Garry Green.

9 (WHEREUPON, State's Exhibit No. 46 is marked for
10 identification.)

11 (WHEREUPON, State's Exhibit No. 47 is marked for
12 identification.)

13 GARRY B. GREEN, after being duly sworn,
14 testifies as follows:

15 THE CLERK: Thank you. Have a seat in the
16 witness stand and give the court reporter your name.

17 COURT REPORTER: Sir, I'll need you to spell
18 your first name for me, if you would, please.

19 WITNESS: G-A-R-R-Y.

20 COURT REPORTER: Thank you. And your full name?

21 WITNESS: Garry Bernard Green.

22 DIRECT EXAMINATION

23 BY MS. SHIPLEY

24 Q Good afternoon, Mr. Green.

25 A Good afternoon.

1 Q Mr. Green, can you tell this jury where you were born
2 and raised?
3 A Wake County, North Carolina.
4 Q When did you move to Columbia, South Carolina?
5 A Maybe when I was maybe five or so.
6 Q And who is your father?
7 A Glenn Green.
8 Q Glenn Green?
9 A Yes, ma'am.
10 Q I'm going to ask you to pull up to that microphone so
11 we can hear you real clearly. Okay?
12 A Yes, ma'am.
13 Q Mr. Green, what is the name of your mother?
14 A Carolyn Green.
15 Q Carolyn Green. And is she remarried?
16 A Yes, ma'am. Carolyn Culler is her --
17 Q Culler?
18 A Yes, ma'am.
19 Q Her husband is whom?
20 A William "Will" Culler.
21 Q William Culler. And where does your mother and your
22 stepfather; the Cullers, where do they reside?
23 A [REDACTED] William Harden Road.
24 Q I'm going to show you a diagram and ask you if you
25 recognize it, State's No. 47. Do you see [REDACTED] William

1 Harden Road in this diagram?

2 **A** Yes, ma'am.

3 **Q** And could you point it out, please?

4 **A** Right here.

5 **MS. SHIPLEY:** Your Honor, at this time the State
6 would seek to introduce State's No. 47 into evidence.

7 **THE COURT:** Any objection?

8 **MS. EVERHART:** No objection.

9 **THE COURT:** Without objection.

10 (WHEREUPON, State's Exhibit No. 47 is admitted
11 into evidence.)

12 **Q** Using the pointer, sir, could you please tell the
13 jury, show the jurors -- I'm just going to hold it up
14 here because we don't need it up long -- right over
15 here. Which one was your house?

16 **A** (Witness points).

17 **Q** That's where your mother lives?

18 **A** Yes, ma'am.

19 **Q** Do you frequent the residence to the right of that
20 house?

21 **A** Yes. To the left.

22 **Q** Okay. Which house is that?

23 **A** Right here.

24 **Q** All right. And is that the residence of Michelle
25 Wilson Jackson?

- 1 **A** Yes, ma'am.
- 2 **Q** Okay. All right. Is her street address [REDACTED] William
- 3 Harden Road?
- 4 **A** Yes, ma'am.
- 5 **Q** How long has your mother lived at that residence with
- 6 your stepfather, Mr. Culler?
- 7 **A** Seven years.
- 8 **Q** And at the time of June 2007, were you living with
- 9 them at that residence?
- 10 **A** Yes, ma'am.
- 11 **Q** Did your stepfather or your mother drive a black
- 12 Volvo?
- 13 **A** Yes, ma'am.
- 14 **Q** Okay. So they had a black Volvo in their driveway.
- 15 Is that correct?
- 16 **A** Yes, ma'am.
- 17 **Q** Now, how are you related to Justin Green?
- 18 **A** He's my brother.
- 19 **Q** And do you and Justin have the same mother?
- 20 **A** No, ma'am. The same father.
- 21 **Q** The same father. So then Green is both of yours
- 22 father?
- 23 **A** Yes, ma'am.
- 24 **Q** Does Justin drive a black Volvo?
- 25 **A** Yes, ma'am.

1 Q And explain for the jury what your father does for a
2 living?

3 A We work on foreign cars.

4 Q Foreign cars?

5 A Yes, ma'am.

6 Q Your father runs his own auto shop?

7 A Yes, ma'am.

8 Q Okay. All right, sir. I'm going to bring your
9 attention to the night of June 3rd, 2007, the early
10 morning hours. You've already testified you were
11 living with your stepfather and mother at William
12 Harden Road. Is that correct?

13 A Yes, ma'am.

14 Q I'm going to show you a diagram, State's No. 46. Do
15 you see your stepfather's house or mother's house on
16 this diagram on William Harden Road?

17 A I believe it's this house here.

18 Q Does this accurately depict your neighborhood and the
19 general area, this map?

20 A Yes, ma'am.

21 Q Okay.

22 MS. SHIPLEY: Your Honor, at this time the State
23 would seek No. 46 into evidence.

24 MS. EVERHART: No objection.

25 THE COURT: Without objection.

1 (WHEREUPON, State's Exhibit No. 46 is admitted
2 into evidence.)

3 Q I believe you pointed, and just correct me if I'm
4 wrong, that your mom's house on this map is over
5 here?

6 A Yes, ma'am.

7 Q Okay. Can you see where the club is? Point out
8 where the club is. And here is a cord or the
9 pointer. Where on this map is the club, if you can
10 see it?

11 A Probably the club should be somewhere right here.

12 Q Okay. So it's just around the block from your house?

13 A Yes, ma'am.

14 Q Do you frequent the H&J club?

15 A Yes, ma'am.

16 Q Do you know the owner of the club?

17 A Yes, ma'am.

18 Q Mr. Rick Jacobs?

19 A Yes, ma'am.

20 Q How often would you say that you go to this club?

21 A Maybe twice a week.

22 Q So you're a regular?

23 A Yes, ma'am.

24 Q And as a regular, do you get to know other customers
25 of the club or the pub?

- 1 **A** Yes, ma'am.
- 2 **Q** And you all call it the pub, correct?
- 3 **A** Yes, ma'am.
- 4 **Q** Now, on the early morning hours of June 3rd, tell
- 5 this jury where it was that you were?
- 6 **A** I was at the pub.
- 7 **Q** All right. Who were you there to meet?
- 8 **A** I met up with my brother.
- 9 **Q** And why was Justin coming to see you at the pub?
- 10 **A** It was close to my birthday and we just decided to
- 11 have a drink.
- 12 **Q** When is your birthday?
- 13 **A** May 30th.
- 14 **Q** How old are you?
- 15 **A** Well, as a matter of fact, it was after my birthday.
- 16 I'm 37.
- 17 **Q** So you're 37 now?
- 18 **A** Yes, ma'am.
- 19 **Q** You turned 36 last -- so you were 36 in June of '07?
- 20 **A** Yes, ma'am.
- 21 **Q** And does your brother, Justin Green, frequent the
- 22 pub?
- 23 **A** No, ma'am.
- 24 **Q** What part of Columbia does he live in?
- 25 **A** The Spring Valley area, Northeast area.

1 Q Northeast area. Where did he go to high school?

2 A Richland Northeast.

3 Q What about you?

4 A I went to the Northeast and to Spring Valley.

5 Q And how much older are you than Justin?

6 A 11 years, ten or 11 years.

7 Q And so he is your baby brother. Is that right?

8 A Yes, ma'am.

9 Q What was Justin doing for a living back in June of

10 '07?

11 A I think he was working for a bank. He had a couple

12 of jobs, a job at the mall I believe with Victoria's

13 Secret and I think at a bank or something.

14 Q Wachovia Bank?

15 A Yes, ma'am. If I'm not mistaken.

16 Q Do you recall, do you know how far your brother got

17 in school?

18 A He actually went to college.

19 Q How about you? Did you go to college?

20 A No, ma'am.

21 Q Did you -- and has your brother ever been in trouble

22 with the law ever in his life?

23 A No, ma'am.

24 Q You've had some brushes with the law, right?

25 A Yes, ma'am.

1 Q And, in fact, when you were what, 17, you were
2 convicted of four counts of armed robbery?

3 A Yes, ma'am.

4 Q What did you do? Tell this jury what you did when
5 you were 17?

6 A I went out and got into some mess and we robbed four
7 stores.

8 Q Okay. Were you convicted as a juvenile?

9 A Yes, ma'am.

10 Q Did you go to DJJ?

11 A No, ma'am.

12 Q What did you get? What was your sentence?

13 A YOA three to six. Yes, ma'am.

14 Q What's that mean? Tell this jury what YOA three to
15 six means?

16 A It means I had to do a mandatory three years down
17 there.

18 Q So that was your first brush with the law. Is that
19 correct?

20 A Yes, ma'am.

21 Q You had another brush with the law I believe in '06
22 for possession of stolen motor vehicle?

23 A Yes, ma'am.

24 Q And what happened to you at that point? What kind of
25 sentence did you get?

1 **A** As a matter of fact, I turned myself in. I think I
2 did a month or so, maybe three months, if I'm not
3 mistaken. I think three months.

4 **Q** And then that was -- you got a time served sentence?

5 **A** Yes, ma'am.

6 **Q** Now, Mr. Green, tell this jury what transpired when
7 you were at the pub. Did your brother show up and
8 meet you there?

9 **A** Yes, ma'am.

10 **Q** Who else was at the pub that you knew?

11 **A** Louis Sanders. There was quite a few people.

12 **Q** Tell the jury how you know Louis Sanders?

13 **A** I went to high school with him.

14 **Q** Which high school?

15 **A** Northeast.

16 **Q** Are you all the same age?

17 **A** I think he is a year older than me.

18 **Q** Okay. So he would not have gone to school with
19 Justin Green. You went to school with Louis Sanders,
20 correct?

21 **A** Yes, ma'am.

22 **Q** And so you'd been friends with him since high school?

23 **A** Yes, ma'am.

24 **Q** Were you there to meet Louis Sanders at the pub, or
25 was he just there?

1 **A** He was just there.

2 **Q** When Justin arrived, do you remember what time it was
3 that he got there?

4 **A** I think it was early, maybe 2:30, 3, something like
5 that.

6 **Q** A little early for you?

7 **A** Yes, ma'am.

8 **Q** Late for most people?

9 **A** Yes, ma'am. Yes, ma'am.

10 **Q** Did Justin know Louis Sanders prior to the early
11 morning hours of June 3rd, 2007?

12 **A** No, ma'am.

13 **Q** Who introduced Justin Green to Louis Sanders?

14 **A** I did.

15 **Q** And where were you when you introduced them?

16 **A** At the pub.

17 **Q** At the pub. How long do you think you hung out with
18 Louis Sanders? And by the way, does Louis Sanders
19 have a nickname?

20 **A** Yes, ma'am.

21 **Q** What is it?

22 **A** Scooter.

23 **Q** Scooter?

24 **A** Yes, ma'am.

25 **Q** Did Scooter and you and Justin Green hang out

1 together at the pub, or was this just a passing
2 introduction?

3 **A** A passing introduction.

4 **Q** What happened at the pub?

5 **A** After Justin arrived, I can recall it was me, Justin
6 and Scooter. We were standing up there at the bar.
7 And all of a sudden, we were probably there a good 30
8 minutes before this incident took place, a girl,
9 female, Mrs. Cannon, just broke a bottle for no
10 reason that I know of and everybody ended up going
11 outside.

12 **Q** So the bar closed down when she broke a beer bottle?

13 **A** Yes, ma'am.

14 **Q** Do you recall seeing Scooter, the defendant, Louis
15 Sanders, talking to this woman at all during the
16 night?

17 **A** I -- briefly. Briefly.

18 **Q** Okay. Were you a party to that conversation? Did
19 you know what they were saying to one another?

20 **A** No, ma'am, I didn't.

21 **Q** In fact, do you know Duane Cannon, Ms. Pamela
22 Cannon's husband, the victim in this case?

23 **A** People said I think I may have seen him. But I don't
24 really recall. But they said I knew him, but I don't
25 recall him.

1 Q You remember telling police you shook hands with him
2 that night?

3 A Yes, ma'am, I did.

4 Q So you had seen him from the pub around before or you
5 don't remember?

6 A I really don't remember.

7 Q But you did shake hands with him that night?

8 A Yes, ma'am.

9 Q Now, after the lights turn on, everybody leaves. Is
10 that correct?

11 A Yes, ma'am.

12 Q What are you doing in the parking lot?

13 A My brother and Ms. Cannon, they were having words,
14 you know, like cracking jokes on each other and
15 stuff. And I felt as though it was escalating. So
16 I'm trying to just calm them down and stuff and just
17 leave.

18 Q Okay. And I'm going to show you a diagram and ask
19 you if you can sort of explain where everybody was
20 standing when all this went down. Are you familiar
21 with this diagram?

22 A Yes, ma'am. Yes, ma'am.

23 Q Is that sort of a bird's eye view of the H&J pub?

24 A It is.

25 Q I'm going to hand this pointer to you. Describe for

1 jury where you remember going when the club closed?

2 Lights on, where did everybody walk out to go?

3 A Over toward the right of the club.

4 Q To the right?

5 A Yes, ma'am.

6 Q Okay. Now, did you have to -- did you have a beer or
7 anything at that time?

8 A No, ma'am.

9 Q Okay. You'd been drinking throughout the night
10 though?

11 A Yes, ma'am.

12 Q And everybody that night had been drinking. Is that
13 fair to say?

14 A Yes, ma'am.

15 Q Now, where do you remember being when the
16 conversation starts escalating between your brother
17 and Ms. Cannon?

18 A Over in this area here.

19 Q Okay. And at that point do you recall what it was
20 that Ms. Cannon said to your brother?

21 A Just picking with him about you're driving your
22 mother's car and little stupid stuff like that.

23 Q All right. Where was the defendant, Louis Sanders,
24 standing at this time?

25 A At that time I'm not sure.

1 Q Okay. And so where are you standing when this
2 conversation is taking place?

3 A With my brother?

4 Q Uh-huh (affirmative).

5 A Over in here.

6 Q And is there a vehicle nearby?

7 A Yes, ma'am.

8 Q Whose vehicle?

9 A My brother's.

10 Q Do you recall what side of the car you were hanging
11 out on?

12 A I was on the passenger's side.

13 Q All right. And your brother, what side was he
14 hanging out on?

15 A The driver's side.

16 Q All right. When you took your brother away from
17 Ms. Cannon since it started as you said escalating,
18 do you recall when it was that you shook hands with
19 Mr. Duane Cannon?

20 A He walked over to me after I calmed the situation
21 down and just shook my hand and said, "Thanks." I
22 said, "You know, no problem."

23 Q And so you felt that everything was over at that
24 time?

25 A Yes, ma'am.

- 1 Q What is it that you remember happening next?
- 2 A The only thing I remember next, I think when I was
- 3 talking with him.
- 4 Q With who?
- 5 A With Mr. Cannon.
- 6 Q Yes, sir.
- 7 A I'm thinking there was another confrontation over
- 8 here, and all of sudden it was like, well, I'm at the
- 9 car, and a gunshot went off.
- 10 Q Okay.
- 11 A And that's when I jumped in the car.
- 12 Q And what did you tell your brother, Justin, to do?
- 13 A "Let's go."
- 14 Q And he was driving that night?
- 15 A Yes, ma'am.
- 16 Q All right. Tell the jury what happened when you guys
- 17 are getting in the car. Who joins you?
- 18 A Louis Sanders.
- 19 Q All right. And did you know whether or not at that
- 20 time he had fired the shot?
- 21 A I wasn't quite sure at that time.
- 22 Q Did you see him with a gun at that point?
- 23 A No, ma'am.
- 24 Q Was Mr. Sanders supposed to be getting a ride with
- 25 you guys at all that night?

1 **A** No, ma'am.

2 **Q** So when you left or your brother was driving, what
3 direction did you leave in?

4 **A** To the right of the club.

5 **Q** Okay. Did you turn right or left onto Hard Scrabble
6 Road?

7 **A** Turned right onto Hard Scrabble.

8 **Q** Now, what were other people doing in the parking lot
9 when the shot is fired?

10 **A** They are leaving also.

11 **Q** So everybody is leaving?

12 **A** Yes, ma'am.

13 **Q** How many shots are fired?

14 **A** One.

15 **Q** Just one?

16 **A** Yes, ma'am.

17 **Q** No question about that?

18 **A** No question about that.

19 **Q** Tell the jury where it is that you drove to after
20 this or where Justin drove?

21 **A** We left. We made a right onto Hard Scrabble.

22 **Q** One minute. I'm going to pause a second so the jury
23 can follow you with the map. All right. Just to
24 orient you, Hard Scrabble and then there is the H&J
25 pub area?

1 **A** Okay. Leaving the pub we made a right. Then we made
2 another right onto Sloan.
3 **Q** Sloan?
4 **A** Yes, ma'am.
5 **Q** Okay.
6 **A** And then another right onto Flora Drive.
7 **Q** Flora Drive. Do you see Flora on there? And do you
8 need to step down to read the street? I know it's
9 small print. And speak up for the court reporter.
10 **A** I don't see it. I don't see it here. This is Hard
11 Scrabble here.
12 **Q** Yes, sir. You just said Flora. Is that Flora right
13 there? Right there, does that say Flora?
14 **A** I think so.
15 **Q** So you took Sloan to Flora?
16 **A** Right.
17 **Q** When you got to Flora, what direction did you turn?
18 **A** Another right.
19 **Q** Where did you end up going at that point?
20 **A** Into Charleswood. Charleswood.
21 **Q** Is this a subdivision?
22 **A** Yes, ma'am.
23 **Q** Okay. Why is it that Justin turned right into
24 Charleswood?
25 **A** I told him to turn right.

1 Q And what made you do that?

2 A I noticed -- once we got onto Flora, I noticed a car
3 coming behind us at a good rate of speed and I told
4 him to turn off and that's when he turned off.

5 Q And could you make out whose car was following you?

6 A No, sir. No, ma'am.

7 Q Okay. And when you turned right, what was the point
8 of turning right?

9 A Just to see if the car was following us.

10 Q When you turned right, what happened?

11 A Well, my brother stopped the car and then Mr. Cannon
12 pulled in behind us.

13 Q Okay. That would be the victim?

14 A Yes, ma'am.

15 Q And what kind of car was he driving? Could you make
16 it out?

17 A It was an SUV.

18 Q Do you remember the color?

19 A No, ma'am. White or light. I am not sure.

20 Q All right. And so you recognized the car?

21 A Did I recognize --

22 Q Did you recognize the car at that point?

23 A His car?

24 Q Yes, sir.

25 A No. I never knew what he was driving.

- 1 Q All right.
- 2 A Yes, ma'am. I didn't know it was him.
- 3 Q So a vehicle, a big SUV --
- 4 A Yes, ma'am.
- 5 Q -- pulls up behind you?
- 6 A Yes, ma'am.
- 7 Q Tell the jury what you instructed Justin to do next?
- 8 A Well, I told Louis to get out the door. Me and Louis
- 9 got out the car.
- 10 Q What intersection are you at at this time?
- 11 A Westbridge and Charleswood I believe.
- 12 Q Okay. So we can go back to this map now. Do you see
- 13 the intersection where your brother stopped and you
- 14 tell Mr. Sanders to get out with you?
- 15 A Up in --
- 16 Q This is Charleswood and this is Westbridge. Do you
- 17 see -- you said you came to a stop at Charleswood and
- 18 Westbridge?
- 19 A Oh, yes, ma'am. Right here. This is what I recall
- 20 here.
- 21 Q All right. So your brother stops, correct?
- 22 A Yes, ma'am.
- 23 Q And you and Mr. Sanders get out of the car?
- 24 A Yes, ma'am.
- 25 Q Now, why did you do that? Why did you and Mr.

1 Sanders get out of the car?

2 A Well, I told Mr. Sanders to get out the car and I got
3 out the car. I didn't want my brother in any kind of
4 trouble and stuff. I just told my brother just to
5 leave.

6 Q Okay. Again, you were how much older than Justin
7 Green?

8 A Ten, eleven years.

9 Q And you've had some brushes with the law, right?

10 A Yes, ma'am.

11 Q Has Justin ever had a brush with the law?

12 A No, ma'am.

13 Q Were you trying to protect Justin that night?

14 A Yes, ma'am.

15 Q When you told Justin to just leave, where did he
16 turn?

17 A Justin, I thought he went straight.

18 Q Straight down Westbridge?

19 A Yes, ma'am.

20 Q All right. Do you know whether or not -- where was
21 the SUV at this time that was following you when you
22 and Sanders got out?

23 A Behind Justin.

24 Q Okay. Do you know whether or not -- are you able to
25 tell whether or not the person driving that car saw

1 you and Sanders get out?

2 A I believe he did.

3 Q But you don't know for sure?

4 A Huh-uh (negative).

5 Q When you tell Justin to drive away, where does he

6 drive to?

7 A He just drives straight up.

8 Q What happens with the SUV?

9 A Took off between me and Sanders and followed my

10 brother.

11 Q All right. And when you say between me and Sanders,

12 what do you mean by that?

13 A I'm on the -- once Justin stopped the car --

14 Q Yes, sir.

15 A -- I got out on the passenger's side of the car.

16 Q Yes, sir. So you're on the right side of the road?

17 A Yes, ma'am.

18 Q Okay. And what about Sanders?

19 A On the left side.

20 Q So he was behind Justin in the rear seat?

21 A Yes, ma'am.

22 Q And gets out of the left side?

23 A Yes, ma'am.

24 Q On the driver's side?

25 A Yes, ma'am.

1 Q And so what side of the street is he on?

2 A Mr. Sanders?

3 Q Yes, sir.

4 A On the left side.

5 Q Okay. And is that what you mean, that the victim
6 drove between you two?

7 A Yes, ma'am. Yes, ma'am.

8 Q All right. What happened next? What did you witness
9 next?

10 A When the truck took out off after my brother, he ran
11 and slammed into the back of my brother and it was a
12 loud noise. And I ran as I quick as I could up there
13 to make sure my brother was all right.

14 Q Okay. And you hear a crash, correct?

15 A Yes, ma'am.

16 Q Point out on this map where the car crashes, general
17 vicinity?

18 A Up in here.

19 Q Okay. And what direction did you run from to go
20 check on your brother?

21 A Ran from down here up to here.

22 Q Okay. And where was Mr. Sanders when you ran down
23 the street?

24 A He was still behind me.

25 Q Okay.. Did he eventually come down the street?

- 1 **A** Yes, ma'am.
- 2 **Q** When you get to your brother, you said you went to
3 check to see if he was okay?
- 4 **A** Yes, ma'am.
- 5 **Q** Were you worried he got hurt from the car accident?
- 6 **A** Yes, ma'am.
- 7 **Q** Did you go up to his car?
- 8 **A** Yes, ma'am.
- 9 **Q** And did he appear to be okay?
- 10 **A** Yes, ma'am. He was just sitting in there. He was a
11 little shaken up and stuff.
- 12 **Q** He never got out of the car. Is that right?
- 13 **A** No, ma'am.
- 14 **Q** Did you see whether or not anyone got out of the
15 white SUV?
- 16 **A** Mr. Cannon was already -- before I got up there on
17 foot, he was already standing out of the truck.
- 18 **Q** Okay. Did you hear anything being said between Mr.
19 Cannon and your brother?
- 20 **A** No, ma'am.
- 21 **Q** While you're checking on your brother, tell this jury
22 what you remember happening next?
- 23 **A** I'm over talking to my brother making sure he is all
24 right and I'm leaning over the car, the driver's
25 side, and the next thing I know I hear somebody say,

1 "What's up", which was Mr. Cannon. And then the next
2 thing you know I heard Louis Sanders say, "This is
3 what's up", and I heard a gunshot.

4 Q When you heard the gunshot, did you turn to see what
5 was going on?

6 A I briefly think I turned. And like I said, I was
7 intoxicated but I was still focusing on my brother.

8 Q Okay. Did you see what happened to Mr. Cannon after
9 you heard the first gunshot?

10 A Well, he fell backwards.

11 Q When he fell, what happened next? What are you
12 trying to do with your brother at this time?

13 A After I see that he is well, make sure he's all
14 right, after the gunshot I started trying to push the
15 SUV, push my brother's car; he had his car in
16 reverse, and move the SUV because the SUV had him
17 blocked in.

18 Q Okay. And so at that point while you're helping your
19 brother you push the SUV with his Volvo?

20 A Yes, ma'am.

21 Q What happened next?

22 A I heard another gunshot within that.

23 Q How much time passed between both gunshots?

24 A Maybe five to ten seconds. I mean, maybe five
25 seconds.

- 1 Q We're going to do a little experiment. When that
2 first hand hits that, you tell me when to stop. Now.
3 Bam.
- 4 (Pause)
- 5 A Now. Maybe five to seven seconds.
- 6 Q Okay. Seven seconds. When you hear the second shot,
7 is Justin able to -- what is going on with the
8 vehicle, with the Volvo?
- 9 A We got the -- when I heard the second shot, well,
10 with the second shot we managed to get the truck
11 back.
- 12 Q The SUV back?
- 13 A Yes, ma'am. And at the same time I noticed Mr.
14 Sanders standing over Mr. Cannon with the gun.
- 15 Q And you saw the gun at that point?
- 16 A Yes, ma'am.
- 17 Q Was Justin able to get his Volvo from under the SUV?
- 18 A Yes, ma'am.
- 19 Q And what side of the car did you get into?
- 20 A I got in the passenger's front.
- 21 Q The front passenger's seat?
- 22 A Yes, ma'am.
- 23 Q When Justin gets the car free, where does Sanders go?
- 24 A He jumps into the back seat of the car.
- 25 Q Had Justin been able to get the Volvo loose sooner,

1 would you have waited for Mr. Sanders?

2 A At that time, probably so.

3 Q Why is that?

4 A I mean, he just -- I just witnessed a murder and I
5 didn't know how he would respond, you know, trying to
6 leave the scene.

7 Q Were you worried about your safety?

8 A Me and my brother's.

9 Q When he jumps in the back seat of the car, which side
10 of the car is he getting into?

11 A The driver's side I believe.

12 Q Okay. And you're in the front passenger's seat.
13 Your brother is driving and he is in the rear seat
14 behind your brother?

15 A Yes, ma'am.

16 Q From there what happens next?

17 A He started directing us to a neighborhood where his
18 girlfriend was.

19 Q Is it the Winslow?

20 A Winslow, yes, ma'am.

21 Q Winslow Subdivision?

22 A Yes, ma'am.

23 Q Do you remember what route you took to get there?

24 A I can't remember that.

25 Q Who was directing Justin on where to drive?

- 1 **A** Louis.
- 2 **Q** All right. When you get to Winslow Subdivision, do
- 3 you know the general vicinity of where it is?
- 4 **A** Yes, ma'am.
- 5 **Q** Can you tell the jury?
- 6 **A** It's off Clemson Road.
- 7 **Q** All right. When you get there, tell the jury what
- 8 happened. What did Justin do?
- 9 **A** Justin left.
- 10 **Q** So you had Mr. Sanders and yourself get out of
- 11 Justin's car and you told him to go home?
- 12 **A** Yes, ma'am.
- 13 **Q** Again, were you trying to protect Mr. Justin Green,
- 14 your brother?
- 15 **A** Yes, ma'am.
- 16 **Q** Where did you and Louis Sanders end up going?
- 17 **A** Where we got dropped off at?
- 18 **Q** Yes.
- 19 **A** Lashonda's house.
- 20 **Q** And who is Lashonda?
- 21 **A** His baby's mother.
- 22 **Q** So he has a child with her?
- 23 **A** Yes, ma'am.
- 24 **Q** Was she happy to see you guys?
- 25 **A** No, ma'am.

1 Q What time do you think it was when you finally got
2 there?

3 A Maybe 5:30 to 6.

4 Q Do you remember if it was light or dark out?

5 A It still may have been a little -- I think it was
6 just starting to get a little light.

7 Q Okay. What happened? Since she was not happy to see
8 you at 5 or 5:30 in the morning, what happened next?

9 A Well, I recall them fussing, had a few words, and her
10 mother came up and took her away.

11 Q Okay. Did you ever see the gun inside of Lashonda's
12 house that Mr. Sanders had on him?

13 A No, ma'am. I don't recall seeing the gun.

14 Q At any time were you able to hear about the details
15 of their argument between Mr. Sanders and Lashonda
16 Downing?

17 A Well, coming to the house that time of morning was
18 the biggest issue that I can remember.

19 Q Okay. And what part of the house did you remain in
20 while you were at Lashonda Downing's house?

21 A In the living room.

22 Q At any time did they leave you alone in the living
23 room to go off?

24 A No, ma'am. I think they were there the whole time.
25 I'm not sure.

- 1 Q You're not sure?
- 2 A I'm really not sure.
- 3 Q At that time you said that her mother showed up?
- 4 A Yes, ma'am.
- 5 Q All right. Can you explain why the mother showed up,
6 or do you know why she showed up?
- 7 A I think Lashonda called her mother because her and
8 Scooter were fussing and just wanted to get picked up
9 or something.
- 10 Q All right. Now, from there did Lashonda Downing
11 leave you and Sanders at her house?
- 12 A Yes, ma'am.
- 13 Q And did she leave?
- 14 A Yes, ma'am.
- 15 Q With her mother?
- 16 A Yes, ma'am.
- 17 Q Did she leave with her children?
- 18 A Yes, ma'am.
- 19 Q How many kids do you recall seeing that night?
- 20 A Two or maybe three. Two.
- 21 Q More than one?
- 22 A Yes, ma'am.
- 23 Q And they left?
- 24 A Yes, ma'am.
- 25 Q Do you remember what you did next?

1 **A** We kind of --

2 **Q** Where did you go from Lashonda Downing's house?

3 **A** To Michelle's house.

4 **Q** And again, who is Michelle?

5 **A** My mother's nextdoor neighbor, my nextdoor neighbor.

6 **Q** And she lives right nextdoor to your mom and
7 stepfather?

8 **A** Yes, ma'am.

9 **Q** At [REDACTED] William Harden Road?

10 **A** Yes, ma'am.

11 **Q** Do you remember how it was that you arrived there?
12 Did you walk, or what did you do?

13 **A** We rode. I can't recall who we rode with.

14 **Q** All right. And you were pretty intoxicated?

15 **A** Yes, ma'am.

16 **Q** When you get to William Harden Road, was Michelle
17 awake when you guys got there?

18 **A** No, ma'am.

19 **Q** How did you get into her house?

20 **A** I either knocked on the door or the window and she
21 came and opened the door.

22 **Q** She let you in?

23 **A** Yes, ma'am.

24 **Q** At that point how long did you stay at her house?

25 **A** I stayed there until -- I don't remember the time,

1 but her mother came out. There was a bunch of police
2 out there, and my mother came over after they left
3 and got me out. I think there was one officer still
4 behind us or something that came out there.

5 Q So while you're at the residence at Michelle
6 Jackson's house, Michelle Wilson Jackson at [REDACTED]
7 William Harden Road, who is inside the house with
8 you?

9 A Louis.

10 Q And is Michelle in there?

11 A Yes, ma'am.

12 Q And you indicated officers showed up at your mother's
13 house at [REDACTED] William Harden Road?

14 A Yes, ma'am.

15 Q Did you and Louis watch the police officers?

16 A Yes, ma'am.

17 Q Do you know if Mr. Sanders had his gun at that time?

18 A No, ma'am.

19 Q So you stayed in the house. You did not come out
20 when the police were out there?

21 A Yes, ma'am.

22 Q Once the police left, you indicated one officer
23 stayed behind. Is that right?

24 A Yes, ma'am.

25 Q Do you know who that officer is, by any chance?

1 A No, ma'am. I don't recall his name.

2 Q Okay. Is that when your mother came and told you to
3 come over?

4 A Yes, ma'am. The officer that stayed there, he just
5 stayed there until Officer -- I had his name -- but
6 until another detective arrived there.

7 Q Okay. And so when you come over back to your
8 mother's house at [REDACTED] William Harden Road, tell the
9 jury what transpires at that point? What happened?

10 A I leave with the officer and go downtown.

11 Q Before you go over to your mom's house at [REDACTED] and
12 you're still at [REDACTED] William Harden Road --

13 A Yes, ma'am.

14 Q -- did you see him walking around a black Volvo that
15 was parked there?

16 A Yes, ma'am.

17 Q Describe for the jury, is that the same black Volvo
18 that your brother was driving that night?

19 A No, ma'am. It wasn't.

20 Q It wasn't? It was a different black Volvo?

21 A Yes, ma'am.

22 Q Whose black Volvo does that belong to?

23 A My niece and mother. It was a black 940 Volvo, and
24 the Volvo Justin had was a black 850.

25 Q So it's not the same Volvo?

1 **A** No, ma'am.

2 **Q** All right. Do you also remember whether the police
3 executed a search warrant at the house at 208 William
4 Harden Road, your mother's house, or were you already
5 taken away by that point?

6 **A** I think I was -- I'm not sure. I'm not sure.

7 **Q** So you indicated when you came over to [REDACTED] or [REDACTED]
8 William Harden Road, your mom's house, the police
9 took you in for questioning?

10 **A** Yes, ma'am.

11 **Q** Do you remember riding with Investigator Don McRae?

12 **A** Yes, ma'am.

13 **Q** Do you remember where in his car you rode? Were you
14 under arrest?

15 **A** No, ma'am.

16 **Q** You were not handcuffed?

17 **A** No, ma'am.

18 **Q** You were voluntarily going in for questioning?

19 **A** Yes, ma'am.

20 **Q** All right. And where did he take you?

21 **A** To the station off of Two Notch Road.

22 **Q** Would that be the Richland County Sheriff's Office?

23 **A** Yes, ma'am.

24 **Q** When you get to the Sheriff's Office, tell this jury
25 what happens when you're inside the Sheriff's Office?

1 **A** They started taking a statement.

2 **Q** Okay. Do you remember if you were in an office or in
3 a cubicle or a conference room? What kind of room
4 were you in?

5 **A** A cubicle.

6 **Q** A cubicle? And at that point did you give a
7 statement to Investigator Don McRae around 7 p.m. on
8 June 3rd, 2007?

9 **A** Yes, ma'am.

10 **Q** I'm going to show you that document and ask you if
11 this is the one we're talking about?

12 **A** Yes, ma'am.

13 **Q** All right. Is that it?

14 **A** Yes, ma'am.

15 **Q** And this statement, where is it that you tell
16 Investigator Don McRae that Louis Sanders was the
17 trigger man that night?

18 **A** The first time --

19 **Q** You don't tell him, right?

20 **A** No, ma'am.

21 **Q** Who do you tell Investigator McRae that did the
22 shooting?

23 **A** I told him it was Flash.

24 **Q** Flash. Who is Flash?

25 **A** It's a male's made-up name.

1 Q Made-up nickname?

2 A Just made-up name.

3 Q Did you describe Flash to Investigator McRae?

4 A Yes, ma'am.

5 Q And how did you describe him to Investigator McRae?

6 A Slender build, dark skinned with braids.

7 Q All right. Can you look on page 2 of that statement.
8 And I'm going to point to that right there. Can you
9 describe Flash?

10 A Yes, ma'am.

11 Q All right. Tell the jury what you answered?

12 A "A black male about five-ten, 130 to 140 pounds,
13 medium brown skinned. I think he was wearing a hat."

14 Q Okay. That description, you said you made up Flash?

15 A Yes, ma'am.

16 Q Who are you really describing at that point?

17 A Louis Sanders.

18 Q Tell this jury why you didn't tell the police right
19 then and there that Louis Sanders was the third guy
20 in the car?

21 A I didn't know how he was -- would react to that, you
22 know, by me saying that.

23 Q What do you mean?

24 A If he -- I was already incarcerated. You know, I
25 didn't know if he would take revenge out on my family

1 or anything.

2 Q Were you scared?

3 A Yes, ma'am.

4 Q Were you scared if he found out you told on him
5 something could happen to you or your family?

6 A Yes, ma'am.

7 Q In fact, in that statement not only do you not tell
8 the police that Louis Sanders did the shooting, you
9 also don't tell him about going to Winslow
10 Subdivision, right?

11 A No, ma'am.

12 Q Everything except for the identity of the third
13 person, what you've already told this jury is in this
14 statement with the exception of the identity of the
15 third person. Is that correct?

16 A Yes, ma'am.

17 Q All the way up until the point of getting in your
18 brother's car, you don't remember anything after
19 that?

20 A Yes, ma'am.

21 Q You don't mention anything about Winslow Subdivision?

22 A No, ma'am.

23 Q Do you remember being asked if the person getting out
24 of the white SUV had a gun?

25 A I remember them asking that.

1 Q Okay. And what was your answer?

2 A I'm not -- I didn't know I don't think.

3 Q Did you ever see the man that got out of the SUV with
4 a gun?

5 A No, ma'am.

6 Q Now, after you gave this statement at 7 p.m. on
7 June 3rd, 2007, do you remember this investigator,
8 Investigator Scott McDonald, coming to you and
9 challenging you and confronting you with your
10 inconsistencies?

11 A Yes, ma'am.

12 Q About the identity of the third person?

13 A Yes, ma'am.

14 Q I'm going to show you a document and ask you if you
15 recognize this?

16 A Yes, ma'am.

17 Q What is that? Tell the jury?

18 A It's just my rights.

19 Q Okay. What kind of rights?

20 A Before we ask you any questions you must understand
21 your rights. I had a right to remain silent.
22 Anything you say can be used against you in court.
23 You have the right to talk to a lawyer for advice
24 before we ask you any questions, to have a lawyer
25 with you during your questioning.

1 Q What else were your rights? What other rights?

2 A If I could not afford a lawyer one would be appointed
3 for me before any questioning if I wish.

4 Q And what else?

5 A It says "If you decide to answer questions now
6 without a lawyer present, you still have the right to
7 stop answering at any time. You also have the right
8 to stop answering at any time until you talk to a
9 lawyer."

10 Q Okay. Did you give up all of your Constitutional
11 rights and agree to talk to the officers that night?

12 A Yes, ma'am.

13 Q And did you sign that giving up your rights?

14 A Yes, ma'am.

15 (WHEREUPON, State's Exhibit No. 48 is marked for
16 identification.)

17 Q I'm going to show you State's 48. Is this the same
18 document we just covered? Is that the original?

19 A Yes, ma'am.

20 MS. SHIPLEY: Your Honor, at this time the State
21 would seek to introduce State's No. 48 into evidence.

22 MS. EVERHART: No objection.

23 THE COURT: Without objection.

24 (WHEREUPON, State's Exhibit No. 48 is admitted
25 into evidence.)

1 Q All right. So after you agreed to continue talking
2 with them, what time were you advised of your rights?
3 Up on the top right-hand corner. Does it say?

4 A 19:42.

5 Q 19:42 military?

6 A Yes, ma'am.

7 Q I believe that's 7:42 p.m. in civilian time. All
8 right. Again, you gave a statement to the police at
9 that time. Is that correct?

10 A Yes, ma'am.

11 Q I'm going to show you a document and ask you if you
12 recognize it. Do you recognize that?

13 A Yes, ma'am.

14 Q All right. Is that the statement that you gave to
15 the police after you were advised of your rights?

16 A Yes, ma'am.

17 Q And tell the jury how many pages long it is?

18 A Four.

19 Q All right. And what's on the fourth page?

20 A A picture.

21 Q Okay. And is that what -- did you draw that picture
22 for law enforcement?

23 A Yes, ma'am.

24 Q All right. Is that your handwriting?

25 A Yes, ma'am.

1 (WHEREUPON, State's Exhibit No. 49 is marked for
2 identification.)

3 Q We'll get to that in a second. Okay? Now, in this
4 statement you again were asked by Investigator Scott
5 McDonald: "Are you positive you do not know the
6 identity of the third person?" And do you remember
7 what your answer was?

8 A Yes, ma'am.

9 Q And what did you answer?

10 A "No."

11 Q You continued to deny knowing who the third person
12 was?

13 A Yes, ma'am.

14 Q And then again you do not tell Investigator Scott
15 McDonald that you end up going to Winslow Subdivision
16 to Louis Sanders' mother of his baby's house?

17 A Yes, ma'am.

18 Q Lashonda Downing. If you would have told
19 Investigator Scott McDonald that you went to Winslow
20 Subdivision to Lashonda Downing's house, why were you
21 concerned about sharing that information? What was
22 your concern?

23 A I just didn't know how anyone would have reacted and
24 I didn't want, you know, any -- looking out for the
25 interest of my family. And I know Lashonda had just

1 got that house and they didn't want any -- also, you
2 know, they just got their house and they didn't want
3 any problems. And, you know, that was just it.

4 Q Do you feel -- did you believe that if you told the
5 investigators about Lashonda Downing's house they
6 would have found out about Louis Sanders?

7 A Yes, ma'am.

8 Q When you were describing to Investigator Scott
9 McDonald about the events that transpired in this
10 cul-de-sac, did you have to draw a picture to explain
11 it to them?

12 A Yes, ma'am.

13 Q Is that this picture right here, State's 49?

14 A It is.

15 MS. SHIPLEY: Your Honor, at this time we'd seek
16 to introduce 49 into evidence.

17 MS. EVERHART: No objection.

18 THE COURT: Without objection.

19 (WHEREUPON, State's Exhibit No. 49 is admitted
20 into evidence.)

21 Q Your Honor, may the witness step down, please?

22 THE COURT: Certainly.

23 Q All right. Mr. green, can you describe for this
24 jury -- and face the jury. Okay. Show them this
25 diagram itself and explain what you meant with that

1 diagram, because it's extremely hard to decipher.

2 **A** This is a -- I remember going up into Charleswood.

3 And this is where we got out the car at, right around
4 in here. Mr. Sanders is on this side. I'm on this
5 side here. I'm telling my brother to go, just go.

6 He takes off going straight. About that time the SUV
7 catches up with him and rams him up here and we end
8 up pushing the SUV back. When the SUV rolled back,
9 just turned to the left. The SUV rode back exactly
10 where my brother was hit at.

11 **Q** And while you're still standing over here, we have
12 cut out pictures not to scale of the Volvo and SUV.
13 Describe for the jury if you could on this diagram
14 what you saw the two vehicles doing?

15 **A** My brother -- just hold them up?

16 **Q** Yeah. What you witnessed when your brother took off
17 down the road?

18 **A** My brother had taken off. The SUV --

19 **Q** Can you do it on that diagram so people know where on
20 this map you are?

21 **A** Say this is my brother here, stopped here. It's my
22 brother taking off here. The SUV running him down,
23 capping him and hitting him around into the driveway.

24 **Q** Okay. And did the SUV pin the Volvo in?

25 **A** Yes, ma'am.

1 Q So by the time you got up there, put the cars as they
2 are positioned by the time you get to your brother?

3 A It's like this. Just say it's like this here.

4 Q Okay. And just stick them in there.

5 A Okay.

6 Q All right. And obviously these are not to scale. Is
7 that correct? The cars don't fit perfectly on the
8 street?

9 A Oh, no, ma'am.

10 Q All right. Please have a seat. When you failed to
11 identify the third person in the vehicle --

12 A Yes, ma'am.

13 Q -- you did tell officers who was driving the car,
14 correct?

15 A Yes, ma'am.

16 Q So you told them your brother, Justin Green, was
17 driving?

18 A Yes, ma'am.

19 Q And you told them that you were in the passenger's
20 seat of the black Volvo?

21 A Yes, ma'am.

22 Q But you did not tell them who got in the back seat of
23 that car?

24 A No, ma'am.

25 Q At that point you were arrested for murder, correct?

1 **A** Yes, ma'am.

2 **Q** And you were -- where did you go from there?

3 **A** To the county.

4 **Q** County jail?

5 **A** Yes, ma'am.

6 **Q** Do you remember having a bond hearing at the Richland
7 County courthouse where we are, on June 7th, 2007?

8 **A** Yes.

9 **Q** And had your family gotten you a lawyer at that
10 point?

11 **A** I'm not -- no, ma'am. I don't think so.

12 **Q** Okay. I'm going to show you a document and ask you
13 if you recognize it. Okay. What is that?

14 **A** Interrogation/advice of rights.

15 **Q** Okay. What is the date and time of that advice of
16 rights form?

17 **A** 6-7-07.

18 **Q** What time?

19 **A** 15:45 military.

20 **Q** All right. So 3:45 p.m.?

21 **A** Yes, ma'am.

22 **Q** And again, are those the exact same rights that we
23 went over with this jury in State's No. 48?

24 **A** Yes, ma'am.

25 **Q** And did you sign and waive those?

1 **A** Yes, ma'am.

2 **Q** Do you recall Mr. John Delgado who is seated in the
3 back of this courtroom being with you?

4 **A** Yes, ma'am. I do. Yes, ma'am.

5 **Q** Is that your lawyer in the back of this courtroom?

6 **A** Yes, ma'am.

7 **Q** What did your lawyer tell you to do?

8 **A** Just be truthful, very truthful.

9 **Q** He told you to tell the truth?

10 **A** Tell the truth. Yes, ma'am.

11 **Q** Did he sit there and witness you be advised of your
12 rights again?

13 **A** Yes, ma'am.

14 **Q** By these two investigators in this courthouse?

15 **A** Yes, ma'am.

16 **Q** Mr. Green, you tell this jury when you are told by
17 your lawyer to tell the truth what you told those
18 investigators.

19 **MS. EVERHART:** Objection, Your Honor.

20 Bolstering.

21 **THE COURT:** Well, approach the bench.

22 (Whereupon, a bench conference is had)

23 **THE COURT:** All right. Ladies and gentlemen,
24 disregard that last answer. What the lawyer told the
25 witness to do is not evidence in this case, and I'm

1 going to order it stricken from the record. So I'm
2 going to ask you to disregard that last question and
3 comment from the witness on the stand. All right.
4 You may continue.

5 **MS. SHIPLEY:** Thank you, Your Honor.

6 **Q** On June 7th, 2007, did you tell Investigator Scott
7 McDonald and Don McRae who the third person was in
8 that black Volvo the early morning hours of June 3rd,
9 2007?

10 **A** Yes, ma'am.

11 **Q** And who did you tell them?

12 **A** Louis Sanders.

13 **Q** Do you see Mr. Sanders in the courtroom today?

14 **A** Yes, ma'am.

15 **Q** Please identify him for this jury?

16 **A** (Witness points).

17 **Q** What is he wearing?

18 **A** A white shirt with a tie.

19 **THE COURT:** Let the record reflect the witness
20 identified the defendant.

21 **Q** At this time when you were questioned on June 7th,
22 did you tell the officers about going to the Winslow
23 Subdivision?

24 **A** Yes, sir. Yes, ma'am.

25 **Q** Was there anyone else in your brother, Justin

1 Green's, black Volvo besides you in the passenger's
2 seat, Justin in the driver's seat and Mr. Sanders?

3 **A** No, ma'am. We were the only three.

4 **Q** What did your brother's hair look like on the early
5 morning hours of June 3rd?

6 **A** Very low. It was like mine.

7 **Q** And is that how your hair appeared in the early
8 morning hours?

9 **A** Yes, ma'am.

10 **Q** And what about Mr. Sanders?

11 **A** Longer with braids.

12 **Q** Do you remember telling investigators that while you
13 were looking out the window or while you were being
14 taken away, were you asked --

15 **MS. EVERHART:** Objection. Leading.

16 **MS. SHIPLEY:** I'm not done with my question,
17 Your Honor.

18 **THE COURT:** Well, phrase it so it prompts an
19 answer, not a yes or a no answer from the
20 defendant -- I mean, from the witness.

21 **Q** When the police asked you to voluntarily come to [REDACTED]
22 your mom's house --

23 **A** Yes, ma'am.

24 **Q** -- do you recall whether or not you saw Mr. Sanders
25 at Michelle's house watching you being taken away?

1 **A** No, ma'am. I don't recall. I don't think I looked
2 back. I think I just left.

3 **Q** Was Mr. Sanders in the house --

4 **A** Yes, ma'am.

5 **Q** -- at that time?

6 **A** Yes, ma'am.

7 **Q** But you don't know if he was watching you or not?

8 **A** Not at that time. No, ma'am.

9 **Q** Did you see what Mr. Sanders did with the gun?

10 **A** No, ma'am.

11 **Q** And did you ever touch that gun?

12 **A** No, ma'am.

13 **Q** Did your brother, Justin, ever touch that gun?

14 **A** No, ma'am.

15 **Q** Did you hear the defendant talking about what he had
16 done to anyone in the early morning hours of
17 June 3rd?

18 **A** He was on the phone, so I don't know who he was
19 talking to, but I heard him mention something to
20 someone on the phone about it.

21 **Q** Where were you when you heard him on the phone?

22 **A** I was in Michelle's house.

23 **Q** What did you hear come out of his mouth?

24 **A** He said, I just killed a person, or -- I can't
25 remember the exact words.

1 Q If you looked at your statement that you provided on
2 June 7th, would that help refresh your memory?

3 A Yes, ma'am.

4 Q Right there.

5 (Pause)

6 A Yes, ma'am.

7 Q All right. When you were asked if you heard Mr.
8 Sanders' comment about what he had done, what did you
9 report to the police?

10 A After the second shot, after he fired the second
11 shot, he acted like it was a joke. Like when he shot
12 the guy, like he kept wanting to jump up and run.

13 Q So he was joking about --

14 A Yes, ma'am.

15 Q -- it after shooting Mr. Cannon?

16 A Yes, ma'am.

17 Q Once you told the investigators who the third person
18 was in the car that night with the long hair, did you
19 have a bond hearing?

20 A Yes, ma'am.

21 Q And do you recall your bond being denied with leave
22 to reapply?

23 A Yes, ma'am.

24 Q Bond being denied means you go back to jail, correct?

25 A Yes, ma'am.

- 1 Q Until another date. I'm going to show you your bond
2 form. Do you remember signing this document?
- 3 A Yes, ma'am.
- 4 Q How much of a bond did you have to come up with, post
5 bond to get out of jail?
- 6 A 125,000.
- 7 Q 125,000?
- 8 A Yes, ma'am.
- 9 Q How much money do you make an hour?
- 10 A I get paid not nearly enough to pay that.
- 11 Q Who helped you do that?
- 12 A My family.
- 13 Q Now, when was it -- if you flip on the other side --
14 that you were actually able to post this bond?
- 15 A On the 30th, July 20th.
- 16 Q Okay. So on the 31st of July?
- 17 A Yes, ma'am.
- 18 Q Okay. Is when you --
- 19 A Oh, I'm sorry.
- 20 Q The 31st of July?
- 21 A Yes, ma'am.
- 22 Q All right. When you lied to the investigators with
23 the Sheriff's Department and told them that the third
24 person's name was Flash --
- 25 A Yes, ma'am.

1 Q -- you understand what you did was criminal?

2 A Yes, ma'am.

3 Q You were present during the murder of this innocent
4 man, correct?

5 A Yes, ma'am.

6 Q Did you participate in any way in the shooting of
7 this man?

8 A No, ma'am.

9 Q When you lied to investigators about the identity of
10 the third person, were you trying to cover up --

11 MS. EVERHART: Objection. Leading.

12 THE COURT: It's leading.

13 Q What were you trying to do?

14 A Protect my family.

15 Q You are pleading guilty to accessory after the fact
16 of murder, correct?

17 A Yes, ma'am.

18 Q You were originally charged with murder?

19 A Yes, ma'am.

20 Q Tell this jury what murder carries?

21 A Life.

22 Q And what's the mandatory minimum?

23 A It's 25.

24 Q Is it 30?

25 A 30.

1 Q And what are you looking at for accessory after the
2 fact of murder?

3 A 15 years.

4 Q Do you remember when you got arrested they took a
5 picture of you?

6 A Yes, ma'am.

7 (WHEREUPON, State's Exhibit No. 50 is marked for
8 identification.)

9 Q Is that what you looked like when you went into the
10 Sheriff's Department?

11 A Yes, ma'am.

12 Q Is that what you looked like when you went into the
13 pub on June 3rd, 2007?

14 A Yes, ma'am.

15 Q Do you have a gap between your teeth?

16 A Yes, ma'am.

17 Q Can you show the jury?

18 (Witness complies)

19 MS. SHIPLEY: May I publish this to the jury,
20 Your Honor?

21 THE COURT: Are you offering it?

22 MS. SHIPLEY: At this time I would like to offer
23 it into evidence, State's No. 50.

24 MS. EVERHART: No objection.

25 THE COURT: Without objection. You may publish

1 it.

2 **MS. SHIPLEY:** Thank you, Your Honor.

3 (WHEREUPON, State's Exhibit No. 50 is admitted
4 into evidence.)

5 **MS. SHIPLEY:** Beg the Court's indulgence, Your
6 Honor. No further questions.

7 **THE COURT:** Approach the bench, counsel.

8 (Whereupon, a bench conference is had)

9 **THE COURT:** Ladies and gentlemen, I'm just
10 trying to get a schedule on the remaining witnesses
11 we're going to hear from today. But at this time I
12 think we'll just take our short afternoon break.
13 I'll ask you to go to the jury room. Just relax for
14 a few minutes and we'll call you when we're ready.
15 Again, don't discuss the case among yourselves while
16 you're in the jury room. Just relax for a few
17 minutes. We'll continue in about ten minutes, or
18 fifteen.

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

20 **THE COURT:** We'll stand at ease for about ten
21 minutes. Mr. Green.

22 **WITNESS:** Yes, sir.

23 **THE COURT:** You can either stay there or you can
24 get up and walk around, but I'm going to instruct you
25 not to talk with anybody during the break. Do you

1 understand?

2 **WITNESS:** Yes, sir.

3 **THE COURT:** The Solicitor's Office, any member
4 of the family, anything?

5 **WITNESS:** Yes, sir.

6 **THE COURT:** Just kind of be by yourself.

7 **WITNESS:** Yes, sir.

8 (Whereupon, a break is had)

9 **MS. SHIPLEY:** May we approach?

10 **THE COURT:** Sure.

11 (Whereupon, a bench conference is had)

12 **THE COURT:** Bring the jury, please.

13 (Jury in at 4:34 p.m.)

14 **THE BAILLIFF:** The jury is present, Your Honor.

15 **THE COURT:** All right. Thank you very much.

16 All right. Ladies and gentlemen of the jury, let me
17 just bring up a matter of housekeeping. I didn't
18 inquire of you before we began this trial as to
19 whether or not any of you had any things like child
20 care commitments.

21 I know sometimes when people have children in
22 child care they're pretty strict about picking the
23 children up at 5:00 or 5:30, things like that. If
24 any of you -- sometimes we'll probably -- we may and
25 probably as the week goes on, we probably certainly

1 will run past 5:00.

2 If that presents any particular problems for
3 you, if you'll just write me a note and let me know.
4 Because we want to try -- we will accommodate you as
5 best we can. But some things just always don't work
6 out the way we plan in terms of testimony and the
7 length of testimony. And we don't like to break up a
8 witness's testimony.

9 So if you have those concerns, I know some
10 people, for example, are in school and classes start
11 at a certain time, that sort of thing. So let me
12 know, if you will, if you have any of those concerns.
13 It will be seldom, if ever, we'd run past, say, 6:00.
14 But don't hold me to that either. So we'll continue
15 now with cross examination of this witness. You may
16 begin.

17 **MS. EVERHART:** Thank you, Your Honor.

18 CROSS EXAMINATION

19 **BY MS. EVERHART**

20 **Q** Mr. Green?

21 **A** Yes, ma'am.

22 **Q** By your own admission, you're a liar?

23 **A** Yes, ma'am.

24 **Q** You had an opportunity to speak to the police several
25 times and you lied to the police?

1 **A** Yes, ma'am.

2 **Q** On the first day the police talked to you they asked
3 you to come in?

4 **A** Yes, ma'am.

5 **Q** You weren't under arrest?

6 **A** No, ma'am.

7 **Q** They didn't cuff you?

8 **A** No, ma'am.

9 **Q** They didn't slide you into the back of the police
10 car?

11 **A** No, ma'am.

12 **Q** They took you to their office and you were free to
13 leave at any time?

14 **A** Yes, ma'am.

15 **Q** While you were there they told you they wanted to,
16 talk to you about a murder?

17 **A** Yes, ma'am.

18 **Q** That's pretty scary?

19 **A** Very.

20 **Q** The police sit you down and they take your statement?

21 **A** Yes, ma'am.

22 **Q** And on the form that you end up signing there is
23 something called an attestation. You promised them
24 that your statement is of your own free will?

25 **A** Yes, ma'am.

1 Q That you're not getting rewarded in any way?

2 A No, ma'am.

3 Q That you're not being intimidated. Is that correct?

4 You're not being intimidated?

5 A No, ma'am. No, ma'am.

6 Q That what you're telling them is the truth and that

7 it's the whole truth. Is that correct?

8 A Yes, ma'am.

9 Q Nothing but the truth?

10 A Correct.

11 Q And that's what you signed the day you made your

12 first statement to the police?

13 A Yes, ma'am.

14 Q And you tell them in that statement that the guy who

15 jumped in your car is named Flash?

16 A Yes, ma'am.

17 Q That he was wearing a hat?

18 A Yes, ma'am.

19 Q And you tell them that that night at the club you saw

20 this guy shoot at Ms. Cannon?

21 A Yes, ma'am.

22 Q And that he just jumped in the car?

23 A Yes, ma'am.

24 Q Now, the police, they're a little suspicious,

25 correct?

1 A Yes, ma'am.

2 Q So after about an hour, an hour and a half, they talk
3 to you again?

4 A Yes, ma'am.

5 Q And this time you're taken into Investigator
6 McDonald's office, correct?

7 A Yes, ma'am.

8 Q How big is this office?

9 A I can't remember. I'm not sure.

10 Q Is it eight-by-eight, ten-by-ten?

11 A I'm not sure.

12 Q Small or large?

13 A Medium I guess.

14 Q What was in this office?

15 A I'm not quite sure. A desk. I really can't
16 remember.

17 Q How many officers were with you?

18 A Two.

19 Q Now, these officers, they read you Miranda, correct?

20 A Yes, ma'am.

21 Q They tell you you have the right to remain silent?

22 A Yes, ma'am.

23 Q They let you know that anything you say can be used
24 against you?

25 A Yes, ma'am.

- 1 Q They let you know you can speak to an attorney?
- 2 A Yes, ma'am.
- 3 Q If you don't have one or can't afford one they'll
- 4 appoint one to you. You can have one?
- 5 A Yes, ma'am.
- 6 Q This is sort of like on TV or in the movies?
- 7 A Yes, ma'am.
- 8 Q You know this is serious. They're asking you about a
- 9 murder, right?
- 10 A Yes, ma'am.
- 11 Q You would want to tell the police anything you know
- 12 to clear yourself, correct?
- 13 A Yes, ma'am.
- 14 Q Now, you've already given one statement that you
- 15 promised was the truth?
- 16 A Right. Yes, ma'am.
- 17 Q But it wasn't the truth?
- 18 A Right.
- 19 Q Now you're giving another?
- 20 A Yes, ma'am.
- 21 Q You're saying it's truthful?
- 22 A Yes, ma'am.
- 23 Q You tell them that you do not know the identity of
- 24 the third person?
- 25 A Yes, ma'am.

1 Q You're telling them that while you were at the scene
2 Mr. Cannon got out of the vehicle and he was facing
3 your brother?

4 A Yes, ma'am.

5 Q They ask you what happens next and you say you don't
6 know, you can't remember after you leave. Is that
7 correct?

8 A I --

9 Q After the shooting where did you go?

10 A Oh. Yes, ma'am. Yes, ma'am. Yes, ma'am.

11 Q You don't remember. After the second statement you
12 were arrested for the murder of Israel Cannon?

13 A Yes, ma'am.

14 Q And they do put you in cuffs this time?

15 A Yes, ma'am.

16 Q And they take you down and they put you in a police
17 car?

18 A Yes, ma'am.

19 Q And they take you out to Alvin S. Glenn and they take
20 your photo and they took you?

21 A Yes, ma'am.

22 Q Take your fingerprints?

23 A Yes, ma'am.

24 Q Take away your clothes?

25 A Yes, ma'am.

- 1 Q Put you in a little jumpsuit?
- 2 A Yes, ma'am.
- 3 Q And they take you and they put you in a cell?
- 4 A Right.
- 5 Q And you were there for two months?
- 6 A Yes, ma'am.
- 7 Q During this time you were put in a cell with a
- 8 roommate?
- 9 A Yes, ma'am.
- 10 Q How big was that cell?
- 11 A Small.
- 12 Q Small? Could you reach out and touch your roommate's
- 13 bed?
- 14 A Yes, ma'am.
- 15 Q What were the beds like?
- 16 A Well, you have a bunk about maybe this high and there
- 17 was one on the floor, a little -- I forgot what you
- 18 call it, a little plastic bed or whatever. I don't
- 19 remember the name of it.
- 20 Q Do you have mattresses?
- 21 A Yes.
- 22 Q And what are they like?
- 23 A Very thin.
- 24 Q What about if you have to go to the bathroom?
- 25 A It's right there.

- 1 Q So if your roommate has to go to the bathroom, you
2 were right there?
- 3 A Yes, ma'am.
- 4 Q So there is no privacy?
- 5 A Yes, ma'am.
- 6 Q And there are bugs out there?
- 7 A Yes, ma'am.
- 8 Q And it smells?
- 9 A Yes, ma'am.
- 10 Q You've got no freedom. You're away from your family?
- 11 A Yes, ma'am.
- 12 Q Away from your friends?
- 13 A (Nods head affirmatively).
- 14 Q Four days after you're taken down to Alvin S. Glenn
15 and you're booked for this murder --
- 16 A Yes, ma'am.
- 17 Q -- they bring you to make another statement?
- 18 A Right.
- 19 Q In this statement you tell them you can tell them who
20 that other person was that night?
- 21 A Yes, ma'am.
- 22 Q And it's Louis Sanders?
- 23 A Yes, ma'am.
- 24 Q And you've phone him since high school?
- 25 A Yes, ma'am.

- 1 Q You know where he lives?
- 2 A Yes, ma'am.
- 3 Q You even know his telephone number?
- 4 A Yes, ma'am.
- 5 Q And give it to the police?
- 6 A Yes, ma'am.
- 7 Q You give a description?
- 8 A Yes, ma'am.
- 9 Q Five-ten?
- 10 A Yes, ma'am.
- 11 Q Weighs around 135, 140?
- 12 A Yes, ma'am.
- 13 Q Slender?
- 14 A Yes, ma'am.
- 15 Q And you tell them he was at the club that night?
- 16 A Right.
- 17 Q You tell them that when you exited that club your
- 18 brother was fussing with Pam Cannon?
- 19 A Yes, ma'am.
- 20 Q They were having an ongoing argument?
- 21 A Yes, ma'am.
- 22 Q And then she insulted him?
- 23 A Yes, ma'am.
- 24 Q And in your statement you don't mention Louis talking
- 25 to Pam that night. How long after the gunshot rang

1 out was it before you left?

2 A Sort of -- after the shot was fired? Sort of
3 instant.'

4 Q Instantly? Within --

5 A A few seconds.

6 Q Was the car already running at this time?

7 A I don't remember.

8 Q And about how far was this car from Ms. Cannon?

9 A Probably maybe six to eight feet. I'm not really
10 sure.

11 Q Did you tell Sanders to get in your car?

12 A No, ma'am.

13 Q In your statement you tell the police you all drove
14 out to Charleswood?

15 A Yes, ma'am.

16 Q And that this SUV was following you?

17 A Yes, ma'am.

18 Q You and Mr. Sanders get out of the vehicle?

19 A Yes, ma'am.

20 Q Your brother continues to drive?

21 A Yes, ma'am.

22 Q And the SUV hits your brother?

23 A Yes, ma'am.

24 Q At that point you run up to check on your brother?

25 A Yes, ma'am.

1 Q Mr. Sanders is out of his vehicle? I mean,
2 Mr. Cannon is out of his vehicle?

3 A Yes, ma'am.

4 Q You don't say anything to him?

5 A Nothing. My concern was my bother.

6 Q So you run straight to your brother even though there
7 is this man that's hit your brother?

8 A Yes.

9 Q He might be angry?

10 A Yes, ma'am.

11 Q He might want to do something to you?

12 A Yes, ma'am.

13 Q Might want do something to your brother?

14 A Yes, ma'am.

15 Q You don't pay any attention to him?

16 A None whatsoever.

17 Q You put your back to him?

18 A Yes, ma'am.

19 Q You say that you heard a shot ring out?

20 A Right.

21 Q When Mr. Cannon falls on the ground, you don't go
22 over to make sure he's alive?

23 A No, ma'am.

24 Q You don't suggest that you all call an ambulance?

25 A No, ma'am.

1 Q You just get back in the car?

2 A After the second shot my main concern was my brother.
3 And if I would have suggested those things, there is
4 no telling what would have happened. I wasn't going
5 to put myself in jeopardy or my brother.

6 Q You've known Louis Sanders since high school?

7 A Yes, ma'am.

8 Q And that night you got back in the car with him?

9 A Yes, ma'am.

10 Q And you went over to the neighborhood where his
11 baby's mama lives?

12 A Yes, ma'am.

13 Q And your brother dropped you all off?

14 A Yes, ma'am.

15 Q You didn't go home with your brother?

16 A No, ma'am.

17 Q You didn't make an excuse and say, hey, it's 4, I
18 have to go home?

19 A No, ma'am. I didn't.

20 Q Went in this residence?

21 A Yes, ma'am.

22 Q Of Lashonda Downing. Had you been there before?

23 A I'm not -- I've probably been in there. I've been in
24 that area. I'm not sure. I think I've been in there
25 one time but I'm not 100 percent sure.

- 1 Q But you show Lashonda?
- 2 A Yes, ma'am.
- 3 Q Because you mentioned being concerned about her
- 4 family?
- 5 A Yes, ma'am.
- 6 Q When you left Lashonda's, you stayed with Louis
- 7 Sanders?
- 8 A Yes, ma'am.
- 9 Q You went over to Michelle Wilson's house?
- 10 A Yes, ma'am.
- 11 Q You hung out there?
- 12 A Yes, ma'am.
- 13 Q Michelle Wilson's house is right next to your
- 14 family's house?
- 15 A Yes, ma'am.
- 16 Q You didn't go home?
- 17 A No, ma'am.
- 18 Q You stayed with Mr. Sanders?
- 19 A Yes, ma'am.
- 20 Q You did say you didn't see a gun with Mr. Sanders?
- 21 A No, ma'am.
- 22 Q At Ms. Downing's house?
- 23 A No, ma'am. I don't recall seeing one. No, ma'am.
- 24 Q Or Ms. Wilson's house?
- 25 A No, ma'am.

1 Q And I believe you testified earlier today that you
2 didn't know Louis had shot at Ms. Cannon when he got
3 in your car?

4 A Right.

5 Q Why would you have cared that something was going to
6 happen to your brother if you didn't know?

7 A Because he had words with the wife, Ms. Cannon.

8 Q Now, you also testified on June 7th when you made
9 your final statement to the police you had been
10 concerned about your family?

11 A Yes, ma'am.

12 Q And what's why you lied before?

13 A Yes, ma'am.

14 Q On June 7th you were incarcerated?

15 A Yes, ma'am.

16 Q Still concerned about your family?

17 A Yes, ma'am.

18 Q But that time it's the truth?

19 A Yes, ma'am.

20 Q You were originally arrested for the murder of Mr.
21 Cannon?

22 A Yes, ma'am.

23 Q And your brother was arrested for that murder?

24 A Yes, ma'am.

25 Q You wouldn't want to go to prison for murder?

- 1 **A** No, ma'am.
- 2 **Q** You wouldn't want your brother to go to prison for
3 murder?
- 4 **A** No, ma'am.
- 5 **Q** He is your little brother?
- 6 **A** Right.
- 7 **Q** You love him?
- 8 **A** Of course. For something, I mean, neither one of us
9 did. No, ma'am.
- 10 **Q** Today --
- 11 **A** Yes, ma'am. I do love him.
- 12 **Q** Today you have told this jury that you're no longer
13 looking at 30 to life, that you're looking at zero to
14 15 years?
- 15 **A** Yes, ma'am.
- 16 **Q** For accessory after the fact?
- 17 **A** Yes, ma'am.
- 18 **Q** That would be zero to 15?
- 19 **A** Yes, ma'am.
- 20 **Q** That means if you enter a guilty plea you could go
21 home. It's possible you don't have to do another day
22 in jail?
- 23 **A** Yes, ma'am.
- 24 **Q** Beg the Court's indulgence for a minute. You said
25 that you were afraid for your brother that evening

1 because he had had words with Ms. Cannon?

2 A Yes, ma'am.

3 Q But you didn't know Mr. Cannon?

4 A People said I knew him, but I don't recall seeing
5 him. But we actually shook hands that night. When I
6 said I was afraid for my brother, that's -- they had
7 the little words and stuff, my brother and his wife.
8 And once we left the scene, I thought he was after --
9 I mean, it happened so quick, Louis shot the gun.
10 And being my brother was fussing with her, I didn't
11 know who he was coming after.

12 Q So you knew it was Mr. Cannon behind you all?

13 A No, ma'am. I didn't know who it was.

14 MS. EVERHART: No further questions of this
15 witness.

16 THE COURT: Cross. I mean redirect.

17 MS. SHIPLEY: Yes, sir, Your Honor.

18 REDIRECT EXAMINATION

19 BY MS. SHIPLEY

20 Q How many times had you been to Michelle Wilson
21 Jackson's house before?

22 A Lots of times.

23 Q How many times had you been there with Louis Sanders?

24 A He's probably been up there about two times while I
25 was over there.

- 1 Q Pull that microphone up. I can't hear you.
- 2 A I'm sorry. Maybe a few times while I was over there.
- 3 Q Did he know who lived nextdoor to Ms. Jackson?
- 4 A Yes, ma'am.
- 5 Q And who lives there?
- 6 A My mother and stepfather.
- 7 Q You gave a total of three statements in writing to
- 8 the police, correct?
- 9 A Yes, ma'am.
- 10 Q And the first statement, you went voluntarily to the
- 11 Sheriff's Department. Is that right?
- 12 A Yes, ma'am.
- 13 Q And in that statement the only thing you don't tell
- 14 law enforcement is the identity of the third person
- 15 in the car?
- 16 A Yes, ma'am.
- 17 Q And that you went to the Winslow Subdivision?
- 18 A Yes, ma'am.
- 19 Q Okay. At that point you are Mirandized. Your rights
- 20 are given to you, correct?
- 21 A Yes, ma'am. Yes, ma'am.
- 22 Q The same day, June 3rd, 2007, that evening?
- 23 A Yes, ma'am.
- 24 Q Do you recall your rights being read to you?
- 25 A Yes, ma'am.

1 Q And you remember going into a little bit more detail
2 about the collision and what you and Justin had to do
3 to get his Volvo loose, correct?

4 A Yes, ma'am.

5 Q That's the diagram you drew. Is this what you drew
6 at that point, State's 49?

7 A Yes, ma'am.

8 Q But you don't tell them about Winslow Subdivision,
9 who the third person was in the car, do you?

10 A No, ma'am.

11 Q And you don't tell them about Winslow Subdivision?

12 A No, ma'am.

13 Q Tell this jury why?

14 A The first couple of times that I gave the statement
15 Flash, I was scared for my family. After I got
16 incarcerated I called my mother and they said, Garry,
17 everybody knows it wasn't you. They know who it was.
18 And so when I finally saw them again, the officers
19 again, I felt that if I went ahead and said the name,
20 he really wouldn't know where the name came from
21 because everybody knew who it was. That's what I was
22 hearing and stuff.

23 Q Now, at that point on June 7th, 2007 --

24 A Yes, ma'am.

25 Q -- when you give the third statement --

- 1 **A** Yes, ma'am.
- 2 **Q** -- and you have an attorney. Is that correct?
- 3 **A** Yes, ma'am.
- 4 **Q** Is that when you tell them the real identity of the
5 third person in the car?
- 6 **A** Yes, ma'am.
- 7 **Q** Is that when you tell them about the Winslow
8 Subdivision, going there afterwards?
- 9 **A** Yes, ma'am. And is it okay if I say something or
10 is --
- 11 **Q** Yes, sir. You're welcome to.
- 12 **A** And I kept it as close as I can without giving up
13 that name. Everything in there is the truth, the
14 description. I just kept from giving up his name at
15 that time.
- 16 **Q** And so in your third statement the only additional
17 information is the identity of the person in the car
18 with you and your brother?
- 19 **A** Yes, ma'am.
- 20 **Q** So you told the police who was driving the car,
21 right?
- 22 **A** Yes, ma'am.
- 23 **Q** And who was driving the car?
- 24 **A** My brother, Justin Green.
- 25 **Q** And you told them that in the first, second and third

1 statements?

2 A First, second -- I think it was the third when I told
3 them about Louis Sanders.

4 Q Correct. But what I'm saying is, I'm asking, you
5 never denied who was driving the car. You always --

6 A No, ma'am.

7 Q -- admitted that you knew who drove the car?

8 A Yes, ma'am.

9 Q You told on your own brother, correct?

10 A Yes, ma'am.

11 Q You've always admitted to being in that car, correct?

12 A Yes, ma'am.

13 Q In the first, second and third statements?

14 A Yes, ma'am.

15 Q The third statement is when you tell the police
16 officers the real true identity of the third subject?

17 A Yes, ma'am.

18 Q You were asked on cross examination about what
19 transpired at the pub when the shot was fired and you
20 were asked that on cross. Beg the Court's indulgence
21 just so I can make sure. Just the highlighted
22 portion that's directly to the cross, the first,
23 highlighted portion, read that to the jury.

24 A "While I was trying to get" -- "while I was trying to
25 get" --

1 **MS. EVERHART:** Objection.

2 **THE COURT:** Hold on.

3 **MS. SHIPLEY:** Oh. Hold on a second.

4 **THE COURT:** What is the objection?

5 **MS. EVERHART:** It's hearsay, Your Honor.

6 **THE COURT:** What's he reading?

7 **MS. SHIPLEY:** His statement. She crossed him
8 about his third statement and she allowed him to read
9 in context what he responded under I believe Rule
10 1009.

11 **MS. EVERHART:** Can I hear the question? Is
12 there a question?

13 **THE COURT:** Approach the bench.

14 (Whereupon, a bench conference is had)

15 **Q** All right. Just to yourself read it. And if it
16 refreshes your memory, let me know. All right. What
17 happened when you heard the shot at the pub?

18 **A** We got into Justin's car.

19 **Q** Who got in there, in that car?

20 **A** I got in the front passenger's seat; Justin, the
21 driver's seat, and Sanders jumped in the back seat.

22 **Q** How quickly did you all get into that car after the
23 shot was fired at the pub?

24 **A** It happened pretty -- pretty quick.

25 **Q** Were other people in the parking lot leaving as a

1 result of hearing the gunshots?

2 A Yes, ma'am.

3 Q And again, how many gunshots at the pub?

4 A One.

5 Q Just one. On June 7th when you gave the statement
6 and you identified the third person in the car that
7 was with you and your brother, Justin --

8 A Yes, ma'am.

9 Q -- you didn't get to go home, did you?

10 A No, ma'am.

11 Q Tell this jury where you went?

12 A I went to the county jail.

13 Q Your bond was denied, correct?

14 A Yes, ma'am.

15 Q The statement that you gave on June 7th, 2007 is the
16 same statement you're giving today to this jury,
17 correct?

18 A Yes, ma'am.

19 Q You have not been promised any type of sentence for
20 the charge of accessory after the fact of murder,
21 have you?

22 A No, ma'am.

23 Q You're at the mercy of the judge?

24 A Yes, ma'am.

25 Q Who is the only person that had a gun that night on

1 June 3rd, 2007, early morning hours?

2 **A** Louis Sanders.

3 **Q** Did you at any time stop in Justin's car along the
4 way anywhere to get rid of the gun?

5 **A** No, ma'am.

6 **Q** Did you witness what he did with the gun?

7 **A** No, ma'am.

8 **MS. SHIPLEY:** That's all I have, Your Honor.

9 **THE COURT:** Anything further?

10 **MS. EVERHART:** Just briefly, Your Honor.

11 RE CROSS EXAMINATION

12 **BY MS. EVERHART**

13 **Q** You're the one who told the police about your
14 brother's involvement in this case?

15 **A** Yes, ma'am.

16 **Q** But you never said he murdered Mr. Cannon?

17 **A** No, ma'am.

18 **Q** You simply said he was driving this vehicle?

19 **A** Yes, ma'am.

20 **Q** You never said he did anything wrong?

21 **A** My brother?

22 **Q** (Nods head affirmatively)

23 **A** No, ma'am.

24 **Q** And just to be clear, in exchange for your testimony
25 your murder charge goes away?

1 **A** Yes, ma'am.

2 **MS. EVERHART:** No further questions.

3 **THE COURT:** All right. You may come down, sir.

4 May this witness be excused?

5 **MS. SHIPLEY:** Yes, sir.

6 **THE COURT:** Without objection?

7 **MS. EVERHART:** Without objection. Next witness.

8 You're free to go, sir.

9 **MS. MCDUFFIE:** The State calls Glenn Green.

10 GLENN O. GREEN, after being duly sworn,

11 testifies as follows:

12 **THE CLERK:** Thank you. Have a seat in the
13 witness stand and give the court reporter your name.

14 **WITNESS:** My name is Glenn Oliver Green.

15 DIRECT EXAMINATION

16 **BY MS. MCDUFFIE**

17 **Q** Good afternoon, Mr. Green.

18 **A** How you doing, ma'am?

19 **Q** Mr. Green, where are you from?

20 **A** I am originally from North Carolina, Fayetteville,
21 area.

22 **Q** And how long have you been in Columbia?

23 **A** Oh, about 34, 36 years.

24 **Q** And where do you currently reside?

25 **A** At 805 Valhalla drive, Columbia, South Carolina.

1 Q And who lives there with you?

2 A My wife and two of my sons.

3 Q And which sons?

4 A Justin Green and Tyler Green.

5 Q And do you have any other children?

6 A Yes, ma'am.

7 Q And who are they?

8 A Garry Green, Bridget Green and Zoe Green.

9 Q And Justin lives with you?

10 A Justin lives with me. Yes, ma'am.

11 Q What kind of car does Justin drive? Or what kind of
12 car did he drive in June of 2007?

13 A A 1994 Volvo black.

14 Q A black Volvo 850?

15 A Yes, ma'am.

16 Q I'm going to take you back to June the 3rd, 2007.

17 That was a Sunday. Do you remember that day?

18 A Yes, ma'am.

19 Q What did you do that day, or what were your plans
20 that day?

21 A My plans was to go to church and then I got up a
22 little late and I didn't go to church. So after I
23 was lazy about going to church I decided I'd go to
24 Fayetteville, North Carolina to see my mother whom at
25 that time was like 90 years old. And I proceeded to

1 leave my house, get dressed and leave my house. And
2 actually I noticed that there was some damage to my
3 car, the car that Justin was driving.

4 Q To the black Volvo?

5 A Yes, ma'am.

6 Q And what kind of damage was that?

7 A It was -- it had been like someone had hit it in the
8 left rear.

9 Q In the left hear?

10 A Yes, ma'am.

11 Q And who had been driving that car that night and the
12 day before?

13 A Justin Green, my son.

14 Q Did anyone else have access to that vehicle?

15 A Not at that time; no, ma'am.

16 Q So you noticed the damage to the car?

17 A Well, I started to go into the house and say
18 something to Justin. I decided I'd go ahead and see
19 my mother. And I got on the interstate and I drove
20 about 35, 40 miles on I-20 headed to North Carolina.
21 I got to Bishopville and I just had a feeling
22 something, came over me, I needed to come back. So I
23 turned around and came back. And when I got back my
24 son Justin started to come out the door to head to
25 work. And I approached him about the car and asked

1 him what happened. He said, "Someone hit him." And
2 that's as far as I -- I just let it go at that.

3 Q Where was Justin working at that time?

4 A I think the Wachovia Bank Center on Greystone
5 Boulevard.

6 Q You say Justin was leaving to go to work?

7 A Yes, ma'am.

8 Q What happened after that?

9 A Well, approximately 4:30, 5:00 my daughter,
10 Veronica -- I don't know if I mentioned her name.
11 But Veronica Green, my daughter, called me and she
12 sounded upset. She asked me if I could meet her
13 someplace. And of course I did. When we met I
14 talked to her and she said that there had been a
15 shooting and that the policemen (sic) was at her
16 mother's house, which was my ex wife, getting ready
17 to tow her black Volvo.

18 Q Where does your ex wife live?

19 A At [REDACTED] William Harden Road, Columbia.

20 Q Your daughter also drives a black Volvo. And her
21 daughter drives a black Volvo?

22 A Yes, ma'am.

23 Q Do you know what kind?

24 A It's a 1995 940 black Volvo.

25 Q Not an 850?

1 **A** No, ma'am.

2 **Q** And that car was where?

3 **A** Well, by the time I got to my ex wife's house, the
4 car had been towed.

5 **Q** But it was parked at --

6 **A** It had been parked there. Yes, ma'am.

7 **Q** And when you arrived at your ex wife's house, what
8 did you do then?

9 **A** Well, I noticed that an officer, a plain clothes man
10 I think; I don't remember exactly, was walking with
11 my son, Garry. And I just thought to question him,
12 but he told me just let him handle the situation. So
13 I then just walked away from that. And so another
14 officer asked me, he was saying that they towed the
15 car. Well, the officer told me he thought the car
16 that they towed had been involved in an accident, an
17 incident.

18 So I walked over to where the car had been towed
19 up from and I looked at the spot and it had rained
20 the night or that morning. And I noticed where they
21 towed my daughter's car from the ground was very dry.
22 I said no way this car was involved because this car
23 hadn't been moved because it's dry here. And I said,
24 "Oh. My car has some damage." I said, "You've
25 probably -- it's probably my car that my son, Justin

1 Green, was driving."

2 Q So you told the police that your son, Justin Green,
3 was driving a black Volvo and that it had fresh
4 damage in the rear?

5 A Yes, ma'am.

6 Q What did the police ask you to then do?

7 A They asked me where was the car and I said it's
8 probably at his job. He asked me, "Where is the
9 job?" I says, "He works at the Wachovia Center on
10 Greystone Boulevard." And he asked me if I would go
11 to get the car, and I said yes. At that point I
12 said, yes, I'd get the car and did they also want to
13 speak with Justin? Well, not at that time but later
14 on in the conversation the officer mentioned to me
15 that someone had gotten killed.

16 And so I was disturbed when I heard that. So
17 knowing that Justin had been driving the car that
18 night, I got on the phone, we called my son, Justin.
19 I asked for him, so we finally did get him. And I
20 said, "Justin, the car has been involved in an
21 accident and they said that it was driven and there
22 was a shooting involved." I said, "Where are you?
23 Are you at work?" He says, "Yes, I'm at work." I
24 said, "Well, you need to come downstairs. Do not
25 leave." He said, "Okay. I'll be downstairs. I'll

1 wait for you until you get here."

2 Q Downstairs at his office?

3 A Downstairs in the parking lot at the Wachovia Center.
4 So the officer asked me if I would go pick Justin up.
5 But I was too shaken at that time and I just didn't
6 feel like I could drive over and get him. So I said,
7 Officer, I can't go." I said, "I'll drive over with
8 you to get Justin but I can't drive."

9 So I got in the car and we drove over. And when
10 we got in the parking lot at the Wachovia Center on
11 Greystone Justin was sitting out there drinking a
12 bottle of water. And I told him, I asked the
13 officers not to talk to Justin. He said that he
14 would. He asked me if I can drive the black Volvo to
15 the Sheriff's Department. I said yes. So I followed
16 them to the Sheriff's Department.

17 Q And you drove the black Volvo to the Sheriff's
18 Department?

19 A Yes, ma'am.

20 Q And did you leave the Volvo there?

21 A Yes, ma'am. They retained the Volvo.

22 Q And how long was it before you got that Volvo back?

23 A Approximately a month and a half, two months.

24 (WHEREUPON, State's Exhibit No. 51 is marked for
25 identification.)

1 Q I show you what's been marked as State's Exhibit 51.
2 Do you recognize that?

3 A Yes, ma'am.

4 Q Is that a fair and accurate depiction?

5 A Yes, ma'am.

6 MS. MCDUFFIE: Your Honor, at this time we'd
7 offer State's 51.

8 MR. SECOR: No objection.

9 THE COURT: Without objection.

10 (WHEREUPON, State's Exhibit No. 51 is admitted
11 into evidence.)

12 Q Mr. Green, can you please tell the jury what is
13 depicted in State's 51?

14 A It's my black '94 850 Volvo. It had been hit in the
15 left rear. And the damage to the bumper was hanging
16 from the right side, just some damage to the quarter
17 panel which was jammed up against the door which was
18 hard to get the door open, and some damage in the
19 light there.

20 Q Do you know a lot about cars?

21 A Yes, ma'am.

22 Q Why is that, Mr. Green?

23 A Because I have been involved in -- I own an auto shop
24 and I have people that do body work for me for a very
25 long time.

1 **MS. MCDUFFIE:** Beg the Court's indulgence.

2 Nothing further, Your Honor.

3 **THE COURT:** Cross examination.

4 **MR. SECOR:** Thank you, Your Honor.

5 CROSS EXAMINATION

6 **BY MR. SECOR**

7 **Q** Mr. Green, how are you, sir?

8 **A** Fine. How are you, sir?

9 **Q** Good. When you arrived at the Richland County
10 Sheriff's Department you were driving a black Volvo,
11 right?

12 **A** Yes, ma'am.

13 **Q** Your son was there with -- was it Investigator
14 McDonald?

15 **A** It's been a long time. I don't remember the
16 gentleman, the officer's name.

17 **Q** But at the time that they were going in the building
18 you were there, right?

19 **A** Yes.

20 **Q** Okay. And isn't it true that you didn't want Justin
21 to talk to the police?

22 **A** Yes. That's true.

23 **Q** You wanted him to have an attorney?

24 **A** I just didn't want him to talk at that time.

25 **Q** Right. And you made that clear. I mean, you tried

1 to relay that information to them, that you didn't
2 want him to talk?

3 **A** Well, yes, I did ask. But he said he was of age and
4 there was nothing I could do. So that was the end of
5 that.

6 **Q** Justin does or did eventually get an attorney, right?

7 **A** Yes, sir.

8 **Q** Charged with murder?

9 **A** I think so. Yes. Because it was on the news, yes.

10 **Q** Who paid for that lawyer?

11 **A** Who paid for that lawyer?

12 **Q** Yes.

13 **A** For Justin's lawyer?

14 **MS. SHIPLEY:** Objection. Relevance, Your Honor.

15 **THE COURT:** Sustained.

16 **Q** Mr. Green, you're aware that your son, Justin's,
17 trial was supposed to start yesterday, right?

18 **A** Yes, I am.

19 **Q** And that trial has been called off, so to speak?

20 **A** Yes, sir.

21 **Q** That's because there's been some agreement reached
22 between your son and the prosecutor's office?

23 **A** Now, I don't know what the agreement was.

24 **Q** Right. Okay. Beg the Court's indulgence for just a
25 minute. Thank you, Mr. Green. I appreciate it. I

1 have nothing further, Your Honor.

2 **THE COURT:** Redirect?

3 REDIRECT EXAMINATION

4 **BY MS. MCDUFFIE**

5 **Q** Mr. Green, do you know why your son's trial was
6 delayed?

7 **A** Why was --

8 **Q** Why your son, why Justin's trial was delayed?

9 **A** Delayed?

10 **Q** Why it didn't happen yesterday?

11 **A** As best I can know, if I'm correct, the charge was
12 dropped.

13 **Q** Was there also a ruling by the Court in that matter?

14 **A** Yes.

15 **MS. MCDUFFIE:** No further questions, Your Honor.

16 **THE COURT:** All right. You may come down, sir.

17 Thank you very much.

18 **WITNESS:** Thank you, Your Honor.

19 **THE COURT:** You're certainly free to go. Thank
20 you for coming.

21 **WITNESS:** Yes, sir.

22 **THE COURT:** All right. Let me talk to you
23 again.

24 (Whereupon, a bench conference is had)

25 **THE COURT:** All right, ladies and gentlemen.

1 I'm just checking on the schedule. I think there is
2 a legal matter I need to take up with the attorneys
3 but there's no sense in you sitting here while I do
4 that. So I'm going to excuse you now for the
5 evening. I'll ask you to be back in the jury room at
6 9:30 in the morning at which time we'll continue the
7 trial. Again have a pleasant evening. Don't discuss
8 the case with yourselves or with anyone else over the
9 evening. Have a pleasant evening.

10 Let me add one other thing. And I know that
11 it's probably not something that you will do. But
12 jurors sometimes, sometimes want to investigate the
13 case themselves. And sometimes they might -- well,
14 that neighborhood or that club location is kind of on
15 my way home; I think I'll go by there and see what
16 that place is really like or where it is and how
17 they -- in other words, do an investigation on your
18 own. That would not be proper.

19 I'm going to ask you to refrain from doing that
20 because as I say I don't think any of you may have
21 even thought about it, but sometimes it crosses your
22 mind. We've had jurors that go home and look up
23 stuff on the internet trying to figure out how
24 something happened, that sort of thing.

25 All the evidence has to come to you from this

1 jury stand and in this courtroom, and it would be
2 improper to try to investigate the case on your own.
3 So I'll just ask you not to do that and have a
4 pleasant evening. We'll see you in the morning.
5 Thank you very much.

6 (Jury out at 5:13 p.m.)

7 **THE COURT:** All right. The matter of Justin
8 Green's identification.

9 **MS. SHIPLEY:** The State calls Justin Green.
10 Your Honor, he identifies --

11 **THE COURT:** He makes an out-of-court
12 identification?

13 **MS. SHIPLEY:** Correct. He met the defendant
14 that night and he is provided with a photographic
15 line-up on June 18th, about 15 days --

16 **THE COURT:** He did not know him.

17 **MS. SHIPLEY:** He did not know him, met him the
18 first time that night. And he is presented with a
19 photo line-up on June 18th which is about 15 days
20 later and positively identifies Mr. Louis Sanders as
21 the third person in the car that day.

22 JUSTIN C. GREEN, after being duly sworn,
23 testifies as follows:

24 **THE CLERK:** Thank you. Have a seat in the
25 witness stand and give the court reporter your name.

1 **WITNESS:** Justin Chadwick Green.

2 DIRECT EXAMINATION

3 **BY MS. SHIPLEY**

4 **Q** Good afternoon, Mr. Green.

5 **A** Good afternoon.

6 **Q** Mr. Green, the purpose of this hearing is regarding
7 your identification. So we're going to be brief.
8 Tell the judge, when was it that you were introduced
9 to Louis Sanders?

10 **A** On the night or early morning of June 3rd.

11 **Q** All right. And who introduced you to him?

12 **A** My brother, Mr. Garry B. Green.

13 **Q** Where were you when you were introduced to him?

14 **A** The pub, a club, H&J.

15 **Q** And where is that located?

16 **A** Off of Hard Scrabble Road.

17 **Q** Do you recall, were you inside of the pub when you
18 were introduced?

19 **A** Yes, ma'am.

20 **Q** And can you describe sort of where in the bar you
21 were at?

22 **A** We were -- there is an area in the bar which you have
23 to kind of step up, and there's some tables there.
24 And so I was sitting at the table.

25 **Q** And who were you sitting with?

1 **A** With my brother, Garry Green, and Mr. Sanders.

2 **Q** Okay. You had arrived. Why did you go to the pub
3 that day?

4 **A** I had spoken to my brother earlier in the night and
5 his birthday had just been a few days before. So,
6 you know, that would be my first chance since his
7 birthday to see him. So, you know, I let him know
8 that if he would be there, you know, I'd come by
9 later on in the evening.

10 **Q** Did you know who your brother would be with at the
11 pub?

12 **A** No, ma'am.

13 **Q** When you arrived was your brother already hanging out
14 with Mr. Sanders?

15 **A** Yes, ma'am.

16 **Q** And were they already seated at this table?

17 **A** No, ma'am.

18 **Q** So you all picked the table out together?

19 **A** Yes, ma'am.

20 **Q** And so all three of you decided to sit together at
21 this table?

22 **A** Yes, ma'am.

23 **Q** I'm going to walk up to you and if you tell me to
24 stop when I reach the distance that you sat from this
25 defendant on the early morning hours of June 3rd.

1 Okay?

2 A Okay.

3 Q You tell me when to stop.

4 A Stop.

5 Q Okay. How many feet do you believe are between you
6 and I right now?

7 A Two feet.

8 Q Okay. And so is this the approximate distance
9 between you and Mr. Sanders when you were introduced?

10 A Yes, ma'am.

11 Q How long did you remain at the table with Mr. Sanders
12 after you were introduced by your brother?

13 A 15, 20 minutes.

14 Q Can you describe the lighting at that time? Was it
15 bright, or was it kind of dark? It's a nightclub?

16 A Yeah. It's kind of dark but you are able to make
17 out, you know, who is in front of you or maybe even
18 who is on the other side of the room possibly.

19 Q Did you have any trouble seeing the face of the man
20 that your brother introduced you to?

21 A No, ma'am.

22 Q And you indicated you were about this distance. You
23 estimate it to be two feet. I would say this is more
24 like five feet.

25 A Okay.

- 1 Q You said that you were at the same table about 15, 20
2 minutes?
- 3 A Yes, ma'am.
- 4 Q Okay. Did you leave the bar that night?
- 5 A Yes, ma'am.
- 6 Q When you left the bar, who left with you?
- 7 A It was me and my brother and Mr. Sanders.
- 8 Q And when you left where did you go?
- 9 A We were making our way home.
- 10 Q Did you stop in the parking lot at any time?
- 11 A Yes. After exiting the club we stood in front of the
12 club for maybe, maybe 15 minutes.
- 13 Q And then what made you leave at that point?
- 14 A There was a gunshot.
- 15 Q Okay. Were you hanging out with Mr. Sanders at all
16 in the parking lot of H&J club?
- 17 A No, ma'am.
- 18 Q When is the next opportunity that you get to view Mr.
19 Sanders? Did he get in your car?
- 20 A Yes, ma'am.
- 21 Q Did you see him get in your car?
- 22 A Yes, ma'am.
- 23 Q Were you able to -- obviously if you were driving,
24 where was he in the car?
- 25 A In the rear driver's seat.

1 Q Were you looking at him at that time?

2 A No, ma'am.

3 Q When is the next opportunity you get to actually see
4 him again, his face? Even though he's with you, when
5 are you looking at him again?

6 A Not until I drop him off.

7 Q Okay. And when you drop him off, where approximately
8 were you at that time?

9 A At home in the Winslow Subdivision.

10 Q Okay. Did you see him any time on Westbridge Road?

11 A Yeah. Yes, ma'am.

12 Q Okay.

13 A You know, not very close to him at that time, but --

14 Q When you dropped him and -- did you drop him and your
15 brother off at Westbridge?

16 A Yes. Yes, ma'am.

17 Q And then -- and we'll be in more detail in front of
18 the jury. But did you end up in the cul-de-sac?

19 A Yes, ma'am.

20 Q Did you have an opportunity to view him at that point
21 in the cul-de-sac?

22 A Yes, ma'am.

23 Q And can you describe how far away he was from you
24 when you saw him at the cul-de-sac? And I'll walk
25 you to you. I'll just start from over here and you

1 tell me when to stop, okay, when I get to the
2 distance Mr. Sanders was from you on the early
3 morning hours of June 3rd in the cul-de-sac. You
4 stop me.

5 A Stop. And I would -- actually, you probably have to
6 go further back.

7 Q Further back? And so he was a good distance away?

8 A Yes. Yes, ma'am.

9 Q Could you tell it was the same person your brother
10 had introduced you to earlier in the night?

11 A Yes, ma'am.

12 Q All right. What was the lighting like in the
13 cul-de-sac?

14 A Dim lighting because it's like maybe one street
15 light.

16 Q Okay. And was he wearing the same clothes that he
17 was wearing at the nightclub?

18 A Yes, ma'am.

19 Q Do you remember what those clothes were?

20 A No, ma'am.

21 Q Okay. And all this transpired on June the 3rd of
22 2007, correct?

23 A Yes, ma'am.

24 Q I'm going to show you two documents and ask you if
25 you recognize them.

1 (WHEREUPON, State's Exhibit No. 52 is marked for
2 identification.)

3 (WHEREUPON, State's Exhibit No. 53 is marked for
4 identification.)

5 Q Do you recognize State's No. 52 and State's No. 53?

6 A Yes, ma'am, I do.

7 Q Okay. And what is that? What are those documents?

8 A One is a photo line-up. Or let's see. Two pieces of
9 paperwork shown and given to me on June 18th.

10 Q Okay. And the State's 52, what is that? Is that
11 your handwriting on that?

12 A Yes, ma'am, I do.

13 Q Did you sign that?

14 A Yes, ma'am.

15 Q Why did you sign that document? What were you
16 attesting to?

17 A That I recognized one of the gentlemen on this photo
18 line-up.

19 Q Okay. And that would be State's No. 53, the photo
20 line-up?

21 A Yes, ma'am.

22 Q All right. And who gave you these photographs, do
23 you remember, to look at?

24 A Mr. McRae.

25 Q Is that him right there at the State's table?

1 **A** Yes, ma'am.

2 **Q** And when he presented these pictures to you, do you
3 recall if Sergeant McDonald was with him?

4 **A** No, ma'am.

5 **Q** You don't remember or he was not?

6 **A** He was not.

7 **Q** When he presented these photos to you, did
8 Investigator McRae suggest to you in any way what
9 photograph to pick out?

10 **A** No, ma'am.

11 **Q** What exactly was the purpose of showing you this
12 array of six photos?

13 **A** To find out who the third person with me was.

14 **Q** Okay. And by that point had you told the
15 investigators the identity of that third person?

16 **A** Had I told them the identity?

17 **Q** Yes. Have you given them a name by this point?

18 **A** No, ma'am.

19 **Q** Okay. You had not given them a name?

20 **A** No, ma'am.

21 **Q** Was this given to you before or after the statement
22 that you gave to the police?

23 **A** Before.

24 **Q** It was done before?

25 **A** Yes, ma'am.

- 1 Q Okay. And so as a result, you identified the person
2 in those six photos?
- 3 A Yes, ma'am.
- 4 Q And which photo did you come to?
- 5 A Number 3.
- 6 Q Number 3?
- 7 A Yes, ma'am.
- 8 Q Okay. And again, did anyone suggest to you which
9 photograph you were to pick out?
- 10 A No, ma'am.
- 11 Q And why did you pick number 3?
- 12 A That was the gentleman that I had been introduced to
13 on the night of June 3rd.
- 14 Q Okay. After you provided that photo line-up to the
15 police, did you then give a statement to the police?
- 16 A Yes, ma'am.
- 17 Q And did you give them a name of the person you were
18 introduced to by your brother?
- 19 A Yes, ma'am.
- 20 Q And what is that name?
- 21 A Mr. Sanders.
- 22 Q What was his first name?
- 23 A Louis Sanders.
- 24 Q Again, how did you find out his name?
- 25 A I found out his name from television.

1 Q Did your brother introduce you and use his name when
2 he introduced you?

3 A No, ma'am. He introduced him to me as Scooter.

4 Q As Scooter?

5 A Yes, ma'am.

6 Q But had you seen this man's picture already in the
7 news?

8 A Yes, ma'am.

9 Q Okay. Did that influence your ability to figure out
10 who it was, who to pick out?

11 A Yes, ma'am.

12 Q Why did you pick out number 3 in that photograph?

13 A Because I recognized him.

14 Q And was that the same man with you that night?

15 A Yes, ma'am.

16 Q And did you circle the name of the picture, of number
17 3 and sign it?

18 A Yes, ma'am.

19 MS. SHIPLEY: No further questions, Your Honor.

20 MR. O'NEIL: Thank you, Your Honor.

21 CROSS EXAMINATION

22 BY MR. O'NEIL

23 Q Justin?

24 A Yes, sir.

25 Q You say you didn't know Louis?

- 1 **A** No, I did not.
- 2 **Q** Never had met him before?
- 3 **A** No, sir.
- 4 **Q** How old are you?
- 5 **A** 26.
- 6 **Q** You never saw Louis in your 26 years of living?
- 7 **A** No, sir.
- 8 **Q** Only met him that night?
- 9 **A** Well, at that time I was 25.
- 10 **Q** In your 25 years of living you hadn't met Louis
- 11 Sanders?
- 12 **A** Right.
- 13 **Q** Only met him that night?
- 14 **A** Yes, sir.
- 15 **Q** Only talked to him briefly in the club?
- 16 **A** Yes, sir.
- 17 **Q** Just briefly. And it was dark in the club?
- 18 **A** Yes, sir.
- 19 **Q** Music playing in the club?
- 20 **A** Yes, sir.
- 21 **Q** And what was Louis' hair like that night?
- 22 **A** It was permed.
- 23 **Q** Permed?
- 24 **A** Yeah. Sort of straight.
- 25 **Q** It was straight. No braids?

1 A No, sir.

2 Q Just permed straight?

3 A Yes, sir.

4 Q Kind of like what Ms. Shipley's hair is?

5 A Yes, sir.

6 Q And you don't remember what Louis had on that night?

7 A No, sir. Not at all.

8 Q Nothing extra ordinary happened at the table while
9 you were sitting with Louis?

10 A An action on his part, no.

11 Q Nothing out of the ordinary happened?

12 A No, sir.

13 Q How much had you had to drink that night?

14 A A few beers and maybe a couple of mixed drinks. But
15 I had been out for some time.

16 Q Had you been drinking anywhere else?

17 A Yes, sir.

18 Q Yes, sir?

19 A Yes, sir.

20 Q How much you had to drink at the other places?

21 A Well, the information I just gave you is, you know,
22 including everything from the whole night. So, you
23 know, I had been at the Queenstown Bistro.

24 Q Off Bush River?

25 A Yes, sir. So, you know, I had a couple of mixed

1 drinks out there and a couple of beers. Then some
2 friends and I went and played cards. So like maybe
3 one more mixed drink there, a beer there. And then
4 while at the pub I had a beer.

5 Q Okay. And what time of the morning was it when you
6 got to the club?

7 A Probably about 2:30, 3:00.

8 Q You hadn't been to sleep yet that day either?

9 A No, sir.

10 Q Been up all day. Now, I guess when you were in the
11 car driving down through I guess Charleswood
12 Subdivision. You were focusing on the road at that
13 point?

14 A That's right.

15 Q You didn't see Louis in the back seat?

16 A No, sir.

17 Q You weren't paying attention to Louis in the back
18 seat?

19 A No, sir.

20 Q And this white Tahoe that Mr. Cannon was driving, it
21 hit you?

22 A Yes, sir.

23 Q I think if we look at the diagram up here, it hit you
24 on your left side?

25 A Yes, sir.

1 Q It hit you on the left side with its right side?

2 A Yes, sir.

3 Q So if you are here -- I'm sorry. Scratch that. So
4 the left side of the Tahoe would have been sticking
5 out?

6 A I'm not following you.

7 Q If you are straight --

8 A Mm-hmm (affirmative).

9 Q -- and the Tahoe hit your left side with its right
10 side, the left side of the Tahoe would have been
11 sticking out further. I mean, the Tahoe would have
12 been directly behind your car?

13 A No, sir.

14 Q The Tahoe was to the left of your car?

15 A Yes, sir.

16 Q And to the rear of your car?

17 A And to the left of me; yes, sir.

18 Q And the Volvo sits lower to the ground than the
19 Tahoe?

20 A Yes, sir, it would.

21 Q Because the Volvo of course is a smaller car and the
22 Tahoe is a big SUV?

23 A Yes, sir.

24 Q So the Tahoe would have been hovering behind you?

25 A Yes, sir.

1 Q And you never got out of your car?

2 A No, sir.

3 Q Never opened your door?

4 A No, sir.

5 Q Never took a step out of your car?

6 A Yes, sir.

7 Q Mr. Cannon stepped out of his car?

8 A Yes, sir.

9 Q He opened his door?

10 A Yes, sir.

11 Q Did he come up to your car?

12 A No, sir.

13 Q He never came up to your car?

14 A No, sir.

15 Q Did he ever come up to your car?

16 MS. SHIPLEY: Objection. Is this related to the
17 purpose of --

18 THE COURT: What's your --

19 MS. SHIPLEY: Relevance for this hearing.

20 MR. O'NEIL: Your Honor, it's relevant to
21 whether or not he can ID Mr. Sanders at the crime
22 scene.

23 THE COURT: I'm going to allow it. The jury is
24 not here.

25 Q Did Mr. Cannon go to the back of the SUV?

1 **A** Not that I saw.

2 **Q** What did you see Mr. Cannon do?

3 **A** I saw him near the front driver's side of his
4 vehicle.

5 **Q** Because he is behind the door?

6 **A** Like standing beside the door.

7 **Q** Was the front driver's side door open?

8 **A** Yes, sir.

9 **Q** Okay. So he was standing behind the front side
10 passenger's door?

11 **A** Like beside it.

12 **Q** You know, and just sticking out of the left?

13 **A** Yes, sir.

14 **Q** Now, did you turn around or were you looking through
15 the rearview mirror?

16 **A** I had my windows down. So all I would have to do is
17 look out my window.

18 **Q** Did you stick your head out the window? What did you
19 do?

20 **A** Just looked, you know, just --

21 **Q** You turned and looked where over your shoulder?

22 **A** To my left. It wasn't necessary for me to turn as
23 so, but just to look as if I'm looking at the young
24 lady there.

25 **Q** But was the Tahoe directly behind you?

- 1 **A** No, sir.
- 2 **Q** Where was it?
- 3 **A** To my left.
- 4 **Q** To your left?
- 5 **A** Yes, sir.
- 6 **Q** And he was behind the door to your left?
- 7 **A** Yes, sir.
- 8 **Q** Okay. And before you did this line-up you never gave
- 9 a description of Mr. Sanders, did you?
- 10 **A** No, sir.
- 11 **Q** And you did this line-up on June 18th, 2007?
- 12 **A** Yes, sir.
- 13 **Q** That's over two weeks after this incident?
- 14 **A** Yes, sir.
- 15 **Q** You said you saw Mr. Sanders' picture on the news?
- 16 **A** Yes, sir.
- 17 **Q** When you saw him on the news, it said that he had
- 18 been arrested for this crime?
- 19 **A** Yes, sir.
- 20 **Q** The same crime you were arrested for?
- 21 **A** Yes, sir.
- 22 **Q** They said he was arrested for murder?
- 23 **A** Yes, sir.
- 24 **Q** What else did they say about Mr. Sanders?
- 25 **A** That's all can they said that I remember.

1 Q How many times did you see that?

2 A Once.

3 Q You also saw Mr. Sanders' name in the paper?

4 A Yes, sir.

5 Q How many times did you see it in the paper?

6 A Just once.

7 Q What did it say when you saw it in the paper?

8 A That he had been arrested for that same crime.

9 Q And when was this? Do you remember?

10 A I would say maybe, you know, around a week or so
11 after, maybe two weeks after I had been arrested.

12 Q But before you did the line-up?

13 A Yes, sir.

14 Q And you say you couldn't get a close look at Mr.
15 Sanders while you all were in the cul-de-sac?

16 A No, sir.

17 Q You didn't get a close look at him. How was the
18 lighting like out there in the cul-de-sac?

19 A Like I said, just one street light, that I can
20 remember anyway.

21 Q But was it raining at that point?

22 A No, sir.

23 Q But it was dark?

24 A Yes, sir.

25 Q And you were incarcerated from June 4th until

1 sometime later?

2 **A** Yes, sir.

3 **Q** But you were definitely still incarcerated when you
4 gave your statement and your photo identification?

5 **A** Yes, sir.

6 **Q** Now, you were incarcerated in the same jail with your
7 brother, Garry?

8 **A** Yes, sir.

9 **Q** How many times had you talked to your brother, Garry,
10 between June 4th and June 18th?

11 **A** Zero.

12 **Q** You didn't talk to your brother, Garry?

13 **A** No, sir.

14 **Q** What dorm were you in?

15 **A** Zulu.

16 **Q** Do you know what dorm your brother was in?

17 **A** Yankee.

18 **Q** You all were in jail the whole time from June 4th to
19 June 18th?

20 **A** No, sir. I was in Zulu -- I don't know -- I guess
21 like a week or so, like, you know, five or six days.
22 And then they moved me to Yankee. And I understood
23 at that time that my brother went to another dorm.
24 Once they moved me over there, I stayed there for a
25 day. Then they put me into the general population

1 over there.

2 Q Do you remember what dorm it was?

3 A I think J or K, something like that.

4 Q J. But it was over in the phase two side?

5 A Yes, sir.

6 Q Do you remember what dorm your brother was in?

7 A No, sir.

8 Q Did you talk with any family members between June 4th
9 and June 18th?

10 A Yeah.

11 Q What family members did you talk to?

12 A My mother and father.

13 Q Did they tell you they saw you on the news?

14 A Yes, sir.

15 Q Did they tell you they saw somebody else on the news
16 for the same charge you had?

17 A No, sir.

18 Q And how long did you see Mr. Sanders after you
19 dropped him off in Winslow?

20 A Maybe a minute.

21 Q A minute. How far away was he from you in Winslow?

22 A Face-to-face.

23 Q Which way did he go when he left out of your car?

24 A He just went, you know, stood outside.

25 Q Do you remember the number of the residence you

1 dropped him off at?

2 A No, sir.

3 MR. O'NEIL: Beg the Court's indulgence. No
4 further questions, Your Honor.

5 THE COURT: Redirect.

6 REDIRECT EXAMINATION

7 BY MS. SHIPLEY

8 Q You were kept separated from your brother while
9 incarcerated at the jail?

10 A Yes, ma'am.

11 Q And the fact that you saw the defendant's, Mr. Louis
12 Sanders' face on the news, did that influence your
13 identification of him in this photo line-up?

14 A No, ma'am.

15 Q And again, did anyone suggest to you as to which
16 photo to identify?

17 A No, ma'am.

18 MS. SHIPLEY: No further questions.

19 MR. O'NEIL: Just one thing briefly, Your Honor.

20 THE COURT: Go ahead.

21 RECROSS EXAMINATION

22 BY MR. O'NEIL

23 Q Mr. Green, State's 53, this is the line-up they
24 showed you?

25 A Yes, sir.

1 Q And was this the same picture you saw on the news?

2 A Yes, sir.

3 Q Was it the same picture you saw in the newspaper?

4 A I didn't see a picture in the paper.

5 Q You saw the name in the paper?

6 A Yes, sir.

7 Q But this is the same picture you saw in the news?

8 A Yes, sir.

9 MR. O'NEIL: No further questions, Your Honor.

10 THE COURT: All right. You may come down now
11 for the purposes of this hearing only.

12 WITNESS: Okay.

13 THE COURT: You're free to go. Next witness.

14 MS. SHIPLEY: The State calls Investigator Don
15 McRae.

16 DON MCRAE, after being duly sworn, testifies as
17 follows:

18 THE CLERK: Thank you. Have a seat and give the
19 court reporter your name.

20 WITNESS: Don McRae.

21 DIRECT EXAMINATION

22 BY MS. SHIPLEY

23 Q Investigator McRae, just to speed it up for the
24 purposes of this hearing, did you and Investigator
25 Scott McDonald develop a photo line-up to show Justin

1 Green on June 18th, 2007?

2 A We did.

3 Q And when you develop photographic line-ups, what is
4 the purpose? What do you try do when preparing photo
5 line-ups?

6 A In preparing a photo line-up we try to use similar
7 characteristics of the particular person that we're
8 building the line-up with. We'll use height, weight,
9 hairstyle, race, hair length, hairstyle, general
10 facial characteristics.

11 Q Okay. And did you in fact develop State's 53 along
12 with Scott McDonald to present to Mr. Justin Green on
13 June 18th?

14 A We did.

15 Q All right. And the characteristics of the
16 photographs of the six people in that line-up, are
17 they generally the same?

18 A Yes, ma'am.

19 Q And what is similar about them?

20 A Hairstyle, twists, facial hair. We try to do skin
21 tone as much as we can. Again, that sometimes gets
22 not as clear as we would like, using, you know, the
23 printers that we have available to us.

24 Q And this photo line-up is presented to Mr. Justin
25 Green in black and white?

1 **A** Yes, ma'am.

2 **Q** Okay.

3 **A** It's actually printed in gray scale. Yes, ma'am.

4 **Q** Can you please relay to Judge Cooper exactly how it
5 is that you presented these photo line-ups to Justin
6 Green?

7 **A** On the morning of June the 18th, just prior to Mr.
8 Green's bond hearing, about 8:44 in the morning we
9 meet Mr. Sanders in the holding location here at 1701
10 Main and speak with him there.

11 **Q** And as a result, was there a lawyer present with him
12 at the time?

13 **A** There was.

14 **Q** Okay. And who was that?

15 **A** It would have been a representative from
16 Mr. Swerling's office. It was Elizabeth Franklin.

17 **Q** Okay. And did he agree to talk to you and waive his
18 rights at that time?

19 **A** He had.

20 **Q** Okay. And when you asked him about the identity of
21 the third person, did you show -- did he provide you
22 a name?

23 **A** Did he provide a name?

24 **Q** Right.

25 **A** No, ma'am.

1 Q Okay. At that point did you show him the
2 photographic line-up?

3 A We did.

4 Q All right. And was he able to provide you -- was he
5 able to identify anyone among the six photos?

6 A He did.

7 Q Did you suggest to him in any manner as to which
8 photo to pick?

9 A No, ma'am.

10 Q And can you describe whether or not he hesitated in
11 any way when he picked a photo, or did he examine it?
12 Explain exactly what you witnessed him do when he was
13 presented with these six photos?

14 A The location that we did this, Your Honor, was a
15 little cramped. I actually had to slide the line-up
16 to him. He took it, put it in his hand, reviewed it
17 and immediately went to picture number 3.

18 Q Who is picture number 3 a picture of?

19 A Louis Sanders.

20 Q Did he hesitate in any way in identifying that
21 photograph?

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

23 Q And when he picked number 3, what did he say number 3
24 did?

25 A He said that number 3 at that time was the person,

1 the third person that was in the car with them on the
2 night of the incident. Justin would implicate Mr.
3 Sanders as the person who shot Israel Cannon on
4 Westbridge Road.

5 Q Okay. And then after that did you have an
6 opportunity to get a written statement from
7 Mr. Justin Green that evening?

8 A We did.

9 Q Okay. And did he cooperate any further besides
10 giving the statement that evening?

11 A After we had finished the written statement with his
12 attorney representative present during that
13 interview, I asked Mr. Justin Green if he would show
14 me the route that they had taken that evening after
15 the incident. Ms. Franklin agreed to this, Mr. Green
16 showing me this route..

17 On our way back to Alvin S. Glenn Detention
18 Center Mr. Green would take me and drive me to the
19 Winslow Subdivision off Clemson Road stating that
20 this was the subdivision that he went to after the
21 incident. However, Mr. Green could not give me
22 specific location directions to the house that they
23 went to and he said that he could not remember the
24 specific turns within the subdivision.

25 MS. SHIPLEY: Okay. No further questions, Your

1 Honor.

2 CROSS EXAMINATION

3 **BY MR. O'NEIL**

4 **Q** Investigator McRae, just quickly.

5 **A** Yes, sir.

6 **Q** Justin Green gave you the name Louis Sanders after
7 you showed him the line-up?

8 **A** Without his statement present, I don't know. And I
9 really don't recall exactly when the name was given.

10 **Q** I think that's what you testified to on direct. Is
11 that --

12 **A** I'm sorry?

13 **Q** I think that's what you testified to on direct, that
14 he gave you the name --

15 **A** Yeah. He would pick Mr. Sanders and identify him as
16 the third subject in the car.

17 **Q** So you showed him the line-up and then he gave you
18 the name Louis Sanders?

19 **A** I don't know if he actually gave Louis Sanders or
20 not. I'm just reading my notes. From my
21 investigative follow-up, there was not a written
22 statement taken at the time of the photo line-up.

23 **Q** I guess let me do it this way then. You met with
24 Justin Green where?

25 **A** Here in the holding cell downstairs?

1 Q When you met with Justin Green, was the first thing
2 he said to you was the shooter was Louis Sanders?

3 A I don't know his exact words. I don't recall his
4 exact words. It wasn't put in written form and that
5 was over a year ago.

6 Q When did he know the name Louis Sanders?

7 A I don't know exactly when he knew his name.

8 Q When did he tell you the name Louis Sanders?

9 A If I could read his statement or have that provided
10 to me, I would probably be able to provide an answer.

11 Q Let me give you this, sir.

12 A The statement was taken at 15:58 hours. Question
13 number two on the statement is: "Who is the person
14 in picture number 3?" "Mr. Sanders."

15 Q And the identification was done at 8:44?

16 A That is correct.

17 Q On the same day?

18 A That's correct.

19 Q 8:44 in the a.m.?

20 A That's correct.

21 Q So he did the line-up before he gave the statement?

22 A That is correct.

23 Q He did the line-up before he gave the name Louis
24 Sanders?

25 A That's correct.

1 Q And he hadn't given you a prior physical description
2 of the individual involved, did he?

3 A Justin Green did not talk with law enforcement. Upon
4 his arrest he immediately invoked his Sixth Amendment
5 right.

6 Q And you said the line-up you showed him was in black
7 and white?

8 A I'm sorry?

9 Q The line-up you showed him was in black and white?

10 A Black and white, gray scale. Yes, sir.

11 MR. O'NEIL: No further questions, Your Honor.

12 THE COURT: Anything further?

13 MS. SHIPLEY: No, sir, Your Honor.

14 THE COURT: Come down. Thank you very much.

15 WITNESS: Thank you, Your Honor.

16 THE COURT: Anything further?

17 MS. SHIPLEY: No, sir.

18 THE COURT: Anything from the defendant?

19 MR. O'NEIL: Yes, Your Honor. I would move to
20 suppress this out-of-court identification and
21 in-court identification based on the fact that it's
22 so unduly suggestive as to provide Mr. Sanders --

23 THE COURT: Let me ask you first, any witnesses?

24 MR. O'NEIL: No, sir.

25 THE COURT: Go ahead.

1 **MR. O'NEIL:** It violates his Fourteenth
2 Amendment right and his Fourth Amendment right to due
3 process, Your Honor. Your Honor, I think as Your
4 Honor is probably full aware, there is two hurdles to
5 get over in the Neil v. Biggers analysis.

6 First is whether or not the law enforcement did
7 anything that was unduly suggestive, Your Honor. I
8 think in this case we actually have action by law
9 enforcement that makes this unduly suggestive, Your
10 Honor. I think what makes it unduly suggestive is
11 that they show Mr. Justin Green a line-up with a
12 picture of Mr. Louis Sanders that was the same
13 picture that was Mr. Justin Green is seen in in the
14 media, Your Honor. I think that makes this line-up
15 unduly suggestive. He had never seen Mr. Sanders
16 before, Your Honor. I think that leads us to the
17 second prong.

18 **THE COURT:** Let me ask you. I mean, that's not
19 -- the picture that appeared in the press is not
20 the -- well, maybe it was; I don't know -- is not
21 police action.

22 **MR. O'NEIL:** Your Honor, I will ask Your Honor
23 to reopen the testimony. I can ask the investigator.
24 I'm pretty sure that law enforcement provides the
25 picture to the media.

1 **THE COURT:** The same picture?

2 **MR. O'NEIL:** Yes, Your Honor.

3 **THE COURT:** Come back up, Mr. McRae.

4 **MS. SHIPLEY:** Your Honor, just so I may --

5 **THE COURT:** Unless you want to stipulate.

6 **MS. SHIPLEY:** The media has access to the jail
7 website and they pull pictures of suspects left and
8 right and put them on the news.

9 **THE COURT:** That's not the question. I'm going
10 to allow him to ask. Officer McRae, if you'll just
11 come back up here.

12 CROSS EXAMINATION

13 **BY MR. O'NEIL**

14 **Q** Briefly, Officer McRae.

15 **A** Yes, sir.

16 **Q** Do you know who is responsible for providing the
17 pictures to the media?

18 **A** Who is responsible for providing pictures to the
19 media?

20 **Q** Yes, sir.

21 **A** Our public information officer would make a release.
22 I would have no idea if they provide the pictures or
23 not. Go ahead. That's it.

24 **Q** So you don't know. But you do know you have a public
25 relations office at the Sheriff's Office?

1 **A** That's correct.

2 **Q** And they coordinate with the media?

3 **A** Yes, sir.

4 **Q** And they provide the media with press releases?

5 **A** That is correct.

6 **MR. O'NEIL:** Beg the Court's indulgence. No
7 further questions, Your Honor.

8 **THE COURT:** All right. Do you want to -- you
9 can come down.

10 **MS. SHIPLEY:** May I ask him a follow-up
11 question, Your Honor?

12 **THE COURT:** Oh, I'm sorry. Go ahead.

13 REDIRECT EXAMINATION

14 **BY MS. SHIPLEY**

15 **Q** Did you ever do a BOLO for the arrest of Louis
16 Sanders in this case?

17 **A** No.

18 **Q** And why is that?

19 **A** We did not want to release his identity to the media
20 immediately once the murder warrant was obtained. We
21 wanted the opportunity to seek him out ourselves.

22 **Q** So you didn't want to tip him off he was identified?

23 **A** That's correct. We didn't want to tip him off that
24 he was wanted.

25 **Q** And so if there was any photos of him released in the

1 media, are you aware of any action your Sheriff's
2 Department took in releasing that information?

3 A No, ma'am.

4 Q And isn't it true that anyone can get on the Alvin S.
5 Glenn Detention Center website and pull a photograph
6 of inmates?

7 A They can.

8 Q By simply entering a name?

9 A Yes, ma'am.

10 Q And I'm going to show you two releases that were in
11 your case file.

12 A Yes, ma'am.

13 Q What are those two releases in your case file
14 pertaining to? Whose arrest?

15 A The first one dated June 4th, 2007 at 15:36 which
16 would be 3:36 p.m., this pertains to the release --
17 this pertains to the arrest of Garry Bernard Green
18 and Justin Chadwick Green.

19 Q Any mention of Louis Sanders in that release?

20 A No.

21 Q Okay. What about the -- and that's the one that your
22 department sends out to all the media outlets?

23 A This is the one that Lieutenant Kown would send to
24 all of our media, to the media outlets.

25 Q The other news release, which channel was that from?

1 **A** This was from the WLTX website.

2 **Q** Okay. And what is that in reference to?

3 **A** This is also in reference to Garry and Justin's
4 arrest.

5 **Q** Okay. So those are the only ones that you're aware
6 of where your office actively sent information to the
7 media about arrests in this case?

8 **A** These are, yes, ma'am.

9 **MS. SHIPLEY:** Okay. That's all, Your Honor.

10 **MR. O'NEIL:** I apologize, Your Honor. Just
11 briefly.

12 **THE COURT:** Go ahead.

13 RE CROSS EXAMINATION

14 **BY MR. O'NEIL**

15 **Q** And did you ask Justin Green before you showed him
16 the line-up whether or not he had seen any reports of
17 Louis Sanders on the news?

18 **A** No, I did not.

19 **Q** And had you seen any media reports of Louis Sanders
20 on the news? His arrest?

21 **A** I am sure I -- yes. Yes.

22 **MR. O'NEIL:** No further questions, Your Honor.

23 **THE COURT:** Okay. All right. Now you can come
24 down.

25 **WITNESS:** Thank you, Your Honor.

1 **THE COURT:** All right. You may continue, Mr.
2 O'Neil.

3 **MR. O'NEIL:** Your Honor, I still maintain that
4 the line-up is unduly suggestive. Whether it was
5 actually the affirmative action of the police by
6 placing the same picture in the line-up that they had
7 given the media, even if they didn't give it to the
8 media, Your Honor, I think the police were negligent
9 for not checking to see whether or not Justin Green
10 had watched the media when I think Officer McRae was
11 aware that Louis Sanders' picture was on the media.
12 Your Honor, it is unduly suggestive by showing him
13 that very same photo that he had seen on the media,
14 Your Honor.

15 Your Honor, when we get to the second prong, it
16 relates to the five factors showing whether or not
17 it's still nonetheless reliable. I think the first
18 factor is the opportunity of the witness to view the
19 criminal at the time of the crime.

20 Your Honor, I think really, Your Honor, I think
21 we have three different kinds of Biggers
22 identifications at this point. You have an ID that's
23 at the pub, an ID in the car, maybe even before, Your
24 Honor, and an ID at the cul-de-sac on Westbridge and
25 an ID in Winslow, your Honor. I think he had varying

1 degrees of opportunity to see Mr. Sanders in all of
2 four of those locations.

3 And I'll begin I guess in the pub. I think he
4 testified that the pub was -- that he has been
5 drinking, he had a few beers and a few mixed drinks,
6 that he had been drinking, it was dark in the club,
7 had never seen Mr. Sanders before, and that he only
8 talked to him briefly inside the club, Your Honor.
9 While in the car I think he testified that he was --

10 **THE COURT:** Wait a minute. Wasn't that the same
11 testimony from a prior witness who identified him?
12 Isn't that the same sort of --

13 **MR. O'NEIL:** Well, I think she said that she had
14 been with Mr. Sanders for at least about 15 minutes
15 in the club, that he was constantly in contact with
16 her in the club and that he was I think two feet away
17 from her. He actually on direct changes his from two
18 feet away to at least five feet away, Your Honor, as
19 opposed to I think Ms. Bowers in her identification,
20 Your Honor. So I guess -- and I guess I'll stick
21 within the club in regard to all the five factors,
22 Your Honor.

23 **THE COURT:** Go ahead.

24 **MR. O'NEIL:** Two, witness' degree of attention.
25 I asked Mr. Justin Green was there anything

1 spectacular that happened inside the club to make him
2 pay any closer attention. He said nothing out of the
3 ordinary happened. There was no prior description.
4 And I think it's the State's burden in this case,
5 Your Honor. So there's no action of any prior
6 witness description, and there has been no testimony
7 of the level of certainty demonstrated at the time of
8 the confrontation, Your Honor.

9 Then the last factor of course is the time
10 between the crime and the confrontation. I think
11 that was at least 15 days, Your Honor. I think this
12 event happened on June 3rd and he didn't identify Mr.
13 Sanders until June 18th. So I would ask you to
14 suppress that out-of-court identification as it
15 relates to the pub and then of course any in-court
16 information based on that, Your Honor.

17 For the car, Your Honor, I would say of course I
18 think he testified he really didn't have any
19 opportunity view the witness inside the car, Your
20 Honor. He was driving I think. His testimony is
21 that when he was the car his attention was always
22 focused on the road and he didn't see Mr. Sanders in
23 the back seat. Of course he may be able to testify
24 that he may have seen Mr. Sanders get into the car.
25 So that would be a moot point at this time, Your

1 Honor.

2 But specifically when it relates to the
3 cul-de-sac at Westbridge, Your Honor, I think his
4 testimony at that point is that he saw Mr. Sanders
5 from even a greater distance at that point and that
6 it was dark. I think it had just started misting.
7 It may not have been raining at that point, Your
8 Honor. It was of course early in the morning as
9 opposed to late at night. He had also still been
10 drinking at this point, Your Honor, still did not
11 know Mr. Sanders, only met him that particular night.

12 And what's I think important about that, Your
13 Honor, is that he was actually in the car, and there
14 was no testimony as opposed to where Mr. Sanders came
15 up. There has been testimony that Justin Green was
16 in the car and a larger vehicle was actually parked
17 behind him and out to the left. That would have been
18 obstructing his view and his opportunity to see Mr.
19 Sanders, Your Honor.

20 So I would base that on my other previous
21 motions, Your Honor, and ask that you suppress any
22 identification at the cul-de-sac.

23 **THE COURT:** All right.

24 **MR. O'NEIL:** And the same obviously would be for
25 the Winslow Subdivision, Your Honor. I think he said

1 he only saw Mr. Sanders at that point for about a
2 minute or so. And the same facts about it being dark
3 and those other factors that I addressed earlier I
4 think apply here at the same time.

5 **THE COURT:** All right. What's the State's
6 position?

7 **MS. SHIPLEY:** Your Honor, under the five
8 factors, first opportunity to view the suspect, Mr.
9 Green testified that there was at least four
10 occasions. I believe that Mr. O'Neil agrees with
11 that.

12 Number one was in the nightclub where he sat
13 two -- well, I thought it looked more like five feet,
14 but he said it was two feet; and that the lighting
15 conditions in a nightclub are typically dark, but he
16 had no problem seeing his face, that he sat at the
17 same time with him for about 15 to 20 minutes and
18 that his brother introduced him as Scooter.

19 He then recalls seeing him in the vehicle, but
20 obviously he's driving. And, Your Honor, he also saw
21 him in the parking lot. But in the vehicle he is not
22 looking at him because clearly he's driving. But he
23 let's him out at the corner of Woodbridge and
24 Charleswood and had the opportunity to view him
25 again. He says that the same guy that he was

1 introduced to inside the pub had the same clothes on,
2 was in the car with him and then dropped off with his
3 brother.

4 And then eventually he sees him again in the
5 cul-de-sac. And I stopped over here. He said I was
6 a little further -- too close from where Mr. Sanders
7 was standing from him in the cul-de-sac. But again,
8 he was able to testify that Sanders was wearing the
9 same clothing as the man he was introduced to, as the
10 same person that he was introduced to in the club.

11 He also testified that all he had to do was turn
12 his head to the left to see Mr. Sanders, that nothing
13 was obstructing his view. Because the Tahoe was
14 behind him, although the right front fender of the
15 Tahoe was hitting the left rear fender of his car, he
16 still was able to view the victim and Mr. Sanders in
17 the cul-de-sac. Also, Your Honor, he just witnessed
18 a murder, so his degree of attention is probably
19 pretty heightened.

20 He never was able to give a description prior to
21 the line-up because he invoked his Sixth Amendment
22 right. But he was extremely certain, according to
23 McRae's testimony, when he identified the perpetrator
24 in the line-up. He did not hesitate, and that would
25 be number four.

1 Number five, there was 15 days between the time
2 he met Mr. Sanders and the time he saw him in a
3 photographic line-up. I specifically asked him the
4 fact that he had seen a photo of Mr. Sanders on the
5 news one time whether that affected his ability to
6 identify the defendant in the photographic line-up.
7 And I asked him, why did you identify number 3 in the
8 photographic line-up, and he said because that was
9 the guy that I was introduced to by my brother named
10 Scooter.

11 And so for those reasons, Your Honor, the five
12 factors under Neil v. Biggers have been satisfied,
13 and the identification, all of this goes to the
14 weight, not its admissibility. It would be
15 ultimately up to the jury to decide whether or not
16 the fact that Mr. Green saw a photo of Mr. Sanders on
17 the evening or sometime after his arrest June the
18 12th whether that impacted or had any influence on
19 his ability to identify him.

20 And also, Your Honor, there is no evidence of
21 any government action in putting this defendant's
22 photograph in the media after his arrest. I believe
23 it's settled that you can get on a website and pull a
24 photograph on your own. Thanks.

25 **THE COURT:** All right.

1 **MR. O'NEIL:** Just one thing. Two things
2 actually, Your Honor.

3 **THE COURT:** Sure.

4 **MR. O'NEIL:** One thing the witness, Mr. Justin
5 Green, said he didn't remember what kind of clothes
6 Mr. Sanders had on in that case, Your Honor.

7 **THE COURT:** Well, he said he had the same
8 clothes on.

9 **MR. O'NEIL:** Yes. I don't speak to that. I
10 actually don't remember him saying that. But if he
11 said -- I can't controvert that. But I know for
12 certain he said he couldn't remember what clothes he
13 had on at that point, Your Honor.

14 **THE COURT:** I agree with you.

15 **MR. O'NEIL:** And, Your Honor, I just went to
16 make it clear to Your Honor is aware that he also
17 said that this was the same picture that was in the
18 line-up as the picture he saw on the news, Your
19 Honor. He didn't know Louis Sanders' name prior to
20 giving the line-up.

21 **THE COURT:** I mean, if I have to look at just
22 the Neil v. Biggers factors, I think this
23 identification is reliable. But I will tell you what
24 I'll do. I mean, I'll withhold final ruling on it
25 until in the morning if you can find some case law.

1 I mean, I'm a little concerned about the media
2 coverage and the fact that a witness sees a
3 photograph on television, then walks in the police
4 station and said, yeah, that's the guy. I mean, it
5 may not be government action and it may not be
6 creating an unduly suggestive atmosphere, but you
7 can't ignore the fact that there is some suggestion
8 from somewhere.

9 I mean, here is the defendant being arrested.
10 His picture is on television and a witness shows up
11 and says, oh, yeah, that's the guy, that is the guy I
12 saw. Well, that's clearly a suggestive -- but
13 whether it's police action, I mean, I'm not -- it may
14 or may not be police action, and it may -- I mean,
15 the cases that deal with out-of-court identifications
16 usually deal with some suggestive procedure that is
17 suggested by law enforcement. This apparently is
18 not. It's just an interesting point that you've
19 raised. And if we can find some -- if you can get
20 Mr. Secor to get on that computer of his, I'll be
21 glad to take a look at it.

22 But I think if I just had to go on the Neil v.
23 Biggers factors alone, and there's continuous contact
24 from the time of Mr. Green's meeting in the club,
25 he's basically almost with the defendant the entire