

VOLUME TWO OF FOUR

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

J. C. Buddy Nicholson, Jr., Circuit Court Judge

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DEC 29 2015

S.C. Supreme Court

DAVID ROCQUEMORE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001213

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1 (State's Exhibit No. 58, .45 caliber
2 shell casing live round, is marked for
3 identification.)

4 BY MR. DURANT:

5 Q. Investigator Owen, I hand you what's now been
6 marked as state's exhibit number 57, ask if you can
7 identify that item.

8 A. Yes. It is the .45 caliber shell casing that
9 was found in the yard that was indicated with placard
10 number 13.

11 Q. And that was collected by you?

12 A. Yes, it was.

13 Q. And do your notes reflect what the -- what the
14 make and caliber of that shell casing is?

15 A. Yes, sir. It's a Winchester round.

16 Q. .45 caliber round?

17 A. .45 caliber, yes.

18 Q. And with regard to state's exhibit number 58,
19 I'd ask you to take a look at that and see if you
20 recognize that.

21 A. It's the Winchester .45 auto hollow-point
22 round that was found along with the shell casing with
23 number 13, as well as two pennies, two dimes, and a
24 nickel.

25 Q. And is the make and caliber of that shell --

1 live round and shell casing consistent with those
2 that you found in the weapon that's previously been
3 marked as state's exhibit 49?

4 A. Yes, it is.

5 Q. Now, with regard to state's exhibit 49, the
6 pistol itself, and the shell casing which -- you
7 know, I don't know, what's the number on the shell
8 casing?

9 A. 57.

10 Q. Do you know if those items were subsequently
11 sent to SLED?

12 A. Yes, they were.

13 Q. And were they sent to SLED in conjunction with
14 some other evidence that was collected by Brian Hodge
15 at the autopsy?

16 A. Yes, they were.

17 Q. And what items of evidence were collected at
18 autopsy in this case?

19 A. The items from autopsy that were collected
20 were the victim's clothing.

21 Q. And how about from -- in terms of the firearm
22 and firearms identification, what else was collected
23 at autopsy? Were any projectiles collected?

24 A. Yeah, yes. Yes, two projectiles were
25 collected.

1 Q. And to your knowledge, those items later went
2 to SLED?

3 A. Yes, that's correct.

4 Q. Do you recall there being a green Dodge
5 Stratus inside the roped-off crime scene?

6 A. Yes.

7 Q. Was that vehicle searched that evening?

8 A. That morning, yes, it was.

9 Q. That morning, excuse me.

10 A. Yes, sir.

11 Q. Any results from the search of that vehicle?

12 A. None, being no evidence was found in the
13 vehicle.

14 MR. DURANT: May the witness come down,
15 Your Honor?

16 THE COURT: Yes, sir.

17 BY MR. DURANT:

18 Q. Probably can do it from there.

19 A. (The witness leaves the witness stand and
20 stands in front of jury-box.)

21 Q. If you would, you can probably just -- yeah, I
22 think you can use that and probably use this one,
23 too. And if you're over here, I'm going to need you
24 to back up a little bit further so you're not in
25 front of the jury.

1 A. Oh, okay. Sorry.

2 Q. It's going to come up over there. First of
3 all, I'm just going to go -- were photographs taken
4 at the crime scene?

5 A. Yes, they were.

6 Q. And did you do the still photography yourself?

7 A. Yes, I did.

8 Q. I'm just going to pick a few pictures. If you
9 would, I just want to have you relate to the jury
10 what they're pictures of. I'm starting with state's
11 exhibit number two.

12 MR. DURANT: Could we dim the lights just
13 a little bit? Thank you.

14 BY MR. DURANT:

15 Q. Could you tell the jury what that is?

16 A. It's Deputy Ford's patrol cruiser.

17 Q. Okay.

18 A. The front.

19 Q. And state's exhibit number three?

20 A. That is the rear of Deputy Ford's cruiser.

21 Q. State's exhibit number four?

22 A. The .45 -- Highpoint .45 caliber in the trunk
23 of Deputy Ford's cruiser.

24 Q. State's exhibit number five?

25 A. A close-up of the round that was jammed in the

1 chamber.

2 Q. And that is the round that was previously
3 introduced into evidence?

4 A. Yes, it is.

5 Q. The Winchester .45; is that correct?

6 A. Yes.

7 Q. State's exhibit number six?

8 A. The round that was ejected from -- ejected
9 from the handgun, this handgun.

10 Q. Seven?

11 A. A close-up of the round. That's a .45
12 caliber.

13 Q. Eight?

14 A. The magazine that was removed from the gun in
15 the trunk of Deputy Ford's cruiser.

16 Q. Nine?

17 A. The defendant, Mr. Rocquemoire.

18 Q. Ten?

19 A. Indicating the address of [REDACTED] [REDACTED]

20 Q. Eleven?

21 MR. DURANT: Can we kill the lights some
22 more? Hard to see these pictures.

23 THE WITNESS: The bottom left is Deputy
24 Ford's cruiser.

25 This area in here was where the victim

1 was removed from.

2 That's the white Ford Landmark

3 Construction truck in the background.

4 Q. What's the significance of that truck which is
5 state's exhibit number 12?

6 A. When the handgun was retrieved from the
7 defendant, it was placed on the toolbox of this
8 truck.

9 Q. Number 13?

10 A. The early morning hours, daylight, showing
11 9752 and the front yard, the Landmark Construction
12 vehicle.

13 Q. Fourteen? Excuse me, that may be -- that's
14 14. That's a picture of the same thing?

15 A. Yes, it is.

16 Q. Fifteen?

17 A. A close-up of the depressed area of the ditch
18 line. That's some paraphernalia from EMS, as well, I
19 believe.

20 Q. Sixteen?

21 A. [REDACTED] is just off to your right.
22 That's Deputy Ford's cruiser, the green Dodge
23 Stratus, and behind that is a white Yukon, GMC Yukon.

24 THE COURT REPORTER: Please repeat that.
25 I could not hear you.

1 THE COURT: Could you repeat that,
2 please? She could not hear you.

3 THE WITNESS: In this area is a '97 green
4 Dodge Stratus, and behind that is a white GMC Yukon.
5 BY MR. DURANT:

6 Q. That's taken -- you're describing from outside
7 the crime scene tape?

8 A. Yes, sir.

9 Q. State's exhibit number 17, I believe?

10 A. It's a close-up of the Dodge Stratus.

11 Q. Eighteen?

12 A. Showing the white GMC Yukon, the Stratus in
13 front of it.

14 Q. And did you determine who that white Yukon
15 later belonged to?

16 A. Yes, sir. That was Defendant David
17 Rocquemore's vehicle.

18 Q. State's exhibit 19?

19 A. A close-up of the green Stratus.

20 Q. The gray truck at the end there, on the other
21 side of the crime scene tape, was that vehicle ever
22 searched?

23 A. No, sir, it was not.

24 Q. Why wasn't it searched?

25 A. It was outside of the crime scene area, and at

1 the time we had no knowledge of it being relevant to
2 anybody at the scene.

3 Q. Twenty?

4 A. The white GMC Yukon.

5 Q. Twenty-one?

6 A. The back of the Yukon.

7 Q. Twenty-two?

8 A. Showing the ditch line where the victim was.

9 Q. What are all those numbers there?

10 A. These numbers are our evidence markers
11 indicating possible evidence or areas of interest
12 that we need to check.

13 Q. Twenty-three?

14 A. Standing on the roadside, looking back down
15 into the ditch, with the same placard still in view.

16 Q. Twenty-four?

17 A. Standing on the opposite side of the driveway,
18 looking back, still indicating the same numbers.

19 Q. Then I'm going to show you some of these
20 numbers and ask you what they are. State's exhibit
21 -- placard number four, this is state's exhibit
22 number 25, I believe.

23 A. Placard number four is marking a pair of
24 sunglasses.

25 Q. State's exhibit number 26 depicting placard

1 number six?

2 A. Number six is marking a white -- white shirt.

3 If I can refer to my notes?

4 Q. Sure. You can stay up there if you want to.

5 A. Okay. Number six is a white -- white tank top
6 T-shirt.

7 Q. State's exhibit number 27?

8 A. It's a clump of mud that was in the front yard
9 of [REDACTED]

10 Q. State's exhibit number 28?

11 A. It's a white tennis shoe, evidence placard
12 number nine.

13 Q. State's exhibit number 29?

14 A. Evidence placards number 10, 11, and 13.
15 Number 10 was a white metal ring.

16 Q. Let me go up to number ten. I have a close-up
17 of that. That's state's exhibit number 30.

18 A. It's the white metal ring.

19 Q. State's exhibit number 31?

20 A. It's a white metal watch.

21 Q. State's exhibit number 32?

22 A. Placard number 13, the live .45 caliber round,
23 the .45 caliber spent shell casing, and the loose
24 change.

25 Q. And that's the live round shell casing

1 previously introduced into evidence; is that correct?

2 A. That is correct.

3 Q. And, finally, state's exhibit number 33?

4 A. Evidence placard number 12, a brown sandal.

5 Q. Okay. Now -- you may resume your seat, sir.

6 A. (The witness returns to the witness stand.)

7 Q. Did you -- was a crime scene diagram prepared
8 at the scene?

9 A. Yes, it was.

10 Q. And how did you go about preparing a crime
11 scene diagram at the scene?

12 A. Diagrams are prepared by drawing the street
13 and indicating approximate locations on the sheet
14 with the evidence placards and then indicating
15 measurements.

16 Q. And measurements were taken?

17 A. Measurements were taken.

18 Q. From where?

19 A. On either side of the scene, there's two SCE&G
20 utility poles that are identified by numbers, from
21 those two fixed points to the evidence, to
22 triangulate.

23 Q. At the request of my office, did you take the
24 items that you had documented on the crime scene
25 diagram and transfer them to an aerial photograph?

1 A. Yes, I did.

2 Q. And the aerial photograph would be of the
3 stretch of Berrywood between Mixedwood and Logwood;
4 is that correct?

5 A. That is correct.

6 MR. DURANT: Your Honor, at this time
7 we'd offer state's exhibit number 54, I believe
8 without objection.

9 THE COURT: Any objection?

10 MR. SAVAGE: No, sir.

11 THE COURT: Fifty-four is in evidence
12 without objection.

13 (State's Exhibit No. 54, previously
14 marked for identification, is received in evidence.)

15 BY MR. DURANT:

16 Q. And if you would -- you prepared a legend for
17 that, as well; is that correct?

18 A. Yes, I did.

19 MR. DURANT: And could we dim the lights
20 a little bit more?

21 BY MR. DURANT:

22 Q. And if you would, it looks like you have items
23 numbered 1 through 13 there. Could you just go
24 through those items and tell the jury what they are
25 and where they're located?

1 A. Berrywood Road -- or Berrywood Street. This
2 is Mixedwood.

3 Q. Obviously, that's [REDACTED] Mixedwood at the top?

4 A. Yes. And then [REDACTED] Item number
5 one which is a paper towel. Item two, a piece of a
6 paper towel.

7 Q. Did you determine whether those pieces of
8 paper towel had anything to do with this incident?

9 A. They were determined that they did not.

10 Q. They just happened to be within the crime
11 scene so you documented them?

12 A. That is correct.

13 Q. Right? Okay. Continue, please.

14 A. Item number three was the 2000 white-colored
15 GMC Yukon. Number four, the broken sunglasses.
16 Number five is another piece of paper towel.

17 Q. Okay. Once again, did you determine that that
18 piece of paper towel had anything to do with this?

19 A. We determined it did not.

20 Q. Continue, please. Number six?

21 A. Number six which is in the roadway was a white
22 tank top.

23 Q. That's the one we previously saw in the
24 photographs, correct?

25 A. That is correct.

1 Q. Number seven?

2 A. Number seven was the green Dodge Stratus.

3 Q. Number eight?

4 A. Number eight, back in the front yard of [REDACTED]
5 Berrywood was a clump of mud..

6 Q. Number nine?

7 A. Nine which was marked as the white tennis
8 shoe.

9 Q. Ten?

10 A. Ten was the metal -- yellow metal ring.

11 Q. Eleven?

12 A. Eleven was the white metal watch. Twelve
13 which was the brown sandal. Thirteen which were the
14 loose change, .45 caliber shell casing, .45 caliber
15 live round.

16 And we placed approximate location of the
17 white Ford. The Landmark Construction truck in the
18 front yard was not marked with an evidence number.

19 Q. And in placing these numbers on the aerial
20 photograph, are they pretty true to -- to where you
21 found them? How did y'all go about -- go about
22 placing numbers on this photograph? Did y'all
23 actually go out and measure?

24 A. Yes. We -- we took our measurements right in
25 the center by number five as well as the SCE&G

1 telephone poles. And just off to the left of the
2 screen, you'll see a shadow of the other telephone
3 pole. From those measurements, we triangulated all
4 13 pieces of evidence.

5 Q. Okay. And those measurements you took at the
6 scene, could you tell me and the jury what the
7 approximate distance is between the shell casing
8 marked as state's exhibit number 13 and the
9 defendant's vehicle marked as state -- or number 13
10 and state's -- the vehicle which is number 3?

11 A. Number 13 to number 3 is approximately 55
12 feet.

13 Q. Okay. Thank you.

14 MR. DURANT: You can kill it, please.
15 You can turn it off, please.

16 Court's indulgence.

17 (Mr. Durant and Mr. Savage confer.)

18 BY MR. DURANT:

19 Q. Investigator Owen, I noticed you came in with
20 a box today.

21 A. Yes, I did.

22 Q. Would you please open that box, and if you
23 would, tell us what it is?

24 A. Do you have a letter opener? I'll use my key.
25 This is the victim's clothing that he was wearing the

1 night of the incident.

2 Q. The victim being Herschel Demar Denson; is
3 that correct?

4 A. That is correct.

5 Q. And do you know who collected those clothes
6 and when?

7 A. Yes, sir. Investigator Hodge collected them
8 at MUSC after the completion of the autopsy.

9 Q. And that was on August 14th of 2005?

10 A. Yes, it was.

11 Q. And do you know what Investigator Hodge did
12 with those clothes after returning them from the
13 autopsy?

14 A. Yes. He hung them in a secured drying area, a
15 drying cabinet, so that they could dry out.

16 Q. And where is that secured drying -- drying
17 cabinet located?

18 A. It's within our evidence room at the sheriff's
19 office.

20 Q. And that is basically a locked compound with a
21 chain link fence around it and electronic locks and
22 all that stuff, correct?

23 A. That is correct.

24 Q. Who removed those clothes, those clothes from
25 the drying cabinet?

1 A. I did.

2 Q. And once you removed those clothes from the
3 drying cabinet, what did you do with them?

4 A. They were -- they were locked into evidence
5 and secured inside a storage location.

6 Q. And how did you package -- first of all, what
7 does the clothing consist of or the items consist of?

8 A. The items consist of two shirts, a pair of
9 boxers, and a brown sandal.

10 Q. Okay. And is the brown -- is the brown sandal
11 in there consistent with the brown sandal we saw
12 marked as placard number 12 for the state?

13 A. Yes, it is.

14 Q. Now, with regard to that clothing, how did you
15 -- how did you package it, seal it, label it,
16 whatever, when you removed it from the drying room?

17 A. When I removed it from the drying room, I
18 folded each piece individually and placed it into a
19 paper bag which was labeled as the victim's clothing.

20 Q. And ---

21 A. The bag, the bag was ---

22 Q. --- what did you do with that bag?

23 A. The bag was sealed up and placed into this
24 box.

25 Q. And what was done with the sealed bag?

1 A. Sir?

2 Q. What was done with the sealed bag?

3 A. The sealed bag was put into this box and
4 sealed.

5 Q. And was that also put into this big box here?

6 A. That's correct. It was placed into that box.

7 Q. Together with all the other evidence in the
8 case, correct?

9 A. Correct.

10 Q. That box was sealed up?

11 A. That box was sealed up.

12 Q. And it was placed where?

13 A. In our -- in the secured evidence compound in
14 the -- its assigned bin.

15 Q. Now, moving ahead, are you aware that on June
16 21st of this year that evidence was signed out to
17 Investigator Matt Casey with the Solicitor's Office;
18 is that correct?

19 A. That is correct.

20 Q. And do you recall encountering that evidence
21 again on June 26th of 2007? And I'm speaking
22 specifically of those items there.

23 A. Yes, sir, that is correct.

24 Q. And where was that at?

25 A. That was at the Solicitor's Office conference

1 room.

2 Q. And on that occasion was the big box opened
3 and the bag opened and was the shirt removed?

4 A. Yes. It was ---

5 Q. By whom?

6 A. --- removed.

7 Q. By whom?

8 A. Investigator Casey and myself.

9 Q. Okay. And after that was done, what was done
10 with the shirt?

11 A. The shirt was then folded back up and placed
12 back into the bag.

13 Q. And given to whom?

14 A. Given to me.

15 Q. And where did you take the shirt?

16 A. I secured it in the -- I took it back to the
17 evidence compound. The next day I took --
18 transported it to SLED in Columbia.

19 Q. And who did you give it to at SLED in
20 Columbia?

21 A. Agent Joe Powell.

22 Q. And he works with the trace department at SLED
23 in Columbia?

24 A. Yes, that is correct.

25 Q. And that was on the morning of June 27th of

1 this year?

2 A. Yes, that is correct.

3 Q. Did you hand it then directly to him?

4 A. I handed it directly to Mr. Powell.

5 Q. You're aware that GSR kits were obtained from
6 both the defendant and the victim in this case; is
7 that correct?

8 A. Yes, that is correct.

9 Q. And did you secure these into evidence, as
10 well?

11 A. Yes, I did.

12 Q. Do you know if they went off to SLED for
13 examination, as well?

14 A. Yes.

15 (Mr. Durant and Mr. Savage confer.)

16 MR. DURANT: Those are 51 and 52.

17 BY MR. DURANT:

18 Q. I hand you what's previously been marked as 51
19 and 52, I believe, into evidence, ask if you
20 recognize those photographs.

21 A. Yes, I do.

22 Q. And it's very colorful. What is it?

23 A. They are pictures from the scene taken on
24 August 14th. It's the roadway, there's skid marks
25 left by an unknown vehicle, and we placed colored --

1 colored evidence cones to single out each tire mark.

2 Q. Did you determine later on whether or not
3 those had anything to do with what went on there that
4 night?

5 A. Our office received information later on that
6 they were a neighbor's skid -- or the tire marks were
7 left by a neighbor's vehicle a day and/or a week
8 prior to the incident.

9 MR. DURANT: Court's indulgence.

10 Are 57 and 58 in, Madam Court Reporter?

11 At this point I would move to introduce
12 state's 57 and 58.

13 MR. SAVAGE: That's subject to whoever
14 the neighbor was that claimed that those ---

15 MR. DURANT: No, no, no, those aren't the
16 pictures. I believe those are already in. 57 and 58
17 were the...

18 MR. SAVAGE: 57?

19 MR. DURANT: 57 was the live round and
20 the shell casing.

21 MR. SAVAGE: I don't have any objection.

22 THE COURT: No objection to 57. It's in
23 evidence without objection.

24 (State's Exhibit No. 57, previously
25 marked for identification, is received in evidence.)

1 THE COURT: How about 58?

2 MR. SAVAGE: (Shakes head from side to
3 side.)

4 MR. DURANT: 58 is the -- is the live
5 round that was found with the shell casing.

6 THE COURT: 58 in evidence without
7 objection.

8 (State's Exhibit No. 58, previously
9 marked for identification, is received in evidence.)

10 MR. DURANT: Court's indulgence.

11 Would you please answer any questions
12 Mr. Savage may have.

13 MR. SAVAGE: Please the Court.

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. SAVAGE:

17 Q. Sir, do you have some notes that you used to
18 testify from today?

19 A. Yes, I do.

20 Q. May I take a look at those, please?

21 MR. SAVAGE: May I approach, Your Honor?

22 (The witness tenders documents to
23 Mr. Savage.)

24 MR. SAVAGE: Your Honor, may I have some
25 time to review this?

1 THE COURT: Yes, sir.

2 (Mr. Savage reviews documents.)

3 MR. SAVAGE: May I reserve the right to
4 review this following so I don't delay the trial?

5 THE COURT: Okay.

6 MR. SAVAGE: Thank you, sir.

7 BY MR. SAVAGE:

8 Q. Detective Owen, I noticed that you are now
9 wearing latex gloves?

10 A. That is correct.

11 Q. What is the purpose of that, sir?

12 A. In case I needed to pull out the shirt, the
13 victim's clothing that are stained with blood.

14 Q. And the idea behind this is to preserve
15 evidence, or is it to protect you? Which is it?

16 A. It's a precautionary measure that we always
17 take to protect us and/or to protect the evidence
18 from cross-contamination.

19 Q. And to give a sense of how the law enforcement
20 community works, your role, that is, the crime scene
21 role, is to preserve and document what was going on
22 at the time of an alleged crime, correct?

23 A. To preserve and document the evidence located
24 at the scene, that's correct.

25 Q. And you don't make, you being Detective Owen

1 or Investigator Owen, Inspector Owens -- do the
2 detectives tell you what to do, or do you do that on
3 your own?

4 A. As in relation to what?

5 Q. Evidence.

6 A. At the scene, we collect evidence that we may
7 think is feasible to the incident or to the case. We
8 also confer with the detectives on the scene to see
9 if they have any information, special evidence that
10 we might need to look for. And both of us, the
11 detectives and the crime scene investigators, are
12 kept informed of what's going on.

13 Q. All right. Earlier you had said that you only
14 inspected those items within the crime scene. How is
15 the crime scene defined?

16 A. The initial crime scene was roped off by the
17 first responding deputies, one being Deputy Ford,
18 which was the immediate area around where the
19 defendant and the suspect -- the defendant and the
20 victim were located.

21 Later, through our investigation, to include
22 the -- these tire impressions on the roadway, we
23 expanded our crime scene back on Berrywood from
24 Logwood -- Logwood to Mixedwood.

25 MR. SAVAGE: Would you mind putting that

1 photograph, the last one that had the numbers on it,
2 on the overhead?

3 MR. DURANT: I can't remember the exhibit
4 number.

5 THE WITNESS: That was the last one I
6 generated. State's exhibit 54.

7 MR. DURANT: Thirty-four?

8 THE WITNESS: Fifty-four.

9 MR. DURANT: Fifty-four, okay. Sorry.

10 BY MR. SAVAGE:

11 Q. Do you still have that little laser?

12 A. Yes, sir, I do.

13 MR. DURANT: You want it on the screen?

14 MR. SAVAGE: Yes, please.

15 BY MR. SAVAGE:

16 Q. Now, for the benefit of the jury, would you
17 show them -- I don't see on here a crime scene. Am I
18 missing it?

19 A. This, this aerial photograph was taken about a
20 week or so later from the air.

21 Q. Okay.

22 A. Our -- our original crime scene ---

23 Q. Now, the question I asked is -- before we
24 start that, is the crime scene depicted on this
25 photograph?

1 A. The original crime scene?

2 Q. Any crime scene?

3 A. No. It was -- it was the crime scene on
4 August 14th.

5 Q. Is the crime scene depicted on this
6 photograph?

7 A. Yes.

8 Q. It is. And how was the crime scene originally
9 depicted?

10 A. I'm not sure I understand your question.

11 Q. You had indicated that Deputy Ford was the
12 first responder and closed off the crime scene?

13 A. Correct.

14 Q. Would you show the ladies and gentlemen of the
15 jury where that is on there? Is it depicted on there
16 or not?

17 A. It is not depicted on this photo, no.

18 Q. The expanded crime scene, was there -- was
19 there an expanded crime scene?

20 A. Yes, there was.

21 Q. And is it depicted on this photograph?

22 A. On this photograph, no.

23 Q. And this is the photograph that you made based
24 on the evidence that you found at the crime scene; is
25 that correct?

1 A. That is correct.

2 Q. And as we look at the crime scene, we see two
3 vehicles?

4 A. Correct.

5 Q. Did you place those vehicles on this
6 superimposed imagery?

7 A. Yes.

8 Q. So those vehicles got on this picture because
9 you manipulated some computer?

10 A. I did not manipulate a computer. It's
11 programs that we use for crime scene reconstruction.

12 Q. But it's make-believe. I mean, it's based on
13 fact, but you -- you inserted those vehicles there,
14 correct?

15 A. I inserted those vehicles in reference to the
16 information we gathered from the scene.

17 Q. All right. And where is the vehicle in which
18 the injured party, the deceased, traveled in?

19 A. (The witness points.) It's parked up here at
20 the corner of Mixedwood and Berrywood.

21 Q. And is that why you put that vehicle there,
22 because that was relevant to your crime scene?

23 A. Yes.

24 Q. It's in the photograph?

25 A. It's in the photograph now, yes.

1 Q. Even though Deputy Ford when he initially
2 reacted, he did not expand the crime scene?

3 A. To include that ---

4 Q. To include that vehicle?

5 A. To include that vehicle, no.

6 Q. And you expanded the crime scene. As we look
7 at the -- from the jurors' perspective, you expanded
8 the crime scene from left to right to include items
9 number one and items number two?

10 A. That is correct.

11 Q. And items number one and items number two were
12 outside, outside the crime scene as you viewed it on
13 August 13th and 14th?

14 A. Correct.

15 Q. And the paper towels?

16 A. Yes.

17 Q. Yet you photographed it?

18 A. Correct.

19 Q. You inspected it?

20 A. Correct.

21 Q. You collected it?

22 A. Correct.

23 Q. Now, tell us about the vehicle in which the
24 injured party, the deceased, arrived in. Did you
25 photograph that?

1 A. Specifically photograph that vehicle, no.

2 Q. Did you inspect it?

3 A. No.

4 Q. Did you look for a weapon?

5 A. In that vehicle, no.

6 Q. Did you look for any contraband?

7 A. In that vehicle, no.

8 Q. And the reason you didn't do that is because
9 it was outside the crime scene as defined by Deputy
10 Ford?

11 A. We had no information that that vehicle was
12 relevant. Had we received information that that
13 vehicle was the victim's or that the victim was
14 transported in to the incident location, we would
15 have enclosed into our crime scene.

16 Q. And what information did you have given to you
17 that evening that items number one and two were
18 relevant to your investigation, papers towels thrown
19 on the side of the road.

20 A. You have a shooting victim. They may have
21 been used to help him or...

22 Q. How about the beer bottles that were found
23 around the driveway? Were they relevant to your
24 investigation, the ones that were within the crime
25 scene that night?

1 A. As evidence of the shooting? No.

2 Q. Well, paper towels aren't evidence of a
3 shooting, are they?

4 A. Could be. They could be used to render aid to
5 the victim.

6 Q. Pieces of clumped mud are not evidence of a
7 shooting, are they?

8 A. Except that the altercation or the shooting
9 took place in a ditch with mud.

10 Q. Were there beer bottles immediately adjacent
11 to the driveway?

12 A. I cannot honestly ask that -- answer that
13 question. I cannot recall.

14 Q. Were there beer bottles between the car in
15 which the injured party, the deceased party, rode and
16 the driveway and the area in which the confrontation
17 took place?

18 A. I believe -- I recall one, yes.

19 Q. Did you photograph it?

20 A. Not specifically, no.

21 Q. Did you mark it with an evidence marker?

22 A. No.

23 Q. Did you take fingerprints from it?

24 A. No.

25 Q. Did you take DNA samples from it?

1 A. No.

2 Q. What is the -- 10, 11, and 13, what are those,
3 sir?

4 A. Just a moment, please. (The witness reviews
5 documents.) Ten was the yellow metal ring. Eleven
6 was a white metal watch. And what was the other
7 number, sir?

8 Q. The ones that you have here right together,
9 10, 11, and 13.

10 A. Ten was the ring, 11 was the watch, and 13 was
11 two dimes, two nickels -- or correction -- two dimes,
12 two pennies, a nickel, a .45 caliber shell casing,
13 and a live .45 caliber round.

14 Q. Certainly they're relevant to the crime scene?

15 A. Yes.

16 Q. Whose watch?

17 A. I don't know.

18 Q. Well, you didn't know then, but whose watch
19 was it as you know of today?

20 A. I still don't know whose watch it is, sir.

21 Q. Is it in your custody?

22 A. Yes, it is.

23 Q. Whose ring was it?

24 A. I do not know that.

25 Q. Now, I'm talking about today. I'm not talking

1 about August 13th. Whose ring and watch is it today?

2 A. I do not have that knowledge. I do not know
3 whose ring or whose watch it is today.

4 Q. That's pretty relevant as being in the crime
5 scene; is it not?

6 A. Being right there where the victim was shot,
7 yes.

8 Q. And, in fact, next to it was a bullet and a
9 cartridge?

10 A. Correct.

11 Q. Pretty relevant to the crime scene.

12 A. Correct.

13 Q. Tell the jury who you said the bullet and the
14 cartridge was from?

15 A. The defendant, Mr. Rocquemore.

16 Q. And that's important, correct?

17 A. Correct.

18 Q. Not based on anything you found or saw that
19 night but from what you heard from other people?

20 A. No. For the fact that the gun belonged to
21 Mr. Rocquemore. He was at the scene that night.

22 Q. Tell me when a weapon fires how it works.

23 A. Firing pin strikes the primer, the projectile
24 is sent down the barrel, and then the cartridge case
25 -- I mean, the shell casing is ejected from a

1 semiautomatic.

2 Q. And when it's ejected from a gun, a weapon
3 such as that, does it go out the side? the top? the
4 back? How does it leave the weapon?

5 A. It goes out the right side of the firearm.

6 Q. And what distance would it travel?

7 A. It depends on if it's close to something else.
8 If it's not close, I don't know the range. If it's
9 close to the ground, it's going to fall, it's going
10 to fall on the ground. If it's close to the wall,
11 it's going to hit a wall and drop down.

12 Q. Any walls around there?

13 A. No, sir.

14 Q. Any trees around there?

15 A. Not in that immediate area, no, sir.

16 Q. Any bushes around there?

17 A. No, sir.

18 Q. Wide open space? If I was standing in front
19 of the jury -- I wouldn't, I don't mean to at all --
20 but if the weapon was fired even in the air, the
21 cartridge would be ejected some distance?

22 A. To your right, yes.

23 Q. Unless it is blocked by something?

24 A. Correct.

25 Q. Correct?

1 A. Correct.

2 Q. Now, let's take a look at the close-up of 10,
3 11, and 13.

4 MR. SAVAGE: Do you have that photograph,
5 again, please?

6 BY MR. SAVAGE:

7 Q. Do you know what photograph it is? The
8 close-up?

9 A. No, sir.

10 Q. Well, on this picture, it looks like it's
11 spread out a little bit, correct? And that's, I
12 assume, because you couldn't superimpose the numbers
13 on -- one on top of each other?

14 A. That's correct.

15 Q. But the items were all clumped together?

16 A. Correct.

17 MR. SAVAGE: Now, let's look at that.

18 All right.

19 MR. DURANT: That one or the one before?

20 MR. SAVAGE: No, that one, too. The one
21 that you just had a moment ago. Thirteen.

22 MR. SAVAGE: Now, in 13 -- and I'm not
23 sure which exhibit this is. Do you know?

24 MR. DURANT: I don't know where they put
25 it.

1 MR. SAVAGE: The photograph that
2 represents the close-up picture of evidence marking
3 number 13.

4 MR. DURANT: That would be 32.

5 BY MR. SAVAGE:

6 Q. That would be exhibit number 32?

7 A. I'm not sure of the state's exhibit number. I
8 don't have it with me.

9 Q. But in any event, you're familiar with the
10 photograph?

11 A. Correct.

12 Q. And how far away would you say the live
13 cartridge is from the spent cartridge?

14 A. In this photograph, they're right by each
15 other.

16 Q. Give us the distance, please, because there's
17 no marking on there, but there is on the side.

18 A. Probably less than an eighth of an inch.

19 Q. And is the spent cartridge on top of change?

20 A. In this picture it shows that it is on top of
21 change.

22 Q. And your testimony earlier was that evidence
23 had not been moved before you photographed it?

24 A. This had been moved because it was buried in
25 the ground.

1 Q. Sir, that's not what I've asked you. I've
2 asked you whether your testimony earlier was that it
3 was photographed before it was moved?

4 A. It was photographed before it was collected.

5 Q. And I don't want to trick the jury, now. Is
6 there a difference between movement and collection?

7 A. Being that was buried in the mud and retrieved
8 with digging and placed in that one general location,
9 photographed, and then collected, so ---

10 Q. But you and the prosecutor wouldn't want to in
11 any way mislead anyone about where this evidence was
12 found by taking a picture of it after it was picked
13 up and dumped in a pile.

14 A. That was picked up amongst with a lot of other
15 mud and sifted through and found and then collected.

16 Q. And then put together and photographed?

17 A. Correct.

18 Q. Where is the photograph, sir, of where it was
19 found?

20 A. I'm sure there is one back, but it was under
21 -- it was underneath ground. You couldn't ---

22 Q. Would you review your -- I'm sorry. Would you
23 review your records, the notes, the thick notebook
24 that you have in front of you, your photographs, so
25 that this jury can get an idea of where the spent

1 cartridge was found? And show us the photograph of
2 where it was, because that is an important fact.

3 A. Can we have the picture of the overview of the
4 ditch in front of [REDACTED] please?

5 MR. DURANT: This one?

6 THE WITNESS: Go back to the overview of
7 the yard.

8 MR. SAVAGE: Would you mind coming down
9 and sorting through them with the prosecutor ---

10 THE COURT: You may step down, sir.

11 (The witness leaves the witness stand and
12 goes to counsel table.)

13 MR. DURANT: And I don't even know -- we
14 have other photographs, too.

15 MR. SAVAGE: I'm talking about the
16 photograph that the jury has seen.

17 MR. DURANT: Well, I mean, there are
18 other photographs, too, but it depends on ---

19 THE COURT: Hold on, hold on. Wait.
20 Don't address each other. Address the Court,
21 Counsel, if there's an issue. Go ahead.

22 (The witness and Mr. Durant further
23 review photographs.)

24 MR. SAVAGE: I can come back to that.

25 THE WITNESS: Number 14.

1 MR. DURANT: State's 14?

2 THE WITNESS: Yes, sir.

3 MR. DURANT: Is that the picture you
4 want?

5 THE WITNESS: Yes. The items that were
6 buried and later marked in number 13 were in this
7 ditch line, buried.

8 MR. SAVAGE: Thank you, sir.

9 (The witness returns to the witness
10 stand.)

11 BY MR. SAVAGE:

12 Q. Inspector, with reference to the spent
13 cartridge, with reference to the live cartridge, and
14 with respect to the change that was in a photograph
15 shown earlier, how far away was the camera that you
16 used from the objects that were photographed?

17 A. Probably four or five feet.

18 Q. And in the photograph that's before us of the
19 cartridge in the mud, how many feet away is that?

20 A. We had not found it at that time, so I could
21 not -- it's probably eight to ten feet away from
22 where I'm standing.

23 Q. With all due respect...

24 A. To this car.

25 Q. --- you have testified that this is a

1 photograph of where the cartridge was found.

2 A. Correct.

3 Q. Is it not important for this jury to know the
4 location, the exact location, where that cartridge
5 was found?

6 A. This depression in the ditch...

7 Q. So ---

8 A. --- is where the shell casing and the live
9 round were found after digging for it.

10 Q. And in what condition? Were they together?

11 A. We picked up with -- we picked up a large
12 amount of dirt with -- with a spade and shovel and
13 placed it into a sifter and sifted through it and
14 found them.

15 Q. Were they found together?

16 A. As sifting through, yes.

17 Q. Was the change found there, as well?

18 A. Yes.

19 Q. So are you telling the jury now that they were
20 all -- the change and the live cartridge and the
21 spent cartridge were found together but in a
22 different location from where they were photographed?

23 A. Correct.

24 Q. The spent cartridge was one-eighth of an inch
25 away from the live cartridge when it was found?

1 A. In that photograph, shown.

2 Q. But that photograph doesn't show where it was
3 found?

4 A. No, it does not.

5 Q. The question I have for you, does the
6 photograph that you have placed before this jury
7 accurately represent the distances between the live
8 round and the cartridge at the time it was found?
9 One-eighth of an inch?

10 A. I cannot give you a measurement. I don't know
11 if it was one-eighth of an inch when it was found,
12 because it was buried in mud. At this point it was
13 not visible to me.

14 Q. Did you...

15 MR. SAVAGE: Take it down, please.

16 BY MR. SAVAGE:

17 Q. Did you draw a diagram of the crime scene?

18 A. Yes, I did.

19 Q. And when you drew a diagram of the crime
20 scene, did you put down where the cartridge was found
21 and where the live round was found?

22 A. Yes, I did.

23 Q. And where does that say in relationship to the
24 photographs we've seen?

25 A. The diagram, it shows it was in the ditch.

1 Q. In relationship to the photographs we've seen?

2 A. In relation, it was -- the photograph, the
3 close-up photograph, number 13, the shell casing and
4 the live round was just outside of the ditch,
5 probably five or six inches outside of the ditch on
6 the grass.

7 Q. But you don't want this jury to think that the
8 photograph that you've shown them is where it was
9 found, but you want them to think that they were both
10 together?

11 A. We found them in the same general vicinity.

12 Q. And once again...

13 A. And I -- and I took a photograph to indicate
14 that we found them in the -- in that general
15 vicinity. And while we were digging through the mud
16 looking for evidence and sifted through the mud
17 looking for evidence, that is what we found.

18 Q. What side of the weapon does the cartridge
19 discharge from?

20 A. On the right side.

21 Q. So if somebody is right-handed, the cartridge
22 would discharge further to the right?

23 A. It's possible.

24 Q. Unless it was blocked?

25 A. That's correct. It's possible.

1 Q. And the distance that a cartridge would fly in
2 the air is how far if it was not blocked?

3 A. I cannot answer that. I do not know.

4 Q. If the weapon was fired on the hard pavement
5 on the roadway, how would it wind up in the ditch?

6 A. It could have been knocked in there by
7 somebody walking along, or it could have been moved
8 over there during the scuffle.

9 Q. And just happened to land in the same -- same
10 spot as the live cartridge?

11 A. In that general area, yes.

12 Q. And just happened to be in the exact same spot
13 of pocket change?

14 A. In that general area, yes.

15 Q. Even though the ditch was to the left of the
16 person who may have been firing the gun who may have
17 had -- been right-handed?

18 A. I'm not sure where the person was when he
19 fired the weapon.

20 Q. Have you listened to the evidence? Have you
21 looked at the record?

22 A. Yes.

23 Q. And you know that the person was on the
24 roadway when the weapon was fired?

25 A. I do not know that.

1 Q. Now, you do know and you testified to the jury
2 that the skid marks were not related to the incident?

3 A. Correct.

4 Q. And you don't know that, but that's what
5 you've heard of from something else?

6 A. Correct.

7 Q. Did you interview anybody about the skid
8 marks?

9 A. No, I did not.

10 Q. And skid marks, in talking to jury, the reason
11 why they were photographed that night, in the morning
12 of the 13th-14th, was because they were within the
13 crime scene as defined by Deputy Ford and they may
14 have been relevant to the case?

15 A. They were not in the crime scene defined by
16 Deputy Ford. They were -- they were thought to be
17 part of the scene in which we expanded our scene.

18 Q. All right. Even though you didn't consider
19 the vehicle that the deceased arrived in as part of
20 the crime scene, you thought some skid marks down the
21 road may have been part of the crime scene?

22 A. That is correct.

23 Q. Now, did you photograph those skid marks?

24 A. Yes, we did.

25 Q. And did you take close-up photographs of the

1 skid marks?

2 A. Yes.

3 Q. Let's look at the skid marks that you showed
4 the jury.

5 MR. SAVAGE: Will they work on the Elmo?

6 MR. DURANT: Yes.

7 MR. SAVAGE: May I approach, Your Honor?

8 Thank you.

9 BY MR. SAVAGE:

10 Q. State's exhibit 51 and 52, which is not in the
11 computer so I'm going to show them to you on this
12 thing over here if I can figure out how that works.

13 Now, as we look at state's exhibit number
14 52 -- well, who's vehicle is that on the right-hand
15 side of the picture?

16 A. The white GMC Yukon, Mr. Rocquemore's.

17 Q. And what distance is there between the camera
18 and Mr. Rocquemore's vehicle?

19 A. Approximately 15 feet.

20 Q. And does the photograph, state's 52, show the
21 entire skid mark?

22 A. No, it does not. It runs off the bottom.

23 Q. Does state's exhibit number 51 more accurately
24 depict the entire skid mark?

25 A. Yes, it does.

1 Q. And what is the distance of the skid mark from
2 beginning to end?

3 A. We did not take measurements of the skid
4 marks.

5 Q. Now, the information that you received
6 regarding that somebody unconnected to the criminal
7 activity that night deposited those skid marks there,
8 when was that information received?

9 A. About mid-morning.

10 Q. Of what day?

11 A. Of August 14th.

12 Q. And do you know who provided that information?

13 A. No, I do not.

14 Q. Do you know who took the information?

15 A. Who personally took the information, no.

16 Q. And is there any reason why those skid marks
17 were not measured?

18 A. Because they didn't -- they did not -- they
19 were not tied to the scene.

20 Q. But they were part of your photographs. Now,
21 we have multiple photos up here. Tell the jury what
22 that means.

23 A. Multiple photos indicate there's different
24 types or different paths of the skid marks.

25 Q. And did you ever take close-up photographs of

1 the skid marks?

2 A. No, sir. The two -- the two photographs
3 viewed were, I believe, only two or maybe three
4 photographs that I took.

5 MR. SAVAGE: May I approach, Your Honor?

6 THE COURT: Yes, sir.

7 BY MR. SAVAGE:

8 Q. You recall two photographs, is that correct,
9 or is it indicated in your notes?

10 A. Looking at my notes.

11 Q. And would you like to correct your testimony?

12 A. (The witness further reviews documents.) I
13 see 18 photographs that show some of the skid marks
14 in them. Yes.

15 Q. Saw 18?

16 A. Eighteen.

17 Q. And you thought there were two?

18 A. The two I'm looking at.

19 Q. All right. So the 18 skid mark photographs
20 that were taken at some point in time must have had
21 some relevance to somebody who had a lot of extra
22 film in their camera if they thought they were part
23 of the crime scene?

24 A. The point that I took these photographs, I did
25 not know that they were not related.

1 Q. But they don't?

2 A. Sir?

3 Q. You take photographs of skid marks to identify
4 the tires that left them there; is that correct?

5 A. Repeat the question, please?

6 Q. The purpose of taking the tire skid marks is
7 to try to identify the vehicle's tires that deposited
8 them on the road; is that correct?

9 A. Yes, sir.

10 Q. I mean, you just didn't take them for scenic
11 beauty.

12 A. But the photographs that I have taken were the
13 beginning of showing the detail ---

14 Q. Did they match David Rocquemore's tires?

15 A. No, they did not.

16 Q. Did they match Chris Thomas's tires?

17 A. I don't know what Chris Thomas' car ---

18 Q. Did they match Mr. Gibbs' tires?

19 A. I don't know which vehicle is his.

20 Q. Because we didn't match Mr. Gibbs' tires on
21 any occasion to the skid marks?

22 A. Those skid marks did not lead -- lead to any
23 vehicles in the area.

24 Q. Could there have been vehicles leaving the
25 area?

1 A. That was our initial assumption, that they
2 were the vehicle that they left -- were left by
3 vehicles leaving the area.

4 Q. And if you had talked to witnesses,
5 independent witnesses who were at the party that
6 night, you could have questioned them whether those
7 skid marks were deposited by somebody attending the
8 party that night?

9 A. By the time that I had gotten there and
10 started setting up, and started setting up to collect
11 evidence, the majority of the attendees at the party
12 had left.

13 Q. And so the people who were identified being at
14 the party were never asked the relevance of the skid
15 marks and when they may have been deposited there?

16 A. To my knowledge, no.

17 Q. But you knew it was very suspicious when you
18 arrived that morning, as a well-trained experienced
19 crime scene officer, that they may have had some
20 relevance?

21 A. At the time they may have, yes.

22 Q. And that's why they took 18 photographs?

23 A. Right.

24 Q. Did you take photographs of the people who
25 attended the party?

1 A. I believe I took photographs of three, I did.

2 Q. You took -- pardon me, sir?

3 A. I believe I took photographs of three people
4 that were the -- the victim's friends.

5 Q. Three people who were the victim's friends?

6 A. Because they were involved in the altercation.

7 Q. Three people who were the victim's friends?

8 A. Correct.

9 Q. Would you kindly show the jurors the
10 photographs you took of all three?

11 A. I do not have those photographs with me.

12 Q. You don't have them with you?

13 A. I do not have them. Mr. ---

14 Q. Would you mind consulting with the prosecutor
15 and getting the photographs and look at them and then
16 let the jury look at them?

17 MR. SAVAGE: May I allow the witness to
18 step down?

19 THE COURT: Yes, sir.

20 (The witness leaves the witness stand and
21 goes to counsel table.)

22 (The witness and Mr. Durant review
23 photographs.)

24 MR. SAVAGE: Sir, I'll help you out, if
25 you want to return to the stand.

1 (The witness further reviews
2 photographs.)

3 (The witness returns to the witness
4 stand.)

5 BY MR. SAVAGE:

6 Q. Do you have ---

7 A. I have pictures of two. Two of the friends.

8 Q. --- all the pictures of the three people you
9 photographed that night?

10 A. I photographed two. The third one was being
11 interviewed at the time. I didn't photograph him.

12 Q. So you didn't take pictures of three; you took
13 them of two?

14 A. That's correct.

15 MR. SAVAGE: May I approach the witness?

16 BY MR. SAVAGE:

17 Q. Are you familiar with this shirt?

18 A. Yes, I am.

19 Q. You are familiar with this shirt? Whose shirt
20 was it?

21 A. I am not sure whose shirt it was. It was
22 brought to me by Sergeant Phillips.

23 Q. And did you photograph it?

24 A. I do not recall.

25 Q. Did you send it off to be examined?

1 A. No, sir, I did not.

2 Q. Did you do anything with it at all?

3 A. No, sir.

4 Q. Do you know where it came from?

5 A. No, sir, I do not.

6 Q. Do you know what size it is?

7 A. No, sir, I do not.

8 Q. Do you know who it belonged to?

9 A. No, sir, I do not.

10 Q. But it's in evidence?

11 A. That's correct.

12 Q. And the evidence is in your custody?

13 A. That is correct.

14 Q. Now, let's help the jury understand why we
15 take photographs at a crime scene.

16 A. To document evidence.

17 Q. And we know that one of the three people, one
18 who was in the dog pile when the police arrive,
19 boxing and the fighting, we didn't photograph?

20 A. That is correct.

21 Q. The others were photographed to show whether
22 they have any injuries on them?

23 A. That is correct.

24 Q. And in the photographs you took, did you find
25 any injuries?

1 A. Yes, I did.

2 Q. And where were those injuries?

3 A. Some on their hands and legs.

4 Q. And those injuries would be indicative of
5 somebody who was in a fight?

6 A. Correct.

7 Q. And did you take pictures of the two people --
8 you didn't take pictures of the third one. But of
9 the two you took photographs of, did you take
10 pictures of their hands?

11 A. Yes, I did.

12 Q. Now, would you do me a favor and look and see
13 if these photographs are the same as the ones that
14 you have?

15 A. Yes, sir. (The witness reviews photographs.)
16 Yes, sir, they are the same.

17 Q. And you took these photographs and you can
18 authenticate them; that is, you were present when
19 they were taken, you were there, and you took them
20 yourself?

21 A. I took them myself, yes.

22 Q. And the photographs are of the -- two of the
23 three people who were involved in the incident?

24 A. Correct.

25 MR. DURANT: Your Honor, are we offering

1 these into evidence? Am I going to get to see them?

2 THE COURT: Show them to counsel.

3 MR. SAVAGE: I thought that he had gotten
4 the photographs from him to start with.

5 MR. DURANT: But they're not in evidence.
6 I mean, if you want to show them to the jury, they
7 ought to be in evidence.

8 Can he offer them and admit them, Your
9 Honor?

10 THE COURT: Go ahead and look at them
11 first.

12 MR. DURANT: Pardon?

13 THE COURT: Go ahead and look at them.

14 MR. DURANT: I mean, I think I've seen
15 the pictures. I don't think I have any objection to
16 putting the pictures in. I just would like them --
17 if he's going to publish them to the jury, Your
18 Honor, I would request that they be marked and
19 admitted.

20 THE COURT: Have them marked for I.D.,
21 Mr. Savage, until you move them in.

22 MR. SAVAGE: Thank you, Your Honor.

23 MR. DURANT: And provided that's done,
24 Your Honor, I have no objection to any of these
25 photographs.

1 THE COURT: Are you offering them into
2 evidence, Mr. Savage, or not?

3 MR. SAVAGE: Yes, Your Honor. I don't
4 think I have to put all of them in.

5 (Defendant's Exhibit No. 1, photo - left
6 hand, Ronald Gibbs, is marked for identification.)

7 (Defendant's Exhibit No. 2, photo - right
8 hand, Ronald Gibbs, is marked for identification.)

9 (Defendant's Exhibit No. 3, photo - lower
10 portion body, back, Ronald Gibbs, is marked for
11 identification.)

12 (Defendant's Exhibit No. 4, photo - back
13 of Ronald Gibbs, is marked for identification.)

14 (Defendant's Exhibit No. 5, photo - full
15 rear view, Ronald Gibbs, is marked for
16 identification.)

17 (Defendant's Exhibit No. 6, photo - legs,
18 front, Ronald Gibbs, is marked for identification.)

19 (Defendant's Exhibit No. 7, photo - full
20 frontal, Ronald Gibbs, is marked for identification.)

21 (Defendant's Exhibit No. 8, photo -
22 bloodstain on shirt, Ronald Gibbs, is marked for
23 identification.)

24 (Defendant's Exhibit No. 9, photo -
25 bloodstain on shirt, Ronald Gibbs, is marked for

1 identification.)

2 (Defendant's Exhibit No. 10, photo -
3 overall photo, muddy wet clothes, Rodney Gibbs, is
4 marked for identification.)

5 (Defendant's Exhibit No. 11, photo -
6 front view, muddy wet clothes, Rodney Gibbs, is
7 marked for identification.)

8 (Defendant's Exhibit No. 12, photo -
9 front view, muddy wet clothes, Rodney Gibbs, is
10 marked for identification.)

11 THE COURT: Defendant's 1 through 12 in
12 evidence -- are you putting them all in?

13 MR. SAVAGE: Yes.

14 THE COURT: --- are in evidence without
15 objection.

16 (Defendant's Exhibits No. 1 through 12,
17 previously marked for identification, are received in
18 evidence.)

19 MR. SAVAGE: Thank you, Your Honor.

20 BY MR. SAVAGE:

21 Q. I'm going to let you take another look at
22 these pictures to make sure that they are the ones
23 that you took.

24 A. (The witness reviews exhibits.) Yes, they
25 are.

1 Q. Thank you. Defendant's number nine is a
2 photograph that you took?

3 A. Yes, it is.

4 Q. And what was the purpose of taking that
5 photograph and what does it show?

6 A. It appears to be a bloodstain on the shirt.

7 Q. And who is the person whose photograph that
8 is?

9 A. That's a picture of one of the victim's
10 friends.

11 Q. And what is his name?

12 A. I'm not sure of his name.

13 Q. And was the shirt with the bloodstain on it
14 examined?

15 A. Besides the picture, no, it was not.

16 Q. Is it in evidence in any of these boxes over
17 here?

18 A. No, sir.

19 Q. Defendant's number eight, what is that a
20 photograph of, please?

21 A. The same T-shirt with the possible bloodstain
22 on it.

23 Q. The picture's a little bit higher. Can you
24 identify who that is?

25 A. I do not know his name.

1 Q. Have you see him here today in the courtroom?

2 A. I believe so, briefly.

3 Q. And would the jury be reasonable to believe
4 that multiple photographs indicate importance?

5 A. Yes.

6 Q. And that's the same bloodstain, actually
7 multiple bloodstains, correct? You can't see it on
8 this photograph?

9 A. The most prominent bloodstain is right here.

10 Q. And is there one at the seven o'clock position
11 from that that's barely visible on this picture? May
12 I see that picture?

13 A. (The witness tenders exhibit to Mr. Savage.)

14 Q. Are there two bloodstains on that picture,
15 both which are equally visible on the original but
16 not on the one that is before the jury?

17 A. (The witness further reviews exhibit.)

18 MR. SAVAGE: May I approach, Your Honor?

19 THE WITNESS: I believe there is a small
20 one just below the first "G" in Nuggets. Right here.
21 Grouping that together as one.

22 BY MR. SAVAGE:

23 Q. All right. What you group together as one are
24 actually two separate bloodstains, correct?

25 A. They are -- they are two separate bloodstains,

1 but I was pointing to both of them.

2 Q. And then you were pointing out a third
3 bloodstain?

4 A. What I -- what appears to be.

5 Q. But this shirt wasn't taken into custody, it
6 hasn't been examined, and we don't know whose blood
7 it is?

8 A. No, we do not.

9 Q. No question, though, at the time the
10 photograph was taken, that it was an important piece
11 of prospective evidence?

12 A. It was possible, yes.

13 Q. Again, I apologize that this may wash out
14 because of the type of equipment we have. Is that,
15 defendant's number three, a photograph that you took?

16 A. Yes, it is.

17 Q. And would it show the lower portion of a body
18 that's been unidentified so far?

19 A. Yes, it does.

20 Q. And does it show fresh bruises on the legs of
21 that person?

22 A. Yes, it does.

23 Q. On the back of the legs of that person?

24 A. It -- yes, it does.

25 Q. And defendant's number five shows a full rear

1 view of the person, showing the bruising to his legs?

2 A. Yes, it does.

3 Q. And that was an important issue that night
4 that you photographed it?

5 A. Yes, it was.

6 Q. And we then took a full frontal view of that
7 person?

8 A. Yes, we did.

9 Q. Now, who is that?

10 A. I do not recall his name.

11 Q. Did you take any other photographs of him?

12 A. I took some of his hands, yes.

13 Q. And which hand is that?

14 A. That is his left hand.

15 Q. And what does that left hand show?

16 A. Minor swelling around the knuckles, possible
17 bruising.

18 Q. And that would be an indication of what, sir?

19 A. That he may have struck something with his
20 left hand.

21 Q. In what time period before the photograph was
22 taken?

23 A. I'm not sure.

24 Q. But it was important that night to photograph
25 it and document it?

1 A. He was detaining a defendant who had just shot
2 his friend.

3 THE COURT: For the record, Mr. Savage,
4 you need to cite the exhibit number.

5 MR. SAVAGE: I'm sorry, Your Honor.

6 BY MR. SAVAGE:

7 Q. The last photograph, you were describing the
8 injuries to the left hand, is exhibit number one,
9 defendant's number one.

10 Defendant's number two, would you describe
11 what that is, please?

12 A. That is the right hand of that individual.

13 Q. The same individual?

14 A. Showing an open minor -- or small open wounds
15 on his knuckles.

16 Q. What about his thumb?

17 A. His thumb was also bleeding, bleeding around
18 the cuticle area.

19 Q. And those hands, do they belong to the same
20 person who is in defendant's number seven?

21 A. Yes, they do.

22 Q. And the purpose, the mindset of the person
23 taking the photograph at the time they were taken, is
24 to document and to preserve evidence, correct?

25 A. Correct.

1 Q. Defendant's number 12. Can you identify
2 defendant's number 12, please, sir?

3 A. That is a second friend of the victim,
4 different from the last pictures that we've seen.

5 Q. And what is that picture showing?

6 A. Showing that his clothes are muddy and wet.

7 Q. Is that the purpose of that photograph?

8 A. Of that photograph, yes.

9 Q. Defendant's number 11 shows -- what is the
10 name of this person?

11 A. I do not recall his name.

12 Q. And what does that photograph show?

13 A. The photograph -- if you could pull it back
14 down so I can see the entire thing, please. Again,
15 it's just showing the wet and muddy shirt of this
16 individual.

17 Q. Defendant's number ten. What is that, sir?

18 A. It's an overall shot of this -- of the
19 individual, showing muddy and wet...

20 Q. Do you know what's in the background of that
21 photograph?

22 A. The Ford Explorer.

23 Q. And whose Ford Explorer is that?

24 A. I believe it was one of these gentlemen's that
25 I photographed.

1 Q. And what is that over the mirror?

2 A. It's a blue towel.

3 Q. And ---

4 A. It appears to be a blue towel.

5 Q. Are you sure that's a blue towel? If you
6 don't know, just say you don't know.

7 A. It appears to be a blue towel.

8 Q. But that couldn't have been there riding down
9 the highway, could it?

10 A. No, sir.

11 Q. Now, going back to those photographs 12, 11,
12 and 10, what did this person have in their hand,
13 their right hand?

14 A. You're indicating this?

15 Q. All I asked was, what did the person have in
16 their right hand?

17 A. I don't believe he had anything in his hand.

18 Q. What does that -- what does that look like
19 that's behind his right hand?

20 A. It's a pink piece of paper.

21 Q. And where was that?

22 A. In his pocket.

23 Q. Okay. And did that prevent you, that pink
24 piece of paper, from taking photographs of his hands?

25 A. No, it did not.

1 Q. Were there any photographs taken of the
2 injuries to his hands?

3 A. He didn't -- to the best that I can recall, he
4 did not have any open wounds or appear to have any
5 swelling to his hands.

6 Q. And would that be of interest to the jurors to
7 see that he didn't have any offensive wounds on his
8 hand so that they could make a judgment as to who's
9 involved in the fight?

10 A. That's shown in one of the pictures.

11 Q. And which picture is that, sir?

12 A. I believe it was the first one that you
13 showed. If you look at his hands, you can see that
14 it does not appear to have any injuries.

15 Q. Pardon me?

16 A. If you look at his hands, it appears that he
17 does not have any injuries.

18 Q. Did you take any close-up pictures of the
19 inside and outside of the hands as you did to the
20 other party?

21 A. No, I did not.

22 MR. SAVAGE: May I approach?

23 Can we have number 19, please? State's
24 exhibit 19. I'm sorry.

25 BY MR. SAVAGE:

1 Q. What is the white object in the roadway?

2 A. It's a white tank top T-shirt.

3 Q. And who does that belong to?

4 A. I do not know.

5 Q. And what examination of that tank top T-shirt
6 has taken place?

7 A. A visual examination.

8 Q. And where is that tank top T-shirt now?

9 A. In that box.

10 Q. And does anybody in this courtroom know who it
11 belongs to?

12 A. No, I do not. I do not know that.

13 Q. Is it like the paper towels that just happened
14 to be there, or is it something that's relevant to
15 this case?

16 A. It was like the paper towels; it just happened
17 to be there.

18 Q. State's number 25, please. What is that?

19 A. It's a pair of broken sunglasses.

20 Q. And where were those sunglasses found?

21 A. Just off the right side of the road -- or just
22 off the side of the road, almost across from the
23 white GMC Yukon.

24 Q. And whose sunglasses are they?

25 A. I do not know that.

1 Q. And what examination has been made of those
2 sunglasses?

3 A. None.

4 Q. And what would be the purpose of taking a
5 photograph of those sunglasses?

6 A. Possible evidence.

7 Q. So when the evidence was collected, it just
8 wasn't examined?

9 A. That's correct.

10 Q. When you participated in this investigation,
11 did you make a report?

12 A. Yes, I did.

13 Q. And in that report you document the
14 information that was either observed by you or
15 provided to you?

16 A. It was information that I observed and/or did.

17 Q. Sir?

18 A. It was information or things that I observed
19 or that I conducted.

20 Q. And in your report you said that the deceased
21 was on top of the defendant -- or the suspect was on
22 top of the victim?

23 A. (The witness reviews document.) It was
24 information that I -- I obtained from Deputy Ford.

25 Q. That's in your report?

1 A. Yes.

2 Q. Now, as part of the investigation you did that
3 night, you took what you have told the jury was
4 gunshot residue?

5 A. I observed that being conducted. That was
6 Investigator Hodge that collected that.

7 Q. Your supervisor?

8 A. No, I'm his -- his copartner, responding to
9 that.

10 Q. And you were just supervising his gunshot
11 residue examination?

12 A. Yes. Or collection, not examination.

13 Q. You have indicated Lieutenant Scarborough had
14 bagged somebody's hands?

15 A. Correct.

16 Q. And who was that?

17 A. The defendant, Mr. Rocquemore.

18 Q. And who had bagged the hands of the injured
19 party?

20 A. I am not sure who bagged them; but in route to
21 the scene, I had advised headquarters, our dispatch,
22 to contact EMS to have them -- if they had not been
23 bagged, to have EMS bag the victim's hands.

24 Q. Did you ever learn whether or not they had
25 been bagged?

1 A. Yes, they were.

2 Q. And the reason to bag the hands is for what?

3 A. To protect against any loss of gunshot
4 residue.

5 Q. The three people you photographed -- excuse
6 me. The two people that you photographed and the
7 one that wasn't photographed, who bagged their
8 hands?

9 A. I don't recall anybody bagging their hands.

10 Q. And what gunshot residue tests were taken of
11 the three people, two of which were photographed and
12 one which wasn't?

13 A. I don't believe there was one done on them.

14 Q. Pardon me?

15 A. I do not believe a gunshot residue kit was
16 conducted on those three.

17 Q. Did you say because there was only one gun
18 involved?

19 A. I did not say that.

20 Q. I misheard you. And gunshot residue can come
21 out of a weapon when a weapon is fired. Gunshot
22 residue doesn't mean just the projectile, but it
23 means what gases and whatnot are in the atmosphere
24 near the explosion of the cartridge at the time the
25 cartridge departs from the projectile?

1 A. That is correct.

2 Q. So those gases and that powder can be spread
3 out. Correct?

4 A. That is possible, yes.

5 Q. Now, David Rocquemore, was his clothing
6 examined for gunshot residue?

7 A. I do not believe they were.

8 Q. Mr. Gibbs, was his clothing -- you've said his
9 hands were not examined. How about his clothing?
10 Was that examined for gunshot residue?

11 A. No, sir, it was not.

12 Q. The other Mr. Gibbs, was his clothing examined
13 for gunshot residue?

14 A. I do not believe so.

15 Q. Mr. Eason, was his clothing examined for
16 gunshot residue?

17 A. I do not believe so.

18 Q. And was the clothing of any of those three
19 taken into custody?

20 A. No, sir.

21 Q. No, sir?

22 A. No, sir.

23 Q. Well, whose shirt is that that we looked at
24 earlier?

25 A. I don't know. Sergeant Phillips brought it to

1 me and said it belonged to one of the -- one of the
2 victim's friends, and I do not know who it belonged
3 to. If it was one of those three, I cannot answer
4 that.

5 Q. Well, one of the three left naked, didn't he?

6 A. I do not know that.

7 Q. And that's why you didn't photograph him?

8 A. I do not know that.

9 Q. Has that shirt been examined yet?

10 A. No, it has not.

11 Q. Well, let's talk about now the injured party.

12 His clothing was taken, correct?

13 A. The shooting victim? Yes, his clothes were,
14 his clothes were taken.

15 Q. And his clothing you have described was taken
16 into custody and it was folded properly and hung out
17 to dry properly and then refolded properly and put in
18 a bag and stapled and put in a cardboard box?

19 A. Correct.

20 Q. When was that?

21 A. The clothes we received on August the 14th
22 from autopsy.

23 Q. And when did you package them up in the bag
24 and the box and whatnot?

25 A. They were placed in a bag that day, taken to

1 the drying -- drying cabinet where they were placed
2 in the drying cabinet, and a day later were taken --
3 was taken out once it was dry and put back in the
4 same bag and put into the box and sealed it.

5 Q. And because the clothing was soaking wet from
6 the ditch, the water in the ditch?

7 A. And blood.

8 Q. Now, was that clothing examined for gunshot
9 residue?

10 A. Yes, it was.

11 Q. And this was on August 14th, 2005?

12 A. No, sir. That was on June 27th, 2007.

13 Q. Two weeks ago?

14 A. Correct.

15 Q. And it's been in your custody for
16 22-and-a-half months before it was examined?

17 A. Correct.

18 Q. And the other clothing that you have in your
19 evidence boxes over here is yet to be examined?

20 A. Correct.

21 Q. And that clothing of the injured party was
22 only examined after defense counsel questioned when
23 it had been examined and what the results were.
24 Isn't that correct?

25 A. It was analyzed at the request of the

1 Solicitor's Office.

2 Q. Because it contradicts what the pathologist
3 wrote in his report at the time ---

4 MR. DURANT: It's argumentative.

5 MR. SAVAGE: --- he examined ---

6 THE COURT: Rephrase your question,
7 Counsel.

8 BY MR. SAVAGE:

9 Q. Did you go to the Medical University of
10 South Carolina?

11 A. No, sir, I did not.

12 Q. Did one of your coworkers go to the Medical
13 University of South Carolina for the autopsy?

14 A. Yes, they did.

15 Q. And did they tell you what the results of
16 their finding were?

17 A. No, they did not.

18 Q. So you were not aware that the pathologist at
19 the time of the examination said it was a close shot
20 wound?

21 A. No, I do not.

22 Q. And if he had told you that, that would have
23 been meaningful to you and you would have examined
24 the garments?

25 A. No, it would not.

1 Q. You just happened to wait 22-and-a-half months
2 before it was done?

3 A. At the -- at the request of the Solicitor's
4 Office.

5 MR. SAVAGE: Beg the Court's indulgence.

6 BY MR. SAVAGE:

7 Q. The green vehicle that was at the crime scene,
8 the one in between the injured party's vehicle and
9 the defendant's vehicle, did you examine it?

10 A. Yes, I did.

11 Q. Did you examine it for contraband?

12 A. Yes, I did.

13 Q. Did you examine it for weapons?

14 A. Yes, I did.

15 Q. Was that by -- done by the consent, the
16 agreement, of the owner?

17 A. Yes, it was.

18 Q. And what did you find?

19 A. Cleaning equipment.

20 Q. Pardon me?

21 A. Cleaning equipment.

22 Q. Did you find any weapons?

23 A. No, I did not.

24 Q. Did you find any fingerprints?

25 A. No, I did not.

1 Q. Did you look for fingerprints?

2 A. No, I did not.

3 Q. Do you know who was in the trunk of that
4 vehicle?

5 A. There was nobody in the trunk of that vehicle.
6 It was cleaning equipment.

7 Q. Do you know how the trunk was opened? Do you
8 have any evidence from your crime scene about who
9 opened it, when it was opened, or anything of that
10 nature?

11 A. I was advised that the owner of the vehicle
12 opened the trunk. For what reason, I do not know.

13 Q. But you don't know, but you didn't examine it?

14 A. I examined the trunk, yes.

15 Q. What was found on the windshield of the green
16 vehicle?

17 A. I believe it was a food wrapper and a yellow
18 or metal necklace.

19 Q. And whose metal necklace was it?

20 A. I was told it was the owner of the car's
21 necklace.

22 Q. When you examined that vehicle, I guess you
23 were primarily interested in the trunk. Is that
24 correct?

25 A. I was interested in knowing if there was any

1 illegal contraband, weapons, or drugs, that nature in
2 that vehicle.

3 Q. And you participated in the search of that
4 vehicle?

5 A. Yes, I did.

6 Q. And nothing was found inside the vehicle?

7 A. There was no weapons nor illegal drugs found
8 in the vehicle.

9 Q. Did you notice anything unusual about the
10 windshield of that vehicle?

11 A. (The witness reviews document.)

12 Q. Sir, I'm asking you what you recall from
13 that time that you remember, not what you
14 remember ---

15 A. Other than the food wrapper and the necklace
16 on the windshield, on the hood of the car, no, I do
17 not.

18 Q. And did you photograph the food wrapper and
19 whatever else was on the windshield?

20 A. Yes, I did.

21 Q. And do you have the photograph of that?

22 A. Yes, I do.

23 MR. SAVAGE: May I approach, Your Honor?

24 THE COURT: Yes, sir.

25 BY MR. SAVAGE:

1 Q. You don't have a blown-up photograph,
2 do you?

3 A. No, sir, I do not.

4 (Defendant's Exhibit No. 13, photo -
5 Dodge Stratus, items on hood, is marked for
6 identification.)

7 (Defendant's Exhibit No. 14, photo -
8 Dodge Stratus, items on hood, is marked for
9 identification.)

10 (Defendant's Exhibit No. 15, photo -
11 Dodge Stratus, close-up, items on hood, is marked for
12 identification.)

13 BY MR. SAVAGE:

14 Q. Inspector Owens, I hand you defendant's marked
15 for identification 13, 14, and 15. Do you recognize
16 those photographs?

17 A. Yes, I do.

18 Q. Now, did you take photographs of the
19 windshield that night -- excuse me.

20 MR. SAVAGE: May I offer these into
21 evidence at this time.

22 MR. DURANT: No objection.

23 MR. SAVAGE: 13, 14, and 15.

24 THE COURT: They're in evidence without
25 objection.

1 (Defendant's Exhibits No. 13, 14, and 15,
2 previously marked for identification, are received in
3 evidence.)

4 BY MR. SAVAGE:

5 Q. Thirteen, 14, and 15, you took those
6 photographs?

7 A. Yes, I did.

8 Q. Because, I guess, this was daytime now when
9 these photographs were taken. Is that correct?

10 A. That is correct.

11 Q. And there was something meaningful about the
12 windshield; that's why the photographs were taken?

13 A. Because of the items on the windshield,
14 correct.

15 Q. And the items you described is a food wrapper
16 and a gold chain?

17 A. And there's also a watch in there.

18 Q. Defendant's number 15 would show them?

19 A. That is correct.

20 Q. I know it's washed out here, but you can see a
21 gold chain on the left side, in the middle of the
22 vehicle is a -- if you would show the jury, please.

23 A. Here's the gold chain, the watch, and the food
24 wrapper.

25 Q. And you took other photographs, defendant's 14

1 and 15, of the same items, correct?

2 A. Correct.

3 Q. Now, were those items taken into evidence?

4 A. No, they were not.

5 Q. Did you collect those?

6 A. No, I did not.

7 Q. Do you know whether they were torn or in any
8 way broken?

9 A. No, I do not.

10 Q. Do you know how they got there or why they got
11 there?

12 A. As I recall, the owner said that they were his
13 and that he placed them there.

14 Q. Did you interview him?

15 A. No, I did not.

16 Q. So you don't recall; you recall somebody else
17 telling you that somebody said something?

18 A. Correct.

19 Q. It's called hearsay?

20 A. Correct.

21 Q. Okay. Do you know who owned the gold chain or
22 the watch?

23 A. By name, no, I do not.

24 Q. And there was no examination of those items?

25 A. A physical examination, no, sir.

1 Q. Did you collect the weapon?

2 A. Yes, I did.

3 Q. And at the time you collected the weapon, did
4 you have gloves on?

5 A. Yes, I did.

6 Q. And the purpose of you having gloves on was
7 what?

8 A. To protect myself, as well as the evidence.

9 Q. And what would you protect yourself from?

10 A. Any unknown contaminants that may be on the
11 weapon or evidence.

12 Q. Such as?

13 A. I don't know where it's been.

14 Q. But what's the type of thing that you were
15 protecting yourself from that could be on the weapon?

16 A. Placing my latents, placing my fingerprints on
17 the weapon.

18 Q. And whose fingerprints were removed from the
19 weapon?

20 A. Did not find any fingerprints on the weapon.

21 Q. None?

22 A. None.

23 Q. Find any blood on the weapon?

24 A. No, sir.

25 Q. Was it tested for that?

1 A. I do not recall. I don't believe.

2 Q. Do you recall that D.H.O. collected distilled
3 water swabs from the weapon at the scene? Who is
4 D.H.O.?

5 A. That is me.

6 Q. Oh, you did examine it?

7 A. I obtained the swabs from it, but I did not
8 examine it.

9 Q. And what did you do with the swabs?

10 A. Placed them into evidence.

11 Q. And where are they now?

12 A. In evidence.

13 Q. And have they been examined?

14 A. No.

15 Q. Has there been any testing at all?

16 A. To my knowledge, no.

17 Q. But you know that they tested it for
18 fingerprints and there were no fingerprints on the
19 weapon?

20 A. The material on the handgun is not conducive
21 for fingerprints.

22 Q. Or somebody wiped the fingerprints off the
23 weapon?

24 A. The material from the weapon is not conducive
25 for fingerprints.

1 Q. But, sir, why would one then even test it for
2 fingerprints if you knew ahead of time there couldn't
3 by any fingerprints on it?

4 A. Still need to try.

5 Q. And do you know whether the fingerprints were
6 wiped off or not?

7 A. The gun does not appear to have been wiped
8 off.

9 Q. Do you know whether or not fingerprints were
10 wiped off that gun?

11 A. It's still covered with mud from the ditch. I
12 don't believe they did.

13 Q. So your answer is no?

14 A. No, nobody wiped them off.

15 Q. Going back to the crime scene, the original
16 crime scene with Deputy Ford, the person who keeps
17 the crime scene log, if you would, tell the jurors
18 what that is.

19 A. It's a deputy who logs anybody that comes into
20 the crime scene, in basic terms.

21 Q. And what is the purpose of that?

22 A. To know who was there at the crime scene.

23 Q. And to keep control of the crime scene?

24 A. Correct.

25 Q. And the information that's put in the crime

1 scene log is the agency in which the person works
2 for?

3 A. Correct.

4 Q. The time they arrived and the time they
5 departed?

6 A. Correct.

7 Q. And the party's name?

8 A. Correct.

9 Q. And in that crime scene log, would it be
10 included when the medical personnel arrive and
11 departed?

12 A. Yes.

13 Q. And do you know whether statements were taken
14 that night from any of the witnesses?

15 A. I was not -- it was not my duty to do written
16 statements or statements from witnesses. So who they
17 were taken from and how many, I am not sure.

18 Q. In the law enforcement community, who takes
19 statements?

20 A. Detectives, a deputy on patrol.

21 Q. And was any detective present before the
22 medical personnel departed the scene?

23 A. I do not believe.

24 Q. Well, you could -- you could verify that by
25 looking at the crime scene log?

1 A. Correct.

2 Q. And you can tell this jury that absolutely
3 unequivocally no detective had even arrived at the
4 crime scene before the EMS left?

5 A. It appears that way, correct.

6 MR. SAVAGE: Thank you, sir.

7 Your witness.

8 REDIRECT EXAMINATION

9 BY MR. DURANT:

10 Q. Are the detectives supposed to sit there and
11 let the victim die while they wait to get there, sir?

12 MR. SAVAGE: Objection, Your Honor.

13 THE COURT: Restate the question.

14 BY MR. DURANT:

15 Q. My question is this: Is the victim supposed
16 -- supposed to stay at the scene and die while y'all
17 wait for the detectives to get there?

18 MR. SAVAGE: Your Honor.

19 THE COURT: I sustain the objection. You
20 can ask him what he's observed.

21 BY MR. DURANT:

22 Q. Is that -- what is the policy of your police
23 department regarding that, the sheriff's office?

24 A. Seek immediate medical attention.

25 Q. And is that the case whether or not a

1 detective is on the scene or not?

2 A. It doesn't matter who's on the scene as long
3 as medical personnel is there to render aid and get
4 them where they need to -- and get the injured party
5 where they need to go.

6 Q. Because, quite frankly, getting to the
7 hospital is more important than having a detective
8 there, correct?

9 A. Correct.

10 Q. On state's exhibit 54, I believe it was, this
11 one here...

12 MR. DURANT: Would you put it up, Mike?

13 BY MR. DURANT:

14 Q. This car right here, it was put on the crime
15 scene diagram why?

16 A. At your request, sir.

17 Q. Correct. This was basically an exhibit
18 prepared for trial; was it not?

19 A. That is correct.

20 Q. And when cases are being prepared for trial,
21 who do you consult with?

22 MR. SAVAGE: Objection.

23 BY MR. DURANT:

24 Q. Who do you consult with?

25 THE COURT: Do you have an objection?

1 MR. SAVAGE: The form of the question.

2 MR. DURANT: What's wrong with the ---

3 THE COURT: No, I'll allow that. Go
4 ahead.

5 BY MR. DURANT:

6 Q. Who did you consult with?

7 A. The investigators on the scene and
8 prosecution.

9 Q. Now, let's go with the ejection of the shell
10 casing. Generally -- taking state's exhibit number
11 49, generally the shell ejects out of the right side
12 of the gun; is that correct?

13 A. That is correct.

14 Q. Okay.

15 THE COURT: Ms. Shealy, can you take off
16 all exhibits?

17 (Ms. Shealy complies.)

18 BY MR. DURANT:

19 Q. That's true if the gun is held that way,
20 correct? (demonstrating)

21 A. Correct.

22 Q. What happens if it's held that way?
23 (demonstrating)

24 A. It comes out of the right side of the gun, but
25 now in position to go ---

1 Q. It goes straight up in the air, right?

2 A. Correct.

3 Q. Oh, by the way, does that gun look like it's
4 been wiped off?

5 A. No, sir, it has not.

6 Q. It's still got mud on it?

7 A. Yes, it does.

8 Q. State's exhibit -- I believe this is five.
9 The gun's muddy there, too, isn't it?

10 A. Correct.

11 Q. The gun doesn't look like it's been wiped off,
12 does it?

13 A. No, sir.

14 Q. Now, let's go back to your report, and
15 Mr. Savage questioned you about making a statement in
16 your report that the defendant was on top of the
17 victim. That's not what your report says, is it?

18 A. No, sir. Do you want me to read what it says?

19 Q. Yes.

20 A. "I encountered Deputy Ford who advised me that
21 the victim and suspect were in an altercation. At
22 one point the suspect pulled a handgun and shot the
23 victim. The victim ended up in a drainage ditch with
24 the suspect on top or just off to the side of the
25 victim."

1 Q. And Mr. Savage conveniently left "or just off
2 to the side" ---

3 MR. SAVAGE: Objection, Your Honor.

4 BY MR. DURANT:

5 Q. Is that correct?

6 MR. SAVAGE: I misspoke, and I corrected
7 it earlier. It's in the record.

8 THE COURT: You can't speak for
9 Mr. Savage's state of mind. I sustain the objection.

10 BY MR. DURANT:

11 Q. And let's go to the photograph of the shell
12 casing. Do y'all have one of those ground
13 penetrating radar kind of photo cameras that can ---

14 A. No, sir, we do not.

15 Q. --- photograph through dirt?

16 A. No, sir.

17 Q. The items found in placard number 13, were
18 they located before you brought the metal detector?

19 A. No, sir, they were not.

20 Q. And that's kind of indicated in the series of
21 photographs here, isn't it, sir?

22 A. Yes, sir.

23 MR. DURANT: Okay. We have the light,
24 and I'm going to need you to dim it some.

25 BY MR. DURANT:

1 Q. Okay. This is state's exhibit number 22.
2 Right here you have 11 and 12 marked. Is that
3 correct?

4 A. Yes, sir.

5 Q. You've got 8, and 9, 10, 11, and 12. There is
6 no 13. Is that correct?

7 MR. SAVAGE: Form of the question ---

8 A. That is correct.

9 MR. SAVAGE: --- Your Honor.

10 BY MR. DURANT:

11 Q. Why is there no 13?

12 MR. SAVAGE: Form of the question.

13 THE COURT: What was the objection?

14 MR. SAVAGE: Objection to the form of the
15 question, leading.

16 THE COURT: Restate that.

17 BY MR. DURANT:

18 Q. Why is there no 13?

19 A. We had not found the items that were found
20 with number 13, being the shell casing and the live
21 round, at the time this photograph was taken.

22 Q. Okay. What does that show? This is -- I'm
23 sorry, I'm going to have to look. This would be
24 state's exhibit number 24.

25 A. This is a picture of the ditch line after we

1 have checked it with the metal detector.

2 Q. Y'all did a considerable amount of digging
3 around there, didn't you?

4 MR. SAVAGE: Form of the question, Your
5 Honor.

6 THE COURT: Sustained.

7 BY MR. DURANT:

8 Q. How much digging did you do around there?

9 A. There is -- and I'm pointing to areas that we
10 have dug. I don't know exactly how many areas, but
11 there were several.

12 MR. DURANT: Could you kill it just a
13 second, Mike?

14 BY MR. DURANT:

15 Q. And going to state's exhibit number 29, what's
16 all that on the right-hand side of that photograph?

17 A. Mud from the drainage ditch which we pulled
18 the shell casing, the coins, and live round out of.

19 Q. And speaking of the pictures, you took
20 pictures of everything, correct?

21 A. Correct.

22 Q. How many pictures did you take of this crime
23 scene? Over 200?

24 A. Yes, sir.

25 Q. Okay. Now, no question -- going to state's

1 exhibit number 19. No question when you got to the
2 crime scene all those vehicles were there, weren't
3 they?

4 A. That is correct. They were there.

5 Q. Okay. Did you see the crime -- did you see
6 Deputy Ford's in-car video?

7 A. Yes.

8 Q. Were those cars there then, as well?

9 A. Yes.

10 Q. So whatever made those marks out on the road,
11 they weren't those cars, right?

12 A. That is correct.

13 Q. Had nothing to do with those cars?

14 A. That is correct.

15 Q. Now, you said you photographed -- when
16 Mr. Savage took you through photographic injuries to
17 these people, you had -- you had pictures of two of
18 the victim's friends; is that correct?

19 A. Correct.

20 Q. And the only injuries you visualized that
21 night were on the hands of the guy wearing the
22 Detroit jersey?

23 A. That is correct.

24 Q. You didn't visualize any injuries on the other
25 fellow ---

1 MR. SAVAGE: Object to the form of the
2 question.

3 THE COURT: Sustained.

4 BY MR. DURANT:

5 Q. Did you -- were any injuries on the other
6 fellow that you saw?

7 A. I didn't -- no, I did not observe any on him.

8 Q. Had there been some on him, would you have
9 taken photographs?

10 A. Yes, I would have.

11 Q. Were you aware that the fellow that had
12 bloodstains on him had given CPR to the man that had
13 been shot...

14 A. I knew some ---

15 Q. --- who had been there?

16 A. I knew someone had given him CPR, but I did
17 not know who.

18 Q. And could that account for the bloodstain on
19 his jersey?

20 A. It could.

21 Q. Were you aware that the fellow wearing that
22 jersey had tackled Chris Thomas when he ---

23 MR. SAVAGE: Objection, Your Honor.

24 BY MR. DURANT:

25 Q. --- threatened to go to his car and get a gun?

1 THE COURT: Restate that question.

2 BY MR. DURANT:

3 Q. Were you aware of that?

4 A. No, sir.

5 Q. Were you aware that he had tackled the
6 defendant's friend?

7 MR. SAVAGE: Object to the form of
8 question.

9 THE COURT: Rephrase.

10 MR. DURANT: I was just asking him if he
11 was aware of it or not.

12 THE COURT: I'll allow that. Go ahead.

13 BY MR. DURANT:

14 Q. Were you aware that the fellow wearing that
15 jersey had tackled the defendant's friend when he was
16 going to his car?

17 A. No, I do not.

18 Q. And could that have accounted for the injury
19 on his hand?

20 A. It could have.

21 Q. Did you have any evidence from any source of
22 any weapon -- other weapon being available out -- or
23 being out there that night besides what you collected
24 as state's exhibit number 49?

25 A. No, I do not.

1 Q. Just one other question, and we'll be done.
2 Is it your job as a crime scene investigator to
3 determine what is sent for forensic testing?

4 A. No, sir.

5 Q. And who makes that decision usually?

6 A. Lead detective on a case.

7 Q. And is it unusual, sir, in your experience,
8 for the Solicitor's Office to ask for some
9 testing ---

10 MR. SAVAGE: Object to the form of the
11 question.

12 MR. DURANT: I'm just asking him is
13 it ---

14 THE COURT: You're asking based on his
15 experience?

16 MR. DURANT: Yeah.

17 BY MR. DURANT:

18 Q. Is it unusual, in your experience, for the
19 Solicitor's Office to ask you to have some testing
20 done when a case is being prepared for trial?

21 A. It -- it happens, yes. It has been my
22 experience, yes.

23 THE COURT: He asked if it was unusual,
24 sir.

25 THE WITNESS: No, it's not unusual.

1 MR. DURANT: Thank you, sir. I have
2 nothing further.

3 MR. SAVAGE: I'll try to be brief,
4 Your Honor.

5 THE COURT: After his follow-up, ladies
6 and gentlemen, we'll stop for the day. Go ahead.

7 RE-CROSS-EXAMINATION

8 BY MR. SAVAGE:

9 Q. While she's looking at that, would you tell
10 the jurors the last time you had a murder case that
11 you sent off the GSR kit two weeks before trial?

12 A. I don't believe the GSR kit was sent two weeks
13 before trial.

14 MR. DURANT: Your Honor, I would object
15 to that question.

16 BY MR. SAVAGE:

17 Q. Were any ---

18 THE COURT: Hold on.

19 MR. DURANT: Because it assumes something
20 that's not true. The GSR kits were sent off months
21 ago.

22 MR. SAVAGE: I'm sorry.

23 THE COURT: Rephrase it, then go ahead.

24 BY MR. SAVAGE:

25 Q. When is the last time you sent clothing off on

1 the eve of trial? What cases?

2 A. Sir?

3 Q. What case, can you name the cases you were
4 involved in which the clothing was sent off on the
5 eve of trial?

6 A. The eve of a trial?

7 Q. Yes.

8 A. No.

9 Q. Two weeks before?

10 A. Two weeks before? At least two or three
11 others.

12 Q. All right. Name them.

13 A. I can't name them, though. It could have been
14 -- there have been shootings.

15 Q. Now, you testified ---

16 A. Assaults.

17 Q. --- that you didn't take any photographs of
18 any hands unless they had injuries. Is that correct?

19 A. Victim's friend's hands.

20 Q. Do you want to refresh your memory?

21 A. These are the palms of the victim's friend's
22 that has the abrasions on his knuckle.

23 Q. Are there any injuries on those photographs?

24 A. Not in the palms of these hands.

25 Q. Are there any injuries on those photographs?

1 A. No.

2 Q. Did you take those photographs?

3 A. Yes. But they're the same hands that ---

4 Q. Excuse me, sir.

5 A. --- had injuries on the back.

6 THE COURT: Hold on a second. State your
7 question, Counsel.

8 BY MR. SAVAGE:

9 Q. You have testified to the prosecutor that you
10 didn't take any photographs of hands that didn't have
11 injuries.

12 A. Those -- those hands have injuries that are
13 not depicted in that picture.

14 Q. Are there any injuries on the palms of either
15 one of these photographs?

16 A. No.

17 Q. And you took multiple photographs of the same
18 hands?

19 A. Of that individual, to include his hands and
20 the back sides of his hands.

21 Q. But you didn't...

22 MR. SAVAGE: May I mark these for
23 identification. 16 and 17, is that right?

24 (Defendant's Exhibit No. 16, photo -
25 palms of Ronald Gibbs, is marked for identification.)

1 (Defendant's Exhibit No. 17, photo -
2 palms of Ronald Gibbs, is marked for identification.)

3 MR. SAVAGE: Without objection?

4 MR. DURANT: Be my guest.

5 THE COURT: Is that without objection?

6 MR. DURANT: Yes, sir, Your Honor.

7 THE COURT: Those are in evidence without
8 objection.

9 MR. SAVAGE: Thank you, Your Honor.

10 THE COURT: It will be either yes or no
11 from this point on.

12 MR. DURANT: Yes, sir.

13 (Defendant's Exhibits No. 16 and 17,
14 previously marked for identification, are received in
15 evidence.)

16 BY MR. SAVAGE:

17 Q. The photographs 16 and 17, defendant's, are
18 photographs of the palms of the hand that do not have
19 any injuries. Correct?

20 A. On the palms there are no injuries. On the
21 forearm, there is a scratch.

22 Q. And there are no photographs of four other
23 hands that were involved that night in the incident?

24 A. That is correct.

25 Q. So the jury can't see the injuries that may or

1 may not have been on the hands of the other parties?

2 A. Correct.

3 Q. But we have photographs of skid marks that you
4 say weren't related and paper towels that weren't
5 related and shirts that weren't related; you have
6 those photographs?

7 A. Correct.

8 Q. And you say you had information that night
9 that there was only one weapon involved. Is that
10 correct?

11 A. The weapon that is here, correct.

12 Q. You had that information that night?

13 A. At that point I had that information, yes.

14 Q. Yet you searched the green car?

15 A. Correct.

16 Q. Yet you didn't search the Explorer automobile?

17 A. Correct.

18 MR. SAVAGE: Thank you, sir.

19 Nothing further, Your Honor.

20 THE COURT: You may step down, sir.

21 Thank you.

22 (The witness leaves the witness stand.)

23 THE COURT: All right, ladies and
24 gentlemen. If you will please just give your pads to
25 the bailiffs on the way out. We'll start back

1 tomorrow at 9:30. Do not discuss this case in any
2 way whatsoever or expose yourself to any type of
3 coverage or conduct any type of independent research.
4 Thank you very much. Have a good night.

5 (Whereupon, the jury leaves the courtroom
6 at approximately 5:55 p.m.)

7 THE COURT: All right. Thank you. See
8 y'all tomorrow.

9 MR. SAVAGE: Judge, I have a couple
10 matters.

11 The problem with leading questions
12 becomes difficult. It puts me in the position of
13 having to object to almost every question they ask.

14 THE COURT: Yeah, I -- y'all need to
15 refrain from leading questions.

16 MR. DURANT: In all honesty, Your Honor,
17 I don't think a lot of my questions were leading. He
18 wouldn't even let me -- he wouldn't even let me ask
19 them, though.

20 THE COURT: Some of them were, and some
21 of them weren't, so just keep in mind that no leading
22 questions.

23 MR. DURANT: I'll endeavor to do that,
24 sir.

25 MR. SAVAGE: The second is a speaking

1 objection, your Honor. It's clear that they're not
2 to comment further, unless the Court rules, from the
3 state. The nature of our objection will remain quiet
4 unless the Court asks us.

5 THE COURT: That's correct.

6 MR. SAVAGE: That hasn't been followed.

7 And number three, when they're showing
8 pictures, on the left-hand side of the pictures
9 they're showing are additional photographs, and I
10 don't frankly know whether they're in evidence or
11 not.

12 THE COURT: I agree with that, and I sent
13 -- I told them to take them off the screen. I don't
14 know if you noticed that.

15 MR. SAVAGE: Yes, sir.

16 THE COURT: I said take the exhibits off
17 the screen, because some -- it looked like some of
18 the first set were not, but the ones in the second
19 set were. So I'd prefer that that not be done.

20 MR. DURANT: That's fine. I'm trying to
21 coordinate this with Mike where ---

22 THE COURT: I understand that. You know,
23 the first time it was up on the screen, there were
24 exhibits that were not in evidence.

25 MR. DURANT: Okay. And -- okay. Like I

1 said, I apologize for that. Usually, I like to do
2 them to the whole screen and tell Mike.
3 Sometimes it's off ---

4 THE COURT: Well, I mean, I just --
5 you've got to be careful. As you know, it could
6 result in some issue.

7 I agree with you.

8 MR. SAVAGE: Thank you.

9 THE COURT: All right. I'll see y'all
10 tomorrow.

11 MR. SAVAGE: And could we keep the last
12 witness present? I intend to recall him, so I don't
13 want him to disappear.

14 THE COURT: All right. Where is the last
15 witness?

16 MR. SAVAGE: And may I have ---

17 THE COURT: Sir, you're still --- will
18 remain. You're not excused from your subpoena.

19 INVESTIGATOR OWEN: Yes, sir.

20 MR. SAVAGE: And may I have the book and
21 the notes that he was testifying before? I told the
22 Court that I wouldn't delay the trial, but that I'd
23 examine them after.

24 THE COURT: Yes, sir. I told you you
25 could look at them.

1 MR. SAVAGE: Thank you.

2 MS. KNEESE-SHEALY: May I approach the
3 court reporter with some exhibits, Your Honor? Thank
4 you.

5 MR. DURANT: Your Honor, can someone
6 examine the book to make sure that we get back
7 exactly what was taken ---

8 THE COURT: Yes.

9 MR. DURANT: --- by Mr. Savage?

10 THE COURT: Yes, sir. Y'all can do that
11 before you give it to him if you want to take a few
12 moments to do that.

13 (Whereupon, at approximately 6:00 p.m.,
14 the trial is recessed to the following day, Friday,
15 July 13, 2007, at 9:30 a.m.)

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CERTIFICATE OF THE COURT REPORTER

I, the undersigned, Brenda Cooley, Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true and accurate transcript of record of the proceedings had and the evidence introduced in the hearing of the captioned trial, Volume II of V, pages 258 through 589, inclusive, relative to appeal, in the Court of General Sessions for Charleston County, Charleston, South Carolina, on the 12th day of July 2007.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 17, 2008

Brenda Cooley

Brenda Cooley

Circuit Court Reporter

State of South Carolina) The Court of General Sessions
County of Charleston) The Ninth Judicial Circuit
State of South Carolina,)
) vs.) Case No. 05-GS-10-8601
) 05-GS-10-8602
David Michael Rocquemoire,)
) Defendant.)
_____)

VOLUME III of V

TRANSCRIPT OF RECORD

July 13, 2007

Charleston, South Carolina

B E F O R E:

The Hon. Daniel F. Pieper, Judge, and a Jury

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

Bruce D. Durant, Esq.
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Bryan Alfaro, Esq.
Attorneys for the State

Andy Savage, Esq.
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Attorneys for the Defendants

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Brenda Cooley
Circuit Court Reporter

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E X H I B I T S

STATE'S	DESCRIPTION	I.D.	REC'D
34	Photo - defendant's face	99	600
35	Photo - defendant, right profile	99	600
36	Photo - defendant, left profile	100	600
37	Photo - defendant, back left hand	100	600
38	Photo - defendant, left palm	100	600
39	Photo - defendant, back right hand	100	600
40	Photo - defendant, right palm	100	600
41	Photo - defendant's truck, driver's seat	100	600
42	Photo - defendant's truck, center console	100	600
43	Photo - defendant's truck, back seat	100	600
44	Photo - Taurus catalogue	101	
45	Photo - defendant's truck, interior rear	101	103/600
47	Photo - autopsy, victim (black-and-white photo)	101	600
59	Gunshot residue collection kit - defendant	605	
60	Gunshot residue collection kit - victim	613	
61	Projectiles recovered from autopsy	614	615
62	Victim's shirt	617	619

DEFENDANT'S	DESCRIPTION	I.D.	REC'D
18	Photo - defendant, close-up, lip (Marker #5)	665	667
19	Photo - defendant, face (Marker #5)	665	667
20	Photo - defendant, ear (Marker #4)	666	667
21	Photo - defendant, knuckle (Marker #6)	666	667
22	Photo - defendant, forehead (Marker #3)	666	667
23	Photo - defendant, forehead (Marker #3)	666	667
24	Photo - defendant, side face (Marker #2)	666	667
25	Photo - defendant, side face (Marker #1)	666	667

* * *

(The exhibits were retained by the clerk of court.)

1 (On Friday, July 13, 2007, the trial
2 reconvenes at approximately 9:30 a.m., and the
3 following proceedings were had:)

4 (There was off-the-record discussion
5 regarding scheduling.)

6 MR. DURANT: Your Honor, our first
7 witness, in respect to the witness this morning, we
8 went through some photos. There's three photographs
9 that Mr. Savage has objected to. I don't know if you
10 want to take that up right now or not.

11 THE COURT: Yeah, let's do that since
12 we're waiting on the jury.

13 MR. DURANT: May I approach, Your Honor?
14 These are the photos that have previously been marked
15 as state's exhibit 43, 44, and 47.

16 MR. SAVAGE: Do you want to hear our
17 objection?

18 THE COURT: Do you have a matter as to
19 these three photographs, Mr. Savage?

20 MR. SAVAGE: Have I seen them? Yes, sir,
21 and I object to them. And if I may, Your Honor, can
22 we put them on the screen so we can talk about them
23 and let everybody see them? Thank you.

24 Judge, the first photograph we have is
25 state's exhibit number 44.

1 (Mr. Durant and Mr. Savage confer.)

2 MR. SAVAGE: Judge, the photo that's
3 before the Court now is state's exhibit number 44
4 which shows the cover of a magazine entitled "Taurus"
5 which is a Brand name for a firearm, and it has three
6 firearms, and it's -- from 2005. That photograph we
7 believe the state will testify was photographed in
8 the back seat of the defendant's car on the morning
9 of the shooting.

10 We believe that is not relevant. We
11 believe that it's prejudicial. We believe that it's
12 evidence of character as to character evidence, and
13 we believe that should be suppressed at least at this
14 time unless the defendant places his character into
15 evidence. There is a second ---

16 THE COURT: What number is that?

17 MR. SAVAGE: That is 44. And 43 is
18 essentially the same photograph but taken at a
19 distance.

20 THE COURT: Why do you want that in
21 there?

22 MR. DURANT: Pardon me?

23 THE COURT: Why are you going to
24 introduce those?

25 MR. DURANT: Those were found in the car,

1 Your Honor. This is a -- this is a murder case. You
2 know, we have to prove the defendant is the shooter.
3 I think it's relevant to the fact that the defendant
4 is a gun owner, knows guns, knows about guns, and I
5 think this is extremely relevant in a shooting case.

6 THE COURT: Are those the same guns that
7 were used in this case?

8 MR. DURANT: No. I believe he had a
9 Highpoint, and this is a Taurus catalogue. And
10 there's certainly nothing prejudicial about having a
11 gun catalogue, Your Honor. The only thing it proves
12 is that the defendant is familiar with guns. It's
13 not -- it's not against the law to own a weapon, and
14 I'm not trying to claim it is against the law to own
15 a weapon.

16 It's just to establish to the jury that
17 he knows guns, he's aware of guns, he owns a gun, and
18 he has knowledge of guns, which very well may come to
19 be an issue depending on what he testifies to.

20 THE COURT: Why does it establish
21 anything more than he had a gun catalogue?

22 MR. DURANT: Well, like I said, my
23 position is it establishes that the defendant is a
24 person that knows guns and -- and owns guns and
25 carries guns.

1 Your Honor can see it any way you deem,
2 but I think it's -- I think it's relevant to the fact
3 that I have to disprove self-defense beyond a
4 reasonable doubt, and I think it is relevant to the
5 fact that this defendant brought a deadly weapon to
6 an argument.

7 THE COURT: Yes, sir, Mr. Savage.

8 MR. SAVAGE: Well, the very phrase that
9 the prosecutor used, "guns" plural, is prejudicial.

10 There was a gun. They've documented that
11 it was a legally-owned gun, and it was purchased
12 years before the incident. Anything beyond that is
13 irrelevant and prejudicial, and it's evidence of
14 character. There'd be no other reason to put that in
15 but to discredit his character, that he's a
16 gun-toting thug.

17 There were no other guns present. If
18 there were other guns found in the vehicle, I would
19 submit that the state would probably be in a better
20 position to use "guns" into evidence but not a
21 photograph of a gun catalogue, "Sports Illustrated,"
22 "Playboy," "Hustler," whatever.

23 MR. DURANT: With all due respect,
24 Your Honor, on the character issue, I just don't see
25 how this bears on the defendant's character. It is

1 lawful to own a gun, which appeared to be proper,
2 which it apparently was in this case and we have no
3 indication that it was not.

4 THE COURT: I don't think it's a
5 character issue, but I also don't think it's a
6 knowledge issue either. I would assume that no one
7 is charged with knowledge of every piece of mail
8 y'all -- one gets in the mail.

9 I don't know anything about the situation
10 other than there's a catalogue in his car. I
11 certainly have no problem saying that does not impute
12 knowledge of guns to a person that has a catalogue.

13 MR. DURANT: Well, you know, I just view
14 it differently, Your Honor. I would think that if I
15 were carrying a gun catalogue around in my car it
16 would indicate that I was a person who liked guns,
17 was aware of guns, and knew about guns.

18 THE COURT: Why is that going to be an
19 issue, though?

20 MR. DURANT: Because the whole issue in
21 this case, Your Honor, is: Is his client the one
22 that brought a gun to an argument?

23 THE COURT: Well, either they accept that
24 proposition or not.

25 MR. DURANT: Pardon me?

1 THE COURT: Either they accept that
2 proposition or not.

3 MR. DURANT: Well, I understand that.
4 But, now, I think it's also relevant that the
5 driver --

6 THE COURT: Why does the catalogue lend
7 itself to assist in making that -- that inference?

8 MR. DURANT: For the reasons I've stated,
9 Your Honor. I don't know how to state it any
10 differently other than it establishes that the
11 defendant is a person that knows guns, is aware of
12 guns. Just like if it was a homebuilding catalogue,
13 it would be -- it would indicate that the defendant
14 is a person that is a do-it-yourselfer or something
15 like that. I mean, it -- it doesn't prove -- prove
16 anything other than he has a knowledge of weapons.
17 And it's certainly not a character issue.

18 THE COURT: Anything, Mr. Savage?

19 MR. SAVAGE: That's all we have,
20 Your Honor.

21 THE COURT: I'll allow the picture in the
22 back of the seat to come in, that one, but not the
23 other.

24 MR. DURANT: So you are allowing 43 but
25 not 44, correct?

1 THE COURT: Yes. That one shows the
2 interior of the car and...

3 MR. DURANT: And just to be clear, this
4 is the one you would allow, right?

5 THE COURT: Yes.

6 MR. DURANT: Would you allow testimony
7 from the -- would you allow testimony from the crime
8 scene person that searched the vehicle as to what
9 that is?

10 THE COURT: They can say anything that
11 they found at the scene.

12 MR. DURANT: Okay.

13 THE COURT: But...

14 MR. DURANT: This is state's exhibit 47,
15 Your Honor.

16 MR. SAVAGE: Concerning the state's
17 exhibit 47, I don't mind the solicitor doing it in
18 black-and-white, because I think that really does
19 help us, but there is no reason for the face of the
20 deceased to be present in the photograph.

21 The wounds are under the left armpit and
22 the center mass in the stomach, and I believe that
23 further cropping of the photograph would eliminate
24 the state's need to use that photograph.

25 THE COURT: What about that, from the

1 State?

2 MR. DURANT: Well, I don't think there is
3 anything about showing his face that's prejudicial,
4 Your Honor. The only problem is it was also the
5 wound that was on the screen. It's shot like it is.

6 I don't have any problems, but -- but, I
7 mean, this is -- this is a murder case, obviously,
8 and I believe this photograph would assist the
9 medical examiner in explaining to the jury where the
10 injuries were.

11 It is as non-prejudicial as I can
12 possibly make it. I made it black-and-white. This
13 is after -- not that there was a whole lot of blood
14 involved anyway, but this is pretty much after he's
15 been cleaned up. This is as antiseptic of a
16 photograph of a deceased person as you can possibly
17 have.

18 THE COURT: I really don't have a problem
19 with that photograph coming in. It's not
20 inflammatory, in my opinion.

21 What else?

22 MR. DURANT: I believe that's all I have
23 before this witness testifies, Your Honor.

24 Can I have just a moment, Your Honor?

25 (Mr. Durant and Mr. Savage confer.)

1 MR. SAVAGE: Judge, we have agreed that
2 there is no objection to any of the evidence that the
3 prosecutor will submit through the next witness,
4 Detective Hodge.

5 They are dispositive of the PCID
6 (phonetic) on the GSR kit of the defendant and the
7 victim, the crime scene video, the photos which he
8 took at the hospital of the deceased -- oh, excuse me
9 -- of the defendant at the hospital.

10 THE COURT: Can you give me those
11 numbers, please? Can you give me the numbers,
12 please?

13 MR. DURANT: Yes, sir, Your Honor, if you
14 can give me a moment. May I approach the court
15 reporter?

16 THE COURT: Yes.

17 (Mr. Durant reviews exhibits.)

18 MR. DURANT: Your Honor, I believe
19 photograph-wise it's state's 34, 35, 36, 37, 38, 39,
20 40, 41, 42, 43 was the one you just ruled on, 45, and
21 47 that you just ruled on.

22 MR. SAVAGE: Those will be without
23 objection, Your Honor.

24 THE COURT: All right. In evidence
25 without objection.

1 (State's Exhibits No. 34, 35, 36, 37, 38,
2 39, 40, 41, 42, 43, 45, and 47, previously marked for
3 identification, are received in evidence.)

4 MR. SAVAGE: Except for the
5 objection already ---

6 THE COURT: I understand. The ones I
7 ruled on?

8 MR. SAVAGE: Yes, sir.

9 MR. DURANT: And, also, Your Honor, with
10 regard to the crime scene video.

11 THE COURT: Oh. I understood that one
12 through forty-two were already in.

13 MR. DURANT: Yes, sir. One through
14 forty-two were already in. It was just, I think -- I
15 think all the photos were in except for those three.

16 Also, Your Honor, the crime scene video
17 that we're talking about is -- the crime scene video
18 is on the same CD as state's exhibit number 50 which
19 was the in-car video, and I believe...

20 THE COURT: That one's already in.

21 MR. DURANT: That one's already in, and I
22 believe Mr. Savage doesn't have any objection to the
23 crime scene video portion of it.

24 (Mr. Savage and Mr. Durant confer.)

25 THE COURT: Is the jury ready?

1 Is there something else, Mr. Savage?

2 MR. SAVAGE: Detective Inspector Hodge is
3 going to be the next witness. We're in the same
4 position with him as we were with Detective Owen
5 yesterday. He can be released to wherever he wants
6 as long as we have access to him, but we would like
7 him to be still under subpoena.

8 THE COURT: All right.

9 Bring the jury in, please.

10 (Whereupon, the jury enters the courtroom
11 at approximately 9:45 a.m.)

12 THE BAILIFF: The jurors are present,
13 Your Honor.

14 THE COURT: Thank you. Please be seated.

15 Good morning, ladies and gentlemen.

16 We're ready to proceed.

17 Call your witness, please.

18 MR. DURANT: The state would call Brian
19 Hodge.

20 (Investigator Hodge enters the
21 courtroom.)

22 THE CLERK: This way, sir.

23 INVESTIGATOR BRIAN HODGE,
24 being first duly sworn by the clerk, is examined and
25 testifies as follows:

1 THE CLERK: Thank you. Be seated. If
2 you'll please state your full name and spell your
3 last name, please.

4 THE WITNESS: My name is Brian Hodge.
5 The spelling of my name is B-R-I-A-N H-O-D-G-E.

6 DIRECT EXAMINATION

7 BY MR. DURANT:

8 Q. Investigator Hodge, could you please tell the
9 jury where you're employed?

10 A. The Charleston County sheriff's office.

11 Q. And how long have you been with the sheriff's
12 office?

13 A. Seven years.

14 Q. And you are currently in crime scene?

15 A. No, sir.

16 Q. Were you in crime scene in 2005?

17 A. Yes, sir, I was.

18 Q. In August, on August 14th, 2005...

19 A. Yes.

20 Q. --- to be exact. Do you recall what time it
21 was when you arrived at the scene?

22 A. It was 5:11 a.m.

23 Q. And Investigator Owen was already there when
24 you got there?

25 A. Yes, sir, he was.

- 1 Q. Was the victim present when you arrived?
- 2 A. No. The victim was gone.
- 3 Q. Was the defendant, David Rocquemore, present?
- 4 A. Yes, sir, he was.
- 5 Q. And where was Mr. Rocquemore?
- 6 A. He was in the backseat of a patrol car.
- 7 Q. And were anything -- was there anything on his
- 8 hands?
- 9 A. I'm sorry, can you...
- 10 Q. Was there anything on his hands?
- 11 A. Yes, sir. His hands were bagged.
- 12 Q. And did you perform any forensic collection
- 13 with regard to his hands?
- 14 A. Yes, sir.
- 15 Q. And what was that?
- 16 A. A gunshot residue collection kit.
- 17 Q. And what is a gunshot residue collection kit?
- 18 A. It's an assortment of vials, magnetic tabs
- 19 that collect residue from the victim's hands -- oh,
- 20 excuse me -- from the person's hands.
- 21 Q. And what do you do with the vials?
- 22 A. Each vial ---
- 23 Q. Do these come in a prepackaged kit or
- 24 something?
- 25 A. Yes, sir, they do.

1 Q. And if you would, just tell the jury how you
2 go about collecting a sample.

3 A. Each -- each vial and magnetic tab is
4 individually labeled. Top of the hand, bottom of the
5 hand. So it pretty much tells you what to do with
6 it.

7 You take that on top of the hand, tap it, and
8 put the magnetic -- whatever having to do with the --
9 the directions say on the bag. Collect them, seal
10 them up, put them back in the bag, fill the paperwork
11 out.

12 Q. So there are four of those; is that correct?

13 A. I believe so. I'm not sure.

14 Q. Basically, one for the front and one for the
15 back, and one for the front -- front and the palm of
16 your hand?

17 A. Yes, sir.

18 Q. Correct? All right. So there are four of
19 them?

20 A. Right.

21 Q. And is that what you used in this case?

22 A. I did.

23 Q. And I hand you...

24 MR. DURANT: Let me get this marked as an
25 exhibit.

1 (State's Exhibit No. 59, gunshot residue
2 collection kit - defendant, is marked for
3 identification.)

4 BY MR. DURANT:

5 Q. Now I hand you what's been marked as state's
6 number 59 for identification purposes and ask if you
7 recognize that exhibit.

8 A. Yes, sir. I recognize it.

9 Q. And what is that?

10 A. This is the gunshot residue collection kit
11 that I performed on the defendant.

12 Q. And what time did you obtain that sample from
13 the defendant on the morning of August 14th?

14 A. This sample was completed at 5:26 a.m.

15 Q. That's your handwriting on it?

16 A. Yes, sir.

17 Q. And did you obtain that sample the same way
18 you explained to the jury?

19 A. I did.

20 Q. Are all the samples individually sealed?

21 A. They are.

22 Q. And then they're placed in that plastic bag --
23 I mean, that paper bag?

24 A. Yes, sir.

25 Q. And is that sealed, as well?

1 A. Yes, sir, it is.

2 Q. And what did you do with that, what did you do
3 with that after it was sealed?

4 A. I handed it to Investigator Owen.

5 Q. And you're aware that that was later sent to
6 SLED for examination; is that correct?

7 A. Yes, sir.

8 Q. Did you film a crime scene video out there
9 that night?

10 A. Yes, sir, I did.

11 Q. Okay. And you're aware that a copy of that
12 crime scene video was placed on -- into compact disk
13 form; are you not?

14 A. Yes, sir.

15 Q. You've had an opportunity to review that?

16 A. I did.

17 Q. And it is a true and exact copy of the video
18 film that you shot at the scene?

19 A. Yes, sir.

20 MR. DURANT: Your Honor, I believe
21 state's 50 we have already in evidence without
22 objection.

23 MR. SAVAGE: That's correct, Your Honor.

24 MR. DURANT: We request permission to
25 publish it to the jury.

1 THE COURT: All right. Go ahead.

2 MR. DURANT: And dim the lights for me,
3 too, please, sir.

4 (State's Exhibit No. 50, officer in-car
5 video on CD disk, begins playback.)

6 BY MR. DURANT:

7 Q. Investigator Hodge, is the scene pretty much
8 as you found it that morning?

9 A. Yes, sir, it is.

10 Q. Before anything had been collected?

11 A. Yes, sir.

12 Q. Was the trunk on that car open when y'all
13 arrived on the scene?

14 A. It was.

15 Q. This film has -- was shot before or after
16 y'all did the digging?

17 A. I'm sorry?

18 Q. Was this film shot before or after y'all
19 actually did the -- brought out the metal detectors?

20 A. This was shot initially as we arrived, before
21 the metal detectors.

22 Q. What is all that stuff there?

23 A. Debris from the medics that worked on the
24 victim.

25 Q. Was the ditch there wet or dry?

1 A. It was very wet.

2 Q. And this film was taken a little bit later
3 that morning?

4 A. Yes, sir, it was.

5 Q. What significance, if any, did you determine
6 with regard to the skid marks that you marked?

7 A. Sergeant Willoughby explained to me that there
8 wasn't any relevance.

9 Q. Did they appear to belong to any of those
10 vehicles over there on the right-hand side?

11 A. No, sir.

12 Q. I notice that there are two different colors
13 there. Are those two different skid marks, the long
14 ones?

15 A. Yes, sir, they were different skid marks.

16 Q. It appears as though the pink one may be
17 coming out of that driveway, the driveway to your
18 left?

19 MR. SAVAGE: Objection to the form of the
20 question.

21 THE COURT: Rephrase the question.

22 BY MR. DURANT:

23 Q. Which direction did the pink one seem to be
24 going?

25 A. The driveway on the left-hand side.

1 Q. How about the purple ones?

2 A. I don't recall.

3 Q. Or the blue ones, the ones on the left?

4 A. Towards the driveway on the left-hand side.

5 Q. And the green ones?

6 A. To the driveway on the left.

7 Q. How about the purple ones in the driveway?

8 A. From that driveway.

9 Q. This is obviously after things have been
10 marked; is that correct?

11 A. Yes, sir.

12 Q. Was this footage shot before or after y'all
13 did the digging?

14 A. It was shot before.

15 Q. And that would be -- there is no 13 there.
16 Had y'all located 13 at that time?

17 A. I don't recall.

18 MR. DURANT: Kill that, please, sir.

19 (The video is concluded.)

20 BY MR. DURANT:

21 Q. After completing the crime scene video, where
22 did you go, Investigator Hodge?

23 A. From there I left to go to St. Francis
24 Hospital.

25 Q. And for what purpose did you go to St. Francis

1 Hospital?

2 A. To collect evidence from the defendant and
3 photograph him.

4 Q. And is that what you did?

5 A. I did.

6 Q. Did you take photographs of the defendant?

7 A. I did.

8 Q. Did you collect any of the defendant's
9 clothing?

10 A. I did.

11 Q. Amongst that clothing, did you find one white
12 Nike tennis shoe?

13 A. Yes, sir, I did.

14 Q. And was that comparable to the tennis shoe we
15 just observed on the crime scene video?

16 A. Yes, sir.

17 Q. You also collected the victim's clothes in
18 this case; is that correct?

19 A. I did.

20 Q. At the autopsy?

21 A. Yes, sir.

22 Q. And you collected a brown sandal at that time?

23 A. I did.

24 Q. And was that comparable to the brown sandal we
25 just saw in the crime scene video?

1 A. It was.

2 Q. What time did you go to the hospital that
3 morning if you recall, sir?

4 A. Which hospital?

5 Q. The St. Francis Hospital, relating to the
6 victim.

7 A. 9:46.

8 Q. Investigator Hodge, I'm going to go through
9 some photographs with you here, starting with state's
10 number 34, and ask, if you would, to identify these.

11 MR. DURANT: If you would kill the lights
12 please, Mike.

13 BY MR. DURANT:

14 Q. Who is that?

15 A. That is the defendant.

16 Q. State's 35. State's 36. State's 37. State's
17 38. State's 39. And state's 40. Those photographs
18 were taken by you, sir?

19 A. Yes, sir, they were.

20 Q. Do they fairly and accurately depict the
21 physical condition of the defendant as you found him
22 at approximately 9:44 on the morning of August 14th,
23 2005?

24 A. At 9:46, yes, sir.

25 Q. Now, after going to the hospital, St. Francis

1 Hospital, where did you go?

2 A. From that location I went back to the evidence
3 compound, I believe. I believe so. Can I refer to
4 my notes?

5 Q. Sure.

6 A. Or the report, excuse me.

7 Q. But basically what I'm referring to is the
8 autopsy. Did you have a chance to attend the autopsy
9 where the victim was?

10 A. Yes, sir, I did.

11 Q. And when was that and where was that?

12 A. It was at MUSC Hospital at 11:27 in the
13 morning.

14 MR. DURANT: May I approach the court
15 reporter, Your Honor?

16 (Mr. Durant and Mr. Savage review
17 exhibit.)

18 BY MR. DURANT:

19 Q. Excuse me. We got a little sidetracked there.
20 This was at the Medical University?

21 A. Yes, sir, it was.

22 Q. About what time did you go there?

23 A. 11:27 in the morning.

24 Q. What did you do at the autopsy?

25 A. I photographed the victim, photographed the

1 x-rays, collected the projectiles, photographed the
2 victim's clothing. I did a gunshot residue
3 collection kit on the victim, and collected blood
4 scraping -- fingernail scrapings, blood, and the
5 victim's clothing.

6 (State's Exhibit No. 60, gunshot residue
7 collection kit - victim, is marked for
8 identification.)

9 BY MR. DURANT:

10 Q. I hand you what's been marked now as state's
11 exhibit -- state's exhibit 60 and ask if you
12 recognize that package.

13 A. Yes, sir, I do.

14 Q. And what is that?

15 A. This is the gunshot residue collection kit
16 that I performed on the victim.

17 Q. And did you obtain that at the autopsy of the
18 victim?

19 A. Yes, sir, I did.

20 Q. Were his hands bagged, too, when you arrived
21 for the autopsy?

22 A. His hands were bagged.

23 Q. And did you collect that sample in the same
24 way that you collected the sample from the Defendant
25 Rocquemoire?

1 A. Yes, sir, I did.

2 Q. And are you aware whether or not that sample
3 was later sent to SLED for analysis?

4 A. Yes, sir.

5 Q. Yes or no, was it sent or not?

6 A. Yes.

7 Q. It was sent?

8 MR. SAVAGE: Judge, I can't hear.

9 THE COURT: You need to repeat that. We
10 can't hear.

11 BY MR. DURANT:

12 Q. I asked you whether or not it was sent to SLED
13 for analysis.

14 A. Oh. I'm not sure.

15 Q. Okay. What did you do with the sample?

16 A. I ---

17 Q. I mean, the GSR kit.

18 A. I took it back to the evidence compound.

19 Q. And turned it over to Detective Owen?

20 A. Yes, sir, I did.

21 (State's Exhibit No. 61, projectiles from
22 autopsy, is marked for identification.)

23 BY MR. DURANT:

24 Q. Now I hand you what's been marked as state's
25 number 61 and ask if you recognize that exhibit.

1 A. Yes, sir, I do.

2 Q. And what is that, please, sir?

3 A. These are the projectiles that the medical
4 examiner took from the victim.

5 Q. And you obtained those from the medical
6 examiner yourself when you went to -- when you went
7 to the autopsy?

8 A. Yes, sir, I did.

9 Q. And were they also packaged in that -- those
10 little film-like cannisters at the time?

11 A. Yes, sir, they were.

12 Q. And does that exhibit appear to be in
13 substantially the same condition now as when you
14 received it from the medical examiner?

15 A. Yes, sir.

16 MR. DURANT: Your Honor, we would offer
17 state's 61, I believe, into evidence at this time.

18 THE COURT: Any objection?

19 MR. SAVAGE: No objection.

20 THE COURT: 61 in evidence.

21 (State's Exhibit No. 61, previously
22 marked for identification, is received in evidence.)

23 BY MR. DURANT:

24 Q. And now referring to state's exhibit number 48
25 already in evidence, would those be the projectiles

1 recovered at the autopsy that are contained in
2 state's exhibit number 61?

3 A. Yes, sir.

4 Q. Thank you. I hand you what's previously been
5 marked as state's exhibit number 47 and ask if you
6 recognize that photograph.

7 A. Yes, sir, I do.

8 Q. And what is that?

9 A. This is a picture of the victim on the autopsy
10 table.

11 Q. At the -- it's been -- it was originally taken
12 in color; is that correct?

13 A. It was.

14 Q. And now it's in black-and-white?

15 A. Yes, sir.

16 Q. But other than that, does it fairly and
17 accurately depict the wounds on the victim as they
18 appeared to you that morning?

19 A. It did. It does.

20 MR. DURANT: Your Honor, I believe we
21 would offer 47 -- I believe it's already in evidence.
22 If I may publish, Your Honor.

23 Could you kill the lights, please.

24 BY MR. DURANT:

25 Q. And could you please point out to the jury the

1 two injuries you observed on the deceased that
2 morning?

3 A. I'm having difficulty with the pointer.

4 Q. Can you not see it? You're up on the roof.

5 A. Oh. No, that would be wrong.

6 The first injury is right here underneath the
7 arm, and the second injury is on the abdomen.

8 Q. Detective Hodge, I'd like you to take a look
9 at the contents of that box, if you would, and tell
10 me if you recognize that.

11 A. (The witness complies.) Yes, sir.

12 Q. And what is that?

13 A. The victim's clothing.

14 Q. Is that the clothing you obtained from the
15 autopsy?

16 A. Yes, sir, it is.

17 Q. Would you please remove the victim's outer
18 shirt, the green and -- the colored and green shirt?

19 A. (The witness complies.)

20 MR. DURANT: And could we have that
21 marked as an exhibit, please, ma'am.

22 (State's Exhibit No. 62, victim's shirt,
23 is marked for identification.)

24 BY MR. DURANT:

25 Q. What did you do with that shirt -- where was

1 that shirt when you were at the autopsy?

2 A. This shirt was in the custody of the medical
3 examiner's on the floor.

4 MR. DURANT: Could you please give me the
5 number on that, Madam Court Reporter?

6 THE COURT REPORTER: Number 62.

7 MR. DURANT: State's exhibit number 62.

8 BY MR. DURANT:

9 Q. And was the shirt wet or damp at the time that
10 you collected it?

11 A. It was damp.

12 Q. And what did you do with the shirt and the
13 rest of the victim's clothing?

14 A. I received it from the medical examiner's,
15 took it to the evidence compound and put it in the
16 drying cabinet.

17 Q. And how did you package the victim's shirt?

18 A. The medical examiner packed it in the bag and
19 turned it over to me.

20 Q. Paper bag?

21 A. Plastic.

22 Q. A plastic bag? And what did you do with the
23 clothing when you got back to the evidence compound?

24 A. I placed them in a drying cabinet.

25 Q. And do you know who removed them from the

1 drying cabinet -- cabinet and marked them into
2 evidence?

3 A. Yes, sir. Investigator Owen did.

4 Q. Investigator who?

5 A. Owen.

6 Q. And...

7 MR. DURANT: The Court's indulgence for
8 just one moment.

9 (Mr. Durant and Mr. Savage confer.)

10 BY MR. DURANT:

11 Q. Does that shirt, state's number 62, appear to
12 be in substantially the same condition now as when
13 you received it from the medical examiner on August
14 the 14th?

15 A. Yes, sir, it does.

16 MR. DURANT: Your Honor, we would offer
17 state's 62 into evidence at this time if there's no
18 objection.

19 MR. SAVAGE: Without objection.

20 THE COURT: State's 62 in evidence
21 without objection.

22 (State's Exhibit No. 62, previously
23 marked for identification, is received in evidence.)

24 BY MR. DURANT:

25 Q. Moving ahead a couple of days, did you have an

1 opportunity to execute a search warrant on the
2 defendant's vehicle?

3 A. Yes, sir, I did.

4 Q. And that was a 2000 GMC Yukon; is that
5 correct?

6 A. Yes, sir, it was.

7 Q. Where did that take place?

8 A. It took place at the evidence compound at the
9 sheriff's office.

10 Q. And did you take photographs at the time that
11 you executed the search warrant on the vehicle?

12 A. Yes, sir, I did.

13 Q. And who assisted you in the execution of the
14 search warrant?

15 A. Investigator Owen assisted me.

16 Q. Investigator Hodge, I'm going to have you take
17 a look at four photographs here and ask you to just
18 tell the jury what they depict, starting with state's
19 exhibit number 41.

20 A. This is a photograph of the Yukon that we did
21 the search warrant on. It's the driver's seat.

22 Q. This is just a view from the -- through the
23 driver's door?

24 A. Yes, sir.

25 Q. State's exhibit number 42. What does that

1 depict?

2 A. That is the center console of the Yukon.

3 Q. And what is this?

4 A. That is a magazine for a pistol.

5 Q. For what kind of pistol?

6 A. A semiautomatic...

7 Q. What caliber ---

8 A. --- handgun.

9 Q. What caliber?

10 A. If I can refer to my notes?

11 Q. Sure. Please do so.

12 A. It was a .45 caliber magazine.

13 Q. And was it also -- did it also have live
14 ammunition in it?

15 A. Yes, sir. It contained seven rounds
16 ammunition.

17 Q. Okay. State's exhibit number 43. What does
18 that depict?

19 A. That is the backseat behind the driver's side.
20 A bunch of tapes, I believe.

21 Q. What is this item right here?

22 A. It's a magazine for Taurus.

23 Q. Taurus handguns?

24 A. Yes, it is.

25 Q. And state's exhibit 45. What is all that

1 stuff in the back there?

2 A. Miscellaneous, tennis shoes.

3 MR. DURANT: You can kill that, Mike.

4 Thank you, sir. Would you please answer
5 any questions that Mr. Savage may have for you.

6 MR. SAVAGE: Please the Court.

7 THE COURT: Yes, sir.

8 CROSS-EXAMINATION

9 BY MR. SAVAGE:

10 Q. Good morning, sir.

11 A. Good morning.

12 Q. I haven't met you before. I'm Andy Savage,
13 and I represent Mr. Rocquemore. I noticed you were
14 referring to some notes?

15 A. Actually, the report's from this, that too.

16 Q. Do you mind if I take a look at those during
17 your testimony?

18 A. No, sir.

19 Q. You have been with the police department for
20 how long, sir?

21 A. Seven years.

22 Q. And what do you currently do?

23 A. I am a sergeant over the vice unit.

24 Q. And at the time of your involvement in this
25 case, what was your rank?

1 A. I was an investigator with the crime scene
2 unit.

3 Q. If you would, explain to the jury how that
4 works in terms of your relationship to Inspector
5 Owens and some of the other officers that may have
6 been at the scene of the crime.

7 A. I'm sorry. My relationship?

8 Q. In other words, the chain of command, how does
9 that work? Who did you work for and who worked for
10 you at that time? Who's making the decisions?

11 A. Well, at the time I was -- my first month of
12 training. Investigator -- excuse me -- Investigator
13 Owen was assisting me, helping me go through
14 training. Sergeant Willoughby was my sergeant at the
15 time.

16 Q. So at the time that the crime scene was
17 inspected by you, you were in a training capacity?

18 A. Yes, sir.

19 Q. And who was instructing you as to what to do?

20 A. Well, everybody you meet instructs you, to
21 help you and give advice.

22 Q. Everybody's involved?

23 A. Yes, sir.

24 Q. But in terms of when you took the video, you
25 -- well, first of all, the purpose of the crime scene

1 is to collect evidence, is that correct ---

2 A. Yes, sir.

3 Q. --- that may be relevant to assist the jury in
4 determining the facts of the case?

5 A. Yes, sir.

6 Q. And sometimes when eyewitnesses are present,
7 they see different things. Not all eyewitnesss
8 necessarily see the exact same thing. Is that
9 correct?

10 A. I don't know what each person sees, but I
11 guess.

12 Q. Well, I mean, the purpose of the crime scene
13 is to do more in a scientific analysis of what was
14 found and where it was found and the condition it was
15 found and the evidence that may hold to prove facts?

16 A. Yes, sir.

17 Q. To help the jury?

18 A. Well...

19 Q. Is that correct?

20 A. To build a case, yes, sir.

21 Q. To build a case. And your role that day was
22 to assist in building the facts of the case?

23 A. Yes, sir.

24 Q. And in terms of building facts, you want to be
25 able to preserve evidence in the way it was found at

1 the crime scene?

2 A. Yes, sir.

3 Q. And in doing that, you take photographs or
4 videos of the evidence as it existed at the crime
5 scene?

6 A. Yes, sir, we do.

7 Q. And that's important?

8 A. Yes, sir.

9 Q. And in terms of importance, measurements
10 count, as well?

11 A. Yes, sir.

12 Q. And, in fact, many of the photographs that you
13 have taken have measuring sticks in them or a
14 measuring device is within the picture so you can
15 look at the photograph and tell the size of the
16 object?

17 A. Yes, they do.

18 Q. Because photographs can give you different
19 views, different sizes, or different appearances of
20 the same object?

21 A. Yes, sir.

22 Q. And size matters?

23 A. In some cases, yes, sir.

24 Q. Distances between where items are found
25 matters?

1 A. Yes, sir.

2 Q. Now, were you aware that there were at least
3 two individuals involved in this situation?

4 A. Yes, sir.

5 Q. And were you aware that those individuals were
6 found in a certain location by the first responders?

7 A. Yes, sir.

8 Q. And in the photographs that you took or the
9 video that you took, did you put a chalk line in your
10 video or in the still photographs to show exactly
11 where the two individuals were when they were found
12 by the first responder?

13 A. No, sir, we didn't.

14 Q. And who's decision was that?

15 A. Well, first of all, there's nobody there who
16 can mark a chalk line around.

17 Q. All right. And the car video, would it show
18 where they were?

19 A. It's not -- I didn't see that. I've seen the
20 video. It's not as accurate enough to do that.

21 Q. It wasn't done for whatever reason. Correct?

22 A. We don't -- we don't draw chalk lines around
23 people.

24 Q. Well, there's none on there at the time. Did
25 you draw chalk lines where they were thought to be?

1 Did you place them, did you mark things so we can
2 tell where, for instance, the blank cartridge was
3 found in relationship to the two bodies?

4 A. We marked the evidence after we did a line
5 search, yes, sir. Those are the numbers in the
6 video.

7 Q. Was there a photograph taken of where the
8 blank cartridge was found?

9 A. Can I refer to my notes? I'm not sure if
10 there was ---

11 Q. Yes, sir.

12 A. --- a blank cartridge at the time I was out
13 there.

14 Q. Yes, sir.

15 MR. SAVAGE: Thirteen, please, on the
16 projector.

17 THE WITNESS: I don't recall actually
18 placing that kind of marker.

19 MR. DURANT: Hold on. Before you put
20 that up...

21 (Mr. Durant and Mr. Savage confer.)

22 MR. DURANT: I believe this is state's
23 29, Your Honor.

24 BY MR. SAVAGE:

25 Q. State's 29, I would like to show on the screen

1 perhaps to refresh your memory.

2 A. No, sir. That was done after I had left for
3 the hospital.

4 Q. It was done when you were not there?

5 A. Yes, sir.

6 Q. Do you know how many bullets or cartridges
7 were recovered?

8 A. I can look at the notes, but I wasn't there
9 during the recovery of those.

10 Q. Are you familiar with the type of weapon that
11 was seized?

12 A. It was a .45 caliber, yes, sir.

13 Q. And are you familiar with the number of
14 cartridges that it holds?

15 A. I can only guess right now.

16 Q. And would it be important to identify the
17 number of cartridges that it holds and the number of
18 bullets or empty cartridges that were found at the
19 scene?

20 A. I'm sorry, could you repeat that?

21 Q. Would it be important as a fact of the case to
22 determine how many shots the weapon's capacity is and
23 then compare it to the number of bullets or empty
24 cartridges that are found at the crime scene?

25 A. Yes, sir.

1 Q. And was that done?

2 A. I don't know that it was done.

3 Q. And were all the blank cartridges found at the
4 crime scene?

5 A. I don't know that either.

6 Q. And how deep in the mud was the cartridge that
7 was found? How deep in the ground?

8 MR. DURANT: Your Honor, he's already
9 answered he wasn't even there when the digging took
10 place. I mean, he's asking him something he
11 couldn't possibly answer.

12 THE COURT: Are you asking him if he
13 knows that, Mr. Savage?

14 BY MR. SAVAGE:

15 Q. Well, were you present when somebody told
16 Detective Willoughby about the tire treads?

17 A. No.

18 Q. And you've testified about that?

19 A. Yes, sir.

20 Q. Well, tell us what your notes reflect about
21 the depth of the empty cartridge in the mud.

22 A. I didn't ask that question. I wasn't there
23 for it.

24 Q. Is it in the crime scene notes?

25 A. I haven't read Investigator Owen's report.

1 Q. You haven't read the crime scene notes in
2 preparation for your testimony today?

3 A. I read my notes, my report.

4 Q. And the notes you have in front of you are
5 just your notes?

6 A. Investigator Owen's is in here, yes, sir.

7 Q. But you just haven't read them?

8 A. I just -- no. I breezed through it.

9 Q. How long were you at the crime scene?

10 A. From 5:11 that morning. I left at 9:32.

11 Q. So you were there for how many hours and how
12 many minutes?

13 A. It would be four hours and twenty-two minutes.

14 Q. And when you were there, the defendant was
15 there?

16 A. The defendant was there.

17 Q. And did you photograph him at the crime scene?

18 A. Yes, sir, I did.

19 Q. And how many photographs did you take?

20 A. I don't recall.

21 Q. Did you take more than one?

22 A. I didn't -- I didn't photograph him.

23 Investigator Owen photographed him.

24 Q. Were you present when he was photographed?

25 A. Yes, sir, I was.

1 Q. And how many photographs were taken?

2 A. I don't know.

3 MR. DURANT: Once again, Your Honor, I
4 would ask that he confine his questions to things
5 that this -- this person did. I mean, how can he
6 possibly know what other people did.

7 THE COURT: All right. I sustain that.
8 He has a little leeway on cross-examination to find
9 out information. Go ahead.

10 BY MR. SAVAGE:

11 Q. I'll ask you questions, and if you don't know,
12 "don't know" is a fine answer. Is that fair enough?

13 A. Yes, sir, it is.

14 Q. Do you know how many photographs of the
15 defendant were taken?

16 A. I do not know.

17 Q. Were you present when photographs of three
18 gentlemen were taken who were involved in the
19 incident?

20 A. Yes, I was.

21 Q. Did you see all three of them's photographs
22 being taken?

23 A. I was doing the video at the time, so I wasn't
24 paying attention to what -- I saw the camera
25 flashing, but I didn't pay attention to how many

1 photographs.

2 Q. Actually, if we look at the video, you can see
3 the still picture being taken at the time the video
4 was taken?

5 A. Yes, sir.

6 Q. So those pictures were taken together,
7 correct?

8 A. Yes, sir.

9 Q. And you were there for four and a half hours?

10 A. Yes, sir. Well, a little less.

11 Q. Do you know if any photographs were taken of
12 all three of the people?

13 A. I do not know that.

14 Q. Did you take a video of all three?

15 A. No, sir.

16 Q. Why is that?

17 A. The third subject was being interviewed at the
18 time.

19 Q. The subject who was being interviewed at the
20 time, how long did that interview take place?

21 A. I don't know.

22 Q. Was it more than two or three minutes?

23 A. I don't know.

24 Q. What time did the three parties leave the
25 scene?

1 A. I don't know that either.

2 Q. Do you know in which -- what vehicle they
3 traveled at the scene?

4 A. No, sir, I don't.

5 Q. Did you see a Ford Explorer at the scene?

6 A. I vaguely recall maybe an Explorer being
7 there, but I can't tell you for sure.

8 Q. Did you photograph that Ford Explorer?

9 A. I didn't photograph anything at the scene.

10 Q. Did you videotape? When I say photograph, I
11 apologize. I mean, did you take any video recording,
12 whether it's a still photograph, a moving photograph,
13 whatever?

14 A. No, sir, I did not.

15 Q. Now, you did take videos of the tire -- the
16 skid marks?

17 A. Yes, sir, I did.

18 Q. And I assume that you took those videos
19 because at least at that time you thought they may be
20 relevant to the investigation?

21 A. Yes, sir.

22 Q. And did it appear that there was more than one
23 source for the skid marks?

24 A. It appeared that way, yes, sir.

25 Q. Those skid marks couldn't have possibly been

1 placed there at the same time by one vehicle. Is
2 that correct?

3 A. At the same time? I don't know.

4 Q. Well, how many skid marks was it?

5 A. I believe there was three sets.

6 Q. Three sets?

7 A. That I recall.

8 Q. So three sets wouldn't be placed at the same
9 time by one vehicle, would they?

10 A. If they backed up and moved back and forth,
11 yeah, they could have.

12 Q. And you've testified about a skid mark that
13 came from the driveway across the street?

14 A. It appeared that's where they came from, yes.

15 Q. Were all the skid marks from the driveway
16 across the street?

17 A. It appeared that way, yes, sir.

18 Q. How about the skid mark, the lengthy one, that
19 came from where the defendant's vehicle was parked?
20 Do you recall that one?

21 A. I don't recall there being one close to the
22 defendant's vehicle.

23 Q. Investigator Hodge, there are several that are
24 not -- this is not on the computer, it may be
25 difficult to see, but we'll give it our best shot.

1 It's state's exhibit number 52.

2 MR. DURANT: Can you kill the lights
3 some, Mike? We might be able to see it better.

4 MR. SAVAGE: And I'll try during the
5 break to get this on the computer.

6 (There was off-the-record discussion
7 regarding the projection equipment.)

8 BY MR. SAVAGE:

9 Q. Well, I'll have you -- I'll just show you the
10 photograph, then I'll come back so maybe the jury can
11 see and you can recall from me showing it to you. Is
12 that okay?

13 A. Sure.

14 Q. This is state's exhibit number 52. What I'd
15 like you to do is look at it and try to get oriented
16 so that we can discuss it with the jury.

17 A. Okay.

18 Q. Sergeant Hodge, in displaying 52, it's
19 difficult to see on the Elmo projector, but instead
20 of just focusing on the skid marks which are
21 difficult to see, would you kindly focus on the
22 little markers going from the six o'clock position to
23 the two o'clock position?

24 A. Yes, sir.

25 Q. And certainly those skid marks go past the

1 driveway across the street?

2 A. No, sir. They come to the right of the
3 beginning of that driveway.

4 Q. Including this last marker in the two o'clock
5 position...

6 A. Okay.

7 Q. It's pretty difficult to see.

8 A. It's difficult to see.

9 Q. By once you see it, you know that it goes past
10 that driveway?

11 A. Yes, sir. I do now, yes, sir.

12 Q. Thank you.

13 MR. SAVAGE: Are these in evidence?

14 MR. DURANT: Those are in evidence.

15 BY MR. SAVAGE:

16 Q. There were a number of photographs taken --
17 excuse me -- were there not?

18 A. Yes, sir, there were.

19 Q. Not just the one that I showed you. And the
20 purpose of taping those skid marks is to what, sir?

21 A. Is to collect the data on the scene.

22 Q. And you said on your testimony in response to
23 the prosecutor's question that you examined them; is
24 that correct?

25 A. I'm sorry?

1 Q. I'm not putting words in your mouth. I'm
2 asking you questions. Sometimes it's not very
3 audible. I thought I heard the prosecutor ask you if
4 you related those skid marks to the cars on the
5 right-hand side of the road.

6 A. He asked did it appear to come from the
7 driveway on the left-hand side. And I said, yes,
8 sir, it did.

9 Q. Did he also ask you if those skid marks were
10 related to the cars on the right-hand side of the
11 road?

12 A. I don't recall that question.

13 Q. If he had asked you that question, what would
14 you say?

15 A. I would say that I'm not sure. It appeared
16 that they all came from the left. There was faint
17 skid marks that were kind of hard to determine, and
18 we really didn't mark those out.

19 Q. And did you ever take a look at those skid
20 marks to identify the type, the size of the tire, and
21 the manufacturer of the tire?

22 A. No, sir, we did not.

23 Q. And the information that you received from
24 Sergeant Willoughby that you've testified came to you
25 the following day?

1 A. No, sir. It came at the scene.

2 Q. At the scene?

3 A. Yes, sir.

4 Q. After you took the photographs?

5 A. Yes, sir.

6 Q. Now...

7 (Mr. Savage reviews documents.)

8 THE COURT: Counsel, could y'all approach
9 while you're doing that?

10 (There was an off-the-record bench
11 conference in the presence of the jury but out of the
12 hearing of the jury.)

13 (Said bench conference being concluded,
14 the following proceedings were had:)

15 THE COURT: All right. Ladies and
16 gentlemen, I'm going to send you to the jury room.
17 Do not discuss the case in any way. Thank you very
18 much.

19 (Whereupon, the jury goes to the jury
20 room at approximately 10:50 a.m.)

21 THE COURT: Thank you. We'll take a
22 short break.

23 (A break is taken at approximately
24 10:50 a.m.)

25 (The trial reconvenes at approximately

1 11:00 a.m., the defendant being present with counsel,
2 and the following proceedings were had:)

3 THE COURT: Are y'all ready? Bring the
4 jury in.

5 (Whereupon, the jury returns to the
6 courtroom at approximately 11:00 a.m.)

7 THE BAILIFF: All jurors are seated,
8 Your Honor.

9 THE COURT: Thank you. Please be seated.
10 All right, ladies and gentlemen. We're
11 ready to proceed.

12 INVESTIGATOR BRIAN HODGE,
13 previously duly sworn, resumes the witness stand and
14 is examined and testifies further as follows:

15 CROSS-EXAMINATION (CONTINUED)

16 BY MR. SAVAGE:

17 Q. Maybe it would be best if we just go back
18 through the video, and that way I won't be coming
19 back with still pictures and video pictures. As I
20 understood, the video, you took the video, not the
21 still pictures?

22 A. Yes, sir.

23 Q. So you are familiar with the scene as the
24 video was taken?

25 A. Yes, sir.

1 Q. And would it be fair -- this is a question.
2 The time on the video, is that an accurate time?

3 A. Yes, sir -- well, no. I'm not sure about the
4 time on -- I don't recall the time on the video.

5 Q. Well, even if the time's not accurate, the
6 clock is accurate. Is that correct? In other words,
7 if it was five o'clock and it was really four
8 o'clock, at six o'clock it would be five o'clock, at
9 eight o'clock it would be seven o'clock. Whether the
10 time is the actual time, the clock is operating
11 correctly?

12 A. Yes, sir.

13 Q. Now, what time did the video start?

14 A. Can I refer to my notes?

15 Q. Sure.

16 A. I'm not sure I put the time that I started it.

17 MR. SAVAGE: Can we dim the lights and
18 get it cued?

19 THE WITNESS: I don't have the actual
20 time of the video that I started it.

21 (State's Exhibit No. 50, officer in-car
22 video on CD disk, begins playback.)

23 BY MR. SAVAGE:

24 Q. What I'm going to do is ask the prosecutor to
25 leave it on, and then we can talk, and maybe we can

1 skip ahead to save a little bit of time, but it
2 appears that it started within --- looks like it
3 might have been five -- almost 5:42, in the lower
4 right-hand side. Correct?

5 A. Yes, sir.

6 Q. I'm going to be making statements that sound
7 like statements, but they're really questions.

8 A. Okay.

9 Q. If you could confirm it. And what this
10 preliminary stuff is, is just to identify the case
11 number. Correct?

12 A. Yes, sir.

13 Q. And the first scene that we see, it started
14 at -- stop, please. What time is that?

15 A. I believe it says 6:18.

16 Q. What video was taken between 5:42 and 6:18?

17 A. I don't recall. I think I walked the scene
18 first.

19 Q. Well, is this the complete video?

20 A. Yeah, it -- from what I've seen, it is a
21 complete video.

22 Q. All right. Can we continue, please. At 6:18
23 then is one of the three gentlemen who were there at
24 the scene when the police first responded. Is that
25 correct?

1 A. Yes, sir.

2 Q. And the purpose of this video is to take a
3 look again and see what his clothing, his body, and
4 whatnot looks like to document what?

5 A. As he was found at the scene.

6 Q. And what are we specifically looking for, like
7 in that shot right there?

8 A. Just collecting the data from his body.

9 Q. Including blood that's on his clothing?

10 A. Anything that's there.

11 Q. The wounds on his hands and fists?

12 A. Yes, sir.

13 Q. And feet? And what is he leaning against?
14 Scrape marks to his right arm?

15 A. As far as what he's leaning against, it's a
16 vehicle. I'm not sure which one.

17 Q. Do you know if that's his vehicle?

18 A. I don't know.

19 Q. Was the vehicle examined?

20 A. I don't know.

21 Q. That's a gray Ford Explorer?

22 A. I don't recall that.

23 Q. And we missed that one to the right arm.
24 Scrape marks?

25 A. Yes, sir.

1 Q. Now, this gentleman, I see that we can see the
2 still photographer in the video, as well, and they're
3 concentrating on the two hands of the person, taking
4 front and back shots?

5 A. Yes, sir.

6 Q. Both still photographs and the video?

7 A. Yes, sir.

8 Q. Then as we go along, we take a video of a
9 second subject?

10 A. Yes, sir.

11 Q. Now, watch his hands and please explain to me
12 what he's doing with his hands.

13 A. He's folding his hands.

14 Q. Where is he holding his hands?

15 A. Under -- he's folding his hands under his
16 arms.

17 Q. And were you able to photograph him at the
18 time he folded his hands and placed them under his
19 arms?

20 A. No, sir.

21 Q. Do you notice he's not using his hands for any
22 express purposes and that he appears to be -- this is
23 a question -- hiding his hands?

24 A. I don't know if he's hiding his hands, but
25 they're not in view.

1 Q. They certainly aren't taken. All of a sudden
2 we're at 6:42. Was there any photographs taken --
3 stop please -- between the time that the second male
4 was photographed and 6:42?

5 A. I'm sorry, repeat that?

6 Q. Was there any video taken between the time
7 that the 6:20 video was taken and 6:42, 22 minutes
8 later?

9 A. No, sir. This is where I've started with
10 doing the scene. I can't tell if there's patrol cars
11 there or not. First of all, the patrol car should be
12 in there for the first video.

13 Q. The patrol car is missing?

14 A. I can't tell.

15 Q. Well, the question I was going to ask, was
16 anything taken, was anything videoed between 6:20 and
17 6:42?

18 A. I don't know.

19 MR. DURANT: Asked and answered, Your
20 Honor.

21 THE COURT: I'll allow it. Go ahead.

22 MR. SAVAGE: I didn't hear the answer,
23 and I apologize.

24 THE WITNESS: I don't recall if I did or
25 not.

1 BY MR. SAVAGE:

2 Q. Between 6:20 to 6:42, where was the third
3 gentleman?

4 A. He was in the -- when I saw him, the third
5 gentleman ---

6 THE COURT: Sorry.

7 THE WITNESS: --- the third gentleman was
8 in the patrol car being interviewed.

9 Q. The whole time?

10 A. I don't know that he was there the whole time.

11 Q. And who was interviewing him?

12 A. One of the detectives.

13 Q. And who is -- what is the detective's name,
14 please?

15 A. I don't know.

16 Q. Well, was he photographed later that day?

17 A. I don't know.

18 Q. Has he ever been photographed?

19 A. I don't know.

20 Q. Do you know whether any clothing was taken
21 from him?

22 A. I don't know that either.

23 Q. Do you know whether he wore a 5X sweatshirt
24 that day?

25 A. I don't know.

1 Q. Do you know if there's a 5X sweatshirt in
2 evidence in the Charleston County evidence locker?

3 A. I don't know that either.

4 Q. At 6:48...

5 MR. SAVAGE: Can we speed it up where we
6 can watch it if it's fast-forwarded? Slow down at
7 6:48.

8 BY MR. SAVAGE:

9 Q. Now, we're outside the crime scene at this
10 point at 6:42 on the Ladson Road side. Is that
11 correct?

12 A. Yes.

13 Q. Looking west?

14 A. On Logwood Drive.

15 MR. DURANT: What time do you want it at?

16 MR. SAVAGE: This is good if you just --
17 if you just speed it up.

18 MR. DURANT: 6:48 you said?

19 BY MR. SAVAGE:

20 Q. As he goes through this, what you're doing is
21 taking the light pole, so you get the number, so we
22 know that the measurements are correct?

23 A. You get a landmark, yes, sir.

24 Q. So that the measurements are correct?

25 A. Yes, sir.

1 MR. DURANT: We're at 6:47 now,

2 Mr. Savage.

3 BY MR. SAVAGE:

4 Q. And we're taking photographs of vehicles. And
5 about 6:48, we start taking video of the skid marks?

6 A. Uh-huh.

7 Q. That looks like you in the video.

8 A. Yeah, it is. I'm taking overall video of the
9 scene right now.

10 Q. Are those people sitting in that car?

11 A. That's a T-shirt.

12 Q. Taking a picture of the VIN number, the
13 vehicle identification number?

14 A. Yes, sir.

15 MR. SAVAGE: Now, if you would stop
16 there.

17 BY MR. SAVAGE:

18 Q. What was the purpose of taking a photograph of
19 the windshield other than the VIN number?

20 A. I'm sorry?

21 Q. The video that we have before us now is
22 6:48:58.

23 A. Uh-huh.

24 Q. What was the purpose of taking a photograph of
25 the windshield other than the VIN number of the

1 vehicle? What are we looking at right now?

2 A. This is an overall view of the scene.

3 Q. And what are we looking at now?

4 A. We're looking at the green -- green vehicle
5 that's parked by the defendant's vehicle.

6 Q. And what do we see in the vehicle?

7 A. What do we see in the vehicle? The VIN number
8 and the outside of the car.

9 Q. And do you see anything that doesn't belong to
10 the car?

11 A. I don't know what belongs to the car. I'm
12 just taking a photograph.

13 Q. Well, does a -- does a potato chip bag belong
14 to the car?

15 A. Uh-huh.

16 Q. It does?

17 A. I don't know.

18 Q. And there appears to be something on the
19 windshield wiper.

20 A. Yes, sir, there is.

21 Q. And what is that?

22 A. There was a chain, and I believe that's -- I'm
23 not sure, but it looks like a watch.

24 Q. Was there both a chain and a watch there?

25 A. During the time of the video, yes.

1 Q. And were they taken?

2 A. I don't know.

3 Q. You took photographs of other watches and
4 rings and sunglasses and whatnot within this crime
5 scene. Correct?

6 A. Yes, sir.

7 Q. And they had some evidentiary value?

8 A. I just collected -- I just recorded the video.
9 That was it. By the time I left, that was all
10 collected. So I wasn't there during collection.

11 Q. Do you know whether or not the jewelry that
12 was found on the windshield of the green vehicle was
13 collected?

14 A. I do not know.

15 Q. Do you know whether the jewelry that was found
16 on the green windshield that was collected was
17 between the driveway of Mr. Brown's house and the
18 door, driver's door, to Mr. Rocquemoire's vehicle?

19 A. I'm sorry, there was -- say again?

20 Q. What I want to help the jury understand is
21 where this windshield is located in reference to the
22 driveway of Mr. Brown's house and the vehicle
23 belonging to Mr. Rocquemoire.

24 A. If you back up the video, you can see where
25 it's sitting at. It's right in front of

1 Mr. Rocquemore's vehicle.

2 Q. And in relationship to the driveway?

3 A. In relation to the driveway?

4 Q. To Mr. Brown's driveway, Mr. Dexter Brown's
5 driveway?

6 MR. DURANT: Your Honor, I think -- I
7 don't know if he knows where Mr. Dexter Brown's ---

8 THE WITNESS: I don't know ---

9 MR. DURANT: --- driveway is.

10 THE COURT: Hold on a second.

11 What's the objection?

12 MR. DURANT: The objection is I think
13 he's asked for facts that he's not aware of.

14 THE COURT: All right. If the witness is
15 not aware of the incident, the witness is instructed
16 to say "I don't know." All right?

17 THE WITNESS: I don't know where the
18 driveway is.

19 BY MR. SAVAGE:

20 Q. You don't know where the driveway is where
21 this incident allegedly started?

22 A. No, sir, I don't.

23 Q. Thank you, sir.

24 MR. SAVAGE: Could you continue, please?

25 MR. DURANT: What time did you say?

1 MR. SAVAGE: Just keep it -- keep it
2 rolling.

3 BY MR. SAVAGE:

4 Q. That identifies the vehicle that was within
5 the crime scene by the number of the back of the
6 vehicle?

7 A. Yes, sir, it does.

8 Q. And the license plate number. And this
9 identifies the number on the mailbox. Correct?

10 A. Yes, sir.

11 Q. And this identifies, again, the pole number.
12 Again, the pole number is used as a reference for
13 measurements?

14 A. Yes, sir.

15 Q. Because measurements count?

16 A. Yes, sir.

17 Q. If you would look beyond the patrol vehicle,
18 do you see the Explorer still present at the crime
19 scene? Right there?

20 A. Yes, sir. Outside the crime...

21 Q. Did you see a gentleman standing next to the
22 Explorer?

23 A. Yes, sir.

24 Q. Do you know who that is?

25 A. No, sir, I don't.

1 Q. And what time is this when the Explorer is
2 still at the crime scene?

3 A. 6:50.

4 Q. What vehicle is that?

5 A. It's a vehicle in the driveway.

6 Q. And what relationship to the criminal
7 activity, alleged criminal activity, did those two
8 vehicles have to the crime?

9 A. As far as I know, they're in the scene, so any
10 information in the scene I record.

11 Q. Did you take the same type of video
12 photographs of the gray Explorer?

13 A. It wasn't in the scene. I wasn't instructed
14 to.

15 Q. At 6:51 you took a video of a sneaker?

16 A. Yes, sir.

17 Q. At 6:51 you took some video of artifacts that
18 were left by the emergency medical responder?

19 A. Yes, sir.

20 Q. At 6:52 you took a video of what appears to be
21 a watch?

22 A. Yes, sir.

23 Q. And do you know whose watch that is?

24 A. No, sir, I don't.

25 Q. Was that watch taken into custody?

1 A. I wasn't there during collection. I don't
2 know.

3 Q. And your notes and nothing else you know about
4 this case, you don't know whether or not that watch
5 was taken into evidence?

6 A. No, sir, I don't.

7 Q. How about the shoe? Do you know anything
8 about the shoe?

9 A. Yes, sir.

10 Q. And you weren't there when that was collected?

11 A. No, sir, I wasn't.

12 Q. But you know that that was taken into custody?

13 A. Yes, sir. It's right here.

14 MR. SAVAGE: Now, would you stop for a
15 moment.

16 BY MR. SAVAGE:

17 Q. What time is it now?

18 A. 8:12.

19 Q. And were you present at the scene between 6:52
20 and 8:12?

21 A. Yes, sir, I was.

22 Q. And in that one hour and 20 minutes, did you
23 take any other video?

24 A. This is the actual order I took the videos.

25 Q. The question was, did you take any other video

1 in that hour and 20 minutes?

2 A. After this one? I'd have to look at it to
3 see.

4 Q. What did you do for that hour and 20 minutes?

5 A. We videoed the scene, marked those skid marks
6 which was very complicated. It took a while because
7 there's a lot of skid marks. And then we measured
8 the -- from the pole to the police cruisers.

9 Q. So between 6:52 and 8:12, your attention was
10 directed to the skid marks?

11 A. I don't know that was the time frame, but it
12 was during that time frame.

13 Q. Well, would you refer to the time frame on the
14 video in front of the jury at this time?

15 A. I'm sorry?

16 Q. Would you refer to the time on the video in
17 front of the jury at this time?

18 A. It is 8:12.

19 Q. And the last segment of the video ended at
20 what time?

21 A. I don't know.

22 (Mr. Savage and Mr. Durant confer.)

23 BY MR. SAVAGE:

24 Q. I'm going to return to the previous couple of
25 slides on the video to see what time it is. Do you

1 see the time there?

2 A. Yes, sir.

3 Q. I apologize, because it's not -- I don't
4 believe it's 6:52. What time is it?

5 A. 6:53.

6 Q. So between 6:53 and I think it was 8:12, what
7 was your attention directed to?

8 A. It was on numerous things during that time.
9 Whatever I've already -- the ones I told you about
10 before. The skid marks ---

11 Q. Such as?

12 A. Taking the video of the skid marks.

13 Q. Taking the video of the skid marks?

14 A. That was part of it, yes, sir, I would assume.

15 Q. That's what you were doing between 6:52 --
16 6:53 and 8:12?

17 A. Plus that I had a lot of duties during that.

18 Q. Do you recall, though, what those duties were?

19 A. Yes, sir. Like I said before, it was
20 documenting the video of the four cruisers, filming
21 the two gentlemen that were in there. We also did
22 skid marks, measured. We had to, in fact, search
23 around the cruisers to make sure that nothing was
24 there before we moved them out of the scene. We also
25 measured the -- from before we moved the cruisers,

1 where their location was, using those poles as a
2 reference point.

3 Q. As then as the video continues, what did you
4 take photographs of?

5 A. After the cruisers were moved, I videotaped
6 after they were removed...

7 THE COURT REPORTER: Please repeat that.

8 THE WITNESS: After the cruisers were
9 moved, I videotaped the scene after they were moved.

10 BY MR. SAVAGE:

11 Q. And it appears that there were about 8 or 12
12 markers placed on the roadway?

13 A. Yes, sir. We did a line search. I'm not sure
14 what the time frame was of the line search, but then
15 we put markers down.

16 Q. So are those markers for purposes of the line
17 search, or are they for purposes of the skid marks?

18 A. For this right here, these markers are for the
19 skid marks. The numbered markers are for the
20 evidence.

21 Q. And then you stayed on and videoed the skid
22 marks and some other -- of other items that the jury
23 has already seen. That's basically what you did from
24 there until you ended the video?

25 A. Yes, sir.

1 Q. And those are items of evidentiary value as
2 they appeared to you during the crime scene?

3 A. Yes, sir, they're -- they are.

4 Q. A lot of emphasis at that time on the skid
5 marks?

6 A. Yes, sir.

7 Q. That was well documented?

8 A. Yes, sir.

9 Q. Thank you, sir. Now, unless there is anything
10 that you want to point out to us on the video, I was
11 going to go on to the next thing, but if I'm missing
12 something, I wouldn't want the jury not to see it.
13 Is there anything else on the video that we should
14 cover?

15 A. Not that I see.

16 Q. Thank you. Now, as I understood it, you left
17 the incident scene and you went to -- was it
18 St. Francis Hospital?

19 A. Yes, sir.

20 Q. And where were you in St. Francis Hospital?

21 A. I was in the emergency room.

22 Q. And is that where Mr. Rocquemore was taken?

23 A. Yes, sir.

24 Q. And how did he arrive? If you know, how did
25 he arrive at St. Francis Hospital? Was he taken by

1 the police or EMS?

2 A. I wasn't -- I didn't see him leave. The last
3 time I saw him he was in the back of a patrol car.

4 Q. And you didn't see how he got there? You
5 don't know?

6 A. No, sir, I don't.

7 Q. Now, what was the reason for you to go to the
8 hospital?

9 A. To photograph the defendant and collect his
10 clothing.

11 Q. To photograph him and to collect his clothing?

12 A. Yes, sir.

13 Q. You had earlier testified about gunshot
14 residue?

15 A. Yes, sir. I included that.

16 Q. Was that also at the hospital?

17 A. No, sir. I collected that at the scene.

18 Q. At the scene?

19 A. Yes, sir.

20 Q. And do you know what time that was collected?

21 A. Bagging was completed at 5:26.

22 Q. The bagging was completed at 5:26 or the
23 actual test?

24 A. When the test was finished and I sealed it, I
25 wrote in 5:26.

1 Q. Okay. I was thinking of the bagging of the
2 hands. That's the description that had earlier been
3 given about the hands. For the jury's benefit, the
4 bagging of hands is to preserve evidence; is that
5 correct?

6 A. Yes, sir, it is.

7 Q. And were the defendant's hands bagged -- I'm
8 talking about hands now, not the evidence -- that
9 day?

10 A. They were. When I arrived, he was bagged.

11 Q. And do you know who bagged them and what time
12 they were bagged?

13 A. I don't know what time Lieutenant Scarborough
14 bagged his hands.

15 Q. Pardon me?

16 A. Lieutenant Scarborough bagged his hands.

17 Q. Lieutenant Scarborough did it?

18 A. Yes.

19 Q. And you then examined them at the location
20 where the incident took place?

21 A. Yes, sir, I did.

22 Q. And you took swabs.

23 A. Yes, sir.

24 Q. Is that correct?

25 A. Yes, sir.

1 Q. And those swabs you took were with -- was it
2 Q-Tips or...

3 A. Yes, sir, it was a Q-Tip.

4 Q. And you took them on the palm-side of each
5 hand and the backside of each hand?

6 A. Yes, sir.

7 Q. And that was done randomly?

8 A. I'm sorry?

9 Q. Was it done randomly? I mean, was there a
10 specific spot that you go right down the...

11 A. No, sir. Initially, you have to use the --
12 there's a magnetic piece, it's a round disk, and you
13 use that to pat the hands first before you go to the
14 swab.

15 Q. So there were two separate obtaining of
16 evidence for the GSR, not one?

17 A. Yes, sir.

18 Q. And is that done randomly? In other words, do
19 you always do it a particular site on the hand, or do
20 you do it wherever you feel that it's...

21 A. We use the magnetic first and then the swabs.
22 The rest of it's random.

23 Q. And when you do that, tell the jury what
24 you're looking for. What is the theory behind the
25 gunshot residue?

1 A. I can tell you that, as far as my limited
2 knowledge on it, it's to collect any residue that's
3 on the hands.

4 Q. And where does that residue come from?

5 A. It comes from a weapon, a gun.

6 Q. And is it -- does it come from the process of
7 the explosion of the bullet when the projectile
8 leaves the weapon?

9 A. Yes, sir.

10 Q. And does that spread out and get on things
11 such as hands and clothing and other items that are
12 in the area?

13 A. That's my understanding.

14 Q. And did you -- if you know, do you know how
15 the process of that gunshot residue examination
16 works?

17 A. I just -- I use the -- the articles that are
18 sent in the bag, and I just collect them like I've
19 explained.

20 Q. But you don't know whether, then, somebody
21 would be looking for certain types of chemicals that
22 is collected?

23 A. No, sir, I don't.

24 Q. And when you collected those chemicals, you
25 didn't take any chemicals -- or GSR from the shirt

1 or...

2 A. No, sir, I don't.

3 Q. --- face or anything else?

4 A. Hands only.

5 Q. Hands only. Now, when you went to the
6 hospital, the first hospital, St. Francis, what
7 examination did you do there?

8 A. When I initially arrived, I photographed the
9 defendant overall. And then I took his wounds,
10 photographed his wounds, and then I laid scales on
11 his wounds and photographed those, and collected his
12 clothing.

13 Q. And for what purpose did you do that?

14 A. To accurately document the -- the defendant.

15 Q. Now, did I understand you to say that you
16 placed scales on the wounds?

17 A. Yes, sir, I did.

18 Q. I want to go back to the photographs that the
19 prosecutor showed you that you introduced to allow
20 the jury to see, and do they have any scales on them?

21 A. I don't recall if they did or not.

22 Q. Why would you want the jury to see the ones
23 with the scales on them?

24 A. It just accurately depicts the defendant.

25 Q. And it also depicts where the injuries are?

1 A. Yes, sir.

2 Q. For instance, if somebody was laying facedown
3 in the mud and they have a busted lip that was
4 bleeding, it would be difficult to hit him in the lip
5 from the back of his head?

6 A. I guess so.

7 Q. And it would be important to show the jury the
8 size of that lip and the attention it deserved
9 medically at the time you photographed him?

10 A. I'm sorry. It would be difficult, sir?

11 Q. It would be important ---

12 A. Yes, it would.

13 Q. --- to document it for the jury to see the
14 extent of the injuries and where the injuries were?

15 A. Yes, sir.

16 Q. Now, do you have the photograph of the
17 defendant's face, the front-on view?

18 A. I don't have any photographs.

19 Q. Do you remember introducing them into
20 evidence?

21 A. Yes, sir.

22 Q. I want to show you state's exhibit number 34.
23 I'm sorry.

24 A. (The witness reviews exhibit.) Yes, sir, I
25 do.

1 Q. Is that the photograph that has been shown to
2 the jury?

3 A. Yes, sir, it is.

4 Q. Did you take other photographs?

5 A. Yes, sir.

6 Q. Have they been shown to the jury?

7 A. Not all of them.

8 Q. Has the photograph where you identified the
9 extent of the injury to his lip been shown to the
10 jury?

11 A. The one by the scale has not been shown.

12 THE COURT REPORTER: Please repeat that.

13 THE WITNESS: The one with the scale
14 hasn't been shown.

15 BY MR. SAVAGE:

16 Q. State's exhibit number 35, that appears to be
17 a right head shot of the defendant?

18 A. Yes, sir, it does.

19 Q. And does that show his injuries?

20 A. Yes, sir.

21 Q. And do you have any other shots that show
22 better his injuries?

23 A. I don't know that there's any better shots,
24 but there's other shots.

25 Q. And state's exhibit number 36, is that the

1 left side of his head?

2 A. Yes, sir.

3 Q. And on any of those photographs, do you show
4 any markings to measure sizes or anything of that
5 type?

6 A. No, sir.

7 MR. SAVAGE: Beg the Court's indulgence
8 for a moment.

9 Judge, it may be easiest -- I know this
10 is a little unusual for him, but to ask if he can
11 identify these photographs before we put them up on
12 the screen.

13 THE COURT: You don't have a hard copy?
14 That's all right. You may step down, sir.

15 (The witness leaves the witness stand and
16 stands in front of the jury-box.)

17 BY MR. SAVAGE:

18 Q. I'll show you a series of photographs and ask
19 if you can identify them, but first I have to have
20 them marked.

21 (Defendant's Exhibit No. 18, photo -
22 defendant, close-up of lip (Marker #5), is marked for
23 identification.)

24 (Defendant's Exhibit No. 19, photo -
25 defendant, face (Marker #5), is marked for

1 identification.)

2 (Defendant's Exhibit No. 20, photo -
3 defendant, ear (Marker #4), is marked for
4 identification.)

5 (Defendant's Exhibit No. 21, photo -
6 defendant, knuckle (Marker #6), is marked for
7 identification.)

8 (Defendant's Exhibit No. 22, photo -
9 defendant, forehead (Marker #3), is marked for
10 identification.)

11 (Defendant's Exhibit No. 23, photo -
12 defendant, forehead (Marker #3), is marked for
13 identification.)

14 (Defendant's Exhibit No. 24, photo -
15 defendant, side face (Marker #2), is marked for
16 identification.)

17 (Defendant's Exhibit No. 25, photo -
18 defendant, side face (Marker #1), is marked for
19 identification.)

20 MR. SAVAGE: Thank you.

21 BY MR. SAVAGE:

22 Q. Sergeant, I'm going to show you defendant's
23 exhibits number 18 through 25, ask you if you can
24 identify them.

25 A. (The witness reviews exhibits.) Yes, sir.

1 Q. What I'm going to try to do, test my
2 technology, I would like to retrieve the photographs
3 and try to put those up on the computer.

4 MR. SAVAGE: Your Honor, with the consent
5 of the state, we would introduce them in evidence at
6 this time.

7 THE COURT: Numbers, please.

8 MR. SAVAGE: I believe it's 18 through
9 25.

10 THE COURT: Defendant's 18 through 25 are
11 in evidence without objection.

12 (Defendant's Exhibits No. 18 through 25,
13 previously marked for identification, are received in
14 evidence.)

15 BY MR. SAVAGE:

16 Q. State's number 20 -- excuse me. Defendant's
17 number 20, is that one of the photographs?

18 A. Yes, it is.

19 Q. Is it the same photograph that's displayed on
20 the screen?

21 A. Yes, sir, it is.

22 Q. And in that, what is defendant's 20 showing?

23 A. It shows -- it's bruising behind the ear of
24 the defendant.

25 MR. DURANT: What number is that?

1 (Mr. Durant reviews exhibits.)

2 BY MR. SAVAGE:

3 Q. Now I'm showing you 22 and 23, defendant's
4 exhibits, and ask you if these are the same
5 photographs that are being displayed to the jury.

6 MR. SAVAGE: Can we dim the lights,
7 please.

8 (Mr. Savage and Mr. Durant confer.)

9 BY MR. SAVAGE:

10 Q. What number is that, please, on the back of
11 the photograph?

12 A. 23 and 22.

13 Q. And does -- which one is this, please?

14 A. That one is number 22.

15 Q. Okay. And does that seem to be the one that's
16 displayed to jury now the same as the one that's held
17 in your hand?

18 A. Yes, sir, it is.

19 Q. Thank you, sir.

20 MR. SAVAGE: May I approach, Your Honor?

21 THE COURT: Yes, sir.

22 BY MR. SAVAGE:

23 Q. Defendant's exhibit number 24 and 25, I'd like
24 you to review those and to verify to the jurors that
25 what's displayed on the scene is the same -- the

1 screen is the same.

2 A. That is bruising on the defendant.

3 Q. Now, these, of course, are the same type of
4 photographs that have previously been shown to the
5 jury to display injuries. Correct?

6 A. Yes, sir.

7 Q. Now, those injuries are injuries that are
8 received by some blunt instrument or blows; is that
9 correct?

10 A. They're injuries. How he obtained them, I'm
11 not sure.

12 Q. And you classify injuries as defense injuries,
13 offensive injuries?

14 A. I'm not qualified to.

15 Q. You're not qualified to do that?

16 A. No, sir.

17 Q. Defendant's exhibit number 21, sir?

18 A. This is an abrasion on the middle finger of
19 the defendant.

20 Q. And does that appear to be the same photograph
21 that you have as is being displayed to the jury?

22 A. Yes, sir, it is.

23 Q. And what does that display?

24 A. An abrasion on the knuckle of the defendant,
25 abrasion.

1 Q. And how do you define abrasion?

2 A. A break in the skin.

3 Q. Defendant's 18 and 19, please take a look at
4 those. And on defendant's 19, is that the same as
5 the one that's being displayed to the jurors now?

6 A. Yes, sir, it is.

7 Q. And what does that -- what is the purpose of
8 that photograph?

9 A. It appeared that he may have some swelling on
10 his lip.

11 Q. Now, when you say appeared, what do you mean
12 by that?

13 A. I didn't know the defendant before the picture
14 was taken, so I didn't know if that was natural or...

15 Q. So if the left side of his lip is a lot larger
16 than the right side of his lip, it might be natural?

17 A. I don't know that for sure, but it's possible.

18 Q. Defendant's 18, please. That's a little
19 closer-up look of it. Did you look at the inside
20 where the lip touches the teeth?

21 A. I don't recall if I did or not.

22 Q. But that photograph that's now before the
23 jurors is the same photograph that's being held in
24 your hand?

25 A. Yes, sir.

1 Q. Thank you, sir. Following -- I assume that
2 the defendant was being treated by medical personnel.
3 We didn't see them in the photograph, but that
4 photograph was taken in the emergency room at
5 St. Francis; is that correct?

6 A. Yes, sir.

7 Q. He was under -- being treated at that time ---

8 A. Yes, sir.

9 Q. --- was he not?

10 A. Yes, sir. There were medical people in the
11 room.

12 Q. And you left St. Francis with those
13 photographs. What else did you leave with?

14 A. Various clothing.

15 Q. And did you take any fingernail scrapings of
16 the defendant?

17 A. No, sir, I did not.

18 Q. And what would one take fingernail scrapings
19 for? What would be the purpose of that?

20 A. I'm not really -- I just collect those things.
21 I -- as far as fingernail scrapings, that's something
22 we don't normally do.

23 Q. You don't normally do that?

24 A. No, sir. Because the medical examiner does
25 that.

1 Q. All right. Now, you left St. Francis
2 Hospital, and you went to the Medical University of
3 South Carolina?

4 A. Well, first of all, I dropped the evidence off
5 at the evidence compound, and then later on that
6 afternoon I went to the autopsy.

7 Q. And the evidence when you dropped it off, was
8 it bagged?

9 A. The victim's clothing was bagged, yes, sir --
10 I mean, the defendant's clothing was bagged.

11 Q. The defendant's clothing was bagged. And what
12 type of bags was it bagged in?

13 A. A brown paper bag.

14 Q. And did you use any plastic bags?

15 A. No, sir.

16 Q. And why wouldn't you use a plastic bag?

17 A. I don't carry plastic bags for evidence in my
18 vehicle.

19 Q. And what is the difference between a paper bag
20 and a plastic bag in terms of preserving evidence?

21 A. In the long term? I'm not -- not qualified to
22 give that information.

23 Q. Do you ever -- do you ever place evidence in
24 plastic bags?

25 A. Yes, sir.

1 Q. And why do you do that?

2 A. Sometimes it's the only thing I've got at the
3 evidence compound. This time brown paper bags,
4 though.

5 Q. And you don't know the difference between a
6 paper bag and a plastic bag in terms of preserving
7 and not spoiling evidence?

8 A. I'm not -- I'm not qualified to give at all.

9 Q. You're not qualified. Well, when you got to
10 the Medical University, did you perform any analyses
11 at the Medical University?

12 A. No, sir. I just collected and photographed
13 the victim.

14 Q. So you didn't do a gunshot residue?

15 A. I did do a gunshot residue.

16 Q. You did?

17 A. I collected a gunshot residue, sir.

18 Q. And did you do the same type of testing you
19 did on the defendant?

20 A. I did.

21 Q. And that would consist of two separate gunshot
22 residue tests, to the front and back of each hand?

23 A. Yes, sir.

24 Q. Now, were those hands bagged?

25 A. Yes, sir, they were.

1 Q. And who bagged them?

2 A. It's my understanding that the medical team
3 that took the victim from the scene did that.

4 Q. Do you know at what time they were bagged or
5 what transpired before they were bagged?

6 A. No, sir, I do not.

7 Q. Would that be important to you?

8 A. No, sir.

9 Q. It wouldn't?

10 A. Just the fact they're bagged.

11 Q. Well, does the timing of the bagging, is that
12 important in terms of preserving evidence?

13 A. Yes, sir, it is.

14 Q. And so would it be important to you to know
15 what time the hands were bagged in relationship to
16 how the hands moved, whether they were in a wet
17 ditch, whether they were in the grass, whether they
18 were in a struggle which could have or could not have
19 removed the evidence?

20 A. Yes, sir, it would.

21 Q. And is that recorded in your notes?

22 A. No, sir.

23 MR. SAVAGE: Beg the Court's indulgence
24 one moment, please.

25 Thank you for your patience, sir.

1 BY MR. SAVAGE:

2 Q. At St. Francis Hospital, you did collect the
3 defendant's clothing?

4 A. I did.

5 Q. And you took it to the evidence compound?

6 A. Yes, sir.

7 Q. Do you have any knowledge of what happened to
8 it after that?

9 A. I placed it in a drying cabinet.

10 Q. And do you have any -- I don't want to ask for
11 speculation on who did what to what.

12 A. Uh-huh.

13 Q. But do you have any knowledge, direct
14 knowledge of what happened to the clothing after you
15 placed it in the drying cabinet?

16 A. At that point Investigator Owen is responsible
17 for it.

18 MR. SAVAGE: Thank you, sir.

19 REDIRECT EXAMINATION

20 BY MR. DURANT:

21 Q. I just have a couple of things to ask you on
22 redirect, Investigator Hodge. To begin with, have
23 you ever put chalk lines around a body?

24 A. No, sir.

25 Q. At a crime scene?

1 A. It's something they do on TV.

2 Q. Were the -- you see that on TV a lot, don't
3 you?

4 A. Yes, sir.

5 Q. Where was the victim and the defendant when
6 you got to the scene?

7 A. The victim was gone. The defendant was in the
8 back of a patrol car.

9 Q. Had the victim been deceased at the time and
10 still there, what would you have done?

11 A. I believe placed a bag over his body and wait
12 for the coroner to arrive.

13 Q. Okay. Before you do that, what would you do?

14 A. I would photograph him.

15 Q. Exactly. If the body's there, you'd
16 photograph it, correct?

17 A. Yes, sir.

18 Q. If it's not there, you can't do that?

19 A. Yes, sir.

20 Q. Is that safe to say?

21 A. Yes, sir.

22 Q. The same with a defendant; is that correct?

23 A. Yes, sir.

24 Q. Now, the skid mark photos that we've had all
25 this conversation about, is it safe to say, and

1 correct me if I'm wrong, that most of those appear to
2 originate from the driveway across the street?

3 MR. SAVAGE: Object to the form of the
4 question.

5 THE COURT: Restate that question.

6 BY MR. DURANT:

7 Q. Can you tell from looking at these photos from
8 what -- from where most of these skid marks appear to
9 originate?

10 A. The driveway on the left.

11 Q. Across the street and down the road from -- to
12 which vehicle? From which vehicle?

13 A. From the white SUV.

14 Q. And even the ones that Mr. Savage pointed out,
15 back up this way, are they consistent with somebody
16 backing out of this driveway and then heading down
17 the road?

18 A. Yes.

19 Q. Peeling or burning out?

20 A. Yes, sir.

21 MR. SAVAGE: Form of the question.

22 THE COURT: I'll allow that. Go ahead.

23 BY MR. DURANT:

24 Q. You've seen the crime scene video?

25 A. Yes, sir.

1 Q. That is an entire video. Is that correct?

2 A. Yes, sir.

3 Q. There are times when you ran the video; were
4 there not?

5 A. Yes.

6 Q. And times where you didn't run the video?

7 A. Yes, sir.

8 Q. Is that safe to say?

9 A. Yes, sir.

10 Q. In other words, you didn't have the video on
11 for four and a half hours?

12 A. No, sir, I did not.

13 Q. Is what the jury saw the entire video you
14 shot?

15 A. Yes, sir.

16 Q. Are you aware of any testing that can be done
17 to a tire mark to determine the manufacturer or the
18 type of tire?

19 A. In my limited knowledge, yeah.

20 Q. You saw the pictures of the condition of the
21 defendant?

22 A. Yes, sir.

23 Q. Mr. Savage asked you could a fat lip occur
24 from someone that's being held down and hit in the
25 back; is that correct?

1 A. Yes, sir.

2 Q. How about somebody's head being knocked to the
3 ground? Could that cause a fat lip?

4 A. Yes, sir.

5 Q. Of course, it could.

6 MR. SAVAGE: Object to the testimony.

7 THE COURT: I sustain that.

8 Disregard that.

9 Go ahead.

10 BY MR. DURANT:

11 Q. With regard to gunshot residue, are you aware
12 of time limits involved with that in a live human
13 being?

14 A. No, sir.

15 Q. Are you aware of the time limits involved with
16 that on an inanimate object?

17 A. No, sir.

18 Q. Are you aware of the time limits involved with
19 that with regard to someone that is deceased?

20 A. No, sir.

21 MR. DURANT: I have no further questions.

22 THE COURT: Anything else? Counsel?

23 MR. SAVAGE: No, sir.

24 THE COURT: All right. You may step
25 down.

1 (The witness leaves the witness stand.)

2 THE COURT: All right, ladies and
3 gentlemen. I'm not sure we can start another witness
4 -- unless you have someone that's very short.

5 MR. DURANT: Court's indulgence for just
6 one moment?

7 (Mr. Durant and Mr. Savage confer.)

8 THE COURT: I had indicated that I have a
9 meeting right at lunchtime so I needed to stop a few
10 minutes earlier than usual. So what I'm going to do,
11 since I don't know exactly how long that meeting is
12 going to last, I'm going to bring you back at 1:30.

13 Ladies and gentlemen, please -- please do
14 not discuss this case in any way during the lunch
15 break. Thank you very much. Have a good day.

16 THE BAILIFF: Everyone remain seated
17 while the jury is leaving.

18 THE COURT: Make sure you give your pads
19 to the bailiff before you leave for lunch.

20 (Whereupon, the jury leaves the courtroom
21 at approximately 11:50 a.m.)

22 THE COURT: All right. We'll go ahead
23 and break for lunch. I'll see y'all back then.
24 Tentatively, we'll probably stop around 3:00 today.
25 All right.

1 MR. SAVAGE: Thank you, Your Honor.

2 (A lunch break is taken at approximately

3 11:50 a.m.)

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1 AFTERNOON SESSION

2 (The trial reconvenes at approximately
3 1:30 p.m., the defendant being present with counsel,
4 and the following proceedings were had:)

5 THE COURT: Are y'all ready?

6 MR. DURANT: The state's ready, Your
7 Honor.

8 THE COURT: Go ahead with the jury and
9 bring them in.

10 MR. DURANT: Before the jury gets in,
11 Mr. Savage had indicated that the three lay witnesses
12 who testified, he had no objection to them being here
13 during this witness's testimony.

14 THE COURT: Is that correct?

15 MR. SAVAGE: That's correct.

16 THE COURT: All right.

17 (Whereupon, the jury returns to the
18 courtroom at approximately at 1:33 p.m.)

19 THE BAILIFF: The jurors are all seated,
20 Your Honor.

21 THE COURT: Thank you. Please be seated.
22 We're ready to proceed, ladies and
23 gentlemen. I hope you had a good lunch.

24 MR. DURANT: The state would call
25 Dan DeFreese.

1 (Mr. DeFreese enters the courtroom.)

2 FRANK DAN DEFREESE,
3 being first duly sworn by the clerk, is examined and
4 testifies as follows:

5 THE CLERK: Please be seated. If you'll
6 just state your full name and spell your last name.

7 THE WITNESS: My name is Frank Dan
8 DeFreese. It's capital D, E, capital F, R-E-E-S-E.

9 DIRECT EXAMINATION

10 BY MR. DURANT:

11 Q. Good afternoon, Mr. DeFreese. If you would,
12 I'd ask that you speak into that microphone so
13 everyone will be able to hear you. Could you please
14 tell the jury where you're employed?

15 A. I work for the South Carolina Law Enforcement
16 Division, what many people know as SLED, and I'm
17 assigned to the forensic services laboratory in
18 Columbia. And within the laboratory, I work in the
19 department where we do the analysis of firearm and
20 toolmark evidence.

21 Q. And what does the field of firearms and
22 toolmark evidence encompass?

23 A. The principal tests that we do are ammunition
24 and firearms. Principally, we are asked to identify
25 bullets left with firearms in which they were fired.

1 and the cartridge cases, match with the firearms from
2 which they were fired. And when those firearms are
3 present, to determine, if given, the bullets or
4 cartridge cases were fired by the same gun.

5 We also do safety and functioning tests,
6 distance determinations as it applies to shotguns,
7 and certain other allied tests that fall within the
8 general firearms identification field.

9 Q. And what specialized training and education
10 have you had in your field of firearms
11 identification?

12 A. My principal training occurred at SLED. After
13 my employment, I was first assigned to the firearms
14 department and ---

15 Q. When were you employed by SLED?

16 A. In January of 1967.

17 Q. And you've been with SLED since 1967?

18 A. All but about two months.

19 Q. That's a long time.

20 A. It is. But I was assigned to the firearms
21 department, and I undertook a course of study in the
22 field of firearm and toolmark analysis. Firearms
23 analysis actually is sort of a subspecialty of
24 toolmark analysis.

25 For about my first two and a half years of

1 employment, I studied the techniques of firearm
2 toolmark identification under Lieutenant Miller Cate
3 (phonetic). Lieutenant Cate established the SLED
4 laboratory when SLED itself was established in 1947.

5 After that period of training, I began
6 accepting cases on my own and testifying as to my
7 results, which I've been doing since 1969.

8 Q. And you are, of course, authorized and
9 certified by SLED to conduct firearms identification;
10 are you not?

11 A. I am.

12 Q. And are you a member of any professional
13 organizations related to the field of firearms
14 identification?

15 A. I'm a member of the Association of Firearm and
16 Toolmark Examiners.

17 Q. And do you now or have you in the past had any
18 teaching responsibilities in the field of firearms
19 identification?

20 A. I do not now. I have in the past been both
21 guest instructor at the police academy, the
22 South Carolina Criminal Justice Academy, many years
23 ago, and I've also been responsible for the training
24 of people that came after me, but I'm not currently
25 involved in that.

1 Q. Okay. Have you been qualified as an expert in
2 the area of firearms identification in the past?

3 A. Yes, I have.

4 Q. And how many occasions and what courts?

5 A. I don't know for certain how many times. I
6 estimate it probably between 600 and 700 times now in
7 Courts of General Sessions in South Carolina and also
8 in federal district court.

9 MR. DURANT: Your Honor, at this time we
10 would offer Mr. DeFreese as an expert in the field of
11 firearms identification.

12 THE COURT: Any objection?

13 MR. SAVAGE: Without objection.

14 THE COURT: The Court finds him to be so
15 qualified in the area of firearms identification
16 without objection.

17 Counsel, go ahead.

18 MR. DURANT: Thank you, Your Honor.

19 BY MR. DURANT:

20 Q. With regard to this case, which I believe is
21 your lab number L0512087...

22 A. Yes, sir.

23 Q. --- did you have the occasion to receive some
24 items of evidence from the Charleston County
25 sheriff's office?

1 A. Yes, I did.

2 Q. And I'm going to have you take a look at some
3 exhibits and see if you can identify those as being
4 exhibits that were submitted to you by the Charleston
5 County sheriff's office, starting with what's been
6 marked as state's exhibit number 49 in evidence.

7 A. Yes, sir. I received state's exhibit 49.

8 Q. And do you recognize that weapon?

9 A. I do.

10 Q. How so?

11 A. I recognize it both by its serial number and
12 by marks which I placed on the firearm at the time I
13 examined it.

14 Q. Okay. And next moving on to state's exhibit
15 number 57, if you need to open that, that's fine.
16 See if you recognize that item.

17 A. Do we have some scissors or something I can
18 open this with?

19 MR. DURANT: Madam Court Reporter, do you
20 have scissors?

21 THE COURT REPORTER: No, sir.

22 MR. DURANT: I'm not sure they allow
23 sharp objects in this building.

24 THE COURT: I don't have any up here, do
25 you?

1 (The clerk tenders scissors to
2 Mr. Durant.)

3 BY MR. DURANT:

4 Q. There you go, sir. (Counsel tenders scissors
5 to the witness.)

6 A. Thank you. (The witness opens exhibit
7 packaging.) Yes, I recognize this object. I have
8 received it before.

9 Q. And how do you know, sir?

10 A. I engraved it at the time I opened the
11 container. It contains my case number, my item
12 number, and my initials.

13 Q. And what is that item, sir?

14 A. This is a fired .45 automatic caliber
15 cartridge case.

16 Q. And what make?

17 A. It bears a Winchester S stamp.

18 Q. Finally, I'd like you to take a look at
19 state's exhibit number 61, and I'd ask if you
20 recognize that item. And please open it if you need
21 to, sir.

22 A. (The witness opens exhibit packaging.) I do,
23 sir. State's exhibit 61 contains two fired .45
24 caliber bullets.

25 Q. And how do you recognize those items?

1 A. They also bear my engraved case number, item
2 number, and initials.

3 Q. Okay.

4 MR. DURANT: Madam Court Reporter, are
5 those items already in evidence, 49, 57, and 61?

6 THE COURT REPORTER: Yes, they are.

7 THE COURT: They're all in.

8 BY MR. DURANT:

9 Q. Let's start with state's exhibit number 49,
10 the weapon itself.

11 A. Yes, sir.

12 Q. What type of weapon is that?

13 A. This is a Highpoint Brand. It's a Highpoint
14 Model JH .45 auto caliber semiautomatic pistol.

15 Q. And what was the condition of that weapon when
16 you received it?

17 A. About in the same condition that it's in right
18 now, that there may have been a bit more soil on the
19 -- in the grips. Some of the dirt that was there may
20 have fallen out, but it's -- it's essentially in the
21 same condition as it is now with the exception, of
22 course, that I fired it and engraved it.

23 Q. Okay. Did it appear soiled when you received
24 it?

25 A. Yes.

1 Q. Did it appear to have mud on it?

2 A. Yes. It looked like it had dried mud and
3 grass in the grooves, on the slide, and also dried mud
4 in the -- in the grip and the check on -- on the
5 grip, and in certain other areas of the pistol.

6 Q. What is the capacity of that weapon? How many
7 rounds will it hold?

8 A. It has a seven-round magazine. If the
9 magazine's fully loaded and one's in the chamber,
10 you can fire as many as eight rounds without
11 reloading.

12 Q. And as part of your examination of that
13 weapon, did you have an opportunity to test fire it?

14 A. I did.

15 Q. On how many occasions?

16 A. I test-fired it six times.

17 Q. Did you find the weapon to be in proper
18 working order?

19 A. Yes. It functioned and fired normally during
20 my test-firing.

21 Q. Any mechanical malfunctions during -- during
22 the time that you test-fired it or that you noticed
23 while examining the weapon?

24 A. No, sir.

25 Q. No problems with the weapon misfiring?

1 A. No, sir.

2 Q. No problems with the weapon double-firing?

3 A. No, sir.

4 Q. And as a general rule, that weapon will fire
5 once when the trigger is pulled once?

6 A. Yes. It did in my test fire. Pull the
7 trigger, it fires once.

8 Q. Moving on to the shell casing that you
9 examined in this case, which is state's exhibit
10 number 57. And I believe you've already identified
11 that was a Winchester .45 auto round; is that
12 correct?

13 A. Yes.

14 Q. Did you have the occasion to compare that
15 shell casing with the shell casings produced when you
16 test-fired the gun?

17 A. I did.

18 Q. And what conclusion did you reach upon making
19 that examination?

20 A. I found matching breach face markings on both
21 the test cartridge cases that I fired from state's
22 exhibit 49 and on the fired cartridge case in state's
23 exhibit 57. From the matching breach face markings,
24 I was able to conclude that this cartridge case,
25 state's exhibit 57, was fired by this pistol, state's

1 exhibit 49.

2 Q. And that was done -- that was done by virtue
3 of a microscopic examination; is that correct?

4 A. It was.

5 Q. And if you would, just explain to the jury
6 what breach face is, breach face of a weapon?

7 A. The breach face in this gun, or for that
8 matter any gun, is that portion that tends to close
9 off the rear end of the barrel.

10 This is partially obscured by the wire tie,
11 but about where my little finger is now, there's a
12 flat surface on the interior part of the slide. When
13 the slide goes forward, that flat surface is -- is in
14 contact with the very back of the cartridge.

15 It is from that flat surface -- there's a hole
16 in it -- that the firing pin protrudes. So the area
17 of the breach around where the firing pin is, is the
18 breach face that actually would come into contact
19 with the cartridge.

20 When the trigger is pulled and the firing pin
21 is consequentially released, it strikes the primer.
22 The primer is located centrally in the back of the
23 cartridge case. The primer initiates the burning of
24 the powder within the cartridge case. That builds a
25 pressure up inside the cartridge case.

1 That pressure makes the cartridge case slam
2 against the breach face, and it transfers the
3 imperfections that are on the breach face to the
4 cartridge case, that they're literally being embossed
5 on the cartridge case as a result of the pressure of
6 the firing. Of course, later on, the pressure builds
7 to a point where the bullet is propelled into motion
8 and out of the gun.

9 And then the slide moves to the rear,
10 certainly in the position it's in, very quickly, and
11 the cartridge case is extracted and ejected from the
12 firearm, and the next cartridge in the magazine is
13 loaded.

14 All of this occurs very quickly.

15 Q. Okay. And as a general rule, the cartridge
16 case is ejected from what side of that firearm?

17 A. In this case, it can only be ejected from the
18 right side of the firearm as I hold it now.

19 Of course, if I held it differently, it would
20 be ejected somewhat differently, but it can't -- it
21 can't come out of the top and it can't come out the
22 other side because there's no place for it to come
23 out.

24 Q. Sure. But it could -- depending on how the
25 weapon was held, it could come out other ways like

1 you said. Is that correct?

2 A. Yes, sir. If you -- if you were to hold the
3 gun like this, it would come out the bottom
4 (demonstrating).

5 Q. Come out of the bottom.

6 A. If you held it straight up, it could come out
7 the right side. If you held it that way, it would
8 come out the top.

9 Q. Come out of the top. Do you have any idea how
10 far the cartridge will eject from the weapon?

11 A. I didn't test this specific gun for that.
12 It's certainly a matter of feet, perhaps more than
13 that, depending on what may stop the motion of the
14 cartridge case.

15 Q. Okay.

16 A. I wouldn't expect it would eject like from you
17 to me, though.

18 Q. As a general rule, how far would you expect it
19 to be? And, I mean, I know you haven't checked that
20 particular one.

21 A. A lot of factors are involved in that, but as
22 a general rule, only a few feet. Four feet, six
23 feet, eight feet. You know, not 30 or 40 or 50 feet.

24 Q. Okay.

25 A. Unless you're way up in the air.

1 Q. Moving on to state's exhibit 61, two
2 projectiles.

3 A. Yes, sir.

4 Q. Did you have an opportunity to examine those?

5 A. I did.

6 Q. And were you able to determine their caliber
7 and type?

8 A. They were .45 auto caliber bullets. They are
9 consistent in their construction with the kind of
10 jacketed hollow-point bullet loaded into some
11 Winchester Brand ammunition.

12 Q. Okay. Were they hollow points or...

13 A. They were jacketed hollow-point bullets.

14 Q. Okay. I'm going to hand you what's been
15 marked as state's exhibit number 58, I believe in
16 evidence, labeled as a .45 caliber round, number 13C,
17 and ask if that bullet is consistent with the
18 projectiles you recovered and also the shell casing
19 you -- you examined.

20 A. To the extent that I can -- can see them, yes.

21 The cartridge case portion of this unfired
22 cartridge has the same head stamp, that is,
23 constructed in the same manner as the fired cartridge
24 case in state's exhibit 57.

25 Now, the bullets that are in state's exhibit

1 61 are rather fully mushroomed; that is, they are --
2 they are opened up as a consequence of striking their
3 target.

4 Q. Sure.

5 A. And as you see them now, they don't appear to
6 look like the bullet that's in this cartridge which
7 has not mushroomed.

8 Q. I understand.

9 A. They are, however, constructed of the same
10 material and constructed -- what I can see, the
11 remaining observable physical characteristics are the
12 same.

13 Q. They're both hollow points, as well?

14 A. Yes, sir.

15 Q. And the same? Winchester .45 caliber auto; is
16 that correct?

17 A. Yes, sir. That -- that was a Winchester .45
18 auto caliber cartridge.

19 Q. I hand you state's exhibit number 56 which is
20 labeled .45 caliber live rounds from gun magazine and
21 ask if those rounds are also consistent with the
22 rounds you examined.

23 A. Yes, sir. These three cartridges are also
24 Winchester .45 auto head-stamped. Their cartridge
25 case portion is constructed in the same manner as the

1 cartridge case in state's exhibit 57, and the three
2 of them are loaded with -- with jacketed hollow-point
3 bullets.

4 Q. Okay, sir. And one more thing I wanted you to
5 take a look at, that would be state's exhibit number
6 55, labeled as a live .45 round from chamber of gun,
7 and ask you if that is also consistent with the
8 ammunition you examined in this case.

9 A. Yes, sir. This also is a Winchester Brand .45
10 auto caliber cartridge loaded with a hollow-point
11 bullet.

12 Q. Thank you, sir. Would you explain to the jury
13 what hollow point is?

14 A. A hollow point is a style of bullet that has
15 the nose section of it scooped out; that is, it has
16 -- the very point of the bullet is -- is a hollow
17 cavity.

18 And usually they're -- like in this case, the
19 area around the hollow cavity has folds in it that
20 are places where the point of the bullet can come
21 apart.

22 The purpose of a hollow-point bullet is to
23 expand upon contact with its target so that it can
24 release more energy in the target than, for instance,
25 a full metal jacketed or a ball round would, but the

1 -- essentially, it's a bullet that has a hollow
2 cavity in its nose.

3 Q. So it creates a greater mushroom effect than a
4 ball round or a strict jacketed bullet?

5 A. It's there for the purpose of weakening the
6 nose portion of the bullet so that the nose of the
7 bullet will expand.

8 Q. Did you have the opportunity during your
9 analysis to compare the projectiles in state's
10 exhibit 61, projectiles retrieved from the victim at
11 the autopsy in this case, with the projectiles you
12 test-fired with the pistol designated as state's
13 exhibit number 50?

14 A. Yes, sir, I did.

15 Q. Or 49, I believe.

16 A. State's exhibit 49.

17 Q. And what conclusion did you reach?

18 A. On both of the bullets in state's exhibit 61,
19 I found matching striated markings that I also found
20 on the test bullets that I found -- I fired myself in
21 state's exhibit 49. They were sufficient to conclude
22 that these two bullets in state's exhibit 61 were
23 fired by this pistol, by state's exhibit 49.

24 Q. And that was by virtue of a microscopic
25 examination, as well?

1 A. Yes, sir.

2 MR. DURANT: Court's indulgence.

3 Could you please answer any questions
4 that Mr. Savage may have for you.

5 CROSS-EXAMINATION

6 BY MR. SAVAGE:

7 Q. Good afternoon, sir.

8 A. Good afternoon.

9 Q. Is it still lieutenant or have you changed
10 titles?

11 A. No. It's just -- just agent. After you
12 retire, you become just an agent.

13 Q. So welcome back to the...

14 A. Thank you.

15 Q. --- field. You do this every day?

16 A. Yes, sir.

17 Q. And you've done this every day since 1967?

18 A. Yes.

19 Q. And you've testified six, seven, eight hundred
20 times in the courtroom, haven't you?

21 A. Yes, sir.

22 Q. And in each and every time you've examined
23 weapons and have examined ammunition, it is for the
24 purpose of assisting the jury in trying to determine
25 what happened at the time that the alleged crime was

1 committed. Is that correct?

2 A. That would be correct.

3 Q. And the testimony that you gave them today
4 about your examination of the weapon and your
5 examination of the items that were received, either
6 from the person who was injured and eventually killed
7 by the weapon and the other cartridges, was to prove
8 that that weapon is the one that inflicted the injury
9 and fired -- was fired that night?

10 A. Well, it was to determine whether or not it
11 was.

12 Q. And there's no question, your testimony now,
13 there is no question that what you have testified to
14 is made for that point; that that weapon is the
15 weapon that was -- fired the cartridge into the body
16 of the deceased gentleman?

17 A. Yes, sir. This weapon fired both of the
18 bullets, and it fired the one fired cartridge case I
19 received.

20 Q. Does your examination help the jury, does it
21 assist the jury, in any other area?

22 A. The firearm itself was in operating condition.
23 There were no defects. There are no obvious safety
24 or functioning defects about the firearm. The
25 firearm was observed to have soil on it. And beyond

1 that, there -- there was no unique or out of the way
2 findings about the firearm itself.

3 Q. And the soil that was on the weapon was on one
4 side of the weapon; is that correct?

5 A. It was more so on one side than the other. It
6 was more so on the right side than on the left.

7 Q. And if you look at the weapon today, the soil
8 is on the right side of the weapon and not on the
9 left side of the weapon?

10 A. There may be just a little smear of dirt, you
11 know, there could be some traces of soil, but the
12 obvious -- the obvious amounts are more on the right
13 side, and there's some on the -- near the front side.

14 Q. And, of course, if that ---

15 A. There may be a little here on the left side of
16 the rear.

17 Q. If that weapon was photographed at the time it
18 was recovered, the proper way to photograph it to
19 show that important fact for the jury would be to
20 photograph it on both sides?

21 A. That would be desirable.

22 Q. Now, does your examination of the weapon
23 indicate that the weapon was lawful?

24 A. Was it lawful?

25 Q. Yes, sir. Is that weapon that you've

1 displayed for the jury an unlawful weapon in the
2 State of South Carolina?

3 A. No.

4 Q. Is the ammunition that you've described to the
5 jury that was found to be fired from that weapon
6 unlawful in the State of South Carolina?

7 A. No, sir.

8 Q. Is it lawful for that weapon to be carried in
9 a vehicle, in the glove box or other compartment in a
10 vehicle, in South Carolina?

11 A. In an enclosed glove compartment or closed
12 trunk, yes.

13 Q. Is it lawful to purchase a weapon in the State
14 of South Carolina?

15 A. If you are not otherwise legally disabled,
16 yes.

17 Q. Is it required to have a background check for
18 anybody who buys a weapon of that nature prior to the
19 delivery of that weapon in South Carolina?

20 A. There is a federal requirement for a
21 background check before any firearm can be sold.

22 Q. Including the weapon that's in evidence?

23 A. Yes.

24 Q. And if the weapon is purchased lawfully, it's
25 documented. Is that correct?

1 A. If it's purchased from a licensed dealer, it
2 is documented.

3 Q. And then that weapon can be traced to its
4 source of purchase?

5 A. Potentially, if it is purchased, you know, by
6 the first purchaser at a retail licensed dealer.

7 Q. And when it's purchased -- and when it's
8 traced to the source of -- source of purchase, there
9 is a form that's filled out, and law enforcement can
10 tell whether there was any misleading or dishonest
11 information provided by the purchaser at the time of
12 purchase?

13 A. There is a federal requirement that a form
14 which is called a 4473 be filled out by a purchaser
15 of a firearm at a licensed dealer. And that -- that
16 is a record the dealer is required to have and to
17 make available for inspection.

18 Q. And it asks a number of questions, in excess
19 of a dozen or 20 questions about the background of a
20 purchaser of a weapon?

21 A. I think it asks 12, 13, 14 questions for the
22 purchaser to fill out in addition to his name and
23 address and what have you.

24 Q. And a photographic identification has to be
25 showed at the place of purchase?

1 A. Yes. Usually, a driver's license.

2 Q. The point being that if law enforcement went
3 back and there was a questionable weapon, they could
4 find all these factors, the 12 to 13 questions that
5 were asked, the identification of the party who
6 purchased the weapon, to see if there was something
7 deceitful or unlawful at the time of the purchase of
8 the weapon?

9 A. It could be done, yes, sir.

10 Q. That's really the purpose of going through
11 that background check, is to make sure that people
12 who purchase weapons are lawfully abiding citizens
13 before they buy the weapon?

14 A. Yes, sir.

15 Q. Now, you fired the weapon on six occasions?

16 A. Correct.

17 Q. And you did that to assist the jury in
18 identifying the spent cartridge as in coming from
19 that weapon?

20 A. Correct.

21 Q. What other information is derived or could be
22 derived from the test-firing of a weapon?

23 A. Among the other things that could be, would be
24 the spread of gunshot residue from the weapon at
25 firing. Now, this is not -- by the way, Mr. Savage,

1 it is not something that I do, but it's during a
2 test-firing of a firearm that is one of the things
3 that you can do.

4 Q. Will you explain to the jury what gunshot
5 residue is?

6 A. When the trigger is pulled, the firing pin
7 falls, the primer ignites, and the powder starts to
8 burn. Most of it but not all of it actually will
9 completely combust.

10 There are parts of the gunshot residue made up
11 of priming compound and parts of it made up of
12 partially burned, unburned, and completely burned
13 powder.

14 The first thing that comes out of the barrel
15 is air, the air that was in front of the bullet. The
16 second thing is the bullet itself, and lastly is a
17 spray of gunshot residue that comes out from behind
18 the bullet.

19 Because it is light, it really doesn't go very
20 far, not like a bullet does. But if a gun is shot in
21 close proximity, some of this gunshot residue can be
22 deposited either on a surface or it can land on the
23 hands of the person that shot the gun or on the hands
24 of someone who's in close proximity to the gun at the
25 time of firing.

1 These are among the tests that you can do with
2 a firearm when it's fired. These are not tests that
3 I do.

4 Q. Now ---

5 A. The other, of course, is what the solicitor
6 was -- was asking about, and it has to do with where
7 is the cartridge case ejected with respect to the
8 firearm.

9 And when we know something about the attitude
10 at which the firearm was held and we have a location
11 of the cartridge case that was recovered, we are in a
12 position to sometimes infer the position of the
13 shooter from the position of the fired cartridge
14 case. In many cases, we aren't, because it requires
15 a great, great deal of information to be available to
16 us.

17 But the gun can be test-fired to see just
18 where it does eject the cartridge case with respect
19 to the gun.

20 Q. Thank you, sir. Now, earlier you had
21 indicated that among your duties, I believe you used
22 a shotgun, and in a shotgun you can tell the spread
23 of the projectiles that come from a shotgun, and then
24 you could estimate distance from where the weapon was
25 fired till it hit the target?

1 A. Yes. It is possible to do in some situations.

2 Q. And that's a pretty definitive comparison
3 because of the weight of the projectiles that are
4 coming from the weapon that hit the target?

5 A. Well, it's -- we can tell within a range of
6 possibilities. You know, where we have a definable
7 spread of shot pellets, where we have multiple
8 birdshot pellets on any given object, we can -- where
9 we have available to us the ammunition that was used
10 and we have available to us the shotgun in question,
11 we can test-fire the shotgun at various known
12 distances to see where that shotgun would likely
13 duplicate that pattern.

14 MR. SAVAGE: May I approach the witness?

15 BY MR. SAVAGE:

16 Q. Pretend the firearm was a shotgun. If I was
17 this distance from you, as opposed to this distance
18 from you, maybe another 10 or 15 feet back, in your
19 laboratory you would be able to determine those
20 differences in distance with a shotgun but not with
21 the type of gun that we have here?

22 A. Yes. We would be able to determine the
23 distance -- the difference in distance from the
24 spread of the shot pellets.

25 Q. Now, respect to the weapon in evidence, using

1 the same logic of firing this weapon, a projectile
2 comes out that's solid in one piece ---

3 A. Yes.

4 Q. --- that goes to the target. From the
5 projectile that comes out that goes to the target,
6 can you tell the distance away that that weapon was
7 fired?

8 A. Not within the distances we're talking here.

9 Q. Because there is only one projectile. Is that
10 correct?

11 A. Correct. There's one projectile, and over the
12 distances within this room, the drop of the
13 projectile is not going to be appreciable.

14 Q. Now, the gunshot residue that you were talking
15 about with the jury, that is also emanating from the
16 hot end of the weapon?

17 A. Yes, sir. It's coming out of the muzzle of
18 the weapon.

19 Q. In the same fashion that the birdshot would
20 come out of a shotgun? The concept is the same?

21 A. The concept is the same. They're not totally
22 analogous, but the concept's the same.

23 Q. The concept is the same; but what the
24 difference is, that the particles that come out of a
25 weapon such as this, the gaseous particles, are very

1 light, and they can't carry the distance that a
2 shotgun pellet would go?

3 A. Correct.

4 Q. And that would be affected by humidity, wind,
5 those sort of environmental factors?

6 A. There would be -- certainly there would be
7 environmental factors to be considered, but the range
8 at which you would expect to find it would be
9 generally just a few feet and shorter.

10 Q. A few feet and shorter?

11 A. That's generally.

12 Q. And that all depends on the type of weapon and
13 ammunition that's used?

14 A. It does. It is weapon and ammunition
15 dependent because some firearms just emit more
16 gunshot residue than others do.

17 Q. And did we test this particular weapon, to
18 your knowledge, did anybody test it for that purpose?

19 A. Not to my knowledge. I -- I certainly did
20 not.

21 Q. At the time you fired it six times, it was not
22 tested for that purpose?

23 A. No. The only thing I test-fired it for was to
24 get my test bullets and my test cartridge cases for
25 the microscopic comparison versus the fired cartridge

1 case and the two fired bullets. That was my sole
2 purpose.

3 Q. And when we talk about the gunshot residue
4 that emanates from the hot end of the barrel, they're
5 not gases, they're actually particles. Is that
6 correct?

7 A. Some of them -- some of it is fairly well
8 combusted material. Some of it is -- is like smoke.
9 Some of it is actually just particulate matter. It
10 may be powder that never really fully caught fire,
11 and then other parts of it are powder that is
12 partially burned.

13 Q. And that's deposited on any object that may be
14 around the hot end of the barrel?

15 A. Correct. Or certainly could be deposited on
16 it.

17 Q. And the testing that can be done, for
18 instance, if they took magnetic strips or if they
19 took Q-Tips of clothing or -- or of skin parts, you
20 would look for an inordinate amount of particulate
21 metallic component in those objects?

22 A. Well, there -- there's gunpowder residue
23 testing for the purpose of distance determination,
24 and then there's also gunshot residue testing for the
25 purpose of determining whether someone was in

1 proximity to a gun at the time it was fired.

2 One of them may be looking, in essence, for
3 smoke particles; and the other may be looking for
4 actual particulate powder, either burned, partially
5 burned, or unburned powder.

6 Q. And so there are two different -- one is
7 gunshot powder; one is gunshot residue.

8 A. There are two different -- conceptually, two
9 different kinds of tests we're looking for.

10 Q. And those tests would be not to identify the
11 projectile from the weapon but to identify what was
12 in close proximity to the hot end of the barrel?

13 A. Correct. Either to try to estimate the
14 distance from the muzzle to the target or to
15 determine if anyone in proximity -- was in proximity
16 to a gun at the time of firing.

17 Q. The point being it's not just the target but
18 anything that was around the target at the time of
19 the firing of the weapon?

20 A. Anything that could have come in contact with
21 the residue.

22 MR. SAVAGE: Beg the Court's indulgence
23 one moment.

24 THE COURT: Yes, sir.

25 MR. SAVAGE: Thank you, sir. No further

1 questions.

2 REDIRECT EXAMINATION

3 BY MR. DURANT:

4 Q. I just have a couple, Mr. DeFreese. Of
5 course, when he was talking about the projection from
6 the front of the weapon and he was stating that it
7 depends in large part upon the caliber and type of --
8 type of ammunition involved, is it true that the
9 larger the caliber the greater the gunpowder residue
10 that emanates from the front of the -- the weapon?
11 For example, would you expect more from a .45
12 than a .22?

13 A. All other things being equal, you would expect
14 more residue to come out of a cartridge that was
15 capable of holding more powder. There are other
16 factors at work so that that may not always be true,
17 but I'd say it is generally a trend.

18 Q. Okay. And just one other question just so
19 we're clear. You don't do gunpowder residue analysis
20 or gunshot residue analysis. That's done by a
21 different department at SLED. Is that correct?

22 A. Correct. Within the SLED laboratory, the
23 trace department handles the analysis of gunshot
24 residue and gunpowder residue. The firearms
25 laboratory does the studies with regard to shot

1 spread and distance determination from shot
2 spread. We have a little division of labor going
3 there.

4 Q. And so the questions he is asking you about
5 are basically handled by the department that Joe
6 Powell is in, who is about to testify. Is that
7 correct?

8 MR. SAVAGE: Object to the form of the
9 question.

10 THE COURT: All right. Rephrase that
11 question, please.

12 BY MR. DURANT:

13 Q. Do you have a fellow named Joe Powell that
14 works at SLED?

15 A. Yes, we do.

16 Q. And what does he do?

17 A. He is the lieutenant in charge of the trace
18 department.

19 Q. And does his job description include the
20 analysis of gunshot residue and gunpowder residue?

21 A. It does.

22 Q. And are you aware that he's a witness in this
23 case?

24 A. I am.

25 Q. And are you aware that he's out in the hall?

1 A. He was the last time I saw him.

2 MR. DURANT: Thank you very much. I have
3 nothing further.

4 THE COURT: Anything else?

5 MR. SAVAGE: No, sir.

6 THE COURT: You may step down, sir.

7 MR. DURANT: I'd ask that Mr. DeFreese be
8 excused if there's no objection, Your Honor.

9 MR. SAVAGE: No objection, Your Honor.

10 THE COURT: You may be excused, sir.

11 (The witness is excused from the witness
12 stand.)

13 MS. KNEESE-SHEALY: The state would call
14 Lieutenant Powell, Joseph Powell.

15 (Lieutenant Powell enters the courtroom.)

16 THE CLERK: This way, sir.

17 JOSEPH D. POWELL,
18 being first duly sworn by the clerk, is examined and
19 testifies as follows:

20 THE CLERK: Please be seated.

21 THE WITNESS: Thank you, sir.

22 THE CLERK: If you'll state your full
23 name and spell your last name.

24 THE WITNESS: My name is
25 Joseph D. Powell, P-O-W-E-L-L.

1 DIRECT EXAMINATION

2 BY MS. KNEESE-SHEALY:

3 Q. Agent Powell, could you tell us where you're
4 currently employed?

5 A. I'm currently employed at the South Carolina
6 Law Enforcement Division, commonly known as SLED. I
7 am assigned to the trace evidence section where I am
8 both analyzing cases, as well as supervising,
9 supervising the department.

10 Q. And how long have you been with SLED?

11 A. Twenty-five years.

12 Q. When you say that you're in the trace
13 examination department, could you explain to us what
14 that means? What is trace evidence?

15 A. Yes, ma'am. Trace evidence is a area of
16 forensics where we deal with analysis of various
17 types of forensics examinations such as explosives;
18 fibers; paint; glass; accelerants, which is used to
19 burn a house down or something; gunshot residue, this
20 is a residue produced when a weapon is discharged;
21 bullet hole analysis; how far away was someone when a
22 weapon was discharged. And other types of
23 examinations that may not have an exact forensic
24 discipline to go to, it would come to us.

25 Q. Would you explain to us the difference between

1 gunshot residue and gunpowder residue?

2 A. Yes, ma'am. Gunshot residue is the material
3 that is found in a weapon when it's discharged. It's
4 a combination of materials called gun primer, which
5 is going to be what -- when you pull the trigger on a
6 weapon, the hammer comes down to the back of the
7 cartridge case. When it strikes the back of that
8 cartridge case, there is chemicals that are known as
9 shock sensitive. These materials when they're hit by
10 the hammer will have actually ignited or catch on
11 fire. That will, in turn, ignite the gunpowder. All
12 this material as it's burned will build up pressure,
13 causing the bullet to separate and to go towards a
14 target.

15 Coming out of the weapon, there is both
16 gunpowder, which is going to be the flake material in
17 the cartridge, as well as gun primer, along with
18 pieces of the bullet, of even debris that may be in
19 the barrel and things like that.

20 We call the gun primer in combination with the
21 bullet and other debris gunshot residue.

22 Q. When you are examining for gunshot residue and
23 gunpowder residue, are you looking for different
24 things with those tests?

25 A. Yes, we are. Gunshot residue, we're actually

1 looking for various metals that are -- that are in
2 the primer that are called barium, antimony, and
3 lead. And we're looking for these, the
4 concentrations of these metals, as well as their
5 morphology or their shape.

6 When it comes to gunpowder, what we're doing
7 there is we're looking -- doing a chemical test. The
8 gunpowder particles are much larger. You can
9 sometimes see them with the naked eye, but we have a
10 chemical test which will bring them out off their
11 deposit to a garment so you can better visualize it.

12 Q. Could you describe for the jury, please, what
13 education and training you've had in trace
14 examination?

15 A. I received my bachelor of science degree in
16 chemistry from the University of Southern
17 Mississippi. After receiving my degree, I became
18 employed at SLED where I went through an extensive
19 in-house training program in both drug analysis as
20 well as trace evidence.

21 While starting my training there, I was also
22 tasked with helping to develop the gunshot residue
23 method that is currently being used at the
24 laboratory.

25 After completing many cases, I was given an

1 assignment to get the counties to run analysis for
2 both trace evidence as well as drug analysis, and
3 I've been -- I've been working at SLED doing this
4 task for 25 years.

5 Approximately, I think it's 15 years ago, they
6 decided to cut trace evidence out of the drug
7 department and make it its own separate entity, and I
8 went with that department, and then within a year or
9 so became the supervisor of that department.

10 Q. Is there any type of certification that SLED
11 does in the area of trace examination?

12 A. We are required to take proficiency exams in
13 every subdiscipline that we perform, on a yearly
14 basis. We go to various seminars, symposium.

15 And in the latter part of my career, I've been
16 actually acting as a guest speaker at many events,
17 teaching others on how to be able to perform trace
18 evidence examination.

19 Q. Approximately how many residue tests have you
20 performed?

21 A. I have performed thousands of actual tests on
22 gunshot residue kits. I don't know the exact number.
23 I know it's many thousands.

24 Q. Have you ever been qualified in the area of
25 trace examination as it relates to gunshot residue

1 testing and gunpowder testing?

2 A. Yes, ma'am. I have -- I have been qualified
3 in both areas. In the area of gunshot residue, I've
4 been qualified approximately 250 times. In the area
5 of gunpowder, it would be in the neighborhood of
6 about 50 times.

7 MS. KNEESE-SHEALY: Your Honor, at this
8 time we would offer Mr. Powell as an expert in the
9 field of trace examinations, including gunshot and
10 gunpowder residue testing.

11 MR. SAVAGE: Without objection.

12 THE COURT: The Court finds him to be
13 qualified in those areas without objection. Go
14 ahead.

15 BY MS. KNEESE-SHEALY:

16 Q. Is it okay for me to call you Lieutenant
17 Powell?

18 A. If you wish, yes, ma'am.

19 Q. Lieutenant Powell, again, tell us as it
20 relates to gunshot residue how do you go about
21 testing the kits that you receive at SLED?

22 A. Yes, ma'am. Excuse me.

23 When a weapon is discharged, as I described
24 earlier, this bluish cloud material that will come
25 out of a weapon we call gunshot residue. It is very,

1 very fine smoke, property of smoke. It will deposit
2 itself on your hands, on your clothing, and on your
3 face if you're around this weapon.

4 The kit itself to collect this material is
5 fairly simple. It has two basic components.

6 The first component is going to be a flattened
7 piece of aluminum which is approximately a half-inch
8 across. It has a sticky adhesive on it, much like
9 you would find with an adhesive tape, and we actually
10 use it to go over the skin, as I'm demonstrating, to
11 pick up any particles that may be on the surface of
12 the skin.

13 Once that has been collected, we'll actually
14 do the same process with a different particle lift
15 for all four areas of the hands: the right palm,
16 right back, left palm, and left back.

17 Once that task is completed, we then follow up
18 with cotton swabs which have been wetted with a weak
19 acid solution and mop up any residue of material that
20 may be left on the hands. Again, we also perform
21 this on the four major regions of the hands.

22 This is then bundled together and sealed up in
23 what's called a gunshot residue kit. It's submitted
24 to our laboratory where we will open it, then we'll
25 take the cotton swabs out first and run analysis on

1 them. The swabs are used to see if we can determine
2 the levels of materials on someone's hands.

3 If we have sufficient levels of materials on
4 someone's hands and they fit our criteria, such as a
5 suspect or other issues that need to be resolved,
6 we'll take it to a second test where we will confirm
7 whether it -- what kind of residue this is, is it
8 actually gunshot residue or just some other material
9 that may be on someone's hands.

10 Once we have completed these two analyses,
11 we'll then issue a report as to our finding and then
12 come to court to testify to it.

13 Q. Regarding gunshot residue itself, could you
14 explain to the jury how it is that the residue can
15 get on someone?

16 A. There are several ways that you could pick up
17 this residue. One way, of course, is to discharge a
18 weapon or shoot it.

19 As you're holding a weapon -- it doesn't
20 matter what type of weapon. As long as it is using a
21 primer, gunshot -- or gunpowder residue -- or gun
22 primer to be able to initiate the charge, it is a
23 weapon. Now, that would include both small caliber
24 weapons, large caliber weapons, shotguns, rifles.
25 Any type of weapon you can think that uses a

1 cartridge as a part of the explosion will give off
2 this residue.

3 When you're holding the weapon and you
4 discharge it, coming out of any place where there's a
5 gap, such as the cylinder gap on a revolver or maybe
6 the ejector port of a semiautomatic, this material
7 will come out. It will also come out in the barrel.
8 As it comes out, it will engulf around your hands and
9 contaminate you with this material.

10 Also, another way that you could pick up this
11 material is if you have picked up a weapon. If you
12 grab and pick up a weapon after it's been discharged,
13 it has materials on it already from the previous
14 discharge, so the materials will get on the palms of
15 your hands.

16 Another way is to be in front of the weapon
17 and fairly close to it so that the material is
18 projected or pushed onto you. That would be a third
19 way.

20 The fourth would be if you sit down here and
21 clean the weapon or work on a weapon, you get -- this
22 could be transferred from inside to the palms from
23 the weapon.

24 Those are the major ways that you can get
25 gunshot residue on your hands.

1 Q. Is there a general rule as to how long gunshot
2 residue can remain on a living person?

3 A. Yes. As long as your heart is beating, your
4 body is constantly removing residue from your hands.
5 If you discharge a weapon and your heart is beating,
6 after six hours it is guaranteed the material is
7 gone. It is no longer on your hands.

8 If your heart stops, the moment your heart
9 stops, from that point on, whatever's on your hands
10 will remain on your hands until somebody physically
11 removes it. But for someone who's alive, six hours
12 is how long -- the most we can expect to see the
13 material.

14 Now, if it's a small caliber weapon, there
15 would be less on your hands. If there's less on your
16 hands, it's gone quicker than it would be for a
17 larger caliber.

18 Q. You have told us that there are kits that you
19 receive. Does SLED have any role in distributing
20 those kits?

21 A. Yes. We offer a kit to any law enforcement
22 agency, if they need those kits, to take with them so
23 that when they need to be able to perform this test
24 they'll have the kits with them.

25 They may also buy them directly from the

1 company. There's a company in North Carolina that
2 manufactures these kits, and they may order them
3 directly.

4 MS. KNEESE-SHEALY: Your Honor, may I
5 approach the court reporter, please.

6 May I approach the witness.

7 BY MS. KNEESE-SHEALY:

8 Q. Lieutenant Powell, I am handing you what has
9 been marked for identification purposes as state's
10 exhibit numbers 59 and 60, and if you could take a
11 look at those and tell us whether they're familiar to
12 you.

13 A. Yes, ma'am. What's listed as state's exhibit
14 59 is a gunshot residue kit. On the back of the kit,
15 my initials have been placed. This is the -- this is
16 the kit after we have sampled it, and what's
17 remaining inside this kit is going to be the particle
18 lifts that were taken in this case.

19 State's exhibit 60 is also a gunshot residue
20 kit which bears my initials on the back. Again, this
21 was a kit that -- this is the remnant of a kit after
22 we ran the analysis on -- on the materials inside.

23 Q. Do you recall from whom you got the kits?

24 A. These kits were submitted to the laboratory by
25 -- one moment. These kits were sent to our

1 laboratory and delivered by -- and I'm having a
2 little bit of difficulty reading the name. It looks
3 like Brent Roy, looks like the name that I've got
4 here, B-R-E-N-T R-O-Y.

5 Q. And you've indicated to us that you received
6 those kits from law enforcement and then you test
7 them; is that correct?

8 A. That is correct. Once ---

9 Q. Now -- I'm sorry. Go ahead.

10 A. Well, once the kits come in, the first thing
11 that we will do is we'll examine the kit to see if
12 they're sealed properly. We go through many hands
13 along the way. We want to make sure that no one has
14 tampered with the evidence.

15 When these kits are taken, there is a red seal
16 that is placed on the evidence kit, and we
17 immediately inspect to see if that seal has been
18 tampered or broken. If it has, we stop. We will not
19 do any more with this kit until we have settled what
20 has happened to this kit.

21 In this case, there was no tampering. The
22 evidence seal was intact. We went forward with our
23 analysis.

24 Q. You've indicated that once you've completed
25 your testing, what remains is put back into that bag;

1 is that correct?

2 A. That is correct.

3 Q. Is there something different about the way it
4 arrives and the way it returns to law enforcement?

5 A. Yes, ma'am. Originally, it has -- it contains
6 in here both particle lifts and swabs.

7 The swabs -- the material we use to be able to
8 extract out the gunshot residue is a corrosive acid.
9 We remove the swabs and actually coat -- immerse them
10 in this acid. So we do not return the swabs back.
11 Because if we did, the acid could be detrimental to
12 other evidence that might be found in an evidence
13 room. So that part of the kit has been disposed of.

14 What is retained is going to be the particle
15 lifts which are still inside these kits at this
16 point.

17 Q. Now, I ask you, regarding the kit that came
18 from the suspect, David Rocquemore, could you explain
19 to the jury what the results of your analysis of that
20 sample were?

21 A. Yes, ma'am. On the kit that came from David
22 Rocquemore, I found round lead particles on the right
23 palm. Round lead particles are one of the components
24 of gunshot residue. What we found in this case was
25 particles which were not just lead particles; they

1 were -- they were melted round particles that had to
2 be formed from a very hot process, and one process
3 where they can be formed is in a discharge of a
4 weapon.

5 Q. Do you have an opinion as to whether
6 Mr. Rocquemoire in fact fired a weapon, based on your
7 analysis?

8 A. In this case, the evidence was found on the
9 right palm. That will definitely indicate that he
10 had handled a weapon that has been previously fired.

11 He could have fired a weapon and the materials
12 have been lost before the kits were taken; but with
13 that amount of materials on the palm of the hands,
14 that indicates that he handled a weapon.

15 Q. When you've indicated to us that residue is
16 left on the hands, what -- what could potentially
17 make some of the residue dissipate?

18 A. Depending upon what you do with your hands.
19 You can wash this material off.

20 Think of the gunshot residue as the
21 consistency of, like, flour. And when you're working
22 with flour, it gets all over you. Well, you can go
23 to the sink and wash your hands, and it will be just
24 completely gone.

25 So any activity that goes on with your hands

1 after discharging a weapon will diminish or remove
2 it.

3 If you're perspiring, now, let's say it's on
4 the back of your palm, if you're perspiring and you
5 wipe your hands, the back of your hands off, you have
6 effectively removed the materials from the back of
7 your hands.

8 Q. And which of the exhibits that I've handed
9 you, those being items 59 and 60, came from David
10 Rocquemore?

11 A. This would be state's I.D. 59.

12 Q. Regarding state's I.D. 60, did you receive a
13 kit from Herschel Demar Denson?

14 A. Yes, I did.

15 Q. Could you tell the jury, please, after
16 analyzing that kit, what did you determine regarding
17 Mr. Denson?

18 A. I found the quantity of metals detected on the
19 back of the right hand may be associated with gunshot
20 residue.

21 What we found was, is when we ran a
22 quantitation on his samples, the samples found on the
23 back of the right hand had sufficient amount to
24 indicate there may be gunshot residue there, but it
25 was not a very strong amount. Very, very weak. It's

1 actually borderline as far as the amount that we
2 found.

3 Q. What does your analysis indicate regarding
4 Mr. Denson's proximity to a fired weapon?

5 A. Again, because of the fact he could have
6 received this by -- he could have discharged a
7 weapon, the material could have been gotten on the
8 back of the hands from discharging a weapon, or he
9 could have been fired or shot at.

10 If you're shooting at someone, again, you can
11 also get this material; but because the levels are so
12 low, he could not have been real close to someone.

13 You have to be far enough away that the cloud
14 will not reach you. In the case of a large caliber
15 weapon, then you project out four or five or six
16 feet, depending upon the round, the shot.

17 So you have to be far enough away you're not
18 getting a large amount, but you're close enough to
19 get some on your hands.

20 Q. Lieutenant Powell, if you could, please, tell
21 us again about gunpowder residue. You've been
22 discussing gunshot residue.

23 A. Yes, ma'am.

24 Q. Now, tell us again what is gunpowder residue.

25 A. Gunpowder is the principal component that's

1 found in the bullet that causes it to separate.

2 When you open up a bullet and look at, it's
3 going to be the round and only round-looking material
4 that's going to be silver-gray in color, and it's
5 what we normally see when you pour out what's found
6 inside of a cartridge case.

7 When this weapon is discharged, the gunpowder
8 itself is pushed out along with the gunshot, coming
9 out in a spread. As it leaves the end of the barrel,
10 it will spread like a water hose will spray out in a
11 cone-like fashion. As it goes, it continues to
12 spread and slow down to the point where it will
13 finally stop.

14 In this case, what we were looking for is see
15 if we could look at the garment to see if there was
16 any gunpowder on the garment.

17 If you're close to the weapon when you're
18 shot, you will get a lot of materials on you from --
19 from this weapon or a lot of gunpowder.

20 As you move back further and further away, you
21 get less and less gunpowder to a point where you will
22 get no gunpowder on your clothing.

23 And so we ran a test to see how far away was
24 the garment, while being worn by the victim, from the
25 gun when it was discharged.

1 Q. Let me back you up for a moment and ask you,
2 are there any types of time constraints when you're
3 examining garments?

4 A. Normally, no. Now, I say that. The material
5 once it's collected on the garment, if the garment
6 has -- is not washed or something done with it, the
7 material will stay there for -- forever.

8 So you have to physically take the garment and
9 put it through some type of cleaning action to remove
10 the particles. Other than cleaning it, it will stay
11 forever.

12 Q. And at the request of the Solicitor's Office,
13 then, you did look at an item of clothing in
14 relationship to this matter, that being a shirt of
15 Herschel Demar Denson?

16 A. Yes, ma'am, that is correct.

17 MS. KNEESE-SHEALY: May I approach again,
18 Your Honor?

19 THE COURT: Yes, ma'am.

20 BY MS. KNEESE-SHEALY:

21 Q. Showing you, Mr. Powell, what has previously
22 been marked as state's exhibit number 69, could you
23 tell the jury whether or not you performed any type
24 of analysis on this garment?

25 A. Yes, ma'am. That shirt was delivered to me

1 just recently. I was asked to run analysis on the
2 garment to see if I found any bullet holes. On
3 examining, I found two holes that I believe were
4 consistent with a bullet. I ran an analysis on both
5 of those holes and rendered a conclusion as to my
6 findings.

7 Q. Okay. First let me ask you, you said that you
8 were just asked recently to do that?

9 A. Yes, ma'am.

10 Q. If I were to tell you this incident occurred
11 in August of 2005, could you tell the jury whether or
12 not you would have any concern with doing this type
13 of examination as recently as a couple of weeks ago?

14 A. There would be no concern on my part as long
15 as the garment had been properly stored. In this
16 case, it had been. There was no mold or anything to
17 be able to really cause a problem with the test. So
18 it was perfectly fine in the condition it was
19 delivered to me.

20 Q. Okay. And, first, if you would tell us all
21 the types of analyses you did on this shirt.

22 A. The very first thing that I did on the garment
23 is I took and I laid it out on a piece of what's
24 called butcher paper, or white paper, to be able to
25 see if I could understand what was -- where the holes

1 were at in the garment. We must try to piece it back
2 together. So I try to actually fold it back and be
3 able to put all the cuts so that we have everything
4 back together. I then do a visual examination of the
5 garment to see what I -- what holes are there.

6 Once I finish with my visual examinations, I
7 will note any holes I think are bullet holes and then
8 place them under a microscope. With a microscope,
9 I'm looking for further detail to help me understand
10 what is there.

11 For example, if a bullet passes through a
12 garment, the garment itself will actually try to hold
13 onto the bullet as the bullet's passing through. So
14 it will wipe off any debris that's around that
15 bullet. We call that bullet wipe. There'll be a
16 little small ringlet that will be around the hole.
17 So I'm looking to see if I can see any of that.

18 I will look in and out from the hole to see if
19 I can find any gunpowder particles, see anything that
20 may be there.

21 Once I've finished with my microscopic
22 examination, I then take -- took the garment and I
23 did a chemical testing where I ran the test looking
24 for gunpowder as well as lead.

25 After performing these two examinations, I

1 made notes as to what I found and then reported them
2 in a report.

3 Q. Okay. Would you mind putting on a pair of
4 gloves and stepping down in front of the jury for me?

5 A. Sure. (The witness complies.)

6 (The witness leaves the witness stand and
7 stands in front of the jury-box.)

8 Yes, ma'am.

9 Q. Okay. If you would please, point out the
10 holes that you found.

11 A. The two holes that I found, and you will note
12 that they're -- you'll see the blue around where I've
13 actually taken a felt tip pen and was marking a piece
14 of paper that was underneath there.

15 These were the two holes that I was examining
16 to see what kind of material was around them. Both
17 of these were examined with chemically to be able to
18 see if I could process anything on the surface.

19 The surface itself is fairly open to
20 examination due to the fact there's not a lot of
21 blood, there's not a lot of material to interfere
22 with my test. So it was a very clean field to be
23 able to see any particles that may have been there.

24 Normally, if I find gunpowder particles, I
25 will find hundreds of them. They will all be around

1 in a cone-shape fashion around the hole. In this
2 case, I did not find that at all. I found no
3 gunpowder particles on either hole in this garment.

4 I did find in one of the holes a little bit of
5 lead which is consistent with what's called the
6 passage of a bullet. It wasn't a complete ring. It
7 was just a little small circular -- circular
8 component around the hole. The other portion was
9 gone either because the fabric broke up when the
10 bullet came through or whatever, I'm not sure.

11 The other hole, I found no lead around it. It
12 looked like it was torn. The bullet obviously as
13 it's going through tore the fiber up, so there was no
14 lead particle.

15 But in both holes, I did not find any
16 gunpowder particle, and I did not find any pattern of
17 lead around the hole.

18 I did find -- and you may be able to see it --
19 a little bit of lead that's going to look like a
20 reddish-wine color right over here to the side, but
21 it was very, very faint. It was not associated with
22 either hole. It's from some other source that has
23 contaminated this garment with just a little light
24 dusting of some reddening on it.

25 Q. Let me ask you a couple of questions about

1 what you've said so far. Regarding the bullet wipe,
2 the semi -- the little area that you saw, does the
3 bullet wipe have anything to do with the distance of
4 a shot?

5 A. No, ma'am. The bullet wipe just means that a
6 bullet went through it.

7 And most weapons can fire up to a mile and a
8 half, and you can get bullet wipe anywhere in that
9 distance. It has nothing to do with how far away a
10 weapon was from a person.

11 Q. And I think you've told us that you do a
12 chemical test and a microscopic test?

13 A. Yes, ma'am.

14 Q. As it relates to the bullet wipe, is there a
15 difference between how you evaluate bullet wipe for
16 purposes of a microscopic test compared to a chemical
17 test?

18 A. Yes. What I'm looking for visually, is I'm
19 looking to see if I can find the material having a
20 uniformity around it. I'm looking for certain
21 characteristics that I can see with my naked eye.
22 Then I take and amplify that with a microscope.

23 The chemical process tells me that it is
24 bullet wipe. Until I perform the chemical, I do not
25 know if I'm looking at lead or maybe looking at

1 grease or some other type of material previously on
2 that bullet. So I must process it first with the
3 chemical to bring out the lead to know if it's lead
4 or not.

5 Q. And as it relates to -- as it relates to the
6 presence or absence of gunpowder, would you explain
7 again to the jury what your conclusion was?

8 A. As far as gunpowder, I found no gunpowder at
9 all on either hole.

10 That would mean that this garment would have
11 to be far enough away from the end of the barrel --
12 now, we're measuring from the end of the barrel, not
13 the person holding the weapon, but from the end of
14 the barrel to this garment has to be far enough away
15 that the powder particles cannot make it to this
16 garment.

17 That distance could be anywhere from three to
18 six foot where you would not get any kind of
19 material, making it out to a mile and a half.

20 Q. Okay. Explain to us then again what
21 conclusion you can reach about the distance between
22 the barrel and the clothing?

23 A. This garment was far enough away from the
24 weapon when it was discharged both times that no
25 gunpowder particles made it to this garment.

1 Q. And do you have an opinion as to how close it
2 could have conceivably been for there to be no
3 gunpowder residue?

4 A. Most weapons, it will begin to disappear or it
5 can be gone at four foot. It depends upon the
6 ammunition, which could factor it up to six foot.
7 Four to six foot is usually the range where the
8 material will drop off.

9 In this case, we have another factor to
10 consider, though. The victim had a little bit of gun
11 primer on his hands. So he -- it appears that he was
12 close enough to get the primer to be projected onto
13 the hands but far enough away that the gunpowder was
14 not able to get to him.

15 So that makes it a very narrow range, about
16 three foot where you could have that happen. And
17 what I mean by that, three, four to six foot, maybe
18 seven foot. Again, I'm just -- it's a best
19 understanding of the principle of -- of what's
20 happened with it.

21 Now, what I'm describing was someone had --
22 was being shot at and had their hand out. Their hand
23 would be closer to the gun. They could get materials
24 on their hand and still not get anything on their
25 garment.

1 Q. And if you would, tell us again that area that
2 you described as wine-colored.

3 A. It's very, very faint. It's -- I'll try to
4 show you as best I can. It's a little wine-looking
5 color right here in this area. And it's very, very
6 faint.

7 And when I was looking at it, it was not deep.
8 It's right -- just, just on the surface. Just like
9 you -- I want to -- it's consistent with me of like
10 someone just brushed up against something that had
11 some lead in it, like a lead paint or something. But
12 it's not very harsh. It's not like you rubbed
13 against something hard. It's just a very light
14 dusting.

15 Q. Okay. You can go ahead and have a seat.

16 A. (The witness returns to the witness stand.)

17 Q. Now, Agent Powell, when asking you about
18 looking at the shirt, if that shirt had been folded
19 and unfolded, would that have removed all the
20 particles of gunpowder?

21 A. No, ma'am. If -- if someone has a shirt that
22 has particles on there, if you fold it up you can get
23 particles that dislodge -- dislodge and go to other
24 locations there, but it does not dislodge all of them
25 because there's so many particles. We're talking

1 about hundreds of particles that will be available
2 and maybe five or six could get dislocated to another
3 location.

4 In this case, I found no particles at all.
5 There was nothing to be dislodged. There were no
6 particles whatsoever.

7 Q. And, again, regarding the gunshot residue kit
8 on David Rocquemore, when you indicated that there
9 were particles found on his right palm, if you were
10 told that the weapon in question was underneath him
11 in a muddy ditch, could that explain why some
12 particles would have been -- it would not be heavily
13 laden with particles?

14 A. Well, again, what you've described is
15 something with moisture or water. As I described,
16 being the consistency of flour, all you have to do is
17 have something with moisture or water which will
18 begin to dissolve it. If you wipe that off, you've
19 taken the particles and materials off.

20 MS. KNEESE-SHEALY: Beg the Court's
21 indulgence just a moment.

22 THE COURT: All right.

23 MS. KNEESE-SHEALY: Just a couple other
24 questions. May we approach the court reporter and
25 get an exhibit, please?

1 (Ms. Kneese-Shealy and Mr. Durant review
2 exhibits.)

3 BY MS. KNEESE-SHEALY:

4 Q. Lieutenant Powell, I'm showing what has
5 previously been marked as state's exhibit number 46.
6 Could you tell us what that photograph depicts?

7 A. That photograph depicts one of the holes that
8 I ran an examination on that I was asked to see if I
9 could find any gunpowder on -- on that hole.

10 If you will notice, at the very bottom of it
11 there's a half-moon or a half-circle dark ring around
12 the hole. That is where I found the bullet wipe.
13 That is bullet wipe you're seeing at the bottom of
14 that hole.

15 Q. Okay. And, again, bullet wipe is different
16 from gunpowder in what way?

17 A. The bullet wipe comes from being wiped off a
18 bullet. It just means that a bullet had come through
19 that garment, and the materials were shook off and
20 retained by -- by the garment.

21 MS. KNEESE-SHEALY: May I approach again,
22 Your Honor.

23 MR. DURANT: What's the number of that?

24 MS. KNEESE-SHEALY: Forty-six.

25 BY MS. KNEESE-SHEALY:

1 Q. And showing you, Lieutenant Powell, what has
2 been marked as state's exhibit 49, could you tell us
3 what -- what type of gun that is if you know?

4 A. Well, this is a large caliber weapon. It --
5 let's see. I believe it's a .45, but I haven't --
6 I'm not a firearms examiner, so I just look at the
7 faceplate of it.

8 But it is a semiautomatic which means that
9 when you pull the trigger, each time you pull the
10 trigger it will expel a spent cartridge case out of
11 the ejector port. And then each time you just pull
12 the trigger, it will discharge a bullet till empty.

13 Q. And if in fact it is a .45, could you tell the
14 jury what difference, if any, it makes as to the
15 caliber of bullet for purposes of your examination?

16 A. For the purposes of dealing with gunshot
17 residue, the larger the caliber weapon, in general,
18 the greater the number of material that will come out
19 of this weapon.

20 You will get a lot of gunshot coming out of
21 the end of the barrel, as well as the ejector port,
22 as well as gunpowder. You have more powder in a
23 larger caliber shell because you have a bigger shell
24 to push down the barrel. So you have more gunpowder
25 as well as gunshot in the larger caliber weapon.

1 MS. KNEESE-SHEALY: Beg the Court's
2 indulgence just a moment.

3 BY MS. KNEESE-SHEALY:

4 Q. Lieutenant Powell, regarding the distance when
5 you're involved with a .45 caliber weapon, could you
6 explain to the jury whether you would expect a
7 greater distance because of the discharge of a .45
8 caliber bullet?

9 A. Compared to a smaller caliber weapon, yes,
10 that would be generally true. This weapon will
11 project particles out farther because it's a larger
12 bullet, more energy. It will push the materials out
13 further from this weapon than a .22.

14 If this was a .22, I would be talking about
15 much closer distances because it just will not
16 project those particles out as far.

17 Q. And with that weapon and a .45 caliber bullet,
18 what distance would you expect to see gunshot powder
19 -- excuse me -- gunpowder residue found on a garment?

20 A. I would expect to find it -- 36 inches or
21 closer, I would expect to find it on the garment. It
22 is unknown between 36 inches and 48 inches will you
23 find it, depending upon the bullet you fired. Beyond
24 48, I would not expect to find it with this weapon.

25 MS. KNEESE-SHEALY: I have no further

1 questions. Please answer any that Mr. Savage may
2 have.

3 THE WITNESS: Yes, ma'am.

4 (There was an off-the-record bench
5 conference.)

6 (Said bench conference being concluded,
7 the following proceedings were had:)

8 CROSS-EXAMINATION

9 BY MR. SAVAGE:

10 Q. Good afternoon, sir.

11 A. Good afternoon, sir.

12 Q. Nice to see you, Lieutenant.

13 A. Good to see you again, sir.

14 Q. The jury has asked -- heard this question
15 before, but the purpose of you being here is to
16 assist them in identifying the evidence which was
17 derived, of course, from the crime scene which could
18 either corroborate or defeat eyewitness testimony.
19 Correct?

20 A. Yes. This -- what I'm presenting is
21 independent of eyewitness examination. All I'm
22 telling you is what I was -- what I found on my
23 examination irregardless of what an -- what someone
24 who is an eyewitness saw or anyone else. All I can
25 tell you is what the evidence I found, that's what we

1 have.

2 Q. You don't even know who David Rocquemore is,
3 do you?

4 A. No, sir. I do not know him at all.

5 Q. So your evidence is derived from your analysis
6 some 120 miles away from here?

7 A. Yes, sir, that is correct.

8 Q. And you're confident in your analysis?

9 A. Yes, sir.

10 Q. For instance, when the solicitor asked you
11 what the distances were and you said three to six to
12 eight feet, or 30 to 40 feet, whatever that is, you
13 don't have a stake in the action. I mean, you are
14 doing that based on your knowledge and your training
15 and experience, not on this case?

16 A. That is correct. My -- I'm trying to give
17 based upon my experience in this case, or in all the
18 cases I've worked, what I found so that it may be
19 able to be used or not be used, depending upon the
20 case.

21 Q. But in this case, you knew it was a .45
22 caliber, and when you gave those distances before the
23 prosecutor came back and asked you does it make a
24 difference on this caliber or that, you knew that
25 already when you gave the distances to the jury?

1 A. Yes, sir, that is correct.

2 Q. And you stand by those?

3 A. Yes, sir, I do.

4 Q. And what I sense from your testimony is that
5 the parties who were involved, the target and the
6 shooter, were in somewhat close proximity. The exact
7 number of inches -- I know at the crime scene they
8 put little things up and you can measure one-eighth
9 of an inch. You're not into that?

10 A. No, sir. And you would never want to do that
11 with what I'm doing, because of the fact that
12 ammunition has variables with it. So you take a box
13 of ammunition, as you discharge those weapons at the
14 same distance you will get little bit differences in
15 the pattern. That's why we try to do what's called a
16 range. This is dealing with the variables that
17 account for that.

18 Q. But you would consider, in layman's terms, in
19 regular terms, that the objects, that is, the party
20 that was killed and the person who was doing the
21 shooting, were in close range?

22 A. Yes, sir. It is not uncommon for most -- most
23 situations for people to be fairly close. Five to
24 six feet between each other is usually where most gun
25 battles occur.

1 Q. And in this case, it could have been less than
2 that. What we know is, it wasn't a contact, it
3 wasn't a touching.

4 A. No, sir. It was not a contact, and it was not
5 a near contact. It had to be far enough away that no
6 gunpowder was deposited on the garment.

7 Q. But there was what you believe to be some sort
8 of evidence on the hands of the person who is the
9 target?

10 A. There -- we've gotten materials which may be
11 consistent with gunshot residue. What I found was,
12 was marginal amounts of lead and antimony on the back
13 of his right hand which may be consistent with
14 gunshot residue.

15 Q. And there are actually three different metals
16 that you're looking for; is that correct?

17 A. Yes. We -- we look for three metals
18 generally: barium, antimony, and lead. However, in
19 this case, we have a trip or, if you will, a
20 threshold where we have two metals which are very
21 rare compared to the third.

22 We -- if we have something that's elevated
23 enough, we take that and we report that. In this
24 case, we said may be consistent with being our
25 weakest match because of the fact that they just do

1 barely meet our minimum guidelines.

2 Q. But the three components that you look for are
3 -- is it antimony? Is that how you pronounce it?

4 A. Yes, sir, antimony.

5 Q. Or lead?

6 A. Or if it ---

7 Q. Or lead?

8 A. Or if it's in -- you know, if it was in
9 England it would be "antimony," but antimony.

10 Q. And in Charleston it's?

11 A. I don't know how they pronounce it in
12 Charleston, sir.

13 Q. You have lead?

14 A. Yes, sir.

15 Q. And barium?

16 A. That is correct.

17 Q. Now, those metals are right here as I look in
18 the courtroom, on the -- on the juror's clothing, on
19 the jury railing here, on the carpet, on my clothes.
20 Those metals exist in the environment?

21 A. Yes, sir, but they exist at levels which are
22 not at the threshold we're looking for. If I may
23 explain.

24 Of the three metals, the most common is
25 barium. Barium is used as a foundation material in

1 makeups and other types of materials, so it's very
2 common. Matter of fact, I have a large amount of it
3 on my hands from the powdered gloves that I put on a
4 little bit earlier. So it is one of those materials
5 which we find a large amount of.

6 Lead is not as common anymore. Although it's
7 still in the environment -- we used to have a lot of
8 things manufactured with lead -- it has been removed
9 from the market, and there are still some sources,
10 but it's somewhat rare.

11 Antimony is the rarest of the three. This
12 material is used only in the leather jacket
13 processing, for the flame retardant, and a few other
14 applications involving the fire sector and hardening
15 of lead in the case of bullets or gunshot residue.

16 So we look at these two rare components to be
17 able to get our first level of a positive.

18 The question, is it found in the environment?
19 Yes. You find very, very trace amounts of this
20 material everywhere but not at the levels we're
21 looking at. You have to have a source to be able to
22 build that level up.

23 Q. So in summary then, the materials that you're
24 looking for generally exist in the everyday
25 environment?

1 A. Yes.

2 Q. And because of the nature of a weapon being
3 fired and the contents of the ammunition powder, you
4 look for an elevation of those three components in
5 specific areas?

6 A. Yes. In this case, it would be two because
7 the third one is so common. It usually has to be
8 much higher levels before it begins to be considered.

9 Q. And when you examined the gunshot residue kit
10 on the deceased party, you found barium levels that
11 were off the chart?

12 A. One moment. (The witness reviews document.)
13 Well, no, sir, not -- what do you mean off the
14 charts? I'm not quite sure what you mean by that.

15 Q. Well, what would be the threshold level, say,
16 for the amount of chemical that you were looking
17 for?

18 A. The amount of chemical that I'm looking for
19 would be what is about 200 parts per billion. That
20 is our -- that is what's called a nominal threshold
21 for barium.

22 In this case, the person had more in what's
23 called the control. The control is a sample that is
24 taken away from the hands, usually on the elbow or
25 behind the knee, to be able to remove what we call

1 environmental issue.

2 I mentioned that barium is used in makeups and
3 other products. We have maybe someone is in --
4 around some lead in their home. And so what we want
5 to try to do is we want to subtract those values out
6 of our data before we make any conclusions.

7 So we want a control on this person. Those
8 values are subtracted out of the data, and then we
9 render a conclusion as to the data after the control
10 is subtracted out.

11 In this case, the barium levels were actually
12 highest on the body away from the hands. And once it
13 was subtracted out of the samples, it actually led to
14 zero values for the barium on -- on the hands.

15 Q. Now, who would have taken that environmental
16 sample to provide it to you?

17 A. That would have been taken by the same person
18 who collected it from the hands. They will collect
19 it. They would collect all that at the same time.

20 Q. And so you would expect, if one were to
21 testify about the origination of the samples, that
22 they would tell you where the environmental sample
23 was taken from?

24 A. They would know where they took it from. They
25 may or may not have told me or on my data. I just

1 take it as a control, and I subtract it out.

2 Q. But in the lab 120 miles away, you're assuming
3 that the collection of the evidence was taken
4 appropriately, so that where the environmental sample
5 was taken from is critical to your analysis?

6 A. Yes, sir. That there is an assumption based
7 upon the idea that the person doing the crime scene
8 is proficient in collecting this kit.

9 Q. So to determine the analysis, it would be
10 important to know, for the jury to follow your
11 analysis, where the environmental sample was taken
12 from and under what conditions?

13 A. I don't know. Depending upon -- that question
14 is vague to me. Would you restate it, please?

15 Q. Would it be appropriate to take the
16 environmental analysis from the hands?

17 A. No, sir. If you take it from the hand, you're
18 now taking a -- something that's already on the
19 hands, subtracting it from something on the hands,
20 and that will just give you nothing.

21 You want to take the control from somewhere on
22 the body. It's not appropriate to take it from the
23 -- from the objects around it. Usually take it from
24 the body in some place that is protected from the --
25 from the blast of the weapon.

1 If the person has short sleeves on, you don't
2 want to take it on the -- on the open arm. You want
3 to take it that's someplace that's covered by
4 clothing.

5 Q. So if there was testimony that the areas in
6 which the test kit was used was on the -- was on the
7 hands, that would give some trepidation to the
8 accuracy of your analysis?

9 A. Yes. If someone in-collect -- incorrectly
10 collected a control, that absolutely would affect my
11 results, because my results are based upon
12 subtracting the control out.

13 Q. But based on what you were provided, and not
14 knowing -- you don't control what happens before that
15 gunshot residue test gets to the state laboratory, do
16 you?

17 A. No, sir, I do not.

18 Q. When it gets to you, based on what came to you
19 in the lab, you gave some pause to consideration for
20 what was found on the victim's hand?

21 A. Could you repeat the question? I'm sorry.

22 Q. The analysis you did in the laboratory, you
23 were concerned with the elevated levels on the
24 victim's hand. Is that correct?

25 A. Concerned, no. I did a factor into -- I

1 subtracted the control out, because they run a
2 control on every sample.

3 Every -- every kit that comes in has a control
4 sample. That control sample is subtracted out
5 automatically before we even look at the data. We
6 then look at the data after the control is subtracted
7 out to draw a conclusion.

8 That conclusion could be -- we will report it.
9 If it's a suicide or a victim, if it is going to be a
10 subject, we can take it to the next step so to see
11 and confirm that it is gunshot residue.

12 Q. And your conclusion was at least on one
13 location on one hand that was consistent with gunshot
14 residue?

15 A. It may be associated with gunshot residue.
16 There is -- this is a weaker than to say consistent.

17 Q. But it wasn't the same as in the environment?

18 A. That is correct. Based upon the control we
19 subtracted out, it rendered us a -- a minimum
20 positive.

21 Q. Assuming that the environmental was accurate
22 at the time it was taken?

23 A. That would be correct.

24 Q. Now, I got off track, and I apologize, but the
25 purpose for that type of examination and the

1 importance of the collection and the production to
2 you is to assist the jury in determining distances,
3 measurements, from the barrel of the weapon to the
4 target that it hit?

5 A. If you're talking about gun -- gunpowder, yes,
6 sir. The gunpowder test is designed to help
7 determine a distance, help be able to give a working
8 range for someone. The gunpowder, though, is
9 different than the gunshot. So, yes, if we're
10 talking about gunpowder.

11 Q. But they both assist the jury in analyzing
12 distances?

13 A. The gunpowder assists in distance. The
14 gunshot can give us some information which may help
15 narrow the range somewhat, but the gunpowder is the
16 one that's the principal determinant in a
17 determination of distance.

18 Q. And the analysis that you did on the hands of
19 the suspect, of Mr. Rocquemoire, confirm that he
20 likely fired the weapon?

21 A. I don't know if we want to say likely fired a
22 weapon. He could have fired a weapon. He -- I
23 definitely have evidence he handled a weapon, but
24 then I'm missing the component on the back of the
25 hand. Without the component on the back of the hand,

1 I can't say likely fired a weapon. He could have
2 fired a weapon.

3 Q. And there was no evidence on the back of his
4 right hand?

5 A. No, sir. There was no evidence.

6 Q. Was there any evidence on his left-hand palm
7 or his left hand -- left-hand palm or the left hand
8 on the back his hand?

9 A. No, sir. The only area that had any evidence
10 that there was gunshot residue was going to be on the
11 right palm.

12 Q. Would it be fair to say that your analysis of
13 the fellow who was shot is that at least his right
14 palm hand was between the barrel of the weapon and
15 his shirt?

16 A. Are you referring to the victim, sir?

17 Q. Yes, sir.

18 A. Okay. The victim hand would have had to be
19 between the gun and the shirt, yes, sir. That would
20 be one way that he'd get this material on the hands.

21 Q. So I'm demonstrating now by holding up my
22 hands, perpendicular to the floor, on my shoulders.

23 A. Yes, sir.

24 Q. That position would not have been possible?

25 A. No, sir. If you were standing -- and you had

1 to be closer, because you're too far away at this
2 point. But if I were shooting at you, like that, the
3 only area that you'd be able to get residue on the
4 palm of your hands would be because you've got your
5 palms out towards the gun. You must have the surface
6 that's going to get the gunshot residue from the gun
7 towards the gun.

8 Q. If the person was swinging towards the barrel
9 or lunging towards the barrel, would that be
10 consistent with your laboratory findings?

11 A. You could be swinging, you could be projecting
12 your hands as a punch. You would just have to have
13 enough distance between you not to get any gunpowder
14 on the garment.

15 Q. And, of course, that would depend on the size
16 of the person and whatnot?

17 A. Yes, sir. Those factors are dictated by the
18 length of the arm and things like that.

19 Q. Now, if immediately adjacent to the parties
20 involved, that is, the shooter and the party, there
21 were other parties standing there, would any evidence
22 from the explosion of the projectile at the time it
23 was discharged from the weapon, would that cloud also
24 go in other areas?

25 A. Yes. If someone is standing adjacent to a

1 weapon, that gunshot residue will come out as a cloud
2 and can get on clothing of people just adjacent to
3 it. It could also get on their face and things like
4 that. They've got to be fairly close, I mean, you're
5 talking about within six foot, but you have to be
6 close enough to the weapon that it -- the cloud will
7 get on you.

8 Q. So within six feet, you could tell whether
9 somebody was close to the shooter of the weapon?

10 A. You can, but let me give you one cautionary
11 word. This cloud once it comes up is affected by
12 currents, the wind currents, whatever. I can't say
13 absolutely six foot. I can say generally speaking.

14 Q. I didn't mean to do that. Everything we're
15 talking about in terms of distance is approximations.
16 You have wind conditions, humidity, a lot of ---

17 A. Yes.

18 Q. --- environmental factors?

19 A. The -- the gunshot residue is the hardest to
20 characterize because it's so light and so easily
21 moved that it can move around with just anything,
22 that someone can be contaminated from one side and
23 another person sitting right next to the gun would
24 get nothing on them, because it's just so -- it's
25 like a cloud -- a dust cloud. If a dust cloud gets

1 kicked up, depending upon the wind, one person would
2 be in the middle of it and the other person would not
3 have any on them at all.

4 Q. You described it as like flour-like...

5 A. Yes, sir.

6 Q. --- or talcum powder or that type of thing.
7 If it's -- the bathroom fan's on, it may go different
8 places than where it's supposed to go.

9 A. That is correct. That's why we use the
10 gunpowder, because gunpowder is not affected by those
11 factors. It will be projected from the weapon, and
12 it will go towards the target because it's bigger
13 particles. They're not affected by the wind and the
14 things around it.

15 Q. Were you provided with -- I'm switching topics
16 now. Were you provided with any evidence of the
17 cotton swab from the weapon itself? Were you -- any,
18 any type of evidence from the weapon that may have
19 been derived from the crime scene?

20 A. No, sir. I received no cotton swabs or
21 anything from the weapon itself.

22 Q. Now, in your laboratory at SLED, could you
23 tell the jurors -- and you probably already did, and
24 I don't want to waste their time -- but did you tell
25 the jurors that you do more than just gunpowder and

1 gunshot residue?

2 A. Oh, yes, sir. Yes, sir.

3 Q. Are some of those things analysis of
4 materials?

5 A. Yes, sir. We -- we run analysis on various
6 types of components that are sent to the laboratory;
7 such as building materials, we may want to compare
8 cinder blocks that was found at a scene, maybe used
9 as an object or a weapon against someone. We can
10 compare that.

11 We can compare -- we look at bullets.
12 Sometimes bullets, of course. We'll match up the
13 components of two bullets, see if they -- if they are
14 consistent with each other.

15 We look at all types of physical materials and
16 try to make comparisons.

17 Q. How about clothing?

18 A. As far as fibers? Yes, sir. We do fiber
19 analysis where we look at fibers and -- and make
20 determinations if it could have come from a garment
21 or not from a garment.

22 Q. How about fingernail clippings?

23 A. Fingernail clippings are normally sent to DNA
24 for them to be able to run their tests. There has
25 been a couple times in my career where I've been

1 asked to look at material underneath the fingernails
2 that is not blood to see if I can determine what it
3 was, such as maybe a grease or some type of oil-type
4 material.

5 Q. Now, in -- let's go back to the clothing. If
6 people are engaged in a fight, is there -- could
7 there be an exchange of trace fiber?

8 A. Yes. If once you come in contact with someone
9 and you engage them physically, a transfer of
10 material begins to occur. It may be fibers, it may
11 be skin cells, it may be other materials. If you're
12 engaged in a combat, there are materials which are
13 exchanged between the two. And we do have ways of
14 testing for that.

15 Q. And could you examine clothing, for example?

16 A. Yes, sir. We actually are -- we're set up to
17 be able to look for various type of skin cells and
18 things for DNA. We could have one -- a comparison on
19 fibers from known to unknown, from both the subject
20 and victim, to see if we have any indication of fiber
21 transfer.

22 Q. In your analysis of the shirt that was
23 displayed to the jury before, did you find -- did you
24 look for anything else other than bullet holes?

25 A. No, sir. I was requested to look at it for

1 the bullet holes, and that was -- that was the full
2 focus what I was looking at. I had nothing else to
3 compare it with or to compare it to. So there was
4 nothing I could do with it other than just look for
5 bullet hole issues.

6 Q. And did you discover any holes that may have
7 been related to the incident or not to the incident?
8 Did you find any other tears or rips or anything of
9 that nature other than the EMS?

10 A. There were other holes in the garment. Either
11 wear holes or tear holes, I couldn't be for sure.
12 The garment itself was in a -- it had -- it had a lot
13 of wear areas where it had decay -- broken down. I
14 could not tell if there was any torn areas, like torn
15 apart, no, sir, I couldn't say that.

16 Q. So if somebody went to the mall that night and
17 bought new clothes and that party allegedly was
18 wearing Brand new clothes out of the mall, that would
19 not be consistent with the findings you made of that
20 shirt, would it?

21 A. No, sir. This shirt was not Brand new. It
22 had been worn for a while, and it was showing age.

23 Q. And did the prosecutor ask you about that?

24 A. No, sir.

25 Q. Tell us about the capability of the State Law

1 Enforcement Division blood analysis. Does your --
2 maybe not in your department, but at the SLED
3 laboratories could you -- for instance, can you take
4 blood splatter; is that a scientific analysis, blood
5 splatter?

6 A. Yes, sir. At our laboratory we're able to
7 take and look at a crime scene and look at how the
8 droplets of blood flow, whether they have been cast
9 off or what happens to them and be able to determine
10 some of the features of what may have happened during
11 the struggle or the fight.

12 We -- we leave remnants of themselves. If
13 someone throws their hands around the neck and casts
14 off some blood, then we can see that and just say,
15 well, this person cast their hand this a way,
16 or there's conclusions that can be drawn based upon
17 the patterns that are found from blood.

18 Q. Such as if they had bloody hands, if there
19 were other sources of blood on any of the parties
20 that were involved, you would be able to identify the
21 movements and the source of the blood?

22 A. The -- the level at which it was able to be
23 found or to be able to determine would have to be
24 determined by the expert in that area, which I'm not.
25 But, yes, what you're describing I'm well aware of

1 and definitely is a possibility.

2 Q. And the transfer of blood from one to another
3 and blood absorption effects are factors?

4 A. Yes. If you want to sit down here and see if
5 someone came in contact with one person who's
6 bleeding, if you'd come in contact, that blood is
7 transferred onto the garment. We have -- you could
8 run DNA and be able to determine it belongs to Person
9 "A" or not Person "B."

10 Q. And you can do the same analysis with, let's
11 say, automobile fabrics, seating, carpet, and
12 identify whether people had fabric or transferred
13 fibers from the -- a particular vehicle?

14 A. Yes, sir. Any materials that have -- well,
15 any type of material that has a covering, you
16 normally have a transfer. Now, the amount of
17 transfer is going to be dependent upon the condition
18 of the object.

19 For example, the carpet here in this courtroom
20 would probably not leave a lot because it's -- it's
21 been -- it's been well kept and there's not a lot of
22 wear on it; but if someone were fighting on it, there
23 very well could be a fiber or two that'd come up from
24 this carpet. Clothing can transfer back and forth.

25 There is -- every time you come in contact

1 with something, a little bit of us is left there and
2 a little bit of it is left on us.

3 Q. Have you had an opportunity to examine any
4 articles of clothing of David Rocquemore?

5 A. I've -- no, sir. I have done no -- I've not
6 examined any clothing from him.

7 Q. Have you examined any clothing from Troy
8 Eason?

9 A. No, sir.

10 Q. Have you examined any clothing identified from
11 Ronald Gibbs?

12 A. No, sir.

13 Q. Have you identified any clothing from Rodney
14 Gibbs?

15 A. No, sir.

16 Q. Have you identified or examined any clothing
17 other than the shirt of the deceased?

18 A. There was other garments that were submitted.
19 There was an undergarment that I used to compare the
20 holes, from the victim, on the outer garment, and I
21 looked at that.

22 There was also, of course, the remainder of
23 the garments that I just -- I looked at very quickly
24 to see if there was any holes in them. I found none,
25 no holes in those.

1 Q. Did you examine any shoes, or did you examine
2 any shorts?

3 A. There was one brown shoe that was found in the
4 evidence, and there was also some navy blue boxer
5 briefs, some green shorts, and a brown belt. That
6 was the other evidence that was submitted with it,
7 with the...

8 Q. The shirt. I apologize. It was submitted to
9 you?

10 A. Yes, sir.

11 Q. Was there a request for examination of that
12 evidence?

13 A. They asked me to take a look at them with the
14 -- their interest was bullet or gunpowder, which I
15 was focusing on the shirt, but I did take a cursory
16 look at the other objects to make sure there was not
17 a hole not explained to me or told to me that may be
18 there.

19 Q. But no trace analysis on the shorts, the
20 underwear, the shoes, or anything like that?

21 A. No, sir. I did no other type examination on
22 those garments.

23 MR. SAVAGE: Would you give me just one
24 moment, please?

25 THE WITNESS: Yes, sir.

1 MR. SAVAGE: Thank you very much,
2 Lieutenant. We have no further questions.

3 THE WITNESS: Thank you, sir.

4 MS. KNEESE-SHEALY: I have no further
5 questions, either, Your Honor. Thank you.

6 THE COURT: You may step down, sir.

7 THE WITNESS: Thank you, sir.

8 THE COURT: Make sure you leave any
9 exhibits ---

10 THE WITNESS: Yes, sir.

11 THE COURT: --- there, please.

12 (The witness is excused from the witness
13 stand.)

14 THE COURT: Ladies and gentlemen, I'm
15 going to let you stop a little bit early today. We
16 have -- and I'm sorry about some of the scheduling
17 changes throughout the trial, but we will actually
18 pick back up on Tuesday at 9:30, not Monday. On
19 Monday I have to kind of start qualifying the other
20 panel for the cases for that week. So if you will
21 please report back on Tuesday at 9:30.

22 It's very important that you not discuss
23 the case with anyone in any way whatsoever. You must
24 not conduct any type of independent research. You
25 must not expose yourself to any type of media

1 coverage. And please take that to heart and very
2 seriously. I know some of you may have seen in the
3 past we've had cases where jurors have actually done
4 that, and obviously it just causes a tremendous set
5 of problems and issues that have -- that have to be
6 dealt with, and not to mention it's violative of the
7 Court's instructions and potentially a contempt of
8 court and other sanctions.

9 So I ask that you not discuss this case
10 in any way whatsoever. If someone tries to, just
11 tell them you can't discuss it, whether that be your
12 spouse, partner, whatever, do not discuss this case.

13 Thank you very much. I hope you all have
14 a good weekend. Tuesday at 9:30.

15 (Whereupon, the jury leaves the courtroom
16 at approximately 3:18 p.m.)

17 THE COURT: Thank y'all. See y'all then.

18 MR. SAVAGE: Thank you, Judge.

19 MS. WILLIAMS: Thank you, Judge.

20 THE COURT: All right. They will secure
21 this courtroom. We'll have it next week, so y'all --
22 so y'all will be able to leave whatever you want to
23 leave.

24 MR. DURANT: It will it be secured
25 Monday, as well, Your Honor?

1 (There was off-the-record discussion by
2 the Court and the deputies.)

3 THE COURT: Yeah. I'm assigned to this
4 courtroom next week. So it shouldn't be a problem,
5 but the deputies will make sure it's secured.

6 (There was off-the-record discussion.)

7 MR. SAVAGE: Judge, I have something for
8 the record.

9 THE COURT: I need something on the
10 record. Madam Court Reporter, I need something on
11 the record, please.

12 MR. SAVAGE: Your Honor, I had earlier
13 asked the court reporter if it was possible, and I'm
14 not sure that it is, to get a copy of the transcript
15 of four witnesses. And in evaluating whether to do
16 that or not, I was advised by the court reporter that
17 it would not be certified.

18 And the idea would be to use the
19 transcript in my closing argument, and I didn't want
20 to get in a position where if it wasn't certified
21 that I was -- you know, I don't want to get in a
22 battle.

23 My thinking on that, after talking to the
24 court reporter, if the jury asks to have a transcript
25 of -- to have the transcript read back to them, that

1 is the transcript as it is now read to them.

2 THE COURT: Well, she reads from her
3 actual notes. Her actual computer notes is what I'm
4 talking about, her steno.

5 MR. SAVAGE: But what I would like ---

6 THE COURT: Or she plays it back to the
7 jury on a tape.

8 MR. SAVAGE: What I would like to do is
9 to get a copy of the transcript, but I don't want to
10 do that if I can't use it.

11 THE COURT: You wouldn't be able to give
12 that to them physically because it's not ---

13 MR. SAVAGE: No, no, no, no. But argue
14 from it.

15 THE COURT: Well, you can argue from it
16 as long as you -- as much as you want, as long as
17 there is no argument on the other side that that's
18 not what was said. Once that happens, then we have
19 to get her to officially read it. We have to take a
20 break and ---

21 MR. DURANT: And if he wants transcripts
22 of every witness, so do I then.

23 (Mr. Savage and Mr. Durant confer.)

24 THE COURT: Although, he's got to pay for
25 it. First of all, let me explain that process. I

1 don't know if we can do that process. Whether she
2 provides it or not within her schedule is her
3 prerogative, but each -- anyone that requests a
4 transcript would have to pay for it, I mean, but if
5 -- we don't have realtime. In order to have
6 realtime, she'd have to go print it on the screen.

7 But the -- I just say that for what it
8 is. It's not a certified copy. Just as when I use
9 realtime, it's the same thing, we say it's not
10 certified, because that lets me find things faster.

11 MR. SAVAGE: In good faith, I could use
12 that in argument?

13 THE COURT: Yes. I mean, you pretty much
14 know what they've said, I mean, but I just say that
15 qualification. If he turns around and says that's
16 not what they said, then we just have to stop and get
17 her to play it back or read it back for us. But you
18 can't give the jury any kind of uncertified
19 transcript or anything like that.

20 MR. SAVAGE: I mean, he could argue it.

21 THE COURT: If the witness said the sky
22 is blue and you want to say the witness said the sky
23 is blue, I doubt there's going to be any kind of
24 debate about that.

25 MR. DURANT: No. No, there's not. But

1 if he's standing up in front of the jury with a
2 transcript in his hand and say the jury -- and "the
3 witness said this, and the witness says that," yes,
4 I'm going object to that.

5 THE COURT: Well, he can't -- he can't
6 refer to that as -- I wouldn't let him refer to that
7 as the official transcript.

8 He can say "my recollection is the
9 witness said this," just as an attorney could do in
10 argument at anytime, and then you would have the
11 right to stand up and say that's not what the
12 testimony was.

13 I mean, I guess the only point of this
14 conversation is it's not official and it would be
15 subject to official verification if there was an
16 issue.

17 MR. SAVAGE: Thank you.

18 (Whereupon, at approximately 3:22 p.m.,
19 the trial is recessed to the following Tuesday, July
20 17, 2007, at 9:30 a.m.)
21
22
23
24
25

CERTIFICATE OF THE COURT REPORTER

I, the undersigned, Brenda Cooley, Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true and accurate transcript of record of the proceedings had and the evidence introduced in the hearing of the captioned trial, Volume III of V, pages 591 through 772, inclusive, relative to appeal, in the Court of General Sessions for Charleston County, Charleston, South Carolina, on the 13th day of July 2007.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 17, 2008

Brenda Cooley
Brenda Cooley
Circuit Court Reporter

State of South Carolina) The Court of General Sessions
County of Charleston) The Ninth Judicial Circuit
State of South Carolina,)
) vs.) Case No. 05-GS-10-8601
) 05-GS-10-8602
David Michael Rocquemore,)
) Defendant.)
_____)

VOLUME IV of V

TRANSCRIPT OF RECORD

July 17, 2007

Charleston, South Carolina

B E F O R E:

The Hon. Daniel F. Pieper, Judge, and a Jury

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

Bruce D. Durant, Esq.
Jennifer Kneese-Shealy, Esq.
Bryan Alfaro, Esq.
Attorneys for the State

Andy Savage, Esq.
Lauren Williams, Esq.
Attorneys for the Defendants

Pages 774-1076

Brenda Cooley
Circuit Court Reporter

I N D E X

MONDAY, JULY 16, 2007

(Trial not in session on Monday, July 16, 2007.)

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DEFENDANT'S	DESCRIPTION	I.D.	REC'D

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* * *

(The exhibit is retained by the clerk of court.)

1 (On Monday, July 16, 2007, the trial is
2 not in session.)

3 (On Tuesday, July 17, 2007, the defendant
4 being present with counsel, the trial reconvenes at
5 approximately 9:30 a.m., and the following
6 proceedings were had:)

7 THE COURT: All right. Good morning.
8 Are y'all ready to proceed?

9 MR. DURANT: The state's ready,
10 Your Honor.

11 MR. SAVAGE: Good morning, Judge. The
12 defense is ready.

13 (There was off-the-record discussion by
14 the Court and the law clerk.)

15 THE COURT: Bring the jury in.

16 (Whereupon, the jury enters the courtroom
17 at approximately 9:32 a.m.)

18 THE BAILIFF: All the jurors are here,
19 Your Honor.

20 THE COURT: Thank you. Please be seated.
21 Good morning, everyone.

22 (Members of the jury reply good morning.)

23 THE COURT: We're ready to proceed.
24 Call your witness, please.

25 MR. DURANT: The state would call

1 Dr. Russell Harley.

2 (Dr. Harley enters the courtroom.)

3 RUSSELL AUBREY HARLEY, JR., M.D.,
4 being first duly sworn by the clerk, is examined and
5 testifies as follows:

6 THE CLERK: Thank you. Be seated. If
7 you will state your full name and spell your last
8 name.

9 THE WITNESS: Russell Aubrey Harley, Jr.,
10 M.D. The last name is H-A-R-L-E-Y.

11 DIRECT EXAMINATION

12 BY MR. DURANT:

13 Q. Good morning, Dr. Harley. Could you please
14 relate to the jury what you do for a living?

15 A. I am an academic pathologist. I teach at the
16 university. I work in the pathology department. I
17 have been the head of the autopsy service in years
18 gone by. At present I'm semi-retired, but I still go
19 in and have space.

20 Q. That's at the Medical University of
21 South Carolina?

22 A. Correct.

23 Q. Are you a licensed physician in the State of
24 South Carolina?

25 A. Yes, I am.

1 Q. How long have you been practicing medicine?

2 A. I finished medical school in 1965, so since
3 then.

4 Q. And where did you receive your medical
5 training?

6 A. Right here at the Medical College.

7 Q. And if you would, would you just relate your
8 medical training for the jury, the benefit of the
9 jury?

10 A. I spent five years at the Medical University.
11 I took a year off between the sophomore and junior
12 years and did a Fellowship. After I finished medical
13 school, I went to Yale for several years. I then
14 went in the Army and was stationed ---

15 Q. What did you do at Yale?

16 A. I did pathology and primarily pulmonary
17 pathology for one year and then the rest of the time
18 general pathology.

19 Q. Okay. Excuse me. Then you said after Yale?

20 A. Then I went to the Armed Forces Institute of
21 Pathology, and which is part of Walter Reed in
22 Washington, and then in the next year I went to
23 Vietnam for a year where I was the surgical
24 pathologist for Southeast Asia. I did a few
25 autopsies over there but not many. I mostly did

1 surgical pathology. Then I returned to Charleston,
2 and I've been on the faculty of the Medical
3 University ever since.

4 Q. And so you've been on the faculty ever since
5 you returned from Vietnam?

6 A. Correct.

7 Q. Are you a full professor at the Medical
8 University?

9 A. Full professor.

10 Q. And what is your area of specialty or
11 expertise?

12 A. I'm board certified in anatomic pathology.
13 Anatomic "path" is the branch of pathology that does
14 psychology, surgical pathology, and autopsy
15 pathology.

16 There are subspecialties in that field that
17 you can get boarded in, but I don't have any of those
18 other boards. I could have been grandfathered in to
19 some of them but just didn't do that.

20 Q. What is psychologic forensic pathology?

21 A. It's the branch of pathology that deals
22 specifically with matters that end up in court,
23 essentially.

24 Q. Dealing with the cause of death, primarily?

25 A. The -- yeah. Forensic pathologists spend most

1 of their time doing medical-legal autopsies and
2 oftentimes things related to that. We're an academic
3 school, so we also train residents and Fellows in
4 forensic path in that subject.

5 Q. And as part of your affiliation with the
6 Medical University of South Carolina, have you had an
7 opportunity to perform autopsies in the past?

8 A. Yes.

9 Q. How many autopsies have you performed during
10 your career?

11 A. Several thousand.

12 Q. And do you currently hold any teaching
13 positions at the Medical University related to
14 pathology?

15 A. Well, I'm still a professor of pathology.

16 Q. And have you previously been qualified as an
17 expert witness in the area of forensic pathology?

18 A. Yes, I have.

19 Q. On how many occasions, sir?

20 A. Oh, not so many. Probably about a half a
21 dozen to a dozen. And the reason for that is that
22 the Fellows in pathology frequently end up here
23 instead of being professors. They are closely
24 involved with the autopsies, and they get experience
25 of going to court and explaining what they've done.

1 MR. DURANT: Your Honor, at this time I'd
2 offer Dr. Harley as an expert in the field of
3 forensic pathology.

4 THE COURT: Any objection?

5 MR. SAVAGE: Without objection.

6 THE COURT: The Court finds him to be so
7 qualified and without objection.

8 BY MR. DURANT:

9 Q. Now, while affiliated with the Medical
10 University of South Carolina, did you have the
11 occasion to perform an autopsy on the person of
12 Demar Denson on August the 14th of 2005?

13 A. Yes.

14 Q. And do you recall what Mr. Denson's age was?

15 A. I think he was 37.

16 Q. And his height?

17 A. He was about five-eight.

18 Q. And his weight?

19 A. About 250, perhaps a little more.

20 Q. And did you as part of your autopsy, did you
21 perform an external examination of his body?

22 A. Yes, we did.

23 Q. Other than the gunshot wounds that we'll get
24 to in a moment, did you observe any signs of recent
25 injury upon your external examination of his body?

1 A. He had a small lesion, a small scrape,
2 essentially, of his right arm close to the elbow.

3 Q. And that's the only other thing that you found
4 on him with the exception of the gunshot wounds?

5 A. Correct.

6 Q. Doctor, I want to have you take a look at
7 state's exhibit number 47 and ask you if you
8 recognize that photograph, sir.

9 A. Right. This is one of our photographs taken
10 at autopsy of the torso and head of Mr. Denson.

11 MR. DURANT: Would you put it on the
12 screen, Mike.

13 BY MR. DURANT:

14 Q. Would reference to that photograph assist you
15 in relating to the jury your findings at autopsy?

16 MR. DURANT: If you would, dim the
17 lights.

18 THE WITNESS: I think you'll have to dim
19 the lights in order to be able to see that there are
20 actually two gunshot wounds there.

21 BY MR. DURANT:

22 Q. Okay.

23 A. There's one obvious ---

24 MR. DURANT: If I may approach?

25 BY MR. DURANT:

1 Q. If you need it, this is a laser pointer. Just
2 hit the red dot right there.

3 A. Okay. There is the fatal gunshot wound. He's
4 a broader man than this picture actually depicts, so
5 this is -- this looks sort of like it's in the
6 middle. It's actually more to the left. So it's the
7 upper left abdomen. There's a second one here, close
8 to his left armpit. And both of these are entrance
9 wounds.

10 Q. Okay. Were there exit wounds associated with
11 either shot?

12 A. No. The bullets were both within the body.

13 Q. And I believe in your autopsy report you
14 designated one of those wounds as "A" and one of
15 those wounds a "B." Which one did you designate "A"
16 and which one did you designate "B"?

17 A. We called this one "A," and we called that one
18 "B."

19 Q. Okay. Let's start with gunshot -- the one you
20 designated as Gunshot "A." Obviously, we can see the
21 point of entry there. Did you detect any soot or
22 stippling around or visualize any sort of stippling
23 around that wound?

24 A. No.

25 Q. And for the jury's benefit, what is soot or

1 stippling? Soot and stippling, I should say.

2 A. Well, if the gunshot wound had been close, if
3 there'd been contact, near contact, or very close,
4 then you would expect to see evidence of damage from
5 the heat of the gases coming out of the barrel of the
6 gun, or the stippling, the tattooing, from the powder
7 that comes out after the bullet.

8 Q. And did you observe anything around the wound
9 or inside the wound that indicated that that was a
10 close gunshot wound?

11 A. No.

12 Q. Of course, clothing makes a difference in your
13 ability to ---

14 MR. SAVAGE: Form of the question,
15 Your Honor.

16 THE COURT: Restate the question.

17 BY MR. DURANT:

18 Q. Would the clothing -- would clothing have any
19 effect on your ability to determine whether there was
20 soot, soot or stippling?

21 A. Right. If there were clothing, you'd expect
22 to find the stippling, the soot, on the clothing
23 rather than on the skin.

24 Q. Okay. Now, say, for example, even assuming
25 for purposes of your testimony that clothing was

1 worn, would there be any -- would there be any
2 observable evidence of a close gunshot wound if there
3 was a contact wound?

4 A. Right. You can -- you can tell a contact
5 wound. And in this case, there were two layers of
6 clothing on his skin, and you could -- you could
7 determine that was a contact wound on all three
8 layers.

9 Q. Okay. Including the body?

10 A. Right.

11 Q. Correct? And that would be for what, why, for
12 what reason would you be able to determine that?

13 A. If -- if there were a contact wound, the first
14 thing that comes out of the barrel of the gun are
15 gases, and they're very hot, and if there were a
16 contact wound, that would actually penetrate the body
17 so that there would be damage to the underlying skin.
18 The gases go in and bounce back out and sort of lift
19 the skin up.

20 There are characteristic changes around the
21 borders of the wound if they're a contact, also
22 caused by the same thing, the heat plus the -- the
23 soot, the powder. These things penetrate into the
24 body so that you find the substance to be substances
25 under the skin, in the skin and under the skin, and

1 you can't wash it off.

2 Q. And just so for the jury's edification, what
3 is considered a close gunshot? What is considered a
4 contact gunshot wound for forensic purposes?

5 A. Contact wounds, you have hard contact and then
6 you have soft contact. In other words, it's a little
7 different in which the gases don't penetrate the
8 skin, and there are patterns related to the soft
9 contact that are characteristic of it. So you can
10 pretty much tell. If it's hard against the skin, if
11 it's touching the skin but not hard against it, those
12 things are pretty clear.

13 Then back out to about six inches or so would
14 be something that you'd call close, perhaps back out
15 to a foot. And by close, what I mean is that we can
16 see evidence that the powder actually hit the skin or
17 the clothing and stuck to it, whereas if the gun is
18 back more than a foot, some -- depending on the
19 nature of the gun and the nature of the bullet and so
20 forth, the kind of gun, it could be more than a foot.
21 It could be out to a couple of feet, maybe even three
22 feet. So the farther back you get, the less likely
23 that you'll see the soot on the clothing or on the
24 skin. Is that clear?

25 Q. Yes, sir. Now, to be clear, you're not a

1 trace analyst, are you?

2 A. No.

3 Q. Okay. And so when you look at things as a
4 medical examiner, do you examine in reference --
5 well, like clothing, for example, do you examine
6 clothing, clothing microscopically?

7 A. Not ordinarily, no.

8 Q. Okay. Just what you can see with the visual
9 eye; is that correct?

10 A. Right.

11 Q. But just to back up, was there any indication
12 from the wound itself that Gunshot Wound "A" was a
13 close gunshot?

14 A. No. We -- and might as well get this
15 straight. We originally questioned Gunshot Wound
16 "B."

17 Q. Well, we'll get to that in a moment.

18 A. Okay.

19 Q. Okay? Were you able to determine a trajectory
20 for Gunshot Wound "A"?

21 A. Right. The bullet went in slightly downward
22 and slightly backward, so you can see where it went
23 in, and it ended up on the -- underneath the shoulder
24 blade on the left side. It went sort of almost
25 straight back and slightly downward.

1 Q. And when you say slightly downward, you're
2 talking how much of a slightly downward?

3 A. Oh, 5 to 10 degrees.

4 Q. About this? (Indicating.)

5 A. About that, yeah. (Indicating.)

6 Q. Okay. Was that projectile recovered?

7 A. It was.

8 Q. And that projectile was later turned over to
9 Brian Hodge at the sheriff's office; is that correct?

10 A. Correct.

11 Q. Could Gunshot "A" in and of itself have been
12 fatal?

13 A. Probably not.

14 Q. Okay. Let's move on to Gunshot "B" if you
15 would. Would you describe the point of entry with
16 regard to Gunshot "B"?

17 A. Gunshot Wound "B" entered the lower rib cage,
18 upper abdomen, on the left-hand side. It then went
19 down and back so that it sort of nicked the head of
20 the pancreas which is on the left-hand side inside
21 the abdomen, and it went through the aorta at the
22 level of the renal arteries, the two big arteries
23 that come down and go to the kidneys. So it went
24 through the aorta at that level.

25 Q. And what is the aorta?

1 A. It's the largest artery in the body. And at
2 this point, it would have been delivering blood to
3 the kidneys, to the lower intestines, to the pelvis,
4 and to the legs.

5 Q. And...

6 A. And the bullet then went on close to the
7 adrenal on the other side. It went through the
8 intestines, and it was found in the lower abdomen on
9 the right side.

10 Q. And what was the effect of the projectile
11 having perforated the abdominal aorta?

12 A. That's a fatal wound. It nearly always is.

13 Q. And why?

14 A. The aorta is a big vessel. It's cone-shaped,
15 so it starts off, when it leaves the heart, larger
16 than it is when it gets down here.

17 It's already delivered blood to the head and
18 the arms, so as it goes it becomes smaller and
19 smaller in diameter. It's about the size of a small
20 garden hose at the point in this case where the
21 bullet went through.

22 The pressure in it is essentially the same as
23 the pressure in the heart, it's a high blood
24 pressure, and a tear in the aorta, a perforation at
25 that point, would have allowed massive rapid

1 hemorrhage. A person with a wound like that would be
2 unconscious in a matter of a minute or so.

3 Q. How long before someone would be incapacitated
4 from an injury such as -- such as that one?

5 A. It would have been almost instant. It would
6 have been a matter of seconds.

7 Q. Now, from your visualization of the actual
8 gunshot wound itself and the interior of the gunshot
9 wound, did you see any indication that this wound was
10 a close gunshot wound?

11 A. When we looked at this gunshot wound
12 originally, there was a sort of gray marking on a
13 portion of it which we weren't certain about, but we
14 thought this probably represented some powder
15 residue.

16 And Doctor -- Dele who -- Dr. Adeagbo, who was
17 our Fellow at the time, thought it was close, and I
18 wasn't sure. I thought it might or might not be, and
19 we ended up classifying it as being a close range
20 gunshot.

21 Later, after this case came up and we began
22 looking at it again, the question again was raised as
23 to how close was it, and we said we can't be entirely
24 sure, but we think it's close, but we're not sure.

25 We had good photographs of it, and I showed

1 that to four other people in the department, all of
2 whom are board certified forensic pathologists with a
3 lot of experience. Two of them said they thought it
4 was what's called a bullet wipe. Two of them said
5 they weren't sure.

6 We had suggested that the clothing could be
7 sent to SLED for analysis, and then that would
8 determine whether it was bullet wipe or whether it
9 was gunshot powder residue.

10 Q. Okay. Now, was that projectile recovered, as
11 well?

12 A. Yes, it was.

13 Q. And then also turned over to Investigator
14 Brian Hodge...

15 A. Right.

16 Q. --- of the sheriff's office? Now, let's get
17 back to that bullet wipe thing a little bit. Did you
18 examine the clothing worn by the victim in this case,
19 specifically his outer shirt?

20 A. Right. We did.

21 Q. And I want to hand you what's been marked as
22 state's exhibit number 46 and ask if you recognize
23 that photograph.

24 A. That is a photograph of the bullet entrance.

25 Q. Categorized as "B"?

1 A. Correct.

2 Q. Now, in your report, you had -- you had
3 indicated that you observed something on the clothing
4 I believe that you said might be soot.

5 A. Right.

6 Q. Is that correct?

7 A. Correct.

8 Q. Could you point out to the jury on photograph
9 "B" what you were talking about?

10 A. Right. I think everybody can see that.

11 Q. You may not -- that's not the strongest laser
12 pointer in the world.

13 A. No, it's not, is it?

14 Q. Let me -- let me help you with the mouse.

15 A. I got it. Here.

16 Q. Okay.

17 A. It would be...

18 Q. That lower border there?

19 A. Right.

20 Q. Okay. And that is what you initially thought
21 could have been soot; is that correct?

22 A. Correct.

23 Q. And that is why you -- this was categorized as
24 a close gunshot wound?

25 A. That's right.

1 Q. Now, you're aware that this shirt was
2 subsequently sent to the State Law Enforcement
3 Division trace department, correct?

4 A. Right.

5 Q. And I believe you were also made aware that
6 there was no gunpowder residue found around either
7 bullet hole; is that correct?

8 A. That's correct.

9 Q. Based upon those findings, would your opinion
10 as to whether or not this was a close gunshot wound
11 change?

12 A. Yes, it would. I'd say that I couldn't say it
13 was close anymore, and that the range would be
14 distant or indeterminate.

15 Q. Okay. And for forensic purposes, y'all are
16 just interested in what you can see with the naked
17 eye; is that correct? And a couple of -- looked at
18 by a couple of people, correct?

19 A. Well, right.

20 Q. Now, based upon the history you obtained in
21 this case, do you have an opinion based upon a
22 reasonable degree of medical certainty as to the
23 cause of death?

24 A. The cause of death was a single penetrating
25 gunshot wound which perforated the abdominal aorta

1 and led to massive hemorrhage and death.

2 Q. Okay. And, essentially, he bled to death
3 internally, correct?

4 A. Correct.

5 Q. Now, as part of an autopsy, is a toxicology
6 screen also performed?

7 A. Toxicology is standard, and we did toxicology
8 in this case.

9 Q. And what were the toxicology results with
10 regard to Mr. Denson's ethanol level?

11 A. I'd have to look to be sure, but I think it
12 was .114, which is slightly above the .1 level.

13 Q. Okay. And how about the drug screen? What
14 were the results of the drug screen?

15 A. The drug screen was negative.

16 Q. And a drug screen is for, generally, narcotics
17 and drugs subject to abuse; is that correct?

18 A. That's correct.

19 Q. Cocaine, marijuana, things of that nature?

20 A. Right.

21 MR. DURANT: Could you please answer any
22 questions Mr. Savage may have for you.

23 THE WITNESS: I'd be glad to.

24 MR. SAVAGE: Please the Court.

25 THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. SAVAGE:

Q. Good morning, Dr. Harley.

A. Good morning.

Q. I always like to give the jury the big picture of where everybody fits in. As I understand it from your testimony and my knowledge of you, you are a pathologist who works at the Medical University.

A. That's correct.

Q. And there's been a lot of controversy over the past 30 years about the medical examiner.

A. Right.

Q. In the early seventies, Dr. Henegar (phonetic) provided legislation to the state legislature that put the medical examiner in charge of the investigations of death. Is that correct?

A. Right. He tried to get a statewide medical examiner system in place.

Q. And we had one in Charleston County?

A. Right. The way the law eventually came out was the three big cities, Greenville, Columbia, and Charleston, were allowed to have a medical examiner if they wished, in conjunction with the continuing coroner system, whereas the rest of the state remained in the coroner system.

1 Q. And the medical examiner system was in place
2 in Charleston up until about ten years ago?

3 A. Something like that.

4 Q. And when the medical examiner was in charge,
5 the pathologist or the forensic pathologist and their
6 investigators and the people who worked at the
7 Medical University would actually go out in the field
8 and examine bodies where they were found, where the
9 injury took place, to further their interpretation of
10 what might have happened. Is that correct?

11 A. That's correct.

12 Q. And now that role has reversed and is now
13 played by an elected official, the coroner?

14 A. Well, the coroner was always involved. The --
15 it was usually a combination of the police, some
16 member of the medical examiner's department, and --
17 and the coroner at a scene.

18 Q. And but today such as in this situation, the
19 coroner, as opposed to a medical examiner, makes the
20 final determination in the record that exists, the
21 public record that exists, as to the manner and the
22 cause of death?

23 A. That is correct.

24 Q. And that information that the coroner derives
25 comes from law enforcement as well as the

1 pathologists at the Medical University?

2 A. That's correct.

3 Q. And your role in this case was as a
4 pathologist at the Medical University?

5 A. That is also correct.

6 Q. So you have a scientific approach to your
7 examination of the corpse or the deceased?

8 A. Right.

9 Q. Now, most of the people who work in that
10 department are called forensic pathologists; is that
11 correct?

12 A. At present, we have five members of that small
13 section. As I've said, I'm semi-retired now, but I
14 still maintain an office there. We have four other
15 people who are board certified in anatomic pathology.
16 I think all of them are board certified in clinical
17 pathology and in forensic pathology, and at least one
18 is also board certified in pediatric pathology.

19 Q. And your certification is in anatomic
20 pathology?

21 A. Right. Just the overall anatomic pathology.

22 Q. And the four physicians that you consulted
23 with in this case recently about the shirt or the
24 body and photographs or whatnot are forensic
25 pathologists?

1 A. That's correct.

2 Q. Now, forensic pathology means that that person
3 then went and had extra training specifically in
4 matters that would be discussed in the courtroom?

5 A. That's correct. This autopsy was done by our
6 forensic Fellow at the time, Dr. Dele Adeagbo.

7 Q. And he ---

8 A. And -- and he was in the process of getting
9 the sort of training that would permit him to take
10 his forensic boards, which he is going to do in the
11 future.

12 Q. And Doctor -- is it Ade...

13 A. Adeagbo, but I think you could call him Dele.

14 Q. With all respect to him, Dr. Dele, he's now at
15 the University of Georgia School of Medicine in
16 Augusta; is that correct?

17 A. He's at MCG, correct.

18 Q. And have you discussed the recent concerns of
19 this case with him?

20 A. No.

21 Q. You have not?

22 A. I have not.

23 Q. And Dr. Dele, is that how you refer to him?

24 A. Well, we -- we call him Dele. If we're going
25 to put a "Doctor" in front of it, we call him

1 Dr. Adeagbo.

2 Q. Dr. Adeagbo actually wrote the nine-page
3 report of the findings of the autopsy?

4 A. Correct. He -- he would have dictated this
5 based on a template that we use, and it would have
6 been transcribed by a secretary, and then I would
7 have looked at it and changed anything that I saw or
8 gone over it with him and then finalized it.

9 Q. And on page one of the autopsy, the summary:
10 The manner of death, homicide; probable cause of
11 death, hemorrhaging, which means bleeding, correct?

12 A. Right.

13 Q. And that was due to a single close range
14 penetrating gunshot?

15 A. We thought it was close range at the time.

16 Q. And on page eight of his report: Significant
17 findings at autopsy include a single close range
18 penetrating gunshot. Is that ---

19 A. As I've said, we -- we thought at the time it
20 was close.

21 Q. And then in the summary, again, he repeated
22 this close range gunshot wound?

23 A. Right.

24 Q. So I would assume that having said that on
25 multiple occasions in the report there was some

1 meaning or context to the importance of that opinion.

2 A. I think what -- what we've said is pretty
3 clear, that at that time we thought it was close, and
4 then now after further consideration we don't think
5 it is.

6 Q. Now, it was only after you discussed, you
7 discussed this case, this trial, some two weeks ago
8 with the prosecutors that your position changed?

9 A. Right. At the time I first discussed this
10 with the prosecutors, we talked about whether this
11 was truly close or not.

12 And I said, well, I thought it probably was,
13 but I wasn't entirely sure, and if we could get the
14 shirt tested -- and perhaps it had already been
15 tested. I didn't have the shirt anymore. And
16 subsequent to that, the shirt was tested.

17 Q. But the findings at the autopsy were based on
18 the examination of the body. Your role wasn't to
19 examine the clothing. That's trace evidence or
20 somebody's else's. But the examination that the
21 medical examiner does, that the pathologist or the
22 forensic pathologist at the Medical University does,
23 is of the body. Is that correct?

24 A. No. No. We examine everything we get. If we
25 had gotten the gun, we'd have examined that. We

1 didn't get that. But we -- we examine the clothing
2 in every case, when we get the clothing, we
3 photograph it, and we examine the body, as well.

4 Q. Now, as I understood your testimony, the
5 prosecutors brought to your attention of a SLED lab
6 report; is that correct?

7 A. After our meeting, they apparently did get the
8 shirt tested.

9 Q. And do you feel that they provided you with
10 all the information that was derived from the SLED
11 analysis?

12 A. I did get a copy of the report, which was
13 phrased in a slightly confusing way, but basically it
14 was saying that they found evidence of bullet wipe,
15 but they did not find gunshot powder residue.

16 Q. And the report that you got really didn't even
17 directly comment on Wound "B" which was the fatal
18 wound?

19 A. It was confusing.

20 Q. And didn't the prosecutors tell you about the
21 gunshot residue that was found on the hand of the
22 deceased at the time he was examined?

23 A. Not that I remember.

24 Q. So the information they provided to you was
25 selective; that is, they determined which information

1 to provide to you, they didn't provide all the
2 information that was found?

3 A. What they provided me with is that one report.

4 Q. Now, with respect to the identification of "A"
5 and "B," I want to be sure that the jury is not left
6 with the impression that that in and of itself has
7 meaning. In other words, "A" doesn't mean first.
8 "B" doesn't mean second. "B" doesn't mean one or
9 two. I mean, those are just arbitrarily designated
10 wounds; is that correct?

11 A. That's exactly correct.

12 Q. It has nothing to do with the fatality of that
13 particular shot or, most importantly, with the timing
14 of the shot?

15 A. That's correct.

16 Q. So is there anything you can tell this jury
17 with reference to the two entrance wounds in terms of
18 which one came first and which one came second?

19 A. I can't say which one came first.

20 Q. With respect to the examination of the body of
21 the deceased, and I think you have indicated that a
22 report came back of blood that you took from the
23 deceased.

24 A. Right.

25 Q. Which was to be examined at some separate lab;

1 is that correct?

2 A. That is correct.

3 Q. But it's something that became part of your
4 report?

5 A. Right.

6 Q. And in your report...

7 MR. SAVAGE: May I approach the bench,
8 Your Honor?

9 THE COURT: Yes, sir.

10 MR. SAVAGE: Approach the witness. I
11 apologize.

12 THE COURT: Yes, that's fine.

13 BY MR. SAVAGE:

14 Q. Dr. Harley, does this appear to be part of the
15 report that you -- that you submitted in this case?

16 A. Yes.

17 Q. And if you would, would you tell the jury what
18 the significance, not the numbers, but the
19 significance of the blood analysis as it -- as it
20 applied to the alcohol content?

21 A. Under the summary comments, and this is signed
22 by William E. Brewer, Ph.D., who is an expert in drug
23 analysis, the summary comment is made: High level of
24 ethanol was found in blood, this level would cause
25 impairment of judgment and motor skills, no other

1 significant findings were found.

2 Q. Impairment of judgment?

3 A. And motor skills.

4 Q. Thank you, sir. And if you could wait just
5 one moment.

6 MR. SAVAGE: Beg the Court's indulgence.

7 (Mr. Savage and Ms. Savage confer.)

8 MR. SAVAGE: Thank you, Dr. Harley. We
9 have no further questions.

10 MR. DURANT: I'd ask that Dr. Harley be
11 excused if there's no objection, Your Honor.

12 MR. SAVAGE: Without objection.

13 THE COURT: You may be excused, sir.
14 Thank you.

15 (The witness is excused from the witness
16 stand and leaves the courtroom.)

17 MR. DURANT: Your Honor, the state rests.

18 (The state rests.)

19 THE COURT: All right, ladies and
20 gentlemen. At this juncture, I need to send you to
21 the jury room. Do not discuss the case in any way.
22 Thank you very much.

23 (Whereupon, the jury goes to the jury
24 room at approximately 10:10 a.m.)

25 THE COURT: Please be seated. Any

1 motions for the Court?

2 MR. SAVAGE: Your Honor, the first motion
3 we make is a motion for mistrial, not on an
4 individual basis but for all the reasons collectively
5 that we have previously placed on the record.

6 THE COURT: All right. That motion is
7 denied. I think that that motion would only be
8 proper based upon any previous motion for mistrial
9 and the specific grounds articulated for that
10 particular motion. That's denied.

11 Anything further?

12 MR. SAVAGE: Judge, we make a motion for
13 a directed verdict at this time. And probably we'd
14 have a little stronger argument at the end of the
15 state's (sic) case.

16 THE COURT: I'm sorry?

17 MR. SAVAGE: We'll have a stronger
18 argument at the end of the defense case.

19 THE COURT: All right. Anything else?

20 MR. SAVAGE: No, sir.

21 THE COURT: All right. Any response from
22 the state to that motion, Mr. ---

23 MR. SAVAGE: It was a very weak motion.

24 THE COURT: Denied. Denied. All right.

25 MR. DURANT: Your Honor, I do want to

1 mention one thing on the continuing mistrial. I've
2 been requested from the defense since Wednesday of
3 last week to provide them with a CD that we provided
4 to them that shows the deputy's in-car video. I have
5 every reason to believe that it's an exact copy of
6 the one that's in evidence and the one that we have,
7 and so I believe it's already looked at ---

8 THE COURT: Yeah. I would like y'all to
9 confirm the video so we don't have a repeat of any
10 issue about difference -- different videos.

11 Please stand, sir.

12 (The defendant complies.)

13 THE COURT: We have reached that stage of
14 the trial where you may present your defense.

15 You have a right to testify on your own
16 behalf; however, no one can make you testify.

17 If you elect to testify and you have some
18 prior record that falls within our rules of evidence
19 or procedure or if there is some other basis for
20 admission of that, of that record, then the state or
21 the solicitor will present this prior record to the
22 jury for consideration for impeachment and possibly
23 other purposes.

24 If you elect not to testify and not to
25 take the stand, I will charge the jury that they

1 cannot give the fact that you did not testify any
2 consideration whatsoever and that there is to be no
3 prejudice to you because you did not testify.

4 It will be left entirely up to you as to
5 whether or not you wish to testify. You can talk
6 further with your attorney or anyone else, but the
7 ultimate decision will be left entirely up to you.

8 Do you understand?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Counsel, have you explained
11 to him the advantages and disadvantages of either
12 testifying or not testifying?

13 MR. SAVAGE: On several occasions.

14 THE COURT: And did you understand all
15 those conversations, sir?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. And have you made
18 a decision at this point? Counsel, has there been a
19 decision on that at this point?

20 MR. SAVAGE: Yes, there has, Your Honor.

21 THE COURT: All right. And do you intend
22 to testify, sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Pardon me?

25 THE DEFENDANT: Yes, sir, Your Honor.

1 THE COURT: Okay. If you should change
2 your mind, please bring that to my attention.

3 All right. Are you ready to proceed, or
4 do you need a break or anything?

5 MS. WILLIAMS: Judge, if I may address
6 the Court. I believe we have some witnesses in the
7 lobby. I want to make sure they get up here quickly.

8 THE COURT: Okay. I'll give you five
9 minutes.

10 MS. WILLIAMS: Thank you.

11 MR. SAVAGE: We intend to sequester the
12 witnesses if the Court would allow us -- allow us to
13 use this conference room.

14 THE COURT: That's fine.

15 MS. WILLIAMS: Thank you, Your Honor.

16 THE COURT: I'll give you five minutes.
17 That's fine.

18 (A break is taken at approximately
19 10:15 a.m.)

20 (The trial reconvenes at approximately
21 10:22 a.m., the defendant being present with counsel,
22 and the following proceedings were had:)

23 THE COURT: Are you ready?

24 MR. SAVAGE: We're ready with one. Two
25 or three are in the neighborhood.

1 THE COURT: In the neighborhood?

2 MR. SAVAGE: We told them 11:00, Judge.
3 That's my fault. One is present. Two are looking
4 for parking spots. So we can proceed, I think, with
5 one anyway.

6 THE COURT: How long is that going to
7 take?

8 MR. SAVAGE: Oh, not long. Maybe 15
9 minutes, 20 at the most.

10 THE COURT: I'll go ahead and give the
11 jury a few more minutes. I don't want to turn right
12 around and send them back.

13 (A break is taken at approximately
14 10:22 a.m.)

15 (The trial reconvenes at approximately
16 10:36 a.m., the defendant being present with counsel,
17 and the following proceedings were had:)

18 THE COURT: Bring the jury in.

19 (Whereupon, the jury returns to the
20 courtroom at approximately 10:37 a.m.)

21 THE BAILIFF: All jurors are seated,
22 Your Honor.

23 THE COURT: Thank you. Please be seated.
24 All right. We're ready to proceed. Call
25 your witness, please.

1 MR. SAVAGE: If it please the Court, the
2 defense calls Michele Powe.

3 (Ms. Powe enters the courtroom.)

4 MICHELE POWE,
5 being first duly sworn by the clerk, is examined and
6 testifies as follows:

7 THE CLERK: Be seated. If you'll please
8 speak into the mike and state your full name and
9 spell your last name.

10 THE WITNESS: My name is Michele Powe.
11 My last name is "P" as in Paul O-W-E.

12 DIRECT EXAMINATION

13 BY MR. SAVAGE:

14 Q. Good morning, Ms. Powe.

15 A. Good morning.

16 Q. Would you kindly introduce yourself to the
17 jurors by way of giving an explanation of where you
18 live and where you work?

19 A. I currently reside in West Ashley, and I
20 currently work at Beneficial Financial Services.

21 Q. When is the first time you had an opportunity
22 to speak to me or anyone from my office?

23 A. I actually spoke with you I believe it was on
24 Friday.

25 Q. Of what week?

1 A. Of this past week.

2 Q. Did you respond to questions about your social
3 life and your whereabouts in August of 2005?

4 A. I did.

5 Q. Were you with a number of your friends that
6 night?

7 A. Yes.

8 Q. If you would tell the members of the jury who
9 you were with, what their relationship is to you, and
10 where you were.

11 A. I actually was with two of my friends, Monique
12 and Diana. We both -- we all worked at Verizon
13 Wireless at the time. I'm sorry, what was the other
14 question?

15 Q. You testified that you were with two friends,
16 you've named them, and that y'all worked at some
17 location.

18 A. Right.

19 Q. Where was that?

20 A. Verizon Wireless.

21 Q. And did you have occasion to be with them on
22 the evening of August 13th and the morning of August
23 14th?

24 A. I did.

25 Q. And if you would tell the jury where you were,

1 why you were there, who was there.

2 A. Well, we were going to a housewarming party,
3 this was another young lady that worked with us, went
4 to her house and to a party in Summerville. And that
5 was me, Monique, and Diana that went to that party.

6 Q. At the party were there males and females?

7 A. Yes.

8 Q. And did you know the other females who were
9 present?

10 A. I knew some of them because there was a lot of
11 employees of Verizon there.

12 Q. And how about the males?

13 A. There were some employees of Verizon there
14 that were males, but some others that I didn't know.

15 Q. Were you introduced to anybody there or did
16 you recognize anybody there by the name of Gibbs?

17 A. Yes.

18 Q. If you would tell the jury, if you would,
19 please, your relationship, how you know them, if you
20 met them that night.

21 A. I had actually met the Gibbs brothers a week
22 ago at a cookout at Dexter's house.

23 Q. And other than that occasion, did you know
24 them?

25 A. I didn't know them, no.

1 Q. Did they have anybody with them?

2 A. They did have two people, two other people
3 with them.

4 Q. Do you know their names?

5 A. Yes.

6 Q. If you would tell the jury their names,
7 please.

8 A. One was Troy. And the other person was, as I
9 called him, Chef because that's how he was introduced
10 to me, but his name was Demar. His actual name was
11 Demar Denson.

12 Q. Were there any other males there that night, a
13 fellow by the name of Thomas or Chris, Thomas Chris
14 or Chris Thomas, or anything like that?

15 A. Yes, he was there.

16 Q. Could you tell the jury your familiarity with
17 him?

18 A. Dexter introduced him to us as his supervisor
19 from work.

20 Q. Was anybody else introduced to you at that
21 time?

22 A. At that time, Chris introduced his friend
23 David.

24 Q. And do you recall his last name?

25 A. I believe it's -- well, no, I really don't.

1 Q. Tell us a little bit about the party in
2 Summerville, what time if you recall when you
3 arrived, what was the nature of the party, was it
4 music or cards or whatever. If you would give us a
5 little feel for what was going on that night.

6 A. Okay. I think I got there -- I think we all
7 got there probably -- I'm thinking it was after
8 eleven o'clock. There was a lot of food. There was
9 food, there was drinks. Just an adult party. It was
10 a housewarming.

11 Q. And the sequence of people who arrived, do you
12 know whether some people were there before you or
13 some people came after you?

14 A. Well, when we ---

15 Q. Particularly the people that you've already
16 discussed with the jury.

17 A. When we walked in, they -- Rodney and Ronald
18 Gibbs were already there with Troy and Chef, Demar.

19 Q. And do you know about any of the other males
20 that you've described to the jury, whether they were
21 there or not?

22 A. I believe -- I'm not sure about Chris or
23 David. I just know that they were there at the
24 party, but I don't know if they were there before.

25 Q. And what was the interaction? What was the

1 social activity going on at that party?

2 A. Just music was playing, some people were in a
3 sitting area. I mean, just general festive
4 atmosphere, not -- everything was positive. Nothing,
5 you know, wrong with it.

6 Q. Do you recall how long you stayed at the party
7 or where you went next or why you left the party?

8 A. Well, it looked like the party was winding
9 down. A lot of people had already started leaving.
10 So we decided to leave, as well. And it was -- and
11 Dexter was like, you know, it's really winding down,
12 let's just go, we can all go back to my house.

13 Q. And do you recall Dexter's last name?

14 A. No, I don't.

15 Q. But he is the one who suggested to leave?

16 A. Right.

17 Q. And did you in fact leave?

18 A. We did leave.

19 Q. And the women who were with you, how many of
20 them went with you, or did y'all go together in the
21 same car, did you travel in separate vehicles or ---

22 A. Right. We were all in the same car, Monique
23 Diana, and I. We drove -- we arrived at the same
24 time.

25 Q. And where did you go?

1 A. We ended up first at Troy's house.

2 Q. And is that Mr. Eason?

3 A. Yes.

4 Q. Troy Eason?

5 A. Right.

6 Q. And how long did you stay at his house?

7 A. It couldn't have been anymore -- it was like
8 probably between five and ten minutes. It wasn't
9 long at all.

10 Q. And do you recall who was at Mr. Eason's house
11 or Troy's house?

12 A. Dexter, myself, Diana, Monique, I believe it
13 was Doris. I mean, not everybody got out of their
14 vehicles because it was going to be a short stop.

15 Q. Now, prior to going to Mr. Eason's house, did
16 you have an opportunity to observe Mr. Rocquemoire at
17 the party?

18 A. Yes.

19 Q. And was he drinking and was he -- what was his
20 affect? What was his personality that night?

21 A. I mean, I think he was -- he was quiet. I
22 think he was maybe drinking a Sprite or something.
23 He wasn't -- he didn't say too much.

24 Q. And it's my understanding you just met him
25 that evening?

1 A. Right.

2 Q. No prior relationship with him?

3 A. No.

4 Q. Have you actually seen him since that night,
5 before today, until today?

6 A. No. I've just seen him today.

7 Q. Have you spoken to him in that time period?

8 A. No.

9 Q. When you left Mr. Eason's home, where did you
10 next go?

11 A. We went to Dexter's house.

12 Q. And that would be Dexter Brown?

13 A. Right.

14 Q. And what went on there? If you would tell the
15 jury who was there, the atmosphere, and the
16 personalities, what was going on.

17 A. Well, when we arrived at Dexter's house, we
18 all basically went down in the den area. Dexter
19 turned on some music, and we just -- some people went
20 upstairs in the kitchen area and started playing,
21 started a Spades game, a card game. And basically it
22 was just a general party atmosphere, just everybody
23 having fun.

24 Q. And were people drinking?

25 A. Right. There were some drinks. We had --

1 there were some people fixing drinks for everybody
2 and, yes, there was alcohol available.

3 Q. So was everybody feeling good?

4 A. Dexter especially, but I personally -- I had
5 one drink at Alma's and then -- and that was my
6 second drink there at Dexter's.

7 Q. And when I say feeling good, I think there's
8 double meaning to that. I mean, was everybody in a
9 jovial party spirit ---

10 A. Right.

11 Q. --- were they angry people, or were they...

12 A. No. Nobody was angry. Everybody was --
13 right, it was a festive atmosphere. Everybody was
14 having a good time.

15 Q. And I guess the second type of meaning that
16 could be is whether people were drinking in excess.

17 A. Right.

18 Q. Was anybody drinking in excess, or as the
19 night went on did you notice that some people were
20 acting perhaps with the encouragement of alcohol?

21 A. Just Dexter was getting funnier by the moment,
22 but no, everybody else was just -- you know, it got a
23 little bit louder. You know, people start talking a
24 little bit loud, and then just making remarks at the
25 cards game, playing the Spades and, you know,

1 slapping their cards down and doing things like that.

2 Q. But there were no fisticuffs, and there's no
3 cussing ---

4 A. Oh, no. No.

5 Q. --- or any antagonism ---

6 A. No.

7 Q. --- among the partygoers.

8 A. No.

9 Q. Now, did that atmosphere change at any time
10 during the course of the night? Well, first -- I
11 apologize. After you got there, did anybody leave,
12 and did you notice that anybody that came with you
13 left?

14 A. I did notice at one point that Troy left. He
15 maybe was there maybe about 10 or 15 minutes, then he
16 left.

17 Q. And but -- again, I'm apologizing, but I go
18 back to the question I asked you. At any time did
19 that atmosphere change? The festive atmosphere, the
20 partying atmosphere?

21 A. No. And -- inside the house, no.

22 Q. How about outside the house?

23 A. The atmosphere did change after a while
24 outside the house, yes.

25 Q. What I'd like you to do is tell the jury what

1 happened without me having to ask you very specific
2 questions. If you would just tell the jury like you
3 were telling a friend what happened that night, from
4 the time that the party atmosphere was feeling good
5 to the time that it went in a different direction.
6 Just try to explain to the jury so they can in their
7 minds picture what was going on.

8 A. Okay. Well, again, we were in the den, and
9 the music was playing. Some people were drinking.
10 Everything was festive for a while, and then I'd say
11 about -- I think I'd been there about -- I mean,
12 between 30, 30 minutes, 30-40 minutes, and then Chef,
13 or a/k/a Demar, and the Gibbs brothers came back.
14 They -- they came to the house.

15 And Chef -- it was still a festive atmosphere.
16 He did start like doing a little dance with Dexter's
17 momma's cane, and but everybody was laughing at him.
18 It was still a festive atmosphere.

19 The only time the atmosphere changed, just to
20 give you a little -- a little scenario, I know that
21 Rodney went outside with his friend and then his
22 brother Ronald followed him a little while after
23 that. And my friend Diana, she started not feeling
24 well, and so she wanted to go outside to get some
25 air. So I went to the kitchen and got her a cup of

1 ice, and I said I would come outside with her, you
2 know, just so -- make sure she was okay.

3 So Diana and I both walked to the front of the
4 house. And she sat on top of a car that was like
5 parked in the driveway. And everything was still
6 fine until Rodney started coming on to me, basically,
7 expressing his interest, and I was just letting him
8 down gently, but he wasn't -- I guess he wasn't
9 taking no for an answer or the lack of interest in a
10 very good way.

11 So, basically, as the conversation went on,
12 you know, I did tell him, you know, no, I'm not
13 interested, you know, but, you know, everything's
14 good, you know, everything's fine.

15 And then, you know, like, Diana, her head was
16 really pounding, and she basically said to us, she
17 said -- well, said to him that "My friend -- my
18 friend is not interested, you know, would you stop
19 bothering her?" She's like, "And my head is
20 pounding, so the both of you stop talking." And
21 that's what she said.

22 And, you know, he was just basically ignoring
23 her and was just saying -- you know, still trying to
24 come on to me.

25 And then, I don't know, the conversation kept

1 going back and forth between me and him, and I'm
2 still trying to just tell him, you know, I'm just
3 really not interested.

4 And then Diana was just like, you know, "Y'all
5 really need to stop talking because my head is
6 hurting."

7 And I'm saying, "Really I'm -- I'm not."

8 And he just -- he just basically said -- he
9 turned to Diana after she said her head was pounding,
10 and he just told her "No more talking to you. You
11 need to shut up."

12 And, you know, Diana looked at him and said,
13 you know, "No, I don't need to shut up. She said
14 she's not interested. So, you know, you shut up."

15 And then he started using -- I don't want to
16 use the language, but he said sort of "Shut the F
17 up."

18 And then when she said, "Shut -- shut me up,"
19 that's when he threw a drink in her face.

20 And that, to me, besides him coming on to me
21 even though I wasn't interested, I think that was the
22 turning point in the atmosphere, right there.

23 Q. Now, after the atmosphere turned, do you
24 recall where Mr. Brown or Mr. Rocquemore were?

25 A. They had left prior to that. They had went to

1 the store.

2 Q. And at the time that they left, was the feel
3 good atmosphere still in play at the party?

4 A. Yes.

5 Q. And, again, Mr. Rocquemore's affect that
6 night, his personality, if you would describe it up
7 until the point that he left.

8 A. Very quiet, very -- very cordial when he did
9 say something. I mean, you know, no negative vibe
10 from him at all.

11 Q. Did you see him hitting on anybody or trying
12 to solicit the attention of a female or interfere
13 with the attention a female was giving somebody else
14 or anything of that nature?

15 A. No. No.

16 Q. Was he acting as a gentleman?

17 A. Very much so.

18 Q. Now, following the episode that you described
19 outside, did that initiate the breakup of the party?

20 A. Well, basically, because since the majority of
21 the people at the party were females and we were
22 leaving. We basically were leaving, so...

23 Q. Now, in addition to the two women who traveled
24 with you in your vehicle, were there other women
25 present?

1 A. Yes.

2 Q. And how many other women?

3 A. There were two other women present.

4 Q. And how many vehicles did they come in?

5 A. I believe they drove separate vehicles.

6 Q. So there were three vehicles and five women?

7 A. Right.

8 Q. And did you all leave at that time, or was
9 there a discussion, or was there -- what led to you
10 leaving and did you leave?

11 A. Well, after he threw the drink in Diana's
12 face, I, you know, tried to get the -- as much
13 alcohol out of her eye because she couldn't see, and
14 then he was coming toward her like, you know, very
15 aggressively, like, you know, he wanted to do
16 something, like almost to the fact that I believed he
17 was going to hit her.

18 So I sort of stood in the -- in between both
19 of them and put my hand out, and I was calling to his
20 brother Ronald, which I call -- I was introduced to
21 him as Nook -- and I said, "Nook, come get your
22 brother, come get your brother." Because, you know,
23 Diana is on this side of me, trying to hold her back,
24 and he's coming toward her and I'm pushing him back.

25 So, finally -- you know, Ronald was leaning

1 against another car that was parked there on the
2 grass -- he grabbed his brother by the back of his
3 shirt and pulled him back.

4 And his brother Rodney just sort of hit his
5 hand away and told him to get, you know, his M-F-ing
6 hands off him. And, you know, then he just stalked
7 off, like cursing, you know, saying like bad things
8 about Dee Dee and myself.

9 Q. So at that point, the type of language that
10 was used changed fairly dramatically?

11 A. It did.

12 Q. And I don't want to embarrass you in a public
13 setting, but the -- but the type of language that was
14 used was not the type of language that had been used
15 earlier in the evening?

16 A. That's correct.

17 Q. And it's not the type of language that was
18 respectful, to say the least?

19 A. Very disrespectful.

20 Q. And there was also physical touching at that
21 point from the time that the drink was thrown on your
22 friend? And I understand it was in her eyes and her
23 face and ---

24 A. Right. It was like part -- mainly on her and
25 partly on me.

1 Q. When the drink was thrown, the action didn't
2 dissipate or didn't stop? It continued on to the
3 point where somebody had to intervene?

4 MR. DURANT: Form of the question, Your
5 Honor. Leading.

6 THE COURT: Restate that, Counsel.

7 BY MR. SAVAGE:

8 Q. Did you intervene at that point physically?

9 A. I did. I had to get in between the -- the two
10 of them.

11 Q. And did any of the males who were there
12 intervene?

13 A. Not at first, not until I had -- I had to get
14 pretty loud and call his brother to come get him.
15 And he was leaning against a vehicle in the front
16 yard, a couple of feet away, and wasn't doing
17 anything. Just watching, wasn't doing anything.

18 Q. Now, who were the first parties to leave?
19 Bad, bad choice of words. Who were the first people
20 to leave the party?

21 A. As far as after that incident?

22 Q. Yes, ma'am.

23 A. It was the Gibbs brothers and Chef.

24 Q. Three, three males?

25 A. Three males.

1 Q. And do you remember who was driving the car?

2 A. Rodney was driving the car.

3 Q. Now, one of them had a nickname that we hadn't
4 heard until you said that. What was the nickname?

5 A. Ronald's nickname is Nook.

6 Q. And he was the one who was driving the car?

7 A. No. His brother Rodney was driving the car.

8 Q. Which one is the Army guy?

9 A. That's Nook. That's Ronald.

10 Q. And was he driving the car?

11 A. No.

12 Q. Where was he?

13 A. He was in the passenger seat.

14 Q. And do you remember the type of car they had?

15 A. It was a Ford Explorer, SUV.

16 Q. Now, would you describe to the jury when they
17 left the party how they left, and how did they drive
18 away, if you will?

19 A. Well, Rodney, as -- as I said before, he
20 stalked off and he was -- he was steady cursing,
21 M-F-ing this, M-F-ing that. He gets into the
22 vehicle. They -- Ronald gets in the back on the
23 side, Chef gets in the backseat, and then he just
24 floors it, and he turns that vehicle like somebody
25 was chasing him. We heard the tires, like,

1 squealing, and then he took -- takes on off like -- I
2 mean, driving extremely fast down the road.

3 Q. Did you ever return to the party that night?

4 A. No.

5 Q. Did you ever return to the scene that night?

6 A. No.

7 Q. When you left the party, was Mr. Rocquemore
8 still there?

9 A. When I left the party? He had just pulled up
10 with Dexter right before we left.

11 Q. And how was that in relationship to the
12 squealing of the tires and leaving the scene of the
13 other people?

14 A. That they had left before Dexter and David had
15 pulled up.

16 Q. They being the Gibbs brothers ---

17 A. Right.

18 Q. --- and Mr. Eason had left before
19 Mr. Rocquemore's return. And when Mr. Rocquemore
20 returned, had his affect or his personality changed
21 in any way?

22 A. No. He had just pulled up with Dexter from
23 the store.

24 Q. And describe for the jury his personality or
25 how he was at that time. Was he calm, agitated, or

1 aggravated?

2 A. I mean, very calm. I mean, he just pulled up.
3 They just came back from the store. And Dexter, you
4 know, hopped out of the vehicle and saw that we were
5 leaving and -- and asked us why we were leaving.

6 Q. Again, Ms. Powe, you haven't seen
7 Mr. Rocquemore or talked to him in the last 23
8 months?

9 A. No.

10 Q. And you were invited to the party by
11 Mr. Dexter Brown?

12 A. Right.

13 Q. No relationship to Mr. Rocquemore at all?

14 A. No.

15 MR. SAVAGE: Kindly answer any questions
16 that the prosecutor may want to ask you.

17 THE WITNESS: Okay.

18 CROSS-EXAMINATION

19 BY MR. DURANT:

20 Q. Good morning, Ms. Powe.

21 A. Good morning.

22 Q. My name is Bruce Durant. I'm with the
23 Solicitor's Office. And to be clear, you were not
24 out there when the shooting takes place ---

25 A. That's correct.

1 Q. --- is that correct?

2 A. That is correct.

3 Q. And the only thing that you know about the
4 shooting basically comes from Chris Thomas; is that
5 correct?

6 A. That's correct.

7 Q. And it comes from Chris Thomas because you
8 subsequently dated Chris Thomas, correct?

9 A. We went out on a couple of dates. That's
10 correct.

11 Q. And Chris Thomas is Mr. Rocquemoire's best
12 friend?

13 A. I don't know. I guess. They came together.
14 I don't know.

15 Q. And to be sure, you were at Alma Boone's
16 party. Was it Alma Boone?

17 A. I know her as Alma. I didn't know her last
18 name.

19 Q. And there were no problems at Alma Boone's
20 house ---

21 A. That's ---

22 Q. --- is that correct?

23 A. That's correct.

24 Q. And you had met the Gibbs and Troy and Demar
25 the previous week, did you say? Were they ---

- 1 A. At a cookout the previous, right.
- 2 Q. No problems out of them then?
- 3 A. No.
- 4 Q. Correct?
- 5 A. That's correct.
- 6 Q. And at Alma's party, all of these same parties
- 7 were involved. There was -- was there any bad blood
- 8 between the Gibbs or Chef or Troy with David
- 9 Rocquemore?
- 10 A. No.
- 11 Q. Or with his friend Chris Thomas?
- 12 A. No.
- 13 Q. Was there any problem between them and the
- 14 Gibbs and -- everybody was happy, correct?
- 15 A. Yeah, everybody was fine. No problem.
- 16 Q. And then y'all get to Dexter's house
- 17 eventually, and people inside, and it's a festive
- 18 atmosphere, as well.
- 19 A. Uh-huh.
- 20 Q. Correct?
- 21 A. That's correct.
- 22 Q. Chef was happy, wasn't he?
- 23 A. Very.
- 24 Q. Yeah. He had -- he had Dexter's mother's cane
- 25 and was -- that's what he was doing this dirty

1 dancing with; is that correct?

2 A. That is correct.

3 Q. And y'all thought that was funny, correct?

4 A. I did.

5 Q. I mean, people were laughing, correct?

6 A. Uh-huh.

7 Q. He was going from room to room. I think
8 everybody thought it was funny except maybe Dexter.
9 Is that correct?

10 A. Dexter didn't think it was too hot.

11 Q. Because he was using his momma's cane?

12 A. That's correct.

13 Q. But that happened in your presence, correct?

14 A. Uh-huh.

15 Q. And Demar wasn't angry with anyone, was he?

16 A. No.

17 Q. And there was no bad blood between Demar and
18 David Rocquemore inside that house, correct?

19 A. That's correct.

20 Q. Nor between Demar and Chris Thomas?

21 A. That's correct.

22 Q. There was basically no blood at all -- bad
23 blood between anybody inside that house; is that
24 correct?

25 A. That's correct.

1 Q. Okay. And the incident you described with
2 Rodney, that was basically between Rodney and
3 Ms. Jenkins? Is that -- excuse me. Is it Diana
4 Jenkins, is that her last name?

5 A. Diana. Right.

6 Q. Okay. That occurred outside, correct?

7 A. That's correct.

8 Q. Chris Thomas wasn't outside?

9 A. No.

10 Q. David Rocquemore wasn't outside?

11 A. Well, he wasn't there.

12 Q. He wasn't there at all, correct?

13 A. Right.

14 Q. So it was just you and Diana and the two Gibbs
15 brothers?

16 A. And Chef was outside, as well.

17 Q. And Chef was outside, as well, originally?

18 A. Right.

19 Q. Or did he come back out later?

20 A. No. He was outside.

21 Q. Okay. And so basically the -- the only
22 problem you describe was between Rodney and Diana,
23 correct?

24 A. I wouldn't -- I didn't -- I wouldn't describe
25 it as a problem. I mean, I was just ---

1 Q. Well, the altercation was between Rodney and
2 Diana, correct?

3 A. That's correct.

4 Q. Okay. And he was cursing?

5 A. He was definitely cursing.

6 Q. She was cursing?

7 A. I really don't recall her cursing. I remember
8 her saying she couldn't see because of the alcohol in
9 her eye.

10 Q. And she was trying to get at him, and you --
11 and he was trying to get at her, according to you,
12 and you stepped between them ---

13 A. He came towards her first, because she was
14 still trying to get the alcohol out of her eye.

15 Q. Okay. And other than this incident with
16 Rodney, did you observe Demar do anything untoward
17 that night or -- or vicious or bad temper or any type
18 of that?

19 A. No. No.

20 Q. Or Ronald or Nook as you know him?

21 A. I didn't observe him to do anything.

22 Q. Or Troy?

23 A. Well, Troy wasn't -- wasn't even there that
24 long.

25 Q. Wasn't even there, correct?

1 A. Right.

2 Q. And after this incident, all the girls left?

3 A. That's correct.

4 MR. DURANT: Court's indulgence.

5 (Mr. Durant and Ms. Kneese-Shealy
6 confer.)

7 BY MR. DURANT:

8 Q. Did you have an opportunity to talk to Chris
9 Thomas after this incident where the drink got thrown
10 on Diana?

11 A. Do you mean like...

12 Q. I mean, did you see Chris Thomas after the
13 incident where the drink got thrown on her? Did you
14 ever go back inside the house, for example?

15 A. No. No. I told Chef to go get my phone and
16 Diana's belongings off of the table and told him we
17 wanted to go.

18 Q. Okay. So Chef went in and ---

19 A. Chef went in and got my things for me.

20 Q. And did that for you?

21 A. Right.

22 Q. Okay. And you said that Dexter and Rocquemore
23 showed up and tried to talk y'all into staying?

24 A. Dexter -- no. Dexter came out of the vehicle
25 and said, you know, where are y'all going?

1 Q. Okay.

2 A. And I told him -- you know, then I told Dexter
3 what happened.

4 Q. And so, now, do you even -- do you even see
5 Mr. Rocquemore?

6 A. He was sitting in the vehicle. He wasn't -- I
7 mean, I'm sure he probably could hear, but ---

8 Q. Okay.

9 A. --- I mean, he was in the vehicle.

10 Q. So he never got out of the vehicle while y'all
11 were --

12 A. No, because he -- he hadn't parked his car
13 yet.

14 MR. DURANT: Okay. Court's indulgence
15 one moment.

16 Thank you. I have no further questions,
17 Ms. Powe.

18 MR. SAVAGE: No further questions for
19 this witness.

20 THE COURT: You may step down. Thank
21 you.

22 THE WITNESS: All right.

23 (The witness is excused from the witness
24 stand.)

25 MS. WILLIAMS: Your Honor, may we

1 approach?

2 (There was an off-the-record bench
3 conference in the presence of the jury but out of the
4 hearing of the jury.)

5 (Said bench conference being concluded,
6 the following proceedings were had:)

7 THE COURT: All right, ladies and
8 gentlemen. I'm going to go ahead and send you to the
9 jury room. There's a little scheduling glitch with
10 the witnesses. We'll wait a few minutes. Otherwise,
11 I'll ask them to take some witnesses out of order, if
12 necessary, so the trial is not delayed in any way.
13 If you'll just go back to the jury room. Do not
14 discuss the case in any way. Thank you very much.

15 (Whereupon, the jury goes to the jury
16 room at approximately 11:10 a.m.)

17 THE COURT: All right. We'll be at ease.
18 Thank you. Please let me know as soon as the witness
19 gets here.

20 (A break is taken at approximately
21 11:10 a.m.)

22 (The trial reconvenes at approximately
23 11:23 a.m., the defendant being present with counsel,
24 and the following proceedings were had:)

25 THE COURT: Are y'all ready?

1 Bring the jury in, please.

2 (Whereupon, the jury returns to the
3 courtroom at approximately 11:23 a.m.)

4 THE BAILIFF: The jurors are all seated,
5 Your Honor.

6 THE COURT: Thank you. Please be seated.
7 Call your witness.

8 MS. WILLIAMS: Your Honor, the defense
9 would call Dileatha Washington to the stand.

10 (Ms. Washington enters the courtroom.)

11 DILEATHA WASHINGTON,
12 being first duly sworn by the clerk, is examined and
13 testifies as follows:

14 THE CLERK: Thank you. Be seated. If
15 you'll state your full name and spell your last name.

16 THE WITNESS: Dileatha Nicole Washington,
17 W-A-S-H-I-N-G-T-O-N.

18 DIRECT EXAMINATION

19 BY MS. WILLIAMS:

20 Q. Good morning, Ms. Washington.

21 A. Good morning.

22 Q. You were running a little late this morning.
23 I'd like to give you a moment to catch your breath.

24 A. Thank you. I appreciate it.

25 Q. Ms. Washington, tell the jury what you do for

1 a living.

2 A. I work for Verizon. I work as the quality
3 assurance coordinator for Verizon.

4 Q. How long have you worked there?

5 A. Six and a half years.

6 Q. Do you have any jobs on the side?

7 A. Yes. I am a full-time singer. I sing jazz,
8 blues, gospel.

9 Q. What kind of events do you sing at,
10 Ms. Washington?

11 A. I sing at South Carolina, Augusta Symphony. I
12 sing for different, different actual -- concert
13 style.

14 Q. Ms. Washington, have we met before?

15 A. Just on yesterday.

16 Q. And so it was that one time on yesterday?

17 A. Absolutely.

18 Q. And when I met with you, did we discuss the
19 events of August 13th and August 14th, 2005?

20 A. Yes, we did.

21 Q. I want to take you back to 2005, on August the
22 13th of 2005. Can you describe to the jury what your
23 plans were for the evening?

24 A. We were just actually at a cookout gathering,
25 a few of my coworkers, my friends, just literally

1 hanging out.

2 Q. Now, when you say we, can you tell the jury
3 who you were with? Who were your female friends?

4 A. In the beginning, at the very first place
5 where we attended the cookout, it was Alma Boone,
6 Diana -- Diana. There's Doris Tucker. I can't
7 remember everyone's last name. Dexter was there. A
8 few of Dexter's friends were there. Mr. Rocquemore
9 was there. Chris. There was Chef. I can't even
10 begin to tell you everyone's name.

11 Q. So it was a group of adults?

12 A. Yes. Very much.

13 Q. Where was this party?

14 A. We first started out at Alma Boone's residence
15 in Summerville. And then we also -- we migrated to a
16 friend of Dexter's which is Troy's house over in
17 Summerville and ---

18 Q. Let me back you up, Ms. Washington. I don't
19 mean to interrupt.

20 A. No.

21 Q. Let's talk about Ms. Boone's party before we
22 -- before we jump ahead.

23 A. Okay.

24 Q. Was there alcohol at the party?

25 A. Oh, yes. Alma keeps a full -- an actual full

1 bar, but no one was really drinking at Alma's house
2 as much. But she keeps it stocked. That's just her
3 nature.

4 Q. Was there music at the party?

5 A. The music was there. It was not -- it wasn't,
6 you know, very good music, as I -- as I would say.
7 That was one of the reasons for us migrating over to
8 another party, because the music wasn't very good at
9 Alma's house. But there was music.

10 Q. Let me ask you about some of the people that
11 you've named, whether or not you know their full
12 names or how long you've -- how long you've known
13 them. Tell me about your relationship with Dexter
14 Brown.

15 A. Dexter and I are friends. We've been friends
16 for about -- well, about two and a half years. When
17 I came to Charleston, we met.

18 Q. Did Dexter invite you to Alma's party that
19 night?

20 A. No. Actually, I invited Dexter who was a
21 friend to Alma's party. Alma actually formally
22 invited them on the previous week. We were at a
23 cookout at Dexter's house.

24 Q. Okay.

25 A. And Chef was cooking, and Alma started

1 cooking, and she invited him over to cook at her
2 house.

3 Q. And when you say Chef, do you know his real
4 name?

5 A. I'm not at all certain. I can't remember
6 exactly what his name is. We -- I just remember them
7 calling him Chef.

8 Q. Do you know him to become the deceased in this
9 incident?

10 A. Yes, I'm aware of that.

11 Q. Does the name Demar ring a bell?

12 A. Yes, that's it. Demar.

13 Q. Are you and Dexter still friends?

14 A. Dexter and I? Yeah, very much so.

15 Q. When is the last time you saw Dexter?

16 A. Last week. I just spoke with him a few days
17 ago.

18 Q. So this event, the events of August 14th, did
19 not change the nature of your -- of your relationship
20 with Mr. Brown; is that correct?

21 A. No. Not at all.

22 Q. Now, let me ask you about some of the people
23 who were there at the time. Do you know a fellow by
24 the name of Ronald Gibbs?

25 A. Yes, I've heard of him. Yes, I've seen him.

1 I know who he is, yes.

2 Q. And when did you meet Mr. Gibbs?

3 A. At the party, at the gathering, the cookout.

4 It really wasn't a party. It was a cookout.

5 Q. At Alma's house?

6 A. Yeah.

7 Q. The first time you met him, that night?

8 A. If I can remember correctly. I'm not quite
9 certain if he was at the previous party the week
10 before. I don't know him very well.

11 Q. Do you know somebody by the name of Rodney
12 Gibbs?

13 A. Yes. He was there. They're brothers if I'm
14 not mistaken.

15 Q. Okay. And when did you meet him?

16 A. At the same time.

17 Q. Do you know anyone by the name of Chris
18 Thomas?

19 A. Yes. He was there, as well. Very skinny,
20 he's kind of skinny, kind of tall.

21 Q. When did you meet Mr. Thomas?

22 A. Same time.

23 Q. And how about the defendant, Mr. Rocquemore?

24 A. The same time. I met him at Alma's. In the
25 same time that they were at Alma's house, the first

1 time I met him. And then we all migrated over to
2 Troy's and Dexter's house.

3 Q. Now, let's talk about the migration. When you
4 left the party, was there a particular reason you
5 left Alma's house?

6 A. Yeah. Really because the music was not
7 adequate. It was really soft. And she was pulling
8 it in from an actual television. So we just went
9 over to -- to Dexter's house. That was really the
10 main reason for going to that house.

11 Q. Did anything unusual happen at Alma's?

12 A. There was a -- if I'm not mistaken, there was
13 an altercation between -- not really an altercation.
14 It was just, you know, Alma's male friend was there,
15 and he was maybe not as happy to see all the guys at
16 Alma's house, so he was a little jealous. So that
17 was another reason why we left. We didn't want it to
18 actually, you know, turn into anything else, so we
19 left.

20 Q. Who decided you were all going to go to
21 Dexter Brown's house?

22 A. Between Dexter and myself, we walked around
23 and kind of started, you know, "Do y'all want to go?"
24 And everybody was okay with it.

25 Q. Do you know at what point everyone left the

1 party? Did y'all leave together, everyone you
2 mentioned today?

3 A. Well, all that I can remember, we all left
4 together. We followed each other, car after car
5 after car.

6 Q. Did you drive yourself?

7 A. Yes, I did.

8 Q. Had you been drinking alcohol at Alma's house?

9 A. I didn't drink at Alma's house. I didn't
10 drink at Alma's house. I didn't start drinking until
11 I was at Dexter's house when I had a Tom Collins.

12 Q. And you made a pit stop along the way at
13 Troy's house. Why were you there?

14 A. And I can't even begin to remember anything
15 about why we stopped at Troy's house. I think we
16 actually went there because it was supposed to be
17 better music, but it didn't turn out that way, so we
18 ended up at Dexter's house.

19 Q. Do you know what time you arrived at
20 Dexter Brown's house?

21 A. Hm, can't be certain to say, but it was
22 probably around -- very close to about 11:00, 10:00
23 or 11:00. It may have even been 12:00. I'm not
24 certain of the time.

25 Q. Were you watching the clock that night?

1 A. No, not at all.

2 Q. When you arrived as Dexter's, who was with you
3 to the best of your recollection?

4 A. There was -- I call her Dee Dee, Diana was
5 there. Michele was there if I'm not mistaken.
6 Myself. Dexter. Mr. Rocquemore was there. Chris.
7 All of those guys were there. Chef was there, which
8 is Demar. And...

9 Q. Dileatha, let me -- let me help you out a
10 little bit.

11 A. Yeah. There was quite a lot of them.

12 Q. When you say -- when you say all of those
13 guys, was Ronald Gibbs at Dexter's?

14 A. Ronald was there.

15 Q. Was Rodney Gibbs at Dexter's?

16 A. Yes, if I'm not mistaken.

17 Q. And was Troy Eason at Dexter's?

18 A. I'm not certain of Troy.

19 Q. You don't remember if Troy was ---

20 A. I don't remember Troy.

21 Q. --- at Dexter's party? Did he remain inside,
22 or was he outside?

23 A. I know that he didn't, like, come immediately
24 right after us. I don't remember him being there.

25 Q. Okay. Describe the party at Dexter's. What

1 were y'all doing?

2 A. Turned the music on, and maybe kind started --
3 started chilling, laughing, talking to each other.
4 Dancing. It was just like a -- like a regular,
5 regular gathering. We had a few drinks.

6 When I say a few drinks, I -- I remember,
7 myself, I drank maybe about two Tom Collins, because
8 it was the first time being introduced to Tom
9 Collins. And it was okay.

10 And what happened was, we ran out of mixture.
11 So that's when Dexter and David decided to go to the
12 store and get some.

13 Q. Now, let me ask you, who introduced you to Tom
14 Collins?

15 A. Doris Tucker.

16 Q. And was she mixing the drinks?

17 A. Yes.

18 Q. Was everyone drinking?

19 A. No, not everyone. I remember that the guys
20 were already feeling rather juiced. Most of them,
21 not all of them.

22 And the girls were not -- they weren't -- they
23 weren't drinking that much. They were pretty much
24 sipping, in a sense. No, the girls weren't
25 intoxicated if that's what you're looking for.

1 Q. Now, when you say the guys were feeling
2 juiced, did anyone exhibit drunken behavior? Did you
3 witness anything?

4 A. I did. That's when Chef decided that he was
5 going to be just a little forward with -- with Doris.
6 He began to make sexual advances toward her.

7 And when I say that, I mean, you know, that he
8 was literally, like, in her space. And she just
9 wanted him -- you know, him out of her space. And
10 she kept telling to leave, got to move, got to go,
11 you know, leave me alone, get out of my space, you
12 know.

13 Q. And did he stop when she asked him to get out
14 of her space?

15 A. He didn't stop.

16 Q. How did he -- how did she get him to stop?

17 A. It was pretty much, if I'm not mistaken, she
18 shoved him, and he fell back on the table. I don't
19 remember anything really breaking, but I do remember
20 a loud bang. What I'm saying is the table was rather
21 strong. He got right up.

22 Q. Did you feel like he was being aggressive?

23 A. Very much so.

24 Q. Was it inappropriate?

25 A. Very much so.

1 Q. Did he make any sexual gestures towards her?

2 A. Yeah. He kind of had -- I don't remember
3 exactly what he had, but he had something that he
4 was, like, moving back and forth between his legs
5 near his penis.

6 Q. Did you witness Doris get ---

7 A. Yes, very much. She -- I witnessed her. She
8 pushed him away. And one of the guys actually had to
9 take him out because he wouldn't stop.

10 Q. Did she have to push him because he was close?

11 A. Yeah. He was very close.

12 Q. He was relentless?

13 A. He was.

14 Q. And how did he come to back off and leave the
15 room?

16 A. The guy -- well, he fell down, and then they
17 got him. They got him up, and they took him out of
18 the room. And I think there might have been maybe
19 two or three guys, you know, telling him, "Stop, man,
20 stop. She don't want -- she don't want you to do
21 this. Stop."

22 Q. They were telling him to stop?

23 A. Yeah. They was telling him to stop.

24 Q. And they actually removed him from the room?

25 A. Uh-huh. Yes, they did.

1 Q. And do you remember who those men were?

2 A. Not exactly. It was maybe like two or three
3 people.

4 Q. After that, describe how the party continued.
5 Did that mess up everyone's good time?

6 A. Kind of. Yeah, because -- it was okay, it
7 wasn't the same, everybody was kind of like they were
8 shaken, but we -- we -- we continued. You know, we
9 continued to just laugh and talk and -- and, you
10 know, just hang out. And then we found a little
11 later that Dee Dee was like feeling sick or whatever
12 and had to -- she went outside.

13 Q. Now, let me ask you. At some point, did
14 Dexter who was the host of the party and
15 Mr. Rocquemore leave?

16 A. Yes. They did leave.

17 Q. Do you know why they left?

18 A. Uh-huh.

19 Q. Why?

20 A. They -- they went to get more drinks.

21 Q. Okay. Because the party was beginning to run
22 low?

23 A. Yeah.

24 Q. So you all planned ---

25 A. But there was -- there was not a lot of drinks

1 there from the beginning, though. It was a small
2 amount from the previous week, so there wasn't a lot
3 there.

4 Q. So y'all had planned on continuing the party?

5 A. Yes. We did.

6 Q. Was Mr. Rocquemoire present for the incident
7 where Chef or Demar Denson when he was in Doris's
8 space and she had to get him off?

9 A. I don't think so. I don't remember him being
10 there.

11 Q. Okay. Let me ask you, you said Dee Dee was
12 feeling sick. What was wrong with her?

13 A. Dee Dee went outside to get some air. She
14 went outside. And when I say Dee Dee, Diana went
15 outside. And she was sitting on a car. I remember
16 looking out the door and to check on her, and she was
17 sitting on a car.

18 Q. How long after the incident with Chef did this
19 occur that Dee Dee went outside?

20 A. I can't remember exactly the time frame. But
21 it -- it wasn't long. It wasn't that long.

22 Q. Okay. Let me ask you, was Dee Dee drunk?

23 A. No.

24 Q. She wasn't feeling sick because she was
25 intoxicated?

1 A. Well, to my -- the best -- the best of my
2 knowledge, she was not drunk.

3 Q. Did you witness her doing anything that would
4 indicate to you that she was drunk?

5 A. No. Not at all.

6 Q. And were you drunk at the party?

7 A. No. Actually, I'd had, like I said, maybe two
8 drinks. But the alcohol was not -- it wasn't
9 stocked, like it wasn't -- there wasn't a lot of
10 alcohol there.

11 Q. Do you consider yourself a heavy drinker?

12 A. Oh, no, not at all.

13 Q. Is it a rare occasion to go out and drink?

14 A. Very rare.

15 Q. But do you feel like you were aware what was
16 going on?

17 A. Yes. Everybody was very, very, you know,
18 knowledgeable about what was going on the entire
19 time. We weren't drinking like that, you know.

20 Q. Were you outside with Dee Dee when she was
21 feeling bad?

22 A. No. I didn't go outside with Dee Dee. I just
23 -- I literally just walked to the door, and I looked
24 at her just to see. She was sitting on a car, and
25 then I went back in the house.

1 Q. Who was outside with her?

2 A. I think that was Michele and some guys that
3 were standing up in front of her.

4 Q. Do you know who the guys were?

5 A. There was Chef out there. And if I'm not
6 mistaken, Ronald was out there. A few guys was out
7 there.

8 Q. And when you looked out the door, what did you
9 see?

10 A. That she was sitting on the car.

11 Q. And nothing unusual was going on?

12 A. No.

13 Q. Okay. What happened next?

14 A. I went back inside. And I was talking, was
15 laughing with everybody.

16 Q. Who remained at the party at this point?

17 A. I don't remember anybody really leaving at
18 that point other than Dexter and Mr. Rocquemore.
19 They went to get some more drinks.

20 Q. So everyone who had been there before ---

21 A. Yeah.

22 Q. --- were still at the party at this point?

23 A. Absolutely.

24 Q. Okay. You're back inside. Anything unusual
25 that happened later on?

1 A. No. The only thing I can remember was, you
2 know, just talking to Doris and playing cards, and
3 playing Spades. Everybody was having fun.

4 Q. At some point, did your friends come back in
5 the house?

6 A. Yes. Dee Dee ---

7 Q. What had happened?

8 A. Dee Dee came inside, and she came inside the
9 house, and she was just like really, really upset.
10 She said that -- Michele was actually saying someone
11 -- someone threw -- well, not someone, they named
12 him, Chef threw a drink in -- in her face.

13 Q. Now, are you sure that it was Chef that threw
14 the drink?

15 A. No. I can't be certain of that. I wasn't
16 outside.

17 Q. You just know he was out there?

18 A. Exactly.

19 Q. You know that it was one of the men who was
20 outside?

21 A. Yeah. It was one of the guys outside that --
22 that allegedly threw the drink in her face.

23 Q. So did Dee Dee have alcohol on her face?

24 A. Dee Dee was very wet. Her hair was wet. Her
25 face was wet. Her shirt was wet. She was wet. She

1 was soaked.

2 Q. Was she was crying?

3 A. She was very much crying.

4 Q. Was she upset?

5 A. Very, very much so.

6 Q. What was the atmosphere at that point?

7 A. Very upset. Everyone was very upset at that
8 point, including myself. Just to have someone throw
9 a drink in your face, very inappropriate.

10 Q. And what did you do next?

11 A. Yeah. We all had a few words, you know,
12 literally, inside the house, and we were very --
13 everybody was very upset, and I'm sure there was some
14 profanity. Everybody's upset and we were mad, very
15 mad that the drink was thrown in her face. And we
16 went outside to start to look for the guys, but when
17 we went outside to look for them, they were gone.
18 They weren't there.

19 Q. The person who had thrown the drink was gone?

20 A. Gone.

21 Q. Were any of the guys still outside?

22 A. They were gone.

23 Q. Do you know who left at that point?

24 A. No. I'm not sure who actually left at that
25 point. I just know that we were -- I was literally

1 trying to get the girls out of there because --
2 because we were very upset. And I assure you that,
3 you know, we were going outside to look for them and
4 it was not going to be very nice.

5 Q. You were going to have a few words?

6 A. Yeah.

7 Q. You were upset about your friend?

8 A. Yeah. Very.

9 Q. Okay. At what point did you leave after that,
10 Dileatha?

11 A. We got in the car, and we left. I got the
12 girls in the car. Everybody pulled off and we left.
13 Maybe three or four cars, the girls, that we were
14 riding in, and we all left.

15 And we pulled out, and we went down the road,
16 turned around the corner, and maybe parked pretty --
17 you know, maybe about two houses down the road. And
18 we stopped, just to gather -- you know, stop to talk
19 before everybody go their own way, separate ways.

20 And when we did stop, we talked, and we're
21 still upset. And everybody was, you know, like, you
22 know, I can't believe this happened, why would he do
23 such a thing like this, what did you say to him, what
24 did you do to him, you know, trying to just see
25 exactly what happened.

1 Q. To your knowledge, did Dee Dee do anything to
2 invite having the drink thrown on her?

3 A. No. Not at all.

4 Q. And to your knowledge, did Doris do anything
5 earlier in the night to invite Chef ---

6 A. Not at all. Not at all.

7 Q. Now, when you stop at -- in the safe spot, can
8 you tell me how did y'all find out what had happened
9 later in the night?

10 A. We were, yes, at the safe spot, as you were
11 saying, and I received a phone call from Dexter. And
12 we were talking on the phone. He was asking me why
13 did you leave, you know, what's wrong, what's going
14 on, what's the problem, y'all come back. And he was
15 trying to get us to come back to the party.

16 And we were, no, we're not coming back. If we
17 do, things are going to -- you know, we probably were
18 ready to hurt your friend, so, but ---

19 Q. When you talked to Dexter, he had no idea why
20 you left?

21 A. Right. He didn't know why.

22 Q. Do you know what the time frame was in between
23 when you left and when you actually talked to Dexter?

24 A. It was a while. It was a while. When I say a
25 while, I don't know exactly how long, but it was --

1 it was a good time.

2 Q. Dileatha, I know -- I know this is tough, but
3 when did you find out that someone actually got shot
4 that night?

5 A. I was on the phone talking to Dexter. When I
6 was talking to Dexter, he was trying to, you know,
7 find out why we left. And I told him that Dee Dee
8 had a drink thrown in her face by one of his friends,
9 and it wasn't cool, and we didn't appreciate it.

10 And, you know, we were just going through the
11 whole thing. You know, what -- what happened, why,
12 why would somebody throw a drink in Dee Dee's face,
13 you know.

14 And so he was like, "Who did it?"

15 And I said, "I don't know, but I know it was
16 one of your friends that did it."

17 And Dexter -- you know, literally, we were
18 talking on the phone this entire time, and he was
19 screaming and yelling out, he started to yell out,
20 "Oh, my God, oh, my God, they shot him, they shot my
21 friend, they shot him," and "they shot my boy."

22 And we were on the phone while -- while this
23 happened.

24 Q. Are you -- at this point, are you and the
25 girls still pulled over at the safe spot away from

1 the party?

2 A. Yes.

3 Q. Regrouping?

4 A. Yes.

5 Q. And who did you think had been shot?

6 A. Well, at the time, we -- I thought he said
7 Chris. So I'm telling the girls, oh, my God, Chris
8 got shot, Chris was shot.

9 And she's like -- then and everybody is like,
10 what do you mean? what happened? what's going on?
11 And we were like "oh, my," just frantic. Everybody's
12 upset, and we were like, oh, my God, I'm glad we're
13 not there, I'm glad we're not there, we got out just
14 in time before -- you know, before the craziness
15 happened.

16 And all this time, we're thinking it was Chris
17 who got shot.

18 Q. Now, let me ask you, during the incident, the
19 drink-throwing on -- on Diana, was David at the party
20 when that happened?

21 A. David was at the party.

22 Q. David Rocquemore?

23 A. He was at the party, you know, for a while,
24 but he went and left with Dexter.

25 Q. So when the drink is actually thrown, he ---

1 A. He wasn't there, no.

2 Q. He was at the store?

3 A. He was at the store ---

4 Q. With Dexter?

5 A. When Dexter was at the store.

6 Q. During the sexual incident with Ms. Doris
7 involving Chef, was David -- was David Rocquemore at
8 the party?

9 A. I'm not certain. I don't think he was in
10 there. I don't think he was in there at all.

11 Q. Did you have much interaction with
12 Mr. Rocquemore?

13 A. Not much. He was very quiet. Very, very
14 quiet. Didn't say much. Very -- he seemed like a
15 very -- a gentleman to me. We wanted to know who he
16 was.

17 Q. And that demeanor was throughout the whole
18 night?

19 A. Uh-huh. He was very consistent.

20 Q. Have you spoken with him at all since this
21 happened?

22 A. Not at all.

23 Q. Have you seen him?

24 A. No, I haven't. This is my first time.

25 Q. Dileatha, let me ask you. Did the police ever

1 take a statement from you?

2 A. They did.

3 Q. And did you report to them the incidents
4 between Dee Dee/Diana and the drink thrower, and Chef
5 and Doris?

6 A. Yes, I did.

7 Q. Did you report a problem?

8 A. I did.

9 Q. Did the police ever come back to follow up on
10 what the problem may have been?

11 A. Not at all.

12 MS. WILLIAMS: The Court's indulgence for
13 one moment, Your Honor.

14 (Ms. Williams and Mr. Savage confer.)

15 MS. WILLIAMS: We have nothing further.
16 If you'd please answer Mr. Durant's or Ms. Shealy's
17 questions.

18 CROSS-EXAMINATION

19 BY MR. DURANT:

20 Q. To be sure, you and I have never spoken; is
21 that correct?

22 A. That is correct, we have not spoken.

23 Q. And my investigator, Matt Casey, tried to talk
24 to you right outside, and you refused to talk to him;
25 is that correct?

1 A. That is correct. I didn't even know who he
2 was.

3 Q. And you told him that you didn't want to talk
4 to him or anybody else from the state, correct?

5 A. Right. I assumed I would answer any questions
6 inside.

7 Q. Where is Doris Tucker today?

8 A. If I'm not mistaken, she's now transferred to
9 Landover, Maryland.

10 Q. And to be quite honest, you weren't outside
11 when Dee Dee had the drink thrown on her, correct?

12 A. That's correct, uh-huh.

13 Q. Okay. So you don't know what she did or
14 what she may have done to contribute to that,
15 correct?

16 A. That is correct. I was not present.

17 Q. Now, you were at Alma's house earlier?

18 A. Uh-huh.

19 Q. Is that true?

20 A. That's true.

21 Q. And so was Chef?

22 A. Yes.

23 Q. And so were the Gibbs brothers, Ronald and
24 Rodney?

25 A. Yes.

1 Q. And so was Troy Eason?

2 A. That's correct, if I'm not mistaken. I'm not
3 sure.

4 Q. And so was David Rocquemore?

5 A. Yes.

6 Q. And so was Chris Thomas?

7 A. Correct.

8 Q. And so was Dexter Brown?

9 A. Dexter was there.

10 Q. Okay. And was there any problem between any
11 of those people?

12 A. Not that I can really remember an actual
13 problem. Like I said, Alma's male friend came, and,
14 you know, he wasn't very pleased with all the guys
15 there, so we left.

16 Q. Okay. But, I mean, that was between Alma and
17 her boyfriend.

18 A. Right.

19 Q. That didn't cause --- there was no -- there
20 was no tension there or a fight there between
21 Mr. Rocquemore and Mr. Thomas and Dexter's friends,
22 correct?

23 A. No. No.

24 Q. It was a jovial atmosphere at least until the
25 boyfriend got jealous. Is that correct?

1 A. It was -- it was rather calm, I would say.

2 Q. Okay. And you did give a statement to the
3 police that night?

4 MR. DURANT: May I approach the witness,
5 Your Honor?

6 THE COURT: Yes.

7 BY MR. DURANT:

8 Q. I'd like to show a statement to you and
9 ask you if that is the statement you gave to the
10 police.

11 A. It is indeed.

12 Q. Okay. Did you have an opportunity to review
13 that statement in preparation for your testimony...

14 A. I read it.

15 Q. --- today?

16 A. I read through it just on yesterday.

17 Q. Okay.

18 A. And it is still consistent with what I am
19 saying today.

20 Q. Okay. But you don't mention anything in there
21 about Doris shoving Chef?

22 A. I'm sorry, I couldn't understand. You were
23 turned away.

24 Q. You didn't say anything in your statement
25 about Doris having to shove Chef; is that correct?

1 A. No, I didn't go into any great detail. I
2 didn't know I had to.

3 Q. And as a matter of fact, you said Demar was
4 dancing provocatively. Correct?

5 A. I did mention that.

6 Q. Yeah. In front of Doris. And Doris asked him
7 to stop.

8 A. Uh-huh.

9 Q. And then Demar stood over Doris, and she asked
10 him to move out of her space. Correct? Is that what
11 you said?

12 A. That's correct.

13 Q. And then you said: For a moment Demar did not
14 move, then another -- then another guy took Demar
15 outside.

16 A. (The witness nods head up and down.)

17 Q. What you told the police, correct?

18 A. Uh-huh. That's correct.

19 Q. Would you admit that's slightly a different
20 version than what you told the jury here today?

21 A. Well, I went into great detail today. I
22 didn't write it down, but I did go into great detail
23 today if that's all right.

24 Q. And then you said this incident -- I believe
25 you said today that Dee Dee came in and said Chef had

1 thrown a drink on her. Is that correct? That's what
2 your testimony to this jury was?

3 A. Well, I'm not all that certain who threw
4 the drink, but I knew she had a drink thrown in
5 her face.

6 Q. Okay.

7 A. I can't be certain who threw it.

8 Q. Do you remember telling the detective that Dee
9 Dee had a drink thrown in her face by Rodney instead
10 of Chef?

11 A. No. I can't be certain today. Again,
12 whatever I wrote down, that's -- that's what I
13 remember at the time.

14 Q. And the girls were angry. Correct?

15 A. I'm sorry?

16 Q. The girls were angry about that incident?

17 A. About the drink being thrown on her?

18 Q. Yes.

19 A. Absolutely. So was I.

20 Q. And -- and you were one of the girls, correct?

21 A. Yes.

22 Q. You were one the girls there, and you were
23 angry, as well?

24 A. Yes.

25 Q. And Chris Thomas was there?

- 1 A. Chris was there.
- 2 Q. He was angry?
- 3 A. That the drink was thrown on her?
- 4 Q. Correct.
- 5 A. I'm not sure of that now.
- 6 Q. He was angry because the girls were leaving?
- 7 A. I am not -- I'm not certain to say about that.
- 8 Q. And Dexter was upset because the girls were
- 9 leaving...
- 10 A. No, I didn't ---
- 11 Q. --- is that correct?
- 12 A. --- speak to Dexter until later.
- 13 Q. But he was upset because the girls had left?
- 14 A. He was upset because when -- because someone
- 15 actually had had some sort of conflict at his home.
- 16 That was his main concern. And he stated that
- 17 several times.
- 18 Q. And ---
- 19 A. He could not believe that it happened at his
- 20 house.
- 21 Q. Okay. And did you observe any altercation
- 22 between David Rocquemore -- Rocquemore or Chris
- 23 Thomas on one side and Demar Denson, the Gibbs
- 24 brothers, and Troy Eason on the other side at any
- 25 time during this entire evening?

1 A. Not at all.

2 Q. Now, you say at some point after y'all -- this
3 incident occurred, with whatever occurred with Dee
4 Dee and -- who came inside the house and told you
5 about it?

6 A. Both the girls came inside, Dee Dee and
7 Michele.

8 Q. So they actually came back inside the house?

9 A. Yeah. They went inside the door.

10 Q. Okay. Did you ever see Chef or Ronald or
11 Rodney or any of them come back in the house once
12 they had left originally with Demar?

13 A. No. Not that I remember.

14 Q. So as far as you know...

15 A. They were gone.

16 Q. --- when you went outside, they were gone,
17 correct?

18 A. Right.

19 Q. How much later did Dexter call you on the
20 telephone?

21 A. It was much later when Dexter called me on the
22 phone.

23 Q. Maybe an hour?

24 A. No, I wouldn't say that long.

25 Q. Thirty minutes?

1 A. I can't be certain.

2 Q. Okay. But it was a good ---

3 A. It was a good while.

4 Q. It was good while later?

5 A. Uh-huh.

6 Q. It wasn't just like boom-boom?

7 A. No.

8 MR. DURANT: Court's indulgence. I have
9 nothing further.

10 THE COURT: Any follow up?

11 MS. WILLIAMS: Your Honor, just briefly.

12 REDIRECT EXAMINATION

13 BY MS. WILLIAMS:

14 Q. Dileatha, could you tell the jury if
15 Mr. Rocquemore or his friend Chris Thomas had any
16 connection with you or your girlfriends beyond being
17 at the same party and interacting that night?

18 A. None at all. Not -- not that I know of, as
19 far as my friends or myself, I know not myself,
20 nobody had contact other than that night.

21 Q. And all interaction that night was friendly?

22 A. Very much so. Very much so.

23 MS. WILLIAMS: Judge, I have nothing
24 further. I would ask ---

25 MR. DURANT: I just have one after that.

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RE-CROSS-EXAMINATION

BY MR. DURANT:

Q. Were you aware that Chris Thomas and Michele Powe actually dated one another after this?

A. Absolutely not.

MR. DURANT: Okay. Thank you.

THE COURT: You may step down, ma'am.

THE WITNESS: Thank you.

MS. WILLIAMS: Thank you, Judge. I'd ask that Ms. Washington be excused.

THE COURT: Any objection?

MR. DURANT: No objection.

THE COURT: You may be excused.

THE WITNESS: Thank you.

(The witness is excused from the witness stand and leaves the courtroom.)

THE COURT: All right, ladies and gentlemen. We're at that point we usually take our lunch break, so I will send you to lunch. If you will report back at 1:30. Do not discuss the case in any way whatsoever. Make sure you give your pads to the bailiff on your way out. Have a good lunch. We'll see you back then.

(Whereupon, the jury leaves the courtroom at approximately at 11:55 a.m.)

1 THE COURT: All right. See y'all after
2 lunch.

3 (A lunch break is taken at approximately
4 11:55 p.m.)
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AFTERNOON SESSION

(The trial reconvenes at approximately 1:35 p.m., the defendant being present with counsel, and the following proceedings were had:)

THE COURT: Are y'all ready?

MR. SAVAGE: Judge, I have one matter that came up. I hope it's not too complicated. There is a member of the jury who's related to an assistant solicitor.

THE COURT: How did -- how did that come up?

MR. SAVAGE: It just came up.

THE COURT: I mean...

MR. SAVAGE: So I ---

THE COURT: --- by what means did it come up? Did a juror talk with somebody? Because no one told me.

MR. SAVAGE: That's the point. The point is that I was told that you were told that he was related to a member of the Solicitor's Office during the time of qualification at the beginning of the matter, that the assistant solicitor reported it to Mr. Alfaro who is sitting as third chair for the prosecution.

THE COURT: If he told me at

1 qualification, I would have told him to bring it up
2 before this.

3 MR. SAVAGE: I don't know whether it's a
4 problem. Can I explain what was reported to me?

5 THE COURT: Yes, sir.

6 MR. SAVAGE: Michael Nelson is an
7 assistant solicitor. Over the weekend, at some point
8 in time, somebody brought to the attention of my
9 office that a relative of Michael Nelson was on the
10 jury that's sitting on this case.

11 Before I approached the Court, I talked
12 to Michael Nelson. Michael Nelson said that he
13 talked to Mr. Alfaro, who is sitting as a prosecutor
14 in this case, before the jury was selected.

15 Mr. Nelson has reported to me that that
16 juror has called him since he was seated on the
17 panel, but Mr. Nelson also told me that he refused to
18 talk to him and hung up. It just creates a concern.

19 THE COURT: Did the juror ---

20 MR. SAVAGE: He then told me ---

21 THE COURT: --- try to talk to him about
22 the case?

23 MR. SAVAGE: I don't know whether he --
24 he's his cousin.

25 THE COURT: First of all, I'm trying to

1 remember if anyone even said that at qualification
2 because I don't even remember that.

3 MR. SAVAGE: I was present, and I didn't
4 hear it. Certainly, I would have made some record of
5 that.

6 THE COURT: Well, she makes a note when I
7 talk to a juror.

8 MR. SAVAGE: Whether or not that was
9 reported to the bench outside our presence or
10 whatever.

11 THE COURT: What is the juror's name so
12 she can check?

13 MR. SAVAGE: I think it's Davies.
14 Davies?

15 THE COURT: She writes it down what
16 they're telling me. I don't even remember that. But
17 if they did, I would have told him to bring it up at
18 selection.

19 (The law clerk reviews notes.)

20 THE COURT: And, actually, the court
21 reporter has that information, also.

22 MR. SAVAGE: D-A-V-I-E-S.

23 THE COURT: Madam Court Reporter, can you
24 look for that.

25 THE COURT REPORTER: Yes, sir.

1 MR. SAVAGE: He says that he owns a
2 painting company, and his wife works at Barnes &
3 Noble, he's 28 years of age. It's juror number 309.

4 THE COURT: Is it Austin Davey?

5 MR. SAVAGE: Excuse me. It's D-A-V-E-Y.

6 THE COURT: I don't even remember him
7 approaching me, to tell you the truth. Were you at
8 qualification?

9 MR. SAVAGE: Yes, sir.

10 THE COURT: Did he approach the bench?

11 MR. SAVAGE: We have no notes of it.

12 THE COURT: I've got a note that says he
13 owned a painting company and his wife works at the
14 Barnes & Noble. I don't have anything other than
15 that. So we'll have to check with the court reporter
16 to refresh my memory because I don't recall that.
17 Sometimes people will say that they know someone in
18 the Solicitor Office, but let's try to find out.

19 MR. SAVAGE: I don't think anybody can
20 answer this, but I don't doubt the integrity ---

21 THE COURT: We're not seeing that he
22 stood up, but I don't know if you want me to pursue
23 it any further or not, or if you just need time to
24 think about it.

25 MR. SAVAGE: This information came to me

1 after 1:30 today. Now...

2 THE COURT: Well, I'm kind of curious if
3 he told you that he came to the bench and disclosed
4 it.

5 MR. SAVAGE: Mr. Michael Nelson is the
6 assistant solicitor in the Ninth Circuit Solicitor's
7 Office.

8 THE COURT: Okay. Do y'all have any
9 recollection of him approaching the bench?

10 MR. DURANT: Personally, I do not,
11 Your Honor.

12 THE COURT: Well, let's see.

13 THE COURT REPORTER: Can we go off the
14 record?

15 THE COURT: Yes, ma'am.

16 (There was off-the-record discussion.)

17 (A break was taken at approximately
18 1:39 p.m.)

19 (The trial reconvenes at approximately
20 1:55 p.m., the defendant being present with counsel,
21 and the following proceedings were had:)

22 MR. SAVAGE: Judge, at approximately 1:40
23 today, a little bit before, Mr. Durant and I had an
24 opportunity to speak to Assistant Solicitor Michael
25 Nelson who is a person in the Ninth Circuit

1 Solicitor's Office.

2 Prior to that time, ten minutes previous
3 to that, I had an opportunity to speak individually
4 with him. Neither I nor any member of my office or
5 staff had spoken to Michael Nelson until 1:30 today.

6 Over the weekend, attention was -- it was
7 brought to our attention to somebody in our office in
8 my absence that there was a member of the seated
9 panel who is related to one of the assistant
10 solicitors and that it was more than just a typical
11 first-cousin relationship. The word that was
12 described, "like brothers."

13 I had an opportunity to speak to
14 Mr. Nelson. He reported that he -- at that time he
15 reported that he had brought that to the attention of
16 one of the prosecutors trying this case, that
17 following the empaneling of the jury that he sat in
18 the courtroom.

19 What he added in the most recent
20 conversation is that he was asked to leave the
21 courtroom by Your Honor because of his relationship
22 with the jury member.

23 I'm just -- I'm not at all being
24 accusatory. I'm just trying to relate what he said,
25 that he was asked to leave the courtroom because of

1 his relationship to the panel member.

2 THE COURT: I think he just assumed that.

3 MR. SAVAGE: And he may have well assumed
4 many things in this case, Your Honor.

5 THE COURT: I just generally told him to
6 leave the courtroom.

7 MR. SAVAGE: He then provided some
8 additional information about the relationship between
9 Mr. Nelson and the juror and the Court that I don't
10 think is necessary to go into at this point, and also
11 said that he believed but he didn't have firsthand
12 knowledge that the relationship between Mr. Nelson
13 and the juror was reported to the Court. He backed
14 off on that a little bit.

15 What he did report, however, is a little
16 bit more alarming; and that is, that he has been
17 contacted on multiple occasions, starting after the
18 empaneling of the jury, as recently as noontime
19 today, by text and by telephone. If he had been
20 told either ---

21 THE COURT: But he did finally break the
22 contact with him?

23 MR. SAVAGE: During the lunch recess
24 today, he was contacted by the juror. Now, that may
25 be the normal practice of the cousins, but that --

1 and I'm not going into and I'm not being accusatory
2 at all of Mr. Nelson or anyone else about the
3 conversations; but Mr. Nelson says, and I take him at
4 his word, that he did not respond or he said he
5 couldn't respond, whatever he said, that Judge Pieper
6 said I couldn't talk, whatever that was; but it seems
7 to me that if it was told to the juror a week ago by
8 Mr. Nelson, then there shouldn't have been any cause
9 for the juror to be texting him or calling him at
10 lunch recess today.

11 And it would appear, regardless of what
12 the relationship is with Mr. Nelson, that we're past
13 that. The new grounds is that he's failed to follow
14 the directions of the Court. It's just...

15 THE COURT: What are you asking the Court
16 to do?

17 MR. SAVAGE: I think he should be
18 dismissed, Judge. We have two extra jurors.

19 THE COURT: Well, if he's been texting
20 the solicitor as of today, I don't have a problem
21 letting him go.

22 MR. SAVAGE: Your Honor, I wish you would
23 ask Mr. Nelson. Mr. Durant was present, but
24 Mr. Nelson has the actual firsthand.

25 THE COURT: Well, we have gone to

1 check -- just to assure you, first of all, I was just
2 joking with Mr. Nelson when I told him to get out,
3 after one plea, if he had any connection to a juror.

4 We have gone and checked our notes twice,
5 and we don't have any recollection of him standing up
6 at all and disclosing that. So if he disclosed it,
7 it wasn't to me. I'm totally unaware of it.

8 I don't have any problem dismissing the
9 juror.

10 MR. SAVAGE: Thank you.

11 MR. DURANT: I have no problem with that,
12 as well, Your Honor.

13 THE COURT: I mean, I'd be happy to ask
14 him, too, on the record, if he said anything to
15 anyone, or anything that you would like to do, or ask
16 him if he disclosed that to me, but whatever you
17 prefer because I really don't have any hesitation.

18 MR. SAVAGE: Here's the -- what concerns
19 me the most is that if he's text'd today. And that's
20 the -- that's the huge...

21 THE COURT: Well, that concerns me, also.

22 MR. SAVAGE: The question then would
23 become whether his relationship or his interest or
24 his bias, if there is one -- I'm not saying there is
25 one -- was passed on and tainted any other jury

1 members.

2 THE COURT: I'll be happy to ask him.

3 MR. SAVAGE: I think that would be
4 appropriate.

5 THE COURT: Bring Mr. Davey in, please.
6 Do you agree?

7 MR. DURANT: I have no problem with that,
8 Judge.

9 THE COURT: Bring Mr. Davey in, please.
10 (The bailiff leaves the courtroom.)

11 THE COURT: Mr. Savage, I just want to
12 personally assure you I would never do such a thing.

13 MR. SAVAGE: Judge, I have no doubt about
14 that. I didn't ask for a recusal of the Court.

15 THE COURT: I understand, but I just want
16 you to personally know I would never do such a thing.

17 MR. SAVAGE: Thank you.

18 THE COURT: I do joke around with all the
19 people that work in this building every now and then,
20 but that's about it.

21 MR. SAVAGE: Judge, the highest
22 compliment that the judge can receive on the circuit
23 bench is that you are right behind Hamilton Smith
24 (phonetic). I've heard that comparison on numerous
25 occasions.

1 THE COURT: Well, I appreciate the
2 comment. Thank you. As you've seen throughout this
3 trial, I try to disclose anything that could
4 potentially be a problem.

5 (Whereupon, Mr. Davey, Juror No. 309,
6 enters the courtroom.)

7 THE COURT: Mr. Davey, would you come
8 forward, please? I just need to ask you a couple of
9 questions if you don't mind.

10 MR. DAVEY: All right.

11 THE COURT: And nothing -- it's just
12 stuff I need to know, okay? First of all, we have an
13 understanding that you may have some connection with
14 someone in the Solicitor's Office?

15 MR. DAVEY: My cousin works there.

16 THE COURT: All right. At the jury
17 qualification, did you approach the bench and
18 disclose that?

19 MR. DAVEY: No, sir.

20 THE COURT: Okay. And do you remember my
21 question when I indicated that does anyone have any
22 connection to the Solicitor's Office or anything?

23 MR. DAVEY: I just thought...

24 THE COURT: All right. You mean you just
25 -- you didn't understand that or...

1 MR. DAVEY: I just...

2 THE COURT: You're not in trouble or
3 anything. I just need to know.

4 MR. DAVEY: Well, somebody stood up and
5 you asked if that was going to have any affect, you
6 know. And it wouldn't, wouldn't affect me.

7 THE COURT: But you didn't disclose?

8 MR. DAVEY: Right.

9 THE COURT: Okay. Now, have you been
10 trying to make any contact with Mr. Nelson since this
11 trial has begun?

12 MR. DAVEY: We've talked.

13 THE COURT: You have talked? What about?

14 MR. DAVEY: Not on that. Just like...

15 THE COURT: Have you talked about this
16 case in any way?

17 MR. DAVEY: No. About his wedding and
18 stuff.

19 THE COURT: All right. And have you
20 disclosed to the jurors in any kind of way that you
21 have some connection with him?

22 MR. DAVEY: No.

23 THE COURT: Has that come up in any kind
24 of way?

25 MR. DAVEY: No, sir..

1 THE COURT: Have you discussed this case
2 in any way?

3 MR. DAVEY: No, sir.

4 THE COURT: All right. If you'll just
5 step outside for a moment.

6 MR. DAVEY: All right.

7 THE COURT: Thank you.

8 (Whereupon, Mr. Davey, Juror No. 309,
9 leaves the courtroom.)

10 THE COURT: I was fairly positive he
11 didn't disclose that at qualification. So just to --
12 that makes me feel a little better.

13 What do you wish for me to do? Any
14 further questioning?

15 MR. SAVAGE: No further question.

16 THE COURT: Anything further from the
17 state?

18 MR. DURANT: No, sir, Your Honor.

19 THE COURT: All right. Bring him in for
20 a second.

21 MR. SAVAGE: Judge, I ask you to instruct
22 him not to discuss it with anyone.

23 THE COURT: I will.

24 MR. SAVAGE: On the jury or ---

25 THE COURT: All right.

1 (Whereupon, Mr. Davey, Juror No. 309,
2 returns to the courtroom.)

3 THE COURT: Mr. Davey, just in an
4 abundance of caution, because that has caused some
5 confusion, I'm going to go ahead and excuse you from
6 this case. Just call back after six o'clock for any
7 instructions about tomorrow.

8 MR. DAVEY: All right.

9 THE COURT: Just give your pad to the
10 bailiff. Thank you, though, for your service.

11 MR. DAVEY: Yes, sir. All right.

12 THE CLERK: He's excused.

13 THE COURT: You're excused for the rest
14 of the week.

15 MR. DAVEY: Pardon me?

16 THE COURT: Sorry. They don't need you
17 tomorrow.

18 MR. DAVEY: Oh.

19 THE COURT: Thank you.

20 (Mr. Davey, Juror No. 309, is excused
21 from the jury and leaves the courtroom.)

22 THE COURT: Anything else?

23 MR. SAVAGE: Judge, how will you handle
24 an instruction to the jurors?

25 THE COURT: I'm going to tell them that

1 one of the jurors has been excused and -- oh, bring
2 that juror back in. I forgot. I need that juror
3 back in. I meant to instruct him not to discuss this
4 case in any way.

5 (Whereupon, Mr. Davey returns the
6 courtroom.)

7 THE COURT: I'm sorry, sir. I also meant
8 to instruct you, you are not to discuss this case in
9 any way ---

10 MR. DAVEY: All right.

11 THE COURT: --- or contact the solicitors
12 or Mr. Nelson or anyone until this case is over. Do
13 you understand?

14 MR. DAVEY: Yes, sir.

15 THE COURT: Thank you.

16 (Whereupon, Mr. Davey leaves the
17 courtroom.)

18 MR. SAVAGE: The defendant is ready to
19 proceed.

20 THE COURT: Are you ready?

21 MR. DURANT: There's one other thing I
22 want to put on the record, Your Honor.

23 Last Wednesday, I was accused in this
24 courtroom of providing the defense with a doctored
25 exhibit. I have now confirmed through defense

1 counsel that my copy and the copy in evidence and the
2 copy they have are identical. And I'm not expecting
3 an apology or anything, but I was accused on the
4 record. I wanted to put that ---

5 THE COURT: Do you mean the one that had
6 the little thing at the top?

7 MR. DURANT: Exactly. I'm talking about
8 the title page on Deputy Ford's crime scene video,
9 in-car video.

10 THE COURT: All right. Is that correct,
11 Mr. Savage?

12 MR. SAVAGE: Your Honor, that's the first
13 I've heard about this, Your Honor. I have no idea.
14 Ms. Williams has not told me that the video was even
15 asked for, if y'all didn't give it to him.

16 MR. DURANT: I confirmed ---

17 THE COURT: Is that correct?

18 MS. WILLIAMS: Judge, I have not seen the
19 original. It has been viewed by my office. That did
20 flash up very quickly, Judge. Couldn't even pause it
21 on there. The issue for the mistrial, Judge,
22 however, was the fact that it was paused with that on
23 the screen.

24 THE COURT: Well, that was just part of
25 the issue. It was also ---

1 MS. WILLIAMS: Exactly.

2 THE COURT: --- inferred that y'all
3 received a different copy of that, and that was the
4 big issue.

5 MS. WILLIAMS: Judge, that does not
6 appear to be the case. I have not looked at it
7 myself.

8 THE COURT: All right.

9 MS. WILLIAMS: We did receive it back
10 from our expert who did put it on the program that is
11 -- is at our office.

12 THE COURT: Before y'all say things like
13 that, you need to know that it's true. All right?

14 MS. WILLIAMS: Judge, I have not viewed
15 it myself. I just -- because Mr. Durant was asking
16 me repeatedly, I said, okay, this is the information
17 I have at this time.

18 THE COURT: All right.

19 MR. DURANT: And it was related to her by
20 a paralegal at her -- at her office that she put the
21 disk in and it stayed.

22 THE COURT: Is that correct?

23 MS. WILLIAMS: That is correct, Judge.

24 THE COURT: All right. He's not asking
25 for anything further, but I'm happy to know that

1 that's the case.

2 Are you ready to proceed?

3 MR. SAVAGE: The defense is ready.

4 THE COURT: State?

5 MR. DURANT: Yes, sir.

6 THE COURT: Bring the jury, in, please.

7 Mr. Clerk, we need to randomly draw from
8 the two alternates which alternate will serve for the
9 remainder of the trial.

10 THE CLERK: Okay. Use the barrel?

11 THE COURT: Yeah.

12 (Whereupon, the jury returns to the
13 courtroom at approximately at 1:58 p.m.)

14 THE BAILIFF: The jurors are present,
15 Your Honor.

16 THE COURT: Thank you. Please be seated.
17 Just give us one second, ladies and
18 gentlemen, we'll be ready to start.

19 Mr. Clerk.

20 (Whereupon, the clerk draws name of
21 alternate juror.)

22 THE CLERK: Juror number 301, Carol
23 Baloglu.

24 THE COURT: All right. Ms. Baloglu?

25 MS. BALOGLU: Yes.

1 THE COURT: All right. Ms. Baloglu.

2 I needed to relieve one of the jurors,
3 ladies and gentlemen, so you'll know why you're one
4 person short. Don't read anything into that as far
5 as the case or anything. Sometimes that happens when
6 people become aware of certain circumstances or they
7 may end up knowing someone that they didn't disclose
8 at the beginning or realize. So that's why we have
9 alternates.

10 So, ma'am, you'll go ahead and serve as a
11 regular juror now, and we'll have one alternate.

12 (Whereupon, Carol Baloglu, Juror No. 301,
13 is seated on the jury.)

14 THE COURT: Are y'all ready?

15 MR. DURANT: Yes, sir, Your Honor.

16 THE COURT: Call your next witness.

17 MR. SAVAGE: Christopher Thomas.

18 (Mr. Thomas enters the courtroom.)

19 CHRISTOPHER THOMAS,
20 being first duly sworn by the clerk, is examined and
21 testifies as follows:

22 THE CLERK: Be seated. If you'll state
23 your full name and spell your last name.

24 THE WITNESS: Christopher Thomas. The
25 last name is spelled T-H-O-M-A-S.

DIRECT EXAMINATION

BY MR. SAVAGE:

Q. Good afternoon, Mr. Thomas.

A. How you doing, sir.

Q. Mr. Thomas, your presence today is to testify as to your knowledge of the events of August 13th and 14th, 2005. I understand that you were present at the party that occurred in the Ladson area of South Carolina that evening?

A. Yes, sir.

Q. If you would, tell the members of the jury your recollection of the events up until such time as the party transferred to Mr. Dexter Brown's. You don't have to go into a lot of detail, but just give them a summary of what you were doing, who you were with, who was there, where you had been.

A. Okay. Dexter, myself, and Dave caravanned ---

Q. Excuse me. The jurors don't know who ---

A. Myself.

Q. --- Dexter, nicknames, and all that. If you would give as much names as you can, if it's Dexter Smith or Dexter Jones ---

A. All right.

Q. --- or whoever.

A. Dexter Brown, David Rocquemore, and myself

1 Chris Thomas, we went to a party in Summerville,
2 which was a card party where we played cards and ate
3 fish.

4 Q. At some time did you leave that party?

5 A. Yes, sir.

6 Q. Where did you go next?

7 A. From that party, we went to one of Dexter's
8 friend's house. I'm not sure of his name.

9 Q. And when you left that party, where did you
10 go?

11 A. We were there a brief time. From there we
12 went to Dexter's house.

13 Q. Dexter Brown?

14 A. Dexter Brown, yes, sir.

15 Q. Now, would you indicate to the jury the people
16 who were at the party which is called party number
17 one, little party number two, and party number three?
18 Were they the same cast of partygoers?

19 A. Well, at party number one, not everyone went
20 to party number two and three.

21 Q. And party number three, had everybody -- would
22 it be fair to say everybody at party number three had
23 been at party number one?

24 A. Yes, sir.

25 Q. And men and women included?

1 A. Yes, sir.

2 Q. Now, did it come to a time at party number
3 three when anyone left the party?

4 A. Yes, sir.

5 Q. And who would that have been?

6 A. Three gentlemen, I'm not sure of their names,
7 but they did leave the party at one time.

8 Q. Okay. Party number two, did the people from
9 party number two go to party number three?

10 A. Yes, sir.

11 Q. And at party number two, the people who were
12 there, did any one of those individuals leave?

13 A. Yes, sir.

14 Q. And how much time at the party number three
15 did -- I'm getting confused.

16 A. I'm listening.

17 Q. All right. How much longer after you got to
18 the final party, the party number three, did the
19 fellows from party number two leave?

20 A. I'm not sure of the time, sir.

21 Q. And at party number three, did Mr. Rocquemoire
22 and Mr. Brown leave?

23 A. Yes, sir.

24 Q. And while they were gone, did anything happen?

25 A. Yes, sir.

1 Q. And were you involved in that?

2 A. No, sir.

3 Q. Mr. Brown wasn't involved in it?

4 A. No, sir.

5 Q. Mr. Rocquemore wasn't involved in it?

6 A. No, sir.

7 Q. And when Mr. Rocquemore and Mr. Brown returned
8 to the party, had the people who were involved in
9 whatever that was, had they left?

10 A. Yes, sir.

11 Q. Male?

12 A. Males.

13 Q. And how about females?

14 A. The females left, as well, sir.

15 Q. So if anything untowards had happened at that
16 time when Mr. Brown and Mr. Rocquemore were not
17 there, everybody who was involved had left when they
18 returned?

19 A. Yes, sir.

20 Q. Was the attitude or affect or the personality,
21 or however you want to describe it, the attitude of
22 Mr. Rocquemore, the same when he returned to the
23 party after everybody had left as it was before he
24 left the party?

25 A. Yes, sir.

1 Q. Did you notice any change in his disposition
2 at all?

3 A. No, sir.

4 Q. Now, following his return to the party, what
5 -- what did you do and what did they do?

6 A. When you say his return to the party, Dave and
7 Dexter?

8 Q. Yes, sir. That's -- I'm at party number
9 three.

10 A. Uh-huh.

11 Q. And I'm at a time when somebody left, when
12 Mr. Brown and Mr. Rocquemoire left and while they were
13 gone something happened, and when they returned
14 that's the time frame I'm in now.

15 A. Okay.

16 Q. Those are the questions I'm going to be
17 asking you about.

18 A. Yes, sir.

19 Q. At that time. Now, were you still present
20 when Mr. Rocquemoire and Mr. Brown came back to the
21 party?

22 A. Yes, sir.

23 Q. And where were you when they returned?

24 A. Standing in the middle of the street in the
25 front of Dexter Brown's driveway.

1 Q. And who was present at that time, the time
2 that Mr. Brown and Mr. Rocquemore returned?

3 A. No one, sir. Me.

4 Q. And when they returned, was anybody else
5 present at that time?

6 A. No, sir.

7 Q. And did there come to be a time when other
8 people arrived back at party number three?

9 A. Yes, sir.

10 Q. When you were standing in the driveway when
11 Mr. Brown and Mr. Rocquemore returned, party number
12 three was over?

13 A. Pretty much. Yes, sir.

14 Q. Everybody had left except you?

15 A. Yes, sir.

16 Q. And Mr. Brown's brother.

17 A. Yes, sir.

18 Q. That's Keith Brown?

19 A. I believe that's his first name.

20 Q. And when Mr. Brown and Mr. Rocquemore
21 returned, how much time if you know -- and it doesn't
22 have to be precise, but try to give the jury an idea
23 of how much time elapsed, how much time passed
24 between the time they returned to the party and then
25 others return to the party.

1 A. I'm not sure of the time, but shortly after,
2 sir.

3 Q. Shortly?

4 A. Shortly.

5 Q. After? Whatever shortly after means, but not
6 a long period of time?

7 A. Not a long period of time.

8 Q. Now, at that time, tell the jurors what
9 happened. And what I think they would like to hear
10 is: Who came, how did they come, what the atmosphere
11 was like at the time they returned; what was the
12 atmosphere among you, Mr. Brown, Mr. Rocquemoire; what
13 was the atmosphere among the people who returned to
14 the party. And if you can identify them, please tell
15 us the type of vehicle they came in and how many
16 people were in it.

17 A. Okay. When Dexter and Dave arrived back to
18 the party, I was standing in the middle of the
19 street. Dexter noticed that cars were gone, and he
20 had asked me what happened.

21 And I told him, prior to them pulling up, I'm
22 not sure of the gentleman, but a young lady had got
23 some beer poured on her or in her face, and they had
24 shortly left.

25 Shortly after that, a vehicle comes flying

1 down the streets with no lights on, a gentleman
2 hanging out the window, yelling all kind of stuff,
3 sorts of things. And they pulled in front of
4 Dexter Brown's house. They get out of the car in an
5 aggressive manner, traveling towards myself Chris,
6 Dexter Brown, and David Rocquemore.

7 Q. And what happened?

8 A. There was a little bit of arguing, arguing
9 going on. One gentleman started to put his hands in
10 David Rocquemore's face like this (demonstrating).
11 David slapped his hand down (demonstrating), and we
12 began to fight.

13 Q. Was there anything that you did or anybody who
14 was with you that provoked that change?

15 A. No, sir.

16 Q. Was that the same type of atmosphere that
17 existed earlier in the evening at party number three?

18 A. When you say atmosphere, are you...

19 Q. Well, you said that people came and they acted
20 aggressively. I'd like you to describe that, but had
21 that type of action -- was that a change or was that
22 a continuation?

23 A. No. That was a change in -- in actions, sir.
24 Prior to them leaving the party, we were just inside
25 of the house, and one of the gentlemen seemed to be a

1 little intoxicated.

2 Q. But in terms of people being angry or ---

3 A. No, sir.

4 Q. --- having bad feelings, there weren't any, at
5 least inside the house?

6 A. No, sir.

7 Q. So how did you react, though? Were you
8 surprised when -- were those the same people who had
9 been at the party earlier?

10 A. Yes, sir. I was very much surprised. I
11 didn't know what triggered their actions.

12 Q. What did you decide to do at that time?

13 A. Well, when the blows -- well, when the blows
14 started to be thrown, I sort of put my dukes up, and
15 I got charged by one gentleman. A tall light-skinned
16 gentleman rushed -- rushed me. As he did that, I
17 turned to go to my trunk to try to get something to
18 hit him with, and he tackled me.

19 Q. Did you -- did you ever get to your trunk?

20 A. I got to the trunk, but I didn't get in to it.

21 Q. Did you open the trunk?

22 A. No, sir.

23 Q. Did you have a key out? Was your key in the
24 lock that opened the trunk?

25 A. No, sir.

1 Q. All right. I want to show you state's exhibit
2 number 16, please, and ask you if you can identify
3 it. Maybe it's 19. I apologize. On the screen
4 before the jury and before the witness is state's
5 exhibit number 19. Do you recognize that photograph?

6 A. Yes, sir.

7 Q. Do you recognize the objects within the
8 photograph?

9 A. Yes, sir.

10 Q. Starting on the right-hand side as the jurors
11 view the screen, please describe what's in the
12 photograph.

13 A. On the right-hand side, I see the -- the front
14 end of Dave's car. Right in front of it, I see my
15 car with the trunk open. And it looks like something
16 on the floor right there in the street.

17 Q. Now, what type of vehicle is that that's your
18 car?

19 A. I drive a Dodge Stratus '97.

20 Q. And what do you use that car for?

21 A. I use it for transportation to and from work,
22 and I also use it -- I own a side business where I do
23 floors, and I use it to transfer my material.

24 Q. For your business?

25 A. Yes, sir.

1 Q. Such as cleaning materials?

2 A. Mop, bucket, a stripping machine, and --
3 that's about it.

4 Q. And all that material was inside the trunk of
5 your car?

6 A. The buffing machine was not, but I do have mop
7 heads, my buckets, and a couple other things back
8 there. I'm not sure right now.

9 Q. Tell us about the object that's in the
10 left-hand side of the screen on the pavement.

11 A. I don't know what that is, sir.

12 Q. Is that any article of clothing that you had
13 or might have lost that evening?

14 A. No, sir.

15 MR. SAVAGE: Beg the Court's indulgence.

16 May I approach the court reporter?

17 THE COURT: Yes, sir.

18 (Mr. Savage reviews exhibits.)

19 BY MR. SAVAGE:

20 Q. Mr. Thomas, I'm going to look for the computer
21 image of this one. I'm going to try to show you
22 another image and ask if you can identify it. It's
23 state's -- excuse me -- defendant's 14.

24 (There was off-the-record discussion
25 regarding projection equipment.)

1 BY MR. SAVAGE:

2 Q. Do you recognize the photograph?

3 A. Yes, sir.

4 Q. Do you recognize the objects in the vehicle
5 within the photograph?

6 A. Yes, sir.

7 Q. Do you recognize that there are objects on top
8 of the windshield of your vehicle?

9 A. Yes, sir.

10 Q. And do you know what they are?

11 A. I can see a watch that looks to be broken.

12 Q. And anything else?

13 A. I see something near the windshield, but I
14 can't make out what it is.

15 Q. Are any of those items yours, any of the items
16 in defendant's 14 which you're seeing right now?

17 A. No, sir.

18 Q. Do those belong to you?

19 A. No, sir.

20 Q. Now, the location of those items in
21 relationship to the driveway where you were standing
22 and where the initial confrontation occurred and
23 Mr. Rocquemoire's vehicle, tell the jury, if you
24 would, the location. Where were those objects in
25 relationship to Mr. Rocquemoire's car and where the

1 initial confrontation took place?

2 A. It looks to me that those objects are on top
3 of my car which is in front of Dave's vehicle
4 approximately ten feet.

5 MR. SAVAGE: Mark this as defendant's
6 next, please.

7 (Defendant's Exhibit No. 26, photo -
8 Chris Thomas' vehicle, is marked for identification.)

9 MR. SAVAGE: May I approach the witness,
10 Your Honor?

11 THE COURT: Yes, sir.

12 BY MR. SAVAGE:

13 Q. Mr. Thomas, do you recognize this photograph
14 and the objects in that photograph?

15 A. It looks to be the same type of photograph.
16 My car, the same stuff in the trunk, that's it.

17 Q. The same location?

18 A. Yes, sir.

19 Q. The same date?

20 MR. SAVAGE: Your Honor, we'd offer this
21 as defendant's, defendant's exhibit 26.

22 MR. DURANT: No objection.

23 THE COURT: Defendant's 26 in evidence
24 without objection.

25 MR. SAVAGE: Thank you, Your Honor.

1 (Defendant's Exhibit No. 26, previously
2 marked for identification, is received in evidence.)

3 BY MR. SAVAGE:

4 Q. Mr. Thomas, before I distracted you -- we got
5 into a lot of other things -- we were talking about
6 you were standing there with two people, a car came
7 up, there was a confrontation, fists started to fly,
8 and you went towards your vehicle.

9 A. Yes, sir.

10 Q. Going back to that point in time now, I had
11 asked you, I believe I'd asked you if you had a key
12 to open your trunk.

13 A. I do have a key, but I didn't have the key
14 then to open the trunk.

15 Q. Tell the jury, if you know, how the trunk was
16 opened.

17 A. Well, the latch on my trunk has -- had
18 previously been broken from me putting supplies in
19 there and buckets, and it would latch, you know, sort
20 of, and I could -- there was a way for me to keep it
21 closed.

22 The gentleman that tackled me, tackled me onto
23 the trunk with a good force, and it threw it -- threw
24 the hinge off. And that's how the trunk popped open,
25 'cause it wouldn't close after that.

1 Q. I want to show you defendant's 26 and ask you
2 if this photograph's -- would assist you in
3 describing to the jury, and I'll put it up if it
4 does, where -- where you hit.

5 A. Yes, sir.

6 MR. SAVAGE: Let me put it up there.

7 BY MR. SAVAGE:

8 Q. All this technology is not working. Would you
9 mind stepping down, please?

10 A. (The witness leaves the witness stand and
11 stands in front of the jury-box.)

12 Q. Mr. Thomas, if you'd stand back here. This is
13 for the jury. We're not able to put this up ---

14 A. Okay.

15 Q. --- for a visual, but it's important to the
16 jury to know what's in this picture.

17 A. Okay.

18 Q. They will have this picture with them. They
19 can look at it later. If you would take the picture
20 and show them where they can look, where they can
21 examine the photograph to look for what you have
22 described as the popping open, what caused the
23 popping open of the trunk. Just stay right here.

24 A. Here you can see in this -- in this scene or
25 this picture, there are scuff marks on the back of

1 this hood where the brake light is present. You can
2 see there, there is a lot of scuff marks on there,
3 like I was pushed on there or what have you.

4 Also, at the bottom of this, you can see where
5 the rubber seal is broken, which right below that is
6 where the trunk latch is broken.

7 Q. Thank you. Kindly return to your seat.

8 A. (The witness returns to the witness stand.)

9 Q. Now, prior to the incident that night, were
10 those scuff marks there?

11 A. No, sir.

12 Q. And are you positive those scuff marks and
13 that jolting of the -- of the trunk is what caused
14 that trunk to pop open?

15 A. Yes, sir.

16 Q. Now, in that trunk or in your vehicle, did you
17 have any weapons?

18 A. No, sir.

19 Q. Did you have a gun?

20 A. No, sir.

21 Q. Did you have anything, a taser or a
22 long-bladed knife or a club or anything of that
23 nature?

24 A. No, sir.

25 Q. Do you know where Mr. Rocquemoire was the last

1 time you saw him?

2 A. Yes, sir.

3 Q. And when I say the last time you saw him, I'm
4 talking about this night. By the way, have you seen
5 Mr. Rocquemore at all since this night?

6 A. No, sir.

7 Q. Have you spoken to him at all since the night,
8 this night?

9 A. No, sir.

10 Q. Have you discussed the testimony today with
11 Mr. Rocquemore?

12 A. No, sir.

13 Q. But the last time you saw him that night,
14 where was he?

15 A. In the police car.

16 Q. All right. Maybe I don't know how to ask the
17 question. Where was he before you went to your car?

18 A. Dave, when I made a dash to my car, I saw -- I
19 saw Dave running or trying to get to his car.

20 Q. And were you able to see anything after that?
21 If you were, explain what it is. If you were not
22 able to, explain why you couldn't see it.

23 A. I couldn't see much after that, due to the
24 fact that I was being held down by one of those
25 gentlemen, the tall light-skinned gentleman.

1 Q. Could you hear anything at that time?

2 A. Yes.

3 Q. And what could you hear?

4 A. I heard scuffling. It sounded like, you know,
5 a fight. I also heard seemed to be like some -- a
6 metal, something hard hit the ground. And after
7 that, shortly after, I heard two shots.

8 MR. SAVAGE: Beg the Court's indulgence.

9 THE COURT: Okay.

10 BY MR. SAVAGE:

11 Q. When you were on the ground, your vision of
12 what was going on, I take it, was blocked or you
13 were...

14 A. Yes, sir.

15 Q. --- in a position that you couldn't see?

16 A. Couldn't see. It was towards the trunk.

17 Q. But you could hear?

18 A. Yes, sir.

19 Q. And the timing of what you heard is critical.
20 Tell the jury, if you can remember, if it's clear to
21 you, what you heard in terms of running, punching,
22 hollering, language, that sort of thing.

23 A. Well, the only thing that I basically heard
24 prior to the fight were the guys were telling Dave
25 and myself that we didn't belong, you know, up there

1 in the area.

2 During the struggle, all I just could hear was
3 just scratching and, you know -- (knocks on witness
4 stand). Just sound like a struggle.

5 Q. You could hear a struggle?

6 A. (The witness nods head up and down.)

7 MR. SAVAGE: Kindly answer any questions
8 the prosecutor might have for you, Mr. Thomas.

9 CROSS-EXAMINATION

10 BY MR. DURANT:

11 Q. Now, when these shots, when you heard these
12 shots, the fellow that had you on the ground let you
13 up?

14 A. Not right away, but shortly after.

15 Q. Okay. And when he let you up, where was
16 everybody?

17 A. I saw two people on top of Dave beating --
18 beating him. The other gentleman let me go and ran
19 over there.

20 Q. Okay. And I'm going to show you an exhibit.
21 Excuse me, let me get the number on this. I think
22 it's state's 34. You have not seen this exhibit
23 before, have you; is that correct?

24 A. No, sir.

25 Q. And do you recognize whose car this would be?

1 A. It looks to be Dave's vehicle.

2 Q. And this would be your vehicle here?

3 A. Yes, sir.

4 Q. And is this area over here where you saw them
5 holding Mr. Rocquemore down on the ground?

6 A. Yes, sir.

7 Q. And this vehicle here would be the vehicle
8 that the guys arrived in?

9 A. Yes, sir.

10 Q. Okay. Now, to be clear, you are a friend of
11 David Rocquemore?

12 A. Yes, sir.

13 Q. And I believe when you were interviewed at
14 your home by Mr. Casey, you said y'all were very,
15 very close?

16 A. Yes, sir.

17 Q. And you have testified that you haven't met
18 with Mr. Rocquemore, but you must have met with
19 Mr. Rocquemore's attorneys on a number of occasions?

20 A. Yes, sir.

21 Q. And that night you were, of course, questioned
22 by police. Correct?

23 A. Yes, sir.

24 Q. Two different detectives, one was Detective
25 Smith and one was Detective Boyd. Do you remember

1 that?

2 A. Yes, sir.

3 Q. And you gave each of them a statement.

4 Actually, you gave a statement to Detective Smith,
5 correct?

6 A. I believe so. I'm not sure of the officer's
7 name.

8 Q. And then another male detective came back and
9 asked you some additional questions?

10 A. Yes, sir.

11 Q. Is that correct? Do you remember that? And
12 do you remember...

13 MR. DURANT: May I approach the witness,
14 Your Honor?

15 THE COURT: Yes, sir.

16 BY MR. DURANT:

17 Q. --- those being the statements, the two
18 statements that you gave?

19 A. Yes, sir.

20 Q. Okay. That is your signature on there?

21 A. Yes, sir.

22 Q. And these statements were given right after
23 the incident occurred. Is that correct?

24 A. Yes, sir.

25 Q. And referring to the first statement, the

1 three-page statement that you gave to Detective
2 Smith. And you told Detective Smith about the girl
3 coming in and saying she had a beer thrown on her,
4 correct?

5 A. Yes, sir.

6 Q. And you told Detective Smith that you went
7 outside to see what was going on. Correct?

8 A. I -- yes, sir.

9 Q. And then the two or three guys pulled out and
10 they got out of the car and started shouting which
11 led to a fight?

12 A. That's not the same time, sir.

13 Q. Well, I mean, is that what your statement says
14 in that ---

15 A. Yes, sir.

16 Q. --- report? Okay. That the two or three guys
17 pulled up, they got out of the car and started
18 shouting which led to a fight. Correct? That's what
19 you told them?

20 A. Yes, sir.

21 Q. You said: One guy grabbed me and held me, and
22 I heard two shots. Correct?

23 A. Yes, sir.

24 Q. And you then -- you told Detective Smith you
25 didn't know why the argument started. Correct?

1 A. Yes, sir.

2 Q. And you told Detective Smith you did not see
3 anyone with a gun?

4 A. Correct, sir.

5 Q. And then Detective Boyd came back and asked
6 you some additional questions?

7 A. Yes, sir.

8 Q. And he asked you what happened when the three
9 guys got out of the Explorer, and you told him they
10 began to argue with David about in the truck not
11 having the lights on?

12 A. Okay.

13 Q. Okay? So Dave was arguing with them about not
14 having the lights on in the truck?

15 A. No, sir.

16 Q. Okay. Well, that's what your statement says.
17 You admit that's what your statement says?

18 A. I didn't say Dave was arguing, sir.

19 Q. Well, why would they have let -- argued with
20 David about the lights not being on in the truck
21 unless David said something to them about it?

22 A. Dave did mention to them driving down the
23 street with the lights off.

24 Q. In fact, he accused them of being a bunch of
25 gangsters?

1 A. I didn't hear that, sir.

2 Q. And they told Dave not to worry about the
3 lights?

4 A. I didn't hear that either, sir.

5 Q. But that's in your statement, correct?

6 A. I can't remember that.

7 Q. And the detective asked you how the fight
8 started, correct?

9 A. Yes, sir.

10 Q. And you said that -- and, first of all, you
11 don't say anything in that statement about them
12 driving down the road fast and almost hitting you
13 with the car and yelling out the window or anything
14 like that. Would you admit you don't say anything in
15 either one of those statements about that?

16 A. I do say that they were driving down the
17 street with their lights off, sir. I did not say
18 that they tried to hit us.

19 Q. Or that they were driving fast or that anybody
20 was yelling out of the window. You have to admit
21 that that's not in that statement, either one of
22 those statements. Correct?

23 A. Correct.

24 Q. And Detective Boyd asked you how the fight
25 started. And you said to Detective Boyd that the guy

1 that got shot approached us, me and Dave, he put his
2 hand in Dave's face, and they began to fight. Now,
3 are you meaning him and Dave, the guy that got shot
4 and Dave?

5 A. Yes, sir.

6 Q. Then your next sentence says: I ran to my
7 trunk to act as if I was getting something. Correct?

8 A. Yes, sir.

9 Q. And what were you acting like you were
10 getting, sir?

11 A. Anything bigger than my fist that I can use
12 for a defense.

13 Q. You were going to your car to get a weapon.
14 Correct?

15 A. I was going to my car to get something to
16 defend myself with.

17 Q. Exactly. And you told them that, too, didn't
18 you?

19 A. No, sir.

20 Q. So you didn't say that? You just went to your
21 car and didn't say a word?

22 A. Yes, sir.

23 Q. Okay. And some big guy grabbed you and held
24 you down. That's what you said?

25 A. Yes, sir.

1 Q. That's exactly how you put it. "I ran to my
2 trunk to act if I was getting something, and some big
3 guy grabbed me and held me down"?

4 A. Yes, sir.

5 Q. And then you say: "They started to fight, and
6 Dave ran to his car." That's what you told Detective
7 Boyd, correct?

8 A. I believe so, sir.

9 Q. It's right there in your statement, but you
10 can read it and tell me if you didn't say it. Is it
11 in the statement or not? The top of page two.

12 A. (The witness reviews document.) Yes, sir.

13 Q. And he asked you to describe the fight between
14 Dave and the guy that got shot. Correct?

15 A. Yes, sir.

16 Q. And you told him that the guy that got shot
17 was in Dave's face, and Dave knocked his hand down
18 from his face, and they started fighting?

19 A. Correct.

20 Q. Those two?

21 A. No, sir.

22 Q. It's what you put -- that's what you told him,
23 right?

24 A. That is what I said, but that isn't -- it's
25 not what happened.

1 Q. And you were asked specifically after that:
2 Did you see any actual blows exchanged or any pushing
3 or shoving between David and the other two guys?

4 Your answer was no. Correct?

5 A. Yes, sir.

6 Q. And then you elaborate: "No. Just Dave
7 slapping the hand"?

8 A. That's all I saw.

9 Q. And you didn't see anything else, correct?

10 A. They began to fight. I didn't have my
11 eyes ---

12 Q. You didn't see anything from that point.
13 Correct?

14 A. No, sir.

15 Q. You didn't say anything about hearing anything
16 hit the ground in your original statement. Correct?

17 A. Correct.

18 Q. And to move backwards a little bit, you were
19 at the party in Summerville with David, correct?

20 A. Yes, sir.

21 Q. And Dexter. And everyone was very cordial at
22 that party. Correct?

23 A. Yes, sir.

24 Q. And at that same party, the guy that got shot
25 and his friends were at the same party; is that

1 correct?

2 A. Yes, sir.

3 Q. And there were no problems at that party?

4 A. I don't agree with that, sir.

5 Q. Okay. You didn't say anything about that?

6 A. Sir, I didn't remember at the time.

7 Q. Oh, okay. You seem to -- your memory seems to
8 be improving with two years of age; is that correct?

9 A. As you guys call me and come visit me and
10 question me, my memory, you know, it goes back and
11 replays the incident.

12 Q. And more and more details get added all the
13 time?

14 A. I'm not saying that, but I'm noticing I'm --
15 there's a few things that, you know, I may remember.

16 Q. Is there -- but you would admit that you never
17 said anything in either one of your statements or
18 when you were interviewed by Mr. Casey or to this
19 jury today that there had been any kind of bad blood
20 between any of you and David Rocquemore before they
21 come -- that time that they came driving up and
22 approached y'all aggressively? That's your
23 testimony?

24 A. No bad blood, sir.

25 Q. Okay. So they had no reason, you would agree,

1 to be angry with you or David Rocquemoire at the time
2 they came back to Dexter's house?

3 A. Not to my knowledge, they didn't have any
4 reason. We didn't give them a reason.

5 Q. Okay. Now, were you angry because they'd run
6 the girls off?

7 A. No, sir.

8 Q. Was David Rocquemoire angry because they had
9 run the girls off?

10 A. Not to my knowledge.

11 Q. Was Dexter Brown angry because they had run
12 the girls off?

13 A. Not to my knowledge.

14 Q. So y'all had no reason to be angry yourselves?

15 A. I can speak for me.

16 Q. Okay. But you were cool, calm, and collected?

17 A. Yes, sir.

18 Q. The fact of the matter is, Mr. Thomas, you
19 started this whole thing, didn't you?

20 A. No, sir.

21 Q. And up until the time you went to your trunk
22 and you announced that you were getting a weapon,
23 that this was just basically an argument?

24 A. No, sir.

25 Q. And you turned it into a deadly encounter by

1 claiming to go get a weapon out of your car, when
2 none of those guys had a weapon. You would
3 acknowledge that, correct?

4 A. I don't know what they had on their person.

5 Q. You didn't see anybody have -- with a weapon,
6 correct?

7 A. No, sir.

8 Q. You didn't hear anybody threaten to have a
9 weapon, did you?

10 A. No, sir.

11 Q. The only person that threatened to get a
12 weapon out there was yourself?

13 A. I didn't threaten to get a weapon. I made a
14 motion to go get it.

15 Q. Okay.

16 A. Why would I tell someone I'm going to get a
17 weapon? That would defeat the purpose.

18 Q. So, but you can make -- you make no bones
19 about the fact that you went to the car to act as if
20 you were getting something?

21 A. I was going to get something.

22 Q. And the fact of the matter is, had you not
23 done that, then probably no one would have been shot
24 that night?

25 A. No, sir, because I reacted after the fight

1 started.

2 Q. The fight didn't involve you.

3 A. Yes, it did. I was attacked -- or approached
4 by the taller gentleman.

5 Q. You didn't say anything in your statements
6 about being attacked by the taller gentleman until
7 you said you went to your car to get something?

8 A. No, sir, but I know how it happened.

9 Q. I know how you've changed your story today,
10 but back then when you gave the statement you said
11 nothing about that, did you?

12 A. Back then I was a little nervous and shook up,
13 sir.

14 Q. Back then maybe you were telling the truth,
15 sir?

16 A. I'm telling the truth now, sir.

17 Q. And when you got -- and when you were let up,
18 those folks were across from David -- from
19 Dexter Brown's house, correct?

20 A. Correct.

21 Q. And they had David down on the ground?

22 A. Yes, sir.

23 Q. And they got a weapon from him?

24 A. I guess, sir.

25 Q. You saw it?

- 1 A. No, I didn't actually see it.
- 2 Q. Okay. David wanted you to come across the
- 3 street and get the weapon, didn't he?
- 4 A. Correct.
- 5 Q. And the guy said you stay where you are?
- 6 A. I didn't remember anyone saying that to me,
- 7 sir.
- 8 Q. And who else had their shirt off that night,
- 9 sir?
- 10 A. I don't know if anyone had their shirt off.
- 11 Q. Well, there's a shirt in the road right there
- 12 where you got tackled?
- 13 A. It's not mine.
- 14 Q. Okay. Well, we know it's not the other
- 15 fellows' because we saw them when the police drove up
- 16 on their surveillance -- on their in-car video. They
- 17 all had shirts on.
- 18 A. Did they video me? Was I on video?
- 19 Q. No, sir, you're not on video.
- 20 A. Was I on video with a shirt off, sir?
- 21 Q. You weren't on video.
- 22 A. Okay.
- 23 Q. Okay. The other guys had their shirts on.
- 24 Did Dexter Brown have his shirt on?
- 25 A. I don't know.

1 Q. Why would he not have his shirt on?

2 A. I don't know.

3 Q. David Rocquemoire had his shirt on. Correct?

4 A. Chris Thomas had his shirt on, too, sir.

5 Q. The guy that got killed had his shirt on. And
6 we know the other three people had their shirts on.

7 So whose shirt was it?

8 A. It's not mine, sir. I had my shirt on.

9 MR. DURANT: Court's indulgence.

10 BY MR. DURANT:

11 Q. And you also say that the jewelry didn't
12 belong to you?

13 A. Yes, sir.

14 Q. And so I don't guess that you pulled that
15 chain and that watch off as you were going to your
16 car to get your weapon out of the trunk?

17 A. No, sir.

18 Q. Were you going to rumble with these guys?

19 A. Would they allow me to take my chain and my
20 necklace off and run to the trunk?

21 Q. They didn't allow you to get your weapon, did
22 they?

23 A. I didn't have a weapon. Did the police find
24 one in the trunk?

25 Q. But you sure told them that you had one?

1 A. No, sir.

2 MR. DURANT: Thank you. I have no
3 further questions ---

4 THE WITNESS: Thank you.

5 MR. DURANT: --- for this witness.

6 MR. SAVAGE: Please the Court.

7 THE COURT: Yes, sir.

8 REDIRECT EXAMINATION

9 BY MR. SAVAGE:

10 Q. Mr. Thomas, the night of this incident, did
11 you cooperate to the best of your ability with the
12 detectives?

13 A. Yes, sir. I even sat in Dexter's driveway,
14 Indian-style, waiting on the police to come.

15 Q. Do you know how many detectives were there
16 that night, or do you have any idea?

17 A. It just was a lot of cars. I don't know, sir.

18 Q. And every one of them who asked you a question
19 about anything, did you answer that to the best of
20 your ability to give them honest and truthful
21 answers?

22 A. Yes, sir.

23 Q. Is there any question that you refused to
24 answer, or is there anything you refused to do to
25 accommodate the law enforcement community that were

1 there that night?

2 A. No, sir.

3 MR. SAVAGE: Thank you, sir.

4 MR. DURANT: Nothing further, Your Honor.

5 THE COURT: You may step down, sir.

6 Thank you.

7 (The witness is excused from the witness
8 stand.)

9 MR. SAVAGE: The defense calls
10 David Rocquemore.

11 THE COURT: Before you do that, let's
12 take a short break, and then we'll pick up with that.

13 MR. SAVAGE: Yes, sir.

14 THE COURT: Ladies and gentlemen, I'll
15 send you to the jury room. Do not discuss the case
16 in any way. Thank you very much.

17 (Whereupon, the jury goes to the jury
18 room at approximately 2:47 p.m.)

19 THE COURT: Thank you.

20 (A break is taken at approximately
21 2:47 p.m.)

22 (The trial reconvenes at approximately
23 3:07 p.m., the defendant being present with counsel,
24 and the following proceedings were had:)

25 THE COURT: Thank you. Please be seated.

1 Are y'all ready to proceed?

2 MR. DURANT: Yes, sir, Your Honor.

3 THE COURT: Defendant?

4 MR. SAVAGE: Judge, we just have that
5 issue on the pre-Miranda silence. I don't know
6 whether that's going to be something that comes up
7 during the testimony or cross-examination.

8 Our position is that it's disingenuous to
9 call it pre-Miranda. It's pre-arrest silence. From
10 looking at the video, it appears Mr. Rocquemore was
11 under arrest and protected by Miranda from the moment
12 the police showed up.

13 We offer one additional thing. He's
14 under investigation for some time, he was a suspect,
15 he was placed under arrest.

16 We also then have the medical situation,
17 what his medical condition was at the time.

18 THE COURT: Well, that's the thing we
19 left it at. I thought we said if something came out
20 inappropriately, you were going to bring it to the
21 Court's attention.

22 Are you planning on getting into this
23 issue?

24 MS. KNEESE-SHEALY: Yes, I am, Your
25 Honor.

1 THE COURT: All right. I'll hear you out
2 on that.

3 MS. KNEESE-SHEALY: Your Honor, it would
4 be my position that under *State vs. Weston, Jenkins*
5 *vs. Anderson, Fletcher vs. Weir*, and *State vs. Bell*
6 that post-arrest/pre-Miranda silence is appropriate
7 for me to cross-examine the defendant about.

8 THE COURT: Well, then I guess I should
9 have been more specific. You're only going to get
10 into it on cross-examination?

11 MS. KNEESE-SHEALY: That's correct.

12 THE COURT: That is how I thought we left
13 it, that if he testified that -- you even
14 acknowledged, Mr. Savage, when it could come up.

15 MR. SAVAGE: I didn't want them to jump
16 up and do that. I think there's some additional
17 concerns with them doing that. I didn't want to have
18 to necessarily make that objection before the jury.
19 That's an issue that would be ---

20 THE COURT: Well, how would it -- give me
21 an example how it may be prejudicial.

22 MS. KNEESE-SHEALY: Your Honor, I have
23 Detective Stanley here if we need to get it on the
24 record. The first responding officer indicated they
25 arrived at the scene at 4:05 a.m. Detective Stanley

1 can testify in camera, Your Honor, I can offer to the
2 Court, that he read his -- he read Mr. Rocquemore his
3 Miranda warnings at 6:05 in the morning.

4 I think it's appropriate under our case
5 law that I am allowed to inquire of Mr. Rocquemore
6 regarding his silence from 4:05 a.m. to 6:05 a.m. and
7 explain what his position regarding the facts that
8 gave rise to the shooting were.

9 THE COURT: Yes, sir. Do you wish to
10 respond?

11 MR. SAVAGE: Judge, there are two issues.
12 One, he was in custody at that time. He was under
13 arrest immediately when the police officers arrived.
14 And he had a medical condition that prevented his
15 examination. In fact, during his interrogation is
16 when the EMS was sought by the detectives for a
17 second examination.

18 THE COURT: Well, I'm kind of curious,
19 because if he had some medical condition and he's
20 testifying, why can't that be said? Couldn't that be
21 inquired about?

22 MR. SAVAGE: They certainly can inquire
23 about his medical condition. I think everybody
24 agrees what his medical condition was at the time.

25 THE COURT: Well, I mean, why -- if they

1 indicate, well, you didn't say or do anything during
2 this period of time, if he calls into question
3 something that prompts that, why wouldn't his
4 response be that, you know, I was precluded from
5 doing anything because of my condition?

6 MR. SAVAGE: I think it would.

7 THE COURT: Well, I mean, what stops the
8 state from doing that?

9 MR. SAVAGE: From asking him why he
10 didn't give the statement he's giving today?

11 THE COURT: What happened between the
12 period of this and that, and why wasn't anything
13 said.

14 MR. SAVAGE: Because he has no obligation
15 to say anything, number one. Number two, he was
16 incapable and not competent to make a statement at
17 the time.

18 THE COURT: All right. Why was he not
19 competent to make a statement, medically?

20 MR. SAVAGE: Medical reasons.

21 THE COURT: What was the medical reason?

22 MR. SAVAGE: I believe he was suffering
23 from concussions. He was hospitalized -- excuse me.
24 He was taken to a hospital.

25 MS. KNEESE-SHEALY: Your Honor, as I

1 understand it, he was taken to the hospital or told
2 to take some Tylenol for his headache and put some
3 ice on his abrasions. It was nothing that amounted
4 to his not being able to speak or to address anyone.

5 THE COURT: What was the other case you
6 cited? Under *Weston*, I don't see why *Weston* says
7 much about it.

8 MS. KNEESE-SEALY: *Jenkins vs. Anderson*,
9 Your Honor, *Fletcher vs. Weir*, and *State vs. Bell*.
10 And, Your Honor, do you want me to continue regarding
11 the case law?

12 THE COURT: Go ahead.

13 MS. KNEESE-SHEALY: In essence, what the
14 case law sets forth is: A person is entitled to
15 Miranda warnings, and once the Miranda warnings are
16 read, it would then be inappropriate, if they chose
17 to remain silent, to then comment on their silence,
18 but these cases draw the distinction between that
19 time period prior to the Miranda warnings being read.

20 And, Your Honor, Mr. Savage has made an
21 issue in this case regarding the absence of a search
22 of the victim's vehicle. And, certainly, had
23 Mr. Rocquemoire indicated at the scene that evening to
24 the officers who were present, prior to the Miranda
25 warnings being read, what I am assuming his version

1 is going to be today in court, perhaps that would
2 have been handled differently. So Mr. Savage has
3 also made that time period an issue.

4 THE COURT: Have you looked at *State vs.*
5 *Weston*, Mr. Savage?

6 In *Doyle vs. Ohio*, the United States
7 Supreme Court held that the due process clause in the
8 Fourteenth Amendment is violated when a state
9 prosecutor seeks to impeach a defendant's exculpatory
10 story, told for the first time at the trial, by
11 cross-examining him about his post-arrest silence
12 after receiving Miranda warnings.

13 *Doyle* also prohibits the state from
14 commenting upon the defendant's request for an
15 attorney.

16 The rationale for *Doyle* is that it would
17 be a violation of due process to allow comment on the
18 silence when Miranda warnings have been -- have been
19 encouraged.

20 Subsequent to *Doyle*, in *Fletcher vs.*
21 *Weir*, 455 U.S. 603, the Supreme Court clarified that
22 *Doyle* was applicable only in situations in which the
23 government had induced, via Miranda warnings, a
24 defendant's belief that his exercise of a
25 constitutional right would not be used against him.

1 In the absence of the sort of affirmative
2 assurances embodied in the Miranda warnings, we do
3 not believe that it violates due process of law for a
4 state to permit cross-examination as to post-arrest
5 silence when a defendant chooses to take the stand.

6 And that goes back to what my initial gut
7 reaction was when we talked about it at pretrial.
8 And if he takes the stand, I'm not sure what the
9 issue is.

10 MR. SAVAGE: Beg the Court's indulgence.

11 (Mr. Savage and the defendant confer.)

12 THE COURT: And she is specifically
13 talking about a period of time before that all took
14 place. Is that correct?

15 MS. KNEESE-SHEALY: That's correct,
16 Your Honor. And the way I thought I could handle it
17 when cross-examining Mr. Rocquemore is to specify
18 those time periods so we don't spill over to
19 post-Miranda.

20 THE COURT: I mean, they went on,
21 Mr. Savage, to say that *Doyle* is simply inapplicable.
22 Unlike *Doyle*, in this case, the person was not under
23 arrest at the time they told him he needed a lawyer
24 nor had he been given Miranda warnings. Under
25 *Fletcher*, it is clear that *Doyle* is inapplicable to

1 reference to his statement to his friend. And they
2 cite another jurisdiction for that, too. That was
3 2006.

4 MR. SAVAGE: I understand the Court's
5 ruling, Your Honor.

6 THE COURT: All right.

7 MR. SAVAGE: I take exception to it, and
8 I'd like explain the exception ---

9 THE COURT: Yes, sir.

10 MR. SAVAGE: --- in case it becomes an
11 issue.

12 THE COURT: Yes, sir.

13 MR. SAVAGE: The exception would be based
14 on the encouragement of law enforcement to delay,
15 intentionally delay. And I'm not saying it was done
16 in this case. The extent of the public policy
17 argument would be that the delay in interrogation can
18 afford them that opportunity of cross-examining him
19 on his pre-Miranda silence.

20 So I believe if Miranda is a
21 constitutional right, which I believe it is now, that
22 that would be in violation of that, because it would
23 encourage a period of time before he's given an
24 opportunity to exercise his Miranda rights when he
25 knows that he is entitled to Miranda and is silent on

1 that basis.

2 But I understand the Court's ruling.

3 THE COURT: Well, I mean, but that's a
4 different spin on it, if you're saying that law
5 enforcement intentionally chose a course of conduct
6 to induce him?

7 MR. SAVAGE: I don't know that they did
8 or not, but certainly that's a public policy issue.

9 They interviewed everybody else at the
10 scene. They interviewed everybody else immediately.
11 In fact, they couldn't photograph, they say, one of
12 them because they are busy interviewing him.

13 And they had that opportunity. It's not
14 that they didn't have the opportunity to interrogate
15 him at the scene. They chose not to. That was not a
16 Rocquemore choice.

17 THE COURT: Well, my concern, to
18 interrupt you, is when you say you don't know whether
19 they did or not.

20 MR. SAVAGE: Correct.

21 THE COURT: If you don't know whether
22 they did or not, I do not either, and there is
23 nothing then postured for the Court as far as
24 testimony is concerned.

25 MR. SAVAGE: The posturing is that they

1 interviewed everybody else at the scene. He was
2 obviously kept there at some time. They photographed
3 him at the scene. They could have interviewed him at
4 the scene and said "what happened?" They chose not
5 to do that. And I'm not attributing any ill motive
6 on their part, but if the Court's ---

7 THE COURT: Well, what I was asking you,
8 are you telling me there is a sufficient basis in the
9 record for all of those statements, or does testimony
10 need to be presented on that issue?

11 MR. SAVAGE: If we're allowed to, we
12 would seek to present testimony. I'm not saying what
13 the testimony would be. I'm hopeful. But I would --
14 I would like to further the record-building by
15 questioning the detectives.

16 THE COURT: She's prepared to offer that
17 testimony.

18 MS. KNEESE-SHEALY: I have one detective
19 here, Your Honor. I don't have all the first
20 responding officers here. Would you like for me to
21 begin with ---

22 THE COURT: That's fine.

23 MS. KNEESE-SHEALY: --- okay, with the
24 detective that's here? We would call Detective
25 Stanley to the stand.

1 DETECTIVE DONALD G. STANLEY,
2 being first duly sworn by the clerk, is examined and
3 testifies as follows:

4 THE CLERK: If you'll please state your
5 full name and spell your last name.

6 THE WITNESS: Donald Gene Stanley,
7 S-T-A-N-L-E-Y.

8 DIRECT EXAMINATION (IN CAMERA)

9 BY MS. KNEESE-SHEALY:

10 Q. Detective Stanley, would you advise the Court,
11 please, where you were employed on August 14th, 2005?

12 A. Charleston County sheriff's office.

13 Q. And what was your position then?

14 A. Detective.

15 Q. What is your connection with the case of The
16 State vs. David Rocquemoire?

17 A. I'm the case agent for this case.

18 Q. And did you appear at the scene the morning in
19 question, that being August 14th, 2005?

20 A. Yes, I did.

21 Q. Do you recall what time you got there?

22 A. I don't recall. I was in Mount Pleasant
23 interviewing somebody else on a separate case when
24 the call went out. I transported them to their
25 residence in Charleston National, and then I

1 responded to the scene.

2 Q. I need you to speak up just a little bit.

3 A. Sure.

4 Q. I'm having a little hard time hearing you.

5 When you arrived at the scene, where was David

6 Rocquemore?

7 A. He was in the back of a patrol car.

8 Q. And could you describe for the Court what you

9 did at the scene prior to, in fact, giving

10 Mr. Rocquemore his Miranda warnings?

11 A. At the scene, we established the number of

12 people that we had there that needed to be

13 interviewed, went ahead and got supervisors and

14 detectives in route to assist in doing that. Had

15 crime scene units in route.

16 Q. Had the crime scene what?

17 A. Units in route to the scene. After they

18 arrived, we went ahead and start taking photographs

19 of Mr. Rocquemore, obtain a GSR kit. And we then

20 decided that we were going to transport him back to

21 our station, and at that point we advised him of his

22 Miranda rights and go ahead and start the interview

23 process.

24 One other thing. I mean, we did try to

25 expedite getting him back to the station. We even

1 ran blue lights and sirens while on 26 to -- to get
2 through traffic.

3 Q. Okay. When you indicate that you intended to
4 take him back to the station, what was the purpose of
5 taking him back there?

6 A. To get him in a proper interview environment.
7 There were a lot of people still at the scene. The
8 scene was, in some respects, a hostile environment
9 for him to be in with some of the other people that
10 were there that had been involved in this incident.
11 And at that time, they were unaware that the victim
12 had -- had expired, and we didn't want them to find
13 that out when he was there.

14 Q. Okay. And of the various things you said were
15 occurring at the scene, whose role was it to oversee
16 all of that?

17 A. As the case agent, I basically directed a lot
18 of who we wanted to get to come to the scene as far
19 as interviewing and whatnot. In actuality, the top
20 ranking supervisor would have been Lieutenant Tittle,
21 and he would have overseen everything.

22 Q. Was there any effort on your part to delay
23 questioning Mr. Rocquemoore?

24 A. Not at all.

25 Q. And where were you when you actually gave him

1 his Miranda warnings?

2 A. At my office in my interview room.

3 Q. And what time was it that those were read to
4 him?

5 A. 6:05 a.m.

6 MS. KNEESE-SHEALY: Beg the Court's
7 indulgence one moment.

8 I have no further questions. Answer any
9 Mr. Savage may have.

10 THE WITNESS: Sure.

11 CROSS-EXAMINATION (IN CAMERA)

12 BY MR. SAVAGE:

13 Q. Good afternoon, sir.

14 A. Good afternoon.

15 Q. You may have already testified to this, and I
16 wasn't listening as closely as I should have. What
17 time did you arrive at the scene?

18 A. I'm not sure of the exact time. As I -- I was
19 in Mount Pleasant interviewing somebody on an
20 unrelated case when this occurred, and I was at our
21 substation which is over off the Isle of Palms
22 Connector at that time. I transported that person
23 back to Charleston National, dropped them off at
24 their residence, and then I responded to Woodside
25 Manor.

1 Q. So you were in Mount Pleasant, went to the
2 Isle of Palms, went to Charleston National before you
3 went to ---

4 A. I was -- when the call went out, I was at our
5 substation at the Isle of Palms Connector. And I
6 take -- I took the victim in that case back to
7 Charleston National, then I responded via 526 back
8 over to I-26 and up to Woodside. I would estimate
9 probably 30 minutes, 35 minutes.

10 Q. During the time period that Mr. Rocquemore was
11 at the scene prior to your arrival, do you know where
12 he was?

13 A. The best of my -- prior to my arrival?

14 Q. Yes, sir.

15 A. Prior to my arrival, the best of my knowledge,
16 he was in the back of a patrol car, but...

17 Q. And who was in that patrol car?

18 A. As far as I know, he was. By himself.

19 Q. And do you know how -- what length of period
20 of time he was detained, arrested, handcuffed, and
21 placed in the back of the patrol car by himself prior
22 to your arrival?

23 A. I would assume as soon as the deputies got on
24 the scene that they handcuffed him and put him in a
25 patrol car. And from what I know of the video, the

1 in-car video, the deputies out there were trying to
2 maintain the scene and protect the crime scene. So I
3 would assume he was sitting by himself in the car the
4 entire time.

5 Q. So the entire time from the time he was
6 arrested till the time you arrived on the scene, he
7 was in the back of a patrol car by himself?

8 A. The best of my knowledge. I can't testify to
9 something I didn't witness.

10 Q. Now, how long after you arrived did you remove
11 him from the scene?

12 A. I would estimate probably -- probably 30 to 45
13 minutes.

14 Q. And during the time period in which you arrive
15 at the scene, did the EMS attend to him while you
16 were there?

17 A. EMS did respond. They checked him, and they
18 said there was nothing wrong with him, and they
19 cleared the scene.

20 Q. And how long a period of time would that have
21 been?

22 A. Period of time when what would have been?

23 Q. In which he was in custody -- not in custody,
24 but how long was he under the care and the
25 observation of the medical personnel?

1 A. I am not sure.

2 Q. Who transported him from the scene to a better
3 place to interview him?

4 A. One of our deputies, I'm not sure which. I
5 believe it was possibly Deputy Moniz, and Lieutenant
6 Scarborough followed behind him, and I followed
7 behind Lieutenant Scarborough.

8 Q. Were you the one who questioned him at the
9 headquarters?

10 A. I provided his Miranda warnings at
11 headquarters. I never questioned him.

12 Q. And why didn't you question him?

13 A. Because he decided he would have the presence
14 of an attorney. At that time I tried to ---

15 THE COURT REPORTER: Excuse me. Please
16 repeat that.

17 THE WITNESS: At that time he requested
18 the presence of an attorney.

19 BY MR. SAVAGE:

20 Q. And prior to the time he requested to speak
21 with his attorney, why did you stop questioning him?

22 A. I'm not sure I understand the question.

23 MR. SAVAGE: May I approach, Your Honor?

24 THE COURT: Yes, sir.

25 BY MR. SAVAGE:

1 Q. Are these your handwritten notes of your
2 interrogation of Mr. Rocquemore?

3 A. Yes, sir.

4 Q. What time did he ask for his attorney?

5 A. 6:12.

6 Q. What time did he -- what time did you stop
7 questioning him to contact EMS?

8 A. That would be at 6:11.

9 Q. So prior to his invoking his Miranda rights,
10 you stop the interrogation to seek medical help?

11 A. Yes, sir.

12 Q. And in your report, you indicated that his --
13 his health was going downhill and that's why you --
14 why you called EMS?

15 A. I wouldn't say his health was going downhill.
16 He complained that his head was hurting, so I
17 summoned EMS.

18 Q. What time was he photographed at the scene of
19 the crime?

20 A. I have no idea what time it was.

21 Q. Do you know who photographed him?

22 A. I believe that would have been Investigator
23 Owen, but I'm not sure.

24 Q. Do you know what time Investigator Owen
25 arrived at the scene of the crime?

1 A. No, I do not.

2 Q. But that would be reflected on the scene log;
3 would it not?

4 A. It should be, yes.

5 MR. SAVAGE: May I approach, Your Honor?

6 THE COURT: Yes, sir.

7 BY MR. SAVAGE:

8 Q. Is Detective Owen 9608?

9 A. I'm not sure what his -- that is him.

10 Q. And what time did he arrive?

11 A. It says he arrived at 4:58.

12 Q. Did anybody question him at that time?

13 A. Not to my knowledge, no, sir.

14 Q. What time did the other detectives arrive?
15 Detective Smith?

16 A. I would have to look at the crime scene log.
17 I don't know off the top of my head. I know
18 Detective Smith wasn't far behind me because she had
19 been assisting me on the case in Mount Pleasant.

20 Q. Was Detective Smith the first detective who
21 arrived on the scene?

22 A. I believe there's also a page two of this.

23 Q. Well, it's in chronological order; is it not?

24 A. No. I see here there are times that are not
25 in chronological order.

1 Q. So crime scene logs, is it your testimony that
2 crime scene logs are not kept in chronological order?

3 A. Typically, they are kept in chronological
4 order.

5 Q. Is there anything out of chronological order
6 on the page that I've shown you?

7 A. Some of the times are not in chronological
8 order.

9 Q. Such as?

10 A. Such as when EMS arrived for the suspect.
11 They have it listed on here before Lieutenant
12 Scarborough is listed on here.

13 Q. And what time is that?

14 A. EMS?

15 Q. Whichever one's out of order.

16 A. They have EMS listed at 4:45 and Lieutenant
17 Scarborough listed at 4:29.

18 Q. And what time does it have Detective Smith
19 arrive?

20 A. 4:32.

21 Q. Do you have any reason to believe that that's
22 inaccurate?

23 A. No, sir.

24 Q. And when was the second officer, what time did
25 they arrive? The second detective, I'm sorry,

1 Detective ---

2 A. I believe it also said 4:32. 4:32 is what it
3 says.

4 Q. And did Detective Smith participate in taking
5 statements that night?

6 A. She did, yes.

7 Q. And was she the first detective to take a
8 statement?

9 A. I don't know who the first detective to take a
10 statement was, but I do know that she initiated
11 taking statements from some of the witnesses out
12 there.

13 Q. And did she question the suspect, as you've
14 identified him, Mr. Rocquemoire?

15 A. No, not to my knowledge, no, sir.

16 Q. Is there anything that prevented her from
17 questioning Mr. Rocquemoire at that time?

18 A. Only the fact that we were establishing the
19 crime scene, what needed to be protected, attempting
20 to identify who all the witnesses were, and how
21 many people we were going to need to interview
22 people.

23 Q. Is there one other interview, one other
24 interview that took place outside the crime scene?

25 A. I don't know who you're referring to.

1 Q. Did you interview Mr. Dexter Brown?

2 A. I didn't interview Mr. Dexter Brown, no, sir.

3 Q. Now, Detective, I don't want to be picking at
4 you, and I don't really mean in any way to be
5 disrespectful, but my understanding is you're the
6 head investigator in this case.

7 A. Correct.

8 Q. And if you don't know, you certainly have the
9 opportunity to look in your file and answer these
10 questions. These are not difficult questions.

11 A. Correct.

12 Q. Where was Dexter Brown interviewed?

13 A. He was interviewed at the scene.

14 Q. Where was Troy Eason interviewed?

15 A. The best of my knowledge, at the scene.

16 Q. Where was Mr. Ronald Gibbs interviewed?

17 A. At the scene.

18 Q. Where was Mr. Rodney Gibbs interviewed?

19 A. At the scene.

20 Q. Where was Mr. David Rocquemoire attempted to be
21 interviewed?

22 A. At our office.

23 Q. As the results of the interviews of Mr. Eason,
24 Mr. Ronald Gibbs, Mr. Rodney Gibbs, Mr. Dexter Brown,
25 did you ever return to a third location or a second

1 location to interview them to further investigate the
2 statement that they had given you?

3 A. Detective Boyd followed up on investigation on
4 -- on statements with them.

5 Q. Pardon me?

6 A. Detective Boyd followed up on statements with
7 several of these people at the scene. I don't know
8 where at at the scene.

9 Q. But did he ever go to their homes or anything,
10 or did he call these witnesses to the workplace there
11 at the headquarters to interview them?

12 A. Not those particular witnesses, no.

13 Q. And those were the witnesses who were there
14 present at the time of the shooting?

15 A. Yes, sir.

16 Q. How about that guy Timothy somebody -- was it
17 Timothy? Chris Thomas. Where is he interviewed?

18 A. Mr. Thomas, I believe, was interviewed at the
19 scene.

20 Q. So everybody is interviewed at the scene
21 except that somebody decided not to interview
22 Mr. Rocquemore at the scene?

23 A. It was my decision not to interview
24 Mr. Rocquemore at the scene because the scene could
25 have been become very hostile. He could have, in

1 turn, became a victim while we were there if they
2 would have found out that the victim in this case was
3 deceased.

4 Q. Thank you.

5 A. I did it for safety purposes.

6 MR. SAVAGE: Thank you, sir.

7 MS. KNEESE-SHEALY: I have no further
8 questions.

9 THE COURT: You may step down, sir.

10 THE WITNESS: Thank you.

11 (The witness leaves the witness stand.)

12 MS. KNEESE-SHEALY: I have nothing
13 further.

14 THE COURT: Any further argument?

15 MR. SAVAGE: Number one, Judge, they had
16 an opportunity to interview him at the scene. They
17 chose not to do that. For whatever reason they did,
18 it's inconsistent if they're interviewing Mr. Thomas
19 and the others.

20 Number two, he apparently wasn't with
21 anybody at the time they claim he was silent. Unless
22 he was talking to himself, there was no one else to
23 talk to.

24 THE COURT: Well, where is the type of
25 assurance that they're looking for that that would

1 not be used against him that underlie -- underlies
2 this policy in these cases?

3 MR. SAVAGE: Provided by the state?

4 THE COURT: Yeah.

5 MR. SAVAGE: I would just say, Judge,
6 there's an evolution in this. You know, Chief Judge
7 Karen Henderson tried to do away with Miranda not
8 very long ago. They took a back swing on that since
9 that attempt, where Miranda is now much more grounded
10 in constitutional law.

11 And it's not uncommon for civilians to
12 know their Miranda rights. It's something that we
13 see daily. They read about it daily, and they see it
14 on TV. It's on entertainment shows. It's on news
15 shows. And we would say that he was possessive of
16 that knowledge at that time.

17 THE COURT: We would "say"?

18 MR. SAVAGE: And for the limited purpose
19 of asking him his knowledge of that area, Your Honor,
20 I would call Mr. Rocquemore to the witness stand.

21 THE COURT: Present whatever you need to
22 present during this in-camera hearing. But, again,
23 like I keep saying, the record is the record. We
24 can't "say" what the record is.

25 MR. SAVAGE: David Rocquemore.

1 DAVID ROCQUEMORE,
2 being first duly sworn by the clerk, is examined and
3 testifies as follows:

4 THE CLERK: Be seated.

5 THE COURT: Let me just advise you of
6 something, sir. Do you understand you don't have to
7 testify in any way whatsoever?

8 THE WITNESS: Yes, sir.

9 THE COURT: Also, do you understand that
10 although this is a -- you may take your seat -- this
11 hearing is being offered just for a limited purpose
12 and cannot be used against you if you do not testify.

13 If you, nevertheless, decide to testify
14 during the trial and you say anything here now that's
15 inconsistent with your testimony at trial, it can be
16 used against you.

17 Do you understand that?

18 THE WITNESS: Yes, sir.

19 THE COURT: Do you wish to proceed?

20 THE WITNESS: Yes, sir.

21 THE COURT: All right. Go ahead.

22 THE CLERK: Please state your full name
23 and spell your last name.

24 THE WITNESS: David Rocquemoire,
25 R-O-C-Q-U-E-M-O-R-E.

1 DIRECT EXAMINATION (IN CAMERA)

2 BY MR. SAVAGE:

3 Q. Do you remember being taken into custody by
4 the police department on August 14th?

5 A. Yes, sir.

6 Q. Was your memory clear at that time? Tell me
7 what your physical and mental condition was at that
8 time.

9 A. At the time, sir, my memory and my mental
10 state was -- it was -- I'm not going to say depleted,
11 but I didn't have full use of it due to the fact that
12 I had severe blows received to the head, and it was
13 just a -- a terrible situation that I was in.

14 Q. We're going to get into that. But from the
15 time that you hit the ground to the time you were in
16 the patrol car, do you have a clear memory of that?

17 A. No, sir.

18 Q. When you were in the patrol car, did anybody
19 approach you that you recall?

20 A. No, sir.

21 Q. Do you remember being photographed?

22 A. No, sir.

23 Q. Now, prior to that date, were you aware of the
24 constitutional protections for people accused of
25 criminal activity?

1 A. Yes, sir.

2 Q. And tell the Court, if you will, your
3 understanding. Not now, not at the time of the
4 incident, but prior to the incident.

5 A. Prior to the incident, I have an aunt that's a
6 veteran of a police department, and I was always told
7 if a situation may arise that you just don't say
8 anything until, you know, you've got an attorney
9 present.

10 Q. Is that aunt present in the courtroom today?

11 A. Yes, sir.

12 Q. Would you point her out to the Court?

13 A. I can't see her back there, sir.

14 Q. How long was she ---

15 A. She -- she's right there. I can see her.

16 Q. How long was she in law enforcement?

17 A. For twenty-plus years, sir.

18 MR. SAVAGE: Kindly answer any questions
19 the prosecutor might have about this aspect of the
20 case.

21 THE WITNESS: Yes, sir.

22 MS. KNEESE-SHEALY: I have no questions,
23 Your Honor.

24 THE COURT: You may step down, sir.

25 Thank you.

1 (The witness leaves the witness stand and
2 returns to defense counsel table.)

3 THE COURT: Anything further?

4 MR. SAVAGE: That's all we have.

5 THE COURT: All right. I'm still not
6 convinced, in the absence of some type of affirmative
7 or implicit assurance such as that found in Miranda
8 and in policies that underlie that type of implicit
9 assurance that is found as the lynchpin of the
10 Miranda analysis, that -- that the state would be
11 precluded from cross-examining a defendant who
12 voluntarily takes the stand on any post-arrest
13 silence.

14 The *Weston* case seems to support that
15 analysis. The *Bell* case seems to support that
16 analysis and does not even use arrest as a guiding
17 dispositive factor. So it's the assurance of it that
18 seems to trigger their concerns of the policy
19 underlying these cases post-*Doyle*.

20 So I will allow it. Anything further?

21 MR. SAVAGE: Judge, would there be any
22 parameters on that, Judge? I'm not sure what exactly
23 would be the silent period.

24 THE COURT: Well, I understood from the
25 state that it's a period from approximately 4:00 to

1 6:00. Is that what you...

2 MS. KNEESE-SHEALY: 4:05 to 6:05.

3 THE COURT: 4:05 to 6-0...

4 MS. KNEESE-SHEALY: 05, Your Honor.

5 THE COURT: 6:05. That's what she
6 indicated earlier, 4:05 to 6:05.

7 MR. SAVAGE: Thank you.

8 THE COURT: Anything in regard to that
9 time period?

10 MS. KNEESE-SHEALY: Your Honor, I have
11 two other matters regarding the cross of
12 Mr. Rocquemore.

13 On the morning of August 14th, he was
14 taken to the hospital. I have a good faith basis to
15 believe that he was using marijuana, Your Honor, the
16 evening in question, and I do intend to ask him about
17 that.

18 THE COURT: All right. Any matters
19 pertaining to that?

20 MR. SAVAGE: That's the first I've heard
21 of it, Your Honor.

22 THE COURT: Pardon me?

23 MR. SAVAGE: That's the first I've heard
24 of it.

25 THE COURT: All right. Well, that's...

1 MR. SAVAGE: If they have a legal urine
2 sample, a urine-drug sample that they have obtained
3 lawfully, then I think we should address that. And I
4 don't believe ---

5 THE COURT: Well, let me stop you with
6 that. I thought you indicated at pretrial that
7 you're not going to go into the issue of marijuana
8 use.

9 MS. KNEESE-SHEALY: In the case in chief,
10 Your Honor.

11 THE COURT: In the case in chief?

12 MS. KNEESE-SHEALY: Yes, Your Honor.

13 THE COURT: Well, why would that not be
14 part of the same set of circumstances? Their proof
15 would be, if they ask him, they're stuck with his
16 answer, unless other witnesses who testify to the
17 same extent, Mr. Savage.

18 But why would the use of marijuana be any
19 different than the use of alcohol if you're relating
20 setting forth the grounds involved in what was
21 transpiring at that moment?

22 MR. SAVAGE: They say they have a good
23 faith reason to believe that. I'm not aware of what
24 that good faith reason would be.

25 MS. KNEESE-SHEALY: Your Honor, he's

1 been provided with a copy of the records from
2 Bon Secours/St. Francis Hospital where
3 Mr. Rocquemoire's urine sample was taken. The lab
4 reports reflects a positive testing result from that.
5 And let me spell it because I'm not sure of the
6 pronunciation of it, C-A -- C-A-N-N-A-B-I-N-O-I-D.

7 THE COURT: All right.

8 MR. SAVAGE: Now, let's assume that's
9 correct, and I don't know that it is or it isn't,
10 that doesn't mean he was smoking marijuana that
11 night. That means he was smoking within 28 days.

12 What the state failed to say is they
13 issued a magistrate's subpoena, which is a nullity in
14 the law in South Carolina, to obtain those records.

15 They have failed to tell the Court that
16 that's not a medical -- that it's a medical test,
17 not a forensic test that was blood and urine or
18 whatever.

19 So if they're going to go into that and
20 question about it, then I have to call some physician
21 in here or toxicologist, whatever, saying he could
22 have been smoking three weeks, three-and-a-half
23 weeks, four weeks before that.

24 It gets into speculation and conjecture.

25 THE COURT: Well, during two or three

1 weeks before, that's true, but what -- is the issue
2 whether or not someone was smoking the night in
3 question?

4 MS. KNEESE-SHEALY: I think that in that
5 Mr. Savage has been consistently indicating that his
6 client was not drinking, that I have a good faith
7 basis to ask his client was he smoking marijuana.

8 We're not talking about the admission of
9 the document itself. We're asking whether or not I
10 can cross-examine him accordingly.

11 THE COURT: What stops her from asking if
12 people were using drinking or if people were using
13 drugs at the party?

14 MR. SAVAGE: If he says no, that's the
15 end of it.

16 THE COURT: That's exactly what I said,
17 Mr. Savage. That's exactly what I said. Unless
18 there's some witnesses that say otherwise, they're
19 stuck with his answer.

20 MR. SAVAGE: When you said witnesses, I
21 thought you meant medical records, and I apologize.

22 THE COURT: Well, I think in the normal
23 course of exploring all of the circumstances, it's
24 proper fodder for cross-examination in light of your
25 questions thus far: Yeah, were people drinking?

1 people using drugs? What was going on? Was it
2 hostile; was it not? I mean, those are all
3 circumstances of the whole self-defense concept,
4 also.

5 MR. SAVAGE: What I wouldn't want them to
6 do is to take some document and say explain this.

7 THE COURT: I don't think that they're
8 going to be able to use that document that way
9 without a proper foundation. I'll just leave it at
10 that at this point.

11 MR. SAVAGE: Thank you.

12 MS. KNEESE-SHEALY: And, Your Honor, one
13 remaining issue is, there was a marijuana cigar found
14 in the defendant's car, and I also intend to question
15 him regarding that.

16 THE COURT: Okay. Are you going to ask
17 him first was anyone using it at the party? Was he
18 using it -- doing it in the car?

19 MS. KNEESE-SHEALY: I intend to ask him
20 about his use of it, Your Honor.

21 THE COURT: I understand.

22 MS. KNEESE-SHEALY: I don't think there's
23 any -- I don't have a good faith basis to ask whether
24 anybody else was using it.

25 THE COURT: Then if he says no, you're

1 stuck with that answer.

2 MS. KNEESE-SHEALY: I understand that.

3 THE COURT: Okay.

4 MS. KNEESE-SHEALY: And so the same
5 applies, Your Honor, to the marijuana cigar?

6 THE COURT: Well, if he says that he was
7 not -- and I'll hear what opposing counsel has to say
8 -- but if he denies something that was in fact true,
9 then that's a whole other basis for admission.

10 MR. SAVAGE: The only thing that's
11 relevant is if the cigar were being used that night.

12 THE COURT: I agree. That's why I asked
13 if she was first going to ask him if he used it.

14 MR. SAVAGE: They can't say were you
15 carrying marijuana around with you. The question is,
16 were you using marijuana that night.

17 If he had a cigar in his glove box or
18 wherever it was and it had no relevance to the issues
19 before the Court at the time, it's not relevant.

20 And we would object to any imposition
21 beyond -- if they say was everybody smoking marijuana
22 that night, were you smoking that night, was
23 Mr. Brown smoking, whoever, whatever that answer is,
24 then it may or may not open up the next question.
25 But if the answer is no, it's closed. They can't go

1 on and say did you have a stogie in your car.

2 THE COURT: Anything else?

3 MS. KNEESE-SHEALY: Your Honor, I think
4 that I am entitled to ask him were you smoking
5 marijuana that evening. Even if he says no, I
6 think I'm then -- I am then able to ask him did you
7 have a marijuana cigar in your automobile that
8 evening.

9 MR. SAVAGE: There's no relevance.

10 THE COURT: Well, how does that show that
11 he was smoking?

12 MS. KNEESE-SHEALY: Well, Your Honor, for
13 -- for impeachment purposes, I think the jury can
14 draw their own conclusion. If he's asked whether he
15 smoked any and he says no, I think I'm at least
16 entitled to say did you have a marijuana cigar in
17 your vehicle.

18 MR. SAVAGE: If he had smoked it, if
19 there was an aroma in the car, if there were ashes in
20 the car, if his clothing smelled like marijuana, if
21 he was acting like he had smoked marijuana, whatever,
22 but there's nothing -- there's nothing that relates
23 marijuana to this incident. All it is, is an attack
24 on his character.

25 THE COURT: Yeah, I'm inclined to think

1 that once it makes that shift over to that, then
2 you're going to need to have some -- to have some
3 kind of clear and convincing evidence to demonstrate
4 that that took place.

5 MS. KNEESE-SHEALY: I'm sorry, I didn't
6 hear the last ---

7 THE COURT: I think that once you make
8 that shift to where it becomes a character analysis,
9 to make that kind of leap, you're going to have to
10 have clear and convincing evidence to be able to make
11 that analysis.

12 MS. KNEESE-SHEALY: Well, Your Honor,
13 just to make sure my point is clear, if I ask him did
14 you smoke marijuana that evening and he says no, I
15 think that in that this is cross-examination I am
16 entitled then to ask whether or not he had marijuana
17 in that vehicle because he -- that the jury should be
18 entitled to hear that, if he denies it and yet there
19 is a marijuana cigar in his car. He still can answer
20 the question however he chooses to answer the
21 question.

22 THE COURT: Well, you're trying to
23 suggest that because it was in the car he was smoking
24 it that evening.

25 MS. KNEESE-SHEALY: I don't know the

1 answer to that, Your Honor, but I certainly think if
2 he just -- if he were to say no, and I don't know
3 that he is going to say no, that I -- I mean, there's
4 no question there was a marijuana cigar in the
5 vehicle. If he then says no, there was not a
6 marijuana cigar in the vehicle, then I'm put in a
7 position ---

8 THE COURT: Had it been used or lit or
9 whatever the word is for it?

10 MS. KNEESE-SHEALY: I don't know, Your
11 Honor. I don't know.

12 THE COURT: I mean, well, some of that
13 would be important to know.

14 MS. KNEESE-SHEALY: I beg the Court's
15 indulgence just one moment.

16 (Ms. Kneese-Shealy and Mr. Durant
17 confer.)

18 MS. KNEESE-SHEALY: And I apologize, Your
19 Honor. What was your last question?

20 THE COURT: Was there -- I mean, did it
21 look like it -- I don't know that you can tell these
22 things.

23 MS. KNEESE-SHEALY: Well, I don't know
24 either, Your Honor.

25 THE COURT: Was it recently used or lit

1 or half-burned or whatever the magic language is?
2 I'm sorry, it's not even my terminology here, so...

3 MS. KNEESE-SHEALY: Yes, sir. I'm
4 not sure that you can tell by looking at it whether
5 it had been used. I think I am entitled to ask
6 him if he used it.

7 THE COURT: Well, if you can't tell that
8 it had been used, then I can't say that it's
9 appropriate to make the linkage that it was done on
10 that night in question.

11 MS. KNEESE-SHEALY: Well, it's present in
12 his vehicle.

13 THE COURT: You're using it ---

14 MS. KNEESE-SHEALY: And he has it.

15 THE COURT: You're using it only for the
16 purpose that he had something in the past that
17 suggests he was doing it that evening and that that
18 converts it into a clear and convincing analysis, and
19 I'm not prepared to do that.

20 If you told me it was half-smoked or
21 whatever the word is and looked like it had been used
22 on the evening in question -- if that can even be
23 ascertained, I don't know -- that's different.

24 MS. KNEESE-SHEALY: Well, it would be
25 just ---

1 THE COURT: That's different.

2 MS. KNEESE-SHEALY: Your Honor.

3 THE COURT: You know, if it was unused,
4 it does not lend itself to the inference that you
5 wish to make that he had used it on the evening in
6 question.

7 MS. KNEESE-SHEALY: But, Your Honor, if I
8 cannot tell, it doesn't lend itself that it wasn't
9 used.

10 THE COURT: Well, but it does beg the --
11 what it begs us to do is to ask whether someone else
12 can tell, not that you or I can tell.

13 (Ms. Kneese-Shealy and Mr. Durant
14 confer.)

15 MS. KNEESE-SHEALY: Your Honor, we have
16 looked at the item notes, and the detective has
17 advised me that it does not look like it has been
18 used.

19 THE COURT: Well, I don't think it lends
20 itself well to that inference then, and I'll let you
21 ask him if anyone was using marijuana that night, or
22 drugs or whatever word, and ask him if he had been,
23 and you're stuck with his answer.

24 MS. KNEESE-SHEALY: Yes, sir.

25 THE COURT: All right.

1 MS. KNEESE-SHEALY: Thank you, Your
2 Honor.

3 THE COURT: Unless you -- I mean, I
4 assume you had an opportunity -- unless you have
5 other witnesses, you are free to ask them the same
6 thing, but -- who were there.

7 MS. KNEESE-SHEALY: Yes, sir. Thank you.

8 THE COURT: Are y'all ready?

9 MR. SAVAGE: Defense is ready.

10 MR. DURANT: Yes, sir, Your Honor.

11 THE COURT: Bring the jury in, please.

12 (Whereupon, the jury returns to the
13 courtroom at approximately at 3:55 p.m.)

14 THE BAILIFF: Your Honor, all jurors are
15 seated.

16 THE COURT: Thank you. Please be seated.
17 We're ready to proceed.

18 MR. SAVAGE: Yes, Your Honor. The
19 defense calls David Rocquemore.

20 DAVID M. ROCQUEMORE,
21 being first duly sworn by the clerk, is examined and
22 testifies as follows:

23 THE CLERK: Be seated. If you'll please
24 state your full name and spell your last name.

25 THE WITNESS: David Rocquemore,

1 R-O-C-Q-U-E-M-O-R-E.

2 DIRECT EXAMINATION

3 BY MR. SAVAGE:

4 Q. I'll say good afternoon even though we have
5 been sitting next to each other for a week and a
6 half, haven't we, Mr. Rocquemore.

7 A. Yes, sir.

8 Q. Early on August 14th, you and Mr. Brown went
9 to the store?

10 A. Yes, sir.

11 Q. And tell the jury, if you would, let's get
12 right to it, what happened when you returned.

13 A. Me and Dexter Brown came back from the store.
14 We then -- as we were approaching his house, I
15 decided to pull up directly behind Christopher
16 Thomas's vehicle.

17 At that time, I think -- I'm not sure the
18 young lady, but there was another young lady, and
19 there's a young lady in the vehicle that briefly said
20 something, you know, to Dexter as far as the incident
21 that had taken place, she had -- she pulled off.

22 After that, Dexter and myself, we then got out
23 of the vehicle and started to walk towards his house.
24 Christopher Thomas then met us at the -- at the end
25 of the driveway, and he begins to tell us ---

1 Q. Mr. Rocquemoire, if you would, if you'd say
2 this in pieces so the jury can absorb it. Is that
3 the same driveway that they've seen the pictures of
4 and that sort of thing? Put ---

5 A. Yes, sir.

6 Q. They haven't been there. So you've got to put
7 what you have into their minds slowly.

8 A. We began to walk towards Dexter Brown's
9 driveway, myself and Dexter. As we approached Dexter
10 -- Dexter Brown's driveway, Christopher Thomas then
11 began to explain to us what had taken place while we
12 -- while we were gone to the store.

13 Q. And at that point, where were y'all located?

14 A. We were standing at the driveway, close to the
15 street.

16 Q. While you were standing there, what happened
17 next, and how much time passed between the time you
18 got there and the next incident?

19 A. Well, while we were standing, Christopher
20 Thomas was explaining to Mr. Brown exactly what had
21 -- what had happened.

22 There -- there was -- not a revving of an
23 engine, but you could hear a vehicle coming down the
24 street, loud profanities and noises coming from the
25 vehicle. At that time, I noticed a truck, an SUV,

1 approaching us.

2 I then turned to Dexter and pointed, just
3 asked him, you know, if he knew -- if he knew who was
4 in the vehicle or if he knew the vehicle. And before
5 he even answered, I ---

6 Q. At that time, you were at the edge of the
7 driveway?

8 A. Yes, sir.

9 Q. And you're pointing at the vehicle coming down
10 the road?

11 A. Yes, sir.

12 Q. Describe that vehicle if you can. Was there
13 anything unusual about it?

14 A. Well, the lights on the vehicle was off, and
15 it was like -- it was the same SUV that we have been
16 seeing all the different pictures that the detectives
17 had the pictures of.

18 Q. That you have been seeing in court?

19 A. Yes.

20 Q. So you've pointed at this vehicle?

21 A. Correct.

22 Q. Does the vehicle stop?

23 A. Yes. The vehicle stops directly in front of
24 us. Upon the vehicle stopping, the doors come open,
25 two individuals come directly towards me in my

1 direction.

2 At that time, the two individuals that came to
3 me began to curse and scream, asking -- excuse my
4 language, but "Who the 'F' was I to point at their
5 truck, was I -- were I familiar with where I was at,"
6 and saying things like I didn't belong over here and
7 you better understand where you're at and things like
8 that.

9 Q. Did you watch the vehicle at that time, or did
10 you watch the people who were in front of you at that
11 time?

12 A. My attention was on the two individuals that
13 were directly in front of me.

14 Q. Do you know what was going on with other
15 people around you?

16 A. No, sir.

17 Q. Now, did that verbal confrontation escalate to
18 something more than that?

19 A. Well, the two individuals that approached me,
20 I'm not sure of the guys' name, one of the
21 individuals began to put his -- put his finger in my
22 face and poke my chest as he was continually cursing
23 and telling me I didn't belong there. At that time,
24 I knocked his hand away from me. Shortly after that,
25 he swung, he swung a punch. I took off running to my

1 vehicle, to my truck.

2 Q. Why were you running to your vehicle?

3 A. For protection, for cover, just I just wanted
4 to get away from those guys.

5 Q. And when you went to your vehicle, did anyone
6 follow you, or did you see anybody else around, or
7 did you know what else was going on?

8 A. I was being hit from behind and pulled and
9 just beat. I was just beat. I was being beat up.

10 Q. Now, did you -- you say you went to your
11 truck.

12 A. Yes.

13 Q. In the courtroom we call them vehicles, I
14 guess, but you went to your truck?

15 A. Yes, sir.

16 Q. And did you open the door?

17 A. Yes. I opened the door, and as I was trying
18 to get into my truck, I was then -- I was continuing
19 to be hit and pulled, prevented -- preventing me to
20 get to my truck.

21 I was -- I was able to get myself half into my
22 truck and just hold on to stay inside my truck with
23 the steering wheel and the console. At the same time
24 I was being hit and pulled, I continued to just swing
25 and kick.

1 MR. SAVAGE: May I approach, Your Honor?

2 THE COURT: Yes, sir.

3 BY MR. SAVAGE:

4 Q. Mr. Rocquemore, I want to stand about a short
5 distance away from you, and what I'd like to do is
6 try to give a visual for the jury, if they can see
7 and hear, about you trying to get into your truck.
8 The door would open...

9 A. Yes, sir.

10 Q. --- from right to left; is that correct?

11 A. Yes, sir.

12 Q. Then you would try to -- if you were going to
13 get in the car, you ---

14 MS. KNEESE-SHEALY: Your Honor, I have an
15 objection to the form of the question.

16 THE WITNESS: Yes, sir.

17 THE COURT: Rephrase that question,
18 Counsel.

19 BY MR. SAVAGE:

20 Q. Do you have a truck on your door?

21 A. Pardon me?

22 Q. Do you have a truck on your door?

23 A. You said a truck?

24 Q. Do you have a door on your truck? Excuse me.

25 A. Yes, sir.

1 Q. I'd better rephrase it. Did you try to open
2 the door?

3 A. Yes, sir.

4 Q. When you tried to open the door, what was the
5 purpose of opening the door?

6 A. So I could get inside of my truck and lock the
7 doors and pull off.

8 Q. And were you able to get in your truck?

9 A. No, sir, not completely.

10 Q. What prevented you from getting inside your
11 truck?

12 A. I was being beat up by two individuals, being
13 grabbed and -- basically, the attempt was, I guess
14 they were trying to drag me from my truck.

15 Q. Now, you apparently weren't dressed that night
16 like you are today?

17 A. Not at all, sir.

18 Q. And the photograph that the prosecutor showed
19 the jury, did that depict the type of clothing you
20 had on?

21 A. Yes, sir, relaxed clothes.

22 Q. Why don't you just refresh their memory with
23 what type of pants or shorts or whatever you had on.

24 A. Well, I just had on a basic white T-shirt, and
25 I had on some -- some cotton capris, like long

1 shorts.

2 Q. And as you were getting in the truck, was your
3 clothing being pulled?

4 A. Yes, sir.

5 Q. And did you try in any way to prevent yourself
6 from being pulled out of the truck?

7 A. Yes. Like I said ---

8 Q. Describe to the jury in some detail how you
9 did that.

10 A. Well, while I was being beaten and pulled, I
11 just continued to hold on to the steering wheel and
12 console of my truck. I just -- with my right hand
13 and my right leg. I just continued to just punch and
14 kick.

15 Q. Now, let's think about if you're behind a
16 steering wheel, which is right and which is left.
17 Were you trying to hold on with one side of your body
18 and to be ---

19 MS. KNEESE-SHEALY: Objection.

20 BY MR. SAVAGE:

21 Q. --- able to protect it on the other side?

22 THE COURT: Hold on. What's ---

23 MS. KNEESE-SHEALY: Object to the form.

24 BY MR. SAVAGE:

25 Q. How did you try ---

1 THE COURT: I'll allow that. Go ahead.

2 BY MR. SAVAGE:

3 Q. --- to protect yourself?

4 A. I held on with my right hand, and I just
5 fought for dear life with what's -- with the left
6 side of my body being all punched and kicked and...

7 Q. And it was the left side of your body that was
8 exposed?

9 A. Yes, sir.

10 Q. What did you do next, and why did you do what
11 you did?

12 A. Excuse me. I -- I continued to hold, to try
13 to keep myself inside of my vehicle. After a failed
14 attempt, I reached in my console and grabbed my
15 firearm. And I still didn't want to shoot nobody.
16 So they -- I was still being beaten and still being
17 pulled on. I was drug from my vehicle. And still
18 not wanting to shoot anybody, I made an attempt to --
19 to strike one or two individuals.

20 Q. When you got out of your vehicle, where was
21 the weapon? Where was the gun?

22 A. Well, I had it in my hand.

23 Q. And what was your intent at that time how to
24 use the gun?

25 A. Well, I just swung it. I mean, I just -- in

1 the heat of the moment, I -- I just grabbed it from
2 my console. I didn't know what direction it was in.
3 I just grabbed it to use it to strike. I just -- I
4 just wanted to hit one of the guys with it.

5 Q. Did you fire the weapon? Did you fire the gun
6 at that time?

7 A. No, sir.

8 Q. Explain to the jury your mindset at that time.
9 You have a gun in your hands. How would you use that
10 gun, and what reason did you use the gun?

11 A. When I grabbed my gun, as I said, I -- my
12 intention was never to shoot anybody. My intention
13 was to just -- I just tried to strike somebody with
14 it.

15 Q. Did you shoot the gun at that point?

16 A. No, sir.

17 Q. What did you do with the gun?

18 A. I made an attempt to -- to hit somebody with
19 it, and I dropped it.

20 Q. But why were you trying to hit somebody with
21 it?

22 A. I didn't want to shoot anybody.

23 Q. But why would you hit somebody with a gun?
24 What were they doing to you?

25 A. They were beating on me. So they would leave

1 me alone.

2 Q. Did they leave you alone?

3 A. No, sir.

4 Q. Did you swing at them?

5 A. With -- with my gun I did.

6 Q. And what happened to the gun at that time?

7 A. Well, it came out of my hand. And after I
8 dropped my gun, after swinging it, with all my
9 beating, I tried to pick it up. And as I went for
10 it, everybody else, you know, just went for it. And
11 at that time, once I grabbed it, I tried to just run.
12 I just tried to run.

13 Q. Was the gun actually on the ground, or did it
14 slip, or where was the gun when it was -- when you
15 picked it back up?

16 A. It was on the ground.

17 Q. And where -- do you know who or how many were
18 around you at that point in time?

19 A. No, sir.

20 Q. Can you give the jury an idea of that? Were
21 you there by yourself? Were there other people
22 there, and what were they doing?

23 A. I don't -- I'm not sure. When I picked --
24 after I picked my gun up off the ground, I just tried
25 to run. I was still being beaten and pulled and

1 kicked.

2 Q. After you picked up the gun, were you
3 continued to be beaten?

4 A. Yes, sir.

5 Q. What happened next?

6 A. I was still being beat. It was as if they
7 were just -- they just wouldn't stop. They were
8 saying they were going to kill me, and, you know, I
9 was just being beat.

10 Q. Do you know whether they had any weapons or
11 not?

12 A. I'm not sure.

13 Q. Did they act like they had any weapons?

14 A. They acted like they wanted to kill me or hurt
15 me. I'm not sure, sir. I don't know.

16 Q. Was the gun visible? Did people see the gun
17 when you got the gun out of the car?

18 A. I would assume so, yes.

19 Q. And did anybody change their behavior...

20 A. No, sir.

21 Q. --- towards you?

22 A. No, sir.

23 Q. The gun didn't scare anyone?

24 A. No, sir.

25 Q. Then what happened?

1 A. Well, after I tried to run -- run, just run
2 for my truck, run. The individuals still continued
3 to beat me, and as I was being beaten and pulled on
4 and just from every angle, and I had already been --
5 as they began to fall on top of me, I fell to the
6 ground with just my weapon.

7 Q. And do you remember shooting your weapon?

8 A. I -- I just remember a loud noise.

9 Q. And could you identify the people who were
10 around you at that time?

11 A. No, sir.

12 Q. And do you know how many people were around
13 you at that time?

14 A. No, sir.

15 Q. And do you know how far away from you they
16 were at that time?

17 A. No, sir.

18 Q. What do you remember next?

19 A. I mean, even after I was on the ground, I was
20 still being beaten. I just remember when the police
21 picked me up.

22 Q. Now, earlier in that evening, who did you go
23 out with?

24 A. I was -- I went to a party with Christopher
25 Thomas.

1 Q. During that party or any subsequent time for
2 which you've recently described for the jury, did you
3 have any problems with anybody?

4 A. No, sir.

5 Q. Did anybody have any problems with you?

6 A. No, sir.

7 Q. And do you have any idea of what the problem
8 was at the time the fight started, what was being
9 said to you, or -- or any explanation of what
10 happened?

11 A. I mean, after they got out of their -- out of
12 their truck, they just -- they just were saying,
13 like, you don't belong here, do you.

14 Q. Now, let's talk about your truck. Was there a
15 weapon in your truck that night?

16 A. Yes, sir.

17 Q. And is that the gun that's been described in
18 the trial?

19 A. Yes, sir.

20 Q. And had that gun been in the truck all night?

21 A. Yes, sir.

22 Q. Had you at any time touched that gun before
23 what you've described to the jury?

24 A. No, sir.

25 Q. Now, at that time were you -- where were you

1 living?

2 A. I was living at 153 Jupiter Lane, Sunburst
3 Lakes, Summerville.

4 Q. And who lives in that house?

5 A. My mom and my dad.

6 Q. And do you have any brothers or sisters?

7 A. Yes.

8 Q. And were you working at that time? Did you
9 have a full-time job?

10 A. Yes, sir, I was.

11 Q. And what type of job did you have?

12 A. I was working for Getrag Precision Gears on
13 Leeds Industrial Park.

14 Q. And at some time before that, had you worked
15 at a job with a fellow by the name of Thomas?

16 A. Yes, sir.

17 Q. And is that how you knew the people to make
18 the social connections to be where you were that
19 night?

20 A. Well, yes, he -- he invited me to -- to a
21 party he was invited to.

22 Q. Now, prior to that night, had you ever had any
23 involvement with law enforcement authorities for any
24 wrongdoing on your part?

25 A. Not at all.

1 Q. Had you ever had any problems with anger
2 management or being a bully or anything when you were
3 in school or anything else?

4 A. No, sir.

5 Q. You have said and I should recall where you
6 were working at that time. Where was your full-time
7 job?

8 A. At Getrag Precision Gears in Leeds Industrial
9 Park.

10 Q. And how many hours a week did you work there?

11 A. Forty.

12 Q. And what type of job was that?

13 A. We made gears for Cummins Diesel Engines, and
14 I worked in the heat treatment department.

15 Q. And while you were working there, did you have
16 any part-time jobs?

17 A. Yes, sir. I ran my own business called
18 Frontline Enterprise.

19 Q. And how long had you done that?

20 A. I had done that for maybe -- I'll say six
21 months to a year.

22 Q. Now, that type of job that you had, Frontline
23 Enterprises?

24 A. Yes, sir.

25 Q. What type of job was that?