VOLUME II of IV

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Marion County

Michael G. Nettles, Circuit Court Judge

RECEIVED
NOV 14 2018
S.C. SUPREME COURT

SHAWN REAVES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000630

APPENDIX

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

SAMUEL KEY
Assistant Attorney General
Rembert Dennis Bldg, Room 519
1000 Assembly Street
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

Pages 501-1000

INDEX

INDEX i

TRIAL TRANSCRIPT DATED AUGUST 24, 2010 (MISTRIAL) 1

TRIAL TRANSCRIPT DATED NOVEMBER 8, 2010 494

FINAL BRIEF OF APPELLANT 1280

FINAL BRIEF OF RESPONDENT 1300

STATE V. REAVES, 2014-UP-057 (S.C. Ct. App. filed Feb. 12, 2014) 1338

PETITION FOR REHEARING 1341

RETURN TO PETITION FOR REHEARING 1356

ORDER DENYING PETITION FOR REHEARING 1367

PETITION FOR WRIT OF CERTIORARI 1368

RETURN TO PETITION FOR WRIT OF CERTIORARI 1388

ORDER GRANTING CERTIORARI 1418

BRIEF OF PETITIONER 1420

BRIEF OF RESPONDENT 1441

STATE V. REAVES, Op. No. 27569 (S.C. Sup. Ct. filed Sep. 2, 2015) 1476

REMITTITUR 1489

PETITION FOR WRIT OF CERTIORARI 1490

ORDER DENYING PETITION FOR WRIT OF CERTIORARI 1517

APPLICATION FOR POST-CONVICTION RELIEF 1518

RETURN 1527

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED NOV. 15, 2017 1535

ORDER OF DISMISSAL 1604

INDICTMENT AND SENTENCE SHEET 1630

MR. BROOKER: Involved in this case do you see a Nicole that we're aware of?

THE COURT: I don't see a Nicole. Do you, Mr. DeBerry?

MR. DEBERRY: No, sir, I don't believe.

THE COURT: We're going to let you stay. I appreciate you coming forward. We got one more.

(Potential juror approached the Bench for an on-the-record discussion.).

THE COURT: And your name and your number?

THE POTENTIAL JUROR: My number is 47. My name is Cormencita Ellison. My number is 47.

THE COURT: And how do you know something about this case?

THE POTENTIAL JUROR: I'm a friend of Michelle Sanders.

THE COURT: Michelle who?

THE POTENTIAL JUROR: Sanders.

THE COURT: Who is this Michelle Sanders?

THE POTENTIAL JUROR: I think it's the victim's mother.

THE COURT: So you know something about this case? Have you heard about it?

THE POTENTIAL JUROR: I heard, yes, sir. It's limited.

THE COURT: All right, I'm going to excuse you for purposes of this trial. If you would just go have a seat out there I would appreciate it.

THE POTENTIAL JUROR: Okay.

CLERK OF COURT: 47.

(Potential juror approached the Bench for an on-the-record discussion.)

THE COURT: Ma'am, if you would stand right there and I need to hear you and she needs to hear you. What is your name and number?

THE POTENTIAL JUROR: My name is Sivitra Hall. I forgot that number that she called me.

THE DEPUTY CLERK OF COURT: Number 76.

THE COURT: 76. And what do you know about the case?

THE POTENTIAL JUROR: I don't really know nothing. I know the boy had died and I know of Shawn.

THE COURT: So you know the victim and the defendant?

THE POTENTIAL JUROR: Yes, sir.

THE COURT: Thank you. Out of abundance of caution I'm going to excuse you for purposes of this trial. If you would just go have a seat out there I'd appreciate it.

THE POTENTIAL JUROR: All right. Thank y'all.

(End of Bench conferences.)

THE COURT: All right. In this particular case the victim is a Ramel Keshawn Applewhite. In that regard, are any of you related by blood or marriage or have a close personal or social relationship with Ramel Keshawn Applewhite? If so, please stand.

(There was no response.)

THE COURT: All right. Let the record reflect that no one stood. Mr. Brooker, if you would just please have your client stand and turn and face the jury panel.

All right, this is the defendant Mr. Shawn Reaves. You may be seated. Thank you very much.

And in this regard, are any of you related by blood or marriage or have a close, personal, or social relationship with the defendant Mr. Shawn Reaves? If so, please stand.

(There was no response.)

THE COURT: All right. Let the record reflect that no one stood.

Mr. Deberry, would you please stand and introduce yourself and members of your staff.

MR. DEBERRY: Thank you, Your Honor. Ladies and gentlemen, I'm Steven Deberry, assistant solicitor for the Twelfth Circuit which is Florence and Marion County. Solicitor Ed Clements is here this morning. Also

prosecuting in this office in Marion is John Jepertinger, Ryan Waller, Fitzlee McEachin. The victim's advocate is Anna Meetze and this is Lieutenant Farmer Blue with the Marion Police Department.

THE COURT: Thank you very much. In this regard, are any of you related by blood or marriage or have a close, personal, or social relationship with Mr. Deberry or any member of his staff or have been represented by them? If so, please stand.

(There was no response.)

THE COURT: Let the record reflect that no one stood. Mr. Brooker, if you would please stand and introduce yourself and any members of your firm.

MR. BROOKER: Good morning, ladies and gentlemen, my name is Thurmond Brooker. My office is in Florence, South Carolina.

THE COURT: All right, thank you very much. In this regard, are any of you related by blood or marriage or have a close, personal, or social relationship with Mr. Brooker or have been represented by him? If so, please stand.

(There was no response.)

THE COURT: All right, let the record reflect that no one stood. In this case the witnesses for the State are gonna be a: Larry Woods, Lisa McReynolds,

Michael McCaskill, Lieutenant Davis, Farmer Blue, Jason Huffman, Dan Defreese, Niki Perry, Gary Cook, Doctor Schandl, Latoya Davis, Joemilla Wilson-Dozier, Jackie McGill, Tyler Conner, and Ken Kensy. In this regard, are any of you related by blood or marriage or have a close, personal, or social relationship with any of these defendants -- these witnesses? If so, please stand. And your name and your number?

THE POTENTIAL JUROR: Sylvia Bell, number 9.

THE COURT: Ms. Bell, and how does that apply to you?

THE POTENTIAL JUROR: The name called Jackie McGill.

THE COURT: All right.

THE POTENTIAL JUROR: I worked with his mother in day care and we're close friends.

THE COURT: All right, thank you very much. If you were selected to serve on a jury in this case and you were to be a witness for one side, would you favor that side or could you be fair and impartial to both sides after hearing all the evidence and testimony from both sides?

THE POTENTIAL JUROR: I think I could be fair.

THE COURT: I need to know if you can or can't. It's very important. Or if it gives you any trouble

that's fine; I just need to know.

THE POTENTIAL JUROR: Yes, I can be fair.

THE COURT: Would you be fair and impartial to both sides after hearing from all of the witnesses and hearing from both sides? Would you be fair not only to the State but the Defendant as well?

THE POTENTIAL JUROR: Yes.

THE COURT: All right, thank you very much. You may be seated.

Anybody else?

(There was no response.)

THE COURT: All right. The defendant's witnesses are gonna be a Travis Lane, Jackie McGill, Shawn Reaves, Ed Severance, and Dan Defreese. In this regard, are any of you related by blood or marriage or have a close, personal, or social relationship with any of these witnesses? If so, please stand.

(There was no response.)

THE COURT: All right, let the record reflect that no one stood. Is there any member of the jury panel that is related by blood or marriage to any law enforcement officer? If so, please stand.

And your name and number.

THE POTENTIAL JUROR: My juror number is 157, Kacy Hartson (ph).

THE COURT: All right, how does that apply to you?

THE POTENTIAL JUROR: My husband works for Marion P.D.

THE COURT: All right. Taking that into account, if you were selected to serve on a jury in this case could you be fair and impartial not only to the State, the solicitor, but the defendant as well?

THE POTENTIAL JUROR: Yes.

THE COURT: Would you be fair and impartial to both sides?

THE POTENTIAL JUROR: Yes, sir.

THE COURT: Thank you very much.

Anybody else?

(There was no response.)

THE COURT: All right. Are any of you aware of or conscious of any bias or prejudice for or against the State in this case? If so, please stand.

(There was no response.)

THE COURT: Let the record reflect that no one stood. Has any member of the jury panel formed an opinion as to the guilt or innocence of the defendant Mr. Shawn Reaves in this case? If so, please stand.

(There was no response.)

THE COURT: All right, no one stood. Is there

any member of the jury panel who is a member of or contributor to any group which has as its primary concern the promotion of law enforcement or victim's rights? These groups would include but certainly not be limited to MADD, SADD, or CAVE, Citizens Against Violent Crimes. If so, please stand.

(There was no response.)

THE COURT: Let the record reflect that no one stood. Have you or any member of your immediate family ever been involved in a crime of personal violence? Crime of personal violence could be criminal sexual conduct, assault and battery of a high and aggravated nature, assault and battery with intent to kill, murder, manslaughter, kidnapping, armed robbery, etc. Those are just a few examples, but with that I think you get the drift. Now if you or any member of your immediate family has ever been a victim or defendant in a crime such as these mentioned, please stand.

Ma'am, if you would come on down.

(Potential juror approached the Bench for an on-the-record discussion.)

THE COURT: Give me your name.

THE POTENTIAL JUROR: Joyce Daniels.

THE COURT: And your number?

THE POTENTIAL JUROR: 38.

THE COURT: How does that apply to you?

THE POTENTIAL JUROR: I had a nephew that was murdered in 2006.

THE COURT: All right. Taking that into account, if you were selected to serve on the jury in this case could you be fair and impartial to the State ---

THE POTENTIAL JUROR: I don't think so.

THE COURT: You don't think you could?

THE POTENTIAL JUROR: Huh-uh.

THE COURT: I'm going to excuse you for purposes of this trial. Just go have a seat, I'd appreciate it.

THE COURT: All right, 38.

Anybody else?

(There was no response.)

THE COURT: All right. Let the record reflect no one else stood. Is there any member of the jury panel who knows of any reason whatsoever why they could not give the parties in this case a fair and impartial trial? If so, please stand.

(There was no response.)

THE COURT: Let the record reflect that no one stood. Does any member of the jury panel have any reason or philosophical objections to rendering judgment against their fellow man? If so, please stand.

(There was no response.)

THE COURT: Let the record reflect that no one stood. Has any member of the jury panel or any member of their family ever been prosecuted by this Solicitor or any member of the Solicitor's staff regardless of whether the case was dismissed or not? If so, please stand.

(There was no response.)

THE COURT: Let the record reflect that no one stood. Anything further from the Solicitor?

MR. DEBERRY: No, Your Honor.

THE COURT: Anything further from the Defense?

MR. BROOKER: Yes, Your Honor. I think we've narrowed this thing down.

(WHEREUPON, counsel approached the Bench for an off-the-record discussion.)

THE COURT: Are you or any immediate member of your family a member of any group or organization that actively opposes violence? If so, please stand.

(There was no response.)

THE COURT: Let the record reflect that no one stood. Are you or any member of your family a member of any community or neighborhood crime watch group or organization? If so, please stand.

(There was no response.)

THE COURT: Let the record reflect that no one stood. Are you or any member of your family a member of

any group or organization that advocates against the possession of guns or firearms? If so, please stand.

(There was no response.)

THE COURT: Let the record reflect that no one stood. Are you or any member of your family a member of the NRA or other similar organizations that advocates private gun ownership rights? If so, please stand.

Mr. Funderburk, how does that apply to you?

THE POTENTIAL JUROR: Pardon me, sir?

THE COURT: How does that question apply to you?

THE POTENTIAL JUROR: I thought you said, are you a member of that organization.

THE COURT: I did.

THE POTENTIAL JUROR: I am.

THE COURT: NRA?

THE POTENTIAL JUROR: Yes, sir.

THE COURT: If you were selected to serve as a juror in this case, taking that into account could you be fair and impartial not only to the State but the Defendant as well?

THE POTENTIAL JUROR: Absolutely.

THE COURT: Thank you very much. You may be seated.

And your name and number?

THE POTENTIAL JUROR: Charles Funderburk, 62.

THE COURT: Thank you.

THE POTENTIAL JUROR: James Allen Owens, Jr., 120.

THE COURT: All right. And are you a member of NRA?

THE POTENTIAL JUROR: Yes, sir.

THE COURT: All right. Taking into account, if you were selected to serve on a jury in this case could you be fair and impartial not only to the State but the Defendant as well?

THE POTENTIAL JUROR: Yes, sir.

THE COURT: Thank you very much. You may be seated.

Anything further?

MR. BROOKER: What number was he again, Your Honor?

THE COURT: Excuse me, what was your name and number one more time?

THE POTENTIAL JUROR: James A. Owens Jr., 120.

THE COURT: 120, Owens. Anything further from the State?

MR. DEBERRY: No, Your Honor.

THE COURT: Anything further from Defense?

MR. BROOKER: None, Your Honor.

THE COURT: All right, thank you very much. For

the record I find the jury panel qualified for this case.
We will now select a jury of twelve, one alternate.
Strikes will be ten and five, two and one.
THE CLERK OF COURT: When I call your name if you will bring your belongings with you, pocketbook, jacket, whatever you may have. Come forward, stand at the end of this desk and face back out.
Number 138, Kevin T. Shaw (black male). Mr. Shaw, if you will just come forward please. Stand at the end of this desk, face back out towards the jury panel. Thank you.
What say the State?
MR. DEBERRY: Please excuse Mr. Shaw from this trial.
THE CLERK OF COURT: You're excused from this trial, Mr. Shaw. Thank you.
Number 36, Mr. Shaw, if you will have a seat back out in the jury panel please, sir.
Kenneth Charles Craven (white male). What say the State?
MR. DEBERRY: Please present Mr. Craven.
CLERK OF COURT: What say the Defendant?
MR. BROOKER: Please excuse Mr. Craven.
CLERK OF COURT: You're excused from this trial, Mr. Craven. Thank you.

Number 10, Lashonda Bethea (black female). What say the State?

MR. DEBERRY: Please present Ms. Bethea.

CLERK OF COURT: What say the Defendant?

MR. BROOKER: Please present Ms. Bethea.

CLERK OF COURT: Ms. Bethea, please have a seat in the jury box please. Thank you.

Number 157, Kacy N. White (white female). What say the State?

MR. DEBERRY: Please present the juror.

CLERK OF COURT: What say the Defense?

MR. BROOKER: Your Honor, we make a challenge at least for cause.

THE COURT: Sure. Would you like to do it up front or out there?

MR. BROOKER: Unless we -- probably do it up front.

THE COURT: Okay.

(WHEREUPON, counsel approached the Bench for an off-the-record discussion.)

MR. BROOKER: I would challenge as a matter of fact that officer -- officer, law enforcement officer, with the police department. This is a matter with the police department. She -- her husband, she's married to a police officer, Marion Police Department. She's close

enough. This is certainly a police department case.

THE COURT: I'm going to grant your motion. We'll excuse her from this trial.

All right, ma'am, you're excused from this trial. If you'd just have a seat back out there.

THE CLERK OF COURT: She was excused by the Court?

THE COURT: Yes.

THE CLERK OF COURT: Number 37, Arcelious T. Crawford (black male). Sir, if you will stand over here please, sir. Thank you.

What say the State?

MR. DEBERRY: Please present Mr. Crawford.

THE CLERK OF COURT: What say the Defense?

MR. BROOKER: Please present the juror.

THE CLERK OF COURT: Mr. Crawford, if you will have a seat in the jury box please, sir.

Number 120, James A. Owens, Jr. (white male). What say the State?

MR. DEBERRY: Please present Mr. Owens.

THE CLERK OF COURT: What say the Defense?

MR. BROOKER: Please excuse this juror for purpose of this trial.

THE CLERK OF COURT: You've been excused from this trial, Mr. Owens. Thank you.

Number 22, Ishmell Brunson (black male). What say the State?

MR. DEBERRY: Please excuse Mr. Brunson for this trial.

THE CLERK OF COURT: You're excused from this trial, Mr. Brunson. Thank you, sir.

Number 85, James Douglas Hughes (black male). What say the State?

MR. DEBERRY: Please present Mr. Hughes.

THE CLERK OF COURT: What say the Defense?

MR. BROOKER: Please present the juror.

THE CLERK OF COURT: Mr. Hughes, if you will have a seat in the jury box please, sir.

Number 81, Belinda I. Hemingway (black female). What say the State?

MR. DEBERRY: Please present Ms. Hemingway.

THE CLERK OF COURT: What say the Defense?

MR. BROOKER: We excuse this juror for the purpose of this trial only.

THE CLERK OF COURT: You're excused, Ms. Hemingway, thank you.

Number 144, Michael C. Smith (white male). What say the State?

MR. DEBERRY: Please present Mr. Smith.

THE CLERK OF COURT: What say the Defense?

MR. BROOKER: Please excuse this juror.

THE CLERK OF COURT: Mr. Smith, you're excused from this trial. Thank you, sir.

Number 54, Johnny D. Floyd (white male). What say the State?

MR. DEBERRY: Your Honor, may we approach?

THE COURT: Sure.

(WHEREUPON, counsel approached the Bench for an off-the-record discussion.)

MR. DEBERRY: Your Honor, we'd like you -- it's got to be hard. Many times not competent to doesn't -- not competent to go through guilty pleas, such we feel if he's not competent to sit through this, be in court for those purposes, then he shouldn't be allowed to serve on jury.

THE COURT: Objection is noted. Objection, Mr. Brooker?

MR. BROOKER: Just to make sure I understand is that your position simply that he's not competent to -- he's also admitted in court today he's been in the mental hospital.

THE COURT: He has, true.

MR. BROOKER: Is it okay if I confer with him what's come across? He may agree with it; I don't know. He may decide to agree with me, to make sure.

THE COURT: Sure.

MR. BROOKER: Okay, right quick.

(Mr. Brooker confers with defendant.)

(WHEREUPON, counsel approached the Bench for an on-the-record discussion.)

MR. BROOKER: Your Honor, unless we have any special information that would disqualify him as a juror, then it's, of course we would object to him being excused for cause unless there's something specific that we know of.

THE COURT: Certainly he got past voir dire questions. He has a driver's license. He's ready to go to court; he should know what time. I think he's qualified.

(End of Bench conference.)

MR. DEBERRY: Your Honor, please present Mr. Floyd for this trial.

THE CLERK OF COURT: What say the Defense?

MR. BROOKER: Please present this juror.

THE CLERK OF COURT: Mr. Floyd, if you will have a seat in the jury box please, sir. Thank you.

Number 95, Tysheema T. Johnson (black female). What saith the State?

MR. DEBERRY: Please present Ms. Johnson.

THE CLERK OF COURT: What say the Defense?

MR. BROOKER: Please present the juror.

THE CLERK OF COURT: Ms. Johnson, if you will have a seat in the jury box please, ma'am. Thank you.

Number 62, Charles L. Funderburk ,(white male). What say the State?

MR. DEBERRY: Please present Mr. Funderburk.

THE CLERK OF COURT: What say the Defense?

MR. BROOKER: Please excuse Mr. Funderburk.

THE CLERK OF COURT: You're excused from this trial. Thank you.

Number 4, Glen D. Atkinson, Jr. (white male). What say the State?

MR. DEBERRY: Please present Mr. Atkinson.

THE CLERK OF COURT: What say the Defense?

MR. BROOKER: Please present the juror.

THE CLERK OF COURT: If you will have a seat in the jury box please, sir. Thank you.

Number 122, Cornell Paige (black male). What say the State?

MR. DEBERRY: Please present Mr. Page.

THE CLERK OF COURT: What say the Defense?

MR. BROOKER: Please present the juror.

THE CLERK OF COURT: Mr. Paige, if you'll have a seat in the jury box please, sir.

Number 151, Antoinette L. Totten (black female).

What saith the State?

MR. DEBERRY: Please present Ms. Totten.

THE CLERK OF COURT: What say the Defense?

MR. BROOKER: Please excuse this juror for purpose of this trial only.

THE CLERK OF COURT: You're excused from this trial, Ms. Totten, thank you.

Number 30, Edna A. Carter (black female). What say the State?

MR. DEBERRY: Please present Ms. Carter.

THE CLERK OF COURT: What say the Defense?

MR. BROOKER: Please present the juror.

THE CLERK OF COURT: Ms. Carter, if you will have a seat in the jury box please, ma'am.

Number 107, Elizabeth A McClain (black female). What say the State?

MR. DEBERRY: Please present Ms. McClain.

THE CLERK OF COURT: What say the Defense?

MR. BROOKER: If you will indulge me just a second, I'm sorry. Please excuse this juror for purpose of this trial.

THE CLERK OF COURT: You're excused from this trial, Ms. McClain, thank you.

Number 147, Joyce A. Stackhouse (black female). What saith the State?

MR. DEBERRY: Please present Ms. Stackhouse.
THE CLERK OF COURT: What say the Defense?
MR. BROOKER: Please present the juror.
THE CLERK OF COURT: Ms. Stackhouse, if you will have a seat in the jury box please, ma'am.
Number 83, Geraldine W. Howard (black female). What say the State?
MR. DEBERRY: Please present Ms. Howard.
THE CLERK OF COURT: What say the Defense?
MR. BROOKER: We'll excuse this juror for purpose of this trial only.
THE CLERK OF COURT: You're excused from this trial. Thank you.
THE COURT: Before we go any further, Solicitor and Mr. Brooker approach.
(WHEREUPON, counsel approached the Bench for an on-the-record discussion.)
THE COURT: Mr. Cornell Paige, juror number 122, was a jailer at the Marion County Detention Center while the defendant was in the jail. He is -- I got that from one of the deputies, sheriff's officers over here on the right.
Juror number 122, first man sitting on the front row, was a jailer at the jail while the defendant was in jail. He didn't say anything. The Solicitor pointed out

that call. You care?

MR. BROOKER: I remember that I think he said he was on parole so.

MR. CLEMENTS: I asked.

THE COURT: He did.

MR. BROOKER: He ---

MR. CLEMENTS: Talk with ---

THE COURT: If you get the juror back (inaudible) for me to then just excuse him. Just keep going.

MR. BROOKER: Can I run across and ask him?

THE COURT: Sure, hurry up if you will.

(Pause while Mr. Brooker confers with defendant.)

MR. BROOKER: Your Honor, I would just put on the record that I just discussed it with my client and my client expresses no objections with keeping juror 122, no objections all.

THE COURT: Sure. All right, we will leave him. He says he doesn't know him.

THE COURT: Present y'all?

MR. BROOKER: Well, information that could be some contraband issue, why he's no longer employed there; but I mean, he didn't got past the jury qualifications. He didn't say ---

THE COURT: That's what he did not know. What, that he worked there? Well, the question is does he

need -- is anybody employed at the penitentiary, did you work at the penitentiary, if I'm not mistaken.

MR. BROOKER: Yeah.

THE COURT: And that's just exempt -- anyway, there's no (inaudible) still qualified to serve. I mean, that's for y'all to figure out, you know

MR. DEBERRY: He should have told us that before we put him on the jury.

MR. BROOKER: I initialy think since it's, defendant's been incarcerated, but I ask him that statement, question as to whether or not he didn't know him; he did not know him. If he had known him it'd be (inaudible) to get the real truth about that juror. I see why he says -- he says he didn't know him. He never had contact with him, Judge.

THE COURT: Anyway, nobody gave me any questions to ask. Solicitor got information qualifications and —

MR. BROOKER: Disqualify him.

THE COURT: Anybody could do their homework. Originally the sheriff did before he actually talked to him.

MR. BROOKER: All right.

MR. DEBERRY: That's all right.

THE COURT: I'm not going to excuse him.

All right, Ms. Clerk. If you'll continue.

THE CLERK OF COURT: Thank you, sir.

Number 166, Levern D. Williamson (black male). What say the State?

MR. DEBERRY: Please present Mr. Williamson.

THE CLERK OF COURT: What say the Defense?

MR. BROOKER: Please present the juror.

THE CLERK OF COURT: Mr. Williamson, if you will have a seat in the jury box please, sir.

Number 8, Sade S. Barr (black female). What saith the State?

MR. DEBERRY: Please present Ms. Barr.

THE CLERK OF COURT: What say the Defense?

MR. BROOKER: Please present the juror.

THE CLERK OF COURT: Ms. Barr, if you will have a seat in the jury box please.

Number 14, Michael E. Britt (white male). What say the State?

MR. DEBERRY: Please present Mr. Britt.

THE CLERK OF COURT: What say the Defense?

MR. BROOKER: Please excuse ---

THE CLERK OF COURT: Mr. Britt, you're excused from the trial of this case. Thank you.

Number 153, Robert A. Wallace (white male). What say the State?

MR. DEBERRY: Please present Mr. Wallace.

THE CLERK OF COURT: What say the Defense?

MR. BROOKER: Please strike Mr. Wallace.

THE CLERK OF COURT: Mr. Wallace, you're excused from this trial. Thank you, sir.

Number 168, Dianne Wilson (black female). What say the State?

MR. DEBERRY: Please strike Ms. Wilson.

THE CLERK OF COURT: Ms. Wilson, you're excused from this trial. Thank you.

Number 164, Tashekia Williams (black female). What say the State?

MR. DEBERRY: Please present the juror.

THE CLERK OF COURT: What say the Defense?

MR. BROOKER: We're out of strikes. I think we might have exhausted them.

THE CLERK OF COURT: Got ten strikes.

MR. DEBERRY: That's correct.

MR. BROOKER: Is that correct?

THE CLERK OF COURT: Uh-huh.

THE COURT: Mr. Brooker.

MR. BROOKER: Present the juror.

THE CLERK OF COURT: Ms. Williams, if you'll have a seat in the jury box please.

THE COURT: Now we need one alternate.

THE CLERK OF COURT: Okay, the alternate. Number

163, Patricia A. Williams (black female). What saith the State?

MR. DEBERRY: Please present Ms. Williams.

THE COURT: What say the Defense?

MR. BROOKER: If I'm correct, is that we're selecting alternates?

THE CLERK OF COURT: Yes, sir.

MR. BROOKER: That one strike each?

THE COURT: One and two.

MR. BROOKER: One and two, okay. Please present the juror.

THE CLERK OF COURT: Ms. Williams, you'll be alternate. Have a seat in the alternate's chair.

THE COURT: Are there any objections to the jury or the process by which they were drawn, assistant solicitor?

MR. DEBERRY: Yes, sir, Your Honor. The State would like to make a Batson motion at this time.

THE COURT: Thank you very much. Members of the jury and alternate, if you would please step into the jury room at this moment. We have to take up a matter of law.

(WHEREUPON, the jury was removed from the courtroom at 11:55 a.m., and the following proceedings commenced in open court.)

THE COURT: All right, Solicitor, I'd be glad to

hear from you at this time.

MR. DEBERRY: Thank you, Your Honor. Mr. Brooker struck juror number 36, who is a white male, Mr. Kenneth Craven. He also struck another white male, Mr. Michael Smith, 144. Number 120, James Owens, also a white male.

THE COURT: What juror number is that?

MR. DEBERRY: Juror number 120. Your Honor, he also struck Michael Britt who is a white male, juror number 14. He also struck Mr. Charles Funderburk, Your Honor. This is juror number 62.

THE COURT: All right. Anything further?

MR. DEBERRY: Just a second, Your Honor. Your Honor, Robert Wallace was also struck. It's a white male, juror number 153. Your Honor, that's six strikes out of the ten that he exercised, that Defense exercised. We ask that there be a race and gender neutral explanation given to the Court for those strikes having been exercised against that group of people.

THE COURT: All right. Mr. Brooker.

MR. BROOKER: One of the things we want to point out with respect to Batson is that the Court has indicated it's a balance test. So basically it's that what the Court is concerned with I think under Batson that whether or not these persons are being struck strictly for the purposes of race. And of course, I think the courts also

said is that when the judges take a look at whether or not, whether or not the strikes were race neutral or not race neutral, or either conjecture considered, the totality of the circumstances including the entire body of strikes, or just looking at the entire body of strikes that was made as well. So it's just not that a single application looking at one particular strike. One of the things we'll notice is -- and of course, we'll go through each one of these individual and we have race neutral reasons for them. One of the things we'll note is that we have ten strikes. And of course, I'm -- four of those, four of those strikes was even striking African American individuals so this is not a situation where we're relating to enforce. We had an opportunity to if we wanted to and strictly try to place blacks on the jury and I think one particular causation gentleman that we selected, I think two that we actually selected to put on the jury and for specific reason.

We'll go over the ones that we struck. I think the first one was Mr. -- was Mr., I think was number 36. And of course that was Mr. Craven, and of course we struck Mr. Craven, and of course if you will notice in every one of our strikes it was consistent with anyone that we thought that had any sort of medical knowledge or had someone in their family that had some sort of significant

medical knowledge that we thought they might -- and I think he said in this particular situation I think was his wife was a nurse. If he had access to some sort of medical knowledge then we struck that particular person. And of course there's also a black female in here that's a nurse and she was struck for the exact same reason. But anyone with medical knowledge we struck. We struck him because I think he indicated his wife, I think, was a nurse. I figured that he would have some at least medical knowledge that's probably going to be beyond what's testified here today. And of course one of the things that we don't like is to have someone, you know, who has knowledge outside of the evidence that will be presented today and of course interject that knowledge into the case and probably make a decision based on that. We want people strictly will be confined to, will have no knowledge beyond at least medical knowledge, beyond what was presented here today. We also did the same thing and that's the reason why we struck her.

The next person we struck which was a white gentleman, I think, was number 120, and that was Mr. James Owens. Now he was very difficult. He was a very difficult decision to strike, and of course, you probably noticed that we took a long time. We probably talked with him over in excess of five minutes or so sitting here.

And of course, the issue was is and -- of course this is one of our voir dire questions. And, of course, we requested the -- whether or not -- requested a question as to whether or not anyone was a member of the NRA. And of course, the reason why we did that is that that's sort of information that can split two ways. If a person is a member of NRA, then of course one of the things that may be beneficial to our side is that maybe that person is comfortable with guns and not shocked by the presence of guns. That was a plus in our side. But what we consider to be minus on our side, you'll also notice we struck the other guy who said he was a member of the NRA organization is of course, unfortunately, we don't have the ability to be able to go in extensively with respect to, you know, how extensive his training is with respect to handguns. And of course, we know that a lot of times when people who are member of NRA some of them are just casual members and some of them are finatics where they collect guns and they take them apart. They clean them, know quite a bit about them.

One of the issues that's gonna be raised in this case and I think is gonna be an issue with respect to the identity of a gun, the identification of a gun. And of course, that's the conflict we had, is this guy -- he may be positive for it because, you know, he's comfortable

with guns. He may be negative for us is that, you know, when the issue comes with respect to, with respect to the identification of guns is that whether or not he's going to bring some knowledge into the courtroom as outside of the evidence that will be presented. So he was a difficult one. We made the determination to strike him for that reason. And quite actually is I was leaning towards putting him on there, but of course, talked with my client and we decided not to because we just don't know the extent of his knowledge. If he had came in and I think if we were able to get more information and he had said he didn't have extensive knowledge of handguns we probably would have put him on there because the other aspect of it, him being comfortable with guns, we assume would be favorable to us. But we just couldn't.

Number 81, and of course they didn't mention this but I mention this to show that we were not being race neutral. I think number 81, which is an African American female who indicated she was a nurse. And of course, like I said, we were being consistent regardless of race. Anyone that we thought that had medical knowledge that would bring something into the courtroom that's beyond the evidence that would be presented, we made a determination to strike her.

We struck number 144. And I think that was --

that was Mr. Smith. Now the only thing I have down for Mr. Smith is he worked at McLeod, but we were uncertain of his capacity but simply because we had down he worked at McLeods. And of course, I didn't have down exactly what capacity he worked in at McLeods. I don't know if we missed that or not, but because of that particular factor we excluded just for that reason again. Does he have any medical knowledge, and he does, to what extent. Is he going to bring something, some knowledge into the courtroom or into that jury box, I don't know the evidence that we intend to present to the jury.

Number 62, was the -- he was the other. He was the only -- one of the only two NRA members and we struck him for the same reason because of the previous one. We were -- you know, and like I said, it cuts both ways. He could -- if he had limited, you know, gun knowledge then of course maybe he would be favorable to us. But if he got extensive gun knowledge then, you know, maybe he -- he wouldn't. Maybe that's what sort of information occurs.

The other one was, let me see, we struck 150. What's the other one?

THE COURT: Number 14, Michael Britt.

MR. BROOKER: Okay. I think number 14 I think for the same reason I think number 14 was -- I think he -- I think the nurse. Was he the nurse? Or no, again, I

think his wife was a nurse at Sunny Acres. At least, that's what we have there. Wife is a nurse at Sunny Acres. So anybody with medical background was struck. And who else? I think the other one was 153. Now this guy we didn't, we didn't strike him on specifically on, I think, if I'm not mistaken he worked with Smurfit-Stone Container and his wife was a student if I remember. And this is the one that we had a little bit of trouble with. And, of course, and quite frankly we struck him for one. It may not be a good reason. It may not be -- some people might say, well, this is not the most intellectual reason in the world but one, I think, we think is important is that we struck him for one reason because of his size. And the reason why we did that is he's a pretty intimidating guy; and of course, that could work both ways. If you get a guy like that, he's a pretty big guy and he's intimidating in size. I think even when he walked past us and y'all probably not felt it, is that the floor right here beneath our feet was shaking. Now a lot of times when you get a person that's on the jury, if you think he's intimidating it presents a catch 22. If he's in your favor, and of course if he has an intimidating presence, then of course he may have the ability to be able to dominate the jury which means he may be able to pull people on his side, which is a good set. But if he

is not, if he is actually on the other side and he has an intimidating presence, he's actually against you, then of course he then could draw influence away from the other side. And I think he was actually our last strike, and I think we were trying to make a determination as to whether or not we should use it on him; and we ultimately ended up, I think, did using our last strike on him, you know. And so collectively, these are all race neutral reasons and we didn't select a jury based upon race.

I think if you actually look at the weight of the -- way that the jury list is rendered, there's actually more African Americans that is listed on here than there are Caucasians. So a lot of the picks that we came to, we came to them because they were African Americans and because they were next on the list and not because we were -- we being picking and dodging around any particular and to try to fill up of race. Because I think if we wanted to, I mean, we definitely could, you know, put 12 African American jurors in that jury box if we wanted to because there's enough on here where we could have. We could have put 12 on here and still have strucks (sic) left over so that definitely wasn't the case as all.

THE COURT: All right, Mr. Deberry.

MR. DEBERRY: Thank you, Your Honor. With respect to the white juror that Mr. Brooker struck that

worked at McLeod, there's no indication that he is in the medical field. We didn't have that information. Furthermore, Your Honor, with the juror that says he struck for size, Your Honor, I mean no disrespect, but there's a large juror on the front row Mr. Paige, who is equal his size. And we just don't feel like that's a strike that should be used that way. It's not pretext. Your Honor, we'd also like to bring up that Mr. Brooker's other four strikes are all black females and that he have to give a reason for that as well.

MR. BROOKER: If you want us to, Your Honor, if we wanted -- frankly, we wanted to get more males on there. And one lady, I think, that came up is that, I think, we struck both male and females, is that we were trying to get a balanced jury. But if you take a look at that jury list, if you take a look at that jury list, most of them are female. I mean, you just can't get around it. You have to get what comes next on the list. So you know, I mean, so to say that we struck, we struck a gender I think that whole -- if you look at them I think just about the entire jury or the majority of the jury is female so I don't know how they can say that we were somehow prejudiced against women in striking female.

THE COURT: I'm gonna deny the motion and we're going to start the trial 9:30 in the morning.

MR. DEBERRY: Thank you.

THE COURT: Do you have any objections to the way the jury was then selected?

MR. BROOKER: I have no objection with the way the jury was selected.

THE COURT: All right, if you will go ahead and bring the jury back.

(WHEREUPON, the jury was returned to the courtroom at approximately 12:11 p.m., and the following proceedings commenced in open court.)

MR. DEBERRY: Your Honor, may we approach a minute.

(WHEREUPON, counsel approached the Bench for an off-the-record discussion.)

THE COURT: All right. I'm going to need the jury to come back in at 9:30 in the morning.

And Ms. Stackhouse, I'm gonna make you the forelady of the jury so if you would sit in that chair every time we come out into the courtroom. Now you've heard a little about this case, but not a lot. Based on what I've seen you don't know anything about this case other than what you've heard in this courthouse. So when you leave here today I'm going to ask and order that you do not talk to anybody about this case. When you go home the first thing your family is gonna do is say, what

happened? You can say I got chosen to sit on a jury, and that's all you can say. I don't want you talking about it with anybody. Don't go out on the street and start talking to people about this case and trying to find out what's going on. Do not get on the internet. Just keep a closed mind. Go home, go about your business, and be back 9:30 in the morning and we will proceed at that time. All right, you are excused.

If everybody else will stay seated while they leave.

(WHEREUPON, the jury was removed from the courtroom at 12:14 p.m., and the following proceedings commenced in open court.)

MR.CLEMENTS: Your Honor, just out of an abundance of caution 'cause I'm not sure when we were up at the Bench that the court reporter could get everything 'cause we were whispering. I know she had a hard time hearing. But Your Honor, I just want to put on the record that the State takes the position that the strikes exercised by Mr. Brooker were pre-textural in nature for a number of reasons. Number one, he said he struck two guys 'cause they were members of the NRA because they had knowledge of guns. Both these individuals were white. He put African American man on the, juror number 166, Levern D. Williamson, who is retired from the National Guard. So

certainly he would have equal or surpassing knowledge of guns than anybody who just happens to be a member of NRA. So we would suggest those two strikes on those white males were pre-textural in nature. Also, Your Honor, regarding the black females, Mr. Brooker struck -- we never got into the reasons for those, but he stated on the record that he struck those because he wanted to get more males on the jury and that is certainly is not gender neutral. So we understand the judge has already ruled but we wanted to make the record complete.

THE COURT: I understand. Of course, I just looked at the totality of circumstances. I looked at all the jurors, the makeup of all the jurors. I listened to his arguments in detail, and I've ruled on that. We don't need to discuss it any further unless you need to. We're going to start back at 9:30 in the morning.

MR.CLEMENTS: Your Honor, I don't know, I think they were planning on taking lunch, starting back when you said start back with pleas.

THE COURT: Okay. We'll be at ease until 1:30 maybe.

Are there any pretrial motions we have to take up before tomorrow?

MR. BROOKER: There may be some we do have to take up. Of course, I will be happy to stick around till

after lunch and go ahead and do them after lunch.

THE COURT: Sure. We'll be back at 1:30. We'll take up pretrial at that time.

(WHEREUPON, a lunch break was taken and State Exhibit Nos. 1 through 4 were marked for identification only.)

MR. DEBERRY: Thank you, Your Honor, the State's only motion would be a Neil versus Biggers hearing that needs to be held to discuss some photo lineup identification that happened during the trial, or during the case. We call Lieutenant Farmer Blue.

WHEREUPON,

FARMER BLUE, JR.,

having been duly sworn by the Clerk of Court, testified as follows:

DIRECT EXAMINATION

BY MR. DEBERRY:

Q Lieutenant Blue, would you state your name for the record.

A Lieutenant Farmer Blue, Jr.

Q All right. And where are you employed?

A I'm employed with the Marion Police Department.

Q Okay. And were you employed in that capacity back in May of 2007?

A Yes, I was.

Q All right. And did you have an occasion or an assignment to investigate a murder that happened in May of 2007?
A Yes, I did.
Q All right. And through your investigation did Marion Police Department make an arrest in this case?
A Yes, we did.
Q And who has been charged with that crime?
A Mr. Shawn Reaves sitting over there.
Q During your investigation of that crime did you have an occasion to show potential witnesses or eyewitnesses of that crime photo lineup?
A Yes, sir, I did.
Q All right.

MR. DEBERRY: May I approach, Your Honor.

THE COURT: Sure.

BY MR. DEBERRY:
Q I'm handing you what's been marked State's Exhibit 1 through 4. Can you take a look at that and see if you're familiar with that.
A Yes, sir, I'm familiar with this.
Q All right. And can you for the record, is this State's Exhibit Number 1? Is this the photo lineup that you used
---
A Yes, it is.

Q ---during your investigation?
A Yes, it is.
Q All right. And who -- I give you 2, 3, and 4 back. What individuals did you show the lineup to?
A Ms. Joemilla Dozier, Ms. Travis Long, and also Mr. Jackie McGill.
Q Okay. And why did you show them a photo lineup?
A I showed them the photo lineup to see if they can make identification of the suspect in the case.
Q Okay. So you had reason to believe that they may have been eyewitnesses to ---
A Yes, I did.
Q Okay. In what manner did you conduct these photo lineups for identification processes?
A Well, what I did was call -- find location first. Then I got them to identify the picture of -- they use these sheets and what they have to do, they have to mark them, see if they identify that picture and what number it was.
Q Okay. Did you -- when you laid down the photo lineup did you suggest who may have been the suspect?
A No, sir, I did not.
Q Did you tell them that he was or may or may not -- what did you tell them with respect to the photo lineup?
A What I'd tell them on these photos I just put the picture down and ask them if they see the suspect that was

involved in the shooting in this photo lineup.
Q Okay. So you didn't point out any particular ---
A No.
Q ---person or anything?
A No, I did not.
Q All right. Is there a witness in the room when that happened?
A Yes, Ms. Heather Evans.
Q Okay. And for Ms. Joemilla Dozier, did you say she participated in the photo lineup?
A Yes, she did.
Q And you didn't -- you say you didn't suggest any answers to her as to who might have been the suspect?
A No, I did not.
Q All right. And did she identify the suspect in the case?
A Yes, she did. She made a positive identification of him.
Q And what number suspect did she identify from the photo lineup?
A She identified number three.
Q Okay. And is number three the defendant in this case?
A Yes, it is.
Q All right. And Mr. Jackie McGill, did you show the same photo lineup to him?

A Yes, I did.
Q Okay. And did he identify the suspect in this case?
A No, he did not.
Q All right. And which sus-- which face did he identify from?
A He identified photo number two.
Q And that's not the suspect in this case; is that what you said?
A No, it's not.
Q And how about Travis Lane?
A He also admitted to the photo.
Q But with Ms. Joemilla Dozier, or Wilson, she -- did you suggest any answers to her?
A No, I did not.
Q Okay. She did it freely and voluntarily and on her own?
A Yes, she did.
Q Okay. Thank you very much. Just answer any questions Mr. Brooker have.

THE COURT: Anything from Defense?

MR. BROOKER: I'll be very brief, Your Honor.

CROSS-EXAMINATION

BY MR. BROOKER:

Q We may not -- we have specific objection to the lineup so. Lieutenant Blue, I'll just ask you just a few

questions in reference to, or at least your procedures for conducting a photo lineup. Do the city of Marion Police Department have procedures that they have outlined instructing them on how to set up a photo lineup?

A Yes.

Q Okay. What are those procedures?

A One of the procedures that we used on this particular lineup was we did it through SLED where sent photographs in to SLED and they randomly select the photo lineup for us.

Q Okay, all right. So the procedure is that what you would do is that you, the city of Marion would select photographs, and then the city of Marion would send those photographs —

A No. No, we select -- we send the suspect photograph in to SLED and they randomly select the lineup for us. We only select one photo.

Q Okay, okay. So the City of Marion doesn't have -- doesn't have procedures?

A That's -- that's the only procedure we have, just to send it to SLED.

Q Send it to SLED and let SLED do it.

A Yes.

Q And do you have any knowledge with respect to how SLED come up with their procedure or what their procedures are

for conducting a photo lineup?
A No, I do not.
Q Okay, all right. Now the photographs that are contained in the photo lineup, I think, are six individuals. Do you know how SLED selected those six individuals?
A Do I know how they selected them?
Q Yes.
A No, I do not.
Q Okay. Do you know whether or not, whether or not when they select the photographs that -- I'm assuming, let me ask you this question. The photographs that you showed, was those photographs in color that you showed to the individuals, or were those black and white photographs?
A They were in color.
Q They were in color?
A Yes.
Q Okay, all right. You wouldn't by any chance happen to have that color photograph with you?
A No, sir, I do not.
Q Okay. And the reason why I ask you that is, is that, is that, do you know how they select what complexion of individuals? I know that with, you know, within I guess any race of individuals there are various tones and complexions. You know how they select which particular

individual they're gonna include in the lineup to make sure that it's -- that there is no particular one or two photographs that stick out that the person might excludes the other?

A No, sir, I do not.

Q Could you look at number four. Now obviously this is a black and white, I guess, photographs that we're looking at; but obviously even in black and white photographs I think you can sometimes make a delineation with respect to whether or not a guy has a brown or light complexion or either very dark. Would you agree with me that on number four that the complexion of the individual on number 4 is appear to be at least from these photographs a very dark complexion person?

A Yes, I would agree to that.

Q Now if that's the case, if this person is very dark complexion person, that is almost the exact opposite or close to the exact opposite complexion of Mr. Reaves; would it not?

A It would be.

Q So that would be a clear characteristics that would allow someone who was selecting this to just clearly eliminate that person simply because he is such dark complexion. Could you look at the bottom row? I think that's number 5, number 6, and number 6.

A Okay.
Q Would you agree with me that they are also almost if not of the same complexion as the individual that's identified in number 4?
A Almost, yes, sir.
Q Okay. So there would appear to be individuals of very dark complexion?
A I would say very darker complexion than number 3.
Q Darker complexion than Shawn Reaves?
A Yes.
Q Okay. So wouldn't you agree that at least that bottom row could probably be distinguished based upon skin complexion?
A I would agree with that, yes, sir.
Q Okay. Now to your knowledge is the purpose, is the purpose of having a photo lineup is to put people in that photo lineup that have similar characteristics so that that person who selects those people, that when they select it they actually -- that they actually are selecting it because they can truly identify features of the particular suspect? Isn't that the purpose of a photo lineup?
A Yes, it is.
Q All the photos -- all the photo -- all the persons in the photo lineup, I guess what I'm trying to say is, all

the persons in the photo lineup should have similar characteristics so that nothing stands out or distinguish one photograph from another; is that correct?

A That is correct.

Q Okay. I think you just testified at least the entire bottom row can be excluded based -- excluded because there is a significant contrast in the complexion between that bottom row and Mr. Reaves; is that correct?

A That's correct.

Q Okay. Now if that is the case and if that's what's true, can it truly be said that this photo lineup is fair and impartial and basically did not suggest or either exclude any party based upon any particular characteristic? I'll ask that again if —

A Please do.

Q I'm sorry. If that's the case, if the bottom row -- and I think you indicated the bottom row can be excluded based upon distinctive characteristics that are distinctively diversed from the skin complexion of Mr. Reaves, would it not be true that then that this would not be a fair lineup?

A I'm — I wouldn't say so. No, I wouldn't think so because it came in as close as age as possible on that thing. I don't really know the ages of these young guys that's on this photo. Like I say, we can't tell much

about on black and white so I'm not able to say that.
Q Okay. I think you clearly you clearly said —
A Yes.
Q —you presented a color photo lineup; is that correct?
A Yes.
Q I think you clearly agree with me and previously is that the individuals that are on the bottom row, the individuals in the photographs 4, 5 and 6 have a skin complexion as diverse and markedly diverse from that from Mr. Reaves?
A Yes.
Q Is that correct?
A That's correct.
Q So those particular individuals, they possess characteristics that distinguish them or at least set them apart from Mr. Reaves?
A Yes.
Q Their complexion?
A Yes.
Q So this is not -- if the purpose of -- correct me if I'm wrong. If the purpose of a photo lineup is to put photographs in that lineup in which all of them share very similar characteristics so that none of them stands out or none of them and can be excluded or excluded, then this would not be a fair line-up based upon that definition?

A Based upon that definition, you're correct.

MR. BROOKER: I have no further questions, Your Honor.

THE COURT: All right. Mr. Deberry.

MR. DEBERRY: Your Honor, I'd just like to ask a few more questions.

REDIRECT EXAMINATION

BY MR. DEBERRY:

Q Lieutenant Blue, of the six individuals on that lineup, do they appear to be all black males?

A Yes.

Q And do they appear to have near or about the same or close to the same hair, the way they wear their hair?

A Yes.

Q And are they -- they seem to be about the same build?

A Yes.

Q About the same age?

A Yes.

Q All right. I have no further questions.

THE COURT: All right. Thank you very much. You mind if I take a look at it real quick.

(Exhibits tendered to the Court.)

THE COURT: All right. Anything further, Mr. Brooker?

MR. BROOKER: You know, obviously no further

questions at least for the witness, Your Honor. You know, we would offer some issue.

THE COURT: I have heard the testimony, and I have reviewed the lineup and I find that the out-of-court identification process was not unduly suggestive. I find they were reliable. We have six African American males. All appear to be similar or the same age. They all have similar hair and appears to be pretty much similar build, therefore, I find it reliable.

MR. DEBERRY: Thank you, Your Honor.

THE COURT: Thank you.

MR. BROOKER: Thank you, Your Honor.

THE COURT: Anything further, Mr. Deberry?

MR. DEBERRY: No, Your Honor, not from the State.

THE COURT: All right. I'll be glad to hear from the Defense.

MR. BROOKER: Thank you, Your Honor. We would like at least to make, I think, one motion that we previously made I think during the previous action, the trial that started in August and I think ended in a mistrial. And of course, that trial was based upon the Six Amendment right to a speedy trial, and of course, we contend to the Court that Mr. Reaves' right to a speedy trial, Sixth Amendment right to a speedy trial, was violated, you know, therefore due process is lacking in

this case. And specifically, what we would refer the Court's attention to, and of course, with respect to our citation is that we're specifically looking at the standard that was established in State versus Pittman and obviously is in State versus Pittman. And I'll give you the citation to that. That's 373 South Carolina 527, 647 S.E.2d 144, and that's a 2007 South Carolina Supreme Court case. Then of course another case that's also applicable with respect to speedy trial rights and that may also offer at least some assistance with respect to what the applicable law is, is that State versus Evans. And that that citation is 386 South Carolina 418 or 688 S.C.2d 583, and that's a 2009 South Carolina Court of Appeals case. And, of course, in Pittman, what that court does is that it identifies the factor, the factors, taking which the Supreme Court, the United States Supreme Court I think has previously identified as the factors that should be considered in determining whether or not a Fourth Amendment right to a speedy trial has been violated, you know, and therefore lacking in due process. And the four factors that were listed that was identified is: One, a length of the delay; two, reason for the delay; three, a defendant's assertion of his or her right; and four, prejudice to the defendant. It says those are the factors that should be balanced by the Court. And of course,

we're gonna argue at least all four, at least three if not all four of those factors, weigh in favor of the defendant.

One deals with the length of this case. And obviously is that there are cases out there that basically says -- that basically says of course, we'll admit it right off the top on that, length is not a -- it does not per se renders a case, renders a violation of the Sixth Amendment speedy trial. It says length itself does not per se render a case in violation of the Sixth Amendment. It's one of the factors that should be considered. And I think that length is something that some -- that something that must be considered with a second factor and that second factor is that the justification or reason for the delay. In this particular situation I think there is obviously no argument that this has been a lengthy trial. This case, I think, the incident which is the -- or the events which is the subject of this case took place, I think, on March, excuse me, May 13, of 2007. To my understanding an arrest warrant was issued for the arrest of Shawn Reaves on May 21 of 2007; that Shawn Reaves was apprehended on May 29 of 2007. And of course, Shawn Reaves was effectively served with the warrants in this case on June -- excuse me, yeah, June 8 of 2007. And of course today is November 8 of 2010 which would make this

exactly, I think, today is almost exactly three years and six months from the date in which he was served with warrants in connection with this case. Three years and six months with the date of the warrants was connected in this case.

Now so I think there's no question that three years and six months is a lengthy amount of time. The question then becomes is whether or not the delay in this case is reasonable. We assert that it was not. I think all of the evidence that was collected in this case, and of course, we can go through them. A lot of them we went through I think during the last term of court. Statements, the photo lineup I think took place, took place in on May 21 of 2007. And that was a photo lineup in which, in which Travis Lane, photo lineup that involved Jackie McGill and a photo lineup that involved, I think, Joemilla Wilson-Dozier or Dozier Wilson. And it was on that particular day on the 25th, on the 25th of May of 2007, in which Joemilla Dozier, Wilson Dozier, said to law enforcement that, I think, or identified Shawn Reaves as the potential shooter and an arrest warrant was issued on that particular day, an arrest warrant particular. The point that I am trying to make is that we have all of the discovery, and all of the discovery in this case was done, was completed within a couple of months after the actual

event. So when this incident or this event took place on May 13 of 2007, within two months all of the evidence that we have been presented by the Solicitor's Office was completed at that particular period of time, which distinguishes this from a case that is extremely complicated in which there are no witnesses, in which there are no alleged physical evidence, and law enforcement, and law enforcement is taking days, months and sometimes years collecting evidence to try to identify who to charge or try to identify who they believe to be the assailant. They've identified who they believed to be the assailant within first -- actually within an arrest warrant was issued within, I think, less than ten days. Less than ten days after this event an arrest warrant was issued, and in less than 20 days after this event Mr. Reaves was in custody. And I think within a period of two months all of the evidence was in. And so let's, in giving benefit of the doubt, and let's say July or August of 2007 every single piece of evidence that you have to prosecute this case is in, it is in, so then the question then becomes is what is the reason for the delay. Why, why does it then take an additional three years and three months or three years and four months thereafter, you know, to then initiate this action.

I can't think of one good reason, and I see

absolutely nothing that's been produced to us to suggest to us that they were searching for lost evidence that somehow was critical to the case or lost witness that somehow was critical to the case. So I think the first two factors, length of the delay -- excuse me, length of the delay and reason for the delay I think weighs in favor of a violation of Mr. Reaves' speedy trial rights and, therefore, a violation of due process.

Factor number three is the Defense's assertion of that right. I think the first time a motion was made or first time a motion was made was, I think, at the previous trial in this case which was in August of this year. And then, of course, I think at that particular period of time I think it was alleged, well, we're here, you're making your motion at the start of a trial, we're here, then we can go ahead and just conduct a trial because we're here now. And so whatever delay that may have been occurred, the fact that an assertion has never been made and the fact that we're about to do it now maybe allows us to excuse that. And then, of course, that motion was overruled. And I think it was not -- I think it was after the third day in connection with this trial that that trial was ended in mistrial. And it ended in a mistrial based upon the facts that on day one there was new discovery that was leaked to the Defense. On day two

there was new discovery that was leaked to Defense. And on day three there was new discovery, tremendous amount, and some of it that was exculpatory, that was leaked to Defense that I think put the Court in a position where it had no course but to grant the mistrial. And then, of course, this new evidence then that have been submitted to us and some of this was on new names of new witnesses after three-and-a-half years of the case. And then, of course, then puts us in a situation where instead of having three years to conduct our defense of this, defense based upon these new names that were submitted to the new information that we had on two months.

So you know, I think the right was asserted last term of court. I think the prosecution was given a pass I think the last term of court; and I think it was delayed again of no reason of the Defense, but purely on the side I think of the State. Clearly on the side of the State, the State of South Carolina. Like I said is, I won't say it's on the side of prosecution because there was some unique circumstances in that particular case but I want to say on the side of the State. And then of course the last one is that the prejudice to the defendant. That one very much well weighs in favor of Mr. Reaves. Is that prior to the conclusion of the case, I think at the end of the August 2010 trial when there was new discovery that was

leaked to us, and of course our defense, our defense evolved and changed in a way based upon the leaking of that new evidence. And you know, because obviously we had some new statements and some of them was extremely critical to our defense that made us think a little bit different and adjust the way in which we were going to attack the case.

Now it was until, I think, last week that I think we -- well, the week before last I think we talked with the prosecutor's office and made a, set a date to review all of the physical evidence in connection with this case last week to review all of the physical evidence that was collected at the scene last week. And of course, this is all of the evidence that was -- and most of this evidence was not evidence that pertained to obtaining a search warrant. This was -- most of this evidence was evidence that was on the outside of the residence, and then also it was evidence that was collected from Mr. Applewhite himself, the shooting victim. And of course, we were at least advised by the prosecutor's office is that some of that evidence has been returned and some of that evidence have been lost.

The evidence that we were specifically seeking to review is, is that there was a Motorola cell phone. We were advised that there was three cell phones. One of

them was a Motorola cell phone. The other one was a Kyocera cell phone, and I think the other one was a UT, looks like starom cell phone. I believe S-T-A-R-O-M or either A-M cell phone. My understanding was, is that we was instructed that two of those cell phones now belong to Mr. Lane or may have been belonged or may have belonged to Mr. McGill and that those cell phones may have been returned, of course, without certainty. We -- the third cell phone is missing and could not be found. There was a Visa credit card with the name of William Bellamy that we asked to see and examine that credit card that was found at the scene, and all of this evidence was found within a couple of feet of the shooting. And what makes this evidence relevant is, is that because all of this evidence was in a couple of feet of the shooting. All of those persons who dropped these items were very close or presumably was very close to the shooting and all of these persons probably was in a position probably to see things that other people could not. Some of these persons may have been, or one of those persons may have been a second shooter because obviously there is an issue with respect to a second shooter. There's even possibly an issue with respect to a third shooter because there was no evidence that limited just the two shooters. And so what we were looking to do then is to try and identify, you know, maybe

the owners to some of this stuff. There was a gold chain, I think three gold chains that are no longer in evidence, that are missing. There is a -- and of course, we wasn't provided with it, but there was a cartridge case that is no longer into evidence. And I think we total at least nine pieces of evidence that was collected at the scene that was in plain view that are no longer in evidence that's missing, lost, or whatever.

Now the most critical piece of evidence that we wanted to take a look at because of this possible new theory that we were looking at was actually the victim's clothing, actually the victim's clothing. Of course, we wanted to look at that, those clothing for two reasons. Is that one is, is that obviously you know from at least testimony that was presented from the last case that there was a possibility, there was a possibility that there may be an issue of self-defense, should the defense decide to assert it. And of course, we have also done some research and of course at least from our research there is an issue with respect to -- well, let me put it this way. We believe that the three individuals that came there that night, I think, with Mr. -- with Mr. Applewhite, that those three individuals at least had a reputation of harboring weapons. We know that Mr. Applewhite was shot in the back. We know that one of Mr. Applewhite's friends

was standing right behind him, and of course, that no one apparently out of all the people who was around the scene seen or either observed a second shooter, even though there's physical evidence of it. Is that we wanted to examine his clothes so that we could take a look at, we can take a look and to see whether or not the number of bullet holes that were in his clothes matches the number of bullet holes or at least gunshots, entry wounds, into his body. So, and the reason why is, is that it helps us, one, to try to determine whether or not there was more than two shooters. And then secondly is, is that we wanted to explore the possibility as to whether or not the victim himself may have had a gun and may have discharged the gun. And, of course, if he did have a gun and discharged the gun, then of course there would be powder residue that would possibly be on the sleeves of the jacket or whatever clothing he was wearing. The biggest piece of evidence that's been lost is -- and of course, I don't know how you lose, you know, the victim's clothing, but the victim's clothing is lost. It is lost. And there's just no -- there's absolutely no way to get around it. And of course, that means that this fourth factor, I think, heavily weighs in favor of Mr. Reaves, heavily weighs in favor Mr. Reaves. And I think one of the main reasons why the -- at least when I was reading some cases.

One of the main reasons why the Fifth Amendment was created is that obviously is to insure that how evidence is preserved, to insure that people have a right to, when they're accused of things, to be able to know what those things are to be able to present a defense, to have all of the evidence when it's fresh in everyone's mind. Now when it's fresh in the minds of the victims who intend to testify, when the evidence is there and available, but in the passage of time this occurs memory fades. And apparently when the passage of time occurs, as we see in this particular situation, evidence mysteriously disappears and gets lost. And I think for those reasons I think if you give an honest assessment of those factors, and of course the supreme court has established those being the factors that you identify, I think it clearly demonstrates that all those factors clearly I think leans in favor that there is a Sixth Amendment right to a speedy trial due process on the situation that we have here. And because if he is forced to go forth with this he's gonna be forced to go forth without having advantage of that particular evidence of absolutely no fault of his own.

THE COURT: When were you first retained?

MR. BROOKER: We were retained, I think, Your Honor, and I need to take a look and see. He had a prior attorney, I think, prior. We were retained, I think, in

2008. This has been probably a year after. We were retained a little over a year after the event.

THE COURT: And was the first motion for speedy trial was made in August, 12 weeks ago?

MR. BROOKER: I think so. I think that's the first one was made. Of course, the Rule 5 I think request for disclosure, I think, disclosing this evidence I think was made probably within six months and this was by his previous attorney that represented him then from Sumter. Was roughly within four months, five months I think after the event.

THE COURT: I'll be glad to hear from you, Mr. Deberry.

MR. DEBERRY: Thank you, Your Honor. I think Mr. Brooker's argument, first of all, for speedy trial is an interesting argument. I'd like to address the four points that Pitman, the case of Pitman brings up. But I think that the evidence issue is something totally separate. I think that he's attempting to combine the evidence problems that are present in this case with a speedy trial motion that, frankly, to me doesn't make very much sense, Your Honor. But I'd like to tell you that, number one, the delay in the length, certainly with multiple lawyers that causes some problem. Your Honor, I can't speak for ---

THE COURT: How many lawyers did he have, two?

MR. DEBERRY: As far as I know there was two, Your Honor. And assertion of right of the speedy trial was only made merely 12 weeks. That was at the very onset of the first trial in this case, and here we are the very first possibility of a retrial and State's ready to go forward, Your Honor. And I think that allowing Mr. Brooker to combine the evidence, the evidentiary problems that the State has in this case, with the fourth prong with Pitman being that the prejudice comes from the evidence problems in this case, I don't think that's the way the Court saw that. I think that they actually want to see the prejudice from the length of time that since he's been charged to the time he asserted his right for a speedy trial.

And Your Honor, as far as the evidence problems in this case, I'll be the first to tell you that there are very many of them. And if evidence that Mr. Brooker is looking for exists on this earth as it did in one form before, I have no idea where it is. I don't think Marion Police Department does. It is not in existence as far as anybody knows. We know that, you know, at one time it was. I don't know how to answer that, Your Honor. The only thing that we can as prosecutor, as to this office, is to move forward with the evidence that we have and been

very open on the record in support of Mr. Brooker, and I've done everything in my power to have him everything that I have.

THE COURT: All right. Well, for the record the Court finds looking at the first prong that it has been a substantial amount of time since he was arrested in '07. As far as a reason for delay goes, this is a very serious charge. It is murder and assault and battery with intent to kill, which normally takes longer than most trials. Furthermore, the defendant apparently has already had two lawyers. He had one lawyer represent him for period of time, apparently had that lawyer dismissed, and hired a new lawyer who had to get up his speed and bring this case forward. That may be the reason for the delay, along with the fact of the back log here in Marion County. Furthermore, in relation to item number three, the motion for speedy trial was not made until 12 weeks ago and we began that trial and that trial was mis-tried. Here we are 12 weeks later, and we're ready to try it again so the trial has moved along pretty fast since the motion for speedy trial has been made.

In regard to prejudice I do not find any prejudice. In fact, the items that defense counsel mentioned probably are gonna work in his favor as that is a problem maybe with the State or their credibility or

their ability to hang on to the evidence. But as far as prejudice I do not find any prejudice, and I'm ready to proceed forward and I deny the motion.

MR. BROOKER: Thank you, Your Honor. Just for the record, Your Honor, is that with respect to that second prong, is that with respect to us coming up to speed we were up to speed in 2008 because once we took the case ---

THE COURT: Either way I have to have a motion presented to me in order to rule it. I didn't have this motion until 12 weeks ago.

MR. BROOKER: I understand that, Your Honor. That's why it says, it says that you consider those four factors. Even if you said one factor weighs in their favor, you know, the other three factors overwhelmingly weighs in the Defense's favor.

THE COURT: I understand your position.

MR. DEBERRY: Your Honor, if I may, just to clarify and to add to our side of that point, as everybody is aware there are at least two shooters in this case. It's been an ongoing investigation even though they did have one in custody fairly early. You know, still don't have a second shooter or maybe even other shooters so that could have added to the delay.

THE COURT: It's a rather complex case, I

understand. Motion is denied. Anything further?

MR. BROOKER: Well, the only other motion, Your Honor, and of course this would be one that at least we just need to put on the record but it would be one similar, I think, to the other ones but this would not be based upon speedy trial. This would be similar argument or at least similar motion that for the purpose of protecting the record we need to go on than would be with respect to a violation of due process based upon, based upon a violation of Rule 5 and also Brady in that there was evidence that was, that was -- evidence that was collected that was lost, evidence that was at least, we think, is pretty relevant to the case that now the Defense does not have the benefit of. And of course, I think what we have told you before, and obviously my argument is gonna be very brief is, because it's similar to the some of the facts are very similar to the facts that we've already argued on previous motion. And that is that, you know, there was evidence that was collected at the scene. Some of it, you know, that we thought was, you know, that might not be quite relevant at least our particular case or at least that we didn't know how we would incorporate that information into our case when we tried the case the first time in August of 2010. And of course, as Your Honor knows, is that this case was mis-tried because there

was some evidence that was released, and of course this was documentary evidence that was produced to the Defense, and of course some of which was very exculpatory, you know, identifying possibly who the second shooter was that we would add that had been disclosed in 2007. That was disclosed in 2007. And we would add, the first part of 2007, within a couple of months after this case. Now that evidence now has been lost and partly due, and of course, to the delay of this case, is that we really would like to see the victim's clothing that was collected at the scene. And of course the incident reports indicated that evidence was collected by the Marion City Police Department, I think, specifically PFC Jackson was called by the Marion hospital and told to pick those clothes up once the victim had expired. And of course, the medical, the incident report says then those clothes then was turned over to, I think, Captain Gray I think who I think is over the investigators, at least in this case. Now nobody seems to know where the bloody clothes are. We were produced, I think, some clothes I think on Wednesday when we arranged to sit down and look at them, but unfortunately those are not the clothes of Mr. Applewhite. Those were actually the clothes from the young female in this case, I think, were her -- which we originally thought belonged to him, which was her jeans and a black T-shirt that was collected

from her and I think also some Nike shoes that was collected from her. And of course, I think we originally assumed that stuff was hers and it wasn't until we opened them and saw that they actually were not. But they actually belonged to, I think, Joemilla Dozier-Wilson or Wilson Dozier, whichever it was, which was the young lady who was involved in that case, who was involved in the altercation with Mr. Applewhite. But the clothes of Mr. Applewhite has been lost. Gold chains have been lost. The credit card has been lost that I think had a name on it. To the best of our ability that credit card read something like William Bellamy from what we could see in the photographs. Well, we couldn't see from the photographs, but of course, we were basing that on what he saw on the report because it can't be clearly delineated from the photographs.

But now we don't have the benefit of that evidence and incorporating that evidence into our defense based upon the new discovery that we received last month, which creates a problem. It creates a tremendous problem. You know, because somebody might say, well, you can still go forth, oh you can still go forth without it. But the whole purpose of due process is for the defendant to defend himself the way he see fits, for the defendants to have the right and opportunity to be able to weigh what

arguments he thinks best supports his position and that he is innocent of the crime, and to have that evidence to be collected; and then for whatever reason, you know, to be carelessly mishandled and lost, just purely handled and lost. And then of course states a defendant where ---

THE COURT: Sounds to me like it works in your favor.

MR. BROOKER: Well, no, not if it's -- the thing about it, Your Honor is, if it was evidence, if it was evidence ---

THE COURT: But that's "if". Do you know?

MR. BROOKER: We know that we could use it and we know that it would be beneficial to our defense.

THE COURT: How do you know that?

MR. BROOKER: The only way that it works in our favor is, is the only way that it works in our favor is if this was evidence they were relying on to prove their case, to prove their case. It's like drugs. If this was a drug case and you lost the drugs we couldn't complain.

THE COURT: It sounds very similar to me right now.

MR. BROOKER: Yeah, because you know, because, you know, because the State would have made a mistake and the only person hurt by the State's mistake would be the State. But when the State makes a mistake and the State

is not hurt by the mistake but the Defense is hurt by their mistake, then that's where you have a different issue.

THE COURT: I think they were hurt in the way I'm seeing it. It sounds like a lot of ripe good cross-examination for you to spend an afternoon on.

MR. BROOKER: I understand, and we're gonna have to do that and it's going to become a credibility issue.

THE COURT: I'm gonna let you do it.

MR. BROOKER: But still we're limited in making the arguments that we wanted to make because that evidence is lost, and there's no way to get around that. Now we have to go to a plan B and plan C. Defense should not have to go to plan B and plan C based upon the mistake of the State.

THE COURT: I understand. I'll be glad to hear from you, Solicitor.

MR. DEBERRY: Your Honor, I just say that, you know, Mr. Brooker seems to say that it was just last week. He's had opportunity to review the evidence that they've had in their possession ever since. There's certain evidence you just can't hand over. You can't hand over bags of evidence. They've been there for his inspection. That's what they've had.

THE COURT: Do you have the victim's clothing?

MR. DEBERRY: No, sir, Your Honor.

THE COURT: Does anybody have the victim's clothing?

MR. DEBERRY: It's never been -- it's never been produced. We've never seen it.

THE COURT: How -- you know you even had it?

MR. DEBERRY: I believe the victim had clothes on when he got killed, but I don't know where they are now. Never seen them.

MR. BROOKER: It's clear it was collected at the scene. We got that from their own reports which says that the Marion County Hospital called PFC Jackson, told PFC Jackson to come pick up the clothes. And then the report says that PFC Jackson picked up the clothes and turned those clothes over to Captain Gray. But even if the clothes were lost is that there's no photographs of the clothes, and there's no evidence that there's even no indication that the clothes were ever logged into evidence.

THE COURT: Then it's not an issue. The clothes aren't coming into evidence anyway. You never had clothes apparently to put in evidence. They can't use it in any form or fashion, and in fact, you can use it in your favor by saying they were sloppy in not keeping up with clothes, for whatever it's worth.

MR. BROOKER: And we intend to do that, but then what we're saying is that there was something else that we intend to do, that we're gonna use these clothes and now we can't do them. We're still gonna have the benefit of saying that, yeah, they were sloppy, and we can still make that argument, but whatever. But the other thing that we were intending to do now we can't do it.

THE COURT: What is that?

MR. BROOKER: Well, one of the things like I said is, that when we obtain the new evidence that the evidence they turned over last month at the end of the evidence that caused last -- not last month but in August, the evidence that caused that case to be a mistrial, when they turned over that evidence and of course I think we went over that evidence and there was some evidence in there that was exculpatory. There was evidence in there producing names. There was evidence in there that then cause us to say, well, okay, maybe there is a different argument we should be making of a new trial based upon this new evidence. One of the things that we're looking at is, is that we knew there were two shooters. There is absolutely no evidence that limits it to two shooters. Absolutely no evidence that we know of at all that limits it to two shooters.

THE COURT: Are you going to argue that?

MR. BROOKER: That's one benefit of the clothing. That's one of the reasons why we wanted to examine the clothing is so that we can -- so that we can take a look at, take a look at, you know, the damage to his clothes, to see whether or not how many piercings were there through his clothes that could have been done by bullets, does the number of piercings through his clothes match the number of piercings contained in his body. A second thing is that, and of course we were not resigned to do is, is, and I think I also told you is that recently we spoiled possibly that maybe Mr. Applewhite had a gun or even maybe one of Mr. Applewhite's, I think, friends that he had with him that night that he brought there had a gun as well too. The question then becomes is, is that was there gun powder residue on his clothes. Now of course, if they couldn't say, well, then there's gunpowder residue got on his clothes, you know, from another shooter because, you know, obviously the gun powder kicks back I think when the gun fires and splatters and would splatter on the, you know, the wrist or the arm or the shoulder of the person shooting the gun. So now that we can't even explore.

THE COURT: All right.

MR. DEBERRY: Your Honor, I just want to in brief respond. Just last week is the first time he's asked to review the evidence that was in the possession that these

clothes, and how could he determine by looking at them if there's gunshot residue on the clothes. I mean, that takes expert of three years.

MR. BROOKER: We could not have determined that, but of course, that but if we wanted to then of course, if we thought this was worth while going into then of course we could then easily picked up an expert that could examine his clothes and sit on the stand easily. And he says why do we wait, why do we wait two years to take a look at it. Like I told him before is, it's not one of the things that we contemplated talking about in the first trial. We came to these new arguments based upon them turning us -- turning over evidence to us just two, two months ago. And so now that they say, well okay, you know, blame yourself, blame yourself for not being creative, creative, or creatively contemplating the stuff that we hid from you, you know, for three-and-a-half years. And if they had turned that stuff over to us prior to the first trial we probably would have incorporated those arguments into our first trial. But like I told, like I indicated is, that once they turn in this new evidence we thought saying, okay, there are some different arguments that can be made here based upon the new evidence so don't blame us, you know, for coming at the table late with these new arguments. Blame yourself for

not turning that evidence over to us soon enough.

THE COURT: Obviously evidence they didn't have.

MR. DEBERRY: That's exactly right, Your Honor. I just want to say it's not evidence that was in the prosecution's hands. There's a Supreme Court law from this country that's out there that's clear that the mistrial, had it been by the prosecutor's intent then we'd be barred from trying it again, and that's not what's been ruled on. That's not what the case is in this situation, and I just ask that we be able to go forward.

THE COURT: All right. I'm going to deny the motion. I do not find prejudice. In fact, I think it probably works in the defendant's favor for sure. You will have wide latitude cross-examine on any element of that stuff that you wish, no question about it. And we'll deal with any other discovery issues that come up quickly and promptly as the trial proceeds. Any other motions?

MR. BROOKER: None at this time, Your Honor. I hope you're right.

THE COURT: All right. Anything further from the State?

MR. DEBERRY: No, Your Honor.

THE COURT: We'll start at 9:30 in the morning.

(Court adjourned at 3:00 p.m. and resumed on November 9, 2010 at 9:50 a.m.)

(WHEREUPON, State Exhibit Nos. 5 through 18 were marked for identification only.)

THE COURT: State ready to proceed?

MR. DEBERRY: Yes, Your Honor.

THE COURT: How about Defense?

MR. BROOKER: Yes, Your Honor. We're ready, Your Honor. I'd like to take at least 30 seconds to put at least one motion. It will only take 30 seconds to put it on there just for purpose of the record. Of course, that motion is going to be a dismissal of this trial based upon a violation of the double jeopardy clause, specifically, is that, and I would explain my argument very quickly so that we can go ahead and start the trial. Is that underneath double jeopardy clause basically says is that defendant won't have to be tried in a proceeding twice. Of course, the Supreme Court, United States Supreme Court, has recognized at least a couple of exceptions to double jeopardy. One of the exceptions is a common exception where if a trial goes to its conclusion, the jury is hung at the end, and Supreme Court basically says that doesn't violate the double jeopardy standard and can be retrial. That's one, I guess, most well known exceptions to double jeopardy and having a second trial. In this particular situation is that the first trial ended in mistrial, ended in mistrial, and of course it ended in mistrial because it

was State's misconduct and not ours. You know, basically says misconduct, gross misconduct. It was a situation where there was evidence that was produced, evidence, and some if it was exculpatory evidence that was not produced. I think we had three days of evidence being presented to the prosecution, being presented to the defense. And finally on the third day after the State opened up its file and we identified a lot of exculpatory evidence I think a mistrial was granted. In that particular situation I think it was granted because there was gross misconduct by the State in failing to turn that evidence over. As a result of that is the second -- the first trial was dismissed almost entirely because of the conduct of the State. As a result second trial had to be redone as a result of the -- as a result of the conduct of the State. As a result, we believe that double jeopardy attaches and that in this particular trial of Mr. Reaves is in violation of double jeopardy clause and that this case should be dismissed, he should be set free.

THE COURT: All right. I'll be glad to hear from you, Solicitor.

MR. DEBERRY: Thank you, Your Honor. Your Honor, the United States Supreme Court from 1982 in Oregon versus Kentucky is clearly on point in this situation. Gross misconduct is not the standard of which has to be

evaluated by Your Honor. It deals clearly with the intent of the prosecution, and I think that this record is clear on the intent of the Solicitor's Office in this case; that we had absolutely no intent to hold back any evidence; that as soon as the evidence became available we turned it over to the Defense during the trial. And we conceded at that point that it was evidence that warranted a mistrial; but is not evidence that warrants, or was not the intent of the prosecution to hold back that evidence which would bar us from trying this case again under double jeopardy.

MR. BROOKER: It's not the prosecution that's being examined. It's the State, which is the plaintiff, and the State is the law enforcement part. The prosecution is only the representative in connection with the criminal trial.

THE COURT: Got you.

MR. BROOKER: So we're judging the conduct of the State, and not that of the Twelfth Judicial Circuit Solicitor's Office.

THE COURT: Got it. Motion is denied. If you will bring out the jury.

(WHEREUPON, the jury was returned to the courtroom at approximately 10:53 a.m., and the following proceedings commenced in open court.)

THE COURT: Ms. Clerk, if you will swear in the

jury.

CLERK OF COURT: Before we begin I need to swear y'all in so if you will just stand and raise your right hand I will swear you in. And say I will or I will not, whichever applies.

(The jury was sworn.)

THE COURT: Ms. Forelady, members of the jury, we are getting ready to start this trial, but before we do so there's a few things I would like to go over with you ahead of time just to give you a little working knowledge as to what you can expect and what your role is. The first thing I want you to understand is that the State of South Carolina has the burden of proof. They have to prove the defendant guilty beyond a reasonable doubt. The Defendant has nothing to prove, only the State. The second thing I want you to understand is that you are the judge of the facts. I am the judge of the law. You ask yourselves, well what does that mean? That means that you being the judge of the facts, you determine what the facts of this case are, you and nobody else. And you ask yourself, well how do I do that. Very simple. You look at two things. You look at any item of evidence that are admitted into the record for you to look at such as paper or documents or reports or bullets or whatever may come up.

The second thing you look at and very, very important are the witnesses that come and sit in this witness chair right here. You listen to those witnesses. You decide who's telling the truth, who's not telling the truth. And that's your job and your job alone. That's not me or anybody else. And I want you to understand that you just use your basic good common sense. You can believe all of what a witness says and nothing a witness tells you, half of what a witness tells you. I mean, that's your job. You can believe one witness over a whole bunch of them or a bunch of them over one. But you sit back and you just listen to these witnesses and you judge their credibility and their believability.

Now I in turn am the judge of the law. At the end of this case I'll instruct you as to what the law is. I will give it to you in great detail. And I want you to understand that if you have any preconceived ideas as to what you think the law is or what you think it ought to be, and it doesn't agree with what I tell you the law is you have to abandon those preconceptions. You have to accept the law as I give it to you. All right, once we get to the point in the trial which is at the very, very end, at that time and only at that time will you begin your deliberations. I will specifically tell you you can start deliberating. When that moment comes then you'll

just certainly take your findings of fact, you'll take the law as I give it to you, you'll put the two together and you'll make a decision therefrom. It will actually flow and it's very, very simple and a lot of common sense will be used by you in making that decision.

Furthermore, I want you to understand that what the lawyers tell you is not evidence. Evidence comes from this witness stand and any exhibits admitted into the record. Lawyers are simply spokespersons for their clients. They are advocates for their clients. They fight for their clients. So keep in mind what they tell you is not evidence. Furthermore, throughout the process of this trial it may go into this afternoon, it may go into tomorrow, it may go into Friday. I am not sure how long it will last. However, if we take a lunch break or if you go home at night or we have to take up some matters of law out here and send you back into the jury room, at no point in time -- and Ms. Forelady, you make sure they do this -- do you begin discussing the case at all. And that's very, very important. The reason I tell you that is because you haven't heard everything, and I will know when that magic time is that you have heard from every witness from both sides and from me and everything proper and then I will specifically tell you to begin. Only at that time do you start discussing the case. So when you

leave this courthouse and you talk with your family members or you talk with anybody on the street, they ask you what's going on, like I told you yesterday, say, at this point in time I can't talk about it, I am under a court order not to talk about it on the street, at home, or even back there in that jury room until I tell you to. I want to make sure you get everything you need to make the proper decision.

All right. With that being said I want you to just sit back. I want you to relax and I want you just to soak it up. If at any point in time anybody has something come up that you need my attention, don't hesitate to raise your hand. Just let me know if you got to go to the restroom or your blood sugar is low and you need some food. If you just need something you let me know and I'll try to make your stay as best as I can. All right, with that being said the State is recognized for their opening statement.

MR. DEBERRY: Thank you, Your Honor, Mr. Brooker. May 13th, 2007, was Mother's Day. It was a Sunday afternoon, Sunday evening, and it was the day that Ms. Applewhite Sanders lost her son, Keshawn Ramel Applewhite. He was gunned down just a few blocks from this courthouse. He was killed on Mother's Day. You'll hear that he was home to see a girlfriend of his and that

he went just a few blocks from this courthouse to see her and talk with her. You'll hear that they got in an argument, maybe even a fight. All that's for you to decide. You're also gonna hear that he walked up to the porch over on East Mullen Street and got killed. He got gunned down right there on Mother's Day on Sunday night. And he's not here today because of that day.

You're gonna hear from this witness stand as the judge told you. This is where you got to get your evidence from. This is where you got to take what you can decide this case with, not from me, not from Mr. Brooker. You got to get it from the evidence from the witness stand. Testimony is evidence and the documents and the pictures that you'll see, you can use that to decide whether Mr. Shawn Reaves is who you believe killed Ramel Shawn Applewhite. You're gonna hear about it all. You're gonna hear about how Mr. Reaves, how they had to go to Philadelphia sometime after the murder to get him. Innocent people don't leave town.

MR. BROOKER: Objection, Your Honor.

THE COURT: Sustained.

MR. BROOKER: Argumentative.

THE COURT: Sustained.

MR. DEBERRY: You're gonna hear from the police in this case. You're gonna hear what they found when they

came on the scene. You're gonna hear about some stuff that they did; you're gonna hear about some stuff that they didn't. But you're also gonna hear from eyewitnesses, people that were standing there, people that were standing as close as I am to you that saw fire coming from the end of a gun that's being a trigger being pulled by Mr. Shawn Reaves. Now this is everybody's day in court. This is the State, this is the victim who is not here anymore, it's his family. And as Mr. Shawn Reaves, it's everybody's day in court. And our system of justice provides that for everybody in this country who is accused of a crime and I ask that you, the people of Marion County, be fair. Please don't come in here with any prejudices, or bias, or anything that's already made your mind up. Please don't take my word for it or Mr. Brooker's word for it or the judge's word for it. Please come here with an open mind to be fair. That's what we'd ask you to do.

As the State we have to prove beyond a reasonable doubt that he's guilty, okay. And we'll talk about what a reasonable doubt, but it's something that's got to leave you firmly convinced he's guilty. It's not any doubt; it's a reasonable doubt. And that's our burden. And at the end of this trial if we hadn't met that burden then please let that man walk out of here. But if we have met

that burden, I ask you to be fair and deliver a verdict that speaks the truth. The word verdict, that's what it means. It's a Latin word and it means the truth. And you're 12 people, ordinary people of Marion County, you get to find the truth. That's your job, to find the truth. Please listen to what happened. Please understand what happened. And please bring this case to justice.

And I'm gonna tell you, there's eyewitnesses. There's other evidence that's gonna prove him guilty. We believe he's guilty. We ask that you find him guilty at the end of the trial after you weigh all of the evidence. I ask that you do so fairly and that you just pay attention and keep an open mind throughout this trial.

The judge is gonna tell you -- I don't know how many times -- it's going to get old, it's gonna get repetitive. He's gonna say every time we take a break you can't discuss this case, and it's 'cause that's part of our system. That's a part of what makes this process fair is that you can't come to a conclusion before time, ahead of time. At the end of the case after all the evidence is in he's gonna say, okay, now it's your chance to go back there and collaborate and deliberate and decide whether or not the evidence proves him guilty beyond a reasonable doubt. Now you may have heard yesterday when we read the indictment, when the judge read the indictment there's two

counts. There's a count one for murder which means the taking of someone's life feloniously with malice aforethought. And there's number two, assault and battery with intent to kill. Now that's South Carolina's way of saying attempted murder. That's exactly what it means. And there's a reason that there's two counts on the indictment, and it's for you to decide what the truth is. It can't be one or the other. It can't be both. It has to be one or the other. You're gonna hear evidence that says that there's two bullets that were found in Mr. Applewhite's body and that they were fired from two different guns, okay. So there's two shooters at least. What you have to decide is if the actions of Mr. Shawn Reaves is what killed Mr. Applewhite or may he just be guilty of attempted murder which is assault and battery with intent to kill. That's gonna be up to you. Pay close attention to the autopsy doctor. Pay close attention to the firearms expert and other evidence that you'll hear about, what kind of gun Mr. Reaves may have been shooting, and make your decision based on the evidence. All we can ask you to do is please be fair. That's all we can ask at the end of this trial that you deliver a verdict that speaks the truth. Thank you very much.

THE COURT: Mr. Brooker.

MR. BROOKER: Thank you, Your Honor. Good morning, ladies and gentlemen. Now before we get at least a little into type of evidence that you might expect to hear in connection with this case, and I think most importantly the type of evidence that you are not expected to hear in this case, we're gonna talk a little bit about the law. And the reason why I said the type evidence that you're not expected in the case, not expected to hear in the case is that every case is based upon evidence. Every case is based upon evidence. And also every case is based upon a lack of evidence, okay. The existence of evidence and the nonexistence of evidence. And the nonexistence of evidence is just as important as the existence of evidence. And when you hear this case and when you sit down and listen to it you have to consider them both. You have to consider what's here, what's not here. It's just as important. It's just as important.

Before I go any further let's talk a little bit about at least, you know, some important rules, you know, in connection with jury trials. I think the prosecutor says something that I think was correct, and that is, is that the purpose of a trial is try to discover the truth. And not only try to discover what the truth is but discover beyond a reasonable doubt, okay. But let's talk just a little bit about some principles, and I think Judge

Seals mentioned some of them that's extremely important in order for you to do this trial justice. One of the first things I think the judge mentioned to you is the lawyers, is that my name is Thurmond Brooker. I represent Shawn Reaves. And it's real important that you understand at least the role of lawyers in the courtroom, the role of the judge in the courtroom, the role of the prosecution in this courtroom. As a lawyer, as myself and as the prosecution, we're not witnesses. We are absolutely not witnesses. Our job is, is to collect whatever evidence or either the nonexistence of evidence to put it to you in an orderly fashion and so that when you go back in that jury room that hopefully you can take this information, you can digest it, and then of course you can draw a reasonable conclusion beyond a reasonable doubt. We are facilitators. We just facilitate the presentation of this evidence.

On the night of this particular incident I wasn't there. On the night of this particular incident, the prosecution wasn't there. The judge wasn't there, okay. So what we say at least with respect to factual is not considered to be evidence. We, as lawyers, are facilitators. The judge is almost like a mediator. His job is gonna be to preside over this case to assist in making sure that the evidence is presented to you in an

orderly fashion, to make sure that this process and procedure is done correctly. And he'll also instruct you with respect to what the law is at the end. So don't forget that. Don't forget that. We're not witnesses. We're not witnesses. We're just facilitators of a presentation of the evidence to you. That's real important.

The next thing that's real important is that Shawn Reaves, Shawn Reaves as he sits there is as innocent as any one of us sitting in this courtroom right now. He is as innocent as any one of us sitting in this courtroom right now. It's called the presumption of innocence and I'm pretty sure most of you have heard of it. Is that every citizen in the United States, every citizen in the United States, and even noncitizen in the United States, has a presumption of innocence. As we walk around in our homes, in our jobs, on the streets, we are presumed to be innocent. That presents (sic) the State from taking away our rights. It prevents the State from coming into your home and snatching you up and putting you in jail. It prevents the State from stopping you when you're driving your car, taking your property and possessions. It's, you know, it presents the State from, you know, from taking these valuable rights from you; we all share it. He shares it. And you have to assume throughout the entire

course of this trial that he is innocent.

Now, innocence can be removed through the process of proof beyond a reasonable doubt. You can think of him, you can think of innocence as almost like a robe or a jacket that we have on. We all have that robe and jacket on. In order for the prosecution to convict him, send him to jail for whatever period of time, they have to unbutton that jacket of innocence and they have to completely remove it from him. And they do that through proof beyond a reasonable doubt, not speculation, not proof through speculation, proof through assumption. Not proof through, I think this is what happened, but proof beyond a reasonable doubt. That's what protect us all from the tyranny of government. Proof beyond a reasonable doubt. That's one of our protections.

Now let's talk a little bit about at least some of what I think the prosecutor instructed and advised you and that was he talked about, I think, the presentation of some evidence and I think he made some conclusions to you. He says, well, Shawn Reaves is guilty of murder or attempted murder, I don't know, but one or the other. But one or the other. Now he says they're gonna present evidence that's gonna prove that. Now during the course of the trial, during the course of the trial, when you listen to witnesses that are sitting up on this stand,

probably one of the most important things that you'll ever -- one of the most important things about any witness as they sit up on that stand is credibility. As a matter of fact, it's credibility of the entire process. Fairness. All trials have to be fair. And in order for all trials have to be -- in order for all trials to be fair there has to be a degree of credibility that hits that stand. There has to be a credible investigation; he's entitled to that.

Now what you will hear today is that you will hear that there was a number of errors that occurred in connection with this case. There was evidence that is lost. There was evidence that was not collected. You will hear a tremendous amount of mistakes that occurred, and all of those mistakes goes to the credibility of this case.

Now when witnesses get on that stand and they testify, look them in the eye and try to make a determination as to whether or not, you know, they're telling the truth or either whether or not if they are telling the truth, they're making statements about what they -- statements about what they think happened instead of what did happen. This was an incident that occurred at ten something at night. I think the prosecution said it was the afternoon. It was not the afternoon. It is ten at night. You will hear that there was a crowd of people

around. You'll also hear evidence -- and I think the prosecution said this correctly -- is that there was shooting from two separate individuals, shooting from two separate individuals. Now you know at least that Shawn Reaves has been charged as one of the shooters. You'll hear evidence that the identity, that the identity of the second shooter was never found. And I would submit to you that the identity of the first shooter has never been found. I'll submit to you that they don't know who committed this murder.

MR. DEBERRY: Objection, Your Honor, I think he's entering evidence into the record at this point that he can't know that's gonna come from that witness stand.

MR. BROOKER: I withdraw that last question.

THE COURT: Thank you.

MR. BROOKER: I think that the evidence will show -- I think that the evidence will show that the identities are not clear. Proof beyond a reasonable doubt. Proof beyond a reasonable doubt, that's the standard. It's extremely important. It is extremely important, and I think the prosecution was correct when he says this case is extremely important. It's extremely important to Mr. Reaves. It's also extremely important to the family of Mr. Applewhite. And the reason why it's extremely important, I think he indicated that everyone,

or all of these individuals, need to have their day in court. But it's also extremely important to justice. This case is extremely important to justice. If you have any prejudice leave them at the door. You have any preconceived notions, leave them at the door. If you have any sympathy leave it at the door. In order for you to effectively do this job you have to be completely non-partial. You have to be completely devoted to the facts and the lack thereof and make a decision strictly based upon that regardless of sympathy or empathy or any other emotion that might be motivating you.

Now if you are to do that, at the conclusion of this case justice will have been served and I think we can all walk away from this -- walk away from this courtroom and feel as if justice has been served. Just listen very closely to the evidence, the nonexistence of evidence, and the credibility and believability of evidence. Thank you very much.

THE COURT: Thank you.

MR. BROOKER: At least before we start, Your Honor, is that we make a motion to at least sequester all witnesses that are expected to testify in connection with the trial.

THE COURT: Any objections from the State?

MR. DEBERRY: No, Your Honor. I mean, we'd like

to have Farmer Blue as the chief investigator remain.

THE COURT: That will be fine. Go ahead and sequester whoever else needs to go.

(Pause.)

MR. DEBERRY: Lieutenant Davis is our first witness and he's the only witness I see in the courtroom.

THE COURT: All right. If you will come around, Lieutenant Davis.

CLERK OF COURT: Sir, come around so I can swear you in please, sir. Place your left hand on the Bible, raise your right hand.

WHEREUPON,

WALKER DAVIS, SR.,

having been duly sworn by the Clerk of Court, testified as follows:

CLERK OF COURT: Thank you. You may have a seat in the witness stand.

THE COURT: All right, Mr. Deberry.

MR. DEBERRY: Thank you, Your Honor.

(WHEREUPON, State Exhibit No. 19 was marked for identification only.)

BY MR. DEBERRY:

Q Lieutenant Davis, how are you doing? Could you state your name for the record please.

A Walker Davis, Senior.

Q Lieutenant Davis, how are you employed?
A Marion Police Department.
Q And what's your rank? Lieutenant?
A Lieutenant.
Q All right. How long have you been lieutenant with the Marion Police Department?
A I been a lieutenant at Marion Police Department going on seven years?
Q And how long have have you been employed with Marion Police Department?
A Twenty-one years.
Q Okay. Back in May of 2007 you were a lieutenant with the Marion Police Department?
A Yes.
Q Okay. And were you working that day or night?
A Yes.
Q Okay. And did you receive a call to respond to East Mullen Street?
A Yes. We received a call to respond to East Mullen Street.
Q How many calls did you receive to respond there?
A It was two.
Q Okay. And what nature of the calls were?
A The first call came out as a fight, but the next call came out as a shooting.

Q Shots fired?
A Shots fired.
Q Okay. And how close in relation were those calls? Or can you remember?
A There were pretty close together.
Q Okay.
A 'Cause when the guys left the first to go to the fight, right after that the shooting came out and then I left to go to the shooting.
Q Okay. Where were you when you received the call?
A I was at the police department.
Q Okay. And the call was -- where was the call?
A Call was going to East Mullen Street.
Q Okay. And about how far along -- what time does it take you to travel that distance when you're on emergency call?
A It don't take long, all depends on the traffic that's going on out there during that time. Take you about three or four minutes to get there.
Q Okay. I'm gonna show you a map of the city marked State's Exhibit 19, this being Mullen Street right here.
A Right.
MR. DEBERRY: Can he step down, Your Honor?
THE COURT: Sure.
BY MR. DEBERRY:

Q Step down for a second. All right, Lieutenant Davis, what street is this?
A That's Pine Street.
Q Okay. And that's in the city of Marion?
A Yes, it is.
Q Okay. And where was the call?
A On East Mullen Street.
Q Okay.
A Right here.
Q This house right here?
A Right.
Q All right. That's where you respond?
A That's where we respond to and when you came -- we came off from ---

THE COURT: You need to make sure the jurors on your left can see.

THE WITNESS: When we came off -- we came from off of like Main Street and came to East Mullen which is right here 'cause you have to come up Pine, up Pine.

THE COURT: The alternate cannot see either.

THE WITNESS: This is Mullen. And you make a right here, come down almost second house from the corner, and this right here.

BY MR. DEBERRY:

Q Okay. Those are a short distance from where you were?

A Yes.
Q Okay. So you responded to East Mullen Street and when you arrived please explain to the jury what perceived, what you saw, what was going on?
A When I arrived on the scene it was a white Crown Vic sitting in the -- parked like on alongside of the road and inside that white Crown Vic I seen a guy slumped over. He had on light colored, light colored clothing and seemed like he was gasping for air. At that time I called central and told them we need 9-1-1 ASAP. They dispatched EMS. They dispatched EMS. Then the area was blocked off 'cause you have to block off the area to keep all your evidence that's there inside that area. And the chief, the captain, Lieutenant Blue, Lieutenant Hopkins, and all of those investigators is notified of the shooting that we had and they responded. And once they got there, everything was turned over to the other investigators.
Q All right. So you testified when you arrived Mr. Applewhite was in his car?
A He was slumped over inside the car.
Q In the front or the back or where?
A In the back passenger seat.
Q Okay.
A On the -- on the driver's side.
Q All right. Was he transported -- how did he leave the

scene?
A He left in the ambulance and because sound like he was gasping for air and that's the reason why he was transported to see if he could be...
Q And what were his apparent injuries?
A Pardon?
Q What were -- apparently to you what were his injuries?
A He had been shot.
Q Okay. But you felt like he should be transported to try to save his life?
A Right.
Q Okay. Were there other people there when you arrived?
A Yes, sir. It was some of his friends that was there and that were with him that was in the car when all this happened, and they was telling us what had went on. He had -- was talking to his girlfriend and ---

MR. BROOKER: Objection, hearsay.

MR. DEBERRY: All right.

BY MR. DEBERRY:
Q Just -- were you the first law enforcement on the scene?
A No, sir. Was another officer with me, Officer Jackson. He responded along, you know, with us because ---
Q Y'all arrived about the same time?
A We arrived about the same time.

SW - W. DAVIS - DIRECT

Q Okay. Did you have information that there may be someone inside the house?
A They said it was some people inside the house, but we never went inside the house.
Q All right. And as a lieutenant what is your job as far as are you an investigator, patrol, or how -- what are your job duties?
A My job is shift supervisor, and whenever we have a shooting or something in that order I block off the area, call the investigators, the chief, and the captain, the mayor, all those people that come down to the scene. And we rope off the area to keep people from coming in 'cause when you have a situation like that a lot of people try to come in to see what's going on and they bring in evidence that's wasn't, that's not part of the scene, and some people take it back out on their feet, whatever, and that's where we protect the area.
Q So you secured the scene?
A I secured the scene.
Q Did your shift or your people or did you enter the house?
A No, I never entered the house.
Q Okay, all right. Thank you very much. Answer any questions Mr. Brooker has for you.
THE COURT: Mr. Brooker.

MR. BROOKER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. BROOKER:

Q Officer Davis, approximately what time was it that you arrived, do you know?

A It's been a while. I don't know, remember the exact time that I arrived.

Q Okay. Now this is not the first time that you've testified in connection with this case, is that correct?

A Correct.

Q You testified at a previous, previous disposition in connection with this case?

A Yes.

Q Okay. Now you just testified, I think, on direct examination that you received a call regarding a female being beaten; is that correct?

A I said it was a call that came in about a fight. And when I arrived on the scene it was said that him and his girlfriend was having a fight.

Q Just for -- just to give you some instructions is, is that, you know, don't tell me what someone told you because it's hearsay.

A Okay.

Q Okay. Now when you testified at the first proceeding in connection with this case you testified that you never

received a call in reference to the fight, but that you received ---

MR. DEBERRY: Objection, Your Honor.

MR. BROOKER: --only a call in reference to shooting; is that correct?

MR. DEBERRY: Objection.

THE COURT: Hold on, don't answer that.

MR. DEBERRY: May we approach.

MR. BROOKER: Sure.

(WHEREUPON, counsel approached the Bench for an off-the-record discussion.)

BY MR. DEBERRY:

Q Officer Davis.

A Yes, sir.

Q Have you previously testified in reference -- have you previously testified in reference to these facts?

A Yes.

Q Did you recall previously testifying to the fact, testifying to the fact that you were called out, that you were initially called out in reference to a fight but never received any communication over the radio in reference to shots?

A I didn't understand. Would you say that again.

Q I'll repeat that again for you. When you previously testified, do you recall previously testifying that you

were never called out, that you were never initially called out to the scene because of a fight, but you were called out of dispatch because of a shooting?

A Right.

Q Is that correct, is it not?

A That's correct 'cause I said I didn't hear the first call come out about the fight. It was the shooting that I heard.

Q So what you previously testified to was slightly incorrect; is that correct?

A Not slightly incorrect. It's correct because of my first set of officers responded to the fight. They heard -- they went to the fight. Then when they left to go to the fight I heard about the shots being fired, and that's when I pulled out and went also.

Q Uh-huh. So my understanding is, is that -- you just correct me if I'm wrong -- is that you denied previously testifying, testifying about coming out as a result, as a result of a fight, or being dispatched out as a result of a fight? Is that correct?

A My officers came out to, was going to the fight. I came out because I heard about the shots being fired.

Q Okay.

A And that was right behind them.

Q Now when you arrived, when you arrived on the scene,

who was there when you arrived on the scene? And I'm talking about your officers. Was there any other officers on the scene when you arrived?

A Officer Jackson had arrived just before I did and I pulled up behind him.

Q And what was Officer Jackson doing when you arrived? Had he gotten out of his car yet or still in his car?

A He had gotten out his car and he said that these people had something ---

Q Don't tell me what Officer Jackson says. Again, it's hearsay. I'm just asking you to describe what he was doing.

A He was out of his vehicle.

Q He was out of his patrol car?

A He was out of the vehicle.

Q Okay. Was he doing anything? And I'm talking about physically what you see with your eyes. Was he doing anything when he was outside of his car, or what was he doing? Standing around, was he talking to someone, or tell me what they say. Was he talking to someone or what was he ---

A He was looking around and came to my vehicle.

Q Okay, all right. And what did you do immediately when you first got out of the car?

A Immediately when I first got out of the car I went

directly to that white vehicle that was sitting in the street.

Q Okay.

A Because I seen some blood and I looked in the car and that's how I seen that the guy had on the light colored clothing, was slumped over in the seat. Then we roped the area off. That's when I started roping the area off so nobody else can get inside the scene.

Q And what was -- what's the purpose of roping the area off?

A To keep all the evidence that's inside that particular area inside confined.

Q Okay. So to my understanding is, purpose of roping it off is to prevent someone from -- prevent people from trampling on the evidence scene and either removing evidence ---

A Right.

Q ---or either bringing evidence in?

A Right.

Q Is that correct? So it's to secure the scene and keep it in its original state or existing state?

A Yes. Yes.

Q Okay. And is that -- that's done for the purpose so that when -- and correct me if I'm wrong. Is that done for the purpose so that when the investigators or evidence

collectors get there, then they can collect the existing evidence that was, that was established naturally as opposed to artificial evidence that would have been accidentally brought in?

A Right.

Q Okay. Now when you roped off the scene I think you said initially that yourself and Officer Jackson was the first two officers on the scene.

A Right.

Q Who was the next officers or law enforcement officials to arrive?

A I can't recall whoever -- who they were 'cause you had some deputies that arrived on the scene, had over there. We had the chief, the captain, and all those other officers, investigators came. So I can't tell you exactly who was going on because we was roping off the area along with that to keep people out and that was it.

Q Okay. Now ---

A 'Cause the other officers to my shift was helping rope off the area also. So it wasn't just me and Jackson the only two officers there. The other officers to the shift helped rope off too.

Q Okay. Now you indicated you prepared a report in connection with this.

A Yes.

Q Okay. Now you indicated at least in your report that you then called, I think, Captain Gray; is that correct?
A Yes.
Q And what would be the purpose of calling Captain Gray?
A 'Cause during that time he was our -- was the first investigator that we had that was on-call. And normally we call him first and then the Cap, I say the chief, then Lieutenant Blue, and go down the line like that.
Q Okay. So he's the first -- and when you say first investigator, is he the top investigator ---
A He's ---
Q ---in the department?
A Correct.
Q Okay. So he's above all of the other investigators. He's the chief investigator?
A Correct.
Q Okay. How long did it take Captain Gray to arrive?
A I can't recall how long it took for him to arrive because the majority of those guys home at night and when they get clothes on and showered up and get out as soon as they can then...
Q So the answer is you don't know what time he arrived?
A I don't know exactly what time it was when he got there.
Q Okay. You indicated at least in your report that while

you were waiting for investigators to arrive, that -- and let me make sure that I get that right. That you talk with witnesses and people that were around. Don't tell me what anybody else says. You said you start asking witnesses and others on the street what had happened?

A Yeah.

Q Who did you talk with? Don't tell me what they say. Just tell me who did you speak with.

A I spoke with several, several people that was there. And also I talked with a Mr. -- I can't think of his name now. Jackie.

Q I'm sorry, go ahead. Is that Jackie McGill?

A Jackie McGill. I talked to Mr. Jackie McGill 'cause he was there.

Q Did you also talk with Travis Lane?

A Travis Lane, I probably talk -- I would have to look on the report. I don't remember Travis, Travis Lane's -- I don't know Travis Lane's face or anything to be calling by name.

Q Would you like to see a report to refresh your record?

A Yes, yes.

(Report tendered to witness.)

THE WITNESS: You got the handwritten one?

MR. BROOKER: I can see if I have a handwritten one.

(Document tendered to witness.)

THE WITNESS: I got on here that Mr. Travis Lane was talked to.

BY MR. BROOKER:

Q Just tell me whether or not you talked with him. Does your report reflect whether or not you'd spoken with him?

A Yep.

Q And is your report a reflection of what supposed to be reflection of what you did that night?

A Exactly.

Q Okay. Just so that you don't have to rely on memory three-and-a-half years later on; is that correct?

A Uh-huh.

Q So you did talk with Mr. -- you talked with Mr. Travis Lane and Mr. Jackie McGill; is that correct?

A I talked with Mr. Travis Lane for a brief moment, but I talked to Mr. McGill a little longer. And that's the reason why his name sticks in my mind a little longer than Travis.

Q Okay, that's fine. Now when you arrived at the scene, and I'm gonna take you back just a little bit.

A Okay.

Q How many people were outside or visible to you when you arrived at the scene?

A It was a crowd.

Q Roughly about how many people?
A I couldn't give you a estimate, a good call on that, because it was a lot of people out there and we had to get them out of the way.
Q Let me ask you this, was it more than two people?
A Yes.
Q Was it more than five people?
A Yes.
Q Was it more than ten people?
A Yes.
Q So more than 15 people?
A I can't tell you that it was more than 15, but I know it was a lot of people.
Q Okay. And where were those people at?
A They was all over. Some of them was a little standing on the corner, and some of them was standing on the other side of the house because some people live on the other side of the street and they was over there, you know, so we had to rope this area off and keep all those people and stuff out of there. It was a lot of people.
Q Now did you talk with anyone other than Travis McGill -- excuse me, Travis Lane and Jackie McGill?
A I talked to Ms. Applewhite when she came up. And was a couple of other ladies out there that I talked to, but I don't recall their names.

Q And don't tell me what they said. What was your purpose of talking to those several other people? What was your purpose of talking to them for?
A To see if they had seen anything and ---
Q Don't tell me anything they said to you.
A No, I'm not telling you anything they said to me.
Q Go ahead.
A And Ms. Applewhite was the one that say she wanted to get over there to see.
Q Objection. Again, I repeat, don't tell me what anyone says.
A Okay.
Q Okay.
A All right.
Q Just I want to know who you talked with. I'm trying to figure out who did you talk with, okay, and what you talked to them about, okay. Now don't tell me what they were saying. What was your purpose for talking to those people? You told me you talked with -- now let me make sure I understand. You told me you talked with Travis Lane; is that correct?
A Right.
Q For a brief period?
A For a brief period.
Q You talked with Jackie McGill for a greater period of

time?
A Uh-huh.
Q You also spoke with Ms. Applewhite; is that correct?
A Uh-huh.
Q And I think you said you spoke with some other people; is that correct?
A Uh-huh.
Q And tell me what was your purpose of talking with those other people?
A To find out what they knew about what went on out there.
Q Okay, all right. That's it. Did you take down any of their names?
A No.
Q Okay. You didn't take down any of their names?
A No.
Q Now why didn't you take down their names? Just your own thinking.
A Because some of those people that was out there saying they didn't know anything.
MR. BROOKER: Objection, Your Honor.
MR. DEBERRY: Your Honor, he cannot object to his own question.
MR. BROOKER: We can if he's not answering the question.

MR. DEBERRY: The answer has to be made and then —

MR. BROOKER: Yeah, I think we told him about ten times you can't say what other people says.

THE WITNESS: But you keep asking me the same thing and I'm telling you what they said 'cause if I'm talking to somebody, you keep asking me what, what did you say to these people, what did you say to these people. I'm telling you what I said to these people and the people are not telling me anything so I can't get any information from those people.

BY MR. BROOKER:

Q You can tell me what you said, it's not hearsay. You can't tell me what anyone else says, okay?

A Okay. Well, I'm not getting any information from those people. I wasn't getting information from them.

Q Okay. So you didn't — so you didn't took down any names?

A No.

Q Okay.

A Not from them.

Q So your answer would be is that you didn't think, you didn't think they had anything fruitful to offer; is that correct? That's why you didn't wrote down their names?

A No.

SW - W. DAVIS - CROSS

Q I'm asking you a question.
A But your question is, it's not coming out the same way what my answer is gonna be 'cause my answer is gonna be what somebody said and you're not gonna -- you don't want to hear that.
Q Yes, sir. I'm asking you about your process and you, no one else. All of these questions directed from your perspective, okay.
MR. BROOKER: Your Honor, we'd ask ---
THE WITNESS: Go ahead. Go ahead.
THE COURT: Go ahead and ask him the question.
MR. BROOKER: Your Honor, if we need to we'd ask for a corrected instructions with respect to what hearsay is.
THE COURT: It's hearsay. There are exceptions to hearsay and some things other people say are not hearsay. I will listen to your question and I'll try to monitor him closely.
BY MR. BROOKER:
Q Okay. Now from your perspective and from your thinking, not what someone says to you, did you not write down those names because you didn't think, you didn't think they needed to be written down.
THE COURT: Might be -- just answer yes or no.

BY MR. BROOKER:

Q Just yes or no.

A No.

Q Okay. Well, approximately how many of those other persons did you talk with?

MR. DEBERRY: Your Honor, I think that's asked and answered. Can we just please move on.

THE COURT: I believe it is.

MR. BROOKER: Well ---

THE COURT: I'll sustain it.

MR. BROOKER: I think we never really asked number of people. I think previously asked him did he talk with. And I think what we're asking him is about how many, what the number is. I think he said he talked with Mr. Lane, Mr. McGill, Ms. White and some other people.

THE COURT: Go ahead and give your answer.

THE WITNESS: I probably talked to about probably about four people.

BY MR. BROOKER:

Q About four other people?

A About four.

Q Is that including Mr. McGill?

A That's including him.

Q That's including all them for a total of about four people.

A About four people.
Q Now did you ask Mr. McGill -- and again, I will preface this -- did you ask Mr. Travis Lane to write a statement of what happened that night?
A I can't recall that.
Q You can't recall whether or not you asked him? Did you ask Mr. Jackie McGill to write a statement of what happened that night?
A Yes, I asked him to write a statement.
Q Did Mr. McGill -- don't tell me what he said. Did Mr. McGill write a statement for you as you requested that night?
A He was writing one, but I think he gave it to one of the officers that was there. But I gave him some papers to write one on.
Q Okay. So you're saying that you gave him some papers to write his statement on?
A Uh-huh.
Q And that you says he started writing one?
A Uh-huh.
Q And correct me if I'm wrong, you didn't -- you didn't collect the statement, or the statement wasn't given to you?
A The statement wasn't given to me.
Q Okay. You said it was given to one of the other

officers?
A It wasn't given back to me.
Q Didn't you ask, didn't you tell Mr. McGill to write his statement and give the statement back to you after he completed it?
A Sure did.
Q Okay. But he defied your instructions and he did something else with it is what you're saying?
A I didn't get it back.
Q Okay, that's fine. I wanted to make sure. So you've never seen it? Have you at least seen the statement that he wrote?
A No, no.
Q Now did you handle the evidence or crime scene log sheet that night?
A That -- no, I didn't handle that log sheet.
Q Now who started the crime scene log sheet?
A Crime scene log sheet, I believe that was started by one of the other officers.
Q Do you know which officer?
A No, I can't recall which one it was.
Q Now let me at least let you take a look at this.
A Okay.
Q All right.
THE COURT: For the record, what are we looking

at?

MR. BROOKER: We're looking at what's -- is listed as crime scene log sheet, and it's on Marion Police Department letterhead.

THE COURT: Has it been marked for identification?

MR. BROOKER: It has not been marked yet.

THE COURT: Go ahead and do that if you're gonna use it.

(WHEREUPON, Defendant Exhibit No. 1 was marked for identification only.)

THE COURT: And what identification number is that?

MR. BROOKER: I'm sorry. The identification number of this is Defense Exhibit 1 for identification purposes.

BY MR. BROOKER:

Q Can you take a look at that? Did you sign that crime scene -- that crime seen log sheet that night?

MR. DEBERRY: Your Honor, I think if he's going to be referring to that and have Lieutenant Davis testify to that he needs to enter that into evidence.

MR. BROOKER: We have no problems with entering it into evidence.

THE COURT: All right. Are you admitting it?

MR. BROOKER: We move to enter that into evidence as ---

MR. DEBERRY: No objection.

MR. BROOKER: ---Defense Exhibit 1.

THE COURT: All right. Exhibit number one is in evidence.

(WHEREUPON, Defendant Exhibit No. 1 was admitted into evidence.)

THE WITNESS: My name is on it.

BY MR. BROOKER:

Q Did you sign your name to that?

A No.

Q Do you know how your name got on it or who put your name on it?

A The person that was taking the names of everybody that was going inside the crime scene, that's who did that. That's who handwrite the names.

Q Do you know who that person is?

A I couldn't tell you who it was.

Q So let me make sure that I understand at least correctly. Let me make sure that I understand correctly there was a crime scene log sheet, but it was not a procedure where everyone who came in or out of the crime scene had to sign in or sign out; is that correct? It wasn't that sort of procedure; is that correct?

A It -- no, it wasn't that type of procedure but that's what kind of procedure it should have been ---

Q Okay.

A ---where you log in everybody that comes in on that, in that crime scene. Everybody -- just like if you came in the crime scene and the person that's taking down the notes whoever you are, they'll write your name down as going into that crime scene.

Q And then when I leave the crime scene they would write my name out as leaving the crime scene and what time?

A No.

Q Okay. That's not the way y'all do it?

A Huh-uh.

Q Okay. Now you said that's the way it should have been done.

A Uh-huh.

Q Okay. But it wasn't done that way.

A (No verbal response.)

THE COURT: Be sure to say yes or no, not nod.

THE WITNESS: Yes. It wasn't done that way, no.

BY MR. BROOKER:

Q Now isn't it true that the reason why it's done that way is so that the law enforcement department who is exercising control of the scene has strict control over who comes in and who comes out; is that correct?

A That's correct, yes.
Q And that they know everybody who comes in and comes out; is that correct?
A Right.
Q Okay. So, and I think you said you didn't know the name of the officer who was doing this?
A No, I didn't know which one, which was taking that list and those names on there.
Q Did you see ---
A I know it was -- I know it was being done.
Q Did you see this list that night?
A No.
Q You didn't see the list that night?
A I didn't see the list that night.
Q Okay. When is the first time did you see the crime scene -- this crime scene log that's been identified as Defense Exhibit 1? When is this first time you see this crime scene list?
A First time I seen that crime scene list was, was here before when you had it.
Q Okay. So you didn't see it -- you didn't see it until this year?
A Right.
Q Until a couple of months ago?
A Uh-huh.

Q Is that correct?
A Right.
Q Now can you vouch for the accuracy of this list that everybody who entered the scene was included on this list?
A Let me see that. I can vouch for some of them that was there; but see, some of these guys, you know, just like the officers that we got now, I don't know them by that name but I know them by face. And I can vouch for some of them on there.
Q So some of the people were ---
A Yeah.
Q You personally saw some of these people on this list that was —
A Yeah.
Q --at the scene?
A At the crime scene, yes.
Q But there are some people that's on the list that you didn't saw, or you don't know whether or not ---
A I don't know their names. I don't know their names.
Q Okay. Now you said that you only saw this crime scene list just a couple of months ago; is that correct?
A Uh-huh.
Q Okay.

THE COURT: Answer yes or no.

THE WITNESS: Yes.

BY MR. BROOKER:

Q You never saw it the night of the crime scene?

A I didn't see it the night of the crime scene, no.

Q And of course, if you never saw it the night of the crime scene can you verify, or can you verify that this list was composed at the time that people went in and out of the crime scene the way it should have been? I'll be glad to rephrase my question if you don't understand.

A You want to rephrase that?

Q If you didn't see Defense Exhibit 1 which is the crime scene log the night of the crime scene, how can you verify that everyone was accurately recorded on the crime scene log as they went to the crime scene?

A 'Cause when the people that go into -- that was going into the crime scene, was the chief and the captain and people like that. 'Cause once you rope off the crime scene and he and the captain gets in there, they become the person that takes over that investigation then because they're the ranking people person. So everything is under my control until they arrive on scene. When they arrive on scene then it's theirs.

Q Do you still handle people coming in and out, and do you still -- well, you said you didn't handle the log, the crime scene that night?

A No. I did not handle that.

Q Can you verify, did you watch the person who did this crime scene log?
A No.
Q Did you watch them write down everybody's name —
A No.
Q ---as they entered the crime scene?
A No.
Q So you cannot verify that it was done accurately?
A I just said no.
Q Okay. So if you cannot verify it was done accurately then there could have been people that entered the crime scene that had no business there?
A No, they didn't enter the crime scene. Anybody didn't have no business there didn't go in that crime scene 'cause I made sure of that.
Q Okay. Now I know that you didn't handle the crime scene, but I see that's listed down here that went on the crime scene was mayor Bobby Gerald. Was mayor Bobby Gerald the late mayor Bobby Gerald?
A He was there.
Q Was he investigator at that time?
A No, he's the mayor.
Q Okay. Does he -- does he investigate crimes?
A He comes out on all of them.
Q He comes out on all of them?

A Comes out on all of them.
Q But he doesn't investigate any crimes?
A No.
Q And so he would not have any sort of at least law enforcement reason for being on the scene?
A I can't speak for him, and if I will tell you anything about that that's gonna be hearsay.
Q Well, I'm just asking you what you know, your personal knowledge is. Don't tell me -- do you know whether or not -- do you know whether or not he had any law enforcement credentials? Yes or no. Do you know or do you not know?
A I don't know.
Q Okay. Do you know whether or not he was an investigator?
A I know he wasn't no investigator.
Q You know he wasn't an investigator?
A No.
Q Do you know whether or not he had investigative purpose for being on the crime scene?
A I can't tell you that.
Q Okay. Now let me ask you just about a couple of names on the crime scene log list. There's a first person's name on the crime scene is Robert -- looks like Temoney, T-E-M-O-N-E-Y.

A Temoney.
Q Do you know that person?
A Yes.
Q Okay, Trey Cooper?
A He's with the fire department.
Q Okay.
A Those guys are with rescue.
Q Robert Temoney, who is he with?
A He's with Marion rescue.
Q Is that EMS?
A Yes.
Q Okay. Trey Cooper you said was fire department?
A Uh-huh.
Q William Skipper?
A I can't tell you who he is. I only know his face.
Q Charles ---
A He's with EMS too.
Q He's with EMS?
A Uh-huh.
Q Chris Johnson?
A Chris, yeah, he was with EMS too.
Q And the it looks like -- looks like Meathal,
M-E-A-T-H-A-L.
A I don't know his face.
Q Eric Barnes?

A He was one of the police officers.
Q Jimmy Collins.
A Jimmy Collins, I only know his face.
Q Jackie Yates?
A He's with the rescue.
Q Looks like that's -- is that Gerald Harpes?
A Gerald Harpes.
THE COURT: Speak up.
THE WITNESS: I only know his face. Go ahead.
BY MR. BROOKER:
Q Marvin Austin?
A That was one of the other police officers?
Q Jimmy Jackson?
A That was one of the police officers.
Q Walter -- and of course that's you.
A Walker, W-A-L-K-E-R.
Q Walker Davis, Senior, that's you?
A That's me, right.
Q Chris McKenzie, who is Chris McKenzie?
A I don't know Chris McKenzie.
Q And of course Farmer Blue. Is that Lieutenant Farmer Blue that's in the room?
A Right.
Q Okay. Jim Gray?
A That's Captain Gray.

SW - W. DAVIS - CROSS

Q Okay. Looks like ---
A Detective Woods.
Q Okay. Bobby Gerald?
A That's the mayor.
Q Lieutenant Farmer Blue.
A They put his name on there twice. Go ahead.
Q So Farmer Blue and Lieutenant Farmer Blue are the same person?
A Same person, uh-huh.
Q Okay. Of course, it says Solicitor Ed Clements?
A Right.
Q Buddy Feagin?
A Uh-huh.
Q Ed Severance?
A I don't know him.
Q Okay. Do you know C. Watson?
A No, I don't know him.
Q You know R -- it looks like Hoalling, H-O-A-L-L-I-N-G.
A I don't know him.
Q What about S. Barfield?
A I know him.
Q Okay.
A He's a deputy.
Q You know E. Grice?
A Yeah, he's a deputy.

Q And looks like D. Miles.
A I don't know him.
Q Okay. So there's a list of people in here that you don't know and you don't know what their purpose was for being out on the scene?
A No, I don't know what their purpose.
Q Now, almost finished. How long did you stay at the scene?
A I stayed at the scene the entire time.
Q Okay. How long was that? How long did the scene lasted? You stayed there until the tape was taken down?
A No, I didn't stay there till the tape was taken down. I stayed there until I believe back until -- it was a while but I left ---
Q I'll try and make it easier for you. Was it daylight? Was it daylight or was it still dark when you left?
A It was just about daylight because that's when I was finishing up with this report 'cause this report had to accompany the body.
Q Okay. Okay. And you prepared your written report there at the scene?
A This written report accompanies the body.
Q Okay. And that report, that handwritten report, you prepared that at the scene?
A At the scene.

SW - W. DAVIS - CROSS

Q Okay, all right. If you can indulge me just a second ---

A Okay.

Q ---to make sure I have no further questions for you. Now just one very brief line of questions. Were you there when the shooting took place?

A No.

Q Did you personally witness the shooting?

A No.

Q Okay. So you was not -- you're not a -- and of course, like I said, don't tell me what someone else says. Those people will have a chance to get up and testify.

A Okay.

Q So you are not a personal witness, a personal witness to the shooting itself, or you don't have personal knowledge from seeing who actually fired---

A No, sir.

Q ---any guns that night?

A No, sir.

Q Okay. And you're not here to tell the jury that you're a personal witness to the shooting but that you personally witnessed who shot fires ---

A No.

Q ---or shotguns that night?

A No, No, I can't do that.

Q Okay.

MR. BROOKER: No further questions for this witness.

THE COURT: Redirect.

MR. DEBERRY: Just a couple, Your Honor.

REDIRECT EXAMINATION

BY MR. DEBERRY:

Q Lieutenant Davis.

A Yes, sir.

Q This crime scene log, you said another officer was in charge of this?

A Yes.

Q Okay. Do you know -- and you testified that you didn't know who that officer was?

A Right, I didn't know who took that list.

Q Okay, so -- so you can't testify as to how he conducted this list, how he made this list?

A No.

Q Okay. And you testified that you left the scene when?

A I left there probably just before it got light 'cause I was doing that report, finishing that report.

Q So the shooting happened on the evening of the 13th?

A Right.

Q So you would have left the scene into the next day?

A Yes.

Q All right. And what is your involvement in that day and days forward with this case?
A It was to finish up with the report to accompany the body and any other questions, whatever they may have.
Q Did you receive any information about the person of interest in this case?
A Lieutenant Blue received some information about the subject.
Q All right. And as a result of that information what did you do?
A I was notified to come talk to him and go pick him up.
Q So you went to pick up Mr. Reaves. Was -- do you remember how long after the incident that you picked Mr. Reaves up?
A Not right offhand.
Q Was it the next day? How many -- about how many days?
A It was, I believe it was a couple of days later.
Q Okay. And where did you go to apprehend Mr. Reaves?
A I went to Pennsylvania, Philadelphia.
Q So you received information that he was in Philadelphia?
A Philadelphia, right.
Q And what was your purpose in retrieving Mr. Reaves from Philadelphia?
A Went up there to bring him back because we had warrants

on him.

Q All right. And what kind of warrants did he have on him?

A For murder.

Q All right. Thank you very much.

THE COURT: Anything further, Mr. Brooker?

MR. BROOKER: Nothing further, Your Honor.

THE COURT: Thank you very much. You may step down.

All right, go ahead and call your next witness.

MR. DEBERRY: Yes, Your Honor. I'm assuming he must be right downstairs.

THE COURT: Okay, go get him.

MR. DEBERRY: Can I have just a minute to get him?

THE COURT: Sure. Everybody okay? Want to do one more witness or you want a break? All right, why don't we take a ten minute break, 10, 15 minute break. Again, do not talk about the case among yourselves at all. We will be back out here at 11:30.

(WHEREUPON, the jury was removed from the courtroom at 11:15 a.m., and a break was taken.)

THE COURT: If you would go ahead and bring out the jury.

(WHEREUPON, the jury was returned to the courtroom at

approximately 11:30 a.m., and the following proceedings commenced in open court.)

THE COURT: Solicitor, call your next witness.

MR. DEBERRY: Thank you, Your Honor the State would call Kenny Kensy.

THE CLERK OF COURT: Sir, if you would come and let me swear you in, sir.

WHEREUPON,

KENNETH KENSY,

having been duly sworn by the Clerk of Court, testified as follows:

DIRECT EXAMINATION

BY MR. DEBERRY:

Q Mr. Kensy, thank you for being here. Can you state your name for the record and where you work.

A Kenneth Kensy. I'm currently employed with the First Judicial Circuit solicitor's as a violent crimes investigator. I'm formerly a special agent with the South Carolina Law Enforcement Division.

Q All right. What were your duties with South Carolina Law Enforcement Division?

A I was assigned to latent prints crime scene unit. We assisted South Carolina agencies, both state and local, in processing crime scenes.

Q All right. And South Carolina Law Enforcement

Division, that's referred to as SLED?
A Commonly referred to as SLED, yes, sir.
Q All right. And how long had you worked for SLED? I mean, how long did you work for SLED?
A I was at SLED approximately five years, but I worked crime scenes prior to working for SLED.
Q Okay. So how many years in law enforcement do you have?
A Approximately 20 years, 14 of which I've been a crime scene examiner.
Q All right. How were you employed back in May of 2007?
A I was a special agent at the South Carolina Law Enforcement Division.
Q All right. And part of your duties -- did part of your duties with SLED at that time, could you be called out to different counties to help assist with investigations?
A We were on-call 24 hours a day.
Q All right. And around May or May 13th, 2007, did you receive a call from the City of Marion?
A I did.
Q And can you explain what you did pursuant to receiving that call and how that, how that happened?
A I received the call approximately around 11 p.m. on the 13th. I'm not exactly sure the exact time, but of course, it took me a little while to respond here. I live about

three hours away so my arrival time was actually on the 14th at approximately 1:30.

Q Okay. So 1:30 in the morning?

A Yes, sir.

Q And what had you been briefed on? I mean, what -- what was your understanding of what you were going to encounter when you arrived here?

A Our assistance was requested in the processing of a death, death scene, and where we would document, identify, and collect physical evidence.

Q Okay. And can you explain the scene as you found it when you arrived?

A It was a single story family dwelling in close proximity to a street.

Q Okay. So there's a house near a street?

A Yes, sir.

Q And ---

MR. DEBERRY: Beg the Court's indulgence just a second. Can I approach, Your Honor?

THE COURT: Sure.

BY MR. DEBERRY:

Q I'm going to hand you what's been marked State's Exhibit or Exhibits 15, 14, 10, 9, 8, and 7. Those are photographs. If you can just take a look at that and see if that's what you encountered the night when you got

there.
A These are my photographs and they are accurate.
Q All right.
MR. DEBERRY: Your Honor, at this time I'd like to introduce those exhibits into evidence.
THE COURT: Any objection, Mr. Brooker?
MR. BROOKER: No objection.
THE COURT: All right. That will be items 15, 14, 10, 9 and 8 and 7; is that correct?
MR. DEBERRY: That's right, Your Honor.
THE COURT: Into evidence without objection.
(WHEREUPON, State Exhibits Nos. 7, 8, 9, 10, 14, 15 were admitted into evidence.)
MR. DEBERRY: Your Honor, if we may approach just a minute.
THE COURT: Sure.
(WHEREUPON, counsel approached the Bench for an off-the-record discussion.)
THE COURT: Members of the jury, if you will step into the jury room for just a moment. We have to go over a matter of law. We'll be back with you in just a second. Do not discuss the case.
(WHEREUPON, the jury was removed from the courtroom at 11:39 a.m., and the following proceedings commenced in open court.)

THE COURT: All right, I'll be glad to hear from you, Solicitor.

MR. DEBERRY: Your Honor, the State's intending to move it's State Exhibit 11 and 16 into evidence, and I believe that Defense counsel has objection. They're pictures of the crime scene as it happened that night.

THE COURT: All right, Mr. Brooker, any objections?

MR. BROOKER: We object, Your Honor, to the introduction of those photographs because basically I object -- our objection is based upon the fact that any probative value of those photographs is outweighed -- excuse me, any prejudice that those photographs may exhibit is outweighed by any probative value they might have. Specifically is, is that those photographs depict absolutely nothing that is in controversy. I think photograph -- I think proposed what's been marked as, I guess, for identification purposes State's Exhibits 11 is basically is that a photograph of blood in the back of the Crown Victoria and blood on the doorway of the Crown Victoria. And of course we think it's just simply for the purposes of shock value; that nothing that's contained in this photograph is actually in controversy. And of course the same can be said also for State's Exhibit Number 16. I think it shows blood, I think, that's on the exterior,

you know, brick wall of the house. And of course, again, is that it has no probative value, at least any probative value this has is outweighed by its prejudice because, again, it does not involve any issue that's in evidence. It doesn't provide nothing to the jury except for shock value.

THE COURT: All right. Let the record reflect that I have examined four photographs the Solicitor has presented to me. Two of them at side bar I said I would not allow based on Mr. Brooker's objection, and I have allowed the other two which are less gruesome of photographs, and in fact, corroborate Lieutenant Davis' as well as other testimony so I will allow those two. All right, if you will bring out the jury. So 11 and 16 are in evidence.

(WHEREUPON, State Exhibit Nos. 11, 16 were admitted into evidence.)

(WHEREUPON, the jury was returned to the courtroom at approximately 11:42 a.m., and the following proceedings commenced in open court.)

THE COURT: All right, you may continue.

MR. DEBERRY: Thank you, Your Honor.

BY MR. DEBERRY:

Q Mr. Kensy, will you take a look at State's, what's entered in the evidence as 11 and 16. Are those also your

photographs?
A Yes, sir, they are.
Q All right.
MR. DEBERRY: I'm gonna ask he be allowed to step down, Your Honor.
BY MR. DEBERRY:
Q If you could, could you just describe the crime scene to the jury by way of these pictures just as far as what's where and what took place as far as what you found that night, how you found it that night.
A Do you have a specific picture you want me to start with?
Q Well, I just, if you could just explain to the jury in relation to how the car was parked with in relation to the house and the evidence that's in those pictures.
A Okay. This is a front shot, a general photograph from the street of the residence on Mullen. You see the white vehicle in the front at some point in time after the shooting incident. The victim was placed in or on this vehicle, and there was a transfer of bodily fluids. The other vehicles are just parked in the front yard of the residence. The front door of the residence and the shooting took place somewhere in proximity of this residence door. There's a shot from the steps, the direction of the steps coming back down to the street and

some projected blood on the corner of the brick veneer of the residence right to the side of the entrance way.

Q All right. Mr. Kensy, pursuant to your investigation did you collect evidence that night?

A I did.

Q Okay. And did any of the evidence that you collected tend to have any value as far as connecting the murder to a suspect?

A No, it did not.

Q Okay. And did you transport any evidence that was given to you from the Marion Police Department to any crime lab?

A I did.

Q All right. And what evidence was that?

A May I refer to ---

Q Sure.

A — my case file? I received three gunshot residue kits from Lieutenant Farmer Blue, a black T-shirt, and one blue jean jacket that was transported to the SLED lab.

Q Okay. And so you received that, those materials, from Lieutenant Farmer Blue with Marion Police Department?

A Yes, sir, I did.

Q And you transported them to where?

A To the laboratory at SLED.

Q Okay. And who did you give the gunshot residue kits to

at SLED?
A They were hand delivered to Lisa McReynolds.
Q Lisa McReynolds, all right. Are you familiar with gunshot residue?
A I'm trained in the collection of it. I can tell you the components.
Q Okay.
A Is that what you're asking?
Q Sure.
A Gunshot residue contains three parts: Barium, lead, and antimony. And after a close time after firing a weapon those three components will be transferred to the hand of a shooter in measurable quantities, and it also can be transferred to the victim or someone that can be standing in proximity to that gunshot.
Q All right. And I'm gonna hand you these three gunshot residue kits. Can you tell us who these were taken from that day?
A I can give you what's on the package but I did not collect them.
Q Okay.
A This, the first one which is SLED's item number six marked State's Exhibit 22, it states that it was collected from Joemilla Wilson-Dozier by Detective Larry Woods.
///

Q If you'll...

(WHEREUPON, State Exhibit No. 20, 21, 22 were marked for identification only.)

MR. BROOKER: Your Honor, we're going to make an objection at least to introducing anything at least that ---

THE COURT: They haven't been introduced yet.

MR. BROOKER: Well, I'm talking about any -- I'm talking about anything off of them as well too because obviously chain of custody has not been established.

THE COURT: Are you introducing them?

MR. DEBERRY: No, sir.

THE COURT: All right.

BY MR. DEBERRY:

Q Mr. Kensy, you testified that the first gunshot residue kit that you received from Farmer Blue is from Joemilla Wilson-Dozier. That's State's Exhibit 20?

A It is labeled as such.

Q Okay, right. How are these two labeled?

A The GR kit that's labeled as State's 21 is labeled as being collected from Rodney McElveen I believe.

Q Okay.

A The handwriting is hard to read. And it was also collected by Detective Larry Woods. And the gunshot residue kit that is labeled State's 22 is labeled as

being collected from Brandon Bellamy, also by Detective Larry Woods.

Q Okay. And are those the three kits that you transported to SLED?

A Yes, sir, they are.

Q Okay. What was your -- after your responded to Marion County and after you left and took some evidence with you back to be tested, what was your further involvement with this case?

A I -- our services were no longer needed by Marion P.D. At their request I terminated my investigation.

Q Okay. So you received notice from Marion Police Department that your service was no longer needed?

A That is correct.

Q All right. Hang on just a second. All right, thank you very much. Please answer any questions Mr. Brooker has.

THE COURT: Mr. Brooker.

MR. BROOKER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. BROOKER:

Q What's your title again?

A Investigator.

Q Investigator. And who are you investigator with right now?

A The First Circuit Solicitor's Office.
Q Okay. I think at that particular period of time I think you said you were with SLED; is that correct?
A That is correct.
Q And what was your capacity at SLED?
A I was a special agent at the latent print crime scene unit.
Q Okay. Since we last left off at least with the -- these gunshot residue kits, let's start off with that. I think you testified that you received the gunshot residue kits from, I think, Detective Woods or Officer Woods?
A No, sir.
Q Who did you receive them from?
A Lieutenant Farmer Blue.
Q Okay. And when was that?
A May I refer to my case file?
Q Certainly.
A That was May the 14th at approximately 6:39 in the morning.
Q Okay. And then what did you do with them?
A I transported them to SLED.
Q And did you give those to someone at SLED or do they have evidence drop box that you put them in?
A Excuse me?
Q I said did you hand them to someone specifically at

SLED, or do they have an evidence drop box that you put them in?
A I hand delivered the evidence.
Q Okay.
A First I have to package and label and then I hand deliver it.
Q Okay. Now you also said that that night that you were called out to, called out to the scene to collect evidence; is that correct?
A That is correct.
Q Okay. And I think you said previously that you are a latents print expert —
A Yes, I have qualified —
Q —specifically at SLED?
A That is one of the areas I've been qualified as an expert.
Q Okay. Now it is my understanding that you also collected evidence from evidence that was from the outside of the home, evidence that was found on the ground in the outside of the home; is that correct?
A That is correct.
Q Okay. And I'm gonna ask you at least a few of those items that was taken outside of the home, I think, that was -- that was on the ground. Now if you can indulge me for just a second. My understanding is that one of the

items that was collected outside, collected outside, was a white, almost like baseball hat; is that correct?

A It was a hat. I cannot tell you for sure the color. Give me one moment please. I have a black hat documented.

Q Okay, you have a black hat that's documented?

A Yes, sir, marker number 7.

Q Okay. Marker number 7, it's a black hat. Do you have marker number one that's being a white hat?

A I'm still searching one moment. Yes, sir, that is correct. Marker number one, a white hat.

Q Okay. So what you collected outside, and of course, to my understanding this evidence was in close proximity to where the shooting took place; is that correct?

A Between the residence and the street, yes, sir.

Q Okay. And of course, lying on the ground I think between the residence and the street right pretty close to where the shooting took place was a white hat; is that correct?

A That is correct.

Q There was also one gold chain; is that correct?

A Actually I've got two gold chains documented.

Q Three gold chains I think actually.

A Yeah, but you said in proximity to where the shooting took place. The other one was found a little bit further over.

SW - K. KENSY - CROSS

Q Okay. How much further over?
A The distance wasn't documented.
Q Okay. Was it as close as I am to you?
A It may have been.
Q Okay. So if it was as close as I am to you, you would say that's not within close proximity?
A No, sir, I would not. That would be an intermediate distance.
Q That would be ---
A Yes, sir.
Q ---an intermediate distance? Okay. So three chains; is that correct?
A Yes, sir, that is correct.
Q Okay. There was also three cell phones; is that correct?
A Three cell phones and a blue-tooth.
Q Okay, so three cell phones and a blue-tooth. And these are all found outside, outside near to where the shooting took place?
A Between where the projected blood was on the brick and between the front of the residence and the street.
Q Okay. Now you also, I think, there was a visa card, if I'm not correct?
A That is correct.
Q Okay. Now do you have your photographs there? I know

that you're looking at something. What are you looking at?

A I have the photographs that were introduced.

Q I'm sorry?

A I have the photographs that were introduced.

Q Okay. Now with respect to the black hat, was that ever analyzed?

A I cannot give you that information.

Q Do you know whether or not it was analyzed?

A I do not know, no, sir.

Q Did you have it analyzed?

A No, sir, I did not.

Q The white hat, was that ever analyzed?

A I do not -- cannot give you an answer. Once again, I do not know.

Q Did you analyze it?

A I do not analyze hats, no, sir.

Q Okay. And you have no knowledge whether or not it was ever analyzed?

A I do not.

Q Okay. There was a Motorola cell phone. Did you analyze that?

A I did not.

Q Okay. Did you ask to have it analyzed or send it off to SLED to be analyzed?

SW - K. KENSY - CROSS

A It was asked of me to return it to the agency.
Q So your request was to return that, the cell phones?
A It wasn't my request. It was requested that I sign over the evidence to the Marion P.D.
Q Okay, okay. Well, and we're gonna get into that. So all of that evidence that we just listed -- the white hat, black hat, what I'm gonna refer to as chain one, chain two, chain three, cell phone one, cell phone two, cell phone three, the blue-tooth, and there was I think also, was there not also a black durag?
A You're spitting it out there pretty quick, but if I could check my paperwork I can tell you about all that so.
Q Certainly, take your time.
A Can you start over item by item and I can you what was done with it. Some of the items were submitted.
Q Certainly.
A Yes, sir.
Q There was a white hat?
A The white hat was submitted for biological screening.
Q Was it screened?
A I cannot give you that -- I'm not privy to that information.
Q So you don't know whether or not it was screened?
A No, sir.
Q And who was it submitted to?

A It was submitted to the evidence processing unit at SLED.
Q It was -- okay, submitted to evidence processing scene at SLED?
A Yes, sir.
Q Was it submitted to anyone in particular?
A If you show me a chain of custody I can tell you, but I do not recall.
Q I don't have one.
A Okay, I cannot answer that.
Q Okay. What I'm handing to you, of course, it's not in the evidence but it's for the purpose of refreshing your memory, is a South Carolina Law Enforcement Division chain of custody form. Can you look at that and tell me whether or not who that was submitted to. I think you said white hat was submitted; is that correct?
A Yes, sir, it was.
Q To SLED.
A It would have been hand delivered to Patty Ruff.
Q Patty Ruff?
A Yes, sir.
Q Okay. Now you said that you submitted that white hat. Was it your decision to submit that white hat, or why did you decide to submit the white hat to SLED for testing?
A At that point in time we had an unknown shooter.

Hopefully to prove ownership.
Q Okay. So the purpose of that would have been able to at least, to at least, if you could identify the owner of that hat then of course that could then put particular person at the scene; is that correct?
A Well, that's -- actually me identifying, that's way beyond my scope.
Q No, I'm not asking that you identify, but I'm saying the purpose of trying to get a DNA sample on that is, is to identify, you said, to identify the owner of that hat?
A Yes, sir.
Q Is that correct?
A And to prove ownership, yes, sir.
Q And the ownership of that hat would probably prove that that person would have been at the scene because that hat was found at the scene?
A Could have been or someone else could have been wearing, you know, someone's hat. I mean, it ---
Q Or if someone else was wearing someone else's hat that presumably that person's DNA would have been in it?
A There's a possibility. I'm not a DNA expert but I'm sure there's a possibility.
Q Okay. So that would put someone, that could potentially identify who was wearing the hat that night potentially?

A Yes, sir.
Q Okay. And could potentially put the wearer of that hat that night at the scene because that hat was found on the ground at the scene; is that not correct?
A At some time or another can at least put them on that property. Can't tell you what happened during, you know —
Q Certainly?
A —the incident.
Q Certainly. But it was found on the scene of the shooting immediately after the accident, or at least you collected that from the scene once you arrived to process the scene; is that right?
A That is correct.
Q And I'm assuming because you collected it you thought that it probably had at least some probative, potentially probative value?
A That's why it was submitted, yes, sir.
Q Okay. Now there was three chains. Was any of those chains submitted for analysis?
A No, sir, they were not.
Q But they were collected?
A They were.
Q By you at the scene?
A Yes, sir, they were.

Q I'm assuming that because you collected them at the scene that you probably -- did you assume that they probably had some involvement in the crime or at least had some probative value to them?
A Well, I may have and I may not. It's kind -- you can't leave it there. You really don't know at the time so you collect everything and then you process what you can or you send what you can for processing. The chain was one of those items that was requested that I return to Marion P.D.
Q And of course I'll ask that question again is, is that did you collect it because you think that it might have any probative value? Yes or no.
A It may, yes.
Q Okay. But that's the reason why you collect evidence is that if something might help out you collect it just in case, if it might have probative value.
A Yes.
Q That's how you distinguish between things that you will take and things that you're not gonna take?
A Yes.
Q You're looking for things that could potentially be connected to the crime; is that correct?
A That is correct.
Q So those necklaces could have had probative value.

A It may.
Q Is that why you collect it?
A Yes, it is.
Q Okay. But that was not submitted for analysis?
A It was returned to the Marion P.D. at their request.
Q Okay. Black hat, was that submitted for analysis?
A That was. That was submitted. Yes, sir, it was. The same scenario as the white hat, it was submitted as item number 9 for biological screening.
Q And it was submitted to the same, I think, Patty at SLED that was —

THE COURT: Patty Ruff.

BY MR. DEBERRY:
Q Patty Ruff, I'm sorry. Patty Ruff.
A That is correct.
Q Okay. Now do you know whether or not that was analyzed by SLED?
A I do not.
Q Okay. Now I'm assuming you submitted the black hat for the same reason you submitted the white hat, is that at that particular period of time that might potentially put someone at the scene; is that correct?
A At least at one time or another. I wanted ownership on that hat also.
Q Okay. Now was it your decision to have the white hat

and black hat analyzed, or were you instructed to have them analyzed?
A No, sir, all I can do is submit the items. It's the unit or the department I submit them to. It's their decision or not whether they can or will process those items.
Q I understand. And I'm saying who made the decision to submit them?
A Well, I did.
Q Okay.
A I collect them.
Q And that was my question is, is that generally is that when you collect you make the decisions with respect to what you're gonna submit?
A What I'm gonna submit, yes, sir.
Q So you made the decision to submit the two white hats, but you made a decision not to submit the chains?
A I did not make the decision not to submit the chains. We're an assisting agency. It was requested by the ---
Q Agency?
A ---Marion agency for me to return that item.
Q Would you have submitted them to SLED?
A Yes, sir, I would have.
Q Now you don't -- don't tell me what anyone says, but who requested, who requested, what's the name of the

person who requested that you return those chains back to Marion P.D.?

A I can only give you the name that I signed them over to. I don't know the hierarchy over there. I returned them to Lieutenant Blue.

Q Okay.

A But I cannot tell you that he's the one who told me to return them. It was someone in the hierarchy.

Q Yes, sir. Now there were also three cell phones. There was a Motorola I believe, and make sure that we have them right. Was there a Motorola cell phone; is that correct?

A I got a Kyocera.

Q Kyocera?

A US Starom. And then the blue-tooth.

Q Okay. There was three cell phones?

A Uh-huh.

Q The third cell phone, that was a Motorola? I think it may be item number five.

A Yes, sir. Motorola cell phone, item five.

Q Did you submit those to SLED for analysis?

A I did not.

Q Okay. I'm assuming you made the decision to submit it to, submit it to SLED, or why didn't you submit it to SLED for analysis?

A Once again, it was requested that I return those items to the Marion P.D.
Q Now I'm -- I'm assuming because you collected those items, those three cell phones that was in close proximity to the scene, that you collect them because you thought they had potential probative value in connection with this case?
A That's correct.
Q Okay. Now you said you did not submit them to SLED because they were requested returned to the agency. Would you have submitted those cell phones to SLED?
A With the cell phone, that depends. The value of the information that's on that phone may be more probative than any forensic evidence that may be on the phone. For instance, if I was to use cyanoacrylate to process that phone for latent fingerprints, I could potentially destroy any electronic data that may be on that phone. So that's a decision a lead investigator or somebody a little bit higher than my pay grade usually would make.
Q Let me ask you a question, is that, is there a possibility that anyone who handled that cell phone -- or let me ask you, that is, that can DNA, potential DNA whether it be sweat or anything like that, can be lifted off a cell phone surface of a cell phone?
A It could be. There's always that potential.

Q Okay. And of course, that sort of DNA could be used to at least identify a particular individual?
A Yes. Someone who may have held that phone or used that phone or what else, but the flip side is they're also ---
Q I'm gonna get to that, I understand. I'm gonna ask about that as well also.
MR. DEBERRY: Objection Your Honor. I ask he be allowed to answer the question.
MR. BROOKER: Certainly he can answer that.
THE WITNESS: The other side of that argument is there are also timelines that can be drawn or phone numbers that can be tied back to certain persons, timetables, that kind of thing that can be down -- or text messages that can be downloaded off those phones that are also found to be of value in investigations like these.
BY MR. BROOKER:
Q But isn't it true that SLED does that type of work, that they do download or process electronic devices that taking abstract cell phone, cell phone numbers, and messages, and that sort of thing?
A SLED has the capabilities but I can't give you a timeline, and a lot of times with forensic evidence you do have a definite timeline before the evidence disintegrates or is contaminated.
Q So correct me if I'm wrong, is that there are two

potential, those cell phones, what you're telling me -- you correct me if I'm wrong. My understanding is that what you're saying is there's two potential types of probative evidence that can be obtained from those cell phones. One is that the internal data on the inside of the cell phone; is that correct?

A That is one, yes, sir.

Q And then the other would be obviously is that any physical evidence that could be found like fingerprints or sweat or that sort of stuff on the outside of the cell phone?

A That is correct.

Q And of course, would you agree with me that both type evidence would potentially be useful?

A I would agree, but in a perfect world you can't always get both types. You're gonna destroy one to get the other.

Q Well, can you obtain the -- can you -- you're gonna destroy one in order to get the other, okay.

A Yes. I didn't say you have to. I said you can destroy one to get the other.

Q Okay. But is that your field of expertise?

A That is, yes, sir.

Q Okay. Now was there any attempt to get either -- do you know whether or not there was any attempt to get

either form of evidence off of these cell phones, either internal data off of the interior of the phone or either latent evidence from the exterior of the phone?

A That was -- to my understanding that was the purpose of me signing those phones over to Marion P.D. They were gonna have them downloaded immediately.

Q And do you know whether or not that was done?

A I do not.

Q Would you have done that?

A Would I have had them downloaded?

Q Yeah, if it was your investigation?

A No, sir, probably not.

Q Okay. How would you have processed those cell phones?

A With cyanoacrylate and and some type of medium, probably a black fingerprint powder.

Q So what you're telling me you would have used them some way or other to obtain evidence. You would have made an attempt to use them in one form or another to take, to obtain some evidence from them?

A If it was determined that we would go the physical evidence route as opposed to the electronic media, then my only option would have been superglue and some type of medium.

Q Would you agree with me that at least some form, whether it be abstracting evidence from the cell phone or

either from the outside of the cell phone, that at least one of those evidence gathering techniques should have been used to get some evidence from the cell phone?

A That should have been used or could have been used?

Q Should have been.

A Well, I mean, I'm not directing the investigation. You're asking me ---

Q I know, but I'm asking your opinion as an investigator.

A You're asking my opinion ---

Q As an investigator.

A My opinion is one or the other should have been used, yes, sir.

Q Do you know whether or not one or the other was used?

A I do not.

Q And of course, I'm sure that you would say that that would be true for all three of those cell phones.

A Yes, sir, I signed them all over at the same time.

Q Now the blue-tooth, the blue-tooth earpiece, what did you do with that? Was that submitted?

A If I'm not mistaken it was turned over also, but I will confirm that. It was also turned over to Marion P.D.

Q Now I'm assuming that you did collect that and that was in proximity of -- that was in close proximity of the incident. And you collected it because you thought it could potentially have probative value; is that correct?

A Yes, sir, that is correct.
Q And I think you said that that was returned to Marion P.D.
A That is correct.
Q Now would at least your opinion that you collected that because it could potentially would have probative value, would you have submitted that to SLED for analysis?
A In my opinion?
Q Yes.
A In my opinion, yes, sir, I would have.
Q And the type of evidence that could have been -- I'm assuming that because it is an earpiece that it could potentially -- could it potentially have wax or either fingerprints or either some other physical evidence on it that could probably identify a person or ---
A It could be a DNA source if I didn't know who it belonged to.
Q Okay. And you said no test was done on the blue-tooth?
A To my knowledge there wasn't.
Q Yes, to your knowledge. But you did not submit it to SLED?
A I did not submit it, no, sir.
Q There was a black durag that was found at the scene?
A That is correct.
Q Did you submit that to SLED?

A I did not.
Q And did you not submit that to SLED because of the same reason it was requested returned to the agency?
A That is correct.
Q Okay. Now I'm gonna ask an obvious question, is that you collected the durag at the -- from the scene because it potentially would have evidence on it or potentially would have some sort of DNA evidence that could potentially identify or either exclude individuals?
A That's why I collect it. That was my purpose of collecting it.
Q As an investigator would you have submitted that to SLED?
A Yes and no.
Q You may explain if you want to explain.
A I can explain? As a crime scene investigator I do not know who these items belong to, but I cannot sit here and tell you that the investigating agency or any of the investigators that were working that had not identified those particular items to a person. So that may be a reason why there's no need for a test. But I'm just not privilegeto that information. I do not know the reasoning behind it.
Q Okay. And I'm gonna ask you, I think, at least your opinion as an investigator. I think you said right now

---

MR. DEBERRY: Objection, Your Honor. He keeps asking for an opinion, and this is a lay witness and opinion testimony is not admissible.

MR. BROOKER: He's a ---

MR. DEBERRY: If he wants to try to qualify him as an expert in whatever he's asking him about, then he needs to do that.

THE COURT: Sustained.

MR. BROOKER: Certainly. I'll go ahead and qualify him.

BY MR. BROOKER:

Q Could you explain at least your law enforcement background and your training?

A Yes, sir, I have -- I've been a law enforcement officer since approximately sometime in 1992. I'm -- I've worked patrol. I've been a patrol supervisor. I've been in crime scene capacity for approximately 14 years. I've investigated a documented 750 death investigations. I'm internationally certified by the International Association for Identification as a crime scene investigator. I've qualified approximately 30 times as a latent print expert, ten times as blood spatter and blood pattern analysis expert, a few other times in different aspects of crime scene investigation including footwear, crime scene

reconstruction, and tire wear.
Q Thank you.
MR. BROOKER: Your Honor, I would submit, submit Investigator McKensy (ph) as an expert.
THE COURT: Any objection?
MR. BROOKER: Investigative expert.
MR. DEBERRY: As long as he asks what questions in line with what he's qualified as an expert.
THE COURT: Motion is granted. Continue further.
BY MR. BROOKER:
Q I think you said that you were a crime scene investigator, I think, has conducted I think you said was 700 something ---
A I've been part of 750 death investigations, yes, sir.
Q In which you've investigated crime scene or been a part of investigating crime scenes?
A Crime scene or evidence.
Q Okay. And so with respect to investigating crime scene and crime scene evidence, I'm assuming that you have a fair knowledge of that, a fairly good knowledge of that?
A I like to think I do.
Q Okay. Now I'll ask you that question and ask you your opinion. I think you previously testified to, I think, is that whether or not you would have the durag analyzed. It depends on whether or not you had identified the owner of

the durag or not. Is that correct?
A That is correct.
Q Okay. Now in this particular situation do you know whether or not the owner of that durag had been identified?
A I do not know, no, sir.
Q Okay. Now had you not known the owner of that particular durag would you have had it analyzed to try to determine who was the owner or at least who was wearing it that night it fell off?
A If ownership was unknown, yes, sir, I would have it submitted to try to determine ownership.
Q Okay. And potentially in your experience that durag would possibly reveal maybe hair samples, hair follicle samples that was caught up in the durag or either some other sort of DNA; is that correct?
A Yes, sir.
Q There was also a Visa card that was found within close proximity of the scene. I think you collected that evidence; did you not?
A Yes, sir, I did.
Q And you collected that evidence because you were of the opinion that it could yield potentially probative evidence?
A That's true.

Q Okay. And with respect to the Visa card what was done to that Visa card?
A It was also returned to the Marion P.D.
Q Okay. Was there a name on the Visa card?
A William A. Bellamy.
Q Okay. Now did you made an attempt to contact William A. Bellamy?
A No, sir, that's beyond my scope as a crime investigator.
Q Yes, sir, okay. And I'm asking you just for your personal knowledge. Do you know whether or not the Marion County P.D. who was the investigating agency, whether they made an attempt to contact William Bellamy whose name was on that credit card?
A Marion County or Marion P.D.?
Q I'm sorry, Marion City P.D.
A I do not know, no, sir.
Q Okay. Now I am gonna ask you your opinion now as an expert. I think you said been involved in investigating hundreds of crime scenes, murder crime scenes. What would have been the value of trying to locate the individual whose name was listed on that credit card that was found at the shooting scene?
A He or she may have been present, may have been a witness, could have been a defendant, at some time may

have been on that property.
Q Is it possible that that person could have even been, you know, actually the assailant?
A That would not be — that would not be beyond the possibility.
Q Okay. So my understanding is that if you got someone's credit card, credit card off of a murder scene, is that you would try and contact that person to try to figure out whether or not that person was there at the murder scene when it happened, or whether or not that person was a victim at the murder scene, or whether or not that person was somehow the assailant or somehow the criminal at the murder scene; is that correct?
A That is correct. If I'm not mistaken one of the GSR kits was Mr. Bellamy that I just examined.
Q Brandon Bellamy.
A Okay.
Q Okay. Brandon Bellamy. This is a William Bellamy?
A Okay. You said Mr. Bellamy.
Q Okay. So, and I think just to ask that question, my understanding is that your answer was that is correct, is that, that card could have been used to find that person and to find out what role that person played at the scene; is that correct?
A Yes, sir, if he had been at the scene.

Q If he had been at the scene. Now if William Bellamy was not carrying his credit card could that credit card, would that credit card also be useful in obtaining DNA evidence to try to determine whether or not someone else was carrying that credit card that night?
A There's always a potential to transfer DNA evidence to anything we touch.
Q Okay. Now I'm gonna ask you your opinion as an expert as a crime scene investigating expert. I think you've already testified to that there was some items that you would have -- that you would have had tested that if it was up to you. I think you said that of the chains. I think you said that of also of the blue-tooth.
MR. DEBERRY: Objection, Your Honor. He's also testified that he doesn't know the reason they weren't tested or if they were tested, and this is asked and answered and been over it several times.
THE COURT: I don't think he finished the question. What was the question?
MR. BROOKER: Yeah, I'm getting ready to ask him his opinion as expert as to whether or not he believes mistakes was made in not having those things done. And this is his ---
MR. DEBERRY: But Your Honor, he's already testified he doesn't know what happened to those things

after he returned them.

MR. BROOKER: No, he's misunderstood —

THE COURT: Overruled. Continued.

MR. BROOKER: Yeah.

BY MR. BROOKER:

Q And I'm asking your opinion as a crime scene expert on assuming that this was one of your 700 plus murder crimes, crimes scenes that you were handling. Okay. You previous testified that you would have had some of those items examined. I think specifically the necklaces, specifically the blue-tooth, and I think you said now the cell phones, you know, for one form of evidence or the other. Do you think it was a mistake in not having those items, all found within close proximity of the crime scene or close proximity of the shooting, not examined?

A It depends.

Q What does it depend on?

A It depends on whether the investigators knew the ownership of that item. If the ownership was unknown I would not say mistake. I would say you missed out on an opportunity to come up with a DNA profile. But I do not know what inside information they had. They may have known who all those items belonged to; I don't know.

Q Okay. So it's your testimony then is, is that if the identity of the owner or the carrier of those items that

night was not known, that as an expert you would have had them examined to determine that?

A I would have had them examined, yes, sir.

Q And of course, you said if that was not done then of course that would have been a missed opportunity; is that correct?

A That is correct.

Q And a ---

A Potentially a missed opportunity.

Q Potentially a missed opportunity. And that missed opportunity we're talking would be a missed opportunity to identify, you know, maybe the owner or the carriers of those items; is that correct?

A Ownership, yes, sir.

Q And possibly identify who was there that night within close proximity of the scene; is that correct?

A It's a possibility, that's correct.

MR. BROOKER: If you can indulge me just a second, Your Honor, I think I may be finished. I think I'm almost finished.

BY MR. BROOKER:

Q There was also a pair of black slippers that night.

A They were submitted to the laboratory.

Q Okay. Do you know whether or not those black slippers were analyzed?

A Past my submission, no, sir, I do not get that information.
Q Now black slippers, I'm assuming that they could potentially have a lot of DNA in them, someone's slippers?
A You could. Possibly determine ownership. The potential is there.
Q That would have been value of identifying it of at least analyzing the slippers is to try to determine, you know, who jumped of those slippers and left them there at the scene?
A Yes, sir.
Q Now in your opinion as an expert and assuming that you did not know who was wearing those slippers that night or who jumped out of those slippers that night at the crime scene, as an expert would you have had them analyzed?
A I would have had them analyzed for ownership.
MR. BROOKER: I think I'm about done, Your Honor. If you could just indulge me just a second to make sure I did not miss anything. Now just a few other questions and I'm gonna be done.
BY MR. BROOKER:
Q Now other than the evidence collection, I know we just talked about some physical evidence that you collected on the outside of the home; is that correct?
A That's correct.

Q Okay. In your opinion as an expert, identified witnesses at the scene, is there a potential there -- is there a potential valuable evidence that could be collected from witnesses, other than their statements? That's -- we'll talk about that is, is that, is there a potential valuable evidence that can be collected from witnesses that were there at the scene that you can identify?

A The potential would always be there.

Q Yeah, so there's always potential that if you have witnesses at the scene that maybe you can get something valuable from them?

A Well, it's called low cards exchange principle. If you come into a room or into an area you leave some evidence and you also take some evidence away, myself included, you, everyone in this courtroom. You are constantly transferring and collecting evidence on your person.

Q Okay. When you enter and exit —

A Exactly.

Q —a particular area, okay. Now so any witnesses that would have been in close proximity of the crime scene it's possible that evidence could be collected from them?

A The potential is there.

Q Okay. Is it possible that evidence could be collected from their clothes if they were in close proximity of the

shooting?
A The potential is there.
Q Okay. Is there -- if someone is shooting, if there are multiple shots that was fired at the crime scene -- and I'm asking this question as an expert. As an expert, would you take -- and specifically if you didn't know exactly who was doing the shooting, fresh on the scene, would you take gunshot residue from the clothes of all of the persons that was in the close proximity of the scene to determine whether or not they were involved in the shooting?
A They generally -- the collection kits that are used are not used for clothing; they are human specific. If that was the scenario and I chose to collect their clothing or I chose to test their clothing, you would collect the outer layer of clothing. You would just take it and submit it to the laboratory. You wouldn't actually test it right there the way you would do hands.
Q Is that something where you would potentially be fresh on a crime scene or you wasn't quite sure of what the story was?
A I have done it on occasion.
Q Okay. So it would be prudent -- and I'm asking you for your opinion. In your opinion it would be prudent then to collect, to probably collect items to determine exactly

SW - K. KENSY - CROSS

whether or not any of those persons who were in very close of the crime scene whether or not they were involved in the shooting?

A Well, I would test their hands. I mean, if they fired a weapon you have a better chance to collecting an amount that could be tested off of their hands than you would their clothing because it is measurable. GSR is measurable. There's an acceptable limit. And I'm not a trace person, but I do know enough about collecting it. And the quantity that you would need to reach that threshold would be found on the hands because we can all come in contact with barium, lead, and antimony. Different things we can touch we come into an acceptable limit. But to get over that threshold to consider it a quantity of GSR, you would more than likely get it on your hands as opposed to being spread out on your clothing.

Q So you would collect it at least or attempt to collect it off hands of people who was involved in the crime scene?

A There have been times where we've collected GSR kit on everyone on a property just out of abundance of caution.

Q And of course, the purpose of doing that is to try to identify who was shooting and who was not shooting; is that correct?

A Yes, sir, that is correct.

Q And do you think that's a prudent move to do at a crime scene where you don't know what the story is at that particular period of time?
A Yes, sir. If you still have persons in the crime scene that would definitely -- in a shooting incident that would definitely be a move I would make, if that's what you're asking.
Q Yes, sir, that's what I'm asking. Do you know whether or not that was done in this particular case?
A I know there were GSR kits collected. I can't tell you under what circumstance because I wasn't the collecting officer.
Q Do you know whether or not they were collected from anyone who was involved in the crime scene?
A Once again, I know they were collected in reference to this crime scene. I can't give you the particulars.
Q So the answer would be, no, you wouldn't know.
A I do not know, I'm sorry.
Q Okay. Now are you familiar with crime scene logs?
A I am, yes, sir.
Q Have you had crime scene logs done at the hundreds of investigations, I think, you said murder investigations that you been part of?
A Death investigations. Yes, sir, the agencies usually keep a crime scene log of everyone coming in or out of the

SW - K. KENSY - CROSS

crime scene.
Q And how was that -- how was that set up? Tell me what's the procedure of doing the crime scene log. Is one particular person in charge of that or do people sign in as they go in or sign out as they go out?
A Generally that's the way most agencies do it. The agencies are in charge of that. We work one or two crime scene examiners so obviously I couldn't stand at the edge of the crime scene and log everyone in and out 'cause I'm the one doing the work. But the agencies usually keep up with that. And a big purpose in it is with footwear. If you find an unknown footwear impression in the scene or something has moved or a fingerprint of someone you know obviously isn't involved, but they may have been a emergency worker or fireman or something of that sort, then you can explain it. If you have him on the log you can go back and talk with them; and they'll say, yeah, I did walk over there. You can collect their boots or whatever you need to do to run a controlled comparison.
Q Okay. Now at the crime scene log or inside of at least the crime scene, is that -- in your experience as an investigator, is that crime scene supposed to be limited to essential personnel only that has something to do with the investigation?
A It should be, yes, sir.

Q And what's the purpose of that?
A It's to keep from contaminating or destroying evidence.
Q The more people that are in the crime scene the more likely is that it will contaminate the evidence that's contained at the crime scene; is that correct?
A That is correct.
Q Okay. At least in your experience from y'all investigations, do y'all have a number -- do y'all have a limited number of people you will allow in, or do y'all allow in as many as you need?
A Well, you -- like I said, in a perfect world you like it to be you and the other person that's helping you process the scene. But once again, we're an assisting agency. You really don't have control over anything prior to you getting on the scene, and you can make suggestions, you know, I really need some of y'all to clear out of here. But once again, you're an assisting agent. If they choose to have four or five of their investigators in a scene, then it's really not a whole lot you can do about it except document it.
Q Did you make that suggestion that night?
A That scene was relatively secure when we arrived.
Q Okay. Now have you seen the crime scene log?
A No, sir, I haven't.
Q I have then what's been identified as Defense Exhibit

1. Could you take a look at the crime scene log. How many people are on there. I didn't count. You can count.
A I'm counting 26. I'm counting 26 but I'm not on there.
Q Okay. You're not on the crime scene log?
A No, sir.
Q But you were at the crime scene?
A I -- yes, sir, I was.
Q Okay. Why then you're not on the crime scene log if you were at the crime scene?
A I can't answer that.
Q All right. Now I think you said that there was 20 how many? How many did you count?
A Twenty-six I think. Unless some of them were repeats I didn't check every name to make sure but in and out.
Q Roughly the mid 20s, mid 20s on this crime log. Would you consider that to be an excessive amount of people that's on a crime scene?
A Well, I don't know what their purpose was. I mean, I don't know if that was checking a residence or emergency personnel or, I mean, I don't know. It doesn't specify what their purpose was.
Q Okay. One of them down here is mayor Bobby Gerald. Have you ever had a mayor to come on a crime scene of the town?
A Not to my knowledge.

Q In your experience is there any particular investigative purpose other than if the mayor is involved in the crime?

MR. DEBERRY: Objection, Your Honor, Mr. Kensy says he doesn't know why the mayor was on the crime scene and that's his knowledge. He'd have to have direct knowledge of this information to testify to it.

MR. BROOKER: Well, I'm not ---

THE COURT: I haven't heard the question. What is your question?

MR. BROOKER: I'm not gonna ask him about Bobby Gerald. I'm gonna ask him about his experience as an expert. I'm gonna ask him in his experience as an expert has he ever had reason to have a mayor on the scene unless that mayor was involved in the crime itself, not this particular mayor.

THE COURT: Overruled. Go ahead. And hopefully you're near the end.

MR. BROOKER: Yes, sir.

BY MR. BROOKER:

Q In your experience as an expert have you ever had a mayor of the small town that you were conducting a murder scene at to come on the murder scene unless he was somehow involved in the crime?

A In the scene itself or on the scene, and I mean beyond

the barrier.
Q Beyond the barrier, inside the scene crime?
A I cannot recall ever having a mayor inside the scene. They have, however, been on the scene when I was called to different municipals to process crime scene.
Q Yes, sir. And you will say that for all of 700 plus, I think, murder investigation I think you said you was involved of crimes.
A No, sir, I said on occasion. Not every scene, no, sir, but I have had mayors on the scene before.
Q But I'm talking about on the inside of the scene.
A On the scene, not in the crime scene.
Q Yeah, and that's what I'm talking about, in the crime scene?
A No, sir, I can't recall ever having a mayor in the direct crime scene itself.
Q And I think the reason why you don't do that is that any unessential personnel could contaminate the crime scene, bring evidence in or bring evidence out; is that correct?
A That possibility exists.
MR. BROOKER: If you can indulge me, Your Honor.
MR. DEBERRY: Objection, Your Honor. I'd like the record to reflect there's been no testimony where the people actually entered or whether they were on the scene.

He's made a delineation between on the scene and in the scene, and there's been no testimony that says listed those names where they were, what they did so.

THE COURT: There has been testimony, Lieutenant Davis.

MR. DEBERRY: He did not say that he knew what they did or what actually, what purpose they had, or whether Mayor Gerald was at the scene or in the scene. There's been no testimony to that.

THE COURT: I'm gonna overrule it. Continue.

MR. BROOKER: Thank you. If you can indulge me just a second to make sure I don't have anything else. I believe just one more I think.

BY MR. BROOKER:

Q I'm gonna hand you...

MR. BROOKER: These are pictures, all I.D., I think we just discussed.

(Pause while attorneys review photographs.)

MR. BROOKER: Your Honor, we would move to enter these photographs in the record I think...

THE COURT: Any objections?

MR. DEBERRY: No objection from the State.

THE COURT: Give me their numbers. Exhibits 2 through 12 in evidence without objection, is that correct, Solicitor?

MR. DEBERRY: Yes, Your Honor.
(WHEREUPON, Defendant Exhibits Nos. 2 through 12 were marked for identification and received into evidence.)
BY MR. BROOKER:
Q I have here what's been marked as Defense Exhibits 2 through 12 and these are photographs. And I think -- are those photographs -- you look through them. Are those photographs of the items that we were just talking about that were collected at the scene: The cell phones, the chains, the durag, so forth and so on?
A Yes, sir, they are.
Q Okay.
MR. BROOKER: I don't have anymore questions, Your Honor.
THE COURT: Mr. Deberry.
MR. DEBERRY: Your Honor, very briefly.

REDIRECT EXAMINATION

BY MR. DEBERRY:
Q Mr. Kensy, you testified several times SLED is just an assisting agency.
A Yes, sir.
Q So this was not your crime scene. I mean, you were called in to assist; is that correct?
A That is correct.
Q All right. And is it common from time to time when you

you have so many investigations that you have experience with, that an agency solve the case without your assistance?

A That is correct. And sometimes we never know, I mean, we're never notified.

Q Okay. Well, in this case were you notified that they had a suspect in custody?

A I was notified that an arrest had been made.

Q All right. And when you're notified of such information is it common a lot of times for potential pieces of evidence or potential items collected on a scene that may have had some type of evidence, that they become not important to the case anymore because there's been a suspect and they solved it through other means?

A Yes. The investigation, I mean, like I said, I'm not privy to all the information. But if an investigator, say for instance can identify a piece of evidence and say it belongs to so and so, then there's no need to go to the expense or waste resources of identifying it when you know who it belongs to.

Q And just a little bit on that, has SLED got a back log, do you know?

A I had ---

MR. BROOKER: Objection to relevancy, Your Honor.

MR. DEBERRY: May I rephrase?
THE COURT: Sure.
BY MR. DEBERRY:
Q At the time you were working there do you know if SLED had a back log of cases to be tested?
A Yes, sir, just about every ---
MR. BROOKER: Objection, relevancy, Your Honor.
THE COURT: Overruled. Continue.
BY MR. DEBERRY:
Q Thank you. You may answer.
A Just about every unit in the forensics building to my knowledge has and still has a back log.
Q Okay. And so it would be a common thing. Do you know if SLED requests for agencies and police departments across the state, if they know that they don't need an item tested, do you know if they request that they let them know that so they can return it?
A They place severe restrictions and limitations on items of evidence that are tested. And many times they'll put a monetary number on it, say, three items of DNA will be all we will test in this particular case.
Q Okay. So in your opinion it's common for an agency who has solved a crime to request items be returned and untested?
A That is -- yes, sir.

Q Thank you very much. I have nothing further.

THE COURT: Anything further, Mr. Brooker?

RECROSS-EXAMINATION

BY MR. BROOKER:

Q When you arrest someone, is that the conclusion of the crime? Is that the conclusion of the -- is that the conclusion of the process when you arrest someone?

A Many times, no, it's not.

Q Okay. Now in your experience when you arrest someone you arrest them -- and of course, I'm still asking you in your expertise as an investigator. When you arrest someone you're arresting that person because you have a suspicion and that person may have committed the crime or what they call reasonable or probable cause?

A That is true.

MR. DEBERRY: Objection, Your Honor. I think this is outside the scope of redirect.

THE COURT: Sustained.

MR. BROOKER: Okay.

BY MR. BROOKER:

Q Now I think you were asked or stated that you know whether or not this crime was solved.

A I know there was an arrest made.

Q Okay. You know there was an arrest made.

A Yes, sir.

Q Okay. And of course, the purpose of and the purpose of at least testing this evidence is to prove, to prove and substantiate your arrest?

A Or to identify anyone at the scene.

Q Okay. Now you were asked a question whether or not SLED has a back log.

A Yes, sir, I was asked that.

Q Okay. Now let me try and put this, ask this the right way. Would a back log be a justification for not examining a critical piece of evidence? Just yes or no. You can explain.

A Should it be or would it be?

Q Should it be?

A Should it be, no, it should not be in my opinion.

MR. BROOKER: No further questions.

THE COURT: Thank you. You may step down.

THE WITNESS: Thank you, Your Honor.

THE COURT: Any objections to this witness being excused?

MR. DEBERRY: Not from the State, Your Honor.

MR. BROOKER: Not from Defense, Your Honor.

THE COURT: Thank you very much. All right. Members of the jury, we're gonna conclude for lunch. I would ask you be back here at 2:30. But while you're out at lunch, again, do not talk about the case among

yourselves or with anybody that you see. If you will be back at 2:30 we will continue. You may be excused. Everybody else be seated.

(WHEREUPON, the jury was removed from the courtroom at 12:55 p.m., and the following proceedings commenced in open court.)

THE COURT: Solicitor, Mr. Brooker, if y'all will come up here for just a brief second.

(WHEREUPON, counsel approached the Bench for an off-the-record discussion.)

(WHEREUPON, a lunch break was taken and court resumed at 2:35 p.m.)

THE COURT: All right, Solicitor, if you'll call your next witness.

MR. DEBERRY: Thank you, Your Honor. The State calls Jason Huffman.

THE DEPUTY CLERK OF COURT: Place your left hand on the Bible, raise your right hand.

WHEREUPON,

JASON HUFFMAN,

having been duly sworn by the Deputy Clerk of Court, testified as follows:

DIRECT EXAMINATION

BY MR. DEBERRY:

Q Will you state your name and occupation for the record.

A Jason Huffman. I was a police officer at Marion Police Department, 2007.
Q All right. Are you currently employed with Marion Police Department?
A No, sir.
Q When did your employment end with Marion Police Department?
A Around 2007, end of 2007 I think.
Q Okay. And were you employed with the Marion Police Department in May of 2007?
A Yes, sir.
Q And what was your rank at that time?
A Lieutenant.
Q Lieutenant. All right. Did you have anything to do with the evidence in the case of State versus Shawn Reaves?
A Yes, sir.
Q All right. And who did you -- what was your role in that?
A I actually transported the evidence from Marion Police Department to Columbia.
Q Okay, so did you handle the evidence, did you touch it? How, what, was it —
A It was sealed. All the evidence was sealed when I transported it from here to Columbia.

Q And do you know -- I'm gonna hand you this to refresh your memory. Could you tell the jury what items of evidence you transported to SLED.

A One sealed envelope containing fired bullets described as bullet taken from victim at autopsy. Also another sealed envelope containing fired bullets described as bullets taken from victim at autopsy. A sealed heat pouch containing blood, toxicologist described as transferred thoratic (sic) blood labeled Applewhite, Ramel Keshawn. And another sealed heat pouch containing blood standard described as Keshawn Ramel Applewhite.

Q Okay. So there's four items of evidence you transferred?

A Yes, sir.

Q What day did you transport those?

A 5/21 of 2007.

Q Okay. Who did you receive that evidence from?

A Lieutenant Blue.

Q Okay. And your only role in this case was that you received that evidence from Lieutenant Blue and you transported it to SLED for analysis?

A Yes, sir.

Q All right. And who at SLED did you deposit that evidence with?

A Niki Perry.

Q Niki Perry, okay. And that was on ---
A 5/21.
Q May 22st?
A Yes, sir.
Q 2007?
A Yes, sir.
Q Okay, all right. That's all you had to do with this case?
A Yes, sir.
Q All right. Thank you very much.

THE COURT: Mr. Brooker.

MR. BROOKER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. BROOKER:

Q Mr. Huffman.
A Yes, sir.
Q I think you said you're no longer with Marion County law enforcement?
A No, sir.
Q Are you still in law enforcement?
A No, sir.
Q Okay. How long were you with Marion P.D., Marion City P.D.?
A 7, 7-and-a-half years roughly.
Q And what was your reason for leaving?

A I resigned due to personal problems.

Q Could you explain to us what those personal problems were?

MR. DEBERRY: Objection, Your Honor. I don't think that's relevant at all.

THE COURT: Sustained.

MR. BROOKER: Goes to credibility, Your Honor.

MR. DEBERRY: Your Honor ---

THE COURT: Come on up.

(WHEREUPON, counsel approached the Bench for an off-the-record discussion.)

THE COURT: Members of the jury, step into the jury room just a brief moment. We'll be back with you. Do not discuss the case.

(WHEREUPON, the jury was removed from the courtroom, and the following proceedings commenced in open court.)

THE COURT: Al right, go ahead, Mr. Brooker, let's see what we have.

PROFFER EXAMINATION

BY MR. BROOKER:

Q Okay, what were the personal problems?

A Actually I was going through a divorce at the time and I relocated and moved back to North Carolina where I'm from.

Q Okay.

MR. BROOKER: That's all we need, Your Honor.

THE COURT: Go ahead and bring the jury back out. I'm going to sustain your objection. We're not going into that.

(WHEREUPON, the jury was returned to the courtroom at approximately 2:44 p.m., and the following proceedings commenced in open court.)

MR. DEBERRY: Okay, thank you, Your Honor.

BY MR. BROOKER:

Q Now what was your position at that particular period of time in 2000, actually May of 2007? What was your position with the Marion City P.D.?

A I was a lieutenant, training officer.

Q Okay. When you say training officer what do you mean by training officer?

A It was just over -- actually over the guys under me for actually training purposes for keeping classes straight. Any training, any ordering equipment, anything in that type of line.

Q Okay, I see. Now the case that's at issue here today, were you on the scene of the crime on May 13 of 2007? Were you at the scene of this incident?

A I don't think so, but I don't recall.

Q Okay. You don't recall if you were at the murder

scene?
A No, sir.
Q A shooting scene?
A No, it's been three years.
Q So you could have been, you just don't remember.
A More than likely I wasn't, but you know, I can't say that without looking at the incident report.
Q Okay. Now I think you testified, I think, on direct examination that you transported, I think, certain items I think to SLED in Columbia; is that correct?
A Yes, sir.
Q And those items were -- and correct me if I'm wrong -- that you transferred a container that's containing two bullets or slugs; is that correct?
A Yes, sir.
Q And I think you said you transferred some blood samples from Mr. Applewhite; is that correct?
A Yes, sir.
Q Anything else?
A No, sir.
Q Okay. Now you said you received those items directly from Lieutenant Blue.
A Yes, sir.
Q And that was on May 21 of 2007?
A Yes, sir.

Q And you just answer me if you know the answer to this is, do you know where Lieutenant Blue obtained those items from?
A Yes, actually, we have a refrigerator there actually for the samples. And as far as the bullets, I can't recall.
Q What type of refrigerator is this?
A It's locked. I'm not sure what it is now, but then it was actually locked. Only certain people had keys to it. It's going to be entered -- evidence would be entered into it. If we couldn't transport it to Columbia we could keep it in a cool place until able to do so.
Q This wouldn't be a refrigerator in my house or anything like that?
A No, sir.
Q It's a different type cooler?
A No, sir.
Q That's why 'cause I don't know. What type of cooler is it?
A It's almost like a medical cooler, sort of looks like a medical, small medical refrigerator. Not like a refrigerator in your house. Something you use for medical use like you would see in maybe a pharmacy.
Q And you were present when he retrieved it from the refrigerator?

A Yes, sir.
Q Now I think I know the answer to this, but I'm gonna ask it anyway, is that you said that your recollection that you were not at the scene that night; is that correct?
A I told you I couldn't recall.
Q I know. That's what I'm saying is that you said to your recollection you were not at the scene.
A No, that's not what I said. I said I don't recall.
Q So I'm assuming if you don't recall, were you a witness to this incident, to the shooting that took place that night?
A No, sir.
Q Okay. So you didn't see what happened that night?
A No, sir.
Q Okay. And you're not a witness to anything that happened that night?
A No, sir.
Q Okay. And of course, you're not sitting here and saying that you witnessed this shooting and that you witnessed Shawn Reaves shoot anything that night?
A No, sir, I'm not.
MR. BROOKER: No further questions.
THE COURT: All right. Anything further, Solicitor?

MR. DEBERRY: Not from the State.

THE COURT: You may step down. Thank you. Good seeing you.

MR. DEBERRY: May he be excused?

THE COURT: Any objection?

MR. BROOKER: No objections, Your Honor.

THE COURT: Call your next witness.

MR. DEBERRY: Your Honor, may we approach just briefly. Your Honor, we're going to call one witness out of order and then...

THE COURT: Is that Agent Woods?

MR. DEBERRY: Then we'll enter this...

THE COURT: All right. And who is your witness going to be?

MR. DEBERRY: Lisa McReynolds.

CLERK OF COURT: Come around and let me swear you in please. Place your left hand on the Bible, raise your right hand.

WHEREUPON,

LISA MCREYNOLDS,

having been duly sworn by the Clerk of Court, testified as follows:

THE CLERK OF COURT: Thank you.

DIRECT EXAMINATION

BY MR. DEBERRY:

Q Please state your full name and occupation for the record please.
A Lisa McReynolds. I work for the South Carolina Law Enforcement. I'm a forensic technician.
Q Okay. So you're a forensic technician for SLED?
A Yes, sir.
Q And as a forensic technician could you explain to the jury what your job duties are.
A I pick up evidence. I process gunshot residue kits, and I return evidence.
Q All right. And when you mean "pick up evidence," what -- can you just explain the process a little.
A Sure. I go down to evidence log-in where all evidence comes in. I pick up just for trace department. I bring it back up to our department, and then I just hold on to the gunshot residue, and then I turn over everything else to the analyst.
Q Do you actually do the analysis?
A No, I don't.
Q Okay. And can you explain to the jury, I mean, the process between when you pick it up and how do you process it for analysis?
A Yes, I can.
Q And what does that include?
A I'll pick it up and when I have enough for a run I open

it up, make sure everything is sealed, it's initialed, it's dated. There's an information form. I make sure all the information is complete. I take the samples out; I give them numbers. I sign them to a sheet, a data sheet, then it's put in a rack. Then once the rack is complete it's given to the analyst and then it's put on the instrument.

Q Okay. And do you have a verified chain of custody with you?

A Yes, I do.

Q Okay. Lab number L07-07104?

A Yes, sir.

Q And can you explain to the jury what involvement you had with items 5, 6 and 7?

A Item 5 I picked it up -- well, actually it was given to me by Ken Kensy. Usually I pick it up from log-in, but he did give me this one. I turned it over to Michael Moskal, which was the analyst in this case. And once he was finished with the analysis I took it back into my possession, and then I took it down to log-in and turned it in to Karonda (ph) Williams. On item six I did the exact same thing. Do you need me ---

Q Just read to the jury what item six is.

A Okay.

Q Or 5, 6 and 7, are they gunshot residue kits?

A Okay. Yeah, item number 5 is a GSR kit from Rodney McElveen. Number six is a GSR kit from Joemilla Dozier, Wilson-Dozier. Item number 7 is a GSR kit from Brandon Bellamy.

Q Okay. And you testified earlier that it was a little bit unusual that, I think you said, that most of the time evidence is deposited into a box, but you actually received this from a person?

A Actually Kenny brought it up to my department.

Q Okay. Kenny Kensy?

A Right.

Q And he handed that evidence to you?

A Right.

Q And then you testified what did you do with it?

A I took it into my custody. I process it. And as soon as I process it I put it into a secure location, which is a lockable file cabinet. I let the analyst know that it's ready. He takes everything into his custody. Then after it's processed on the instrument he tells me it's ready for me to get back into my custody, and then I return it back to log-in.

Q Okay. So who had an opportunity to handle this evidence or see this evidence or touch this evidence between the time that you processed it and placed it in your lockable locker and the analyst took control of it

and actually did analysis?
A It would have been myself and Michael.
Q Just the two of you exclusively?
A Right, that would have touched it.
Q Okay. Is that -- is anybody else, I mean, is that a secure location? Can anybody else get into it?
A The only other people are the people in the trace department, but they would have no reason to be in there. I mean, they're allowed in the room but they're lockable file cabinets.
Q Okay.
A And every analyst has their own file cabinet.
Q Okay. So you placed this directly into Michael Moskal who analyzed these gunshot residue kits. You placed it into his lock box?
A Into the cabinet, yes.
Q Okay. Is that all you had to do with this lab, this number, this case?
A Yes, sir, I did.
Q All right. Thank you very much. Please answer any questions Mr. Brooker has.
A Okay.

THE COURT: Mr. Brooker.

MR. BROOKER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. BROOKER:

Q Ms. Reynolds, back in 2007 when you received this information, received these GSR kits, what was your position with SLED at the time?

A It was still a forensic technician.

Q Okay. And what did you do as a forensic technician?

A I picked up the evidence, and I also was processing GSR kits.

Q You performed the analysis or the chemical ---

A No, just -- I had them -- I prepared them for analysis.

Q Okay, I got you. You prepared them for analysis. Now you have a chain of custody I think ---

A Yes, sir.

Q ---form that you have with you.

A Yes, sir.

Q Okay. And I am looking at, I think, GSR item number one, excuse me, item number five.

A Okay.

Q Of course you're on the same page as I am?

A Yes, sir.

Q Okay. That GSR item number, or that GS-- this chain of custody form says that Kenny McKensy (sic) delivered that, I guess, item five GSR kit on May 16 of 2007 at 10:15; is that correct?

A I believe that's when he took it into his custody, but

when he actually gave it to me was 5/24/07 at 9:51. That's when I took it into my custody.

Q Okay. Now do you see where it says Kenny McKensy. And of course, let me see -- do you see where it says submission. It says 5/16/2007 and has the time? I'm at the very top.

A Yes, sir.

Q And it says submitted by.

A Yes, sir.

Q Kenny McKensy of the South Carolina Law Enforcement Division.

A Yes, sir.

Q Does that not suggest when he submitted this evidence?

A It could have been, but it was not when he submitted to me.

Q Okay. So if the form says submitted by Kenny McKensy, date 5/16/2007, could that be an error?

A I don't know what that means by when he submitted. I don't know who he submitted it to. I don't -- I don't know if that meant him submitting it, taking it into his custody or not. I just know that when he gave it to me I took it into my immediate custody at that time and that was on the 5/24/at 9:51.

Q Do you agree it doesn't say received by, it says submitted by. Is that correct?

A Yes, sir.
Q So submitted by me if -- I'm assuming, my thinking is that "submitted by" means that you are giving it to someone or submitting it to someone. That's what means submitted by, submitted. That says submitted by, submitted by Kenny McKensy of South Carolina Law Enforcement Division, not received. Am I correct that's what the language says?
A That's what it says and Kenney Kensy is the only one I know that could answer that for you.
Q Okay. So you don't understand why it has -- it has ---
A I don't know the process before it gets to me.
Q So would you agree that 5/16/07 and 5/24/07 is roughly seven days difference?
A Yes, sir.
Q Okay. And you still can't explain that difference where this form says submitted by Ken McKensy on 5/16/07, and you're saying at least on this form you're indicating you received it on 5/24/07, seven days later?
A I can tell you that I took it in my custody when he walked in the door on 5/24/07 at 9:51. That's the way I always do it.
Q Okay. And you just can't explain that discrepancy at least in those two days?
A No, sir.

SW - L. MCREYNOLDS - CROSS

Q Now on item six, again said pretty much the same thing on 5/16/07 at 10:15 submitted by Kenney McKensy of the South Carolina Law Enforcement Division. Am I reading that correct?
A Yes, sir.
Q And then, of course, the first indication of your receiving it would be at 5/24/07 at 9:51, at 9:51. Is that correct?
A Yes, sir.
Q Okay. So again, can you explain that discrepancy between this form indicating being submitted at 5/16/07 and your first entry with respect to receiving it the seven days later on 5/24/07?
A No, sir. All I can tell you is when it walks in the door I take it into my custody and then I put it in the locked secure file cabinet.
Q And there is that identical discrepancy, is it not, for GS kit number 7 submitted by Kenny Kensy on 5/16/07 at 10:15 p.m. and your first entry of receipt is seven days later at 5/4/07 at 9:51?
A That's correct.
Q Okay. And you said you don't -- at least you can't explain that discrepancy?
A No, sir, I can't.
Q Now when you take it what do you do with it?

A As soon as I receive it I put it in a secure cabinet for gunshot residue kits that are to be processed. I have a separate cabinet for that. Once they are processed they go into a cabinet for whichever analyst I am doing the work for at that particular time.

Q Is that what y'all call maybe the evidence room or in a particular bin or shelf?

A It's sort of lockable storage cabinets.

Q It's a storage cabinet?

A Yes.

Q And it has specific shelves?

A It's like four drawer filing cabinets and each analyst has a filing cabinet.

Q Okay. Are they labeled A, B,C or how are they labeled?

A They have names on them.

Q Okay. Now I'm taking you back to item number five.

A Okay.

Q Okay. You received it at 5/27/04 (sic) at 9:15-- 51; is that correct?

A Yes, sir.

Q Okay. And then, of course, the next entry is 6/6/07 which is, I guess, roughly -- let me do my math. 13 days later by Michael -- is that Moskal?

A Yes, sir.

Q Michael Moskal. So around 13 days later, 13 days later

at 7:19 Michael Moskal receives it.
A It is put in a cabinet. Usually we have several running so it depends on if the instrument is running, how many runs ahead of this run. It's in the drawer until he puts it into his custody.
Q Okay. So you didn't pass it on to him. What you're saying is you put it in a drawer and he took it out the drawer?
A I put it in a secure drawer, let him know that it's there ready for him, and then he puts it in his custody when he's ready to put it on the instrument.
Q Okay. And in this secure, this bin that you're talking about or cabinet where it is, you says that -- is there one cabinet for each particular technician?
A They're all analysts. I'm the only technician.
Q Analysts?
A But eight or ten cabinets. We try to keep one cabinet per analyst, but if it gets so many runs ahead then we do have to go to, you know, use different drawers, whatever is available.
Q So every analyst would have access to every cabinet?
A Yes, sir.
Q How many analysts is there?
A There is seven and then with me it's the technician. It will be eight.

Q So eight people potentially would have access to during those 13 days while it's sitting in this cabinet eight people would roughly have access to it, analyst roughly seven analysts, and then of course yourself?
A Yes, sir.
Q Okay. Anyone else have access to that room? Is it clean, or who cleans it?
A We clean our own labs. Nobody is allowed in there. We do have a log-in book if somebody has to go in there they have to be escorted. That's very seldom.
Q So a janitor wouldn't come in and clean in there?
A We don't have a janitor that comes in our office at all.
Q Okay. If you can indulge me just a second, make sure I don't have any further questions for you.
A Okay.
Q Now this sounds like a pretty simple question, but I'm gonna ask it. Now the incident that is the subject of this case, you were not there at the scene; were you not?
A No, sir.
Q Okay. And you didn't personally witness anything; did you not?
A No, sir.
Q So you're not here telling the jury that you personally witnessed Shawn Reaves shoot anyone; is that correct?

A No, sir.
Q You're just simply here to say that items were submitted to you for, well, submitted to SLED for analyzing and that you received and processed those items; is that correct?
A Yes, that's correct.
Q That's your only involvement?
A Yes, sir.
Q Okay.

MR. BROOKER: I don't have any further questions for this witness, Your Honor.

THE COURT: Anything further, Solicitor?

MR. DEBERRY: Nothing further, Your Honor.

THE COURT: Any objections to this witness being excused?

MR. BROOKER: No objection, Your Honor.

THE COURT: You may be excused. Have a good day.

Call your next witness.

MR. DEBERRY: Just a second, Your Honor.

MR. BROOKER: May we approach.

(WHEREUPON, counsel approached the Bench for an off-the-record discussion.)

THE COURT: All right, Solicitor, if you'd call your next witness.

MR. DEBERRY: Thank you, Your Honor. The State would request just an instruction to the jury about what's going to happen.

THE COURT: Members of the jury, I want you to you understand that there is a witness that cannot be present today; however, his testimony was taken previously. It was taken under oath with both lawyers present to ask questions, and you can treat this person reading this testimony as if this other person Mr. Larry Woods was present here in court. Furthermore, I want you to understand that just because my law clerk is reading it does not mean that I -- we have anything to do with it; he's just got to read it. It's as simple as that. You are the judge of the facts, not me. So you determine what's true and what's not true and that is strictly your job. My law clerk just is here to be the reader.

MR. MCEACHIN: Your Honor,may I approach.

(Court's Exhibit Number 1, deposition transcript of Larry Woods, was marked and made a part of the record.)

MR. BROOKER: Just for the record, Your Honor, is that we want at least to emphasize I think our previous objection that was not put on the record so we want to go ahead and put on the record now. And of course, we just simply say objection based upon confrontation clause.

THE COURT: All right, that is overruled.

MR. BROOKER: Thank you, Your Honor.
THE COURT: Thank you.
(Deposition of Larry Woods was read into the record by the law clerk.)
MR. MCEACHIN: Your Honor, I would just for purposes of the record, I'll stick these up here. State's Exhibits 20, 21 and 22, gunshot residue kits in this case.
THE COURT: Mr. Brooker.
MR. BROOKER: We object.
THE COURT: All right.
MR. BROOKER: Based -- well, yes, we basically object based upon insufficient chain of custody and then also based upon the confrontation clause.
THE COURT: We will just skip the rest which is already into the record, the objections themselves. You can continue with your testimony.
MR. MCEACHIN: Thank you, Your Honor.
MR. BROOKER: Thank you, Your Honor.
MR. MCEACHIN: Beg the Court's indulgence just a moment, Your Honor. May we approach, Your Honor.
THE COURT: Sure.
(WHEREUPON, counsel approached the Bench for an off-the-record discussion.)
MR. MCEACHIN: Your Honor, may I approach the stand?

THE COURT: Sure.

(Mr. McEachin confers with the witness.)

(Reading of deposition continued.)

MR. MCEACHIN: I have no further questions, Your Honor.

THE COURT: Cross.

(Reading of cross-examination of Larry Woods.)

MR. BROOKER: Your Honor, if we can make the residue samples from them, at least a yes or no answer. He can give an explanation whether -- I'm entitled, we're entitled to that.

MR. MCEACHIN: Your Honor, I believe that by his answer it's clearly no. He can't testify whether they shot a gun that night. He can just testify that he got the evidence.

MR. BROOKER: We can ask him with respect to what his knowledge is, Your Honor. That's ---

THE COURT: Answer the question.

(Reading of deposition continued.)

MR. MCEACHIN: Objection, Your Honor, asked and answered, he doesn't know.

THE COURT: Sustained. Go ahead and ask your next question.

(Reading of deposition continued.)

MR. MCEACHIN: Objection, Your Honor, he's

testified he didn't go to the scene.

THE COURT: Go ahead and answer the question.

MR. BROOKER: I can ask him again, Judge.

(Reading of deposition continued.)

MR. BROOKER: If I may approach the witness, Your Honor.

MR. MCEACHIN: Your Honor, if Detective Woods testifies based on that document it needs to be introduced by Mr. Brooker in evidence.

MR. BROOKER: I have no problem entering it into evidence, Your Honor.

THE COURT: All right.

MR. BROOKER: We move to enter that into evidence as Defense Exhibit 1 or A.

THE COURT: Any objection?

MR. MCEACHIN: No objection.

THE COURT: Defense Exhibit Number 1 in evidence.

(Reading of deposition continued.)

MR. BROOKER: I don't have any other questions for this witness, Your Honor.

THE COURT: Any redirect?

MR. MCEACHIN: Thank you, Your Honor. I'd just like to ask a question.

(Reading of testimony continued.)

MR. MCEACHIN: No further questions.

THE COURT: Any re-cross, Mr. Brooker?

MR. BROOKER: No, Your Honor.

THE COURT: Any objection to this witness being excused?

MR. MCEACHIN: No, Your Honor.

THE COURT: You're excused. Call your next witness.

MR. DEBERRY: Your Honor, we call Michael Moskal.

WHEREUPON,

MICHAEL MOSKAL,

having been duly sworn by the Clerk of Court, testified as follows:

DIRECT EXAMINATION

BY MR. DEBERRY:

Q Could you please state your name and occupation for the record.

A Yes, sir, Michael Moskal, M-O-S-K-A-L. I am currently employed by the South Carolina Law Enforcement Division, which is commonly known as SLED.

Q All right. And what is your job title at SLED?

A I'm a forensic scientist and am assigned to the trace evidence department.

Q Okay. And when you say trace evidence could you

explain to the jury what you're talking about, what trace evidence is?

A Yes, sir. Trace evidence is evidence that is really too small to be seen with the naked eye, and a lot of times it requires using high tech instrumentation and microscopes in order to be able to see. It's gonna include things like gunshot residue, fiber, paint, duct tape, some bank dyes, and some other trace, types of materials.

Q How long have you been employed or been a trace expert?

A I've been in trace department employed by SLED for a little over four years now.

Q All right. And how many occasions have you been called to testify in court?

A Fifteen times in state and federal.

Q All right. And as a result of those appearances in court were you determined to be an expert by court in those situations?

A Yes, sir. I was deemed an expert in gunshot residue and distance determination in each of those cases.

Q Okay. And what type of training do you have to go through to become a trace expert?

A I have a chemistry degree from the College of Charleston. After completing a chemistry degree I taught at Summerville High School for nine years -- for eight

years, I'm sorry, when I was employed by SLED. And then once I was employed by SLED I went through an in-house training period. It was six months for gunshot residue, and during that time I learned how to use instrumentation. There were reading assignments, lecture assignments, tests to be taken. Those were gonna cover the instruments, cover what gunshot residue is, where it comes from, how it's deposited, all the stuff in order that's needed in order to make a determination in case to case. At the end of that six month period -- well, everything I did in that six month period, I'm sorry, was I worked alongside a qualified gunshot residue analyst. I worked her cases with her side by side. She was watching what I was doing, seeing that I was doing it correctly. And at the end of that six month period I was given a mock case to take for myself from like the evidence was coming into the lab until the time I completed it. At the end of my working case-up I was given a mock trial, and then after successfully completing that I was deemed competent to take gunshot residue cases.

Q Can you explain to the jury -- well, first of all, Your Honor, I'd like to have Mr. Moskal qualified as an expert in gunshot ---

THE COURT: Any objections?

MR. BROOKER: No objection, Your Honor.

THE COURT: Motion granted.

MR. DEBERRY: Thank you.

BY MR. DEBERRY:

Q Can you explain to the jury the very nature of gunshot residue and its qualities and how it works.

A Yes, sir. Gunshot residue is everything that comes out of a weapon when it's fired. It's going to include a variety of things. It can be dirt that's left in the barrel, oils that are left in the barrel from cleaning. It can be fragments of bullets that were fired through there prior. It's going to include bits of burnt gun powder, some unburnt gun powder. But specifically what we look for when we analyze gunshot residue are some materials that come out of the primer of that cartridge case. And the primer is unique in the materials that are in there. They have three compounds. One contains lead. One contains barium, and the other one contains antimony. And when those three elements come together in the physics of what's happening when that cartridge case is fired, the amount of heat and the amount of pressure inside of there takes those three separate materials and blends them into a single particle and the cooling process of it makes it into a round particle. And so gunshot residue is a round particle with those three elements in there, and it's only known to come from gunshot residue. It's not known to

come from anything else.
Q All right. And is it -- how when the collection of gunshot residue, can you explain it's importance and the time period that may be relevant or anything like that?
A Yes, sir. Gunshot residue is a very fragile type of evidence, unlike if you had broken glass it would stay there indefinitely until somebody actually removed it. Gunshot residue, when it deposits on a person's hand, on a living person's hand, it's kind of like if you were cooking and you had flour on your hands. The more you move around in the kitchen the more that flour disappears from your hands, and over a period of time the majority of it is going to have disappeared. Gunshot residue is the same way. Our body naturally absorbs those metals that are on our hands. Every time we brush our hands or we rub our hands through our hair, any type of movement like that. If you washed your hands, any fluid going across your hands, it's going to remove that material from them. And what we found is that on a living person this gunshot residue doesn't last more than a six hour period.
Q Okay. So even if there's gunshot residue on a person's hands and they don't wash them or rub them off or anything like that, over a six hour period it's probably gonna dissipate anyway?
A Yes, sir.

Q Okay. Were you working with the trace department back in May of 2007?
A Yes, sir, I was.
Q Okay. And as a result of that did you work on a case with lab number L07-07104?
A Yes, sir, I did.
Q Okay. And can you tell the -- well, who did you receive -- what items of evidence -- the gunshot residue kits items 5, 6 and 7 in that report, who did you receive those from?
A When evidence comes into the trace laboratory Lisa McReynolds is our technician. She goes downstairs to the log-in department where outside agencies and our crime scene personnel will bring evidence in. They assign it a case number. Lisa McReynolds then from our department goes down to log-in, picks it up, brings it upstairs, and distributes it to whomever in our department will be working that day. So I received these items from Lisa.
Q Okay. And were there three kits?
A Yes, sir.
Q And what's the names were those kits designated?
A May I read from the report the names?
Q Sure.
A My item number five was a GSR kit from Rodney Detwon McElveen.

Q Okay.
A My item number six was a GSR kit from Joemilla Chesorea Wilson-Dozier. And my item number 7 was a GSR kit from Brandon Deshawn Bellamy.
Q All right. And did you -- and you testified you received those kits from Lisa McReynolds?
A Yes, sir.
Q Okay. And did you analyze those kits?
A Yes, sir, I did.
MR. DEBERRY: Your Honor, at this time I'd like to introduce these into evidence and allow the report to come into evidence as well.
THE COURT: Any objections?
MR. BROOKER: No objection, Your Honor.
THE COURT: Very good. Same into evidence. If you would give me the numbers.
MR. DEBERRY: Your Honor, the report is State's Exhibit 17 and then the three gunshot residue kits are State's Exhibits 20, 21 and 22.
THE COURT: 17, 20, 21, 22 are in the evidence without objection.
(WHEREUPON, State Exhibits Nos. 17, 20, 21, 22 were admitted into evidence.)
BY MR. DEBERRY:
Q I hand you these, sir, and the report. Do you have

that?
A I got a copy of it.
Q All right. Could you verify that those are the gunshot residue kits that you analyzed?
A Yes, sir, these are the kits. When I complete a GSR kit I will seal it with evidence tape. I will initial it and date it. And so each of these kits, State's both 21, 20, and 22 each bear my initial and the date that I sealed them.
Q Okay. And those are the reports you -- those are the kits you analyzed?
A Yes, sir. This is the remnants of the kits that I analyzed.
Q And what are the result of your tests?
A When we analyze a GSR kit the GSR kit is collected from four areas of the hands. They're gonna collect the right palm, the right bank, the left palm, and the left bank. And so a report is gonna indicate each one of those four areas for each kit that's collected. And may I refer to the report just real quickly on this?
Q Sure.
A In all four areas for all three of these kits the quantity of metals found did not indicate the presence of gunshot residue.
Q Okay. So you're testifying that Rodney McElveen

Joemilla Wilson-Dozier, and Mr. Bellamy, these kits turned up negative for them having shots or having gunshot residue present on their hands?

A The quantities of metal as we found were not consistent with gunshot residue.

Q Okay. Thank you very much.

A Yes, sir.

THE COURT: Mr. Brooker.

MR. BROOKER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. BROOKER:

Q How should I address you, Mr. Moskal?

A Sir?

Q How should I address you? What's your title?

A Moskal. Mr. Moskal is fine.

Q Mr. Moskal is fine.

A Yes, sir.

Q Okay. Let me ask you at least a few questions in reference to, I guess, gunpowder residue.

A Yes, sir.

Q I think you previously testified that gunshot powder residue, it's kind of a very fragile item?

A Gunshot residue, yes, sir.

Q It's something that can be removed very easily?

A Yes, sir, it is.

Q Okay. So if I had gunpowder residue on my hands could I remove it by washing my hands?
A Yes, sir, you could.
Q Could I remove it by shaking my hands?
A Yes, sir, you could.
Q So if I shot a gun and right after I shot a gun I did this motion here, and shake off my hands, could I remove gunshot residue?
A That is possible, yes, sir.
Q Okay. Or if I rub my hands on my clothes could I remove gunshot residue?
A Yes, sir. All of those actions have the ability to begin to remove it, yes, sir.
Q Okay. So correct me if I'm wrong. In your opinion is the value of obtaining a gunshot residue test, is it most valuable when you can get it immediately after someone discharged a gun and you can eliminate them from performing any of those actions or functions that might remove the residue?
A The -- we encourage the officers to collect it as soon as possible.
Q Okay. Now do you know, I think you said that gunshot residue kit was done on Brandon McElveen?
A Rodney Detwon McElveen.
Q I'm sorry, Rodney Detwon McElveen. Now do you know the

reasons that induced law enforcement to take the gunshot residue test?

A No, sir, I do not.

Q Okay. Now do you know from the time in which Rodney McElveen was suspected of firing a gun versus the time in which the gunshot residue kit was performed, do you know how much time had lapsed?

A I can refer to a note and tell you, yes, sir.

Q Okay.

A Look.

Q What note can you refer to and could you show me the note first?

A Yes, sir, I can. You want me to explain to you first what the note is?

Q Why don't you let me see it to make sure it's admissible. Are these your notes?

A These are notes that come in the gunshot residue kit when it's collected.

Q Okay.

(Pause while attorneys review notes along with the witness.)

BY MR. BROOKER:

Q From the note you're referring to, what time was the shooting, the gunshot suspected to have occurred?

A Okay. When -- may I explain.

Q Certainly.
A When a gunshot residue kit is collected the officers, inside the GSR kit have a form, and it has a place where the officer writes his name, the agency he works for, the name of the person he's collecting a GSR kit from, and the area for them to write down any activities that this person may have been engaged in prior to his collecting the GSR kit. And then there's a place for the officer to write the time and the date that the shooting occurred and the time and date where the officer collected it. In the kit from Rodney Detwon McElveen they have recorded the date and the time of the shooting as being 05/13/07 and the time is being 2204 hours.
Q 2204 four hours?
A Yes, sir.
Q So that was something like 10:04?
A Yes, sir, p.m.
Q So there at least from the kit -- from the information you have the shooting allegedly took place somewhere around 10:04 p.m. on May 13 of 2007; is that correct?
A That is correct.
Q Okay. Now when was the gunshot residue kit performed?
A The gunshot residue kit was collected on 05-14-07 at 12:55 a.m.
Q 12:55 a.m., a.m. ---

A The ---
Q 12:55 a.m. on what day?
A On the 14th.
Q Okay. Now does it state between, I think that's roughly a little less than three hours; is that correct?
A Yes, sir, just shy.
Q Just shy of three hours, okay. Do you have any information about the activity of that person within those three hours?
A All it states in here is that the subject was in his bedroom.
Q Okay. It doesn't state whether or not he had washed his hands, whether or not he was lying on his bed, or anything like that?
A No, sir, it does not.
Q Okay. So if he had washed his hands would it be uncommon not to find gunshot residue?
A Washing the hands can remove it. There are times some people you'd be surprised how poor of a job they do washing their hands and it still remains, but it would definitely hinder the process.
Q Okay. Can wind, if I was on a windy day and I had gunshot residue on me, can it remove gunshot residue? Unassisted?
A Unassisted just wind by itself I'd probably say no.

Q Okay. I think you previously said shaking your hands can remove it.
A No. The physically brushing your hands against another object, yes, sir.
Q Okay. Now if he was on his bed, if he was lying on his bed and he's rubbing his hand against his bed, he's lying on his bed, could that remove it?
A Yes, sir, that could begin to remove it.
Q Okay. So without knowing whether or not, without knowledge whether or not he engaged in any activity to remove the gunshot residue from his hands, that test is useless with respect to telling me whether or not he had fired a gun?
A Not always. I mean ---
Q I'm talking about this test.
A In this case not knowing, correct.
Q Not knowing whether or not he had engaged in any conduct to remove gunshot residue from his hands would render that test, I guess, useless in determining whether or not he had fired a gun?
A The, you know, the best I can tell you on this one is that the materials on his hands were not consistent with somebody firing ---
Q Okay.
A --- a weapon.

Q But you cannot say whether or not he did not fire a gun?
A Correct, I cannot.
Q This test doesn't tell you whether or not he had fired a gun?
A The results I have on this one do not lead me to say he fired a gun, no, sir.
Q Okay. And let me -- okay. Now with respect to the other persons I think there was a -- indulge me. There was a Joemilla, I think, Wilson-Dozier.
A Yes, sir.
Q Gunshot residue was negative on her?
A Correct.
Q And I'm assuming the amount of time that lapsed that we just discussed in a little short of three hours would be the pretty much the same with her as well, too, between the time of the alleged shooting and then the time on when the gunshot residue kit was performed?
A Hers was collected at 1:10 a.m. so about an extra 10, 15 minutes.
Q And extra 10, 15 minutes later?
A Yes, sir.
Q So roughly maybe a little over three hours with her?
A Correct.
Q Okay, a little over three hours with her. And then, of

course, does it provide any information with respect to her activities between those three hours?
A Hers simply says she was in the house so no detailed activities of what she had done.
Q Doesn't state whether or not she had taken a shower, doesn't state whether or not she had changed her clothes, whether or not she had washed her hands or anything like that?
A No, sir, it does not.
Q Okay. Now would that sort of information, if you don't know whether or not she had done, engaged in any of those activities that would remove gunshot residue, is it not true that that test can't tell you whether or not she actually shot a gun. It simply tells you no residue was found?
A It simply tells me no residue was found, yes, sir.
Q But it can't tell ---
A The quantities of metals were not consistent with it.
Q But it could not rule out her shooting or firing a gun within those three hours; is that correct?
A Correct.
Q And just very briefly, the same for I think Brandon Deshawn Bellamy. Okay. What time was his gunshot residue kit performed?
A Brandon Deshawn Bellamy was collected at 12:33 a.m. so

about two-and-a-half hours.
Q About two-and-a-half hours was his collected. About two-and-a-half hours. And again, I'll ask you the same question. In that two-and-a-half hours, two-and-a-half hours before, you know, I guess law enforcement had him into custody and performed these gunshot residue kits, does it say what his activities were during those two-and-a-half hours?
A On Brandon Deshawn Bellamy it does. It states he was inside the residence and that he did not wash his hands.
Q He was inside the residence but he did not wash his hands?
A Yes, sir.
Q Okay. And just for clarification, for those two-and-a-half hours -- and you tell me whether or not you know. For those two-and-a-half hours that he was outside the presence of law enforcement, do you have any indication as to how they would know whether or not he had washed his hands?
A No, sir, I do not.
Q Okay. No idea how they would know?
A No, sir.
Q Okay. Did they say what room he was in?
A No, sir, it does not.
Q Did they say whether or not he shook his hands?

A No, sir, it does not.
Q Does it say whether or not when he lay on his bed he rubbed his hands against his bed?
A No, sir, it does not.
Q Okay. So without that information, without excluding, without the ability to be able to exclude all the factors that would be able to remove before all of the incidences or events that would be able to remove gun shot residue, can that test tell you whether or not he had fired a gun if you can't rule out all of the activity ---
A No.
Q ---that could remove the ---
A Not being able to rule all those out it cannot.
Q Okay. So that test does not, cannot rule Brandon Bellamy out from actually firing a gun that night?
A No, sir, it cannot.
Q Okay. Now just for clarification, now you weren't at the scene that night, were you?
A No, sir, I was not.
Q Okay. And you weren't an eyewitness to any shooting or anything that night; were you not?
A No, sir, I was not.
Q Did you witness Shawn Reaves shoot anybody that night?
A No, sir, I did not.
Q Okay.

MR. BROOKER: No further questions for this witness.

THE COURT: Any redirect?

MR. DEBERRY: Short, Your Honor.

REDIRECT EXAMINATION

BY MR. DEBERRY:

Q Mr. Moskal, when you testified it's possible that even someone could wash their hands and gunshot residue still be present?

A I have seen kits where somebody's hands were washed or a person's hands were washed and they still had gunshot residue on them. Yes, I have.

Q And you testified that rubbing your hands against something or against almost anything can begin to take the gunshot residue away?

A Yes, sir.

Q But I mean, does it always take it all away or how is that processed?

A It doesn't always take it all away. You get a certain amount of materials deposited on your hands when you shoot a weapon. And I'll go back to the flour or the baking powder type scenario working in the kitchen. As you begin to move around the kitchen it doesn't all disappear immediately. It appears gradually over time and gunshot residue is gonna work the same way.

Q Okay. And you testified that you really need to perform these tests within six hours of someone firing a weapon?
A Yes, sir.
Q And these tests all were done well within six hours?
A They were done well within the six hours.
Q Okay. And they're all negative?
A Yes, sir.
Q In other words, these three people don't have any gunshot residue present on their hands which will suggest that they fired a gun six hours prior?
MR. BROOKER: Objection, Your Honor.
THE COURT: Grounds?
MR. BROOKER: Grounds that actually is that it calls for speculation. I think he's previously testified there's no way to determine whether or not they had fired a gunshot or ---
THE COURT: Rephrase.
BY MR. DEBERRY:
Q What are the results of these tests?
A The results of these tests are that the quantities of metals that I found on these three peoples' hands did not indicate the presence of gunshot residue.
Q Okay. And if they had fired a gun that night, isn't it true that for you to detect it it would have been within

the previous six hours of being tested?

A Yes.

Q Okay. Thank you very much.

THE COURT: Anything further, Mr. Brooker?

MR. BROOKER: No further questions.

THE COURT: Any objections to this witness being excused?

MR. DEBERRY: No, Your Honor.

MR. BROOKER: None from Defense, Your Honor.

THE COURT: You're excused. Thank you.

Call your next witness.

MR. DEBERRY: Your Honor, we call Gary Cook.

WHEREUPON,

GARY COOK,

having been duly sworn by the Clerk of Court, testified as follows:

DIRECT EXAMINATION

BY MR. DEBERRY:

Q Officer Cook, could you please state your name and occupation for the record.

A Sergeant Gary Cook. I work with Marion County Sheriff's Office.

Q Sergeant Cook, how long have you been in law enforcement?

A Eleven years.

Q 11 years? Have you been with Marion County Sheriff's Office those 11 years?
A No, I've been with -- I've been with them now for about five years.
Q And who were you employed with before then?
A I worked with Marion Police Department and also Dillon Police Department.
Q Marion and Dillon, okay. May of 2007, were you employed with Marion Police Department?
A Yes, I was.
Q Okay. And what was your job duty and your rank with Marion Police Department in May of 2007?
A I was a corporal on the road on a shift.
Q Okay, Corporal. Did you have occasion during that period of time or on May 14th, 2007, did you accompany the body of Mr. Ramel Keshawn Applewhite to autopsy?
A Yes, I did.
Q Okay. And can you explain to the jury what I mean by accompanying the body?
A The body was -- the body of the victim was transported to MUSC in Charleston. I followed the transport and I stayed there during the autopsy and then I followed the body back.
Q So did you observe the autopsy?
A Yes.

Q So you watched the autopsy as it happened?
A I was in the very next room. They had a window up.
Q There's a window there where you can see?
A Yes, sir.
Q Did you observe the autopsy doctor remove any evidence from the victim?
A As I can remember correctly she did -- the doctor did remove some projectiles.
Q Okay.
A And blood I believe it was.
Q Okay. Projectiles and blood. Were those bullets or do you know?
A Yes, bullets.
Q And how many were there?
A Two I believe.
Q Okay. And so those came, from your knowledge, those came from the body of the victim?
A Yes.
Q Okay. And how did you -- did you take custody of those, of that evidence?
A Yes, I did.
Q Okay. How did you take custody of that evidence?
A They signed it over to me at the autopsy room right there where the doctor signed it over.
Q So the doctor actually signed it over to you and gave

you custody of that evidence?
A Yes.
Q And you testified that it was -- what was it?
A Two bullets, blood, hair sample, and I think some earrings.
Q Okay. So a pair of earrings, a tube of blood, two bullets, and a hair sample?
A Yes.
Q Okay. Could you have held -- I mean, what's the size of all that evidence?
A I believe if I -- it's hard to remember. I think it was just placed in one like ziplock bag.
Q So it wasn't ---
A Sealed.
Q I mean, you didn't need a box or ---
A No.
Q ---a cart to carry it out. It was just a small amount of evidence?
A Yes.
Q Okay. What did you do with that evidence?
A I carried it to back to Marion Police Department.
Q Okay.
A And turned it in.
Q Who did you turn it in to?
A We have a -- or they had a evidence refrigerator.

Q Okay.
A That it was put into.
Q And did you -- did you have a key to that evidence refrigerator?
A No, mostly I think the admin staff, administration staff had a key to it.
Q Okay. Who was investigating the murder?
A Lieutenant Farmer Blue.
Q Lieutenant Blue so. Did you give this evidence to Lieutenant Farmer Blue to put into the refrigerator?
A I think if I can remember, I put it in there; he just unlocked it for me.
Q He unlocked it and you put it in the refrigerator?
A Yes, sir.
Q Okay. Did you have any other involvement with this case?
A No.
Q Did you go to the scene the night the shooting occurred?
A I responded with Marion Rescue Squad.
Q Okay. So as the rescue squad you weren't acting under your duties as a law enforcement officer?
A No, I was acting as a rescue member.
Q So you were not on duty when the shooting happened?
A No, I was not.

Q Okay. So you responded to an emergency medical situation?
A Yes.
Q Okay. Did you witness -- I mean, when did -- when you arrived on the scene what was your role, what did you do?
A I just -- the incident already took place by the time I arrived on the scene.
Q Had the victim been transported at that time?
A I believe the victim was being transported when I pulled up.
Q Okay. Did you have any involvement law enforcement-wise with the scene?
A No.
Q Okay. So is the only thing you had to do with this case as far as your law enforcement duties are concerned, is how you testified that you accompanied the body to the autopsy? You watched the autopsy, you watched the evidence come from the victim at the autopsy, and you brought that evidence back and you put it in the refrigerator at the Marion Police Department?
A Yes, sir.
Q All right. Is that your only involvement in this case?
A Yes.
Q All right. Thank you very much. Answer any questions Mr. Brooker has.

THE COURT: Mr. Brooker.

MR. BROOKER: Thank you, Your Honor. If you will indulge me just a second, Your Honor.

CROSS-EXAMINATION

BY MR. BROOKER:

Q Investigator, what's your position right now?

A Sergeant with the Sheriff's Office.

Q Sergeant with the Sheriff's Office, okay. And at that -- if you can indulge me just a second Your Honor.

MR. BROOKER: I had something in my hand and ...

BY MR. BROOKER:

Q Sergeant at the Sheriff's Department. At that particular time in May 13 of 2007, what was your employment capacity? How was you employed?

A I was employed with the city of Marion Police Department.

Q Okay. And I think you testified that you were off-duty on that particular, that particular night when this event took place?

A Yes.

Q But you said you then responded as a part of -- what was that, EMS?

A Marion Rescue -- I responded along with the rescue squad.

Q Were you volunteering with them or?

A Yes, as a volunteer basis.
Q You're volunteering with them, okay. What did you -- about what time did you arrive at the scene?
A I cannot remember what time we arrived.
Q Okay. Who was present when you arrived at the scene, if you can recall? Was there anybody there that you know?
A I can't remember everybody.
Q Just anybody that you know.
A As far as law enforcement or as far as rescue?
Q Either one.
A I know I believe, if I can remember correctly, I know myself and Chad Barker responded with the rescue truck because law enforcement requested a ladder I believe it was. And that was my only intention -- that's my only thing I did there.
Q They requested a ladder?
A Yes.
Q Okay. Now how long did you stay on the scene?
A Not very long.
Q Well, you stay an hour?
A Probably not that long.
Q Did you stay 30 minutes?
A I'd say probably 15 to 30 maybe, if that.
Q And what did you do during those 15 to 30 minutes?
A Basically stood by on the outer part of the scene until

they were threw with the ladder I believe.
Q Okay. So you never went on the scene. Did you ever went on to the scene?
A I was there on the scene, but I didn't go in the house. I didn't go near the house. All I did was hand them the ladder.
Q Yeah, I'm not talking about on the inside of the house. Were you on the outside? Was there a crime scene tape up?
A Yes.
Q Were you inside the crime scene tape?
A I believe I was.
Q Did you sign the crime scene log?
A I believe what I did was give Lieutenant Davis a list of the fire rescue personnel that was on the scene.
Q Now this is a copy of at least the crime scene log that's been entered as Defense Exhibit 1. Is your name on that crime scene log?
A No.
Q Okay. But you said you presented a separate list to them?
A I presented a -- we did a list for the fire and rescue personnel---
Q Okay.
A ---that responded.
Q And that was on the scene?

A Yes.
Q And I think you said your only job was hand them a ladder or take them a ladder there for them to use?
A That's it.
Q Do you have any idea what they were using the ladder for?
A I'm not sure; I can't remember.
Q Did they use the ladder on the inside or outside to?
A I cannot remember.
Q Okay. How big a ladder was it?
A Maybe a 10 to 12-foot ladder.
Q Okay, that's a pretty good size ladder. It's 10 to 12-foot ladder?
A It could have been. I don't think-- that's our regular size I believe.
Q Okay. Now I think you said that you later transported, you later went with Mr. Applewhite's body to the autopsy; is that correct?
A Yes, I accompanied the transport.
Q Okay. You just drove by or you went in the vehicle transport?
A I rode behind it.
Q You rode behind the transport vehicle, okay. And I think you testified to the fact that there's a little window, I think, where you can view into the autopsy room?

A Yes.
Q And, of course, you observed the autopsy?
A Yes.
Q Okay. And I think you said that you were given some items?
A Yes.
Q Okay. Now don't tell me where you testified to but, you previously testified that you received those items from the autopsy, autopsy examiner, and I think that was Cindy, looks like Schandl.
A I can't remember. There were two -- there's two or three examiners in the room at the time.
Q Do you remember previously testifying to the fact that you were given those items to -- given those items that you just talked about by Cindy A. Schandl?
A I don't remember I said specifically her.
Q You don't remember whether or not you said her or not?
A Yes.
Q Okay.
A I know I was given by one of the doctors there. I can't remember which one.
Q Okay. You said you took them back to Marion; is that correct?
A Yes.
Q And that you put them in a -- what was that, a---

A It was a thing, I think it's called evidence refrigerator, stuff that has to stay cool.
Q Okay. And I think you personally put them in there, but Lieutenant Blue opened the door for you?
A They had to unlock it 'cause the regular road guy didn't have a key to the refrigerator and he was the investigating detective.
Q Do you know who all has keys to that refrigerator?
A If I recall it was just mainly the administration staff, the detectives and training officers I think was the only. I believe that was it.
Q Detectives and training officers that you ---
A Or admin staff, like the chief and them.
Q Okay. So ---
A I know I did not have a key.
Q I understand. Detectives and training officers. Do you know how many detectives they have?
A I believe two at that time.
Q Okay. How many training officers?
A One.
Q And I'm assuming the administration is -- administrators would be, would be, I think you said, Chief Smith and then, of course, Captain Gray.
A Also the detective officer, the investigator.
Q Okay. He was also one of the investigators on the

scene that day?
A I believe he was there. I cannot remember if he was there.
Q Okay. Any other investigators?
A Lieutenant Blue and I think -- that's all I can remember 'cause like I said, I stayed on the outside of the scene that day.
Q Lieutenant Hopkins, was he an investigator?
A I believe at that time he was a training officer.
Q You believe he was a training officer. You think two investigators? Now —
A If I can recall correctly.
Q Let me ask you just a couple of questions and I'm gonna wrap up with you.
A Okay.
Q All right. Did you personally witness any shooting that night at the scene?
A No, I did not.
Q Okay. So it's not your testimony that you personally witnessed the shooting and that you personally witnessed Shawn Reaves shot anybody that night?
A No, I did not.
Q Okay. My understanding is that your testimony is basically limited to the fact that you brought a ladder to the scene that night, and I think you said that you

accompanied Mr. Applewhite body to the autopsy site?
A Yes.
Q And of course, collected items that were turned over at the autopsy site; is that correct?
A Yes, that's it.
Q And returned those back to Marion, put them in a evidence locker ---
A Yes.
Q ---is that correct? Is that all your involvement?
A That's all my involvement in that case.
Q Okay.
MR. BROOKER: No further questions for this witness.
THE COURT: Redirect?
MR. DEBERRY: No, Your Honor.
THE COURT: You may step down. Any objections to him being excused?
MR. BROOKER: None, Your Honor.
THE COURT: All right, you're excused.
MR. DEBERRY: Your Honor, may we approach just a second.
(WHEREUPON, counsel approached the Bench for an off-the-record discussion.)
THE COURT: All right, members of the jury, we have concluded for the day. We're gonna start back at

9:00 and try to work hard and get in as much testimony as we possibly can. As I instructed you earlier, when you go home I guarantee you, again, your family members are gonna ask you what happened. Tell them you cannot talk about the case. Just get some rest, relax a little bit, be back at 9 in the morning and we will work hard tomorrow. You are excused. Everybody else remain seated while they leave.

(WHEREUPON, the jury was removed from the courtroom at 4:30 p.m., and the following proceedings commenced in open court.)

THE COURT: All right. We'll be back 9:00 in the morning.

(Court resumed at 9:20 a.m. on November 10, 2010.)

THE COURT: Before we begin let me bring up something that y'all mentioned to me in chambers. I have a recollection -- correct me if I'm wrong -- but the last time we had this trial the two attorneys stipulated that there was no search warrant; is that right?

MR. DEBERRY: Yes, Your Honor.

THE COURT: Is that right, Mr. Brooker?

MR. BROOKER: That's right.

THE COURT: Well, this time have y'all stipulated that there is no search warrant?

MR. DEBERRY: Your Honor, it's my impression, and

I prepared my case for this time prepared to your last ruling. And I believe that you instructed us that we're trying the case this time the same way we tried it last time.

THE COURT: Right. Well, if there is an invalid search warrant, for whatever reason, then of course evidence comes in as if there were no search warrant such as plain view doctrine. That's why I'm asking this time. I got to talking with my clerk. Have y'all stipulated there is no search warrant?

MR. BROOKER: We have not stipulated for this trial. And like I was telling you before is, is based upon what they released to us the last time – and of course, this is a new trial with a new jury, new questions. And based upon what they released to us the last time is that we changed our defense; and that's why, and of course, when the issue came about the witnesses that we had subpoenaed – and I think specifically is that, you know, there were two particular witnesses that there was an issue we talked about in chambers before beginning of this trial on Monday and as to why we subpoenaed those persons I think we notified them, I think everybody at that particular period of time, is our defense has changed or has evolved based upon the production of new evidence they released to us that caused

a mistrial last term of court.

THE COURT: What is it that you're looking to do?

MR. BROOKER: Basically is that what we're looking to do is that everything that happened that night, Your Honor, is a part of this trial. And everything that happened that night including what took place on the inside of this house is something that we're gonna use for two, for two specific reasons.

THE COURT: Let me ask you this, are you going to bring up the word search warrant?

MR. BROOKER: Potentially, yes. Potentially we are going to bring it up, and the reason why is that that word was used that night on the scene. When we asked witnesses about that, about that particular issue that word was used that night. Now if law enforcement wants to say, well, we didn't have a search warrant and that's perfectly fine that'll kill the issue pretty quickly.

THE COURT: I think that's what they're saying anyway. Is that correct, Solicitor? I'm just trying to think it through.

MR. DEBERRY: As far as what law enforcement is gonna say on the stand that when Mr. Brooker calls him up there, I can't answer that.

THE COURT: Are you talking about ---

MR. DEBERRY: There certainly were search

warrants. There were search warrants involved with this case because there was so many drugs and illegal activities that was not related to this murder. And they were earlier in court proceedings found to not be good, found all kinds of problems with them. Those cases have been dismissed pursuant to problems with those warrants. We tried this case last time, and I was not -- I was precluded from introducing evidence that I have --

THE COURT: Well, that was by stipulation that there was no search warrant.

MR. DEBERRY: Right.

THE COURT: Keep that in mind. I didn't necessarily preclude it. You two lawyers just stipulated there's no search warrant. So if there's been a search warrant, whatever items of evidence you have coming in have to come in pursuant to rules as if no search warrant existed. You follow me?

MR. DEBERRY: That's right. And that's what precluded the State from being able to introduce that evidence, and Your Honor specifically told us that we try this case the same way we tried it last time so I don't have my witnesses from SLED subpoenaed, my evidence that can come in from these other places, it's advantageous to my case.

THE COURT: I understand. That's why I'm asking

on the record do the two of you stipulate there's no search warrant.

MR. BROOKER: I think, Your Honor, even though the last time we stipulated, even though the last time we stipulated that no evidence, that no evidence I think -- and this is for the last trial -- that this evidence that was seized to pursuant to that search warrant or alleged search warrant would be entered into evidence. But if you note, Your Honor, is evidence was, is that Mr. Defreese testified, testified during last term of court and inadvertently is that Mr. Defreese's reports there was two guns that were from that, taken from that crime scene. There was a .38 Special and there was an AK47 rifle. That's the rifle that was taken. Mr. Defreese ---

MR. DEBERRY: That's not right.

MR. BROOKER: Mr. Defreese's report, have you looked at Mr. Defreese's report?

MR. DEBERRY: Yes, I know exactly what you're talking about. The AK47 was found on the scene in someone else's car along with the large amount of marijuana. A .38 Special was recovered at a different crime at a different location.

MR. BROOKER: And ---

MR. DEBERRY: That's not the crime scene.

MR. BROOKER: And that's in his reports. That he

testified, that he testified, he testified those guns and compared those two guns to the bullets that was taken out of Applewhite's body.

THE COURT: So you want to put them in. So you want the guns to come in, all the information about the guns?

MR. BROOKER: Yeah, I don't want to exclude anything that happened that night. And of course, if they want ---

THE COURT: That opens the door for you.

MR. DEBERRY: That's fine.

MR. BROOKER: And one of the things that can happen, Your Honor, is they can't say, well, we're embarrassed about some of the stuff we did and we want to try to hide some of the stuff we did.

THE COURT: I agree.

MR. BROOKER: All of that stuff happened that night. All of the subject come in. Anything that occurred as part of this investigation is subject to come in, and nobody is gonna be protected because of embarrassment. This guy's life is on the line. And I don't want to hurt anybody if I don't have to, but I'm not thinking about, well, I'm gonna protect somebody's feelings.

MR. DEBERRY: Your Honor, we are not standing

here in this courtroom worrying about being embarrassed. I can tell you that personally. And I can tell you that earlier witnesses already testified in this case had to testify with a closed lip, so to speak, because they cannot mention anything that was outside of plain view. And my investigator that was on the scene from SLED recovered an assault rifle from the scene that night.

THE COURT: If he opens the door you can re-call your witnesses.

MR. DEBERRY: He's not under subpoena anymore, Your Honor.

MR. BROOKER: And no one ---

THE COURT: He can subpoena him real quick.

MR. DEBERRY: I'm talking about Kenny Kensy from SLED who collected the evidence.

MR. BROOKER: And the thing about it, Your Honor, is ---

THE COURT: That's only if he opens the door.

MR. BROOKER: ---no one is limiting him from asking those questions, is that this is an absolutely new trial. And when you have an absolutely new trial you have an absolute new jury.

THE COURT: I think we all had assumed that both of you had agreed, stipulated this time also but certainly ---

MR. DEBERRY: Your Honor, you told us specifically that only what was in plain view will be talked about and that's the way I've been trying my case. Any other way is unfair.

MR. BROOKER: Well, if ---

MR. DEBERRY: At this point in the proceeding I've already had witnesses on the stand; they've already been released from subpoena.

MR. BROOKER: Let's -- this can be resolved pretty quickly. Is that there's plenty of other officers who was on the scene. If he wants to testify with relation to drugs we can let all the drugs and stuff go in if he wants to ask him about it. Anything that was recovered at that scene he can get through any other officer that he could have got through Ken Kensy.

MR. DEBERRY: That's not fair, Your Honor. That is fundamentally unfair because they called SLED in that night for the specific reason to collect the evidence.

MR. BROOKER: And they did.

MR. DEBERRY: And that's what he did. Nobody else collected evidence.

MR. BROOKER: But anybody else can testify. The prime investigator can testify to everything that happened in connection with this case, and he's gonna be asked everything that's happened in connection with this case.

So if he wants the drugs let's bring them in. I ain't got no problem with that; let's stipulate. Everything is on the table.

THE COURT: He's going to open the door to everything.

MR. DEBERRY: Your Honor, I request a continuance if this is the way this is going to go because it's fundamentally unfair. It's not right for me to have to re-call a witness, even if I can get him here from Summerville after he's been released from a subpoena, and put him back in front a jury to talk about stuff he didn't talk about the first time.

THE COURT: Have you got another officer that can talk about it?

MR. DEBERRY: Your Honor, he didn't -- no other officer -- Kenny Kensy from SLED was called in. He collected the evidence, and he's -- his testify -- his testimony was curtailed to the fact that he could only talk about what was in plain view.

MR. BROOKER: And again, who curtailed that?

MR. DEBERRY: Your Honor did.

THE COURT: Well, that was based on the two of you ---

MR. BROOKER: You did.

THE COURT: ---stipulating there is no search

warrant.

MR. BROOKER: From the previous —

THE COURT: What happened today is we have showed up on Wednesday and Defense is saying he's not stipulated at this time, which I understand.

MR. BROOKER: Your Honor, we told them I think ---

THE COURT: I understand.

MR. BROOKER: ---at the beginning we were trying this case —

THE COURT: I'm not going to prevent you from re-calling him or getting him here.

MR. DEBERRY: Your Honor, that's unfair.

THE COURT: If he opens the door.

MR. DEBERRY: Your Honor, that's unfair. And any other officer that's gonna testify to his actions were, what Kenny Kensy's actions were, is clearly hearsay.

THE COURT: I mean, why can't you get him back?

MR. DEBERRY: Well, Your Honor, it's not fair to have to put him back in front of a jury at this point because it looks bad to the fact that we must have forgot about it to start with. That's not fair. That is fundamentally unfair.

THE COURT: Either way we've got a big pile of mess here based on certain things that were done by the

investigating officers at the crime scene. I've got to deal with them. He's got to deal with them and y'all got to deal with them. If it'd all been clean to start with we wouldn't have this mess.

MR. DEBERRY: Your Honor, I understand completely ---

THE COURT: Talking about unfair and all that kind of stuff, I have to make this case go some way or another. Mr. Brooker is not consenting to or stipulating there is no search warrant, and I'm not preventing you from getting him back. I'll give you whatever time you need to get him back. You can have him explain on the stand that there's some things that he would like to bring up further. But it is a screwed up case from what I have seen, but we got to deal with it and we got to get it done. I'm willing to work with you.

MR. DEBERRY: Your Honor, may I just ask one question please. Is it -- was it not your ruling that this case was going be tried under ---

THE COURT: My ruling was based on the two of y'all stipulating there was no search warrant. Now if we showed up today, I'm sort of assuming he was stipulating there's no warrant, you were stipulating there's no warrant. Well, even if you didn't and you brought up the search warrant then he's gonna bring up all other evidence

that come along with that baggage. I mean, you're kind of stuck between a rock and a hard place regardless of what I do unless I'm missing something, am I?

MR. DEBERRY: Your Honor, I'm under the assumption —

THE COURT: Think about it.

MR. DEBERRY: —and it wasn't an assumption that came from Your Honor, that we were under the plain view doctrine and that we were only talking about what was in plain view.

THE COURT: Well, you are under plain view doctrine because if you bring up that search warrant he's going to deal with it in a way that you're not going to like it. You're welcome to bring up the search warrant, no question; but of course, he's going to deal with it. I didn't rule it was invalid. The two of y'all stipulated that it was not coming up or that there was no search warrant; therefore, I was trying the case accordingly. Today Mr. Brooker has determined that he's not stipulating to that.

MR. DEBERRY: Your Honor, I think there's another problem, a huge problem. with the search warrants, that they are discussed in this case and that they are -- if the validity of those warrants are brought into question in this case I'm — Your Honor is the one that signed them

as a magistrate or as a city judge.

THE COURT: I don't think it's the validity of the search warrant as who actually signs the warrants, the officer. Is that correct?

MR. BROOKER: I don't think it's necessary the validity of them. I think what the issue is that they were purporting to have search warrants that night. And of course for a year, for a year-and-a-half they lied about having search warrants, and then of course, after a year-and-a-half then they confess that they didn't have a search warrant that night.

THE COURT: Y'all come up here real quick.

MR. BROOKER: That's the issue.

(WHEREUPON, counsel approached the Bench for an off-the-record discussion.)

THE COURT: We'll be at ease for 15 minutes.

(WHEREUPON, a recess was taken from the proceedings.)

THE COURT: Just for the record, it's my understanding, Mr. Brooker, that nobody is challenging the validity of the search warrant; is that correct? What says, Solicitor?

MR. DEBERRY: Your Honor, I can't say that's correct. I'm not ---

THE COURT: If you are I tell you right now I will recuse myself from the trial based on the case ---

MR. DEBERRY: I understand.

THE COURT: —law I have, and I don't have any problem doing that. It doesn't bother me one way or the other. But I just want it on the record if y'all aren't, the quicker we can do it the quicker I can mis-try this case and we can move on.

MR. DEBERRY: Your Honor, I can't anticipate what's going to come out in this trial. That's not for me to be able to do at this point.

THE COURT: But you haven't so far?

MR. DEBERRY: No, sir.

THE COURT: And how about you?

MR. BROOKER: I haven't so far, Your Honor.

THE COURT: It doesn't -- just want to let you know it doesn't bother me a bit if you do. We will just mis-try it. But obviously we've got a messed up trial based on that bad investigation. Bring them out.

(WHEREUPON, the jury was returned to the courtroom at approximately 10:25 a.m., and the following proceedings commenced in open court.)

THE COURT: I appreciate y'all being patient. We have been out here working very hard to try to streamline this case, speed it up, but we're here now ready to proceed again.

Solicitor, if you'll call your next witness.

MR. DEBERRY: Thank you, Your Honor. The State calls Jackie McGill.

THE CLERK OF COURT: If you will come around, let me swear you in Mr. McGill.

WHEREUPON,

JACKIE F. MCGILL, JR.,

having been duly sworn by the Clerk of Court, testified as follows:

CLERK OF COURT: Have a seat in the witness box.

DIRECT EXAMINATION

BY MR. DEBERRY:

Q Thank you. Good morning. Could you state your full name for the record please.

A Jackie F. McGill, Jr.

Q Okay. And Jackie, where do you live?

A [redacted], Marion, South Carolina.

Q Is that in Marion?

A Yes, sir.

Q Okay.

THE COURT: Be sure to speak up so everybody over there can hear you.

BY MR. DEBERRY:

Q You currently working?

A Yes, sir.

Q Who do you work for?

A AVM, ArvinMeritor.
Q Okay.
A Mullins, South Carolina.
Q Here in Mullins?
A Yes, sir.
Q All right. And what are some of your previous jobs?
A I was mostly shipyard experience, previously worked i n road rescue, did four years in United States Air Force. That's pretty much it.
Q All right. So you said something about road rescue.
A Yes, sir.
Q Is that emergency medical system or?
A Ambulance.
Q You said you were in the Air Force?
A Yes, sir.
Q You did four years?
A Four years.
Q Okay. You've been around Marion all your life?
A No, not really. I -- most of my life I been around Marion, but I after I got in military were there four years. I went to school, certified in welding so.
Q Certified welder?
A Yes, sir.
Q Okay. Did you know Keshawn Applewhite?
A Yes, sir.

Q How did you know Keshawn?
A He and I went to high school together. We supposed to go in military buddy/buddy system, but he went after I did it.
Q So he was in the military?
A Yes, sir.
Q What branch of military?
A Air Force.
Q He was in the Air Force?
A Yes, sir.
Q Okay. What year did you go in the military?
A 2000.
Q Okay. And so you got out when?
A 2004.
Q Okay. And he went in after then you say?
A Yeah, I think he went in that October or November. Shortly after I did, 2000.
Q Of 2000?
A Yes, sir.
Q Okay. So he was in the Air Force.
A Uh-huh.
Q All right. Well how long had you known Keshawn?
A Me and him was childhood friends. He was from up north. He moved down here. As soon as he moved down here we start hanging out from, I guess, 10 years, 12 years old

on up till the —

Q How old are you now?

A Twenty-eight.

Q Twenty-eight?

A Yes, sir.

Q So you got up with Keshawn and y'all were childhood friends from age ten or so until he passed away?

A Yes, sir.

Q Okay. Was Keshawn in town on Mother's Day which was May 13th of 2007?

A Yes, sir.

Q Okay. And did you have occasion to be with him that evening?

A Yes, sir.

Q All right. And can you tell us a little bit about what Keshawn was doing at that time? I mean, was he living here or what?

A No, sir, he wasn't living here.

Q What was going on?

A He was staying in Atlanta, Georgia.

Q Okay.

A He just came home for the weekend for Mother's Day.

Q He came home for Mother's Day, all right. And had you seen -- that was a Sunday. Had you seen him that weekend?

A I saw him that Sunday. I didn't see him none other

than just that Sunday.
Q Okay. But you knew he was in town?
A Yes, sir.
Q Okay. When did y'all get together that Sunday?
A Sunday afternoon we got together. He called me and asked me where -- I saw him earlier that day. He was taking another elderly lady something for Mother's Day. She had to be some kin to me, or I saw him over there. He was like we get up —
MR. BROOKER: Objection, Your Honor, at least to hearsay.
MR. DEBERRY: Okay.
THE COURT: Sustained.
BY MR. DEBERRY:
Q If you can just tell us where did y'all meet up?
A You asked me where I saw him. I saw him earlier that day and later on that afternoon.
Q Okay. And later on that afternoon did you get in the car with him? I mean...
A Yes, sir.
Q Where did y'all meet at?
A I was at SOV game room and he called me, asked me to ride with him somewhere.
Q Okay.
MR. BROOKER: Objection, Your Honor, again to

hearsay.
BY MR. DEBERRY:
Q Can't say what he told you.
A Yeah, I was at the game room.
Q While you were at the game room who else was at the game room with you?
A Travis Lane, Roger McCray, Mark McCummings, a few other friends I was hanging out.
Q All right. And was that daytime, nighttime?
A After evening, about to get late in the afternoon.
Q About to get dark?
A Yeah.
Q Now you said Keshawn came there to get you?
A Yes, sir.
Q Okay. And was anybody with Keshawn?
A Yes, sir.
Q Who was with him?
A Karen Graves, his cousin.
Q And who is Karen Graves?
A That's his cousin.
Q Keshawn's cousin?
A Yes, sir.
Q And what did you think she was with him for?
A I thought we was going to meet some -- well, Travis who was with him also. Him and Karen, they were kind of

talking.
Q Hold on just a minute. What kind of car did he come in?
A A Crown Vic, a white.
Q Okay. He and Karen came to the game room?
A Uh-huh.
Q And who left the game room with him? You said yourself and who?
A Travis Lane.
Q All right. Now tell the jury a little bit about Travis Lane. Are y'all -- were y'all friends? Are y'all friends?
A We known each other maybe the last ten years since I was in high school.
Q Okay.
A Travis, he's a fun going guy, you know.
Q Okay. You talked about his demeanor. You say he's fun going. What...
A He's, if you want to describe, heavy set dude or he didn't really work. He -- most time he's the one who usually ran the game room, you know.
Q So he kind of worked at the game room?
A Yes, sir.
Q All right. When you say heavy set describe -- describe what he looked like.

A 350, 400-pounds, that's a big dude. I mean, not muscular but just, you know.
Q Did he have any health problems?
A Yeah, he had -- he had a bad -- his left, leg he had a bad disease on his leg. I'm not sure what it was. He almost died from it maybe six months. He was in the hospital, got real sick. Real bad fungus on his leg that, you know, they really couldn't do nothing about before. You know, it would bleed sometime, smell real bad.
Q Okay. And was he in that kind of condition that Mother's Day?
A Yeah, he couldn't -- he couldn't wear shoes. He wore slippers most of the time, you know, saggy pants. I mean, he was a real big dude, you know.
Q Was he a fighter?
A No, sir, not. I wouldn't ---
MR. BROOKER: Objection, Your Honor, at least with calls for speculation unless he is going to at least, at least qualify him on his entire background.
THE COURT: Any response?
MR. DEBERRY: Your Honor, he's testified he knows the guy for ten years and they were good friends. I think if he has personal knowledge of him being aggressive or a fighter I think he can testify to it.
MR. BROOKER: Your Honor, I think Your Honor if

the question asked whether or not he ever seen him fought that is perfectly fine.

THE COURT: Why don't you rephrase your questions.

BY MR. DEBERRY:

Q Have you ever seen an occasion where Travis Lane had a problem with somebody that maybe brought them to violence?

A I never saw him fight a sole, never.

Q Okay. And if Travis Lane had to do something, say if he had to sprint a ways, how would he be able to do that?

A Walk basically, I mean. He wasn't fast. I mean, he wasn't a real mobile kind of dude, you know. His leg, he kind of walked with a limp, you know.

Q And do you know if Travis Lane and Karen Reaves -- you say Karen Reaves was in the car?

A Karen Graves.

Q Karen Graves was in the car with Keshawn when they came to the game room?

A Yes, sir.

Q What was your understanding when you saw Karen Graves in the car?

A I kind of thought it was like a setup, you know. We was going to see girls, or you know. Those two were together, you know, so I ---

Q Those two were together?

A Well, they weren't girlfriend/boyfriend but —
Q Who are you talking about?
A Karen Graves and Travis Lane. They liked each other. So they were not in a relationship but the closest thing to a relationship. They really liked each other. So when I saw her I kind of thought, well, who is for me, you know, I'm thinking.
Q Okay. So you thought you were going off on maybe a date or?
A Not a date, but maybe he had somebody waiting for me somewhere so.
Q I understand, all right. So the four of y'all got in the car and road off?
A Yes, sir.
Q Okay. And tell the jury where you went.
MR. BROOKER: Objection, Your Honor, we -- if we may approach.
THE COURT: Sure.
(WHEREUPON, counsel approached the Bench for an off-the-record discussion.)
BY MR. DEBERRY:
Q Mr. McGill, you said the four of y'all got in the car together and you rode off?
A Yes, sir.
Q And it was just around, right around dark?

A Yeah, it was getting dark.
Q Okay. Where did y'all go?
A East Mullen Street.
Q Okay. Did you want to go to a house there?
A They were pull up to her house, yes, sir.
Q All right. And how did -- and you're in the white Crown Vic you said?
A Hum.
Q Okay. And what happened when -- or whose house was that? Do you know whose house that was?
A I don't know who owned it. I mean, I know who ---
Q Who stayed there?
A Yeah.
Q Who stayed at that house?
A I know Deshawn Bellamy stayed there.
Q Deshawn Bellamy?
A Yes, sir.
Q Are you close friends with Deshawn Bellamy?
A We not close friends. I mean, I...
Q You know him if you saw him?
A Yeah, I know him. We had -- we spoke before, you know, maybe been out a couple of times. You know, been in the same place, same time like several occasions.
Q And do you know Shawn Reaves?
A I know him. I don't know him personally but I've seen

him a few times also.
Q Okay. Is he sitting in the courtroom today?
A Yes, sir.
Q Where is he?
A Beside Attorney Brooker (indicating).
Q Okay. So y'all pulled up at the Bellamy's house. How, where was the car positioned?
A Right in front of the -- in the street. Half in the street, half in the yard right in front of the house.
Q Okay. I want to show you what's marked as State's Exhibit Number 19. This is East Mullen Street. This is the Bellamy house.
A Uh-huh.
Q Can you just point to right where you were parked?
A Right here. Right in front of the house.
Q Okay.
A I came in from this direction right in front of the house up there.
Q Okay, all right. Now tell the jury what took place when you got to the house.
A Well, when we got there it was some -- it was a good little bit of people in the yard.
Q How many people would you say?
A Maybe ten.
Q Okay. So they were between you and the house?

A Yeah, between me and the house.
Q Okay.
A We got out the car. Keshawn -- well, I'm not supposed to say what he say, okay.
Q What did he do?
A When he got in the car he asked to speak to Joemilla. He wanted to talk to Joemilla.
MR. BROOKER: Again, I'm just going to make caution reminding with respect to hearsay, Your Honor, raise an objection.
MR. DEBERRY: All right.
THE COURT: Very well.
BY MR. DEBERRY:
Q So who is Joemilla?
A It was his girlfriend.
Q Okay. That was Keshawn, the victim's girlfriend.
A Keshawn's girlfriend, yes, sir.
Q So at that point in time you learned that he was there to see her?
A Yes, sir.
Q Okay. And what took place?
A Well, she came out the house.
Q And so she was inside?
A She was inside the house. She came out the house. They walked down the street. Well, she didn't want to

come out the yard first. He tug on her jacket. She went into the street. They went down the street, started arguing back and forth.

Q Okay. Who -- when you say they went down the street, how far down the street did they go?

A They walked maybe 50 yards down the street.

Q Okay. So they were away ---

A 40-yards.

Q From the house?

A Yeah, they were away from the house. Yeah, they were away.

Q And who went down the street with them?

A Just them two. No one else went with them.

Q So they were just going down the street?

A Talking, arguing.

Q Okay.

A Yelling back and forth at each other.

Q So go ahead and just tell what happened.

A Started yelling back and forth at each other. He said some things; she said some things. He takes his finger and points it in her head; she hits him. When she hit him he grabbed her, slung her to the ground into the mud. I then came to grab him to stop it.

Q And they were still down the road?

A Yeah, they were down the road. I went down the road

and stop it.
Q Okay.
A I stopped them from -- tried to stop them from fighting. She had it -- she had his shirt; she wouldn't let it go. I'm telling her to let his shirt go. I'm telling him, man, you're gonna get in trouble, you have no business down here fighting a female. He telling me he don't have her.
MR. BROOKER: Again, objection, hearsay.
THE COURT: Sustained.
BY MR. DEBERRY:
Q All right, go ahead.
A Anyway, he lets her -- he like braces hisself away from her; I'm trying to pull on him. She then hits -- when she hit him he then grabbed her, slammed her on the ground.
Q Okay.
A I tell another gentleman that was at the house to her.
Q Who is that?
A Huh?
Q Who was that?
A I don't know. I don't know his first name. Last name was Gerald.
Q Okay. Now he had come down the road at that point?
A He was still -- well, after he slung her they kind of like were moving back down towards this way, down towards

the house.
Q Back towards the ---
A Still not in the yard but towards like where the car is parked. They then -- he had come in the -- he had already come like from -- they had come from -- everybody was mostly toward the door. He had come back toward the end of the yard then. I tell him, I say, man grab her, I'm gonna grab him.
Q You're talking about Gerald?
A Gerald, yeah.
Q That he had come out to assist?
A Yeah.
Q He had come away from the crowd?
A Uh-huh.
Q Okay.
A So I tell him to grab her, I grab him, and so we can go. She's still laying on the ground. I get him, get him, and put him in the front seat of the driver.
Q Okay.
A I rode ---
Q Hold on just a minute. When you say you put him in the front seat of the driver you're talking about Keshawn?
A Keshawn, yeah.
Q Okay. What's Travis Lane and Karen Graves doing?
A Karen had came up whenever the first -- whenever they

arguing the first time and he slung her into the mud. She had -- I went down there. Karen had came up there. She was kind of like arguing with Joemilla telling him -- telling her to let him go.

Q Uh-huh.

A All right. Everybody's trying -- Travis kind of still like halfway in between the road. He never really came up to Keshawn. I mostly was grabbing Keshawn.

Q Right.

A Get back to the car. Travis is at the car. I get Keshawn in the front seat. Travis came. We came into the yard. Travis was sitting behind Keshawn. I was sitting behind Karen in the back seat. Travis tells me to get ---

THE COURT: Sustained.

BY MR. DEBERRY:

Q And you can't tell ---

A Okay. Anyway, Travis get back on the side that I was on. I'm getting back on Travis side because of the mud that was in -- mud on the ground. He had slippers on so he didn't want to get muddy so he got back in on the side that I got on. I'm getting in the car. Joemilla then comes, spits on Keshawn.

Q Okay. So Keshawn was in the car?

A Was in the car.

Q Okay.

A Window down, he's in the car, door shut. I'm about to get in the back seat. Joemilla comes up; she spits on him. When she spits on him she then goes up to the porch of the house.

Q Okay. Stop right here a minute. Now Joemilla is who he went there to see and who they went down the road and got in a fight with?

A Yes, sir.

Q Or argument or however you explained it.

A Yes, sir.

Q And then you testified they come back towards the car and that you get Keshawn in the car?

A Yes, sir.

Q And that y'all -- and that Travis has to come around not to step in the mud and gets in the car.

A Yes, sir, on the side of that I came in on.

Q Okay. And that y'all were going to leave?

A Yes, sir.

Q Okay. And you testified that Joemilla comes there and spits into the window?

A She spits on him, yes, sir.

Q Through the window?

A Through the window, yes, sir.

Q Okay, all right. If you're the front steps of the house, okay, and I'm the white Crown Victoria, tell me how

far away it was parked as I'm walking.
A Maybe from here to ---
Q I mean, when I get away that far.
A About, yeah.
Q About this far?
A You ---
Q So ---
A Maybe a little closer.
Q Okay. So right in here somewhere?
A Uh-huh.
Q So if you're standing on the front steps of that house on [redacted] and I'm where the car is, this is how far apart we are?
A Uh-huh.
Q Okay. And you're testifying that Keshawn is in the car and that Joemilla walks up and spits through the window?
A Yes, sir.
Q What happened then?
A She walked, Joemilla walks from behind the car from the street where he had just slammed her up to the car, spits on him, then goes up to the step.
Q All right. So if I'm Joemilla at this point, okay, and I just spit in the car and I'm walking towards the steps, that's what you're testifying to?
A Yes, sir.

Q Okay. Now where are you? What did Keshawn do?
A He got out. As soon as she spit on him she took -- he get out the car. I was getting in the car and she came, spit on him. He gets out the car then. She goes up to the porch.
Q All right, hold on. So she goes there and then she's walking towards the porch. Okay?
A Uh-huh.
Q Keshawn, you're testifying Keshawn gets out of the car and does what?
A He goes after her.
Q Following her to the porch?
A Yes, sir.
Q All right.

MR. DEBERRY: Your Honor, may he step down?

THE COURT: Sure.

BY MR. DEBERRY:

Q Can you please, if I'm -- can you -- how about get back here where you would have been at the car.
A The house is here. The car would have been ---
Q No, the house is —
A This is the house, okay.
Q And Joemilla spits and then goes towards the house?
A Yes, sir.
Q And Keshawn gets out the front seat of the car. So if

I'm Keshawn what do I do? I follow her?
A Yeah, you go immediately follow her.
Q How far behind Joemilla am I?
A She had already about made it to the steps. With him being halfway there she was already on the steps.
Q Okay. So Joemilla walks up here and Keshawn is right behind her?
A Yeah, he's following her.
Q He's following her?
A Uh-huh.
Q You have to come around the car, correct?
A No, I was on the same side Keshawn was on.
Q So what did you do?
A As soon as he got in the car I grabbed him. I grabbed his shirt 'cause he was going like he was mad.
Q Okay, so if I was -- if I was Keshawn and I got out the car and I'm walking, what did you do?
A I grab him, no man. I'm grabbing him, okay, right. He's jerking away. He's jerking away from me, right. He jerked ---
Q And he's following ---
A He jerked away. I grabbed him and then he jerked, right.
Q All right. And so, am I doing right, is what he would have done?

A Yeah.
Q I'm walking towards the house?
A Uh-huh.
Q And you're right behind me?
A Yeah, I'm right behind.
Q And Keshawn and Joemilla is ahead of us?
A Yeah, it's kind of further. He was more on my left side.
Q Who?
A Keshawn.
Q Okay. Where is Joemilla up here?
A She's already -- she's ---
Q She's already at the house?
A She's at the house and she's standing on maybe the second or third step. She's standing right there.
Q Okay.
A She's standing up there.
Q So if she's standing there and I'm Keshawn ---
A Uh-huh.
Q ---the one who got shot?
A Uh-huh.
Q And I'm walking up here behind Joemilla and you're right behind me trying to say, no, don't go up there, let's go, is that what you were doing?
A Yes, sir.

Q Okay.

MR. BROOKER: Your Honor, we're going to make an objection at least to leading.

THE COURT: Sustained.

MR. BROOKER: If he would simply ask him a question and allow him to answer.

BY MR. DEBERRY:

Q All right. So at the point when Joemilla is standing there and if I'm Keshawn and I'm standing here, where are you?

A I was on -- it's hard for me —

Q Come around where you, where you would have been.

A It's hard for me to do it this way because the house was here.

Q So let's act like the house is here, okay. All right, so I'm coming towards the house and I'm Keshawn, where are you?

A I'm right here. I'm coming up kind of further this way here, right here.

Q Okay. And did you see Shawn Reaves?

A I never -- what I'm saying, I never -- when I saw Shawn I never, like, stood and stopped. It was all in walking motion.

Q Okay.

A I'm still walking towards Keshawn. Keshawn goes up to

the step and Shawn is standing in front of the step.
Q Okay. So this is the steps. Where is Shawn standing?
A He's standing -- the steps was right here. Joemilla is on the steps. If she's on the step he was standing right here.
Q Okay. So she walked past him?
A Yeah.
Q Okay. And again, well, who was between -- was there anything between you and Shawn Reaves?
A Keshawn.
Q Keshawn.
A Uh-huh.
Q Okay. So you're testifying that you're about here. I'm Keshawn and I was about here and Shawn Reaves was standing about here.
A Yes. Okay, the house, like I'm saying, it hard for me because it's like I'm trying to read a blueprint.
Q Okay.
A Because the house, with me remembering it, the house was on this side. This was the -- the car was here, the house was here. She was standing here. He would be standing here. He would be standing here where the house, where it originally was.
Q Okay.
A If the house was here she's on the step. This is

Joemilla. This would be Shawn right here. Keshawn is coming this way and I'm on this side of Keshawn.

Q Okay. So you're testifying that Keshawn is between you and Shawn Reaves?

A Uh-huh.

Q All right. Stand over here where Shawn Reaves was standing.

A Okay.

Q And I'm Keshawn. And I'm walking up here and you're behind us.

A Uh-huh.

Q And what happened?

A Well, as I walking up I hear, what. I hear, what. Then pop, pop, pop, pop.

MR. BROOKER: Objection, Your Honor. At least -- well, I withdraw. I'll go ahead and let him say that. I withdraw it.

BY MR. DEBERRY:

Q All right. So Shawn Reaves was standing there and you're about here, right?

A Uh-huh.

Q Get back here for me, I'm sorry. And you -- and repeat what you said.

A Keshawn is walking up. I hear, what. And I hear pop, pop, pop, pop, pop.

Q All right. What did you think was going on?
A Someone was shooting.
Q Okay. What did you do?
A I hit the ground where I was at.
Q All right. You just ---
A Yeah, I didn't run. I hit the ground.
Q On your face?
A No, I just kind of like -- I kneeled kind of like.
Q Show the jury what you did. I mean, you just -- was it just that ---
A Instant. As soon as I heard gunshots I just like this right here kind of.
Q All right. And okay. So what happened next?
A I see Keshawn. I don't know if he tried to grab Shawn or he was trying to run, but he kind of lunged like that way, okay. It was real fast gunshots.
Q So he was facing Shawn Reaves?
A He was standing right directly in front of Shawn Reaves.
Q Right. And you're saying he fell toward Shawn Reaves?
A Yeah. He fell -- I don't know if he, like I'm saying, I don't know if he tried to grab him or if he was running or what, but his motion was going towards that way.
Q Okay. And did he fall down?
A Yeah, he fell.

Q All right. And which way was he facing when he fell?
A He was on his stomach facing the house right beside the steps there like a banister right there. He was laying right beside the steps.
Q Okay. Did you hear anything else after the pop, pop, pop, pop?
A After the pop, pop, pop I was hearing clicking.
Q You were hearing clicking?
A Uh-huh.
Q What did that sound like to you?
A Like a gun clicking. I'm thinking it's out of bullets.
Q Okay. And if I'm Shawn Reaves and you're laying right there, the click is coming from right here?
A Uh-huh.
Q Okay. So what did you -- so what did you see at that time?
A I saw Shawn Reaves, he took off that way. I jumped up. I tell Keshawn, come on man, let's go. He gets up, takes two steps. I go ---
Q Wait a minute. He gets up?
A Uh-huh.
Q Keshawn got up?
A Uh-huh.
Q Did he -- which way did he take two steps?
A He was laying on the ground. He got up, took two

steps.
Q Now that's back towards the car?
A Towards the car, yeah.
Q Okay. So he took two steps and what?
A He fell. I'm running. I look back; he fall. I run up to him.
Q Which way did he fall? How did he fall?
A If we going to the car ---
Q The car is right here.
A He fell going like he trying to get to the car. He was trying to come to the car.
Q You mind just showing how he fell?
A He was on the ground. He was laying, he was laying on his stomach on the ground.
Q Facing the house?
A Yeah. I yell. He gets up and he make two steps and just fall.
Q All right.
A I then —
Q Okay. So he like he was going back, headed back towards his car?
A Uh-huh.
Q Okay. Tell us what you did.
A I then yelled. I look at him and I run up to him. He's on his chin. He's laying on his chin and he's behind

like blood coming all out his mouth. I yell for Travis to come help me try to get him in the car. Travis run up. Travis come up. I'm already trying to grab him. Travis get the other end; we get him to the car.

Q All right. How did y'all -- how did y'all get him?

A We picked him up by his arms and kind of ---

Q Could he walk up?

A No, he wasn't doing nothing.

Q Okay.

MR. BROOKER: May we approach, Your Honor.

THE COURT: Sure.

(WHEREUPON, counsel approached the Bench for an off-the-record discussion.)

MR. DEBERRY: Thank you, Your Honor.

BY MR. DEBERRY:

Q You said that -- you may, can come back down. You said that Keshawn was -- had fallen, gotten up, and turned around, okay.

A Uh-huh.

Q And that he was facing towards his car when he fell the second time.

A Uh-huh.

Q So you grabbed him?

A I grabbed him.

Q Now did somebody else him?

A Yeah. Travis came up and he grabbed him. I yelled for Travis to come help me grab him.
Q Okay.
A Travis came. We picked him up. I got him by his arm. Travis was on this side of...
Q Okay.
A All right. And the car was -- the car door was already open from whenever I got out the last time.
Q Okay.
A We get -- try to get into the car. We could never get him to the car.
Q Now did you try to pull him in the car head first?
A Yeah, we tried to put him in there head first. This was his car. The car is pointing this -- well, the car is pointing this way right here. That's the front seat. This is the back seat. We get him in, grab his pants. There's mud all down here. We get him in. We can only -- we couldn't hardly get him in. Neither one of us could get him completely in the car. We got him halfway in the car. This is the floor. He was -- his right shoulder was on the seat, and the rest of his body from waist on down was in the mud. This part of his body was hanging in the car, and the rest of him was like on the seat back right here.
Q Okay.

A So we could never -- cops showed up, told us to move, I mean.
Q Okay, take the stand. So you testify that all this happened – I mean, over what time period would this have taken place? I mean, from the time that Joemilla left the car and Keshawn followed her and you got out and everything took place, about how long?
A You talking about time limit as far as the shooting and?
Q Very fast?
A Yeah, the shooting happened real fast. As soon as he was shot we went. He get up, fall. We immediately try to get him in the car. Get him in the car, cops pull up.
Q Okay. So you're testifying that y'all are still trying to get Keshawn in the car and the Marion Police Department shows up?
A Marion Police Department shows up. I was on my knees in the mud trying to lift the back end of Keshawn to get him in the car, get the rest of his body in the car.
Q Okay. Why were you trying to get him in the car?
A To take him to the emergency room hospital.
Q Take him, try to get him some help.
A Uh-huh.
Q Okay. I need to ask you a few questions. If you could, where the jury can see this map. All right. Back

up so the jury can see. This is East Mullen Street where you testified before. This is the house.

A Uh-huh.

Q Which side of this house -- this is the house? This is East Mullen Street. Which side of the house did you see Shawn Reaves?

THE COURT: All right, Mr. McGill, the forelady has to see as well as other jurors.

THE WITNESS: Oh, I'm sorry.

BY MR. DEBERRY:

Q Let's show them a couple of times. Which side of that house? Don't draw on it.

A If this was the -- if this was the porch, whenever I heard him take a shot he took off this way.

Q Took off running this way?

A Yeah.

Q He didn't run out past the car?

A No, huh-uh.

Q So he ran this direction?

A Yeah.

Q Okay, all right. And that's after you heard the clicking?

A Yeah.

Q Now you said Travis had a foot problem. Do you know if -- and you said he had to wear slippers.

A Yes, sir.
Q Do you know if he had on slippers that night?
A Yeah, he had on some -- he had on black slippers. He wore those all the time. He didn't wear shoes. It was black slippers. We call them nebo slippers because he wouldn't put his foot all the way in them. They will be bent down in the back and he would just put his foot in and...
Q All right.
Q Do those look like his slippers?
A Yes, sir.
Q All right. Do you know why they would have been left on the scene that night?
A Him running.
Q Just in the confusion?
A Yeah.
Q Did you -- do you know anything about any cell phones?
A I had a cell phone.
Q Did you drop it during ---
A I never, I never, I never got my cell phone. I don't know what happened to it. I never ---
Q So you lost it that ---
A I lost the cell phone, yes, sir.
Q All right. Was Keshawn wearing a hat?
A I want to say he was wearing a headband.

Q Like a durag?
A A red -- no, just like a red -- he had on a -- it was white, red, and green, blue jean shorts, white, green and red air force ones, and I want to say a red headband he had on.
Q Okay. I'm gonna show you what's marked as State's Exhibit 14. If you could get down in front of the jury. Do you recognize that picture?
A Yeah.
Q Can you explain to the -- let me show it to them just real quick.
(Published to the jury.)
BY MR. DEBERRY:
Q Where is this picture taken from?
A I'm taking the picture. Look like it standing from the house. This would be the porch so they had to be standing where Keshawn fell at.
Q And they were taking a picture back towards the car?
A Back towards the street where the car was.
Q Is that the car?
A Yes, that's the car.
Q Is that how it was when y'all got out?
A Yes, sir. This truck, I mean, must have been taken there. I don't remember seeing this. This truck was -- that's the street. There was no truck in the street.

Q But that's how the car was?
A The car was exactly the same way, yes, sir.
Q Okay. Is that how it was when y'all tried to get Keshawn back in the car?
A Yes, sir.
Q Okay. Where were you standing when the shooting happened?
A I was over this way, over that way kind of further back that way.
Q All right. And where -- can you see in this picture where Shawn Reaves would have been standing?
A Yes, sir. He would have been standing right here by the front of the porch, right side.
THE COURT: You need to understand the alternate needs to see all this stuff also.
BY MR. DEBERRY:
Q All right. Come show -- where were you standing?
A I was standing over this way. Keshawn was -- Shawn was standing here. Keshawn would have been standing in front of here and I would be on the right side.
Q Okay, all right. And in this picture?
(Photo published to the jury.)
BY MR. DEBERRY:
Q Where is -- this picture would have been taken from where?

A From the street.
Q From the street back towards the house?
A Back towards the house, uh-huh.
Q So is this the car again?
A Yes, sir.
Q Okay. And is this where Keshawn got out of the car?
A Yes, sir.
Q And he testified he walked up to these steps?
A Yes, sir.
Q In this picture where would you have been?
A Keshawn, like I said, Shawn by my side. Keshawn was right in front. I was there on the right side. Keshawn back right side of him.
Q Okay. And if you're Shawn Reaves and I'm you, I'm Jackie McGill, how far away do I need to get when the shooting starts?
A Probably where this fellow is about a little further back to your left a little bit.
Q Well, I mean, just distance.
A Yeah, about from here to there.
Q About from me to you?
A Maybe a little further back from this gentleman here.
Q Okay.
A Right there.
Q About right in here? Okay, all right. Now I'm going

to show you what's marked State's Exhibit 11.

(Exhibit published to the jury.)

BY MR. DEBERRY:

Q Is that the back door where you tried to put your friend in the car?

A Yes, sir.

Q You testified he was bleeding?

A Uh-huh.

Q Does that fairly and accurately show what it looked like?

A Yes, sir.

Q That's the mud you're talking about?

A Uh-huh.

Q And what was your testimony as far as being able to get him in this car?

A We couldn't get him all the way in. I had his, bottom part of his body was, his knees and all were in the mud down here. His shoulder, his shoulder was on this part of the seat. His head was -- left arm was hanging and he was just laying there.

Q And at that time while you were trying to get him in the car what happened?

A Policeman pulled up, told us to move away from the car.

Q Okay. You can sit down.

A (Witness resumed the witness stand.)

Q Did you know any of the police officers that arrived there that night?
A Yes, sir.
Q Who was the first one to talk to you?
A Walker Davis.
Q Lieutenant Davis?
A Lieutenant Davis, yes, sir.
Q Okay. And did he ask you to write a statement that night?
A Yes, sir.
Q And did he provide you with material to write a statement that night?
A Yes, sir.
Q And did you write a statement that night?
A Yes, sir, I wrote a statement.
Q Where did you write a statement?
A On the back of the police car.
Q On the back?
A Yes, sir.
Q On the trunk?
A On the trunk of the police car.
Q How long after he got there did you write that statement?
A He got there. The ambulance pulled up. Whenever -- I was writing the statement as Keshawn was being worked on

in the ambulance.
Q Okay. What did you write in that statement? I know you can't remember every word you wrote in that statement but...
A I wrote, explained everything from when I was at the game room till us driving there, what I said, what he said, what was being said, her coming out the house. I put what he was wearing in that statement.
Q Let me ask you this, is there anything in that statement that you did not testify here today?
A No, sir.
Q You ---
A Is there anything in the statement that I didn't testify what you ask me or ---
Q Right.
A ---hearsay so.
Q Only hearsay?
A Yes, sir.
Q Has your story every changed?
A Never.
Q Okay. Jackie, you testified that Karen Graves, Travis Lane, yourself Jackie McGill, and Keshawn Applewhite rode to [redacted] that night.
A Yes, sir.
Q You testified that you thought y'all probably going to

see if y'all can meet some women.
A Yes, sir.
Q All right. And did y'all have any guns?
A No, sir.
Q Any weapons?
A None.
Q Any intention that you knew of to go and fight?
A None.
MR. BROOKER: Objection, Your Honor, leading questions.
THE COURT: Sustained.
BY MR. DEBERRY:
Q What did y'all have in that vehicle with you?
A It was a brand new car. He just got the car. Just, I had a chain and my phone. That's all I had.
Q Okay. Did you have your chain or did you lose your chain that night or?
A My chain was in the car.
Q Okay. You're talking like a necklace?
A Yes, sir.
Q Okay. Hold on just a second. When did you know, Jackie, that Keshawn died?
A Whenever I got through writing my statement we left got in the truck with my father, and he told me that he didn't make it.

Q All right. Thank you very much.

THE COURT: Mr. Brooker.

MR. BROOKER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. BROOKER:

Q Mr. McGill, the story that you're testifying here today is not quite the same story that you told that night in subsequent to that same night; is that correct?

A Repeat that again, sir.

Q The story that you're telling here today is not quite consistent with the story that you've subsequently told about these, about the events that night; is that correct?

A No, sir, it's not correct.

Q It's not correct. Now you stated, I think, on direct examination that Mr. Applewhite came around to the, I think, game room to pick yourself up and to also pick up Travis Lane and that you were not -- you thought that y'all were going to pickup some girls or something; is that correct?

A Yes, sir.

Q Well, that's not entirely true, is it?

A Yes, sir, it's true.

Q Didn't you also knew that Travis Lane had been around to East Mullen Street, or did you also know that Travis Lane had been around East Mullen Street and that Travis

Lane had gotten into a confrontation around East Mullen Street just before he came to pick up ---

MR. DEBERRY: Objection, Your Honor. This evidence is not in the record, has not been testified to, and he can't testify himself. Mr. Brooker cannot testify.

THE COURT: Come on up.

(WHEREUPON, counsel approached the Bench for an off-the-record discussion.)

BY MR. BROOKER:

Q Did you know where Travis Lane was prior to him coming around to pick y'all up from the game room?

A When I was at the game room Travis Lane was at the game room playing cards with us.

Q Where was -- do you know where Jackie, excuse me. Do you remember where Mr. Applewhite was prior to coming around to pick y'all up at the game room?

A Do you want me to give assumption or do you want me -- I know I didn't know ---

Q I'm asking you with your knowledge.

A No.

Q Did you ask ---

A To my knowledge I thought he might have been on his way back to Atlanta.

Q I'm sorry?

A I thought he might have been on the way back to

Atlanta.

Q And when y'all got in the car did y'all discuss -- and don't tell me what he says. I just want to know whether or not you had a conversation. Did y'all have a conversation either when he picked up at the pool hall or either when you got in the car?

A I asked him the -- I asked him where are we going.

Q Okay. Okay. So when he came and picked y'all up -- like I said, I don't want you to -- I'm not asking what he says.

A Okay.

Q Is that you asked what him what he, where were y'all going?

A Yes, sir.

Q And I'm assuming -- don't tell me what he says, but did he give any response to your questions?

A Yes, sir, he gave a response.

Q Okay. And did y'all -- isn't it true that y'all went directly over to East Mullen Street?

A Yes, sir.

Q Y'all didn't deviate or go spend an hour any place else or spent half an hour any place else; is that correct?

A Yes, sir.

Q Y'all went straight to East Mullen Street?

A Yes, sir.

Q Okay. So isn't it true is that, that particular period of time is that when you testified that you thought y'all were going someplace to meet some girls, that is absolutely false. Is that you knew y'all were going around to East Mullen Street?

A No, that wasn't false. Prior to -- when I got in the car I was thinking we were going to meet girls. Once we got there I knew there wasn't no girls.

Q Okay. And what did you thought y'all were going to do around East Mullen Street?

A When I saw Joemilla car -- you don't want me to say what they said.

Q No, I'm asking you your thoughts. What did you think y'all were going to do around East Mullen Street? I don't want you to tell me anything that Mr. Applewhite said. I'm asking you about your thought. What did you think y'all were going around there to do?

A I wasn't going around there to do nothing.

Q Okay. Did Mr. Applewhite appear angry?

A Well, whenever he answer my question it was with a smile on where were we going. It was a smile so he wasn't -- he didn't seem angry then.

Q Okay. Now y'all went straight around to East Mullen Street; is that correct?

A Yes, sir.

Q And of course, I think you testified too that Ms. Joemilla -- I think it's Wilson-Dozier. Was she in the house when y'all got -- she was in the house when y'all got around to East Mullen Street; is that correct?
A Yes, sir.
Q Good. And I think you testified to the fact is that, is that she would not originally come out of the house to see Mr. -- to see Mr. Applewhite; is that correct?
A Yes, sir.
Q Okay. So now, and again, I'm asking you of your impression, your impression, is that, did you think there was something a little bit odd when he -- when y'all went around there -- and again, let me at least ask, I think Mr. Applewhite's a pretty big guy; is it not?
A Yes, sir, he's ---
Q Around 6'1"?
A 6'1", yes, sir.
Q And he's around somewhere around 230, 240 pounds?
A Yes, sir.
Q In that neighborhood? I think you testified that Mr. Travis Lane is a big guy, somewhere around 350 to 400 pounds; is that correct?
A Yes, sir.
Q Okay. He picked y'all up and y'all went straight around to East Mullen Street to where Joemilla Wilson was;

is that correct?
A Yes, sir.
Q Okay. Now that house where Joemilla Wilson was, was at, isn't it true that's the house of Brandon Bellamy?
A Deshawn.
Q Deshawn Bellamy?
A Yes, sir.
Q I think it's Brandon Deshawn Bellamy I believe is his —
A I don't know his name.
Q Well, you know him by Deshawn?
A Yes, sir.
Q That's the home of Brandon Deshawn Bellamy. Okay. Now you testified earlier that what Mr. Applewhite considered Joemilla Wilson-Dozier as his girlfriend; is that correct?
A Yes, sir. I didn't say consider. I said they were girlfriend/boyfriend.
Q Well, they were girlfriend and boyfriend, okay. And I think you testified to the fact that he had, I think, a Miss -- was Miss Graves?
A Karen Graves, yes, sir.
Q Miss Karen Graves was in the car and you said they had a somewhat of a close relationship and that was —
A Travis -- Karen was Keshawn's cousin. Travis Lane Karen had -- the other friend of ours, they were having,

you know, they were kind of like relationship kind of. Not relationship but real close.

Q Travis Lane and ---

A Karen.

Q And Karen had a relationship.

A Right. Keshawn and Karen were cousins.

Q Okay. Keshawn and Karen was cousins, okay. Now isn't it true that when y'all got around there that you became aware that Travis Lane -- that Mr. Applewhite was upset that Joemilla was at Brandon Bellamy's house?

A I was aware that he wanted to talk to her. He was still in a jovial mood. He wasn't leaping for joy, but he wasn't frowned or, you know.

Q Well, you tell me. When did his jovial mood left and he became violent?

MR. DEBERRY: Objection, Your Honor, he's asking for hearsay.

MR. BROOKER: No, no, that's not hearsay.

MR. DEBERRY: An expression of a person's expression is absolutely hearsay.

THE COURT: Rephrase your question.

MR. BROOKER: I think he's already testified that Mr. Applewhite hit the girl; that is violence. So I'm asking him when did his jovial mood left and he became violent.

THE COURT: I'm going to overrule it. Go ahead.

THE WITNESS: Answer the question? Answer?

BY MR. BROOKER:

Q Yes, sir.

A Whenever they were down the street and she hit him.

Q Whenever they were down the street and she hit him. Now I believe you testified, I think, on direct examination that -- and you correct me if I'm wrong, I want to make sure that I repeat what you said correctly. You testified on direct examination is, is that at some point in time she agreed to come out of the house; is that correct?

A Yes.

Q And that they then walked down the street. And I think, if I'm not -- if my memory serves me correctly, you said something around 50 yards or 50 feet or something like that, ---

A Yeah.

Q ---they went down the road. Okay. And I think you said that -- and let me flip through my notes because I was writing it down. That they got in a confrontation down the street and that you went and stopped it? Is that correct?

A I went down to try.

Q That's what you testified on direct examination?

A Yes, sir, I went down to try and stop it, yes, sir.
Q You went down to try to stop it.
A Yes, sir.
Q Okay. Now do you remember giving -- do you remember talking to, I think, was it Lieutenant Davis at the scene?
A Yes, sir.
Q Okay. Now when you talked to Lieutenant Davis that's not the way that you described what happened; is it not?
A No, sir, I described it just how I told you.
Q Okay. When you talked with Lieutenant Davis, did you not tell Lieutenant Davis that they were walking down the street -- let me make sure that I get my facts straight here. If you will indulge me just a second.

MR. BROOKER: If you can indulge me for just a second, Your Honor.

BY MR. BROOKER:

Q Didn't you tell Lieutenant Davis that they walked down the street arguing and then they walked back up to the house and that when they walked back up to the house that Mr. Applewhite struck Joemilla, Ramel Applewhite struck Joemilla or hit Joemilla, and that she fell in a puddle of water?
A No, sir, I didn't. I didn't tell Lieutenant Davis that.
Q So if that's in Lieutenant Davis' report that would be

false?
A Yes, sir.
Q Now let me just ask a question to be absolutely certain. Do you know Lieutenant Davis?
A Yes, sir, I know him.
Q How well do you know him?
A I mean...
Q I'm sorry?
A I mean, I know him. I don't live with him and we don't hang out but I know him.
Q You just know him casually by name or by face?
A Yes, I mean, we had conversations or...
Q Okay, I won't go any forward. But does, to your knowledge, does Lieutenant Davis, does he have any grudge against you or anything like that?
A Not as I know of.
Q To your knowledge does he have any reason to lie about what your statements would have been to him that night?
A No, sir.
Q Okay. So it's your testimony that that statement that's in Lieutenant Davis' report, is not true and that you did not tell Lieutenant Davis that?
A Yes, sir.
MR. DEBERRY: Objection, Your Honor.
THE COURT: Grounds.

MR. DEBERRY: Mr. Brooker is pitting witnesses.

MR. BROOKER: I'm asking him about his own statement and the report.

THE COURT: Continue.

BY MR. BROOKER:

Q Now you also, I think you testified, that you wrote a statement that night on the back of one of the patrol cars at the request of Lieutenant Davis; is that right?

A Yes, sir.

Q When you finished that statement who did you give that statement to?

A Lieutenant Davis.

Q You gave that statement to Lieutenant Davis?

A Yes, sir.

Q You certain about that?

A Yes, sir.

Q Was Travis Lane asked to write a statement?

A Yes, sir.

Q Did he wrote a statement on the back of the patrol car as well too?

A Yes, sir, he wrote one.

Q Who did he give that statement to?

A I guess he gave it to Lieutenant Davis also.

Q Okay. Karen Graves, did she wrote a statement that night that you're aware of?

A Yes, sir.
Q Did she also wrote on the back of the patrol car?
A All of us were writing on the car, yes, sir.
Q All three of y'all wrote a statement on the back of the patrol car?
A Yes, sir.
Q Do you know who she gave her statement to?
A I guess she gave it to him. Also, I wasn't cued on who she was going to give her statement to, who she was -- I know who I give mine to.
Q You're certain you gave yours to Lieutenant Davis?
A Yes, sir.
Q Now I have here, I think, and I'll show it to you. We're gonna mark it.

MR. BROOKER: Your Honor, we move to mark this for identification purposes as defense exhibit. This is a one page letter purported to be the statement of Jackie McGill.

(WHEREUPON, Defendant Exhibit No. 13 was marked for identification only.)

BY MR. BROOKER:

Q Mr. McGill, I want you to take a look at that, what's been marked Defense Exhibit 13. Is that the statement that you wrote that night on the back of that vehicle?
A No, sir.

Q Now it has your name on it. It has Travis Lane's name on it too; is it not?
A Yes, sir, it does.
Q Does it have your signature on there?
A No, sir.
Q Did you sign your statements that night?
A I'm not sure if I signed it or not.
Q How many pages were in your statement?
A At least three.
Q At least three pages?
A Yes, sir.
Q And was that page, to the best of your knowledge, was it on Marion County stationary?
A Yes, sir.
Q Marion County Police Department stationary?
A Yes, sir.
Q Now I'm gonna ask you at least some questions in reference, in reference to this statement, and I want you to tell me whether or not these are your words.

MR. DEBERRY: Objection, Your Honor.

THE COURT: What grounds?

MR. DEBERRY: Might we approach?

MR. BROOKER: Sure.

(WHEREUPON, counsel approached the Bench for an off-the-record discussion.)

BY MR. BROOKER:

Q You said this is not your statement.

A Yes, sir, correct.

Q And I think you said you've never -- have you ever seen it before?

A No, sir.

Q Never seen this before, okay. All right.

MR. BROOKER: Your Honor, we would like to offer this into evidence. Obviously we understand this is not gonna be at least disclosed to the jury. We'd like to proffer it into evidence.

THE COURT: Any objections?

MR. DEBERRY: None, Your Honor.

THE COURT: You want it in evidence?

MR. DEBERRY: No, Your Honor. He said he'd like to proffer it.

MR. MCEACHIN: As a Court exhibit, Your Honor. Defendant's 13.

(Defense Exhibit Number 13 was re-marked as Court's Exhibit Number 2.)

THE COURT: For the record I ---

MR. BROOKER: And for the record, Your Honor, I think that what's -- what was previously listed as Defense Exhibit, I think, 13 is now identified as Court's Exhibit Number 2 for the record.

THE COURT: That's right.

MR. BROOKER: Okay.

BY MR. BROOKER:

Q So you didn't write this; is that correct?

A Yes, sir.

Q Now did you ever tell -- let's talk about the statement that you did wrote. Did you ever tell Lieutenant Davis or any other investigator that you talked about that when Ramel Applewhite was shot that he was actually walking up the stairs at the house?

A No, sir.

Q So that wouldn't be true if that ---

A Wouldn't be true.

Q Okay. Now did you tell your story, and I think you testified that you did, is that you told your story to Lieutenant Walters; is that correct?

A Lieutenant Walters?

Q I'm sorry, Lieutenant Davis, Lieutenant Walter Davis.

A Yes, sir.

Q Okay. Now when you told your story to Lieutenant Walter Davis, you didn't tell Lieutenant Walter Davis ---

A I wrote a statement. I don't -- I'm not sure if explained to him everything that happened that night. I just I know I wrote a statement to Lieutenant Davis.

Q And Court Exhibit 2 is not the statement that you

wrote?
A That's not my statement.
Q Okay. Now with respect to Court Exhibit 2 is, did you see the statement that was written by Travis Lane?
A No, sir.
Q Did you see the statement that was written by Karen Graves?
A No, sir.
Q Okay. So I'm assuming that what's been identified as Court Exhibit 2, you couldn't verify that they wrote this statement either?
A No, sir.
Q Now I think you testified to -- and let me -- correct me if I'm wrong -- is that I think now it's your testimony at least today, is that Jackie is -- excuse me, I apologize. Is that Joemilla Wilson-Dozier and Ramel Applewhite got into a physical altercation down the road while they was down the road?
A Yes, sir.
Q Okay. Now is it also your testimony now that when they came back up to the house that he struck her at the house and knocked her into a puddle of water? Is that still your testimony?
A He struck her at the house?
Q He struck her when they got back up at the house. He

struck her that's ---
A No, sir, that's never been my testimony.
Q That's never been your testimony?
A No.
Q That she struck her up at the house and she fell into a puddle of water?
A No, sir.
Q Okay. And that you never told Lieutenant Walter Davis that he struck her once, he got back up at the house, and she fell into a puddle of water?
A No, sir.
Q So if that's in the report that would be false?
A Yes, sir.
Q Now I think you testified too that when you -- first of all, let me ask you this question. How long did Joemilla and Mr. Applewhite, how long did they fought?
A It was, I mean, I didn't have a time when they were -- they were fighting off and on twice. They got in two altercations, one toward end of the street and kind of walking back towards the car, and then he slammed her. And as far as the fistfight and all, that was it. She didn't -- the last allocation was her spitting on him. He never touched her again or nothing like that.
Q So he never struck her or picked her up and slammed her in the water puddle back at the house?

A Never, never did that, never slammed her in a water puddle. He slammed her in the street but not in a water puddle.
Q Okay. Slammed her in the street but never slammed her in a water or puddle anything like that, okay. Now you said to my understanding on direct examination that you said after the altercation, all right, or at some point in time after the altercation when Joemilla, when Joemilla and Travis -- excuse me, Joemilla and Ramel Applewhite back at the house, that Joemilla went back towards the front, went back towards the front steps of the house?
A Yes, sir, after she spit on him she went up the steps.
Q Okay. And I think it was your testimony that he had already at least gotten in the car?
A He was in the car.
Q He was in the car ---
A Yeah.
Q ---when she spit on him?
A Uh-huh.
Q And then she went back up at the steps?
A Uh-huh.
Q And then I think you said that he got out of the car and to go back towards him back up towards the steps?
A Yes, sir.
Q Okay. Now did you got out of the car and go after him,

or were you in the car?
A I was getting in the car. He was getting out the car. I got —
Q You then -- I'm sorry, I didn't mean to interrupt.
A He was in the car; I was getting in the car. She spit on him. I got out the car. I got out the car, and I grabbed his -- if I could have, if I could have grabbed him hold I would have did, but I could only grab his shirt and stop him from going up there.
Q Okay. You grabbed him to try and stop him?
A I grabbed his shirt. I was trying to pull him.
Q But you couldn't. Okay, was he upset then again?
A Yes, sir.
Q And I think you testified that he walked up towards the -- or close to the steps; is that correct?
A Yes, sir.
Q And I think you said you heard "what", and then you said right after you heard "what" you heard then bang, bang, bang. How many shots did you hear?
A Five.
Q And how did you know you heard five shots? You counted them?
A Well, it was in my head. I just heard it pop, pop, pop, pop, pop.
Q Okay. And let me ask you, now I think you said

immediately after you heard "what", then you heard the pop, pop, pop, pop, pop; is that correct?

A Yes, sir.

Q Okay. How much of time was there in between "what" and then when you heard the first pop?

A Seconds.

Q Split seconds?

A Some seconds, yeah.

Q Okay. After the "what", then you heard shots. Now I think, if I'm not mistaken, you testified on direct examination that at one point in time you testified on direct examination that what you believe to be Shawn Reaves who was standing, I think you said, somewhere near the steps but you believe to be Shawn Reaves and Mr. Applewhite, were they -- the distance between them two was about where you are and where I am?

A The distance between who?

Q Between us?

A Shawn and Keshawn?

Q Yeah, who you allege to be Shawn Reaves and Keshawn. What was ---

A Shawn Reaves and Keshawn, they were close. They was right up. I mean, he could reach his arm out and touch him.

Q Okay. So are they as close as I am to you right now?

A No, closer.
Q Are they as close as I am to you right now?
A They were (witness steps down) right here.
Q Okay, about right here. So they were in arm reaching distance, distance ---
A Uh-huh.
Q ---who you perceived to be Shawn Reaves?
A Shawn Reaves and Keshawn Applewhite.
Q Okay, all right. Now, now previously when you were talking about a distance that was about, I think, with the solicitor, you were describing a distance that was approximately where the Solicitor was standing here and you were standing over there, whose positions were you describing at that particular period of time?
A I was describing -- he said my distance from Keshawn and Shawn Reaves.
Q Okay, okay. So you were a little bit further back from behind him?
A Yeah, I was still walking.
Q Okay, and you were still walking. But when the shooting took place how close were you to Mr. ---
A I was -- I was still walking to -- what happened, I was getting closer and closer and then the gunshots and I fell. The distance was -- where you at, stand back a little further. About well, no, where you were standing

to. About right here.
Q Okay. So you were about this distance away. And would you say -- and I'm gonna you an estimate. Is that roughly about six foot, six foot distance from where you were standing ---
A Yes, sir.
Q ---to where I am?
A You can say that.
Q And of course, the distance that you described, the distance that you described between where Mr. Applewhite was and the, and the person that you believe to be Shawn Reaves, that distance was pretty much about 2 feet apart, 2 or 3 feet apart?
A Yeah, 2 feet, yeah. Maybe closer.
Q Very close, within arms reaching distance.
A Yeah, uh-huh.
Q Okay. Now when you were asked on direct examination was there anything between you and this person that you thought was Shawn Reaves, you said Mr. Applewhite was between y'all two; is that correct?
A Yes, sir.
Q All right. And I think you testified that it was Mr. -- that I think your entire direct examination you testified to the person that was standing across Mr. Applewhite was Mr. Shawn Reaves?

A Yes, sir.
Q Okay. Who else was standing over there near the porch?
A It was -- Joemilla was on the porch.
Q And who else was there?
A It was some other dudes that were on the porch. The momma.
Q Well, you don't have to tell me all their names. About how many people?
A I don't know, maybe five.
Q About five people that were standing over there ---
A Yeah.
Q ---up on the porch?
A Yeah.
Q Anybody standing around the porch on the ground?
A No, huh-uh.
Q Now are you certain that it was Shawn Reaves that fired a gun?
A Yes, sir.
Q And when did you become certain of that?
A When the shooting took place.
Q Okay. And I think you said that you had seen Shawn Reaves around town before.
A Yes, sir.
Q Is that correct?
A Seen him a few times.

Q You seen him a few times around town?
A Yes, sir, with family members, I mean.
Q I'm sorry?
A I said I seen him with family members.
Q You've seen him with family members? How long have you lived in Mullins?
A I stay in Marion.
Q I'm sorry, in Marion, I apologize.
A Basically all my life.
Q All your life? Okay. And you just tell me whether or not you know, do you know whether or not Shawn Reaves is from Marion? Well, just whether or not you know. If you don't know say you don't know.
A I haven't seen him. I mean, all the years I saw him in, from me living here, I haven't seen him, with me growing up here. So no, I wouldn't know whether he was from Marion or not.
Q Okay, you just seen him around on occasion, okay. Now you think you said that you were certain that night that it was Shawn Reaves; is that correct?
A Yes, sir.
Q Did you do a lineup? Didn't you do a photo lineup or a photo lineup was presented to you?
A Yes, sir.
Q And that photo lineup was presented to you, was it the

next day after the shooting?
A No, sir.
Q Let me make sure. If you can indulge me for just a second. You did a photo lineup on -- was it May 17 of 2007?
A No, sir.
Q Okay. When did you do that photo lineup?
A I'm not sure. It wasn't -- it wasn't that close. I know I didn't do a lineup until after the funeral.
Q Is that a week -- is that a week away or so?
A Well, the funeral was within that same -- well, it was the next week so it might have been a week after the funeral.
Q So roughly about two weeks from the shooting?
A Yes, sir.
Q Okay. I'm gonna hand to you what's referred to as Marion Police Department photo lineup identification form. Okay. Do you see that form?
A Yes, sir.
Q Is your name on that form?
A Yes, sir.
Q What date is on that form?
A 5/17/2007.
Q Okay. So it wasn't a couple of weeks later, it was actually a few days later, roughly four days later; is

that correct?
A Yes, sir.
Q Okay. So your memory wasn't accurate on that; was it not?
A No, sir.
Q Now do you remember that photo lineup?
A Do I remember it?
MR. BROOKER: Let me move to enter this into evidence as defense exhibit. I believe this would be 13.
THE COURT: Any objection?
MR. DEBERRY: No, Your Honor.
THE COURT: All right, Defense Number 13 in evidence.
(WHEREUPON, Defendant Exhibit No. 13 was marked for identification and received into evidence.)
BY MR. BROOKER:
Q Now in that photo lineup were you presented a list of photos to take a look at?
A Yes, sir.
Q Is this a picture of the photo lineup you were shown?
A I'm not sure; I don't remember that.
Q You don't remember this photo lineup?
A No, sir. I don't remember the actual lineup that he gave me.
Q Okay. You don't remember the actual lineup?

A No, sir.
Q Okay. Do you remember whether or not you picked out Shawn Reaves from that lineup?
A Do I remember? No, sir, I don't remember whether I picked out Shawn Reaves.
THE COURT: Speak up.
THE WITNESS: No, sir, I don't remember whether or not I picked up Shawn Reaves.
BY MR. BROOKER:
Q So you don't know whether or not in that photo lineup that you picked out someone other than Shawn Reaves?
A No, sir.
MR. BROOKER: Any objections to entering this into the record? It's up to you. This is just the other half of the photo lineup.
MR. DEBERRY: That will be fine, no objection. You're entering it as a defense exhibit?
MR. BROOKER: Yes.
THE COURT: Any objections?
MR. DEBERRY: No, Your Honor.
MR. BROOKER: Your Honor, we move to enter this as a defense exhibit.
THE COURT: 14 without objection.
MR. BROOKER: That's correct, Your Honor.
(State's Exhibit Number 1 was re-marked as Defendant's

Number 14 and entered into evidence.)
BY MR. BROOKER:
Q Now on Defense Exhibit 3 (sic), that's a lineup sheet. That's the photo lineup identification form. I'm gonna ask you to take a look at that. That's Defense Exhibit 13. Now would you agree with me that on that form that it gives you six selections to choose from; is that correct?
A Yes, sir.
Q That gives you selections to choose from. Which selection did you choose?
A Photo number 1.
Q Photo number 2?
A Yes, sir.
Q Okay. Now I know that you said that you didn't use, that you don't remember whether or not this is the photo lineup that you used.
A Yes, sir.
Q But I'm just gonna ask you, now do you recognize the person that's identified as number two in this lineup?
A Yes, sir, I know him.
Q Who is that?
A BT.
Q BT?
A Yes, sir.
Q Okay. Is he from Marion?

A No, sir.
Q Okay. Do you recognize the person who is identified in number one? Recognize that photo?
A No, sir.
Q Number 4?
A No, sir.
Q Number 5?
A No, sir.
Q Number 6?
A No, sir.
Q Okay. You recognize number 3?
A Yes, sir.
Q Who's number 3?
A Shawn.
Q Okay. Now Shawn Reaves, at least is identified as number 3 in this photo lineup; is that correct?
A Yes, sir.
Q And of course, you identified, and of course this is assuming. I know you say you can't remember whether or not you looked at this photo lineup differently.
A Yes, sir.
Q But you identified the person -- you identified at least photo number two at least on your photo identification form; is that correct?
A Yes, sir, BT. I know BT. I know, I mean, I would have

never chose ---

THE COURT: Speak up.

THE WITNESS: I say I know BT personally. I would have never chose him as the shooter. I know he wasn't even nowhere around.

MR. BROOKER: Your Honor, we move to publish this to the jury.

MR. DEBERRY: Objection, Your Honor,.

THE COURT: Hold on. What grounds? They're in evidence; aren't they?

MR. DEBERRY: Yes, Your Honor, but I just want it to be clear that he says that he doesn't know if that's the photo lineup that presented ---

THE COURT: You'll have a chance to ask questions again. Go ahead and publish them to the jury.

(Pause.)

BY MR. BROOKER:

Q Now isn't it the truth, or you tell me, does your memory -- in your opinion is your memory better on the date in which an event occurs or close around on the date to which event occurs than it would be years later?

A I can -- I say that you forget things that happen from the past as years go along.

Q Okay. So time causes the memory to fade?

A Yes, sir.

Q And would you agree with me that the events that took place on that day, that your memory would have been better right around the time of those events than it is three-and-a-half years later today?

A I wouldn't agree with you. Nothing tragic, no, sir, I wouldn't agree with you on that.

Q So you're saying that your memory got better over the years?

A I'm not saying it got better, but I wouldn't say -- I'm not saying I would have forgot what happened as far as the tragic events.

Q Okay. Now your memory has gotten better with respect to who Shawn Reaves is; has it not?

A I know him -- his hair is longer. It's gotten better, if you want to say it like that, yes, sir. He's gotten a little bit more weight since three years, you know, so.

Q Okay. So he would have been a slightly different person?

A Little bit, a little slimmer. I've changed over three years.

Q Yeah.

A If you look at my picture I had a low hair cut. I have six inch dreads now.

Q Okay, all right. So you'd be better able to identify him six years ago than you would be today because he's

changed?
A What I'm saying is to your question as in my memory fading, that I would have a better picture of him now than I did three years ago. Yes, sir, he's changed, I've changed.
Q Okay.
A As far as my memory.
MR. BROOKER: Now if you can indulge me just a second, Your Honor.
BY MR. BROOKER:
Q You were friends with, I think you testified, you were friends with Ramel Applewhite?
A Yes, sir.
Q And that y'all'd been friends for how long?
A Since childhood.
Q I'm sorry, go ahead.
A Since childhood. It had been a while, long time.
Q How long you were friends with Mr. Lane?
A Probably met Travis, I was in high school when I met Travis.
Q Now you just tell me if you know, you'd say, well, I don't know. If you do, say I do know. Do you know how long Travis Lane and Ramel Applewhite knew each other?
A Keshawn met Travis around about the same time that I would have.

Q So y'all all grew up together as childhood friends?
A No, we didn't grow up. Travis is older than us. We kind of all started hanging out, you know, at the game room, the game room place where we would hang out.
Q I got you. I got you. But y'all all met around the same time?
A I met him with me hanging out with Keshawn might go to game room. Keshawn come to the game room. We were all staying in Marion at the time.
Q Okay.
A And I would go to the game room. I had got in the military. He was around here a while. I was around here a while; we still hang out.
Q Okay, all right.
MR. BROOKER: Now if you can indulge me just a second, Your Honor.
BY MR. BROOKER:
Q I think you testified that you were roughly around 6 feet or so -- this is give or take -- roughly around 6 feet behind Ramel Applewhite before he got shot.
A Yes, sir.
Q Where was Travis Lane at this respect to where you and Ramel Applewhite was?
A I left Travis at the car.
Q Travis was at the car?

A Uh-huh.
Q Okay. Now you said you heard five shots, I think, is what you said in quick succession, bang, bang, bang, bang, bang.
A Pop, pop, pop, pop, pop, yes, sir.
Q In quick succession, okay. Now you testified that -- and let me, and I just want to make sure I got this right. The rounds was in very quick succession, pop, pop, pop, pop, pop?
A It was quick, yeah.
Q It wasn't a pop, then a pause?
A No.
Q Then a pop?
A No.
Q Then a pause?
A No.
Q Then a pop?
A No.
Q Then a pause?
A No, sir.
Q It was pop, pop, pop, pop, pop in a quick succession?
A Yes, sir.
Q Okay. And I think you said that -- you testified that Ramel Applewhite fell to his knees, or I think you said you think he lunged forward till you said you couldn't

remember whether or not he had grasped on to you, the person you believed to be Shawn Reaves; is that correct?
A Yes, sir.
Q You said he may have?
A I said, I don't know if he run -- I don't know if he was trying to run, trying to grab, or what he was doing. I just know he fell.
Q Okay. But you said you think he may have lunged forward and then he fell to the ground, okay. Now when he fell to the ground did he just -- just went limp and just fell over or did he fall to his knees and then fell to the ground, or do you know?
A I'm not for certain; I'm not sure.
Q Okay. Well, that's all I'm asking. I just want to -- I want to know what you know. Now I think you said that you testified that you said you told them something to the effect to, "get up, let's go". And that he got himself up off the ground; is that correct?
A Uh-huh.
Q And I think you said he may have turned around and he took maybe two steps or so going back towards the car and that's when he fell, okay. And when he fell at that time did he fell again forward on his —
A Stomach.
Q Okay, on his stomach?

A Yes, sir, on his chin. When I ran up to him he was on his chin and kind of like chin and arms were behind him like that.
Q Okay.
A No, he wasn't all the way on his stomach, no, sir.
Q Now when the first time that he fell and you told him get up and let's go, did you ever come to help him up that time or did he get up on his own?
A When I call for him he got up, just popped up.
Q Got up by himself and came up. If you can indulge me just a second. Did you -- so that's the way you described it? You didn't -- if you can indulge me just a second, make sure I get my notes straight. Now did you also talk with Lieutenant Blue at any time during this investigation?
A Yes, sir.
Q Okay. Do you see Lieutenant Blue in the courtroom?
A Yes, sir.
Q Now -- did you tell Lieutenant Blue that the shooters and others, that after the shots were fired that the shooters and others had ran back into the house?
A No, sir. What I said was people scattered. The mother, she was standing at the door. She ran back in the house but most people just scattered.
Q Okay. You didn't tell Lieutenant Blue that the

shooters and others had ran back into the residence and closed the door?
A No, sir.
Q So if anyone had said that to Lieutenant Blue it would not have been you?
A Yes, sir.
Q And I ask you just one more question to be absolutely certain. I ask one more question. I know, I know that I think I asked you whether or not this is a photo lineup that you saw. I think you said you don't know whether or not this is the photo lineup that you saw. You can't say whether it was or wasn't. Now prior to today have you ever seen this photo lineup to your memory?
A No, sir, no.
Q To your memory you've never seen this lineup till today, prior to today?
A Yeah -- no, prior to that, no, sir.
Q Based upon your memory prior to today you've never seen this photo lineup?
A No, sir, I haven't seen it, no, sir.
Q But you are able to pick Shawn Reaves out of this photo lineup?
A Yes, sir.
Q Today?
A Yes, sir.

Q Now you said that you met and talked with Lieutenant Blue. About how long after that would have been that you went and met and talked with Lieutenant Blue?
A I wouldn't remember. I wouldn't remember. I know I talked to him.
Q Okay.
A During the whole investigation after I talked to him.
Q Okay. And did you talk with him the next day?
A No, sir, not to my knowledge I didn't talk to him the next day.
Q You think it would have been within the next week. I'm not talking about a specific number of days. You think it was —
A Yes, sir.
Q —within a week's time?
A I talked to him, yes, sir.
Q Okay. And —
A At the time I was actually -- I was actually working in Charleston so I would have had to be home to —
Q Talk with him?
A Yeah.
Q Okay. When you talked with Lieutenant Blue, did you give a statement when you talked with Lieutenant Blue?
A No, sir.
Q Okay. And like I said, I don't want you to tell me

what Lieutenant Blue says 'cause that would be hearsay. I want you to tell me is that, what type of information were you giving to Lieutenant Blue when you talked with him? First of all, let me ask, was it anything different than what you have previously given?

A My information that I give to anybody? No, sir. It hadn't been -- I told everyone that I've talked to the same story since day one.

Q Okay. So the information that you gave Lieutenant Blue would have been pretty much similar to the information that you wrote on the statement that you said you wrote out that night?

A Yes, sir.

Q And gave to Lieutenant Davis?

A Yes, sir.

Q It would have been consistent with any statement, that you -- any verbal statement that you may have gave to Lieutenant Davis? I know you said you can't remember whether you did or did not; but if you did, would it have been consistent?

A Yes, sir, on my behalf.

Q Yeah, that's what I'm talking about.

A Yes, it would have been consistent on my behalf, yes, sir.

Q That's what I'm talking about. Now other than talking

to Lieutenant Davis, other than talking with Lieutenant Blue, did you talk with anyone else in connection with this case?

A I'm not sure, sir. I've talked to a lot of people as far as ---

Q Well, and let me rephrase that.

A ---what happened that day.

Q Did you talk with any of the other officers?

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

Q Okay.

MR. BROOKER: Okay, if you can indulge me just a second, Your Honor. Let me make sure I don't have any follow up questions.

BY MR. BROOKER:

Q Was there anyone immediately behind you when the shooting took place?

A Not as I know of.

Q Not that you know of?

A Yes, sir.

Q Okay. Did you hear a second gunshot?

A No, sir.

Q Shooting from a second gun?

A No, sir.

Q Now the -- you said the quick successions of popping sounds that you heard, okay, were they -- were they in

complete succession.?
A Yes, sir.
Q Pop, pop, pop, pop, pop.
A Yes, sir.
Q One right after the other? No pause at all?
A No pause at all.
Q Okay. That low popping sound, that pop, pop, pop, pop, pop, did you hear any other sound that was different from the popping sound?
A No, sir.
Q Okay.
A None.
Q Did you see, to your knowledge was there only one shooter?
A Yes, sir.
Q You didn't see anybody else shooting?
A No, sir.
Q Now I know that you were asked this question. You were asked this question on direct examination, is that, were you carrying a gun? Were you carrying a gun that night?
A No, sir.
Q Did law enforcement take gunshot residue, did gunshot residue kit on you to determine whether or not you had been shooting?
A No, sir.

Q So the fact that you had not been shooting was simply your word?
A Yes, sir.
Q Okay. Were you -- did -- let me ask you something. Had you -- have you ever had to give that information to any law enforcement officer that you were not shooting?
A No, sir.
Q So you never had to provide that information with any law enforcement officer that you were not shooting?
A Not to my recollection, no, sir.
Q Travis Lane, did he have a weapon?
A No, sir.
Q Do you know whether or not Travis Lane was shooting?
A He didn't shoot. Yes, sir, I know he didn't. He wasn't shooting.
Q Okay. And how do you know that he wasn't shooting?
A 'Cause he was behind me.
Q Now you testified that when you heard the popping sound that you went down on the ground. And you said Mr. Lane was back at the car; is that right?
A Yes, sir.
Q So you didn't have your eyes on him, did you?
A No, sir.
Q Okay. So are you saying that because -- are you saying that Travis Lane wasn't shooting because you were good

friend, you didn't think he was, or are you saying that because you actually was watching him?

A I'm saying that because we were in the car. Me and Travis were in the same place. There were no guns with us. That's why I'm saying that.

Q Did Mr. Applewhite had a gun with him?

A No, sir.

Q And how do you know that?

A To my recollection, sir, he didn't have a gun but whenever I -- whenever I grabbed him it was no gun nowhere to, no.

Q Okay. Now when law enforcement arrived at the scene did they ask to take a gunshot residue test? I think you already told me they didn't ask to do a gunshot residue test on you, but did they ask to take a gunshot residue test on Travis Lane?

A I don't know. I didn't see.

Q If you don't know just say you don't know.

A I don't know.

Q Do you know whether or not, whether or not they asked to take a gunshot residue test on Karen Graves?

A No, sir, I don't know whether they asked one of her either.

Q Did you know whether ---

A They didn't ask one to do one on me.

Q You didn't do one?
A No, sir, I didn't do one.
Q Do you know whether or not -- like I say, if you don't know just say no. Do you know whether or not they did a gunshot residue test on Ramel Applewhite?
A No, sir, I don't know.
Q Now I know that you said that when the shooting started that you were around 6 feet behind. You were around 6 feet behind Mr. Applewhite and that you dove to the ground kind of on your hands and knees and that you said that Travis Lane was back at the car; is that correct?
A Yes, sir.
Q Where was Karen Graves?
A I guess she was at the car too. She was -- she was already in the car whenever Keshawn was in the car.
Q Okay. She's already -- she never got out the car the second time ---
A Whenever we was -- whenever we was taking him back to the car she was already still on the other side of the car.
Q And when yourself and Mr. Applewhite got out the car she never got out; she stayed in?
A I don't know whether she got out or not. What I'm saying is ---
Q Okay.

A —she was still at the car whenever we were taking him back.
Q Okay.
A A little.
Q When y'all left the car and start walking back up towards the house, she was in the car at that time?
A Yes, sir.
Q Okay. And of course, what she did shortly after that you wouldn't know because you didn't kept an eye on her?
A Yes, sir, I didn't.
Q Okay. Around how many people that was out there that night in the yard, in the yard, in this vicinity in the area?
A There was people all in the yard behind us, some people on the porch. I mean, it was like it was a good little bit of people around.
Q Was it more than two?
A Yeah, it was more than two. It was about ten. I mean, the same amount of people that was there but the — there was a yard behind us that had a lot of people in their yard also.
Q Okay.

MR. BROOKER: No further questions, Your Honor.

THE COURT: Any redirect?

MR. DEBERRY: Thank you, Your Honor, very

briefly.

REDIRECT EXAMINATION

BY MR. DEBERRY:

Q On cross-examination, Mr. McGill, you were asked about Keshawn Applewhite's size.

A Yes, sir.

Q So about 6'1" I think?

A Yes, sir.

Q Two hundred some pounds?

A Yes, sir.

Q I'm gonna ask you if you recognize this photograph.

(WHEREUPON, State Exhibit No. 23 was marked for identification only.)

BY MR. DEBERRY:

Q Mr. McGill, I'm gonna hand you what's been marked as State's Exhibit 23, see if you recognize, or if you can recognize who that person is in that picture.

A That's Keshawn.

Q That's Keshawn Applewhite?

A Yes, sir.

Q Okay. Is that near or about the way his build was back in 2007?

A Might have been a little bigger than. That looks a little smaller on that picture.

Q Okay.

MR. DEBERRY: Your Honor, at this time we'd like to introduce this picture into evidence.

THE COURT: Any objections?

MR. BROOKER: Yes, Your Honor.

THE COURT: What grounds?

MR. BROOKER: I don't know whether or not you want to discuss this -- step up to say to you, state what the objections are?

THE COURT: Come on up.

MR. BROOKER: Just outside the presence of the jurors.

(WHEREUPON, counsel approached the Bench for an off-the-record discussion.)

THE COURT: Go ahead and put your objection on the record. You're welcome to do it.

MR. BROOKER: Yes, Your Honor, it's that I object simply based upon the fact, is that, as I think that photograph is being introduced, I think, for purpose of trying to show the relevant size of Mr. Applewhite at the time in which this incident, this event took place. I think the defendant testified that that photograph is not an accurate depiction of what his size was at that particular period of time, that he was bigger at that particular period of time. So I think because he's rejected that picture as being a accurate depiction of

what his size was at the time in which this incident took place it has little to no probative value and almost nothing but prejudicial value.

THE COURT: Any response?

MR. DEBERRY: Your Honor, I just say that Mr. Brooker on cross-examine opened the door of his physical appearance, size, and what he looked like. The defendant answered questions, and he has acknowledged that is a photograph of the victim and that it should be allowed in evidence.

THE COURT: Objection overruled. Okay.

MR. DEBERRY: Your Honor, at this time I'd like to publish the picture to the jury.

THE COURT: 23 is in evidence. You may publish it.

(WHEREUPON, State Exhibit No. 23 was admitted into evidence.)

BY MR. DEBERRY:

Q Mr. McGill, you testified that that photo lineup, which is State's Exhibit, I mean Defendant's Exhibits 14.

A Yes, sir.

Q On the sheet of paper where you had -- where you indicated who were deciding was Shawn Reaves.

A Yes, sir.

Q You picked somebody who was not Shawn Reaves?

A Yes, sir.
Q But you're not sure if this is the lineup that you were presented?
A No, sir. Like I said, I know the one they say I picked I know him personally.
Q So you picked number two, and you know that person personally?
A Yes, sir.
Q What is his name?
A BT.
Q BT?
A Yes, sir.
Q Where is BT from?
A I -- I seen him -- I think he's from Latta. Play ball with my brother.
Q But you identified here in court today who is ---
A Yes, sir, yes, sir.
Q What number?
A 3.
Q And who is number 3?
A Shawn Reaves.
Q And is Shawn Reaves in the courtroom today?
A Yes, sir.
Q And is that the person?
MR. BROOKER: Objection, Your Honor, as to

in-court identification. It's extremely highly prejudicial and probative value.

THE COURT: He just asked if Shawn Reaves was in the courtroom, and he said yes. I'm gonna overrule it. Continue.

MR. DEBERRY: Thank you, Your Honor.

BY MR. DEBERRY:

Q And is that the person you saw shoot Keshawn, Keshawn Applewhite?

A Yes, sir.

Q Speak up.

A Yes, sir.

Q Thank you very much.

MR. BROOKER: Objection, Your Honor.

THE COURT: Any re-cross?

MR. BROOKER: I guess we'll put our objection on the record, Your Honor, is that because that is an in-court identification, in-court identification is extremely inappropriate.

THE COURT: All he asked was did Shawn Reaves shoot the victim.

MR. BROOKER: No, he didn't. He asked did y'all —

THE COURT: He already asked. He said yes. Objection overruled. You may re-cross.

MR. BROOKER: Yes, sir. Let me make sure I don't have any re-cross, Your Honor.

We were gonna ask a question, I think, based upon the photograph, Your Honor, and I think we need -- it will be going up, it's circulating around the jury.

BY MR. BROOKER:

Q That photograph, I think you said that, that that wasn't an accurate depiction of Mr. Applewhite's side at the time which this incident took place.

A Yes, sir.

Q Is that correct?

A He may have gained like a little stomach or.

THE COURT: Speak up.

THE WITNESS: I say he may have gained a little stomach or, you know.

BY MR. BROOKER:

Q Do you know -- do you know what the -- when this photograph was taken?

A Yes, sir, basic training.

Q Okay. And what year was that?

A 2000. I'm thinking 2000.

Q In the year of 2000?

A Yes, sir.

Q So this photograph would have been taken roughly seven years, roughly seven years before the night of this

particular incident?
A Yes, sir.
Q Okay. And you said, I think, and I think you testified previously that people kind of change over the years and but that this is not an accurate depiction of his size at the time?
A Yes, sir. Like I said, he might have gained a little stomach but build is pretty much the same.
Q Okay. Now just for clarification I think you also asked was Shawn Reaves in the courtroom I think on redirect. And I think you said that Shawn Reaves was in the courtroom, is that correct, —
A Yes, sir.
Q —on redirect? Okay. And you testified that this may not have been the photograph, I think, on redirect that you had seen?
A Yes, sir.
Q Is that correct?
A Yes, sir.
Q Line-up?
A Yes, sir.
Q But you had no problem picking him out from this lineup?
A Yes, sir.
Q Is that correct?

A Yes, sir.
Q And that you have no problem, and I think you said that on redirect that you know number two?
A Yes, sir.
Q And who again you say he was ---
A BT.
Q ---on redirect? Who?
A BT.
Q Who is BT?
A He play ball with my brother and I.
Q Is he from Marion?
A I don't know, sir.
Q Where is he from?
A I don't know where he's from. He stay in Latta.
Q Okay. Where he play ball at?
A In Latta.
Q In Latta?
A Yes, sir.
Q Okay. But that you don't recognize any of the other persons other than Shawn Reaves?
A And BT.
Q There are only two people that you recognize, BT and Shawn Reaves?
A Yes, sir.
Q And you're certain of that?

A Yes, sir.

Q Okay.

MR. BROOKER: No further questions.

THE COURT: Thank you, you may step down. Thank you.

All right, members of the jury, we're going to take a lunch break until 2:00. If you would be back here about five minutes till 2 we will resume promptly thereafter. Like I told you in the past, do not discuss the case at all among yourselves or with anybody. Thank you and enjoy your lunch. Everybody else remain seated while they leave.

(WHEREUPON, the jury was removed from the courtroom at 12:33 p.m., and the following proceedings commenced in open court.)

MR. DEBERRY: Your Honor, may we approach?

THE COURT: Sure.

(WHEREUPON, counsel approached the Bench for an off-the-record discussion.)

(WHEREUPON, a lunch break was taken.)

THE COURT: Bring out the jury.

(WHEREUPON, the jury was returned to the courtroom at approximately 2:00 p.m., and the following proceedings commenced in open court.)

THE COURT: Solicitor, if you'd call your next

witness.

MR. DEBERRY: Thank you, Your Honor. The State calls Doctor Cynthia Schandl.

THE DEPUTY CLERK OF COURT: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

CYNTHIA ANNA SCHANDL,

having been duly sworn by the Deputy Clerk of Court, testified as follows:

DIRECT EXAMINATION

BY MR. DEBERRY:

Q Good afternoon.

A Good afternoon.

Q Could you please state your name and occupation for the record?

A Yes, my name is Cynthia Anna Schandl, S-C-H-A-N-D-L, and I am assistant professor forensic pathologist at the Medical University of South Carolina in Charleston, South Carolina.

Q Okay. Can you please explain to the jury a little bit about what forensic pathology is and how you came to that title.

A Yes. A forensic pathologist is an individual who is -- first becomes a pathologist so to become a pathologist one must complete college and then go to medical school to

become a medical doctor and then train in the field of pathology which involves a residency training program for an additional four years after medical school. And then if one has an interest in specialty such as forensic pathology, then there's additional training year involved so that's called fellowship. So having completed all those parts of training through medical school and then residency and fellowship, one can then take national board examining through the American Board of Pathology to become board certified in those areas, both anatomic pathology, clinical pathology, and then if you're also looking for a specialty such as forensic pathology, also board certification for forensic pathology. So I'm board certified in all those areas. Now to step back a bit, pathology itself is the study of disease. So that's where forensic pathology has its base in the study of disease.

Forensics in particular studies disease as it relates to the cause of death and also adds another element to that which is the manner of death. So when we're talking about the cause of death that would be the thing that actually killed an individual whether it's a heart attack or a stroke or a gunshot wound. And then the manner of death is a secondary classification. It's a classification of that cause of death. So if it was a heart attack it would be called a natural death and that's

manner. If it's a gunshot wound it may be a suicide. If the person shot themselves it may be a homicide if somebody else shot them. And so our manners of death include natural, suicide, homicide, accidents and undetermined. So forensic pathology specifically looks to answer the question of what caused death and what manner can we assign to that cause of death.

Q Okay. And how long have you been a forensic pathologist?

A I've been on faculty since 2004 at MUSC as a forensic pathologist and before that was my training.

Q Okay. And how many times -- have you been qualified as an expert in court?

A Yes, sir.

Q And about how many times?

A More than fifty times.

Q Okay. What usually is your purpose for testifying in court?

A Well, usually it's -- I'm usually testifying to those cases that I performed or had a part in their performance of some autopsies that I participated in. And generally speaking, just like I mentioned before, in order to explain how an individual died or what events occurred that caused that individual's death and then to provide my opinion as to the manner of death.

Q Okay.

MR. DEBERRY: Your Honor, at this time I'd like to have Doctor Schandl qualified as an expert in forensics.

THE COURT: Any objection?

MR. BROOKER: No objection.

THE COURT: All right. Thank you.

BY MR. DEBERRY:

Q Doctor Schandl, back in May or on May 14th, 2007, did you have an occasion to perform an autopsy on Mr. Ramel Keshawn Applewhite?

A Yes, that is correct.

Q Okay. And can you explain to the jury how that process begins and what you found?

A Yes, sir. So, this is -- South Carolina is what they call a coroner state so each of the different counties has an elected official who is the coroner who determines which cases, which deaths if you will, which people who die should get an autopsy and which people do not need an autopsy. So for example, if somebody had known -- a known cancer and they were sick for a long time and so forth, perhaps the coroner would not request an autopsy on that individual. But if somebody was shot they would request an autopsy on that individual. So we get our cases at MUSC, and there are other forensic pathologists throughout

the state. We get our cases by referral through the coroner's office. So the coroner becomes aware of the case in his jurisdiction and his county. He then calls our office to schedule the autopsy and transports that person, the dead person, to our office physically to Charleston. So we take down the information that they give us, what the coroner or whoever is working with the coroner, that pertains to the case and then we'll do the case in Charleston. We begin the case ---

Q Excuse me, I'm sorry.

MR. BROOKER: Your Honor, we may need to put an objection on the record. I think it's going to be extremely brief. I think we need to do it -- to proffer outside the presence of the jury. It will be very brief.

THE COURT: Members of the jury, if you will step into the jury room just a second we will be back with you in a moment.

(WHEREUPON, the jury was removed from the courtroom at 2:08 p.m., and the following proceedings commenced in open court.)

THE COURT: I'll be glad to hear from you, Mr. Brooker.

MR. BROOKER: Your Honor, we have an objection on the record at least to the autopsy report, and of course it's gonna be based upon an insufficient

establishment of chain of custody. And of course I think some people might find this unusual is that, you know, because we're talking about human body is that once that -- once that corpse is deceased, once the individual is deceased of course the corpse then becomes evidence like any other evidence in a murder trial.

THE COURT: Let me ask you this, is the report being offered into evidence the autopsy report?

MR. DEBERRY: Yes, sir, Your Honor.

THE COURT: Okay. But you haven't offered it yet?

MR. DEBERRY: No.

THE COURT: Go ahead.

MR. BROOKER: Well, not only would be the autopsy but I think her testimony with respect to her findings for examination, for examination, that you know, because obviously is that, you know, before any results or either results can put in the evidence with respect to. The same way with respect to ballistics testing, is that the corpse is no different than, you know, than gunshot residue. It's no different than a ballistics test being done on a bullet. It's no different than blood that's being transported to be analyzed. All of it has to be satisfied through chain of custody. And of course in this particular situation it's that the body is absolutely no

different. Some people might, you know, lay people might feel a little bit put off by that because we're talking physical body, but at that particular period of time individual is deceased. It is evidence that in a murder case. It is capable of being altered. It is capable of being altered, and of course, the chain of custody with respect to, with respect to body has to be established ---

THE COURT: The body is not being submitted into evidence, is it?

MR. BROOKER: No, it's not.

THE COURT: Just the autopsy report.

MR. BROOKER: It's a result of the examination. Basically it's the purpose of ---

THE COURT: Autopsy report.

MR. BROOKER: The purpose of chain of custody is so that whenever evidence ---

THE COURT: Let's see if we got it right. We're not talking about the body. We're talking about the autopsy report. Is that correct?

MR. DEBERRY: Your Honor, we are certainly not going to introduce the body into evidence.

THE COURT: All right. So let's limit it to chain of custody to the autopsy report.

MR. BROOKER: Well, I think the purpose of a chain of custody, Your Honor, is that so that the results

that obtain from -- the results that's obtained from an item that's being examined that, that results has some degree of credibility, like blood. Like when we do, chain of custody has to be done on blood. Obviously the blood is not gonna be entered in. Blood is not going to be entered into evidence. Blood is not gonna be entered into evidence. But the reason why chain of custody has to be done on blood is that, obviously is that, is that the information that's taken from that blood, it has to be some sense of reliability on it.

THE COURT: We're talking about a report, not blood; is that correct?

MR. DEBERRY: Yes, Your Honor.

THE COURT: Let's limit this to the report because that's the only thing you're bringing in from this doctor, correct?

MR. DEBERRY: Well, she is going to become a chain witness to the evidence that comes from the body.

THE COURT: But that's not—

MR. DEBERRY: But that's not being offered into evidence right now.

THE COURT: Right now it's just the report.

MR. DEBERRY: Yes, sir, Your Honor.

THE COURT: Okay, let's limit it to that.

MR. BROOKER: In every chain of custody situation

it is -- chain of custody situation, Your Honor, it's -- it's just about in every chain of custody situation it's not the actual evidence, it's not the actual physical evidence itself. And that's what the chain of custody is not meant to do. It's actually evidence that's actually taken from that particular, that particular item. And of course, in order for evidence that's taken from that particular item to be deemed reliable you have to establish a chain of custody that not only applies to that item but it applies to the report that's pertained from information taken from that item. And of course they have to establish a chain of custody for the body itself to make sure that there was no material alterations to the body from the time in which the accident happened and to the time in which it received from her. An example of that is that if you give -- if you give somebody that, a corpse, and then of course if that corpse sit around and someone shoots it again for fun and then of course the autopsy clerk gets it ---

THE COURT: Just to streamline things a little bit, we haven't gotten there with her testimony, have we?

MR. DEBERRY: Your Honor, I'd like to respond. I think I can make -- for one thing the only type of evidence that needs chain of custody is the evidence that may be fungible, and that means easily interchanged or

swapped with another piece of evidence. If he's saying that this body could have been swapped, I don't understand ---

MR. BROOKER: Not swapped, but evidence that could be easily altered. Not swapped but altered. And the body can easily be altered. That's why the chain of evidence is to insure it's not insure -- insure that the evidence is not altered so that when the examiner does report, then her report then has some reliability with respect to that this piece of evidence is in the same condition it was at the time in which the crime took place and that there has not been a significant alterations and that would change the outcome of the -- that would affect the outcome of the examination. And so it's anything that can easily be altered. Now if we're talking about probably something that can't be altered very easily, if we were talking about maybe a steel ball, then it's hard to alter that. Then, of course, there would be an issue human body is real easy to alter so, and like I said, that's simply our motion. We want to put it on the record to be protected that no chain of custody has been established, and therefore, the report is improper.

THE COURT: Any response?

MR. DEBERRY: Your Honor, we believe the body is not fungible evidence. There needs not to be any type of

chain of custody involved with that.

THE COURT: Whenever the applicable time comes, if you need to object again you can just object on the record and I'll rule at that time.

Why don't you go ahead and continue.

Let's bring the jury out.

(WHEREUPON, the jury was returned to the courtroom at approximately 2:15 p.m., and the following proceedings commenced in open court.)

THE COURT: All right, if you will continue.

MR. DEBERRY: Thank you, Your Honor.

BY MR. DEBERRY:

Q Doctor Schandl, if you could continue or maybe backup just a second or two to catch what you were saying.

A Yes, of course. So I was trying to tell you how we go about beginning the autopsy or the postmortem examination. And so after the body arrives in Charleston, then generally it would be the next morning we bring the body to a table and we will take photographs of that body as it comes to us. So whether clothed or unclothed, often a body will be unclothed if the person has received medical treatment because they'll take the clothing off to get to the body. So we'll take that set of photographs, and then we'll begin what is called the external examination

portion of the autopsy. So that consists of using diagrams as well as photographs, as I mentioned, to note those things that might be identifying features such as eye color, height, weight, any tattoos, those sorts of things, and also note those things that might be important to the case in the terms of injuries. So this is the time that we're looking for injuries to the skin of the body.

So after that is completed, after we've completed the external examination and documented all of the identifying features and all the injuries, then we will go to what is classically considered the autopsy, which is the internal examination. And in that examination, that's when the line incision is made and the internal organs are exposed and removed and any natural disease processes or any injuries to the organs can then be seen as well as in a case such as this where there's gunshot, gunshot wounds involved, the track of the bullets can be followed through the body to see what structures in the body were struck during the course of the bullet traveling through the body. So that's the internal examination.

The other portions of the examination include toxicologic examination if products are available to send for drug testing. And microscopic evaluations so small pieces of a tissue that we see in the different organs that may have injury or disease, we look at them under the

microscope to confirm that injury or disease. And then all of this information is pulled into a report that is then provided to the coroner. And that's what I would be referring to as we go. It's that report that was generated that was then given to the coroner's office.

Q Okay. And as a result of this autopsy what did you learn about the victim in this case?

MR. BROOKER: Your Honor, we make objection that particular period of time that any evidence that was obtained at the autopsy actually, report itself, is inadmissible because of proper chain of custody has not been established.

THE COURT: I understand. Overruled. Continue.

MR. DEBERRY: Thank you.

THE WITNESS: Yes. So upon examination of Mr. Applewhite, uponexternal examination I found that there were multiple defects consistent with gunshot wounds. Upon total examination I found that those multiple defects consisted of five different gunshot wound tracks so five different shots. Three of these shots were -- did not go into body cavities or hit organs or other structures or cause fractures. Those three were -- one was to the right side of the back and it went basically into the skin and back out. One was to the stomach, the lower left part of the stomach, and it went through the

tissue of the stomach wall, the stuff you can grab if you're trying to see how much you'll fit in your jeans that day. So that's the meat of your stomach and out. So that's another one that went through and through. And then the third one that went through and through went through and through his left thigh so through the skin muscle and then out the skin of the back of the thigh without hitting the big leg bone there or causing a fracture. So those were three.

So that leaves two more. One of the two was to the shoulder, right on top of this left shoulder, and it went slightly back and slightly to his left and fractured this shoulder bone back here called the scapula, that triangular on your back. So he got fractures from that gunshot and that bullet was still in him. So we're talking about the two that didn't go, didn't come all the way out. So those are called penetrating to us. We call them penetrating because we get a bullet out. So that one got a bullet out in association with that wound it caused fractures to this bone. And then the last one, the fifth one, was to the back, the left upper back right about here, and that one did hit a number of structures internally including the left lung, the aorta. The aorta is the largest high pressured blood vessel in your body. It's about the size of a garden hose, and it's the one

that leaves the heart to go, to take oxygen to the rest of the body. So there was a hole at the aorta itself. It then traveled near enough to heart to cause some damage to the heart but without actually hitting the heart. And then went through the liver and into the colon or the large bowel, and that's where we found the bullet from that one.

So basically there were five shots. Three went through and through and then two we recovered bullets from and the ones we recovered bullets from was to the left shoulder and to the left back.

Q Okay. When you remove those bullets how do you keep them separate?

A Well, basically we'll number them as we remove them, and we'll make a note of where we remove them from. So in this case we had a bullet number one and a bullet number two and then we'll measure them and take photographs of them too to make sure they're not mixed up in any way. So for one thing, they're taken out at different points in the case 'cause you're not, you know, you're not directing your attention to both of them at one time. So you get one out and then you work on that, and then you go and you get the other one out after you follow that pathway and then you work on that one and they go in separate containers with separate labels so that there's no mixup

possible.
Q Okay. So you testified that you removed one bullet from actually the scapular area.
A From the shoulder here, yes.
Q Okay. And which bullet was that?
A Just a sec. That one is called bullet number two.
Q All right. So bullet number two was lodged in the shoulder?
A That is correct.
Q Okay. And what number bullet did you retrieve and -- can you say again the track it took from the colon?
A Yes. The other one that went through all those structures, that one we call bullet number one, because we found two. This is one and two. So two went to the shoulder and one went through the lung, the aorta, damaged the heart, went through liver, and ended up in the colon of the large bowel. That was called number one.
Q That's bullet number one?
A That's correct.
Q Bullet number two was lodged in the shoulder?
A That's right.
Q All right. Doctor Schandl, in your professional opinion which bullet caused the death of Mr. Applewhite?
A Bullet number one, the one that went through all those structures including the aorta.

Q Okay. So in your opinion bullet number one caused the death?
A Yes, sir.
Q Okay. Now when you say the rest of the bullets, the other three bullet hole, bullet injuries, you call those through and through.
A Yes, sir.
Q Does that mean -- can you tell and explain to the jury what that means?
A Yes, I call them through and through. In the report what we call them is perforating so penetrating meaning we found the bullet and perforating meaning it went all the way through so that means we didn't find a bullet because it went all the way through, it's somewhere wherever he was when he got shot. So that's the difference. Perforating went all the way through and penetrating didn't and we got the bullet.
Q Okay. So the other three gunshots you didn't recover any bullets from?
A That's correct.
Q Okay. And just to be clear, bullet number one is the one that went through the lung, the aorta, caused heart damage, through the liver, and ended in the colon?
A That's correct.
Q And that's in your opinion the one that killed Mr.

Applewhite?
A Yes, sir.
Q And bullet number two was retrieved from the shoulder?
A That's right.
Q Thank you. Please answer any questions Mr. Brooker -- hang on just a second. Doctor Schandl, when the evidence is taken from the -- excuse me just a second. When you retrieve that evidence what's the purpose, I mean not the purpose but how -- what's the procedure in you, in who you give that evidence to?
A Often we'll have an assistant in the room and in this case I did. And my assistant in this case is Doctor Jeffrey Springer, and so he was assisting me with labeling and writing out what the evidence was for transfer to law enforcement. And so basically after I examine the evidence and measured it and put it into its proper, you know, receptacle or bottle or however we transport it, whatever we transfer it in, and labeled it and then all those items that were gonna be transferred as evidence go into one bag; or if there's a whole bunch of it, more than one bag, so they go into one container and then we have a list of the items on a sheet that has two copies so if you push down you get the same thing on the next sheet. And then either I or my assistant will sign that we're signing the items over and then whoever is receiving the items

will also sign that they're receiving the items. And then so we get to keep one of those sheets and one sheet goes with the evidence.

Q Okay. And do you have that sheet with you?

A Yes, sir, a copy of it.

Q Okay. And how many items were transferred from MUSC to and to who were they transferred?

A Five items were transferred. And to whom, that's Gary -- hang on. Gary E. Cook.

Q Okay. Were they signed by yourself or Doctor Springer?

A They were signed over by Doctor Springer.

MR. BROOKER: Objection, Your Honor.

THE COURT: Hold on one second.

MR. BROOKER: Your Honor, assuming is that our objection is based upon is that under what basis that she and, I guess, into this document and record is I think clear hearsay as long as she's the one who prepared the document, signed, and executed same.

THE COURT: Any response?

MR. DEBERRY: Your Honor, to start with it's a business record exception and it's part of her autopsy report.

THE COURT: Have you laid that groundwork?

MR. DEBERRY: Yes, sir. I think she testified that that -- that this piece of paper is what they use to

list the items of evidence and how they transfer, how they keep a record of transferring that evidence to the police.

THE COURT: Objection overruled.

MR. DEBERRY: Thank you.

BY MR. DEBERRY:

Q And who is it signed over by?

A Signed over by Jeffrey Springer who was my assistant in this case.

Q So was he present during the autopsy?

A Yes.

Q Okay. And was it signed over under your direction?

A Yes.

Q And you testified it was signed over to Mr. Gary Cook?

A That's correct.

Q Okay. And just one last question, what was the manner of death that you determined in this case?

A The manner of death is homicide in this case.

Q And the definition of homicide is?

A Again, this is a situation with one individual loses their life due to the result of somebody else's action or inaction, in this case action.

Q Thank you very much. Please answer any questions Mr. Brooker might have.

MR. BROOKER: If you will indulge me just a second, Your Honor.

CROSS-EXAMINATION

BY MR. BROOKER:

Q Doctor, is it Schandl?

A Schandl, yes.

Q Schandl, okay. I'm going to be very brief. What did you say that your area of practice was at MUSC?

A I'm a forensic pathologist.

Q Okay. And as a forensic pathologist, and of course, I don't know, is that, do you primarily perform autopsies? Is that what you primarily do in your position with your job?

A Yes. That is my primary job. I have -- since it's an academic institution I do a number of other things including teaching and other administrative positions, but yes, autopsies is my primary job.

Q What percentage of your time is spent doing autopsies?

A About 50 percent.

Q About 50 percent. Is the other 50 percent as an educator?

A Administrative teaching and other things.

Q Okay. Now I'm gonna ask you just one question for clarification, is that, I think that you said -- and you correct me if I'm wrong -- is that there was one gunshot wound was the actual gunshot injury that actually caused death; is that correct?

A Yes, sir.
Q And that gunshot entry would have been the gunshot injury to the upper, was it the upper right back?
A Left.
Q It was the upper left back. That gunshot wound would have been to the upper left back. That was the one now where the -- where the gunshot slug actually penetrated the pulmonary lobe, the aorta, the liver, and also the, you said left bronchus; is that correct?
A That's correct.
Q And I think you identified at least three of the wounds, I think, as I think your language is superficial perforating gunshot wounds. And just to make sure I understand is, is that, what do you mean when you say it's a superficial perforating gunshot wound?
A In this case superficial for two of the wounds, the one to the right back and the one to the stomach really does mean superficial meaning just to the stuff, again, that you can pull up with your finger. So the skin and the tissue directly beneath the skin. Now the one to the leg is superficial, but it also hits muscle, so I mean, you cannot discount the possibility that other wounds may be harmful. I mean, clearly if you're shot anywhere that's probably not a good thing.
Q But those injuries did not cause death?

A That's correct.
Q Death is actually caused, I think, by the gunshot injury to the upper left back; is that correct?
A That is correct.
Q All right.

MR. BROOKER: I have no further questions for this witness.

THE COURT: Thank you. Anything further?

MR. DEBERRY: Nothing further for this witness, Your Honor.

THE COURT: Thank you. You may step down.

MR. DEBERRY: May Doctor Schandl be excused from her subpoena?

THE COURT: Any objection?

MR. BROOKER: No objections, Your Honor.

THE COURT: You're excused.

Call your next witness.

MR. DEBERRY: The State would call Niki Perry.

THE DEPUTY CLERK OF COURT: Please come here and let me swear you in please.

WHEREUPON,

NIKKI PERRY,

having been duly sworn by the Clerk of Court, testified as follows:

DIRECT EXAMINATION

BY MR. DEBERRY:

Q How are you doing? Could you please state your name for the record and your occupation.

A Niki Perry, P-E-R-R-Y. I'm a forensic technician for the South Carolina Law Enforcement Division.

Q All right. Thank you for being here, Ms. Perry. Please explain to the jury your job duties at SLED and what a forensics technician does.

A Sure. In the evidence control department in the forensic lab we log in package and properly seal evidence brought into the lab for forensic analysis.

Q Okay. And how long have you been employed at SLED in that capacity?

A I've been employed with SLED since June of 2006.

Q All right. And so I guess that says that you were employed there during the month of May of 2007?

A Yes, sir.

Q Okay. And did you have any involvement with case number L07-07310?

A I did.

Q Okay. And could you please explain to the jury what your involvement with that case is?

A I accepted evidence on May 21st, 2007, from Jason Huffman of the Marion Police Department.

Q Okay. And how many items of evidence did you accept

that day from Mr. Huffman?
A I accepted three items of evidence that day.
Q Okay. And can you -- and can you tell the jury what those items of evidence were purported to be when you accepted them?
A Sure. According to my chain of custody, item one was described as a sealed envelope containing fired bullets described as bullet taken from victim at autopsy.
Q Okay.
A SLED item number two is described as one sealed envelope containing fired bullets described as bullet taken from victim at autopsy. And item number three was a sealed heat-sealed pouch containing blood for toxicology labeled Applewhite, Ramel Keshawn.
Q Okay. Was there a fourth one or that's it?
A That was all.
Q Okay. Can you tell the jury what is it that you did with that evidence?
A When evidence is brought into SLED I accept it from the officer. They provide me with a SLED forensic services request form, and on that form they detail the case information as well as the items of evidence that they are bringing in for SLED and what analysis requests they would like performed on those items. What I will do is package that evidence. I will seal it with SLED seal tape, and in

my presence the officer submitting it will initial and date on all seals. I will enter in all the case information from those SLED request forms; and using that information, our computer will then generate a unique lab number for each case and item number for each item submitted. At that time after it is logged in I will then place that sealed evidence into our locked evidence room and evidence control department.

Q Okay. And can you -- can you testify as to who took custody of the evidence after you received it from Jason Huffman?

A Yes. According to my chain of custody, after I placed it in our firm's evidence intake storage in our evidence room forensic technician Amy Stevens then retrieved it from the firearms intake and transferred it to forensic scientist Dan Defreese in the firearms department.

Q Okay. And can you tell the jury just a little bit about firearms intake or firearms evidence intake storage. Is that a secure location?

A Sure. It is a double secured location evidence control. Our large main evidence room is secured by a key card separate area where we lock the firearm evidence and our drug evidence so it is in a secured locked area within our locked evidence room.

Q Okay. So the likelihood of it being handled by someone

that -- some outside person or somebody that would tamper that evidence is very low?

A Very, very unlikely.

Q Okay. Okay, I have nothing further. Thank you for being here. Please answer any questions Mr. Brooker has.

CROSS-EXAMINATION

BY MR. BROOKER:

Q Just very briefly to make sure I don't have any questions. It might be the first. Let me check and see though. Ms. Perry, I'm looking at the chain of custody forms from SLED. Of course I think it indicated that Lieutenant Huffman submitted these items. Lieutenant Huffman from Marion Police Department submitted these items, I think, to you on 5/21 of '07 at 12:39 a.m.?

A That is correct.

Q Okay. And, of course —

A P.m.

Q I'm sorry. He did. And of course my understanding is that shortly thereafter you placed them in evidence locker?

A That is correct, firearms evidence intake storage.

Q Okay. And then of course they remain in that evidence locker until -- until four days later, roughly May 25 of 2007; is that correct?

A That is correct.

Q Okay. And after that particular period of time you had no further handling, at least according to chain of custody evidence form, you had no further handling of that particular evidence?
A No, sir, I did not.
Q Okay. So you wouldn't know what happened to it at that particular point or thereafter?
A No, sir.
Q I'm talking about with direct evidence. You have no direct knowledge with respect to what happened because you didn't handle it after you received it —
A Right.
Q —and placed it in the evidence locker.

MR. BROOKER: No further questions.

THE COURT: Thank you. Anything further?

MR. DEBERRY: No, Your Honor.

THE COURT: You may step down.

THE WITNESS: Thank you.

(Pause while attorneys confer.)

MR. DEBERRY: Your Honor, is there any way we can have about five minutes to discuss an issue that may be potential?

THE COURT: All right. Why don't you take five, ten minute break, whatever you need. We'll be back with you shortly.

(WHEREUPON, the jury was removed from the courtroom at 2:43 p.m., and the following proceedings commenced in open court.)

MR. DEBERRY: Your Honor, we'd like to put on the record real brief. Your Honor, the State's next witness is Mr. Dan Defreese from SLED, and he's a firearms expert. With respect to the search warrants in this case there were two firearms that were recovered. Mr. Defreese tested both of those. They didn't have any connection in this case. Mr. Brooker has stipulated not to mention those guns, and we've also stipulated not to bring in the fact that they were tested so...

THE COURT: Is that correct, Mr. Brooker?

MR. BROOKER: Yes, Your Honor. I think what we talked about is that, is that, is that, is that, is that we reserve the right to testify the fact that they did not have the warrants. And, of course, they didn't. And so the validity of the warrants are not going to come into question, simply they didn't have them, because they-- did not have any that night. I think that's what the charges against Bellamy was. So we're gonna proceed on that, proceed on the ground and will question law enforcement with respect to the fact that they didn't have any weapons. But excuse me, not didn't have any weapons, but didn't have any warrants when they went in that night.

But obviously, is that with respect to service of a warrant and with respect to collection of any sort of evidence with respect to the warrants is that we have stipulated that we're not going to mention anything collected pursuant to a warrant in that house, including drugs or guns or whatever they got in the house that night.

THE COURT: Both of you stipulate to that?

MR. DEBERRY: Yes, sir, Your Honor.

THE COURT: And go ahead and bring out the jury, if you would.

(WHEREUPON, the jury was returned to the courtroom at approximately 2:49 p.m., and the following proceedings commenced in open court.)

THE COURT: All right, call your next witness.

MR. DEBERRY: We call will Dan Defreese to the stand.

CLERK OF COURT: Mr. Defreese, if you will come around here and let me swear you in.

WHEREUPON,

FRANK DAN DEFREESE,

having been duly sworn by the Clerk of Court, testified as follows:

DIRECT EXAMINATION

BY MR. DEBERRY:

Q Mr. Defreese, if you could for the record, please state your name and occupation.
A My name is Frank Dan Defreese, spelled D-E-F-R-E-E-S-E.
Q Okay. Thank you for being here this afternoon. And could you explain to the jury where you work.
A I work for the South Carolina Law Enforcement Division in the laboratory in Columbia and within the laboratory I'm assigned to the department where we do the identification of firearm and tool mark evidence.
Q Okay. So that is your area of expertise?
A It's in firearms identification and tool mark identification.
Q Okay. And how long have you been employed with SLED?
A Since January of 1967.
Q Okay. January of 1967. How many times have you been declared an expert or ruled an expert by the judge in a case involving firearms?
A I don't actually know how many times because I didn't keep track of it for so many years, but I estimate probably between 600 and 700 times.
Q Okay. So you've testified in court as an expert over 600 times?
A Yes, sir.
Q Okay. And what kind of training do you have involving firearms?

A My principal training I actually received at SLED. After my employment I began studying the techniques of firearm and tool mark identification under a gentleman by the name of Miller Cade. Mr. Cade established the SLED laboratory when SLED itself was established, and after about two-and-a-half years of studying under his direct supervision I began accepting cases my own and testifying as to my results. I've done that since 1969.

Q Okay.

MR. DEBERRY: Your Honor, at this time I'd like to have Mr. Defreese declared an expert to give his testimony.

THE COURT: Any objections?

MR. BROOKER: No objection, Your Honor.

THE COURT: You may go ahead.

MR. DEBERRY: Okay. And he be declared an expert or ruled an expert in the field of firearms.

THE COURT: Any objection?

MR. BROOKER: No objection, Your Honor.

THE COURT: All right, granted.

BY MR. DEBERRY:

Q All right. Mr. Defreese, were you working with SLED May of 2007?

A I did.

Q Okay. And did you have an occasion to receive evidence

in case number L07-07310?
A I did.
Q Okay. And how did you receive that evidence and what type of evidence was that?
A There were two bullets received as evidence in that case, and they were received by me in a sealed container from our central evidence room.
Q Okay. And who did you receive those items of evidence from?
A I actually picked the items of evidence up from the person who handed them to me was by the name of Amy Stevens. Amy is among our staff that works in the evidence receiving area.
Q Okay. And do you have a chain of custody report there?
A I do.
Q And who did Amy Stevens receive the evidence from?
A Well, she went in and got the evidence off the shelf in the firearms intake storage area within the evidence vault, and they were put there by Niki Perry who received them from Jason Huffman with Marion Police Department.
Q Okay. Thank you very much.
(WHEREUPON, State Exhibits Nos. 24 and 25 were marked for identification only.)
BY MR. DEBERRY:
Q Mr. Defreese, I'm gonna hand you what's been marked

State's Exhibits 24 and 25 and see if you can identify them.

A Yes, sir, I can.

Q And can you tell the jury how you can identify them.

A During my process of examining the evidence I engrave my case number and item number and my initials on the item of evidence so that I can recognize it when I see it later.

Q Okay. So the purpose of you engraving those actual -- what are those actual pieces of evidence?

A They're both fired bullets. Both State's Exhibits 24 and State's Exhibit 25 are fired bullets.

Q Okay. So when you received them from Ms. Amy Stevens you put your own mark on those bullets and that's what just identified them with here today?

A Yes, sir.

Q Okay.

MR. DEBERRY: Your Honor, at this time I'd ask that these bullets be introduced as evidence and that he be able to read from his report.

THE COURT: Any objections?

MR. BROOKER: No objection, Your Honor.

THE COURT: Thank you. 24 and 25 in evidence.

MR. DEBERRY: It's also State's Exhibit 18 is the report.

THE COURT: 18 in evidence as well.
(WHEREUPON, State Exhibits Nos. 18, 24, 25 were admitted into evidence.)
BY MR. DEBERRY:
Q I'll hand you your report, Mr. Defreese.
A All right.
Q When you received those items of evidence, the two bullets, were they labeled?
A Yes, they were -- they were in these containers which had the autopsy labels at the time. I affixed the yellow label to it which has my case number and my item number on it.
Q Okay. So when they came in how were they labeled?
A They were labeled as Applewhite Ramel and they had an FA0800338 which is a forensic autopsy number and then 51407 Doctor Schandl. And I also wrote on the label, item one, with my case number and it's just marked bullet. I believe it had bullet number one on it at a prior time.
Q Okay.
A And it was torn off.
Q So they were marked as bullet number one, bullet number two?
A Yes, the other bullet -- the other container had a similar label, but it was marked bullet number two and that became my item number two.

Q Okay. So you went -- bullet number one is your item number one and bullet number two is your item number two?
A Yes, I used the same number that the doctor used. And bullet number one is State's Exhibit 24 and bullet number two is State's Exhibit 25.
Q Okay. And let's talk about bullet number one.
A Yes, sir.
Q What were your findings as it pertained to bullet number one?
A I found that bullet number one was most consistent with bullets loaded into 38-Special caliber and 357 Magnum caliber cartridges. That all of the remaining observable physical characteristics of this bullet were most consistent with those two calibers, 38 or 357 Magnum. And 38-Special caliber ammunition can be fired in 357 Magnum caliber firearms, but 357 Magnum caliber ammunition cannot be fired in 38-Special caliber firearms.
Q Okay. Were there any characteristics on bullet number one that suggest -- well, you testified that it's 38 or 357. Are there any marks on it or anything that can, you can tell about which type of gun it may have been fired with?
A Well, from the rifling impressions that are on the bullet we can make some determinations in this case. There were five groove impressions on this bullet,

meaning that as I look at it there were five raised and five lowered segments on this bullet for the bullet was actually gripped by the rifling of the gun in which it was fired. I was able to measure those and was able to determine their direction of twist because the rifling either has to turn the bullet to the right or turn the bullet to the left. These are right-hand with five right 38 or 357 Magnum caliber bullets. I determined that there were a relatively small number of known manufacturers of guns that used this rifling specification. And they were the Alpha, and Coonan arms, the I.N.A., Llama, Ruger, Smith and Wesson, Sport-Arms and Taurus. Those manufacturers we know make or have made firearms with rifling specifications that match the specifications noted on this bullet.

Q Okay. And are there any characteristics of bullet number one that can lead you to give an opinion of whether or not it may been fired from a long rifle, a handgun, or a automatic handgun, or revolver, or anything like that?

A Not specifically. Most of the -- most of the firearms in 38 Special and 357 Magnum calibers are revolvers. The overwhelming majority of them are. And of the list of firearms which have specifications that match the bullet in State's Exhibit 24, only the Coonan arms firearm is a semiautomatic. All of the other firearms are revolvers.

Q Okay. So you're saying that out of all the possibilities of manufacturers that make .38-caliber guns, out of all the ones that could have manufactured a gun that would have fired bullet number one, there's only one that make anything other than a revolver?

A Right. The Coonan Arms pistol is a rather large 357 Magnum caliber pistol. It's rarely seen, rarely encountered. I think I've had one the entire -- during my entire career. All the other ones are revolvers.

Q Okay. So bullet number one is most consistent with a 38. Can you explain now bullet number two.

A Yes. Bullet number two is most consistent with full metal jacketed bullets loaded into 9-millimeter Luger caliber cartridges. The -- all the remaining observable physical characteristics are consistent with those of 9-millimeter Luger caliber bullets. In the case of this bullet I found that it had six groove rifling impressions on it, but I was not able to accurately measure the width of the land and groove impressions with confidence because regular slippage going on in the bore of the gun in which this bullet was fired. And six land and groove rifling in a 9-millimeter Luger caliber cartridge is probably the most popular rifling specifications used. So if I had produced a list it would be an enormously long list. I provide the investigating officers with information that

might assist them in their investigation and to provide a list that might have 80 or 100 more brands of pistols on it would just not be much help to them. So I didn't provide a list. The overwhelming majority of all 9-millimeter Luger caliber firearms are either pistols or sub-machine guns. There are a very few revolvers that have been made in 9-millimeter Luger caliber; there are some.

Q Okay. So most likely bullet number two was not fired out of a revolver?

A Based on the number of guns in circulation it's more likely it was fired by a semiautomatic than a revolver.

Q And can you testify with certainty 'cause you testified that there's different numbers of lands and grooves on bullet number one than on bullet number two. What does that lead you to say?

A That there's no way that these two bullets were fired by the same gun. That regardless of revolver or semiautomatic, State's Exhibit 24 was fired by one and State's Exhibit 25 was fired by another gun.

Q And you testified that most probably bullet number one was fired from a revolver and bullet number two fired from a semiautomatic?

A Just given the number and types of firearms made in those calibers, it's more likely that bullet number one

was fired, State's Exhibit 24, was fired by a revolver than it was by a semiautomatic pistol. I can't say for certain but it's more likely. Similarly with State's Exhibit 25, it's more likely it was fired by a pistol or sub-machine gun than it was by a revolver just given the number of firearms that were made in that caliber, the number of types of firearms made in that caliber but I can't say for certain.

Q Okay. And I'm gonna ask you a question based on your opinion as an expert. If you're firing a gun rapidly or consecutively what's the difference in what happens when you run out of bullets in a revolver as opposed to a semiautomatic or a pistol?

A Well, a revolver is a type of handgun that carries its cartridges in a cylinder that's located usually about in the midpoint in the gun. All of the cartridges are placed in the cylinder manually, and they're removed from that cylinder manually. And regardless of how it's loaded they stay in there and the gun is manually operated. That is, it's either cocked with your thumb or it's cocked by pulling the trigger, and a revolver will fire however many cartridges it has chambers for. Usually it's 5, 6, 7, 8, 9, it depends on the caliber of the gun. Most 38s and 357s are -- have either 5, 6. Some of them have 7 and a very few of them have as many as 8 rounds in a cylinder.

Most of them have either 5 or 6. When you shoot a revolver nothing is gonna come out of it but the bullet and the propellant gases. A cartridge case is not extracted from a revolver during the firing cycle. That when you fired all the cartridges in revolver then you have to remove the cartridges to reload it.

Q Is it possible to continue pulling the trigger and the gun try to fire?

A Yeah. If a revolver -- if you had like a five shot revolver and you pull the trigger five times and fired five shots, if you keep on pulling it the gun will snap. The cylinder will rotate but nothing will happen because there won't be any unfired ammunition remaining in the gun.

Q But it will make a noise?

A Yeah, it'll make a clicking noise.

Q A clicking noise, thank you. And what's the difference in that and a pistol you're talking about.

A We'll, a semiautomatic pistol, there are manually operated pistols like Derringers that have, you know, multiple barrels. But most semiautomatic pistols have one barrel and one chamber. They have a magazine that's located usually in the grip, and a number of cartridges are located in the magazine and they're fed one by one into the chamber as the bullets are fired. And each time

the shooter pulls the trigger, cartridge fires, a bullet goes down the barrel, and shortly thereafter a cartridge case is extracted and ejected. It's thrown out of the gun using some of the energy of the firearm, and then it's prepared for the next firing and it will fire until all of the cartridges in the magazines are exhausted at which point, you know, if the hammer were cocked and you pulled the trigger one more time it would snap but nothing would happen. And many semiautomatic pistols contain a mechanism so that when the last shot is fired the slide will lock to the rear, and after that it lets you know it's time to change the magazine.

Q Okay. In that situation where you're firing a semiautomatic pistol and slide lock to the rear, if you pulled the trigger again at that point then what will happen?

A You will just pull the trigger. Nothing would happen. It would -- the trigger itself may move but the gun -- if the slide were locked to the rear it wouldn't even make a clicking noise.

Q All right.

MR. DEBERRY: Your Honor, we at this point we intend to introduce two photographs and I don't know if Mr. Thurmond has an objection.

THE COURT: Any objection?

MR. BROOKER: We do, Your Honor. We have an objection.

THE COURT: Okay. Something you need to take outside the jury's presence?

MR. BROOKER: I think so if he intends to introduce them, Your Honor.

MR. DEBERRY: Well, Your Honor, we can just use them for demonstrative purposes. We don't have to introduce them in evidence.

THE COURT: Any objections?

MR. BROOKER: Well, why don't you proceed forward with it, then if an appropriate objection arises you can make it.

MR. BROOKER: May I approach at least briefly, Your Honor.

(WHEREUPON, counsel approached the Bench for an off-the-record discussion.)

MR. BROOKER: Your Honor, we probably need to take the jury out and put the objection on the record.

THE COURT: If you would step into the jury room just a moment.

(WHEREUPON, the jury was removed from the courtroom at 3:18 p.m., and the following proceedings commenced in open court.)

THE COURT: All right, Solicitor, tell me what

you intend to do with the two photographs, identify the two photographs, and then I will allow you to object.

MR. BROOKER: Thank you, Your Honor.

MR. DEBERRY: Thank you. Your Honor, State's Exhibit Number 5 is picture of a revolver. And State's Exhibit Number 6 is a picture of a -- to my knowledge a semiautomatic handgun. And the expert on the stand has testified extensively about the differences in a revolver and a handgun. I'd just like to ask him for demonstrative purposes only to be able to use these pictures to help him explain himself to the jury.

THE COURT: You're not going to present them as weapons used in the crime, are you?

MR. DEBERRY: No, Your Honor.

THE COURT: You're not going to say weapons used in the crime, are you?

MR. DEBERRY: No, Your Honor.

THE COURT: Just for demonstrative purposes, correct?

MR. DEBERRY: Yes, sir.

THE COURT: And Mr. Brooker will have extensive cross-examination in that regard, but go ahead and put your objection on the record.

MR. BROOKER: Your Honor, we object to this based upon a couple of reasons. And of course, I'm trying and

it's involved, is that one is that the Prosecution has an interesting in trying to -- if the Prosecution has an interest, and of course we know that and they know that. We have all the evidence. They have an interest in trying to identify at least one of the guns that's being involved in this case as a revolver and trying to identify the other gun involved in this case as being a semiautomatic. And what they're doing is presenting a picture of two fictitious guns, guns that have absolutely nothing to do with this case at all, to try to suggest or create impression in the minds of the jury. Now obviously is that, is that they're saying they're using this as demonstrative for demonstrative reasons to demonstrate the difference between a revolver and the difference between a ---

THE COURT: Automatic pistol.

MR. BROOKER: ---semiautomatic. Now if anybody has a television, unless you've been living -- unless you have not had a television for the last 20 years or so, is this is not something that's beyond the common knowledge of a jury, that the jury doesn't understand the difference between a revolver and the difference between a semiautomatic like a 9-millimeter. Secondly is, is that for demonstrative purposes is that he's saying he's trying to demonstrate the -- demonstrate the differences between

those two guns. These are not examples that are actually working where they can be cocked and shows the difference. I think he says one of them when they're empty it slides back and the other one does not. You know, these are not working models. These things will be entered into evidence simply for the purposes of planting a suggestion in the minds of the jury with respect to what guns that was used that day when absolutely no guns, no guns was found. And although you can give a corrective instruction, a corrective instruction only goes so far, you know, which means is that it can't supplant, you know, any impressions that goes in the minds of these jurors. This is not evidence that's -- that is absolutely essential to them making the particular point they simply intend to make. And prejudicial value of it is just tremendously outweighs, you know, the demonstrative purposes they intend to use, specifically in light of the fact that the expert testified is that he can't be even certain, he can't even be certain that both of these guns or that one was a revolver and one was a semiautomatic. He says that both of them could have been a revolver.

THE COURT: I'm going to overrule the objection. It will be used for demonstrative purposes. They obviously know these guns because the bullets are already in evidence and we have a deceased body and so forth and

so forth, and you can cross-examine on that.

MR. BROOKER: Certainly will. Thank you, Your Honor.

(WHEREUPON, the jury was returned to the courtroom at approximately 3:22 p.m., and the following proceedings commenced in open court.)

THE COURT: Continue.

MR. DEBERRY: Thank you.

BY MR. DEBERRY:

Q Mr. Defreese, before the break you testified -- you were testifying about the differences between a revolver and a handgun, maybe a semiautomatic or a pistol?

A Yes, sir.

Q I'd like to show you for demonstrative purposes only State's Exhibit 5 and State's Exhibit 6, and see if this could help aid your discussion with the jury as far as the components of those two different types of guns and what you've been talking about as far as a slide and a cylinder and a chamber and that type of thing.

A It could, yes, sir.

Q Okay, could you -- you testified earlier that when you shoot out of bullets with a semiautomatic what happens? Could you just go back over that and show with the picture.

A All right. Referring to State's Exhibit 6, it's a

picture of a semiautomatic pistol. The semiautomatic pistol has, the top of it is a slide which moves back and forth with every shot. You can see in the middle of the picture an ejection port that's actually occupied by a portion of the barrel right now. If the slide were retracted, if it were pulled as far as it was to the rear the ejection port would be open. During the firing cycle, as I mentioned before, the slide -- well, the slide would open and the fired cartridge case from the firing would be ejected automatically shortly after the bullet went down the barrel. This gun would keep its unfired cartridges in a metal box called a magazine that goes inside the grip of the pistol. Generally speaking, most pistols of this size hold more rounds than most revolvers. A gun of this size might hold 12, 13, 14 cartridges. Of course there are smaller semiautomatic pistols that don't hold that many. This particular pistol is a double action pistol that would be capable of being fired either from a thumb cocked hammer in a single action mode or by a simply a long pull of the trigger. Many semiautomatic pistols are not. Many of them will fire only from a single action mode where the hammer has to be manually cocked, but that's essentially the semiautomatic pistol and its ejection as opposed to that of a revolver.

Q So if someone were shooting that gun and it ran out of

the ammunition, what would happen if you pulled the trigger again?

A Well, the trigger itself would move but like the hammer wouldn't fall because in this particular gun if it had fired all its cartridges the slide should lock to the rear. The slide should be in a rearward position, the ejection port open. And you know, if you pull the trigger you would just simply pull the trigger nothing would happen because the hammer would already be cocked but it couldn't fall because it was being held to the rear by the slide.

Q Okay. And how is that different from the gun on the other picture?

A The other handgun in State's Exhibit 5 is a revolver. This particular one is a double action revolver. And as I previously testified, in the center of the gun there is a revolving cylinder into which a number of cartridges are loaded. The cylinder of a gun such as this would hold five cartridges or as many as five cartridges could be placed in it so it's capable of shooting as many as five times before it has to be reloaded. And each time either the trigger was pulled, either a long pull of the trigger by itself would do it because this is a double action revolver, or the hammer could be manually cocked and then the trigger pulled and would fire it in single action

mode. This firearm is capable of both types of firing. When that happens the cylinder would rotate to bring the next cartridge and the next chamber into alignment with the barrel. Then the hammer would fall, the firing pin would strike the cartridge, and it would fire. And the next shot would occur and the next, and each time no cartridge case would be expelled from the gun. All the cartridge cases would remain in the cylinder until it was opened and the cartridges were manually removed.

Q Okay. And what would happen if you fired the last round in a gun like that and then you pulled the trigger again?

A You can continue after it was -- after all the cartridges had been fired you could continue to pull and snap and the cylinder would rotate and the hammer would fall again and again and again. And each time it would make a snapping or a clicking noise but nothing would fire and nothing would be ejected from the gun.

Q All right. Thank you very much, Mr. Defreese. Please answer any questions Mr. Brooker may have.

THE COURT: Cross.

CROSS-EXAMINATION

BY MR. BROOKER:

Q Mr. Defreese, let me see where we want to start at. Let me make sure I understand please, Mr. Defreese, the

principles of rifling. My understanding is that now at least most handguns that they have a series of lands and grooves, and of course, the lands would be the elevated portion and of course the grooves would be the lower portion of the gun?

A Yes. Within the bore of any rifle firearm which includes pistols and revolvers and rifles, not usually shotguns but even now sometimes some shotguns, have rifling in them. There's a series of spiraling grooves that grip the bullet and cause the bullet to spin and these are what leave the impressions on the bullet that I measured to determine what possible makes of firearms could fire the bullets. The lowered segments are called grooves and the raised segments are called lands as you look at the rifling.

Q I have here at least a photograph of a bored gun, barrel gun, and is that kind of an accurate depiction of what land and grooves can look like in the barrel of a gun?

A Yes. This is a graphic representation of rifling of really what you would see if you view the muzzle of a firearm.

Q Can we have this identified as a Defense Exhibit?

THE COURT: Any objection?

MR. DEBERRY: No, Your Honor.

(WHEREUPON, Defendant Exhibit No. 15 was marked for identification only.)

MR. BROOKER: Any objection to entering it into the record?

THE COURT: Any objection?

MR. DEBERRY: None. I don't. No, Your Honor.

(WHEREUPON, Defendant Exhibit No. 15 was admitted into evidence.)

BY MR. BROOKER:

Q And I think you said this is an example of what rifling is, and of course, what's been identified as Defense Exhibit 15 is actually the – is a view of the material barrel of a gun, and it shows the different lands and grooves in a rotating circular motion; is that correct?

A Well, this is a representation —

Q Yeah.

A —of rifling. It's actually a drawing.

Q Uh-huh.

A But it does seek to depict what rifling would look like near the end of the barrel. It doesn't show what's down in the barrel, but it shows what you would see at the terminating end.

Q But those are the twisting lands and grooves?

A Yes.

Q So that you find that barrel of a gun?

A That's correct.
Q All right.
MR. BROOKER: Publish this to the jury?
THE COURT: Any objection?
MR. DEBERRY: No, Your Honor.
BY MR. BROOKER:
Q Okay. Now I think on bullet number one, what you have listed I think in your report is bullet number one, I think you said that that particular bullet has five lands and grooves?
A That's correct.
Q Is that correct? And of course I think that you says that bullet number one is most consistent with bullets that would be fired out of a .38 Special or either 357 Magnum?
A Yes, sir.
Q Okay. Now I want to talk about one word "most consistent".
A Yes.
Q I think your report says item one was examined and found to be most consistent with bullets found in a .38 or a 357. Now when you're saying most consistent is that you're saying is that in your opinion more likely than not that bullet one came from a .38 or either a 357, but it is not limited to a .38 or 357. There are other

possibilities, even if those other possibilities are of a lesser degree possibility than a .38 or 357?

A Yes. I'm saying that it's possible that there may be some other origin for it, but it's most likely a .38 or a 357 based on its observable physical characteristics. They're wholly consistent with a .38 Special or 357. They're not consistent with a 9-millimeter or a .38 Smith and Wesson caliber or a .38 Colt caliber or some other .38 calibers. There are other .38 calibers other than .38 Special and 357 Magnum.

Q Okay. Are there other type guns other than the .38 or either a 357 -- or either 357 caliber that can fire that type of bullet? I know that you said it's most consistent with a 38 or 357. Are there -- and I'm talking about the possibility. Is it possible that another caliber of gun other than a .38 or 357 could have fired that bullet? Yes or no, and then ---

A Yes, it is possible but bullets of that type are not normally loaded by manufacturers but a hand loader, a person could take a bullet out of a .38 Special and put it into a caliber for which it was not normally intended and fire it. That can be done. So it is possible for it to happen.

Q So my understanding is, is that you're saying that most likely when you're looking at a reasonable person

standard, that a reasonable person would only use this type of gun in a .38, this type of bullet in a .38 or 357, but it is possible to use it in a different caliber gun? Yes or no?

A Yes, but we're talking about bullets and not necessarily cartridges. Remember, all I've got to look at is just the bullet, and the bullet -- the bullet that's intended to be loaded into a .38 or 357 Magnum caliber cartridge could be withdrawn from that cartridge and intentionally put into the wrong cartridge. The companies that make ammunition don't make it that way, but it's possible someone could have done that, you know. So, and I couldn't tell that by looking at the bullet alone.

Q Now you would better be able to determine exactly what bullets that bullet came from, and I'm talking about what you have listed as item number one, if you actually had the gun that fired it; is that correct?

A In fact, the only way I can tell you what caliber it was would be to have the gun that fired it.

Q That's the only way that you can say for certain what sort of gun fired that bullet is to have, is to have the gun?

A If, for instance, if it were a 357 Magnum caliber firearm that fired that bullet, I would know that bullet, you know, had to have come from either a.38 Special or a

357 Magnum caliber cartridge fired in that particular gun. That's -- to have the gun is the only way to know for certain what caliber gun the bullet was fired in. Other than that, we fall back on looking at the observable characteristics of the bullet, which in this case have to do with its diameter, the dimensions of its rifling. The fact that the bullet is ejected hollowpoint with a closed base and the fact that it does have what is called a crimping cannelure, which is a feature commonly found on bullets loaded into revolver cartridges and uncommonly found on bullets loaded into semiautomatic pistol cartridges. All of these factors mitigate in favor of .38, 357, and away from any semiautomatic caliber; but it still doesn't mean someone couldn't have taken a .38 or 357 Magnum caliber bullet and deliberately for instance, put in a .38 Smith and Wesson caliber cartridge and fired in a .38 Smith and Wesson caliber firearm, some of which have five land and groove right hand towards right.

Q So your opinion is based upon probability and not possibility when you're talking about ---

A Yes.

Q ---probability?

A When I say most consistent with, I'm trying to give the investigator the best information I can to go out and look for a .38 Special or a 357 Magnum caliber firearm because

I think that's what fired this bullet. I'm not saying it as a matter of certainty or as a matter of proof that it couldn't have come from anything else but that.

Q Okay.

A But I'm trying to give them an investigative aid. This is not an identification; it's just an aid.

Q Okay. Now with respect to bullet number two, I think that you said that you can say at least within a reasonable degree of certainty that the gun that fired bullet one and the gun that fired bullet two were not the same guns; is that correct?

A That's correct.

Q And the reason for that is, is that the bullet that fired bullet number one has five lands and grooves, and the bullet that fired bullet number two has six lands and grooves?

A Yes, sir, that's correct.

Q Which makes them completely distinctive; is that correct?

A Yes, it means they're —

Q From each other?

A They're class negative. They're not even in the same class as each other.

Q So there is absolutely, absolutely no possibility that those two bullets could have been fired from the same gun?

A That is correct.
Q Okay. We would then have at least two different guns being fired?
A Yes, sir.
Q Okay. Now let's talk about with respect to bullet number two. And I think you used the similar language that I think that you used to reach your conclusion about a three -- about a .38 Special, either 357 being the caliber of guns firing, I think, from bullet number one. And that is with respect to bullet number two or item number two, you said that item number two was examined and found to be most consistent with bullets loaded into some 9-millimeter Luger caliber cartridges. So, am I also to assume that we're talking about probability and not possibility?
A Yes.
Q Is it possible, not that it was probable, but is it possible that the gun that fired item number two was something other than a 9-millimeter Luger?
A Yes, it's possible. And same explanation that someone could take a bullet out of the 9 millimeter Luger cartridge and load that into some other caliber cartridge and fire it in another caliber firearm. It can be done. The manufacturers don't make ammunition that way, but it is possible that it could take place.

Q Okay.
A And then again, that's why I use the terminology most consistent with to apply to these.
Q And of course, you use that terminology to at least aid the officers in at least narrowing down their scope as opposed to out there looking for every gun that could be found on the earth, manufactured on the earth.
A Yes. I'm telling the officer you need to look for 9-millimeter Luger caliber type for bullet number two for State's Exhibit 25.
Q You're not ---
A You need to be looking for a .38, 357 for State's Exhibit 24; that those are my best estimates of the calibers of guns that you need to be looking for.
Q But you're not telling them that those were the caliber of guns that was fired that day?
A No, I'm not -- I can't say for hundred percent certain that there's no other explanation in the world for it, but I can just say this is the most likely thing that took place, to look in these areas.
Q Okay. Now you're probably more learned about this than I am, but let me ask you a question. When they're talking about the caliber of a gun is there -- is the caliber of a gun based upon the diameter of the barrel? How do you determine the caliber of the gun?

A There's a little confusion with regard to the issue of caliber as we talk about it.
Q Yes, sir.
A A caliber is actually one one hundredth of a inch. It's one caliber. When we speak about cartridges such as .38 Special caliber, that would make you think that a .38 Special caliber cartridge has a bullet that is 38 one hundredths of an inch in diameter, but that's not so. It's actually closer to .36 caliber than it is to .38. Because there are different conventions that have been used over the years to name calibers. So ammunition in popular distribution we give them names like .38 Special that don't directly apply to the dimension of the bullet. Now 357 Magnum actually is dimensionally correct because the bullet diameter of a 357 Magnum caliber cartridge is .357 inches. The .38 Special uses the same diameter bullet even though it's got the -- in dimensionally the wrong name. So when we're talking about commercially available cartridges, the name and the caliber are just -- they really are just names. They're not directly or they're not always directly tied to each other with dimensions.
Q And the point 357 I think you said, what is it, that 357 Magnum.
A Yes, sir.

Q And of course, we're talking about at least in millimeters. Is a 357-barrel actually measured in circumference or diameter, actually measured roughly 9-millimeters size?

A It's very close. A 9-millimeter bullet, a nominal like 9-millimeter Luger bullet has a diameter of .355-inches so the 9-millimeter Luger caliber bullet is like two thousandths of an inch smaller in diameter than the nominal diameter of the 357 Magnum or .38 Special caliber.

Q So when these measurements are that close with some of these ammunitions, they can be fired from different guns?

A The bullets could be if the bullets were placed in the right cartridge in order to fire them that way. Like I said, the manufacturers don't make them that way, but it could be done.

Q Okay. Now a -- take you back to item number two. And of course, I think you said something on direct examination that I want to point out, and that is that you said that the item number two bullet, you says it is possible that that could have been fired from a revolver?

A Yes. There are some 9-millimeter Luger caliber revolvers. Ruger and Smith and Wesson have both made them as I think but the Ruger revolver I believe has eight land and grooves and the Smith's and Wesson has five. I know of those two brands and there may be some others.

Q Okay.
A So while there are 9-millimeters Luger caliber revolvers, I can't think of one that has six land and grooves with right hand twist.
Q Now ---
A But I'm not saying there's not one; I can't think of one.
Q You're saying you can't think of one off the top of your head?
A Right.
Q Okay. Now is it -- is that category of guns that could have fired that, is it limited to Ruger and Smith and Wesson? Caliber of revolvers that could have fired, and again, I'm going back to most consistent. Is it limited to Lugers?
A It, if I understand your question, could there be some other brand of 9-millimeter Luger caliber revolver other than Smith and Wesson and Ruger?
Q Not necessarily 9-millimeter Ruger -- Luger revolver. Can there be any other 9-millimeter type revolver even if it's not made by Luger that could have fired that particular gun?
A There could be. I don't know of one but there could be.
Q Now let me just ask, you know, a couple of questions in

reference to that is, is that do you have a data base or do you keep a data base of a list of guns that have five lands and grooves, all the guns that have six lands and grooves, all the guns that have seven lands and grooves and so forth and so on. Do you keep that type of data base?

A We do.

Q Okay.

A I'm not sure we have every single gun ever made in it, but we've got at least all the popular firearms listed in it.

Q Okay, you have all the popular firearms. And approximately how many brands of firearms do you have on your list?

A I don't know. It would be in the hundreds.

Q It would be in the hundreds?

A Yes.

Q So the number of guns that have six lands and grooves -- and I know you don't have your statistics here -- could that potentially, potentially be 10, 20, 30, 40, 50?

A Are you talking like 9-millimeter Luger caliber six land and grooves or all six land and grooves?

Q All six land and groove revolvers, 9-millimeter, six land and groove revolvers.

A It's actually -- I don't know that there would be any

listed, but I would have to check the data base to know for certain if there were any six land and groove right hand twist revolvers.

Q Did you check your data base before you came hear today?

A Not for that particular. I didn't give it that query, no, sir.

Q Okay. So when you're testifying to this jury today, and I think you were shown these two guns.

A Yes.

Q The pictures of these two guns, and just for clarification purposes is, is that this is no gun that's involved in this case, is it not, what's been identified as State's Exhibit 5 for demonstrative purposes?

A No.

Q This is no gun that's been involved in this case, is it not ---

A Not to my knowledge.

Q --in that you're aware of?

A To my knowledge that picture has to do with no gun involved in this case.

Q And what's been identified as State's Exhibit 6, this is no gun -- this is a picture of no gun that's involved in this case to your knowledge?

A To my knowledge that picture represents a gun that's

not involved in this case.
Q Okay. And when you're talking about bullets two, bullet one and bullets two, is it possible that both of those bullets could have been fired from revolvers? Is it possible, not probable but possible?
A When you ask the question possible, of course the answer is yes, it's possible. It is not probable.
Q Now you said that there were some Lugers -- well, I think it is probable and I think you testified that it was probable. I think you said that there are some Luger revolvers that are in existence; is that correct?
A Now Ruger.
Q Ruger.
A It's R -- it's R-U-G-E-R which is a American manufacturer of firearms. Not to be confused with ---
Q Luger.
A ---the 9-millimeter Luger, L-U-G-E-R, which is the name of the caliber of cartridge we were talking about with the bullet number two, State's Exhibit 25.
Q Yes, sir. But I think you indicated there was some 9-millimeter revolvers that could have fired bullet number two.
A No, I said there are some 9-millimeter revolvers that have been made, but that's where later in the testimony when I get thinking about it, both the Ruger and the Smith

and Wesson revolver, the two that I'm familiar with, neither one of them have six land and groove right hand twist rifling. So in that's where there may be some other, there may be some custom made firearm. There may be some firearm that we're unaware of. That's why I can't say it's impossible, but I just don't know of any.

Q You just don't know?

A Right.

Q Okay. So your testimony would be is, is that, to that question, that it is possible, you just don't know?

A To my knowledge there is not, but without doing a lot of research I wouldn't want to say. I wouldn't want to testify it couldn't be. That's why I'm saying it's possible.

Q Well, I'm asking you do you know right now sitting, testifying in this courtroom, yes or no?

A Do I know that there are no revolvers with six land and grooves and right hand twisted in 9-millimeters?

Q Yes.

A I do not know that.

Q Thank you.

MR. BROOKER: If you can indulge me just a second, Your Honor. No further questions, Your Honor.

THE COURT: Anything further, Solicitor?

MR. DEBERRY: Real brief.

REDIRECT EXAMINATION

BY MR. DEBERRY:

Q Mr. Defreese, how long have you been in this profession?

A 43 years.

Q 43 years?

A 44, something like that.

Q Okay. And you testified that you have never encountered from your memory a 9-millimeter revolver that has six lands and grooves with a right twist?

A I'm not aware of one. I've never encountered one and I'm not aware of a reference to one sitting here today. Like I say, I have not researched it and, but I'm unaware of one.

Q And you testified that of the two 9-millimeter revolvers that you're aware that exists, that one, the Smith and Wesson has five lands and grooves, and that the Ruger has eight lands and grooves?

A That's to the best of my recollection, correct, yes, sir.

Q So neither one of those types of pistols that you're aware of with your 43 years of experience could have fired bullet number two?

A That's correct. The two that I'm aware of do not have rifling specifications like our bullet number two.

Q And you mentioned earlier on cross-examination existence of a crimping cannelure.
A Yes, sir.
Q Do both of the bullets in evidence, bullet number one and bullet number two, have a crimping cannelure?
A No. The first bullet, bullet number one, State's Exhibit 24 has the crimping cannelure. Bullet number two, State's Exhibit 25, does not. And it's, as I say, a crimping cannelure is a fairly common feature on revolver bullets because they need to be crimped tightly in a case to keep them from coming out under recoil. That is, when the gun kicks back after firing there's a tendency of bullets to move forward out of the case just because of the inertial setback of the gun, and that's why it's common for revolver cartridges to have a fairly heavy crimp on them to prevent this from happening. It's not necessary to have that with a semiautomatic pistol because the cartridges are all kept together in a little box in grip and because many of them actually hit space so they -- the gun orients them correctly according to their case neck so it's just not common to crimp them.
Q Okay. And bullet number two does not have crimping?
A It does not have a crimping cannelure.
Q Okay. So your testimony is that bullet number one is most consistent, most likely to be a.38 or a 357 that's

most likely fired from a revolver and that bullet number two is most likely or most consistent with a 9-millimeter caliber that's most likely fired from some other gun besides a revolver?

A Yes. I'm -- one is -- bullet one, .38, 357, the overwhelming majority of which are revolvers and all of one of which on the list of possibles are revolvers. Bullet number two, 9-millimeter, most 9-millimeters ever made are semiautomatic pistols or sub-machine guns. And there are very, very few 9-millimeter revolvers; and as we've discussed I can't think of one with six lands and grooves and right hand twist, sitting here today.

Q And the last question I have for you, Mr. Defreese, attorney Brooker was asking you about the possibility of different size bullets being fired from cartridges or shell casings that they were not intended by a manufacturer be fired in. You said that could be manually done?

A It could be done by hand loader, by someone who is assembles ammunition as a hobby. Hand loaders can do a great many things and small manufacturers can do a great. many things that large manufacturers customarily do not do for a lot of reasons.

Q And you ---

A Like I say, it's possible that could happen.

Q And in your expert opinion is it likely for this type of a thing to happen with your man that practices a hobby of reloading firearm -- shell casings?

A We don't typically see a lot of hand loaded ammunition involved in the cases we examine. It's just -- it does come in from time to time that we'll see hand loaded ammunition, but most of the ammunition we see is factory loaded stuff.

Q All right. Thank you very much. We appreciate you being here.

THE COURT: Anything further, Mr. Brooker?

MR. BROOKER: Just one question to follow up what he says so I can make sure I clearly understand him.

RECROSS EXAMINATION

BY MR. BROOKER:

Q In followup I think to the last question that was just asked you is that, bullet number two ---

A Yes, sir.

Q Is it possible for bullet number two to be fired from a .38 or 357 if it's placed in a .38 or 357 cartridge?

A Yes.

Q Okay.

A It is possible.

Q It is possible?

A It is possible.

Q No further questions.

THE COURT: All right. You may step down. Thank you.

MR. DEBERRY: May he be released from his subpoena, Your Honor?

THE COURT: Any objection?

MR. BROOKER: Yes. No objection to his being released.

THE COURT: You may be released. Thank you.

MR. DEBERRY: The State calls Tyler Connor.

CLERK OF COURT: Sir, if you will come around and let me swear you in please, sir. Place your left hand on the Bible and raise your right hand.

WHEREUPON,

TYLER CONNOR,

having been duly sworn by the Deputy Clerk of Court, testified as follows:

CLERK OF COURT: You may have a seat in the witness box.

DIRECT EXAMINATION

BY MR. DEBERRY:

Q How are you doing? If you could just kind of speak up so everybody can hear you. It's most important for the jury can hear you and I understand you. Could you please just state your name for the record.

A Tyler Connor.
Q Tyler Connor?
A Yes, sir.
Q Okay. Tyler, how old are you?
A Nineteen.
Q Nineteen. What do you do now? Are you a student or do you work or?
A I'm attending school to get my high school diploma.
Q You're attending school for your high school diploma?
A Yes.
Q Okay. Do you have a job or are you just mainly focusing on school?
A School.
Q Okay. Where are you from?
A Sumter County.
Q Okay. Back in May of 2007 did you find yourself in a little bit of trouble?
A Yes, sir.
Q Okay. And where were you?
A DJJ in Columbia.
Q DJJ?
A Yes, sir.
Q Do you know what that stands for?
A Department of Juvenile Justice.
Q Okay. Is that kind of like jail?

A Detention center, yes, sir.
Q Detention center, okay. Why were you there?
A Assault and battery.
Q Okay.
A That was the charge.
Q Has that charge -- you were charged with assault and battery?
A Yes, sir.
Q Okay. And how is that -- has that charge been disposed of?
A Yes.
Q Have you been to court ---
A Yes.
Q ---and whatever happened? Okay. And now you're out?
A Yes, sir.
Q How long have you been out of DJJ?
A Since I was 16.
Q Okay. So about shortly after May or so you were out or?
A Yes, sir.
Q Okay. While you were in DJJ did you have an opportunity to meet Shawn Reaves?
A Yes, sir.
Q Okay. And do you see Shawn Reaves in the courtroom today?

A Yes, sir.
Q Where is he sitting?
A Right there.
Q Okay.
MR. BROOKER: Objection, Your Honor, to the in-court identification, I mean, it's not real information. Everybody knows Shawn Reaves is sitting in court. It's just highly prejudicial. I mean, this is not out of court identification where it's actually neutral. This is actually in-court identification where everybody knows that Shawn Reaves is sitting right there.
THE COURT: Overruled. Continue.
MR. DEBERRY: Thank you, Your Honor.
BY MR. DEBERRY:
Q So Mr. Reaves is sitting over there. Please let the record reflect that the witness has identified Mr. Reaves. All right, Tyler, how long have you been in DJJ -- or was he there when you got there or were you there first, or how does that work?
A I was there first.
Q Say again?
A I was there first.
Q Okay. And what -- under what circumstances did y'all meet?
A We were just put in a room together for holding.

Q Okay. Y'all were in a holding cell, was it a cell?
A Yes, sir.
Q Was it -- I mean, could either one of y'all leave or y'all were locked there together?
A We were locked in the room.
Q Y'all were locked there together?
A Yes, sir.
Q And did y'all start a conversation?
A Yes, sir.
Q Okay. Who initiated the conversation?
A I'm not sure.
Q Okay. So y'all were just talking back and forth?
A Yes, sir.
Q Okay. And did Mr. Reaves -- what did y'all ask each other?
A I think he asked me what I was in there for and I asked the same question.
Q And did he tell you why he was there?
A Yes, sir.
Q And please just speak clearly and loudly and try to remember everything he told you and let's tell the jury what he said.
A He just told me that he was in there for murder in the first degree.
Q All right. And did he tell you what he did?

A That he shot someone.
Q Okay. And he tell you anything about the crime?
A He did, but I'm -- I don't want to sit up here and not tell the whole story 'cause I can't really remember; it's been so long.
Q Did he tell you anything about what type of a gun used, or he used?
A I wrote a statement that I wrote when I was 16. I do remember him saying a .38 pistol.
Q Okay. Can I ---
MR. DEBERRY: Your Honor, I'd like to show him the statement to refresh his recollection.
THE COURT: All right.
BY MR. DEBERRY:
Q See if you can just take a second to read that.
(Pause while the witness reads statement.)
THE COURT: Give the statement back to the Solicitor.
BY MR. DEBERRY:
Q Tyler, did he tell you that he did the act alone?
A Sir?
Q Did he tell you he acted alone or did ---
A No, sir.
Q What did he tell you about it?
A He had a friend with him.

Q Friend of his was also? And did he tell you -- what did he tell you about he and his friend?
A After he shot, his friend also fired shots too. I'm not sure how many.
Q Okay. Did he tell you what type of gun his friend used?
A A 9-millimeter.
Q Okay. And did he tell you what he did with the gun?
A No, sir.
Q Okay. Did he tell you what he did after he shot the person?
A I'm not sure what he did right after, but I knew he went out of town. I knew he left town.
Q Told you he left town?
A Yeah.
Q All right. Can you remember anything else that he told you about the crime?
A No, sir.
Q All right. Did you believe him?
A Yeah, I believed him. I mean, he had no reason to lie about it.
Q Did you know him from previous?
A No, sir.
Q Okay. So you just met at DJJ, and he told you that he shot a person with a .38 and that somebody was with him

and shot also with a 9-millimeter?
A Yes, sir.
Q Okay. He told you he left town after the shooting happened?
A Yes, sir.
Q Okay. He told you this while y'all were together in a cell?
A Yes, sir.
Q Okay. I have no further questions. Answer any questions Mr. Brooker has.

THE COURT: Mr. Brooker.

MR. BROOKER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. BROOKER:
Q Mr. Connor.
A Yes, sir.
Q You said that you were charged with assault and battery. Wasn't you actually in there for burglary?
A No, sir, I had burglary charges too. I didn't know how to discuss that, whatever.
Q So let me make sure I understand correctly, is that where you had assault and battery and burglary charges ---
A Yes, sir.
Q ---or did you have ---
A I had assault and battery and burglary charges?

Q Okay. So not just assault and battery, you had burglary charges?
A Yes, sir.
Q Okay. And how did you come to give a statement about Shawn Reaves?
A My dad came to a visitation, and it kind of shook me I guess 'cause I never talked to someone who killed anyone. And I guess he went and told my lawyer and then my lawyer contacted -- I don't know who the detective name was, wanting a statement.
Q Now do you remember a Detective Richbourg with the Sumter City Police Department?
A Yes, sir, I do.
Q Do you remember your going to him and saying that Shawn Reaves was a bad dude and that he had said some things to you?
A No, sir, I never remember calling him a bad dude, if you would murder someone.
Q What did you remember going to Detective Richbourg and saying?
A I think my dad talked to him and he picked me up to take me to court, and I told him what was told, what Shawn told me in the jail.
Q Did you talk to Detective Richbourg?
A Yeah, I talked to him.

Q What do you remember telling Detective Richbourg?
A About the murder.
Q Okay. So it was not your father who contacted law enforcement here. It was actually Detective Richbourg after you said those statements to Detective Richbourg.
A I'm not sure who -- I was 16 at the time. I'm not sure, but I know I told my dad before I told anyone.
Q Okay. So you said you know you told your dad?
A Yeah.
Q You also told Detective Richbourg, but I think you testified that after you told your dad that your dad is the one that got in touch with detectives; is that correct?
A Yeah, he told my lawyer and my lawyer then got in contact.
Q Do you know whether or not that's to be the truth or is that something you're speculating about as to whether or not it was your lawyer that got in touch with detectives —
A I'm not one hundred percent sure.
Q —or either detective —
A I'm not one hundred percent sure at all.
Q So if you're not one hundred percent then why did you say it?
A It was either one of the two. It was Detective

Richbourg or my dad. I know we met at my lawyer's office so I was assuming that my dad told my lawyer and my lawyer so, I guess.

Q So some of your statement is based upon assumption and not necessarily fact?

A Yes, sir, that part of it would be.

Q That part of it is based upon assumption and not necessarily fact. Now you were in there I think you said for assault and battery and also for burglary.

A Yes, sir.

Q What was the disposition of your charges?

A What was I charged with?

Q No, what was the conclusion of your charges?

A I had a plea bargain for conspiracy to burglary and assault and battery.

Q And what was the basis of that plea bargain?

A Basis? What do you mean by that?

Q What was the plea bargain?

A I pleaded guilty to those charges and they dropped the rest of my charges.

Q You plead guilty to?

A Assault and battery and conspiracy.

Q Conspiracy. And then they dropped the burglary charge?

A Yes, sir.

Q And how much time did you spend in jail?

A I spent three months in DJJ, then I went home on house arrest for a month-and-a-half and went back to an evaluation center for 45 days. And then I went home, I'd say, for six months on probation and then to a camp for seven months.

Q That's a pretty sweet deal for being charged for burglary; is it not?

A Yes, sir, but I have, I guess, I don't know -- co-defendant or who they be, but people had the same charges as me, exact same charges as me, same cases, and got less than that.

Q Isn't it true, Mr. Connor, is that you've had an interest in trying to make a statement against Mr -- against Mr. Reaves so that you can receive some sort of benefit in connection with the charges that were pending against you?

A No, sir.

Q Okay. Now you told detectives, let me ask you this, how did you prepare for your testimony today?

A Prepared?

Q Yes. How did you prepare for your testimony today, or did you prepare for your testimony?

A No, I didn't prepare.

Q Did you read your previous statement or anything like that?

A Yes, I had read it.
Q Okay. So you read your previous statement in preparation for your testimony today?
A Yes, sir.
Q Now did you tell Lieutenant Blue that Shawn Reaves told you that he was selling drugs to somebody and that they started arguing and that the subject threw down some drugs, threw down his drugs, and charged at Shawn Reaves and Shawn Reaves shot at him?
A Yes, sir, that's how the story was told to me.
Q Okay. That's what you told them that Shawn Reaves told you that that what happen?
A Yes, sir.
Q Okay. Now do you know whether or not those set of facts is consistent with any other facts? And I'm just asking you do you know. If you don't know ---
A No, sir.
Q You know whether or not those set of facts is consistent with any other facts that's been testified in connection with this case today?
A No, sir.
Q You also said – and I'm assuming – what you're saying is, and you tell me what I'm wrong, based upon your statement is, is that you're saying Shawn Reaves says he was involved in a drug deal gone bad.

A Yes, sir.
Q Now you said that Shawn Reaves also told you that he shot the guy five times with a .38 and that the .38 didn't have a hammer?
A Yes, sir.
Q Now how much do you know about guns?
A Good bit.
Q Can a gun shoot without a hammer?
A No, sir, that's not what I was trying to tell the detective. That's actually one that you cannot cock with your finger until the trigger is pulled. I think it's a levin (ph) Light.
Q Well, that's what you have on your statement; is that correct?
A Yes, sir.
Q That he was shooting him with a gun without a hammer?
A No, can't do that; that's impossible.
Q It's impossible?
A Unless it has a firing pin in the hammer.
Q And you said also Shawn Reaves told you that he had girls that rented houses for him.
A Yeah, I remember him saying something about that. I'm not saying that's true or not. That's what I remember.
Q And he told you that his friend -- he told you that he shot the guy five times and his friend shot him twice?

A Yes, sir.
Q So that'd be a total of seven times?
A Yes, sir.
Q Do you know whether or not that has any -- whether or not that is consistent? And like I said, if you don't know you say you don't know. Do you know whether or not that is consistent with any other facts that's been testified in connection with this case?
A No, sir.
Q Now you testified on direct examination is that, is that you don't know what Shawn Reaves told you that he did with the gun, this alleged gun. But in your statement you said that Shawn Reaves says that he went and threw it in the river.
A I don't remember that. It might be in the statement. I'm not sure if we have the same statement.
Q You don't remember him telling you that or you don't remember writing that in your statement.
A I don't remember writing that in my statement.
Q Okay. If you'd hold on just a second. Is this your handwriting? And of course I have -- I am -- I have Tyler Connor's statement I think that's dated February 8 of 2007; is that correct?
A Yes.
Q That's the date on that?

A Yes, sir.
Q That is your signature at the bottom?
A That's my signature.
Q Now I'm gonna look in here and let me ask you -- let me find where it is. Okay, yeah. Does it not say, Shawn Reaves said that he threw the gun in a lake or pond?
A Yes, sir.
Q Okay. And you're saying that you don't remember writing that in your statement?
A I didn't write the statement.
Q Who wrote the statement?
A Detective Blue. That's not my handwriting on my statement. That's my signature. I told him. He videotaped it.
Q So Detective Blue wrote the statement for you and you signed it?
A Yes, sir, after I read it.
Q So you never told him that you threw any -- that Shawn Reaves said that he threw the gun in the lake or river?
A I don't remember, but I believe I told him that. Really, that just slipped my mind.
Q Well, let me see if I can get that straight. Previously you said that you don't remember telling him that he threw it in some sort of lake or river. Now you're saying that you do remember telling him that you

(sic) threw it in some sort of lake or river?
A Yes, sir.
Q Okay. Now can you read?
A Yes, sir.
Q Can you write?
A Yeah.
Q So Detective Blue wrote this for you?
A Yes, sir, that's not my handwriting.
Q Had you to sign it?
A Yes, sir.

MR. BROOKER: No further questions.

THE COURT: All right, anything further, Solicitor?

BY MR. DEBERRY:

Q Tyler.
A Yes, sir.
Q Did -- you said you signed this statement?
A Yes, sir.
Q All right. Did -- do you think you read it before you signed it?
A Yes, sir.
Q Okay. So Farmer, or Lieutenant Blue, would have written it out and then you had an opportunity to read it --
A To read it and sign it.

Q ---and you signed it?
A Yes, sir.
Q Okay. Was your statement also videotaped?
A Yes, sir.
Q Okay. Was what's in this -- by you signing this statement is what's in this statement accurate as far as what he told you?
A Yes, sir.
Q Okay. Thank you very much.
THE COURT: Anything further?
MR. BROOKER: No further questions, Your Honor.
THE COURT: Thank you. You may step down.
Solicitor, can we go one more witness today? You got one ready?
MR. DEBERRY: May we approach.
THE COURT: Sure.
(WHEREUPON, counsel approached the Bench for an off-the-record discussion.)
THE COURT: Members of the jury, we are concluded for today. We're going to start back Friday at 9. Tomorrow is a State holiday. We won't have a courthouse. We won't have a court reporter. We will not have a clerk of court so we have to come back Friday at 9 and hopefully we'll be through Friday. Thank you very much. Do not discuss the case. We'll come back here

Friday at 9. Thank you very much. We'll see you then.

(WHEREUPON, the jury was removed from the courtroom at 4:24 p.m., and the following proceedings commenced in open court.)

THE COURT: We'll be back Friday at nine.

(WHEREUPON, the proceedings were concluded for the day to be reconvened on November 12, 2010 at 9:00 a.m.)

THE COURT: Let's go ahead and bring the jury out.

(WHEREUPON, the jury was returned to the courtroom at approximately 9:15 a.m., and the following proceedings commenced in open court.)

THE COURT: Good morning. Solicitor, if you'd call your next witness.

MR. DEBERRY: Thank you, Your Honor. The State calls Lieutenant Farmer Blue, Marion Police Department.

WHEREUPON,

FARMER BLUE, JR.,

having been duly sworn by the Clerk of Court, testified as follows:

DIRECT EXAMINATION

BY MR. DEBERRY:

Q Could you please state your name and occupation for the record?

A My name is Farmer Blue, Jr. I'm a lieutenant with the

Marion Police Department of investigations.
Q Thank you. How long have you been with the Marion Police Department?
A I've been with the Marion Police Department for about eight years. Six of the last years have been in investigation.
Q Okay. And how long have you been lieutenant?
A I've been lieutenant for about 12 years.
Q 12 years?
A Yes, sir.
Q So you were employed somewhere before in law enforcement?
A I was employed before in South Carolina State Forestry Commission.
Q Okay. Lieutenant Blue, were you acting as a Lieutenant in investigations in May of 2007?
A Yes, I was.
Q Okay. And did you -- did you have an occasion or call to respond to [redacted] on May 13th?
A Yes, I did.
Q Okay. And can you tell the jury what your role was initially on that crime scene?
A Initially my role was to assist lead investigator on the case that we had a murder investigation going on.
Q Okay. And who was the lead investigator at that time?

A It was Captain Gray.
Q Okay. And did he remain lead investigator in this case?
A He remained the head investigator till I think somewhere around the 15th or 14th of May of that year.
Q So this happened on the 13th so you're saying the next day or day after?
A Yes.
Q Okay. And then whose case did this become?
A It became my case at that time.
Q Okay. Do you recall what the reason was for the transition in the case?
A As far as I recall, the reason was that Captain Gray had became ill and he had stepped out for an illness at that time.
Q Okay. So at that point two days later when you inherited this case as your own, however, had it been yours from the day one were there things that you would have done different?
A Yes, there would have been lot of other things I would have done different in the case.
Q How so?
A Well, during that time there was a lot of things that was done. There should have been some more, better evidence collected, and also the fact that possibly could

have been some accessory.
Q Okay. Lieutenant Blue, but you -- you responded to the scene along with Captain Gray and, I mean, were you one of the first investigators to respond to the scene that night?
A I was not one of the first, but I did respond to the scene that night.
Q And can you explain to the jury what was taking place when you responded to the scene that night.
A When I was -- when I responded after I arrived I was debriefed by Captain Gray what we had. I was briefed about suspects that were involved in the shooting, may have went back into the house, and that we needed to make entry into that resident to keep evidence from being lost and get the suspect.
Q Okay. So you're testifying that they had -- that they had information that night that people may have been inside the house who---
A Yeah.
Q ---possibly could have been involved?
A Yes, sir.
Q Okay. So at that situation was the house entered by law enforcement at that time?
A It was not entered. At that time there was attempts to get in. We had knocked on the door, knocked on the

windows surround the house, knocked on premises trying to get someone to come to the door, never could get anyone to the doors. At that time we did send for search warrant so we entered the residence.

Q And did you receive the search warrant before law enforcement entered it?

A Yes, I did. Yes, sir.

Q Okay. And upon entering the residence was, I mean, what type of situation was that? What did y'all think you were gonna encounter?

A We thought we may have encountered hostile gun fire and that it was dangerous stunts and things that we're going into, and so we went in because no one would come to the door. We had to go in with care and then we may have been fired upon once we entered the residence.

Q Okay. So law enforcement entered with their guns drawn?

A Yes, we did.

Q Okay. And once you entered the residence can you explain to the jury what you found.

A After we entered the residence we was -- as we was going in we called, we called, and stating, yelling police, police, that we was entering the residence. We kept on going down this hallway. We got to the one of the back bedrooms where we located three subjects hiding. At

that time there's one female and two males. And then in another bedroom right across from the hallway on the left, there's a female lying in the bed with two small kids. And at that time we got them all up, had them all come out, and to move their hands to see if they had a weapon or anything, and brought them back to the living room where we could interview them.

Q Okay. You remember -- do you remember the names of those individuals?

A The three individuals in the back bedroom that were found first was Joemilla Wilson Dozier and Brandon Deshawn Bellamy and Mr. McElveen.

Q Okay. And do you know if those three individuals were tested for gunshot residue?

A Yes, they were.

Q And do you know the results of those tests?

A I do. At the time I didn't, but now I know it was negative. There was no residue found on their hand to link them to shooting the gun.

Q Okay. Did you detain those people at that time?

A I did not detain them but they were detained.

Q Do you know what happened to them, I mean?

A They were detained and removed from the residence and taken to the police department where they was interviewed by Captain Gray and Detective Woods.

Q Okay. But at that point in time it wasn't your -- you were not the lead investigator?
A No, I was not.
Q Okay. Did anything else go on inside the house when y'all went in there?
A While we was in there we searched for a weapon that could have been used in the incidence, and during that time we did request that law enforcement be brought in with the search to so as any other suspect that may be hiding in the resident.
Q Okay, all right. And Lieutenant Farmer Blue, let's direct your attention now to when you received the case as your own. Can you just explain to the jury how you started up your investigation and what you were working with.
A Well, when I started the investigation I didn't have much to work with at the time because a lot stuff was not given to me at that time. Well, so what I had to do was I called back in the witnesses that was to the case and start all over again, start from ground floor, because I wanted to gain as much information about this case as I could before I proceeded with my investigation.
Q Okay. And Lieutenant Blue, what -- I mean, what leads did you have at that time and how did you continue your investigation?

A Well, at that time what I did after talking to the witnesses, I detained a name. At that time the only name that I had to go on was Mister. They stated that the shooter was a young guy and his name was Mister. I didn't know Mister. And so I started my investigation trying to find out who was Mister, and so I went around talking to find the neighborhood and I also went to the schools due to the fact that they stated that this Mister was young. I went to the schools to see if they may know, if students or anything may know a Mister. At that time I learned that Mister was also Mr. Shawn Reaves. And so at that time I went to verify that even a little bit more so I went to his mother. I went to his mother and asked her where her son because I had been asked questions about the autopsy statements. She stated to me she didn't know.

MR. BROOKER: Objection, Your Honor. Hearsay, Your Honor.

THE WITNESS: I apologize.

BY MR. DEBERRY:

Q Can't say what anybody else told you.

A Right.

Q Did you -- so you're testifying that you verified that Mister is also ---

A Yeah, yes, sir. I learned that Mister was also Mr. Shawn Reaves and that was information Woods verified.

And at that time I started looking to search for more witnesses in the case, and I did found another witness that stated that she -- I did locate another witness.

MR. BROOKER: Objection, Your Honor, again for hearsay.

THE COURT: Sustained.

BY MR. DEBERRY:

Q Okay. Just without saying what somebody told you what did you learn?

A I learned that Mr. Reaves was seen that night at the residence. Mr. Reaves was apparently did have a weapon in his hand. And Mr. Reaves was seen leaving that area running across the field and jumping into a vehicle and leaving the scene.

Q And did you speak with Mr. Reaves at that time?

A No, I did not. I didn't speak to him at that time due to the fact that Mr. Reaves had fled and went to Philadelphia.

Q Can you repeat that? Had you spoken to Mr. Reaves at that point?

A I did not, had not spoken to Mr. Reaves due to the fact that he had fled and went to Philadelphia and was unable to locate.

Q Did you know at that point in time that he was in Philadelphia?

A At that point I did not know he was in Philadelphia. All I know he was nowhere to be found in the city limits or county of Marion.

Q Okay. And do you know if he was of age he should have been in school during that time?

A Yes.

MR. BROOKER: Objection to leading, Your Honor.

THE COURT: Sustained.

BY MR. DEBERRY:

Q Do you know what he should have been doing in Marion County at that time?

A Yes, he should have been enrolled at Marion County adult, I mean, alternative school.

Q Okay. And was he -- and again, you stated he was nowhere around?

A He was nowhere to be found.

Q Okay. And at what point did you learn of his whereabouts?

A I did receive information to his whereabouts. I received information that he was in Pennsylvania, Philadelphia.

Q And Farmer, Lieutenant Blue, at this point in time during your investigation did you -- did you know that there was -- what did you know about the shooting?

A At that point in time of the investigation through my

investigation I learned that Mr. Shawn Reaves was in fact the shooter of a .38 weapon had been fired into the body of Mr. Applewhite.

Q Okay. Were you aware that there were two separate bullets?

MR. BROOKER: Objection, Your Honor, calls for speculation, and unless he's a direct witness he didn't know that. Now if he's testifying to what someone told him then of course that would be hearsay.

THE COURT: What was your question? I hadn't heard.

MR. DEBERRY: Your Honor, if I could, I'll just rephrase it this way.

BY MR. DEBERRY:

Q Lieutenant Blue, at any point in this investigation did you learn that there was two different bullets involved?

A Yes, I did. Yes, I did.

Q And when did you learn that information?

A After getting the information back from SLED and it was determined that there was two different bullets that was recovered in the body of Mr. Applewhite.

Q Okay. Was that before or after Mr. Shawn Reaves was detained or y'all detained him in Philadelphia?

A That was before.

Q Okay. Lieutenant Blue, did you do any further

investigation, or is there still an ongoing investigation pertaining a possibility of a second shooter?

A I did do further investigations. I myself have never closed this case because there's still ongoing investigation to the second shooter.

Q Okay. Through information of -- through the return of evidence and information that you've received back from the autopsy doctor and from experts at SLED, do you believe -- what makes you believe, or what do you believe about the defendant in this case?

A Through the investigations due to all the experts that was presented and all the facts in the case and due to witnesses that I interviewed myself, I came to the conclusion that Mr. Shawn Reaves ---

MR. BROOKER: Objection, Your Honor. I think that is a determination to be made by the jury. Of course he can't at least give a speculation with respect to ---

THE COURT: Any response?

MR. DEBERRY: Your Honor, I just say that I'm asking him how he came to his conclusion to charge Mr. Reaves with murder.

THE COURT: You're not asking for his conclusion, you're asking how he ---

MR. DEBERRY: That's correct.

THE COURT: But not his conclusion. All right.

Why don't you rephrase the question, let's hear that.
BY MR. DEBERRY:
Q What information did you use to charge Mr. Reaves with murder?
A The information I used was the fact from witnesses testimony, eyewitness testimony, and through my investigation.
Q And you testified that before you entered the house that night you had a warrant?
A Yes, I did.
Q Okay. And did you serve that search warrant on any individual?
MR. BROOKER: Objection to leading, Your Honor.
THE COURT: Overruled.
BY MR. DEBERRY:
Q What did you do with the search warrant?
A At the end of the search I did serve the search warrant on Ms. McElveen who is also inside the residence at that time.
Q Okay. Lieutenant Blue, was there any evidence that was requested from your department to be returned from SLED without being tested?
A Yes, there was some evidence that was requested to be returned to the police department.
Q What was the purpose of your requesting that to be

returned?
A I did not request it, but the purpose of that was to be returned was that we did know the identification of those items and who they belonged to. That's the reason why they was asked to be sent back.
Q Okay. And can you explain to the jury why your agency or did your agency notify SLED, or what did your agency notify SLED to do?
A We did notify SLED to come out, help assist in their investigation of the murder, and they came in and collected evidence at the scene.
Q Okay. And did you end that request of their assistance?
A No, I did not.
Q Okay. I have no further questions. Please answer any questions.

THE COURT: Okay. Cross.

MR. BROOKER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. BROOKER:

Q Lieutenant Blue, you know approximately what time was it that the -- if you'd indulge me just a second -- that the shooting took place?
A I don't know exactly. Possibly, I take a guess, I think it was around ten something at night.

Q You know what time it was called in?
A No, I don't recall.
Q Okay. Did you ever receive a CAD report from 9-1-1 to try to identify exactly what time it was called in?
A Yes, I think that CAD report was entered in at---
Q I hand you something here. Is this a copy of the CAD report that you received or obtained prior to your investigation?
A Yes.
Q Okay. What time does it say that that call first came in?
A It was 2204.
Q Is that 10:04?
A Yes.
Q That's 10:04 p.m.?
A Yes, sir.
Q And that was on May 13 of 2007; is that correct?
A That's correct.
Q Okay. Now on the same report, and I think you said this is a copy of the CAD report you received, does it not say that call arrival time at 2207?
A Yes, it does.
Q Okay. So, and what does call arrival time means?
A I would think that means the time the officer arrived on the scene.

Q That would mean time officer arrived on the scene.
A Correct.
Q Correct me if I'm wrong, is that the call in reference to a shooting came in, according to that CAD report that I think you said you obtained during the course of your investigation, at 10:04 p.m. on May 13 of 2007; and that roughly three minutes later which would be 10:07 p.m. that the first officer arrived on the scene; is that correct?
A That is correct.
Q Okay. Now when you arrived on the scene approximately what time was it that you arrived on the scene?
A I don't recall what time I actually arrived. I don't recall what time it was.
Q Who was there when you arrived on the scene?
A When I arrived on the scene Captain Gray, Detective Woods, Chief Smith, and some others was already on the scene along with the officers that had responded to the scene.
Q Now at that particular period of time had SLED Agent Kenny McKensy I think -- were you in the courtroom when he testified I think a couple of days earlier?
A Yes, I was.
Q Now at that time had SLED Agent Kenny McKensy arrived?
A No, he has not.
Q Okay. What is the first thing you did when you arrived

on that scene, Detective?
A The first thing I did was meet with Captain Gray where he briefed me what we had, the situation that we had.
Q Now I'm not gonna ask you what Captain Gray said to you, but at that particular period of time after the briefing -- I'm asking you from your understanding.
A Okay.
Q Okay. Was it your understanding that a shooting had taken place?
A Yes.
Q At that particular period of time was the crime scene secured off by crime scene tape?
A Yes, it was.
Q Okay. Now when you entered the scene did you have to sign the log-in?
A No, did not.
Q Okay. So you didn't sign the log-in?
A No. I did not.
Q Did you see the log-in when you entered this crime scene?
A Not as I entered, no, sir.
Q Okay. Did you talk with someone and said, someone put my name on the crime scene log?
A No, I did not.
Q Okay. But I have at least the crime scene log and

that's what's been as previously marked as Defense Exhibit 1. Is your name on that crime scene log?
A Yes.
Q How many times is it on that crime scene?
A Twice.
Q Why would your name be on the crime scene log twice?
A Only thing we have someone designated to an area each person name is entered to the crime scene. And at that time they must have forgot to put my name on there twice. Only thing I can -- I don't know.
Q So you're making a speculation about that; you don't know?
A I don't know.
Q Okay. Do you know the person who wrote this crime scene log?
A No, I don't.
Q Can you verify to the accuracy of the crime scene log if you don't know the person who was ---
A Can I verify to it?
Q Yes.
A No, I cannot.
Q Okay. You said that it was approximately that when you arrived there you don't know what time it was?
A No, I do not.
Q Now is there any particular importance of documenting

what time you arrived at a crime scene for the purpose of the investigation? Isn't that kind of important?

A Yes, it is.

Q Okay. So if that is kind of important to document what time you arrive on a crime scene, is there any indication on the crime scene log what time you or either the roughly over 20 something people that entered the crime scene what time they arrived?

A There's no indication on there; but as officers, when we arrive we sign off at the scene and that is logged into dispatch also from 9-1-1 at that time.

Q Okay. So officers, y'all -- could you repeat that again. I want to make sure I understand.

A As officers, when we arrive on the scene we sign in on scene, and at that time the 9-1-1 dispatch usually logs that in.

Q Okay. So I have a -- how did you generally log-in at the scene through the 9-1-1 dispatcher? Do you have a code, or do you have a -- do you have a code or identification number that's specific to you that dispatcher knows you're logging in?

A Identification number, yes.

Q And do you give that information number to the 9-1-1 ---

A Yes.

Q ---caller? And what is your identification number?
A A-3.
Q Your identification number is A-3?
A Yes.
Q Now this is 9-1-1 CAD report I think you previously said that you obtained. Can you take a look at this and see what time that A-3 arrived at the scene.
A Looks like 2230.
Q So that would have been 10:30?
A Yes.
Q You arrived at 10:30?
A Yes.
Q Okay. So exactly 10:30?
A Yes, sir, that's what it looks like.
Q Okay. 10 -- 2233; is that correct?
A Right.
Q So that would be 10:33.
A Yes, sir.
Q So you arrived then approximately 29 -- arrived at the scene approximately 29 minutes after shooting; is that correct?
A That's correct.
Q And I think you said the first thing you did when you arrived on the scene is that you were briefed by ---
A Captain Gray.

Q ---Captain Gray? Do you know what Captain Gray's code number is?

A Captain Gray is A-2.

Q He's A-2.

A Right.

Q Okay. If you'd indulge me for just a second. Now would you agree with me that A-2, and again, we're looking at the -- and for purposes of clarification and for the record, we make a motion to have the CAD report into the record.

THE COURT: Any objections?

MR. DEBERRY: No objection, Your Honor.

THE COURT: 16 in evidence without objection.

(WHEREUPON, State Exhibit No. 16 was marked for identification and received into evidence.)

BY MR. BROOKER:

Q Now of course, we're looking at again what's been marked Defense 16. This is the CAD report. And would you agree with me that the first entry, the first entry for I think A-2 I think in which you says represents Captain Gray, is roughly 10:26?

A I agree.

Q 10:26 p.m.?

A Correct.

Q So he was there roughly at 10:26 p.m.?

A Uh-huh.
Q So he arrived at the crime scene and I think you consider correct when you said that you arrived at 10:30. He had arrived at the crime scene roughly four minutes before you did?
A Yes, sir.
Q Okay. Now how long did it take for Captain Gray to brief you?
A It wasn't long because what we did, we had briefed quickly because we still didn't know if the shooters were still inside. We didn't know that we were going to ---
Q Was it greater than five minutes?
A About five minutes.
Q Roughly five minutes.
A Yes.
Q He debriefed you. After he debriefed you what did you do next?
A Next we surrounded the house and made sure that we waited to see if we could get a search warrant so we could get into the residence since we could not get anyone to come to the door.
Q So you surrounded the house. And repeat that again. So you surrounded the house?
A Yes, sir. We surrounded the house to prevent anyone from entering to prevent anyone from leaving.

Q Okay.
A And we waited till we get the search warrant in hand so we could get inside the residence?
Q And the purpose of that would be is if there was anyone in there that would potentially be involved in a crime or either the actual perpetrator of the crime itself and that would prevent that person from escaping; is that correct?
A That is correct.
Q That's the purpose of surrounding the house?
A Yes, that's correct.
Q Okay. So there was no possibility that person could have fleed, flee, or anybody who was in the house could have fleed the house without law enforcement knowing?
A That is correct.
Q Okay. I think you said that y'all then secured a search warrant?
A Yes, we did.
Q Now Lieutenant Blue -- excuse me, Lieutenant Hopkins was the one that was responsible securing that search warrant; is that correct?
A That is correct.
Q And what is Lieutenant Hopkins' code number? What was his code number?
A He would have been A-4.
Q He would have been A-4?

A Yes.
Q Indulge me for just a second. Now would you agree with me that A-4, according to this log-in sheet, around -- arrived roughly 10:33 p.m. as well as the state -- A-4. I'm sorry, I think it's 10:37.
A That was -- that was E-4 you were pointing to.
Q A-4. Just a second. I -- I think you're right. I don't see A-4. Could you take a look at that and see if you see A-4 on there. And of course, for identification purposes we're making reference to what's been marked as Defense Exhibit 16, the CAD report.
A That's not on here.
Q A-4 is not on here?
A No, sir.
Q And that would have been Lieutenant Hopkins' code number?
A Yes, sir.
Q Okay. Now you previously testified that everyone -- that there's no need for people to sign, at least indicate what time they arrived on the crime scene log because they check in through dispatch; is that correct?
A I didn't say there was no need. I said but that's usually what happens.
Q Okay. But it didn't happen in this case?
A No, sir.

Q According to the CAD report there was no indication that Lieutenant Hopkins ever arrived on the scene; is that correct?
A Yeah.
Q According to the CAD report.
A That is correct.
Q But he was there; is that correct?
A Yes, sir, he was.
Q You visually saw him; is that correct?
A Yes, sir.
Q Was he there before you?
A No, sir, he arrived shortly after me.
Q He arrived after you?
A Yes.
Q Okay. So these CAD reports is not necessarily a representation or at least records exactly who entered the scene; is that correct?
A It's supposed to be, but the officer is responsible for calling these in once they arrive on the scene. That he didn't call it in there's no way they could have recorded it.
Q So if an officer broke procedure and didn't call in then of course no way that the CAD, that the 9-1-1 report would reflected they ever entered the scene?
A Yeah, that is correct.

Q Okay. And is it policy that you do check in when you arrive?
A In a case like this, yes, sir.
Q So that would be a violation of policy not to check in.
A It's not a violation, but it is something definitely wrong because we need to know who all there on the scene.
Q And you need to know what time they were on the scene; is that correct?
A Yes, sir.
Q Now was it -- I think you previously said that it was Lieutenant Blue that was supposed to go get the search warrant?
A Lieutenant Hopkins.
Q I'm sorry, Lieutenant Hopkins that was supposed to go get the warrant in this case; ---
A Yes.
Q ---is that correct?
A That is correct.
Q Is this a copy of that warrant? You can review it.
A Yes, it is.
Q Now what time did y'all go into the home?
A I don't recall exactly what time it was. It was after -- it was after 12. I don't remember what time.
Q You don't recall what time you went into the home?
A No, sir, I don't recall what time it was.

Q I think you testified -- you testified that you entered the home before SLED Agent McKensy arrived; is that correct?
A That is correct.
Q Were you in the courtroom when SLED Agent McKensy indicated that he arrived around -- around I think it was 1:05?
A I was in here. I don't recall what time he said he arrived.
Q Sorry, somewhere around 1:30, I apologize.
A Yes, sir, I just don't recall but I was in here.
Q Now what time was that search warrant brought back to you?
A I don't remember what time, but it was brought back to us before we entered the residence.
Q Okay. So you don't know what time -- and you correct me if I'm wrong. You said you don't know what time you entered the residence, you don't know what time the search warrant was brought back.
A I don't recall what time it was, no, sir.
Q Who brought the search warrant back?
A Lieutenant Hopkins.
Q And who did Lieutenant Hopkins allegedly give it to?
A I served the warrant after the search of the residence.
Q You served the warrant after?

A After the search of the residence, yes.
Q And what time was that?
A I don't -- I don't recall.
Q What time was the search of the residence complete?
A I don't recall.
Q I hand you again, at least, the search warrant. What time does it say on the return for the search warrant?
A 1:30 a.m.
Q So it's 1:35 a.m, okay. How long did it take y'all to search? Tell me what you found. How long did it take y'all to search that residence?
A I don't recall. Around maybe five, ten minutes.
Q Took you five, ten minutes to search the residence?
A Yes.
Q Now when you got the search warrant did you review the search warrant?
A At that time, no, sir, I did not review it. No, sir.
Q You didn't open it up and look at it and check to see whether or not everything was -- see whether or not it was a valid search warrant?
A At that time, no, sir, I did not.
Q So when you're saying that when you served a search warrant, are you truly saying you served what you believed to be a search warrant? Isn't that the correct way to say it?

A That is correct.
Q Because you didn't review it?
A No, I did not review it.
Q Can you verify that Lieutenant Hopkins actually obtained a search warrant?
A It was one placed in my hand. As far as I can tell you, yes, I can verify that there was a search warrant given to me.
Q That was a piece of paper obtained, put in your hand, but you said you didn't actually looked at it?
A I didn't look at it, but I looked at the top sheet to make sure it was a search warrant that was given to me before we entered the residence.
Q Now at the Marion County at the -- at the Marion City Police Department y'all have a computer system where y'all type those warrants up on; is that correct?
A Some of them do; I don't. That is correct.
Q You don't type -- you didn't never type any search warrant?
A I haven't typed a search warrant in this case.
Q I know. I'm not talking about this case. I'm asking you, did you have a computer system at that time where you have to log in to get in that computer system?
A Yes, sir, but not on my system. Some of them do.
Q Some of them do?

A Yes, sir.
Q Okay. Now what's the warrant number on this particular warrant? I think it's on the front there. Isn't that warrant number 63 on the front of that?
A Yes, sir, 63.
Q That's warrant number 63. I'm gonna hand you this, is that -- have you ever seen the computer log-in screen when you logged into your computer?
A Yes, sir.
Q Take a look at that and—
MR. DEBERRY: Objection, Your Honor. I'd like to see that.
MR. BROOKER: Sure.
(WHEREUPON, counsel approached the Bench for an off-the-record discussion.)
BY MR. BROOKER:
Q If you would take a look at that. Tell me when you've looked at it.
A Yes, sir.
Q Okay. What is that?
A It's a user log.
Q Have you ever seen your -- have you ever seen a user log-in before?
A No, sir, I have not.
Q Okay. Do you recognize that user -- recognize that

user log-in or any of the names on that user log-in?
A Do I recognize any of the names?
Q Yes. What name do you recognize on the user log-in?
A Lieutenant Hopkins.
Q And let me ask you a question. Where it says MPD and hyphen 06 ---
MR. DEBERRY: Objection, Your Honor.
THE COURT: Grounds.
MR. DEBERRY: Your Honor, he testified he has not entered that computer. He did not swear out that search warrant. He didn't type it up. He didn't have anything to do with it other than he had in it in his hands before he went into residence that night.
THE COURT: And he said he's never seen the warrant. Sustained.
MR. DEBERRY: And he doesn't have any direct knowledge so he can't testify about that piece of paper.
THE COURT: Sustained.
MR. BROOKER: I can question him about what he knows about this particular document.
THE COURT: He says he doesn't know anything about it.
MR. BROOKER: Well, I haven't even finished questioning him, Your Honor. I think wouldn't that decision be a little premature?

THE COURT: Well, you asked him to look at, what it was, identify it, have you seen a user log before, and he said no.

MR. BROOKER: Yeah, I asked ---

THE COURT: If you'd like to continue with your foundation do it before you get into the log itself and let's just see where it goes.

MR. BROOKER: Certainly.

BY MR. BROOKER:

Q Do you know what that is?

A What what is? Repeat again.

Q What is in your hand?

A It says user log. That's the only thing I know.

Q Do you -- have you ever seen a user log to your computer system before?

A No, I have not.

Q Okay. Now when you log into your computer, when you log in your computer do you have to enter -- do you have to sign in or anything like that?

A Yes, I do.

Q And does your computer record what time you sign in?

A I have no idea.

Q Isn't it true that you have absolutely no way of knowing whether or not Lieutenant Davis ever obtained a valid search warrant?

A Lieutenant Hopkins.
Q Hopkins?
A All I know is what was brought back to me.
Q I'm talking to you from your personal knowledge. Do you have any personal knowledge as to whether or not that search, whether or not that was an actual search warrant that was contained in your hand other than you're saying you looked at the cover —
MR. DEBERRY: Objection, Your Honor. This is asked and answered.
THE COURT: Sustained.
THE WITNESS: No personal knowledge?
THE COURT: Go ahead. Move on to the next question.
MR. DEBERRY: Objection sustained.
BY MR. BROOKER:
Q Now but you entered that house; did you not?
A Yes, I did.
Q And when you entered that house who entered the house with you?
A Captain Gray, Detective Woods, myself, Lieutenant Hopkins, Officer Jackson, and as far as I remember there may have been a couple more. I don't recall who else.
Q That was Officer Jackson. I think you said Captain Gray.

A Yes.
Q I'm sorry, Officer -- and I apologize. That was Officer Jackson, Captain Gray.
A Detective Woods.
Q Detective Woods?
A Myself.
Q Yourself?
A And there may have been a few others, but I don't remember who they were.
Q There may have been a few others but you don't remember who they were?
A Right.
Q Let me give you this once again, what's been identified as Defense Exhibit 1. For those few others that you said you can't remember, could you take a look at that, what's been marked as Defense Exhibit 1, which is the crime scene log list, and see if that doesn't jog your memory with respect to who was there.
A Would y'all remember the fact who was there or who was entered the residence?
Q Who entered residence?
A No. This doesn't jog my memory. All the ones I called basically on here.
Q All the ones you called but you said there were a few others that entered the residence?

A There probably was a few others, but I don't remember who they were.
Q You don't remember who they were?
A No, I don't.
Q You don't remember seeing Ed Severance?
A He didn't enter the residence with us.
Q You remember seeing Ed Clements?
A I remember seeing them at the scene, but they didn't enter the residence with us that night.
Q Did Lieutenant Hopkins enter the residence with you that night?
A Yes, he did.
Q So he was one of the other ones that you didn't remember just a minute ago?
A I think I called out Lieutenant Hopkins.
Q Did Mayor Bobby Gerald enter the residence?
A No, sir.
Q Did you see Mayor Bobby Gerald at the crime scene?
A Yes, sir, he was at the crime scene, not in the crime scene.
Q Did he ever enter the crime scene barrier?
A As far as I know, no.
Q Now if he did not enter the crime scene barrier do you know why his name would be on the crime scene log-in sheet?

A The only way I can do is speculate on that. I don't know why. I can speculate why his name on there.
Q That's only what I'm asking you. Do you know why? If you don't know why ---
A No, sir, I do not.
Q ---then you can say no?
A No, sir, I do not.
Q Did you call him there?
A No, sir, I did not.
Q To your knowledge, and I'm asking you to your knowledge, do you know whether or not he had anything to do with the investigation that night?
A No.
Q Now you are a detective; is that correct?
A That is correct.
Q You were a detective that night; is that correct?
A That is correct.
Q How many murder crime scenes have you investigated prior to that particular matter? I'm not talking about the night of what turned into a murder crime scene. How many of those crime scenes have you investigated before?
A On ---
Q Prior to March ---
A Prior to March that 7th -- 13th of that year?
Q Yeah, prior to May 13th. May 13th.

A That was my first.
Q That was your first?
A Yes.
Q Now what sort of training do you go through in order to become a detective?
A Well, you have to go through the academy. You go -- after you -- got to go first to be a law enforcement officer which I did. And you have to be in law enforcement for so many years. And then what I did I completed training of detective training at level one detective school in Columbia back at the Academy. And there I had the extensive training to blood splatter and also training of fingerprinting, dusting, and collection of evidence.
Q Okay. So you have training with respect to collection of evidence?
A Yes, sir.
Q Now with that being said, would you agree with me that normally what you'd like to do is try to preserve the crime scene in its original state after the crime; is that correct?
A That is correct.
Q And would you agree with me that the purpose of that is, is that no evidence is lost either through people trampling over it or people bringing in evidence, or

people taking evidence out inadvertently on their feet or something else out on their person; is that correct?
A That is correct.
Q So with that being done, it's real important to limit the number of people to only those essential people, essential people to come on the crime scene; is that correct?
A That is correct.
Q In your opinion was that done that night?
MR. DEBERRY: Objection, Your Honor. He can't give opinion testimony.
THE COURT: I'm gonna overrule it. Go ahead.
BY MR. BROOKER:
Q In your opinion as an investigator, I think you said you are an investigator.
A Yes.
Q In your opinion as an investigator was that done that night?
A In my opinion?
Q Yes.
A Yes, it was.
Q Okay. So you said Bobby Gerald would be an essential on the crime scene?
A On at the scene, at the scene. Not on the scene, at the scene.

Q Okay. You said -- and can you verify that everybody who entered the crime scene was an essential person?
A I cannot verify that.
Q So if you can't verify that everybody who entered the crime scene was an essential person how would you then can previously state that you think the crime scene was properly secured and that only essential people was entering the crime scene?
A I can say that because I think that crime scene was secure; and I also think that some of those people, in fact, put on the crime scene log was not actually on scene. They was at the scene. And that's the reason why those names got put on there. And as far as my knowledge, that crime scene was kept completely secure.
Q Now I'm gonna repeat this and I'm gonna ask you again because I think you said something -- you previously said that you didn't keep track of the crime scene log?
A No, I do not.
Q So how can you make that statement if you didn't keep track of the crime scene?
A I can make that statement through my visual observation. I was there.
Q Through your visual observation?
A Yes, sir.
Q And you have a pristine memory with respect to every

last person who was on the scene?
A I don't have a memory like that for every person that was on the scene, but I try my best as an investigator to know what I case when I go in and know what's happening and see who is there at the scene and who is also around the scene.
Q Well, now that would not be true because you previously stated you could not even remember the people actually inside the home.
MR. DEBERRY: Objection, Your Honor, this is argumentative at this point.
THE COURT: Sustained.
BY MR. BROOKER:
Q Now there were certain evidence that was collected at the scene; is that correct?
A Yes.
Q And, of course, I'm gonna direct your attention to the evidence collected outside, okay?
A Okay.
Q Now you were in the courtroom, I think, when SLED Agent McKensy testified; is that correct?
A That is correct.
Q And I think SLED Agent McKensy testified that there were certain items that was requested. Do you remember SLED agent saying there were certain items that was

requested, returned to the Marion P.D. without being tested?

A Yes, sir.

Q Okay. I think -- let's talk about at least some of those items. There was a white hat. There was a white hat at the crime scene; was it not?

A Yes, it were.

Q And that was collected and taken into evidence; was it not?

A Yes, it were.

Q Now you had purpose of collecting that evidence and I'll ask you the same question I asked, I think, SLED Agent McKensy. The purpose of taking that evidence, taking that evidence into custody, is to try to determine -- I'm sorry, let me scratch that. The purpose of collecting that evidence is that that evidence -- well, that evidence was found very close to where the shooting took place, is that correct, outside?

A Yes, sir, that is correct.

Q And the purpose then would be of collecting that evidence, would be to try to identify maybe the owner or either the occupier of that hat that particular night?

A That is correct.

Q Okay. And of course, if you can do that would you agree with me that that then would put, would allow you

to be able to put people at the scene ---
A Yes.
Q ---that night?
A Yes, it would, or probably. Not actually, probably. That's just a stepping stone.
Q Okay. Now because a lot of times these crimes are puzzles you have to put together; is that correct?
A That is correct.
Q And you need to know all the players that are involved to try to figure out everything; is that correct?
A That is correct.
Q Okay. Now the white hat, was that ever analyzed?
A I'm not sure. There was -- there was -- all those items that was collected was collected by SLED.
Q Was that white hat returned to you?
A Yes, it was.
Q Did you receive any analysis from SLED pertaining to the testing of that white hat?
A I don't recall to be honest with you. I don't recall.
Q You don't recall?
A I don't recall if I did or not. There was a lot of stuff that we received back, and I don't know if that was one of them.
Q Do you have your file with you?
A No, sir, I do not.

Q You don't recall -- now do you have a white hat with you?
A Yes, they should be, yes, sir.
Q Is this the evidence that's contained in this bag here?
A Yes, sir.
Q Okay.
MR. BROOKER: Your Honor, we're gonna at least make a motion to at least take out this evidence. And of course, we're gonna ask him specific questions in reference to this evidence.
MR. DEBERRY: I have no objection, Your Honor. The evidence is right here.
THE COURT: Go ahead. Get it out quick, today.
(Pause.)
BY MR. BROOKER:
Q Is this the evidence that you brought here today in this box?
A Yes, it is.
Q Is this some of the evidence that was collected at the scene?
A Yes, sir.
Q Okay. Is this white hat in this box?
A It should be.
THE COURT: Lieutenant Blue, why don't you get down and go ahead and speed things up a little bit.

BY MR. BROOKER:
Q Could you find that white hat for us.
A (Witness steps down.)
Q Okay. And of course, is that the white hat, that's the actual white hat that was collected at the scene?
A Yes, it is.
Q Okay. Now there is a blue hat as well; is that correct?
A Blue or black, yes, sir.
Q Blue. I think it was roughly blue and black.
A Okay.
Q Do you have that?
A Yes, sir.
Q And you would agree with me that that was a hat that was collected at the scene that's depicted in Defense Exhibit, I think, Defense Exhibit Number 5?
A Yes.
Q That's the same hat that's depicted in Defense Exhibit Number 5?
A Yes, it is.
Q Was that hat tested?
A I don't recall; I don't know.
Q You know who the owner of that hat is?
A No, I do not know.
Q You know who the owner of the white hat is?

A No, I do not.
Q Now on direct examination you testified, too, that evidence was not tested because that evidence could be identified or the owner of that evidence could be identified?
A Yes.
Q That's not true with respect to all of the evidence?
A Some of the evidence that went to SLED -- all of the evidence I was talking about was evidence requested to come back without being tested. I don't know about what was requested to be tested and what was not requested to be tested.
Q Now why -- if you don't know who the owner of those hats were at the scene, why would you not test that evidence so that you can possibly identify the owner or either possibly identify the wearer of those hats at the scene that night?
A I don't know if they had been tested or not.
Q Do you have any -- do you have any reports from SLED indicating they'd been tested?
A I do have some reports. I don't -- haven't read those reports in a while. I don't recall or remember what was tested and was not tested.
Q But you definitely don't have any reports with you today?

A I don't.
Q For either one of those hats?
A No, sir.
A (Witness resumes seat on the stand.)
Q There was a Visa card that was taken at the scene; is that correct?
A Yes.
Q And that's the Visa card that's identified in Defense Exhibit Number 9; is that correct?
A That is correct.
Q Do you have that Visa card into evidence?
A No, sir, I do not.
Q That Visa card was submitted to SLED; was it not?
A Yes, it was.
Q And that Visa card was returned back to you, returned back to Marion County P.D. -- Marion City P.D.; is that correct?
A Yes, it was.
Q Okay. Was that card ever tested for prints or either any other DNA that might identify the owner or the carrier of that card that night?
A No, sir. As far as I can recall that card was not tested. As far as I can recall that card was claimed by Mr. Bellamy.
Q Which Mr. Bellamy?

A Brandon Deshawn Bellamy was, I think he's claimed that that card was belonged to his brother. Okay, I'm sorry.
Q Let me ---
A I think it was claimed by Mr. Bellamy.
Q You think it was claimed by Mr. Bellamy?
A Yes, as far as I know, yes, sir.
Q Do you have a release form showing ---
A I do not have.
Q ---this card was released to Mr. Bellamy?
A I do not, no, sir.
Q Now do you know what name was on that card?
A I think it was William A. Bellamy.
Q And I think you're saying that you believe that it was turned over to Deshawn Bellamy?
A Yes, sir.
Q But you don't have any record of it being turned over ---
A I can't be accurate about that, can't be sure about that. That's my belief.
Q Well, let me ask you this, and is that you stating what you think happened and not what you know?
A Yes, sir, that's correct.
Q So you really don't know whether or not it was returned to him?
A No, I do not.

Q But you would agree that was collected as evidence in the case and it was not tested?
A Yes, sir. Yes, it was -- it was not tested.
Q William Bellamy, do you know who William Bellamy is? I think it's William -- maybe A. Bellamy. Do you know who William A. Bellamy is?
A No, sir, I made an attempt to find out who William A Bellamy is and I still don't know who William A. Bellamy is.
Q And what sort of attempts did you make?
A I made attempts by talking to some people and also through searching the computer data bank to see I can locate this person, see if he ever been charged or in anything or have a residence whatever. I haven't found one.
Q Okay. Everything that you did in connection with this investigation did you document that?
A Not everything, no.
Q Okay. Is what you just explained to me was that documented?
A No, sir.
Q So you never -- so you never -- have -- you have no documentation indicating that you searched for Mr. William A. Bellamy?
A I have no documentation on it because I never found any

conclusion of that. If I'd found someone that said something I'd have wrote it down.

Q I have in my hands -- of course, I'm just gonna ask you one question about this. I have in my hands an investigative note. I think it's dated 5/21/of 2007; is that correct?

A Yes, sir, that's correct. Yes.

Q Is this similar to the type of investigative note that you would make when you conduct at least some sort of process or you engage in some sort of events in investigation?

A Yes, sir, that's an investigative report.

Q But what you just stated is not in any of your investigative reports; is it not?

A That should not be, no, sir. I try to put only facts in that report.

Q So we simply rely on your word today that you did that; is that correct?

A That is correct.

Q There was a Motorola cell phone that was collected at the scene; is that correct?

A That is correct.

Q And that's the same cell phone that's identified in Defense Exhibit 2; is that correct?

A That is correct.

Q That is the cell phone that collected at the scene?
A That is correct.
Q And that cell phone was collected in close proximity where the shooting took place?
A That's correct.
Q Okay. Now were you in the courtroom when Investigator Kenny McKensy testified in reference to the cell phone?
A Yes.
Q This cell phone was actually returned back to Marion P.D. would testing.
A Yes.
Q Is that correct?
A That's correct.
Q And it was returned back on the request of Marion P.D.; is that correct?
A That's correct.
Q Did you make the request to return that cell phone back?
A No, sir, I do not.
Q Do you know who made the request to return that cell phone back?
A No, sir, I do not.
Q Why was not that cell phone tested?
A I can speculate. That's all, that's all I can do.
That it was determined that the identity of the suspect

was knowed, the person that owned that was noticed, was knowable. They knew it.

Q Okay. Now I know you said you were speculating.

A Yes, sir, I'm speculating.

Q I'm gonna ask you, not based upon your speculation but based upon your knowledge because you are the investigator a couple of days afterwards; is that correct?

A That is correct.

Q Okay. So why didn't you have that phone tested?

A As far as I know that stuff was already either sent or sent back. I have no idea. I didn't test it because it was already sent back or it already been sent to SLED. I don't have any idea.

Q Okay. But whether it had been sent back to SLED or not you didn't say, you didn't say to yourself, well, why haven't this been tested, it needs to be tested?

A I didn't say then because as far as I know it was the object had been identified. Everything that was coming back I figured it had been identified.

Q You figured it had been identified?

A Yes, sir.

Q Do you know whether or not it had been identified?

A I do not know.

Q So you have no idea whether or not this cell phone has been identified.

A I know there was some phones that was identified. I don't know if that was one of the phones or not.
Q Do you know who was carrying this phone that night?
A I do not know.
Q Was any fingerprints taken off this phone?
A I do not know.
Q Was the -- was the interior of this phone checked to see telephone numbers, or text messages to try to identify the owner of the phone or the carrier of the phone that night?
A It was not by me. As far as I can say they had already been identified. It was not by me.
Q You said you don't know; is that correct?
A I don't know.
Q There was also a Kyocera cell phone found at the scene that night; is that correct?
A That is correct.
Q And you were in the courtroom when the SLED agent said that was sent back?
A Yes.
Q Did you -- without testing?
A Yes, sir, I was in here.
Q Did you have it sent back or request it to be sent back without testing?
A No, sir.

Q When did you learn that this along with the other items that I just asked you about, the ones I've previously asked you about, that they were all sent back without testing.

A After all the evidence started coming back from SLED that's when I known that, and that was all two weeks later.

Q Have you identified the owner of the Kyocera cell phone?

A I have not. I know Mr. McGill lost one and that he had claimed one. I don't know which one it was. I do not have any idea about those phones.

Q Do you have any -- do you have any records indicating who claimed these particular items?

A I do not.

Q Now these items are all evidence in investigation, right?

A Yes, sir.

Q And you have no idea who you turned them over to?

A I didn't turn them over to anyone. I ---

Q Okay. I'm sorry -- go ahead.

A I don't know what happened to these items. I didn't turn them over.

Q Okay. You don't know what happened to these items?

A No, sir, I do not.

Q So you're percolating that the Kyocera was turned over to —

A I'm speculating on the whole -- on all of that about the phone because I do not know.

Q Do you know -- who would know what happened to these cell phones?

A No, sir, I do not.

Q Are there any receipts indicating who signed for these items?

A No, sir. What I do, whenever I return items I use a property return sheet which when I return properties to anyone I get them to sign and I sign. And if there's a witness there I get the witness to sign and it's dated. I do not have none of those.

Q Is that a standard form in your office?

A That's a standard form for me.

Q That form was not used in this case to return property if it was returned?

A If it was returned by me it would have been, yes.

Q But do you have any forms from any of other people that was involved in this investigation that indicates they returned any of this property?

A No, sir.

Q So there was also, I think it was a — I think it was a U.S. Starom, a Starom. S-T, I think, A-R-O-M cell phone.

Is that correct?
A That is correct.
Q Third cell phone?
A That's correct?
Q Have you been able to identify the owner of that cell phone?
A Same through all those objects that were determined. I do not know anything about those objects.
Q You don't know anything about those items?
A No, sir.
Q Do you know whether or not those items was tested?
A I do not know.
Q Do you have any reports indicating that those items were tested?
MR. DEBERRY: Objection, Your Honor, asked and answered.
THE COURT: Not in relation to the third cell phone it has not. Overruled, continue.
THE WITNESS: Repeat the question.
BY MR. BROOKER:
Q Do you have any SLED reports indicating that that cell phone was tested?
A There may be some; I don't know. I don't know. I don't have any idea. I don't recall anything about those phones.