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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Kristi Lea Harrington, Circuit Court Judge

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THE STATE,

SC Court of Appeals

RESPONDENT,

V.

DERRINGER YOUNG,

APPELLANT

Appellate Case No. 2011-195446

RECORD ON APPEAL

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**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:**

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1 MR. WETMORE: Correct, Your Honor.

2 THE COURT: All right. And, Mr. Wetmore, you  
3 will -- should that change and you seek to introduce  
4 that statement, you will alert the Court so that we may  
5 have the appropriate evidentiary hearing?

6 MR. WETMORE: That's right, Your Honor.

7 THE COURT: And with that, Ms. Proctor, anything  
8 further?

9 MS. PROCTOR: Yes, Your Honor.

10 We have asked for a Counsel hearing, which we  
11 will have tomorrow. So we just ask since we haven't  
12 had that yet that he not bring up in his opening, that  
13 the bullets match, until we have that testimony.

14 THE COURT: Any objection to refraining from --

15 MR. WETMORE: Judge, I was going to just briefly  
16 mention in opening statement that the gun was tested  
17 and the gun matched the shell casings. I mean, I have  
18 a good-faith believe that's what's going to be  
19 introduced in trial.

20 MS. PROCTOR: That's our whole argument, so then  
21 we need the hearing before openings.

22 MR. WETMORE: The witness --

23 MS. PROCTOR: Use it in --

24 MR. WETMORE: -- actually is employed in SLED.

25 MS. PROCTOR: Well, use it in your closing.

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1 THE COURT: All right, counsel.

2 MS. PROCTOR: Yes, Your Honor.

3 MR. WETMORE: Well, he's -- from Columbia, so  
4 he's not here. He's going to come in and testify, so I  
5 anticipated having that hearing before he testified. I  
6 was going to mentioned -- I was going -- they did test  
7 the weapon and it did match the shell casing. And  
8 there's no physical evidence that links the defendant  
9 to the murder weapon. I was going to mention the fact  
10 that it did match up the shell casings, because I do  
11 believe -- I have good faith to believe that that would  
12 be the evidence at trial.

13 MS. PROCTOR: Your Honor, Ms. Mullaney can  
14 address this because this is her motion.

15 THE COURT: All right. Thank you.

16 MS. MULLANEY: I'm sorry. It is my motion.

17 In fact, that's exactly what we're going to be  
18 challenging, and we're going to be challenging the  
19 science behind that ballistic testimony that, in fact,  
20 they even can look at shell cartridges and say that  
21 they match to a degree of scientific certainty that  
22 they were fired from that particular gun. And there's  
23 been case law in the federal courts limiting that type  
24 of testimony.

25 So we would ask that the solicitor just not be

1 allowed to open on that until I've had a chance to  
2 cross-examine their expert and make my argument and  
3 present case law to Your Honor.

4 THE COURT: But, Ms. Mullaney, if Mr. Wetmore  
5 believes that there's a good-faith basis that the  
6 testimony will be admitted, and he indicates that he  
7 anticipates what the evidence will show and that  
8 testimony is excluded, and I indicate to the jury that  
9 nothing that he says or you say in your opening is to  
10 be considered evidence, what is the harm to your  
11 client?

12 MS. MULLANEY: Well, Your Honor, I think there's  
13 significant harm, given nowadays the CSI effect, that  
14 scientific evidence carries a great deal of weight with  
15 a jury and that if he were to open that these bullets  
16 were -- came from this firearm, to the exclusion of  
17 every other firearm in the world, that is exactly what  
18 I'll be presenting and arguing against that testimony.  
19 And I will be cross-examining the expert. There's been  
20 several critics in the field who feel that that, in  
21 fact, actually isn't a legitimate science and that that  
22 conclusion cannot be drawn. And so I ask that they not  
23 be allowed to open on it or that we then have the  
24 hearing before Your Honor rules on it.

25 THE COURT: Well, your witness is not available;

1 is that correct?

2 MR. WETMORE: That's correct. He's coming from  
3 Columbia. He's -- he was prepared to do the hearing  
4 before he testifies.

5 Judge, all I was going to elicit, all I'll  
6 allude to, is it matches the shell casings. I'm not  
7 going to say to the exclusion of any other weapon in  
8 the world. I'm not going to make -- I think it's  
9 important to give them the foundation and the roadmap  
10 that it does match the shell casings. That's what --

11 THE COURT: All right.

12 MR. WETMORE: Certainly if they cross this  
13 expert and it -- there is some doubt, they can waive  
14 it. But I do believe that the testimony, when he  
15 testifies, will be that it matches.

16 MS. MULLANEY: We object to that, and that's  
17 what we're going to be arguing against: that, in fact,  
18 they're not able to say that it matches and that it's  
19 clearly very subjective and it's not a science and --

20 THE COURT: Well, there is -- Ms. Mullaney,  
21 isn't there a report, I'm assuming, that indicates that  
22 it does match?

23 MS. MULLANEY: Well, Your Honor, I haven't --  
24 also -- I've not been turned over his bench notes, his  
25 -- the micropheragram [phonetic]. All of that he was

1 going to bring to me and I was going to go over it with  
2 him tomorrow. I spoke to the SLED agent last week and  
3 we were going to go over that tomorrow. So I haven't  
4 even been given all the scientific reports that he has  
5 done to generate his report.

6 THE COURT: But there is a report generated from  
7 a witness that says that the ballistics test was done  
8 and there was a match; is that correct?

9 MS. MULLANEY: There's a one-page report. But I  
10 have not been turned over any of his notes or  
11 photographs or diagrams showing how he came to that  
12 conclusion that it, in fact, was a match.

13 THE COURT: But there is a conclusion that --  
14 you agree that there is a conclusion made by that  
15 witness; correct?

16 MS. MULLANEY: I agree that he made that  
17 conclusion. I don't necessarily agree with that  
18 conclusion. And that's what I'm going to be  
19 challenging; and that's going to be crux of my Counsel  
20 argument, and that's going to be the testimony that I'm  
21 going to be seeking to preclude or at least limit to  
22 some degree.

23 THE COURT: All right. Mr. Wetmore, anything  
24 further?

25 MR. WETMORE: Judge, she's bringing up -- I

1 believe certainly is good things for the jury to waive,  
2 but I believe that the witness will be credible. And  
3 his report will be admitted. And so that's the basis  
4 for me mentioning it in opening statement. So I'm not  
5 going to dwell on it, but I do think it's worth  
6 mentioning. I believe that the evidence will come in  
7 that he believes there's a match. Now, Ms. Mullaney  
8 might have some different considerations, and the jury  
9 can certainly waive those. But that would be his  
10 testimony, and I believe it's reliable, so therefore I  
11 would like to just briefly mention it in the opening  
12 statement.

13 THE COURT: And, again, Mr. Wetmore, you believe  
14 that there's a good-faith basis that that testimony  
15 will be admitted?

16 MR. WETMORE: Absolutely, Judge. That's  
17 essentially what he's going to testify to. That's  
18 what's in his report. I can pass up his report, if you  
19 would like, just to see what it says. But that's going  
20 to be the basis of his testimony.

21 MS. MULLANEY: Your Honor, essentially what  
22 they're saying is that they are -- that they don't  
23 believe that Your Honor is going to grant my motion or  
24 consider my motion in any way. And I don't think it  
25 prejudices the State in any way whatsoever to leave

1 that and they can close on that. But in opening, until  
2 the testimony has been presented, until I've had a fair  
3 and full opportunity to examine the expert and to look  
4 at his reports, which have not been turned over to me  
5 yet, I would ask that they not be allowed to comment on  
6 that until after the Counsel hearing.

7 THE COURT: Did we contemplate this when we said  
8 we were going to do this Counsel hearing in the  
9 morning?

10 MS. PROCTOR: I don't know. I didn't think he  
11 would open on it because he knew we were having the  
12 hearing.

13 MS. MULLANEY: If we knew he was going to open  
14 on it, then we would have, you know, asked that the  
15 SLED agent be here today. But obviously, to  
16 accommodate his schedule -- but we didn't know that he  
17 was going to open on it.

18 MR. WETMORE: Well, Judge, like I said, I  
19 believe that the standard is good-faith effort that the  
20 evidence will be introduced. Obviously, with any piece  
21 of evidence, when it's a witness I can argue -- or I  
22 can mention it in opening and that witness could drop  
23 dead and -- and, you know, I can't predict everything  
24 that's going to happen. But I have a good-faith that  
25 that's -- that's what's going to happen.

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1 THE COURT: All right. I will allow it, based  
2 upon the information that has been presented. I  
3 believe that -- according to the State, there's a good-  
4 faith basis that the evidence will be admitted, based  
5 upon the information that the State has. This is in no  
6 way to make any reference to how the Court will rule on  
7 the hearing or the admissibility of the evidence  
8 tomorrow. I indicate more -- on more than one occasion  
9 that the information that is contained in the State's,  
10 as well as the defendant's, opening and closing is not  
11 to be considered evidence. And so I believe that at  
12 that point if the State has indicated that there is a  
13 good-faith basis that the evidence will be admitted,  
14 then it is appropriate evidence or statement for  
15 opening.

16 Ms. Mullaney, Ms. Proctor, your argument and  
17 objection is I believe well-noted for the record.

18 MS. PROCTOR: Your Honor, while we're on  
19 openings, it came to my attention that the solicitor is  
20 going to want to have the officer show a picture of a  
21 tattoo of Mr. Young, through Officer Gomes, and I just  
22 want to know if we're going to get into that in  
23 opening. And, if so, I will argue that motion now.

24 THE COURT: All right. And there's a picture of  
25 a tattoo?

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1 MR. WETMORE: Judge, the defendant, at the time  
2 of the arrest had a tattoo of the handgun that looks  
3 almost identical to the murder weapon. He's got it  
4 like right in his waistband, tattooed. The officer  
5 that was booking him in took a picture of it.

6 I'm in the process of researching the issue and  
7 I believe there's some argument to be made that it is  
8 non-testimonial, physical, characteristic evidence and  
9 I can actually compel him to display it to the jury.  
10 I'm not going to mention it in opening, though.

11 THE COURT: All right.

12 MR. WETMORE: As we approach that witness, I'll  
13 prepare a memo or hand you up some cases about that.

14 THE COURT: Thank you.

15 All right. Anything further?

16 MS. PROCTOR: Just to save time, Your Honor,  
17 it's my understanding that the laywitnesses will  
18 testify this afternoon. And so that we don't have to  
19 have the jury go in and out, I just wanted to briefly  
20 go over a prior record so I will know whether or not I  
21 can ask about it.

22 I think the first witness will be Joshua Pryder?

23 MR. WETMORE: Joshua Crider.

24 MS. PROCTOR: Joshua, I mean. Joshua Crider.

25 And he has a pointing and presenting a firearm in 2005

1 that he received eighteen months. And he -- I don't  
2 understand these federal charges. He has a money-  
3 laundering and a cocaine. And I know he received I  
4 think eighty years, either eighty or forty.

5 MR. WETMORE: Judge, he had a big sentence in  
6 federal court -- I'm not sure of exactly the number --  
7 but he has testified against the co-defendants in that  
8 federal case and is awaiting his general departure so  
9 it's kind of a in-process as to what the final sentence  
10 is going to be.

11 MS. PROCTOR: And it's my understanding that  
12 part of his testifying today will possibly lead to  
13 maybe a lower sentence, or he's hoping.

14 THE COURT: And so your question, Ms. Proctor,  
15 is whether or not you may inquire of that sentence?

16 MS. PROCTOR: Or how would you like me to  
17 inquire?

18 I know I can't go about the sentence but can I  
19 say you have -- do you want me to say money-laundering  
20 in federal court or do you have -- how would you want  
21 me to approach that?

22 THE COURT: What does the charge reflect? It's  
23 a reflection of money-laundering?

24 MS. PROCTOR: Mine says money-laundering.

25 MR. WETMORE: I don't know anything about money-

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1           laundrying. He has a -- he's already pled guilty in  
2           federal court to a drug charge. And of course--

3           THE COURT: Is that the one to which he may  
4           receive a benefit --

5           MR. WETMORE: That's correct.

6           THE COURT: -- to testifying here today?

7           MR. WETMORE: That's correct, Judge. He may  
8           very well receive that. I have told him, you know, no  
9           promises, no threats, but I'll certainly let your  
10          attorney know what you have done.

11          THE COURT: All right. Mr. Wetmore, any  
12          objection to Ms. Proctor inquiring as to the federal  
13          drug charge and whether or not his testifying here  
14          today will be of a benefit?

15          MR. WETMORE: Judge, I'm going to ask him about  
16          that. I'm going to clear that up.

17          MS. PROCTOR: Okay.

18          MR. WETMORE: But the other -- the pointing and  
19          presenting she mentioned, I would argue that's not  
20          relevant.

21          THE COURT: The pointing and presenting?

22          MR. WETMORE: Yes, Your Honor.

23          That's from 2004. It happened well before this,  
24          so I argue it's not relevant. I can see her argument  
25          that he might have a motive to help himself out by

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OPENING STATEMENT

MR. WETMORE: My name is Burns Wetmore. I introduced myself earlier. I represent the Solicitor, the prosecutor in this case. I appreciate you being here today. I know this is probably not your favorite thing to do, but we can't do our job without you guys doing your job. So I appreciate your being here.

This case happened a while back. It happened around thanksgiving of 2007 in North Charleston. And if you remember, that was back when the bars and the clubs up in North Charleston could stay open almost all night. They have to close at 2:00 now, but back in 2007 nobody was shutting them down so they stayed open late. And it was about 3:00 a.m. when this happened. And it happened at a place called Club 843 off of Dorchester Road, kind of near Dorchester and Cross County, and obviously late at night.

People were drinking, doing what else people do at clubs. Some pretty serious fights had broken out inside of the club. And as the security tried to gain order, they began getting people out of the club, turning the lights on, and the fights that were happening inside the club spilled out into the parking lot.

And the defendant, Derringer Young, was involved

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1 in these altercations. And immediately upon coming out  
 2 the front door, he produces a handgun and he shoots the  
 3 first victim in the side, right by the door, actually  
 4 in the fire lane right outside the door of the club.  
 5 And that victim lived. He was hit in the side, but he  
 6 made it. And the defendant proceeded to walk across  
 7 the parking lot out to his car. Actually, pretty  
 8 nonchalantly, as the witness will testify, walked right  
 9 out and was getting in the car and he was going to take  
 10 off.

11 Well, very poor judgment on another individual's  
 12 part. The second victim went to approach Mr. Young,  
 13 the defendant, Derringer Young. After he had just seen  
 14 him shoot the guy, he approached him. Probably poor  
 15 judgment because the victim in this case approached the  
 16 defendant, before he left, and the defendant very  
 17 coldly and coolly pulled the gun back out and shot this  
 18 guy in the face, point blank in the face, killed him  
 19 instantly. He died right there in the parking lot.

20 Well, the defendant now has an opportunity, so  
 21 he took off. He took off in the car with his cousin  
 22 and with his date for the night, his girl for the  
 23 night, and as he took off and he got a little ways away  
 24 from the club -- and he threw the gun out the window  
 25 about a mile from the club.

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1           That night the police responded instantly, and  
2           the security guard who was working the door, working  
3           the club, gave a very detailed description of the car  
4           and identified the defendant as the shooter. No  
5           question. He told the police exactly what they were  
6           driving in, exactly who did the shooting. And, sure  
7           enough, the police stopped him barely a mile from the  
8           club in the exact car, the exact people that the  
9           security described.

10           And the defendant's cousin was driving the car  
11           and immediately says, listen, the defendant was the  
12           shooter. He identifies his own cousin, the defendant,  
13           as the shooter. He didn't waste any time. No question  
14           about it. He was driving, this man was the shooter.

15           The other person in the car I told you was the  
16           date, the girl for the night. There's some confusion  
17           as to whether it's a girlfriend or just a date, casual.  
18           She wanted nothing to do -- she instantly said, hey,  
19           this man was the shooter. No question. Everybody  
20           tells the police he's the shooter. And the girl even  
21           went a step further. She took the police back to the  
22           very spot where he threw the gun out. So they pick it  
23           up, recover the murder weapon. Everybody says that  
24           he's the shooter and the girl even takes them to --  
25           takes them to the gun. All that happened that very

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night.  
Since that night, in working the case two major things have happened in my mind. I describe it as two distinct things. The first thing is that the murder weapon was tested, and no doubt it works. It's got abrasions, it's got road-rash on it, where he slung it out the window, and it matches the evidence at the scene. So that's been tested.

Now, I'm going to be honest with you. There's no fingerprints on the gun, no DNA on the gun. In fact, the only thing that they found on the gun was an animal hair, oddly. But no -- there's no DNA, there's no fingerprints, on that gun. But I want to let you guys know this is not like TV. This is not CSI. It is very rare to get DNA, it's very rare to get fingerprints, off of any gun. So let's be real. This is real life. Okay? This is not a TV show. There's no DNA, there's no fingerprints. This is real life, and we don't always have it. In fact, it rarely happens.

The other thing I would mention to you about that is that DNA, fingerprints, are to identify an unknown suspect. Well, we know who the suspect is in this case. It's the defendant. We have three people that saw the gun in his hands shoot it. We have the

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1 security guard, we have the cousin, we have the  
2 girlfriend. They all saw the gun in his hands as he  
3 shot the first man, as he shot the second man, and as  
4 he threw the gun out the window. So we're going to  
5 give you plenty of evidence that puts the gun, the  
6 murder weapon, in his hands. You don't need the DNA.  
7 You don't need the fingerprints. This is real life.

8 After that night, the gun was tested, one. And,  
9 number two, I think it's very important -- you're going  
10 to hear about how this man, the defendant, ran his  
11 mouth about this incident. He talked about this. You  
12 would think this would be something you would not  
13 mention to anybody. But he talked about it quite a bit  
14 in the jail. And he bragged about it. I guess it sort  
15 of appeared to be tough around the other inmates.  
16 Bragged about it. Bragged about what he did.

17 And, in fact, he had an altercation with  
18 somebody else and he threatened them, using this very  
19 incident. He said, I'm going to shoot you in the head  
20 like I shot the guy in the head at Club 843. He goes a  
21 little farther than that. Very specifically, and just  
22 unbelievable. He said, I'm going to shoot you in the  
23 head and I'm going to watch your brains spill out, just  
24 like I did the guy at Club 843. He can't stop talking.  
25 So since that night, the gun has been tested. And he

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1 continues to talk about the incident, using it to pump  
2 himself up, using it to threaten others. That's  
3 inexcusable.

4 And this is a strong case, a strong case against  
5 this man, and I'm going to ask you to find him guilty  
6 of the murder of the fellow that was killed, and for  
7 assault and battery with intent to kill for the victim  
8 that was shot but lived. Thank you.

9 THE COURT: Ms. Proctor?

10 MS. PROCTOR: Thank you, Judge.

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FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-826-6313

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JOSHUA CRIDER,

Having Been First Duly Sworn,  
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. WETMORE:

Q. Joshua, how old are you?

A. I'm twenty-six.

Q. Did you grow up around here? Are you --

A. I grew up --

Q. -- have you been here most of your life?

A. -- in Florida, and I've been here about the last  
eight years.

Q. Eight years?

A. Yes, sir.

Q. You've been working here or going to school  
here?

A. Been working here.

Q. Working here?

A. Yes, sir.

Q. Have you got family here?

A. I have a wife and four kids.

Q. Okay. Tell me this. Getting to the -- your  
background, go ahead and be honest with everybody. In  
2004, were you convicted of pointing and presenting a  
firearm?

MIA PERRON, CVR-CM

-79-

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1 A. Yes, sir.

2 Q. What's that all about?

3 A. I got wrapped up into a disgruntled dispute  
4 between a boyfriend and a girlfriend. And the gentleman  
5 was assaulting the female --

6 MS. PROCTOR: Objection, Your Honor. May we  
7 approach?

8 THE COURT: You may.

9 [Whereupon, an off-the-record bench conference  
10 is held]

11 THE COURT: Sustained as to relevance.

12 Mr. Wetmore, you may proceed.

13 Q. [Mr. Wetmore] Joshua, I just want to be honest.  
14 You do have a conviction. And just very briefly tell us  
15 what this is all about. It sounds pretty serious.

16 A. I got wrapped up in an argument between a  
17 gentleman and his girlfriend and instead of calling the  
18 police, I tried to handle the situation myself and pointed  
19 a shotgun at him and --

20 Q. And obviously a mistake on your part?

21 A. Yes, sir.

22 Q. You pled guilty to it?

23 A. Yes, sir.

24 Q. That happened way back in 2004?

25 A. Right.

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1 Q. Now, this incident happened in November of 2007.  
2 Okay? At that time, where were you working?

3 A. Club 843.

4 Q. And where is that?

5 A. On Dorchester Road, at the corner of Cross  
6 County and Dorchester, in the Food Lion shopping center.

7 Q. Okay. What did you do at the club? What were  
8 your duties, your responsibilities?

9 A. I started out -- when I first started working  
10 there two and a half years before this incident, I was  
11 just doing regular bouncing, just checking IDs at the  
12 door, patting down.

13 Then over the time, I moved up, ended up  
14 basically running the club by myself when the owner was  
15 not present. I was responsible for the on-goings of the  
16 nightly events at the club.

17 Q. So by November of 2007, you were managing the  
18 club, basically?

19 A. Yes, sir.

20 Q. Now, you were working that night, November 22nd,  
21 2007?

22 A. Yes.

23 Q. Okay. Do you remember what event -- what was  
24 going on that night at the club?

25 A. There was a gentleman, from I guess the local

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1 area, that was doing a CD-release party. A group had  
2 rented out the club for the night and they supplied their  
3 own DJ. And basically all we were responsible for was to  
4 have the place available and the alcohol available. They  
5 were pretty much running their own show.

6 Q. So it was some -- it was some musicians that  
7 were having a CD release party --

8 A. Yes, sir.

9 Q. -- like a rap star or something?

10 A. Yes, sir.

11 Q. And they -- you were managing the club?

12 A. Right.

13 Q. Security --

14 A. Yes, sir.

15 Q. -- as one component of that?

16 Was it getting packed in there that night?

17 A. Yes, sir.

18 Usually, about -- after between 2:00 and 3:00 in  
19 the morning, we usually got packed because most of the  
20 other clubs in Charleston close, and at that time we were  
21 staying open till 5:00 or six o'clock in the morning. So  
22 we were kind of like the after-party for the after-  
23 parties.

24 Q. Okay. So everybody would come there after the  
25 other bars had closed in the area?

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1 A. Yes, sir.

2 Q. And so that night, November 22nd, 2007, it was  
3 pretty crowded at the music party?

4 A. Yeah. Yes, sir.

5 Q. Now, was the Defendant Derringer Young there?

6 A. Yes, sir.

7 Q. Okay. Do you happen to remember what he was  
8 wearing?

9 A. A black tee-shirt, a long-sleeved tee-shirt,  
10 black-colored pants, and a black-and-white ball cap with  
11 the letter A on the front.

12 MR. WETMORE: Can I approach? May I approach?

13 THE COURT: You may approach.

14 Q. [Mr. Wetmore] So in evidence here -- let's  
15 start I guess down towards the bottom. We have these.  
16 These are the pants?

17 A. Yes, sir.

18 Q. These are the pants that he was -- that he was  
19 wearing.

20 What kind of shirt did you say he had on?

21 A. A black long-sleeve.

22 Q. Is this the black long-sleeve shirt he was  
23 wearing?

24 A. Yes, sir.

25 Q. What else did he have on that was any kind

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1 of --

2 A. A black-and-white ball cap with the letter A on  
3 the front of it.

4 Q. Letter A? Like the Atlanta Braves or something?

5 A. Something like that, yeah.

6 MR. WETMORE: This stuff is sealed up.

7 Q. [Mr. Wetmore] Is that it?

8 A. Yes, sir.

9 Q. This is the outfit right here he was -- he was  
10 wearing?

11 A. Yes, sir.

12 MR. WETMORE: Okay. Your Honor, I would like to  
13 mark that as State's 1, 2 and 3.

14 Any objection?

15 MS. PROCTOR: Without objection.

16 THE COURT: Well, my court reporter needs to  
17 mark it.

18 MR. WETMORE: I'm sorry. Could you just hand me  
19 the -- those stickers?

20 Number 1 is the pants.

21 [Whereupon, State's Exhibit Number 1 is marked  
22 by Mr. Wetmore]

23 MR. WETMORE: Number 2 is the shirt.

24 [Whereupon, State's Exhibit Number 2 is marked  
25 by Mr. Wetmore]

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1 MR. WETMORE: And 3 is the hat.

2 [Whereupon, State's Exhibit Number 3 is marked  
3 by Mr. Wetmore]

4 MR. WETMORE: Is that okay, Madam Court  
5 Reporter? Is that all right?

6 THE COURT REPORTER: Yes.

7 THE COURT: All right. And at this time you  
8 wish to admit into evidence 1, 2 and 3; is that  
9 correct?

10 MR. WETMORE: Yes, ma'am.

11 THE COURT: Any objection, Ms. Proctor?

12 MS. PROCTOR: None, Your Honor.

13 THE COURT: State's 1, 2 and 3 into evidence  
14 without objection.

15 [[Whereupon, State's Exhibit Number 1 is  
16 admitted into evidence by the Court].

17 [Whereupon, State's Exhibit Number 2 is admitted  
18 into evidence by the Court]

19 [Whereupon, State's Exhibit Number 3 is admitted  
20 into evidence by the Court]

21 THE COURT: You may proceed.

22 Q. [Mr. Wetmore] So you noticed -- so you noticed  
23 he was wearing those clothes?

24 A. Yes, sir.

25 Q. All right. Now, tell me: about three o'clock,

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1 what was going on inside the club?

2 A. Another gentleman was getting in an altercation  
3 with a female patron and the club kind of just stopped. I  
4 guess they were having a disagreement about something that  
5 evening and apparently I guess he struck her. And  
6 apparently that irritated a lot of people. And one of the  
7 people was the DJ so the DJ stopped the music. When the  
8 music stops in a club, everybody kind of turns and sees  
9 what's going on.

10 My security officers and I got in the middle of  
11 the situation and tried to get him out of the club to find  
12 out what was going on, because it's easier to deal with a  
13 situation like that on the outside than it is with a whole  
14 bunch of people on the inside.

15 Q. Sure.

16 A. We tried to get him out of the club. He decided  
17 that he was going to fight and tussle with us, so we tried  
18 to restrain him as best we could. I ended up grabbing him  
19 and pulling him outside. I got about halfway through the  
20 club and one of his friends grabbed me in a choke hold.  
21 And so I released him, turned around, and shoved the  
22 gentleman that had me in a choke hold back up towards the  
23 bar and he tripped over a bar stool.

24 At that point in time, my officers -- any time  
25 that my officers would get in a conflict, we would always

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1 get them out of the situation and let somebody else step  
2 in and take over. That way, you're not getting two people  
3 tussling back and forth and one of your security guards  
4 fighting a patron. That's the last thing that we always  
5 needed [phonetic]. So our standing rule was if you get in  
6 an altercation with somebody, you were to remove yourself  
7 from the situation, which I did.

8 I went into the area behind the bar, kind of  
9 out of sight, let my other guys handle it, get him  
10 outside.

11 Q. So because you had had to physically pull him  
12 out, you backed off so there weren't any further conflicts

13

14 A. Correct.

15 Q. But the other security guard grabbed him -- get  
16 him out?

17 A. Yes, sir.

18 He decided to keep fighting. And a group of his  
19 friends thought that they were going to I guess protect  
20 him, keep him in the club, or, you know, try and get my  
21 security officers off of him, and it turned it into  
22 basically an all-throw-out brawl.

23 Q. So there was a -- there was a pretty good brawl  
24 inside the club?

25 A. Yes, sir.

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1                   Chairs started flying, tables got flipped over,  
2 beer bottles were getting thrown.

3           Q.       Really?

4           A.       So it was a fairly eventful evening.

5           Q.       And while this was going on and -- the defendant  
6 was still inside the club; right?

7           A.       Yes, sir.

8           Q.       Now, what did you guys decide to do? As the man  
9 -- as a security team, what did you decide to do with all  
10 these people?

11          A.       What I ended up doing is I went into the kitchen  
12 area, turned on the main lights for the inside of the bar,  
13 and called North Charleston PD for their assistance,  
14 because basically it was three-something in the morning.  
15 You know, we didn't need to have, you know, a big-out  
16 brawl and somebody end up getting hurt so I decided to  
17 shut the club down for the night.

18          Q.       So you were going to shut it down? Party --

19          A.       Yeah.

20          Q.       Party's over?

21          A.       Party's over.

22          Q.       Turned the lights on, the music is off?

23          A.       Yes, sir.

24          Q.       And did you try to make everybody leave?

25          A.       Yes..

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1           At that point in time, when we -- my officers  
2 and I -- you know, once I passed the word around to  
3 everybody and they realized what was going on, we started  
4 trying to get the patrons out. There was a big group over  
5 by the front door and I got kind of stuck in the middle of  
6 them. And another tussle had broken out and we all kind  
7 of got shoved out the front door.

8           Once I reached the front sidewalk, I heard  
9 somebody yell gun and I immediately took for -- took off  
10 for cover over in the parking area.

11         Q.       All right. Let me show you this right here.

12                 [Off the record momentarily]

13         Q.       [Mr. Wetmore] Does that photograph fairly and  
14 accurately represent the building and the parking lot  
15 where the club was?

16         A.       Yes, sir.

17         Q.       You've had a chance to look at that picture?

18         A.       Yes, sir.

19         Q.       If you would --

20                 MR. WETMORE: I'm going to give you this laser  
21 pointer.

22                 If I may approach the witness again?

23                 THE COURT: You may.

24                 MR. WETMORE: Use this to kind of point out  
25 things. It kind of helps to explain. The top red

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1 button does it.

2 Q. [Mr. Wetmore] Show me where you kind of spilled  
3 out in the parking lot. It sounds like you were kind of  
4 forced out with everybody else?

5 A. Yeah.

6 Well, the club itself is right between here. My  
7 car -- I normally park in the fourth or fifth spot, so  
8 when I came out the door, I went straight over here to the  
9 passenger side of my car.

10 Q. So you come straight out to your car?

11 A. Yes, sir.

12 Q. That night when the fight broke out?

13 A. Yes, sir.

14 Q. Tell me if you saw the defendant, Derringer  
15 Young.

16 A. Yes, sir.

17 Q. Okay. Where did you see him?

18 A. He was up here by the fire-lane sidewalk area.

19 Q. Okay. Now, so he's right there in that little  
20 strip?

21 A. Yeah. He's about right here.

22 Q. Okay. And how -- about how close are you? So  
23 you're parked right there at that white car?

24 A. Yeah, tight about where the white SUV is.

25 Q. So you're just a few feet from where he was

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1 standing?

2 A. Yes, sir.

3 Q. Tell us what you saw him do.

4 A. He pulled a pistol out. And there -- one  
5 gentleman that we had been having the problems with  
6 earlier that evening, known as L.A., I think -- what was  
7 his actual name? But L.A. was standing on the sidewalk.  
8 Mr. Young pulled a pistol out and shot him once in the  
9 lower-right abdomen.

10 Then once -- after he shot L.A. right up here on  
11 the sidewalk, he took off running this way through the  
12 cars. And he was parked right about here underneath this  
13 streetlight. He went to get into an older model -- I  
14 think it was a Mercury Grand Marquis and -- that was  
15 parked here. And he basically just didn't have any care  
16 or concern that he had just shot somebody.

17 There was another gentleman that was standing  
18 right about here in front of the car, and Mr. Young got  
19 out of the car and approached that gentleman and basically  
20 just point-blank shot him right below his left eye, in the  
21 face.

22 Q. Let me -- let me just -- I don't mean to slow  
23 progress, but let me make this clear.

24 The first shooting you saw, okay --

25 A. Uh-huh.

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1 Q. -- happened by the door?

2 A. Yes, sir.

3 Q. Right there in the fire lane?

4 A. Right there.

5 Q. Show me exactly where the defendant was. Point  
6 to him. Right there?

7 A. Uh-huh.

8 Q. Okay. And point to where you were.

9 A. [Witness complies]

10 Q. Right there where that white car is. Okay.

11 And you saw the defendant shoot the guy, named  
12 L.A., that had been causing the problems in the club?

13 A. Yes, sir.

14 Q. This was the guy -- L.A. was the one that had  
15 started this whole mess?

16 A. Pretty much, yes, sir.

17 Q. And you see the defendant shoot him right beside  
18 -- right in front of you?

19 A. Correct.

20 Q. Okay. Now, about how close do you think that is  
21 from that car to that door? Is it --

22 A. I would say --

23 Q. -- about as close as you and I, farther away, or  
24 closer?

25 A. About from me to the back door back there.

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1 Q. Right about from you to the back door?

2 A. Right.

3 Q. Okay. And was anything blocking your view from  
4 your position to the spot where he's shooting at?

5 A. No, sir.

6 Q. It's 3:00 in the morning. Was it light enough  
7 out so that you could see everything?

8 A. Yeah.

9 Underneath this entire walkway, all the way down  
10 here to the Food Lion, there's walkway lights that are  
11 fairly bright in the evening. There's also a lamppost  
12 here and a lamppost here that have three heads on them  
13 each. So it's a fairly lit-up parking lot.

14 Q. So you were close enough, there was no  
15 obstructions, there was plenty of light?

16 A. Yes, sir.

17 Q. No doubt you saw him shoot --

18 A. Yes, sir.

19 Q. -- L.A., the first victim?

20 A. Correct.

21 Q. And is Danny Agerson the one that they call  
22 L.A.?

23 A. Yes, sir.

24 Q. It is?

25 A. Yes, sir.

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1 Q. So Danny Agerson, a/k/a L.A., is the first one  
2 that got shot that night?

3 A. Correct.

4 Q. Right there at the door of the club.

5 Now, any doubt in your mind about that?

6 A. No, sir.

7 Q. Now, I didn't mean to slow you down.

8 Tell us exactly what he did from the moment he  
9 shot Danny Agerson. Where did he go right after that?  
10 Just use the marker and show us.

11 A. Well, he shot Danny up here and he made his way  
12 through the cars over here, over to the waiting car that  
13 he was waiting on with his friend and his friend's  
14 girlfriend.

15 Q. Okay. So he was parked right there where those  
16 two black cars are?

17 A. Yes, sir.

18 Q. Or the car he was going to was parked there.

19 Now, this is the second shooting?

20 A. Yes.

21 Q. Once again, where were you?

22 A. Over here.

23 Q. And so you stayed right there at your car?

24 A. Yes.

25 Q. Okay. And what was he doing when he was

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1 walking? Was he running? Was he -- did he have the gun  
2 in his hand? What was going on?

3 A. Right after he shot L.A. up here -- or Danny  
4 Agerson, and he was walking back across, he just  
5 nonchalantly slipped the gun in his front-left pocket.

6 Q. In this pocket right here --

7 A. Yes, sir.

8 Q. -- of these -- of these jeans.

9 But he wasn't walking fast, he was just kind of  
10 walking?

11 A. No. He was just like a leisurely stroll.

12 Q. Did that strike you at all as being unusual?

13 A. Yeah. I mean, I figured --

14 MS. PROCTOR: Objection, Your Honor. Calls --

15 THE COURT: Basis?

16 MS. PROCTOR: It calls for speculation.

17 THE COURT: Sustained. Move on.

18 Q. [Mr. Wetmore] All right. So you saw him walk  
19 across the parking lot, put the gun in that -- in those  
20 [phonetic] pocket?

21 A. Uh-huh.

22 Q. Do you remember which pocket he put it in?

23 A. Front-left pocket.

24 Q. Front-left pocket?

25 A. Yes, sir.

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1 Q. Right here? This pocket right here?

2 A. [No response]

3 Q. Is that -- is that right?

4 A. Yes, sir.

5 Q. In these Dickies pants?

6 A. Yes, sir.

7 Q. All right. So tell me what he does when he gets  
8 to that car.

9 A. Once he gets over here to the car --

10 Q. Who else is out there, right there at that car?  
11 Anybody else?

12 A. There's a black male and a black female that are  
13 standing there. One of them's the driver and the female  
14 was I guess one of their girlfriends or one of their  
15 friends.

16 Q. Okay.

17 A. And there was a gentleman, another patron, that  
18 was standing right here trying to block the car. Mr.  
19 Young pulled the pistol out, walked up and approached the  
20 gentleman. They had a few choice words with each other  
21 and then he fired a shot right into his face. And he  
22 ended up laying about over here.

23 Q. So you saw the defendant shoot the second guy  
24 right in the face?

25 A. Right in the face.

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1 Q. And the second guy was standing in front of the  
2 car?

3 A. Yes, sir.

4 Q. Trying to stop the car?

5 A. Yeah.

6 When Mr. Young pulled the pistol out, he started  
7 backing up going back over towards the Food Lion with his  
8 hands up, and he was kind of backing away, and that's when  
9 Mr. Young fired the single shot into his face.

10 Q. So the victim was backing up --

11 A. Uh-huh.

12 Q. -- when the defendant shot him right in the  
13 face?

14 A. Yes, sir.

15 Q. Now, once again, you're at your car. How far  
16 away is that from where the defendant shot him in the  
17 face?

18 A. I would say probably about seventy-five feet.

19 Q. So it's a decent little piece?

20 A. Yes.

21 Q. Anything blocking your view?

22 A. No, sir.

23 Q. Okay. Once again, the lighting -- it's not up  
24 underneath that awning. Is it lit up out there or --

25 A. There's a lamppost that's right here, so he was

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1 basically right underneath the light.

2 Q. So he's parked underneath the light?

3 A. Right.

4 Q. So you could clearly see him shoot him in the  
5 face?

6 A. Yes, sir.

7 Q. Did you lose sight of this man, after he did the  
8 first shooting, when he walked over to the car?

9 A. No, sir.

10 Q. You watched him the whole way?

11 A. Yes.

12 I was on the phone with the police department,  
13 giving them the description of him and everything like  
14 that.

15 Q. All right. So what did the other -- after he  
16 shot the first guy by the door, walks across the parking  
17 lot, shot the second guy point blank in the face, what did  
18 the defendant do?

19 A. He got into the car that was parked right here.  
20 He got the girl in the backseat passenger side, and he  
21 jumped in the passenger side and they took off.

22 Q. So he put the girl in the back seat?

23 A. Uh-huh.

24 Q. And he got in the --

25 A. In the front.

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1 Q. -- front passenger --

2 A. Front passenger seat.

3 Q. What about the other black male out there?

4 A. He got in the car in the driver's side.

5 Q. Okay. So that was -- that was the driver?

6 A. Yes, sir.

7 Q. So there was three people in that car?

8 A. Yes, sir.

9 Q. Any doubt in your mind, though, that the  
10 defendant was the shooter?

11 A. No, sir.

12 Q. In the first instance by the door, the second  
13 instance at the car?

14 A. Correct.

15 Q. He did both shootings?

16 A. Yes.

17 Q. All right. Tell me where they went from there.

18 MR. WETMORE: And if you don't mind, let me  
19 pause and bring this out a little bit more.

20 Q. [Mr. Wetmore] Does this picture right here  
21 fairly and accurately represent the club and the  
22 surrounding area?

23 A. Yes, sir.

24 Q. Okay.

25 MR. WETMORE: Okay. Let me focus on that.

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1 Q. [Mr. Wetmore] Show me what happened with the  
2 car.

3 A. They pulled out from right here, came up and  
4 went right in front of the club, down the side access  
5 road, all the way down to Cross County, and made a right  
6 onto Cross County, down here to Dorchester Road and made a  
7 left onto Dorchester heading up towards the air force  
8 base.

9 Q. So they didn't go out that main Kirkpatrick?

10 A. No, they didn't come out of here. They went out  
11 this side entrance over here.

12 Q. So out the side. And then went left on  
13 Dorchester?

14 A. Uh-huh.

15 MR. WETMORE: The last picture.

16 Q. [Mr. Wetmore] Is this -- where's the club?  
17 It's down there. Tell us again the direction.

18 A. They came out this little side access road right  
19 here, down here on Cross County, and made a left. And I  
20 believe they were stopped, somewhere up here on Dorchester  
21 Road, by North Charleston PD.

22 Q. So once they got out of -- club, they went left  
23 on Dorchester?

24 A. Yes, sir. Towards --

25 Q. Towards --

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1 A. -- the air force base.

2 Q. -- like the marine -- the naval base?

3 MR. WETMORE: At this point I would like to  
4 admit these maps as 4, 5 and 6.

5 THE COURT: Any objection, Ms. Proctor?

6 MS. PROCTOR: No, Your Honor.

7 [Whereupon, State's Exhibit Number 4 is marked  
8 by the court reporter]

9 [Whereupon, State's Exhibit Number 5 is marked  
10 by the court reporter]

11 [Whereupon, State's Exhibit Number 6 is marked  
12 by the court reporter]

13 THE COURT: State's 4, 5 and 6 into evidence  
14 without objection.

15 [Whereupon, State's Exhibit Number 4 is admitted  
16 into evidence by the Court]

17 [Whereupon, State's Exhibit Number 5 is admitted  
18 into evidence by the Court]

19 [Whereupon, State's Exhibit Number 6 is admitted  
20 into evidence by the Court]

21 Q. [Mr. Wetmore] And during that entire time when  
22 you're watching the defendant shoot people and drive off,  
23 were you on the phone with the police?

24 A. Yes, sir.

25 Q. Where were you? You called 911 I guess?

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A. Yes, sir.

Q. I want you to listen to this, if you don't mind, and let us know if this is the call you made.

[Whereupon, 911 tape is played for the jury.  
911 tape is not transcribed by the court reporter]

Q. [Mr. Wetmore] Is that you?

A. Yes, sir.

[Whereupon, 911 tape continues for the jury.  
911 tape is not transcribed by the court reporter]

MR. WETMORE: At this point, I would like to admit that 911 call.

THE COURT: Is it State's 7?

MR. WETMORE: That's correct.

What I would like to do, too, is say that I realize there's a couple of tracks on this. I would like to isolate that track and burn just that track and then put a sticker on it, if that's okay.

THE COURT: Any objection?

MS. PROCTOR: No, Your Honor.

MR. WETMORE: I would like to admit it through this witness, but I'll clean it up so it's just that one track.

THE COURT: All right. Here's what we're going to do. I want that marked as State's 7, then I want you to redact the copy to the track that was just

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1 played and that will be 7-A.

2 MR. WETMORE: 7-A.

3 THE COURT: Thank you.

4 MR. WETMORE: And we'll just put that phone call  
5 in. There's a couple of --

6 THE COURT: So with that --

7 MR. WETMORE: This will be 7 and then we'll --

8 THE COURT: State's 7 --

9 MR. WETMORE: -- create 7-A and we'll just have  
10 that one.

11 THE COURT: -- into evidence without objection,  
12 Ms. Proctor?

13 MS. PROCTOR: [No response]

14 [Whereupon, State's Exhibit Number 7 is marked  
15 by the court reporter]

16 [Whereupon, State's Exhibit Number 7 is admitted  
17 into evidence by the Court]

18 Q. [Mr. Wetmore] All right. So that's the call --  
19 that's the tape of the call you made?

20 A. Yes, sir.

21 Q. And in it you're telling the police what's going  
22 on before your very eyes?

23 A. Yes, sir.

24 Q. Okay. A couple of things that are a little bit  
25 different I want you to clear up.

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1                    You mentioned the first shooting at the door to  
2 the club. Okay? It sounds like at first you say he's  
3 shot in the chest. But once you get closer, where --  
4 where was the first victim shot?

5            A.        In the lower stomach.

6            Q.        So the --

7            A.        Lower abdomen.

8            Q.        -- first victim by the door was shot towards the  
9 lower part of his stomach?

10           A.        Yes, sir.

11           Q.        Towards the side, or the middle?

12           A.        Towards the side.

13           Q.        So the first guy is shot lower chest, to the  
14 side?

15           A.        [No response]

16           Q.        Down in here someplace?

17           A.        Yes, sir.

18           Q.        That's the first guy by the door?

19           A.        Right.

20           Q.        Okay. And then the second shooting is where you  
21 describe this guy who's shot right by the eye?

22           A.        Yes, sir.

23           Q.        That's the murder victim?

24           A.        Yes.

25           Q.        Now, when the defendant came out and shot the

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1 victim right in the face, in the eye or right near the  
2 eye, at that point how many people were at the car and how  
3 many got into the car?

4 A. The shooter, Mr. Young, the driver, and the  
5 female passenger. I thought there was another gentleman  
6 that got in, but there wasn't.

7 Q. So there's three people total?

8 A. Yes, sir.

9 Q. Besides the fourth black male that was shot in  
10 the face and fell down?

11 A. Yes, sir.

12 Q. But in the car there was three people?

13 A. Yes, sir.

14 Q. The defendant, who shot the guys?

15 A. Correct.

16 Q. The black male that was driving?

17 A. Correct.

18 Q. And the black female that was the girlfriend or  
19 a date or something?

20 A. Correct.

21 Q. So three people left in that car; is that right?

22 A. Yes.

23 Q. So in the tape it sounds almost like you're  
24 saying four people. But what's -- what is the correct  
25 number?

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1 A. Three.

2 Q. So there's three people in that car leaving.

3 A. [No response]

4 Q. After that car pulled away, the defendant in the  
5 front passenger seat, were there anymore shots fired?

6 A. No.

7 Q. So you didn't hear anymore shots after the  
8 defendant left?

9 A. No.

10 Q. Did you see anybody else with a gun out there  
11 that night besides the defendant?

12 A. No, sir.

13 Q. You were security. Were you armed in any way?  
14 Did you have a gun?

15 A. No. None of my staff uses firearms.

16 Q. So the only gun you saw that night was in his  
17 hands --

18 A. Yes.

19 Q. -- when he shot the first man by the door?

20 A. Yes.

21 Q. When he shot the second man by the car?

22 A. Yes.

23 Q. The tape sort of ends when the police arrive, it  
24 sounds like --

25 A. Correct.

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1 Q. -- is that right?

2 Okay. When they arrive, did you meet with and  
3 begin talking to the police officers?

4 A. Yes, I did.

5 Q. And what did you tell them?

6 A. Basically gave the officer on scene the same  
7 rundown that I had gave the dispatcher. I was trying to  
8 get them the description of the car so that way they could  
9 stop the car before he got too far down the road.

10 The officer that I spoke with then radioed in  
11 the description of the car again. As more officers were  
12 approaching, a couple of them turned into the parking lot  
13 and a couple of them kept going down Dorchester Road.

14 Q. Okay. So you were telling them what you had  
15 just seen?

16 A. Yes.

17 Q. Okay. And you described the vehicle as a  
18 Lincoln?

19 A. Yes, sir.

20 At first look, it was -- it looked like a  
21 Lincoln. Mercury. They all look the same.

22 Q. Okay. So you describe to them the car and you  
23 describe to them the people in the car?

24 A. Correct.

25 Q. Now, did you go with them to help them look for

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1 these people, look for these -- look for the car, look for  
2 the --

3 A. Yes, I did.

4 Q. What did you do, exactly?

5 A. Once the officers stopped the car farther down  
6 Dorchester Road, one of the officers approached me and  
7 said that they had the car detained that they thought  
8 might be the car. They asked me if I would come with them  
9 to positively ID the car and the people in it.

10 Q. Okay. So the police stopped a car that I guess  
11 was close to your description?

12 A. Correct.

13 Q. Okay. And they stopped it?

14 A. Yes, sir.

15 Q. And did you go with the police out there to the  
16 road -- out to Dorchester Road?

17 A. Yes, I did.

18 Q. To take a look at the car?

19 A. Yes.

20 Q. And was -- the car they had stopped, was it the  
21 car that was the one you saw involved in the shooting?

22 A. Yes.

23 It was very indistinct [phonetic] because on the  
24 passenger side there was like a big three- to four-foot  
25 dent. It had plowed into something, like somebody had

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1 kind of backed into something. So, I mean, it was very  
2 few and far between that you're going to find two cars of  
3 the same make and model, with the same dent, on the same  
4 road.

5 Q. Where was the dent?

6 A. On the passenger side.

7 Q. Okay. Where was it on the passenger -- do you  
8 remember?

9 A. I believe it was the front door and part of the  
10 rear-passenger door.

11 Q. Okay. So it's a -- it's an older model that --  
12 you initially said a Lincoln. When you saw it the second  
13 time --

14 A. It was a Mercury.

15 Q. -- it was a Mercury?

16 A. Lincoln Mercury. They both --

17 Q. Same model?

18 A. Same models. They all look the same.

19 Q. Okay. So when you got out at the traffic stop,  
20 you saw the same car with the same dent?

21 A. Yes.

22 Q. What about the people? Were they the same  
23 people that you saw?

24 A. Yes, sir.

25 Q. Now, did you identify the car as the one that

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1 had been used in the shooting?

2 A. Yes.

3 Q. Did you tell North Charleston, this is the car  
4 that was in the shooting?

5 A. Yes, I did.

6 Q. Okay. And did you identify the defendant,  
7 Derringer Young, as the one who had been doing the  
8 shooting?

9 A. Yes.

10 Q. Now, did you identify the other black male as  
11 the driver?

12 A. Yes, I did.

13 Q. Did you identify the black female as the  
14 passenger?

15 A. Yes.

16 Q. Tell me how that process took place. Were they  
17 still in the car when you pulled up there or were they out  
18 of the car?

19 A. No. They were out of the car and they were in  
20 separate -- the police officers had separated them into  
21 three different cars, three different patrol cars. And  
22 the deputy that I was with pulled up and turned a  
23 spotlight onto the back of the Mercury. And the officers  
24 that had made the traffic stop brought them out one by one  
25 and asked, okay, well, who was this person and who was

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1 this person and who was this person. And I told them, you  
2 know, it was the shooter, the black female, and the  
3 driver.

4 Q. Do you remember who they brought out first?

5 A. I believe they brought out Mr. Young first.

6 Q. So they brought him out of that police car,  
7 walked him to the back of the Mercury, shown a light on  
8 him. What did they ask you?

9 A. They asked if he was the shooter and I said,  
10 yes, he was. He still had the black shirt on and the  
11 pants on, but he had lost the baseball cap.

12 Q. Okay. So you told him that that was the  
13 shooter, you had just seen him shooting people?

14 A. Yes.

15 Q. Still had on those clothes right there that you  
16 described?

17 A. Yes.

18 Q. All right. Then they brought out -- I assume  
19 they brought out the girl and you identified her?

20 A. Yes, sir.

21 Q. What did you tell him that she was?

22 A. I told him that she was just a girlfriend or a  
23 passenger that was just riding with them.

24 Q. Okay. And she was in the back?

25 A. Yes, sir.

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1 Q. And the other black male --

2 A. Was the driver.

3 Q. You told him he was the driver?

4 A. Yes.

5 Q. When you were making that identification, you  
6 were in a police car?

7 A. Yes, sir.

8 Q. How close were you to the defendant and the  
9 driver and the passenger? Do you --

10 A. Probably fifteen, twenty feet.

11 Q. So like this far [indicates] maybe?

12 A. Yes, sir.

13 Q. And the police car you're in is lighting them up  
14 with his spotlight?

15 A. Correct.

16 Q. So there's no problem observing and seeing them  
17 out there on the road?

18 A. No, sir.

19 Q. No problem identifying him?

20 A. No, sir.

21 Q. No doubt in your mind this person here was the  
22 shooter?

23 A. No, sir.

24 Q. No doubt in your mind that that car was the car  
25 he had just left?

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1 A. No, sir.

2 Q. How far was it from the club to where they took  
3 you out to the traffic stop?

4 A. I'd say less than a mile.

5 Q. Less than a mile?

6 A. Yes, sir.

7 Q. Didn't get very far?

8 A. No.

9 Q. You were able to quickly identify the car, and  
10 the defendant as the shooter?

11 A. Yes, sir.

12 Q. Now, I assume that the police officer took  
13 you -- drove you out to the traffic stop?

14 A. Uh-huh.

15 Q. In his car?

16 A. Yes, sir.

17 Q. Okay. While you're in his car, at any time that  
18 night did the police suggest to you who had done this?

19 A. No.

20 They were asking me can you describe him, can  
21 you give me more details about him, can you identify him.

22 Q. Okay. Did they at all, you know, tell you who  
23 to pick out?

24 A. No.

25 Q. They didn't have any information about this, did

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1 they?

2 A. No, they didn't.

3 Q. It had just happened; right?

4 A. Correct.

5 Q. They were relying on you for that information?

6 A. Yes.

7 Q. So it would have been impossible for them to  
8 have suggested to you anything because they didn't know  
9 anything?

10 A. Correct.

11 Q. They were looking at you for the answer?

12 A. Correct.

13 Q. Without any problems, you identified the  
14 defendant as the shooter?

15 A. Yes, I did.

16 Q. Now, after you identified the car, the Mercury,  
17 after you identified him as the shooter, his driver, his  
18 passenger, did you go to North Charleston Police  
19 Department and give a statement?

20 A. Yes, I did.

21 Q. And you put it down in writing, signed your name  
22 as true and all that?

23 A. Yes, I did.

24 Q. And is that the same truth as you've told us  
25 today?

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1 A. Yes, it is.

2 Q. Except the things I asked you to clarify and  
3 explain?

4 A. Correct.

5 Q. Now, since that night -- since that night, how  
6 many times have you and I met?

7 A. About three or four.

8 Q. In getting ready for court?

9 A. Correct.

10 Q. Now, have I made you any sort of promises --

11 A. No, sir.

12 Q. -- about anything?

13 A. No.

14 Q. Threatened you in any way about anything?

15 A. No, sir.

16 Q. You're here today to tell the truth?

17 A. Yes, sir.

18 Q. The same truth you told that night --

19 A. Yes.

20 Q. -- back in November of 2007?

21 And you were subpoenaed to testify today?

22 A. Yes, I was.

23 Q. Anybody contact you about your testimony at all?

24 A. No, sir.

25 MR. WETMORE: If I could have just a moment,

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1 Your Honor.

2 THE COURT: Yes, sir.

3 [Whereupon, Mr. Wetmore and Mr. McCoy confer]

4 MR. WETMORE: Just to make sure we have it all  
5 clear.

6 Q. [Mr. Wetmore] You saw the shooting at the door  
7 and you saw the -- how long between the shooting at the  
8 door and the shooting at the car?

9 A. Probably less than a minute.

10 Q. Less than a minute?

11 A. Yes.

12 Q. And no problems -- no questions that there's  
13 been -- there's a shooter in both instances?

14 A. No, sir.

15 Q. And no question that he took off with the others  
16 in that older Mercury?

17 A. No, sir.

18 Q. And it was distinctive to you because it had a  
19 big dent --

20 A. Yes, sir.

21 Q. -- on the passenger-side front door?

22 MS. PROCTOR: Your Honor, I would ask -- these  
23 are leading questions.

24 THE COURT: Sustained.

25 Q. [Mr. Wetmore] How long or how much time passed

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1 from when the car left, the older Mercury left, to when  
2 the police arrived?

3 A. I'd say under a minute, minute and a half.

4 Q. And is the time accurately reflected on the 911  
5 call?

6 A. Yes, sir.

7 Q. So a very brief period of time before the police  
8 were there?

9 A. Yes.

10 Q. How long before the police pulled the car over?

11 A. I would say under a minute and a half, two  
12 minutes maybe.

13 Q. So under a minute and a half -- around under a  
14 minute and a half, two minutes maybe.

15 You say it was about a mile, maybe less than a  
16 mile, from the club?

17 A. Correct.

18 Q. And then quickly after that, you went out there?

19 A. Yes, I did.

20 MR. WETMORE: I don't have any further  
21 questions. Answer any questions from the defense.

22 MS. PROCTOR: The Court's indulgence.

23 THE COURT: Yes, ma'am.

24 [Whereupon, Ms. Proctor reviews documents]

25 MS. PROCTOR: Hi, Mr. Crider.

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CROSS-EXAMINATION

1

2

BY MS. PROCTOR:

3

Q. Now, how long did you say that you had worked at  
4 Club 843 before this incident?

5

A. About two years, two and a half years.

6

Q. Now, is this club -- is it something that was  
7 like open every day to the public, or was it only open on  
8 nights that --

9

A. We were open Wednesday through Sunday.

10

Q. And anybody could come in?

11

A. Yes, ma'am.

12

Q. But this night was a private party; correct?

13

A. No.

14

It was still an open event but some people had  
15 rented it out to have their event there. It -- we were  
16 still open to regular patrons.

17

Q. So you didn't have to pay to get in?

18

A. No, you didn't.

19

Q. Oh. Okay. Did you normally have to pay to get  
20 in?

21

A. Yes, ma'am.

22

Q. Okay. But they were having a party but anybody  
23 that could pay the cover charge could come in?

24

A. Correct.

25

Q. Now, you had said that they were sponsors. So

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1 when you're referring to the sponsors, those are the  
2 people that were paying for the party?

3 A. Yes, ma'am.

4 Q. Now, how many -- and did they bring their own  
5 security?

6 A. No, ma'am.

7 Q. Okay. So how many bouncers were there? Or I  
8 guess -- are bouncers and security the same --

9 A. Yes.

10 Q. -- thing?

11 A. Yes, ma'am.

12 Q. Okay. How many were there that night?

13 A. Approximately seven.

14 Q. And they -- are there usually seven?

15 A. Well, we keep anywhere between about four to  
16 eight, depending on what the event is going to be that  
17 night.

18 Q. So on a regular, say, Wednesday night, would you  
19 have had seven?

20 A. No.

21 We would have had about four. Wednesdays --  
22 Wednesdays and Thursdays are usually slow days. Friday,  
23 Saturday and Sunday we kind of stack up.

24 Q. Okay. And you said that the owners of the club  
25 were not there that night?

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1 A. Correct.

2 Q. Now, when people come in and pay their money,  
3 are their IDs checked for age?

4 A. Yes, ma'am.

5 Q. Now, what about weapons? Do you --

6 A. Yes, ma'am.

7 Q. -- have a scanner or --

8 A. We used handheld wands and we used physical  
9 touch.

10 Q. Okay. So everybody that came in was patted down  
11 for weapons?

12 A. Yes, ma'am.

13 Q. And they were also scanned?

14 A. Yes, ma'am.

15 Q. So nobody could come in with a weapon?

16 A. No, ma'am.

17 Q. Now, this was -- this party was on a Wednesday  
18 night and it was going into Thanksgiving morning; correct?

19 A. I believe so, yes.

20 Q. And everybody in there was doing fine? They  
21 were drinking, dancing, and it was about three o'clock  
22 that you happened to notice a commotion with somebody  
23 named L.A.; correct?

24 A. Correct.

25 Q. Now, did he usually come into the club?

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1 A. Yes, ma'am.

2 Q. So you had seen him before?

3 A. Yes, ma'am.

4 Q. So you knew who he was?

5 A. Yes, ma'am.

6 Q. And when you noticed him you said that he had  
7 hit a woman, or did someone tell you that, or did you see  
8 it?

9 A. I didn't see the incident myself.

10 Somebody had told me -- well, the DJ had made  
11 the announcement that it takes a punk to hit a female so  
12 under the assumption that that's what happened, is L.A.  
13 struck the female.

14 Q. And so you went over to try to calm down  
15 [phonetic] and you asked him to leave?

16 A. Yes, ma'am.

17 Q. And he got a little belligerent; correct?

18 A. Yes, ma'am.

19 Q. And then he started to fight? Went towards the  
20 DJ?

21 A. Yes, ma'am.

22 Q. And you, at this point, were trying to grab him  
23 out sort of to diffuse the situation?

24 A. Correct.

25 Q. Now, when you went up to him, that -- some of

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1 his friends came up to you and somebody put you in a choke  
2 hold?

3 A. Yes, ma'am.

4 Q. And L.A. was still belligerent, was trying to  
5 take off his shirt, and he still wanted to fight?

6 A. Yes, ma'am.

7 Q. Now, at about this point, is this sort of when  
8 you started to realize things were getting a little bit  
9 out of control?

10 A. Yes, ma'am.

11 Q. Because a lot of his friends, L.A.'s friends,  
12 are coming in and they're fighting the bouncers --

13 A. Yes, ma'am.

14 Q. -- and fighting you?

15 A. [No response]

16 Q. So L.A. is taken out of the club. And I think  
17 you say in your statement that by this time it's getting  
18 pretty violent. Chairs are being thrown and you sort of  
19 went behind the bar?

20 A. Yes, ma'am.

21 Q. And some people are trying to get out, some are  
22 throwing chairs, everybody's fighting, and it's a scary  
23 situation?

24 A. Yes, ma'am.

25 Q. Now, this is when I think at 2:00 -- once the DJ

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1 stops, this is it, everybody sort of went more crazy?

2 A. Yes, ma'am.

3 Q. Now, so they're in the club, people are throwing  
4 bottles and chairs, L.A. is outside, and you sort of -- do  
5 you get pushed out into the crowd, or you're still in the  
6 -- you're still in the bar at this point?

7 A. Once I turned the lights on and I was trying to  
8 get everybody out, people were still fighting. I got kind  
9 of shoved into the crowd as everybody was going out the  
10 door.

11 Q. Now, so when you are inside the bar, you hadn't  
12 called 911 at that point, had you, inside the bar?

13 A. Right after I turned the lights on.

14 Q. Okay. So you're inside the bar and this is when  
15 we first hear you on the 911 tape?

16 A. Yes, ma'am.

17 When I'm asking for the assistance of the police  
18 department, yes.

19 Q. Now, when you see the fights inside with L.A.  
20 and all his friends fighting, he's not in -- in that fight  
21 inside, was he --

22 A. No, ma'am.

23 Q. -- with his friends?

24 Now, when you go outside, the fight has --  
25 there's still fighting inside and the fight now, some of

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1 it has escalated outside?

2 A. Yes, ma'am.

3 Q. And I think at that time, when you're talking to  
4 911, you're telling them that out in the parking lot  
5 people are throwing chairs, chains, they're throwing  
6 everything?

7 A. Yes, ma'am.

8 Q. So there's people out there? Everybody's  
9 fighting outside and inside?

10 A. Yes, ma'am.

11 Q. Now, you said that at this point you ducked  
12 behind your car and you hear a commotion and hear  
13 something going on and that's when you turn and you see  
14 L.A. being shot?

15 A. Yes, ma'am.

16 Q. And L.A.: I guess you know now that's  
17 Mr. Agerson?

18 A. Yes, ma'am.

19 Q. Now, you said that when -- when L.A. was shot,  
20 where was everybody else out there?

21 A. There was still a bunch of people up on the  
22 sidewalk right about by the front-door area.

23 Q. Now, what -- I think this is State's Exhibit 4  
24 that Mr. Wetmore showed you. Now, this is a picture  
25 during the day?

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1 A. Yes, ma'am.

2 Q. But this was at nighttime; correct?

3 A. Yes, ma'am.

4 Q. And there were a lot more cars in the parking  
5 lot; right?

6 A. Yes, ma'am.

7 Q. Now, in between the first row of cars and the  
8 door to the car [phonetic], that is where everybody is  
9 fighting?

10 A. Everybody is fighting up here along the sidewalk  
11 and over this way. And a couple of them had gone over  
12 this way, too.

13 Q. So the fight is everywhere?

14 A. Yes, ma'am.

15 Q. People are throwing things.

16 And your testimony is that you look up -- or you  
17 hear a commotion because you don't know what's going on  
18 because there's quite a few commotions going on; right?

19 A. Right.

20 Q. And you see somebody walk up to L.A. and shoot?

21 A. Yes, ma'am.

22 Q. Now, is L.A. in the door or in the --

23 A. He's right on -- right here in this fire lane,  
24 right off the sidewalk.

25 Q. Are there any cars in that fire lane, or all the

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1 cars are in their spots?

2 A. All the cars are in their spots down here and  
3 over here.

4 Q. Okay. And basically there's -- where those two  
5 black cars are, that's where you said the Mercury was?

6 A. Yes, ma'am.

7 Q. Okay. And there were cars in front of them,  
8 too; correct?

9 A. There was cars in this area, all these spots  
10 were filled here, and there were some filled over here.

11 Q. And how far away was -- now, you're over in your  
12 car --

13 A. Uh-huh.

14 Q. -- and L.A.'s in the fire lane. And you said  
15 somebody came up to him and shot him. How far was the  
16 shooter from L.A. when L.A. got shot?

17 A. I would say an arm's length away.

18 Q. So he -- it was a close shot?

19 A. Close range, yes, ma'am.

20 Q. And you're saying, puts the gun in his pocket,  
21 slowly walks away?

22 A. Yes, ma'am.

23 Q. He walks toward where I guess that black car is  
24 down --

25 A. Yes, ma'am.

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1 Q. -- that you pointed to?

2 A. Uh-huh.

3 Q. And your testimony is he got in the car?

4 A. Uh-huh.

5 Q. And the other two people got -- all three were  
6 in the car?

7 A. Yes, ma'am.

8 Q. And then he gets back out of the car?

9 A. Correct.

10 Q. Now, all this time you're still talking to 911?

11 A. Yes, ma'am.

12 Q. Now, a moment ago you were asked if you heard  
13 anymore gunshots --

14 A. Uh-huh.

15 Q. -- and you said no. Well, we can even play it  
16 back. Do you remember on the 911 tape when you are  
17 talking to the police and you're describing -- you're  
18 saying they're going down Cross County Road and you say  
19 he's heading towards the air force base, I've got more  
20 gunshots now..

21 A. Uh-huh.

22 Q. So when you're talking to 911 back right when  
23 this is happening, you're telling 911 that they're in  
24 their car driving away but you're hearing more gunshots?

25 A. That's -- I believe that's what I said.

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1 Q. Okay. So today you said you didn't, but this  
2 is three years later. But on that's -- when you were with  
3 911 --

4 A. Uh-huh.

5 Q. -- at that time, you said to 911, I hear more  
6 gunshots?

7 A. Yes, ma'am.

8 Q. Now, so the police come immediately. And how  
9 many people are still out there?

10 A. Quite a few -- once the gunshots rang off, quite  
11 a few people took off. There wasn't very many people left  
12 by the time the police department got there.

13 Q. Well, didn't the police get there within say a  
14 minute or --

15 A. Uh-huh.

16 Q. -- two minutes?

17 A. Yes, ma'am.

18 Q. You're still talking on the phone --

19 A. Yeah.

20 And people were taking off, jumping in their  
21 cars, and leaving.

22 Q. Okay. And the police didn't stop any of them?

23 A. No, ma'am.

24 Q. And so everybody just --

25 A. Scattered.

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1 Q. -- scattering?

2 So the police then -- how do you know that  
3 they've stopped the car?

4 A. One of the officers that I was talking to, when  
5 she pulled up there was two other officers behind her and  
6 three others that kept going down Dorchester Road, up and  
7 over the hill, in the direction that they left in. And  
8 when I was talking to her, she's like, hold on a second.  
9 And then she's listening to her radio and she says, well,  
10 they've stopped a car. And then she was talking to  
11 another officer and that's when they decided that they  
12 were going to take me up there and have me identify the  
13 car.

14 Q. And so when you drive up there, do you ever get  
15 out of the car? Or do you stay in the police car?

16 A. I stay in the police car.

17 Q. And you say that they brought out each person.  
18 Did they -- were they cuffed? uncuffed?

19 A. I believe they were cuffed.

20 Q. So they're cuffed and the police are saying,  
21 as they bring him -- brought him out -- I think you said  
22 Mr. Young first --

23 A. Uh-huh.

24 Q. -- and they said, is he the shooter?

25 A. Yes.

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1 Q. And you said yes?

2 A. Yes, I did.

3 Q. And, now, you gave -- went back to the police  
4 station and you gave -- you wrote your own statement. You  
5 gave a pretty detailed statement; correct?

6 A. Yes, ma'am.

7 MS. PROCTOR: Court's indulgence.

8 THE COURT: Yes, ma'am.

9 [Whereupon, Ms. Proctor and Ms. Mullaney confer]

10 Q. [Ms. Proctor] I noticed that the State was  
11 asking you if you received any promises in your testimony  
12 today --

13 A. Yes, ma'am.

14 Q. But isn't it true that by testifying today,  
15 you're hoping for a downward departure possibly on your  
16 federal charges?

17 A. Possibly. It's up to the judge to grant that.

18 Q. Okay. But that is something that you have  
19 spoken to the prosecutor about; correct?

20 A. As far as I'm -- as far as I know, all he's  
21 going to do is write a letter saying that I participated  
22 in the testimony.

23 Q. And what exactly are your charges?

24 A. Conspiracy to sell cocaine first degree and  
25 conspiracy to commit money-laundering.

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1 MR. WETMORE: Judge, may we approach?

2 THE COURT: You may.

3 [Whereupon, an off-the-record bench conference  
4 is held]

5 THE COURT: All right. Ms. Proctor?

6 MS. PROCTOR: I have no further questions,  
7 Judge.

8 THE COURT: Mr. Wetmore?

9 MR. WETMORE: Just wanted to ask you a couple of  
10 things about what Ms. Proctor asked you about.

11 REDIRECT EXAMINATION

12 BY MR. WETMORE:

13 Q. She first was asking you about how you screened  
14 patrons at the door --

15 A. Yes.

16 Q. -- for any kind of weapons?

17 A. Correct.

18 Q. You use a wand --

19 A. Uh-huh

20 Q. -- and you use a pat-down.

21 A. [No response]

22 Q. And so it's unlikely that somebody would slip a  
23 gun past one of you guys?

24 A. No, sir.

25 Q. I guess it's possible, but you check for that?

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1 A. Anything is possible. But, yes, we do -- we did  
2 our best to try and avoid that.

3 Q. Obviously, you don't check anything anybody has  
4 in the parking lot?

5 A. No.

6 Q. Anything in the cars?

7 A. No.

8 Q. It's impossible to check that?

9 A. Correct.

10 Q. Ms. Proctor was asking you about the first  
11 shooting that happened at the door of the club in the fire  
12 lane and she said that you watched as somebody shot the  
13 first victim, somebody shot L.A. --

14 A. Yes.

15 Q. -- who's known as Danny Agerson.

16 This isn't just somebody, this is the defendant;  
17 right?

18 A. Correct.

19 Q. Any doubt that he's the one that shot?

20 A. No.

21 Q. Any doubt that he shot the second guy at the  
22 car?

23 A. No doubt.

24 Q. So it's not just somebody, it's this fellow --

25 A. Mr. Young.

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1 Q. -- is that correct?

2 A. Yes.

3 Q. Now, you said that after he shot the first  
4 victim and the second victim, they left in that Mercury?

5 A. Yes.

6 Q. And the rest of the people took off?

7 A. Correct.

8 Q. Obviously, very chaotic commotion and a lot  
9 going on?

10 A. Uh-huh.

11 Q. Think back very clearly. Any doubt in your  
12 mind, did gunshots ring out after the defendant left?

13 A. I think it was something else that I might have  
14 heard that sounded like a gunshot. But, no. I mean, I  
15 didn't hear anybody else screaming or yelling or anything  
16 like that. Nobody else got shot.

17 Q. So the best of your recollection, no more  
18 gunshots after he left?

19 A. No, sir.

20 Q. Now, I know it's a little confusing, but  
21 focusing on it: no more gunshots after he left?

22 A. No.

23 Q. Now, after the police had already stopped you,  
24 you went out and you identified the Mercury as the car --

25 A. Correct.

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1 Q. -- involved and you identified the defendant as  
2 the shooter?

3 A. Correct.

4 Q. They didn't say anything at all to prompt you or  
5 to force you as to who to pick?

6 A. No, sir.

7 Q. They didn't use their words to suggest to you  
8 who had done it?

9 A. No, sir.

10 Q. They didn't have any idea who had done it?

11 A. No.

12 Q. The last thing Ms. Proctor touched on is we had  
13 talked about you had a previous conviction.

14 A. Correct.

15 Q. But you actually are locked up now for federal  
16 charges; is that right?

17 A. Correct.

18 Q. Drug charges?

19 A. Yes, sir.

20 Q. And have you already come in and admitted your  
21 responsibility and pled guilty to the charges?

22 A. Pled guilty and been sentenced.

23 Q. Now, back in November of 2007 when this happened,  
24 did you have any pending federal drug charges?

25 A. No.

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1 In a roundabout way, pretty much those drug  
2 charges --

3 MS. PROCTOR: Objection, Your Honor.

4 THE COURT: Sustained.

5 Q. [Mr. Wetmore] When the time this incident  
6 happened, you didn't have any pending charges?

7 A. No.

8 Q. When you picked up the phone and dialed 911 and  
9 made this recording, you didn't have any pending charges?

10 A. No.

11 Q. When you talked to the police at the scene --

12 MS. PROCTOR: Objection --

13 Q. [Mr. Wetmore] -- you didn't have any pending  
14 charges?

15 A. No.

16 MS. PROCTOR: -- leading.

17 THE COURT: Hold on one second.

18 Overruled as to leading.

19 Q. [Mr. Wetmore] When you went with the police to  
20 the traffic stop to identify the defendant as the shooter,  
21 did you have any pending charges then?

22 A. No, sir.

23 Q. When you go to the police station and give them  
24 a full written statement and full cooperation, did you  
25 have any pending charges then?

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1 A. No, sir.

2 Q. So all this happened and you helped them  
3 basically solve this case?

4 A. Yes, sir.

5 Q. You didn't have any pending charges, did you?

6 A. No.

7 I was just doing my responsibility as a citizen.

8 Q. And that's happened -- the charges happened  
9 since this incident?

10 A. Yes.

11 Q. You said you were doing your responsibility as a  
12 citizen. What prompted you to do this as a citizen?

13 A. I mean, it's my responsibility that if I see  
14 somebody point blank get shot and killed or if I see  
15 somebody rob a bank or if I see something happen like  
16 that, it's my duty to inform the law enforcement, hey,  
17 this is what's going on, this is what happened. I mean, I  
18 don't think that somebody should get killed and the  
19 murderer get away. If it was one of my family members, I  
20 would want somebody to step up and do the same thing.

21 Q. So you stepped up that night and told the police  
22 what you saw?

23 A. Yes, sir.

24 Q. No doubt in your mind about seeing this man as  
25 the shooter?

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1 A. No, sir.

2 Q. Now, when you did all of that, you weren't  
3 hoping to gain anything from it? You didn't have any  
4 pending charges?

5 A. No.

6 MR. WETMORE: No further questions.

7 MS. PROCTOR: No more questions.

8 THE COURT: Sir, you may step down.

9 [Whereupon, Mr. Crider is excused and exits the  
10 witness stand]

11 THE COURT: Call your next witness.

12 MR. WETMORE: Your Honor, make a real quick  
13 check and make sure he's in the hallway?

14 THE COURT: All right. Mr. Foreman, I'm  
15 anticipating calling one more witness before we break  
16 for the evening. Do y'all need a comfort break?

17 THE FOREMAN: Yes, we do.

18 THE COURT: All right. Please remember my  
19 admonitions. Do not begin deliberations, do not  
20 discuss this case amongst yourselves.

21 Please rise for the jury.

22 [Whereupon, the jury exits the courtroom at  
23 5:24 p.m.]

24 THE COURT: Thank you. Be seated.

25 Just for scheduling, you have -- we have one

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1 nothing but the truth, so help you God]

2 THE WITNESS: Yes, sir.

3 THE COURT: Be seated.

4 [Whereupon, Mr. Smalls takes the witness stand]

5 THE CLERK OF COURT: Mr. Smalls, you need to  
6 speak into this microphone. You need to get pretty  
7 close to it.

8 State your full name and then spell your last  
9 name for the record.

10 THE WITNESS: Renardo Smalls. S-M-A-L-L-S.

11 - - - - -

12 RENARDO SMALLS,

13 Having Been First Duly Sworn,

14 was Examined and Testified as Follows:

15 DIRECT EXAMINATION

16 BY MR. WETMORE:

17 Q. Renardo, how old are you?

18 A. Twenty-four.

19 THE COURT: All right. Mr. Smalls, you're going  
20 to need to sit up and --

21 A. Twenty-four.

22 THE COURT: -- speak into the microphone. Thank  
23 you.

24 Q. [Mr. Wetmore] Twenty-four years old. Are you  
25 from here?

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1 A. Uh-huh.

2 THE COURT: Mr. Smalls, you're going to have to  
3 answer yes or no.

4 A. Yeah.

5 THE COURT: My court reporter is taking down  
6 everything that you say and she cannot write down head  
7 shakes or mmm. So yes or no, sir.

8 Mr. Wetmore.

9 Q. [Mr. Wetmore] Renardo, are you -- you have a  
10 good bit of family in this area?

11 A. Yeah.

12 Q. Okay. Do you work here? Do you go to school  
13 here?

14 A. No.

15 Q. But you've lived here your whole life?

16 A. Yeah.

17 Q. While we're on the history -- we're on the  
18 subject of your history, let's be honest. And were you  
19 convicted in 2004 of possession of crack cocaine?

20 A. Yeah.

21 Q. You don't have anything pending now, though, do  
22 you?

23 A. No.

24 Q. Nothing pending now?

25 A. No.

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1 Q. Okay. You know the defendant, Derringer Young?

2 A. Yeah.

3 THE COURT: Is that a yes?

4 A. Yes.

5 Q. [Mr. Wetmore] How long have you known him?

6 A. Long time.

7 Q. Okay. Are you guys related in any way?

8 A. Yeah..

9 Q. What's your relationship?

10 A. He's my cousin.

11 Q. He's your cousin.

12 Okay. Now, we're here regarding the shootings  
13 at Club 843 that happened on November 22nd, 2007, about  
14 3:00 a.m., that club off of Dorchester Road in North  
15 Charleston. Were you with the defendant at the club that  
16 night?

17 A. Yeah, we been to the club.

18 Q. Yes? We need to hear you. Speak --

19 A. Yeah, we been to the club.

20 Q. So you went to the club with the defendant?

21 A. [No response]

22 Q. How did you get to Club 843?

23 A. Drive.

24 Q. Who was driving?

25 A. I been driving.

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1 Q. You were driving?

2 A. Yeah.

3 Q. What kind of car were you driving?

4 A. I can't remember.

5 Q. You don't remember what you were driving?

6 A. [Indicates negatively]

7 THE COURT: All right. Mr. Smalls, you're going  
8 to have to answer out loud. Head shakes are not  
9 acceptable.

10 Q. [Mr. Wetmore] Do you know what kind of car you  
11 had back in 2007?

12 A. No.

13 Q. But you remember driving the defendant that  
14 night?

15 A. Yeah.

16 Q. To Club 843?

17 A. [No response]

18 Q. When you guys got to the club, what was  
19 everybody doing? Were you-all just kind of hanging out  
20 listening to music or --

21 A. I don't know what -- everybody went their  
22 separate way. I don't know.

23 Q. And when you were at the club, what were you  
24 doing?

25 A. Getting drunk.

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1 Q. Getting drunk?

2 A. Uh-huh.

3 Q. Okay. Hanging out with the defendant?

4 A. Didn't. I just tell you everybody went their  
5 separate way?

6 Q. I didn't -- I can't hear you. What did -- what  
7 did you say?

8 A. Everybody been their separate way.

9 Q. So once you got to the club everybody's just  
10 kind of going, doing their own thing?

11 A. Uh-huh.

12 Q. Now, at about three o'clock, late that night,  
13 were there a bunch of fights breaking out in the club?

14 A. Yeah.

15 Q. Were you fighting anybody?

16 A. No.

17 Q. Was anybody jumping on you, beating on you?

18 A. No.

19 Q. Did you get put out, with all the rest of the  
20 people, by security?

21 A. Yeah. Everybody get put out of the club.

22 Q. So everybody got kicked out of the club?

23 A. Uh-huh.

24 Q. Is that a yes?

25 A. Yeah.

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1 Q. All right. So when you left everybody else,  
2 what did you do?

3 A. I going to my car.

4 Q. You went to your car?

5 A. [No response]

6 Q. Did you hear any gunshots?

7 A. I can't recall. I can't remember.

8 Q. You can't recall if you heard any gunshots?

9 A. Huh-uh.

10 Q. Renardo, do you remember talking to the police  
11 that night?

12 A. No.

13 Q. You don't remember that?

14 A. [Indicates negatively]

15 Q. Do you remember giving them a statement?

16 A. No.

17 Q. Do you remember a detective typing the  
18 statement, at your request, in your own words as you tell  
19 it to him?

20 A. No.

21 Q. You don't remember any of that?

22 A. When you drunk, you can't remember nothing.

23 MR. WETMORE: If I may approach the witness,  
24 Your Honor?

25 THE COURT: You may.

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1 Q. [Mr. Wetmore] I'm going to show you --  
2 MR. WETMORE: Actually, let me get a clean copy.  
3 [Whereupon, Mr. Wetmore reviews documents]  
4 MR. WETMORE: Go ahead and mark this, if I may,  
5 Your Honor.

6 THE COURT: You may.

7 MR. WETMORE: See if I can remember. I'm on  
8 Number 8?

9 THE COURT: 8.

10 [Whereupon, State's Exhibit Number 8 is marked  
11 by the court reporter]

12 Q. [Mr. Wetmore] I'm going to hand you what's been  
13 marked as State's Number 8. If you would take a look at  
14 that.

15 [Whereupon, the witness reviews documents]

16 Q. [Mr. Wetmore] Renardo, do you see at the bottom  
17 where it says: I have read the foregoing statement or had  
18 it read to me and it is a true and correct to the best of  
19 my knowledge. I've given this statement freely and  
20 voluntarily and been provided a copy of my statement.

21 Is that your signature below that?

22 A. Yeah.

23 Q. Now, on the cover page of the whole thing, the  
24 front page where it says -- it goes through all the rights  
25 that they read to you and it says: I fully understand

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1 these rights explained to me. Signed, Renardo Smalls.

2 Is that your signature?

3 A. Yeah.

4 Q. It says: no threats, force, or promises of any  
5 kind have been given to me.

6 Once again, did you sign your name, Renardo  
7 Smalls, right there?

8 A. Yeah.

9 Q. If you would look on the first page of the  
10 typing it says: Detective James Hill is typing this  
11 statement for me at my request, in my own words, as I tell  
12 it to him.

13 MS. PROCTOR: Your Honor, objection. May we  
14 approach?

15 THE COURT: You may.

16 [Whereupon, an off-the-record bench conference  
17 is held]

18 Q. [Mr. Wetmore] Mr. Smalls, you have State's  
19 Number 8 there before you?

20 A. [No response]

21 THE COURT: Is that a yes?

22 A. Yeah, I guess.

23 Q. [Mr. Wetmore] That's a statement, made to the  
24 North Charleston Police Department, by you to Detective  
25 James Hill. I've already asked you -- on the first page

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1 you read all your rights and you signed your name as  
2 understanding your rights; correct?

3 A. Yeah.

4 Q. That's your signature on the first page; right?

5 A. Yes.

6 Q. Then down below it says: understanding my  
7 rights, I have no threats or promises or force.

8 And you signed it again; correct?

9 A. Uh-huh.

10 Q. And then if you flip the page over, the next --  
11 the actual writing, actual statement, at the bottom of  
12 each page, you signed it: foregoing statement true and  
13 correct, freely and voluntarily.

14 You signed it; correct?

15 A. Uh-huh. Yeah.

16 Q. And on the first page where it says: I heard  
17 one gunshot --

18 MS. PROCTOR: Your Honor, objection. Leading,  
19 and what we just discussed. It was --

20 THE COURT: I'm going to --

21 MS. PROCTOR: -- it just goes to --

22 THE COURT: -- sustain the question as to  
23 leading.

24 MS. PROCTOR: -- my previous objection.

25 Mr. Wetmore, please lay the foundation.

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1 Q. [Mr. Wetmore] Do you admit or deny making this  
2 statement to the police?

3 A. I can't remember.

4 Q. You can't remember?

5 A. Uh-huh.

6 Q. You don't remember talking to him about this  
7 shooting?

8 A. No.

9 Q. How do you know that you read all these rights  
10 and had them read to you and signed them?

11 A. I don't know.

12 Q. You don't remember --

13 A. Like I'm saying --

14 Q. -- telling her that?

15 A. -- I was drunk.

16 Q. So you deny making these statements?

17 A. What did I just tell you just now? I say I  
18 can't recall making these statements.

19 MR. WETMORE: Your Honor, did you want to  
20 proceed in the manner you suggested earlier or --

21 THE COURT: All right. Counsel approach.

22 [Whereupon, an off-the-record bench conference  
23 is held]

24 Q. [Mr. Wetmore] Mr. Smalls, if you would take a  
25 moment to read your statement. Please take a second to

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1 read through your statement. Read the typed-up pages.

2 [Whereupon, the witness reviews documents]

3 Q. [Mr. Wetmore] Have you already read it?

4 A. [Indicates affirmatively]

5 Q. Okay. After reading that, does that refresh  
6 your memory about the incident?

7 A. No.

8 Q. So that doesn't refresh your memory as to what  
9 happened?

10 A. That still ain't going to make me remember  
11 nothing to reading it.

12 THE COURT: I'm sorry. Can you repeat that?

13 THE WITNESS: Huh?

14 THE COURT: Can you repeat what you just said?

15 A. I say I still don't -- ain't going to remember.

16 Q. [Mr. Wetmore] You don't remember making the  
17 statement, or you don't remember what happened that night?

18 A. What the question that you asked me?

19 Q. Do you remember what happened that night at the  
20 club?

21 A. You asked me about the statement. Now you're  
22 going into something else.

23 Q. I'm asking you right now do you remember what  
24 happened that night at the club.

25 A. No.

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1 Q. You don't -- so you don't remember at all what  
2 happened?

3 A. [No response]

4 Q. Do you remember giving this statement detailing  
5 exactly what happened?

6 A. No.

7 Q. So you remember neither the night nor the  
8 statement? You just remember you were driving?

9 A. I been drunk, high. I can't remember.

10 MR. WETMORE: I just want to argue he's denying  
11 his statement.

12 THE COURT: Ladies and gentlemen of the jury,  
13 there's a matter of law that I must take up outside of  
14 your presence.

15 Do not begin your deliberations. Do not discuss  
16 this case amongst yourselves.

17 Mr. Smalls, please remain seated.

18 Please rise for the jury.

19 [Whereupon, the jury exits the courtroom at  
20 5:55 p.m.]

21 THE COURT: Thank you. Please be seated.

22 Mr. Smalls --

23 THE WITNESS: Ma'am?

24 THE COURT: Do you understand what I am saying  
25 to you?

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1 THE WITNESS: Yes, ma'am.

2 THE COURT: Are you having difficulty with the  
3 English language here today?

4 THE WITNESS: No.

5 THE COURT: Is there some reason that you cannot  
6 answer out loud, loudly, yes or no, or respond to  
7 questions?

8 THE WITNESS: No, ma'am, ain't no reason.

9 THE COURT: Is there some reason that you have  
10 been unable to do so up to this point?

11 THE WITNESS: No, ma'am.

12 THE COURT: Do you think that if I bring the  
13 jury back in, you will be able to respond out loud to  
14 the State's questions, to the defendant's questions,  
15 and to the Court's questions?

16 THE WITNESS: Yes, ma'am.

17 THE COURT: Mr. Smalls, do you understand what  
18 it means to be held in contempt of court?

19 THE WITNESS: Yes, ma'am. I answering the  
20 questions.

21 THE COURT: I'm sorry?

22 THE WITNESS: I said I'm answering the  
23 questions.

24 THE COURT: All right. And, Mr. Smalls, that is  
25 your one warning from the Court.

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1 THE WITNESS: All right.

2 THE COURT: If you need any additional  
3 explanation, I need you to look at the Court and say --  
4 tell me that you need additional explanations. But you  
5 must answer the question out loud so that my court  
6 reporter can hear, that the State can hear, and that  
7 the defendant can hear, so that we may move on.

8 Do you understand me, Mr. Smalls?

9 THE WITNESS: Yes, ma'am.

10 THE COURT: Mr. Wetmore, what I understood  
11 Mr. Smalls to indicate was that he made that statement  
12 at the -- the night of the incident; is that correct?

13 MR. WETMORE: Judge, he appears to acknowledge  
14 his signature, yet claims to not have any memory of it,  
15 and I would argue that he's not been admitting the  
16 statement.

17 THE COURT: All right. Mr. Wetmore, under -- so  
18 are you attempting to introduce the entirety of State's  
19 8?

20 MR. WETMORE: Judge, what I'm going to do is ask  
21 him the questions and if he does not admit them, then I  
22 will seek to introduce it as extrinsic evidence under  
23 613(d).

24 THE COURT: All right. And, Mr. Wetmore, what I  
25 heard Mr. Smalls say was that that was his signature on

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1 the front of the document; correct?

2 MR. WETMORE: Yes, ma'am.

3 THE COURT: And when was the document made?

4 MR. WETMORE: It was made shortly after the  
5 incident.

6 THE COURT: All right. And -- all right.

7 Ms. Proctor, why wouldn't this be admissible  
8 under 803(5).

9 MS. PROCTOR: Well, he's saying -- he's not  
10 saying I didn't give it, he says I was on -- I was high  
11 that night, I was on drugs and drinking, and I don't  
12 remember giving it.

13 I think it's -- I think it's different. If you  
14 put somebody on the stand and you say did you give a  
15 statement to the police, no, is this your signature,  
16 no, do you remember doing it, no, I mean, did you do  
17 it, no. And it's total denial. Because this says if a  
18 witness denied making that statement. He didn't deny  
19 making it. He says, I don't remember it, I was drunk,  
20 I'm at the police station at 8:00 in the morning, I had  
21 been high all night, I don't remember.

22 And it's not in his handwriting. It's a typed-  
23 written statement --

24 THE WITNESS: Exactly.

25 MS. PROCTOR: -- that all he did was sign.

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1           So he's just saying, I don't remember. And I  
2 think that's different. And by having him then lead  
3 him on each question, that's the same as admitting it  
4 and I don't think he can.

5           And I'm sorry. What rule did you say?

6           THE COURT: 803. 803(5), recorded --

7           MS. PROCTOR: I was under 613.

8           THE COURT: Recorded recollection.

9           MS. PROCTOR: 803(5)?

10          THE COURT: Yes, ma'am. I'm sorry -- yes.

11          MR. WETMORE: So I guess it would be to the  
12 hearsay exception, because he made it at the time, two  
13 hours after the incident, now does not accurately  
14 remember it. Because I think that's appropriate.

15          I just would argue, as well, too, he's not  
16 admitting the statement. He's I guess not definitely  
17 denying it. He's saying, I was drunk. You know, he  
18 has a right saying that. But he's not admitting it.  
19 And so I think it's appropriate to ask about points in  
20 the statement. And if he's not admitting them, which I  
21 don't anticipate he will, then I can introduce those  
22 parts of the statements as extrinsic evidence.

23          And I think you're correct, too, that it also is  
24 appropriate under 803(5) as something he's unable to  
25 remember, now that he had down then -- put it down

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1 then. Well, gave a two-page statement and then --  
2 plenty of detail.

3 THE COURT: Ms. Proctor, I'll be happy to hear  
4 from you. Final word.

5 MS. PROCTOR: I was just looking at the last  
6 sentence. If admitted, the memorandum for a record may  
7 be read into the evidence but may not itself be  
8 received as an exhibit unless offered by an adverse  
9 party.

10 I'm still --

11 MR. WETMORE: Judge, that's all I would do. I  
12 guess if you take that line, we should be able to read  
13 it, if you don't believe it's appropriate under 602(b).

14 THE COURT: All right. Ms. Proctor?

15 MS. PROCTOR: I'm reading it as fast --

16 [Whereupon, Ms. Proctor reviews documents]

17 MS. PROCTOR: He did not deny making it, and  
18 he's not denying making it, and I don't think it falls  
19 under the hearsay rule. I think it goes under -- I  
20 don't like our new rule book.

21 [Whereupon, Ms. Proctor reviews documents]

22 MS. PROCTOR: Under 613. I think that's what  
23 fits, under prior statements of witnesses. And it is  
24 not -- what he is reading is the last part of -- where  
25 he said extrinsic impeachment evidence and prior

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1 consistent statements inadmissible by State's witness  
2 was admissible, as witness denied making it.

3 He is not denying making it.

4 MR. WETMORE: Judge, the way I see it is I  
5 don't --

6 THE COURT: Well, but he hasn't admitted that he  
7 made the statement, either; correct?

8 MR. WETMORE: Judge, I don't see the word deny,  
9 either. It says, if he does not admit it. And he does  
10 not admit it. I'm looking under 613(b). I wasn't  
11 looking at the case, I was looking at the statute. It  
12 says: if he does not admit it, then extrinsic evidence  
13 is admissible.

14 And that's what I would argue first. And in the  
15 alternative I think, Your Honor, something along, as  
16 well, with 803(5). But --

17 THE COURT: All right. I will allow you to read  
18 the statement, Mr. Wetmore. I do believe that the fact  
19 that he did not admit making the statement. I do not  
20 believe that the -- his indication -- he has been given  
21 the opportunity to explain the statement. He has  
22 indicated that he did not -- he does not remember  
23 making the statement, that he does not admit to making  
24 the statement. I do believe that it's appropriate and,  
25 as such, the evidence of the statement is admissible.

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1 Ms. Proctor, I believe that your argument  
2 concerning this is thoroughly preserved for the record.  
3 I will allow you any additional argument.

4 MS. PROCTOR: I just think he's trying to back-  
5 door in a statement that he's not allowed to.

6 So is he -- what -- how -- what are we going to  
7 do? He's going to completely read the statement?

8 THE COURT: I believe that under the rules, that  
9 the statement is admissible.

10 Mr. Wetmore, you may publish to the jury -- you  
11 may have Mr. Smalls read the statement into the record  
12 from the stand.

13 MR. WETMORE: Judge, may I publish it? He seems  
14 to have problems speaking up. May I just publish it,  
15 admit it, pursuant to 613(d), and then we go home? Is  
16 that okay with your ruling?

17 THE COURT: Well, I don't know that we're going  
18 home after you do that, Mr. Wetmore, but I will allow  
19 you to -- you may read into -- the statement into  
20 evidence.

21 Again, note your objection.

22 MR. WETMORE: All right. Judge, thank you.

23 MS. PROCTOR: Your Honor, would I be able to  
24 proffer one question and just ask him if he denies it?  
25 No one has yet asked him that question, you deny it, or

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1 you don't remember it.

2 THE COURT: I believe that question has been  
3 asked but, Ms. Proctor, you may ask Mr. Smalls:

4 Ms. Proctor has one question for you.

5 -----

6 PROFFER

7 BY MS. PROCTOR:

8 Q: Do you deny making this statement?

9 A: I said I don't recall.

10 Q: Or you don't recall making it?

11 A: I don't recall it.

12 THE COURT: Thank you.

13 All right. Anything before we bring in the  
14 jury?

15 MS. PROCTOR: No.

16 MR. WETMORE: No.

17 MS. PROCTOR: No, Your Honor.

18 THE COURT: All right. Thank you.

19 Let's bring in the jury.

20 [Whereupon, the jury enters the courtroom at  
21 6:06 p.m.]

22 THE BAILIFF: Jurors are all present, Your  
23 Honor.

24 THE COURT: Thank you. Please be seated.

25 Mr. Wetmore, your witness.

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1 MR. WETMORE: Thank you, Judge.

2 CONTINUED DIRECT EXAMINATION

3 BY MR. WETMORE:

4 Q. Mr. Smalls, you do not admit this statement, so  
5 I'm going to read it. It says: Detective James Hill is  
6 typing this statement for me at my request, in my own  
7 words, as I tell it to him. Me and my cousin, Derringer  
8 Young, are hanging out downtown with some friends.  
9 Everybody's talking about going to the party at Club 843  
10 so we decided to go. We got to Club 843 almost at  
11 midnight. I was hanging out in the club, chilling and  
12 talking to a girl. Had been there for a while and a fight  
13 started in the club. The people fighting the bouncers in  
14 the club. Chairs was getting thrown. It was bad. That's  
15 when the bouncers started telling everyone to get out of  
16 the club. I started looking for Derringer but I couldn't  
17 find him in the club. I got to the door of the club and  
18 started walking towards my car and made it to the first  
19 set of cars and I heard one gunshot. I looked over my  
20 shoulder towards the club and saw Derringer and the girl  
21 walking towards my car. Derringer and the girl was behind  
22 me when I got almost to the front of my car. I saw  
23 another guy, I don't know his name, the guy Derringer  
24 shot, walking towards us. When he got to Derringer, they  
25 started having words. That is when Derringer shot the

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1       guy. I don't remember how many shots he fired because I  
2       was scared. I had never seen anybody be shot before. I  
3       jumped in the car and then Derringer and the girl got in  
4       the car and we left. When we was driving off, I was  
5       asking Derringer what was going on. He wasn't saying  
6       anything. We started going down Dorchester Road when the  
7       girl in the back seat saw the police and said, they  
8       turning around. And she sounded like she was getting  
9       ready to cry. That's when Derringer rolled down the  
10      window and threw the gun out the window. And when he  
11      threw the gun out the window, he almost broke my window  
12      trying to get the gun out. The police turned on their  
13      blue lights, so I stopped. I can't remember exactly where  
14      we were at on Dorchester Road but I know we got stopped in  
15      front of the shopping center next to Bergman [phonetic].  
16      What was Derringer wearing, the detective asked. Black  
17      shirt, gray, blue pants. What did the gun look like.  
18      Black. Have you seen Derringer with a gun before. No.  
19      Did you handle the gun he had tonight at any time. No.  
20      Did you see the first guy get shot. No. The guy you saw  
21      Derringer shoot, what was he wearing. I don't remember.  
22      Do you know the guy that Derringer shot. No.

23                   Your Honor, at this point I would like to  
24                   introduce State's Number 8 into evidence.

25                   THE COURT: Pursuant to the defendant's previous

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1 objection, it's into -- excuse me -- State's 8 into  
2 evidence.

3 Noting your objection for the record, Ms.  
4 Proctor. Thank you.

5 [Whereupon, State's Exhibit Number 8 is admitted  
6 into evidence by the Court]

7 Q. [Mr. Wetmore] Mr. Smalls, have you been  
8 subpoenaed to testify today? You're testifying because of  
9 a subpoena?

10 A. Yeah.

11 Q. You all scared or nervous?

12 A. No.

13 Q. You're not scared or nervous about testifying?

14 A. No.

15 Q. Has anybody talked to you, communicated anything  
16 to you --

17 MS. PROCTOR: Objection, Your Honor.

18 Q. [Mr. Wetmore] -- about your testifying?

19 A. No.

20 THE COURT: Hold on one second.

21 Basis, Ms. Proctor?

22 MS. PROCTOR: Hearsay. There's no relevance to  
23 this.

24 THE COURT: Counsel approach.

25 [Whereupon, an off-the-record bench conference

1 is held]

2 THE COURT: Sustained.

3 MR. WETMORE: I don't have any further  
4 questions.

5 THE COURT: I'm sorry, Mr. Wetmore. Nothing  
6 further?

7 MR. WETMORE: No further questions.

8 THE COURT: All right. Ms. Proctor, your  
9 witness.

10 MS. PROCTOR: Thank you, Your Honor.

11 MS. MULLANEY: Hi, Mr. Smalls.

12 CROSS-EXAMINATION

13 BY MS. MULLANEY:

14 Q. Mr. Smalls, you didn't write that statement;  
15 right?

16 A. No.

17 Q. And it's not -- this isn't your handwriting;  
18 correct?

19 A. That's typed.

20 Q. It's typed. The police typed it; correct?

21 A. I guess.

22 Q. And then they asked you to sign it; right?

23 A. I can't remember.

24 Q. You can't remember because you were intoxicated  
25 that night?

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1 A. Yeah.

2 Q. You were drunk and you were high?

3 A. Yeah.

4 Q. And there were a lot of things going on?

5 A. Yeah.

6 Q. And you were afraid they were going to charge  
7 you with this murder, weren't you?

8 A. No.

9 Q. Well, they did check your hands for gun powder  
10 residue?

11 A. Yeah.

12 Q. So you were afraid that they were going to  
13 charge you with this, weren't you?

14 A. No, I ain't been afraid.

15 Q. Pardon me?

16 A. I wasn't afraid.

17 Q. You weren't afraid.

18 Is everything the solicitor read to you, is that  
19 what happened that night?

20 A. I can't remember.

21 Q. And you've been charged with drugs before;  
22 correct?

23 A. Yes.

24 MS. MULLANEY: Thank you.

25 THE COURT: Mr. Wetmore?

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1 MR. WETMORE: I don't have anything, Judge.

2 I think State's Number 8 is already into  
3 evidence; correct?

4 THE COURT: Yes.

5 MR. WETMORE: It's been admitted.

6 THE COURT: Ladies and gentlemen, this is an  
7 appropriate time for us to take our evening break.

8 Do not begin your deliberations. Do not discuss  
9 this case amongst yourselves.

10 Do not read, watch, listen to any news accounts,  
11 should there be any.

12 Ladies and gentlemen, please be back in your  
13 jury room at 9:30. We will begin promptly once  
14 everyone is back, all thirteen of you are ready to  
15 proceed.

16 Mr. Smalls, please remain seated.

17 Please have a wonderful evening.

18 Please rise for the jury.

19 [Whereupon, the jury exits the courtroom at  
20 6:17 p.m.]

21 THE COURT: Thank you. Be seated.

22 May this witness be excused, Mr. Wetmore?

23 MR. WETMORE: Judge, he's -- I'm done with him,  
24 unless you have anything further.

25 THE COURT: All right. Ms. Proctor, any

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1 objection to this witness being released from his  
2 subpoena?

3 MS. PROCTOR: No, Your Honor.

4 THE COURT: Mr. Smalls, you are released from  
5 your subpoena. You may leave the courtroom. Thank you  
6 very much.

7 [Whereupon, Mr. Smalls is excused and exits the  
8 witness stand]

9 THE COURT: Anything further from the State?

10 MR. WETMORE: Nothing, Your Honor.

11 MS. PROCTOR: Nothing, Your Honor.

12 THE COURT: All right. We will be in recess in  
13 this matter until 9:30.

14 [Off the record momentarily]

15 THE COURT: Thank you. Everyone have a  
16 wonderful evening.

17 MR. WETMORE: Thank you, Judge.

18 [JURY TRIAL ADJOURNS AT 6:17 P.M.]

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1 nothing but the truth, so help you God]

2 THE WITNESS: Yes, sir, I do.

3 THE CLERK OF COURT: Be seated.

4 [Whereupon, Mr. Hill takes the witness stand]

5 THE CLERK OF COURT: State your full name and  
6 spell your last name for the record.

7 THE WITNESS: Yes, ma'am.

8 James Michael Hill, Jr. H-I-L-L.

9 - - - - -

10 JAMES M. HILL, JR.,

11 Having Been First Duly Sworn,

12 was Examined and Testified as Follows:

13 DIRECT EXAMINATION

14 BY MR. WETMORE:

15 Q. Detective Hill, how long have you been with  
16 North Charleston Police Department?

17 A. Since 2000.

18 Q. Now, if you could just very briefly tell the  
19 jury kind of the highlights of your training and your  
20 experience that helps you do your job.

21 A. Yes, sir.

22 I started my law enforcement career at the  
23 Charleston County Detention Center. From there I went to  
24 Calhoun County Sheriff's Office, where I was a deputy for  
25 a couple of years, and from Calhoun County Sheriff's

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1 Office I came to North Charleston Police Department.

2 Since being at North Charleston Police  
3 Department, I've been assigned to patrol, an ATF task  
4 force, narcotics, and investigations.

5 Q. And currently what are your duties and your  
6 responsibilities?

7 A. I'm the sargent over the crimes against persons  
8 unit.

9 Q. So you're a detective sargent in the  
10 investigations part of the police department?

11 A. Yes, sir.

12 Q. Now, we're here regarding the double shooting  
13 that happened at Club 843 on November 22nd of 2007. Did  
14 you assist in investigating this case?

15 A. Yes, sir, I did.

16 Q. Now, did part of your assistance involve  
17 interviewing and taking a statement from the witness that  
18 we just heard at the end of the day yesterday, Renardo  
19 Smalls [phonetic]?

20 A. Yes, sir.

21 Q. So you met with him when this happened?

22 A. Yes, sir.

23 Q. Tell me where --

24 MS. PROCTOR: Your Honor, objection.

25 THE COURT: Basis?

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1 MS. PROCTOR: I think he's pitting one of his  
2 witnesses against another.

3 And I don't see the relevancy of this.

4 THE COURT: All right. Counsel approach.

5 [Whereupon, an off-the-record bench conference  
6 is held]

7 THE COURT: Rephrase your question, Mr. Wetmore.

8 MR. WETMORE: Sorry, Judge. Thank you.

9 Q. [Mr. Wetmore] Detective, I meant the jury, we,  
10 collectively, heard from Mr. Smalls yesterday. I know  
11 that you didn't hear from Mr. Smalls yesterday. But you  
12 did meet with him after this happened; correct?

13 A. Yes.

14 Q. Where were you when you met with Renardo Smalls?

15 A. North Charleston Police Department, in the  
16 investigative section of the police department.

17 Q. Okay. So he was brought to the police station?

18 A. Yes, sir.

19 Q. And did you meet with him in a private room or  
20 out in the open or --

21 A. No, sir.

22 It would have been in one of our interview  
23 rooms.

24 Q. Okay. So who all was in the room besides you  
25 and him?

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1 A. Just me and him.

2 Q. Okay. So just the two of you in a room?

3 A. Yes, sir.

4 Q. You're sitting across the table from him or --

5 A. I could have been across, and at some point I  
6 may have actually got face-to-face with him.

7 Q. So you were pretty close with him?

8 A. Uh-huh.

9 Q. Okay. How long did you meet with him?

10 A. I don't remember exactly how long the interview  
11 lasted.

12 Q. Did you notice him to be drunk?

13 A. No, sir.

14 Q. Did you notice him to be high?

15 A. No, sir.

16 Q. Intoxicated in any way?

17 A. No, sir.

18 Q. In fact, you don't typically take statements  
19 from people who are intoxicated, do you?

20 A. Correct.

21 Q. So you were convinced that he was sober enough  
22 to give a statement?

23 A. Yes, sir.

24 Q. You didn't have any questions about that?

25 A. No, sir.

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1 MR. WETMORE: If I may approach, Your Honor?

2 THE COURT: You may.

3 Q. [Mr. Wetmore] I'm going to hand you what's been  
4 marked as State's Number 8. That's admitted into  
5 evidence. If you would take a look and see if you can  
6 tell what that is.

7 A. It's a North Charleston Police Department  
8 witness statement, typed by me, in Mr. Renardo Smalls'  
9 words, with the exception of the question and answers,  
10 which are questions that I asked and he gave me an answer  
11 and I typed his response.

12 Q. So that document is the written statement that  
13 you took from Renardo Smalls?

14 A. Yes, sir.

15 Q. If you would just describe to us how the process  
16 worked. What would you have done with him first before  
17 taking the statement?

18 A. Generally, before I interview someone I talk to  
19 them for a short time, try to get to know a little bit  
20 about them. And then if I feel that Miranda is needed,  
21 based on what this witness -- or, i.e., if it's going to  
22 be a defendant, or if it's unknown if Miranda is needed.  
23 And then from that point, I get into the statement part  
24 and I basically write what they're saying.

25 Q. Okay. So in this case did you read the rights,

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1 did you read him his rights, Renardo Smalls?

2 A. I did.

3 Q. And did you ask if he understood?

4 A. I did.

5 Q. Okay. Did he sign before you that he did  
6 understand his rights?

7 A. Yes, sir, he did.

8 Q. And is his signature there on the page in front  
9 of you?

10 A. Yes, sir. On that statement, yes, sir.

11 Q. And it says -- what is the date and the time it  
12 looks like you did that?

13 A. The statement was given 11/22/2007 at 0800  
14 hours, which is 8:00 a.m. in the morning.

15 Q. 8:00 a.m. in the morning after the shooting?

16 A. Yes, sir.

17 Q. Now, what is that -- I guess the warning or the  
18 phrasing at the bottom of that advice of rights page?

19 A. You mean on the witness statement, sir?

20 Q. On the first page, like the cover page, it says  
21 advice of constitutional rights. At the bottom there's  
22 something additional: having these rights in mind, I wish  
23 to waive these rights.

24 A. You didn't hand me a copy of the constitutional  
25 rights.

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1 Q. Oh. It's not on your page?

2 [Whereupon, Mr. Wetmore reviews documents]

3 A. But, I mean, our -- I know it's one there. It's  
4 a waiver. It's basically asking the subject if they wish  
5 to waive their rights and talk to us. And I believe it  
6 says no threats, forces or promise of any kind have been  
7 made by me, to him, to get him to talk to me.

8 Q. [Mr. Wetmore] Obviously, you didn't make any  
9 threats or any promises or any forces or anything?

10 A. No, sir.

11 Q. So the exhibit in front of you is simply the  
12 statement; correct?

13 A. Yes. Yes, sir.

14 Q. And tell me how that process worked. After you  
15 read him his rights, he signed off, tell me how the  
16 process worked of taking his written statement.

17 A. Like I said, I generally start my interview  
18 talking to them individual, trying to get to know them,  
19 trying to get a little personal with them, kids, school,  
20 education. Basically trying to get a feel to make sure  
21 they understand what I'm asking them and they can  
22 intelligently answer me.

23 Q. And did you feel that Renardo Smalls understood  
24 what you were asking him? He was able to provide accurate  
25 information to you?

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1 A. Yes, sir.

2 Q. And so how did -- how did this written statement  
3 get created? It says you're typing it at his request, in  
4 his own words. He's talking and you're typing?

5 A. Correct.

6 But I would have asked him beforehand do you  
7 want to write your statement or do you want me to write  
8 your statement. And that's when he asked me to write the  
9 statement; therefore, I started typing his statement.

10 Q. He asked you -- he asked you to write it?

11 A. Yes, sir.

12 Q. So you typed it for him as he was saying it?

13 A. Yes, sir.

14 Q. So the words on the paper there, until it gets  
15 to the question-and-answer part, those words are coming  
16 out of his mouth?

17 A. Correct.

18 Q. And you're typing them?

19 A. Yes, sir.

20 Q. You're not suggesting to him what to say?

21 A. No, sir.

22 Q. You're not promising him -- giving him the right  
23 information?

24 A. No, sir.

25 Q. Isn't it true in that point of the investigation

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1 you didn't have a whole lot of information yourself?

2 MS. PROCTOR: Your Honor, I would ask that --  
3 these are leading questions. Objection.

4 THE COURT: Mr. Wetmore, please rephrase your  
5 question.

6 Q. [Mr. Wetmore] At that point in the  
7 investigation, did you have a lot of information?

8 A. No, sir, I did not.

9 Q. Were you relying on him for the information?

10 A. Yes, sir, I was.

11 Q. Certainly not suggesting it?

12 A. Correct.

13 Q. Now, after you took down his words, did you ask  
14 him some questions?

15 A. I did.

16 Q. And those were recorded on the statement, too;  
17 correct?

18 A. Yes, sir.

19 Q. And you -- as he answered, did you type out his  
20 answers?

21 A. Yes, sir, I did.

22 Q. And at the end of each page there is a phrase.  
23 If you would share with us what that phrase says.

24 A. At the bottom of our statements there's a  
25 portion that says: I've had -- I've read the foregoing

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1 statement, or have had it read to me, and it's true and  
2 correct to the best of my knowledge. I have given this  
3 statement freely and voluntarily and have been provided a  
4 copy of this statement. It's on the bottom of every page  
5 of the statement. And once you're done with the  
6 statement, we'll go over the statement with whoever has  
7 given the statement, make sure they don't want to change  
8 anything, add anything, or delete anything, and then they  
9 sign each page.

10 Q. Okay. So he told you the story, and he told it  
11 again while you wrote it, then you read it back to him; is  
12 that correct?

13 A. Yes, sir.

14 Q. And then it says: true and correct, free and  
15 voluntary.

16 Did he sign it?

17 A. He did.

18 Q. And did you sign it?

19 A. I did.

20 Q. And during that entire process, you didn't have  
21 any doubt that he was sober enough to give a statement?

22 A. Correct.

23 MR. WETMORE: Thank you. I have no further  
24 questions.

25

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FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

## CROSS-EXAMINATION

1  
2 BY MS. PROCTOR:

3 Q. Detective Hill, when -- where did you first  
4 encounter Mr. Smalls? Was it at the police station?

5 A. Yes, ma'am.

6 Q. And where was he? I mean, was he in a room by  
7 himself?

8 A. He was in an interview room and I went into an  
9 interview room to interview him.

10 Q. And was he wearing cuffs at that time?

11 A. I can't -- I don't remember, to be honest with  
12 you.

13 Q. Now, you said that you went over a advisement of  
14 rights form and he signed that at seven o'clock. Now, the  
15 statement is given at eight o'clock. What happened during  
16 that hour between 7:00 and 8:00?

17 A. We were talking.

18 Q. And while he was talking to you, did you take  
19 any notes?

20 A. No, ma'am.

21 Q. Now, when he was talking to you, did he tell you  
22 -- he said he had been in a bar; correct?

23 A. [No response]

24 Q. Well, I mean, Club 843 is a bar.

25 A. Yeah. He said they were hanging out downtown

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1 and then they were going to a party at Club 843.

2 Q. Okay. But when I say he -- maybe I shouldn't  
3 say bar. A club. So you know he had been at Club 843?

4 A. Yes, ma'am.

5 Q. ( And this incident took place at 3:00, 3:30 in  
6 the morning and now it was seven o'clock. So you assume  
7 that he probably had been drinking; correct?

8 A. He may have.

9 Q. Well, you didn't smell any alcohol at all?

10 A. No, ma'am.

11 Q. And did you know whether or not he had done any  
12 drugs?

13 A. No, ma'am, I did not.

14 Q. Did you test him for any drugs?

15 A. No, ma'am, I did not.

16 Q. And is this the first time you had -- you had  
17 ever met Mr. Smalls; correct?

18 A. That I can't truthfully answer.

19 I don't remember if I've ever encountered him in  
20 the street or -- before or not.

21 Q. So assuming this was the first time you had run  
22 into him at 7:00 or 8:00 in the morning, after he had been  
23 in a bar, you wouldn't really know whether he was drunk or  
24 not because you don't really know his tolerance of  
25 drinking, do you?

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1           A.       When I'm talking to someone, I try to evaluate  
2 whether this person is coherent enough to understand what  
3 I'm asking them and they can answer the questions that I  
4 am asking and if they're not coherent enough to understand  
5 or they appear to be intoxicated or under the influence of  
6 anything, then I won't take their statement.

7           Q.       And this is a typewritten statement; correct?

8           A.       Yes, ma'am, it is.

9           Q.       So what you're saying is this is verbatim? You  
10 never had to delete a sentence, you never -- he gave you  
11 this whole -- this narrative exactly like this with  
12 nothing else?

13          A.       This is exactly what he told me, yes, ma'am.

14          Q.       And is he telling you exactly like this -- so  
15 you never stopped during the sentences and asked  
16 questions?

17          A.       No, ma'am.

18                    The only time I stopped and asked him something  
19 is where you see in parenthesis. I was trying to clarify  
20 where he says, I don't know his name, and then I'm like  
21 who are you talking about. I asked him that and --

22          Q.       Well, I guess my question is back on the last  
23 page you've got where you're asking him questions.

24          A.       Yes, ma'am.

25          Q.       So what I'm saying is during this whole

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1 narrative, you never asked any questions except that one  
2 time? You just went on this -- just was spewing it out  
3 and you were just typing?

4 A. Correct.

5 Q. And when it was over, did you read it?

6 A. Yes, ma'am.

7 Q. And how do you know he can read?

8 A. Because I asked that in the beginning of my  
9 interview process.

10 Q. You say he can read?

11 A. I asked the individual can they read and write.

12 And, if you look on my Miranda form --

13 Q. Right.

14 A. -- if you see the checkmarks, if you'll notice,  
15 they're upside down. That is his reading his advisement  
16 of rights to me.

17 Q. So he read them out loud?

18 A. Yes, ma'am.

19 Q. Do you normally type your statement?

20 A. Sometimes I do, sometimes I don't.

21 At this time we had a computer in the interview  
22 room I was in so, yes, ma'am, I decided to type it.

23 Q. And do you -- did you videotape or tape-record  
24 this?

25 A. No, ma'am.

1 Q. Sometimes do you take a video -- video-record  
2 statements?

3 A. No, ma'am.

4 Q. You never have? You've never taped a statement,  
5 tape-recorded a statement, ever?

6 A. Not for North Charleston police investigation.  
7 For when I was on the ATF task force, they had recordings  
8 in their interview rooms so some of those interviews were  
9 tape-recorded, yes, ma'am.

10 MS. PROCTOR: Thank you. I have no further  
11 questions.

12 THE COURT: Mr. Wetmore?

13 MR. WETMORE: Nothing further.

14 THE COURT: Sargent, you may step down. You're  
15 free to remain with us but you're also free to leave.

16 THE WITNESS: Thank you.

17 [Whereupon, Mr. Hill is excused and exits the  
18 witness stand]

19 THE COURT: Call your next witness.

20 MR. WETMORE: The State calls Jonathan Glenn.

21 [Whereupon, Mr. Glenn comes forward]

22 THE CLERK OF COURT: This way, sir.

23 Place your left hand on the Bible and raise your  
24 right hand.

25 [Whereupon, Mr. Glenn is duly sworn by the clerk

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1 of court as follows: do you swear or affirm that your  
2 testimony will be the truth, the whole truth, and  
3 nothing but the truth, so help you God]

4 THE WITNESS: Yes, I do.

5 THE CLERK OF COURT: Be seated.

6 [Whereupon, Mr. Glenn takes the witness stand]

7 THE CLERK OF COURT: Sir, if you would just  
8 state your full name and then spell your last name for  
9 the record.

10 THE WITNESS: Jonathan Glenn. The last name,  
11 G-L-E-N-N.

12

13

JONATHAN GLENN,

14

Having Been First Duly Sworn,

15

was Examined and Testified as Follows:

16

DIRECT EXAMINATION

17

BY MR. WETMORE:

18

Q. Mr. Glenn, how long have you been with North

19

Charleston Police Department?

20

A. Since August of 2005.

21

Q. Okay. And would you share basically your

22

training and experience real briefly for the jury so they  
23 understand?

24

A. For three and a half years, since 2005 -- I was

25

on patrol at the time of this incident. Was taking

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1 dispatch calls, traffic stops, and backing other officers  
2 up.

3 After three and a half years in patrol, went to  
4 the Speed Team, which is a street-level vice team, for two  
5 years.

6 And now I'm currently assigned to narcotics.

7 Q. Now you work in narcotics?

8 A. Yes, sir.

9 Q. That's why you have that big, scruffy beard?

10 A. Yes, sir, it is.

11 Q. Now, that's what you're doing now. What were  
12 you doing back in November of 2007?

13 A. That was back when I was in patrol. Working  
14 night shift.

15 Q. So you were working night shifts?

16 A. Yes, sir.

17 Q. And November 22nd, 2007, about 3:00 a.m., when  
18 this shooting happened, tell us what you were doing that  
19 night.

20 A. Actually, myself and my partner, Tony Doxy  
21 [phonetic], we were at Dorchester Road near Apartment  
22 Boulevard. Got a dispatch call for a shooting at the Club  
23 843.

24 Q. So you got called over your radio?

25 A. Yes, sir.

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1 MR. WETMORE: Your Honor, may I approach and  
2 grab this --

3 THE COURT: You may.

4 MR. WETMORE: Can you see that behind you? Is  
5 that clear enough for you to tell what it is?

6 THE WITNESS: Not very focused.

7 [Off the record momentarily]

8 Q. [Mr. Wetmore] I know that's not perfect, but is  
9 that close enough that you can see what this is a map of?

10 A. It's a map of Dorchester Road.

11 Q. Now, does that -- as out of focus as it is, does  
12 it fairly and accurately represent the length of  
13 Dorchester Road from the club to the place where you were  
14 involved in this case?

15 A. Yes, sir.

16 Q. It's already been admitted into evidence as  
17 State's Number 6. Can you take a look at State's Number 6  
18 and tell us where you were when you got the call about the  
19 shooting? Use that laser pointer and just kind of point  
20 to it, if you don't mind.

21 THE WITNESS: Do you mind if I step back so I  
22 can actually see the names of the roads?

23 THE COURT: You may.

24 THE WITNESS: Thank you.

25 A. Right around this area right here, Dorchester

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1 and Apartment Boulevard, is where I was.

2 Q. [Mr. Wetmore] So that's where -- that's where  
3 you are?

4 A. Yes, sir.

5 Q. With your partner?

6 A. Correct.

7 Q. And what did the call -- what did the call  
8 advise you had just happened?

9 A. There was a shooting at the Club 843.

10 Q. Can you show us real quick where that is?

11 A. It's the club right here. This is Cross County  
12 Road and Dorchester Road, and it's in that shopping plaza.

13 Q. Okay. So you received information the shooting  
14 happened right there?

15 A. Yes, sir.

16 Q. And you were on down at Dorchester up towards  
17 the top of the map?

18 A. Yes, sir.

19 Q. Did you have any idea which way the suspect was  
20 coming?

21 A. The dispatch advised that the vehicle was at  
22 Dorchester and Cross County, made a left on Dorchester  
23 actually towards where I was actually sitting at  
24 Dorchester and Apartment.

25 Q. Okay. So you got information that he was headed

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1 your way?

2 A. Yes, sir.

3 Q. And what other information did you have at that  
4 point?

5 A. The information dispatch provided was a silver-  
6 color, older-model, possibly a Lincoln. But it was an old  
7 silver, box-style vehicle with a dent in the driver's --  
8 or the passenger-side door.

9 Q. So an older Lincoln, dent in the passenger-side  
10 door.

11 Any information about the occupants at that  
12 time, or were you just looking for the vehicle?

13 A. Just looking for the vehicle.

14 Q. At the time we got dispatched, there was no  
15 information about who was in the vehicle.

16 Q. Okay: So where you're positioned, were you able  
17 to see the car coming towards you?

18 A. Yes, sir.

19 I actually was sitting up near Brossy Circle,  
20 just stationary, and waited for the vehicle. It was a  
21 silver-color, box-style vehicle, a dent in the passenger-  
22 side door, that came by. And that's when I initiated a  
23 traffic stop on the vehicle.

24 Q. Did -- how much time had passed from when you  
25 got the call on the radio to where you saw this car pass?

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1 A. Within minutes.

2 Q. Okay. And it was the same kind of car?

3 A. Right.

4 Q. Did you notice the dent?

5 A. Yes, sir, I did.

6 Q. Pretty distinctive dent in the door?

7 A. Yes, sir.

8 Q. So when that car passed you, what did you do?

9 A. I got behind the vehicle. I conducted a traffic  
10 stop.

11 Because there was a possibility of a gun that  
12 was involved in the shooting, what we did was a -- it's  
13 called a felony car stop. Waited until back-up got there  
14 and called each person out of the vehicle, one by one, to  
15 get them to lay on the ground to search them for weapons  
16 and then detain them.

17 MR. WETMORE: Okay. Now, you can sit back down.

18 I think we can probably just go ahead and turn this  
19 thing off.

20 THE WITNESS: Yes, sir.

21 Q. [Mr. Wetmore] So the car you stopped, was it a  
22 Lincoln?

23 A. It was not. It was a Mercury, four-door.

24 Q. And those body styles are pretty similar or not?

25 A. Yes, sir. They're both box-style, larger cars.

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1 Q. Approximately what year was it?

2 A. I would say in the '80s. I'm really not certain  
3 of the year.

4 Q. And what color was it?

5 A. Silver.

6 Q. Did you know -- did you see that -- see anything  
7 unique about the door, the passenger door?

8 A. Yeah. The dent that was described by dispatch.  
9 There was a dent in the passenger-side door of the vehicle  
10 that I pulled over.

11 Q. So when you got the car stopped, you could tell  
12 it well-matched the description you were given?

13 A. Yes, sir.

14 Q. All right. About how far is it from where you  
15 stopped the car to the club?

16 A. It's a mile -- it's 1.2 miles from the Club 843  
17 to the place where I stopped the vehicle.

18 Q. So 1.2 miles --

19 A. Yes, sir.

20 Q. -- from the club to where you stopped the car?

21 A. Yes, sir.

22 Q. Now, Club -- and that site -- that intersection  
23 where you stopped the car, is that in the City of North  
24 Charleston?

25 A. Yes, it is.

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1 Q. In your jurisdiction in Charleston County?

2 A. Yes, sir.

3 Q. All right. So you've got the car stopped. Were  
4 you by yourself at that point?

5 A. At the time the car pulled over I was.

6 I was standing by. Which it was mere seconds  
7 until my back-up that was in the same location that I was,  
8 he arrived. And that's when we had them exit the vehicle  
9 one by one.

10 Q. Okay. So you're the first one there --

11 A. Yes, sir.

12 Q. -- the first one to stop the car?

13 A. Yes, sir.

14 Q. Was the defendant in the car?

15 A. Yes, sir.

16 Q. Okay. Where was -- where was he seated in the  
17 car?

18 A. He was the passenger in the front seat.

19 Q. Front-seat passenger?

20 A. Yes, sir.

21 Q. Anybody else in the car?

22 A. The driver, who was Mr. Smalls. And there was a  
23 female in the back seat, Ms. Brown.

24 Q. Okay. So three people, total, in the car?

25 A. Yes, sir.

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1 Q. And the defendant was in the front passenger  
2 seat?

3 A. Yes, we was.

4 Q. If you would just tell us briefly what you did  
5 at the traffic stop.

6 A. Once the vehicle was pulled over, waited until  
7 Patrolman Doxy arrived. When he arrived, we had each  
8 occupant in the vehicle exit, lay on the ground where they  
9 were detained, searched, make sure there's no weapons.  
10 Just in reference to that shooting, that's what we would  
11 usually do. It's called a felony traffic stop.

12 Q. Sure.

13 A. And from then, they were all put in separate  
14 vehicles. There's a third officer, Officer Huggins, who  
15 came to the scene and the third person, the female, was  
16 placed in his vehicle.

17 Q. So you and your back-up asked them to get out of  
18 the car?

19 A. Yes, sir.

20 Q. And you put each person in a police car; is that  
21 right?

22 A. Yes, sir.

23 Q. And did you search the people themselves for  
24 guns or weapons?

25 A. Yes, sir, we did.

1 Q. Did you find anything?

2 A. No. No, sir.

3 Q. Did you look in the car for a gun?

4 A. Yes, we did.

5 Q. Did you find a gun in the car?

6 A. No, sir. No weapon was found.

7 Q. I'm going to ask you to watch a video. This is  
8 the traffic-stop video.

9 [Off the record momentarily]

10 Q. [Mr. Wetmore] I'm going to get you to take a  
11 look at this and just kind of tell us what we're -- tell  
12 us what we're watching. Is this -- have you taken a look  
13 at this video of the traffic stop?

14 A. Yes, I have. Yes, sir.

15 [Whereupon, video is played for the jury with  
16 questions from Mr. Wetmore. The video is not  
17 transcribed by the court reporter]

18 A. That's Dorchester Road.

19 That's the suspect vehicle in front of me, box-  
20 style vehicle, silver in color -- and this is Brossy  
21 Circle and Dorchester Road.

22 At this time I'm waiting for the back-up to show  
23 up before we get them to exit the vehicle.

24 At this time we're getting everybody's hands,  
25 make sure there's no weapons that they're holding, in

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1 order to get them to exit the vehicle.

2 Q. [Mr. Wetmore] So that's your police car taking  
3 this video?

4 A. Yes, sir, it is.

5 Q. Do you see the defendant?

6 A. Yeah. The defendant, laying on the ground, the  
7 right.

8 We're just waiting for the female to come out of  
9 the back.

10 Q. Is that the female? That passenger?

11 A. Yes, sir.

12 At this time we're putting handcuffs on  
13 everybody. We search them and then search the car and  
14 make sure there's no weapons present.

15 Q. That's you with the driver, Renardo Smalls;  
16 correct?

17 A. Yes, sir.

18 This is walking the driver, Mr. Smalls, to place  
19 him in the back of my patrol car.

20 Q. So that's you with the driver; correct?

21 A. Yes, sir.

22 And then here's where we get the defendant and  
23 place him in Doxy's vehicle.

24 Q. Okay. So this is another officer with the  
25 passenger, the female passenger?

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1 A. Yes, sir.

2 Q. She's going to another police car; correct?

3 A. Correct. I placed her in Officer Huggins' car,  
4 who should be showing up here momentarily.

5 Now we'll search the car to make sure there is  
6 no weapons in the car -- secured at the back of the car.

7 That's Officer Huggins. He just showed up to  
8 take the female back to his vehicle.

9 Q. He's taking the female back to his vehicle?

10 A. Yes, sir.

11 Q. And is the defendant still there?

12 A. Yeah, the defendant is still with us. Yes, sir.

13 And that's Patrolman Doxy taking the defendant  
14 back to his vehicle.

15 Q. Then from there, you guys are just taking a look  
16 at the car trying to find a weapon --

17 A. Correct.

18 Q. -- any kind of weapon?

19 A. Yes, sir.

20 [Whereupon, video concludes]

21 Q. [Mr. Wetmore] All right. Now, after you had  
22 stopped the car and gotten everybody out, did the North  
23 Charleston Police Department -- did another officer bring  
24 a witness out to where you were?

25 A. Yes, sir. Officer Repman brought the bouncer

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1 from the Club 843 up to the traffic stop.

2 Q. Okay. Now, Officer Repman brought the bouncer  
3 you said --

4 A. Yes, sir.

5 Q. -- to the traffic stop. What was the purpose of  
6 bringing him out there?

7 A. Later we found out that he was the person that  
8 called dispatch to give us the car description, and also  
9 he witnessed the whole incident, the shooting in the  
10 parking lot, and he was going to come up to ID the three  
11 people in the car to see if they were associated with the  
12 incipient.

13 Q. Okay. And did you take place in that process,  
14 too?

15 A. I did.

16 Q. And how did that process go?

17 A. When the bouncer showed up to do the ID, I just  
18 had my -- the driver, Mr. Smalls, exit the vehicle and see  
19 if he had anything to do with the incident. And that's  
20 when the bouncer ID'd him as the driver of the vehicle.  
21 From then, I just put Mr. Smalls back in the back of my  
22 car.

23 Q. So those individuals that we saw you stop, were  
24 they each brought out?

25 A. Yes, sir, they were.

1 Q. They were each brought out one by one?

2 A. Yes, sir.

3 MS. PROCTOR: Your Honor, objection. Leading.

4 THE COURT: I'm going to allow it.

5 Q. [Mr. Wetmore] Now, where was the witness?

6 Where was the bouncer at that time?

7 A. He was behind all of the patrol cars.

8 And that's where he sat to witness -- we would  
9 bring each person out one at a time, put a light on them  
10 to see if he could see if they played any role in the  
11 incident.

12 Q. And he was in a police car himself or --

13 A. Yes, sir.

14 Q. And you and the other officers that were out on  
15 the road, did you bring your suspects up?

16 A. Yes, sir.

17 Q. So that the witness could see them?

18 A. Right.

19 Q. And how far away do you think this witness was  
20 from the car? Was he a long distance from --

21 A. No, sir.

22 He was probably -- if there were three cars  
23 already on scene, he would have been the fourth or fifth  
24 car on scene.

25 Q. Now, at any point in the process of the witness

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1 coming out and looking at the suspects, did you suggest to  
2 him who was who?

3 A. No, sir.

4 Q. Did you indicate who he should identify at all?

5 A. No, sir.

6 Q. At that point, did you have any information  
7 about the case?

8 A. None at all. No, sir.

9 Q. So you were relying on the witness --

10 A. Correct.

11 Q. -- correct?

12 A. Yes, sir.

13 There was no further information given from  
14 dispatch than the car description and where they left  
15 from.

16 Q. So you stopped the car and you assisted in  
17 allowing the witness, the bouncer, to identify the  
18 suspects?

19 A. [Indicates affirmatively]

20 Q. What did you do after he had identified the car  
21 and the suspects?

22 A. Detectives, they already were in route because I  
23 guess at the same time there was a murder that happened  
24 that was -- at Club 843. That's what the shooting was  
25 about. I put the driver back in the back of my car and

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1 waited for detectives to show up, and they would handle it  
2 from there.

3 Q. Okay. So the detectives were investigating the  
4 murder, meaning this case; right?

5 A. Yes, sir.

6 Q. And the shooting, meaning this case?

7 A. Right. Yes, sir.

8 Q. And you turned over the suspects to the  
9 detectives to talk to them?

10 A. Correct. Yes, sir.

11 Q. Anything else you did in investigating this  
12 case?

13 A. No, sir.

14 MR. WETMORE: No further questions at this time.  
15 If you would please answer any from Ms. Proctor.

16 THE COURT: Ms. Proctor?

17 MS. PROCTOR: We don't have any questions.

18 THE WITNESS: Thank you.

19 THE COURT: Officer, you may step down. You're  
20 free to remain with us.

21 THE WITNESS: Okay. Thank you.

22 THE COURT: You're also free to leave.

23 [Whereupon, Mr. Glenn is excused and exits the  
24 witness stand]

25 THE COURT: Call your next witness.

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1 MR. WETMORE: The State calls Travis Repman,  
2 with the North Charleston Police Department.

3 [Whereupon, Mr. Repman comes forward]

4 THE CLERK OF COURT: This way, ~ Officer.

5 Place your left hand --

6 [Whereupon, Mr. Repman is duly sworn by the  
7 clerk of court as follows: do you swear or affirm that  
8 your testimony will be the truth, the whole truth, and  
9 nothing but the truth, so help you God]

10 THE WITNESS: I do.

11 THE CLERK OF COURT: Be seated.

12 [Whereupon, Mr. Repman takes the witness stand]

13 THE CLERK OF COURT: Please state your full name  
14 and then spell your last name for the record.

15 THE WITNESS: Travis Repman. R-E-P-M-A-N.

16 THE COURT: Mr. Wetmore.

17 - - - - -

18 TRAVIS REPMAN;

19 Having Been First Duly Sworn,

20 was Examined and Testified as Follows:

21 DIRECT EXAMINATION

22 BY MR. WETMORE:

23 Q. Officer Repman, how long have you been with  
24 North Charleston Police Department?

25 A. Three years.

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1 Q. Very briefly give us your training and your  
2 experience that helps you do your job.

3 A. I have a bachelor's degree in criminal justice  
4 from Edinburg University. I graduated from the South  
5 Carolina academy in 2006. Worked with the Goose Creek  
6 Police Department for a little over a year before  
7 transferring to North Charleston. I worked patrol at the  
8 time, on night shifts, and recently I've been assigned,  
9 since 2008, on the Speed Team.

10 Q. Okay. So in November of 2007, you were night  
11 shift?

12 A. Yes, sir.

13 Q. Were you on duty November 22nd, 2007, about 3:00  
14 a.m.?

15 A. Yes, sir.

16 Q. What were you doing that night?

17 A. I was conducting control in the north area of  
18 North Charleston.

19 Q. And were you advised about the shootings at Club  
20 843?

21 A. I was.

22 Q. If you would tell us what information you were  
23 given.

24 A. We were advised that there was a fight, at  
25 first. Later advised there was a shooting. Was given a

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1 vehicle description. Other officers, while I was in  
2 route, conducted a traffic stop on that vehicle, the  
3 believed vehicle. I responded to the scene, after seeing  
4 that they were secure, and went on from there.

5 Q. So you went to the club? By scene, you mean  
6 club?

7 A. Yes, sir.

8 Q. Okay. So you didn't go out to Dorchester Road  
9 initially?

10 A. I drove past there.

11 I took Michaux Parkway and down Dorchester and  
12 past the traffic stop.

13 Q. Okay. So you went first -- you went to the club  
14 first?

15 A. Correct.

16 Q. Now, what did you see when you got to the club?

17 A. It was chaotic.

18 There was a couple of people on the ground.  
19 There was a couple of other officers on the scene helping  
20 to secure the scene. The club was -- several bouncers  
21 outside, or security.

22 Q. And when you were there was the victim, Danny  
23 Agerson, there? Was he still there? the one that was shot  
24 and lived?

25 A. Yes.

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1 Q. He was still there?

2 A. Yes.

3 Q. Did you see the victim, Maurice Maxwell, out in  
4 the parking lot? The one that was killed.

5 A. I did not see him.

6 I was at the front -- very front of the club and  
7 made contact with security.

8 Q. Okay. So you made contact with security?

9 A. [Indicates affirmatively]

10 Q. Okay. Did you come into contact with the man  
11 with the security, Joshua Crider --

12 A. Yes.

13 Q. -- the head guy?

14 A. Yes.

15 Q. Was it apparent that he was a witness to these  
16 shootings?

17 A. Yes.

18 Q. And so based on that information he had, did you  
19 discuss with him the possibility of identifying the car  
20 and suspects?

21 A. I did.

22 Q. Was he agreeable to going and doing that?

23 A. Yes. He was more than willing.

24 Q. He was cooperative?

25 A. Very cooperative.

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1 Q. So how does something like that take place?  
2 What did you -- what did you do with this cooperative  
3 witness who had witnessed the shooting?

4 A. I cleared it with my supervisors. I advised  
5 them of what he had stated to me, what he had seen, and  
6 cleared with them that it was okay to take him to the  
7 secured traffic stop and see if he could identify the  
8 vehicle and the individuals inside of the vehicle.

9 Q. Okay. So you took him out to Dorchester Road  
10 where the car was stopped --

11 A. Correct.

12 Q. -- the defendant was stopped?

13 A. Correct.

14 Q. You drove him out there in your car?

15 A. Yes.

16 Q. Now, what did you see when you got there? What  
17 did you notice about the car?

18 A. It was the box-style description that was given.  
19 It was also described as having a large dent in the side  
20 of it.

21 Q. So you noticed the car and you believed it  
22 matched the description?

23 A. Yes.

24 Q. Did you see any suspects out there?

25 A. The suspects were already in the vehicles when

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1 we got there --

2 Q. Okay.

3 A. -- in separate -- all three were in separate  
4 vehicles.

5 Q. Three suspects in three separate cars?

6 A. Yes, sir.

7 Q. So what did you do when you pulled up? Did you  
8 pull up close to the suspect car, the big, box Mercury?

9 A. Close enough to where I could put my spotlight  
10 on each individual so the suspect could have a good view  
11 of the face and the entire individual inside of it, but  
12 yet so they could not visually see him.

13 Q. Okay. So you were close enough so that the  
14 bouncer, Joshua Crider, could see the suspect?

15 A. Yes, sir.

16 Q. But not close so that they could look in and see  
17 him?

18 A. Right. I used the spotlight for that reason.

19 Q. Okay. So you -- tell me how the suspects came  
20 in front of you, in front of the witness.

21 A. They came one by one.

22 First, the defendant was taken from a patrol  
23 vehicle and brought out and was identified as the suspect,  
24 as the shooter.

25 Q. So the defendant's identified as the shooter?

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1 A. Yes, sir.

2 Q. How did -- what did -- you said they took him  
3 out. Where did they -- where did the officers taken him?

4 A. They brought him out from a vehicle.

5 Q. Okay. So they took him out from their police  
6 car?

7 A. Correct.

8 Q. Where did they -- where did they take him?

9 A. Just out to the side of it in clear view. You  
10 know, there's no obstructed view of his body or face. He  
11 could see the entire view of the body, the entire --

12 Q. And so they -- they brought him out, clearly  
13 exhibited, and you shown a light on him?

14 A. Yes, sir.

15 Q. And the witness identified him as the shooter?

16 A. Yes, sir.

17 Q. Now, did they bring, similarly, the other  
18 people? The driver, the backseat passenger, did they  
19 bring them out, also?

20 A. Yes, they did.

21 Q. And the witness identified them?

22 A. Yes.

23 Q. Now, you obviously noticed that the car matched  
24 the description. Did the witness recognize the car?

25 A. He did.

1 Q. Identified the car as involved in the shooting?  
2 Identified the defendant as the shooter?

3 A. Yes.

4 Q. Identified the other people as the people in the  
5 car with him?

6 A. Yes.

7 Q. And from where you were positioning the witness,  
8 there was no obstructions?

9 A. No.

10 The lane in the middle of Dorchester Road in the  
11 double left-turn lane.

12 Q. You gave him plenty of light so he could see?

13 A. Yes.

14 Q. Have you taken a chance to review the video of  
15 the identification?

16 A. I have previously, yes.

17 MR. WETMORE: If you would kind of turn around  
18 and take a look at it.

19 Maybe if we just turn the light down just a  
20 little bit.

21 And you can tell us what's going on.

22 [Off the record momentarily]

23 MR. WETMORE: Let's don't worry about it. Let's  
24 don't worry about it.

25 You've described the process pretty well to us,

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1 I think. That's sufficient.

2 Q. [Mr. Wetmore] The main thing -- I want to be  
3 clear. At any point, did you suggest to the witness --  
4 the bouncer, did you suggest to him who to identify?

5 A. No. No.

6 Q. Did you suggest to him who was who?

7 A. No.

8 Q. At that point, did you have any idea of what was  
9 going on?

10 A. No.

11 All we knew was we had the vehicle and people  
12 shot at the scene.

13 Q. So you didn't know who was who in that car?

14 A. No.

15 Q. You were relying on the witness for that  
16 information?

17 A. Correct.

18 Q. And he clearly identified this man as the  
19 shooter?

20 A. Yes, he did.

21 Q. Now, after this witness identified the car, the  
22 defendant as the shooter, the other people in the car,  
23 what else did you do with this case? Anything else  
24 further in working this case?

25 A. No, other than taking him back to the scene.

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1 Q. So you took him back to the club --

2 A. Correct.

3 Q. -- where he was working?

4 A. Correct.

5 MR. WETMORE: I don't have any further  
6 questions. Please answer any questions Ms. Proctor  
7 has.

8 MS. PROCTOR: No questions.

9 THE COURT: Officer, you may step down. Thank  
10 you.

11 [Whereupon, Mr. Repman exits the witness stand]

12 THE COURT: Mr. Foreman, are you ready for your  
13 midmorning break?

14 THE FOREMAN: Yes, Your Honor, we are.

15 THE COURT: All right. Please remember my  
16 admonitions. Do not discuss this case amongst  
17 yourselves. Do not begin your deliberations.

18 Please rise for the jury. We'll take a ten-  
19 minute recess.

20 [Whereupon, the jury exits the courtroom at  
21 10:36 a.m.]

22 THE COURT: Thank you. Be seated. We'll take  
23 ten minutes.

24 [Whereupon, a recess is taken from 10:35 a.m. to  
25 10:52 a.m.]

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1 [State's Exhibit Numbers 9 through 39 are marked  
2 by Mr. McCoy during the recess]

3 THE COURT: Anything before we bring in the  
4 jury?

5 MR. WETMORE: No, ma'am.

6 THE COURT: Ms. Proctor?

7 MS. PROCTOR: No. Burns -- I just need to say  
8 one thing to Burns about the video.

9 [Whereupon, Ms. Proctor and Mr. Wetmore confer]

10 THE COURT: All right. Let's go ahead and bring  
11 in the jury.

12 MS. PROCTOR: Your Honor, may we approach?

13 THE COURT: You may.

14 [Whereupon, an off-the-record bench conference  
15 is held]

16 [Whereupon, the jury enters the courtroom at  
17 10:52 a.m.]

18 THE BAILIFF: Jurors are present, Your Honor.

19 THE COURT: Thank you. Be seated. Thank you.  
20 Mr. Wetmore, call your next witness.

21 MR. MCCOY: The State calls Angie Bunker, from  
22 the North Charleston Police Department.

23 [Whereupon, Ms. Bunker comes forward]

24 THE CLERK OF COURT: Put your left hand on the  
25 Bible and raise your right hand.

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1 [Whereupon, Ms. Bunker is duly sworn by the  
2 clerk of court as follows: do you swear or affirm that  
3 your testimony will be the truth, the whole truth, and  
4 nothing but the truth, so help you God]

5 THE WITNESS: Yes, ma'am.

6 THE CLERK OF COURT: Be seated.

7 [Whereupon, Ms. Bunker takes the witness stand]

8 THE CLERK OF COURT: If you'll please state your  
9 full name and spell your last name for the record.

10 THE WITNESS: Angela Bunker. B-U-N-K-E-R.

11 MR. MCCOY: Officer Bunker, thank you for being  
12 here with us this morning.

13  
14 ANGELA BUNKER,

15 Having Been First Duly Sworn,  
16 was Examined and Testified as Follows:

17 DIRECT EXAMINATION

18 BY MR. MCCOY:

19 Q. Can you tell the jury where you're employed.

20 A. I'm employed with the City of North Charleston  
21 Police Department.

22 Q. And tell the jury how long you've been with  
23 North Charleston.

24 A. I've been with North Charleston going on ten  
25 years.

1 Q. And in those ten years, what have been your  
2 duties there?

3 A. My primary duties there have been being a patrol  
4 officer with North Charleston, and also I spent almost  
5 five years in the forensics unit.

6 Q. In those ten years with patrol and with crime  
7 scene, have you received any sort of education or training  
8 that have helped you with your duties?

9 A. Yes, sir.

10 I've attended several different trainings in  
11 reference to my forensics duties. I've been crime scene  
12 reconstructionist, shooting reconstructionist. Also, I've  
13 had several smaller classes in DNA evidence and  
14 collection.

15 Q. All right. Well, let's talk about specifically  
16 crime scene investigations. Tell the jury what that  
17 department does.

18 A. Crime scene, primarily they are to be able to  
19 sort through the evidence and to photograph a scene as it  
20 is upon our arrival, where we can hopefully go back  
21 through and put pretty much a puzzle back together.

22 Q. All right. Tell the jury: how important is it  
23 to collect as much evidence as you can at a crime scene?

24 A. It's important to get as much as you can because  
25 at that time you don't necessarily know what's going on,

1 who was there, why they were there. So sometimes you get  
2 too much. But it's better to get too much than not  
3 enough.

4 Q. And in your five years of crime scenes, how many  
5 crimes scenes have you investigated personally?

6 A. A lot.

7 Q. When you say a lot, are we talking ten, are we  
8 talking twenty, or a hundred?

9 A. Hundreds.

10 Q. And tell the jury, is crime scene -- is the  
11 crime scene unit -- is that called out to every single  
12 call?

13 A. No.

14 Mostly -- crime scene forensics units are called  
15 out to mostly high crimes such as homicides, sexual  
16 assaults, some major burglaries. But mostly it's persons'  
17 crimes that are more common.

18 Q. So as a crime scene officer, you don't go to  
19 every routine traffic stop?

20 A. No, sir.

21 Q. You're going to serious crimes such as your  
22 armed robberies, your murders, or your rapes?

23 A. Yes, sir.

24 Q. Okay. And usually that's where you're looking  
25 for evidence?

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1 A. Yes, sir.

2 Q. And as a crime scene officer, when you respond  
3 to these typical crimes, hundreds of crime scenes that  
4 you've been to, when you arrive there do you know who a  
5 suspect is?

6 A. No, sir.

7 Q. Is it typical for you to know, or not know, who  
8 a suspect is?

9 A. Most likely I do not know who the suspect is at  
10 the time.

11 Q. And when you are called out to a scene, who  
12 calls you out there?

13 A. Normally it's the commanding officer, normally  
14 either the sargent or the lieutenant on scene.

15 Q. Is it also safe to say that once you arrive to a  
16 crime scene, are you usually the first one there?

17 A. No.

18 Q. Okay. How many people are usually there when  
19 you get there?

20 A. Normally there is patrol officers that have  
21 tried to rope off the scene and protect it. There's also  
22 lieutenants and sargents. And sometimes the detectives  
23 have already made it there. So there's quite a few  
24 officers there prior to me arriving.

25 Q. Okay. Officer Bunker, I'm going to take you

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1 back to November of 2007. What were your duties with  
2 North Charleston then?

3 A. At that point I was assigned to the forensics  
4 crime scene unit.

5 Q. And did you happen to receive a call to respond  
6 to a homicide on the 22nd of that month?

7 A. Yes, sir.

8 Q. And tell the jury -- and tell the jury where you  
9 went.

10 A. I received a call-out in reference to going to  
11 Club 843, that's located at 7550 Dorchester Road, in  
12 reference to a shooting.

13 Q. Okay. Is that also in Charleston County?

14 A. Yes.

15 Q. And with this reference to a shooting, did you  
16 have any other details once you were called out there?

17 A. No. My original call-outs are very vague.

18 Q. Okay. Once you get there, tell the jury what  
19 you see.

20 A. Once I get there, I have one black male that was  
21 laying on the ground that was shot. And also I was being  
22 pointed out that there was a second black male that had  
23 been shot a little farther down the parking lot.

24 Q. All right. And to back up a little bit. Once  
25 you arrive -- you talked a little bit about this already.

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1 Was this crime scene secure when you arrived?

2 A. Patrol officers were continuing to secure it at  
3 the time. When I arrived, they were trying to put yellow  
4 crime scene tape up where people couldn't pass into it.

5 Q. And what does a secure crime scene mean?

6 A. A secure crime scene means that the officer who  
7 has the log knows who comes in and who has left that  
8 scene.

9 Q. And why is it important to monitor who comes in  
10 and out of a crime scene?

11 A. Because if you come into a crime scene you most  
12 likely bring something with you, and that way we can  
13 discover why you were there at that time.

14 Q. Okay. So when you arrive, the place is in the  
15 process of being secured?

16 A. Yes, sir.

17 Q. And, also, as a crime scene detective, is it  
18 your responsibility to photograph what you find?

19 A. Yes, sir.

20 MR. MCCOY: Your Honor, may I approach the  
21 witness?

22 THE COURT: You may.

23 Q. [Mr. McCoy] Officer Bunker, I'm going to show  
24 you what's been marked for ID purposes as State's 9  
25 through 36. If you could take a moment to look at those

1 and tell me what those are. You don't have to go through  
2 each one. But just take a look at those.

3 A. All right. 9 is the first victim that I ran  
4 into closer to the building. It's the gentleman who had  
5 been shot to the side.

6 Q. Okay. We don't need to go through -- if you  
7 would just look through them and tell me if those are  
8 photographs that you have taken on that scene that day.

9 [Whereupon, the witness reviews documents]

10 A. Yes, sir.

11 These ones were taken at the scene, and these  
12 ones were taken later.

13 Q. [Mr. McCoy] Okay. And are those photographs a  
14 fair and accurate representation of what you observed on  
15 the 22nd of November?

16 A. Yes, sir.

17 MR. MCCOY: Your Honor, at this point I would  
18 move 9 through 36 into evidence.

19 MS. PROCTOR: Without objection.

20 THE COURT: State's 9 through 36 into evidence  
21 without objection.

22 MR. MCCOY: Thank you, Your Honor.

23 [Whereupon, State's Exhibit Numbers 9 through 36  
24 are admitted into evidence by the Court]

25 MR. MCCOY: I would like to get permission to

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1 publish some of these photographs to the jury.

2 THE COURT: You may publish.

3 MR. MCCOY: Thank you, Your Honor.

4 Q. [Mr. McCoy] Officer Bunker, you've already  
5 testified once you arrive the scene is being secured. And  
6 did you happen to come across somebody who was injured at  
7 that scene?

8 A. Yes, sir.

9 Q. And I'm going to show you what's been marked as  
10 State's Exhibit Number 9. If you could turn around, take  
11 a look at that, and kind of tell the jury what that is and  
12 what you see.

13 A. It's a black male laying on his side, being  
14 worked on by first responders, fire department. He was  
15 shot to the side.

16 Q. Was EMS already there?

17 A. Yes.

18 Q. Was this how you observed him when you saw him?

19 A. Yes.

20 Q. And can you tell if he has any sort of wounds in  
21 his body at all?

22 A. He did have a gunshot wound to his side.

23 Q. Okay. And, Officer Bunker, I'm also going to  
24 show you -- you've already mentioned that there was also a  
25 second victim that you encounter once you arrive. If you

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1 would take a look at State's 10 and tell the jury what you  
2 see here.

3 A. Yes, sir. That was a black male that had  
4 actually died on scene.

5 Q. Okay. How close in relation was victim one to  
6 victim two?

7 A. They weren't dramatically far apart. It was a  
8 parking lot and one was kind of in the middle of the  
9 parking lot and the other one was closer to the  
10 businesses.

11 Q. Okay. And just to ask you several details.  
12 What is this right here that is coming outside from the  
13 victim?

14 A. Blood.

15 Q. And I want to ask you this: what's this shiny  
16 object that's right here?

17 A. A shell casing.

18 Q. It's a shell casing. Do you remember what kind  
19 of shell casing that was?

20 A. A nine millimeter.

21 Q. Okay. And, Officer Bunker, you testified you've  
22 just seen these two victims at this scene. And what's  
23 your next duty? What's your next task?

24 A. My next task is to identify other items that are  
25 left on the scene, to mark them, to be able to photograph

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1 it.

2 Q. Okay. And were you able to locate or find any  
3 other items on the scene?

4 A. Yes, sir.

5 We found the shell casings. We also found some  
6 bottles and clothing.

7 Q. Okay. And just to back up, as well. This is --  
8 is this a -- this is a club?

9 A. Yes, sir.

10 Q. And what does the scene look like there?

11 A. It's a strip-mall and it has several different  
12 businesses in it. And one of the businesses is a small  
13 restaurant that they turned into a club right there in the  
14 strip mall.

15 Q. Is it typical for you to see bottles, cigarette  
16 butts, maybe even an item of clothing, outside of a busy  
17 club area?

18 A. Yes, sir.

19 Q. And how do you -- when you find a piece of  
20 evidence, how do you mark it?

21 A. We mark it with placards, with numbered  
22 placards.

23 Q. And these placards represent what?

24 A. They just represent that that's something that  
25 might be important later.

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1 Q. So each individual piece of item -- of evidence  
2 that you may find or you may locate, you mark it with  
3 something?

4 A. Yes.

5 Q. Is it also common to see your crime scenes  
6 covered with placards?

7 A. Yeah.

8 Q. Okay. How many shell casings did you find on  
9 that scene?

10 A. There's three shell casings located next to the  
11 victim.

12 Q. And when you say close to the victim, about how  
13 close were they?

14 A. They were within arms reach of them.

15 Q. Okay. Arms reach of them. When you say victim,  
16 are we talking about the first man who you saw who was  
17 still alive, or the second man that's no longer alive?

18 A. The second man.

19 Q. Okay. Did you collect those pieces of evidence?

20 A. Yes, sir.

21 Q. All right. Tell the jury a little bit about the  
22 process of collecting evidence. Once you've marked it and  
23 you leave it in place, photograph it, how do you then  
24 collect it?

25 A. The evidence is marked with a placard. We

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1 photograph it as it is. And then with gloved hands we  
2 will package it into -- such as shell casings will go into  
3 a little paper box, where it doesn't sweat any of the  
4 prints or any latents off it, if possible. And also they  
5 will go into a plastic bag and then be turned into the  
6 North Charleston evidence room.

7 Q. Okay. And when you turn it into the North  
8 Charleston evidence room, how do you check it in there?

9 A. You have to sign it in by a chain of custody.

10 Q. Okay. And is your name on the chain of custody  
11 of the items that were collected at this scene at Club  
12 843?

13 A. Yes, sir.

14 Q. Officer Bunker, did you have an opportunity,  
15 with other crime scene investigators, to go to another  
16 scene after this?

17 A. Yes, sir.

18 Q. Tell the jury where you went.

19 A. We went through the area and were notified of  
20 certain areas that there possibly was a gun thrown out the  
21 door. And we also did a search warrant of the possible  
22 suspect vehicle.

23 Q. And, also, was there a time where a gun was  
24 located?

25 A. Yes.

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1 Q. And who was with you when you located that gun?

2 A. Sargent Hallman, with the crime scene unit.

3 Q. Okay. So a gun was found?

4 A. Yes.

5 Q. Do you remember what kind of caliber that gun  
6 was?

7 A. Nine millimeter.

8 Q. Okay. And you also just testified now that  
9 you've moved to another crime scene after that. Where did  
10 you go after that?

11 A. After that we -- we got a -- the suspect's  
12 vehicle was towed to the city warehouse, where it's safe  
13 to process it, and we processed the suspect vehicle.

14 Q. Okay. Officer Bunker, I'm going to show you  
15 what's already been placed into evidence as State's Number  
16 30. If you could take a look at that and tell the jury  
17 what it is.

18 A. That's the suspect vehicle that we had towed  
19 over to the city impound area.)

20 Q. Why is a -- is a vehicle towed away from a scene  
21 before it's searched?

22 A. To contain all the evidence within the vehicle,  
23 and gives us a safer place to process it.

24 Q. For the protection of evidence?

25 A. Yes.

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1 Q. Okay. Looking at this vehicle, Officer Bunker,  
2 can you tell me what this is right here?

3 A. A dent.

4 Q. A large dent on the passenger door?

5 A. Yes, sir.

6 Q. Okay. Can you tell the jury what kind of --  
7 what color that car is?

8 A. Silver.

9 Q. All right. And you already testified that you  
10 were there and searched this for evidence.

11 A. Uh-huh.

12 Q. What did you happen to find inside of the silver  
13 car?

14 A. A blue cell phone that belonged to the female  
15 that was located in the vehicle during the police stop; a  
16 black-and-white hat that witnesses described the suspect  
17 wearing; also, a Rush visa card with the name S. Brown on  
18 it; and a Kodak disposable camera.

19 Q. Okay. And I'm going to show you what's been  
20 placed into evidence as State's 34. If you can take a  
21 look at that for me. Is that the hat that you found  
22 inside the silver car?

23 A. Yes, sir.

24 Q. Okay. And did you secure these items of  
25 evidence once you found them?

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1 A. Yes, sir.

2 Q. Your name is on the chain of custody for these  
3 pieces of evidence?

4 A. Yes, sir.

5 Q. And they were turned into the North Charleston  
6 evidence custodian?

7 A. Yes, sir.

8 Q. And secured there?

9 A. Yes, sir.

10 Q. Okay. And, Officer Bunker, I'm going to back up  
11 and ask you a couple of details about the gun that was  
12 found.

13 Q. When you are investigating or you find a gun on  
14 a scene, is it typical for you to look with your naked eye  
15 at the gun for fingerprints?

16 A. Yes.

17 Q. Did you see any fingerprints on this gun?

18 A. No. We were unable to locate any latents --

19 Q. Okay.

20 A. -- to identify.

21 Q. What decision was made next as to how to handle  
22 this gun?

23 A. At that point, since we didn't see any latents,  
24 we took touch DNA from the gun-trigger area.

25 Q. All right. And what does that mean?

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1           A.       It's -- pretty much what we do is take a sterile  
2 swab and we rub it against the area of contact, which  
3 would have been the trigger, trying to get DNA from the  
4 skin cells.

5           Q.       Okay. Were you able to pick up any touch DNA on  
6 there?

7           A.       Not as far as I know, sir.

8           Q.       Okay. And this is just a -- this is just a  
9 typical question for a crime scene officer. But once  
10 you've already wiped the gun down, will you -- can you go  
11 back and fingerprint after that?

12          A.       You can. But it's highly unlikely that you'll  
13 get any latent prints and if you do, they'll most likely  
14 be distorted.

15          Q.       Okay. So once you've wiped the gun down, it's  
16 very hard or difficult to get prints off the gun?

17          A.       Yes.

18          Q.       And you also testified that you didn't see any  
19 prints on the gun when you arrived there?

20          A.       Correct.

21          Q.       And, Officer Bunker, was there any sort of hair  
22 fiber or anything else found on that gun?

23          A.       Yes.

24                    There was a small piece of black hair, that was  
25 located in the chamber of the gun, that was collected.

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1 Q. Okay. And do you know the results or do you  
2 know what became of that hair that was found?

3 A. I was advised that the hair came back as an  
4 animal hair.

5 Q. And not as a human-being hair?

6 A. Correct.

7 Q. Okay. And, Officer Bunker, did you take any  
8 photographs of the gun as you found them?

9 A. Photographs were taken by the forensics unit.  
10 Unfortunately, they were not attached to this  
11 case number so I was unable to produce them at this time.

12 Q. But are you here today -- so you don't have  
13 photographs of the gun? They were taken but we just don't  
14 know -- we don't know where they are?

15 A. Correct.

16 Q. Now, are you here to tell us today, though,  
17 where this gun was found?

18 A. Yes.

19 Q. Okay. And you're testifying that you are  
20 basically the evidence that's telling us where the gun was  
21 found?

22 A. Yes, sir.

23 Q. Now, Officer Bunker, did you have an opportunity  
24 to fingerprint or DNA-test anything else from that scene?

25 A. Not as far as I recall, sir.

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1 MR. MCCOY: Okay. Court's indulgence, Your  
2 Honor.

3 THE COURT: Yes, sir.

4 [Whereupon, Mr. McCoy and Mr. Wetmore confer]

5 MR. MCCOY: Officer Bunker, I have a couple more  
6 questions for you.

7 If I could approach the witness, Your Honor?

8 THE COURT: You may.

9 [Whereupon, State's Exhibit Number 40 is marked  
10 by the court reporter]

11 [Whereupon, State's Exhibit Number 41 is marked  
12 by the court reporter]

13 [Whereupon, State's Exhibit Number 42 is marked  
14 by the court reporter]

15 Q. [Mr. McCoy] Officer Bunker, I'm going to show  
16 you what's been marked for State's ID purposes as 40, 41  
17 and 42. And if you could take a look at that for me and  
18 tell me what that is.

19 A. This is the gun that was located off of  
20 Dorchester Road.

21 Q. Okay. And it's the same gun that was recovered  
22 by you and Officer Hallman?

23 A. Yes.

24 Q. The same gun that was recovered by you and  
25 Officer Hallman on November 22nd, 2007?

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1 A. Yes, sir.

2 Q. In relation to the shooting at Club 843?

3 A. Yes, sir.

4 Q. Okay. Tell me about 41.

5 A. 41 are the shell casings that were located on  
6 scene.

7 Q. Okay. And the shell casings were located on the  
8 scene. When you talk about on the scene, you're talking  
9 about Club 843 --

10 A. Yes, sir.

11 Q. -- in the parking lot?

12 A. Yes, sir.

13 Q. Around the victim number two, who was deceased?

14 A. Yes, sir.

15 Q. And how about State's 42?

16 A. This was the bullet that was in the chamber of  
17 the gun when we located the gun.

18 Q. So the gun still had one in the chamber --

19 A. Yes.

20 Q. -- when it was recovered?

21 A. Yes.

22 Q. And this is the same 42 that you recovered from  
23 State's 40 from the shooting at Club 843 on the night of  
24 November 22nd, 2007?

25 A. Yes, sir.

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1 MR. MCCOY: Your Honor, at this point I move  
2 State's 40, 41 and 42 into evidence.

3 THE COURT: Any objection?

4 MS. PROCTOR: Court's indulgence.

5 THE COURT: Yes, ma'am.

6 MS. PROCTOR: No objection. Without objection,  
7 Your Honor.

8 THE COURT: State's 40, 41 and 42 into evidence  
9 without objection.

10 [Whereupon, State's Exhibit Number 40 is  
11 admitted into evidence by the Court]

12 [Whereupon, State's Exhibit Number 41 is  
13 admitted into evidence by the Court]

14 [Whereupon, State's Exhibit Number 42 is  
15 admitted into evidence by the Court]

16 Q. [Mr. McCoy] And, finally, Officer Bunker, I  
17 want to ask you one specific question about each one of  
18 the victim's that you encountered on the scene at Club  
19 843. And State's 9, the first person you came to, who had  
20 suffered a gunshot wound, can you tell us what his name  
21 was?

22 A. His name was later identified as Danny Edward  
23 Agerson [phonetic].

24 Q. Okay. And I'm going to take you now to State's  
25 10. The second victim you came to on the scene at Club

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1 843 in the parking lot, did you ever find out what his  
2 name was?

3 A. I was later advised that that victim was Maurice  
4 Maxwell.

5 MR. MCCOY: Thank you, Officer Bunker. Please  
6 answer any questions Ms. Proctor may have for you.

7 THE WITNESS: Yes, sir.

8 THE COURT: Ms. Proctor?

9 CROSS-EXAMINATION

10 BY MS. PROCTOR:

11 Q. Officer Bunker, were you the chief forensic  
12 investigator in this case?

13 A. I was the lead, yes, ma'am.

14 Q. And you said that when you arrived on the scene,  
15 there were other officers there already; correct?

16 A. Yes, ma'am.

17 Q. And somebody was starting a crime-log scene -- a  
18 log. Did you do that or did somebody else?

19 A. Patrol does that.

20 Q. And then when it's done, do they turn it over to  
21 you?

22 A. They either turn it over to us or they turn it  
23 over to the detective.

24 Q. And that's important because you need to know  
25 how many people come out of the crime scene and go in?

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1 You need to keep track of that; correct?

2 A. Yes, ma'am.

3 Q. Now, when you arrive at the scene, you're the  
4 one that starts collecting all the evidence, right? The  
5 physical evidence?

6 A. Yes, ma'am.

7 Q. And physical evidence at a crime scene can be  
8 fingerprints, hair evidence, blood, fingerprints, GSR,  
9 anything of that sort; correct?

10 A. Yes, ma'am.

11 Q. And collecting these things is all part of the  
12 documentation that you make?

13 A. Yes, ma'am.

14 Q. Now, you said that you had some training  
15 courses. And when you take those courses, do they train  
16 you in how to write your report?

17 A. No, ma'am.

18 Q. They don't ever tell you how to do a report in  
19 any classes?

20 A. No, ma'am. They leave that to policies.

21 Q. Okay. And North Charleston does have a policy  
22 book, though, correct, that you follow?

23 A. Yes, ma'am.

24 Q. And they have policies in how you collect your  
25 evidence?

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1 A. Yes, ma'am.

2 Q. And one of their policies says that you are to  
3 package it properly; correct?

4 A. Yes, ma'am.

5 Q. And you put the case number on each item and you  
6 put the date and time collected?

7 A. Yes, ma'am.

8 Q. And you put the location of where you found the  
9 item?

10 A. Yes, ma'am.

11 Q. And you describe the item?

12 A. You give a brief description, yes, ma'am.

13 Q. Right. But you describe what it is?

14 A. Yes, ma'am.

15 Q. And then you put your initials on it of who  
16 brought it to you?

17 A. Yes.

18 Q. Because sometimes there are other crime scene  
19 officers out there; correct?

20 A. Yes.

21 Q. And on this night, Officer Hallman and Wyant --  
22 Officer Wyant, came out later; correct?

23 A. Yes, ma'am.

24 Q. Now, not all scenes that you go to -- do you  
25 photograph every scene you go to?

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1 A. We attempt to, yes, ma'am.

2 Q. And usually, though, it depends on what type of  
3 crime it is?

4 A. Yes, ma'am.

5 Q. The severity of the crime?

6 A. [No response]

7 Q. Now, when you take -- when you take your  
8 pictures, these are all digital photography?

9 A. From this time, yes, ma'am, they are.

10 Q. And when you get done taking your pictures, what  
11 do you do with your camera? What do you do with them?

12 A. After the photographs are taken from a scene,  
13 they are downloaded onto a CD or a DVD and they are then  
14 labeled with the appropriate case number and then stored  
15 into a locked photo file.

16 Q. Now, do you know in this case how many  
17 photographs you took?

18 A. Not off the top of my head, no, ma'am.

19 Q. Okay. Well, do you document anywhere how many  
20 photographs are taken at the scene?

21 A. Yes, ma'am.

22 On each CD envelope, before they are filed you  
23 put the case number, you put who took the pictures, and  
24 also how many photographs are in the envelope.

25 Q. So before you came to testify today, have you

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1 looked at all of your pictures?

2 A. Not today, no, ma'am. But I have in the past.

3 Q. You have looked at them. So do you have a rough  
4 idea of how many photos were taken?

5 A. No, ma'am.

6 Q. Now, this case happened approximately three  
7 years ago; correct?

8 A. Yes, ma'am.

9 Q. And that is the reason that there is a policy  
10 and that it is important that every single thing is  
11 documented; correct?

12 A. Yes, ma'am.

13 Q. And that's because when you come to court, the  
14 prosecutor has to look at it, the defense has to look at  
15 it, the other officers in the case, and you have to for  
16 the jury to look at; correct?

17 A. Yes, ma'am.

18 Q. Now, about how many officers were at the scene  
19 when you arrived?

20 A. Probably anywhere from ten to fifteen.

21 Q. And were there other civilians out there?

22 A. Yes, ma'am.

23 Q. Now, there were two people shot. You said one  
24 was being attended by EMS?

25 A. Uh-huh.

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1 Q. And do you know if any GSR, gunpowder residue,  
2 was taken from his hands?

3 A. I am not sure, no, ma'am.

4 Q. And where was he located?

5 A. In the parking lot in front of 843.

6 Q. Okay. Was he right in front of the door, or on  
7 the sidewalk?

8 A. He was in the parking lot, but it was closer to  
9 the building.

10 Q. Okay. You had -- besides the picture we saw, do  
11 you have any picture of him in relation to the other  
12 victim?

13 A. I don't believe so, no, ma'am.

14 Q. Do you have any picture of where he was related  
15 to the door or to the parked cars?

16 A. Not with me, no, ma'am.

17 Q. Do you have pictures that you didn't bring  
18 today?

19 A. I don't know what -- I don't -- cannot tell you  
20 exactly what's on that CD, ma'am. I have been refreshed  
21 of the ones that I was shown a few minutes ago.

22 Q. Now, did you ever go inside the club and take  
23 any pictures?

24 A. No, ma'am.

25 Q. Did you ever go in there to look for any other

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1 evidence?

2 A. No, ma'am.

3 Q. Were you told that a fight originated inside the  
4 club by any of the officers?

5 A. Upon my arrival, I was directed that the fight  
6 had started outside the club.

7 Q. So nobody ever told you it started inside?

8 A. I don't recall being advised of that, no, ma'am.

9 Q. Now, you said that when you collect your  
10 evidence, you put placards by each piece; correct?

11 A. We attempt to get each piece, yes, ma'am.

12 Q. Now, let's go over a little bit what you found.  
13 And some items you say are not important. I know you said  
14 number four was just a tissue. And that was important,  
15 correct, because you still -- because you want to collect  
16 everything, you make sure you take pictures of what you  
17 think could be important later; correct?

18 A. Yes, ma'am.

19 Q. And your placards for -- I think in the picture  
20 show one and three were the shell casings. Now, you have  
21 in your report that you have -- that number six -- you say  
22 that number six was a bullet that appeared to have  
23 misfired. Do you -- did you ever take a picture of that  
24 bullet that had misfired?

25 A. I would assume so, yes, ma'am.

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1 Q. If I showed you -- unfortunately, they're on a  
2 CD.

3 Do you know where that -- do you know where that  
4 was found? Is there anywhere that documents in your  
5 report -- I think that will be easier. Anywhere that  
6 documents in your report where a bullet that was misfired  
7 was found?

8 A. It says that placard number six was a bullet  
9 that appeared to have misfired, so it would have been in  
10 the photograph.

11 Q. Let me show you these that I think have already  
12 been marked.

13 So if we don't -- if you don't have a picture of  
14 it, you don't put it in your report where it is? I mean,  
15 aren't you supposed to put where you find something? And  
16 wouldn't a misfired bullet be important?

17 A. Ma'am, it's kind of difficult to describe the  
18 asphalt and everything in that aspect, but we depend on  
19 the pictures to kind of tell it for us.

20 MS. PROCTOR: Court's indulgence.

21 THE COURT: Yes, ma'am.

22 Q. [Ms. Proctor] Can you look through these  
23 pictures and see if you see where a number six placard is?

24 [Whereupon, the witness reviews documents].

25 A. No, ma'am.

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1 Q. [Ms. Proctor] So as of today, you found a  
2 misfired bullet but we have no idea where that bullet was  
3 found; correct?

4 A. It was found in the parking lot of Club 843,  
5 ma'am.

6 Q. But you don't know where?

7 A. Correct.

8 Q. Now, when you have these placards, you put them  
9 down when you find the evidence; correct? And you have I  
10 think one through seventeen?

11 A. Yes, ma'am.

12 Q. Now, when you list them, you have one through  
13 ten. I think there was a smoked cigar, some Miller cans.  
14 And then you have twelve and thirteen as broken necklace,  
15 fourteen are some blood drops, sixteen is the hockey  
16 shirt, and seventeen is a hole under the right arm. And  
17 you're finding these at the scene; correct?

18 A. Yes.

19 Q. Well, number eleven is the nine millimeter gun.  
20 So how did number eleven get in here if you hadn't found  
21 that gun yet, if you didn't find it for a few hours? Is  
22 this another gun?

23 A. No, ma'am.

24 A lot of times what will happen is there'll be  
25 more than one forensics unit on scene and so they'll take

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1 the first number, thinking that was the one that was --  
2 and eleven hadn't been used, so we didn't change it out.

3 Q. So but eleven, then, wasn't really used for like  
4 two or three hours later?

5 A. Right.

6 Q. Now, you testified a minute ago -- and I think  
7 it's in your report -- that a picture was taken of the  
8 gun. Do you know what happened to that picture?

9 A. No, ma'am.

10 Q. Did you take that picture?

11 A. I believe Sargent Hallman did.

12 Q. Pardon?

13 A. I believe Sargent Hallman took it.

14 Q. Was he using your camera, or did he have his own  
15 camera?

16 A. He is issued his own camera, but most likely he  
17 was using mine because that's where the other photographs  
18 were on.

19 Q. Is it common to lose evidence?

20 A. No, ma'am.

21 Q. Now, do you also have any pictures of where this  
22 gun was found in relation to the club?

23 A. The -- where the gun was located, and the club,  
24 were too far apart to actually be able to show you from  
25 point A to point B.

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1 Q. Okay. Did you have any pictures of what type of  
2 area it was found? Was it found on the asphalt, was it  
3 found in a parking lot, was it found at a store, in --

4 A. It was --

5 Q. -- in the grass?

6 A. I'm sorry.

7 It was located in a car lot, at the very front  
8 of a car lot, in rocky -- in the rocks, where the cars  
9 were parked, in between two cars. There were pictures --  
10 those were the pictures that we are unable to locate at  
11 this time. But, yes, ma'am, they were taken.

12 Q. And you said that when you found the gun, you  
13 looked at the gun and you couldn't see any prints so no  
14 fingerprints were taken at that time; correct?

15 A. Correct.

16 Q. Now, was it at that time that you said you found  
17 a hair on the gun, or was that at a later time?

18 A. We immediately, at that time, secured the gun  
19 and we located -- when we went back to processing it,  
20 that's when we located the hair on it.

21 Q. And did you send the hair to SLED?

22 A. I don't have that with me right now. I do  
23 believe so, yes, ma'am.

24 Q. And do you remember when you sent that hair to  
25 SLED?

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1 A. No, ma'am.

2 Q. So it wouldn't surprise you to learn it was only  
3 sent like a month ago?

4 A. No, ma'am.

5 Q. But wouldn't it be important, if you found a  
6 hair on a piece of evidence, to send it to SLED  
7 immediately; correct?

8 A. It depends on protocol, ma'am.

9 Q. Pardon?

10 A. It depends on protocol.

11 Q. So the protocol is if you find some hair --  
12 which you can now get, you know, DNA off a hair root --  
13 that's not protocol to see if that's the person that  
14 handled the gun? Wouldn't that be as important as a  
15 fingerprint?

16 A. Ma'am, we go by SLED's ruling to accept certain  
17 items, so many items for each case, so I don't -- I'm not  
18 the one who chooses which items go and which items don't.

19 Q. Who would that person be?

20 A. It would be discussed between the detectives and  
21 sargents.

22 Q. So it's the police, not the crime scene, that  
23 decides what should go to SLED?

24 A. Well, it comes down to SLED only takes certain  
25 items, will only take certain -- a certain amount of items

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1 per case.

2 Q. Well, so if it's a case with a lot of evidence,  
3 we're just going to say, no, we're not going to test it  
4 because we don't want to see if this person did it or this  
5 person did not do it? They don't want to take -- what is  
6 their limit?

7 A. I'm not familiar with it anymore, ma'am. I'm  
8 not longer in forensics.

9 Q. Now, do you have your report in front of you?

10 A. Yes, ma'am.

11 Q. If you'll look at the very last part, the very  
12 last paragraph, in the last sentence you say: several  
13 officers, K-9 Humphries, Sargent Hallman and I.

14 Is there another -- is there another page to  
15 this report?

16 A. We are attempting to locate that, actually,  
17 ma'am. But this is -- the bottom of this sentence would  
18 have been: in the attempt to locate the gun.

19 Q. So you're trying to locate what? the rest of  
20 this -- your report?

21 A. We attempted to locate it to see if there was.  
22 We contacted the forensics unit and stuff, and they were  
23 unable to locate a second page, also, ma'am.

24 Q. So there is another whole other page, to the  
25 crime scene report, that's missing?

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1 A. We thought maybe because of the way I ended the  
2 report. But there's not one to be found, ma'am.

3 Q. Now, after you did this, he went -- there was a  
4 search warrant on a car and you accompanied Detective  
5 Runey [phonetic]; correct?

6 A. Yes.

7 Q. And when you got to the car, you stated that you  
8 took several items from the car; right?

9 A. Yes, ma'am.

10 Q. Now, when you were searching the car, since you  
11 were crime scene, did you search the car to see if there  
12 was any blood in the car?

13 A. We did search the vehicle for any kind of blood,  
14 yes, ma'am.

15 Q. And what -- how did you do that? Did you --

16 A. It just was --

17 Q. -- use any instruments or just eyeball it?

18 A. Just eyeballed it.

19 Q. And what about gunpowder residue?

20 A. No, ma'am.

21 Q. Is it true, though, that if -- it's possible, as  
22 you've seen before, that gunpowder residue could be in a  
23 car, correct, on a seat, on a window? It could be in  
24 there; correct?

25 A. Yes.

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1 MR. MCCOY: Objection, Your Honor. Speculation.  
2 This witness hasn't been classified as an expert.

3 THE COURT: Sustained.

4 Q. [Ms. Proctor] Now, you also went to the autopsy  
5 and collected certain items; correct?

6 A. Yes, ma'am.

7 Q. And you stated that you -- in your report it  
8 says that you took fingerprints from the victim; correct?

9 A. Yes, ma'am.

10 Q. And did you swab his hands at that time, before  
11 you took his prints, for any gunpowder residue?

12 A. No, ma'am.

13 Q. Have you ever swabbed a victim for gunpowder  
14 residue?

15 A. Yes, ma'am.

16 Q. So if a victim is involved in a shooting, it  
17 would be common practice at times to take gunpowder  
18 residue from his hands, too; correct?

19 A. Yes, ma'am.

20 Q. Thank you.

21 MS. PROCTOR: Court's indulgence.

22 [Whereupon, Ms. Proctor and Ms. Mullaney confer]

23 MS. PROCTOR: I have no further questions.

24 MR. MCCOY: A couple of follow up, Your Honor.

25 THE COURT: Yes, ma'am.

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1 MR. MCCOY: May I approach the witness, Your  
2 Honor?

3 THE COURT: You may.

4 MR. MCCOY: Mark this for ID purposes only,  
5 please.

6 [Whereupon, State's Exhibit Number 43 is marked  
7 by the court reporter]

8 REDIRECT EXAMINATION

9 BY MR. MCCOY:

10 Q. Officer Bunker, you were first questioned, about  
11 taking photographs on the scene, by Ms. Proctor when she  
12 first started her cross-examination. I'm going to show  
13 you what's been marked as State's 43, for identification  
14 purposes only. If you could take a look at that for me  
15 and tell me -- and tell the jury actually what that is.

16 A. Yes.

17 This is the folder I was talking about. After  
18 we download the photographs from the -- onto a CD, the CD  
19 goes into a folder like this. Here's the date, my  
20 initials, how many photographs, the case number, incident  
21 location, and what kind of incident it was.

22 Q. And does it say on there how many photographs  
23 you did take?

24 A. Seventy-nine.

25 Q. Okay. And can you also open that up and take a

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1 look inside?

2 A. [Witness complies]

3 Q. And tell the jury what that is.

4 A. It's also the same thing: date, my initials,  
5 how many photographs, the case number, incident location,  
6 and the incident.

7 Q. Okay. So you know how many photographs you were  
8 -- that you had taken?

9 A. Yes, sir.

10 Q. It's documented on this manilla folder that I  
11 just handed to you.

12 There's also been a little bit of testimony  
13 about a placard being out of order and you labeled the gun  
14 that was found away from Club 843 with placard number  
15 eleven. But was there any other weapon whatsoever that  
16 was found on the scene at Club 843?

17 A. No, sir.

18 Q. And the nine millimeter handgun, that you  
19 documented yourself in your report, was found away from  
20 the scene at Club 843?

21 A. Yes, sir.

22 Q. Okay. Where is the North Charleston Police  
23 Department located?

24 A. At this time or --

25 Q. Right now.

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- 1 A. 2500 City Hall Lane.
- 2 Q. How long have y'all been at 2500 City Hall Lane?
- 3 A. A few months.
- 4 Q. A few months.
- 5 Is it a brand new building?
- 6 A. Yes, sir.
- 7 Q. Where was the office previously located?
- 8 A. 4900 Lacrosse Drive.
- 9 Q. 4900 Lacrosse Drive.
- 10 How close are those two offices from one
- 11 another?
- 12 A. A stoplight.
- 13 Q. A stoplight away.
- 14 So you recently underwent a big move?
- 15 A. Yes.
- 16 Q. Did you have to transfer all of the evidence,
- 17 photographs from every single case that North Charleston
- 18 handles, from point A to point B?
- 19 A. I personally did not, but the forensics unit
- 20 that's in service now did.
- 21 Q. Okay. So things were just recently moved?
- 22 A. Yes.
- 23 Q. And Officer Bunker, there's been a lot of talk
- 24 about this hair being tested, being sent to SLED a month
- 25 or so ago. Again, what was the results, to your

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1 knowledge, of what that hair even was?

2 A. An animal hair.

3 MR. MCCOY: Okay. Thank you, Officer Bunker.

4 MS. PROCTOR: Just a few more questions.

5 RE-CROSS-EXAMINATION

6 BY MS. PROCTOR:

7 Q. You were just asked about documenting your  
8 inflow and you said how many pictures were on it; correct?

9 A. Yes, ma'am.

10 Q. Well, on the report that you have in front of  
11 you it says: detail of evidence recovered.

12 Correct?

13 A. Yes, ma'am.

14 Q. And it says items, location, and status. Why do  
15 you -- did you not fill in any of that?

16 A. I don't know, ma'am, not at this time.

17 Q. And Mr. McCoy just said that you did have a move  
18 and that forensics or somebody in that unit moved the  
19 evidence to the new building; correct?

20 A. Yes.

21 Q. So they moved all the evidence from every case  
22 in North Charleston; correct?

23 A. No.

24 Q. Some is still somewhere else?

25 A. Well, I don't really have a clue, ma'am, because

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1 I'm not part of that any longer.

2 I know that the evidence from the old building,  
3 most of it, or all of it, I'm not sure, has been moved to  
4 the new building.

5 Q. So out of everything that was moved, it --  
6 couldn't you say, reasonably, that would have been the  
7 most important thing that was moved would be the evidence  
8 so that was probably done very, very carefully; correct?

9 A. Yes.

10 MS. PROCTOR: I have no further questions.

11 THE COURT: You may step down. Thank you.

12 THE WITNESS: Thank you, ma'am.

13 [Whereupon, Ms. Bunker is excused and exits the  
14 witness stand]

15 THE COURT: Call your next witness.

16 MR. MCCOY: Thank you, Your Honor.

17 The State would call Officer Al Hallman, from  
18 the North Charleston Police Department.

19 [Whereupon, Mr. Hallman comes forward]

20 [Whereupon, Mr. Hallman is duly sworn by the  
21 clerk of court as follows: do you swear or affirm that  
22 your testimony will be the truth, the whole truth, and  
23 nothing but the truth, so help you God]

24 THE WITNESS: I do.

25 THE CLERK OF COURT: Please state your full name

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1 and spell your last name for the record.

2 THE WITNESS: Al Hallman. H-A-L-L-M-A-N.

3 MR. MCCOY: Sargent Hallman, thank you for being  
4 here with us today. I appreciate your time.

5 THE WITNESS: Certainly.

6 - - - - -

7 AL HALLMAN,

8 Having Been First Duly Sworn,  
9 was Examined and Testified as Follows:

10 DIRECT EXAMINATION

11 BY MR. MCCOY:

12 Q. If you could, tell the jury where you work.

13 A. I am employed by the City of North Charleston  
14 Police Department.

15 Q. And how long have you been with the City of  
16 North Charleston?

17 A. Almost twenty-three years.

18 Q. Twenty-three years. A long time.

19 A. A long time.

20 Q. In those twenty-three years, could you tell the  
21 jury what your duties have been?

22 A. I started out in uniform patrol. I did about  
23 four and a half years in uniform patrol. And then I went  
24 to general investigations for a year and a half; and then  
25 was transferred to the forensic investigations unit, where

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1 I served over seventeen years in forensics; and now I'm  
2 currently assigned as a road sargent.

3 Q. All right. When we're talking about forensics,  
4 are we talking about the crime scene investigation unit?

5 A. That's correct.

6 Q. And you've been with them for seventeen years?

7 A. A little over seventeen years.

8 Q. When you were there, was there a point in time  
9 where you were in charge of that entire division?

10 A. Yes, I was, for approximately five, five and a  
11 half years.

12 Q. Okay. Can you tell the jury if you've received  
13 any sort of training or classes that have helped you with  
14 your leading, at times, the crime scene investigation  
15 unit?

16 A. Yes.

17 Both myself and every member of the unit has  
18 received numerous advanced training courses dealing with  
19 all aspects of forensic science: crime scene processing,  
20 evidence processing, latent fingerprint examinations. And  
21 most of the people in my unit, as well as myself, received  
22 a diploma from the American Institute of Applied Sciences  
23 as successful completion for forensic science.

24 Q. Okay. So you've taken a lot of classes?

25 A. Yes, a lot of classes.

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1 Q. A lot of education on this?

2 A. Yes.

3 Q. Officer Hallman, when we're talking about crime  
4 scene investigations with North Charleston, what type of  
5 scene does that typically entail?

6 A. From the most petty of a larceny to the most  
7 severe of a homicide.

8 Q. So you've been called out to all kinds of  
9 scenes?

10 A. Yes, sir.

11 Q. If we specifically talk about violent crimes,  
12 what comes to mind to you?

13 A. Homicides, rapes, suicides, fatal vehicle  
14 accidents.

15 Q. Okay. And in your seventeen years as a crime  
16 scene officer, how many violent-crime scenes have you  
17 responded to?

18 A. Hundreds upon hundreds.

19 Q. Hundreds upon hundreds?

20 A. Yes, sir.

21 Q. Have you ever testified in a court, in a state  
22 court, as an expert in crime scene investigations?

23 A. Yes, I have.

24 Q. Approximately how many times have you done that?

25 A. Fifteen or twenty, maybe.

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1 MR. MCCOY: Okay. Your Honor, at this point I  
2 move Sargent Hallman in as an expert in crime scene  
3 investigations.

4 THE COURT: Ms. Proctor?

5 MS. PROCTOR: The Court's indulgence.

6 THE COURT: Yes, ma'am.

7 [Whereupon, Ms. Proctor and Ms. Mullaney confer]

8 MS. PROCTOR: Your Honor, we don't have a  
9 problem with him being qualified as an expert of  
10 collecting evidence at crime scene, but I don't know if  
11 they are qualifying him as an expert to interpret  
12 reports. But he's -- if he's an expert in going to  
13 crime scenes and collecting evidence --

14 THE COURT: All right. Counsel approach.

15 [Whereupon, an off-the-record bench conference  
16 is held].

17 THE COURT: Ms. Proctor, with that, no objection  
18 to qualifying Sargent Hallman as an expert in the area  
19 of crime scene investigations?

20 MS. PROCTOR: Yes.

21 THE COURT: Ladies and gentlemen of the jury,  
22 normally a person cannot testify to or give opinion  
23 testimony. Typically when they testify, a person must  
24 testify as to what they saw, heard or sensed by smell  
25 or something of that nature. However, there is an

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1 exception when someone is qualified because of their  
2 education or experience. They are permitted to give  
3 their opinion in certain areas if the Court qualifies  
4 them that way.

5 Sargent Hallman will be qualified in the area of  
6 crime scene investigation to give opinion testimony in  
7 that area. That does not mean that you must accept the  
8 opinion. It is evidence for you to use in any way that  
9 you see fit.

10 Mr. McCoy?

11 MR. MCCOY: Thank you, Your Honor. May it  
12 please the Court.

13 Q. [Mr. McCoy] Officer Hallman, let's get back.  
14 Now you've been established as an expert in crime scene  
15 investigations. Let's talk a little bit about  
16 fingerprints.

17 A. Okay.

18 Q. Tell the jury what a latent fingerprint is.

19 A. A latent fingerprint is an impression left on a  
20 surface whenever a person's hands or the soles of their  
21 feet come in contact with that surface. The word latent  
22 means invisible to the naked eye and in order to be seen  
23 needs some kind of further process, whether it be oblique  
24 lighting or chemical processes or fingerprint-powder  
25 processes to make that print visible.

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1           When you take a latent print, you add a process  
2 to it so that you can see a print, then it becomes what's  
3 called a patent print. And the patent word means visible  
4 to the naked eye.

5           Q.       So the difference between a latent and a patent  
6 means -- latent has been brought out by another object or  
7 a substance to make it patent, and patent means visible --

8           A.       Correct.

9           Q.       -- to the naked eye?

10          A.       Correct.

11          Q.       Okay. What sort of circumstances can affect a  
12 fingerprint?

13          A.       Heat, environment, weather. If a person's hand  
14 comes in contact with a surface and there is some items or  
15 substrate between his hand and the surface being touched,  
16 of course nothing is going to be left with ridge detail.  
17 Any wear or movement against the surface that the latent  
18 print is on can actually distort or remove a fingerprint.  
19 There are numerous, numerous examples as to how a  
20 fingerprint can be left and be distorted or be removed.

21          Q.       So fingerprints are -- they're sensitive items?

22          A.       Very sensitive.

23          Q.       They can be affected by numerous things that are  
24 around us that we have no control over?

25          A.       That's correct.

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1 Q. Like you just testified as to weather, as  
2 somebody brushing their hands against something? How  
3 about sweat? Does sweat affect a fingerprint?

4 A. Sweat can distort a fingerprint. Generally, it  
5 would depend on the amount of sweat present.

6 Basically, your hands are sweating all the time  
7 and that perspiration of those oils coming from your sweat  
8 glands is actually what creates the latent print when  
9 you've touched a surface. If you're sweating excessively  
10 and you leave that -- or you touch that surface, then that  
11 print can be distorted due to the beads of sweat in that  
12 latent print. Generally, you can still get an impression.  
13 But the heavier the sweat, the more distorted the print  
14 will be.

15 Q. Okay. Do fingerprints -- if they are left on an  
16 object, do they have any sort of time span? Can you tell  
17 how far back it goes, or can you tell how close of a time  
18 it was that somebody came in contact with anything?

19 A. No.

20 Q. So there's no timestamp that you can tell,  
21 whatsoever, on a fingerprint?

22 A. There is no timestamp.

23 Through my working with latent prints over the  
24 years, I've established the belief that when an item or  
25 when a surface is processed with black fingerprint powder,

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1 the darker that the latent appears on that surface, the  
2 newer that print is or the earlier, more recently, that  
3 print was put on that surface. The lighter print, though,  
4 indicates that the print has been there for some time.  
5 And that's basically the only way to determine any kind of  
6 time frame whatsoever.

7 But, no, you cannot put a timestamp on a latent  
8 print because if a print is left on an item and it is  
9 placed in a pristine environment, it can stay there  
10 predominately forever.

11 Q. Okay. We've also heard a lot of talk, from the  
12 defense and from us, about a thing called GSR. Tell the  
13 jury what GSR is.

14 A. GSR stands for gunshot residue.

15 Basically, it's the lead and the metals that are  
16 expended when a firearm is fired. Certain firearms expend  
17 these gases and these lead particles backwards. A  
18 revolver, for instance: when a revolver is fired, the gas  
19 is actually fired backwards towards the shooter's hands.  
20 Semiautomatic pistols have the ejection port either to the  
21 right or left side of the pistol, and, therefore, the  
22 majority of the gasses on a semiautomatic pistol go out  
23 the sides but they still do tend to blow back on the  
24 person or the shooter's hands. The same with a shotgun.  
25 A shotgun has the side-ejection port.

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1 But basically it's the metals, the lead  
2 particles, that are -- the gunpowder flakes that are  
3 actually deposited on a shooter's hands coming from a  
4 fired pistol.

5 Q. We've talked about GSR. You just explained it.  
6 How far away does somebody need to be, in your expert  
7 opinion, to receive gunshot residue on them if they are a  
8 victim?

9 A. If they are a victim, that -- it's hard to say.  
10 The projectile itself can actually transport  
11 parts of the gunpowder residue and place gunpowder --  
12 gunshot residue on the wound or on the clothing at the  
13 entry point. Naturally, the closer that the victim is to  
14 the shooter, the more GSR is going to be present on that  
15 person.

16 Q. Okay. And we've talked about the sensitivity of  
17 a fingerprint. How sensitive is GSR?

18 A. It's just as sensitive.

19 GSR can be removed from your hands simply by  
20 brushing your hands against your pants or your shirt.  
21 It's -- you almost have to have really good, pristine  
22 conditions to get GSR off a person's hands. The best time  
23 to get that gunshot residue is right after the gun has  
24 been fired or very shortly after it's been fired and the  
25 person that fired the gun was placed in the position to

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1 where he could not remove it from his hands, such as his  
2 hands being bagged by police officers or whatever the case  
3 may be.

4 But the longer the time frame goes, the more  
5 opportunity that person has to either wipe his hands or  
6 wash his hands and remove the gunshot residue from his  
7 hands.

8 Q. Could gunshot residue get on clothes?

9 A. Yes, it can.

10 Q. Can it be wiped off of clothes just as easily as  
11 it can off of a hand?

12 A. It's harder to wipe it off of clothing.  
13 However, it can be very easily washed out of clothing.

14 Q. Okay. Is it possible for somebody to lose  
15 gunshot residue on their hands if they put their hands in  
16 their pocket?

17 A. Absolutely.

18 Q. Explain why that is.

19 A. Because you're actually creating a rubbing  
20 effect against your hands to another surface.

21 Q. And how about sweat? Does sweat affect gunshot  
22 residue on a hand?

23 A. Sweat would merely move the gunshot residue  
24 around on the hand, but it would not remove it unless it  
25 was so excessive to where the sweat was actually dripping

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1 off of those hands.

2 Q. Okay. Tell the jury what touch DNA is.

3 A. Touch DNA deals with epithelial cells, the skin  
4 cells on your hands.

5 Whenever you touch an item, you leave skin cells  
6 or epithelials on the item that you've touched and those  
7 epithelials contain cells which contain DNA to that person  
8 that touched that surface.

9 Q. Is touch DNA visible to a naked eye?

10 A. No.

11 Q. And how do you test for touch DNA?

12 A. If you've got an item that you're wanting to  
13 collect epithelial DNA from, you use sterile swabs and  
14 distilled water to swab that surface in two different  
15 directions. And then the swab is dried and sent to SLED  
16 where it is -- there are several different kinds of DNA  
17 testing, mitochondrial DNA, PCR DNA, that they can conduct  
18 to determine if there is DNA present in that swab.

19 Q. And, Sargent Hallman, once you've made a call to  
20 swab something down, which you just testified is rub  
21 something down, for touch DNA, I mean, is it typical or is  
22 it even possible to then go back and fingerprint that  
23 item?

24 A. It's possible. But you've got to understand  
25 that the surface that's being swabbed, any ridge detail

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1 from fingerprints that would be on that surface would be  
2 wiped away merely within the swab because the swab is  
3 collecting anything on that surface. And you're looking  
4 for skin cells placed in a latent print, basically. And  
5 by testing it for DNA or swabbing it for DNA, you're  
6 pretty much removing anything on the surface.

7 Q. Okay. Sargent Hallman, I'm going to take you  
8 now to November 22nd of 2007. Did you have an opportunity  
9 to arrive to a crime scene in North Charleston at Club  
10 843?

11 A. Yes, sir, I did.

12 Q. Tell the jury what you did when you got there.

13 A. When I arrived, Investigator Bunker and  
14 Investigator Wyant were already on scene, members of the  
15 crime scene unit at the time. They were already on scene  
16 and had begun processing the initial scene and locating  
17 items of evidence for photography documentation and for  
18 collection.

19 I assisted Investigator Bunker in collecting the  
20 items of evidence that she had located in the parking lot.  
21 After they had been documented with photography, those  
22 items were secured and released to her at the scene. She  
23 took custody of all that stuff at the scene.

24 I do remember that there was a black male laying  
25 face up in the parking lot, with a large amount of blood

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1 around him, when I arrived. I was informed that there was  
2 a second shooting victim, that that victim had already  
3 been transported to the hospital by EMS prior to my  
4 arrival.

5 After we had -- after Angie Bunker and I had  
6 completed pretty much collecting the evidence in the  
7 parking lot, we received information from NCPD  
8 investigators that there was a possibility that the gun  
9 used in the shooting had been tossed from a vehicle in a  
10 ditch, a real deep ditch in a grassy area, just out front  
11 of the shopping center. So at that time, receiving that  
12 information, Investigator Bunker and I went to that area  
13 and searched that entire ditch line for the gun. And no  
14 gun was found.

15 As we were completing that search, we received  
16 another bit of information from detectives stating that  
17 now they believed the gun had been tossed out of the  
18 vehicle onto the grassy area on Dorchester Road in front  
19 of Huntley Park. So at that point I took one side of  
20 Dorchester Road and Investigator Bunker took the other  
21 side and we started searching the entire grassy area along  
22 Dorchester Road.

23 We went to the entrance to Huntley Park. No gun  
24 had been found. Then, again we received information from  
25 detectives, for a third time, stating that the gun had

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1 been thrown out the window of the vehicle and had landed  
2 in a car lot. The only car lot within that area that I  
3 remembered was the car lot -- a used car lot at the corner  
4 of Dorchester Road and Brossy Circle.

5 We made our way down that way, still continuing  
6 to search the area on both sides of Dorchester Road. As I  
7 got to the car lot at Dorchester and Brossy, I started  
8 checking a little gravel area where the cars were parked  
9 and about halfway down I observed a gun laying in the  
10 gravel between two cars.

11 MR. MCCOY: Judge, may I approach the witness?

12 THE COURT: You may.

13 Q. [Mr. McCoy] Sargent Hallman, I'm going to show  
14 you what's already been placed into evidence as State's  
15 40. If you could take a look at that for me and tell me  
16 what that is.

17 A. It's a Smith and Wesson semiautomatic pistol,  
18 nine millimeter, and was the gun marked as number eleven  
19 by Investigator Bunker. That is the gun that we found --  
20 or that I found in the car lot on Dorchester Road.

21 Q. Okay. And this is a gun that you found away  
22 from the scene, not at the scene --

23 A. Correct.

24 Q. -- of Club 843?

25 A. That's correct.

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1 Q. And this is the same gun that you found that  
2 day?

3 A. Yes, sir.

4 Q. Sargent Hallman, you've heard that -- well, you  
5 just testified there are different locations that you  
6 initially tried to search. But the final location that  
7 you did search, how close to the road was this handgun?

8 A. There's a sidewalk right in that area and the  
9 gun was in the gravel area, between two cars, about twenty  
10 -- fifteen or twenty feet from the sidewalk.

11 Q. Okay.

12 A. And the sidewalk, of course, is about, what,  
13 four -- three or four feet from the road edge.

14 Q. Okay. So it was a short distance from  
15 Dorchester Road?

16 A. Yes, a very short distance.

17 Q. Okay. And, also, this third location where you  
18 did find the gun, how far away would you estimate it was  
19 to -- back to Club 843?

20 A. Half a mile, maybe less.

21 Q. Okay. So it was a relatively short distance --

22 A. Yes.

23 Q. -- from Club 843?

24 And, Sargent Hallman, was this gun photographed?

25 A. Yes, it was.

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1 Q. And do you know what's happened to the  
2 photograph of this gun?

3 A. The photographs were apparently filed under a  
4 different case number and were secured in our files under  
5 a different OCA number and we cannot locate the photos for  
6 some reason. We've looked extensively and cannot find  
7 them.

8 Q. But the gun is here?

9 A. The gun is here. I located --

10 Q. Is this the same gun that you located --

11 A. -- the gun.

12 Q. -- and you found from November 22nd of 2007?

13 A. That's correct.

14 I'm also the one that photographed the gun, so I  
15 know photos were taken.

16 Q. Okay. And Sargent Hallman, when you found this  
17 gun, what is the -- what are the additional approaches  
18 that a crime scene investigator does? When they see a  
19 handgun, they know it may be related to a crime, what do  
20 you do first?

21 A. The very first thing is document it with  
22 photography to secure, as it was found, a visual  
23 representation.

24 Q. Okay. And what do you do next?

25 A. Then we put gloves on, sterile gloves, that have

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1 been -- have not been used at all, and we collect the  
2 firearm and we secure it in a gun box such as that one  
3 right there. We do not unload the gun until we get back  
4 to our office, just in case there may be evidence on the  
5 gun that we can collect prior to unloading it.

6 Q. Were there any patent fingerprints on that  
7 handgun?

8 A. When we took the gun back to our lab and  
9 examined it, you could see smudge marks on the gun but we  
10 did not see any viable latent print detail or identifiable  
11 ridge detail to warrant processing it for latent prints.  
12 And at that point we made the call to swab the gun and the  
13 clip and the trigger guard for DNA.

14 Q. Okay. So a call was made to swab the gun for  
15 DNA?

16 A. That's correct.

17 Q. Was it possible for you to then go back and then  
18 fingerprint this gun afterwards?

19 A. No, because what was on the gun was rubbed off  
20 during the swabbing process.

21 MR. MCCOY: The Court's indulgence for just one  
22 moment, Your Honor.

23 THE COURT: Yes, sir.

24 [Whereupon, Mr. McCoy and Mr. Wetmore confer]

25 MR. MCCOY: Sargent Hallman, thank you for your

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1 time, and thank you for your questions.

2 THE WITNESS: Certainly.

3 MS. PROCTOR: Hi, Sargent Hallman.

4 THE WITNESS: Hi. How are you?

5 CROSS-EXAMINATION

6 BY MS. PROCTOR:

7 Q. You said you were in crime scene for about  
8 seventeen years. So during that time, you tested for  
9 gunpowder -- not tested. You took gunpowder residue tests  
10 from victims, defendants --

11 A. Yes, ma'am.

12 Q. -- witnesses?

13 A. Yes, ma'am.

14 Q. And you said that a time frame is -- the best  
15 time is to get it up to basically four hours; correct?

16 A. No, I never said four hours. I know that SLED's  
17 standards are not to accept any gunshot residue collection  
18 kits that have been collected after six hours.

19 But we -- I just basically testified that the  
20 closer you can get it to that shooting time, the better  
21 your chances are of getting the gunshot residue.

22 Q. So if somebody was arrested say within a minute  
23 from a crime scene and their hands were tested, that's  
24 pretty good; correct?

25 A. That's -- you're doing very good, yes, ma'am.

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1 Q. And when you swab for GSR, you swab their front  
2 of their hands and the back of their hands?

3 A. Yes, ma'am.

4 The general testing is first we use a sticky-tab  
5 collection. That's part of the gunshot residue collection  
6 kit. It's done prior to the swabbing because the swabbing  
7 is basically used to get anything left that the sticky  
8 tabs do not get.

9 So it's a two-part collection process.

10 Q. Okay. And so basically -- so you test complete  
11 for this part, the front of your hand, the palm, the  
12 front, and the hand, so basically four different tests?

13 A. Yes, ma'am.

14 Q. And you said that it can also get on your  
15 clothes; correct?

16 A. That's correct.

17 Q. And when you fire a gun, if it's a short  
18 distance the victim can get -- gunpowder residue can blow  
19 onto their clothes; correct?

20 A. That's correct.

21 Q. And gunpowder residue can also blow back on the  
22 shooter's clothes?

23 A. Yes, ma'am.

24 Q. And you said that sometimes gunpowder residue  
25 can get wiped off if somebody puts their hands in their

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1 pocket?

2 A. Yes, ma'am.

3 Q. And -- but clothes can be tested; correct?

4 A. Oh, absolutely.

5 Q. So the pockets can be tested for gunpowder  
6 residue if --

7 A. The pockets? Yes, they can.

8 But the only problem you run into with pockets,  
9 that I've seen in my experience, is that the pockets are  
10 where you keep your change, your coins, and they, too,  
11 actually place very similar metals or metal flakes within  
12 a pocket. And generally SLED does not like to try and  
13 test pockets but they will, but we've never had any luck  
14 on it at all.

15 Q. But as far as, though, say the front of a shirt,  
16 if somebody shot a gun, the front of their shirt could be  
17 tested to see if there was gunpowder residue on the front  
18 of their shirt?

19 A. It could, yes, ma'am.

20 Q. And, now, when you do the testing, because these  
21 are small particles you take what you have done and that  
22 goes to SLED; correct?

23 A. Yes, ma'am, because they've got the scanning  
24 electron microscope.

25 Q. Okay. And so they use the microscope and they

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1 analyze everything to see if there are certain particles  
2 in it and then they send the test back and say positive or  
3 negative; correct?

4 A. That's correct.

5 Q. Is it also possible for gunpowder residue to be  
6 found on a car seat if the shooting -- if a gun went off  
7 in a car?

8 A. It's possible.

9 I have never seen it. It would almost have to  
10 be the gun being fired while right up against a car seat.  
11 But I've never had that experience. I've never had a case  
12 where I've investigated that.

13 Q. What about wiping your hands on a car seat?

14 A. That's possible. There's -- you've always got  
15 that transfer process.

16 Q. And it's also common practice, if there is a  
17 victim that was involved in a shooting, to test their  
18 hands also for gunpowder residue to see if they had a  
19 weapon; correct?

20 A. That's correct.

21 MS. PROCTOR: Court's indulgence.

22 THE COURT: Yes, ma'am.

23 [Whereupon, Ms. Proctor and Ms. Mullaney confer]

24 MS. PROCTOR: No further questions.

25 MR. MCCOY: No, ma'am.

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1 THE COURT: All right. And just for scheduling  
2 for the hearing regarding --

3 And who is the agent from SLED?

4 MR. WETMORE: His name is Dan Defreese.

5 I had intended, Your Honor, to call Detective  
6 Greg Gomes right after lunch and then Detective -- and  
7 then Agent Dan Defreese.

8 THE COURT: And, Ms. Mullaney, you're requesting  
9 a hearing concerning the testimony of Agent Defreese;  
10 is that correct?

11 MS. MULLANEY: Yes, ma'am.

12 THE COURT: And how long do you anticipate --  
13 well, first, what is the purpose of the hearing?

14 MS. MULLANEY: The purpose of the hearing is  
15 regarding his testimony that the bullet -- that the  
16 cartridge casing that he tested matched and were fired  
17 from that gun but he also tested to the exclusion of  
18 every other nine millimeter in the world. And the  
19 purpose of the hearing is to question him on that  
20 science. And I'm going to ask Your Honor not to allow  
21 that testimony.

22 THE COURT: And how long do you anticipate that  
23 will take?

24 MS. MULLANEY: Twenty to thirty minutes, Your  
25 Honor.

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1 THE COURT: Mr. Wetmore.

2 MR. WETMORE: Thank you, Judge.

3

4

GEORGE G. GOMES;

5

Having Been First Duly Sworn,

6

was Examined and Testified as Follows:

7

DIRECT EXAMINATION

8

BY MR. WETMORE:

9

Q. Lieutenant Gomes, how long have you been with  
10 the North Charleston Police Department?

11

A. Since 1995.

12

13

Q. Give us brief highlights of your training and  
13 your experience.

14

A. I initially started in uniform patrol, which is  
15 pretty much where every police officer starts. From there  
16 I went to a policing community team for a few years. Then  
17 I went to narcotics, where I spent a majority of my  
18 career. That's where I'm currently assigned as a  
19 lieutenant over special enforcement section.

20

During -- about a fourteen-month stretch --  
21 during this incident I was working major cases, which  
22 included homicides and major person crimes.

23

Q. And so your duties back in November 22nd, 2007,  
24 you were investigations, as well

25

A. Yes, sir. That's correct.

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1 Q. Did you take part in the investigation of the  
2 double shooting at Club 843?

3 A. Yes, sir, I did.

4 Q. How did you come to learn about that situation?

5 A. I was actually paged by our dispatch center at  
6 approximately 3:30 in the morning, 3:20 in the morning, in  
7 reference to this shooting and I responded from my home.

8 Q. So you were called from your home to investigate  
9 this shooting?

10 A. Yes, sir.

11 Q. Were you assigned to be the head detective, case  
12 agent?

13 A. I was.

14 Q. And you went to the club; is that correct?

15 A. Yes, sir, I did.

16 Q. When you got to the club, was the deceased  
17 victim -- Maurice Maxwell, was he still there?

18 A. He was, yes, sir.

19 Q. He was lying, as we've seen pictures of him --

20 A. Yes, sir.

21 Q. -- on his back?

22 A. Yes, sir. That's correct.

23 Q. Now, the victim that lived, what was his name?

24 A. Danny Alterson.

25 Q. Alterson?

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1 A. Alterson.

2 Q. Can you take a look at your report --

3 A. Yes.

4 Q. -- and see if that refreshes your memory.

5 [Whereupon, the witness reviews documents]

6 A. Danny Agerson.

7 Q. [Mr. Wetmore] Agerson?

8 A. Agerson. Sorry.

9 Q. That's okay.

10 Danny Agerson was the victim that was shot but  
11 lived; is that correct?

12 A. Yes, sir, that's correct.

13 Q. Now, was he still there when you got there or  
14 had he already been taken away?

15 A. He was transported.

16 Q. He was transported by medical personnel?

17 A. Yes, sir.

18 I think he was actually Medi-vac'd out, is my  
19 understanding.

20 Q. So the deceased victim, Maurice Maxwell, was  
21 there but the victim Daniel Agerson, Danny Agerson, had  
22 already been taken away?

23 A. Yes, sir.

24 Q. Now, later on, did you ever reach out and  
25 communicate with the victim that lived? Danny Agerson.

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1 A. Yes, sir, I did.

2 Q. Did you meet with him in the hospital?

3 A. No, sir.

4 Q. Did you meet with him at home, a building, or  
5 something?

6 A. Yes, sir.

7 About eight days after the shooting, I met with  
8 him at a relatives house.

9 Q. So you weren't able to talk to him at the scene  
10 because he was taken away, couldn't talk to him at the  
11 hospital, but you talked to him at a relative's house?

12 A. I did.

13 Q. Did you discuss the incident with him?

14 A. Yes, sir, I did.

15 Q. Okay. Did you take a written statement from  
16 him?

17 A. Yes, sir, I did.

18 Q. Did you stay in constant contact with Danny  
19 Agerson?

20 A. No, sir, I didn't.

21 MS. PROCTOR: Objection, Your Honor. He has  
22 been leading --

23 THE COURT: I'm going to allow it.

24 You may answer.

25 A. No, sir, I did not.

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1 Q. [Mr. Wetmore] So you didn't stay in constant  
2 contact with him?

3 A. No, sir.

4 Q. Now, in preparing for court this week --

5 A. Yes, sir.

6 Q. -- did you work with out investigators at the  
7 solicitor's office to attempt to locate Danny Agerson?

8 A. Yes, sir, I did.

9 Q. Just briefly describe what tactics or techniques  
10 were used to try to locate this victim, Danny Agerson.

11 MS. PROCTOR: Objection, Your Honor.

12 THE COURT: Bases?

13 MS. PROCTOR: Relevancy.

14 THE COURT: I'm going to allow it.

15 A. Yes, sir.

16 General practice, we usually check utilities,  
17 power, water bill, law enforcement databases, DMV, skip-  
18 trace, different databases where people usually will have  
19 services or whatever, so that we can try to locate a  
20 legitimate, good address for them. But, unfortunately, we  
21 haven't have any success.

22 Q. [Mr. Wetmore] So you made efforts -- you've  
23 worked with the solicitor's office to make efforts but  
24 have not been able to locate the victim, Danny Agerson?

25 A. No, sir, we haven't.

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1 Q. Not since this incident happened?

2 A. Yes, sir.

3 Q. Now, we talked about the deceased victim. We  
4 talked about the victim that lived, Danny Agerson. That  
5 night out there did you have any contact with the security  
6 guard, the bouncer that we've heard from, Joshua Crider?

7 A. I saw him that night. I -- I didn't have any  
8 real contact with him, though.

9 Q. Okay. Let's see who else. That night did you  
10 have any contact -- did you interview a potential witness,  
11 Shemera Brown?

12 A. Yes, sir, I did.

13 Q. And based on your investigation, who is Shemera  
14 Brown?

15 A. She identified herself as the defendant's  
16 boyfriend.

17 Q. Defendant's boyfriend?

18 A. I mean, girlfriend. I apologize.

19 Q. So Shemera Brown is the defendant's girlfriend?

20 A. Yes, sir.

21 Q. Okay. She a black female? White female?

22 A. A black female.

23 Q. And based on your investigation, was she in the  
24 car with the defendant?

25 MS. PROCTOR: Objection, Your Honor. May we

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1 approach?

2 THE COURT: You may.

3 [Whereupon, an off-the-record bench conference  
4 is held]

5 Q. [Mr. Wetmore] So, Detective Gomes, we were  
6 talking about -- I was asking you about Shemera Brown, the  
7 girlfriend that was in the car. That night you were able  
8 to talk to her --

9 A. Yes, sir. I interviewed her.

10 Q. Okay. And did she voluntarily give you a  
11 statement that night?

12 A. Yes, sir, she did provide a statement.

13 Q. Was she cooperative in helping you with the  
14 case?

15 A. Yes, sir. She was very cooperative.

16 Q. Was she, in fact, the one that took you to where  
17 the defendant threw the gun out?

18 A. Yes, sir, she did.

19 Q. How did she do that?

20 A. Initially, she was providing us locations based  
21 on her memory of when they left. And, again, you're  
22 talking a short distance. The officers went to the  
23 location and they weren't able to locate the firearm so  
24 myself and another detective, we just put her in the  
25 vehicle and drove her back to the area and she was able to

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1 show us where the weapon was thrown out.

2 Q. So you put her in one of your cars and she took  
3 you right to where the defendant threw the gun out?

4 A. Yes, sir, she did.

5 Q. Now, that was that night she -- it sounds like  
6 she was very cooperative.

7 A. Yes, sir.

8 Q. Did she give you a written statement, too?

9 A. Yes, sir, she provided us a written statement.

10 Q. Okay. Now, as to Shemera Brown, did you stay in  
11 constant contact with her since this happened?

12 A. Between us and the solicitor's office, we have  
13 been in contact with her and met with her a few occasions.

14 Q. North Charleston Police Department, you  
15 particularly, and our office, our investigators, have we  
16 stayed in touch with her?

17 A. Yes, sir.

18 Q. Do you happen to know the last time we met with  
19 Ms. Brown?

20 A. Late last week.

21 Q. And in terms of getting her to court this week,  
22 have you, working with the solicitor's office, had any  
23 success with that?

24 A. Unfortunately, we haven't been able to locate  
25 her.

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1 Q. So this week, working with our office, you have  
2 not been able to locate her?

3 A. No, sir.

4 Q. But that night she was very cooperative?

5 A. Yes, sir, she was.

6 Q. In fact, took you right to the murder weapon?

7 A. That's correct.

8 Q. Now, based on what you saw and who you talked to  
9 out there, you recovered the murder weapon; is that  
10 correct?

11 A. The crime scene officer --

12 Q. Crime scene officer.

13 A. -- recovered it, yes, sir.

14 Q. If you would take a look at that piece of  
15 evidence right there. I don't know the number. State's  
16 Number 40. Is that the murder weapon that y'all  
17 recovered?

18 A. Yes, sir, it is.

19 Q. Okay. Based on all these people you talked to  
20 and the evidence that you presented, did you determine to  
21 charge the defendant with a crime?

22 A. Yes, sir, we did, based on everything we had.

23 Q. What did you charge the defendant with?

24 A. We charged him initially with murder.

25 Q. And that was based on which shooting?

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1           A.     The second one, deceased victim, Maxwell.

2           Q.     Okay. Any other charges?

3           A.     Yes, sir.

4                     He was charged with assault and battery with

5 intent to kill for Agerson, Danny Agerson, the victim that

6 lived.

7           Q.     And were you present when he was arrested and

8 booked?

9           A.     Yes, sir, I was.

10          Q.     And you -- did you collect his clothing?

11          A.     Yes, sir, I did.

12                     MR. WETMORE: If I may approach, Your Honor?

13                     THE COURT: You may.

14          Q.     [Mr. Wetmore] These items of clothing -- you've

15 been in here this week -- 3, State's Number 3, and State's

16 Number 2 and State's Number 1, are these the clothes that

17 you took off of the defendant?

18          A.     Yes, sir. With the exception of the hat.

19          Q.     The hat? You didn't have the hat?

20          A.     No, sir.

21          Q.     Do you know where the hat was located?

22          A.     In the vehicle.

23          Q.     It was in the car?

24          A.     Yes, sir.

25          Q.     Did you take any other steps in investigating

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1 this case, Detective Gomes?

2 A. Other than just, like I said, afterwards going  
3 back and interviewing Mr. Agerson. That's where it was  
4 completed, after that on the 30th, about eight days after  
5 the shooting.

6 Q. And unfortunately, that meeting with Mr. Agerson  
7 was the last contact we had?

8 A. Yes, sir, it is -- yes, sir, it was.

9 MR. WETMORE: All right. I don't have any  
10 further questions.

11 THE COURT: Ms. Proctor?

12 MS. PROCTOR: Thank you.

13 CROSS-EXAMINATION

14 BY MS. PROCTOR:

15 Q. Detective Gomes, you said you were the lead  
16 detective in the case; correct?

17 A. Yes, ma'am.

18 Q. And you went to the scene that night; correct?

19 A. I did briefly.

20 Q. And did you talk to any of the witnesses that  
21 were out there?

22 A. I don't know that there were any other witnesses  
23 located out there, other than the ones that have been  
24 presented.

25 Q. Besides the two people that you just mentioned,

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1 do you know from reviewing the reports if -- I think  
2 supposedly they're -- I think the testimony was maybe ten  
3 to twenty officers out there. Any of those officers talk  
4 to any of the patrons from the club that night?

5 A. Not that I'm aware of.

6 Q. Do you know if anybody -- any of those ten to  
7 twenty officers went in the club and talked to any of the  
8 people in the club?

9 A. I don't know.

10 I know when I arrived there wasn't anyone left  
11 except for officers and a few security personnel. But  
12 pretty much everyone.

13 Q. They had gone.

14 But when you reviewed the reports, did you see  
15 if any officers had maybe talked to -- gotten written  
16 statements from the bouncers that were involved in the  
17 fight?

18 A. No, ma'am.

19 Q. Or any of the people that were involved in the  
20 fights outside before you arrived?

21 A. I don't know that any of them were located.

22 Q. So not one person -- by the time the police  
23 arrived, not one person was there?

24 A. I wasn't -- I wasn't the initial responding  
25 officer. I came from home.

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1 Q. Well, I know. But you're chief officer. You've  
2 read everything that we have.

3 A. Yes, ma'am.

4 Q. And the officers were there within two minutes.

5 A. Yes, ma'am.

6 Q. And so out of all the people that were out there  
7 fighting, like twenty or thirty people, there wasn't one  
8 person still left there?

9 A. I don't -- not -- no one else -- other than what  
10 you see and what we've talked about, I don't know of  
11 anyone else that was interviewed or talked to that night.

12 I can't speak to how many people were there  
13 because I wasn't there originally. I mean, I agree with  
14 you what's been said, but I don't know of anyone else that  
15 was talked to that night, other than what we've talked  
16 about.

17 MS. PROCTOR: Okay. I have no further  
18 questions.

19 THE COURT: Mr. Wetmore?

20 REDIRECT EXAMINATION

21 BY MR. WETMORE:

22 Q. Detective Gomes, so you haven't seen an  
23 interview with a patron of the club? Like a person  
24 inside?

25 A. No, sir.

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1 Q. Okay. But your agency did talk to the bouncer?

2 A. Yes, sir.

3 Q. The head of security?

4 A. Yes, sir.

5 Q. That would be Joshua Crider?

6 A. Crider. Yes, sir.

7 Q. But the patrons had already taken off?

8 A. Yes, sir.

9 MR. WETMORE: I don't have any further  
10 questions.

11 MS. PROCTOR: None, Your Honor.

12 THE COURT: Detective, you may step down.

13 [Whereupon, Mr. Gomes is excused and exits the  
14 witness stand].

15 THE COURT: Approach just for scheduling.

16 [Whereupon, an off-the-record bench conference  
17 is held]

18 MR. MCCOY: Your Honor, the State calls  
19 Dr. Schandl, from Medical University of South Carolina.

20 [Whereupon, Dr. Schandl comes forward]

21 THE CLERK OF COURT: Raise your right hand.

22 [Whereupon, Dr. Schandl is duly sworn by the  
23 clerk of court as follows: do you swear or affirm that  
24 your testimony will be the truth, the whole truth, and  
25 nothing but the truth, so help you God]

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1 THE WITNESS: Yes, sir, I do.

2 THE CLERK OF COURT: Be seated.

3 [Whereupon, Dr. Schandl takes the witness stand]

4 THE CLERK OF COURT: If you'll state your full  
5 name and spell your last name for the record.

6 THE WITNESS: Cynthia Anna Schandl. S-C-H-A-N-  
7 D-L.

8 MR. MCCOY: Dr. Schandl, thank you for being  
9 here with us this afternoon. I appreciate your time.

10

11

12

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25

CYNTHIA SCHANDL,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. MCCOY:

Q. If you could, tell the jury where you work.

A. I work at the Medical University of South  
Carolina, in the department of pathology and laboratory  
medicine, within the forensic and autopsy section.

Q. Tell the jury what the forensic and autopsy  
section does at MUSC.

A. Primarily, what we do is perform autopsies, both  
forensic autopsies as well as medical autopsies which are  
those generated by individuals who are sick in the  
hospital.

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1           So the forensic autopsy service has to do with  
2 those individuals who are not known to have an actual  
3 disease process that led to their death but, instead,  
4 another process may have led to their death, such as an  
5 accident or a homicide or a suicide. Sometimes we still  
6 get natural deaths if those individuals may be found in  
7 their homes and they don't have a medical history or other  
8 things like that.

9           So things that require investigation by law  
10 enforcement, generally speaking.

11           Q.     And if you could tell the jury basically what is  
12 an autopsy.

13           A.     An autopsy encompasses several different things.  
14 Basically, we're looking at dead individuals for evidence  
15 of disease or injury. An autopsy begins with an  
16 examination of the individual as they are brought to us,  
17 whether they have clothing on or whether they don't, and  
18 then that clothing is removed and the autopsy continues  
19 with an external examination of the body where we document  
20 those things that are important for identification of the  
21 body, such as height and weight, any tattoos, those sorts  
22 of things, as well as any injuries that might be present  
23 on the body.

24           After the external examination is completed, we  
25 then go to what is commonly thought of as the autopsy,

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1 which is the internal examination portion of the autopsy,  
2 where a Y incision is made and we'll look for evidence of  
3 disease processes and injury inside the body in the organs  
4 and so forth.

5 In addition, we also then take materials from  
6 those organs to look at under the microscope, again, to  
7 document injuries and to document diseases. We also send  
8 out body fluids, usually blood, for toxicology testing, as  
9 well.

10 So all of those components make up an autopsy.

11 Q. And, Dr. Schandl, how long have you been a  
12 forensic pathologist with MUSC?

13 A. I've been on faculty at MUSC since 2004.

14 Q. And, Dr. Schandl, if you could -- I know there's  
15 a lot of it -- if you could tell the jury a little bit  
16 about your educational background.

17 A. Yes. So in order to --

18 MS. PROCTOR: Your Honor, we would stipulate  
19 that she's an expert.

20 THE COURT: In --

21 MS. PROCTOR: In --

22 MR. MCCOY: Your Honor, I think it's important  
23 for the jury --

24 MS. PROCTOR: Oh. That's fine.

25 MR. MCCOY: -- to hear her qualifications.

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1 THE COURT: All right. Thank you. Please  
2 continue:

3 THE WITNESS: Thank you.

4 A. In order to become a forensic pathologist, one  
5 must complete college. So I have a Bachelor's degree in  
6 biology from the California State University System in San  
7 Bernardino. One must then complete medical school. I  
8 came to the Medical University of South Carolina here in  
9 Charleston in order to complete my medical school  
10 training. During that time period, I also completed a  
11 doctoral degree. Graduated from medical school and  
12 graduate school in '99.

13 And after that point, you then are eligible for  
14 licensure as a medical doctor, which I'm licensed as a  
15 medical doctor in the states of South Carolina and  
16 Florida.

17 At that point, you can then choose specific  
18 training, after medical school, depending on what type of  
19 doctor you wish to be or what kind of practice you wish to  
20 have. I chose pathology as my field of practice and so  
21 the residency program for pathology, anatomic and clinical  
22 pathology is an additional four years.

23 And after that, I then chose to specialize in  
24 the field of forensic pathology, which is an additional  
25 year of fellowship training.

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1           There are then board certifications by the  
2 American Board of Pathology in anatomic pathology,  
3 clinical pathology, and forensic pathology, all of which I  
4 have taken and passed. I'm board certified in those three  
5 areas of pathology.

6           So after that sum of training, you know,  
7 generally speaking, in this country you can be called a  
8 forensic pathologist.

9           Q.       [Mr. McCoy] I don't even know if I could keep  
10 up with all that.

11           But, Dr. Schandl, if you could also tell the  
12 jury: in your years at MUSC, how many autopsies have you  
13 performed?

14           A.       I've performed over a thousand autopsies.

15           MR. MCCOY: And, Your Honor, at this point, I  
16 would move Dr. Schandl as an expert in forensic  
17 pathology.

18           THE COURT: And that's without objection?

19           MS. PROCTOR: Yes, Your Honor.

20           THE COURT: Dr. Schandl will be qualified as an  
21 expert in the area of forensic pathology.

22           MR. MCCOY: Thank you, Your Honor.

23           Q.       [Mr. McCoy] Dr. Schandl, did you have an  
24 opportunity to perform an autopsy on an individual that  
25 was shot and killed on November the 22nd of 2007?

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1 A. Yes, sir, I did. Maurice Maxwell.

2 Q. And how do you know that you performed an  
3 autopsy on Maurice Maxwell?

4 A. In our system -- this state has a coroner  
5 system. So our cases are referred from the coroners of  
6 each county, who are elected officials. They are the  
7 individuals who tell us that there is a case that we're  
8 asked to perform and they also provide us the  
9 identification information for those individuals that they  
10 are requesting an autopsy for. So it's directly from  
11 communication with the coroner that I receive  
12 identification on my individuals.

13 Q. Now, Dr. Schandl, when you perform an autopsy,  
14 any autopsy, is it important for you to document your  
15 findings?

16 A. Yes, sir.

17 We document our findings in many ways. At the  
18 end of the case, and after all the results are in, we then  
19 generate a written report that is given to the coroner's  
20 office. But during the documentation, we also use notes  
21 and different diagrams that -- in order to help us  
22 generate that report.

23 Q. Dr. Schandl, tell the jury what you observed  
24 about Maurice Maxwell when he came in for an autopsy.

25 A. Mr. Maxwell had two gunshot wounds. One was a

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1 grazed gunshot wound to the back, the left side of the  
2 back, and the other gunshot wound was to the face, to the  
3 left cheek of the face.

4           Upon performing the autopsy, this grazed gunshot  
5 wound did not appear to enter -- there were no projectiles  
6 associated with it, did not appear to enter the chest  
7 cavity, or cause any damage to vital organs.

8           On the other hand, the gunshot wound to the face  
9 that was to the left cheek did actually go through the  
10 area of the brain right at the brain stem where the brain  
11 stem meets the spinal cord right at the base of the skull.  
12 So this -- the gunshot wound to the left side of the face  
13 caused a mortal injury, or one that causes death to this  
14 individual, by disrupting the brain stem and the proximal  
15 spinal cord.

16           Q.       And, Dr. Schandl, this was all observed in your  
17 external examination of Mr. Maxwell?

18           A.       Well, the external examination, I was able to  
19 determine where the gunshot wounds were. With assistance  
20 of the internal examination, I was then able to determine  
21 that -- what structures the bullet went through.

22           Q.       And, Dr. Schandl, taking you to a portion of  
23 your report that's called evidence of injury and it's  
24 labeling of the head and neck area, if you could tell the  
25 jury the trajectory of the gunshot wound to Mr. Maxwell's

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1 face.

2 A. So that trajectory -- what we're talking about  
3 is an angle after the bullet hits the target, in this case  
4 the face, between there and where we recover the bullet in  
5 this case -- because we did recover a bullet from the  
6 neck. So the trajectory in this case is back -- from  
7 front to back. So that makes sense. It's coming this way  
8 into the face and it's going slightly medial. So slightly  
9 towards the midline. So something like this, and  
10 essentially straight back.

11 Q. And if you could tell the jury about the  
12 trajectory of the gunshot wound, the graze wound, to his  
13 back.

14 A. The trajectory of the grazed wound is forward,  
15 down, and to the right. So we're talking about -- so if  
16 you're going from the back, forward -- anything, from back  
17 to front. So that would make sense because if you were on  
18 the back and it were going back, it wouldn't hit you.  
19 Right? So if it's on the back, it would have to go  
20 forward in order to hit you. So it's going somewhat  
21 forward, it's going down, and it's going to the right,  
22 which, again, is towards the midline.

23 Q. Dr. Schandl, you've already testified that a  
24 bullet fragment was recovered from the gunshot wound to  
25 the face. Was there one recovered from the grazed wound

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1 to the back?

2 A. No.

3 We recovered a projectile from the one that was  
4 to the face but not from the one that was to the back.

5 MR. MCCOY: And, Judge, may I approach the  
6 witness?

7 THE COURT: You may.

8 Q. [Mr. McCoy] Dr. Schandl, is it also important  
9 for you to document your findings of both an external and  
10 an internal examination through photograph?

11 A. Yes, sir.

12 Q. Dr. Schandl, I'm going to show you what's  
13 already been placed into evidence as State's 37 and 38.  
14 And if you can take a look at those and tell me what those  
15 are, and then I may publish those to the jury.

16 A. State's Exhibit 37 shows the gunshot wound to  
17 Mr. Maxwell's face, which is to the left cheek, again.  
18 And State's Exhibit 38 shows the graze gunshot wound to  
19 the back.

20 Q. Thank you.

21 MR. MCCOY: And if I have your permission, Your  
22 Honor, I would like to publish these to the jury.

23 MS. PROCTOR: No objection.

24 THE COURT: State's 37 and 38 you may publish.

25 MR. MCCOY: Thank you.

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1 Q. [Mr. McCoy] Dr. Schandl, I'm going to show you  
2 what's first been marked as State's -- as State's 38. If  
3 you could take a look at that and tell the jury what that  
4 is.

5 A. So what you see here is -- this is -- this is  
6 Mr. Maxwell's back and this is his left arm here. It's  
7 kind of hard to see because it's so closeup. And this is  
8 the graze wound. And this is a probe that I just placed  
9 in the wound to demonstrate the trajectory, essentially.  
10 So that's the gunshot wound to the back.

11 Q. Dr. Schandl, if you could explain to the jury  
12 why this seems to be an open-tear wound.

13 A. Well, the nature of a grazed wound is that it  
14 penetrates perhaps just the very upper levels of the skin  
15 but then continues on without actually going into the skin  
16 or through the body. So we don't find a projectile and we  
17 don't find an exit wound in those kinds of cases because  
18 it's just grazing the skin. And so that is -- that is  
19 why.

20 Q. And the grazing of the skin causes a tear that  
21 looks very similar to the one that's in State's 38?

22 A. Yes. That's correct.

23 Q. Dr. Schandl, I want to show you what's now been  
24 marked and placed into evidence as State's 37. And if you  
25 could, tell the jury what that is.

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1           A.       This is a photograph of Mr. Maxwell's face close  
2 up and you can see there's a defect to the left cheek  
3 that's round. Yes, there [indicates]. And that's the  
4 entrance gunshot wound that resulted in Mr. Maxwell's  
5 death.

6           Q.       Dr. Schandl, why is an entry wound -- or an  
7 entry wound to Mr. Maxwell, why such a small circle?

8           A.       This is characteristic for an entrance gunshot  
9 wound. Basically, a little portion of the skin is torn  
10 out as the bullet goes through. So this is a very common  
11 appearance for an entrance gunshot wound. You can get  
12 different appearances. If, for example, the bullet hits  
13 something on the way and starts to tumble, you won't get a  
14 nice round hole, or if there's something between the  
15 muzzle of the gun and the target, again, it can tumble and  
16 you won't get such a nice, clean defect.

17                    But this is a fairly typical entrance gunshot  
18 wound.

19           Q.       Okay. Dr. Schandl, if you could -- I know this  
20 is not part of your typical examination, because tests go  
21 elsewhere. But if you could also look to your report and  
22 if you could: did Mr. Maxwell have any evidence of  
23 alcohol in his system as a result of a blood test?

24           A.       Again, we do send blood for toxicologic  
25 examination to a private laboratory. He did have a blood

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1 alcohol level of 149 milligrams per deciliter. That's  
2 equivalent to 0.149 percent.

3 Q. Okay. Dr. Schandl, if you could, did he have  
4 any evidence of marijuana in his system?

5 A. He did.

6 He had delta nine tetrahydrocannabinol, which is  
7 THC, the active ingredient in marijuana. He had some THC  
8 on board. So in his blood. The level was 4.8 nanograms  
9 per milliliter.

10 Q. And to me, I'm not really sure what 4.8  
11 milligrams or milliliter means. I mean, is that a low or  
12 is that a high level?

13 A. It's considered a low level. But you can never  
14 determine how any individual will react to a particular  
15 level of drug. It's considered a low level, however.

16 Q. Okay. And, Dr. Schandl, I'm going to take you  
17 now to another portion of your report that you created  
18 that says -- that's entitled the cause of death. If you  
19 could tell the jury what the cause of death was to Mr.  
20 Maxwell.

21 A. The cause of death: proximal spinal cord and  
22 distal brain stem disruption due to a distant, penetrating  
23 gunshot wound to the head.

24 Q. And, Dr. Schandl, what does that mean? Explain  
25 that to me.

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1           A.       So we mentioned already that this projectile,  
2 this bullet, went through the area of the brain right at  
3 the base of the brain at the brain stem and the spinal  
4 cord. So that's the disruption. It's an actual physical  
5 disruption of those structures by the bullet itself.

6           Distant and penetrating are terms that we use to  
7 describe what we find at autopsy. So penetrating is one  
8 way to describe a wound. Perforating is the other way.  
9 So penetrating means that the bullet went into the body  
10 but did not come out, as opposed to perforating, where the  
11 bullet went into the body and then came out the other  
12 side.

13           So in this case we have a penetrating gunshot  
14 wound. The bullet went into the body. We recovered the  
15 bullet in the body.

16           Distant is the same thing to a forensic  
17 pathologist as indeterminate in that we're not seeing any  
18 physical evidence, looking with our eyes, of either a  
19 contact gunshot wound where we would see soot around the  
20 wound, or a close gunshot wound where we would see  
21 stippling or scrapes around the wound. We don't see  
22 either of those things, so we can call it distant.

23           That doesn't mean that it is necessarily  
24 distant. That just means we're not seeing those two  
25 things that tell us distance. We were not seeing soot and

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1 we're not seeing stippling. That might mean that it's  
2 distant, meaning that the muzzle or the end of the gun was  
3 far enough from the skin that you don't see soot and you  
4 don't see stippling. That's certainly one possibility.

5 The other possibility is that the projectile  
6 went through an intermediate target and any of those types  
7 of evidence were on that intermediate target and not on  
8 the skin.

9 So those are the two possibilities and why we  
10 think that distant is the same thing as indeterminate.

11 Q. And what you just testified: you can't give us  
12 a distance based on your findings here?

13 A. That is correct.

14 Q. But you're saying that it is not a contact  
15 wound, which is right next to the face -- I mean, gun  
16 touching the face -- and there's no soot or stippling,  
17 which indicates it was not a close-range shot?

18 A. I have no evidence physically that it was a  
19 contact or a close-range shot. That's correct.

20 Q. And, Dr. Schandl -- and, also, in your expert  
21 opinion, labeled under your report as manner of death,  
22 what was the cause of Mr. Maxwell's passing?

23 A. The manner of death in this case is homicide.

24 We're given several different options to use in  
25 this state: homicide, suicide, accident, natural, and

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1 undetermined. And in this case the best fit is homicide.

2 MR. MCCOY: Dr. Schandl, thank you for your  
3 time.

4 THE WITNESS: Yes, sir.

5 MS. PROCTOR: No questions.

6 THE COURT: May the doctor be excused and  
7 released from her subpoena?

8 MR. MCCOY: Yes, ma'am.

9 THE COURT: Any objection?

10 MS. PROCTOR: No, Your Honor.

11 THE COURT: Doctor, you are excused from your  
12 subpoena. Feel free to remain with us.

13 [Whereupon, Dr. Schandl is excused and exits the  
14 witness stand]

15 THE COURT: Ladies and gentlemen, now is an  
16 appropriate time for us to take our mid-afternoon  
17 break. There is also a matter of law that I need to  
18 take up outside of your presence.

19 Please do not discuss this case amongst  
20 yourselves. Do not begin your deliberations.

21 Please rise for the jury.

22 [Whereupon, the jury exits the courtroom at  
23 2:45 p.m.]

24 THE COURT: Thank you. Be seated.

25 All right. We are ready with the Counsel

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COUNSEL HEARING

THE COURT: All right. Ms. Mullaney, you have filed a motion indicating that you believe that the State should not be allowed to enter -- introduce evidence from their ballistic expert; is that correct?

MS. MULLANEY: That's correct.

And in the alternative -- I would ask that if Your Honor doesn't agree with my motion, in the alternative I'm going to be asking that his testimony at least be limited.

THE COURT: All right. And just so I understand what we're focusing on: how do you propose that his testimony be limited?

MS. MULLANEY: Yes, ma'am.

I'm going to propose that his testimony be limited and be crafted similarly to what the --

[Whereupon, Ms. Mullaney reviews documents]

MS. MULLANEY: -- to what the State proposed. And -- I mean, to what the Court held in the United States vs. Glynn, where the Court concluded that to allow any ballistic's examiner to testify that he had matched a bullet or a casing to a particular gun to a reasonable degree of ballistic certainty would seriously mislead the jury and that his ballistic opinion may be stated in terms of more likely than not.

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1           So I'm going to be asking Your Honor to limit  
2 his testimony to his conclusion, that those cartridges  
3 came from the nine millimeter gun, was more likely than  
4 not.

5           THE COURT: All right. And based upon your  
6 review of the discovery materials, what do you believe  
7 that -- do you believe that he will be able to make  
8 that determination more likely than not, or is it your  
9 position that the agent cannot even make that  
10 determination?

11           MS. MULLANEY: Well, it's my position, yes, that  
12 he cannot make that determination but if he is allowed  
13 to make it, that it should be more likely than not.  
14 And the reason I base it on that is because this  
15 science has come under significant scrutiny since 2008  
16 when the National Research Council undertook to look at  
17 ballistic science and ballistic evidence that was  
18 introduced into -- in court and there was a finding  
19 that a fundamental assumption of unique and  
20 reproducibility of firearms, related toolmarks, has not  
21 yet been fully demonstrated. And the National Research  
22 Council also found that further scientific studies  
23 would be necessary before these determinations and  
24 conclusions can be made and especially in such an  
25 absolute term as what's been allowed -- what's been

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1 allowed in court proceedings previously and that  
2 they -- this science has come under scrutiny. And I'm  
3 going to ask Your Honor to preclude his testimony and  
4 to limit it.

5 THE COURT: All right. Let's call the agent.

6 MR. MCCOY: Your Honor, it's Dan DeFreese.

7 And, Your Honor, so that I understand, just to  
8 be clear, that Dan DeFreese is not the one to come in  
9 here and say without any doubt in the world this is the  
10 same handgun and the same bullets, same shell casings.  
11 He's going to say to a reasonable degree of certainty.  
12 He can't say as an absolute certainty. He's going to  
13 say a chance of it being some other gun are remote.

14 THE COURT: All right.

15 [Whereupon, Mr. DeFreese comes forward]

16 THE CLERK OF COURT: Raise your right hand.

17 [Whereupon, Mr. DeFreese is duly sworn by the  
18 clerk of court as follows: do you swear or affirm that  
19 your testimony will be the truth, the whole truth, and  
20 nothing but the truth, so help you God]

21 THE WITNESS: I do.

22 THE CLERK OF COURT: Be seated.

23 [Whereupon, the Mr. DeFreese takes the witness  
24 stand]

25 THE CLERK OF COURT: If you'll state your full

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1 name and spell your last name for the record.

2 THE WITNESS: My name is Frank Dan DeFreese.

3 The last name is spelled capital D-E, capital F-R-E-E-  
4 S-E.

5 THE COURT: Ms. Mullaney, you may inquire for  
6 the purposes of this hearing.

7 MS. MULLANEY: Yes, ma'am.

8

9

FRANK D. DEFREESE,

10

Having Been First Duly Sworn,

11

was Examined and Testified as Follows:

12

DIRECT EXAMINATION

13

BY MS. MULLANEY:

14

Q. Mr. DeFreese, just to begin with, can you just

15

give us a brief thumbnail of your experience and

16

educational background?

17

A. Okay. I'm a graduate of the University of South

18

Carolina in Columbia. I have a Bachelor of Science degree

19

in business administration.

20

In my professional career, I was employed with

21

the State Law Enforcement Division on January the 12th,

22

1967 and with a few interruptions for assorted retirements

23

have been working there almost continuously since. I

24

presently work part time.

25

After my employment, I was first assigned to the

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1 SLED firearms laboratory. I began a course of instruction  
2 in the techniques of firearm and toolmark analysis. That  
3 was conducted by Lieutenant Millard Cate. Lieutenant Cate  
4 established the SLED laboratory when SLED itself was  
5 established in 1947. Lieutenant Carl Stokes was also  
6 working in the laboratory at that time and I received some  
7 instruction from him, as well.

8 My principle instruction in the field of firearm  
9 and toolmark analysis came from them because it takes  
10 about -- it took me about two and a half years of studying  
11 under their direct supervision before I began accepting  
12 case work on my own and testifying as to my results. I  
13 did that here in Charleston in September of 1969 and I've  
14 been testifying in courts throughout this state since.

15 In addition to that, I'm also a graduate of the  
16 FBI National Academy in Quantico, Virginia.

17 And I'm a member of the Association of Firearm  
18 and Toolmark Examiners, what's known as AFTE. And AFTE is  
19 the preeminent organization dealing with the field of  
20 firearm and toolmark identification.

21 From time to time, my employer was good enough  
22 to send me on to seminars conducted by AFTE, which I  
23 attend whenever funds permit.

24 Q. And have you written any articles or been  
25 published?

1           A.       I've written no peer-reviewed articles. I have  
2 written several magazine articles for non peer-reviewed  
3 publications.

4           Q.       All right. And, Mr. DeFreese, can you tell me  
5 if you've have any proficiency testing?

6           A.       I do.

7           Q.       And can you expand a little bit on what that  
8 proficiency testing consists of?

9           A.       Well, the SLED laboratory has a quality  
10 assurance program that incorporates many things. Among  
11 the things that the quality assurance program has are  
12 proficiency tests which we purchase from the Collaborative  
13 Testing Service. They, at periodical intervals, will make  
14 available tests in a number of different forensic fields.

15                   We typically buy, for the firearm personnel --  
16 the firearm and toolmark laboratory personnel we'll buy a  
17 test in firearms and a test in toolmarks, and perhaps a  
18 test in some other related field, every year. So usually  
19 every year each examiner is subjected to two -- or  
20 depending on the way the cycles occur -- sometimes more  
21 than two proficiency tests per year. And, of course, we  
22 don't know what the answer is until after we've finished  
23 it.

24           Q.       And can you tell me what your error rate is?

25           A.       So far, it's a zero.

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1 Q. So has your error rate always been zero?

2 A. Yes.

3 Q. So since 1967, you have never made an error on  
4 your job?

5 A. No, I wouldn't say that.

6 But the testing program, the CTS program, has  
7 not been in place since that time. It began in the mid to  
8 late 1970s. And all of the -- all of the CTS tests that I  
9 have taken, I have got the right answer on.

10 Q. Okay. And is the SLED laboratory certified by  
11 any organizations?

12 A. The SLED laboratory is accredited: the American  
13 Society of Crime Laboratory Directors laboratory  
14 accreditation board. And that's known in the industry as  
15 ASCLD Lab. We've had that accreditation since 1994.

16 Q. Now, if I could just ask you some questions  
17 about this case.

18 You prepared a report in this particular case?

19 A. Yes, I did.

20 Q. And in your report it was your opinion that  
21 items eight, nine and ten, which are cartridge cases that  
22 were given to you, were fired from item number six, which  
23 was a Smith and Wesson nine millimeter pistol that was  
24 given to you; correct?

25 A. That's correct.

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1 Q. And your opinion -- this opinion was based upon  
2 the premise that a tool, such as a firearm breech face,  
3 leaves a unique toolmark on an object such as a cartridge  
4 or a bullet and that that toolmark is unique and  
5 reproducible; correct?

6 A. Yes.

7 Q. So that is essentially one of the basic premises  
8 of ballistic science and toolmark identification?

9 A. It is that it can be identified, yes.

10 Q. Right. That they can make an identification.

11 But you're aware that in 2008 the National  
12 Research Council, which is the operating agency of the  
13 National Academy of Sciences, an independent body of  
14 distinguished scientists that congress established in 1863  
15 for the purpose of advising the federal government  
16 agencies of scientific and technical questions, that they  
17 undertook a study on ballistic imaging?

18 A. I am.

19 Q. And that as a result of that study, that there  
20 was a finding that the validity of the fundamental  
21 assumption of uniqueness and reproducibility of firearms  
22 related toolmarking has not yet been fully demonstrated?

23 A. I'm aware of that finding, yes.

24 Q. And you're also aware that they found that a  
25 significant amount of research would be needed to

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1 scientifically determine the degree which firearms-related  
2 toolmarks are unique or even quantitatively characterize  
3 the probability of uniqueness?

4 A. I believe that's part of their findings, as  
5 well.

6 Q. And you would also agree that whether or not a  
7 cartridge is a match is based on the opinion of the  
8 examiner; correct?

9 A. Yes.

10 Q. And that it's subjective?

11 A. The examiner's opinion is a subjective statement  
12 about an objective identification, objective view of the  
13 evidence.

14 Q. And there is no national standard?

15 A. There's no national standard for quantifying  
16 what it takes to -- there is a national standard for  
17 qualifying what it takes to establish an identification.

18 Q. So, for example, a toolmark examiner here in  
19 South Carolina could find something that would be a match  
20 but a toolmark examiner in Oregon could find that it  
21 wasn't a match?

22 A. That probably would not take place. But you can  
23 get differing by degrees.

24 For instance, you can get an examiner in one  
25 place that would say this is a match and an examiner in

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1 another place that would say, I don't think there's enough  
2 here to establish an identification but I can't exclude  
3 it. That does happen.

4 Q. Because it's -- like, for instance, with  
5 fingerprints, where there's actually maybe eight or  
6 thirteen points, there isn't a standard in this science?

7 A. I don't know that there's a standard in latent  
8 fingerprints, either. There are in some countries. I'm  
9 unaware that there's a standard here at the present time.

10 Q. When we're talking about toolmarks, there are  
11 several different types of toolmarks; correct?

12 A. Yes.

13 Q. There's class characteristics?

14 A. Well, there are several different kinds of  
15 characteristics of toolmarks.

16 Q. Thank you. Yes. Sorry.

17 A. Different characteristics.

18 Q. And one of those being class characteristics?

19 A. Right.

20 As we view firearms evidence, the first major  
21 breakdown would be the class characteristics, which  
22 generally consists of the caliber and, in the case of  
23 bullets, the number of lands and grooves. And that's the  
24 basic breakdown. The width of the lands and grooves can  
25 add to that, as well.

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1 Q. And, for example, a good example of a class  
2 characteristic would be in a Glock that the firing pin is  
3 usually a rectangular shape?

4 A. Yes. A Glock and some other firearms.

5 Q. And that the number of lands is often an  
6 important class characteristic?

7 A. It is. When you're dealing with bullets, it's a  
8 very important characteristic.

9 Q. And the direction of the twist is also an  
10 important class characteristic?

11 A. Right.

12 Q. Mr. DeFreese, without having this weapon, this  
13 Smith and Wesson nine millimeter that was turned over to  
14 you, would you have been able to tell, just by looking at  
15 items eight, nine and ten, that they were fired by a Smith  
16 and Wesson?

17 A. No, not to the -- I could tell they were not  
18 fired by some guns but I couldn't exclude a Smith and  
19 Wesson as being the gun that fired it based on what's  
20 observable on the cartridge cases alone.

21 Q. And another characteristic of toolmark would be  
22 a subclass characteristic?

23 A. Yes.

24 Q. And subclass may be repeated in more than one  
25 barrel and they're much smaller?

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1 A. They are.

2 They're typically characteristics of the tooling  
3 that was used to form whatever the workpiece happened to  
4 be.

5 Q. And is it fair to say that they are constantly  
6 changing?

7 A. Yes.

8 Q. And then --

9 A. Although subclass characteristics can persist  
10 over several different work pieces.

11 Q. Because they're typically found in barrels that  
12 are produced consecutively?

13 A. Yes.

14 It's not uncommon to find some subclass  
15 characteristic carryover in consecutively-produced parts.

16 Q. And then another characteristic of toolmark is  
17 the individual characteristic?

18 A. Yes.

19 Q. And, in fact, that's what you look to to make  
20 your opinion that they were fired from this particular  
21 gun?

22 A. Correct.

23 Q. And individual characteristics, the manufacturer  
24 does not control them?

25 A. No, the manufacturer doesn't put them there on

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1 purpose. They just -- they occur accidentally.

2 Q. And they're unique in perfections?

3 A. They are.

4 Q. And it is this individual characteristics that  
5 you look to determine if one and only one tool is the  
6 source of a particular toolmark?

7 A. That's correct.

8 Now, of course for you to have a match, the  
9 class has to be the same. And if there are subclass  
10 characteristics, you would expect them to be the same,  
11 too. It's like just finding individual characteristics or  
12 suspected individual characteristics and without the other  
13 two characteristics being in harmony with it would not --  
14 would not affect an identification.

15 Q. Right. You have to have all three?

16 A. Yes.

17 Q. So, for instance, if you saw one that had a  
18 rectangular mark, you would be able to tell that was a  
19 Glock but you would need to look at other characteristics  
20 to determine which --

21 A. If we were looking at the cartridge cases and I  
22 found test cartridge cases that had a rectangular firing  
23 pin aperture, then I would know without looking any  
24 further. I need not even look at individual  
25 characteristics because I know the gun is simply not

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1 capable of producing it. And many eliminations are based  
2 on differences in class characteristics.

3 Q. And, Mr. DeFreese, you're also familiar with  
4 Professor Schwartz' work; isn't that correct?

5 A. I am.

6 Q. And Professor Schwartz is an expert witness and  
7 has testified in many cases and takes -- agrees with the  
8 finding of the National Academy of Science?

9 A. Well, Professor Schwartz is a legal hired gun  
10 and she goes about using that study, or using at least  
11 some of the language out of that study, to directly  
12 confront firearms identification to say that it's really  
13 not a valid science and that much more work needs to be  
14 done before it will be.

15 Q. And in her work, she identifies three essential  
16 pitfalls that stand in the way of firearm and toolmark  
17 examiner's goal of identifying one and only one tool  
18 that's the source of a particular toolmark. And she  
19 identifies the first difficulty as an individual  
20 characteristics of toolmarks are combinations of non-  
21 unique marks?

22 A. She alleges that, yes.

23 Q. And is there a danger of this occurring in  
24 making identifications?

25 A. I suppose you could say there's always a danger

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1 of something, but it's something that a trained examiner  
2 controls for.

3 And that's -- as part of your training, you look  
4 at known match and known non-match comparisons to  
5 determine the extent to which agreement has to be there  
6 and the kind -- and the areas in which agreement will  
7 occur. And based on that, you can make the -- you can  
8 control for what she's alleging there.

9 Q. And she also identifies another danger as  
10 individual characteristics of a toolmark can change over  
11 time?

12 A. It's true that they do, because tools are unlike  
13 fingerprints. For instance, they're not capable of  
14 healing themselves and restoring themselves to their  
15 original condition.

16 But, nevertheless, the marks, even the  
17 individual marks that are left on bullets and cartridge  
18 cases, for instance, remain relatively stable over time.  
19 And a number of studies have fired 5,000, 7,000 rounds and  
20 been able to identify the ones from the first with ones  
21 from the last. So that -- they do change over time. And  
22 it's a good thing they do, because that tends to make the  
23 gun even more unique.

24 But in most cases they're stable enough to where  
25 that's not an issue for our identification. For ours --

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1 for instance, a gun being damaged or abused, like thrown  
2 into the Intercostal Waterway, you know, that sort of  
3 thing, where corrosion or where some other severe damage  
4 occurs to it, would just prevent us from identifying  
5 something. It wouldn't make us falsely identify anything.

6 Q. And if a weapon were thrown from a moving car at  
7 a high rate of speed and landed on an asphalt surface,  
8 that could potentially cause damage to the weapon?

9 A. It could.

10 In fact, if bullets were a consideration, I  
11 would have inspected the barrel to make sure it wasn't  
12 damaged at or near the muzzle from such an event, because  
13 that can seriously change the markings placed on bullets.  
14 But it's not going to change the markings placed on the  
15 breech face of fired cartridge cases. It's not going to  
16 change that, because that area of the gun is internal to  
17 the gun and it's not exposed as the gun is tossed around.

18 Q. So did you see any damage to the breech face of  
19 this gun?

20 A. No.

21 Q. And -- but you did see abrasions to the gun, as  
22 you marked in your notes?

23 A. I did.

24 There were abrasions to the grip and to the  
25 slide near the muzzle and to the side of the gun. And the

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1 abrasion was consistent with road-rash abrasion.

2 Q. And you obviously didn't have the opportunity to  
3 look at the breech face before the gun was thrown out the  
4 window; correct?

5 A. Certainly not.

6 Q. Mr. DeFreese, isn't there a danger that a  
7 pattern may look like a class characteristic but the  
8 particular depth of line can be an individual one?

9 A. That the pattern could look like a class  
10 characteristic but it would really be an individual  
11 characteristic? There wouldn't be much danger of that  
12 because normally class characteristics are really large or  
13 gross characteristics, and individual characteristics are  
14 much finer in nature.

15 So I would say, here again, you can say there's  
16 always danger of something but they're -- that's  
17 something, too, that we would control for in our training.

18 Q. And Professor Schwartz also says that there's --  
19 a danger in confusing individual characteristics of class  
20 or subclass characteristics could lead to false negatives,  
21 as well as false positive?

22 A. The uninformed could end up making a wrong  
23 conclusion, if you weren't aware of the phenomenon, if you  
24 weren't aware that that is something to control for. And  
25 there have been many, many studies on subclass

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1 characteristics and subclass characteristic carryover to  
2 inform the firearms examiner what to look for and what not  
3 to look for in that regard.

4 Q. And couldn't a firearm be wrongly identified as  
5 the source of a toolmark if it did not produce -- if an  
6 examiner confuses a subclass characteristic shared by more  
7 than one tool, with an individual characteristic, lead to  
8 one and only one tool?

9 A. If someone did not know what they were doing,  
10 they could look at a subclass characteristic and they  
11 could conclude that, ah-ha, this is an identification.  
12 But if someone knows what they're doing, they would not do  
13 that.

14 Q. But, again, Mr. DeFreese, there's no strict  
15 rules for determining whether a microscopic pattern or a  
16 toolmark is an individual or subclass characteristic;  
17 isn't that correct?

18 A. They're not labeled --

19 Q. And there's no strict rules as to which tools or  
20 manufacturing processes do or do not produce toolmarks  
21 with subclass characteristics?

22 A. There's a great deal of research done about  
23 that. And there's -- there's information available about  
24 issues to look for in subclass characteristic carryover.

25 Now, for instance, we know that the groove

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1 impressions or groove-impression marks produced by gun  
2 barrels that have broached riffling have a substantial  
3 chance of subclass characteristic carryover.

4 And in issues where we -- cases where we don't  
5 have the gun, we would simply not use the markings and the  
6 groove impression to effect an identification. But we  
7 know from our experience that the ones in the land  
8 impressions don't have this problem, so we simply have to  
9 rely on land impressions rather than groove impressions.

10 So, here again, it's something you can control  
11 for in your training.

12 Q. But, again, like a land impression -- correct me  
13 if I'm wrong -- is a class characteristic, right, not an  
14 individual characteristic?

15 A. Well, the land impression is filled -- the land  
16 impression itself is a class characteristic but it is  
17 filled with individual characteristics that within the  
18 land impression you're looking for the individual striated  
19 markings that would permit you to make an identification.

20 There are also individual striated markings in  
21 the groove impression. But this is where, particularly  
22 with broached riffling and cut-riffling barrels, there's the  
23 possibility of carryover. So it's like you really have to  
24 discount those marks, in terms of their value, for  
25 identification purposes.

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1 Q: Now, today, you know, in the age of technology,  
2 that some machining processes are capable of reproducing  
3 remarkably similar surface characteristics; isn't that  
4 correct?

5 A. They're better now in that respect than they  
6 have been, but they're still not totally identical.

7 Q. And that toolmarks change -- again, we agree  
8 that toolmarks change over time; correct? I think that I  
9 asked you about that.

10 A. They do change over time but not so fast as to  
11 affect our ability to identify bullets and cartridge  
12 cases, in most cases.

13 And in those cases where -- and I have had guns  
14 that literally changed their markings so quickly that I  
15 simply could not identify the bullets fired by that gun.  
16 You simply have an inconclusive result when that is the  
17 case.

18 Q. And what type of guns does that occur in?

19 A. Those were principally the European made guns  
20 that were widely imported into this country in the mid to  
21 late 1960s and early 1970s. A great many revolvers,  
22 mainly the Rohm -- that's spelled R-O-H-M -- name. They  
23 were extremely inexpensive, not very-well-made firearm,  
24 and it wasn't uncommon with them to not be able to match  
25 your test bullets with each other. And for the trained

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1 firearms examiner, if you can't match your test specimens  
2 with each other, at least in most cases, you don't stand  
3 very much of a chance of matching them with an evidence  
4 bullet. And when you get that situation, the results of  
5 your analysis are simply inconclusive because you can't  
6 tell for sure.

7 Q. Examiners don't expect toolmarks on bullets  
8 fired from the same gun ever being exactly alike; correct?

9 A. Correct.

10 Q. There's no such thing as a hundred-percent  
11 match?

12 A. Correct, even among test bullets.

13 Q. So even among -- in your report, even among the  
14 cartridges that you looked at, there was differences?

15 A. There are some variations. There are shot-to-  
16 shot variations.

17 As we discussed, the same as you don't -- every  
18 time you sign your name, it's not identically the same  
19 even though it possesses the same characteristics -- those  
20 shot-to-shot variation in cartridge cases and bullets  
21 fired from one gun barrel.

22 Q. And there was a difference in the test-firing as  
23 opposed to the cartridges that you examined?

24 A. I'm not sure I --

25 Q. The test bullets that you fired from the nine

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1 millimeter Smith and Wesson and that you compared to items  
2 eight, nine and ten, that was different?

3 A. Right.

4 Each of -- I test-fired this gun six times. And  
5 if you look at all six cartridge cases critically, there  
6 are some differences among those six but there are  
7 substantial similarities among the six. And that's the  
8 first thing you do is examine the test cartridge cases and  
9 the case cartridge cases with each other to see what marks  
10 are repeatable, reliable marks to use to effect an  
11 identification, and what marks are variable and not likely  
12 to occur the same in every shot.

13 Q. And in this particular case, you only test-fired  
14 this particular gun; correct?

15 A. Correct.

16 Q. You didn't test it against another nine  
17 millimeter?

18 A. No. That would have served no purpose.

19 Q. Or another Smith and Wesson?

20 A. No.

21 Q. So you didn't do a blind test?

22 A. I didn't do a known non-match comparison because  
23 known non-match comparisons are something we do in  
24 training, you know, to familiarize the examiner with what  
25 -- how much similarity you can see in known non-matches,

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1 to contrast that with how much similarity you will see in  
2 known matches.

3 Q. So you don't think it would be important to  
4 test-fire another Smith and Wesson nine millimeter of  
5 similar make and model and compare it to the cartridges  
6 that you looked at, item nine and ten, to see whether they  
7 were similar or dissimilar?

8 A. No.

9 Q. I just want to ask you a few brief questions  
10 about GSR.

11 Is this case, this was a nine millimeter, so the  
12 cartridges are ejected out of the side; correct?

13 A. Well, they're ejected out the top.

14 And, of course, I would have to test this  
15 particular gun to determine anything about the directions.  
16 But the ejection port is cut into the top and partly into  
17 the right-hand side of the slide, so you would be looking  
18 for the cartridge case to be ejected up and slightly to  
19 the right if the gun were held vertical, in the vertical  
20 position. But that, too, can vary somewhat because people  
21 don't always hold the gun vertically. Sometimes they hold  
22 it straight up and sometimes they hold it to the side, or  
23 somewhere in between. But, generally speaking, it's only  
24 capable of coming out somewhere between the top and the  
25 right-hand side.

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1 Q. And that would probably -- that would be a  
2 significant amount of gunpowder residue?

3 A. It might or might not. It could leave gunpowder  
4 residue, particularly on the top of the palm of a right-  
5 handed shooter.

6 Q. And it would leave more than, say, cartridges  
7 that were ejected out the bottom?

8 A. Well, also, as we discussed, the -- I don't know  
9 of a Smith and Wesson pistol that ejects out the bottom.  
10 They all eject either out the top or to the top and side.  
11 But if there were a pistol ejected out the bottom of the  
12 grip, it would -- it would have to tend to leave less  
13 residue.

14 Q. And a nine millimeter gun is a very common gun?

15 A. It's a very popular caliber.

16 Q. And --

17 A. Although the gun in question here -- I might  
18 add: the gun in question here was only made for two  
19 years. It was made from 1992 to 1994 and thereafter it was  
20 discontinued.

21 Q. And it was a -- as we had spoke earlier, it was  
22 one of the least expensive guns that Smith and Wesson  
23 made?

24 A. It is.

25 It was what they called their no-frills line of

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1 guns. It was a gun that was not very well-finished. It  
2 was mechanically very sturdy but they didn't spend a lot  
3 of money putting a high-gloss blue and a lot of fancy  
4 features on it. It's just a workhorse gun.

5 Q. So it was less expensive than other Smith and  
6 Wesson guns?

7 A. Correct.

8 Q. And there's many different manufacturers that  
9 make nine millimeter guns?

10 A. Yes.

11 Q. And according to the National Research Council,  
12 they say that approximately five-million guns are brought  
13 into the U.S. market each year?

14 A. I don't know what the -- I don't remember what  
15 their number is.

16 But I wouldn't disagree with that number. I  
17 don't know whether you're talking about brought into this  
18 country or both domestically produced and imported. But  
19 there are millions, to be sure.

20 Q. And, again, with toolmark examinations, there is  
21 no national standard?

22 A. There is a national standard established in the  
23 AFTE theory of identification, and that standard is that  
24 the -- there has to be sufficient agreement in order for  
25 there to be an identification. And sufficient agreement

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1 is said to exist when the degree of similarity is better  
2 than that found in known non matches and approaches that  
3 found in known matches. Now, that is -- that's a  
4 qualitative but not a quantitative standard, but it is a  
5 standard that most firearms identification personnel would  
6 adhere to.

7 MS. MULLANEY: Beg the Court's indulgence.

8 THE COURT: Yes, ma'am.

9 [Whereupon, Ms. Mullaney reviews documents]

10 MS. MULLANEY: Thank you.

11 THE WITNESS: Thank you.

12 MR. MCCOY: Thank you, Your Honor.

13

14

CROSS-EXAMINATION

15

BY MR. MCCOY:

16

Q. Mr. DeFreese, again, how long have you been  
17 dealing with or working with firearms and toolmark  
18 identification?

19

A. I've actually been doing casework in firearms  
20 identification for about thirty-seven or thirty-eight of  
21 my forty-three years. There was a period of time in which  
22 I was involved in more administrative duties and actually  
23 didn't do day-to-day casework. But I was also -- and part  
24 of my administrative duties were overseeing the firearms  
25 laboratory. So, actually, I've got probably in the range

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1 of thirty-eight years worth of experience in actually  
2 doing case work.

3 Q. So if I'm thirty-two years old, you've been  
4 doing this longer than I've been alive?

5 A. Yes.

6 MR. MCCOY: May I approach the witness?

7 THE COURT: You may.

8 Q. [Mr. McCoy] Mr. DeFreese, I want to show you  
9 what's already been placed into evidence as State's 40 and  
10 I also want to show you what's already been placed into  
11 evidence as State's 41. Now, they've already been placed  
12 into evidence. These were the gun and the shell casings  
13 that were found from the scene, the gun found down the  
14 road. Tell me how you put these two together to come to  
15 your conclusions.

16 A. Well, after we receive the evidence, we make  
17 certain inspections of the packaging and what-have-you,  
18 and then we collect information about the firearm and  
19 information about the bullets. Or cartridge cases in this  
20 case.

21 I have worksheets that I fill out that have the  
22 data that I collect on it. The data would include things  
23 such as the manufacturer of the cartridge cases and data  
24 about the firearm, the capacity of the firearm, the length  
25 of the barrel, the trigger-pull weight, and what-have-you.

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1 This is just something we do as a standardized procedure.  
2 It's part of our protocol.

3 After that, and once I have marked all the  
4 evidence specimens, I would take the pistol and test-fire  
5 it to obtain bullets and cartridge cases that I knew this  
6 gun fired. We don't do a direct comparison between  
7 cartridge cases and the gun, or bullets and the gun. We  
8 do it between test bullets and cartridge cases and a  
9 suspect bullet or cartridge case.

10 I then take, in this case, my test cartridge  
11 cases and I would look at all of them under my comparison  
12 microscope. That scope permits me to view two objects at  
13 the same time and to move the markings that are present on  
14 one object, adjacent to another, to observe their  
15 similarity.

16 Once I had observed the test cartridge cases,  
17 then I would take the evidence cartridge cases contained  
18 in State's Exhibit 41, one by one, and would compare them  
19 with some or all of the test cartridge cases to see if the  
20 same markings were present. And in this case I found that  
21 they were. I found, you know, more than sufficient  
22 agreement -- in fact, these cartridge cases were very  
23 well-marked.

24 And from that, I concluded that the three fired  
25 cartridge cases in State's Exhibit 41 were fired by that

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1 pistol.

2 Q. And, Mr. DeFreese, do you -- is this the  
3 standard and the norm, the practice, that is done in South  
4 Carolina?

5 A. And, indeed, throughout the United States.

6 Q. So this is recognized not only here but in the  
7 entire United States as the way, the standard way, to do  
8 firearm and toolmark identifications?

9 A. Yes.

10 Q. And you've already testified and you've told me  
11 a little bit about an equipment -- some equipment that you  
12 use.

13 A. Yes.

14 Q. Tell me again about the equipment that you use  
15 to make these determinations.

16 A. Well, I use a Lika comparison microscope. It  
17 permits me to view things in the power range from about  
18 five power up to about forty power. It's calibrated both  
19 by the manufacturer, and our calibration is checked  
20 monthly. We do a monthly check of all our scales, all our  
21 measuring instruments, and -- of the microscope itself to  
22 make sure that the same magnification ratio is on both  
23 sides of the microscope.

24 Nothing was weighed in this case because we're  
25 not dealing with bullets. But I have, you know,

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1 electronic scales, electronic calipers, manual calipers  
2 and manual -- manual and electronic micrometer calipers.

3 Q. And, Mr. DeFreese, the equipment that you use,  
4 is that regularly calibrated or kept up to national  
5 standards?

6 A. Well, as I said, the calibration is checked at  
7 least once -- it's checked once a month. And it's --  
8 also, we hire the people at the Department of Health and  
9 Environmental Control to come and inspect the scales and  
10 calibrate them, if need be, at least twice a year.

11 And, of course, if anything -- if any instrument  
12 were to fall out of calibration, we would cease using it  
13 until it was recalibrated and restored to operating  
14 condition.

15 Q. Yes, sir.

16 And, Mr. DeFreese, you touched briefly on  
17 publications or reviews that are out there on this type of  
18 identification. Do you keep up-to-date with those or do  
19 you read those current reviews?

20 A. I read, particularly, the AFTE Journal. That's  
21 -- the AFTE Journal, that's probably the preeminent  
22 publication dealing with firearms-related matters.

23 There's also an occasional firearms article in  
24 the Journal of Forensic Science. There's an occasional  
25 one published by the International Association for

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1 Identification.

2 So, I mean, I do follow the literature. I'm not  
3 saying I read everything that's in print, but I do follow  
4 the literature.

5 Q. Do you, yourself, have to be recertified in any  
6 sort of time for this identification?

7 A. No.

8 We become certified to do the examinations from  
9 SLED upon the completion of our training, and thereafter  
10 we're not -- there's no recertification process unless one  
11 were to be taken off of case work for some reason.

12 Q. And how many times -- or have you ever testified  
13 as an expert in firearm and toolmark identification here  
14 in South Carolina?

15 A. Yes, I have.

16 Q. And approximately how many times?

17 A. I don't know exactly.

18 Q. Would you say we're looking more close to five  
19 or more close to fifty?

20 A. We're looking somewhere between 600 and 700  
21 times.

22 MR. MCCOY: Your Honor, if I may have a moment?

23 THE COURT: You may.

24 [Whereupon, Mr. McCoy and Mr. Wetmore confer]

25 MR. MCCOY: Thank you, Mr. DeFreese.

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1 MS. MULLANEY: Just briefly.

2 THE COURT: Thank you.

3 REDIRECT EXAMINATION

4 BY MS. MULLANEY:

5 Q. Mr. DeFreese, what is the statistical certainty  
6 that item eight, nine and ten came from item six?

7 A. I don't have any statistical-certainty numbers  
8 to quote you.

9 Q. But it's your opinion that there's no room for  
10 doubt that -- that items eight, nine and ten came from  
11 item six?

12 A. In my opinion, the three cartridge cases in  
13 State's Exhibit 41 were fired by this pistol.

14 And I know in science there's no absolutes.  
15 Science doesn't tend to tolerate absolutes. But the  
16 likelihood that I'm mistaken is very, very remote, remote  
17 to approaching the range of practical impossibility.

18 I just do not believe there's another firearm  
19 that fired these.

20 Q. In the world?

21 A. Yes.

22 I should add I have not test-fired every single  
23 firearm in the world. But the degree of similarity  
24 between these test bullets -- I mean, these test cartridge  
25 cases and the evidence cartridge cases are very good, the

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1 markings are very good, the gun is very reliable and  
2 repeatable in its markings, and they're very dramatic  
3 markings.

4 Q. Okay. And you had testified earlier on direct  
5 that the national standard is that there would be  
6 sufficient agreement, or a degree of similarities, better  
7 than found in known non matches?

8 A. Yes.

9 Q. But you didn't test for any non matches in this  
10 case?

11 A. No.

12 Because you test -- you do the known non-match  
13 testing as a part of your training. Known non-match  
14 testing does not generally go on in casework.

15 Q. And there has kind of come two different schools  
16 of study in ballistic imaging; isn't that correct?  
17 There's the CMS approach, which is line counting, and then  
18 there is the old school tradition of pattern-matching;  
19 correct?

20 A. There are two general ways in which one effects  
21 an identification. The CMS, or the consecutively marked  
22 line-counting, is a newer one in which the examiner will  
23 actually count the number of consecutively-matching  
24 striates. It's used on bullets, for the most part -- and  
25 where a given number is established, will permit that to

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1 be sufficient to say this is a match, or where more than  
2 one patch of a certain number. And then there's some  
3 characters -- characterizations about whether the marks  
4 are two-dimensional-appearing marks or three-dimensional-  
5 appearing marks.

6 It's one theory of identification and it's used  
7 by some examiners. It is really only a variation of the  
8 pattern-matching because the pattern where those  
9 consecutively-marked consecutively-matching lines occur  
10 has to be the same. It's not just throw a bunch of lines  
11 on a screen and count the number of lines that look like  
12 they match. It's like that area has to be a matching  
13 pattern.

14 So it's a different way to calculate, more than  
15 anything else. They're both basically looking at the same  
16 thing but one is counting the lines and the other one is  
17 not counting the lines.

18 Q. And the school of thought that you would adhere  
19 to is the old-school tradition of pattern matching?

20 A. I'm a pattern-matcher, yes.

21 MS. MULLANEY: Thank you.

22 THE COURT: All right. Ms. Mullaney, briefly,  
23 argument?

24 MS. MULLANEY: Yes, ma'am.

25 Your Honor, I don't think that the standard has

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1           been met as been set forth in State v. Counsel or State  
2           v. Jones.

3                     State v. Jones outlines several factors. The  
4           first, a publication and peer review of the technique.  
5           The second is prior application of the method to the  
6           type of evidence involved in the case. The third is  
7           the quality control procedures used to ensure  
8           reliability.

9                     I think that particularly applies here because  
10          no blind testing was done. The only test that Mr.  
11          DeFreese testified to, the only gun that was examined,  
12          was the nine millimeter, the suspect gun, and it was  
13          not tested against any other gun, any other nine  
14          millimeter, any other Smith and Wesson.

15                    And then the fourth is the consistency of the  
16          method with recognized scientific laws and procedures.

17                    I think that's important, also, Your Honor, in  
18          light of the National Academy of Research Science's  
19          report and finding in 2008, which has called into  
20          question this science and this finding and it said that  
21          further research is needed.

22                    The federal courts -- since this report has come  
23          out, the federal courts have started to back away more  
24          so from this science and to limit the testimony of  
25          ballistic examiners.

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1 I believe that the NCR report casts severe doubt  
2 on the underlying premise of firearms and toolmark  
3 identifications. And even if guns are capable of  
4 leaving unique and reproducible marks, there's no  
5 scientific basis for examiners' claim to be able to  
6 single out that particular gun that produced an  
7 evidenced toolmark, and labeling it scientific would  
8 give it more credence than it deserves.

9 Again, I would like to cite some of the federal  
10 cases. The first one to come down dealing with this  
11 issue is United States v. Montiero. In that case the  
12 Court found that while the underlying principles behind  
13 firearm identification may be scientifically valid,  
14 there is no reliable scientific methodology which will  
15 currently permit the expert to testify that a casing in  
16 a particular firearm are matched to an absolute degree  
17 of certainty or to an arbitrary degree of statistical  
18 certainty.

19 I'm also going to cite State v. Green, which I  
20 think is very important and on point here because in  
21 State v. Green there was also no blind test that was  
22 done. State v. Green is 405 Supp.2d 104. And like the  
23 case that was presented today, the examiner, the  
24 ballistic examiner, only tested the suspect gun and  
25 didn't test it against any other guns to -- in

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1 determining that a match existed. And the Court held  
2 there it was, in effect, an evidentiary show up, not  
3 with scientists, with regard it's a blind test. And  
4 the Court held in Green that the ballistic expert was  
5 not allowed to testify that the match was to an  
6 exclusion of all guns.

7 And, lastly, I would cite United States v.  
8 Glynn. And it is in Glynn I'm going to ask you to  
9 tailor or limit Mr. DeFreese's testimony as to what the  
10 Court stated in United States v. Glynn. In Glynn, the  
11 Court held that ballistic examinations not only lack  
12 the rigors of science but suffer from greater  
13 uncertainty than any other kinds of forensic evidence.  
14 The Court concluded that to allow any ballistic  
15 examiner to testify that he had matched a bullet or a  
16 casing to a particular gun to a reasonable degree of  
17 ballistic certainty would seriously mislead the jury  
18 and that the ballistic opinion may only be stated in  
19 terms of more likely than not.

20 In light of Glynn, that is my motion: first,  
21 that the testimony be precluded. If Your Honor is not  
22 going to preclude it, then I ask that it be limited and  
23 that he -- Mr. DeFreese only be able to say that items  
24 nine, ten -- items eight, nine and ten, it's more  
25 likely than not that they were fired from item six.

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1 THE COURT: Anything further, Mr. McCoy?

2 MR. MCCOY: Very briefly, Your Honor.

3 Mr. DeFreese testified that he has been doing  
4 this for quite some time. I don't think I need to go  
5 into detail on that. He testified that SLED follows a  
6 national standard. He testified that South Carolina  
7 follows the national standard. He testified that the  
8 equipment that he uses to make his comparison and tests  
9 are regularly calibrated and are up to national  
10 standards. He even testified that his error rate in  
11 thirty-eight years is zero, with follow-up reports.  
12 And he testified, Your Honor, when he was up there,  
13 that he did not need to do blind testing in this case.

14 He has been an expert witness in a state, South  
15 Carolina, that accepts him as a firearm and toolmarking  
16 identification expert, five, six hundred times. Your  
17 Honor, this is the practice that our state follows.

18 It is my understanding that he is not going to  
19 sit there and say that beyond any doubt in the entire  
20 world, these firearm -- these shell casings were fired  
21 from this gun. He just told you up there, Your Honor,  
22 he said there that science does not allow for him to  
23 say with an absolute certainty that that is the case.

24 But, Your Honor, I believe that he provided  
25 enough information to certainly allow him to testify as

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1 an expert and certainly allowed to give his final  
2 conclusion to his findings.

3 THE COURT: And, Mr. McCoy, what do you believe  
4 that he can testify to? More likely than not,  
5 reasonable degree, or something else?

6 MR. MCCOY: I think that the standard, Your  
7 Honor, on this is definitely a little higher than more  
8 likely than not. I mean, that sounds like a fifty-  
9 fifty determination to me. And in thirty-eight years,  
10 Mr. DeFreese has never been found to make an error.  
11 And I think he's testified to the fact that -- and if I  
12 understand him correctly -- that his results that --  
13 for another gun to have fired these shell casings is so  
14 far remote that he can't even calculate the statistics.

15 THE COURT: Mr. McCoy, he didn't say that he's  
16 never made an error, he just said his error rate was  
17 zero.

18 MR. MCCOY: Well, excuse me, Your Honor, if I  
19 misspoke, but that's what I meant to say.

20 THE COURT: All right. Thank you.

21 Anything further, briefly, Ms. Mullaney?

22 MS. MULLANEY: No, ma'am.

23 THE COURT: All right. The Court has reviewed  
24 the cases that you have cited, Ms. Mullaney, and the  
25 Court also reviewed a recent Supreme Court case, United

1       States vs. Wellock, which was decided in March of this  
2       year.

3               Several cases noted that the discipline of  
4       firearms and toolmark identification is firmly rooted  
5       in the scientific method. Citing Diaz: there is a  
6       method and a science behind firearm and toolmark  
7       identification. As well as Montero: firearm  
8       identification evidence travels the line between  
9       testimony based on science and experience. Science is  
10      the core of this theory but its application is based  
11      upon experience and training.

12              Even in Glynn, that Ms. Mullaney primarily  
13      relied upon, after determining that the toolmark  
14      identification is not science, the Court said that the  
15      theory has unique characteristics so that each firearm  
16      is to -- are to an appreciable degree copied on to some  
17      or all of the bullets or casings fired from that gun is  
18      both plausible and sufficiently documented by  
19      experience as to provide a good working assumption for  
20      most practical purposes.

21              Accordingly, the Glynn court did permit the  
22      introduction of firearm toolmark identification with  
23      some limitations.

24              Assuming that this Court does accept the Glynn  
25      Court's finding that whatever firearm-toolmark

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1 identification is, it is not science, that would not  
2 forsage the exclusion of all firearm-toolmark  
3 identification evidence. Accordingly, that is because  
4 Rule 702 is not limited only to the admissibility of  
5 scientific evidence alone but it also governs technical  
6 and specialized evidence which by necessity does not  
7 meet the rigors of scientific analysis.

8 Rule 702 permits the introduction of technical  
9 or specialized evidence if it is given by a qualified  
10 witness, based on sufficient facts, and produced  
11 through reliable methods that have been applied  
12 reliably to the facts of the case so long as it is  
13 helpful to the jury's understanding of the case or will  
14 assist the jurors in making a factual determination.

15 The Counsel-Jones factors of testibility, error  
16 rate, peer review journal acceptance, and adherence to  
17 standards governing the methodology are relevant to  
18 determinations of admissibility under Rule 702.

19 In reviewing the testimony that has been  
20 presented for the purposes of this hearing by Agent  
21 DeFreese in applying the factors as enumerated above, I  
22 determine that the testimony should be admitted, that  
23 Agent DeFreese be admitted as an expert in the area of  
24 firearms and toolmark identification to give his  
25 opinion to a reasonable degree of ballistic certainty.

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1 DeFreeze has been employed in this area for over  
2 forty-eight years, is a member, as he indicated, of the  
3 most prestigious organization in this area, and has  
4 written numerous magazine articles. He has been  
5 qualified as an expert witness in this state over 600  
6 times. His testimony has indicated that his work is  
7 subject to peer review and that the equipment is  
8 calibrated and tested rigorously. His testimony  
9 further indicated that he has stayed current in the  
10 area of firearm and toolmark identification.

11 Accordingly, this Court is denying the  
12 defendant's motion to limit the testimony of Agent  
13 DeFreeze and will further allow the testimony to be  
14 stated with reasonable degree of certainty in the  
15 firearms and toolmark identification field.

16 Anything further, Ms. Mullaney?

17 MS. MULLANEY: No, ma'am.

18 THE COURT: Anything further?

19 MR. MCCOY: No, ma'am.

20 MS. PROCTOR: I just want to see: you said U.S.  
21 v. Willard or --

22 THE COURT: Willock.

23 And I just lost that cite. I'm sorry. I'll  
24 give it to you in just a minute. Back and forth  
25 between two documents.

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1 [Whereupon, the Court reviews documents]

2 THE COURT: It is 2010 Westlaw 1233992, and it  
3 was decided March 23rd of 2010.

4 MS. PROCTOR: W-I-L-L-A --

5 THE COURT: I'm sorry. W-I-L-L-O-C-K.

6 MS. PROCTOR: Okay. Thank you.

7 THE COURT: All right. Anything -- just for  
8 scheduling: this witness is -- you have this witness  
9 and one more; correct?

10 MR. WETMORE: Correct, Judge.

11 I'm going to go make sure that the next witness  
12 is in the hallway. And you guys can go ahead and start  
13 this witness without me --

14 THE COURT: All right. We're going to take a  
15 five-minute comfort break and then we'll resume.

16 You may step down, you're free to remain right  
17 there, but we're going to -- we'll take a five-minute  
18 recess.

19 Thank you.

20 [Whereupon, a recess is taken from 3:52 p.m. to  
21 3:56 p.m.]

22 THE COURT: Mr. McCoy, are you ready?

23 MR. MCCOY: Yes, ma'am, I'm ready.

24 THE COURT: Ms. Proctor, are you ready?

25 MS. PROCTOR: Yes.

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1 THE BAILIFF: The jurors are present, Your  
2 Honor.

3 THE COURT: Thank you. Please be seated.  
4 Mr. McCoy?

5 MR. MCCOY: Thank you, Your Honor. May it  
6 please the Court.

7 The State has now called Dan DeFreese, with the  
8 South Carolina Law Enforcement Division.

9 THE CLERK OF COURT: Mr. DeFreese, if you'll  
10 please stand. Put your left hand on the Bible.

11 [Whereupon, Mr. DeFreese is duly sworn by the  
12 clerk of court as follows: do you swear or affirm that  
13 your testimony will be the truth, the whole truth, and  
14 nothing but the truth, so help you God]

15 THE WITNESS: I do.

16 THE CLERK OF COURT: Please be seated.

17 [Whereupon, Mr. DeFreese takes the witness  
18 stand]

19 THE CLERK OF COURT: Please state your full name  
20 and spell your last name for the record.

21 THE WITNESS: My name is Frank Dan DeFreese.  
22 It's spelled capital D-E, capital F-R-E-E-S-E.

23 THE COURT: Mr. McCoy?

24 MR. MCCOY: Thank you, Your Honor.

25 Mr. DeFreese, I thank you for being here with us

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1 today. I appreciate your time.

2

3

FRANK D. DEFREESE,

4

Having Been First Duly Sworn,

5

was Examined and Testified as Follows:

6

DIRECT EXAMINATION

7

BY MR. MCCOY:

8

Q. If you could tell the jury where you're  
employed.

9

10

A. I work for the South Carolina Law Enforcement  
Division, in the forensics services laboratory, in  
Columbia.

11

12

13

Q. Tell the jury a little bit about what you do in  
the forensics laboratory in Columbia.

14

15

A. I'm assigned to the department within the  
laboratory where we do the analysis of firearm and  
toolmark evidence.

16

17

18

Our most frequently requested service is the  
firearms identification of fired ammunition components,  
including fired bullets and fired cartridge cases.

19

20

21

And we also do the analysis of tools and  
compromised physical security devices like locks and safes  
and other security devices.

22

23

24

Q. And how long have you been with that division of  
SLED?

25

MIA PERRON, CVR-CM

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1 A. For forty-three years.

2 Q. And you've been dealing with firearms for forty-  
3 three years?

4 A. Well, I was first hired in 1967 and was assigned  
5 to the firearms laboratory and began my training and began  
6 doing firearms and toolmark identification.

7 And, actually, in 1989, I became the director of  
8 the laboratory. And for a period of about five years or  
9 more, I wasn't actually doing day-to-day casework in the  
10 laboratory but I was supervising the entire laboratory.

11 Then I was briefly assigned to the department  
12 where we do the regulation of firearms dealers.

13 And then after that, I began just -- I went back  
14 to my first love of doing firearms case work and I've been  
15 doing that off and on. I will occasionally retire and  
16 come back.

17 Q. Can you tell the jury a little bit about any  
18 education that you've received that's helped you in your  
19 duties at SLED?

20 A. Well, my principle training in the field of  
21 firearms identification I actually received right there at  
22 SLED.

23 We have a course of instruction that takes in  
24 the range of two and a half to three years to complete,  
25 wherein you study the techniques of firearm and toolmark

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1 identification under an examiner who's qualified to do  
2 firearms and toolmark identification. It's an  
3 apprenticeship type program. I did that with Lieutenant  
4 Millard Cate. Lieutenant Cate established the SLED  
5 laboratory when SLED itself was established. And SLED  
6 came into being in 1947.

7 After completing my training, I began accepting  
8 case work and doing case work substantially the -- you  
9 know, the entire time except when I was doing  
10 administrative duties.

11 So I've been actually doing case work for around  
12 thirty-seven, thirty-eight years. I haven't done the math  
13 on that.

14 Q. Okay. You already testified you worked for  
15 SLED.

16 A. Yes.

17 Q. Was SLED accredited or recognized by any  
18 national or statewide government agencies or any agency?

19 A. Yes.

20 SLED is -- SLED, the investigative part of it,  
21 is accredited by a body known as CALEA. It's the body  
22 that accredits law enforcement agencies. Now, the SLED  
23 laboratory is accredited by the -- a group known as ASCLD  
24 Lab. That is the American Society of Crime Laboratory  
25 Directors laboratory accreditation bureau. And they

1       accredit forensic laboratories throughout the United  
2       States and Canada and elsewhere in the world.

3           Q.       And in firearms and toolmarking identification,  
4       is there a certain standard or recognized practice  
5       accepted in the nation?

6           A.       Yes.

7           Q.       And what is that?

8           A.       Well, in terms of recognized standard of  
9       identification? Or --

10          Q.       Yes, sir.

11          A.       -- recognized procedures for doing things?

12          Q.       Well, I mean, both.

13          A.       Most of the -- most of the laboratories in the  
14       United States have members of an organization known as the  
15       Association of Firearm and Toolmark Examiners. I am also  
16       a member of that organization.

17                 And AFTE has -- they have model protocols for  
18       doing firearms identification, they offer training, and  
19       they offer a publication, a journal, in which techniques  
20       of identification and novel situations regarding firearms  
21       identification are discussed.

22                 And all of the forensic laboratories that I'm  
23       aware of use essentially the same techniques in the  
24       identification of firearm and toolmark items of evidence,  
25       which is a side-by-side visual comparison of the marks

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1 that are present on bullets and cartridge cases, to  
2 determine if the agreement is sufficient to conclude that  
3 the bullet or cartridge case was fired by a given weapon,  
4 fired by the same weapon that fired another bullet, or was  
5 not. In many cases, the evidence is excluded.

6 And in some cases the evidence, for one reason  
7 or another, is simply either too badly damaged or  
8 improperly marked and in many cases we just cannot tell  
9 for certain whether a given ammunition component was fired  
10 by a particular firearm.

11 Q. And in your department where you are, what's the  
12 most common thing that you're asked to do?

13 A. It's the identification of bullets and cartridge  
14 cases, either with each other or back to the firearms --  
15 to a suspect firearm.

16 Q. Okay. And how many times do you think you have  
17 compared shell casings with a weapon?

18 A. Tens of thousands of times.

19 Q. And have you ever testified in South Carolina  
20 state courts as an expert witness?

21 A. I have.

22 Q. And approximately how many times?

23 A. I estimate between 600 and 700 times.

24 MR. MCCOY: Okay. Your Honor, at this point, I  
25 would offer Mr. DeFreese as an expert in firearms and

1 toolmark identification.

2 MS. MULLANEY: Subject to my previously stated  
3 objection.

4 THE COURT: All right. Agent DeFreese will be  
5 qualified as an expert in the area of firearm and  
6 toolmark identification.

7 MR. MCCOY: Thank you, Your Honor.

8 Q. [Mr. McCoy] Mr. DeFreese, tell the jury how you  
9 even receive evidence.

10 A. Evidence is brought to the SLED laboratory,  
11 usually in person by a representative of law enforcement  
12 agencies throughout the state.

13 SLED was created to help other police  
14 departments do things that they couldn't do for themselves  
15 and one of them frequently is the analysis of forensic  
16 evidence.

17 So typically, most of the evidence we receive is  
18 hand-carried to us, where it is documented, it is sealed,  
19 and I will generally receive the evidence in a sealed  
20 container with integrity packaging. And thereafter, I  
21 will inspect that and do my analysis of the evidence and  
22 return the evidence in a sealed condition.

23 MR. MCCOY: Your Honor, may I approach the  
24 witness?

25 THE COURT: You may.

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1 Q. [Mr. McCoy] Mr. DeFreese, I'm going to show you  
2 what's been marked and already admitted into evidence as  
3 State's 40 and State's 41. If you could take a look at  
4 that and if you could tell the jury if you've had an  
5 opportunity to review those pieces of evidence.

6 A. Yes, sir, I have.

7 Q. And tell the jury what you would have done or  
8 did once you did receive these evidence -- these pieces of  
9 evidence.

10 A. Well, after I inspect the package to make sure  
11 it's still sealed and undamaged, I open it and I document  
12 the evidence that I receive, in this case State's Exhibit  
13 40, which is a Smith and Wesson model 915 nine millimeter  
14 luger caliber pistol with magazine. And in State's  
15 Exhibit 41, I received three fired nine millimeter luger  
16 caliber cartridge cases and one unfired nine millimeter  
17 luger caliber cartridge.

18 Q. Mr. DeFreese, once you've got these items and  
19 you've documented what you see, how do you begin your  
20 testing?

21 A. Well, as part of documenting them I engrave them  
22 with marks, before any examination, to make sure they're  
23 not confused one with another.

24 And I recognize my markings as I have them  
25 engraved on each of these.

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1           The next part of my test will be to fire the gun  
2 and recover from this firearm known bullets and cartridge  
3 cases for comparison purposes. In effecting an  
4 identification of a bullet or cartridge case, we don't  
5 directly compare the bullet or cartridge case with a  
6 pistol, for instance. We will compare it with test  
7 bullets or test cartridge cases to see if the same  
8 markings are present and whether they're sufficiently  
9 present to make a conclusion, and, where they're  
10 different, make a different conclusion.

11           This weapon, although it was somewhat abraded on  
12 its slide and on its grip, functioned and fired normally.

13           Once I've got -- in this case there were no  
14 bullets. There were only cartridge cases. So in this  
15 case I next took the cartridge cases that I knew, State's  
16 Exhibit 40, and fired, and I compared them with each other  
17 under my comparison microscope. It's a microscope that  
18 has two sets of objective lenses and permits me to look at  
19 parts of one or parts of the other cartridge case. I can  
20 look at two of them side by side. They have a dividing  
21 line -- dividing lines present in the image so that I can  
22 manipulate the markings present on a bullet or cartridge  
23 case to bring them in alignment with each other.

24           The test cartridge cases from State's Exhibit 40  
25 exhibited repeatable really good markings. And then I

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1 took, one by one, the three fired cartridge case specimens  
2 and compared them with one of my test cartridge cases.

3 I should back up a little bit and explain that  
4 the identification of a cartridge case is based on  
5 markings that are placed on it by the firearm in which its  
6 fired. In this firearm, a cartridge is placed in the  
7 barrel in an enlarged area at the rear of the barrel  
8 called the chamber.

9 Now, normally, the slide on this pistol would be  
10 all the way forward. The slide is the reciprocating top  
11 part of this pistol. When this pistol is fired and goes  
12 through a firing sequence, a bullet is expelled out the  
13 barrel -- down the bore and out of the barrel and it flies  
14 in the direction the pistol is pointed. And a short time  
15 thereafter, the fired cartridge case is extracted and  
16 ejected automatically from the pistol. That is, this  
17 cartridge case will come out of the ejection port and go  
18 off into space somewhere, to permit the chamber to be  
19 emptied so that the next cartridge, which will be in this  
20 box magazine which goes in the grip of the pistol -- the  
21 next cartridge will be stripped out of the top of the  
22 magazine, placed in the chamber, and thereafter the pistol  
23 is prepared for the next shot.

24 This is a semiautomatic pistol, meaning that  
25 each time the trigger is pulled, it'll fire once. When

1 it's in proper operating condition, each time the trigger  
2 is pulled the bullet goes down the barrel, the cartridge  
3 case goes out the ejection port, and it's ready to fire  
4 again so long as there's ammunition present in the  
5 magazine. And this one I believe holds up to fifteen  
6 cartridges. This is a fifteen-round magazine, so the gun  
7 could shoot as many as sixteen times before being  
8 reloaded.

9 Q. Now, Mr. DeFreese, you've given us some great  
10 insight on how the gun operates. But in your testing, are  
11 you -- from what I understand, are you testing the bullets  
12 that were recovered from a scene, which you know nothing  
13 about, to bullets that you have also test-fired -- shell  
14 casings, excuse me, that you have actually test-fired?

15 A. In this case there were only fired cartridge  
16 cases, so in this case I only compared fired cartridge  
17 cases, that I knew State's Exhibit 40 had fired, with the  
18 fired cartridge case evidence specimens, the three -- the  
19 three here.

20 Q. Then tell the jury what you're looking for when  
21 you examine these fired cartridge cases.

22 A. Well, when the cartridge is struck by the firing  
23 pin to initiate the burning of the propellant powder  
24 within the cartridge, the firing pin itself can leave a  
25 mark on the cartridge which may be capable of

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1 identification.

2 But there are other surfaces that come into  
3 contact with the cartridge case that can also leave marks  
4 on it that may be suitable for identification purposes,  
5 the principle one being the breech face. The breech face  
6 of any firearm is that portion that holds the back of the  
7 cartridge case in.

8 And in this case it is a portion of the slide of  
9 this pistol that's just inside and at the very rear of the  
10 ejection port. The breech face has a hole in it, which is  
11 where the firing pin protrudes from to strike the primer  
12 at the back of the cartridge. The primer is what  
13 initiates the burning of the propellant. It's what causes  
14 the cartridge to fire.

15 So during the firing sequence, when the breech  
16 face is closed on the chamber, a cartridge -- the  
17 propellant begins to burn, the pressure inside the  
18 cartridge case builds to the point where seeking to  
19 escape, it drives the bullet out of the barrel. While  
20 it's doing that and while it's expanded against the walls  
21 of the chamber, it's also expanded against the breech  
22 face. So whatever imperfections, whatever leftover  
23 machine marks, whatever damage marks there might be on the  
24 face of this breech are transferred to the cartridge case.

25 It's much in the same way as if you took a stamp

1 and stamped on a piece of paper, only in this case the  
2 piece of paper is coming into contact with the stamp  
3 because the cartridge case is moving against the breech  
4 face. It's held there very briefly. And then, of course,  
5 then the cartridge case is expelled from the gun.

6 It's those markings that I use as the basis for  
7 the identification because those marks will vary from  
8 pistol to pistol. And where the marks are sufficient, I'm  
9 able to conclude that particular cartridge cases were  
10 fired by a particular gun.

11 Q. Now, does each individual handgun, or gun that's  
12 made, leave different toolmarkings?

13 A. There will be differences in the toolmarks of  
14 every single pistol.

15 Q. Every single one made?

16 A. Every single one made will be different.

17 Q. And why is that?

18 A. Because the tools themselves wear during the  
19 process of cutting things and because the metal itself is  
20 not completely homogenous. That is, there are microscopic  
21 voids, hard spots, soft spots. The metal -- two different  
22 pieces of metal don't cut exactly the same way, even if  
23 they're the same alloy.

24 And as the chips of metal are removed, sometimes  
25 the chips of metal will get back into the teeth that are

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1 doing the cutting and they'll leave marks that will be  
2 unique to that particular area because they're randomly  
3 formed.

4 After the part is actually cut, then the part  
5 goes for finishing where it's prepared by either deep  
6 blasting, shot blasting, or polishing, and then it may be  
7 oxidized by bluing or by a process they call parkerizing  
8 [phonetic]. And this particular one is blued.

9 All of these factors leave cumulative, unique  
10 markings on the breech faces and, indeed, on all the  
11 working surfaces of the firearm. The ones that we're  
12 concerned with for identification purposes are principally  
13 the breech face, the chamber, the firing pin, the  
14 extractor, and the ejector.

15 There can also be magazine lip marks on some  
16 cartridges. But for the most part, where we can find a  
17 matching breech-face impression or a matching firing-pin  
18 impression or matching chamber marks, we can concluded  
19 that a particular cartridge was actually fired. You can  
20 have matching extractor and ejector marks on cartridges  
21 that are merely cycled through a gun without being fired.

22 Q. Where do you test-fire the other cartridges? I  
23 mean, where do you do that?

24 A. We have a -- we have a room prepared for the  
25 purpose in the laboratory at SLED. We also have a small

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1 indoor range.

2 But in this case I fired the gun in our vertical  
3 water-recovery tank where the bullets are slowed by being  
4 fired into a column of water and I catch the cartridge  
5 cases as they're ejected from the gun in a bag.

6 Q. And you collect these cartridge cases?

7 A. Yes.

8 Q. You then take them to the standards that have  
9 been sent to you by other law enforcement, and then you  
10 begin your test?

11 A. Well, as I say, I first compare the test  
12 cartridge cases with each other to make sure that the  
13 markings on them are repeatable and to see what the extent  
14 of the markings are. After that, I take one test  
15 cartridge case at a time and compare it with one evidence  
16 cartridge case at a time to see if the markings are  
17 present on both the evidence and the test.

18 Q. Okay. Mr. DeFreese, when you do these testing  
19 -- perform these tests, do you create a report as to your  
20 findings?

21 A. I do.

22 Q. And if you could tell the jury again the items  
23 that you received, the items you tested, and the results  
24 of your conclusions.

25 A. All right. State's Exhibit 40 is my item six,

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1 which is the Smith and Wesson model 915 nine millimeter  
2 luger caliber semiautomatic pistol. Its serial number is  
3 TZY0352. And it came with one fifteen-round magazine.

4 I assigned my items seven, eight, nine, and ten  
5 to the other -- to the other evidence.

6 MS. MULLANEY: Your Honor, if I could just note  
7 our previously-stated objection for the record.

8 THE COURT: Yes, ma'am.

9 MS. MULLANEY: Thank you.

10 THE WITNESS: I don't know what I did with it.  
11 It was just here. Oh. It fell down in the box. I  
12 thought I had lost a cartridge case. Had me going  
13 there for a second.

14 A. The item seven was an unfired cartridge and the  
15 only observation I made about it is that it was the right  
16 caliber for use in the pistol, what I called item six, or  
17 State's Exhibit 40. It had the same head stamp as the  
18 fired cartridge cases. That head stamp is just the  
19 identification that's put on there by its manufacturer.

20 Q. [Mr. McCoy] Okay. And that was item seven on  
21 your report?

22 A. Right, that's item seven on my report.

23 Items eight, nine and ten were the three fired  
24 nine millimeter luger caliber cartridge cases, which were  
25 all Winchester brand. And after my comparison of these

1 three fired cartridge cases with my test cartridge cases,  
2 I found sufficient agreement between the two and I  
3 concluded that these three fired cartridge cases were  
4 fired by this pistol.

5 Q. All right. And how about item twelve?

6 A. Item twelve, which I do not have in front of  
7 me --

8 MR. MCCOY: If I could approach, Your Honor?

9 THE COURT: You may.

10 Q. [Mr. McCoy] Sorry about that. I thought that  
11 was in the box, too. That's State's 42.

12 A. Item twelve is also an unfired Winchester brand  
13 nine millimeter luger caliber cartridge. I actually did  
14 not do any microscopic comparisons with the unfired  
15 ammunition. I just noted that they were the correct  
16 caliber and they had the same head stamp as the fired.

17 Q. Okay. So the results of your findings at SLED  
18 were that items eight, nine and ten, which are shell  
19 casings, were fired by that gun that you also had up there  
20 with you at SLED, which is item number six?

21 A. That's correct.

22 Q. Mr. DeFreese, is there anybody that ever backs  
23 up your findings or does any kind of follow-up work to  
24 your analysis?

25 A. Each of our cases goes through a review process

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1 and part of the review process for this case and for all  
2 of our cases is that once I have completed my examination,  
3 I'll get another examiner who is qualified to do that kind  
4 of casework to come and look at this same evidence to see  
5 if he concurs with my findings.

6 Q. So there are follow-up results to this?

7 A. Yes.

8 Q. And if you were inaccurate as to your findings  
9 and your SLED reports, would you have noted that in this  
10 finding?

11 A. Certainly if I had made an error, we would have  
12 caught it at that point in time.

13 Q. And in your several decades of doing this at  
14 SLED, have you ever been known to make an error on these  
15 findings?

16 A. Well, I've never made an error in my --

17 MS. MULLANEY: Objection.

18 THE COURT: Basis?

19 MS. MULLANEY: Calls for speculation. And there  
20 hasn't been adequate evidence of a peer review  
21 presented --

22 THE COURT: Overruled on that basis.

23 MR. MCCOY: You can answer the question.

24 A. I've never made an error in my proficiency  
25 testing which goes on.

1           From time to time they test us to see if we get  
2 the right answer, and I've made no errors on that.

3           And with regard to other items: if I, for  
4 instance, write down the wrong number on something or I've  
5 done something else in my paperwork, or omitted something,  
6 all of that's reviewed by the same person, generally.  
7 It's the same person that does the microscopic  
8 verification of my results.

9           So, in essence, the case is not totally reworked  
10 by another examiner but it is totally reviewed by another  
11 examiner before it's approved and a report is issued.

12           MR. MCCOY: Your Honor, may I approach the  
13 witness?

14           THE COURT: You may.

15           Q.       [Mr. McCoy] Mr. DeFreese, you've already  
16 testified, kind of right when you started, that State's  
17 40, the nine millimeter handgun, has -- was in working  
18 order. But you also testified that it had some sort of  
19 scrapes or abrasions at the bottom of the pistol. If you  
20 could take a look at that and kind of tell the jury what  
21 that's consistent with.

22           A.       I noted it as abrasion consistent with contact  
23 with pavement, what we refer to as road rash.

24           It's the kind of abrasion that you would see on  
25 a firearm if it were tossed from a moving vehicle and

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1 struck pavement. And it generally consists of abrasions  
2 that are on the left side of the slide and frame near the  
3 muzzle. There's -- the slide latch is also extensively  
4 scratched. There's scratching at the rear of the slide.  
5 And there's particularly noticeable scratching of the  
6 grip, the bottom of the grip.

7 Q. Okay. But even with these -- this road rash or  
8 these abrasions, the gun was in properly working order  
9 when you received it?

10 A. Right.

11 I had no difficulty whatsoever firing the gun.

12 MR. MCCOY: The Court's indulgence, Your Honor.

13 THE COURT: Yes, sir.

14 [Whereupon, Mr. McCoy and Mr. Wetmore confer]

15 Q. [Mr. McCoy] And, Mr. DeFreese, before I step  
16 down: when you receive these items to test, do you know  
17 anything about the circumstances or facts that involve the  
18 individual crime?

19 A. We will sometimes have an incident report. I  
20 think in this report I did have like the initial officer's  
21 incident report.

22 The -- sometimes that helps us to clarify what  
23 services are really needed in a case. But we almost never  
24 have thorough investigative reports and we almost never  
25 have the entire story to -- from the very get-go.

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1 Q. Okay. Do you have your report up there with you  
2 right now?

3 A. Yes.

4 Q. If you could take a look at that. And can you  
5 tell the jury who the subject is in this case?

6 A. The subject is Derringer Lamont Young.

7 Q. And how many victims are listed?

8 A. There are two listed victims, Maurice Venor  
9 [phonetic] Maxwell and Danny Edward Agerson.

10 MR. MCCOY: Thank you, Mr. DeFreese. I  
11 appreciate your time.

12 THE COURT: Ms. Mullaney, your witness.

13 MS. MULLANEY: Yes, ma'am. Just briefly.

14 CROSS-EXAMINATION

15 BY MS. MULLANEY:

16 Q. Mr. DeFreese, in this case you actually were  
17 given some of the police reports?

18 A. Yes.

19 I did have an incident report -- I'm looking for  
20 the date on it -- dated 11/22/07. Mary Bowman and  
21 Jonathan David Glenn I think were the reporting officers.

22 Q. So you did have some information, albeit a small  
23 amount, with regard to this case?

24 A. Right.

25 I mean, I knew just what was in this.

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1 Q. Now, your opinion is based upon the premise that  
2 tools such as a firearm breech face leaves a unique  
3 toolmark on an object such as a bullet or a cartridge case  
4 and that the toolmarks are unique and reproducible;  
5 correct?

6 A. Yeah.

7 Only the bullet is not included in this. The  
8 breech face -- the bullet would be marked by the interior  
9 surface of the barrel. The breech face is marked by  
10 the -- the cartridge is marked by the breech face.

11 Q. So your opinion is based on the premise that  
12 toolmarking, that it leaves unique marks that are  
13 reproducible? That the breech leaves unique marks on a  
14 cartridge case that are reproducible?

15 A. It's based on the premise that the breech can  
16 leave unique markings on a cartridge case that's fired in  
17 that gun. It doesn't always do it, but that it's -- it  
18 can leave markings that are capable of being identified.

19 Q. And you're familiar with in 2008 the National  
20 Research Council, which is the operating agency of the  
21 National Academy of Sciences, an independent body of  
22 distinguished scientists that congress established in 1863  
23 for the purpose of advising the federal government  
24 agencies scientific and technical questions, that they  
25 issued an imaging report in 2008?

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1 A. Yes.

2 Q. And that in the report, their finding was that  
3 the validity of the fundamental assumption that uniqueness  
4 and reproducibility of firearms-related toolmarks has not  
5 yet been fully demonstrated?

6 A. Yes, that was one of their findings. Then they  
7 went on to elaborate that at some length.

8 And also, Dr. Roth, the chairman of that  
9 committee, published an affidavit in the United State Vs.  
10 Kevin Edwards case in which he more fully developed what  
11 his opinion was because there was -- there's a lot of  
12 misunderstanding about what that statement involved.

13 Q. Well, they went on to say that a significant  
14 amount of research would be needed to specifically -- to  
15 scientifically determine the degree to which firearms  
16 related toolmarks are unique or even to quantitatively  
17 characterize the probability of their uniqueness?

18 A. That's correct.

19 Dr. Roth, being a statistician, was interested  
20 in quantitatively -- that is, by establishing numbers --  
21 come up with a probability model similar to that that's  
22 used in DNA identification, that that was what he would  
23 like to see in the firearms field. Such does not exist  
24 today.

25 Q. And then that finding goes to the most basic

1 premise to which firearm and toolmark identifications are  
2 based upon?

3 A. Well, yes and no, because if you'll read farther  
4 in the study, they rely on those same markings to do what  
5 they want to do with regard to ballistic imaging.

6 And Dr. Roth goes on to say in his affidavit  
7 that he was not -- he was not bringing the whole question  
8 of firearms identification up, he was only saying that we  
9 need more study about it, especially if we want to  
10 establish a mathematical model, which was what he and many  
11 people would like to see.

12 Q. So he said further research is needed?

13 A. Right.

14 I mean, I can think of no topic on which further  
15 research would not be of some benefit. And it would be  
16 here, too.

17 Q. Right.

18 But they also were -- you know, their findings  
19 are involved but their -- in that the validity that  
20 toolmarks are unique and that the reproducibility has not  
21 yet been demonstrated.

22 A. Well, and there were --

23 Q. And they were clear --

24 A. There are a number of other bolded -- you know,  
25 that committee had many different findings. That was one

1 of them.

2 Q. But that's the main one, the most important one,  
3 the one that they've highlighted and --

4 A. No.

5 I think there's other ones that are there. And  
6 I think the other ones are in bold, as well. It may not  
7 be in your copy, but I believe it is in mine.

8 Because, see, they were asked to determine  
9 whether a nationwide computerized database of ballistic  
10 images was a worthwhile thing to do. They ultimately  
11 concluded it was not at this time. But that was what they  
12 were tasked to do. They were not tasked to determine  
13 whether or not the identification of firearms evidence was  
14 a valid science. They just added that it looks like more  
15 work is needed here.

16 Q. Right. Before we can reach these conclusions  
17 and more research needs to be done.

18 A. Well, before we can come up with numerical  
19 probabilities that are like DNA analysis.

20 And, in fact, that -- there seems to be a shift  
21 on the part of all forensic science to use the DNA  
22 business model, which may or may not be applicable to  
23 evidence that's capable of being viewed.

24 Q. Right.

25 So in ballistic science, there isn't a national

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1 standard?

2 A. There's not a national quantitative standard.  
3 There is a recognized qualitative standard.

4 Q. But whether or not a cartridge is a match is the  
5 opinion of the examiner; correct?

6 A. It is. It's based on the examiner's education,  
7 training and experience.

8 But it's also based on the examiners being able  
9 to actually view something. It's based on an objective  
10 item.

11 Q. Right. And --

12 A. But it is a subjective conclusion.

13 Q. Sorry to interrupt.

14 So there is no national standard to be applied  
15 to evaluate how many marks make a match?

16 A. No, there's no number.

17 In fact, there's no standard for what  
18 constitutes a mark.

19 Q. Right.

20 And a wrong -- also, there isn't a standard as  
21 to how many markings would rule out a match, either?

22 A. No.

23 There are some people that want to infer a  
24 standard from it. But there is no national standard.

25 Q. And in this case you had the Smith and Wesson

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1 gun. But had you not been given the Smith and Wesson,  
2 would you have been able to tell, just by looking at items  
3 eight, nine and ten, the cartridge cases, that they were  
4 fired, in fact, by a Smith and Wesson?

5 A. No, not to the exclusion of other makes of  
6 firearms that the -- the gross, the really gross class  
7 characteristics of these cartridge cases, are such that  
8 Smith and Wesson and some other brands could have produced  
9 the class characteristics; that is, round firing pin,  
10 parallel breech-face marks. There are a lot of guns that  
11 have that.

12 Q. And examiners do not expect toolmarks on bullets  
13 fired from the same gun to ever be exactly alike; correct?

14 A. Each shot is different.

15 Each and every bullet, each and every cartridge  
16 case, is going to be different if you examine it minutely.  
17 But there are marks that are consistent from shot to shot  
18 that can be used for identification.

19 Q. But there's no such thing as a hundred-percent  
20 match?

21 A. No, not every single stray mark.

22 There will always be some random mark here and  
23 there that may not perfectly align. But the marks of  
24 interest that we're looking for are the ones that we can  
25 demonstrate the gun will produce again and again in our

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1 test specimens.

2 Q. And a nine millimeter gun is a very common gun;  
3 is that fair to say?

4 A. Nine millimeter is a very popular caliber, and  
5 there are a great many nine millimeter caliber firearms.

6 Q. And, Mr. DeFreese, it's your opinion that items  
7 eight, nine, and ten, the cartridge cases, in this report,  
8 were fired from item six, which is the nine millimeter  
9 Smith and Wesson pistol?

10 A. Yes.

11 Q. However, did you fire the same type of  
12 ammunition in a different Smith and Wesson nine millimeter  
13 and compare the cartridge cases to items eight, nine and  
14 ten in your report?

15 A. No.

16 MS. MULLANEY: Thank you.

17 MR. MCCOY: I don't have anything, Your Honor.  
18 Thank you.

19 THE COURT: Agent DeFreese, you may step down.

20 THE WITNESS: Thank you.

21 [Whereupon, Mr. DeFreese is excused and exits  
22 the witness stand]

23 THE COURT: Call your next witness.

24 MR. WETMORE: The State calls Larry Clayton.

25 [Whereupon, Mr. Clayton comes forward]

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1 LARRY CLAYTON,

2 Having Been First Duly Sworn,

3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MR. WETMORE:

6 Q. Mr. Clayton, how old are you?

7 A. Twenty-seven.

8 Q. Twenty-seven?

9 MR. WETMORE: Make sure to talk loudly in the  
10 microphone, like Judge Harrington said, so I can hear  
11 you.

12 Q. [Mr. Wetmore] Now, are you from Charleston,  
13 North Charleston area? Did you grow up here?

14 A. Yes, sir.

15 Q. Do you have family that lives around here?

16 A. Yes, sir.

17 Q. Do you work or go to school in this area?

18 A. Yes, sir.

19 Q. So you've been here all your life?

20 A. Yes, sir.

21 Q. And while we're on the topic of your background,  
22 I want to make sure we're honest with everybody.

23 You've been convicted of crimes on at least two  
24 occasions here: 2001 possession of crack and 2004  
25 possession of crack?

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1 A. Yes, sir.

2 Q. And you admit those convictions.

3 You pled guilty, been given a sentence for  
4 those?

5 A. Yes, sir.

6 Q. Nothing pending right now? You don't have  
7 anything that's any charges now?

8 A. [No response]

9 Q. Tell me about -- tell me about in November, now,  
10 of 2009. Were you in the Charleston County jail  
11 originally because of some family court child support  
12 issues?

13 A. Yes, sir.

14 Q. When you were in the Charleston County jail in  
15 November of 2009, were you housed near the defendant,  
16 Derringer Young?

17 A. Yes, sir.

18 Q. Okay. Now, we are here this week trying the  
19 case about the shooting -- two shootings at Club 843,  
20 Dorchester Road, North Charleston. That's the subject of  
21 this trial. And that happened back in November of 2007.  
22 Over the time that you were housed near the defendant, did  
23 you overhear him talking to other people about being  
24 involved in this incident?

25 A. Yes, sir.

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- 1 Q. You heard him talking about this very incident?
- 2 A. Yes, sir.
- 3 Q. To other people near you?
- 4 A. Yes, sir.
- 5 Q. Now, did he ever make any comments directly to  
6 you about this incident?
- 7 A. Yes, sir.
- 8 Q. How many times did he talk to you?
- 9 A. Like two times.
- 10 Q. Two times.
- 11 Okay. The first time he said something to you  
12 about this incident, what did he say?
- 13 A. He was like, I'll shoot you in the fucking head  
14 like I did -- I'll shoot you in the fucking head like I  
15 did the guy at Club 843.
- 16 Q. Okay. I know you're nervous. You've got to  
17 speak in that microphone.
- 18 Tell me -- tell the jury exactly what he said to  
19 you.
- 20 A. I'll shoot you in the fucking head like I did  
21 that guy at the club, Club 843.
- 22 Q. And he was making that -- he made a kind of  
23 threatening manner to you?
- 24 A. Yes, sir.
- 25 Q. Saying he would shoot you in the head like he

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1 shot the other guy in the head?

2 A. Yes, sir.

3 Q. Now, you knew what shooting he was talking  
4 about?

5 A. No, sir.

6 MS. PROCTOR: Objection, Your Honor. I would  
7 ask him not to lead the witness.

8 THE COURT: Mr. Wetmore, please rephrase your  
9 question.

10 Q. [Mr. Wetmore] Did you know what shooting he was  
11 talking about?

12 A. No, sir.

13 Q. Tell us again: the first time, what did he say  
14 to you directly?

15 A. I'll shoot you in the fucking head like I did  
16 the guy at Club 843.

17 Q. I'll shoot you in the f'ing head like I shot the  
18 guy in the Club 843?

19 A. [No response]

20 Q. All right. That was the first time he made a  
21 comment to you about that. You said he did that twice?

22 A. Yes, sir.

23 Q. What did he say -- and these were on separate  
24 occasions?

25 A. Yes, sir.

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1 Q. Okay. So the second occasion he made a comment  
2 to you about this, what did he say that time?

3 A. He was like, I ain't no pussy about the shit I  
4 do.

5 Q. Okay. And did he make -- make any comments to  
6 you about he had anything to do with this incident, this  
7 shooting?

8 A. Yes, sir.

9 Q. What else did he say to you?

10 A. He was like, I'll shoot you in the head like I  
11 did the guy at Club 843; I ain't no pussy about the shit I  
12 do; I ain't take no crap off nobody.

13 Q. Now, did he make any other comments to you about  
14 -- that involved this case?

15 A. No, sir.

16 Q. Now, you contacted our office with this  
17 information; correct?

18 A. Yes, sir.

19 Q. And did you give a written statement that puts  
20 this information down in writing?

21 A. Yes, sir.

22 Q. And do you have a copy of that statement with  
23 you?

24 A. Yes, sir.

25 Q. If you would take a look and review that

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1 statement and see if that refreshes your memory of what  
2 you told the detectives.

3 [Whereupon, the witness reviews documents]

4 A. Yes, sir.

5 Q. [Mr. Wetmore] You mentioned he said he would  
6 shoot you in the head like he did the guy at the club and  
7 he wasn't any pussy about what he did. Did he make any  
8 other specific --

9 A. He said he'd shoot me and watch my brains spill  
10 out.

11 THE COURT: Mr. Clayton, I'm going to need --

12 MR. WETMORE: You've got to speak louder --

13 THE COURT: -- you to speak loudly into the  
14 microphone.

15 A. He say he'll shoot me and watch my brain spill  
16 out.

17 Q. [Mr. Wetmore] He said he would shoot you and  
18 watch your brain spill out?

19 A. Yes, sir.

20 Q. Any other comments regarding the shooting at the  
21 club?

22 A. No, sir.

23 Q. Just what you overheard and the direct things he  
24 said to you?

25 A. Yes, sir.

1 MR. WETMORE: I don't have any further  
2 questions, Judge.

3 Actually, the Court's indulgence first, Your  
4 Honor.

5 THE COURT: Yes, sir.

6 [Whereupon, Mr. Wetmore and Mr. McCoy confer].

7 Q. [Mr. Wetmore] Just generally, don't need to get  
8 into specifics, Mr. Clayton, but what caused this -- these  
9 threats? What was the basis of this argument?

10 A. Over the phone.

11 Q. Over a phone? Phone at the jail?

12 A. Yes, sir.

13 MR. WETMORE: I don't have any further  
14 questions.

15 THE COURT: Ms. Proctor?

16 CROSS-EXAMINATION

17 BY MS. PROCTOR:

18 Q. Now, Mr. Clayton, you were in -- you had been in  
19 the unit, at this time, with Mr. Young for about five  
20 months; correct?

21 A. Yes, ma'am.

22 Q. And being in jail you know that when you snitch  
23 on somebody and you call the detective, that usually helps  
24 get you out of jail, doesn't it?

25 A. Yes, ma'am.

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1 Q. And, as a matter of fact, you called the  
2 detectives two times; right?

3 A. Yes, ma'am.

4 Q. And also from being in jail you know that when  
5 people are in jail, their lawyers send them their police  
6 reports; correct?

7 A. Yes, ma'am.

8 Q. It's called discovery; right?

9 A. Yes, ma'am.

10 Q. And your lawyer probably sent you your  
11 discovery; right?

12 A. Yes, ma'am.

13 Q. And when it's in the jail, anybody can read  
14 anybody's stuff that they want to, can't they?

15 A. Yes, ma'am.

16 Q. And you didn't like being in jail, did you?

17 A. Nobody likes being in jail.

18 Q. And you wanted to get out of jail?

19 A. Yes, ma'am.

20 But I had to wait until my six months was up on  
21 my child support.

22 Q. And you said a moment ago you don't have any  
23 charges pending. But don't you have the escape charge?

24 A. My escape charge.

25 Q. That charge is still pending, the escape charge;

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1 right?

2 A. Yes, ma'am.

3 Q. And the solicitor's office is the office that's  
4 prosecuting that escape charge; right?

5 A. I think so.

6 Q. And this office is going to decide whether or  
7 not you go back to jail or not; correct?

8 A. Yes, ma'am.

9 MS. PROCTOR: I have no further questions.

10 THE COURT: Mr. Wetmore?

11 REDIRECT EXAMINATION

12 BY MR. WETMORE:

13 Q. Mr. Clayton, you -- like I said, you contacted  
14 our office because you had this information?

15 A. Yes, sir.

16 Q. Correct?

17 Did you hear the defendant actually say these  
18 many things?

19 A. Yes, sir.

20 Q. Did you get that information from reading his  
21 discovery?

22 A. No, sir.

23 We was like one man's cells apiece. It was --

24 Q. So you never saw any information on this case?

25 A. No, sir.

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1 Q. Did you get this information from his mouth  
2 directly saying it to you?

3 A. Yes, sir.

4 Q. Now, while you were in the jail for failure to  
5 pay child support --

6 A. Yes, sir.

7 Q. -- family court time, I guess they call it --

8 A. Yes, sir.

9 Q. -- yo were additionally charged with escape for  
10 walking off --

11 A. Yes, sir.

12 Q. -- of a work cite; correct?

13 MS. PROCTOR: Objection, Your Honor.

14 THE COURT: Basis?

15 MS. PROCTOR: Your Honor, may we approach?

16 THE COURT: You may.

17 [Whereupon, an off-the-record bench conference  
18 is held]

19 THE COURT: Sustained as to leading.

20 Q. [Mr. Wetmore] So, Mr. Clayton, you admitted you  
21 have a pending escape charge?

22 A. Yes, sir.

23 Q. Just very briefly, what is the basis of that  
24 escape charge? I know why you were dealing with family  
25 court. Initially, you were on family court time?

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1 A. Yes, sir.

2 Q. And during that time you picked up an escape  
3 charge?

4 A. Yes, sir.

5 Q. What is the basis of the escape charge? I  
6 understand the family court case.

7 A. What you mean the basis?

8 Q. What caused you to be charged with escape?

9 A. I just walked off from the work cite and didn't  
10 come back on time.

11 Q. You walked off a work cite and you did not come  
12 back on time?

13 A. Yes, sir.

14 Q. So for that, you were charged with escape?

15 A. Yes, sir.

16 Q. Have you received any promises regarding that  
17 particular charge?

18 A. No, sir.

19 Q. From me or from anyone?

20 A. No, sir.

21 Q. Have you received any threats about that charge  
22 from me or from anyone?

23 A. No, sir.

24 Q. And in your statement that you gave to the  
25 police, did you tell the truth?

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1 A. Yes, sir.

2 Q. And have you told us the truth today?

3 A. Yes, sir.

4 MR. WETMORE: I have no further questions.

5 MS. PROCTOR: I have one.

6 THE COURT: Yes, ma'am.

7 RE-CROSS-EXAMINATION

8 BY MS. PROCTOR:

9 Q. Since Mr. Wetmore wanted to get into your  
10 escape: instead of walking off of work release, you  
11 basically were apprehended at the Airport Inn; correct?

12 A. Yes, ma'am.

13 Q. And you know that this carries a sentence of one  
14 to fifteen years; right?

15 A. Yes, ma'am.

16 Q. And you don't want to go back to jail or prison  
17 for fifteen years, do you?

18 A. No, ma'am.

19 MS. PROCTOR: Thank you.

20 THE COURT: Any objection to Mr. Clayton being  
21 excused? From the State?

22 MR. WETMORE: No, ma'am.

23 THE COURT: From the defendant?

24 MS. PROCTOR: No, Your Honor.

25 THE COURT: Mr. Clayton, you are excused. You

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1 may step down.

2 [Whereupon, Mr. Clayton is excused and exits the  
3 witness stand]

4 THE COURT: Call your next witness.

5 MR. WETMORE: Judge, may we approach just  
6 briefly about --

7 THE COURT: You may.

8 MR. WETMORE: -- our schedule?

9 [Whereupon, an off-the-record bench conference  
10 is held]

11 THE COURT: Ladies and gentlemen of the jury,  
12 this is an appropriate time for us to break for the  
13 evening.

14 Do not begin your deliberations. Do not discuss  
15 this case amongst yourselves. Please remember, do not  
16 read, watch, listen to any news accounts. Do not do  
17 any independent investigation regarding this matter.

18 Ladies and gentlemen, have a wonderful and  
19 restful evening and I will see you back in your jury  
20 room at 9:30.

21 Please rise for the jury.

22 [Whereupon, the jury exits the courtroom at  
23 4:55 p.m.]

24 THE COURT: Thank you. Please be seated.

25 All right. For the record, as of now the State

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And with that, Ms. Proctor?

MS. PROCTOR: Your Honor, at this time the defense rests.

THE COURT: All right. Thank you.

Ladies and gentlemen, the State and the defendant have rested.

And as I indicated to you in my opening, we've reached the part of the trial where you will now hear closing arguments. Just as I had indicated to you that opening statements were not to be considered evidence, neither are any of the things contained in the closing arguments to be considered evidence.

Ladies and gentlemen, after Mr. McCoy and then Ms. Proctor give their closing arguments, I will instruct you on the law that is applicable to this case.

Mr. McCoy?

MR. MCCOY: Thank you, Your Honor. May it please the Court, Ms. Proctor and Ms. Mullaney.

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CLOSING ARGUMENT

1  
2 MR. MCCOY: On November 22nd, 2007, a monster  
3 was unleashed in North Charleston and in its path stood  
4 Danny Agerson, Maurice Maxwell. And you can see the  
5 injuries that they suffered. Neither one of these men  
6 stood a chance.

7 Danny Agerson was the luckier of the two. He  
8 suffered a gunshot wound to the stomach but he was  
9 still -- left the scene in a helicopter and taken to  
10 the hospital, but he survived, he lived.

11 The most unfortunate of the two was Maurice  
12 Maxwell. He died at 3:00 a.m. in a parking lot in  
13 North Charleston, by himself, without his family, with  
14 no one there to take care of him, to hear his final  
15 words, to tell him it's going to be okay. And he died.  
16 He lost his life and he's no longer here. This was at  
17 the hand of a monster, ladies and gentlemen. That  
18 monster is sitting in the courtroom today, and it's  
19 Derringer Young.

20 Let's talk about the people that saw this  
21 happen. First, we have Joshua Crider. He was the  
22 bouncer. He was the security at Club 843. He was in  
23 charge of taking care of everybody and making sure they  
24 were safe in this club. He was employed by the club.  
25 He helped run the club.

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1           What did he tell you when he got on the stand?  
 2           He told you that Club 843 is a club. It's a place  
 3           where people come to party and drink. He said that  
 4           club usually gets busy and stays busy around 2:00 or  
 5           three o'clock because it stays open longer than the  
 6           other bars do. He said around 2:00 or three o'clock it  
 7           started getting crowded. He said people started to fill  
 8           in, people were hanging out. There was a CD release  
 9           party that night, as well, which probably made it a  
 10          little extra crowded.

11          What did he tell you happened when he was  
 12          inside? He told you that a fight broke out. He told  
 13          you that somebody hit a woman in the club. It wasn't  
 14          Maurice Maxwell that hit the woman. There's no  
 15          testimony that it was Danny Agerson that hit the woman.  
 16          He said after that, all mayhem broke loose in the bar.  
 17          He said there were punches being thrown, bottles being  
 18          thrown, chairs and tables being overturned.

19          As a security guard, what did he try to do? He  
 20          tried to regain control. He grabbed the guy who was  
 21          causing the ruckus and started to take him outside.  
 22          Once that happened, he was attacked. And he told you,  
 23          he told you himself on this stand, that once that  
 24          happens, I don't want to fight back, I don't want to  
 25          turn this into a fight so I removed myself from the

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1 situation and I went and stood behind the bar. He said  
2 after that, the lights came on and we're getting  
3 everybody out, everybody out of the club.

4 And what does he tell you happens after that?  
5 He says he saw Derringer Young walk out of that bar.  
6 What did he tell you he was wearing? He told you he  
7 was wearing a black shirt, he told you he was wearing a  
8 black-and-white Atlanta hat, and he told you that he  
9 had on light-colored pants.

10 And what did he tell you he saw? He told you  
11 that he saw, unprovoked, Derringer Young pull out a gun  
12 right at the doorway, right at the entrance to this  
13 club, and he fired one shot at Danny Agerson and struck  
14 him in the side.

15 What did he do after that? This is what's the  
16 most scarey part of this. What did he do after that?  
17 He put his gun in his pocket, didn't look back. Didn't  
18 run to his car. He was walking to his car. The rest  
19 of his party was ahead of him, Renardo Smalls and  
20 Shemera Brown. Stuck his gun in his pocket like it was  
21 an everyday thing and started walking to his car. He  
22 had just shot a man. He didn't know if he was going to  
23 live or die.

24 What does he tell you happens next? He says a  
25 gunshot has gone off, so I run to my car, is what

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1 Joshua Crider says. He runs to his car. He sits by  
2 his car when he sees the defendant, Derringer Young,  
3 walking towards the car still.

4 Poor judgment on Maurice Maxwell's part. He  
5 probably should have never done what he did. But he  
6 approached the defendant. What did Joshua Crider tell  
7 you he saw next? He said in a chilling moment he saw  
8 the defendant pull the gun out of his pocket again and  
9 fire a shot into Maurice Maxwell's face. Shot him in  
10 the face.

11 The coroner told you up here it wasn't right up  
12 against his face, it wasn't a close shot but it was a  
13 little bit of a distance shot. And why is that  
14 important? Why does that ring a bell? It rings a bell  
15 because Joshua Crider also told you that Maurice  
16 Maxwell was backing away. He wanted no part of this.  
17 He wanted no part of a fight, he wanted no part of an  
18 altercation. He wanted to get away from a man with a  
19 gun, and he was backing up.

20 That didn't matter to Derringer Young. He  
21 didn't care one bit. He shot Maurice Maxwell in the  
22 face -- which you will have back here with you these  
23 photos -- and he shot him in the shoulder, which was  
24 the graze wound.

25 Next we heard -- or, actually, I'm sorry. To

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1 continue with Joshua Crider, what else did he tell you  
2 he did? He told you he called 911 right away. He  
3 called the police after he had just seen what he saw  
4 and he said, there's a car that's leaving right now,  
5 it's a gray-color older model car, it's got a big dent  
6 on the right-hand side. That's all he could say. He  
7 was jacked up, he was worked up. And he said that he  
8 heard other gunshots, but he told you on the stand he  
9 was mistaken about that, he didn't. He didn't hear  
10 other gunshots. But he told you and he told the police  
11 what the defendant was wearing and he told the police  
12 and he told you what the defendant rode away in. Why  
13 is that important? It's important because not even a  
14 mile down the road the defendant was arrested in that  
15 car, with these clothes on, with that hat on,  
16 corroborating Joshua Crider's story.

17 Joshua Crider was also taken down to the scene.  
18 He sat in his car and each person was brought out in  
19 front of him. The police told you on the stand, Joshua  
20 Crider told you on the stand, nobody told him what to  
21 say, nobody told him who to pick out. But as each  
22 person would walk in front of him he said, that girl  
23 was there, I saw her; that guy was there, I saw him, he  
24 was driving the car; but that man who you just brought  
25 out, wearing these clothes, is the very man I saw shot

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1 -- shoot Danny Agerson and the very man I saw shot  
2 Maurice Maxwell in the face and kill him in a parking  
3 lot at Club 843. And who was that man? Without doubt,  
4 without any hesitation, Joshua Crider told you it was  
5 Derringer Young. Take a look at the evidence. Take a  
6 look at his testimony and see how it corroborates each  
7 other and see how it comes together.

8 Next, we heard from Renardo Smalls. Y'all saw  
9 him get on the stand. You saw him get up there. He  
10 got up there and he said, yeah, I drove the car to Club  
11 843, I drove the defendant there, I don't remember what  
12 kind of car it was, I don't remember what it looked  
13 like, and, actually, I don't remember what happened  
14 that night because I was drunk and I was high.

15 But you're going to have his statement back  
16 there with you. You're going to have his statement in  
17 the back with you. And that's very important. What he  
18 tells you in that statement -- he tells you, I heard  
19 one gunshot; I looked over my shoulder towards the club  
20 and saw Derringer and the girl; they were walking  
21 towards my car. Derringer and the girl was behind me;  
22 when I got almost to the front of my car, I saw the  
23 other guy, I don't know his name, the guy Derringer  
24 shot, walking towards us. When he got over to  
25 Derringer, they started having words. That is when

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1 Derringer shot the guy, period. You're going to have  
2 the statement back there with you.

3 And what else does he tell you? What else does  
4 he tell you in this statement? He says, we started  
5 going down Dorchester Road with the girl in the back  
6 seat, saw the police, and said, they are turning  
7 around. She sounded like she was getting ready to cry.  
8 That's when Derringer rolled down his window. When he  
9 threw the gun out of the window, he almost broke my  
10 window trying to get the gun out. That's what Renardo  
11 Smalls tells you. And also I hear, what was Derringer  
12 wearing? He was wearing a black shirt and gray pants.  
13 That's what Renardo Smalls tells you in his statement  
14 that he gave that night to the police.

15 You've heard testimony about Shemera Brown, the  
16 girl, the girlfriend that was supposed to be there.  
17 And you heard Officer Gomes get on the stand and he  
18 told you, she has cooperated with us from the  
19 beginning, she has been with us from the beginning, she  
20 even met with us last week. But come trial time, she's  
21 nowhere to be found. She's the one who told the police  
22 where the gun was and where the gun could be found.

23 And let me talk about the three people who saw  
24 this happen: Joshua Crider, Shemera Brown, and Renardo  
25 Smalls. Is there a reason -- is there a reason why

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1 Renardo Smalls got up on that stand and told you he  
2 didn't remember what happened that night? Is there a  
3 reason for that? There is a reason for that, and the  
4 reason is right here [indicates]. Is there a reason  
5 why Shemera Brown has cooperated with police from day  
6 one and has not shown up for this trial this week? Is  
7 there a reason for that? That reason is right here  
8 [indicates]. Is there a reason why Danny Agerson  
9 cooperated with the police from the very beginning --

10 MS. PROCTOR: Your Honor, I object. I think  
11 this calls for speculation.

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

13 Ladies and gentlemen, I do remind you that  
14 everything in closing is not evidence.

15 You may continue, Mr. McCoy:

16 MR. MCCOY: Is there a reason why Danny Agerson  
17 is not here this week and he's cooperated with the  
18 police? That reason is right here [indicates].

19 Joshua Crider, Danny Agerson, Shemera Brown, and  
20 Renardo Smalls have all see firsthand with their eyes  
21 what this man is capable of. Joshua Crider came in  
22 here. He's locked up. Derringer Young can't get to  
23 him. He's locked up. He's in jail.

24 Let's talk about the other evidence you've heard  
25 from the police officers and the experts that came here

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1 to testify. We know from Shemera Brown -- or, I'm  
2 sorry -- Renardo Smalls, that the gun was thrown out of  
3 the window. And we know from the police officers that  
4 Shemera Brown led them to the gun.

5 Mr. DeFreese got up here on the stand, the SLED  
6 expert from Columbia who talked about guns. He told  
7 you this gun had abrasions on the bottom. He said it  
8 has abrasions. He said that's consistent with what we  
9 like to call road rash, consistent with a gun being  
10 thrown out of a moving vehicle and hitting pavement.  
11 Isn't that what Shemera Brown told the police? Isn't  
12 that what Renardo Smalls told the police in his  
13 statement?

14 He told you not only that, but he told you that  
15 the shell casings that were found at the scene, the  
16 three nine-millimeter shell casings found at the scene,  
17 were fired from this gun and this gun alone. And this  
18 was the gun that was found less than a half a mile from  
19 Club 843.

20 Ladies and gentlemen, who else did we hear from?  
21 We heard from Larry Clayton. He came in here and took  
22 the stand. And what did he tell you? He told you, I  
23 was in jail, I was locked up on Leeds Avenue with this  
24 man; we weren't in the same cell; I didn't read any of  
25 his materials; and I've been made no promises; but I'm

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1 going to tell you what he told me over a fight over the  
2 telephone; he said, I'll shoot you like I did that boy  
3 at Club 843 and I'll watch your brains spill out. He's  
4 bragging about what he's done. He has no remorse about  
5 what he has done. He's actually threatening people,  
6 harm, about what he's done.

7 And, ladies and gentlemen, you are going to hear  
8 several charges from the judge at the conclusion of  
9 this case. She is going to charge you with murder.  
10 Murder is the killing of another person with malice.  
11 Okay? And I want to talk about malice. What is  
12 malice? Malice is an evil heart and it's evil  
13 intentions.

14 And how do we tell malice? We can't get inside  
15 his head and see what he was thinking. We interpret  
16 malice through his actions. We interpret them through  
17 his -- you know, what he says. Actions sometimes speak  
18 louder than words. He didn't say anything when he was  
19 -- when he was out on that scene. Well, what did his  
20 actions show us? His actions showed us malice,  
21 shooting one man, putting the gun back in your pocket,  
22 turning your back on him, and walking back to your car  
23 like nothing has happened. That's an evil heart,  
24 walking away and leaving a man to die. Then being  
25 confronted from another man, who was backing away from

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1 you, still firing your weapon, shooting him in the  
2 face. Shooting somebody in the face is malice. It's  
3 evil intentions. And then fired one more shot for  
4 goodwill. It's malice. It's evil intentions. It's an  
5 evil heart. Putting the gun back in your pocket,  
6 walking back to your car -- walking, not running -- and  
7 getting in the car and then leaving.

8 What else is malice? Malice is bragging about  
9 what you have done. Malice is saying to somebody else,  
10 I'll shoot you like I did the other guy at Club 843.  
11 Malice is going into detail about that shooting,  
12 saying, I'll watch your brains spill out on the floor.  
13 That's malice.

14 The judge is going to charge you with another  
15 charge that's called voluntary manslaughter. Voluntary  
16 manslaughter is the killing of another person in a heat  
17 of passion. It's when your emotions are aroused,  
18 you're excited. Where's the heat of passion in this  
19 case? He's not running, he's not getting excited, he's  
20 not yelling out, he wasn't provoked in a fight to shoot  
21 right away. There's no heat of passion.

22 Heat of passion, also, you have to have a time -  
23 - there can be no time to really cool off. There can  
24 be no real time to take in and think about what you're  
25 doing. It's a natural instinct to shoot right away.

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1 Derringer Young didn't have that. He shot, put the gun  
2 back in his pocket, thinking about what he had done --  
3 at least I hope thinking about what he had done --  
4 walked back to his car, pulled the gun back out and  
5 shot Maurice Maxwell in the face, put it back in his  
6 pocket and left. Where's the heat of passion? There  
7 isn't any. But what there is is malice. That's why  
8 this is a murder and not voluntary manslaughter.

9 The judge is also going to charge you with  
10 assault and battery with intent to kill. That is what  
11 in South Carolina is basically our attempted murder  
12 charge. It's when you shoot somebody or you do  
13 something to somebody, you assault and batter somebody,  
14 with the intention of killing them.

15 But, see, actually, the statute is misleading.  
16 You don't have to actually intend for them to die, you  
17 have to inflict serious bodily -- intend to inflict  
18 serious bodily injury on a person. When you shoot  
19 somebody, I don't know what else you intend to do with  
20 the inflict serious bodily injury to somebody. Or I  
21 think you intend to kill them. So it's hard to do a  
22 lesser included of that with assault and battery of a  
23 high and aggravated nature. When you assault and  
24 batter somebody and it's a high and aggravated  
25 circumstances, this is an assault and battery with

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1 intent to kill. It's an intended murder. And this was  
2 a murder.

3 Maurice Maxwell died as a result of Derringer  
4 Young. Danny Agerson was shot, and barely survived, as  
5 a result of Derringer Young. Maurice Maxwell's family  
6 is here. They've been present all week. And today is  
7 their day. Today is the day that they can have peace  
8 and they can rest with what's happened. They've been  
9 waiting for this day for three years.

10 I ask you and I urge you to take a look at all  
11 the evidence. Take a look at all the pictures.  
12 Remember and think about all the testimony you've heard  
13 over the past three days and I am firmly convinced, I  
14 am firmly convinced, that you will find the defendant  
15 guilty of the murder of Maurice Maxwell and assault and  
16 battery with intent to kill, attempted murder, of Danny  
17 Agerson.

18 MS. PROCTOR: May it please the Court?  
19 Solicitor?

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1 CLOSING ARGUMENT

2 MS. PROCTOR: It's a pretty simple case. You've  
3 got Joshua Crider saying he did it. You've got his  
4 drunk cousin saying he did it. You have a jailhouse  
5 snitch saying he did it.

6 Now, the solicitor in his opening argument said  
7 -- which is probably the only thing we agree on -- this  
8 is not CSI, this is real life. And this is real life.  
9 We're in a real courtroom, we have a real judge, we  
10 have real people, and we have real laws. This is not  
11 CSI. It is not TV.

12 Now, Derringer has been charged with two very  
13 serious charges. He has been charged with murder and  
14 he has been charged with assault and battery with  
15 intent to kill. And I submit to you, ladies and  
16 gentlemen, he is not guilty of those.

17 Is this case really that simple? Is it that  
18 simple? Now, the State has the burden of proof. They  
19 have to prove to you beyond a reasonable doubt. And  
20 the judge is going to charge you when I finish talking.  
21 And listen to those charges. The defendant has nothing  
22 to prove. You don't have to prove that you are  
23 innocent. When you come into this courtroom, you come  
24 in an innocent person. We don't have to ask questions,  
25 we don't have to put up a defense, we don't have to do

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1 anything. The State has the burden and it's a very  
2 heavy burden.

3 Now, the judge is also going to charge you  
4 reasonable doubt. Now, if you go back to your jury  
5 room and you say, well, you know, I'm not sure about  
6 this, or, you know, maybe it could be this, or, you  
7 know, maybe, would've, could've, should've, that is  
8 reasonable doubt. And that's also common sense. One  
9 thing you-all brought with you today is your common  
10 sense.

11 Now, we heard that Danny Agerson, L.A., he  
12 started this fight. He was irate that night. He was  
13 out of control. He is trying to fight security, he is  
14 trying to fight the DJ, he fought the woman. He was  
15 trying to take his shirt off to fight the bouncer.  
16 Then his friends, they come in and they want to fight  
17 all the bouncers. This is what started the fight. And  
18 he is on a rage. Danny Agerson is out of control.

19 And when this fight breaks out, all his friends  
20 come. They all get involved. And then they finally  
21 get him out of the club. And his friends were out  
22 there with him. Now, all these people, they're all  
23 hotheads, they all want to fight, and there's fighting  
24 going out [phonetic] outside.

25 Shots ring out and 911 is called. The police

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1 are there within minutes. Minutes. And as they said,  
2 everybody scattered. Well, if they're Danny's friends,  
3 why aren't they there to help him? Why do they leave?  
4 Do they leave with the gun? Do they -- why are they  
5 afraid? Why do they take off? What did those people  
6 have to hide? They don't stay and help their friend,  
7 they bolt. There are so many people out there.

8 And Mr. Crider said, well, we check people when  
9 they come in for guns and we scan them and we check  
10 their pockets. But the State wanted you to believe  
11 that the only gun out there was Derringer Young. Those  
12 people started a fight and the minute the cops came,  
13 they took off. Why? Why is Danny not here? We don't  
14 know. There's been no evidence whatsoever of any  
15 threats made by him. Why isn't Danny here? We don't  
16 know. We don't know what he's got to hide. He could  
17 have easily have had a gun that night. We don't know.

18 Now, Josh Crider, when he came in, he said he  
19 was a bouncer. They had eight bouncers there that  
20 night and this fight still got out of control. That  
21 tells you how this fight was. Now, he called 911. And  
22 you're going to have the tape in the jury room. Please  
23 listen to it again. When he is talking to 911 he is  
24 saying, my God, they're throwing chairs, they're  
25 throwing tire irons, they're throwing chains.

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1           It is out of control outside. And there are  
2 people out there. Now, when the State showed you the  
3 pictures of the scene, they -- it was taken at daytime.  
4 You'll have these pictures back with you. And, look,  
5 these are pictures during the day. Think of this place  
6 at night with cars. We don't even -- and the pictures  
7 that we do have, yes, it's lit out there but that's  
8 when all the police cars are there. We need a picture  
9 of what it looked like that night. It was dark out  
10 there. There are a lot of people in that parking lot,  
11 and he's afraid.

12           Danny was so -- excuse me, not Danny. Mr.  
13 Crider was so afraid inside, and he's a security guard.  
14 He got behind the bar. And he said, I got behind the  
15 bar; this place was going crazy. And it was still  
16 going crazy when he was outside. There are people  
17 going everywhere. Some people are running, some people  
18 are staying. There's a lot of confusion in that  
19 parking lot. And Mr. Crider wanted you to believe,  
20 well, it was very well-lit. Well, it's at night. And  
21 he said -- the solicitor just said, he said, well, he  
22 had on light pants. Well, listen to the 911 tape. In  
23 the 911 tape he said he had on blue jeans. And that  
24 the reason is, because it was dark out there. It  
25 wasn't that light.

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1           He then says that Derringer got into a car and  
2           then got out of the car and went up and approached Mr.  
3           Maxwell. Well, listen to the tape and the sequence of  
4           events. He is saying that he sees Mr. Young shoot  
5           Danny Agerson and slowly walk away. From the time on  
6           the 911 tape from the first shot to the second shot was  
7           very fast. There was no possibility, from what he  
8           said, that he could have slowly walked away, gotten  
9           into a car, then got out of the car. That doesn't make  
10          sense. Please listen to the tape.

11                 We also don't know what words were spoken  
12          between Mr. Maxwell and Mr. Young. We don't know if  
13          Mr. Maxwell had a gun. We don't know, because  
14          everybody left. We don't know. We don't know if he --  
15          if Mr. Young was threatened.

16                 Now, 911 doesn't lie. He also talks about a  
17          white-and-black hat. Look at that hat. It's very  
18          distinguishable. It's got an A on it. None of that  
19          was disclosed.

20                 Now, he came in and he said, which was  
21          interesting, I'm testifying because I'm a good citizen.  
22          Well, you know -- and thank me for what I did. He,  
23          first of all, called 911 because he was scared, he was  
24          out of control. That's why it happened. He came in  
25          here as a good citizen because he wants a downward

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1 departure in his sentence. Was he a good citizen when  
2 he was conspiring to money-launder? Was he a good  
3 citizen when he was conspiring to sell cocaine? He  
4 wants you to think he is coming in here to just help  
5 the community. Well, he wasn't helping them then.

6 Mr. Wetmore asked him were you promised anything  
7 and he said no. Well, then I had to remind him, well,  
8 isn't it true that what you testify today is going to  
9 help you lower your sentence. He said, well, yes,  
10 that's what I'm hoping for; I do hope for that. And  
11 that is a promise.

12 And that came to light also when I asked him and  
13 I played the tape and I was telling him about a tape  
14 and I said, well, you say the car is heading towards  
15 the air force base; I've got more gunshots now. And  
16 when I asked him he goes, well, you know, maybe. But  
17 then Mr. Wetmore gets up and says, oh, you didn't hear  
18 anymore gunshots, did you -- and he's like, thinking  
19 I've got to say what he wants me to say, he's the one  
20 who's going to write the letter for me -- no, I did not  
21 hear more gunshots. Listen to that tape. He says, I  
22 hear more gunshots. There were more guns out there  
23 that night.

24 Now, Renardo Smalls: look at his demeanor when  
25 he testified. The State wants you to believe that this

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1 statement that he gave were his words. The judge  
2 couldn't get him to answer a complete sentence on the  
3 stand. He couldn't get him to say yes or no but the  
4 officer wants you to believe at eight o'clock in the  
5 morning, after he had been out drinking all night, that  
6 these are his words. Do you think he's this  
7 articulate? It's awful coincidental that by then the  
8 police knew exactly what happened and he says exactly  
9 what the police wants. We don't even know if he can  
10 read.

11 Look at this statement. Do you think these are  
12 the words that came out of his mouth? He's scared to  
13 death. They're taking GSR off his hands. He knows  
14 that he could be charged. He knows that. He's going  
15 to say whatever the police wants. They type it up and  
16 he signs it.

17 And the officer said, well, I didn't smell any  
18 alcohol on him at all. This happened and he had been  
19 out drinking all night. Common sense tells you that  
20 he's going to smell of alcohol. I guarantee if he  
21 would have been stopped, and not for this incident, he  
22 would have been charged with DUI. And they were sure  
23 going to smell alcohol then.

24 Now, crime scene -- this is a very serious case.  
25 It's a murder case. It doesn't get more serious than

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1 this. When Officer Bunker arrived on the scene she  
2 said there were ten to twenty police officers already  
3 there. Well, what did they do? Basically what they  
4 did at the crime scene was nothing relevant to this  
5 case. Did they talk to any witnesses? No. They said,  
6 well, there were none out there. You're not going to  
7 get me to believe that there was not one person they  
8 couldn't have talked to to say, stop, can you tell me  
9 what happened; can we get it -- can you do this.

10 There were eight bouncers. You know they were  
11 still in the bar. Not everybody left. They didn't  
12 even try to talk to each other. Once that car was  
13 stopped, the case was over. They never even went in  
14 the bar to see what happened. You know when the  
15 shooting took place, probably people ran inside to get  
16 away. Go in there and look. At least look, talk to  
17 other people, say, did anybody else see any guns out  
18 here. Ask people.

19 Take pictures of the chains that were thrown and  
20 the pipes that were thrown. Take pictures of the  
21 chairs. Take pictures that let the jury know exactly  
22 what happened out there that night. Have people look  
23 to see -- look under cars. See if there are other  
24 guns. Go in the club and look and see if guns were  
25 hidden. Do something. You have twenty people out

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1 there. Plus there's three crime scene people besides  
2 the ten to twenty police officers.

3 Now, what did they do? Well, unfortunately,  
4 they lost some evidence. They lost some page of the  
5 crime scene report. They had pictures of items that we  
6 don't know where they are, where they come from.  
7 There's a misfired bullet. Well, that's pretty  
8 important in a shooting case. Where did this misfired  
9 bullet come from? Document it. Take a picture. That  
10 is your job.

11 They waited three years to send a hair off the  
12 gun to SLED. Now, that's pretty important. Just by  
13 luck it came back that it was a dog hair. What if that  
14 hair on the gun was Renardo Smalls'? That could have  
15 been very important. Do your job.

16 And the explanation of, well, SLED only pays for  
17 a certain amount of evidence, was ridiculous. This is  
18 a murder case. All that was sent to SLED was GSR, DNA  
19 on a piece of gun, and some shell casings. And you're  
20 not going to tell me that SLED won't take more than  
21 that.

22 It's also -- I mean, and the State didn't go  
23 over this with you, because he had no gunpowder residue  
24 on his hands. They took it. I asked them, I said, so  
25 you take gunpowder residue off the front of your hand,

1 the bottom. So that's four tests. They said he fired  
2 five times at close range. There should have been  
3 something on his hands. They said, well, you know, you  
4 have up to four hours. They arrested him three minutes  
5 after this incident. Three minutes. It still would  
6 have been on his clothes. Test his clothes. If he  
7 went up and shot, it would have been on his clothes.  
8 You can't -- I'm sure in two minutes he didn't go in --  
9 there was no evidence of a towel in the car. Putting  
10 your hands in your pocket that short of time isn't  
11 going to take every single bit of gunpowder residue.  
12 And that is important. None were on his hands. None.

13 There were no fingerprints of his on the gun.  
14 And they said, well, the gun didn't have any prints; I  
15 eyeballed it and I didn't see any. Well, they said  
16 there was DNA, they had tested for that. It wasn't  
17 his.

18 Test his clothes. Take his clothes to SLED and  
19 test them to see if there's gunpowder residue on his  
20 clothes. Take Renardo Smalls' clothes and see if  
21 there's gunpowder residue on his. Schmekia [phonetic],  
22 she's -- take hers. Also, test the car. I said, well,  
23 can you get gunpowder residue off the car seats. He  
24 said, well, yes. Well, if you're in the car and you're  
25 wiping your hands on the car seats, there would have

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1           been gunpowder residue. Check it. Check this. This  
2           is important. Check it.

3                     That's CSI. They are crime scene. They are  
4           trained to do that and South Carolina has the  
5           technology to do this. And when somebody is charged  
6           with the crime of murder, please do what you need to  
7           do.

8                     Now, Mr. DeFreeze from SLED came in. And he is  
9           positive he's never made a mistake in his whole entire  
10          life, that the shell casings that were found at the  
11          scene matched that gun. Well, he also said, though,  
12          that he didn't test it with another gun, do a blind  
13          test to see. But what they did is they sent him the  
14          police report: we found three shell casings, this gun,  
15          and the gun was thrown in the pavement. See if it  
16          matches.

17                    Well, my God, I can get that to match; you've  
18          already told me what happened. If you want a real  
19          reason and a real, honest-to-God test, then send --  
20          don't send the police report. Say, figure it out,  
21          you're a scientist, did these shell casings come from  
22          the most common gun in America, a nine millimeter. But  
23          when you say, well, it was thrown on the pavement -- he  
24          comes in, well, it looks like it was thrown on the  
25          pavement. Well, hello. I can do that. It's like

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1 giving somebody the answers to a test. Let them do it  
2 at the crime scene lab without telling him what  
3 happened. No wonder he's always right.

4 Now, Mr. Clayton, he is a drug user, dead-beat  
5 dad, who is doing child support. And he escapes while  
6 he's doing child support. And it was like, well, yeah,  
7 I just walked off. Well, if he's caught at the Airport  
8 Inn, where is he going? He escaped because he didn't  
9 want to be in jail.

10 I mean, he doesn't -- he's a jailhouse snitch.  
11 Anybody in there for a long time -- and he's a felon.  
12 He knows. You go in, you're in there for ages. You  
13 look at their police report. And everybody does that.  
14 There's nothing else to do at the jail. And they know  
15 everybody's case that is in the jail. You read their  
16 police reports. Everybody talks about it. You call up  
17 the solicitor, you call up the detective, somebody  
18 threatened me, I want out of jail, and I'll cooperate.  
19 It happens all the time. And that's exactly what  
20 happened. He wanted out of jail then, which he proved  
21 because he had already escaped. And he doesn't want to  
22 go back to jail. He's looking at three years. How  
23 believable is he?

24 Shemera Brown, where is she? There has been no  
25 evidence that she was threatened in this case. The

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1 solicitor put all these bullets out to make a little  
2 show. What does she have to be afraid of? What does  
3 she -- what happened that night? It would be good to  
4 have her tell you what happened. What's her  
5 involvement in this? Does she know more? She could  
6 have come in here. There's no evidence whatsoever that  
7 she was threatened.

8 Now, when you look at all the things in this  
9 case that are missing, you make this case not as simple  
10 as I said. It is not a simple case. There are a lot  
11 of doubts in this case. There are a lot of motives for  
12 lying in this case. There are a lot of motives for  
13 people testifying the way they did in this case.

14 Now, listen to the judge's charges. And when  
15 you go back in that jury room and you deliberate and  
16 you still believe that he's the shooter, then listen to  
17 the charge of voluntary manslaughter. What was it  
18 Maurice Maxwell said to him? What was their  
19 conversation? Did Maurice Maxwell threaten him? Did  
20 he have a gun? Listen to the charge of assault and  
21 battery of a high and aggravated nature. We don't know  
22 what the wounds were to Danny. He could have been  
23 airlifted out. He had been fighting. He fought a  
24 bouncer. He fought a DJ. He could have had wounds  
25 from everywhere. There's no bullets that have been

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1 brought in. We don't -- he was probably beat up before  
2 he got outside.

3 A lot of things weren't done in this case. And,  
4 you know, I think all of us in here -- you know, we can  
5 all say and pretty much I think guarantee that we're  
6 not going to commit a crime. But not one of us in this  
7 courtroom can say with guaranteed certainty that you  
8 won't ever be charged with a crime. And then all of a  
9 sudden, it's not going to be so simple.

10 We're going to want the police to cross all  
11 their I's and dot all their T's. We're going to want  
12 people to come into the courtroom and testify without  
13 motive. That is what Derringer Young is asking today.  
14 That is what he's asking you to do. Because we never  
15 know when it can happen to us. Thank you.

16 Judge, may we approach before you charge the  
17 jury?

18 THE COURT: You may.

19 [Whereupon, an off-the-record bench conference  
20 is held]

21 THE COURT: Ladies and gentlemen, there is a  
22 matter of law that I must take up outside of your  
23 presence.

24 Do not begin your deliberations. Do not discuss  
25 this case amongst yourselves.

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1                   When you return, I will instruct you on the law  
2 applicable to this case.

3                   Please rise for the jury.

4                   [Whereupon, the jury exits the courtroom at  
5 10:32 a.m.]

6                   MS. PROCTOR: Your Honor, I apologize for --

7                   THE COURT: Hold on one second.

8                   Thank you. Please be seated.

9                   All right. At the sidebar -- now that we are  
10 outside of the presence of the jury, at the sidebar Ms.  
11 Proctor brought to the Court's attention that since I  
12 have included the lessor included voluntary  
13 manslaughter, that -- her concern was under Belcher as  
14 to the inference of malice.

15                   Is that correct, Ms. Proctor?

16                   MS. PROCTOR: Yes. Yes, Your Honor.

17                   THE COURT: And what is the State's --

18                   Well, Ms. Proctor, do you believe that since I  
19 am charging the lessor included voluntary manslaughter  
20 that I then cannot charge malice, the inference of  
21 malice?

22                   MS. PROCTOR: Yes, Your Honor. And I have it --

23                   [Whereupon, Ms. Proctor reviews documents]

24                   [Whereupon, Ms. Proctor and Ms. Mullaney confer]

25                   THE COURT: What's the State's position, Mr.

1 McCoy? Have you had an opportunity to review --

2 MR. MCCOY: Judge, I have read this case and I  
3 read it -- I was just going over it right now. I  
4 probably read it a few months ago.

5 But it was my understanding that self-defense  
6 was a part of that and that's why it was a problem with  
7 the charge.

8 But if I can have two seconds, Judge, I can  
9 formulate my argument a little better for you.

10 THE COURT: Thank you.

11 [Whereupon, Mr. McCoy reviews documents]

12 MS. PROCTOR: But I think it -- I think it also  
13 goes to self-defense, but I think it also goes to  
14 provocation. And I think if you charge voluntary  
15 manslaughter, that --

16 [Whereupon, Ms. Proctor reviews documents]

17 MR. WETMORE: Judge, I've briefly reviews this.  
18 I think the chief thing is that there's no component of  
19 self-defense in this case --

20 MS. PROCTOR: And I --

21 MR. WETMORE: -- I think that was the sticky  
22 point in that case. And that's not -- that's not the  
23 issue here. I think that the use of a gun certainly is  
24 something that they can use to infer malice --

25 THE COURT: Ms. Proctor, my reading of Belcher

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1 is that the -- where the use of the weapon would be  
2 lawful, such as in the self-defense issue, that that's  
3 what would justify not including the inference.

4 So my question to you is do you believe that by  
5 including voluntary manslaughter, that the use of the  
6 weapon then becomes lawful?

7 MS. PROCTOR: I thought that the holding was  
8 that the use of a deadly-weapon-implied malice  
9 instruction has no place in a murder prosecution where  
10 evidence is presented that would reduce, mitigate,  
11 excuse, or justify a killing.

12 And I think the word reduce -- to me, my  
13 understanding was it's reducing the murder charge to  
14 voluntary manslaughter.

15 It says: where a jury asked -- is asked to  
16 consider a lesser included offense of murder for a  
17 defense, Belcher asserts the permissive inference  
18 charge violates our common law and our constitutional  
19 prohibition against charging juries on the facts.

20 THE COURT: All right.

21 MR. WETMORE: Judge, the only thing I would say  
22 in response is in that case, it's my understanding the  
23 jury had the option of believing there was a self-  
24 defense situation, which a gun would have been  
25 permissible. That's not the case here. So --

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1 MS. PROCTOR: Well, I --

2 MR. WETMORE: -- it's not a --

3 MS. PROCTOR: -- but I don't think they say it's  
4 only used --

5 THE COURT: Okay.

6 MS. PROCTOR: -- in self-defense.

7 THE COURT: All right. Please let Mr. Wetmore  
8 make his argument --

9 MS. PROCTOR: Yes, Your Honor.

10 THE COURT: -- and then I will allow you --

11 MR. WETMORE: That's it, Judge.

12 The facts are so different in this case. It's  
13 not -- self-defense is not an issue in this case and so  
14 therefore even if the jury does find him guilty of  
15 voluntary, it doesn't excuse the weapon. And so it's  
16 just not the same case. The self-defense component is  
17 not in this case, and that was what was at issue in  
18 Belcher.

19 MS. PROCTOR: And, Your Honor, I agree that this  
20 case is self-defense. But it's my understanding that  
21 it is not to be used just in self-defense cases.

22 THE COURT: All right. My malice does not  
23 include the permissive inference, based upon the  
24 Court's inclusion of the lessor included, based upon my  
25 reading of Belcher. Thank you.

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MOTION FOR A MISTRIAL

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MS. PROCTOR: And, Your Honor, one thing.

I objected during Mr. McCoy's closing argument when he was telling the jury that -- inferring that witnesses were not here because he had threatened them. And at this time, Your Honor, I think I'm going to ask for a mistrial. I think those were improper comments. I think what happened then is he shifted the burden and I had to get up there then and say that they were not threatened. And I think that they reflected the trial with unfairness and it violated his due process right. And I think there's case law on this. And he put in evidence of threats. There was no evidence at all in this trial that he's had any contact with any of the witnesses. And when he put bullets out there to show that he -- they didn't come in because he was going to kill them, I think is highly prejudicial and denied Mr. Brown -- Mr. Young a fair trial.

THE COURT: At this time I'm denying your motion for a mistrial.

The Court instructed, prior to closing arguments, that the information contained and the arguments contained were not to be considered evidence in any way. At your objection to the State's closing, the Court then reminded the jury that -- of that

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1 instruction. I do not believe that the closing  
2 argument by the State rose to the level to require a  
3 mistrial.

4 Note your exception for the record. Anything  
5 further?

6 MS. PROCTOR: No, Your Honor.

7 MR. WETMORE: Nothing from the State, Your  
8 Honor.

9 THE COURT: All right. Let's bring in the jury.

10 [Whereupon, the jury enters the courtroom at  
11 10:43 a.m.]

12 THE BAILIFF: All seated, Your Honor.

13 THE COURT: Thank you. Please be seated.

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CHARGE OF THE COURT

1  
2 THE COURT: Ladies and gentlemen, we've reached  
3 the part of the trial where I will instruct you on the  
4 law applicable to this case.

5 I remind you that during this trial you and I  
6 have had certain duties to perform. As the trial  
7 judge, it is my responsibility to preside over the  
8 trial of this case and I have the duty to rule on the  
9 admissibility of evidence offered during this trial.

10 You are to consider only the competent evidence  
11 before you. If there was any testimony that was  
12 ordered stricken from the record, you must disregard  
13 that testimony. You are to consider only the testimony  
14 that has been presented to you from the witness stand,  
15 any exhibits which have been made a part of the record  
16 in this case, as well as the stipulations of counsel.  
17 I have the additional duty to charge you on the law  
18 applicable to this case. As the presiding judge, I am  
19 the sole judge of the law in this case and it is your  
20 duty as jurors to accept the law and apply the law as I  
21 state it to you now. If you have any idea as to what  
22 the law is or what the law ought to be and it does not  
23 agree with what I am about to tell you, you must  
24 abandon your own idea because you are sworn to accept  
25 the law and apply the law as I state it to you now.

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1           In every case tried in this court before a jury,  
2           the jury becomes the sole and exclusive judge of the  
3           facts in this case. A trial judge cannot comment on or  
4           make any statement to a trial jury about the facts in  
5           this case. Since you, the jury, are the sole judge of  
6           the facts in this case, you are not to infer from what  
7           I have said during the progress of this trial, in  
8           ruling upon the admissibility of evidence in this case,  
9           or anything I say now during the course of the  
10          instruction, that I have any opinion about the facts in  
11          this case. The law simply does not allow me to have an  
12          opinion about the facts in this case. This is a matter  
13          solely for you, the jury, to determine. As jurors, it  
14          is your duty to determine the effect, value, and weight  
15          and the truth of the evidence that has been presented  
16          throughout this trial.

17                 The indictments charge the defendant with murder  
18                 and assault and battery with intent to kill. I remind  
19                 you the fact that the defendant was arrested, charged,  
20                 and indicted in this case is not evidence in this case  
21                 and cannot be considered by you as evidence in this  
22                 case. Nor does it create any presumption or inference  
23                 of guilt. This is the document that is simply the  
24                 formal written instrument which contains the charges  
25                 made against the defendant. It is the formal document

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1 by which this case is brought into this Court. The  
2 indictments in this case allege two different offenses  
3 against the defendant. The charges are murder, assault  
4 and battery with intent to kill. Each indictment  
5 charges a separate and distinct offense. You must  
6 decide each indictment separately, on the evidence, and  
7 the law applicable to it, uninfluenced by your decision  
8 as to the other indictment. The defendant may be  
9 convicted or acquitted on any or all of the offenses  
10 charged. You will be asked to write a separate verdict  
11 of guilty or not guilty for each indictment. The  
12 defendant has pled not guilty to each indictment and  
13 that plea puts the burden on the State to prove the  
14 defendant guilty. A person charged with committing a  
15 criminal offense in South Carolina is never required to  
16 prove himself innocent.

17 I charge you it is an important rule of law that  
18 a defendant in a criminal trial, no matter what the  
19 seriousness of the charge may be, will always be  
20 presumed innocent of the crime for which the indictment  
21 was issued unless guilt has been proven by evidence  
22 satisfying you of that guilt beyond a reasonable doubt.  
23 This presumption of innocence does not end when you  
24 begin your deliberations but it accompanies the  
25 defendant throughout the trial until you reach a

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1 verdict of guilt based on evidence satisfying you of  
2 that guilt beyond a reasonable doubt.

3 The presumption of evidence [sic] is like a robe  
4 of righteousness placed around the shoulders of the  
5 defendant, which remains with the defendant until it  
6 has been stripped from the defendant by evidence  
7 satisfying you of the defendant's guilt beyond a  
8 reasonable doubt. The presumption of innocence is not  
9 mere legal theory. It is not a legal phrase. It is a  
10 substantial right to which every defendant is entitled  
11 unless you, the jury, are satisfied from the evidence  
12 of the defendant's guilt beyond a reasonable doubt.

13 The State has the burden of proving the  
14 defendant guilty beyond a reasonable doubt. Some of  
15 you may have served as jurors before in civil cases  
16 where you were told that it was only necessary to prove  
17 that a fact is more likely true than not true, such as  
18 by a greater weight or a preponderance of the evidence.  
19 In criminal cases, the State's proof must be more  
20 powerful than that. It must be beyond a reasonable  
21 doubt. Proof beyond a reasonable doubt is proof that  
22 leaves you firmly convinced of the defendant's guilt.  
23 There are very few things in this world that we know  
24 with absolute certainty, and in criminal cases the law  
25 does not require proof that overcomes every possible

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1           doubt. If based upon your consideration of the  
2           evidence you are firmly convinced that the defendant is  
3           guilty of the crime charged, you must find the  
4           defendant guilty. If, on the other hand, you think  
5           there's a real possibility that the defendant is not  
6           guilty, you must give the defendant the benefit of the  
7           doubt and find him not guilty.

8                       There are two types of evidence which are  
9           generally presented during a trial: direct evidence  
10          and circumstantial evidence. Direct evidence is the  
11          testimony of a person who claims to have actual  
12          knowledge of a fact, such as an eyewitness. It is  
13          evidence which immediately establishes the main fact to  
14          be proved. Circumstantial evidence is proof of a chain  
15          of facts and circumstances indicating an existence of a  
16          fact. It is evidence which immediately establishes  
17          collateral facts from which the main fact may be  
18          inferred. Circumstantial evidence is based on  
19          inference and not on personal knowledge or observation.  
20          The law makes absolutely no distinction between the  
21          weight or value to be given either direct or  
22          circumstantial evidence, nor is a greater degree of  
23          certainty required of circumstantial evidence than of  
24          direct evidence. You should weigh all of the evidence  
25          in this case and after weighing all of the evidence if

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1 you are not convinced of the guilt of the defendant  
2 beyond a reasonable doubt, you must find the defendant  
3 not guilty.

4 Necessarily, you must determine the credibility  
5 of the witnesses who have testified in this case.  
6 Credibility simply means believability. It becomes  
7 your duty as jurors to analyze and to evaluate the  
8 evidence and determine what evidence convinces you of  
9 its truth. In determining the believability of the  
10 witnesses who have testified, you may believe one  
11 witness over several witnesses, several witnesses over  
12 one witness. You may believe part of the testimony of  
13 a witness and reject the remaining part of the  
14 testimony of that same witness. You may believe the  
15 testimony of a witness in its entirety or you may  
16 reject the testimony of a witness in its entirety. You  
17 may consider whether the testimony of the witness -- or  
18 the witness has exhibited to you any interest, bias,  
19 prejudice, or other motive in this case. You may also  
20 consider the appearance and the manner of a witness  
21 while testifying.

22 The rules of evidence ordinarily do not permit  
23 witnesses to testify to opinions or to conclusions. An  
24 exception to this rule exists for witnesses we call  
25 expert witness -- witnesses. A witness who by

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1 education or experience has become expert in some art,  
2 science, profession, or calling may state an opinion as  
3 to relevant and material matter in which the witness  
4 claims to be an expert, and they also state the reasons  
5 for that opinion. You should consider any expert  
6 opinion received in evidence in this case and, like any  
7 other evidence, give it the weight you think it  
8 deserves. If you decide that the opinion of an expert  
9 witness is not based on sufficient education or  
10 experience, or if you conclude that the reasons given  
11 in support of the opinion are not sound, or that the  
12 opinion is outweighed by other evidence, you may  
13 disregard the opinion entirely. An expert witness'  
14 testimony is to be given no greater weight than that of  
15 any other witness simply because that witness is an  
16 expert. Further, you are not required to accept an  
17 expert's opinion, even though it is not contradicted.

18 I instruct you and emphasize the fact that a  
19 defendant did not testify is not a factor to be  
20 considered by you in any way in your deliberation, and  
21 in your consideration, on the question of the guilt of  
22 the defendant. It must not be considered by you in any  
23 way whatsoever. A defendant has the constitutional  
24 right to remain silent and the assertion of this right  
25 must not be considered by you in your deliberations. I

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1 repeat: under your oath, you are to draw no conclusion  
2 whatsoever from the fact that the defendant did not  
3 testify in this case. The fact that the defendant did  
4 not testify should not even be discussed in the jury  
5 room. The burden of proof, as I have stated to you, is  
6 on the State. The defendant is not required to prove  
7 his innocence. The burden of proof remains on the  
8 State to prove guilt beyond a reasonable doubt.

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

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1 person in the past.

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

10 In order to establish criminal liability,  
11 criminal intent is required. For example, the mental  
12 state required to be proven by the State for a  
13 particular crime might be purpose, intent, knowledge,  
14 recklessness, or criminal negligence. Criminal intent  
15 must be proven by the State beyond a reasonable doubt.  
16 Criminal intent is always a matter that must be  
17 determined by the jury from the circumstances  
18 surrounding the situation. There is no way to prove  
19 intent to a mathematical certainty. There is no way  
20 medical science can dissect a person's brain and  
21 determine what the person had in mind, so the law says  
22 that criminal intent may be inferred from the  
23 circumstances that were shown to have existed. This is  
24 how you make a determination of whether or not the  
25 element requiring intent was present. It is not

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1 necessary to establish intent by direct and positive  
2 evidence. But intent may be established by inference  
3 in the same way as any other fact, by taking into  
4 consideration the acts of the parties and all the facts  
5 and circumstances of this case. The criminal intent is  
6 a mental state. It is a conscious wrongdoing. It is  
7 up to you to determine what the defendant intended to  
8 do, based upon the circumstances showing to have  
9 existed. Criminal intent can arise from action or a  
10 failure to act. It may arise from negligence,  
11 recklessness, or an indifference to duty or to  
12 consequence that is considered by the law to be the  
13 equivalent of criminal intent.

14 The defendant is charged with murder. The State  
15 must prove beyond a reasonable doubt that the defendant  
16 killed another person with malice aforethought. Malice  
17 is hatred, ill will or hostility towards another  
18 person. It is the intentional doing of a wrongful act  
19 without just cause or excuse, and with an intent to  
20 inflict an injury, or under circumstances that the law  
21 will infer an evil intent. Malice aforethought does  
22 not require that malice exists for any particular time  
23 before the act is committed, but malice must exist in  
24 the mind of the defendant just before and at the time  
25 that the act is committed. Therefore, there must be a

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1 combination of the previous evil intent and the act.  
2 Malice is shown when a person speaks words which  
3 express hatred or ill will for another or when the  
4 person prepared beforehand to do the act which was  
5 later accomplished.

6 Ladies and gentlemen, if you find that the State  
7 has failed to prove beyond a reasonable doubt that the  
8 defendant committed murder, you may consider whether  
9 the State has proved beyond a reasonable doubt that the  
10 defendant committed voluntary manslaughter. To prove  
11 voluntary manslaughter, the State must prove beyond a  
12 reasonable doubt that the defendant took the life of  
13 another in the sudden heat of passion, based on  
14 sufficient legal provocation. Both heat of passion and  
15 sufficient legal provocation must be present at the  
16 time of the killing to constitute voluntary  
17 manslaughter. Sudden heat of passion may, for a time,  
18 affect a person's self-control and temporarily disturb  
19 a person's reason. The sudden heat of passion must be  
20 the type that would make an ordinary person unable to  
21 coolly reflect on his actions and would produce an  
22 uncontrollable impulse to do violence. Sufficient  
23 legal provocation must be the type that would make a  
24 person of ordinary reason and caution become enraged  
25 and to lose control temporarily. The provocation

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1 needed for voluntary manslaughter must come from some  
2 act of or related to the victim. Words alone, however  
3 vulgar or insulting, are not enough to be legal  
4 provocation. Where death is caused by the use of a  
5 deadly weapon, the words must be accompanied by some  
6 overt act, threatening act, which could have produced  
7 the heat of passion. The exercise of a legal right, no  
8 matter how offensive it is to another, is never  
9 sufficient legal provocation for voluntary  
10 manslaughter. If the heat of passion had cooled or if  
11 there was enough time between the provocation, if any,  
12 and the killing, for the passion of a reasonable person  
13 to cool, the killing would not be voluntary  
14 manslaughter. In deciding whether a reasonable person  
15 would have had enough time to cool off, you should  
16 consider all the circumstances surrounding the killing.  
17 You may consider the nature of the provocation, if any,  
18 the defendant's mental and physical state, and the  
19 circumstances and relationships between the parties.  
20 The defendant has been charged with assault and  
21 battery with intent to kill. In order to prove assault  
22 and battery with intent to kill, the State must prove  
23 beyond a reasonable doubt that the defendant committed  
24 an unlawful act of violent -- of a violent nature to  
25 the person of another with malice aforethought. An

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1 assault occurs when a person unlawfully attempts or  
 2 offers to commit a violent injury upon another person  
 3 and had the apparent ability to complete the attempted  
 4 injury. An assault is the intentional creation of a  
 5 reasonable fear of immediate bodily harm. It is not  
 6 necessary that the attempted injury or harm actually  
 7 take place. For example, if I walked up to you and  
 8 when we are within arm's reach I draw back to hit you,  
 9 that is an assault. A battery is the unlawful touching  
 10 of another person by a person who has committed the  
 11 assault. An unlawful touching can be caused by a part  
 12 of the accused's body or by any object the accused puts  
 13 in motion. A battery is the completion of the assault  
 14 by using or applying force to another person, however  
 15 slight, in a rude, angry or resentful manner without  
 16 legal justification. Using my earlier example, if I  
 17 carry through the assault by hitting you, then that is  
 18 a battery.

19 If you find that the State has not proven that  
 20 the defendant is guilty of assault and battery with  
 21 intent to kill, you must then determine whether the  
 22 State has proved that the defendant is guilty of  
 23 assault and battery of a high and aggravated nature.  
 24 Assault and battery of a high and aggravated nature  
 25 includes all of the element of assault and battery with

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1 intent to kill except malice aforethought. In  
2 addition, the State must prove beyond a reasonable  
3 doubt an aggravating circumstance. Circumstances of  
4 aggravation include the use of a deadly weapon, the  
5 intent to commit a felony, the infliction of serious  
6 bodily injury, a great disparity between the ages or  
7 physical conditions of the parties, a difference in the  
8 genders of the parties, the taking of indecent  
9 liberties or familiarities with a female through the  
10 use of force, the purposeful infliction of shame and  
11 disgrace, and the resistance of lawful authorities.  
12 These are only examples of circumstances of -- excuse  
13 me. These are only examples of circumstances of  
14 aggravation.

15 Mere presence at the scene is not sufficient to  
16 prove someone guilty of a crime. A defendant's  
17 presence where a crime is being committed, or mere  
18 association with a person who commits a crime, does not  
19 make a defendant an accomplice or an aider or abettor  
20 of the person committing the crime. The burden is on  
21 the State to prove every element of the crime charged.  
22 If you find after reviewing all of the evidence that  
23 the State has proved that the defendant was only  
24 present at the scene of the crime and that they have  
25 not proved beyond a reasonable doubt any other

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1 participation in the crime, then you must find the  
2 defendant not guilty. The law is that proof of at the  
3 scene of the crime is not sufficient to find someone  
4 guilty.

5 Ladies and gentlemen, you will be asked to write  
6 a separate verdict for each of the indictments. And in  
7 no particular order, it's simply one must come first on  
8 the paper: in the Court of General Sessions, docket  
9 2008-GS-10-1082, we, the jury, find the defendant not  
10 guilty, or, we, the jury, find the defendant guilty, of  
11 murder, or voluntary manslaughter.

12 Mr. Foreperson, you must sign and date the  
13 verdict form, certifying that the decision is the  
14 unanimous decision of the jury.

15 Again, in no particular order: in the Court of  
16 General Sessions, docket 2008-GS-10-3646, we, the jury,  
17 find the defendant not guilty, or, we, the jury, find  
18 the defendant guilty of assault and battery with intent  
19 to kill, or assault and battery of a high and  
20 aggravated nature.

21 Again, you will sign that verdict form,  
22 indicating that decision is the unanimous decision  
23 of the jury.

24 Ladies and gentlemen, this will be the last time  
25 that I make this announcement to you. Do not begin

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1 your deliberations. Do not discuss this case amongst  
2 yourselves. We will be gathering the verdict forms, as  
3 well as the evidence that will come back to you. Once  
4 all of that has been gathered, the bailiff will bring  
5 that into your jury room indicating that you may then  
6 begin your deliberations.

7 Mr. Alternate, you have completed your service  
8 at this time to this case. I ask that you remain.  
9 They will escort you to a separate jury room and I will  
10 excuse you at an appropriate time.

11 Ladies and gentlemen, please remember my  
12 admonition. You will be given the information and the  
13 evidence in just a few moments.

14 Please rise for the jury.

15 [Whereupon, the jury exits the courtroom at  
16 11:03 a.m.]

17 THE COURT: Thank you. Be seated.

18 Any objection to, correction, addition to, the  
19 charges read? From the State?

20 MR. WETMORE: No objection.

21 I would like to take a look at the verdict form  
22 real quick, if you don't mind.

23 THE COURT: All right. Any objection to the  
24 charge as read?

25 MS. PROCTOR: No, Your Honor.

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VERDICT

1  
2 THE COURT: Mr. Foreman, I understand the jury  
3 has reached a verdict. If you'll please hand the  
4 verdict forms to the bailiff.

5 [Whereupon, the foreperson proffers documents to  
6 the bailiff. The bailiff proffers documents to the  
7 Court]

8 THE COURT: Thank you.

9 [Whereupon, the Court reviews documents]

10 THE COURT: Mr. Young, please rise.

11 [Whereupon, Mr. Young complies]

12 THE CLERK OF COURT: The verdict forms in the  
13 matter of the State of South Carolina versus Derringer  
14 L. Young, defendant, we, the jury, find the defendant  
15 guilty of assault and battery with intent to kill.  
16 Certified as a unanimous verdict by the foreperson on  
17 July the 21st, 2010.

18 Ladies and gentlemen of the jury, if this was  
19 your verdict, please raise your right hand.

20 [Whereupon, jurors comply]

21 THE CLERK OF COURT: Thank you.

22 Please let the record reflect that all twelve  
23 jurors raised your right hand.

24 I'll do the other verdict form. We, the jury,  
25 find the defendant guilty of murder. Certified as a

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1 unanimous decision by the foreperson on July 21st,  
2 2010.

3 Ladies and gentlemen of the jury, if this is  
4 your verdict, please raise your right hand.

5 [Whereupon, jurors comply]

6 THE CLERK OF COURT: Thank you. Please let the  
7 record reflect that all twelve jurors raised their  
8 right hand.

9 THE COURT: Thank you.

10 Anything further required of the jury? From the  
11 defendant?

12 MS. PROCTOR: No, Your Honor.

13 THE COURT: Thank you.

14 Anything further required of the jury? From the  
15 State?

16 MR. WETMORE: No, Your Honor.

17 THE COURT: Thank you.

18 Is the State prepared to go forward with  
19 sentencing at this time?

20 MR. WETMORE: Just about five minutes, Your  
21 Honor.

22 THE COURT: All right. Thank you.

23 Are you prepared --

24 MS. PROCTOR: Yes, Your Honor.

25 THE COURT: -- to go forward with sentencing at

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SENTENCING

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THE COURT: All right. Mr. Wetmore, I have heard the testimony. Is there anything additional from the State? I will need Mr. Young's prior conviction, criminal record.

MR. WETMORE: Judge, I would like to share with you his prior convictions. And then two of his family members would also like to address you, if this is an appropriate time.

THE COURT: All right.

MR. WETMORE: From his prior record we have a 2004 reckless, trespass, no driver's license, failure to stop for blue lights. And then in 2004 he was arrested for ABWIK and armed robbery and pled down to strong armed robbery. He got a YOA. I believe it was in 2005. And then since that, he's had a PWID cocaine, 2005. And in 2006 is a parol revocation. I guess that's on the YOA. Appears to have been released from the YOA shortly before this happened. So that's the extent of the prior record.

I know that the family does wish to briefly address you.

THE COURT: All right. I'll be happy to hear from anyone.

MS. JOHNSON: Thank you, Your Honor.

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1 think that filling up our prisons with these young  
2 people that have no hope in the future of getting out I  
3 think is going to eventually -- at some time prison is  
4 just going to turn into total mayhem. I think that you  
5 have to have something to look forward to and work  
6 towards, whether it's an education or a trade. And I  
7 think he has potential.

8 I would just ask that if you could be as lenient  
9 as possible on his sentence.

10 THE COURT: Does Mr. Young wish to address the  
11 Court?

12 MS. PROCTOR: No, Your Honor.

13 THE COURT: All right. Before I impose  
14 sentence, I wish to thank the attorneys, all the  
15 attorneys involved, Mr. McCoy, Mr. Wetmore, on behalf  
16 of the State, for your professionalism. I also wish to  
17 thank Ms. Proctor and Ms. Mullaney for your  
18 professionalism and your zealous -- very zealous  
19 representation of Mr. Young.

20 Mr. Young, it's the order of the Court on  
21 indictment 2008-GS-10-3646 that you be committed to the  
22 State Department of Corrections for a term of twenty  
23 years. That is concurrent to indictment 2008-GS-10-  
24 1082. It's the order of the Court, Mr. Young, based  
25 upon your previous record and the facts as the Court

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1 heard them, that you be committed to the State  
2 Department of Corrections for a term of life.

3 Good luck to you, Mr. Young.

4 We are in recess in this matter. Post-trial  
5 motions within ten days.

6 [JURY TRIAL CONCLUDES AT 2:09 P.M.]  
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STATE'S  
EXHIBIT

8

# NORTH CHARLESTON POLICE DEPARTMENT WITNESS STATEMENT

Page 1 Of 3 Complaint # 2007049488

Statement of Renardo Lebron Smalls Date of Birth 1-11986 Age 21

Home Address North Charleston, SC 29405 Home Phone 813-2109 Business Phone \_\_\_\_\_

Employer Unemployed Business Address \_\_\_\_\_

This statement is in reference to Homicide

Which occurs at Club 843 North Charleston, SC, on or about 11-22-2007

at approximately 0300 Hrs.

This statement is given 11-22-2007 (date) at 0800 (time) at North Charleston Police Department (Location)

Detective James Hill, is typing this statement for me at my request, in my own words as I tell it to him:

Me and my cousin (Derringer Young) were hanging out downtown with some friends. Everybody was talking about going to the party at Club 843 so we decided to go. We got to Club 843 at almost midnight. I was hanging out in the club chilling and talking to a girl and had been there for a while when a fight started in the club. There were people fighting the bouncers in the club, chairs was getting thrown it was bad, that's when the bouncers started telling everyone to get out of the club. I started looking for Derringer but I couldn't find him in the club. I got the door of the club and started walking towards my car and made it to the first set of cars and I heard one gunshot. I looked over my shoulder towards the club and saw Derringer and the girl they were walking towards my car. Derringer and the girl was behind me when I got almost to the front of my car I saw the other guy I don't know his name (the guy Derringer shot) walking towards us,

I have read the foregoing statement or have had it read to me and it is true and correct to the best of my knowledge. I have given this statement freely and voluntarily and have been provided a copy of my statement

Witness: Jm Hill 131

Witness: \_\_\_\_\_ Signature: Renardo Smalls

**NORTH CHARLESTON POLICE DEPARTMENT  
WITNESS STATEMENT**

when he got over to Derringer they started having words. That is when Derringer shot the guy. I don't remember how many shots he fired because I was scared and I have never seen anyone get shot before. I jumped in the car and then Derringer and the girl got in the car and we left. When we was driving off I was asking Derringer what was going on, he wasn't saying anything. We started going down Dorchester Road when the girl in the back seat saw the Police and said they turning around, she sounded like she was getting ready to cry. That's when Derringer rolled down the window and threw the gun out the window, when he threw the gun out of the window but he almost broke my window trying to get the gun. The Police turned on there blue lights so I stopped, I cant remember exactly were we were at on Dorchester Road but I know we got stopped in front of the shopping center near the Burger King.

Q: What was Derringer wearing?

A: Black shirt, gray or blue pants.

Q: What did the gun look like?

A: black.

Q: Have you seen Derringer with a gun before?

A: No

Q: Did you handle the gun he had tonight at anytime?

A: No

Q: Did you see the first guy get shot?

I have read the foregoing statement or have had it read to me and it is true and correct to the best of my knowledge. I have given this statement freely and voluntarily and have been provided a copy of my statement

Witness: Jim Kelly 131

Witness: \_\_\_\_\_ Signature: X Bernardo Smalls

**NORTH CHARLESTON POLICE DEPARTMENT  
WITNESS STATEMENT**

A: No

Q: The guy you saw Derringer shot what was he wearing?

A: I don't remember.

Q: Do you know the guy Derringer shot?

A: No

*End of Statement*  
*B.G. JMA*

I have read the foregoing statement or have had it read to me and it is true and correct to the best of my knowledge. I have given this statement freely and voluntarily and have been provided a copy of my statement

Witness: *JM Hill 131*

Witness: \_\_\_\_\_ Signature: *Bernardo smans*

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

**FILED**

2010 JUL 30 AM 11:14

IN THE COURT OF GENERAL SESSIONS  
FOR THE NINTH JUDICIAL CIRCUIT

JULIE J. ARMSTRONG  
CLERK OF COURT  
Warrant No(s): K-260697 and K-298451  
Charge(s): Murder and ABWIK

STATE OF SOUTH CAROLINA

BY MMA

vs.

DERRINGER YOUNG,

Defendant

**MOTION FOR A NEW TRIAL**

The Defendant, indicted for Murder and Assault and Battery with Intent to Kill, proceeded to trial before the Honorable Kristi Harrington on July 19, 2010. The jury returned a verdict on Wednesday, July 21, 2010 finding the Defendant guilty of both charges. The Court sentenced the Defendant to twenty years on the Assault and Battery with Intent to Kill and life without parole on the Murder.

The Defendant hereby moves for a new trial on the following bases:

1. All defense motions made, but denied;
2. All defense objections made, but overruled

Defense counsel submits the following in support of this motion:

1. After swearing the jury panel it came to the trial court's attention that one of the jurors knew the lead detective's family. The defense asked the court to have this juror excused and be replaced by the alternate. Defense counsel told the court had they know this fact when choosing the juror they never would have seated this juror since a major part of the Defendant's case was attacking the police for poor investigation. The defense believed this juror could not be fair and impartial. This motion was denied by the trial court.
2. One of the pre-trial motions of the defense was a motion for an evidentiary hearing on the admissibility of the evidence regarding the ballistics. The defense asked the trial court to not allow the State to mention in opening statements to the jury the results of the ballistics report until after the State v. Council hearing. This motion was denied.
3. Two of the State's witnesses that testified were impeached by the Defense concerning their prior records. The defense merely asked if they were convicted of such crime. On direct examination, the State was allowed to

explain the circumstances surrounding their convictions over the defense's objections. "The details of a crime of which a witness has been convicted, whether the details could be considered mitigating or aggravating, are not admissible; the witness has "already been afforded the opportunity to defend himself against that charge and his conviction is conclusive." See *State v. Gregg*, 230 S.C. 222, 95 S.E. 2d 255.

4. The admission of Renardo Smalls's written statement. Mr. Smalls never denied making the statement to the police he just could not remember giving it. This statement should not have been entered into evidence under SCRE 613(b).
5. Mr. Frank Defreese should not have been allowed to offer his opinion that the cartridges recovered in this case were fired from the same firearm. The Defense believes his ballistics opinion should have been limited to stating "more likely than not". The science in this area has come under scrutiny since 2008. Further scientific studies need to be done in this area. His testing of this gun was also never done with a blind test with other similar gun.
6. The court erred in not granting a mistrial due to the improper and inflammatory statements made by the Solicitor in his closing argument. The Solicitor implied, while placing, empty shell casings on the jury railing that the reason their witnesses did not come to court was because the defendant was going to shoot them. The Solicitor's comments so infected the trial with unfairness as to make the resulting convictions a denial of due process.

Respectfully submitted,

*Lorelle D. Proctor*  
 Lorelle D. Proctor  
 Attorney for Derringer Young

2010 JUL 30 AM 11:14  
 JUDGE J. ARMSTRONG  
 CLERK OF COURT  
 MA

FILED

Dated: July 30, 2010

COUNTY OF CHARLESTON  
IN THE COURT OF COMMON PLEAS

Warrant No: K-260697 and K-298451

State of South Carolina

versus

Derringer Young.

PLAINTIFF

DEFENDANT(S)

FILED  
2011 JUN 22 PM 2:29  
JULIE J. ARMSTRONG  
CLERK OF COURT  
By *[Signature]*

**CHECK ONE:**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.
  - DECISION BY COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
  - ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. nonsuit)  
 Rule 43(k), SCRPC(Settled);  Other -
  - ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding Arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
  - DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other
- NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING THE LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order. (Formal order to follow)  
 Statement of Judgment by the Court:

**The Defendant's Motion for A New Trial is respectfully Denied. .**

Dated at Charleston, South Carolina, this 22 day of June, 2011.

*[Signature]*  
PRESIDING JUDGE

Clerk of Court  
Julie J. Armstrong

AT TEST: A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK, C.P., G.S. & F.C.  
By *[Signature]*  
DEPUTY CLERK

BMW20071111679

DOCKET NO. 2008GS1001082

WITNESSES

GREG GOMES

North Charleston Police Department

The State of South Carolina

County of Charleston

AGENCY CASE NUMBER

2007049488

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2008

ARREST WARRANT NUMBER

K260697

THE STATE

DATE OF ARREST

2007-11-22

vs.

ACTION OF GRAND JURY

DERRINGER LAMONT YOUNG

DOB: 1985-08-10

B/M

*Aldo Cepeda*  
Foreperson of Grand Jury

FEB 05 2008

Indictment for

MURDER

VERDICT

GUILTY

*[Signature]*

7/21/2010

Foreperson of Petit Jury

Date:

INDICT

FILED

FEB - 7 2008

JULIE STRONG  
CLERK, C.P. & G.S.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

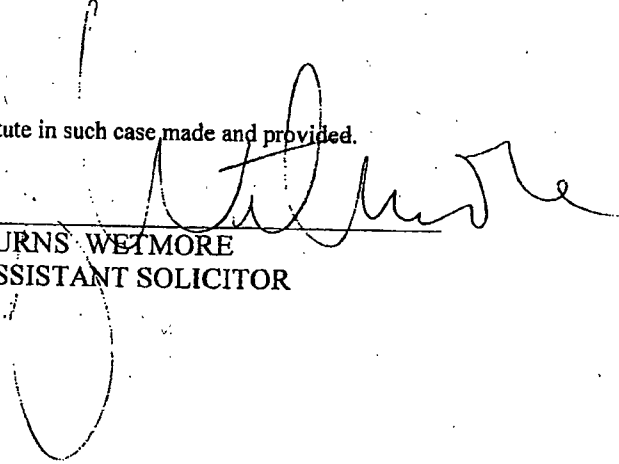
INDICTMENT

At a Court of General Sessions, convened on February 4, 2008 the Grand Jurors of Charleston County present upon their oath:

MURDER

That in Charleston County on or about November 22, 2007, with malice aforethought, DERRINGER LAMONT YOUNG did kill and murder Maurice Maxwell by means of gunshot wound, and that Maurice Maxwell did die in Charleston County as a proximate result thereof on November 22, 2007; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

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

  
BURNS WETMORE  
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Charleston VS. STATE

DERRINGER LAMONT YOUNG

AKA:

Race: B Sex: M Age: 24

DOB: 08-10-1985 SS#:

Address:

City, State, Zip: CHARLESTON, SC 294030000

DL#: SID#: SC01488907

\*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Murder

INDICTMENT/CASE#: 2008GS1001082

A/W#: K260697

Date of Offense: 11/22/2007

S.C. Code §: 16-03-0010, 0020

CDR Code #: 0116

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted. Lesser Included Offense. Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: Without Negotiations or Recommendation. Negotiated Sentence. Recommendation by the State.

ATTEST: Wetmore, Burns SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of Life days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable\*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered Total: \$ plus 20% fee: \$ Payment Terms: Set by SCDPPPS

Recipient:

\*Fine:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5 %), § 14-1-211(A)(1) (Conv. Surcharge), § 14-1-211(A)(2) (DUI Surcharge), § 56-5-2995 (DUI Assessment), § 56-1-286 (DUI Breath Test), Proviso 47.9 (Public Def/Prob), § 14-1-212 (Law Enforce. Funding), § 14-1-213 (Drug Court Surcharge), § 50-21-114(BUI Breath Test Fee), § 56-5-2942(J) (Vehicle Assessment), Proviso 90.5 (SCCA Surcharge), § 44-53-450(C) (Conditional Discharge), 3% to County (if paid in installments), TOTAL \$ 133.96

PTUP days/hours Public Service Employment Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund Other:

Condition Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge Judge Code: Sentence Date: 7/21/10

Clerk of Court/ Deputy Clerk Court Reporter: SCCA/217 (06/2010)

Handwritten signature: M. Ferron

390

BMW20080201030

WITNESSES

JAMES HILL  
North Charleston Police Department

AGENCY CASE NUMBER

2007049488

ARREST WARRANT NUMBER

K298451

DATE OF ARREST

2007-11-22

ACTION OF GRAND JURY

TRUE BILL

*Eddie Cochran*  
Foreperson of Grand Jury

MAY 06 2008

VERDICT

GUILTY

*[Signature]*

5/21/2010

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008GS1003646

The State of South Carolina  
County of Charleston

COURT OF GENERAL SESSIONS

MAY TERM 2008

THE STATE

vs.

DERRINGER LAMONT YOUNG  
DOB: 1985-08-10  
B/M

Indictment for

ASSAULT AND BATTERY WITH  
INTENT TO KILL

2008 MAY 12 PM 3:28  
JULIE J. ARMSTRONG  
CLERK OF COURT

FILED

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

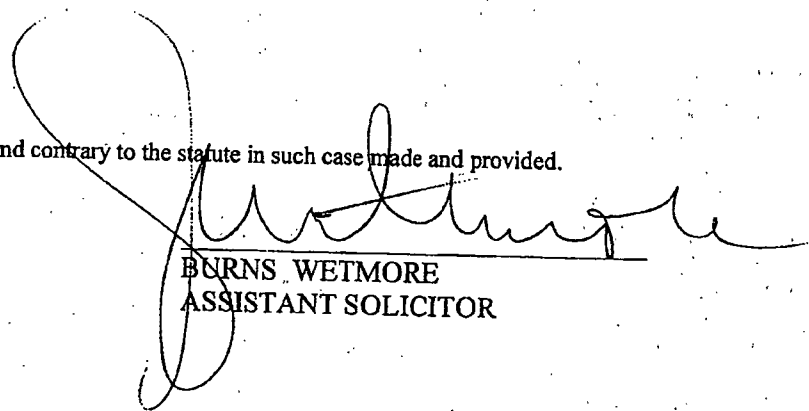
INDICTMENT

At a Court of General Sessions, convened on May 5, 2008 the Grand Jurors of Charleston County present upon their oath:

**ASSAULT AND BATTERY WITH INTENT TO KILL**

That in Charleston County, South Carolina, on or about November 22, 2007, the Defendant, with malice aforethought, did commit an unlawful act of a violent nature upon the victim, Danny Adgerson, to wit: the Defendant did shoot the victim, Danny Adgerson in the lower abdomen; all in violation of the Common Law of South Carolina and Section 16-03-620 of the Code of Laws of South Carolina (1976, as amended).

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

  
BURNS WETMORE  
ASSISTANT SOLICITOR

COUNTY OF Charleston
STATE VS.
DERRINGER LAMONT YOUNG
AKA:
Race: B Sex: M Age: 24
DOB: 08-10-1985 SS#:
Address:
City, State, Zip: CHARLESTON, SC 294030000
DL#: SID#: SC01488907
\*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: ABWIK/Assault and Battery with Intent to Kill

INDICTMENT/CASE#: 2008GS1003646
A/W#: K298451
Date of Offense: 11/22/2007
S.C. Code §: 16-03-0620
CDR Code #: 0014

SENTENCE SHEET

[X] CONVICTED OF or [ ] PLEADS

in violation of § 16-03-0620 of the S.C. Code of Laws, bearing CDR Code # 0014
[ ] NON-VIOLENT [X] VIOLENT [ ] SERIOUS [X] MOST SERIOUS [ ] Mandatory GPS(CSC w/minor 1st or Lewd Act) § 17-25-45

The charge is: [X] As Indicted. [ ] Lesser Included Offense. [ ] Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: [X] Without Negotiations or Recommendation, [ ] Negotiated Sentence, [ ] Recommendation by the State.

ATTEST: Wetmore, Burns 17241 SC Bar# Defendant. Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections, [ ] County Detention Center,
for a determinate term of 20 days/months/years or [ ] under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$ ; provided that upon the service of days/months/years and/or payment
of \$ ; plus costs and assessments as applicable\*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

[X] CONCURRENT or [ ] CONSECUTIVE to sentence on: 2008-GS-10-1082
[ ] The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
[ ] The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence ) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

[ ] RESTITUTION: [ ] Deferred [ ] Def. Waives Hearing [ ] Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
[ ] Set by SCDPPPS

PTUP
days/hours Public Service Employment
Obtain GED [ ]
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling [ ]
Random Drug/Alcohol testing [ ]
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Recipient:
\*Fine:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5 %), § 14-1-211(A)(1) (Conv. Surcharge), § 14-1-211(A)(2) (DUI Surcharge), § 56-5-2995 (DUI Assessment), § 56-1-286 (DUI Breath Test), Proviso 47.9 (Public Def/Prob), § 14-1-212 (Law Enforce. Funding), § 14-1-213 (Drug Court Surcharge), § 50-21-114(BUI Breath Test Fee), § 56-5-2942(J) (Vehicle Assessment), Proviso 90.5 (SCCJA Surcharge), § 44-53-450(C) (Conditional Discharge), 3% to County (if paid in installments), TOTAL \$ 133.90

[ ] Condition Discharge, § 44-53-450(C) requires
\$350 be paid to the Clerk prior to case disposition
[ ] Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk
Court Reporter: M. Perron
SCCA/217 (06/2010)

Presiding Judge
Judge Code:
Sentence Date: 7/21/10

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

April 23rd, 2013

Susan B. Hackett

Susan B. Hackett  
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

 ORIGINAL

\_\_\_\_\_  
Appeal from Charleston County  
Kristi Lea Harrington, Circuit Court Judge  
\_\_\_\_\_

RECEIVED

APR 23 2013

SC Court of Appeals

THE STATE,

RESPONDENT,


V.

DERRINGER YOUNG,


APPELLANT

\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 23rd day of April, 2013.

  
\_\_\_\_\_  
Brandon Hall  
Administrative Specialist

SUBSCRIBED AND SWORN TO before me  
this 23rd day of April, 2013.

  
\_\_\_\_\_  
(L.S.)  
Notary Public for South Carolina

My Commission Expires: November 16, 2022.