

VOLUME I of IV

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Honorable Paul M. Burch, Circuit Court Judge

S.C. SUPREME COURT

ANDRE T. BOONE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000943

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
COURT OF GENERAL SESSIONS

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	)	
V.	)	TRANSCRIPT OF RECORD
	)	
EUGENE D. PATTERSON AND	)	07-GS-40-2137
ANDRE TAYSON BOONE	)	07-GS-40-2324
	)	
DEFENDANTS.	)	

MAY 5, 2008
COLUMBIA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE WILLIAM P. KEESLEY, JUDGE; AND A
JURY.

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

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STACY L. SHEPPARD
CIRCUIT COURT REPORTER

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	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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(COURT REPORTER NOTE: The Solicitor's
office premarked some of their exhibits.)

Date: 5-5-08County: PickensCase No: 07-85-40-2137 **VOIR DIRE**Case No: 07-85-40-2324 Judge: Maesly

State

State Atty: Jack CampbellDon GoldbergDefendant: Andre BooneDefense Atty: Camille Everhart, DanielleEugene PattersonPayne, Abby Thomas, Joe's SutherlandCourt Reporter: Stacy L. Sheppard

**** STRIKES ****

Juror No.	Name	Sex	Race	Court	State	Defense	Accept
301	Glorigna William	F	B		1		
123	Charles Hicks	M	W				1
272	Robert Henderson	M	W			1	
275	Blake Ronald Von	M	W			2	
8	Mamie Arthur	F	B				2
135	Caron Swenson	M	W				3
28	Jammra Brasfield	F	W				4
280	Brendalyn Wayner	F	B				5
67	Beverly Dill	F	B				6
61	Jack Daniel, III	M	W			3	
152	Rebecca Koziel	F	W				7
236	Ywendolyn Reese	F	B		2		
29	Florence Bright	F	B				8
199	Garrett Reverte	M	W				9
214	Linda Porter	F	W				10
158	Margaret Lallie	F	W			4	
262	Catherine Seal	F	W			5	
282	Warren Webster	M	W				11

1 (The following proceedings were held on May
2 5, 2008.)

3 THE COURT: I understand there's some pretrial
4 matters we need to address before we bring the jury
5 up; is that correct?

6 MS. PAYNE: Yes, Your Honor.

7 THE COURT: All right. Let me hear them.

8 MS. PAYNE: Thank you, Your Honor. May it
9 please the Court. Danielle Payne standing with
10 Andre Tayson Boone. Just for the Court's record,
11 along with me is Camille Everhart and Ashley Thomas.

12 Your Honor, we do have a motion to suppress any
13 mention of gang references in this case. Your
14 Honor, it is our position that it is not considered
15 relevant evidence under Rule 401. Obviously, the
16 Court understands that relevant evidence means
17 evidence having any tendency to make the existence
18 of any fact that is of consequence to the
19 discrimination of the action more probable or less
20 probable than it would be without the evidence.

21 Your Honor, today we are going forward on a
22 murder charge, an aggravated breach of peace, a
23 unlawful carrying of a -- possession of a pistol
24 under 21. It is our position that any gang
25 reference, whether it be to Andre in particular or

1 to anyone else in this matter, would not be relevant
2 evidence to the issues at hand. And, actually, it
3 would fall under Rule 403 which would be more
4 prejudicial than probative.

5 Your Honor, the only people that have made the
6 gang an issue is the State, in that, I mean
7 Investigator Smith and the investigators that were
8 involved -- or Investigator Ellis and Captain Smith.

9 Your Honor, the initial fist fight that brought
10 all of these boys together was between Corey and
11 Chad, Chadwick Robinson and Corey Sanders. Your
12 Honor, Corey Sanders himself puts in his statement
13 that the next person I saw was Chad. He was coming
14 from the gas station with a tank top on. I had a
15 beef with him over something that happened at a
16 Ridge View basketball game a couple of weeks ago.

17 It has nothing to do with whether or not he was
18 in a gang, doesn't ever mention that he was in a
19 gang or any of that nature.

20 Your Honor, there is no direct case law on
21 point on this in South Carolina, but there is the
22 case of State v. Day, which I'll hand up to Your
23 Honor, and provide to the Solicitor's office, if I
24 may approach.

25 THE COURT: Sure.

1 **MS. PAYNE:** In State v. Day, that case was
2 concerning the defendant's tattoo or a nickname.
3 The Supreme Court decided that a tattoo or nickname
4 is not prejudicial when used to prove something at
5 issue in a trial such as the identification of the
6 defendant.

7 Well, in our case, we don't have anything like
8 that. In State v. Day, they were referring to him
9 over and over, the Solicitor was, calling him an
10 outlaw and that was his nickname. That is not an
11 issue in this case. Identification was never an
12 issue in this case and has nothing to do with Andre
13 if he is or is not in a gang.

14 Furthermore, Your Honor, the Supreme Court, the
15 U.S. Supreme Court in Dawson v. Delaware -- I'll
16 also provide that, if I may approach.

17 **THE COURT:** Sure.

18 **MS. PAYNE:** The Supreme Court held that, in
19 that case, it was a prison gang and I believe a
20 murder happened in that case and they allowed the
21 introduction of the prison gang issue because they
22 would require its members to lie, cheat and kill.
23 The Supreme Court has held that evidence of prison
24 gang membership may be relevant and admissible in
25 criminal cases, but where -- that where there is not

1 a clear showing of relevance, admission of such
2 evidence violates the First Amendment.

3 Your Honor, in this case, it is not a relevant
4 issue. It is irrelevant as to whether or not anyone
5 was in a gang. It was a fight that happened at the
6 Waffle House. There were high school boys and girls
7 there watching this fight and they just happened, if
8 they were or if they're not, just happened to be in
9 a gang or we're not even clear on that issue. Your
10 Honor, we would hold that it is completely
11 irrelevant in this case. It's found to be
12 irrelevant and it's completely prejudicial. And it
13 would be our position that it shifts the burden to
14 the defense to, therefore, prove that he is not in a
15 gang or to prove that it has nothing to do with what
16 is at issue.

17 What is at issue is if there was a -- the
18 murder of Brian Wright and whether or not Andre
19 Boone was responsible for that.

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

21 **MR. SUTHERLAND:** And, Your Honor, we had hoped
22 to make the same motion and would like to join in
23 that motion. And just to point out, not to
24 reiterate too much of what was already said, this
25 was a fight between a couple of teenagers and two

1 groups of teenagers from their respective
2 neighborhoods, it does appear, gathered to watch a
3 fight. This has been happening since I was a child
4 and I was involved in a couple myself.

5 But we had hoped to point to the same case,
6 State versus Day. And it's our position that any
7 repeated use of the word gang or gang affiliation is
8 not going to have a real purpose relevant to the
9 issues here, who killed Brian Wright, that's the
10 issue at this trial, sir.

11 And in State versus Day, they point to, I think
12 what Ms. Payne had talked about, repeated references
13 to Outlaw and just the holding was that those
14 repeated references amounted to an impugning of the
15 defendant's character. And we'd argue that it's the
16 same analogy whether it be Outlaw or Crip, Folk,
17 Blood or whatever it is they might choose to
18 characterize Mr. Patterson is, that that would be
19 improper evidence, sir.

20 **THE COURT:** All right. What's the State's
21 position?

22 **MS. CAMPBELL:** Your Honor, there is a case in
23 South Carolina, State versus Price. It's at 629
24 S.E.2d 363. It's a 2006 Supreme Court case. It was
25 a murder trial, Your Honor, also a confrontation

1 between rival gangs. In that case, it was the
2 Bloods and the Crips.

3 In this case, Your Honor, on the date in
4 question, and I would just make a brief proffer,
5 there were two rival gangs involved, actually a
6 third member of the Crips was actually hanging out
7 with the Folks. During the day, there will be
8 testimony, that they had repeatedly tried to set up
9 a fight between the two different gangs, specific
10 members, I believe two members from each gang wanted
11 to fight that day.

12 Upon arriving at the Waffle House some time
13 shortly after midnight on this Sunday night, the
14 Bloods were in the back of the parking lot, some of
15 them were inside the actual Waffle House when a
16 large group of people, reportedly Folk members,
17 started walking up. At that point, one of the
18 members of the Bloods, Mr. Corey Sanders, ran down,
19 confronted one of the members of the Folk gang. At
20 that point, a physical altercation took place.

21 At some point, it became apparent to members of
22 the Bloods that their Blood member was not fairing
23 too well during the fight. At that point, one of
24 the defendants, Andre Tayson Boone, who puts in his
25 statement that he is a Blood member, pulls out a

1 gun. He then shoots into the air.

2 At that point, members of the Folk gang and one
3 of their friends who was a Crip, one of those being
4 Eugene Patterson, the other defendant in this case,
5 pulled out their gun. Shots were then exchanged
6 between the two and into the parking lot which
7 resulted in the death of Brian Wright, Your Honor.

8 The animosity, there was -- this case, Your
9 Honor, I don't know of any way you can explain the
10 animosity between the two rival groups because it
11 was clearly gang oriented. Every single witness in
12 the case refers to it being gang oriented. It's --
13 although, Your Honor, motive is not a necessary
14 element of murder, we are allowed, I think, to go
15 into relevant facts as far as what motivated these
16 two rival groups or gangs to be there that night.
17 And I don't know how to explain the animosity
18 between the two without going into the language of
19 the gang affiliation.

20 In State versus Chris Lieberman, which is
21 currently up on appeal, Your Honor, indications of
22 gang association did come out because it was
23 relevant in that case, Your Honor.

24 And, of course, in State versus Price, they
25 were able to go into the fact that the gang was

1 involved. In that case, however, they did say it
2 was improper because the investigator testified as
3 an expert in gangs and gang activity. The court
4 said he did not have a basis for that. However,
5 they did say that the testimony itself was relevant
6 and proper as far as the general characteristics
7 between the Folks and the gangs -- excuse me -- the
8 Folks and the Bloods. In that case, I believe it
9 was the Crips.

10 **THE COURT:** Thank you.

11 Anything else?

12 **MS. PAYNE:** Just briefly. Your Honor, there
13 were many people at this fight and that many of them
14 were not in gangs, including a whole car full of
15 girls that were there to watch it also, Your Honor.

16 And when the Solicitor referenced in their
17 statements, a lot of the times this is brought out
18 on a question format from the investigators who are
19 asking them. They know their names for the most
20 part. And then they would say, and he's a Folk or
21 something like that.

22 It was not necessarily between the Folks and
23 the Bloods. There was many people there, many
24 people watching this fight, including a Crip who
25 doesn't necessarily hang out with the Folks or

1 anyone else in that matter.

2 Your Honor, we still stand on our motion to
3 suppress.

4 THE COURT: Anything else?

5 MR. SUTHERLAND: Nothing further, Your Honor.

6 THE COURT: Anything else from the State?

7 MS. CAMPBELL: No, sir.

8 (Pause.)

9 THE COURT: Let me ask you some questions,
10 please. The State's contention is that
11 Mr. Patterson is a member of what gang?

12 MS. CAMPBELL: Mr. Patterson would be a Folk
13 member, Your Honor.

14 THE COURT: And that's based on what?

15 MS. CAMPBELL: On, I believe, his own
16 contentions.

17 MR. SUTHERLAND: No, sir.

18 MS. CAMPBELL: Witnesses would place him as a
19 member of the Folk gang.

20 THE COURT: Sir?

21 MR. SUTHERLAND: Some witnesses do say that.
22 He denies that, sir.

23 MS. CAMPBELL: He, I believe, does admit that
24 he hangs out with Folk. He just denies membership.

25 THE COURT: And the State's contention is that

1 Mr. Boone is a member of what gang?

2 MS. CAMPBELL: He's a Blood member. It's in
3 his statement, as well as other witnesses say it.

4 MS. PAYNE: Your Honor, if I may respond to
5 that?

6 THE COURT: Sure.

7 MS. PAYNE: Your Honor, Mr. Boone has told us
8 that when he was being interrogated by Investigator
9 Roe, Investigator Roe kept asking over and over and
10 over, Are you a member of the Bloods? Mr. Boone
11 kept saying, No, no, no I'm not. He finally says,
12 I'm a member of the TTP. A known member of the
13 Blood TTP says he is not a member of that sect. He
14 might be a member of another sect.

15 He is not a member of a gang. He was trying to
16 get past that point so that he could tell the truth
17 in the rest of his statement. Investigator Roe
18 would not let him get on. And I am sure, if the
19 Court would allow us, we could ask Mr. Boone that on
20 the record.

21 THE COURT: And Mr. Wright, was he -- is it the
22 State's contention that he was a member of a gang?

23 MS. CAMPBELL: He was affiliated with the
24 Folks, Your Honor. His friends were Folk members.

25 THE COURT: And was there a reference to the

1 Crips?

2 MS. CAMPBELL: There was one Crip involved,
3 Your Honor, that would be Oliver Feldman. He was
4 riding that night with Eugene Patterson. The Folk
5 and the Crips, at least in this area according to
6 the information I get from my witnesses, get along.

7 MS. PAYNE: And, Your Honor, if I may add,
8 Oliver Feldman is also charged with murder in this
9 case. He's just not sitting before you today.

10 THE COURT: And the State claims it has
11 evidence that throughout the day leading up to this,
12 there were repeated attempts to set up a fight
13 between which gangs?

14 MS. CAMPBELL: Between members of the Folk and
15 the Bloods, specifically a guy named Chad Robinson
16 and Corey Sanders and Dameon Dowling and Tayson
17 Boone.

18 THE COURT: And how did that relate to what
19 happened at the Waffle House?

20 MS. CAMPBELL: During the course of the day,
21 Your Honor, it's somewhat convoluted, there had been
22 phone calls back and forth between members of these
23 two groups or gangs. They attempted to, I believe,
24 meet up at a Waffle House down the road earlier in
25 the night. There was something that happened at a

1 Wendy's. There was actually a party that night at
2 Windsor Lake where there was also another shooting
3 that broke up that party.

4 And the indications being on the night in
5 question around midnight, the Bloods were already at
6 the Waffle House. At which point at the Mobil
7 Station next door, a large group of young men who
8 were members of the Folk primarily, there were two
9 Crips there, I believe, started approaching the
10 Waffle House and that is when the initial fist fight
11 started, which then led to the shootings, that then
12 led to Mr. Wright's death.

13 Your Honor -- and it might be instructed even
14 in, say, Mr. Boone's statements and in, I believe,
15 the statements from the other co-defendant, I mean
16 he refers to, I was there to fight a boy named
17 Dameon who was a Folk. I saw a bunch of Folks pull
18 up into the Waffle House entrance. I saw one pull
19 up something at the Mobil Station. Then he refers
20 to how he recognized some people as Bloods as his
21 friends.

22 **THE COURT:** All right. And so Mr. Boone,
23 according to the State's version of what happened,
24 admitted that he is a member of the Bloods and that
25 things were not going well for a fellow gang member

1 in the fight.

2 MS. CAMPBELL: Yes, sir, his friend, Corey
3 Sanders.

4 THE COURT: And so Boone pulled out a gun and
5 fired it into the air.

6 MS. CAMPBELL: Yes, sir, according to
7 Mr. Boone's statement and to witnesses.

8 THE COURT: And after that, who started
9 shooting; do you know?

10 MS. CAMPBELL: The State's evidence would then
11 show that Mr. Feldman, who was with Mr. Patterson,
12 pulled out their respective guns. Mr. Feldman
13 allegedly had a .22 -- no, a .32, excuse me,
14 revolver. Mr. Patterson had a .380. Witnesses will
15 testify that there was then a cross fire.

16 And there will also be more testimony that, and
17 in his own statement, Mr. Boone says that at first
18 he shot into the air and then he shot at the other
19 people that were shooting and that he may have shot
20 into the crowd a little bit. This is across a
21 parking lot and into a gas station next to the
22 Waffle House.

23 THE COURT: Is there any evidence that
24 Mr. Patterson was involved in any of these phone
25 calls during the day?

1 MS. CAMPBELL: No, sir. They received a call
2 that night that there was going to be a fight.

3 THE COURT: Who is they?

4 MS. CAMPBELL: He and Mr. Feldman.

5 THE COURT: Okay. So Patterson and Feldman --
6 you have evidence that Patterson and Feldman got a
7 phone call that there was going to be a fight that
8 night?

9 MS. CAMPBELL: Yes, sir. We have two witnesses
10 that will say that.

11 THE COURT: Gang related?

12 MS. CAMPBELL: They were all going there to see
13 the fight between the two gang members.

14 THE COURT: And what about Mr. Boone, was he
15 involved in any of the phone calls? Do you have any
16 evidence of that?

17 MS. CAMPBELL: Beg the Court's indulgence.

18 THE COURT: Yes, ma'am.

19 (Pause.)

20 MS. CAMPBELL: One member, I believe -- he was
21 in the car with Jerome Thompson, Demon Griffin,
22 William Kee and Derrick Guilyard, Your Honor. It's
23 my information that one or more of them got the
24 information to go to the Waffle House for that
25 purpose to view -- to see this spectacle. I don't

1 know how else to put it.

2 And, Your Honor, to be honest, I can't remember
3 if they got the phone call or talked to someone.
4 Beg the Court's indulgence.

5 (Pause.)

6 MS. CAMPBELL: Your Honor, in Mr. Boone's
7 statement, it says, We were then supposed to meet at
8 the Waffle House on Hard Scrabble, which is a
9 different Waffle House, but they didn't show
10 up there either. We later figured out that they
11 were leaving...

12 THE COURT: Slow down. I don't know how they
13 can take it down when I'm having a hard time
14 following you.

15 MS. CAMPBELL: Your Honor, it might be easier
16 if I just hand up the statements with the Court's
17 permission.

18 THE COURT: Sure.

19 MS. PAYNE: Your Honor, we would ask that all
20 statements that pertain to this be given to Your
21 Honor to consider.

22 THE COURT: I'm not going to weigh evidence.
23 I'm looking to see if there is evidence. And if
24 y'all want me to look at something, you can hand it
25 up. But if one side says that it didn't happen that

1 way and the State says it happened that way, I don't
2 get to decide that dispute.

3 MS. CAMPBELL: Your Honor, these would be
4 Mr. Boone's two original statements and let me get
5 you Mr. Patterson's, it might help. It's just so
6 convoluted.

7 (Pause.)

8 MS. CAMPBELL: Your Honor, here are two of
9 Eugene Patterson's statements.

10 MR. SUTHERLAND: If I may, which ones are
11 those?

12 MS. CAMPBELL: I gave the third one to him at
13 the same time.

14 Here are all three of his statements. Your
15 Honor, his first statement pretty much denies him
16 seeing or doing anything and then he later changes
17 his story.

18 And the other statement I would ask to hand up,
19 Your Honor, is the other person that was in the car
20 with Mr. Feldman and Mr. Patterson because he
21 outlines exactly how they knew to go to the thing,
22 and that would be a Mr. Karminde Leggett.

23 (Pause.)

24 MS. CAMPBELL: Your Honor, if I may approach
25 with one more. This is Oliver Feldman's statement

1 that also kind of explains the relationship between
2 the Bloods, the Folks and the Crips.

3 (Pause.)

4 **THE COURT:** Anything else I need to look at?

5 **MS. PAYNE:** Your Honor, if I may just briefly
6 respond?

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

8 **MS. PAYNE:** Your Honor, the central issue at
9 hand here is whether this evidence is considered
10 relevant as evidence. Nothing that's been presented
11 makes this more or less probable than it would be
12 without this evidence.

13 Your Honor, we would ask the Court to consider
14 Corey Sanders' two statements in which he says, How
15 do you know Tayson, Andre Tayson Boone?

16 We had a beef about two or three weeks ago over
17 some crazy stuff and we were supposed to fight, but
18 we never really did.

19 Well, obviously they're not in the same Blood
20 sects.

21 He says, Are Tayson and Jerome Bloods?

22 Yes, but they're in a different sect than I am.
23 I am a Tree Top Piru, which is in Andre's statement.
24 He says he's a TTP and Corey Sanders says clear as
25 day he is not a TTP.

1 I know you're not here to dispute -- or decide
2 the evidence, but that lends credence to Andre
3 Boone's statement that Investigator Roe is forcing
4 him to say he's in a gang.

5 Your Honor, furthermore, Dameon and Andre were
6 supposed to fight. And you'll see, I believe, in
7 Andre's statement, that that was when Andre got
8 jumped by Dameon at the Main Event Club. He didn't
9 know that he was in a gang at that time. He knew
10 him as the guy that jumped on him and hit him. This
11 whole thing stems between a fight between Corey and
12 Chad.

13 Corey, clear as day, says, The next person I
14 saw was Chad and he was coming from the gas station
15 with a tank top on. I had a beef with him over
16 something that happened at a Ridge View basketball
17 game a couple weeks ago. He said, I kicked him when
18 I tried to step over him. Doesn't say anything
19 about this being a gang issue.

20 And if I may hand these up to you to consider.

21 (Pause.)

22 **THE COURT:** Anything else?

23 **MS. PAYNE:** Just briefly, Your Honor. It also
24 says in Jerome Thompson and Derrick Guilyard's
25 statement, clear as day, I'll hand those up as well,

1 but that Andre Tayson Boone is not in a gang.

2 Your Honor, we would further, just if the Court
3 does find it is relevant evidence, which we stand by
4 our position that it is not, we go to Rule 403,
5 although relevant evidence may be excluded, its
6 probative value is substantially outweighed by the
7 danger of unfair prejudice, confusion of the issues
8 or misleading the jury. And that is exactly what
9 the State is trying to do in this case, Your Honor.
10 It is not essential to the issue of who shot Brian
11 Wright. Thank you, Your Honor.

12 THE COURT: Anything else?

13 MS. CAMPBELL: Your Honor, I can hand up
14 additional statements, but I think you've got an
15 idea of what the affiliations were.

16 THE COURT: Once again, it's not my role, I'm
17 not permitted to get into the evaluation of which
18 version of the story is true and which is not. And
19 my experience has been when you have multiple people
20 giving statements, there's always going to be a
21 variance.

22 The defense is focusing on what caused the
23 fight. I don't think anybody's in here on trial for
24 fighting. The question is, why did the fight
25 escalate?

1 And I've read through these statements and I'll
2 concede they don't all mention gangs, but it's
3 replete all through the statements with references
4 about different people having different gang
5 affiliations and, moreover, wearing colors and
6 references to Bloods and Crips and Folk, different
7 sects, S-E-C-T-S, of gang. You know, I certainly
8 would want to err on the side of excluding it, but I
9 don't see how in the world I can exclude it. Motion
10 denied.

11 **MS. PAYNE:** Thank you, Your Honor.

12 **THE COURT:** What else do we have?

13 **MS. EVERHART:** Your Honor, Camille Everhart
14 from the public defender's office representing Andre
15 Boone.

16 Last week our office submitted a motion to both
17 you and the Solicitor's office in regard to a stun
18 belt. Andre Boone is not wearing a stun belt
19 presently. He has on leg restraints. We just
20 wanted to make sure that you had made a decision
21 about the stun belt.

22 **THE COURT:** I haven't made a decision. I was
23 communicating with the security people and was under
24 the understanding they would not put the stun belts
25 on for the purpose of this proceeding and that I

1 would hear you all out before we did that.

2 Anything else?

3 MS. EVERHART: Your Honor, we would like to
4 address the stun belt shackling issue.

5 THE COURT: Go ahead.

6 MS. EVERHART: Your Honor, we did submit that
7 motion to you in regard to the stun belt. We do
8 feel like having our client shackled with the stun
9 belt would cause him to be ineffective while helping
10 us. He would be in a constant state of fear that
11 this belt could go off or any movement he made could
12 be perceived as aggressive or negative.

13 Your Honor, I'll be honest, I believe I speak
14 for Ms. Payne and Ms. Thomas when I say I don't feel
15 comfortable sitting next to him while he's hooked up
16 to something that could shoot bolts of electricity
17 through his body. I don't know how competent and --
18 how I would be able to effectively represent him if
19 I have a constant fear that I might be injured, Ms.
20 Payne or Ms. Thomas, or that he might be injured.

21 Your Honor, I feel that shackling in general is
22 prejudicial. I would like to point out that
23 Mr. Boone has no prior record. He has not gotten in
24 any violent trouble while he's been incarcerated at
25 Alvin S. Glenn. He has not made escape attempts.

1 Your Honor, we addressed the issue last week of
2 there being extra personnel in the courtroom,
3 security personnel. Not only are there officers in
4 here dressed, there are plain clothes officers in
5 the courtroom. It's also going to be a closed
6 court. I do not feel that Mr. Boone is any kind of
7 escape risk. I don't think he is going to attempt
8 to leave the courtroom. He has never been anything
9 but docile and meek and friendly every time I'm
10 around him.

11 Your Honor, we would also argue that it's a
12 violation of his constitutional rights, that would
13 be under the Sixth, Eighth and 14th Amendments.

14 As I said, I truly do not believe that he would
15 be able to actively participate in his case if he's
16 in constant fear that something could happen with
17 this device. Up to now, we have no idea what could
18 happen, what the chances are this thing could go off
19 by accident or user error. Your Honor, if we were
20 to go forward, we would request a hearing where we
21 could at least hear from the manufacturer what those
22 chances are that it could go off by itself, if an
23 officer could accidentally set it off.

24 I do believe our office had this issue prior in
25 the Quincy Allen death penalty case and it was

1 decided not to use the stun belt because of these
2 issues.

3 THE COURT: Anything else?

4 MR. SUTHERLAND: And, sir, if I may, I've known
5 Eugene since he was 15. I don't believe that
6 they've shown any demonstrable need to hook him up
7 to this electric shock thing.

8 He and I have always had a good relationship.
9 We're speaking freely here. He's here for his day
10 in court. We talked about potentially, if it was
11 appropriate, him perhaps addressing the Court on
12 this issue because he is here for his day in court,
13 sir. He's not here to fuss or cause trouble. He's
14 here to assist me and to help me. And he's -- he
15 may be participating at some point in the future.
16 And I don't believe that they have a demonstrable
17 need to put this thing on him. I mean, he's not
18 going anywhere, sir.

19 THE COURT: Does the State want to be heard?

20 MS. CAMPBELL: Your Honor, we do feel like that
21 because of the nature of this case, as we've
22 discussed, that there are some extra risks involved
23 here and however you feel is appropriate to address
24 them, we defer to your wisdom.

25 THE COURT: All right. At the pretrial

1 conference last week, the defense was saying that
2 they did not want the defendant shackled in any way.
3 I understand that to still be their position. They
4 said that the leg chains would make noise throughout
5 the trial.

6 I asked the question if Richland County had
7 access to stun belts because we use them in
8 Lexington County and never have had any problem with
9 them. I was told that Richland County has one, but
10 did not have another at that day. They have since
11 gotten another one. And I'm perfectly willing not
12 to put the stun belts on them and see how things go,
13 but they're going to be restrained.

14 I've been told that there are Velcro leg
15 restraints that can be utilized and that's what
16 we'll start out with, but if there's any kind of
17 activity that causes me any concern, I have
18 confidence in those devices. I'll let you put
19 whatever you need to put in the record. We've used
20 them before in cases in Lexington without any
21 incident whatsoever. And I've never felt like the
22 defendant -- as a matter of fact, the reason I
23 brought it up is because I think they're the least
24 conspicuous of all of them.

25 Now, I understand the concerns you all have

1 expressed about having voltage -- the ability of
2 having eight seconds of voltage transmitted to
3 somebody and I know any machine can go wrong, but
4 it's fine with me to start out that way, but I'm not
5 going to allow the trial to go on without some sort
6 of restraints. You can object to that if you like.

7 Now, there was a question about when they stand
8 up and face the jury. The record should reflect
9 that we had tables brought in here that have what
10 are normally called modesty screens, but they're
11 wood matching the tables across the front and the
12 legs of the people sitting at the table cannot be
13 seen. The arms and hands are free.

14 Do y'all need anything else on the record?

15 **MS. EVERHART:** Nothing further, Your Honor.

16 **MR. SUTHERLAND:** No, sir. Thank you.

17 **THE COURT:** Can they stand up and face the jury
18 or do y'all want me to just skip that part?

19 **MS. PAYNE:** Just practicing.

20 **THE COURT:** That looked pretty natural to me.

21 **MR. SUTHERLAND:** Yes, sir.

22 **THE COURT:** Okay. Thank you.

23 Anything else? It's 12:25.

24 **MS. CAMPBELL:** I just haven't seen any voir
25 dire yet.

1 **MS. EVERHART:** Your Honor, we had two copies,
2 one with gang questions and one without. So, Your
3 Honor, if I may approach with a copy of our voir
4 dire.

5 **THE COURT:** Ms. Campbell, these are your
6 statements back.

7 **MS. CAMPBELL:** Thank you, sir.

8 **THE COURT:** All right. As I understand,
9 they've got 63 jurors on the list. Is that right or
10 wrong?

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

12 **THE COURT:** Is that the whole venire?

13 **MS. CAMPBELL:** No, sir. There was a huge
14 venire this morning.

15 **THE COURT:** I don't really see much sense in
16 starting at 12:25. My preference would be take an
17 hour for lunch and then bring the jury back. Can we
18 do that, Mr. Clerk?

19 **THE CLERK:** Yes, Your Honor.

20 **THE COURT:** Have the jury come back -- just
21 tell them -- give them an hour for lunch and tell
22 them to be back, okay?

23 **THE CLERK:** Yes, sir.

24 **THE COURT:** I'll meet y'all back here in an
25 hour. You can -- on voir dire, if you have strong

1 objections to anything that's in there, you can let
2 me know, but I can tell you that generally I don't
3 go through voir dire exactly as it's given to me. I
4 try to lump questions together and I'll try to tell
5 you what I'm not going to ask before we bring the
6 jury up, okay.

7 Okay. Then is there any problem having them
8 back here in an hour?

9 OFFICER: No, sir.

10 THE COURT: Thanks very much. We'll be in
11 recess for one hour. Thank you.

12 MS. CAMPBELL: And, Judge, if I could, you make
13 them reciprocal as I recall, like if they're asking
14 if they've ever been, you know, victim of a violent
15 -- you also say accused?

16 THE COURT: Right. I try to go both sides.

17 And, folks, any of y'all in the audience, let
18 me say something now that I generally -- I say in
19 every trial. I don't know why you're here. I don't
20 know who you're here for. It's really important
21 that you not have any conversations that a juror
22 might overhear and not have any contact with any of
23 these potential jurors and that's extremely
24 important.

25 So if you go to a local restaurant, be very

1 careful that you look around and make sure that
2 nobody has on a juror tag. The safest thing is not
3 to be having conversations that relate to the case
4 in any way. That's on both sides, State's
5 witnesses, defense witnesses, family members of the
6 defendants, the victim, everybody, just be really
7 careful, okay.

8 Thank you. We're at ease for an hour.

9 (Whereupon, there was a luncheon recess.)

10 **THE COURT:** Looking through these proposed voir
11 dire questions, number six, I'm probably going to
12 limit somewhat, but I'll ask the gist of it. Number
13 seven, the same thing. And other than making the
14 questions come from both sides, as we discussed
15 before the lunch break, the rest of them, in general
16 terms, are acceptable to me. Do y'all have anything
17 else?

18 **MS. CAMPBELL:** The only thing I would -- Your
19 Honor, in number 12, they said have an aversion to
20 guns or firearms, maybe the wording could be changed
21 a little bit.

22 **THE COURT:** I'm not going to use that exact
23 wording.

24 **MS. CAMPBELL:** Thank you.

25 **THE COURT:** Both sides ready for the jury, all

1 sides ready for the jury?

2 MS. CAMPBELL: Did you get Mr. Sutherland's
3 voir dire?

4 (Pause.)

5 THE COURT: All right. They're sort of in
6 reverse order. The ones that are entitled
7 misconceptions regarding the law, I don't ever ask
8 those. Generalized bias or prejudice, the first
9 question is basically the standard statutory
10 question. And the second question I think we'll
11 cover numerous times about the section on prior
12 experience. I'm not going to word the questions
13 that way, but I think we'll cover that general
14 issue.

15 Relationship to law enforcement and things of
16 that nature, I'll generally ask about. You're
17 asking me about loss of a child, I'll probably ask
18 that. I'm not going to go into the detail that
19 you've got.

20 MR. SUTHERLAND: Yes, sir.

21 THE COURT: And the questions on opinions and
22 discussions and pretrial publicity, we'll cover
23 that, but not necessarily those exact questions.
24 Anything else?

25 MR. SUTHERLAND: No, sir.

1 **MS. PAYNE:** Your Honor, I just want to be
2 candid with the Court, number 28 on the juror list
3 is Juror Number 79, she is actually a family member
4 of mine.

5 **THE COURT:** Okay. We're going to use jurors
6 numbers not names. Anything else?

7 **MS. CAMPBELL:** Strikes are ten and 20, I
8 believe.

9 **THE COURT:** Strikes are ten and 20. Are y'all
10 going to be able to work out the strikes or do I
11 need to allocate them? Can y'all work together on
12 the strikes, both defendants?

13 **MS. EVERHART:** Yes, Your Honor, I think so.

14 **THE COURT:** All right. Otherwise, they're
15 going to be ten, ten and ten, okay.

16 **MS. CAMPBELL:** Yes, sir.

17 **THE COURT:** Mr. Clerk, will you send for the
18 jury, please?

19 **THE CLERK:** Yes, Your Honor.

20 **MR. GOLDBERG:** Judge, did you get a copy of the
21 newest witness list that was left up on the bench
22 for you?

23 **MS. CAMPBELL:** I apologize, Your Honor. We had
24 left some names off.

25 (The jury panel enters the courtroom.)

1 **THE COURT:** Is Juror Number 37 in the
2 courtroom?

3 (There was no response.)

4 **THE COURT:** As I understand it, the jurors were
5 instructed to return at 1:30. It's now four minutes
6 till 2:00. And Juror Number 37 has not appeared.
7 The clerk has advised me he's informed all of the
8 attorneys of that and that no one has an objection
9 to going ahead and proceeding; is that correct?

10 **MR. GOLDBERG:** That's correct.

11 **MR. SUTHERLAND:** Correct, Your Honor.

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

13 **THE COURT:** All right. Mr. Bailiff, we're
14 going to go with what we got.

15 Ladies and gentlemen of the jury, my name is
16 Billy Keesley and I've been assigned by the Chief
17 Justice to preside over this term of general
18 sessions court, which is commonly called criminal
19 court. You've been brought up to possibly serve as
20 jurors on two cases that will be tried together for
21 purposes of convenience. They're separate and
22 distinct cases, separate and distinct indictments
23 and they will maintain that separation throughout
24 the trial.

25 I was not present when Judge Manning qualified

1 you this morning, so if I say anything that
2 duplicates what you've already been told by him or
3 by Ms. Scott or the clerk's staff, I apologize, but
4 I have to make sure that these things are said.

5 What we're going to do is we're going to go
6 through a process of asking you questions. And the
7 purpose of these questions is to obtain from you any
8 information that might relate to any possible
9 interest in the case, bias, prejudice, connection,
10 anything at all that could affect your ability to be
11 a fair and impartial juror.

12 Now, what will happen is that I will pose these
13 questions to you and if the question applies to you
14 or you have doubt about whether it applies to you,
15 please stand. When I call on you, I need you to
16 identify yourself by your Juror Number. Just use
17 your number, all right? Listen carefully to the
18 question I ask of you and answer that question.

19 Now, you need to understand a few things about
20 this process. The first thing I want to make sure
21 you understand is that this is a court of record.
22 What that means is that the court reporter over
23 here, and we have a student who's also with us this
24 week, they're going to be taking down everything
25 that's said. So the first thing I have to do if

1 you're going to speak is I have to identify you by
2 your Juror Number as to who is speaking. So speak
3 loudly and distinctly so that we all hear what you
4 say and that we have an accurate record.

5 You must understand that you have an obligation
6 to be completely truthful and honest with me. If I
7 ever ask you anything that you prefer to discuss
8 more privately, let me know you want to come down
9 front, we'll talk about it over here on the side.
10 But you must understand, folks, that if you have any
11 doubt about whether these things apply to you, you
12 need to discuss it with me and let me resolve the
13 doubt.

14 Now, there may be times when I limit your
15 responses. I may say, for example, just to answer a
16 question yes or no. If I say that and you do not
17 feel that you can adequately answer the question
18 within the limitation, don't give me the full
19 explanation in front of everybody, otherwise you
20 defeat the whole purpose of my limitation. Just
21 tell me you want to come down front and we'll get
22 the full explanation down front. There may be times
23 when I don't give you an option. I may tell you
24 we're going to talk about this down front.

25 Now, to impress upon you the obligation that

1 you have to be truthful and honest with the Court,
2 I'm going to put you under oath and this oath is
3 going to remain with you throughout this trial and
4 any other cases you might be seated on this week.
5 So if you're here for jury service, please stand and
6 raise your right hand. Thank you.

7 (Whereupon, the jury panel was sworn by the
8 Court.)

9 **THE COURT:** Is there any member of the jury
10 panel unable to take that oath for any reason; if
11 so, please stand?

12 No one stood.

13 Ladies and gentlemen, I have in my hand two
14 indictments. One indictment is captioned the State
15 versus Eugene Patterson. Mr. Patterson is charged
16 with the offense of murder. The indictment alleges
17 that Eugene Patterson did, in Richland County, on or
18 about February 19, 2007, feloniously, willfully and
19 with malice aforethought kill one Brian Wright by
20 means of shooting Mr. Wright and that Mr. Wright
21 died as a proximate result thereof, which is alleged
22 to be in violation of a code section cited in the
23 indictment.

24 The other indictment is captioned the State
25 versus Andre Boone. Mr. Boone also is charged with

1 the offense of murder. This indictment reads that
2 Andre Boone did, in Richland County, on or about
3 February 19, 2007, feloniously, willfully and with
4 malice aforethought kill one Brian Wright by means
5 of a gunshot wound and that Mr. Wright died as a
6 proximate result thereof, which is alleged to be a
7 violation of a code section cited in the indictment.

8 Now, upon their arraignments on these charges,
9 each of these defendants, Mr. Patterson and
10 Mr. Boone, have entered pleas of not guilty. They
11 are presumed to be innocent. It is incumbent upon
12 the State of South Carolina, having brought these
13 charges, to prove the guilt of the defendants beyond
14 a reasonable doubt.

15 An accused has no obligation to prove anything
16 at all. The accused person is presumed to be
17 innocent.

18 This indictment is not evidence of anything.
19 It has no evidentiary value. An indictment is
20 nothing more than a charging paper. It is merely
21 the formal means by which someone is charged and
22 brought to trial.

23 I'm going to be asking you a series of
24 questions. If any of them apply to you or you have
25 doubt about whether they apply to you, please stand

1 and follow the procedure that I outlined for you
2 earlier.

3 Now, folks, I'm going to tell you that we're
4 going to use a numbering system that you were given.
5 So whatever's on your badges that's what we're going
6 to use. But I've got different numbers up here, it
7 may be a little lapse while I'm trying to find you
8 on my list, so just bear with me, don't go straight
9 into the information, wait till I come back to you.

10 Is Eugene Patterson in the courtroom?

11 Mr. Patterson, I need for you to stand for me,
12 please, turn and face the jury.

13 Thanks very much. You may be seated.

14 Is there any member of the jury panel who is
15 related by blood or marriage or connected by
16 employment with Eugene Patterson; if so, please
17 stand?

18 (There was no response.)

19 **THE COURT:** Mr. Patterson will be represented
20 by Mr. Tivis Sutherland. Thank you, sir.

21 Is Andre Boone in the courtroom? Mr. Boone, I
22 need for you to stand, please, and face the jury.

23 Thank you. You can have a seat.

24 Is there any member of the jury panel who is
25 related by blood or marriage or connected by

1 employment with the defendant, Andre Boone; if so,
2 please stand?

3 (There was no response.)

4 THE COURT: Mr. Boone will be represented by
5 Ms. Danielle Payne, Ms. Camille Everhart and Ms.
6 Ashley Thomas.

7 Thank you, ladies. You may be seated.

8 Now, ladies and gentlemen, the jury that is
9 chosen to hear these cases is going to be told and
10 instructed that there will be two judges in the
11 courtroom. The jury will be the judge of the facts
12 and I'm the judge of the law. I'm not permitted to
13 comment on the facts. And I want you to understand
14 that nothing that I say during this process should
15 in any way be construed as me telling you what the
16 facts of the case are.

17 Right now all I have before me are some
18 documents that have been handed up to me. They're
19 in the form of allegations and I don't know anything
20 about the case, that's the way it's supposed to be.
21 And so just understand that the information I'll be
22 giving to you is just information to help you
23 familiarize yourself so that you can answer the
24 questions better.

25 I'm advised that this case arises from an

1 incident that is alleged to have occurred on
2 February 19, 2007, at a Waffle House and a Mobil Gas
3 Station located on Two Notch Road. I'm advised that
4 Mr. Wright, Brian Wright, was a 15-year-old young
5 man who allegedly was killed. And I'm advised that
6 there was media coverage of that incident.

7 To the best of your knowledge, have any of you
8 heard, seen or read anything about this matter; do
9 you know anything about the underlying factual
10 allegations; has anybody talked to you about this
11 incident; do you have any knowledge whatsoever about
12 this matter; if so, please stand?

13 (Jurors stand.)

14 THE COURT: Folks, I'm going to come back to
15 you in just a minute. We're going to talk about all
16 those things up here, but I kind of got the cart
17 before the horse, I left out something. Y'all have
18 a seat, okay. I've got a lot of pieces of paper up
19 here and I left out something that's very important.

20 I've been given a list of potential witnesses
21 and I need to read those to you.

22 And if any of these people are present, I'm
23 going to ask that person to stand as his or her name
24 is called.

25 If there are people behind you, members of the

1 jury, that you can't see, I'll call your attention
2 to the fact that somebody's standing up behind you.
3 Don't expect all of these people, even don't expect
4 most of these people to be here. It's very unusual
5 that the witnesses will be present during this part
6 of the trial, but if any of them are here, I'll have
7 them stand and face you.

8 And, also, I may be reading out some names that
9 are fairly common names. And if I read out a name
10 and you're not sure if that person is somebody that
11 might have some relationship with you, if you just
12 let me know that you have some connection with
13 somebody by that name, I'll try to get more
14 identifying information so that we can know if we're
15 talking about the same person.

16 All right. The following persons have been
17 identified as potential witnesses. Y'all really
18 have to pay attention, it's a lot of names, all
19 right.

20 Sandra Boone, she's behind you to my right,
21 folks. Thank you. Rob Portee; Corey Sanders;
22 Dameon Dowling; Derrick Guilyard; Raymond Asberry;
23 Chad Robinson; Quintez Clemons; Samuel Clemons;
24 Karmindae Leggett, that's spelled K-A-R-M-I-N-D-A-E;
25 Herbert Carter; Karleisa Brabham; Tanesha Joe;

1 William Kee; Leroy Johnson; Jerome Thompson; Amy
2 Weber, W-E-B-E-R; Anthony Britt; Oliver Feldman;
3 Demon Griffin; Justin Hephner; Kenyatta Osby;
4 Tanechia Outin; Dennis Rowe; Jonathan King; Joy
5 Delatorre of the Richland County Sheriff's
6 Department; Kenneth Kaczmarck, Richland County
7 Sheriff's Department; Howie Austin of the Richland
8 County Sheriff's Department.

9 I tell you what, rather than me saying Richland
10 County Sheriff's Department over and over again,
11 about the next 20 names are Richland County
12 Sheriff's Department, I'll tell you when they're
13 not, okay.

14 John Baker; Major James Stewart; John Ewing;
15 Stan Smith, face the jury for me, please, thank you;
16 Dave McRoberts; Marsden Roe, thank you, sir; Matt
17 Ellis, thank you; Rob Martin, thank you; Zane
18 Padgett; David Collins; John Barron; Stan Richards;
19 Harold Bouknight; William D. Thompson; Brian
20 Godfrey; Walter McDaniels; Tena Goff; Michael
21 Beeler; Joseph A. Clarke; Bill Mann. That's the end
22 of the list of the Richland County Sheriff's
23 Department.

24 Now, I'm going to start the three with SLED:
25 Tammy Rawl, Michael Moskal, and Joe Powell. All

1 right, that ends the ones with SLED.

2 Elbert Pearson and then Jim E. Reese of the
3 Richland County Coroner's Office; the initial C.
4 Golden with the Calhoun County Sheriff's Office;
5 Bill Cartwright of the Calhoun County Sheriff's
6 Office; David Daniel of Richland County EMS; Christy
7 Stover of Richland County EMS; Donald Whiteley,
8 Richland County EMS; Sergeant First Class Gala --
9 how do you pronounce that?

10 MR. GOLDBERG: Gueli.

11 THE COURT: Gueli, G-U-E-L-I, who is with Fort
12 Jackson Military Police; Doctor Clay Nichols of
13 Palmetto Richland Memorial Hospital; Huong,
14 H-O-U-N-G, Pham, P-H-A-M; Sylvester Boone; Don
15 Girndt, G-I-R-N-D-T; Destiny Truesdale.

16 Is Quentis Clemons the same as Quintez Clemons?

17 MS. PAYNE: Yes, Your Honor.

18 THE COURT: Which one's right?

19 MS. PAYNE: I believe it's Quintez.

20 THE COURT: Okay. Patti Rickborn, she's to my
21 right back there, folks. Thank you, ma'am. Frank
22 Heming; Byron, B-Y-R-O-N, Morant, M-O-R-A-N-T.

23 All right. Ladies and gentlemen, those are the
24 potential witnesses in the case. Are any of you
25 related by blood or marriage or connected by

1 employment with any of the potential witnesses; if
2 so, please stand?

3 (There was no response.)

4 **THE COURT:** All right. The State will be
5 represented by Ms. Luck Campbell and Daniel
6 Goldberg. They're with the office of the Fifth
7 Circuit Solicitor. Thank you very much.

8 Now, back to the question, do any of you know
9 anything about this case, heard, seen or read
10 anything? Y'all form a line over here to my right,
11 please. The attorneys may join me on the side.

12 (Whereupon, the following bench conferences
13 were held on the record.)

14 **THE CLERK:** Number 149, sir.

15 **THE COURT:** What's your situation, ma'am?

16 **JUROR:** I know for a fact that I read in the
17 newspaper that it was gang related...

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

19 **THE COURT:** She says she knows for a fact that
20 she read a newspaper article that it was gang
21 related and that -- did you say sister?

22 **JUROR:** One of the defendant's sister got
23 murdered was related -- gang-related retaliation or
24 something about this case.

25 **THE COURT:** Is there anything about that

1 information that will affect your ability to be a
2 fair and impartial juror in this case?

3 JUROR: I don't know.

4 THE COURT: Do you have some doubt?

5 JUROR: Yes.

6 THE COURT: Thank you. I'll set you aside.

7 Juror Number 149 is set aside on the trial of
8 this case.

9 THE CLERK: Number 132, sir.

10 THE COURT: Go ahead, sir. What did you see,
11 hear or read?

12 JUROR: Basically all I know is what happened
13 on the morning news and in the paper.

14 THE COURT: When you say on the news, what kind
15 of news are you talking about?

16 JUROR: You know, regular local news.

17 THE COURT: T.V., radio or --

18 JUROR: T.V.

19 THE COURT: What stations?

20 JUROR: WLTX.

21 THE COURT: And you say you read something
22 about it?

23 JUROR: Yeah, in the newspaper, the State.

24 THE COURT: Do you recall anything that you --
25 specific that you read, saw or heard?

1 JUROR: Well, just about the shooting part,
2 that's about all.

3 THE COURT: What did you hear?

4 JUROR: That some people at the Waffle House
5 down the road from where I live were involved in a
6 shooting. They say it might have been gang related
7 or something to that effect.

8 THE COURT: Anybody talk to you in the
9 neighborhood about that?

10 JUROR: No, just myself and my wife.

11 THE COURT: Do you have any opinions about the
12 case?

13 JUROR: Not really.

14 THE COURT: Do you frequent that Waffle House?

15 JUROR: No. I'd only been there one time to
16 that one.

17 THE COURT: Have you ever seen anything there
18 that caused you any concern?

19 JUROR: No.

20 THE COURT: If you're on this jury, you
21 understand that you'd be under an oath that you
22 promise that you will decide the case based on the
23 evidence and the law; do you understand that?

24 JUROR: Yes.

25 THE COURT: That's going to come in this

1 courtroom; understand that?

2 JUROR: Yes.

3 THE COURT: Is there anything about what you
4 may have heard, seen or read through the media or
5 any other sources that would affect your ability to
6 follow that oath?

7 JUROR: No.

8 THE COURT: You can decide the case without
9 regard to whatever the media might have --

10 JUROR: I believe I could. I understand what
11 you're saying.

12 THE COURT: Do you have any doubt whatsoever
13 about that?

14 JUROR: No.

15 THE COURT: Did your wife express any opinions
16 to you about the case?

17 JUROR: No. She's just, basically, she's tired
18 of people getting killed.

19 THE COURT: Would any of that conversation or
20 your situation with your wife, would that affect
21 your ability to be fair and impartial?

22 JUROR: No.

23 THE COURT: Any doubt at all about --

24 JUROR: No.

25 THE COURT: Thank you very much, sir. Don't

1 discuss any of that with your fellow jurors, please.

2 132 is eligible to serve.

3 THE CLERK: Juror Number 123, sir.

4 THE COURT: Yes, sir, what's your situation?

5 JUROR: Media coverage, newspaper.

6 THE COURT: Do you recall any specifics?

7 JUROR: Nothing more than there was a shooting
8 at the Waffle House.

9 THE COURT: Don't remember anything else about
10 it?

11 JUROR: Seems like there was a young guy trying
12 to run, that's all I remember, maybe in a cross fire
13 or something like that, that's all I know.

14 THE COURT: If you're on this jury, you
15 understand that you'll be under an oath that you
16 decide the case based on the evidence and the law?

17 JUROR: Yes.

18 THE COURT: You understand those things will
19 come in the courtroom?

20 JUROR: Yes.

21 THE COURT: Do you have any doubt about your
22 ability to put aside whatever you may have seen,
23 heard or read through the media?

24 JUROR: I don't.

25 THE COURT: You can decide this case based only

1 on the evidence and the law?

2 JUROR: Yes, sir.

3 THE COURT: Do you have any doubt whatsoever
4 about your ability to do that?

5 JUROR: I don't.

6 THE COURT: Thank you, sir.

7 Juror Number 123 is eligible to serve.

8 Yes, sir.

9 THE CLERK: Juror Number 95, sir.

10 THE COURT: Okay. What's your situation, sir?

11 JUROR: I heard a lot about it on the news and
12 watched it on the news and I had a lot of talk about
13 it between my sisters, family members.

14 THE COURT: Anything about any of that that
15 affects your ability to be fair and impartial as a
16 juror in this case?

17 JUROR: Yes.

18 THE COURT: I'll set you aside on this one.
19 Just have -- you see that gentleman in the green
20 coat right there, go back there to him.

21 Juror Number 95 is set aside on the trial of
22 this case.

23 Yes.

24 THE CLERK: Juror Number 66, sir.

25 THE COURT: Go ahead, ma'am.

1 JUROR: Other than just having read about the
2 alleged incident, the members of the Wright family
3 are members of the church that I attend.

4 THE COURT: Has anybody at the church talked to
5 you about this?

6 JUROR: No, sir.

7 THE COURT: They didn't talk about it when it
8 happened?

9 JUROR: No.

10 THE COURT: Did any of the family members talk
11 to anybody?

12 JUROR: No. I don't know the family. I just
13 know that they're members of my church.

14 THE COURT: So you don't talk to them at
15 church?

16 JUROR: No.

17 THE COURT: Did the church have anything for
18 them?

19 JUROR: Unfortunately, we do. We have a
20 project that's called the BWRIGHT Project and it's a
21 situation at church where any youth that had any
22 problems with people at school or even with their
23 parents that they feel free to come in and talk with
24 adults. And I'm not affiliated with that, but it is
25 in place. Senator Darrel Jackson is my pastor, so

1 it's a program that he initiated.

2 COURT REPORTER: What was the name of the
3 program?

4 JUROR: B-W-R-I-G-H-T, in honor of the victim.

5 THE COURT: Let me skip to the last question
6 and then I'll come back and work my way through if I
7 need to, okay?

8 JUROR: Sure.

9 THE COURT: Anything about your relationship
10 with the family, with the church, with anything you
11 may have been exposed to about this matter, would
12 that affect you ability to be fair and impartial?

13 JUROR: No, sir.

14 THE COURT: You can decide this case without
15 regard to --

16 JUROR: Without prejudice, yes.

17 THE COURT: And you would not be concerned
18 about what the Wrights might think of your decision?

19 JUROR: No. I've no trouble with that. You
20 just asked me those questions and that's just my
21 involvement with it. I just happen to attend the
22 church where the program resides.

23 THE COURT: You said you read something about
24 it.

25 JUROR: In the newspaper whenever the incident

1 occurred.

2 THE COURT: Do you remember any specifics, what
3 was written in the newspaper?

4 JUROR: Just what you said when you commented
5 about the alleged incident where it occurred.

6 THE COURT: Do you understand that if you're on
7 this jury, you'll be under an oath that you will
8 promise us that you'll decide the case based on the
9 evidence and the law?

10 JUROR: Yes.

11 THE COURT: You understand those things come to
12 you in this courtroom?

13 JUROR: Yes, sir.

14 THE COURT: Would you have any problem, any
15 difficulty at all in putting aside anything you may
16 know about this case, anything you might have seen,
17 heard or read through the media, anything any church
18 member might have done, any organization related to
19 the church, your affiliation with the church, can
20 you put all of that aside?

21 JUROR: I can, yes, sir.

22 THE COURT: You can decide this case based
23 solely on the evidence presented in court?

24 JUROR: Yes.

25 THE COURT: Do you have any doubt whatsoever

1 about that?

2 JUROR: No, sir.

3 THE COURT: Thank you, ma'am. Just go back to
4 your seat, please.

5 Juror Number 66 is eligible to serve.

6 Yes, ma'am.

7 THE CLERK: Juror Number 269, sir.

8 THE COURT: What's your situation, ma'am?

9 JUROR: I remember hearing about the shooting
10 on the news. And, also, I glimpse at headlines on
11 the web. Details, I don't remember that much.

12 THE COURT: Do you remember anything at all?

13 JUROR: Not really, just something about a teen
14 being shot at a Waffle House.

15 THE COURT: So you heard something on the news,
16 T.V. news?

17 JUROR: Uh-huh.

18 THE COURT: And you saw something on the
19 Internet?

20 JUROR: Yeah.

21 THE COURT: Was that like a State Newspaper web
22 site or what was it?

23 JUROR: I'm not sure. It might have been the
24 same T.V. station. It might have been WLTX since I
25 go to that often.

1 **THE COURT:** And you don't remember any
2 specifics?

3 **JUROR:** No, I don't. That's too long ago.

4 **THE COURT:** You understand that if you're on
5 this jury, you'll be promising us that you'll decide
6 the case on the evidence and the law?

7 **JUROR:** Yes, I do.

8 **THE COURT:** You understand those things come to
9 you in this courtroom?

10 **JUROR:** Yes, sir.

11 **THE COURT:** Is there anything at all about what
12 you may have heard, seen or read that would affect
13 your ability to follow that oath and decide this
14 case based only on what's presented in the
15 courtroom?

16 **JUROR:** No. Quite frankly, I just don't
17 remember the details, but I thought it would be
18 worth mentioning.

19 **THE COURT:** You did the right thing. Do you
20 have any doubt at all about your ability to decide
21 this case based only on what's presented in court?

22 **JUROR:** No, I don't.

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

24 Juror Number 269 is eligible to serve.

25 Yes, ma'am.

1 **THE CLERK:** Juror Number 116, sir.

2 **THE COURT:** What's your situation?

3 **JUROR:** On that day, the night that it
4 happened, I was on my way from church so I passed
5 right by the Waffle House and saw that, you know,
6 something had happened. I don't live too far from
7 the Waffle House.

8 **THE COURT:** Do you remember what you saw?

9 **JUROR:** I saw the police lights, a lot of
10 policemen (sic). And if I can remember, looked
11 like I saw somebody's shoes, somebody lying on the
12 ground and, you know, could see the feet. And I
13 said -- I got upset about it and I thought somebody
14 must have got killed.

15 **THE COURT:** You got upset?

16 **JUROR:** Yeah.

17 **THE COURT:** Let me skip to the last question
18 and then I'll work my way back if I need to.
19 Anything about that experience that affects your
20 ability to be fair and impartial as a juror in this
21 case?

22 **JUROR:** Yes.

23 **THE COURT:** That's understandable. Just --
24 there's a gentleman back there by the back doors,
25 you need to go back there to him, go right this way

1 for me, okay.

2 Juror Number 116 is set aside on this trial.

3 Yes, ma'am.

4 **THE CLERK:** Juror Number 133, sir.

5 **THE COURT:** Yes, ma'am, what's your situation?

6 **JUROR:** I heard about it on the news and I read
7 it in the newspaper that there had been a shooting
8 down there.

9 **THE COURT:** What newspaper?

10 **JUROR:** The State.

11 **THE COURT:** And do you remember what media
12 outlet that you heard it on?

13 **JUROR:** Probably WIS.

14 **THE COURT:** Do you recall any specifics of what
15 you may have heard, seen or read?

16 **JUROR:** That there had been a shooting at the
17 Waffle House and probably a young -- a young man had
18 been killed and it was possibly gang related.

19 **THE COURT:** You understand that if you're a
20 juror on the case, that you'll be promising us that
21 you'll decide the case based on the evidence and the
22 law; do you understand that?

23 **JUROR:** Yes, I do.

24 **THE COURT:** Do you understand that that's going
25 to come to you here in this courtroom?

1 JUROR: Yes, I do.

2 THE COURT: Do you have any question about your
3 ability to put aside what you may have seen, heard
4 or read through the media and decide the case based
5 only on the evidence presented?

6 JUROR: No, I don't have any question.

7 THE COURT: You're confident you can do that?

8 JUROR: I think I can do that.

9 THE COURT: Do you have any doubt at all?

10 JUROR: No.

11 THE COURT: Thank you very much.

12 Juror Number 133 is eligible to serve.

13 Yes, sir.

14 THE CLERK: Number 100, sir.

15 THE COURT: Yes, sir.

16 JUROR: One of your eyewitnesses by the
17 chair...

18 THE COURT: Hold on a second. One of the
19 eyewitnesses what?

20 JUROR: By the name of Chad Robinson that you
21 had called earlier, he had called me and told me
22 that I just heard about it on the -- I heard about
23 it on the news actually. But he called and told me
24 about the shooting.

25 THE COURT: So one of the people that I called

1 out as a witness --

2 JUROR: Yes, sir.

3 THE COURT: -- called you?

4 JUROR: Yes, sir. He's like my best friend.

5 He just called and told me what had happened because
6 I guess he was there eating at the time or just up
7 there hanging out.

8 THE COURT: Right. I'm going to have to set
9 you aside. See that fellow back there in the green
10 jacket, if you'll go around this way to him.

11 Juror Number 100 is set aside on this trial.

12 Yes, ma'am.

13 THE CLERK: Number 4, sir.

14 THE COURT: Yes, ma'am. What did you see, hear
15 or --

16 JUROR: I got a phone call when the accident
17 happened, it was my girlfriend and that was her
18 friend's other friend's son that got shot and then
19 we discussed it over the phone. And I'm also a
20 nurse that works at Richland in the trauma room and
21 at Lexington Medical Center and kept up with it
22 through the news and the media.

23 THE COURT: I'm going to ask you the last
24 question first and then I'll come back through if I
25 need to, okay?

1 JUROR: Okay.

2 THE COURT: Anything at all about any of that
3 that affects your ability to be a fair and impartial
4 juror in the case?

5 JUROR: Yes.

6 THE COURT: Just go back to that gentleman in
7 the green coat back there, okay.

8 Juror Number 4 is set aside on this trial.

9 Yes, ma'am.

10 THE CLERK: Juror Number 60, sir.

11 THE COURT: Yes, ma'am.

12 JUROR: I just read a news report.

13 THE COURT: What kind of media outlet was it?

14 JUROR: WIS.

15 THE COURT: Do you remember any specifics of
16 what you may have seen on WIS?

17 JUROR: I think just the location.

18 THE COURT: Anything else you can remember?

19 JUROR: Huh-huh. I think it was just the
20 location that stuck out.

21 THE COURT: Any particular reason why the
22 location stuck out?

23 JUROR: No, sir.

24 THE COURT: You don't live near there or
25 anything?

1 JUROR: No.

2 THE COURT: If you're on this jury, you
3 understand that you'll be under an oath where you
4 promise us that you'll decide the case based on the
5 evidence and the law?

6 JUROR: Yes, sir.

7 THE COURT: You understand those things come
8 here in this courtroom?

9 JUROR: Yes, sir.

10 THE COURT: Is there anything at all about what
11 you may have heard, seen on WIS that would affect
12 your ability to be a fair and impartial juror?

13 JUROR: No, sir.

14 THE COURT: You're confident you can decide the
15 case without regard to what you may have seen
16 through the media?

17 JUROR: Yes, sir.

18 THE COURT: Any doubt at all?

19 JUROR: No, sir.

20 THE COURT: Thank you, ma'am.

21 Juror Number 60 is eligible to serve.

22 Yes, ma'am.

23 THE CLERK: Juror Number 117.

24 THE COURT: Yes, ma'am.

25 JUROR: I just remember hearing about it on the

1 news.

2 THE COURT: Do you remember what media outlet?

3 JUROR: T.V., WIS probably.

4 THE COURT: Do you remember any specifics?

5 JUROR: No, just that somebody was shot at a
6 Waffle House on Two Notch Road.

7 THE COURT: Anything else you can remember?

8 JUROR: That's about all I remember, but I do
9 -- I don't remember when it happened, but I do
10 remember it being on the news.

11 THE COURT: You understand that if you're on
12 this jury, you'll be under an oath that you're
13 promising us that you'll decide the case based on
14 the evidence and the law?

15 JUROR: Yes, sir.

16 THE COURT: You understand those things will
17 come in this courtroom?

18 JUROR: Yes, sir.

19 THE COURT: Is there anything at all about what
20 you may have been exposed to through the media that
21 will affect your ability to follow that oath and
22 decide this case based only on the evidence and the
23 law?

24 JUROR: No, sir.

25 THE COURT: Any doubt in your mind?

1 JUROR: No, sir.

2 THE COURT: Thank you very much.

3 117 is eligible to serve.

4 Yes, ma'am.

5 THE CLERK: Number 54, sir.

6 THE COURT: What's your situation, please?

7 JUROR: I read about it in the media. And,
8 also, I'm a clinical social worker and we had a
9 conference on gang related violence and that case
10 was sort of brought up within that framework. We've
11 been studying gang related violence.

12 THE COURT: When you say you read it in the
13 media, do you know what outlet?

14 JUROR: WIS and the State.

15 THE COURT: Do you remember specifics of --

16 JUROR: It was a shooting -- it was a drive --
17 not a drive-by shooting, but similar to that, not
18 similar, but it was -- all I know that there was
19 talk that it was gang related and that's the
20 violence in the cities. They're trying to go after
21 the gangs, Crips and the Bloods.

22 THE COURT: Now, were you on the program at
23 that conference or just --

24 JUROR: I was a member -- I mean, I was in the
25 audience.

1 THE COURT: And do you know why they picked
2 that as an example?

3 JUROR: Again, they were studying -- they were
4 talking about the gangs and the incidents of gangs
5 rising in Columbia and alleged incidents that looked
6 like gang related incidents.

7 THE COURT: Who was presenting that?

8 JUROR: I could go back to the program, but I
9 believe --

10 THE COURT: Let me ask you this. Was it law
11 enforcement people?

12 JUROR: No, social work, clinical social work.

13 THE COURT: All right. If you're on this jury,
14 do you understand that you'll be under an oath that
15 you have to decide this case based on the evidence
16 and the law?

17 JUROR: Uh-huh, yes, sir.

18 THE COURT: Do you understand that those things
19 are presented in the courtroom? They come to you in
20 the courtroom?

21 JUROR: Yes, sir.

22 THE COURT: All right. Is there anything at
23 all about what you may have seen, heard, read
24 through the media or in that conference that would
25 affect in any way your ability to put that aside and

1 decide the case only on what was presented in the
2 courtroom?

3 JUROR: I don't think so.

4 THE COURT: You have some doubt?

5 JUROR: Uh-huh.

6 THE COURT: I'll have to set you aside. That
7 gentleman in the green coat back there, if you'll go
8 to him.

9 Juror Number 54 is set aside on the trial of
10 this case.

11 Yes, ma'am.

12 THE CLERK: Number 208, sir.

13 THE COURT: 60 on our list. Yes, ma'am.

14 JUROR: I vaguely remember some news coverage
15 on this incident. And then probably two to three
16 months later, I was having lunch with a friend whose
17 daughter may have been there. I'm not sure if it's
18 the same or not, but I remember her talking about
19 how afraid her daughter had been.

20 THE COURT: She's not sure if it was the same
21 incident or not is what she said after that.

22 JUROR: I don't remember too many specifics.

23 THE COURT: Do you know what media outlet you
24 may have --

25 JUROR: Probably WIS news.

1 THE COURT: Do you remember any specifics?

2 JUROR: No, just young people being there.

3 THE COURT: Just young people?

4 JUROR: Yes, I think for the most part.

5 THE COURT: And you say that your friend and
6 you were having lunch and your friend brought up
7 that her daughter had been at a location where a
8 shooting had taken place?

9 JUROR: Correct.

10 THE COURT: Was it a Waffle House?

11 JUROR: Yes, I know it was a Waffle House.

12 THE COURT: Did I read her name out?

13 JUROR: No.

14 THE COURT: And did your friend tell you what
15 happened?

16 JUROR: No, not specifically. She talked more
17 about her daughter's emotions than anything. I
18 mean, I know someone was shot and killed.

19 THE COURT: So she talked about how her
20 daughter was affected by that?

21 JUROR: Correct.

22 THE COURT: What did she say?

23 JUROR: She talked about how afraid the young
24 girl had been. I remember her talking about her
25 daughter becoming very ill afterwards.

1 THE COURT: Physically ill?

2 JUROR: Yes, nauseated.

3 THE COURT: If you're on this jury, you'll be
4 put under an oath where you promise us that you'll
5 decide the case based only on the evidence and the
6 law; do you understand that?

7 JUROR: Yes.

8 THE COURT: You understand those things are
9 presented in the courtroom?

10 JUROR: Yes.

11 THE COURT: Is there anything at all about what
12 you may have seen, heard or read through the media
13 or through that conversation that you had with your
14 friend or your relationship with your friend and her
15 daughter that would in any way affect your ability
16 to put that aside and decide the case only on the
17 evidence and the law?

18 JUROR: Oh, absolutely not.

19 THE COURT: Okay. You can decide the case
20 without regard to what you may have been told
21 outside the courtroom?

22 JUROR: Correct, yes.

23 THE COURT: Is there any doubt at all?

24 JUROR: No doubt.

25 THE COURT: Can you decide the case without

1 regard to what your friend may think about your
2 decision?

3 JUROR: Yes.

4 THE COURT: Do you have a relationship with her
5 daughter?

6 JUROR: No.

7 THE COURT: Any doubt at all in your mind about
8 any of that?

9 JUROR: No, sir.

10 THE COURT: Thank you very much. Just have a
11 seat back where you were, please.

12 208 is eligible to serve.

13 Yes, sir.

14 THE CLERK: Number 297, sir.

15 THE COURT: 56 on our list. Yes, sir, go
16 ahead, please.

17 JUROR: Yes. I have no direct link to this
18 case, but I have a son who's incarcerated in
19 Pennsylvania under the same conditions.

20 THE COURT: Would that affect your ability to
21 be fair and impartial as a juror in this case?

22 JUROR: I think it would be.

23 THE COURT: Thank you, sir. You see that
24 gentleman in the green coat back there, go to him,
25 please.

1 Juror Number 297 is set aside in this case.

2 Yes, ma'am.

3 THE CLERK: Number 148, sir.

4 THE COURT: Go ahead, please, ma'am.

5 JUROR: I read about it in the newspaper and
6 listened to it on the news. And some of my friends
7 and us talked about it, but that was about it.

8 THE COURT: Some of your friends talked about
9 it with you?

10 JUROR: Uh-huh.

11 THE COURT: Do you remember what newspaper you
12 might have read?

13 JUROR: The State.

14 THE COURT: And you say you heard it?

15 JUROR: On the news.

16 THE COURT: What station; do you know?

17 JUROR: 19.

18 THE COURT: Is that WLTX?

19 JUROR: Uh-huh.

20 THE COURT: Do you remember specifics about
21 what was in the media?

22 JUROR: That it was just a shooting at a Waffle
23 House and there was a 15 year old, I think he was 15
24 or something like that, got shot.

25 THE COURT: Do you remember anything else?

1 JUROR: No.

2 THE COURT: What did your friends talk about
3 with you?

4 JUROR: Just talking about the same thing that
5 was on the news.

6 THE COURT: And you were discussing it, too?

7 JUROR: Uh-huh.

8 THE COURT: What did you say?

9 JUROR: We just talked, saying that it's a
10 shame that it happened, but it happened, that's
11 about it.

12 THE COURT: Did your friends know any of these
13 folks?

14 JUROR: No.

15 THE COURT: And do you know any of them?

16 JUROR: No, sir.

17 THE COURT: Now, if you're on this jury, you
18 understand you'll be under an oath where you're
19 promising us that you're going to decide the case
20 based on the evidence and the law; do you
21 understand?

22 JUROR: Yes, sir.

23 THE COURT: You understand the evidence and the
24 law is presented in the courtroom?

25 JUROR: Yes, sir.

1 **THE COURT:** Is there anything at all about what
2 you may have heard, seen or read through the media
3 or talked about with your friends that would in any
4 way affect your ability to follow that oath?

5 **JUROR:** No.

6 **THE COURT:** You can decide this case without
7 regard to what you may have heard on the outside?

8 **JUROR:** Yes, sir.

9 **THE COURT:** Any doubt in your mind about that?

10 **JUROR:** No doubt.

11 **THE COURT:** Thank you, ma'am. Did your friends
12 express any opinions other than saying it was a
13 shame?

14 **JUROR:** No, not really.

15 **THE COURT:** Okay. Thank you, ma'am.

16 148 is eligible to serve.

17 Yes, ma'am.

18 **THE CLERK:** Number 236, sir.

19 **THE COURT:** Go ahead, please, ma'am.

20 **JUROR:** I think I was out of town because I
21 coach, but I remember when I came back, hearing
22 about it on the television.

23 **THE COURT:** What do you coach?

24 **JUROR:** Volleyball and softball.

25 **THE COURT:** Where?

1 JUROR: Benedict.

2 THE COURT: Do you recall what T.V. station?

3 JUROR: I always listen to Channel 19.

4 THE COURT: Do you remember any specifics about
5 what they said?

6 JUROR: Only that a kid was killed at the
7 Waffle House.

8 THE COURT: Anything else you remember?

9 JUROR: No.

10 THE COURT: Now, if you're on this jury, you
11 understand that you'll be under an oath where you're
12 promising us that you'll decide the case based on
13 the evidence and the law; you understand that?

14 JUROR: Uh-huh.

15 THE COURT: That's a yes?

16 JUROR: Yes, sir.

17 THE COURT: She's taking down what we say so
18 I've got to make sure that it's right.

19 JUROR: But I keep looking at the kid with the
20 ponytail that, I guess, don't have nothing to do
21 with it, just like I've seen him before, but that's
22 it.

23 THE COURT: You think you may have seen him
24 before?

25 JUROR: Because I coach and I see kids all the

1 time, so I don't know.

2 THE COURT: Do y'all know if he has any
3 connection to Benedict College?

4 MS. PAYNE: (Shook head.)

5 THE COURT: Is there anything at all about what
6 you may have heard, seen or read on the T.V. that
7 would in any way affect your ability to follow that
8 oath and decide this case based only on what's
9 presented in the courtroom?

10 JUROR: No, sir.

11 THE COURT: You can decide the case without
12 regard to what you may have heard or seen on the
13 outside?

14 JUROR: Yes.

15 THE COURT: Any doubt at all about any of that?

16 JUROR: No.

17 THE COURT: If, at any time, you realize that
18 you know him, let me know, okay?

19 JUROR: Okay.

20 THE COURT: Okay. Thank you, ma'am.

21 Juror Number 236 is eligible to serve.

22 Yes, ma'am.

23 THE CLERK: Number 191, sir.

24 JUROR: I've actually got two issues.

25 THE COURT: All right.

1 **JUROR:** One of the witnesses that you read out
2 is Christy Stover, I'm her -- she's the mother of my
3 step-grandchildren. I don't know if that makes a
4 difference or not.

5 **THE COURT:** One of the witnesses is related to
6 you by marriage?

7 **JUROR:** Well, I'm the grandparent --
8 step-grandparent of her child -- children. My
9 daughter is married to her first husband. I know
10 this is getting complicated.

11 **THE COURT:** What's your other issue?

12 **JUROR:** Well, I've heard a lot about the case
13 in the media. When you talked about the Two Notch
14 thing, it all came back.

15 **THE COURT:** What have you heard through the
16 media that you can recall?

17 **JUROR:** That it happened late at night at the
18 Waffle House on Two Notch and that the police, if I
19 remember correctly, thought it was a gang related
20 thing, that the boy's father said, No, my son was
21 not in a gang. And I do remember that Bibleway
22 Church has started a foundation named after Brian
23 Wright to try to keep children from going into
24 gangs.

25 **THE COURT:** Do you know how that witness -- do

1 you know anything about what she knows?

2 JUROR: Who -- oh, Ms. Stover? No, huh-huh.

3 THE COURT: Hadn't talked to her at all?

4 JUROR: No.

5 THE COURT: It's just her daughter is married
6 to --

7 JUROR: No. My daughter is married to her
8 first husband. I have two step-grandchildren and
9 Christy is their mother. These family relationships
10 can get complicated.

11 THE COURT: Let me ask the last question first
12 and then I'll come back. Anything about any of that
13 that affects your ability to be fair and impartial
14 as a juror in this case?

15 JUROR: No, not that I know of.

16 THE COURT: Any doubt?

17 JUROR: Maybe a tiny bit.

18 THE COURT: I'll set you aside.

19 JUROR: Not much, but I just wanted to bring it
20 up to you.

21 THE COURT: You did exactly what you're
22 supposed to do. And I think I would have had to set
23 you aside anyway if you're related to a potential
24 witness even if it's through that marriage. Thank
25 you.

1 Juror Number 191 is set aside on this case.

2 Yes, ma'am.

3 THE CLERK: Juror Number 279, sir.

4 THE COURT: She's 39 on our list.

5 Go ahead, ma'am.

6 JUROR: I'm aware of this case.

7 THE COURT: How?

8 JUROR: Through the media and reading the
9 paper.

10 THE COURT: Which paper?

11 JUROR: The State.

12 THE COURT: And other media would be what?

13 JUROR: News.

14 THE COURT: T.V.?

15 JUROR: T.V. news.

16 THE COURT: Do you know what stations?

17 JUROR: 19.

18 THE COURT: Do you recall any specifics about
19 what you may have been exposed to through media
20 coverage?

21 JUROR: No.

22 THE COURT: Don't remember anything at all?

23 JUROR: Just what took place, what transpired.

24 THE COURT: What is that?

25 JUROR: Boy, someone, losing their life. It

1 was a murder.

2 THE COURT: You remember somebody got killed?

3 JUROR: Right.

4 THE COURT: Anything else you remember about
5 it?

6 JUROR: And just that he was a young man that
7 was killed.

8 THE COURT: Okay. Do you understand that if
9 you're a juror in the case, that you'll be promising
10 us you'll be under oath where you promise us that
11 you will decide the case based on the evidence and
12 the law?

13 JUROR: Sure.

14 THE COURT: Do you understand those things come
15 to you in this courtroom?

16 JUROR: Yes.

17 THE COURT: Is there anything at all about what
18 you may have heard, seen or read through the media
19 that would in any way affect your ability to follow
20 that oath and decide the case only by what's
21 presented in the courtroom?

22 JUROR: No.

23 THE COURT: You can decide the case without
24 regard to anything on the outside?

25 JUROR: Yes.

1 THE COURT: Any doubt in your mind about that?

2 JUROR: No doubt.

3 THE COURT: Thanks very much. Just have your
4 seat back there, please.

5 279 is eligible to serve.

6 Yes, ma'am.

7 THE CLERK: Number 280, sir.

8 THE COURT: What's your situation?

9 JUROR: I have heard of it because where I work
10 at, they have a BWRIGHT intervention program for the
11 young people. At first, I didn't realize that was
12 the same person.

13 THE COURT: What is the BWRIGHT intervention
14 program?

15 JUROR: Well, it's for young people to keep
16 them out of trouble. I think maybe the young man
17 had belonged or something to the organization, to
18 that particular church and so they set up a, you
19 know, a program to try and keep other young men from
20 whatever happening to him, I think, and that's where
21 I had heard of it.

22 THE COURT: And you said you were exposed to
23 that through your work?

24 JUROR: I don't work with them, but I work for
25 the Midland's Community Development Corporation.

1 They have a lot of different programs within that
2 organization, that's one of the programs, that's
3 all.

4 **THE COURT:** Do you know anything at all about
5 the matter, about this incident?

6 **JUROR:** I mean, after, you know, you said it, I
7 sort of remember, you know, hearing about it in the
8 paper.

9 **THE COURT:** What do you sort of remember
10 hearing?

11 **JUROR:** That a young man was at a gas station
12 and got hurt, got killed.

13 **THE COURT:** Anything else, specifics?

14 **JUROR:** No, no specifics.

15 **THE COURT:** Okay. Do you understand that if
16 you're on this jury, you'll be under an oath where
17 you're promising us that you're going to decide the
18 case based on the evidence and the law?

19 **JUROR:** Yes.

20 **THE COURT:** You understand those things come to
21 you in this courtroom?

22 **JUROR:** Yes, I do.

23 **THE COURT:** Is there anything at all about your
24 affiliation with your work, with that organization,
25 with anything you may have heard on the outside that

1 will affect your ability to follow that oath and
2 decide this case only based on what's presented in
3 the courtroom?

4 JUROR: Yes.

5 THE COURT: It would affect you?

6 JUROR: No, it wouldn't. I'm saying, yes, it
7 wouldn't.

8 THE COURT: It's a long, convoluted question.
9 It's my fault. Anything on the outside affect your
10 ability to be able to decide this case based on
11 what's presented in the courtroom?

12 JUROR: No, I don't think so.

13 THE COURT: Do you have any doubt?

14 JUROR: No, I don't.

15 THE COURT: Is there anything about your job
16 that would affect your ability to be fair and
17 impartial?

18 JUROR: Oh, no.

19 THE COURT: So you wouldn't be worried about
20 what anybody might think of your decision if you're
21 on a jury?

22 JUROR: Oh, no, because it's a separate -- it's
23 totally separate. I work with young children,
24 after-school children.

25 THE COURT: All right. Do you have any doubt

1 whatsoever about your ability to be fair and
2 impartial?

3 JUROR: No, I don't.

4 THE COURT: Thank you very much. Just have a
5 seat back there for me, please.

6 280's eligible to serve.

7 Yes, ma'am.

8 THE CLERK: Number 292, sir.

9 THE COURT: Go ahead, ma'am.

10 JUROR: I just heard about it on the news.

11 THE COURT: You heard about it on the news?

12 JUROR: Yes, sir.

13 THE COURT: What news?

14 JUROR: Channel 19.

15 THE COURT: Do you recall any specifics?

16 JUROR: Just a young man, 15 years old, was
17 gunned down. I think it was gang related.

18 THE COURT: Anything else?

19 JUROR: No, sir.

20 THE COURT: Do you understand that if you're
21 selected as a juror in the case, that you'll be
22 under an oath where you've promised us that you'll
23 decide the case based on the evidence and the law?

24 JUROR: Yes, sir.

25 THE COURT: Do you understand those things come

1 to you in this courtroom?

2 JUROR: Yes, sir.

3 THE COURT: Is there anything at all about what
4 you may have heard, seen or read through the media
5 that would in any way affect your ability to follow
6 that oath?

7 JUROR: No, sir.

8 THE COURT: You can decide the case without
9 regard to what you may have heard on the outside?

10 JUROR: Yes, sir.

11 THE COURT: Any doubt in your mind about that?

12 JUROR: No, sir.

13 THE COURT: Thanks very much.

14 292 is eligible to serve.

15 Yes, ma'am.

16 THE CLERK: Number 113, sir.

17 THE COURT: Yes, ma'am.

18 JUROR: I just saw it on T.V.

19 THE COURT: Do you know what station?

20 JUROR: WIS T.V.

21 THE COURT: Do you remember any specifics?

22 JUROR: I just remember a person got shot,
23 that's all.

24 THE COURT: You remember a person got shot?

25 JUROR: Uh-huh.

1 THE COURT: Nothing else you can remember?

2 JUROR: (Juror shook head.)

3 THE COURT: If you're on this jury, you
4 understand that you'll be under an oath promising us
5 to decide the case based only on the evidence and
6 the law?

7 JUROR: Uh-huh.

8 THE COURT: Say it out loud.

9 JUROR: Yes.

10 THE COURT: You understand those things come to
11 you in the courtroom, the evidence and the law?

12 JUROR: Yes.

13 THE COURT: Is there anything at all about what
14 you may have been exposed to through the media that
15 would affect your ability to follow that oath?

16 JUROR: No.

17 THE COURT: You can decide the case without
18 regard to anything you may have heard, seen or read
19 on the outside?

20 JUROR: Yes.

21 THE COURT: Any doubt in your mind?

22 JUROR: No.

23 THE COURT: Thanks very much.

24 113 is eligible to serve.

25 Yes, ma'am.

1 **THE CLERK:** Juror Number 264, sir.

2 **THE COURT:** Yes, ma'am, what's your situation?

3 **JUROR:** I saw it on the news.

4 **THE COURT:** Saw it on the news?

5 **JUROR:** Uh-huh.

6 **THE COURT:** Do you remember what station?

7 **JUROR:** WIS.

8 **THE COURT:** Do you remember any specifics about
9 what you heard on the news?

10 **JUROR:** Not really.

11 **THE COURT:** Do you remember anything about what
12 you saw on the news?

13 **JUROR:** Just about the shooting, that's it.

14 **THE COURT:** Anything at all you can tell me?

15 **JUROR:** No, nothing.

16 **THE COURT:** You understand that if you're on
17 this jury, you'll be under an oath to decide the
18 case based on the evidence and the law?

19 **JUROR:** Uh-huh.

20 **THE COURT:** You've got to say yes or no.

21 **JUROR:** Yes.

22 **THE COURT:** You understand that those things
23 come to you here in the courtroom not from outside?

24 **JUROR:** Yes.

25 **THE COURT:** Is there anything at all about what

1 you may have seen, heard through the media that
2 would affect your ability to follow that oath?

3 **JUROR:** No.

4 **THE COURT:** You can decide the case without
5 regard to anything you may have been exposed to on
6 the outside?

7 **JUROR:** Yes, sir.

8 **THE COURT:** Any doubt in your mind?

9 **JUROR:** No.

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

11 264 is eligible to serve.

12 **MS. CAMPBELL:** Judge, one thing just with that
13 one juror, his name is Andre Tayson Boone and he
14 goes by Tayson. So I don't know if we might want
15 to --

16 **MS. EVERHART:** He actually goes by Andre.

17 **MS. CAMPBELL:** I'm just saying we might throw
18 it out there.

19 **THE COURT:** Okay.

20 (The bench conferences were concluded.)

21 **THE COURT:** Ladies and gentlemen, if you have
22 already been set aside on this case, they need you
23 for other cases. So if you'll go, please, back down
24 to the jury assembly room, I'll appreciate it, or go
25 wherever Ms. Scott tells you to go.

1 (The excused jurors leave the courtroom.)

2 THE COURT: All right. Ladies and gentlemen,
3 we need to add some information -- you're talking
4 about the defendant, Mr. Boone's, name?

5 MS. CAMPBELL: Yes, sir.

6 THE COURT: I read Mr. Boone's name to you as
7 Andre Boone and I wanted to make sure, are any of
8 you related by blood or marriage or connected by
9 employment with Andre Tayson Boone; if so, please
10 stand?

11 (There was no response.)

12 THE COURT: Thank you.

13 Are any of you employed in any capacity or do
14 you have any immediate family members or close,
15 personal friends who are employed in any capacity
16 with any law enforcement office, that would be
17 federal, state or local, military, it would include
18 any type of organization that prosecutes cases,
19 including the attorney general's offices,
20 solicitor's offices, district attorney's offices?
21 You got any relatives, immediate relatives, close,
22 personal friends or you, yourself, are employed in
23 any field of law enforcement, please let us know by
24 standing.

25 (Jurors stand.)

1 **THE COURT:** Your name, sir -- I'm sorry, give
2 me your juror number.

3 **JUROR:** 135.

4 **THE COURT:** He's seven on our list.

5 What's your situation, sir?

6 **JUROR:** My brother's an officer in the Army Jag
7 Corps.

8 **THE COURT:** Anything at all about that
9 relationship that affects your ability to be a fair
10 and impartial juror in this case?

11 **JUROR:** No, sir.

12 **THE COURT:** Any doubt in your mind?

13 **JUROR:** No, sir.

14 **THE COURT:** Thank you. 135 is eligible.

15 Your name please, ma'am. I'm sorry, it's
16 habit.

17 **JUROR:** 79.

18 **THE COURT:** 28 on our list. And what's your
19 situation, ma'am?

20 **JUROR:** I'm related by marriage to Danielle
21 Payne.

22 **THE COURT:** I'm going to need to set you aside
23 on this case, ma'am. Juror Number 79 is set aside
24 on the trial of the case. She's one of the defense
25 attorneys.

1 In the blue blazer, your number, sir?

2 JUROR: 275. My wife is the traffic resource
3 safety prosecutor for, I guess, DUI prosecution for
4 the state.

5 THE COURT: She works for the Attorney
6 General's Office or Commission on Prosecution
7 Coordination?

8 JUROR: Commission on Prosecution.

9 THE COURT: Is there anything at all about that
10 relationship that affects your ability to be fair
11 and impartial as a juror in this case?

12 JUROR: No, sir.

13 THE COURT: Any doubt in your mind?

14 JUROR: No, sir.

15 THE COURT: Thank you. 275 is eligible to
16 serve.

17 Yes, ma'am.

18 JUROR: 138.

19 THE COURT: 54 on our list. And what's your
20 situation, ma'am?

21 JUROR: My husband's a correctional officer at
22 the department of corrections.

23 THE COURT: Anything about that that affects
24 your ability to be fair and impartial as a juror in
25 this case?

1 JUROR: No, sir.

2 THE COURT: Any doubt in your mind?

3 JUROR: No, sir.

4 THE COURT: Thank you. 138's eligible to
5 serve.

6 In the green shirt.

7 JUROR: 61.

8 THE COURT: Number 11 on our list. What's your
9 situation, please?

10 JUROR: Large number of friends on the North
11 Carolina State Highway Patrol.

12 THE COURT: Anything about your relationship
13 with them that affects your ability to be fair and
14 impartial as a juror in this case?

15 JUROR: No, sir.

16 THE COURT: Any doubt in your mind?

17 JUROR: No, sir.

18 THE COURT: Thank you very much. Juror Number
19 61 is eligible to serve.

20 Yes, ma'am.

21 JUROR: 192. My daughter-in-law's a U.S.
22 probation officer.

23 THE COURT: Anything about your relationship
24 with her or her experiences that affects your
25 ability to be a fair and impartial juror in the

1 case?

2 JUROR: No, sir.

3 THE COURT: Any doubt in your mind?

4 JUROR: No, sir.

5 THE COURT: Thank you. 192's eligible.

6 Yes, ma'am.

7 JUROR: 171. My husband works with the South
8 Carolina Commission of Indigent Defense.

9 THE COURT: Anything at all about that that
10 affects your ability to be a fair and impartial
11 juror in the case?

12 JUROR: No, sir.

13 THE COURT: Any doubt in your mind?

14 JUROR: No, sir.

15 THE COURT: 171 is eligible to serve. Thank
16 you.

17 Folks, I've asked you if you are related by
18 blood or marriage or connected by employment with
19 any of the potential witnesses, with the defendants.
20 What I need for you to do now is this, if you've got
21 any connection of any kind with any of the people
22 involved in these cases or any of the entities
23 involved in these cases, you need to disclose that
24 to us, that would include if you're a neighbor, if
25 you're a friend, if you attend the same church or

1 civic clubs, if you're current or former clients of
2 any of these attorneys or anyone with whom they're
3 affiliated, if you've ever been on the opposite
4 sides of one of these attorneys or anyone with whom
5 they're affiliated, if you have any connection with
6 any of the law enforcement entities that I read out
7 to you like the Richland County Sheriff's Department
8 or SLED, the coroner's office, with Palmetto
9 Richland, if you've got any connection of any kind
10 with any of these folks, please disclose it to us by
11 standing.

12 (Juror stands.)

13 **THE COURT:** Your number, sir?

14 **JUROR:** 272.

15 **THE COURT:** 272 is number three on our list.

16 And what's your situation, please?

17 **JUROR:** Barney Giese and I go to the same
18 church and our kids go to the same school.

19 **THE COURT:** Is there anything at all about
20 those relationships that would in any way affect
21 your ability to be a fair and impartial juror in
22 this case?

23 **JUROR:** No.

24 **THE COURT:** You can decide these cases without
25 regard to what Solicitor Giese may think of your

1 decision?

2 JUROR: Yes.

3 THE COURT: Any doubt whatsoever in your mind
4 about any of that?

5 JUROR: No.

6 THE COURT: Thank you very much.

7 272 is eligible to serve.

8 Anybody else?

9 (There was no response.)

10 THE COURT: Are any of you members of or
11 financial contributors to any organization which has
12 as one of its primary purposes the enforcement --
13 the support of law enforcement or victim's rights,
14 that would include organizations such as Citizens
15 Against Violent Crime, Mothers Against Drunk
16 Driving, any sort of sister care or any shelter for
17 people who are abused? If you have any connection
18 of any kind with any such association, please let us
19 know.

20 (There was no response.)

21 THE COURT: Have any of you ever testified in a
22 criminal case either for or against -- either for
23 the State or for the defense? Any of you ever been
24 a witness testifying in a criminal case in any
25 state, in any federal prosecution?

1 (Juror stands.)

2 THE COURT: Your number, please.

3 JUROR: 113.

4 THE COURT: Come down front, please.

5 The lawyers may join me on the side.

6 (Whereupon, the following bench conference
7 was held on the record.)

8 THE COURT: What's your situation, ma'am?

9 JUROR: I was a witness in a criminal case in
10 the State of Washington.

11 THE COURT: For the state or the defense?

12 JUROR: For the state.

13 THE COURT: What kind of case was it?

14 JUROR: It was an assault and battery case.

15 THE COURT: And was it against you or somebody
16 else?

17 JUROR: It was against someone else.

18 THE COURT: Is there anything at all about that
19 experience that affects your ability to be fair and
20 impartial?

21 JUROR: No.

22 THE COURT: Any doubt in your mind?

23 JUROR: No.

24 THE COURT: Thank you very much.

25 113's eligible to serve.

1 (The bench conference was concluded.)

2 **THE COURT:** All right. I'm going to try to --
3 I'm trying to combine as many of these questions as
4 I can and I'm trying to approach them from different
5 angles, so these are multiple part questions, please
6 listen carefully.

7 Have any of you, any of your immediate family
8 members, any of your close, personal friends ever
9 been the victim of a violent crime or ever been
10 accused of committing a violent crime, you,
11 immediate family member, close, personal friend on
12 either side?

13 (Jurors stand.)

14 **THE COURT:** We're going to talk about it down
15 front. Now, obviously, folks, that would include if
16 anybody who you were related to or a close, personal
17 friend of has ever been murdered or accused of
18 committing a murder. Form a line over here to the
19 right please. But it would be any violent crime.

20 (Whereupon, the following bench conferences
21 were held on the record.)

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

23 **THE CLERK:** Number 113, sir.

24 **THE COURT:** She's number 43 on our list.
25 What's your situation?

1 JUROR: My father was murdered.

2 THE COURT: Was that in this county or
3 somewhere else?

4 JUROR: It was in the State of Georgia.

5 THE COURT: In Georgia?

6 JUROR: Uh-huh.

7 THE COURT: Can you tell me a little bit about
8 what happened?

9 JUROR: His girlfriend stabbed him in his neck.

10 THE COURT: Girlfriend?

11 JUROR: Uh-huh.

12 THE COURT: Did they prosecute her?

13 JUROR: They did.

14 THE COURT: Were you involved in that case in
15 any way?

16 JUROR: No.

17 THE COURT: What happened to her?

18 JUROR: She was sentenced to 15 years.

19 THE COURT: Is there anything at all about that
20 experience or your relationship with your father
21 that affects your ability to be a fair and impartial
22 juror in the case?

23 JUROR: No.

24 THE COURT: Any doubt in your mind?

25 JUROR: No.

1 THE COURT: Thanks very much.

2 113's eligible to serve.

3 Yes, ma'am.

4 THE CLERK: Number 283, sir.

5 THE COURT: Go ahead, please.

6 JUROR: My brother, Sherman Weeks, was killed

7 a...

8 COURT REPORTER: I can't hear what she's
9 saying.

10 THE COURT: Come up here just a little bit.

11 Your brother --

12 JUROR: Sherman Weeks.

13 THE COURT: Was accused of shooting someone?

14 JUROR: Uh-huh.

15 THE COURT: And you said something about how
16 long ago that was?

17 JUROR: It's been five years ago.

18 THE COURT: And did the person die?

19 JUROR: No.

20 THE COURT: Was your brother prosecuted?

21 JUROR: Yes, he served a few years.

22 THE COURT: Was that in Richland County?

23 JUROR: Yes.

24 THE COURT: Were you involved in the case in
25 any way?

1 JUROR: No.

2 THE COURT: Do you know what law enforcement
3 agency may have been involved? Was it the county,
4 sheriff's --

5 JUROR: I believe the county.

6 THE COURT: Is there anything at all about that
7 experience that affects your ability to be a fair
8 and impartial juror in this case?

9 JUROR: Yes.

10 THE COURT: It is, okay. See that gentleman in
11 the green coat back there, I need you to go with
12 him.

13 Juror Number 283 is set aside on the trial of
14 this case.

15 Yes, ma'am.

16 THE CLERK: Number 171, sir.

17 THE COURT: 27 on our list. Yes, ma'am.

18 JUROR: I had a good friend in college that was
19 raped.

20 THE COURT: Was that in --

21 JUROR: 1980.

22 THE COURT: In Richland County?

23 JUROR: Yes.

24 THE COURT: Did they arrest anybody?

25 JUROR: I don't know what happened with it.

1 **THE COURT:** Is there anything at all about that
2 experience that affects your ability to be a fair
3 and impartial juror in the case?

4 **JUROR:** No, sir.

5 **THE COURT:** Any doubt in your mind?

6 **JUROR:** No.

7 **THE COURT:** Thank you.

8 171's eligible to serve.

9 Yes, ma'am.

10 **THE CLERK:** Number 66 sir.

11 **THE COURT:** 61 on our list. Yes, ma'am.

12 **JUROR:** Judge, the State of South Carolina
13 currently has my son hanging on a murder charge.

14 **THE COURT:** Is that in Richland County?

15 **JUROR:** Yes, it is.

16 **THE COURT:** Who arrested him? Was it the
17 county, sheriff's office or the city?

18 **JUROR:** City of Columbia.

19 **THE COURT:** What's your son's name?

20 **JUROR:** Andre Rogers, R-O-G-E-R-S.

21 **THE COURT:** Do you understand that if your son
22 is prosecuted, had he been indicted, that this same
23 Solicitor's office will be the ones that will be
24 prosecuting him?

25 **JUROR:** Yes, I do.

1 **THE COURT:** You understand it might be
2 different people, but it will be somebody under the
3 same umbrella; do you understand that?

4 **JUROR:** Yes, I do.

5 **THE COURT:** Is there anything about your
6 relationship with your son or his situation that
7 affects your ability to be fair and impartial as a
8 juror?

9 **JUROR:** No, sir, it is not.

10 **THE COURT:** Who's defending him?

11 **JUROR:** Jack Swerling.

12 **THE COURT:** How old is your son?

13 **JUROR:** Twenty-one.

14 **THE COURT:** Is there anything at all about the
15 fact that the same prosecutor's office will be
16 prosecuting your son that would affect your ability
17 to be fair and impartial?

18 **JUROR:** No, it's not.

19 **THE COURT:** Are you going to be a witness in
20 that case or do you know?

21 **JUROR:** Not that I know of, no, sir.

22 **THE COURT:** You don't know who he's accused of
23 killing, do you?

24 **JUROR:** Last name is Griffin, initials would be
25 E.J.

1 THE COURT: E.J. Griffin?

2 JUROR: Uh-huh.

3 THE COURT: So you can decide this case without
4 regard to the involvement of the Fifth Circuit
5 Solicitor's Office in this particular case?

6 JUROR: I believe I can, yes.

7 THE COURT: Do you have any doubt at all about
8 any of that?

9 JUROR: No doubt, no, sir.

10 THE COURT: Any doubt about your ability to be
11 fair and impartial in the case?

12 JUROR: No, sir, not at all.

13 THE COURT: Just go back and have your seat,
14 but don't discuss that with anybody, okay?

15 JUROR: Sure.

16 THE COURT: I'm going to rule right now that
17 she's eligible. If we get down to that number,
18 y'all can raise that issue.

19 MS. CAMPBELL: Thank you.

20 MS. EVERHART: Okay.

21 THE CLERK: Number 61, sir.

22 THE COURT: On that last, Juror Number 66,
23 she's eligible to serve.

24 He's number 11 on our list. Go ahead, please.

25 JUROR: My sister was physically and sexually

1 assaulted by her first husband.

2 THE COURT: Was that in Richland County or
3 somewhere else?

4 JUROR: Mecklenburg County, North Carolina.

5 THE COURT: And did they prosecute him?

6 JUROR: My sister was estranged from the
7 family, so I don't know if he was.

8 THE COURT: Is there anything at all about your
9 relationship with her or her experience that affects
10 your ability to be fair and impartial as a juror in
11 the case?

12 JUROR: No, sir.

13 THE COURT: Any doubt in your mind?

14 JUROR: No, sir.

15 THE COURT: Thanks very much.

16 61's eligible to serve.

17 Yes, ma'am.

18 THE CLERK: Number 145, sir.

19 THE COURT: Go ahead, please, ma'am.

20 JUROR: I worked in preschool and one of my
21 parents had homicide by child abuse of two children
22 that was in my classroom. I don't know if that
23 pertains to...

24 THE COURT: Okay. Let me see if I heard you
25 correctly, okay?

1 JUROR: Okay.

2 THE COURT: You work at a preschool?

3 JUROR: Yeah, I worked in a preschool.

4 THE COURT: And your parents ran the preschool?

5 JUROR: No. She was a parent of one of my
6 classroom children. It's just a parent. And she
7 got convicted of child abuse, homicide. She killed
8 him in a abuse case.

9 THE COURT: You kept some children in --

10 JUROR: In a preschool.

11 THE COURT: In a preschool and their -- a
12 child's mother was convicted of homicide by child
13 abuse?

14 JUROR: Uh-huh. She killed the two in an
15 accident or something and he was in my class.

16 THE COURT: Yes, ma'am. You did the right
17 thing by telling me. Was that here in Richland
18 County?

19 JUROR: Yes, sir, back in 2002. She was
20 convicted on two counts of child abuse.

21 THE COURT: What was her name?

22 JUROR: Brown, I believe, was the last name.

23 THE COURT: Say that again.

24 JUROR: The last name Brown was the child's
25 name.

1 **THE COURT:** Brown?

2 **JUROR:** Uh-huh, I believe.

3 **THE COURT:** And this lady got convicted, is
4 that what you said?

5 **JUROR:** Uh-huh, she was convicted. She got
6 life term.

7 **THE COURT:** Life in prison. Is there anything
8 at all about your relationship with the child that
9 would affect -- or that experience that affects your
10 ability to be fair and impartial as a juror in this
11 case?

12 **JUROR:** No, sir.

13 **THE COURT:** Were you involved in the case in
14 any way?

15 **JUROR:** No. They had a character -- just
16 questions about the character, but nothing -- I
17 mean, no involvement in it.

18 **THE COURT:** Did you testify?

19 **JUROR:** Huh-huh. They did an investigation,
20 but that's as far as it went.

21 **THE COURT:** They came and asked you about the
22 mother's character?

23 **JUROR:** Yeah.

24 **THE COURT:** But they didn't call you as a
25 witness?

1 JUROR: No.

2 THE COURT: Is there anything at all about that
3 experience that affects your ability to be fair and
4 impartial in the case?

5 JUROR: No.

6 THE COURT: Any doubt in your mind?

7 JUROR: No.

8 THE COURT: Thanks very much.

9 145 is eligible to serve.

10 Yes, ma'am.

11 THE CLERK: Number 147, sir.

12 THE COURT: Yes, ma'am, what's your situation,
13 please?

14 JUROR: In January of 1977, my first cousin was
15 executed by an African-American pimp.

16 THE COURT: Did they arrest him?

17 JUROR: He served seven years in Atlanta.

18 THE COURT: Were you involved in the case in
19 any way?

20 JUROR: No, other than being family.

21 THE COURT: Did you go to the trial or plea or
22 anything?

23 JUROR: No. I was in college.

24 THE COURT: Is there anything about that
25 experience or your relationship with your cousin

1 that affects your ability to be fair and impartial
2 as a juror in this case?

3 JUROR: We felt like he got away with something
4 that he didn't get nearly as much time as he should
5 have.

6 THE COURT: So do you have some doubt?

7 JUROR: I do.

8 THE COURT: Thank you, ma'am. Just, that
9 gentleman in the green coat back there, go back
10 there to him, okay.

11 147 is set aside on the trial of this case.

12 Yes, sir.

13 THE CLERK: Number 53, sir.

14 THE COURT: What's your situation, please?

15 JUROR: My uncle had passed away...

16 THE COURT: Come up here just a little bit.
17 Your uncle was shot with an R-15 rifle in Puerto
18 Rico?

19 JUROR: Yes, sir. I believe it was...

20 COURT REPORTER: I can't hear him.

21 THE COURT: He said he believed it may have
22 been drug related of some kind.

23 JUROR: And I have a grandfather that passed
24 away last year.

25 THE COURT: What happened to him?

1 JUROR: With him, I believe he just fell and
2 died on the floor, age-wise he was about --

3 THE COURT: No foul play?

4 JUROR: No, sir.

5 THE COURT: Well, let's go back to your uncle.
6 Your uncle was killed in what you think was a drug
7 related situation in Puerto Rico?

8 JUROR: Yes, sir.

9 THE COURT: Were you involved in that case in
10 any way?

11 JUROR: No, sir.

12 THE COURT: Is there anything at all about that
13 experience or your relationship with him that
14 affects your ability to be a fair and impartial
15 juror in the case?

16 JUROR: No, sir.

17 THE COURT: Any doubt in your mind?

18 JUROR: No, sir.

19 THE COURT: Thanks very much.

20 53 is eligible to serve in the case.

21 Yes, ma'am.

22 THE CLERK: Number 147, sir -- 174.

23 THE COURT: What's your situation, ma'am?

24 JUROR: Two co-workers -- do I give names?

25 THE COURT: What happened to them?

1 JUROR: The husband shot the wife.

2 THE COURT: Both of them?

3 JUROR: No. The husband shot the wife. I was
4 co-workers with them.

5 THE COURT: You work with both of them, the
6 husband and the wife?

7 JUROR: I wasn't with them, but --

8 THE COURT: No, no. You worked with them?

9 JUROR: Right.

10 THE COURT: And what happened to the husband?

11 JUROR: He's serving time.

12 THE COURT: Were you involved in the case in
13 any way?

14 JUROR: No.

15 THE COURT: How long ago are we talking about?

16 JUROR: I think it was 2002, maybe.

17 THE COURT: In Richland County?

18 JUROR: Uh-huh.

19 THE COURT: Is there anything about that
20 experience or your relationship with them that
21 affects your ability to be fair and impartial as a
22 juror in this case?

23 JUROR: No.

24 THE COURT: Any doubt in your mind?

25 JUROR: No.

1 THE COURT: Thank you very much.

2 174 is eligible to serve.

3 Yes, sir.

4 THE CLERK: Number 231 -- 213.

5 THE COURT: Yes, sir.

6 JUROR: My twin sister was raped by a co-worker
7 a couple months ago.

8 THE COURT: In Richland County?

9 JUROR: Yes, sir.

10 THE COURT: Have they arrested him?

11 JUROR: Yeah. They're still waiting on a
12 trial.

13 THE COURT: Is he in jail or is he out on bond
14 or what?

15 JUROR: He's out on bond.

16 THE COURT: Are you going to be involved in the
17 case in any way; do you know?

18 JUROR: I was a witness. I was there.

19 THE COURT: You were there?

20 JUROR: Uh-huh.

21 THE COURT: Would that affect your ability to
22 be a fair and impartial juror in the case?

23 JUROR: No, sir.

24 THE COURT: You understand if this case goes
25 forward, or actually if it's been indicted, that

1 this same Solicitor's office, same prosecutors will
2 be involved, maybe not the same people, but the same
3 office?

4 JUROR: Yes, sir.

5 THE COURT: Is there anything about that that
6 affects your ability to be fair and impartial?

7 JUROR: Not at all.

8 THE COURT: Do you know what law enforcement
9 agency arrested this --

10 JUROR: Richland County.

11 THE COURT: Is the fact that the same law
12 enforcement officers or office is involved would
13 that affect your ability to be fair and impartial?

14 JUROR: No, sir.

15 THE COURT: You can decide the case without
16 regard to what any of those might think of your
17 decision?

18 JUROR: Yes, sir.

19 THE COURT: Do you have any doubt at all about
20 your ability to be fair and impartial?

21 JUROR: No, sir.

22 THE COURT: Thank you, sir.

23 213 is eligible to serve.

24 Same deal if we get down that low.

25 MS. CAMPBELL: Okay. Judge, also you've asked

1 about if they've been affiliated with any, like,
2 CAVE, CADRE and all those. Did you go -- and you
3 did mention the public defender's office --

4 MS. PAYNE: We would ask that --

5 MS. CAMPBELL: Just in general, not saying
6 they're with us. And, also, like any prisoner's
7 rights groups or ministries.

8 THE COURT: Okay. I'll do the same.

9 (The bench conferences were concluded.)

10 THE COURT: Are any of you involved in any way
11 in any organization -- I'm trying to think of an
12 organization that deals with defendant's rights and
13 for some reason, it just went straight through my
14 head -- but that would include any such organization
15 or prison ministry type organization, people that go
16 to the local jails and assist in ministries,
17 anything like that, if you've got any kind of
18 connection with any organization of outreach to
19 defendants, anything like the innocence project,
20 anything like that, let us know about it, please.

21 (There was no response.)

22 THE COURT: All right. Ladies and gentlemen,
23 as you know from what I've read to you, the
24 allegations in this case -- or these cases are that
25 Brian Wright was killed by means of shooting. And

1 what I need for you to do now is to tell me if you
2 have such strong beliefs related to any types of gun
3 possession, gun ownership or any such strong -- any
4 feelings of -- any strong feelings related to
5 firearms that would in any way affect your ability
6 to serve as a fair and impartial juror in this case?
7 If you do, stand up, we'll talk about it down here.

8 (There was no response.)

9 **THE COURT:** Have any of you, and again this is
10 a question I'm going to pose and we'll talk about it
11 down front if it applies to you, have any of you
12 ever lost a child? Any of you have had a child pass
13 away; if so, please stand.

14 (Jurors stand.)

15 (Whereupon, the following bench conferences
16 were held on the record.)

17 **THE COURT:** Juror Number 66.

18 **THE CLERK:** Yes, Your Honor, 66.

19 **JUROR:** Thirty years ago I had a son that died
20 at the age of seven months for what they determined
21 to be SIDS.

22 **THE COURT:** Did you say three years ago?

23 **JUROR:** Thirty-one years ago.

24 **THE COURT:** Is there anything at all about that
25 experience that affects your ability to be fair and

1 impartial in this case?

2 JUROR: No, sir.

3 THE COURT: Thank you very much, ma'am.

4 66 is eligible to serve.

5 Yes, sir.

6 THE CLERK: 53, sir.

7 JUROR: I have an ex-girlfriend that was five
8 months pregnant and she lost the child back in 2006.

9 THE COURT: Anything at all about that that
10 would affect your ability to be fair and impartial
11 as a juror in this case?

12 JUROR: No, sir.

13 THE COURT: Any doubt in your mind?

14 JUROR: No, sir.

15 THE COURT: Thank you very much.

16 Juror Number 53 is eligible to serve.

17 (The bench conferences were concluded.)

18 THE COURT: Ladies and gentlemen, are any of
19 you currently or formerly in any gang? Do you have
20 any family members who currently or formerly are or
21 were members of a gang? Have any of you, any of
22 your immediate family members or close, personal
23 friends ever been the victim of any gang related
24 crime? If so, please stand.

25 (There was no response.)

1 **THE COURT:** Have any of you formed or expressed
2 any opinions about these cases; if so, please stand?

3 (There was no response.)

4 **THE COURT:** Are any of you aware of any
5 interest, bias or prejudice that you might have for
6 or against the State, for or against the defendants,
7 Mr. Patterson and Mr. Boone, for or against anyone
8 or any entity involved in these cases; if so, please
9 stand?

10 (There was no response.)

11 **THE COURT:** Can each of you give both the State
12 of South Carolina and the defendants, Mr. Patterson
13 and Mr. Boone, a fair and impartial trial? If you
14 know of any reason why you cannot, please stand now.

15 (There was no response.)

16 **THE COURT:** Further questions from the State?

17 **MR. GOLDBERG:** No, sir.

18 **THE COURT:** Further questions from
19 Mr. Patterson?

20 **MR. SUTHERLAND:** No, sir. Thank you, Your
21 Honor.

22 **THE COURT:** Mr. Boone?

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

24 **THE COURT:** Thank you very much. The jury
25 panel's qualified.

1 Now, ladies and gentlemen, what's going to
2 happen next is that the clerk is going to call
3 names. If your name is called, you need to gather
4 your personal belongings, come down front.

5 Mr. Bailiff, show them where to come, please.

6 Come over here and stand right where the
7 bailiff is. When you get down here, the clerk is
8 going to ask questions of the State's attorney and
9 the defense attorneys. Based on their responses,
10 you will be told whether to have a seat in the jury
11 box over here or have a seat in the back of the
12 courtroom. So you need to bring any personal
13 belongings you may have brought with you because
14 your next stop is going to be somewhere else.

15 The strikes are ten for the State and 20 for
16 the defendants. My understanding is that there is
17 no problem with the use of the strikes, so --

18 **MR. SUTHERLAND:** Yes, sir.

19 **THE COURT:** Do y'all need to slide closer or
20 anything? If you need to get up and move around,
21 just let me know, okay. Feel free to do it is what
22 I'm saying. I won't have a problem.

23 All right. Mr. Clerk, give us a jury, please.

24 **THE CLERK:** Yes, Your Honor.

25 (During the jury selection process, the

1 jurors were called forward and peremptory strikes
2 were exercised as reflected by the attached voir
3 dire sheet made a part of this record at page 13.)

4 THE COURT: Are there any matters to take up,
5 including composition of the panel, prior to the
6 jury being sworn, from the State?

7 MR. GOLDBERG: Nothing from the State.

8 THE COURT: Defense?

9 MR. SUTHERLAND: Nothing from Mr. Patterson.

10 THE COURT: Anything from Mr. Boone?

11 MS. EVERHART: No, Your Honor.

12 THE COURT: Thank you very much.

13 Ladies and gentlemen, I'm going to ask you in
14 just a moment to step back into the jury room.
15 We've got some legal issues that we have to deal
16 with before we can get started with the part of the
17 trial that you'll be involved in and, therefore, I
18 need to get my bearings from the attorneys about how
19 long that's going to take. I know I'm going to let
20 you go home shortly, but let me find out from them
21 where we are.

22 Do not discuss this case in any way at all.
23 When I say this case, throughout this whole trial,
24 obviously you know there are two separate and
25 distinct cases here, all right. Don't discuss

1 either of these cases in any way, don't talk about
2 the people involved, don't talk about the type of
3 case that's alleged, don't talk about these cases in
4 any way. As soon as I can, I'll get you back out
5 here and give you instructions and let you go home
6 for the balance of the day.

7 Mr. Iverson, you're going to be the foreman of
8 the jury. When you all come back, the bailiffs will
9 instruct you how to report back in. Usually, you're
10 toward the front of the line. You have a seat on
11 the front row on this end. I know I just read out
12 your name, but I apologize to you, it's a habit.
13 That's just a new process we're trying to
14 incorporate in cases and I'm just an old hand, so
15 I'm sorry.

16 The rest of you folks can sit anywhere you like
17 except the two alternates. You folks need to stay
18 in the back in one of those two chairs, all right.

19 Mr. Bailiff, will you take charge of the jury
20 for me, please.

21 (The jury retires to the jury room.)

22 **THE COURT:** Ladies and gentlemen, if you were
23 not selected on this jury, thank you very much. You
24 are to return to the jury assembly room and they
25 will tell you what to do from there. Thank you.

1 (The remaining jury panel was excused.)

2 **THE COURT:** How long are these motions going to
3 take?

4 **MR. SUTHERLAND:** I would expect a good while.
5 I'm not exactly sure what they're going to try to
6 introduce under Lyle, but I'm certain it's at least
7 one thing. Unless they're just throwing me off and
8 I just spent 14 hours getting ready for it.

9 **MS. CAMPBELL:** No, sir. We can make a proffer
10 so that that would expedite it a little bit. As to
11 what evidence we would have under Lyle, it's just a
12 single incident.

13 **MR. SUTHERLAND:** Okay. Good. That's the one I
14 was expecting, I guess.

15 **MS. CAMPBELL:** But I do have a list of motions
16 from the other defendant.

17 **THE COURT:** Right now I need an approximation
18 of time.

19 **MS. CAMPBELL:** I would say a half a day at
20 least.

21 **MR. SUTHERLAND:** Yes, sir. Because we've got
22 three statements with two officers in the Jackson v.
23 Denno. The Neil v. Biggers, I think, they've
24 actually only got one person that might be subject
25 to that for the I.D., that's Samuel Clemons, and

1 also the Bruton issues as well, sir. It's going to
2 take a good while, Your Honor.

3 THE COURT: Bring them back in, please.

4 (The jury returns to the courtroom.)

5 THE COURT: All right. Ladies and gentlemen,
6 what's going to happen is that I'm going to let you
7 go for the day. And after conferring with the
8 attorneys, it appears that we've got a lot of work
9 that I have to do that does not involve you. They
10 gave me an estimate. And so what I'm going to need
11 to tell you to do is to be prepared to come in
12 tomorrow at two o'clock in the afternoon. We're
13 going to stay here today and we'll come back in the
14 morning and work. And I'll do everything I can to
15 be ready for you folks at two o'clock tomorrow.

16 But just in case things run long, you've got a
17 phone number on that badge you were given, I think
18 it's on the back side, I need you to call that
19 number tomorrow between 11:00 and 12:00 and it will
20 tell you whether to come on in at 2:00 or whether
21 the plans have been changed, okay. I'm sorry I
22 can't be more definitive than that, but that's the
23 best I can do.

24 Now, before I let you go for the day, I have to
25 give you some instructions and these instructions

1 are very important, you must follow them. Do not
2 discuss this case -- these cases with anyone. Don't
3 talk about it with family members, friends, anybody
4 at all. Don't discuss these cases. Don't talk
5 about them with anybody else until this week is
6 over, this case is over and you've rendered your
7 verdicts. If anybody does attempt to contact you
8 and discuss the case with you, please report that to
9 me so that can I deal with it.

10 Do not discuss this case among yourselves until
11 I tell you to, that will be at the very end of the
12 trial when I tell you to begin your deliberations.
13 Do not discuss the case in any way at all while
14 you're together, don't discuss the case at all until
15 I tell you to start your deliberations.

16 Also, ladies and gentlemen, I'm not going to
17 sequester you, meaning I'm not going to put you in a
18 hotel somewhere and make you stay away from your
19 homes, but I have to place you, in order for this to
20 work the way it needs to work, I need to place you
21 under some directives and I'm expecting you to
22 follow them, that is that you are not to watch any
23 local or state media on T.V., you're not to listen
24 to any local or state newscasts on the radio, you're
25 not to read any local or state newspapers, no media,

1 state or local. If you are inadvertently exposed to
2 any media coverage for any reason, get away from it.
3 And at the first opportunity you have, report to me
4 what you saw, heard or read through the media.

5 Now, it's really important, ladies and
6 gentlemen, that you understand that when you take
7 your oath tomorrow, you're going to be promising us
8 as a trial jury that you'll decide this case based
9 on the evidence and the law. Now, I want you to use
10 your common sense, but the evidence is going to come
11 to you in this courtroom, so please do not allow
12 yourselves to be exposed to any media coverage, if
13 there is any. And also, you know, you can't have
14 family members telling you what was on T.V., they
15 can't talk to you about the case at all. Again, I
16 don't know of any media coverage of this trial right
17 now except in the past, which gets me to the next
18 point.

19 You cannot do any independent investigation of
20 the case. You are perfectly qualified to do your
21 jobs. You just need to sit, listen attentively and
22 when I tell you the law, you apply that law and you
23 go back to your jury room and you deliberate and you
24 decide -- and discuss with your fellow jurors and
25 decide what the facts of the case are. You're

1 perfectly qualified to do that. Do not do any
2 independent investigation.

3 Now, let me give you examples of what I mean.
4 Once you find out where this is alleged to have
5 occurred, and I've already told you something about
6 the allegations, don't go out there and look around.
7 I'm not telling you that if you have to go that way
8 to go home or to go somewhere, you have to go a
9 circuitous route, I'm not telling you that. Just
10 don't stop and look around. Don't go there
11 specifically to look around. Don't go on the
12 Internet and look up the law. Don't go on the
13 Internet and look up any prior coverage of this.
14 Don't do any independent investigation.

15 Now, when we are able to start the part of the
16 trial that involves you, ladies and gentlemen, I'll
17 try to explain to you how we normally operate court
18 and what to expect as best I can tell you. And I'll
19 try to keep you abreast of how the process is going
20 so that you can plan as best you can.

21 I probably will order in a lot of your lunches
22 this week, so you need to be prepared, once you get
23 here, to stay here all day. We'll try to give you a
24 little bit of free time to make phone calls and do
25 things like that, but we're going keep moving as

1 much as we can.

2 Any questions before I let you go today?

3 (There was no response.)

4 **THE COURT:** Okay. If you have some true
5 emergency that arises, please have somebody call the
6 clerk's office and let us know because when the time
7 comes that I need you, if you're not here, I have to
8 send somebody to find you. So please let us know if
9 you have some true emergency that prevents you from
10 being here.

11 Call that number, please, tomorrow between
12 11:00 and 12:00 to verify that we're still on for
13 two o'clock, all right.

14 I hope you have a very pleasant evening and if
15 you'll follow the bailiff. When you come back
16 tomorrow, don't come to the jury assembly room,
17 don't come to the courtroom. He'll show you how to
18 report, report directly to that jury room. Thank
19 you.

20 (The jury was excused for the day.)

21 **THE COURT:** We're going to take a ten minute
22 break and then we'll get started. I can probably go
23 about an hour tops. I've got drug court in
24 Edgefield tonight and I think I've cancelled the
25 last three and I just can't cancel it again. Thank

1 you.

2 (Brief Recess.)

3 (State's Exhibit Numbers 1 through 9 were
4 marked for identification purposes.)

5 **THE COURT:** All right. What motions do we need
6 to address?

7 **MS. CAMPBELL:** Your Honor, if it pleases the
8 Court, we can go ahead and start with statements.

9 **THE COURT:** Okay. We're going to do Denno
10 hearings?

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

12 **THE COURT:** Call your witnesses.

13 **MS. CAMPBELL:** The State calls Dave McRoberts.

14 WILLIAM DAVID MCROBERTS,

15 having been duly sworn, testified as follows:

16 **THE CLERK:** Please have a seat there, sir.

17 State your full name for the record and please spell
18 your last.

19 **THE WITNESS:** William David McRoberts,
20 M-C-R-O-B-E-R-T-S.

21 DIRECT EXAMINATION

22 BY MS. CAMPBELL:

23 **Q** Sergeant McRoberts, where are you employed?

24 **A** The Richland County Sheriff's Department.

25 **Q** What do you do there, sir?

1 A I'm a supervisor in the investigative unit.

2 Q I want to turn your attention back to February
3 of 2007. Did you become involved in the
4 investigation of the Waffle House shooting?

5 A Yes, I did.

6 Q Was that ultimately classified as the murder of
7 Brian Wright?

8 A That's correct.

9 Q And how did you become involved?

10 A I was the on-call evening shift investigator
11 that night.

12 Q And what date did this actually occur?

13 A On the 19th.

14 Q Shortly after midnight?

15 A Yes.

16 Q The next day or that same day during the --
17 around 4:37 in the evening -- that afternoon, that
18 would be 1637, did you come in contact with a Eugene
19 Patterson?

20 A Yes.

21 Q And how did you make contact with him?

22 A He was a witness to the shooting that happened
23 at the Waffle House that night.

24 Q And what was your purpose in making contact
25 with Mr. Patterson?

1 A Just taking a statement as to what he knew
2 about it, any information he could give us.

3 Q And, at that point, was he a suspect in the
4 case?

5 A No, ma'am.

6 Q Where did you make contact with him?

7 A At the sheriff's department. His father, I
8 think, brought him down.

9 Q His father?

10 A (Witness nodded head.)

11 Q And did you, in fact, take a statement from him
12 that day?

13 A I did.

14 Q Did you advise him of his rights?

15 A I didn't.

16 Q Why not?

17 A He wasn't in custody.

18 Q And I want to show you what's been marked as
19 State's Exhibit Number 1. Do you recognize that?

20 A Yes.

21 Q And what is that?

22 A That's the witness statement I took from him.

23 Q And how many pages is it?

24 A Three.

25 Q Once you had taken this statement from Eugene

1 Patterson on the afternoon of February the 19th, was
2 he free to leave the sheriff's department after
3 giving you that statement?

4 A Yeah, he left after that.

5 Q He did leave?

6 A He did.

7 Q Later, did it come to your attention that you
8 needed to get some more information from
9 Mr. Patterson?

10 A Yes.

11 Q I want to turn your attention to February 22nd
12 of 2007. Did you again make contact with Eugene
13 Patterson?

14 A I did.

15 Q Tell the Judge how that occurred.

16 A Information came in that he had more
17 information about the shooting and wasn't telling us
18 everything, so we got in contact with him. I was
19 still on the evening shift. So he came in again.
20 And I'm pretty sure he came in with his father
21 again.

22 Q And that evening of the 22nd, you made contact
23 with him?

24 A Yes.

25 Q And where did that take place?

1 A At the sheriff's department on Two Notch Road.

2 Q Prior to talking to him on that occasion based
3 on the additional information you had, did you
4 advise him of his rights?

5 A I did.

6 Q I'm going to show you what's been marked as
7 State's Exhibit Number 2. Do you recognize that?

8 A That's the form I had him sign.

9 Q And what is that form?

10 A This is the standard form for the Richland
11 County Sheriff's Department for the advice of
12 rights.

13 Q And I notice that there's a handwritten part at
14 the top, whose handwriting is that?

15 A That's mine.

16 Q And what information is contained there?

17 A The person's name that I'm speaking with, the
18 location as to where I'm giving the rights, the date
19 and the time.

20 Q And what time is reflected on that form?

21 A 10:08 p.m.

22 Q And where were you actually talking to him at
23 that point?

24 A In my office.

25 Q Your office at the sheriff's department?

1 A Uh-huh.

2 Q You have your own office?

3 A Yes.

4 Q Tell this Judge how you went about advising him
5 of his rights that evening.

6 A I just started at the top of the form with the
7 first sentence and went all the way down.

8 Q Okay. And what rights did you advise him of
9 that evening?

10 A I advised him that he had the right to remain
11 silent, anything he said could be used against him
12 in court. He had a right to a lawyer and he had the
13 right to talk to a lawyer before answering any
14 questions.

15 Q And is that verbatim what's on that sheet?

16 A That's not verbatim. That's the gist of
17 what's --

18 Q You've got to do how you advised him of his
19 rights that day.

20 A I checked off on each box next to the sentence.
21 Before we ask you any questions, you must understand
22 your rights. You have the right to remain silent.
23 Anything you say can be used in court.

24 THE COURT: Slow down. She's got to take down
25 what you say, sir. Don't read so fast.

1 **THE WITNESS:** You have the right to talk to a
2 lawyer for advice before we ask you any questions
3 and to have a lawyer with you during any
4 questioning. If you cannot afford a lawyer, one
5 will be appointed for you before any questioning if
6 you wish. If you decide to answer questions now
7 without a lawyer present, you still have the right
8 to stop answering at any time. You also have the
9 right to stop answering at any time until you talk
10 to a lawyer.

11 **BY MS. CAMPBELL:**

12 **Q** And who was present when you advised him of his
13 rights that evening?

14 **A** Myself and Eugene.

15 **Q** Patterson?

16 **A** Yes.

17 **Q** And I noticed that there -- you mentioned some
18 boxes over to the left of the rights you just read
19 out. Those are checked off on this form?

20 **A** Checked off as I read them to him.

21 **Q** They were checked off as you read them to him?

22 **A** Yes.

23 **Q** Did he appear to understand what you were
24 saying to him?

25 **A** He did.

1 Q Did he appear coherent?

2 A He did.

3 Q Did he respond appropriately?

4 A Yes, he did.

5 Q Did you threaten him in any way to make him
6 talk to you?

7 A No.

8 Q At any time while he was in your presence, did
9 he invoke any of his rights?

10 A No, ma'am.

11 Q Did he appear to be under the influence of any
12 kind of alcohol or drugs or any other substance?

13 A No, he didn't.

14 Q Did he acknowledge that he understood his
15 rights that day?

16 A He did.

17 Q And how did he acknowledge that?

18 A He signed below the rights on the first top
19 part and then at the bottom at the waiver.

20 Q I'll get to that in a minute. And when he
21 signed the first part acknowledging that he
22 understood his rights, who witnessed that?

23 A I did.

24 Q And that's your signature?

25 A Yes.

1 Q Prior to speaking to him, you also, I believe,
2 indicated that you read him the waiver of rights?

3 A Yes.

4 Q And for the record, what did you explain to
5 him -- or what did you read to him about the waiver
6 of rights?

7 A I read to him, basically, what it says, I have
8 read this statement of my rights and I understand
9 what my rights are. I'm willing to talk and answer
10 questions. I understand and know what I'm doing.
11 No promises have been made to me and no pressure or
12 coercion of any kind has been used against me.

13 Q And, again, did he appear to understand what
14 you were telling him?

15 A He did.

16 Q Did he respond appropriately when you talked to
17 him?

18 A Yes.

19 Q Did he appear to be under the influence of any
20 alcohol, drugs or anything else?

21 A No.

22 Q At any point, did he ask you to speak to his
23 lawyer?

24 A No, ma'am.

25 Q At any point, did he tell you he didn't want to

1 talk to you anymore?

2 A No, ma'am.

3 Q After you read him his waiver of rights, did he
4 acknowledge that he understood those?

5 A He did.

6 Q And how was that done?

7 A He signed the bottom.

8 Q And that's his signature?

9 A That's his signature.

10 Q And who witnessed that signature?

11 A I did.

12 Q I noticed there's also one more line at the
13 bottom of handwritten notes. Whose notes are those?

14 A Those are mine.

15 Q What is that?

16 A To make sure someone either -- they can
17 understand or have the maturity to understand what I
18 just read to them. And he stated that he finished
19 the 11th grade at Blythewood Academy.

20 Q And you put that on State's Exhibit Number 2?

21 A Yes.

22 Q Once you had advised him of his rights and
23 everything, did you then proceed to take a statement
24 from him?

25 A I did.

1 Q And I'm going to show you what's been marked as
2 State's Exhibit number 3, which is a four page
3 document. Do you recognize that?

4 A I do.

5 Q And, in fact, is that the statement that was
6 taken after you advised him of his rights on
7 February 22nd of 2007?

8 A Yes.

9 Q And how was this statement taken, like --
10 explain to the Judge how you took the statement.

11 A It's a question/answer. I would ask him a
12 question, then type it out and he would respond to
13 it and I typed down what he said.

14 Q And did he give you some more information about
15 what happened at the Waffle House the night of the
16 shooting?

17 A He did.

18 Q At any time when you were talking to him, did
19 he ever invoke any of his rights, ask for a lawyer
20 or anything else?

21 A No.

22 Q And in your opinion, was he talking to you
23 voluntarily on that evening?

24 A He was.

25 Q After you spoke to him that evening, did he

1 remain at the sheriff's department or was he free to
2 go?

3 A He was free to go.

4 Q And that would be State's Exhibit Number 3 was
5 the statement that you took that night?

6 A Yes.

7 Q Again, at any time, did you promise him
8 anything to make him talk?

9 A No.

10 Q Did you threaten him in any way?

11 A No, ma'am.

12 Q Did you use any coercion to make him talk to
13 you?

14 A No.

15 Q And did he appear to understand what you were
16 asking to respond appropriately?

17 A Yes.

18 Q And he was arrested that night not on a murder
19 charge I don't believe, but another charge?

20 A That's correct.

21 Q Thank you.

22 THE COURT: I'm sorry. What was that? He was
23 arrested or --

24 MS. CAMPBELL: He was not arrested for murder
25 that night, Your Honor. He was arrested on another

1 charge, which we aren't proceeding on.

2 Thank you.

3 THE COURT: Cross?

4 MR. SUTHERLAND: Please the Court.

5 THE COURT: Yes, sir, Mr. Sutherland.

6 CROSS-EXAMINATION

7 BY MR. SUTHERLAND:

8 Q Sir, you -- when did you arrest him that night,
9 the night of the second statement?

10 A The night when he came in.

11 Q So you arrested him when he came in. So he was
12 under arrest during the second statement?

13 A Correct.

14 Q Okay. Going back to the first statement for a
15 little bit now. You said that you didn't mirandize
16 him and that he came in freely and he wasn't a
17 suspect at that time?

18 A Right.

19 Q And had you contemplated any kind of arrest at
20 the time of that statement?

21 A No.

22 Q And this was -- this took place at 5623 Two
23 Notch?

24 A That's correct.

25 Q (And he was free to leave at any time; is that

1 what you're saying?

2 A Yes, sir.

3 Q Now, was this -- do you have like an
4 office/office up there or one of them cube things?

5 A I've got an office with a door.

6 Q I'm going to move forward to the second
7 statement because it seems like there's a little bit
8 of confusion, at least from the direct testimony at
9 the very end. You've got that this statement was
10 made at 10:08 p.m.?

11 A The advice of rights was at 10:08.

12 Q The advice of rights was at 10:08. And what
13 was the time of his arrest?

14 A It would have been shortly before that.

15 Q You don't have that information?

16 A I don't have the arrest report, no, sir, I
17 don't.

18 Q How long was he in custody prior to the advice
19 of rights?

20 A It would have been -- I would have brought him
21 right back to my office as soon as he came in.

22 Q But he came in. You didn't go get him or
23 nobody brought him, no sheriffs, no law enforcement
24 brought him to you?

25 A I don't remember. I don't remember what...

1 Q Do you know what the basis of the arrest was,
2 what he was arrested for at the time that you were
3 speaking with him?

4 A No, I don't actually. I was on evening shift
5 that week, I was at the office.

6 Q Do you have a specific recollection of -- at
7 that date, at that time, this particular advice of
8 rights sheet of going over this with him?

9 A Yes, I do.

10 Q Okay. And you had testified earlier, did you
11 go over this line by line with him?

12 A I did.

13 Q And so you would read, Before we ask you any
14 questions, you must understand your rights, and then
15 check that off?

16 A Correct.

17 Q Okay. And when we got down here to the waiver
18 of rights, so he understood everything that you were
19 telling him?

20 A He did.

21 Q So where it says, I've read this statement of
22 my rights, I understand what my rights are, I'm
23 willing to talk and answer questions, he understood
24 that?

25 A (Witness nodded head.)

1 Q I understand and know what I'm doing. No
2 promises have been made to me and no pressure or
3 coercion of any kind, he understood that, has been
4 made against him?

5 A He did. He said he did.

6 Q What time -- did you sign that waiver of rights
7 form? Did y'all fill that out right away or had he
8 sat for a while beforehand?

9 A The time on the sheet says 10:08 and that's
10 when I read it to him. I don't know how long he sat
11 with me or I don't --

12 Q You don't know how long --

13 A I didn't make all those notes on the sheet.

14 Q So you don't know --

15 A I didn't sit down and talk with him at any
16 length before he was advised, no.

17 Q So you can't testify as to the conditions of
18 his custody prior to your taking this statement from
19 him?

20 A I don't know what happened before he got to my
21 office.

22 Q So he wasn't in custody from the time of the
23 first statement that he made to you until the time
24 of the second statement, was he?

25 A No. After that first statement, he went home

1 with his father.

2 Q But it was at some point after that first
3 statement that he was taken into custody prior to
4 being brought to be interviewed by you?

5 A That's correct.

6 Q And there was no one else present when you
7 interviewed him the second time?

8 A No, sir. There was another investigator up in
9 investigations, Investigator Thompson. He's the one
10 that notarized it.

11 Q It wasn't investigator Thompson that brought
12 him to you?

13 A I don't remember.

14 MR. SUTHERLAND: Your Honor, I have no further
15 questions at this time with this witness.

16 THE COURT: Thank you.

17 Any questions from Mr. Boone?

18 MS. PAYNE: Yes, Your Honor, just briefly.

19 CROSS-EXAMINATION

20 BY MS. PAYNE:

21 Q Sergeant McRoberts, do you have a report in
22 this case?

23 A Do I have a what?

24 Q Did you do a report?

25 A I did a statement.

1 Q Just took a statement?

2 A Right.

3 Q You didn't actually do a report?

4 A No. This is the only involvement I had in the
5 case.

6 Q You didn't have any involvement with respect to
7 Andre Tayson Boone?

8 A Not that I recall.

9 Q So you don't know. Did you have anything to do
10 with Mr. Boone?

11 A Not that I recall, no.

12 MS. PAYNE: No further questions.

13 THE COURT: Redirect?

14 REDIRECT EXAMINATION

15 BY MS. CAMPBELL:

16 Q Show you this document. Is that a booking
17 sheet? I'm sorry, I should have provided that
18 earlier.

19 A Yes.

20 Q And is that a sheet you actually filled out in
21 this case?

22 A It is.

23 Q And what was he arrested for that night?

24 A Obstructing justice.

25 Q And so there was an outstanding warrant for

1 him?

2 A That's correct.

3 Q And did he turn himself in that night?

4 A I don't remember.

5 Q What time does it say the time of arrest was?

6 A He was arrested at 9:30.

7 Q And what time was it that you actually took the
8 statement or advised him of his rights?

9 A At 10:08.

10 Q And between 9:30 and 10:08 until you advised
11 him of his rights, you didn't ask him any questions
12 about this case?

13 A No.

14 MS. CAMPBELL: Thank you.

15 THE COURT: Recross?

16 MR. SUTHERLAND: Yes, sir.

17 RECROSS-EXAMINATION

18 BY MR. SUTHERLAND:

19 Q So you just read the booking report and that
20 shows that he was arrested at 9:30?

21 A Correct.

22 Q Do you know how long he was in custody prior to
23 his being arrested at 9:30?

24 A No.

25 Q Do you know what the conditions of his custody

1 were prior to being arrested at 9:30?

2 A No.

3 MR. SUTHERLAND: No further questions, Your
4 Honor.

5 THE COURT: Anything else?

6 MS. PAYNE: Nothing further.

7 THE COURT: Thank you, sir. You may step down.
8 Call your next witness.

9 MS. CAMPBELL: The State would call Captain
10 Stan Smith.

11 JAMES STANLEY SMITH,
12 having been duly sworn, testified as follows:

13 THE CLERK: Please have a sit there, sir.
14 State your full name for the record.

15 THE WITNESS: James Stanley Smith.

16 DIRECT EXAMINATION

17 BY MS. CAMPBELL:

18 Q Captain Smith, where are you employed?

19 A Richland County Sheriff's Department.

20 Q What do you do there, sir?

21 A I'm a supervisor in the criminal investigative
22 division, primarily with the major crime section.

23 Q Did you become involved in the investigation
24 involving the murder of Brian Wright?

25 A I did.

1 Q I want to turn your attention specifically to
2 February the 23rd of 2007. Did you make contact
3 with Eugene Patterson on that day?

4 A I did.

5 Q How did that come about, sir?

6 A On the evening of the 22nd, he had been
7 arrested for obstruction of justice regarding some
8 inconsistencies that we had uncovered in the
9 investigation from previous statements he had given
10 us. He had given Sergeant McRoberts a statement
11 that night of the 22nd and I wanted to get some more
12 detail about -- further line of questioning about
13 that statement.

14 Q And where did you make contact with
15 Mr. Patterson?

16 A Actually, we had -- Investigator Roe, I
17 believe, retrieved him from the Alvin S. Glenn
18 Detention Center and brought him to my office that
19 morning. He was still in jail for the obstruction
20 charge.

21 Q And what was the purpose of your making contact
22 with him?

23 A To, again, talk to him a little bit more about
24 his second statement and some inconsistencies that
25 we deemed that were still present with regard to

1 that second statement.

2 Q Approximately, what time was it when you made
3 contact with him that day?

4 A It was midmorning, I think, probably around
5 10:30.

6 Q And what did you do when you came in contact
7 with Eugene Patterson?

8 A I knew he had been advised of his rights
9 before, but there was a break in custody, so I
10 advised him, again, of his rights verbally.

11 Q And you did the verbal advice of rights that
12 morning?

13 A Yes.

14 Q And what rights did you actually advise him of
15 that morning?

16 A I advised him that he had a right to remain
17 silent, that anything he said could be used against
18 him in court. He had a right to speak to a lawyer
19 for advice before we asked him any questions and to
20 have a lawyer with him during questioning; that if
21 he could not afford a lawyer, one would be appointed
22 to him before any questioning if he wished; and if
23 he decided to stop answering at any time, he could;
24 and he also could stop until he talked to a lawyer.
25 Standard advice of rights that we typically use.

1 Q Did he appear to understand the rights as you
2 explained them to him?

3 A Yes.

4 Q Was he coherent when you were talking to him?

5 A He was.

6 Q He had been in custody, but was he under the
7 influence of any -- or appear to be under the
8 influence of any kind of alcohol, drugs or anything
9 of that nature?

10 A No. He seemed to be very aware of what was
11 going on.

12 Q Did you promise him anything to make him talk
13 to you?

14 A No.

15 Q Did you coerce him in any way?

16 A No.

17 Q Did you threaten him?

18 A No, ma'am.

19 Q In your opinion as an investigator, did he
20 appear to be cooperative at that point?

21 A He did.

22 Q Did you actually take a statement from him that
23 morning?

24 A Actually, I did not. I think myself and
25 Investigator Ellis then went -- when we got some

1 information from him that then we deemed to be
2 closer to what we had gotten from some of the other
3 witnesses, particularly with regard to who he was
4 with in the vehicle that he was in on the night of
5 this incident, we then turned -- let Investigator
6 Roe actually take the written version of that oral
7 admission that he made to us.

8 Q I'm going to show you State's Exhibit Number 5.
9 First, just ask if you recognize that?

10 A Yes. That is the written statement that
11 Investigator Roe took from Eugene Patterson.

12 Q So you were able to get some information from
13 Mr. Patterson after advising him of his rights, but
14 then Investigator Roe actually reduced that to
15 writing?

16 A He reduced it to writing, that's correct.

17 Q And were you aware he also advised him of his
18 rights as well?

19 A He readvised him with a written form prior to
20 taking the written statement.

21 Q Is that all the contact you had with him, with
22 Patterson, as far as taking statements?

23 A I had some contact with him when he was
24 arrested, but there were no formal statements taken
25 at that time.

- 1 Q And why was that?
- 2 A He invoked his attorney privilege.
- 3 Q And what date was that, sir?
- 4 A Bear with me. It was on the 2nd of March.
- 5 Q So that would have been March the 2nd?
- 6 A Yes.
- 7 Q And the date when you orally advised him of his
- 8 rights --
- 9 A It was the 23rd of February.
- 10 Q And when you say that he was arrested on March
- 11 the 2nd, what was he arrested for at that point?
- 12 A He was arrested for murder.
- 13 Q And that's when he invoked his rights?
- 14 A That's correct.
- 15 Q So no more statements were taken?
- 16 A That's correct.
- 17 Q Prior to -- you were aware that there was an
- 18 outstanding warrant for obstruction of justice for
- 19 him on the 22nd, I believe?
- 20 A Yes.
- 21 Q And prior to Investigator McRoberts making
- 22 contact with Mr. Patterson, did you have telephone
- 23 contact with him?
- 24 A I did.
- 25 Q Can you tell the Judge about that?

1 A We secured that warrant in the middle of the
2 day, Your Honor. And I actually made contact with
3 Eugene Patterson and advised him that we did indeed
4 have an arrest warrant for him. He hung up the
5 phone on me. I then called back. He did not
6 answer. His voice mail answered and I left a
7 lengthy message describing the purpose of us
8 obtaining a warrant at that point in time and the
9 need for him to come on in to the sheriff's office
10 and be cooperative so that we wouldn't, you know, be
11 compelled to have to arrest him, for instance, at
12 his place of business, that kind of thing.

13 Q And that would have been the night before he
14 came in and gave a statement, which is State's
15 Exhibit 2 and 3, to McRoberts?

16 A That was actually the day of, the afternoon of.
17 And he came on in that night and he was arrested for
18 the obstruction charge.

19 Q So he was actually arrested at the sheriff's
20 department?

21 A That's correct.

22 MS. CAMPBELL: Thank you. I don't have
23 anything further, Your Honor.

24 THE COURT: All right. Mr. Sutherland.

25 MR. SUTHERLAND: Please the Court.

1 CROSS-EXAMINATION

2 BY MR. SUTHERLAND:

3 Q Sir, you said there was some kind of --
4 midmorning that you had verbally mirandized him?

5 A Yes, sir.

6 Q And that you had gotten some information from
7 him. Did you -- but you didn't record it in the
8 form of a statement or anything?

9 A Yes, sir, I did. I put it in my notes as to
10 what he told us.

11 Q And were these -- did that end up going in,
12 ultimately, into your investigative report?

13 A That's correct.

14 Q Okay. So that information is in there.

15 A Yes, sir -- well, what -- the information he
16 gave us was pretty simple as far as the car he was
17 in, that was the point of contention at that time
18 and who he was with. It was very easy to recall
19 that to later put in my note.

20 Q So do you know -- well, actually --

21 MR. SUTHERLAND: No further questions of this
22 witness, Your Honor. .

23 THE COURT: Any questions on behalf of
24 Mr. Boone?

25 MS. EVERHART: Nothing, Your Honor.

1 THE COURT: Redirect?

2 MS. CAMPBELL: No, sir.

3 THE COURT: Thank you, sir. You may step down.

4 Call your next witness.

5 MS. CAMPBELL: The State would call

6 Investigator Roe.

7 MARSDEN ROE,

8 having been duly sworn, testified as follows:

9 THE CLERK: Please, have a seat there, sir.

10 State your full name for the record and, please,

11 spell your last.

12 THE WITNESS: Marsden Roe, that's spelled

13 R-O-E.

14 DIRECT EXAMINATION

15 BY MS. CAMPBELL:

16 Q Investigator Roe, where are you employed?

17 A Richland County Sheriff's Department.

18 Q And what do you do there, sir?

19 A I'm currently an investigator for the special

20 victim's unit.

21 Q I want to turn your attention back to February

22 the 23rd of 2007. Did you make contact with Eugene

23 Patterson that day?

24 A Yes, I did, ma'am.

25 Q Can you briefly tell the Judge how that came

1 about?

2 A Yes, ma'am. It was either the primary
3 investigator, Ellis, or Captain Smith instructed me
4 to pick up Mr. Patterson from the jail, wanted to
5 get some further information on some inconsistencies
6 that were brought up in the investigation.

7 Q And when you transported him, where did you
8 take him to?

9 A Took him directly in to Captain Smith.

10 Q And were you there when Captain Smith orally
11 advised him of his rights?

12 A I don't believe so, ma'am. I think I went to
13 get a cup of coffee and go to the restroom, things
14 like that.

15 Q When you returned back, though, did Captain
16 Smith request that you take a statement from the
17 defendant, Eugene Patterson?

18 A Yes, ma'am.

19 Q Based on some information that he had given the
20 captain?

21 A Yes, ma'am.

22 Q I want to show you what's been marked as
23 State's Exhibit Number 4. Do you recognize that?

24 A Yes, I do, ma'am.

25 Q And what is that?

1 A That's where I advised him of his Miranda
2 rights.

3 Q And the writing here at the top, whose writing
4 is that?

5 A That's mine, ma'am.

6 Q What information does that contain?

7 A It has the defendant's name, the place where he
8 was read his Miranda rights, who read it to him.
9 And it has my name on there, of course, Investigator
10 Roe. It has the date, the time. And then it
11 outlines his rights and then at the bottom part is
12 the waiver of rights.

13 Q And at the top, it indicates the time and the
14 date?

15 A Yes, ma'am.

16 Q What time and date did you actually advise him
17 of his rights that day?

18 A At 1100 hours.

19 Q That would be 11:00 a.m.?

20 A Yes, ma'am.

21 Q And where did this take place?

22 A At 5623 Two Notch Road, which is the main
23 headquarters for the Richland County Sheriff's
24 Department.

25 Q And where was the defendant when you were

1 actually talking to him? Where were you taking the
2 statement?

3 A I have a cubicle.

4 Q And he was there?

5 A Yes, ma'am.

6 Q And he had been placed under arrest at that
7 point for obstruction of justice; is that correct?

8 A Correct, yes, ma'am.

9 Q Because you had retrieved him from the jail?

10 A Yes, ma'am.

11 Q Tell the Court and just go through the exact
12 rights that you read to him that day.

13 A I explained to him that, you know, he might
14 have been read these before, but I said, I have to
15 just go ahead and read you your rights on paper. I
16 explained that I would -- as I read them, that he
17 needed to acknowledge them and if he had any
18 questions, he could stop and I could explain further
19 to make sure that he understood them.

20 Then I started and said, Before you -- Before
21 we ask you any questions, you must understand your
22 rights. You have the right to remain silent.
23 Anything you say can be used against you in court.
24 You have the right to talk to a lawyer for advice
25 before we ask you any questions and to have a lawyer

1 with you during any questioning. If you cannot
2 afford a lawyer, one will be appointed for you
3 before any questioning if you wish. If you decide
4 to answer questions now without a lawyer present,
5 you still have the right to stop answering at any
6 time. You also have the right to stop answering at
7 any time until you talk to a lawyer. And then what
8 I do is I ask them, Do you understand, to make sure
9 and double check that they understand everything. I
10 say, That's just saying that you understand your
11 rights and if you do understand what we just went
12 over, I need you to sign here and then we'll talk
13 about whether you want -- the waiver part.

14 Q And did he do that?

15 A Yes, ma'am.

16 Q Once he indicated he understood the rights as
17 you read them to him, did you proceed to the waiver?

18 A Well, I go ahead and I usually get the piece of
19 paper back and I sign where I witnessed that.

20 Q Okay. And then what happened?

21 A Then I said, We're going to talk about the
22 waiver of rights. And I explained -- I pretty well
23 read this verbatim, I have read this statement of my
24 rights and understand what my rights are. I am
25 willing to talk and answer questions. I understand

1 and know what I'm doing. No promise has been made
2 to me and no pressure or coercion. And that's where
3 I usually stop.

4 I say that's a fancy word that only pretty well
5 lawyers -- that lawyers use and I tell them I'm
6 going to go ahead and explain that to them. The
7 example I usually give them is I tell them that if I
8 basically -- if I tell somebody that you admit to a
9 bank robber, I'm going to lock up your grandmother
10 that's ill, that's coercion. I explain that's
11 unlawful pressure. And I ask them if they
12 understand it. And they said -- if they do, I need
13 them to initial it. And he initialed it.

14 And so then I start from -- I tell them, I'm
15 going to start with that whole sentence again to
16 make sure they understand it. And I say, I
17 understand and know what I'm doing, no promise has
18 been made to me and no pressure or coercion of any
19 kind has been used against me. And I ask them if
20 they understand that and if they're willing to talk
21 to me, which he acknowledged he did understand that
22 to include the coercion and then he signed the form
23 that said he was willing to talk to me.

24 Q And did he then give you a statement?

25 A Yes, ma'am.

1 Q Which you then reduced to a typewritten
2 statement?

3 A Yes, ma'am.

4 Q At any time, did you promise him anything to
5 make him talk to you?

6 A No, ma'am.

7 Q Did you threaten him in any way?

8 A No, ma'am.

9 Q Did you use any coercion to get him to talk?

10 A No, ma'am.

11 Q Did he appear to be under the influence of any
12 kind of drugs, alcohol or any other things?

13 A No, ma'am.

14 Q Was he coherent, responsive?

15 A Yes, ma'am.

16 Q And in your opinion, was he talking to you
17 voluntarily?

18 A Yes, ma'am.

19 Q I want to show you State's Exhibit Number 5.
20 Do you recognize that?

21 A Yes, ma'am. This is the statement that I took
22 from Eugene Patterson.

23 Q And how many pages is that?

24 A Total of three pages.

25 Q And once you had typed written that statement

1 out, did he have the opportunity to review it?

2 A Yes, ma'am.

3 Q Could he have made any changes had he wanted?

4 A Yes, ma'am.

5 Q And did he choose to make any changes?

6 A No, ma'am.

7 Q Did he acknowledge that that was his statement
8 in any way?

9 A Yes, he did.

10 Q How is that?

11 A He signed it where it says that he had made the
12 foregoing statement freely and voluntarily without
13 fear, threat, promise or hope of reward of any kind,
14 he signed it and then I witnessed it. And then I
15 went and got -- or got Sergeant McDaniels, who I
16 stopped him in the hall between the cubicles, and
17 had him -- said, I need you to have this gentleman,
18 his statement notarized. And he swore in front of
19 Sergeant McDaniels, which is an investigator for our
20 office.

21 Q And Sergeant McDaniels actually notarized his
22 signature after Eugene acknowledges this?

23 A Right, on the top.

24 Q And that's what's included in State's Exhibit
25 Number 5?

1 A Yes, ma'am.

2 Q At any time when he was in your custody, did he
3 ask for a lawyer?

4 A No, ma'am.

5 Q Did he ever tell you he didn't want to talk
6 anymore?

7 A No, ma'am.

8 Q And did you ever hear him say anything of that
9 sort on that day?

10 A No, ma'am.

11 MS. CAMPBELL: Your Honor, at this time, I'd
12 ask to approach and hand up the statements and the
13 advice of rights.

14 THE COURT: Okay.

15 MS. CAMPBELL: Thank you. I don't have
16 anything else.

17 THE COURT: Cross?

18 MR. SUTHERLAND: Please the Court, sir.

19 THE COURT: Yes.

20 CROSS-EXAMINATION

21 BY MR. SUTHERLAND:

22 Q Investigator Roe, on this, I noticed when you
23 spoke about the waiver of rights form, what you got
24 down the -- you know what I'm talking about, that
25 form you just went over with Ms. Campbell, and you

1 said that you circled coercion at the bottom of the
2 page.

3 A What's your question, sir?

4 Q Y'all were talking about this advice of rights
5 form.

6 A He initials right there where I always explain,
7 that's my routine. I use this -- I don't change my
8 routine on explaining coercion because it's a lawyer
9 -- it's a word used by lawyers.

10 Q So you do that with every statement?

11 A Yes, sir.

12 Q Do you know when -- now, you went and retrieved
13 him from the jail and it was that -- was that the
14 way it was, you went and retrieved him or did
15 Investigator Smith go and get him?

16 A No, I went, sir.

17 Q Now, you went and retrieved him at the jail and
18 he had been there since the night before?

19 A Yes, sir.

20 Q Okay. Do you know how long he was in custody
21 on the 22nd?

22 A No, sir.

23 Q Either prior to his arrest or post-arrest?

24 A No, sir. I didn't have those details. I was
25 just following instructions or orders from Captain

1 Smith.

2 Q Yes, sir.

3 MR. SUTHERLAND: No further questions of this
4 witness at this time, Your Honor.

5 THE COURT: Any questions?

6 MS. PAYNE: No questions, Your Honor.

7 THE COURT: Redirect?

8 MS. CAMPBELL: No, sir.

9 THE COURT: Thank you, sir. You may step down.
10 Call your next witness.

11 MS. CAMPBELL: Your Honor, as far as this
12 defendant, that would be all the witnesses as to
13 this defendant. And, of course, in front of the
14 jury, we will not go into his invocation, but I just
15 wanted you to be aware of it.

16 THE COURT: All right. Do you have any
17 evidence to present on the Denno hearing?

18 MR. SUTHERLAND: Beg the Court's indulgence.

19 THE COURT: Yes, sir.

20 (Pause.)

21 MR. SUTHERLAND: The defense will call Eugene
22 Patterson, sir.

23 THE COURT: Are you able to walk up there, sir?

24 ****

25 ****

1 EUGENE PATTERSON,
2 having been duly sworn, testified as follows:
3 **THE CLERK:** Please have a seat up there, sir.
4 State your full name for the record.

5 **THE WITNESS:** Eugene Denario Patterson.

6 DIRECT EXAMINATION

7 BY MR. SUTHERLAND:

8 **Q** Eugene, you've heard the testimony of each of
9 the investigators who were up here?

10 **A** Yes, sir.

11 **Q** I want you to tell me what you remember about
12 the events. While you were in custody between the
13 night of the 22nd and between the time that you made
14 this statement, what do you remember people saying
15 to you, what do you remember feeling and what do you
16 remember doing? And I'll try to help you out, I
17 just can't lead you, okay?

18 **A** The night of the 22nd, I was charged for
19 obstruction of justice and then I went to the county
20 or whatnot. The 23rd about early -- about
21 midmorning some time, they came and got me and took
22 me to the sheriff's department. And then while I
23 was in the -- when I went in the room, Captain Smith
24 had basically read my rights, went over that again.
25 And then he tell me -- he asked me -- I told him off

1 the top. I was like, I ain't got nothing to say. He
2 was like, Well I tell you what, you got -- because I
3 had to go to bond court later on that day, he said
4 if I didn't write no statement, that he was going to
5 call down there to the courthouse -- I mean, to the
6 county jail and get my bond denied, all right. So
7 whenever I had got a statement -- I wrote a
8 statement or whatnot, on the little rights thing, I
9 circled coercion and put my initials.

10 Q So just to be clear, your testimony is that
11 after Investigator Smith mirandized you and was
12 asking you for further information, you were telling
13 him that you didn't -- you didn't have anything to
14 say, that you didn't want to say anything?

15 A I didn't have anything to say.

16 Q So when he said -- what did he say about your
17 bond again, about what could happen with your bond?

18 A The only thing he tell me, he was like, if I
19 didn't -- if I didn't sign no statement, if I didn't
20 talk to them, then he was going to call down to the
21 county jail to get my bond denied.

22 Q Did he say anything if you did give a
23 statement?

24 A Yeah -- I mean, he just said if I didn't give
25 no statement, that he was going to get my bond

1 denied. After that, Investigator Roe, he -- well,
2 we left the county, we left -- I mean, we left the
3 sheriff's department. As we was going down back to
4 the county jail, he was like, Do you smoke? I was
5 like, Yeah.

6 So he had -- matter of fact, he had got some
7 gas and then we had -- there's a store right down
8 the street from the county jail, I don't know the
9 name of it, but it's a gas station, and then there's
10 a road that you go down like right across the street
11 from it, we went down that road, pulled off the side
12 of the road. Matter of fact, he had a pack of
13 Newports and a pack of Marlboros or something, so he
14 gave me a Newport. And we're sitting out there
15 speaking or whatnot and then he asked me, did I want
16 another one. I said, Yeah. So he gave me that.

17 After we finished that, he took me back to the
18 county jail. He tells me before I even went in the
19 county jail, he said, All right, we're going to call
20 down there to make sure you get a PR bond.

21 Okay, when I got in the -- when I went to bond
22 court, I had to wait because, matter of fact, I
23 think the time I was supposed to go, it was
24 already past that time.

25 Q You were at the sheriff's department when you

1 were already supposed to --

2 A Yeah, when I was supposed to go. They came and
3 get me right around the time I was supposed to go.
4 So as -- I end up going to bond court or whatnot.
5 When I went to bond court, the judge told me, he
6 said, The sheriff's department called down here and
7 they said they would not have no problem with you
8 getting no PR bond. So that's how come I got a PR
9 bond.

10 Q So you did get a PR bond?

11 A I did get a PR bond.

12 Q Did you believe when -- did you -- what did you
13 believe about that statement that you were writing?
14 In other words, you know, like when you circled
15 coercion, you felt like you were being --

16 A I mean, pretty much because, obviously, if I
17 wouldn't have, obviously based on what -- what I
18 took it as, the things he was saying to me, as if I
19 didn't write a statement, if I didn't speak to them,
20 if I didn't cooperate with them, then I was going to
21 have to -- my bond was going to get denied and I was
22 going to have to stay in there.

23 Q Okay. And so then as you say -- you do say
24 that on the way back to the jail, that you stopped.
25 Now, during this time that you were stopped with

1 Investigator Roe, did y'all talk about the case or
2 the facts of the case or anything?

3 A I mean, the only thing he was really saying
4 was, you know, back in the days we used to fight or
5 whatever, now, you know, the young people pulling
6 out guns and all that, you know what I mean. Things
7 that's irrelevant really.

8 Q The kind of stuff that I talk to you about
9 sometimes?

10 A Pretty much.

11 Q Is there any way you would have given that
12 statement but for the pressure tactics that were put
13 on to you?

14 A No, sir, because on my way -- when we was going
15 up there, whenever invest -- he was speaking to me
16 on our way going up there and on our way coming
17 back. On our way going up there, he was speaking to
18 me about, you know, basically a case like, you know,
19 this young man he's never going to live to basically
20 have kids and all this, all this. And I'm asking
21 like, yo, what does that have to do with me. And
22 he's like, I'm just saying, I'm just saying, you
23 know --

24 Q Did he know, when he was telling you this
25 stuff, that you knew the victim; did he know that?

1 A Yeah, he knew that because I told him that. I
2 told him we went to school together and all.

3 Q So did you feel like he was trying to -- I
4 can't put words in your mouth. How did that make
5 you feel when he started talking to you about this
6 young man?

7 A Basically, the things he was saying to me, he
8 was making it look like this really is not on me,
9 I'm just following my instructions. That's
10 basically how he was making it look to me because
11 he's saying, Captain Smith want to speak to you.
12 Because on our way going up there, I was telling
13 him, I said, Man, I ain't got nothing else to say to
14 y'all. He tells me, he said, Well, Captain Smith
15 says he still want to speak to you. So that's, you
16 know what I mean, that's the whole thing as far as
17 going back up there to the sheriff's department.

18 Q Do you recall anything else -- any other
19 conversations with any investigators, any officers
20 or anybody that would have influenced your decision
21 to write that statement or have you pretty much
22 explained everything? Is there stuff that even we
23 haven't talked about?

24 A Yeah, one other thing. My first time, my first
25 time -- my first night when they brought me in there

1 when I wasn't charged with anything, the first thing
2 he tells me is, because he asked me what I knew or
3 whatever, I wrote the statement. Then he tell me,
4 he said, Well, basically I don't know what we
5 brought you in here. You're not even -- Captain
6 Smith said you're not really no help to us.

7 So then he also tells me, he said something
8 about, We messed up his anniversary weekend or
9 something like that, you know what I mean, but I
10 wasn't a suspect at the time, so why was --

11 Q But this wasn't with the one statement, this
12 was earlier?

13 A Yeah, that's the first -- this is the first
14 statement.

15 Q Okay. Now, was it an anniversary weekend or
16 was it a holiday weekend?

17 A It was anniversary weekend. I remember that.
18 It was supposed to be anniversary.

19 **THE COURT:** Hold on just a second.

20 Folks, I don't know where y'all think you are,
21 but you're in a courtroom. And if you start this
22 laughing in the audience or making comments or any
23 gestures or anything else, I can hold you in
24 contempt of court. I can put you in prison for six
25 months without a trial by a jury. So you better

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1 straighten up.

2 **MAN:** Yes, sir.

3 **THE COURT:** Go ahead.

4 **MR. SUTHERLAND:** I don't have any further
5 questions for you at this time. They're going to
6 cross-examine you now, okay.

7 **MS. PAYNE:** We don't have any questions for
8 this witness.

9 **THE COURT:** Go ahead, Solicitor.

10 CROSS-EXAMINATION

11 BY MS. CAMPBELL:

12 **Q** Is that your family back there?

13 **A** Yes, ma'am.

14 **Q** So the first time you came in, who did you talk
15 to?

16 **A** The first time I came in, I spoke to Captain
17 Smith.

18 **Q** Is that the day it happened?

19 **A** That -- that was February, I think the -- that
20 was the 19 -- matter of fact, yeah, it was the 19th.

21 **Q** February 19th. And you spoke to Captain Smith?

22 **A** Uh-huh.

23 **Q** So your contention is he was there?

24 **A** Yes, ma'am.

25 **Q** And what did he tell you then?

1 A He tell me that -- I wrote -- I got -- I had a
2 written statement. I gave him a statement or
3 whatnot and he tell me that basically he don't even
4 know why they brought me in here because the
5 statement that I gave, basically, I guess, it wasn't
6 really enough or something, or it wasn't what they
7 was looking for.

8 Q Well, do you remember talking to Investigator
9 McRoberts?

10 A Yeah, I remember speaking to him.

11 Q What time of day was it?

12 A It was nighttime from my understanding.

13 Q Nighttime?

14 A When I turned myself in for obstruction of
15 justice.

16 Q No, no, no. I want to talk about the first
17 time you talked to Investigator McRoberts when you
18 gave that first statement, that was on the 19th?

19 A I know I spoke to Captain Smith on the 19th. I
20 don't know if I spoke to a captain -- I mean,
21 Investigator McRoberts at that time.

22 Q So your contention is you spoke to Captain
23 Smith on the 19th not to Investigator McRoberts?

24 A Yeah. I mean Captain Smith, Investigator Ellis
25 and there was another guy in there, I don't know if

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1 it was McRoberts or not.

2 Q What time of day was it?

3 A It was -- hold on, I'm really not sure, I
4 mean...

5 Q Did you stay or did you leave after that first
6 time?

7 A Yes, ma'am. Matter of fact, that was -- that
8 was nighttime because my father brought me.

9 Q Your father brought you and you left with your
10 father?

11 A Yes, ma'am.

12 Q And your contention is you talked to
13 Investigator Ellis, Investigator Captain Smith. Who
14 took your statement?

15 A I don't know really.

16 Q Captain Smith?

17 A No, he didn't -- I know he didn't take it.

18 Q When was the next time you talked to him?

19 A February 22nd.

20 Q What time of day was that?

21 A That was nighttime again. That's when I turned
22 myself in.

23 Q The first time when you talked to Investigator
24 Ellis and McRoberts and Smith on the 19th, did they
25 coerce you then?

1 A Did they coerce me, no, they didn't coerce me.

2 Q Did they promise you anything to make you talk?

3 A No, ma'am.

4 Q Did they threaten you in any way?

5 A No, ma'am.

6 Q Okay. Let's move on to the 22nd when you
7 turned yourself in, right, on the obstruction of
8 justice?

9 A Yes, ma'am.

10 Q Where did you turn yourself in?

11 A Where?

12 Q Where?

13 A To the sheriff's department.

14 Q And how did you turn yourself in?

15 A My father brought me.

16 Q And did you turn yourself in the lobby?

17 A Yes, ma'am.

18 Q And did you make contact with Captain Smith?

19 A It was an officer in there who arrested me at
20 the time.

21 Q And do you remember talking to Investigator
22 McRoberts, Sergeant McRoberts?

23 A Yes, ma'am.

24 Q And did he advise you of your rights?

25 A Yes, ma'am.

- 1 Q Did you understand them?
- 2 A Yes, ma'am.
- 3 Q You've been arrested before?
- 4 A Yes, ma'am.
- 5 Q You understand what your rights are?
- 6 A Yes, ma'am.
- 7 Q You're intelligent?
- 8 A Yes, ma'am.
- 9 Q You weren't under the influence of anything,
- 10 were you?
- 11 A No, ma'am.
- 12 Q And they placed you under arrest for
- 13 obstruction?
- 14 A Yes, ma'am.
- 15 Q And you gave them a statement at that time,
- 16 too, didn't you?
- 17 A Yes, ma'am.
- 18 Q And, at that point, nobody coerced you, did
- 19 they?
- 20 A No, ma'am.
- 21 Q Nobody threatened you in any way?
- 22 A No, ma'am.
- 23 Q But your contention is here today that the
- 24 third time you went, after you had spent the night
- 25 in jail, they came and got you the next morning?

1 A Yes, ma'am.

2 Q And that's when Investigator Roe transported
3 you?

4 A Yes, ma'am.

5 Q And on the way there, what was your testimony?

6 A On the way there, he was speaking to me about
7 the victim, Brian Wright, or whatnot. And he was
8 basically -- he was telling me basically how they
9 used to do it back in the old day with the fighting
10 and, you know, people wasn't using guns or whatnot,
11 whatever. And I was telling him that, you know, the
12 guy I knew him and we went to school together or
13 whatever, you know what I mean.

14 Q But you understand he was trying to coerce you
15 into talking to him?

16 A No, the only thing -- when I told him -- when I
17 went up there, I tell him, I say, I ain't got
18 nothing else to say because I wrote a statement that
19 night, so --

20 Q So you had nothing else to say?

21 A No.

22 Q And you're an intelligent man?

23 A Yes, ma'am.

24 Q You understand what your rights are. And at
25 that point, you knew you had the right not to say

1 anything, right?

2 A Yes, ma'am.

3 Q And you talked to him, though?

4 A No. Listen, okay, at the time, that's when we
5 was riding.

6 Q You were riding.

7 A Okay. When we got to the sheriff's department,
8 when we got to the sheriff's department, Captain
9 Smith -- I went in Captain Smith's office, okay. I
10 tell him -- I told him the same thing I
11 told Investigator Roe, I said, I don't have anything
12 else to say. He told me if I didn't cooperate with
13 them, if I didn't give them -- because, basically,
14 he was telling me that I knew more than what I was
15 saying the night before, which he wasn't there,
16 okay. So then I was like, Man, I don't know nothing
17 else. He tell me, all right, all right, you want to
18 play a hard, you know the rest. And I was like what
19 is you saying. So he tell me, he say, if I didn't
20 write no statement or cooperate with them, he was
21 going to call down to the county jail and get my
22 bond denied.

23 Q So he was coercing you?

24 A Yeah.

25 Q Right there. Did he advise you of your rights

1 verbally? Do you remember that part?

2 A Matter of fact, yeah, he did.

3 Q But he was coercing you?

4 A Yeah.

5 Q And you proved that because you circled it on
6 that piece of paper that the Judge has now?

7 A Yes, ma'am.

8 Q And you initialed it because you wanted the
9 Judge to know later you were coerced, right?

10 A Yes, ma'am.

11 Q Do you know Andre Boone?

12 A No, ma'am.

13 Q He's not in your gang, is he?

14 A I ain't in no gang.

15 MR. SUTHERLAND: Objection, that's outside the
16 scope of the hearing and everything.

17 THE COURT: Sustained. Go ahead.

18 BY MS. CAMPBELL:

19 Q Do you know anything about any statements they
20 took from Andre Boone?

21 A No, ma'am. I don't know him.

22 Q Do you know why he would circle coercion and
23 initial that the same way you did?

24 A I don't know him.

25 Q Would that be perhaps because that's

1 Investigator Roe's practice?

2 A That ain't got nothing to do with me.

3 Q And you've been arrested before, you understand
4 everything?

5 A Yes, ma'am.

6 Q Why did you give him information?

7 A Why did I give him information? Because he
8 told me that he was going to get -- he was going to
9 have my bond denied if I didn't cooperate with them.
10 What I had already said, I done say what I had to
11 say February 22nd that night.

12 Q You understand the system. You can't get your
13 bond denied for obstruction of justice?

14 A Well --

15 MR. SUTHERLAND: Your Honor, Ms. Campbell's
16 just being argumentative and sort of repetitive, you
17 know the system, you're intelligent, this, that and
18 the other.

19 MS. CAMPBELL: I was just laying a foundation.

20 THE COURT: Well, it's not a question. It was
21 a statement. Ask a question, please. The second
22 part of it was a statement. Go ahead.

23 BY MS. CAMPBELL:

24 Q Do you understand the system?

25 A It depends. I mean, a little bit. I mean, I

1 don't understand the whole system. You got to be
2 more, you know...

3 Q Do you understand how a bond is set?

4 A No, ma'am.

5 Q Do you understand that a judge sets the bond?

6 A Yes, ma'am, I understand that.

7 Q And it's totally up to a judge?

8 A Well, I'm going to say this, all I know is when
9 I went to bond court, when the judge told me that
10 the sheriff's department called down there and said
11 that they didn't mind me having a PR bond, when I
12 got that PR bond, I knew that what Captain Smith
13 told me before I came down there, I knew it had some
14 truth to it.

15 Q Do you know what judge you were in front of?

16 A No, ma'am.

17 Q Do you understand that you can't get bond
18 denied on an obstruction of justice?

19 A No, ma'am, I never had that before.

20 **MS. CAMPBELL:** Beg the Court's indulgence.

21 (Pause.)

22 Q In that last statement, we're talking about
23 where you say Sergeant Smith pressured you --

24 A Captain Smith.

25 Q -- did you say you were the shooter?

1 A No, ma'am.

2 Q Who did you say was the shooter?

3 MR. SUTHERLAND: Your Honor, again, it's
4 outside the scope of the voluntariness of the
5 statement.

6 THE COURT: Overruled. Answer the question,
7 please.

8 THE WITNESS: Oliver Feldman.

9 BY MS. CAMPBELL:

10 Q You never said you were the shooter in that
11 statement, did you?

12 A No, ma'am. You got...

13 MS. CAMPBELL: Thank you, Your Honor.

14 THE COURT: Redirect?

15 REDIRECT EXAMINATION

16 BY MR. SUTHERLAND:

17 Q Eugene, you were a juvenile when you got in
18 trouble before?

19 A Yes, ma'am -- excuse me -- yes, sir. My bad.

20 Q Well, it's getting late in the afternoon. So
21 where Ms. Campbell was trying to portray you as some
22 sort of an expert in the mechanics of the system,
23 you got in trouble that time that I represented you
24 when you were a juvenile?

25 A Yes, sir.

1 Q Which was like three years ago or something
2 like that?

3 A Yes, sir.

4 MR. SUTHERLAND: I don't have any further
5 questions, Your Honor.

6 THE COURT: Recross?

7 MS. CAMPBELL: No, sir.

8 THE COURT: Thank you, sir. You can step down.
9 Any other witnesses on behalf of Mr. Patterson
10 on the Denno hearing?

11 MR. SUTHERLAND: None from the defense, Your
12 Honor.

13 THE COURT: Do y'all have any witnesses on this
14 issue?

15 MS. PAYNE: No, Your Honor.

16 THE COURT: Do y'all have any reply?

17 MS. CAMPBELL: No, sir.

18 THE COURT: Thank you.

19 All right. With regard to the alleged oral
20 statement that was testified by Mr. Smith, the Court
21 was never apprised of the specifics of that
22 statement. It was indicated that Mr. Smith was
23 asking Mr. Patterson about who Mr. Patterson was
24 with that night or what car Mr. Patterson was in
25 that night being the night of the shooting. So I

1 don't know that I have that before me and I don't
2 know what the statement was. I know what the
3 questions were, but I don't know what the answers
4 were. They probably coincide with what's in these
5 written documents, but I don't know that for sure.

6 A Denno hearing is -- do y'all want to be heard
7 on anything?

8 MR. SUTHERLAND: Just briefly, Your Honor.
9 With respect to the statement the night of the 23rd,
10 I think the testimony from Mr. Patterson that he was
11 threatened with having bond denied, despite what Ms.
12 Campbell says about the obstruction charge not being
13 able to get the bond denied, he was threatened with
14 having his bond denied if he didn't give the
15 additional statement. And he gave the additional
16 statement, sir.

17 We would argue that that was a threat that was
18 held over his head in order to obtain the statement
19 from him and, therefore, that the statement was a
20 statement that was forced by the actions of the
21 agents of the State and we'd ask that it be
22 excluded, Your Honor.

23 THE COURT: All right. In a Denno stage, the
24 standard is different than what the jury would have
25 before it. It's a lesser standard than proof beyond

1 a reasonable doubt.

2 The Court has considered the testimony of the
3 witnesses and finds that the State has established
4 by the requisite degree of proof that the statements
5 contained in State's Exhibit 1, 2 is an advice of
6 rights form, 2 is, 3 is a statement, 4 is an advice
7 of rights form and 5 is a statement. The Court
8 finds that those documents, which are marked for
9 identification purposes at this time, have been
10 established by the State to have been made by the
11 defendant, Mr. Patterson, after having properly been
12 advised of his constitutional rights. And his
13 rights, commonly known as Miranda warnings,
14 specifically he was advised that he had -- as to
15 Number 3 and Number 5, that he had the right to
16 remain silent; that any statement that he made would
17 be used against him in court; that he had the right
18 to have an attorney present with him to consult with
19 an attorney prior to any questions; and that if he
20 could not afford an attorney, that one would be
21 appointed for him by the court; that he could stop
22 answering questions at any time; that he could have
23 a lawyer present with him during questioning; and
24 that he freely and voluntarily waived those rights
25 and made the statements; that he was not, at the

1 time, under any improper undue influence; that he
2 was not under the influence of any alcohol or drug;
3 that he understood his rights. And he made a
4 knowing and intelligent waiver of them and gave the
5 statement freely and voluntarily as to number 3 and
6 number 5.

7 With regard to number 1, the testimony
8 established and the defendant has admitted giving
9 that statement. It was not the product of in
10 custodial interrogation. It was not a requirement
11 that Miranda warnings be given. The statement was
12 given freely and voluntarily and it is admissible.
13 Each of these will be admissible if the State
14 establishes proper foundation in front of the jury.

15 Court's in recess until 9:15 in the morning.
16 Thank you.

17 (Whereupon, the proceedings were concluded
18 for May 5, 2008.)

19 (The following proceedings were held on May
20 6, 2008.)

21 **THE COURT:** All right. What's the next motion?

22 **MR. GOLDBERG:** Please the Court, Your Honor.
23 We need to take up a Jackson v. Denno in regards to
24 Andre Boone.

25 **THE COURT:** All right. Go ahead and call your

1 witness.

2 MR. GOLDBERG: Thank you, Your Honor. The
3 State calls Investigator Roe.

4 MARSDEN ROE,
5 having been duly sworn, testified as follows:

6 THE CLERK: Please have a seat there, sir.
7 State your full name for the record and please spell
8 your last.

9 THE WITNESS: Marsden Roe, last name is spelled
10 R-O-E.

11 DIRECT EXAMINATION

12 BY MR. GOLDBERG:

13 Q Investigator Roe, where are you employed?

14 A Richland County Sheriff's Department.

15 Q How long have you been employed there?

16 A This time about six years, I believe, sir.

17 Q What are your duties with the sheriff's
18 department?

19 A I'm currently an investigator for the special
20 victim's unit.

21 Q Back in February of '07, what was your role
22 with the sheriff's department?

23 A I was a burglary investigator. I did -- I was
24 on-call to assist in homicides.

25 Q Did you have an opportunity on February 28th of

1 '07 to come in contact with an Andre Tayson Boone?

2 A Yes, sir.

3 Q And what was the nature of that contact?

4 A Contact, we initiated a search warrant. I was
5 over in Meadow Lakes, sir.

6 Q And after executing a search warrant, what
7 happened?

8 A I transported him to headquarters at the
9 Richland County Sheriff's Department.

10 Q Once you got to headquarters, where did you
11 take him?

12 A Into Captain Smith's office.

13 Q Into his office. Was anyone else with you at
14 the time?

15 A Yes, Investigator Martin soon arrived.

16 Q And once you got into Captain Smith's office
17 with Mr. Boone, what did you do?

18 A I mirandized him.

19 Q I'm going to show you what's been marked as
20 State's Exhibit 6. Is that the advice of rights
21 form you went through with Mr. Boone?

22 A Yes, sir.

23 Q And can you tell the Judge at the top what that
24 sheet indicates?

25 A Okay. The sheet indicates it's the Richland

1 County Sheriff's Department Interrogation Advice of
2 Rights Form that we use. And are you speaking of
3 this right on the right-hand side?

4 Q Yes, sir.

5 A Before I usually advise somebody of their
6 rights, I ask them what their education level is.
7 In this case, I indicated that I'd asked him that
8 question. I make a note on the upper right-hand
9 side, the 10th grade at Richland North -- N.E.,
10 which stands for Northeast.

11 Q Okay. And does the sheet also indicate the
12 name of the suspect and the time and date of the
13 interview?

14 A Yes, it does, sir.

15 Q Can you tell us what that information is?

16 A The date was February 28th, 2007, and the time
17 was 1015 hours, which is 10:15 a.m. civilian time.

18 Q And the location of the interview?

19 A Is 5623 Two Notch Road, which is the Richland
20 County Sheriff's Department headquarters.

21 Q And it was in Captain Smith's office?

22 A Yes, sir.

23 Q And that was with Andre Boone?

24 A Yes, sir.

25 Q Okay. Can you also tell us then what you did

1 next in terms of advising Mr. Boone of his rights?

2 A Yes, sir. I explained that if they have any
3 questions, I'm going to read them their rights, even
4 though they might have heard it on T.V. or things,
5 I'm going to go step-by-step and just acknowledge if
6 they had -- to make sure that they understand each
7 one. And then we would talk about the second
8 section, the waiver of rights, after we're finished
9 with the first part and that I was going to go
10 through each and every one of them and that they
11 should acknowledge, if there's any questions, feel
12 free to stop me and I can explain further. And then
13 I just read it to them at which --

14 Q Go ahead and tell the Judge how you did it for
15 Mr. Boone.

16 A I said, Before we ask you any questions, you
17 must understand your rights; he acknowledged, so I
18 put a check. You have the right to remain silent;
19 he acknowledged, I put a check on the left-hand
20 side. Anything you say can be used against you in
21 court; he acknowledged, I put a check by the side.
22 You have the right to talk to a lawyer for advice
23 before we ask you any questions, have a lawyer with
24 you during any questioning; he acknowledged, I put a
25 check on the left-hand side. If you cannot afford a

1 lawyer, one will be appointed for you before any
2 questioning if you wish; he acknowledged, I put a
3 check by the side. If you decide to answer any
4 questions now without a lawyer present, you still
5 have the right to stop answering at any time; you
6 also have the right to stop answering at any time
7 until you talk to a lawyer; he acknowledged that, I
8 put a check. I said, if he -- and I asked him if he
9 understands all that, and basically by signing here,
10 that he acknowledged that I did read these to him
11 and that he did understand them.

12 Q And did he sign his name?

13 A Yes, he did.

14 Q And then did you also sign as a witness to his
15 signature?

16 A Yes, I did.

17 Q Did someone else sign as a witness to that
18 signature as well?

19 A Yes, sir, Investigator Martin.

20 Q And he was in the room while you went through
21 those rights?

22 A Yes, sir.

23 Q Okay. And then what's the next thing you did
24 on the advice of rights form?

25 A I explained the next part is the waiver of the

1 rights. I explained to him I -- I tell him, I have
2 read this statement of my rights and understand what
3 my rights are. I'm willing to talk and answer
4 questions. I understand and know what I'm doing.
5 No promise has been made to me and no pressure or
6 coercion.

7 Then I stop there and I explain, I have to
8 explain this word because it's a word that basically
9 is used just by lawyers and that coercion, an
10 example would be if your grand -- I explain -- or I
11 told him that his -- that he needs to admit to a
12 bank robbery that he didn't commit or I'd lock up
13 his ill grandmother, using that as an example, that
14 would be coercion, unlawful pressure. And so I
15 said, but I'm going to go ahead and ask him if he
16 understands that example. He acknowledged that.

17 I said, Well I'm going to go ahead and read the
18 sentence again just in total context now that I've
19 explained that. So I go back and I say, No promises
20 have been made to me and no pressure or coercion of
21 any kind has been used against me. I said if he
22 understood that, I have him circle coercion and then
23 have him initial that I explained that word to him.

24 Q And did he initial the word coercion?

25 A Yes, sir. And I said, if he's willing to talk

1 to me and understands that -- is willing to waive
2 his rights, I asked him if that's so, then he needs
3 to sign right here at the bottom acknowledging that
4 he's waiving his rights and is willing to talk to
5 me.

6 Q And did he sign the form?

7 A Yes, sir.

8 Q And who was that witnessed by?

9 A It was witnessed by myself and Investigator
10 Martin.

11 Q And you both signed that form as well?

12 A Yes, sir.

13 THE COURT: Hold on just a minute, Mr.
14 Goldberg.

15 MR. GOLDBERG: Yes, sir.

16 (Pause.)

17 THE COURT: All right. Go ahead.

18 BY MR. GOLDBERG:

19 Q After you advised him of his rights, he signed
20 the form waiving his rights, correct?

21 A Yes, sir.

22 Q And he understood those rights?

23 A Yes, sir.

24 Q And after waiving those rights, he indicated he
25 wanted to talk to you?

MARSDEN ROE (IN CAMERA) - DIRECT BY MR. GOLDBERG

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1 A Yes, sir.

2 Q And was he offered any promises of leniency?

3 A No, sir.

4 Q Any threats of violence?

5 A No, sir.

6 Q Anything like that, denied any food, bathroom,
7 water, anything like that?

8 A No, sir.

9 Q So, at that point, you proceeded to take a
10 statement from him; is that correct?

11 A Right, verbal. We started talk --

12 Q Verbal statement?

13 A Right. We started talking about the case.

14 Q And what did he initially indicate in the
15 verbal statement that you took from him?

16 A Generally, he was saying that he was admitting
17 to shooting, I believe it was, a .22 caliber pistol
18 up in the air.

19 Q And, at this point, you spent quite a bit of
20 time discussing that night with him in regards to
21 the .22; is that correct?

22 A Yes, sir.

23 Q At some point during this conversation, did
24 another investigator join you with Mr. Boone?

25 A Yes. Sergeant Ewing had came into the room.

1 Q Okay. And what did Sergeant Ewing say when he
2 came in the room?

3 A Basically that he was interviewing another
4 subject, subject in the investigation, Jerome
5 Thompson, and that -- explained that Jerome Thompson
6 was giving conflicting or contradicting information,
7 and explained that it wasn't a .22, that Jerome was
8 placing a nine millimeter pistol in the defendant's
9 hands.

10 Q In Mr. Boone's hand?

11 A Correct.

12 Q And, at this point, did Sergeant Ewing stay in
13 the room for the conversation or did he leave?

14 A He left and went back to the individual that he
15 was -- Jerome Thompson that he was interviewing.

16 Q Did Captain Smith also join you for this
17 interrogation?

18 A Yes, sir, a little bit later after Investigator
19 Martin had to leave.

20 Q And once Captain Smith joined you, the two of
21 you began to take a statement from Mr. Boone; is
22 that correct?

23 A Yes, sir.

24 Q I'm going to show you what's been marked as
25 State's Exhibit 7. Do you recognize that?

1 A Yes, sir.

2 Q Can you read towards at the top what that is?

3 A It says, The statement of Andre Tayson Boone.

4 He gives his address at ■ (sic) Meadowbury Drive,

5 Columbia, South Carolina, the zip code, and his date

6 of birth. And it says, Made at Columbia, South

7 Carolina, the 28th day of February 2007 at 1130

8 hours in the presence of Investigator Roe and

9 Captain Smith of the Richland County Sheriff's

10 Department.

11 Q Under that section, is there another area that

12 is kind of an outline for an advice of rights again

13 for Mr. Boone?

14 A Yes, sir.

15 Q Did you explain that to him once again?

16 A Yes, I did.

17 Q How did you go about doing that?

18 A It's on the -- we do this on computer, of

19 course, and then I would say before, you know, as

20 it's right there showing on the computer and I say,

21 we're going to do this statement together. And I

22 explain they can read it, you know, if you read a

23 couple lines, it's the exact same thing as what we

24 just went over with the -- or a little bit earlier

25 with the waiver of rights. It explains your rights

1 once again, that's what the paragraph is on the
2 computer screen. It's going to be part of your
3 statement.

4 Q And, initially, who was typing out the
5 statement, you or Captain Smith?

6 A Myself.

7 Q At some point later, though, did you switch
8 roles later in that interview?

9 A I believe Captain Smith helped me out because
10 of my typing abilities.

11 Q All right. Thank you. And, at any point, did
12 Mr. Boone stop you and ask to speak to an attorney?

13 A No, sir.

14 Q At any point, did you threaten him in any way?

15 A No, sir.

16 Q Did you promise him anything?

17 A No, sir.

18 Q At any point, did he indicate to you that he
19 wanted to stop talking?

20 A No, sir.

21 Q Did it appear, at any time, that he was under
22 the influence of any drugs or alcohol?

23 A No, sir.

24 MR. GOLDBERG: Thank you. That's all of my
25 questions.

1 THE COURT: Cross?

2 CROSS-EXAMINATION

3 BY MS. PAYNE:

4 Q Good morning, Investigator Roe.

5 A Good morning.

6 Q At the time you were talking to Mr. Boone, how
7 old was he?

8 A I believe he was 17. I have his date of birth
9 on the statement.

10 Q [REDACTED]/90.

11 A Okay.

12 Q Would he be 16?

13 A Okay.

14 Q Were you aware of his prior record?

15 A No, ma'am.

16 Q So he doesn't have a prior record; isn't that
17 right, never been in trouble before?

18 A I'm not -- I didn't do a criminal -- or a
19 background check or anything like that. I have no
20 knowledge of...

21 Q At the time that you took him or went to the
22 search warrant at Meadow Lakes; is that correct?

23 A Correct.

24 Q Was he under arrest at that time?

25 A Yes. There was a warrant, also. Besides a

1 search warrant, there was an arrest warrant for him,
2 I believe.

3 Q So where did you pick him up and take him to
4 the search warrant?

5 A I picked him up -- I believe his mother brought
6 him back to the residence where we initiated the
7 search warrant. He was not present at the
8 residence. I believe his mother was contacted and
9 brought him to the location.

10 Q So when he came back to the location, at what
11 point did you put him under arrest?

12 A I don't know if it was me personally that put
13 him under arrest, but he was placed in my car and it
14 was decided I would take him to headquarters.

15 Q So when he was placed under arrest, you have no
16 knowledge of when his rights were read to him at
17 that time?

18 A I read him his Miranda rights at headquarters.

19 Q At headquarters.

20 A Correct.

21 Q By this time he was already in your custody?

22 A Correct, in my car. He was placed in my car on
23 Meadow Lakes Drive at his home, his residence.

24 Q Who placed him in your car?

25 A I did.

1 Q Okay. But you didn't read him his rights until
2 you got back to headquarters?

3 A Correct.

4 Q And you read him his rights at 10:15; is that
5 correct?

6 A 10:15, yes, ma'am.

7 Q Did you talk to him at all prior to going over
8 the rights?

9 A Just to explain that we were going to
10 headquarters and that we would talk once we got to
11 headquarters.

12 Q Okay. That was in the car ride?

13 A Yes, ma'am. It's a short drive.

14 Q Okay. So you didn't take his statement until
15 11:30; is that correct?

16 A That's correct, ma'am.

17 Q Okay. And you made a report of all of this, of
18 everything that you did on this investigation; is
19 that correct?

20 A A report, I did a follow-up, what we call a
21 follow-up report investigation.

22 Q You said you took an oral statement; is that
23 correct?

24 A No, I said I spoke to him orally, yes. He was
25 making statements and we were talking.

1 Q And what did he say during this oral statement?

2 A That he had shot a .22 in the air, that he was
3 present at the Waffle House, and a lot of the
4 details were just who was there at the Waffle House,
5 things like that is what we were speaking of.

6 Q And, at this point, you say that Sergeant Ewing
7 comes in, gives some contradicting information?

8 A Correct.

9 Q He leaves and then you're alone with Andre
10 Boone; is that correct? Were you ever alone with
11 Andre Boone?

12 A No, ma'am.

13 Q Investigator Martin was with you, also?

14 A Or Captain Smith, yes, ma'am.

15 Q So you begin to take the written statement?

16 A Correct.

17 Q While you're taking a written statement, do you
18 type as they write -- as they tell you, excuse me?

19 A Yes, ma'am.

20 Q Okay. So you're typing as he's telling you
21 what happened?

22 A I ask a question, type up the question, they
23 respond. A lot of times they're responding as
24 you're trying to type, but, yeah, it's a back and
25 forth thing.

1 Q And when you're going through this statement,
2 when you're taking a statement, you want to go by
3 the most important things first; is that correct?
4 You want to go through his rights, make sure that he
5 is fully aware of what he is doing, because this is
6 a young kid, correct?

7 A What's your question, ma'am? I don't
8 understand what your question is.

9 Q Do you want to get the most important things
10 out first?

11 A As long as you get the facts in the statement.

12 Q But you want to make sure he is aware of his
13 rights, correct?

14 A Right, which I had already done.

15 Q Okay. So when you're giving a statement with
16 Andre Boone, you go through, you say, I understand
17 that I have a right to remain silent, you go through
18 that whole paragraph first; is that correct?

19 A When I advised him of his rights, is that what
20 you're referring to?

21 Q I'm talking about his written statement.

22 A No, ma'am, I don't highlight that. I just went
23 through this just prior.

24 Q Okay. So you don't go over it again when
25 you're actually committing his statement to writing?

1 A Just to the extent I said earlier that I say
2 it's on the computer, these are your rights that we
3 just went over how many ever minutes ago and explain
4 that that's going to be as part of this statement
5 and that's part of it.

6 Q And the very first question that you asked out
7 the gate is, Tayson, are you in the Bloods gang;
8 that's your first question?

9 A When I started taking the written statement,
10 yes, ma'am.

11 Q Okay. Then you asked, What sect are you in?
12 And he responds, TTP, Tree Top Piru; right? Those
13 are the first two questions you asked?

14 A That's right, ma'am.

15 Q So then you decide that you're going to ask,
16 Were you advised of your rights previously; right?

17 A Yes, ma'am.

18 Q That was your third question, Did you waive,
19 give up your rights and agree to talk to us?

20 A Correct.

21 Q Have you been promised anything?

22 A That's right.

23 Q And finding out if he was in a gang was more
24 important at this point to you, correct?

25 A That popped in my mind at that particular time

1 so that's the question I asked.

2 MS. PAYNE: Beg the Court's indulgence.

3 THE COURT: Yes, ma'am.

4 (Pause.)

5 MS. PAYNE: Nothing further.

6 THE COURT: Do you have any questions of this
7 witness, Mr. Sutherland?

8 MR. SUTHERLAND: No, sir.

9 THE COURT: Redirect?

10 MR. GOLDBERG: No, sir. Thank you.

11 THE COURT: You may step down.

12 Any other witnesses 'on this Denno hearing?

13 MR. GOLDBERG: Yes, sir. The State calls
14 Captain Smith.

15 JAMES STANLEY SMITH,
16 having been duly sworn, testified as follows:

17 THE CLERK: Please have a seat there, sir.
18 State your full name for the record.

19 THE WITNESS: James Stanley Smith.

20 DIRECT EXAMINATION

21 BY MR. GOLDBERG:

22 Q Captain Smith, where are you employed?

23 A Richland County Sheriff's Department.

24 Q And what are your duties with the sheriff's
25 department?

1 A I'm a captain in the criminal investigative
2 division. My primary responsibilities are violent
3 crimes to armed robberies and homicides.

4 Q Back in February of '07, were you involved in
5 the investigation and murder of Brian Wright?

6 A I was.

7 Q Did you have an opportunity to come in contact
8 with an Andre Tayson Boone?

9 A I did.

10 Q What was the nature of that contact?

11 A We had obtained a search warrant for his
12 residence and a warrant for aggravated breach of
13 peace regarding an incident at the Waffle House
14 where he had been identified firing a pistol. And
15 actually where -- I conducted executing that
16 warrant, I believe, on Meadowbury Drive. And we had
17 actually made telephone contact with his mother, who
18 I believe was trying to enroll him at that time into
19 Keenan High School. And we told her that we were at
20 the residence executing a search warrant and she
21 brought him back to the house.

22 Q And, at that point, he was placed under arrest?

23 A He was placed under arrest before we left. I
24 don't believe he was taken into custody immediately
25 when they got there. We explained to the mother

1 what was going on and there was some -- just some
2 conversation. He was ultimately placed under arrest
3 before we departed.

4 Q At this point, did Mr. Boone make any
5 statements to you in your presence?

6 A No.

7 Q Once he was placed under arrest, where was he
8 taken?

9 A He was taken to Richland County Sheriff's
10 Department. I believe Investigator Roe drove him
11 in, short drive from Meadow Lake subdivision to our
12 office at 5623 Two Notch Road.

13 Q Investigator Roe just testified that he then
14 took Mr. Boone into your office to conduct an
15 interview?

16 A That's correct.

17 Q At some point, did you join in that interview?

18 A I did. After finishing up the search warrant
19 with some other detectives, I actually came on into
20 the office as well.

21 Q At this point had the statement begun to be
22 reduced to writing or was it still an oral
23 conversation?

24 A Investigator Martin and Investigator Roe were
25 involved in an oral conversation with Mr. Boone.

1 Q And Investigator Martin was still in there when
2 you entered the room; is that correct?

3 A That's correct.

4 Q About how long did that go on until
5 Investigator Martin had to leave the room?

6 A I want to say that he had already gotten
7 summoned or had been summoned prior to me arriving
8 and he needed to go, so there wasn't a lot of
9 overlap, just a few minutes.

10 Q From the time that you entered the room, what
11 was the initial substance of the conversation with
12 Mr. Boone? What was he telling you?

13 A He was admitting that he was at the Waffle
14 House on the night in question. And he was
15 admitting that he did fire a gun into the air.
16 However, he was claiming that it was a .22 revolver,
17 which would be the same .22 revolver that we had
18 found in the execution of the search warrant.

19 Q At some point, did Investigator Ewing enter the
20 room?

21 A He did.

22 Q And what did he do when he came in the room?

23 A We had executed another search warrant that day
24 in Meadow Lake subdivision at an acquaintance's
25 house who had also been present, Jerome Thompson.

1 And Investigator Ewing -- Sergeant Ewing and
2 Investigator Ellis had begun talking to Jerome and
3 Jerome had some conflicting information about the
4 .22. And, basically, it had become evident that it
5 was not a .22 at all, it was a nine millimeter,
6 which was consistent with shell casings that we
7 found in the area where they were at the Waffle
8 House.

9 Q And Sergeant Ewing presented that information
10 to Mr. Boone?

11 A Yes.

12 Q Did he stay in the room after that?

13 A He soon departed.

14 Q And presumably went back to talk to Jerome
15 Thompson?

16 A Correct.

17 Q At this point, what was the nature of the
18 conversation with Mr. Boone after Sergeant Ewing
19 left the room?

20 A Again, based on the evidence that we found at
21 the scene of nine millimeter shell casings in the
22 area where we knew that Tayson Boone and Jerome
23 Thompson were, would be consistent and
24 self-corroborating, if you will, that the nine
25 millimeter was possessed by Mr. Boone and not a .22,

1 so he was basically confronted with this
2 information, you know. And he immediately admitted
3 that he indeed had the nine millimeter and the .22
4 was just a made-up story.

5 Q To your knowledge at this point, had Mr. Boone
6 been advised of his rights?

7 A Yes. I was aware that he had been advised of
8 his rights by Investigator Roe and Martin prior to
9 my arrival.

10 Q At any point in your observation of Mr. Boone,
11 did he appear to be under the influence of any drugs
12 or alcohol?

13 A No, sir.

14 Q Did you threaten him in any way?

15 A No, sir.

16 Q Did you promise him anything?

17 A No, sir.

18 Q Were any efforts of coercion used?

19 A No, sir.

20 Q At any point, did Mr. Boone indicate to you
21 that he wished to stop talking and speak to an
22 attorney?

23 A No, sir.

24 Q Investigator Roe, I believe, testified that, at
25 some point, you and he switched and you began to

1 take the actual written statement from Mr. Boone?

2 A That's correct.

3 Q Can you describe for the Court how that took
4 place?

5 A Investigator Roe was challenged, if you will,
6 Your Honor, with regard to typing ability and it was
7 taking an extraordinarily long time, and not that
8 I'm a whole lot better, but I am a little faster and
9 I took over at some point.

10 Q And completed the statement with Mr. Boone?

11 A Yes, sir.

12 Q At the completion of the statement, let me show
13 you State's Exhibit 7, which is, I believe, an eight
14 page statement, did Mr. Boone sign his statement in
15 any place?

16 A He did.

17 Q And where did he sign that statement?

18 A Two sections at the bottom. One is an
19 acknowledgment that the statement was made freely
20 and voluntarily without fear, threat, promise or
21 hope of reward of any kind, he signed there.

22 Q And was that signed on each page of the
23 statement?

24 A Yes.

25 Q And that was done that day when you interviewed

1 him?

2 A On the 28th of February, that's correct.

3 Q Is there another area on the statement where he
4 could have signed the form?

5 A Yes.

6 Q And where is that?

7 A That's at the bottom of the page where it
8 indicates that a copy has been made and it consists
9 of X number of pages. In this case, it was eight
10 pages.

11 Q Did he sign it on that particular day?

12 A Yes, sir, he signed it on that day.

13 Q He actually signed the statement, but was it
14 signed at the very bottom where the statement was
15 notarized that day?

16 A The notary wasn't signed.

17 Q The notary wasn't signed?

18 A Yes.

19 Q Can you explain how that took place?

20 A Basically, I am a notary and I witnessed the
21 signature, but left the office to attend to some
22 other matters in this investigation before I
23 actually swore him to his signature. The following
24 day realizing that we had made that error, I went to
25 the Alvin S. Glenn Detention Center to the juvenile

1 wing. And in front of several correctional
2 officers, I advised Mr. Boone why I was there and
3 that we had not notarized his signature and at that
4 time, I did that.

5 Q And, at that point, it was notarized?

6 A That's correct.

7 Q But the previous day when you had actually
8 interviewed him, at the time of the interview, he
9 signed each page of the statement acknowledging that
10 he understood the statement and that it was his
11 statement?

12 A That's correct.

13 Q And at no point, did he indicate to you that he
14 wished to stop talking or asked for an attorney?

15 A No, sir.

16 Q Did you then actually go with Mr. Boone out to
17 the Meadow Lakes area?

18 A Yes.

19 Q Back on the 28th when you first took the
20 statement?

21 A I did.

22 Q What was the nature of that?

23 A In his statement, he indicated that even though
24 that the weapon was not recoverable, they had fired
25 the weapon before in the back of a wooded area at

1 the rear of the subdivision and we were wanting to
2 obtain some ballistics evidence. And having worked
3 cases involving ballistics evidence, I'm familiar
4 with the fact that you can obtain a shell casing to
5 shell casing match and I wanted to get the objective
6 shell casings if possible. And we did indeed find
7 some which were ultimately matched to the scene.

8 Q Was another investigator with you at the time
9 of this?

10 A I believe that was Roe, yes, sir.

11 MR. GOLDBERG: Your Honor, if I may approach.

12 THE COURT: Yes, sir.

13 MR. GOLDBERG: I'll hand up 6 and 7.

14 Those are all my questions. Thank you.

15 THE COURT: Cross?

16 MS. PAYNE: Just briefly, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. PAYNE:

19 Q Captain Smith, when you were at the Meadow Lake
20 area and you called Andre to come back, did you tell
21 him on the phone that you had a warrant for him?

22 A I don't know that I did. I know I told him we
23 had a search warrant and that he needed to come -- I
24 actually spoke to his mother and that she needed to
25 come back to the house.

1 Q So you never spoke to Andre on the phone?

2 A I don't believe I did. I believe I spoke to
3 the mother.

4 Q And once he arrived at the home, what happened
5 next?

6 A We talked to his mother briefly. And, at some
7 point in time, he volunteered and showed us where
8 the .22 pistol was. There was not any conversation
9 about the incident at that point. It was clear that
10 we were there searching for weapons. And then he
11 was ultimately taken into custody prior to us
12 leaving.

13 Q Why didn't you tell him when they first got
14 there that you had a warrant for him?

15 A We were there actually executing the search
16 warrant, you know, for evidence and that was
17 actually -- our primary concern then was if there
18 was a gun there that we could obtain. Plus, they
19 were being pretty cooperative, there wasn't any
20 reason -- she brought him back voluntarily. It
21 wasn't like he was going to run on us or anything
22 like that. There wasn't any reason to, you know,
23 swoop down on him or anything. They were very
24 cooperative.

25 Q Why were you dealing with his mom so much?

1 A Beg your pardon?

2 Q Why were you dealing with his mom so much?

3 A Well, it was her residence and she's the one we
4 had made contact with. And quite naturally, she was
5 concerned and that's our custom to try to explain it
6 to a parent in a situation like that, that's not
7 unusual.

8 Q And because he's 16 years old, his mom's
9 still --

10 A If he was living there at 18, I probably would
11 explain it to his mother, that's generally my
12 custom.

13 Q And as soon as he arrived in the home actually,
14 didn't you put cuffs on him?

15 A I was trying to recall and I can't say for sure
16 we did that. He was cooperative. I know he was
17 cuffed before we left, but I don't recall at what
18 point he was handcuffed. I don't believe it was as
19 soon as he got there, though.

20 Q Okay. At what point did you read him his
21 rights when you put the cuffs on him?

22 A He was advised of his rights before we started
23 questioning him at the office.

24 Q So you didn't read him his rights when you put
25 him in the car?

1 A No, ma'am, I didn't. I didn't put him in the
2 car.

3 Q Who put him in the car?

4 A I believe Investigator Roe did.

5 Q You just heard his testimony to say he just got
6 in his car. Investigator Roe just testified and
7 said he was put in his car. He didn't say he put
8 him in his car.

9 A Well, I'm not sure what you mean by put. I
10 mean, he got into the car some kind of way.

11 Q Who put the cuffs on him and put him in the
12 back of the cop car?

13 A I don't recall who put the cuffs on him.

14 MS. PAYNE: Nothing further.

15 THE COURT: Do you have any questions, Mr.
16 Sutherland?

17 MR. SUTHERLAND: Nothing from us, sir.

18 THE COURT: Redirect?

19 MR. GOLDBERG: No, sir.

20 THE COURT: Thank you, sir. You may step down.

21 Any further witnesses from the State on the
22 Denno hearing?

23 MR. GOLDBERG: One more, Your Honor. The State
24 calls Investigator Martin.

25 ****

1 ROBERT EUGENE MARTIN, JR.,
2 having been duly sworn, testified as follows:

3 THE CLERK: Please have a seat there, sir.
4 State your full name for the record.

5 THE WITNESS: Robert Eugene Martin, Jr.

6 DIRECT EXAMINATION

7 BY MR. GOLDBERG:

8 Q Investigator Martin, where are you employed?

9 A Richland County Sheriff's Department.

10 Q And what are your duties with the sheriff's
11 department?

12 A Currently assigned to the special victims unit
13 as a sex crimes investigator.

14 Q Back in February of '07, were you with the
15 sheriff's department?

16 A I was.

17 Q And what were your duties then?

18 A The same.

19 Q And did you have an opportunity to come in
20 contact with an Andre Tayson Boone?

21 A I did.

22 Q And what was the nature of that contact?

23 A Investigator Roe had stopped me in the hall and
24 asked if I would sit in on an interview with him.
25 He had -- other investigators had been tasked out to

1 multiple sites for search warrants, some other
2 arrests and some other interviews and he asked if I
3 would help him out.

4 Q At this point, had you been involved in the
5 case in any way?

6 A No.

7 Q So he asked you to come sit in on that
8 interview?

9 A Correct.

10 Q And that was in Captain Smith's office?

11 A Yes, it was.

12 Q And while you were in there, was the defendant
13 informed of his rights?

14 A He was.

15 Q Did you do that or did Investigator Roe do
16 that?

17 A Investigator Roe did that.

18 Q And you witnessed him do it?

19 A I did.

20 Q And he was fully advised of his Miranda rights?

21 A He was.

22 Q I'm going to show you what's been marked as
23 State's Number 6. Take a look at that. All of the
24 rights enumerated on that form, were they provided
25 to Mr. Boone?

1 A They were.

2 Q And what are those rights?

3 A Would you like me to read them?

4 Q Yes, sir.

5 A Before you're asked any questions, you must
6 understand your rights. You have the right to
7 remain silent. Anything you say can be used against
8 you in court. You have the right to talk to a
9 lawyer for advice before you're asked any questions
10 and to have a lawyer with you during any
11 questioning. If you cannot afford a lawyer, one
12 will be appointed for you before any questioning if
13 you wish. If you decide to answer questions now
14 without a lawyer present, you still have the right
15 to stop answering at any time. You also have the
16 right to stop answering at any time until you talk
17 to a lawyer. And then he acknowledged it by his
18 signature.

19 Q You witnessed him sign that form?

20 A I did.

21 Q And then is there also a waiver of those rights
22 at the bottom of that form?

23 A There is.

24 Q And what does that indicate?

25 A It says, I have read this statement of my

1 rights and understand what my rights are. I am
2 willing to talk and answer questions. I understand
3 and know what I am doing. No promises have been
4 made to me and no pressure or coercion of any kind
5 has been used against me. And he acknowledged that
6 with his signature.

7 Q And did you witness Investigator Roe read that
8 to him?

9 A I did.

10 Q Did you witness Investigator Roe explain to him
11 the concept of coercion?

12 A I did.

13 Q And you witnessed Mr. Boone acknowledge that
14 concept?

15 A He did with his initials and then he signed his
16 signature.

17 Q To your knowledge as you sat there, did
18 Mr. Boone understand the rights that were provided
19 to him?

20 A Yes.

21 Q Did he appear to be under the influence of any
22 drugs or alcohol at any time?

23 A No.

24 Q Were there any threats of violence made to him?

25 A No.

1 Q Offers of leniency?

2 A No.

3 Q Promises?

4 A No.

5 Q Denied any comforts whatsoever?

6 A No.

7 Q At any point, did he indicate to you that he
8 wanted to stop talking and asked for an attorney?

9 A No.

10 Q And, at that point, did he ultimately start
11 discussing the case with you?

12 A He did.

13 Q What was he initially stating?

14 A He had a -- I want to say he had a pretty
15 fabricated story about a .22 pistol that he had that
16 night and shooting it in the air. Some other
17 information came out during the investigation, they
18 were interviewing another person down the hall. And
19 in that interview, Investigator Ewing came in and
20 more information was brought to light. At which
21 point, he changed his story and said he had a nine
22 millimeter pistol that he was shooting in the air
23 and then as he was trying to get away, he kind of
24 cocked it down towards the group because he thought
25 he was going to get shot himself. They were

1 returning fire.

2 Q Did Investigator Ewing remain in the room?

3 A I believe he came in and went out and then
4 Captain Smith came in.

5 Q Captain Smith came in while you were still in
6 the room?

7 A While I was still there, yes.

8 Q At this point, had the statement been reduced
9 to writing or was it still an oral conversation?

10 A It was still an oral -- they were still
11 gathering facts from this other -- whoever else they
12 were interviewing in parts of the case.

13 Q Were you able to remain in the room for the
14 entire interview?

15 A I could not. I had an appointment.

16 Q And so, at some point, you eventually left the
17 room?

18 A When Captain Smith came in, I wasn't in very
19 long and then I left the room.

20 MR. GOLDBERG: Thank you, sir. That's all I
21 have.

22 THE COURT: Cross?

23 MS. PAYNE: Just briefly.

24 ****

25 ****

CROSS-EXAMINATION

1

2

BY MS. PAYNE:

3

Q Investigator Martin, how many statements have
4 you taken since this -- since Andre Boone's,
5 roughly?

6

A Fifty would probably be appropriate.

7

Q Did you do a report in this case?

8

A I did not.

9

Q So it's over a year ago and you remember what
10 oral statement was given?

11

A Yes.

12

MS. PAYNE: Nothing further.

13

THE COURT: Mr. Sutherland?

14

MR. SUTHERLAND: No, sir.

15

THE COURT: Redirect?

16

MR. GOLDBERG: No, sir.

17

THE COURT: Thank you, sir. You may step down.

18

Any other witnesses from the State on the Denno
19 hearing?

20

MR. GOLDBERG: No, sir.

21

THE COURT: Does Mr. Boone wish to offer any
22 evidence on the Denno issue?

23

MS. EVERHART: Your Honor, I do believe there
24 is another statement of Mr. Boone.

25

MR. GOLDBERG: We're not seeking to offer that

1 statement into evidence.

2 MS. EVERHART: Beg the Court's indulgence.

3 (Pause.)

4 MS. PAYNE: Your Honor, just for purposes of
5 the record, we are making a motion to suppress Andre
6 Boone's statement on February 28th. He was taken
7 into custody immediately when he arrived at his home
8 on Meadow Lake where they were executing a search
9 warrant, never apprises him that they had a warrant
10 for aggravated breach of peace awaiting him. He
11 comes home because they told his mother they're
12 going to do a search warrant, they come back.

13 He put him into cuffs, don't read him his
14 rights, put him in the back of a cop car. He's 16
15 years old, never been in trouble before, in the 10th
16 grade. They do not allow his mother to come with
17 him. She's not at the department with him, at the
18 Richland County Sheriff's Department. They have
19 some sort of discussion in the car. It's not clear
20 exactly from Investigator Roe what they talked
21 about. He's in their control and custody, Your
22 Honor. They then take this statement and there are
23 several people involved.

24 We're just arguing that this wasn't a voluntary
25 statement, Your Honor.

1 **THE COURT:** All right. I didn't hear any
2 testimony about a statement being made during the
3 transporting of Mr. Boone. What I have before me,
4 as I understand it, relates to State's Exhibit
5 Number 6 and State's Exhibit Number 7 for
6 identification purposes.

7 With regard to the statement in State's Exhibit
8 Number 7, the Court finds that the State has
9 established by the requisite degree of proof and
10 beyond a preponderance of the evidence that the
11 statement was made by the defendant, Mr. Boone,
12 freely and voluntarily, that he was properly advised
13 of his constitutional rights and his rights under
14 Miranda versus Arizona.

15 Specifically, he was informed that he had the
16 right to remain silent; that anything he did say
17 could be used against him in court; that he had the
18 right to have an attorney present with him during
19 all interrogations and interviews; he had the right
20 to confer with an attorney before any questioning;
21 he had the right to have an attorney present during
22 questioning; that if he could not afford an
23 attorney, one would be appointed for him; and that
24 he could stop at any time and invoke his rights to
25 silence and invoke his right to an attorney; that

1 the statement was the product of the defendant,
2 Mr. Boone's, own free will; it was not improperly
3 induced by any coercion, threat, force, promise,
4 reward -- promise of reward or hope of reward; that
5 Mr. Boone knowingly and intelligently, freely and
6 voluntarily waived his rights and gave the statement
7 and questions.

8 If the proper foundation is established before
9 the jury, then the statement will be entered and
10 then the jury would have to determine that the State
11 has proven this -- relevant inquiries for the jury
12 about voluntariness and waiver and being apprised of
13 Miranda warnings and the standard there is proof
14 beyond a reasonable doubt.

15 Now, with regard to the statements that were
16 made before this witness statement was given, I
17 think they're intended to be incorporated in this
18 written statement. If they're not, they appear also
19 to have been made properly.

20 **MS. CAMPBELL:** Your Honor, not to interrupt,
21 but if you give me a break, I'll find out who these
22 people are and --

23 **THE COURT:** I appreciate it.

24 Ladies and gentlemen, let me just make this
25 announcement. While court is going on, things are

1 happening, stay in your seats. There are breaks,
2 there are opportunities when you can move backwards
3 and forwards and not be disruptive, but that was
4 three or four different groups of people who got up
5 while I'm trying to make these Denno findings.
6 Don't do it. And if you have some emergency or
7 something like that, act accordingly, I understand
8 that. But otherwise, don't just be moving in and
9 out of here.

10 With regard to any statement that was given
11 prior to the actual typing of the statement,
12 pursuant to this testimony, again I think those
13 things were intended to be incorporated into the
14 written statement, but if they weren't, I find that
15 Miranda warnings had first been given, that they
16 were understood, that they -- basically, the same
17 findings I made before with regard to Mr. Boone that
18 he was properly advised of his rights, including the
19 Miranda warnings, that he made a free, knowing,
20 voluntary and intelligent decision to waive those
21 rights, not the product of any compulsion, promise,
22 hope of reward, undue influence, threats, that he
23 made a knowing and intelligent waiver of those
24 rights.

25 Once again, if a proper foundation is

1 established, those may come before the jury and they
2 will have to do the relevant inquiry to determine if
3 the State has proven beyond a reasonable doubt that
4 the statement was made and that the warnings were
5 properly given and that the defendant understood his
6 rights and made a free, knowing, voluntary and
7 intelligent waiver of them and gave the statement
8 voluntarily.

9 With regard to the age of Mr. Boone, I have
10 read some summaries I have of cases dealing with
11 minors and I don't see anything in any of those
12 cases that would suggest that the Court should deny
13 the admission of these statements. His age is a
14 factor that can be considered by the jury, but I
15 don't see anything in what I've heard that would
16 establish anything that would allow the Court to
17 exclude the statements from the jury.

18 Now, some of the things that were argued to me
19 in this motion to suppress are not in the record.
20 Nobody testified about mama wasn't there or wasn't
21 allowed to come or any of that stuff. And when he
22 was told he was in custody or when he was told he
23 was under arrest is pretty much irrelevant because
24 the whole inquiry has been one of an in-custodial
25 interrogation. I haven't treated it as though it

1 were some sort of voluntary statement or statement
2 not the product of custodial interrogation.

3 Yesterday we had a situation where there was
4 not an in-custodial interrogation as to
5 Mr. Patterson, the first part of it.

6 What other motions do you have because I've got
7 to put some kind of message for this jury? I've got
8 a list of pretrial motions that Ms. Everhart gave.
9 Some of them I think we can handle pretty quickly,
10 but there are 15 of them on there.

11 **MS. EVERHART:** Yes, Your Honor, there are
12 several I think we can knock out fairly quickly. We
13 will have two people -- proffering testimony from
14 two people in regard to allowing the jury to view
15 the crime scene, that is number 12. I believe that
16 would be the one that might take the longest amount
17 of time.

18 We also have Biggers hearings that we need to
19 go forward, I believe. And we also have Bruton that
20 we need to address. I think the rest would take
21 place pretty quickly.

22 **MS. CAMPBELL:** If I may, on the lineups, Your
23 Honor, as far as two of the lineups, one from Oliver
24 Feldman and one from Karmindeae Leggett, I believe he
25 did point out for the police Eugene and Oliver, but

1 he knows them by name and sight. And under Hughes
2 McCloud (ph) and In Re: Robert, I believe is the
3 other case, Your Honor, I believe that it wouldn't
4 be necessary to conduct a hearing on those since he
5 knew them previously.

6 MR. SUTHERLAND: I mean, I don't know if
7 there's ample -- there's ample evidence that they
8 did know each other, that witness had to -- Samuel
9 Clemons.

10 MS. CAMPBELL: There is one witness that --
11 Mr. Karmindae Leggett, he does pick out Tayson
12 Boone, Your Honor.

13 And to give you a little bit of background,
14 these witnesses are somewhat reluctant, to put it
15 mildly, to come forward. It might be something we
16 could take up just prior to his testimony: I can go
17 ahead and put the officers up today, this morning,
18 Your Honor, but as far as getting Mr. Leggett in
19 here, there may be, at some point, us moving for a
20 bench warrant. We have already gotten a bench
21 warrant on one of our witnesses, Mr. Samuel Clemons.
22 We are currently looking for him. He is not
23 available at this point.

24 Ms. Tanesha Joe, Your Honor, as of yesterday,
25 our information was she's in the hospital. I've got

1 my investigators working on her today. And that
2 just puts us down to Oliver Feldman who knows
3 everyone involved.

4 So these may be matters -- I can put up the
5 officers today as far as the ones that don't know
6 anyone, but we're just talking about three different
7 people.

8 And I apologize for the -- there was
9 apparently, my information, a shooting last night
10 that may involve some of these witnesses as victims.

11 **THE COURT:** That may involve some of these
12 witnesses?

13 **MS. CAMPBELL:** I've got to double check with my
14 office, but our information is at least one
15 potential witness, there was a shooting last night
16 of him.

17 I guess, just to sum up the lineup situation,
18 there will be three potential witnesses that don't
19 know the people that did pick someone, one being
20 Karmindae Leggett, one being Tanesha Joe, one being
21 Samuel Clemons. Mr. Clemons we are looking for.

22 **THE COURT:** Will there be any mention of being
23 picked out of a lineup in the opening statements or
24 any --

25 **MS. CAMPBELL:** No, sir, we will not mention

1 anything.

2 THE COURT: All right. Court will be in recess
3 for five minutes.

4 (Brief Recess.)

5 THE COURT: All right. Here's my feeling about
6 the Neil versus Biggers hearing. As long as there's
7 not going to be any mention of identification, I
8 don't see any need to do those. I'd rather not do
9 them piecemeal. I'd rather do them after we've got
10 all of the witnesses available to do them.

11 So I've done the Denno hearings. And unless
12 you all want to be heard on that, we'll just differ
13 doing the Biggers hearings to see if we've got the
14 witnesses that we can do them.

15 MS. CAMPBELL: Thank you.

16 THE COURT: What other motions do I have
17 pretrial?

18 MR. SUTHERLAND: I believe, sir, that they
19 intend to Lyle in an incident against my client.

20 THE COURT: What is it that you want to offer?

21 MR. GOLDBERG: Your Honor, there's an incident,
22 it's a related shooting involving Mr. Eugene
23 Patterson. We can make a proffer at this time with
24 Investigator Ellis to provide a factual background
25 for the Lyle issue.

1 THE COURT: And what is it?

2 MR. GOLDBERG: The short version, Your Honor,
3 is that at the scene at the Waffle House on this
4 particular night, the Brian Wright incident, there
5 were some .380 caliber shell casings that were
6 recovered at the scene. Through the course of
7 investigation, Investigator Ellis took a statement
8 from a third defendant who was suspected of shooting
9 that night, Mr. Oliver Feldman. Mr. Feldman was
10 with Mr. Patterson that night. He puts the .380 in
11 Mr. Patterson's hand.

12 Additionally, he also provides information
13 about a shooting at a 100 Hyer Court location,
14 H-Y-E-R, that is the residence of Anthony Britt.
15 Mr. Britt did file an incident report from that
16 incident. It happened some two weeks prior to this
17 Waffle House incident. I believe it was February
18 the 4th. There were some shell casings collected at
19 that scene, .380 caliber. They were compared to the
20 .380's found at the Waffle House scene and they came
21 back as a match as fired from the same firearm.

22 Additionally, a statement was taken from
23 Mr. Britt who told Investigator Ellis that it was,
24 in fact, Eugene Patterson that had fired those shots
25 into that location.

1 It's our position that the prior incident at
2 the Hyer Court residence, the shooting, once you
3 determine that the shell casings match up, it's a
4 link between the two and it goes to the identity of
5 one of the shooters at the Waffle House location as
6 Mr. Patterson never, in fact, admits to firing a
7 weapon at that scene. However, it's our position
8 that this does put that .380 in his hand at that
9 scene.

10 **THE COURT:** Feldman said that he saw Patterson
11 at the Waffle House shoot a .380.

12 **MR. GOLDBERG:** Feldman was actually riding with
13 Patterson that night. They were together that night
14 when -- the evidence, we believe, will show that
15 when Mr. Boone fires his weapon first from across
16 the parking lot, Mr. Feldman and Mr. Patterson were
17 together, get their firearms and then return fire.
18 And Mr. Feldman, in his statement, discusses the
19 fact that Mr. Patterson had a .380 and that he fired
20 it that night. And that is corroborated by the fact
21 that there are .380 caliber shell casings found at
22 the Waffle House scene in the general location where
23 Mr. Feldman says that the two of them were standing
24 when firing.

25 **THE COURT:** And Feldman said that there was an

1 earlier incident at Britt's house where Patterson
2 fired a .380 into Britt's residence.

3 MR. GOLDBERG: He did not -- Feldman did not
4 specifically, I don't think, say that it was a .380
5 that was used. He did provide information, however,
6 that there had been a shooting involving
7 Mr. Patterson at that Hyer Court location. As a
8 result, a statement was collected from Mr. Britt.
9 Mr. Britt then says that it was Mr. Patterson that
10 fired into his house.

11 Additionally, the casings that had been
12 collected at the Hyer Court location were run
13 against the casings found at the Waffle House and
14 they came back as a match as both being the same
15 .380's that had been fired from the same firearm.
16 The gun was never recovered.

17 And, additionally, Your Honor, it also goes
18 towards some indication of the whole dynamics of the
19 situation in terms of the gang intention between the
20 rival gangs in that Mr. Folk -- or, excuse me,
21 Mr. Patterson, who is an alleged Folk member, fired
22 these shots into Mr. Britt's residence, Mr. Britt,
23 who is an alleged Blood member.

24 THE COURT: How many different shell casings
25 were recovered at the scene at the Waffle House?

1 **MR. GOLDBERG:** How many different caliber you
2 mean?

3 **THE COURT:** Yes, different types.

4 **MR. GOLDBERG:** There were .380 caliber shell
5 casings, nine millimeter caliber and I believe
6 that's it.

7 **THE COURT:** Did all of the .380's match?

8 **MR. GOLDBERG:** Beg the Court's indulgence.

9 (Pause.)

10 **MR. GOLDBERG:** They were all fired from the
11 same gun according to the forensics expert. The
12 other firearm that's alleged to have been used was a
13 .32 revolver by Mr. Feldman. I don't believe there
14 was anything found as a result.

15 **THE COURT:** And you have a ballistics expert
16 who's going to testify that the .380 caliber shell
17 casings found at the Britt residence matched
18 the .380 caliber shell casings found at the Waffle
19 House.

20 **MR. GOLDBERG:** He is prepared to testify and
21 documented so in his report that they were fired by
22 the same firearm.

23 **THE COURT:** All right. Mr. Sutherland, do you
24 want to be heard?

25 **MR. SUTHERLAND:** Yes, sir, if it please the

1 Court. Mr. Goldberg -- and I should point out for
2 the Court that prior to this past Friday afternoon,
3 the only evidence that I was aware of connecting
4 these two incidents together was the ballistics
5 match. This past Friday afternoon I got a statement
6 signed by Mr. Britt. We went to go over some
7 exhibits in the Solicitor's office Friday afternoon
8 and they hand me this statement.

9 Now, Mr. Goldberg, I don't believe, adequately
10 characterized the statement. The question to
11 Mr. Britt was, Were you able to see who was standing
12 in your yard shooting?

13 The answer is no.

14 What it is is a matter of opinion. He says, I
15 know that it was Eugene Patterson.

16 How do you know that it was Eugene Patterson?

17 Because he is the only person that I have
18 problems with.

19 And he goes on to recount some past problems
20 with Mr. Patterson. But Mr. Britt cannot come in
21 here and take that stand and say that he saw Eugene
22 Patterson shooting into his house.

23 The information with respect to Mr. Feldman was
24 somewhat surprising. We first learned last
25 Wednesday at the security meeting that he was not

1 going to be tried along side the co-defendants here,
2 sir. I immediately began inquiring if there was any
3 additional information. I was suspicious that he
4 had given some sort of further statements. I was
5 told that he had not given anything outside of his
6 original statement.

7 Then, at this meeting this past Friday, I
8 cornered Investigator Ellis and I asked him, and he
9 told me the same thing, he said he has not given
10 anything. I went down that statement with him and
11 that's it. And then I began to inquire about -- I
12 began to press and push on him and then he finally
13 admitted to me that he had talked about this Hyer
14 Court incident. I have never heard anything from
15 him.

16 They never committed -- he gave me a copy of
17 his notes, but he did not prepare any sort of a
18 report or anything, any sort of information to give
19 me the substance of these statements to which this
20 individual is supposed to testify today to on the
21 stand today. This is newly discovered evidence,
22 Your Honor, and I don't even know what it is. He
23 gave me a copy of his notes. I can't make sense of
24 that stuff.

25 They have had this information in their

1 possession for several days prior, at least. They
2 had 15 months to go and get this information from
3 Mr. Britt and from Mr. Feldman. And 72 hours before
4 we're coming to trial, before we're going to have a
5 hearing on the incident, they provide this new
6 information. Previously, the argument was a
7 ballistics match is a ballistics match, there's
8 nothing more.

9 In the incident report, there are unidentified
10 suspects. If Anthony Britt knew at that time who it
11 was, he could have told the police, not come in here
12 15 months later and then, well he can't even take
13 the stand and say that other than to say I know it's
14 Eugene Patterson.

15 Our position is that there's no link between
16 these two incidents except for the ballistics match
17 and that any of this evidence they're intending to
18 offer today that is 72 -- or, no, it's been four
19 days now that they turned over to us on Friday, it
20 shouldn't be admissible because they had a duty to
21 turn over to me the substance of anything
22 inculpatory or exculpatory with respect to my
23 client, with respect to statements. I specifically
24 asked for that in paragraph five of my discovery
25 motion.

1 And, Your Honor, I asked -- even in asking
2 Investigator Ellis, he said, well, I'm not going to
3 type anything up. And so, Your Honor, it's our
4 position that the only evidence they have that
5 should be at issue here is that ballistics match,
6 but -- and we would further be asking that this
7 other stuff be excluded, sir.

8 **THE COURT:** Do you have a copy of the statement
9 of Mr. Britt?

10 **MR. SUTHERLAND:** Yes, sir.

11 **THE COURT:** May I see it?

12 **MS. PAYNE:** Your Honor, if I may also
13 interject. Mr. Britt is represented by Mary LaFave
14 in our office. She has not been contacted about any
15 testimony or that he provided a statement. I would
16 just state that she probably needs to speak with her
17 client prior to any testimony.

18 (Pause.)

19 **THE COURT:** All right. Mr. Goldberg, do you
20 have anything else?

21 **MR. GOLDBERG:** No, sir.

22 **MR. SUTHERLAND:** I do have a copy of his notes
23 as well if the Court would be interested.

24 **THE COURT:** Sure.

25 Rule 404 deals with character evidence not

1 being admissible. In subsection B, it reads that
2 evidence of other crimes, wrongs or acts is not
3 admissible to prove the character of a person in
4 order to show action in conformity therewith. It
5 may, however, be admissible to show motive,
6 identity, the existence of a common scheme or plan,
7 the absence of mistake or accident or intent.

8 Now, in evaluating such things as common scheme
9 and plan, there has to be, from my recollection of
10 the case law, a very substantial similarity in the
11 two incidents. That's not present here.

12 The one thing that I see that it might go to
13 would be identity and I think that it may well be a
14 strong case for identity. The problem is that in
15 reading that statement of Mr. Britt, it doesn't say
16 what it was represented to say. He says he doesn't
17 know who shot the gun in his house.

18 It says -- later on, he said something like, I
19 think it was. And then the question was, well how
20 do you know it was. He never said he knew it was.
21 He said that the only person he'd had any problems
22 with was Mr. Patterson. And, therefore, they go
23 into a discussion about the problems that had been
24 had with Mr. Patterson in an earlier incident where
25 he does identify that Mr. Patterson came to his

1 house and, along with others, shot at Mr. Britt.
2 They also ask questions about Mr. Patterson's house
3 being shot up, which Mr. Britt says he didn't know
4 anything about.

5 So based on -- again, these are all in limine
6 rulings and I don't have the benefit of hearing all
7 of the testimony that you are going to present. I
8 don't have the benefit of having talked to the
9 people with whom the investigators and the attorneys
10 have talked. And in limine rulings are always
11 preliminary rulings for that very reason because I
12 may develop a different impression about things as
13 the case goes along. But the in limine ruling of
14 the Court is that you cannot go into that other
15 shooting.

16 MR. GOLDBERG: Thank you, Your Honor.

17 THE COURT: I'm going to make these Court
18 Exhibits.

19 (Court's Exhibit Number 1, statement of
20 Anthony Britt, was marked for identification
21 purposes.)

22 THE COURT: All right. So that's the Lyle
23 issue.

24 MR. GOLDBERG: Yes, sir.

25 THE COURT: All right. Can we use this list

1 that Ms. Everhart gave to me or do we still have
2 other things outside the list?

3 **MR. SUTHERLAND:** I believe there's one more
4 issue about Bruton with respect to the
5 co-defendant's statements, sir.

6 **THE COURT:** All right. What's the Bruton
7 issue?

8 **MR. SUTHERLAND:** We believe one of the exhibits
9 -- one of the statements that they don't intend to
10 introduce that they said that it was self-serving,
11 but we would ask that the statement dated February
12 28th, 2007, be redacted. That information in the
13 statement identifies -- there are just inculpatory
14 statements about Mr. Patterson, identifying him at
15 the scene, identifying the shooting, identifying him
16 exchanging gunfire with the co-defendant.

17 And, Your Honor, we do have a proposed form for
18 the redacted statement of the co-defendant, but we
19 do certainly believe that these statements would
20 fall under Bruton versus United States.

21 **THE COURT:** Do y'all want to be heard on this?

22 **MS. EVERHART:** Yes, Your Honor. We do have
23 Bruton issues as well for our client in regards to
24 statements that Eugene Patterson made the night of
25 the incident.

1 Your Honor, his first two statements, it did
2 not appear to us that anything needed to be
3 redacted, but in his statement dated February 23rd
4 of '07, one point when responding to a question, he
5 says, I saw a guy wearing all black over towards the
6 back parking lot shooting up into the air, the gun
7 he was shooting with looked like a black nine
8 millimeter. This could be describing our client.

9 In addition, he states at one point that I ran
10 into Oliver's car and Oliver started shooting
11 straight back at the guy dressed in black that was
12 shooting, that also goes to our client. And, Your
13 Honor, he is asked can he describe -- describe the
14 man who was dressed in black that you said was
15 shooting from the back area of the parking lot. He
16 says, Five nine, skinny, dark skin. He does say
17 with a medium afro.

18 Your Honor, there's also a, possibly,
19 incriminating statement. It may need some kind of
20 limiting instruction. And they are asking, Do you
21 know the name of the guy who was shooting in the
22 back of the parking lot? And he answers no.

23 It is our understanding under Bruton and the
24 cases that follow that when there is a specific
25 reference to someone's name or a physical

1 description that could match that person, those
2 would need to be redacted. However, if there is
3 something that could simply be inferred as
4 incriminating the co-defendant, that would not
5 necessarily have to be redacted, Your Honor, but a
6 limiting instruction should be given.

7 THE COURT: What's the State's position?

8 MS. CAMPBELL: Which statement do you want me
9 to take first, Your Honor?

10 I agree that there's some redacting that needs
11 to be done. I would agree with, in Andre Boone's
12 position, on Eugene Patterson's statement in his
13 third statement, they asked him, Can you describe
14 the man that was dressed in the back? He was about
15 five nine, skinny, dark skin. I agree that should
16 be redacted out.

17 THE COURT: Okay. What else?

18 MS. CAMPBELL: The only other redaction for
19 that part that I would say is they do ask him a
20 question about, Have you heard anything else you
21 think would assist in this investigation? And
22 there's kind of a hearsay statement, but if that
23 stays in, that's fine.

24 As far as that statement, Your Honor, I think
25 that would be the extent of any direct reference or

1 description of the person shooting from the other
2 end of the parking lot.

3 MS. EVERHART: Your Honor, if we may, just in
4 regard to that same statement he gave February 23rd,
5 he does -- Eugene Patterson does describe a guy
6 wearing all black over towards the back parking lot
7 shooting up into the air one time and into the crowd
8 two times. From testimony that will be given at
9 trial, it would appear that that would be describing
10 our client, Your Honor. For that reason, we would
11 ask that that be redacted.

12 THE COURT: What's the State's position on
13 that?

14 MS. CAMPBELL: I would agree to redact the part
15 about dressed in black. He doesn't give any
16 other -- I mean, there's going to be ample testimony
17 that there were people shooting.

18 As far as any identifying factors, dressed in
19 black would be the only one I can see, Your Honor.

20 THE COURT: What about the caliber of the
21 weapon?

22 MS. CAMPBELL: Beg the Court's indulgence. I'm
23 trying to find that.

24 I don't know that that's any kind of
25 identifying factor to this defendant. I mean, the

1 testimony is going to be that nine millimeter shell
2 casings were found there at the scene. I don't
3 think we have any direct testimony other than the
4 defendant's own statement that's going to say he was
5 the one firing the nine millimeter. There were five
6 other people in that car -- four other people,
7 excuse me, Your Honor, in that car. And I don't
8 think there's going to be any dispute that someone
9 was shooting the nine millimeter. There's no
10 identifying per se. It doesn't say that the guy in
11 black was firing the nine millimeter.

12 THE COURT: Okay.

13 MS. EVERHART: Your Honor, I do believe in
14 Mr. Patterson's statement, he does say the gun he
15 was shooting looked like a black nine millimeter.
16 Ballistics indicate that all the nine millimeter
17 casings found at the scene all were shot from the
18 same firearm.

19 Your Honor, we would point to State v.
20 Singleton. The Supreme Court held in that case that
21 the defendant's Sixth Amendment right to
22 confrontation was violated. The jury was presented
23 with a nontestifying co-defendant's confession which
24 also incriminates the defendant. They concluded
25 that the trial judge's refusal to redact the

1 physical description in the statement constituted a
2 violation of Bruton. And, again, in regard to
3 physical descriptions, that would apply.

4 MS. CAMPBELL: Your Honor, we agree with what
5 she just said, any physical description of the
6 defendant.

7 MS. EVERHART: Your Honor, part of that line is
8 the guy in black was shooting into the air into the
9 crowd, I think that was a nine millimeter, going
10 specifically to the man in black.

11 THE COURT: She said she agrees to redact the
12 reference to somebody wearing black.

13 MS. EVERHART: Thank you, Your Honor.

14 THE COURT: What about Mr. Sutherland's
15 position?

16 MR. SUTHERLAND: With specificity --

17 THE COURT: Wait a minute. I hadn't heard from
18 them yet.

19 MS. CAMPBELL: Thank you, Your Honor.

20 Looking through his statement, Your Honor, I
21 believe on page three of his statement, he
22 references -- anytime he references him by name, I
23 believe in the middle of the first paragraph, he
24 says, The other dude with the Crip is named Eugene.
25 I think that should be redacted, Named Eugene.

1 Then, Duck told me his name is Eugene, should
2 be redacted. He then goes on, I fired the Crip,
3 dude. Then, The dude, he then put, I think is
4 called Eugene, that should be redacted.

5 At the bottom of the page, again he refers to
6 him as named Eugene, that should be redacted. Any
7 time the name Eugene or any physical description is
8 in here we agree should be redacted.

9 **THE COURT:** You said you had a proposed
10 redacted version.

11 **MR. SUTHERLAND:** Yes, sir. And I noticed when
12 she was going through the list, it was actually
13 conforming to mine.

14 **THE COURT:** Why don't you show it to her and
15 let her see if you're in agreement.

16 (Pause.)

17 **THE COURT:** All right. What's in disagreement?

18 **MS. CAMPBELL:** Your Honor, we're just asking
19 that one part about how he couldn't pick him because
20 he couldn't see him very well be left in. I believe
21 his contention is he just wants that taken out.

22 He was shown a photo lineup of Andre Tayson
23 Boone. We do not intend to go into that -- I'm
24 sorry -- Andre was shown a lineup of Eugene
25 Patterson. He was not able to pick him out. And

1 the only reason we ask that that stay in is just
2 that it shows that he was at a distance and couldn't
3 see anyone.

4 Other than that, we're in agreement with every
5 redaction, which are the highlighted parts, Your
6 Honor, with the Court's approval.

7 THE COURT: You want it to stay in?

8 MS. CAMPBELL: Just that one line, yes, sir.

9 THE COURT: You want it out?

10 MR. SUTHERLAND: Yes, sir.

11 MS. EVERHART: Your Honor, we would ask that it
12 stay in as well.

13 THE COURT: All right. The portion of the
14 statement, the question is: Have I shown you a
15 lineup today with six pictures in it? Additionally,
16 have I asked you if you recognized the boy in the
17 lineup who you were told is named Eugene?

18 He answered: Yes, but I can't pick him out
19 because I didn't see his face real well. That was
20 the first time I had ever seen that guy. All I know
21 is that he was big and dark skinned. Duck was the
22 one who told me that his name was Eugene.

23 MR. SUTHERLAND: And we'd just hoped to redact
24 really the entire portion of that. And with respect
25 to the lineup and everything, we just sort of felt

1 like it was contaminated with the surrounding
2 information, sir.

3 **THE COURT:** Anything else?

4 **MS. CAMPBELL:** No, sir.

5 **THE COURT:** The ruling of the Court is that all
6 of that comes out.

7 **MR. SUTHERLAND:** Thank you, Your Honor.

8 **MS. EVERHART:** Your Honor, if we may, I know
9 the State has indicated that they are not planning
10 to put Andre Boone's second statement that he made
11 to the police in. However, we are intending to use
12 it and it does have references to Mr. Patterson and
13 they may want to redact that as well.

14 **MS. CAMPBELL:** I don't think I can use it since
15 it's a self-serving statement, but that's just my
16 opinion.

17 **THE COURT:** Is there some disagreement I need
18 to resolve?

19 **MS. CAMPBELL:** Yes, sir, prior to any -- the
20 attempt by them to get this statement into evidence,
21 yes, sir.

22 **THE COURT:** What is it you want to have
23 admitted?

24 **MS. EVERHART:** Well, Your Honor, he does
25 discuss in his statements, he talks to the police

1 about the fact that he has learned, while being
2 incarcerated, that there may be someone else who was
3 involved in the shooting that night.

4 Your Honor, in addition, he provides the
5 officer with some information about another gun
6 possibly being present on the scene with Oliver
7 Feldman who was charged in this murder, also makes
8 reference to Eugene Patterson and Oliver Feldman
9 driving up near where he was the night in question
10 and his --

11 THE COURT: Who is he? I'm sorry. Who is he?

12 MS. EVERHART: Andre Boone.

13 THE COURT: You want to introduce a statement
14 without your client testifying about all of these
15 things that are exculpatory for him?

16 MS. EVERHART: Your Honor, he may end up
17 testifying.

18 THE COURT: Well, if he testifies, then I don't
19 have the issue before me.

20 MS. CAMPBELL: Yes, sir. There's some hearsay
21 issues, too, but if he testifies, that's different.

22 THE COURT: Y'all are talking about Bruton
23 right now, right?

24 MS. PAYNE: Yes, sir.

25 THE COURT: So I'm assuming nontestifying

1 co-defendants and this is a self-serving, allegedly,
2 statement of the person who made the statement, not
3 the statement of the co-defendant; am I following
4 y'all right?

5 MS. CAMPBELL: This is a self-serving statement
6 made by Andre Boone about what he heard when he was
7 in jail. And, of course, Your Honor, that's another
8 issue if he testifies.

9 THE COURT: Sure. Hearsay and others.

10 MS. CAMPBELL: And then we can take up the
11 hearsay.

12 THE COURT: But that's not a Bruton issue, is
13 it?

14 MS. EVERHART: Your Honor, just in regard to --
15 we don't know for sure if he's taking the stand, so
16 if it were to come in at any point from Mr.
17 Sutherland in regard to references to Eugene
18 Patterson.

19 THE COURT: Y'all lost me, I'm sorry. Mr.
20 Sutherland, do you intend to go into that?

21 MR. SUTHERLAND: No, sir.

22 THE COURT: Then how about I just wait and if
23 it looks like it's going to pop up, call my
24 attention to it, okay?

25 MS. EVERHART: Thank you, Your Honor.

1 **THE COURT:** I apologize for not following
2 y'all. I just got a little lost in some of the he
3 said this. And I wasn't following who he was.
4 Again, I don't know the case as well as you all know
5 it.

6 What other issues other than what's on this
7 list?

8 **MS. EVERHART:** Your Honor, we do have a
9 possible limiting instruction to go along with the
10 statements if the Court would like.

11 **THE COURT:** All right. What is it?

12 **MS. EVERHART:** Any statement or confession by a
13 co-defendant can only be considered by you as it
14 pertains to him and not to the defendant, Andre
15 Boone.

16 **THE COURT:** Have you seen this?

17 **MS. CAMPBELL:** No, sir, but I think if it
18 carries the language, I've seen -- whatever your
19 normal limiting instruction is what we would
20 request, Your Honor.

21 (Pause.)

22 **THE COURT:** Have you seen it now?

23 **MS. CAMPBELL:** Yes, sir.

24 **MR. SUTHERLAND:** We're not uncomfortable...

25 **THE COURT:** Is there anything for me to rule on

1 right now?

2 MS. CAMPBELL: No, sir.

3 THE COURT: Would this be in the charge or do
4 you all want this at the time of the introduction of
5 the statement or both?

6 MS. EVERHART: We would ask preliminarily, Your
7 Honor.

8 THE COURT: Preliminary, what? Right now
9 nobody's objecting to it.

10 MS. CAMPBELL: Other than some of the wording
11 as to specifically Andre Boone, but...

12 THE COURT: A statement or confession of one
13 co-defendant cannot be considered in any way against
14 the other co-defendant?

15 MS. CAMPBELL: I think there's an appropriate
16 charge, Your Honor. I'll go look to make sure. But
17 I think the language is similar to that, yes, sir.
18 But I believe that would be part of your charge, I
19 could be wrong.

20 THE COURT: Well, I'm going to tell you, to be
21 honest with you, I bet in 16 years, I hadn't tried
22 two co-defendants at the same time, twice, maybe two
23 trials in the whole time I've been on the bench. So
24 while I'm familiar with Bruton and I know they had a
25 situation in Aiken County where a judge had to throw

1 a murder case out because there was a Bruton
2 violation, I haven't had much practical experience
3 with it. I know enough to know to be scared of it.

4 Anything else that I need to rule on right now?

5 MR. SUTHERLAND: That takes care of everything
6 from us.

7 THE COURT: Can we go to this list now or we
8 still off the --

9 MS. CAMPBELL: I've only got one issue and I
10 think we've all agreed on it so it's no big deal.

11 THE COURT: What's that?

12 MS. CAMPBELL: The crime scene investigator,
13 Mr. Bill Allen, who actually collected the shell
14 casings at the crime scene, is in Iraq. He's been
15 there for over a year, I believe, now. We would
16 have his supervisor -- there were other officers
17 there at the scene that went around and observed him
18 collecting the actual shell casings. He then
19 collected them that night, they were turned over the
20 next day for some evaluations to be done.

21 His supervisor is prepared to testify as far as
22 the chain of custody and all that, those issues,
23 Your Honor. Investigator Ellis was actually there
24 at the scene that night and went around and observed
25 -- actually, Mr. Allen showed him where several

1 shell casings were found that night. That would be
2 the only issue we have.

3 I've talked to Ms. Payne. I don't think she's
4 got a problem with the chain.

5 MS. PAYNE: We are not objecting to chain under
6 that, Your Honor. We would object if they try to
7 put in his diagram that he did.

8 MS. CAMPBELL: I've got Mr. Padgett doing a
9 diagram based on the actual photographs, so we won't
10 put in Mr. Allen's diagram. Mr. Padgett, however,
11 who also went to the scene a day or two days later,
12 has a nice diagram.

13 MS. PAYNE: That would be fine, Your Honor.

14 THE COURT: Anything else on that?

15 MR. SUTHERLAND: Nothing from us, Your Honor.

16 THE COURT: All right. I've been handed
17 written pretrial motion which states, Number one,
18 renew discovery.

19 MS. EVERHART: Yes, Your Honor. We would make
20 a motion to renew discovery. I believe part of what
21 we're concerned about can be addressed in 13, 14 and
22 15. As Mr. Sutherland told the Court, we were only
23 informed last week that Oliver Feldman would not be
24 tried in this case. We had asked the Solicitor's
25 office if he does have a deal to testify in this

1 case, they have indicated to us that there is no
2 formal offer. He may have an expectation of a deal,
3 but not a deal as it stands. And we just want to
4 put on the record that that is the case.

5 Also, Your Honor, we had been informed that his
6 testimony is not substantially changing in regard to
7 what occurred the night of the Waffle House
8 incident. However, there has been issues raised
9 about, perhaps, later testimony against
10 Mr. Patterson. We also would like to put on the
11 record that his testimony is not substantially
12 changing and if that is the case, then we would
13 remove the motion to disallow his testimony.

14 Your Honor, in regard to renewing discovery, we
15 were handed a witness list yesterday with the name
16 of Tanesha Joe on this list. This morning we talked
17 to Mr. Sutherland in this case. He told us that he
18 was handed a statement that -- in December of '07
19 from Tanesha Joe. We have never received a
20 statement. She's supposedly a witness from that
21 night.

22 It was given to the police in June of '07. Mr.
23 Sutherland received it December of '07. We did not
24 receive a statement. It is not referenced in any of
25 the reports we have. We have not been given it at

1 any point when asked for new discovery or additional
2 discovery. We did receive, in the last week or two,
3 a stack of rap sheets and her name is in the rap
4 sheets, but we didn't have any reference to her at
5 any other point.

6 Two weeks ago today we met with Dan Goldberg in
7 the Solicitor's office and Matt Ellis and we did
8 review all the discovery they had in regard to the
9 case. Plus, Ms. Payne and I had time to review
10 other information. We never saw any reference to
11 her in the information they had in their office.

12 Apparently, she also picked our client out of a
13 photo lineup. We do not have a copy of this photo
14 lineup, Your Honor.

15 Mr. Tivis -- Mr. Sutherland was kind enough to
16 allow us to review his copy of the statement this
17 morning. It does appear that her story is somewhat
18 different from other statements we have received in
19 discovery. Because of that, if we had been provided
20 this statement, Your Honor, we would have provided
21 that to our investigator and she would have
22 attempted to talk with this witness.

23 Also, the statement references a Terrance
24 Thomas who we've never received any information
25 about. Our investigator probably would have made an

1 attempt to contact Mr. Thomas as well.

2 Your Honor, we feel that at this point we would
3 be ineffective in regard to these statements. Our
4 client would suffer as a result of us not having an
5 opportunity to peruse these and follow up on the
6 investigation and we would ask that this statement
7 and her possible testimony, as well as the photo
8 lineup be suppressed.

9 THE COURT: Well, I haven't had a Biggers
10 hearing on any lineup, so how is that going to come
11 in?

12 MS. EVERHART: At this point, they indicated
13 she is currently in the hospital. And I would
14 assume whenever she is released and they attempt to
15 put her on the stand, we would need to address the
16 Biggers issue.

17 THE COURT: All right. What's this all about?

18 MR. GOLDBERG: Your Honor, I can tell you, as
19 an officer of the court, that we made arrangements
20 with Ms. Payne, Ms. Everhart and Ms. Thomas to meet
21 with Investigator Ellis and myself in my office, I
22 believe it was a week ago Friday, not this past
23 Friday but a week before, to review any potential
24 discovery issues that we may have. I opened up my
25 entire file. I laid out the two notebooks in front

1 of me, as you see them now, for them to peruse at
2 their leisure, to flip through every single page if
3 they like and inform me if there was anything that
4 they were aware that they did not have.

5 Included in that notebook at that time is the
6 statement by Tanesha Joe. It's been in there the
7 entire time that I've had this notebook. It was
8 there that day. I don't know if they didn't see it,
9 but it's been there the entire time and available
10 the entire time.

11 Why it wasn't provided to them prior to that
12 day, I cannot speak to that. My paralegal is
13 actually looking for the discovery checklist at this
14 point, but it was available some, at least, 10, 12
15 days ago. The entire notebook and the entire file
16 was made available to defense counsel at that time.

17 Putting that aside for a moment, Your Honor, it
18 would be our contention that even if there was some
19 violation that you would find in this regard, the
20 proper remedy for this would be a continuance as
21 opposed to an exclusion of her testimony.

22 **THE COURT:** Well, what is it she says that's
23 different --

24 **MS. EVERHART:** Unfortunately, Your Honor, I
25 don't have a copy in front of me -- Your Honor, I

1 believe she's asked about the shooting at the Waffle
2 House. She indicates that she and Mr. Thomas
3 arrived afterwards. And she asked if they missed
4 the fight and someone there told them yes and then
5 they heard a shot. Then they heard a shot into the
6 ground and then they heard some more shots. They
7 show her a photo lineup and she proceeds to pick out
8 our client from the photo lineup.

9 THE COURT: As who? As one of the shooters or
10 what?

11 MS. EVERHART: This would be Tanesha Joe.

12 THE COURT: No, no. Picked your client out of
13 the photo lineup as what, as the shooter or what?

14 MS. EVERHART: Yes, as the person shooting the
15 gun. And this is supposedly after the fight has
16 occurred and is no longer going on. This is
17 different from any other statement we have.

18 MR. GOLDBERG: Your Honor, if I may, it doesn't
19 even contradict the defendant's own statement where
20 he admits that he fired a weapon at the scene.

21 MS. EVERHART: Your Honor, it's the timing that
22 we have issue with, that certainly warranted some
23 form of investigation since her statement is
24 substantially different.

25 THE COURT: I understand it's different that --

1 you say it's different. How is that beneficial to
2 your client?

3 **MS. EVERHART:** This statement would not be
4 beneficial to our client and that's why we would
5 have investigated it further.

6 There's discussion in it that he's shooting
7 once into the air. We have other statements saying
8 that it's twice into the air.

9 Shots into the ground, we haven't had any other
10 statements with shots into the ground. The fact
11 that supposedly this fight is over and people are
12 hanging out and then out of nowhere for no apparent
13 reason, she has our client firing, we would have
14 followed up with an investigation.

15 **THE COURT:** Do you know the whereabouts of Ms.
16 Joe?

17 **MR. GOLDBERG:** It's our information that she
18 had some sort of illness at this time and she is in
19 the hospital. We are attempting to locate her at
20 this time. We've had our investigator working on
21 it. I believe we know which hospital she's in. I'm
22 not sure what her exact condition is. We're trying
23 to get a hold of her, but we're just not certain
24 about her medical condition at this point.

25 **THE COURT:** As soon as you know where she is,

1 communicate that to Mr. Boone's attorneys and
2 whatever information you have about her condition so
3 that their investigator can talk to her. All I have
4 right now in front of me is that the statement
5 implicates the defendant and if anything makes it
6 worse towards him. So I need to know where there is
7 -- if there is a discovery violation, where there's
8 any -- anything to be pursued by giving additional
9 time for investigation of what likely would be
10 developed from an investigation.

11 What about Mr. Thomas? Was his name ever
12 mentioned to them aside from opening up the notebook
13 two weeks ago?

14 **MR. GOLDBERG:** I'm sorry?

15 **THE COURT:** Didn't you say there was a
16 reference in her statement to a Mr. Thomas being
17 with her?

18 **MS. EVERHART:** Yes, Your Honor. We have no
19 other information about Mr. Terrance Thomas that was
20 with her that night other than in this statement.

21 **MR. GOLDBERG:** Your Honor, I see his name in
22 the statement, but I honestly have no idea who he is
23 or what he would add to this case. His name, to my
24 knowledge, does not appear in any other part of the
25 investigation.

1 Just for clarification, Your Honor, I'm
2 wondering if there's some dispute over whether they
3 had access to our materials on that day.

4 **MS. EVERHART:** No, Your Honor. I do believe I
5 addressed two weeks ago today we met in the office
6 and went through --

7 **MR. GOLDBERG:** And reviewed the notebooks.

8 **MS. EVERHART:** I believe I pointed out that
9 neither Ms. Payne nor I saw that statement or the
10 photo lineup, Your Honor.

11 **MS. PAYNE:** And, Your Honor, I will admit to
12 that. I think the problem comes in the fact that
13 Mr. Sutherland was provided a copy back in December.
14 When once seeing that he had not received it and it
15 was not brought to our attention, it would be
16 assumed, and that's an assumption, Your Honor, that
17 they had copied that stuff at the same time. I just
18 think under the abundance of caution, it should have
19 been provided to us.

20 **MS. CAMPBELL:** Your Honor, if I may address
21 that. I met with Mr. Sutherland because he
22 requested it in December. And he, too, went through
23 the same notebook with me and that's when he
24 received the Tanesha Joe statement. He made that
25 attempt because he wanted to make sure he had all

1 the discovery ahead of time, that is the reason that
2 was provided to him. The same opportunity has been
3 afforded to them.

4 THE COURT: All right. At this point, I don't
5 find a discovery violation. I think that the proper
6 remedy, if there is any remedy that would be
7 imposed, would be to allow the investigator to talk
8 to this potential witness and then I won't be
9 dealing in abstract concepts, I can be dealing in
10 what it is that they're claiming that they can
11 develop. You can move to exclude her testimony at a
12 later stage if she comes in and we go through the
13 identification.

14 MS. CAMPBELL: At the first break, I'll make
15 sure that my investigator either gets her here or
16 gets every bit of information we've got and we will
17 turn that over.

18 THE COURT: Well, I don't want anybody drug out
19 of a hospital room now.

20 Is there anything else on discovery that you
21 all know about?

22 MS. EVERHART: No, Your Honor.

23 MS. CAMPBELL: Your Honor, I would note hereto,
24 we have -- initially, Andre Boone was represented by
25 Joe Chaplin; is that correct?

1 MS. EVERHART: Yes, that's correct.

2 MS. CAMPBELL: And I believe y'all received Joe
3 Chaplin's file?

4 MS. EVERHART: We did not. We actually,
5 originally, had all three co-defendants in our
6 office, so we received discovery at that time for
7 the case. And Joe Chaplin also, I believe,
8 represented Mr. Boone for several months.

9 MS. CAMPBELL: For several months. And I can
10 show here where he was mailed discovery including
11 Tanesha Joe's statement and lineup, which would have
12 been provided to your office, too, at the same time
13 if you were representing all three.

14 MS. EVERHART: It was not provided through --
15 we received discovery for Oliver Feldman and it was
16 not provided in that discovery file. Unless you
17 have a --

18 THE COURT: Make a copy of that -- I'm sorry, I
19 didn't mean to interrupt you.

20 MS. EVERHART: No, Your Honor, that's fine.

21 THE COURT: Make a copy of that -- will you
22 give me a copy of the statement, Mr. Sutherland?

23 MR. SUTHERLAND: Yes, sir. Actually, I
24 provided them -- we can get the statement --

25 MS. PAYNE: I got my clerk, Your Honor, to go

1 make a copy of it for us.

2 THE COURT: Make this a court's exhibit, those
3 two pieces of -- those two things.

4 MS. PAYNE: Your Honor, our investigator is
5 sitting with us also, so...

6 (Pause.)

7 (Court's Exhibit Number 2, statement of
8 Tanesha Joe and discovery checklist, was marked for
9 identification purposes.)

10 THE COURT: Settle the record of potential
11 witnesses, what is that?

12 MS. EVERHART: Your Honor, we just want to make
13 sure what -- several of these people do have prior
14 records, what could come in, and specifically in
15 regard to Mr. Patterson, I believe, is our main
16 concern.

17 MS. CAMPBELL: Your Honor, we did provide prior
18 records on -- everyone has a record. And I see the
19 first record --

20 THE COURT: Wait a minute.

21 You want me to settle what can come in if
22 Mr. Patterson's testifies?

23 MS. EVERHART: For cross-examination purposes.

24 THE COURT: Okay. How do I know if he's going
25 to testify or not?

1 **MS. EVERHART:** We won't know until --

2 **MR. SUTHERLAND:** That decision is going to be
3 made at a much later time, Your Honor.

4 **THE COURT:** I don't need to be deciding that
5 now. And as far as -- now if they don't have the
6 prior criminal records of other witnesses who are
7 not charged, then that's an issue.

8 **MS. EVERHART:** We have received a substantial
9 number of rap sheets --

10 **MS. CAMPBELL:** Including, Your Honor, the first
11 one is Tanesha Joe's, which was turned over, at
12 least, a week ago.

13 **MS. EVERHART:** And I mentioned that. We just
14 want to make sure we have all the rap sheets for
15 everyone who's going to testify.

16 **THE COURT:** The State is representing that they
17 have turned over all of the rap sheets on all of the
18 potential witnesses.

19 **MS. CAMPBELL:** That we know we're calling and
20 I'll make sure the rest are run today if they
21 haven't already been done.

22 The only thing I would just say is if I can get
23 with them at some point to see what's admissible and
24 what's not. It's probably something you don't have
25 to waste -- not waste -- you know, we can probably

1 agree to it, like the simple assault stuff come in.
2 And I think, Your Honor, if we have ten minutes with
3 both defense counsel, you won't have to worry about
4 this.

5 THE COURT: I think that's a much better use of
6 time, but let me read something real quickly.

7 (Pause.)

8 THE COURT: All right. Y'all can get together
9 and make sure that -- what I'd like to do is to make
10 sure that you have your support staff, Solicitors,
11 working on getting copies of all the rap sheets on
12 all the potential witnesses to the defense attorneys
13 so that we don't have any downtime there.

14 MS. CAMPBELL: Yes, sir. And we did that a
15 week ago. We turned over the vast majority of them.
16 I will make sure that any that may have not been
17 done, but I know at least 15 were turned over.

18 THE COURT: That's what I want to know is that
19 the 15 -- that the ones that have not been turned
20 over, that those -- you go ahead and do that, give
21 that to the defense lawyers' support staff so they
22 can be preparing these things. And then you can
23 read Rule 609 as well as I can and as long as it's
24 not an accused person on trial, I think you can
25 probably work out 99 percent of what it is.

1 MS. CAMPBELL: I agree.

2 THE COURT: All right. So let's do that.

3 There's a motion to sequester witnesses.

4 MS. CAMPBELL: Your Honor, we agree to
5 sequester all lay witnesses, I think, is what
6 they're concerned with. I believe they've agreed
7 that experts and law enforcement are okay in the
8 courtroom.

9 THE COURT: Is that right?

10 MS. EVERHART: Yes, Your Honor.

11 MS. CAMPBELL: Number four, Your Honor, I
12 believe we've agreed to take those up just as the
13 three witnesses come up.

14 THE COURT: Co-defendants' statements, have I
15 already dealt with that?

16 MS. CAMPBELL: Yes, sir.

17 THE COURT: Media coverage?

18 MS. EVERHART: Yes, Your Honor. I do realize
19 there is no media in the courtroom presently. Ms.
20 Campbell has informed me there might be media
21 coverage later.

22 We understand that this is entirely within the
23 Court's discretion. Your Honor, we would just ask
24 that media coverage not be allowed because the juror
25 -- this is a long trial and the jurors may hear

1 something about it on the media. If some media's
2 allowed, we would ask print media over television
3 media simply because it would be easier for the jury
4 to avoid.

5 **THE COURT:** The only request I've gotten so far
6 has been from WIS and WACH, I think. They want to
7 cover the trial. I've never denied a media request.
8 The only restrictions I generally place are that the
9 media cannot photograph the jurors and they cannot
10 photograph the victim's family without the victim's
11 family's consent. So the motion's denied.

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

13 **THE COURT:** All right. Have I dealt with the
14 gang references?

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

16 **THE COURT:** What about the gang paraphernalia,
17 what is that?

18 **MS. PAYNE:** Yes, sir, Your Honor. A search
19 warrant that was testified to earlier by Captain
20 Smith was executed at the home of Andre Boone on
21 Meadow Lakes Drive. At that time, they did take
22 some items, some red shirts -- I think all the red
23 shirts they could find in the home and some
24 notebooks, I believe, were also taken. We were just
25 asking that all of that is suppressed, Your Honor.

1 We feel, first and foremost, that it's burden
2 shifting to prove that it's not his stuff. There is
3 a brother that lives in the home that it could
4 potentially be his stuff and it could not
5 potentially be his stuff.

6 Furthermore, it's just clothing that's red. It
7 has nothing to do with being in a gang, but the
8 implication is going to be that that's what it is.
9 We argue that it's extremely prejudicial, it's
10 irrelevant and we're just asking that the Court
11 suppress any mention of that.

12 **THE COURT:** What's the State's position?

13 **MS. CAMPBELL:** Your Honor, at this point, I'm
14 not sure what we plan on putting in from that
15 search. I don't know that it's appropriate at this
16 point to take that up, but I would bring it to the
17 Court's attention prior to us attempting to
18 introduce anything from that search warrant.

19 **THE COURT:** All right. There is to be no
20 mention of finding anything of any specific color
21 during the search. If there is to be a mention of
22 it, that should be handled outside the presence of
23 the jury. It's going to have to be something a
24 whole lot more than just red clothes.

25 **MS. CAMPBELL:** Yes, sir, I agree.

1 **MR. SUTHERLAND:** Your Honor, if I may, sir, I
2 had met with Solicitor Goldberg and Investigator
3 Ellis and they informed me that they didn't intend
4 to introduce any of the sort of similar materials,
5 so I hadn't raised the issue, sir.

6 **THE COURT:** It applies to both -- I know there
7 was a search warrant executed. I understand that's
8 a different issue technically, but as far as the
9 overriding issue about saying that this person we
10 obtained clothing of a certain color, y'all need to
11 address that outside the presence of the jury.

12 What about the photographs of the crime scene
13 and autopsy?

14 **MS. PAYNE:** Yes, sir, Your Honor. We are
15 making a motion to suppress, obviously, the autopsy
16 pictures in this case. I know it is in the sound
17 discretion of the judge, the admissibility,
18 relevance; however, Your Honor, it has been ruled in
19 the past that photographs that are just entered in
20 to arouse the sympathy of the jury or anything like
21 that, should be deemed inadmissible. I know the
22 State has informed me that they don't plan to go
23 into the autopsy pictures, but they plan to use a
24 diagram.

25 **MS. CAMPBELL:** We would as far as the head shot

1 goes, Your Honor. This was a shot to the back of
2 the head. The pathologist, I think, can testify to
3 that.

4 There is an abrasion, though, on the knee that
5 may be relevant. There's some dispute in this case
6 as to what angle each of the shooters had as far as
7 who was the actual shooter and how far the victim
8 actually traveled prior to going down, but I will
9 not mention any autopsy pictures in opening. And if
10 I see something come up, I will bring it to the
11 Court's attention. At this time, I do not
12 anticipate any autopsy pictures, but I would not
13 mention them nor will I bring them around or
14 anything prior -- I would do it outside the presence
15 of the jury if something comes up.

16 **THE COURT:** What about the crime scene? What's
17 the problem with the crime scene?

18 **MS. PAYNE:** Your Honor, there are many pictures
19 that are cumulative. We would just ask that they
20 limit those pictures. There's also a rather large
21 pool of blood that surrounds the body because of his
22 wound. We would ask that those pictures are limited
23 as well. We can surely go through the pictures
24 together and hopefully come to some sort of
25 agreement on that as well.

1 **THE COURT:** All right. Again, that's -- I'm
2 ruling in the abstract there. Let me see what
3 happens and you can raise the objections.

4 Don't show them to the jury, obviously, until
5 you've got a ruling.

6 What about the use of the word "they" in
7 opening statements, what is that about?

8 **MS. PAYNE:** Your Honor, we were just asking
9 that they don't combine these two defendants
10 together. They do not know each other and we are
11 asking that they remain separate. We're just asking
12 the Court to call them by their names and keep them
13 separate in this case. They are being tried
14 separately and we just don't want the jury to have
15 any confusion with that.

16 **THE COURT:** Well, if I think there's some abuse
17 going on, you can raise the issue and I'll deal with
18 it. I pointed out to the jury in the first few
19 sentences that the indictments were separate and
20 distinct. They were -- cases would maintain that
21 status throughout the trial and that the cases had
22 to be evaluated on their merit or lack of merit.

23 That principle should be preserved throughout
24 the trial. If there's an abuse of that, we'll deal
25 with it. If there's just an inadvertent reference

1 or something to make the questioning go faster, I'm
2 not going to stop them from using that word.

3 MS. PAYNE: Yes, sir.

4 THE COURT: What about suppression of drug
5 evidence?

6 MS. CAMPBELL: We will not be going into that.

7 THE COURT: Let me skip down. 13 and 14, is
8 there a deal? I don't know if we ever covered that.

9 MS. EVERHART: Your Honor, I do believe we put
10 on the record when I was renewing the discovery
11 motion that --

12 THE COURT: I know you said it, but I don't
13 know if I ever heard a response.

14 MS. CAMPBELL: Basically, Your Honor, he's been
15 offered no deals at this point. Of course, I think
16 he hopes that the judge will consider it down the
17 road or he hopes for a reduction in charge or -- I
18 mean, the usual. But we've made no promises or no
19 deals as far as anything.

20 THE COURT: And the motion to disallow
21 Mr. Feldman's testimony.

22 MS. CAMPBELL: I think they're withdrawing
23 that.

24 MS. EVERHART: Yes.

25 THE COURT: Withdrawn.

1 So you said that you thought there would be a
2 lot of time invested in this motion to permit the
3 jury to view the scene.

4 **MS. EVERHART:** Just more substantial than we've
5 invested in the prior motions, Your Honor.

6 **THE COURT:** I'm sorry, I didn't hear you.

7 **MS. EVERHART:** Just more substantial than we've
8 invested in the prior motions. I don't anticipate
9 it would take very long, probably not more than 15,
10 20 minutes.

11 **THE COURT:** Okay. Generally, I rule -- I would
12 love to go ahead and rule on it now, but generally I
13 rule on that much later in the trial after I've seen
14 photographs and things of that nature, but if it's
15 something we can do now, I'd love to get it out of
16 the way.

17 **MS. EVERHART:** Either way, Your Honor. The
18 reason we wanted to bring it up first was in order
19 to give Barbara Scott adequate time, should you
20 grant motion, to arrange transport to the crime
21 scene.

22 **THE COURT:** Let's deal with this first. Do
23 y'all object to the jury going to the scene? Has it
24 changed any? Is there anything different about it
25 today than it was last year?

1 **MS. CAMPBELL:** That's something I just hadn't
2 really thought it through, Your Honor. At this
3 point, I don't want to join in the motion and I
4 don't know that it wouldn't be something appropriate
5 maybe at a later time to resolve. I've only ever
6 had one person ever want to go to a scene. And I
7 just haven't reviewed the law on it, Your Honor.

8 **THE COURT:** Why do you think it's important?

9 **MS. EVERHART:** Well, Your Honor, we believe
10 that the jury needs to go to the crime scene because
11 the photographs taken and provided to us through
12 discovery mostly they appear to be focused on the
13 nuances, where bullets are located, but not in
14 reference to where they might be in regard to where
15 the different buildings are.

16 There are a lot of photographs of the body up
17 close, Your Honor, but not a lot of photographs that
18 really show where the body would be in relation to
19 the entirety of the parking lot to where Mr. Boone
20 may have been standing, to where Mr. Feldman may
21 have been standing, where Mr. Patterson may have
22 been standing.

23 Your Honor, there are two drawings that have
24 been provided in discovery that depict the scene,
25 they're not to scale. Your Honor, we do have

26

27

28

1 drawings from possible witnesses and they are not to
2 scale.

3 We have been to the crime scene ourselves. We
4 have had our crime scene expert go to the crime
5 scene and our investigator go to the crime scene.
6 We honestly do not believe that you get an accurate
7 picture of what this crime scene looks like until
8 you're standing in it. Spatially, the photographs
9 don't appear to match up with reality just because
10 of the way they were shot and the angles. Most of
11 the photographs are at night. There are some from
12 the day.

13 We do have our crime scene expert and our
14 investigator and can proffer their testimony if you
15 would like to hear it. But that would be our main
16 argument.

17 **THE COURT:** How long would it take to get out
18 there?

19 **MS. EVERHART:** I believe it's possibly a 10
20 minute -- 10, 15 minute drive.

21 **MR. SUTHERLAND:** I'd say 20.

22 **THE COURT:** And what businesses are there?
23 It's a Waffle House and a Mobil station.

24 **MS. EVERHART:** And a liquor store and the Mobil
25 Gas Station, they're in the same building, Your

1 Honor.

2 MS. CAMPBELL: Your Honor, I can hand up some
3 overheads, aerals, that show the Waffle House. And
4 then I've got the crime scene pictures as well.

5 And if I may just point out to him what's on
6 here?

7 MS. EVERHART: Yes.

8 (Pause.)

9 THE COURT: All right. This is not a final
10 ruling, but I'll be inclined to let the jury look at
11 the scene.

12 MS. EVERHART: Thank you, Your Honor.

13 THE COURT: And one of the reasons may be,
14 because I don't know exactly, if this case goes to
15 the jury, what it will go to the jury on, so there
16 may be some issues that the jury would have to
17 evaluate that might be better served by having a
18 view of the scene.

19 MS. CAMPBELL: Yes, sir. And the other thing
20 we would ask for is some kind of limiting
21 instruction about the conditions may be different
22 from what they were like at 12 o'clock at night. If
23 you could fashion just some limiting -- in other
24 words, if we go at noon, it's a whole different
25 world from what it is at midnight.

1 **THE COURT:** Yeah, I'll let you make your
2 motion. I doubt I'm going to -- I don't want to get
3 too much into commenting on the facts. If you all
4 enter a stipulation, I'd be happy to read the
5 stipulation to the jury, you know, if you want to
6 stipulate that the time was between certain hours
7 and it was obviously dark or whatever you want to
8 stipulate to, but I'm not going to get into
9 commenting on facts.

10 What else do I have?

11 **MS. EVERHART:** Nothing from us, Your Honor.

12 **THE COURT:** Anything else from the State?

13 **MS. CAMPBELL:** No, sir.

14 **THE COURT:** Defense?

15 **MR. SUTHERLAND:** Nothing from us, sir.

16 **THE COURT:** The jury's coming at 2:15, so I
17 want y'all to work -- I don't want y'all to scatter
18 on me, okay? We've got two hours and 15 minutes,
19 that's plenty of time to eat lunch and nobody be
20 inconvenienced.

21 I want them to have whatever it is that they
22 may not have with regard to the record of the
23 witnesses that was already covered. And I want you
24 all to sit around and talk about what's covered
25 under 609 and whether there's any disagreement and

1 anything else I'm not thinking of right now that you
2 all said y'all could probably sit down and work out.

3 The redaction of those statements, if they
4 haven't been finalized, make sure that they're
5 finalized and everybody knows what we're talking
6 about, okay?

7 Nothing else?

8 (There was no response.)

9 THE COURT: All right. Y'all do that before
10 you go to lunch for me, all right? Thank you.
11 Court's in recess until 2:15.

12 (Whereupon, there was a luncheon recess.)

13 THE COURT: State ready for the jury?

14 MS. CAMPBELL: State's ready, Your Honor.

15 THE COURT: Mr. Sutherland, are you ready for
16 the jury?

17 MR. SUTHERLAND: Yes, sir.

18 THE COURT: Ms. Payne, are you ready for the
19 jury?

20 MS. PAYNE: Yes, Your Honor.

21 THE COURT: Bring them in, please.

22 (The jury enters the courtroom at 2:15 p.m.)

23 THE COURT: Let me see the attorneys up here,
24 please.

25 (Whereupon, a bench conference was held off

1 the record, in the presence of the jury, but out of
2 the hearing of the jury.)

3 **THE COURT:** Ladies and gentlemen, thanks very
4 much. We're going to have you placed under oath as
5 the trial jury. And as you know, there are two
6 separate and distinct cases here and they're being
7 tried together for purposes of convenience.

8 Mr. Clerk, if you would, administer the oath.

9 Stand please and raise your right hand, ladies
10 and gentlemen.

11 (The jury was duly sworn by the Clerk of
12 Court at 2:16 p.m.)

13 **THE COURT:** Ladies and gentlemen, I received
14 some questions from you, so I'll address those
15 first. The first question, Are you permitted to
16 take notes? And the answer to that question is yes.
17 I do have to give you some instructions about that.
18 And if you want us to give you a paper and pen,
19 pencil, we'll be happy to try to accommodate you --
20 or we will be happy to accommodate you. We won't
21 try, we'll do it.

22 I need to explain to you that the judges who do
23 not allow jurors to take notes, they generally do
24 that out of a concern that the jurors who do not
25 take notes, when you start your deliberations, would

1 give undue deference to the jurors who did take
2 notes. In other words, they would improperly yield
3 to what was written down as opposed to what was in
4 someone's memory. I don't buy into that. You know
5 what you remember, you know what you heard, what you
6 saw. And it's fine with me, if you take notes.

7 They do tell us if we let you take notes, that
8 we have three rules. Here they are: First, when
9 you leave the courtroom, you cannot take your notes
10 with you until the deliberations. You have to leave
11 them face down in your seat. When we have extended
12 breaks, the bailiffs will take charge of your notes.
13 We do not read your notes. Nobody reads your notes.

14 Second, when you go back to your jury room to
15 deliberate the cases, you will have your notes with
16 you then, but you cannot physically show them to
17 another juror. You may read them, then you may say
18 whatever you like, but you cannot say, look here, I
19 wrote it down. You can't physically show them to
20 another juror.

21 And the third thing is that after the trials
22 are over, your notes have to be destroyed. So we
23 will have you give them to the bailiffs. The
24 bailiffs will tear them into tiny little pieces and
25 throw them away. If you put them on something that

1 you need back, we have to take a black magic marker
2 or something and obliterate the notes. So it's not
3 a good idea to put your notes on something you need
4 to keep because we're going to destroy them.

5 With those three rules, you're welcome to take
6 notes. If any of you need a pencil, pad, raise your
7 hand, we'll make sure you got it.

8 We'll get those to you in just a moment. Any
9 of you who want to -- if you change your mind and
10 you want a pad and a pencil later, let us know.

11 All right. The second question, Do alternate
12 jurors participate in deliberations? No, but you
13 don't know if you're going to be an alternate juror
14 when deliberations come around. You might be one of
15 the 12 when the juror deliberations start, so you
16 have to pay close attention throughout the trial.

17 So the answer to the question is if you're
18 still an alternate when deliberation time comes, no,
19 you will not be in the deliberations. There is a
20 possibility, however, that I may keep you after the
21 jury starts its deliberations in case there's a
22 problem with one of the jurors during the
23 deliberations. If somebody were to fall very sick
24 or something, there are some options I have. I just
25 have to make that call at the end of the case.

1 The third note is that two jurors teach biology
2 at Midland's Technical College. Are the prosecution
3 and defense aware of this? They know.

4 And the fourth, Is there an estimated time of
5 completion of the trial to advise your employers?
6 When I told you yesterday that I would try to keep
7 you abreast of how the trial is proceeding, that's
8 what I meant and I am going to continue to do that
9 as the case goes along. I wish I could give you
10 better estimates than I'm able to give to a jury,
11 any jury, not just you. I wish I could give better
12 estimates to the jury.

13 I still am very hopeful that we will finish
14 this case this week. I'm having my doubts, but I'll
15 let you know. So if you want to go ahead and put
16 your employers on notice that we could go a couple
17 of days into next week, you might want to do it.
18 It's always easier to work back from that, but we're
19 going to try very hard to get this case to you this
20 week. Do not plan to work into the weekend under
21 any scenario, now that might change, but that's my
22 plan.

23 (Court's Exhibit Number 3, jury note, was
24 marked for identification purposes.)

25 **THE COURT:** Ladies and gentlemen, I want you to

1 give me about 12 minutes during which I'm going to
2 explain to you how we usually operate court as far
3 as the jury is concerned. I'm going to tell you how
4 I expect the cases to begin. I won't go through the
5 whole process, but I'll tell you how we will get
6 started and then I'm going to give you some
7 instructions that you'll have to follow throughout
8 the trial.

9 Now, the first thing that's going -- well, let
10 me start where I said. We normally bring you in
11 about 9:15 in the morning for beginning the cases.
12 So I'll try to bring you in around 9:15. We usually
13 go until about one o'clock and break for lunch.

14 As I told you yesterday, I'm going to see about
15 having your lunch brought in each day. If I see
16 that that's not being helpful as far as moving the
17 case along, then I'll adjust on the fly. But I'm
18 probably going to bring your food in this week. We
19 usually break for the day between 5:00 and 5:30.

20 You know as much as I know now about how your
21 day is likely to go. We will -- like I said, we'll
22 adjust on the fly if necessary. We'll try to keep
23 things moving, but that's usually how the jury
24 operates.

25 The way the case will begin is that the

1 attorneys will first make their opening statements
2 to you. In these opening statements, the attorneys
3 are not permitted to engage in argument. Opening
4 statements can be introductory. They can be an
5 outline, an overview, an introduction.

6 When the opening statements are finished, then
7 I will call upon the State to present its evidence.
8 The State brought these charges and the State has
9 the entire burden of proof. The burden of proof in
10 criminal court is proof beyond a reasonable doubt.
11 So the State has to prove the guilt of the
12 defendants beyond a reasonable doubt. And I will
13 recognize the State to present evidence in an
14 attempt to meet that burden.

15 When the State finishes presenting its cases in
16 chief, the Solicitor will announce to me that the
17 State rests. At that point, I have to send you out
18 of the courtroom and discuss legal issues with the
19 attorneys. When you come back in, I'll tell you
20 where we go from there. But those are the
21 benchmarks you can look for as we get started.
22 You'll hear the opening statements and then the
23 presentation of the State's case in chief.

24 Ladies and gentlemen, it is very important that
25 you understand a few things. I've mentioned a

1 little bit about these to you when we drew you
2 yesterday, but it's really important you understand
3 this. The oath that you just took was one in which
4 you promised us that you're going to decide these
5 cases based on the evidence and the law, so you need
6 to know where that comes from.

7 The evidence comes from the sworn testimony of
8 witnesses. Evidence may also come through exhibits.
9 An exhibit can be anything tangible that's marked
10 into the record. It can be a photograph, a map, a
11 chart, anything tangible.

12 If something is an exhibit, it comes into
13 evidence and it goes back into the jury room with
14 you when you decide the cases. And the reason I'm
15 telling you that is because it's not at all unusual
16 for an attorney to have something and show it to you
17 from a distance or hand it into the jury box and ask
18 you to circulate it around so you're trying to look
19 at this thing while you're also trying to pay
20 attention to what's going on on the witness stand.
21 So just realize that all of the exhibits will be
22 back with you in the jury room when you decide the
23 case.

24 Now, I don't know what the exhibits are going
25 to be in this case so what I'm about to tell you

1 don't think I'm trying to inject myself into the
2 facts. There is a special rule in every case that
3 the Chief Justice and the Supreme Court have
4 announced related to guns. So if there is any kind
5 of firearm that's entered into evidence in this
6 case, we're going to have some special rules about
7 the handling of firearms. I'll tell you about those
8 if that comes up. But all of the exhibits will be
9 back there with you.

10 To boil all of that down to a nutshell, if
11 there's a gun in evidence, you can't have the gun
12 and the ammunition in the jury room at the same
13 time. And the gun has to be kept in the possession
14 of the court reporter throughout the trial except
15 when it's being utilized during the presentation of
16 evidence.

17 What the lawyers say is not evidence. I want
18 you to pay attention to them, but what comes out of
19 their mouths is not evidence. The evidence comes
20 from the witnesses and the exhibits.

21 Now, there is one exception to that rule about
22 what the lawyers saying not being evidence. If we
23 come upon it, I'll tell you about it. I'm not going
24 to burden you with it unless we have it, all right?

25 Now, you know where the evidence comes from.

1 The law comes from me. It's my job to decide what
2 law applies to these cases and tell that to you at
3 the end of the trial.

4 Now, it's important that you understand then
5 that there are two judges in this courtroom. I'm
6 the judge of the law. I just told you, at the end
7 of the trial, I'm going to tell you the law. It's
8 also my job to preside over the trial, maintain
9 order and to make legal rulings as the case goes
10 along.

11 You're the other judge. You have to understand
12 that you are the only judge of the facts. Only you
13 get to decide such things as whether evidence is
14 believable or not. Only you get to decide what
15 weight, if any, to put upon evidence. That's
16 entirely your prerogative and I'm not going to
17 invade your province. You're the only judge of the
18 facts.

19 Now, I want to point out something to you just
20 to make sure that there's no confusion, and this is
21 somewhat of an example of what I mean by the
22 separation of our roles. As we go along in this
23 trial, there may be occasions where one of the
24 attorneys feels that another attorney is trying to
25 present something to the jury that's not proper for

1 the jury to consider, it's not proper evidence. And
2 if one of these attorneys feels that way, they've
3 taken an oath, just like you and I have taken an
4 oath, to do their jobs and they have an obligation
5 to stand up and raise an objection.

6 Now, if that happens, many times I'll send you
7 out of the courtroom while I consider that
8 objection. Don't be worried about what we're doing
9 out here, don't think anybody's trying to hide
10 anything from you. It just goes quicker if I send
11 you out of the courtroom. I can cut to the heart of
12 the matter and we can deal with it and move on.

13 If I overrule an objection, that means I let it
14 come before you. If I sustain the objection, that
15 means that I do not let it come before you.

16 Now, obviously, if I've ruled that the
17 objection is sustained and it shouldn't come before
18 you, you have to disregard that, whatever you may
19 have heard that I sustained, you've got to disregard
20 that in its entirety. It's not proper for you to
21 consider.

22 But if I overrule the objection and I do let it
23 come before you, I want to make sure you understand
24 that it has not crossed my mind to think about
25 whether that thing is believable or not because

1 that's not my job. It has not crossed my mind to
2 think about whether you should give that any weight.
3 That's not my job. My job is to look with tunnel
4 vision to see does that thing fit within the rules
5 for the jury to consider. And if I think it does,
6 it comes to you and you decide whether it's
7 believable and you decide what weight, if any, it
8 should have.

9 So you're the judges of the facts and I will
10 not invade your province. Please don't ever
11 misconstrue any ruling I make as passing upon the
12 facts of the case.

13 Now, while you've promised us that you're going
14 to decide these cases based on the evidence and the
15 law and you have to do that, I am not telling you to
16 leave your common sense at home. We want you to use
17 your common sense, use your sense of logic and
18 reason and your good judgment. It just makes good
19 common sense that you keep an open mind about these
20 cases and you don't make up your mind until you've
21 heard all of the evidence and you know what the law
22 is.

23 So there's a rule that I've already told you
24 about, but I've got to tell you again. It's very
25 hard to follow. That rule is that you are not to

1 discuss these cases in any way among yourselves
2 until I tell you to.

3 Now, the reason that's hard to follow is
4 because you 14 folks may feel that you've got little
5 in common except you all live in Richland County and
6 you all got picked on this case. So the logical
7 thing that you're going to want to talk about when
8 you leave the courtroom and you're together is what
9 just happened in the courtroom. You have to resist
10 that temptation until I tell you to begin your
11 deliberations and then we wait on you.

12 Don't discuss the case until I tell you to.
13 Don't talk about the case with anybody else, family
14 member, friend, anybody until the case is completely
15 over, your verdicts have been rendered and you've
16 been discharged from this jury. If anybody attempts
17 to contact you and discuss the cases with you,
18 report that to me so that I can deal with it.

19 Now, ladies and gentlemen, there have been
20 media requests related to the trial, that doesn't
21 mean this trial is any more or less important than
22 any other trial, it just means the media has chosen
23 to cover it. I don't know if any of that will ever
24 air, but let me tell you a few things about media
25 coverage.

1 First, they cannot film you, all right. You
2 will not have to worry about that. You will not be
3 shown on television. Your names will not be
4 published. You will not be the part of any media
5 coverage. They can't do that.

6 And, second, I need to repeat to you what I
7 told you yesterday. You cannot watch, listen to,
8 read any state or local media during the time you're
9 on this jury. Stay away from the media coverage,
10 the news. If you're inadvertently exposed to it in
11 any way, report to me at the first opportunity what
12 you may have seen, heard or read through the media.
13 Now, that's very important and I'm going to depend
14 on you to let me know if you are exposed to any
15 media coverage.

16 All right. The last thing I want to tell you
17 is thank you. I often tell juries that by this
18 point in the trial, they have found out that I have
19 very little to no personality. And they probably
20 have come to understand that I'm not the kind of guy
21 who's going to repeatedly sit up here and say thank
22 you.

23 I know you've got other things to do and other
24 places to be. I also know it's very easy to find
25 yourself in a dispute. And if you're ever in one,

1 you'll be very grateful that 14 people like you came
2 away from everything else they had to do in their
3 lives to come in and resolve the dispute and I thank
4 you for that.

5 My promise to you is this, if you're waiting on
6 us, we're working. There is never going to be a
7 situation where we're sitting around drinking coffee
8 and telling jokes while you're waiting on us.
9 That's not going to happen. I can't promise you you
10 won't have to hurry up and wait. I can't promise
11 you things will go smoothly. All I can promise you
12 is that people will be working.

13 So thank you for your presence. Thank you for
14 your attention. And to honor my commitment to you,
15 it's time for me to be quiet.

16 Which of you is going to give the opening
17 statement?

18 **MR. GOLDBERG:** I am, Your Honor.

19 **THE COURT:** All right. If you would please,
20 ladies and gentlemen, I invite your close attention
21 to the opening statements.

22 Mr. Goldberg, you're recognized.

23 **MR. GOLDBERG:** May it please the Court, Your
24 Honor.

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

1 MR. GOLDBERG: Counsel.

2 Good afternoon. Usually when I come before a
3 jury like yourselves, I like to start off with a
4 theme or a catch phrase, something that you can grab
5 a hold of and stick in your pocket and use
6 throughout the course of this trial as a reminder of
7 what this case is about. And as I prepared for this
8 case, I've realized nothing I can come up with would
9 be as meaningful or effective as the cold, hard
10 facts of this case.

11 Fifteen-year-old Brian Wright was murdered. He
12 was murdered when a bullet blew open the back of his
13 head, traveled all the way through his brain, ripped
14 through his brain and exploded out the front of his
15 head. He was left bloody and motionless on cold
16 pavement in a gas station parking lot.

17 As shocking as those words may sound to some of
18 you, what I'm about to tell you may come as an even
19 greater shock. No one in this courtroom, not me,
20 not the law enforcement, not the defense attorneys,
21 not doctors can tell you with 100 percent certainty
22 who fired the shot that actually killed Brian
23 Wright.

24 What I can tell you with 100 percent certainty
25 is that on that fateful night, both Andre Tayson

1 Boone and Eugene Patterson, the defendants in this
2 case, both fired weapons at the scene that night.
3 And I can also tell you that under the law in this
4 state, both men are responsible for Brian Wright's
5 death regardless of which one actually fired the
6 fatal shot.

7 In this state, the law provides that if two or
8 more people combine together to commit some sort of
9 an unlawful act and in the process, a homicide is
10 committed, then all of the participants in the
11 unlawful act are as guilty as the one who actually
12 killed the person. In other words, the hand of one
13 is the hand of all or the act of one is the act of
14 all.

15 And what we have in this case is a gun battle,
16 a gun fight. You've got Andre Tayson Boone on one
17 end of a parking lot, in a Waffle House parking lot,
18 firing his weapon. You've got Eugene Patterson and
19 some other folks on the other end of the parking
20 lot, rival gang members, firing their firearms and
21 it creates a gun battle in the middle of this
22 parking lot. Now, unfortunately, for Brian Wright,
23 he got hit by one of those shots.

24 Now, the facts in this case will show that if
25 Andre Tayson Boone had never fired his nine

1 millimeter into the air, Brian Wright would not be
2 dead. If Eugene Patterson had not retreated, picked
3 up his weapon and then returned fire, Brian Wright
4 would not be dead.

5 Essentially, if the gun battle itself had not
6 taken place, then William Wright would not have been
7 forced to come out to the scene that night and
8 identify his son's dead body while standing in a
9 parking lot.

10 Ladies and gentlemen, my name is Dan Goldberg.
11 I'm an assistant solicitor in the Fifth Circuit
12 Solicitor's office. It covers Richland and Kershaw
13 Counties. Along with my co-counsel, Luck Campbell,
14 it's our job to prosecute crimes that take place in
15 Richland County. And today, and for the next
16 several days, it's going to be our job to prove to
17 y'all beyond a reasonable doubt that on February the
18 19th, 2007, Andre Boone and Eugene Patterson
19 committed the crime of murder and Brian Wright was
20 killed.

21 What I want to do at this time is give you a
22 quick factual preview of what you're going to hear
23 in this case. I don't want to give you all of the
24 details. I'm going to leave that up to the
25 witnesses who take this stand and tell them

1 yourselves (sic). I'm just going to give you a
2 little preview.

3 You're going to hear that on this night,
4 February 19th, 2007, this Waffle House is on Two
5 Notch Road near I-20, on that night, there was a lot
6 of animosity between two rival gangs, the Bloods and
7 the Folk Nation. There was a fight that was set up
8 between one member of each, Corey Sanders and Chad
9 Robinson. Phone calls were made between all of the
10 groups. Everyone was told about the fight, everyone
11 knew it was going to happen, it was just a matter of
12 where.

13 Eventually, they all end up at this Waffle
14 House. Evidence will show that there are people
15 everywhere in this parking lot, Bloods, Folks,
16 random friends, girls, all in this parking lot
17 waiting for this fight to take place.

18 When the fight finally takes place -- or as it
19 takes place, you've got, as I stated, a group of
20 Bloods mainly in the back of the parking lot and a
21 group of Folks near the front of the parking lot.
22 Corey Sanders, who's a Blood, comes up to fight Chad
23 Robinson, a Folk. As they engage, more Folks come
24 to support Chad.

25 It's at this point other Bloods come forward to

1 help Corey and now the fight is growing and it's
2 growing and the Folks are getting the best of the
3 Bloods. Corey is getting beat pretty good.

4 It's at this point that Andre Tayson Boone goes
5 back to his car in the back of the parking lot, gets
6 a nine millimeter handgun, runs back over to where
7 this fight's taking place and admittedly fires two
8 shots into the air. That's undisputed even by
9 Mr. Boone who's going to tell you that. You're
10 going to hear from him. He gave a written statement
11 to the police and you're going to get to hear it
12 about what he did that night and he admits he fired
13 two shots in the air. And once that happened, all
14 hell breaks loose.

15 At this point, you've got Patterson going back
16 to the car along with a friend of his, Oliver
17 Feldman. They both grab firearms. They come back
18 towards the middle and begin to fire back in that
19 direction and now you've got your crossfire. People
20 are scattering. There's chaos everywhere.

21 Mr. Boone will go on to say after he fired the
22 two shots in the air, that he fired at least one
23 shot wildly, that he doesn't really know where it
24 went, that it may have head in a direction towards
25 the Mobil Gas Station, which happens to be the

1 general area where Brian Wright's body was found.
2 He then indicates that he fires at least four more
3 shots.

4 You will also hear testimony from several
5 witnesses indicating that Eugene Patterson fired
6 multiple shots that night all over the parking lot.
7 I'm not going to get into the details of what
8 witness said what. You're going to hear that for
9 yourself when they take the stand.

10 And you're going to hear testimony from all
11 sorts of people that were there that night, members
12 of the Bloods, members of Folks, people who aren't
13 gang members at all and you'll have to remember that
14 they don't necessarily want to be here when they're
15 testifying, but they're going to be under oath to
16 tell you what they know and what they remember and
17 what they saw. And it's up to you, as Judge Keesley
18 told you, as the judges of the facts, to determine
19 if what they're telling you is the truth.

20 Of course, you're going to hear from law
21 enforcement about the investigation that they
22 conducted after this incident, about the shell
23 casings that they collected at the scene, nine
24 millimeters shell casings that were found in the
25 general area where Tayson Boone is alleged to be

1 firing from, .380 shell casings that were found from
2 in the area where Eugene Patterson was alleged to be
3 standing and firing. You're going to hear from
4 forensic experts, all of these people.

5 But I want you to keep in mind when you hear
6 from them, that this is not television. It's not
7 CSI. It's real life. And these people do a good
8 job, but this is not a situation where it can be
9 cleared up in a 55 minute television show. It took
10 time and it took effort. Keep that in mind.
11 There's not going to be a magical piece of evidence
12 that at the last second is going to tell you who
13 fired the shot that killed Brian Wright. But,
14 again, I don't want to get too far into it. I'm
15 going to leave you to hear that from the witnesses
16 themselves.

17 Now, you heard me mention earlier that it's our
18 job to prove this case to y'all beyond a reasonable
19 doubt. I want to take a quick second and talk to
20 y'all about what that means.

21 In every case, the State of South Carolina
22 holds the burden of proof which requires us to prove
23 our case to you beyond a reasonable doubt. It does
24 not require us to prove our case beyond any doubt or
25 all doubt, simply a reasonable doubt.

1 So the question becomes what is a reasonable
2 doubt? A reasonable doubt is one that causes a
3 reasonable person to hesitate to act. An example I
4 like to give is that some -- a person may say that
5 the sun won't rise in the morning, that would be an
6 unreasonable doubt. Here, our burden of proof is to
7 prove the case to you beyond a reasonable doubt.

8 You're going to hear the facts from the
9 witnesses. Judge Keesley is going to give you the
10 law as provided by the State of South Carolina. He
11 is the sole judge of the law in this case.

12 As you know, each defendant is charged with
13 murder, the willful, felonious killing of another
14 with malice aforethought. Malice aforethought, that
15 simply means evil in your heart, hatred, ill will.
16 He's going to tell you that the law says that you
17 can infer malice from the use of a deadly weapon,
18 which is what we have in this case.

19 I mentioned it to you earlier, the hand of one
20 is the hand of all. If you have two people who join
21 together for some sort of criminal purpose, such as
22 robbing a store, and during the course of that, you,
23 person A, are liable for everything done by person B
24 that is incidental to that act. So if person A and
25 person B agree to commit a robbery, person A hauls

1 off and beats the clerk, person B is just as
2 responsible as person A even though he never threw a
3 punch. That's the law in this state.

4 And along those same lines, if two people
5 combine together to commit an unlawful act, again
6 like arming yourself with a firearm and engaging in
7 a gun battle with a rival gang member and in the
8 process a homicide is committed, then all of the
9 participants in that act, all of the participants in
10 that gun battle are as guilty as the person who
11 actually killed the victim. That's the law in this
12 state.

13 We are also required to prove criminal intent.
14 And you're going to be instructed on one element of
15 that, which is the concept of transferred intent.
16 Normally, you have a situation where person A fires
17 a shot at person B with the intent to kill them,
18 intent is not an issue there, but what happens if
19 that bullet misses B and hits person C that they
20 weren't aiming for? The law in this state tells you
21 that if you have that intent to kill when you fired
22 at person B and you miss them, it travels with the
23 bullet to person C, you can be held responsible for
24 it.

25 I don't want to get too far into the law again,

1 that's Judge Keesley's job to instruct you on that,
2 but you needed to know these concepts going into
3 this so that you can think about them and apply them
4 to the facts of this case as you're listening to the
5 testimony.

6 Again, I mentioned earlier you are the sole
7 judges of the facts in this case. One of the main
8 ingredients with that is judging the credibility or
9 the believability of witnesses. Look at the witness
10 when they're on the stand, are they hesitant, are
11 they forthright with what they have to say, would
12 they be biased or prejudiced, has their testimony
13 been corroborated. Those are some questions that
14 you can ask yourself, but I submit to you that it's
15 a little easier than that.

16 You all do this everyday of your lives. You
17 may not realize it, but when you're walking down the
18 street or when you're at the water cooler, when you
19 come in contact with someone and they're talking to
20 you, somewhere inside of you you are judging, do I
21 believe what this person is telling me, is it
22 believable, is it credible. This is no different.

23 Considering that, you can believe all of what
24 they say, part of what they say, you don't have to
25 believe any of what they say, that's up to you as

1 the judges of the facts.

2 I want to just take a quick second and thank
3 you for your service here, but I want to remind you
4 of the oath that you all took just now when you were
5 sworn in as jurors. You all swore that you would
6 well and truly try to deliver a true and just
7 verdict, or something to that effect. I'm
8 paraphrasing a little bit. The key word there is
9 verdict, comes from Latin, and it means to speak the
10 truth, to speak the truth, and that's all we're
11 asking for, ladies and gentlemen. That is all we're
12 asking for.

13 It was once written, The truth will come to
14 light, for murder cannot be hid long. Murder cannot
15 be hid long. Now is that time. Now is the time for
16 that truth to come to light. And I'm confident that
17 you will follow your oath. You will speak the truth
18 and that truth is going to shout out loud and clear
19 that the citizens of Richland County are not going
20 to tolerate this kind of behavior.

21 MR. SUTHERLAND: Objection, Your Honor.

22 THE COURT: Yes, sir.

23 MR. SUTHERLAND: Your Honor, he's talking about
24 the citizens of Richland County.

25 THE COURT: Ladies and gentlemen, disregard

1 that portion of the Solicitor's argument. The
2 objection's sustained.

3 MR. GOLDBERG: Thank you, Your Honor.

4 The best way for you to speak the truth is to
5 come back with a verdict finding Tayson Boone guilty
6 of the murder of Brian Wright and to find Eugene
7 Patterson guilty of the murder of Brian Wright.
8 Thank you.

9 THE COURT: Thank you, Mr. Goldberg.

10 Mr. Sutherland, you're recognized for your
11 opening statement.

12 MR. SUTHERLAND: Thank you, Your Honor.

13 Ladies and gentlemen, my name is Tivis
14 Sutherland. And I must say first off, I am
15 privileged to represent Eugene Patterson in this
16 matter that's before you that you're going to be
17 considering in the jury room back there. Y'all just
18 heard the government, Mr. Goldberg, he came up here
19 and he explained to you, and I'm grateful to him to
20 a degree because it's always been a little difficult
21 for me to understand exactly how they would want
22 anyone to believe that someone was guilty of murder
23 who did not kill anyone.

24 They spent -- they arrived on the scene within
25 minutes. They began to collect evidence. They

1 began to process the scene. They began to track
2 down witnesses. They began to interview witnesses.
3 They investigated, Investigator Ellis, Investigator
4 Roe, they investigated through the night. I believe
5 they were relieved by Captain Smith, but they were
6 working nonstop 24 hours a day collecting, analyzing
7 evidence.

8 This went on through day two, through day
9 three, through day four, five, six, a week, eight
10 days, nine days, ten days and they were hitting a
11 brick wall. They had not charged anyone with murder
12 ten days into this investigation until they decided
13 to change the rules.

14 They went about 50 feet that way behind y'all,
15 had a meeting in the Solicitor's office and they
16 decided, where in the morning they didn't have
17 anyone charged with murder, they had a meeting and
18 they decided anyone who anybody says is discharging
19 a firearm, be it up in the air, that way, this way,
20 that's -- and has talked to everybody who anybody
21 says is discharging a firearm is a murderer.

22 So they go from no murderers in the morning to
23 three murderers after this meeting. They changed
24 the rules. They put their faces out there for
25 public consumption. They told the public that he is

1 a murderer, that he is a murderer, that Oliver
2 Feldman is a murderer, who is likely to come in here
3 and testify and y'all are going to hear from him,
4 but they go from nothing to everything.

5 And all of these long months investigating this
6 case, going over their evidence, I still have not
7 been able to understand how they can do that, how
8 they can have a meeting where nobody's a murderer,
9 they can come out of a meeting and everybody's a
10 murderer. Well, they're the government, they can do
11 what they want to a point, but not until they go
12 through y'all.

13 I would ask y'all to listen to this stuff,
14 observe -- be keenly observant of how they treated
15 this crime scene, what they did to try to find this
16 projectile that they say because they can't find it,
17 everybody's a murderer. If they'd have found it,
18 somebody would have been a murderer. It doesn't
19 make sense. They can't come up here with all this
20 law talk and all these fancy theories and make
21 everybody a murderer.

22 If they want to make somebody a murderer, get
23 the person who actually committed the crime,
24 prosecute them and bring them before a jury. Don't
25 bring people in front of juries and accuse them of

1 murder when they did not kill anybody.

2 It is impossible that both of these kids here
3 or that Oliver Feldman all killed him. He died from
4 a single gunshot wound and it's a tragedy. It's a
5 tragedy. They want to compound the tragedy by
6 saying everybody's a murderer. That ain't right.
7 That's not America.

8 There's an old story, I'm going to try to calm
9 down a little bit, there's an old, old story that
10 reminds me of what they're doing. Back in ancient
11 Greece in the city/state of Athens, whenever there
12 was a plague, when there was a famine, when there
13 was an invasion, when there was a tragedy, the
14 Athenians would go among the cripples, among the
15 beggars, the lame, the poor, the outcasts and they
16 would choose somebody, drive them outside the city
17 gates and they would kill them.

18 The Israelites, thankfully, if they had known,
19 for the beggars and the cripples, for the lame and
20 the poor in Israel, did the same thing, but they
21 drove out a goat. They called it the scapegoat.

22 To some degree or another, all three, whether
23 he gets up here, he lies, does whatever he thinks he
24 has to do to try to help himself, all three of these
25 boys are scapegoats because they could not solve

1 this crime. If it had been solved on day nine, if
2 they had their man, if they had their murderer, they
3 wouldn't have been charged with it, their faces
4 wouldn't have been on T.V., everybody -- half the
5 people in jury selection wouldn't have heard
6 everything that's going on.

7 They want to talk about gangs, well -- they
8 want to make some kind of monsters out of these
9 kids. Well they are kids like anybody in America is
10 a kid when they're a teenager. No matter how old
11 they are, young men can be knot heads. Young men
12 meet after school and have a fist fight. Many -- I
13 don't think I need to explain to you that that has
14 happened at least throughout my lifetime and
15 throughout our history. It's what knot head young
16 men do.

17 The problem that we have these days is the
18 introduction of firearms into the communities where
19 these young men live and they get their hands on
20 them and a fist fight becomes a tragedy.

21 These boys are scapegoats, ladies and
22 gentlemen. Please don't let them come up here with
23 their fancy law talk and make you think they did
24 something that's impossible that each and everyone
25 of them can do. The hand of one is the hand of all,

1 they didn't even know each other.

2 The hand of one, the hand of all, if you use
3 the armed robbery where the driver is out in the
4 car, or whatever it was he said, and the fellow with
5 the gun goes in and they're both responsible, well
6 they got together and they had a plan. These boys
7 went there to watch a fist fight. One boy jumps in
8 and another boy starts shooting and all heck breaks
9 loose, well where is this plan where they all got
10 together and said, you know, I think we're going to
11 kill Brian Wright? That's the hand of one is the
12 hand of all, not this nonsense.

13 And I would just encourage you listen -- make
14 your own decisions, listen to these witnesses. And
15 the young people up here are going to be, if they
16 get them up here, are going to be hard for y'all to
17 discern, I'm sure, but look at this evidence they
18 collected, look at this crime scene log that they're
19 going to testify about.

20 They say that they couldn't find this
21 projectile which led to accusing these boys of
22 murder, accusing all of them of murder, well why
23 couldn't they find it? Did it go up into outer
24 space? Did it evaporate? They were at the Mobil
25 station, they were at the Waffle House, why couldn't

1 they find it? Did they miss anything?

2 You will hear that they sure did because three
3 days later they came back and found some more shell
4 casings. Why didn't they sit there, why didn't they
5 take the time working day and night as they were
6 now, as they were, why didn't they stay there and
7 look and look and look and find this thing? It did
8 not go into the atmosphere. It went somewhere. And
9 then they can come here and say, this person
10 murdered poor Brian Wright.

11 But, no, they want to come here and say
12 everybody murdered poor Brian Wright. That's not
13 right, ladies and gentlemen. And I'm very, very
14 confident that at the end of the day, y'all are not
15 going to buy into that nonsense.

16 I certainly appreciate your time. Thank you
17 very much.

18 **THE COURT:** Thank you, Mr. Sutherland.

19 Which of you is going to make the opening
20 statement?

21 All right. Ms. Payne, you're recognized for
22 your opening statement.

23 **MS. PAYNE:** One bullet, one victim, one murder,
24 three people charged with murder. Whose bullet
25 killed Brian Wright? Not Andre Tayson Boone's.

1 Ladies and gentlemen, on February 18th into
2 February 19th, one bullet struck and took the life
3 of Brian Wright. This is a terrible, unimaginable
4 tragedy for Mr. Wright's family. But it is also a
5 tragedy for our community because in the State's
6 rush to justice to make someone, anyone responsible,
7 this case has instead become the State's rush to
8 injustice as three people have been charged for a
9 crime one person committed.

10 Ladies and gentlemen, Andre Boone, Eugene
11 Patterson and Oliver Feldman have all three been
12 charged in the murder of Brian Wright, only two of
13 them sit before you today. You will hear evidence
14 that Investigator Ellis and Captain Smith got
15 together with the Solicitor's office and decided to
16 charge these three young men with murder based on
17 the theories of mutual combat and transferred
18 intent.

19 What this means is they believe that a group of
20 young men got together and decided to fight. In a
21 nutshell, that's what mutual combat means is they
22 planned to fight, they met and they started
23 fighting. And after they were there, guns started
24 firing and an innocent bystander was shot and
25 killed.

1 The evidence you will -- you will hear from the
2 evidence that Andre Boone was not a part of that
3 initial fist fight. And everyone agrees that Brian
4 Wright was not an intended victim. He was an
5 innocent observer. He was there nothing more than
6 to watch this fist fight with his friends. That's
7 where transferred intent comes into play where you
8 intend to kill one person and miss and hit someone
9 else.

10 But, ladies and gentlemen, before you ever have
11 to consider these theories, first question, who shot
12 the fatal shot who killed Brian Wright? And,
13 secondly, were they acting in concert with anyone
14 else? Andre Boone is not the answer to either one
15 of those questions. He was not the shooter. He was
16 not acting in concert with anyone. He is not
17 guilty.

18 Let's talk about the first question, who shot
19 the fatal shot? Andre Boone went to the Waffle
20 House to see his girlfriend, Doneisha "Duck"
21 Smallwood. He had been riding around with his
22 friends all night looking for this fist fight
23 between Corey and Chad with a bunch of high school
24 kids. When it wasn't happening at these other
25 locations, he went to see his girlfriend. And once

1 he was there, all of the guys arrived and Corey and
2 Chad started fighting.

3 Andre runs up to the fight and someone in blue
4 flashes a gun at him, says, Get back or I'll shoot
5 you. Andre makes a juvenile decision, he runs back
6 to his explorer and asks his friend, Jerome
7 Thompson, for his nine millimeter firearm that he
8 had brought out that night. Andre shoots it two
9 times up into the air. This is a critical fact,
10 folks, because Brian's wound is inconsistent with
11 either, with a straight down bullet.

12 It's at this point that Andre becomes a target
13 and Oliver Feldman and Eugene Patterson get out the
14 guns that they brought to that fight and began
15 firing directly at Andre Boone. He runs to the
16 grassy area behind his explorer and begins firing
17 back over their heads. And witness testimony will
18 corroborate this that the shots were going over
19 their heads. Witness testimony will also
20 corroborate that -- where Andre exactly was in the
21 grassy area. And the physical evidence, the three
22 nine millimeter shell casings they talk about, will
23 corroborate it as well. One bullet went into the
24 wall of the Mobil Gas Station.

25 Ladies and gentlemen, the physical evidence and

1 the witness testimony will corroborate that it is
2 impossible that Andre Boone was the shooter that
3 took Brian Wright's life that night.

4 Now, let's talk about the second question.
5 Andre Boone did not know Eugene Patterson and Oliver
6 Feldman. Did not know them then, does not know them
7 now. And when asked, couldn't pick them out of a
8 photo lineup. Pay attention to who came with whom
9 that night.

10 Now, ladies and gentlemen, the Judge instructed
11 you earlier that Andre Boone and Eugene Patterson
12 have been indicted for murder and that these were
13 merely charging papers.

14 Ladies and gentlemen, Oliver Feldman was also
15 indicted in the murder of Brian Wright. Hold them
16 to their indictments. Hold them to where it reads,
17 Oliver Feldman did in Richland County on or about
18 February 19, 2007, feloniously, willfully and with
19 malice aforethought kill one Brian Wright by means
20 of a gunshot wound and that the said victim died as
21 a proximate result thereof. One bullet, ladies and
22 gentlemen.

23 Now, Andre Boone sits here today an innocent
24 man with absolutely no burden to prove himself not
25 guilty. The State of South Carolina has the sole

1 burden to prove him guilty beyond a reasonable
2 doubt. Folks, this is the strictest standard we
3 have in this country and it is strict for a reason
4 and this case is it.

5 The State assumes that because Andre's sitting
6 behind the defense table sitting with his three
7 defense attorneys and was involved in an incident at
8 the Waffle House that you will assume that he's
9 guilty. In this country, we have the presumption of
10 innocence not the assumption of guilt. If you think
11 Mr. Boone is guilty, it's not enough. You must be
12 sure. The Judge will instruct you that if you
13 hesitate to act, then they have not met their
14 burden.

15 Where is Oliver Feldman? They don't know each
16 other. One bullet. Hesitation.

17 Ladies and gentlemen, what we do know about
18 this case is that the physical evidence can and will
19 tell its own story and that story is that Andre
20 Boone was not the shooter that took Brian Wright's
21 life. Listen to the CSI investigators, look at all
22 of their pictures, look at the diagrams, take it all
23 in, listen to the witnesses, it is all consistent,
24 consistent, consistent. We implore you to look at
25 all of these things. It all points the same way,

1 Andre Boone is not the shooter that took Brian
2 Wright's life.

3 Investigator Ellis, Captain Smith will get on
4 the stand, tell you they do not know whose bullet
5 took Brian Wright's life. They cannot make the
6 call, the State's attorneys cannot make the call and
7 yet they are asking you to make that call.

8 It all comes back to this: One bullet, who
9 fired the fatal shot that took Brian Wright's life?
10 Physical evidence, witnesses, corroborating
11 statement will show that it is impossible that Andre
12 Boone took Brian Wright's life. One victim.

13 Brian Wright's body was found in a location at
14 the Mobil Gas Station where it is impossible that
15 any of Andre's shots could have hit him. Listen to
16 the investigators, they did not do any investigation
17 as to Brian's whereabouts when all of this was going
18 on and listen to where he was found. One murderer.

19 You may not like the actions that Andre took
20 that night. You will hear that he was also charged
21 with aggravated breach of peace, unlawful carrying
22 of a weapon and possession of a firearm by a person
23 under 21, but, conveniently, those are not before
24 you today.

25 Three people charged with murder. Andre Boone

1 did not, does not and remains separate from Eugene
2 Patterson and Oliver Feldman. He does not know
3 them.

4 Ladies and gentlemen, at the end of this case,
5 Ms. Everhart, Ms. Thomas and myself believe you will
6 find Mr. Andre Tayson Boone not guilty in the murder
7 of Brian Wright.

8 **THE COURT:** Thank you, Ms. Payne.

9 All right. Ladies and gentlemen, we're going
10 to take a ten minute break before you start hearing
11 the evidence. Don't discuss the case.

12 If you're taking notes, leave those pads face
13 down. Since so many of you have those pads, you
14 probably need to put your juror number or something
15 on it to identify it. Thank you. Follow the
16 bailiff.

17 (The jury retires to the jury room.)

18 **THE COURT:** Before we take this brief break, I
19 want to make sure you all understand things the same
20 way I did.

21 On that Bruton discussion we had earlier, I
22 raised the question about the mention of the nine
23 millimeter. I don't profess to be an expert on
24 Bruton as I told you. It's a confrontation clause
25 case. It's not an identification case. And when

1 you all started talking about redacting the things
2 that identified the defendant -- or co-defendant, I
3 agree with what you said, it's just that I think
4 it's not limited to just saying the guy with the
5 black shirt.

6 And I'm really concerned, not knowing all of
7 the evidence, that the mention of the guy with the
8 nine millimeter is the equivalent from a
9 confrontational clause evaluation as the guy with
10 the black shirt. If the only evidence in this case
11 is going to be that the guy with the nine millimeter
12 was doing this or that and Mr. Boone is not allowed
13 to cross-examine the person making that statement,
14 then I think you got a Bruton issue. So I'm saying
15 stay away from that, don't go into it.

16 If you got law to the contrary, give it to me
17 and I'll digest it and we'll deal with it. But that
18 ruling kind of -- I let it fall and didn't pick it
19 back up.

20 All right. We're at ease for about six
21 minutes.

22 (Brief recess.)

23 **THE COURT:** State ready?

24 **MS. CAMPBELL:** Yes, sir.

25 **THE COURT:** Defense?

1 MR. SUTHERLAND: Yes, sir.

2 MS. EVERHART: Yes, sir.

3 THE COURT: Bring in the jury, please.

4 (The jury returns to the courtroom.)

5 THE COURT: All right. Ladies and gentlemen,
6 as I told you, we'll start hearing the testimony
7 from the State's witnesses now.

8 I want to make sure you understand something.
9 Throughout this trial, you're probably going to see
10 me looking down at this computer screen a lot. What
11 I'm doing is preparing the law and looking up law.
12 And I promise you I'm paying attention. I'm not
13 playing video games or anything like that. I don't
14 know how. But I had a jury the other week ask me
15 why I kept looking at the computer screen. So just
16 to make sure you understand this is what I work on
17 to get access to the law and put together what I'm
18 going to tell you at the end of the trial.

19 All right. Call your first witness, please.

20 MS. CAMPBELL: May it please the Court.

21 THE COURT: Yes.

22 MS. CAMPBELL: The State calls Investigator
23 Beeler.

24 MICHAEL RAY BEELER, JR.,

25 having been duly sworn, testified as follows:

1 **THE CLERK:** Please, have a seat there, sir.

2 State your full name for the record, please spell
3 your last.

4 **THE WITNESS:** Michael Ray Beeler, Jr., Beeler,
5 B-E-E-L-E-R.

6 DIRECT EXAMINATION

7 BY MS. CAMPBELL:

8 **Q** Investigator Beeler, where are you employed?

9 **A** Richland County Sheriff's Department, ma'am.

10 **Q** What do you do there, sir?

11 **A** Most recently, I'm a forensic analyst
12 investigator.

13 **Q** How long have you worked in law enforcement?

14 **A** Almost 11 years, ma'am.

15 **Q** Back in February of 2007, what were your duties
16 at the Richland County Sheriff's Department?

17 **A** At that time, I was a patrol unit.

18 **Q** And as a patrol unit, can you explain to this
19 jury typically what types of calls you go on?

20 **A** Typically, anything, 911 calls, cats up trees,
21 dogs barking, my neighbor's playing their music too
22 loud, anything and everything. As a line unit,
23 anytime someone calls, we go. And then when I'm not
24 on calls, I patrol around neighborhoods, businesses,
25 things like that.

1 Q I want to turn your attention back to the
2 evening of February the 18th into the early morning
3 hours of the 19th, were you working a second job
4 that day?

5 A I was working with the sheriff's department
6 what's known as a special duty detail, different
7 businesses hire the sheriff's department out for
8 security purposes. We do it at banks, restaurants.
9 This particular night I was working at the
10 AmeriSuites, which is on Two Notch Road near I-20.

11 Q And that whole area, that's here in Richland
12 County?

13 A Yes, ma'am.

14 Q And what shift were you working that evening?

15 A I believe I was working 9:00 p.m. to 5:00 a.m.

16 Q During the course of that evening while you're
17 there -- and you're basically monitoring what's
18 going on at the AmeriSuites; is that correct?

19 A Yes, ma'am.

20 Q While you're there, though, do you still
21 monitor what comes out of the radio?

22 A Yes, ma'am. We're required to have our radios
23 on and respond to emergency calls and calls for
24 assistance in the area.

25 Q That evening do you recall receiving an

1 emergency call nearby where you were working?

2 A Yes, ma'am. I heard a call go out in the area.

3 Q And what kind of call was it?

4 A It was a call referenced a fight and shots
5 fired right down the street at the gas station and
6 Waffle House area.

7 Q And is that near a major highway?

8 A Yes, ma'am.

9 Q What highway is that?

10 A Interstate I-20.

11 Q Near interstate I-20. Actually, the
12 intersection of I-20 and Two Notch Road?

13 A Yes, ma'am.

14 Q And how far away from the AmeriSuites is that?

15 A I'm not sure as far as feet and distance, but
16 less than a block away.

17 Q Once you got that call, what did you do?

18 A I was walking the floors at the time, ran down
19 the stairs to my patrol car, got in my patrol car
20 and immediately responded to the Mobil station, the
21 gas station, right there.

22 Q And tell this jury what you observed as you
23 pulled into the Mobil Gas Station?

24 A Mobil Gas Station, I saw a lot of people in the
25 area and I saw a gentleman down on the ground,

1 immediately looked for anybody that might be
2 dangerous, have guns in their hands, anything like
3 that.

4 Q And so you saw one person down on the ground?

5 A Yes, ma'am.

6 Q And you said you saw a lot of people in the
7 area. Were they coming, going or could you tell?

8 A With the approaching sirens and blue lights,
9 the majority of the people were leaving. The
10 gentleman that was on the ground, there were a
11 couple of people walking toward him and I told them
12 to stay back, trying to secure the scene.

13 Q What else did you do after getting there as far
14 as the person that was on the ground?

15 A Typically, in situations like that, the first
16 responsibility is to the victim. I observed that I
17 was unable to help him and immediately began looking
18 around for anybody that might have any kind of guns,
19 asking if anybody had seen the suspects.

20 Q How did you know you were not able to help --
21 did you attempt to do anything to help the person on
22 the ground?

23 A No, ma'am. From what I could see, the blood
24 and the, apologize to the victim's family, brains
25 poking out of his head, I knew that the -- I'm not a

1 medical personnel, there was nothing at that point
2 that I could do for him.

3 Q And at any point when you were there, did he
4 move in any way or have any signs of life?

5 A No, ma'am.

6 Q After you got there you mentioned --

7 THE COURT: What was his answer?

8 Did you answer that last question?

9 THE WITNESS: I said, no, ma'am, Your Honor.

10 THE COURT: Thank you.

11 MS. CAMPBELL: I'm sorry, Your Honor.

12 THE COURT: No, I just didn't hear him. Go
13 ahead.

14 BY MS. CAMPBELL:

15 Q You mentioned that after you got there and
16 checked on the victim, you then began to try to ask
17 questions from people there?

18 A Yes, ma'am.

19 Q And were you able to get any information?

20 A No, ma'am, nobody saw anything.

21 Q Did you continue to try to secure that scene
22 there that night?

23 A Yes, ma'am. Like I said, primary
24 responsibility is to the victim, then the
25 apprehension of any possible suspects, looking

1 around for anybody with a gun in their hand. Not
2 seeing anybody, then move on to scene security, try
3 to protect the scene, try to get EMS in there, keep
4 people away. And at that point, other units started
5 showing up and we started securing the scene.

6 Q You mentioned other units started showing up,
7 so you were not in charge of the scene that night?

8 A No, ma'am. I was the first person on the scene
9 and once -- being in an off-duty situation, special
10 duty situation, once primary units that are
11 patrolling come on scene and supervisors come on the
12 scene, they take control of the -- take priority
13 over the scene. I assist them however I can.

14 Q And did Sergeant Austin, I believe, show up
15 that night?

16 A Yes, ma'am.

17 Q And did he actually take over the scene from
18 you?

19 A Yes, ma'am.

20 Q Did you assist in taping up -- what we call
21 taping off the scene, trying to secure it?

22 A I went to get crime scene tape and handed it to
23 someone. They were already putting the crime scene
24 tape up.

25 Q And did you personally interview any witnesses

1 that night or would that have been turned over to
2 other investigators?

3 A Other than asking, pretty much yelling at
4 people in the area, Have you seen anybody, do you
5 know who it was, no, ma'am, I didn't interview
6 anybody.

7 Q And on that evening while you were there at the
8 scene, did you get any information about who the
9 shooter was or was not?

10 A No, ma'am.

11 Q I want to show you what's been marked as
12 State's Exhibits Number 11 and 8 first and just ask
13 you, first of all, do you recognize those?

14 A Yes, ma'am.

15 Q And do those fairly and accurately depict other
16 than -- this occurred, approximately, what time of
17 night; do you remember?

18 A I do not remember, ma'am. It was dark and it
19 was cold.

20 Q It was dark and it was cold?

21 A Yes, ma'am.

22 Q And other than these being taken in the
23 daylight, do those fairly and accurately depict the
24 areas we've been talking about with the Mobil
25 station, the AmeriSuites and those areas?

1 A Yes, ma'am. These appear to be aerial
2 photographs. The name of AmeriSuites has been --
3 since been changed to Jamison Suites.

4 Q Jamison Suites?

5 A Yes, ma'am.

6 Q I'm going to show you some additional
7 photographs first, State's Exhibits 14, 15, 25, 17
8 and 18. And first, without saying what they are, do
9 you recognize those?

10 A Yes, ma'am.

11 Q And do those fairly and accurately depict the
12 scene as you came upon it that night --

13 A Yes, ma'am.

14 Q -- specifically as far as the victim was
15 concerned?

16 A Yes, ma'am, with the exception of the medical
17 pads on the gentleman...

18 Q Okay. And I'll get back --

19 **THE COURT:** I'm sorry, I couldn't understand
20 you.

21 **BY MS. CAMPBELL:**

22 Q Repeat that.

23 A I'm sorry. Other than the medical pads that
24 were placed upon the victim by EMS to get vitals.

25 Q So EMS responded after you got there?

1 **A** Yes, ma'am. These photos also indicate things
2 that were put down to mark the shell casings that
3 were, of course, not there prior to our arrival.

4 **MS. CAMPBELL:** Your Honor, at this time, we'd
5 offer them into evidence.

6 **THE COURT:** Is there any objection on behalf of
7 Mr. Patterson?

8 **MR. SUTHERLAND:** If we can take a quick look.

9 (Pause.)

10 **THE COURT:** Any objection?

11 **MS. PAYNE:** Your Honor, we do have an objection
12 to one.

13 **THE COURT:** Can I do it here or do I need to
14 send the jury out?

15 **MS. PAYNE:** We can approach the bench.

16 **THE COURT:** No.

17 **MS. PAYNE:** Then we probably need to send the
18 jury out.

19 **THE COURT:** You can approach the bench, but
20 it's not going to be on the record.

21 Ladies and gentlemen, please step in the jury
22 room, leave your notes, don't discuss the case.

23 (The jury retires to the jury room.)

24 **THE COURT:** All right. Which one is
25 objectionable and which one's not?

1 **MS. PAYNE:** Your Honor, we are objecting to
2 State's Exhibit 15, if I may approach.

3 **THE COURT:** Sure.

4 Did you ask him about 15?

5 **MS. CAMPBELL:** Yes, sir, I asked him about 15.
6 I also mentioned that I did show these to defense
7 counsel beforehand before we came in here. She
8 objected to some of them being cumulative. I then
9 told her the ones that I was taking out and I did
10 not realize there were anymore problems.

11 **THE COURT:** What's your objection?

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

13 Your Honor, we would object to it being
14 completely prejudicial with the amount of blood that
15 is by the victim's body. Your Honor, there are more
16 than enough pictures that Ms. Campbell has that can
17 adequately portray what she is trying to portray. I
18 have one in front of me that is not objectionable.
19 We are concerned about the emotion of the jury being
20 at play because of the amount of blood that is by
21 his body.

22 Your Honor, we do not have an objection to the
23 other one, I believe is 18, but we strenuously
24 object to 15 as extremely prejudicial to Mr. Boone.

25 **THE COURT:** Let me see the other ones, please.

1 **MS. CAMPBELL:** Yes, Your Honor. I'll hand up
2 13. I have withdrawn 16 and 12, Your Honor, because
3 the main thing we're just trying to show is the
4 position of the body because there's an issue as to
5 angles and where Mr. Wright actually fell.

6 **THE COURT:** All right. You asked him about 14,
7 15, 17, 18 and 25?

8 **MS. CAMPBELL:** No, sir. I asked him about 17,
9 18, 25 and then the two that were originally handed
10 up.

11 **THE COURT:** That's 14 and --

12 **MS. CAMPBELL:** I had shown her the -- I had
13 voluntarily withdrawn two of them because she
14 objected to cumulative was what she told me.

15 **MS. PAYNE:** Your Honor, I did try to take this
16 up before we brought the jury back in because Ms.
17 Campbell had told me she was going to bring in
18 pictures, but, of course, my arguments would be to
19 the Court.

20 **THE COURT:** Okay. I apologize to you all.
21 It's the kind of thing I normally can rule on very
22 quickly. I'm just confused. I've got the court
23 reporter's real time up here. These three that you
24 handed me she doesn't have --

25 **MS. CAMPBELL:** And I apologize. I thought you

1 wanted me to show you the ones I initially intended
2 that I had withdrawn some of so that she wouldn't
3 have the cumulative argument. I apologize, Your
4 Honor.

5 As far as the other ones, I do not believe she
6 objects to 17, 18 or 25.

7 **THE COURT:** Let me see those.

8 **MS. CAMPBELL:** They do not show the victim.

9 **THE COURT:** All right. The ones that you have
10 there, read those numbers for me please, the three
11 that I just handed you back.

12 **MS. CAMPBELL:** 13, 12 and 16.

13 **THE COURT:** You object to those?

14 **MS. CAMPBELL:** 13 was the only additional one
15 that I intended to offer because I've withdrawn the
16 other two because they don't show the angles as
17 well.

18 **MS. PAYNE:** I do not object to 13. I don't
19 have the other ones in front of me.

20 **MS. CAMPBELL:** The other two were withdrawn.

21 **THE COURT:** All right. Mr. Sutherland, do you
22 want to take a role in this?

23 **MR. SUTHERLAND:** I just wanted to take a quick
24 look at the picture they were substituting and I'm
25 fine with it.

1 **THE COURT:** What about these two?

2 **MR. SUTHERLAND:** I had shared some of the same
3 concerns as Ms. Payne, Your Honor, but I had not
4 intended to object.

5 **THE COURT:** All right. If 13 comes in, I would
6 say my initial ruling on this is that State's
7 Exhibit 14 and State's Exhibit 15 will be excluded
8 under Rule 403 that even if relevant, balancing the
9 prejudicial value and the probative -- the
10 prejudicial effect and the probative value would
11 require me to exclude them. If I understand the
12 angle situation more later, I might change the
13 ruling.

14 **MS. CAMPBELL:** Then, Your Honor, we would offer
15 12 and 16, that means --

16 **THE COURT:** 12 and 16.

17 (Pause.)

18 **MS. PAYNE:** Your Honor, I believe 14 and 16, is
19 that what Your Honor has?

20 **THE COURT:** 12 and 16 were the last two.

21 **MS. PAYNE:** 12 and 16 are basically the same
22 pictures, not as close up, showing the same amount
23 of blood, our concern would be the same. Also,
24 they're cumulative to 13, which we are not objecting
25 to.

1 **MS. CAMPBELL:** And, Your Honor, if she will
2 stipulate that her person was in the position that
3 he could have shot that person, then we don't need
4 any of the pictures.

5 **THE COURT:** I doubt she's going to stipulate to
6 that.

7 Do you want to join in this one, Mr.
8 Sutherland?

9 **MR. SUTHERLAND:** Your Honor, my concern would
10 be that they were cumulative, sir, and that there
11 would be some prejudicial effect from that.

12 **THE COURT:** All right. The ruling of the Court
13 with regard to 16 and 12 is that if a proper
14 foundation is established, that they would be
15 admissible. They are not excluded under Rule 403.
16 They show different vantage points. You can see
17 different buildings. And while they're not -- there
18 is blood, the shots are taken from -- the
19 photographs are taken from a much -- a distance
20 further away and the lighting is such that the blood
21 is not as obvious. It's not violative of 403. So
22 15 and 14 are excluded under 403.

23 **MS. PAYNE:** Thank you, Your Honor.

24 **MS. CAMPBELL:** I've got 12, 16...

25 **THE COURT:** Two are in without objection.

1 MS. CAMPBELL: Then I guess I need to hand this
2 one up. And 13 was the one you allowed in?

3 MS. PAYNE: You did rule that 13 could come in.

4 THE COURT: 13 can come in if he's asked about
5 it. 17 and 18 were without objection and 25.

6 MS. CAMPBELL: I've got 17, 18 and 25 were
7 without objection.

8 THE COURT: And the other two he wasn't asked
9 about because you were not planning to use them.

10 MS. CAMPBELL: And I'll go back over those.

11 THE COURT: Right.

12 Bring in the jury.

13 (State's Exhibit Numbers 17, 18 and 25,
14 photographs, admitted into evidence.)

15 (The jury returns to the courtroom.)

16 THE COURT: Thank you. The objection is
17 sustained in part and overruled in part. 17, 18 and
18 25 are in without objection.

19 You may continue, Ms. Campbell.

20 BY MS. CAMPBELL:

21 Q If I may show you a series of photographs, I
22 believe will be 12, 13 and 16. And first just ask,
23 do those fairly and accurately represent the scene
24 as you saw it that night?

25 A Yes, ma'am.

1 Q In addition to 17, 18 and 25?

2 A Yes, ma'am.

3 MS. CAMPBELL: Your Honor, at this time, we'd
4 offer the additional pictures into evidence.

5 THE COURT: Read the numbers once again.

6 MS. CAMPBELL: 12, 13 and 16, I believe.

7 THE COURT: Subject to previous objection?

8 MS. PAYNE: Yes, Your Honor.

9 THE COURT: All right. Mark them in the
10 record, they are admitted over objection.

11 MS. CAMPBELL: Thank you, Your Honor.

12 (State's Exhibit Numbers 12, 13 and 16,
13 photographs, admitted into evidence.)

14 BY MS. CAMPBELL:

15 Q Once you had secured the scene that night and
16 the tape was being put up, did you do anything in an
17 effort to help secure any possible evidence there at
18 the scene?

19 A Yes, ma'am.

20 Q And what did you do, sir?

21 A I carry little plastic cups in my patrol car
22 and -- or my patrol car at the time. I went around
23 to the different -- we located some shell casings in
24 the Waffle House parking lot.

25 Q And you mentioned that you had these little

1 cups. What did you do with those cups in order to
2 try to preserve where the shell casings were
3 located?

4 A I placed them beside the projectiles, the shell
5 casings, so people wouldn't step on them, so they'd
6 be marked so people (sic) would be easier to find
7 when the lab technicians got there.

8 MS. CAMPBELL: Your Honor, may the witness step
9 down?

10 THE COURT: Yes, sir, but you really have to
11 keep your voice up, okay.

12 THE WITNESS: My apologies, Your Honor.

13 THE COURT: That's all right. You do what I
14 do, you trail off at the end when you're talking.

15 (Witness leaves the witness stand.)

16 BY MS. CAMPBELL:

17 Q First, if you can, I want to show you what I
18 believe to be in evidence, which is State's Exhibit
19 Number 11.

20 THE COURT: 11's not in.

21 MS. CAMPBELL: Then, Your Honor, I'd offer 8
22 and 11 into evidence. I believe I offered them
23 before?

24 MR. SUTHERLAND: Are those the overheads?

25 MS. CAMPBELL: Yes, sir.

1 **MR. SUTHERLAND:** We're fine with that.

2 **THE COURT:** 8 and 11 are in without objection.

3 (State's Exhibit Numbers 8 and 11,
4 photographs, admitted into evidence.)

5 **THE COURT:** Yes, ma'am, you may display them on
6 the screen.

7 **MS. CAMPBELL:** Thank you, Your Honor.

8 **BY MS. CAMPBELL:**

9 **Q** I'm going to show you what's been marked as
10 State's Number 11. What area does that show?

11 **A** That shows the area close to I-20 on Two Notch
12 Road. It shows the Waffle House, the Mobil station
13 and the Havertys.

14 **Q** And is that what's reflected what you have in
15 your hand?

16 **A** Yes, ma'am.

17 **Q** And you mentioned that you were working at the
18 AmeriSuites that night. Is that shown on this
19 diagram?

20 **A** Yes, ma'am.

21 **Q** And where is it approximately? And speak real
22 loud, come over here so everybody can see you.

23 **A** The AmeriSuites, Jamison Suites, is right here
24 on the right-hand side of the screen. The Havertys
25 is in the middle, the Waffle House and the Mobil

1 station, I-20 is over, left-hand side.

2 Q I notice that there's a road that starts over
3 here that travels across in the middle of this.
4 What road is that?

5 A That's Two Notch Road, ma'am.

6 Q And then there's another road that kind of
7 curves up here. What would that be?

8 A I'm not sure. This is not my typical patrol
9 area. Without looking at a map, I wouldn't know
10 what the name of the road is.

11 Q You mentioned that this area shows the Waffle
12 House. Can you actually point -- can you actually
13 show which building is the actual Waffle House that
14 you mentioned?

15 A Yes, ma'am. This is the Waffle House with the
16 yellow sign in front.

17 Q And the door to the Waffle House, do you know
18 how you actually enter that Waffle House?

19 A It's approximately right here, ma'am, on the
20 side of the building facing the Mobil station.

21 Q And you mentioned the Mobil station, where is
22 it?

23 A The Mobil station here with the gas pumps out
24 front right in front of Two Notch Road.

25 Q I'm going to show you what's been marked

1 State's Exhibit 8. Is that another view of the
2 Mobil station and the Waffle House?

3 A Yes, ma'am.

4 Q And, again, where is the Waffle House on that?

5 A Waffle House is right here, ma'am.

6 Q And when you went into the Mobil station that
7 night and you saw someone lying on the ground,
8 approximately where was he located; do you remember?

9 A He was in this area right here. I'm not sure
10 if he was actually under the awning or not. I take
11 that back, he was not under the awning. The awning
12 was to cover the -- that was the gas pumps. He was
13 in the area close to the sidewalk.

14 Q If you can come step in front of the jury. I
15 want to show you what's been marked as State's
16 Exhibit Number 12. Tell the jury what does that
17 show?

18 A That shows the area directly in front of the
19 Mobil station, victim on the ground.

20 Q And is that how the victim appeared that night
21 when you got there?

22 A Yes, ma'am.

23 Q Show you what's been marked as State's Exhibit
24 Number 13 and 14. Are those from different angles
25 showing the same thing?

1 A Yes, ma'am.

2 Q And what actual business do you see there in
3 the background?

4 A (Inaudible.)

5 THE COURT: What did you say?

6 THE WITNESS: The Waffle House.

7 THE COURT: You can't talk just to her, all
8 right.

9 THE WITNESS: Yes, sir.

10 THE COURT: We have to take down everything you
11 say.

12 BY MS. CAMPBELL:

13 Q And is that Waffle House located just adjacent
14 to the Mobil Gas Station?

15 A Yes, ma'am, it is.

16 Q That night you mentioned that you made some
17 effort to secure some evidence there at the scene.
18 What type of evidence were you finding that night?

19 A Bullet casings and I believe it was an intact
20 bullet.

21 Q An intact bullet?

22 A Yes, ma'am.

23 Q And then I show you what's been marked as
24 State's Exhibit Number 18. Does that show some of
25 the items?

1 A Yes, ma'am, it does. I believe you can see the
2 little plastic cups I put down.

3 Q And are there actual markers next to the items
4 that you found? Did you do anything with those
5 items that night when you found them, the shell
6 casings?

7 A No, ma'am. Other than put the plastic cups
8 down to mark for the investigators when they
9 arrived, I didn't do anything, just try to protect
10 them, preserve them.

11 Q And where exactly did you find those shell
12 casings that night?

13 A In the parking lot of the Waffle House.

14 Q I show you another angle of the Waffle House in
15 State's Exhibit Number 17. Is that a closer up
16 view?

17 A Yes, ma'am, it is.

18 Q And when you initially got there, how did you
19 actually have those items marked?

20 A With the clear plastic cups.

21 Q As a responding officer, is it your duty to
22 process the crime scene or to collect evidence?

23 A Initially, no, ma'am, it's just protect and
24 preserve.

25 Q And is that what you did that night?

1 A Yes, ma'am.

2 Q Okay.

3 A (Witness resumes the witness stand.)

4 Q Once you were able to turn over the crime scene
5 to other supervisors, did you then return to your
6 job at the AmeriSuites that night?

7 A Yes, ma'am, I did.

8 Q So that was the extent of your involvement in
9 this case?

10 A Yes, ma'am.

11 MS. CAMPBELL: Thank you, sir. Please answer
12 any questions the defense has.

13 THE COURT: Mr. Sutherland, do you have any
14 questions?

15 MR. SUTHERLAND: Yes, sir, if it please the
16 Court.

17 THE COURT: Yes, sir.

18 CROSS-EXAMINATION

19 BY MR. SUTHERLAND:

20 Q Sir, did you write any kind of a report about
21 your activities at the scene that night?

22 A I don't believe I did, sir.

23 Q Okay. Now, according to the crime scene log,
24 you arrived at about 12 minutes after midnight and
25 left about one o'clock. Does that make sense to

1 you?

2 **A** Yes, sir.

3 **Q** Okay. And just, according to your testimony, I
4 mean your first duty is to protect and preserve
5 life?

6 **A** Yes, sir.

7 **Q** And, also, concern for the victims, there may
8 be another suspect or something running around there
9 and security and then it's to sort of cordon off the
10 area and protect the scene; is that correct?

11 **A** Yes, sir.

12 **Q** And so, basically, you just set these cups down
13 where you could, the officers would arrive and
14 people were coming to take over the thing. You just
15 heard an emergency, you went there, you did what you
16 could as a responding officer; is that accurate?

17 **A** Yes, sir.

18 **MR. SUTHERLAND:** I have no further questions of
19 this witness, Your Honor.

20 **THE COURT:** Any questions on behalf of
21 Mr. Boone?

22 **MS. PAYNE:** No, Your Honor.

23 **THE COURT:** Thank you.

24 Any redirect?

25 **MS. CAMPBELL:** No, sir.

1 **THE COURT:** Thank you, sir. You may step down.

2 Call your next witness, please.

3 **MR. GOLDBERG:** Your Honor, the State calls
4 Howie Austin.

5 **THE COURT:** Come around to be sworn please,
6 sir.

7 HOWARD JAMES AUSTIN, III,
8 having been duly sworn, testified as follows:

9 **THE CLERK:** Please have a seat there, sir.
10 State your full name for the record and please spell
11 your last.

12 **THE WITNESS:** Howard James Austin, III,
13 A-U-S-T-I-N.

14 DIRECT EXAMINATION

15 BY MR. GOLDBERG:

16 **Q** Mr. Austin, where are you employed?

17 **A** I am currently employed with Richland School
18 District One.

19 **Q** What do you do for the school district?

20 **A** I am the manager over the safety and emergency
21 services program of the district.

22 **Q** Prior to that, where were you employed?

23 **A** I was with the Kershaw County Sheriff's
24 Department.

25 **Q** Were you also employed by the Richland County

1 Sheriff's Department?

2 A I was.

3 Q How long did you work for them?

4 A Approximately ten years.

5 Q And back in February of 2007, were you working
6 with Richland County?

7 A I was.

8 Q Tell this jury a little bit about what you were
9 doing for the sheriff's department back then.

10 A I was a shift supervisor for the region two
11 area, which encompassed the Two Notch Road area of
12 the incident in question. I oversaw the daily
13 duties of the deputies in that area, the daily
14 duties of any law enforcement on the scene in the
15 area that night.

16 Q And on this particular day, February 19, 2007,
17 did you receive a call about a shooting that night?

18 A I did.

19 Q And what was the nature of that call?

20 A The nature of the call was a fight in progress
21 and shots fired at 7505 Two Notch Road, which I
22 believe is the Waffle House or -- yeah, which is the
23 Waffle House.

24 Q Upon getting that call, what did you do?

25 A Responded. I was heading southbound on Two

1 Notch Road around I-77, responded. As I pulled up
2 at the scene, there was people running everywhere.
3 There was cars pulling out of the Waffle House
4 parking lot, pulling out from beside Havertys'
5 parking lot. I exited my vehicle and tried to
6 secure somewhat of a crime scene that we had.

7 Q You mentioned pulling out of the Havertys'
8 parking lot. In relation to the Waffle House, if
9 the Mobil Gas Station, looking at the Waffle House,
10 is to the left, where is the Havertys location?

11 A Havertys is the building directly behind the
12 Waffle House on the right.

13 Q So when you got to the scene, there were other
14 officers already out there?

15 A There was, I believe, two other officers prior
16 to my arrival.

17 Q And Deputy Beeler was one of them?

18 A Deputy Beeler was the first one on the scene
19 and I believe Deputy Afflick was the second one on
20 the scene.

21 Q And upon your arrival, what did you do?

22 A I exited the vehicle, made contact with Deputy
23 Beeler, observed a subject laying on the ground. At
24 that time, we tried to determine what we had as a
25 crime scene, cordoned off the crime scene, tape it

1 down, secure any evidence that we had. My job was
2 to notify the lab to respond and investigators to
3 respond to the scene, make sure that the crime scene
4 log was started.

5 Q Is it fair to say that, at this point, you were
6 the supervisor on the scene?

7 A I was.

8 Q And part of those duties you say included
9 starting a crime scene log?

10 A That is correct.

11 Q What exactly does that mean?

12 A We have a form with the sheriff's department
13 that anybody enters into a crime scene after it's
14 been cordoned off or taped off, names and times are
15 notated on that form to give investigations an idea
16 of who's been in and out of that crime scene.

17 Q And when you said that you started it, you
18 didn't actually fill out the form; is that correct?

19 A No. I actually went back to my patrol vehicle.
20 I got the forms out of my car. I handed them to my
21 master deputy, Joe Clarke at the time, asked him to
22 go ahead and start filling out the crime scene log
23 because we were still trying to preserve the crime
24 scene and notating any witnesses that still may be
25 there.

1 Q Would it be fair to say then that your main
2 goal at the scene would be to preserve the scene as
3 it was?

4 A That is correct.

5 Q And tell the jury how you did that.

6 A We made sure that the crime scene area was
7 taped off with crime scene tape. There's rolls that
8 we keep in our patrol cars that if we have a certain
9 incident that we need to cordon off to make sure
10 that nobody else comes and goes in that area, that
11 no evidence is destroyed or damaged in that area, we
12 tape it off with this crime scene tape. But I had
13 some deputies grab a couple rolls of it and we
14 cordoned off the entire section from the corner of
15 the Waffle House by the old pay phones that were
16 over there close to Havertys all the way across in
17 front of the Mobil Gas Station and down the side
18 because we knew we had a large area as a crime
19 scene.

20 Q Were you made aware of the name of the victim
21 in this case at some point?

22 A I was not at that -- initially, when I first
23 got there as we were trying -- as I was also trying
24 to find witnesses in the area as people were still
25 fleeing the area, I recognized four young gentlemen

1 I've had law enforcement dealings with in the past
2 as far as arresting them for various charges. I
3 made contact with them. They know me very well.
4 One of them actually ended up started talking to me
5 about the --

6 Q Now, you can't go into exactly what they told
7 you, but based on that, did you learn the name of
8 the victim in the case?

9 A I did.

10 Q And what was the person's name?

11 A Brian Wright.

12 Q And did you generate an incident report in
13 regard to this incident?

14 A I had a, formerly, new deputy that was working
15 on my squad at the time by the name of --

16 Q I'm sorry. A what deputy?

17 A New deputy. He was formerly a new deputy.
18 Since he responded to the scene, I went ahead and as
19 we were still busy trying to preserve the crime
20 scene, he showed up. I got him to start gathering
21 information from the deputies and I made him start
22 filling out the report.

23 Q As his supervisor, did you at some point review
24 the report that he filled out?

25 A I did.

1 Q Do you recall what time you arrived on the
2 scene that night?

3 A I believe I arrived maybe 12 minutes, 12, 15,
4 16 minutes after midnight.

5 Q 0012?

6 A 0012.

7 Q If the crime scene log were to indicate that
8 you didn't arrive until 0020, can you explain that?
9 Would that be because when you initially arrived,
10 there was no crime scene --

11 MS. PAYNE: Objection, Your Honor, leading.

12 THE COURT: Sustained.

13 MR. GOLDBERG: I'll rephrase the question.

14 BY MR. GOLDBERG:

15 Q At the time that you arrived at 0012, what, if
16 any, had been started in terms of the crime scene
17 log?

18 A We didn't have the crime scene log started
19 immediately when I arrived. I could be a little off
20 on my time. I'm trying to remember the times at
21 dispatch. We recorded, I think, 12 minutes after
22 midnight was maybe the first responding unit, me
23 being the third responding unit possibly was 20
24 minutes after midnight, but we tried to get the
25 crime scene going as quick as possible after my

1 arrival and after we were trying to secure the crime
2 scene, we needed to get a log going and that's what
3 we did.

4 Q Who, if anyone, did you notify about this
5 incident once you were on the scene?

6 A Once I was on the scene, I contacted our desk
7 sergeant from the sheriff's department to make the
8 proper notifications of the command staff for
9 investigations, the lab to get them to respond out
10 there under the circumstances, the situation that we
11 had. And then I contacted my supervisor in the
12 region all the way up to the captain, the regional
13 commander in our region.

14 Q At some point, did an investigator and lab unit
15 arrive?

16 A Yes, they did.

17 Q At that point, were you still the supervisor on
18 the scene?

19 A Yes, I was.

20 Q How long did you remain out there that night?

21 A I was actually out on the scene and on the
22 exterior part of the crime scene till the body
23 removal team arrived, picked up the body and I left
24 with the body.

25 MR. GOLDBERG: I believe that's all I have.

1 Thank you, sir.

2 THE COURT: Mr. Sutherland.

3 MR. SUTHERLAND: Please the Court.

4 CROSS-EXAMINATION

5 BY MR. SUTHERLAND:

6 Q Sir, you said that you assigned a new deputy to
7 gather information at the scene?

8 A I assigned the new deputy to take the report of
9 the information given to him.

10 Q And who was that?

11 A His name was Ken Kaczmarck, Kenneth Kaczmarck.

12 Q So who was it that was in charge of the crime
13 scene log?

14 A Once I got the paperwork, the forms, out of my
15 patrol vehicle, I turned them over to Master Deputy
16 Clarke to start the crime scene log.

17 Q But were you as the -- were you the senior
18 officer on scene until, what was it, 0200 or was it
19 until the lab arrived?

20 A Until the lab arrived.

21 Q That was about one o'clock?

22 A I believe so.

23 THE COURT: Did you say 1:05? Somebody
24 coughed, I couldn't hear you. Did you say 1:05?

25 MR. SUTHERLAND: I said is it about one

1 o'clock.

2 BY MR. SUTHERLAND:

3 Q Okay. So would you have been the individual
4 that was supposed to initial -- approve whoever
5 entered and exited the crime scene?

6 A No.

7 Q Who would that have been?

8 A That would probably have been -- well, as
9 deputies were already there as we cordoned off the
10 crime scene, we went ahead and listed them in the
11 log that was in the crime scene. If you show up on
12 the scene and you pass the rope per se or the tape,
13 then you're considered in the crime scene. If you
14 stand on the exterior side of that tape, you're not
15 in the crime scene, you're not going to be on the
16 log because you're not going to contaminate or
17 tamper with any evidence that's within the
18 boundaries of that crime scene, of that tape.

19 Q Okay. So who was responsible for approving
20 people entering and leaving the crime scene?

21 A I don't think I understand your question. I
22 don't believe there's anybody necessarily per se
23 responsible for allowing or not allowing. We didn't
24 allow the general public, of course, to come in.

25 Q Okay. I'm going to read you something from the

1 crime scene log and it's up at the top. There are a
2 couple lines now.

3 Anyone entering the crime scene must personally
4 complete the information below in these boxes.
5 Below that it says, No one, it's in bold and it's
6 underlined, Is allowed in the crime scene until
7 after the initial approval, that's in bold, Of the
8 senior crime scene investigator in charge of the
9 scene.

10 So according to the protocols on the crime
11 scene log, someone should have been in charge,
12 saying, this person may enter, this person may not?

13 A I understand what you're saying now.

14 Q Do you remember who that was?

15 A That would have been, I think, Investigator
16 Ellis. I remember seeing him out there on the scene
17 that night.

18 Q Okay. Investigator Ellis. Now, he arrived
19 at -- well, I mean, you just can't possibly know
20 this stuff.

21 Your testimony is that Investigator Ellis was
22 in charge of the scene and he was responsible for
23 approving people to enter the scene or to leave the
24 scene?

25 A I guess you can say I was in charge of the

1 scene until the investigators got there, if that's
2 what you're asking.

3 Q So you were in charge. Did you know that your
4 initial approval was required for each person
5 entering or leaving that scene on this crime scene
6 log?

7 A In a roundabout way, I guess, yes.

8 Q Okay. So where, and I guess I could ask you
9 more questions about this, where it has CSI
10 initials, the senior crime scene investigator in
11 charge of the scene for all of these people,
12 actually no one throughout the pendency of the crime
13 scene log was ever approved to enter or leave. So
14 you did not follow what protocols were on here and
15 initial -- personally initial the approvals for
16 people that entered or left the scene; is that
17 correct? Do you want me to let you take a look at
18 this?

19 A Yes, I do. I want to see what you're talking
20 about.

21 MR. SUTHERLAND: Your Honor, may I approach the
22 witness?

23 THE COURT: Certainly.

24 BY MR. SUTHERLAND:

25 Q What was confusing to me was that I read the

1 protocols and I understand them because preserving
2 the integrity of the scene, I mean you just can't
3 have people tramping around in there like a bunch of
4 elephants, but I didn't see where anybody the whole
5 night had fulfilled the obligation to approve a
6 person entering or leaving.

7 A The CSI that you're talking about here initials
8 that is for the crime scene investigator to initial
9 not for the approval for somebody to initial. The
10 officer or officers that show up and/or EMS,
11 responding emergency personnel that show up, their
12 names go in this block, they initial here as --

13 Q Well, who puts their names in there?

14 A Either the individual or the officer in charge
15 of the crime scene log.

16 Q Okay. But see this line right here that says,
17 Anyone entering the crime scene must personally
18 complete the information below. You see what I'm
19 saying?

20 A Right.

21 Q So that's the same handwriting?

22 A The same handwriting here because he wrote the
23 names down as they were coming into the scene, they
24 initialed. He wrote the names down to get the
25 names. You've got EMS showing up that's got

1 stretchers and their equipment, they can't drop --

2 Q I understand that. But as far as sheriff's
3 department personnel -- I mean, I'm asking you --

4 A Their initials are right here, sir.

5 Q Okay. But what it says is not what was done.
6 All I'm trying to say is this is what's required,
7 people need to personally fill it out and that that
8 wasn't done and I mean that is the case.

9 A If you want to make that argument, you're more
10 than welcome to.

11 Q Well, no, you tell me. Did these people
12 personally fill this out?

13 A There's initials signed right here that they
14 agreed to this, that they were on the scene, that
15 they'd come in at the time, all their initials are
16 there of the times that they came in, which verifies
17 the fact that they were there.

18 Q Okay. So your contention is where it says,
19 Anyone entering the crime scene must personally, in
20 bold, Complete the information below, what it really
21 means is someone else can do it, they just have to
22 initial it?

23 A As long as it's initialed that they're on the
24 scene, they're in the crime scene, their initials,
25 that's just fine.

1 Q So despite the policy on the page, it's okay to
2 do something else?

3 A It's a statement, sir. It's not a policy.

4 Q Okay. Well, then what's --

5 A That's just a statement on there.

6 Q Okay. Well, then what's it there for? I mean,
7 do y'all --

8 A To make sure that they fill out the crime scene
9 log, to make sure that they're on the crime scene
10 log.

11 Q Okay. So y'all put stuff at the top of crime
12 scene logs which are important because it's
13 important to know who went in and out of the crime
14 scene log. So your testimony is that y'all put
15 directives -- that the sheriff's department puts
16 directives at the top of a crime scene log that
17 says, Anyone entering the crime scene must
18 personally complete the information below. No one,
19 underlined, Is allowed in the crime scene until
20 after the initial approval of the senior crime scene
21 investigator in charge of the scene. So that
22 doesn't really mean anything?

23 A This signature is the personally completed,
24 that's what this signature means, personally
25 completed, as it states right there, personally

1 complete, that's what the signature's for.

2 Q Okay. But look here, this says, CSI initials,
3 that corresponds with the second thing. All I'm
4 trying to get out of you is, and I think we could
5 hopefully end this soon, is that there are
6 instructions at the top of the page that were not
7 followed. Are we good?

8 A I disagree with you, but if that's the argument
9 you want to make, sir.

10 Q All right. Well, I think they'll figure it
11 out, but thanks.

12 A Thank you, sir.

13 MR. SUTHERLAND: I have no further questions of
14 this witness at this time, Your Honor.

15 THE COURT: Any questions on behalf of
16 Mr. Boone?

17 MS. PAYNE: Yes, Your Honor.

18 CROSS-EXAMINATION

19 BY MS. PAYNE:

20 Q Good afternoon, Mr. Austin.

21 A How are you?

22 Q Good. Thank you. You took a look at this
23 report after the new deputy had completed it,
24 correct?

25 A That's correct.

1 Q Okay. And the complainant on this is Corey
2 Swift; is that right?

3 A That's correct.

4 Q Did you talk to Mr. Swift?

5 A I did not.

6 Q Do you know if anyone talked to Mr. Swift?

7 A I don't know who spoke with Mr. Swift.

8 Q He's the one that called in. Do you know his
9 involvement?

10 A No, I do not. I don't know his involvement
11 other than he turned out to be the complainant. I'm
12 not sure if he was an employee of Waffle House or
13 the one that made the initial call.

14 Q And there were some witnesses you mentioned
15 earlier?

16 A Correct.

17 Q Did you take statements from any of them about
18 what they saw?

19 A I actually kind of asked them to kind of hang
20 tight for a moment as the investigators were en
21 route, the investigators would want to speak with
22 them as I still tried to assist on securing the
23 crime scene.

24 Q Did you ever follow up to see if anybody took
25 their statements?

1 A No, I did not. Once they were turned over to
2 investigations...

3 Q Are you aware that there were five people that
4 statements weren't taken from?

5 A No.

6 Q And they were on the scene when you got there?

7 A They were on the exterior part of the scene
8 when I got there.

9 Q Where were you prior to this?

10 A Prior to my response?

11 Q Yes, sir.

12 A I was heading southbound on Two Notch Road
13 towards I-77.

14 Q Where had you been prior to that?

15 A Prior to that, I was actually -- I think, the
16 last call I took was a fight-type situation, a
17 shooting call at a clubhouse/pool house off of
18 Windsor Lake at Two Notch Road.

19 Q And was there allegations of a shooting taking
20 place there?

21 A That is correct.

22 Q And you responded to that?

23 A That is correct.

24 Q And Joe Clarke also responded with you?

25 A That is correct.

1 MS. PAYNE: Just briefly, Your Honor.

2 (Pause.)

3 MS. PAYNE: Nothing further Your Honor.

4 THE COURT: Redirect?

5 MR. GOLDBERG: Briefly, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. GOLDBERG:

8 Q Mr. Austin, to your knowledge, was there any
9 unauthorized personnel on this crime scene?

10 A There is not a single unauthorized personnel on
11 that crime scene log or that even entered the crime
12 scene that night.

13 Q And, also, he asked you about Deputy Kaczmarck.
14 Are you aware of where he is located currently?

15 A Yes. He has been activated back into the
16 military. He is, I believe, overseas in Iraq.

17 MR. GOLDBERG: Thank you.

18 THE COURT: Mr. Sutherland.

19 MR. SUTHERLAND: Just briefly, sir.

20 RECROSS-EXAMINATION

21 BY MR. SUTHERLAND:

22 Q So Deputy -- is it Kasmarek or Kaczmarck?

23 A Kaczmarck.

24 Q Okay. Deputy Kaczmarck on that night, was he
25 with you? Did he enter the crime scene or was he

1 just outside the tape?

2 A He was outside the tape line. I advised him to
3 stay on the outside of the tape line and start
4 gathering information as we were able to get
5 information to him to fill out the report.

6 Q Was he ever on the inside of the tape line?

7 A No.

8 MR. SUTHERLAND: Okay. No further questions,
9 Your Honor.

10 THE COURT: Anything else?

11 MS. PAYNE: Nothing further, Your Honor.

12 THE COURT: Thank you, sir. You may step down.
13 Call your next witness, Solicitor.

14 MS. CAMPBELL: The State would call Zane
15 Padgett.

16 ZANE PADGETT,

17 having been duly sworn, testified as follows:

18 THE CLERK: Please have a seat there, sir.

19 State your full name for the record, please spell
20 your last.

21 THE WITNESS: Zane Padgett, P-A-D-G-E-T-T.

22 DIRECT EXAMINATION

23 BY MS. CAMPBELL:

24 Q Lieutenant Padgett, where are you employed?

25 A I'm employed with the Richland County Sheriff's

1 Department.

2 Q And what do you do there, sir?

3 A Presently, I'm with internal affairs.

4 Q I want to turn your attention back to February
5 2007. What were you doing at the sheriff's
6 department then?

7 A I was in charge of the forensic laboratory
8 then.

9 Q And how long have you worked in law
10 enforcement, sir?

11 A Almost 27 years.

12 Q And what did your duties include in charge of
13 the laboratory?

14 A I was in charge of the forensic laboratory.
15 And basically there what they did is they actually
16 went out and processed the crime scenes, everything
17 from picking up evidence to photographing evidence
18 to then bringing the evidence back and analyzing it.

19 Q Can you tell this jury a little bit about your
20 training and your education in your field of crime
21 scene investigation?

22 A I've been through several courses, formal
23 courses at the academy, formal private courses for
24 fingerprint comparison, arson investigation,
25 trajectory analysis, blood pattern analysis, crime

1 scene reconstruction and also on-the-job training.

2 I've been in forensics for almost 24 years.

3 Q And have you been qualified before as an expert
4 in crime scene investigation?

5 A Yes, ma'am, I have, among several other areas.

6 Q Sir?

7 A Among several other areas.

8 Q And do you know how many times you've been
9 qualified?

10 A At least 40.

11 MS. CAMPBELL: Your Honor, at this time, we'd
12 offer him as an expert in crime scene investigation.

13 THE COURT: Voir dire, Mr. Sutherland?

14 MR. SUTHERLAND: None from us, sir.

15 THE COURT: Anything?

16 MS. PAYNE: No, Your Honor.

17 THE COURT: He is so recognized. Thank you.
18 You may continue.

19 MS. CAMPBELL: Thank you, Your Honor.

20 BY MS. CAMPBELL:

21 Q Lieutenant, back in February of 2007, did your
22 duties include reviewing crime scene notes and
23 investigations?

24 A Yes, ma'am. When a forensic investigator went
25 to a scene and he came back and completed his notes

1 and his reports, it was one of my duties and my
2 sergeant's to actually look over the notes and
3 ensure that they were complete.

4 Q And were you the supervisor for Investigator
5 Bill Allen?

6 A I was at the time, yes, ma'am.

7 Q And where is Mr. Allen now?

8 A He is presently on a -- hired with a private
9 security firm in Iraq.

10 Q He is in Iraq?

11 A Yes, ma'am.

12 Q Did you have an opportunity to review his
13 report and the photographs that were taken from the
14 night of this incident?

15 A I did.

16 Q And was he the actual officer -- or the
17 investigator that responded to the scene and
18 processed or collected evidence at the crime scene?

19 A Yes, ma'am. Investigator Allen was the actual
20 forensic investigator that processed this scene that
21 night.

22 Q And I want to show you some photographs that
23 are already in evidence including State's Exhibits
24 Numbers 12, 16, 13, 18, 17 and 25. Are those the
25 photographs that the investigator under your

1 supervision would have taken that night?

2 A All of the exhibits that you just mentioned
3 were taken by Investigator Allen that evening.

4 Q I'm going to show you some additional
5 photographs including State's Exhibit 19, 20, 21,
6 22, 23, 24, 26, 27, 28, 31, 33 and 62. And, first,
7 just ask are those also photographs taken of the
8 crime scene that night?

9 A Yes, ma'am. The photographs you just mentioned
10 were also taken by Investigator Allen on that
11 evening.

12 MS. CAMPBELL: Your Honor, at this time, we'd
13 offer those into evidence.

14 THE COURT: Show them to opposing counsel,
15 please.

16 (Pause.)

17 MR. SUTHERLAND: No objection, Your Honor.

18 MS. PAYNE: Without objection, Your Honor.

19 THE COURT: All right. Mark all those in the
20 record, please.

21 MS. PAYNE: We're confused if she entered 38 or
22 48, we didn't hear that one, not in the stack that
23 you had.

24 THE COURT: No, it skipped from 33 to 62.

25 MS. CAMPBELL: Yes, sir.

1 **MS. PAYNE:** Okay. Thank you, Your Honor.

2 (State's Exhibit Numbers 19 - 24, 26 - 28,
3 31, 33 and 62, photographs, admitted into evidence.)

4 **BY MS. CAMPBELL:**

5 **Q** First of all, I want to show you what's been
6 marked as State's Exhibit 18 and State's Exhibit
7 Number 17. Do you recognize those?

8 **A** Yes, ma'am, I do. These are pictures taken of
9 the front area of the Waffle House.

10 **Q** And I noticed that in the -- actually on the
11 ground, there are some cups and then some markers
12 with actual letters on them. Explain to the jury
13 why those are there and what they represent.

14 **A** Generally patrol deputies they'll carry either
15 index cards or plastic cups with them. It's a cheap
16 way of actually being able to mark evidence once
17 they get to the scene so people won't step on them,
18 they're not moved, so that way when the crime scene
19 investigator arrives, they already have a general
20 location of the scene. Once the crime scene
21 investigator arrives, he will actually take yellow
22 markers with letters on them and actually place them
23 next to the evidence so that way when we photograph
24 the evidence, it's easier to see in the pictures
25 than a paper cup and you can relate the different

1 letters to what that actual evidence is.

2 Q And I show what's been marked as State's
3 Exhibit 19 and 20. Is that what you're talking
4 about?

5 A That is correct. That's a photograph of the
6 same piece of evidence just from a different
7 distance.

8 Q So I notice here in State's Exhibit Number 17,
9 you can see one of the markers, it has an A?

10 A That is correct.

11 Q And would this be a closer up of State's
12 Exhibit 19?

13 A Yes, ma'am, same photograph just at a different
14 angle or possibly distance.

15 Q And State's Exhibit Number 20?

16 A That is correct.

17 Q And is that where it would have been located
18 that night once the police were able to get to the
19 crime scene?

20 A Yes, ma'am, that's where the forensic
21 investigator located that particular item of
22 evidence.

23 Q And once this had been photographed, would you
24 all have collected this item?

25 A Eventually that item of evidence would have be

1. collected.

2 Q And I'm showing you again State's Exhibit
3 Number 20. Are you aware of what that is?

4 A Yes, ma'am. That is a live round. When I say
5 a live round, that's a bullet that has not been
6 fired yet.

7 Q There are other markers. And I'm going to show
8 you what's been marked as State's Exhibit Number 21.
9 Do you recognize that?

10 A Yes, ma'am. This is a photograph that was
11 taken by Investigator Allen. It shows a marker
12 labeled B. There's a piece of evidence within the
13 marker a Waffle House -- the front of the Waffle
14 House is in the background.

15 Q And I'm showing you again State's Exhibit
16 Number 17. Do you see that on that photograph?

17 A I do. It's back in this area right here.
18 There's the A that we mentioned before in the front.

19 Q Is it right below where my finger is?

20 A And it's right below where her finger is right
21 now, B.

22 Q And I notice that some of these pictures it's
23 harder to see, is that because of the time of day?

24 A That's because it's nighttime and when you're
25 using a flash on a camera, you can only produce so

1 much flash at night. The further the distance
2 something is, you'll need more flash and that's why
3 we take close-ups of photographs so you can see them
4 at a distance, but then we go up close to them and
5 take them so you can actually see what they depict.

6 Q So what is portrayed in State's Exhibit Number
7 21, this is a further out shot than State's
8 Exhibit --

9 A That is correct. That's just at a further
10 distance.

11 Q I'm going to show you a close-up, which is
12 State's Exhibit Number 22. Do you recognize that?

13 A Yes, ma'am. This is also B, the marker B, with
14 an item of evidence in it. And it's just a real
15 close-up shot of that piece of evidence.

16 Q And what is that evidence?

17 A That is a fired shell casing. In other words,
18 a bullet that has been fired, the projectile is gone
19 and it's just the casing that's left over.

20 Q There is also, I believe, in State's Exhibit
21 17, another one which is labeled as in State's
22 Exhibit 23?

23 A Yes, ma'am.

24 Q Where is that located?

25 A Back here, the furthest piece of evidence out

1 is depicted in State's Exhibit 23 as marker C
2 identifying another piece of evidence.

3 Q And, again, in State's Exhibit Number 24, is
4 that a close-up?

5 A That is a close-up of C, yes, ma'am.

6 Q And, again, what type of evidence is that?

7 A That is a fired shell casing, in other words, a
8 bullet that has already been fired.

9 Q And he would have photographed that prior to
10 collecting it that night?

11 A All evidence is photographed prior to
12 collecting if possible.

13 Q I want to turn your attention to State's
14 Exhibit Number 25. Does this show a different angle
15 on the parking lot?

16 A Yes, it does. Here's the Waffle House here.
17 It appears that those other photographs were taken
18 from an angle straight in front of the Waffle House.
19 This is going to the left side of the Waffle House
20 as you're facing the building and it's just a
21 different angle. In this photograph, you can see
22 marker A, marker B, marker C and now we have an
23 additional marker D.

24 Q Where would Two Notch Road be in relation to
25 that picture?

1 A Two Notch Road runs this way right here on the
2 other side of this telephone pole.

3 Q I'm going to show you what's been marked as
4 State's Exhibit Number 27.

5 A 27 is a close-up of marker D. There is a
6 plastic bottle in it.

7 Q State's Exhibit Number 28.

8 A Is the actual shell casing in State's Exhibit
9 28, which can be seen here in the foreground on
10 State's Exhibit 27 and there's the bottle behind it.

11 Q So State's Exhibit 28 would be a close-up of
12 what we see in State's Exhibit 25; is that correct?

13 A That is correct.

14 Q And in what part of the parking lot is this
15 shell casing located?

16 A This shell casing, if you were coming out of
17 the Waffle House front door, it would be to your two
18 o'clock, to your right front, not directly out the
19 front doors, but to your right front as you're
20 walking out the door.

21 Q I show you what's been marked as State's
22 Exhibit Number 26. It's hard to see there in the
23 foreground.

24 A This is a photograph of marker D, which had the
25 bottle and the fired shell casing in it. You can

1 barely see the D here and the bottle here. This is
2 the Waffle House here, the door being down here and
3 Two Notch Road over here. It's just at a different
4 angle.

5 Q And I'm going to show you State's Exhibit
6 Number 33 and 62. What do those show?

7 A These are photographs taken from the Waffle
8 House area, the front parking lot area going to the
9 right front. In the foreground of State's Exhibit
10 62, you can see a black object here and it's a
11 Styrofoam tray that you may do a takeout order with
12 that was on the ground. And this is just a further
13 shot away of that same area.

14 Q And was there any items of significance found
15 in this tray in State's Exhibit Number 62?

16 A Yes, ma'am. There's actually a fired shell
17 casing that was located on that tray. It was kind
18 of stuck to the tray.

19 Q So there at the scene that night when
20 Investigator Allen went out there and was searching
21 that area, what area was he able to find either live
22 ammunition or spent shell casings?

23 A In the asphalt parking lot in front of the
24 Waffle House.

25 Q And were all of the spent shell casings in the

1 same area?

2 A No, ma'am, they were not.

3 Q And, in fact, were they in distinct areas?

4 A They were in two general areas basically, in
5 front of the door of the Waffle House in the parking
6 lot and then there was an area to the right front of
7 the Waffle House as you're coming out of it.

8 Q And I show you State's Exhibit Number 31, which
9 is a shot from where?

10 A This is a shot from actually in front of the
11 Mobil station. Here's the Waffle House. This is
12 the Mobil station. One area that the shell casings
13 was found was right in here and the other area was
14 over here (indicating).

15 Q So if I can mark with my finger, one area was
16 right in here?

17 A Right down right in front of the Waffle House,
18 that is correct. And the other area right in that
19 area, yes, ma'am, that is correct.

20 Q So how many shell casings total were found in
21 these two different areas?

22 A There was one live bullet and two shell casings
23 found in the front area in front of the Waffle
24 House.

25 Q And that would be near the door?

1 A That's near the door.

2 Q And then the back of the parking lot?

3 A The other area to the right front of the Waffle
4 House, there was two expended or fired shell casings
5 located.

6 Q And just for the record, the live projectile
7 and the two spent shell casings found near the front
8 door of the Waffle House, what were those labeled?

9 A Those were labeled A, B and C.

10 Q And was there any determination made as to
11 their caliber?

12 A They were .380 caliber.

13 Q .380?

14 A Yes, ma'am.

15 Q And was that the same caliber as those found in
16 the back of the Waffle House the two that were found
17 that night?

18 A No, ma'am. The other two shell casings that
19 were found to the right front area of the Waffle
20 House were nine millimeter expended shell casings.

21 Q Once Investigator Allen photographed these
22 items, would he have collected them?

23 A Eventually, yes, ma'am.

24 Q And would those have been later forwarded for
25 some testing?

1 A That is correct. He would have collected them,
2 packaged them, taken them back to the laboratory,
3 then they would have been farmed out or, you know,
4 taken out to different areas whether it be
5 ballistics, fingerprints, DNA.

6 Q That night did Investigator Allen also, at the
7 request of Investigator Ellis, do gunshot residue
8 kits on two people that were there at the scene?

9 A Yes, ma'am, he did.

10 Q And what is a gunshot residue kit and what's
11 the purpose of that?

12 A When someone fires a gun, the actual firing pen
13 when it hits the back of the bullet and it pops that
14 little cap, it will actually ignite the gunpowder
15 inside of the shell casing, that produces a gas and
16 the gas contains microscopic particles of the
17 gunpowder and the primer that is in the bullet. So
18 when you fire a gun, the gases escape from the gun
19 and throw out these microscopic particles. These
20 particles are so small, they're still burning to a
21 certain degree, they will actually embed in your
22 skin and like I said, they're microscopic.

23 So when we do a gunshot residue test, what
24 we're doing is we are attempting to obtain these
25 microscopic particles out of your skin. We use a

1 solution of, you know, hydrochloric acid and water
2 and some other stuff. It's not enough hydrochloric
3 acid to burn you, but it's enough to get those
4 particles out of your skin. And what we're trying
5 to see is if a person was either near or fired a
6 handgun recently.

7 These particles will wear off over time and
8 they can be washed and scrubbed off over time so
9 getting gun primer residue from hands is -- it needs
10 to be done fairly quickly if you can.

11 Q And, in fact, is there a time period in which
12 you won't even do the testing anymore?

13 A There is a time period that SLED won't do the
14 testing. We generally will do it now on a live
15 person, it's generally six hours because we're all
16 shedding skin cells and those particles will
17 eventually fall off and the average time is about
18 six hours.

19 Q And, for the record, Investigator Allen, I
20 didn't show you the photographs, but would have also
21 photographed the position of the body as it was at
22 the scene that night?

23 A He would have photographed the position of the
24 body as it was when he arrived there, that is
25 correct.

1 Q I want to turn your attention to February the
2 20th of 2007. Did you personally become involved
3 with this case at that point?

4 A I did.

5 Q And that would have been the next day?

6 A Yes, ma'am, the very next day.

7 Q And what did you do on that day?

8 A Investigator Allen was off and I discovered
9 that the evidence that he had in his private locker
10 needed to be processed and farmed out. And this
11 happens many times when you have people working
12 shifts, another person needs to take over the scene.
13 So that particular day, I went into Investigator
14 Allen's private locker and obtained the evidence
15 that he had collected that night and turned it over
16 to another forensic investigator to continue working
17 on it.

18 Q And before I go any further, the items that
19 would have been in his locker, would anyone else
20 have any access to those?

21 A Our storage lockers are private lockers at the
22 sheriff's department. There's only two people that
23 have access to it, the actual forensic investigator
24 that owns the locker and myself.

25 Q And would anyone have an opportunity to alter

1 or tamper with any evidence such as the shell
2 casings that night?

3 A They cannot get in those lockers.

4 Q And what items did you actually retrieve and
5 what did you do with them?

6 A I went into his locker and documented all of
7 this and retrieved one live .380 bullet, two
8 spent .380 shell casings, two spent nine millimeter
9 shell casings, the plastic tray and the plastic
10 bottle that was in the photographs, a gum wrapper, a
11 peach candy bag, five quarters, one penny, one
12 dollar bill and a Motorola cell phone. These were
13 taken out. They weren't changed or altered. They
14 were directly handed over to Investigator Stan
15 Richards on a chain of custody.

16 Q And what does Investigator Stan Richards do?

17 A He's also a forensic investigator in the
18 laboratory at the time.

19 Q I want to turn your attention to February the
20 22nd. Did you have an opportunity to actually go to
21 the scene at the Waffle House?

22 A I did.

23 Q And what was the purpose of you going out there
24 that day, sir?

25 A Apparently, it was discovered, and I'm not sure

1 exactly how, that there may have been a entrance
2 mark in the wall of the Mobil station. And this was
3 a couple days later during the daylight hours.

4 Q And what do you mean an entrance mark?

5 A If I were to fire a gun at this wall here,
6 you're going to have a hole in it where you can see
7 where a bullet actually went into it.

8 Q And is it unusual, especially in a case where
9 it occurs in the nighttime, for there to be
10 follow-up investigations to make sure you secure all
11 possible evidence?

12 A That is correct, especially when you're
13 searching for evidence at nighttime, it's very, very
14 difficult and, you know, it's a easy possibility
15 that you could miss something. It's during the
16 darkness, you're not sure how far of an area you
17 need to search and, of course, you do your best
18 always at nighttime. And many cases, many scenes
19 that I've worked, we've gone back during daylight
20 hours and found evidence that we could not find that
21 night.

22 Q And in this case when you got to the scene that
23 day, did you recover any additional evidence?

24 A Yes, ma'am. I actually discovered three
25 additional nine millimeter casings up in a grass

1 area to the right front of the Waffle House, fairly
2 -- not really close to the nine millimeter casings
3 that was found that night. They were a little bit
4 distance, you know, further out, but they were also
5 in grass, which is a little bit harder to find
6 especially at nighttime.

7 Q And would you characterize those as being in
8 the front part or the back part of the parking lot?

9 A They would have been to the right front -- over
10 to the right as you're walking out the door in the
11 general vicinity where the other nine millimeter
12 casings were located.

13 Q And I'm going to show you what's been marked as
14 State's Exhibits Number 38, 37, 36, 35 and 34.
15 First, just ask do you recognize those?

16 A Yes, ma'am. These were all photographs that I
17 took that day when I went out there.

18 Q You actually took those that day?

19 A I took these, yes, ma'am.

20 Q And that would have been on the 22nd?

21 A That is correct.

22 MS. CAMPBELL: Your Honor, at this time, we
23 offer State's Exhibits 34 through 38 into evidence.

24 THE COURT: Show them to opposing counsel,
25 please.

1 (Pause.)

2 MS. PAYNE: Without objection, Your Honor.

3 MR. SUTHERLAND: Without objection.

4 THE COURT: Mark those in evidence, please,
5 ma'am.

6 (State's Exhibit Numbers 34 through 38,
7 photographs, admitted into evidence.)

8 MS. CAMPBELL: May it please the Court.

9 THE COURT: Yes, ma'am.

10 BY MS. CAMPBELL:

11 Q I'm going to show you what's been marked as
12 State's Exhibit Number 34. What does that show?

13 A 34 is a photograph I took. I'm standing in the
14 parking lot of the Waffle House way over to the
15 right as if I walked out of the door and went to the
16 very right of the Waffle House straight forward.
17 And in this photograph, there's my markers A, B and
18 C and those are placed where the three nine
19 millimeter shell casings were located.

20 Q And State's Exhibit 35, does that show a
21 different angle?

22 A 35 is a different angle. You have A, B and C
23 markers here, the Waffle House is here, the Mobil
24 station is here and I'm taking it at an angle from
25 the shell casings back towards the Mobil station

1 where the victim was eventually located.

2 Q And do you actually see the side of the Mobil
3 station right there?

4 A Yes, ma'am. These three red dots, the Mobil
5 station also has a liquor store next to it, so the
6 three ABC dots, that's actually the right portion of
7 the Mobil station.

8 Q And the shell casings, those are -- how were
9 those denoted?

10 A By markers A, B and C. Those markers also have
11 my initials on them. All of the forensic
12 investigators have their initials on their markers
13 so we don't mix them up with each other.

14 Q And is that where you found them that day when
15 you went back to look for any further evidence?

16 A That is correct.

17 Q Show you State's Exhibits Numbers 36 and 37.
18 Do those also just denote where you found the shell
19 casings?

20 A Yes, ma'am. 36 and 37 are just the same A, B
21 and C location, different angles, different
22 distance.

23 Q And, finally, I want to show you State's
24 Exhibit Number 38. Does that show where these items
25 were located in relation to the Waffle House?

1 A That is correct. Here you have the three nine
2 millimeter shell casings that I collected that
3 morning and you can see the Waffle House in this
4 background here. The other nine millimeter shell
5 casings were found in this area here. And then, of
6 course, the .380 shell casings were over here in the
7 parking lot in front of the Waffle House.

8 Q In the Waffle House parking lot?

9 A That's correct.

10 Q And when you find -- do you find a shell casing
11 at the scene of every crime where there's a shooting
12 involved?

13 A No, ma'am.

14 Q Why not?

15 A Shell casings go everywhere. I mean, there's
16 no rhyme to reason to them. They can hit an object.
17 They can hit a person. I've actually had them fall
18 into people's pants cuffs and them actually walk off
19 the scene with them and not even knowing it.
20 They've been stuck in tire treads and then people
21 drive off, we've never found them. Shell casings
22 even during the daytime are very difficult to find.

23 Q Do certain types of guns not expel shell
24 casings?

25 A Revolvers. In other words, revolvers, like

1 police officers used to carry, has a little cylinder
2 in it. You load it with six shots generally. When
3 you fire those guns, the shell casings obviously
4 stay in the gun. They don't go anywhere. But most
5 of today's guns that are used for much of, you know,
6 anything are what are considered semiautomatics.
7 When you fire the pistol, the shell casing ejects
8 out and, like I said, it can go at any angle and hit
9 anything.

10 Q I want to show you some additional photographs,
11 which are State's Exhibits 39 through 47. Do you
12 recognize those?

13 A Yes, ma'am. These are photographs I also took
14 that same morning on the 22nd when I located the
15 additional nine millimeter shell casings.

16 Q And what are those photographs of, what
17 building?

18 A That is the Mobil station, the side, where we
19 found the entrance hole of one of the projectiles.

20 MS. CAMPBELL: Your Honor, at this time, we'd
21 offer them into evidence.

22 (Pause.)

23 MS. PAYNE: Without objection, Your Honor.

24 MR. SUTHERLAND: Without objection.

25 THE COURT: Mark those, please, in evidence.

1 (State's Exhibit Numbers 39 through 47,
2 photographs, admitted into evidence.)

3 BY MS. CAMPBELL:

4 Q I'm going to show you State's Exhibit Number
5 39. What does that show, sir?

6 A 39 is the side of the Mobil station. I'm
7 looking from an angle of where the shell casings
8 that I found that day. The Waffle House would be
9 over here. And Mr. Wright's body would have been in
10 this area here (indicating).

11 Q Show you State's Exhibit Number 40 and 41. Are
12 those a closer up shots of the same side?

13 A Those are close-up shots of where the actual
14 entrance hole is on the side of the building. If
15 you use this sign here, the no loitering sign as a
16 reference and State's Exhibit 39, you can see the
17 sign here, and you can use those as a reference to
18 find out about where that hole was.

19 Q And I believe the bottom of that sign is at the
20 top of State's Exhibit 41?

21 A That is correct. Here's the bottom of the sign
22 here, here's a little bit closer photograph of the
23 entrance hole. And, again, State's Exhibit 48 shows
24 even a closer shot.

25 Q And that's how it appeared two days afterwards?

1 A That is correct.

2 Q Did you also take a photograph back from an
3 angle towards where you found the shell casings?

4 A Yes, ma'am. This photograph here I'm actually
5 standing next to the Mobil station where the hole is
6 and I'm looking back to the area that I found the
7 shell casings in this area here. So I'm standing at
8 the wall here looking back and the shell casings
9 were found in this area.

10 Q Did you do anything to try to determine the
11 trajectory as in State's Exhibits 46 and 47?

12 A Yes, I did. When a projectile enters a wall,
13 you can generally tell depending on the material it
14 hits. If it hits a cardboard or wood, sometimes
15 you're not going to be able to tell. But when it
16 hits a very hard object, it will make an angle and
17 you can actually see the angle that the bullet went
18 into the wall. That was so in this case, I could
19 actually tell what angle the bullet went in.

20 So what we do is we run a rod through that hole
21 at the same angle that the bullet went in, a tight
22 rod so it matches and meshes in there. What this
23 does is this gives you a reverse trajectory as to
24 the angle the bullet was actually fired and how it
25 actually entered the wall. In this photograph here,

1 State's Exhibit 46, you can actually see the rod
2 that I've placed into the side of the Mobil station.

3 Q Put my finger right there.

4 A That is correct. And that's showing the
5 trajectory of how the bullet path went when it went
6 into the wall.

7 Q And where did it point?

8 A It pointed right back to the area where I found
9 the three nine millimeter expended shell casings.

10 Q State's Exhibit Number 30 --

11 A 47. 47 here is what I've actually done is I've
12 actually taken my camera and placed it on that dial
13 coming out of the wall and that shows the reverse
14 trajectory of what path that bullet took. And if
15 you look at the photograph, you can see that the
16 straight path of the bullet -- that the projectile
17 took was from the area that I found those three nine
18 millimeter shell casings on that same day.

19 Q Did you make any attempts that day to find --
20 let me ask you this. We're talking about shell
21 casings. What's the difference between a shell
22 casing and a projectile?

23 A A bullet has two parts, it has more than that,
24 but two main parts. One is a projectile, that's the
25 part that actually comes out of the end of the

1 barrel that shoots and then kill and maim people.
2 The other part is the casing which holds the
3 gunpowder that the projectile is originally in. So
4 you fire the bullet. You've got a projectile, it
5 depends on the caliber how big it is, it goes out.
6 The casing generally ejects out of the gun and
7 stays, you know, where you're firing it or in the
8 general area.

9 Q So when we're referring to these shell casings,
10 that would be the outside of the bullet?

11 A It's not really the outside. It's the part
12 that holds -- that originally holds the bullet with
13 the gunpowder. They don't do any damage. They just
14 eject out of the gun.

15 Q So it's the projectile that does the damage
16 because it comes out of the end of the gun?

17 A Very fast.

18 Q Did you make any attempts to find any
19 projectiles over at that Mobil station when you were
20 looking that day?

21 A We did. We looked all over, you know, for any
22 projectiles. And like I said, the only evidence we
23 had of any projectile was this hole in this wall.
24 The walls are made of steel. They're -- it's not
25 real thick steel, it's not real thin either. And,

1 of course, then there's insulation behind the walls,
2 then you have aluminum and steel supports within
3 this wall.

4 Q And were you able to find any projectiles at
5 the Mobil station or at the Waffle House?

6 A No.

7 Q Is that unusual?

8 A That is not unusual at all. In fact, we're
9 very happy if we ever do find projectiles because
10 once they're fired, even if they go through
11 something, they can travel long ways. And if they
12 hit anything soft or hard, they can angle, ricochet
13 and go another way. And they also, if they hit a
14 hard enough object, they can fragment and pretty
15 much disintegrate into such small pieces you'll
16 never find them.

17 Q That day did you collect the three shell
18 casings that you found over in the back, in the
19 grassy area next to the Waffle House parking lot?

20 A I did.

21 Q And did you try to process them for anything?

22 A Yes, ma'am. I processed them for fingerprints.
23 And I also did what's called DNA swabs. I actually
24 swabbed the shell casings in an attempt to get DNA
25 evidence from the shell casings.

1 Q And were you able to get any results?

2 A To my knowledge, we did not get anything.

3 Q Were you able to get any latent prints?

4 A No, ma'am. Generally, we -- I may have gotten
5 a partial latent print off of one shell casing in 24
6 years. Unlike T.V., it's next to impossible to do
7 on a fired shell casing.

8 Q And why is that?

9 A Many factors involved, it's brass. Brass does
10 not take fingerprints very well. When the gun is
11 fired, that shell casing heats up to an extreme
12 temperature which generally destroy the amino acids
13 that are put on the shell casings. And our policy,
14 I think our guidelines today is we process very few
15 fired shell casings for fingerprints because it just
16 doesn't -- we don't get them anymore.

17 Q Finally, I want to turn your attention to May
18 the 9th of 2007. Did you make any additional
19 attempts to retrieve a projectile from that wall at
20 the Mobil station?

21 A Yes, ma'am. If I can go back to the 22nd, we
22 actually, when we were looking to see if we could
23 find a projectile inside of the wall or somewhere
24 around where the entrance hole was, we pulled part
25 of the panel away to look behind the panel to see if

1 the projectile was back in there somewhere. I also
2 had a scope, it's kind of like a snake scope that
3 you can actually scope through a hole and behind
4 walls and actually look in it with a light. And on
5 the 22nd, we actually pulled the panel away, looked
6 back in there, stuck my hand in there, you know,
7 used the scope. We could see where the bullet
8 actually went through the steel wall, but we could
9 not locate the projectile anywhere behind the wall.

10 Q I'm going to show you State's Exhibit Number
11 42, 43 and 44. Were those photographs you took that
12 day?

13 A Yes, ma'am. Here's what the --

14 Q Wait, I've got to put them in evidence first.

15 A I'm sorry. I'm sorry.

16 MS. CAMPBELL: Your Honor, at this time, we'd
17 offer them into evidence.

18 THE COURT: Show them to opposing counsel.

19 (Pause.)

20 MR. SUTHERLAND: Without objection.

21 THE COURT: Any objection?

22 MS. PAYNE: Beg the Court's indulgence.

23 THE COURT: Yes, ma'am.

24 MS. PAYNE: Without objection, Your Honor.

25 THE COURT: Check with the court reporter and

1 see if some of those are already in.

2 (Pause.)

3 THE COURT: All right. They're already in
4 evidence. There was no objection this time. Go
5 ahead.

6 BY MS. CAMPBELL:

7 Q I want to show you State's Exhibit Number 42.
8 You mentioned you made further attempts to try to
9 find the projectile?

10 A That's correct. This is on the 22nd, on the
11 day that I went out there. You can see the entrance
12 hole here. We removed this panel because the
13 projectile went in here and stopped. You would
14 assume it would fall down here somewhere, so we
15 removed this panel and looked all through there and
16 did not locate it.

17 Q And, again, this is just another shot of
18 State's Exhibit Number 43?

19 A Yes, ma'am, a different angle. This was on the
20 22nd.

21 Q And the fact that you found no evidence of that
22 bullet, again, is that unusual?

23 A Not at all. I mean, it could have hit
24 something, like I said, there's steel supports back
25 behind that wall and it could have hit that and it

1 could have hit anything really hard and it
2 fragmented.

3 Q You reviewed the crime scene and everything.
4 You're aware where Mr. Wright received a bullet
5 wound to his head?

6 A Yes, ma'am, I am.

7 Q Is there any way that the same bullet that went
8 into that wall could have been the same one that
9 killed him?

10 A I don't think so. The problem is that the
11 bullet would have to be traveling at such a rate of
12 speeds to penetrate that steel wall and once it did,
13 it didn't come out because there's no evidence that
14 the bullet came out of that wall anywhere. There's
15 no way that that bullet could have been the one that
16 actually killed Mr. Wright.

17 As to where that projectile is, my best answer
18 is that it did fragment. It hit something hard
19 behind that wall and it completely fragmented away.
20 I went back at a later date and removed several
21 panels from that Mobil station with tools in order
22 to locate the projectile behind the wall, it was
23 never found.

24 Q Okay. So, for the record, the one that entered
25 the side of the Mobil station, you never found that

1 projectile?

2 A No, ma'am.

3 Q And were you ever -- were you or Investigator
4 Allen or anyone else ever able to find the bullet
5 that penetrated through Mr. Wright's head?

6 A No, ma'am, we could not.

7 Q And again, for the record, if a defendant is,
8 or a person, a witness of interest or anyone that
9 you wanted to do gunshot residue kits on, testing to
10 see if they fired a gun, once -- if they haven't
11 been apprehended within six hours, can you even do a
12 test to show anything?

13 A Generally not, no, ma'am.

14 MS. CAMPBELL: Thank you. I don't have
15 anything else.

16 THE COURT: Do you expect a lengthy cross?

17 MR. SUTHERLAND: Quite possibly, sir.

18 THE COURT: Ladies and gentlemen, step in the
19 jury room, don't discuss the case and let me find
20 out where we are.

21 (The jury retires to the jury room.)

22 THE COURT: Lengthy being how long?

23 MR. SUTHERLAND: I'm really unsure. I
24 understand that this was a very particular -- or an
25 investigator of particular interest for them as

1 well, sir. I'd be happy to call it a day, Your
2 Honor.

3 MS. PAYNE: I anticipate my cross will be
4 pretty lengthy, longer than 15 minutes.

5 THE COURT: Longer than an hour?

6 MS. PAYNE: No, sir.

7 THE COURT: What about you? I'm not going to
8 hold you to it. I'm just trying to get an idea.

9 MR. SUTHERLAND: Well, sir, I mean it's hard --
10 I don't know how long I take when I do this stuff.

11 THE COURT: I understand. That's a very honest
12 answer.

13 I'm going to keep moving on. We'll take a few
14 minutes for a break, I mean, very few minutes, and
15 then we'll see where we go. I might stop after --
16 or in the middle.

17 You can step down if you like, but you cannot
18 discuss your testimony with anyone; you understand?

19 THE WITNESS: Yes, sir.

20 THE COURT: All right. Just a few minutes,
21 folks, and then we're going to get started back.

22 (Brief Recess.)

23 THE COURT: Are you ready, Mr. Sutherland?

24 MR. SUTHERLAND: Yes, Your Honor.

25 THE COURT: Bring the jury in for me, please.

1 (The jury returns to the courtroom.)

2 THE COURT: All right. As I understand it,
3 there was a little bit of confusion about whether 48
4 was in evidence or not. And by agreement of
5 counsel, it is in evidence.

6 All right. You may cross-examine, Mr.
7 Sutherland.

8 (State's Exhibit Number 48, photograph,
9 admitted into evidence.)

10 CROSS-EXAMINATION

11 BY MR. SUTHERLAND:

12 Q I had wanted to sort of go over some of your
13 testimony about where some of the stuff was.

14 A Sure.

15 Q But you went out there -- just to be clear, you
16 went out there on the 22nd. It was somebody else
17 that was there on the 19th?

18 A On the 19th, the night that the actual scene
19 was worked, that was worked by Investigator Bill
20 Allen, one of my forensic investigators.

21 Q Okay. And so when you -- but you reviewed all
22 of his work?

23 A That is correct.

24 Q You had gone out there on the 22nd, three days
25 later?

1 A That is correct.

2 Q Now, you had testified earlier that shell
3 casings can, you know, sort of fly anywhere and
4 everything?

5 A Depending on what they hit, depending on the
6 environment, sure.

7 Q But you had earlier, do you remember this
8 diagram?

9 A I do.

10 Q Now, you had -- I'm just going to try to draw
11 this up here.

12 A Sure.

13 MR. SUTHERLAND: And beg everybody's
14 indulgence, I'm going to try to get this right.

15 (Pause.)

16 THE COURT: Try not to talk to yourself, Mr.
17 Sutherland.

18 MR. SUTHERLAND: Sorry, Your Honor.

19 BY MR. SUTHERLAND:

20 Q Okay. Now, that -- it's sort of -- I mean, I
21 did the best that I could, but that's kind of close
22 to what you have here, sir?

23 A That's a likeliness, yes, sir.

24 Q Okay. I was interested when you were talking
25 about these .380 shells here. And I think you had

1 said that you came out and it was like a two o'clock
2 angle from the front door?

3 A I was talking about the shells to the right,
4 that is correct.

5 THE COURT: Folks, can y'all see?

6 (Jurors so indicate.)

7 THE COURT: Okay. Thank you.

8 BY MR. SUTHERLAND:

9 Q And these shells, they were those .380 shells;
10 is that your recollection?

11 A You're talking about B and C on the chart, sir?

12 Q Yes, sir.

13 A B and C are the .380 casings, that is correct.

14 Q Now, you've also got a live round over here?

15 A That is correct.

16 Q Okay. Now, knowing a little bit about this
17 stuff from the Army, but when -- I know about rifles
18 and if I was to pull the charging handle back on an
19 M16 and there was a live round in the chamber, it
20 would eject?

21 A That is correct. It would eject intact.

22 Q Yes, sir.

23 A That is correct.

24 Q And when I let that go, it would push another
25 round up in there?

1 A If there was another round in the magazine,
2 that is correct.

3 Q So you have this live round here and then you
4 have these spent shells here?

5 A That is correct.

6 Q Would that be consistent with someone pulling
7 the charging handle back, ejecting the live round
8 and moving forward and discharging that firearm?
9 I'm talking about the distance between the live
10 round and these shells.

11 A That could be one scenario.

12 Q Yes, sir. But, I mean, does the live round --
13 nobody's -- well, I didn't see where anybody made
14 sense of the live round. And just the first thing I
15 thought of, well there's probably one in there when
16 they pulled the --

17 MS. CAMPBELL: Objection, Your Honor, to his
18 testifying.

19 THE COURT: You have to ask a question, Mr.
20 Sutherland. You can't make a statement.

21 BY MR. SUTHERLAND:

22 Q Okay. What I was looking for was just an
23 explanation of a live --

24 A Live round can be anything. It can be there
25 was a live round in the chamber, it could be ejected

1 out. It could have fallen out of somebody's pocket.
2 It could have had a magazine. It could have fallen
3 out of the magazine. Someone could have had it in
4 their hand, they could have thrown it. I mean,
5 there's many possibilities as to why a live round
6 would be on the asphalt, many.

7 Q All right. But that would make sense?

8 A Many would make sense.

9 Q Okay. Fair enough. When you found these here,
10 again, you were testifying about the things flying
11 around and sometimes never being able to be found,
12 but when you find these here, I mean that's
13 consistent with the firearm being discharged in this
14 area here?

15 A It could be consistent with that, that is
16 correct.

17 Q Okay. And --

18 A May I make one comment on your chart, which I
19 think you're confusing me, sir?

20 Q Is it messed up?

21 THE WITNESS: Can I stand up?

22 THE COURT: Sure.

23 THE WITNESS: If you take this entire Waffle
24 House area here, it really needs to be moved over
25 more this way because from the aerial photographs,

1 which we're not privy to obviously at the crime
2 scene, the door of the Waffle House is really in
3 this area here, okay. So I just want to understand
4 that because it's not really in proportion.

5 BY MR. SUTHERLAND:

6 Q Okay. So when you did this, you were working
7 off of something else?

8 A I was working off of two sketches and stuff
9 like that. That's why I put on my sketches, Not to
10 scale, because I'm not an architect, I can't draw
11 these to scale. But, you know, after looking at
12 aerial photographs, which we can obtain later, you
13 can actually -- if you take this whole area and move
14 it this way, just the Waffle House and the parking
15 lot, because the doors to the Waffle House are
16 really just to the left of the Exxon station.

17 Q Now, because you had testified earlier that
18 this bullet strike here, that you had done a
19 trajectory path and it led you right back to shell
20 casings?

21 A The nine millimeter shell casings that I
22 collected on the 22nd, that is correct, sir.

23 Q So, generally -- or would you -- not saying
24 this is the case, I mean, generally when you're
25 discharging a firearm, the shell casings, now if

1 somebody's moving their hand around or something
2 like that, but generally the shell casings are going
3 to fall sort of in the area where it was discharged?

4 A With no outside factors, which like I say can
5 include many things, with no outside factors,
6 generally when you shoot a semiautomatic weapon,
7 your shell casings, 99 percent of the casings will
8 eject to the right and slightly to the rear
9 depending on the make and model of the gun. And
10 they will generally be within the same area that you
11 fired the gun outlying any other circumstances that
12 may take effect. And, of course, with me or anyone
13 else not being there during the shooting, we don't
14 know what factors take effect.

15 Q Yes, sir. But, I mean, this sort of would back
16 up that proposition?

17 A That is correct.

18 Q Okay. Now, you had also testified that
19 sometimes these things get lost. You had said that
20 they could get stuck in a tire or something like
21 that?

22 A I've seen it happen, yes, sir.

23 Q So when you went back out and you found
24 these --

25 A Correct.

1 Q -- there could well have been other shell
2 casings present that were carried off by a tire or
3 something like that?

4 A It's possible, sure.

5 Q Okay. Now, you said -- but you said that it's
6 not unusual to miss shell casings?

7 A Sure. Absolutely.

8 Q But, I mean, you're performing sort of a
9 concerted search of an area. I mean, you've got
10 this particular thing in mind that you're looking
11 for --

12 A Absolutely.

13 Q If you've got a flashlight and it's something
14 brass, I mean it's going to catch your eye?

15 A Sometimes, yes, sir.

16 Q Because these didn't. Now, would you -- I
17 noticed that from these, you just used that to trace
18 this back to here?

19 A The bullet in the wall, that is correct. I
20 bring that trajectory back to try to figure out what
21 angle the shooter would have been when he fired that
22 round.

23 Q So when these were going to the right and back
24 and ended up here, I mean you would have had to have
25 some sort of weird left-handed gun to be shooting,

1 say, this way and for it to have them end up there.

2 Does that make sense?

3 A No, sir.

4 Q It doesn't make any sense?

5 A No, sir. Well, I don't know of any left-handed
6 guns.

7 Q Well, that's what I was talking about, it just
8 doesn't make sense. I mean, these things being here
9 having been ejected to the back and to the right --

10 A Generally I said, not all handguns, generally.

11 Q But would generally mean that someone was right
12 about here and these things were kicking out over
13 here?

14 A It depends on -- it would all depend on what
15 angle he's looking at as to where they were
16 ejecting.

17 Q See, like if his -- if his angle, let's say,
18 would shift from this way to that way with the
19 firearm, then the shell casings would head generally
20 in that direction?

21 A They could.

22 Q Okay.

23 A That's possible.

24 Q I mean, unless there was something in the way
25 or something?

1 A Could be a person standing there, it could hit
2 a person and, you know, go at a different angle.

3 Q Okay. How far apart were these?

4 A I would have to look at the photographs, sir, I
5 don't know. I think they were fairly close
6 together, but I have to look at the photographs.

7 Q Okay. So does that tell you anything that they
8 were fairly close together, was that the same firing
9 position?

10 A The best way I can answer that, sir, is it's
11 possible that they could have been. You've got to
12 remember, too, when shell casings hit pavement, what
13 are they going to do, they're going to bounce.

14 Q Yes, sir. But it would seem that these
15 particular things had sort of ejected and landed in
16 the same area?

17 A It appears that way, that is correct.

18 Q Okay. But would you agree that these shell
19 casings here are consistent with firing shots in
20 this direction?

21 A No, sir, I would not agree with that.

22 Q You don't?

23 A Not they could be consistent -- if you were
24 standing here and firing in that direction, the
25 shell casing could be consistent with it being

1 there. If you were here firing in this direction,
2 that position could be consistent with the shell
3 casings.

4 Q Okay. If there's testimony to support --

5 THE COURT: Are y'all sure y'all can see?

6 JUROR: I can't see.

7 MR. SUTHERLAND: I'm standing right in front of
8 the middle of that thing; is that right?

9 THE COURT: You can't talk to the jury.

10 MR. SUTHERLAND: It depends on the position --

11 THE COURT: I just don't see how y'all can see
12 through him. Go ahead.

13 MR. SUTHERLAND: I'm sorry, Your Honor.

14 But let us say --

15 THE COURT: Do y'all have a pointer or
16 anything?

17 BAILIFF: There's a pointer right there.

18 BY MR. SUTHERLAND:

19 Q So if there's evidence that would indicate that
20 this weapon was discharged in that direction,
21 finding these shell casings here would be consistent
22 with that evidence?

23 A It could be consistent with that evidence.

24 Q Okay. I mean, you know, you said it could be
25 consistent with other things. Basically, if there

1 is someone or some -- well, say I say that I stood
2 here and I discharged this firearm in that direction
3 and you found these things here, then that would be
4 consistent with what I had told you?

5 A It could be consistent. It could also be
6 consistent you turning in the opposite direction and
7 firing.

8 Q So I would have to be lying for it to be
9 inconsistent?

10 A You've confused me, sir.

11 Q Okay.

12 A Maybe I can clear it up. Finding those shell
13 casings there means generally that the person was in
14 that general area when he fired the shell casings
15 with the exception of any other outside factors,
16 okay. I can't tell you -- because two shell casings
17 are found here, there's no way I can tell you what
18 direction that person was pointing in when he fired
19 those shell casings. It could be anywhere around
20 that circle of the shell casings when he fired it.

21 Q Because you had the additional factor up here?

22 A I had that one additional factor of that one
23 round in the building so I can tell you the angle
24 that the bullet went into the building.

25 Q And so then with these shell casings, you can

1 sort of say --

2 A That is consistent.

3 Q Right.

4 A Absolutely.

5 Q But someone saying they were shooting this way
6 and the shell casings being there, you said --

7 A It could be consistent, but it could be
8 consistent in any other -- any position around those
9 shell --

10 Q All right. It's just that if a bunch of people
11 came up here and said that it was being fired in
12 this direction, is that sort of consistent?

13 A It could be any direction as far as I'm
14 concerned because of the position of the shell
15 casings, it could be any direction.

16 Q I got you, sir.

17 MR. SUTHERLAND: Beg the Court's indulgence.

18 THE COURT: Yes, sir.

19 (Pause.)

20 BY MR. SUTHERLAND:

21 Q Oh, you testified about the GSR residue --

22 A Yes, sir.

23 Q You know, if somebody's washing their hands or
24 they're sweating or something like that, that could
25 affect that test, also?

1 A It can sometimes.

2 Q So, I mean, within that six hour period, if
3 those are intervening factors there like sweat and
4 washing your hands --

5 A It could have some affect on it, yes, sir.

6 MR. SUTHERLAND: No further questions of this
7 witness at this time, Your Honor.

8 THE COURT: All right. Thank you.

9 Ladies and gentlemen, we'll recess for the day.
10 I need you back in the jury room at 9:15 in the
11 morning. If you will leave your note pads with the
12 bailiff. Now, make sure you put some identifying
13 information on there. We'll lock them up. We won't
14 read them. We'll give them back to you in the
15 morning, all right.

16 I hope you have a pleasant evening. Remember
17 all of those admonitions I gave you about not
18 discussing the case and avoiding the media coverage.
19 Thank you. 9:15 in the morning, don't call, just
20 come.

21 (The jury was excused for the day.)

22 THE COURT: Everybody stay here until I know
23 the jury's left the building, okay.

24 MS. PAYNE: Your Honor, if I may, I just wanted
25 to make a continuing objection to all of the gang

1 references. They made it in their opening statement
2 and I didn't want to stand up. Can I just have a
3 running...

4 **THE COURT:** Go ahead. I'm sorry. If the door
5 opens, they might hear.

6 **MS. PAYNE:** Can I just have a renewing
7 objection to that? I didn't want to have to stand
8 up in the middle of the opening argument. I know
9 you've already ruled on it.

10 **THE COURT:** To the extent I can give you a
11 continuing objection, you have it. Whether this --
12 depending on whether an appellate court reviews this
13 or not, I don't know if they'll agree with me, but
14 to the extent I can, I'll give you a continuing
15 objection.

16 **MS. PAYNE:** Thank you, Your Honor.

17 **THE COURT:** You cannot discuss your testimony
18 with anybody during this recess, all right?

19 **THE WITNESS:** Yes, sir, I understand that.

20 **THE COURT:** You may step down if you like.

21 While we're waiting, would you all gather all
22 of those exhibits that are spread everywhere and
23 make sure the court reporter is square with you
24 before we go?

25 All right. Ladies and gentlemen, in a few

1 minutes, they'll tell me whether the jury's left or
2 not. Be very careful as you leave, I don't know if
3 you're parked in the same areas that some of these
4 jurors might be, they may stop somewhere at a
5 convenience store or somewhere that you might choose
6 to stop on the way home, just be really careful that
7 you don't have any kind of contact with any of the
8 jurors.

9 Are they clear?

10 OFFICER: Yes, sir.

11 THE COURT: All right. Court's in recess until
12 9:15. Thank you.

13 (Whereupon, the proceedings were concluded
14 for May 6, 2008.)

15 (The following proceedings were held on May
16 7, 2008.)

17 THE COURT: Mr. Padgett, come back on the
18 stand, please. You're still under oath.

19 State ready for the jury?

20 MS. CAMPBELL: The State's ready, Your Honor.

21 THE COURT: Defense, everybody ready?

22 MR. SUTHERLAND: Ready, Your Honor.

23 THE COURT: Bring in the jury.

24 (The jury enters the courtroom at 9:25 a.m.)

25 THE COURT: Ladies and gentlemen, we're going

1 to continue with cross-examination.

2 I do need to remind you of something I said on
3 Monday. When you come to court, please don't come
4 through the courtroom, come around down the hallway.
5 It's really important you not come through the
6 courtroom, we might be doing something and have a
7 problem. So make sure you come in down this way
8 down the hallway.

9 All right. Cross-examination on behalf of
10 Mr. Boone.

11 MS. PAYNE: May it please the Court.

12 THE COURT: Yes.

13 CROSS-EXAMINATION

14 BY MS. PAYNE:

15 Q Good morning, Investigator Padgett.

16 A How are you?

17 Q Good. How are you doing? Yesterday you told
18 us a little bit about yourself. How long have you
19 been an investigator?

20 A In forensics?

21 Q Sure.

22 A About 23 years.

23 Q And how long have you been doing crime scene
24 investigations?

25 A About 23 years.

1 Q How many times did you say you've been
2 qualified as an expert?

3 A Approximately 40.

4 Q So you know how important it is to make sure
5 your diagrams and your reports are accurate?

6 A They are important, that is correct.

7 Q Okay. And you did a diagram in this case?

8 A I did a sketch, yes, ma'am.

9 Q Okay. Does this look like it enlarged?

10 A It appears to be.

11 Q I want you to make sure. Is that your diagram
12 enlarged?

13 A Yes, ma'am.

14 Q I just want to talk about --

15 MS. CAMPBELL: Objection, Your Honor. If she
16 wants to, put it into evidence before she uses it in
17 front of the jury.

18 MS. PAYNE: Demonstrative purposes, Your Honor.

19 THE COURT: Do you want to be heard?

20 MS. CAMPBELL: I just think before the jury
21 views it, Your Honor, she at least needs to mark it
22 for I.D. purposes and have some foundation done and
23 then offer -- and we have no objection with it going
24 into evidence.

25 THE COURT: You can mark it for I.D. You don't

1 want to offer it in evidence?

2 MS. PAYNE: Not at this point.

3 THE COURT: Let me see it.

4 (Defendant Boone's Exhibit Number 1,
5 diagram, marked for identification purposes.)

6 THE COURT: The objection is overruled.

7 BY MS. PAYNE:

8 Q Investigator Padgett, what's been marked as
9 Defendant's Exhibit 1, does this look like an
10 enlarged diagram of what you drew in this case?

11 A Yes, ma'am.

12 MS. PAYNE: Your Honor, may I publish it to the
13 jury?

14 THE COURT: If you can put it on that easel,
15 yes.

16 MS. PAYNE: Yes, sir.

17 BY MS. PAYNE:

18 Q Investigator Padgett, you made several
19 measurements in this case?

20 A I made some of them, yes, ma'am.

21 Q Okay. And when you were talking with Mr.
22 Sutherland yesterday, you told the jury that it's
23 not accurate?

24 A Well, the building placement are not accurate
25 because I hadn't had an opportunity to see an aerial

1 photograph before I did that sketch.

2 Q Okay. And what you told the jury yesterday was
3 that actually the door of the Waffle House looks
4 into the parking lot of the gas station; is that
5 correct?

6 A Actually, if you take the entire Waffle House
7 there and move it to the bottom of the chart the way
8 it's orientated now, it would be a little bit more
9 accurate and I noticed that after I saw an aerial
10 photograph.

11 Q Okay. So if we move the Waffle House down
12 here?

13 A Approximately.

14 Q Okay. Roughly?

15 A Rough.

16 Q And the door right here?

17 A Somewhere around there, yes, ma'am.

18 Q And, actually, this is a Mobil Gas Station,
19 right?

20 A Mobile Exxon, yes, ma'am. Exxon's part of
21 Mobil.

22 Q Okay. I understand. And the Mobil Exxon Gas
23 Station is actually perpendicular to the Waffle
24 House; isn't that correct?

25 A That's right. It come actually more this way

1 off the chart (indicating).

2 Q So it's more this way than it is that way?

3 A I suppose so.

4 Q Okay. All right. And in the Mobil Gas
5 Station, there is the Mobil Gas Station part and
6 then there's the liquor store part?

7 A Right connected to it, same building, yes,
8 ma'am.

9 Q Okay. So about right -- roughly (indicating)?

10 A Around there, sure.

11 Q It's a lot shorter than the actual Mobil Gas
12 Station?

13 A That is correct.

14 Q Okay. You measured from the bullet casings
15 that were found back here?

16 A Yes, ma'am.

17 Q To the edge of the Mobil Gas Station?

18 A Correct.

19 Q You measured to the edge of the actual
20 shell case -- or the hole that was entered inside
21 the --

22 A Yes, ma'am.

23 Q Did you measure from here to the edge of the
24 actual gas station front?

25 A I can't see the chart.

1 Q Let me turn it. Sorry about that.

2 A No, ma'am. It was actually from the rear edge
3 of the Mobil station and then to where the actual
4 hole was in the wall, that is correct.

5 Q Did you measure from where the shell -- where
6 the bullet entered to the edge?

7 A No, ma'am.

8 Q You didn't measure from here to here, okay.
9 Did you measure from where the victim's body was
10 found to the edge of the front?

11 A The victim was not there when I was doing this.
12 I came two days later.

13 Q You came two days later.

14 A That's correct.

15 Q But you've been -- you're the supervisor for
16 Investigator Allen, correct? And you've --

17 A Correct.

18 Q -- viewed all of his stuff?

19 A Yes, ma'am.

20 Q All of the pictures that he's taken?

21 A Yes, ma'am.

22 Q And the diagrams?

23 A I did.

24 Q Okay. Are you aware that Mr. Wright's body was
25 found 20 feet in in front of the Mobil Gas Station?

1 A That would be approximate.

2 Q And looking at what's been entered into
3 evidence under State's Exhibit 13, can you tell me
4 where the feet are facing?

5 A The feet are facing kind of like to the corner
6 of the Waffle House in that direction.

7 Q So like this (indicating)?

8 A More that way actually. It appears that way in
9 the picture.

10 Q Okay. So more that way?

11 A Uh-huh.

12 Q And this is Two Notch Road down here?

13 A That is correct.

14 Q So the door of the Waffle House, can you see
15 the door of the Waffle House from the victim --
16 where Mr. Wight's body is found?

17 A Yes, ma'am, you can.

18 Q Okay. And his feet are headed this way
19 (indicating)?

20 A Approximately, that's correct.

21 Q Okay. Yesterday Mr. Sutherland was also
22 talking to you about the way that shell casings pop
23 out of the gun?

24 A That is correct.

25 Q Is it consistent with the shell casings that

1 were found here from going that way or from going
2 that way?

3 A Say again.

4 Q Yes. Could he -- could Mr. Patterson have been
5 pointing back to the back parking lot or to the
6 side?

7 A He could have been pointing in any direction.

8 Q You can't say for sure?

9 A There's no way, no, ma'am.

10 Q Did you measure between these shell casings and
11 these shell casings?

12 A The shell casings that you're pointing to now
13 were not there when I collected the other shell
14 casings.

15 Q Okay. I understand. And you marked here A, B,
16 C through P?

17 A A, B, C dash P, my last name is Padgett, those
18 are mine.

19 Q Got you. I wanted to make sure of that. Does
20 a .38 revolver pop out shell casings?

21 A A revolver? No, ma'am.

22 Q Does a .32 revolver pop out shell casings?

23 A Revolvers do not eject shell casings. You can
24 open the cylinder and remove them or, you know, pop
25 them out, but they don't -- automatically, they do

1 not, that is correct.

2 Q And neither does a .357?

3 A A revolver, no, ma'am.

4 Q And you said that it was impossible to get the
5 bullet from the wall. You could not get it?

6 A It was not located.

7 Q Okay. So you don't know what kind of bullet it
8 was?

9 A No, ma'am.

10 Q It's just an assumption based on the
11 trajectory?

12 A That is correct.

13 Q You testified yesterday that the casings, you
14 could not -- that it's near impossible to get
15 fingerprints off of those. Why do you test if it's
16 impossible?

17 A Well, we'd actually did a study recently the
18 last year or so about, you know, the possibility of
19 even obtaining fingerprints or latent prints from
20 shell casings. And we did a lot of work on it, a
21 lot of studies, you know, we actually fired some,
22 tested them, different methods, different time
23 frames. And, you know, like I said yesterday, in my
24 24 years of forensics, I think I got a partial
25 latent off of one fired shell casing. And the

1 partial latent that I did get that one time, as I
2 recall, it was -- I wouldn't have been able to
3 compare it to anybody anyway.

4 MS. PAYNE: Beg the Court's indulgence.

5 THE COURT: Yes, ma'am.

6 (Pause.)

7 BY MS. PAYNE:

8 Q And you stated yesterday that the bullet that
9 hit the side of the metal gas station did not go all
10 the way through; is that correct?

11 A We did not find where it went all the way
12 through anywhere. We actually went inside the
13 liquor store, which that would have been the rear
14 wall, and looked at all the walls inside there, you
15 know, to see if it penetrated anywhere and we did
16 not find it, no, ma'am.

17 Q And, again, you are not aware that the body was
18 20 feet in in front of this Mobil Gas Station?

19 A I can look at the photographs and make an
20 approximation.

21 Q Sure.

22 A I mean, I did already is what I'm saying. It
23 appears it may be 20 feet in.

24 MS. PAYNE: No further questions.

25 THE COURT: Redirect?

1 MS. CAMPBELL: Yes, sir.

2 REDIRECT EXAMINATION

3 BY MS. CAMPBELL:

4 Q She asked you about the shell casings that you
5 collected. And, again, this is a chart you prepared
6 for your reference?

7 A Right. The reason we do these sketches are for
8 our reference so at a later date we can go back and
9 kind of orientate ourselves as to where things were.
10 They're not accurate. They're not drawn to scale.
11 They're mainly used as a reference more than
12 anything else.

13 Q And I want to show you State's Exhibit Number
14 10. Do you recognize those?

15 A Yes, ma'am. These are the three nine
16 millimeter shell casings that I collected when I
17 went out there on the 22nd. They've got my initials
18 and case number on them.

19 Q And you collected on those in what part of the
20 parking lot at the Waffle House?

21 A Right at the top left there where it says A, B,
22 C dash P, right there, yes, ma'am.

23 Q And what kind of -- was this a grassy area?

24 A It was grass.

25 Q Grass?

1 A Yes, ma'am.

2 Q So that would be next to the actual asphalt?

3 A That is correct.

4 MS. CAMPBELL: Your Honor, at this time, I'd
5 offer State's Exhibit 10.

6 THE COURT: Any objection?

7 MR. SUTHERLAND: None from us, sir.

8 MS. PAYNE: Without objection, Your Honor.

9 THE COURT: Mark those in evidence, please,
10 ma'am.

11 (State's Exhibit Number 10, shell casings,
12 admitted into evidence.)

13 BY MS. CAMPBELL:

14 Q I want to show you another document, first,
15 just ask if you recognize that?

16 A I do.

17 Q And what is that, sir?

18 A This is a sketch that Investigator Allen
19 prepared when he worked the original scene.

20 Q And, again, for the jury's qualification, is
21 that to scale?

22 A No. None of these sketches are to scale.

23 We're not architects and we don't do them to scale.

24 Q But does that generally show with measurements
25 where the shell casings and the live round he found

1 that night were located?

2 **A** Yes, ma'am, it does.

3 **MS. CAMPBELL:** Your Honor, at this time, I
4 would offer State's Exhibit 65.

5 **THE COURT:** Any objection?

6 **MR. SUTHERLAND:** Your Honor, this would be
7 hearsay being someone else's drawing.

8 **THE COURT:** Did you all not have -- is he one
9 of the people in Iraq?

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

11 **THE COURT:** Ladies and gentlemen, step in the
12 jury room, please. Don't discuss the case.

13 (The jury retires to the jury room.)

14 **THE COURT:** What did you all tell me about this
15 before? Didn't you discuss this before?

16 **MS. CAMPBELL:** Yes, sir.

17 **THE COURT:** What was the agreement?

18 **MS. CAMPBELL:** There would be no objection, but
19 I may have misunderstood.

20 **MR. SUTHERLAND:** I thought it was about
21 testimony. I didn't know that it was about exhibits
22 or drawings or anything. I thought that
23 Investigator Padgett was going to be able to testify
24 about the file that he had reviewed.

25 **THE COURT:** Anything else?

1 MS. CAMPBELL: Your Honor, this is part of the
2 file that he reviewed. This wasn't a document
3 prepared by Investigator Allen. He can testify -- I
4 can do a foundation as to why he would have prepared
5 this and everything. And I will definitely put in
6 that it's not to scale. There are photographs
7 already in evidence. This is just his rendering of
8 where the actual items were located.

9 MS. PAYNE: Your Honor, if we may join in on
10 this as well. Also, we'd object to it coming in
11 because it's not accurate. Investigator Allen was
12 there at the scene. Investigator Padgett has just
13 told you that he was not there, wasn't there for the
14 body placement. Investigator Allen's diagram is not
15 accurate and we would want to cross-examine him
16 about what he saw that night.

17 **THE COURT:** Unless it can come in under a
18 hearsay exception Rule 803, it's not going to be
19 admissible.

20 MS. CAMPBELL: Can I do it as a business
21 records exception?

22 THE COURT: I don't know. You can try.

23 EXAMINATION

24 BY MS. CAMPBELL:

25 9 Investigator Padgett, when an investigator goes

1 to a scene, does he, including making drawings, do
2 certain documentation?

3 A That is correct.

4 Q And are those documents entered into a forensic
5 file in your office?

6 A Yes, ma'am.

7 Q And are those documents kept in the normal
8 course of business?

9 A They are.

10 Q Is this one of those documents?

11 A Yes, ma'am, it is.

12 (Pause.)

13 MS. PAYNE: Your Honor, may I be heard?

14 THE COURT: I don't know if she's through yet.

15 MS. CAMPBELL: Your Honor, if I may, there's
16 another investigator that went with Mr. Allen at the
17 scene and I think he can put it in. I can mark it
18 for I.D. at this time and I'll blow it up and put it
19 in with him later. He can testify to everything on
20 here.

21 THE COURT: Okay. Mark it for identification,
22 please.

23 MS. CAMPBELL: Your Honor, that will be state
24 State's Exhibit 65 for I.D.

25 (State's Exhibit Number 65, diagram, was

1 marked for identification purposes.)

2 THE COURT: Bring the jury back.

3 (The jury returns to the courtroom.)

4 THE COURT: The objection is sustained.

5 MS. CAMPBELL: May it please the Court.

6 BY MS. CAMPBELL:

7 Q I want to show you what's been marked as
8 State's Exhibit 65 for I.D. purposes. Is that a
9 document prepared by Investigator Allen on the night
10 that he went to the scene?

11 A Yes, ma'am, it is.

12 Q And were you aware that Investigator Matt Ellis
13 was also at the scene with him that night?

14 A Investigator Ellis was also at the scene.

15 Q And does that, you can't say what's on it, but
16 does that document reflect the measurements and
17 everything that he took that night with collecting
18 the shell casings, the live round and other evidence
19 there at the scene?

20 A That is correct.

21 Q There's been some question as to this diagram
22 drawing, this diagram drawing. I want to show you
23 what's been marked as State's Exhibit Number 13.
24 What's the purpose of taking photographs at the
25 crime scene? Why is that so important?

1 A The purpose of taking photographs is that gives
2 you an accurate real picture of what the scene
3 looked like.

4 Q And when y'all do diagrams and stuff, you
5 approximate so much?

6 A Those are approximate, you know, placement of
7 buildings, placement of items. The reason we do the
8 measurements on there is because if, for some reason
9 at a later date, for example, if I needed to go out
10 and put my shell casings that I collected in the
11 spot that I collected them, by the measurements to
12 walls or to certain fixed objects, I could go out
13 there with a measuring tape or a laser distance
14 finder and actually place those shell casings in an
15 approximate, you know, area that I located them in.
16 So the measurements are accurate, that's why we have
17 to do that. As far as the drawings, it's a sketch
18 of what the scene looked like and that's why we do
19 take photographs.

20 Q But say in State's Exhibit Number 17, that
21 accurately shows exactly where those shell casings
22 or the live round were located that night?

23 A That is correct and that's why we take the
24 photographs and then we -- like I said, we measure
25 them so if I needed to go back out there and

1 actually place these items where they are from the
2 measurements, I could do that.

3 Q And, in fact, in the back part of the parking
4 lot at the Waffle House, State's Exhibit Number 25,
5 does that show the back of the parking lot?

6 A That is correct. That's the side area right
7 back here and there's some other objects of evidence
8 that you can see that are marked on the sketch.

9 Q In this case, also, one of the nine millimeter
10 shell casings was found towards the back of the
11 parking lot, what was it stuck to?

12 A It was stuck to a Styrofoam like takeout plate,
13 the shell casing was.

14 Q And referring to that photograph, it's not
15 reflected in that photograph, is it, State's Exhibit
16 25?

17 A I cannot see it. I know it's a black Styrofoam
18 plate and it's a little hard to see. I'm not sure
19 if it's in that photograph or not.

20 Q It is, however, reflected in one of the other
21 photographs?

22 A It is in, I think, in a couple photographs, you
23 can actually see the black Styrofoam plate. It's on
24 the asphalt, the black asphalt. It's just hard to
25 see.

1 Q And the placement that Mr. Allen would have put
2 it on here was next to which item?

3 A It was right next to another nine millimeter
4 shell casing that was located.

5 Q But the plate is located in a different part of
6 the parking lot, can you explain that?

7 A It could have blown away. It was a Styrofoam
8 plate. He has it marked, like I said, at that shell
9 casing. In the photograph that I think I looked at
10 earlier, you can see the actual plate itself. And
11 being a Styrofoam plate, it could have blown from
12 where it was originally located.

13 Q When you went back two days later, you
14 mentioned that you found these additional, I think
15 it's State's Exhibit 10. Is that the exact location
16 where you found those additional nine millimeter
17 shell casings?

18 A Yes, ma'am. I marked them with the yellow
19 markers, that is correct.

20 Q And this is State's Exhibit 35?

21 A That's State's Exhibit 35, that is correct.

22 Q And so that accurately reflects exactly where
23 you found those shell casings; is that right?

24 A Yes, ma'am, that's where they were before I
25 removed them, I photographed them and marked them.

1 Q And then you went and used -- to the Mobil
2 station next to it, State's Exhibit 47, what does
3 that dial show?

4 A That dial shows the reverse trajectory that the
5 projectile would have traveled when it hit the side
6 of the Mobil station.

7 Q And, approximately, how far was the distance
8 from where the hole was on the side of the Mobil
9 station to where you found those three shell casings
10 approximately?

11 A Eighty-nine feet six inches from the hole in
12 the wall to where I found the shell casings.

13 Q And you're an expert in crime scene
14 investigation?

15 A Yes, ma'am.

16 Q Can a nine millimeter travel that distance?

17 A Easily.

18 Q Can it travel further?

19 A A lot further.

20 Q I want to show you what's been marked as
21 State's Exhibit Number 64. Does that fairly and
22 accurately depict an overview of the Mobil station
23 and the Waffle House?

24 A Yes, ma'am, that's an aerial photograph of the
25 area.

1 MS. CAMPBELL: Your Honor, at this time, I'd
2 offer it.

3 MR. SUTHERLAND: Without objection, Your Honor.

4 MS. PAYNE: Without objection.

5 THE COURT: Thank you. Mark it in evidence,
6 please.

7 (State's Exhibit Number 64, aerial
8 photograph, admitted into evidence.)

9 BY MS. CAMPBELL:

10 Q To refer to Defendant's Exhibit 1 --

11 MS. CAMPBELL: Your Honor, may the witness step
12 down?

13 THE COURT: Yes, ma'am.

14 (Witness leaves the witness stand.)

15 BY MS. CAMPBELL:

16 Q There's been some question as to the actual
17 placement. Does this accurately show how these
18 buildings are placed?

19 A Yes, ma'am.

20 Q And is that in the report in this case?

21 A It is.

22 Q Where exactly is the Waffle House?

23 A Waffle House is right here. This is Two Notch
24 Road.

25 Q Where exactly is the Mobil station itself?

1 A This is the Mobil station and this is the
2 awning that goes over the gas pumps.

3 Q Where was Mr. Wright's, 15-year-old
4 Mr. Wright's body located on there?

5 A Approximately in this area right here.

6 Q And I show you State's Exhibit Number 13. Does
7 that accurately show exactly where his body was?

8 A Yes, ma'am, that's correct.

9 Q Where he died?

10 A Yes, ma'am.

11 Q And, again, the reason for photographs?

12 A It's an accurate -- a photograph is an accurate
13 portrayal of the actual scene before anything's
14 moved or collected.

15 Q And State's Exhibit Number 13, can you see
16 where the front door to the Waffle House is?

17 A Yes, ma'am, you can. It's directly...

18 COURT REPORTER: Can you speak up some, please?

19 MS. CAMPBELL: I'll switch sides. I apologize.
20 That's my fault.

21 BY MS. CAMPBELL:

22 Q Can you actually see here in State's Exhibit 13
23 where the front door to the Waffle House is?

24 A Yes, ma'am. It's right behind Mr. Wright
25 underneath -- may I see the photograph?

1 Q Sure.

2 A Just to the left of the sign where it says
3 Waffle House, the doors are located right here.

4 Q And where is that located here on State's
5 Exhibit Number 64?

6 A Right here.

7 Q Right here?

8 A Yes, ma'am.

9 Q And is that directly across from where
10 Mr. Wright's body is?

11 A That is correct.

12 Q And the shell casings that you found in the
13 grassy area, where is that located on State's
14 Exhibit 64?

15 A Approximately, this grass area right here.

16 Q The shell casings that were found that night by
17 Mr. Allen, and you can refer to State's Exhibit
18 Number 65 for I.D. at this time, where were the .380
19 shell casings and the live round located here on
20 State's Exhibit 64?

21 A The live round was located, approximately, in
22 this area (indicating). The two .380 expended shell
23 casings were located in, approximately, this area.

24 Q And that area, again, would be in front of the
25 front door directly across?

1 A That is correct.

2 Q And then the nine millimeter spent shell
3 casings that he was able to locate, the two towards
4 the back of the parking lot, where were those
5 located?

6 A Approximately, this area here.

7 Q And where, again, was it that you found the
8 additional nine millimeter shell casings in the
9 grassy area?

10 A This area here.

11 Q And, again, all this is reflected in the
12 photographs?

13 A That is correct..

14 Q Thank you. Please have a seat.

15 A (Witness resumes the witness stand.)

16 MS. CAMPBELL: Beg the Court's indulgence.

17 THE COURT: Yes, ma'am.

18 (Pause.)

19 BY MS. CAMPBELL:

20 Q The distance from where the .380s are to where
21 Mr. Wright's body, would a .380 caliber
22 semiautomatic weapon be able to shoot someone from
23 that distance?

24 A Absolutely.

25 Q The distance from the nine millimeter shell

1 casings, either the ones found in the parking lot or
2 the ones found in the grassy area, would they be
3 able to shoot someone from that distance?

4 A Absolutely.

5 Q And to your knowledge, were there any other
6 shell casings or any other type of ammunition or
7 anything found?

8 A We did not locate any other shell casings.

9 Q Were you ever able to find the projectile that
10 went through Brian Wright's head?

11 A No, ma'am. There was an entrance wound, exit
12 wound and it could be anywhere.

13 Q Is that unusual?

14 A Not unusual at all.

15 (Pause.)

16 MS. CAMPBELL: Thank you.

17 THE COURT: All right. Recross?

18 MR. SUTHERLAND: Please the Court.

19 THE COURT: Yes, sir.

20 RECROSS-EXAMINATION

21 BY MR. SUTHERLAND:

22 Q I just, very quickly, when Ms. Payne was up
23 here talking about these .380 shell casings, she
24 used a name. You're not aware of any evidence --
25 anything that's in evidence, any testimony, any

1 evidence at all about a name regarding who -- that's
2 in evidence here today, about a name regarding who
3 ever might have been standing near those things; is
4 that correct, sir?

5 A I don't recall any names, sir.

6 Q I mean, from this testimony, evidence?

7 A I don't recall any names.

8 Q Now, Ms. Campbell had -- and imagine this being
9 shifted the way that it was, but Ms. Campbell, I
10 think, had you testify that this door was -- that
11 the front door of the Waffle House was basically
12 directly across from where the victim was found?

13 A That is correct.

14 Q Okay. Now, it's also downhill, isn't it?

15 A I think there's a slight grade as I recall.

16 Q And this is State's 13. Now, these are parking
17 places?

18 A That is correct.

19 Q Yes, sir. And at the time that y'all were
20 there, there's -- does it appear in State's 13 that
21 there is just one car in the parking places there?

22 A At the time this photograph was taken, I can
23 only see one car. There could be more cars behind
24 the building that I cannot see.

25 Q Yes, sir. And -- I mean, ultimately, you know,

1 the issue is, at the time, how many cars were there,
2 but you can't know that, so --

3 A I wasn't there, sir, I don't know.

4 Q Yes, sir. So in State's 13, there's a car
5 there that's slightly downhill. And are you aware
6 of how many people were there or -- at the time of
7 this incident, just that it was a bunch of people
8 or --

9 A I have no idea, sir. I wasn't there.

10 MR. SUTHERLAND: No further questions. Thanks.

11 THE COURT: Anything else, Ms. Payne?

12 MS. PAYNE: Yes, Your Honor.

13 RECROSS-EXAMINATION

14 BY MS. PAYNE:

15 Q Ms. Campbell showed you State's Exhibit 64.
16 You said this is an accurate reflection of what that
17 scene looked like; is that correct?

18 A It's an aerial photograph of the Waffle House
19 and the Mobil station.

20 Q Yes, sir. Are you telling me that it's
21 impossible to draw a diagram that's to scale?

22 A I can't do one, ma'am.

23 Q You've never done one?

24 A Not to scale, no, ma'am, never.

25 Q You don't think it would be helpful to the

1 Solicitor's office to determine what they're going
2 to do with their case?

3 A To do?

4 Q Whether they're going to proceed on a
5 particular charge? You just --

6 A Oh, I don't know, ma'am. I would actually have
7 to hire an architect to do that. I don't have the
8 knowledge or the experience to do any type of
9 diagram or sketch to scale.

10 MS. PAYNE: If I may grab the pointer, Your
11 Honor.

12 Q I believe in your diagram you said that -- or
13 you put on your diagram where you found the nine
14 millimeter shell casings the third day that you went
15 back out there?

16 A Yes, ma'am.

17 Q That they were 68 feet back?

18 A They were 68 feet, 11 inches from the rear of
19 the Mobil station, the very rear corner, that is
20 correct.

21 Q In this courtroom, where would 68 feet be?

22 A I'm not real good at approximations, I'll be
23 honest with you.

24 Q Just approximate?

25 A I would think 68 feet may be to that back wall

1 or maybe a little bit further.

2 Q Where would 89 feet be?

3 A Further.

4 Q And you didn't take one at the front of the --
5 front corner of the Mobil Gas Station, right? That
6 would be even further?

7 A It would be slightly further, yes, ma'am, maybe
8 about five feet, six feet at the most.

9 Q And where Brian Wright's body was, would be
10 even further?

11 A It would be further, that is correct.

12 Q Okay. And you had been looking at -- you were
13 looking at State's Exhibit 13?

14 A Yes, ma'am.

15 Q Where is the grassy area in that picture?

16 A Behind the Mobil station back behind here.

17 Q Can you see it in that picture?

18 A No, ma'am.

19 Q You can't see it in this picture?

20 A No, ma'am, the building's blocking it.

21 MS. PAYNE: I have no further questions, Your
22 Honor.

23 THE COURT: Anything else of this witness?

24 MS. CAMPBELL: No, sir.

25 THE COURT: Thank you sir, you may step down.

1 Call your next witness, Solicitor.

2 MR. GOLDBERG: State calls David Daniel.

3 DAVID JOSEPH DANIEL,

4 having been duly sworn, testified as follows:

5 THE CLERK: Have a seat in the witness box.

6 State your full name for the record, please.

7 THE WITNESS: My name is David Joseph Daniel.

8 DIRECT EXAMINATION

9 BY MR. GOLDBERG:

10 Q Mr. Daniel, where are you employed?

11 A With Richland County EMS.

12 Q And what are your duties with Richland County

13 EMS?

14 A I'm a paramedic crew leader. Basically, I'm in
15 charge of the ambulance I'm on.

16 Q Can you tell the jury typically what that
17 involves doing?

18 A Well, for the obvious thing, you know, for
19 patient care wise, I'm the one who's responsible
20 for, you know, doing any advance care or any of the
21 decisions and making sure that, you know, the units
22 got all the equipment and everything like that.

23 Q How long have you been doing this?

24 A Twenty-two years.

25 Q And back in February of '07, did you respond or

1 get a call about an incident at the Waffle House,
2 Mobil station of Two Notch and I-20?

3 A Yes.

4 Q Do you recall the nature of the call that you
5 got?

6 A I believe it went down as a shooting.

7 Q And when you got that call and arrived at the
8 scene, what did you do?

9 A Well, my supervisor had arrived just right like
10 a minute or two before we did and she said that it
11 appeared that the person was deceased. At that
12 point, we took out our heart monitor and then
13 approached where the victim was.

14 Q And when you approached the victim, what did
15 you observe?

16 A I saw a black male laying on the ground with a
17 obvious gunshot wound to the forehead and obviously
18 appeared was not breathing, did not have a pulse.
19 And we hooked him up to the heart monitor, at which
20 time, it showed he had no electrical activity in the
21 heart and we determined him to be deceased at that
22 point.

23 Q When you hooked him up to the heart monitor,
24 did you move the body in any way?

25 A No. Generally, I tried to -- in a crime scene

1 where it's obvious the person is deceased, I don't
2 want to, you know, move the person to alter
3 anything. To hook him up to the heart monitor, you
4 generally just need to put patches up on the chest
5 and one down here just to lift up the shirt.

6 Q And you said you'd observed a obvious gunshot
7 wound. Can you describe a little more detail what
8 you observed about the patient?

9 A He had a gunshot wound to the forehead. You
10 could obviously see bone fragments and there was
11 actually brain matter protruding from the wound.

12 Q And blood obviously?

13 A Yes. There was a large amount of blood that
14 was behind the patient's head running down the
15 pavement at the gas station.

16 Q And once you put the monitor on and determined
17 he was deceased, what did you do after that?

18 A At that point, we just removed the monitor and
19 then left, went back out -- we parked on the street,
20 so we went back out and then completed paperwork and
21 left the scene.

22 MR. GOLDBERG: I believe that's all I have.
23 Thank you.

24 THE COURT: Cross?

25 *****

1 CROSS-EXAMINATION

2 BY MR. SUTHERLAND:

3 Q Sir, are you aware of what time you might have
4 arrived at the scene?

5 A I'd have to look at the paperwork to be exact,
6 but I believe it was some time -- it's on the run
7 report the exact time we showed up. If you have a
8 copy of that, I could tell you.

9 Q I've got the crime scene log here. You're
10 Mr. David Daniel?

11 A Yes, sir.

12 Q Well, you're not in here, sir. No further
13 questions. Thanks.

14 THE COURT: Any questions on behalf of
15 Mr. Boone?

16 MS. EVERHART: No, Your Honor.

17 THE COURT: Anything else from the State on
18 this witness?

19 MR. GOLDBERG: No, sir.

20 THE COURT: Thank you, sir. You may step down.
21 Call your next witness.

22 MS. CAMPBELL: May it please the Court.

23 THE COURT: Yes, ma'am.

24 MS. CAMPBELL: The State calls Sergeant Stan
25 Richards.

1 STAN RICHARDS,
2 having been duly sworn, testified as follows:

3 **THE CLERK:** Have a seat in the witness box.
4 State your full name for the record, please.

5 **THE WITNESS:** Stan Richards.

6 DIRECT EXAMINATION

7 BY MS. CAMPBELL:

8 **Q** Sergeant Richards, where are you employed?

9 **A** With Richland County Sheriff's Department.

10 **Q** What do you do there, sir?

11 **A** At present, I am with the crime scene unit.

12 **Q** Can you tell this jury a little bit about your
13 background, your education?

14 **A** Yes, ma'am. My undergraduate studies was with
15 Saint Leo University in criminology, had some
16 graduate studies with Wayland Baptist University in
17 sociology. I have had experience and training in
18 crime scene investigation, marijuana testing, blood
19 pattern analysis, DNA procedures, latent
20 verification, crime scene photography, palm print
21 verification, latent processing, shoe and trek wear
22 impressions, AFIS training, crime scene
23 reconstruction, comparison examinations on footwear,
24 advanced blood pattern analysis, gunshot -- gun
25 sight and forensic shooting reconstruction. And,

1 also, I am certified through the International
2 Association for Identification as a crime scene
3 investigator.

4 Q And have you been qualified before as an expert
5 in crime scene investigations?

6 A I have.

7 Q And do you know, approximately, how many times?

8 A Approximately, 11 times.

9 MS. CAMPBELL: Your Honor, at this time, we'd
10 offer him as an expert.

11 THE COURT: Any voir dire, Mr. Sutherland?

12 MR. SUTHERLAND: No, sir.

13 THE COURT: Any voir dire, Ms. Payne?

14 MS. PAYNE: No, Your Honor.

15 THE COURT: He is so recognized. You may
16 continue.

17 BY MS. CAMPBELL:

18 Q Sergeant Richards, just for the record, you
19 didn't actually go to the crime scene the night that
20 this occurred; is that correct?

21 A I did not, ma'am.

22 Q However, on the 20th of February, did you
23 receive certain evidence that had been collected
24 from the crime scene?

25 A I did.

1 Q And what was the purpose in -- and who did you
2 collect that evidence from?

3 A I received that evidence from Lieutenant
4 Padgett on a internal chain of custody for
5 processing.

6 Q And when you say for processing, what was your
7 intent in doing with the items that were collected?

8 A My intent was to see if I could find any latent
9 print evidence on the items that I was given, also
10 to process for DNA collection.

11 Q And exactly on the 20th, what items were turned
12 over to you that had been collected by, I believe,
13 Investigator Allen at the crime scene?

14 A Yes. I received one live .380 round, which is
15 a unfired cartridge; two fired .380 cartridges or
16 spent shell casings; two fired nine millimeter
17 cartridges or spent shell casings; one plastic tray;
18 one plastic bottle; one gum wrapper; one candy bag;
19 five quarters; one dollar bill -- one one dollar
20 bill; and one Minolta cell phone.

21 Q And, sir, tell this jury -- you process crime
22 scenes yourself; is that correct?

23 A I do.

24 Q And when you go to a crime scene and collect
25 certain items, do you know whether or not they may

1 have anything to do with the actual -- how do you go
2 about collecting items at a crime scene? What do
3 you do out of an abundance of caution?

4 A Well, I have to say that first off when you go
5 to a crime scene, there's a lot of things going on
6 at one time, so a scene is very dynamic. What you
7 have to do is try to identify to the best of your
8 ability what you think may be relevant and then you
9 have to preserve that the best that you can and
10 collect it for physical evidence. What you look
11 for, of course, in a shooting incident, any
12 cartridge cases, any rounds, anything that has to
13 do, or paraphernalia has to do with shooting. You
14 mark those, photograph them, then later collect
15 those items in order to process them for latent
16 prints, DNA or whatever you're looking for.

17 Q And, in this case, you mentioned that there was
18 like a plastic bottle, a gum wrapper, candy bag that
19 were collected. Did those necessarily have anything
20 to do with the scene? Would you collect them out of
21 an abundance of caution?

22 A Yes, we would. At a crime scene, you collect
23 anything that looks out of place that might be there
24 with the possibility of having some type of
25 evidence.

1 Q You mentioned specifically that you received
2 one unfired .380 shell casing?

3 A Yes.

4 Q Excuse me, 380 cartridge?

5 A .380 cartridge.

6 Q And then you received two fired .380
7 cartridges?

8 A Yes.

9 Q And two fired nine millimeter cartridges?

10 A Yes.

11 Q I want to show you what's been marked as
12 State's Exhibit Number 67 and 66. First, just ask
13 if you can look at those and see if those are, in
14 fact, the items that I just mentioned?

15 A These in the first envelope are .380 fired
16 cartridge casing, a nine millimeter fired cartridge
17 casing and a live round, which is a .380 round,
18 marked A, B and E.

19 Q A, B and E?

20 A Well, this one's not marked as E, I'm sorry.
21 This one's unmarked, but it's a nine millimeter
22 casing found under a plate. These were three that I
23 processed.

24 Q And that would have been, just for reference,
25 State's Exhibit 67?

1 A Yes, ma'am. The other two marked D and C --
2 one marked C, a .380 fired cartridge casing, and one
3 marked D, a nine millimeter fired cartridge casing.
4 Those two I also processed.

5 MS. CAMPBELL: Your Honor, at this time, we'd
6 offer into evidence State's Exhibit 66 and 67.

7 THE COURT: Any objection?

8 MR. SUTHERLAND: Your Honor, I would have a
9 reservation and objection about the .380 shell
10 casings, sir.

11 THE COURT: Ladies and gentlemen, please, step
12 in the jury room. Don't discuss the case.

13 (The jury retires to the jury room.)

14 THE COURT: What's your objection?

15 MR. SUTHERLAND: Your Honor, for the record, we
16 had spoken earlier and agreed about the supervising
17 agent being able to testify about reviewing his
18 reports and -- the reports of Bill Allen and
19 everything, but with respect to the .380 rounds, we
20 would just make the objection that there's a gap in
21 the chain of custody with the absence of
22 Investigator Allen and that, therefore, they
23 shouldn't be admitted into evidence.

24 THE COURT: Yes, ma'am.

25 MS. CAMPBELL: Your Honor, I would refer to

1 State versus Taylor, State versus Sweet, State
2 versus Mathis. I believe Taylor is a 2004 Court of
3 Appeals case. In that case, again the presiding
4 person was -- there was a person missing out of the
5 chain. I believe they had died in that case or
6 unavailable for whatever reason. The court said as
7 long as we can prove, and I believe the testimony
8 from Investigator Padgett was, they were collected,
9 they were put in his locker, he then released them
10 to Sergeant Richards on the 20th. So there is no
11 gap in the chain. I would hand up Taylor or give
12 you the cite, whichever you prefer.

13 And this is also something we discussed, that
14 was the reason we didn't bring this up at pretrial.

15 **THE COURT:** Let me see the cases.

16 **MS. CAMPBELL:** Your Honor, I'd also note that
17 there are some photographs that were not objected to
18 that are already in evidence to each of these items.

19 **THE COURT:** And what's your position,
20 Mr. Sutherland?

21 **MR. SUTHERLAND:** It was just our position, Your
22 Honor, that since there is a gap in the chain of
23 custody since Investigator Allen is not able to come
24 here and actually testify himself as to the
25 collection of these items and what might have

1 happened between, I know that he has a report, but
2 to whatever might have happened between the
3 collection of these items and putting them in his
4 locker, sir, we would just cite that the gap in the
5 chain of custody, we would argue that that would be
6 a reason to deny the admission of the shell casings,
7 sir.

8 (Pause.)

9 **THE COURT:** Can you get him to lay a little bit
10 -- first of all, before I ask you that question, I
11 went back and looked when you all discussed this,
12 when we went through the pretrial motions, Ms.
13 Campbell brought the issue up, brought up the fact
14 that Mr. Allen is not available, he's in Iraq, and
15 that there was a discussion about that. And Ms.
16 Payne stated that there was not going to be any
17 objection to the chain of custody.

18 Now, obviously, she doesn't represent
19 Mr. Patterson. Then I asked Mr. Sutherland if there
20 was anything else on that issue and he said no. I
21 can't say that necessarily binds him, but it was
22 misleading to me.

23 **MR. SUTHERLAND:** Your Honor, I'm sorry.

24 **THE COURT:** If there was going to be an issue,
25 I could have been far more precise in my

1 questioning, but what I was trying to figure out, if
2 there was going to be any issue about this.

3 Now, this is not something like blood or
4 something that would dissipate. The rules are
5 different for things like shell casings, but can you
6 get him to lay a little bit more foundation about
7 how he acquired them and where he acquired them
8 from?

9 MS. CAMPBELL: Yes, sir. And I think I did go
10 through it with Investigator Padgett that it would
11 have been put in Mr. Allen's locker, that he and
12 Mr. Allen were the only ones with keys, that they
13 would have been secure, no one could tamper with
14 them. I think that's already in the record.

15 THE COURT: It is.

16 EXAMINATION

17 BY MS. CAMPBELL:

18 Q Sergeant, when exactly did you receive these
19 items from Mr. Allen's locker from Lieutenant
20 Padgett?

21 A At 8:20 in the a.m. on the 20th of February
22 '07.

23 THE COURT: And is there any particular way he
24 can identify them aside from -- are they marked or
25 anything?

1 BY MS. CAMPBELL:

2 Q What identifying factors were on these items?

3 A The shell casings themselves, Your Honor, are
4 not marked by us. They are placed in individual
5 containers or envelopes and marked by me, placed in
6 a larger envelope in order to go to evidence and
7 marked and handwritten by me.

8 THE COURT: What about in this case?

9 BY MS. CAMPBELL:

10 Q Were there any identifying factors on State's
11 Exhibit 67?

12 A These are all my handwriting, A is live round.
13 And my initials on the back of the evidence tape
14 where I sealed them on each one of those.

15 THE COURT: All right. Anything else, Mr.
16 Sutherland?

17 MR. SUTHERLAND: No questions of this witness,
18 Your Honor.

19 THE COURT: Anything else?

20 MS. PAYNE: We do not object, Your Honor.

21 THE COURT: If that foundation is established,
22 the objection will be overruled.

23 MS. CAMPBELL: So just go through that?

24 THE COURT: Just go through a little bit about
25 that.

1 MS. CAMPBELL: Your Honor, with the Court's
2 permission, it might be better if I mark them
3 individually.

4 THE COURT: Sure.

5 MS. CAMPBELL: Beg the Court's indulgence.

6 THE COURT: No problem.

7 (Pause.)

8 MS. CAMPBELL: For the record, Your Honor, I've
9 marked them individually. Item A is 66, item B is
10 67, item C is 68, D is 69, and the round found in
11 the plate would be 70.

12 THE COURT: Make sure the court reporter has
13 all of that squared away.

14 (Pause.)

15 MS. CAMPBELL: Thank you, Your Honor.

16 THE COURT: Bring in the jury, please.

17 (The jury returns to the courtroom.)

18 THE COURT: Go through the foundation please,
19 Solicitor.

20 MS. CAMPBELL: May it please the Court.

21 THE COURT: Yes, ma'am.

22 BY MS. CAMPBELL:

23 Q Sergeant, you're an actual supervisor in the
24 forensic unit?

25 A I am now, yes, ma'am.

1 Q And tell this jury, y'all have certain evidence
2 lockers where you place evidence temporarily until
3 further testing can be done?

4 A We do.

5 Q And is that evidence then secure once it's
6 placed in that locker?

7 A It is.

8 Q And Investigator Allen's evidence locker would
9 it have been secure at the time?

10 A Yes.

11 Q When did you actually receive these items, one
12 unfired cartridge casing, .380; the two fired .380s;
13 and the nine millimeter .380 fired cartridge cases?

14 A I received those on a chain of custody form
15 from Lieutenant Padgett on the morning of February
16 20th, '07 at 0820 in the morning.

17 Q 8:20 in the morning?

18 A Yes, ma'am.

19 Q On the 20th?

20 A Yes, ma'am.

21 Q And these events occurred on the 19th?

22 A Yes, ma'am.

23 Q And once Investigator Allen had collected these
24 items and put them into his evidence locker, would
25 anyone have had an opportunity to tamper with them

1 or alter them in any way?

2 A No one can get into those lockers except
3 supervisors.

4 Q And I want to show you items I marked -- they
5 originally came to you in a larger envelope; is that
6 correct? I want to show you the individual
7 envelopes, which I have remarked, State's Exhibit 66
8 through 70; do you recognize those?

9 A Yes, I do.

10 Q And were those items properly packaged when you
11 received them?

12 A Yes, they were. They came straight out of the
13 locker and given to me packaged the way Investigator
14 Allen had packaged them. I processed them,
15 repackaged them. I sealed them with evidence tape,
16 initialed them myself, placed them in the larger
17 envelope, sealed and initialed myself.

18 Q And on items 66 through 70, are there
19 identifying factors showing where you actually --
20 after testing them or doing some tests on them,
21 actually resealed them yourself?

22 A Yes, ma'am, my initials are on the evidence
23 tape.

24 Q And when you received those items, were there
25 any evidence that anyone had tampered with them or

1 altered them in any way?

2 A No, ma'am.

3 MS. CAMPBELL: Your Honor, at this time, we'd
4 offer 66 through 70.

5 THE COURT: Subject to previous objection?

6 MR. SUTHERLAND: Yes, sir.

7 THE COURT: Mark them in the record, please,
8 ma'am.

9 (State's Exhibit Numbers 66 through 70,
10 shell casings, admitted into evidence.)

11 BY MS. CAMPBELL:

12 Q When you received these items, what tests were
13 you going to do on them?

14 A First always test in the lab for latent prints.

15 Q And tell this jury, how do you go about testing
16 such -- on items such as the spent shell casings for
17 latent prints?

18 A Well, it would be best to say there's different
19 ways that you test for -- using different chemicals
20 for latent prints. If I may, very simply, a latent
21 print is developed because of the oils on your
22 fingertip. I guess all of you have looked at your
23 fingers and you've noticed the ridges on the end of
24 your fingertips.

25 On those ridges, there are pores and you sweat

1 out of those pores and what comes out is fatty oils
2 or amino acids. Those oils adhere to items or
3 substrates that you may touch leaving an impression
4 of the ridges sometimes on the items that you
5 actually touched. We use chemicals to either
6 enhance those things because they're hard to see
7 with the naked eye or chemicals that react with the
8 amino acids or fatty oils to enhance those latent
9 impressions and that's what I did.

10 On the items, the one unfired cartridge casing
11 and the four fired cartridge casings and including
12 the plastic tray, plastic bottle, the gum wrapper,
13 the peach candy bag and the Minolta cell phone, I
14 used a chemical called Cyanoacrylate and I fume
15 that. What that actually entails is putting these
16 items in a fuming chambers that is enclosed using a
17 chemical known as Cyanoacrylate, which is really
18 Super Glue.

19 What that does, you heat that up, it goes into
20 the air, mix it with moisture that you may have with
21 a vaporizer -- that you would have with a vaporizer
22 inside the chamber also, it becomes an aerosol.
23 That aerosol will adhere to those fatty oils and
24 amino acids that may be on the substrate or on the
25 item itself inside the chamber, then you're able to

1 see those latent prints, if there are any.

2 That's what I did with those items and there
3 was negative results on all of them.

4 Q So including the fired cartridge casings,
5 the .380s, one unfired and the two fired nine
6 millimeter cartridges, you said your results were
7 negative, what does that mean?

8 A That means I did not find any identifiable or
9 usable latent prints. That means I could have seen
10 some partial, which might mean a ridge or two or
11 three ridges, that's not enough there to use to
12 identify anything with anybody. I have seen those
13 before on cartridge cases. It's very, very seldom
14 that you would -- I've never seen a usable or
15 identifiable print on a cartridge case or a round
16 for that matter.

17 Q And why is that?

18 A Well, it's because the materials -- for
19 different reasons. There are some materials that
20 these things are made out of copper, lead, whatever
21 they might be are just not conducive to leaving a
22 print. As I've told you before, these are oils
23 we're talking about, oils that go on something and
24 can be removed very easily if they're rubbed. The
25 weather can affect those type things. Oil, of

1 course, won't sit on a water base if something is
2 wet.

3 So a latent print is a very fragile piece of
4 physical evidence, so it can be removed very, very
5 easily. It's not as easy to come up with a
6 identifiable and usable latent print as some people
7 might think.

8 Q So if I walk up and I touch this like this, am
9 I necessarily going to leave an identifiable print?

10 A Not necessarily.

11 Q Does the surface make a difference?

12 A Yes, it does.

13 Q Does the fact that whether or not my finger may
14 move or roll make a difference?

15 A Yes. Smudging is when you put your hand or
16 your finger down on a substrate and you move it
17 across like you're twisting a doorknob. A lot of
18 people think just because you've touched a doorknob,
19 you might get a latent print, but when you move your
20 hand and your fingers, that's called a smudging.
21 You've got to have those ridges develop before you
22 can do anything with a latent print.

23 Q And there were other items such as, I think,
24 candy wrappers, a gum wrapper and a plastic tray
25 that you also tested?

1 A That's correct.

2 Q And were you able to get any identifiable
3 prints off those?

4 A I did not.

5 Q And do you know whether or not those had
6 anything to do with the shooting?

7 A I do not.

8 Q Did you also take some swabs from the items you
9 had mentioned?

10 A Yes, I did. I fully developed the five
11 quarters and the penny and the dollar bill. I
12 processed those also with a different chemical. I
13 used magnetic powder on the coins, didn't develop
14 anything on those either. I used a chemical known
15 as Ninhydrin, which is a reactor which reacts with
16 amino acids in a nonporous item like a dollar bill.
17 I had negative results on that also. On all of
18 those items, I swabbed those items for possible DNA
19 and those swabs were submitted to our DNA lab.

20 Q Once you had processed all the items, including
21 the cartridge casings and the live round, what did
22 you do with those items?

23 A Those items were packaged the same as the
24 cartridge casings and they were submitted to
25 evidence for appropriate disposition.

1 Q And, specifically, items 66 through 70, the
2 ammunition found at the scene, would that have been
3 tested by another person?

4 A Yes. I marked those to go to our firearms
5 department, ballistics.

6 Q And who is your firearms examiner?

7 A David Collins.

8 Q And during the time period that you had those
9 items 66 through 70 in your care, did anyone alter
10 them, tamper with them or do anything to them?

11 A Absolutely not.

12 Q And when you submitted them, were they packaged
13 properly?

14 A Yes, they were.

15 Q Did you also become aware that some gunshot
16 residue kits had been collected by Investigator
17 Allen the night of the shooting?

18 A Yes.

19 Q And I'm going to show you what's been marked as
20 item 71. Did you submit those items taken from
21 Investigator Allen's locker into evidence for
22 further testing?

23 A Yes, I did.

24 MS. CAMPBELL: Your Honor, at this time, we'd
25 offer item 71 into evidence.

1 THE COURT: Any objection to this?

2 MR. SUTHERLAND: No objection, sir.

3 MS. PAYNE: Without objection, Your Honor.

4 THE COURT: Thank you.

5 (State's Exhibit Number 71, GSR kit,
6 admitted into evidence.)

7 BY MS. CAMPBELL:

8 Q I want to turn your attention to -- and all
9 that testing that you've testified to and all that
10 as far as the fingerprinting, getting the DNA swabs
11 and everything, what date did that occur on?

12 A On the 20th.

13 Q And then you submitted those items into
14 evidence on that day?

15 A Yes, ma'am.

16 Q Later on March the 5th, 2007, did you again get
17 involved in this case as far as the search warrant?

18 A Yes, ma'am.

19 Q And what was requested of you regarding a
20 burgundy Malibu Chevrolet?

21 A Right. I was requested to execute a search
22 warrant on a '98 Chevy Malibu, burgundy in color,
23 tag 316 UFZ, which was located at our secure
24 compound facility.

25 Q And I want to show you what's been marked as

1 State's Exhibits Number 57 through 61. Do you
2 recognize those photographs?

3 A Yes, ma'am. These are photographs of the
4 vehicle that I executed the search warrant on.

5 MS. CAMPBELL: Your Honor, at this time, we'd
6 offer them into evidence.

7 THE COURT: Any objection to this?

8 MR. SUTHERLAND: No objection.

9 MS. PAYNE: Without objection, Your Honor.

10 THE COURT: Mark it into evidence, please.

11 (State's Exhibit Numbers 57 through 61,
12 photographs, admitted into evidence.)

13 BY MS. CAMPBELL:

14 Q Looking at State's Exhibits Number 57 and 58,
15 is that the car you were actually processing on
16 March the 5th of 2007?

17 A Yes, ma'am.

18 Q Specifically, you were looking for any evidence
19 of weapons, fired or unfired cartridge casings?

20 A That's correct.

21 Q And did you find any in that car?

22 A I did not.

23 MS. CAMPBELL: Thank you, sir. That's all I
24 have.

25 THE COURT: All right. Cross?

1 MR. SUTHERLAND: Please the Court.

2 CROSS-EXAMINATION

3 BY MR. SUTHERLAND:

4 Q Real quickly, sir. You retrieved these items
5 from Investigator Allen's locker?

6 A I did not.

7 Q Who retrieved them for you?

8 A Lieutenant Padgett.

9 Q Were there -- did you test -- and you tested
10 everything for prints, you couldn't find any prints?

11 A That's correct.

12 Q And you swabbed everything for DNA and sent it
13 to the lab?

14 A I did.

15 MR. SUTHERLAND: Thank you, sir.

16 THE COURT: Cross?

17 CROSS-EXAMINATION

18 BY MS. PAYNE:

19 Q Just briefly. You stated you collected -- or
20 you were given a bag of peach rings, I believe?

21 A I'm sorry?

22 Q A bag of peach rings was given to you to be put
23 into evidence; is that correct?

24 A I don't -- I'm sorry, I don't understand what
25 you --

1 Q A bag of candy?

2 A Bag, yes, a bag of candy, peach candy.

3 Q And you were given some change?

4 A I was.

5 Q Okay. Are you aware that these were found on
6 the body of Brian Wright?

7 A No, I was not aware of that.

8 Q Okay. And you said you executed a search
9 warrant on the burgundy Malibu, correct?

10 A Yes, ma'am.

11 Q Are you aware that this was driven by Oliver
12 Feldman?

13 A No, I wasn't.

14 MS. PAYNE: No further questions.

15 THE COURT: Anything further of the witness?

16 MS. CAMPBELL: No, sir.

17 THE COURT: Anything else?

18 MR. SUTHERLAND: No, sir.

19 THE COURT: Thank you, sir. You may step down.

20 Call your next witness.

21 MS. CAMPBELL: The State would call

22 Investigator Bouknight.

23 HAROLD MICHAEL BOUKNIGHT,

24 having been duly sworn, testified as follows:

25 THE CLERK: Have a seat in the witness box.

1 State your full name for the record, please.

2 THE WITNESS: Harold Michael Bouknight.

3 DIRECT EXAMINATION

4 BY MS. CAMPBELL:

5 Q Investigator Bouknight, where are you employed?

6 A With the Richland County Sheriff's Department.

7 Q And what do you do there, sir?

8 A Crime scene investigator.

9 Q Can you tell this jury a little bit about your
10 training in crime scene investigation?

11 A Yes, ma'am. I've gone through inhouse
12 training, which includes reading, written tests and
13 proficiency tests and crime scene processing, crime
14 scene photography, latent print processing and
15 comparison, footwear development and comparison and
16 blood stain pattern analysis. I've been through
17 training in footwear comparison and evaluation,
18 blood stain pattern analysis, crime scene
19 reconstruction and crime scene photography and the
20 fundamentals of crime scene investigation.

21 Q On February the 19th of 2007, did you attend an
22 autopsy of Brian Wright?

23 A Yes, ma'am.

24 Q And who was actually performing the autopsy
25 that morning?

1 A The autopsy that morning was performed by Dr.
2 Clay Nichols.

3 Q And tell this jury what's your purpose in
4 attending an autopsy?

5 A Whenever we go to an autopsy, we are there to
6 collect any evidence that may be present on the body
7 at that time from nail scrapings and pubic and head
8 hair standards, gunshot residue and the clothing and
9 anything else that may be evidence on or in the
10 body.

11 Q And in this case while you were there, did you
12 notice any -- well, you took some photographs, but
13 we aren't going to go into those. Did you notice
14 any obvious injury to the body of Brian Wright?

15 A Yes, ma'am. He had an abrasion on his right
16 knee and there was what appeared to be a bullet hole
17 in the rear of his head and in his forehead.

18 Q While you were there, did you collect any
19 gunshot residue kit?

20 A Yes, ma'am.

21 Q Tell the jury what's the purpose in that.

22 A The purpose of that is it's a collection kit
23 that uses sticky tabs and you separate the tabs from
24 the left hand, the back of it, the palm of the left
25 hand, the back of the right hand and the palm of the

1 right hand, and then you take swabs of the back and
2 the palms of both hands and they're forwarded for
3 gunshot residue analysis.

4 Q There's been testimony earlier about you need
5 to do gunshot residue kits on live people within six
6 hours. If someone's a victim of a murder as in this
7 case, can gunshot residue kits be collected later?

8 A Yes, ma'am.

9 Q Why is that?

10 A Because they're not active. Gunshot residue is
11 very fragile evidence and just, you know, moving
12 against clothing and things like that can wipe it
13 off basically. And with a person being deceased,
14 they're not moving, they're contained within a bag
15 and there's a better chance of the gunshot residue
16 being present.

17 Q I want to show you what's been marked as
18 State's Exhibit Number 75, ask if you recognize
19 that, please?

20 A Yes, ma'am. This is the packaging where I
21 packaged the gunshot residue collection kit.

22 Q Explain to the jury exactly how you go about
23 collecting the gunshot residue kit.

24 A It's a fairly simple procedure using the sticky
25 tabs that are labeled left-hand palm and left-hand

1 back and right-hand palm and right-hand back, you
2 just dab them on those areas, seal them up. And
3 then you use a five percent solution of nitric acid
4 and just swab those same areas and then they're
5 placed in their separate test tubes and then they're
6 forwarded to SLED for analysis.

7 Q And these were collected in the proper manner?

8 A Yes, ma'am.

9 MS. CAMPBELL: Your Honor, at this time, I'd
10 offer State's Exhibit 75.

11 THE COURT: Any objection?

12 MS. PAYNE: Without objection.

13 THE COURT: Mark it in evidence, please.

14 (State's Exhibit Number 75, GSR kit,
15 admitted into evidence.)

16 BY MS. CAMPBELL:

17 Q Once the gunshot residue kit is collected in
18 this case, did you then place it into evidence?

19 A Yes, ma'am.

20 Q And would it have been forwarded to another
21 department for testing?

22 A Yes, ma'am.

23 Q While there you mentioned that you tried to get
24 certain evidence from the victim. Do you also
25 collect certain items of clothing?

1 A Yes, ma'am. We collect all of the items of
2 clothing.

3 Q And these were collected from the victim. What
4 items of clothing did you collect from the victim
5 that day?

6 A I got a multicolored striped shirt, pair of
7 blue jeans, some red shoes, two white T-shirts,
8 socks, a pair of blue striped boxers and a number 38
9 M&M's jacket.

10 Q I'm going to ask you to look at some items
11 what's been marked as State's Exhibit Number 73.
12 Whose writing is that at the bottom of this package?

13 A That's mine.

14 Q And what items are located in 73?

15 A Two white T-shirts and one striped shirt.

16 Q I'm going to show you what's been marked as
17 State's Exhibit Number 74. Again, there's writing
18 on that?

19 A Yes, ma'am.

20 Q And what item is located in this?

21 A That's the number 38 M&M's jacket.

22 Q Right there?

23 A Yes, ma'am.

24 Q Item Number 72, whose writing is that?

25 A That's mine.

1 Q And what items are in here?

2 A A pair of red Nike shoe.

3 Q And in addition, did you also collect
4 underwear, socks and things?

5 A Yes, ma'am.

6 Q But these were items of clothing taken from the
7 victim the morning the autopsy occurred, or went
8 into the afternoon I believe?

9 A Yes, ma'am.

10 MS. CAMPBELL: Your Honor, at this time, I'd
11 offer these items into evidence.

12 THE COURT: Any objection?

13 MR. SUTHERLAND: Your Honor, at this time, I'd
14 certainly like to take a look at these items as they
15 are or as they would be presented to the jury rather
16 than the bags, sir.

17 THE COURT: Sure.

18 MS. PAYNE: Can we have a matter of law, Your
19 Honor?

20 THE COURT: Can you have what?

21 MS. PAYNE: Can we have a matter of law?

22 THE COURT: All right. Ladies and gentlemen,
23 please step in the jury room. Don't discuss the
24 case.

25 (The jury retires to the jury room.)

1 **MS. PAYNE:** Your Honor, we would just like to
2 take a look at the clothing outside of the presence
3 of the jury to determine if there's any blood on it.
4 We haven't seen them outside the bags and we didn't
5 want to break the seal prior to. We just want to
6 take a look at them.

7 **MS. CAMPBELL:** We had the evidence here last
8 week, they had the opportunity to look at them, but,
9 of course, whatever they need. But I want to make
10 it clear we made it available.

11 **THE COURT:** Court's in recess for ten minutes.
12 You can step down if you like, but you can't
13 discuss your testimony with anyone.

14 **THE WITNESS:** I'll stay.

15 **THE COURT:** Thank you.

16 (Brief Recess.)

17 **THE COURT:** Are there issues I need to address?

18 **MS. PAYNE:** Your Honor, we do have an objection
19 to State's Exhibit 73 as the two white T-shirts and
20 a red and white striped shirt. Your Honor, there is
21 a lot of blood that is on these three shirts. We
22 would object under 403 as it is extremely
23 prejudicial against Mr. Boone. We would also argue
24 under the same theory of the photographs that it
25 pulls at the heart strings and the emotions of the

1 jury. We would ask that the Court not allow exhibit
2 73 into evidence under 403, Your Honor.

3 THE COURT: Mr. Sutherland?

4 MR. SUTHERLAND: The same objection, Your
5 Honor, that any probative value is substantially
6 outweighed by the prejudice.

7 THE COURT: Solicitor?

8 MS. CAMPBELL: Your Honor, the only reason we
9 are -- and I will agree to withdraw the two white
10 T-shirts which do have blood on them obviously. The
11 only reason that this is an issue in this case is
12 there's some issue as to who belongs to what gang
13 and the perceptions that night as to where anyone
14 was shooting.

15 The shirt in this case is very probative to our
16 case. It is a red shirt that the victim was wearing
17 that night. It would, along with the red shoes, be
18 important to our case. You cannot see the shirt in
19 the photos that we've been allowed so much so to
20 introduce except for part of it. The one you can
21 see it in we weren't allowed to put in, but I think
22 the other ones -- and let me make sure I'm not
23 saying anything wrong, Judge.

24 (Pause.)

25 MS. CAMPBELL: The ones that are in, Judge, you

1 can't really see the shirt which would have been
2 very apparent. And I'll show you the two that
3 weren't allowed where the shirt is obvious. But in
4 these, Your Honor, as you might note, and it sounds
5 ridiculous, but the color red is significant in this
6 case.

7 **THE COURT:** I understand. 14 and 15 are the
8 ones that were not allowed.

9 **MS. CAMPBELL:** Yes, sir.

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

11 **MS. PAYNE:** Your Honor, we would just -- I'm a
12 little confused by the Solicitor's argument. Your
13 Honor, the coat is being -- without objection in
14 evidence and that is what is in the pictures.
15 Mr. Wright --

16 **THE COURT:** The what is without objection?

17 **MS. PAYNE:** The M&M coat, which is, I'm not
18 sure, Your Honor, if I may approach and look at the
19 number, Number 74 is what you can see in the
20 pictures and identifying a red jersey. You can
21 barely see the red shirt. Furthermore, Your Honor,
22 he is -- the victim in this case by everyone's
23 admission is not in a gang. There's hardly any --

24 **MS. CAMPBELL:** And we agree that he is not in a
25 gang. However, it's the perception of who's

1 shooting at whom and what they perceive, which is
2 important in this case. And the colors do play
3 significant roles in whether you're a Folk or a
4 Blood or if you're misidentified. This came up in
5 another gang case I had where the victims in that
6 case were wearing red.

7 THE COURT: I understand.

8 MS. PAYNE: Furthermore, Your Honor, it's our
9 argument that there is hardly any evidence in this
10 case of the placement or the whereabouts of Brian
11 during this whole incident and we haven't been made
12 aware of anything about that. So I'm not exactly
13 sure where that comes into play, Your Honor.

14 And as to Andre, he's supposedly, by the
15 State's theory, a Blood, so the red shirt has
16 nothing to do with him. He would be wearing red if
17 he is in gang.

18 MS. CAMPBELL: That's why it would help you.

19 MS. PAYNE: Your Honor, that comment is
20 unnecessary.

21 THE COURT: She can...

22 MS. CAMPBELL: Your Honor, as far as his
23 placement, I think it's obvious where he was or at
24 least at the time he was shot.

25 THE COURT: Yes.

1 **MR. SUTHERLAND:** Quite frankly, Your Honor,
2 this is the first time that I've heard them assert,
3 other than in the media lately, that there were no
4 connections between the victim and the Folk Nation.
5 This is in Investigator Smith's report.

6 It would be our contention that they appear to
7 be trying to flit what's in their reports on its
8 head and associate him -- put him on the other side
9 from the people that he was actually with, which
10 were all of his friends were up here and all of the
11 other people were down here, they were in two
12 distinct areas, because they want to make -- they
13 appear to be wanting to make the argument that
14 suddenly somebody who's shooting here, people who
15 were shooting at them decided to turn and start
16 shooting at their friends or something.

17 They're trying to identify him with a gang,
18 which he's not affiliated with according to their --
19 according to their own report, it's on the first
20 page of yours, and in other places, he is friends
21 with the people -- an associate with people on the
22 Folk side.

23 **THE COURT:** Y'all have something else?

24 **MS. PAYNE:** Our argument is under 403, Your
25 Honor, that it's more prejudicial than probative.

1 This is the bottom line, there's blood all over it.
2 and that's what the jury's going to see. We just
3 object, Your Honor.

4 THE COURT: Have I heard everybody's argument?

5 MR. SUTHERLAND: Yes, sir.

6 THE COURT: Then I need to see the things.

7 (Pause.)

8 THE COURT: There are three T-shirts in there,
9 is that right, or two?

10 MS. CAMPBELL: Two white T-shirts, which we'll
11 withdraw those two.

12 THE COURT: All right. And there's a shirt
13 with some writing on it.

14 MS. CAMPBELL: The red and white shirt.

15 THE COURT: I thought I saw something looked
16 like it had screen -- like air brush writing on it
17 at the bottom. Not that shirt. Is there something
18 with some blue airbrush writing on it?

19 MS. CAMPBELL: Yes, sir, we don't need -- well,
20 the only one we're attempting is this one with the
21 red and white stripes.

22 THE COURT: Anything else?

23 MS. CAMPBELL: Not about this.

24 MR. SUTHERLAND: No, sir.

25 THE COURT: The objection's overruled as to

1 that shirt. All of the arguments about
2 misidentification or alleged misidentification of
3 gang affiliation, all those sorts of things that are
4 being made from the defense, those might well go to
5 jury arguments or issues about the theory of the
6 case and those sorts of things, but I don't see
7 anything about that shirt that is unduly prejudicial
8 under Rule 403.

9 And we all have heard about what happens in
10 situations where the military's involved with
11 friendly fire. The fact that somebody can be
12 misidentified is a completely separate issue that
13 perhaps the jury will evaluate, perhaps it won't.

14 **MS. CAMPBELL:** Judge, one other thing I just
15 want to bring the Court's attention, we're getting
16 to that portion where we have members of the lay
17 witnesses, I guess. They are sequestered, some are
18 in jail. And there may be some logistics, not
19 snafus, they're here, but I just wanted to alert the
20 Court that it may take us a little bit. We're doing
21 the best we can, but we have to keep certain people
22 separated.

23 **THE COURT:** All right. Are you ready for the
24 jury?

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

1 MR. SUTHERLAND: Yes, sir.

2 MS. PAYNE: Yes, Your Honor.

3 THE COURT: Bring the jury back.

4 (The jury returns to the courtroom.)

5 THE COURT: All right. Some of the items were
6 withdrawn. One that was not withdrawn, the
7 objection's overruled. You may continue, Solicitor.

8 (State's Exhibit Numbers 72 through 74 were
9 admitted into evidence.)

10 BY MS. CAMPBELL:

11 Q Looking at item number 73, what is this item?

12 A That's a red, white, blue and gray striped
13 shirt, collared shirt that the victim was wearing.

14 Q And I notice that it's cut open. Is that how
15 it was when you received it?

16 A Yes, ma'am.

17 Q And who did that belong to? Who did you
18 retrieve that from?

19 A Brian Wright.

20 Q The next item, which is item number 74, what is
21 this?

22 A That's the jacket that was taken off of Brian
23 Wright.

24 Q And what does it say here on the front?

25 A NASCAR Elliott Sadler.

1 Q Items number 72, what are these items?

2 A Those are the red tennis shoes that came from
3 Brian Wright.

4 Q And those are all the items that you recovered,
5 along with other ones, at the autopsy of 15-year-old
6 Brian Wright?

7 A Yes, ma'am.

8 Q Were you present when some x-rays were
9 reviewed?

10 A Yes, ma'am.

11 Q Is there any evidence of any projectile?

12 A No, ma'am.

13 Q And these were head shots, right?

14 A Yes, ma'am.

15 Q So there was no projectile that was recovered
16 from inside -- or seen on the x-ray inside his head?

17 A Yes, ma'am, that's correct.

18 MS. CAMPBELL: Thank you. I have nothing
19 further.

20 THE COURT: Mr. Sutherland.

21 MR. SUTHERLAND: Please the Court, Your Honor.

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. SUTHERLAND:

25 Q Sir, briefly, Ms. Campbell's last question, you

1 examined some x-rays and there was no projectile
2 evident in those x-rays; is that correct?

3 A Correct.

4 Q So it was back where he came from basically?
5 The projectile exited at the scene?

6 A Yes, sir.

7 MR. SUTHERLAND: All right. No further
8 questions. Thank you, Your Honor.

9 THE COURT: Any questions on behalf of
10 Mr. Boone?

11 MS. PAYNE: No questions, Your Honor.

12 THE COURT: Any redirect?

13 MS. CAMPBELL: No, sir.

14 THE COURT: Thank you, sir. You may step down.
15 Call your next witness, please.

16 MR. GOLDBERG: The State calls Karleisa
17 Brabham.

18 KARLEISA BRABHAM,
19 having been duly sworn, testified as follows:

20 THE CLERK: Have a seat in the witness box.
21 State your full name for the record, please.

22 THE WITNESS: My name is Karleisa Brabham.

23 DIRECT EXAMINATION

24 BY MR. GOLDBERG:

25 Q Ms. Brabham, how are you doing today?

1 A I'm fine. How are you?

2 Q Good. Are you a little bit nervous about being

3 here today?

4 A Yeah.

5 Q Where are you from?

6 A Columbia, South Carolina.

7 Q Did you grow up in Columbia?

8 A Yes.

9 Q Are you in school? Are you working? What do

10 you do?

11 A I'm in school and I'm working.

12 Q Where do you go to school?

13 A Spring Valley.

14 Q And you're about to graduate?

15 A Yes.

16 Q When will you graduate?

17 A In June.

18 Q And where do you work?

19 A At O'Charley's.

20 THE COURT: I'm sorry. What did you say?

21 THE WITNESS: At O'Charley's.

22 THE COURT: Can you do me a favor? You see

23 those two microphones that are kind of to the sides

24 of you?

25 THE WITNESS: Yes. Turn them towards me?

1 THE COURT: Yes, ma'am, please. Those two
2 amplify your voice. Thank you.

3 BY MR. GOLDBERG:

4 Q Karleisa, I want to take you back to February
5 19, 2007. Were you at the Waffle House that night?

6 A Yes, sir.

7 Q And what were you doing at the Waffle House
8 that night?

9 A Hanging out.

10 Q Who were you with?

11 A My cousins, Morgan Jackson and Destiny
12 Truesdale.

13 Q And how did you get up there? Did you drive?

14 A Yes.

15 Q Whose car did you take?

16 A My mom's.

17 Q What kind of car is that?

18 A A black Cadillac.

19 Q When you got to the Waffle House, where did you
20 park the car?

21 A In the back.

22 Q In the back of the parking lot?

23 A Yes, sir.

24 Q Why did you go to the Waffle House that night?

25 A Morgan Jackson's boyfriend was -- they were

1 having -- they were going to have an altercation and
2 we went up there to try to stop it.

3 Q Who was her boyfriend?

4 A Cedric Ruff.

5 Q And he was going up there to fight that night?

6 A Yes.

7 Q And she wanted to break it up?

8 A Right.

9 Q All right. Well, when you got to the parking
10 lot, what did you do?

11 A Stayed in the car.

12 Q At some point, did her boyfriend show up?

13 A Yes, sir.

14 Q What happened when he got there?

15 A They began to fight.

16 Q Do you know who he was fighting with?

17 A The only people I knew out there were Chad,
18 Cedric and Corey.

19 Q Chad, Cedric and Corey?

20 A Yes.

21 Q Were Cedric and Corey friends?

22 A I knew they knew each other. I'm not sure what
23 kind of relationship they had.

24 Q Okay. And did you see the fight?

25 A It was at a distance and it was dark, but you