

VOLUME II of IV

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Paul M. Burch, Circuit Court Judge

ANDRE T. BOONE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000943

APPENDIX

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1 could see all the movement and everything.

2 Q Would it be fair to say that this fight was
3 taking place in the middle of that parking lot?

4 A Towards the end by the road.

5 Q It was up in that direction?

6 A Yes.

7 Q It wasn't in the back where you were?

8 A No.

9 Q Once they started fighting, did you see anybody
10 walk in front of your car?

11 A Yes, sir.

12 Q Who was that?

13 A Tayson.

14 Q Is that Tayson Boone?

15 A I'm not sure of his last name.

16 Q You just know him as Tayson?

17 A Yes.

18 Q And when you saw him walk in front of your car,
19 what did you see him doing?

20 MS. EVERHART: Objection, Your Honor.

21 THE COURT: Yes.

22 MS. EVERHART: Leading the witness.

23 MR. GOLDBERG: I asked her what she saw him
24 doing. I didn't suggest the answer.

25 THE COURT: It's overruled. Go ahead.

1 BY MR. GOLDBERG:

2 Q When Tayson walked in front of your car, what
3 did you see him doing?

4 A He fired in the air.

5 Q Fired a gun?

6 A Yes.

7 Q After he fired the gun in the air, what did you
8 see him do after that?

9 A When he was doing that, he bounced back like
10 and hit the car because he was directly in front of
11 my car.

12 THE COURT: He bounced back and what?

13 THE WITNESS: Hit the car.

14 THE COURT: Hit the car.

15 THE WITNESS: Yeah.

16 BY MR. GOLDBERG:

17 Q Where was your car in relation to -- well, let
18 me scratch that. Were there any other cars parked
19 next to your car?

20 A Only his.

21 Q Tayson's car?

22 A Yes.

23 Q And that would have been on which side of your
24 car, closer to the road or closer to the back of the
25 parking lot?

1 A Closer to the road.

2 Q Okay. And you said he was standing in front of
3 your car when he fired the shot in the air?

4 A Yes, sir.

5 Q Okay. And tell me again what happened when he
6 fired the gun?

7 A I'm guessing the pressure from the gun made him
8 bounce back and bump into the car.

9 Q Who, if anyone else, did you see shooting that
10 night?

11 A Like I said it was dark. I know it was a
12 brown-skinned guy in a black shirt.

13 Q And which direction was that person firing?

14 A Towards us.

15 Q Towards you in the back of the lot?

16 A (Witness nodded head.)

17 Q You said brown skin and a dark shirt?

18 A Yes, sir.

19 Q Do you recall in what direction that was coming
20 from, where he was firing?

21 A The end of the parking lot.

22 Q Towards the road?

23 A Yes.

24 Q The fellow that you know as Tayson and you saw
25 firing the gun, do you see him in the courtroom

1 today?

2 A Yes, sir.

3 Q Can you point him out for me?

4 A Over there.

5 Q In the white shirt?

6 A Yes.

7 MR. GOLDBERG: Your Honor, let the record
8 reflect the witness has identified Mr. Boone.

9 THE COURT: It's so noted.

10 MR. GOLDBERG: Thank you. Please answer any
11 questions the defense might have.

12 THE WITNESS: Okay.

13 MR. SUTHERLAND: Please the Court, sir.

14 THE COURT: Mr. Sutherland.

15 CROSS-EXAMINATION

16 BY MR. SUTHERLAND:

17 Q How are you doing, ma'am?

18 A I'm fine. How are you?

19 Q I'm doing pretty well. This was around
20 midnight that you were there?

21 A I'm guessing. I don't really remember.

22 Q It was kind of late?

23 A Yes.

24 Q And you had testified that it was dark out
25 there. Now, did any of the cars have their

1 headlights on or anything like that?

2 A I'm not sure.

3 Q Were there a lot of people that were there?

4 A It was a good little bit of people, yes, sir.

5 Q But you don't -- I mean, it was 15 months ago.

6 I mean, you -- do you basically just remember what
7 you testified to just now?

8 A Yes, that's all.

9 MR. SUTHERLAND: I have no further questions,
10 Your Honor.

11 THE COURT: Any questions on behalf of
12 Mr. Boone?

13 MS. EVERHART: Yes, Your Honor.

14 CROSS-EXAMINATION

15 BY MS. EVERHART:

16 Q Hi. How are you?

17 A I'm fine. How are you?

18 Q Good. Doing fine. Now, you made a statement
19 to the police in regard to this case, correct?

20 A Yes, ma'am.

21 Q And that was March 5th?

22 A Yes, ma'am.

23 Q And in this statement, you indicated to the
24 police you were there with Morgan Jackson and
25 Destiny Truesdale?

1 A Yes, ma'am.

2 Q And y'all were there to watch her boyfriend in
3 a fight?

4 A We were there to stop it.

5 Q Stop the fight?

6 A Yes, ma'am.

7 Q And this was a little confusing for me, but let
8 me see if I can get my bearings. You were parked at
9 the back of the parking lot?

10 A Yes, ma'am.

11 Q And you indicated that the black Explorer that
12 belonged to Mr. Boone was parked in front of your
13 car?

14 A If I remember correctly, it was beside my car.

15 Q Closer to Two Notch Road?

16 A Yes.

17 Q So you were parked behind his closer to the
18 back of the parking lot?

19 A Right.

20 Q About how much space do you think was between
21 the vehicles?

22 A I don't remember.

23 Q Were y'all in parking spaces next to each
24 other?

25 A Yes, ma'am.

1 Q And you indicated that when he shot into the
2 air, it was next to your vehicle?

3 A It was in front of the car.

4 Q In front of your vehicle?

5 A Yes.

6 Q Was he stand -- and he was standing in front of
7 your vehicle, but further back than the Ford
8 Explorer?

9 A Yes, ma'am.

10 Q He fired twice into the air?

11 A I remember one, but there was a lot going on
12 and like I said, that was a long time ago.

13 Q But he did fire into the air?

14 A Yes, ma'am.

15 Q And when you talked to the police, you
16 indicated that after firing into the air, he bumped
17 into your vehicle?

18 A Yes, ma'am.

19 Q And that was because he was coming in between
20 your vehicle and his vehicle?

21 A He was in front of the car. I'm not sure what
22 you're asking me.

23 Q Did you see him move anywhere after firing into
24 the air and bumping into your vehicle?

25 A After he shot once and I heard another gunshot,

1 that's when I drove off. So after that, I really
2 don't remember anything else.

3 Q And you indicated to the police that you did
4 see another boy shooting your way?

5 A Yes, ma'am.

6 Q And that he was -- had brown skin?

7 A Yes, ma'am.

8 Q And he had on a black shirt?

9 A It was a dark colored shirt.

10 MS. EVERHART: Beg the Court's indulgence one
11 moment.

12 THE COURT: Yes, ma'am.

13 (Pause.)

14 MS. EVERHART: Nothing further from the
15 witness. Thank you.

16 THE COURT: Redirect?

17 MR. GOLDBERG: Yes, sir, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. GOLDBERG:

20 Q Ms. Brabham, you didn't know Eugene Patterson,
21 did you?

22 A No, sir.

23 MR. SUTHERLAND: Your Honor, objection to
24 leading.

25 THE COURT: Rephrase it. You said, You didn't

1 know Eugene Patterson, did you. That is leading.

2 You can rephrase it.

3 MR. GOLDBERG: Thank you, Your Honor.

4 BY MR. GOLDBERG:

5 Q The person in the black shirt that night, do
6 you know who it was?

7 A No, sir.

8 MR. GOLDBERG: Thank you.

9 MR. SUTHERLAND: Your Honor -- well, no
10 objection, I guess.

11 THE COURT: I understand. Do you have any
12 further questions of the witness?

13 MR. SUTHERLAND: Yes, sir.

14 RECROSS-EXAMINATION

15 BY MR. SUTHERLAND:

16 Q You have no idea who Eugene Patterson is?

17 A No.

18 Q You've never seen him before?

19 A No.

20 MR. SUTHERLAND: No further questions.

21 THE COURT: All right. Recross on behalf of
22 Mr. Boone?

23 MS. EVERHART: No, Your Honor.

24 THE COURT: Thank you, ma'am. You may step
25 down.

1 Call your next witness.

2 MS. CAMPBELL: The State calls Jerome Thompson.

3 JEROME CHRISTOPHER THOMPSON,

4 having been duly sworn, testified as follows:

5 THE CLERK: Have a seat in the witness box and
6 state your full name for the record, please.

7 THE WITNESS: Jerome Christopher Thompson.

8 DIRECT EXAMINATION

9 BY MS. CAMPBELL:

10 Q Mr. Thompson, you're going to have to speak up
11 as loud as you can, okay, because it's hard to hear
12 in here.

13 A Yes, ma'am.

14 Q Jerome, how old are you?

15 A Twenty.

16 Q Did you go to high school?

17 A Yes, ma'am.

18 Q How far did you go in school?

19 A Twelfth grade.

20 Q Did you finish?

21 A Huh-huh. No, ma'am.

22 Q What high school did you go to?

23 A Keenan High.

24 Q You live here in the Columbia area?

25 A Yes, ma'am.

1 Q And how long have you lived in Columbia?

2 A Since I was born.

3 Q Do you know a young man named Andre Tayson
4 Boone?

5 A Yes, ma'am.

6 Q What do you call him?

7 A Tayson.

8 Q Tayson?

9 A (Witness nodded head.)

10 Q Do you see him here in the courtroom?

11 A Yes, ma'am.

12 Q Can you show the jury where he is?

13 A Yes, ma'am.

14 Q Can you point to him?

15 A Yes, ma'am.

16 Q Will you do it for me?

17 A (Witness indicating.)

18 Q Sitting where? What color shirt does he have
19 on?

20 A White.

21 MS. CAMPBELL: Your Honor, may the record
22 reflect he's identified the defendant?

23 THE COURT: So noted. Go ahead.

24 BY MS. CAMPBELL:

25 Q How do you know Tayson?

1 A From the neighborhood.

2 Q And what neighborhood is that?

3 A Meadow Lake.

4 Q How long have you lived in Meadow Lake?

5 A Since the seventh grade.

6 Q How long have you known Tayson?

7 A I think high school.

8 Q Is Tayson older or younger than you?

9 A Younger.

10 Q I want to turn your attention back to last
11 February when the shooting occurred, okay?

12 A Yes, ma'am.

13 Q On that evening, it would have been February
14 18th, who were you with that evening?

15 A Me and Little Duke.

16 Q You and Little Duke. Does Little Duke have a
17 name?

18 A Demon.

19 Q Demon. Does he have a last name?

20 A Griffin.

21 Q And Demon Griffin, does he have a brother that
22 you know?

23 A Yeah.

24 Q And what's his brother's name?

25 A Brian.

1 Q Does he have a cousin that he's real close
2 with?

3 A Yes, ma'am.

4 Q What's his name?

5 A Derrick.

6 Q And what were you and Little Duke, or Demon,
7 doing that night?

8 A We was chilling at his house.

9 Q At whose house?

10 A Demon. Duke.

11 Q Who else was there when you were chilling with
12 Demon?

13 A Derrick.

14 Q Guilyard?

15 A Yes, ma'am.

16 Q And do you remember about what time of night
17 this was?

18 A No, ma'am.

19 Q At some point, did somebody else come by the
20 house?

21 A Yes, ma'am.

22 Q Who came by the house?

23 A Tayson.

24 Q And Tayson's the person we've just been talking
25 about?

1 A Yes, ma'am.

2 Q And what was Tayson driving that night; do you

3 remember?

4 A His truck.

5 Q What kind of truck?

6 A I think it's a Ford.

7 Q Did he have anybody with him?

8 A I don't remember.

9 Q Do you know a guy named Bernard?

10 A Yes, ma'am.

11 Q Does he have another name?

12 A No, that's his name.

13 Q That's his name. Do you remember whether or

14 not Bernard was with y'all that night?

15 A Yeah, he was with us that night.

16 Q And do you remember how he got over to Little

17 Duke, or Demon's, house?

18 A No, ma'am.

19 Q When Tayson came over that night, what was

20 y'all's plan?

21 A To go to a party.

22 Q And where was the party?

23 A I don't know where it was at.

24 Q Did y'all end up going to the party?

25 A No, we didn't make it.

1 Q Why not?

2 A Because it got shot up before we got there.

3 Q How did you learn that the party had gotten
4 shot up before you got there?

5 A Because the dude that shot it up called.

6 Q Who was that?

7 A Little Byron.

8 Q Byron?

9 A Yeah.

10 Q And who did he actually call?

11 A Tayson.

12 Q He called Tayson?

13 A Yeah.

14 Q Did Tayson have a cell phone that night?

15 A Yes, ma'am.

16 Q Did you have a cell phone?

17 A Yes, ma'am.

18 Q Once you learned that the party you were
19 supposed to -- had been shot up by Byron, y'all
20 didn't go to the party?

21 A No, ma'am.

22 Q Where did y'all go?

23 A To the Waffle House.

24 Q And is there more than one Waffle House on Two
25 Notch?

1 A Yes, ma'am.

2 Q Which Waffle House on Two Notch did y'all go to
3 that night?

4 A The one up the -- right next door to the little
5 gas station where the dude didn't get shot at, up
6 the street from that one.

7 Q You're going to have to slow down a little bit,
8 talk a little louder, okay?

9 A Where the dude got shot at, it's right up the
10 street from that one.

11 Q It's up the street from where the dude got
12 shot?

13 A Yes, ma'am.

14 Q So you ended up at a different Waffle House
15 later?

16 A No, we went to that Waffle House first before
17 we even went to the other one.

18 Q Okay. Is it near a road that we know besides
19 Two Notch? Is it next to the Mobil Gas Station?

20 MR. SUTHERLAND: Your Honor, it's leading.

21 THE COURT: Sustained.

22 BY MS. CAMPBELL:

23 Q Can you tell me any kind of business that's
24 near it?

25 A It's a little U-Haul place up the street from

1 it.

2 Q A U-Haul place up the street from it?

3 A Yes, ma'am.

4 Q Is there any other business there?

5 A And there's a hotel right behind it.

6 Q Okay. Was that different from the Waffle House
7 where you ended up later?

8 A Was it different?

9 Q Was it a different Waffle House?

10 A Yes, ma'am.

11 Q And why did y'all go to that Waffle House at
12 first?

13 A We just stopped at that one because that's
14 where we was -- we was right by it when the dude
15 call us...

16 Q I can't understand you.

17 A Oh, I'm sorry. We was right by it when the
18 dude called us said he had done shot up the party.
19 So we just stopped at that one.

20 Q You stopped at the Waffle House?

21 A Yes, ma'am.

22 Q And what were you looking for at the Waffle
23 House?

24 A We just stopped over there because we can't...

25 THE COURT: Hold on a second. I think you're

1 past those microphones. Can you move them in front
2 of you a little bit?

3 THE WITNESS: (Witness complies.)

4 THE COURT: There you go thank you.

5 MS. CAMPBELL: Yeah, sometimes when you get too
6 close, it muffles.

7 THE COURT: Well, I think he's past them. Go
8 ahead.

9 MS. CAMPBELL: Thank you, Your Honor.

10 BY MS. CAMPBELL:

11 Q And when you went to that first Waffle House
12 you went to that night, was anybody there?

13 A Not when we first got there.

14 Q And then what happened while y'all were at that
15 Waffle House?

16 A A couple people rode up and then some dude in a
17 car came by talking junk.

18 Q You've got to talk louder so I can understand
19 you.

20 A A couple people rode up.

21 Q A couple people rode up. Did you know them?

22 A One of them name was -- I forgot his name.

23 Q Okay. Did you recognize him?

24 A Yeah, I know him.

25 Q And what happened when a couple people rode up?

1 A Another car rode past talking junk, people
2 hanging out the window talking junk.

3 Q So were y'all in the parking lot or inside the
4 Waffle House?

5 A In the parking lot.

6 Q So while y'all are in the parking lot at this
7 first Waffle House, some people rode by doing what?

8 A Talking trash.

9 Q And what does that mean to me? I'm old.

10 A Just talking junk.

11 Q At that time, were you in a gang?

12 A Yes, ma'am.

13 Q What gang are you in?

14 A Blood.

15 Q And were you in a certain sect in that gang?

16 A TTP.

17 Q And what does that mean?

18 A Tree Top Piru.

19 Q The people that drove by talking trash, did you
20 recognize them as being in a different gang?

21 A I didn't know them at all.

22 Q But they were talking trash?

23 A Yes, ma'am.

24 Q They weren't part of your gang?

25 A No, ma'am.

1 Q So for clarification, who all's in the car or
2 in the Waffle House parking lot, who all has left
3 Little Duke's house and who all is at this Waffle
4 House first?

5 A Talking about with us?

6 Q With you.

7 A Me, Derrick, Bernard, Little Duke and Tayson.

8 Q Once the people drove past talking trash, did
9 they stop?

10 A No, ma'am, they kept going.

11 Q What happened next?

12 A We left and went to Wendy's.

13 Q Why did you go to Wendy's?

14 A Because the dude, Corey, say the dude said meet
15 him at Wendy's.

16 Q Say that again.

17 A The dude, Corey, he said the dude --

18 MR. SUTHERLAND: Your Honor, I'm going to
19 object to hearsay statements.

20 THE COURT: Do you want to be heard?

21 MS. CAMPBELL: I can rephrase and I can get
22 around it.

23 THE COURT: Disregard that last statement of
24 the witness, ladies and gentlemen.

25 Rephrase your question, please. The

1 objection's sustained.

2 BY MS. CAMPBELL:

3 Q Was Corey at the Waffle House that night?

4 A Yes, ma'am.

5 Q And who is Corey?

6 A Some dude Tayson know. I don't really hang
7 around him like that.

8 Q So he was a friend of Tayson's?

9 A Yes, ma'am.

10 Q And you can't say what Corey said to you, okay,
11 but did you see a conversation between Tayson and
12 Corey? Did you hear it?

13 A No, ma'am.

14 Q Did you talk to Corey?

15 A No. I don't talk to Corey like that.

16 Q As a result of what Corey told you, you can't
17 say what he said, where did y'all go?

18 A To the Waffle House -- I mean, not to the
19 Waffle House, but to Wendy's.

20 Q And where is the Wendy's?

21 A On Two Notch Road right next -- right down the
22 street from the Wal-Mart.

23 Q And why were y'all going to the Wendy's?

24 A I guess to fight the dudes because they
25 supposed to been coming up there, but they never

1 came up.

2 Q How long did y'all stay at the Wendy's?

3 A For like 20 or 30 minutes.

4 Q And who all was at the Wendy's?

5 A Me -- the same people that was in the first car
6 and Corey and some of his homeboys.

7 Q And some of his homeboys. You didn't know
8 their names?

9 A No, ma'am.

10 Q But it's you in your car, who else?

11 A In our car?

12 Q Yeah.

13 A Me, Bernard, Derrick and Little Duke and
14 Tayson.

15 Q So there are five of you?

16 A Yes, ma'am.

17 Q And then Corey was he in a separate car?

18 A Yeah. He was riding with one of his homeboys.

19 Q And what kind of car were they driving?

20 A I don't remember.

21 Q What kind of car were y'all driving?

22 A The truck, the Ford truck.

23 Q Whose truck?

24 A Tayson's.

25 Q What color was it; do you remember?

1 A Blue. It's blue or black.

2 Q How long did y'all -- where did you say the
3 Wendy's was?

4 A Right down the street from the Two Notch
5 Wal-Mart.

6 Q From the Two Notch Wal-Mart?

7 A Yes, ma'am.

8 Q And you said that you were supposed -- who was
9 supposed to be fighting some dudes?

10 A I guess we were because they said they was
11 going to come up there.

12 Q How long did y'all stay at the Wendy's?

13 A For like 20 or 30 minutes.

14 Q Do you know why you were going to fight the
15 guys?

16 A No, ma'am.

17 Q You stayed at Wendy's for 20 or 30 minutes you
18 said?

19 A Yes, ma'am.

20 Q Then where did you go?

21 A To another Waffle House.

22 Q Where was this one?

23 A Over there by the Summit somewhere.

24 Q By the what?

25 A The Summit.

1 Q Near the Summit?

2 A (Witness nodded head.)

3 Q So that's not on Two Notch Road?

4 A No, ma'am.

5 Q And why were y'all going to this next Waffle
6 House?

7 A We just went to that one to go.

8 Q Did you go eat?

9 A No, ma'am. We didn't even pull up in the
10 Waffle House parking lot.

11 Q Why not?

12 A We just saw the police over there so we kept
13 riding.

14 Q You saw the police, so you didn't pull into
15 that Waffle House?

16 A No, ma'am.

17 Q Did you even see anybody you knew in the Waffle
18 House parking lot?

19 A In that parking lot?

20 Q Yeah.

21 A No, ma'am.

22 Q Where did you go next?

23 A Corey and them went to the gas station to get
24 -- I think they went to get cigarettes.

25 Q And where was the gas station?

1 A Right in front of the Waffle House.

2 Q The one over near the Summit?

3 A Yes, ma'am.

4 Q Did you stay in the car?

5 A Yes, ma'am. Everybody stayed in our car.

6 Ain't nobody got out the car but them out of their
7 car.

8 Q That would be Corey and his --

9 A His homeboy.

10 Q And how many people were in that car; do you
11 know?

12 A I think like three.

13 Q Once they came out, did y'all talk about where
14 you were going next?

15 A No, ma'am. We just went back to the last
16 Waffle House where the dude got shot at.

17 Q Okay. So you went to the -- this would be your
18 third Waffle House?

19 A Yeah, the one on Two Notch.

20 Q The one where the shooting actually took place
21 that night?

22 A Yes, ma'am.

23 Q Why were you going there?

24 A I think Tayson was going to see his girlfriend.

25 Q Once you went into that Waffle House, did y'all

1 pull into the parking lot?

2 A Yes, ma'am.

3 Q And what part of the parking lot did y'all park
4 in?

5 A In the back on the end of the -- the Waffle
6 House.

7 Q In the back of the Waffle House?

8 A Yes, ma'am, not all the way in the back. Like
9 the Waffle House and then it's a brick wall, we were
10 parked on the other side across from the brick wall.

11 Q Is it in the Waffle House parking lot, though?

12 A Yes, ma'am.

13 Q But it's not towards the road, it's towards the
14 back?

15 A Yes, ma'am.

16 Q And when y'all parked, what did y'all do?

17 A We went in the Waffle House.

18 Q And who all went in?

19 A All of us.

20 Q And when you say all of you, tell me who was
21 there?

22 A Me, Bernard, Derrick, Little Duke and Tayson.

23 Q What about Corey and his group, were they at
24 that Waffle House, too?

25 A Yes, ma'am.

- 1 Q That night did you have any weapons with you?
- 2 A Yes, ma'am.
- 3 Q And what weapons did you have with you?
- 4 A A gun, a nine.
- 5 Q A nine?
- 6 A Yes, ma'am.
- 7 Q Is that also known as a nine millimeter weapon?
- 8 A Yes, ma'am.
- 9 Q And that was your gun that night?
- 10 A Yes, ma'am.
- 11 Q And during this time when y'all went from the
- 12 Waffle House to the Wendy's to the Waffle House,
- 13 where was the gun?
- 14 A On my waist.
- 15 Q And why did you have it on your waist?
- 16 A I keep it for safety reasons.
- 17 Q When y'all got out at this third Waffle House,
- 18 did you take the gun in with you?
- 19 A Yes, ma'am.
- 20 Q You did?
- 21 A Yes, ma'am.
- 22 Q And where did you put it?
- 23 A It was still on my waist.
- 24 Q Once you went into the Waffle House, did all
- 25 five of you go in?

1 A Yeah, everybody went in.

2 Q What about Corey and his guys?

3 A They stayed in the parking lot.

4 Q And, at this point, did you know anything about

5 a fight with Corey?

6 A A fight with Corey?

7 Q That Corey was going to be in?

8 A I knew about it, but we didn't think the dude

9 was going to show up.

10 Q Was Corey in a gang?

11 A Yes, ma'am.

12 Q What gang is he in?

13 A I have no idea.

14 Q And out of the group of guys you were with, the

15 five guys you were with, who was Corey closest with?

16 Who was he friends with?

17 A Him and Bernard -- I mean, him, Bernard and --

18 I mean, Tayson and Bernard.

19 Q Tayson and Bernard?

20 A Yes, ma'am.

21 Q How long were you inside; do you remember?

22 A About five minutes.

23 Q And did you eat or anything inside?

24 A No, ma'am.

25 Q Did you see anybody you knew inside?

1 A Yeah, Duck and them, Duck and her friends.
2 Q Duck?
3 A I don't know her real name.
4 Q It's a girl?
5 A Yes, ma'am.
6 Q Did she have some other girlfriends with her?
7 A Yes, ma'am.
8 Q Did you talk to them?
9 A Did I talk to them?
10 Q Uh-huh.
11 A I talked to one of them.
12 Q And you said you stayed in about five minutes?
13 A Yes, ma'am.
14 Q Why did you go back outside?
15 A To put my gun back in the car.
16 Q Did you do that?
17 A Yes, ma'am.
18 Q Were there many people in the Waffle House that
19 night?
20 A Nobody but the girls and us and then other
21 people started coming.
22 Q Other people started coming?
23 A Yes, ma'am.
24 Q When you went back into the truck, did you end
25 up putting your gun up?

- 1 A Yeah, we stayed in the car.
- 2 Q And you stayed in the car?
- 3 A (Witness nodded head.)
- 4 Q Who all went back to the truck with you when
- 5 you went to put your gun up after five minutes in
- 6 the Waffle House?
- 7 A Me, Bernard, Derrick and Little Duke.
- 8 Q And when you say five minutes, do you know if
- 9 it was exactly five minutes, could it have been more
- 10 or less?
- 11 A It could have been a little more.
- 12 Q Where did you put the gun?
- 13 A I sat in the car and sat it on my lap.
- 14 Q You were sitting in the car?
- 15 A Yes, ma'am, because we stayed in the car.
- 16 Q Where were you sitting in the car?
- 17 A In the front seat.
- 18 Q Were you the driver?
- 19 A No. I was on the passenger side.
- 20 Q Who was the driver that night?
- 21 A Tayson.
- 22 Q Tayson. Who all else was in the car with y'all
- 23 while you were sitting in the parking lot at the
- 24 Waffle House?
- 25 A Who was in the car with me?

1 Q Yeah, at that point while you had the gun in
2 your lap?

3 A Me, Little Duke, Derrick and Bernard.

4 Q And where was Tayson?

5 A Still inside talking to Duck.

6 Q Talking to Duck?

7 A (Witness nodded head.)

8 Q Did Tayson end up coming out to the car?

9 A Yes, ma'am.

10 Q While you were out in the parking lot, did you
11 notice anything?

12 A It started getting packed. And at one time,
13 the dude he said somebody pulled out a gun on him.

14 Q Do you remember seeing some cars coming through
15 the parking lot?

16 A Yes, ma'am.

17 Q What color cars did you see pull in?

18 A One of them was green with some writing on the
19 side.

20 Q Did you see any other cars?

21 A Yes, ma'am, but I don't remember how they
22 looked. I just remember that one because they had
23 the writing on the side.

24 Q Do you remember noticing a certain guy in a car
25 that drove by?

1 A Yes, ma'am.

2 Q And what did he look like?

3 A A light-skinned dude and a dark-skinned dude.

4 Q A light-skinned dude and a dark-skinned dude?

5 A One of them had -- with a blue...

6 THE COURT: I'm sorry, I didn't hear you. What
7 did you say?

8 THE WITNESS: One of them was light skin with a
9 blue flag around his neck.

10 BY MS. CAMPBELL:

11 Q Blue flag around his neck, the light skin. So
12 the light-skin dude had a blue flag around his neck?

13 A Yes, ma'am.

14 Q What does that mean to you?

15 A He a Crip.

16 Q Did you notice anybody else in the car with
17 him?

18 A Yes, ma'am.

19 Q And what did you notice about them?

20 A He was dark skinned, kind of buck.

21 Q And when they drove by, where were y'all
22 parked?

23 A We were still in the back towards the back.

24 Q And did they drive by?

25 A Yeah. They rode all the way back there and

1 then turned around and parked in the front.

2 Q And they parked in front?

3 A Yes, ma'am.

4 Q And would that be towards the road or away from
5 the road?

6 A Toward -- they closer to the road than we was.

7 Q And what road is that?

8 A Two Notch Road.

9 Q Was it still in the Waffle House parking lot?

10 A Yes, ma'am.

11 Q Did you see where they went once they parked?

12 A They just got out their car.

13 Q They got out of the car?

14 A Yes, ma'am.

15 Q At some point, did Tayson come back to the car?

16 A Yes, ma'am.

17 Q Did you see Corey at that point?

18 A Yes, ma'am.

19 Q And you can't say what he said, but did Corey
20 come and talk to Tayson?

21 A No, ma'am.

22 Q Who did he come talk to?

23 A He didn't come to talk to nobody at first
24 because he didn't come till all their peeps came.

25 Q You're going to have to slow down and explain

1 this to me.

2 A He didn't come to the truck till he saw all of
3 their peeps.

4 Q And when you say he didn't come to the truck
5 until he saw all their people, what people are you
6 talking about?

7 A Their gang members, the rest of their click.

8 Q What gang?

9 A I think they're Folk.

10 Q So this would be a different gang from your
11 gang?

12 A Yes, ma'am.

13 Q And the ones y'all associate with?

14 A Yes, ma'am.

15 Q So where were all those Folks coming from? Did
16 you see what area?

17 A Some of them was coming from the little gas
18 station next door and some of them running from
19 across the street.

20 Q So some of them are coming from the gas station
21 next door?

22 A Some of them was coming from right next door to
23 the Waffle House from the store.

24 Q From the store?

25 A Yes, ma'am.

1 Q Is that a gas station?

2 A Yes, ma'am.

3 Q That's next door?

4 A Yeah, right next door.

5 Q And then you said some were coming from across
6 the street?

7 A Across the street, running from across the
8 street.

9 Q What street?

10 A From the Two Notch street where the railroad
11 tracks at.

12 Q And they were coming into the parking lot of
13 which store?

14 A To the Waffle House.

15 Q Could you see at that point where the
16 light-skinned dude with the blue flag and the
17 dark-skinned dude that was with him were?

18 A They were still in front of the Waffle House
19 standing by their car.

20 Q And were they associated with your gang or with
21 the other gang or did you know?

22 A With the other gang. They wasn't with us.

23 Q What happened next?

24 A Corey ran down there started trying to fight
25 all of them by his self.

1 THE COURT: Corey ran down there and did what?

2 THE WITNESS: Corey ran down there tried to
3 fight all of them by his self.

4 BY MS. CAMPBELL:

5 Q And when you say Corey ran down there, where
6 was Corey before he started to run?

7 A By our truck.

8 Q And when you say he ran down there, where was
9 he running to?

10 A To their crowd.

11 Q To their crowd?

12 A Yes, ma'am.

13 Q And was their crowd approaching the Waffle
14 House?

15 A Their crowd was already in the parking lot.

16 Q Of the Waffle House?

17 A Yes, ma'am.

18 Q So they were coming from the gas station and
19 from across the street --

20 A And across the street.

21 Q -- into the Waffle House parking lot?

22 A Yes, ma'am.

23 Q And so y'all were in the back and Corey was
24 right there?

25 A Yes, ma'am.

1 Q And he ran up to them?

2 A And tried to fight all of them by his self.

3 Q Did he get in a fight?

4 A Yes, ma'am.

5 Q Do you know who he got in a fight with?

6 A No. He got in a fight with their whole click.

7 THE COURT: He got in a fight with who?

8 THE WITNESS: Their whole -- all their -- all
9 of them.

10 BY MS. CAMPBELL:

11 Q At this point, where is your gun?

12 A Still in the car.

13 Q Where was Tayson?

14 A Tayson ran up there to see what he doing.

15 Q So is Tayson outside the car?

16 A Yes, ma'am. He made it to the car, but he
17 hadn't got in the car yet.

18 Q Okay. So in the car before the fight starts.

19 And did Corey have any weapon that you saw?

20 A Not that I know of. He didn't show it to us if
21 he did.

22 Q And you never saw him with a weapon during the
23 fight?

24 A No, ma'am.

25 Q Prior to that, Tayson had gotten back to your

1 car?

2 A After the fight?

3 Q No, before the fight.

4 A He had got back to it, but he hadn't got in.

5 Q Okay. So who was in the car at that point
6 before Corey runs off to fight everybody?

7 A All of us except for Tayson, me, Duke.

8 Q And is Tayson right outside the car?

9 A Yes, ma'am.

10 Q And Corey -- is he talking to Corey?

11 A No. They weren't talking, they was just
12 standing there.

13 Q And, at that point, while they're both standing
14 there, Corey takes off and runs to the crowd?

15 A Yes, ma'am.

16 Q And is that in front of the Waffle House where
17 the fight takes place?

18 A Yes, ma'am.

19 Q And do you know where the front door of the
20 Waffle House is?

21 A Yes, ma'am.

22 Q Was it near there?

23 A It was near, but it wasn't close to it.

24 Q Corey ran out and he's gotten into a fight?

25 A Yes, ma'am.

1 Q And how many people is he fighting with, can
2 you tell?

3 A I don't know how many it was, it was a bunch of
4 them, though.

5 Q It was a bunch of them?

6 A Yes, ma'am.

7 Q More than five?

8 A Yes, ma'am.

9 Q More than ten?

10 A More than ten.

11 Q More than 20?

12 A Probably about 15.

13 Q At that point, what does Tayson do?

14 A He went up there and he looked and they say --
15 one dude say, if he jump in, he was going to shoot
16 them.

17 Q Wait a minute. Let me back up. Tayson runs
18 down to where Corey is?

19 A Yes, ma'am.

20 Q Does he get into a fist fight at that point?

21 A No, ma'am.

22 Q What does he do then, Tayson?

23 A He came back to the car. He was about to help
24 him to fight, but the dude told him if he jump in,
25 he was going to shoot him.

1 Q Who told you that?

2 MR. SUTHERLAND: Objection, Your Honor, that's
3 hearsay.

4 THE COURT: Ladies and gentlemen, I need to ask
5 you to step in the jury room. Don't discuss the
6 case.

7 (The jury retires to the jury room.)

8 THE COURT: Yes, sir.

9 MR. SUTHERLAND: If I'm getting the testimony
10 correctly, this is sort of hearsay cued that one
11 person said to him what another person said, sir.
12 And, I mean, that's the argument that there's sort
13 of three-way hearsay.

14 THE COURT: It wouldn't be hearsay as against
15 the defendant on trial I don't believe.

16 MR. SUTHERLAND: So he -- you know what. So he
17 was saying that the co-defendant was saying that?

18 MS. CAMPBELL: Yes.

19 THE COURT: Yes.

20 MR. SUTHERLAND: I'm terribly sorry, Your
21 Honor. I misunderstood.

22 THE COURT: It may technically be hearsay. I
23 just think as a practical matter, it's going to work
24 its way out where it would come in. And it is
25 double in the fact that he is reciting what somebody

1 else told him. So you're going to withdraw your
2 objection?

3 MR. SUTHERLAND: Well, I would think it can
4 come in under the statement against interest at that
5 point.

6 THE COURT: There may be any number of things
7 that might come in under, that's why I send the jury
8 out.

9 MR. SUTHERLAND: Your Honor, I'll let the Court
10 rule. I'm sorry.

11 THE COURT: I'm not ready to rule because I
12 don't know. I have to hear the circumstances. But
13 if you withdraw your objection, I don't have to
14 worry about it. I'm not telling you you should or
15 shouldn't, I'm just asking you.

16 MR. SUTHERLAND: I'll withdraw the objection,
17 Your Honor.

18 THE COURT: Are y'all objecting?

19 MS. PAYNE: No, Your Honor.

20 THE COURT: All right. Bring the jury back in.

21 (The jury returns to the courtroom.)

22 THE COURT: The objection's withdrawn.

23 You may continue, Ms. Campbell.

24 BY MS. CAMPBELL:

25 Q This was Tayson that ran back to the car?

1 A Yes, ma'am.

2 Q Once he got back to the car, what did he ask
3 you for?

4 A The gun.

5 Q And where was the gun when he was asking for
6 it?

7 A Still on my lap.

8 Q What did you say?

9 A At first, I was hesitant to give it to him.

10 Q Excuse me?

11 A At first, I was hesitating to give it to him,
12 then I just gave it to him.

13 Q At first, you hesitated?

14 A Yes, ma'am.

15 Q Then you gave it to him. And why did you give
16 him the gun?

17 A I don't know why I gave it to him, but he
18 wanted it.

19 Q He wanted it?

20 A Yes, ma'am.

21 Q Once you gave him the gun, what happened?

22 A He just shot two times in the sky.

23 Q Where was he standing when he shot two times in
24 the sky?

25 A Like a few feet back from the crowd where they

1 was fighting at.

2 Q Where you were parked, could you notice any of
3 the cars around you?

4 A I noticed Duck car and another car.

5 Q What kind of car?

6 A Duck car.

7 Q Duck car.

8 A Her little blue -- I don't know what kind of
9 car it is. It was a little blue car.

10 Q Did you see a Cadillac?

11 A Yes, ma'am. The Cadillac was parked back there
12 where we was.

13 Q After he got the gun from you, what did you do?

14 A I got out the car.

15 Q You got out of the car?

16 A Yes, ma'am.

17 Q Did anybody else get out of the car at that
18 point?

19 A Bernard and Derrick.

20 Q And where was Little Duke, or Demon?

21 A He was still in the car.

22 Q What happened then?

23 A He shot two times in the sky.

24 Q Then what happened?

25 A Everybody started running and then --

1 Q Everybody started running?

2 A Yes, ma'am. And then the two dudes start
3 shooting. The light-skin dude with the flag around
4 his neck and the dark-skinned dude started shooting.

5 Q And prior to that night, had you ever seen the
6 light-skinned dude or the dark-skinned dude?

7 A No, ma'am.

8 Q That was shooting from the other end of the
9 parking lot?

10 A No, ma'am.

11 Q So let me get one thing straight. He shoots
12 twice in the air that you see?

13 A Yes, ma'am.

14 Q And, at that point, where does Tayson go?

15 A He ran to the back of the truck.

16 Q He goes to the back of the truck?

17 A Yes, ma'am.

18 Q Does he still have a gun?

19 A Yes, ma'am.

20 Q And you said everybody starts running?

21 A Yes, ma'am.

22 Q Where are they running to?

23 A They was running everywhere.

24 Q And does that include people associated with
25 your gang?

1 A No, we was straight.

2 Q You were straight?

3 A We were straight. All of us already by the car
4 close -- the truck that we was riding in.

5 Q Where was Corey?

6 A Corey, I don't know where he ran at when he
7 shot in the sky.

8 Q But he ran somewhere, too?

9 A Yes, ma'am.

10 Q But he didn't run back to your car?

11 A He ran that way, but I don't know where he
12 went.

13 Q Okay. And the people that were with Corey, do
14 you know where they went?

15 A No, ma'am.

16 Q And when you mentioned all of these people that
17 had walked across the street and were coming
18 across --

19 A That's where they was running.

20 Q That's where they were running to?

21 A That's where they -- yeah, they was running
22 back towards the store and back across the street.

23 THE COURT: They were running where? I'm
24 sorry.

25 THE WITNESS: Back to the store and back across

1 the street.

2 BY MS. CAMPBELL:

3 Q Y'all were still all around your car?

4 A Yes, ma'am.

5 Q Were you behind the car from the street or in
6 front of it?

7 A No. I was in front of the car.

8 Q Where was Derrick?

9 A They had done got -- Derrick and Bernard had
10 done got back in the truck.

11 Q They were in the truck?

12 A Yes, ma'am.

13 Q Where was Tayson?

14 A In the back of the truck.

15 Q Was he behind the truck?

16 A Yes, ma'am.

17 Q So you were at the front, so you could see what
18 was going on at the other end of the parking lot?

19 A Yes, ma'am.

20 Q And what did you see?

21 A I saw the light-skinned dude with the blue flag
22 on and the dark-skinned dude busting towards our
23 way.

24 Q And describe the dark-skinned dude.

25 A The dude right there.

1 **THE COURT:** Hold on a second.

2 Ladies and gentlemen, please step in the jury
3 room. Don't discuss the case.

4 (The jury retires to the jury room.)

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

6 **MR. SUTHERLAND:** Your Honor, this is pretty
7 incredible. There's no mention that he ever knew or
8 met or identified Eugene prior to just sitting right
9 here. I'm not exactly sure, did the State ever show
10 him any photo lineups, has he been watching the
11 media, that's been all over the media?

12 I don't know about the reliability of such an
13 identification except to say that it's never been
14 made at any point in the last 15 months until this
15 point presently. There's never been any indication
16 that he's ever identified Mr. Patterson and I don't
17 have any --

18 **MS. CAMPBELL:** He was never shown any -- he's
19 never made an identification of the defendant
20 before.

21 **THE COURT:** Mr. Thompson, I'm going to have
22 them take you to a separate room while I deal with
23 some legal issues.

24 **THE WITNESS:** Yes, sir.

25 **THE COURT:** You'll be in there by yourself,

1 okay?

2 **THE WITNESS:** Yes, sir.

3 **THE COURT:** Security, can y'all take him to a
4 separate room?

5 (The witness leaves the courtroom.)

6 **THE COURT:** All right. Let's take a few
7 minutes and then I'll get right back with you, okay.

8 (Brief recess.)

9 **THE COURT:** I haven't had a chance to do any
10 reading, but this is off the top of my head. I
11 think where there's an in-court identification
12 that's made, unless it is the product of some sort
13 of police suggestiveness, that the case law states
14 that that is a matter to be dealt with through
15 cross-examination. And it's an issue of credibility
16 and questions can be asked about the failure to make
17 prior identifications, the suggestiveness of having
18 people sitting at a defense table, all those things
19 can be brought out on cross-examination, but unless
20 it's the product of suggestiveness, my recollection
21 of the law is -- or suggested by the police, my
22 recollection of the law is it's a matter for
23 cross-examination.

24 Now, if I need to do a Denno hearing, I'd be
25 happy to do a Denno hearing to see if -- what he

1 said was, I think that dude over there, and just
2 sort of nodded his head in the general direction.
3 So I don't know where you all want to take this from
4 here, but I sent him out of the courtroom so he
5 wouldn't be privy to anything we're talking about.

6 MR. SUTHERLAND: Your Honor, do you think it
7 might be possible for us to just sort of take a
8 little pause and maybe -- Investigator Ellis took
9 his statement, and for Investigator Ellis to take
10 the stand so I could just ask him about what went
11 on, did you show him any lineups, that sort of
12 thing, sir?

13 THE COURT: I'll let you talk to him if he'll
14 talk to you, but if you want to do a --

15 MR. SUTHERLAND: No, I can talk to him, sir.

16 THE COURT: Well, I mean, I'm offering you and
17 I will do, if there's any issue at all, I will do a
18 Denno hearing and make a determination as to whether
19 there -- if you call that an in-court identification
20 that just took place, if that is the product of any
21 sort of suggestiveness and then whether I get to the
22 second prong or not. From what you all told me just
23 briefly before we took that little five minute
24 break, my initial impression is that it caught the
25 State by surprise that he said what he said, so I

1 don't know.

2 All right. Let's just be at ease and we'll
3 check with you periodically to see -- Mr. Ellis,
4 will you talk to him? You don't have to.

5 **INVESTIGATOR ELLIS:** I don't have a problem.

6 **THE COURT:** Okay. Thank you. We'll be at
7 ease.

8 (Brief Recess.)

9 **THE COURT:** All right is there any objection or
10 anything we need to put on the record or do I need
11 to do any Denno hearing?

12 **MR. SUTHERLAND:** Your Honor, in going through
13 the materials that I have and in speaking with the
14 officers, I don't see any basis -- any basis for a
15 hearing on the identification. There's no
16 information available to me through speaking with
17 the investigators and through the reports and
18 through the statement of the witness that would
19 indicate to me that there was any sort of State
20 action that might have influenced the
21 identification.

22 Even with respect to an objection, I'm having a
23 little bit of difficulty being aware of, at least to
24 the best of my knowledge, of the stated case law
25 that with the lack of State action, private session

1 identification, it's my understanding, as the Court
2 said earlier, that cross-examination is the proper
3 answer to such an identification, sir.

4 THE COURT: Well, it's -- the way the system
5 views is what your remedy would be. Now, whether
6 you choose to go into it and make -- bring it out
7 more or whether you choose to let it lie, that's a
8 tactical matter that only a person on his feet or
9 her feet in a trial can decide. You can confer with
10 your client about that, but the remedy the system
11 offers to you is cross-examination.

12 MR. SUTHERLAND: Yes, sir, and that's my
13 understanding as well. So any objection, I think,
14 would be -- actually may be frivolous, so I wouldn't
15 be making an objection.

16 THE COURT: Okay. Can you all get him back in
17 here, the witness?

18 (The witness resumes the witness stand.)

19 THE COURT: All right. Bring the jury back in,
20 please.

21 (The jury returns to the courtroom.)

22 THE COURT: You may continue with your
23 cross-examination -- excuse me -- with your
24 examination, Solicitor.

25 MS. CAMPBELL: Thank you.

1 BY MS. CAMPBELL:

2 Q We were talking about the two guys at the other
3 end of the parking lot that were shooting towards
4 y'all.

5 A Yes, ma'am.

6 Q And where was Tayson at that point?

7 A After they start shooting?

8 Q Yeah.

9 A He was in the back of the car.

10 Q And did you see Tayson shoot anymore?

11 A Yes, ma'am.

12 Q And how many times did you see Tayson shoot
13 when the other two guys were shooting?

14 A I don't know how many times he shot.

15 Q Was it more than one?

16 A Yes, ma'am.

17 Q Was it more than two?

18 A Yes, ma'am.

19 Q And did you see what area he was shooting
20 towards?

21 A Straight down. From the back of the truck,
22 straight down.

23 Q To the ground?

24 A No, straight down towards the back of the
25 truck.

1 **THE COURT:** I'm sorry. I didn't understand
2 that either. Say it again.

3 **THE WITNESS:** Straight, went straight from the
4 back of the truck pointing -- just going straight,
5 aiming straight, not at the ground, just towards --
6 BY MS. CAMPBELL:

7 **Q** Aiming straight?

8 **A** Towards the road.

9 **Q** Towards the road. Where were you at this
10 point?

11 **A** Still in front of the truck.

12 **Q** Did you end up getting back in the truck?

13 **A** I almost got left.

14 **Q** Who got back in the truck first, you or Tayson?

15 **A** Tayson.

16 **Q** Was everybody else already in the truck?

17 **A** Yes, ma'am.

18 **Q** You said that you almost got left?

19 **A** Yeah -- yes, ma'am.

20 **Q** Who was driving?

21 **A** Tayson.

22 **Q** Where was the gun at that point?

23 **A** It was still with him.

24 **Q** With him?

25 **A** (Witness nodded head.)

1 Q How did you get in the truck?

2 A I had to chase the truck.

3 Q Were you able to get in?

4 A Yes, ma'am.

5 Q Where did you get in, the front or the back?

6 A The front.

7 Q And were the other three guys still in the
8 back?

9 A Yes, ma'am.

10 Q What happened to the gun at that point?

11 A I got it.

12 Q What did you do with it?

13 A I got picked up by my sister.

14 Q Once y'all left the Waffle House after all of
15 the shooting occurred -- let me back up, too. You
16 said that Tayson shot twice up in the air, first?

17 A Yes, ma'am.

18 Q And then more times after that?

19 A Yes, ma'am.

20 Q Do you know how many times the other two guys
21 shot?

22 A No, ma'am.

23 Q Was it more than once?

24 A Yes, ma'am.

25 Q More than two?

1 A Yes, ma'am.

2 Q Once y'all left in the Ford -- was it a Ford?

3 A Yes, ma'am.

4 Q Where did y'all go?

5 A He took me to Burger King to get picked up by
6 my sister.

7 Q How did you get in touch with your sister?

8 A Off my phone.

9 Q Off your phone?

10 A Yes, ma'am.

11 Q Did she pick you up?

12 A Yes, ma'am.

13 Q What happened to the gun that night, the nine
14 millimeter?

15 A It was at my house.

16 Q So after you got back in the car and you go
17 over to the -- was it the Burger King?

18 A Yes, ma'am.

19 Q Where your sister picked you up?

20 A Yes, ma'am.

21 Q You had the gun?

22 A Yes, ma'am.

23 Q What did you do with the gun?

24 A Got rid of it.

25 Q How did you rid it?

1 A My sister's boyfriend got rid of it.

2 Q Was it the same sister that picked you up?

3 A Yes, ma'am.

4 Q Did you tell your sister what happened?

5 A She already knew, that's why she had called me.

6 Q Why did you get rid of the gun?

7 A I thought it had a body on it.

8 Q You thought it had a body on it?

9 A Yes, ma'am.

10 Q Why did you think that?

11 A Because we didn't know who shot the dude.

12 Q Did Tayson ever tell you -- say anything about
13 having a body on it?

14 A No, ma'am.

15 Q Do you recall giving a statement to the police
16 back when this happened?

17 A Yes, ma'am.

18 Q Do you remember talking about what Tayson told
19 you about the gun?

20 A No. I meant to say Duck said it because she
21 was telling us stuff what the police were saying.

22 Q Do you remember what Tayson told you about his
23 role in the shooting?

24 A No, ma'am.

25 Q Do you want to look at your statement? Would

1 that refresh your memory?

2 A Yes, ma'am.

3 Q Is that your statement?

4 A Yes, ma'am.

5 Q That's your signature down here?

6 A Yes, ma'am.

7 Q Do you see this paragraph?

8 A Yes, ma'am.

9 Q Is that what you told the police?

10 A Yes, ma'am.

11 Q So do you remember what Tayson told you about
12 the shooting that night?

13 A Yes, ma'am.

14 Q What did he tell you?

15 A He didn't know if he did it or not and he might
16 have did it. He thought he had did it because
17 whoever he had -- dude got shot.

18 Q He thought he had done it why?

19 A Because all the shooting, he wasn't sure who
20 did it.

21 Q Do you remember talking afterwards with Derrick
22 and all those guys that were in the car?

23 A Yes, ma'am.

24 Q Demon?

25 A Yes, ma'am.

1 Q And did y'all come up with a story you were
2 supposed to tell the police?
3 A Derrick did.
4 Q What kind of gun were you supposed to say that
5 Tayson had?
6 A A little Deuce Deuce, a .22.
7 Q A .22 and that's a Deuce Deuce?
8 A Deuce.
9 Q Did you tell the police that?
10 A Yes, ma'am.
11 Q And, again, who got rid of the gun for you?
12 A My sister's boyfriend.
13 Q Have you ever seen it since then?
14 A No, ma'am.
15 Q And why did you get rid of the gun?
16 A Because we thought it had a body on it.
17 Q You thought it had a body on it. What does
18 that mean to somebody old like me?
19 A We thought it had killed him.
20 Q Do you remember talking to the police?
21 A Yes, ma'am.
22 Q On February 25th?
23 A Yes, ma'am.
24 Q And they advised you of your rights?
25 A Yes, ma'am.

1 Q And they took a statement; is that correct?

2 A Yes, ma'am.

3 Q And you told them what you knew about that
4 night?

5 A Yes, ma'am.

6 Q And do you remember doing a drawing?

7 A Yes, ma'am.

8 Q Trying to explain where everybody was?

9 A Yes, ma'am.

10 Q And do you remember meeting with Investigator
11 Ellis?

12 A Yes, ma'am.

13 Q I'm going to show you what's been marked as
14 State's Exhibit Number 76. Do you recognize this?

15 A Yes, ma'am.

16 Q What's that?

17 A That's the drawing.

18 Q And who did the drawing?

19 A Me.

20 Q And is this actually your handwriting in here?

21 A No.

22 Q Whose handwriting is it?

23 A The officer.

24 Q So you drew in the thing, then he labeled what
25 they were?

1 A Yes, ma'am.

2 Q And does this reflect where you thought
3 everybody was that night?

4 A Yes, ma'am.

5 MS. CAMPBELL: Your Honor, at this time, we'd
6 offer State's Exhibit Number 76.

7 THE COURT: Show it to opposing counsel,
8 please.

9 (Pause.)

10 MR. SUTHERLAND: No objection from us.

11 MS. EVERHART: No objection.

12 MS. CAMPBELL: I misstated something.

13 BY MS. CAMPBELL:

14 Q This happened on the 28th; is that correct?

15 A I don't remember what day they came and got me.

16 Q See that date on there?

17 A Yes, ma'am.

18 Q And what date is it?

19 A The 28th.

20 MS. CAMPBELL: Thank you.

21 THE COURT: Mark it in evidence.

22 (State's Exhibit Number 76, drawing,
23 admitted into evidence.)

24 BY MS. CAMPBELL:

25 Q On this, does it show the Waffle House?

1 A Yes, ma'am, right there.

2 Q Right here?

3 A Yes, ma'am.

4 Q Does it show where Tayson was when he shot in
5 the air?

6 A Yes, ma'am.

7 Q Where is that on here?

8 A Right there (indicating).

9 Q And what are the words it says right next to
10 it?

11 A Tayson shot in the air.

12 Q Does it shoot -- say something about where
13 Tayson was shooting, also?

14 A Yes, ma'am.

15 Q And where is that on there?

16 A On the back of the car.

17 Q And what does it say right there next to it?

18 A Which one? There's two of them.

19 Q Read both of them, if you don't mind.

20 A Shooting with the weapon, Tayson shot down.

21 Q Tayson shot nine millimeter?

22 A Yes, ma'am.

23 Q And up here is this another vehicle that's
24 portrayed?

25 A Yes, ma'am.

1 Q And what does that say?

2 A I can't really read it. It's kind of messed up
3 right there. It's saying...

4 THE COURT: I'm sorry. I can't understand him.

5 THE WITNESS: It's vehicle something. I can't
6 really read the handwriting.

7 MS. CAMPBELL: Something vehicle and then
8 what's --

9 BAILIFF: Your Honor, they can't hear.

10 THE COURT: I can't either. Try to speak up
11 for us, please.

12 THE WITNESS: This vehicle --

13 BY MS. CAMPBELL:

14 Q Vehicle?

15 A -- and something. I can't really read the
16 handwriting.

17 Q Okay. But Investigator Ellis helped you with
18 that?

19 A Yes, ma'am.

20 Q And where it says vehicle, who was there?

21 A The light-skinned dude and the dark-skinned
22 dude.

23 Q And then this other, what looks like, a
24 vehicle, whose vehicle is that?

25 A Tayson's vehicle.

1 Q And that's how you remember it, approximately?

2 A Yes, ma'am.

3 Q Jerome, do you have a nickname?

4 A Yes, ma'am.

5 Q What's your nickname?

6 A J-Rock.

7 Q J-Rock. Back when this happened, did you go to
8 the police immediately or did they find you?

9 A They found me.

10 Q And when they found you, did they charge you
11 with anything?

12 A Yes, ma'am.

13 Q What did they charge you with?

14 A Two pistol charges and breach of peace.

15 Q Two pistol charges?

16 A Yes, ma'am.

17 Q Unlawful carrying?

18 A Yes, ma'am.

19 Q And then unlawful carrying under the age of 21?

20 A Yes, ma'am.

21 Q And then you said a breach of peace?

22 A Yes, ma'am.

23 Q And that was of a high and aggravated nature?

24 A Yes, ma'am.

25 Q And those charges are still pending?

1 A Yes, ma'am.

2 Q And you have a lawyer on those charges?

3 A Yes, ma'am.

4 Q And your lawyer was here earlier I believe; is
5 that correct?

6 A Yes, ma'am.

7 Q Have you been promised anything in exchange for
8 your testimony here today?

9 A No, ma'am.

10 Q And, in fact, back on February 28th, you gave a
11 statement to Investigator Ellis?

12 A Yes, ma'am.

13 Q And you told him pretty much everything you
14 told us today?

15 A Yes, ma'am.

16 Q Did you know Brian Wright?

17 A The dude that got shot?

18 Q Yeah.

19 A No, ma'am.

20 Q Just a couple more questions. When you got the
21 gun back, did you check to see whether there were
22 any bullets left in it?

23 A Yes, ma'am.

24 Q Were there any?

25 A No, ma'am.

1 Q Did you know how many bullets were in it when
2 you handed it to Tayson?

3 A I think it was nine.

4 Q And were there any bullets in it when you got
5 it back from him?

6 A No, ma'am.

7 Q Finally, you're a member of the sect in the
8 Blood gang?

9 A Who?

10 Q You're part of a Blood gang?

11 A Yes, ma'am.

12 Q Were the other guys in your car associated with
13 Bloods?

14 A Not all of them.

15 Q Not all of them?

16 A Just the older people.

17 Q The older people?

18 A Yes, ma'am.

19 Q But they all got -- everybody in that car got
20 along with Bloods?

21 A Yes, ma'am.

22 Q And what about with the Folks, how did the
23 Bloods and the Folks get along?

24 A Every certain ones we was cool with them. Like
25 we knew them for a while, we were straight with

1 them.

2 Q That night in the Waffle House parking lot,
3 were y'all cool with the ones that came in the
4 parking lot?

5 A We didn't really know most of them.

6 Q And what about the Crips?

7 A There was only one Crip up there, the little
8 light-skinned dude.

9 Q The light-skinned dude?

10 A Yes, ma'am.

11 Q That's the only Crip you saw?

12 A Yes, ma'am. That's the only one that was
13 holding the flag, that had the flag on that was
14 showing he was a Crip.

15 **THE COURT:** I have no idea what he said. I'm
16 sorry.

17 BY MS. CAMPBELL:

18 Q Can you repeat that?

19 A Yes, ma'am. He was the only one wearing the
20 flag that show he was a Crip.

21 Q He was the only one wearing a flag that showed
22 he was a Crip?

23 A Yes, ma'am.

24 Q And that flag was what color?

25 A Blue.

1 Q That night how many people did you see shooting
2 out there?

3 A Three.

4 Q And those are the three you've been talking
5 about?

6 A Yes, ma'am.

7 Q And you didn't see anybody else shooting?

8 A No, ma'am.

9 MS. CAMPBELL: I don't have anything else, Your
10 Honor.

11 THE COURT: Okay. Mr. Sutherland.

12 MR. SUTHERLAND: Please the Court, briefly.

13 CROSS-EXAMINATION

14 BY MR. SUTHERLAND:

15 Q Mr. Thompson, you just testified that you have
16 is it an aggravated breach of peace and a couple
17 pistol charges pending against you?

18 A Yes, sir.

19 Q And do you think that the odds are it might be
20 favorable for you to be here testifying today rather
21 than not?

22 A What you mean?

23 Q Do you think it's in your best interest to be
24 here testifying today?

25 A (Witness utters nonwords.)

1 Q You don't know, okay. And you have never
2 I.D.'d him prior to today?

3 A No, sir.

4 Q In 15 months?

5 A No, sir.

6 MR. SUTHERLAND: I have no further questions?

7 THE COURT: All right. Any questions on behalf
8 of Mr. Boone?

9 MS. EVERHART: Yes, Your Honor.

10 CROSS-EXAMINATION

11 BY MS. EVERHART:

12 Q Hi, Mr. Thompson. How are you?

13 A Fine. How about you?

14 Q Good. Thank you. Now, the night this occurred
15 you didn't go to the party at Windsor Lake?

16 A No, ma'am.

17 Q And that's because you learned it had been shot
18 up by Byron?

19 A Yes, ma'am.

20 Q Y'all did go to the Waffle House on Two Notch,
21 however?

22 A Yes, ma'am.

23 Q And y'all went there because Tayson was going
24 to see his girlfriend, Doneisha?

25 A Yes, ma'am.

1 Q Y'all call her duck?

2 A Yeah.

3 Q Now, when y'all got there -- bear with me one
4 moment. I'm going to show you a big picture and I
5 may need you to help me figure out where everything
6 is. Can you see that okay?

7 A Yes, ma'am.

8 Q When y'all arrived at the Waffle House that
9 night, you went to the back of the Waffle House?

10 A Yes, ma'am.

11 Q Around this area?

12 A That's the Waffle House right there?

13 Q I'm sorry. This is the Waffle House.

14 A Like right there.

15 Q Right here?

16 A I know where the Waffle House -- you see where
17 that bluish car at, the little grayish or blueish,
18 whatever it is?

19 Q That one?

20 A Yes, ma'am. We were parked like right there.

21 Q All right. And when y'all got there, y'all
22 backed into the parking space, correct?

23 A Yes, ma'am.

24 Q And, at that time, y'all went in the Waffle
25 House?

1 A Yes, ma'am.

2 Q Came back out, you got in the car?

3 A Yes, ma'am.

4 Q And Mr. Boone wasn't in the car with you at
5 that time?

6 A No, ma'am.

7 Q I believe you testified earlier that while
8 y'all were back out at the car, another car drove
9 by?

10 A Yes, ma'am, the green car with the white
11 writing on it.

12 Q Did something happen?

13 A The light-skinned dude pulled out a pistol on
14 the dude Q.T., I don't know his real name.

15 Q Now, while y'all were back at the car, you said
16 Corey started to get into a fight?

17 A That was after all of them came.

18 Q Okay. And that fight took place around in
19 here?

20 A Yes, ma'am.

21 Q And you said Mr. Boone ran up to the fight?

22 A Yes, ma'am, from the car.

23 Q And then he came running back?

24 A Yes, ma'am. We was already out the car by the
25 time he got back, though.

1 Q And you testified that he indicated he had been
2 threatened?

3 A Yes, ma'am.

4 Q At that point, he came up to you and he asked
5 for your gun?

6 A Yes, ma'am.

7 Q And you testified you hesitated to give it to
8 him?

9 A Yes, ma'am.

10 Q And when you talked to the police about this
11 incident, you indicated that you were actually
12 surprised?

13 A Yeah, because he don't really do stuff like
14 that.

15 Q You told the police he was a pretty boy?

16 A Yes, ma'am.

17 Q And, at that point, you indicated he fired into
18 the air?

19 A Yes, ma'am.

20 Q Twice?

21 A (Witness nodded head.)

22 Q And that he ran?

23 A To the back of his truck.

24 Q And he pulled in backwards?

25 A Yeah, he was already -- yes, ma'am, we were

1 parked in backwards.

2 Q So he was at the back driver's side?

3 A Yes, ma'am.

4 Q Shooting toward Two Notch Road?

5 A Yes, ma'am.

6 Q And you testified that there were shots coming
7 back?

8 A Yes, ma'am.

9 Q And they were coming from the right corner of
10 the Waffle House?

11 A Yeah, that's where their car was parked at
12 where those two cars right there at..

13 Q And the shots were coming from that general
14 area?

15 A Yes, ma'am.

16 Q And, at that point, after the shots were
17 exchanged, Mr. Boone jumped in the vehicle and y'all
18 left?

19 A Yes, ma'am.

20 Q Did you see a body at that time?

21 A No, ma'am.

22 Q So you don't know where the body was located?

23 A No, ma'am.

24 Q And you've testified that you did -- you do see
25 Mr. Boone in the courtroom?

1 A Yes, ma'am.

2 Q There were other gentlemen there shooting that
3 night?

4 A Yes, ma'am.

5 Q One I believe you described as a light-skinned
6 guy?

7 A Yes, ma'am.

8 Q Do you see him in the courtroom?

9 A No, ma'am.

10 Q Now, after you left, after not seeing the body,
11 Mr. Boone received a phone call?

12 A Yes, ma'am.

13 Q And that's how he learned that someone had
14 died?

15 A Yes, ma'am. That's how all of us found out.

16 Q And how did he appear to you?

17 A He looked like he was hurting because, I guess,
18 he didn't know if he did it or not.

19 Q Right. And I believe you told the police that
20 there was a lot of shooting that night?

21 A Yes, ma'am,

22 Q And I believe you addressed the issue of a .22
23 being discussed as being at the scene?

24 A Yes, ma'am.

25 Q And the police asked you about that?

1 A Yes, ma'am.

2 Q And you indicated to the police that a
3 gentleman named Derrick Guilyard told the police
4 that?

5 A Yes, ma'am.

6 Q And then he told you about it?

7 A Yes, ma'am.

8 Q And that's why y'all said there was a .22?

9 A Yes, ma'am.

10 Q You also told the police that that .22 that
11 y'all were talking about it --

12 A It been broke.

13 Q -- it was broken. It had been broken for
14 months?

15 A Yes, ma'am.

16 Q The police also asked you if anyone in the car
17 with you that night was in a gang?

18 A Yes, ma'am.

19 Q And you told them not Tayson?

20 A Yes, ma'am, and Little Duke.

21 Q You were asked about the number of bullets in
22 your gun and today you indicated you thought there
23 may have been nine?

24 A Yes, ma'am, because it holds ten.

25 Q But you're really not sure how many?

1 A No, ma'am.

2 MS. EVERHART: No further questions, Your
3 Honor.

4 THE COURT: Redirect?

5 MS. CAMPBELL: Nothing further, Your Honor.

6 THE COURT: What about you, Mr. Sutherland?

7 MR. SUTHERLAND: Just one additional question
8 for clarification.

9 RECROSS-EXAMINATION

10 BY MR. SUTHERLAND:

11 Q Mr. Thompson, did you testify that the
12 light-skinned guy and a dark-skinned guy were in a
13 car?

14 A Yeah, with white writing on it.

15 Q It was a green car with white writing on it?

16 A Yes, sir.

17 Q And these are the people that you say were
18 shooting?

19 A Yes, sir.

20 MR. SUTHERLAND: Okay. Thanks.

21 No further questions, Your Honor.

22 THE COURT: Anything else?

23 MS. EVERHART: Yes, Your Honor, briefly.

24 *****

25 *****

1 RECROSS-EXAMINATION

2 BY MS. EVERHART:

3 Q Do you know for a fact it was a green car?

4 A Yes, ma'am.

5 MS. EVERHART: Beg the Court's indulgence one
6 moment.

7 (Pause.)

8 Q And that green car was the one that the man
9 with the blue flag was in?

10 **A** Yes, ma'am.

11 Q That parked at the front of the Waffle House?

12 A Yes, ma'am.

13 Q And that was the one that had the altercation
14 with you?

15 A Who, with me?

16 Q With Q.T.?

17 A Yes, ma'am.

18 Q With the gun?

19 **A** Yes, ma'am.

20 MS. EVERHART: No further questions, Your
21 Honor.

22 THE COURT: Anything else of the witness?

23 MS. CAMPBELL: Just one question.

24 *****

25 *****

1 REDIRECT EXAMINATION

2 BY MS. CAMPBELL:

3 Q And you -- where that car is drawn is on your
4 map, right?5 A Yes, ma'am -- I can look at it again? I don't
6 think the green car is on there.

7 Q The burgundy car where the shootings occurred?

8 A It was green. I don't think it's on the paper,
9 though, the green car.10 Q The car that's on the paper is that drawn on
11 the paper where the shooters were?

12 A Oh, yes, ma'am.

13 Q Thank you. That's all I have.

14 A I thought you were talking about when they
15 pulled up behind -- in the back.

16 THE COURT: Mr. Sutherland?

17 RECROSS-EXAMINATION

18 BY MR. SUTHERLAND:

19 Q Just again, sir, you said it was a green car
20 with white writing on it?

21 A With white writing on the door.

22 MR. SUTHERLAND: Okay. Thanks.

23 No further questions, Your Honor.

24 THE COURT: Anything else?

25 MS. EVERHART: Nothing, Your Honor.

1 THE COURT: Thank you, sir. You may step down.

2 All right. Ladies and gentlemen, your lunch, I
3 hope, is here. Here's what we're going to do.
4 We'll provide you your lunch and I'd like for you
5 all to eat in the jury room, please. I have to give
6 everybody else a chance to eat lunch and I can't
7 feed the whole courtroom, so I have to give them a
8 chance to get an opportunity to get something to
9 eat. We won't save a whole lot of time, but I'm
10 going to try to get started back in 50 minutes.

11 After you finish eating, you can come out of
12 the jury room and you can call people as long as
13 you're not talking about the case and you can do
14 whatever you need to do, but if it is at all
15 possible, I ask that you stay as close back here as
16 you can. If some of you are smokers or you want to
17 go down as a group outside, I'd like to have one of
18 the bailiffs go with you, okay.

19 But, basically, you're going to be on your own
20 once you eat. I need you back in that jury room in
21 50 minutes. Don't discuss the case and stay away
22 from any media coverage. Thank you.

23 (The jury was excused for lunch.)

24 THE COURT: Court's in recess until 1:50.

25 (Whereupon, there was a luncheon recess.)

1 (The jury returns to the courtroom.)

2 THE COURT: Call your next witness.

3 MS. CAMPBELL: State calls Robert Portee.

4 ROBERT PORTEE,

5 having been duly sworn, testified as follows:

6 THE CLERK: Have a seat in the witness box and
7 state your full name for the record, please.

8 THE WITNESS: My name is Robert Portee.

9 DIRECT EXAMINATION

10 BY MS. CAMPBELL:

11 Q Okay. Mr. Portee, if you can, you've got to
12 talk kind of loud in here because it's hard to hear,
13 okay?

14 A All right.

15 Q How old are you?

16 A Twenty-one.

17 Q Do you live here in the Columbia area?

18 A Yes, ma'am.

19 Q Are you currently employed?

20 A Yes, ma'am.

21 Q Are you going to school at this time?

22 A Yes, ma'am.

23 Q Where do you go to school?

24 A Midland's Tech.

25 Q I want to turn your attention -- did you go to

1 high school here in Columbia?

2 A Yes, ma'am.

3 Q And what high school did you go to?

4 A Richland Northeast.

5 Q Richland Northeast?

6 A Yes, ma'am.

7 Q So you obviously graduated high school?

8 A Yes, ma'am.

9 Q Do you know a guy named Corey Sanders?

10 A Yes, that's my cousin.

11 Q He's your cousin?

12 A Yes, ma'am.

13 Q And that's by blood?

14 A Yes, by blood.

15 Q I want to turn your attention back to February
16 the 18th, that evening into the early morning hours
17 of the 19th. Do you remember what you were doing
18 that night?

19 A I went to a party.

20 Q And where was the party?

21 A Windsor Lake.

22 Q Windsor Lake?

23 A Windsor Lake clubhouse.

24 Q And what part of town is that in?

25 A Northeast side of town.

1 Q The northeast side?

2 A Yes, ma'am.

3 Q And do you remember, approximately, what time
4 it was you got to the party? Was it before dark or
5 after dark?

6 A It was after dark.

7 Q And who did you go to the party with that
8 night?

9 A Herbert and Glenn.

10 Q Herbert and Glenn?

11 A Uh-huh.

12 Q What's Glenn's last name?

13 A I don't know.

14 Q Do you know Herbert's last name?

15 A Carter.

16 Q And when y'all got to the party, did you stay
17 for a while?

18 A Yeah, we stayed for a while.

19 Q And what happened that made you leave the party
20 at Windsor Lake?

21 A The party got shut down. Somebody fired a shot
22 to clear it out and we left.

23 Q So somebody fired a shot?

24 A Yeah.

25 Q And the party cleared out at that point?

1 A Yes, ma'am.

2 Q Did the police come?

3 A I don't know. I had already been gone.

4 Q At that point, who were you in the car with?

5 A Herbert and Glenn.

6 Q And who's driving?

7 A Glenn.

8 Q Where were y'all going then?

9 A We was going to the Waffle House.

10 Q Which Waffle House?

11 A I went to the one on Two Notch up on a hill and

12 then I got a call from my cousin, told me he wasn't

13 at that one. He was at the one by the Travel Lodge.

14 Q The one down by the Travel Lodge?

15 A Yes, ma'am.

16 Q And is that the one next to the Mobil Gas

17 Station?

18 A Yes, ma'am.

19 Q And you were at the other one when you got that

20 call?

21 A (No response.)

22 Q You'd gone to the other Waffle House first?

23 A Yes, ma'am.

24 Q Do you know what time of night this is?

25 A About 12:00 getting into 1:00.

1 Q And when you got a call, you can't say what
2 your cousin said, would that be Corey?

3 A Yeah.

4 Q As a result of that call, did y'all go to the
5 other Waffle House?

6 A Yes, ma'am.

7 Q And when you got there, were there other people
8 there?

9 A Yeah, there was a lot of people there.

10 Q And where did y'all pull into the parking lot?

11 A As soon as we pulled in, we went into up like
12 maybe...

13 THE COURT: Speak up a little bit, please. I
14 can't hear you.

15 THE WITNESS: We pulled into the building to
16 the end and made a left and parked.

17 BY MS. CAMPBELL:

18 Q Did you park near anybody you knew?

19 A Yeah. We was parked next -- maybe two parking
20 spaces down from Tayson.

21 Q From Tayson?

22 A Yeah.

23 Q And how do you know Tayson?

24 A I know of him. I seen him around the streets.

25 Q You can recognize him?

1 A Yeah.

2 Q Do you see him here in the courtroom?

3 A Yeah.

4 Q Can you point him out for the jury?

5 A (Witness indicating.)

6 Q What's he wearing?

7 A He's wearing a suit.

8 Q He's wearing a suit?

9 A Uh-huh.

10 Q Is he seated at a table or against the wall?

11 A At a table.

12 Q Has he got women or men next to him?

13 A Women.

14 MS. CAMPBELL: Your Honor, may the record
15 reflect he's identified the defendant, Andre Tayson
16 Boone?

17 THE COURT: It's so noted.

18 BY MS. CAMPBELL:

19 Q What kind of car was Tayson driving that night;
20 do you remember?

21 A He was riding in a black truck.

22 Q Did you know any of the other guys that were
23 with Tayson that night?

24 A I knew two of the guys who I played pop one
25 with.

1 Q You played what?

2 A I played pop one in football with.

3 Q Football?

4 A Yeah.

5 Q And who were they? Do you remember their
6 names?

7 A Demon and Bernard.

8 Q When you first got there, was everything okay?

9 A Yeah, everything was okay.

10 Q Did you find Corey after you got there?

11 A Yeah.

12 Q Where was he?

13 A He was already in the parking lot.

14 Q And did you go and talk to Corey?

15 A Yeah.

16 Q And were you out in the parking lot or were you
17 inside?

18 A I was in the parking lot.

19 Q And what happened next?

20 A And Corey and this guy named Chad got into it.
21 They started fighting, you know. Then my cousin
22 start fighting with them and then, you know, I threw
23 a punch, you know, because I feel like --

24 Q Okay. Let me slow down for a little bit, okay.
25 You mention that Corey got into it with a guy named

1 Chad?

2 A Yeah.

3 Q And Corey is your cousin?

4 A Uh-huh.

5 Q And are y'all part of a gang, or were you at
6 the time?

7 A Yeah.

8 Q And what was the gang?

9 A TTP.

10 Q TTP?

11 A (Witness nodded head.)

12 Q And is that kind of an offshoot of the Bloods?

13 A Yeah.

14 Q And are you familiar with the term Folk?

15 A Yes.

16 Q Is that a different group of people?

17 A Yes.

18 Q And are you familiar with the term Crip?

19 A Yes.

20 Q Is that another different group?

21 A Yes.

22 Q You said that Corey and Chad started getting
23 into it. Where was the fight taking place?

24 A In front of the Waffle House door.

25 Q And did Chad have a bunch of people that had

1 come up with him or do you know?

2 A Yes.

3 Q And what direction had they come from?

4 A They come from the front of the parking lot.

5 We was coming from towards the back.

6 Q So you and Tayson -- where was he, in the front
7 or the back of the parking lot?

8 A The back.

9 Q And so -- and Tayson was back with y'all?

10 A No.

11 Q Or you were parked near him?

12 A I was parked near him.

13 Q And then the other group was coming from the
14 other end of the parking lot?

15 A Uh-huh.

16 Q And are you familiar with that gas station next
17 door?

18 A Yes.

19 Q Were there any people over there?

20 A There was people standing over there.

21 Q Were they part of your group?

22 A No.

23 Q Okay. Once the fight started, was it just
24 between two people or tell me how it happened?

25 A It was just between them two, you know. And I

1 felt he was getting the best of my cousin, so, you
2 know, I jumped in and then, you know --

3 Q Wait. You're going to have to talk up a little
4 louder. You felt like who was getting the best of
5 your cousin?

6 A Chad.

7 Q Chad?

8 A Yeah.

9 Q So, at that point, you did what?

10 A I hit him.

11 Q Who did you hit?

12 A Chad.

13 Q Where did you hit him?

14 A In his head.

15 Q And then what happened?

16 A And then after that, I got hit. And then after
17 that, shots was fired. I hit the ground, ran to the
18 car and we left.

19 Q Prior to you being involved in a fight, did you
20 see anyone else out there that you knew that night
21 in the front of the parking lot towards the road?

22 A Yeah.

23 Q Who was that?

24 A Eugene.

25 Q And how do you know Eugene?

1 A I know of him. I seen him around before.

2 Q And do you remember what kind of car he was
3 driving that night?

4 A No, ma'am.

5 Q Do you remember what part of the parking lot he
6 was in?

7 A In the front.

8 Q And now when you say the front, is that towards
9 Two Notch Road?

10 A Yeah, that's right by the road.

11 Q Did you know any of the other guys with him?

12 A No.

13 Q Eugene, the guy you know as Eugene, do you see
14 him in the courtroom?

15 A Yes.

16 Q And where is he seated?

17 A Right there.

18 Q Is he at a table or is he at a bench?

19 A Yeah, a table.

20 Q Is he at a different table from Tayson?

21 A Yes.

22 Q Does he have -- how many people are sitting
23 next to him?

24 A One guy.

25 MS. CAMPBELL: Your Honor, may the record

1 reflect he's identified the defendant, Eugene
2 Patterson?

3 THE COURT: There's two guys sitting at that
4 table.

5 BY MS. CAMPBELL:

6 Q Which one of these two guys is Eugene Patterson
7 that you saw that night?

8 A The black guy.

9 THE COURT: It's so noted.

10 BY MS. CAMPBELL:

11 Q You mentioned that you're involved in the
12 fight. You threw a punch on Chad and then you got
13 hit?

14 A Yes.

15 Q And then you said you heard shots?

16 A Yeah.

17 Q Could you see who was shooting?

18 A No, I was in the cross fire.

19 Q Okay. And that's what I want to get to. Could
20 you tell what direction the shots were coming from?

21 A The front and the back.

22 Q From the front and the back?

23 A Yes.

24 Q And where are you in the parking lot when the
25 shots are being fired?

1 A In the middle of the crowd.

2 Q And where is the crowd in relation to the front
3 door of the Waffle House?

4 A Like right in front of it.

5 Q How do you know that the shots were coming from
6 both sides?

7 A I mean, shots were coming from both sides. I
8 mean, you can hear shots coming from the front and
9 the back. It was like 12 to 15 shots fired that
10 night.

11 Q From both ends of the parking lot?

12 A Yes.

13 Q Once you heard the shots coming from both, you
14 were in the middle?

15 A Yeah, in the crowd.

16 Q What did you do?

17 A I dropped and hit the ground.

18 Q And then what happened?

19 A I got up and ran and hopped in the car and
20 left.

21 Q Did you know a young man named Brian Wright?

22 A No, ma'am.

23 Q Did you see him that night or see anyone get
24 hit?

25 A (Witness shook head.)

1 Q And could you actually see who the actual
2 shooters were that night?

3 A No, ma'am.

4 Q I want to go back, though, to a conversation
5 you had with Tayson before the shooting started. Do
6 you remember talking to him?

7 A Yes.

8 Q What did Tayson tell you that night?

9 A I was going to chunk at these niggers.

10 Q I was going to chunk at...

11 A These niggers.

12 Q And when he told you that, did you understand
13 what he meant?

14 A Yeah, I mean...

15 Q Well, I'm old. What does that mean?

16 A Shoot.

17 Q At that point, did you see a gun in Tayson's
18 hands?

19 A No, ma'am.

20 Q Did you hear anything that night, though, that
21 you knew that there was a gun in Tayson's car?

22 A I heard the racking of a gun.

23 Q And who all was in the car when you heard the
24 racking of the gun?

25 A It was Tayson, Jerome and Demon and Bernard.

1 Q And was this before the fight even started?

2 A Yeah, this was before the fight.

3 Q And that's what Tayson told you?

4 A Yes.

5 Q You said that after you hit the ground, you ran
6 and y'all left?

7 A Yes.

8 Q And who did you leave with?

9 A Herbert and Glenn.

10 Q Where did y'all go?

11 A Drop me straight off, home.

12 Q You went to your house?

13 A Yes, ma'am.

14 Q After you got to your house, tell this jury
15 what happened.

16 A After I got to the house, I got a phone call
17 saying --

18 Q You can't say what anybody said to you.

19 A Oh.

20 Q Did you also get a phone call from your
21 girlfriend that night?

22 A Yes.

23 Q And as a result --

24 A My girlfriend was with me.

25 Q Was with you?

1 A Yes, she was with me.

2 Q And as a result of those phone calls, what did
3 you do?

4 A Called the police to clear my name.

5 Q So you made contact with the police that night?

6 A Yes.

7 Q And why did you make contact with the police?

8 A Because people were saying that I was the guy
9 that killed him, which it was a lie.

10 Q Were there other reasons you called the police
11 as well as far as safety?

12 A No, just to clear my name.

13 Q Did you actually go to the police station that
14 night?

15 A Yes.

16 Q How did you get there?

17 A They came to my house and picked me up.

18 Q Once you got to the police station, did you
19 talk to them?

20 A Yes.

21 Q Did you tell them the whole truth the first
22 time you talked to them?

23 A No.

24 Q Why not?

25 A Because my family was in jeopardy. I was

1 getting threatening phone calls to my parents.

2 Q You were getting threatening phone calls?

3 A Yes.

4 Q Did you tell them some of what went on that
5 night?

6 A Yes, I did.

7 Q Did they ask for your consent to perform
8 certain tests on you?

9 A Yes, they did.

10 Q And what tests did they do to you that night?

11 A Hand swabbings.

12 Q And did you tell them they couldn't do it?

13 A No, I didn't tell them.

14 Q Did you want them to do it?

15 A Yeah.

16 Q And, in fact, on that night, they advised you
17 of your rights; is that correct?

18 A Yes, they did.

19 Q Later, did the police get back in touch with
20 you?

21 A Yes.

22 Q And that would have been on -- about three days
23 later?

24 A Yeah, like three, maybe four days later.

25 Q And, again, they advised you of your rights

1 again?

2 A Yes.

3 Q And I'm going to show you advice of rights. Is
4 that the one you signed off on?

5 A Yes, ma'am.

6 Q And did you give them a statement at that
7 point?

8 A Ma'am?

9 Q Did you give them a statement?

10 A Yes.

11 Q And in that one, did they ask if you told the
12 complete truth in the first statement?

13 A Yes.

14 Q And what did you tell them?

15 A I told them, no, I left something out.

16 Q And what part had you left out?

17 A About how it really went down.

18 Q At that point when you met with the officers,
19 did they ask you to kind of do a diagram of where
20 everybody was in the parking lot?

21 A Yes.

22 Q And I'm going show you what's been marked as
23 State's Exhibit Number 77. Do you recognize that?

24 A Yes, I recognize that.

25 Q And is that one you did that night?

1 A Yes.

2 Q Is this your handwriting?

3 A Yes.

4 Q And are these the names of some of the people
5 you knew that were out there?

6 A Yes.

7 Q As well as, I think, some information you gave
8 on the back?

9 A Yes.

10 MS. CAMPBELL: Your Honor, at this time, we'd
11 offer State's Exhibit 77.

12 THE COURT: Show it to counsel.

13 (Pause.)

14 MR. SUTHERLAND: Without objection Your Honor.

15 MS. CAMPBELL: Your Honor, I'll put in a copy.

16 MS. PAYNE: Without objection to the front,
17 Your Honor.

18 THE COURT: Mark it State's Exhibit 77.

19 (State's Exhibit Number 77, drawing,
20 admitted into evidence.)

21 BY MS. CAMPBELL:

22 Q I'm going to show you State's Exhibit Number
23 77, that's just a copy of the front of this page; is
24 that correct?

25 A Yes.

1 Q On here, in State's Exhibit Number 77, does it
2 show, approximately, where the Waffle House is?

3 A Yes.

4 Q And where the gas station is?

5 A Yes.

6 Q And where does it show that Tayson and his
7 friends were?

8 A Towards the back.

9 Q And what's written right there?

10 A Tayson.

11 Q And is that, approximately, where Tayson or his
12 car was located that night?

13 A Yes.

14 Q And it also points -- has several -- what do
15 the X's stand for in this?

16 A Females and fellows.

17 Q Like the X's over here in front of the gas
18 stations, fellows and females?

19 A See I had females right here, these little X's,
20 that was -- that was these two.

21 Q These two, that would be what says Corey and
22 Rob?

23 A Yeah.

24 Q Then females and Chad?

25 A Yes.

1 Q What were the females doing that night?
2 A Trying to break it up.
3 Q Was that before you got involved?
4 A Yeah.
5 Q Then down here some more X's. What does that
6 say under that?
7 A Chad friends.
8 Q And is that, approximately, where they were
9 located when the fight was going on?
10 A Yes, ma'am.
11 Q And then down here is a name with some X's
12 behind it, what's that?
13 A It says Eugene.
14 Q And would that have been, approximately, where
15 you saw Eugene before you got in the fight?
16 A Yes, ma'am.
17 Q And, again, for the record, you didn't see who
18 actually did the shooting?
19 A No, ma'am.
20 Q Tayson Boone -- Eugene, he's not a member of
21 your gang, is he?
22 A No, ma'am.
23 Q Do you know what gang he's in?
24 A I guess, Folk, Crip, I guess.
25 Q And Tayson, do you remember giving a statement

1 about whether or not he was a member of a gang?

2 A Yeah.

3 Q And what gang is he in?

4 A He's a Blood.

5 Q For the record, did you have a gun that night?

6 A No, ma'am.

7 Q And when you went to Corey Sanders' aid, you
8 used your fist?

9 A Fist only.

10 MS. CAMPBELL: Thank you. Please answer any
11 questions the defense may have.

12 THE COURT: Mr. Sutherland.

13 MR. SUTHERLAND: Please the Court.

14 THE COURT: Yes.

15 CROSS-EXAMINATION

16 BY MR. SUTHERLAND:

17 Q Mr. Portee, there's -- you testified on direct
18 that you had heard shots coming from two directions.
19 Do you remember that testimony?

20 A Yes, sir.

21 Q Now, you had given a statement -- actually, it
22 was on the 19th when you came in. Now, what your
23 statement says is, I heard about 12 to 15 shots.
24 The shots were coming from the back of the parking
25 lot.

1 Now, you didn't say that they were coming from
2 two directions at that time.

3 A No.

4 Q Do you think your memory would have been better
5 that night or 15 months later?

6 A That --

7 Q In other words, were you right after this
8 incident --

9 A When I heard shots, I hit the ground.

10 Q Okay.

11 A I mean, but you could tell shots were coming
12 from the front and the back. I mean, it was more
13 than one gun sounding off.

14 Q Okay. So why did you tell the police it was
15 only coming from the back?

16 A I wasn't telling the complete truth that night
17 and I admitted that when I wrote my statement again.

18 Q Well, why -- but when you say that they were
19 coming from the back, they would have been coming
20 from the people that you were with?

21 A No, I wasn't with Tayson and them.

22 Q You weren't?

23 A I wasn't. I came out there for my cousin aid.

24 Q Okay. But would everyone in that back area or
25 on that side sort of be supportive of Corey in the

1 fight?

2 A I don't know.

3 Q You don't know. Was everybody back there
4 Bloods?

5 A I don't know that neither.

6 Q Would anyone who wasn't a Blood be hanging out
7 back there?

8 A I don't know.

9 Q Okay. But you do agree that you told the
10 police that night that the shots were coming from
11 that back area of the parking lot?

12 A Yes.

13 Q And you said that you were aware that people
14 were saying that, actually, that you had shot Brian?

15 A Yes.

16 Q And did you wash your hands prior to making
17 that statement at 4:00 a.m.?

18 A No.

19 Q And you also mentioned in your statement that
20 you saw a guy with a gun who was a black male with
21 braids and all black, no more than six feet. You
22 saw this guy where the shots were coming from. Now,
23 this is where you were -- are saying right now that
24 you weren't completely truthful, but the way that
25 it's worded in here, it looks like there was more

1 than one person in that back parking lot area?

2 A Yeah, there was more than one person back
3 there.

4 Q I mean, with the firearm?

5 A I mean, I didn't see anybody with a firearm. I
6 told you why I said that. I was getting threatening
7 phone calls before the police even came to my house.
8 I don't want to put my family in jeopardy when I'm
9 getting threatening phone calls saying, I know what
10 your mom drive, I know where you live, I'm going to
11 kill your parents, I'm going to kill your brother.

12 MR. SUTHERLAND: This is hearsay, Your Honor,
13 that was not solicited and I ask that it be stricken
14 from the record.

15 MS. CAMPBELL: Your Honor, he asked him why he
16 didn't tell the truth. I think he has a right to
17 explain it.

18 MR. SUTHERLAND: I don't think I asked why. I
19 said he wasn't telling the truth.

20 MS. CAMPBELL: Okay. And he has a right to
21 explain why he wasn't telling the truth.

22 MR. SUTHERLAND: I didn't ask him why.

23 THE COURT: This falls within the exception
24 under Rule 803(3). Go ahead. It's overruled.

25 MR. SUTHERLAND: Yes, sir.

1 BY MR. SUTHERLAND:

2 Q So where in that statement that was untruthful,
3 or part untruthful that you've been testifying
4 about, when you say, I saw a guy with a gun who was
5 a black male with braids in all black, no more than
6 six feet and medium build, that was not truthful?

7 A No.

8 Q Okay. So you were just trying to put it on
9 somebody else maybe or something?

10 A Yeah.

11 Q Okay. Now, one thing, in your -- I want to --
12 actually want to make sure I -- do you remember when
13 the investigators asked you that if you knew that --
14 the dead boy Brian, do you remember what your
15 response was?

16 A I don't know him from a can of paint.

17 Q Is that pretty callous or you just didn't care?

18 A No, I do care, I mean, but I don't know him.
19 He asked me if I knew him, I don't know him.

20 MR. SUTHERLAND: All right. No further
21 questions at this time, Your Honor.

22 THE COURT: All right. Any questions on behalf
23 of Mr. Boone?

24 MS. PAYNE: Yes, Your Honor.

25 *****

CROSS-EXAMINATION

1

2

BY MS. PAYNE:

3

Q Good afternoon, Mr. Portee. How are you doing?

4

A All right.

5

Q You testified on direct that Glenn was driving the car; is that correct?

6

7

A Yes.

8

Q Okay. Where did you park next to Tayson's Explorer?

9

10

A Towards the end of the building.

11

Q Okay. Was it on the side --

12

THE COURT: Speak up, please.

13

BY MS. PAYNE:

14

Q Was it on the side closest to Two Notch or on the other side?

15

16

A Side closer to the gas station.

17

Q So it would go your car and then Tayson's car?

18

A My car, parking space, then Tayson's car.

19

Q Okay. You also testified that you're a Blood, you're in the TTP. Tayson's not in the TTP; is that correct?

20

21

A He's not in our division, but --

22

Q He's not in your sect?

23

A No.

24

25

Q And your sect is TTP?

1 A Uh-huh.

2 Q You also testified that you'd been at a Windsor
3 Lake party?

4 A (Witness' nodded head.)

5 Q And that Byron had shot up the party, that's
6 why you left?

7 A No. He shot in the air to clear out the party.

8 Q Okay. And the Solicitor showed you what's
9 State's Exhibit 77. Is Byron at the Waffle House
10 that night?

11 A Yeah, he was there.

12 Q Okay. Where was he at? Can you point?

13 A Parked back there.

14 Q He was parked back there?

15 A Yes.

16 Q Okay. And where are you at?

17 A Where was I parked or where was I at?

18 Q Where were you standing?

19 A I was standing right there...

20 COURT REPORTER: I'm sorry. Can you repeat
21 that again?

22 THE WITNESS: I said I was standing over where
23 the X is where my name is.

24 BY MS. PAYNE:

25 Q And this is accurate from what you remember

1 that night?

2 A Yes.

3 Q You don't want to change anything from this,
4 right?

5 A Not at all.

6 Q Okay. And you also, in your statement,
7 testified that Tayson was in the back, you have him
8 here?

9 A Uh-huh.

10 Q How tall are you?

11 A How tall am I?

12 Q Yeah.

13 A Five, nine.

14 Q And you said that the shots were coming from
15 the back towards Two Notch Road?

16 A Yes.

17 Q And they were going over your head?

18 A Yes.

19 Q And you're right here in front of the Waffle
20 House?

21 A (Witness nodded head.)

22 MS. PAYNE: Beg the Court's indulgence.

23 THE COURT: Yes, ma'am.

24 (Pause.)

25 MS. PAYNE: Nothing further, Your Honor.

1 THE COURT: Redirect?

2 REDIRECT EXAMINATION

3 BY MS. CAMPBELL:

4 Q One thing I want to clear up. We're talking
5 about Bloods. There are different sects in
6 different neighborhoods?

7 A Uh-huh.

8 Q And different sects of the TTP?

9 A Repeat that question again.

10 Q TTP is one sect?

11 A Yes.

12 Q And that can be different from neighborhood to
13 neighborhood?

14 A Uh-huh.

15 MS. CAMPBELL: Thank you.

16 THE COURT: Mr. Sutherland, do you have
17 anything else?

18 MR. SUTHERLAND: Nothing further.

19 THE COURT: Ms. Payne, do you have anything
20 else?

21 MS. PAYNE: No, Your Honor.

22 THE COURT: Thank you.

23 Thank you, sir. You may step down.

24 Call your next witness.

25 MR. GOLDBERG: The State calls Quintez Clemons.

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QUINTEZ CLEMONS,
having been duly sworn, testified as follows:
THE CLERK: Have a seat in the witness box and
state your name for the record.
THE WITNESS: Quintez Clemons.
DIRECT EXAMINATION
BY MR. GOLDBERG:
Q Mr. Clemons, how are you doing?
A Fine.
Q How old are you, sir?
A Nineteen.
Q Where are you from?
A Tennessee.
Q How long have you lived in Columbia?
A Five years.
Q Did you go to high school here?
A Uh-huh.
Q Where did you go to high school?
A Keenan.
Q Keenan. Back in February of 2007, did you end
up at the Waffle House February 19th?
A Yes, sir.
Q What were you doing that night?
A Huh?
Q What were you doing that night?

1 A We was going out there to get something to eat.

2 Q Who were you there with?

3 A Little Man, Sylvester.

4 Q Is that Sylvester Boone?

5 A Yes.

6 Q What kind of car were you in?

7 A Nissan silver.

8 Q Whose car was that?

9 A (No response.)

10 Q Whose car was it?

11 A (Witness shrugged shoulders.)

12 Q You don't know. Do you know -- it was a silver

13 Nissan?

14 A (Witness nodded head.)

15 Q Do you know --

16 THE COURT: Hold on a second.

17 Mr. Clemons, you need to say your answers for

18 me, okay?

19 THE WITNESS: Yes, sir.

20 THE COURT: Thank you.

21 BY MR. GOLDBERG:

22 Q Where was the car parked at the Waffle House

23 that night?

24 A We was behind the Waffle House.

25 Q In the back of the --

1 A Like where the dumpster is and that little
2 furniture place, we was behind it.

3 Q Okay. And did you go inside the Waffle House
4 that night?

5 A Uh-huh. Yes, sir.

6 Q Did you get something to eat?

7 A No. We had left out, it was too crowded.

8 Q What did you do when you walked back out?

9 A Went to the car.

10 Q Back to the car you came in?

11 A Uh-huh.

12 Q At some point, did you see another car come
13 driving through the lot?

14 A Yeah, that's when we had got out the car and
15 went to Tayson car and start talking to them and
16 another car drove in.

17 Q You were talking to Tayson that night?

18 A Uh-huh.

19 Q And where was he parked?

20 A On the other side.

21 Q Was it the front or the back of the lot?

22 A The back of the lot.

23 Q And it was on the other side of the lot?

24 A Uh-huh.

25 Q So your car, I guess, was directly behind the

1 building so to speak?

2 A Behind -- uh-huh.

3 Q And then his car would have been --

4 A On the other side of the parking lot --

5 Q Closer to the gas station?

6 A Yeah.

7 Q And when you were talking to Tayson -- how did
8 you know Tayson?

9 A I been knowing Tayson, that's my friend. I
10 been knowing him.

11 Q Known him for a long time?

12 A (Witness nodded head.)

13 Q And you said another car came on through the
14 lot when you were talking to Tayson?

15 A (Witness nodded head.)

16 Q What did that car look like?

17 A It was -- one of them was maroon, one was green
18 with white writing on it. I recognized the maroon
19 car. It was my friend, Bay. And I was trying to
20 get his attention and then they had made a U-turn
21 and came back around.

22 Q That was the maroon car?

23 A Uh-huh.

24 Q Came to the back of the lot, made a U-turn and
25 then you -- did you go up and talk to him?

1 A Uh-huh.

2 Q Does Bay go by another name? Is that his real
3 name?

4 A That's not his real name.

5 Q Is it Karmindae?

6 A Karmindae.

7 Q How do you know Karmindae, or Bay?

8 A His mom and my mom are close friends.

9 Q He was in that burgundy car?

10 A Uh-huh.

11 Q Was anybody else in the car with him?

12 A Yes, sir.

13 Q Who was in the car with him?

14 A I remember the boy with the braids, the
15 light-skinned one. He's the one pulled the gun out
16 on me, the light-skinned one.

17 Q He had light skin and braids?

18 A Uh-huh.

19 Q Was he wearing any colors that night?

20 A A blue flag, blue.

21 Q And you said he had a gun?

22 A Uh-huh.

23 Q And he pointed it at you?

24 A (Witness nodded head.)

25 Q What happened when he pointed the gun at you?

1 A They told him that me and him was cousin and he
2 put the gun down and me and Bay started talking.
3 They drove off to the front.

4 Q Did they park the car in the front of the lot?

5 A Yes, that's when I walked back to my car.

6 Q Did you see the fight that took place that
7 night?

8 A No. We was parked behind it. We was in the
9 car --

10 Q Could you -- I'm sorry. Go ahead.

11 A We was parked behind the Waffle House. When
12 the fight started, we didn't know the fight was
13 going on. Tayson was running towards the fight,
14 that's when we got out the car running towards the
15 fight. By the time we got there, people was already
16 shooting towards us, so we ran and got back in our
17 car.

18 Q You were in your car?

19 A Uh-huh.

20 Q It was cold out that night, wasn't it?

21 A Yeah.

22 Q And the fight starts, you get out of your car
23 and that's when the shooting was going on; is that
24 what you're saying?

25 A By the time we got around the corner, that's

1 when the shooting start. A big black -- a big black
2 dude was walking towards Tayson's car shooting.

3 Q Did you see -- well, you said a big black dude?

4 A Uh-huh.

5 Q Do you know what color shirt he was wearing?

6 A Black.

7 Q And he was shooting in which direction?

8 A Towards Tayson's car.

9 Q Did you see Tayson shooting?

10 A No.

11 Q You never saw him shoot?

12 A No. I couldn't see the front of the Waffle
13 House where they was at, where Tayson and them was
14 at, because we was parked in the back and we was in
15 our car, so I couldn't see them.

16 Q Do you remember giving a statement to the
17 police about this incident?

18 A Yes, sir.

19 Q Investigator Ellis met with you, I believe, on
20 March 20th?

21 A Uh-huh.

22 Q If I showed you that statement, would it help
23 refresh your memory about that?

24 A I already know.

25 Q Do you want to take a look at it?

1 A No.

2 Q Is that your signature?

3 A Yes.

4 Q Is that your signature, also?

5 A Yes.

6 Q Where did you see Tayson run to from the back
7 of the parking lot?

8 A From his car.

9 Q To where?

10 A He was in the front of his car, people was in
11 the front of his car talking. I guess the fight
12 started and he ran. When I see him run, that's when
13 I jumped out my car and we started running. By the
14 time we got around the corner, they was already
15 shooting. So we turned around, ran back and got in
16 our car and left.

17 Q Did you ever see him with a firearm in his
18 hand?

19 A No.

20 Q But you saw -- did you see the light-skinned
21 dude with a gun?

22 A When he pulled it out on me, yes, but as far as
23 him shooting in the --I didn't see that.

24 Q And the big black dude in the black shirt?

25 A Yeah. When we was coming around the corner

1 trying to get to the fight, that's the first person
2 I seen, that's what made us turn around. He was
3 walking towards us. When we ran around the corner,
4 he was right there walking towards us shooting. I
5 turned around and ran to the car.

6 **MR. GOLDBERG:** Beg the Court's indulgence.

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

8 (Pause.)

9 **BY MR. GOLDBERG:**

10 **Q** You said you and Tayson have been friends for a
11 long time; is that right?

12 **A** Uh-huh.

13 **Q** Did you grow up in the Meadow Lakes area?

14 **A** No, from school.

15 **Q** From school. If I show you this statement, are
16 you sure it's not going to refresh your memory about
17 something that you're leaving out here, if I have
18 you look at this paragraph right here?

19 **A** Yeah. I just talked to Mr. O'Neil about that.
20 I told him I didn't write that in my statement. He
21 said he was going to talk to Mr. Matthew Ellis about
22 it.

23 **Q** Well, you can't talk about what anybody else
24 said. You don't want to look at this?

25 **A** I know what it says.

1 **MR. GOLDBERG:** That's all I have. Thank you.

2 **THE COURT:** Mr. Sutherland.

3 CROSS-EXAMINATION

4 **BY MR. SUTHERLAND:**

5 **Q** Just briefly. Mr. Clemons, when that
6 light-skinned fellow was -- you said that he pointed
7 a -- it was a .357 at you?

8 **A** Yes, sir.

9 **Q** Now, you also mentioned in your statement that
10 he had a black semiautomatic in his lap?

11 **A** On his lap, uh-huh.

12 **Q** So the light-skinned Crip guy actually had two
13 firearms, at least, that you know of?

14 **A** Yes, that I know of. He had one in his hand
15 and one on his lap.

16 **Q** And he was pointing the .357 at you?

17 **A** Yes. He said, do we have a problem.

18 **Q** So for no reason then?

19 **A** When I walked up to the car, I guess he didn't
20 know who I was. He pulled it out. He said, Do you
21 have a problem? And Bay was like, That's my cousin.
22 He put it down.

23 **Q** So his reason was, all that you did was you
24 walked up to the car?

25 **A** And I had my hands up.

1 MR. SUTHERLAND: No further questions, Your
2 Honor.

3 THE COURT: Thank you, Ms. Everhart.

4 MS. EVERHART: Yes, Your Honor. Thank you.

5 CROSS-EXAMINATION

6 BY MS. EVERHART:

7 Q Hi, Mr. Clemons. How are you?

8 A Hi.

9 Q That night when you were at the Waffle House,
10 were you also with your brother?

11 A My brother, Sam.

12 Q So Sam was there with you?

13 A Uh-huh.

14 Q And you testified that while you were at the
15 back of the Waffle House, a car came back there and
16 made a U-turn?

17 A Uh-huh.

18 Q And that was the one your friend, Bay, was in?

19 A Uh-huh.

20 Q And you went up to the car?

21 A Uh-huh.

22 Q And the light-skinned black male had a big
23 silver revolver, 357?

24 A Yes, ma'am.

25 Q And then he also had this semiautomatic?

1 A Another gun on his lap, yes, ma'am.

2 Q And that he actually pointed that silver .357
3 at you?

4 A Yes, ma'am.

5 Q Now, you testified on direct that you do know
6 Tayson, you're friends with him?

7 A (Witness nodded head.)

8 Q But you wouldn't lie for him, would you?

9 A No.

10 MS. EVERHART: Beg the Court's indulgence.

11 THE COURT: Yes, ma'am.

12 (Pause.)

13 MS. EVERHART: Nothing further for this
14 witness. Thank you.

15 THE COURT: Redirect?

16 MR. GOLDBERG: Yes, sir.

17 REDIRECT EXAMINATION

18 BY MR. GOLDBERG:

19 Q The -- I believe you testified that you saw a
20 big black male in a black shirt firing in Tayson's
21 direction; is that right?

22 A Well --

23 Q That wasn't Bay, was it?

24 A No.

25 Q It was somebody else?

1 A (Witness nodded head.)

2 MR. GOLDBERG: Thank you.

3 THE COURT: Mr. Sutherland, do you have any
4 recross?

5 MR. SUTHERLAND: No, sir.

6 THE COURT: Do y'all have anything else, Ms.
7 Everhart?

8 MS. EVERHART: Nothing further, Your Honor.

9 THE COURT: Thank you, Mr. Clemons. You may
10 step down.

11 Call your next witness.

12 MR. GOLDBERG: The State calls William Kee.

13 WILLIAM KEE,

14 having been duly sworn, testified as follows:

15 THE CLERK: Have a seat in the witness box and
16 state your name for the record.

17 THE WITNESS: My name is William Kee.

18 DIRECT EXAMINATION

19 BY MR. GOLDBERG:

20 Q Mr. Kee, where are you from?

21 A Columbia, South Carolina.

22 Q You're going to have to make sure you keep your
23 voice up so the jury and the Judge can hear
24 everything you say, okay?

25 A All right.

1 Q Pull those microphones a little closer to you.

2 A (Witness complies.)

3 Q Did you go to high school in Columbia?

4 A No.

5 Q Where did you go to high school?

6 A Keenan.

7 Q Okay. That's in Columbia, though, right?

8 A (Witness nodded head.)

9 Q How old are you?

10 A Nineteen.

11 Q And were you out at the Waffle House back on

12 February 19, 2007?

13 A Yes, sir.

14 Q When the shooting took place?

15 A Yes, sir.

16 Q Who were you with that night?

17 A I was with Tayson, Jerome, Derrick, Duke and

18 Sam.

19 Q Whose car were you in?

20 A Tayson's car.

21 Q Was that -- what kind of car was it?

22 A Like a Ford, SUV, I guess.

23 Q SUV?

24 A Yes.

25 Q What color was it?

1 A Black.

2 Q And when you got to the Waffle House, where did

3 you park the car?

4 A Like to the back.

5 Q To the back of the lot?

6 A Yeah, like towards the back.

7 Q And why did y'all go to the Waffle House that

8 night?

9 A Basically, to fight, basically.

10 Q For a fight?

11 A Yeah.

12 Q Did you know who was going to fight?

13 A No, not really.

14 Q At the time, were you a member of a gang?

15 A Yeah.

16 Q You were a Blood?

17 A Yes, sir.

18 Q Were you a TTP?

19 A Yes, sir.

20 Q Did you know who you were going there to fight?

21 A Not really, no.

22 Q Just to go and fight?

23 A (Witness nodded head.)

24 Q At some point while you were out there -- well,

25 let me ask you this. Did you ever get into a fight

1 yourself?

2 A No -- like --

3 Q Fist fight?

4 A -- the day before.

5 Q I mean that night?

6 A No.

7 Q At some point, were there shots fired at that
8 location?

9 A Yes, like...

10 Q I'm sorry?

11 A Yes.

12 Q Who did you see fire a gun?

13 A First -- the first two shots, I saw Tayson
14 shoot in the air. Then after that, I didn't see no
15 more because I was in the truck. Everybody
16 scattered out.

17 Q Do you see Tayson in the courtroom here today?

18 A Yes, sir.

19 Q Can you point him out?

20 A He's sitting over there.

21 Q Sitting at one of the tables?

22 A Yes, sir.

23 Q And what's he wearing?

24 A I guess, suit and tie, white shirt.

25 Q A white shirt?

1 MR. GOLDBERG: Will the record reflect that the
2 witness has identified the defendant?

3 THE COURT: So noted.

4 BY MR. GOLDBERG:

5 Q You said that Mr. Boone fired twice in the
6 area; is that right?

7 A (Witness nodded head.)

8 Q Where was he standing when he did that?

9 A Like right in front of the truck.

10 Q In front of his truck?

11 A Yeah.

12 Q Do you remember if the car was pulled head into
13 the space or backed in?

14 A Backed in.

15 Q Where were you when he fired up into the air?

16 A I was getting inside the truck. Like everybody
17 scattered out, started running and I ran to the
18 truck and got inside the truck.

19 Q Front seat or back seat?

20 A Back seat.

21 Q What did you observe once you got in the truck?

22 A Basically nothing because I was ducking because
23 they was shooting and stuff.

24 Q Did you hear anything else?

25 A No, not really.

1 Q Did you hear anymore shots?

2 A Yeah, shots was fired back and forth.

3 Q Where did you hear those shots coming from?

4 A Some was coming from the back, some was coming
5 from the front of the truck.

6 Q When you say coming from the back, what do you
7 mean by that? From the back of the truck?

8 A Yes, from the back of the truck.

9 Q Were there also shots coming from a different
10 area of the parking lot?

11 A Yeah, it sounded like it.

12 Q Where did it sound like they were coming from?

13 A From like the side of the truck behind where we
14 was parked, like from the side of the truck.

15 Q Like in the direction towards the road?

16 A Yes.

17 Q And are you familiar with a story that Derrick
18 Guillyard had given the police about a .22 being
19 involved that night?

20 A Yeah, it was like a false story.

21 Q So that wasn't true?

22 A No, it wasn't true.

23 Q Did you see anyone else with a gun that night?

24 A No.

25 Q Were you actually arrested on an unrelated

1 charge to this involving some sort of a lottery
2 ticket?

3 A Yes, sir.

4 Q Is that charge still pending?

5 A Yes, sir.

6 Q Have you been promised anything for your
7 testimony here today?

8 A No, sir.

9 MR. GOLDBERG: Thank you, sir.

10 THE COURT: Mr. Sutherland.

11 CROSS-EXAMINATION

12 BY MR. SUTHERLAND:

13 Q Just a few questions about what the environment
14 was like out there. It was around midnight or a
15 little bit after?

16 A I guess so, yeah.

17 Q Okay. Had you ever been inside the Waffle
18 House while you were up there?

19 A Yeah. When we first got there, we walked
20 inside the Waffle House.

21 Q So -- now, the lights are pretty bright, I
22 think, in the Waffle House. Was it dark in the
23 parking lot?

24 A No, not really.

25 Q Did people have their headlamps on or

1 something?

2 A I think there was like a night light out there.

3 Q A night light out there. How many people do
4 you think -- are you able to guess how many people
5 were out there?

6 A Like over 30, basically.

7 Q Maybe 30?

8 MR. SUTHERLAND: No further questions. Thank
9 you, Your Honor.

10 THE COURT: Anything on behalf of Mr. Boone?

11 MS. EVERHART: No questions for this witness.

12 THE COURT: Anything else from the State?

13 MR. GOLDBERG: Just have one quick question,
14 Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. GOLDBERG:

17 Q What's your middle name?

18 A Bernard.

19 MR. GOLDBERG: Thank you.

20 THE COURT: Anything else?

21 (There was no response.)

22 THE COURT: Thank you, sir. You may step down.
23 Call your next witness.

24 MR. GOLDBERG: State calls Corey Sanders.

25 THE COURT: Do you expect him to be lengthy?

1 MR. GOLDBERG: It could be.

2 THE COURT: Let's go ahead and take a break
3 now, ladies and gentlemen, ten minutes. Don't
4 discuss the case. Thank you.

5 (The jury retires to the jury room.)

6 THE COURT: Court's in recess for ten minutes.

7 (Brief recess.)

8 THE COURT: Do y'all have your witness here?

9 MS. CAMPBELL: We're getting him, Your Honor.
10 He's in custody.

11 MR. SUTHERLAND: Your Honor, one concern I have
12 about the next witness. In one of the statements
13 that he gave to them, he refers to a prior bad act.
14 And I know that -- I just hope to raise the issue as
15 a matter of caution with the Solicitors as a prior
16 bad act involving a firearm. And I'm just really
17 concerned about that and I just wanted to raise it
18 before the Court.

19 MR. GOLDBERG: Your Honor, you will allow me
20 two seconds, I will instruct him, make sure he does
21 not make any comment on that.

22 THE COURT: Sure.

23 MS. CAMPBELL: Your Honor, for purposes of
24 scheduling, too, after that, we do have like three
25 witnesses we need to take up the photo lineups on

1 and those may be two or three of the next witnesses
2 after this one. I just wanted to keep the Court
3 apprised.

4 **THE COURT:** Okay.

5 (Pause.)

6 **THE COURT:** Bring in the jury.

7 (The jury returns to the courtroom.)

8 **THE COURT:** Call your witness.

9 **MR. GOLDBERG:** Thank you, Your Honor. The
10 State calls Corey Sanders.

11 **THE COURT:** Come up here to the bailiff,
12 please, sir.

13 **COREY SANDERS,**
14 having been duly sworn, testified as follows:

15 **THE CLERK:** Have a seat in the witness box and
16 state your full name for the record, please.

17 **THE WITNESS:** Corey Sanders.

18 **DIRECT EXAMINATION**

19 **BY MR. GOLDBERG:**

20 **Q** Mr. Sanders, how old are you?

21 **A** Eighteen.

22 **Q** And where are you from?

23 **A** Columbia, South Carolina.

24 **Q** Did you go to high school here in Columbia?

25 **A** Yes, sir.

1 Q Where did you go to high school?

2 A Blythewood High.

3 Q I want to take you back to February 19th, 2007.

4 What were you doing on that night?

5 A I was with a friend.

6 Q Who were you with?

7 A Charles Williams and Byron Morant.

8 Q Charles Williams and Byron Morant. And where
9 were you that night with them?

10 A We were riding, going to a party at the Windsor
11 Lakes Club, which was shut down where we ended up at
12 a Waffle House.

13 Q I just need to make sure that you speak loud
14 enough so that everybody in the back can hear you,
15 okay?

16 A Okay.

17 Q Can you say that again?

18 A We were riding down Two Notch going to a
19 Windsor Lake Club party where it had been shut down
20 and where we ended up at the Waffle House.

21 Q The party had been shut down when you got
22 there?

23 A Uh-huh.

24 Q Which Waffle House did you go to?

25 A On Two Notch by the Mobil.

1 Q By the Mobil. Where did you park your car when
2 you got there?

3 A In the Waffle House parking lot.

4 Q Towards the front or the back?

5 A In the front, in the middle.

6 Q In the middle?

7 A Yeah.

8 Q Not right by the road?

9 A Huh-huh.

10 Q And what did you do when you got there?

11 A I went inside and was chilling with a couple of
12 females and was getting ready to fight.

13 Q Who were you getting ready to fight?

14 A A guy named Chad.

15 Q Are you a member of a gang?

16 A Yes, I was.

17 Q You were at the time?

18 A Yeah.

19 Q Which one?

20 A Blood.

21 Q Was there a particular sect of Bloods that you
22 were a part of?

23 A Yeah.

24 Q What was that?

25 A TTP.

1 Q TTP?

2 A Yeah.

3 Q What about Chad, was he in a gang?

4 A Yeah, he was a Folk.

5 Q Folk. And so you were hanging out in the
6 Waffle House waiting for the fight to take place; is
7 that right?

8 A Yes, sir.

9 Q While you were sitting in the Waffle House
10 before this happened, did you see any cars pull up?

11 A I saw a burgundy Malibu.

12 Q Where did the burgundy Malibu park?

13 A Right beside the Waffle House close to Two
14 Notch.

15 Q Close to Two Notch?

16 A Yeah.

17 Q Who was in the burgundy Malibu?

18 A Eugene Patterson, a light-skinned guy and a guy
19 go by the name of Bay.

20 Q Eugene Patterson, a light-skinned guy and a guy
21 that goes by the name of Bay?

22 A Yeah.

23 Q Did you know Eugene Patterson?

24 A Yes.

25 Q How did you know him?

1 A Went to school with him.

2 Q Where did you go to school together?

3 A Blythewood Academy.

4 Q Did you know the light-skinned guy?

5 A Never seen him before.

6 Q When you saw Eugene in the burgundy Malibu,
7 where was he?

8 A He was in the back seat.

9 Q What, if anything, did you observe about him
10 when you saw him?

11 A He made a gun signal.

12 Q A gun signal?

13 A Yeah.

14 Q Can you describe what that means?

15 A Like pointed a gun like out of the window as if
16 he was going to shoot.

17 Q Was it his actual hand or was it an actual gun?

18 A It was an actual gun.

19 Q What kind of gun was it?

20 A I couldn't positively say. It was a high
21 caliber gun, though.

22 Q A high caliber gun?

23 A Yeah.

24 Q So it wouldn't have been a revolver then?

25 A No.

1 Q What did you do after he had made that gesture
2 to you?

3 A He got outside the car, walked inside the
4 Waffle House and about ten seconds later, they left
5 out.

6 Q So, basically, they walked in and walked right
7 back out?

8 A Yeah.

9 Q At some point, did you walk outside for the
10 fight to take place?

11 A Yeah.

12 Q Tell me what happened then when you walked
13 outside.

14 A I walked outside -- before I walked outside, I
15 seen the burgundy Malibu pull back up. And I saw a
16 couple of more cars pull back up with Chad and a
17 couple of other people that was with him was in that
18 vehicle, that's when I walked outside and they was
19 coming in between cars. They parked across the
20 street at the Mobil. And once we met up with each
21 other, we squared off and fought.

22 Q All right. Let me back up a little bit. You
23 saw a couple cars pull up?

24 A Uh-huh.

25 Q And one of them had Chad in it?

1 A Uh-huh.

2 Q Who was with Chad?

3 A Ramond Asberry, Keyon Lewis and Dameon.

4 Q Did you know those guys?

5 A Yes, sir.

6 Q How did you know them?

7 A I knew them from an ongoing beef I had with
8 them the last week, a week before that incident.

9 Q Was your beef with Chad?

10 A Yeah.

11 Q When you say you had a beef with them, can you
12 tell me what that means?

13 A We had got into it at a basketball game about
14 disrespect or something. He said I disrespected
15 him.

16 Q And that's what prompted you and him to set up
17 this fight?

18 A Uh-huh.

19 Q Do you know if Chad was a member of a gang?

20 A He was a Folk.

21 Q What about the people he was with?

22 A They were also Folks.

23 Q Where did Chad's party park?

24 A They parked at the Mobil.

25 Q So you went outside to fight Chad and what

1 happened when you went outside to fight him?

2 A I went outside to fight Chad, the light-skinned
3 guy was already standing outside with a gun in his
4 hand. He wasn't trying to hide it or anything.
5 There was another group in the back of the parking
6 lot or whatnot.

7 Q Who was that group?

8 A That was Jerome and Tayson's group.

9 Q Do you know who they are?

10 A I know who they are.

11 Q Where were they?

12 A They were in the back.

13 Q Back in the parking lot?

14 A Yeah.

15 Q Were they at a car?

16 A Were they at a car?

17 Q In or at a car?

18 A Yeah.

19 Q What kind of car?

20 A Black SUV.

21 Q Had you ever met Tayson before?

22 A We had a little ongoing beef that never really
23 got into an altercation with.

24 Q What was that over?

25 A Female.

1 Q A female?

2 A (Witness nodded head.)

3 Q But you saw him there that night?

4 A Yeah.

5 Q Did you have any conversations with him?

6 A Other than I told him about what was -- I was
7 about to fight Chad. And he asked me was that the
8 guy who jumped on him was going to be there or
9 whatnot. I told him...

10 Q I'm sorry. Can you back that up? Can you say
11 that again?

12 A I said I told him about I was about to fight
13 Chad. And a group of boys that was -- had a beef
14 with Chad, jumped on him last week, I had soon find
15 out that I stated in my next statement.

16 Q Did you know Tayson by any name other than
17 Tayson?

18 A I know him by Tay Bug (ph). I never knew...

19 COURT REPORTER: I'm sorry, say that again.

20 THE WITNESS: I knew him by Tay Bug.

21 BY MR. GOLDBERG:

22 Q Tay Bug?

23 A Yeah.

24 Q Was he in a gang?

25 A Yeah.

1 Q What gang?

2 A He was a Blood.

3 Q He was a Blood, also. Was he the same kind of
4 Blood that you were?

5 A Huh-huh.

6 Q What was he?

7 A If I'm not mistaken, he's was like Six Deuce
8 Brim or something like that.

9 Q Six Deuce Brim?

10 A Yeah.

11 Q Is that a sect of the Bloods?

12 A Yeah.

13 Q It's just different from -- I believe you said
14 you were TTP?

15 A TTP.

16 Q And you gave two statements to the police; is
17 that right?

18 A Yes, sir.

19 Q And the first one, did you mention anything
20 about Jerome or Tayson?

21 A No, sir.

22 Q And why was that?

23 A Because I didn't -- I didn't know who they were
24 by name. I just know them by face. And they was
25 asking me by names. They didn't show me any

1 pictures or nothing like that.

2 Q Did you know the victim, Brian Wright?

3 A Yeah, I did.

4 Q How did you know him?

5 A I went to Blythewood Academy with him, also.

6 Q Let's talk about the light-skinned guy that you
7 mentioned. Can you describe him a little more?

8 A I just know he was wearing all blue with a blue
9 bandana around his face.

10 Q Which car did you see him in?

11 A The burgundy Malibu.

12 Q Did you see the kind of gun that he had?

13 A It was a revolver, that's all I knew about it.

14 Q A revolver?

15 A Uh-huh.

16 Q Did you have a gun on you that night?

17 A No, sir.

18 Q Who is Brian Blackwell?

19 A Some guy that went...

20 Q He what?

21 A It's a guy that went to Ridge View.

22 Q Oh, Ridge View?

23 A Yeah.

24 Q Ridge View High School?

25 A Yeah.

- 1 Q Was he out there that night?
- 2 A I didn't see him.
- 3 Q What kind of car does he drive?
- 4 A Black Maxima.
- 5 Q Did you see it out there that night?
- 6 A No, sir.
- 7 Q Do you know who Tayson and his group of people
- 8 had beef with that night?
- 9 A With Dameon.
- 10 Q What gang is Dameon a part of?
- 11 A He's a Folk.
- 12 Q To your knowledge, what was their beef about?
- 13 A Dameon and a couple of people jumped on Tayson
- 14 at the Main Event Nightclub, I believe, last
- 15 weekend, the weekend before that happened.
- 16 Q The person that you know as Tayson, do you see
- 17 him in the courtroom here today?
- 18 A Yeah.
- 19 Q Can you point him out for me?
- 20 A Right there (indicating).
- 21 Q Can you describe for me what he's wearing?
- 22 A A shirt, tie and a blue jacket.
- 23 Q What color is the shirt?
- 24 A I believe it's yellow.
- 25 Q And who's sitting at the table with him, males

1 or females?

2 A Females.

3 MR. GOLDBERG: Your Honor, let the record
4 reflect that the witness has identified Mr. Boone.

5 THE COURT: It's so noted.

6 BY MR. GOLDBERG:

7 Q And do you see Mr. Patterson in the courtroom
8 here today?

9 A Yes, sir.

10 Q Can you point him out?

11 A Right there (indicating).

12 Q Can you describe what he's wearing?

13 A Suit, black suit.

14 Q And who is he sitting with?

15 A A male.

16 Q Which individual of the two are Mr. Patterson,
17 they're both wearing a suit, the white guy or the
18 black guy?

19 A The black guy.

20 Q Thank you.

21 MR. GOLDBERG: Your Honor, let the record
22 reflect the witness has identified Mr. Patterson.

23 THE COURT: It's so noted.

24 BY MR. GOLDBERG:

25 Q What kind of beef did you and Eugene have?

1 A The only beef, I'm Blood, he's a Folk.

2 THE COURT: I'm sorry. I didn't understand
3 that. I apologize.

4 THE WITNESS: I said the only beef there was,
5 I'm a Blood, he's a Folk.

6 THE COURT: Okay. Thank you.

7 BY MR. GOLDBERG:

8 Q Where was Jerome that night?

9 A He was in the back of the parking lot.

10 Q Who was he with?

11 A Tayson.

12 Q Did you see him with a gun?

13 A I did.

14 Q What kind of gun?

15 A A nine millimeter.

16 Q Did you ever see anybody fire a gun?

17 A No, sir.

18 Q Did you hear shots?

19 A Yes, sir.

20 Q You just don't know who fired one?

21 A Huh-huh.

22 Q Mr. Sanders, you were also arrested unrelated
23 to this; is that right?

24 A Yes, sir.

25 Q You were charged with assault with intent to

1 kill and possession of a pistol under 21; is that
2 right?

3 A Yes, sir.

4 Q And have you received any promises about those
5 charges in exchange for your testimony here today?

6 A No, sir.

7 MR. GOLDBERG: Thank you. Please answer any
8 questions the defense has.

9 MR. SUTHERLAND: Please the Court, sir.

10 THE COURT: Yes, sir.

11 CROSS-EXAMINATION

12 BY MR. SUTHERLAND:

13 Q Mr. Sanders, one thing I wanted to try to clear
14 up with you first, I mean I had some sort of general
15 questions about what went on, but in this statement
16 that you gave back on February 19th of last year,
17 you said -- now, you had testified on direct that
18 you saw Eugene pointing a gun, a high powered gun or
19 a high caliber gun; is that what you said?

20 A Yes, sir.

21 Q Now, in your statement, you say that he saw me
22 and made a gun sign to me?

23 A They had written it down wrong. I actually
24 stated that he pointed a gun.

25 Q Well -- now, you didn't say he made a gun sign?

1 A No, I never --

2 Q You said he pointed a gun?

3 A Yeah.

4 Q And so the investigator just wrote down your
5 words wrong?

6 A Yeah.

7 Q Because Mr. Goldberg appeared to me to be a
8 little surprised by your answer there, too, but I'm
9 going to go ahead and move on.

10 MR. GOLDBERG: Objection, Your Honor.

11 THE COURT: Ladies and gentlemen, disregard the
12 comment of the attorney. Attorneys are not
13 permitted to comment.

14 BY MR. SUTHERLAND:

15 Q Okay. So then after that, after this where he
16 got it wrong where you say, no, I told him that he
17 was pointing a gun or a high caliber gun or whatever
18 you said you told the investigator this, and on the
19 next page, he asked you, You only saw that one
20 light-skinned guy with a gun? Answer, Yes. Do you
21 remember that?

22 A Yeah.

23 Q So when -- so when you told him you only saw
24 one guy with a gun, didn't you think you ought to
25 say, no, remember I just told you that Eugene was

1 pointing a gun at me? Does that make sense?

2 A Yeah, it do, but I know I stated he be the one
3 that I seen with a gun in my statement.

4 Q Okay. But you do recall telling him the only
5 one you saw was -- in the first statement, with a
6 gun was the light-skinned guy when he asked you that
7 question directly?

8 A (Witness nodded head.)

9 Q Okay. And then in your last statement that you
10 made, you said that Jerome had a gun also, correct?

11 A Yes.

12 Q But you had -- this may be sort of covering
13 some of what you went through on direct, but you had
14 went there because you wanted to get -- you had
15 wanted to get in a fist fight with Chad; is that
16 correct?

17 A That was actually the page they said to me
18 that.

19 Q And you guys were angry with each other because
20 somebody had stepped on somebody at a basketball
21 game?

22 A Yeah. He said I stepped on him at a basketball
23 game.

24 Q And so just from that point forward, it just
25 elevated to the point where y'all decided that,

1 listen, we're going to meet and we're going to have
2 a fist fight?

3 A Yeah.

4 Q And one thing -- I'm going to use this thing
5 that I drew actually.

6 MR. SUTHERLAND: Beg the Court's indulgence.

7 THE COURT: Yes, sir.

8 BY MR. SUTHERLAND:

9 Q Because you had drawn a map and -- but you had
10 said that you had told them that you heard shots
11 coming from three different areas; do you remember
12 that?

13 A Uh-huh.

14 Q And maybe I can just work from memory on this.
15 You told them -- like over here is the Mobile
16 station.

17 THE COURT: Let's not do this again, okay.
18 You've got your back to the jury.

19 MR. SUTHERLAND: Yes, sir, I'm sorry.

20 BY MR. SUTHERLAND:

21 Q Now, where that says Exxon, I put that there
22 because the investigator put Exxon on there, but
23 he's right, it is Exxon Mobil. But you said that
24 you heard shots coming from three areas. And, you
25 know, this would be the back. I mean, does this

1 layout sort of make sense of the area to you?

2 A (Witness nodded head.)

3 Q Now, this would be the back here sort of, I
4 guess, where Jerome and everybody was sort of
5 parking at here?

6 THE COURT: Hold on a second. He shook his
7 head in the affirmative, I think.

8 MR. SUTHERLAND: Oh, sorry, sorry.

9 BY MR. SUTHERLAND:

10 Q You've just got to say yes or no.

11 A Yes, sir.

12 Q Okay. This is the area here and you were --
13 Jerome and everybody was. And you said that you
14 heard shots coming from somewhere back there?

15 A Yes, sir.

16 THE COURT: I'm sorry, I didn't hear his
17 answer.

18 THE WITNESS: I said, yes, sir.

19 BY MR. SUTHERLAND:

20 Q But you also heard shots coming from the Mobile
21 station?

22 A Yes, sir.

23 Q In addition to the shots up here?

24 A Yes, sir.

25 Q So there were actually three areas where

1 firearms were being discharged, one of which was the
2 Mobile station?

3 A Yes, sir.

4 Q Are you aware -- obviously, you're here and
5 you're aware of what happened to Brian Wright?

6 A Yes, sir.

7 Q Were you aware when you were there or -- that
8 he'd actually been shot and fallen down over here?

9 A No, sir.

10 Q But, again, one, two, three?

11 A Yes, sir.

12 Q And you're sure about that?

13 A Yes, sir.

14 MR. SUTHERLAND: I have no further questions of
15 this witness, Your Honor.

16 THE COURT: Thank you.

17 Any questions on behalf of Mr. Boone?

18 MS. EVERHART: Yes, Your Honor.

19 CROSS-EXAMINATION

20 BY MS. EVERHART:

21 Q Hi, Mr. Sanders. How are you?

22 A How are you doing?

23 Q I'm going to ask you a quick question to
24 clarify something.

25 A Okay.

1 Q The light-skinned guy you described was there
2 one guy who was in blue or were there two
3 light-skinned guys?

4 A One.

5 Q Just one, that's what I thought. So the night
6 when you went to the Waffle House, you went there
7 specifically to fight with Chad?

8 A Yes, ma'am.

9 Q And that was over the beef y'all had from the
10 basketball game?

11 A Yes, ma'am.

12 THE COURT: I'm sorry. Speak up a little bit,
13 please.

14 MS. EVERHART: Yes, Your Honor.

15 THE COURT: Well, you too, but he is who I was
16 talking to.

17 BY MS. EVERHART:

18 Q And when you arrived that night, you stated
19 that you did see Eugene Patterson?

20 A Yes, ma'am.

21 Q And that he actually pointed a gun at you?

22 A Yes, ma'am.

23 Q You also said that you saw a light-skinned guy?

24 A Yes, ma'am.

25 Q And that he had a gun in his hand?

1 A Yes, ma'am.

2 Q He wasn't trying to hide it or anything?

3 A No, ma'am.

4 Q He was just flashing this thing around in the
5 parking lot?

6 A Yes, ma'am.

7 Q And you said that people were parked in the
8 back of the Waffle House?

9 A Yes, ma'am.

10 Q The front of the Waffle House?

11 A Yes, ma'am.

12 Q And over at the Mobil Gas Station?

13 A Yes, ma'am.

14 Q Now, this light-skinned guy who was wearing
15 blue, who was flashing his gun around, do you see
16 him here today?

17 A Huh-huh. No, ma'am.

18 Q And you've mentioned that you are -- you are a
19 member of the Bloods?

20 A I was affiliated, yes, ma'am.

21 Q And that the group you were in was called TTP?

22 A Yes, ma'am.

23 Q Mr. Boone wasn't a member of the TTP?

24 A No, ma'am.

25 Q And you mentioned that in the past, you had had

1 a beef with Tayson?

2 A Yes, ma'am.

3 Q But that was over with?

4 A Yeah.

5 MS. EVERHART: Beg the Court's indulgence one
6 moment.

7 THE COURT: Yes, ma'am.

8 (Pause.)

9 MS. EVERHART: No further questions of this
10 witness. Thank you.

11 THE COURT: Redirect?

12 MR. GOLDBERG: Yes, sir.

13 REDIRECT EXAMINATION

14 BY MR. GOLDBERG:

15 Q Mr. Thompson -- excuse me, I'm sorry --
16 Mr. Sanders, she asked you about Mr. Boone being a
17 member of TTP?

18 A Uh-huh.

19 Q Are there more than one sect of TTP?

20 A Yes, there is.

21 Q He just wasn't in your sect?

22 A Yeah.

23 Q She also asked you about the light-skinned guy
24 with the gun who was wearing blue, right?

25 A Yes, sir.

1 Q There was only one of them?

2 A Yes, sir.

3 Q And what kind of gun did he have?

4 A It was a revolver.

5 Q And what kind of car did you see him get out
6 of?

7 A Burgundy Malibu.

8 Q For the record, how many shots did you actually
9 see with your own eyes fired that night?

10 A I didn't see none of them fired.

11 Q But you heard them coming from a lot of places?

12 A Yeah.

13 Q And tell us one more time, Mr. Sanders, who the
14 people were that you saw with a gun that night?

15 A The light-skinned guy, Eugene Patterson and
16 Jerome.

17 MR. GOLDBERG: Thank you.

18 THE COURT: Mr. Sutherland?

19 MR. SUTHERLAND: Nothing further, Your Honor.

20 THE COURT: Anything else, Ms. Everhart?

21 MS. EVERHART: Nothing further, Your Honor.

22 THE COURT: Thank you, sir. They'll take you
23 out.

24 Ladies and gentlemen, the attorneys have

25 advised me that there are some legal issues that I

1 might need to address at this stage and I don't know
2 exactly how long this is going to take. So I need
3 to ask you to step in the jury room and let me find
4 out and then I'll make a decision about what to do
5 with you for the rest of the day while we do that.
6 Thank you.

7 (The jury retires to the jury room.)

8 THE COURT: What issues are there?

9 MS. CAMPBELL: Your Honor, these are the photo
10 lineups.

11 THE COURT: So I need to do Neil versus Biggers
12 hearings?

13 MS. CAMPBELL: Yes, sir.

14 THE COURT: And how many witnesses is it?

15 MS. CAMPBELL: I've got two -- I've got two for
16 sure, Your Honor, I think three, which would be all
17 that we need to do. I'm sorry, Your Honor, there
18 are only two here today that we need to do because
19 the co-defendant actually knows the person he
20 picked.

21 THE COURT: How long do you think this will
22 take?

23 MS. CAMPBELL: May be a guess, I'm always
24 wrong.

25 THE COURT: That's okay, give me your guess.

1 **MS. CAMPBELL:** I would think 30 minutes each
2 maybe, maybe 40 minutes each, or less. It shouldn't
3 take that long, Your Honor.

4 **THE COURT:** Call your witness.

5 **MS. CAMPBELL:** Thank you. Karmindae Leggett.

6 KARMINDAE LEGGETT,
7 having been duly sworn, testified as follows:

8 **THE CLERK:** Have a seat in the jury box and
9 state your name for the record.

10 **THE WITNESS:** Karmindae Leggett.

11 DIRECT EXAMINATION

12 BY MS. CAMPBELL:

13 **Q** Mr. Leggett, how old are you?

14 **A** Eighteen.

15 **Q** Do you live here in Columbia?

16 **A** Yes, ma'am.

17 **Q** I want to turn your attention back to the night
18 of February the 18th into the early morning hours of
19 the 19th. Who were you hanging out with that
20 evening?

21 **A** Oliver and Eugene.

22 **Q** You were with who?

23 **A** Oliver, Eugene.

24 **Q** Oliver and Eugene?

25 **A** Yeah.

- 1 Q How long have you known Oliver and Eugene?
2 A Not that long.
3 Q Had you known them for a matter of weeks,
4 months or years?
5 A Like months.
6 Q So did you know them by name and sight?
7 A (Witness shook head.)
8 Q When you saw them, did you recognize them?
9 A Oh, yes, ma'am.
10 Q Do you remember giving a statement to the
11 police back in March of last year?
12 A Yes, ma'am.
13 Q About what happened at the Waffle House that
14 night. And they showed you some lineups of some
15 people; is that correct?
16 A Yes, ma'am.
17 Q And the first one I'm going to show you is
18 State's Exhibit Number 80. Do you recognize that
19 one? Did you recognize one of those people?
20 A Yes, ma'am.
21 Q Did you already know him by name and sight?
22 A Yes, ma'am.
23 Q And who was that?
24 A (Inaudible.)
25 Q Okay.

1 COURT REPORTER: I didn't understand him.

2 BY MS. CAMPBELL:

3 Q Who was that?

4 A Oliver.

5 Q Oliver?

6 A Yes, ma'am.

7 Q I'm going to show you another one, State's
8 Exhibit Number 79. Did they show you these photos?

9 A Yes, ma'am.

10 Q Did you recognize somebody in that one?

11 A Yes...

12 Q Who did you recognize?

13 THE COURT: Hold on a second.

14 Are you feeling okay?

15 THE WITNESS: Yes, sir, I'm all right.

16 THE COURT: All right. I can't hear you. I
17 need you to speak up for me, please.

18 BY MS. CAMPBELL:

19 Q Will you lean up here a little bit so you can
20 get close to the microphone for me?

21 A (Witness complies.)

22 Q Thank you. Who did you recognize?

23 A Eugene.

24 Q Can you say it a little louder?

25 A Eugene.

1 Q Eugene?

2 A Yes, ma'am.

3 Q And you already knew these two people?

4 A Yes, ma'am.

5 Q Did they show you another lineup?

6 A Yes.

7 Q About somebody else. And I'm going to show you

8 what's been marked as State's Exhibit Number 78.

9 That night, did you see the person towards the back
10 of the parking lot that was shooting towards y'all?

11 A Not really, but sort of, kind of.

12 Q Were you able to see his face?

13 A (No response.)

14 Q Had you ever seen him before?

15 A (Witness shook head.)

16 Q Do you remember them showing you this lineup,

17 State's Exhibit 78?

18 A Yes, ma'am.

19 Q Did you recognize a person in this lineup?

20 A Yes, ma'am.

21 Q And who did you recognize?

22 A I don't remember his name.

23 Q I know you don't know his name. Did you
24 recognize him from seeing him in the parking lot
25 that night?

1 A Yes, ma'am.

2 Q And how close did you get to him that night?

3 A Um.

4 Q Were you able to identify him?

5 A Yes, ma'am.

6 Q And is that the person you saw shooting the gun
7 that night?

8 A Yes, ma'am.

9 Q And who was he shooting the gun at?

10 A (No response.)

11 Q Do you remember?

12 A I don't know who he was shooting at.

13 Q Was he shooting at the other end of the parking
14 lot or the end of the parking lot you were on?

15 A I guess he was shooting my way...

16 Q But he was shoot --

17 A But I just heard gunshots fired.

18 THE COURT: I have no idea what he said.

19 BY MS. CAMPBELL:

20 Q Was he shooting a gun?

21 A (Witness nodded head.)

22 Q Do you remember where he was in the parking
23 lot?

24 A In the back.

25 Q In the back?

1 A Yes, ma'am.

2 Q And had you ever seen him before?

3 A Yes, ma'am. I seen him before the shooting.

4 Q Before the shooting?

5 A (Witness nodded head.)

6 Q And how many times had you seen him before the

7 shooting?

8 A Just once.

9 Q Just once. But you didn't know his name?

10 A (Witness shook head.)

11 Q Is this the guy you saw shooting in the parking

12 lot?

13 A Yes, ma'am.

14 Q When they showed you these pictures, did they

15 tell you which one to pick out?

16 A No, ma'am.

17 Q And why did you pick out this one that was

18 marked number four?

19 A Because that's the guy who I seen.

20 Q Can you speak up a little bit louder?

21 A That's the guy I seen.

22 Q Shooting?

23 A Yes, ma'am.

24 Q Can I push these a little closer to you?

25 A (Witness nodded head.)

1 Q And that was on the night?

2 A Yes, ma'am.

3 Q Did you know Brian Wright?

4 A Yes, ma'am.

5 Q And that was the night that Brian Wright got

6 shot?

7 A Yes, ma'am.

8 Q And he was the one with the ones shooting in

9 the parking lot?

10 A Yes, ma'am.

11 Q Who put these initials above it, the K.L.?

12 A Me.

13 Q And did you circle that yourself?

14 A (Witness shook head.)

15 Q Who circled that for you?

16 A The captain.

17 Q The captain. Is this your signature down here?

18 A Yes, ma'am.

19 Q And how do you say your name?

20 A Karmindae.

21 Q Karmindae?

22 A Yes, ma'am.

23 Q Is it Leget or Leggett?

24 A Leggett.

25 Q Karmindae Leggett. And that's your signature?

1 A Yes, ma'am.

2 Q And you wrote in your address?

3 A Yes, ma'am.

4 Q And your phone number?

5 A Yes, ma'am.

6 Q And that's the person you recognized from
7 seeing him that night?

8 A Yes, ma'am.

9 Q And you'd seen him before, so you recognize
10 him?

11 A Yes, ma'am.

12 Q And the other two people you've known before,
13 too?

14 A Yes, ma'am.

15 MS. CAMPBELL: Your Honor, that's all we have
16 on this issue.

17 THE COURT: Cross?

18 MR. SUTHERLAND: Your Honor, we actually don't
19 have an issue with respect to this witness. I mean,
20 there is prior knowledge.

21 THE COURT: All right. What about Mr. Boone?

22 MS. EVERHART: Your Honor, we do have a motion
23 to suppress the I.D.

24 THE COURT: Do you want to ask him any
25 questions?

1 MS. PAYNE: Well, I will.

2 THE COURT: I'm not telling you you have to.
3 I'm asking you, do you want to ask him any
4 questions?

5 MS. PAYNE: Sure.

6 THE COURT: Okay.

7 CROSS-EXAMINATION

8 BY MS. PAYNE:

9 Q In the statement you gave to Investigator
10 Ellis, you said you saw a guy dressed in black,
11 correct?

12 A Yes, ma'am.

13 Q And he was at the other end of the parking lot,
14 correct?

15 A Yes, ma'am.

16 Q And it was nighttime?

17 A (Witness nodded head.)

18 Q About how long do you think you looked back
19 there?

20 A (No response.)

21 Q How long were you looking at the guy dressed in
22 black?

23 A For a quick second.

24 Q So a second, quick glance?

25 A (Witness nodded head.)

1 Q You weren't asked to pick anyone out of a photo
2 lineup until March 5th; is that correct?

3 A I believe so.

4 Q Okay. So how long since this incident, like
5 how many days?

6 A (No response.)

7 Q More than a week?

8 A (Witness nodded head.)

9 Q Have you watched the news at all?

10 THE COURT: Hold on.

11 Are you sure you're okay?

12 THE WITNESS: (Witness nodded head.)

13 THE COURT: You hadn't had anything to drink or
14 any kind of drugs today, have you?

15 THE WITNESS: Nah.

16 THE COURT: Sir?

17 THE WITNESS: No, sir.

18 THE COURT: Okay. I really need you to speak
19 up. This is really important stuff up here. Okay.

20 BY MS. PAYNE:

21 Q Had you been watching the news or hearing
22 anything in the neighborhood?

23 A No, ma'am.

24 MS. PAYNE: I have no further questions for
25 this witness, Your Honor.

1 THE COURT: Anything else?

2 REDIRECT EXAMINATION

3 BY MS. CAMPBELL:

4 Q You said you'd seen him on one prior occasion.

5 When was that; do you remember?

6 A That was only at the Waffle House.

7 Q At the Waffle House?

8 A Yes, ma'am.

9 Q So when you saw him that night, you recognized
10 him?

11 A Yes, ma'am.

12 MS. CAMPBELL: Thank you.

13 No further questions, Your Honor.

14 THE COURT: Do you have anything?

15 MR. SUTHERLAND: Your Honor, it just sort of
16 looks like he's passing out on the stand, sir.

17 THE COURT: Well, I'm sure we can get the EMTs
18 here if we have a problem, but I don't think he's
19 passing out on the stand. Anything else?

20 MR. SUTHERLAND: Nothing with respect to this
21 witness.

22 THE COURT: Anything else?

23 MS. PAYNE: Nothing from the witness.

24 THE COURT: Thank you, sir. You can step down.
25 You can't leave now. We're not through, okay.

1 Don't leave the courthouse.

2 MS. CAMPBELL: State calls Samuel Clemons.

3 SAMUEL CLEMONS,

4 having been duly sworn, testified as follows:

5 THE CLERK: Have a seat, state your name for
6 the record.

7 THE WITNESS: My name is Samuel Clemons.

8 DIRECT EXAMINATION

9 BY MS. CAMPBELL:

10 Q Mr. Clemons, how old are you?

11 A Twenty.

12 Q Do you live here in Columbia?

13 A Yes, ma'am.

14 Q Can you speak up for me? You've got to get
15 close to those microphones.

16 A Yes, ma'am.

17 Q Thank you. I appreciate it. I want to turn
18 your attention back to that night. Did you know
19 Brian Wright?

20 A No, I didn't know him personally. I had seen
21 him before, though.

22 Q That night back at the Waffle House when the
23 shooting occurred, were you out there that night?

24 A Yes, ma'am.

25 Q And do you remember seeing some people with

1 guns out there that night?

2 A Yes, ma'am.

3 Q Did you know any of the people that had guns?

4 A Yes, ma'am.

5 Q Who did you know that had a gun?

6 A Tayson, Eugene and Oliver. It was three of
7 them.

8 Q Those three?

9 A Yeah.

10 Q And how did you know Eugene?

11 A Oh, I just had seen him before. I didn't know
12 him personally like that. I just had seen him
13 around.

14 Q So did you know him by name or did you just
15 know him by face?

16 A I knew him by face.

17 Q By face?

18 A Yeah.

19 Q Did you see him out there that night?

20 A Yes, ma'am.

21 Q Did you see him with a gun?

22 A Yes, ma'am. He had it on his lap. He was in
23 the car. I seen him in the car.

24 Q Okay. And did you also see him out in the
25 parking lot with the gun?

1 A Yes, ma'am.

2 Q Did you see him actually shooting the gun?

3 A Yes, ma'am, but I was trying to, you know what
4 I'm saying, duck at the same time, but I seen him
5 shooting, though.

6 Q Okay. And the person that you saw out there --
7 did you see anybody else out there shooting guns
8 that night?

9 A Yeah.

10 Q Who else was shooting?

11 A Oliver and Tayson.

12 Q Police came and they took a statement from you,
13 didn't they?

14 A Yes, ma'am.

15 Q Did they show you some photographs?

16 A Yes, ma'am.

17 Q And did you describe the guy, you didn't know
18 his name, but you gave them a description in your
19 statement of who was shooting that night?

20 A Uh-huh.

21 Q And one of the ones you saw with the gun -- did
22 they show you this lineup?

23 A Yes, ma'am.

24 Q And when they showed you this lineup, did they
25 tell you which one to pick out?

1 A Huh-huh.

2 Q Did they give you any information or indicate

3 in any way who you should choose?

4 A No, ma'am.

5 Q And when you saw that lineup, did you recognize

6 one of those people in that?

7 A Yes, ma'am.

8 Q And which one did you recognize?

9 A Eugene.

10 Q Did you know his name at the time, though?

11 A No, ma'am.

12 Q But do you recognize him as being one of the

13 ones shooting out there that night?

14 A Yes, ma'am.

15 Q Along with who?

16 A Tayson and Oliver.

17 Q And when you were shown this lineup, did it

18 have this big circle on it or anything?

19 A No, ma'am.

20 Q And who put the big circle on it?

21 A Investigator Ellis, Matthew Ellis.

22 Q Matthew Ellis?

23 A Uh-huh.

24 Q And down here, are these your initials?

25 A Uh-huh.

1 Q And the date?

2 A Uh-huh.

3 Q And that's March the 20th, 2007?

4 A Yes, ma'am.

5 Q Had you seen him before that night?

6 A Of the incident?

7 Q Yes, sir.

8 A Yeah, I had seen him a couple of times.

9 Q So when you saw him out there with a gun that
10 night, you actually recognized him?

11 A Yeah.

12 Q How close did you get to him?

13 A I talked to him. I shook his hand.

14 Q So you got a good look at his face?

15 A Yeah.

16 MS. CAMPBELL: Your Honor, that would be --

17 Q Did they also have you fill out this photo
18 lineup affidavit?

19 A Uh-huh.

20 Q And that's your signature?

21 A Yes, ma'am.

22 Q As to who you recognized off this lineup?

23 A Yes, ma'am.

24 MS. CAMPBELL: Your Honor, that would be

25 State's Exhibit 81. Your Honor, may I approach with

1 the two lineups?

2 THE COURT: Sure.

3 MS. CAMPBELL: That's all I'd have on this
4 issue, Your Honor.

5 They may ask you some questions, okay?

6 THE COURT: Cross?

7 MR. SUTHERLAND: Please the Court.

8 THE COURT: Yes.

9 CROSS-EXAMINATION

10 BY MR. SUTHERLAND:

11 Q Sir, you keep calling him Eugene. Who told you
12 his name was Eugene?

13 A Huh? I later seen him.

14 Q I mean here today you're testifying and you're
15 calling him Eugene. Who told you his name?

16 A I seen his name in the newspapers and stuff,
17 Eugene.

18 Q So you've seen his face in the newspaper?

19 A No, I seen him. I know who -- I seen him and I
20 talked to him that night, so, of course, I'm going
21 to know who he is.

22 Q So you talked to him that night, what did you
23 say?

24 A I was like, What's up, you know what I'm
25 saying, that -- and kept moving.

1 Q What else did you say?

2 A What you mean?

3 Q I'm asking --

4 A I shook his hand and kept moving.

5 Q So you -- but you didn't know his name at that

6 time?

7 A No.

8 Q You said you'd seen him a couple of times

9 before?

10 A Yeah, I'd seen him.

11 Q Where?

12 A In the neighborhood.

13 Q In the neighborhood?

14 A Yeah.

15 Q What neighborhood is that?

16 A Around Wood Field, man, around that area, Wood

17 Field, that's...

18 Q Around Wood Field?

19 A Yeah.

20 Q Anywhere else?

21 A No.

22 Q Now, when you went in there and they showed you

23 the picture lineup, this was on -- it was about the

24 20th of March. It was about a month after the

25 incident?

1 A Uh-huh.

2 Q Had you seen anything on television or anything
3 showing his face on T.V. or in the paper or anything
4 like that?

5 A Yeah, I'd seen it in the newspaper.

6 Q Okay. And so that -- you did see it in the
7 newspaper, but you saw it prior to the -- to doing a
8 photo lineup?

9 A Yeah.

10 Q Okay. And so that's where you learned his name
11 is Eugene?

12 A Yeah, I knew -- yeah, that's where I knew his
13 name is Eugene.

14 Q I've got to make sure that we're squared away
15 here. Now, what I'm asking about is prior to the
16 photo lineup --

17 A Prior to that, I did not know his name, no.

18 Q But you had seen him in the newspaper?

19 A Yeah, I'd seen him in the newspapers and stuff,
20 that's how I found out his name was Eugene.

21 Q But -- all right. I think what the -- what I'm
22 talking about here is, you know, we've got the 19th
23 of February.

24 THE COURT: Y'all can't have a private
25 conversation. You have to let us in on it.

1 MR. SUTHERLAND: Oh, I'm sorry.

2 BY MR. SUTHERLAND;

3 Q We've got the 19th of February, that's the
4 night of the incident.

5 A (Witness nodded head.)

6 Q Okay. And then we've got the 20th of March,
7 which is when you did the lineup.

8 A Uh-huh.

9 Q And what I'm trying to get at, I know that
10 you've said that you saw him in papers and that's
11 how you learned his name is Eugene, but what I was
12 asking is if that happened between this time? In
13 other words, you know, between when, you know, what
14 happened to Brian and the time that you did the
15 lineup, did you learn his name in the papers between
16 that time?

17 A Yeah, of course, like I was going to know his
18 name regardless. I mean, we was all in the
19 situation, so, of course, I'm going to know his
20 name.

21 Q Okay. So you -- but this is in the papers,
22 though, during this time period that you learned his
23 name?

24 A Yeah.

25 Q It was at night, after midnight, when you saw

1 him up there?

2 A Uh-huh.

3 THE COURT: I'm sorry, what was your answer?

4 THE WITNESS: Yes, sir.

5 BY MR. SUTHERLAND:

6 Q Was it dark out there?

7 A Yes, sir.

8 Q Were there a lot of cars?

9 A Yes, sir.

10 Q How many people were basically running around
11 out there? What's your guess as to how many people
12 were running around out there?

13 A I don't know. It was a lot of people.

14 Q Now, were you -- when you went up to the car,
15 were you threatened by anybody?

16 A No.

17 Q Was your brother with you?

18 A No. My brother was already at the car.

19 Q Okay. When you walked up, was he being
20 threatened with a firearm when you walked up or was
21 that already done?

22 A Yeah, that was already, you know what I'm
23 saying. I'd seen them doing it, but it had got
24 resolved.

25 Q Okay. You said you saw a black .357 magnum?

1 A Uh-huh.

2 Q Are you pretty sure about that, what kind of
3 firearm?

4 A Yeah, I knew it was a revolver, so.

5 Q Okay. So a black revolver.

6 MR. SUTHERLAND: I have no further questions at
7 this time, Your Honor.

8 THE COURT: Thank you.

9 Any questions of the witness?

10 MS. PAYNE: No questions for this witness, Your
11 Honor.

12 THE COURT: Redirect?

13 MS. CAMPBELL: No, sir.

14 THE COURT: Thank you, sir. You can step down.
15 Don't leave the courthouse, please.

16 Call your next witness.

17 MS. CAMPBELL: I guess I need to put up the
18 investigators. Investigator Matt Ellis.

19 MATTHEW ELLIS,

20 having been duly sworn, testified as follows:

21 THE CLERK: Have a seat and state your name for
22 the record.

23 THE WITNESS: Matthew Ellis.

24 ****

25 ****

1 DIRECT EXAMINATION

2 BY MS. CAMPBELL:

3 Q Investigator Ellis, have you become involved in
4 the investigation of the murder at the Waffle House
5 back on February the 19th of 2007?

6 A I did.

7 Q During the course of that investigation, did
8 you make contact with a Samuel Clemons?

9 A I did.

10 Q When did you make contact with him, sir?

11 A I believe it was on March the 20th, 2007.

12 Q And did you take a statement from him at that
13 time?

14 A That's correct.

15 Q During the course of giving him a statement,
16 did he describe various individuals out there either
17 with guns, doing shootings and things of that
18 nature?

19 A I believe he did, yes.

20 Q And at some point, did you show him some photo
21 lineups?

22 A I did.

23 Q And how many photo lineups total did you show
24 him?

25 A Three.

1 Q And was he able to identify anyone?

2 A Yes.

3 Q And who was he able to identify as being out
4 there?

5 A Eugene Patterson.

6 Q Did you also show him a photo lineup of an
7 Oliver Feldman?

8 A I did.

9 Q Was he able to pick anyone out of that one?

10 A No.

11 Q When you showed him State's Exhibit Number 81,
12 tell this Judge exactly how you presented this
13 lineup to him and what he indicated to you?

14 A Your Honor, after he described the individuals
15 and I had taken his statement, I had these photo
16 lineups already printed out. I handed him the photo
17 lineup and asked him did he describe -- did he see
18 in the photo lineup the individuals that he
19 describes. And I had several lineups and I
20 explained to him that only one individual would be
21 in each photo lineup, that there wasn't multiple
22 subjects in a lineup. There were six subjects
23 placed in this lineup.

24 And, at that point in time, he viewed this
25 lineup. He identified the individual marked number

1 six in the bottom right-hand corner as an individual
2 out at the scene that he described in his statement.

3 Q Do you recall which lineup you presented to him
4 first? Was it Mr. Patterson's or Mr. Feldman's?

5 A I do not.

6 Q And did you tell him he had to pick someone?

7 A No, I did not.

8 Q Did you indicate which picture he should pick?

9 A I did not.

10 Q And, in fact, did you show him the two lineups
11 separately?

12 A Yes.

13 Q And when you showed him the lineup of
14 Mr. Oliver Feldman, was he able to identify anyone?

15 A No.

16 Q Did he indicate that to you?

17 A Yes.

18 Q When you showed him the lineup of -- with
19 Eugene Patterson's photograph in it, tell the Judge
20 what his reaction was.

21 A His reaction, he pointed to the picture and
22 identified that picture number six was in fact. He
23 initialed it and dated it for me.

24 Q And did anyone influence his picking that
25 photograph?

1 A No influence.

2 Q And did he indicate that was the person he saw
3 out there that night?

4 A Yes.

5 Q With a gun. Once he had indicated who he
6 recognized, which is number six, and who is that
7 actually?

8 A Eugene Patterson.

9 Q Did you have him memorialize that in any way?

10 A Correct.

11 Q And how was that done, sir?

12 A He put his initials, dated it and circled the
13 picture.

14 Q And in addition to that, did you fill out
15 what's called this photo lineup sheet?

16 A I did. I filled it out and with all the --
17 filled out all the proper blanks to what he had
18 picked and had him sign it as an affidavit of his
19 selection.

20 Q And was anyone else present when he was shown
21 the lineups?

22 A No. We were actually, it was just him and I
23 sitting in my vehicle.

24 Q So no one else was present that could influence
25 him?

1 A No, there was not.

2 MS. CAMPBELL: Your Honor, that's all I would
3 have with this investigator.

4 THE COURT: Cross?

5 MR. SUTHERLAND: Please the Court.

6 CROSS-EXAMINATION

7 BY MR. SUTHERLAND:

8 Q Now, you said that he was sitting in your
9 vehicle when y'all did the lineup?

10 A That's correct. I had tried to make contact
11 with him previously. And his -- I believe it's his
12 stepfather, Anthony Jackson, called me and told me
13 that he was at home -- actually him and his brother
14 were both at home. So I responded to their address,
15 it's an apartment complex, made contact with them
16 and interviewed them separately in my vehicle away
17 from anybody and showed them the photo lineups in
18 there.

19 Q Now, he -- you have him -- I mean, he picked
20 number six, he picked Eugene?

21 A Correct.

22 Q Now, he did not -- he didn't tell you -- he was
23 calling him this dude, this dude that I saw. He
24 wasn't calling him Eugene.

25 A No. I stated that it was -- she asked me who

1 it was and I stated it was Eugene.

2 Q And this was on the 20th of March, so this is a
3 month and a day after the incident?

4 A That's correct. I received his -- through the
5 course of the investigation at the latter end of it
6 is when I received his name, Samuel Clemons' name,
7 so I immediately tried to research that and locate
8 him.

9 Q Where did you get his name from? Did he call
10 or did someone call? Do you remember where you got
11 his name from?

12 A I don't -- can I have...

13 Q Oh, is this a confidential informant thing?

14 A No. It's -- I received it from a defendant.

15 Q Oh.

16 A I don't know if I can.

17 Q Oh, is this the other -- all right.

18 A I don't know if I can get into that. I'm just
19 not sure.

20 Q Okay. But you -- well, you received the
21 information about a month later. So you were
22 directed towards him. He didn't in any way direct
23 himself towards you?

24 A That's correct.

25 Q Did you ask him if he had seen any media

1 accounts or anything like this?

2 A I did not. I, you know, asked him would he be
3 able to identify this individual that he was
4 describing. And he stated he was willing to look at
5 the photo lineup.

6 Q So he gave you -- he gave you a detailed
7 description?

8 A He gave me a -- to his account, it was a
9 detailed description. I'm not quite sure, without
10 refreshing my memory, his description of the
11 individual.

12 Q That wouldn't be, there was a dude in the back
13 seat? It was more than that?

14 A I believe there was. If I can look at the
15 statement, I could tell you.

16 MR. SUTHERLAND: I have no further questions at
17 this time, Your Honor.

18 THE COURT: Thank you.

19 Do y'all have any questions of this witness?

20 MS. PAYNE: Not for this witness, Your Honor.

21 THE COURT: Who did the other lineup?

22 Thank you, sir. You can step down.

23 Did you all have anything else of him? I'm
24 sorry.

25 MS. CAMPBELL: No.

1 THE COURT: Come around, please.

2 JAMES STANLEY SMITH,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. CAMPBELL:

6 Q Captain Smith, where are you employed?

7 A Richland County Sheriff's Department.

8 Q What do you do there, sir?

9 A I'm in the criminal investigative division.

10 I'm a supervisor, particularly in the major crime
11 unit.

12 Q Did you become involved in the investigation of
13 the murder at 7505 Two Notch Road or the Waffle
14 House, Mobile Gas Station?

15 A I did.

16 Q During the course of that, did you come in
17 contact with a Karmindae Leggett?

18 A Karmindae Leggett on the 5th of March, yes,
19 ma'am.

20 Q And during that -- how did you make contact
21 with him?

22 A We learned about him, he was actually in the
23 company of Oliver Feldman and Eugene Patterson. We
24 learned about that through some statements. And we
25 made contact with him and brought him in.

1 Q Did you actually take a statement from him?

2 A Yes.

3 Q And during the course of your contact with him
4 on that date, did you have the opportunity to show
5 him some lineups?

6 A I did.

7 Q And I want to show you, first, what's been
8 marked as State's Exhibit Number 80 and 79. Did he
9 indicate whether or not he had known two of these
10 individuals of the three individuals charged in this
11 case pretty well?

12 A Yes, ma'am.

13 Q And who are those individuals?

14 A It was Eugene Patterson and Oliver Feldman.

15 And, Your Honor, we refer to that sort of as an
16 acquaintance pick just to verify that we're talking
17 about the right people. He knew them. He knew them
18 by name actually, at least their first names.

19 Q And you've seen Mr. Leggett. He's -- did he
20 also indicate whether or not he had gotten a look at
21 the third person shooting in the parking lot that
22 night?

23 A Yes, ma'am.

24 Q And did he indicate whether or not he thought
25 he could recognize him to you?

1 A He did.

2 Q And based on the information he gave you, did
3 you then get a lineup of the third person?

4 A I did.

5 Q And who was in that lineup?

6 A Andre Tayson Boone.

7 Q And did you actually show these other two
8 lineups first or what order or how did that happen?

9 A I don't recall.

10 Q I'm showing you what's been marked as State's
11 Exhibit Number 78. Do you recognize that?

12 A I do.

13 Q And when you showed this six photo lineup to
14 Mr. Leggett, was there any writing on this at the
15 time?

16 A No, ma'am.

17 Q And tell the Judge how you presented it to him,
18 what you said to him and what his reaction was.

19 A I just asked him, Your Honor, if he recognized
20 anyone in the lineup that he had seen shooting in
21 the Waffle House parking lot that night. He
22 indicated that he did. And he went to photograph
23 number four and he said that was the individual that
24 he saw shooting from the opposite area of the
25 parking lot from where he had been with Oliver and

1 Eugene in the front area. And I asked him to
2 circle, initial it and date the picture.

3 Q And did he do that?

4 A Yes, ma'am.

5 Q And who did he actually identify in that
6 photograph?

7 A Andre Tayson Boone.

8 Q Did you or anyone else do anything to influence
9 his pick?

10 A No, ma'am.

11 Q Did you indicate to him which one he should
12 pick?

13 A No, ma'am.

14 Q Did anyone -- was anyone else there?

15 A I don't believe so.

16 Q So was there any outside influence that could
17 have made him pick number four?

18 A No, ma'am.

19 Q Did he hesitate?

20 A No, ma'am.

21 Q Once he identified number four as the person he
22 recognized as one of the shooters in the parking
23 lot, did he memorialize that?

24 A We did it in two different ways. We did it
25 with a photo affidavit form. It's sort of a fill in

1 the blank, what talks about the person that
2 describes the individual, who would be myself, that
3 showed him the lineup, where it was shown, the
4 picture that he picked out, the race and sex of the
5 individual, what the actual crime was that they're
6 saying was committed, in this case, he just
7 mentioned that he shot a pistol, where it occurred,
8 which is 7505 Two Notch Road, and the date, which is
9 February 19, 2007.

10 Q And is that actually his signature down there?

11 A It is.

12 Q Acknowledging that that's who he recognized?

13 A That's correct.

14 Q In addition to the other two who he already
15 knew?

16 A That's correct. We also memorialized it in a
17 second fashion in the actual statement that I took
18 from him. He referred to the identifications in the
19 statement as well.

20 MS. CAMPBELL: That's all I'd have of this
21 witness, Your Honor.

22 THE COURT: Cross?

23 MR. SUTHERLAND: None from us. It's an
24 acquaintance as far as Mr. Leggett.

25 THE COURT: Go ahead.

1 MS. PAYNE: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MS. PAYNE:

4 Q Captain Smith, do you have a copy of this in
5 front of you?

6 A She just took it.

7 MS. CAMPBELL: It's right there on the table.

8 BY MS. PAYNE:

9 Q State's Exhibit 78.

10 A Yes, ma'am.

11 Q What's the one difference in those pictures?

12 A I'm not sure what you're referring to.

13 Q Number four is different than one, two, three,
14 five and six?

15 A They all have dreadlocks. If you're referring
16 to the shells, five also has some sort of object
17 like that in his hair, as does, I believe, one. I'm
18 not sure what else you're referring to.

19 Q What about the background?

20 A It's shaded similarly to two.

21 Q It's much darker than two actually?

22 A That's a judgment call. I don't know that it's
23 much darker. There's some darkness also in one.

24 Q Isn't this the same picture that was put in the
25 newspapers?

1 A I don't recall.

2 MS. PAYNE: No further questions, Your Honor.

3 THE COURT: Redirect?

4 MS. CAMPBELL: No, sir.

5 THE COURT: Anything further of the witness?

6 (There was no response.)

7 THE COURT: Thank you, sir. You may step down.

8 What are your positions on this? Is that all
9 of the things on Biggers?

10 MS. CAMPBELL: Yes, sir, except for that one
11 witness that's still in the hospital.

12 THE COURT: I'm sorry. I meant for these two.
13 Do y'all want to offer any evidence?

14 MR. SUTHERLAND: No, sir.

15 MS. PAYNE: No, Your Honor.

16 THE COURT: What's your position?

17 MR. SUTHERLAND: Your Honor, it's kind of an
18 odd position with respect to this identification.
19 The witness does admit that he was viewing media
20 accounts in between the incident time and the time
21 of the pick, which was approximately 31 days.

22 I'm not sure that -- I don't know that I could
23 really argue that there's State action involved in
24 the media other than the fact that the information
25 is generally provided by investigators to the media.

1 I mean, they certainly don't get the pictures from
2 the defense attorney. And I think this may be
3 something of a -- of -- well, it may not be a great
4 argument, sir, but I think it's worth me putting it
5 on the record.

6 THE COURT: Put whatever you want on the
7 record. Don't worry about how it comes across.

8 MR. SUTHERLAND: I appreciate it, Your Honor.
9 So our position is that since the sheriff's
10 department, the State, somebody is providing
11 information to the media, that the media is then
12 reporting and that the witness has admitted that
13 he's observed in the '31 days between the incident
14 and the photo identification, that actually the --
15 that the release of this information to the media is
16 an act by the State and that that in and of itself
17 -- I mean, they always say, you know, investigators
18 say this, that and the other, that the release of
19 the information by the State is actually a State
20 action, which could have made the identification
21 process more suggestive. Does that make any sense,
22 sir?

23 THE COURT: Yes, sir.

24 MR. SUTHERLAND: Thank you, Your Honor.

25 THE COURT: What's your position on the

1 identification?

2 MS. PAYNE: Thank you, Your Honor. We are
3 making a motion to suppress the identification
4 procedure by the Solicitors -- or by Captain Smith
5 in this case on the grounds that it was so unduly
6 suggestive as to violate Mr. Boone's Fourteenth
7 Amendment rights of due process under Neil versus
8 Biggers, Your Honor. We would be asking to suppress
9 both the identification procedure used prior to
10 today and the one that's going to be coming in
11 court.

12 Your Honor, I believe in Neil v. Biggers, they
13 articulate the court has to look at the totality of
14 the circumstances, that looking at the procedure was
15 so impermissibly suggestive as to give rise to the
16 very substantial likelihood of misidentification.
17 The factors the court used in that was, one,
18 opportunity to view -- of the witness to view the
19 crime -- of the person at the time of the crime.
20 Mr. Leggett testified he got to, in his words, got
21 to view a guy in black for a hot second.

22 Your Honor, the second one is witness' degree
23 of attention. He said it was dark out and he was at
24 the front of the parking lot and the person in black
25 was at the back of the parking lot. And there's

1 been testimony prior to today that there's many
2 people in between.

3 Your Honor, third, accuracy of the witness'
4 prior description of the defendant. And he says,
5 he's a guy dressed in black, not very specific in
6 that matter.

7 As to the fourth one, level of certainty
8 demonstrated at the confrontation. Obviously,
9 Captain Smith is saying that happened. He picks him
10 out immediately. We understand their position on
11 that.

12 Also, the fifth is the time between the crime
13 and the confrontation. Your Honor, the crime
14 happened February 19th, 2007, allegedly, and he's
15 not asked to pick this out until March 5th, 2007.
16 We are all well aware there was a lot of media
17 attention.

18 Mr. Boone does not have a prior record and the
19 only picture they have is a picture of that, and
20 this isn't in evidence, but it's his driver's
21 license picture. Your Honor, it is substantially
22 different than the other ones and that's why I
23 handed it to the Court to review. It's Exhibit 78,
24 I believe. The background is so much darker than
25 the rest of them and it is eye catching. I hadn't

1 even considered that prior to sitting down today and
2 that's what caught my eye. I just ask the Court to
3 take that in consideration and suppress this
4 identification as unduly suggestive.

5 THE COURT: What's the State's position?

6 MS. CAMPBELL: Your Honor, as far as Ms.
7 Payne's argument, I think it goes to weight not the
8 admissibility. The witness stated that he was able
9 to see him, that he was across the parking lot. He
10 did say that he had seen him on a prior occasion,
11 that he recognized him, I believe, is how he put it
12 from seeing him before. And the officer testified
13 that he showed him lineups along with the others and
14 that he immediately picked him.

15 As far as the background being darker, I don't
16 think that's significant taken in the context of the
17 lineup as a whole.

18 THE COURT: Do y'all want to respond?

19 MS. PAYNE: I would just briefly respond. I
20 think it's very significant. The whole purpose of
21 this is suggestiveness. Also, taking into
22 consideration that the lineups, the two prior, were
23 completely different setups than this and it didn't
24 have any background issues at all. I think that
25 that is significant in this case.

1 **THE COURT:** And what about the position that's
2 taken by Mr. Sutherland?

3 **MS. CAMPBELL:** Your Honor, the witness
4 testified that he recognized him because he had seen
5 him around on multiple occasions, he just didn't
6 know his name. He learned his name through the
7 news. But he testified on direct, Your Honor, that
8 he recognized him based on seeing him that night.

9 He did go on and was completely honest about
10 saying, yeah, he learned what his name was in the
11 newspaper. However, when asked on direct
12 examination, he stated that he based his
13 identification on seeing him that night, that he had
14 seen him around and that he even shook his hand that
15 night, I believe is the testimony.

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

17 **MR. SUTHERLAND:** And, Your Honor, really, our
18 point is that the State -- what's still on the, you
19 know, of course, on the first prong, that the State
20 by -- he's saying at that time on the 20th, after
21 having looked through -- after having had exposure
22 to the television, to the newspapers and everything,
23 he's saying on that date, and he's still calling him
24 the dude in this, but he's saying that he learned
25 that his name was Eugene in the media, but he forgot

1 that his name was Eugene when he went to make the
2 statement.

3 Your Honor, just with respect to his
4 credibility on the stand on these issues, and again
5 the suggestibility, I know it's a novel approach to
6 it, but I think the suggestibility -- the suggestive
7 argument about the photo lineup has to do with their
8 prior conduct in releasing this information to the
9 media that was public and that was available and
10 that the witness obviously has exposed himself to,
11 which he admitted on the stand, sir.

12 **THE COURT:** Anything else?

13 **MS. CAMPBELL:** No, sir.

14 **THE COURT:** Where is the other one? I've got
15 78, where is the other one?

16 **MS. CAMPBELL:** Those are the two in question,
17 these are the other two that were shown to
18 Mr. Karmindae Leggett, but he knows them and that
19 was not disputed.

20 **THE COURT:** Thank you.

21 (Pause.)

22 **THE COURT:** All right. With regard to what's
23 been marked for identification purposes at this time
24 as State's Exhibit 80 and 81, those are, as I
25 understand it, those are the acquaintance lineups.

1 There is no issue in the record as to the lineups
2 being improperly suggestive. There's no indication
3 that there was any action on behalf of law
4 enforcement that is improperly suggestive.

5 With regard to Exhibit 78, let me just first
6 address the issues that have been raised. There's
7 an objection related to the background and the
8 shading of the background. This photo lineup, there
9 was no testimony as to how it was prepared, but the
10 photo lineup shows six black males all with similar
11 hairstyles. Photo two and four have some shading in
12 the background, photo three has a little bit.

13 There are cases, and I can't cite them to you
14 without looking them up, but there are cases even, I
15 think, where you can have different colors of
16 backgrounds far more difference in the backgrounds
17 from what's shown here where the courts have said
18 that that's not unduly suggestive and not violative
19 of the rights of the defendant.

20 Now, I'm somewhat concerned by the testimony of
21 Mr. Leggett. I was trying my best to hear what he
22 said. And I do have the benefit of the real time
23 notes. They're not a transcript certainly by any
24 stretch at this point, but I do have the benefit of
25 that assistance if I need it.

1 Mr. Leggett began by saying he didn't really
2 see the person in Number 78, but then later on he
3 said he did. But the inquiry, as I pointed out to
4 you all on Monday, that I go through in a Neil
5 versus Biggers hearing is a two prong analysis. And
6 the first prong is whether there is suggestiveness
7 on the part of law enforcement and if you don't find
8 that, you don't really reach the second prong, which
9 is the reliability of the identification. So while
10 there may be many issues that one could attack
11 related to the reliability, that again gets to be
12 one of those matters where you look at
13 cross-examination as the remedy.

14 There's -- the Court finds that the State has
15 established by the requisite degree of proof at this
16 time that for the purpose of this Neil versus
17 Biggers hearing, that Exhibit 78 was not the product
18 of any type of law enforcement suggestiveness.
19 There's nothing about the lineup including the
20 background that causes the Court any concern.

21 The witness, Mr. Leggett, testified that no one
22 suggested anything to him as far as who he should
23 identify, that he put his initials on the document.
24 And that when Mr. Smith testified, he testified
25 there was no outside influence, that he just merely

1 asked Mr. Leggett if he had -- Mr. Leggett had
2 recognized anybody in this lineup that was shooting
3 at the incident location that night. There were no
4 outside influences that would have improperly
5 effected the selection of photo number four. And
6 the Court finds that State's Exhibit 78, if a proper
7 foundation is established, will be admissible to the
8 jury.

9 With regard to -- let me see if I've got the
10 numbers right. 78 is the one that is being objected
11 to on behalf of Mr. Boone; is that right?

12 MS. PAYNE: Correct, Your Honor.

13 THE COURT: And the two acquaintance ones, did
14 I have those right when I said the numbers? This is
15 Oliver, so that's not really before me right now; is
16 that right?

17 MS. CAMPBELL: They don't have any objection to
18 Oliver Feldman. They don't have any objection to
19 Eugene. I'm sorry, to --

20 MR. SUTHERLAND: Did y'all talk about the
21 Oliver lineup...

22 THE COURT: I'm sorry, what was that?

23 MR. SUTHERLAND: I'm sorry, Your Honor. I just
24 -- I thought -- when Ms. Campbell started talking
25 about it, I sort of blurted out. I shouldn't have

1 done it, Your Honor. I asked if y'all were going to
2 talk about the Oliver lineup and then I thought that
3 I didn't really have a problem with it.

4 **THE COURT:** Well, I don't know that the issue
5 necessarily is before me right now. Those were
6 testified about. As I recall it, Mr. Leggett said
7 he was with Oliver and Eugene and he knew them.

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

9 **THE COURT:** With regard to Exhibit 80, Oliver,
10 he knew Mr. Oliver -- or he knew Oliver by name and
11 by sight, and with regard to 81, which would be
12 Eugene, that he knew him. So 80 and 81 were the
13 acquaintance lineups, right? So 79 is the one you
14 have the objection on, which is this one?

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

16 **THE COURT:** All right. Once again, there's no
17 indication, in the Court's view, of any kind of
18 violation of the defendant's rights by law
19 enforcement. There's no evidence of undue
20 suggestiveness. There are cases about media and
21 there are cases related to identifications that are
22 affected by media coverage.

23 In this instance, Mr. Clemons testified that he
24 knew the defendant, Mr. Patterson, by his face, that
25 he saw him in the car that night. He was not told

1 who to pick. He gave the police a description.
2 Investigator Ellis put those into a lineup. It
3 apparently was shown to the witness, Mr. Clemons,
4 Samuel Clemons, and that he picked out the
5 defendant, Mr. Patterson.

6 There was a lot of back and forth about the
7 newspaper coverage. And my interpretation of that
8 testimony was that the witness was trying to
9 communicate how he came to know the name of the
10 defendant, not the face. And my recollection is
11 that he testified he saw the individual that night
12 as one of the people shooting, that he recognized
13 Mr. Patterson and was familiar with him and that he
14 talked to Mr. Patterson that night and actually
15 shook his hand. There was a great deal of certainty
16 there.

17 But once again, I don't think I get to that
18 inquiry about the certainty because there's no
19 indication in the record of suggestiveness on the
20 part of law enforcement or any kind of impropriety.

21 However, with regard to Mr. Clemons, he was
22 very certain of his identifications and it appears
23 that clearly both prongs would be met if I reached
24 the second prong. So the ruling of the Court is
25 that a proper foundation has established that

1 State's Exhibit Number 79 for identification can
2 come into the record as an exhibit.

3 All right. Anything else, ladies, gentlemen?

4 MS. CAMPBELL: No, sir.

5 MR. SUTHERLAND: No, sir.

6 THE COURT: Tell the jury I'll get to them in
7 about five minutes. We'll take a five minute break.

8 (Brief recess.)

9 THE COURT: State ready?

10 MS. CAMPBELL: State's ready.

11 THE COURT: Defense?

12 MS. PAYNE: Yes.

13 THE COURT: Bring in the jury.

14 (The jury returns to the courtroom.)

15 THE COURT: Call your next witness, Solicitor.

16 MS. CAMPBELL: May it please the Court?

17 THE COURT: Yes, ma'am.

18 MS. CAMPBELL: State calls Karmindae Leggett.

19 KARMINDAE LEGGETT,

20 having been duly sworn, testified as follows:

21 THE CLERK: Have a seat in the box, state your
22 full name for the record and you need to speak up,
23 please.

24 THE WITNESS: Karmindae Leggett.

25 *****

DIRECT EXAMINATION

1

2

BY MS. CAMPBELL:

3

Q Karmindae, how old are you?

4

A Eighteen.

5

Q And where did you go to high school?

6

A Richland Northeast.

7

Q Richland Northeast?

8

A Yes, ma'am.

9

Q What grade did you get through?

10

A Eleventh.

11

Q Eleventh grade?

12

A Yes, ma'am.

13

Q Do you still live here in the Columbia area?

14

A Yes, ma'am.

15

Q Do you know a guy named Eugene Patterson?

16

A Yes, ma'am.

17

Q How do you know Eugene Patterson?

18

A As a friend.

19

Q Do you have a nickname for him? Did you call

20

him something?

21

A Just Big Gene.

22

Q Big Gene?

23

A Yes, ma'am.

24

Q Did you know a guy named Oliver Feldman?

25

A Not that good.

1 Q How did you meet Oliver Feldman?
2 A Through friends.
3 Q And what did you call him?
4 A Oliver.
5 Q Did you know if Big Gene was in a gang?
6 A No, ma'am, not sure.
7 Q You aren't sure?
8 A No, ma'am.
9 Q Were you in a gang?
10 A No, ma'am.
11 Q Did you know if Oliver was in a gang?
12 A Well, yes, ma'am.
13 Q What gang was Oliver in?
14 A Crip.
15 Q Crip?
16 A Yes, ma'am.
17 Q I want to turn your attention back to February
18 the 18th and to the 19th, that evening. Remember
19 when you ended up at the Waffle House?
20 A Yes, ma'am.
21 Q And you've got to speak up for me, okay?
22 A (Witness nodded head.)
23 Q Where did you start out that evening? Where
24 did you meet up with Big Gene?
25 A At a friend's house.

- 1 Q What was the friend's name?
- 2 A Angelo.
- 3 Q And what did y'all plan to do that night or
- 4 where did you go?
- 5 A We didn't go nowhere until later, just went to
- 6 the Waffle House.
- 7 Q Why did you go to the Waffle House that night?
- 8 A Friend called.
- 9 Q A friend called?
- 10 A Yes, ma'am.
- 11 Q And as a result of that phone call, you went to
- 12 the Waffle House?
- 13 A Yes, ma'am.
- 14 Q What were you going there to see?
- 15 A A fight.
- 16 Q And whose -- a fight?
- 17 A Yes, ma'am.
- 18 Q Did you know who the fight was going to be
- 19 between?
- 20 A Not really until I got there.
- 21 Q Okay. Who drove over there?
- 22 A Me.
- 23 Q And what car were you driving that night?
- 24 A Oliver's car.
- 25 Q And what kind of car did Oliver have?

1 A Burgundy.

2 Q Do you know what kind it was?

3 A Burgundy Malibu.

4 Q Malibu?

5 A Yes, ma'am.

6 Q It was a burgundy Malibu?

7 A Yes, ma'am.

8 Q And who all was in the car with you that night?

9 A Me, Oliver and Big Gene.

10 Q You, Oliver and Big Gene?

11 A Yes, ma'am.

12 Q And who was sitting where in the car?

13 A I was driving. Oliver in the passenger.

14 Q And who was in the back seat?

15 A Gene.

16 Q Once you got to the Waffle House, were there

17 some other people there?

18 A Yes, ma'am.

19 Q And how did y'all pull into the Waffle House

20 parking lot? You were driving, right?

21 A Yes, ma'am.

22 Q What part did you pull into first?

23 A What part?

24 Q Did you drive through the parking lot?

25 A Yes, ma'am.

1 Q Did you go into the back of the parking lot?

2 A Yes, ma'am.

3 Q Where did you end up parking that night?

4 A At the front by the road.

5 Q And that's Two Notch Road?

6 A Yes, ma'am.

7 Q And you actually parked the car?

8 A Yes, ma'am.

9 Q Do people call you a certain name?

10 A They might have called me Bay every now and
11 then.

12 Q They call you Bay?

13 A Yes, ma'am.

14 Q Once you parked the car tell this jury what you
15 did.

16 A Went inside the Waffle House.

17 Q And who went inside the Waffle House with you
18 that night?

19 A Me, Oliver, Gene.

20 THE COURT: I'm sorry, what did you say?

21 THE WITNESS: Me, Oliver and Gene.

22 BY MS. CAMPBELL:

23 Q And how long did y'all stay in the Waffle
24 House?

25 A Not that long.

1 Q The car that you were driving that night, I
2 want to show you what's been marked as State's
3 Exhibit Number 57. Does that look like the car?

4 A Yes, ma'am.

5 Q And who did the car belong to?

6 A Oliver.

7 Q Oliver?

8 A Yes, ma'am.

9 Q Y'all went into the Waffle House and you didn't
10 stay in very long. Were there some other people out
11 in the -- outside?

12 A Yes, ma'am.

13 MR. SUTHERLAND: Your Honor, objection to
14 leading.

15 THE COURT: Leading?

16 MR. SUTHERLAND: Yes, sir.

17 THE COURT: State your questions in a
18 nonleading fashion, please.

19 BY MS. CAMPBELL:

20 Q What did you see on the outside?

21 A People.

22 Q Did you know any of the people?

23 A I didn't know -- I knew a couple of people. I
24 didn't know all of them.

25 Q Once you came back outside of the Waffle House,

1 where did you go?

2 A I headed towards the car.

3 Q Towards the car?

4 A Yes, ma'am.

5 Q And where was the car parked?

6 A Right by the road.

7 Q In front of the Waffle House?

8 A On the side.

9 Q On the side?

10 A Yes, ma'am.

11 Q Once you got back to your car, where were
12 Oliver and Eugene?

13 A They was right behind me on the way to the car.

14 Q What happened next?

15 A Gunshots.

16 Q And when you say gunshots, could you tell where
17 the gunshots were coming from?

18 A I knew they was coming from behind me.

19 Q At that point, did you know whether or not
20 there -- had the fight already started?

21 A Yes, ma'am, the fight was already started.

22 Q And do you know who was doing the fighting?

23 A I heard that there was Corey, Chad.

24 MR. SUTHERLAND: That's hearsay, Your Honor.

25 THE COURT: You can't say what somebody told

1 you.

2 BY MS. CAMPBELL:

3 Q Did you see who was fighting that night?

4 A I seen one person.

5 Q And where was the fight taking place?

6 A Like in the middle of the parking lot.

7 Q In the middle of the parking lot?

8 A Yes, ma'am.

9 Q And that would be the Waffle House parking lot?

10 A Yes, ma'am.

11 Q Did you see some people over at the Mobil Gas
12 Station?

13 A I really wasn't paying no attention.

14 Q Okay. Was the fight already going on before
15 you heard the first gunshots?

16 A Yes, ma'am.

17 Q In what direction could you hear the guns
18 coming from, could you tell?

19 A From behind.

20 Q From behind whom?

21 A From behind the way I was walking towards the
22 car.

23 Q Okay. So if you're walking towards Two Notch,
24 right, from the Waffle House?

25 A Yes, ma'am.

1 Q The front door. They were coming from behind
2 you?

3 A Yes, ma'am.

4 Q So that would be the other end of the parking
5 lot?

6 A Yes, ma'am.

7 Q Would you characterize that as the front or the
8 back of the parking lot?

9 A The back.

10 Q Could you tell at first who was shooting?

11 A No, ma'am, not at first.

12 Q When you heard the shots, what did you do?

13 A Went to the car.

14 Q And who all went to the car with you?

15 A Me, Oliver and Gene.

16 Q And what did they get?

17 A Their guns.

18 Q Their guns?

19 A Yes, ma'am.

20 Q Did you have a gun?

21 A No, ma'am.

22 Q And what kind of gun did Oliver have?

23 A I think it was a .32.

24 Q What kind of gun is that? Is it a semi?

25 A Revolver.

1 Q Revolver?

2 A Yes, ma'am.

3 Q And what kind of gun did Big Gene get?

4 A I think a .380.

5 Q And where did they get the guns from?

6 A They was already in the car.

7 Q When they got the guns, what happened?

8 A They fired back.

9 Q They fired back?

10 A Yes, ma'am.

11 Q And what direction would that be in?

12 A Towards the back.

13 Q Do you know how many times they fired their
14 gun?

15 A Like two or three.

16 Q And when they were firing back, did you hear
17 anymore gunshots from the back of the parking lot?

18 A Yes, ma'am.

19 Q And could you tell what direction those were
20 coming?

21 A By that time, I was in the car.

22 Q Did you get a look at the person in the back of
23 the parking lot that was shooting?

24 A Yes, ma'am.

25 Q And had you seen him before?

1 A I seen him when I first pulled up.

2 Q What were people doing as the gunshots were
3 going back and forth?

4 A Running, scattered.

5 Q And did you see anybody get shot that night?

6 A No, ma'am.

7 Q What did you do when the gunshots started?

8 A I unlocked the doors and hopped in the car.

9 Q You hopped in the car?

10 A Yes, ma'am.

11 Q And do you know how many times Eugene shot?

12 A Like two or three.

13 Q Do you know how many times Oliver shot?

14 A Same, two or three.

15 Q Do you know how many times the other end of the
16 parking lot there were shots?

17 A No, ma'am.

18 Q What happened to Big Gene and Oliver after you
19 got in the car?

20 A They hopped in the car with me.

21 Q And where did y'all go?

22 A Everybody got dropped off.

23 Q Where did you get dropped off?

24 A I went to my brother's house.

25 Q Did you drop off Eugene before you went to your

1 brother's house?

2 A Yes, ma'am.

3 Q Where was that?

4 A Back at Angelo's house.

5 Q Did you contact the police that night?

6 A No, ma'am.

7 Q Did they track you down later?

8 A Yes, ma'am.

9 Q Do you remember meeting with Captain Smith and
10 giving him a statement?

11 A Yes, ma'am.

12 Q And they asked you about what happened that
13 night?

14 A Yes, ma'am.

15 Q And you gave him this six page statement; do
16 you remember that?

17 A Yes, ma'am.

18 Q And on that date, do you also remember them
19 showing you some photo lineups?

20 A Yes, ma'am.

21 Q I'm going to show you what's been marked as
22 State's Exhibit Number 79 and just first ask, do you
23 recognize this?

24 A Yes, ma'am.

25 Q Is that one of the lineups that Captain Smith

1 showed you?

2 A Yes, ma'am.

3 Q When he showed you that lineup, was there any
4 writing on it?

5 A No, ma'am.

6 Q And did he ask you whether or not you
7 recognized anyone?

8 A Yes, ma'am.

9 Q And did you recognize someone in that lineup?

10 A Yes, ma'am.

11 Q And who was that?

12 A It was Gene.

13 THE COURT: I'm sorry, I couldn't hear you.
14 Who did you recognize?

15 THE WITNESS: Eugene.

16 THE COURT: Thank you.

17 BY MS. CAMPBELL:

18 Q And did you indicate that with your initials?

19 A (Witness shook head.)

20 Q Are those your initials?

21 A There are no initials.

22 Q I'm sorry. That's the date, isn't it?

23 A Yes, ma'am.

24 Q And did you sign off on it in this first page
25 of 79; is that your signature?

1 A Yeah.

2 Q And that's where you filled out your address,
3 too?

4 A Yes, ma'am.

5 MS. CAMPBELL: Your Honor, at this time, we'd
6 offer State's Exhibit 79.

7 THE COURT: Is there any objection to 79?

8 MR. SUTHERLAND: Other than the prior
9 objection.

10 THE COURT: All right. Subject to previous
11 objection, it's marked in the record.

12 (State's Exhibit Number 79, photo lineup,
13 admitted into evidence.)

14 BY MS. CAMPBELL:

15 Q Did he show you another lineup? I show you
16 what's been marked as State's Exhibit Number 80. Do
17 you recognize that?

18 A Yes, ma'am.

19 Q And when he showed you that lineup, did he ask
20 you if you recognized anyone?

21 A Yes, ma'am.

22 Q And did you?

23 A Yes, ma'am.

24 Q And who did you recognize?

25 A Oliver.

1 Q And which one was he in that lineup?

2 A (No response.)

3 Q Which one was Oliver?

4 A (No audible response.)

5 THE COURT: I'm sorry, I can't hear you.

6 BY MS. CAMPBELL:

7 Q This one?

8 A Yes, ma'am.

9 Q Bottom right?

10 A (Witness nodded head.)

11 Q And when you were shown this lineup, was there
12 any writing on it or anything?

13 A No, ma'am.

14 Q Did anyone tell you which one to pick on either
15 one of these lineups?

16 A No, ma'am.

17 Q And did you date that one as well?

18 A Yes, ma'am.

19 Q And then you signed off that that's who you
20 recognized?

21 A Yes, ma'am.

22 Q So that was Eugene and Oliver, right?

23 A Yes.

24 Q Did he also ask you if you recognized the guy
25 you saw shooting from the other end of the parking

1 lot?

2 A Yes, ma'am.

3 Q And did he show you what's been marked as
4 State's Exhibit Number 78?

5 A Yes, ma'am.

6 Q And when he showed you that lineup, was there
7 any writing on it?

8 A No, ma'am.

9 Q And what, if anything, did he tell you before
10 showing you the lineup?

11 A (No response.)

12 Q Did he ask you if you recognized anyone?

13 A Oh, yes, ma'am.

14 Q And when you saw those six photos, did you
15 recognize anyone?

16 A Yes, I did.

17 Q And who did you recognize?

18 A Number four.

19 Q Number four?

20 A Yes, ma'am.

21 Q And those are your initials there?

22 A Yes, ma'am.

23 Q And then he filled in this part and you signed
24 it?

25 A Yes, ma'am.

1 MS. CAMPBELL: Your Honor, at this time, we'd
2 offer State's Exhibit -- I'm not sure I offered 80
3 and 79 -- 78, excuse me.

4 THE COURT: Is there any objection to 80?

5 MR. SUTHERLAND: No, sir.

6 THE COURT: No objection on 80. 78?

7 MS. EVERHART: No objection.

8 THE COURT: No objection on 78?

9 MS. EVERHART: No objection other than the
10 previous objections.

11 THE COURT: Mark it for I.D. Is the officer
12 going to testify?

13 MS. CAMPBELL: Yes, sir.

14 THE COURT: Just mark it for I.D. right now.

15 MS. CAMPBELL: Okay. They're marked for I.D.

16 THE COURT: No, no, the two are in. 79 and 80
17 are in.

18 MS. CAMPBELL: 78 will be marked for I.D. at
19 this time?

20 THE COURT: Right.

21 (State's Exhibit Number 80, photo lineup,
22 admitted into evidence.)

23 BY MS. CAMPBELL:

24 Q Mr. Leggett, you're here under subpoena today;
25 is that correct?

1 A Yes, ma'am.

2 Q You don't want to be here?

3 A No, ma'am.

4 Q You have pending in our office, I believe, a
5 possession of -- is it crack cocaine?

6 A Yes, ma'am.

7 Q And a marijuana charge?

8 A Yes, ma'am.

9 Q And you've got a lawyer on that?

10 A Yes, ma'am.

11 Q Has anyone offered you anything in exchange for
12 your testimony here today?

13 A No, ma'am.

14 Q Do you remember back when you gave a statement
15 to Captain Smith on March the 5th of 2007?

16 A I believe so.

17 Q And do you remember giving that statement down
18 at the sheriff's department?

19 A Yes, ma'am.

20 Q And you met with Captain Smith; do you remember
21 him?

22 A Yes, ma'am.

23 Q And he asked you some of the same questions I
24 have; is that right?

25 A Yes, ma'am.

1 Q And he asked you specifically whether or not
2 Gene and Oliver are in a gang?

3 A Yes.

4 Q And do you remember what you told them?

5 A Yes.

6 Q Do you want to refresh your memory?

7 A (Witness reviewing document.)

8 Q Is Gene in a gang or was he at the time?

9 A Maybe at the time.

10 Q Okay. And what gang was he in?

11 A Folk.

12 Q And what gang was Oliver in?

13 A Crip.

14 Q The person you know as Big Gene, do you see him
15 here in the courtroom?

16 A Yes, ma'am.

17 Q Can you point him out for the jury?

18 A (No response.)

19 Q You don't want to point him out?

20 A No.

21 Q Why don't you want to point him out?

22 A (No response.)

23 Q Is he here in the courtroom?

24 A Yes, ma'am.

25 Q And the person that you recognize as the

1 shooter at the other end, do you see him here in the
2 courtroom?

3 A Yes, ma'am.

4 Q Can you point him out?

5 A (No response.)

6 Q You don't want to point him out either?

7 A (Witness shook head.)

8 Q Is he here in the courtroom?

9 A Yes, ma'am.

10 Q And are those the two people you identified in
11 State's Exhibit Number 78 and State's Exhibit Number
12 79?

13 A Yes, ma'am.

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

15 THE COURT: Yes, ma'am.

16 (Pause.)

17 BY MS. CAMPBELL:

18 Q Do you remember -- just one question about when
19 the fight broke out between the two people that were
20 doing the fist fight.

21 A Yes, ma'am.

22 Q And you didn't see any of those people with any
23 guns, did you?

24 A No, ma'am.

25 Q And how many people did you see out there with

1 the guns shooting that night?

2 A Three, it could have been more.

3 Q And those are the people we talked about?

4 A Yes, ma'am.

5 Q Where were Gene and Oliver when the fight broke
6 out? Where did they go?

7 A They was like right by me.

8 Q Right by you?

9 A Yes, ma'am.

10 Q And were you up near the fight or were you back
11 at the car?

12 A Back by the car.

13 Q Did either of them go up towards the fight?

14 A No, ma'am. They was like just a little bit
15 ahead of me.

16 Q Do you remember, again, when you gave that
17 statement to Sergeant Smith when you talked about
18 where they went when the fight broke out?

19 A Yes, ma'am.

20 Q And what did you tell them?

21 A I said --

22 MR. SUTHERLAND: Your Honor, I don't know that
23 she's established his need to have his recollection
24 reflected -- refreshed with respect to that
25 particular fact.

1 THE COURT: Are you trying to refresh his
2 recollection or are you trying to impeach him?

3 MS. CAMPBELL: I'm trying to impeach him.

4 THE COURT: All right. That's fine. Go ahead.

5 BY MS. CAMPBELL:

6 Q Do you remember what you told him?

7 A Yes, ma'am.

8 Q And what did you tell him?

9 A That Gene went up real close.

10 Q Wait a minute. You've got to say it louder so
11 we can all hear you.

12 A That Gene went up real close, but Oliver stayed
13 near the car.

14 Q And you also remember when you gave this
15 statement, do you remember when you talked about had
16 you ever seen the gun that Gene had that night
17 before?

18 A Yes, ma'am.

19 Q And had you seen him with it before?

20 A Yes, ma'am.

21 MS. CAMPBELL: Thank you. Please answer any
22 questions they may have, okay.

23 THE COURT: Mr. Sutherland.

24 MR. SUTHERLAND: Please the Court.

25 THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. SUTHERLAND:

Q Mr. Leggett, you had earlier testified that Eugene was not in a gang; do you remember that?

A Yes, sir.

Q Okay. And, actually, what you had said -- or what you had said initially, I think, that you were with Oliver at Angelo Tucker's house?

A Yes, sir.

Q And then in your statement, you said, After Eugene got off from work, he came by there. Is that what you recall saying in your statement?

A Yes, sir.

Q And he works at the Department of Mental Health?

A I believe so.

Q Okay. Now, you had also said that there could have been, and this is in your direct testimony, that there could have been more people shooting?

A Yes, sir.

Q Now, these people -- when these shots were going off in the back part of the parking lot, did you feel -- who did you feel like that -- whoever this was was shooting at, was it the people that were with you, that were with y'all on Chad's side

1 of things?

2 A The people that was with us.

3 Q So, basically, people from your neighborhood
4 were on one side, friends and acquaintances from
5 your particular neighborhood, were all up here on
6 this one side; is that correct?

7 A Yes, sir.

8 Q And then someone started shooting in the
9 direction of your friends and acquaintances?

10 A Yes, sir.

11 Q Okay. And so the reaction -- I understand your
12 testimony, the reaction, do you believe it was to
13 protect these people?

14 A Yes, sir.

15 Q And that it -- and to protect you?

16 A Yes, sir.

17 Q And to perhaps protect themselves?

18 A Yes, sir.

19 Q And once -- when you left -- when y'all left,
20 did you still hear shots when you were leaving?

21 A I think I did.

22 Q Okay. So once everybody had gotten out of the
23 way, in other words, all of your friends and
24 everybody had gotten out of the way and gotten to
25 their cars or at least gotten free of the field of

1 -- I don't want to talk Army talk -- of where the
2 shooting was going through, then you all left?

3 A Yes, sir.

4 Q Because everybody was safe?

5 A (Witness nodded head.)

6 MR. SUTHERLAND: Beg the Court's indulgence.

7 THE COURT: Did you answer that? I'm sorry.

8 Did you answer his last question?

9 THE WITNESS: Yes, sir.

10 THE COURT: Your answer was yes?

11 THE WITNESS: Yes.

12 THE COURT: Thank you.

13 BY MR. SUTHERLAND:

14 Q So do you believe that anyone that you've said
15 today, either Oliver or Eugene, would have done, and
16 this is according to you that they were shooting,
17 but do you believe that they would have done any
18 shooting at all --

19 MS. EVERHART: Objection, Your Honor.

20 MS. CAMPBELL: Objection, Your Honor.

21 MR. GOLDBERG: Objection.

22 THE COURT: Okay. Who wants to go first?

23 MS. EVERHART: Speculation --

24 MS. CAMPBELL: Can't speculate on what another
25 person would do.

1 THE COURT: Do you want to be heard?

2 MR. SUTHERLAND: No, no, they're right. I may
3 be close to that. Sorry, Your Honor.

4 THE COURT: That's all right. That's what I
5 get paid to do. Go ahead.

6 BY MR. SUTHERLAND:

7 Q Well, got to get back to the initial thing.
8 The initial thing was I think you had received a
9 telephone call, and I'm not asking what was said,
10 but in response to that, you and your friends went
11 to watch a couple of guys have a fist fight?

12 A Yes.

13 Q That's what you remember?

14 A Yes, sir.

15 Q You didn't go up there to watch somebody have a
16 gun fight?

17 A No, sir.

18 Q It's just a couple of teenagers fighting; is
19 that correct?

20 A Yes, it is.

21 Q And, again, just to sort of reinforce what you
22 had said on direct that there could have been more
23 people shooting. Do you recall saying in your
24 statement that there may have been another person
25 back there shooting? Do you recall saying that when

1 you were interviewed?

2 A Yes, sir.

3 Q And as Ms. Campbell said, you do have pending
4 charges against you in Richland County?

5 A Yes, sir.

6 MR. SUTHERLAND: I have no further questions at
7 this time, Your Honor.

8 THE COURT: All right. Thank you.

9 Any questions on behalf of Mr. Boone?

10 MS. EVERHART: Yes, Your Honor.

11 THE COURT: All right. Ms. Everhart, go ahead.

12 CROSS-EXAMINATION

13 BY MS. EVERHART:

14 Q Hi, Mr. Leggett.

15 A Hi. How you doing?

16 Q When y'all got to the Waffle House that night,
17 y'all were watching a fight?

18 A Yes, ma'am.

19 Q And, at that point, you heard shots go into the
20 air and you turned and started running back toward
21 the car?

22 A Yes, ma'am.

23 THE COURT: I'm sorry, what did you say?

24 THE WITNESS: Yes, sir.

25 THE COURT: Would you do me a favor, I don't

1 want to interfere, but if you stand close to him,
2 I'm going to have a hard time getting him to speak
3 up.

4 MS. EVERHART: No problem, Your Honor.

5 BY MS. EVERHART:

6 Q At that point, you ran back and jumped in your
7 car?

8 A Yes, ma'am.

9 Q And Oliver and Eugene started shooting after
10 you jumped in the car?

11 A Yes, ma'am.

12 Q And they were shooting from closer to the car
13 and the road?

14 A Yes, ma'am.

15 Q And I believe you told the police that you
16 thought Oliver shot maybe around three times?

17 A Yes, ma'am, two to three.

18 Q And Eugene shot about four?

19 A About two to three, also.

20 Q And you indicated to the police that you
21 believed Eugene had a .380?

22 A Yes, ma'am.

23 Q And that was because he always had it with him?

24 MR. SUTHERLAND: Excuse me. Objection, Your
25 Honor.

1 THE COURT: Yes.

2 MR. SUTHERLAND: May we approach briefly?

3 THE COURT: You can approach. If you approach,
4 it's not on the record. If you want to preserve
5 anything --

6 MR. SUTHERLAND: Yes, I would like to
7 preserve --

8 THE COURT: Ladies and gentlemen, please step
9 in the jury room. Don't discuss this case.

10 (The jury retires to the jury room.)

11 THE COURT: Yes, sir.

12 MR. SUTHERLAND: Your Honor, if I may, I was
13 just operating on memory here, I believe that the
14 next line she's about to read is, I know it was
15 a .380 because he always carries one. And I would
16 view that as character evidence that would be
17 improper and it would be prejudicial to my client,
18 sir.

19 MS. EVERHART: Your Honor, he put in his
20 statement to the officers, Big Gene always has his,
21 he doesn't go nowhere without his.

22 MR. SUTHERLAND: And, again, I don't see that
23 as relevant. I do see it as prejudicial, sir.

24 MS. EVERHART: I think it's relevant in terms
25 of whether or not he was carrying a .380 that night

1 and it is a statement he made to the police, Your
2 Honor.

3 THE COURT: Do y'all want to be heard?

4 MS. CAMPBELL: I'm with her.

5 THE COURT: All right. The objection's
6 sustained.

7 MR. SUTHERLAND: Thank you, Your Honor.

8 THE COURT: Do you understand what that means?
9 You can't say he carried it with him all the time,
10 okay?

11 THE WITNESS: (Witness nodded head.)

12 THE COURT: Now, he's already made one
13 statement without objection that is somewhat
14 equivalent, but not quite as prejudicial. All
15 right. Thank you.

16 All right. Bring the jury back in.

17 (The jury returns to the courtroom.)

18 THE COURT: All right. The objection's
19 sustained. Ask your next question, please.

20 MS. EVERHART: Thank you, Your Honor.

21 BY MS. EVERHART:

22 Q You indicated to the police that Oliver might
23 have had a .32 with him that night?

24 A Yes, ma'am.

25 Q You also told the police in your statement that

1 you didn't know for sure that it was a .32?

2 A Yes, ma'am.

3 Q But he was shooting a gun?

4 A Yes.

5 Q And I believe you also testified today that you
6 did know Brian Wright?

7 A Yes, ma'am.

8 Q That you didn't see him out there?

9 A No, ma'am.

10 MS. EVERHART: Beg the Court's indulgence one
11 moment.

12 THE COURT: Yes, ma'am.

13 (Pause.)

14 MS. EVERHART: No further questions, Your
15 Honor.

16 THE COURT: Redirect?

17 MS. CAMPBELL: Just a couple.

18 REDIRECT EXAMINATION

19 BY MS. CAMPBELL:

20 Q Defense counsel asked you about that y'all were
21 just going there to watch a fist fight?

22 A Yes, ma'am.

23 Q But Oliver took his revolver with him?

24 A Yes, ma'am.

25 Q And Gene had his .380?

1 A Yes, ma'am.

2 Q To go watch a fist fight?

3 A Yes, ma'am.

4 MS. CAMPBELL: Thank you.

5 THE COURT: All right. Recross?

6 RECROSS-EXAMINATION

7 BY MR. SUTHERLAND:

8 Q Was that .380 in Oliver Feldman's lap when
9 y'all were in the car?

10 A Yes, sir.

11 MR. SUTHERLAND: No further questions, Your
12 Honor.

13 THE COURT: Recross?

14 MS. EVERHART: Nothing further, Your Honor.

15 THE COURT: Thank you, sir. You may step down.
16 Are y'all going to call Samuel Clemons?

17 MS. CAMPBELL: Yes, sir.

18 THE COURT: I think we've got time to get him
19 in today. Call your witness.

20 MS. CAMPBELL: Samuel Clemons.

21 SAMUEL CLEMONS,

22 having been duly sworn, testified as follows:

23 THE CLERK: Have a seat in the witness box,
24 state your full name for the record, please.

25 THE WITNESS: Samuel Clemons.

1 DIRECT EXAMINATION

2 BY MS. CAMPBELL:

3 Q Mr. Clemons, how old are you?

4 A Twenty.

5 Q You live here in the Columbia area?

6 A Yes, ma'am.

7 Q How long have you lived here?

8 A About four and a half, five years.

9 THE COURT: Speak up a little bit, please.

10 THE WITNESS: Four and a half or five years.

11 BY MS. CAMPBELL:

12 Q If you can move up just a little closer, it
13 would help me, okay.

14 A (Witness complies.)

15 Q Where did you go to high school?

16 A Keenan.

17 Q Did you graduate?

18 A No, ma'am.

19 Q What grade did you get through?

20 A Eleventh grade.

21 Q Eleventh grade?

22 A Uh-huh.

23 THE COURT: Try to say yes or no and not uh-huh
24 and huh-huh, okay?

25 THE WITNESS: Yes, sir.

1 THE COURT: Thank you.

2 BY MS. CAMPBELL:

3 Q Do you know a guy that you know as -- by the
4 name of Bay?

5 A Yes, ma'am.

6 Q And how do you know Bay?

7 A We're real good friends.

8 Q You're real good friends?

9 A (Witness nodded head.)

10 Q Is that him that just walked out of the
11 courtroom?

12 A Yes, ma'am.

13 Q I want to turn your attention back to the night
14 at the Waffle House, that evening, on the evening of
15 18th before the shooting occurred.

16 A Uh-huh.

17 Q What were you doing that evening, that night?

18 A I was with Tayson earlier.

19 Q You were with Tayson?

20 A Uh-huh.

21 Q And did you and Tayson split up that evening?

22 A No ma'am, we was together.

23 Q You were together?

24 A Uh-huh.

25 Q How did you end up at the Waffle House that

1 night?

2 A I rode out there with him.

3 Q You rode out there with him?

4 THE COURT: I'm still having a hard time
5 hearing you. You need to speak up for me, okay?

6 THE WITNESS: Yes, sir.

7 THE COURT: And try not to say uh-huh and
8 huh-huh.

9 BY MS. CAMPBELL:

10 Q Once you got out to the Waffle House, where did
11 you go?

12 A I went inside the Waffle House.

13 Q And what were you doing inside the Waffle
14 House?

15 A About to get something to eat.

16 Q And were there other people in there that you
17 knew?

18 A Uh-huh.

19 Q Who did you know inside?

20 A It was a couple of people, girls and stuff.

21 Q And did you know the girls' names?

22 A Yeah, I knew a couple of them.

23 Q Did you know there was a fight that was
24 supposed to be going on that night?

25 A Oh, yeah, I had knew about it, but...

1 Q Had it supposed to have been going on kind of
2 all day long?

3 A Yeah, I knew there was words exchanged, but I
4 didn't know about what.

5 Q That night were you there when you saw Bay pull
6 up in the parking lot?

7 A Yes, ma'am.

8 Q And what kind of car was he driving that night?

9 A A dark colored car.

10 Q Dark colored car?

11 A Uh-huh.

12 Q Was it a sedan, an SUV or what; do you
13 remember?

14 A It was like a sedan.

15 Q And where did he pull into the parking lot at
16 first?

17 A He just pulled in, went to the back and turned
18 around.

19 Q And did you go up and talk to him while he was
20 in the back part of the parking lot?

21 A Yes, ma'am.

22 Q Why did you go over there?

23 A Because my brother was over there.

24 Q And what's your brother's name?

25 A Quintez.

1 Q When you got over there, what happened?

2 A Nothing, I just talked to Bay and left.

3 Q And when you talked to Bay, did he tell you
4 some information, you can't say what he said, but
5 did he give you some information?

6 A Yes, ma'am.

7 Q And when you were over there, did you see
8 anybody else in the car with Bay?

9 A Yes, ma'am.

10 Q And who else did you see in the car?

11 A Oliver and Eugene.

12 Q Did you know them by name at that time?

13 A No, ma'am.

14 Q And who did you see sitting in the car?

15 A Bay, Oliver and Eugene.

16 Q And who was sitting in the front seat?

17 A Oliver.

18 Q And describe him for the jury.

19 A Light-skinned male, braids.

20 Q Was there anything distinctive about what he
21 was wearing that night?

22 A Blue jersey.

23 Q A blue jersey?

24 A Yes, ma'am.

25 Q And do you know -- what did that indicate to

1 you?

2 A Nothing, he was wearing a jersey.

3 Q Okay. Did you see him with any type of weapon,
4 the guy in the blue jersey, the light-skinned guy?

5 A Yes, ma'am.

6 Q And what kind of weapon did you see him with?

7 A A revolver.

8 Q A revolver?

9 A Yes, ma'am.

10 Q How did you describe that weapon in your
11 statement; do you remember?

12 A I told them it was a revolver, a black
13 revolver.

14 Q Okay. And I want to show you your statement.
15 Do you remember giving a statement to the police
16 back on May the 20th -- March the 20th of 2007?

17 A Yes, ma'am.

18 Q And you gave them a description of the
19 revolver?

20 A Yes, ma'am.

21 Q And what caliber did you describe it as?

22 A As a revolver, .357.

23 Q Okay. As a revolver, .357?

24 A Yes, ma'am.

25 Q And whose lap did you see the revolver, .357?

1 A Oliver.

2 Q The light-skinned guy?

3 A Yes, ma'am.

4 Q I want to show you what's been marked as
5 State's Exhibit Number 82 and just first ask you to
6 look at that?

7 A (Witness complies.)

8 Q Does that look like what you saw Oliver
9 holding?

10 A Yes, ma'am.

11 MS. CAMPBELL: Your Honor, at this time, we
12 mark it for I.D. purposes and put it in later.

13 THE COURT: All right.

14 (State's Exhibit Number 82, gun, was marked
15 for identification purposes.)

16 BY MS. CAMPBELL:

17 Q And you know the difference between a revolver
18 and a semiautomatic?

19 A Yes, ma'am.

20 Q Did you see anybody in the back seat of the car
21 when you went over to talk to Bay?

22 A Yes, ma'am.

23 Q And who did you see in the back seat?

24 A Eugene.

25 Q Did you know his name at the time?

1 A No, ma'am.

2 Q The person that was in the back seat that you
3 now know as Eugene, did you see him doing anything
4 that night with a gun?

5 A Yeah. I seen him shooting it, but everybody
6 was shooting.

7 Q Tell the jury where you were and what you
8 observed the person you now know to be Eugene.

9 A I was on the back side of Tayson's SUV when
10 they started shooting.

11 Q And what part of the parking lot was the person
12 that was in the back seat, what part of the parking
13 lot was he in when you saw him shooting?

14 A They was in the front part of the parking lot.
15 We was parked in the back.

16 Q And when you say the front part, is that
17 towards Two Notch or the other end?

18 A Towards Two Notch.

19 Q And which direction did you see him shooting
20 in, did you see?

21 A Yeah, towards -- like towards the car.

22 Q Did you see anybody else shooting around the
23 same time you saw that person that was in the back
24 seat of the dark-colored car Bay was driving?

25 A Yeah.

1 Q Who else did you see shooting?

2 A Tayson shot in the air twice and then that's
3 when Eugene returned fire.

4 Q Were you able to see where the light-skinned
5 guy was at that point?

6 A No, ma'am.

7 Q What did you do when you heard the gunshots?

8 A Run.

9 Q And did you leave that actual area that night?

10 A Later -- afterwards, yeah.

11 Q The person that you saw shooting, you saw him
12 shoot twice, how many gunshots total did you hear
13 that night; do you remember?

14 A I can't give you an accurate amount, but it
15 was --

16 Q Was it more than a few?

17 A Uh-huh.

18 Q And could you tell if it was coming from two
19 separate areas in the parking lot?

20 A Yeah, you could.

21 Q And once you ran, you don't know what happened
22 after you left that area?

23 A No, ma'am.

24 Q Okay. Did the police get a statement from you,
25 I believe, in March of 2007?

1 A Yes, ma'am.

2 Q And, at that same time, you told them -- how

3 did you know Tayson?

4 A That's a friend.

5 Q He's a friend of yours?

6 A Yes, ma'am.

7 Q Were you in a -- let me back up. You're

8 familiar with the Bloods and the Folk?

9 A Yes, ma'am.

10 Q Were you a member of either one of those

11 groups?

12 A No, ma'am.

13 Q Did you know whether or not Tayson was?

14 A No, ma'am.

15 Q You don't know?

16 A No, ma'am.

17 Q But Tayson was a friend of yours?

18 A Yes, ma'am.

19 Q Do you see him here in the courtroom?

20 A Yes, ma'am.

21 Q Can you point him out for the jury?

22 A (Witness indicating.)

23 Q Can you describe what he's wearing?

24 A A suit, tie.

25 Q Is he sitting at the wall or the table or what?

1 A At the table.

2 Q And who's next to him?

3 A I guess his lawyers.

4 Q Is it female or male?

5 A Female.

6 MS. CAMPBELL: Your Honor, may the record
7 reflect he's identified Tayson -- I mean, the
8 defendant, Andre Tayson Boone.

9 THE COURT: His lawyers are female or he's
10 female?

11 THE WITNESS: His lawyers are female.

12 THE COURT: All right. He's so recognized. Go
13 ahead.

14 MS. CAMPBELL: Thank you, Your Honor.

15 BY MS. CAMPBELL:

16 Q When they took a statement from you, did they
17 also show you a photo lineup?

18 A Yes, ma'am.

19 Q I'm going to show you what's been marked as
20 State's Exhibit Number 81 for I.D. purposes at this
21 point. Do you recognize that?

22 A Yes, ma'am.

23 Q And when they showed this photo lineup, did
24 they tell you who to pick?

25 A No, ma'am.

1 Q Did they indicate that you had to pick anybody
2 or anything like that?

3 A No, ma'am.

4 Q When you looked at those six photographs, did
5 you recognize anybody?

6 A Yes, ma'am.

7 Q And which one did you recognize, Mr. Clemons?

8 A Eugene.

9 Q Did you know his name at the time?

10 A No, ma'am.

11 Q You've since learned it?

12 A Uh-huh.

13 Q Through?

14 A Through the newspapers and stuff, I had seen
15 it.

16 Q And did you tell the officer that you
17 recognized one of those people?

18 A Yes, ma'am.

19 Q And where was this person sitting in the car
20 when you first came in contact with Bay that night?

21 A The back seat.

22 Q And the person that you identified in State's
23 Exhibit Number 81 for I.D. purposes, was he one of
24 the ones you saw shooting that night?

25 A Yes, ma'am.

1 Q In what part of the parking lot was he shooting
2 from when you saw him?

3 A The front area of the parking lot.

4 Q And when you saw him shooting and Tayson
5 shooting, you don't know where the light-skinned guy
6 was?

7 A No, ma'am.

8 Q Did you ever see Bay shoot anybody?

9 A No, ma'am.

10 Q Did you know Brian Wright?

11 A Not personally, I'd seen him before, though.

12 Q So you didn't see him get shot?

13 A No, ma'am.

14 Q You were in the back of the Waffle House
15 parking lot?

16 A Yes, ma'am.

17 Q The person that you picked out in that photo
18 lineup that you call Eugene now that you know his
19 name, do you see him here in the courtroom?

20 A Yes, ma'am.

21 Q Can you point him out for the jury?

22 A (Witness indicating.)

23 Q Can you describe where he's sitting?

24 A He's sitting right there with his lawyer in the
25 black suit.

1 Q Is his lawyer female or male?

2 A Male.

3 Q Okay. And is he the white or black male
4 sitting at that table?

5 A Black.

6 MS. CAMPBELL: Your Honor, may the record
7 reflect he's identified the defendant?

8 THE COURT: He's identified the defendant,
9 Mr. Patterson, yes.

10 BY MS. CAMPBELL:

11 Q And that's all you know about what went on that
12 night?

13 A Yes, ma'am.

14 Q Did you actually witness the fight that was
15 going on?

16 A Yes, ma'am.

17 Q And do you know who was fighting that night?

18 A There was a bunch of people fighting.

19 MS. CAMPBELL: Okay. Thank you.

20 THE COURT: Okay. Mr. Sutherland, do you have
21 any questions?

22 MR. SUTHERLAND: Please the Court.

23 THE COURT: Yes, sir.

24 *****

25 *****

1 CROSS-EXAMINATION

2 BY MR. SUTHERLAND:

3 Q Mr. Clemons, one thing that you said on direct
4 when she asked you who was shooting, you said
5 everybody was shooting. Do you remember saying that
6 or was that sort of a misstatement? Did you mean a
7 whole bunch of people were out there shooting?

8 A Yeah, it was a misstatement. I meant to say,
9 you know, like they was returning fire at each
10 other.

11 Q Okay. And, basically, what you testified to on
12 direct is that you said that -- you said that Tayson
13 fired a couple of shots and that Eugene returned
14 fire?

15 A Yes, sir.

16 Q And you said, and we went over this a little
17 bit earlier, we're not going to spend too much time
18 on it, but you said that you learned his name from
19 the newspapers, that you had read, you know, some
20 articles about it and everything; is that correct?

21 A Yes, sir.

22 Q And we talked a little bit about Oliver Feldman
23 earlier and I believe you said that -- you testified
24 that as you were walking up to the car, some sort of
25 incident where he was threatening your brother?

1 A Yes, sir.

2 Q And was it -- do you think it was because you
3 approached the car maybe that he stopped threatening
4 your brother or --

5 A Oh, it was because --

6 MS. CAMPBELL: Objection, Your Honor. I don't
7 think he can speculate on to why someone stopped
8 doing something.

9 THE COURT: Sustained. Rephrase your question.
10 BY MR. SUTHERLAND:

11 Q Did you walk up to the car in support of your
12 brother?

13 A I went to go see what was going on, yes, sir.

14 Q Did he have his hands up or something like
15 that?

16 A Yeah, he was just kind of like falling back
17 from the car, yes, sir.

18 Q And you saw and you observed that it was
19 because Oliver Feldman was threatening him with a
20 firearm?

21 A Yes, sir.

22 MR. SUTHERLAND: I have no further questions
23 from this witness at this time, Your Honor.

24 THE COURT: Questions on behalf of Mr. Boone?

25 MS. EVERHART: No questions from this witness,

1 Your Honor.

2 THE COURT: Redirect?

3 MS. CAMPBELL: No, sir.

4 THE COURT: Thank you, Mr. Clemons. You may
5 step down.

6 Ladies and gentlemen, we're going to break for
7 the day in just a few minutes and I'll need you back
8 tomorrow at 9:15 just like we did today. Remember
9 to come directly to the jury room and not through
10 the courtroom, not to the jury assembly room.
11 Remember all of those admonitions about not
12 discussing the case with anybody or allowing anybody
13 to discuss the case with you and avoid any media
14 coverage. And if you are exposed to any, report it
15 to me.

16 Now, I told you that I would try to keep you
17 abreast of what I thought as to how the case is
18 progressing, and this is very much of a guessing
19 game on my part, I want you to understand that, not
20 because of this case, it's that way in every case.
21 And when the trial's all over, I'll let you ask me
22 questions and you can have at me and I can explain
23 things to you maybe a little better. It's not that
24 I'm trying to hide anything from you now, I just
25 need to wait till the trial's over before I can tell

1 you some things in any trial, same thing in every
2 trial.

3 Having said that, my guess right now, trying
4 not to overreact, is that we will be going on this
5 trial next week. I told you we're not going to work
6 through the weekend. It's Mother's day weekend,
7 we're not going to work through the weekend. And I
8 will let you know as I know what exactly I think
9 that's going to involve, whether it be Monday and
10 Tuesday or just Monday. We'll see how things go.

11 Now, I will tell you that at this point in many
12 trials, I have been convinced of exactly what I just
13 told you that we will go into the next week and I
14 have been wrong on all of them but three. We
15 finished all of them by Friday except three trials
16 that I've had to take into the next week. And I've
17 been doing this coming up on 17 years.

18 So I'll keep you abreast of what I think. You
19 can't hold me to it, but I do want to let you know
20 that you probably need to advise folks that it's a
21 good chance that you'll be here with me Monday and
22 possibly Tuesday.

23 I hope you have a very pleasant evening. And
24 if you would please, follow the bailiffs, leave your
25 notes with the bailiffs so that they can give them

1 back to you tomorrow.

2 (The jury was excused for the day.)

3 **THE COURT:** All right. Ladies and gentlemen,
4 Court's in recess until 9:15 in the morning. Thank
5 you.

6 (Whereupon, the proceedings were concluded
7 for May 7, 2008.)

8 (The following proceedings were held on May
9 8, 2008.)

10 **THE COURT:** Is the State ready?

11 **MS. CAMPBELL:** State's ready, Your Honor.

12 **THE COURT:** Defense?

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

14 **MS. PAYNE:** Yes, sir.

15 **THE COURT:** All right. Bring in the jury,
16 please.

17 (The jury enters the courtroom at 9:40 a.m.)

18 **THE COURT:** Ladies and gentlemen, I'm sorry for
19 the late start. There was a wreck on the interstate
20 and I got backed up. So it's my fault, not my
21 fault, but it's my fault.

22 All right. Call your next witness.

23 **MS. CAMPBELL:** May it please the Court. The
24 State calls Derrick Guilyard.

25 *****

1 DERRICK GUILYARD,
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: My name is Derrick Dontel (ph)
6 Guilyard.

7 DIRECT EXAMINATION

8 BY MS. CAMPBELL:

9 Q Okay. You're going to have to speak up a
10 little bit. It's hard to hear in here. Okay?

11 A Okay.

12 Q What's your name?

13 A Derrick Dontel Guilyard.

14 Q Derrick Guilyard?

15 A Yeah.

16 Q How old are you, Mr. Guilyard?

17 A Nineteen years old.

18 Q Where are you from?

19 A From South Carolina, Columbia, South Carolina.

20 Q Did you go to high school here?

21 A Yes, ma'am, I did.

22 Q What high school did you go to?

23 A W.J. Keenan High School.

24 Q W.J. Keenan?

25 A Uh-huh.

1 Q Did you graduate?

2 A No, ma'am, I didn't.

3 Q What grade did you go through?

4 A All the way to the 11th grade.

5 Q Since dropping out of school, have you done
6 anything to further your education?

7 A I mean, yes, just recently I got a GED.

8 Q Do you work anywhere?

9 A Yes, ma'am.

10 Q Where do you work?

11 A I'm a custodian for Service Solutions.

12 Q A custodian?

13 A Uh-huh.

14 Q For whom?

15 A Service Solutions.

16 Q And where do you generally work for that
17 custodial service?

18 A Pontiac Elementary.

19 Q I want to turn your attention back to February
20 of last year. Were you in a gang?

21 A Yes, ma'am, I was.

22 Q What gang were you in?

23 A I was a Blood.

24 Q And how long had you been in the Bloods?

25 A Since the 6th grade.

1 Q Since the 6th grade?

2 A Yes, ma'am.

3 Q Had you always been with the same group of
4 Bloods?

5 A No, ma'am.

6 Q Can you explain to the jury how there are
7 different groups of Bloods and why you changed your
8 groups?

9 A I mean, it's like a lot of groups of Bloods.
10 Me, really, I was just a Tree Top Piru and then I
11 was a Nine Trey Gangster.

12 Q Tree Top Piru?

13 A Uh-huh.

14 Q And then you were what?

15 A A Nine Trey Gangster.

16 Q A Nine Trey Gangster?

17 A Yes, ma'am.

18 Q And those are all groups within the Bloods?

19 A Yeah.

20 Q Do the Bloods get along with the Folk,
21 generally?

22 A No, ma'am.

23 Q Do the Bloods get along with the Crips,
24 generally?

25 A No, ma'am.

1 Q What about between the Folks and the Crips?

2 A I mean, not really, I mean, but they could.

3 Q They could?

4 A Uh-huh.

5 Q Did you decide at any point to get out of the
6 gang?

7 A Yes, ma'am, I did.

8 Q And why did you want to get out of the gang?

9 A Because my girl is pregnant. I didn't want my
10 child to become a gang member.

11 Q Your girlfriend was pregnant?

12 A Yes, ma'am.

13 Q And was she pregnant last spring?

14 A Yes, ma'am.

15 Q And you didn't want your child to become a --
16 why would that make him a Blood member?

17 A Because the sect that I was in, if you have a
18 child and you're a gang member, your child is
19 automatically a gang member.

20 Q And your girlfriend -- how long had you dated
21 your girlfriend?

22 A Since the 6th grade.

23 Q What's your current status with your
24 girlfriend?

25 A We're married.

1 Q You're married?
2 A Yes, ma'am.
3 Q When did you get married?
4 A March 17th of this year.
5 Q And did y'all have a child?
6 A No, ma'am.
7 Q What happened?
8 A I mean, did we have a child? No, ma'am, we
9 don't have a child.
10 Q You said she was pregnant?
11 A I mean, yes. I mean, you was like, do I have a
12 child. I mean, I almost had a child, but he died.
13 Q Do you know Tayson Boone?
14 A Yes, ma'am.
15 Q How do you know Tayson?
16 A We was really like family.
17 Q Do you know a young named Demon Griffin?
18 A Yes, ma'am.
19 Q How do you know Demon?
20 A He's my cousin, but we call each other
21 brothers.
22 Q He's your cousin?
23 A Uh-huh.
24 Q But you call each other brothers?
25 A Yes, ma'am.

1 Q Do you know Jerome Thompson?

2 A Yes, ma'am.

3 Q Do you know Samuel Clemons?

4 A Yes, ma'am.

5 Q Do you know Bernard Kee?

6 A Yes, ma'am.

7 Q Were those people all affiliated with the

8 Bloods?

9 A No, ma'am.

10 Q Did they hang out with Blood people?

11 A Yes, ma'am.

12 Q The evening of February the 18th, before the

13 shooting occurred that we're going to talk about,

14 okay?

15 A Uh-huh.

16 Q Who were you with?

17 A I was with Tayson.

18 Q Where were y'all?

19 A We were at the Waffle House.

20 Q Which Waffle House did you go to first; do you

21 remember?

22 A I mean, it was like a year and a half ago, like

23 everything's kind of...

24 Q Prior to getting to the Waffle House right

25 there next to the Mobil Gas Station --

1 A Okay.

2 Q -- had y'all gone to different places?

3 A I mean, the only place that I can remember that

4 we went to was really like the party.

5 Q What party?

6 A Like it was two parties that night. There was

7 a Windsor Lake party and one of them I didn't go to.

8 Q Which party did you not go to?

9 A I don't really remember where it was.

10 Q Were you at the Windsor Lake party when the

11 shooting occurred?

12 A Yes, ma'am. I mean, when the shooting

13 occurred? Yes, ma'am -- no, actually we left before

14 the shooting started.

15 Q At some point during that night, did you end

16 up -- you don't remember exactly where you went that

17 night?

18 A That night --

19 Q Did you end up at the Waffle House where the

20 shooting occurred that night?

21 A Yes, ma'am.

22 Q And how did y'all get there; do you remember

23 that?

24 A Tayson.

25 Q And what was Tayson driving that night?

1 A It was like a black midsize SUV.

2 Q Who all was with you in that black midsize SUV?

3 A Me, Tayson, Jerome Thompson, Demon Griffin and
4 Bernard Kee.

5 Q At some point during that night, had y'all met
6 up with Samuel Clemons?

7 A Yes, ma'am.

8 Q And did you give him a ride?

9 A Yes, ma'am.

10 Q Once you got to the Waffle House that night,
11 tell the jury where did y'all go in the Waffle House
12 parking lot?

13 A Where did we go?

14 Q Uh-huh.

15 A It was like when we went into the parking lot,
16 we went like a little far down, almost -- like
17 almost in front of the Waffle House building and we
18 reversed and parked in it.

19 Q You said you backed into the parking place?

20 A Yes, ma'am.

21 Q And was it towards -- you're aware of where Two
22 Notch Road runs into Waffle House?

23 A Yes, ma'am.

24 Q Were you parked towards the road or towards the
25 back of the parking lot?

1 A I mean, closest to the back.

2 Q Why did y'all go to the Waffle House that
3 night?

4 A I mean, my sole purpose of going there, just to
5 meet up with some females, or get to know some
6 females.

7 Q Did you get out of the car?

8 A Yes, ma'am.

9 Q Did you go inside the Waffle House?

10 A Yes, ma'am.

11 Q Were there some females in there?

12 A Yes, ma'am.

13 Q And were there any particular females you
14 talked to that night?

15 A I mean, no, because every female had a dude
16 talking to them and I didn't want to intervene or
17 interfere.

18 Q How long did you stay in the Waffle House; do
19 you even remember?

20 A Not too long. I don't remember the approximate
21 time.

22 Q Who all went in the Waffle House with you at
23 first?

24 A At first, I mean, I don't really remember. I
25 just remember me going in there.

1 Q Okay. Were there other people out there that
2 night?

3 A Yes, ma'am.

4 Q Were there a lot of people out there that
5 night?

6 A Yeah, you can say so.

7 Q Do you remember seeing a guy named Corey
8 Sanders?

9 A Yes, ma'am.

10 Q And how do you know Corey Sanders?

11 A I know him because we both worked at Sonics on
12 Decker Boulevard together.

13 Q So you both worked together at the Sonic?

14 A Uh-huh.

15 Q And was Corey friends with one of the people
16 you were with that night?

17 A I mean, if not friends, maybe an associate.

18 Q Who was he an associate with?

19 A Tayson.

20 Q And what's the difference between being a
21 friend and an associate?

22 A I mean, a friend it's like -- I mean, I can't
23 really explain the difference, but an associate is a
24 person that you're not that close to, maybe you just
25 know of or is cool with.

1 Q You're cool with?

2 A Yeah.

3 Q Okay. Where did you first see Corey Sanders
4 that night or did you?

5 A Where did I first see him? I mean, I first
6 seen him when the fight broke out.

7 Q Okay. And let me get back to that. Were you
8 inside the Waffle House when the fight broke out?

9 A Was I inside? No, ma'am.

10 Q Where were you?

11 A I was already to the car.

12 Q Tell this jury once you got back to the car,
13 before the fight broke out, what happened.

14 A I mean, we seen like a lot of Folks coming up
15 from the gas station right there next to the Waffle
16 House and we seen Corey Sanders going and start
17 fighting with one of the Folks.

18 Q When you say that you'd seen a lot of Folks,
19 does that mean members of the Folk gang?

20 A I mean, I can't really say that they was Folks,
21 but they all were together. If not Folks, maybe
22 affiliated.

23 Q So they were coming from which direction?

24 A From the gas station.

25 Q And the gas station is how far from the Waffle

1 House parking lot?

2 A Not that far.

3 Q Is it next door?

4 A Uh-huh.

5 Q And do you know, approximately, how many people
6 you saw coming from that area?

7 A No, ma'am.

8 Q Did they come into the Waffle House parking
9 lot?

10 A Yes, ma'am.

11 Q And then you said what happened?

12 A I seen Corey Sanders fighting one of the
13 individuals.

14 Q And did you see Corey with any kind of weapon
15 that night?

16 A No, ma'am.

17 Q Did you see the other individuals they were
18 fighting with any kind of weapon?

19 A Yes, ma'am, just one.

20 Q And we'll get to what you saw later, okay?

21 A Okay.

22 Q At first, though, when Corey was doing the
23 fighting, was that a fist fight going on?

24 A Uh-huh. I mean, he was really getting beat up,
25 so I wouldn't call it a fight.

1 Q Okay. Corey was getting beat up, I'm sorry.

2 At some point, did you see Tayson go towards the

3 fight?

4 A Yes, ma'am.

5 Q Did he then come back to the car after that?

6 A Yes, ma'am.

7 Q And this is as Corey's getting beat up?

8 A Yes, ma'am.

9 Q What happens when Tayson comes back towards the
10 car?

11 A I mean, he asked Jerome for the pistol and
12 Jerome gave it to him. Then he went out and he
13 fired in the air.

14 Q And where was he when he fired in the air,
15 approximately?

16 A I mean, like close to his car.

17 Q Close to the car?

18 A Yes, ma'am.

19 Q Where were you at that point?

20 A I was right there to the car door.

21 Q Do you know what kind of gun it was?

22 A It was a nine millimeter.

23 Q A nine millimeter?

24 A Yes, ma'am.

25 Q And you said he fired once into the air that

1 you saw?

2 A I mean, I really don't want to say, maybe once
3 or twice, but I believe once.

4 Q Don't let me put words in your mouth, just as
5 you remember it, okay?

6 A Yes, ma'am.

7 Q So you saw once or twice into the air?

8 A Yes, ma'am.

9 Q And, at that point, what did you do?

10 A I mean, I already know what was going down or
11 what was going to happen, so I was really beginning
12 to get into the car.

13 Q Okay. Wait a minute. You said you knew what
14 was going to happen?

15 A Yes, ma'am.

16 Q What did you know was going to happen?

17 A I mean, after one person shoots, another person
18 begin to shoot.

19 Q So, at that point, you decided it was in your
20 best interest to get in the car?

21 A Yes, ma'am, for me and my brother's sake -- or
22 my cousin's sake.

23 Q Which cousin?

24 A Demon Griffin.

25 Q And did you tell him to do something?

1 A I told him to get down.

2 Q Get down?

3 A Yes, ma'am.

4 Q And did he get down in the car?

5 A Yes, ma'am, in the trunk.

6 Q When you say in the trunk area, this was an

7 SUV?

8 A Yes, ma'am.

9 Q So is this like the back cargo area?

10 A I mean, you can get in the back seat to get

11 into the car -- I mean, the trunk.

12 Q So, at this point, you're in the back seat?

13 A Yes, ma'am.

14 Q Who else is in the car?

15 A I don't remember. After I seen that Duke was

16 secure and I just begin to look down and get down.

17 Q Okay. I couldn't understand you. Can you slow

18 down a little bit? You said what?

19 A After Duke -- I mean, after Demon, after he --

20 I seen that he was okay --

21 Q Does he have a nickname?

22 A Duke. His mother gave him that name.

23 Q After Duke got in the car, you get in the car?

24 A Uh-huh.

25 Q And you told him to get down?

1 A Yeah, I got down.

2 Q And when you say get down, what do you mean?

3 A I mean, duck.

4 Q So were you able to see what's going on outside
5 the car at that point?

6 A I mean, at some times, I would look up and then
7 hold my head right back down.

8 Q And why was it you felt that you needed to get
9 down in the car?

10 A Because when gunshots are fired, your life is
11 in jeopardy.

12 Q After you got into the car and were ducking
13 down, could you tell where Andre went, Tayson?

14 A I mean, the only times I looked up, I seen that
15 he was like around his car.

16 Q He was around the car?

17 A Yes, ma'am, the left side because we were
18 reversed in.

19 Q Had he moved to a different area around the
20 car?

21 A Yes, ma'am.

22 Q And was he towards the front or the back of the
23 car at this point?

24 A I mean, the back.

25 Q Did you hear or see gunshots while you were

1 ducking down?

2 A I didn't see anything because after I seen
3 where he was, I began to hold my head down again,
4 but I heard gunshots.

5 Q And could you tell what area the gunshots were
6 coming from?

7 A I mean, if not from or to, but that direction.

8 Q Okay. You'll have to explain that to me. Not
9 from or to --

10 A I mean, like maybe shots were going into that
11 direction because somebody was right there shooting
12 or he was shooting. I don't really want to say.

13 Q Someone was shooting near the car?

14 A Yeah.

15 Q Could you tell whether or not anybody was
16 shooting in another part?

17 A I mean, I heard multiple gunshots.

18 Q Okay. And you were ducking down?

19 A Yes, ma'am.

20 Q So you couldn't see if anybody was shooting at
21 the other end of the parking lot?

22 A No, ma'am, but I heard gunshots hitting the
23 cars near to us, though.

24 Q Hitting the cars around you?

25 A Uh-huh.

1 Q Do you know whether or not Jerome was in the
2 car at that point?

3 A You mean when the gunshots are fired? No,
4 ma'am, I don't because I held my head down.

5 Q Do you remember how many gunshots you heard?

6 A No, ma'am.

7 Q Was it more than one?

8 A Yes, ma'am.

9 Q Was it more than two?

10 A Yes, ma'am.

11 Q Was it a lot?

12 A I mean, you can say so.

13 Q What happened next?

14 A I mean, then I just remember Tayson getting in
15 the car and pulling off.

16 Q And when y'all pulled off after Tayson got in
17 the car, was he driving?

18 A Yes, ma'am.

19 Q Do you know what happened to the gun?

20 A No, ma'am.

21 Q Whose gun was it?

22 A That was Jerome's gun.

23 Q Who all was in the car when y'all left; do you
24 remember? Who all was in the car when y'all left
25 the parking lot, the Waffle House that night?

1 A The parking lot? I mean, I believe that
2 everybody -- I mean, I wasn't really paying
3 attention to the people in the car. I was just
4 thinking about what just happened, but I believe
5 that -- the people that came with us.

6 Q But was Samuel Clemons in the car at that
7 point?

8 A I don't really remember.

9 Q Okay. But Bernard, Jerome?

10 A Yes, ma'am.

11 Q Did y'all talk about what had happened as you
12 drove off?

13 A I mean, yes, ma'am.

14 Q Where did you go?

15 A I mean, they took me home -- well, not home, at
16 my grandmother's house in Meadow Lakes.

17 Q They took you back to Meadow Lakes?

18 A Yes, ma'am, because that's where everybody
19 really stayed at.

20 Q Did Tayson live in Meadow Lakes?

21 A Yes, ma'am.

22 Q And you lived in Meadow Lakes?

23 A No, ma'am.

24 Q That's where your grandmother lived?

25 A Yes, ma'am.

1 Q What about Demon? Did he get out with you?

2 A Yeah.

3 Q At your grandmother's house?

4 A Uh-huh.

5 Q Did y'all have a conversation about what you
6 were going to tell the police?

7 A Yes, ma'am.

8 Q Tell this jury what y'all decided you would
9 tell the police if they asked you.

10 A We decided to tell the police that it was a .22
11 revolver, .22 caliber revolver.

12 Q And why were y'all deciding to say it was a .22
13 caliber revolver?

14 A Because we just really wanted no relation to
15 anything that just happened, just trying to get our
16 name cleared.

17 Q Why would -- who were you saying was shooting
18 the .22?

19 A I said that Tayson shot the .22 one time in the
20 air and then we left.

21 Q That was the story y'all came up with?

22 A Yes, ma'am.

23 Q Why did y'all come up with a story?

24 A Why did we come up with the story? To have
25 little or no involvement in the situation

1 whatsoever.

2 Q You were protecting whom?

3 A I was trying to protect Tayson.

4 Q Did the police make contact with you the next
5 day?

6 A I mean, yeah, I made contact with them.

7 Q You made contact with them?

8 A You mean after the Waffle House?

9 Q The next day after the Waffle House?

10 A Yes, ma'am, I made contact with them.

11 Q And that would have been February 20th of 2007;
12 is that right?

13 A Yes, ma'am, I believe so.

14 Q And when you made contact with them, did you
15 give them a statement?

16 A Yes, ma'am.

17 Q And I'm going to show you this three page
18 statement. Do you recognize it?

19 A Yes, ma'am.

20 Q And was that statement the truth?

21 A Yes, ma'am -- oh, this statement right here?

22 Q Yeah, that statement right there.

23 A This is the statement on the 20th, no, ma'am,
24 it wasn't.

25 Q And what wasn't true that you put in the

1 statement?

2 A About the type of gun that we had.

3 Q Did you also not tell the truth about how many
4 times the gun was shot?

5 A Yes, ma'am.

6 Q And that was the plan?

7 A Yes, ma'am.

8 Q Do you remember the police making contact with
9 you again on February 26th of '07?

10 A Yes, ma'am.

11 Q And you actually went out, I believe, to the
12 Waffle House with the police that day?

13 A Yes, ma'am.

14 Q And, at that point, you were still sticking to
15 your story about it being a .22?

16 A Yes, ma'am.

17 Q Did they ask you to show where exactly it was
18 that Tayson was shooting?

19 A Yes, ma'am.

20 Q Did you show them?

21 A Yes, ma'am. Or that he shot because I said
22 that he shot once.

23 Q And you were still saying he just shot once?

24 A Yes, ma'am.

25 Q Did they ask you to do a diagram?

1 **A** Yes, ma'am, of like where we parked at.

2 **Q** I want to show you what's been marked as
3 State's Exhibit Number 83. This is a copy. Do you
4 recognize that?

5 **A** Yes, ma'am.

6 **Q** And is that a copy of the diagram you did for
7 them?

8 **A** Yes, ma'am.

9 **Q** On the 26th, which is the date up at the top?

10 **A** Yes, ma'am.

11 **MS. CAMPBELL:** Your Honor, at this time, we
12 offer State's Exhibit 83.

13 **THE COURT:** Any objection?

14 **MS. PAYNE:** Without objection, Your Honor.

15 **MR. SUTHERLAND:** No objection.

16 **THE COURT:** Mark it in evidence.

17 (State's Exhibit Number 83, diagram,
18 admitted into evidence.)

19 **BY MS. CAMPBELL:**

20 **Q** On this diagram, does it show the Waffle House?

21 **A** Yes, ma'am.

22 **Q** Show me where it is.

23 **A** Right there (indicating).

24 **Q** Is that where the Waffle House is?

25 **A** Yes, ma'am.

1 Q Does it also show where you said Tayson shot
2 that one shot?

3 A No, ma'am.

4 Q What's this say up here?

5 A I can't really understand the handwriting.

6 Q How did y'all say you parked the car?

7 A We reversed in.

8 Q And what is Tayson's name?

9 A Tayson Boone.

10 Q And is there an X right there?

11 A Yes, ma'am.

12 Q And is that where you showed them?

13 A Uh-huh.

14 Q In relation to the Waffle House?

15 A Yes, ma'am.

16 Q But, again, on February 26th, you were still
17 sticking to your other story?

18 A Yes, ma'am.

19 Q Did the police make contact with you on March
20 the 5th?

21 A Yes, ma'am.

22 Q At that point, did they have a warrant for your
23 arrest?

24 A No, ma'am.

25 Q Did they arrest you for something?

1 A Yes, ma'am.

2 Q What did they arrest you for?

3 A They arrested me for obstructing justice.

4 Q Obstruction of justice?

5 A Yes, ma'am.

6 Q And that charge is still pending?

7 A Yes, ma'am.

8 Q And you have a lawyer on that charge?

9 A Yes, ma'am.

10 Q She was here earlier?

11 A Yes, ma'am.

12 Q At that point, did you talk to -- did you get

13 advised of your rights?

14 A Yes, ma'am.

15 Q Did you understand what your rights were?

16 A Yes, ma'am.

17 Q Did you then give them a statement about what

18 really happened?

19 A Yes, ma'am.

20 Q I'm going to show you this three page

21 statement. Do you recognize that? Excuse me, it's

22 a two page statement and your advice of rights.

23 A Yes, ma'am.

24 Q Is that the statement you gave?

25 A (Witness nodded head.)

1 Q And in that statement, they asked you if you
2 were totally truthful in your other statements?

3 A Yes, ma'am.

4 Q Your other written statement?

5 A Yes, ma'am, they asked me that.

6 Q Did you tell them what you didn't tell the
7 truth about?

8 A Yes, ma'am.

9 Q And did you explain to them in here why you --
10 y'all made up the story?

11 A I mean, it just -- I don't -- we didn't really
12 have a -- like I told -- you asked me why did we
13 make up the story about the .22?

14 Q Yes, sir.

15 A Just to have little or no involvement with the
16 situation.

17 Q Because you knew it was a nine millimeter?

18 A Yes, ma'am.

19 BAILIFF: Back up from the microphone.

20 BY MS. CAMPBELL:

21 Q What was that again? Just repeat that.

22 A I mean, to have little or no involvement with
23 the situation whatsoever.

24 Q Mr. Guilyard, that night you heard a lot of
25 gunshots?

1 A Yes, ma'am.

2 Q Could you see who was shooting at the other end
3 of the parking lot?

4 A No, ma'am.

5 Q Who's the only person you saw shooting that
6 night?

7 A The only person that I saw shooting was Tayson.
8 But I heard other people firing.

9 Q And where was it that you saw Tayson shooting
10 that night?

11 A In front of the car.

12 Q And then where did you see Tayson go?

13 A To the back of the car.

14 Q And did you see him actually shoot more?

15 A No, ma'am.

16 Q Did you hear the gunshots?

17 A Yes, I heard gunshots.

18 Q From the area where Tayson was standing or near
19 your car?

20 A Yeah, near the car.

21 Q Tayson, do you see him here in the courtroom?

22 A Yes, ma'am.

23 Q Can you point him out for the jury?

24 A He's right there.

25 Q And where is he seated?

1 A On the left side of the courtroom.

2 Q And who's seated beside him?

3 A I'm guessing his attorneys.

4 Q Male or female attorneys?

5 A Female.

6 Q And what's he wearing?

7 A He's wearing a black suit, white shirt, black
8 tie.

9 MS. CAMPBELL: Your Honor, may the record
10 reflect he's identified the defendant, Andre Boone?

11 THE COURT: Yes, ma'am.

12 MS. CAMPBELL: Thank you. Please answer any
13 questions they may have.

14 THE COURT: Cross?

15 MR. SUTHERLAND: Please the Court.

16 CROSS-EXAMINATION

17 BY MR. SUTHERLAND:

18 Q Mr. Guilyard?

19 A Yes, sir.

20 Q This is going to be pretty brief. You had
21 testified earlier that Bloods and Folks do not get
22 along. Do you recall that testimony?

23 A Yes, sir.

24 Q Folks and Crips do not really get along?

25 A Uh-huh.

1 Q Now, most of the people -- I believe you said
2 that there was a Demon Griffin, there was a Jerome
3 Thompson, I guess, Clemons -- now, when Clemons came
4 and then joined you, did you know him as a Blood
5 member or a Blood associate or...

6 A I mean, no, I just knew of him. I knew him.

7 Q Just knew him?

8 A From school.

9 Q Okay. But when he came up there, he came up
10 there and joined the people that you were with?

11 A Yeah.

12 Q Okay. And now you got your education, you're
13 married and you got a job and you've moved on with
14 your life?

15 A Yeah.

16 MR. SUTHERLAND: No further questions.

17 THE COURT: Cross?

18 CROSS-EXAMINATION

19 BY MS. PAYNE:

20 Q Good morning, Mr. Guilyard.

21 A Good morning.

22 Q How are you doing this morning?

23 A Doing good. How are you doing?

24 Q Doing good. Thank you. You were the first one
25 to give a statement after this happened, right?

1 A Yes, ma'am.

2 Q Okay. And it wasn't until March 5th that you
3 were arrested, right?

4 A March 5th, yeah.

5 Q So you were arrested and that's when you gave
6 your second statement?

7 A I mean, yeah, before I was arrested.

8 Q Okay. And you were arrested for obstruction of
9 justice?

10 A Uh-huh.

11 Q Is that why they brought you back in there?

12 A I mean, to jail?

13 Q Yes.

14 A Uh-huh.

15 Q What did they tell you on March 5th when you
16 came in?

17 A They tell me that I was being arrested for
18 lying on my statement.

19 Q You testified that other people were firing
20 that night?

21 A Uh-huh.

22 Q You heard shots all around you?

23 A Yes, ma'am.

24 Q And isn't it true that Tayson shot up in the
25 air to stop that fight that was going on?

1 A Yes, ma'am.

2 MS. PAYNE: No further questions.

3 THE COURT: Redirect?

4 MS. CAMPBELL: No, sir.

5 THE COURT: Anything else?

6 MR. SUTHERLAND: Nothing further, Your Honor.

7 THE COURT: Thank you, sir. You may step down.

8 Call your next witness.

9 MR. GOLDBERG: State calls Demon Griffin.

10 DEMON GRIFFIN,

11 having been duly sworn, testified as follows:

12 THE CLERK: Have a seat in the witness box and
13 state your full name for the record, please.

14 THE WITNESS: Demon Griffin.

15 DIRECT EXAMINATION

16 BY MR. GOLDBERG:

17 Q Mr. Griffin, how old are you?

18 A Seventeen.

19 Q And where are you from?

20 A South Carolina.

21 Q From Columbia?

22 A Yes, sir.

23 Q Do you go to high school?

24 A Yes, sir.

25 Q Where do you go to school?

1 A W.J. Keenan High School.
2 Q Keenan?
3 A Yes, sir.
4 Q Do you know Derrick Guilyard?
5 A Yes, sir.
6 Q How do you know him?
7 A Family, my cousin.
8 Q Your cousin?
9 A Yes, sir.
10 Q Are y'all pretty close?
11 A Yes, sir.
12 Q Were y'all together back on February 19th,
13 2007?
14 A Yes, sir.
15 Q Did you go to the Waffle House that night?
16 A Yes, sir.
17 Q Who else were you with that night?
18 A Tayson Boone, William Kee and Jerome Thompson.
19 Q Tayson Boone, William Kee, Jerome Thompson and
20 Derrick Guilyard?
21 A Yes, sir.
22 Q Whose car were you in?
23 A Tayson.
24 Q What kind of car was it?
25 A Ford Explorer.

1 Q Do you know what color it was?

2 A Black.

3 Q And what did you go up to the Waffle House for?

4 A I guess we was going -- I went up there and got
5 me something to eat.

6 Q You actually ate while you were up there?

7 A Yes, sir.

8 Q Were there a lot of people there that night?

9 A Yes, sir.

10 Q And after you ate, what did you do?

11 A Well, we was getting ready to leave and it was
12 a bunch of arguing between two groups of people.

13 Q Did you see the arguing before or after you
14 walked out of the Waffle House?

15 A After I was walking out towards the car.

16 Q And you said two groups of people. How did you
17 know it was two different groups of people?

18 A Because one was walking from the -- like coming
19 towards us, coming towards the Waffle House.

20 Q From where?

21 A From like towards the gas station.

22 Q Okay. Go ahead.

23 A And there was another group like near our car,
24 but, like, I'd say like five cars down like right
25 there in that area.

1 Q Where was your car parked?

2 A We was in the back area of the parking lot.

3 Q But you said there was one group coming over
4 from the Mobil; is that right?

5 A Yes, sir.

6 Q Towards the Waffle House parking lot?

7 A Yes, sir.

8 Q And then the second group was where? Farther
9 down from your car?

10 A Yes, sir, like maybe three, four cars down.

11 Q In the Waffle House parking lot?

12 A Yes, sir.

13 Q And, at some point, those two groups started
14 arguing?

15 A Yes, sir.

16 Q How could you tell that they were arguing?

17 A Because they was yelling back and forth at each
18 other and you could tell like when somebody get like
19 angry or get heated, whatever and there was just
20 words coming out like.

21 Q You could tell it wasn't friendly?

22 A Sir?

23 Q You could tell it wasn't friendly?

24 A Yes, sir.

25 Q When that happened, when you saw these two

1 groups arguing, what did you do next?

2 A When I saw them arguing, my cousin, Derrick, he
3 was like, Go get in the car because I think
4 something is fixing to go down, like that right
5 there. So I got in the car and I hopped over the
6 back seat and got in the trunk area.

7 Q Kind of in the way back of the Explorer?

8 A Yes, sir.

9 Q Once you hopped in the car, what happened after
10 that?

11 A I just started hearing gunshots.

12 Q You heard gunshots?

13 A Yes, sir.

14 Q How many gunshots do you know?

15 A No, sir, I can't remember how many there were.

16 Q Do you know if it was one or 20 or a hundred or
17 anywhere close to any of those?

18 A I'd say, I don't know, maybe about, maybe 11,
19 12 shots.

20 Q Eleven or 12?

21 A Yes, sir.

22 Q But you didn't see anybody firing a gun that
23 night, correct?

24 A No, sir.

25 Q You just heard it?

1 A Yes, sir.

2 Q When you said these two groups were arguing
3 with each other?

4 A Yes, sir.

5 Q About how many people are we talking about in
6 this parking lot?

7 A It was a bunch. It was like -- it was like the
8 group that was near us, I'd say maybe like 12 of
9 them. And the group that was walking towards us, it
10 was probably about 25, 30. I don't know. There was
11 like a bunch of people that came, a bunch of people.

12 Q Did you recognize anybody in that group that
13 was the group closer to you all?

14 A No, sir, I didn't know them that well. Like, I
15 ain't never really go out like that.

16 Q Did you ever see Tayson talking to anybody out
17 there that night, other than the people that you
18 rode with?

19 A Yes, sir. He spoke to a couple of people like
20 maybe that was in the group that was near us, he
21 spoke to them when we was coming into the Waffle
22 House, when we first came.

23 Q The group that was parked near you?

24 A Yes, sir.

25 Q When you say they were parked near you, is that

1 closer to the back of the lot or the front of the
2 lot?

3 A I'd say maybe like in the middle.

4 Q But it wasn't the group that came over from the
5 Mobil station?

6 A No, sir.

7 Q And you never saw who was shooting; is that
8 right?

9 A No, sir.

10 MR. GOLDBERG: Thank you. That's all I have.

11 THE COURT: Mr. Sutherland?

12 CROSS-EXAMINATION

13 BY MR. SUTHERLAND:

14 Q Mr. Griffin, so you, yourself, were going there
15 just to get something to eat; is that correct?

16 A Yes, sir. We was -- we was riding around
17 before then trying to go to a party, but we got a
18 phone call that that party got shut down, so --

19 Q I'm sorry. You got a call that the party got
20 shut down?

21 A Sir?

22 Q I didn't mean to interrupt you.

23 A Oh, you're good.

24 Q Okay. Did you -- were you aware that a couple
25 of young people were supposed to meet for a fist

1 fight?

2 A No, sir.

3 MR. SUTHERLAND: No further questions, Your
4 Honor.

5 THE COURT: Cross?

6 MS. PAYNE: No questions, Your Honor.

7 THE COURT: Anything else of this witness?

8 MR. GOLDBERG: No, sir.

9 THE COURT: Thank you, sir. You may step down.
10 Call your next witness.

11 MS. CAMPBELL: State calls Oliver Feldman.

12 OLIVER FELDMAN,

13 having been duly sworn, testified as follows:

14 THE CLERK: Have a seat in the witness box,
15 state your full name for the record, please.

16 THE WITNESS: Oliver Feldman.

17 DIRECT EXAMINATION

18 BY MS. CAMPBELL:

19 Q Mr. Feldman, how old are you?

20 A I'm 23, ma'am.

21 Q Can you get a little closer to those mics, not
22 too close, but a little closer?

23 A (Witness complies.)

24 Q You're how old?

25 A I'm 23, ma'am.

1 Q Where did you grow up?

2 A I grew up in Miami.

3 Q In Miami?

4 A Yes, ma'am.

5 Q And how long did you live in Florida?

6 A For about seven years.

7 Q Where did you move after you left Florida?

8 A South Carolina.

9 Q And have you lived in South Carolina ever since

10 then?

11 A Yes, ma'am.

12 Q What part of South Carolina were you living in?

13 A Saint Matthews.

14 Q Saint Matthews?

15 A Yes, ma'am.

16 Q And who did you live in Saint Matthews with?

17 A I lived with my mother and stepfather.

18 Q Did you go to high school there?

19 A Yes, ma'am.

20 Q What high school did you go to?

21 A I went Calhoun County.

22 Q Did you graduate?

23 A Yes, ma'am.

24 Q Were you in a gang?

25 A Yes, ma'am.

1 Q What gang are you in?

2 A I'm in the Rolling 20's Crip Gang.

3 Q The Rolling 20's Crip Gang?

4 A Yes, ma'am.

5 Q And how long have you been a member of the
6 Rolling 20's Crip Gang?

7 A Since 2000.

8 Q And how did you get in that gang?

9 A I was introduced in it by one of my friends
10 from high school.

11 Q How do you know Eugene Patterson?

12 A I know him through a mutual friend, Angelo
13 Tucker, because his brother worked with me at the PX
14 on Fort Jackson.

15 Q You worked at the PX at Fort Jackson?

16 A Yes, ma'am.

17 Q And who did you work there with?

18 A Reese Tucker, Angelo's brother.

19 Q Angelo Tucker's brother?

20 A Yes, ma'am.

21 Q And that's how you met Eugene?

22 A Yes, ma'am.

23 Q Did you call him Eugene or did you have a
24 nickname for him?

25 A I just called him Big Gene.

1 Q Big Gene. And we're going to talk about the
2 night that the shooting happened. Prior to that,
3 how long had you known Big Gene?

4 A About a couple of weeks, two or three weeks.

5 Q You said you were from Saint Matthews. Did
6 Angelo live in Saint Matthews or in Columbia?

7 A He lived in Columbia.

8 Q And you actually worked in the Columbia area?

9 A Yes, ma'am.

10 Q And you became friends with Angelo?

11 A Yes, through his brother.

12 Q Would you come to Columbia to, say, go to
13 parties and things of that sort?

14 A Yes, ma'am.

15 Q The evening -- I want to back up for a minute.
16 Did you know whether or not Big Gene was in a gang?

17 A Yeah, I knew he was in the Folk Nation Gang.

18 Q And you're a Crip?

19 A Yes, ma'am.

20 Q Do the Crips and the Folks get along?

21 A Yes, ma'am.

22 Q Always?

23 A The majority of the time.

24 Q What about the Folks and the Bloods?

25 A They get along sometimes, but, usually, they go

1 at it, they go at each other.

2 Q What about the Bloods and the Crips?

3 A The Bloods and Crips don't get along, ma'am.

4 Q I want to turn your attention to February 18th,
5 that evening before the shooting occurred at the
6 Waffle House, okay?

7 A Yes, ma'am.

8 Q What were y'all doing -- what were you doing
9 that evening?

10 A Prior to the shooting at the Waffle House, we
11 was going -- we was planning on attending a party in
12 Windsor Lakes, but then the party got shot -- I
13 mean, the party got shut down early due to a shoot
14 out.

15 Q And when you say, We were planning on
16 attending, who all were you with that night?

17 A Me, Karmindee Leggett, Eugene and Reese Tucker
18 and Angelo Tucker.

19 Q So did all ever actually go to the party at
20 Windsor Lakes?

21 A No, ma'am, we never made it.

22 Q How did you find out it had gotten shot up?

23 A Somebody had called on Karmindee Leggett's cell
24 phone.

25 Q Where were y'all prior to going to that party?

1 A We was at Angelo's apartment.

2 Q And, again, who was there?

3 A It was me, Big Gene, Reese Tucker, Angelo
4 Tucker and Karmindae Leggett.

5 Q Do you remember what you were wearing that
6 night?

7 A Yes, ma'am.

8 Q What were you wearing?

9 A I had on blue jeans, a jersey and -- a blue
10 jersey and a race car coat and a blue bandana.

11 Q And why did you have on the blue bandana?

12 A Because it represents my gang colors.

13 Q Do you remember what colors Eugene was wearing
14 that night?

15 A I believe he had on a black hoody, that's all I
16 can remember for right now.

17 Q He was wearing black?

18 A Yes, ma'am.

19 Q After y'all found out that the party had been
20 shot up, did y'all make other plans?

21 A Well, I think -- I believe Gene had received a
22 phone call that there was supposed to be a fight --
23 supposed to be a fight going on, we were supposed to
24 meet up with Raymond Asberry. And then me and Gene
25 and Karmindae Leggett, we all entered my vehicle and

1 Karmindae Leggett drove. And we met at this parking
2 lot, but I don't remember what the name of the
3 store, but we met at an empty parking lot. And we
4 got another call from Raymond Asberry to go to the
5 Waffle House.

6 Q And when you said you got in your car, what
7 kind of car were you driving?

8 A A '98 burgundy Malibu.

9 Q I show you what's been marked as State's
10 Exhibit Number 57. Do you recognize that?

11 A Yes, ma'am, that's my car.

12 Q And who was driving it that night?

13 A Karmindae Leggett.

14 Q Why?

15 A Because I don't know my way around Columbia
16 that well because I don't live up here.

17 Q So y'all first went to another store?

18 A Yes, ma'am.

19 Q And you just don't -- you aren't from Columbia?

20 A Yes, ma'am.

21 Q And then y'all received another phone call?

22 A Yes, ma'am.

23 Q And after you received that phone call, where
24 did you go?

25 A Went straight to the Waffle House on Two Notch.

1 Q Did any of y'all have your guns that night?

2 A Yes. I had a .32 revolver and Eugene had a
3 Hi-Point .380.

4 Q Did Karmindae have a gun?

5 A No, ma'am.

6 Q I want to show you what's been marked as
7 State's Exhibit 82 for I.D. at this time. Do you
8 recognize this?

9 A Yes, ma'am, that's my .32 revolver.

10 Q Is that the gun you had that night?

11 A Yes, ma'am.

12 Q Why did you have your gun with you?

13 A I tend to carry it on me sometimes in Columbia
14 because I don't know to expect being that I involve
15 myself with certain people.

16 Q And that night you were involved with whom?

17 A Yes, ma'am.

18 Q Who were you involved with?

19 A Gene and Karmindae Leggett.

20 Q Do you know, prior to going to the Waffle
21 House, that Big Gene had his gun?

22 A Yes, ma'am.

23 Q When y'all got to the Waffle House, where did
24 you go?

25 A We went inside the Waffle House and looked

1 around, talked to a couple people, then we turned
2 back out and we went back to my car.

3 Q Let me stop. First, when you pulled in the
4 parking lot, where did y'all park; do you remember?

5 A We parked on the side of the Waffle House
6 towards Two Notch.

7 Q Prior to getting out of your car when you were
8 going through the parking lot, did y'all have words
9 with anybody?

10 A Yes. Karmindae Leggett spoke to his cousin.
11 His last name is Clemons, but I don't recall his
12 first name.

13 Q Did you say anything to him or show him your
14 gun?

15 A No. He seen the gun laying on my lap, but I
16 didn't say anything to him.

17 Q Where were you seated in the car?

18 A I was seated on the passenger side.

19 Q And you said Karmindae was driving?

20 A Yes, ma'am.

21 Q Where was Big Gene?

22 A He was sitting in the back.

23 Q Where did you park in the parking lot?

24 A On the side of the Waffle House next -- right
25 next to Two Notch.

1 Q So towards the front?

2 A Yes, ma'am.

3 Q Were there other people already there when you
4 got there at the Waffle House that night?

5 A Yes, ma'am.

6 Q Were there people parked towards the back?

7 A Yes, ma'am.

8 Q When y'all got there, you said that you got out
9 of the car and went into the Waffle House?

10 A Yes, ma'am.

11 Q When you went into the Waffle House, did you
12 see anybody you knew?

13 A No. I don't know too many people from
14 Columbia.

15 Q Why were you going in the Waffle House?

16 A Because I was just following Karmindee into the
17 Waffle House.

18 Q Do you remember how long you stayed in the
19 Waffle House?

20 A It wasn't even two minutes, ma'am.

21 Q When you came back out, where did you go?

22 A Went back towards my car.

23 Q And, again, that was parked toward the front?

24 A Yes, ma'am.

25 Q And what were you planning on doing at that

1 point?

2 A As we was walking towards the car, we didn't
3 have no initial plans, but then when I got towards
4 my trunk, we turned around and a fight occurred.

5 Q Where was the fight going on?

6 A It was like towards the middle of the Waffle
7 House parking lot close to the front door of the
8 Waffle House.

9 Q So in the Waffle House parking lot, but towards
10 the front door?

11 A Yes, ma'am.

12 Q And could you see how many people were actually
13 involved in the fight?

14 A First, it was two people involved and then a
15 third party got hisself involved.

16 Q Did you notice any other people coming over
17 from the gas station next door?

18 A Yes. I noticed a couple people getting out of
19 their car like Raymond Asberry and a couple other
20 people.

21 Q And were more people coming from the gas
22 station over into the parking lot?

23 A Yes, ma'am.

24 Q And that would be into the Waffle House parking
25 lot?

1 A Yes, ma'am.

2 Q And were they all going towards the fight?

3 A Yes, ma'am.

4 Q Could you tell, as the fight was progressing --
5 did you know who was involved in the fights?

6 A I learned who was involved after the fight was
7 over.

8 Q At the time, you didn't know?

9 A No, ma'am.

10 Q Could you tell whether or not one person was
11 getting the better of another?

12 A Yes, ma'am.

13 Q You mentioned that a third person then came
14 over and got involved?

15 A Yes, ma'am.

16 Q And as you continued to watch, did more people
17 get involved?

18 A No, that was it.

19 Q That you saw?

20 A Yes, ma'am.

21 Q And, at that point, where are you in the
22 parking lot?

23 A I'm standing by the trunk of my car.

24 Q Could you tell whether or not the people
25 involved were in rival gangs?

1 A Yeah, I could tell because one came to the aid
2 of the other one.

3 Q Could you tell which gang member was getting
4 the better of the other?

5 A Yes, ma'am.

6 Q And which one was?

7 A The Folk member was getting the better of the
8 Blood gang member.

9 Q As you watched, as it progressed, what happened
10 next? Was this the fight y'all had gone there to
11 witness?

12 A Yes, ma'am.

13 Q And this was going to be a fight between gang
14 members?

15 A Yes, ma'am.

16 Q What happened next?

17 A After that, I saw somebody started shooting,
18 pointing the gun towards the air and started firing
19 shots.

20 Q Where were they located?

21 A They was located towards the back of the
22 parking lot.

23 Q And could you actually see the shooter at that
24 point?

25 A Yes, ma'am.

1 Q You couldn't see him well enough to see his
2 face, though, but could you see the shooter?

3 A I couldn't see his face, but I could see him
4 shooting, though.

5 Q And could you tell how he was shooting?

6 A Yes, ma'am.

7 Q How was he shooting?

8 A He fired a couple shots into the air.

9 Q Into the air?

10 A Yes, ma'am.

11 Q And where was he located when he was firing the
12 shots in the air when you first saw him?

13 A Towards the end of the parking lot.

14 Q And when you say towards the end, is that
15 towards the end towards the road or towards the end
16 towards the end of the building?

17 A Towards the end of the building.

18 Q Towards the back?

19 A Yes, ma'am.

20 Q At that point, what did you do?

21 A At that point, he started firing towards me.
22 And then me and Gene ran to the back of my car and
23 we both grabbed our guns and started firing back
24 towards that individual.

25 Q Where had you left your gun when you had gone

1 in the Waffle House?

2 A I left it on the back of the floor on the back
3 seat of the car.

4 Q And where had Big Gene left his gun?

5 A The same area.

6 Q So you said first you saw him firing two times
7 up?

8 A Yes, ma'am.

9 Q And then your testimony is you started running
10 towards your car?

11 A Yes, ma'am.

12 Q And you got your guns?

13 A Yes, ma'am.

14 Q And then you said he started firing at you or
15 you started --

16 A He started firing towards us, then we returned
17 fire.

18 Q How many times did you shoot your gun?

19 A I shot about two or three times.

20 Q Where was Gene when you -- where were you in
21 relation to where your car was parked?

22 A I was right beside the trunk, ma'am.

23 Q You were beside the trunk?

24 A Yes, ma'am.

25 Q But you were -- so you could see through the

1 back?

2 A Yes, ma'am.

3 Q Towards the back of the parking lot?

4 A Yes, ma'am.

5 Q Where was Big Gene when he got his gun?

6 A First, he was on the right side and then he
7 moved over to the left side and he started firing
8 his gun.

9 Q Was he going towards the end of the parking
10 lot?

11 A Yes, ma'am.

12 Q That would be towards the back?

13 A Yes, ma'am.

14 Q As he was firing his gun?

15 A Yes, ma'am.

16 Q You mentioned that there were people in the
17 back of the parking lot when y'all got there?

18 A Yes, ma'am.

19 Q And then the fight broke out?

20 A Yes, ma'am.

21 Q And then there were all these other people that
22 came into the parking lot, right?

23 A Yes, ma'am.

24 Q Before and during the fight?

25 A Yes, ma'am.

1 Q Where are all of these people?

2 A They started running for cover after the shots
3 started being fired.

4 Q Because they're all in the middle of the
5 parking lot?

6 A Yes, ma'am.

7 Q How many times did Gene shoot that you know of?

8 A Two or three shots.

9 Q Were you paying attention to what you were
10 doing?

11 A Yes, ma'am.

12 Q But could you hear Gene shooting, too?

13 A Yes, ma'am.

14 Q The person that you first saw shooting two
15 times in the air, was there a person shooting back
16 at you at that point while y'all were shooting?

17 A Yeah. It was the same person that I saw
18 shooting in the air.

19 Q Did you think it could have been two people?

20 A Yeah. I thought it could have been two people,
21 but he was moving around shooting at us.

22 Q So you saw one person in one area and then he
23 moved to another area near the car?

24 A Yes, ma'am. I made a mistake and thought it
25 was two people.

1 Q What direction was he firing in?

2 A Towards us, towards me and Gene.

3 Q And all of the people that were in the parking
4 lot right there in between you two, are they down on
5 the ground, are they running, what's going on?

6 A They ran for cover.

7 Q After you shot and Gene was doing his shooting,
8 what did y'all do?

9 A After that, we heard the shots come to a cease
10 and then we ran to the car and we left.

11 Q You heard the shots come to what?

12 A Come to a cease.

13 Q They quit?

14 A Yes, ma'am. And then we ran to the car and
15 then we left.

16 Q Where did you go?

17 A We went back to Angelo's apartment.

18 MS. EVERHART: Your Honor, we have a matter of
19 law.

20 THE COURT: Ladies and gentlemen, please step
21 in the jury room. Don't discuss the case.

22 (The jury retires to the jury room.)

23 THE COURT: Yes, ma'am.

24 MS. EVERHART: Thank you, Your Honor. At the
25 beginning of this trial during the pretrial, one of

1 the things we put on the record was that Oliver
2 Feldman had not changed his story about the night of
3 the incident and the Solicitor agreed that that was
4 their understanding. This morning we were told
5 again he had not changed his story at the time of
6 the incident, that was why we withdrew our motion at
7 the beginning to have his testimony suppressed.

8 Your Honor, today what he is testifying to is
9 different from what he said the night of the
10 incident. She was leading him, indicated to him
11 that there were no longer two shooters at the back.
12 Originally, he stated there were two shooters at the
13 back of the Waffle House parking lot, that is what
14 is in all of the information we have, that's what we
15 were told he was going to be testifying to and we
16 were reiterated that this morning.

17 **THE COURT:** All right. Mr. Feldman, I need for
18 you to step back out while I address this, okay?

19 (The witness leaves the courtroom.)

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

21 **MR. SUTHERLAND:** And, sir, additionally, if I
22 might join with the co-defendant's counsel. I
23 myself was assured that there were no changes and --
24 there were going to be no changes in his story. At
25 least at this point, he's made a pretty substantive

1 change, that is going from seeing two shooters to
2 one shooter, Your Honor. And I had expressed
3 concerns earlier about their interviews with Feldman
4 and my not getting any sort of report of the
5 substance of those interviews and squabbled with
6 Investigator Ellis a little bit and then he finally
7 gave me a copy of his notes.

8 But, I mean, any addition -- I mean, any
9 additional testimony or any changes or anything like
10 that, I feel like, and I believe that we were
11 entitled to the substance of those changes to his
12 testimony of what was said. And if they, you know,
13 because they're going line by line with the
14 statement that he made last year and they're saying,
15 we went line by line over the statement with him and
16 there are no changes to the statement, why couldn't
17 they just take another statement from him?

18 Well, they would have had to turn that over to
19 me perhaps, but other than that, going over the
20 statement and taking notes and not letting it be --
21 and we're a few days past that, it was this past
22 Friday afternoon that I discovered all of this, but
23 I believe that we were entitled and certainly they
24 were entitled to the substance of anything
25 inculpatory or exculpatory. I know specifically in

1 my discovery motion, I asked for the substance of
2 any oral statements, inculpatory or exculpatory,
3 regarding my client.

4 He has, at this point very early on in his
5 testimony, already reduced the number of shooters
6 from two to one. I know that it reflects on the
7 co-defendant, but that's still a change in his
8 story, that's a change in his statement. And I've
9 been assured repeatedly that his testimony was not
10 going to vary from his statement, Your Honor. And I
11 feel like we were entitled to -- I wished they had
12 taken a statement and turned it over so that we
13 could review it prior having to cross-examine him,
14 sir.

15 **THE COURT:** So what's the motion?

16 **MS. EVERHART:** Your Honor, we would ask that
17 his testimony be disallowed. Actually, Your Honor,
18 we would ask for a mistrial. The jury's been unduly
19 prejudiced by this.

20 **MS. PAYNE:** Your Honor, it's a direct violation
21 of exactly -- of Rule Five. We are entitled to any
22 oral statements that change his written statement
23 from before. We have asked repeatedly, I asked this
24 morning. It was a leading question and that is that
25 there was knowledge about this prior to.

1 THE COURT: All right. Solicitor.

2 MS. CAMPBELL: Your Honor, I would just ask to
3 hand up to the Court and make it a court's exhibit a
4 copy of his statement.

5 THE COURT: All right. Let me see it.

6 MS. CAMPBELL: In his statement, he says that
7 he thought it was two people. He describes them in
8 the exact same manner, wearing the exact same
9 clothing. He just says they were in two different
10 positions. He also testified this morning that he
11 couldn't see the shooter's face.

12 MS. EVERHART: Your Honor, he drew a drawing
13 that has two distinct shooters on it as a part of
14 that statement.

15 MS. CAMPBELL: Which we will make part of the
16 record.

17 MS. PAYNE: Your Honor, I can hand it up.

18 THE COURT: I think it's attached to this.

19 (Pause.)

20 THE COURT: What was the motion that you did
21 not pursue at the beginning of the trial?

22 MS. EVERHART: Your Honor, on our motions list,
23 I believe it was the 15th motion on there, was a
24 motion to disallow his testimony. It came after our
25 motion, one, to reveal any deal, that was number 13,

1 and then to reveal his testimony.

2 At that time, we put on the record that he did
3 not presently have a deal and that his testimony had
4 not substantially altered in regard to the night in
5 question. At that time, I said that I would
6 withdraw our motion to disallow his testimony based
7 on the fact that our understanding was his testimony
8 was not changing. Ms. Campbell did state on the
9 record that that was her understanding as well.

10 Your Honor, I do believe, at this point, we are
11 ineffective as counsel because we were told his
12 statement was going to remain the same. We were
13 reiterated that again this morning and told it had
14 not changed. And then he gets to the stand and is
15 asked a leading question and he changes his story.

16 **THE COURT:** I don't see how that it's
17 ineffective, but that will be another question for
18 another day perhaps. Anything else?

19 **MR. SUTHERLAND:** Your Honor, and I would
20 further point out, I mean, this is -- these are my
21 cross-examination questions for Mr. Feldman, two
22 thirds of them deal with this very issue, sir.

23 **THE COURT:** Anything else?

24 **MS. EVERHART:** Your Honor, we would just say
25 that we believe we were being ineffective because we

1 were told that his statement was not changing, and
2 it was different. And we would have approached this
3 differently if we had known he was making a
4 different statement, we would have tried to talk
5 with him, but we were told his statement was the
6 same.

7 And, Your Honor, it does completely alter the
8 defense in this case. Our understanding was there
9 were multiple people, putting multiple shooters in
10 the parking lot.

11 **THE COURT:** Ms. Campbell, when did you find out
12 that this was going to happen?

13 **MS. CAMPBELL:** Your Honor, my information was,
14 I wasn't present for the interview with Mr. Feldman,
15 but my information was he basically said he thought
16 it was two people, but it could have been one. They
17 were dressed alike, but he thought it was two
18 people. I've never heard from any investigator that
19 he said the words that, you know, I was mistaken. I
20 mean, I can't control everything a witness says.

21 I mean, it's in his statement. He puts in
22 there that he thought it was two people, but then he
23 gives a description and they're dressed just alike,
24 he puts them in two different areas.

25 I mean, I think the only question that I've

1 consulted is that when asked if it could have been
2 the same person, he said, well maybe, but I thought
3 it was two people, was the information I had.

4 THE COURT: The written statement you handed me
5 states, This is a different guy than the first one
6 that shot twice.

7 MS. CAMPBELL: Yes, sir. And then if you go on
8 and read the description, the clothing description
9 is the same.

10 THE COURT: I read that.

11 You're saying the leading question was when Ms.
12 Campbell asked if Mr. Feldman thought it could be
13 two people?

14 MS. EVERHART: Your Honor, I don't know the
15 exact wording, but they were leading questions
16 leading up to whether or not it was one or two
17 people prior to that, whether or not it was the same
18 person.

19 THE COURT: Now, this is not the official
20 record, these are just notes, but what I have right
21 now on the real time, it starts with a question:
22 The person that you first saw shooting two times in
23 the air, was there a person shooting back at you at
24 this point while y'all were shooting?

25 And the answer is: Yeah, the same person that

1 I saw shooting in the air.

2 Then the question is: Did you think it could
3 have been two people?

4 And the answer was: Yeah, I thought it could
5 have been two people. He was moving around and
6 shooting at us.

7 Question: So you saw one person in one area
8 and then moved to another area of the car?

9 And the answer was: Yes, ma'am, I made a
10 mistake thinking it was two people.

11 The diagram shows one location of a Blood
12 member shooting that is sort of in the middle and to
13 the rear of the Waffle House and the Mobil station
14 parking lot and then another indication of a Blood
15 member shooting from an area right at the corner of
16 the Waffle House building and the parking lot but
17 further back.

18 Who is Mr. Feldman's lawyer?

19 **MS. CAMPBELL:** Mr. Schwartz (ph).

20 **THE COURT:** Is he here?

21 **MS. CAMPBELL:** He was here all day yesterday,
22 Your Honor. He's not here this morning, but we can
23 get him on his cell phone.

24 **MR. GOLDBERG:** He said, Your Honor, if we
25 needed him, he would be available to take a

1 conference call.

2 THE COURT: Give me a few minutes to think
3 about it. We'll be at ease.

4 (Brief Recess.)

5 (Court's Exhibit Number 4, statement of
6 Oliver Feldman, was marked for identification
7 purposes.)

8 THE COURT: Do you have something else?

9 MS. CAMPBELL: Your Honor, I just wanted to put
10 on the record, and I have told the defense counsel
11 both this, that we did talk to everyone that has
12 been interviewed, I was not there for the interviews
13 with Mr. Feldman, that in the interviews basically
14 what he told them when asked if it could have been
15 the same person, that he didn't get a look at their
16 face, which is in the statement I believe, that they
17 were both dressed alike, but he thought it was two
18 people.

19 The first time I'd ever heard the words, I made
20 a mistake, was today on the stand. And I mean, I
21 kind of went with it at that point because I didn't
22 know what else to do, but as you've noticed in this
23 trial, I don't think there's been a single witness
24 that hasn't been somewhat variant in their
25 testimony.

1 **THE COURT:** Well, that happens a lot in trials.
2 Do y'all have anything else?

3 **MR. SUTHERLAND:** If I may, I do have my
4 discovery motion if Your Honor would care to see it
5 or to make it a court exhibit.

6 **THE COURT:** You certainly may, yes, sir.

7 (Court's Exhibit Number 5, Defendant
8 Patterson's motions, were marked for identification
9 purposes.)

10 **MR. SUTHERLAND:** And I think the point is that
11 Investigator Ellis' notes are already a court
12 exhibit. And if they had simply just taken a
13 statement or if they had made some kind of report, I
14 understand that the latest of these interviews was
15 on April 28th, according to the notes that are a
16 court's exhibit, you know, this kind of -- I mean,
17 this kind of confusion, you know, could not or would
18 not arise.

19 I don't know why they didn't write a report. I
20 don't know why they didn't take another statement.
21 I don't know why all of the information I was
22 getting was, no he hasn't changed his statement, no
23 he hasn't changed his statement, when obviously he
24 had in that there was additional information in
25 these notes with respect to the Lyle issue earlier

1 which didn't go as far as it could have.

2 We just believe that any time the government
3 gets these -- interviews these witnesses, picks up
4 additional information or doesn't pick up additional
5 information, at least they could write some kind of
6 report, record the substance of these conversations
7 and turn them over to the defense in accordance with
8 Rule Five, sir.

9 MS. EVERHART: Your Honor, we join in that. We
10 were also provided with small, handwritten notes
11 from Investigator Ellis. No discussion was
12 mentioned in the notes about when it happened prior.
13 It was simply this new information involving
14 Mr. Patterson.

15 THE COURT: Wait a minute. Y'all have me
16 confused now. What new information?

17 MS. CAMPBELL: Your Honor, at the beginning of
18 the trial, I made a motion for Lyle information.
19 There was information gotten from Mr. Feldman as far
20 as the shooting involving Eugene Patterson at the
21 Hyer Court address, that was the additional
22 information in addition to what was in the
23 statement. They didn't take another statement
24 because he said, essentially, what was in the
25 statement was what they interviewed him about as far

1 as this incident.

2 The only additional information was the part
3 you didn't allow anyway, but we did turn that over
4 because it was about Hyer Court and the shooting of
5 Eugene Patterson and the information that Oliver
6 Feldman had about that shooting. But they didn't
7 feel it necessary to take another statement because
8 his interview was consistent with the statement he'd
9 already given.

10 MR. SUTHERLAND: And if I may, Your Honor, it
11 was like pulling teeth to get this thing out of them
12 on Friday and -- because I asked and I got the sort
13 of standard answer, he hasn't changed his statement
14 or anything. And I started talking about my
15 discovery motion, started talking about Rule Five
16 and then they mentioned, well he talked a little bit
17 about this Hyer Court incident. And I said, Do you
18 have a report, do you have notes?

19 And, finally, he redacted a little something
20 off the top, but we went over in my office and
21 started talking about it. I asked Investigator
22 Ellis, I said, I need something, I need the
23 substance of this stuff. And this is this past
24 Friday. He said, Well, I'm not typing anything up.
25 But he did make a copy of the notes which I

1 introduced as a court exhibit in pretrial, sir.

2 And I just -- I don't know why they didn't just
3 take another statement or write a report on this,
4 rather I should decipher, you know, officer's notes
5 to look and try and make sense of, you know, phone
6 numbers, details. I don't see why they didn't
7 recognize that they had -- that they were obliged to
8 do this and to provide me with this information in
9 an intelligible fashion, sir.

10 THE COURT: What information?

11 MR. SUTHERLAND: With the additional
12 information that they had developed.

13 THE COURT: That I have kept out?

14 MR. SUTHERLAND: Well, yes, sir.

15 THE COURT: Then why are we talking about that?
16 Y'all are getting me real confused.

17 MR. SUTHERLAND: I'm sorry, sir. All that I
18 was arguing about that was to show that they had
19 developed additional information and not taken a
20 statement or written a report, that's all.

21 THE COURT: What else?

22 MR. SUTHERLAND: That's all I have.

23 THE COURT: They don't have to write a report.
24 All right, have a seat.

25 There's a whole lot of things I'd like for a

1 whole lot of people, including myself, to do better
2 or differently. I can't deal with abstracts unless
3 it's required by the rule.

4 I'm going to read Rule 5 to you and you all can
5 tell me where it is that I'm wrong. I know Brady is
6 a separate issue. I understand if it's exculpatory,
7 they have to get it to you. So I understand that
8 this statement, which has now been marked for
9 identification purposes as Court's Exhibit Number 4,
10 it contains exculpatory information and it will be
11 required to be disclosed under Brady. I understand
12 that, all right.

13 Now, Rule 5 subsection (a), Disclosure of
14 evidence by the prosecution. And before I go into
15 this, let me just tell y'all, if you want to argue
16 to me about what it ought to be, I fully agree there
17 ought to be a whole lot more disclosure in criminal
18 cases. It just isn't my decision to make. And my
19 understanding, to balance that out, is that most of
20 the time there is. Even though it's not
21 specifically required by the rule, most Solicitor's
22 offices open up the file and say, take a look at it.

23 What I've got to do now is interpret the rule.
24 So Rule 5(a) provides for disclosure of evidence by
25 the prosecution. And under subsection (2), it

1 states that unless it's one of the things in
2 subsection (1), which I don't see how these apply to
3 the issue before me, it states, This rule does not
4 authorize the discovery or inspection of, and
5 skipping down, Statements made by prosecution
6 witnesses or prospective prosecution witnesses
7 provided that after a prosecution witness has
8 testified on direct examination, the court shall, on
9 motion of the defendant or the prosecution to
10 produce any statement of the witness in the
11 possession of the prosecution which relates to the
12 subject matter as to which the witness has
13 testified. And provided further that the court may,
14 upon sufficient showing, require the production of
15 any statement of any prospective witness prior to
16 the time the witness testified.

17 Now, I understand why the various sides would
18 feel as they feel. Now, let me just go ahead and
19 make these rulings and be done with this and we can
20 move on. And I can ask you some questions as to
21 where we're going from here.

22 First of all, I've gone back and I've looked
23 through the notes, I've looked back through the real
24 time notes and I am convinced that this was not
25 something that the Solicitor knew about ahead of

1 time. The question that was phrased as a leading
2 question is responsive to something that the witness
3 brought out. And all of us who have practiced law
4 in criminal court and in civil for that matter know
5 that when witnesses get on the stand, a lot of times
6 you don't know what's coming out of their mouths.

7 He brought up -- he, the witness, brought up
8 that he was mistaken, so I don't see any evidence of
9 any prosecutorial misconduct. Therefore, I see no
10 ground to grant a mistrial and I see no ground to
11 exclude the testimony. The remedy is to impeach him
12 with his prior inconsistent statement.

13 Now, having said that, I need to hear from you
14 all about your response in light of that ruling. I
15 will fully agree that that change is critical, it's
16 significant.

17 While I haven't been privy to seeing all of
18 these diagrams and charts and the things that the
19 jury has seen, it does appear that the angle of the
20 shooter could well be a critical inquiry, the angle
21 from which the shots would have come. Therefore, if
22 there is evidence that Mr. Boone was further over
23 behind the Waffle House, then what had originally
24 been stated, that would change the angle at which
25 his shots would have been fired more toward where

1 the victim was found.

2 So I understand and accept the defense's
3 argument, I don't know to what extent, but I
4 certainly accept it at face value that in preparing
5 for the case, the defense would have wanted to focus
6 on the fact that there was, number one, another
7 shooter; number two, that that shooter was at an
8 angle that was more likely, in, I would suspect,
9 their view of the facts, to have resulted in the
10 fatal shot; and, three, that they had one witness
11 who was there who was not friendly to Mr. Boone who
12 would say it was somebody other than Mr. Boone over
13 there shooting.

14 So it seems to me that the possible things the
15 Court needs to inquire into, one, deal with allowing
16 the defense to reassert its pretrial motion about
17 disallowing the testimony of this witness, and,
18 second, considering whether there is some need for
19 additional time or some sort of continuance of the
20 matter to allow for the change of direction, if
21 there is any.

22 Now, having said that, I also want to make it
23 clear that from what I've heard in this courtroom,
24 not determining the facts in any way, every other
25 witness I've heard testify said there were only

1 three shooters and they've been identified as these
2 three individuals. So the defense would have to
3 have been prepared for the proposition that the jury
4 might have accepted the fact that it was only the
5 three who have been named by the other witnesses and
6 not this fourth unknown person that up until today
7 Mr. Feldman had been referring to.

8 Do y'all want to talk among yourselves before
9 you talk to me?

10 MS. EVERHART: Yes, Your Honor.

11 THE COURT: All right. Tell the jury it's
12 going to be another 10, 15 minutes before I know
13 anything about getting back to them.

14 MS. PAYNE: Thank you, Your Honor.

15 THE COURT: Just so it's clear, the motions
16 that were before me before the break are denied.

17 (Brief recess.)

18 THE COURT: Anything else that I need to
19 address?

20 MS. EVERHART: Nothing, Your Honor.

21 THE COURT: Anything else I need to address?

22 MR. SUTHERLAND: Nothing from us, Your Honor.

23 MS. CAMPBELL: We just need to get the witness,
24 Your Honor.

25 THE COURT: Y'all bring Mr. Feldman back in for

1 me.

2 (The witness returns to the courtroom.)

3 THE COURT: All right. Bring in the jury.

4 (The jury returns to the courtroom.)

5 THE COURT: You may continue, Solicitor.

6 MS. CAMPBELL: May it please the Court.

7 THE COURT: Yes, ma'am.

8 BY MS. CAMPBELL:

9 Q Mr. Feldman, once y'all got back into the car,
10 who was driving at that point?

11 A Karmindae.

12 Q And did Karmindae have a gun that night?

13 A No, ma'am.

14 Q Where did y'all go at that point?

15 A We went back to Angelo's apartment.

16 Q And what did you do when you got back to
17 Angelo's apartment?

18 A We stayed there for a little while talking and
19 then somebody called on the --

20 Q You can say they called, but you can't say what
21 they said, okay?

22 A All right.

23 Q So somebody called who?

24 A Karmindae's cell phone, that was it.

25 Q And where did you stay that night?

1 A I went back home.

2 Q And where is your home?

3 A In Camden, South Carolina.

4 Q And did you drive there?

5 A Yes, ma'am.

6 Q In which car did you drive?

7 A My Malibu.

8 Q Did you go to the police?

9 A No, ma'am.

10 Q Did the police find you?

11 A Yes, ma'am.

12 Q And I believe on March the 1st of 2007, how did

13 the police make contact with you?

14 A They arrested me at my job in Fort Jackson.

15 Q Do you remember Captain Smith?

16 A Yes, ma'am.

17 Q And did he take you somewhere that day?

18 A He drove me to the Waffle House and then to the

19 sheriff's department.

20 Q And when he drove you to the Waffle House, is

21 that the same Waffle House we've been talking about

22 where the shooting occurred?

23 A Yes, ma'am.

24 Q And after -- during the course of that, too,

25 did he advise you of your rights that day?

1 A Yes, ma'am.

2 Q Did you understand what your rights were?

3 A Yes, ma'am.

4 Q Did you cooperate with the police?

5 A Yes, ma'am.

6 Q Did you tell them what you knew what happened
7 that night?

8 A Yes, ma'am.

9 Q And did you give them a statement?

10 A Yes, ma'am.

11 Q I believe a total of five pages?

12 A Yes, ma'am.

13 Q And you talked about what you and Big Gene and
14 Bay did that night?

15 A Yes, ma'am.

16 Q At some point when you were being interviewed,
17 did they also ask you to draw kind of a diagram of
18 what you knew happened that night?

19 A Yes, ma'am.

20 Q And I want to show you what's been marked as
21 State's Exhibit Number 84. Do you recognize that?

22 A Yes, ma'am.

23 Q And what is that?

24 A That's where we were at the Waffle House.

25 MS. CAMPBELL: Your Honor, at this time, I'd

1 offer State's 84 into evidence.

2 THE COURT: Any objection?

3 MR. SUTHERLAND: Without objection.

4 MS. EVERHART: No objection.

5 THE COURT: Thank you.

6 (State's Exhibit Number 84, diagram,
7 admitted into evidence.)

8 BY MS. CAMPBELL:

9 Q Does it show where the gas station is?

10 A Yes, ma'am.

11 Q Does it show where the Waffle House is?

12 A Yes, ma'am.

13 Q And where is the gas station?

14 A To your left.

15 Q Is it right here where my finger is?

16 A Yes, ma'am.

17 Q And where is the Waffle House?

18 A To your right.

19 Q And that would be over here where my finger is?

20 A Yes, ma'am.

21 Q On this also, does it show where your car was
22 parked that day?

23 A Yes, ma'am.

24 Q And point it out for me.

25 A (Witness indicating.)

1 Q Right there?

2 A Yes, ma'am.

3 Q And this long line in front of it, what road
4 would that have been; do you know?

5 A Two Notch.

6 Q And so that would have been towards the front
7 of the Waffle House?

8 A Yes, ma'am.

9 Q Does it also show your name, as well as
10 Eugene's name on there?

11 A Yes, ma'am.

12 Q And there are arrows?

13 A Yes, ma'am.

14 Q And what were you trying to show the police
15 when you put where y'all were and where the arrows
16 were pointing?

17 A The direction in which we were shooting.

18 Q Is that also the direction in which you were
19 moving?

20 A No, ma'am.

21 Q And was Eugene closer to the persons at the
22 other end of the parking lot? Or, who was closer?

23 A Eugene was.

24 Q And you said you saw Bloods shooting in two
25 different places is that on here?

1 A Yes, ma'am.

2 Q And the car isn't on here, but does that show
3 the two locations approximately?

4 A Yes, ma'am.

5 Q And that's labeled, Blood shooting; is that
6 correct?

7 A Yes, ma'am.

8 Q And that's your recollection of what you saw
9 that night?

10 A Yes, ma'am.

11 Q After the police got a statement from you and
12 you signed off on it, right?

13 A Yes, ma'am.

14 Q Did they also ask you to consent to a search of
15 your house?

16 A Yes, ma'am.

17 Q And, also, consent to give up some DNA, a swab
18 from your mouth to get DNA evidence?

19 A Yes, ma'am.

20 Q And I'm going to show you what's been marked as
21 State's Exhibit 86 and 85. Are those your
22 signatures on those?

23 A Yes, ma'am.

24 Q And did you consent to that?

25 A Yes, ma'am.

1 MS. CAMPBELL: Your Honor, at this time, I'd
2 offer 85 and 86.

3 MR. SUTHERLAND: Without objection from us,
4 Your Honor.

5 MS. EVERHART: No objection, Your Honor.

6 THE COURT: Mark it in evidence, please.

7 (State's Exhibit Numbers 85 and 86, consent
8 forms, admitted into evidence.)

9 BY MS. CAMPBELL:

10 Q Oliver, when you first talked to the police,
11 were you completely honest about what kind of gun
12 you had that night?

13 A No, ma'am.

14 Q What did you originally tell them you were
15 shooting that night?

16 A A .22.

17 Q When did you tell them the truth about what
18 kind of gun you were shooting that night?

19 A After they told me they already knew what kind
20 of gun I had and they described which caliber gun I
21 had.

22 Q And for the record, State's Exhibit Number 82,
23 is that the gun you were shooting that night?

24 A Yes, ma'am.

25 Q And the .22 that you told them about, did

1 that .22 even work?

2 A It doesn't even exist, ma'am.

3 Q Were you also able to identify who Big Gene was
4 for the police that day?

5 A Yes, ma'am.

6 Q And they actually showed you a photo lineup?

7 A Yes, ma'am.

8 Q But you knew him by name and sight?

9 A Yes, ma'am.

10 Q Now, on March the 1st, did they arrest you?

11 A Yes, ma'am.

12 Q What all have you been arrested for in this
13 case?

14 A Breach of peace and murder.

15 Q And are those charges still pending?

16 A Yes, ma'am.

17 Q Have you received any deals in exchange for
18 your testimony here today?

19 A No, ma'am.

20 Q Have any promises been made?

21 A No, ma'am.

22 Q Do you hope it will benefit you in the future?

23 A Yes, ma'am.

24 Q And do you understand it will only benefit if
25 you testify truthfully?

1 A Yes, ma'am.

2 Q You gave a statement to the police back on --
3 in March; is that right?

4 A Yes, ma'am.

5 Q And then about a week ago, you met with your
6 lawyer and the investigators to go over your
7 statement?

8 A Yes, ma'am.

9 Q You and I have never gone over your statement?

10 A No, ma'am.

11 Q The person that you knew as Big Gene that you
12 identified for the police.

13 A Yes, ma'am.

14 Q Do you see him here in the courtroom?

15 A Yes, ma'am.

16 Q Can you point him out for the jury?

17 A (Witness indicating.)

18 Q Which table is he sitting at?

19 A The middle table.

20 Q And how many people are sitting at that table?

21 A Two.

22 Q And what is he wearing?

23 A Black suit.

24 MS. CAMPBELL: Your Honor, may the record
25 reflect he's identified the defendant, Eugene

1 Patterson?

2 THE COURT: It is so noted.

3 BY MS. CAMPBELL:

4 Q Is that the person you were with that night
5 that was shooting along with you?

6 A Yes, ma'am.

7 MS. CAMPBELL: That's all I have, Your Honor.

8 THE COURT: Mr. Sutherland?

9 MR. SUTHERLAND: Please the Court.

10 CROSS-EXAMINATION

11 BY MR. SUTHERLAND:

12 Q Mr. Feldman, weren't you supposed to be sitting
13 over here during this trial, sir?

14 A Yes, sir.

15 Q But you changed your mind?

16 A I didn't actually change my mind, sir.

17 Q Someone changed it for you?

18 A Yes, sir.

19 Q You're 23 or 24 years old?

20 A I'm 23, sir.

21 Q Why are you hanging around with a bunch of 15,
22 16 and 17 years old?

23 A Through mutual friends, sir.

24 Q Through mutual friends. Are you an O.G.?

25 A No, sir.

1 Q You're not an O.G.?

2 A No, sir.

3 Q Have you ever told anybody that you're an O.G.?

4 A No, sir.

5 Q One thing I want to get back to, you had said
6 in your statement, and you talked about it a little
7 earlier, you said you might have been mistaken or
8 something. But you said that I fired two rounds at
9 the dude that was shooting at us; do you remember
10 testifying about that?

11 A Yes, sir.

12 Q Okay. I saw another dude shooting from the
13 back corner of the Waffle House who was five feet
14 from the building. This is a different guy than the
15 first one that shot twice. When -- so you sat with
16 investigators and prior to making this statement,
17 you talked to them for a good while, didn't you?

18 A Yes, sir.

19 Q And you went through the details of everything
20 with them that you had to offer in your statement?

21 A Yes, sir.

22 Q And when it was committed to writing, you --
23 did they go through it with you line by line to make
24 sure it was accurate?

25 A Yes, sir.

1 Q So it's only been since that statement that you
2 realized or that you decided that you were mistaken
3 about the two different shooters?

4 A Yeah, it's been since that statement.

5 Q Okay. Was it -- what was it at that time that
6 made you think that it was two different people?

7 A Because I felt as if shots were coming from two
8 different areas because there was so many shots
9 being fired off.

10 Q Now, you've had a chance to read the discovery
11 in this case; isn't that right?

12 A Yes, sir.

13 Q And has it been since you read the discovery or
14 the evidence in this case that -- is it the
15 discovery or the evidence in this case that made you
16 believe that there was only one shooter instead of
17 two?

18 A Discovery.

19 Q Okay. Well, that's fair. So it was actually
20 evidence and statements from other people rather
21 than your own recollection?

22 A Yes, sir.

23 Q Okay. Fair enough. All right, when you
24 testified earlier, I think -- actually -- well, I
25 don't need to draw anything up there. You testified

1 earlier that once someone began shooting in the
2 direction of the crowd -- now, these are people that
3 if you weren't directly friends, you knew basically
4 in the layout of the parking lot, the people in the
5 back of the parking lot and then the people on the
6 other side of the parking lot, you knew basically
7 that these people up here were friends, associates,
8 people from the name -- same neighborhood, people
9 that were together in a sense? Does that make sense
10 to you?

11 A Yes, sir.

12 Q Would you agree with that?

13 A Yes, sir.

14 Q And that all of these other people over here
15 were together as well?

16 A Yes, sir.

17 Q Okay. So I remember you testifying that when
18 shooting started from back in this area over here,
19 that you had decided to return fire in the direction
20 of the shots?

21 A Yes, sir.

22 Q Okay. So when the person was shooting in the
23 direction of yourself and also all of the people
24 that were together over here, you said that you
25 returned fire. The implication of that is that if

1 someone hadn't shot in the direction of you --

2 A Yes.

3 Q -- or in the direction of these other people,
4 that there would -- you would not have shot back at
5 them; is that a fair characterization of your
6 testimony?

7 A Yes, sir.

8 Q Okay. Did you feel like you were protecting
9 yourself and protecting the people that you were
10 with when you were discharging your firearm back in
11 that direction?

12 A Yes, sir.

13 Q Is it your belief -- you say that Eugene was
14 shooting. Is it your belief that both of you would
15 not --

16 MS. EVERHART: Speculation, Your Honor,
17 objection.

18 BY MR. SUTHERLAND:

19 Q Do you have personal knowledge that neither one
20 of you would have returned fire but for this person
21 that began shooting in the direction of your
22 neighborhood people, your associates, yourself and
23 you say Eugene?

24 A Yes, sir.

25 Q And after everyone had cleared the parking lot,

1 people ran and they -- after everyone was out of the
2 way, that's when you and, you say, Mr. Patterson
3 withdrew, got in the car and left; is that fair?

4 A Yes, sir.

5 Q Okay. Real quick, I'm going to look at some
6 stuff here. And, again, you had testified that you
7 got a pending murder charge, a pending -- well,
8 you've got this pending against you and a breach of
9 peace and that you're hopeful that your
10 participation here will be beneficial to you?

11 A Yes, sir.

12 MR. SUTHERLAND: Okay. Thank you.

13 No further questions of this witness, Your
14 Honor.

15 THE COURT: Cross?

16 MS. EVERHART: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. EVERHART:

19 Q Hi, Mr. Feldman.

20 A How are you doing, ma'am?

21 Q I'm doing fine. Thanks. How are you?

22 A All right.

23 Q Now, on March 1st of '07, you were arrested for
24 murder, the murder of Brian Wright?

25 A Yes, ma'am.

1 Q And you were put in handcuffs?

2 A Yes, ma'am.

3 Q And you were put in a police car?

4 A Yes, ma'am.

5 Q And you were taken down to Alvin S. Glenn

6 Detention Center?

7 A Yes, ma'am.

8 Q And they took you in and they booked you?

9 A Yes, ma'am.

10 Q Took your fingerprints?

11 A Yes, ma'am.

12 Q They processed you?

13 A Yes, ma'am.

14 Q Then they took away your clothing?

15 A Repeat that, ma'am.

16 Q They took away your clothing?

17 A Yes, ma'am.

18 Q And they put you in a uniform?

19 A Yes, ma'am.

20 Q And they took you down to a dorm?

21 A Yes, ma'am.

22 Q And they locked you in?

23 A Yes, ma'am.

24 Q And you've been down there for 15 months?

25 A Yes, ma'am.

- 1 Q Away from your family?
- 2 A Yes, ma'am.
- 3 Q Away from your friends?
- 4 A Yes, ma'am.
- 5 Q Away from your life as you knew it?
- 6 A Yes, ma'am.
- 7 Q You are sitting here today testifying for the
- 8 State of South Carolina?
- 9 A Yes, ma'am.
- 10 Q You are not sitting here today on trial for the
- 11 murder of Brian Wright?
- 12 A No, ma'am.
- 13 Q Eugene Patterson's here on trial for the murder
- 14 of Brian Wright?
- 15 A Yes, ma'am.
- 16 Q Andre Boone's here on trial for the murder of
- 17 Brian Wright?
- 18 A Yes, ma'am.
- 19 Q And you're testifying in a case against them?
- 20 A Yes, ma'am.
- 21 Q And you hope that if Eugene Patterson or Andre
- 22 Boone is convicted of this murder, you won't have to
- 23 go to trial for the murder of Brian Wright?
- 24 A Possibly.
- 25 Q And you know that if Eugene Patterson and Andre

1 Boone are not convicted of this murder, you may have
2 to go to trial for the murder of Brian Wright?

3 A Possibly.

4 Q And you hope to get a deal out of testifying
5 today?

6 A Possibly.

7 Q Now, you talked with the police on March 1st of
8 '07, correct?

9 A Yes, ma'am.

10 Q And that was 12 days after the incident?

11 A Yes, ma'am.

12 Q Twelve days after an incident that was very
13 important to your life?

14 A Yes, ma'am.

15 Q Stands out in your memory?

16 A Yes, ma'am.

17 Q And that was the day someone pulled out a gun
18 and shot into the air at the Waffle House?

19 A Yes, ma'am.

20 Q And you grabbed your gun and you returned fire?

21 A Yes, ma'am.

22 Q And when you talked to that police 12 days
23 after the event, you felt pretty clear about what
24 you saw?

25 A Yes, ma'am.

1 Q And you told the police that you saw someone
2 shooting shots into the air?

3 A Yes, ma'am.

4 Q And that you went and got your .32 caliber
5 revolver?

6 A Yes, ma'am.

7 Q From the back seat of Gene's car?

8 A My car.

9 Q Back seat of your car. And that Eugene got his
10 gun?

11 A Yes, ma'am.

12 Q And that you fired two rounds at the guy who
13 was shooting at you?

14 A Yes, ma'am.

15 Q And that Eugene fired his gun?

16 A Yes, ma'am.

17 Q And then you saw another guy shooting from the
18 back corner of the Waffle House?

19 A Yes, ma'am.

20 Q But that was a different guy from the first one
21 who shot twice?

22 A Yes, ma'am.

23 Q And you also told the police that when you were
24 shooting, there was no one that could have been
25 caught in the cross fire?

1 A Yes, ma'am.

2 Q And that was 12 days after the incident
3 occurred?

4 A Yes, ma'am.

5 Q And today is 15 months after the incident
6 occurred?

7 A Yes, ma'am.

8 Q About a week ago you met with officers from
9 South Carolina in Richland County?

10 A Yes, ma'am.

11 Q And they talked to you about what you had seen
12 that night?

13 A Yes, ma'am.

14 Q And you indicated to them that you had seen two
15 shooters?

16 A Yes, ma'am.

17 Q And that was one week ago?

18 A Yes, ma'am.

19 Q One week later, you were sure you saw one
20 shooter?

21 A Yes, ma'am.

22 Q Once again, you are not sitting here on trial
23 for the murder of Brian Wright?

24 A No, ma'am.

25 Q And you hope to get a deal out of testifying in

1 this case?

2 A Possibly.

3 MS. EVERHART: No further questions for this
4 witness.

5 THE COURT: Redirect?

6 MS. CAMPBELL: Just a couple questions.

7 REDIRECT EXAMINATION

8 BY MS. CAMPBELL:

9 Q Were things happening pretty quickly that
10 night?

11 A Yes, ma'am.

12 Q Were there a lot of people around?

13 A Yes, ma'am.

14 Q As the shots were being fired by you, by
15 everybody, were there a lot of people around?

16 A As the shots were being fired by Tayson.

17 Q You stated originally to the police you thought
18 you saw two people shooting?

19 A Yes, ma'am.

20 Q Did you, in fact, see shootings from two
21 different locations?

22 A Yes, ma'am.

23 Q Around that car?

24 A Yes, ma'am.

25 Q One from one side of the car and then from the

1 back?

2 A Yes, ma'am.

3 Q And in your statement, the best description you
4 could give of what you thought was two shooters was
5 what?

6 A They was dressed in all black.

7 Q You described one as how?

8 A As a black male dressed in all black, they have
9 brown skin.

10 Q Did you indicate whether or not you could see
11 his face?

12 A No, ma'am.

13 Q And the person you saw in the second location
14 you saw shooting that night, how did you describe
15 him?

16 A As a black male in all black.

17 Q For the record, all of the shooting was coming
18 right around that black car?

19 A Yes, ma'am.

20 Q Just you saw the first shots at one end and the
21 second set of shots at the other?

22 A Yes, ma'am.

23 Q And in the meantime, you were getting your gun,
24 Gene was getting his?

25 A Yes, ma'am.

1 Q Where were all of the people?

2 A All the people had scattered out and there was
3 just some remaining back there in that corner.

4 Q Back in the corner?

5 A Yes, ma'am.

6 Q But all of the people started out in the
7 parking lot, right?

8 A Yes, ma'am.

9 MS. CAMPBELL: Thank you.

10 THE COURT: Anything further?

11 MR. SUTHERLAND: Not from us, Your Honor.

12 THE COURT: Anything further?

13 MS. EVERHART: Yes, Your Honor.

14 RECROSS-EXAMINATION

15 BY MS. EVERHART:

16 Q When you met with the police, you drew a
17 diagram?

18 A Yes, ma'am.

19 Q And in this diagram, you drew two different
20 shooters?

21 A Yes, ma'am.

22 Q Coming from the back of the Waffle House?

23 A Yes, ma'am.

24 Q And when you talked to the police, they asked
25 you what direction you shot in?

1 A Yes, ma'am.

2 Q And you said, Toward the guy shooting at the
3 back of the Waffle House not the one near the
4 corner?

5 A Yes, ma'am.

6 MS. EVERHART: No further questions.

7 THE COURT: Anything else?

8 MS. CAMPBELL: Just one question.

9 RE-REDIRECT EXAMINATION

10 BY MS. CAMPBELL:

11 Q There was nobody still in that corner shooting
12 at that point?

13 A No, ma'am.

14 MS. CAMPBELL: Thank you.

15 THE COURT: Anything else?

16 MR. SUTHERLAND: Nothing from us, sir.

17 MS. EVERHART: No further questions.

18 THE COURT: Thank you, sir. You may step down.
19 Call your next witness.

20 MS. CAMPBELL: The State calls Amy Webber.
21 Your Honor, we just need to take this witness out of
22 order because of scheduling.

23 AMY WEBBER,

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 MS. CAMPBELL: Your Honor, may we approach for
3 a moment about something that doesn't need to be on
4 the record?

5 THE COURT: Sure.

6 (Whereupon, a bench conference was held off
7 the record, in the presence of the jury, but out of
8 the hearing of the jury.)

9 THE COURT: I need you to step down just a
10 minute, ma'am.

11 (Pause.)

12 DIRECT EXAMINATION

13 BY MS. CAMPBELL:

14 Q Ms. Webber, where are you employed?

15 A I'm employed at the Johnson County Sheriff's
16 Office in Mission, Kansas.

17 Q And what do you do there, ma'am?

18 A I'm a firearm and tool mark examiner.

19 Q Can you tell this jury a little bit about your
20 education and training in that area?

21 A Yes, ma'am. I was trained -- I started my
22 training with the Richland County Sheriff's Office
23 in 2004, was a firearm and tool mark examiner. I
24 attended the ATF National Firearms Examiner Academy
25 from October of 2005 until October of 2006. After

1 which, I returned from Washington, D.C. and
2 performed supervised case work under the firearm and
3 tool mark examiner at Richland County, David
4 Collins. And I left the sheriff's department in May
5 of 2007.

6 Q And that's when you went to your current
7 employment?

8 A Yes, ma'am.

9 Q And you are considered an expert in firearms
10 and tool marks?

11 A Yes, ma'am.

12 MS. CAMPBELL: Your Honor, at this time, we'd
13 offer her as an expert in that area.

14 THE COURT: Any voir dire?

15 MR. SUTHERLAND: None from us, sir.

16 THE COURT: Any voir dire?

17 MS. THOMAS: None, Your Honor.

18 THE COURT: Thank you.

19 She is so recognized.

20 BY MS. CAMPBELL:

21 Q Ms. Webber, I want to turn your attention back
22 to February and March of last year of 2007. Were
23 you in a position to assist David Collins in what
24 would ultimately be his examination of certain
25 items?

1 A Yes, ma'am.

2 Q And I want to turn your attention specifically
3 to this case. Did you receive and prepare certain
4 items of evidence in order for Investigator Collins
5 to analyze them?

6 A I did.

7 Q And, at that point, were you still kind of in a
8 training mode as far as what your current occupation
9 is?

10 A Yes, ma'am.

11 Q Can you tell this jury basically what items you
12 received from evidence and then we'll talk about
13 what you did with them in preparation?

14 A I physically received on the chain of custody,
15 items 67, which was a .32 auto caliber revolver;
16 item 70, which was a blue bandana; and item 71,
17 which was a box of .32 auto unfired cartridges; and
18 I also received item 77, a bullet that I checked out
19 and I did not examine, I received it and then I
20 returned it back to evidence.

21 Q You mentioned that -- you mentioned of those
22 items that you received a .32 caliber revolver?

23 A Yes, ma'am.

24 Q And I'm showing you what's been marked State's
25 Exhibit Number 82 for I.D. at this point. Is that

1 one of the items that you received?

2 A Yes, ma'am, and it has my markings on it.

3 Q And what, if anything, would you have done with
4 that item prior to Investigator Collins doing
5 further testing with that?

6 A I would do a preliminary examination on it. I
7 would take notes on the condition, the type of
8 firearm that this was, photograph it and test fire
9 it.

10 Q And did you do those things in this case? You
11 can refer to your notes.

12 A I did.

13 Q And was that firearm, item number 82, in
14 working order?

15 A It was.

16 Q And was further testing done -- or if any
17 further testing had to have been done on that item,
18 would that have been done by Investigator Collins?

19 A It would.

20 Q And while that revolver was in your care, did
21 anyone alter it, tamper with it or do anything with
22 it?

23 A No, ma'am.

24 Q And, in fact, you had retrieved it from the
25 evidence room itself?

1 A Yes.

2 Q And then you would have forwarded that to
3 Investigator Collins?

4 A Yes, ma'am.

5 MS. CAMPBELL: Your Honor, at this time, we'd
6 offer 82 into evidence.

7 THE COURT: Any objection?

8 MS. PAYNE: Without objection, Your Honor.

9 MR. SUTHERLAND: No objection.

10 THE COURT: Thank you. Mark it in evidence.

11 (State's Exhibit Number 82, gun, admitted
12 into evidence.)

13 BY MS. CAMPBELL:

14 Q In addition to the revolver, did you also
15 receive some shell casings and, I believe, a live
16 round?

17 A David Collins had checked out numerous
18 cartridge cases that I performed the preliminary
19 examination on and preliminary microscopic
20 observations.

21 Q I'm going to show you State's Exhibits 70, 69,
22 68, 67 and 66. These are items that Investigator
23 Allen retrieved from the scene?

24 A I did.

25 Q And you said you would have done some

1 preliminary testing?

2 A Yes, ma'am.

3 Q But, again, ultimately, for any opinion in this
4 case, that would be up to Investigator Collins; is
5 that correct?

6 A Yes, ma'am.

7 Q During the time period, however, you had these
8 items in your possession, did anyone alter them,
9 tamper with them or do anything with them?

10 A No, ma'am.

11 Q I'm going to show you some additional items
12 that were retrieved by Sergeant Padgett, three more
13 nine millimeter shell casings, which has been marked
14 State's Exhibit Number 10, and ask you if you
15 recognize those?

16 A I do.

17 Q And were those also items -- did you retrieve
18 those or were those retrieved by Investigator
19 Collins?

20 A Those were retrieved by Investigator Collins.

21 Q And what, if any, testing, preliminary testing,
22 would you have done on those?

23 A I would have done the basic write-ups of the
24 evidence description and the photography and the
25 basic microscopic observations of which David

1 Collins would confirm those observations that I make
2 and issue --

3 Q So in this case and in every case at that time
4 because of your role, anything you did would have
5 been turned over to Investigator Collins and he
6 would ultimately come to a conclusion?

7 A Yes.

8 Q Finally, the last item I want to show you,
9 which has been marked as State's Exhibit 87 for I.D.
10 purposes at this point, did you have any contact
11 with those?

12 A I did.

13 Q And what, if anything, did you do with those
14 items?

15 A I did the same -- same as before. I would do
16 the basic documentation, photography and the
17 microscopic initial observations of which David
18 Collins would then confirm.

19 Q And as far as State's Exhibit Number 87 for
20 I.D. purposes at this point, while these items --
21 these are additional shell casings, I believe?

22 A Uh-huh.

23 Q While these items were in your possession, did
24 anyone alter them, tamper with them or do anything
25 to them?

1 A No, ma'am.

2 Q Other than your documentation. All of the
3 information --

4 MS. CAMPBELL: Your Honor, at this time, we'd
5 offer it into evidence.

6 (Pause.)

7 MR. SUTHERLAND: No objection.

8 MS. THOMAS: No objection, Your Honor.

9 THE COURT: Thank you. Mark that in evidence.

10 (State's Exhibit Number 87, shell casings,
11 admitted into evidence.)

12 BY MS. CAMPBELL:

13 Q And you also mentioned that you, I believe,
14 received a box of unfired ammunition; is that
15 correct?

16 A I did.

17 Q Any and all information that you developed in
18 this case would have been turned over to
19 Investigator Collins?

20 A It would have.

21 Q And again, for the record, while you had any
22 contact with any of this evidence, no one altered
23 it, tampered with it or did anything to it?

24 A No, ma'am.

25 Q And you aren't here to render any opinions

1 today?

2 A I am not.

3 Q Even though you're currently qualified?

4 A That's correct.

5 Q Your observations and your examinations, as
6 well as the evidence would have ultimately been
7 turned over to Investigator Collins?

8 A Yes.

9 MS. CAMPBELL: Thank you.

10 THE COURT: Cross?

11 CROSS-EXAMINATION

12 BY MR. SUTHERLAND:

13 Q Ma'am, this should be pretty brief.

14 A Okay.

15 Q Do you recall testifying about -- or did you
16 testify about item 77, a bullet fragment?

17 A I did. I received it from evidence on April
18 9th, 2007, and I returned it on April 27th of '07.
19 I did not examine it or look at it in any way.

20 Q But you did receive it?

21 A I received it.

22 Q Okay. So if someone were to be testifying --
23 someone had testified earlier about bullet
24 fragments, but this would be an example of a bullet
25 fragment, the item 77?

1 A I did not open item 77, so I'm unaware.

2 MR. SUTHERLAND: All right. Thank you, ma'am.

3 No further questions.

4 THE COURT: Cross?

5 MS. THOMAS: I have no questions for this
6 witness.

7 THE COURT: Anything further of the witness?

8 MS. CAMPBELL: No, sir.

9 THE COURT: Thank you, ma'am. You may step
10 down.

11 Call your next witness.

12 MS. CAMPBELL: The state calls Michael Moskal.

13 MICHAEL MOSKAL,

14 having been duly sworn, testified as follows:

15 THE CLERK: Have a seat in the witness box,
16 state your full name for the record.

17 THE WITNESS: Michael Moskal, M-O-S-K-A-L.

18 DIRECT EXAMINATION

19 BY MS. CAMPBELL:

20 Q Agent, where are you employed?

21 A South Carolina Law Enforcement Division,
22 commonly known as SLED.

23 Q What do you do there, sir?

24 A I'm a trace analyst, evidence.

25 Q Can you tell this jury a little bit about your

1 training, your education in trace evidence?

2 A Yes, ma'am. I received a BS in chemistry in
3 1998 from the College of Charleston. I began
4 teaching for seven or eight years and I was employed
5 in SLED in 2006. Upon employment, I began an
6 intense six month training period in order to
7 analyze gunshot residue, it included reading
8 literature, books, having lectures on
9 instrumentation, as well as GSR, taking tests along
10 the way.

11 And while I was doing all that, I was working
12 underneath a court qualified GSR analyst working her
13 cases along side her. In that six month process, I
14 worked over 300 cases with her. At the end of that
15 six month period, they gave me a mock case where I
16 took it from beginning to end, worked it myself and
17 then went through a mock testimony. At the end of
18 that, then I was qualified as a GSR analyst.

19 Q And you currently analyze what we call gunshot
20 residue or GSR kits?

21 A Yes, ma'am.

22 Q And that's at SLED?

23 A Correct.

24 Q The South Carolina Law Enforcement Division?

25 A Yes, ma'am.

1 **MS. CAMPBELL:** Your Honor, at this time, we'd
2 offer him as an expert in trace evidence,
3 specifically as to gunshot residue.

4 **THE COURT:** Any voir dire?

5 **MR. SUTHERLAND:** None from us, sir.

6 **MS. PAYNE:** None from us, Your Honor.

7 **THE COURT:** He is so recognized. You may
8 continue.

9 BY MS. CAMPBELL:

10 **Q** Agent, I want to turn your attention to case
11 number L-0703928. Did you receive certain gunshot
12 residue kits in this case?

13 **A** Do you mind if I refer to my notes?

14 **Q** Please refer to your notes.

15 **A** Okay. And you said 3919?

16 **Q** Yes, sir.

17 **A** Yes, ma'am, I did.

18 **Q** Specifically, I want to show you what's been
19 marked as State's Exhibit 71, and I'll hand that to
20 you. Before I go any further, tell this jury what's
21 the purpose in getting a gunshot residue kit from,
22 say, someone's hands?

23 **A** Gunshot residue kits are collected in order to
24 pull off trace evidence of somebody's hands that's
25 suspected of being involved or being near a shooting

1 or handling a weapon.

2 Q And, typically, if someone comes up and shoots
3 a gun, is gunshot residue going to end up on or
4 around their hands, specifically if it's a pistol or
5 something of that nature?

6 A In general, yes, ma'am.

7 Q Are there various factors that affect whether
8 or not gunshot residue may be on someone's hands?

9 A There are factors that affect how much may
10 occur or the type of weapon, yes, ma'am.

11 Q And, in fact, if someone's hands are around the
12 muzzle of a gun or the end of a gun when a gun is
13 fired, even though they may not have fired the gun,
14 could they get gunshot residue on their hands?

15 A Yes, ma'am.

16 Q Is gunshot residue considered a fairly fragile
17 entity?

18 A It's a very fragile entity.

19 Q And, in fact, if a person, and I hate to put it
20 this way, but in a live person, is there a certain
21 time period past which trying to get gunshot residue
22 is just simply not possible or y'all don't even test
23 for it?

24 A Correct.

25 Q And what's that time period?

1 A That's a six hour time period.

2 Q And explain to the jury what factors go into it
3 and why y'all won't even test a gunshot residue kit
4 if it's not collected from a live person within six
5 hours?

6 A Gunshot residue, like I said a second ago, is a
7 very fragile type of evidence. It's a lot like if
8 you got baking powder on your hand in the kitchen,
9 to start with, everything you touch, those materials
10 rub off of your hands, and so baking powder or
11 flour, after a period of time, would have
12 disappeared from your hands completely.

13 In addition to that, our body naturally absorbs
14 the gunshot residue materials that we're looking
15 for. And any type of movement, any fluids running
16 over the hands, all of those types of activities
17 begin to diminish the amount of gunshot residue on
18 your hands and so we have found that at the end of a
19 six hour period, it simply is not there.

20 Q And the agencies that submit gunshot residue
21 kits to you, they're aware of this policy?

22 A Yes, ma'am.

23 Q And, in fact, in certain cases, you make sure
24 you confirm that it was within the six hour period?

25 A Correct.

1 Q However, if someone, say, is shot at a scene
2 and killed, can gunshot residue kits be done on
3 their hands at a later time, say, in an autopsy?

4 A In an autopsy, yes, ma'am. A deceased person,
5 any of the movements, the bodily activities, the way
6 it absorbs into our hands, once a person has
7 deceased, those activities stop and so without an
8 outside force removing them, that gunshot residue
9 would remain.

10 Q Referring back to State's Exhibit Number 71,
11 were those two gunshot residue kits you received in
12 this case?

13 A (Witness reviewing document.)

14 Q And you can refer to your report if you need
15 to.

16 A I have two separate cases with this one.

17 Q Yes, sir, you do.

18 A What's in this evidence container is from my
19 case number L-073928.

20 Q Yes, sir, that's the first one I want to look
21 at. And I believe you received two gunshot residue
22 kits in that case?

23 A There are two gunshot residue kits in this
24 case. I know this is mine because it bears my
25 initials on the outside of it and the date where I

1 sealed this up when I was completed with the
2 analysis of this.

3 Q And although there are two kits, were they
4 packaged properly so that they wouldn't cross
5 contaminate when you received them?

6 A When we open up a GSR kit, if there are any
7 types of abnormalities or something that's just not
8 normal, we would note it in the GSR kit. And
9 according to this, everything was packaged
10 correctly.

11 Q Before I go any further, tell this jury how is
12 a gunshot residue kit collected, say, by a lab
13 technician or a crime scene investigator?

14 A The gunshot residue kits have two types of
15 collection apparatus so to speak. We look for two
16 different things. The first part that the officer
17 or the GSR technician is going to do is a particle
18 lift, that's basically like a double sided sticky
19 tape that they will collect from the four areas,
20 right palm, right back, left palm and left back.
21 And what they do with those sticky tabs is they take
22 it and they dab it all the way across the palm.
23 They seal it up. They take a second one from the
24 backs, seal it up and do the same thing for the left
25 hand.

1 Once they've completed that, then what they're
2 going to do is take a cotton swab, they're going to
3 soak it with a dilute solution of nitric acid and
4 they're going to rub that swab over the four same
5 areas. So, again, we'll get four separate areas of
6 cotton swabs. And then they'll take a cotton swab
7 control generally from somewhere that would not be
8 exposed during a shooting, a lot of times it's the
9 back of the calf or the back of the lower portion of
10 the back. And so those are the two types of
11 evidence that we'll get out of a GSR kit.'

12 Q And referring to the lab number you just
13 referred to, you received gunshot residue kits, what
14 was the first one labeled?

15 A My item number one in this case is one GSR kit
16 from Brian Trevaris (ph) Blackwell.

17 Q And did you actually test all of the different
18 areas where gunshot residue, an attempt was made to
19 collect it?

20 A Yes, ma'am.

21 Q And that would be off the front and back of
22 both hands?

23 A Correct.

24 Q And from the Brian Trevaris Blackwell kit, what
25 were your results?

1 A On Brian Trevaris Blackwell, all four areas,
2 the quantities of metal did not detect -- or did not
3 indicate the presence of gunshot residue.

4 Q And would that be consistent with someone who
5 had not fired a weapon?

6 A Yes, ma'am, it would.

7 Q Or someone who had not had their hands around a
8 weapon that was being fired?

9 A Yes, ma'am, assuming they had not washed their
10 hands or done anything.

11 Q Which there are different factors that can --

12 A Correct.

13 Q And the second kit you got in that case, I
14 believe, was labeled Robert Lee Portee, Jr.?

15 A Yes, ma'am.

16 Q And, again, in your examination of the
17 collection from the right palm, the right back, the
18 left palm, the left back, what were your results?

19 A Those four areas, the quantities of metals did
20 not indicate the presence of gunshot residue.

21 Q So, again, from Rob Portee, it would indicate
22 he had not fired a gun?

23 A Barring any outside washing hands, those types
24 of issues, yes, ma'am.

25 Q And, finally, did you also receive in a

1 separate case lab number, which is 072919, the same
2 -- a gunshot residue kit that had been collected
3 from the victim, Brian Wright?

4 A Yes, ma'am, I did.

5 Q And, again, were those all properly packaged
6 and everything when you got them?

7 A They were packaged properly, yes, ma'am.

8 Q And what was the result of your testing when
9 you examined the palms, as well as the back of the
10 hands of the victim in the case, Brian Wright?

11 A For Brian Wright, all four areas came back that
12 the quantities of metals did not indicate the
13 presence of gunshot residue.

14 Q You mentioned that some things can affect
15 whether or not you can get results, say, if a person
16 fires a gun?

17 A Yes, ma'am.

18 Q Washing your hands or scrubbing your hands
19 vigorously could affect it?

20 A Yes, ma'am.

21 Q But barring that, the indications, if you find
22 gunshot residue, indicates that either they were
23 around a gun that was fired or fired a gun?

24 A Correct or handled one.

25 Q Or handled one. And, again, if a suspect is

1 not apprehended, assuming they're still alive,
2 within the six hour period, is there any reason to
3 do a gunshot residue kit?

4 A No, ma'am.

5 Q State's Exhibit Number 75, just for the record,
6 is that the gunshot residue kit you received for
7 Brian Wright?

8 A Do you have scissors I can open this with?

9 Q Yes, sir. I apologize.

10 A Yes, ma'am. This is the GSR kit from Brian
11 Wright. Again, I recognize my initials from where I
12 sealed this up when I was completed with it.

13 Q And, again, was there any evidence of any
14 tampering or alteration in that gunshot residue kit?

15 A No, ma'am.

16 Q Was there any evidence of any tampering or
17 altering of any of these three gunshot residue kits?

18 A No, ma'am.

19 Q And they were properly sealed when you got
20 them?

21 A Yes, ma'am.

22 MS. CAMPBELL: Thank you, sir.

23 THE COURT: Cross?

24 MR. SUTHERLAND: Please the Court.

25 THE COURT: Yes, sir.

1 CROSS-EXAMINATION

2 BY MR. SUTHERLAND:

3 Q Briefly, sir, about the factors affecting the
4 gunshot residue test, Ms. Campbell had mentioned
5 washing hands, also maybe sweating?

6 A Yes, sir.

7 Q If it's winter time and somebody's wearing
8 gloves?

9 A Gloves, anything coming between your hand and
10 the weapon when it's shot would prevent it from
11 landing on your hands, yes, sir.

12 MR. SUTHERLAND: Thank you, sir.

13 No further questions, Your Honor.

14 THE COURT: Cross?

15 MS. PAYNE: No questions, Your Honor.

16 THE COURT: Anything further of the witness?

17 MS. CAMPBELL: No, sir.

18 THE COURT: Thank you, sir. You may step down.

19 MS. CAMPBELL: Your Honor, may he be excused?

20 THE COURT: Any objection to the witness being
21 released?

22 MR. SUTHERLAND: No objection, Your Honor.

23 MS. PAYNE: Without objection, Your Honor.

24 THE COURT: You're free to go. Thank you.

25 Do y'all have a 12 minute witness?

1 **MS. CAMPBELL:** No, sir.

2 **THE COURT:** Ladies and gentlemen, the
3 experiment yesterday with bringing your lunch in
4 really didn't help a whole lot, so I'm going to let
5 you be on your own for lunch. I need you back in
6 the jury room at two o'clock. I typically have to
7 give you that much time to make sure you can get
8 back. And I'm not saying I won't order you lunch
9 later in the trial, but we'll let you be on your own
10 today.

11 Don't discuss the case, don't let anybody
12 discuss it with you, leave your notes in the chair,
13 please.

14 (The jury was excused for lunch.)

15 **THE COURT:** All right. Ladies and gentlemen,
16 when you're allowed to leave the courtroom, you need
17 to be very careful that you don't have any contact
18 with any of these jurors, that you not have any
19 conversations that might be overheard by a juror
20 that in any way relate to the case or anybody in it.
21 The jurors go back out through this secured area,
22 but many times they filter back in to the common
23 area, so you need to be very careful.

24 Also, when you go to lunch, you may choose to
25 go to the same place that some of these jurors may

1 go, so make sure you check around and make sure
2 there are no jurors in your vicinity. They can
3 overhear anything you're talking about if you're
4 going to be talking in any way about the case. Two
5 o'clock.

6 (Whereupon, there was a luncheon recess.)

7 THE COURT: State ready?

8 MR. GOLDBERG: State's ready.

9 THE COURT: Defense?

10 MR. SUTHERLAND: Yes, sir.

11 THE COURT: Bring in the jury, please.

12 (The jury returns to the courtroom.)

13 THE COURT: Call your next witness, please.

14 MR. GOLDBERG: Please the Court, the State
15 calls Sergeant McRoberts.

16 WILLIAM DAVID MCROBERTS,
17 having been duly sworn, testified as follows:

18 THE CLERK: State your full name for the
19 record, please.

20 THE WITNESS: William David McRoberts.

21 DIRECT EXAMINATION

22 BY MR. GOLDBERG:

23 Q Sergeant McRoberts, where are you employed?

24 A At the Richland County Sheriff's Department.

25 Q How long have you been employed there?

1 A Fifteen years.

2 Q What are your current duties with the sheriff's
3 department?

4 A I'm a supervisor in the investigative unit in
5 the property crimes.

6 Q Can you describe for the jury a little bit
7 about what that means?

8 A Investigate burglaries, any other crimes
9 involving stolen property.

10 Q And, in fact, in February of last year, were
11 you working in that same capacity?

12 A Yes, sir.

13 Q Were you, in fact, working on the night of
14 February 19, 2007?

15 A I was.

16 Q And what were you doing that night?

17 A I was the on-call supervisor past midnight for
18 any major incidents.

19 Q What does it mean to be the on-call supervisor?

20 A If something happens, robbery, shooting,
21 anything like that, they call the on-call supervisor
22 and he in turn calls the on-call team to go out.

23 Q So you were at headquarters or you were out in
24 the field?

25 A I was out in the field.

1 Q And did you actually get a call about an
2 incident at the Waffle House that night on Two Notch
3 Road?

4 A I did, the desk sergeant called me.

5 Q And what was the nature of that call?

6 A Advising me that someone had been shot and
7 killed at the Waffle House on Two Notch Road.

8 Q Is that the one on Two Notch by I-20?

9 A Yes.

10 Q Once you received that call, what did you do?

11 A I spoke to the investigator that was out on the
12 scene, that was Investigator Baker I believe, he
13 kind of gave me a synopsis of what was going on.

14 And I in turn called Investigator Ellis who was the
15 primary homicide detective on call that night.

16 Q At that point it would go to Investigator Ellis
17 to actually handle the investigation?

18 A That's correct.

19 Q So for that time -- at that point, you weren't
20 involved in the case?

21 A No, sir.

22 Q At what point did you become involved in this
23 case again?

24 A Later on that night, the evening of the 19th,
25 when I came on for evenings that week.

1 Q And what did you do at that point?

2 A Captain Smith briefed me about what was going
3 on, who were some of the names that I needed to talk
4 to, some of the individuals involved that were
5 present. And he advised me that one guy was coming
6 in that night -- was supposed to come in to give a
7 statement.

8 Q Who was that?

9 A Eugene Patterson.

10 Q And, at some point, you did actually make
11 contact with Eugene Patterson?

12 A I did.

13 Q Where was that that you met with him?

14 A At the sheriff's department on Two Notch Road.

15 Q Are you aware of how he got to the sheriff's
16 department?

17 A I believe his father came with him, brought
18 him.

19 Q When he got there, what did the two of you do?

20 A I walked him to my office and took a typed
21 statement, actually talked to him a little bit
22 beforehand and took a statement.

23 Q At this point was he under arrest for anything?

24 A No, sir.

25 Q Was he a suspect at this point?

1 A At this point all I knew was that he was there,
2 allegedly, when it happened.

3 Q Once you got him in your office, what did you
4 do? You began to talk about the case?

5 A Right.

6 Q Did you advise him of his rights at this point?

7 A No, sir.

8 Q He wasn't in custody?

9 A He wasn't in custody.

10 Q Okay. And I want to show you what's been
11 marked as State's Exhibit 1 for I.D. Can you take a
12 look at that, please, and tell me what that is?

13 A This is the statement I took from him on the
14 19th.

15 Q From Mr. Patterson?

16 A Yes, sir.

17 Q And, again, he wasn't in custody at the time?

18 A No.

19 Q He was free to leave at any point?

20 A He was.

21 Q You didn't pressure him to talk to you in any
22 way?

23 A No, sir.

24 Q He didn't ever indicate to you that he wanted
25 an attorney?

1 A No, sir.

2 Q Or he wanted to stop talking?

3 A No, sir.

4 Q Was he threatened in any way to talk to you?

5 A No, sir.

6 Q Promised anything?

7 A No, sir.

8 Q And did he, in fact, give you this written
9 statement that is three pages long that night?

10 A He did.

11 Q Did he sign this statement when you were done
12 with it?

13 A Yes.

14 Q And it was just the two of you talking?

15 A Yes.

16 MR. GOLDBERG: Your Honor, at this point, I'd
17 move to put State's 1 into evidence.

18 MR. SUTHERLAND: Without objection, Your Honor.

19 MS. PAYNE: Without objection, Your Honor.

20 THE COURT: Mark it in the record, please.

21 (State's Exhibit Number 1, statement of
22 Eugene Patterson, admitted into evidence.)

23 MR. GOLDBERG: Your Honor, permission for the
24 witness to publish the exhibit?

25 THE COURT: Yes, sir.

1 BY MR. GOLDBERG:

2 Q Sergeant, if you could take me through this
3 statement and read to the jury exactly what it reads
4 on here. And if there's any point where you asked
5 him anything else, please go into that as well.

6 A The first question I asked him was: What did
7 you do yesterday after you got off work at 6:30
8 p.m.?

9 And Mr. Patterson's response was: When I got
10 off work, I went to see my homeboy, Will Bethel, in
11 Pontiac. He lives off Big John Road. I stayed
12 there for a couple of hours. His mom, Teresa
13 Bethel, was there and his sister, Tiesha, was there.
14 I left Pontiac and went to my daddy's house to get
15 my hair cut. On the way to my dad's, I rode past
16 the Windsor Clubhouse and I saw the police out
17 there. I was at the light, I kept going. I kept on
18 going to my dad's. My dad stays on Flora Drive with
19 his wife and my little sister and they were all at
20 the house last night when I got there.

21 I got a call from my home girl, Tanisha, and
22 she told me that the Windsor Clubhouse had got shut
23 down. I got my hair cut and I ate some wings. My
24 girlfriend, Natasha Lyles, called my cell phone. I
25 was coming over to her house so she wanted me to

1 bring her something to eat from the Waffle House.
2 Natasha lives off Garners Ferry Road by the Sonic
3 and a store next to it. I told her I would call her
4 from the Two Notch Road -- call her from the Waffle
5 House to see what she wanted.

6 I left my house and went straight down Two
7 Notch where you get on 20, I-20. I was driving my
8 green Dodge Neon that's wrecked in the back where
9 somebody ran into me. I pulled into the Waffle
10 House by myself and I got out and I went in and I
11 saw Corey Sanders and a couple of other dudes. It
12 was him and a couple of other dudes and some girls.
13 I know Corey from Blythewood Academy. Corey saw me
14 and I saw him, but we ain't cool like that so we
15 didn't speak. When I saw Corey, he was about to
16 walk out. A couple of the guys that Corey was with
17 had on red-fitted baseball hats like you get out of
18 the mall. Two of the dudes had on red hats and one
19 had on a black hat.

20 After Corey and his friends walked out, that's
21 when a white Grand Am pulled up and about six or
22 seven dudes got out, that's when I saw the dude in
23 the white tank top get out and he ran up to Corey
24 and them two got in a fight. That's when I ran out
25 of the Waffle House and I got into my car, I jumped

1 in my car. While I was in my car backing out, I
2 heard about three or four gunshots, then I put the
3 car in reverse and I left. After that, I went
4 straight home to my mom's house at Saint Andrews
5 Terrace.

6 The next question is: Did you arrive at the
7 Waffle House the same time last night on Two Notch
8 Road with any of your friends?

9 Eugene's answer was: No. Corey Sanders was
10 already inside when I got there and my home girl,
11 Tanisha, rode up in a black Trailblazer with some
12 dude I didn't -- I couldn't see in the back because
13 the windows were tinted. Tanisha's number is
14 586-9185. She rode through the parking lot and I
15 was -- when I was leaving, I saw Tanisha. Just as
16 the fight started, Tanisha pulled up in the Waffle
17 House parking lot. Tanisha stays somewhere in
18 Blythewood. Tanisha was still in the parking lot
19 when the shots started, that's when I pulled out.

20 The next question is: Do you know if Corey
21 Sanders is a Blood gang member?

22 I know he hangs with them, but I'm not sure
23 that he is one.

24 The next question is: Are you a member of the
25 Folk gang or have you ever been a Folk gang member?

1 I used to hang with them in school, but I never
2 joined a gang.

3 The next question is: Do gangs usually let
4 nongang members hang out with them?

5 His answer was: I don't know. The only reason
6 I was cool with them was because I had went to
7 middle school with them before they joined the gang.

8 Were any of the Folk gang members -- were any
9 of the Folk gang member (sic) you used to hang with
10 at the Waffle House last night?

11 The only person that I saw was a Folk that was
12 at the Waffle House last night was Keyon Lewis. I
13 didn't notice Keyon until I was leaving last night.
14 He was going in the Waffle House as I was leaving.

15 Do you remember seeing anyone dressed in all
16 blue wearing a blue bandana last night?

17 No. I remember seeing people dressed in red,
18 pink and all black.

19 Did you see anyone with a gun at the Waffle
20 House last night?

21 Nope. I heard shots. I didn't see no gun.

22 Do you know who fired the gun at the Waffle
23 House last night on Two Notch Road?

24 No, but I can probably find out.

25 Did you have a gun at the Waffle House last

1 night?

2 No.

3 When you saw -- when you first saw Corey
4 Sanders at the Waffle House last night, did you make
5 any type of hand gesture to him at all?

6 No.

7 And the last question: Is there anything else
8 you want to add to this statement?

9 He responded: No.

10 Q Sergeant, what was the date again of this
11 statement that you took from Mr. Patterson?

12 A February 19th, 2007.

13 Q And he signed on that statement acknowledging
14 that it was his?

15 A He did.

16 Q Can you publish for the jury, I believe, down
17 on the bottom portion of his statement underneath
18 his answers, there's a line on each statement, what
19 that says?

20 A I make this statement of my own free will and
21 accord without reward or intimidation. All of the
22 above is the truth, the whole truth and nothing but
23 the truth.

24 Q And he did sign underneath that?

25 A Yes, sir.

1 Q At that point, what did you do with him? Was
2 he free to leave?

3 A He left with his father.

4 Q He wasn't placed under arrest?

5 A No, sir.

6 Q What was your next involvement in this case?

7 A My next involvement wasn't until he came back
8 in on the 22nd.

9 Q Mr. Patterson?

10 A Yes.

11 Q How did he end up coming in contact with you on
12 the 22nd?

13 A Well, again, I was briefed on it when I came
14 in. I came in around, I think, three o'clock or
15 3:30 that day and Captain Smith told me that the
16 investigation revealed that Eugene was involved more
17 than he was saying at first when he talked to me.
18 And, at that point, they had an arrest warrant for
19 him.

20 Q And he was actually placed under arrest and
21 brought to the sheriff's department?

22 A No. I believe, he turned himself in again.

23 Q He turned himself in?

24 A Yeah, he came in that night.

25 Q To the sheriff's department?

1 A Yes, sir.

2 Q And that would be on what day; do you recall?

3 A That would have been on February 22nd.

4 Q I want to show you what's been marked as
5 State's Exhibit 2 for I.D., take a look at that. Do
6 you recognize that document?

7 A This is the written advice of rights that we
8 give.

9 Q When Mr. Patterson got to the sheriff's
10 department that night, where was he taken to?

11 A He came in the front -- where the desk
12 sergeant's office is and they notified me
13 immediately and I came down there and met him.

14 Q And where did you take him?

15 A Back up to my office.

16 Q Was he handcuffed at this point?

17 A I don't remember if he was. I mean, I wouldn't
18 have handcuffed him unless I was sending him off in
19 the paddy wagon, but I don't believe he was.

20 Q So you took him off to your office to talk to
21 him?

22 A Yes.

23 Q And when you did that, you advised him of his
24 rights?

25 A I did.

1 Q And did you do that based on the sheet that I
2 just handed you, State's Number 2?

3 A Yes, sir.

4 Q At this time, I'd like for you to explain to
5 the jury exactly how you advised him of his rights
6 as if he were sitting there right now and you had
7 that sheet in your hand, exactly how it took place.

8 A I told him, before I asked him any questions,
9 that he had the right to remain silent. I told him,
10 You got to understand your rights. You have the
11 right to remain silent. Anything you say can be
12 used against you in court. You have the right to
13 talk to a lawyer for advice before we ask you any
14 questions and to have a lawyer with you during any
15 questioning. And if you cannot afford a lawyer, one
16 will be appointed for you before any questioning, if
17 you wish. If you decide to answer questions now
18 without a lawyer present, you still have the right
19 to stop answering at any time. You also have the
20 right to stop answering at any time until you talk
21 to a lawyer.

22 Q And are there some little boxes next to each
23 one of those statements?

24 A Each sentence that I read off to him, I just
25 checked the box to make sure I went to the next one.

1 Q And did he indicate that he understood those
2 rights?

3 A He did.

4 Q And did he notate that on the sheet in some
5 way?

6 A Yeah. He signed right here where it says he
7 understood it and down at the bottom was the waiver.

8 Q And go ahead and tell us how you went through
9 that waiver of his rights.

10 A Once he decided that he wanted to talk to me,
11 then I had him -- I read him the waiver at the
12 bottom that says, I've read this statement of my
13 rights and I understand what my rights are. I'm
14 willing to talk and answer questions. I understand
15 and know what I'm doing. No promises have been made
16 to me and no pressure or coercion of any kind has
17 been used against me.

18 Q And did he indicate that he understood that?

19 A He did. He signed it again.

20 Q He signed the form again and you signed it as a
21 witness?

22 A Yes.

23 Q Is there also some writing at the bottom of
24 that page?

25 A I asked him what grade he finished in high

1 school and he advised me that he finished the 11th
2 grade at Blythewood Academy.

3 Q At this point did it appear to you that he
4 understood his rights?

5 A He did.

6 Q And that he was waiving them freely and
7 voluntarily?

8 A He did.

9 Q Did you threaten him in any way?

10 A No.

11 Q Did you make him any promises?

12 A No, sir.

13 Q Offers of leniency?

14 A Well, it wasn't my case, so I didn't know what
15 exactly -- I didn't have anything to offer him.

16 Q Did he appear to you to be under the influence
17 of any drugs or alcohol at this time?

18 A No, sir.

19 Q Did you deny him the right to water, food or
20 bathroom or anything like that?

21 A No, sir.

22 Q And once he was advised of those rights and
23 waived them, did he then provide you with a
24 statement?

25 A He did.

1 Q At any point during the time that he gave you
2 that statement, did he indicate to you that he
3 wished to stop talking?

4 A No, sir.

5 Q At any point did he ask for an attorney?

6 A No, sir.

7 Q Did he give you any indication that he was not
8 speaking to you freely and voluntarily?

9 A No, sir.

10 Q I want to show you what's been marked as
11 State's Exhibit 3 for I.D. Do you recognize that?

12 A This is the second statement that I took from
13 him.

14 Q And at first when you took his statement, did
15 you immediately type it as you took it from him or
16 how did that work?

17 A I had a little bit of discussion before we put
18 it in writing for him just to see what he wanted to
19 change in his first statement because that was the
20 whole reason why he was wanting to give another
21 statement is there was something he needed to change
22 in his first one.

23 Q I believe this is a four page statement; is
24 that correct?

25 A Yes, sir.

1 Q And did he sign on each page indicating that it
2 was his statement?

3 A He did.

4 Q What's the date of that statement?

5 A It's dated February 22nd, 2007, but the dates
6 at the bottom are -- were messed up.

7 Q What does it indicate?

8 A One says February 22nd, 2005, and the notary
9 says February 22nd, 2006, but the actual date was
10 February 22nd, 2007.

11 Q And you recall this interview taking place?

12 A Yes, sir.

13 Q And it was in 2007?

14 A It was in 2007.

15 MR. GOLDBERG: Your Honor, at this time we'd
16 offer State's 2 and 3 in evidence.

17 MR. SUTHERLAND: No objection.

18 MS. PAYNE: Without objection, Your Honor.

19 THE COURT: Thank you.

20 (State's Exhibit Numbers 2 and 3 admitted
21 into evidence.)

22 BY MR. GOLDBERG:

23 Q You said at first, the two of you discussed the
24 case before it was memorialized in writing; is that
25 correct?

1 A That's correct.

2 Q I would like for you to --

3 MR. GOLDBERG: Your Honor, permission for the
4 witness to publish the exhibit?

5 THE COURT: Yes, sir.

6 BY MR. GOLDBERG:

7 Q If you could, Sergeant, read the top of the
8 statement all the way down indicating the question
9 and answer between you and Mr. Patterson, as well as
10 the top portion of the statement and explain to the
11 jury what that is.

12 A In a suspect statement, we have the Miranda
13 warning published at the very top where you fill in
14 their name. And it says: I, Eugene D. Patterson,
15 understand that I have the right to remain silent,
16 anything I say can be used against me in court. I
17 have the right to talk to a lawyer for advice before
18 we ask you any questions and to have a lawyer with
19 me during any questioning. If I cannot afford a
20 lawyer, one will be appointed for me before any
21 questioning if I wish. If I decide to answer
22 questions now...

23 THE COURT: You're going to have to slow down.
24 She can't take that down that fast. Go ahead.

25 THE WITNESS: If you decide to answer questions

1 now without a lawyer present, you have the right to
2 stop answering at any time. And you also have the
3 right to stop answering at any time till you talk to
4 a lawyer.

5 Then I went down to the first question that
6 says: Is there anything you want to change about
7 the statement you gave me on February 19th, 2007,
8 when you came into my office?

9 And his answer was: Everything was the truth
10 except I left out the fact that I knew the guy
11 dressed in all blue with the blue bandana. I saw
12 this newer white Grand Am pull up with about seven
13 dudes in the car. They pulled up to the gas station
14 by the Waffle House next to the gas pumps. When
15 they pulled up, they hopped out of the car and they
16 ran over to the Waffle House parking lot. I saw the
17 guy dressed in blue running over by the gas station.

18 I saw Corey Anderson in this fight with Chad
19 fighting and Chad was getting the best of Corey.
20 And Corey was about to fall on the ground when Rob
21 Portee pulled out what looked like a nine millimeter
22 pistol and he shot one time in the air and the next
23 shot was right at the crowd in the Waffle House
24 parking lot. The gun Rob had was black. It looked
25 like a nine millimeter.

1 Then after the second shot, I seen the dude
2 dressed in blue run by the store and he fired a
3 couple of shots. The first shot was toward the
4 Waffle House and the other shots were fired toward
5 the gas station. The guy in blue took off running
6 toward the same way he was shooting. He was running
7 past the store in the front of the store. The dude
8 dressed in blue had a revolver, it was black. And
9 the gun looked to be about four or five inches in
10 length, then I peeled out of the parking lot.

11 Do you remember who was in the white Grand Am
12 when they pulled up?

13 His answer was: The dude, Raymond Asberry, was
14 driving the Grand Am. Chad was in the Grand Am. I
15 didn't recognize anybody else.

16 Do you know the name of the dude dressed in
17 blue that you saw shooting that night?

18 I know his name is Oliver and he works on Fort
19 Jackson. I know that because me and a dude named
20 Angelo were at Angelo's apartment over near Windsor
21 Shore Apartments. This dude, Oliver, is from
22 Orangeburg, that's why nobody knows him around here.
23 I was at my friend Angelo Tucker's apartment and
24 Oliver came over to take a shower and basically
25 Angelo asked Oliver what he was about to do and he

1 said he was about to go to work on Fort Jackson.
2 Angelo Tucker works at the McDonalds at Columbia
3 Mall. Whenever Oliver comes to Columbia, he goes by
4 Angelo's apartment to take a shower first.

5 When is the last time you saw Oliver?

6 That night at the Waffle House was the last
7 time I saw him.

8 How do you know it was the same Oliver you know
9 if the guy had on a bandana?

10 Because the bandana was wrapped around his
11 neck, it wasn't covering his face. I know it was
12 him, I saw his face real good.

13 Do you remember when I asked you about making a
14 gesture at Corey Anderson when you saw him at the
15 Waffle House?

16 Yeah, I remember you asking me that, but I
17 didn't do nothing like that.

18 Have you talked to Angelo Tucker since the
19 shooting at the Waffle House?

20 Yeah, I talked to him earlier today. He called
21 me and he told me he knew I didn't want people
22 coming by my house shooting it up because he heard
23 somebody who had called him and telling him I saw
24 who was shooting that night. He was just letting me
25 know what was going around.

1 Were you riding with anybody else the night of
2 the shooting at the Waffle House?

3 No, I was by myself and I was driving my green
4 Neon.

5 Why didn't you tell the truth about knowing the
6 guy in the blue the first time we talked?

7 Because I was thinking about my little sister
8 and it was too easy for somebody to find out where I
9 lived. And if somebody found out I was talking to
10 the police, then I'd be afraid they would come by my
11 house and shoot my house up.

12 Can you describe this guy, Oliver?

13 He's a light-skinned black male and he's about
14 six feet tall, and he's skinny and he's probably
15 about 19 or 20 years old. Oliver has crooked teeth.
16 If you look at his teeth, they look like the teeth
17 are double behind each other. I think he has a
18 tattoo on his forearm. It looks like some old
19 English letters that are written small on the back
20 of his forearm. Oliver has long corn roll braids in
21 his hair, they hang down to his neck.

22 Do you know if Oliver has a girl around
23 Columbia?

24 I don't think so because he's real shy when it
25 comes to girls.

1 Do you recognize the man in the driver's
2 license photo I showed you tonight?

3 Yeah, that's the guy, Oliver, that I was
4 talking about. He is the one I was talking to at
5 Angelo's apartment and he's the one I saw dressed in
6 blue with the blue bandana around his neck that
7 night at the Waffle House who was shooting.

8 Is there anything else about that night at the
9 Waffle House you need to tell me?

10 No, that's it.

11 That was pretty much the end of it.

12 BY MR. GOLDBERG:

13 Q And on each of the four pages, was
14 Mr. Patterson given an opportunity to sign each
15 page?

16 A Yes.

17 Q And did he?

18 A He did.

19 Q And was that signature witnessed?

20 A It was notarized by Investigator Thompson.

21 Q And did you also sign the document?

22 A I did.

23 Q In fact, is there also a statement on the form
24 underneath where his answers are indicating that he
25 is giving the statement freely and voluntarily?

1 A Yes.

2 Q What does that say?

3 A Says: This is to certify that I have read or
4 had read to me the foregoing statement consisting of
5 four pages and a true copy has been given -- that's
6 the bottom. And also it says: I have made the
7 following statement, foregoing statement, freely and
8 voluntarily without fear or threat, promise or hope
9 of reward of any kind.

10 Q And he signed under each statement?

11 A Yes.

12 Q And when you take these statements, they're
13 done on a computer; is that correct?

14 A That's correct.

15 Q Some of these blanks, some boiler plate
16 information, I guess you could say?

17 A Yeah.

18 Q Like the address section and the bottom
19 sections that you just read?

20 A (Witness nodded head.)

21 Q Could that explain why it was the wrong year?

22 A Correct.

23 Q And, again, at any point, did he indicate to
24 you he wanted to stop talking?

25 A No. I mean, he was very cooperative with me.

1 Q What other involvement did you have in the case
2 after this point?

3 A That was it.

4 MR. GOLDBERG: I believe that's all of my
5 questions. Thank you.

6 THE COURT: Cross?

7 CROSS-EXAMINATION

8 BY MR. SUTHERLAND:

9 Q Sergeant McRoberts, actually, I've only really
10 got a couple of questions for you. How long were
11 y'all sitting together on that second evening; can
12 you approximate or do you recall?

13 A It was long enough for me to take the statement
14 and...

15 Q You talked about it some before?

16 A Yeah, I mean, it wasn't long.

17 Q And you had testified earlier with respect to
18 the first statement, he was not in custody?

19 A Correct.

20 Q And that was where he came by after work?

21 A I don't know where he came from, but his dad
22 brought him up there, so I'm not sure where he came
23 from.

24 Q I thought you had testified that he got off
25 work at 6:30?

1 **A** That was the first question. That was about
2 the day before, that wasn't the day of the
3 statement.

4 **Q** But just for -- he was in the custody of law
5 enforcement during that second statement?

6 **A** The second statement he was.

7 **MR. SUTHERLAND:** I have no further questions,
8 Your Honor.

9 **THE COURT:** All right. Cross?

10 **MS. PAYNE:** No questions, Your Honor.

11 **THE COURT:** Anything else of the witness?

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

13 **THE COURT:** Thank you, sir. You may step down.
14 Call your next witness.

15 **MR. GOLDBERG:** State calls Investigator
16 Thompson.

17 DARRELL THOMPSON,
18 having been duly sworn, testified as follows:

19 **THE CLERK:** State your full name for the
20 record, please.

21 **THE WITNESS:** Darrell Thompson.

22 DIRECT EXAMINATION

23 BY MR. GOLDBERG:

24 **Q** Investigator Thompson, where are you employed?

25 **A** Richland County Sheriff's Department.

1 Q And how long have you been there?

2 A This time about four years.

3 Q And can you describe for the jury your duties
4 with the sheriff's department?

5 A I investigate property crimes.

6 Q Back in February of 2007, were you working for
7 the sheriff's department then?

8 A I was.

9 Q Did you have an opportunity to come in contact
10 with a Eugene Patterson?

11 A Briefly, yes.

12 Q And what was the nature of that contact?

13 A Sergeant McRoberts was working evenings that
14 night, so was I, and McRoberts was interviewing
15 Mr. Patterson in his office. I observed that off
16 and on.

17 Q You weren't in there the entire time, though?

18 A No.

19 Q Ultimately, did you witness Mr. Patterson sign
20 the statement that he gave, show you State's Exhibit
21 3?

22 A I did.

23 Q And you notarized that document?

24 A I did.

25 Q Indicating that Mr. Patterson, in fact, had

1 read the document and signed it?

2 A Yes.

3 Q Did you ask him any questions at any point?

4 A I asked him if he was Eugene Patterson. He
5 said, Yes. I said, Is this your statement? Yes.

6 Have you read it, you know what's in it? Yes.

7 Given freely and voluntarily? Yes. Is it the

8 truth? Yes. Well, if it's the truth, I need you to

9 sign the top line acknowledging that it is your
10 statement of the truth, sign the bottom line if you
11 want a copy. And he did sign both on all pages.

12 Q On each page?

13 A Right.

14 Q And is there a typo on the dates on that
15 statement?

16 A There is.

17 Q It was, in fact, in 2007?

18 A It was.

19 Q And while you were present with Mr. Patterson,
20 did you ever hear him indicate that he wanted to
21 stop talking?

22 A No, sir.

23 Q Did he ever ask for a lawyer?

24 A Not to my knowledge.

25 Q To your knowledge, was he threatened in any

1 way?

2 A No.

3 Q Promised anything?

4 A No.

5 Q Denied any comforts of any kind?

6 A No.

7 Q Did you have any other involvement in the case
8 beyond that?

9 A Not with him.

10 Q Not with Mr. Patterson?

11 A No.

12 MR. GOLDBERG: Thank you. That's all I have.

13 THE COURT: Cross?

14 MR. SUTHERLAND: No questions, Your Honor.

15 THE COURT: Cross?

16 MS. PAYNE: No questions, Your Honor.

17 THE COURT: Thank you, sir. You may step down.
18 Call your next witness.

19 MS. CAMPBELL: The State would call Tena Goff.

20 TENA GOFF,

21 having been duly sworn, testified as follows:

22 THE CLERK: Have a seat in the witness box,
23 state your name for the record, please.

24 THE WITNESS: Tena Goff.

25 *****

1 DIRECT EXAMINATION

2 BY MS. CAMPBELL:

3 Q Investigator Goff, where are you employed?

4 A The Richland County Sheriff's Department.

5 Q What do you do there?

6 A I'm the evidence custodian.

7 Q As the evidence custodian, what do your duties
8 include?9 A My job is to oversee the procedures and daily
10 activities of the evidence room, also to supervise
11 the personnel that are inside.12 Q And do your duties include making sure that
13 once evidence is submitted into your evidence room,
14 that no one can alter or tamper with it in any way?

15 A That is correct.

16 Q I want to turn your attention to this case
17 involving the shooting at the Waffle House. Were
18 certain evidence, including some shell casings,
19 submitted to your evidence room?

20 A Yes, they were.

21 Q Were there also some -- one live round of
22 ammunition?

23 A Yes.

24 Q A projectile?

25 A Yes.

1 Q I believe one operative revolver and one
2 inoperative revolver? I'll show you what's been
3 marked as State's 88 for I.D.

4 A Yes.

5 Q And State's Exhibit for I.D. 89, which is a
6 projectile?

7 A Yes.

8 Q As well as multiple shell casings that were
9 collected from various scenes; is that correct?

10 A Yes, ma'am.

11 Q Were all of those items submitted properly to
12 your evidence room?

13 A Yes, they were.

14 Q Were they later forwarded to various personnel
15 in the ballistics department, including Amy, who was
16 Mauldin then I believe, Webber now and David
17 Collins?

18 A Yes.

19 Q And during the time period those items were in
20 your custody or under your supervision, did anyone
21 alter or tamper with them in any way?

22 A No.

23 Q In this case, were there also some swabs, I
24 believe, submitted by Sergeant Stan Richards, I
25 believe, that were later forwarded to DNA?

1 A Yes.

2 Q Did anyone have an opportunity to alter or
3 tamper with those items in any way?

4 A No.

5 Q Finally, I want to go over some gunshot residue
6 kits, I believe a total of three were submitted for
7 consideration. These items, which have been marked
8 State's Exhibits 75, 71 -- I forgot to show you the
9 one other pistol, which is State's Exhibit 82 from
10 earlier, were those items properly submitted into
11 your evidence room?

12 A Yes.

13 Q And did anyone have an opportunity to alter or
14 tamper with them in any way?

15 A No.

16 Q And were those items, specifically the gunshot
17 residue kits, later properly forwarded to SLED, or
18 the South Carolina Law Enforcement Division?

19 A Yes they were.

20 MS. CAMPBELL: Thank you. I have nothing
21 further.

22 THE COURT: Cross?

23 MR. SUTHERLAND: Please the Court.

24 THE COURT: Yes.

25 *****

1 CROSS-EXAMINATION

2 BY MR. SUTHERLAND:

3 Q Ms. Goff, do you have a projectile?

4 A Somewhere in all of this, yes.

5 Q This is the projectile right here?

6 A Yes.

7 Q Now, you wouldn't know if this is what's listed
8 as a bullet fragment in any of the reports, would
9 you?

10 A In the evidence room, on our records, it is a
11 spent projectile.

12 Q All right. Thanks.

13 MR. SUTHERLAND: No further questions, Your
14 Honor.

15 THE COURT: Cross?

16 MS. PAYNE: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. PAYNE:

19 Q Investigator Goff, do you have a copy of your
20 property report up there?

21 A I do.

22 Q Did you also get submitted a item number 13, a
23 peach ring candy bag?

24 A Yes, we did.

25 Q And number 18, which is an envelope containing

1 two dollars and 20 cents in change?

2 A Yes, ma'am.

3 Q And number 70, a blue bandana?

4 A Yes.

5 MS. PAYNE: Nothing further.

6 THE COURT: Redirect?

7 MS. CAMPBELL: No, sir.

8 THE COURT: Recross?

9 MR. SUTHERLAND: No, sir.

10 THE COURT: You may step down. Thank you.

11 MS. CAMPBELL: Your Honor, may she be excused?

12 THE COURT: Any objection to the witness being
13 released?

14 MR. SUTHERLAND: No objection.

15 MS. PAYNE: Without objection, Your Honor.

16 THE COURT: You're free to go. Thank you.
17 Call your next witness.

18 MR. GOLDBERG: The State calls Investigator
19 Roe.

20 MARDEN ROE,
21 having been duly sworn, testified as follows:

22 THE CLERK: Have a seat, state your full name
23 for the record, please.

24 THE WITNESS: Marsden Lloyd Roe.

25 *****

1 DIRECT EXAMINATION

2 BY MR. GOLDBERG:

3 Q How do you spell your last name?

4 A R-O-E.

5 Q Where are you employed, sir?

6 A Richland County Sheriff's Department, sir.

7 Q And how long have you been there?

8 A This time, approximately, four years.

9 Q Can you describe for the jury your duties with
10 the sheriff's department?

11 A I'm currently an investigator in the special
12 victim's unit.

13 Q What does that entail?

14 A I investigate child abuse, elderly abuse and
15 anything of a sexual nature.

16 Q How about back in February of 2007, were you
17 working in the same capacity?

18 A No, sir. I was a burglary investigator,
19 property crimes investigator.

20 Q And were you working on the night of February
21 19th, 2007?

22 A No, sir, but I was on-call to assist on
23 homicide on-call.

24 Q Can you describe for the jury what that means?

25 A What it is we had -- during that time, we had,

1. what they call, a primary, which at that time
2 Investigator Ellis was on the primary. We take
3 turns rotating and if there is a homicide, we're the
4 ones that get called. And I was on the list to
5 assist Investigator Ellis if there was such an
6 incident.

7 Q And, at some point, did you get a call about
8 such an incident?

9 A Yes, sir.

10 Q What was the nature of that call?

11 A The nature was about a shooting or homicide
12 that occurred at the Waffle House on Two Notch Road.

13 Q Is that the Waffle House near Two Notch and
14 I-20?

15 A Yes, sir.

16 Q When you got that call, what did you do?

17 A I, basically, took a quick shower and responded
18 -- got dressed and responded to the Waffle House.

19 Q And when you arrived on the scene, what did you
20 do?

21 A I made contact with the uniformed patrol that
22 was there, the supervisor, Investigator Ellis
23 responded right behind me and, basically, gathered
24 the initial information.

25 Q Did you make contact with anyone inside the

1 Waffle House?

2 A Yes, I did, sir. I made contact with -- at
3 that time, he was in charge, it was the cook. I
4 think I got his name in my --

5 Q Do you have your notes in front of you?

6 A Yeah, I have my investigative follow-up notes.
7 A Justin Hephner, if I'm saying it right, he was the
8 cook at the time.

9 Q Based on your conversation with him, about how
10 many people were out in the parking lot that night?

11 A Approximately, 40 to -- he had said there was
12 40 teenagers out in front of the -- outside in the
13 parking lot or in the immediate area.

14 Q And after you conducted an interview with him,
15 what did you do after that?

16 A After I did that, I went to see if Investigator
17 Ellis needed any assistance. He was going to, I
18 believe, make contact with the family that had
19 arrived. I helped -- I tried to assist, it was
20 Investigator Baker there was and the forensics,
21 Allen. I then went ahead and tried to look in the
22 parking lot to assist locating any other evidence
23 that would be of value.

24 Q And over the course of the next several days,
25 did you continue to participate in the

1 investigation?

2 A Yes, I did, sir.

3 Q And what was the nature of your participation?

4 A Basically, shortly after all this and after I
5 went and helped Investigator Allen and the forensics
6 and Baker look for evidence, Investigator Ellis
7 directed me to the Summit area because there was a
8 situation where there was a drive-by type shooting
9 being reported up in that area that may or may not
10 be related.

11 Q All right. And once you did that, what did you
12 do?

13 A I returned to the investigation to --

14 Q I'm sorry. Go ahead.

15 A To assist.

16 Q At some point, I believe it was on February
17 23rd, did you make contact with a Eugene Patterson?

18 A Yes, I did, sir.

19 Q And how did you come in contact with him at
20 that time?

21 A When I arrived at work that morning, Captain
22 Smith directed me and explained that Eugene
23 Patterson was down at the jail and that I should go
24 and pick him up and bring him to the sheriff's
25 department to clear up some, I guess, some

1 conflicting information.

2 Q And you were aware that he had already given a
3 statement to the sheriff's department at that time?

4 A Yes, I was briefed to that extent.

5 Q So you went and got him and brought him back to
6 the sheriff's department?

7 A Yes, sir.

8 Q Where did you take him once you got there?

9 A Directly to Captain Smith's office, sir.

10 Q And once you got into Captain Smith's office,
11 what did you do with him? Did you get to talk to
12 him?

13 A I didn't, sir. I took a break and got a cup of
14 coffee and probably used the restroom, things like
15 that. I put him in Captain Smith's hands.

16 Q Did you advise him of his rights --

17 A No, I did not, sir.

18 Q -- when you encountered him?

19 A Not at that time, sir.

20 Q When did you advise him of his rights?

21 A He was in Captain Smith's office briefly. And
22 after I took my break, I went in and -- to see how
23 it was progressing. And Captain Smith basically
24 relayed that he was willing, you know, he was ready
25 to give a statement. And so to free up Captain

1 Smith and stuff, I went ahead and took him to my
2 cubicle at that time and then that's when I advised
3 him of his Miranda rights.

4 Q I'm going to show you what's been marked as
5 State's Exhibit 4 for I.D. purposes and you take a
6 look at that.

7 A Yes, sir.

8 Q Can you tell us what that is?

9 A This is the form that the Richland County
10 Sheriff's Department uses, format, when we advise
11 somebody of their rights.

12 Q And whose name is on the form?

13 A I filled in his name, Eugene Patterson. And it
14 has the date and time and the place, which was 5623
15 Two Notch. And it says who -- has a place for the
16 officer, investigator to fill in who's reading or
17 providing the Miranda advisement of rights and it
18 has my name, Investigator Roe, at the top.

19 Q And what was the date and time that you did
20 that?

21 A The date was February 23rd, 2007, at 1100
22 hours.

23 Q Did you then advise him of his rights?

24 A Yes, I did, sir.

25 Q Can you explain to this jury exactly how you

1 advised him of his rights?

2 A I tell him that he's probably heard this before
3 on T.V. or whatever, but bear with me, this is a
4 formality we have to do and I explain that and I go
5 down through the line.

6 I say: Before we ask you any questions, you
7 must understand your rights. You have the right to
8 remain silent. Anything you say can and -- can be
9 used against you in court. You have the right to
10 talk to a lawyer for advice before we ask you any
11 questions and to have a lawyer with you during any
12 questioning. If you cannot afford a lawyer, one
13 will be appointed for you before any questioning if
14 you wish. If you decide to answer questions now
15 without a lawyer present, you still have the right
16 to stop answering at any time. You also have the
17 right to stop answering at any time until you talk
18 to a lawyer.

19 Q And can you tell the jury what those check
20 marks are next to each of those lines?

21 A Right. That is when, basically, I tell them
22 acknowledge -- I'm going to read them to him. If
23 there's any problems, if they don't understand
24 something, just stop me and I can try to explain
25 further if it's necessary, but once they

1 acknowledge, shake their head or say uh-huh, then I
2 go ahead and check off on the left-hand side.

3 Q And then does the suspect, in this case,
4 Mr. Patterson, notate on the form that he understood
5 that?

6 A Yes, sir.

7 Q How did he do that?

8 A Well, I explain to them what they're doing is
9 signing, basically that he was -- that I did read
10 these to him and that he does understand what I just
11 read to him. And then I hand the paper to him and
12 he acknowledged by his signature.

13 Q And did you also sign it as well?

14 A Yes, I signed where it says witness.

15 Q And what's the next part of the advice of
16 rights form?

17 A Then I explain that this is the waiver part.
18 And I tell them, of course, once again, if I need to
19 explain anything, just stop me and I'll explain. I
20 said, I have read this statement of my rights and
21 understand what my rights are. I'm willing to talk
22 and answer questions. I understand and know what
23 I'm doing. No promises have been made to me and no
24 pressure or coercion.

25 And then I stop right there, that's my routine.

1 I have to say that coercion, not to insult your
2 intelligence, but coercion is a word that's usually
3 just used by lawyers, so if you were even a doctor
4 or whatever, I would explain this word because it's
5 not a normally used word. And I explain that
6 coercion, an example would be that if I told you to
7 admit to a bank robbery that you didn't do or I'll
8 lock up your ill grandmother, that that would be
9 unlawful pressure or unlawful -- that would be a
10 coercion. So then I say, I'm going to start -- I
11 asked him if he understands that, he acknowledged.

12 And then I say, I'm going to read the whole
13 sentence in its context. So I go back and say, No
14 promises have been made to me and no pressure or
15 coercion of any kind has been used against me. And
16 I say, If that's correct, I need you to circle
17 coercion and initial it, which in this case he did.
18 And then I said if you're willing to talk to me, he
19 needs to sign the form, which he did. And then I
20 witnessed that form, also.

21 Q And it appeared as though he understood his
22 rights?

23 A Yes, sir.

24 Q And he waived those rights?

25 A Yes, sir.

1 Q Had you threatened him in any way?

2 A No, sir.

3 Q Made him any promises of any kind?

4 A No, sir.

5 Q Offers of leniency?

6 A No, sir.

7 Q Did he appear to be under the influence of
8 drugs or alcohol?

9 A No, sir.

10 Q Did you deny him any comforts whatsoever?

11 A No, sir.

12 Q Bathroom, food, water?

13 A No, sir.

14 Q At any point did he indicate to you that he did
15 not want to talk to you?

16 A No, sir.

17 Q And that he wanted to talk to a lawyer?

18 A No, sir.

19 MR. GOLDBERG: Your Honor, at this time, we
20 would move State's Number 4 into evidence.

21 THE COURT: Any objection?

22 MR. SUTHERLAND: Just renewing my prior
23 objections.

24 THE COURT: Anything else?

25 MS. PAYNE: Without objection.

1 **THE COURT:** Subject to previous objection on
2 behalf of Mr. Patterson, mark it in evidence.

3 (State's Exhibit Number 4, advice of rights,
4 admitted into evidence.)

5 **BY MR. GOLDBERG:**

6 **Q** Once he waived those rights, did you proceed to
7 talk to him?

8 **A** Yes, sir.

9 **Q** Did you take a statement from him?

10 **A** Yes, I did, sir.

11 **Q** Was it a verbal discussion at first?

12 **A** Very briefly, sir.

13 **Q** And then you began to memorialize it in
14 writing?

15 **A** Right. I pulled it up on the computer. We
16 have a form that comes up on the computer.

17 **Q** I want to show you what's been marked as
18 State's 5 for I.D. purposes. Have you take a look
19 at that.

20 **A** Yes, sir.

21 **Q** And what is that item?

22 **A** It's a statement that I took from Eugene
23 Patterson.

24 **Q** Can you tell us what the date is on that
25 document?

11 A No, sir.

13 A No, sir.

15 **A** No, sir.

18 MR. SUTHERLAND: Again, renewing my previous
19 objection, Your Honor.

21 MS. PAYNE: Subject to previous objection, Your
22 Honor.

25 (State's Exhibit Number 5, statement of

1 Eugene Patterson, admitted into evidence.)

2 MR. GOLDBERG: Your Honor, permission for the
3 witness to publish the statement?

4 THE COURT: Yes, sir.

5 BY MR. GOLDBERG:

6 Q Investigator, if you would, publish that
7 statement to the jury exactly as it reads on that
8 document.

9 A It says: I, Eugene D. Patterson, understand
10 that I have the right to remain silent. Anything I
11 say can be used against me in court. I have the
12 right to talk to a lawyer for advice before you ask
13 me any questions and to have a lawyer with me during
14 any questioning. If I cannot afford a lawyer, one
15 will be appointed for me before any questioning, if
16 I wish. If I decide to answer questions now without
17 a lawyer present, I still have the right to stop
18 answering at any time. I also have the right to
19 stop answering at any time until I talk to a lawyer.
20 Do you make the following -- do make the following
21 statement.

22 It has a Q, of course, for question. It says,
23 Investigator M. Roe, which is me, and then an R for
24 Eugene Patterson, meaning response.

25 The first question I asked him: Is there

1 anything you wish to add, change or clarify in your
2 written statement you provided yesterday about the
3 shooting incident at the Waffle House on the 19th of
4 February of 2007?

5 Response: Yes. I did not go to the Waffle
6 House in my green car. I was at Angelo's house when
7 Bay got a phone call from either Dameon or Raymond
8 saying that Corey and Chad were about to fight at
9 the Waffle House. Me, Bay, in quotation -- or
10 parentheses I should say, Karmindae, and Oliver
11 jumped in Oliver's burgundy Malibu and went to the
12 Waffle House.

13 When we got there, we all went inside. I
14 started talking to a couple girls and Oliver and Bay
15 went outside. When I started to come outside the
16 Waffle House, I saw a white Grand Am pull up into
17 the gas station parking lot. Raymond, Chad and some
18 other people that I don't know by name got out of
19 a -- out of the white Grand Am and ran over to the
20 Waffle House. A girl that I don't know was trying
21 to tell them not to fight. They just started
22 fighting anyway and that is when Chad hit Corey in
23 the face and it looked like he was going down. That
24 is when a light-skinned dude with short hair wearing
25 a red shirt hit Chad in the back of the head.

1 Then I saw a guy over towards the back parking
2 lot shoot up into the air one time and then into the
3 crowd two times. The gun was -- the gun he was
4 shooting looked like...

5 Q Just continue as it appears on the document.

6 A Like a, and then there's a blank. I ran to
7 Oliver's car and Oliver started shooting straight
8 back at the guy that was shooting. Bay was already
9 in the driver's seat of the car and I jumped into
10 the front passenger seat. Oliver jumped into the
11 back seat and they pulled out and we got out of
12 there. We went back to Angelo's house. Somebody
13 came and picked up Bay and I left in my car and
14 Oliver left in his car.

15 Question: Can you describe Oliver's car?

16 Response: It is a burgundy Malibu with tinted
17 windows and four doors, that's all I remember about
18 it.

19 Then there is a question with a blank space, a
20 R with a response of another blank space.

21 The next question: Why did you say in your
22 previous statement that his name was Rob?

23 Response: Because Latifa told me that is who
24 she heard was shooting.

25 Question: Do you know the name of the guy that

1 was shooting from the back area of the parking lot?

2 Response: No.

3 What kind of gun was Oliver shooting and what
4 happened to it?

5 I don't know for sure, but it looked like a
6 small caliber revolver. I didn't -- I didn't not
7 see any shell casings drop when he was firing the
8 pistol, but I just don't know for sure what kind it
9 was.

10 A question and a blank space, an R for
11 response, a blank space.

12 A question: Is this statement now the complete
13 truth about what happened in this incident?

14 Response: Yes. I was not completely honest in
15 my first statement because I'm worried that somebody
16 will hurt my family.

17 Question: Is there anything you wish to add to
18 this statement?

19 The answer is no.

20 Then I put the slash marks, end of statement,
21 slash marks, that way it assures them that nothing
22 is -- in other words, that's definitely the end of
23 the statement.

24 Q And, at this point, did Mr. Patterson have an
25 opportunity to review that statement?

1 A He did, sir.

2 Q And explain how that happened.

3 A Yes. I stopped Sergeant McDaniels in the hall
4 to witness this statement and to have it notarized
5 and...

6 Q Can you publish for the jury the portion of the
7 statement at the bottom that indicates where
8 Mr. Patterson signed on each of those pages?

9 A Sure. It says, I have made the foregoing
10 statement freely and voluntarily without fear,
11 threat, promise or reward or hope of any kind -- of
12 reward or hope of reward of any kind. And then he
13 signed his name and I witnessed that.

14 And then it says, To certify that I have read
15 or read to me the foregoing statement consisting of
16 three pages and a true copy has been given to me on
17 this 23rd day of February 2007 and sworn. And
18 that's where Sergeant McDaniels, who is a notary,
19 dealt with that portion and Eugene Patterson signed,
20 once again, at the bottom of that.

21 Q All right. Thank you, sir. And several days
22 later, I'm going to jump you ahead to February 28th
23 of 2007, did you come into contact with a Andre
24 Tayson Boone?

25 A Yes, I did, sir.

1 Q What was the nature of that contact?

2 A I was assisting in the search warrant out to
3 Meadow Lakes at his residence. While we were there,
4 I believe, it was Captain Smith had made contact
5 with his mother that was trying to enroll him into
6 school and it was arranged that she would bring him
7 directly back to his residence. Like I said, I just
8 assisted with the search warrant, but then that's
9 when I made contact with him.

10 Q What happened when you made contact with him?

11 A He was either placed under -- placed in
12 handcuffs. I knew there was an outstanding arrest
13 warrant also besides the search warrant that was
14 being executed. I cannot recall if it was myself or
15 some other investigator at the scene, placed him in
16 cuffs, after he was able, I believe, hug his mother
17 and was placed -- I placed him in my car and drove
18 him to the Richland County Sheriff's Department
19 headquarters.

20 Q Once you got to headquarters, what did you do
21 with them?

22 A I advised him of his rights.

23 Q And where was that at the headquarters?

24 A In my cubicle again.

25 Q Let me show you what's been marked as State's

1 Exhibit 6 for I.D.

2 A If I can correct myself. That was in Captain
3 Smith's office, he has an actual office.

4 Q When you were with Mr. Boone, it was in Captain
5 Smith's office?

6 A Correct.

7 Q And that's when you advised him of his rights?

8 A Yes, sir.

9 Q And what is the item I just handed you, State's
10 6?

11 A Once again, it's an advisement of rights form
12 that the Richland County Sheriff's Department uses.

13 Q And who was it for?

14 A Andre Tayson Boone.

15 Q And can you tell the jury when and where that
16 document was executed?

17 A Right. The place was at 5623 Two Notch Road,
18 which is headquarters. And the officer that advised
19 him of his rights, Investigator Roe. And it has
20 Investigator Martin that was there with me. The
21 date is February 28th, 2007. The time that I
22 conducted this was at 1015 hours, which is military,
23 10:15 a.m. civilian time.

24 Q And can you please describe for this jury
25 exactly how you advised Mr. Boone of his rights?

1 A Once again, I tell them they've probably heard
2 it either likely on T.V., but it's a formality, I
3 have to advise him. He might be familiar with
4 somebody being read their rights or heard it on
5 T.V., but bear with me. And I say, I'm going to
6 explain these to you and I just need you to
7 acknowledge as I read them and inform you of them.

8 And I say, Before we ask you any questions, you
9 must understand your rights. He acknowledged and
10 then I checked the block to the left. And you have
11 the right to remain silent. And I check the block.
12 Anything you say can be used against you in court.
13 He acknowledged, I checked the block on the left
14 side. You have the right to talk to a lawyer for
15 advice before I ask you any questions and to have a
16 lawyer with you during any questioning. He
17 acknowledged, I checked the block on the left. If
18 you cannot afford a lawyer, one will be appointed
19 for you before any questioning, if you wish. He
20 acknowledged, I checked the block on the left. If
21 you decide to answer questions now without a lawyer
22 present, you still have the right to stop answering
23 at any time. You also have the right to stop
24 answering at any time until you talk to a lawyer.
25 He acknowledged, I checked the block.

1 I explained that, you know, asked him if he
2 understood these. And then, basically, I'm going to
3 ask him to sign here that's acknowledging that I did
4 read these to him and that he does understand them.
5 He said he did and he signed on the form and then
6 myself and Investigator Martin witnessed this.

7 Q And once he acknowledged that he understood his
8 rights, did he, in fact, waive his rights?

9 A Yes. Then I explain that we'll go on to the
10 waiver portion of the rights -- rights advisement.
11 I tell him, I have read this statement of my rights
12 and understand what my rights are. I am willing to
13 talk and answer questions and I understand and know
14 what I'm doing. No promises have been made to me
15 and no pressure or coercion.

16 And once again, I stop. I explain that it's
17 not a common word and not to insult anybody's
18 intelligence, but it's a word used by lawyers,
19 basically. And I said an example would be if I tell
20 you to admit to a bank robbery that you didn't do or
21 I'm going to lock up your ill grandmother, that
22 would be unlawful coercion. I say, But to put it in
23 context, I'm going to read the whole statement. He
24 acknowledges that he understands that concept or the
25 word -- the definition or my example.

1 And I say, I'm going to start back at the
2 beginning of the sentence so I put it in context.
3 So I say, No promises have been made to me and no
4 pressure or coercion of any kind has been used
5 against me. I said, if that's true and you are
6 willing to talk to me, I need you to sign at the
7 bottom of that form, which he did. And then myself
8 and Investigator Martin witnessed that.

9 Q Did he also indicate that he understood what
10 coercion meant?

11 A Yes, he did. He circled it and initialed it.

12 Q And, at this point, was he promised anything?

13 A No, sir.

14 Q Was he threatened in any way?

15 A No, sir.

16 Q Offers of leniency?

17 A No, sir.

18 Q Did he appear to you to be under the influence
19 of any alcohol or drugs?

20 A No, sir.

21 Q Was he denied any comforts?

22 A No, sir.

23 Q Water, food, bathroom, anything like that?

24 A No, sir.

25 Q Did you threaten him in any way?

1 A No, sir.

2 Q At any point did he indicate to you that he
3 wanted to talk to a lawyer?

4 A No, sir.

5 Q Or that he wanted to stop talking?

6 A No, sir.

7 MR. GOLDBERG: Your Honor, at this time, we'd
8 move State's 6 into evidence.

9 MR. SUTHERLAND: No objection.

10 MS. PAYNE: Without objection, Your Honor.

11 THE COURT: Mark it in the record.

12 (State's Exhibit Number 6, advice of rights,
13 admitted into evidence.)

14 BY MR. GOLDBERG:

15 Q And, at that point, did you take a statement
16 from him?

17 A Yes, I did, sir.

18 Q Was Investigator Martin still in the room?

19 A At that point, the written statement?

20 Q Yes, sir.

21 A Not for the -- he might have been there for
22 just a small, very small portion when I started the
23 written statement, but he was there when we just
24 verbally talked.

25 Q So were you joined by another investigator?

1 A Yes, sir, Captain Smith returned.

2 Q And, initially, when the statement was taken,
3 who was actually typing out the statement?

4 A That was me, sir.

5 Q Did you finish typing out the statement?

6 A No, sir.

7 Q Who finished it?

8 A Captain Smith.

9 Q All right. And then once you and Captain Smith
10 finished taking the statement from Mr. Boone, did
11 you end up leaving the sheriff's department with him
12 to go somewhere?

13 A Yes, sir. We went to -- during the written
14 statement, he provided information that basically
15 suggested that there might be evidence in the dead
16 end of a street in Meadow Lakes. So myself, Captain
17 Smith and Mr. Boone did go out to that area.

18 Q Once you got out there, what did you do?

19 A We discovered some shell casings where
20 Mr. Boone said that there was a possibility that
21 they would be there.

22 Q And were they collected?

23 A Yes, I collected them, sir.

24 Q And placed in evidence?

25 A Yes, and I placed them into evidence.

1 MR. GOLDBERG: Beg the Court's indulgence.

2 THE COURT: Yes, sir.

3 (Pause.)

4 BY MR. GOLDBERG:

5 Q You said you collected some shell casings out
6 there?

7 A Yes, sir.

8 Q Put them into evidence?

9 A Yes, sir.

10 Q Did you also have contact with some officers
11 from the Calhoun County Sheriff's Department at a
12 later date?

13 A Yes, sir, that was Bill Cartwright.

14 Q What was the nature of that contact you had
15 with him?

16 A I believe to pick up -- I picked up a pistol
17 from him.

18 Q Show you State's 82 that's in evidence. Do you
19 recognize that?

20 A Yes, I do, sir.

21 Q Is that the pistol you collected from Calhoun
22 County?

23 A Yes, sir.

24 Q And what did you do with it once you got it?

25 A I, basically, took it directly to our evidence

1 room, placed it in our evidence.

2 MR. GOLDBERG: Beg the Court's indulgence.

3 THE COURT: Yes, sir.

4 (Pause.)

5 BY MR. GOLDBERG:

6 Q One more thing, I just need to show you what's
7 been marked as State's Exhibit 7 for I.D. purposes
8 only. Do you recognize that?

9 A Yes, sir.

10 Q And what do you recognize that to be?

11 A That's the statement taken from Andre Tayson
12 Boone.

13 Q And how many pages is it?

14 A Eight pages of the written statement, plus an
15 additional diagram.

16 Q And what's the date on the statement?

17 A The 28th day of February 2007, sir.

18 Q And that's the statement that you witnessed and
19 took from him after you advised him of his rights;
20 is that correct?

21 A Yes, sir.

22 MR. GOLDBERG: Thank you, sir. Those are all
23 my questions.

24 THE COURT: Do you anticipate cross to be
25 lengthy?

1 **MR. SUTHERLAND:** I don't believe that mine
2 would be too lengthy.

3 **THE COURT:** It's time for a break.

4 All right. Ladies and gentlemen, we'll take
5 about a ten minute break. Don't discuss the case.

6 (The jury retires to the jury room.)

7 **THE COURT:** All right. During the break, you
8 may step down, but you can't discuss your testimony
9 with anybody, understand?

10 **THE WITNESS:** Yes, sir.

11 **THE COURT:** Thank you. We're at ease for ten
12 minutes.

13 (Brief Recess.)

14 **MS. CAMPBELL:** Your Honor, if I could, State's
15 Exhibit 7, which is going in through a later witness
16 that I wanted to go ahead -- the redacted version, I
17 used the original two pages from the original
18 statement and I have substituted in the last six
19 pages with the redactions in it. And I will hand it
20 up to the Court for your approval, but defense
21 counsel has already approved it. And I did take out
22 that -- you were concerned, I believe, about the
23 nine millimeter reference, I did take that out, but
24 I want to make sure that I didn't leave anything in
25 that would offend anyone. And I just thought this

1 might be the appropriate time.

2 (Pause.)

3 THE COURT: The only concern I have is, and I'm
4 not trying to interject myself into the trial, is
5 the references to they. I see that you redacted the
6 other person and put the Crip, but it still refers
7 to they and I do have some concerns about that.
8 It's several places in here. And I was trying to
9 think of a way to deal with it. I think it might be
10 better if you can refer to the shots, but -- it's
11 not going in now?

12 MS. CAMPBELL: No, sir. It's not going in
13 until Captain Smith. So we've got time to do it.

14 THE COURT: You can look at it and see if you
15 understand what I'm talking about.

16 MS. CAMPBELL: I'll look at it, Your Honor.

17 THE COURT: Are you ready for the jury, Mr.
18 Sutherland?

19 MR. SUTHERLAND: Yes, sir.

20 THE COURT: Are you ready?

21 MS. PAYNE: Yes, Your Honor.

22 THE COURT: All right. Bring in the jury,
23 please.

24 (The jury returns to the courtroom.)

25 THE COURT: Cross-examination.

1 MR. SUTHERLAND: Please the Court.

2 THE COURT: Yes.

3 CROSS-EXAMINATION

4 BY MR. SUTHERLAND:

5 Q Investigator Roe, sir, at the time of -- that
6 you took this statement, he had been in custody
7 continually for how long?

8 A Can you tell me which statement you're
9 referring to, sir?

10 Q I'm sorry. The statement of the 23rd. Do you
11 want me to bring it up?

12 A You're referring to Eugene Patterson, sir?

13 Q Yes, sir.

14 A Okay. Go ahead with your question. I
15 understand which statement you're referring to now.

16 Q This is the statement of the 23rd.

17 A All right, sir.

18 Q He had been in custody continually for how
19 long?

20 A When I picked him up, he was at the detention
21 center, sir.

22 Q And he had given -- you testified -- I mean, we
23 heard testimony about another statement. He had
24 been in custody continually since that statement?

25 A That's my understanding, yes, sir.

1 Q And no -- neither he nor anyone else had been
2 charged with the murder at that time; is that
3 correct?

4 A Not at that point, no, sir.

5 Q And it would be another six days later before
6 y'all began arresting people and charging them with
7 murder, approximately a week?

8 A That sounds about right, sir.

9 Q When you -- you stated that when you first
10 showed up on the scene that night of the 19th, I'm
11 sorry to jump around like that, but I had to -- you
12 reported or -- no, you don't report to, you checked
13 in with the uniform patrol supervisor; do you recall
14 testifying to that?

15 A Yeah, Corporal Howie Austin, I believe, is the
16 gentleman I made contact with.

17 Q Do you remember approximately -- do you
18 remember what time that was?

19 A I believe I got -- according to my notes, I got
20 contacted by Sergeant McRoberts at 0030. I don't
21 recall for sure if I took a shower, but I threw
22 water on my face at least and threw on clothes and
23 responded. So I probably arrived there at -- in
24 fact, my notes say 0055 hours is when I arrived, I
25 believe.

1 Q So it was -- so Corporal Austin was in charge
2 at the scene when you arrived?

3 A To the best of my knowledge, yes, sir.

4 Q Who was in control of the crime scene log; do
5 you recall?

6 A No, I don't remember that.

7 Q You do recall -- do you recall seeing initially
8 the crime scene log?

9 A Yes, sir.

10 Q Did you fill out any other information on the
11 crime scene log?

12 A No, sir.

13 Q Was a senior crime scene investigator, did --
14 were you approved to enter the crime scene by the
15 initials of the senior crime scene investigator?

16 A They don't have any choice. They know that
17 myself and Ellis was responding and we would be
18 handling the homicide investigation.

19 Q All I'm asking is did anyone initial to let you
20 into the scene?

21 A Not that I'm aware of, sir.

22 Q Okay.

23 MR. SUTHERLAND: I have no further questions of
24 this witness at this time, Your Honor.

25 THE COURT: Cross?

1 MS. PAYNE: Thank you, Your Honor.

2 THE COURT: Yes, ma'am, Ms. Payne.

3 CROSS-EXAMINATION

4 BY MS. PAYNE:

5 Q Good afternoon, Investigator Roe.

6 A Good afternoon.

7 Q On February 19th, you were doing lots of
8 investigation work, you were talking to many people?

9 A Yes, ma'am.

10 Q Okay. And I believe when you first responded,
11 you got some information that two males in a black
12 Nissan had been involved in the shooting of
13 Mr. Wright?

14 A We had information that they was possibly
15 involved, yes.

16 Q Okay. That was a black Nissan car?

17 A It was a black Nissan car, yes.

18 Q Did you do any follow-up investigation on that?

19 A I went to the Summit area, I believe. Sand Pine
20 is the road, in reference to a black Nissan in a
21 drive-by shooting.

22 Q A little bit further on you got some
23 information from someone inside the Waffle House; is
24 that correct?

25 A Yes. I talked to the cook and I made contact

1 with the cook, which basically was the person in
2 charge at the Waffle House at that time of night.

3 Q What was his name?

4 A Justin, hopefully I'm saying it right, Hephner.

5 Q And through your investigation, you learned
6 that there had been a prior incident involving a
7 revolver earlier in the Waffle House that night?

8 A Correct. According to Mr. Hephner, yes, there
9 was an earlier incident.

10 Q And he was the cook inside the Waffle House?

11 A Yes, ma'am.

12 Q Okay. I believe you testified earlier that you
13 responded to Meadow Lakes, Mr. Boone's residence, to
14 execute a search warrant?

15 A Yeah, that was later in the investigation, yes,
16 ma'am.

17 Q Not the same day?

18 A Correct.

19 Q And, at that time, Mr. Boone and his mother was
20 not there? They were not there?

21 A Correct.

22 Q They were actually trying to enroll Mr. Boone
23 in school?

24 A Yes, ma'am.

25 Q I believe he's in 10th grade -- he was in 10th

1 grade at the time, is that what you put on his
2 advice of rights sheet?

3 A I don't have a copy of that, but that sounds
4 correct, 16 years old, I believe, at the time.

5 Q Yes, sir. Thank you. And, in fact, it was
6 your testimony that you guys were talking to his
7 mother and trying to get her back and him back to
8 the home?

9 A Once we -- your question is did we make
10 contact?

11 Q With her?

12 A Yes, Captain Smith did. He was in charge.

13 Q Okay. And you actually had an arrest warrant
14 for Mr. Boone at that time?

15 A Correct.

16 Q Did you inform Ms. Boone of that at the time
17 you were talking to her?

18 A Once again, Captain Smith talked to Ms. Boone,
19 I did not. I was still searching.

20 Q So we need to clarify that with Captain Smith?

21 A Right. I did not speak to his mother.

22 Q Okay. When Mr. Boone arrived back on the
23 scene, did you tell him that he had an arrest
24 warrant waiting for him?

25 A Like I said, I'll let Captain Smith lead on

1 that. He spoke to the mother. I don't know if he
2 -- I would be speculating if I said who notified him
3 or his mother.

4 Q Do you know what the arrest warrant was for?

5 A I believe it was for breach of peace high and
6 aggravated nature, I believe.

7 Q And, actually, when you guys were executing the
8 search warrant, you were looking for a .22; is that
9 correct?

10 A I don't have a copy of the search warrant, but,
11 yes, a weapon.

12 Q And Mr. Boone actually helped you guys find
13 the .22 just so you'd stop searching his mother's
14 home?

15 A Yes, I do recall -- yeah, it was in a sock
16 drawer or something.

17 Q You further testified that after he gave a
18 statement to you, I believe it was an eight page
19 statement; is that correct?

20 A I believe it was eight pages, plus the diagram,
21 but I don't have a copy in front of me.

22 Q That he actually voluntarily took you to where
23 this -- the nine millimeter had been fired?

24 A Yes, ma'am.

25 Q So he took you there?

1 A Yes, ma'am.

2 Q Did you ask for him to take you there?

3 A I believe, yes, ma'am.

4 Q Or did he volunteer the information?

5 A Well, we asked if he would mind, in other
6 words, so we wouldn't be wasting, how can you say
7 it, time is of an essence when you're doing a
8 homicide investigation. He was cooperative and so
9 we asked, yes, take us there rather than us be out
10 there for hours trying to find out -- when you're
11 talking about a dead end street. I was familiar
12 with it from my patrol days, but there is a pretty
13 big area out there, and if he could, you know, if it
14 was valuable in the sense that he could take us
15 directly to where he had fired that weapon before.

16 Q Absolutely. So he helped you with that?

17 A Yes, ma'am.

18 Q I believe you also took statements from Herbert
19 Carter, is that correct, and Glenn Wright?

20 A That sounds correct, ma'am.

21 Q You've been in here the whole time, is that
22 correct, the whole time of this trial?

23 A Yes, ma'am.

24 Q Have you heard from Herbert Carter or Glenn
25 Wright? Have you seen them testify?

1 A No, ma'am.

2 MS. PAYNE: Beg the Court's indulgence.

3 THE COURT: Yes, ma'am.

4 (Pause.)

5 MS. PAYNE: Nothing further, Your Honor.

6 THE COURT: Redirect?

7 MR. GOLDBERG: Nothing further, Your Honor.

8 THE COURT: Anything else?

9 MR. SUTHERLAND: Just one question, sir.

10 RECROSS-EXAMINATION

11 BY MR. SUTHERLAND:

12 Q Sir, you just testified that time is of the
13 essence in a homicide investigation; do you recall
14 that testimony?

15 A Yes, sir.

16 MR. SUTHERLAND: No further questions, Your
17 Honor.

18 THE COURT: Anything else?

19 MS. PAYNE: Nothing further, Your Honor.

20 THE COURT: Thank you, sir. You may step down.
21 Call your next witness.

22 MR. GOLDBERG: State calls Investigator Martin.

23 ROBERT MARTIN,

24 having been duly sworn, testified as follows:

25 THE CLERK: Have a seat in the witness box and

1 state your name for the record, please.

2 THE WITNESS: Robert Martin.

3 DIRECT EXAMINATION

4 BY MR. GOLDBERG:

5 Q Investigator Martin, where are you employed?

6 A Richland County Sheriff's Department.

7 Q How long have you been there?

8 A Total, since about 2000.

9 Q And can you describe for the jury your duties
10 with the sheriff's department?

11 A Currently assigned to the special victim's unit
12 as a sex scenes investigator.

13 Q Back in February of '07, what were you doing
14 with the sheriff's department?

15 A Same job, same title.

16 Q Did you have an occasion to come in contact
17 with an Andre Tayson Boone back in February of '07?

18 A I did.

19 Q And what was the nature of that contact?

20 A Investigator Roe had him in custody and asked
21 me to assist in an interview.

22 Q At this point, had you been involved in the
23 investigation of the shooting at a Waffle House on
24 Two Notch Road in any way?

25 A No, I had not.

1 Q Okay. So when you came in contact with
2 Mr. Boone, what happened?

3 A We were in Captain Smith's office at
4 headquarters. We went in, introduced myself to
5 Tayson, Mr. Boone. Mr. Roe then advised him of his
6 rights.

7 Q You witnessed him advising him of his rights?

8 A I did.

9 Q At any point was Mr. Boone threatened in any
10 way?

11 A No.

12 Q Were there any promises made to him?

13 A No.

14 Q Any offers of leniency?

15 A No.

16 Q Was he denied any comforts of any sort?

17 A No.

18 Q Did he appear to you to be under the influence
19 of any drugs or alcohol?

20 A No.

21 Q At any point did he indicate that he wanted to
22 talk to a lawyer?

23 A No.

24 Q At any point did he indicate that he did not
25 want to talk to y'all?

1 A No.

2 Q And did he eventually waive his rights?

3 A He did.

4 Q Did he provide a statement?

5 A He did.

6 Q And before that, you said Investigator Roe went
7 through his advice of rights with him?

8 A That's correct.

9 Q Show you State's 6, is that the form that he
10 went through with him?

11 A Yes.

12 Q Did you witness that?

13 A I did.

14 Q And did you notate that on that form somewhere?

15 A I did. My signature's on the advice and the
16 waiver of rights.

17 Q At what point did you sign the document?

18 A After it was explained to Mr. Boone, after his
19 signature.

20 Q After he was advised of his rights and after he
21 waived those rights?

22 A That's correct.

23 Q At that point a statement was taken from him?

24 A Yes.

25 Q And you were in the room when that began; is

1 that correct?

2 A That's correct.

3 Q Initially, was the statement being taken down
4 on a computer right away or was there an oral
5 conversation?

6 A It was an oral conversation.

7 Q And when the oral conversation was taking
8 place, what, if anything, did Mr. Boone tell you at
9 first about a weapon that he had?

10 A At first, he gave a statement that he was in
11 possession of a .22 and had fired it in the air
12 while he was at the scene.

13 Q At some point did you learn this information
14 not to be accurate?

15 A Sergeant Ewing of the sheriff's department was
16 interviewing another suspect in the same building in
17 pretty close proximity, he came down with other
18 information. At which time Mr. Boone changed from
19 a .22 to say that he had a nine millimeter pistol
20 and had fired some shots in the air and then had
21 some retaliation fire from somewhere and leveled it
22 towards where the firing was coming from and fired
23 some more shots.

24 Q Were you present when the statement was reduced
25 to writing?

1 A It had been -- the beginning of it when Captain
2 Smith came in the room, I had another appointment
3 that I had to go to and I left.

4 Q Did you ever have any other contact with
5 Mr. Boone after that?

6 A No, sir.

7 Q Did you ever have any other involvement in the
8 case other than that?

9 A No, sir.

10 MR. GOLDBERG: Thank you. That's all I have.

11 THE COURT: Cross?

12 MR. SUTHERLAND: I have no questions of this
13 witness, Your Honor.

14 THE COURT: Cross?

15 MS. PAYNE: Nothing further.

16 THE COURT: Thank you, sir. You may step down.
17 Call your next witness, please.

18 MR. GOLDBERG: State calls Investigator
19 McDaniels -- Sergeant McDaniels.

20 WALTER SHAWN MCDANIELS,
21 having been duly sworn, testified as follows:

22 THE CLERK: State your name for the record,
23 please.

24 THE WITNESS: My name is Walter Shawn
25 McDaniels.

1 DIRECT EXAMINATION

2 BY MR. GOLDBERG:

3 Q Sergeant McDaniels, is that correct?

4 A Yes, it is.

5 Q You're employed at Richland County Sheriff's
6 Department?

7 A Yes, I am.

8 Q How long have you been there?

9 A Nine years.

10 Q And can you tell the jury what your duties are
11 with the sheriff's department?

12 A Currently, I'm the sergeant over cold case
13 homicide.

14 Q Was that what you were doing back in February
15 of '07?

16 A Yes, it was.

17 Q Were you involved in the investigation of the
18 shooting at the Waffle House on I-20 and Two Notch?

19 A Very briefly, yes, sir.

20 Q And what was the nature of that involvement?

21 A I was stopped by Investigator Roe who wanted me
22 to notarize a statement that he had just taken.

23 Q Was that in regards to a Eugene Patterson?

24 A Yes, it was.

25 Q And were you present when the entire statement

1 was taken?

2 A No, I wasn't.

3 Q And when you say he stopped you to notarize the
4 statement, what does that mean?

5 A At the end of the statement, there's a portion
6 on the actual form that is --

7 Q Let me show you State's Exhibit 5, work off
8 that.

9 A Again, the bottom left portion of the actual
10 statement, there's a spot there for an actual notary
11 to sign, swearing the individual to that statement.

12 Q And did you ask him any questions?

13 A I asked him if that was his statement and if it
14 was the truth and nothing but the truth and he
15 stated yes.

16 Q And then did he indicate that on the statement?

17 A He indicated that this was his statement by
18 actually signing it in two places on each sheet.

19 Q Did he do that on every page?

20 A Yes, he did.

21 Q And by doing so, he indicated that this was his
22 statement?

23 A Yes, sir.

24 Q While you were there with him, did you threaten
25 him in any way?

1 A No, I didn't.

2 Q Did you promise him anything?

3 A No.

4 Q Any offers of leniency?

5 A No, sir.

6 Q Did he appear to understand what he was doing?

7 A Yes, he did.

8 Q Did he appear to be under the influence in any
9 way?

10 A No, he did not.

11 Q Did he ever ask for an attorney?

12 A No, sir.

13 MR. GOLDBERG: That's all I have. Thank you.

14 THE COURT: Cross?

15 MR. SUTHERLAND: Just briefly, Your Honor.

16 THE COURT: Yes, sir.

17 CROSS-EXAMINATION

18 BY MR. SUTHERLAND:

19 Q Sergeant McDaniels.

20 A Sir?

21 Q You notarized the statement, you don't really
22 know too much about this otherwise; is that correct?

23 A No, sir.

24 MR. SUTHERLAND: No further questions, Your
25 Honor.

1 THE COURT: Cross?

2 MS. PAYNE: Nothing from us, Your Honor.

3 THE COURT: Anything else?

4 MR. GOLDBERG: No, sir.

5 THE COURT: Thank you, sir. You may step down.

6 Call your next witness.

7 MS. CAMPBELL: State would call Investigator

8 Golden.

9 CHRIS GOLDEN,

10 having been duly sworn, testified as follows:

11 THE CLERK: Have a seat in the witness box,

12 state your name for the record, please.

13 THE WITNESS: My name is Chris Golden.

14 DIRECT EXAMINATION

15 BY MS. CAMPBELL:

16 Q Investigator Golden, where are you employed?

17 A Calhoun County Sheriff's Office.

18 Q Calhoun County, does that include the Saint

19 Matthews area?

20 A Yes, ma'am.

21 Q Back in the end of February 1st -- or March of

22 2007, were you contacted by the Richland County

23 Sheriff's Department?

24 A Yes, ma'am.

25 Q And was that to assist in recovering some

1 evidence in this case?

2 A Yes, ma'am.

3 Q And, specifically, what type of evidence were
4 you looking for?

5 A I was instructed to look for a particular type
6 of handgun.

7 Q And did you make contact with a person who
8 lives in the Saint Matthews area?

9 A Yes, ma'am.

10 Q Who did you make contact with?

11 A I believe it was the sister -- I can't think of
12 the name off the top of my head.

13 Q Was the last name Boone -- excuse me --
14 Feldman?

15 A Yeah.

16 Q I show you what's been marked as State's Number
17 82. Does that have the information, pertinent
18 information, you need on it?

19 A Yes, ma'am.

20 Q And what was the name?

21 A I believe this will be Mr. Feldman's sister,
22 she's a Hagar.

23 Q She's a Hagar?

24 A Yes, ma'am.

25 Q And so you made contact with her. And what was

1 the purpose in you making contact with Oliver
2 Feldman's sister?

3 A The purpose was, from my recollection, that the
4 investigators was told by Mr. Oliver Feldman that
5 there was a handgun in a particular coat located in
6 his bedroom.

7 Q Did you make an attempt to recover the handgun?

8 A Yes, ma'am.

9 Q And were you able to recover that handgun?

10 A We searched the room looking for this
11 particular coat that Mr. Feldman described to the
12 investigators. We couldn't find it at first. We
13 looked in his bedroom closet, coats, under the bed,
14 shoe boxes just in case, but we could not find it at
15 first until later that evening.

16 Q And later that evening, did you make contact
17 again with the same person?

18 A It was the -- Mr. Feldman's mom.

19 Q And was she able to provide you with additional
20 information which enabled you to find this pistol?

21 A She said she located the coat with the pistol
22 in it.

23 Q Did she in fact -- did you collect that that
24 evening?

25 A Yes, ma'am, I did.

1 Q And I show you a chain of custody form. What
2 date did you actually collect and log that pistol
3 into evidence?

4 A That was March the 1st of 2007.

5 Q And I show you State's Exhibit Number 82. Is
6 that the actual pistol?

7 A Yes, ma'am.

8 Q Once you collected the pistol, did you then log
9 it into your evidence room?

10 A Yes, ma'am.

11 Q And captain -- is it Captain Cartwright?

12 A Yes, ma'am.

13 Q Captain Cartwright ultimately would have taken
14 control of that at that point?

15 A Yes, ma'am.

16 Q While you had this pistol in your possession,
17 did you alter it, change it or do anything with it?

18 A The only thing I did was put it in a brown
19 paper bag along with the coat, bagged it and sealed
20 it and took it back to my sheriff's office.

21 Q And then you logged it into office?

22 A I turned it over to Captain Cartwright.

23 Q Who would have logged it into evidence?

24 A Yes, ma'am.

25 MS. CAMPBELL: Thank you. I don't have

1 anything further.

2 THE COURT: Cross?

3 MR. SUTHERLAND: I have no questions for this
4 witness, Your Honor.

5 THE COURT: Cross?

6 MS. PAYNE: No questions from Mr. Boone.

7 THE COURT: Thank you. You may step down.

8 MS. CAMPBELL: The State would call Captain
9 Cartwright.

10 WILLIAM CARTWRIGHT, III,
11 having been duly sworn, testified as follows:

12 THE CLERK: State your name for the record,
13 please.

14 THE WITNESS: My name is William Alexander
15 Cartwright, III.

16 DIRECT EXAMINATION

17 BY MS. CAMPBELL:

18 Q Captain Cartwright, where are you employed?

19 A Calhoun County Sheriff's Office.

20 Q How long have you worked there, sir?

21 A I've got a total of ten years at this
22 department.

23 Q I want to turn your attention back to March of
24 2007. Did you come in possession of State's
25 Exhibit, I believe, it's 82?

1 A Yes, ma'am, I did.

2 Q And I show you a copy of your evidence report
3 sheet. Is that the custody form?

4 A Yes, ma'am, it is.

5 Q And when did Investigator Golden turn that item
6 over to you?

7 A Investigator Golden? Yes, ma'am. I received
8 it, it appears to be, March 1st of '07.

9 Q And, ultimately, did you then take it into your
10 custody or into the police department's custody?

11 A Yes, ma'am, I did.

12 Q And, ultimately, did you then turn it over to,
13 I believe, Investigator Roe from the Richland County
14 Sheriff's Department?

15 A Yes, ma'am, I did.

16 Q When was that transfer made?

17 A Appears to be March 5th of '07.

18 Q During the time period that you had that pistol
19 in your custody, did you do anything to it, alter it
20 in any way or change it?

21 A No, ma'am, I did not.

22 Q Did anyone else have access to it?

23 A No, ma'am, they did not.

24 MS. CAMPBELL: Thank you, sir. I have nothing
25 further.

1 THE COURT: Questions?

2 MR. SUTHERLAND: No questions of this witness,
3 Your Honor.

4 MS. PAYNE: No questions, Your Honor.

5 THE COURT: Thank you, sir. You may step down.
6 Call your next witness.

7 MR. GOLDBERG: The State calls Chad Robinson.

8 MS. CAMPBELL: Your Honor, may these last two
9 witnesses be excused to go back to Calhoun?

10 THE COURT: Any objection to those witnesses
11 being released?

12 MS. PAYNE: Without objection, Your Honor.

13 MR. SUTHERLAND: No objection, Your Honor.

14 THE COURT: You're free to go. Thank you very
15 much.

16 CHAD ROBINSON,
17 having been duly sworn, testified as follows:

18 THE CLERK: Have a seat in the witness box,
19 state your name for the record.

20 THE WITNESS: Chad Robinson.

21 DIRECT EXAMINATION

22 BY MR. GOLDBERG:

23 Q Chad, how old are you?

24 A Twenty.

25 Q Did you grow up in Columbia?

1 A Yes, sir.

2 Q Where did you grow up, what part of town?

3 A Ridge Wood.

4 Q Did you go to high school here?

5 A Yes, sir.

6 Q Where did you go to high school?

7 A Dutch Fork, Eau Claire.

8 Q And I want to take you back to February of

9 2007, February 19th. Do you remember what you were

10 doing that night?

11 A Yes, sir. I was with all my friends out.

12 Q Who were you with?

13 A I was with Ced -- Ced, Keyon.

14 Q Is that Cedric Ruff?

15 A Yes, sir.

16 Q Keyon Lewis?

17 A Yes, sir.

18 Q Who else?

19 A Raymond.

20 Q Raymond Asberry?

21 A Yes, sir.

22 Q Anybody else?

23 A Dameon.

24 Q Is that Dameon Dowling?

25 A I don't know his last name.

λ

1 Q Okay. What were y'all doing that night?

2 A Riding around.

3 Q Did you go to a party?

4 A We were supposed to have went to the party. It

5 was too overpacked.

6 Q Where was that party that you tried to go to?

7 A Two Notch Road, Windsor Lake house.

8 Q Okay. You said it was too overpacked?

9 A Yes, sir.

10 Q And what did you do since you couldn't go

11 there?

12 A Went to Wal-Mart.

13 Q Wal-Mart?

14 A (Witness nodded head.)

15 Q All right. And after Wal-Mart?

16 A After Wal-Mart, I received a call -- my cousin

17 received a call, Corey -- Corey called. He wanted

18 to fight me or whatever and we went to go set it up.

19 Q You said your cousin got that call?

20 A Yes, sir,

21 Q Who's your cousin?

22 A Cedric.

23 Q Okay. And he got that call from Corey about

24 the fight?

25 A Yes, sir.

1 (Witness' cell phone ringing.)

2 Q Is that your phone?

3 A Yes, sir.

4 Q Want to shut it off?

5 A My bad. Yes, sir.

6 Q So Corey called Ced?

7 A Yes, sir.

8 Q And Ced was with you?

9 A Yes, sir.

10 Q About wanting to fight you?

11 A Yes, sir.

12 Q Did you know that he wanted to fight you?

13 A Yes, sir, I did.

14 Q Why did he want to fight you?

15 A We got into it two weeks before that at a game,

16 altercation happened at the game, escalated to that

17 night.

18 Q So where were you going to go meet for the

19 fight?

20 A Waffle House.

21 Q Which one, on Two Notch?

22 A Two Notch Road.

23 Q The one by I-20?

24 A Yes, sir.

25 Q So did all of y'all ride up to that Waffle

1 House then?

2 A Yes, sir.

3 Q And when you got there, where did you park the
4 car?

5 A We parked the car at the Mobil.

6 Q Is that next to the Waffle House?

7 A Yes, sir.

8 Q Whose car were you in?

9 A In a friend of mine's car.

10 Q Do you remember what kind of car it was?

11 A It was all white, all white, tinted windows,
12 Grand Am.

13 Q Grand Am?

14 A (Witness nodded head.)

15 Q So you parked over at the Mobil, then what did
16 you do?

17 A We over there looking at them. It was a bunch
18 of boys, it was a bunch of boys over there.

19 Q Over where?

20 A At behind the Waffle House.

21 Q Were they in the parking lot?

22 A Yes, sir. One of my homeboys -- we wasn't
23 about to get out the car. One of my homeboys --

24 Q I'm sorry. Slow down a little bit.

25 A We wasn't about to get out the car at first.

1 Q One of your friends got out of the car first?

2 A After he got out the car, I was like, okay
3 then, okay then. I got out the car. Corey and me
4 seen each other, we about to fight. Females in
5 between us, no. We got them out the way, threw up
6 our hands, threw some punches, we locked up. Yellow
7 Boy, Yellow Boy came behind me, hit me in my head.
8 My cousin, Ced, hit him in the face. Next thing you
9 know, pow, pow, we heard shots. I let him go --

10 Q Let me back up a second. I'm sorry. I don't
11 mean to interrupt you. You said when y'all parked
12 in the Mobil, there was a bunch of people over at
13 the Waffle House?

14 A Yes, sir.

15 Q A lot of people?

16 A Yes, sir.

17 Q And when you got out of the car, you saw Corey?

18 A Uh-huh.

19 Q And y'all went towards each other?

20 A Uh-huh.

21 Q And you said you locked up; is that right?

22 A At first -- first, we just was kind of throwing
23 some hands up at first, then we locked up with each
24 other. One of his homeboys came behind me, hit me
25 in my head and my cousin --

1 Q You said that was a Yellow Boy?

2 A Yeah.

3 Q Do you know who that is, what his name is?

4 A No.

5 Q But he hit you in the back of your head?

6 A Yeah.

7 Q And after he did that?

8 A My cousin, Ced, hit him in the face or
9 whatever.

10 Q And so by this time, there's more than just two
11 of you fighting?

12 A Something like that.

13 Q Okay. And I believe -- okay. You started to
14 say something while y'all were fighting, something
15 happened?

16 A We was fighting, we locked up then. We locked
17 up with each other. Then we heard shots, pow, pow.
18 I let him go. We started -- we started -- we
19 started running.

20 Q You, I believe, mentioned something about a
21 Yellow Boy?

22 A Yeah.

23 Q Did you see him doing anything during the
24 fight?

25 A I seen him -- we seen him reach for something,

1 but like shooting, we couldn't really see.

2 Q You didn't ever see anything in his hands?

3 A No.

4 Q And then the shots went off?

5 A Yes.

6 Q And when the shots went off, what did you do?

7 A Ran.

8 Q Where did you run, which direction?

9 A We ran to the Mobil, towards the Mobil.

10 Q And as you were running, what did you hear or
11 see?

12 A I just heard shots, pow. I heard a bunch of
13 shots towards -- toward our way.

14 Q Towards your way. How could you tell they were
15 headed your way?

16 A I could just -- I could just feel the sounds.

17 Q You could feel the sounds?

18 A (Witness nodded head.)

19 Q Where in the Waffle House parking lot had the
20 fight taken place?

21 A In the middle like, how to put this.

22 Q Kind of near the door, front door?

23 A Yes, sir.

24 Q And when you took off running, you say you took
25 off running to the Mobil station. Did you run

1 towards Two Notch or towards the back of the Mobil
2 or just straight across in the Mobil?

3 A Toward the back of the Mobil.

4 Q Once you ran over there, where did you go?

5 A Hide, hide in the bushes.

6 Q What happened to the ride that you had?

7 A We couldn't fit in the car. We couldn't fit in
8 the car. There was a bunch of people hop in the
9 car. Raymond and me, we're in the back, we're in
10 the back hiding down, hiding down, so -- ducked
11 down.

12 Q And, at this point, there are still shots being
13 fired?

14 A Yeah.

15 Q How long did you have to stay back there?

16 A For about a good three minutes, three to five
17 minutes probably.

18 Q When you came out, where did you go?

19 A We came out, went towards the car, went towards
20 the car. And we seen the boy, we seen the boy on
21 the ground.

22 Q The boy that got shot?

23 A Yes, sir.

24 Q And he was in the Mobil parking lot?

25 A Yes, sir.

1 Q Did you know that boy?

2 A Not like that.

3 Q Had you ever seen him before?

4 A I'd seen him around before.

5 Q How did you eventually leave that night?

6 A How we left? They came back and got us.

7 Q Your ride came back?

8 A Yes, sir.

9 Q Did you ever see anyone with a gun that night?

10 A I didn't see --

11 Q With your own eyes?

12 A No, sir.

13 Q Did you see Eugene Patterson that night?

14 A I didn't. I just heard, I just heard he was
15 there.

16 Q I don't mean with a gun. Did you see him at
17 all at the Waffle House?

18 A I was so focused on my man that night to even,
19 what you call, pay attention.

20 Q Do you remember giving a statement to an
21 investigator with the sheriff's department in this
22 case?

23 A Yes, sir.

24 Q Investigator Ellis?

25 A Yes, sir.

1 Q I think that would have been the next day after
2 this happened, right, somewhere in there?

3 A In the week.

4 Q Within a week?

5 A Throughout that week.

6 Q I'm going to show you this. Tell me if you
7 recognize what it is.

8 A It's a statement.

9 Q Is that the statement you gave to Investigator
10 Ellis?

11 A Yes, sir.

12 Q Can you flip over to page two?

13 A Okay.

14 Q And I believe the question he asked you is, Did
15 you see Eugene Patterson at the Waffle House that
16 night?

17 A Okay. I see.

18 Q Do you know what your answer was?

19 A We heard he was in a -- in what you call
20 burgundy car. I was told that.

21 MR. SUTHERLAND: Excuse me, that's hearsay.

22 THE COURT: You can't say what somebody else
23 told you.

24 BY MR. GOLDBERG:

25 Q All I want to know is if you had seen them

1 there that night?

2 A I'd seen him in the car.

3 Q In the burgundy car, that's it, right?

4 A Yes, sir.

5 Q That's all I wanted to know. Thank you.

6 A Okay.

7 Q I'm going to show you, I believe, this is
8 State's Number 64. Now, do you recognize this area,
9 Waffle House here?

10 A Yeah.

11 Q That's Two Notch Road running this way; is that
12 right?

13 A Yes, sir.

14 Q Can you tell me where you were when this fight
15 took place?

16 A I was right there, right there.

17 Q And when the shots got fired and you took off
18 running, which way did you head?

19 A We ran thisway, that way.

20 Q Into the Mobil station?

21 A Yes, sir.

22 Q You said you ran -- I believe you told me a
23 minute ago, you ran towards the back?

24 A Behind the Mobil, yes, sir.

25 Q So you were here; is that right?

1 A Uh-huh. Yep, we ran through there.

2 Q And that's when you said you felt --

3 A Shots, yes, sir.

4 MR. GOLDBERG: I believe that's all I have for
5 you. Thank you. Please answer any questions they
6 have for you.

7 THE WITNESS: Okay.

8 CROSS-EXAMINATION

9 BY MR. SUTHERLAND:

10 Q Mr. Robinson?

11 A Yes, sir.

12 Q The way I understand your testimony, it's
13 pretty much consistent with your statement, you were
14 there for a fist fight?

15 A Uh-huh.

16 Q And was this -- was it a basketball game where
17 somebody stepped on somebody's foot or something
18 like that?

19 A It's a basketball game.

20 Q Okay. So you were up there fighting. And then
21 Yellow Boy, if I were to say the name, Robert Portee
22 -- or you just don't know Yellow Boy's real name?

23 A That might be his name, I don't know.

24 Q Okay. But you saw him reaching into his pants
25 after he jumped in and he got knocked off of you?

1 A Yeah.

2 Q Now, you saw him reaching into his pants, was
3 it -- is that what your testimony was that you saw
4 him reaching into his pants or something?

5 A Reached for something. I didn't see him shoot,
6 though.

7 Q I'm not asking that, but did it look like he
8 was reaching -- did you feel like, uh-oh, that --

9 A Yeah.

10 Q Okay. And as you were running back -- one
11 thing Mr. Goldberg had been pointing out to you the
12 Waffle House. Now, you all were fighting -- I need
13 to get the pointer. So when you all came from the
14 Mobil station, when you all came from the Mobil
15 station, you had parked here?

16 A Yes, sir.

17 Q And then you came over to here?

18 A We came over there.

19 Q And Corey and his people were already standing
20 here?

21 A Uh-huh.

22 Q And this is actually, you know, what you had
23 come there to -- for the fist fight?

24 A Uh-huh.

25 Q Now, one thing I wasn't too clear about. Now,

1 when you ran back this way, you ran on this side?

2 **A** Yes, sir.

3 **Q** Okay. And it was as you were running from here
4 to here that you could hear --

5 **A** I hear shots, yes, sir.

6 **Q** You actually heard -- you heard them in your
7 ear?

8 **A** Yes, sir.

9 **Q** Not just the boom, boom, but the snap, the
10 velocity?

11 **A** Yes.

12 **Q** Okay. And, again, that was running this way?

13 **A** Yes, sir.

14 **Q** The shots that went off in this area here, that
15 started you into a run?

16 **A** Yeah.

17 **Q** And it was during this run that you heard the
18 snapping?

19 **A** Yes, sir.

20 **Q** I mean, they were close to you?

21 **A** Yes, sir.

22 **MR. SUTHERLAND:** I have no further questions,
23 Your Honor.

24 **THE COURT:** Cross?

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

1 CROSS-EXAMINATION

2 BY MS. EVERHART:

3 Q Hi, Mr. Robinson.

4 A Hey. How are you doing?

5 Q I'm doing fine. Thanks. Bear with me one
6 minute while I get this set up. Can you see that
7 okay?

8 A (Witness nodded head.)

9 Q When you got there, it was with Keyon Lewis,
10 Raymond Asberry, Cedric Ruff and Dameon?

11 A Yes, ma'am.

12 Q And y'all parked right around in here?

13 A Yes, ma'am.

14 Q Were y'all underneath the awning?

15 A We was up there and we parked -- we parked at a
16 gas little thing, at the pump.

17 Q So underneath the awning?

18 A Yes, ma'am.

19 Q And you testified you came out and you watched
20 the fight take place around here?

21 A I was doing the fighting.

22 Q Jumped in the fight?

23 A Jumped in the fight, it was one on one fight.

24 Q And that was right around the front door of the
25 Waffle House?

1 A Right around there, yes, ma'am.

2 Q And you testified you heard two shots go into
3 the air. There were shots firing?

4 A Yes, ma'am.

5 Q And then you took off running?

6 A Yes, ma'am.

7 Q And your whole group took off running?

8 A Yes, ma'am.

9 Q And y'all didn't run back to your car?

10 A No, ma'am.

11 Q Y'all ran to Randy's car?

12 A Yes, ma'am.

13 Q And that was parked closer to the road?

14 A Uh-huh.

15 Q So you heard the shots and then you started
16 running?

17 A (Witness nodded head.)

18 Q And when you talked with the police, they asked
19 you did you see the little boy on the ground.

20 A Yeah.

21 Q When you were running through the parking lot
22 and you didn't?

23 A (Witness shook head.)

24 Q And you talked with the police the day after
25 this happened, correct?

1 A Yeah.

2 Q And now today you're saying that you thought
3 the shots were coming your way, but did you tell
4 that to the police?

5 A I told them that.

6 Q Do you recognize this as your statement?

7 A Yes, ma'am.

8 Q Could I have you look through there and read
9 out where you told the police?

10 A Okay.

11 Q Did you see it?

12 A No, ma'am. I met with them Friday, that I -- I
13 was telling them what all happened.

14 Q But you didn't see that in your statement?

15 A No, ma'am.

16 MS. EVERHART: Beg the Court's indulgence a
17 moment.

18 THE COURT: Yes, ma'am.

19 (Pause.)

20 BY MS. EVERHART:

21 Q This statement we just discussed you gave one
22 day after this incident occurred?

23 A Uh-huh.

24 Q And you were just saying you met on Friday with
25 someone?

1 A Uh-huh.

2 Q Who was that?

3 A O'Neil.

4 Q And it was then that you remembered that there
5 were shots coming your way?

6 A I just felt the shots coming down. I felt the
7 shots.

8 Q But you didn't put it in your statement on the
9 day after the incident?

10 A No, ma'am.

11 MS. EVERHART: No further questions, Your
12 Honor.

13 THE COURT: Redirect?

14 MR. GOLDBERG: No, sir.

15 THE COURT: Anything else?

16 MR. SUTHERLAND: Nothing further.

17 THE COURT: Thank you, sir. You may step down.
18 Call your next witness.

19 MS. CAMPBELL: State would call John Barron.

20 JOHN BARRON,

21 having been duly sworn, testified as follows:

22 THE CLERK: State your name for the record,
23 please.

24 THE WITNESS: My name is John Barron,

25 B-A-R-R-O-N.

DIRECT EXAMINATION

1

2

BY MS. CAMPBELL:

3

Q Investigator Barron, where are you employed?

4

A Richland County Sheriff's Department.

5

Q What do you do there, sir?

6

A Forensic DNA analyst.

7

Q And what do you do as a forensic DNA analyst?

8

A DNA is a forensic science specialty that's

9

involved in analyzing material for body fluids or

10

tissues that could possibly contain DNA. These

11

items of evidence then are processed and if

12

possible, a DNA profile is developed and compared to

13

known DNA samples from individuals.

14

Q Can you tell this jury a little bit about your

15

education and your training in the field of DNA?

16

A Yes. I have a Bachelor of Science degree in

17

Microbiology from Clemson University. I actually

18

began forensic DNA training at the State Law

19

Enforcement Division, or SLED, in 1999. I completed

20

my training there as qualified as an expert in DNA

21

analysis. I've been testifying in courts since then

22

in the State of South Carolina. And in 2004, I went

23

to Richland County Sheriff's Department to help

24

establish the DNA laboratory there.

25

Q And have you testified before as an expert in

1 the field of DNA analysis?

2 A Yes, I have.

3 Q And, approximately, how many times have you
4 been qualified as an expert in that area?

5 A Approximately, 30 times.

6 MS. CAMPBELL: Your Honor, at this time, we
7 offer him as an expert in DNA analysis.

8 THE COURT: Voir dire?

9 MR. SUTHERLAND: None from us, Your Honor.

10 MS. PAYNE: No, Your Honor.

11 THE COURT: He is so recognized. You may
12 continue.

13 BY MS. CAMPBELL:

14 Q Investigator, DNA can be a useful tool in
15 solving crimes; is that correct?

16 A Yes, it can.

17 Q And is it always -- in every criminal case, is
18 it always something that may be useful?

19 MR. SUTHERLAND: Your Honor, she's leading.

20 THE COURT: Don't lead.

21 BY MS. CAMPBELL:

22 Q In your experience, DNA's usefulness, does it
23 vary from case to case?

24 A It does. DNA, of course, is a specific
25 molecule individual. It identifies individuals, but

1 DNA may or may not be developed from items of
2 evidence. It may develop profiles that are not
3 probative to the case.

4 Q In this case, were you submitted certain items
5 of evidence to attempt to do DNA analysis on?

6 A Yes, I was.

7 Q And when I say, when you attempt to do DNA
8 analysis, are you able to get DNA from every piece
9 of evidence that's ever submitted to you?

10 A No.

11 Q Why not?

12 A There may not be enough DNA present or there
13 may be no DNA at all. A lot of the items that we're
14 submitted these days because of the sensitivity of
15 the testing involved, involves testing items that
16 may have been just touched by individuals. We do
17 not see the DNA. All we do is swab it, extract it
18 and see if there's any DNA present.

19 Q In this case, I believe that there were some
20 items, some ammunition and other items, that were
21 submitted to you that I want to talk about first?

22 A Yes, there were several items submitted
23 including ammunition.

24 Q And I believe those would be swabs from actual
25 ammunition; is that correct?

1 A Yes.

2 MR. SUTHERLAND: Your Honor, she's leading.

3 THE WITNESS: All of the --

4 THE COURT: Hold on, please.

5 State your questions in a nonleading fashion,
6 please.

7 MS. CAMPBELL: Yes, sir.

8 BY MS. CAMPBELL:

9 Q You can proceed.

10 A All of the items I received were swabs. They
11 were swabbed by crime scene personnel from various
12 items and submitted for DNA analysis.

13 Q And are you familiar with a man named Sam
14 Richards?

15 A Yes.

16 Q And is he qualified or does he often submit
17 swabs from items of evidence?

18 A Yes. He's an investigator in our crime scene
19 unit. He submits evidence very often to our
20 laboratory.

21 Q In this case, I want to refer to what's
22 referred on your report item number 22. What items
23 were submitted to you in that case?

24 A You want me to elicit all the items; is that
25 correct?

1 Q Starting with number 22 on your item number.

2 A Item number 22 is two swabs from nine
3 millimeter casings. Item 23, two swabs from .380
4 casings. Item 24, a swab from an unfired .380
5 cartridge.

6 Q Let me stop there. Those were items that were
7 found at the scene. Did you do any testing -- when
8 you talked about the two swabs from the nine
9 millimeter casings and the two swabs from the .380
10 casings, did you attempt to do any testing on those
11 items?

12 A No, I did not.

13 Q And tell this jury why you can't get DNA off
14 those items.

15 A Those are fired cartridge casings. We have had
16 experience in our laboratory and has been reported
17 in scientific literature that we do not get any
18 results from such items and so we do not waste time
19 and resources testing them.

20 Q So I'm going to show you what's been marked as
21 State's Exhibits Number 67 -- 66 through 70. These
22 are all fired cartridge casings. Would there be any
23 reason for you to attempt to get DNA from these
24 items?

25 A No.

1 Q The last item you mentioned was what item?

2 A A swab from an unfired .380 cartridge.

3 Q And what's the difference between -- what's the
4 difference between an unfired and a fired cartridge
5 casing?

6 A The fired cartridge casing no longer has the
7 bullet present and a cartridge is a complete --

8 Q What was the caliber of the unfired cartridge
9 casing?

10 A It was two swabs from nine millimeter casings
11 and two swabs from .380 casings.

12 Q And those were fired or unfired?

13 A Fired.

14 Q And you also mentioned an unfired. What was
15 it's --

16 A A .380 cartridge.

17 Q Did you attempt to get DNA from the swab taken
18 from the unfired cartridge casing?

19 A Yes, I did.

20 Q And what was your result?

21 A There was no DNA present on the unfired .380
22 cartridge.

23 Q Is that unusual?

24 A No, it's not unusual. It's a very small item.
25 Again, we're looking for possible skin cells that

1 may have been left by someone who handled it. It
2 would be completely dependent upon the person who
3 handled it. Some people shed their skin cells very
4 readily, other people may not. Items that are
5 touched is just simply a hit and miss type of guess
6 work as to whether or not DNA is there. We test it.
7 We examine it for DNA. If there's some there, we
8 try to develop a profile. If there's not, then we
9 stop at that point. In this case, there was no DNA,
10 so my report reflected the fact that there was no
11 DNA extracted from this item.

12 Q Did you also receive swabs from various items
13 from some money?

14 A Yes.

15 Q And what were those items?

16 A A swab from a dollar bill, a penny and five
17 quarters.

18 Q And when you examined the swabs from that
19 currency, what was the result?

20 A Either there was no DNA found or there was a
21 limited amount of DNA and no profile was developed.

22 Q And what does that mean when you have DNA, but
23 you can't develop a profile?

24 A There has to be enough DNA present to develop a
25 complete profile. Very often we get partial

1 profiles that are just not sufficient for a
2 comparison and we do not want to implicate or
3 anything like that with such a profile.

4 Q And, in this case, it was either you didn't
5 have anything sufficient to make an evaluation?

6 A That's correct. Either no DNA was found or
7 just a minimal amount and no profile.

8 Q Is that unusual?

9 A No.

10 Q Additional items that were submitted are swabs
11 -- I'm sorry for misstating that -- did you also get
12 a swab from a gum wrapper foil?

13 A I did.

14 Q And what was the result of that?

15 A There was DNA present on that and I developed a
16 full male DNA profile.

17 Q Were you able to identify it any further?

18 A No. Without running known samples to compare
19 it, then it would have -- no identification would be
20 made, but it was submitted to what we call the
21 combined DNA indexing system. It's a DNA data base
22 of all convicted felons in South Carolina and the
23 United States and it was compared to that data base
24 and no hits were obtained. In other words, it did
25 not match anybody in the data base.

1 Q And do you know what, if any, significance the
2 gum wrapper foil had in this case?

3 A I did not.

4 Q Did you also get a swab from a peach candy bag?

5 A Yes.

6 Q What was the result of that?

7 A A minimal amount of DNA, no profile was
8 developed, nothing of significance.

9 Q Did you also get a swab from the victim's cell
10 phone?

11 A I did.

12 Q What was the result of that?

13 A Not sufficient DNA for a profile.

14 Q Did you also get a swab from a black plastic
15 tray?

16 A I did.

17 Q What was the result?

18 A Insufficient DNA to develop a profile.

19 Q Finally, did you also get a swab from a plastic
20 Lipton bottle?

21 A I did and I obtained a complete female DNA
22 profile.

23 Q And, again, do you know what significance, if
24 any, the Lipton bottle had in this case?

25 A I do not.

1 Q You're familiar with crime scene
2 investigations?

3 A Somewhat.

4 Q And when a crime scene investigator goes to a
5 crime scene, do they investigate -- do they
6 collect -- how do they collect evidence?

7 A Usually they collect evidence -- anything that
8 they perceive as possible evidence, they would
9 collect.

10 Q And is it better to err to collect more or
11 less?

12 A More, obviously, because if you leave it and
13 it's gone when you come back, then it's of no value.
14 But if you collect -- most of the evidence that's
15 collected on a case is evidence that's probably not
16 used.

17 Q And these items from the crime scene and from
18 the victim, again explain why, on the fired
19 cartridge casings, you simply don't do the testing?

20 A Well, we did test them for a while, we never
21 got any results. And this is something that has
22 been addressed universally in the forensic field.
23 And other laboratories are reporting the same thing
24 that they're not getting anything. And so it's
25 become universally accepted until better procedures

1 or more sensitive testing is developed, that most
2 laboratories choose not to bother to test them. And
3 laboratories that do test them aren't getting any
4 results.

5 Q In some cases such as when a shooting is
6 involved, can the defendant's clothing be collected
7 later and perhaps have blood on it?

8 A . Yeah.

9 Q Would you expect to find any DNA evidence from
10 the victim on the defendant's clothing if there's --

11 MR. SUTHERLAND: Your Honor, she's leading.

12 MS. CAMPBELL: Hypothetical.

13 THE COURT: You hadn't finished your question.
14 Go ahead.

15 BY MS. CAMPBELL:

16 Q Hypothetically speaking, if a person is shot
17 from a distance of, say, more than 15 or 20 feet,
18 would you expect to find any of the victim's DNA on
19 any of their clothing?

20 A No, I would not. I think common sense would
21 tell us that.

22 MS. CAMPBELL: Thank you.

23 THE COURT: Cross?

24 MR. SUTHERLAND: Please the Court.

25 *****

CROSS-EXAMINATION

BY MR. SUTHERLAND:

Q Sir, is it Investigator Barron or Sergeant Barron?

A John Barron.

Q John Barron?

A That's correct.

Q Well, I'll call you sir. And just something that you said that interested me. Now, you said that you can't or that you don't test fired cartridges for DNA; do you recall that testimony?

A Not any longer. I said we did for a while when we started the laboratory. DNA testing has come a long way over the years, it's very sensitive and so that is a common piece of evidence. We tested for a while, never got any results and other laboratories in the United States were reporting the same thing. As a matter of fact, in some of the scientific literature, articles have been written saying that people aren't finding anything.

Q And why was that again, sir?

A Why?

Q Yes, sir.

A I don't know if I can explain exactly why there's no DNA present, but there's just not any

1 that we've been -- that scientists have experienced,
2 no DNA found on fired cartridge cases. It could
3 have something to do with the heat and the pressure
4 applied to it.

5 Q Well, I mean, somebody could conceivably --
6 well, I mean, if you don't know why, I was going to
7 say somebody could conceivably touch or handle these
8 things afterwards and the oil or sweat from their
9 fingers could get on there?

10 A Is it possible that someone handled it
11 afterwards?

12 Q Yes, sir.

13 A Probably possible, but I would think it would
14 be unlikely because they're thrown from the gun and
15 who knows where they land.

16 Q Yes, sir. And when you were speaking about
17 finding DNA on things like a .380 cartridge, it
18 would be where somebody may have been handling that
19 and potentially sweat or oils from the hand as they
20 might have been loading it into --

21 A Right. Any item that we touch, I mean we have
22 developed DNA profiles from checks, forged checks,
23 from fingerprints, from items, doorknobs, steering
24 wheels, things that you touch. If you shed enough
25 skin cells, and again that would be dependent upon

1 the individual because it's not going to be the same
2 for every individual, some people for some --
3 whatever reason will leave more skin cells which
4 have DNA in them. Every cell that has a nucleus in
5 your body has DNA and skin cells is one of those
6 cells.

7 Q So, conceivably, if someone has a fingerprint
8 that would be a smudge that might not be suitable
9 for a fingerprint examiner if those oils or the skin
10 cells are present there, you could conceivably get a
11 DNA match from a bad print?

12 A That's true.

13 MR. SUTHERLAND: I have no further questions of
14 this witness at this time, Your Honor.

15 THE COURT: Cross?

16 MS. PAYNE: No questions, Your Honor.

17 THE COURT: Redirect?

18 MS. CAMPBELL: No, sir.

19 THE COURT: Thank you, sir. You may step down.

20 Ladies and gentlemen, we'll take another ten
21 minute break. Don't discuss the case.

22 (The jury retires to the jury room.)

23 THE COURT: Court's in recess for ten minutes.

24 (Brief recess.)

25 THE COURT: Are you ready?

1 MS. CAMPBELL: Please the Court. Your Honor,
2 over the break, I was looking at some cases on
3 redacted statements, specifically they're -- and Ms.
4 Payne has a beautiful memo on it. It's my
5 understanding in reading -- and State versus
6 Fletcher is one of the more recent cases and I
7 happened to participate in that case, Your Honor.
8 In that case, I believe the judge had us actually
9 put in instead of the name of the person, you would
10 say like Joe and the other guy. Any physical
11 description, of course under Singleton, should be
12 deleted and I think we've done that, including the
13 reference to the nine millimeter.

14 However, Your Honor, the cases do hold, too, I
15 believe, that it also has to be able to make sense;
16 therefore, my only objection to removing the word
17 they, and I believe Ms. Payne would join with me on
18 this, is that it doesn't make anymore sense.

19 There's also a United States Supreme Court case
20 that says instead of leaving a blank or using the
21 word deletion, like deleted where the name was, that
22 you should put in some other misnomer, such as the
23 other guy or something of that nature. I don't
24 believe that's what defense counsel wants in this
25 case, and that's just me looking at the law quickly.

1 And I'm sure you know a lot more than I do, but my
2 understanding is I just can't give any physical
3 description or any kind of identifying factors to
4 the person.

5 However, to take out the word they, would take
6 it totally out of context and would, therefore, not
7 make any sense. The cases even address the fact
8 that although when you take the redacted confession
9 and couple it with other evidence, it may
10 inferentially implicate the defendant, that that is
11 kind of -- that that can happen. And that's me not
12 saying anything very well.

13 **THE COURT:** I understood you.

14 **MS. CAMPBELL:** Ms. Payne might be able to
15 address it a little better.

16 **MR. SUTHERLAND:** And, Your Honor, she had --
17 and I'm sorry it took me so long to read the case,
18 but I just don't read the case the same way. And I
19 told Ms. Campbell, it looks to me like that a
20 further -- that further redaction would be the
21 remedy to that.

22 I understand that she tried this case and there
23 was a substitute in language, but with respect to
24 the word they, that tells me it's a direct reference
25 to it would be him along with somebody else, but

1 that's the word they, those guys over there, they,
2 that is directly referring to him. I would just
3 like to have the word they redacted out of there.

4 I understand that they both want the plural in
5 there, you know, for their own reasons, but I don't
6 think that it's too much to ask, and I don't think
7 that it's too much to ask just to remove the plurals
8 in there in that respect, Your Honor.

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

10 **MS. PAYNE:** Thank you, Your Honor. May it
11 please the Court. Your Honor, in preparing for our
12 own -- the statement that we wanted redacted with
13 Eugene Patterson, I did prepare a memo in support of
14 it, Your Honor. And our understanding of Bruton is
15 that any physical descriptions referencing the name
16 of someone, that is when a redaction would be
17 necessary.

18 The cases further hold in Richardson v. Marsh
19 is a U.S. Supreme Court case, was, I believe, cited
20 -- either cited in Bruton or was a part of the
21 Bruton issue, was that a limiting instruction is the
22 necessary remedy when there is a reference that's
23 not a physical description or a name that may
24 inferentially link up the co-defendant in this case,
25 and that is exactly what's going on, that the they

1 is an inferential link to Mr. Patterson and
2 Mr. Feldman where it's not a direct physical
3 description and a direct name.

4 We would ask that the remedy in this case would
5 be a limiting instruction given by the Court. And
6 it wouldn't --

7 MR. SUTHERLAND: And, Your Honor, I mean I
8 believe that a limiting instruction would actually
9 draw attention to it. You know, my recollection,
10 and frankly -- my recollection of the Richardson
11 versus Marsh in, I recall, my read of it, was that
12 the requirement is the redaction of any reference to
13 the defendant, I believe that's the language, any
14 reference. And I would incorporate the word they
15 into a reference to the defendant. And their
16 holding was that as long -- in this inferential --
17 the inferences that they're speaking about, I don't
18 believe that that was from the particular -- the
19 particular words, the substance of the redaction.

20 I believe, sir, that the plural should be taken
21 out. I believe it's -- I believe it's fine under
22 Richardson and the case that I just reviewed with
23 Ms. Campbell. And then, again, I believe a limiting
24 instruction might draw attention to it. I mean, I
25 understand the case law about the obvious gaps is

1 from the United States Supreme Court is what Ms.
2 Campbell handed to me. Again, with my quick read of
3 that, then the better answer would be more redaction
4 rather than less, sir.

5 THE COURT: Yes.

6 MS. PAYNE: I just wanted to read a quote from
7 Richardson v. Marsh, Your Honor. It says, The
8 confrontation clause is not violated when a
9 defendant's name is redacted, but other evidence
10 links the statement's application to the defendant
11 when a proper limiting instruction is given. And,
12 furthermore, Richardson v. Marsh specifically
13 declined to extend Bruton rules to the situation
14 when a defendant's name or any reference to him is
15 redacted even though the statement's application
16 then is linked up by other evidence properly
17 admitted against the defendant.

18 THE COURT: Do y'all have the cases you're
19 talking about or the brief?

20 MS. CAMPBELL: Yes, sir. And I believe that's
21 a similar quote in State versus Garrett, which is a
22 Court of Appeals South Carolina case.

23 MS. PAYNE: Beg the Court's indulgence, we do
24 have it.

25 MS. CAMPBELL: This is Richardson versus Marsh,

1 State versus Fletcher and I'll hand up State versus
2 Garrett.

3 (Pause.)

4 MR. SUTHERLAND: May I approach, sir?

5 THE COURT: Yes, sir.

6 (Pause.)

7 THE COURT: We're going to have to break for
8 the day. Bring the jury in.

9 (The jury returns to the courtroom.)

10 THE COURT: Ladies and gentlemen, after we took
11 that recess, the attorneys raised a legal issue that
12 I need to address before the next witness testifies
13 and I've been trying to deal with this, but they've
14 handed me about a hundred pages of stuff to read and
15 we discussed this earlier in the week and I knew it
16 was coming up, I just didn't know when. So I'm not
17 going to keep you here while I try to read through
18 this. I'll read it tonight.

19 I'll need you back here in the morning at 9:30.
20 I'm going to talk with them about 9:15 and tell them
21 what I've decided, but I want you here at 9:30.

22 Based on what I've been told, my optimism about
23 finishing tomorrow is no longer in existence. We
24 will definitely be going into next week and I don't
25 know how far. I'm still hoping no further than

1 Tuesday. I'm going to try to avoid that for many
2 reasons, some of which involve having to reschedule
3 things that we specifically scheduled separately
4 from other court and some of which involves that we
5 have a conference next week that I'm required to
6 attend that I've already paid for and I won't get my
7 money back, so I've got a lot of incentive to finish
8 this thing, too. So we will work hard. We'll do
9 what we can, but I'm going to make sure above all
10 things that I do my job the best I can and give
11 everybody concerned a fair trial, including trying
12 to be receptive to your needs.

13 I don't do things with juries like bring you in
14 at eight o'clock in the morning and work you till
15 nine o'clock at night. I just don't think that's
16 fair to anybody. So if you would, please be in the
17 jury room in the morning at 9:30. Thank you.

18 (The jury was excused for the day.)

19 **THE COURT:** Did you say you had a brief?

20 **MS. PAYNE:** Not one that we are willing to hand
21 in at this time, Your Honor. And just to make
22 clear, we're not joining in on the State's motion.
23 We're making our own motion just for a limiting
24 instruction not for a redaction.

25 **THE COURT:** Okay.

1 **MS. PAYNE:** We did want to talk to the Court
2 about scheduling on our behalf, also.

3 **THE COURT:** Sure.

4 **MS. PAYNE:** I believe the State has indicated
5 at some point that they might end tomorrow.

6 **MS. CAMPBELL:** Yes. I mean, barring -- every
7 time we get rolling, though, we seem to -- we
8 anticipate between four and six more witnesses at
9 the most, Your Honor.

10 **MS. PAYNE:** I don't know if Mr. Sutherland
11 plans on putting up a case, we do at this point.
12 And Your Honor has also been inclined to allow the
13 jury to view the scene. We didn't know at what
14 point you would like to allow them to do that, as
15 well as we have one of our witnesses who's not going
16 to be available tomorrow afternoon as he's going out
17 of town. So we can do everybody but him.

18 **THE COURT:** Well, I don't recall too many cases
19 where I have read as much law as I've read on this
20 one. And I can go ahead and give you a little taste
21 of some of the things that I'm going to want to talk
22 to you folks about, but I suspect we may have to
23 talk about the law a good bit. So I really -- I
24 don't want to do anything to rush through the trial.
25 I don't want to do anything to cause the defense to

1 have to rush through anything. I'm perfectly
2 willing to accommodate you with your scheduling
3 needs.

4 I still am inclined to allow the jury to view
5 the scene. I don't know specifics about that. I
6 guess I need to find out who would be arranging that
7 for the county and, logistically, what all would be
8 entailed and what suits them better. We usually do
9 that at the very last thing, but that's not
10 necessarily always required. I have had a jury come
11 in like in the morning while we were talking about
12 law and let them go to the scene and then waited on
13 us to finish talking about law.

14 Do you have something else?

15 MS. PAYNE: Well, I was just going to let Your
16 Honor know that we have talked to Barbara Scott
17 before. We were going to let them know again that
18 we were kind of nearing the end of the case. I
19 believe it's on the party making the motion to kind
20 of get everything together, so we're trying to do
21 that as sufficiently as possible. The deputies also
22 contacted us about whether we would want our clients
23 to go. Obviously, we do not want our client to go
24 and we don't need to go. We just are asking that
25 the jury go. So we'll do everything we can to help