

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Post Conviction Relief

Honorable Jocelyn Newman, Circuit Court Judge

App. Case No. 2020-000205

H. Dewain Herring,

Petitioner,

vs.

State of South Carolina

Respondent.

APPENDIX
VOLUME I OF VII

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ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) COURT OF GENERAL SESSIONS
)

06-GS-40-00881, 00914

State of South Carolina

vs.

) TRANSCRIPT OF RECORD
) (Trial)
)
)

H. Dewain Herring,

)
)
) Defendant.
)

May 7, 8, 9, 10 11, 14, 15, 16, 17, 18, 21, 2007
Columbia, South Carolina

BEFORE:

THE HONORABLE G. THOMAS COOPER, JR., JUDGE

APPEARANCES:

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2	2	Statement	130	1118
3	3	Statement	130	1131
4	4	Photograph	218	1571
5	5	Search Warrant	226	859
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6	4	Photograph	211	
7	5	Photograph	211	
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Monday, May 7, 2007

THE COURT: All right. Is the State ready to proceed?

MR. MEADORS: Your Honor, we have -- there are a couple of Mr. Harpootlian's Voir Dire questions we object to.

THE COURT: Well, I mean, are you ready to proceed and start the case?

MR. MEADORS: Oh. Yes, sir. I apologize.

THE COURT: The defense ready to proceed?

MR. HARPOOTLIAN: The defense is ready to proceed, Your Honor. There is a housekeeping matter. Ms. Herring has written a letter to the Court. It's been filed with the court. Is that --

THE COURT: It's satisfactory.

MR. HARPOOTLIAN: Thank you, Your Honor.

THE COURT: All right. Solicitor, call your case.

MR. GIESE: Your Honor, at this time the State of South Carolina calls Indictment No. 2006-GS-40-00881 and 2006-GS-40-00914. One is for murder. The other is for pointing and presenting a firearm.

THE COURT: All right. Defense ready to proceed?

1 **MR. HARPOOTLIAN:** Your Honor, the defendant
2 enters a plea of not guilty to both charges and is
3 ready to proceed.

4 **THE COURT:** How does he wish to be tried?

5 **MR. HARPOOTLIAN:** By a jury.

6 **THE COURT:** All right.

7 **MR. HARPOOTLIAN:** Or by God and by his country,
8 whichever language you want to use.

9 **THE COURT:** All right, sir. Any matters of a
10 pre-trial nature that need to be taken up before we
11 begin the jury selection process? Just announce what
12 you have.

13 **MR. HARPOOTLIAN:** The solicitor has some
14 objections to my Voir Dire, and perhaps that is
15 something that we ...

16 **MR. MEADORS:** Your Honor, if we can start
17 with --

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

19 **MR. MEADORS:** -- requested Voir Dire offered by
20 Mr. Herring through Mr. Harpootlian.

21 **THE COURT:** Which one? I have it in front of
22 me.

23 **MR. MEADORS:** Yes, sir. Okay. Your Honor,
24 first, as far as just the language, I know Your Honor
25 has his own language you use to introduce the jury.

1 We would object specifically to using this language:
2 "I will tell you from the outset there is nothing
3 wrong with you having viewed, listened or read
4 anything. We're simply trying to determine" -- I
5 don't think -- that specific language we'd ask Your
6 Honor not use, or just use what you usually do, Your
7 Honor, as your opening comments to this jury.

8 MR. HARPOOTLIAN: And, Your Honor, if your
9 opening comments incorporate these general questions,
10 we'd have no objection whatsoever.

11 THE COURT: Well, as is my practice, when the
12 Voir Dire is completed I will ask you if there's
13 anything in addition that you would like for me to
14 ask this jury, so that if I overlook something or
15 phrase something that you think is prejudicial one
16 way or the other, I'll allow you to bring it and take
17 it up with the Court.

18 MR. HARPOOTLIAN: Yes, sir. The only reason we
19 have this extensive sort of description at the front
20 end is to try to ensure that jurors who've read or
21 heard or seen on television something about this --

22 THE COURT: Well, we're going to take hopefully
23 a sufficient amount of time to inquire into those
24 matters.

25 MR. HARPOOTLIAN: Thank you, Your Honor.

1 **MR. MEADORS:** Judge, if we could move on to page
2 5 of the defendant's Voir Dire, No. 21 specifically.
3 "Have you or any member of your immediate family had
4 any personal experience with any diagnosed" -- with
5 anyone --

6 **THE COURT:** 25?

7 **MR. MEADORS:** 21 on page 5.

8 **THE COURT:** Oh. I thought you said 25. Go
9 ahead.

10 **MR. MEADORS:** "Had a personal experience with
11 anyone diagnosed with bipolar disorder or
12 manic/depressive disorder."

13 We would object to that, Your Honor. I don't
14 think there is going to be any testimony. We haven't
15 been served or haven't been put on notice of any type
16 of defense of that nature. We don't believe that
17 would be appropriate in Voir Dire. We just don't
18 think it's going to be an issue in this case.

19 **MR. HARPOOTLIAN:** We think it will be an issue
20 in the case, Your Honor. And we are not raising GBMI
21 nor insanity.

22 **THE COURT:** You have not raised that as a
23 defense. But it may become an evidentiary matter.
24 Is that correct?

25 **MR. HARPOOTLIAN:** Yes, sir.

1 **THE COURT:** All right.

2 **MR. MEADORS:** Your Honor, I don't know how it
3 could. We haven't been provided with anything. I
4 mean, that opens the door to asking about everything
5 of these jurors.

6 **THE COURT:** If counsel represents that it may be
7 an evidentiary factor in this case, I think it's fair
8 to ask it.

9 **MR. MEADORS:** Your Honor, again, we can't --

10 **THE COURT:** It's not a defense. You understand?

11 **MR. MEADORS:** I understand that. And that's my
12 objection. It's not a defense. So if it came out,
13 it would be a red herring, so to speak. And I don't
14 know --

15 **MR. HARPOOTLIAN:** As an officer of the court,
16 Your Honor, I represent to the Court it is not a red
17 herring. It may very well come out.

18 **THE COURT:** Well, it's sort of like alcoholism.
19 If there is going to be testimony the defendant was
20 under the influence of alcohol, I guess --

21 **MR. MEADORS:** No question about that. And there
22 was alcohol consumed at the club, alcohol at the --

23 **THE COURT:** I said it's similar. I didn't say
24 that that applies in this case. I just said that's
25 similar. That's why I think if there is any -- if

1 there is an evidentiary matter that may come up, all
2 I'm going to ask is if they've had any experience
3 with it.

4 **MR. MEADORS:** Yes, sir. We just don't see the
5 relevance, Your Honor. And the follow up is: "Does
6 any member of the jury possess any preconceived
7 notions or opinions as to individuals diagnosed with
8 bipolar --"

9 **THE COURT:** Well, I might grant your motion on
10 that one.

11 **MR. HARPOOTLIAN:** We'll strike that. We'll
12 withdraw that part.

13 **THE COURT:** All right. Leave 21 in. Take 22
14 out. I think that's fair.

15 **MR. MEADORS:** I guess our objection is it might
16 be creating an issue in these jurors' minds which
17 isn't there and that certainly we have been --

18 **THE COURT:** May be; maybe not.

19 **MR. MEADORS:** We have been told it will not be
20 an issue in this case as far as the medical
21 testimony.

22 **MR. HARPOOTLIAN:** I have not said that, Your
23 Honor. What I've said is that there will not be a
24 defense of insanity nor GBMI, which is what I am
25 required to notify the solicitor of.

1 **THE COURT:** I'm going to allow it. No. 21 is
2 out. No. 22 remains in.

3 **MR. HARPOOTLIAN:** Thank you, Your Honor.

4 **MR. MEADORS:** On No. 24 of Mr. Harpootlian's,
5 Your Honor, we ask that -- "Have you or any member of
6 your immediate family had any personal experience
7 with anyone addicted to drugs or alcohol?" And I
8 believe that's without objection.

9 **MR. HARPOOTLIAN:** Without objection.

10 **MR. MEADORS:** And on No. 27.

11 **THE COURT:** Let me just write that in. All
12 right. 27.

13 **MR. MEADORS:** Let me see. Oh, No. 26. I
14 apologize. The last sentence of "whether you know or
15 have a close personal relationship to the witnesses
16 or are acquainted in any way to the witnesses." We'd
17 ask that be added. Acquainted.

18 **MR. HARPOOTLIAN:** Acquaintance?

19 **MR. MEADORS:** Yes, sir.

20 **MR. HARPOOTLIAN:** Okay. That's what I thought.

21 **MR. MEADORS:** I thought he heard me.

22 **MR. HARPOOTLIAN:** I didn't hear you.

23 **MR. MEADORS:** He knew what I was talking about.

24 **THE COURT:** But I will say that the Voir Dire
25 that was submitted to the Court has no list of

1 witnesses.

2 **MR. HARPOOTLIAN:** We are submitting that now,
3 Your Honor. I apologize.

4 **THE COURT:** All right. A copy for the State.

5 **MR. HARPOOTLIAN:** Pardon me?

6 **THE COURT:** A copy for the State.

7 **MR. HARPOOTLIAN:** Yes, sir. We've already given
8 a copy to the State. I apologize. We've just
9 tweaked it. And, Your Honor, I think both the State
10 and I will agree that we've given you a list of every
11 potential witness, and certainly the vast majority of
12 these witnesses will not be called. Isn't that
13 correct?

14 **MR. MEADORS:** Judge, do you have a copy of this
15 case?

16 **THE COURT:** No, I don't.

17 **MR. MEADORS:** It's coming to you right now. I
18 think I'd echo that. I think this would cover every
19 potential witness.

20 **THE COURT:** Well, I don't want to read this list
21 twice if it's duplicative.

22 **MR. MEADORS:** I don't think there's that many.
23 There may be four or five. I haven't had an
24 opportunity to look at it.

25 **MR. HARPOOTLIAN:** There's a bunch that are the

1 same.

2 MR. MEADORS: And, Judge, as far as the
3 State's --

4 THE COURT: Just hold on. All right. I'm
5 sorry, Solicitor.

6 MR. MEADORS: Yes, sir. May it please the
7 Court. Your Honor, we have provided our requested
8 Voir Dire, and I don't believe Mr. Harpootlian has an
9 objection to anything.

10 THE COURT: I'll hear from him.

11 MR. HARPOOTLIAN: Beg the Court's indulgence.
12 Your Honor, we don't have any objection to -- no. We
13 don't have any objection to them. We'd also note
14 that Mr. Herring is not on the witness list. For the
15 record, no decision has been made as to whether he
16 would testify.

17 THE COURT: Well, I'll introduce Mr. Herring to
18 the jury panel and ask if anybody knows him. We'll
19 take care of that one. All right. Does that resolve
20 the issues with regard to voir dire?

21 MR. MEADORS: And, Your Honor, again, I guess
22 obviously our objection earlier was, you know, we
23 can't try to find out a jury profile. But obviously
24 Your Honor will cover it just basically if everybody
25 is fair and impartial and can give a fair verdict,

1 that's all we ask for.

2 **THE COURT:** That's my sole objective today.
3 Now, other matters just for the record pre-trial
4 matters? Other pre-trial matters?

5 **MR. HARPOOTLIAN:** No, sir, Your Honor. I do
6 want to represent for the record, since there has
7 been some question at bond setting concerning Mr.
8 Herring's mental status, I've talked to his
9 psychiatrist who indicates he's competent to stand
10 trial and would understand the nature of the charges
11 against him and assist in his own defense.

12 **THE COURT:** All right.

13 **MR. HARPOOTLIAN:** If your Honor has any
14 questions about that, you're welcome to question Mr.
15 Herring concerning that.

16 **THE COURT:** No. I'll accept your
17 representation. I was under the impression you had
18 certain motions.

19 **MR. HARPOOTLIAN:** Your Honor, we do. But I
20 thought you would do those --

21 **THE COURT:** We will do them later. I just want
22 you to announce them.

23 **MR. HARPOOTLIAN:** Oh. I apologize to the Court.
24 Your Honor, we have motions to suppress
25 identification. We have motions to suppress

1 statements. We have motions to suppress searches.
2 We also have a couple of motion in limes to exclude
3 the use of certain photographs, diagrams and physical
4 evidence that the solicitor proposes to use.

5 MR. MEADORS: And we're prepared to go on those
6 this afternoon, Your Honor, and have the witnesses
7 either in the vicinity or they will be here
8 momentarily.

9 THE COURT: I have four motions submitted to the
10 Court from the defense. Is that it as far as you
11 know? There may be sub portions of the motions.

12 MR. HARPOOTLIAN: Yes, sir. It's search, I.D.,
13 statements, and then the motion in limine concerning
14 the photographs and sketches that the solicitor
15 proposes to use.

16 MR. MEADORS: About the video, but if that
17 includes those others you're talking about, that's
18 fine.

19 MR. HARPOOTLIAN: The videos, the pictures that
20 were taken most recently at the club, and the
21 diagrams that were done.

22 THE COURT: All right.

23 MR. MEADORS: We're all in agreement those are
24 the pre-trial issues.

25 THE COURT: Good. And it's still at least the

1 belief of both the State and the defense that this
2 case can be concluded this week?

3 **MR. MEADORS:** Without question.

4 **MR. HARPOOTLIAN:** Your Honor, if the State acts
5 expeditiously; yes, sir.

6 **THE COURT:** Well, I just want to be able to
7 announce to the jury that fact. Anything further
8 before we bring the jury?

9 **MR. HARPOOTLIAN:** Nothing from the defendant,
10 Your Honor.

11 **MR. MEADORS:** No, sir.

12 **THE COURT:** All right. Bring the jury, please.

13 (Pause)

14 **THE COURT:** Mr. Harpootlian.

15 **MR. HARPOOTLIAN:** Sir?

16 **THE COURT:** Ten strikes. Ten and five.

17 **MR. HARPOOTLIAN:** Ten and five. Yes, sir.
18 Judge, could we approach for just a second while
19 they're coming in?

20 **THE COURT:** Sure.

21 **MR. HARPOOTLIAN:** John. Barney.

22 (Whereupon, a bench conference is had)

23 **THE BAILIFF:** Your Honor, the jury is present.

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

25 (Whereupon, the bench conference continues)

1 **THE COURT:** All right. Good afternoon, ladies
2 and gentlemen. We are about to go into the trial of
3 the case of The State v. Dewain Herring. Now, some
4 of you may have seen some accounts of this case in
5 the press. And so this qualification process that I
6 told you about this morning may take a little longer
7 than it usually does because I'm going to have to ask
8 you a series of questions about what you know about
9 the case and if you have any contact with the case or
10 any of the parties involved in the case.

11 And if there are any questions that I ask you
12 that you feel uncomfortable answering in front of
13 your fellow jurors, well, I'll ask you to do the same
14 thing we did this morning; that is, approach the
15 bench, and I'll try to discuss it with you.

16 But some of these questions are going to deal
17 with your attitudes about alcohol, any number of
18 things. It's going to, as I say, take a little
19 longer than we normally do. And as I usually tell
20 jurors when we start a case, every case in the state
21 of South Carolina; as a matter of fact, in this
22 nation, when an indictment is rendered, an indictment
23 is what I have in my hand. There are two indictments
24 in this case. These indictments are merely the
25 formal legal documents that brings the case into

1 court. They are not evidence of anything.

2 And the fact that someone is charged in South
3 Carolina or anywhere in the United States with a
4 crime is not evidence of the crime against them. And
5 every individual, every individual, is presumed
6 innocent of the charges until such time as they may
7 be proven guilty to a jury by beyond a reasonable
8 doubt. In other words, the proof has to convince a
9 jury beyond a reasonable doubt of the defendant's
10 guilt, at which time a jury would render a guilty
11 verdict.

12 So, when I read to you the indictments and when
13 I tell you about the parties in this case, you are
14 not to -- or from the questions that I ask you, you
15 are not to assume the defendant's guilt or anything
16 regarding either the guilt or innocence of the
17 defendant. So I want to just preface my remarks by
18 saying that because it is important. It is vitally
19 important that we have an impartial jury to deal with
20 these issues. And there are multiple issues that
21 will come up in this case.

22 Now, as I always explain to jurors, any case
23 that's brought in the criminal court system is
24 prosecuted by the State Solicitor's Office. In other
25 words, as I said, sometimes they're called the

1 District Attorney. Sometimes they are called the
2 State's attorney. But the Solicitor's Office in
3 South Carolina prosecutes cases.

4 And your Fifth Judicial Circuit Solicitor is
5 Mr. Barney Giese. He will be prosecuting this case
6 today along with Deputy Solicitor John Meadors. I'm
7 going to ask if each of them will stand. I'll ask if
8 any member of the jury panel is related by blood,
9 connected by marriage or employment or a close
10 personal acquaintance of either Mr. Barney Giese or
11 Mr. John Meadors? If so, please stand.

12 And again, I'm going to try to identify you by
13 numbers. I hope it works. But if you'll stand when
14 I ask you and in response to some of these questions.
15 Because the court reporter on my right, Ms. Williams,
16 has to hear what you have to say about any one of the
17 questions.

18 All right. If nobody is connected by blood or
19 marriage or knows either Mr. Giese or Mr. Meadors,
20 I'm going to ask if any member of the jury panel is
21 aware of, knows anybody that works with the Fifth
22 Judicial Circuit Solicitor's Office. Any member of
23 the jury panel related by blood or connected by
24 marriage or a close personal acquaintance of any
25 member of the staff of the Solicitor's Office?

1 Anybody know people that may work in the Solicitor's
2 Office? Yes, sir. And your name, please?

3 **JUROR:** My name is Darby Plexico, juror 127.

4 **THE COURT:** Mr. Plexico, what is the extent of
5 your relationship with a member of the staff of the
6 Solicitor's Office?

7 **JUROR:** One of the assistant solicitors, Dan
8 Goldberg, was my roommate for a year after law
9 school. He's been at my house. I might know one or
10 two other people over there, but it would just be
11 because I'm an attorney.

12 **THE COURT:** Okay. Well, Mr. Plexico, given that
13 relationship, do you feel that you could be fair and
14 impartial and give both parties a fair and equal
15 trial in this case?

16 **JUROR:** Certainly.

17 **THE COURT:** And you have no feeling of conflict
18 due to the fact that you know Mr. Goldberg?

19 **JUROR:** No, sir.

20 **THE COURT:** All right. Thank you very much,
21 sir. Yes, sir.

22 **JUROR:** I am John Boyd, juror number 15. I
23 attended law school. I'm an attorney. I attended
24 law school with Mr. Goldberg as well.

25 **THE COURT:** All right. Any relationship beyond

1 that? Church related? School related? Any other
2 activities, social or otherwise?

3 **JUROR:** (Shakes head negatively).

4 **THE COURT:** All right, sir. Mr. 15, do you feel
5 that that relationship, would that relationship
6 prevent you from giving both the State and the
7 defendant a fair and impartial trial in this case?

8 **JUROR:** No, it wouldn't.

9 **THE COURT:** Thank you very much. All right,
10 ladies and gentlemen, I'll ask if any member of the
11 jury panel or any member of your family is employed
12 in law enforcement, any law enforcement agency? For
13 example, the Richland County Sheriff's Department,
14 City of Columbia Police Department, Forest Acres
15 Police Department, Irmo Police Department, SLED, FBI;
16 any type of law enforcement agency that you or any
17 member of your family may be associated with? And
18 the lady on the front row, and if you'll give me your
19 numbers, I'm going to try to do this by number. So,
20 yes, ma'am.

21 **JUROR:** I'm juror number 23. I have an uncle,
22 Kevin Reese, who I believe is an FBI agent.

23 **THE COURT:** He is undercover?

24 **JUROR:** Yes, sir.

25 **THE COURT:** You said you believe he's an FBI

1 agent.

2 **JUROR:** Yes.

3 **THE COURT:** Sure it's not the CIA? Ms. 23,
4 would that fact in any way interfere with your
5 ability to give both the State and the defendant a
6 fair and impartial trial?

7 **MR. HERRING:** No, sir.

8 **THE COURT:** And where is he located?

9 **JUROR:** I think Columbia. I have no idea. I
10 don't know.

11 **THE COURT:** Okay. He is really undercover.
12 Thank you very much, Ms. 23. Yes, ma'am. Your
13 number?

14 **JUROR:** I'm juror number 14. My husband works
15 for Alvin S. Glenn Detention Center. I don't believe
16 that --

17 **THE COURT:** I can't quite hear you.

18 **JUROR:** My husband works for Alvin S. Glenn
19 Detention Center.

20 **THE COURT:** Okay. He is a law enforcement
21 officer who works at the Detention Center?

22 **JUROR:** Yes, sir.

23 **THE COURT:** Ms. 14, would that fact in any way
24 interfere with your ability to give both the State
25 and the defendant a fair and impartial trial?

1 *JUROR:* No, sir.

2 *THE COURT:* Okay. Thank you very much, ma'am.
3 Yes, ma'am. Your number, please?

4 *JUROR:* 54.

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

6 *JUROR:* My husband is an instructor at the
7 Department of Defense Polygraph Institute/polygraph
8 examiner, criminal investigator.

9 *THE COURT:* Where?

10 *JUROR:* At the Department of Defense
11 Institution.

12 *THE COURT:* Department of Defense?

13 *JUROR:* Yes, sir.

14 *THE COURT:* Where is that?

15 *JUROR:* The school is out at Ft. Jackson.

16 *THE COURT:* I see. Now, Madam 54, would that
17 fact in any way interfere with your ability to give
18 both the State and defendant a fair and impartial
19 trial?

20 *JUROR:* No, sir.

21 *THE COURT:* Thank you very much. Yes, sir.
22 Number?

23 *JUROR:* 176.

24 *THE COURT:* All right, sir.

25 *JUROR:* I have a brother that's on the Highway

1 Patrol, a trooper stationed in Loris, South Carolina.

2 THE COURT: All right, sir. Would that fact in
3 any way interfere with your ability to give both the
4 State and defendant a fair and impartial trial?

5 JUROR: No, sir.

6 THE COURT: Thank you very much, Mr. 176. And
7 Mr. 15, was it?

8 JUROR: I'm 127, Your Honor.

9 THE COURT: 127. I'm sorry.

10 JUROR: My cousin, not my first cousin, my
11 second cousin, is Scott Plexico. I think he's a
12 captain with the Richland County Sheriff's
13 Department.

14 THE COURT: Let me get your number again.

15 JUROR: 127.

16 THE COURT: I went to the wrong number. Okay.
17 I've got a long list up here. You believe he is a
18 captain with the Richland County Sheriff's
19 Department?

20 JUROR: I know he works for the Sheriff's
21 Department. I'm not exactly sure what his rank is.

22 THE COURT: All right.

23 MR. MEADORS: Your Honor, can we approach?

24 THE COURT: Sure: Mr. Harpootlian.

25 MR. HARPOOTLIAN: Sir?

1 **THE COURT:** Let me ask Mr. Plexico, would that
2 fact in any way interfere with your ability to give
3 both the State and the defendant a fair and impartial
4 trial?

5 **JUROR:** No, sir.

6 **THE COURT:** It's your second cousin?

7 **JUROR:** Yes. It's not a first. It's a second
8 cousin. It's beyond that.

9 (Whereupon, a bench conference is had)

10 **MR. HARPOOTLIAN:** Your Honor, do you agree with
11 our position on that?

12 **THE COURT:** Yes, sir. All right. Thank you,
13 sir.

14 All right. I'm going to take this one step
15 further, ladies and gentlemen. Any member of the
16 jury panel a regular contributor to or supporter of
17 law enforcement groups or groups that advocate for
18 victims' rights; in other words, groups such as the
19 Sheriff's Association or the Troopers' Association or
20 Mothers Against Drunk Driving or Sister Care or
21 Students Against Drunk Driving or Citizens Against
22 Violence or any one of these groups that has as
23 their -- and by this I mean, does any member of the
24 jury panel donate to any of these groups or do you
25 volunteer for any of these groups? Very worthwhile

1 causes.

2 So let me just go ahead and ask the question.
3 Any member of the jury panel support any of these
4 groups with any degree of regularity or participate
5 with any of these groups? Nobody? Yes, sir. I hope
6 you donate to the Troopers' Association.

7 **JUROR:** Yes, sir, I do. It's SCLEOA.

8 **THE COURT:** SCLEOA. That's the South Carolina
9 Law Enforcement Officers Association. Right?

10 **JUROR:** Yes, sir.

11 **THE COURT:** Let me ask you this, sir. I've
12 forgotten your number now.

13 **JUROR:** 176.

14 **THE COURT:** 176. I don't mean to be -- make
15 light of it. But did you get a little sticker to go
16 on the back of your car?

17 **JUROR:** Yes, sir, I did.

18 **THE COURT:** Have you ever gotten a ticket?

19 **JUROR:** Yes, sir, I have.

20 **THE COURT:** I've been doing this seven years and
21 you are the first person that's ever told me that,
22 that they got a ticket when they had a sticker on the
23 back of their car. Thank you very much for your
24 honesty.

25 **JUROR:** I didn't put the sticker on the back of

1 my car.

2 **THE COURT:** Oh, you didn't put it on there.

3 **JUROR:** I just received it.

4 **THE COURT:** Thank you. Anybody else donate to,
5 support or volunteer for any of these types of
6 groups? All right. Mr. Harpootlian, let me see you
7 a minute.

8 **MR. HARPOOTLIAN:** Sir?

9 **THE COURT:** Could I see you just a minute?

10 **MR. HARPOOTLIAN:** Yes, sir.

11 **THE COURT:** It's not necessary.

12 (Whereupon, a bench conference is had between
13 the Court and Mr. Harpootlian).

14 **THE COURT:** All right. Ladies and gentlemen, as
15 I told you a minute ago about these indictments,
16 they're not evidence of anything but I must explain
17 these indictments or at least read these indictments
18 to you. And I'll do that in just a minute.

19 As I said, the case that we're about to go into
20 is the case of The State v. Dewain Herring. Mr.
21 Herring, I'm going to ask you to stand and face the
22 jury. Any member of the jury panel, any member of
23 the jury panel related by blood or connected by
24 marriage or employment or a close personal
25 acquaintance of Mr. Dewain Herring?

1 Now, Mr. Herring is a practicing attorney here
2 in Columbia, and I must expand that question a little
3 bit to ask if any member of the jury panel has been
4 represented by Mr. Herring either in the past or at
5 the present? Any member of the jury panel know Mr.
6 Herring or have been represented by him? Thank you,
7 sir. Yes.

8 **JUROR:** Number 66.

9 **THE COURT:** Just wait a minute. You can sit
10 down, Mr. Herring. Number -- what was it -- 66?

11 **JUROR:** Yes, sir.

12 **THE COURT:** Let me find you on the list. And
13 what is --

14 **JUROR:** He's a friend.

15 **THE COURT:** He's a friend?

16 **JUROR:** Yes, sir.

17 **THE COURT:** All right. In what type of context?
18 A social context or business or professional context?

19 **JUROR:** Social.

20 **THE COURT:** Religious? All right. More of a
21 social friend?

22 **JUROR:** Yes, sir.

23 **THE COURT:** Okay. All right. Ms. Number 66,
24 would that fact in any way interfere with your
25 ability to give both the State and the defendant a

1 fair and impartial trial?

2 **JUROR:** No, sir.

3 **THE COURT:** All right. You're certain about
4 that? You wouldn't feel uncomfortable?

5 **JUROR:** I would not.

6 **THE COURT:** Thank you very much, ma'am. Anybody
7 else? All right. Mr. Herring is represented in this
8 matter today by attorneys Richard or Dick Harpootlian
9 and Mr. Graham Newman. I'll ask if any member of the
10 jury panel is related by blood or marriage or
11 connected by marriage or employment or a close
12 personal acquaintance of either Mr. Richard
13 Harpootlian or Mr. Graham Newman? If so, please
14 stand. Or perhaps have been represented by them.
15 All right. Two attorneys. And, Mr. 15, right?

16 **JUROR:** Correct.

17 **THE COURT:** Mr. 15, what is the extent of your
18 relationship with them? Is it professional or
19 friendship?

20 **JUROR:** It's friendship. I went to law school
21 with Mr. Newman.

22 **THE COURT:** With Mr. Newman?

23 **JUROR:** Yes, sir.

24 **THE COURT:** Would that fact in any way interfere
25 with your ability to give both the State and the

1 defendant a fair and impartial trial?

2 JUROR: No, sir.

3 THE COURT: Thank you very much, Mr. 15. 127,
4 right?

5 JUROR: Yes, sir.

6 THE COURT: I'm getting there. What is the
7 extent of your relationship?

8 JUROR: I went to law school with Mr. Newman as
9 well. I know him from that and what comes with that.
10 And also my firm handles cases against and with his
11 firm and Mr. Harpootlian's firm.

12 THE COURT: All right. I'm ask you again, would
13 that fact in any way interfere with your ability to
14 give both the State and the defendant a fair and
15 impartial trial?

16 JUROR: No, sir.

17 THE COURT: Thank you very much. Yes, ma'am.
18 Your number, please?

19 JUROR: Number 50.

20 THE COURT: Number 50?

21 JUROR: Number 50.

22 THE COURT: Yes, ma'am.

23 JUROR: Mr. Harpootlian represented my son at
24 one time.

25 THE COURT: All right. Can you tell me how long

1 ago?

2 **JUROR:** It was in 2000, 2001.

3 **THE COURT:** Okay. Would that fact in any way
4 interfere with your ability to give both the State
5 and the defendant a fair and impartial trial?

6 **JUROR:** No, sir.

7 **THE COURT:** All right. Ladies and gentlemen, as
8 I told you, I was going to just read the indictments
9 in this case. The first indictment charges the
10 defendant, H. Dewain Herring, with murder in that H.
11 Dewain Herring did in Richland County on or about
12 January 29th, 2006 feloniously, willfully and with
13 malice aforethought kill one John Johnson by means of
14 a firearm and that the said victim died as a
15 proximate result thereof. That's the first
16 indictment.

17 The second indictment is pointing and presenting
18 a firearm, in that H. Dewain Herring did in Richland
19 County on or about January 29th, 2006 knowingly point
20 or present a firearm, to wit: A revolver, at the
21 victim, Sergeant David Linfert and/or Officer Brien
22 Gwyn, in violation of the Code of Laws of the state
23 of South Carolina.

24 Ladies and Gentlemen, those are the two
25 indictments in this case. So I'm going to tell you a

1 little bit more about the allegations and then I'm
2 going to ask you what you know about this case, what
3 you've heard about the case and whether any of that
4 pre-trial publicity may have impacted your ability to
5 give both the State and the defendant a fair and
6 impartial trial.

7 The events, the alleged events leading to these
8 charges took place, as I said, either on January 29th
9 or January 30th, obviously in the nighttime, on or
10 about the premises of Chastity's Gold Club, ~~████~~
11 ~~██████████ ████████~~. Now, I don't know exactly what
12 part of town that's in, and that's the truth. Well,
13 let me explain, I don't live here. That's probably
14 my best excuse. I don't know where it is. But some
15 of you may. And there was some press about it at the
16 time as I understand, and I'm certain there's been
17 some press reports about it recently. So, I'll
18 ask --

19 MR. MEADORS: Your Honor, I apologize. But can
20 we approach?

21 THE COURT: Sure.

22 (Whereupon, a bench conference is had)

23 THE COURT: All right. Ladies and Gentlemen,
24 I've been corrected. These events allegedly took
25 place on January 28th and 29th, 2006. Chastity's

1 Gold Club is on River Drive in Richland County. And
2 the second charge; that is, the pointing and
3 presenting a firearm charge, took place at ~~the~~
4 ~~the~~ ~~which~~ which is a residential community
5 here in Richland County. So, just to make sure we
6 have our facts correct.

7 All right. Now, since you know that much about
8 the case and you may or may not have seen reports in
9 the press, I'll ask if any member of the jury panel
10 feels that you have prematurely or at this point in
11 time formed an opinion about the guilt or innocence
12 of the defendant based solely on what you've heard,
13 read or seen?

14 Any member of the jury panel feel that as of
15 today, in this hour, that you already have a
16 preconceived notion that the defendant is either
17 guilty or not guilty based on what you have seen or
18 may have seen and heard through the press and any
19 other dialogue in the community? Any member of the
20 jury panel?

21 Now, the next series of questions will deal with
22 this issue. And it's all right if you think about it
23 for a minute as long as we by the end of the
24 questioning period you feel comfortable that you
25 don't personally have any of these preconceived ideas

1 about the guilt or innocence of the defendant.

2 Has anyone expressed to you, anyone expressed to
3 you an opinion about the guilt or innocence of the
4 defendant?

5 **MR. MEADORS:** Your Honor, I hope you don't get
6 mad at me. I apologize. We need to approach again.

7 (Whereupon, a bench conference is had)

8 **THE COURT:** All right. Let me ask this, ladies
9 and gentlemen. To begin with, I guess I should ask,
10 has any member of the jury panel been exposed to any
11 press or media coverage of this event? Just if
12 you'll stand if you are aware of the case. Quiet.

13 **THE BAILIFF:** Quiet, please.

14 **THE COURT:** All right. That's what I thought.
15 Thank you. All right. Now I'll continue. Based on
16 what you know or have heard or have seen, is there
17 any specific information that you are aware of that
18 would render unable to give both the State and the
19 defendant a fair and impartial trial?

20 In other words, have you come upon any
21 information from any source other than what you may
22 have read or seen or heard in the press that would
23 create a situation in your mind that would make you
24 feel, honestly would make unable to render a fair and
25 impartial verdict to both the State and the

1 defendant?

2 All right. Let me ask you this. Is any member
3 of the jury panel aware of any specific evidence; in
4 other words, evidence that may be presented in a
5 court of law, in this court, that has come --
6 anything that has come to your attention through
7 conversations or through the news media that would
8 make you feel uncomfortable about sitting on the
9 trial of this case, that you could not be fair and
10 impartial to both the State and the defendant?

11 Any evidence that might have come -- I have no
12 idea what it could be, but something that might have
13 come to you. I saw so-and-so who saw so-and-so who
14 said something and I believe that it's true; those
15 kind of conversations or instances where things just
16 happen in daily life.

17 Has anyone, anyone, including family members,
18 ever expressed to you an opinion about the guilt or
19 innocence of this defendant, the guilt or innocence
20 of this defendant? Anybody told you, I know he is
21 guilty or I know he is innocent and I have reason to
22 believe, or anything of that nature that would
23 naturally influence an individual when considering a
24 case? Has anyone told you that they are convinced or
25 that they have an opinion about the guilt or

1 innocence of the defendant?

2 Now, this may be a little more general. Has any
3 member of the jury panel participated in discussions
4 with other individuals; in other words, you yourself
5 may have participated, not necessarily in expressing
6 an opinion about guilt or innocence, but had
7 conversations either at work or with your family or
8 church, whatever, about this case?

9 All right. I'm just going to ask you briefly.
10 Of course I'll get your number. But I'm just going
11 to ask you briefly about it. If you'll just be as
12 honest with me as you can, I would appreciate it.
13 Yes, ma'am. In the green shirt.

14 **JUROR:** Number 111.

15 **THE COURT:** Number what?

16 **JUROR:** 111. I'm a reporter at The State
17 Newspaper.

18 **MR. HARPOOTLIAN:** Your Honor, could we approach
19 for just a moment before she finishes answering, Mr.
20 Meadors and I?

21 **THE COURT:** Well, sure.

22 (Whereupon, a bench conference is had)

23 **THE COURT:** We are going to get through this
24 this afternoon. In response to that question,
25 Ms. 111, if you'll come forward and just tell me so

1 the rest of the panel may not be influenced by what
2 you may have to say. Because I just don't know.
3 Come on up.

4 **MR. GIESE:** Is this on the record?

5 **COURT REPORTER:** I can't get it from over there.

6 **THE COURT:** All right. So the court reporter
7 can hear what you have to say.

8 (Whereupon, the following side bar conference is
9 had)

10 **THE COURT:** Okay. How are you?

11 **JUROR:** Okay. I'm an education reporter at The
12 State Newspaper. And by judging what stories go in
13 the newspaper, and obviously this was in the paper
14 every day, so when I see the stories that are run
15 about this case, I know about it ahead of time,
16 certainly everybody has conversations about it.

17 **THE COURT:** Sure.

18 **JUROR:** And I've never specifically discussed
19 this case with anyone at work or anything, but I'm
20 obviously in an atmosphere that the case is
21 discussed.

22 **THE COURT:** I fully understand. The same
23 question that I've asked everybody else. Do you feel
24 you could be fair and impartial?

25 **JUROR:** Absolutely. I cover schools, not

1 courts.

2 **THE COURT:** Okay. Thank you very much.

3 (Whereupon, the side bar conference is
4 concluded)

5 **THE COURT:** Somebody else stood up. Come on
6 down, sir. And the lady, I'll get you next.

7 **JUROR:** What I have to say is not that
8 important. I really think it's worth mentioning.

9 (Whereupon, the following side bar conference is
10 had)

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

12 **JUROR:** My brother-in-law knows him and --

13 **THE COURT:** Knows who?

14 **JUROR:** Mr. Herring. And he keeps telling me
15 about mental state and those kind of issues.

16 **THE COURT:** Okay. So you've had some
17 discussions with him, general discussions about it?

18 **JUROR:** Yeah. Well, yeah.

19 **THE COURT:** Okay. Do you know any more about it
20 than that?

21 **JUROR:** Well, I've read the newspaper and, you
22 know, I know people that know him.

23 **THE COURT:** But you don't?

24 **JUROR:** I don't know him, no.

25 **THE COURT:** As a result of those

1 conversations -- oh, by the way, what was your
2 number?

3 JUROR: 124.

4 THE COURT: All right. As a result of those
5 conversations, do you feel that you can be fair and
6 impartial?

7 JUROR: I mean, I do know some factors that may,
8 you know, his mental state, I have nothing other
9 than --

10 THE COURT: What type business are you in?

11 JUROR: Me?

12 THE COURT: What type business?

13 JUROR: I'm a professor at up S.C.

14 THE COURT: But not involving psychology?

15 JUROR: No. I'm in the business school.

16 THE COURT: In the business school?

17 JUROR: Yes.

18 THE COURT: All right. Thank you very much.

19 MR. MEADORS: Judge, did he finish? I didn't
20 finish hearing his answer about whether he could --
21 in response to Your Honor's question.

22 MR. HARPOOTLIAN: Can be fair and impartial to
23 both sides.

24 JUROR: I believe I could, yeah.

25 THE COURT: Okay. Thank you, sir.

1 (Whereupon, the side bar conference is
2 concluded)

3 **THE COURT:** Come on down.

4 **JUROR:** Me?

5 **THE COURT:** Yeah. I'm not going to bite you. I
6 just think I need to ask, ma'am. I'm not trying to
7 embarrass you or anything.

8 (Whereupon, the following side bar conference is
9 had)

10 **THE COURT:** Okay.

11 **JUROR:** 65. The blonde headed lady that stood
12 up is my ex sister-in-law. My brother is a friend of
13 the defendant. And when the story came out in the
14 paper, we talked about it. But that's it.

15 **THE COURT:** The blonde headed lady who stood up?

16 **MR. HARPOOTLIAN:** Yes.

17 **MR. GIESE:** She stood up.

18 **THE COURT:** Oh, I'm with you now.

19 **JUROR:** We didn't talk about whether there was
20 anything to it or not, just all of it in the paper.

21 **THE COURT:** What's that lady's connection with
22 you?

23 **JUROR:** She's my ex sister-in-law.

24 **THE COURT:** Ex sister-in-law. Okay. So --

25 **JUROR:** If she didn't stand up, I probably

1 shouldn't have.

2 **THE COURT:** Well, no. It's important that we
3 know whether -- there is nothing wrong with saying
4 you know something, ma'am.

5 **JUROR:** I don't know anything about it. You
6 just asked if we had discussed it. We saw it in the
7 paper.

8 **THE COURT:** I know. I know. All right.
9 Counsel. Counsel.

10 **MR. HARPOOTLIAN:** Sir?

11 **THE COURT:** You take it elsewhere.

12 **MR. HARPOOTLIAN:** Yes, sir.

13 **THE COURT:** Do you think you could be fair and
14 impartial?

15 **JUROR:** (Nods head affirmatively).

16 **THE COURT:** And what is your -- 51?

17 **JUROR:** 65.

18 **THE COURT:** 65. Okay. Thank you.

19 (Whereupon, the juror returns to her seat and
20 the side bar continues as follows)

21 **MR. MEADORS:** Do you want to wait and see if she
22 stands up later?

23 **MR. GIESE:** The lady that she said she had the
24 discussion with did not stand up.

25 **MR. HARPOOTLIAN:** She did stand up.

1 **THE COURT:** She did not stand up. She stood up
2 to start with. She says she's a very close personal
3 acquaintance.

4 **MR. GIESE:** Right.

5 **THE COURT:** She did not stand up when I asked
6 her if they had discussions.

7 **MR. MEADORS:** This juror said if she didn't
8 stand then I shouldn't stand up because there were
9 conversations. I guess that's her point.

10 **THE COURT:** Well, I don't want to embarrass the
11 other one.

12 **MR. HARPOOTLIAN:** Well, she said she could be
13 fair and impartial.

14 **THE COURT:** I have to ask her the same question.
15 All right.

16 (Whereupon, the following side bar conference is
17 concluded)

18 **THE COURT:** Ladies and gentlemen, let me just
19 say, none of this process is intended to embarrass
20 anybody. I appreciate your candor and truthful
21 answers to these questions. And I know you all are
22 searching your minds to make sure that you feel
23 comfortable that you can give both the State and the
24 defendant a fair and impartial trial even in light of
25 the amount of publicity that's gone on before this

1 case has begun.

2 We are going to select out of your -- we have
3 approximately 60 people here. We're going to select
4 12 members of the jury. We will select two
5 individuals to be alternates. So, obviously all of
6 you will not be serving on the jury.

7 One way that the selection process works is that
8 your names will be drawn in a certain order by a
9 computer, random order by a computer. And each of
10 the attorneys will have an opportunity to what we
11 call strike a juror. In other words, sometimes
12 jurors believe that lawyers select the juries. They
13 don't. But they do have some input into who does not
14 get onto a jury because they are given that right by
15 law. By statutory law they have a right to excuse
16 certain jurors.

17 So, when I ask these questions, they're just --
18 they are -- both the defense counsel and the State's
19 counsel are trying to see as best they can those
20 jurors that they believe will be fair and impartial.
21 Not that they don't believe that anybody would not be
22 fair and impartial, but some of your answers may give
23 them some insight as to whether you may have some
24 bias in favor of one side or the other.

25 And so that's the reasons for these questions.

1 They're not, as I say, to embarrass you or to try to
2 put you on the spot or anything like that. But they
3 have a duty and responsibility, both the State's
4 attorney and the defense counsel, to be as diligent
5 as they can in trying to assure that a fair and
6 impartial jury is selected in this case.

7 So those are -- I just want to explain -- and
8 I'm sure you know that, but that's why some of these
9 questions are necessary, to try to at least get to
10 know you a little better here on Monday afternoon.

11 Okay. Ladies and gentlemen, as I told you
12 earlier, the first indictment alleges that Mr.
13 Herring did kill John Johnson. I need to know if any
14 member of the jury panel knows or has any
15 acquaintance with the deceased individual, Mr. John
16 Johnson, whether you knew him or any member of his
17 family, perhaps go to his -- went to his church,
18 lived in his neighborhood, have any connection with
19 Mr. John Johnson? If so, please stand.

20 Any member of the jury panel or any member of
21 your family ever been the victim of a crime of
22 violence? Victim of a crime of violence. I'm not
23 going to ask you a lot about it, but I do need to
24 know just the bear essentials of what that may have
25 been and when it may have occurred. Any member of

1 the family? Yes, ma'am. On the front row. And I
2 need your number.

3 JUROR: Juror 88.

4 THE COURT: Yes, ma'am.

5 JUROR: I obtained grounds of divorce for
6 physical cruelty.

7 THE COURT: How many how long ago?

8 JUROR: 24 years.

9 THE COURT: Would that fact in any way interfere
10 with your ability to give both the State and the
11 defendant a fair and impartial trial, ma'am?

12 JUROR: No, sir.

13 THE COURT: Next lady.

14 JUROR: Juror number 54. My brother was killed
15 in a car accident by a drunk driver in April of 2006.

16 THE COURT: I'm sorry, ma'am. Would that fact
17 in any way interfere with your ability to give both
18 the State and the defense a fair and impartial trial?

19 JUROR: No, sir.

20 THE COURT: Yes, ma'am. On the front row.

21 JUROR: Juror number 31.

22 THE COURT: Yes, ma'am.

23 JUROR: My son was shot and killed by a person
24 that really didn't know him. But it was in 1991.

25 THE COURT: 1991?

1 **JUROR:** Mm-hmm (affirmative).

2 **THE COURT:** Would that fact in any way interfere
3 with your ability to give both the State and the
4 defense a fair and impartial trial?

5 **JUROR:** No, sir.

6 **THE COURT:** Thank you very much, ma'am. Yes,
7 ma'am.

8 **THE JUROR:** Juror 165.

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

10 **JUROR:** A home robbery about 12 years ago.

11 **THE COURT:** All right. Would that fact in any
12 way interfere with your ability to give both the
13 State and the defense a fair and impartial trial?

14 **MR. HERRING:** No, sir.

15 **THE COURT:** Thank you very much, ma'am. Yes,
16 sir.

17 **JUROR:** My son was a victim of --

18 **THE COURT:** What's your number, please?

19 **JUROR:** My number is 114.

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

21 **JUROR:** And my son was attacked, beaten
22 brutally, assault with intent to kill. He was
23 hospitalized.

24 **THE COURT:** How long ago?

25 **JUROR:** March of this year.

1 THE COURT: March of this year?

2 JUROR: Yes, sir.

3 THE COURT: All right, sir. Are you still
4 involved in the legal process as a result of that?

5 JUROR: No, sir.

6 THE COURT: All right. Did that happen in
7 Richland County?

8 JUROR: Yes, sir.

9 THE COURT: All right. Would that fact in any
10 way interfere with your ability to give both the
11 State and the defense a fair and impartial trial?

12 JUROR: No, Your Honor.

13 THE COURT: Thank you very much. Yes, sir,
14 Mr. 127.

15 JUROR: Your Honor, when I was a student at
16 Wofford at Spartanburg I worked part time at a bank
17 that was robbed while I was working there by a person
18 with a gun. That would have been 2000 or 2001.

19 THE COURT: All right, sir. Would that fact in
20 any way interfere with your ability to give both the
21 State and the defense a fair and impartial trial?

22 JUROR: No, sir.

23 THE COURT: All right. Yes, ma'am.

24 JUROR: Number 3. I was the victim of --

25 THE COURT: Number 3?

1 **JUROR:** -- CDV and intent to kill by my ex
2 husband.

3 **THE COURT:** Number 3?

4 **JUROR:** In 2001.

5 **THE COURT:** You are number 3?

6 **JUROR:** Yes.

7 **THE COURT:** Ma'am, would that fact in any way
8 interfere with your ability to give both the State
9 and the defense a fair and impartial trial?

10 **JUROR:** No, sir.

11 **THE COURT:** Thank you very much, ma'am. Yes,
12 sir. 127.

13 **JUROR:** I forgot to mention that my mother
14 actually worked in banking for about 30 years as a
15 branch manager, and she has been involved in probably
16 three or four robberies at banks where people have
17 come in and robbed the banks she worked at.

18 **THE COURT:** The same bank?

19 **JUROR:** Different places, different banks over
20 the course of 30 years.

21 **THE COURT:** Thank you very much, sir. Anybody
22 else? Any member of the jury panel or any member of
23 your family ever been accused of committing a violent
24 crime? Any member of your family, either you or any
25 member of your family, been accused, and again, I

1 just want a brief answer, been accused of committing
2 a violent crime? Number.

3 JUROR: 88.

4 THE COURT: Number 88 again.

5 JUROR: My ex husband was charged with assault
6 with intent to kill of a high and aggravated nature
7 against his brother-in-law.

8 THE COURT: How long ago was that?

9 JUROR: Right before I divorced him, 24 years
10 ago.

11 THE COURT: Thank you, ma'am. Yes, sir.

12 JUROR: 13.

13 THE COURT: Yes, sir.

14 JUROR: Minor charge, ten years ago against
15 myself. I spoke with you about this this morning.

16 THE COURT: Yes, sir. All right. Would that
17 fact in any way interfere with your ability to give
18 both the State and the defense a fair and impartial
19 trial?

20 JUROR: Absolutely not.

21 THE COURT: Thank you very much, sir. Oh. Yes,
22 ma'am. On the front row.

23 JUROR: Number 14.

24 THE COURT: Yes, ma'am.

25 JUROR: My nephew was accused of a crime.

1 **THE COURT:** How long ago?

2 **JUROR:** A couple of years ago.

3 **THE COURT:** A serious crime?

4 **JUROR:** Yes, sir.

5 **THE COURT:** Okay. Would that fact in any way
6 interfere with your ability to give both the State
7 and the defense a fair and impartial trial? Again,
8 I'm going to be asking the same question every time.
9 Would that fact in any way interfere with your
10 ability to give both the State and the defense a fair
11 and impartial trial?

12 **MR. HERRING:** No, sir.

13 **THE COURT:** Thank you. Yes, ma'am.

14 **JUROR:** Number 50.

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

16 **JUROR:** My son was charged with strong armed
17 robbery in 2000.

18 **THE COURT:** Would that fact in any way interfere
19 with your ability to give both the State and the
20 defense a fair and impartial trial?

21 **JUROR:** No, sir.

22 **THE COURT:** Thank you, ma'am. Yes, sir; with
23 the brown, tan, brown shirt.

24 **JUROR:** Number 169.

25 **THE COURT:** 69?

1 JUROR: 169.

2 THE COURT: 169.

3 JUROR: I had a brother accused of assault with
4 intent with a weapon or something like that. That
5 was many years ago.

6 THE COURT: Many years ago? Would that fact in
7 any way interfere with your ability to give both the
8 State and the defense a fair and impartial trial?

9 JUROR: I don't believe so.

10 THE COURT: All right. Thank you. Yes, ma'am.

11 JUROR: 107. About a year ago my son was
12 accused of assault and battery.

13 THE COURT: All right. Would that fact in any
14 way interfere with your ability to give both the
15 State and the defense a fair and impartial trial?

16 JUROR: No.

17 THE COURT: Thank you very much, ma'am. All
18 right. As I indicated to you earlier, ladies and
19 gentlemen, the defendant, Mr. Herring, is an attorney
20 in the state of South Carolina. Would the fact that
21 Mr. Herring is an attorney in any way affect your
22 ability to render both a fair and impartial trial in
23 this case?

24 Any member of the jury panel own or possess a
25 firearm in either your home or your business? All

1 right. I think I'm not going to ask the question
2 about fair and impartial trial. We just need to
3 know, just tell me your number and home or business.
4 Number 80.

5 *JUROR:* 88.

6 *THE COURT:* 88.

7 *JUROR:* Home.

8 *THE COURT:* All right. Thank you, ma'am.

9 *JUROR:* 58. It's home.

10 *THE COURT:* All right.

11 *JUROR:* 15, home.

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

13 *JUROR:* 54, home.

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

15 *JUROR:* 71, home.

16 *THE COURT:* At your home?

17 *JUROR:* Yes, sir.

18 *THE COURT:* 63, home. All right. The lady with
19 the pink dress.

20 *JUROR:* 106, home.

21 *THE COURT:* Yes, ma'am. And the gentleman.

22 *JUROR:* 110, home.

23 *THE COURT:* All right.

24 *JUROR:* 143, home.

25 *THE COURT:* All right.

1 **JUROR:** 113, home.

2 **THE COURT:** All right.

3 **JUROR:** 176, home.

4 **THE COURT:** Thank you.

5 **JUROR:** 178, home and business.

6 **THE COURT:** Home and business.

7 **JUROR:** Yes, sir.

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

9 **JUROR:** 164, home.

10 **THE COURT:** All right.

11 **JUROR:** 128, home.

12 **THE COURT:** Report.

13 **JUROR:** 169, home, which is also my business.

14 **THE COURT:** Home and business. All right.

15 Thank you very much. It kind of goes along with
16 that, this next question. Any member of the jury
17 panel possess a concealed weapons permit issued by
18 the State Law Enforcement Division or any other law
19 enforcement agency? Anybody possess one of the
20 concealed weapons permits? And I just need your
21 number.

22 **JUROR:** 143.

23 **THE COURT:** All right, sir. And --

24 **JUROR:** 178.

25 **THE COURT:** 178. All right. Thank you very

1 much. Has any member of the jury panel or any member
2 of your immediate family ever had any experience --
3 and I just need sort of a yes or no answer to this --
4 experience with anyone diagnosed with bipolar
5 disorder or a manic/depressive disorder? Any member
6 of the jury panel or any member of your family ever
7 had any personal experience with anyone diagnosed
8 with either bipolar disorder or manic/depressive
9 disorder? Number 88.

10 **JUROR:** I'm a registered nurse, so I've had
11 experience with bipolar patients.

12 **THE COURT:** All right. Thank you very much,
13 ma'am.

14 **JUROR:** Number 58. My sister.

15 **THE COURT:** I've got the wrong sheet. Number
16 58?

17 **JUROR:** Yes.

18 **THE COURT:** All right, sir. Yes, ma'am.

19 **JUROR:** Number 14. My brother-in-law.

20 **THE COURT:** Yes, ma'am. Yes, sir; on the front
21 row.

22 **JUROR:** Number 16. I work at a state
23 psychiatric hospital.

24 **THE COURT:** All right. You work there?

25 **JUROR:** Yes, sir.

1 **THE COURT:** All right. Thank you very much,
2 sir. Yes.

3 **JUROR:** Number 15, my first cousin.

4 **THE COURT:** Okay. The lady.

5 **JUROR:** Number 48, my ex sister-in-law.

6 **THE COURT:** I didn't hear you.

7 **JUROR:** My ex sister-in-law.

8 **THE COURT:** Ex sister-in-law. Yes, ma'am. Yes.

9 **JUROR:** Number 46. And I'm a special education
10 major. So I work with those type of disorders.

11 **THE COURT:** Thank you very much. With the blue
12 shirt on.

13 **JUROR:** Yes. I'm a professional counselor and I
14 have clients.

15 **THE COURT:** Okay. Thank you very much, ma'am.
16 Let's just go from my left to your --

17 **MR. MEADORS:** What was her number? I'm sorry.
18 What was her number?

19 **JUROR:** Sorry. 101.

20 **THE COURT:** 101.

21 **MR. MEADORS:** Thank you. Yes, ma'am; in the
22 green blouse.

23 **JUROR:** 111, a member of my family.

24 **THE COURT:** Number?

25 **MR. GIESE:** 111.

1 **THE COURT:** Member of your family.

2 **JUROR:** Yes. My adopted brother.

3 **THE COURT:** All right. With the black.

4 **JUROR:** 105, close friends.

5 **THE COURT:** Thank you, ma'am.

6 **JUROR:** 138, sister.

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

8 **JUROR:** 143. As a pastor I have had some in our
9 congregation.

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

11 **JUROR:** 176, ex wife.

12 **THE COURT:** Thank you very much, sir.

13 **JUROR:** 178, as a security supervisor at the
14 Federal building at the V.A. with the office.

15 **THE COURT:** Thank you very much, sir.

16 **JUROR:** 144, my girlfriend.

17 **THE COURT:** Thank you very much, sir.

18 **JUROR:** Number 3, my ex husband.

19 **THE COURT:** Thank you very much. Any member of
20 the jury panel who has any religious or moral
21 objections to the consumption of alcohol, religious
22 or moral objections to the consumption of alcohol?
23 And again, I just need your number if you feel that
24 you do so.

25 **JUROR:** 143.

1 THE COURT: Yes, sir.

2 JUROR: 71.

3 THE COURT: Number 71. All right, sir.

4 JUROR: 94.

5 THE COURT: Mr. 94. Thank you very much. Any
6 member of the jury panel or any member of your
7 immediate family have personal experience with
8 someone addicted to drugs or alcohol? Personal
9 experience with anyone addicted to either drugs or
10 alcohol? All right. Let's just start on the front
11 row. Yes, sir. Mr. 15, is it?

12 JUROR: My first cousin.

13 THE COURT: All right. Thank you very much.

14 JUROR: 23, my aunt.

15 THE COURT: 23?

16 JUROR: Yes.

17 THE COURT: Yes, ma'am.

18 JUROR: 13, my nephew.

19 THE COURT: Your nephew.

20 JUROR: Yes, sir.

21 JUROR: 14, my brother-in-law.

22 THE COURT: Brother-in-law. 88.

23 JUROR: Professionally as a nurse I used to work
24 in the unit where people come in to detox.

25 THE COURT: Thank you very much.

1 **JUROR:** 31, my ex husband.

2 **THE COURT:** Thank you, ma'am.

3 **JUROR:** 76. Both my uncle and my
4 brother-in-law.

5 **THE COURT:** Thank you very much, sir.

6 **JUROR:** 71. My father-in-law, a couple of my
7 brother-in-laws.

8 **THE COURT:** Thank you, Mr. 71.

9 **JUROR:** 66, my father.

10 **THE COURT:** 66.

11 **JUROR:** I'm number 66.

12 **THE COURT:** Oh. You're number 66. Thank you
13 very much. Thank you very much. Let's see. With
14 the black jacket on.

15 **JUROR:** 114, my aunt.

16 **JUROR:** 110, my father and my aunt.

17 **THE COURT:** Thank you.

18 **JUROR:** 65, myself.

19 **THE COURT:** All right.

20 **JUROR:** 127, a friend that I went to college
21 with.

22 **THE COURT:** Okay.

23 **JUROR:** 105, grandparents.

24 **THE COURT:** Thank you.

25 **JUROR:** 113, my dad.

1 THE COURT: Thank you very much.
2 JUROR: 138, my dad.
3 THE COURT: Thank you.
4 JUROR: 137, my aunt and uncle.
5 THE COURT: Thank you.
6 JUROR: 143, again professionally.
7 THE COURT: Thank you very much, sir.
8 JUROR: 189, my son and my brother-in-law.
9 THE COURT: Thank you very much.
10 JUROR: 164, friend.
11 THE COURT: Thank you very much.
12 JUROR: 149, an uncle, brother and a sister.
13 THE COURT: Thank you very much.
14 JUROR: 144, uncle.
15 THE COURT: Yes, sir. Green shirt.
16 JUROR: 158, brother.
17 THE COURT: Thank you very much, sir. Lady with
18 the --
19 JUROR: Number 3, ex husband.
20 THE COURT: Number 3. Yes, ma'am. 160.
21 JUROR: 169.
22 THE COURT: 9.
23 JUROR: Brothers, father, cousins, friends.
24 THE COURT: How are you doing?
25 JUROR: Better than them.

1 **THE COURT:** Thank you very much, sir.

2 **JUROR:** 84, father.

3 **THE COURT:** Thank you very much, Ms. 84.

4 **JUROR:** Your Honor.

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

6 **JUROR:** 58, a friend. I didn't realize we were
7 doing that.

8 **THE COURT:** All right. Thank you very much.
9 Again, I appreciate your candor, ladies and
10 gentlemen. All right, ladies and gentlemen.
11 Obviously from what I told you so far and what you
12 may have been exposed to in the press, one or more of
13 the parties -- and there may be witnesses also that
14 are involved in this case; I don't know -- but one or
15 more of the parties or witnesses may be linked either
16 by employment or as a patron of an adult
17 entertainment club which features or in which nude
18 dancing is commonplace.

19 Do any of you have any preconceived opinions as
20 to people associated with these type adult clubs,
21 whether customers or employees? And I'm going to ask
22 you if you do have feelings about that one way or the
23 other, I will ask you in this case whether those
24 feelings would affect your ability to render an
25 impartial decision as to the fact in this case. In

1 other words, I'll go back to asking the question
2 about whether it would affect your ability to give
3 both the State and the defendant a fair and impartial
4 trial.

5 So, any member of the jury panel who has
6 feelings or opinions, not necessarily opinions, but
7 preconceived ideas about the people who may either be
8 customers or employees of such places? All right,
9 sir. And your number, please.

10 **JUROR:** 158.

11 **THE COURT:** All right, sir. Whoa, whoa, whoa,
12 whoa. Would that fact in any way interfere with your
13 ability to give both the State and the defendant a
14 fair and impartial trial?

15 **JUROR:** No, sir.

16 **THE COURT:** Thank you very much. Yes, ma'am.

17 **JUROR:** 101.

18 **THE COURT:** All right. Would that fact, the
19 fact that you do have some preconceived ideas or
20 opinions about this type of entertainment I'll call
21 it, would that fact in any way interfere with your
22 ability to give both the State and the defense a fair
23 and impartial trial?

24 **JUROR:** No, sir.

25 **THE COURT:** All right. Thank you very much.

1 Thank you, ma'am. And your number was 1-0 --

2 JUROR: 1.

3 THE COURT: 101. Number 12. Is that correct?

4 JUROR: 13, Your Honor.

5 THE COURT: I was close.

6 JUROR: Yes, you were.

7 THE COURT: Would the fact that you have some
8 preconceived idea about this in any way interfere
9 with your ability to give both the State and the
10 defendant a fair and impartial trial?

11 JUROR: Absolutely not.

12 THE COURT: Thank you very much, sir.

13 JUROR: 14.

14 THE COURT: Yes, ma'am. Again, would that fact
15 in any way interfere with your ability to give both
16 the State and the defense a fair and impartial trial?

17 JUROR: Jurors.

18 THE COURT: Thank you very much. And your
19 number, please.

20 JUROR: 94.

21 THE COURT: 94. The same question. Would that
22 fact in any way interfere with your ability to give
23 both the State and the defense a fair and impartial
24 trial?

25 JUROR: No, sir.

1 **THE COURT:** Thank you very much, sir. Back to
2 the firearms question. A minute ago I skipped over
3 one. Any member of the jury panel or any member of
4 your family a member of the National Rifle
5 Association, the NRA, or any other group that
6 advocates for the right to bear arms? Any member of
7 the jury panel either a member of those groups or a
8 member of any other group that supports that sort of
9 activity? Number -- I got you down.

10 **JUROR:** 88.

11 **THE COURT:** 88.

12 **JUROR:** I'm a southern lady. I hunt and fish.
13 I'm a member of the NRA.

14 **THE COURT:** Thank you very much, Madam 88.
15 Anybody else? All right. Ladies and gentlemen, I am
16 going to read a list of names. These individuals may
17 be witnesses in this case. And the question is the
18 same with regard to each. I'll pause after each name
19 because sometimes if I go too fast it's sometimes
20 hard to process it in your mind. But I'll ask if any
21 member of the jury panel is related by blood or
22 connected by marriage or a close personal
23 acquaintance of any one of the following individuals.

24 And if any of these witnesses are present, if
25 any witnesses are present, when your name is called,

1 will you please stand so the jury may identify you
2 other than by name. They might recognize you by
3 sight.

4 Investigator Brian Allen with the Richland
5 County Sheriff's Department. Now, most of the
6 witnesses will be up here in front of you, ladies and
7 gentlemen. I'll tell you if anybody stands up in the
8 back. Obviously I don't know. So you won't have to
9 be crane your neck every time.

10 Investigator Brian Allen with the Richland
11 County Sheriff's Department. Deputy Attach or Attach
12 with the Richland County Sheriff's Office. Nicole
13 Beran, B-E-R-A-N. Jerry Britt. All right.
14 Mr. Britt is in the back of the room. Anybody know
15 Mr. Britt? Thank you, sir.

16 Dr. Jeff Brown. Mack Brown. Jerry Bryson.
17 Betty Butler. Beverly Crane or Bev Crane with the
18 Richland County Sheriff's Department. Robert Dean.
19 Captain Joe Dorton with the Richland County Sheriff's
20 Department. Denise Eargle. Deputy Gallegos with the
21 Richland County Sheriff's Department.

22 Renisha Granger. Captain Stephen Griffey with
23 the Richland County Sheriff's Department. Deputy
24 Hoover with the Richland County Sheriff's Department.
25 Paul LaRosa, Richland County Sheriff's Department.

1 MR. GIESE: Your Honor, he's SLED. I'm sorry.

2 THE COURT: I'm sorry. State Law Enforcement
3 Division?

4 WITNESS: Yes, sir.

5 THE COURT: I'm sorry. Thank you very much.
6 Robert Middleberg. Investigator William O'Neill with
7 the Richland County Sheriff's Department. Wilbur
8 Savage. Rob Schmidt. Judy Spell, 911. Investigator
9 William Wesley with the Richland County Solicitor's
10 Office. Robert Weston. A Mrs. Hartin who works for
11 the Forest Acres Police Department. Investigator Jay
12 Russell with the Forest Acres police department.

13 Winta Adams, Richland County EMS. Joye Cameron,
14 Richland County EMS. Andrew Steward, Richland County
15 EMS. Steven White, Richland County EMS.
16 Investigator John Baker with the Richland County
17 Sheriff's Department. The next ten or about twelve
18 names, ladies and gentlemen, all work with the
19 Richland County Sheriff's Department.

20 Investigator Richard Davis, Chuck Earles, Scott
21 Faust, Tena Goff, Deputy Brien Gwyn, Deputy Thomas
22 Hodges. Captain Dan Lane. David Linfert.
23 Investigator Ray Livingston. Sergeant Joe Odom.
24 Corporal Payne, P-A-Y-N-E. Investigator Stan
25 Richards. Sergeant Joe Odom. Corporal Payne with

1 Richland County. I think I just read that.

2 Investigator Stan Richards. Masdenio Roe, Richland
3 County. Captain Stan Smith, Richland County
4 Sheriff's Department. Investigator Brent Tavenner.
5 Deputy Williams. Chief Deputy David Wilson.

6 Carly Brandenburg at Palmetto Richland Memorial.
7 Dr. Stan Kessler, Palmetto Richland Memorial. Amanda
8 Reeves, a nurse at Palmetto Richland Memorial.
9 Special Agent Phillip Coonfield with the State Law
10 Enforcement Division. Lilly Gallman with SLED.
11 Captain Paul Grant with SLED.

12 Dave Lawrence with the State Law Enforcement
13 Division. Special Agent Vello Paavel, State Law
14 Enforcement Division. Special Agent Eddie Porter,
15 State Law Enforcement Division. Joe Powell, State
16 Law Enforcement Division. Special Agent Melissa
17 Skipper, State Law Enforcement Division.

18 Dr. Geoffrey Brown. Dr. Romero. Jack Hensell.
19 Sandra McFadden. Richard Carter, Richland County
20 Sheriff's Department. Michael Baird. James
21 Bartling. Nicole Beran. Monty Bruce. Reverend
22 Michael Bullock. Standing. Reverend -- anybody know
23 Reverend Bullock? Todd Krippen. Steven Cully.
24 Melissa Cummings. Ross Farmer. Timothy Farmer.
25 Donald Hawkins. Mr. Hawkins is standing up in the

1 back. Anybody know Mr. Hawkins? Virginia Herring.
2 All right. Well, jurors, stand. Okay. You know Ms.
3 Herring?

4 *JUROR:* Yes.

5 *THE COURT:* Okay. And your name? Number again?

6 *JUROR:* 65.

7 *JUROR:* 66.

8 *THE COURT:* 66, 65. 65 and 66. 66?

9 *JUROR:* Yes, sir.

10 *THE COURT:* Is that correct?

11 *JUROR:* (Nods head affirmatively).

12 *THE COURT:* All right.

13 *JUROR:* (Nods head affirmatively).

14 *THE COURT:* All right. John Holbrook. Kelly
15 Humphrey. Chris Isgett. Mr. Isgett is an attorney
16 here in Richland County. Kristie Goswell or Coswell
17 Johnson. William Koff, K-O-F-F. Angela Koon.
18 Ms. Koon is standing in the back. Thank you, ma'am.
19 Miles Loadholt. Jessica McClendon. Ruth Morris.
20 Kara Mustafa. Ms. Mustafa is standing in the back.
21 Paul Prioleau or Prioleau. Henry Robitowitz.
22 Edward Rothchild. David Singletary. Sandal Sanders.
23 Kit Smith. Ms. Smith is standing. Number 66?

24 *JUROR:* Yes, sir.

25 *THE COURT:* And Mr. 15?

1 **JUROR:** Yes.

2 **THE COURT:** Let me just -- stay up. Mr. 15,
3 what is your relationship other than --

4 **JUROR:** I just know -- I mean, I don't know her
5 well, but I know who Kit Smith is.

6 **THE COURT:** All right. Do you know her
7 personally?

8 **JUROR:** No, sir.

9 **THE COURT:** Okay. Do you know who she is?

10 **JUROR:** Yes.

11 **THE COURT:** Ms. Smith is a member of the
12 Richland County Council.

13 **MR. SMITH:** Yes.

14 **THE COURT:** You still are?

15 **MR. SMITH:** Yes.

16 **THE COURT:** I knew she used to be but she still
17 is a member of the Richland County Council. And
18 would that fact in any way interfere with your
19 ability to give both the State and the defense a fair
20 and impartial trial?

21 **JUROR:** No, sir.

22 **THE COURT:** Ms. 66, how do you know Ms. Smith?

23 **JUROR:** A personal friend.

24 **THE COURT:** If she were a witness in this
25 case -- and all of those people may not be called as

1 witnesses -- but if she was called as a witness, do
2 you think that would influence your ability of give
3 both the State and the defendant a fair and impartial
4 trial?

5 JUROR: No, sir.

6 THE COURT: Thank you very much. And, yes, sir.

7 JUROR: 124.

8 THE COURT: 124. Okay. What is your
9 relationship?

10 JUROR: Her husband is my Dean.

11 THE COURT: Her husband is your Dean?

12 JUROR: Yes.

13 THE COURT: Business school. That is pretty
14 important. Mr. 124, would that fact in any way
15 interfere with your ability to give both the State
16 and the defense a fair and impartial trial --

17 JUROR: No.

18 THE COURT: -- if she were to be called as a
19 witness?

20 JUROR: No.

21 THE COURT: All right. Thank you very much.
22 Anybody else? Steve Smith. Steve Smith. Phillip
23 Steude or S-T-E-U-D-E.

24 MR. HARPOOTLIAN: Steude.

25 THE COURT: Steude.

1 **JUROR:** Here I go again.

2 **THE COURT:** Ms. 66. And how do you know
3 Mr. Steude?

4 **JUROR:** He was my counselor many years ago
5 through my divorce.

6 **THE COURT:** All right. Okay. And would that
7 fact -- if he were called as a witness, would that
8 influence your judgment any more than any other
9 witness in this case?

10 **JUROR:** No, sir.

11 **THE COURT:** Thank you very much. Terrence
12 Tobin. Carl Weeks. Mr. Weeks is standing in the
13 gallery. Anybody know Mr. Weeks? Robert Wiseman.
14 Kevin Wilson. Sharon Wilson. Skip Whitmire. James
15 Woodard. Lawton Yates.

16 **MR. MEADORS:** Judge.

17 (Whereupon, a bench conference is had)

18 **THE COURT:** All right. Now, ladies and
19 gentlemen, I'm going to give you a break in just a
20 few minutes if you need it. You probably do. I've
21 been advised that I skipped a couple of names on the
22 list. And, by the way, if we called every name on
23 this list to be a witness, we'd be here probably
24 until the Fourth of July. But these are names that
25 may be called. So don't get any trepidation. I

1 believe that both counsel have advised me that this
2 case will finish this week. In other words, I don't
3 believe we have any concern at least at this point
4 about going over Friday, past Friday. So, I just
5 want to let you know that.

6 The names that I may have overlooked, I don't
7 know. Robert Weston. I thought I called it but
8 maybe I didn't. Investigator Morris Davis with the
9 Richland County Sheriff's Department. And Deputy
10 Thomas Hodges. All right. Anybody know any of those
11 people? Oh. Yes, sir.

12 JUROR: Juror 15.

13 THE COURT: 15.

14 JUROR: I know Robert Weston if it's that the
15 Robert Weston that --

16 THE COURT: You know Robert Weston if it's the
17 Robert Weston you know?

18 JUROR: We're good friends.

19 THE COURT: Well, and you're right. I mean,
20 there probably are several. But would the fact that
21 he may be called as a witness -- and I don't know --
22 would that fact -- would you tend to believe him more
23 so than you would believe any other witness in this
24 case?

25 JUROR: No, sir.

1 **THE COURT:** So it wouldn't influence your
2 judgment one way or the other?

3 **JUROR:** No, sir.

4 **THE COURT:** Thank you very much, sir. Oh, yes,
5 ma'am. Madam 66.

6 **JUROR:** Yes. I know a Robert Weston.

7 **THE COURT:** Okay. I'll ask you the same.

8 **JUROR:** He's not in the police force.

9 **THE COURT:** He is what?

10 **JUROR:** He is not in the police force.

11 **THE COURT:** This one doesn't indicated whether
12 he's in the police force or not. I've just got a
13 list of names. But anyway, if that Robert Weston
14 that you know is called, would that fact -- would you
15 be tend to leave him any more than you'd believe any
16 other witness in this case?

17 **JUROR:** No, sir.

18 **THE COURT:** So that wouldn't influence your
19 judgment --

20 **JUROR:** No, sir.

21 **THE COURT:** -- one way or the other? Thank you
22 very much, Ms. 66. Now, I asked you a question a few
23 minutes ago about religious or moral objections to
24 the consumption of alcohol. And I believe one, two,
25 three, at least three people stood. I think the

1 gentleman with the black jacket on and the gentleman
2 with the yellow shirt on. I think it's yellow and
3 the Reverend back there. If you'll please stand and
4 let me ask you one other question with regard to that
5 question. I need to sort of follow up. And if there
6 was anybody else that had any strong feelings about
7 this, I'll be glad to -- I mean, you can certainly
8 stand and answer the questions. And your number
9 again, please.

10 **JUROR:** 71.

11 **THE COURT:** 71.

12 **JUROR:** Yes, sir.

13 **THE COURT:** Mr. 71, if you do have those
14 personal feelings or objections to the consumption of
15 alcohol, would those feelings be such or so strong
16 that if somebody in this case, somebody in this case
17 happened to be either drinking or using alcohol
18 perhaps to excess, would that fact tend to make you
19 more or less likely to give both the State and the
20 defendant a fair and impartial trial?

21 In other words, would that feeling that you
22 have, that objection that you have to the consumption
23 of alcohol, do you think that would interfere with
24 your judgment in terms of deciding whether or not the
25 defendant was guilty or not guilty in this case?

1 **JUROR:** No, sir. I don't think so.

2 **THE COURT:** Okay. Thank you very much, sir.
3 And your number, please?

4 **JUROR:** 94.

5 **THE COURT:** 94. I'll ask you the same question.
6 Would the fact that have you these objections to the
7 consumption of alcohol, would that fact in any way
8 interfere with your ability to give both the State
9 and the defense a fair and impartial trial? Just as
10 I have explained it to the last juror, would that
11 fact in any way interfere with your ability to give
12 both the State and the defense a fair and impartial
13 trial if it turns out that somebody, some witness in
14 this case was consuming alcohol or perhaps was under
15 the influence of alcohol? Would that interfere with
16 your judgment?

17 **JUROR:** No, sir.

18 **THE COURT:** All right. Thank you very much.
19 And I'm going to get -- let me take the Reverend
20 next. Yes, sir. And your number again was ...?

21 **JUROR:** 143.

22 **THE COURT:** 143. I'll ask you the same
23 question. Would the fact that have you those
24 concerns and beliefs which are personal to you, would
25 that fact in any way interfere with your ability to

1 give both the State and the defense a fair and
2 impartial trial?

3 **JUROR:** No, sir.

4 **THE COURT:** And, ma'am, on the front row.

5 **JUROR:** 14. No, sir, it would not.

6 **THE COURT:** Okay. But you do have certain
7 feelings about alcoholism, commonly, people who
8 consume alcohol one way or the other?

9 **JUROR:** Yes, sir.

10 **THE COURT:** Okay. Thank you very much. Anybody
11 else have any similar concerns? All right. Let me
12 just check. All right, ladies and gentlemen. Now,
13 we have been at this, oh, for about an hour and a
14 half now. And after my explanations to you, the fact
15 that I have read the indictments to you, questioned
16 you about certain facts that may become in evidence,
17 listed the people that may be involved in this
18 matter, can any member of the jury panel think of any
19 reason personal to you one way or the other, I want
20 you to be as honest with the Court as you can, any
21 reason why you could not give both the State; that
22 is, the prosecution, and the defendant a fair and
23 impartial trial? Any member of the jury panel just
24 feel that this is not the kind of case that you could
25 sit on and be fair to both parties? Mr. 15, is that

1 the way you feel?

2 **JUROR:** I would just like to explain a
3 relationship I have with Mr. Herring, one of his
4 members of his family that I think should be brought
5 to light.

6 **THE COURT:** All right. You want to approach the
7 bench?

8 **JUROR:** Yes, please.

9 **THE COURT:** All right.

10 (Whereupon, the following side bar conference is
11 had)

12 **JUROR:** I'm probably missed my opportunity to do
13 this earlier, and I apologize.

14 **THE COURT:** By the way, who is your father?

15 **JUROR:** Bill Boyd.

16 **THE COURT:** The one and only Bill Boyd?

17 **JUROR:** Yes, sir.

18 **THE COURT:** Yes, sir. I think a lot of your
19 father.

20 **JUROR:** I appreciate it. I know -- I know Mr.
21 Herring's son, [REDACTED], went to school with him,
22 friends with him. I have fallen out of contact but I
23 see him here and there. And I was waiting for the
24 right opportunity to bring that up. And I have
25 been -- you know, I'm a lawyer. I understand the

1 role of the judiciary, but it would be difficult for
2 me to sit in that jury box if he were to come here
3 and see him. I know him. He knows me. I'm not
4 saying I couldn't be impartial, but that's --

5 **THE COURT:** That would bother you?

6 **JUROR:** Yeah. I just thought I should make that
7 known.

8 **THE COURT:** Well, I appreciate your candor. I
9 think you probably should not serve on this jury.

10 **MR. HARPOOTLIAN:** No objection.

11 **MR. MEADORS:** Thank you very much.

12 **THE COURT:** I mean, you can just stay here
13 through the end of this.

14 **JUROR:** Yes, sir.

15 (Whereupon, the juror returns to his seat and
16 the side bar conference continues as follows)

17 **MR. MEADORS:** Judge, that would be number 6.

18 **THE COURT:** He just said he didn't stand up
19 earlier.

20 **MR. MEADORS:** I'm not sure. And I don't think
21 you asked if anybody had been represented by
22 Mr. Harpootlian. Somebody stood up voluntarily.

23 **MR. HARPOOTLIAN:** I don't know.

24 **THE COURT:** I asked her. She said her son had
25 been represented by you and she said she has been

1 excused.

2 **MR. MEADORS:** No. I knew that.

3 (Whereupon, the side bar conference is
4 concluded)

5 **THE COURT:** All right. While I'm standing here,
6 anybody else have any feelings?

7 **JUROR:** Mine is not really pertaining to this,
8 but you said the case might go through Friday?

9 **THE COURT:** Yes.

10 **JUROR:** I have a prior engagement Friday
11 afternoon and they told me I would not have to be
12 here on Friday.

13 **THE COURT:** All right. You made that known to
14 the clerk?

15 **JUROR:** Yes.

16 **MR. HARPOOTLIAN:** What's her number, Judge?

17 **THE COURT:** What was your number?

18 **JUROR:** 165.

19 **THE COURT:** Just come on up. Let me talk to you
20 about that. I thought most of those we got cleared
21 up this morning.

22 **JUROR:** I thought she told me she wasn't going
23 to put me on any criminal ones.

24 **THE COURT:** Oh, she did.

25 **MR. HARPOOTLIAN:** She's the last one on the

1 list.

2 **THE COURT:** Okay. You've got a prior
3 engagement?

4 (Whereupon, the following side bar conference is
5 had)

6 **JUROR:** I had my daughter dance recital
7 rehearsal and I have a graduation at USC on Friday
8 afternoon.

9 **THE COURT:** I've got my granddaughter's dance
10 recital on Friday night, too.

11 **JUROR:** Well, actually the rehearsal is Friday,
12 starts that Friday afternoon and it's Saturday. But
13 the graduation is Friday.

14 **THE COURT:** All right. I tell you what. We're
15 going to release you. Just don't leave right now.
16 Just when we take a break you can be free to go.
17 You're number 60?

18 **JUROR:** 165.

19 **THE COURT:** 165. All right. You can go sit
20 down.

21 (Whereupon, the juror returns to her seat)

22 **THE COURT:** She is the last one.

23 **MR. MEADORS:** That's the one that I moved from
24 60 to 61. That's what caused -- so that's probably
25 why Ms. Cox told her.

1 **THE COURT:** Her daughter's dance recital.

2 **MR. HARPOOTLIAN:** Dance recital.

3 **THE COURT:** At school.

4 **MR. HARPOOTLIAN:** I'd rather be here. But
5 that's just me.

6 (Whereupon, the side bar conference is
7 concluded)

8 **THE COURT:** Anybody else? Anything further from
9 the State?

10 **MR. MEADORS:** No, sir.

11 **THE COURT:** Anything further from the defense?

12 **MR. HARPOOTLIAN:** Nothing from the defense, Your
13 Honor.

14 **THE COURT:** Madam Clerk, give us a jury.

15 **MR. HARPOOTLIAN:** Well, judge.

16 **THE COURT:** I'm sorry.

17 **MR. HARPOOTLIAN:** I thought you'd give us
18 about --

19 **THE COURT:** Ladies and gentlemen, I told you I
20 was going to give you a break before we start that
21 process. As I said, we're going to draw -- the names
22 have been drawn by the computer and I don't know the
23 order of them. You don't either. In any event,
24 let's take about a 15-minute break after which I tell
25 you the process or the procedure we use. We're going

1 to finish drawing this jury today and then I'm going
2 to let you go home. Those of you who are not drawn
3 will go back into the jury pool for civil cases or
4 any other criminal cases. And those of you who are
5 selected to serve on this jury, I'll dismiss you for
6 the evening. But it's sort of a little -- I need to
7 talk to you a little bit before I dismiss you. So
8 once we complete the jury selection process, I'll be
9 excusing you for the evening.

10 So, let's take about a 15-minute break. We're
11 going to -- the lawyers are going to ingest the
12 information that I just gave.

13 **DEPUTY:** Everybody stay seated.

14 **THE COURT:** Everybody in the audience please
15 stay seated. The jury is going to exit if they wish
16 and take a short break.

17 **MR. HARPOOTLIAN:** Judge, we're going to adjourn
18 to the jury room back here if we've been excused. Is
19 that okay?

20 **THE COURT:** All right. Counsel, let me see you
21 just a minute.

22 (Whereupon, a bench conference is had)

23 (Whereupon, a break is taken)

24 **THE COURT:** All right, counsel. Let me see you
25 one more minute.

1 (Whereupon, a bench conference is had)

2 **THE COURT:** All right, ladies and gentlemen.
3 Just two more questions. I promise. Since you
4 received your jury summons, since you received your
5 jury summons, has anybody contacted you about this
6 case? Any member of the jury panel who has been
7 contacted about this case since you knew that you
8 were going to be summoned as a juror?. You didn't
9 know it was going to be in this case but you knew you
10 were coming here this week. Any member of the jury
11 panel been contacted by anybody since that time in
12 reference to this case?

13 All right. One more question. I said two. The
14 other question is, during the break, and of course I
15 didn't segregate anybody, did anybody either in the
16 audience or counsel at the tables or any of the
17 officers, anybody else, contact you or make it a
18 point to speak to you about -- I'll just say speak to
19 you? Anybody that approached you at the water
20 fountain or in the water closet or --

21 **JUROR:** Somebody approached me. But I'll look
22 and see if it was in this.

23 **UNKNOWN PERSON:** I asked him if he brought a
24 book to read while he was waiting for jury duty.

25 **JUROR:** That's all it was.

1 **THE COURT:** Who are you, sir?

2 **MR. WALLACE:** My name is Rick Wallace. I'm an
3 attorney here in town and just happened to be sitting
4 out there.

5 **THE COURT:** Okay. All right. Thank you very
6 much, Mr. Wallace. Anybody else? Because obviously
7 during the trial of the case those of you who are
8 selected on this jury, are not going to be
9 sequestered. Somebody asked the question if you were
10 going to be asked to stay overnight or anything like
11 that. But we will ask you to be separate or
12 separated from anybody that may be involved in this
13 case. And if you heard the list of names of
14 witnesses, there are just enumerable people that may
15 have some connection with this case that could
16 approach you even unintentionally about it, and that
17 would be improper. And those of you who are selected
18 on the jury, those will be the instructions as we go
19 along. But, however, those are my two questions.
20 We're now ready to select the jury. Madam Clerk.

21 **THE CLERK:** Yes, sir. Ladies and gentlemen of
22 the jury panel, as I call your number, if you'll
23 please come to the microphone at the center of the
24 courtroom bringing any personal belongings with you
25 and state your number only and your occupation.

1 Number 58.

2 (White male)

3 **JUROR:** I am number 58. And I'm an assistant
4 vice-president with AT&T.

5 **THE CLERK:** What says the State?

6 **JUROR:** I'm sorry?

7 **THE COURT:** No. Just hold on a minute. We're
8 going to ask the lawyers whether they have any
9 objection.

10 **MR. MEADORS:** Please excuse 58.

11 **THE CLERK:** Please have a seat in the back of
12 the courtroom. Number 164.

13 (White male)

14 **JUROR:** I'm 164. I'm an engineer with Degree
15 Scientific.

16 **THE CLERK:** What says the State?

17 **MR. MEADORS:** Please present 164.

18 **THE CLERK:** What says the defense?

19 **MR. HARPOOTLIAN:** Please swear 164.

20 **THE CLERK:** Please have a seat in the jury box.
21 Number 111.

22 (White female)

23 **JUROR:** I'm juror number 111 and I work for The
24 State Newspaper.

25 **THE CLERK:** What says the State?

1 **MR. MEADORS:** Please strike 111.

2 **THE CLERK:** Please have a seat in the back of
3 the courtroom. Number 84.

4 (White female)

5 **JUROR:** I'm juror number 84, an administrative
6 specialist.

7 **THE CLERK:** What says the State?

8 **MR. MEADORS:** Please present 84.

9 **THE CLERK:** What says the defense?

10 **MR. HARPOOTLIAN:** Please swear the juror.

11 **THE CLERK:** Please have a seat in the jury box.
12 Number 173.

13 (Black male)

14 **JUROR:** I'm juror number 73. Palmetto Health.

15 **THE CLERK:** What says the State?

16 **MR. MEADORS:** Please present 173.

17 **THE CLERK:** What says the defense?

18 **MR. HARPOOTLIAN:** Please excuse the juror.

19 **THE CLERK:** Please have a seat in the back of
20 the courtroom. Number 128.

21 (Black male)

22 **JUROR:** Number 128. Employed at Department of
23 Juvenile Justice.

24 **THE CLERK:** What says the State?

25 **MR. MEADORS:** Please present 128.

1 **THE CLERK:** What says the defense?

2 **MR. HARPOOTLIAN:** Please excuse the juror.

3 **THE CLERK:** Please have a seat in the back of
4 the courtroom. Number 23.

5 (Black female)

6 **JUROR:** Number 23, unemployed.

7 **THE CLERK:** What says the State?

8 **MR. MEADORS:** Please present 23.

9 **THE CLERK:** What says the defense?

10 **MR. HARPOOTLIAN:** Please excuse 23.

11 **THE CLERK:** Please have a seat in the back of
12 the courtroom. Number 100.

13 (Black male)

14 **JUROR:** Number 100, paralegal.

15 **THE CLERK:** What says the State?

16 **MR. MEADORS:** Please present 100.

17 **THE CLERK:** What says the defense?

18 **MR. HARPOOTLIAN:** Please excuse the juror.

19 **THE CLERK:** Please have a seat in the back of
20 the courtroom. Number 107.

21 (Black female)

22 **JUROR:** Number 107. I'm a medical laboratory
23 technologist.

24 **THE CLERK:** What says the State?

25 **MR. MEADORS:** Please present 107.

1 **THE CLERK:** What says the defense?

2 **MR. HARPOOTLIAN:** Please swear 107.

3 **THE CLERK:** Please have a seat in the jury box.
4 Number 114.

5 (Black male)

6 **JUROR:** 114. Rural male carrier.

7 **THE CLERK:** What says the State?

8 **MR. MEADORS:** Please present 114.

9 **THE CLERK:** What says the defense?

10 **MR. HARPOOTLIAN:** Please swear 114.

11 **THE CLERK:** Please have a seat in the jury box.
12 Number 14.

13 (Black female)

14 **JUROR:** Number 14. Home educator, speech
15 therapist by profession.

16 **THE CLERK:** What says the State?

17 **MR. MEADORS:** Please present 14.

18 **THE CLERK:** What says the defense?

19 **MR. HARPOOTLIAN:** Please excuse 14.

20 **THE CLERK:** Okay. Please have a seat in the
21 back of the courtroom. Number 31.

22 (Black female)

23 **JUROR:** Number 31. I operate the photograph
24 center at Wal-Mart.

25 **THE CLERK:** What says the State?

1 **MR. MEADORS:** Please present 31.

2 **THE CLERK:** What says the defense?

3 **MR. HARPOOTLIAN:** Please swear 31.

4 **THE CLERK:** Please have a seat in the jury box.

5 Number 149.

6 (White male)

7 **JUROR:** Number 149. I'm retired, internal
8 auditor, Ft. Jackson.

9 **THE CLERK:** What says the State?

10 **MR. MEADORS:** Please present 149.

11 **THE CLERK:** What says the defense?

12 **MR. HARPOOTLIAN:** Please swear 149.

13 **THE CLERK:** Please have a seat in the jury box.

14 Number 101.

15 (White female)

16 **JUROR:** Number 101. I'm a professional
17 counselor.

18 **THE CLERK:** What says the State?

19 **MR. MEADORS:** Please present 101.

20 **THE CLERK:** What says the defense?

21 **MR. HARPOOTLIAN:** Please swear 101.

22 **THE CLERK:** Please have a seat in the jury box.

23 Number 46.

24 (Black female)

25 **JUROR:** I am number 46, and I'm a full-time

1 student at Columbia College.

2 THE CLERK: What says the State?

3 MR. MEADORS: Please present 46.

4 THE CLERK: What says the defense?

5 MR. HARPOOTLIAN: Please excuse 46.

6 THE CLERK: Please have a seat in the back of
7 the courtroom. Number 176.

8 (White male)

9 JUROR: I'm number 176, employed with Department
10 of Transportation. I'm the manager of their
11 centralized office.

12 THE CLERK: What says the State?

13 MR. MEADORS: Please present 176.

14 THE COURT: What says the defense?

15 MR. HARPOOTLIAN: Swear the juror, please.

16 THE CLERK: Please have a seat in the jury box.
17 Number 48.

18 (White female)

19 JUROR: Number 48, retired accountant.

20 THE CLERK: What says the State?

21 MR. MEADORS: Please present 48.

22 THE CLERK: What says the defense?

23 MR. HARPOOTLIAN: Swear the juror, please.

24 THE CLERK: Please have a seat in the jury box.
25 Number 105.

1 (White female)

2 JUROR: Number 105, director of meeting and
3 membership services at the Home Builders Association
4 of South Carolina.

5 THE CLERK: What says the State?

6 MR. MEADORS: Please present 105.

7 THE CLERK: What says the defense?

8 MR. HARPOOTLIAN: Excuse the juror, please.

9 THE CLERK: Please have a seat in the back of
10 the courtroom. Number 54.

11 (Black female)

12 JUROR: I'm number 54 and I'm an account
13 executive.

14 THE CLERK: What says the State?

15 MR. MEADORS: Please present 54.

16 THE CLERK: What says the defense?

17 MR. HARPOOTLIAN: Excuse the juror, please.

18 THE CLERK: Please have a seat in the back of
19 the courtroom. Number 76.

20 (White male)

21 JUROR: I'm juror number 76. I'm a contract
22 manager for Blue Cross/Blue Shield.

23 THE CLERK: What says the State?

24 MR. MEADORS: Please excuse 76.

25 THE CLERK: Please have a seat in the back of

1 the courtroom. Number 71.

2 (White male)

3 **JUROR:** Number 71, construction superintendent,
4 Fitz & Gibbons, Incorporated.

5 **THE CLERK:** What says the State?

6 **MR. MEADORS:** Please present 71.

7 **THE CLERK:** What says the defense?

8 **MR. HARPOOTLIAN:** Please swear 71.

9 **THE CLERK:** Please have a seat in the jury box.
10 Number 91.

11 (White female)

12 **JUROR:** Number 91, homemaker.

13 **THE CLERK:** What says the State?

14 **MR. MEADORS:** Please present 91.

15 **THE CLERK:** What says the defense?

16 **MR. HARPOOTLIAN:** Swear 91, please.

17 **THE CLERK:** Please have a seat in the jury box.
18 Number 118.

19 (Black female)

20 **JUROR:** Number 118. SCE&G.

21 **THE CLERK:** What says the State?

22 **MR. MEADORS:** Please present 118.

23 **THE CLERK:** What says the defense?

24 **MR. HARPOOTLIAN:** Please excuse 118.

25 **THE CLERK:** Please have a seat in the back of

1 the courtroom.

2 **MR. HARPOOTLIAN:** Is that nine?

3 **THE CLERK:** Yes, sir. Strike count is three for
4 the State and nine for the defense.

5 **MR. HARPOOTLIAN:** Thank you.

6 **THE CLERK:** Number 124.

7 (White male)

8 **JUROR:** 124, a business professor.

9 **THE CLERK:** What says the State?

10 **MR. MEADORS:** Please excuse 124.

11 **THE CLERK:** Please have a seat in the back of
12 the courtroom. Number 88.

13 (White female)

14 **JUROR:** Juror 88, nurse administrator,
15 University of South Carolina School of Medicine.

16 **THE CLERK:** What says the State?

17 **MR. MEADORS:** Please excuse 88.

18 **THE CLERK:** Please have a seat in the back of
19 the courtroom. Number 3.

20 (White female)

21 **JUROR:** I'm juror number 3. I'm a stay at home
22 mom.

23 **THE CLERK:** Does the State --

24 **MR. MEADORS:** Please present 3.

25 **THE CLERK:** Thank you. What says the defense?

1 **MR. HARPOOTLIAN:** Excuse the juror, please.

2 **THE CLERK:** Please have a seat in the back of
3 the courtroom. Number 178.

4 (Black male)

5 **JUROR:** Juror number 178, security officer.

6 **MR. MEADORS:** Please present 178.

7 **THE CLERK:** Does the defense challenge for
8 cause?

9 **MR. HARPOOTLIAN:** No objection.

10 **THE CLERK:** Please have a seat in the jury box.

11 **THE COURT:** Two alternates.

12 **THE CLERK:** Number 12.

13 (Black female)

14 **JUROR:** Juror number 12. Administrative
15 specialist.

16 **THE CLERK:** What says the State?

17 **MR. MEADORS:** Please present 12.

18 **THE CLERK:** What says the defense?

19 **MR. HARPOOTLIAN:** Please excuse 12.

20 **THE CLERK:** Please have a seat in the back of
21 the courtroom. Number 144.

22 (White male)

23 **JUROR:** Processing manager at McEntire Produce.

24 **THE CLERK:** What says the State?

25 **MR. MEADORS:** Please excuse 144.

1 **THE CLERK:** Please have a seat in the back of
2 the courtroom. Number 192.

3 (Black male)

4 **JUROR:** Juror 192. A retired school principal.

5 **THE CLERK:** Does the State challenge for cause?

6 **MR. MEADORS:** Please present 192.

7 **THE CLERK:** What says the defense?

8 **MR. HARPOOTLIAN:** Swear the juror.

9 **THE CLERK:** Please have a seat in the jury box.
10 Number 106.

11 (White female)

12 **JUROR:** 106. I work at Wachovia.

13 **THE CLERK:** What says the State?

14 **MR. MEADORS:** Please present 106.

15 **THE CLERK:** What says the defense?

16 **MR. HARPOOTLIAN:** Swear the juror.

17 **THE CLERK:** Please have a seat in the jury box.

18 **MR. MEADORS:** Begging the Court's indulgence.

19 **MR. HARPOOTLIAN:** No motions.

20 (Pause)

21 **MR. MEADORS:** May we approach?

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

23 (Whereupon, a bench conference is had)

24 **THE COURT:** All right.

25 **MR. MEADORS:** We do have a motion, Your Honor.

1 **THE COURT:** You have a motion?

2 **MR. MEADORS:** Yes, sir.

3 **THE COURT:** We'll take it up in chambers. All
4 right. Ladies and gentlemen of the jury panel and
5 the selected members of jury, just relax for a few
6 minutes. There is a matter of law that I need to
7 take up with the attorneys. I'm going to do it in
8 chambers so I don't have to ask you to go out. It's
9 easier for the four of us to step outside to my
10 chambers. And we'll be with you in just a minute.
11 So just relax. And a member of the -- Ms. 137, we're
12 going to get you out of here in time.

13 **JUROR:** Thank you.

14 **THE COURT:** Okay. Ms. 137 has some child care
15 problems, or issues as we say. All right. My
16 chambers immediately.

17 (Whereupon, the following in chambers discussion
18 is had)

19 **MR. HARPOOTLIAN:** Okay.

20 **THE COURT:** Just wait a minute. Whenever you're
21 ready, Jenny.

22 **COURT REPORTER:** I'm ready.

23 **THE COURT:** What's your motion, Mr. Meadors?

24 **MR. MEADORS:** Batson, Your Honor. We believe
25 the defense struck -- nine of their ten strikes were

1 against African-Americans. We do think the burden
2 shifts to them at this point to offer a race neutral
3 reason or explanation for the strikes.

4 **THE COURT:** All right. Let's start.

5 **MR. HARPOOTLIAN:** Your Honor, I consulted with
6 my client before coming in here. We'd make a reverse
7 Batson motion. I think four out of the five --

8 **MR. MEADORS:** Okay. Then we'll consent to pick
9 another jury then if he's making that motion. If
10 you're making that motion --

11 **MR. HARPOOTLIAN:** No. That's not the remedy.
12 The remedy is not picking another jury.

13 **MR. GIESE:** Go ahead.

14 **MR. HARPOOTLIAN:** Okay. Kirk Tisdale. I struck
15 him because he --

16 **THE COURT:** He works at Palmetto Health.

17 **MR. HARPOOTLIAN:** He works at Palmetto Health.
18 He failed to return his jury slip. We struck
19 everybody, the people we struck, everybody that
20 didn't return their jury -- we didn't have any
21 information on him.

22 **MR. GIESE:** What number was he?

23 **THE COURT:** He's number 173.

24 **MR. GIESE:** 170 what?

25 **THE COURT:** 173.

1 **MR. GIESE:** Here he is. I'm looking right at
2 it. Kirk E. Tisdale, Coachman's Court, B.S. degree
3 in banking and finance.

4 **MR. HARPOOTLIAN:** What? B.S. degree in banking
5 and finance?

6 **MS. LINDLER:** No, no, no. That's --

7 **MR. GIESE:** 173, Tisdale, Kirk Tisdale.

8 **THE COURT:** He's talking about these things.

9 **MR. GIESE:** Your Honor, he had these. This is
10 from the jury thing.

11 **MR. HARPOOTLIAN:** No. But he ain't got a B.S.
12 in banking and finance.

13 **MR. GIESE:** 173, juror number -- oh, that's the
14 old 173.

15 **MR. HARPOOTLIAN:** That's right.

16 **MR. GIESE:** No. It's the new 173. It's 0408.

17 **MR. MEADORS:** That's right. That's him.

18 **MR. HARPOOTLIAN:** Let me see.

19 **MR. GIESE:** Jury questionnaire.

20 **MR. HARPOOTLIAN:** Let me see the front of it.

21 **THE COURT:** He did not turn in one of these.

22 **MR. HARPOOTLIAN:** He did not turn in one of
23 these.

24 **MR. GIESE:** He --

25 **MR. MEADORS:** I don't think that's what was he

1 saying to start with.

2 MR. HARPOOTLIAN: No, no. What I'm saying is
3 one of these.

4 COURT REPORTER: I can't take it. You all
5 please stop talking all over one another.

6 MR. HARPOOTLIAN: What I'm saying is I went
7 through here; I didn't see one of these on him.

8 THE COURT: All right. I think that's, well,
9 getting close to pretextural.

10 MR. HARPOOTLIAN: It's close.

11 THE COURT: Yes. I think that's close to
12 pretextural. Go ahead.

13 MR. HARPOOTLIAN: Okay. Number 8, Willie
14 Portee. He is a South Carolina DJJ chief of security
15 and operations.

16 THE COURT: All right.

17 MR. HARPOOTLIAN: He has a brother-in-law in law
18 enforcement. He was the manager of the South
19 Carolina Department of Corrections for 20 years.

20 THE COURT: All right. Race neutral. Go ahead.

21 MR. HARPOOTLIAN: Antavia Carson.

22 THE COURT: Yes. Unemployed.

23 MR. HARPOOTLIAN: Unemployed student. We struck
24 everybody that was under the age of 25. Too young.

25 THE COURT: Too young.

1 **MR. HARPOOTLIAN:** Too young. We didn't want
2 people -- we want people with some life experience on
3 this jury. Black, white, green, yellow, Asian,
4 oriental, whatever; we struck every one of them that
5 was under 25. And she's unemployed. And she's a
6 student.

7 **THE COURT:** No. She is not a student.

8 **MR. HARPOOTLIAN:** Sir?

9 **THE COURT:** She did not identify herself as a
10 student.

11 **MS. LINDLER:** We have unemployed student.

12 **MR. HARPOOTLIAN:** We have unemployed student on
13 here. We got that from one of the sheets.

14 **THE COURT:** She just didn't identify herself as
15 such. If you are consistent with under 25, I will
16 listen to that.

17 **MR. HARPOOTLIAN:** Yes, sir. I am.

18 **THE COURT:** Brian Legree.

19 **MR. HARPOOTLIAN:** He's a paralegal for Franchot
20 Brown. We indicated we didn't want anybody who was
21 in the legal profession. We would have struck
22 lawyers. We would have struck paralegals.

23 **THE COURT:** Go ahead.

24 **MR. HARPOOTLIAN:** Next one was --

25 **THE COURT:** Angela McCrea.

1 **MR. GIESE:** She's on.

2 **MR. HARPOOTLIAN:** She's on.

3 **THE COURT:** I'm sorry. You're right.

4 **MR. HARPOOTLIAN:** The next one I think was
5 Cheryl --

6 **THE COURT:** Bowman?

7 **MR. HARPOOTLIAN:** Cheryl Bowman.

8 **THE COURT:** A home educator.

9 **MR. HARPOOTLIAN:** She had an objection to
10 alcohol. Her brother-in-law is bipolar. Her nephew
11 has committed a crime. She has preconceived ideas
12 about strip clubs. She home schools her children and
13 her husband is with the Richland County Detention
14 Center.

15 **THE COURT:** All right.

16 **MR. HARPOOTLIAN:** Faust I think was the next
17 one. Am I wrong about that?

18 **THE COURT:** Kathleen Faust. Student at Columbia
19 College.

20 **MR. HARPOOTLIAN:** Number -- let me look. We had
21 nothing on her. I don't think we've got a card on
22 her. Hold on.

23 **MS. LINDLER:** No, we did not.

24 **MR. HARPOOTLIAN:** Something else about her
25 though. She was a student, right?

1 **MR. GIESE:** A student at Columbia College.

2 **MR. HARPOOTLIAN:** Yeah. We didn't want any
3 students. How old is she?

4 **MR. MEADORS:** She had to be less than 25.

5 **MR. HARPOOTLIAN:** We didn't want any students.
6 And let me check one other thing.

7 **MS. LINDLER:** We also had this note during the
8 Voir Dire.

9 **MR. HARPOOTLIAN:** What does it say?

10 **MS. LINDLER:** She is experienced through her job
11 with bipolar.

12 **MR. HARPOOTLIAN:** She had some experience with
13 bipolar people. That was another reason.

14 **MR. GIESE:** That you didn't want her?

15 **MR. HARPOOTLIAN:** No. We didn't want her. This
16 is the other thing. She didn't send in her card.

17 **MR. GIESE:** You put somebody else on there --

18 **MR. HARPOOTLIAN:** She did not send in her card.

19 **THE COURT:** Which one are we talking about?

20 Faust?

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

22 **THE COURT:** I'm going to give you the under 25
23 and student.

24 **MR. MEADORS:** Well, have we confirmed that?

25 **MR. HARPOOTLIAN:** I've got what I've got.

1 **MR. MEADORS:** That Faust is under 25?

2 **MR. HARPOOTLIAN:** No. She is not under 25. She
3 is a student.

4 **THE COURT:** I don't know how old she is. I'm
5 assuming that you --

6 **MR. HARPOOTLIAN:** We didn't want students. We
7 didn't want young people. We wanted people with life
8 experience. And she didn't submit her -- if she had
9 been late for jury duty, that would have been a
10 racially neutral reason. She did not send in her
11 jury information card, which indicates a less, in my
12 opinion, less than civic interest in what she's
13 doing.

14 **MR. MEADORS:** For the record though, was she
15 less than 25?

16 **MR. HARPOOTLIAN:** I don't believe so. I believe
17 she's 31.

18 **THE COURT:** You guys know a lot more about her
19 than I do.

20 **MR. HARPOOTLIAN:** I believe she's 31 years old.
21 But we don't know because she didn't send her card
22 in. The next one I struck was --

23 **THE COURT:** Mauldin, white female.

24 **MR. HARPOOTLIAN:** Do I have to cite a racially
25 neutral reason for striking her? She is white. They

1 accused me of striking blacks. She wouldn't look me
2 in the eye is basically why I struck her.

3 **THE COURT:** Tanya Gary.

4 **MR. HARPOOTLIAN:** Tanya Gary.

5 **THE COURT:** She works with an insurance agency.

6 **MR. HARPOOTLIAN:** Okay. Her husband is a
7 polygraph instructor at the Department of Defense.
8 She has a degree in criminal justice. And she had a
9 brother killed in a DUI, by a felony DUI.

10 **THE COURT:** Dorothy Murphy.

11 **MR. HARPOOTLIAN:** Dorothy Murphy.

12 **THE COURT:** SCE&G.

13 **MR. HARPOOTLIAN:** Right. Her husband is with
14 South Carolina Department of Juvenile Justice.

15 **THE COURT:** Does everybody confirm that?

16 **MR. HARPOOTLIAN:** That's what she said. That's
17 what's on her information sheet.

18 **MR. GIESE:** So it's anybody that's -- I'm just
19 asking this. So, the fact that she is related to
20 someone in --

21 **MR. HARPOOTLIAN:** No. In her household, is with
22 DJJ. Her husband or she is with DJJ. What was the
23 next one? Was that it? No. Rose Watts. Rose
24 Watts.

25 **THE COURT:** White female.

1 **MR. HARPOOTLIAN:** White female.

2 **THE COURT:** All right, solicitor. Back to you.

3 **MR. MEADORS:** Did we do Sandra Branch?

4 **THE COURT:** Oh. That's the alternate. Give me
5 your alternate strike.

6 **MR. HARPOOTLIAN:** Oh, you want to go ahead and
7 do those?

8 **MR. MEADORS:** Well, Judge, we --

9 **MR. HARPOOTLIAN:** Wait a minute. Did we strike
10 Sandra Branch?

11 **THE COURT:** I think you did. First alternate.

12 **MR. HARPOOTLIAN:** Let me look. Hold on a second
13 here.

14 **MS. LINDLER:** I don't think we did.

15 **MR. HARPOOTLIAN:** I don't think we did.

16 **THE COURT:** Well, somebody struck her. Did the
17 State struck her? The State couldn't --

18 **MR. MEADORS:** I have down here --

19 **MR. GIESE:** No. We struck Sakel. He struck
20 Branch.

21 **MR. MEADORS:** You struck Branch.

22 **THE COURT:** Yeah. That's what I thought. You
23 struck Branch.

24 **MR. HARPOOTLIAN:** Hold on a second here. Oh, I
25 know why I struck her. I wanted Sakel. I wanted the

1 next guy down. You had excused Rusnak and Sakel was
2 the next one down.

3 **THE COURT:** I know that. So you struck a black
4 female to get a white male? Is that what you're
5 telling me?

6 **MR. HARPOOTLIAN:** No. I struck a woman who
7 happened -- who happened to be black whose
8 credentials to me were not as good as Steven Sakel
9 who is a processing project manager who is 54 years
10 old who'd been on two juries, who reads Criminal
11 Intent, Law and Order, O'Riley, all the shows that we
12 want him to watch and read; whereas, she had no
13 television listed on her sheet. She did not appear
14 to have the same interests this guy did. And I don't
15 believe she sent her card in. She did not.

16 **THE COURT:** There is no card on her?

17 **MR. HARPOOTLIAN:** No card on her.

18 **THE COURT:** Solicitor.

19 **MR. MEADORS:** Do you want me to go over ours now
20 before we go back?

21 **THE COURT:** No. I want you to go over his.

22 **MR. MEADORS:** Begging the Court's indulgence. I
23 left my other -- can Your Honor give me two minutes?
24 I left my other list in there. I'll be right back.

25 (Pause)

1 **MR. HARPOOTLIAN:** Judge, I'd like to make this
2 list that was given to me by the Clerk of Court as an
3 exhibit in this hearing since this is what I relied
4 on.

5 **THE COURT:** That's fine. Court's Exhibit No. 1.
6 (WHEREUPON, Court's Exhibit No. 1 is marked for
7 identification.)

8 **MR. HARPOOTLIAN:** And, for the record, those are
9 as I understand it what is mailed back in by the
10 jurors.

11 (Pause)

12 **MR. MEADORS:** Thank you.

13 **MR. HARPOOTLIAN:** Your Honor, let me also put
14 this on the record. We did two jury focus groups on
15 this jury. One of the indications was that people
16 under the age of 25 were not very good, were
17 absolutely horrible for us, that students were
18 absolutely horrible for us. The older the individual
19 and the more educated the individual, the better off
20 we would be.

21 So I want to put that on the record as to the
22 criteria we're using. Whether they were black or
23 white. And that people with an interest in
24 television shows like CSI were better for us than
25 people that were not interested in television shows

1 or watched other kinds of things. I just want to --
2 that's sort of the criteria we used on these people
3 who didn't return the cards.

4 (Pause)

5 **MR. MEADORS:** I'll just start from the top.
6 Mr. Tisdale again, Palmetto Health.

7 **THE COURT:** Failure to return his jury
8 information card. Now, the only thing I can say
9 about that is that it's difficult for anybody to
10 evaluate strikes if they don't have at least that
11 basic information. Now, I don't know if that's a
12 transfer from the death penalty jury or not.

13 **MR. MEADORS:** Judge, it clearly is. I'm sorry.

14 **THE COURT:** Is it?

15 **MR. MEADORS:** Yes, sir.

16 **THE COURT:** So there was plenty of information
17 about him.

18 **MR. MEADORS:** Yes, sir. I guess, respectfully,
19 to say if that's a reason why you did the strike and
20 you had the complete information, more than we
21 usually have, where he clearly had returned a
22 six-page, seven-page, dated; I mean, that to me --

23 **THE COURT:** All right. I accept that.

24 **MR. HARPOOTLIAN:** But, Judge, they all had to
25 mail the slip back in. He may have mailed the

1 questionnaire in back some time ago but he did not
2 mail that slip back in. At least, according to the
3 clerk's office. That was what was given us this
4 morning.

5 **THE COURT:** That happens every Monday morning.

6 **MR. HARPOOTLIAN:** I understand that.

7 **THE COURT:** And that may have been available as
8 of Thursday or Friday. I don't know.

9 **MR. HARPOOTLIAN:** No. But that's --

10 **THE COURT:** I understand that.

11 **MR. MEADORS:** As we go through these, we think
12 the information was there in and of itself.

13 **THE COURT:** Well, that's the information that I
14 don't have as to what you have, because they're not
15 all transferred from the --

16 **MR. MEADORS:** There were about seven or eight
17 that were not transferred, roughly. I may be wrong
18 on that figure, but approximately that were
19 additional.

20 **THE COURT:** And maybe the guy said I sent in
21 everything about me, I don't need to send another one
22 in. I don't know. But when I said earlier it
23 appears it could be pretextual just because he
24 didn't send that in when he'd already sent the full
25 information in.

1 **MR. HARPOOTLIAN:** Let me see what he just sent
2 in.

3 **THE COURT:** All right. Just hold it. Off the
4 record.

5 (Off the record)

6 (Whereupon, a break is taken)

7 (Whereupon, the in chambers conference is
8 concluded)

9 **THE COURT:** Thank you. All right, ladies and
10 gentlemen. I apologize for the delay. I think
11 Ms. Richardson, she's gone to get her children.
12 Okay. Good. All right, counsel. Ladies and
13 gentlemen, those of you who were not selected on this
14 jury, I'm going to ask you to -- Ms. Falcone, where
15 do they go?

16 **THE CLERK:** You'll just need to take the white
17 card out of the badge and as you exit you just need
18 to leave it with the bailiff and call in tomorrow at
19 4:30 for further instructions to see if there are any
20 further things to do.

21 **THE COURT:** All right. Everybody understand?

22 **JUROR:** I didn't hear that.

23 **THE COURT:** Okay. Step over there so they can
24 hear you, Ms. Falcone. Ms. Falcone is with the
25 Clerk's Office.

1 (Off the record)

2 **THE COURT:** All right. Ladies and Gentlemen of
3 the Jury, we are obviously not going to begin this
4 trial right now. And there are a number of legal
5 matters I need to take up with the attorneys before
6 we actually start the testimony in the case. So I'm
7 not going to swear you now. I'm going to ask you
8 just to return in the morning at 10:00.

9 When you return to the jury room, when you
10 return to the courthouse in the morning, I'm going to
11 ask you to come to your jury room. Now, the bailiffs
12 are going to take you to an assigned jury room that
13 you will occupy throughout the entire trial. It will
14 always be up here on the third floor. And so when
15 you return in the morning, don't go back downstairs
16 to the jury assembly room because we'll have to
17 just -- we'll just have to come find you. So if you
18 will report to the jury room tomorrow morning at
19 10 a.m., I would appreciate it.

20 I'm going to ask you several things. Now, you
21 probably are aware because of the press coverage of
22 this trial pre-trial, there undoubtedly, or at least
23 I would think there would be continuing -- some sort
24 of continuing press coverage during the trial. I'm
25 going to ask you not to either watch or read stories

1 about this case.

2 And the reason for that is fairly simple. You
3 are the jurors. You are going to hear the evidence.
4 When you read what somebody else says about it or you
5 read or you listen or see what a reporter says about
6 it, there may be some innuendos or opinions or
7 something in that reporting that may influence you
8 one way or the other. And that's what we strive not
9 to have happen.

10 You are going to be the first people to see and
11 hear and know everything about this case. Whatever
12 you would hear from a reporter would be secondhand,
13 whether it's press or video or anything like that.
14 So I'm going to ask you not to read or listen to or
15 watch any reports of the press.

16 Now, the press cameras were not in here today.
17 The cameras probably will be in here tomorrow. There
18 will be two press cameras in here. Our court system
19 encourages the open and free flow of information
20 about what's going on in the court systems. So there
21 will be television cameras in here tomorrow. You
22 have been identified only by number, as you know, and
23 that will continue throughout the trial. Your names
24 will not be used. The cameras are expressly,
25 expressly prohibited from photographing any juror,

1 the jury or any juror. Your faces will not be shown
2 on the nightly news or anything like that. That's
3 the rule. That's the only way they get to come into
4 the courtroom.

5 And if you'll recall perhaps from some of your
6 other experiences watching events occur, courtroom
7 events occur on television, you never see the jurors
8 because that's the rule. We want to protect your
9 privacy and we're going to do it the best way we can.

10 If you were to encounter in the halls or in the
11 lobby or on the street anybody involved in this case
12 either from the press or any of the participants in
13 the trial, you are to please report that to me
14 immediately because everybody that's involved in this
15 matter has been cautioned that they are not to
16 approach jurors. They are not to photograph jurors.
17 They are not to try to talk to you. We want to keep
18 you in a sense isolated as we can because this is
19 where everything happens.

20 But we don't require you to be sequestered or to
21 spend the night in a motel or anything like that
22 because we think you're probably happier, so to
23 speak, sleeping in your own bed at night. So I just
24 give you that little bit of information before we
25 return and start again in the morning.

1 As I said, there are a number of legal issues I
2 need to take up with the attorneys. The purpose of
3 doing that prior to the trial is to hopefully make
4 the trial run smoother. I've told you that I believe
5 this trial will be concluded by the end of the week.
6 And, hopefully, if I can get some of these matters
7 out of the way that the attorneys may disagree on, it
8 will expedite the progress of the trial.

9 And even when you get here in the morning, we
10 may not be quite finished. We're going start right
11 now and try to work out some of these matters. But
12 we'll reconvene in the morning to try to work them
13 out. So, if you will respect that caution about the
14 press reports, I would appreciate it.

15 When you return to the jury room I'm going to
16 ask you not to discuss the case among yourselves
17 because you know -- well, you and I know about the
18 same amount about it at this time. And believe me, I
19 know what's in the indictment and I know what has
20 been in the press. And that's about the extent of my
21 knowledge about this case, too.

22 But it would be inappropriate to start talking
23 about the case before you hear all of the evidence
24 and you hear the charge on the law, what the law is
25 as regards this case. So I'll ask you not to discuss

1 the case. You can discuss anything, talk about the
2 weather or the Braves or you can talk about the
3 Clemson Tigers if you want to. I'm sure that's an
4 interesting topic probably. Seriously, talk about
5 anything but the case.

6 And again, I'll ask you also not to discuss it
7 with your family or anyone else over the evening
8 hours because people -- you know, people just
9 naturally want to tell you their opinion. And that
10 would be improper for you to sort of maybe be tainted
11 by what somebody else's opinion is of this case.

12 It has been a fairly widely reported case, so
13 it's likely that if you were to tell somebody that
14 you were on this jury they might have something to
15 say about it. So I'll ask you to please not disclose
16 your jury selection to any of your friends or
17 neighbors or family members.

18 I'm sure your family is going to know you're up
19 here and they're probably going to be curious about
20 what you're doing. But I probably think a lot of
21 them can probably assume what you're doing even if
22 you don't tell them.

23 All right. And then the final thing, well, two
24 more things. First, the first thing I'm going to ask
25 you to do is when you return to the jury room in the

1 morning, you probably haven't gotten to know each
2 other too well in your limited period of time
3 together, but I will ask you to select one of your
4 members as the foreperson of the jury. That person
5 will actually communicate in court with me if
6 necessary any of the concerns of the jurors.

7 That person will eventually write the verdict if
8 that becomes necessary and will generally preside in
9 the jury room during the deliberations of the jury.
10 So if you'll elect one of your members now, that
11 person, whoever that may be, will take the seat that
12 the first gentleman was selected. He's seated with
13 the orange badge and green shirt. They will take
14 that seat and maintain that seat throughout the
15 trial.

16 The rest of the seats don't have any names on
17 them. So I'll ask you just to sit where you're
18 comfortable, where you think you can hear and see.
19 Most of the -- I mean, all of the witnesses will
20 testify from this witness stand right here in front
21 of you. So you'll be able to see and hear them and
22 you'll be asked certainly to judge their demeanor and
23 listen to what they say. So I want you to just be
24 comfortable wherever you choose to sit.

25 The only persons that cannot serve as foreperson

1 of the jury are our two alternates, the gentleman and
2 the lady that were selected last. They are -- in the
3 event something happens to one of the 12 of you or
4 something comes up that's unavoidable, they are here
5 to serve as your alternates. But throughout the
6 trial they have the responsibility of listening and
7 paying attention just as though they were jurors.
8 But they could not serve as the foreperson of the
9 jury and they will maintain those two seats
10 throughout the trial.

11 In the morning I will provide you with pencils
12 and paper if you wish to take notes. I will caution
13 you that notes are only used for your own personal
14 recollection purposes. They're not to be used for
15 trying to convince somebody else that you heard
16 something that they didn't hear, that sort of thing.
17 They're for your own personal recollection.

18 And I guess the final thing I'm going to ask you
19 to do is have a pleasant evening. We'll see you at
20 10:00 in the morning. Thank you very much.

21 (Jury out at 5:50 p.m.)

22 **THE COURT:** All right, counsel. I was
23 advised -- you advised the Court that there were four
24 motions that needed to be resolved, one of which has
25 been withdrawn. Is that correct?

1 **MR. HARPOOTLIAN:** Your Honor, we made a motion
2 to suppress the line-up identification. We are
3 officially withdrawing that motion. That leaves a
4 motion on statements, search, and a motion in limine
5 to exclude certain sketches and photographs the State
6 has indicated they propose to introduce.

7 **THE COURT:** All right.

8 **MR. MEADORS:** Your Honor, I would propose -- and
9 of course whatever Your Honor says -- we have all the
10 witnesses available for the statement tonight. If we
11 could do that tonight and then perhaps come back
12 early and resolve the search warrant in the morning.
13 I think we could resolve easily before 10 if we
14 started at 9 or whenever.

15 **THE COURT:** All right. Any objection?

16 **MR. HARPOOTLIAN:** No, sir.

17 **THE COURT:** Okay. Jackson v. Denno.

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

19 **MR. MEADORS:** Yes, sir.

20 **THE COURT:** Statement.

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

22 **THE COURT:** How many statements?

23 **MR. MEADORS:** The statements are on the 911
24 tape, but I don't believe those are contested at all.
25 We'll play those.

1 **MR. HARPOOTLIAN:** The statements made to law
2 enforcement.

3 **MR. MEADORS:** Two written statements and one
4 oral statement. And we have all the witnesses here.

5 **THE COURT:** Call your first witness.

6 **MR. HARPOOTLIAN:** Your Honor, could I ask that
7 the witnesses be sequestered? And we have no
8 witnesses out here who are going to be witnesses
9 during the trial. I'd make the motion the witnesses
10 be sequestered.

11 **MR. MEADORS:** Of course, Your Honor. We just
12 ask our chief investigating officer --

13 **THE COURT:** Yes, sir. That's correct. All
14 right. Any other witnesses in this case, I'm going
15 to ask you to --

16 **MR. MEADORS:** Of course we'd ask that to go both
17 sides obviously.

18 **THE COURT:** Any witnesses in the case are going
19 to have to step outside while these proceedings take
20 place, including law enforcement that may be involved
21 in these statements, with the exception of Captain
22 Smith. All right.

23 **MR. MEADORS:** I'm going to get these marked real
24 quick, Your Honor.

25 **MR. HARPOOTLIAN:** Your Honor, while he is doing

1 that, could I ask about the logistics on this? I am
2 told they are going to display the videotapes if
3 they're allowed in on some sort of projection
4 equipment here. And somebody tell me how that works
5 so if we want to use it on cross --

6 **THE COURT:** Well, let's do that not on court
7 time at this moment.

8 **MR. HARPOOTLIAN:** Okay. Okay.

9 **THE COURT:** Thank you.

10 **MR. MEADORS:** Your Honor, when Your Honor lets
11 that in, or hopefully let's that in, I think there
12 will be two different options.

13 **MR. HARPOOTLIAN:** Okay. Somebody just show me
14 because tomorrow I'm going to have to operate them.

15 (WHEREUPON, State's Exhibit No. 1 is marked for
16 identification.)

17 (WHEREUPON, State's Exhibit No. 2 is marked for
18 identification.)

19 (WHEREUPON, State's Exhibit No. 3 is marked for
20 identification.)

21 **MR. MEADORS:** Your Honor, the state of South
22 Carolina would now call Investigator Dave Lawrence.

23 DAVE LAWRENCE, after being duly sworn, testifies
24 as follows:

25 **THE CLERK:** Thank you. Please have a seat in

1 the witness stand and state your full name for the
2 record.

3 **WITNESS:** Dave Lawrence.

4 **DIRECT EXAMINATION**

5 **BY MR. MEADORS**

6 **Q** Good afternoon, Investigator Lawrence. You're with
7 the South Carolina Law Enforcement Division?

8 **A** That's correct.

9 **Q** And you have been in law enforcement for how long?

10 **A** Slightly over 21 years.

11 **Q** And have you been with SLED the whole time?

12 **A** No, sir. I have been with SLED for eight years. And
13 prior to that I was with the Richland County
14 Sheriff's Department for a little over 13 years.

15 **Q** Did you undergo training when you -- tell Your Honor
16 briefly about your schooling.

17 **A** I'm certified at the South Carolina Criminal Justice
18 Academy as a police officer. I have a Bachelor of
19 Science degree from the University of South Carolina
20 in Criminal Justice. I am a polygraph examiner from
21 the Polygraph Institute in Atlanta, Georgia. And I
22 have attended numerous investigative-related training
23 and schools throughout my career.

24 **Q** I'm going to ask you questions today relating to the
25 opportunity you had to talk to Mr. Dewain Herring,

1 the defendant in this case. And they're going to be
2 tailored to that. Okay?

3 A Okay.

4 Q Did you have an occasion to come in contact with the
5 defendant on January 29th, 2006?

6 A I did.

7 Q Can you please tell Your Honor how that came about?

8 A Yes, sir. The Richland County Sheriff, Leon Lott,
9 had contacted the State Law Enforcement Division
10 regarding an arrest leading up to an investigation
11 involving a shooting with officers from the Richland
12 County Sheriff's Department and a private citizen
13 which is routinely a function of SLED to conduct when
14 a local law enforcement agency is involved in a
15 shooting.

16 Myself and Special Agent Paul LaRosa responded
17 to [REDACTED] in Richland County and at
18 that time was greeted by Richland County Sheriff's
19 Department Chief Deputy David Wilson who at that time
20 gave an oral briefing to us regarding an
21 investigation that they were conducting which led
22 them to the address at [REDACTED]

23 That investigation was a shooting that had taken
24 place at Chastity's Club on River Drive in Richland
25 County. The officers involved in the investigation

1 had obtained a search warrant for the residence of
2 460 Alexander Circle. That's the reason why they
3 went there on the early morning hours of January the
4 29th. During that time the officers encountered a
5 subject within the residence and a shooting incident
6 took place at that location.

7 After our crime scene unit responded to that
8 location, myself and Paul LaRosa went to the Richland
9 County Sheriff's Department to speak with the
10 officers involved from the Sheriff's Office in the
11 shooting. And it was at that time shortly thereafter
12 on the morning of the 29th that we came in contact
13 with an individual by the name of Dewain Herring at
14 the Sheriff's Office.

15 Q Let me stop you here Prior to that, Richland County
16 had a search warrant, correct?

17 A That's correct.

18 Q Did South Carolina Law Enforcement Division also
19 execute a search warrant?

20 A We did.

21 Q Who did that?

22 A I wrote a search warrant for [REDACTED]
23 And the reason for that, I did that prior to our
24 crime scene investigators entering that residence to
25 process that location.

1 Q We're going back to the Sheriff's Department. You
2 left. We'll come back to the search tomorrow
3 morning. Okay. You go to the Sheriff's Department?

4 A Correct.

5 Q What if anything do you observe? What happens when
6 you get to the Sheriff's Department?

7 A After we got to the Sheriff's Department, myself and
8 Agent LaRosa spoke with some of the officers that
9 were involved. We tried to at least begin to get an
10 oral statement from him to get somewhat of an idea as
11 to what took place. And that's what we did that
12 morning, as well as prepared the search warrant that
13 we'll talk about later.

14 But it was shortly thereafter that I actually
15 observed a marked patrol unit, Richland County
16 Sheriff's Department vehicle, drive into the back
17 parking lot of the Sheriff's Office. A uniformed
18 deputy got out, opened the back door, and a white
19 male subject dressed in an orange jumpsuit with
20 handcuffs in the front exited that vehicle. I later
21 found out that of course that was Mr. Dewain Herring
22 at that time.

23 Q And did you know why he was there at that point when
24 you saw him then?

25 A Well, I obviously knew he was in custody and he was

1 under arrest for something. And the Sheriff's
2 Office, it was my understanding that they were --
3 that even though this case was still under
4 investigation by the Sheriff's Office, it was my
5 understanding from Chief Deputy Wilson that the
6 intent was to most likely bring charges against Mr.
7 Herring for an incident that occurred at the
8 Chastity's Club on River Drive.

9 Q You respond because there's been a police officer
10 shooting, correct?

11 A That's correct.

12 Q And when you initially go to the Sheriff's Department
13 on January 29th I guess it is now?

14 A That's correct.

15 Q 2006, you briefly talk to the officers?

16 A Right.

17 Q You testified you see the defendant, Mr. Herring,
18 come out of the patrol car going to the Sheriff's
19 Department. What do you do next?

20 A Well, he was taken to a conference room at the
21 Sheriff's Office. And I noticed he had a bandage on
22 one of his arms. Someone from the Sheriff's Office
23 had contacted the Richland County Emergency Medical
24 Services, EMS, and they responded to render some
25 further aid to Mr. Herring. It appears as though

1 they were either increasing the bandage or changing
2 the bandage on his arm at that time. So we waited
3 until they got through before we actually spoke with
4 Mr. Herring.

5 Q And tell the judge, if you will, where were you in
6 the Sheriff's Department when you spoke to Mr.
7 Herring, the defendant?

8 A They took him to a conference room nearby the
9 investigative division on the ground floor level.

10 Q Is that the big conference room we all use when we're
11 out there?

12 A I guess so.

13 Q And at that point in the conference room, who was
14 there?

15 A Myself and Agent LaRosa.

16 Q All right. And Dewain Herring?

17 A That's correct.

18 Q And was he handcuffed at that point?

19 A Yes, he was.

20 Q And showing you what's marked State's 1 for I.D., do
21 you recognize that?

22 A I do.

23 Q What is that?

24 A It's a SLED standard Miranda rights form.

25 Q And did you read or advise Dewain Herring of his

1 rights?

2 A Yes, I did.

3 Q And did you do that initially when you met with him?

4 A Well, after we initially made contact with Mr.
5 Herring, I introduced myself and Agent LaRosa and we
6 explained to him that we had been contacted by the
7 Richland County Sheriff's Department to conduct this
8 officer-involved shooting that occurred at

9 which I had understood the course
10 of that was his residence, you know, at that time.
11 And I explained to him that was the reason why we
12 were there, investigating the incident that occurred
13 at this residence.

14 Q And did you have an occasion to read him his rights?

15 A Yes, I did.

16 Q Before asking him any questions or talking to him?

17 A Yes. Before asking him any questions. That's
18 correct.

19 Q And that's the advice of rights form that Chief
20 Stewart has you all use, correct? State's 1 ID?

21 A That's correct.

22 Q And can you read your rights, read the rights as you
23 read them to the defendant, Dewain Herring, on
24 January 29th, 2006?

25 A Yes, sir. I explained to Mr. Herring that we did

1 want to advise him of his rights, and the reason
2 being that he wasn't under arrest by SLED but he was
3 obviously under arrest or in custody. And that's the
4 reason why. And out of an abundance of caution I did
5 advise him of his rights, you know, because of that.

6 It was during that time that I explained to Mr.
7 Herring that of course, you know, could he read and
8 write. He replied that he could. And as I always do
9 when I get ready to advise somebody of their rights,
10 I put it before them and I read it to them and ask
11 them if they will please read it themselves as I read
12 it.

13 And it states that the place was the Richland
14 County Sheriff's Department on January 29th. The
15 time is 9:42 a.m. It says: "Before we ask you any
16 questions, you must understand your rights. You have
17 the right to remain silent. Anything you say can be
18 used against you in court as evidence against you.
19 You are entitled to talk to a lawyer now and have him
20 present now or at any time during questioning. If
21 you cannot afford a lawyer, one will be appointed for
22 you without cost. If you decide to answer questions
23 now without a lawyer present, you will still have the
24 right to stop answering at any time. You also have
25 the right to stop answering at any time until you

1 talk to a lawyer. Do you understand these rights?
2 Do you wish to talk to us at this time?"

3 Out to the left of each one of these statements
4 is a line that we ask that person who is being
5 advised of their rights to initial and that initial
6 is their acknowledgment that they have been advised
7 and they do understand. Excuse me. Part two of this
8 statement --

9 Q Before we get to part two, as you're going through
10 it, reading him his rights, you're telling Your Honor
11 based on your experience and your training in law
12 enforcement and just everyday life, did Mr. Herring
13 appear to understand these rights as you read them?

14 A Yes, he did.

15 Q Did he tell you he understood them?

16 A Yes, he did.

17 Q Did he also indicate on the form that he understood
18 them by putting his initials?

19 A That's correct.

20 Q Well, then that is the line right before each one?

21 A That's correct.

22 Q And after -- let me ask you right here in this line;
23 "If you decide to answer questions now without a
24 lawyer present you will still have the right to stop
25 answering at any time"; it looks like there is

1 defendant's initials right there?

2 A It is.

3 Q Would you explain that?

4 A Yeah. That sentence there -- well, there's two
5 sentences within that one phrase there, as you can
6 see. And he initialed that on his own without me
7 asking him to.

8 Q So he corrected that sentence, if you will?

9 A I don't know if he corrected it. He actually
10 initialed I guess either the end or the beginning of
11 the next sentence.

12 Q The end of a sentence; the beginning of the next?

13 A That's correct.

14 Q So in your opinion he understood your rights and he
15 acknowledged those to you, correct?

16 A Yes, sir.

17 Q After that's the waiver of rights. Tell Your Honor
18 about that.

19 A The waiver of rights says: "I have read this
20 statement of my rights and I understand what my
21 rights are. I am willing to talk now without a
22 lawyer present. I understand and I know what I am
23 doing. No promises or threats have been made to me
24 and no pressure or coercion of any kind has been used
25 against me."

1 Q And as those were read to Mr. Herring, is it your
2 opinion based on your training and being there with
3 him that he understood not only the rights but his
4 waiver of rights?

5 A That's correct.

6 Q And did he sign as such below the waiver of rights?

7 A He did.

8 Q And you didn't make him sign or anything?

9 A No, sir.

10 Q Next to that there are two witnesses. Is the top one
11 you?

12 A The top one is me.

13 Q And below it, who is that?

14 A Paul LaRosa.

15 Q At any time during to reading of these rights and/or
16 the waiver of the rights, Captain, did the defendant
17 tell you, I don't want to talk to you?

18 A No, sir he did not.

19 Q Did he appear to be under the influence of alcohol or
20 drugs or any other intoxicants at that time?

21 A Well, he didn't -- I can't say he didn't appear to
22 be, you know, at that time.

23 Q He did not appear to be?

24 A No, sir,

25 Q Could you smell something coming from him?

1 A I detected an odor. I mean, it could have been -- it
2 appeared to be that of an alcoholic type odor that
3 was emitting from his body.

4 Q Did you have any trouble understanding when he
5 responded to you?

6 A No, I did not.

7 Q Did he appear to understand your question as to
8 content when he'd respond to you?

9 A Yes, sir.

10 Q Was it timely?

11 A It was timely.

12 Q After you had read him his rights, and if he had said
13 he don't want to talk to you, I want a lawyer, what
14 would have you done?

15 A Stopped.

16 Q Did you threaten or coerce him in any way?

17 A No, sir.

18 Q Did you hold out any hope of reward or promise?

19 A No, sir.

20 Q And did you actually know Mr. Herring? Did you know
21 he was a lawyer?

22 A I did.

23 Q Had you had previous dealings with him either in
24 other cases, or did you know who he was?

25 A I was acquainted with Mr. Herring prior to this.

1 Q Now, what's marked State's 2, do you have a copy of
2 the first written statement?

3 A I have the copy.

4 Q Okay.

5 MR. MEADORS: I hand this to the Court.

6 MR. HARPOOTLIAN: You're not going to publish
7 that now, are you?

8 MR. MEADORS: No, sir.

9 (Document handed to the Court)

10 Q Looking at what's marked Court's (sic) 2, just a few
11 brief questions about the top of that. It's got
12 Richland County. It's got an address, a date of
13 birth, Social Security number, phone numbers. Who
14 gave you all that information?

15 A Mr. Herring did.

16 Q And when you would ask him that information, was
17 it -- did he volunteer it right away?

18 A Yes, he did.

19 Q Did you have any trouble understanding his responses
20 or his answers?

21 A No, sir.

22 Q Like when you asked him his Social Security number,
23 was he able to recite it?

24 A Yes, he was.

25 Q After you had filled in that part, you had already

1 red him his rights, correct?

2 A That's correct.

3 Q And did you take this one, two, three-page written
4 statement which is State's 2 for I.D.?

5 A Yes, I did.

6 Q And just for the record, did you -- how did you do
7 it? Did you talk to him first and then take his
8 written statement?

9 A Yes. I explained to Mr. Herring that we would like
10 to know his account of what took place at his
11 residence that night. And we went through it, myself
12 and Agent LaRosa, verbally to begin with. And that's
13 whenever I asked Mr. Herring if we could take a
14 written statement to the effect of what we just
15 talked about, and then we went through it again as we
16 went through it and then took the written statement.

17 Q And after you had taken this statement, did you go
18 over it with the defendant?

19 A Yes, we did.

20 Q And specifically, it looks at the top where it's got
21 question: Lawrence, and then answer: Herring, did
22 you all both initial those?

23 A He initialed those.

24 Q Okay. And at the bottom of page 1 of State's 2 for
25 I.D., is that the defendant's signature or initials?

- 1 A Yes, it is.
- 2 Q And what does that show to you that you are able to
- 3 testify here in court today to?
- 4 A I always ask whoever we're taking a statement from to
- 5 initial on each page, to initial the beginning where
- 6 the writing begins and at the end where the writing
- 7 stops on each page.
- 8 Q And as far as page 2 and 3, did Mr. Herring also
- 9 initial the top and bottom of those?
- 10 A Yes, he did; as well as signed the bottom of it.
- 11 Q He signed the bottom of each page?
- 12 A That's correct.
- 13 Q And there's a slash at the bottom of page 3?
- 14 A Mm-hmm (affirmative).
- 15 Q And is that -- whose initials are those?
- 16 A Those are Mr. Herring's.
- 17 Q And explain that to the judge?
- 18 A The very last word that is written, I ask the person
- 19 that we're taking the statement from to initial that
- 20 and then draw a line through any blank line that is
- 21 left within that page and ask them to initial that
- 22 page and make sure there would be no other writing
- 23 that may be placed upon it thereafter.
- 24 Q Is that so no one can come back and add anything
- 25 later? Correct?

1 A That is correct.

2 Q At any time during the taking of this statement --
3 and this your handwriting?

4 A It is mine.

5 Q You read to him afterwards and then he initialed that
6 he agreed with it, correct?

7 A That is correct.

8 Q At any time during the taking of this statement,
9 either the oral part or his written statement, did
10 the defendant tell you he didn't want to talk to you?

11 A No, he did not.

12 Q Did he request a lawyer?

13 A No, he did not.

14 Q Did you threaten him, coerce him, hold out any hope
15 of reward?

16 A No, sir.

17 Q Would he, and was he, if he asked provided an
18 opportunity to go to the bathroom or get something to
19 eat?

20 A Yeah. We asked him if he wanted anything. And he
21 wanted some water at the beginning. I remember him
22 talking about his mouth was pretty dry. And Agent
23 LaRosa went and he got him a cup of water. Initially
24 he said he didn't want anything to eat. He just
25 wanted something to drink at that time.

1 Q And did Agent LaRosa sign all three pages, too?

2 A Yes, he did.

3 Q So he was there for the entire taking of this
4 statement also?

5 A Yes, sir, he was.

6 Q Tell the judge what you did after that. You're
7 taking the statement from the defendant, Dewain
8 Herring. What do you do after that? What happens
9 next?

10 A We take this initial statement. And after, you know,
11 once again, it is discussed and signed, you know,
12 with Mr. Herring, then I said we were there to
13 investigate the officer-involved shooting and that's
14 the reason, you know, why we were there. I said we,
15 SLED. And based on the information that I was
16 briefed on by Chief Wilson and the information that I
17 received from Mr. Herring, it seemed to be in
18 conflict. We're there to try to find the facts and
19 to try to the evidence thereof.

20 And I go and I speak with Captain Paul Grant who
21 is the Captain of the Midlands region who was my
22 supervisor at the time to discuss this. And I
23 explained to Chief Wilson what he had briefed me
24 with, the information I'm receiving now is a certain
25 conflict. And it was at that time that Chief Wilson,

1 that they had obtained a videotape from the
2 Chastity's Gold --

3 Q The conflicting information was that you weren't
4 provided at this point by Mr. Herring anything about
5 Chastity's, correct?

6 A Yeah. Well, during the first statement, no. Could
7 you ask that again, please?

8 Q You said it was in conflict. What do you mean by
9 that?

10 A By the briefing that Chief Wilson had provided to us
11 at the time that we arrived, based on their version
12 of the incident that had occurred that led up to the
13 shooting at and what Mr. Herring
14 had told me at that time was in conflict based upon
15 the statement that he had given.

16 Q I understand. So you go to meet with Investigator
17 Chief Deputy Wilson?

18 A With Chief Wilson. And at that time he said that he
19 had a videotape that was obtained from the Chastity's
20 Club. And I actually viewed it. And it had on it
21 that it was on approximately January 29th at like
22 12:10 a.m. a photograph that appeared to be that of
23 Mr. Herring entering the nightclub. And then shortly
24 thereafter --

25 Q Could that have been an hour earlier, around 11

1 something where he entered? Shortly after 12 when he
2 is exiting?

3 A Well, I have noted down that it was 10:12 a.m. And I
4 don't -- if you'll bear with me one moment, I'm
5 almost -- yes. It was approximately 12:10 a.m. on
6 January 29th that the incident -- approximately the
7 incident that occurred at the nightclub. And it was
8 sometime just prior to that, I mean, just prior to
9 that that the videotape had a photograph of what
10 appeared to be Mr. Herring on it.

11 Q So you saw that, saw him at the club?

12 A Yes, I did.

13 Q And did you also see on the video where shots were
14 coming from a vehicle, a shot was coming from a
15 vehicle?

16 A You could see like a small flash that appeared to be
17 coming from a moving vehicle.

18 Q What did you do after that?

19 A At that time I reentered the room that Mr. Herring
20 was in and that Agent LaRosa was in, and I wanted to
21 speak to Mr. Herring further. So what I actually did
22 at that time, I asked Mr. Herring would we go back
23 and start early that day on Saturday, January 28th,
24 and tell me everything that he had done that day.
25 And that's whenever we actually started talking and

1 going into more detail.

2 And he explained that he had been golfing
3 earlier with a friend of his in Aiken, had consumed
4 some alcoholic beverages throughout the day as they
5 were playing golf. Came back home and was at his
6 residence at around 8 to 8:30 p.m. He stated he was
7 at his house by himself at that time.

8 And I then asked Mr. Herring did he recall going
9 to Chastity's' nightclub. And he explained no. He
10 stated, "No, I don't." He said, "I know where it is
11 but I don't recall ever going there." I then asked
12 Mr. Herring that the Sheriff's Office has a videotape
13 of you entering Chastity's Nightclub last night; and
14 does it help you with your recollection? The next
15 statement was: "I remember the white woman with the
16 big tits." He said, "I had a scotch and soda while
17 there. I do recall, but hazy, that I was there. I
18 could not tell you if the place was full or crowded
19 or anything."

20 Q And you went on and asked him some questions about
21 how many guns he had and what car he was in, correct?

22 A I did.

23 Q On the last page you asked him if he recalled firing
24 a weapon from a Toyota as he was leaving?

25 A Yes, sir, I did.

1 Q And what did he tell you?

2 A He stated that he did have a black Toyota 4Runner
3 that did belong to him and that he was in it that
4 night and that -- I asked him regarding what type of
5 handguns that he had. And he stated a .40 caliber
6 Glock, a .22 Smith and Wesson, a .357 Smith and
7 Wesson and a Ruger .357, a .22 pump rifle. He stated
8 that he usually had the .22 pistol, .22 rifle or the
9 Ruger .357 in the vehicle with him but he couldn't
10 recall which one that he had in the Toyota last
11 night.

12 I asked him did he recall firing a weapon from
13 the Toyota as he was leaving Chastity's and he stated
14 that he did not. I asked him did he fire any shot at
15 all. He stated that if he did, he was not shooting
16 at anyone. I'm not saying that I did not do it, and
17 if the gun went off while in my hand, it was a
18 harmless error.

19 Q It's actually it was harmless error, right. There's
20 not an A in there. It was harmless error?

21 A Harmless error. That's correct. And if it was, it
22 probably was the Ruger .357.

23 Q You say if. Would that be it was probably?

24 A It was. Yeah. It was probably the Ruger .357, and
25 if it went off, it was an accident. I asked him did

1 he see anybody when he fired the weapon. He stated
2 no, I was not shooting at anybody. There was nobody
3 to shoot at. I asked him if there was anything else
4 that he would like to add. He stated: "Not at this
5 time."

6 Q Is there a line drawn down there with his initials,
7 that being Dewain Herring, there?

8 A Yes, it is.

9 Q All right. All of this to this point had been in
10 your handwriting --

11 A That's correct.

12 Q With the exception of those initials? Did he add
13 something besides that in his own handwriting?

14 A Yeah. After we completed writing the statement, I
15 read the statement back to him. And as we got to the
16 end where it stated, you know, "Is there anything
17 else", he had stated: "Not at this time", he wanted
18 to write something at that time. So I gave him my
19 pen and he wrote, "But do reserve the right to edit,
20 add or delete", and he initialed it and I initialed
21 it.

22 Q So again, that was done at that same time period when
23 this statement was taken, correct?

24 A That's correct.

25 Q At any time during the taking of this three-page

1 statement, and on this second statement between the
2 first and the second one, had he asked to talk to a
3 lawyer?

4 A No, he hadn't.

5 Q Had you held out any hope or promise of reward
6 between the first statement and the second statement?

7 A No.

8 Q Did you threaten or coerce him --

9 A No.

10 Q -- during this statement? He didn't ask for a
11 lawyer?

12 A No, he did not.

13 Q Could you still understand him and understand what he
14 was saying, and did he appear to understand what you
15 were saying in your questions based on the content of
16 his answer?

17 A He certainly appeared to be very aware of what was
18 taking place.

19 Q And on this last, this also -- we've talked about the
20 end -- but he initialed the corner, if you will, and
21 the end of each page also showing that this had been
22 read to him and this is what he had provided to you?

23 A That's correct.

24 Q On each page; 1, 2 and 3?

25 A That's correct.

1 Q And did you and Paul LaRosa sign each page?

2 A We did.

3 Q Did you give Mr. Herring a copy of these statements?

4 A Yeah. This was a carbon copy form that we use, and
5 he received what would be a yellow copy of his
6 statement which would have been a carbon copy.

7 Q And all of these, both of these were taken in that
8 same conference room?

9 A That's correct.

10 Q And just -- I'm almost through. But as far as the
11 setting, it was you. All were all sitting down?

12 A We were.

13 Q Okay. And then was Mr. Herring, how close was he to
14 you?

15 A A little bit closer than you are to me right now,
16 almost the same distance. He was sitting on the long
17 end of the table and I was sitting at the head, and
18 Paul LaRosa was sitting on the other corner.

19 Q After you took this second statement, if you will,
20 for purposes, what did you do next with the
21 defendant, Mr. Herring? Or did he come in contact
22 with any other law enforcement officer?

23 A He did. At the time that we concluded this
24 statement, I told Chief Wilson that we were done.
25 And Chief Wilson it is my understanding at that time

1 made contact him.

2 Q And is the person who gave you both these statements
3 in the courtroom here today?

4 A Yes, he is.

5 Q Would you please point him out for the record?

6 A He is the gentleman sitting there beside Mr.
7 Harpootlian.

8 MR. MEADORS: I'd like the record to reflect
9 he's picked Mr. Dewain Herring, Your Honor.

10 THE COURT: The record will so reflect.

11 MR. MEADORS: That's all. Thank you.

12 MR. HARPOOTLIAN: May it please the Court, Your
13 Honor.

14 THE COURT: Yes, sir.

15 CROSS EXAMINATION

16 BY MR. HARPOOTLIAN

17 Q Lieutenant, right?

18 A Yes, sir.

19 Q Lieutenant, let me ask you a few questions here.
20 You've mentioned that Mr. Herring had a bandage on
21 his arm. He had been shot, hadn't he?

22 A It is my understanding through the briefing with
23 Chief Wilson that he was shot by one of his officers.

24 Q Shot in the arm?

25 A Correct.

1 Q Taken to the hospital?

2 A Yes, sir.

3 Q Treated?

4 A Yes, sir.

5 Q Did you realize he'd been given Ativan before you --
6 did you know he'd been given drugs at the hospital?

7 A I didn't know what type of drugs, no; not at that
8 time.

9 Q You later knew it, found out that he'd been given
10 Ativan?

11 A It could have very well been documented in the
12 hospital records. I don't recall taking a look at
13 that.

14 Q Let me show you this. Let's see you've seen this
15 record before. Have you seen that record before from
16 the Palmetto Richland?

17 A This was a record that probably -- well, it was noted
18 that Agent LaRosa received and handled. And he took
19 care of this part of the investigation.

20 Q Okay.

21 A But I know it was a part of this investigative
22 report.

23 Q But when you were interrogating Mr. Herring, did you
24 realize he'd been given Ativan?

25 A No, sir; I did not.

- 1 Q Do you have any idea what Ativan is? Do you know
2 what its affect is? It's a sedative?
- 3 A I would hate to quote it.
- 4 Q Sedative? Pain killer?
- 5 A Okay.
- 6 Q And had you known he'd been given a sedative or a
7 pain killer, would you have interrogated him?
- 8 A It's hard to say now. But most likely I probably
9 would.
- 10 Q You still would have?
- 11 A Probably so.
- 12 Q Now, he'd been shot. He was bleeding, as a matter of
13 fact, bleeding so much they had to come in and work
14 on him in the conference room, right?
- 15 A Yeah. Someone from the Sheriff's Office called and
16 just wanted to make sure -- I think they saw -- it
17 appeared as though that there was substance oozing
18 through the bandage and they wanted to make sure.
19 And they did come and I think applied more bandage to
20 him.
- 21 Q And the substance that was coming from the bandage
22 was blood?
- 23 A It appeared to be.
- 24 Q It appeared to be. You know what blood looks like?
- 25 A Yes, sir.

1 Q You and I have been to a few homicide scenes
2 ourselves, haven't we?

3 A We have.

4 Q We've seen blood before. That was blood soaking
5 through the bandage because he'd been shot?

6 A Right. That's the reason we waited on EMS to further
7 treat him before we spoke with him.

8 Q Okay. And being shot is not a pleasant experience,
9 is it?

10 A Well, I've never been shot.

11 Q But you've been around a lot of people who have been
12 shot?

13 A Yes, sir.

14 Q And most of them are in a lot of pain after they've
15 been shot?

16 A Yes, sir.

17 Q Did he appear to be in pain?

18 A He appeared to be in some discomfort. I can, you
19 know, say that.

20 Q Now, you said you smelled alcohol on him. You
21 actually worked as a deputy sheriff a couple of years
22 ago, did you not?

23 A I did.

24 Q And you made driving under the influence arrests, did
25 you not?

1 A I have.

2 Q And you, back in the old days before we had all the
3 technical stuff, you stopped somebody, you smelled
4 alcohol on their breath and they were unsteady on
5 their feet and they had slurred speech, bloodshot
6 eyes, fumbled through the light, you'd arrest them
7 for DUI?

8 A I don't know at that point. But I would have
9 probably done other investigation and see whether or
10 not they would have been.

11 Q Did he appear to be unsteady on his feet?

12 A I saw him very briefly walking into the Sheriff's
13 Office. And what I can recall, he didn't appear to
14 be stumbling. But at the time I saw him, it was very
15 brief and I didn't see him again until he was sitting
16 down in the conference room.

17 Q Did he -- I want you to describe his demeanor. He's
18 in an orange jumpsuit. Were his hands handcuffed the
19 whole time you talked to him?

20 A Yes, sir.

21 Q And he had a Band-aid on him. I mean, it wasn't a
22 Band-aid. It was a big bandage. He caught a Glock,
23 a .40 caliber Glock in the arm, did he not?

24 A It was later determined that he did. That's correct.

25 Q And you determined that, right?

1 A No. Our forensics did. Ballistics did.

2 Q Because they pulled a bullet out of the wall in his
3 house, a .40 caliber, that had his flesh on it. Is
4 that correct?

5 A That's correct.

6 Q Now, so he'd been shot. He's been given Ativan. You
7 smelled alcohol on his breath. And you continued to
8 interrogate him?

9 A I did.

10 Q Okay. Now, and you were there to investigate the
11 shooting at the house, I think is what you said,
12 investigate the incident at the residence. Is that
13 right?

14 A That's correct.

15 Q And the incident at the residence was that several
16 Richland County Sheriff's deputies came into the
17 house and shot at him 16, 17 times?

18 A The --

19 MR. MEADORS: Judge, I would object, at least
20 for purposes of this whether this statement was
21 freely and voluntarily given. That's got nothing to
22 do with --

23 MR. HARPOOTLIAN: Well, I'm coming back to --

24 MR. MEADORS: I understand the injuries do, but
25 not the shots.

1 Q Is that what you were there to investigate?

2 THE COURT: Go ahead. Go ahead.

3 A Yeah. We were there to investigate the
4 officer-involved shooting at that residence. That's
5 correct.

6 Q And is that a normal procedure, whenever an officer
7 fires his weapon to have SLED come in and
8 investigate?

9 A Yes. It's very normal. It is.

10 Q Okay. And so you were there to investigate -- I
11 guess what I'm trying to get to is, was there some
12 question about who was at fault? Is that -- I mean,
13 what were you there to investigate?

14 A We are there to investigate an officer-involved
15 shooting, to gather the facts and the evidence and
16 present it to a solicitor for their review to see if
17 there's any criminal charges to be brought against
18 primarily the officers involved in the shooting.

19 Q And that's what your first statement was, your
20 interrogation was about, was the shooting, correct?

21 A That's what both statements were about.

22 Q Okay. The second statement, however, was about his
23 involvement at Chastity's' though, was it not?

24 A No. What I -- the question to begin with was to tell
25 me what happened that night. And the reason -- of

1 course I learned from the Sheriff's Office, our
2 question is, why were you there to begin with. And
3 they were there, according to him, based upon the
4 search warrant. I wanted Mr. Herring to tell me what
5 actually took place and his version throughout the
6 night.

7 Q What time did you get to the Sheriff's Department?

8 A It was -- to the Sheriff's Office was approximately,
9 about 8:45, 9:00 a.m.

10 Q Okay. And you began interrogating him. And the
11 first statement I think indicates that it was
12 completed at 10:52. Is that right?

13 A First of all, I didn't interview him.

14 Q Who did you interrogate?

15 A It wasn't an interrogation. It was an interview.
16 And we began, we advised him of his rights I think it
17 states 9:42 a.m.

18 Q I'm sorry. Where does it say where it begins,
19 beginning time?

20 A I'm going by -- well, once again, it's got 9:42 a.m.
21 on the advice of rights.

22 Q So you advise --

23 A And I made a note that I first made contact, it was
24 approximately 9:30 that I first made contact him.

25 Q So you advised him of his rights at 9:42. That's

1 when he actually executes the advice of rights form?

2 A That's correct.

3 Q Then you have a discussion with him?

4 A Yes.

5 Q And then these statements that are marked for the
6 State, these are your words. I mean, is this a
7 verbatim transcript?

8 A No. They're not my words. They're what pursuant to
9 interview is what he's telling me and I'm
10 transcribing what he's telling me. And I wrote it
11 this time because he had -- we always give everybody
12 the opportunity to write their own statements. I
13 asked him did he want me to write the statement and
14 he said yeah.

15 Q Well, he had been shot. One arm was bandaged and
16 then the hands were handcuffed. It would be sort of
17 hard for him to write?

18 A That was one reason why.

19 Q That would be the major reason, wouldn't it?

20 A That was one reason. The other reason was he said he
21 wanted me to write it.

22 Q Well, did you offer to take the handcuffs off?

23 A No, sir.

24 Q Okay. It's sort of hard to write with your hands
25 cuffed together. Have you ever been handcuffed?

- 1 A Yes, sir.
- 2 Q Okay. Have you ever tried to write anything?
- 3 A No, sir.
- 4 Q Okay. And would you try?
- 5 THE COURT: Move on.
- 6 Q It would be difficult to write.
- 7 MR. HARPOOTLIAN: Yes, sir.
- 8 Q Okay. So, at 10:52 you finished the first statement.
- 9 Is that right?
- 10 A That's correct.
- 11 Q And then what time do you start -- did you readvise
- 12 him of his rights?
- 13 A No, sir; I did not.
- 14 Q Why not?
- 15 A Because it was a continuation thereof. And either
- 16 myself or Paul LaRosa was in constant contact with
- 17 him. There was no need to advise him after he'd
- 18 already been advised.
- 19 Q What if you'd left the room?
- 20 A I did leave the room.
- 21 Q What if both of you all left the room and came back
- 22 in?
- 23 A Well, that didn't happen. We stayed there.
- 24 Q Would it be your policy to readvise him of his
- 25 rights?

1 A It's according to what the facts and circumstances
2 may be. It may or may not be.

3 Q Now, you then talked to him. So you don't know when
4 you began the second interviews because there's no
5 advice of rights form?

6 A It was -- I have an estimated time. It was
7 approximately 10 to 15 minutes. Probably ten
8 minutes, closer to ten minutes.

9 Q Ten minutes. So if you stopped this statement, the
10 first one at 10:52, it would be approximately 11:00
11 when you started the second interview, interrogation,
12 discussion?

13 THE COURT: I need to look at these.

14 MR. HARPOOTLIAN: I'm sorry. I thought he had
15 these in front of him, Your Honor.

16 A I have a copy.

17 THE COURT: Do you have all three of them?

18 WITNESS: Yeah, I have a copy. Yes, sir.

19 THE COURT: With the times on them?

20 A Yes, sir. It would have been approximately 11:00.

21 Q And it's completed at 11:54?

22 A That's correct.

23 Q So you interviewed him beginning around 9:00 and
24 finished with him around 12:00?

25 A No, sir. We began at approximately 9:30. The advice

1 of rights at 9:42.

2 Q Okay. And finished with him about noon?

3 A That's correct.

4 Q Okay. Then what did you do?

5 A We then turned him over to Chief Wilson.

6 Q Did you stay while he was being interviewed by Chief
7 Wilson, or did you leave?

8 A I left.

9 Q What about Mr. LaRosa?

10 A He left.

11 Q And so you turned him over to Chief Wilson and then
12 you all left. You don't know what occurred after you
13 left. Is that correct?

14 A No, sir, I don't.

15 Q Okay. Now, at that point -- okay. I think that's
16 all I have. Begging the Court's indulgence. Maybe
17 it's not all I have. Beg the Court's indulgence.

18 (Pause)

19 MR. HARPOOTLIAN: That's all I have.

20 THE COURT: Anything further?

21 REDIRECT EXAMINATION

22 BY MR. MEADORS

23 Q Could you understand him when he answered your
24 questions? The defendant. Could you understand his
25 answers?

1 A Yes. I could clearly understand him.

2 Q Did he ever say, Dave, I don't want to talk to you;
3 or, Agent Lawrence, I don't want to talk to you?

4 A No, he didn't.

5 Q That's all. Thank you.

6 THE COURT: All right. You may come down, sir.
7 Thank you very much.

8 MR. MEADORS: Agent Paul LaRosa.

9 PAUL C. LAROSA, III, after being duly sworn,
10 testifies as follows:

11 THE CLERK: Thank you. Please have a seat in
12 the witness stand and spell and state your full name
13 for the record, please.

14 WITNESS: Paul Charles LaRosa, III. Last name
15 is spelled L-A, capital, R-O-S-A.

16 DIRECT EXAMINATION

17 BY MR. MEADORS

18 Q Good afternoon.

19 A Good afternoon.

20 Q How many years have you been in law enforcement?

21 A I have been employed with SLED for 13 years, and
22 that's my complete law enforcement.

23 Q Graduated from school, went to college and then went
24 to criminal justice?

25 A Yes, sir.

1 **MR. HARPOOTLIAN:** We think he's extraordinarily
2 well qualified and well trained.

3 **MR. MEADORS:** We'll accept that stipulation.
4 Thank you.

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

6 **Q** Did you have an occasion -- and I'm going to direct
7 my questions to the opportunity you had to be with
8 Mr. Herring on January 29th, 2006.

9 **A** Yes, sir. We were called and requested to
10 investigate a police-involved shooting and by the
11 Richland County Sheriff's Office. And that's how
12 myself and Special Agent Lawrence got involved with
13 Mr. Herring.

14 **Q** Thank you. And did you have an occasion to meet with
15 the defendant when his rights were read at the
16 Richland County Sheriff's Department?

17 **A** Yes, sir. I was present while Mr. Lawrence read him
18 his rights.

19 **Q** And just to show you these very briefly, State's 1
20 for I.D., do you recognize that?

21 **A** Yes, sir, I do. It's the standard Miranda rights
22 form from SLED and bears my signature.

23 **Q** And you stated you were there when Agent Lawrence
24 read the rights to Dewain Herring?

25 **A** Yes, sir. I was in the room.

1 Q At any point during that, did Agent Lawrence in your
2 presence or you threaten, coerce, hold out any hope
3 of reward in exchange for his statement?
4 A No, sir.
5 Q Promise him anything?
6 A No, sir.
7 Q Did he appear to you to be under the influence of
8 alcohol or any other intoxicant?
9 A I could tell that it was not affecting his decision
10 making.
11 Q You didn't have any trouble understanding him?
12 A That's correct. He was coherent.
13 Q Did he appear to understand your questions based on
14 his answers, and were they timely?
15 A Yes, sir, they were.
16 Q He signed all of these in your presence saying he
17 understood his rights?
18 A Yes, sir; and initialed them.
19 Q Did you all, "you all" being you and Investigator
20 Lawrence, take a statement?
21 A Yes, sir. We actually took two of them.
22 Q And State's 2 for I.D., is your signature on pages 1,
23 2, and 3?
24 A Yes, sir, it is.
25 Q And during that process of taking State's 2 for I.D.,

1 did the defendant ever say he wanted a lawyer? Did
2 he ever say he wanted a lawyer or didn't want to
3 talk?

4 A No, sir. Not during this first statement.

5 Q And did you understand everything he said?

6 A Yes, sir, I did.

7 Q And he appeared to understand what you all said?

8 A Absolutely. Yes, sir.

9 Q Did you have an occasion later to take State's 3 for
10 I.D.?

11 A Yes, sir.

12 Q And is your signature on there also?

13 A Yes, sir, it is. It's on every page.

14 Q During the taking of statement 3, Captain LaRosa, did
15 you appear to understand the defendant when he gave
16 you those answers?

17 A Yes, sir.

18 Q Did he appear to understand you?

19 A Yes, sir.

20 Q As in statement 2, did you threaten, coerce, hold out
21 any hope of reward for the defendant in exchange for
22 these statements?

23 A No, sir.

24 Q Did he ever say I don't want to talk to you or give
25 me a lawyer?

- 1 A Only at the very end of the statement when he said,
2 "But I do reserve the right to edit, add or delete
3 anything." And he didn't have anything else at that
4 time. And that concluded it.
- 5 Q But that's all he said there?
- 6 A Yes.
- 7 Q He just said, "I reserve the right to edit, add or
8 delete"?
- 9 A That's correct. He never requested an attorney with
10 us.
- 11 Q It may have been later with Chief Wilson you're
12 talking about, correct?
- 13 A Possibly.
- 14 Q And you all gave him a copy of these statements, "
15 right?
- 16 A Yes, sir, we did.
- 17 Q Is the person that you were present when his rights
18 were read and you said he understood his rights and
19 then gave a statement, is that person in the
20 courtroom?
- 21 A Yes, sir, he is.
- 22 Q Would you please point him out?
- 23 A He is sitting right there in the middle of the
24 defense table.
- 25 MR. MEADORS: Your Honor, we'd ask the record

1 reflect he's --

2 **THE COURT:** The record will so reflect.

3 **MR. MEADORS:** -- picked out Dewain Herring. I
4 believe that's all we have. And I don't know if
5 there are any questions from the other side.

6 **MR. HARPOOTLIAN:** No questions.

7 **MR. MEADORS:** Chief David Wilson.

8 **THE COURT:** Come down, sir.

9 **MR. MEADORS:** Chief David Wilson.

10 **DAVID WILSON,** after being duly sworn, testifies
11 as follows:

12 **THE CLERK:** Thank you. Please have a seat in
13 the witness stand and state your full name for the
14 record.

15 **WITNESS:** David Wilson.

16 **DIRECT EXAMINATION**

17 **BY MR. MEADORS**

18 **Q** Chief, I'm going to take you right to your
19 headquarters January 29th of 2006. Did you have an
20 occasion talk with the defendant, Dewain Herring?

21 **A** Yes, sir, I did.

22 **Q** Can you tell the judge how that came about?

23 **A** The State Law Enforcement Division had finished their
24 interview of Mr. Herring. I went into the room to
25 interview him concerning the shooting at the club. I

1 went in. I introduced myself. We talked for a few
2 minutes. Then I asked him if he'd been advised of
3 his rights by SLED. He stated that he had.

4 Q Now, let me just stop you there. You had known the
5 defendant previously and actually had been involved
6 in something with him prior to this, not of a
7 criminal nature. Is that correct?

8 A That is correct.

9 Q So you knew who he was?

10 A Yes, sir.

11 Q You knew he was an attorney?

12 A I did.

13 Q You asked him if his rights had been read to him. He
14 indicated they had?

15 A That's correct.

16 Q Did he indicate to you he didn't want to talk to you?

17 A No, sir.

18 Q Did he ask for a lawyer?

19 A Not at that time.

20 Q Could you understand what he was saying?

21 A Yes, sir.

22 Q Did he appear to understand what you were saying,
23 Chief?

24 A Yes, sir.

25 Q You threaten him?

1 A No, sir.

2 Q Coerce him?

3 A No.

4 Q Hold out any hope of reward?

5 A No.

6 Q What happened next?

7 A I offered him food and drink. He accepted. He
8 started eating. I asked him what he remembered about
9 the incident at Chastity's. He stated he remembered
10 very little. He stated he remembered going there and
11 that he had a dispute with the employees. He stated
12 that when he fired the gun he wasn't shooting at
13 anyone.

14 He stated that he thought it would be his Ruger
15 handgun because it's the one that he usually kept in
16 his car. He stated, told me he had a concealed
17 weapons permit through SLED. At that point he asked
18 if he was under arrest. I advised him that he was
19 under arrest. He asked me what for? I told him for
20 murder. He seemed surprised. I advised him that
21 when he shot through the door of the club he had hit
22 and killed someone. He stated: "No, no, no", and
23 lowered his head into his hands.

24 He told me that he had not intended to hurt
25 anyone. At that point he stated that he needed a

1 lawyer, and I ceased questioning him concerning the
2 incident at Chastity's.

3 Q We're out of the presence of the jury. What else did
4 you talk about after that? Did you ask him for --

5 MR. MEADORS: A potential future issue, Your
6 Honor.

7 A I asked him --

8 Q In your notes.

9 A At some point he had mentioned his wife being out of
10 town. I asked him when his wife was due to return
11 home. He said 3:00 that afternoon. He I asked him
12 if he wanted to call somebody to have at the house
13 for her to stand by outside of the house because
14 there was a lot of SLED agents. I had one of my
15 detectives standing by out there. She would have
16 driven up, seen the police, and probably thought the
17 worst. So I asked him if he wanted to call somebody.
18 He called a friend of his named Chris, talked to
19 Chris for quite a while about his wife returning and
20 told Chris about the murder charge, talked about the
21 case. He was using the phone --

22 MR. HARPOOTLIAN: Your Honor, I would object to
23 this testimony. Chris is Chris Isgett, an attorney.

24 MR. MEADORS: I'll stipulate to that.

25 MR. HARPOOTLIAN: He called Mr. Isgett after he

1 asserted his right to an attorney. And I would
2 prefer not to have this conversation --

3 **MR. MEADORS:** Well, the conversation on the
4 phone was what we have sealed with Your Honor. We
5 immediately made that --

6 **THE COURT:** We have what? Oh. Go ahead.

7 **MR. MEADORS:** That is in my notes. But this is
8 just leading up to that, Your Honor. It's in camera.
9 I just want to --

10 **MR. HARPOOTLIAN:** I thought this was his
11 recollection, what he heard on --

12 **MR. MEADORS:** He can't hear what Chris is
13 saying. He can say what he heard in the office. And
14 I'm not saying we're offering that at this time, but
15 I'd like to make a record of it.

16 **MR. HARPOOTLIAN:** I'd object to it even being
17 stated at this point. This is attorney/client. He's
18 talking to an attorney, the person he calls after he
19 asserts.

20 **MR. MEADORS:** Well, can't Your Honor decide
21 after he proffers it? I mean, the jury is not here.
22 That's why I wanted to go forward and Your Honor can
23 rule on that.

24 **THE COURT:** Well, it sounds like -- go ahead.

25 Q Please go ahead.

1 **THE COURT:** So this is --

2 **MR. MEADORS:** This --

3 **THE COURT:** Let me ask a question. This officer
4 is overhearing the defendant talking to his lawyer
5 about this case. Is that correct?

6 **MR. MEADORS:** Correct. And the lawyer is on the
7 other line. He's on a phone that's clearly marked
8 recorded, line recorded. We didn't go pick that up
9 and listen. I talked to my boss and we decided we'd
10 seal that and give it to Your Honor. These are the
11 conversations he heard here. We are proffering it
12 for the record right now. I want to do that just so
13 we can be crystal clear on the record. I don't see
14 how that hurts anybody right now.

15 **MR. HARPOOTLIAN:** My question, is he proffering
16 it because he wants to offer it to a jury?

17 **MR. MEADORS:** I don't know. I'm not saying I
18 will or not. But I have a right proffer it now.
19 That's all I'm trying to do. It's just a few more
20 lines.

21 **MR. HARPOOTLIAN:** Well, Your Honor, if it's
22 attorney/client, we'd object to it even being
23 proffered. We'd rather do it in camera. There's
24 reporters here. There's everyone else.
25 Attorney/client --

1 **MR. MEADORS:** I did not think there were
2 reporters here.

3 **THE COURT:** Well, whether there are or not, it's
4 still -- approach the bench.

5 (Whereupon, a bench conference is had)

6 **THE COURT:** I overrule the objection.

7 **Q** Just finish reading your notes, please, Chief.

8 **A** During the conversation with the defendant and Chris,
9 they talked about the case and how to minimize media
10 exposure. While the conversation was proceeding, I
11 began to suspect that Chris might be an attorney. He
12 did not talk about Chris being an attorney prior to
13 that.

14 The defendant asked me if he could hire one
15 attorney for the bond hearing and another for the
16 trial. I told him I thought that he could. I'd seen
17 that happen in the past. Shortly thereafter -- our
18 conversation -- he got off the phone, our
19 conversation ceased. I ordered deputies that were
20 guarding him to take him back by the hospital to
21 change his bandages since he had bled through the
22 bandages while we were sitting there talking.

23 **MR. MEADORS:** Judge, that's the extent. We're
24 not offering the content of what he was talking to
25 Chris about. It was just that one statement.

- 1 Q After that, was that on a phone in your office that
2 you took a picture of, or it's been described, it's
3 been turned over to the defense?
4 A Yes.
5 Q That says phone call is recorded?
6 A Yes, sir.
7 Q And after that, did you contact me?
8 A Yes, I did.
9 Q And did we discuss what we would do with that
10 recording between the defendant and Chris Isgett?
11 A That is correct.
12 Q And did we decide to seal that?
13 A That's correct.
14 Q I believe the Court has that now in their possession
15 or the Clerk's Office does, correct?
16 A As far as I know.
17 Q As far as you know?
18 A Yes, sir.
19 Q And you or I have not listened to that, correct?
20 A No, sir. You may have. I haven't.
21 Q I certainly have not. And you took -- this was not a
22 written statement, just so the record will be clear.
23 Correct?
24 A No, sir. It was not written.
25 Q It's an oral statement. And you took down and made

1 this in your -- either took notes and/or put it on
2 your computer and transcribed this, correct?

3 A Right.

4 Q And the person who made these statements to you, is
5 that Mr. Herring here in the courtroom?

6 A Yes, sir, it is.

7 MR. HARPOOTLIAN: May it please the Court, Your
8 Honor.

9 THE COURT: Yes, sir.

10 CROSS EXAMINATION

11 BY MR. HARPOOTLIAN

12 Q Mr. -- the SLED agents, where were you when the SLED
13 agents were interrogating Mr. Herring?

14 A When the SLED agents were interviewing Mr. Herring I
15 was in my office which is in another part of the
16 building.

17 Q So you weren't listening in on the conversation. You
18 weren't watching through a one-way mirror. You
19 weren't doing any of that?

20 A No, sir.

21 Q So you had no idea what he had told them or said to
22 them?

23 A After their interview with him, I did. Yes, sir.

24 Q How did you get that?

25 A They came back into the office and briefed me.

1 Q Okay. Did they show you the written statements?

2 A I believe they did. I don't recall. But I believe
3 they possibly did.

4 Q So there's some period of time there in your office
5 you all are reviewing his written statements or
6 talking about what he said. How long did that take?

7 A Probably 15, 20 minutes.

8 Q 15, 20 minutes. While that's going on, where is Mr.
9 Herring?

10 A He is in the conference room at the Sheriff's Office.

11 Q Anybody with him?

12 A Uniformed deputies.

13 Q Okay. And then you go down there to interrogate him?

14 A To talk to him about the shooting at Chastity's.
15 Yes, sir.

16 Q Or to interview him about it?

17 A That's right.

18 Q You wanted a statement from him?

19 A Yes, sir.

20 Q I mean. And this is pretty routine, you go down and
21 interview somebody. Is that right?

22 A That's correct.

23 Q I want to make sure the record is clear. You did not
24 readvise him of his Miranda warnings. Is that
25 correct?

1 A No, sir, I didn't.

2 Q You did not?

3 A I did not.

4 Q Okay. And at this point, it would have been -- if
5 they had finished interviewing him at -- 11:54 was
6 when that statement was signed and went down to your
7 office. You spent 15, 20 minutes there. About
8 12:15, 12:30, in that range?

9 A Yes, sir.

10 Q You're back down there. And he is bleeding through
11 his Band-aid, his bandage on his arm?

12 A It was later on that I actually realized he was
13 bleeding, still bleeding some.

14 Q Okay. Now, the time he had been given -- do you know
15 what time he'd been given his original Miranda
16 warnings?

17 A No, sir, I don't.

18 Q Okay. And when you began interviewing him at about
19 12:15 is what we think, 12:30, in that range?

20 A Somewhere in that range.

21 Q You were not aware of how long it had been since his
22 Miranda warnings had been given to him?

23 A No, sir.

24 Q I mean, you agree with that?

25 A I agree with you.

1 Q Okay. And were the SLED agents in there with you, or
2 did you do this by yourself?

3 A I was in there by myself.

4 Q And he would -- he had been shot the previous night.
5 Is that correct?

6 A Yes.

7 Q And were you aware of the fact he'd been given
8 Ativan?

9 A No.

10 Q Did he smell of alcohol to you?

11 A No. Not that I remember.

12 Q Okay. Did he appear to be upset?

13 A I think he was upset. Yes, sir.

14 Q Yeah. Being shot, that will get you right upset,
15 won't it?

16 A It tends to do it.

17 Q Have you ever been shot?

18 A No.

19 Q Okay. I understand it hurts.

20 A I'm sure it does.

21 Q And he was shot with a .40 caliber Glock round in his
22 arm. Is that correct?

23 A As far as I know; yes, sir.

24 Q Okay. That's all I have.

25 MR. MEADORS: Just very briefly.

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REDIRECT EXAMINATION

BY MR. MEADORS

Q You asked him if he'd been read his rights, correct?

A That's correct.

Q You knew he was an attorney?

A That's correct.

Q Did he ever indicate to you that he wanted to invoke his waiver and remain silent?

A Only when he asked for his attorney.

Q Prior to that he made these statements that you've told Your Honor about, in your opinion freely and voluntarily, without threatening or coercion or anything?

A Yes, sir.

Q And after he makes the statements and you tell him what he's charged with, then he says, I want a lawyer, after you told him he is charged with murder. Correct?

A That's correct.

Q Thank you.

THE COURT: Anything further?

MR. HARPOOTLIAN: Sir?

THE COURT: Anything further?

MR. HARPOOTLIAN: No, sir.

THE COURT: You may come down, sir. Thank you

1 very much.

2 WITNESS: Yes, sir.

3 MR. MEADORS: Judge, that's all. Thank you.

4 MR. HARPOOTLIAN: We have no evidence.

5 THE COURT: No witness?

6 MR. HARPOOTLIAN: No witness, Your Honor.

7 THE COURT: All right.

8 MR. HARPOOTLIAN: We do have argument though.

9 THE COURT: Go ahead.

10 MR. HARPOOTLIAN: If it please the Court, Your
11 Honor. As to the initial statements, we would --
12 that is, those taken by SLED, obviously this
13 gentleman had been shot. He was bleeding. He was on
14 Ativan. And we will submit that those in the
15 totality of the circumstances should not be admitted
16 in the court.

17 But if for a moment, conceding those, let's move
18 to the second statement, the oral statement. And,
19 Your Honor, we hand up to the Court two cases,
20 Hopkins, United States v. Hopkins which is a Fifth
21 Circuit case, and State of North Carolina vs. Perry
22 Fisher. There are many, many cases that contain the
23 same principle concerning the totality of the
24 circumstances, but these two cases I believe outline
25 them best. I've got -- just to make sure I get

1 Mr. -- here we go. Nope. Let me make sure I give
2 them their copies. Here you go.

3 MR. MEADORS: Thank you very much.

4 MR. HARPOOTLIAN: You're so welcome. Your
5 Honor, the test here as to the second interview as
6 outlined in Fisher are there are five factors to be
7 considered. Well, first of all, the Miranda warnings
8 once given are not to be accorded unlimited efficacy
9 or perpetuity. There may be occasion where
10 interrogation by one authority, be it State or
11 Federal, is so disconnected with interrogation by the
12 other, it's compelled the reiteration of Miranda
13 warnings. The need for the second -- that's Hopkins.
14 The need for the second warning is to be determined
15 by the totality of the circumstances in each case.
16 The ultimate question is, did the defendant with full
17 knowledge of his legal rights knowingly and
18 intentionally relinquish them?

19 Now, what we have here in the uncontradicted
20 facts are that at about 9:30 they began -- at 9:42
21 they advised him of his rights. Almost two and a
22 half hours later SLED finishes interviewing him with
23 a break inbetween, between the first one and the
24 second statement. And then they leave, go down to
25 Mr. Wilson's office where they spend 15 to 20

1 minutes. And probably 45 minutes later; that is,
2 between the -- or 30 minutes after they're finishing,
3 SLED finished, Wilson comes in without advising him
4 of his rights again and begins interrogating him.

5 Now, the five factors as outlined in Fisher as
6 to whether or not he needs to be readvised are, the
7 length of time between the giving of the first
8 warnings and the subsequent interrogation. Here it
9 was two and a half to three hours, almost three
10 hours, a considerable period of time.

11 Second, whether the warnings and subsequent
12 interrogation were given in the same or different
13 places. We don't contend that applies here.

14 Third, whether the warnings were given and the
15 subsequent interrogation conducted by the same or
16 different officers. Different. When it's different,
17 that's one of the factors in the totality of the
18 circumstances that would mandate the statement be
19 excluded.

20 Fourth, the extent to which the subsequent
21 statement differed from any previous statements.
22 They were there to interrogate him on the shooting in
23 the house. They've got some tangential statement
24 about what happened at Chastity's. But that was the
25 sole focus of Wilson.

1 And, five, the apparent intellectual and
2 emotional state of the suspect. He'd been shot. I
3 don't know if you can get much more emotional than
4 being shot. In pain. They gave him Ativan. Now,
5 they seem to think he's coherent and they say they
6 can get a statement out of him. That's just one
7 piece of it.

8 So, Judge, we would you ask you at the outset to
9 consider his emotional state in suppressing the
10 statements given to Lieutenant -- well, given to the
11 SLED officers. And then we would ask you under the
12 Fisher and Hopkins cases to suppress the statement
13 given to Officer Wilson.

14 One more thing. All the conversation overheard
15 by Officer Wilson between Mr. Herring and the
16 attorney we submit should be -- should not be allowed
17 before the jury because it is attorney/client. Now,
18 if they've got him in custody, they've got him
19 handcuffed and then he says he wants to talk to his
20 lawyer and the only phone they give him is recorded,
21 one that's recorded doesn't in any way lessen their
22 responsibility to Mr. Herring to afford him
23 meaningful contact and discussions with a lawyer. So
24 we'd ask you to exclude any of that testimony before
25 the jury, number one. Number two, Wilson's

1 statement; and of course then the SLED statements.

2 THE COURT: All right. Solicitor.

3 MR. MEADORS: In reverse order if I can. Judge,
4 as far as those statements to his attorney, I don't
5 know, you know, if he's talking about Ativan or how
6 any other substance might play into that. Some of
7 that discussion about the media could directly refute
8 something that may come up later. And that's why I
9 wanted to make a record on it. I don't plan on
10 introducing it if it doesn't, but I just want it to
11 be out there and want Your Honor to be aware of that.
12 And that could show a state of mind without going to
13 the specific content of what they talked about. And
14 that's why I wanted to offer it. And I guess we'll
15 have to address that when we get to it, Judge.

16 As far as the statements to SLED, I think we
17 have clearly showed that he was read his rights, he
18 understood his rights. His will was not overborne.
19 He wasn't threatened. He wasn't coerced. He is a
20 lawyer. I think that clearly goes that he knew what
21 was going on. They didn't have any trouble
22 understanding him. They said that he appeared to
23 understand them.

24 The first statement, Your Honor, we talked about
25 the shooting primarily, they go talk to Dave Wilson.

1 Then it comes back and they say the evidence about
2 Chastity's. They go into, they being SLED,
3 continuing the same advice -- continuing under the
4 same advice of rights.

5 After that Chief Wilson comes back, and it is
6 following up the same subject matter that SLED has
7 taken in the same second statement directly. So it
8 is the same subject matter. Chief Wilson clearly
9 says -- and the first thing he asked, have you been
10 read your rights? He knows he's an attorney. He
11 acknowledges, yes, I have been read my rights. He
12 doesn't say I don't want to talk to you, doesn't say
13 give me a lawyer. It's only after he's told he's
14 charged with murder that he says I want a lawyer.

15 Your Honor, State v. Ballington, once a
16 voluntary and intelligent waiver of Miranda rights is
17 made that waiver continues until the accused
18 indicates he wants to revoke the waiver and remain
19 silent or circumstances exist that establish his will
20 has been overborne and his capacity for self
21 determination critically impaired.

22 They all went -- they not only knew he was a
23 lawyer, but the first thing Chief Wilson asked him
24 is, have you been read your rights? Yes, I have.
25 Your Honor, we think the record is crystal clear on

1 that. If he wanted to invoke, he could; as he does
2 just a few minutes later, Your Honor. I think one of
3 these cases, Hopkins, helps us.

4 **THE COURT:** Well, let me do this. I don't mean
5 to cut you short. But I'm going to rule on the two
6 written statements. But I want to read these over
7 the evening hours and I'll let you know my decision
8 as to the statement from Chief Deputy Wilson.
9 Anything further?

10 **MR. HARPOOTLIAN:** No, sir.

11 **MR. MEADORS:** Your Honor, we just would ask Your
12 Honor to consider State v. Ballington, and I'll give
13 you a copy of that.

14 **THE COURT:** Yes, sir. I'll be glad to look it
15 at. I think I'm pretty familiar with it.

16 **MR. MEADORS:** I think you are. I think you've
17 had that before.

18 **THE COURT:** I am always subject to learning.
19 Anything further?

20 **MR. MEADORS:** State v. Benjamin we'd also like
21 to give Your Honor a copy of which I think is very on
22 point, which we'll make a copy of both of those and
23 have them either to Your Honor first thing in the
24 morning.

25 **THE COURT:** All right. We're going to reconvene

1 at 9 in the morning.

2 All right. As to the statements given to the
3 SLED officers, to Mr. Lawrence with Mr. LaRosa
4 present, I have carefully considered the evidence
5 which has been offered by the State and the
6 defendant, although no evidence has been offered on
7 behalf of the defendant. And I am convinced by a
8 preponderance of the evidence and so find that the
9 alleged statement obtained from the defendant, when
10 the statement was obtained from the defendant the
11 defendant was fully advised of his rights under the
12 Fifth and Sixth Amendments to the Constitution, and
13 the defendant was advised of the Constitutional
14 safeguards required by Miranda v. Arizona as follows.

15 The defendant was advised prior to any
16 interrogation that he had the right to remain silent.
17 The defendant was advised prior to any interrogation
18 that he waived his right to remain silent and made a
19 statement; that such statement can and will be used
20 against him in a court of law. These were all rights
21 which were given to him while he was in custody and
22 he was being interrogated.

23 The defendant was advised prior to any
24 interrogation that he had the right to employ or
25 select an attorney of his own choice, that if he did

1 not have the money, funds or resources to employ an
2 attorney the court would appoint and provide an
3 attorney for him if he so desired without cost or
4 expense to him, that he had the right to have his
5 present with him at all times during all interviews
6 and all interrogations. And the defendant was
7 advised prior to any interrogation that he had the
8 right to consult with his attorney before
9 interrogation.

10 The defendant was advised prior to any
11 interrogation he had the right to interrupt or
12 terminate the interrogation at any time. He had the
13 further right to stop answering questions at any time
14 during the interrogation.

15 The defendant was advised prior to the
16 interrogation that if during interrogation he desired
17 an attorney, the interrogation would cease until an
18 attorney was provided for him and he would be given
19 the opportunity to consult with his attorney prior to
20 further investigation, interrogation.

21 The defendant knowingly, intelligently waived
22 his right under the Fifth and Sixth Amendments to the
23 Constitution of the United States and the
24 Constitutional safeguards required by Miranda v.
25 Arizona, and that the alleged statement obtained from

1 the defendant was freely and voluntarily given
2 without duress, coercion, without undue influence,
3 without reward, without promise or hope of reward,
4 without promise of leniency, without threat of
5 injury, without compulsion or inducement of any kind,
6 that such alleged statement was the voluntary product
7 of the free and unconstrained will of the defendant;
8 and that this Court finds the foregoing conclusions
9 by a preponderance of the evidence. And I,
10 therefore, find the statements are admissible into
11 evidence.

12 I might add that I feel that the time between
13 the initial interview; I mean, the initial advice of
14 rights form and the time at which the second
15 statement was taken was not excessive.

16 The defendant was provided with a beverage of
17 his choice. There appears to have been no coercion
18 on the part of the officers involved. The defendant,
19 as has been said, was an attorney. And the subject
20 matter of the statements encompassed a period of time
21 over the evening hours of between January 28th and
22 29th. I don't find that those are separate events
23 per se. I mean, they are separate events, but they
24 are -- both events were mentioned in the statements.
25 They are sort of a continuation of the events of that

1 evening. They're not two totally separate events,
2 one taking place one day or one week, one take
3 happening one day or one week later. They are
4 connected events. And I so find.

5 I feel that the testimony of Officer LaRosa
6 corroborates the testimony of David Lawrence. And I
7 so find that those two statements are admissible. I
8 find by the preponderance of the evidence those two
9 statements are admissible.

10 I will review the Hopkins case, the Fisher case,
11 any case anybody wishes to submit on the issue of the
12 verbal statement given to Chief Deputy David Wilson.
13 I do not -- I'm aware of the cases that say in
14 essence that the Miranda warning does not go stale
15 over a period of several hours. So I'm not going to
16 prejudge that issue, but I will consider all five
17 factors as set forth in United States v. Hopkins.
18 Anything further on this issue?

19 MR. HARPOOTLIAN: No, sir.

20 MR. MEADORS: No, sir.

21 THE COURT: All right. Let's reconvene at 9:00
22 and we'll discuss --

23 MR. HARPOOTLIAN: Can we talk a little
24 housekeeping before?

25 THE COURT: Sure.

1 **MR. HARPOOTLIAN:** Okay. As I understand it,
2 we'll deal with the two motions left, which is the
3 motion in limine on the pictures and stuff and on the
4 search the first thing in the morning. Right?

5 **MR. MEADORS:** Just so I can clear. The pictures
6 you're talking about was Jack Hensell?

7 **MR. HARPOOTLIAN:** Jack Hensell and the videos.

8 **MR. MEADORS:** That's two different things. You
9 talking about the videos of the inside of Chastity's.

10 **MR. HARPOOTLIAN:** I'm talking about the videos,
11 all the videos. And the search. That's all that's
12 left. Thank you, Judge.

13 **THE COURT:** 9:00.

14 (Whereupon, the proceedings are concluded for
15 the day, to be reconvened tomorrow morning)

Tuesday, May 8, 2007

THE COURT: Solicitor, may I see you a minute?
It's not with regard to this case.

MR. HARPOOTLIAN: Sir?

THE COURT: It's not with regard to this case.
(Off the record)

MR. HARPOOTLIAN: May it please the Court, Your
Honor?

THE COURT: Yes, sir.

MR. HARPOOTLIAN: We have a motion to suppress
the search warrant we'd like you to hear before the
jury gets here.

THE COURT: Well, the jury arrives at 10. Let
me first address the statement given to Chief Deputy
David Wilson.

MR. HARPOOTLIAN: Yes, sir.

MR. MEADORS: I know Your Honor has these you
said, but I've got a couple of these cases you are
familiar with.

MR. HARPOOTLIAN: Do you have a copy for me?

MR. MEADORS: No.

MR. HARPOOTLIAN: Your Honor, he doesn't have
copies for me?

THE COURT: I do. I've read them.

MR. MEADORS: I thought Mr. Harpootlian had

1 them.

2 **MR. HARPOOTLIAN:** I do, too, but I just wanted
3 to see if he had copies for me.

4 **THE COURT:** I'll be glad to share mine with you.

5 **MR. HARPOOTLIAN:** Thank you, Your Honor.

6 **THE COURT:** All right. As to the suppression of
7 the statement given by the defendant to Chief Deputy
8 David Wilson, I have reviewed both the cases that the
9 defense proffered yesterday; that is, the Hopkins
10 case and the Fisher case. And I'm aware of the
11 Rochester -- State v. Rochester and State v.
12 Bollington. Now, both of the cases submitted by the
13 State are South Carolina cases. The Fisher case is a
14 case out of the Supreme Court of North Carolina, and
15 the Hopkins case is a case out of the Fifth Circuit
16 Court of Appeals. It's a Federal case.

17 But I find that the statement given to Chief
18 Deputy David Wilson does not violate either the
19 Hopkins or the Fisher holdings. In this case the
20 statement given to Chief Deputy David Wilson was
21 contemporaneous almost. I mean, it's within 30 or 40
22 minutes of the statements given to the SLED officers,
23 Lawrence and LaRosa.

24 I don't fail -- and I looked at the five factors
25 referred to by Mr. Harpootlian. I do not think that

1 the time requirement was such that it would make the
2 Miranda warnings stale or remote.

3 Considering the second factor, the warning, and
4 the subsequent interrogation was given at the same --
5 in the same room at the same place. So, I mean,
6 again, it's sort of contemporaneous subsequent action
7 on the part of the officers. I agree that the
8 statements were given; interrogation was conducted by
9 different officers, but they're not different -- they
10 work for different people but they both were
11 investigating the events of the prior evening. The
12 statements didn't -- they differed in the sense that
13 they were -- the second statement or the third
14 statement was a recitation of the continuation of the
15 events that occurred on the 28th.

16 And the apparent intellectual and emotional
17 state of the suspect was testified to by the
18 officers. I mean, it's one thing to look at those
19 statements in hindsight and produce the medical
20 evidence that the defendant had been taking some sort
21 of a pain killer or some sort of drug that could have
22 affected his mental process, but as far as the
23 appearance to the officers, there was apparently no
24 difference in the appearance of the defendant from
25 the time of the first statement 'til the time of the

1 third statement.

2 So I do not feel that the Miranda warnings were
3 either stale or remote and that any officer acted so
4 as to -- as the Hopkins case says, to dilute the
5 efficacy of the Miranda warnings. So I find that the
6 statement given to Chief Deputy David Wilson is
7 admissible. I find so by a preponderance of the
8 evidence, with the caveat and with the restriction
9 that all statements -- I mean, the statement stops at
10 the time the defendant invoked his right to counsel
11 and called Attorney Isgett. I think anything past
12 that point -- that may be subject to a further
13 ruling -- but anything past that point is not
14 admissible. What the officer overheard during the
15 conversation with Attorney Isgett, I would rule that
16 is inadmissible.

17 All right. Now, subsequent motions.

18 **MR. HARPOOTLIAN:** Your Honor, let me -- having
19 read my advance sheets last night, apparently the
20 Court of Appeals has ruled that once you have ruled
21 something admissible that I have objected to in a
22 motion in limine, I must continue to object or I've
23 waived my objection.

24 **THE COURT:** All right.

25 **MR. HARPOOTLIAN:** I would then ask the Court to

1 note nunc pro tunc my objection as an ongoing
2 objection so I don't have to reiterate it at every
3 point in front of the jury.

4 **THE COURT:** So noticed. Yes, sir.

5 **MR. HARPOOTLIAN:** And at this time, Your Honor,
6 we'd make a motion to suppress the searches conducted
7 both by the Richland County Sheriff's Department and
8 SLED pursuant to alleged search warrants. And we're
9 ready to proceed.

10 **THE COURT:** All right.

11 **MR. MEADORS:** Your Honor, if we could start
12 initially with the SLED search warrant.

13 **MR. HARPOOTLIAN:** Well, Your Honor, this is my
14 motion. I am --

15 **MR. MEADORS:** He can't determine what we start
16 with.

17 **MR. HARPOOTLIAN:** Well, I --

18 **THE COURT:** Hold it. Let's stop. I don't know
19 if there are any search warrants, you know, at this
20 point. So tell me what you're talking about.

21 **MR. HARPOOTLIAN:** Your Honor, there is a search
22 warrant that was executed by the Richland County
23 Sheriff's Department at approximately 4:00 in the
24 morning.

25 **THE COURT:** All right.

1 **MR. HARPOOTLIAN:** They shoot up the place, shoot
2 Mr. Herring.

3 **THE COURT:** We're talking about a search
4 warrant.

5 **MR. HARPOOTLIAN:** Right. Well, that's in
6 context, because you heard Lieutenant Dave Lawrence
7 testify yesterday that at some point after that they
8 get a search warrant and execute it.

9 **THE COURT:** A SLED search warrant.

10 **MR. HARPOOTLIAN:** Right. And the SLED search
11 warrant to some extent is based on evidence seized or
12 observed as a result of the Richland County search
13 warrant. So it makes sense to go forward --

14 **THE COURT:** So, chronologically, Richland County
15 is first, SLED is second.

16 **MR. HARPOOTLIAN:** SLED is second.

17 **THE COURT:** All right.

18 **MR. MEADORS:** And, Your Honor, I want to proffer
19 a few things if you're through.

20 **MR. HARPOOTLIAN:** Well, Your Honor, I have made
21 a motion to suppress. As I understand, the burden is
22 on me. I'm ready to go forward. He either objects
23 to us having this hearing or we go forward. This
24 proffer, he can put anything up he wants after I put
25 up my witnesses.

1 **THE COURT:** What's your position, Mr. Meadors?

2 **MR. MEADORS:** I object to the SLED search
3 warrant, and I want to tell you why if he'll sit down
4 and let me talk.

5 **MR. HARPOOTLIAN:** Do what?

6 **MR. MEADORS:** I object to having a hearing on
7 the SLED search warrant.

8 **MR. HARPOOTLIAN:** I'm not there let.

9 **MR. MEADORS:** Okay. Well, I am. And I'm going
10 to take them in order.

11 **MR. HARPOOTLIAN:** Well --

12 **THE COURT:** No, no. I'm going to take them in
13 order. I'm going to take them in the order in which
14 they occurred, the chronological order in which they
15 occurred. We've got a Richland County Sheriff's
16 search warrant and I'll hear evidence on that now.

17 **MR. MEADORS:** Okay. And here's why we can't do
18 that, Judge, in all due respect. The affiant in that
19 case is in Texas. And I told him that. He knew
20 that. I don't know why he's doing this now. The
21 affiant --

22 **MR. HARPOOTLIAN:** Your Honor, I object to the
23 comments by the solicitor as to why I'm doing this.
24 I'm doing it because I'm required to do it by law.

25 **MR. MEADORS:** I have told him our witness in

1 that case is in Texas.

2 **THE COURT:** That's fine.

3 **MR. MEADORS:** He was subpoenaed, a Federal
4 subpoena before ours.

5 **THE COURT:** All right.

6 **MR. MEADORS:** He's testifying in a CDV.
7 Somebody is being court-martialed. He's flying back
8 today instead of tomorrow.

9 **THE COURT:** The affiant?

10 **MR. MEADORS:** The affiant in that case. So we
11 can't --

12 **MR. HARPOOTLIAN:** We can't --

13 **MR. MEADORS:** Would you please let me finish? I
14 didn't interrupt you. We cannot go into that because
15 the affiant in that case is not here. I did tell Mr.
16 Harpootlian that.

17 **THE COURT:** Is he the only witness in that case?

18 **MR. HARPOOTLIAN:** No, sir. And he is not the
19 affiant --

20 **MR. MEADORS:** He was addressing me, not you, Mr.
21 Harpootlian.

22 **THE COURT:** Let me see the search warrant.

23 **MR. HARPOOTLIAN:** Could I have --

24 **MR. MEADORS:** The search warrant says David
25 Linfert who is here. But the affiant who was sworn

1 is in Texas. And I told him that.

2 MR. HARPOOTLIAN: Well, Your Honor, I'm sorry.

3 THE COURT: That's fine.

4 MR. HARPOOTLIAN: Let me make sure this is the
5 right one. Personally appeared before me. Linfert.
6 And, Your Honor, --

7 THE COURT: Just hold on. I just can't read it.

8 MR. HARPOOTLIAN: Up at the top.

9 THE COURT: Oh, D. Linfert.

10 MR. HARPOOTLIAN: Yes, sir.

11 THE COURT: Who is D. Linfert?

12 MR. HARPOOTLIAN: That gentleman seated right
13 there. I'm ready to proceed.

14 MR. MEADORS: And, Judge, yes, sir. That's why
15 he knows he wasn't the affiant. I've told him that
16 before. He knows that.

17 MR. HARPOOTLIAN: Well, he's not under oath.
18 And we think we'll prove that he was the affiant.

19 THE COURT: Well, I'm going to hear it.

20 MR. HARPOOTLIAN: Thank you. Officer Linfert,
21 take the stand, please.

22 MR. MEADORS: Your Honor, he can't call a
23 witness. You're offering this to show that it was --

24 MR. HARPOOTLIAN: I am proceeding with my burden
25 to show a prima facia case as I understand the United

1 States Supreme Court of South Carolina cases.

2 Officer Linfert to the stand, please.

3 MR. MEADORS: And then we take over after that,
4 Your Honor, and say that the prima facia is not he
5 being called as a witness. If he shows there was a
6 defect, if you are proffering that, I'll accept that
7 and I'll call a witness.

8 MR. HARPOOTLIAN: I am attempting to show there
9 was a defect. If you'll take the stand.

10 MR. MEADORS: Your Honor.

11 THE COURT: All right. Here. Officer Linfert,
12 take the stand, please.

13 MR. HARPOOTLIAN: And, Your Honor, I would also
14 ask that the other officers, except for the chief
15 officer, be sequestered, as we asked yesterday.

16 THE COURT: Granted.

17 DAVID LINFERT, after being duly sworn, testifies
18 as follows:

19 THE CLERK: Please have a seat there, sir.

20 State your full name for the record.

21 WITNESS: I'm David Linfert.

22 DIRECT EXAMINATION

23 BY MR. HARPOOTLIAN

24 Q Officer Linfert, by whom are you employed?

25 A The Richland County Sheriff's Department.

1 Q And how long have you been so employed?

2 A Approximately 11 years now.

3 MR. MEADORS: Your Honor, I object to this, and
4 I'd like to approach and show you some law.

5 THE COURT: Well, I understand. Just tell me
6 what your objection is.

7 MR. MEADORS: He is entitled to specifically
8 state there's a defect and then the State moves
9 forward with calling witnesses. This is not the
10 right procedure. If he's stated there's a defect,
11 we'll accept that and we'll go forward. And that's
12 what the law is.

13 MR. HARPOOTLIAN: Your Honor, I'm attempting to
14 show there is a defect. And I take this in the form
15 of a proffer to show there's a defect.

16 THE COURT: We're not getting anywhere. The
17 only way I can rule on something is to hear the
18 evidence.

19 MR. HARPOOTLIAN: Yes, sir.

20 THE COURT: To hear the case.

21 MR. HARPOOTLIAN: Yes, sir. I'm attempting to
22 do that.

23 THE COURT: All right.

24 MR. HARPOOTLIAN: Thank you, Your Honor.

25 Q Officer Linfert, you -- and I'm going to try to cut

1 to the chase on this if the solicitor will allow me
2 just to summarize a little bit. You were one of the
3 investigators involved in investigating the shooting
4 at Chastity's on the 28th/29th, the early morning
5 hours of the 29th. Is that correct?

6 A Yes, sir.

7 Q Okay. And you gave a statement to Officer Lawrence
8 of SLED. I'm going to try to summarize some of that.
9 Do you have a copy of that with you? I'd hand you up
10 a copy so we can just hit the high spots. Is that a
11 copy of your statement?

12 A Yes, it is.

13 Q Okay. Now, as I understand it, you went to -- did
14 you go to Chastity's to begin with?

15 A Yes, sir.

16 Q Okay. And you received a description of a suspect
17 vehicle as a Toyota Pathfinder or 4Runner, a black
18 Toyota 4Runner or Pathfinder bearing South Carolina
19 Education tag 1891. Is that right?

20 A Yes, sir.

21 Q And then you did a or had a search done on that
22 license tag. Is that correct?

23 A Yes, sir.

24 Q And it came back to Landmark Drive?

25 A That's correct.

1 Q And you sent some people over there to look at
2 Landmark Drive. And that was a business park. Is
3 that correct?

4 A Yes, it was.

5 Q And you set up surveillance at that location?

6 A Correct.

7 Q Now, at some point you determined that the owner of
8 the vehicle was a guy named Dewain Herring and that
9 he had another address at You may
10 have done an Internet search or people search or
11 something based on the records I saw. Is that
12 correct?

13 A Correct.

14 Q Okay. And you sent two deputies over to that
15 location?

16 A Correct.

17 Q And they indicated to you that they observed a black
18 4Runner inside the garage. Is that correct?

19 A Yes.

20 Q Did you then go over yourself to determine if the
21 black 4Runner was there?

22 A Yes, I did.

23 Q And as I understand it, there is a walk up to the
24 front door and there are some windows to the left of
25 the front door?

1 A I believe so.

2 Q That look into the garage?

3 A Correct.

4 Q And you all looked in those windows and saw the black
5 4Runner and saw it was the only vehicle in the
6 garage. Is that right?

7 A Yes.

8 Q Okay. And did you attempt to go around behind the
9 house?

10 A We attempted to, but I believe there was a large
11 fence that we could not get over or something.

12 Q Okay. And the garage doors were closed. But you
13 all -- did you all have to use a flashlight to look
14 in and see the car?

15 A No.

16 Q Or could you see it?

17 A You could see it in the garage.

18 Q Okay. And let me show you this. If I could get them
19 marked for identification, please.

20 (WHEREUPON, Defendant's Exhibit No. 1 is marked
21 for identification.)

22 (WHEREUPON, Defendant's Exhibit No. 2 is marked
23 for identification.)

24 (WHEREUPON, Defendant's Exhibit No. 3 is marked
25 for identification.)

1 (WHEREUPON, Defendant's Exhibit No. 4 is marked
2 for identification.)

3 (WHEREUPON, Defendant's Exhibit No. 5 is marked
4 for identification.)

5 Q Okay. Now, when I talked about you walked by and
6 there's a three-car garage, this would be Exhibit
7 No. 5, is that that three-car garage?

8 A Yes, sir. I believe so.

9 Q I'm not sure whether this is a picture you all took
10 or somebody else took that morning. But the doors
11 were closed like that?

12 A Yes, sir.

13 Q No windows in them?

14 A No.

15 Q Now, as you walk up to the front of the house,
16 Defendant's Exhibit No. 3, that the front of the
17 house?

18 A Yes, it is.

19 Q And these are the windows that you --

20 A No. I don't believe -- I think there is windows on
21 -- there would be another wall going this-a-way.

22 Q Okay. Well, let me go to Defendant's Exhibit No. 4.
23 Are you talking about these windows up here?

24 A No. There are open windows. There is blinds on them
25 but they were open like that. Maybe that's that. I

1 don't know. But I seem to believe that it might be
2 past that location there.

3 Q You think there's another window back here?

4 A I believe so.

5 Q Well, let me look. So your testimony is you didn't
6 look in this window, this window or this window?

7 A No. There's another set of windows --

8 MR. MEADORS: I would object to anything --

9 A -- on the side of the garage.

10 MR. MEADORS: Objection.

11 THE COURT: Overruled. Go ahead.

12 MR. MEADORS: Your Honor, this is a probable
13 cause hearing for the search warrant.

14 MR. HARPOOTLIAN: Yes, sir.

15 THE COURT: That's what I understand it is.

16 Q Okay. So, your testimony is there is another window?

17 A I believe so. Because for some reason I remember the
18 gravel, but I remember also that the window was open.
19 You could plainly see into the garage.

20 Q Okay. Now, was the -- you had to get up to the
21 window to look in, because this level, this window
22 level is above the top of the car, is it not?

23 A No. I don't believe so. I mean, you could see into
24 the garage because the garage light was on inside.

25 Q What kind of light?

1 **A** Like you switch on the light in the garage.

2 **Q** And how far away did you stand to look?

3 **A** You could see it as you're walking up to the house.
4 I mean, as you get I think to the sidewalk in front
5 of the garage, it maybe cuts across going up to the
6 front. I don't know. It's hard to remember the
7 exact layout of the house.

8 **Q** Well, I need for you to remember the exact layout for
9 me. Was it on this --

10 **A** No, it wasn't on that. It's on this long side of the
11 house.

12 **Q** Hold on one second. Well, I want you to show me
13 on -- let me have this marked, please. I may have a
14 big one of these. That's right. Right here. I want
15 you to show the judge where you think you were
16 standing when you looked in the window?

17 **A** This would be the front door?

18 **Q** Correct.

19 **A** We came up the driveway initially.

20 **Q** Right.

21 **A** And I'm pretty sure, I thought there was --

22 **Q** I want you to be -- you're under oath. I want you to
23 be 100 percent sure.

24 **THE COURT:** Let him answer the question, please.

25 **MR. MEADORS:** Your Honor, object.

1 **THE COURT:** I'll take care of it. Let him
2 answer the question.

3 **MR. HARPOOTLIAN:** Yes, sir.

4 **A** From what I recollect, the windows would have been on
5 this side of the residence that we looked into. And
6 the blinds were open because you could see straight
7 into the garage almost.

8 **Q** I want to make sure. Is it this window? And I'm
9 pointing to the far with me looking at it left-hand
10 side of Defendant's Exhibit No. 4. Are you saying
11 there's another set of windows?

12 **A** I believe there is a another set of windows. The
13 blinds were of open where you could see into the
14 garage.

15 **Q** Okay. And when you looked into the garage, tell me,
16 please, what part of the vehicle you saw?

17 **A** You could see the whole side of the 4Runner in the
18 garage.

19 **Q** Okay. Now, tell me how that search warrant came to
20 be drafted. Who drafted the search warrant? Who
21 wrote it?

22 **A** I prepared it on my computer because Mr. Davis did
23 not have a search warrant for something like this on
24 his computer.

25 **Q** So you typed this?

1 A Yes.

2 Q Okay. This affidavit?

3 A Yes.

4 Q And was Mr. Davis with you when you went out to the
5 location?

6 A Mr. Davis did not go to the location the first time.
7 I believe he was still at the club finishing up a
8 statement with one of the witnesses.

9 Q Okay. Well, whose words are these on "Reason for
10 affiant's belief that property sought is on the
11 subject premises"?

12 A Those would be my -- I typed up the search warrant.

13 Q And you put your name in as the affiant?

14 A I did not change it by mistake.

15 Q By mistake. So you sent this search warrant with
16 Mr. Davis to Judge Peay?

17 A Yes. After I talked with Mr. Judge Peay on the phone
18 I informed him of what we had and what I was asking
19 for in the search warrant and that I would be sending
20 over Investigator David to meet with him because
21 Mr. Davis knew where Judge Peay's residence was.

22 Q Well, he actually didn't meet Judge Peay at his
23 residence. He met him at a parking lot, did he not?

24 A I don't recollect where they met. I just --

25 Q But Judge Peay didn't swear you. He swore

1 Investigator Davis. Is that correct?

2 A At that time, yes.

3 Q At any time did he swear you?

4 A No. He just asked the information about what we were
5 looking for and what the whole incident was about.

6 Q But that wasn't under oath?

7 A No.

8 Q And the affiant or the person who swears to this is
9 Investigator Davis. Is that right?

10 A Yes, it is.

11 Q But you're listed as the affiant. Is that correct?

12 A Mr. Davis signed on the affiant form, but my name is
13 at the top. That's correct.

14 MR. HARPOOTLIAN: That's all we'd have for the
15 witness, Your Honor.

16 CROSS EXAMINATION

17 BY MR. MEADORS

18 Q Have you got a copy of the search warrant?

19 A Yes, sir.

20 Q And as far as a description of the property sought,
21 it says a -- well, let's go back, start over.

22 "Description of premises to be searched", does it say
23 the location is

24 A Yes, it does.

25 Q Do you describe or is it described in the search

- 1 warrant what the house is?
- 2 A Yes.
- 3 Q Made of stucco, has a three car garage on the left
- 4 side of the residence when facing the road?
- 5 A Correct.
- 6 Q The numbers appear on the mailbox?
- 7 A Correct.
- 8 Q In front of the residence?
- 9 A Correct.
- 10 Q Search warrant is to include all persons at the
- 11 premises, all persons at the premises, vehicles at
- 12 the location if owned and operated by the persons of
- 13 the premises or if owned or operated by persons
- 14 residing at the premises; temporarily absent,
- 15 specifically a black 1996 Toyota 4Runner bearing
- 16 South Carolina . Correct?
- 17 A That's correct.
- 18 Q And all outbuildings on the curtilage, correct?
- 19 A Correct.
- 20 Q That's listed in the search warrant?
- 21 A Correct.
- 22 Q Had you been to the house, looked at the house, seen
- 23 the -- or you had, hadn't you?
- 24 A Yes, I had.
- 25 Q You had been to the house, got the description, saw

1 it. And that's what was put in the search warrant,
2 correct?

3 A Yes, sir.

4 Q All right. And description of property sought is
5 what?

6 A Firearms, ammunition, burgundy sweater, white
7 turtleneck shirt, khaki pants, eyeglasses, black 1996
8 Toyota 4Runner bearing South Carolina tag EU 1891,
9 and any or all other evidence associated to a
10 shooting incident.

11 MR. HARPOOTLIAN: Is that the search warrant?
12 John?

13 MR. MEADORS: No.

14 MR. HARPOOTLIAN: Could I see it?

15 MR. MEADORS: Well, you didn't show me yours.
16 If you want to come up here I'll show you.

17 (WHEREUPON, State's Exhibit No. 4 is marked for
18 identification.)

19 Q Is this a picture of the car that was in the garage
20 at that you all searched?
21 State's 4?

22 A Yes, it is.

23 Q And you saw it there?

24 A Yes, I did.

25 Q Does that have 1891?

1 A Yes, it does.

2 Q When had you learned about that driver's license?

3 How did you get that tag number?

4 A The tag number was obtained by witnesses at the

5 nightclub.

6 Q Chastity's?

7 A That's correct.

8 Q And had you gone to Chastity's first?

9 A Yes, I did.

10 Q And when you were in Chastity's, did you talk to

11 witnesses?

12 A Yes, I did.

13 Q And did you learn that John Johnson had been murdered

14 there?

15 A Yes, I did.

16 Q Shot in the head, correct?

17 A Yes, sir.

18 Q And did you get a suspect out of -- or you got the

19 address of -- you got the driver's license -- the

20 license tag at that point?

21 A That is correct.

22 Q What did you all do with that information?

23 A We ran that information. That's -- the vehicle came

24 back registered to Landmark Drive. Once we had found

25 out that that was an office park, we also ran the

1 name Dewain Herring for his driver's license
2 information. We also checked one of the search
3 databases we have using his name, and we came up with
4 the address of: as the residence
5 that was currently used.

6 Q Okay. And then you went there?

7 A That's correct.

8 Q Made your observations there?

9 A Yes.

10 Q You had determined that that's where Dewain Herring
11 lived?

12 A Yes.

13 Q Determined that the Toyota 4Runner was in the garage?

14 A Yes.

15 Q The same one that had been described by individuals
16 at Chastity's?

17 A Yes.

18 Q Had you seen the tape at that point?

19 A Yes.

20 Q You had seen the tape?

21 A Yes.

22 Q What had you seen on the tape?

23 A I saw Mr. Herring entering the nightclub when he
24 first arrived there, also when he was escorted out
25 from the club and him getting into his vehicle

1 outside of the club.

2 Q And you saw that prior to going to

3 A Yes.

4 Q So you had the identity of Dewain Herring?

5 A Yes.

6 Q The identity of the vehicle?

7 A Yes.

8 Q After you had been to and confirmed

9 that that was the residence, you got the description,

10 put it in the search warrant?

11 A Yes.

12 Q Along with the vehicle?

13 A Yes.

14 Q And the items you were searching for?

15 A Yes.

16 Q And when you go back to the Sheriff's Department, do

17 you pull down a driver's license photo to compare to

18 the video from Chastity's to confirm that that's the

19 same individual?

20 A Yes.

21 Q And it was?

22 A Yes, it was. No doubt about it.

23 Q And that's when you typed up the search warrant,

24 correct?

25 A Yes.

1 Q And it's got -- what were the affiant's belief? And
2 I guess kind of, too. You talked to the judge. You
3 weren't sworn. But also Investigator Davis also
4 talked to the judge, correct?

5 A That's correct.

6 Q And then the judge swore Investigator Davis, correct?

7 A Yes.

8 MR. HARPOOTLIAN: Object, Your Honor. I object.
9 Unless he was present when Investigator Davis talked
10 to the judge, he could not testify to it.

11 THE COURT: Sustained.

12 Q Did you --

13 MR. HARPOOTLIAN: Thank you.

14 Q -- tell the judge that Investigator Davis would be
15 coming to see the judge?

16 A Yes, I did.

17 Q And you relayed the facts in this search warrant to
18 the judge, correct?

19 A Yes, I did.

20 Q And the judge -- describe the judge's title.
21 Magistrate?

22 A Yes, he is.

23 Q And then Investigator Davis at your request went to
24 talk to the judge, correct?

25 A That's correct.

1 Q And as stated previously, Investigator Davis is going
2 to be here tomorrow, correct?

3 A Yes.

4 Q He's in Texas. But you actually typed this up?

5 A Yes, I did.

6 Q All right. And the affiant's reasons, you typed this
7 up and you went over that with Investigator Davis,
8 correct?

9 A Mr. Davis was aware of all this information because
10 he was also at the club with us during the
11 investigation.

12 Q Okay. So as far as the affiant's belief, and it's
13 your information and belief he relayed this to the
14 magistrate, correct?

15 A Yes.

16 Q And specifically about there being a shooting on
17 River Drive, correct?

18 A Yes.

19 Q Witnesses describing the vehicle?

20 A Yes.

21 Q Providing the license plate?

22 A Yes.

23 Q Description of the car?

24 A Yes.

25 Q And even in here it's got according to DMV records a

- 1 license as registered to Dewain Herring, correct?
- 2 A Yes.
- 3 Q It has a business address?
- 4 A Yes.
- 5 Q Also has an address of _____?
- 6 A Yes.
- 7 Q Investigators located the residence and observed the
- 8 black Toyota 4Runner parked in the garage, correct?
- 9 A Yes.
- 10 Q And a search is necessary to further this
- 11 investigation, correct?
- 12 A Yes.
- 13 Q Tell the judge, any doubt you saw that 4Runner in the
- 14 house?
- 15 A There is no doubt.
- 16 Q No doubt?
- 17 A No doubt.
- 18 Q You're not lying about that, are you?
- 19 A No, sir.
- 20 Q And a search was later executed by you all, being the
- 21 Richland County Sheriff's Department, correct?
- 22 A Yes.
- 23 Q Is that Investigator Rose's signature there that did
- 24 the return?
- 25 A I believe it is. Yes, sir.

1 Q And also that would be the -- you all searched not
2 only the residence but the house, correct?

3 A The residence and the vehicle; yes, sir.

4 Q Okay. And I think in the residence there was some
5 marijuana and other items found, correct?

6 A Yes, sir.

7 Q And also in the car that Stan Richards I believe
8 tested for some gunshot residue, correct?

9 A Yes.

10 Q They're going to be coming and testifying later. And
11 I believe also in the car was some ammunition and
12 some other items in the back, correct?

13 A Yes.

14 Q A Ruger gun magazine I believe is in the back seat?

15 A I believe so. Yes, sir.

16 Q We'll have other witnesses to testify to that. Beg
17 the Court's indulgence. Just briefly, as far as the
18 top of the -- was that marked with your witness? Did
19 you mark this?

20 MR. HARPOOTLIAN: What is it?

21 MR. MEADORS: Search warrant.

22 MR. HARPOOTLIAN: I did not. I want to though.

23 MR. MEADORS: Okay. Let me mark your copy if
24 that's okay with you.

25 MR. HARPOOTLIAN: That's wonderful.

1 (WHEREUPON, State's Exhibit No. 5 is marked for
2 identification.)

3 Q What's now State's 5 for I.D., Mr. Harpootlian asked
4 you at the top of the affidavit, I believe you said
5 you had the capabilities of typing this and Morris
6 Davis didn't, correct?

7 A That is correct.

8 Q And the guy that personally appeared before me, D.
9 Linfert?

10 A Yes.

11 Q You actually typed it. You put your name in there.
12 You weren't the affiant. That's clearly his name
13 down there at the bottom, right?

14 A Yeah. Since this was on my computer, my name was
15 pretyped in the form fields.

16 Q That was my next question. Does your name
17 automatically come up --

18 A Yes, it does.

19 Q -- since it's in your thing? So that was a
20 Scrivener's error, if you will?

21 A Yes.

22 Q Or a computer's error?

23 A Correct.

24 Q No question that Morris Davis' signature is there as
25 the affiant?

1 A No. There's no question about that.

2 MR. MEADORS: Your Honor, subject of course, as
3 I stated earlier, to Investigator Davis who will be
4 here in the morning, if it's still contested, he will
5 be here tomorrow to say that he presented these facts
6 to the magistrate and was sworn. Short of that,
7 that's why I said we couldn't go forward today.

8 MR. HARPOOTLIAN: I'm not done with this
9 witness.

10 THE COURT: Go ahead.

11 MR. HARPOOTLIAN: Thank you.

12 REDIRECT EXAMINATION

13 BY MR. HARPOOTLIAN

14 Q I want to make sure I understand just a couple of
15 things correctly. First of all, you typed the search
16 warrant. You typed your name in, correct? The only
17 name --

18 A I didn't type my name in. It automatically is in
19 because it's on my computer.

20 Q Because it's on your computer?

21 A Right.

22 Q You read it. I'm sure you read it before you handed
23 it to the officer. Is that correct?

24 A I read the affidavit and the description.

25 Q You didn't read who the affiant was?

1 A No.

2 Q You didn't take the time to type his name in?

3 A No.

4 Q Okay. And my understanding is that Investigator
5 Davis did not go to the house with you. Is that
6 correct?

7 A The first time he did not.

8 Q The second time is when you had the search warrant?

9 A That's correct.

10 Q Okay. So the warrant had already been gotten by the
11 time Davis went to the house with you. Secondly, did
12 Investigator Davis do the -- did he go to Chastity's?

13 A Yes, he did.

14 Q And was he at Chastity's while you were preparing
15 that warrant?

16 A No. He came back to the office at that time.
17 Initially when we went to the house he was still at
18 the club. And when we met back, went to the office
19 to type the search warrant, he was already back at
20 the office.

21 Q Who went to the house with you?

22 A I believe it was Investigator Baker, and then we had
23 two uniformed deputies who were originally sent there
24 by us to watch the house.

25 Q Who were they?

1 A I don't recall their names.

2 Q Okay. Now, when you got there, were there two
3 uniformed deputies there?

4 A Yes, there were.

5 Q And when you got there, did they take you to the
6 point where they saw the vehicle inside the garage?

7 A They just told me that the vehicle was in the garage.

8 Q And --

9 A And they showed me where the garage was.

10 Q Okay. And where did they point you to?

11 A Again, I would say this side of the --

12 Q Back over here?

13 A I believe so. Yes, sir.

14 Q You have no recollection of walking up to these two
15 windows and looking in?

16 A No. I don't believe so.

17 Q Okay. And so your testimony is you're on this end,
18 because there's a driveway down here, right?

19 A Yes.

20 Q The driveway comes in?

21 A Yes, sir.

22 Q And then this part of the house faces the driveway,
23 looking at Defendant's Exhibit No. 1?

24 A This faces the roadway.

25 Q Pardon me?

1 A This faces the roadway.

2 Q This faces the roadway?

3 A Right.

4 Q And the driveway comes in I think and curls around?

5 A Right.

6 Q Okay. And your testimony is that you could see the
7 vehicle. How far down the vehicle could you see?

8 Could you see just the top of it? Did you see the
9 windows? Did you see --

10 A You could see probably three quarters from the top
11 down to the bottom of the vehicle just from the
12 outside. And if you walked up closer you could
13 probably see the whole vehicle.

14 Q Well, when you say walked up closer, did you ever get
15 on the gravel?

16 A For some reason I remember stepping around the gravel
17 or the grass, but I don't recall having to go up to
18 the house itself to look in. So you could see it
19 just from the outer edge out here.

20 Q But did you have to get off this driveway or the
21 sidewalk to see it?

22 A A step or two.

23 Q A step or two off the sidewalk and the driveway.
24 Okay. And by a step or two do you mean -- stop me
25 when I'm a step or two from you.

1. A Further back.
- 2 Q Further back?
- 3 A Yeah. It depends on where you're standing in the
- 4 driveway if the sidewalk starts and ends.
- 5 Q Okay. If the driveway -- let's do this. Since
- 6 you're on crutches, I'm not going to make you come
- 7 down. But this is a tape measurer. I want you to
- 8 hold one end of that. Stop me when I'm as far away
- 9 from you as you had to step off the sidewalk or the
- 10 grass to look in that window.
- 11 A Probably from like right around that orange strip
- 12 maybe would be --
- 13 Q About here?
- 14 A That's where I would be looking into the garage.
- 15 This would be the garage.
- 16 Q Right.
- 17 A And that's probably what my location was.
- 18 Q So you had to come up to within six feet of the
- 19 garage?
- 20 A Probably. Yeah. Somewhere around that.
- 21 Q I mean, this is six feet?
- 22 A Okay.
- 23 Q I mean, I'll show it to you so there's no dispute.
- 24 What does that say?
- 25 A Six feet. Yes, sir.

1 Q Okay. So you're within six feet of the building
2 before you could see in the garage and see the car?

3 A Yes, sir.

4 Q I'm sorry. I couldn't hear you.

5 A Yes, sir.

6 Q Okay. And until you approached to that six feet, you
7 could not see -- you could not identify the vehicle.
8 That's why you approached to make sure it was the
9 vehicle. Is that correct?

10 A Well, I think we walked up to the front door first
11 and then we walked towards the garage. But, yeah.

12 Q Okay. Now, the State has introduced a picture, No.
13 4. You've already testified. I want to make sure
14 this is clear. The garage door was closed. You
15 could not see this view. This view was taken after
16 you all executed the search warrant, after you'd
17 arrested Mr. Herring and you put the doors up and
18 took this picture. Is that correct?

19 A Yes, sir.

20 MR. HARPOOTLIAN: That's all we have for this
21 witness, Your Honor.

22 MR. MEADORS: Just two, please.

23 RE CROSS EXAMINATION

24 BY MR. MEADORS

25 Q So Investigator Davis went to Chastity's? Morris

1 Davis?

2 A Yes, sir.

3 Q Actually interviewed a couple of witnesses there,
4 didn't he?

5 A Yes, sir.

6 Q So was aware of at least something that happened at
7 Chastity's, correct?

8 A He was aware of the whole incident.

9 Q Meets back with you at the Sheriff's Department,
10 correct?

11 A Yes, sir.

12 Q And that's when you all go over the search warrant
13 and he ultimately takes it to His Honor for his
14 signature, correct?

15 A That's correct.

16 Q Thank you.

17 MR. HARPOOTLIAN: That's all I have. One more.
18 I'm sorry.

19 THE COURT: Come down.

20 MR. HARPOOTLIAN: One more witness, please.

21 THE COURT: Come down, sir. Thank you very
22 much, sir.

23 WITNESS: Yes, sir.

24 THE COURT: Next witness.

25 MR. HARPOOTLIAN: Yes, sir. Virginia Herring.

1 Your Honor, we're calling her for the limited
2 purposes of the issue of the search warrant.

3 **THE COURT:** Certainly.

4 **MR. HARPOOTLIAN:** Yes, sir.

5 VIRGINIA M. HERRING, after being duly sworn,
6 testifies as follows:

7 **THE CLERK:** Please have a seat there, ma'am.
8 Speak into that microphone. State your full name for
9 the record.

10 **WITNESS:** Virginia Herring.

11 DIRECT EXAMINATION

12 **BY MR. HARPOOTLIAN**

13 **Q** Ms. Herring, state your full name for the record,
14 please.

15 **A** Virginia McCord Herring.

16 **Q** Okay. Are you familiar with the defendant, Dewain
17 Herring?

18 **A** Yes.

19 **Q** What is your relationship with him?

20 **A** My husband.

21 **Q** Okay. How long have you all been married?

22 **A** Almost 39 years.

23 **Q** 39 years. Okay. Now, I'm going to ask you some
24 specific questions about the physical layout of the
25 home you live in. Okay?

- 1 **A** Okay.
- 2 **Q** How long have you lived in the home on
- 3
- 4 **A** About 15 years.
- 5 **Q** All right. And I want to show you specifically -- I
- 6 want to ask you about the visibility into the garage
- 7 windows. You have -- and let me ask you this. We
- 8 see in Defendant's Exhibit No. 4, is that a view of
- 9 your garage?
- 10 **A** Yes.
- 11 **Q** Okay. And there's one, two and then three windows, a
- 12 third being a double window?
- 13 **A** Yes.
- 14 **Q** Are there any other windows into that garage?
- 15 **A** No.
- 16 **Q** And are there any windows in the garage doors?
- 17 **A** No.
- 18 **Q** Now, let me ask you this. First of all, has the --
- 19 have you changed anything about the layout of the
- 20 landscaping or anything around this house since the
- 21 night of January 29th, 2006, or has it remained
- 22 basically the same?
- 23 **A** The same.
- 24 **Q** Okay. And if -- first of all, the only window that
- 25 faces the street or the driveway is this window right

1 here. Is that correct? On the far right?

2 A Correct.

3 Q There is no other window over there?

4 A No.

5 Q If you keep going around here, you're going to come
6 to the garage door. Is that correct?

7 A Correct.

8 Q No window?

9 A No window.

10 Q Now, this window, if one is -- assume there is a
11 light on in the garage. First of all, is the
12 vehicle -- if we're looking at the plane here, is the
13 vehicle -- let's go these side windows here. If a
14 vehicle is parked in the garage, the top of that
15 vehicle and the 4Runner that your husband drives,
16 would the top of that vehicle be above or below the
17 bottom of these two windows over here or even with
18 it?

19 A Even to below.

20 Q Okay. Because the floor of the garage is
21 significantly below these windows. Is that correct?

22 A Correct.

23 Q Now, any window down here on the end, if one were
24 standing on the sidewalk or on the --

25 MR. MEADORS: Mr. Harpootlian, what number is

1 that? I'm sorry.

2 MR. HARPOOTLIAN: No. 4.

3 Q If one were standing on the sidewalk or on the
4 driveway, could you see, even if the light were on --
5 let me back up. The light in that garage is attached
6 to the garage doors?

7 A Yes.

8 Q It comes on and off with the garage door going up and
9 down?

10 A (Witness nods head affirmatively).

11 Q When it's down the light's off?

12 A Yes.

13 Q But assume for the sake of argument there was a light
14 on in there, could you see any vehicles, including
15 your husband's 4Runner which is a little taller than
16 a normal vehicle, from any, from the sidewalk over
17 here in front of the house or back here on the
18 driveway? Could you see it?

19 A No.

20 Q And the reason is ...?

21 A Because the car is below the level of the window.

22 Q Now, these windows down here on the end, are they
23 even higher compared to the inside than these two?
24 That is, does the house -- slant is the wrong word.
25 But is the grade of the house such that if you're

1 standing down here, I'm talking about looking at this
2 No. 4, if you're standing to the far left, that would
3 be on your driveway. Is that correct?

4 A Far left, yes.

5 Q Right. And when you look in this window, if the
6 blinds were open, what would you be looking at?
7 Could you see a vehicle?

8 A No.

9 Q Could you see the ceiling maybe?

10 A If you look up, maybe.

11 Q Okay. Now, there's a tree here in front of this
12 window. Does that block the window?

13 A Yes.

14 Q Can you see through that tree?

15 A No.

16 Q Is it an evergreen? Would it have leaves on it and
17 this foliage on it in January?

18 A Yes.

19 Q Has it on it all year long?

20 A Yes.

21 Q Now, we heard a moment ago that -- let me put this on
22 six feet. We heard Investigator Linfert talk about
23 it is a moment ago. I'm sorry, Judge. My eyesight
24 isn't as good as it used to be. Six feet. You heard
25 Officer Linfert testify a moment ago that he had to

1 get within six feet of a window to see in. If you're
2 within that distance, that six feet of any of these
3 windows, are you on the grass or on the gravel?

4 A Can I look?

5 Q Sure. This is six feet. Would you have to be on the
6 grass or the gravel?

7 A Yes.

8 Q Okay. As a matter of fact, I think we were out there
9 last week. We measured from the window across out to
10 the sidewalk. It was more than 15 feet. Isn't that
11 correct?

12 A Right.

13 Q And we measured from the house back off the gravel.
14 It was more than 20 feet?

15 A Yes.

16 Q So if you're within six feet of the window, you've
17 got to be off the sidewalk, off the driveway, onto
18 the grass or the gravel. Is that correct?

19 A Correct.

20 Q And you don't want people walking on the grass or the
21 gravel, do you?

22 A No.

23 Q Okay. Where do you want them walking when they come
24 to visit is on the sidewalk or the driveway. Isn't
25 that correct?

1 A Correct.

2 Q Ms. Herring, Mr. Meadors is going to have a series of
3 questions. If he asks them too fast for you, ask him
4 to slow down. Thanks.

5 THE COURT: Any questions?

6 MR. MEADORS: Yes, sir. I would object to that
7 aside.

8 MR. HARPOOTLIAN: There's no jury here.

9 THE COURT: Sir?

10 MR. MEADORS: Well, just to putting on a show.
11 We object. This is a serious matter, Judge. There's
12 nothing funny about it.

13 MR. HARPOOTLIAN: I'm not trying to be funny.
14 He's very staccato in his questioning.

15 MR. MEADORS: I'm much slower than Mr.
16 Harpootlian.

17 THE COURT: She can answer the questions. Get
18 all this out of the way, all this banter out of the
19 way.

20 MR. HARPOOTLIAN: Yes, sir.

21 THE COURT: This is not leading to any
22 conclusions.

23 CROSS EXAMINATION

24 BY MR. MEADORS

25 Q I've just got a few questions. You can see out of

1 the windows, can't you? I mean, from the garage, you
2 can clearly see out?

3 A Yes.

4 Q I mean, you really wouldn't put a window in your
5 house that you couldn't see out of?

6 A You can see out of.

7 Q Right. I mean, so if you're in your garage, you can
8 look out and see the yard and everybody?

9 A No.

10 Q Okay. I mean, you see more than the sky, I mean,
11 when you look out of the window?

12 A You really cannot look out the window.

13 Q You cannot look at the window?

14 A Not standing on the garage floor.

15 Q And depending on where and what distance somebody
16 could see something into the window would depend on
17 their height and other matters, wouldn't it?

18 A Yes.

19 Q I mean, that's -- and you don't know if the windows
20 were open or the lights were on or whatever this
21 night, correct? Because you were out of town for
22 this weekend?

23 A I was out of town.

24 Q You were at Edisto?

25 A Yes.

1. Q Okay. So you weren't there and don't know whether
2 the lights were on, the windows were open or
3 anything?

4 A No.

5 Q Just a couple of other questions.

6 Circle is you and your husband's residence, correct?

7 A Yes.

8 Q And you all do own a 1996 Toyota 4Runner, and the
9 license tag is South Carolina, it's got an apple on
10 it, then 1891?

11 A Yes.

12 Q That's registered in you all's name? You or your
13 husband's?

14 A Yes.

15 Q Okay. And you would agree that it's a stucco house
16 and has a three-car garage?

17 A Yes.

18 Q And the numbers are on your mailbox?

19 A Yes.

20 Q Beg the Court's indulgence. And there's no question,
21 is it, that your husband had the 4Runner that night,
22 correct?

23 MR. HARPOOTLIAN: Objection, Your Honor.

24 THE COURT: Sustained.

25 MR. HARPOOTLIAN: Thank you.

1 **MR. MEADORS:** Why?

2 **MR. HARPOOTLIAN:** Well, because you just --

3 **THE COURT:** Sustained. Sustained. Move on.
4 She's out of town.

5 **MR. MEADORS:** He didn't state his objection.

6 **THE COURT:** Sir, did you hear my ruling?

7 **Q** Who else was at the house that weekend?

8 **MR. HARPOOTLIAN:** Objection, Your Honor; if she
9 is not there.

10 **Q** When did you leave that weekend?

11 **THE COURT:** If she knows.

12 **Q** When did you leave, Ms. Herring?

13 **A** Saturday morning.

14 **Q** About what time, if you remember?

15 **A** Mid morning.

16 **Q** I had ended my questioning, but I'm doing some more
17 now. Mid morning. And when did you return?

18 **A** Late Sunday afternoon.

19 **Q** And to your knowledge, was anybody else at your house
20 that weekend besides your husband, Dewain Herring?

21 **A** To my knowledge, there was not.

22 **Q** You did not take the Toyota 4Runner to the beach,
23 correct?

24 **A** Correct.

25 **Q** And how many other vehicles do you all have?

1 A One.

2 Q That's the Toyota. And what's the other one?

3 A A BMW.

4 Q So you had the BMW?

5 A Yes.

6 Q So the only other car you all owned would have been
7 the Toyota 4Runner, correct?

8 A Yes.

9 Q And if your husband is in the house, just like habit,
10 in the house, he's going to park the 4Runner in the
11 garage, correct?

12 MR. HARPOOTLIAN: Objection, Your Honor. It
13 calls for speculation.

14 THE COURT: Sustained.

15 Q Where would he park his vehicle, the Toyota 4Runner?

16 A In the garage.

17 Q Thank you.

18 THE COURT: Anything further?

19 MR. HARPOOTLIAN: Yes. Just a couple of
20 questions.

21 REDIRECT EXAMINATION

22 BY MR. HARPOOTLIAN

23 Q When you got home -- and really, Mr. Meadors asked
24 you if the window were up or down. Are those windows
25 ever put up? I mean, when you say up, I mean, the

1 window open, not the blinds?

2 A They were down.

3 Q They were down. As they appear in this picture here,
4 correct?

5 A Yes.

6 Q Okay. And the blinds are left open or closed?

7 A Closed on the front. Usually the ones on the side
8 are open slightly.

9 Q Now, you saw the Sheriff's deputy testify a moment
10 ago, walk up to the stand and walk back. He's about
11 my height. Is that right?

12 A Yes.

13 Q So he's not six-foot-eight or six-foot-nine or seven
14 feet tall?

15 A Right.

16 Q Is that correct?

17 A Correct.

18 Q Beg the Court's indulgence. That's all I have.

19 RE CROSS EXAMINATION

20 BY MR. MEADORS

21 Q So the blinds are open some on the side? Your answer
22 to his question.

23 A As in the picture.

24 Q Thank you.

25 MR. HARPOOTLIAN: Nothing further.

1 **THE COURT:** You may come down, ma'am. Thank you
2 very much.

3 **MR. HARPOOTLIAN:** Your Honor, we have two
4 motions, not concerning the search warrant, but an
5 evidentiary motion.

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

7 **MR. HARPOOTLIAN:** May it please the Court, Your
8 Honor. What's clear from the testimony is there's
9 some dispute between this deputy and the people that
10 live there as to what you can see or not see.
11 There's only one way to resolve this, and this is for
12 you to go see. So we'd ask the Court to go to the
13 premises and observe what can be seen or not seen
14 from those windows. I think you'll determine that
15 they had to go onto the curtilage to look into the
16 window to see anything, a light on or not on. If so,
17 that would be a violation of several United States
18 Supreme Court cases which we'll be happy to hand up
19 to Your Honor.

20 **THE COURT:** "Into the curtilage" are the
21 operative words of that motion I assume.

22 **MR. HARPOOTLIAN:** Absolutely.

23 **THE COURT:** What do you mean by that?

24 **MR. HARPOOTLIAN:** Well, Your Honor, let me hand
25 up to the Court our motion. Well, we haven't had the

1 SLED part of it yet. But let me just cite a couple
2 of cases to you on this issue. I'd prefer not to
3 hand up the memorandum at this point. May it please
4 the Court, Your Honor, we'd hand up to the Court
5 Rogers vs. Pendleton which is a Fourth Circuit
6 Federal Circuit Court case. And let's get a copy of
7 that for Mr. Meadors. Your Honor, if you'd hand me
8 that one back, I will give you the one that we've
9 shown the appropriate pages. Let me give this to Mr.
10 Meadors.

11 MR. MEADORS: Thank you.

12 MR. HARPOOTLIAN: And then I will -- may it
13 please the Court, Your Honor. This case involves
14 officers going onto -- this is called a knock and
15 talk, is what the parlance of the Supreme Court, the
16 United States Supreme Court and other courts have
17 used. That is, you have a right to walk up the
18 front, come onto the driveway, to walk up the
19 sidewalk, knock on the door and talk to somebody.
20 And if you see somebody -- see something that's
21 evidence of a crime during the process of doing that,
22 then it's okay.

23 However, on page 11, the officers argue that the
24 District Court failed to recognize the right of
25 officers to enter upon curtilage to make an

1 investigation based on reasonable suspicion. The
2 District Court failed to recognize this right because
3 no such right exists. Instead, the right secured by
4 Tobin and similar cases is to knock and talk; that
5 is, to knock on a resident's door or otherwise
6 approach the residence seeking to speak to the
7 inhabitants, not the right to make a general
8 investigation in the curtilage based on reasonable
9 suspicion.

10 A contrary rule would eviscerate the principle
11 of Oliver and Dunn that curtilage is entitled to the
12 same level of Fourth Amendment protection as the home
13 itself. Indeed, the cases the officers rely on
14 simply say the police officers do not need a warrant
15 to do what any private citizen may legitimately do,
16 approach a moment to speak to the inhabitants.

17 Now, let me find the definition they use in here
18 of curtilage. In this case they observed somebody
19 drinking beer on their own front steps. Curtilage,
20 Your Honor, is anything other than the public space.
21 And the public space is the sidewalk and the
22 driveway. You can't walk up to a window or get
23 closer to a window off those public spaces to look in
24 them to determine if something is there.

25 And this officer has testified that he got

1 within six feet of the window. So that would be on
2 the curtilage. That would be approaching these areas
3 to see what can't be seen from the public areas. And
4 on Defendant's Exhibit No. 4, clearly based on the
5 testimony of Ms. Herring, it's about 20 feet from
6 here to that window and there's a bush in front of
7 it. There is no window around the side. And it's
8 15 feet from here to that window. He testified he
9 got within six feet of both windows which puts him
10 14 feet into their curtilage here and puts him 9 feet
11 into the curtilage over here.

12 So as to the probable cause for this warrant, no
13 matter whether it's facially incorrect, because we
14 have one affiant that Judge Peay saw at the top of
15 the warrant and somebody else signing at the bottom;
16 before we even get to that issue, there is no
17 question that a significant portion of the probable
18 cause to issue that search warrant was seeing the
19 vehicle in the garage. And we would submit that that
20 seeing was an illegal search and seizure without a
21 warrant; that is, looking in the window.

22 **THE COURT:** State.

23 **MR. MEADORS:** May it please the Court.

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

25 **MR. MEADORS:** Your Honor, this is a civil case

1 they cited dealing with reasonable suspicion. These
2 officers when they went to 460 Alexander Circle had
3 probable cause to arrest him. They could have gone
4 and arrested him right there on the information they
5 had. Much stronger than reasonable suspicion.

6 You've heard sworn testimony they saw the
7 vehicle there. They didn't go in out of an abundance
8 of caution and excellent law enforcement, might I
9 add, incredible law enforcement, they stay at the
10 scene. They go back and get a search warrant from a
11 magistrate, come back and then execute the search
12 warrant.

13 SLED later on does another search warrant, just
14 for these purposes right here, is to come in and say
15 we dotted every I and crossed every T. They had
16 probable cause to arrest when they got there, Judge.
17 It has nothing to do with reasonable suspicion. They
18 could have gone on in.

19 The only technical area in this is that Linfert
20 pulled down on his affidavit, it just comes out
21 automatically when he uses his computer. He's
22 testified to that. We've got Investigator Morris
23 Davis flying in from Texas this afternoon to say he
24 swore an oath before the magistrate that these were
25 the facts and that he was the actual affiant.

1 Judge, we think clearly they had a right to go
2 to the house. They had a right to go and arrest him,
3 and clearly they had a right to look and see if the
4 car was there. They've testified they did see it.
5 There's a window there you can see out of. If
6 anything, that goes to a jury issue, the weight and
7 not admissibility if they both testify in front of
8 the jury once Your Honor lets it in.

9 **THE COURT:** Not on a suppression motion.

10 **MR. MEADORS:** I'm just saying that it's a jury
11 issue, Your Honor, as far as credibility of the
12 officers.

13 **THE COURT:** What is the jury issue?

14 **MR. MEADORS:** If he wants to argue that the
15 officers are lying, that's a jury issue later.
16 That's what I'm saying.

17 **THE COURT:** No. But the admission or
18 nonadmission of the search warrant is the issue that
19 has to be decided at this level.

20 **MR. MEADORS:** Yes, sir.

21 **THE COURT:** It's not up to the jury to decide
22 whether the search warrant is valid.

23 **MR. MEADORS:** That isn't what I was saying. I
24 was saying if he wants to call them a liar, he can do
25 that in front of the jury.

1 **MR. HARPOOTLIAN:** Your Honor, perhaps I
2 anticipated the solicitor would raise this issue of
3 they had enough for an arrest warrant. In fact,
4 eerily similar to these, even when they had an arrest
5 warrant, the Supreme Court of the state of Georgia
6 said in the State v. Schwartz, a 2003 case,
7 "Undoubtedly an officer may knock on the outside door
8 of a home without implicating the Fourth Amendment.
9 The State argues that given the arrest warrant" --
10 here they had an arrest warrant -- "the deputies were
11 further authorized to enter the Schwartz residence
12 and search for Walker, someone that didn't live
13 there. In granting the motion to suppress, however,
14 the trial court found insufficient evidence that
15 Walker lived with the Schwartzes." And, quote, it is
16 now well established that even when armed with an
17 arrest warrant, police must either have a search
18 warrant, exigent circumstances or consent to lawfully
19 enter a third person's home to arrest someone who
20 does not reside there.

21 And then they go on to say: "Moreover, even if
22 the deputies were authorized to enter the home to
23 arrest Walker, Brown's decision to peer through a
24 window was not necessarily reasonable. Nothing in
25 the record indicates Brown gained his vantage point

1 by traveling along the route any visitor would travel
2 to the Schwartz's front door. Instead of walking
3 through that door, Brown went to the side of the
4 house where the carport and the front of the house
5 met. Brown's authority to approach the house
6 therefore did not justify his observation through the
7 window."

8 And of course they cite the same Supreme Court
9 cases and the Federal cases we've cited in our brief.
10 Which once we finish with the SLED piece of this --
11 because, Your Honor, our position is going to be that
12 SLED gained access to the house based -- if this is
13 an illegal search, then SLED's search is based on
14 that. They never would have gotten in the house
15 without the illegal search warrant. And so any
16 evidence gained from the SLED search warrant would be
17 predicated on what was learned by Richland County
18 Sheriff's deputies.

19 So, this is, Your Honor, we believe a very
20 serious issue. And we ask Your Honor if you have any
21 doubts in your mind that this officer could not
22 without going on the curtilage; that is, the area
23 that's grass, that gravel, somewhere that visitors
24 wouldn't normally travel, if you have any doubt about
25 that, we'd invite you to visit Alexander Circle and

1 view it and to determine whether or not what the
2 officer has testified to is accurate.

3 **THE COURT:** All right, sir. Well, I'm going to
4 deny that motion. I'm not going to -- the Court's
5 not going to make itself a witness in this case.

6 **MR. HARPOOTLIAN:** I'm sorry?

7 **THE COURT:** I said I am not going to make myself
8 a witness in this case and I'm not going to visit the
9 residence. You've shown through the photographs the
10 general location. I accept that.

11 **MR. HARPOOTLIAN:** We just offer it as an
12 opportunity if the Court has questions.

13 **THE COURT:** Oh. You made a specific motion that
14 I go.. And I'm saying I'm denying that motion that I
15 go.

16 **MR. HARPOOTLIAN:** Yes, sir.

17 **THE COURT:** All right.. What is the situation
18 with Deputy Davis?

19 **MR. MEADORS:** Judge, as I stated earlier, he was
20 testifying in a case in Texas. I talked to him last
21 night. He was supposed to come back tomorrow but
22 he's flying back today. He will be here --

23 **THE COURT:** I think his testimony is necessary
24 before I can rule on the issue of the suppression of
25 the search warrant. Now, that may curtail some of

1 your testimony today. I don't know.

2 MR. MEADORS: No, sir. And that's exactly what
3 I was trying to say first thing this morning. I
4 didn't think you could decide it without him.

5 THE COURT: I understand. I'm going to allow
6 Deputy Davis to testify. I'm going to look at this
7 issue. It is a serious issue. But I don't feel at
8 this point that I'm going to make the decision on
9 whether to admit the fruit of the warrant until I
10 hear Deputy Davis' testimony because there may --
11 although --

12 MR. MEADORS: Judge, we would --

13 THE COURT: Let me finish. Please. Let me
14 finish my sentence.

15 MR. MEADORS: I'm sorry. I thought you were
16 through. I apologize.

17 THE COURT: Well, I think slowly.

18 MR. MEADORS: I'm sorry. You know I didn't mean
19 that. I'm sorry.

20 THE COURT: Slower than you can talk. If you'll
21 review State v. Dunbar, I mean State v. Dunbar is a
22 2004 case, cert granted, denied. It was granted,
23 improvidently granted in 2006. It clearly says that
24 a search warrant can be based on hearsay.

25 MR. HARPOOTLIAN: Yes, sir.

1 **THE COURT:** I mean, so it may be that -- I mean,
2 that's an issue. I want to put that issue at rest.
3 Dunbar clearly says that, in quoting State v.
4 Sullivan, magistrates can issue search warrants based
5 on hearsay information that is not as a result of the
6 direct personal observation of the affiant. A final
7 search warrant affidavit may be based on hearsay
8 information. Probable cause for a search warrant can
9 be supported by information given to the affiant by
10 other officers. And that's a U.S. Supreme Court's
11 decision.

12 So, I want to put that issue to rest. But I
13 still need to know what Davis's level of knowledge is
14 and how he came to take this before the magistrate.
15 Now, that's where I'm going.

16 **MR. MEADORS:** Can I respond to that briefly?

17 **THE COURT:** Well, I don't know that you need to
18 respond. I just ruled on it.

19 **MR. MEADORS:** Well, the reason I want to ask, I
20 don't think there is anything else he is going to
21 elicit from Morris Davis that would affect this.

22 **THE COURT:** I don't know. But that's a
23 presumption.

24 **MR. MEADORS:** Okay. But, Judge, also, I don't
25 think, even if they didn't see the car, they've got a

1 right to go there if the search warrant --

2 **THE COURT:** We're not there yet.

3 **MR. MEADORS:** Well, Judge, we'd like the matter
4 ruled on before we swear the jury.

5 **THE COURT:** I'm not going to do it; not unless
6 you're going to wait for Mr. Davis.

7 **MR. MEADORS:** Well, if Mr. Davis is going to add
8 something to your offer --

9 **MR. HARPOOTLIAN:** Oh, absolutely.

10 **THE COURT:** All right. Let's move on to the
11 SLED search warrant.

12 **MR. HARPOOTLIAN:** Your Honor, I would ask that
13 we perhaps, since the jury is sitting there, the SLED
14 search warrant is predicated --

15 **THE COURT:** I understand that. The same
16 argument?

17 **MR. HARPOOTLIAN:** It's going to be pretty much
18 the same argument with a couple of -- well, we'll go
19 ahead and proceed with that. That's fine. I mean,
20 there's a couple of additional arguments. Do you
21 want to do that now, or do you want to wait until
22 Davis testifies?

23 **THE COURT:** No. I want to do that now.

24 **MR. HARPOOTLIAN:** Okay. Then I would call --

25 **MR. MEADORS:** Your Honor, at this point the

1 State will be calling the witnesses.

2 MR. HARPOOTLIAN: Well, I'm showing a prima
3 facia case that the SLED search warrant is --

4 MR. MEADORS: The fruit. Your Honor, the SLED
5 search warrant is on its face correct. He can make
6 an argument it's the fruit of the poisonous tree.
7 But there's nothing wrong with the SLED search
8 warrant at all itself in its execution. He's just
9 saying because of the first warrant, search warrant,
10 they shouldn't have taken the --

11 THE COURT: Do you concede that?

12 MR. HARPOOTLIAN: No, sir. I respectfully
13 disagree.

14 MR. MEADORS: Can he proffer how he disagrees
15 with us?

16 THE COURT: Just wait. Let me do it. What will
17 your testimony -- what do you purport that the
18 testimony of the SLED officers will show that would
19 invalidate -- other than the arguments you've already
20 made -- that would invalidate the SLED search
21 warrant? And again, I have not seen it. I don't
22 know what you're talking about.

23 MR. HARPOOTLIAN: Well, Your Honor, we believe
24 that the search warrant, when we have a chance to
25 proffer the affiant, Your Honor will see that the

1 statements contained in the search warrant are
2 summary in a fashion. We want to make sure -- we
3 need to know what Investigator Lieutenant Lawrence
4 related to the magistrate orally, if he did. And
5 that's why I want to make the proffer. It shouldn't
6 take ten minutes with him. Very short.

7 **THE COURT:** We've done it once. We're going to do
8 it again. It's the simplest way to do it. Call your
9 witness.

10 **MR. HARPOOTLIAN:** Thank you. Lieutenant
11 Lawrence, please.

12 **DAVE LAWRENCE,** after being duly sworn, testifies
13 as follows:

14 **THE CLERK:** Please have a seat there, sir.
15 State your full name for the record.

16 **WITNESS:** Dave Lawrence, L-A-W-R-E-N-C-E.

17 **DIRECT EXAMINATION**

18 **BY MR. HARPOOTLIAN**

19 **Q** Okay. You testified yesterday. The judge is
20 familiar with who you are. Lieutenant?

21 **A** That's correct.

22 **Q** Is this the search warrant you executed or you're the
23 affiant for and executed at Circle?

24 **A** This is a copy of one. That's correct.

25 **Q** Right. Can I have it, please? Can I have this

1 marked for identification or introduced for the
2 purposes of this hearing, Your Honor? Please the
3 Court?

4 **THE COURT:** Yes, sir. It's my understanding
5 that you have offered 1 through 5 also.

6 **MR. HARPOOTLIAN:** Yes, sir. And okay. And the
7 other one is in.

8 (WHEREUPON, Defendant's Exhibit No. 6 is marked
9 for identification.)

10 **Q** Now, tell me how this search warrant was obtained.
11 First of all, you're the affiant. Did you appear in
12 front of a magistrate?

13 **A** On this particular search warrant, I prepared the
14 search warrant. I typed it out. And I contacted the
15 magistrate, Richland County magistrate that was on
16 call which was Mildred McDuffie. She was at the
17 Richland County bond court. And we handled this
18 transaction per telephone and fax machine.

19 **Q** Telephone and fax machine?

20 **A** That's correct.

21 **Q** Did you ever appear in front of her personally?

22 **A** No, sir.

23 **Q** Were you sworn by her?

24 **A** Yes, sir.

25 **Q** Over the telephone?

1 A That's correct.

2 Q Was there a notary present?

3 A There's never a notary present.

4 Q I mean, did somebody have you put your hand on the
5 Bible and swear?

6 A No, sir.

7 Q The action we see on the outside of this warrant, two
8 fax numbers, time date stamps, looks like faxes. Is
9 that right?

10 A That's correct.

11 Q So, this one here, it says 1:29, 2:06, 8:46 from
12 803-5 -- do you see that number right there? Is that
13 on top of yours?

14 A No, it's not.

15 Q Well, let's look at the exhibit I have here, because
16 this is what was furnished to us by the State.

17 A I have a copy that states on January 29th, 2006 at
18 8:46.

19 Q Now, but the one at the bottom says 8:27, right?

20 A That's correct.

21 Q So tell me how this occurs. You fax it to the
22 magistrate, right?

23 A That's correct.

24 Q And then the magistrate -- and what happens then?

25 A Well, as I explained it, the reason why we did this,

1 Chief Justice Toal issued an Order in July of 2001
2 stating this was an acceptable procedure. Chief
3 Judge Willie Womble in Richland County stated this
4 was an acceptable procedure. And that's the reason
5 why it was followed, pursuant to that Order, as well
6 as what the judge was instructing me to do that
7 morning.

8 It is a process where an officer will prepare a
9 search warrant, make telephone contact with a
10 magistrate. You discuss the contents of the search
11 warrant with that magistrate. She will instruct you
12 to send it to her for her review; in this case, her
13 review, Ms. McDuffie. The officer will sign it. She
14 will sign it. She will fax a copy back. And that
15 will actually serve as the original search warrant.
16 And that's what was conducted during this day. And I
17 was following the judge's instructions and procedures
18 in obtaining a search warrant.

19 Q Now, that Order issued by Chief Justice Toal, was
20 that signed by all the Justices or just one?

21 A It's my understanding the Chief Judge Billy Womble of
22 Richland County, it was issued by her, Judge Toal.

23 Q Have you ever seen such an Order?

24 A Yes, sir.

25 Q You've seen one signed by Judge Toal?

1 A Yes, sir.

2 Q And is it signed by the four other Justices or just
3 by her?

4 A Just by her.

5 Q Okay.

6 A I would have never done it if it hadn't been
7 acceptable procedure.

8 Q Oh, I'm not blaming you at all. I'm just wondering
9 how it happens.

10 A Mm-hmm (affirmative).

11 Q So you did not appear before the magistrate?

12 A No, sir.

13 Q You were sworn over a telephone?

14 A That's correct.

15 Q Did you relate anything to the magistrate other than
16 what you've typed out here?

17 A I am sure I explained more, the circumstances of what
18 our procedure was and the reason why we were involved
19 in the investigation, that SLED was contacted by the
20 Richland County Sheriff's Department to conduct an
21 officer-involved shooting.

22 Q So you were investigating an officer-involved
23 shooting?

24 A That's correct.

25 Q Okay. And that was the purpose for the search

1 warrant?

2 A Correct.

3 Q And that's what you related to the judge?

4 A That's correct.

5 Q And did you indicate to the judge you were

6 investigating a homicide?

7 A No. We were not investigating the homicide.

8 Q Okay. And what you were looking for was any

9 firearms, ammunition, spent cartridges, projectiles,

10 blood, any and all evidence associated to a shooting

11 incident involving the Richland County officers and

12 resident of said address. Right?

13 A That is correct.

14 Q So you're looking for evidence specifically about

15 that shooting on

16 A That's correct.

17 Q Now, prior to you executing the search warrant, the

18 Richland County Sheriff's Department had already

19 entered the residence. That's where the shooting

20 occurred, correct?

21 A Correct.

22 Q Do you know their authority for being in the

23 residence?

24 A When I arrived at on this

25 particular morning, whenever Chief Deputy Wilson was

1 there, he gave an oral briefing on that. I actually
2 saw a copy of the search warrant. Because as
3 investigating an officer-involved shooting, one of
4 the main questions and concerns that we have, what
5 caused the engagement of a local law enforcement
6 agency, their officers and a private citizen. And
7 that was the engagement that took place that morning
8 pursuant to the search warrant that they had, went to
9 that location to serve.

10 Q And I guess this is sort of redundant; not redundant
11 but a rhetorical question. They wouldn't have been
12 in there but for that search warrant your
13 investigation revealed. Is that correct?

14 A It was my understanding that was reason why they went
15 to that residence, was pursuant to that search
16 warrant, to serve it on that particular morning.
17 That was the reason why they had the engagement.

18 Q Now, your knowledge that you relayed, your reason,
19 what you swore to, was according to I believe your
20 notes, you spoke to a Richland County officer,
21 Wilson. Is that right?

22 A Correct.

23 Q And after speaking to just him -- is that who you
24 spoke to that morning?

25 A At the scene, that was the only one I spoke with.

1 Q Prior to getting the search warrant, did you speak to
2 any other Richland County Sheriff's deputies?

3 A I did.

4 Q Who did you speak to?

5 A Sergeant Linfert.

6 Q Okay. So you spoke to Sergeant Linfert?

7 A I did.

8 Q And what did he tell you?

9 A When I came to the Sheriff's Office, because I went
10 to the Sheriff's Office to meet one of our crime
11 scene investigators to obtain all the weapons from
12 the officers that were involved, and it was my
13 understanding that the officers that were involved in
14 the shooting were at the Sheriff's Office. When I
15 usually -- we usually try to get some type of at
16 least an oral statement from the officers at that
17 time to try to get an idea of what the facts and
18 circumstances were. And Sergeant Linfert was at the
19 Sheriff's Office whenever I got there, and I spoke to
20 him regarding the search and also saw a copy of the
21 search warrant that they had.

22 Q And did Sergeant Linfert tell you that he had seen
23 the black Toyota 4Runner in the garage?

24 A If I can recall correctly, that would be correct.

25 Q And that was part of his probable cause to get his

1 search warrant to go into the residence?

2 A Well, it's kind of hard for me to comment on their
3 probable cause other than what's on the search
4 warrant that was signed by a judge.

5 Q Well, you saw their --

6 A I did.

7 Q -- affidavit before you went and got your affidavit?

8 A I did. And I read it.

9 Q Okay. Let me read to you your reason for affiant's
10 belief that property sought is on the subject
11 premises. Okay?

12 A Mm-hmm (affirmative).

13 Q "On January 29th, 2006, deputies of the Richland
14 County Sheriff's Department responded to
15 ~~Lexington~~ Columbia, South Carolina, to serve
16 a search warrant." So that's the first thing you
17 say, right?

18 A That's correct.

19 Q "The officers were investigating a murder that had
20 occurred at the" Kristie's (sic) -- "nightclub
21 located at 3722 River Drive."

22 MR. MEADORS: It's Chastity's.

23 MR. HARPOOTLIAN: I'm sorry? Did I say
24 something?

25 MR. MEADORS: You misread it.

1 Q "the officers were investigating a murder that had
2 just occurred at" -- Kristie's "nightclub located at
3 3722" --

4 MR. MEADORS: Chastity's.

5 MR. HARPOOTLIAN: What do I keep saying?

6 MR. MEADORS: Kristie's.

7 MR. HARPOOTLIAN: I'm sorry. Chastity's.

8 Q "Upon executing the search warrant, the officers had
9 to force entry into the residence. After gaining
10 entry into said residence, the officers were
11 confronted by a white male subject that fit the
12 description of the murder suspect from Chastity's
13 Nightclub. This subject was later positively
14 identified as Dewain Herring, owner and resident of
15 said location. The suspect ran to a nearby bedroom,
16 obtained a handgun and turned towards the officers.
17 Several officers discharged their service weapons and
18 wounded the suspect. Several shots were fired from
19 the officers, entered the walls of the immediate
20 area, and blood from the suspect was observed on the
21 floor. The State Law Enforcement Division was called
22 by Richland County Sheriff Leon Lott to investigate
23 the officer-involved shooting. Based upon the
24 totality of the circumstances, a search of the
25 residence surrounding this area is warranted to help

1 process the scene by SLED to further obtain evidence
2 to assist this ongoing investigation."

3 So you weren't there to investigate a murder?

4 A That's correct. We were not.

5 Q You were there to investigate whether the officers
6 had done anything wrong?

7 A Correct.

8 Q Okay. You weren't there to investigate whether Mr.
9 Herring had done anything wrong?

10 A To a degree.

11 Q Well, to a degree. What do you mean by that?

12 A Well, to a degree. Obviously in this case -- and I
13 have to make this, you know, rather clear -- in cases
14 that we are getting called to investigate an
15 officer-involved shooting with a local agency, that
16 agency technically is suspect and the person engaged
17 with them is the victim. In this case Mr. Herring is
18 actually our victim, our alleged victim per se.

19 Q Right.

20 A And pursuant to our investigation, obviously we
21 gather the facts and present them to the solicitor
22 for his review to see if there is anything done. But
23 pursuant to that investigation also, as a duty of the
24 law enforcement officer, we are there to try to find
25 the facts and the evidence and try to seek the truth.

1 And that's what we were doing. And at any time that
2 we may have or determine any kind of facts or
3 evidence that may be related to any other type of
4 crime, obviously it's our duty to report that as
5 well.

6 Q And did you do a report to the solicitor?

7 A Yes, we did.

8 Q And did you report that the officers acted
9 appropriately or inappropriately?

10 A We do not give an opinion.

11 Q Did you determine whether or not the facts related to
12 you as to how this shooting occurred --

13 MR. MEADORS: Your Honor, I'm going to object.
14 This is a suppression hearing. This has nothing to
15 do with the probable cause of this search warrant,
16 Your Honor, whatsoever.

17 THE COURT: Where are you going?

18 MR. HARPOOTLIAN: I'm going to if he was lied to
19 by the officers, then the probable cause for --

20 THE COURT: Well, let's move on.

21 MR. HARPOOTLIAN: Yes, sir.

22 Q You say here: "Based on the totality of the
23 circumstances, a search of the residence surrounding
24 this area is warranted." Now, the totality of the
25 circumstances, is this the totality of the

1 circumstances you listed in here?

2 A It is based on everything. And this is very standard
3 procedure that we do for our crime scene
4 investigators who go to a scene to obtain a search
5 warrant before searching the residence, especially if
6 there is any allegation in this case that a shooting
7 that actually occurred. But based upon the totality
8 of the fact that the officers did fire their weapons,
9 we did learn that, that the private citizen, based
10 upon their information that was provided for us, was
11 in possession of a handgun. There was a shooting.
12 He got shot. And based upon that totality there at
13 that residence that we want to come in and gather
14 further evidence. And once again, always out of an
15 abundance of caution, we do obtain the search warrant
16 before our crime scene investigators begin their
17 search.

18 Q Right. And were you present when the crime scene
19 investigators did their search?

20 A I was present during part of it.

21 Q Okay. Were you present when -- did you tell them,
22 relate to them what had occurred?

23 A I did. As --

24 Q And -- I'm sorry. Go ahead.

25 A As well as Captain Grant was on the scene. And

1 Special Agent Paul LaRosa was on the scene. And
2 Captain Grant stayed at the scene until all the crime
3 scene investigators arrived. And Agent LaRosa and
4 myself went to the Sheriff's Office to try to
5 contact, make contact with the officers.

6 Q Now, did the officers indicate to you that when Mr.
7 Herring surrendered himself he came out of a
8 bathroom?

9 A If I can recall, he came out of a -- I think it was
10 an adjoining bedroom/bathroom area down a short
11 hallway into a foyer area.

12 Q And when he came out, did he -- I mean, he had his
13 weapon. It was a --

14 MR. MEADORS: Your Honor, objection again. This
15 is --

16 THE COURT: I'm going to sustain the objection.
17 This is not a discovery issue.

18 MR. HARPOOTLIAN: Well, we --

19 THE COURT: I don't see the relevance of it at
20 all.

21 MR. HARPOOTLIAN: We believe he exceeded the
22 scope of the search warrant, what they seized. I'd
23 like to deal with that now or I can do it later.

24 THE COURT: On what basis?

25 MR. HARPOOTLIAN: Well, they seized evidence,

1 weapons, a weapon that was not related to the
2 shooting that he is investigating.

3 THE COURT: How do they know they're not related
4 to the shooting?

5 MR. HARPOOTLIAN: Well, Your Honor, I'm about to
6 get into that. That's why I'm asking him what the
7 officers related to him. And I need a record on
8 this, Your Honor.

9 THE COURT: Go ahead.

10 MR. HARPOOTLIAN: Thank you.

11 THE COURT: We've had a jury sitting there for a
12 half an hour.

13 MR. HARPOOTLIAN: Yes. I apologize, Your Honor.
14 I apologize.

15 Q When they related to you that when he came out of the
16 bathroom to the adjoining bedroom he had his weapon
17 that he had taken in there with him and he threw it
18 on the bed. Isn't that correct?

19 A There was indication that there was a weapon found on
20 the bed.

21 Q And the officers indicated in their statements to you
22 that that's the weapon that he had in his hand when
23 he came out of the bathroom. Isn't that correct?

24 A I don't know if they could say to an absolute
25 certainty that that was the case. But there was a

1 weapon on the bed.

2 Q Okay. And what weapons were you looking for?

3 A We were looking -- well, first of all, is that they
4 obtained that weapon but they continue with the
5 search. There was also other weapons there.

6 Q There were?

7 A And that. And not knowing, just like Your Honor just
8 said, not knowing which one was exactly involved,
9 it's not to say that that was the one that was
10 involved that he had or if he did indeed have it in
11 his hand; we can't actually show that. So there's
12 another weapon. And we're not going to leave any
13 evidence that could be evidence behind when we're
14 doing a search. Just like in this case there was
15 even marijuana found in the house. We weren't going
16 to leave that there. So we found marijuana.

17 Q You left a .45 caliber automatic pistol there, did
18 you not? You left a .40 caliber Glock there, did you
19 not?

20 A That would have to be a question for the crime scene.

21 Q The people that seized this stuff?

22 A That's correct.

23 Q You don't know of any other weapons that were there
24 other than these two .357's?

25 A I would defer to crime scene.

1 Q Do you know?

2 A Do I know? I mean, I could look to through the notes
3 here.

4 Q Please.

5 A It may take a while, but I'll be glad to do so.

6 Q Well, when you say take a while, do you have any
7 independent recollection of seeing any other weapons
8 there? A Glock? A .45? A .22?

9 A I didn't participate in that part of the crime scene
10 search. So I don't know --

11 Q Do you know why all they seized was two --

12 MR. MEADORS: Your Honor, if he'd let him finish
13 his answer, please.

14 MR. HARPOOTLIAN: I'm sorry. I'm trying to move
15 along.

16 MR. MEADORS: He's talking fast.

17 Q Do you know why all they seized was two .357's?

18 A I can -- once again, I prefer not to answer that
19 question. That would probably be more appropriate
20 for one of the crime scene investigators. But it's
21 my recollection that -- yeah. You know what? I'll
22 actually tell you why.

23 Q Why?

24 A Now that I think about it. Because during the time
25 that we spoke to Mr. Herring, he did make reference

1 that he cocked the gun and uncocked it as you would
2 with a revolver. And he was the one who made mention
3 to me in the written statement, as we went over it
4 yesterday, that if he did this shooting at the club
5 that it probably would have been the .357.

6 Q Okay.

7 A And that's the reason why we took both of them.

8 Q So you're looking for the .357 from the club
9 shooting?

10 A Well, it could have been -- it could have been the
11 one that the officers alleged that he pointed at them
12 as well. That's why we were not going to leave it
13 there behind.

14 Q Well, I want to understand this. You were seizing
15 357's because I think you just testified you
16 interviewed him and he had said to you that he had a
17 .357. I think he even told you it was a Ruger?

18 A That's correct.

19 Q Out in his car that night at Chastity's?

20 A Mm-hmm (affirmative).

21 Q And that's why it would have been seized?

22 A Yeah. It would be remiss of us to not retrieve that
23 weapon --

24 Q Okay.

25 A -- regardless of what the circumstances would be.

1 Q Okay. Regardless of whether or not you had a legal
2 right to seize it?

3 A No. We did have a legal right.

4 Q And the legal right was what?

5 A On the description of property, it says any firearms.

6 Q What were you investigating?

7 A An officer-involved shooting.

8 Q Were you investigating the Chastity's murder?

9 A No, we were not.

10 Q Okay.

11 A But once again, it was facts and evidence or even
12 physical evidence in this case that could have been
13 possibly used in either/or alleged crime. And we
14 would have been remiss and derelict not to retrieve
15 it.

16 Q When you got there, were the garage doors open or
17 closed?

18 A I don't recall.

19 Q Was the black 4Runner in the garage or out?

20 A It was in.

21 Q Do you remember seeing it?

22 A I think I saw it from the inside. We went inside of
23 the house. There's a door that goes out to the
24 garage.

25 Q Okay. That's all I have.

1 **THE COURT:** Anything further? I mean, anything
2 from the solicitor?

3 **MR. MEADORS:** Oh, yes, sir.

4 **THE COURT:** Yes, sir. Go ahead.

5 CROSS EXAMINATION

6 **BY MR. MEADORS**

7 **Q** Defendant's 6 for the record, I think, the search
8 warrant. Let's just go over the particulars. You
9 put in there a description of the premises, correct?

10 **A** That's correct.

11 **Q** 460 Alexander Circle, correct?

12 **A** That's correct.

13 **Q** Described the residence. Stucco, three-car garage?

14 **A** Correct.

15 **Q** Number on the mailbox, correct?

16 **A** Correct.

17 **Q** The search is to include all persons at the premises,
18 vehicles at the location if owned and operated by
19 persons at the premises or if owned or operated by
20 persons residing at the premises. Temporarily
21 absent, specifically a black 1996 Toyota 4Runner?

22 **A** Correct.

23 **Q** Bearing SC EU 1891. And all outbuildings on the
24 curtilage. Correct?

25 **A** Mm-hmm (affirmative).

1 Q And description of property, Mr. Harpootlian asked
2 you: Any firearms, ammunition, spent cartridges,
3 projectiles, blood, any and all other evidence
4 associated to a shooting involving the Richland
5 County Sheriff's Department officers and the resident
6 of the address. Correct?
7 A Correct.
8 Q Now, he's already had you read, and I'm not going to
9 have you do it again, but the reasons for affiant's
10 belief. And these are stated again on Defendant's 6,
11 correct?
12 A Right.
13 Q And pursuant to Her Honor, Chief Justice Toal's
14 Order, you did it just like she said to do it,
15 correct? Or she said it was okay to do it?
16 A I did it according to the way the magistrate
17 instructed me to do it that morning.
18 Q And you've seen an Order where Chief Justice Toal
19 said this is appropriate to do it this way, correct?
20 A That is correct. For Richland County.
21 Q Called the magistrate. Were sworn, correct?
22 A Correct.
23 Q Provided this information as far as the description,
24 your reason to believe that the property sought is on
25 the subject premises and the description, correct?

- 1 A Correct..
- 2 Q Sworn and signed the affidavit, correct?
- 3 A That is correct.
- 4 Q And this was sent back to you by the magistrate,
- 5 correct?
- 6 A That is correct.
- 7 Q You got it. You left a copy at the residence,
- 8 correct?
- 9 A We did.
- 10 Q Now, on the return it's got Paul Grant and Paul
- 11 LaRosa, correct?
- 12 A That's correct.
- 13 Q Both with SLED?
- 14 A That's correct.
- 15 Q Now, just a few questions. SLED was called in at
- 16 Sheriff Lott's request because it was a police
- 17 officer shooting, correct?
- 18 A That is correct.
- 19 Q That's standard operating procedure, correct?
- 20 A We do that quite often.
- 21 Q And on the return there are listed two .357's, one a
- 22 Smith and Wesson .357, correct?
- 23 A Correct.
- 24 Q And one a Ruger .357, correct?
- 25 A That's correct.

1 Q And both of those are similar types, correct? Both
2 can cock, correct?

3 A They are both revolvers and they have a lot of
4 similarities.

5 Q And both of these were the subject of the property
6 sought in the search warrant, weren't they?

7 A They were.

8 Q Both firearms?

9 A Both.

10 Q Both gathered by SLED in their search pursuant to
11 this search warrant signed by the magistrate?

12 A That's correct.

13 Q Do you know where they were found?

14 A Not exactly, no. I'm not the one that actually
15 retrieved them.

16 Q You testified yesterday you are the individual; you
17 and Agent LaRosa, who took the statements from -- the
18 first two statements from the defendant, Dewain
19 Herring, correct?

20 A Correct.

21 Q Beg the Court's indulgence. That's all. Thank you.

22 **THE COURT:** Anything further?

23 **MR. HARPOOTLIAN:** No, sir.

24 **MR. MEADORS:** Judge, we do have a matter we need
25 to discuss in chambers.

1 **THE COURT:** Approach the bench.

2 (Whereupon, a bench conference is had)

3 **THE COURT:** All right, Mr. Harpootlian. Any
4 further witnesses on this issue?

5 **MR. HARPOOTLIAN:** No, sir.

6 **THE COURT:** Any witnesses from the State on this
7 issue; that is, the issue of the SLED --

8 **MR. MEADORS:** The SLED --

9 **THE COURT:** -- search warrant?

10 **MR. MEADORS:** Your Honor, the only other motion
11 we have is Paul LaRosa, and I don't think -- for
12 these purposes, no, sir.

13 **THE COURT:** All right. What further motions,
14 pre-trial motions either from the State or from the
15 defense?

16 **MR. HARPOOTLIAN:** Your Honor, we have a motion
17 to exclude certain photographs and sketches that were
18 done by the solicitor or someone at their behest in
19 the last couple of weeks of the Chastity's strip club
20 and its interior and the parking lot. We need to
21 authenticate those.

22 **THE COURT:** Photographs?

23 **MR. HARPOOTLIAN:** Photographs and sketches --

24 **THE COURT:** Sketches?

25 **MR. HARPOOTLIAN:** -- that were done. Although

1 I'm not sure we're going to have an objection to the
2 sketches, we don't know the factual basis. We object
3 to them at this point.

4 Secondly, there were a series of -- I keep
5 calling them videotapes, but they're not. They're
6 CD's taken off a hard drive at Chastity's, but both
7 of which were given to us last week at no fault, as
8 far as I know, of law enforcement. And we need to
9 authenticate those, where they've been for a year and
10 a half, have they been altered in any way, what do we
11 know about them. And so, Your Honor, I don't know
12 that it's going to take a significant amount of time.

13 **THE COURT:** They all involve witnesses?

14 **MR. MEADORS:** Judge, I guess as far as the --
15 there's one main camera shot which everybody knows
16 about the shooting out of Chastity's. It's been in
17 law enforcement's possession since January 29th,
18 2006.

19 **MR. HARPOOTLIAN:** Correct. Which has been
20 apparently taken off of a longer -- it's edited. I
21 mean, it's taken off of a longer tape which we got
22 last week.

23 **MR. MEADORS:** Correct. And, Your Honor, there
24 were four other camera views or angles, if you will,
25 that did not come into --

1 **MR. HARPOOTLIAN:** Is it three?

2 **MR. MEADORS:** Three to four, Your Honor. But
3 anyway, that came into law enforcement's possession
4 last Tuesday I believe, Your Honor. And that we
5 have -- obviously prior to that, it's my
6 understanding under the law we're not responsible for
7 the chain until it comes in our possession. So we'd
8 have to show the chain from last Tuesday to today
9 which we're prepared for. There's a case out of
10 Anderson involving a commode I believe that was
11 thrown onto the interstate. I'm pretty clear on
12 that.

13 But we do have the witnesses that say that those
14 tapes were locked in a room since January 29th 'til
15 today. I don't think we have to prove that. But
16 they are here today and can say nobody has tampered
17 with them.

18 **MR. HARPOOTLIAN:** Well, if they attempted to
19 introduce them before the jury, we would object to
20 them without having some authenticating witnesses.

21 **MR. MEADORS:** We're prepared to go forward with
22 that.

23 **MR. HARPOOTLIAN:** It shouldn't take long.

24 **THE COURT:** Well, that's what I thought at 9:00
25 this morning, too. All right. And the additional

1 issue is the witness that appeared before the
2 magistrate on behalf of the Richland County Sheriff's
3 Department named Mr. Davis?

4 **MR. HARPOOTLIAN:** Yes, sir.

5 **THE COURT:** And for the record, Solicitor, where
6 is Mr. Davis? I have indicated his testimony is
7 essential to a ruling on whether or not the search
8 warrant is valid and whether or not it should be
9 suppressed.

10 **MR. MEADORS:** Your Honor, he is in El Paso,
11 Texas. He received a Federal subpoena on a CDV
12 involving a court martial out there. He received
13 that subpoena before ours. He went there. He was on
14 standby for here. I believe the State and the
15 defendant have both subpoenaed him, I would like the
16 record to reflect. I talked to him last night. I
17 thought he would be back before then. He had a
18 flight scheduled for Wednesday. He's changing that
19 and coming back today. He's testifying this morning.
20 He should be back. I mean, he will be back in the
21 state today.

22 **MR. HARPOOTLIAN:** And, Your Honor, of course we
23 subpoenaed him last week. He has ignored that
24 subpoena. You know, I understand he went to Federal
25 Court. But for the record, we object to waiting for

1 him. We're ready to go forward. They don't have
2 their witness here. We'd ask the search warrant be
3 suppressed.

4 **MR. MEADORS:** Your Honor, in his defense --

5 **THE COURT:** Just hold it. And I tell you, as an
6 officer of the court, I take Mr. Meadors' statement
7 that he was subpoenaed by a Federal District judge.
8 I don't for the moment concede that that has any
9 superiority over the subpoena of this court.
10 However, if he is under subpoena and in a different
11 court, I cannot produce him here.

12 But I've got to hear -- I have to hear his
13 testimony before the search warrant ruling is made.
14 And, therefore, based on all of those factors, I
15 think the best and most efficient use of our time is
16 to release this jury and tell them to be back in the
17 morning. And we will continue and resolve all of
18 these evidentiary and pre-trial issues. We'll
19 continue until that's done.

20 And I want Officer Davis here at 9:00 in the
21 morning, at which time we'll take his testimony.
22 I'll bring the jury back at 10:00 in the morning.
23 This matter ought to be ready to proceed by 10:00 in
24 the morning.

25 **MR. MEADORS:** Your Honor, for the record, his

1 subpoena, it may be in Federal military court, I just
2 want the record to reflect. But he's in the court.

3 **MR. HARPOOTLIAN:** He's definitely superior to
4 Federal military court, Your Honor, I submit.

5 **MR. MEADORS:** Well, he's testifying in Federal
6 Court.

7 **THE COURT:** All right. I'm going to release the
8 jury until 10:00 in the morning. Bring the jury,
9 please. All right. Hold on. Let's don't have all
10 the commotion until I dismiss this jury.

11 **DEPUTY:** Everybody stay seated, please.

12 **MR. HARPOOTLIAN:** Your Honor, I'm just moving
13 these away from the jury's view at this point.

14 (Jury in at 10:55 a.m.)

15 **THE BAILIFF:** The jury is present, Your Honor.

16 **THE COURT:** All right. Good morning, ladies and
17 gentlemen. I want to first apologize to you for the
18 delay. There have been quite a number -- I
19 underestimated yesterday when I told you we would
20 work yesterday afternoon and this morning. We
21 reconvened at 9 to take up the pre-trial matters.
22 And these matters involve some testimony from
23 witnesses that go to procedural issues in this case.
24 And we've been working our way through that. But we
25 are not complete. There are several other motions

1 that need to be disposed of before we can actually
2 start the trial. And that's going to -- I just don't
3 want you sitting back there, A, wondering about
4 what's going on out here; and B, getting mad at me
5 because I tell you one thing and it just doesn't work
6 out that way. But that may be the case throughout
7 this trial.

8 I try my best to manage our time because I am
9 sensitive to your time. And it's important that
10 things move smoothly so that we do get -- use the
11 most efficient use of our time.

12 But I am going to have to tell you that we are
13 not going -- probably not going to finish all of that
14 testimony or all of those procedural matters until in
15 the morning, which means I am going to release you
16 now until 10:00 tomorrow morning.

17 Now, two things. Ms. James -- I'm sorry.
18 Ms. 84, I do appreciate your being willing to serve
19 as foreperson of this jury. And juror, Mr. 164, I am
20 taking up -- I'll take up your note. I think it's no
21 problem.

22 **JUROR:** Thank you, sir.

23 **THE COURT:** I appreciate your candor again and
24 your disclosure. So thank you very much. All right.
25 Again, I'll ask you not to discuss the case with

1 anyone else over the evening hours. You haven't been
2 sworn yet. We haven't actually started the trial
3 yet. But it still would be improper to discuss the
4 matter with anyone else over the evening hours or
5 among yourselves when you return to the jury room. I
6 am going to ask you again not to avail yourself of
7 press reports. I frankly don't know if there are any
8 press reports about it today or not.

9 There is obviously not much that television can
10 report if the trial hasn't even started. So it's not
11 likely that there would be coverage in the media, but
12 I don't know that. I'm just asking you not to avail
13 yourself of that if there is any reporting.

14 And I guess the third thing, again I'm going to
15 ask you to have a pleasant day. You will be paid for
16 today. So don't worry about that. And at this time
17 I'm going to propose to you we'll be ready in the
18 morning and I think we'll still be able to complete
19 the trial this week. But it obviously will run in
20 towards the latter part of the week before we're able
21 to finish. But that's what I believe. It doesn't
22 always work that way.

23 So I thank you very much for your patience. I'm
24 going to dismiss you now for the day and ask you to
25 be back in the jury room tomorrow morning at 10 a.m.

1 Thank you very much.

2 (Jury out at 11:00 a.m.)

3 **THE COURT:** All right. Let's take about a
4 15-minute break. We'll reconvene at 11:15 and we'll
5 continue with the motions and the other matters of a
6 pre-trial nature. Thank you very much.

7 **MR. MEADORS:** We'll work together to get those
8 done.

9 (Whereupon, a break is taken)

10 **THE COURT:** All right. Mr. Harpootlian, you
11 indicated that there were issues as to photographs,
12 sketches, the authentication of certain CD's. What's
13 the status of those motions?

14 **MR. HARPOOTLIAN:** If it please the Court, we
15 filed motions in limine to exclude certain
16 photographs and sketches. First of all, we have
17 reviewed the photographs with the solicitor and we've
18 agreed which ones we would not object to. As to the
19 sketches, we've agreed to not object to any of those
20 except one which depicted Chastity's as it is today
21 as opposed to the time of the incident. And they've
22 agreed that none of these will be depicted as to
23 scaled except one which was done of basically the
24 parking lot to the door that has some measurements on
25 it.

1 In addition to that, we've agreed to not object
2 to the chain on the videotapes, with the Solicitor's
3 representation that he is going to call the witnesses
4 that would authenticate the chain at some point. In
5 other words, we'll go ahead and let it come on -- so
6 we don't have to stop and have a whole bunch of
7 hearings, we'll let it come in. He can use it with
8 his witnesses. But at some point he'll call the
9 officers that got it, the people that turned it over
10 and other witnesses that can authenticate it. Is
11 that correct?

12 **MR. MEADORS:** Yes, sir. That will make a
13 smoother flow for both sides, Judge. And going back
14 to the one diagram, it is an approximate scale of the
15 parking lot. It shows an arrow on the diagram. But
16 we'll certainly represent it -- so I think we're in
17 agreement with that. And the pictures as far as that
18 were taken what will be shown, if any, of the inside
19 of Chastity's.

20 **MR. HARPOOTLIAN:** Right. Except for the law
21 enforcement group shot I believe.

22 **MR. MEADORS:** And, Judge, there were some other
23 previous pictures which showed the door as it was
24 that night which I don't think there's any dispute on
25 these pictures, just three or four of them, of the

1 inside and outside.

2 **MR. HARPOOTLIAN:** I think that is correct. Yes,
3 sir. I believe that's correct. Yes, sir.

4 **MR. MEADORS:** Judge, the investigator has
5 been -- his flight is coming in tonight. He will be
6 here prepared to go at 9:00 tomorrow morning in this
7 case.

8 **THE COURT:** All right. Are these exhibits
9 pre-marked at this stage?

10 **MR. HARPOOTLIAN:** No, sir.

11 **THE COURT:** Can we do that?

12 **MR. HARPOOTLIAN:** I've got no objection to it.

13 **MR. MEADORS:** We can do that this afternoon.
14 Yes, sir. Be happy to.

15 **THE COURT:** Well, the court reporter is here. I
16 don't know the extent of what needs to be marked.

17 **MR. MEADORS:** Judge, the ones which can be --

18 **THE COURT:** Can you agree as to which
19 photographs will be entered without objection?

20 **MR. HARPOOTLIAN:** I think so. I think we did
21 that a little while ago.

22 **THE COURT:** I know. Let's go ahead and mark
23 them so we don't have to again delay.

24 **MR. MEADORS:** Your Honor, what we'll be offering,
25 through the first few witnesses are the pictures that

1 were taken that night by Investigator Livingston
2 which depict the inside of Chastity's as it was then
3 and the door on the outside.

4 **THE COURT:** There are no pictures of the victim?

5 **MR. MEADORS:** Judge, no, sir. There are some
6 blood.

7 **MR. HARPOOTLIAN:** Well, we'd object --

8 **MR. MEADORS:** There's not any.

9 **MR. HARPOOTLIAN:** Wait. This has got blood in
10 it.

11 **MR. MEADORS:** Yes, sir. There is blood, but the
12 victim is not in there. Your Honor, I guess we need
13 to mark it as we're talking.

14 **MR. HARPOOTLIAN:** I think there are pictures
15 that exclude the blood.

16 (WHEREUPON, State's Exhibit No. 6 is marked for
17 identification.)

18 **MR. HARPOOTLIAN:** What is this of?

19 **MR. MEADORS:** Judge, I think we can go through
20 this this afternoon. Here's an example. State's 6
21 for I.D. at this point, that would be the inside of
22 Chastity's, the lobby, if you will. Mr. Johnson's
23 body had already been removed. But you do see some
24 stains there. And there are blood stains in all the
25 pictures. There's no other way to do it. We don't

1 think that's inflammatory. It's not a picture for
2 them that --

3 **THE COURT:** I don't know if --

4 **MR. HARPOOTLIAN:** I object to anything that has
5 blood in it, Your Honor.

6 **THE COURT:** Well, that I don't think is intended
7 to arouse the passion of the jury.

8 **MR. HARPOOTLIAN:** These are other pictures from
9 inside.

10 **MR. MEADORS:** I don't think all of those he's
11 offering, Your Honor.

12 **MR. HARPOOTLIAN:** No, I'm not offering them,
13 Your Honor. I think those are the ones you're
14 offering. I think.

15 **THE COURT:** Okay.

16 **MR. HARPOOTLIAN:** We don't have any objection to
17 these. We have an objection to this one.

18 **MR. MEADORS:** It's already marked State's 6.
19 Your Honor, here is some of the rest of them.

20 **THE COURT:** That is what number? 6?

21 **MR. HARPOOTLIAN:** Well, he marked it as -- is
22 this the same one, John?

23 **MR. MEADORS:** Yeah. It's the same picture.

24 **MR. HARPOOTLIAN:** It's the same one you just
25 looked at. It's 6.

1 **THE COURT:** I do not find that objectionable.

2 **MR. HARPOOTLIAN:** None of these are numbered.

3 **MR. MEADORS:** That's what I'm saying.

4 **MR. HARPOOTLIAN:** I don't object to any of
5 those. As a matter of fact, if you don't put them
6 in, I'll put them in.

7 **THE COURT:** In other words, do any of these need
8 rulings by the Court?

9 **MR. HARPOOTLIAN:** I think the only one is the
10 one that has the -- well, let me see. What about
11 these other pictures, John?

12 **MR. MEADORS:** They're not numbered for the
13 court. Your Honor, we will look at these right after
14 the break.

15 **THE COURT:** I'll be here. I'm not going
16 anywhere.

17 **MR. HARPOOTLIAN:** But other than this, we're
18 done for the day?

19 **THE COURT:** I don't know. For the record, any
20 other matters that need to be decided by the Court of
21 a pre-trial nature other than Mr. Davis's testimony
22 on the issue of the search warrant?

23 **MR. HARPOOTLIAN:** No, sir. I want to make sure
24 that the record is clear that the objection --

25 **THE COURT:** Turn around and speak so the court

1 reporter --

2 MR. HARPOOTLIAN: I'm sorry. That the Batson
3 objections that were made previously by the State
4 have been resolved, that they've withdrawn those.

5 THE COURT: Yes, sir. Is that correct?

6 MR. MEADORS: I think that was Your Honor's
7 conclusion yesterday.

8 THE COURT: Yes, sir. I understand the
9 Batson --

10 MR. HARPOOTLIAN: Because the motion was made.
11 There was never a conclusion.

12 THE COURT: It was never ruled on the record. I
13 overruled the Batson. The State withdrew the Batson
14 motions. Let's put it that way. Here. Let me let
15 you look at this, both of you.

16 (Whereupon, a bench conference is had)

17 (WHEREUPON, Court's Exhibit No. 2 is marked for
18 identification.)

19 THE COURT: Otherwise, we'll stand at ease until
20 9:00 in the morning.

21 (WHEREUPON, State's Exhibit No. 7 is marked for
22 identification.)

23 (WHEREUPON, State's Exhibit No. 8 is marked for
24 identification.)
25

1 (WHEREUPON, State's Exhibit No. 9 is marked for
2 identification.)

3 (WHEREUPON, State's Exhibit No. 10 is marked for
4 identification.)

5 (WHEREUPON, State's Exhibit No. 11 is marked for
6 identification.)

7 (WHEREUPON, State's Exhibit No. 12 is marked for
8 identification.)

9 (WHEREUPON, State's Exhibit No. 13 is marked for
10 identification.)

11 (WHEREUPON, State's Exhibit No. 14 is marked for
12 identification.)

13 (WHEREUPON, State's Exhibit No. 15 is marked for
14 identification.)

15 (WHEREUPON, State's Exhibit No. 16 is marked for
16 identification.)

17 (WHEREUPON, State's Exhibit No. 17 is marked for
18 identification.)

19 (WHEREUPON, State's Exhibit No. 18 is marked for
20 identification.)

21 (WHEREUPON, State's Exhibit No. 19 is marked for
22 identification.)

23 (WHEREUPON, State's Exhibit No. 20 is marked for
24 identification.)
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1 (WHEREUPON, State's Exhibit No. 21 is marked for
2 identification.)

3 (WHEREUPON, State's Exhibit No. 22 is marked for
4 identification.)

5 (WHEREUPON, State's Exhibit No. 23 is marked for
6 identification.)

7 (WHEREUPON, State's Exhibit No. 24 is marked for
8 identification.)

9 (WHEREUPON, State's Exhibit No. 25 is marked for
10 identification.)

11 (WHEREUPON, State's Exhibit No. 26 is marked for
12 identification.)

13 (WHEREUPON, State's Exhibit No. 27 is marked for
14 identification.)

15 (WHEREUPON, State's Exhibit No. 28 is marked for
16 identification.)

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18 identification.)

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22 identification.)

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12 identification.)
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14 identification.)
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16 identification.)
17 (WHEREUPON, State's Exhibit No. 41 is marked for
18 identification.)
19 (WHEREUPON, State's Exhibit No. 42 is marked for
20 identification.)
21 (WHEREUPON, State's Exhibit No. 43 is marked for
22 identification.)
23 (WHEREUPON, State's Exhibit No. 44 is marked for
24 identification.)
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1 (WHEREUPON, State's Exhibit No. 45 is marked for
2 identification.)

3 (WHEREUPON, State's Exhibit No. 46 is marked for
4 identification.)

5 (WHEREUPON, State's Exhibit No. 47 is marked for
6 identification.)

7 (WHEREUPON, State's Exhibit No. 48 is marked for
8 identification.)

9 (WHEREUPON, State's Exhibit No. 49 is marked for
10 identification.)

11 (WHEREUPON, State's Exhibit No. 50 is marked for
12 identification.)

13 (Whereupon, the proceedings are concluded for
14 the day, to be reconvened tomorrow morning)

1 Wednesday, May 9, 2007

2 **MR. HARPOOTLIAN:** We're ready, Judge?

3 **MR. MEADORS:** The State's ready..

4 **THE COURT:** All right. With regard to the
5 search warrant served by the Richland County
6 Sheriff's Department, the State advised the Court
7 yesterday that Mr. Davis who apparently signed as the
8 affiant on the affidavit would be here at 9:00 this
9 morning. And, Mr. Harpootlian, yesterday I allowed
10 you to call the witnesses. Do you prefer to do that
11 today? It matters not to me.

12 **MR. HARPOOTLIAN:** I'd prefer to call Davis, Your
13 Honor.

14 **THE COURT:** Because all I really need to know or
15 hear is both sides of the issue. It matters not to
16 me who goes first. So, I'll follow the same
17 procedure we did yesterday.

18 **MR. MEADORS:** I've never done it before, but
19 since we started that way, I think we ought to do it.

20 **MR. HARPOOTLIAN:** Investigator Davis.

21 MORRIS DAVIS, after being duly sworn, testifies
22 as follows:

23 **THE CLERK:** Thank you. Please have a seat in
24 the witness stand and state your full name for the
25 record.

DIRECT EXAMINATION

BY MR. HARPOOTLIAN

Q Tell me your name again, please?

A Hi. Morris Davis with the Richland County Sheriff's Department.

Q All right. Investigator Davis, I had a subpoena served on you last week to appear in court on Monday?

A Yes, sir.

Q Did you get that subpoena?

A Yes, I did.

Q And did call me or call the court or anybody?

A I called the court who was supposed to talk to someone and give me a call back.

Q Who did you call?

MR. MEADORS: Object to the relevance for this hearing. He's here, Your Honor.

MR. HARPOOTLIAN: I just want to know why he didn't honor my subpoena, why he didn't call and why we're standing here on Wednesday. I think it's important for the Court to know, and I'd like to know, in judging his --

THE COURT: It's not important to the Court.

MR. HARPOOTLIAN: Sir?

THE COURT: It's not important to the Court. Now, unless there's some appellate reason for a

1 record on this issue, we dealt with it yesterday.
2 I'm prepared to proceed.

3 MR. HARPOOTLIAN: Yes, sir. The Court has been
4 inconvenienced, as has everyone else.

5 MR. MEADORS: Objection, Your Honor.

6 THE COURT: Please, Mr. --

7 MR. MEADORS: Well, he keeps talking.

8 THE COURT: And you keep interrupting. The
9 matter was resolved yesterday. Let's don't start
10 today like this.

11 MR. HARPOOTLIAN: I'll move on.

12 THE COURT: Thank you.

13 Q You -- tell me how it came about that State's Exhibit
14 No. 5, as I understand it, you presented this to
15 Judge Peay at about 4:02 a.m.?

16 A Yes, I did.

17 Q Where did you present it to him?

18 A At his home.

19 Q Okay. How did it get there?

20 A I drove it there. He was the on-call magistrate at
21 that time.

22 Q Okay. Now, at the top of this warrant -- I mean
23 affidavit -- is a fax number indicating it was faxed
24 somewhere at 3:33 a.m. on that day. Do you know
25 where it was -- who faxed it and where you faxed it

1 to?

2 A Sergeant David Linfert.

3 Q Faxed it where?

4 A To the home of Judge Peay.

5 Q So Judge Peay had this document signed or unsigned by

6 you before you got there?

7 A It was unsigned.

8 Q Okay. Did you actually carry it there, or did he

9 already have this faxed copy?

10 A Well, I think he already had it. If it was faxed, he

11 already had it.

12 Q Okay. So he already had the document. It was at his

13 house. And you went out there to do what?

14 A To sign the warrant, the search warrant.

15 Q Okay. And tell the Court, please, what you said to

16 Judge Peay?

17 A I told him that we had responded to an incident

18 location and gave him the specifics of the case.

19 Q No. I need to know exactly what you told him

20 word-for-word. Did you make any notes?

21 A Did I make any notes?

22 Q Yes.

23 A No, sir. I didn't make any notes because I was aware

24 of the case.

25 Q I'm sorry?

1 A I didn't make any notes because I was aware of the
2 case. I was at the incident location and interviewed
3 certain individuals.

4 Q What I want to know is what you told him at
5 approximately 4:00 on the morning of the 29th?

6 A Okay. Well, what I told Judge Peay is that there was
7 an incident at the incident location on River Drive.
8 And I told him the specifics of a vehicle description
9 that I was given, suspect description, things of that
10 nature.

11 Q Okay. What did you tell him -- you see the affidavit
12 on the warrant right here. And that is your
13 signature as the affiant. Is that right?

14 A Yes, it is.

15 Q Now, did you read that before you signed it?

16 A Yes, sir, I did.

17 Q Okay. Now, up here it says the affiant is David
18 Linfert. Is that correct?

19 A Yes, it does.

20 Q So, did you notice that when you read it?

21 A Yes, I did.

22 Q And did you say anything to the judge about it?

23 A I can't recollect at this moment, sir.

24 Q Well, I mean, you're signing an affidavit that
25 somebody else has sworn to?

1 **A** Yes, I did, sir.

2 **Q** And you did that knowingly?

3 **MR. MEADORS:** Objection. Not sworn to, Your

4 Honor. The name was on the top.

5 **MR. HARPOOTLIAN:** No. I'm sorry. Your Honor,

6 these are speaking objections.

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

8 **MR. HARPOOTLIAN:** And I object to them.

9 **THE COURT:** Just --

10 **MR. MEADORS:** It goes both ways.

11 **THE COURT:** Sir.

12 **MR. HARPOOTLIAN:** Thank you.

13 **Q** It says at the top: "Personally appeared before me,

14 one D. Linfert, who being duly sworn says there is

15 probable cause to believe the Herring property

16 subject to seizure under provision" so-and-so "and

17 under the laws is located on the following premises."

18 Right?

19 **A** Yes, sir.

20 **Q** So the affidavit says Linfert swore to this. Is that

21 correct?

22 **A** Yes, sir, it does.

23 **Q** And then down at the bottom all it says is: "Sworn

24 and subscribed before me", and then your signature,

25 affiant?

1 A Yes, it does.

2 Q But up at the top it says somebody else is swearing
3 to it?

4 A It does.

5 Q And you read that before you signed it?

6 A Yes, I did.

7 Q And did you think there was anything wrong with that?

8 A No, sir, I did not.

9 Q Why not?

10 A I didn't think it was a problem. I explained to
11 Judge Peay why I was signing it.

12 Q Okay. Why were you signing it?

13 A Because Linfert was at the office and he asked me to
14 go to Judge Peay's office or house.

15 Q What did you tell Judge Peay? Did you tell him --
16 what did you tell him beyond what's in this reason
17 for affiant's belief that property sought is on the
18 subject's premises? Beyond what's in that one
19 paragraph, what other facts did you relate to him
20 that's not contained in that paragraph?

21 A Give me a moment to just read this.

22 Q Sure.

23 (Pause)

24 A Basically what's in the narrative.

25 Q I'm sorry?

1 A Basically what was in the narrative.

2 Q Did you tell him anything other than what's in there?

3 A No, sir. I don't recall.

4 Q Had you gone to the residence before the search
5 warrant was executed?

6 A No, sir.

7 Q Did you go when the search warrant was executed?

8 A Yes, sir.

9 Q Okay. And when you went when the search warrant was
10 executed, did you go in the front door?

11 A Yes, sir.

12 Q Were you one of the officers with your gun drawn?

13 A No. My weapon wasn't drawn. I was the fifth man to
14 go in. So I was -- once the fireworks started, I
15 exited the building for cover.

16 Q Okay. So the fireworks started. You went back out?

17 A Yes, sir.

18 Q Okay. Did you have any occasion to look in the
19 garage?

20 A No, sir.

21 Q Before going in, did you look in the garage?

22 A No, sir.

23 Q Did you look in the garage after you went in?

24 A No, sir.

25 Q So you never looked in the garage either through the

1 garage doors, through the windows or through the door
2 that connected with the kitchen?

3 A No, sir.

4 Q So in there where it says that the vehicle was --
5 this vehicle was seen at the residence, that's not
6 something you knew of your own knowledge?

7 A I knew that because Linfert told me that the vehicle
8 was in the garage.

9 Q That he'd seen it in the garage?

10 A That he'd seen it in the garage.

11 Q Did he tell you how he saw it in the garage?

12 A If I can recall, they went out there.

13 Q No. I mean, did he see it through the front window,
14 the back window, the garage door?

15 A I can't recall..

16 Q When you signed this affidavit, or you signed this
17 search warrant, as the affiant?

18 A Yes, sir.

19 Q It says "reason to believe". Let me find my glasses
20 so I don't misquote it. "Reason to believe that
21 property sought is on the subject premises"?

22 A Mm-hmm (affirmative).

23 Q What reason did you have to believe that firearms,
24 ammunition, burgundy sweater, white turtleneck shirt,
25 khaki pants, eyeglasses, black 1996 Toyota 4Runner

1 bearing SC EU 1891 and any and all other evidence
2 associated to a shooting incident would be located at

3
4 A Well, for one, sir, I was -- I interviewed the young
5 lady and she gave me information, specific
6 information on what he was wearing.

7 Q Okay.

8 A Also I saw the video which showed the vehicle.

9 Q Okay. So you saw the video and saw a black 4Runner?

10 A Yes, sir, I did.

11 Q You talked to the lady and you knew you were looking
12 for a burgundy sweater?

13 A Yes, sir.

14 Q But what I want to know is why you knew that would be
15 in

16 A I was informed by Sergeant Linfert that that vehicle
17 was at that residence.

18 Q Okay. Now, were you part of the process that did a
19 check on the license, that did a search on the
20 driver's license that came back to Landmark
21 Drive?

22 A No, sir. I was just informed.

23 Q You were informed that the vehicle came back to 3612.
24 The vehicle was registered to Landmark Drive,
25 not Circle. Is that correct?

1 A I can't recall, sir.

2 Q But that's what you put in your affidavit?

3 A That's what was listed in the affidavit by Sergeant

4 Linfert.

5 Q Okay. That's what Sergeant Linfert put in. But is

6 that your affidavit or his affidavit?

7 A It's his affidavit, sir. But it was signed by

8 myself.

9 Q Okay. I'm sorry. It's his affidavit signed by you?

10 A Yes, sir.

11 Q So you're not -- you can't swear any of that's true?

12 A Yes, sir. I can swear. I can swear --

13 Q That Linfert --

14 A -- what the description of the vehicle was, because I

15 saw -- I was told that that tag number was on that

16 vehicle. I saw that vehicle on the video. And I

17 also -- let me see further if it shows any

18 description of clothing. I knew that the person had

19 glasses and the description of the clothing that they

20 were wearing.

21 Q Well, I guess what I'm saying is, this affidavit, is

22 this your affidavit or Sergeant Linfert's affidavit?

23 A Sergeant Linfert prepared the affidavit.

24 Q But is it your -- are you -- did he swear that's

25 true, or did you swear that's true?

1 A I swore that was true.

2 Q Okay. But Sergeant Linfert prepared the affidavit.
3 All you did was sign it, right?

4 A Yes, sir.

5 Q Okay. And you didn't give the magistrate any
6 information beyond outside what's contained in that
7 one paragraph?

8 A No, sir.

9 Q I'm sorry. Am I correct about that?

10 A You're correct, sir.

11 Q Okay. Beg the Court's indulgence. That's all I have
12 at this time.

13 CROSS EXAMINATION

14 BY MR. MEADORS

15 Q Good morning.

16 A Good morning.

17 Q You flew in late last night?

18 A Yes, sir.

19 Q Now, you've got a copy of the search warrant?

20 A Yes, I do.

21 Q And this is Defendant's 6. All right. Now, before I
22 get to that, you responded to Chastity's, didn't you?

23 A Yes, sir, I did.

24 Q And that was on 1-29-06 at 12:45 a.m. you went to
25 Chastity's at 3722 River Drive, right?

- 1 A Yes, sir.
- 2 Q And when you got there you were able to interview
- 3 some folks, a Renisha Granger and Angel Koon,
- 4 correct?
- 5 A Yes, sir.
- 6 Q You yourself interviewed them?
- 7 A Yes, sir.
- 8 Q And you took a statement from them or you talked to
- 9 them about what happened that night?
- 10 A I talked and took a statement from them.
- 11 Q Okay. And they told you what happened, didn't they?
- 12 A Yes, sir, they did.
- 13 Q And did they tell you basically that -- did Ms. Koon
- 14 tell you she observed the suspect through the camera
- 15 system leave and come back driving an SUV?
- 16 A Yes, sir.
- 17 Q Also gave you a description of the individual. 50 to
- 18 60 years old, gray-headed, wearing a red sweater,
- 19 khaki pants?
- 20 A Yes, sir.
- 21 Q And that's some of the stuff you all were looking for
- 22 in the search warrant, right?
- 23 A It is.
- 24 Q And you learned about that right off the bat when you
- 25 went to the scene, right?

1 A Yes, sir.

2 Q You did?

3 A Yes, sir.

4 Q And you saw this videotape, correct?

5 A I did.

6 Q It shows the car on there?

7 A Yes, sir.

8 Q And that videotape was gotten from Chastity's and
9 taken back to headquarters by some of your officers
10 prior to getting the search warrant, right?

11 A Yes, sir, it was.

12 Q No question about that. And the driver's license
13 photo was taken and compared to the picture on the
14 video at Chastity's, right?

15 A Yes, sir.

16 Q And that's true, isn't it?

17 A It is.

18 Q And Mr. Harpootlian asked you if there was anything
19 in here. And your first -- besides this you told the
20 magistrate. And you said basically you orally
21 supplemented to the magistrate that you had seen the
22 video and it corroborated that that was Dewain
23 Herring, didn't you?

24 A Yes, sir.

25 Q You told him that. I don't think you understood his

1 question when he asked you. But you orally told that
2 to the magistrate separate from here, right?
3 A Yes, sir.
4 Q No question about that, is there?
5 A No, sir.
6 Q After you got this information from Chastity's, you
7 go back to headquarters?
8 A Yes, sir.
9 Q Sergeant Linfert's computer could prepare a search
10 warrant, correct?
11 A It could.
12 Q He had the capabilities of doing that?
13 A Yes, sir.
14 Q Is that why his computer was used?
15 A Yes, sir, it was.
16 Q And is his computer, his name automatically comes out
17 at the top when you print it, doesn't it.
18 A Yes, sir, it does.
19 Q Your name doesn't come out of his computer when it
20 prints off it, does it?
21 A No, sir.
22 Q It comes out as Sergeant Linfert?
23 A Yes, sir.
24 Q Is that why that's at the top of the search warrant,
25 not yours?

1 A Yes, sir, that is.

2 Q Now, description of the property sought: Firearms,
3 ammunition, cartridges, projectiles. You had the
4 wrong search warrant. State's 5, description of
5 property sought: Firearms, ammunition, burgundy
6 sweater, white turtleneck shirt, khaki pants,
7 eyeglasses, black Toyota 4Runner, 1991, and any and
8 all other evidence associated with the shooting. You
9 were familiar with all these items because you had
10 taken statements and you'd been to the scene,
11 correct?

12 A Yes, sir.

13 Q And that's the items that were being sought?

14 A Yes, sir.

15 Q Description of the premises to be searched is

16
17 A Yes, sir.

18 Q That's where the defendant resided, correct?

19 A Yes, sir.

20 Q And you were familiar with that and you knew that was
21 where he resided because when you got back to the
22 Sheriff's Department you all had checked the driver's
23 license and confirmed that's where he lived in
24 relation to the vehicle that went back to him,
25 correct?

- 1 A Yes, sir.
- 2 Q No doubt about that?
- 3 A Yes, sir.
- 4 Q And that description is in accurate description of
- 5 his residence, isn't it?
- 6 A It is.
- 7 Q And that's in this affidavit?
- 8 A It is.
- 9 Q Reasons for offense: Belief that the property sought
- 10 is on the subject premises. And this is what you
- 11 went over with the magistrate, isn't it?
- 12 A It is.
- 13 Q That's how you do it, isn't it?
- 14 A Yes, sir, it is.
- 15 Q Did Judge Peay know you weren't David Linfert?
- 16 A Yes, sir, he did.
- 17 Q Is there any question about that?
- 18 A No, sir.
- 19 Q No offense. He's white and you're African-American,
- 20 right?
- 21 A Yes, sir.
- 22 Q He didn't call you Sergeant Linfert, did he?
- 23 A He did not.
- 24 Q Okay. January 29th deputies of the Sheriff's
- 25 Department responded to Chastity's Nightclub located

1 at 3722 River Drive in regards to a shooting. You
2 actually responded?

3 A Yes, I did.

4 Q Victim was shot once in the head by an unknown
5 firearm. No question about that, right?

6 A No question.

7 Q Was his body still there when you got there?

8 A It was not.

9 Q "Victim pronounced deceased later at the hospital.
10 Witnesses were able to describe the suspect was
11 responsible and provided a license tag to the suspect
12 vehicle. The vehicle was described as a black Toyota
13 4Runner bearing South Carolina education tag 1891.
14 According to DMV records, this license is registered
15 to Dewain Herring at Landmark. This location was a
16 closed business. Search of records at Richland
17 County provide an additional address of

18 . Investigators located the residence and
19 observed a black Toyota 4Runner in the garage.
20 Search is necessary to further this investigation."

21 So you knew this defendant lived at

22 that he drove a Toyota 4Runner and that he
23 was the same individual on his driver's license as on
24 the video at Chastity's before anybody went to
25 didn't you?

- 1 A Yes, sir.
- 2 Q You knew all that information prior?
- 3 A Yes, sir.
- 4 Q And that's what was in the search warrant?
- 5 A Yes, sir.
- 6 Q Even before Sergeant Linfert looked and saw the
- 7 Toyota 4Runner, correct?
- 8 A Yes, sir.
- 9 Q No doubt about that, is there?
- 10 A No doubt, sir.
- 11 Q And all that's described in this search warrant, the
- 12 property description with particularity and the
- 13 affiant's reason that they think the property is
- 14 there. All that's in there, right, in this search
- 15 warrant?
- 16 A It is.
- 17 Q And you conveyed that to Judge Peay?
- 18 A Yes, sir, I did.
- 19 Q And whose signature is down there as the affiant?
- 20 A Investigator Morris Davis.
- 21 Q That's you, isn't it?
- 22 A Yes, sir.
- 23 Q And did you swear before Judge Peay that you were
- 24 telling the truth, the whole truth and nothing but
- 25 the truth, so help you God?

1 A I did.

2 Q And you were, weren't you?

3 A Yes, I was.

4 Q When you left Judge Peay, you thought you had a good
5 search warrant, didn't you?

6 A I did.

7 Q No question about it, is there?

8 A No question.

9 Q And in addition to what's in the body here, you
10 orally supplemented to him, Judge, I've seen it on
11 the video, the car?

12 A Yes, sir.

13 Q And we've checked the picture of him at Chastity's
14 with his DL and that's Mr. Dewain Herring?

15 A Yes, sir.

16 Q And let me ask you. In this statement you took
17 from -- and you actually put all this in your
18 statement of January 30th, didn't you, that you went
19 to Judge Peay?

20 A Yes, I did.

21 MR. HARPOOTLIAN: Objection, Your Honor.

22 THE COURT: That's not in evidence.

23 MR. MEADORS: Judge, this hearsay is admissible.
24 I mean, what's the objection?

25 MR. HARPOOTLIAN: Your Honor, would you like to

1 hear my objection?

2 THE COURT: We're getting into -- go ahead. Put
3 it on the record.

4 MR. HARPOOTLIAN: He is attempting to bolster
5 this witness's statement by a prior consistent
6 statement. I object under the rules of evidence.

7 MR. MEADORS: Your Honor, the jury is not here.
8 Hearsay is admissible. I think that's admissible in
9 this proceeding.

10 THE COURT: Overruled. I mean, I sustain the
11 objection.

12 MR. HARPOOTLIAN: Thank you.

13 Q You had information that Mr. Herring was naked in the
14 room. That's why he was kicked out, correct?

15 A Yes, sir.

16 Q All right. And you had information that he shot a
17 firearm, correct?

18 A Yes, sir.

19 Q And that a person who shot a firearm was out there on
20 the streets, correct?

21 A Yes, sir.

22 Q And you all didn't know where he was at that point,
23 did you?

24 A No, sir, we did not.

25 Q And you knew that he had a Toyota 4Runner that he was

1 driving, right?

2 A Yes, sir.

3 Q And that based on this evidence a gun might be with

4 him, correct?

5 A Yes, sir.

6 Q And he fled from the scene, didn't he?

7 A He did.

8 Q And a copy of this search warrant was left at the

9 scene after it was executed, wasn't it?

10 A Yes, sir, it was.

11 Q Beg the Court's indulgence. Beg the Court's

12 indulgence. Judge Peay is a magistrate, correct?

13 A He is.

14 Q Has the authority to sign search warrants, correct?

15 A He does.

16 Q You had done other search warrants in the past,

17 correct?

18 A Yes, sir.

19 Q Thank you. That's all.

20 MR. HARPOOTLIAN: Just one additional question.

21 REDIRECT EXAMINATION

22 BY MR. HARPOOTLIAN

23 Q The car was registered to an address at Landmark,

24 right?

25 A Yes, sir.

1 Q Is that what you swore to?

2 A Yes, sir.

3 Q Did you try to get a search warrant for Landmark?

4 A I did not.

5 Q That was where the car was registered to. Why not?

6 A I don't have any information on that, sir. I can't
7 recollect because I wasn't the one who prepared the
8 search warrant.

9 MR. HARPOOTLIAN: That's all I have.

10 THE COURT: You may come down, sir. Anything
11 further on this issue?

12 MR. MEADORS: No, sir.

13 MR. HARPOOTLIAN: No evidence, Your Honor.

14 THE COURT: All right. I am prepared to rule on
15 the search warrant.

16 MR. HARPOOTLIAN: Your Honor, we have --

17 THE COURT: You argued yesterday. I asked the
18 State to be prepared to argue today.

19 MR. HARPOOTLIAN: All right. So you want me to
20 wait to reply to them if need be?

21 THE COURT: If need be.

22 MR. MEADORS: Your Honor, he's been --

23 THE COURT: Sir, it's your turn.

24 MR. MEADORS: If it pleases Your Honor?

25 THE COURT: Yes, sir.

1 **MR. MEADORS:** I guess first if I could summarize
2 what I think the defense position is.

3 **MR. HARPOOTLIAN:** Do you have a copy of the
4 case? I'm sorry.

5 **MR. MEADORS:** I'm sorry. I promise --

6 **MR. HARPOOTLIAN:** Are you going to hand the
7 judge a copy of some cases? I'm sorry. I thought he
8 handed up cases.

9 **MR. MEADORS:** No cases for Mr. Harpootlian. If
10 he's got any --

11 **THE COURT:** Let's go.

12 **MR. HARPOOTLIAN:** I'm sorry.

13 **MR. MEADORS:** My understanding of their
14 position, Your Honor, is that the fact that the
15 officers were at [REDACTED], I don't
16 believe they dispute the fact they could go there,
17 knock on the door, and then the testimony is when
18 Linfert looked in the window, they are claiming
19 that's a separate search, that then as a result of
20 the fruit of the poisonous tree knock out everything.
21 I think that's a basic summary of what they're
22 saying.

23 I'd like to start out by first of all talking
24 about the two cases they cited, Your Honor. I
25 believe first Rogers vs. Pendleton, Judge, 249 F3d

1 279, Judge. Beg the Court's indulgence. Judge, that
2 was a case where there was a party from somebody that
3 was going to Harvard school, I believe Harvard. The
4 parents had given a party. There was a certain time
5 limit for the party. Adults could drink. There was
6 a separate line for kids underage that couldn't
7 drink. The party was supposed to end at 10. And
8 there may have been a band or some music. I don't
9 know.

10 At some point the police officers got called.
11 There might have been some music or noise, loud noise
12 coming along. An officer comes by, Judge, doesn't
13 hear any at that point but takes it on his own,
14 decides just to go and investigate further, sees I
15 believe Rogers in the front yard.

16 This is a 1983 action, by the way, Your Honor.
17 And the front yard would be consistent with ours.
18 Sees Rogers in the front yard with a beer, decides
19 he's going to go ahead and just investigate. In my
20 opinion he didn't have probable cause, much less
21 reasonable suspicion. That's what this case whole
22 case is based on. I don't think it is in any way
23 factually similar to ours.

24 Very creative. Lauren, I think they go -- and
25 it does raise the proposition talking about curtilage

1 and says, no, you need more than reasonable
2 suspicion. You need probable cause, Your Honor; and
3 then goes on to cite Oliver and Dunn and says in
4 addition to probable cause you must have either a
5 search warrant and/or exigent circumstances.

6 Well, number one, I don't think there's any
7 clear law on that in this state or the United States.
8 The difference in this case, we had probable cause to
9 be there to start with for an arrest, Your Honor.

10 I then want to follow up also. I'll get to my
11 memo. I think there were exigent circumstances. I
12 think there were exigent circumstances. You had a
13 car there that had been identified on a video that a
14 bullet came from that killed John Johnson. They
15 didn't know where that car was. And they had
16 information somebody in that car had a gun and
17 already killed one person, might be out on the
18 streets. I think that's exigent circumstances when
19 you've got probable case for an arrest. You're
20 waiting to go get a search warrant to see if that car
21 is still there for the safety of everybody else in
22 this county.

23 So, number one, I think they do have exigent
24 circumstances. I don't even think that's the
25 proposition that that's clear law at this point. But

1 if it is, I think we meet it.

2 Judge, the second case, Schwartz, that was a
3 case where they, being police -- and it's from
4 Georgia -- the police went to look for a suspect in a
5 drug case. It wasn't even his house. It was
6 somebody else's house. And they thought he lived
7 there. And the guy said he doesn't live there and
8 then they went to search. I agree that's bad.
9 That's nothing to do with this case. Factually, that
10 has nothing to do with this case.

11 Your Honor, assuming -- I'll go to my memo --
12 assuming that Your Honor thinks or finds that that
13 was a separate search, peering in the window, which I
14 think is what they cite Schwartz for; and again, that
15 case, there was no probable cause even to go to that
16 house, which clearly I think distinguishes our case;
17 assuming Your Honor finds that a separate search, I
18 then would like to, if it please Your Honor, consider
19 my memo, our memo, which I have handed to Solicitor
20 Harpootlian.

21 Judge, obviously the first thing the State must
22 show, the State must show, a warrant issued hereunder
23 shall be issued upon affidavits sworn before a
24 magistrate, a municipal judge or a judge of a court
25 of order establishing grounds for the warrant. If

1 the magistrate is satisfied the grounds for the
2 application exists or that there's probable cause to
3 believe they exist, he or she shall issue a warrant
4 identifying the property, then naming or describing
5 the person or place to be searched. It may be issued
6 only upon a showing of probable cause.

7 So just for ministerial matters, we have
8 established with particularity the place to be
9 searched, the items we're looking for, without
10 question we believe. And again, that goes back to
11 the car is identified on the video, identified by the
12 witnesses, identified by a license tag prior to the
13 officer even going there. And Mr. Herring was
14 identified or put, placed with his house based on a
15 driver's license search.

16 Judge, we started thinking about this last night
17 along with some of our employees in Kershaw County.
18 And we realized that most of the body of the law is
19 based on drug search warrants where there have been
20 deficiencies and they've come to the court's
21 attention. And if one, either the reliability or one
22 of the prongs is deficient, you look how strong the
23 other prong is. And that's basically what the body
24 of law is made up of, as Your Honor well knows. And
25 a weakness in one area can be supplanted by strength

1 in another.

2 Judge, deficiency, one of the elements of
3 veracity and reliability may be compensated for in
4 determining the overall reliability of a tip by a
5 strong showing as to the other or by some other
6 indicia of reliability. And that's State v. Bellamy,
7 Your Honor, 336 SC 140.

8 Your Honor's test in reviewing this, reviewing
9 the testimony yesterday, is the totality of the
10 circumstances. If Your Honor today thought, well,
11 maybe they should not have peered in that window,
12 let's throw that out, Judge. Just throw it out.
13 Because under the good faith exception and the
14 inevitable discovery exception, they had probable
15 cause to get in that house. There is no question
16 about it.

17 They already knew the Toyota 4Runner was
18 connected to that house. The only thing they gained
19 by looking in there, they didn't gain anything. They
20 already knew it was there. They already knew it was
21 connected to that house.

22 The magistrate in that search warrant, Your
23 Honor, State's 5, has plenty of probable cause
24 outside of that Toyota 4Runner. They know somebody
25 has been shot. They know they've got a description

1 of his clothes. They know they've already been to
2 Landmark. It wasn't there. They know it's tied to
3 460. They've got him identified by description by
4 people that saw him just a few hours earlier.
5 They've got him -- did the officer orally supplement
6 to the magistrate? Yes. He's on video. It's the
7 same picture as the guy on the driver's license.
8 They've got probable cause to go arrest and search.
9 That provide that to the magistrate. Forget the fact
10 that Linfert saw it in there. All they did is
11 confirm what they already knew.

12 So if you throw that out, under the totality of
13 the circumstances, Your Honor, which is what Your
14 Honor must consider, there is plenty of probable
15 cause for the judge to issue this warrant. Good
16 faith exception, they relied on it, as they should.
17 Yes, I thought this was a good warrant. I was there.
18 They described him. I told the judge. And it leads
19 to the inevitable discovery doctrine, Your Honor.
20 They would have gotten in there and discussed that or
21 found that anyway. And that's clear law, Your Honor.

22 In this case items to be searched were the
23 4Runner, guns and other evidence related to the
24 shooting. The affidavit spells out the location of
25 the search warrant. The witnesses got the tag off

1 the suspect vehicle. The vehicle came back to the
2 defendant, his place of business. The business was
3 checked out. Records shows the defendant's residence
4 as the next logical place the vehicle might be. The
5 affidavit also included the witnesses gave a
6 description of the suspect orally supplemented with
7 information that a video was reviewed. The defendant
8 was identified via description, his DMV photo and the
9 video.

10 The search warrant is the defendant's residence.
11 In addition, the written affidavit memorialized that
12 a deputy had seen the suspect vehicle in the garage
13 at the location. They already knew that. They
14 already knew it was connected to him. So if you take
15 that out, the magistrate still had probable cause,
16 Your Honor.

17 And the deputy seeing that actually takes it
18 higher than our burden, beyond a reasonable doubt.
19 We don't have to do that as probable cause. So
20 again, if you take out the fact it appeared in there,
21 clearly we think there's probable cause for a
22 magistrate to find that this is proper to search this
23 particular residence, 460 Alexander Circle.

24 And that is exactly describing the situation, we
25 took that out of as in State v. Williams, Your Honor,

1 262 SC 186. "It is enough that the evidence is such
2 as to induce in the mind of the issuing officer an
3 honest belief that the facts set forth exist or as
4 would lead a man of prudence to believe that the
5 offense has been committed." They had all without
6 looking in and putting the Toyota, Linfert's
7 testimony he saw it in the driveway.

8 Basically, Judge, the good faith exception and
9 the inevitable discovery doctrine I believe protect
10 the State. And that's what the counter is to the
11 fruit of the poisonous tree, knocking everything out.
12 Of course there has been plenty of case law that says
13 because of that, it's not judicially efficient or
14 fair to knock out, respectfully, all of the evidence
15 when the officers relied on good faith and the items
16 would have been discovered inevitably, which they
17 would have in this case without question if
18 Investigator Linfert had not looked in the garage.

19 Beg the Court's indulgence. And I'll just
20 finish with this. In the event the Court rules an
21 improper search was conducted when the deputy peered
22 through the garage window results in a lack of
23 probable cause, the State would respectfully submit
24 that the evidence should still be admitted under the
25 good faith exception of the exclusionary rule. The

1 exception was carved out of the exclusionary rule in
2 United States vs. Leon, 468 US 896. Leon was
3 discussed in State v. Weston, 329 SC 287. The Court
4 held that when an officer acting in objective good
5 faith had obtained a search warrant from a judge or a
6 magistrate and acted within its scope, a reviewing
7 court should not order a suppression of the evidence
8 based on the lack of probable cause.

9 And, Judge, the cases that deal with -- as we're
10 all familiar with and used to deal with them more
11 than we do now, with the drug search warrants, they
12 deal with was it reckless? Was there stuff put in
13 the affidavit that's clearly wrong? And that's what
14 the courts look at in most of these cases. Look,
15 somebody may have almost lied in there.

16 You've got the exact opposite here. There's no
17 lying here. It was in there. You know, instead of
18 going in, these officers stopped. They've already
19 got probable cause to arrest. They stop and they go
20 get a search warrant. I mean, that's good law
21 enforcement. They could have gotten it without
22 looking in there. They take the precautions to dot
23 every I and every T. They don't put anything false
24 in their affidavit.

25 Three situations the court looks at. First is

1 the deference toward the magistrates finding probable
2 cause does not preclude inquiry into the knowing or
3 reckless falsity on the affidavit of which the
4 determination was based. There's none of that here.
5 Courts must also insist that the magistrate purport
6 to perform his neutral and detached function is not
7 served as a rubber stamp.

8 Third, reviewing courts will not refer to a
9 warrant based on an affidavit that does not provide
10 the magistrate with a substantial basis for
11 determining existence of probable cause. Clearly
12 that was here.

13 Your Honor, in conclusion, and thank you for
14 letting me talk, Judge, the State would submit that
15 the evidence should be admitted on the grounds that,
16 number one, the affidavit and oral supplementation
17 made in the application for the search warrant met
18 the burden of probable cause to support the issuing
19 of the search warrant.

20 Number two, the inevitable discovery doctrine
21 should apply to the extent that the Court rules any
22 improper searches were conducted and that a valid
23 search warrant would have been obtained and executed
24 despite any improper search with the same result as
25 what actually occurred.

1 And, third and finally, and again thank you,
2 Judge, that the search warrant contained sufficient
3 indicia of reliability that the officers executing it
4 were entitled to rely upon it, and that any evidence
5 obtained through that reliance should be admitted
6 under the good faith exception, if Your Honor gets
7 that far. Thank you.

8 **THE COURT:** Mr. Harpootlian.

9 **MR. HARPOOTLIAN:** Your Honor, after discussing
10 the curtilage issue yesterday with you, I went back
11 and looked for cases in which either the United
12 States Supreme Court, the Federal Court, Appeals
13 court or some other state court dealt with the
14 curtilage issue.

15 And the cases are overwhelmingly clear that a
16 police officer does not have the right to step off
17 that sidewalk and go look in a window. And the
18 testimony is clear here he went way off the sidewalk,
19 and if he looked in that front window he had to go
20 behind the bush. But taking him at his word, he was
21 way off the sidewalk and into the curtilage.

22 United States v. Larry VanDyke which is a Fourth
23 Circuit case, it says: "Because of expectations of
24 privacies inherent in common law concept of
25 curtilage, we recently reiterate that absent exigent

1 circumstance the warrantless search of one's home or
2 its curtilage when effectively trespassing violates
3 the Fourth Amendment", United States v. Jackson.

4 A 1987 case, United States v. Dunn, Supreme
5 Court of the United States in which the Supreme Court
6 said: "Drawing upon the court's own cases, the
7 cumulative experience of the lower courts have
8 grappled with the task of defining the extent of the
9 home's curtilage, we believe the curtilage question
10 should be resolved with particular reference to four
11 factors: The proximity of the area claimed to be
12 curtilage to the home, for the areas included within
13 an exclusive enclosure surrounding the home, the
14 nature of the uses to which the area is put, and the
15 steps taken by the resident to protect the area from
16 observation. United States Supreme Court.

17 **THE COURT:** I've read it.

18 **MR. HARPOOTLIAN:** Schwartz and Brad, we handed
19 that up to you yesterday.

20 **THE COURT:** Yes, sir. I read it.

21 **MR. HARPOOTLIAN:** Rogers v. Pendleton, we handed
22 that up to you yesterday.

23 **THE COURT:** I read it.

24 **MR. HARPOOTLIAN:** Holder v. State of Indiana,
25 Supreme Court of Indiana, defines curtilage. I'm not

1 trying to beat a dead horse here, but I would differ
2 with the -- which defines it the same way the Supreme
3 Court does. But I just want to make it clear that
4 every state, the United States Supreme Court, every
5 Federal Circuit would find the area the police
6 officer went into was curtilage.

7 **THE COURT:** I would agree with you.

8 **MR. HARPOOTLIAN:** Well, then I don't need to
9 beat that dead horse.

10 Secondly, once you do that, once you find that
11 he went into the curtilage; and of course, Your
12 Honor, Won San on exigent circumstances, the old Won
13 San case says: "The government claims no
14 extraordinary circumstances such as the imminent
15 destruction of vital evidence or the need to rescue a
16 victim in peril." That's the Won San case.

17 So the exigent circumstances argument I think is
18 wrong. So, what we're left with is an affidavit.
19 And I copied it. And I've taken out the part about
20 seeing the car in the garage. And what it now says
21 is: "On January 29th deputies of the Richland County
22 Sheriff's Department responded to Chastity's
23 Nightclub located at 3722 River Drive in regards to a
24 shooting innocent."

25 Well, that doesn't give you any information.

1 And again, "the reason for affiant's belief that the
2 property sought is on the subject premises." Details
3 of this case can be found in a certain report. "The
4 victim, John Johnson, was shot once in the head by an
5 unknown firearm." Again, nothing to connect it to
6 Alexander Circle.

7 "The victim was pronounced deceased at Richland
8 Memorial Hospital shortly after arrival. Witnesses
9 were able to describe the suspect responsible and
10 provided a license plate to the suspect vehicle. The
11 vehicle was described as a black Toyota 4Runner
12 bearing S.C. education tag 1891."

13 Interestingly, according to DMV records, this
14 license is registered to Dewain Herring at

15 in Columbia, South Carolina. So the
16 registration comes back to Landmark Drive. This
17 location was closed. "A search of Richland County
18 records also provided an additional address of

19 "in Columbia." They didn't cross out
20 the part about looking in the window and seeing the
21 car. "A search of the residence and vehicle were
22 necessary to help further assist this ongoing
23 investigation."

24 Now, what reason is there to believe that
25 evidence of a crime is located at

1 What probable cause is there to believe
2 other than that's the address he lists on his
3 driver's license?

4 And, Your Honor, the cases are replete. There
5 is a Seventh Circuit case almost directly on point,
6 if I can find it, United States v. Dickerson, a 1992
7 case in which -- let me make sure. There we go.
8 This is a robbery. The probable cause affidavit
9 presented to the municipal court judge stated only
10 that a witness saw the robber run from the bank to a
11 car, parked in the emergency lane on I-69, and the
12 license plate number was registered to Dickerson at

13 The affidavit did not even
14 state the car was parked at the house. Thus,
15 Dickerson persuasively argues the affidavit provided
16 the issuing magistrate no facts to establish that
17 evidence of a crime could be found inside the
18 residence at 4858 North Hillside. And the District
19 Court suppressed that search, suppressed that search.

20 So, though that's easily, except the only
21 difference here is, the car's registration comes back
22 to not e but to Landmark. So, Your
23 Honor, initially we would say --

24 **THE COURT:** Well, the car, you keep saying that.
25 But the car is registered not to a place. Cars are

1 registered to individuals.

2 **MR. HARPOOTLIAN:** Yes, sir.

3 **THE COURT:** At a place. Am I correct?

4 **MR. HARPOOTLIAN:** Well, yes, sir. But assume
5 for the sake of argument that they are multiple
6 places. What gives them probable cause to believe
7 there is evidence of a crime in that location as
8 opposed to Landmark? What evidence? None.

9 **THE COURT:** I guess, correcting what you keep
10 telling me, a car is not registered to a place. It's
11 registered to an individual. And perhaps they looked
12 in the phone book. I don't know.

13 **MR. HARPOOTLIAN:** Right.

14 **THE COURT:** But go ahead.

15 **MR. HARPOOTLIAN:** We would hand up to the Court
16 a memorandum of attached cases. They are initialed
17 memorandum. And I think it's important to review the
18 basic concept here, the Wayward case which is a
19 Fourth Circuit case, 1993. And it says:
20 "Residential searches have been upheld only where
21 some information links the criminal activity to the
22 defendant's residence." And here there is no evidence
23 to link it to the residence.

24 In addition -- and, Your Honor, the knock and
25 talk we've talked about in *Rogers v. Pendleton*, State

1 v. Schwartz and all these cases about the burden is
2 not to talk, absent that information they had no
3 evidence to believe any evidence of the crime was
4 contained at that location.

5 In addition, Your Honor, we have -- you just
6 heard this officer testify, one officer listed as the
7 affiant and another officer signing the warrant.
8 They can say that's a Scrivener's error. But what it
9 does, and it may indicate recklessness on their part,
10 but what it certainly does indicate is the absence of
11 a neutral and detached magistrate. How a magistrate
12 can look at the warrant and see one name as the
13 affiant at the top and then let somebody else sign it
14 we think indicates a violation of Leon and Dunbar.

15 Dunbar says: "In reviewing an application for a
16 search warrant, a magistrate must make an independent
17 determination of probable cause and not serve as a
18 rubber stamp for the police." So, that's an invalid
19 affidavit.

20 In the Eight Circuit you have The United States
21 v. Decker: "The magistrate was found to have wholly
22 abandoned his judicial role when admitting to having
23 blanched at a facially defective search warrant and
24 having executed the search warrant on the strength of
25 what the officer said."

1 So, that had to be what happened here. Had to
2 be. Because if he read it, he would have seen one
3 person was the affiant and another person signed it.
4 That's facially detective.

5 And additionally we argue that the scope of the
6 search warrant, they exceeded the scope of the search
7 warrant in their investigation. They've said they
8 wanted to search a person or persons on the premises,
9 vehicles on the premises, outlying buildings. And
10 yet, they went through bedroom, bathroom, medicine
11 cabinet, closet, son's bedroom; way beyond what
12 was -- and none of that was alleged to have been
13 evidence of a crime.

14 And a Fourth Circuit case, United States v.
15 Uzinski: "A blanket suppression is appropriate where
16 the warrant application merely serves as a subterfuge
17 masking the officer's probable cause for a general
18 search."

19 Now, that goes to the Richland County search
20 warrant. Do you want me to go on and argue the ~~SLED~~
21 ~~search warrant while we're here?~~

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

23 **MR. HARPOOTLIAN:** Okay. In response to the
24 Richland County officer's firing on the defendant,
25 SLED went. They did an interview and got their own

1 search warrant. Now, Judge, we spent last night
2 looking for some rule, some -- there is a generally
3 recognized exception in many, many states that allow
4 a telephonic affidavit on a search warrant. We can
5 find no such exception in this state. As a matter of
6 fact, every case we found says that our requirements
7 are dictated by the statute.

8 And the statute says: "A warrant shall be
9 issued only upon affidavit sworn to before the
10 magistrate court of record establishing grounds for a
11 warrant." That's 17-13-140.

12 In 28-360, as to the meaning of the phrase, by
13 defining the term "acknowledged before me" employed
14 by notaries, the words "acknowledged before me" means
15 the person acknowledging appeared before the person
16 taking the acknowledgment. Now, certainly our court
17 has said over and over again our statute makes our
18 view of issuing search warrants a legal standard
19 higher than the general Fourth Amendment standard.

20 Your Honor, I hand up to you the case of the
21 State v. McKnight which was written by The Honorable
22 Julius Ness in 1987. And in that case, if I can find
23 the language, on the second page of the -- actually,
24 it's the third page. "A search warrant which itself
25 is insufficient to establish probable cause may be

1 supplemented before the magistrate by sworn oral
2 testimony." State v. Sacks. "However, sworn oral
3 testimony standing alone does not satisfy the
4 statute. The mandate of the statute is clear. The
5 court cannot under the guise of statutory
6 interpretation overlook the plain meaning of the
7 statute to apply wholly different meaning."

8 The paragraph before that. I'm sorry. "The
9 State argues the warrant was not defective since it
10 was supported by Cox's sworn oral testimony. An
11 affidavit is a voluntary ex parte statement reduced
12 to writing and sworn to or affirmed before some
13 person legally authorized to administer an oath or
14 affirmation. It differs from an oath in that an
15 affidavit consists of a statement of fact which is
16 sworn to as the truth while an oath is pledged."

17 So he very specifically says that an affidavit,
18 what it is, and it's got to be sworn to before. Now,
19 we have civil rules to define how you do a deposition
20 by telephone. And there's specific civil rules that
21 deal with that because you have to go through a
22 number of steps to dot an I and cross a T to take a
23 deposition. Which I might point out is a far less
24 effective document than a search warrant.

25 And yet, the State would say based on the only

1 testimony in this record from Lieutenant Lawrence who
2 says he talked to a judge who told him that they had
3 some Order that allowed him to do it. We can't find
4 any such Order in the -- well, I don't have but one
5 copy of this. But we just got this from the Chief
6 Justice's office which is the Order. We do have some
7 copies. I'm sorry. And I think this may be even
8 further instructive as to why this warrant is not --
9 let's see if it complies with the Chief Justice's
10 Order.

11 "Number one, search warrant should be obtained
12 by law enforcement officers in person before a
13 magistrate judge during usual operating hours
14 whenever possible and when circumstances are
15 practical."

16 Now, the first thing is, this search warrant,
17 the SLED search warrant, as you can see from the time
18 stamps on it, it's faxed over at 8:27 and faxed back
19 at 8:46. That ain't the middle of the night.

20 "In extraordinary circumstances or after normal
21 court hours when a law enforcement officer finds it
22 necessary to obtain a search warrant the following
23 procedures shall be obtained, facsimile search
24 warrants. All search warrants issued either in
25 person or by facsimile must comply with the language

1 and format established and authorized by the statute
2 by the Attorney General of this state. The law
3 enforcement officer applying for the facsimile search
4 warrant shall fully prepare the search warrant and
5 all related affidavits. The search warrant must
6 consist of the minimum four pages required by the
7 Attorney General's approved form. The officer will
8 then telephonically contact the district magistrate.
9 If that magistrate is unavailable, then the officer
10 may contact the on call. The officer will then
11 telephonically brief the magistrate, the officer then
12 fax the search warrant to the magistrate. The
13 officer shall sign all pages of the warrant prior to
14 faxing the warrant."

15 It doesn't look like he signed all pages. It
16 looks like he signed only the affidavit. And I
17 suppose the reason you want all pages signed is so
18 the magistrate knows and can authenticate that each
19 page is a real page.

20 "If the magistrate is satisfied with the
21 warrant, he will then contact the officer and the
22 officer will be telephonically sworn to the facts
23 contained in the warrant. The magistrate will then
24 sign each page of the search warrant and fax it back
25 to the officer." Again not done. "The original

1 search warrant and facsimile of the search warrant
2 will be served and a copy of the facsimile search
3 warrant shall be left at the address. The original
4 facsimile with the" -- with something. Apparently
5 we're missing something here, but this is the best we
6 could get this morning.

7 Judge, first of all, and let me say this. And I
8 respect the Chief Justice. But I don't believe that
9 her Order supersedes a five-justice decision by the South
10 Carolina Supreme Court of 1987. I don't think she
11 can determine unilaterally what the statute means.
12 And I think the statute means when "personally
13 appeared before me" means "personally appeared before
14 me."

15 Secondly, they didn't even comply with what she
16 said to do. And there are strict requirements here
17 because facsimiles, and we've dealt this before, are
18 inherently unreliable. There is no law -- now, there
19 is a law now which allows, you can use Internet to
20 communicate things that are certified and there are a
21 number of procedures you go through that.

22 But this is a very cavalier and reckless way to
23 deal with a procedure that we don't concede is
24 Constitutional or legal under our statute, but they
25 didn't even comply with that.

1 In addition, Your Honor, the SLED affidavit
2 fails to establish probable cause. These are
3 conclusionary statements. And it's important to
4 remember that in State v. Weston, a 1987 case, our
5 Supreme Court suppressed the fruits of a search
6 warrant because, quote, the affidavit failed to set
7 forth any facts as to why the police believed Weston
8 committed the crime.

9 Similarly, in this affidavit, Lawrence gave no
10 indication of any crime at all, much less connection
11 of Herring to a crime. Lawrence bases much of his
12 affidavit upon a recitation or allegations regarding
13 the Chastity's incident earlier in the evening, an
14 incident that by his own testimony he wasn't
15 investigating.

16 So there was no probable cause. His affidavit,
17 he didn't comply with the Chief Justice's Order, and
18 we don't believe you can get a telephonic -- you
19 can't swear over the telephone to a magistrate under
20 our statute, not under the Fourth Amendment, but our
21 statute requires a more stringent standard.

22 In addition, Your Honor, as Agent Lawrence
23 testified, much of what he relied on was obtained by
24 the Richland County Sheriff's Department on their
25 illegal search and their illegal entry into the

1 residence. And of course their search exceeded the
2 investigation of the shooting incident at 460
3 Alexander Circle.

4 So, Your Honor, that is initially. And now let
5 me respond to a couple of things. The solicitor has
6 raised a good faith exception under Leon. I hand up
7 to the Court a memorandum on Leon. And we would say
8 that it doesn't apply for four reasons. First, the
9 magistrate approved a facially defective warrant.
10 Somebody up here is the affiant. Somebody down here
11 swears to it. Second, the affidavit was invalid and
12 insufficient. It never stated why there was belief
13 that there was evidence of a crime, why there was
14 specific evidence of a crime within the house.

15 So, and, Judge, I'm not going to hash and rehash
16 what's in this memo except to say that as Wayward
17 said, and I cited that earlier, it must be reasonable
18 to believe the items to be seized would be found in
19 the place to be searched. And I again quoted
20 Dickerson in here.

21 And even if a Federal good faith standard were
22 applied, a good faith exception to the South Carolina
23 warrant statute would not. As the South Carolina --
24 in State v. Covert, as the South Carolina Supreme
25 Court has recognized, Section 17-13-140 of the South

1 Carolina Code actually imposed stricter warrant
2 requirements and Constitutional provisions. So good
3 faith would not apply.

4 And of course as to the statute, the SLED
5 warrant is statutorily deficient, doesn't comply with
6 the Chief Justice's Order, and the affidavit doesn't
7 provide the magistrate with a substantial basis for
8 the determination of probable cause.

9 And we believe all of that violates our statute.
10 And Leon only goes to Constitutional infirmities, not
11 statutory infirmities. And the SLED warrant is based
12 almost entirely on the fruits of an unlawful search.

13 And, Your Honor, I'd like to hand up another
14 memorandum to you. This is to deal with basically
15 their inevitable discovery, sort of what we call the
16 independent source doctrine in which they've argued.
17 The independent source doctrine recognizes that
18 evidence must be excluded if it would not have come
19 to light but for the illegal actions of the police
20 the evidence has been obtained by the exploitation of
21 that illegality. That's State v. Copeland, a 1996
22 case, and in Won San, of course the seminal fruit of
23 the poisonous tree United States Supreme Court case.

24 The independent source doctrine doesn't cure the
25 deficiencies. And we have attached cases which we

1 believe point out very clearly that our statutory
2 construct has been violated, and the independent
3 source doctrine does not in any way get them past
4 that.

5 In Murray vs. United States, a 1988 case, the
6 Fourth Circuit said this. I'm sorry. The United
7 States Supreme Court said this. Looking at a -- I
8 think it was a Maryland statute. "The General
9 Assembly has imposed strict requirements in Federal
10 law for issuing a search warrant. Both the Fourth
11 Amendment" -- I'm sorry. This is The State vs.
12 Jones. "Both the Fourth Amendment of the United
13 States Constitution, Article 1, Section 10 of the
14 South Carolina Constitution require an open oath of
15 affirmation before probable cause can be found by an
16 officer of the court and a search warrant issued."

17 Additionally, the South Carolina Code mandates
18 the search warrant, quote, shall be issued only upon
19 affidavit sworn to before the magistrate, municipal
20 judge or a judge of a court of record. That's State
21 vs. Jones, a 2000 case. And of course I've already
22 cited McKnight, Chief Justice Ness' decision.

23 Without the illegally obtained information as to
24 the location of the 4Runner, no probable cause
25 exists. And I've already walked through that. The

1 Wayward case. In State vs. Baccus our Supreme Court
2 found the search warrant led to reckless probable
3 cause because the supporting affidavit failed to set
4 forth any facts as to why the police believed the
5 defendant committed the crime, lacked specificity and
6 contained conclusionary statements. And I've
7 outlined that. I don't want to beat a dead horse
8 here, Your Honor.

9 But in State v. Weston, a 1997 case, Justice
10 Toal issued a unanimous opinion suppressing the
11 fruits of the search warrant in an affidavit that
12 read this. "On March 18th, 1994, at approximately
13 22:45 hours, the victim, Claude Crumb, who was a
14 victim of an armed robbery and assault with intent to
15 kill at The defendant in this
16 instance, Kelvin Weston, Kelvin Weston by the South
17 Carolina Department is the registered owner of the
18 above-listed vehicle. Also investigation revealed
19 through witnesses this defendant was driving the
20 above vehicle at the time of the incident. The
21 search for the above items are fully needed or needed
22 to fully complete this investigation.

23 "The court delivered a scathing review of the
24 language saying the first three sentences of the
25 affidavit are merely conclusionary statements. While

1 the fourth sentence provides information linking
2 Weston to his car at the time of the incident, it
3 offered nothing to link Weston or the Datsun to the
4 Crumb crime itself." So here it's the residence, not
5 the car.

6 And we -- Judge, we have not sworn this jury.
7 There are at the minimum troubling, troubling,
8 troubling questions about these search warrants. I
9 think even the solicitor has indicated to you that
10 should you rule to suppress these matters they will
11 appear the matter and we'll get a resolution of these
12 issues prior to trying this case.

13 In fairness, I think that once we raise the
14 issues and show that the warrants are facially
15 defective or there's a facially defective search, the
16 burden shifts to the State. I submit to you, please
17 don't put the burden on the defendant to prove the
18 searches were unconstitutional or illegal. The
19 burden is on the State.

20 There has been no testimony they complied with
21 that Order of the Chief Justice. There has been no
22 testimony that they complied with that statute. We'd
23 ask you to suppress both the searches. If the State
24 wants to appeal it, we'll be back here within 12
25 months, 13 months or so. If the court reverses

1 you -- I believe they will affirm you should you
2 suppress these -- and then we'll be dealing with a
3 case without having to litigate it once with all of
4 these issues as to whether the search -- there's no
5 question looking in that window, I respectfully
6 submit to the Court, was unconstitutional intrusion,
7 a violation of the law.

8 And once they began that process and didn't
9 comply with the Chief Justice's Order, which again I
10 would not concede is appropriate, they themselves
11 violated the law. And that's what we're here to do.
12 We're here to make sure the law is followed. This
13 man is accused of murder. It's a very serious
14 offense. We'd move that Your Honor suppress these
15 searches, allow the State to appeal, get the highest
16 court of this state to decide whether this is the
17 kind of conduct which they have not in the past
18 approved and I submit will affirm you should suppress
19 them. Thank you, Your Honor.

20 **MR. MEADORS:** Very briefly?

21 **THE COURT:** Solicitor.

22 **MR. MEADORS:** May it please, Your Honor?

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

24 **MR. MEADORS:** Of course we certainly think
25 you'll be affirmed once Your Honor respectfully lets

1 this in, if that's needed to be down the road.

2 I'd like to quote Weston that he was citing
3 there, Your Honor. "The court held that when an
4 officer acting in objective good faith has obtained a
5 search warrant from a judge or a magistrate and acted
6 within his scope, the reviewing court should not
7 order a suppression of the evidence based on the lack
8 of probable cause."

9 Judge, we have probable cause here despite when
10 he looked in there. There's an independent source
11 doctrine memo that basically says that because
12 Linfert was at the top of the search warrant the
13 whole thing should be thrown out. That's clearly not
14 the law. You've had officers testify that he told
15 the judge I'm who I am. He knew who Investigator
16 Davis was. There's no bearing on that, respectfully,
17 we think whatsoever.

18 Judge, it's all good faith. He handed you a
19 copy of this reason to believe and left out the
20 Toyota. We will agree with him. Leave him out.
21 That's our argument. One thing he did not mention in
22 that nice recitation for those many minutes was oral
23 supplementations. It never came out of his mouth.

24 We think this by itself is enough. They clearly
25 have somebody identified. They have a license

1 number. They have a car. The only other logical
2 place it would be is his residence which is on the
3 driver's license which has the same photo they saw in
4 the video from Chastity's.

5 Investigator Morris orally tells the judge in
6 addition to this we've seen him on video. He was
7 there. His car -- I think as Your Honor said, a car
8 belongs to a person, not a place. And he lives at
9 his residence, Your Honor. Whether the car was in
10 here or not, they were going to search the residence
11 based on probable cause. That's where Dewain Herring
12 lived. It had identified Dewain Herring through
13 witnesses' descriptions and through the video.

14 Judge, in addition, and clearly I think it's
15 what the law says. They acted in good faith. And
16 the inevitable discovery doctrine, Your Honor, even
17 if Linfert hadn't looked in there, this search
18 warrant would have been issued. They would have
19 found the car and the other items in there.

20 Going to the SLED search warrant, I rest on Our
21 Honor, Chief Justice Toal. That's who I cite, the
22 Chief Justice of the South Carolina Supreme Court who
23 issued this Order under circumstances, you can do it
24 this way. They in good faith relied on that Order.
25 It was a Sunday morning. The magistrate said this is

1 the way we're going to do it. Here is the Order. We
2 can do it. He signed it. He faxed it, gave her the
3 probable cause. And the probable cause in that
4 affidavit, Your Honor, as is stated through David
5 Lawrence, Lieutenant Lawrence I think, Captain
6 Lawrence, they were there investigating a police
7 officer shooting. Out of an abundance of caution,
8 they executed another search warrant for some items
9 that I know Solicitor Harpootlian wants to go into in
10 this trial. They went in and said, hey, this is why
11 we were here. There was this incident at Chastity's.
12 That's how the police got involved. That led to the
13 shooting at 460 Alexander Circle. That's what we're
14 here to search. Two search warrants. Two separate
15 law enforcement agencies. I don't know how much more
16 good faith you could have. And they followed Her
17 Honor's, Chief Justice's, Order in getting that
18 search warrant.

19 Beg the Court's indulgence. Your Honor, it is
20 good faith. These officers got this search warrant,
21 executed it in good faith after talking with two
22 magistrates, authorized these two search warrants,
23 gave them the probable cause. Even without Linfert
24 putting in the affidavit that the defendant was in
25 there, they knew the Toyota belonged to Dewain

1 Herring. They would have found it anyway.

2 We respectfully ask Your Honor to deny these
3 motions so that we can go forward with this trial.
4 Thank you.

5 **THE COURT:** All right. Let's take a 15-minute
6 recess. I'll give you my decision.

7 (Whereupon, a break is taken)

8 **THE COURT:** All right, counsel. I have
9 considered the matter of the State's -- I mean the
10 defendant's motion to suppress both the Richland
11 County Sheriff's Department search warrant and the
12 SLED search warrant and find as follows.

13 The warrantless search -- it was a warrantless
14 search -- within the curtilage of the defendant's
15 home was conducted by the Richland County Sheriff's
16 Department. And Investigator Linfert on
17 January 29th, 2006, according to his testimony, he
18 observed a 1996 4Runner in the defendant's garage.
19 The garage is attached to the house. The garage
20 doors were closed. The windows in the garage facing
21 the street had blinds which were drawn according to
22 Mrs. Herring. He thereafter left the premises to
23 assist in obtaining a search warrant from a
24 magistrate.

25 This search fits into none of the classic

1 warrant requirement exceptions under the law. It was
2 not incident to an arrest. There may or may not have
3 been exigent circumstances. It was approximately
4 4:00 in the morning in a quiet neighborhood. There
5 appeared to be no reason to go onto the property.

6 Perhaps the officers could have obtained --
7 nothing was -- it was a quiet evening apparently. No
8 exigency to keep somebody from fleeing from the
9 premises. Although exigent circumstances could also
10 lead to the destruction of evidence. So, I mean, I
11 have to consider that, too. So I say there may or
12 may not have been exigent circumstances which would
13 have been an exception to the warrant requirement.

14 There was no search by consent. I believe the
15 search clearly violated the defendant's expectation
16 of privacy within his home, a right which is
17 protected by the Fourth Amendment to the Constitution
18 and pursuant to U.S. v. Oliver could not support the
19 seizure of evidence or be the basis for a later
20 search warrant.

21 Pursuant to Matt v. Ohio, U.S. Supreme Court,
22 the remedy for such violation is to suppress any
23 evidence seized or to suppress a subsequent search
24 warrant and its fruits. However, in this case no
25 evidence was seized at that time. So we must turn

1 solely to the search warrant.

2 A search warrant can be issued only based on
3 probable cause. Probable cause is supplied by
4 evidence which would lead a reasonable person to
5 believe that an offense has been or is being
6 committed and that the items to which the search
7 warrant is directed are located in the area
8 described.

9 Disregarding the language of the affidavit which
10 both counsel have pointed out, disregarding that
11 language in the affidavit referring to the
12 defendant's 4Runner, or 4Runner, the Court finds that
13 there are sufficient facts sworn to in the affidavit
14 which would lead a disinterested magistrate to
15 conclude that a search warrant should be issued of
16 the defendant's premises.

17 A homicide had just occurred. Witnesses
18 described the defendant, a black 4Runner and the
19 license number. The police identified the defendant
20 as the owner of the 4Runner and had determined that
21 the defendant's residence was

22 A gun had been used in the homicide. The items
23 sought in the warrant, firearms, ammunition,
24 clothing, the 4Runner are typically items that would
25 be kept in one's home. Thus, it is this Court's

1 ruling that the search warrant was supported by
2 probable cause when it was issued by the magistrate,
3 and the items seized as well as the warrant itself
4 are admissible. Therefore, the defendant's motion to
5 suppress the Richland County Sheriff's Department
6 search warrant is denied.

7 With regard to the SLED search warrant, the
8 Court rules that it was also supported by probable
9 cause when issued, and the items seized and the
10 warrant itself are admissible. Therefore, the
11 defendant's motion to suppress the evidence gathered
12 through the SLED warrant is denied.

13 Additionally, I might comment that it's the
14 Court's opinion that under the inevitable discovery
15 doctrine the evidence seized from the automobile
16 would have eventually been discovered as a result of
17 other processes such as an arrest warrant during a or
18 the routine investigation of this homicide. And I so
19 rule.

20 All right, counsel. Are you ready for the jury?

21 **MR. HARPOOTLIAN:** Your Honor, we need about five
22 minutes before we bring the jury. Mr. Herring needs
23 to step in the restroom. Before he does that, can I
24 state two things for the record?

25 **THE COURT:** Certainly.

1 **MR. HARPOOTLIAN:** One, we except to your ruling.

2 **THE COURT:** Certainly.

3 **MR. HARPOOTLIAN:** Two, under the most recent
4 decisions, can I note that nunc pro tunc and not
5 every time they introduce the evidence so I don't
6 have to reiterate that?

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

8 **MR. HARPOOTLIAN:** Three, Your Honor, as to your
9 ruling on inevitable discovery as to the arrest of
10 Mr. Herring, the alleged murder weapon was found in a
11 closet nowhere near him and would not have been --
12 there is no evidence to indicate that they would have
13 secured that location. They got the gun and pulled
14 him out. So I just note that for evidentiary
15 purposes. Can we take five minutes and be ready to
16 go?

17 **THE COURT:** Yes, sir. Go ahead.

18 **MR. HARPOOTLIAN:** Your Honor, while he's doing
19 that, I'd like the Chief Justice's Order made a part
20 of this record.

21 **MR. MEADORS:** We have no objection.

22 **MR. HARPOOTLIAN:** And all of the materials, all
23 the memorandums that we've handed to the Court. I
24 can do that separately if that's okay.

25 **THE COURT:** Well, and all the cases.

1 **MR. HARPOOTLIAN:** And all the cases. Yes, sir.

2 **THE COURT:** I'll attempt to accumulate them.
3 I've broken them up.

4 **MR. HARPOOTLIAN:** Okay.

5 **MR. MEADORS:** We'd ask that the State's memo
6 also be made a part of the record.

7 **THE COURT:** Approach the bench, please.

8 (Whereupon, a bench conference is had)

9 (WHEREUPON, Court's Exhibit No. 3 is marked for
10 identification.)

11 **THE COURT:** All right. Is the State ready to
12 proceed?

13 **MR. GIESE:** The State's ready.

14 **THE COURT:** Is the defense ready to proceed? Is
15 the defense ready to proceed?

16 **MR. HARPOOTLIAN:** Yes, sir. I'm sorry.

17 **THE COURT:** Bring the jury, please.

18 (Jury in at 10:40 a.m.)

19 **THE BAILIFF:** The jury is present, Your Honor.

20 **THE COURT:** All right. Thank you very much.
21 Good morning, ladies and gentlemen. We're ready to
22 continue -- not to continue -- to begin this trial.
23 Madam Clerk, will you swear the jury, please.

24 **THE CLERK:** Yes, sir. Ladies and Gentlemen of
25 the Jury, if you'll stand and please raise your right

1 hand to be sworn. After this oath please acknowledge
2 by answering, "I do."

3 (Whereupon, the jury is sworn)

4 **THE CLERK:** Thank you. You may be seated.

5 **THE COURT:** All right, ladies and gentlemen.
6 Before we begin this trial I want to tell you just
7 some introductory remarks. This trial will probably
8 be different from what you might expect. Many people
9 do not have a chance to attend actual court sessions
10 as you're now doing. You may think from watching
11 television or movies or reading books that trials are
12 always full of high drama or intense action.

13 While all of these things may be true at times,
14 this trial is not for entertainment. It's a
15 fundamental part of our democracy, a search for the
16 truth in an effort to make sure that justice is done
17 between the parties before this court. Searching for
18 the truth, making sure that justice is done, is often
19 a slow, deliberate and repetitive process, the
20 opposite of what you may have seen on television on
21 in books or in movies.

22 This courtroom is a place of honor dedicated to
23 the protection and preservation of citizens' rights
24 through what many have called the greatest justice
25 system ever created.

1 The attorneys appearing before you are advocates
2 for the parties they represent; but first and
3 foremost, they are officers of this court sworn to
4 uphold the integrity and fairness of our judicial
5 system and to help you in a search for the truth.
6 You should expect them to be professional, competent
7 and ethical in the representation of their clients'
8 interests.

9 And remember that you've just taken an oath to
10 try this case and reach a fair and just verdict. You
11 are also expected to be professional, reasonable and
12 ethical. So I want to thank you as we begin this
13 trial for accepting this important responsibility of
14 jury service and for your contribution today to our
15 justice system.

16 As you know, we are about to try the case of The
17 State v. H. Dewain Herring. And what I tell you now
18 is intended to serve as a further introduction of the
19 case. These remarks are not a full explanation of
20 the law applicable to the case which I will explain
21 to you later at the end of the trial. This is merely
22 an explanation of the procedure we will follow in the
23 trial of this case so you may better understand what
24 may be happening from time to time.

25 Now, I have given you paper and pads to take

1 notes. I cautioned you yesterday about what those
2 notes are for. They're for your own personal
3 recollection, not to be used at any point to try to
4 convince your fellow jurors that you may have taken
5 something down that they may not have heard or may
6 have taken down in a different fashion.

7 The defendant is charged in two indictments,
8 first with murder, and the second with pointing and
9 presenting a firearm. Now, let me just take a moment
10 and define to you our law as it relates to murder.
11 The defendant is charged with murder. The State must
12 prove beyond a reasonable doubt that the defendant
13 killed another person with malice aforethought.

14 Now, malice is hatred or ill will or hostility
15 towards another person. It is the intentional doing
16 of a wrongful act without just cause or excuse and
17 with an intent to inflict an injury or under
18 circumstances that the law would infer an evil
19 intent.

20 Malice aforethought does not require that malice
21 exist for any particular time before the act is
22 committed, but malice must exist in the mind of the
23 defendant just before and at the time the act is
24 committed. Therefore, there must be a combination of
25 evil intent and the act.

1 Malice aforethought may be express or inferred.
2 These terms express and inferred do not mean
3 different types of malice but merely the manner in
4 which malice may be shown to exist; that is, either
5 by direct evidence or by inference from the facts and
6 circumstances which are proved.

7 Express malice is shown when a person speaks
8 words or expresses hatred or ill will for another or
9 when the person prepared beforehand to do the act
10 which is later accomplished.

11 For example, lying in wait for a person or any
12 other acts of preparation going to show that the deed
13 was within the defendant's mind would be express
14 malice. Malice may be inferred from conduct showing
15 a total disregard for human life. Inferred malice
16 may also arise when the deed is done with a deadly
17 weapon. A deadly weapon is any article, instrument
18 or substance which is likely to cause death or great
19 bodily harm.

20 Now, the indictment charging pointing and
21 presenting a firearm probably doesn't need much more
22 definition than that. Now, these indictments are
23 simply the charges by which the case is brought into
24 court. They are not in any sense evidence of any of
25 the allegations that they contain. The defendant has

1 pled not guilty to these indictments; and the State,
2 therefore, has the burden of proving each of the
3 elements of the indictments beyond a reasonable
4 doubt.

5 And it will be your duty, ladies and gentlemen,
6 to decide whether the State has met that burden.
7 Your purpose as jurors is to find and determine the
8 facts. You are the sole judges of the facts. If at
9 any time I make any comment regarding the facts, you
10 must disregard that. You are to determine the facts
11 from the testimony you hear and any other evidence
12 that's introduced into court. It will be up to you
13 to determine the inferences which you feel may
14 properly be drawn from the evidence.

15 It's especially important that you perform your
16 duty of determining the facts diligently and
17 conscientiously because ordinarily there is no way to
18 correct an erroneous determination of the facts by a
19 jury.

20 On the other hand and with equal emphasis the
21 same law that makes you the judges of the facts makes
22 me the judge of the law. The law as given by the
23 Court is the only law you may consider. You must
24 accept it and follow it even though you may disagree
25 with it. I cannot tell you what the facts are. You

1 should not disagree with me about what the law is or
2 what the law should be. Your job is to take the law
3 as I explain it to you and apply it to the facts as
4 you find them from the testimony of the witnesses and
5 any other evidence which is introduced during the
6 course of the trial. And after doing that you will
7 render your verdict, a true and just verdict under
8 the solemn oath you just took as jurors.

9 And until I advise you to begin your
10 deliberations you must not discuss this case with
11 anyone, including your fellow jurors, friends, family
12 members or anyone involved in the case. After the
13 case is submitted to you, you must discuss it only in
14 the jury room with your fellow jurors.

15 The attorneys and the parties in this case have
16 been advised that they are not to talk to you at all.
17 So if anyone involved in the case sees you and
18 doesn't say hello, they're not being unfriendly.
19 They're just following my instructions.

20 And during the trial I have asked you yesterday,
21 do not read, listen to or watch news accounts or
22 reports about this case. This includes anything that
23 may be in the newspapers, on the Internet, radio or
24 television. You must not consider anything that you
25 may have read or heard about the case outside this

1 courtroom, whether before or during the trial.

2 It's important that you keep an open mind and
3 not decide any issue in this case until all of the
4 evidence has been presented, the parties have made
5 their closing arguments and I have instructed you on
6 the law in this case.

7 It will be your solemn responsibility to
8 determine the guilt or innocence of the defendant,
9 and your verdict must be based solely on evidence as
10 it is presented to you in this trial and on the law
11 as I instruct you during and at the close of the
12 trial.

13 Now, in just a moment the solicitor will make
14 what is called an opening statement in which the
15 solicitor will explain to you the issues in the case,
16 or at least what the solicitor thinks the issues are
17 in this case. The attorney for the defendant will
18 also make an opening statement although is not
19 required to do so.

20 What the attorneys tell you in their opening
21 statements is not evidence in this case. It's only
22 their contention as to what the issues are. The
23 evidence in the case will be presented to you by the
24 testimony of sworn witnesses from this witness stand
25 and/or exhibits that may be introduced during the

1 course of the trial.

2 Now, from time to time during the trial you may
3 hear one of the lawyers say something like, Your
4 Honor, I believe we have a question of law to discuss
5 with you; or, may we approach the bench. Or
6 sometimes I myself might find it necessary to excuse
7 you from the courtroom for a short period of time so
8 the attorneys and I can discuss a matter of law.

9 The reason for this is because you are the
10 judges of the facts. Sometimes when I am discussing
11 matters of law with the attorneys it may be necessary
12 for me to make some comment as to the facts in
13 connection with a ruling and whether or not a
14 particular law applies.

15 I'm not supposed to tell you what I think the
16 facts are. So I will excuse you from the courtroom
17 while these discussions take place so that in no way
18 will you be influenced by anything that I might say
19 or do in connection with the facts.

20 From time to time the attorneys will object,
21 will stand and say, I object to this or that.
22 They're objecting because we have rules of evidence
23 that must govern all courtroom activities. And if
24 they feel these rules of evidence may have been
25 violated, they have a right to object. They are not

1 trying to obstruct anything or hide anything from
2 you.

3 In determining what the true facts are in this
4 case you must decide whether the testimony of any
5 witness is believable or not believable. It will be
6 my responsibility to rule as a matter of law as to
7 whether certain testimony is admissible at all, but
8 once the testimony is admitted; in other words, once
9 you hear it, whether or not you believe it is solely
10 up to you to determine.

11 In deciding whether to believe a witness, you
12 have the right to consider the interest of any
13 witness, the bias of any witness, the prejudice of
14 any witness and the opportunity of the witness to
15 have seen the matters and things about which the
16 witness may testify and the way the witness acts on
17 the witness stand.

18 You have the right to consider anything that's
19 in this record that will help you evaluate the
20 testimony of these witnesses. That means it is your
21 duty to pay close attention to the witnesses. Listen
22 to the witnesses and pay close attention to the
23 attorneys and to the Court. Try not to let your
24 thoughts wander, but give strict attention to the
25 testimony in the case so at the end of all the

1 testimony, after the arguments of counsel and the
2 charge on the law by the Court, you will then be in a
3 position to determine what the true facts are and to
4 apply the law to those facts and thus render a true
5 and just verdict.

6 It will be your added duty, Madam Foreperson, to
7 preside in the jury room and be the jury's
8 spokesperson here in court. It will also be your
9 duty to write the verdict if that becomes necessary
10 at the conclusion of the trial, but I'll give you
11 further instructions about that at the conclusion of
12 the trial.

13 All right, counsel. You may begin with your
14 opening remarks. Solicitor.

15 MR. GIESE: May it please the Court, Your Honor,
16 On January 28th, 2006, the victim in this case, John
17 Johnson, was working at his place of business, his
18 place of work which is Chastity's which is an adult
19 entertainment club on River Drive here in Richland
20 County.

21 That night, right before midnight, a person, a
22 man who was in the bar at that time was asked to
23 leave. That man confronted employees and John
24 Johnson in that location and threatened violence upon
25 them, threatened their life, threatened the

1 well-being of John Johnson and his employees. That
2 man threatened to come back and do violence.

3 Within ten minutes of those threats, within ten
4 minutes of those threats John Johnson lay dead in his
5 place of business with a .357 slug in his head, shot
6 by the same man who had threatened them in that
7 location.

8 The man who was asked to leave, the man who
9 threatened the lives of these employees and John
10 Johnson, the man who came back to the location, the
11 man who fired the .357 slug into the location and
12 into the head of the victim, John Johnson, and then
13 fled, he's in the courtroom today. He's here. It is
14 that man, Dewain Herring. He is the one that
15 threatened, he is the one that shot, and he is the
16 one that fled.

17 You know the mistake he made though, the State
18 submits? He didn't realize that a lot of it was
19 being taped. And that's why we're here today.

20 Madam Forelady, Ladies and Gentlemen of the
21 Jury, my name is Barney Giese. I am the solicitor
22 for the Fifth Judicial Circuit. The Fifth Circuit is
23 Richland County and Kershaw County. I am the chief
24 prosecutor for those two counties, for this circuit.
25 Today it's my job and my office's job to prosecute

1 this case.

2 As I told you, Dewain Herring is in the
3 courtroom today. He's seated at the defense table
4 along with his defense team. Seated at the State's
5 table is my Deputy Solicitor, John Meadors; Captain
6 Stan Smith of the Richland County Sheriff's
7 Department. And seated behind the bar on that front
8 row is the family of John Johnson, also known as "Jon
9 Jon".

10 It's our job to prosecute these two indictments.
11 And for the record, they read: "At a Court of
12 General Sessions convened on February the 15th, 2006,
13 the grand jurors of Richland County present upon
14 their oath that H. Dewain Herring did in Richland
15 County on or about January 29th, 2006, feloniously,
16 willfully, and with malice aforethought kill one John
17 Johnson by means of a firearm and that the said
18 victim died as a proximate result thereof, all in
19 violation of South Carolina Code of Laws, Section
20 16-3-10.

21 And the second indictment -- and they're
22 separate indictments; they're two separate charges.
23 And you'll see, the State submits, it's from two
24 separate incidences. Pointing and presenting a
25 firearm. That H. Dewain Herring did in Richland

1 County on or about January 29th, 2006, knowingly
2 point and/or present a firearm; to wit: a revolver,
3 at the victim, Sergeant David Linfert and Officer
4 Brien Gwyn, all in violation of Section 16-23-410 of
5 the Code of Laws of South Carolina, this being
6 against the peace and dignity of the State and
7 contrary to the statute in such case made and
8 provided.

9 Those are the two indictments and the elements
10 therein that the State has to prove. It's up to us.
11 It is our burden to prove these.

12 And His Honor told you, he defined, he defined
13 murder for you. But very simply put, it is the
14 unlawful killing intentionally, intentional unlawful
15 killing of a human being, John Johnson, the State
16 submits, by a human being, Dewain Herring, and that
17 the killing was done with malice aforethought.

18 His Honor explained what malice aforethought was
19 earlier, but he'll give it to you again later on.
20 Suffice it to say, as he put it, it's evil intent.
21 It's an evil heart. It's a dark heart. It's a heart
22 fatally bent on mischief and devoid of all social
23 duty. And those are legal terms. But it's a
24 maliciousness. It's an evilness.

25 Now, obviously the State, we can't cut open

1 Dewain Herring and look in his brain and look in his
2 heart as to what was in there when he fired that
3 fatal shot that killed John Johnson. But what we can
4 do, and the State submits what we will do, is have
5 you look at the acts and what exactly Dewain Herring
6 did that night.

7 And the State submits when you see what he did
8 and when you see exactly what happened, there'll be
9 no doubt but that Dewain Herring had malice in his
10 heart and in his mind when he fired that fatal shot,
11 hatred and ill will, because we will show you what
12 happened.

13 Now, the pointing and presenting a firearm as
14 His Honor said is fairly simple. Did Dewain Herring
15 point or present, which means just pull out, a
16 firearm? The State submits that if he did, he is
17 guilty.

18 Now, to prove these elements, especially the
19 malice aforethought, to prove these elements, the
20 State is going to put witnesses up here. Right here,
21 this is the witness stand. They're going to swear an
22 oath, and they're going to tell you exactly what they
23 saw, exactly what they heard, exactly what they said
24 and exactly what happened the night of January 28th,
25 2006 and the early morning hours of January 29th,

1 2006. And they're going to tell you exactly what
2 they saw and exactly what they did.

3 And the State submits this is what they're going
4 to tell you. About 11:00, about 11:00, the 28th,
5 Dewain Herring comes into Chastity's. The defendant.
6 Sometime later that evening, before midnight, right
7 before midnight, Dewain Herring hires a dancer in the
8 club for \$300 to do a private dance for him in a
9 private room called the champagne room.

10 Dewain Herring goes off into the champagne room,
11 one of several rooms where this happens. The dancer
12 goes to freshen up. While the dancer is freshening
13 up and before she goes to the champagne room for the
14 30-minute dance, Dewain Herring, the defendant,
15 strips himself naked, lays down on the couch and
16 begins masturbating. That is against club rules, the
17 State submits.

18 An employee whose job it is to monitor these
19 things sees it, tells Mr. Herring, you cannot do
20 this. You must leave. Put your clothes on and
21 leave. Mr. Herring does not. He refuses. And that
22 is where the manager, John Johnson, has to get
23 involved.

24 Now, I'm not going to go into the details of
25 what happened inside the club at this time. I'm

1 going to let the witnesses do that. Suffice it to
2 say that Mr. Herring wanted his \$300 back and
3 everybody in that club wanted Mr. Herring out of
4 there.

5 It took minutes to get Mr. Herring to leave.
6 And during those minutes, on at least three occasions
7 Dewain Herring threatens violence upon the employees
8 in there. He threatens "Jon Jon" and his life and
9 threatens to come back and do damage.

10 Once he leaves, when they finally get him out
11 the door -- and some of this is on tape -- it takes
12 him minutes to actually leave the parking lot. He is
13 out there lurking in his car. He gets out of the car
14 at one time and confronts John Johnson again. And
15 all they want him to do is leave. Please, Mr.
16 Herring, leave. They don't touch him. They don't
17 throw him out. They treat him with dignity. John
18 Johnson treats this man with dignity. Please leave.

19 And you know something? Finally, finally, to
20 the club and the members and the employees of that
21 club, he finally on tape drives his car out of the
22 parking lot. He drives off down River Drive toward
23 Columbia.

24 In one minute, approximately one minute and 49
25 seconds later, as you will see the State submits on

1 the tape, Dewain Herring, the man who had threatened
2 the employees of that club, said, I am coming back to
3 get you, makes good his threat. He comes back.

4 And on tape he pulls up to the front of that
5 door, the door where everyone comes in and out, the
6 front door. And you see it on tape. His car parks
7 directly in front of the door, approximately 30 feet,
8 with his windows rolled down on the passenger's side.

9 At that point everyone in the club that knows
10 about this, the employees, are panicking. And you'll
11 see it on tape. There's a tape of inside that one
12 room where the killing takes place. They're
13 panicking. They see him on tape. They're scared.
14 They're worried.

15 John Johnson opens the door, looks out, sees the
16 defendant in his car, shuts the door. And, ladies
17 and gentlemen, the State asks you at this point when
18 you see this tape to please pay close attention.
19 Because at that point the car he is driving in, the
20 State submits, inches up, inches forward to get a
21 better shot at that door if it opens again.

22 And sure enough, John Johnson opens that door
23 one more time. And he peeks it open. He sees the
24 door. He says -- excuse my language -- but "Oh,
25 shit", the State submits because he sees Dewain

1 Herring with that gun. He immediately shuts the
2 door, and within two seconds of that door being shut,
3 Dewain Herring fires a shot through the door, killing
4 John Johnson who had just peeked his head out that
5 door.

6 That's not the end of the case. The case goes
7 on. Because this man flees. He flees. Right after
8 that shot is fired, 39 seconds after he pulls into
9 that lot, he flees. And that's where the pointing
10 and presenting a firearm comes in, ladies and
11 gentlemen. Because the defendant gets home, takes
12 the murder weapon out of the car, hides it under some
13 clothes, the State submits, and stays at home.

14 Richland County Sheriffs show up. They find the
15 tape. They develop Dewain Herring as a suspect.
16 They get a search warrant for Dewain Herring's house
17 at 460 Alexander Court here in Richland County. Five
18 deputies go to this location. They don't get an
19 answer at the door. They knock the door in, as they
20 are legally allowed to do if no one answers the door
21 and they have a legal search warrant, which is what
22 they had.

23 As they go in, they see someone, a figure,
24 Dewain Herring, run across the area. He goes back to
25 a bureau near his bed and pulls out a .357 Magnum.

1 The same man who had used a .357 earlier that morning
2 pulls it out, presents it, turns. Two officers,
3 Officer Linfert and Officer Gwyn see it, are fearful
4 of their life and they open fire. Those two officers
5 shoot, as do the other officers inside the house, in
6 fear of their life, serving a legal search warrant
7 which they had a right to do.

8 Mr. Herring is hit. He's taken by EMS to the
9 hospital. He's hit in his arm. And he is arrested
10 later on that morning. That's the pointing and
11 presenting a firearm. You cannot point a firearm or
12 present it at anyone, much less at the police.
13 You'll be hearing from those Linfert and Gwyn.
14 They'll tell you exactly what they saw, exactly what
15 they did and why they had to do it.

16 Ladies and gentlemen, the State submits that
17 Dewain Herring committed these acts. It's up to us
18 to prove it. And as His Honor told you and I'm sure
19 Mr. Harpootlian will tell you, it is up to the State
20 of South Carolina to prove all the elements of this
21 indictment. It is our burden. And, ladies and
22 gentlemen, the State submits it is a burden in this
23 case we gladly accept. We gladly accept it. Because
24 the State submits when you've heard the evidence in
25 this case, when you've heard what Dewain Herring did

1 that night and those early morning hours, there'll be
2 no doubt. Once you hear the law, there'll be no
3 doubt in your mind but that Dewain Herring is guilty
4 of the intentional, malicious murder, murder of John
5 Johnson and the pointing and presenting a firearm at
6 those law enforcement officers. Guilty. Thank you.

7 **MR. HARPOOTLIAN:** May it please the Court, Your
8 Honor.

9 **THE COURT:** Mr. Harpootlian.

10 **MR. HARPOOTLIAN:** Wow. That took almost 45
11 minutes. My name is Dick Harpootlian. I'm a lawyer.
12 I've practiced in this county for 35 years. In 1990
13 I was elected to be solicitor, just like Mr. Giese
14 over there. I was a prosecutor for four years as the
15 solicitor and eight years before that, like
16 Mr. Meadors, as the Deputy Solicitor. I have stood
17 in this courtroom and asked juries to convict, and
18 sometimes they did; sometimes they didn't.

19 The lawyers in this courtroom are advocates.
20 What we're going to ask you to do is look at the
21 evidence in this case from our perspective.
22 Everything you just heard from Mr. Giese isn't
23 evidence. And the judge is going to tell you there
24 are certain roles to be played by people in this
25 courtroom. We're advocates. There are witnesses.

1 What we say is not evidence. We're advocates. We're
2 going to try to probe these witnesses.

3 The judge is going to tell you it's up to you to
4 believe or disbelieve these witnesses. You can
5 believe all what they say, some of what they say.
6 You can believe it, disbelieve it. Because you are
7 the sole judges of the facts. Only one person can
8 tell you what the law is, and that's Judge Cooper.
9 We're going to tell you what we think it is. But
10 disregard what we've said about the facts or the --
11 and I'm going to talk about the facts in just a
12 minute and the law because you're going to decide
13 what the facts are and he is going to tell you what
14 the law is.

15 You know, it's difficult to stand before a jury
16 or anybody and ask them to do what Judge Cooper told
17 you you just swore to do. Let me explain that to
18 you. Dewain, stand up. Just stand up. This is
19 Dewain Herring, a 63-year-old lawyer, married, father
20 of two children, successful in his profession, close
21 to retirement. His wife, Virginia, is right behind
22 him. Thank you. Sit down.

23 He is presumed innocent. Let me say that again.
24 He is presumed innocent. Now, let me tell you why I
25 repeat that. Because it is the natural human

1 condition to assume and presume the worst. It's
2 natural for you to assume he's done something wrong
3 or he wouldn't be sitting over there.

4 Maybe there's a better way, a better way to
5 explain that to you. If you'll just follow me for
6 just a second here. If, like me, you were sitting
7 this morning having a cup of coffee reading the
8 newspaper or watching television and you saw or heard
9 that the police had arrested somebody for a
10 horrendous crime, our natural reaction to that is,
11 thank God they caught him. Thank God they got him
12 off the street. Thank goodness that the police
13 apprehended this person.

14 And we did something then that's very natural
15 and very allowable over your cup of coffee in the
16 morning. You presumed the police had arrested the
17 right person and they had committed a crime just
18 based on what you read in the paper. Nobody swore to
19 you under oath about anything. It's that presumption
20 of guilt that is no natural that with every one of
21 us. I do it. You do it.

22 But, you see, your role in this world changed
23 this morning dramatically because the judge asked you
24 to stand and you were sworn. And you swore to do two
25 things: One, to listen; and, two, to follow the law

1 as he gives it to you. And he's told you once, he's
2 told you twice, he's told you three times; I'm going
3 to reiterate it, Dewain Herring is presumed innocent.
4 That isn't some fiction. That isn't something made
5 up. There are men and women dying right now around
6 the world to support that premises.

7 This is a unique system of justice. We are the
8 only ones in the world that have this system that's
9 tried and true. And it protects the innocent by
10 making the State who has all the power in the world,
11 all the resources in the world to gather evidence and
12 bring it before you.

13 You're going to hear testimony in this case that
14 some of this evidence in this case was sent to Cape
15 Canaveral and NASA looked at it, NASA, the people on
16 the moon, things on Mars. All the resources in the
17 world.

18 Dewain Herring had me, that's Graham Newman over
19 there, an associate in my office, a lawyer, and my
20 staff. We're in a little house over here on Laurel
21 Street. We're doing the best we can. But, you see,
22 the law recognizes that the government has these
23 resources. And long ago it was recognized that the
24 defendant is presumed innocent and that the State
25 must prove to you beyond a reasonable doubt, a doubt

1 for which you can give a reason. I've got a doubt
2 because of this, because they didn't give me this or
3 I don't believe that or when I look at it I still
4 have questions beyond a doubt which is reasonable.

5 So that presumption of innocence is not just a
6 legal fiction. It's not some words we say. It is
7 extremely important for you to consider it as you
8 hear every witness from this witness stand, every
9 word said by them.

10 You see, you can judge these folks, the judge is
11 going to tell you, based on their demeanor, based on
12 their demeanor; that is, how they testify, whether
13 you think they're truthful or not. See, that's so
14 important.

15 Oliver Wendell Holmes, one of the foremost
16 jurists in this country's history, once said, "Jury
17 service is the highest service one can perform for
18 one's country in peace time." That's it. Because it
19 is the juror who protects the individual from the
20 awesome power of the government to take their life or
21 their liberty or their property.

22 You know, in this case you're going to hear a
23 lot of testimony. You're going to see some
24 videotapes. We'll talk about those in just a minute.

25 But I think what is important for you to realize

1 is that again the presumption of innocence and the
2 proof beyond a reasonable doubt, the burden on the
3 State is more than a legal fiction. But maybe
4 there's a better way to explain this to you. And I
5 think it's important for you to consider this during
6 your deliberations and while you listen to the
7 testimony.

8 Several years ago I happened to be in Scotland.
9 It's a beautiful place. Cold, rainy; but it can be
10 pretty. And I had occasion to wander into a
11 courthouse. Being a lawyer, I was curious about
12 seeing people in wigs and how they do things over
13 there. And the courtroom was not like this. It was
14 a very ornate courtroom. But the judge sat in a
15 black robe, just like this judge, and he had a wig
16 on. And the lawyers wore robes and they had wigs on.

17 And it was a murder trial they were trying. And
18 they got to the point at the end of the trial where
19 they charged the jury. And the judge will do that
20 with you. He's going to tell you what the law is.
21 But when they got to the part where they charge the
22 jury, I mean everything looked the same and the
23 charge sounded the same, malice aforethought, all of
24 that, until he got to the point where he said there
25 are three possible verdicts in this case.

1 MR. GIESE: Objection, Your Honor.

2 THE COURT: What's the objection?

3 MR. GIESE: The objection is, this is not
4 Scotland. Scotland law does not apply here. This is
5 South Carolina law. I apologize for interpreting.

6 MR. HARPOOTLIAN: Well, I'm not saying it
7 applies here. And, Your Honor, I --

8 THE COURT: Overruled.

9 MR. HARPOOTLIAN: Thank you.

10 THE COURT: Go ahead.

11 MR. HARPOOTLIAN: I'm not telling you that
12 Scottish law applies here. What I am telling you is
13 the system that we use here today is based on that
14 same system. They have three verdicts in Scotland:
15 Guilty, not guilty and not proven. Not proven. Now,
16 we have merged those two verdicts here of not proven
17 and not guilty into one verdict, not guilty.

18 But they specifically recognize there are
19 instances in which the State has not proved the
20 defendant guilty beyond a reasonable doubt but
21 there's clearly not evidence that the defendant could
22 show that he's innocent. So they have that middle
23 ground of not proven. And it's extremely important
24 for you to recognize that because in many, many
25 instances the defendant cannot prove himself

1 innocent. And in this case, in this case, it's going
2 to be extremely important.

3 Now, the judge has told you about murder and the
4 solicitor has talked about murder. And it's an
5 intentional killing with malice aforethought, malice,
6 evilness of heart, an intentional premeditated kind
7 of killing. But there's a lesser-included offense
8 called involuntary manslaughter. Involuntary. It is
9 a reckless, wanton killing of somebody. You'll hear
10 that one.

11 And then there's another; it's not a crime, but
12 accident, accident; that is, the unintentional. The
13 dropping of a gun, it goes off and hits somebody,
14 mishandling of a weapon. Now, let me tell you why
15 that's important. The State has already marked
16 certain exhibits. I want to show you one of them
17 that has been blown up. I'm sorry, Your Honor. I
18 didn't know we wrapped it.

19 You heard the solicitor say -- let me make sure
20 I've got this right -- that the shot was fired
21 through a door and hit John Johnson in the head.
22 This is a picture the State took, that the forensic
23 unit of the Richland County Sheriff's Department took
24 the night of the shooting. It will be -- it already
25 has been entered into evidence. This is a blow up of

1 / it.

2 You heard Mr. Giese testify that "Jon Jon"
3 Johnson peeked out this door; opened it, peeked out;
4 opened it, peeked out. And you will see that on the
5 videotape. And then a shot rang out. Where does the
6 shot hit? Right here. Right here. Almost in the
7 doorjamb. Not over here, not over here, but here.

8 And what's going to be important for you to know
9 is this. What is the trajectory of that bullet? Was
10 it going up? Was it going down? Did it ricochet?
11 Did it hit something else? Did it hit the pavement
12 and go up and go through the door? Was it going up?
13 Was it going down? Was it going sideways?

14 It's going to be important for you to understand
15 the forensics of this. And again, these folks have
16 NASA at their disposal and they should be able to
17 tell you, and we hope to hear, exactly, exactly how
18 that bullet went through that door: Up, down,
19 sideways or whatever.

20 Now, let me say this to you. We don't know in
21 most instances what these witnesses will say. None
22 of them, virtually none of them have ever been put
23 under oath. They've never testified anywhere before.
24 We don't have a right like in a civil case to take
25 their deposition to find out what they're going to

1 say. We've seen pieces of statements that they may
2 have given to the police. Several of them told me
3 when I asked to talk to them that they were friends
4 of John Johnson's; go to hell. So we don't know what
5 they're going to say. We haven't had that
6 opportunity.

7 But we want to know things like this. There are
8 a number of pieces of evidence we have not been able
9 to challenge or look at. And we're going to want to
10 know. That's just one of them. But I show you that,
11 I show you that because it is one of the things I
12 think that's going to be important for you to know.

13 Because if it was a weapon that was dropped or a
14 weapon that was mishandled, what if this trajectory
15 is, if the car is back over here 45 feet away, we
16 think, we're going to wait to hear what the forensic
17 officer testifies to, what if it's going up? What if
18 it's coming down? What if it hit a brick and
19 ricocheted off? Is that an intentional killing? Is
20 that the intent to shoot somebody, who by the way, is
21 last seen over here?

22 So those are things that you should challenge
23 the State in your mind. You've got to look over
24 there and say he hasn't done anything wrong. State
25 of South Carolina, show me, prove to me that he

1 intentionally killed somebody with malice
2 aforethought.

3 And when you hear from the Richland County
4 Sheriff's forensic unit how high it went in, flip it
5 over, how high it came out; I'm sure there should be
6 some sort of photo of a trajectory on this with a
7 laser or a streamer. Haven't seen it.

8 We have seen, however, pictures from the
9 residence where SLED processed. They called in SLED
10 to process the shooting. We'll talk about the
11 pointing and presenting in just a moment. Where they
12 did laser trajectory on every one of the 17 bullets
13 that were fired at Mr. Herring who never fired a
14 shot. 17 bullets.

15 And you're going to hear testimony that Mr.
16 Herring wears two hearing aids, is totally death
17 without them, was in bed with what's called a C-pack.
18 It's a machine for people who have sleep apnea. He
19 didn't hear anybody banging on the door. What he did
20 hear was his metal door being knocked down. When he
21 got up and went to the hall to see what was going on,
22 he saw people coming in. As he backed up shots were
23 fired. He didn't have a gun in his hand. He didn't
24 point anything to anybody. And he ran back to his
25 bedroom to get his gun and he got shot. He then went

1 in his bathroom and called 911. You will hear those
2 tapes. Oh, my God. They've broken in. They're
3 holding me hostage. They've shot me. Get the police
4 here. Please help me. They shot me. They're
5 holding me hostage. Okay.

6 Knew they were the police? Don't think so.
7 Pointed a gun at anybody? They've already fired 12
8 or 13 shots before he ever gets near his gun. And do
9 you have a right to pull your gun out when somebody
10 has broken into your house, when somebody has shot at
11 you? Absolutely. And he gets shot in the arm, goes
12 to the bathroom, calls 911. If they don't play the
13 911 tape for you, we will. We will.

14 Now, let me tell you what's behind this door. A
15 cesspool. It is shocking to me and you and everybody
16 else that doesn't know what adult entertainment
17 means. Adult entertainment means women completely
18 naked dancing, women selling their bodies back in the
19 champagne room, drugs everywhere. You're going to
20 hear testimony that this is a den of iniquity.
21 Dante's inferno. I mean, you can call it anything
22 you want. I call it a cesspool.

23 Now, should Dewain Herring have gone there?
24 Well, I'm sorry. This cesspool is licensed by
25 Richland County, the City of Columbia and the State

1 of South Carolina, certified okay to go into. Okay
2 to go into. This is what our community has come to.
3 This.

4 Now, nobody wanted to, should have died that
5 night. Nobody. But what you're going to hear
6 from -- and, by the way, when you listen to these
7 witnesses from Chastity's, who are they? You're
8 going to find out more about them. The men treat
9 women like they're -- I'm trying to think of a word
10 as disgusting, degrading and demeaning to describe
11 how they treat them.

12 You look on the videotape. They've got a guy
13 named Carl Weeks who is going to be testifying about
14 what he heard. Look at that videotape, how he treats
15 the women that walk up to him. He treats them worse
16 than most people treat their dogs.

17 These guys are in the business of selling women.
18 Did Dewain Herring go in there? Yes. Should he have
19 gone in there? No. Out of that did something
20 horrible happen to him that's ruined his life? Yes.
21 Is "Jon Jon" dead? Yes. Does he feel bad about that
22 about that? Yes. Will it haunt him the rest of his
23 days? Yes. But did he murder anybody? No. Did he
24 intentionally kill anybody? No.

25 You're going to hear testimony from women that

1 work there that these women are encouraged to get the
2 customers as intoxicated as possible and to take
3 advantage of them. Get the money off of them. And
4 who encourages them? The Carl weeks of the world.
5 The "Jon Jon"'s of the world. That's who encourages
6 them to sell their bodies to get as much cash as they
7 can and to get the customers as drunk as they can.

8 So as you examine this evidence, this isn't a
9 one-hour television show where you're going to decide
10 did he do it or not do it. You've already decided he
11 didn't do it. That's what the presumption of
12 innocence is about. He didn't do it.

13 And, you know, as you listen to the evidence,
14 you're going to continue to say under the charge
15 given you by the judge he didn't do it. And until
16 you get back in that jury room and each one of you is
17 convinced beyond a reasonable doubt that he did do
18 it, you can't convict of anything.

19 This isn't about his family or his family or
20 those people or this community. This is about him.
21 He is the only one on trial here. He is entitled to
22 that presumption of innocence, that proof beyond a
23 reasonable doubt. He is entitled to it because
24 that's what this country is about. This country is
25 about the individual and his right to justice. So as

1 you listen to this evidence, put it in that crucible.
2 Put it to the test. Did they lie about something
3 else?

4 Now, you're also going to hear statements Mr.
5 Herring gave the next morning. He doesn't remember a
6 lot about what happened that night. Remember, he has
7 been shot, taken to the emergency room, brought back.
8 He is kept there for some three hours. He does the
9 best he can. But we submit before this case is over
10 you'll know why he didn't remember. You'll know why
11 he didn't remember. We don't have to prove why.
12 They have to prove that he did remember and he was
13 lying about it. We believe that the evidence proves
14 to you beyond a reasonable doubt that he couldn't
15 have.

16 In a minute you're going to hear the State's
17 evidence. They get to go first. And they get to go
18 last because they have the burden. It doesn't seem
19 quite fair. But if you abide by the oath you took a
20 moment ago and are skeptical and presume him
21 innocent, it's perfectly fair.

22 So, ladies and gentlemen, you're getting ready
23 to do something very difficult. You're getting ready
24 again to do something that is unnatural. You're
25 getting ready to do something that nobody -- you

1 know, they didn't ask you to volunteer. There wasn't
2 a sign put up on the courthouse saying, anybody who
3 wants to be on jury duty next week, sign up. You
4 were taken away from your family, your jobs, your
5 friends and what you'd rather be doing to sit here.
6 You're drafted.

7 And that's the way we do it here, because we
8 want people that don't want to be here. We want
9 people who will question authority, who will question
10 every piece of evidence that's put before you by the
11 State of South Carolina. And that's what reasonable
12 doubt and presumption of innocence is about.

13 I have probably stood in front of this rail two
14 to three hundred times on both defending and
15 prosecuting people. Every time I do it, I'm amazed
16 at the intelligence and integrity of these jurors.
17 Because they abide by that oath. They don't go home
18 and watch TV. They don't read newspapers. They base
19 their verdict on this testimony and exhibits they
20 see. They don't show any sympathy or compassion or
21 whatever for either side. They base it on the facts.

22 And if you do that, hey, if you do that in this
23 case, you will reach a verdict. And you know the
24 word "verdict" comes from the Latin word "verdicto"
25 which literally translated means to speak the truth.

1 And the truth in this case, the truth in this case is
2 Dewain Herring is not guilty of anything. He is
3 guilty of bad judgment. He is guilty of being in the
4 wrong place at the wrong time. He is guilty of
5 ruining his life. But he did not intentionally shoot
6 anybody that night. But he doesn't have to prove
7 that you that he didn't. They have to prove to you
8 that he did. And if you make them do that, you'll be
9 abiding by that oath you took in this courtroom and
10 you will dispense justice.

11 On behalf of Dewain Herring I want to thank you
12 for being here. Again, we know it's a sacrifice.
13 Thank you.

14 **THE COURT:** Approach.

15 **MR. HARPOOTLIAN:** Yes, sir.

16 (Whereupon, a bench conference is had)

17 **THE COURT:** All right. Ladies and gentlemen of
18 the jury, I've been informed by counsel that they
19 want to set up the video equipment. It's been
20 indicated to you that there are videos that will be
21 shown to you. That's going to take about five or ten
22 minutes to go ahead -- I think you saw yesterday
23 there were monitors on the rail of the jury box. And
24 I want to go ahead and let them set it up. So let's
25 take a short break. And let's -- it will be about

1 ten minutes. I'll call you back as soon as we're set
2 up and ready to go. All right. Again, don't discuss
3 the case among yourselves while you're in the jury
4 room. You're excused for just a few minutes. Just
5 take a short break.

6 (Jury out at 11:37 a.m.)

7 **THE COURT:** All right. We'll stand at ease for
8 ten minutes.

9 **MR. HARPOOTLIAN:** Thank you, Your Honor.

10 (Whereupon, a break is taken)

11 (WHEREUPON, State's Exhibit No. 51 is marked for
12 identification.)

13 (WHEREUPON, State's Exhibit No. 52 is marked for
14 identification.)

15 (WHEREUPON, State's Exhibit No. 53 is marked for
16 identification.)

17 **MR. MEADORS:** Judge, beg the Court's indulgence
18 real quick. We've got one final one.

19 (WHEREUPON, State's Exhibit No. 54 is marked for
20 identification.)

21 **THE COURT:** Is the State ready to proceed?

22 **MR. GIESE:** Your Honor, we just have one issue,
23 administrative. I believe Mr. Harpootlian earlier
24 made a motion to sequester all witnesses. At that
25 time I thought it was just for the --

1 to the family of the deceased in his opening
2 statement. They're not listed as witnesses. We
3 would object to any reference by anybody to them;
4 that is, pointing them out, identifying them. They
5 have no evidentiary value in this case.

6 **THE COURT:** I don't think the solicitor intends
7 to do anything like that.

8 **MR. MEADORS:** We certainly won't violate the
9 rules as far as victim impact statement, Your Honor.
10 If some witnesses may say they have known "Jon Jon"
11 and/or his family, it would be a cursory remark. We
12 certainly wouldn't be appealing to the passion or
13 prejudice of anyone. We wouldn't do that.

14 **MR. HARPOOTLIAN:** Unlike the opening statement
15 when you did that.

16 **THE COURT:** Bring the jury, please.

17 (Jury in at 11:58 a.m.)

18 **THE BAILIFF:** The jury is present, Your Honor.

19 **THE COURT:** Thank you very much sir. Solicitor,
20 call your first witness.

21 **MR. MEADORS:** If it please the Court. At this
22 time the State of South Carolina would call Donald
23 Hawkins.

24 DONALD HAWKINS, after being duly sworn,
25 testifies as follows:

1 **MR. HARPOOTLIAN:** We'd like to sequester
2 witnesses during the entire trial, Your Honor; ours
3 and theirs.

4 **MR. GIESE:** And we would also reciprocate, like
5 that also.

6 **MR. HARPOOTLIAN:** I'd like to be able to just
7 keep Ms. Herring in the courtroom with her husband.
8 She is not an operative witness.

9 **THE COURT:** That's fine. All other witnesses
10 who will testify with the exception of the chief
11 investigating officer.

12 **MR. HARPOOTLIAN:** They've got two of them. I
13 don't object to them.

14 **MR. GIESE:** He doesn't object to that.

15 **THE COURT:** All right. All other witnesses, I
16 don't know who they are.

17 **MR. MEADORS:** Stan Smith clearly everybody
18 agrees should be in the courtroom.

19 **THE COURT:** Instruct any other witnesses to wait
20 outside until their name is called. All right.
21 Ready to proceed?

22 **MR. MEADORS:** All of our witnesses should be
23 out.

24 **MR. HARPOOTLIAN:** Your Honor, one other matter
25 before we bring the jury in. The solicitor referred

1 **THE CLERK:** Thank you. Please have a seat in
2 the witness stand and state your full name for the
3 record.

4 **WITNESS:** My name is Donald Hawkins.

5 DIRECT EXAMINATION

6 **BY MR. MEADORS**

7 **Q** Mr. Hawkins, if you would, please, speak up so
8 everyone in the courtroom can hear you, but mostly
9 importantly the jury, please.

10 **A** Donald Hawkins.

11 **Q** Mr. Hawkins, please tell these ladies and gentlemen
12 of the jury a little bit about yourself;
13 specifically, where you were born?

14 **A** I was born in Columbia, South Carolina, Baptist
15 Hospital.

16 **Q** Where were you raised?

17 **A** Raised in Hopkins, then moved to Irmo.

18 **Q** Where did you go to high school?

19 **A** Irmo High School.

20 **Q** When did you get through with high school?

21 **A** 1997.

22 **Q** 1997?

23 **A** Yes, sir.

24 **Q** After you got through with high school, what did you
25 do?

1 A I worked at odd jobs, Time Warner Cable being one of
2 them; and then like delivery jobs, Pizza Hut, Steak
3 Out and Joe's to Goes, Dodgeland. I worked at
4 Dodgeland for about four or five years.

5 Q Did you say Joe's to Goes?

6 A Joe's to Goes.

7 Q What is that?

8 A It's a delivery place. It's where I currently work
9 now also.

10 Q And you mentioned Dodgeland?

11 A Yes, sir.

12 Q Is that on Greystone Boulevard?

13 A 190 Greystone Boulevard.

14 Q All right. What did you do at Dodgeland,
15 Mr. Hawkins?

16 A I serviced cars, customer service, service advisory
17 work. I also did courtesy delivery.

18 Q And if you'd back up just a little bit, that may
19 be --

20 A Courtesy delivery.

21 Q Yes, sir. What did you do after that?

22 A After Dodgeland I worked probably -- I worked
23 Dodgeland and Joe's to Goes at the same time, and
24 then after Dodgeland just Joe's to Goes. And then I
25 worked at Chastity's.

1 Q And what time did you start working at Chastity's?
2 What year?

3 A 2005.

4 Q And had you -- prior to working at Chastity's, had
5 you worked at any other entertainment clubs?

6 A Prior, no.

7 Q Okay. And when you first -- do you remember what
8 month you started at Chastity's?

9 A September.

10 Q And when you started at Chastity's, Mr. Hawkins, what
11 was your role? What was your job? What did you do?

12 A Basically primarily floorman, worked front door. I
13 pitt bossed a little and also bar backed.

14 Q As we learn what some of these terms are, I'm going
15 to start with you. What does it mean to be a
16 floorman at Chastity's? And it's Chastity's Gold
17 Club?

18 A Yes, sir. Chastity's Gold Club.

19 Q Is that on River Drive?

20 A Yes, sir.

21 Q That's in Richland County?

22 A Richland County; yes, sir.

23 Q What's it mean to be a floorman?

24 A To watch the customers, tend to the customers, watch
25 dancers, basically just make sure of your presence

1 and take care of any type of arguments or fights or
2 whatnot.

3 Q Now, you had some other jobs there. Did you say a
4 bar back?

5 A Bar back, yes.

6 Q What's that mean?

7 A Basically tends the bar refilling coolers with beer,
8 alcohol and Pepsi, Coca-Cola, Pepsi products, you
9 know, the syrups.

10 Q And did you ever work the front door area like when
11 people would come in?

12 A Yes, sir.

13 Q And explain to us a little bit about that. What are
14 the age limits? Could you come in if you were under
15 21?

16 A Yes, you could.

17 Q All right. Of course you couldn't have any alcohol
18 if you're under 21, could you?

19 A No, you cannot.

20 Q So if somebody came in under 21, what would be done,
21 if anything?

22 A We would take their I.D. until they left. And also
23 their entry fee was \$20 instead of 10. And they
24 would basically be buying a shirt for that 20. No.
25 It was \$25. Excuse me. And then they were buying a

1 shirt with that money. And they would have to put a
2 shirt on that either said under 21 or it would be a
3 Chastity's Gold Club shirt.

4 Q And why did they have to put that shirt on,
5 Mr. Hawkins?

6 A So the other floormen would know that he is under
7 age, and if he was in the club and if he had a drink
8 he would be asked to leave.

9 Q So the fee is higher for that and it's basically
10 paying for the shirt?

11 A Yes.

12 Q So the cover otherwise, if I or Mr. Harpootlian or
13 anybody went in 21 years or older, it would be ten
14 bucks?

15 A Yes.

16 Q Now, prior to you starting work at Chastity's, did
17 you know John Johnson, the victim in this case?

18 A Yes, I did.

19 Q Can you tell the ladies and gentlemen when you met
20 John Johnson?

21 A I met "Jon Jon" probably six to eight years ago at
22 another strip club, Bottoms Up, that today does not
23 exist. But I met him then. And off and on the last
24 couple of years I have always ran into him when I
25 went out, you know, went out to the bar scene or

1 whatnot.

2 Q And were you working at Bottoms Up then?

3 A No.

4 Q You just met him there at that establishment?

5 A Yes.

6 Q And is that how you got this job?

7 A Yes and no. Like I met -- that's when I started to
8 meet people that worked at Chastity's. I mean, you
9 know, six years ago they were hanging out at Bottoms
10 Up. Then, you know, you get to know them as friends.
11 And then six years later they're working at
12 Chastity's basically.

13 Q So in January of 2006 your job at Chastity's Gold
14 Club was what?

15 A January 2006, primarily floorman and working the
16 door.

17 Q Tell these folks, what was John Johnson's job then?

18 A He was the manager and he was -- in January he was
19 temporary GM.

20 Q What does that mean, temporary GM?

21 A We just -- a GM had recently quit right before the
22 Christmas holidays.

23 Q Do you remember his name?

24 A Rhett Reeves.

25 Q Rhett Reeves. Okay. Prior to Rhett Reeves leaving,

1 what was John Johnson's job?

2 A He was the next manager in line basically. He was
3 the primary or the prime time manager which was the
4 busier days of the week, Wednesday through Saturday
5 night. And he was the manager for the prime nights
6 that we would have more business.

7 Q John Johnson was?

8 A Yes.

9 Q When Rhett -- I can't remember whatever his last name
10 was. When Rhett left, John Johnson became the
11 full-time manager?

12 A Yes, sir.

13 Q What difference was that from his role before this
14 Rhett fellow left?

15 A Difference? He had to come in a little on other
16 days. He also set the schedule up. And he was -- he
17 had more duties to do.

18 Q More administrative stuff?

19 A More administrative stuff, yeah. More day-to-day
20 business.

21 Q I've got a calendar coming.

22 MR. HARPOOTLIAN: Why?

23 MR. MEADORS: To show it to him.

24 MR. HARPOOTLIAN: Why?

25 MR. MEADORS: Do you want to approach?

1 **MR. HARPOOTLIAN:** Are you going to put it in as
2 an exhibit?

3 **MR. MEADORS:** I'll show it to you first.

4 **MR. HARPOOTLIAN:** I'll stipulate this date was a
5 Saturday. We don't need a calendar or anything else.
6 Just move on. We'll save some time.

7 **MR. MEADORS:** Your Honor, we're going to take
8 our time and go through this case so every fact in
9 this case can be presented.

10 **THE COURT:** All right. I understand. There's
11 no objection on the floor. Let's move on.

12 **Q** On January 28th of 2006, were you working at
13 Chastity's?

14 **A** Yes, sir.

15 **Q** Now, during this time period, Mr. Hawkins, did you
16 have a regular schedule you worked there?

17 **A** Yes, I did.

18 **Q** Tell these folks what that was?

19 **A** My schedule?

20 **Q** Yes. I mean --

21 **A** Pre -- before January 28th I was there four days a
22 week at most, sometimes five. And I usually worked
23 mainly Thursday, Friday, Saturday and then either a
24 Sunday or like either a Sunday or another off day,
25 like on Tuesday or Wednesday.

1 **MR. MEADORS:** Beg the Court's indulgence.

2 (WHEREUPON, State's Exhibit No. 55 is marked for
3 identification.)

4 **MR. HARPOOTLIAN:** Your Honor, can we approach
5 one second?

6 (Whereupon, a bench conference is had)

7 **THE COURT:** Sir, I'm going to ask you to keep
8 your voice up. You have a tendency, sometimes you
9 let your voice go up and down.

10 **WITNESS:** Okay.

11 **THE COURT:** I want to be able to hear what you
12 say. Okay?

13 **WITNESS:** Yes, sir.

14 **THE COURT:** Thank you.

15 **Q** I'm going to show you what's marked State's 65 (sic).
16 Do you recognize this as a calendar for the month of
17 January 2006? Is this a January 2006 calendar?

18 **A** Yes, it is.

19 **Q** And you stated on January 28th. Is that a Saturday?

20 **A** Yes, it is.

21 **Q** And were you working on January 28th of 2006?

22 **A** Yes, I was.

23 **MR. MEADORS:** Your Honor, we'd offer this, I
24 believe without objection.

25 **COURT REPORTER:** You said No. 65. For the

1 record, it's 55.

2 MR. MEADORS: 55. I apologize. 55.

3 THE COURT: Without objection.

4 (WHEREUPON, State's Exhibit No. 55 is admitted
5 into evidence.)

6 Q So what hours were you working or were you planning
7 to work or did you work on January 28th of 2006?

8 A January 28th I came into work early, around the 5 or
9 6:00 hour. And I was planning to work all the way
10 until close, which would have been 3 -- between 3 and
11 4 in the morning.

12 Q During the week did the hours at Chastity's Gold Club
13 differ whether it was a Monday through Thursday or
14 Friday through Saturday?

15 A Yes, it did.

16 Q Tell them what the hours were?

17 A Sunday through Wednesday we usually closed -- I mean,
18 this was 90 percent of the time, we closed at 2 a.m.
19 Thursday, Friday, Saturday we usually stayed open
20 between 3 and upwards to 5, 6:00 in the morning.

21 Q Would that depend on how many customers were there?

22 A Yes, it did.

23 Q Of course after Saturday at a certain time, did you
24 quit serving alcohol?

25 A Yes, we did.

1 Q So you arrived at Chastity's on January 28th of 2006
2 at what time?

3 A 5, 6:00 by the time I was at Chastity's.

4 Q What was your job that evening at Chastity's,
5 Mr. Hawkins?

6 A Primarily I was the floater which is the floorman
7 that would walk --

8 MR. HARPOOTLIAN: Your Honor, I can't -- I
9 cannot understand him back here. It's muffled.
10 Could he back up just a little bit?

11 WITNESS: Can I get some water? That would
12 probably help.

13 THE COURT: Certainly. It's back behind you.

14 MR. HARPOOTLIAN: I apologize, Your Honor. I
15 just can't hear him back here. It's all jumbled,
16 muffled.

17 MR. MEADORS: I think he was trying to speak
18 into it.

19 THE COURT: Pull it back a little bit. All
20 right. Go ahead.

21 Q What does a floater do?

22 A It is the floorman that would walk between the rooms,
23 the bar area, the main room area, the dressing room
24 area and so forth, even walk the parking lot.

25 Q Did there come a time on January 28th, 2006 when

1 you're at Chastity's where your job changed, your
2 role changed that night?

3 A Yes, it did. One floorman was sent home at about 11.
4 And I took the spot at the door. I was working the
5 door then.

6 Q All right. And who sent that doorman home?

7 A "Jon Jon" sent Jason Mathis home.

8 Q And so at that time your job became what, if
9 anything?

10 A I worked the door.

11 Q And your job at working the door on January 28th,
12 2006 was what?

13 A Checking I.D.'s, greeting the customers that came in
14 or when the customers left, saying have a nice
15 evening.

16 Q And "Jon Jon's" job was what?

17 A He was the manager that night, but he became the
18 floater when they sent Jason home, including around
19 the bar.

20 Q Kind of what you were doing previously?

21 A Yeah.

22 Q Now, was there anything unusual or different going on
23 at Chastity's this night?

24 A This was -- it was a promotional night for a
25 magazine, V-2.

- 1 Q What is V-2?
- 2 A It is a entertainment magazine for nightclub
3 entertainment, adult entertainment. It's a regional
4 magazine throughout Georgia, North Carolina and South
5 Carolina.
- 6 Q Does this magazine promote and/or showcase, if you
7 will, nightly spots, entertainment places?
- 8 A Yes. Primarily Myrtle Beach, Columbia, the bigger
9 cities.
- 10 Q Describe the crowd as the night got later?
- 11 A It started to get a little crowded; couples,
12 regulars.
- 13 Q So was it unusual for couples to come to Chastity's?
- 14 A No, it was not unusual.
- 15 Q Did there come a time that evening when you were
16 called back to come to the pitt?
- 17 A Yes.
- 18 Q All right. And tell the jury what the pitt is?
- 19 A The pitt is the other shift area of the club the
20 floorman would work. That is to watch the dances in
21 the back room, make sure that there wasn't anything
22 going on other than dancing; VIP dances and champagne
23 dances.
- 24 Q All right.
- 25 A And he would take -- he would take the money from the

1 dancers. The club takes a percentage of the dance
2 they give.
3 Q Okay. We may get into this later with some other
4 witnesses. But if a dance is done, the club gets
5 part of the fee and the other goes to the dancer?
6 A Yes.
7 Q Is that a set fee?
8 A Yes, it is.
9 Q And is that fee paid prior to the dance or after to
10 the club?
11 A Either/or.
12 Q You got called to come back to the pitt?
13 A Yes, I did.
14 Q Tell these ladies and gentlemen of the jury what
15 happened, what you observed when you went back to the
16 pitt?
17 A I got called to come back to the pitt. "Jon Jon" and
18 Carl Weeks was already back there.
19 Q Now, who is Carl Weeks?
20 A He is another floorman.
21 Q Another floorman?
22 A Yes.
23 Q So his job would have been to do what?
24 A That night he was the pitt boss.
25 Q You get called back to the pitt. What happens next?

1 What do you observe next?

2 A I observed the defendant getting dressed.

3 Q Getting dressed. What do you mean?

4 A He was putting on his sweater I believe.

5 Q And where were you?

6 A I was behind "Jon Jon" and Carl in the hallway at the
7 champagne room. The champagne room. Excuse me.

8 MR. MEADORS: Your Honor, for the record, Mr.
9 Harpootlian said in his opening these were entered.
10 They weren't technically entered on the record I
11 don't think. And I'd like to just do these now, with
12 the exception of No. 7.

13 MR. HARPOOTLIAN: Object. And pursuant to
14 previously made objection.

15 MR. MEADORS: State's 6 through 50, Mr.
16 Harpootlian and I have both reviewed these. And
17 we're offering these without objection.

18 MR. HARPOOTLIAN: Yes. Yes. Without objection.

19 THE COURT: Without objection. Go ahead.

20 (WHEREUPON, State's Exhibit No. 6 is admitted
21 into evidence.)

22 (WHEREUPON, State's Exhibit No. 8 is admitted
23 into evidence.)

24 (WHEREUPON, State's Exhibit No. 9 is admitted
25 into evidence.)

1 (WHEREUPON, State's Exhibit No. 10 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 11 is admitted
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 12 is admitted
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 13 is admitted
8 into evidence.)

9 (WHEREUPON, State's Exhibit No. 14 is admitted
10 into evidence.)

11 (WHEREUPON, State's Exhibit No. 15 is admitted
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 16 is admitted
14 into evidence.)

15 (WHEREUPON, State's Exhibit No. 17 is admitted
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 18 is admitted
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 19 is admitted
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 20 is admitted
22 into evidence.)

23 (WHEREUPON, State's Exhibit No. 21 is admitted
24 into evidence.)
25

1 (WHEREUPON, State's Exhibit No. 22 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 23 is admitted
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 24 is admitted
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 25 is admitted
8 into evidence.)

9 (WHEREUPON, State's Exhibit No. 26 is admitted
10 into evidence.)

11 (WHEREUPON, State's Exhibit No. 27 is admitted
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 28 is admitted
14 into evidence.)

15 (WHEREUPON, State's Exhibit No. 29 is admitted
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 30 is admitted
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 31 is admitted
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 32 is admitted
22 into evidence.)

23 (WHEREUPON, State's Exhibit No. 33 is admitted
24 into evidence.)

25

1 (WHEREUPON, State's Exhibit No. 34 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 35 is admitted
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 36 is admitted
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 37 is admitted
8 into evidence.)

9 (WHEREUPON, State's Exhibit No. 38 is admitted
10 into evidence.)

11 (WHEREUPON, State's Exhibit No. 39 is admitted
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 40 is admitted
14 into evidence.)

15 (WHEREUPON, State's Exhibit No. 41 is admitted
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 42 is admitted
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 43 is admitted
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 44 is admitted
22 into evidence.)

23 (WHEREUPON, State's Exhibit No. 45 is admitted
24 into evidence.)
25

1 (WHEREUPON, State's Exhibit No. 46 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 47 is admitted
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 48 is admitted
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 49 is admitted
8 into evidence.)

9 (WHEREUPON, State's Exhibit No. 50 is admitted
10 into evidence.)

11 MR. MEADORS: And, Judge, State's 51, 52 which
12 are included in that, but I want to say specifically
13 53 were included in that. These are diagrams which
14 he's looked at, and we agree with these also.
15 Without objection.

16 THE COURT: Without objection? The diagrams,
17 Mr. Harpootlian?

18 MR. HARPOOTLIAN: I'm sorry?

19 THE COURT: As to the diagrams?

20 MR. HARPOOTLIAN: Are they the ones?

21 MR. MEADORS: Yes.

22 MR. HARPOOTLIAN: The ones as to the condition
23 of the club? I believe, Your Honor, we do not object
24 to the admission of -- what is this marked -- 51.
25 But it is not to scale.

1 **MR. MEADORS:** That's true. Yes.

2 **MR. HARPOOTLIAN:** Not to scale. And not all
3 objects are shown. It's an approximation prepared --

4 **MR. MEADORS:** By Jack Hensell.

5 **MR. HARPOOTLIAN:** -- by Jack Hensell, someone
6 that works for the Solicitor's Office.

7 **MR. MEADORS:** Your Honor, that is depicted at
8 the bottom, not to scale.

9 **MR. HARPOOTLIAN:** Did you put any of those in
10 there?

11 **MR. MEADORS:** 52, Your Honor, is to scale, we've
12 all agreed on.

13 **MR. HARPOOTLIAN:** Well, it's to scale, but I'm
14 going to want it authenticated before it's put in.

15 **MR. MEADORS:** I didn't understand that yesterday
16 but that's fine. And finally, Your Honor, the
17 approximate scale is 53, which we've all agreed on.

18 **MR. HARPOOTLIAN:** We've agreed this is also not
19 exactly to scale.

20 **MR. MEADORS:** Correct. I said approximate.

21 **MR. HARPOOTLIAN:** It's just approximate. It's
22 not scientifically accurate.

23 (WHEREUPON, State's Exhibit No. 51 is admitted
24 into evidence.)
25

1 (WHEREUPON, State's Exhibit No. 53 is admitted
2 into evidence.)

3 Q I'm going to show you what's been entered without
4 objection State's 51. And I want you to speak up if
5 you can. Okay? Show the ladies and gentlemen of the
6 jury the front of Chastity's as it was on January
7 28th, 2006?

8 A This is the front area of Chastity's right here.

9 Q Now, if you were working in the front taking I.D.'s,
10 taking money, where would you be?

11 MR. HARPOOTLIAN: Your Honor, if it please the
12 Court.

13 THE COURT: Let me do something.

14 MR. HARPOOTLIAN: Yes, sir.

15 THE COURT: The court reporter can't hear when
16 he's speaking the other way. He's going to have to
17 either turn or come down and use the pointer.

18 MR. MEADORS: Judge, I am just going to do a
19 brief here and then go on.

20 MR. HARPOOTLIAN: I can't hear him.

21 MR. MEADORS: If he'd come down, please.

22 THE COURT: Well, I can hear him. Sir, I can
23 hear him. You're going to have to do something else.
24 Go ahead.

25 MR. HARPOOTLIAN: Your Honor, may I approach?

1 (Whereupon, a bench conference is had)

2 Q Step down, please. Mr. Hawkins, I need you to talk
3 there so this lady can hear you here. Okay? And
4 speak up loud. Okay?

5 A Talk this way?

6 Q This way, to her.

7 A To the jury. All right. This is the front of
8 Chastity's Gold Club right here. The front door, I
9 would be standing right here. If you were working
10 the front door, you would pretty much walk this area
11 out to the front, back in or wherever somebody needed
12 you.

13 Q Okay. All right. Once you go inside the club, what
14 is this area?

15 A That is the bar area.

16 Q Drinks served there?

17 A Yes, sir.

18 Q If you go back into this area, it's got a pole stage.
19 Pole stage, what is this called back in here?

20 A The main room area.

21 Q Where would the dancing take place, if anywhere?

22 A Well, there will be a dancer on stage and there will
23 be dancers in the VIP room if a customer has bought a
24 dance. And if a customer has bought a champagne room
25 dance, they would be in this area.

- 1 Q Now, these rooms here, are there doors on these? Or
2 were there doors on January 28th, 2006?
- 3 A No. There are no doors on any of these rooms or this
4 hallway right here.
- 5 Q Were there beads there?
- 6 A There were beads.
- 7 Q Now, you get called to go back to where? Show the
8 jury.
- 9 A I get called here. I get called to the champagne
10 room here.
- 11 Q When you get to the champagne room, this area here,
12 you pointed -- and I'm sorry -- who if anybody, was
13 there when you got there, Mr. Hawkins?
- 14 A "Jon Jon" was there. John Johnson. Excuse me. The
15 defendant was here, was right here. John was here.
16 Carl was here. I was right -- I was right here at
17 the entrance of this hallway.
- 18 Q I think you stated you observed the defendant,
19 something about his clothing?
- 20 A Yeah. He was putting on his sweater. He already had
21 his undershirt on. He was putting his sweater on.
- 22 Q What, if anything, did you hear the defendant say?
- 23 A I came in on a comment he said to "Jon Jon" and Carl.
- 24 Q What was that comment?
- 25 A He was making threats to "Jon Jon" and Carl.

1 Q What did he say?

2 A I don't know the whole comment, but the end of it

3 was, "I'm going to kill you."

4 Q "I'm going to kill you"?

5 A Yes.

6 Q Did you take what was said as a threat --

7 A Yes --

8 Q -- at that point?

9 A -- we did. He was argumentative. He already was

10 being escorted out of the club at that point.

11 Q What happened after that?

12 A I got called to -- John told me to go to the dressing

13 room to make sure everything was okay, make sure

14 because of the -- I got called to the dressing room

15 to make sure everything was okay. The dancers, you

16 know, hear -- you know, dancers hear -- they like to

17 talk real quick. And then I came back to the

18 champagne room, and the defendant was being walked

19 from here to the bar.

20 Q You go to the dressing area?

21 A Yes.

22 Q You were told to go there by "Jon Jon"?

23 A Yes.

24 Q You come back. What's happening?

25 A The defendant, Carl and "Jon Jon" were walking to

1 this area right here. And I am probably -- I go from
2 the dressing room to this hallway. They're walking
3 from here to here.

4 Q And as a result of the conversation -- they told you
5 what they had seen back here. And as a result of
6 that, the defendant, Dewain Herring, was being walked
7 out, correct?

8 A Yes.

9 Q Did you join that line of walking him out?

10 A Yes, I did.

11 Q Getting Dewain Herring out of the club?

12 A Yes.

13 Q And can you show the jury on here where the
14 defendant, Dewain Herring, was taken out of the club?

15 A He was walked through the bar to the lobby, out to
16 the lobby, out the front door and to the front area
17 of the club. His car was in the parking lot.

18 Q Did you all push him, drag him, throw him out of the
19 club?

20 A No, we did not.

21 Q Him being the defendant, Dewain Herring?

22 A No, we did not.

23 Q How was he taken out of the club?

24 A We walked behind him and made sure that he couldn't
25 backstep. We walked behind him so he could keep

1 going forward.

2 Q And have you taken, escorted other people out of the
3 club prior to January 28th, 2006?

4 A Yes, I have.

5 Q And is this the procedure you all use?

6 A Yes. We use it as friendly as we can get until he
7 gets worse. We use a very friendly procedure of
8 walking people out of the club.

9 Q Did the defendant want to leave?

10 A He did not want to leave.

11 Q Can you describe his demeanor, his being Dewain
12 Herring, as he was leaving the champagne room as you
13 were going with him here? Describe his demeanor to
14 these ladies and gentlemen.

15 A Very aware of what was going on.

16 MR. HARPOOTLIAN: Object, Your Honor. "Very
17 aware of what's going on"? That's --

18 THE COURT: Just what you observed, sir.

19 Q Did he appear to you to understand the conversations
20 you and/or other people were having him? Could he
21 respond to it?

22 A Yes.

23 Q What did he look like? What was his dress like? Did
24 he have his clothes on now?

25 A Yeah. Red shirt, white turtleneck, pants.

1 Q Did he appear to understand when he was told, hey,
2 you've got to leave?

3 A I wasn't there for when he was told to leave. I was
4 not there at all at that time.

5 Q You said, you've testified you heard what you
6 considered a threat. Did you hear him, being Dewain
7 Herring, saying anything else as he was coming out?

8 A He was threat -- he was talking to John. So John was
9 the closest person to him with us walking him out.

10 Q And what did you hear him say, if anything?

11 A I didn't hear -- I can't really tell you what he
12 said. I just know it was threats. But like I can't
13 hear word-for-word what it was because there was
14 music and everything else. But as we got out here, I
15 could hear more threats.

16 Q And when you come outside, who comes outside, if
17 anybody?

18 A "Jon Jon" comes outside.

19 Q And do you go outside of Chastity's initially when
20 the defendant, Dewain Herring, was being taken out?

21 A I actually stay at the counter and then I walk out
22 seconds later.

23 Q Seconds later. When you get outside, --

24 A Yes.

25 Q -- who is outside?

- 1 A "Jon Jon" and the defendant.
- 2 Q All right. And you testified earlier at this point
- 3 you heard some other threats?
- 4 A Yes.
- 5 Q Tell the ladies and gentlemen what threats, if any,
- 6 you heard from the defendant, Dewain Herring, when he
- 7 was outside?
- 8 A You don't want me to come back here. Somebody is
- 9 going to get f'd up.
- 10 Q Did he use F-U-C-K'd up?
- 11 A F-U-C-K-'d up. Yeah.
- 12 Q You don't want me to come back here. Somebody is
- 13 going to get f'd up. Did you hear him saying that?
- 14 A Yes.
- 15 Q Did you consider that a threat, Mr. Hawkins?
- 16 A That was a threat.
- 17 Q Did you take it that way?
- 18 A Yes.
- 19 Q Who else was he speaking to you there? Who else was
- 20 with you?
- 21 A Me and John.
- 22 Q And where were you located when that happened?
- 23 A I was out here at the front awning.
- 24 Q You can have a seat back. What happened after that?
- 25 A He kept talking to John about the establishment, what

1 it was there to sell.

2 Q He being the defendant, Dewain Herring?

3 A Yes. And we told him that we didn't sell that type
4 of products and that we were for dances only. And
5 then he said something about that again. And then
6 that's when John said, "You can go up the street for
7 that if you have to. Don't come back here."

8 Q Is he actually -- does "Jon Jon" motion? Do you
9 remember if he motions up the street?

10 A He motions. He motions go up the street.

11 Q Had the defendant paid for a dance that night or for
12 the champagne room?

13 A I did not witness it; but to my knowledge, yes.

14 Q Was he asking you all for his money back?

15 A Yes.

16 Q In your opinion, based on your observations at the
17 time you were with the defendant, Dewain Herring, did
18 he appear to be upset with you that he didn't get his
19 money back?

20 MR. HARPOOTLIAN: Objection, Your Honor. Asking
21 for opinion.

22 THE COURT: Sustained.

23 MR. HARPOOTLIAN: Thank you.

24 Q Did he ask for his money back?

25 A Yes, he did.

1 Q Describe his emotions. What was his demeanor?

2 A Angry.

3 MR. MEADORS: Your Honor, at this time we'd like
4 just a few seconds to pull the screen up, please.

5 THE COURT: Okay.

6 MR. MEADORS: Your Honor, while they're doing
7 that, State's 54, while it appears there is nothing
8 in it, it is actually the CD that contains the
9 cameras. Mr. Harpootlian and I have --

10 MR. HARPOOTLIAN: He is going to at some point
11 call witnesses to establish the chain, if you will,
12 on that since they've had it.

13 MR. MEADORS: That's correct..

14 MR. HARPOOTLIAN: But at this point we're not
15 objecting once that chain, the people who have had it
16 since it was turned over it to them.

17 THE COURT: Reserving your objection.

18 MR. MEADORS: So it would be State's 54 for I.D.
19 at this point.

20 MR. HARPOOTLIAN: Right. But you're going to
21 play it.

22 MR. MEADORS: As we told you we would. Yes,
23 sir.

24 MR. HARPOOTLIAN: Your Honor, we obviously want
25 them to call the chain witnesses.

1 **MR. MEADORS:** We are, sir. And for the record,
2 this is camera 12, camera 4, camera 5, camera 8,
3 camera 3, the ones which we provided to you. And we
4 will provide the chain witnesses. It's for I.D.

5 **THE COURT:** What is your objection?

6 **MR. HARPOOTLIAN:** Well, Your Honor, I want to
7 make it clear for the record as I reserve my
8 objection and they don't connect the chain, the jury
9 at that point would have seen it and it will be a
10 problem.

11 **MR. MEADORS:** Judge, we have everybody in the
12 chain. I told him that.

13 **MR. HARPOOTLIAN:** And I'm sure they do. I just
14 don't want --

15 **THE COURT:** I'll just have to take care of it.

16 **MR. HARPOOTLIAN:** Okay. Again at that point,
17 Your Honor, I'd have to make a motion.

18 **THE COURT:** I understand that.

19 **MR. HARPOOTLIAN:** Okay.

20 **MR. MEADORS:** Your Honor, I think so everybody
21 can hear, I'm going to ask Mr. Hawkins to come right
22 here and ask him to speak up so that the court
23 reporter and I think everybody will be able to hear
24 if he talks up, with your permission. Donald,
25 Mr. Hawkins, if you'll come down. And, Your Honor,

1 as I ask Mr. Caba to change, I'm going to refer to
2 the camera number and then where it's located. So
3 that way I think for the record, that should be
4 fairly clear.

5 Q Mr. Hawkins, again, if you'd speak up and use this if
6 you need to. I'll try to stand back where the jurors
7 can see. Do you recognize this?

8 A Yes.

9 Q Okay. And tell the folks what that is?

10 A This is the front camera at the door, front door of
11 Chastity's Gold Club pointing down in the awning, the
12 awning area. There's an awning up above this.

13 Q And that is camera 4. Is that what it says right
14 there? Camera 4?

15 A Yes.

16 Q Okay. Now, you've reviewed these tapes or most of
17 them with either me or somebody with Solicitor
18 Giese's staff, correct?

19 A Yes.

20 Q And does it depict -- this fairly and accurately
21 depicts what happened at Chastity's that night?

22 A Yes.

23 Q Correct?

24 A Yes, it does.

25 Q Please roll the tape. Now, we just saw a car coming

1 in here. Do you know whose car that is?

2 A Yeah. That's the defendant's car parking in front of
3 the sign of Chastity's.

4 Q Mr. Kata, please stop. Now, at 11:48 on
5 January 28th, 2006 --

6 MR. HARPOOTLIAN: It's 11:00.

7 MR. MEADORS: 11:00:48 seconds.

8 MR. HARPOOTLIAN: Right.

9 Q 11:00:48 seconds, on January 28th, 2006, do you know
10 who that person is coming in there?

11 A That's the defendant.

12 Q And if he keeps walking, is he going toward the club?

13 A Yes.

14 Q Keep going forward. So at 11:01:06 p.m. the
15 defendant enters Chastity's, correct?

16 A Yes.

17 Q Please go ahead then and go to 11:56:50 and just
18 pause it. That's fine. Just stop it. Your previous
19 testimony is that I believe when we referred to --

20 I'm sorry, Judge -- State's 51, that the defendant
21 was escorted out by you, Mr. Weeks and the victim
22 "Jon Jon"?

23 A Yes.

24 Q Correct? And you viewed this tape. Does this show
25 the defendant being escorted out of Chastity's?

1 A Yes. This will show him being escorted out of
2 Chastity's.
3 Q Please roll the tape, Mr. Kata. All right. Pause it
4 right here, please. Who is this?
5 A That's "Jon Jon". This is me. That's Carl. And the
6 guy that just left was the defendant.
7 Q Please roll it. Any of that time, did you all touch
8 him going out?
9 A This time, no.
10 Q Was he thrown out?
11 A No.
12 Q Please stop it. Okay. Let it roll. Who is this
13 individual?
14 A This is Carl.
15 Q And who is this?
16 A That's me.
17 Q Now, stop right here, Mr. Kata. At 11:56:26 on
18 January 28th, 2006 -- camera 12 now for the record,
19 Judge, also -- what are you all looking at?
20 A We're looking at a series of cameras that were placed
21 on this wall. This is the counter of Chastity's.
22 This wall that's -- on the other side of the wall is
23 a door. On this side of the wall there is a series
24 of cameras that we have for security for the parking
25 lot.

1 Q And looking at State's No. 10, does it show this?
2 A Yes.
3 Q Show these cameras?
4 A Yes, it does.
5 Q They're monitors I guess I should say?
6 A Yes.
7 Q And is that what you all were looking at?
8 A Yeah. We're looking at all those monitors.
9 Q These monitors that you all were looking at. What
10 were you looking at?
11 A The parking lot. There is certain different views
12 that those cameras show.
13 Q And did it show then the defendant, Dewain Herring,
14 going outside?
15 A Yes.
16 Q Can you now switch to front camera which would be
17 camera 4. Can you go back to 11:56, pick up where
18 they walk out? 11:56:56.
19 JUROR: Excuse me. Excuse me.
20 MR. MEADORS: I'm sorry.
21 (Mr. Meadors moves out of the way of a juror).
22 Q Is that the defendant leaving?
23 A Yes, it is.
24 Q Who is behind him?
25 A John.

- 1 Q And at this time where are you?
- 2 A I am looking at the camera.
- 3 Q Pause one second, please. I notice there is a time,
- 4 some time lapse between here. When you walk out,
- 5 looking back at State's 10, when you walk out and
- 6 take a left as you go out, what is back in here, if
- 7 anything? Let me show a better picture here.
- 8 State's 9. Looking at State's 9, how would you
- 9 describe this area in here?
- 10 A A nook.
- 11 Q A nook?
- 12 A Yeah. It would be a nook, an open nook.
- 13 Q Go ahead. And you've seen that. Where, if anywhere,
- 14 did the defendant go?
- 15 A He went to his car.
- 16 Q And at this point now on camera 4 at 11:57:45, who
- 17 comes out?
- 18 A I come out.
- 19 Q That's you?
- 20 A Yes.
- 21 Q And who, if anybody, based on your observations and
- 22 looking at this, who comes back here?
- 23 A Dewain.
- 24 Q The defendant, Dewain Herring?
- 25 A Yeah.

1 Q Pause one second and switch to front right. Keep
2 this here. Then go back to the time, the same time
3 on the right front which would be camera 5, please.
4 Again, is this John Johnson?
5 A Yes, sir.
6 Q And if I am looking at Chastity's Gold Club, would
7 this camera be on the right shooting in?
8 A If you're looking at it, it would be on -- yeah. It
9 would be on the right, right corner.
10 Q Pause that one second. You testified earlier that
11 there were some threats when you got outside?
12 A Yeah.
13 Q Tell me what's going on over here?
14 A These are the threats that I said earlier. You don't
15 want me to come back here or somebody is getting F'd
16 up. And this is where he is talking about the
17 establishment of Chastity's Gold Club, assuming that
18 it was a --
19 Q Speak up, please.
20 A Assuming that Chastity's Gold Club was some type of a
21 self prostitution or whatnot. And this is where we
22 are telling him, no, that's not what this is. This
23 is a dance establishment. It's a bar establishment,
24 a legal establishment.
25 Q So he was trying to tell you that's what this was and

1 you were saying it's not that type of place, it's a
2 dancing establishment?

3 A Yes, sir.

4 Q What, if anything -- you said earlier -- is there a
5 gesture here where John Johnson motions up the road?

6 A Yeah. It's later in the video. But, yes.

7 Q Would you go back to camera 4 front, please? Please
8 roll it, Mr. Kata. Where is John Johnson's hand?

9 A The left one is in the pocket. The other one is
10 motioning with the defendant.

11 Q Stop right there. Now, John Johnson is pointing up
12 the road?

13 A Yes.

14 Q You are there. What was that for?

15 A This is where he said that if you want that type
16 of -- we weren't trying to specifically say a place,
17 but we just say go up the street if you want that
18 type of entertainment.

19 Q Please continue, Mr. Kata. At any time in this
20 thing, had you or "Jon Jon" threatened the defendant,
21 Dewain Herring?

22 A I -- no.

23 Q Right in here?

24 A No.

25 Q What does this depict now? What do you remember and

1 what does this show?

2 A This shows him getting in his car and then he

3 actually pulls out of his parking space. He doesn't

4 pull out of the parking lot but out of the parking

5 space. And he sits in his car for a few minutes in

6 the parking lot.

7 Q What are you all doing?

8 A Watching him leave. And right here we had noticed he

9 was messing with his glove box.

10 Q Show the jury. You saw that?

11 A Yes.

12 Q Show the jury. What do you mean by that,

13 Mr. Hawkins?

14 A He was leaned over in his car towards the glove box

15 with his right hand.

16 Q Could you see if he got anything?

17 A I couldn't. No. The door was closed. The door of

18 the car was closed. You couldn't see anything.

19 Q Could you see his body moving?

20 A Yeah. His body is moving over.

21 Q And you all were here and his car was here?

22 A Yes.

23 Q Where did Mr. John Johnson go here?

24 A He went to the other side of the parking lot.

25 Q Just pick it up back when we went to his car. You

1 were going to front right camera a minute ago,
2 weren't you? Would you go back then? I apologize.
3 Which is camera 5 for the record. And does front 5
4 camera right show -- does this show Mr. Johnson
5 coming here?

6 A Yeah.

7 Q And at this point you go where?

8 A I go to the back -- to the top of the steps.

9 Q And do you go inside at that point?

10 A No.

11 Q What are you doing then, Mr. Hawkins, if anything?

12 A Pretty much watching, watching out for John at that
13 time because he -- 'cause he went to the part of the
14 parking lot that's actually not on a camera.

15 Q So you're out there also observing, correct?

16 A Yes.

17 Q And at this point, what's in your mind, if anything?

18 MR. HARPOOTLIAN: Objection, Your Honor.

19 THE COURT: Sustained.

20 MR. MEADORS: It's his mind, Your Honor, in
21 Mr. Hawkins' mind.

22 THE COURT: I understand that.

23 Q At this point had you been threatened?

24 A Yes.

25 Q Where was the person that had threatened you?

- 1 A Still in the parking lot.
- 2 Q Where was your partner or the manager, Mr. John
- 3 Johnson?
- 4 A Behind his SUV in the parking lot a few car lengths
- 5 down.
- 6 Q And you were up here?
- 7 A Yes.
- 8 Q Why were you still here? Why were you still outside?
- 9 A Because I could see John.
- 10 Q Please roll on. Can we now move to -- you can stop,
- 11 please -- front left which is camera No. 8 for the
- 12 record. And this vehicle right here is whose vehicle
- 13 based on what you observed that night and this video?
- 14 A The defendant's.
- 15 Q And at 12:00:30 seconds, what do you observe here on
- 16 the front of this vehicle?
- 17 A On the front of the vehicle?
- 18 Q Did the lights come on?
- 19 A Yes.
- 20 Q Does the car leave and go back?
- 21 A Yes.
- 22 Q Stop it right there for a second please, Mr. Kata.
- 23 What did you observe that night? What happened with
- 24 the defendant's vehicle?
- 25 A It stayed in the parking lot for a minute or two

1 right there at the exit area of the parking lot. And
2 that was where we were getting his license plate
3 number.

4 MR. HARPOOTLIAN: Objection, Your Honor. I have
5 a matter I want to take up with the Court.

6 THE COURT: All right. Approach the bench.
7 (Whereupon, a bench conference is had)

8 THE COURT: Proceed, Mr. Solicitor.

9 MR. MEADORS: Thank you, Judge.

10 Q Where is "Jon Jon" now?

11 A He is behind the defendant's SUV.

12 Q Let me -- if you would, please, look, and if you'd
13 keep speaking up, at State's 53. That doesn't work.
14 Come this way. Sorry about that. Speak up, please,
15 so everybody can hear you.

16 A All right. The front of Chastity's right here.

17 Q Right.

18 A The SUV backs up. This is the opening of the parking
19 lot.

20 Q Correct.

21 A And the SUV is approximately right here.

22 Q Okay. Where is "Jon Jon"?

23 A He is a few car lengths back, around right here.

24 Q All right. Where are you?

25 A I'm right here at the corner.

1 Q Can you see out from where you are?

2 A Yes.

3 Q That's okay. Go back, Mr. Hawkins. No. I'm sorry.
4 Roll the tape. Now, do you remember how long this
5 car you've identified Mr. Dewain Herring was in sat
6 there in the parking lot?

7 A A few minutes.

8 Q Did you observe anything from where you were in
9 relation to that car?

10 A That car? I observed his windows rolling down.

11 Q Say that one more time?

12 A Windows rolling down.

13 Q You saw that?

14 A Yes.

15 Q What else, if anything?

16 A He leaned back over again into the glove box area or
17 the passenger's seat.

18 Q Now, could you go to camera number, front. Is that 4?
19 12:59, please. 12:59. Now, right here you testified
20 earlier couples came. And I don't know who they are.
21 I don't know if anyone wants to point them out. But
22 is that a couple coming in there?

23 A That's a couple.

24 Q Now, who is that?

25 A That's Carl.

1 Q Now, you and Carl are there. Where is the
2 defendant's vehicle?
3 A It's still in the parking lot.
4 Q And had you already been outside or inside when Carl
5 came out?
6 A I was inside when Carl came out.
7 Q You'd gone inside?
8 A Yeah.
9 Q Came back out?
10 A Came back out.
11 Q Where is the defendant's car at this point?
12 A Still in the parking lot.
13 Q Still where you pointed out?
14 A Carl, he is looking at it at that point.
15 Q Who is he talking to?
16 A He is talking --
17 MR. HARPOOTLIAN: Objection.
18 MR. MEADORS: I didn't say what he said.
19 MR. HARPOOTLIAN: No. I don't think he can say
20 who he talked to.
21 THE COURT: Overruled.
22 Q Well, where are you?
23 A I'm right here out of view.
24 Q Is that you?
25 A Yes.

1 Q Across from him?

2 A Yes.

3 Q Where Mr. Weeks' mouth is moving?

4 A Yes.

5 Q Okay. Please roll the tape. And from where you are,

6 can you see the defendant's vehicle?

7 A I could see it. But I am also back here. I could

8 see the front of it at this point!

9 Q Can you go to 12:01:26 on the right front camera

10 which is -- front right camera, right front which is

11 5, please. I apologize. The left front camera.

12 12:1. What, if anything, does this car do there?

13 A What? That car?

14 Q Here.

15 A Moving forward.

16 Q Go back to camera 4, please. If you could please go

17 back to 12:01:15. I apologize. 12:01:15. Right

18 there. Does that show Carl Weeks with his hand out?

19 A Yes.

20 Q Does that show Carl Weeks writing on his hand?

21 A Yes.

22 Q At this point where is the vehicle the defendant is

23 in?

24 A I believe it's still in the parking lot.

25 Q Whose head was that right there?

1 A Back up.

2 Q Could you go back, please, sir?

3 A That's my head.

4 Q 12:02:33 you were still outside with Carl Weeks?

5 A Yes.

6 Q Now, where are you going there, if anywhere?

7 A I was going back inside to the counter.

8 Q Pause right there, please. Go to inside camera

9 number 12. At the same time go to 12:03. Is that

10 you coming back inside?

11 A Yes.

12 Q And what are you looking at there?

13 A Cameras.

14 Q Pause right there, please, and go to left front

15 camera, camera 8, at the same time. Can you see this

16 camera view from inside when you're looking at the

17 monitor?

18 A Yes.

19 Q Are you looking at that?

20 A Yes.

21 Q Where is "Jon Jon"?

22 A He is still behind the SUV a few car lengths back.

23 Q Pause right there, please. What time is this?

24 A 12:03:25.

25 Q What, if anything, is the car you've identified the

1 defendant, Dewain Herring, in doing at this point?
2 A Leaving the parking lot.
3 Q Please continue. Which way is it heading in relation
4 to your club?
5 A He is going towards downtown Columbia.
6 Q Could you stop and go back to camera 4, please, the
7 front camera. At 12:03:30, after the defendant
8 leaves, do you come outside? That's shown on this
9 tape?
10 A Yes.
11 Q And what are you all looking at now?
12 A We're looking up the street towards downtown
13 Columbia.
14 Q And who is this that appears now at 12:04:05?
15 A "Jon Jon".
16 Q 12:04:05 "Jon Jon" appears back, correct?
17 A Yes.
18 Q Who is that going inside?
19 A Carl is going back inside the club.
20 Q That's you?
21 A Yes.
22 Q That's "Jon Jon". John Johnson?
23 A Yes, it is.
24 Q Stop, please. Why did you come back inside?
25 A We saw the defendant's SUV coming back down River

1 Drive.

2 Q In the direction of Chastity's?

3 A Yes.

4 Q What did you do when you saw that?

5 A Well, we both went back into the club.

6 Q Stop, please. Whose car is this?

7 A The defendant's SUV.

8 Q Where are you now?

9 A In the club.

10 Q Where is John Johnson at?

11 A In the club.

12 Q Okay, sir. Back up just a little bit so the jurors

13 can see. Come this way, please. Stop. What door

14 was that?

15 A That's the front door.

16 Q Go ahead. Stop. Who is behind this door?

17 A "Jon Jon".

18 Q Is the door open?

19 A Yes.

20 Q Whose car is that up here?

21 A That's the defendant's.

22 Q Go ahead. Go back real quick. Keep going back.

23 Where are you at this point?

24 A I am in the club.

25 Q I understand that. Where in the club are you?

1 A Pacing the lobby at the counter.

2 Q Go ahead. What, if anything, did you observe coming
3 from the side of the vehicle?

4 MR. HARPOOTLIAN: Objection.

5 THE COURT: Overruled.

6 Q Did you observe anything on the side of the vehicle
7 from that video?

8 MR. HARPOOTLIAN: Well, objection as to what his
9 opinion is of what's on that video.

10 MR. MEADORS: I didn't ask him what his --

11 THE COURT: Approach the bench, please.

12 (Whereupon, a bench conference is had)

13 THE COURT: Go ahead. The objection is
14 overruled.

15 Q Go back to 12:06, please. Go back to 12:06:00.
16 What, if anything, do you see on the side of this
17 vehicle, if anything?

18 A There's a flashing light.

19 Q Play it back. Now switch to camera 4 inside.
20 12:05:30. And go a little farther back. Keep going
21 back a little farther. I apologize. Okay. Play.
22 Now, who is this here?

23 A This is me.

24 Q Who is this?

25 A That's Angela.

1 Q Angela's last name?

2 A Coon.

3 Q And at this point what are you all looking at?

4 A The video screens.

5 Q Pause it. Now, when "Jon Jon" comes -- you stated he

6 came inside?

7 A Yes.

8 Q Where did he come inside?

9 A He came to the front door.

10 Q And looking at State's 9, does that show the front

11 door?

12 A Yes, it does.

13 Q And when you're inside looking at State's 6, does

14 that show the front door?

15 A Yes, it does.

16 Q And can you step over here, please, just briefly?

17 Can you show the ladies and gentlemen of the jury

18 where "Jon Jon" would have been when he came inside

19 right before the defendant's vehicle came back up?

20 A He stayed right here at the front door.

21 MR. HARPOOTLIAN: May it please the Court, Your

22 Honor. Note the previously made motion on No. 6.

23 THE COURT: Yes.

24 Q If you go straight back here in No. 6, could you go

25 back into the back of the bar that way on January

1 28th, 2006?

2 A Straight back from this door?

3 Q From this door, if you walked straight in, could you
4 go that way?

5 A No. There was a mirror, a wall here, and a
6 chandelier.

7 Q So if you wanted to get to this area, how would you
8 go from the door?

9 A You had to have come in and turned.

10 Q So, before 12:06:06, 12:06:06 when "Jon Jon" came in,
11 he was standing where?

12 A At the door.

13 Q And you were where?

14 A At the counter.

15 Q Prior to "Jon Jon" hitting the floor; what, if
16 anything, did you hear from him?

17 A He says a statement. He said, "Oh, shit."

18 Q Play the tape. And back up a little bit, please.
19 I'm sorry. Is that "Jon Jon"?

20 A Yes.

21 Q Is that Angela?

22 A Yes.

23 MR. HARPOOTLIAN: May we approach the bench,
24 Your Honor?

25 THE COURT: Yes, sir.

1 MR. HARPOOTLIAN: I apologize.
2 (Whereupon, a bench conference is had)
3 Q Continue. Is that you there?
4 A Yes.
5 Q After the shot was fired, was 911 called?
6 A Yes.
7 Q Did the EMS come?
8 A Yes.
9 Q Did the Sheriff's Department come?
10 A Yes.
11 Q And then does the rest of this tape reflect some of
12 that?
13 A Yes.
14 Q Stop, if you will, and go back to the front to the
15 left. Okay. The front left outside at 12:04. Your
16 Honor, I'm about to finish. I have a couple more
17 questions on this. 12:06:04. I'm sorry. Have you
18 still got 12:06? Okay. Start there. That's it.
19 After "Jon Jon" hit the floor, what did this car do?
20 A Leave the parking lot.
21 Q Do you see that on here?
22 A Yes.
23 Q That's all at this time. I am not through
24 questioning him. That's all as far as this. If you
25 would please take a seat back. I show you what's

1 been admitted into evidence as State's 11. If you'll
2 keep, please, speaking up, Mr. Hawkins. Does that
3 show the out -- I may have shown this to you
4 earlier -- the indention, if you will, plus the door
5 going into Chastity's?
6 A Yes, it does.
7 Q Okay. Now, based on the time that you -- why did you
8 hit the floor?
9 A A loud sound hit the door.
10 Q Based on the time that you spent with this individual
11 that night, did you have an opportunity to see who it
12 was, give a description of him?
13 A After the shot?
14 Q No, sir. Prior to this. I mean, did you see the
15 defendant? There's no question you saw the defendant
16 in Chastity's?
17 A Yes.
18 Q You helped escort him out?
19 A Yes.
20 Q Gave a description of what he was wearing?
21 A Yes.
22 Q Is the individual that you helped escort out of
23 Chastity's, the individual who was in the front and
24 moved his car back and the individual that stayed
25 minutes out in front before he went out on River

1 Drive and the individual that came back and sat 38
2 seconds as we saw in front of the car for which you
3 say is a flash you saw, and the individual --

4 MR. HARPOOTLIAN: Objection, Your Honor. He
5 never said flash.. He said light.

6 Q The light you saw.

7 MR. HARPOOTLIAN: And again, I object to that
8 testimony.

9 THE COURT: I understand.

10 MR. HARPOOTLIAN: Especially by the solicitor.

11 Q Is that person in the courtroom?

12 A Yes, he is.

13 Q Please point him out to the ladies and gentlemen of
14 the jury.

15 A (Witness points).

16 MR. MEADORS: Your Honor, we'd like the record
17 to reflect he's pointed out the defendant, Dewain
18 Herring.

19 THE COURT: The record will so reflect the
20 witness identified the defendant.

21 Q And the individual who made the threats to you and
22 "Jon Jon", is that individual here?

23 A Yes, he is.

24 Q Is that Mr. Dewain Herring?

25 A Yes, it is.

1 **MR. MEADORS:** Beg the Court's indulgence.

2 Judge, thank you. That's all we have.

3 **THE COURT:** All right. Ladies and gentlemen of
4 the jury, we're going to take our lunch break at this
5 time. I'm going to ask you to be back in the jury
6 room at 2:15 at which time we will recommence the
7 trial or continue the trial. Again, I'll ask you not
8 to discuss the case among yourselves when you return
9 to the jury room or with anyone else over the lunch
10 hour. All right. Thank you very much.

11 (Jury out at 1:15 p.m.)

12 **THE COURT:** Now, Mr. Hawkins, you may come down.
13 Let me caution you, sir, not to discuss this case or
14 discuss anything with any of the parties in this case
15 over the lunch hour. You're under oath and I expect
16 you to respect that, sir. All right. Thank you very
17 much. You may come down.

18 Mr. Harpootlian, anything for the record at this
19 time?

20 **MR. HARPOOTLIAN:** Yes, sir. I'd ask Your Honor
21 to -- during this testimony, the family -- I
22 understand this is traumatic to them, but it's
23 prejudicial to my client to have them sobbing in the
24 courtroom.

25 **THE COURT:** All right. I will caution the

1 audience. Well, some of them have left the
2 courtroom. And I will caution the audience about
3 displays of emotion during the continuation of the
4 trial. I will do that. There's not much other than
5 that I can do.

6 MR. HARPOOTLIAN: You can remove them from the
7 courtroom, Your Honor.

8 THE COURT: I'm not going to do that at this
9 point.

10 MR. HARPOOTLIAN: We would ask that if it
11 reoccurs you remove them from the courtroom.

12 THE COURT: I'll take that under advisement.

13 MR. HARPOOTLIAN: Yes, sir.

14 THE COURT: Anything further for the record?

15 MR. HARPOOTLIAN: Not at this time, Your Honor.

16 THE COURT: All right. We'll stand at ease
17 until 2:15.

18 (Whereupon, a lunch break is taken)

19 THE COURT: All right. Ladies and gentlemen in
20 the gallery, let me just say, I know that this may be
21 a very difficult trial to witness for some people,
22 particularly people who are connected with the victim
23 in this case, but that may not be the only people who
24 may be emotionally affected. It's very distracting
25 when displays of emotion -- and I realize they

1 happen. That's part of the life of being up here in
2 this room, in this courtroom. But they are
3 distracting to the court. They are distracting to
4 the jury.

5 And I'm going to have to ask anybody that feels
6 that they cannot sit through this testimony without
7 displaying emotions that you step outside. It's very
8 easy to step outside, re-calm yourself and come on
9 back in. This is an open courtroom. This is a
10 public courtroom. Everybody, anybody is welcome in
11 this courtroom that does not distract and interfere
12 with the court's business.

13 I say that in all due respect to everybody in
14 this courtroom. If you have to come and go, I'll ask
15 that you come and go quietly. This is serious
16 business. This is very serious business. And it's
17 important that we maintain order in the courtroom.
18 If necessary, I have the authority to clear the
19 courtroom. I don't want to do that. I don't -- it's
20 not necessary at this point. I am just making that
21 as an observation and a caution, and I would
22 appreciate your cooperation.

23 Now, counsel, are you ready for the jury?

24 **MR. HARPOOTLIAN:** Your Honor, I'd like to put a
25 matter on the record.

1 **THE COURT:** Certainly.

2 **MR. HARPOOTLIAN:** During Mr. Hawkins' testimony
3 on direct he was asked by the solicitor if he could
4 see something in the videotape. I would note for the
5 record he responded a light, as if to infer that it
6 was a flash of a muzzle or something to do with a
7 gun. As a matter of fact, the solicitor in
8 re-questioning him asked when he saw the flash.

9 That would be an opinion of what he's looking
10 at. He's not been qualified as an expert and
11 therefore can't give an opinion as to what is seen on
12 that videotape.

13 I would further note for the record this
14 videotape was shipped to Cape Canaveral where NASA
15 examined it, attempted to enhance it. And if they
16 have some expert that is going to give an opinion
17 about it, I haven't seen such a report yet. So to
18 have this witness give an opinion about what he sees
19 on the video, not what he saw that night but what he
20 sees today in the videotape we believe is a violation
21 of rules of evidence. We'd object to it. We'd ask
22 you to strike it and instruct the jury to disregard
23 it.

24 **THE COURT:** What's the State's position?

25 **MR. MEADORS:** Your Honor, under 701, if a

1 witness is not testifying as an expert, the witness's
2 testimony forms an opinion or inference to deliver
3 those opinions or inferences --

4 **MR. HARPOOTLIAN:** I can't hear Mr. Meadors, Your
5 Honor.

6 **THE COURT:** He said 701.

7 **MR. MEADORS:** So actually based on his
8 perceptions, I asked him, looking at that did you
9 appear to see anything? He says, I see some light.
10 I think he's allowed to testify to that.

11 **MR. HARPOOTLIAN:** But, Your Honor, not what he
12 sees in the courtroom. That's about what he saw
13 then. He is being asked to a look at a videotape and
14 say interpret this for me. What is that? Is that a
15 light? Could, you know --

16 **THE COURT:** It certainly was not phrased in that
17 manner. And I'm not certain that the question wasn't
18 when the video shows him looking at a monitor and
19 whether the question dealt with what he thought he
20 saw or what he says he saw at that time or what he
21 saw in the courtroom today, I quite frankly am not
22 clear.

23 **MR. HARPOOTLIAN:** Well, Your Honor, I was clear
24 because --

25 **THE COURT:** Or both.

1 **MR. HARPOOTLIAN:** He was not looking at the
2 monitor at the time of the shot. He has made that
3 clear. I'm talking about the monitor. The night of
4 the incident he was not looking at the monitor when
5 the shot came.

6 **THE COURT:** Okay.

7 **MR. HARPOOTLIAN:** He has made that clear. He
8 didn't see the shot. He heard the shot. So whatever
9 he is saying --

10 **THE COURT:** We know he didn't see it.

11 **MR. HARPOOTLIAN:** -- is based on this courtroom
12 here today, and these jurors -- I mean, if the
13 solicitor in argument wants to say that's a flash,
14 the jurors can look at that. They'll have their
15 opinions. But to have him give an opinion we submit
16 is improper under the rules.

17 **MR. MEADORS:** Your Honor, I think under 701(a),
18 he can look at it. Do you in your opinion as a lay
19 person see anything? I see what I think is a flash.
20 I think every person could do that.

21 **THE COURT:** He never used the word "flash".

22 **MR. MEADORS:** Well, the light. I wasn't trying
23 to misrepresent. I see a light. I think he can look
24 at something and say that.

25 **THE COURT:** Flash is a little different than a

1 light

2 **MR. MEADORS:** Well, that thing is there.
3 There's something. And he says it's a light.

4 **MR. HARPOOTLIAN:** It's something.

5 **THE COURT:** That's the solicitor's opinion, too.

6 **MR. HARPOOTLIAN:** Well, it's something. I mean,
7 that's --

8 **MR. MEADORS:** I mean, it's a bullet.

9 **THE COURT:** All right. That's enough. How
10 would you have me instruct the jury?

11 **MR. HARPOOTLIAN:** I would say that only experts
12 can give opinions. You've heard this gentleman give
13 you an opinion as to what he thinks that video shows.
14 You're to disregard his opinion and that testimony is
15 to be struck and not considered.

16 **MR. MEADORS:** I respectfully ask you not to do
17 that. He's allowed to say what he observes, if
18 anything, on the video. Like if it's a car, if it's
19 something else, he just said I saw it. It's a
20 picture. He can interpret it. He was there.

21 **THE COURT:** Okay. The motion is overruled.

22 **MR. HARPOOTLIAN:** Sir?

23 **THE COURT:** The motion is overruled. He says he
24 saw a light. I don't know whether he saw a light. I
25 don't know whether he saw the light. I've ruled.

1 **MR. HARPOOTLIAN:** I just want the record to be
2 clear that it's based on what he sees in the
3 courtroom today, not what he saw that night.

4 **THE COURT:** All right. Ready for the jury?
5 Where is the witness? Mr. Harpootlian?

6 **MR. HARPOOTLIAN:** Sir?

7 **THE COURT:** Do you need the video for cross
8 examination?

9 **MR. HARPOOTLIAN:** Yes, sir. Not immediately,
10 but during the process. The solicitor has been kind
11 enough to let me use his --

12 **THE COURT:** Operator.

13 **MR. HARPOOTLIAN:** -- operator and screen and
14 equipment. Of course it belongs to all of us, but
15 the equipment that's here.

16 **THE COURT:** That's fine.

17 **MR. HARPOOTLIAN:** But we need the witness.

18 **THE COURT:** Where is the witness?

19 **MR. MEADORS:** He's here.

20 **THE COURT:** Oh. Come on back up, Mr. Hawkins.
21 All right. Bring the jury, please.

22 **MR. HARPOOTLIAN:** Judge, this microphone, it's
23 blocking my client's ability to see his lips which is
24 having some -- can we move it this way a little bit?

25 **THE COURT:** You can move it any way you want it.

1 **MR. HARPOOTLIAN:** Is that better, Dewain?

2 **MR. HERRING:** Yes, sir.

3 **MR. HARPOOTLIAN:** Okay. Thank you. Is that
4 okay with my media people?

5 (Jury in at 2:25 p.m.)

6 **THE BAILIFF:** The jury is present, Your Honor.

7 **THE COURT:** Thank you very much. Ladies and
8 gentlemen, I hope you had a pleasant lunch. We're
9 now ready to continue with the trial and the cross
10 examination by Mr. Harpootlian.

11 **MR. HARPOOTLIAN:** May it please the Court, Your
12 Honor?

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

14 CROSS EXAMINATION

15 **BY MR. HARPOOTLIAN**

16 **Q** Mr. Hawkins, how about step down here for just a
17 second, would you?

18 (Witness complies)

19 **Q** Now, if you'll stand over here. Why don't you let me
20 have that? Thank you. As I understand it from this
21 video, you are standing over here. You come out.
22 You come back in. What do you all call the
23 gentleman? John? "Jon Jon"?

24 **A** "Jon Jon".

25 **Q** "Jon Jon". He is outside. And he is at this point

1 at the door?

2 A At the door.

3 Q Peeking out?

4 A Yes.

5 Q You've got your back to him?

6 A Right here?

7 Q Yes.

8 A This was just telling them what was going on.

9 Q Who is "them"?

10 A The cashier, Nicole, and I think -- yeah. The

11 cashier, Nicole. And then I turned around. As you

12 see, I turned right back around.

13 Q Well, let's go over the film, as they say. Okay.

14 And who is this right here? That was Nicole?

15 A No. Nicole is still behind the desk.

16 Q Okay. You're looking back and then you go down?

17 A Yeah.

18 Q So, you -- how about back that up again. Okay. Back

19 was to the door?

20 A Yeah.

21 Q You are not -- "Jon Jon", whatever he is doing out

22 here, opening and closing the door, you can't see

23 that, right?

24 A At this moment, no.

25 Q Back it up a little bit more. Keep backing it up.

- 1 Okay. Now, go forward. That's Angela and you?
- 2 A Mm-hmm (affirmative).
- 3 Q You all are watching the monitors, right?
- 4 A Yes.
- 5 Q 12:05:33, 34, 36, 40, 42, 43. You walk over. Is
- 6 "Jon Jon" in or out at that point?
- 7 A His head is out.
- 8 Q But his body is in?
- 9 A Yes.
- 10 Q Okay. So at 49 you're over there talking with her.
- 11 And actually you all looked back here. There's a
- 12 flash back here. What was that?
- 13 A That's probably the front stage lights.
- 14 Q Okay. 01, 03, 05. So, for about 12 seconds prior to
- 15 you taking a dive there when you hear the shot, your
- 16 back is to this area. Isn't that correct?
- 17 A Yes.
- 18 Q Okay. So whatever is going on back here, "Jon Jon"
- 19 peeking in, peeking out, whatever, you can't see it
- 20 because your back is to him. Isn't that correct?
- 21 A Yes.
- 22 Q Okay. So -- you can stop it. So when you said you
- 23 saw a light a little while ago, that was from looking
- 24 at it today?
- 25 A Yeah.

1 Q Not from something you saw that night?

2 A No.

3 Q And that's just you looking at the same video these
4 jurors are looking at. You see a light. Some people
5 may not see a light. Isn't that right?

6 A That's what the prosecutor asked me then. That's
7 what I said.

8 MR. MEADORS: Objection. That's what he said.

9 THE COURT: Overruled. Go ahead.

10 Q Okay. But it's based on what you see here today?

11 A Yes.

12 Q Go ahead and take the stand. You can turn that off.
13 Now, how long did you work at Chastity's?

14 A From September to early April.

15 Q Is that the only time you worked there?

16 A Yes.

17 Q Have you worked at other strip clubs?

18 A No.

19 Q That's the only one you ever worked at?

20 A Yes.

21 Q And you worked there for about six months?

22 A Yes.

23 Q And how did you come to work there?

24 A I have friends that worked there before, before I
25 started working there.

1 Q Who are they?

2 A Rhett Reeves, Tia Dixon, several of the bartenders
3 and management, Andre Gerard. I mean, I went to high
4 school with Andre Gerard which was a manager at the
5 time.

6 Q Had you been in the place before you went to work
7 there?

8 A Yes.

9 Q On a number of occasions?

10 A Yes.

11 Q So, were you a frequent visitor there?

12 A Yes.

13 Q Okay. Now, where were you working prior to going to
14 work there?

15 A Joe's to Goes.

16 Q Joe's to Goes. Is that where you work now?

17 A Yes.

18 Q And that is a sandwich --

19 A Delivery, sandwich, wings.

20 Q Okay. Now, let me understand a little bit about this
21 club. You worked there as a what? What was your
22 title?

23 A Floorman.

24 Q Is that in management?

25 A No, it's not. No, it's not.

- 1 Q Okay. And how did you get paid?
- 2 A Hourly, plus tips.
- 3 Q And who tipped you?
- 4 A The customers, DJ's, dancers.
- 5 Q Okay. Now, let's talk about, what are you doing that
- 6 a customer would tip you for?
- 7 A Customer service, greeting them.
- 8 Q So somebody walks -- you say good evening, sir, and
- 9 they give you money?
- 10 A On occasion it's happened like that, yes.
- 11 Q Okay. I mean, do you get a lot of that?
- 12 A No. On occasion.
- 13 Q Now, customers also give you money when they're going
- 14 back into the champagne room or into the VIP room,
- 15 don't they?
- 16 A Yes.
- 17 Q And what do they tip you for, the customer, for the
- 18 champagne room or the VIP room?
- 19 A Tip the floorman?
- 20 Q Yeah.
- 21 A Sometimes we've gotten them champagne before and
- 22 they'll tip us for bringing it back there to them.
- 23 Q I've been out there and there's a guy that stands --
- 24 when somebody is back in that champagne room area,
- 25 there's a guy that stands outside?

1 A Yes.

2 Q What is he doing? Facing out. Not facing in, but
3 facing out?

4 A The guy that stands at the, near the champagne room?

5 Q Yes.

6 A Well, initially he's probably watching the main
7 floor.

8 Q He's got his back to the champagne room though?

9 A Yes.

10 Q And it appeared to me he was trying to keep people
11 from going back in there. I mean, do you have --

12 MR. MEADORS: Objection.

13 Q Do you have to --

14 MR. MEADORS: Objection.

15 Q Does he --

16 THE COURT: Rephrase the question.

17 MR. MEADORS: Your Honor, he's talking about an
18 incident when he was out there.

19 THE COURT: Sir, I understand the question.

20 Q Do people stand -- do people form and stand with
21 their back to the champagne room looking out at the
22 floor?

23 A Yes.

24 Q Is part of their purpose in doing that to prohibit
25 unauthorized people from going back in the champagne

1 room?

2 A Well, if they haven't paid, they don't go back there.

3 Q Okay. So you've got to pay to go back in the
4 champagne room?

5 A Yes.

6 Q And how much do you pay to go back in the champagne
7 room?

8 A Champagne, depending on the time, 215.

9 Q Okay. That's 215 just for the champagne and whatever
10 you do back there?

11 A Yes.

12 Q And how long do you get to go to the champagne room
13 for \$215?

14 A I believe 15 to 30 minutes.

15 Q Okay. 15 to 30 minutes?

16 A Yes.

17 Q Why not 15 or 30 minutes?

18 A I don't remember how much it actually costs for
19 either/or. I just know that it is -- there is a -- I
20 think it's a 15-minute dance for \$215.

21 Q Now, you have -- I mean, as I understand it, you can
22 have a dance -- if we look at State's Exhibit No. 51,
23 let me just hold it here so the jury can see it. You
24 come in the front door here and you go back here to
25 the bar, and there's a stage here where it says pole.

- 1 stage?
- 2 A Yes.
- 3 Q Do young ladies dance there?
- 4 A Yes, they do.
- 5 Q And then you come back here and there's another pole
- 6 stage. Young ladies dance there?
- 7 A Yes.
- 8 Q Does it cost money to get into the club?
- 9 A Yes, it does.
- 10 Q What does it cost?
- 11 A \$10.
- 12 Q Okay. You got in for \$10. You can sit here at the
- 13 bar and watch the ladies dance?
- 14 A Yes.
- 15 Q Okay. Now, can you get a lap dance when sitting out
- 16 here?
- 17 A No. I mean, you can be offered one, but then you
- 18 have to go to the VIP room.
- 19 Q Okay. So, a lap dance -- and tell the jury what a
- 20 lap dance is?
- 21 A That's a one-song dance.
- 22 Q Well, I mean, do they prance around in front of you?
- 23 A Yes.
- 24 Q Do they get on you? Do they sit in your lap?
- 25 A Yes.

- 1 Q Okay. So you have a woman sitting in your lap, on
2 your lap dancing?
3 A Yes.
4 Q Okay. And is she clothed or unclothed?
5 A VIP, no. She's unclothed.
6 Q She's unclothed. So you would have a naked woman on
7 your lap, sitting on your lap rubbing on you,
8 gyrating on you to music in the VIP room. Is that
9 right?
10 A Yes.
11 Q And that occurred every night?
12 A Yes.
13 Q And how much does that cost?
14 A The VIP dance?
15 Q Yes.
16 A \$30.
17 Q Okay. And that's one dance?
18 A Yes.
19 Q Okay. Now, if you get a naked woman on your lap
20 dancing for \$30 in the VIP room, --
21 A Uh-huh (affirmative).
22 Q -- what do you get in the champagne room?
23 A The dance is longer.
24 Q A longer dance?
25 A Yes.

1 Q And what else?

2 A Champagne.

3 Q And what else?

4 A I don't know where you're going with this.

5 Q Well, let me tell where I'm going with this. If you
6 can have a naked woman sitting on your lap in the VIP
7 room gyrating, what else can you get? What else
8 would you get? I mean, how much further can you go
9 than a naked woman --

10 MR. MEADORS: Objection, Your Honor.

11 Q -- grinding on your lap?

12 MR. MEADORS: He's already said champagne.

13 THE COURT: Overruled.

14 MR. HARPOOTLIAN: Your Honor.

15 THE COURT: Overruled. It's cross examination.
16 I'm going to allow it. Go ahead.

17 MR. HARPOOTLIAN: And I would object to
18 continually being interrupted with speaking
19 objections.

20 THE COURT: Yes, sir.

21 MR. HARPOOTLIAN: Thank you.

22 THE COURT: That's the rule.

23 Q What do you get? Champagne?

24 A Yes.

25 Q You can't have champagne in the VIP room?

1 A No.

2 Q You've never seen champagne poured in the VIP room?

3 A I've had -- I've never seen -- I've seen a glass of
4 champagne in the VIP room that a customer takes back
5 to the VIP room. I have never seen a bottle and two
6 glasses taken to the VIP room and given as they can
7 pour it.

8 Q How much is the champagne a bottle?

9 A It varies from price as -- it varies from different
10 types of champagne.

11 Q How much is the most expensive?

12 A Dom Perignon.

13 Q What's that? \$200 a bottle?

14 A I think it's like 250, 270.

15 Q 250. So you get for 300 bucks or 225, you can't
16 get -- which is what you said -- you can't get a
17 bottle of Dom and a dance, can you, for 225?

18 A No.

19 Q And let me ask you this. When you saw Mr. Herring
20 getting dressed, was there a bottle of champagne in
21 the room?

22 A I wouldn't -- I didn't look in the room at the time.
23 I was -- as I said earlier, I was -- I was just in
24 the doorway.

25 Q But you didn't see a bottle of champagne?

1 A I didn't see in the room.

2 Q Well, he's in the room getting dressed, right,
3 putting his sweater on?

4 A He's in the doorway of the room.

5 Q Okay. So your testimony -- well, let me ask you.
6 Let's just cut to the chase here. You're aware of
7 some dancers having sex with some customers in the
8 champagne room, are you not?

9 A I have heard that it's happened.

10 Q Is it frequent, infrequent?

11 A Not as frequent as I would believe, no.

12 Q Well, how frequent is it?

13 A I wouldn't know.

14 Q Well, you are the floorman. You worked there for
15 seven months. Is that right?

16 A Yes.

17 Q Are you telling this jury that you've heard about it
18 but nobody said, hey, we caught Cashandra in the
19 champagne room with some guy having sex last night?
20 You never heard that?

21 A I've heard it.

22 MR. MEADORS: Objection. Hearsay, Your Honor.

23 A That's where there frequent comes into it. I've
24 heard it, but it's --

25 MR. MEADORS: Objection.

1 **THE COURT:** Of his own knowledge only. I
2 sustain that objection. That's hearsay.

3 **Q** As a result of hearing anything, did you become more
4 vigilant about looking for people -- did you ever go
5 in the champagne room and check to see if people were
6 having sex in there?

7 **A** As a pitt boss, that's what you do. Frequently you
8 walk back there.

9 **Q** Okay. Now, you testified there were some beads
10 hanging down on these doors. Those beads, they gave
11 you privacy in the champagne room, right?

12 **A** Yeah. They're doorway beads.

13 **Q** Doorway beads. So it's like having a door there.
14 You can't see through them clearly. You've got to
15 part them to look, correct?

16 **A** Yes.

17 **Q** Okay. Did you work as a pitt boss?

18 **A** On occasion, yes.

19 **Q** Did you actually go back and part the beads and look
20 in?

21 **A** I have, yes.

22 **Q** Okay. And did you ever -- when you parted the beads,
23 did you see a naked woman sitting on a guy's lap
24 gyrating on him?

25 **A** Yes, I have.

1 Q Is that what you always saw back there?

2 A Yes.

3 Q Have you ever seen -- now, you're under oath. Have
4 you ever seen a man back there with any part of his
5 private parts exposed?

6 MR. MEADORS: Objection.

7 A No.

8 Q Never?

9 A Not me, no.

10 Q Not you?

11 MR. MEADORS: Relevance to this case, Your
12 Honor.

13 THE COURT: Overruled.

14 Q Not you?

15 A No.

16 Q Now, have you ever been told -- have you ever been
17 tipped by a dancer?

18 A Yes.

19 Q Well, what do you get tips from dancers for?

20 A Watching them so that I can make sure that nothing
21 happens to them.

22 Q Okay. Now, have you ever had to go into the
23 champagne room and remove somebody for touching a
24 dancer?

25 A I have, yes.

- 1 Q On how many occasions?
- 2 A A couple of occasions.
- 3 Q Okay. Is that a fairly frequent process?
- 4 A No.
- 5 Q Okay. So what goes on in the champagne room is, in
- 6 the privacy of a room -- and you have four of them
- 7 there -- women get on a man's lap and grind
- 8 themselves in a dance to music, correct?
- 9 A Yes.
- 10 Q And this is -- they're called entertainers. Is that
- 11 right?
- 12 A Yes.
- 13 Q And they are entertaining the man they're grinding
- 14 into his lap. Is that what they're doing there?
- 15 A I would assume so, yes.
- 16 Q Apparently for \$300. Is that right?
- 17 A Yes.
- 18 Q And the house gets part of the \$300?
- 19 A Yes.
- 20 Q What part?
- 21 A I think it's \$50.
- 22 Q They get \$50. And if they get champagne, does all
- 23 that money go to the house?
- 24 A No. There's a commission on the champagne.
- 25 Q Who gets the commission?

- 1 A Whoever sells it.
- 2 Q The seller being the dancer or you all or who?
- 3 A The dancer or us or management.
- 4 Q Okay. Now, let me ask you this. How are dancers --
- 5 are dancers paid? Do you know how they get their
- 6 money?
- 7 A By dancing and getting tips.
- 8 Q They're not paid employees, are they?
- 9 A No.
- 10 Q So they get tips?
- 11 A Yes.
- 12 Q Now, if you -- the way you get tips, if you're out
- 13 here on the pole stage dancing, the way you get tips
- 14 is to -- I mean, how do you get your tips there if
- 15 you're out here dancing? Does somebody throw money
- 16 at you? How do you get the money?
- 17 A As you say, throw money at them.
- 18 Q You've got naked women dancing up here?
- 19 A Yes.
- 20 Q And men are throwing money at them?
- 21 A I mean, yeah. Or they come close to them and they
- 22 put it in a garter built.
- 23 Q So they reach up and touch the woman and put it in
- 24 her garter belt. Is that right?
- 25 A Yes.

- 1 Q And so they get it there. Now, how do they end up
2 getting from -- when they're not dancing up here, are
3 they moving among the customers here?
- 4 A Yes. Or at the bar.
- 5 Q Or at the bar. And now, the bartenders, are they
6 women or men?
- 7 A Women.
- 8 Q Okay. And are they -- how do they get paid?
- 9 A Tips.
- 10 Q Okay. So the people pouring the liquor make their
11 money based on tips?
- 12 A Yes.
- 13 Q They don't get paid by the hour?
- 14 A They actually get paid by the hour also.
- 15 Q And they get tips?
- 16 A Yes.
- 17 Q Okay. And are they naked or clothed?
- 18 A Clothed.
- 19 Q And so, do they ever go back to the champagne room?
- 20 A No.
- 21 Q Now, the woman who are not dancing, we'll call them
22 dancers or entertainers, are they moving among the
23 customers out here among the tables?
- 24 A Yes.
- 25 Q And do they talk to them about buying champagne room

- 1 or going back into the VIP room or the champagne
2 room?
- 3 A Yes.
- 4 Q Because that's where they make their money, right?
- 5 A Yes.
- 6 Q They're not going to make any money out here chewing
7 the fat out with some mope at the bar, are they?
- 8 A I guess not.
- 9 Q Okay. So the idea is to get them back here to the
10 champagne room?
- 11 A Yes.
- 12 Q That's where they make the big bucks. Is that right?
- 13 A Yeah.
- 14 Q Now, you get a piece of that action as floorman.
15 That is, either the customer, the entertainer or
16 somebody else is giving you tips?
- 17 A Yes.
- 18 Q Okay. Who else is giving you tips over than the
19 customer and the dancer? Anybody else?
- 20 A No. That's it.
- 21 Q Okay. And the more a dancer gets, the entertainer
22 gets in the champagne room, the more you would -- in
23 other words, more champagne room dances is good for
24 everybody, isn't it?
- 25 A Yes.

1 Q And do couples go in the champagne room?

2 A Yes.

3 Q With a dancer?

4 A Yes.

5 Q And the dancer does dances with the woman or with the
6 man or both? How does that work?

7 A Either/or. Everything.

8 MR. MEADORS: Objection.

9 Q Either/or or everything?

10 MR. MEADORS: Objection. Relevance to this
11 case.

12 THE COURT: Overruled.

13 Q Either/or or what?

14 A Both.

15 Q Or both?

16 A Either/or, the man or the woman.

17 Q So sit and they gyrate in the man's lap? Gyrate in
18 the woman's lap? What?

19 A Yes.

20 Q Now, the dancers are allowed to touch the customer,
21 but the customer is not allowed to touch them. Isn't
22 that the rule?

23 A Yes.

24 Q So the dancers actually can take their naked breasts
25 and rub them in the face of the man, or the woman,

1 that's sitting there in a lap dance. Isn't that
2 correct?

3 A Yes.

4 Q And that's allowed. Right?

5 A (Nods head affirmatively).

6 Q So, if you're sitting there, the dancer can take her
7 naked breasts and rub them all over you. She could
8 touch you anywhere she wants. Isn't that correct?

9 A Yes.

10 Q The only rule is a man is not supposed to touch her.
11 Is that right?

12 A Yes.

13 Q And we call this dancing? Is that what you'd call
14 it?

15 **MR. MEADORS:** Your Honor, is that a question?

16 Q I am. Is that dancing? He's been asked to give
17 opinions about other things, Judge. I want to know
18 if that's dancing in your opinion.

19 A In a way, yes.

20 Q In a way. In a way, is it also prostitution?

21 **MR. MEADORS:** Objection, Your Honor.

22 **THE COURT:** Overruled. Go ahead.

23 Q In a way, is it not also prostitution?

24 A I don't know.

25 Q Well, what's your definition of prostitution?

1 A Somebody on -- somebody on the street.

2 Q They've got to be on the street?

3 A That is my definition.

4 Q It can't be in a hotel room? What are they doing on
5 the street?

6 MR. MEADORS: Your Honor, objection.

7 THE COURT: All right. Sustained. That's far
8 enough.

9 MR. HARPOOTLIAN: Your Honor, I'd like his
10 definition.

11 THE COURT: Does it relate to this case?

12 MR. HARPOOTLIAN: Yes, sir. It does relate to
13 this case.

14 Q Your definition of prostitution, sir?

15 MR. MEADORS: Your Honor, I thought you
16 overruled him, sustained my objection.

17 THE COURT: I sustained your objection.

18 MR. MEADORS: Yes, sir.

19 THE COURT: Approach the bench.

20 (Whereupon, a bench conference is had)

21 Q Is prostitution paying a person of the -- well, I was
22 going to say opposite sex, but these days -- for
23 paying somebody --

24 MR. MEADORS: Objection to that side comment,
25 Your Honor.

1 **THE COURT:** Overruled.

2 **MR. MEADORS:** Your Honor, I object.

3 **THE COURT:** Sir, I have overruled it. Now, I
4 cannot say it any more times.

5 **MR. MEADORS:** Your Honor, for the record, I was
6 just objecting to his side comment. He said, oh,
7 today you never know. That's what I was objecting
8 to.

9 **THE COURT:** Ask your question, Mr. Harpootlian,
10 and then please let's move on.

11 **MR. HARPOOTLIAN:** Yes, sir.

12 **Q** Mr. Hawkins, if someone is paying someone else for
13 sex, is that prostitution?

14 **A** Yes.

15 **Q** Is sex only sexual intercourse?

16 **A** Yes.

17 **Q** You and President Clinton would agree on one thing
18 apparently.

19 **MR. MEADORS:** I object. I'm sorry.

20 **MR. HARPOOTLIAN:** Your Honor, he doesn't need to
21 be pounding on table.

22 **MR. MEADORS:** He doesn't need to bring that in
23 about President Clinton. I apologize. But that's a
24 comment that has nothing --

25 **THE COURT:** Please have a seat, Mr. Meadors.

1 Ask a question, Mr. Harpootlian, --

2 MR. HARPOOTLIAN: Yes, sir.

3 THE COURT: -- and get an answer. And let's
4 stop the side comments.

5 MR. HARPOOTLIAN: Yes, sir.

6 THE COURT: I realize you are very clever and
7 you may think some of these things are cute. This is
8 a -- this is a serious courtroom. And this jury
9 wants to hear evidence, not your testimony. Do you
10 understand?

11 MR. HARPOOTLIAN: Yes, sir.

12 THE COURT: Ask your question.

13 Q Is it your opinion that only when people have sexual
14 intercourse it's sex?

15 A Yes.

16 Q Oral sex?

17 A Yes.

18 Q Is that sex?

19 A Yes.

20 Q Touching someone and manually manipulating them, is
21 that -- manually manipulating their genitalia, is
22 that sex?

23 A No.

24 Q Okay. Mr. Hawkins, have you ever seen illicit drugs
25 in this establishment?

1 A From time to time, yes.

2 Q Being used by the entertainers. Is that correct?

3 A No.

4 Q Back in the dressing room. Is that correct?

5 A Yes.

6 Q Well, who is back in the dressing room?

7 A Entertainers. Sorry.

8 Q Okay. And the drugs were cocaine, were they not?

9 MR. MEADORS: Objection.

10 A No.

11 Q What were they?

12 THE COURT: Overruled.

13 A Marijuana.

14 Q You've never seen cocaine there?

15 A No.

16 Q Do you know a gentleman named Carlos?

17 A No.

18 Q Now, Mr. Hawkins, you have indicated that when you
19 were in the back -- you testified here today that
20 when you were in the back by the room you heard Mr.
21 Herring say, "I'm going to kill you." Is that
22 correct?

23 A I heard the end of that statement.

24 Q What did you hear?

25 A Going -- "kill you" part.

1 Q What did you hear?

2 A "Kill you".

3 Q Okay. That's all you heard?

4 A That was what I heard.

5 Q Now, when you were interviewed by the Sheriff's

6 Department within an hour of your friend being

7 killed, did you tell them that?

8 A I told them what I heard outside in my statement.

9 Q What you told them you heard was: "If I come back

10 here, there's going to be issues. Someone is going

11 to get fucked up." Is that what you told them?

12 A Yes.

13 Q But you didn't tell them about the kill part back by

14 the room?

15 A Because I didn't hear the full statement.

16 Q Well, why today do you say I heard him say -- and you

17 testified I believe on direct -- "I'm going to kill

18 you"? Did you hear the "I'm going to"?

19 A No. I didn't. Sorry.

20 Q "Kill you" is all you heard?

21 A Yes.

22 Q Yet you didn't tell the Sheriff's Department that

23 that night, did you?

24 A I told them my version of what happened.

25 Q Well, your version of what happened, it wouldn't be

1 that you heard somebody say to "Jon Jon" I'm going to
2 kill you and then you know, within 15, 20 minutes
3 he's dead?

4 A There was several detectives that night interviewing
5 everybody that was a part of this incident.

6 Q Okay. Now, just a few weeks ago I came to visit you,
7 did I not?

8 A Yes.

9 Q And I interviewed you, did I not?

10 A Yes.

11 Q And I took a taped statement from you, did I not?

12 A Yes, you did.

13 Q And did I ask you at that point if you heard Mr.
14 Herring say anything that night, and you said just
15 what you said in your statement: "You don't want me
16 to come back here. If I come back here, there's
17 going to be some issues. Somebody is going to get
18 fucked up"?

19 A Yes.

20 Q I asked you did you hear Mr. Herring say anything
21 else, and your response was no in that taped
22 interview. Is that correct?

23 A Yes. Then.

24 Q So how is it 14 months after the original event, four
25 weeks -- let me see what date I interviewed you --

- 1 I've got it here somewhere. Approximately three
2 weeks ago. Here it is. About three weeks ago I
3 asked you, you don't remember that. And yet today
4 you get on this witness stand and you're telling the
5 jury you heard him say, "I'm going to kill you." And
6 now you say you didn't hear "I'm going to". All you
7 heard was "kill you". This fresh memory of yours --
- 8 A Earlier I did say that I caught the last end of that
9 statement to the prosecution.
- 10 Q When did you say that?
- 11 A When the prosecution questioned me.
- 12 Q When did they question you? After I did?
- 13 A No. Earlier today.
- 14 Q So that's the first -- you mean here in the
15 courtroom?
- 16 A Yeah. I said today that I caught the last end of
17 that statement.
- 18 Q Okay. Now, while you've been waiting to testify,
19 have you spent any time with Carl Weeks?
- 20 A No.
- 21 Q Have you seen Carl Weeks?
- 22 A Not until the last week or two.
- 23 Q Where did you see him the last week or two?
- 24 A In the Solicitor's Office.
- 25 Q So you all came up together to the Solicitor's

1 Office?

2 A Yes.

3 Q And were you all interviewed together?

4 A We were, but it was after we were interviewed

5 separately.

6 Q But you were both interviewed again together. Is

7 that correct?

8 A Yes.

9 Q Did you hear Carl Weeks make statements about

10 threats?

11 A Yes.

12 Q Prior to hearing those, had you ever told anybody

13 that you heard him say he was going to kill anybody?

14 A No. Probably not.

15 Q Probably not?

16 A Yeah.

17 Q So when was the first time you told anybody you heard

18 Dewain Herring say, "I'm going to kill you"; the

19 first time you told anybody, the prosecutor, me,

20 anybody?

21 A When we started -- we started with the trial.

22 Q When we started the trial. From the stand? Or did

23 you tell somebody before you took the stand?

24 A Before I took the stand.

25 Q Who did you tell?

- 1 A We -- we were being prepped.
- 2 Q By who?
- 3 A The prosecution.
- 4 Q Mr. Meadors?
- 5 A Yes.
- 6 Q Okay. And so you told Mr. Meadors. Did Mr. Meadors
- 7 say, well, Mr. Hawkins, you've never said that
- 8 before? Did he question you about that?
- 9 A I didn't say it in the statement when it happened.
- 10 Q You didn't say it to me?
- 11 A No, I didn't.
- 12 Q You've never said it until you came up here to this
- 13 courthouse. Isn't that right?
- 14 A No.
- 15 Q When did you say it before then?
- 16 A No. You're right. Yes.
- 17 Q Okay. And you didn't say it until after you heard
- 18 Mr. Weeks say there had been a threat back there that
- 19 he said he was doing to kill him. Isn't that right?
- 20 A Yes.
- 21 Q Okay. So it was Mr. Weeks' statement that got you to
- 22 say what you said under oath here today. Is that
- 23 correct?
- 24 A Yes.
- 25 Q Okay. So when you took the stand and put your hand

1 on the Bible and told to tell the jury the truth and
2 the whole truth and nothing but the truth, so help
3 you God, you related to them something you did not
4 hear. Isn't that correct?

5 A I heard the end of the statement.

6 Q Well, you just told us didn't. You told us you heard
7 it from Mr. Weeks.

8 A Yeah. But I remembered hearing it.

9 Q Now, Mr. Hawkins, you've testified here that you saw
10 Mr. Herring when he was sitting in his car in front
11 of the club reach into the glove compartment, right?

12 A He leaned over towards the passenger's side of the
13 car. I assumed he was going for the glove
14 compartment.

15 Q You don't know he was going in the glove compartment?

16 A Yes.

17 Q He could have been dropped something on the floor?

18 A I guess so, yes.

19 Q So could have been reaching over to get something on
20 the floor, on the seat? You don't know. He was
21 reaching in that general correction. Is that
22 correct?

23 A Yes.

24 Q Now, you've said that before, haven't you?

25 A Yes.

1 Q You gave that in your statement. Today however,
2 after he pulls and backs out, you say that you saw
3 him reach over again. Is that right? After he'd
4 pulled over to the corner of the parking lot?

5 A I guess. I don't --

6 Q Well, I don't want you to guess. I want you to tell
7 us what you remember. Do you remember after he pulls
8 out of his parking spot --

9 A No, I don't remember. But I do remember him before
10 he pulled out that he reached over.

11 Q But didn't you tell the jury after he pulled out and
12 was over there in the corner of the parking lot that
13 he reached over again? Didn't you tell them that not
14 three hours ago?

15 A Yes.

16 Q Well, why did you tell them that? Were you mistaken?

17 A I may have been mistaken.

18 Q Okay. I'm trying to determine. You were mistaken.
19 Okay. Now, when you were at the counter talking to
20 Angela, we saw it just a moment ago, and you weren't
21 looking at the monitor, your back is to "Jon Jon",
22 right?

23 A Yes.

24 Q The music in that place is very, very, very loud. Is
25 it not?

1 A Yes.

2 Q I mean, it's very loud?

3 A It's louder in the back. It's loud -- it's loud in
4 the bar. It's not so loud in the lobby. It's more
5 like muffled.

6 Q Okay. Can you go to the camera inside where they are
7 escorting him out? That would be -- and while he's
8 doing that, you were asked about Mr. Herring's
9 demeanor. Did he appear to you to be impaired in any
10 way?

11 A No.

12 Q Did he appear to be intoxicated in any way?

13 A Not that I know of. No.

14 Q Okay. Now, have you gotten to that point?

15 MR. CABA: Mm-hmm (affirmative).

16 Q Stop it one second because I want him to come down.
17 Come on down here, Mr. Hawkins. You get over here.
18 Okay. Can you roll it, please? Thank you. Okay.
19 There comes Mr. Herring. Stop it, please. Okay.
20 Now, this is the front door, right?

21 A Yes.

22 Q What's over here? Where is Mr. Herring going?

23 A That's an office door.

24 Q He is walking into somebody's office?

25 A It appears that way, yes.

1 Q Well, you remember. You were right -- I think that's
2 you right here I think. Here?

3 A Yes.

4 Q Okay. That's you. You don't remember him walking
5 into the office?

6 A He didn't walk in the office.

7 Q Pardon me?

8 A He did not walk in the office.

9 Q Well, did he try to walk into the office?

10 A Yes. It appears that way.

11 Q So he didn't even know where the front door was?

12 A No.

13 Q And so go ahead and roll it. So, he's over there for
14 a while, and then apparently somebody instructs him
15 the right way to go. Let's go through that again.
16 Okay. Back that up. Okay. Now stop for one second.
17 This is that bar area back here, right? There's a
18 dancer back up here in this corner?

19 A Yes.

20 Q Okay. Here comes Mr. Herring out here. Who is that
21 right behind him? Is that you or is that --

22 A That's "Jon Jon".

23 Q That's "Jon Jon". Okay. Go ahead, please. Then
24 you, then Mr. Weeks. And then you can see "Jon
25 Jon's" hand go up. Whoa, we've got to go that way.

- 1 Is that about it? Is that what he's doing, pointing
2 the right way for him to go?
- 3 A Yeah.
- 4 Q Okay. And then to walk out. Okay. And that was at
5 12:57:15 (sic). Can we go to the outside camera for
6 a minute, please?
- 7 A That would be 11.
- 8 Q I'm sorry. 11:57:15. Okay. Go ahead. Here comes
9 Mr. Herring. Here comes John. Where are you?
- 10 A I'm at the counter.
- 11 Q Okay. Now, this guy at this point you would concede,
12 I guess now, that he has not made any threats in your
13 presence?
- 14 A No.
- 15 Q Right? You haven't heard any threats. But then you
16 come out, right?
- 17 A Yes.
- 18 Q And this is when you heard the threat. You're going
19 to walk down here and he is going to walk back. Is
20 that right?
- 21 A Yes.
- 22 Q You'll be sorry if I come back here, or, you know,
23 something to that effect?
- 24 A Yeah.
- 25 Q And that's when you herd the threat?