

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 II OF VII

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1 A Yes.

2 Q You didn't hear anything in the back. The music is
3 blaring. It's pumping. And you really -- this is
4 where you hear the threat. Is that right?

5 A Yes. That's where I heard the threat.

6 Q Okay. Go ahead and take the stand. Okay. Now, when
7 "Jon Jon" goes back out, you all let him go out alone
8 with the guy, right?

9 A Yes.

10 Q Do you all get a lot of threats there?

11 A We get some, have gotten some.

12 Q I mean, people that are escorted out typically aren't
13 real happy about it?

14 A No.

15 Q And so then, I mean, if you send "Jon Jon" out there
16 by himself with somebody, you're not really
17 concerned. "Jon Jon" can take care of himself,
18 right?

19 A Well, I was at the videos.

20 Q Okay. And you watch him go out and then you go out?

21 A Yes.

22 Q And then he comes back and you all talk?

23 A Yes.

24 Q And then he gets in his car and he backs up for a
25 minute and then he leaves. And then you see that car

1 come back. Is that right?

2 A Yes.

3 Q I want to make sure of a couple of things so I don't
4 misunderstand. How many cameras were there operating
5 that night?

6 A On the front of the building?

7 Q Right.

8 A I would say seven or eight.

9 Q Okay. And we only have outside three?

10 A Three.

11 Q Where are the rest?

12 A They're further down by the corporate office.

13 Q But pointing back that way?

14 A They're pointing -- there are various views of the
15 parking lot: The back parking lot, the side parking
16 lot, the sign in front of the building.

17 Q Now, as I understand it, all these cameras are going
18 to a hard drive somewhere, right?

19 A Yes.

20 Q Where they're recorded?

21 A I would assume so. Yeah.

22 Q I mean, we see they've been recorded, right?

23 A Yeah.

24 Q Now, there are also cameras in the back, right?

25 A Yes.

- 1 Q Are there cameras in the champagne room?
- 2 A No.
- 3 Q Are there cameras back here shooting towards the
- 4 champagne room?
- 5 A Yes.
- 6 Q And so, back here you can actually watch the girls
- 7 dance naked on a video somewhere?
- 8 A All that I wouldn't know. That would be up to who
- 9 works in the corporate office. I wouldn't know
- 10 anything about those cameras in the back room.
- 11 Q Now, the corporate office is a brick building
- 12 nextdoor to this. Is that right?
- 13 A Yes, it is.
- 14 Q And all these cameras feed into there. Is that
- 15 correct?
- 16 A Yes.
- 17 Q And what you're telling me is there are cameras in
- 18 the back here that show -- they can observe what's
- 19 going on back here. Is that correct?
- 20 A To my knowledge, I know there are cameras there.
- 21 They all feed into the corporate office.
- 22 Q Okay. Have you ever been to the corporate office?
- 23 A Yes.
- 24 Q Have you ever seen the video monitors there?
- 25 A No. It's on computer.

1 Q So it just feeds into the computer. They don't watch
2 it over there?

3 A No.

4 Q Now, you indicate John was at the door. You have
5 your back to the door for we said 12 seconds prior to
6 the shooting, correct?

7 A Yes.

8 Q So you don't know whether his head was sticking out
9 the door or not prior to the shooting, the last time?

10 A I heard the door close and then I heard the shot.

11 Q Okay. But you don't know whether his head was out
12 the door or not when the shot was fired, do you?

13 A No. Not to my knowledge.

14 Q I mean, before the door, you don't know whether he
15 stuck his head out the door to look or not before the
16 shot was fired because the door -- as we saw, the
17 door close and within two seconds the shot was fired.
18 Isn't that right?

19 A Yes.

20 Q And you for 12, at least 10 seconds prior to that
21 door closing, based on these, your back is to the
22 door. You don't know whether he was sticking his
23 head out the door or not to look, do you?

24 A No.

25 Q And Angel (sic) had gone back to the office. Is that

1 where she had gone?

2 A I believe she went around the counter, to behind the
3 counter.

4 Q Okay. Can I have the shot from the front of the --
5 go up to where the vehicle returns. Okay? How about
6 step down here, Mr. Hawkins. Back up just a little
7 bit. Okay. Now, go forward. Okay. And we see the
8 vehicle pulling up. The door is closing, right? The
9 vehicle pulling up. It stops right here. The door
10 opens down here. We see it opening a little bit.
11 The car pulls up. The door opens fully. That's at
12 12:05:46, 45, 05:50, 05:51, 05:52, 05:53, 56. The
13 door is still open. The door is still open. 01, 03.
14 The car pulls up and is gone. Okay.

15 So let's look at again the inside, please,
16 around that same time. Go to the same time period.
17 Okay. That's 41. Go ahead. Okay. You're looking
18 at 48. Now you're looking this way. 50, 51, 52, 53,
19 54, 55, 56, 57, 58, 59, 1, 3, shot.

20 So it's clear there, for probably 15 seconds
21 your back is to the door. You can't see "Jon Jon".
22 You can't see the monitor. You have no idea what's
23 going on back there except you hear the door open and
24 close. Correct?

25 A Yes.

- 1 Q Okay. Go ahead and take the stand again, please.
2 Turn that off. So you're not telling this jury that
3 you saw "Jon Jon" sticking his head out to look at
4 the car?
- 5 A He had his head stuck out to look at the car.
- 6 Q When?
- 7 A When it shows that door was open.
- 8 Q How do you know? Your back is to him.
- 9 A When I went to go talk to him in that video, he had
10 his head --
- 11 Q When you went to talk to him when?
- 12 A Right there. That shows me going to the door and
13 then I turned around. Right before I turned around,
14 I was at the door with him.
- 15 Q Before the 15 seconds, before you walk over here?
- 16 A Yes.
- 17 Q Okay. So he's looking out the door then?
- 18 A Yes.
- 19 Q But after that there's -- at the time, if you go back
20 ten seconds before the shot is fired, you can't say
21 he was looking out the door?
- 22 A No, I can't.
- 23 Q You can say when we see you walking from over at the
24 door back over to here, correct, that's about 15
25 seconds before we see "Jon Jon" fall? Is that right?

1 A Yes.

2 Q Okay. And for those 15 seconds you don't know
3 whether "Jon Jon" has got his head outside the door,
4 inside the door, whether the door is opened, the door
5 was closed. Isn't that correct?

6 A Yes.

7 Q Beg the Court's indulgence for just a moment, please.
8 Now, have you ever described "Jon Jon" as your good
9 friend?

10 A He was a friend of mine, yes.

11 Q And you and I reviewed your personnel file when I met
12 with you. Is that correct?

13 A Yes.

14 Q And in your personnel file -- let me make sure I
15 quote this correctly -- it says you were terminated
16 because of unprofessional relations with
17 entertainers?

18 A Yes.

19 Q What's an unprofessional relationship with an
20 entertainer?

21 A I have no idea actually.

22 Q Did you --

23 A I never -- I never seen that until you showed me
24 that. I never heard about it or why I was let go or
25 whatever. I never heard about it until you showed me

1 that.

2 Q Nobody ever talked to you about that?

3 A Never.

4 Q Beg the Court's indulgence one moment. Thank you,
5 Mr. Hawkins.

6 **THE COURT:** Redirect.

7 **MR. MEADORS:** Yes, sir. Thank you. If it
8 pleases Your Honor.

9 REDIRECT EXAMINATION

10 **BY MR. MEADORS**

11 Q Mr. Hawkins, you said you -- Mr. Harpootlian asked
12 you if you gave him a statement?

13 A Yes.

14 Q When was that?

15 A He was saying three weeks. I guess that was three
16 weeks ago.

17 Q All right. Where was that taken?

18 A It was taken at Longhorn's, Harbison Boulevard.

19 Q And who was present for that?

20 A My brother-in-law, Harry -- excuse me -- Trey Heizer.

21 Q And what options were you given about that statement,
22 if any?

23 A I was either to give a tape recorded statement or had
24 to go to his office to get a typed and initialed, a
25 typed statement of some sort.

1 Q Who told you had to go to his office to give the
2 typed statement?

3 A Harpootlian.

4 Q So you either had to be taped or go to his office and
5 give a typed statement?

6 A Yes. He said it was too much of a hassle, so let's
7 go ahead and get the tape recording.

8 Q Did you know you didn't have to go to his office?

9 A I did not know until you told me.

10 MR. MEADORS: Can I see a copy of that, please,
11 if that's the statement?

12 MR. HARPOOTLIAN: You're not entitled to it.

13 MR. MEADORS: Your Honor, I think I am. He's
14 given a statement. He's referred to it several
15 times. At this point I think we are entitled to it
16 to look at a statement he gave Defense Attorney
17 Harpootlian a few weeks ago involving questions he'd
18 asked him. I think at this time we are entitled to
19 look at it under --

20 THE COURT: All right, ladies and gentlemen. I
21 advised you at the beginning of the trial there might
22 be legal matters I needed to take up with the
23 attorneys. This appears to be one of those times.
24 So I'll try to get it straightened out. So I'm going
25 to ask you to retire to the jury room for a few

1 minutes. Just relax. We'll call you as soon as
2 we're ready. Thank you.

3 (Jury out at 3:17 p.m.)

4 **THE COURT:** All right, Solicitor.

5 **MR. MEADORS:** Thank you, Your Honor. 613(a) I
6 think is directly on point. "In examining a witness
7 concerning the prior statements made by the witness,
8 whether written or not, the statement need not be
9 shown nor its content disclosed to the witness at the
10 time; but on request, the same shall be shown or
11 disclosed to opposing counsel."

12 That would be me, the State. He has referred
13 several times to a statement that he gave, he, the
14 witness, gave to the defense attorney, specifically
15 about the threats. Did you tell me that or not that
16 you had made that or not when I talked to you?

17 He's got the transcript, I believe of it, right
18 there. I think this is the time that we're entitled
19 to look at what he was examining this witness on. I
20 think it's directly on point, 613(a). Why would
21 we -- I don't understand how he would be --

22 **MR. HARPOOTLIAN:** It's my work product, Your
23 Honor. I didn't show it to him. I didn't introduce
24 it. I didn't cross examine him from it. I didn't
25 quote it verbatim. I happened to tape record it

1 rather than have him write a statement. If he'd
2 written a statement that I had impeached him on,
3 which I have not done, perhaps -- I don't even think
4 then under Rule 5 it's producible. And I have not --
5 I've cross examined him. I said, did you tell me X?
6 Did you tell me Y? Yes.

7 **MR. MEADORS:** Your Honor, he cross examined him
8 directly off that statement, referred to it.
9 Remember when you met with me you gave me a
10 statement? He asked him, did you tell me that then?
11 If that isn't referring to it, asking him about it, I
12 don't know what is. And he's got it right there in
13 front of him. It's been transcribed.

14 **MR. HARPOOTLIAN:** What if I just made notes?
15 Could he get my notes?

16 **MR. MEADORS:** He taped recorded it. It's
17 transcribed. It's A statement by this witness. He
18 has asked him about it. Do you remember when you
19 gave a statement? Yes, I do. We'd like to see it.

20 **MR. HARPOOTLIAN:** You'd better get somebody here
21 from a court reporting service to authenticate it
22 because I'm not.

23 **MR. MEADORS:** This witness can, Your Honor.
24 This witness can authenticate it.

25 **THE COURT:** That's not --

1 **MR. MEADORS:** It's not fair, respectfully,
2 for --

3 **THE COURT:** Just let me -- is this statement
4 given under oath?

5 **MR. HARPOOTLIAN:** No, sir. It's my interview of
6 him.

7 **THE COURT:** It's not given under oath?

8 **MR. HARPOOTLIAN:** Sir?

9 **THE COURT:** Was it given under oath?

10 **MR. HARPOOTLIAN:** No. Your Honor, for purposes
11 of the record, I bought him a steak at Longhorn's
12 Steakhouse and I interviewed him. Rather than having
13 him come down to my office, I said, is it okay if I
14 tape this? You don't have to give me a statement
15 anyway either way. He was kind enough to let me tape
16 it.

17 **THE COURT:** All right.

18 **MR. MEADORS:** Your Honor, the rule says whether
19 written or not. It doesn't say anything about sworn.
20 This is a statement. He's asked him about it and
21 inferred to the jury his credibility that one
22 statement he made up here under oath when I asked him
23 is not in that statement he gave him. That's exactly
24 what the rule is for, and that's why we're entitled
25 to it. And we'd respectfully ask time during this

1 break to review it.

2 THE COURT: Do what?

3 MR. MEADORS: We'd respectfully ask during this
4 break time to get it and review it.

5 THE COURT: Well, I don't know that I need to do
6 that. This is the product of an interview?

7 MR. HARPOOTLIAN: Yes, sir.

8 THE COURT: Is that all it is?

9 MR. HARPOOTLIAN: That's it. That's it.

10 THE COURT: All right.

11 MR. MEADORS: Judge.

12 THE COURT: Yes, sir.

13 MR. MEADORS: He asked him about it like it was
14 a statement he's given. He's basing his credibility
15 on it, is going to argue that he's given prior
16 inconsistent --

17 THE COURT: You can cross examine him about it.

18 MR. MEADORS: I can't unless I have that to show
19 he made some consistent statements. I don't know why
20 he doesn't want us to see it. If it's his same
21 statement from three weeks ago, why does not he not
22 want us to see that?

23 THE COURT: Well, he says it's his work product.

24 MR. MEADORS: Judge, he asked him about it. If
25 it goes to work product, it makes him a witness. He

1 is pitting himself against that witness if that's
2 true. And I object to that. He can't have it both
3 ways. He cannot have it both ways. He's saying it
4 was a prior statement and he can't cross him on his
5 work product.

6 **MR. HARPOOTLIAN:** He didn't disagree with me.

7 **MR. MEADORS:** He called it a prior statement.
8 Your Honor, I'd ask the record to go back. He called
9 it a prior statement.

10 **MR. HARPOOTLIAN:** I asked if he told me. And,
11 Judge, as to prior consistent statements, I don't
12 think he can get those in. A prior consistent
13 statement is not admissible.

14 **MR. MEADORS:** Yes, sir. Once he's questioned
15 his credibility, we are allowed to go back. Yes,
16 sir.

17 **THE COURT:** All right. Let me look at it. No.
18 I don't want to look at it, come to think of it. I'm
19 not going to make him produce it.

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

21 **MR. MEADORS:** Sir?

22 **THE COURT:** I'm not going to make him produce
23 it.

24 **MR. MEADORS:** Well, I would ask that he -- I
25 would ask a instruction to the jury, respectfully,

1 that any prior statement given to Mr. Harpootlian is
2 not in evidence, it is not to be considered
3 whatsoever. Because he has put that, framed it like
4 it's a prior statement. In effect, he's saying he's
5 lying. That's exactly what he's doing. He said when
6 you met with me you lied. You lied this morning
7 because when you met with me you said this.

8 **MR. HARPOOTLIAN:** All he said when he met with
9 me was what he told the police. That's all.

10 **MR. MEADORS:** He held it up in front of the
11 jury, Judge. I saw him. The solicitor saw him. He
12 held it up right here. If that's not an implication
13 of a prior statement, he held it up when he asked the
14 question.

15 **THE COURT:** Of course I can't see him.

16 **MR. MEADORS:** I understand that. I'm not lying
17 to you. The solicitor saw it. We saw it when he
18 held it up. That's an implication to these folks
19 he's given a prior inconsistent statement previously.

20 **THE COURT:** I'll so instruct the jury.

21 **MR. HARPOOTLIAN:** Well, Your Honor, I'd object
22 to an instruction that says that I somehow have
23 inferred to them that I -- you know what? He can
24 have the statement. It's sealed. The tape is with
25 it. Listen to it.

1 **THE COURT:** Let's take about a ten-minute break.

2 **MR. MEADORS:** He has no objection to unsealing
3 it.

4 **THE COURT:** Sir, once again, can you just stay
5 there.

6 **WITNESS:** Stay here?

7 **THE COURT:** Are you okay?

8 **WITNESS:** I kind of want a cigarette. I want to
9 smoke.

10 **THE COURT:** Oh. Well, go ahead and smoke. But
11 come right back. This shouldn't take long.

12 **WITNESS:** I'll come right back.

13 (Whereupon, a break is taken)

14 **MR. MEADORS:** Beg the Court's indulgence.

15 (Pause)

16 **THE COURT:** Mr. Meadors, let me ask you one
17 thing while you're doing this. Are you going to use
18 this screen?

19 **MR. MEADORS:** Just for one question to start
20 with, and then I'll be finished with it.

21 **THE COURT:** Well, it blocks my view of whatever
22 is going on on that side of the room. So when you
23 say he held up something, I can't see it. I
24 understand that. I'm not asking you --

25 **MR. MEADORS:** I certainly didn't anticipate

1 that, and I'm sorry.

2 THE COURT: If you want to use it, go ahead and
3 use it. I'm just making you aware of the fact that I
4 can't see what goes on beyond that.

5 MR. MEADORS: The rest of the witnesses I don't
6 think will be using it as much. And we might be
7 using it towards the end.

8 THE COURT: Whatever. I'm just advising you.

9 MR. MEADORS: I apologize.

10 (Pause)

11 MR. MEADORS: Judge, to make this easier, I
12 think if we make a quick extra copy, it will be
13 more --

14 MR. HARPOOTLIAN: Well, you can hand that to
15 him. I'll work without a copy. I don't care. But,
16 Your Honor, prior to him asking him questions about
17 it, two points I'd make. One, this is his witness.
18 He's not allowed to lead him. And, two, if he's
19 going into some sort of prior consistent statement,
20 I'd ask him to proffer those now rather than me
21 having to object in front of the jury so that we can
22 deal with it outside of the jury presence's, if I
23 may. And I may not have any objection.

24 MR. MEADORS: Your Honor, it's my understanding
25 of the law, once he puts his credibility in issue, in

1 this case it was several prior inconsistent
2 statements, we are allowed to go back and show his
3 consistent statements. That my understanding. I've
4 done this 20 years. I've seen Mr. Harpootlian do it.
5 That's what we're going to do anyway prior to us
6 having this period briefly, and then a few questions
7 out of here.

8 **THE COURT:** Well, it is a prior -- if it is a
9 prior consistent statement, prior consistent
10 statement, it is being offered to rebut -- and I'm
11 reading from the rule, "an express or implied charge
12 against the declarant of the recent fabrication or
13 improper influence." And I assume that's what you're
14 trying to do. I mean, that he -- that there was --
15 that he is implying that there is a recent
16 fabrication. And that's where we are.

17 **MR. MEADORS:** Yes, sir. Judge, with all due
18 respect, I don't think he necessarily meant -- or
19 maybe he did, and I don't take offense either way.
20 But he implied a threatening comment that we
21 somehow -- I took it that way; I don't know if the
22 jurors did -- had something to do with that comment.
23 Now, he has made the "Oh, shit" comment about the gun
24 to Mr. Harpootlian in this transcript before I even
25 met the guy, told that on the stand. And that's not

1 in his statement. So, yes, if he is saying we met
2 with him and he said something different in the
3 statement here, we met with him, he knew about it
4 first, he's trying to have it both ways.

5 **MR. HARPOOTLIAN:** But, Your Honor, I never
6 challenged him or impeached him on whether or not
7 "Jon Jon" said "Oh, shit", A. B, this isn't a
8 deposition. It's a recording of my entire interview
9 with him.

10 **THE COURT:** The jury is going to know. It's not
11 under oath. It's just a statement he made at a
12 prior --

13 **MR. HARPOOTLIAN:** But all he has to say is, did
14 you tell Mr. Harpootlian that "Jon Jon" said, "Oh,
15 shit"? Yes or no? Yes. But not with a statement,
16 not with my work product statement.

17 **MR. MEADORS:** Your Honor, he specifically
18 crossed him about not being able to see whether "Jon
19 Jon" could see out the door. In his statement he
20 clearly says that's how I knew he had a gun. I saw
21 him at the door. He tells Mr. Harpootlian that. And
22 that's when he said, "Oh, shit." That's how I know
23 he knew he had a gun. That's directly in response to
24 his questions he said.

25 **MR. HARPOOTLIAN:** Which is inconsistent with the

1 videotape. If he wants to go over that again, I'll
2 be happy on recross to rehash.

3 **THE COURT:** I'm going to allow him to go ahead.

4 **MR. HARPOOTLIAN:** But, Your Honor, I object to
5 my interview which is not under oath being handed to
6 this witness. He can ask him, did you tell Mr.
7 Harpootlian so-and-so, yes or no? But for him to
8 read from a transcript of my work product interview
9 with him is inappropriate.

10 **THE COURT:** Yes, sir. I agree with you.

11 **MR. HARPOOTLIAN:** Thank you.

12 **THE COURT:** You can only ask him until he
13 disagrees with what he said, and you can use it to
14 impeach him.

15 **MR. HARPOOTLIAN:** Thank you.

16 **THE COURT:** But we're not going to read it.
17 This is hearsay.

18 **MR. MEADORS:** It's his words. I think he's
19 just -- did you tell him so-and-so? That's the way
20 I'm going to ask it.

21 **THE COURT:** It's an out-of-court statement.

22 **MR. HARPOOTLIAN:** That's fine.

23 **THE COURT:** Bring the jury in.

24 (Jury in at 3:43 p.m.)

25 **THE BAILIFF:** The jury is present, Your Honor.

1 **THE COURT:** All right. You may continue.

2 **MR. MEADORS:** May it please the Court.

3 **Q** Mr. Harpootlian was asking you about a time several
4 weeks ago when you met with him at ...?

5 **A** Longhorn's.

6 **Q** Longhorn's. Do you remember when he was asking you,
7 those questions?

8 **A** Yes.

9 **Q** I think the testimony has been that was taped,
10 correct?

11 **A** Yes, it was.

12 **THE COURT:** Mr. Meadors, let me just explain
13 something to you. Madam Foreman, ladies and
14 gentlemen of the jury, this prior interview by Mr.
15 Harpootlian that has been testified to about was not
16 a statement given under oath. It was merely
17 apparently -- I say merely; that's a bad word --
18 apparently just an interview. And the witness may or
19 may not have said something different than he's said
20 now. And that's what Mr. Meadors is going to inquire
21 into.

22 But as to whether the matters were -- that
23 statement or that interview is not going to be
24 evidence in this case. It's not going to be
25 submitted as evidence in this case which means the

1 only purpose for which it can be used is to see if
2 there are any inconsistencies or consistencies with
3 the statement the witness gives on the witness stand
4 today.

5 I just want you to understand that. It's not a
6 prior sworn statement or anything like that. It's
7 the result of an interview that has been testified to
8 with Mr. Harpootlian. All right, Mr. Meadors. You
9 may continue.

10 **MR. MEADORS:** If it pleases Your Honor.

11 **Q** Mr. Harpootlian asked you how did you know today he
12 was looking out the door if you had your back to him.
13 Correct?

14 **A** Yes.

15 **Q** You do you remember when he asked you that?

16 **A** (Nods head affirmatively).

17 **Q** I can't lead you, so I'm just going to ask you the
18 question. Okay?

19 **A** Okay.

20 **Q** After "Jon Jon" has come inside, on the tape, do you
21 remember telling him that he was standing at the door
22 there? Yes or no?

23 **MR. HARPOOTLIAN:** Objection, Your Honor. Do you
24 remember telling him anything would be leading.

25 **MR. MEADORS:** I'm not suggesting he did or

1 didn't.

2 THE COURT: All right. Overruled. Go ahead.

3 Q Did you tell him he was standing at the door?

4 A Tell who? Harpootlian?

5 Q Yes, sir.

6 A Yes.

7 Q Did you tell him at first he actually went all the
8 way out the door?

9 A Who? John?

10 Q Yes, sir.

11 A The door was opened wider.

12 Q Do you remember -- or did you tell him -- I
13 apologize -- that's how he knew he pulled a gun,
14 because he had his head peeping out the door?

15 A I believe that is how John knew he had -- he --

16 MR. HARPOOTLIAN: Objection, Your Honor.

17 THE COURT: Sustained.

18 MR. HARPOOTLIAN: I believe?

19 THE COURT: Sustained.

20 MR. HARPOOTLIAN: Thank you.

21 Q Did John have his head popped out the door?

22 A Yes.

23 Q Did you tell him whether or not John said -- did you
24 tell him whether or not John said, "Oh, shit"?

25 Excuse me.

1 **MR. HARPOOTLIAN:** Objection, Your Honor. He's
2 already testified to this. He has been impeached on
3 it. Improper redirect.

4 **MR. MEADORS:** Your Honor, he's put his
5 credibility in issue. I think it's proper to go back
6 and show --

7 **THE COURT:** Overruled. Go ahead.

8 **Q** Did you tell Mr. Harpootlian three weeks ago that
9 "Jon Jon" said "Oh, shit"?

10 **A** Yes.

11 **Q** And after that did you tell Mr. Harpootlian that's
12 how "Jon Jon" knew he had a gun?

13 **A** Yes.

14 **MR. HARPOOTLIAN:** Objection, Your Honor. A, he
15 couldn't know that. B, what he told me, it's still
16 hearsay. It's still conjecture on his part and
17 improper. I would object.

18 **THE COURT:** Overruled. Go ahead.

19 **Q** Then did tell him "I then heard a gun go off"?

20 **A** I heard a gun go off.

21 **Q** Did you tell him you were at arm's length of "Jon
22 Jon"?

23 **A** I told Harpootlian I was at arm's length of "Jon
24 Jon".

25 **Q** Did you tell him whether or not you were pulling or

1 tugging on him prior to the shot?

2 A No.

3 Q Your answer was no --

4 A Yes.

5 Q -- that you weren't?

6 A (Nods head affirmatively).

7 Q Did you tell him about whether or not any drug use
8 was in there?

9 A Yes. He did ask me that question.

10 Q What did you tell him about whether or not you had
11 seen drugs in that place?

12 A I believe in the statement, in the tape recorded
13 interview, I said drugs as well as anywhere else.

14 Q Drugs there as well as they would be anywhere else?

15 A Yes.

16 Q Did you tell him whether you had heard or not whether
17 girls had put drugs in anybody's drinks?

18 A I never -- I never heard of any girl do that.

19 Q Did he ask you, "Yeah, that's what I mean. There are
20 drugs there just like anywhere else?" Is that what
21 he asked you? And did you say, "Yeah, just like
22 anywhere else"?

23 A Yes.

24 Q Did you ever tell him there were drugs in that place
25 when you talked to him a few weeks ago, or that you

1 had seen them?

2 A I said as how I said it in my statement.

3 Q Just like anywhere else?

4 A Yes.

5 Q I believe when he asked you, referring to your
6 statement you gave -- and you gave this statement at
7 what time on January 29th, 2006 to law enforcement?

8 A 1:29:06.

9 Q I understand that. What time is marked here? I'm
10 sorry.

11 A It's military. I believe it's 12:50.

12 Q And Mr. Harpootlian asked you in one of his questions
13 on cross, and I think you referred to this, "If I
14 come back there is going to be some issues", someone
15 is going to get F'd up. Correct?

16 A Yes.

17 Q And then I think later on your questioning, did he
18 also say, "You don't want me to come back here"? Did
19 you tell him that's what Mr. Herring said?

20 A Yes.

21 Q And that's in your statement?

22 A (Nods head affirmatively).

23 Q Did you put in your statement whether or not the
24 defendant was messing around or leaning over toward
25 his glove box at 12:50 on January 29th, 2006, Mr.

1 Hawkins?

2 A Yes.

3 Q Did you put in your statement on January 29th, 2006
4 he made some threats?

5 A Yes.

6 MR. HARPOOTLIAN: If it please the Court, Your
7 Honor, he is just repeating what he said on direct
8 again. There has never been any --

9 THE COURT: What's the objection?

10 MR. HARPOOTLIAN: -- allegation by me that he
11 didn't put that in his statement.

12 MR. MEADORS: Yes, sir. He said he didn't put
13 specifically in here the threat to kill. He puts in
14 here that there were threats and specifically what
15 they are. I mean, he puts it in here.

16 THE COURT: I don't have it. I don't have the
17 police report.

18 MR. MEADORS: I am just asking him --

19 THE COURT: Just hold it. What's the objection?

20 MR. HARPOOTLIAN: My objection is that he has a
21 right on redirect to go in if he's given a prior
22 consistent statement. And certainly we asked him
23 what threats he made. He said when he came outside,
24 he said these things, those threats. The only thing
25 we impeached him on was whether he said he was going

1 to kill somebody back by the champagne room. That's
2 not in the statement. And, therefore, all this is
3 either misdirection or --

4 **MR. MEADORS:** That's not true. Objection.

5 **THE COURT:** Overruled. Go ahead.

6 **Q** Did you put in here the guy started making some
7 threats?

8 **THE COURT:** What are you referring to?

9 **MR. MEADORS:** Your Honor, his statement. He's
10 impeached him on it, about the threat --

11 **THE COURT:** What statement?

12 **MR. MEADORS:** His statement he gave the police.
13 I've already had him identify it. I'm sorry.

14 **THE COURT:** You keep switching back and forth.

15 **MR. MEADORS:** No, sir. This is his statement to
16 Richland County.

17 **THE COURT:** I understand. But you keep
18 switching back and forth.

19 **MR. MEADORS:** I'm sorry. I apologize. I'd like
20 to mark it if I could just for identification for the
21 record. Maybe that's the thing to do.

22 **THE COURT:** Sure.

23 **MR. MEADORS:** And I'd also like to mark for
24 identification this, for identification.
25

1 (WHEREUPON, State's Exhibit No. 56 is marked for
2 identification.)

3 (WHEREUPON, State's Exhibit No. 57 is marked for
4 identification.)

5 Q Referring to State's 56 for I.D. only, is this the
6 statement you gave to law enforcement?

7 A Yes, it is.

8 Q At 12:50 on 1-29-06?

9 A Yes, it is..

10 Q Did you put in here that the guy left and came back a
11 few minutes later?

12 A Yes.

13 Q Did you put in this statement whether or not you were
14 close to "Jon Jon" and went to grab him and right
15 after that there was a shot or went towards him? Did
16 you put that in here?

17 A I put that in the statement.

18 Q And you didn't put, "oh, shit" in your statement, did
19 you? Excuse me.

20 A No, I didn't.

21 Q The first person you ever told that about was Mr.
22 Harpootlian, correct; that you heard him say, "Oh,
23 shit" when he was at the door?

24 A The first person at this, yes. But I have told my
25 family.

1 Q The first person, any of this group right here, the
2 first person you told was Mr. Harpootlian?

3 A Yes.

4 Q As a matter of fact, you met with Mr. Harpootlian and
5 knew him before you knew me?

6 A Yes.

7 Q And you told me that after you told him?

8 A Yes.

9 Q And that's the truth, isn't it?

10 A Yes.

11 Q Beg the Court's indulgence. Just one final thing.
12 Could you go back to 12:06:00, please. I guess you
13 need to come down. I'm sorry. Please, with the
14 Court's permission. I am sorry. Can I? I'm sorry.

15 THE COURT: (Nods head affirmatively).

16 Q You get on the other side, please. Mr. Kata, please
17 play it. When did you hear him say, Oh, "S"?

18 A Right as I was doing the little movement right there.

19 Q How long after that did you hear the gunshot?

20 A It was almost immediate.

21 MR. MEADORS: That's all we have.

22 MR. HARPOOTLIAN: Stay right where you are. May
23 it please the Court, Your Honor?

24 THE COURT: I'm sorry?

25 MR. HARPOOTLIAN: I asked Mr. Hawkins to stay

1 right there. I want to follow up. How about back
2 that up a little bit, please, to where he walks in
3 the door.

4 RECROSS EXAMINATION

5 BY MR. HARPOOTLIAN

6 Q Okay. You walk in at 12:05:17?

7 A Yes.

8 Q Okay. And is "Jon Jon" still outside, or does he
9 come in?

10 A He is coming in.

11 Q Okay. He is coming in. So he's coming in the door
12 at 12:05:17, right? Go forward. Is "Jon Jon"
13 outside or inside right now?

14 A He is inside.

15 Q And you all were watching the video?

16 A Yes.

17 Q Is the car in front of the place at this point?

18 A Yes.

19 Q And what are you doing? You're walking over there.

20 Okay. Now your back -- you're looking back. Now
21 your back at 12:05:49 is to the door and/or "Jon
22 Jon". Is that correct?

23 A Yes.

24 Q And that's the shot right there at 12:06:05 which is
25 16 seconds after you turned your back on him. Is

1 that correct?

2 A Yes sir.

3 Q Okay. So, what this video indicates is, and in your
4 statement you said, "Jon Jon" started looking out the
5 front door. Stop there. Was "Jon Jon" looking out
6 the front door when you walked back in with him? Was
7 he looking out the front door?

8 A Yeah. He started looking out the front door.

9 Q And then you said a vehicle stopped at the front
10 door, right?

11 A Yes.

12 Q This is your statement. Let's look at it together.

13 MR. MEADORS: Could I see what page you're on?

14 MR. HARPOOTLIAN: I'm on page 2 of four pages of
15 the statement given to the Richland County Sheriff's
16 Department on January 29th that you marked.

17 Q "I told "Jon Jon" to get inside." When did you tell
18 him that?

19 A That was right as we were walking in.

20 Q Okay. Back it up to 12:05:17.

21 A I know that's when --

22 Q 12:05:17.

23 A I believe that's when I walked up to him, before my
24 back was turn.

25 Q Well, let's look at it. I want to know when you said

1 that. Is he inside now?
2 A No. He's at the door looking out.
3 Q Who is that young lady standing behind you?
4 A I don't know.
5 Q Is he inside or outside?
6 A He is looking out the door.
7 Q Okay. He's looking out the door. You walk over
8 there and say --
9 A That's -- right there is when I told him.
10 Q Okay. And that's at 12:05:48. And then you turned
11 your back. And then you said, "I went to grab "Jon
12 Jon." Okay. Is that when you went to grab him?
13 A That right there was what -- I'm mistaken in trying
14 to grab him on my statement. But that is when I went
15 to the door, went to him.
16 Q But you weren't going to grab him?
17 A No.
18 Q Okay. So you're mistaken on your --
19 A I'm mistaken on that. Yes.
20 Q Now, you at one point told me you were six inches
21 away from him when he got shot, did you not?
22 A At the time we were on the floor, I was with him,
23 about six inches away.
24 Q Okay. Now, after the police came that night -- go
25 ahead and take the stand again. You can go ahead and

1 cut it off. The video, that night the police came
2 and got -- looked at the video. And I think they may
3 have printed off some pictures off the video. Were
4 you present when they did that? Did they show you a
5 picture?

6 A What's your question?

7 Q Did they print off a picture of Mr. Herring from the
8 video that night?

9 A No. I mean, I don't know. I don't know.

10 Q Did you see a video that night?

11 A No, I didn't.

12 Q Had you seen these videos at any point prior to
13 coming to court, any of them?

14 A I haven't seen these videos until a week or two ago.

15 Q Okay. So never at any point?

16 A No.

17 Q So when you have said in your statement when talking
18 to me and when you were talking to Mr. Meadors and
19 when you talked to the police about seeing him stick
20 his head out the door, I want to make it clear that
21 there is some 16 seconds between the time you turn
22 your back on him --

23 A Yes.

24 Q -- and when the shot is fired. And clearly, you
25 didn't see him with his head out the door or coming

1 back in the door when the shot was fired. Isn't that
2 clear?

3 A Yes. That's clear. Yes.

4 Q Okay. And you don't know -- I mean, when you said
5 you heard him say, "Oh, shit", the first person you
6 told that to was me investigating this case, correct?

7 A Yes.

8 Q And you had just forgotten it?

9 A Yeah.

10 Q Okay. And we can clearly see him going to the ground
11 and you going to the ground. Do you know whether he
12 said it going down, said it when he was standing up,
13 said it when things happened?

14 A As the door was being closed. Because I heard the
15 door -- all this is --

16 Q You heard --

17 A The door closes, "Oh, shit", then the shot.

18 Q You had your back to him and you're 15 feet away and
19 you hear the door close?

20 A That door is pretty heavy and it does have a nice
21 heavy sound to it when it closes.

22 Q Music blaring out from the back?

23 A As I said, it's muffled from the back, from the
24 front.

25 Q And you didn't remember that "oh, shit" until two

1 weeks ago when I talked to you?

2 A No. I remembered it. But as you said, the first
3 person I talked to about it in this case was you. I
4 remembered.

5 Q Now, you talked to the police?

6 MR. MEADORS: If he could find --

7 A I talked to the police. That was only that night. I
8 haven't talked to the police since that night about
9 anything except for when I had the picture line-up.

10 Q But 12:50 that night, you actually were mistaken
11 about what you told the police that night about where
12 you were and what happened. Isn't that correct?

13 A Yes. That's correct.

14 Q And you didn't hear tell them about hearing "Jon Jon"
15 say anything?

16 A No. I didn't tell them about anything.

17 Q And Mr. Meadors -- I interviewed you about three
18 weeks ago. I think that's the first time we'd ever
19 met. Right?

20 A Yes.

21 Q And Mr. Meadors didn't talk to you until after that?

22 A Yes.

23 Q I'm correct about that?

24 A Yes.

25 Q And no one from the Sheriff's Department has talked

1 you in the 14 months since they interviewed you less
2 than an hour after Mr. Johnson was killed?

3 A No.

4 Q Until when? Two weeks ago?

5 A Yes.

6 MR. HARPOOTLIAN: Beg the Court's indulgence one
7 moment.

8 THE COURT: You may come down, sir. Thank you
9 very much. May this witness be excused?

10 MR. HARPOOTLIAN: Sir?

11 THE COURT: Any objection to excusing this
12 witness?

13 MR. HARPOOTLIAN: No objection.

14 THE COURT: You're free to go, sir. Thank you
15 very much.

16 MR. MEADORS: Are you ready to go?

17 THE COURT: Yes, sir. Next witness.

18 MR. MEADORS: Yes, sir. The State would call
19 Nicole Beran, B-E-R-A-N.

20 NICOLE Y. BERAN, after being duly sworn,
21 testifies as follows:

22 THE CLERK: Thank you. Please have a seat in
23 the witness stand and state your full name for the
24 record, please.

25 WITNESS: My name is Nicole Yoshiko Beran.

DIRECT EXAMINATION

BY MR. MEADORS

Q Good afternoon. Pronounce your last name, please?

A Beran.

Q Please tell the jury a little bit about yourself, please, ma'am. Start on with where you're born and where you're raised?

A I was born in Florida. I was raised in South Carolina. My father was in the military, so we moved out here. And I've been mostly raised in South Carolina.

Q Where did you go to high school, please, ma'am?

A I went to Dutch Fork High School.

Q And when did you get through with high school?

A I got my GED when I was a little bit older.

Q And after that what did you do?

A I waited tables. Well, I started working when I was 16, working at the movie theater and cleaning hotel rooms. And then when I turned 18 I started waiting tables at like Roadhouse Grill and different places.

Q Did you ever study cosmetology?

A Yeah. I studied cosmetology when I was 18. I didn't graduate a couple of months probably shy of completing because I had a child when I was young and I was a single mom working full time taking care of a

1 child also.

2 Q And just briefly did you work in a beauty supply
3 place?

4 A Yes. I worked at Sally's Beauty Supply at the same
5 time I was going to school.

6 Q So you have one child?

7 A I two children. I had a child when I was young, a
8 teen-ager, and then I had another when I was 21.

9 Q Now, prior to working at -- and I assume you worked
10 at Chastity's. That's why you're here, correct?

11 A Yes.

12 Q Prior to that, did you work at any other nightlife
13 establishments?

14 A Yes, I did. I've worked a good bit of them. I
15 started working in the adult industry when I was 19
16 and worked there off and on. I worked other jobs
17 inbetween, and they just didn't pay as good as the
18 adult industry did.

19 Q Did you work at Bottoms Up?

20 A Yes. I worked at Bottoms Up. I started there when I
21 was 19.

22 Q What did you do there?

23 A I was a cocktail waitress. "Jon Jon" was my hiring
24 manager. I also did door hostess there.

25 Q What year would that have been, Ms. Beran, the best

1 you can remember?

2 A It would have been in '98.

3 Q Did you work at Club Cabaret?

4 A I also worked at Club Cabaret. I was a bartender
5 there when I turned 21. I went there after I had my
6 daughter. And me and her dad were having problems
7 and my house burned down. And so I decided to go
8 back to work.

9 Q You worked at Platinum Plus?

10 A I worked at Platinum Plus also. I was a door hostess
11 and a beer tub girl there.

12 Q Southern Gentleman?

13 A I worked at Southern Gentleman as a bartender and a
14 door hostess and a waitress.

15 Q Carolina Wings?

16 A Carolina Wings. I was a waitress at Carolina Wings
17 also.

18 Q You worked for a lawyer?

19 A I worked for an attorney, David E. Butler, P.A., for
20 about six months inbetween. I decided there was less
21 stress at the club.

22 Q When did you start working at Chastity's?

23 A I started working at Chastity's about a year and a
24 half. It was actually November, the November before
25 everything happened, for about a year and a half.

1 Q So, to reference, in November before everything
2 happened, would that be in 2005?

3 A Yes, sir.

4 Q And when you started there, what was your job?

5 A I started there doing bartending. I had
6 previously -- really I started working for Drink in
7 November, and I filled in a couple of times
8 bartending at Chastity's. And then after Drink was
9 sold, I went to the Chastity's.

10 Q For those who may not know, what do you mean when you
11 say you worked for Drink?

12 A Drink was a dance club that Jerry Britt owned
13 downtown, a regular dance club.

14 Q And you were a waitress there?

15 A No. I was a bartender.

16 Q Jerry Britt owned that?

17 A Yes, he did.

18 Q Who owns Chastity's?

19 A Jerry Britt.

20 Q Is that connection how you got to Chastity's?

21 A Yes, sir. When they sold Drink they offered me the
22 full-time position there. And of course I needed a
23 job and the money was good. So I said yes.

24 Q And your first job there was what at Chastity's?

25 A Bartending.

1 Q And where did you work as a bartender in Chastity's?
2 I'm showing you what's State's 51. As a bartender,
3 where would you work on State's 51?

4 A (Witness points).

5 Q Did you work in other places after that in
6 Chastity's? Did you have other jobs there?

7 A After Chastity's?

8 Q No, no.

9 A No. Chastity's was the only one that I had. Because
10 after I moved from bartender to door hostess, my
11 hours were pretty good, considering it was nighttime,
12 and I made good money. And I had thought about
13 getting other jobs, but none of them would be able to
14 pay me enough to pay my bills.

15 Q And that was a terrible question I asked you. Did
16 you work other positions at Chastity's besides the
17 bar? That was my fault.

18 A Oh. Other positions? Yes. I did the door hostess.

19 Q What does that mean? Tell these folks.

20 A Door hostess is when people come in, I sit at a desk
21 and I check their ID's. I make sure that they're of
22 age. I greet them. I get their money, change, give
23 them tickets to get in. And if they want cigars, I
24 have a cigar stand. And if they're VIP, I write down
25 their card number. It's a very easy job. It's just

1 pretty much, I'm the first face that they see when
2 they come in, so I greet them.

3 Q If you're under age, can you come in; under age
4 drinking, 21, can you go into Chastity's?

5 A If you're under 21, you can come in, but you have to
6 be at least 18. Now, our under 21 policy is we take
7 your driver's license. We hold it. But that would
8 be my job. I mark you. I put bands on you. I make
9 you take off your t-shirt and put on a red t-shirt
10 that says under 21 in bright, bright bold letters.
11 We are very strict about under 21 drinking because it
12 can get the whole establishment shut down.

13 Q On January 29th, 2006, were you working at
14 Chastity's?

15 A Yes, I was.

16 Q And your job that night there was what?

17 A Being door hostess.

18 Q And was there anything -- was there any special
19 promotion going on at Chastity's that night?

20 A We were having a magazine promotion party where the
21 people for the magazine was coming in and they were
22 interviewing people that worked there and taking
23 pictures because they run a magazine that promotes
24 the adult industry in North and South Carolina. And
25 so it was a promotions party.

1 Q Do you remember the defendant, Dewain Herring, coming
2 to Chastity's on January 29th of '06?

3 A Yes, I do.

4 Q How do you remember that?

5 A The reason why I remember it is because I have a
6 pretty good memory when it comes to people's faces.
7 But he was -- he stuck out to me. And he didn't talk
8 to me but he stuck out. And so, you know, how like
9 they say sometimes it's hard to forget a face. Well,
10 I didn't forget his face.

11 Q And where were you working when he came in the club?

12 A I was working the door. I took his money.

13 Q And how much is it to come in?

14 A I think it was only like \$8. I can't remember. It's
15 been a while since I've done the admission.

16 Q And did he actually pay you?

17 A Yes, he did. He paid me cash.

18 Q Did you give him change?

19 A I did give him change. And I told him to have a nice
20 day.

21 Q And is it unusual for you to give large amounts of
22 change?

23 A No. It's not unusual. As a matter of fact, we try
24 to give as many 1's as possible.

25 Q That's so that folks will spend them there?

1 A That's right. So they'll tip. If they have tipping
2 money, it's more than likely you'll spend a 1 than a
3 20.
4 Q And after the defendant identified as Dewain Herring
5 went in back, into part of the establishment, did you
6 see him any during that time?
7 A No. I never saw him while he was inside the
8 establishment. I only saw him come and I saw him
9 leave.
10 Q Okay. And back to when he was coming, you're pretty
11 much -- did you pretty much stay at the front when
12 you were working at this time?
13 A Yes.
14 Q And again, just one question and I'll sit back down.
15 Again, show the jury -- well, not again -- show the
16 jury where you were working?
17 A I'm right here.
18 Q And where would people come to pay?
19 A Right here.
20 Q When is the next time you saw who you've identified
21 as -- or you say you know as Mr. Herring, Dewain
22 Herring, the defendant in this case?
23 A When he was leaving.
24 Q Describe what you saw to the jury. The jurors. I'm
25 sorry.

1 A I saw him leaving and them following behind him. And
2 I was thinking, wow, why is he leaving so early? And
3 then Carl came up to me and we asked him --
4 Q Don't say what Carl said.
5 A Okay.
6 Q But you asked Carl what had happened?
7 A Mm-hmm (affirmative). We asked Carl what had
8 happened.
9 Q And as he was being led out, he, the defendant, were
10 any of the employees there who were walking out there
11 with him, did they touch him?
12 A No, they didn't.
13 Q Did you see them push him or anything?
14 A No. I didn't even hear them be mean to him or yell
15 at him.
16 Q After the defendant walks out the door, what did you
17 do next?
18 A I just -- Carl came over and he started talking to us
19 and telling us what was going on. And so part of my
20 job is to watch the monitors to keep an eye on the
21 parking lot because all the cameras are in front of
22 me. And I sit there all night. So I have to like
23 watch the cameras and make sure everything is okay.
24 So I was watching the cameras and I was watching "Jon
25 Jon" and Dewain talk.

1 Q So you see them outside just on a video monitor?

2 A Yes.

3 Q Do you know what they were talking about?

4 A I was assuming that they were talking about --

5 MR. HARPOOTLIAN: Objection.

6 Q You don't know what they were talking about, do you?

7 A No. There is no audio on there.

8 Q That was my next question. But you saw them on the
9 video?

10 A I saw them on the video, yes.

11 Q And after the defendant and "Jon Jon" went out, can
12 you tell the jury what happened after that, what you
13 remember?

14 A We watched them for a little while on the video.
15 Then "Jon Jon" came inside. They were talking about
16 what was going on. And he went back outside. He
17 come back in. Angel started screaming. He came
18 back. The gunshot went off. I dropped to the
19 ground. I panicked. I crawled up underneath the
20 desk. And Angel started yelling had "Jon Jon" been
21 hit. And that's what happened.

22 Q Your Honor, I think very briefly we could show this.
23 Mr. Kata, please go to the inside camera first and
24 the beginning. Could you go back? And I apologize.
25 Your Honor, we're now for the record on camera 12 at

1 11:00:57 seconds. And I'm sorry. Would you please
2 step down? I'm sorry, Ms. Beran. It's been a long
3 day. Would you please go over there and please speak
4 up so everybody can hear you. And right here. If
5 you'll be right here on this side. Just come right
6 here.

7 A Okay.

8 Q Now, before we start, where are you?

9 A There is my monitor and then here is the seat. And
10 they were standing right here. And then right here I
11 would push it in and pay for the cash. So I'm right
12 here, right off camera but directly in front of them
13 because I get a direct view of them inside.

14 Q And "they" meaning customers?

15 A Customers, yes.

16 Q Please go ahead. Stop it one second. What's going
17 on here?

18 A Right here I just told him how much it cost and he is
19 looking for his money. And, but see, it's really
20 dark right there. So he is probably leaning to get
21 the light from the monitors.

22 Q Go ahead.

23 A And I just gave him back his change. And he's
24 counting it.

25 Q He's counting his change?

1 A Yes.

2 Q You said earlier you remembered him?

3 A I do. I do remember him. I remembered him very
4 well.

5 Q And what did you remember about him?

6 A Because I was with the cosmetology school, I notice
7 little things about people's manicures and eyebrows
8 and stuff like that. And I noticed that most older
9 men have very bushy eyebrows. And I noticed his
10 eyebrows were very, very manicured, very in line,
11 very distinctive eyebrows.

12 And his fingers, his nails were very, very clean
13 and manicured, very well groomed. He was very well
14 groomed, very nice clothes. You know, he kind of
15 stuck out like a sore thumb.

16 And also a lot of people come there to have a
17 good time. And he did not seem like he was very
18 pleased. And even when I told him have a good time,
19 have a nice day, he just kind of looked at me and
20 raised his eyebrows like over his glasses and just
21 walked inside.

22 Q Would you please go to 11:56:50. And where are you
23 now?

24 A I'm still right here. That's why that guy just waved
25 because I said, "Have fun." That's usually what I

1 say.

2 Q Stop right there.

3 A There, right there is the office door. And a lot of
4 people mistake it for the exit door because they're
5 apart from each other. All night long we watch the
6 people try to go into the office thinking it's the
7 out. So right there they're saying no, no, no,
8 that's the office. Out's this way.

9 Q Does that happen a lot?

10 A All the time. All the time.

11 Q Keep going. Did you see anybody push or escort out
12 Mr. Herring by holding him or touching him or
13 anything?

14 A No. No.

15 Q Stop. And please go forward to 12:05:45. Now, let's
16 stop right here. Go back a little. 12:05:30,
17 please. And let me just -- again, where are you?

18 A I'm still right here.

19 Q And I've just got a couple more questions on this.
20 Showing you what's State's 6, who are these folks?

21 A That's Donnie and that's Angel. And I'm right here.
22 And we're all watching the screens together.

23 Q And does State's 6 show those screens?

24 A Yes. Right there. This is the screens that we're
25 watching right here.

1 Q And does this where my finger is show the front, what
2 you all were looking at?

3 A Yes. That's the front door. And it's very clear,
4 the front door.

5 Q Go ahead. And you testified earlier that at some
6 point Angel screamed or said he's back?

7 A Yeah. He came back. He came back. She started
8 yelling.

9 Q And when did you start looking at the cameras or the
10 monitors?

11 A I was looking at the cameras when they were. And
12 then Angel came around thinking that everything was
13 going to be all right. So she came around and she
14 sat back down next to me. And we were chatting and
15 then we'd look over and then we were chatting some
16 more. And that's when she started to yell. And when
17 she started to yell, I looked at her. And as soon as
18 I looked at her, the gunshot went off.

19 Q So, let me stop here. When the gunshot went off,
20 what did you do?

21 A I hit the ground. Then I started to check myself.
22 And I crawled up underneath the desk that was holding
23 all the monitors because I was scared he was going to
24 come in and like maybe kill us. And then Angel
25 started screaming for me and looking for me to call

1 911, but I couldn't move.

2 Q What happened after that?

3 A She started yelling "Jon Jon" has been hit and
4 somebody get the door to lock the door. And then I
5 heard them say that the door was locked. And they
6 were still looking for me. And so I stood up and I
7 looked over and I saw "Jon Jon" there.

8 Q Where were you, if you can show, on this video?

9 A I dropped and I crawled over underneath the monitor
10 desk. And then when I stood up, I stood up directly
11 across from "Jon Jon".

12 Q Have a seat.

13 (WHEREUPON, State's Exhibit No. 58 is marked for
14 identification.)

15 (WHEREUPON, State's Exhibit No. 59 is marked for
16 identification.)

17 Q Did EMS, Emergency Medicine, come?

18 A Yes, sir, they did.

19 Q The police came?

20 A Yes.

21 Q And just looking at State's 64 (sic) for I.D. only,
22 did you give a statement?

23 A Yes, I did.

24 Q Okay. What time does that statement say you gave it?
25 State's 58 for I.D., can you tell me what time this

1 says in the corner up here?

2 A Right in here?

3 Q Yes.

4 A 1:29.

5 Q So that would be 1:30?

6 MR. HARPOOTLIAN: Objection, Your Honor. He's
7 publishing a document that's not in evidence.

8 MR. MEADORS: I'm not publishing it. I'm just
9 asking what time she gave the statement.

10 THE COURT: Overruled.

11 Q Did you have an occasion to meet with law enforcement
12 later on that day in addition to that statement?

13 A They questioned me that night. I also went to a
14 line-up. I chose him from line-ups.

15 Q And that's what I want to ask you about. Showing you
16 what State's 59 for I.D. did you have occasion to
17 view a photographic line-up?

18 A Yes, I did.

19 Q And tell these ladies and gentlemen, where that was?

20 A It was at the Sheriff's patrol office.

21 Q Sheriff's Department?

22 A Sheriff's Department.

23 Q Is this the line-up you were -- 59 for I.D. only --
24 that you were shown?

25 A Yes, this was.

1 Q And describe the line-up to the folks, the ladies and
2 gentlemen?

3 MR. HARPOOTLIAN: No objection to that coming
4 in, Your Honor, if he wants to go ahead and show it
5 to the jury at the same time.

6 MR. MEADORS: Okay. Thank you very much.

7 MR. HARPOOTLIAN: No objection.

8 Q So you were shown a line-up?

9 A Yes.

10 Q And nobody suggested to you who to pick out or
11 anything like that?

12 A No. A matter of fact, he turned it over and then
13 walked off.

14 Q And when you were asked if you could pick out anybody
15 that you recognized in here from the previous day,
16 could you?

17 A Yes.

18 Q Or earlier that morning. I'm sorry.

19 A As soon as I saw him, I knew it was him.

20 Q And you picked out number 2, correct?

21 A Yes.

22 Q You signed it, that you'd picked him it?

23 A I circled it and I signed it.

24 Q And on the front, it's got Faust up here, 11-29, 3:16
25 p.m. That's your signature?

1 A Yes.

2 Q And the police showed you that later that day?

3 A Yes.

4 Q And you picked out number 2 because that was the
5 person that came. You got his money, went to
6 Chastity's and then you saw leave with the three
7 folks that worked there?

8 A Yes. And if you look at the eyebrows, you'll know
9 what I'm talking about.

10 MR. MEADORS: Now we'd offer this, 59, without
11 objection.

12 MR. HARPOOTLIAN: No objection.

13 (WHEREUPON, State's Exhibit No. 59 is admitted
14 into evidence.)

15 Q Beg the Court's indulgence. And is that person in
16 the courtroom?

17 A Yes.

18 Q Would you please point him out?

19 A In the burgundy tie.

20 MR. MEADORS: We'd like the record to reflect
21 she's pointed out the defendant, Dewain Herring.

22 THE COURT: Let the record reflect the witness
23 identified the defendant.

24 Q You were emotional that night when this happened?

25 A Yes. I was very emotional. "Jon Jon" was not --

1 Q That's all. That's all. Just ...

2 CROSS EXAMINATION

3 BY MR. HARPOOTLIAN

4 Q Ms. Beran, I think you and I talked by phone last
5 week?

6 A Yes, sir. Monday.

7 Q Last Monday?

8 A This Monday that just passed.

9 Q Two days ago or a week ago?

10 A No. A couple of days ago.

11 Q A couple of days ago. I knew it was recently. I
12 have lost track of time here. When you look at Mr.
13 Herring today, those are the manicured eyebrows
14 you're talking about?

15 A They don't look so manicured today.

16 Q They don't. Okay. What about mine? Are these
17 manicured eyebrows?

18 A No.

19 Q Okay. I just wondered what a manicured eyebrow looks
20 like. You worked at Platinum Plus, right?

21 A Correct.

22 Q What other strip clubs did you work at?

23 A Club Cabaret, Bottoms Up, Chastity's.

24 Q Okay. Did you ever dance at any of those?

25 A No.

- 1 Q Okay. You always worked as a hostess or a bartender?
- 2 A Or a cocktail waitress.
- 3 Q Or a cocktail waitress. So you have been around the
- 4 adult entertainment, strip club, whatever you want to
- 5 call it, business in this town for a while. Is that
- 6 right?
- 7 A Off and on.
- 8 Q Off and on. Now, tell the jury, please, how dancers
- 9 make money. Do they get paid a salary?
- 10 A No. Usually they pay a house tip out and they get
- 11 their money from giving dances and tips on stage.
- 12 Q Okay. And the tips on stage, let me ask you this.
- 13 Do women that dance at these clubs, are they totally
- 14 nude or not?
- 15 A It depends on what club you go to. Chastity's was a
- 16 totally nude club. The rest were not.
- 17 Q So it was the only totally nude club in town?
- 18 A Yes.
- 19 Q Are they supposed to be totally nude?
- 20 A I don't know. But I believe that everybody is fine
- 21 with that. It's fine if they're totally nude.
- 22 Q I'm sorry. I can't hear you.
- 23 A I think they were allowed to be totally nude.
- 24 Q The girls didn't dance with panties in their hands?
- 25 A With panties in their hands?

1 Q Did you ever hear anybody ever yell red alert?

2 A No.

3 Q No?

4 A Well, the stage is in the very, very, back. I'm in
5 the very front.

6 Q But it's the only club you know of where they dance
7 nude?

8 A Yes.

9 Q Now, have you ever seen anybody get a lap dance?

10 A No.

11 Q Never?

12 A Not there.

13 Q What?

14 A Not there.

15 Q Anywhere?

16 A Yeah. At other clubs.

17 MR. MEADORS: Objection. She said not there.

18 A Not there.

19 THE COURT: I sustain that.

20 Q Did you ever go back to the champagne room?

21 A Nope. Not when the girls were dancing.

22 Q So you never went to the back. You don't know what
23 happened back there?

24 A Nope.

25 Q Did you ever go in the dressing room?

- 1 A I've been in the dressing room to retouch my makeup.
- 2 Q When the girls are in there dressing?
- 3 A Yes.
- 4 Q Okay. Did you ever see drugs back there?
- 5 A No.
- 6 Q Now, when you were a bartender at Chastity's, was
- 7 there some emphasis put on -- well, strike that. The
- 8 people that came in that were under 21 that you had
- 9 to put shirts on, that was to keep them from having
- 10 alcohol served to them. Is that correct?
- 11 A Correct.
- 12 Q Were they prohibited from getting lap dances?
- 13 A No, they weren't prohibited from getting lap dances.
- 14 Q So you could be 16-year-olds?
- 15 A No. You couldn't be 16.
- 16 Q How old do you have to be?
- 17 A You have to be 18 to get in the club.
- 18 Q 18 to get in the club. You can get a lap dance or
- 19 whatever they offer in the back in terms of dancing?
- 20 A Correct.
- 21 Q Okay. But no alcohol?
- 22 A No alcohol.
- 23 Q Let me ask you if you've ever seen this document
- 24 before?
- 25 A I don't recall seeing this.

1 Q Okay. Were you paid a salary?

2 A Yes. I was paid hourly.

3 Q Hourly. Did you receive any tips on top of that?

4 A Yes.

5 Q And who tipped you?

6 A Customers that come through the door that I greeted
7 and, you know, wanted to tip me.

8 Q You didn't get anything from the dancers, anything
9 from the floor people, anybody? Just customers?

10 A No. I tip my floorman. I would tip my floorman. He
11 didn't tip me.

12 Q Well, now, why would you tip your floorman?

13 A Because he stands there all night and makes sure that
14 everything is okay. Sometimes if a large group of
15 guys come in and one of them wants to slide by the
16 door, he makes sure that doesn't happen. You know,
17 he'll help me get the t-shirts down because I'm short
18 and I can't reach it. He will help me get the
19 t-shirts down, help the guys get them on, stuff like
20 that.

21 Q When you were a bartender, did you get paid a salary
22 or did you just work tips or both?

23 A I got waitress salary and then I got tips.

24 Q Okay. Now, the girls that are dancing are dancers
25 but not dancing, they sit around the bar and at these

1 tables when they're not dancing. Is that correct?

2 A Well, we have a policy. Because we are fully nude,
3 there is the barroom and then there is the back dance
4 room. The dancers are like not supposed to sit
5 around the bar just to drink. It doesn't really look
6 that good. And you can only have liquor at the bar
7 and you can't have liquor in the back.

8 Q So how does one arrange -- have you been in the back
9 when people arranged to have lap dances or go to the
10 champagne room? Do you know how that works?

11 A No.

12 Q No. Okay. Now, when Mr. Herring came in, did he
13 appear to be impaired or intoxicated to you in any
14 way?

15 A No.

16 Q When he left, could you tell whether he was impaired
17 or intoxicated?

18 A No.

19 Q You're not saying he was. You're not saying he
20 wasn't?

21 A I'm just saying he wasn't stumbling around.

22 Q He wasn't stumbling around. Let me -- could I get
23 you to go to the film again for just a second. The
24 night of the shooting, did you have an opportunity --
25 this video we saw, have you ever seen it before?

- 1 A Yes.
- 2 Q When did you see it?
- 3 A I saw it a couple of days ago.
- 4 Q Is that the first time you've seen it?
- 5 A Yes.
- 6 Q Who showed it to you?
- 7 A I was shown in the office.
- 8 Q Here at the courthouse?
- 9 A Mm-hmm (affirmative).
- 10 Q Mr. Meadors show it to you?
- 11 A Yes.
- 12 Q Okay. And did he review it with you?
- 13 A No. He just told me to brace myself.
- 14 Q Brace yourself. Okay. Let me -- let's take this
- 15 back to before -- take it back to where I think
- 16 you'll see Weeks standing right here. Right in the
- 17 middle. If you'll go backwards. Keep going back.
- 18 Maybe not. I think that's too far. No, no. I'm
- 19 sorry. It's further back than that. I apologize.
- 20 Maybe right after they escort him out. I think
- 21 that's 12:0 --
- 22 MR. CABA: 11:50 something.
- 23 Q 11:50 something. Okay. There it is. Back it up
- 24 just a little further. Okay. Go forward now. Okay.
- 25 Step down here, please. I'm sorry. Stop it for one

1 second. Now, you've already -- stand right over here
2 for me, please. You've already said that you saw
3 them escort him out. And you were standing -- I
4 think we earlier saw Mr. Herring giving money to
5 somebody right here. Is that you?

6 A That's me.

7 Q So your desk faces down towards the door?

8 A No. It faces straight across into the lobby to the
9 bar.

10 Q It faces this way?

11 A Yes.

12 Q Is this a counter here?

13 A Yes.

14 Q And then does it turn that way or not? Or it just
15 goes all the way down?

16 A My computer is like this, and then it turns just a
17 little bit. And then, well, it's got the opening
18 right here, but it goes like this. It's kind of
19 shaped funny. But this is long. And I just know
20 like my chair right here when I'm sitting looks
21 directly across.

22 Q So you face the back right here? You face back to
23 where the bar and the dancing is?

24 A Yes. But I can also look straight down like this and
25 see all the monitors clearly.

1 Q So you'd be looking over your left shoulder to look
2 down at the monitors and the front door?
3 A Well, I have a swivel chair so I can turn and look,
4 too.
5 Q Okay. Go forward, please. No, no. You stay right
6 here, please. I want the video to go forward. Okay.
7 And that's Mr. Herring going out?
8 A That's him.
9 Q That's John. Mr. Hawkins. Mr. Weeks. Is that
10 correct?
11 A Correct.
12 Q And you're still seated right over here?
13 A Yes.
14 Q Okay. Now, here comes Mr. Weeks. Is that right?
15 And Mr. Hawkins?
16 A Mm-hmm (affirmative).
17 Q And they would be looking at ...?
18 A The monitors.
19 Q The monitors. Now, who is Mr. Weeks? Is he talking
20 to you?
21 A Yes. And Angel.
22 Q And Angel. You all are both back there off camera?
23 A Right. Correct.
24 Q Now, there is music playing back here, correct?
25 A Correct.

1 Q Is it loud?

2 A No. Because this is the bar area, and the music is
3 after the bar area into the dance area. So there is
4 that wall, the bar area and then another wall before,
5 then a doorway before you even get to the music area.
6 So it's very muffled.

7 Q Let's back up just a little bit. We missed something
8 there. Now, you know Mr. Weeks, right?

9 A Mm-hmm (affirmative).

10 Q Let's keep backing up. Okay. Stop. Now go forward.
11 He's walking over talking to you and Angel. Is that
12 right?

13 A Correct.

14 Q Let's watch. Okay. Now, is he laughing?

15 A Yes.

16 Q Okay. Now, I don't want you say what he said because
17 that would be hearsay. But he looks like something
18 is hilarious. Is that right?

19 A Correct.

20 Q Okay. Now, is he just sort of a jovial guy all the
21 time?

22 MR. MEADORS: Your Honor, objection. He's
23 asking her but he's not letting her go into what he's
24 saying.

25 MR. HARPOOTLIAN: I'm just asking her

1 characterization, Your Honor. Not what he said. He
2 appears to be laughing. I'm not asking what he was
3 saying.

4 **THE COURT:** Go ahead.

5 **Q** Okay. Is he generally a jovial kind of guy?

6 **A** Carl is a very nice guy. He is lighthearted. But he
7 works in the back, so I haven't had many
8 conversations with him. He had just recently started
9 not too long before that.

10 **Q** But he's definitely smiling there, is he not?

11 **A** Oh, yes.

12 **Q** Okay. Let's watch him a little while longer. Is he
13 a big guy?

14 **A** He's a big guy.

15 **Q** Shaved head?

16 **A** Shaved head.

17 **Q** Jerry Britt?

18 **A** Yes. That was Jerry Britt and the other girl that
19 worked in the office with Jerry.

20 **Q** What was her name?

21 **A** I think it was Nikki.

22 **Q** Okay. So that was the owner of the club leaving. Is
23 that right?

24 **A** Correct.

25 **Q** Again, was he smiling?

- 1 A I can't tell. It's a little blotchy.
- 2 Q Okay.
- 3 A But Donnie comes back in and they're watching the
- 4 monitors now. And as you can see, his face gets
- 5 serious.
- 6 Q Okay. Okay. Stop it, please. Who is that?
- 7 A That's Mia.
- 8 Q That's Mia. Ms. Grainger. Is that correct?
- 9 A Correct.
- 10 Q Her real name is Grainger?
- 11 A Well, I wouldn't know her by her real name, but --
- 12 Q But she's a dancer named Mia?
- 13 A Correct.
- 14 Q Okay. Go forward, please. Okay. Now, what's going
- 15 on here?
- 16 A He is asking her to step back inside because we don't
- 17 like the dancers to come out past this line so
- 18 they're not gathered around the doorway.
- 19 Q Now, do dancers normally come out like that and come
- 20 up to where you are?
- 21 A Sometimes. Well, they'll ask me to order them some
- 22 food or see if one of their customers can get a taxi
- 23 cab or just, you know, to check on the status. But
- 24 they're not supposed to really hang around there. So
- 25 he was asking her to step back.

1 Q But he grabbed her by the arm and pushed her back,
2 did he not?

3 MR. MEADORS: Objection, Your Honor.

4 A No, he did not.

5 Q Let's look at that again. Did he grab her?

6 MR. MEADORS: Your Honor.

7 Q Ma'am, do you remember him grabbing her?

8 A No.

9 Q Okay. Let's to forward.

10 A If it was aggressive, a lot of those --

11 MR. MEADORS: Your Honor, if he could let her
12 finish.

13 THE COURT: Let her finish.

14 A If he was aggressive with her, a lot of those girls
15 are pretty gutsy. And I'm sure that they would have
16 really thrown a fit with the management if he was
17 aggressive with her. And anybody who has ever stood
18 in high heels knows if somebody grabs you and pushes
19 you, you'd probably fall over.

20 Q Okay. Back it up again. Let's watch her again.
21 Back it up a little bit more. Okay. Now, he's
22 pointing to the back?

23 A Mm-hmm (affirmative).

24 Q Did you hear him say anything or her say anything? I
25 don't want you to tell me what they said. But did

1 you hear it?

2 A I heard it. But I just don't recall word-for-word.

3 Q Okay. Now, where is his hand?

4 A On her arm.

5 Q Okay. Now let's watch. Go ahead.

6 A I don't see a grip motion. I see a go ahead gesture.

7 Q It is what it is. Go ahead and take the stand again,
8 please. Beg the Court's indulgence. Other than Mr.
9 Herring paying you money when he came in, you never
10 heard him say another word that night, did you?

11 A No, sir.

12 Q Okay. When he was walking out, you never heard
13 another word?

14 A No, sir.

15 MR. HARPOOTLIAN: Nothing further.

16 THE COURT: Redirect.

17 REDIRECT EXAMINATION

18 BY MR. MEADORS

19 Q And Mr. Harpootlian asked you about when Carl was
20 over there gesturing and all. Was he telling you
21 what had happened in the back room?

22 MR. HARPOOTLIAN: Objection. Hearsay.

23 MR. MEADORS: No, sir. I'm not going to ask him
24 what he said.

25 MR. HARPOOTLIAN: Objection. Hearsay.

1 **THE COURT:** Overruled.

2 **MR. MEADORS:** I'm not going to ask her the
3 content of it.

4 **THE COURT:** Go ahead.

5 **Q** Was he telling you what had happened?

6 **A** Yes. He was telling us --

7 **Q** Without saying.

8 **A** He was telling us what had happened.

9 **Q** That's fine. Wait. Beg the Court's indulgence.
10 That's all.

11 RECROSS EXAMINATION

12 **BY MR. HARPOOTLIAN**

13 **Q** And he thought it was funny?

14 **A** Well, I worked there a year and a half and I've
15 worked many clubs. And I haven't heard of anything
16 like that happening. So we did think it was a bit
17 ridiculous.

18 **Q** Funny. He is laughing. You were laughing. Angel
19 was laughing. Right?

20 **A** Yeah. We thought it was a bit ridiculous.

21 **Q** Right. Somebody naked back in the champagne room?

22 **A** Well, that wasn't the funny part.

23 **Q** Well, I understand. Well, tell me what the funny
24 part was. What was so funny?

25 **A** We just thought that it was ridiculous that he'd come

1 in there and then get mad at us because we didn't
2 want him acting that way.

3 Q Well, do you know who he was supposed to be back in
4 the champagne room with?

5 A Mia.

6 Q Mia, the girl that comes forward that we saw right
7 there?

8 A Mm-hmm (affirmative).

9 Q Did you see Mia later on that night?

10 A No.

11 Q That's the only time you saw her that night?

12 A When she come up to the front door. I didn't know
13 Mia.

14 Q And Carl thought everything was very funny about what
15 happened back there, about getting naked?

16 A No. It's not as much that he thought it was funny,
17 what he did, because that's not funny. He just took
18 the -- he was talking about what the guy had said to
19 him and look it lightheartedly.

20 Q Took it lightheartedly. Thank you.

21 THE COURT: Thank you very much. Come down,
22 ma'am. Approach the bench, counsel.

23 MR. MEADORS: Can this witness be excused?

24 THE COURT: Any objection?

25 MR. HARPOOTLIAN: Without objection.

1 **THE COURT:** No objection.

2 (Whereupon, a bench conference is had)

3 **THE COURT:** All right, ladies and gentlemen of
4 the jury. It's just about 5:00. I was inquiring of
5 counsel as to the next witness and what the length,
6 likelihood that that witness would be lengthy.
7 Apparently the witnesses are being called and the
8 order in which they are being called are witnesses
9 who were at the club that night. And their testimony
10 is subject to cross examination, as you've seen from
11 the first two witnesses. Counsel have both advised
12 me that the direct and the redirect examination or
13 the cross examination is likely to be lengthy. And
14 I'm not going to hold you here unduly this evening.

15 So I'm going to release you now. But let me ask
16 you first to do this. I want you to go to the jury
17 room. And if you will, let me know -- it's becoming
18 apparent, if you haven't already realized it, that
19 this case may not finish by Friday afternoon. I
20 don't think that's any great -- it doesn't take any
21 great insight on my part to determine that. Given
22 the list of the names of the list of witnesses, not
23 all of whom will be called; but let's assume a
24 substantial portion of them will be called, some will
25 be short; some will certainly not be as long as the

1 ones we've heard from today.

2 So I'm going to ask you to go to the jury room
3 and let me know, if you'll just take your pads and
4 write me a note, if you have problems going into next
5 week. In other words, if you have -- we are -- we
6 have to finish this case once we've started it. It
7 has to go on. I need to know what, if any, problems
8 you have.

9 Now, I've already received a note from juror
10 149. And I'm sensitive to his plans that he has.
11 And we're going to try to see how we can -- we'll
12 work -- I just need to know what I'm dealing with
13 with you. I don't know if somebody has a prepaid
14 flight to Los Angeles to see your daughter's first
15 child. In other words, I don't know that much about
16 you, and I just need to know if it's going to cause
17 insurmountable problems for you to go into next week.

18 At some point, either today -- or I mean, either
19 tomorrow or Friday, we may consider going Saturday if
20 it looks like we could finish and not have to go into
21 next week. But I just don't know. At the rate we're
22 going, we may certainly go into next week.

23 So if you will do that before you leave, any
24 notes that you leave with me I'll accumulate them and
25 try to discuss them with you in the morning. But I

1 figure we might as well sort of figure this early. I
2 don't want to wait until Friday afternoon to find
3 someone does have those nonrefundable plane tickets
4 to somewhere.

5 So if you'll do that -- I have reviewed all of
6 your, not biographies but your juror information
7 cards. I would hope that all of your employers would
8 be sensitive to the need for the jury to stay
9 together until this matter is completed. So, before
10 you leave tonight, if you'd do that for me, please.

11 I'll release you for the evening, ask you to be
12 back in the jury room at 9:30 in the morning at which
13 time we'll resume the testimony. And again I'll ask
14 you not to discuss this case among yourselves or with
15 anyone else over the evening hours. And again,
16 please avoid the press or media reports of this
17 trial. Thank you very much. You're dismissed for
18 the evening.

19 (Jury out at 4:58 p.m.)

20 **THE COURT:** All right. We'll stand at ease
21 until 9:30 in the morning. Counsel, let me just see
22 you for one other minute before you leave. But we're
23 adjourned.

24 **MR. HARPOOTLIAN:** Your Honor, can we talk about
25 scheduling back in your chambers? Because I have

1 witnesses --

2 THE COURT: Sure.

3 MR. HARPOOTLIAN: -- that I need to ...

4 (Whereupon, the proceedings are concluded for
5 the day, to be reconvened tomorrow morning)

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Thursday, May 10, 2007

(WHEREUPON, Court's Exhibit No. 4 is marked for identification.)

THE COURT: All right. State ready to proceed?

MR. MEADORS: Yes, sir, Your Honor.

THE COURT: Defense ready to proceed?

MR. HARPOOTLIAN: The defense is ready, Your Honor. We have two matters to bring up before we bring the jury in.

THE COURT: Yes, sir.

MR. HARPOOTLIAN: Yesterday witness Mr. Hawkins was asked by the solicitor to look at the videotape and give an opinion as to what a streak of light was, and he indicated that he felt that was evidence of a gunshot.

THE COURT: Not the witness.

MR. HARPOOTLIAN: The witness, Mr. Hawkins, gave an opinion that that streak of light was a gun being fired.

THE COURT: All right. Go ahead.

MR. HARPOOTLIAN: I objected to it. Your Honor did not strike it. After reviewing Rule 702 and several cases including The State vs. Kent Williams, it's clear to me, Your Honor, that our rules allow opinions only when those opinions would assist the

1 jury in determining something they can't determine
2 themselves.

3 His opinion as to what's on that videotape, he's
4 not testifying what he saw that night, he's not
5 testifying about what he saw that night and what he
6 thought it to be. He's sitting there on the witness
7 stand looking at a picture basically and saying, I
8 think that appeared to be a gunshot.

9 The jury, unless it assists the jury in
10 making -- in analyzing something they can't analyze
11 themselves, it's inadmissible, number one. Number
12 two, the only other time that you can give opinion if
13 you're an expert. He hasn't qualified as an expert.

14 So, Your Honor, I would move for a mistrial or
15 in the alternative a curative instruction to the jury
16 that they're to disregard Mr. Hawkins' testimony, any
17 opinion about testimony about what he sees in the
18 video.

19 **THE COURT:** All right. The state's position.

20 **MR. MEADORS:** Your Honor, it's my recollection
21 and my friends at the table's here recollection that
22 he said that that was a light. I never heard him say
23 that was a gunshot. None of us remember that. And I
24 think he's entitled to look in this case at a
25 picture, in effect is what it was. I remember him

1 saying a light.

2 **THE COURT:** I'll try to clarify for the jury.

3 **MR. HARPOOTLIAN:** Thank you.

4 **THE COURT:** As to both positions.

5 **MR. MEADORS:** I don't think he said gunshot. So
6 I don't know if there needs to get any clarification.

7 **THE COURT:** Well, we can go back and get the
8 tape. But I'm just going to hopefully cure it
9 without the necessity of doing that.

10 **MR. HARPOOTLIAN:** That's fine with me, Your
11 Honor.

12 **MR. MEADORS:** And the fact he says it's a light,
13 he would be allowed to say he sees what appears to be
14 a light. Thank you.

15 **THE COURT:** It's always something.

16 **MR. HARPOOTLIAN:** Your Honor, the second matter,
17 I understand that Mia Grainger is the first person.

18 **MR. MEADORS:** Ms. Renisha Grainger. Yes, sir.

19 **MR. HARPOOTLIAN:** I'm sorry. I went by her
20 stage name. Will be their first witness. The second
21 witness will be a young man named Weeks who
22 according -- I think we all agree is going to testify
23 that he was -- that the deceased over like a Nextel
24 radio phone radioed him the vehicle license number on
25 the black 4Runner. In other words --

1 **THE COURT:** All right.

2 **MR. HARPOOTLIAN:** And that would be hearsay.

3 Now, we have prepared a memorandum. I mean, Mr.
4 Meadors, is there some dispute about the facts?

5 **MR. MEADORS:** Your Honor, he's on tape. You see
6 him writing. That's already been testified to by Mr.
7 Hawkins, that he was actually writing something.
8 We're not offering him for the fact of what the
9 license tag number is but for the fact that he was
10 writing a license tag number. I don't think that's
11 hearsay.

12 **MR. HARPOOTLIAN:** But he is not going to testify
13 that Mr. Johnson told him that the license tag was A,
14 B and C and he wrote it down on his hand?

15 **MR. MEADORS:** He's going to testify he wrote
16 down the license tag that John Johnson gave him.
17 Yes, sir.

18 **MR. HARPOOTLIAN:** Okay. Well, that would be
19 hearsay.

20 **MR. MEADORS:** Without going into what it was.
21 So I don't think is hearsay. We've got plenty of
22 other folks that can say what the license was. So I
23 think when we get to that we'll probably --

24 **MR. HARPOOTLIAN:** What I'm trying to prevent,
25 Your Honor, is them getting it in, me objecting and

1 you having to instruct the jury. And this is --

2 **THE COURT:** Okay.

3 **MR. HARPOOTLIAN:** It's clear from the statements
4 and what they have given you so far --

5 **THE COURT:** I'll deal with it.

6 **MR. MEADORS:** And, Your Honor, Mr. Harpootlian
7 can --

8 **THE COURT:** I'm aware of.

9 **MR. HARPOOTLIAN:** Sir?

10 **THE COURT:** I'm aware of it and I'll deal with
11 it. It sounds like hearsay.

12 **MR. MEADORS:** And I'm sure Mr. Harpootlian will
13 trust me. I will not go into that and we will
14 approach before I ask that question.

15 **MR. HARPOOTLIAN:** We have a memorandum of law we
16 would like to hand up to the Court if it becomes an
17 issue at the time. Or do you want it now?

18 **THE COURT:** I can't be aware of it if I don't
19 have it.

20 (Document handed to the Court)

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

22 **THE COURT:** Anything else?

23 **MR. HARPOOTLIAN:** No, sir, Your Honor. No, sir.

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

25 **MR. HARPOOTLIAN:** Your Honor, may I approach?

1 They are not going to show the face?

2 **THE COURT:** No face, voices. Everything else.

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

4 (Jury in at 10:00 a.m.)

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

6 **THE COURT:** All right. Thank you. Good
7 morning, ladies and gentlemen. We're ready to
8 continue with the trial. Before we do, let me
9 just -- with regard to some of the testimony
10 yesterday; when Mr. Hawkins testified -- of course
11 I've got a screen up here; you've got a screen -- Mr.
12 Hawkins testified something to do with the time at
13 which the defendant's vehicle pulled up in front of
14 the Chastity's place of business.

15 And while watching the video he offered some
16 testimony -- I don't recall it specifically. I can
17 go back and get it. I don't recall specifically,
18 that he observed either a flash of light or something
19 of that nature, whether it -- I don't think he said
20 he thought it was a gunshot wound or a gunshot, but
21 he said something about a light.

22 There was talk between the lawyers whether it
23 was a flash, that sort of thing. He was offering an
24 opinion from the videotape. He didn't say that the
25 night of the event that he saw something. He said he

1 saw something, he thought he saw something on the
2 videotape.

3 Well, ordinarily the only people that can give
4 opinions in testimony are experts, people who can
5 take certain facts and deduce a conclusion, an
6 opinion. I just want you to be aware of the fact
7 that he's not -- he was a lay witness. He's not
8 eligible to be giving opinions. What he did or
9 didn't see, if he tried to give you an opinion that
10 would make you think that it was a gunshot wound, I'm
11 going to ask you to strike that from the testimony in
12 this case and strike it from your memory as to what
13 he said, because he is not supposed to be giving
14 opinions.

15 You are the only ones who can draw conclusions
16 from what you saw on the tape and his testimony with
17 regard -- he can say he's looking at a light. I'm
18 looking at a light, that's not an opinion. But if I
19 say the light is coming from so-and-so and so-and-so,
20 then that may be an opinion.

21 So, anyway, it may tend to be confusing. And my
22 charge to you may be a little confusing. But I hope
23 you understand what I'm trying to get across to you,
24 is that that testimony that I considered, you recall
25 there was some objection to it at the time. And I'm

1 now granting that objection or sustaining that
2 objection, asking you to disregard that testimony.

3 All right, Solicitor. You may begin to call
4 your first witness.

5 MR. MEADORS: Your Honor, for the record, under
6 701, an opinion is allowed by a lay witness and Your
7 Honor is allowed to say that was a light. Just if he
8 said gunshot, he couldn't say it because that would
9 be his opinion.

10 THE COURT: I don't think you need to say it any
11 better than I said. So I've told the jury that.
12 That's my opinion. That's my ruling. And let's call
13 your first witness.

14 MR. MEADORS: Renisha Grainger.

15 RENISHA L. GRAINGER, after being duly sworn,
16 testifies as follows:

17 THE CLERK: Thank you. Please have a seat in
18 the witness stand and state your full name for the
19 record.

20 THE WITNESS: My name is Renisha Lynn Grainger.

21 COURT REPORTER: Spell your last name, please?

22 WITNESS: G-R-A-I-N-G-E-R.

23 DIRECT EXAMINATION

24 BY MR. MEADORS

25 Q Good morning, Ms. Grainger.

1 A Good morning.

2 Q Please tell the ladies and gentlemen of this jury a
3 little bit about yourself; specifically, where you're
4 born and raised?

5 MR. HARPOOTLIAN: I apologize, Your Honor. But
6 when he gets up next to the witness, we can't hear
7 him back here. I apologize.

8 Q Tell the jury about yourself, where you were born and
9 raised?

10 MR. HARPOOTLIAN: Thank you.

11 A I was born in Oxnard, California. But I was raised
12 in South Carolina. I was adopted.

13 Q Oxnard, California?

14 A Yes. It's in Ventura County.

15 Q And you were raised in South Carolina?

16 A Yes.

17 Q And where were you raised in South Carolina?

18 A In Mullins, South Carolina.

19 Q Mullins?

20 A Yes.

21 Q And did you -- how old were you when you came back to
22 South Carolina?

23 A When I came to South Carolina, I was ten. Nine or
24 ten.

25 Q Nine or ten?

- 1 A Yes.
- 2 Q Ms. Grainger, if you'll -- you don't have to come up
3 too close, but just if you could speak into that.
- 4 A Oh, okay.
- 5 Q Thank you very much. Did you go to high school?
- 6 A Yes, I did.
- 7 Q Where did you go?
- 8 A I went to Mullins High.
- 9 Q When did you graduate from Mullins?
- 10 A '97.
- 11 Q What did you do after high school?
- 12 A I worked a couple of odd end jobs. I went to
13 Florence-Darlington Tech. And in 2000 I went to
14 South Carolina State University.
- 15 Q Did you ever work at Subway in Florence?
- 16 A Yes. While I was attending Florence-Darlington Tech.
- 17 Q If you don't mind speaking up, please, ma'am.
- 18 A Yes. When I also attended Florence-Darlington Tech.
- 19 Q How about Blue Cross/Blue Shield? Did you work
20 there?
- 21 A Yes. I worked there for about a year as well.
- 22 Q And where was that office of Blue Cross/Blue Shield?
- 23 A That was in Florence; as well as the one in Columbia
24 later on.
- 25 Q Did you go on to school after that?

- 1 A Yes. I decided to go ahead and pursue a four-year
2 degree.
- 3 Q Where did you go?
- 4 A South Carolina State University.
- 5 Q Did you graduate from South Carolina State?
- 6 A No, I haven't.
- 7 Q How many hours do you lack?
- 8 A 14.
- 9 Q Do you intend to finish that at some point?
- 10 A Yes, sir.
- 11 Q Now, have you ever heard of Playmates?
- 12 A Yes. I used to work at Playmates in Florence.
- 13 Q And would that be an adult entertainment place?
- 14 A Yes, it would.
- 15 Q When did you work there? Was that back when you were
16 in Florence going to --
- 17 A Yes.
- 18 Q -- Darlington Tech?
- 19 A (Nods head affirmatively).
- 20 Q And is that where Jimmy Carter's was if you're
21 heading from Mullins to Florence on the left before
22 you get on the PeeDee River Bridge?
- 23 A Yes.
- 24 Q And how long did you work there?
- 25 A I worked there for about three months.

- 1 Q In your life now, you're at South Carolina State
2 College. Okay. Just pretend you're there right now
3 with me. Were you also working when you went to
4 school at South Carolina State?
- 5 A Yes, I was.
- 6 Q Did you have a study you were doing?
- 7 A I did a work study at South Carolina State.
- 8 Q Were you also working somewhere else?
- 9 A Yes, I was.
- 10 Q Tell them where you were working?
- 11 A Chastity's Gold Club.
- 12 Q So you were working at Chastity's while you were
13 going to college at South Carolina State?
- 14 A Yes.
- 15 Q Where were you living then? In Orangeburg or here?
- 16 A In Orangeburg.
- 17 Q And if you said it before, I apologize. What --
- 18 A At that time.
- 19 Q I'm sorry. At that time?
- 20 A Mm-hmm (affirmative).
- 21 Q When did you start working at Chastity's?
- 22 A About 2000.
- 23 Q What was your schedule day wise at Chastity's? How
24 many days would you work when you first started?
- 25 A It would vary. When I first started, I would work

1 around four or five days a week.

2 Q Did you have different hours you were working, Ms.
3 Grainger?

4 A Yes. Several different hours.

5 Q Did there come a time you started working more
6 regularly at Chastity's?

7 A Yes.

8 Q After South Carolina State?

9 A Yes.

10 Q When was that?

11 A When I got so -- I went into it immediately
12 basically. I worked -- my schedule remained the same
13 throughout the time that I have been dancing or had
14 been dancing. About four, four days a week, four to
15 five days a week.

16 Q Were there any particular days of the week those
17 were, those four or five days?

18 A No.

19 Q Were there any particular hours of the day those
20 were?

21 A They varied.

22 Q What time did Chastity's open back in January 2006?

23 A 11 or 12, the same time they open now I guess.

24 Q The same time? 11 or 12?

25 A Yes.

1 Q I've got Chucky Cheese written in my notes. Why is
2 that?

3 A I'm sorry?

4 Q Did you move to another state at some point? After
5 you left Chastity's, did you go to another state?

6 A Yes, I did.

7 Q You're living in another state right now?

8 A Yes, I am.

9 Q When did you move from the Columbia area? After this
10 incident?

11 A I moved prior to this incident. I moved December the
12 26th.

13 Q So when did you quit working full time, if you will,
14 those four or five days at Chastity's prior to this
15 incident? Did there come a time when you quit
16 working full time and went on somewhere else?

17 A Yes.

18 Q Before January 2006, did you stop working at
19 Chastity's for a while?

20 A Yes.

21 Q And I apologize for the confusion. Where did you go
22 after that?

23 A Well, I had been working at Blue Cross/Blue Shield
24 for a year in Columbia.

25 Q And still are?

1 A As well as dancing on the weekends.

2 Q Blue Cross/Blue Shield as well as dancing on the

3 weekends. Did there come a time in November or

4 December of 2005 where you moved out of state?

5 A Yes.

6 Q You started staying out of state more?

7 A Mm-hmm (affirmative).

8 Q Did you go out of state with your boyfriend?

9 A Yes, I did.

10 Q How long were you dating your boyfriend?

11 A Now eight years.

12 Q So you were dating him back when this happened?

13 A Yes.

14 Q Prior to that?

15 A Yes.

16 Q Dating him now?

17 A Yes.

18 Q And is it fair to say before we get into this night

19 that you pretty much worked regularly at Chastity's

20 'til November of 2005, or December, went to another

21 state; and did you start coming back and working in

22 Chastity's December of 2005?

23 A Yes.

24 Q Okay. And let's start there. At that point where

25 were you staying? Did you have a house in Columbia?

1 **A** Yes, I did.

2 **Q** Who else was staying at that house?

3 **A** The house in Columbia?

4 **Q** Yes, ma'am.

5 **A** "Jon Jon" rented my house out.

6 **Q** "Jon Jon"?

7 **A** Mm-hmm (affirmative).

8 **MR. HARPOOTLIAN:** I'm sorry. What?

9 **MR. MEADORS:** "Jon Jon".

10 **MR. HARPOOTLIAN:** Was staying where?

11 **MR. MEADORS:** At the house in Columbia.

12 **Q** Now, when you were coming back, Ms. Grainger, when

13 you came back here December and January and started

14 working back at Chastity's, were you living in

15 Atlanta primarily or in Columbia?

16 **A** I was living in Atlanta.

17 **Q** And did you think about dancing in Atlanta?

18 **A** No.

19 **Q** Did your boyfriend want you dancing in Atlanta?

20 **A** No, he didn't.

21 **Q** So to gain money; where, if anywhere, did you work?

22 **A** South Carolina.

23 **Q** Chastity's?

24 **A** Yes.

25 **Q** And how often in December of 2005 and January of 2006

1 would you come back to work at Chastity's?

2 A Every week.

3 Q And would you stay here for two or three days when
4 you came back to work?

5 A Yes.

6 Q And then go back to Atlanta?

7 A Yes.

8 Q And you have one child, correct?

9 A Yes.

10 Q Was your boyfriend taking care of your child in
11 Atlanta?

12 MR. HARPOOTLIAN: Your Honor, I hate to
13 interrupt him, but this is leading the witness.

14 MR. MEADORS: I'm fixing to stop when I get done
15 with the background.

16 THE COURT: He's leading. It's preliminary.
17 I'm going to allow it up to a point.

18 MR. HARPOOTLIAN: Yes, sir.

19 Q In another state? And I apologize.

20 A You're fine.

21 Q I'm sorry. Your son would stay there with your
22 boyfriend when you came back to here to work?

23 A Yes.

24 Q So why did you come back to work at Chastity's? Tell
25 them.

1 A I hadn't found a job yet in Atlanta. And I was
2 supposed to transfer from Blue Cross/Blue Shield to
3 Blue Cross/Blue Shield in Atlanta, but I didn't wait
4 to want to wait on that. So I was anxious to move up
5 with there my boyfriend. So I figured I could work
6 and make a little bit of money on the side until I
7 found a regular job. That was my plan.

8 Q And did you make pretty good money at Chastity's?

9 A Yes, I did.

10 Q Now, January 28th of 2006, you know why we're here,
11 Ms. Grainger?

12 A Yes, I do.

13 Q Did you work that day or evening at Chastity's?

14 A Yes, I did.

15 Q Do you remember, can you tell these folks what time
16 you came to work?

17 A I went to work somewhere between 6 and 9.

18 Q Did you have a set time when you'd come into work?

19 A No, I didn't.

20 Q Would the dancers have a set -- I mean, would you
21 have to be there at 5 or 6 or 7?

22 A No. There was no set time. It was whenever you
23 decided to go. But the requirement was that when you
24 went, you stayed eight hours.

25 Q That you what? I'm sorry.

- 1 A You stayed and worked eight hours.
- 2 Q When you first went to Chastity's between 6 and 9,
3 whenever it was, what did you do on January 28th,
4 2006 once you got to work? What did you do?
- 5 A I sat in the dressing room, what I normally do. I
6 got dressed and I stayed in the dressing room. I
7 went out to the bar area a couple of times, but
8 that -- I just stayed in the back, in the dressing
9 room.
- 10 Q And in State's 51, can you point out -- do you
11 recognize this generally as the Chastity's?
- 12 A Yes.
- 13 Q Can you show when you say the dressing room where you
14 went, Mrs. Grainger?
- 15 A Right there.
- 16 Q Up here?
- 17 A Mm-hmm (affirmative).
- 18 Q So how long did you stay in the dressing room on
19 January 28th, 2006?
- 20 A Practically all day, all night that night. I stepped
21 out a couple of times prior to the incident. But I
22 was back there.
- 23 Q Why didn't you come out more?
- 24 A I wasn't in the mood. I didn't feel like it. I had
25 been there. I had had a long week. There was a lot

1 of other things going on in my life at that time that
2 I was trying to deal with, and I just did not feel
3 like working at that moment.

4 Q And working in your field would mean going out and
5 dancing in the club?

6 A Talking and being talked to.

7 THE COURT: Ask her to speak up.

8 A Talking and being talked to or meeting with guys or
9 just working.

10 Q Talking or being talked to or meeting with guys or
11 just working. All right. Your testimony was you
12 didn't feel like doing that when you first got there?

13 A No, I didn't.

14 Q Was there anybody else back in the dressing room with
15 you when you were back there?

16 A There was a lot of people. Girls were in and out of
17 the dressing room.

18 Q Is there A manager or a house mom or something?

19 A There was a house mom at that time.

20 Q What is the house mom's function at Chastity's, if
21 any?

22 A To supply the females with the entertainer's needs as
23 far as feminine supplies or just little snacks, food,
24 whatever she brought, just to be back there.

25 Q Did there come a time when you decided that you would

1 work or would go try to earn some money that night?

2 Did you come out of the dressing room?

3 A I came out of the dressing room several times that
4 night.

5 Q And back to State's 51, when you came out of the
6 dressing room that night, did you ever -- or did you
7 see the defendant, Dewain Herring?

8 A When I came out of the dressing room that night, I
9 walked in. The hallway is set up, as soon as you
10 step out of the dressing room, you can see back on
11 the dance floor where the dances are being done and
12 the entertainment is on stage. And you can see
13 the --

14 MR. HARPOOTLIAN: Your Honor, I can't understand
15 a word she's saying.

16 A You can see -- when I stepped out of the dressing
17 room, you can stand in the hall right here, right
18 there, and you can see in the back where the dances
19 are being given as well as to the bar. I stood there
20 for a minute looking around, scanning to see which
21 way I wanted to go, what I wanted to do.

22 Q Give me your finger a second. Point up here where
23 you're talking about?

24 A I stood right about here in the hallway where you can
25 see, where you can see.

1 Q And you can speak and you can turn this way, too, if
2 you want to and speak into either one of them if you
3 want to, whichever is comfortable with you. So you
4 did that?

5 A Mm-hmm (affirmative).

6 Q At any time after that did you come out? Did you
7 go -- you came out and looked around. What happened
8 next, if anything?

9 A Yes. I was signaled at the bar.

10 Q Say that again? I'm sorry.

11 A I was signaled at the bar. While I was standing
12 there, there was a guy getting my attention from the
13 bar.

14 Q You were signaled at the bar?

15 A Yes.

16 Q And I'm not going to be here much longer. Where was
17 the person sitting on State's 51? If you could show.
18 If you could point and then speak into the thing,
19 that way --

20 A He was sitting right here. As soon as I walked out,
21 I'm standing here. He was sitting like at the first
22 two chairs at the bar.

23 Q And you said you were signaled out. What do you mean
24 you were signaled out?

25 A He was looking at me and called me and did a little

1 nod. He asked me to come over.

2 Q He did a little nod and asked you to come over?

3 A Yes.

4 Q And did you go over there?

5 A Yes, I did.

6 Q And, Ms. Grainger, when you went over there to this

7 person, what happened next?

8 A He asked me my name. I sat down and talked for a

9 second. He asked me if I wanted something to drink.

10 Q He asked you if you wanted something to drink?

11 A Yes.

12 Q I'm just bringing it up a little bit. That's fine.

13 Okay. Just speak into it.. Did you get a drink?

14 A Yes, I did.

15 Q Did he get a drink?

16 A Yes, he did.

17 Q What happened next?

18 A I proceeded to try to offer him a dance.

19 Q To offer him a dance?

20 A Yes. But he was talking other -- when I was talking

21 to him about a dance, he was making comments about,

22 well, I've never seen a black girl. I've never been

23 with a black girl before. You're a beautiful black

24 girl. I've never been with a black girl before. And

25 I hear what he's saying, but I'm talking along, like,

1 well, would you like a dance? And he made a comment
2 saying he's been with Asian women or, you know,
3 whatever, a lot of different types of women, but he
4 had never been with a black girl and he heard that
5 black women were the best or they were good and he
6 wanted to find out or whatever. I said, well, I can
7 give you a dance.

8 Q And this person told you or had that conversation
9 with you at this bar stool in State's 51?

10 A Yes.

11 Q And you said, I can give you a dance. Right?

12 A Yes.

13 Q Well, what happened after that?

14 A He asked me how much the dance was. I told him. And
15 I guess he thought the dance was going to take place
16 at the bar.

17 Q Why do you say that?

18 A Because he didn't -- when I told him, come on, let's
19 go, let's go to the back, he acted like I didn't know
20 what I was talking about. And I explained to him
21 that, you know, we had to go to the back to get a
22 dance, to get a couch dance.

23 Q And when you say to the back to get the house dance,
24 referring again to State's 51, where are you talking
25 about you had to go to the back to get the house

1 dance?

2 A To the couch room. That's the \$30 room.

3 Q Is it up here?

4 A Yeah. I can't see. Yes.

5 Q I'm sorry.

6 A Yes.

7 Q Stay up there because your voice is up.

8 A Right here.

9 Q Is that what's marked the VIP room on State's 51?

10 A Yes.

11 Q And how many couches are in this room marked the VIP
12 room? How many couches are in there? I mean, do you
13 remember?

14 A About six.

15 Q So, did you all go back to the VIP room?

16 A Yes, we did.

17 Q And tell the ladies and gentlemen of the jury,
18 Ms. Grainger, did you give him a dance in the VIP
19 room?

20 A Yes, I did.

21 Q And I've got -- how much is a dance in the VIP room
22 at Chastity's?

23 A It's \$30.

24 Q And is that a song?

25 A Yes.

1 Q And how long is the song?

2 A About three minutes.

3 Q Okay. And how does it work as far as \$30? When do
4 you collect it? What do you do with it? And does
5 anything go to Chastity's?

6 A I collect the money from the gentleman or the guy
7 that I'm giving the dance to. \$5 goes to Chastity's
8 which is paid on my way out of the room after the
9 dance is done.

10 Q And that's in this, the couch or the VIP room,
11 correct?

12 A Yes.

13 Q So you gave a dance to the defendant, Dewain Herring,
14 correct?

15 A Yes.

16 Q And when you danced, I mean, you're dancing in front
17 of him? Is it a dance you're showing to him, or do
18 you --

19 A I danced in front of him. I sat on his lap and
20 danced for him. I gave him a lap dance and did
21 several things, well, several different moves in that
22 little three minutes, which I believe was a two for
23 one dance.

24 Q You just said you believe that was a two for one?

25 A Yes.

- 1 Q All right. What does that mean?
- 2 A That's when I give two dances for the price of one.
- 3 But it's basically the same amount of time.
- 4 Q Do you tend to have more customers that will get a
- 5 dance when it's two for one?
- 6 A Yes.
- 7 Q Sort of like anything else?
- 8 A Yes.
- 9 Q All right. You did this dance and/or lap dance for
- 10 the defendant. What happened after that,
- 11 Ms. Grainger? Did you all go? I mean, where did you
- 12 all go after --
- 13 A I understand what you're saying.
- 14 Q Okay. I'm sorry.
- 15 A I'm sorry.
- 16 Q But where did you all go?
- 17 A After the dance we went back to the bar. I was
- 18 trying to collect the money then. I was trying to
- 19 collect the money then, but he was like, you know,
- 20 our drinks are at the bar or whatever. Because prior
- 21 to that he didn't want to leave his drink. I don't
- 22 know for whatever reason. But I explained to him
- 23 that liquor was not to be taken beyond that point, so
- 24 we had to leave our drinks with the bartender.
- 25 Q So you couldn't take liquor beyond what point?

1 A The bar. You couldn't take liquor beyond the bar
2 part, the bar area.
3 Q So, no liquor back in here?
4 A None.
5 Q So you leave your drinks here. Was it covered or
6 anything?
7 A Yes. The bartender did cover the drinks for us.
8 Q So, you get through with the dance in the VIP room.
9 Where do you all go, if anywhere, after that; you all
10 being you --
11 A We went back to the bar to get the drinks. He wasn't
12 really trying anything I had to say about my money
13 then, and he just wanted to go back and get his
14 drinks.
15 Q Had he paid you for the \$30 yet for the dance?
16 A No.
17 Q What about the person at the back who is supposed to
18 collect? Was he trying the collect the five from
19 you?
20 A Yes, he was.
21 Q Well, did you pay him the 5?
22 A No. I told him to give me a minute, that, you know,
23 I was trying to talk to him and we were going back to
24 get his drinks. And I was going to try to talk him
25 into another dance or whatever but that I would pay

1 him his money.

2 Q And pay him the money. You mean the person in the
3 back who gets the \$5?

4 A Yes. The bouncer.

5 Q So you're back in the bar area now, Ms. Grainger.
6 Okay. And we're talking about Dewain Herring you
7 were with, correct?

8 A Yes.

9 Q There was no question about that?

10 A Yes.

11 Q Is he in the courtroom?

12 A Yes, he is.

13 Q Would you point him out?

14 A Sitting right there.

15 MR. MEADORS: We'd like the record to reflect
16 she's pointed to the defendant, Dewain Herring.

17 THE COURT: The record will so reflect the
18 witness identified the defendant.

19 Q We're at the bar area. What happens next?

20 A I was asking about what he wanted to do about the
21 money. Did he want another dance. We had our drinks
22 back. And he made a statement, well, yeah, I'll take
23 another dance. And I said, well, we can go back to
24 the couch for \$30. And he was like \$30 for that? I
25 said, well, you can get a VIP dance. Well. What I

1 call a VIP dance where you go to the champagne room.

2 We have the champagne room. I said, you can get

3 that. He said, well, what do I get for that? I

4 said, well, that's a half an hour complete privacy.

5 Q Half an hour complete privacy. And what you say VIP

6 but on here is the champagne room?

7 A Champagne room.

8 Q And what did he say to that?

9 A He said --

10 Q "He" being Dewain Herring.

11 A He made a comment like a half an hour complete

12 privacy? I said yes. He said, well, are you going

13 to be good to me? Are you going to take care of me?

14 And I looked at him and I was like of course. He was

15 like 'cause, you know, like I told you, I haven't

16 ever been with a black girl before. I always heard

17 black girls can go all night and everything. And I'm

18 just looking at him. Well, I'm not really looking at

19 him. I'm just rolling my eyes because I really

20 didn't feel like -- the way he was talking was not

21 stuff that I never heard before, but it just wasn't

22 grooving at that time, you know, not to me.

23 So I'm like, come on, you know, we can go back

24 there. We can get 30 minutes. It's complete

25 privacy. They're going to put us in the room and

1 they're going to bring a bottle of champagne. Are
2 you going to take care of me? I said, I'm going to
3 give you the best dance, you know, you've had.
4 You've never been with a black girl before. So I'm
5 going to give you a dance. Of course.

6 Q I'm going to give you the best dance you ever had?

7 A Right.

8 MR. HARPOOTLIAN: Your Honor, I object. Mr.
9 Meadors repeats everything she says before he asks
10 another question. We've heard her testimony.

11 MR. MEADORS: I think that's the first time I've
12 done it.

13 THE COURT: Overruled. Go ahead.

14 Q I'm going to give you best dance you've ever had?

15 A Yes.

16 Q Now, where is the champagne room, what we've got
17 marked champagne room and you've said, I'll take you
18 to the VIP room?

19 A Right there.

20 Q Okay. This is on State's 51. How much did it cost
21 on January 28th, or how much did he pay to go to the
22 champagne room?

23 A VIP dancers, you will charge no less than 250. I
24 charged him 300.

25 Q And of that 300, Ms. Grainger, how much of that goes

1 to --

2 A We have to pay a portion of it to the house. Usually
3 50. I think then it was 65.

4 Q So a portion goes to the house?

5 A Mm-hmm (affirmative). And the rest is yours.

6 Q And sometimes if there's a certain price, do you have
7 patrons who will tip you even more?

8 A Yes.

9 Q And that's allowed, correct?

10 A Yes.

11 Q If anybody wants to tip you. All right. You're at
12 the bar. Did he agree to a champagne room dance?

13 A Yes, he did; after some talking. Which it wasn't a
14 whole -- the whole conversation inbetween the dance
15 included with this man took place in about ten,
16 fifteen minutes. Not even 15. Well, 15 at the most.
17 I walked out. I met him. I saw him. We bought a
18 drink. He asked me for a drink immediately, you
19 know, if I wanted a drink. We sat there. We talked
20 for a second. I told him about the dance. The two
21 for one I knew was coming around. I think that's why
22 he went. That was a two for one dance that I gave
23 him. We went back there. He was anxious to get back
24 to his drink that he didn't want to leave in the
25 first place.

1 We got back to the bar. I'm trying to get my
2 money for the dance that I had gave him already and
3 trying to make some more money. Okay. So, yes, I
4 talked to him. I told him about the VIP room. I
5 told him that it was a room that they would put us
6 in. It was complete privacy and that it was 30
7 minutes. I told him how much I wanted. He said that
8 wasn't a problem. Okay. He gave me \$300.

9 I told him, the next conversation was, well, I
10 need 30 more for the dance that I just gave you that
11 you didn't get this for, you know, the VIP room.
12 Well, I'm not -- I don't have two. You know, I don't
13 feel like doing all this. You want me to leave my
14 drink. You want me to do this. You want me -- I
15 said, well, fine, you know. I said some other choice
16 words. I was like, fine. I'll just, you know, pay
17 everything, take everything inclusive.

18 I was like, are you ready to go? Where you
19 going now? Where you going now? I said, I've got to
20 go to the back, you know. He made it seem like
21 everything is supposed to happen where he was. I
22 said, we have to walk to the back. Didn't we just
23 come back from there? Yes, we did. We are going
24 back to the champagne room. Remember? So he is
25 behind me. I just started walking to go pay the

1 people that I needed to pay because the money was in
2 my hand at that point.

3 Q And did you go pay for the original dance in the VIP
4 room?

5 A Yes. I went and paid the bouncer the \$5 for the
6 dance.

7 Q And did you pay anybody for the -- do you have to pay
8 before you go back --

9 A Yes.

10 Q -- in the champagne room?

11 A Yes.

12 Q And did you pay for that?

13 A Yes.

14 Q Okay. They're in.

15 MR. HARFOOTLIAN: Oh, they are?

16 Q Look what's been entered as State's 47. Do you
17 recognize that as --

18 A Yes.

19 Q As it was? What is that?

20 A That's the champagne room.

21 Q Is that a hallway to it?

22 A Yes. That's the hallway leading to the champagne
23 room.

24 Q And did you have an occasion to walk or go with
25 initially the defendant back to the champagne room?

1 A Once I paid for the dance and I told the bouncer we
2 were going to the champagne room, I paid \$5. Then I
3 paid the other money to go back there, yes. There
4 were some other dances being done. And that room was
5 open.

6 Q Did you show him where it was?

7 A Yes. I walked him back there. I told him, you know,
8 this is where we're going to be.

9 Q And looking at State's 50, is that it?

10 A Yes.

11 Q And I think there's been some confusion about a
12 tassel and a love seat. Is it a table and love
13 seat?

14 A Yes. That's what's in the room, a little table and a
15 love seat, a couch.

16 Q After you showed him where this room is, what did you
17 do?

18 A I proceeded to go back to the dressing room. He made
19 a comment, well, where are you going? Where are you
20 going? You said I get 30 minutes. I said, well,
21 your time doesn't start until I come back.

22 Q Did he ask you when his time started?

23 A Yeah. He was like, you're going to waste my time.
24 You're going to go back there and you're not going to
25 come back. I was like no. There was a bouncer

1 standing there who took over the conversation. He
2 was like, sir, you know, you're going to get 30
3 minutes. We're going to bring you a bottle of
4 champagne. You know, she is going to freshen up
5 while we are getting the room ready for you. And
6 your time does not start until she walks back in this
7 room.

8 Q So after you leave the champagne room, where do you
9 go, if anywhere?

10 A I went back to the dressing room.

11 Q To over here?

12 A Right there. Yes.

13 Q Were you going to prostitute yourself that night?

14 A No.

15 Q Had you offered your body to Dewain Herring?

16 A No. He asked -- prior at the bar he made a comment
17 about -- he made a comment about, can we do something
18 outside of the club? I told him I don't leave with
19 anyone. He also made a comment when I told him about
20 the 30-minute champagne room, he said, well, what if
21 I need more than 30 minutes? I said, well, you can
22 buy another 30 minutes. If you've got the money to
23 stay back here all night, you can stay back here all
24 night.

25 Q You said he made a comment about seeing him outside

1 the club?

2 A Yes.

3 Q When was that?

4 A When I asked him -- when I was initially trying to

5 talk him into a dance and stuff, he was like, well,

6 why can't you just come back to my place? And I was

7 like, no, I'm here to make money.

8 Q You told him no?

9 A Yes. I told him no.

10 Q Do the rules allow men to touch females in their

11 private parts at Chastity's?

12 A No. The rules don't allow it.

13 Q Do the rules allow female entertainers such as

14 yourself to touch men in their privates?

15 A No.

16 Q As a part of -- are you allowed to dance for them and

17 sit on their laps?

18 A Yes.

19 Q And is that what you do as entertainment there?

20 A Yes.

21 Q In the champagne room? Did you go out to eat any

22 time that night?

23 A Yes.

24 Q Do you remember where you went?

25 A Yes. I went and got something to eat from

1 Chick-Fil-A.

2 Q Do you remember what you ordered?

3 A I ordered a No. 1 with cheese, lettuce, tomato and a
4 Sprite.

5 Q Do you remember what the person that was with you
6 ordered?

7 A He ordered a No. 1.

8 Q Speak up, please?

9 A He ordered a No. 1 with a large sweet tea and a soup,
10 chicken noodle soup.

11 Q And who was eating with you?

12 A "Jon Jon".

13 Q What time did you all go out to eat?

14 A I'm not too sure. But it was evening. It wasn't too
15 late. The club hadn't got too packed. And it
16 wasn't -- I would say around 10 something, 10, 20
17 'til 11.

18 Q After you came to work you went out to eat with him
19 at Chick-Fil-A and came back?

20 A Yeah. We just went to grab something to eat.

21 Q Do you remember what he was wearing? The defendant?

22 A Yeah.

23 Q Could you tell the jury?

24 A He had on a red sweater with a white turtleneck, some
25 slacks. He had on some dark colored socks. And I

1 remember his socks because of the dance that I gave
2 him and some dark shoes.
3 Q And you remember all that from that night?
4 A Mm-hmm (affirmative).
5 Q Now, you have -- I mean this with all due respect and
6 I apologize --
7 MR. HARPOOTLIAN: Sir, I can't hear.
8 MR. MEADORS: I said, I mean this with all due
9 respect and I apologize.
10 MR. HARPOOTLIAN: Have you done something?
11 Q Have you had some addictions?
12 A Yes.
13 Q Is cocaine one of them?
14 A Yes. Yes, it was.
15 Q And are you recovering from that?
16 A Yes. Basically.
17 Q Relapsed some?
18 A Yes, I did.
19 Q You're straight now?
20 A I am fine now.
21 Q Have been attempting to recover since when?
22 A I have not been involved in drugs --
23 Q Ma'am?
24 A I have not been involved in drugs since February.
25 Q And after -- did you personally use drugs some at

1 Chastity's?

2 A Yes.

3 Q And were you using some this night?

4 A Yes.

5 Q Did you have something to drink, too?

6 A Yes.

7 Q When did you leave Chastity's?

8 A That night?

9 Q I mean, when did you quit working there? I'm sorry.

10 A Prior? Because there was two times.

11 Q After this incident, did there come a time when --

12 A That was my last night.

13 Q When after that did you try to stop using drugs?

14 A I stopped using drugs that night and relapsed a

15 couple of months later in May. That went on for a

16 while. Then I stopped again. And I just haven't

17 been involved in that atmosphere since.

18 Q Beg the Court's indulgence. After you were in the

19 dressing room, did you ever go back to the champagne

20 room?

21 A No. I never -- I never made it back in that room.

22 Q What happened next that night that you remember as

23 far as the defendant, Dewain Herring?

24 A I'm sorry?

25 Q Did you see him again after that?

1 A No. When I left him, that was the last time I saw
2 him. That was the last time. That was the end of my
3 night.

4 Q And did you --

5 A When we went in that room.

6 Q I'm sorry?

7 A Leaving that room and leaving him in that room, that
8 was -- that was it.

9 Q And he paid you in cash. Is that correct?

10 A Yes, he did.

11 Q Did you ever attempt to go back toward the lobby area
12 that is depicted on State's 51?

13 A Yes. After I got to the dressing room, leaving him
14 in there, and I thought everything was okay. I
15 thought everything was all good. I made some money.
16 I'm going to go up and give this 30-minute dance. I
17 know I have this crazy acting guy but it didn't
18 matter. I have some money. I was sitting in the
19 back killing time which is what I normally do. I
20 can't talk for everybody else. But me personally, in
21 this situation, that's what I normally do. So I'm
22 sitting back there smoking a cigarette. No
23 intentions of rushing myself. The bouncer comes back
24 and he asks me did I have my money. And I said yeah.
25 And I was like, why? He was like, because we've got

1 to put him out. And "Jon Jon" comes back and he
2 tells me, he's like, I don't know. He was like, I'm
3 going to have a talk with you. And I was like, well,
4 what happened? And he was like, a dude in there
5 naked, stark naked, birthday suit naked. And I was
6 like what? They was like he so naked, he took off
7 everything, shoes, clothing. But, you know, we were
8 laughing. It was funny at that time.

9 Q Was that unusual for somebody to be stark naked back
10 there?

11 A I'm sorry? Yes. Yes. It's very unusual for
12 anyone -- I don't think -- I know in the five years
13 that I have been an entertainer, there have been
14 situations where men have been back there and they've
15 been caught with their penis, if you will, out or
16 pants down. No one has ever gotten naked, not -- not
17 a customer. Entertainers of course. Not a customer.

18 Q When you walked out to the bar area as you said
19 earlier, were you able to go -- excuse me. Strike
20 that. I apologize. When you walked out in the lobby
21 area earlier, you said you started to, did you go out
22 in the lobby area?

23 A Yes. Okay. Like I said, that's when I found out
24 that he was being put out. They told me -- they
25 asked me if I had my money. I said yes. They told

1 me what happened. We're going to put him out. Stay
2 back here. I was always different. That wasn't just
3 me, for me that night, you know. That was always the
4 rules. If they had an altercation with a guy, the
5 entertainer or whatever was to stay in the back and,
6 you know, until he was put out. And then you could
7 come back out and continue to try to make money or
8 whatever it is you are doing that night.

9 I'm in the back. And in my mind, like I said,
10 everything was all right. I got money. I don't have
11 to do the dance. Honestly, in my mind everything is
12 like great. I got paid. I don't have to do the
13 dance. This guy was a jerk anyway. He's out. Okay.

14 I'm sitting back there and I'm like, well,
15 what's taking so long? Because normally they'll come
16 back and talk to you, figure out what happened just
17 in case something, you know, comes back later. And
18 of course, you know. So I'm waiting on him. And,
19 you know, nobody ever comes to the back. So, yes, I
20 did go out.

21 I went to the bar. I went up to the front door.
22 And I saw two of the of bouncers standing there. And
23 I went up to them and I was like, where is "Jon Jon"?
24 You know, I said, I'm waiting on him. He's supposed
25 to talk. And I was like, what's going on? And he

1 was like -- he just, you know, like moved me. He
2 kept looking at me. He was like, get your ass back.
3 This dude is a problem. We've got about a problem.
4 Go back to the dressing room. So I went back to the
5 dressing room.

6 Q And when you go back to the dressing room after that;
7 what, if anything, happened next?

8 A I'm sitting in the dressing room chair. And I'm
9 talking to the house mom. And we're in the middle of
10 like just conversating about the situation, what
11 possibly could happen. Because females are coming
12 back there and they're like, did you see the guy out
13 there? You know they had an encounter.

14 MR. HARPOOTLIAN: Your Honor, I object to
15 hearsay.

16 THE COURT: Yes, sir.

17 MR. HARPOOTLIAN: I haven't objected so far, but
18 I'm objecting now.

19 Q What happened after that, if anything, in the
20 dressing room besides your discussion --

21 A Just me. Okay.

22 Q Besides your discussions with the other individuals
23 back there?

24 A I was just talking. And I heard what sounded to me
25 like a speaker. Because our speakers have blown.

1 The speakers in the club have blown before. I
2 thought it was a speaker blowing. And I was like
3 commenting saying, well, we ain't going to have no
4 music tonight. I thought it was -- I mean, a heard a
5 loud sound.

6 Q How long was that after you'd come to the lobby and
7 been told to go back?

8 A Huh?

9 Q How long was it after you heard that sound?

10 A I hadn't -- I hadn't been in the dressing room long.

11 Q Beg the Court's indulgence.

12 A I'm sorry?

13 Q I said beg the Court's indulgence. Wait one second.
14 How did you find out what happened?

15 A After -- after the sound, I would say within ten
16 seconds after the sound, someone came running back
17 there. And at first -- at first it wasn't him. It
18 was another -- it was another bouncer. It was
19 another bouncer, so they said. And I was getting
20 dressed. I was getting ready to go home. Several
21 entertainers were just getting dressed. We were
22 leaving. Five seconds after that somebody came back
23 there and they was like, you know, it was "Jon Jon".
24 I was already dressed. I went to the front. And it
25 was him.

1 Q Ms. Grainger, your date of birth is 5-31-79?

2 A 5-3. I just had a birthday.

3 Q Happy birthday.

4 A Thank you.

5 Q I read it wrong. In September of '96, I guess you'd
6 just turned 17, did you plead guilty to a shoplifting
7 and false information to a police officer when you
8 gave him the wrong name?

9 A Yeah. Yes, sir.

10 Q Ms. Grainger, thank you. Please answer any questions
11 Mr. Harpootlian has.

12 CROSS EXAMINATION

13 BY MR. HARPOOTLIAN

14 Q Ms. Grainger, I don't believe we've ever met before,
15 have we?

16 A No, sir.

17 Q And I left some messages on your cellphone. Did ever
18 get those?

19 A You're a private investigator?

20 Q Either my private investigator or me. Did you ever
21 get those messages?

22 A No.

23 Q Calls?

24 A I never had a message. I spoke to a private
25 investigator who said he was a police officer who

1 also showed up at my house.

2 Q I don't believe that was my guy.

3 MR. MEADORS: Objection.

4 Q In Georgia?

5 A In Atlanta, Georgia.

6 Q In Atlanta. No.

7 A He said he was with the defense.

8 Q With the State?

9 A With the -- no.

10 MR. MEADORS: Your Honor, she said defense.

11 A He said his name. I don't remember his name. He
12 said he was a private investigator hired on behalf
13 of, and he said the guy's name.

14 Q Okay. And you got served a subpoena?

15 A No. I didn't get served anything. I got headache.
16 He kept calling my phone wanting me to go over my
17 testimony. And I told him that I didn't have to talk
18 to him. He first told my landlord that he was a
19 state police officer.

20 Q That would be --

21 MR. MEADORS: Your Honor, objection.

22 MR. HARPOOTLIAN: I'm sorry. That would be
23 hearsay, Your Honor. And I would ask the witness not
24 to --

25 THE COURT: But you asked the question. You

1 asked.

2 **MR. MEADORS:** Let her finish.

3 **MR. HARPOOTLIAN:** Okay. If she'll finish.

4 **A** My landlord called me and told me --

5 **THE COURT:** Well, now that's hearsay.

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

7 **A** -- that --

8 **THE COURT:** Ma'am.

9 **A** -- she had --

10 **MR. MEADORS:** Your Honor, he opened the door.

11 **THE COURT:** Just let me deal with it, please.

12 You can't say what the landlord told you.

13 **THE WITNESS:** Oh, okay.

14 **THE COURT:** You can say what the guy who said he
15 worked for Mr. Harpootlian said but not the landlord.

16 Okay?

17 **THE WITNESS:** Okay.

18 **THE COURT:** Thank you.

19 **A** So I got -- I received the number though from my
20 landlord. And I called. Because I'm thinking I
21 don't know what it is. So I called the first time.
22 Star 67's my number. He didn't have my number. He
23 told me who he was, a private investigator hired on
24 behalf of you.

25 **Q** What was his name?

1 A I don't remember the name.
2 Q Okay.
3 A But he wanted to go over my statement. And I
4 wouldn't.
5 Q Did he go over it?
6 A No. I told him I didn't want to talk to him, not to
7 call me any more. He called me three times and he
8 also showed up at my door.
9 Q Okay.
10 A I don't think nothing good can come of anybody hired
11 on behalf of knowing where I live.
12 Q Okay. You don't like this guy, do you?
13 A I don't have --
14 Q You don't like him, do you?
15 A I don't know him.
16 Q Well, you met him.
17 A I don't know him.
18 Q Were you living with "Jon Jon" when John Johnson was
19 killed?
20 A No. I was living --
21 Q Were you staying --
22 A -- in Atlanta.
23 Q Were you staying at his house?
24 A Did I spend nights in the house that I technically
25 own? Yes.

1 Q Did he spend nights there with you?

2 A That was "Jon Jon's" house.

3 Q I'm sorry. Did you spend the night, did you spend
4 nights with "Jon Jon" in the same house?

5 A Yes.

6 Q During this period of time?

7 A Yes.

8 Q The night before he was killed, did you spend the
9 night in the house with him?

10 A Yes.

11 Q Okay. The night he was killed, did you have dinner
12 with him?

13 A Yes.

14 Q Did you have a relationship with him?

15 A Yes.

16 Q A physical relationship with him?

17 A A friendship relationship with him.

18 Q Did you have a physical relationship?

19 A When you say physical what do you mean?

20 Q Did you have sex with him?

21 A Have I had sex with "Jon Jon"?

22 Q Yes.

23 A No.

24 Q Never?

25 A No.

1 Q You stayed there every -- when you were in town with
2 him. Is that correct?
3 A No. I didn't stay there every time I came into town.
4 Q Let me ask you a couple of questions. You said you
5 got the money and that you didn't have to do anything
6 for it and you were happy about that. Is that right?
7 A I said I got the money and I didn't have to deal with
8 him.
9 Q Or do it?
10 A And I was happy about that. Yes.
11 Q Okay. Now, on that -- and I think you told the jury,
12 what does the term gigged up mean? Gigged up, do you
13 know what that means?
14 A I have no idea what you're talking about.
15 Q You've never heard anybody say being on cocaine was
16 gigged up?
17 A You mean geeked up?
18 Q Geeked up. I'm sorry.
19 A That's what you mean?
20 Q Well, I think that is what I mean. Geeked up. Were
21 you geeked up that night?
22 A No. I was high.
23 Q What's the difference between geeked up and high?
24 A I don't know. You have to ask the people who get
25 geeked up. I don't get geeked up.

- 1 Q What is geeked up?
- 2 A I can't be able to tell you what it is.
- 3 Q Okay. Well, let's just cut to the chase here. Were
- 4 you on cocaine that night?
- 5 A Yes, I was.
- 6 Q You snorted cocaine?
- 7 A Yes, I snorted cocaine.
- 8 Q Did you snort it back in the dressing room?
- 9 A Okay. The reason why I think is because, yes, I
- 10 think I did one or two.
- 11 Q One or two what?
- 12 A Lines.
- 13 Q Lines back in the dressing room?
- 14 A Yes.
- 15 Q And you'd also had -- did you have drinks that night
- 16 also?
- 17 A I had two drinks that night.
- 18 Q Two drinks and cocaine?
- 19 A Two drinks and cocaine.
- 20 Q Does that affect your ability to remember what
- 21 happened at all?
- 22 A If anything, it heightened my ability.
- 23 Q It heightened your ability having cocaine and
- 24 alcohol?
- 25 A No. It did not affect my ability to deal with

1 whatever happened that night.

2 Q Okay. And did you find it necessary to do cocaine to
3 dance?

4 A No, I didn't.

5 Q Did you find it necessary to have a drink to dance?

6 A No, I didn't.

7 Q So there are many nights you went up there with no
8 cocaine and no alcohol and sober and did this sort of
9 thing?

10 A Yeah. Out of the five years I did exactly what you
11 said. I went up there with no cocaine, no liquor and
12 no drinks. Yes.

13 Q Okay. Now, I want to know what it is that occurs --
14 are there lap dances given out here by the bar,
15 either the front back here in the back? Is this
16 called the pit back here?

17 A Stage area.

18 Q The stage area. Where is the pit? What's a pit? Do
19 you know?

20 A No.

21 Q Okay. Well, do lap dances happen out here by the bar
22 or back here in the stage area?

23 A They only happen in the back. In the stage area you
24 cannot get nude. You cannot even walk to the bar if
25 you weren't dressed.

1 Q Here?

2 A Yes. You couldn't walk to the bar if you weren't

3 dressed. Not where I was.

4 Q But back here you could walk around naked?

5 A You didn't walk around naked. You always had

6 something on. But you're right. If a table dance

7 was done, you couldn't get nude. You could only take

8 -- it would only be topless. Nude dances were done

9 in the couch room.

10 Q Now, so, you could do lap dances?

11 A Not lap dances. You could do table dances to which

12 if you did a table dance, you had to stand within

13 three feet from them. You could not grind them. You

14 could not touch them.

15 Q Why?

16 A Because it was a table dance and you're in the open.

17 You couldn't do that. That's what the couch rooms

18 are for.

19 Q Was it illegal to touch them?

20 A I don't know the technical stuff.

21 Q Okay. So out here in the public area where people

22 could see you, you weren't allowed to touch. You

23 stayed three feet away. But if you went back in the

24 VIP room or the champagne room, you were allowed to

25 touch. You were allowed to get on their lap. Is

- 1 that right?
- 2 A Exactly.
- 3 Q Completely naked?
- 4 A Yes.
- 5 Q Okay. Now, let's talk about the VIP room. When you
- 6 go in the VIP room, I think you said you charged \$30
- 7 for that. Is that right?
- 8 A Yes.
- 9 Q It was two for one night?
- 10 A Yes.
- 11 Q And for \$30 you were completely nude?
- 12 A Mm-hmm (affirmative).
- 13 Q I'm sorry?
- 14 A Yes.
- 15 Q And the gentleman is seated on a couch?
- 16 A Yes.
- 17 Q Or a chair?
- 18 A Couch.
- 19 Q Okay. And you sit on his lap?
- 20 A Yes.
- 21 Q Naked?
- 22 A Yes.
- 23 Q And when you say dance, what do you mean by that?
- 24 What do you do?
- 25 A I dance.

1 Q Well, are your feet on the ground?

2 A Feet always have to be on the ground.

3 Q Well, how do you sit on him? Does he slide forward?

4 A To do what?

5 Q For you to sit on his lap.

6 A For what?

7 Q I mean, if you're sitting on his lap --

8 A If he's sitting in the chair like I'm sitting in this
9 chair right here, and you come sit on my lap, do I
10 need to slide forward?

11 Q Well, I'm wondering. Are you facing him? Are you
12 facing the other way? How are you sitting on his
13 lap?

14 A I don't even want to deal with customers half the
15 time. I don't even face them. I sit with my back
16 towards them and dance for them.

17 Q Okay. So you sit naked on their lap with your back
18 to them?

19 A Yes.

20 Q And you don't want to face the customers. Why?

21 A I just don't like dealing with them. I'm there for
22 the money. If I can do dances on a stack of cash and
23 leave and not deal with any talking customer, I
24 would. I don't understand what you're --

25 Q You're just there for the cash?

1 A Exactly. It was my job. I dealt with it the way I
2 dealt with it. I can't talk about everybody else and
3 how they deal with it. But me, that particular
4 night, I danced with my back to him sitting on his
5 lap.

6 Q Okay. And you did that most nights, sat with your
7 back to them?

8 A For this customer, I danced with him.

9 Q I'm talking about other customers.

10 A Okay. What do you want to know about other
11 customers?

12 MR. MEADORS: Objection to other customers.

13 MR. HARPOOTLIAN: Practice.

14 THE COURT: Overruled.

15 Q Thank you. I'm sorry?

16 A What do you know to know about other customers?

17 Q I want to know -- you were a dancer for five years.
18 Do you always dance with your back to your customer
19 when you sit on their lap?

20 A Yes, sir. In five years, there ain't but so much you
21 can come up with. It's about the same four routines.

22 Q The same four what?

23 A Routines.

24 Q Okay. Tell me what the routines are?

25 A There's a dance routine that I made up. I may stand

1 up. In a three-minute song, you want to know what
2 happens? I may stand up. I may walk to them. I'm
3 going to try to talk up 30, 45 seconds of that
4 without having to do anything. Okay. Then when they
5 proceed to say, okay, I want my dance, I'm going to
6 stand up. I'm going to dance for them for probably,
7 technically out of three minutes, if I talk to them
8 for 45 minutes, and I've only got 15 minutes left, I
9 may stand up another 30 -- well, seconds. I may
10 stand up another 30 seconds and just -- I don't
11 understand how you all want me to say this.

12 Q Go ahead and say it.

13 A There is no cursing in the courtroom?

14 Q If it's necessary to curse.

15 A Okay. I may just stand up and shake my, I'll say
16 behind. Okay. You do a couple of times, smile,
17 giggle and --

18 Q What do you do with your behind?

19 A Shake it.

20 Q Shake it?

21 A Move your hips, do something as towards dancing,
22 which is what I was there for.

23 Q Now, your posterior, your rear, your behind, is that
24 on them at any point in their lap?

25 A It varies. Yes, I do sit in their laps, but it

1 varies. I don't know how I did it with every
2 customer. I wasn't that good at moves.
3 Q But when you are sitting in their lap, you are naked,
4 correct?
5 A Yes.
6 Q And they are not?
7 A Correct.
8 Q And are you testifying you've never -- well, first of
9 all, strike that. You grind your posterior into
10 their lap. Is that what you do when you dance?
11 A Yes.
12 Q Okay. So you are rubbing your genitalia, your naked
13 genitalia into their covered genitalia?
14 A It's inevitable. Yes.
15 Q It's inevitable?
16 A If I'm dancing and I'm there to do a three-minute
17 dance and I initially sit on their lap, then of
18 course what you will call grinding is what's going to
19 happen.
20 Q You're going to be pressing your naked genitalia --
21 A I'm going to be sitting and moving. I'm not
22 intentionally pressing nothing.
23 Q And in beat to the music?
24 A Exactly.
25 Q Into their genitalia?

1 A Yeah. Exactly.

2 Q Okay.

3 A So if it's a slow song, then it's not grinding,

4 right? It's just moving.

5 Q I'm sorry. I just -- your characterization is fine.

6 Now, when you were back in the dressing room --

7 A Yes, sir.

8 Q -- after, you go and do a lap dance with Mr. Herring

9 in the VIP room, right?

10 A Yes, sir.

11 Q And you don't get your money before you go in there?

12 A No, sir.

13 Q Even though this is just all about the money?

14 A That is the rule.

15 Q What?

16 A For the club. You get paid after your services are

17 rendered. Some girls do get their money before they

18 go in for a 30 -- you're not big on the \$30. If you

19 don't get it, so what? I didn't get it. So what?

20 You know what I'm saying? But with the VIP you get

21 your money up front. They're not adamant. They

22 don't -- you can't run -- in the club aspect, you

23 can't run a club with give me my money before. You

24 know what I'm saying?

25 So, no. The thing is you offer a dance and then

1 you have a bouncer sitting right here on the way out.
2 They're going to give you your money. Except in this
3 case. But they're going to give you the money nine
4 times out of ten. Sometimes, various occasions,
5 other guys, too, have gotten away with not paying the
6 female the money. But that's the aspect. It's
7 supposed to be a comfortable environment for both
8 parties.

9 Q And sometimes you get the money without having to
10 perform the services?

11 A Exactly. Sometimes.

12 Q Sometimes that happens?

13 A Sometimes that happens.

14 Q And that's a good thing?

15 A It's a great thing.

16 Q Okay. And in this case you send him to the champagne
17 room, right? Do you take him there?

18 A Yes. I walked with him.

19 Q And you walk him in there. And then you left to do
20 what?

21 A Nothing really. I cannot sit up here and honestly
22 give you an excuse as to why I left other than I went
23 to go freshen up. I did do that. Of course that's
24 part of being an entertainer. You've got to keep
25 yourself together. So I went to go freshen up to

1 prepare to go back in there. But that only took
2 approximately what? That can only take two to three
3 minutes.

4 Q Okay. So two to three minutes?

5 A I was just slow with it.

6 Q Two to three minutes. Did you head back to the
7 champagne room?

8 A I never made it back to the champagne room.

9 Q Why?

10 A Because in my two to three minutes your client was
11 naked.

12 Q Well, but in five -- if there had been testimony that
13 he'd been in there five minutes --

14 A For real? There was? I don't --

15 Q But if there had been such testimony, it was five
16 minutes before somebody went in there --

17 **MR. MEADORS:** Objection, Your Honor. Pitting.

18 Q If there'd been --

19 **THE COURT:** Go ahead.

20 Q Would that be too long?

21 A No. Not for either of us really. I mean, it wasn't
22 too long for me.

23 Q So it could have been five minutes you were back in
24 there?

25 A It could have been. And it could have been 15. But

1 it wasn't enough time for me or him. He had a great
2 time.
3 Q Okay.
4 A I was chillin'.
5 Q You could have been 15 minutes there freshening up
6 before they found him in the room there and you were
7 told not to come?
8 A I really don't know.
9 Q Because you were taking cocaine and you were
10 drinking?
11 A You're asking me -- no. You're asking me is it
12 possible --
13 Q Yeah. .
14 A -- that that could have happened? Anything is
15 possible. We now know that.
16 Q Okay. Anything is possible, isn't it?
17 A Yes.
18 Q Now, you didn't tell him to go take his clothes off,
19 did you?
20 A I sure did not.
21 Q And then you didn't tell the bouncer after five .
22 minutes ago, Joe, check on the guy because he'll be
23 naked and you can throw him out?
24 A I sure did not.
25 Q You've never heard of girls doing that, have you?

1 A I don't know. I don't know what girls do.
2 Q You've heard about girls setting guys up that way
3 before, haven't you? Haven't you?
4 A I have heard stories of it being done. I don't.
5 Q But you don't do it?
6 A No.
7 Q You're in it for the money. You'd never do anything
8 like that, would you?
9 A Why? When you've got guys who will give it to you
10 without you having to testify in court on a senseless
11 situation like this.
12 Q You didn't know that night you were going to testify
13 in court, did you?
14 A I didn't know about a lot of things that were going
15 to happen.
16 Q You were just ripping him off, weren't you?
17 A No.
18 Q He was --
19 A I didn't. No. No. He knew what he came to -- you
20 know. You go to a strip club. You've never been in
21 a strip club? You've never gotten a dance? Why
22 you're asking questions about how they grind, you've
23 never had an entertainer sit on your lap? You don't
24 know what you go there for? I was an entertainer for
25 four and a half, five, almost six years. When this

1 situation happened, it's going to forever changed my
2 life. I'm not going to let you sit up here and put
3 words in my mouth and twist up the story. No. I
4 went there to make money. That was my job. That was
5 my job, to make money. Nobody paid me but myself.
6 The club didn't pay. I paid to work, as does every
7 entertainer. No. No one expects for this mess to
8 happen. No. And you know what? It's not -- I don't
9 even see how you sit up here and justify it.

10 Q You done? Are you finished with your answer?

11 A Did you just get it all?

12 Q I'm sorry?

13 A Did you get it all?

14 Q I ingested every word of it. Thank you.

15 A You're welcome.

16 Q Do you know a dancer named Dazzle?

17 A No. It rings a bell. But, no.

18 Q Peaches?

19 A There were a lot of Peaches.

20 Q A lot of Peaches.

21 A Right.

22 Q How about Kitty?

23 A Those, yeah. There was a Kitty.

24 Q A Donna?

25 A Yes.

1 Q Seduction?

2 A I don't know no Seduction.

3 Q Savannah?

4 A There was Savannah.

5 Q Layla?

6 A There was a Layla.

7 Q Liz?

8 A I know Liz.

9 Q Nadia?

10 A Nadia rings a bell. But then there could have been
11 several faces to a Nadia. Continue.

12 Q Okay. Now, after you found out that "Jon Jon" had
13 been shot, you're back in the dressing room. Is that
14 correct? That's when you find out --

15 A I'm in the dressing room. And I heard. But that's
16 hearsay and that's not allowed. Right?

17 Q Well, you became aware -- I'm not asking you what you
18 heard. But you became aware of the fact that "Jon
19 Jon" had been shot?

20 A I became aware of the fact that "Jon Jon" has been
21 sheet when I saw him. If hearsay is not allowed and
22 I heard it, then it's now allowed.

23 Q Okay. You're back in the dressing room crying, are
24 you not?

25 A I'm upset because there is a shooting in the club.

1 Q But you end up back in the dressing room crying at
2 some point because "Jon Jon", the guy you spent
3 nights with, the guy you had dinner with that night,
4 the guy that was your friend for five years is dead?

5 A After the fact, yes. I do end up back in there.

6 Q And you're crying?

7 A Yes.

8 Q And you're saying -- let me get this straight. Let
9 me make sure I get this right. "Jon Jon" is dead and
10 it's all my fault. "Jon Jon" is dead and it's all my
11 fault." Isn't that what you said?

12 A I may have said that.

13 Q Why would you have said that?

14 A Because I feel like if I had not went out there and
15 spoke to that man or even acknowledged when he spoke
16 to me that this would not have happened. Even
17 though, okay, hearsay is not allowed. And so I can't
18 even go into all of that. But I felt like if I --
19 what if I would have kept on going? On top of all of
20 the stuff that I had been through that week, I felt
21 like what if I would have just kept -- what if I'd
22 have went back to Atlanta? What if I would have
23 stayed home? What if I would have did anything else
24 but go and accept a drink or say boo to that guy
25 sitting over there?

1 Q What if you hadn't tried to rip him off? What if you
2 hadn't taken his money?

3 MR. MEADORS: Objection.

4 A What if he'd have stayed home?

5 Q Well, if he'd stayed home --

6 A What if he'd have stayed home? What if he'd have
7 went someone else? What if he'd have went to
8 Playmates or Platinum or something?

9 Q What if you --

10 A What if he'd have went to a white girl? There's a
11 lot of what if's.

12 Q What if you hadn't sat in there for 5 or 10 or 15
13 minutes; why did you tell him to get naked and then
14 take his money?

15 A I did not tell him to get naked.

16 Q You set him up, didn't you? You set him up and --

17 A I don't set people up.

18 MR. MEADORS: Objection. He is not letting her
19 answer, Your Honor. She said I did not tell him to
20 get naked.

21 THE COURT: I understand.

22 MR. MEADORS: He is repeating her answer. He
23 can't do that, respectfully.

24 THE COURT: Let her answer the question.

25 MR. HARPOOTLIAN: Your Honor.

1 **MR. MEADORS:** It's asked and answered.

2 Objection.

3 **THE COURT:** Overruled.

4 **MR. HARPOOTLIAN:** My understanding is speaking
5 objections are not allowed. I would ask --

6 **THE COURT:** I've tried to explain that but it
7 doesn't seem to do much good. Continue.

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

9 **THE COURT:** Keep going.

10 **Q** You got your 3000 bucks, didn't you? You got \$300?

11 **A** I got \$300. It was supposed to be 330. But I got
12 300.

13 **Q** And you gave how much of it to the house?

14 **A** 65 went to the house and 5 went to other parts. So
15 that's 70.

16 **Q** So you put \$270, \$230 in your pocket for doing --

17 **A** No. I put \$230 on 20 on my way back.

18 **Q** I'm sorry?

19 **A** You want to know where that money is? That 200 of
20 your man's money is up and down 20. You can find
21 pieces if it ain't in the PeeDee River or somewhere
22 right now. I don't know.

23 **Q** Why?

24 **A** Why should I keep it?

25 **Q** Well, you're right; you didn't earn it. But I

1 thought maybe you --

2 **MR. MEADORS:** Your Honor, objection.

3 **THE COURT:** Overruled.

4 **MR. MEADORS:** That's a side comment, Your Honor.
5 He said, oh, you're right; you didn't earn it. It's
6 not a question.

7 **MR. HARPOOTLIAN:** Your Honor, I'd note an
8 objection to the speaking objections.

9 **MR. MEADORS:** I think I'm allowed to explain my
10 objection.

11 **THE COURT:** Please sit down and let this
12 continue.

13 **Q** Now, you indicate that he came out or you came out
14 and he had a drink and you bought a drink. Is that
15 right?

16 **A** No. He bought me a drink. I didn't buy a drink.

17 **Q** You don't buy drinks. People buy you drinks?

18 **A** Exactly.

19 **Q** Okay. And the bartender that night, do you remember
20 who that was?

21 **A** Excuse me. Vaguely. It was a female bartender.
22 There were two bartenders. We had about four in the
23 club.

24 **Q** All of them females?

25 **A** Yes.

1 Q Okay. And as you have explained the rules, if you go
2 in the back, you've got to leave your drink with the
3 bartender?

4 A No. If you go in the back, you have to leave your
5 drink at the bar. You cannot take your drink in the
6 back where the girl is going to be nude.

7 Q So where does your drink sit while you're going in
8 the back?

9 A I told the bartender and she covered it up. I
10 covered mine up. See, he was making an issue about
11 leaving his drink. I told him you can't take it to
12 the back. He also thought that I was supposed to
13 give him a dance at the bar. But, hey, it's your
14 client.

15 Q Well, why would you cover it up? What are you afraid
16 of?

17 A What? I don't know what I'm afraid of. Why am I
18 here? There's a lot of stuff that could possibly go
19 wrong.

20 Q Like what?

21 A Why not cover it up? It's just a thing that I do. I
22 always cover up my drink.

23 Q Are you afraid of somebody putting something --

24 A Like I only put gas in my car when I'm trying to go
25 somewhere because you can't drive a car without gas.

- 1 Q Yes, ma'am. You're afraid of somebody putting
2 something in your drink?
- 3 A It's a possibility in strip clubs, yes.
- 4 Q Does it happen in strip clubs?
- 5 A Yes. It happens in strip clubs.
- 6 Q Do you know of your own knowledge of it happening to
7 somebody?
- 8 A I've heard.
- 9 Q Have you ever heard -- I want to know the practice in
10 not just this strip club --
- 11 A It's all hearsay though.
- 12 Q All hearsay. I understand that. But you covered it
13 up because you were afraid somebody was going to put
14 something in your drink?
- 15 A I want to protect myself.
- 16 Q Okay. And let me ask you this. You took him back to
17 the champagne room. He gave you \$300?
- 18 A He gave me \$300 at the bar. We went to the champagne
19 room. Yes.
- 20 Q Okay. You paid how much to the guy at the --
- 21 A The prices have varied. When I first started working
22 at Chastity's, it was \$50.
- 23 Q For what?
- 24 A \$50 for 30 minutes.
- 25 Q For what?

1 A But time -- you know, goes to the house. \$50 to the
2 house. You can charge no less than 250. That didn't
3 change. Or no less than 265. Once it went up to 250
4 and 65. Once the house went up on their prices, then
5 of course it went up.

6 Q Ms. Grainger. I'm just trying to find out --

7 A Mm-hmm (affirmative).

8 Q I'm just trying to find this out. He hands you 300.
9 You give 65 to the house you said. Is that right?

10 A I believe that's what it was at that time, yes.

11 Q Who do you give that to?

12 A The bouncer sitting in front of the couch room.

13 Q The bouncer who is it sitting in front of -- when you
14 say the couch room, I want to make sure.

15 A There is two bouncers.

16 Q Is it the champagne room or the VIP room?

17 A There are two bouncers. There's one at both.

18 Q Okay. There was a counter here. Is there a bouncer
19 that stands at the door to the champagne room?

20 A Yes. Because there's one that continually worked. I
21 can't say it's just one. But they come through and
22 they check the VIP rooms while you're in there as
23 well. So, yes. There is one sitting there. And
24 then there is one that's always, especially when the
25 dance is going on, there's always in the vicinity of

1 that room because he does checks.

2 Q Okay. Now, these rooms, the entrance to each one of
3 these rooms had beads on it, right?

4 A Yes.

5 Q And you couldn't see in it?

6 A You could see I in it.

7 Q You could see in it but not clearly unless you pulled
8 the beads back. Isn't that right?

9 A I could see.

10 Q Okay. And by the way, it's dark back here, isn't it?

11 A Sir, I mean, a club is dark. A strip club is dim.
12 It's not dark. It's dim.

13 Q Dim. Okay. And there's music playing very loudly,
14 right?

15 A Yes.

16 Q Okay. And this area you took him is called the
17 champagne room, correct?

18 A Yes.

19 Q You call it the VIP room. But it's called the
20 champagne room?

21 A Yes.

22 Q Now, he gave you 300. 65 went to the house for the
23 champagne room. \$5 you gave to some -- who did you
24 give that to for the previous dance in the VIP room,
25 in the couch room?

- 1 A The guy who was sitting at the post that you just
2 pointed to.
- 3 Q Okay. So you had \$230. Where is the champagne? Did
4 you go get a bottle of champagne and bring it to him?
- 5 A No. It was brought in the room.
- 6 Q Who brought it?
- 7 A One of the bouncers.
- 8 Q For 65 bucks?
- 9 A Hey. Some people don't get nothing.
- 10 Q No. Is 65 bucks their take, or does that buy the
11 champagne?
- 12 A I don't know. Well, I know technically, but I know
13 we charge 65 to rent the room. So that's for like
14 the room.
- 15 Q So, on this particular night, to your knowledge there
16 was no champagne in the champagne room?
- 17 A I can't say that.
- 18 Q What?
- 19 A I can't say that. There was supposed to be champagne
20 brought in there. I never made it back in there. So
21 I couldn't tell you what there was on that particular
22 night. I can tell you what we have.
- 23 Q I said to your knowledge?
- 24 A To my knowledge, I don't know.
- 25 Q Did you give anybody money for champagne?

- 1 A I gave \$65 to the house for the room. And, yes, I
2 told him they were to bring a bottle of champagne.
3 Q You gave them \$65 for the room. You didn't bring any
4 the champagne in. No?
5 A That's not my job.
6 Q Okay. But to your knowledge you never saw any
7 champagne brought in, correct? All you've got to say
8 is yes or no and we can move on.
9 A But I wasn't out there. So I'm just trying to make
10 sure you've got it accurately. To my knowledge, I
11 was in the dressing room. I mean, I can't --
12 Q But you know of know champagne in the room?
13 A The champagne was supposed -- I told him when we went
14 back there that there was going to be champagne. And
15 I really don't know why it's relevant, but I want you
16 not to twist up what I'm saying.
17 Q Who is paying for the champagne?
18 A It's complementary.
19 Q Oh, it's complementary?
20 A I believe. I believe.
21 Q You believe?
22 A Somewhere down the line, I'm pretty sure it's
23 complementary.
24 Q How many times have you been in the champagne room?
25 A When? That night?

1 Q Ever.

2 A Ever?

3 Q Hundreds? Thousands?

4 A I don't know.

5 Q A bunch?

6 A In five years, a lot.

7 Q A lot. Tell me, do people have to pay for the

8 champagne that's brought into the champagne room?

9 A That's why I said it's complementary, because I

10 remember back in the day that's what they said.

11 You're paying the money for the rental of the room,

12 for your privacy. So, it's complementary I guess.

13 Q Okay. So nobody has to buy a bottle of champagne?

14 A No. Not unless you want to. They do have other

15 bottles that are offered.

16 Q But there's complementary champagne brought into the

17 champagne room?

18 A Yes.

19 Q You're sure of that?

20 A Yes.

21 Q What?

22 A Yes. Yes, sir.

23 Q Okay. Now, your testimony is that when he was

24 talking to you at the bar, he said, why don't you

25 come back to my place?

1 A Yes.

2 Q Okay. Now, did he seem impaired or intoxicated to
3 you in any way?

4 A His words did not slur at all.

5 Q But was he unsteady on his feet? Did he appear -- I
6 mean, you've indicated he said things to you --

7 A He leaned. But that was over a trip when we were
8 walking. Because when you go down into the -- when
9 you leave the bar and you go down into the couch room
10 where the dances are being done, they were still
11 remodeling the club. Well, almost finished. But
12 there is like -- like you've got to watch if you
13 don't trip over the rope over here. This is like a
14 little stump. No. He knew exactly. He didn't slur.
15 I can't say he was intoxicated. He only had one
16 drink and he didn't drink all of that.

17 Q When he came back out, did he drink the same drink
18 again?

19 A Yeah, he took more sips. No. Wait a minute. When
20 we came back out, I was talking to him about the
21 money. I know I drank my drink. Did he take a sip
22 of his? He took one sip. One sip.

23 Q So he had something to drink when he came back out of
24 the same drink he'd left out there. Is that right?

25 A He had one or two sips before. The glass -- okay.

1 On the glass, I can tell you this much. The class
2 that we had was a short glass. That's what he was
3 drinking out of. I can't exactly tell you. It was a
4 dark liquor though. And he took about -- I would say
5 about this much. But it was also pretty much filled
6 up. So that's what? Two or three sips?

7 Q Okay. But he had a sip when he came back there?

8 A Yes.

9 Q He drank some before you all went back there. He
10 drank some when he came back out?

11 A Yes.

12 Q Okay. Now, this --

13 **COURT REPORTER:** Excuse me, Your Honor. I'm
14 sorry to interrupt. I need to change a disk. I just
15 need a second.

16 (Pause)

17 **COURT REPORTER:** Thank you, Your Honor. I'm
18 ready.

19 **MR. HARPOOTLIAN:** Ready?

20 **COURT REPORTER:** Thank you.

21 **THE COURT:** Proceed.

22 **MR. HARPOOTLIAN:** May it please the Court, Your
23 Honor.

24 Q You indicated that he didn't understand when he is
25 paying you \$300 that he would have to go into the

1 back. Is that right?

2 A No. I did not state he didn't understand. I said
3 when he paid the \$300 he acted like he did not want
4 to go. He was tired of moving. He acted like
5 everything was supposed to happen where he was, what
6 he wanted. He understood. He just didn't want to --
7 I don't want -- I'm tired. Why we always got to keep
8 moving is what he said. Why do we have to go to the
9 back again? He understood. So you've got to
10 understand if you can ask why.

11 Q He wanted to stay out in the public area. He said,
12 why can't we do it right here?

13 A He made a comment about it being too complicated.

14 Q Well, but he said, oh, this is too complicated?

15 A No. He didn't say, this is too complicated. Okay.
16 We went to the back, back and forth. We went to the
17 back for the dance. He couldn't take his drink. We
18 came back up to get his drink. Now we've got to go
19 back. And he didn't really say it that sensibly.
20 It's just like -- you know what I'm saying -- a lot
21 of it, you're talking about a 15-minute conversation
22 total. So there wasn't a whole bunch said. But it
23 was a lot of movements and gestures. And he made --
24 I can't finish his statement because, like I said, it
25 was gypped up. But it was all this, you know, and

1 then the bobbing and the weaving of the head. Why
2 back in here? And if you want to dance, that's where
3 we have to go.

4 Q You said you told him it was half an hour and
5 complete privacy?

6 A Yes.

7 Q What does the privacy matter?

8 A Because that's what we're told. I mean, from the
9 time I started working there, that's what was
10 explained to me. And that's just what everybody --
11 well, what I say.

12 Q You tell him complete privacy?

13 A Yes.

14 Q But you know people are going to be looking in there
15 all the time, right?

16 A Yes.

17 Q Okay. So that's not complete privacy, is it?

18 A No.

19 Q Okay. And he was being very suggestive to you before
20 you went back there about --

21 A About.

22 Q About having sex? Is that what he was suggesting,
23 you all have sex?

24 A He didn't say that.

25 Q But that's what you thought he said, isn't it? Go

1 ahead.

2 THE COURT: You can say that what he said.

3 A I know. But I mean, what I thought didn't come out.
4 So would that be considered hearsay?

5 THE COURT: No. It's not hearsay.

6 Q No. I want your impression. I want your impression
7 of what he was asking for. Was he asking for sex?

8 A What he said was, I've never been with a black girl.
9 I've been with several different kinds of women.
10 I've been many places. But I've never been with a
11 black girl. I heard black women can go all night.

12 Q So what do you think he meant?

13 A What do you think he meant?

14 Q Ma'am, I'm sorry. I'm not testifying here. I'm not
15 naked with him in a room. I want to know what you
16 thought.

17 A I don't care what the guys think. I don't care about
18 what they think. He said I was attractive. He said
19 a bunch of stuff. You know what I'm saying? I
20 didn't think -- I didn't take a second thought to
21 think about what he thought. Do you mean implied?

22 Q I'm sorry?

23 A Are you trying to say implied? Of course I knew what
24 his implications were. But then again, you don't --
25 I don't know what his implications were. No, I can't

1 say that. Because I've had gentlemen talk the same
2 way that he talked and they didn't want anything.
3 And they didn't do anything. And they didn't try to
4 touch. You know, so, no; I can't say. No.

5 Q So you go -- after he says that, never been with a
6 black woman, black women go all night long, you told
7 him it was 300 bucks. And it is -- let me make sure
8 I get this right -- complete privacy. Is that right?
9 Your words? Complete privacy?

10 A Yes.

11 Q Okay. And then you take him back there, right?

12 A Yes.

13 Q And did you pay on the way in?

14 A Yes. We paid before we went in.

15 Q Okay. And you left him there for some period of time
16 afterwards. Is that correct?

17 A Yes. I left him.

18 Q Okay. And I believe when you talked to the police
19 you said to them -- this would have been at almost
20 just before 1:00, within an hour almost of "Jon Jon"
21 being killed -- you told them -- correct me if I'm
22 wrong -- "he gave me the money and I told him I had
23 to go and pay the house and for him to give me a
24 minute to freshen myself." Is that what you told
25 them?

1 A Yes. That's -- that's what I told him.

2 Q But you'd already paid the house?

3 A Okay. Read what you said I said again?

4 Q You'd like to see it?

5 A No. Just read it. You said that I stated what now?

6 Q "He gave me the money and I told him I had to go and
7 pay the house and for him to give me a minute to
8 freshen up."

9 A Yes. And I just explained that the last 45 minutes.
10 What happened was he gave me the money. He knew I
11 had to go pay to house. I told him that. I went to
12 go pay the house, put him back there in the room and
13 told him that I needed a minute to go freshen up.
14 So, yes, that is what I mean.

15 Q What I'm trying to find out is did you pay the house
16 on the way in or did you pay --

17 A I'm not going to pay the house double. Mind you, he
18 only gave me 300. So, I mean, I don't have to lie
19 and cheat anybody. I'm not understanding your
20 question.

21 Q What I'm wanting to know is, did you pay -- had you
22 already paid the house when you walked in the room?

23 A He watched me pay the house.

24 Q Okay. So you couldn't have -- when you tell the
25 police I told him I had to go and pay the house and

1 for him to give me a minute to freshen up, you were
2 mistaken?

3 A Whose writing is that? I didn't write that. I told
4 the police what I did. If they shortened it up,
5 then, oh, well. But that is the point. Did I write
6 it out? I don't remember. But I know that's what
7 happened.

8 Q Do you recognize this?

9 A Yes, I recognize this statement.

10 Q Is that your signature?

11 A That's my signature. Is that my handwriting? Is
12 that my handwriting?

13 Q Ma'am, I don't know whether it's your handwriting or
14 not.

15 A That's not my handwriting. That's my signature.

16 Q Did you read it and sign it that night?

17 A Yes. I read it and signed it that night.

18 Q And did you say --

19 A Yes. I did said it. Yes.

20 Q He gave you the money and I told him that I had to
21 go --

22 A Yes. I said it.

23 Q Okay. Well, you're wrong. Are you wrong now, or
24 were you wrong then?

25 A I still don't understand what you're saying.

1 Q Did you pay the house and then leave him there to,
2 quote, go freshen up; or did go freshen up and pay
3 the house? Had you already paid the money?

4 A We cannot go into the room. He was right here. He
5 was not letting me far with his money. Okay?

6 Q Right.

7 A He was right on my neck. I paid the house. We
8 walked to the room. I put him in the room. We. The
9 bouncer was there, too. I told him to go in the
10 room, I will be back. I'm going to freshen up. Now,
11 what are you asking me?

12 Q I'm asking you why you would tell the police you
13 hadn't already paid? You were trying to justify
14 leaving him there, setting him up to be thrown out?

15 A I wasn't trying to justify anything. I told the
16 police exactly what I'm telling you now. Why would I
17 lie? This is not about me. Is this about me?

18 Q Well, let me ask you, would you lie because you
19 ripped him off?

20 A No.

21 MR. MEADORS: Objection.

22 Q I'm quoting what you said earlier.

23 A He gave me --- I can't rim him off. He gave me -- I
24 told him my price and he gave it to me.

25 THE COURT: That's all right. Go ahead. Answer

1 the question. I'm going to try to get the lawyer to
2 stop asking questions in the middle of your
3 questions.

4 MR. HARPOOTLIAN: Thank you.

5 MR. MEADORS: I would object. And I'm not
6 speaking. Can I say what it is?

7 THE COURT: No, sir. I sustain it.

8 MR. HARPOOTLIAN: Thank you, Your Honor. I'll
9 move on.

10 Q I'm almost done, Ms. Grainger. I know you're going
11 to be happy to hear that. You testified that when
12 you were informed that he was found naked in the --
13 stark naked in the room that everybody was laughing
14 about it. Is that right?

15 A I laughed.

16 Q You did?

17 A Yes. I laughed.

18 Q And you then said I got the money and I didn't have
19 to do the dance and that not only were you laughing
20 at him, you were laughing at your good fortune. You
21 didn't have to --

22 A I laughed.

23 Q Now, you indicate that you were friends with "Jon
24 Jon". You all stayed together. You ate meals
25 together. Since this incident have you had an

1 opportunity to speak to his family?

2 A No.

3 Q Did you go to the funeral?

4 MR. MEADORS: Objection.

5 THE COURT: Sustained.

6 Q Have you had an opportunity to talk to Carl Weeks
7 since this incident?

8 A I have not spoken to anybody. Since this incident I
9 left, and this is my first time ever stopping in
10 Columbia since.

11 Q When did you come back for this trial?

12 A Sunday.

13 Q When?

14 A Sunday.

15 Q Okay. And have you been kept in a room with other
16 witnesses awaiting testifying?

17 A No.

18 Q You are all alone in a room somewhere?

19 A No. I didn't. It was my choice not to be with
20 anybody. And my answer is no, I have not seen
21 anyone.

22 Q Okay. Could we go to the tape a minute? I tell you
23 what. We can just do it on the screen. We don't
24 have to put the big screen up. I think the jurors
25 can see this up there and we can see it here. Can we

1 go to the inside shot? Let me give you the exact --
2 I want to go to camera 12 at midnight plus 15
3 seconds. Ma'am, can you step down here for just a
4 second because you're going to need to be able to see
5 this. Come right here, please, so this microphone
6 will pick you up.

7 **THE COURT:** You stand back.

8 Q I'm sorry? Oh. Yes, sir. And I want you to watch
9 this screen up here, please. What time is that? I
10 can't see.

11 **MR. CABA:** Midnight 20.

12 Q Just go up. Are you familiar with this area?

13 A Yes.

14 Q Do you know who those two people are?

15 A Yes.

16 Q And I'm sorry. You're going to have to speak into
17 this microphone.

18 A Yes.

19 Q Okay. And let's watch it for just a minute and see
20 if you recognize anybody else. Who is that that's
21 walking up?

22 A That's me.

23 Q Now, who is that that's grabbed you?

24 A I don't know his name.

25 Q I'm sorry?

1 A I don't remember his name.

2 Q Is that Mr. Weeks?

3 A If that's his name, yes.

4 Q Okay. But that is you that walked up. Is that
5 correct?

6 A Yes.

7 Q Okay. Thank you. Go ahead and take the stand for
8 me, please. Thank you. I beg the Court's indulgence
9 for a moment. I'd like to show you some documents,
10 see if you've ever seen them before. Okay? Have you
11 ever seen that?

12 MR. MEADORS: Your Honor, I'd like to see them
13 also.

14 MR. HARPOOTLIAN: Pardon? If she can identify
15 them. If she can't, then we won't be offering them.

16 Q Have you seen that before?

17 A No. I mean, --

18 Q If you can't recognize it, that's fine.

19 A The thing is, I have worked at so many clubs. And, I
20 mean, I don't -- a lot of them have lists. A lot of
21 them don't.

22 Q Okay.

23 A A lot of them have a list, but they don't show you
24 what they tell you on them. So, I mean, --

25 Q What about this one? Have you ever seen that one

1 before?

2 A What is that?

3 Q Well, it's a memo.

4 A What is that? I mean, a bunch of papers? What?

5 Q If you've seen this document before, you can say yes.

6 If you haven't seen it, you can say no and we'll move

7 on.

8 A Well, no.

9 Q Haven't seen it. Okay. What about this? Have you

10 ever seen this before?

11 A No.

12 Q Okay. Do you want to look at it a little longer?

13 A No.

14 Q Now, these other clubs you worked at, were they

15 totally nude clubs?

16 A One of them.

17 Q Other than Chastity's?

18 A Yes..

19 Q And where was that?

20 A Myrtle Beach.

21 Q What was the name of that club?

22 A I forgot.

23 Q I'm sorry?

24 A I forgot.

25 Q You forgot.

1 A If somebody can say the name, then -- do you know the
2 name of it? I'm trying to remember the name of it
3 but I can't remember. But it's the only -- I'm
4 pretty sure you're familiar with it. It's the only
5 nude club in Myrtle Beach. I am trying. I can't
6 remember the name of it. I'm sorry.

7 Q Thank you.

8 THE COURT: Redirect?

9 MR. MEADORS: Just a few. May it please the
10 Court.

11 REDIRECT EXAMINATION

12 BY MR. MEADORS

13 Q Mr. Harpootlian showed you a statement. Is this the
14 statement he was referring to you of 12:53, 1-29-06?

15 A Yes.

16 Q 12:53, 1-29-06 you told the police what happened?

17 A Yes.

18 Q And I believe at the start of his questions, I
19 believe you said you got a phone number from
20 something that was written to the South Carolina
21 police from your landlord?

22 A She gave it to me over the phone. She told me that
23 phone number.

24 Q You called that number; and as a result of that, was
25 it the South Carolina police?

1 A No, it wasn't.

2 Q It was a representative of whom, if anybody?

3 A He said he was a private investigator.

4 MR. HARPOOTLIAN: Objection, Your Honor. A,
5 it's hearsay. B, he's not got any document with him
6 where somebody allegedly wrote a phone number on it
7 and a name on it.

8 MR. MEADORS: Your Honor, speaking objection, by
9 the way.

10 MR. HARPOOTLIAN: I apologize.

11 MR. MEADORS: And, number two, it's already been
12 talked --

13 THE COURT: Sir. Overruled.

14 Q They said they were a representative of who?

15 A Yes. He called my cellphone, and he told me that he
16 was a private investigator hired on behalf of the
17 alleged murderer of John Johnson.

18 Q Did you have a conversation? What did you say to him
19 after that?

20 A I told him that I didn't know who he was and why he
21 was calling. But the last time I checked, John
22 Johnson wasn't alleged anything, that, you know, he
23 was deceased. And I didn't want to talk to him.

24 Q I've just got one question.

25 A All right?

1 Q On January 28th of 2006, did you, Ms. Renisha
2 Grainger, call Dewain Herring and ask him to come to
3 Chastity's?

4 A No. I don't know him, never seen him a day before in
5 my life.

6 Q That's all I have.

7 MR. HARPOOTLIAN: Nothing further.

8 THE COURT: All right. You may come down,
9 ma'am. Thank you very much. May this witness be
10 excused? Any objection?

11 MR. HARPOOTLIAN: Please. No objection.

12 MR. MEADORS: Thank you.

13 THE COURT: You're free to go, ma'am. Thank you
14 very much. All right, ladies and gentlemen of the
15 jury, let's take a short break. I'll call you in
16 about 10 or 15 minutes. Don't discuss the case among
17 yourselves while you're in the jury room.

18 (Jury out at 11:33 a.m.)

19 THE COURT: We'll stand at ease for about ten
20 minutes.

21 (Whereupon, a break is taken)

22 (WHEREUPON, State's Exhibit No. 60 is marked for
23 identification.)

24 THE COURT: Solicitor, are you ready?

25 MR. HARPOOTLIAN: We're trying to figure

1 something out logistically.

2 **MR. MEADORS:** Beg the Court's indulgence.

3 (Whereupon, a bench conference is had)

4 **MR. MEADORS:** Angel Koon.

5 **THE COURT:** Bring the jury, please.

6 (Jury in at 11:55 a.m.)

7 (WHEREUPON, State's Exhibit No. 61 is marked for
8 identification.)

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

10 **THE COURT:** Solicitor, call your next witness.

11 **MR. MEADORS:** He if it please, Your Honor. The
12 State would call Angel Koon.

13 JEWEL A. KOON, after being duly sworn, testifies
14 as follows:

15 **THE CLERK:** Thank you. Please have a seat in
16 the witness stand and state your full name for the
17 record.

18 **THE WITNESS:** My name is Jewel Angel Koon.

19 **COURT REPORTER:** I'm sorry. First name?

20 **THE WITNESS:** Jewel.

21 DIRECT EXAMINATION

22 **BY MR. MEADORS**

23 **Q** Good afternoon, Ms. Koon.

24 **A** Good afternoon.

25 **Q** Where were you born and where were you raised?

- 1 A Lexington County, South Carolina.
- 2 Q Born and raised?
- 3 A Yes, sir.
- 4 Q Where did you go to high school?
- 5 A Lexington High School.
- 6 Q And you graduated in what year?
- 7 A 1997.
- 8 Q Tell the ladies and gentlemen of the jury what you
- 9 did after that. Did you work?
- 10 A I did. I was promoted from cashier to shift manager
- 11 at McDonald's.
- 12 Q What did you do after that?
- 13 A I went to work for Piggly Wiggly. I did some
- 14 cashier/bookkeeping work there.
- 15 Q And what did you do after that?
- 16 A I worked for Time Warner Cable. I was an
- 17 administrative assistant and did some customer
- 18 service work.
- 19 Q Did you work while you were in high school, too?
- 20 A Yes, sir.
- 21 Q And after that did there come a time you started
- 22 working at Chastity's?
- 23 A Yes, sir.
- 24 Q And what time was that, Ms. Koon?
- 25 A It's probably been about four years I have been

1 there.

2 Q So, roughly, 2003?

3 A Yeah. Roughly.

4 Q And when you first started working at Chastity's,

5 what was your job?

6 A I bartended and I worked the door some.

7 Q And how long did you do that?

8 A For probably about a year.

9 Q And after that, did your job at Chastity's change?

10 A It did. I applied for a position of -- it was an

11 administrative position at the time.

12 Q What type position?

13 A It was an administrative position. My title actually

14 ended up being executive vice-president.

15 Q And what did that mean?

16 A Basically I did pretty much the payroll, the books,

17 kept track of sales, all that sort of stuff,

18 collaborated with the managers, promotions, things of

19 that sort.

20 Q And you stayed in that -- what's your position today

21 with Chastity's, if any?

22 A My position is still executive vice-president. I

23 work in the corporate office.

24 Q All right. And I think somebody has talked about the

25 corporate office in this case. Where is the

1 corporate office in relation to -- I'm showing you
2 what's State's 51. And do you recognize this as not
3 to scale, but a drawing of the inside of Chastity's?
4 A Yes. It's very similar.
5 Q Where is the corporate office in relation to this
6 drawing?
7 A It's actually in a separate building located beside
8 the patio.
9 Q Over here?
10 A Yes, sir.
11 Q And who has got access to that corporate office?
12 A The owner, Jerry Britt, which is my employer, and
13 myself.
14 Q And besides that, does anybody else have access?
15 A No. The door remains locked.
16 Q The door remains locked except for you two?
17 A Yes, sir.
18 Q You have a key. And is that the way it was in
19 January of 2006?
20 A Yes, sir. Even during business hours we keep the
21 door locked.
22 Q And is that the way it is today?
23 A Yes, sir.
24 Q Now, let me take you, if you don't mind, to
25 January 29th of 2006, Ms. Koon. As an executive and

- 1 your title, what hours would you usually work during
2 the week?
- 3 A Generally, Monday through Friday, 9 to 5.
- 4 Q Would you ever come in on a weekend?
- 5 A Occasionally I would stop by just to check on things,
6 to see, you know, how the sales were going.
- 7 Q Now, this January 28th. I mean, it's the 29th.
8 January 28th, 2006 into the morning of January 29th,
9 did you have an occasion to go by Chastity's on the
10 January 28th?
- 11 A We did. We were actually holding a V2 party which is
12 a magazine that focuses on adult entertainment. They
13 were doing a write up for our club.
- 14 Q And V2, were they promoting Chastity's basically?
- 15 A Yeah. Basically.
- 16 Q Had you advertised this, or was this is a special
17 night or anything?
- 18 A Yeah. It was a special night. I'm sure they
19 advertised in a magazine. And, you know, we had it
20 on the marquis outside.
- 21 Q And do you remember what time you got there?
- 22 A I don't remember exactly what time I got there. It
23 wasn't late. It was probably around 10. I'm not
24 real sure exactly what time.
- 25 Q Whenever you got there that night, where were you?

1 Where did you go inside the bar? Inside Chastity's.

2 I'm sorry.

3 A Well, I predominantly stayed at the front door. I.
4 was pregnant at the time. So I was trying to stay
5 away from the smoke. It's really smoky in a bar. So
6 I was predominantly at the front door.

7 Q And who else was there with you during the evening,
8 if anybody?

9 A The hostess, Nicole Beran.

10 Q She's already testified here today in this courtroom
11 in this case. Are you aware of that?

12 A Yes, sir.

13 Q So you were primarily up front with Nicole out of the
14 smoke because you were pregnant?

15 A Yes, sir.

16 Q Have you since had that child?

17 A Yes, I have.

18 Q Now, do you remember the defendant coming in that
19 night?

20 A No, sir.

21 Q And describe the crowd as the evening went on on
22 January 28th, that night. What sized crowd was it?

23 A We were pretty busy that night.

24 Q And were you helping check people in, too?

25 A No. I actually was just sitting up there talking to

1 Nicole. It would have been her job to check, you
2 know, I.D.'s and gather admission charges.

3 Q Toward later on in the evening, if you will, before
4 12:00 that night, do you remember seeing the
5 defendant leaving the club?

6 A Yes, sir, I do.

7 Q Can you explain, tell the ladies and gentlemen what
8 you remember?

9 A Well, I just remembered them walking out, Mr.
10 Herring. And I just thought it was odd because he
11 was, you know, a well dressed man. It didn't seem
12 like there were any problems.

13 Q And after he'd been escorted out, did you inquire as
14 to why he had been escorted out?

15 A Yes, sir. I asked Carl Weeks.

16 Q Carl who?

17 A Weeks.

18 Q What happened after that?

19 A We just stayed up front kind of watching the monitor
20 to see what was going on.

21 Q From your memory, when the defendant was walking out,
22 can you describe how he was acting, his demeanor?

23 A I mean, it didn't -- you wouldn't have even been able
24 to really tell that there was an issue, to be honest.
25 Which is why we asked, because, you know, the manager

1 followed him outside.

2 Q Did either the manager or Donnie or I believe Mr.
3 Weeks -- it's already been testified to -- did you
4 see them lay a hand on Dewain Herring?

5 A No, sir.

6 Q And I think you testified you started looking at the
7 monitors?

8 A Yes, sir.

9 Q I believe it's in State's 6. I'm actually showing
10 you State's 10 right now. Can you see the monitor in
11 State's 10 that you're talking about?

12 A Yeah. These monitors.

13 Q And where would you have been, and Ms. Nicole Beran,
14 after Dewain Herring had been taken out; in reference
15 to State's 10, if you can do it?

16 A I would have been in this vicinity, you know,
17 inbetween the cameras and sitting beside Nicole.

18 Q All right. And when you look at these cameras, what
19 do they depict?

20 A The outside parking lot.

21 Q Did you see the defendant waiting outside in his car?

22 A Yes, sir.

23 Q How did you see that?

24 A Through the camera system.

25 Q And so, can you describe that camera system to the

1 ladies and gentlemen of the jury?

2 A It's actually -- there is a digital recorder that

3 records over in our corporate office. It has a split

4 screen monitor over there. And then we had the

5 monitors so the hostess and the guys at the front can

6 see the outside area located at the hostess station.

7 Q And specifically, looking back at State's 51 -- if

8 you'll please just speak up -- is this the front of

9 Chastity's?

10 A Yes, sir.

11 Q All right. Can you show the jury where the cameras

12 are or were on January 28th, 2006? Excuse me.

13 A There would have been one over in the corner. Which

14 the corporate office is not on this drawing.

15 Q Correct.

16 A So there would have been actually two on that side of

17 the building.

18 Q So can we say a far left?

19 A Yes.

20 Q For the sake of argument? And then a left if you're

21 looking at it?

22 A Yeah.

23 Q Far left and left?

24 A And then there would have been one over here, one

25 right directly above the door, one on this side, and

1 I think there was also one in the back parking lot
2 that focused on the dumpster, and one inside the
3 door.

4 Q And you all were able -- were you all able to view
5 those camera views from inside the lobby?

6 A We would have been able to view all the parking lot
7 cameras from inside the lobby.

8 Q And is that what you were looking at when you saw the
9 defendant's vehicle out? You said you saw the car
10 sitting there?

11 A Yes, sir.

12 Q After the defendant had gone outside, you were
13 watching the monitor, what happened next? What do
14 you remember next?

15 A I remember seeing "Jon Jon" outside talking to Mr.
16 Herring.

17 Q Through the camera?

18 A Through the camera.

19 Q Can you describe that?

20 A They just were talking.

21 Q And what happened next? What do you remember next?

22 A I just remember just seeing him walk to his car, walk
23 back from his car. They continued to talk. And I
24 think at a later point Donnie and -- Donnie Hawkins
25 and Carl Weeks came outside whenever he was getting

1 in his car to leave.

2 Q And did Donnie and Carl ever come back inside?

3 A They did come back inside.

4 Q And is there a point in time where the defendant's

5 vehicle came back?

6 A Yes, sir.

7 Q And how do you know that?

8 A Because we could see on the camera system.

9 Q And is that from the front camera?

10 A Yeah. It would have been the camera that's directly

11 above the door.

12 Q And after you saw the defendant's vehicle come back,

13 what happened after that?

14 A Well, you could see "Jon Jon" open and close the door

15 and then I heard a gunshot.

16 Q Where were you when that happened?

17 A I would have been over on the counter by Nicole.

18 Q Over on the counter by Nicole?

19 A Yes. Beside the hostess station.

20 Q And did you realize what was happening at first?

21 A At first I didn't realize what was happening.

22 Q And how far were you from "Jon Jon" when he was at

23 the door when you heard this?

24 A Probably like -- I would say like maybe ten feet.

25 Q Did you realize he was shot at first?

1 A No. Once I realized that it actually was a gunshot,
2 I thought that he had just ducked just like everyone
3 else.

4 Q What did you do after that, after you heard the shot?

5 A Well, as soon as I realized that he had been shot, I
6 asked Nicole to call 911. She was under the counter.
7 And so I went behind the counter and I grabbed my
8 purse and I grabbed my cellphone and I called 911
9 because our phone at our front door area had a cord.
10 I knew I wouldn't be able to move with it. But I
11 grabbed my cellphone and I called 911.

12 Q When the defendant's car was pulling back up, did you
13 hear "Jon Jon" say anything?

14 A I didn't hear him say anything. Or not that I can
15 recall.

16 Q I'm not talking about right before the shot. I'm
17 talking about when his car backed up, came back up.

18 A No.

19 Q Did you ever tell anybody, don't go back out there?

20 A I did tell "Jon Jon" not to go back outside by
21 himself.

22 Q Why did you tell him that?

23 A Because any time a customer leaves and then comes
24 back, I mean, it could be a bad situation.

25 MR. MEADORS: Your Honor, at this time, begging

1 the Court's indulgence, we just want to show a brief
2 ...

3 MR. HARPOOTLIAN: Maybe you can show it just on
4 the screen.

5 MR. MEADORS: Well, I was going to use the
6 other. I would like to use this briefly.

7 MR. HARPOOTLIAN: Okay.

8 MR. MEADORS: It's camera 12. Your Honor, we're
9 going to the inside camera, camera 12.

10 Q Would you please step down here?

11 A Sure.

12 MR. MEADORS: With the Court's permission?

13 THE COURT: Yes, sir.

14 Q You can step on this side, please. 11:56. Okay.
15 Are you ready? Please play it. Now, stop for a
16 minute. Where are you before the defendant is
17 getting escorted out?

18 A You'll see the cash register, and the counter
19 actually extended over a little. And I would have
20 been right beside Nicole which would be directly
21 behind the cash register.

22 Q Go ahead, please. Stop. When you saw him, did
23 anybody put their hands on Mr. Dewain Herring?

24 A No, sir.

25 Q Keep going, please. Stop. Now, at this time you

1 testified you were looking at the monitors. Did it
2 appear to you they were also looking at the monitors
3 at this point? Correct?

4 A Yes, sir.

5 Q And at this point who is coming back up to you?

6 A Carl is.

7 Q And is he telling you what happened at that point?

8 A Yes, sir.

9 Q Go ahead. And stop. You said -- why was everybody
10 watching the monitors?

11 A Well, I mean, it was just unusual for a guy that was
12 as well dressed as he was, and we weren't sure
13 exactly what was going on. Just looking to see what
14 happens.

15 Q Had "Jon Jon" -- did you learn of a threat?

16 A I did. I did.

17 Q And when did you learn of that?

18 A In speaking with Carl and Donnie.

19 Q And do you know when that was?

20 A I don't remember precisely when it was, but --

21 Q Did you learn of it prior to the shooting?

22 A Yes, I did.

23 Q And between 11:57:50 and 12:06:06, where did you go,
24 if anywhere, besides this front lobby?

25 A Nowhere. I stayed in the front lobby.

1 Q Stop one second, please. Can you go to right --
2 excuse me -- left front camera. 12:53, please.
3 12:53. I'm sorry. 12:00:53. Stop, please. You
4 testified earlier that you saw the defendant's car in
5 the parking lot just sitting there, correct?

6 A Mm-hmm (affirmative).

7 Q Is this how you saw it that night?

8 A Yes.

9 Q Through this camera?

10 A Yes, sir.

11 Q Camera 8?

12 A Yes, sir.

13 Q And how long did the defendant sit there?

14 A It would have to be for a couple of minutes.

15 Q Just sat there?

16 A Yes.

17 Q 12:03:25, please. Did you see the defendant's
18 vehicle pull out on River Drive and leave?

19 A I did.

20 Q Did you see it through this camera?

21 A Yes, sir.

22 Q Go back to front camera, camera 4, please, at
23 12:05:05, please. You can stop right there. Thank
24 you. I think you testified earlier Mr. Hawkins and
25 Mr. Johnson came back inside. Is this when you're

1 talking about?

2 A They did, yes.

3 Q Can you go now back to camera 4, please, Mr. Kata?
4 12:05:15, inside camera, camera 4. All right. Stop
5 it right there. I mean, back up. I'm sorry. Go
6 back between 12:04 and 12:05. I apologize. Okay.
7 Start right there. Who is this? Stop it.

8 A It's me.

9 Q Is that you? Angel Koon?

10 A Yes, sir.

11 Q Keep going. Who is that with you?

12 A It's Donnie Hawkins.

13 Q And what are you all looking?

14 A We're looking at the camera system.

15 Q I understand that. But do you remember what picture
16 you were looking at?

17 A I'm sorry. We were looking at him pulling back up.

18 Q And could you leave this here, please, Mr. Kata, and
19 go back to camera 4 at the same time period,
20 12:05:17. We'll start a few seconds back, please.
21 Is this what you were looking at when you saw the
22 defendant's car come back up?

23 A Yes, sir.

24 Q What's going through your mind at that point?

25 A Oh, my God. We don't know what to think. Why would

1 he pull back up? I'm telling "Jon Jon" don't go out
2 there by yourself.

3 Q Keep playing. At this time are you inside the lobby?

4 A I am inside.

5 Q You told "Jon Jon" not to go back out. Do you see
6 the car drive away from the cameras, from the inside
7 cameras?

8 A Yes.

9 Q Go back to camera 4, please, just a little bit.
10 Excuse me. The inside camera. I apologize. Yes.
11 And go back to -- let it go from there. That's fine.
12 You're watching the cameras here, the car outside,
13 correct?

14 A Yes, sir.

15 Q Stop right there, please. Who were you talking to
16 here?

17 A Nicole.

18 Q And you're starting to peer back here. Were you
19 looking back in this area, too?

20 A Yes.

21 Q And what is back here?

22 A The bar.

23 Q Go ahead. So at this point -- please stop -- you're
24 not looking at the monitor?

25 A No.

1 Q Correct? And where is "Jon Jon"?

2 A He's at the door.

3 Q Go ahead. Where are you when that happened?

4 A I would be beside the hostess station.

5 Q Is that you?

6 A Yes, sir.

7 Q So when "Jon Jon" fell, you were actually back here,

8 correct?

9 A Yes, sir.

10 Q That's all. You can have a seat back.

11 A Thank you.

12 Q Did the police and EMS arrive?

13 A They did.

14 Q Did you give them a statement?

15 A I did.

16 Q Did you give them a description who had come in? Mr.

17 Herring, correct?

18 A Yes, sir. The best I could.

19 Q You gave them a description that night?

20 A I did.

21 Q And is he in the courtroom, the person you saw being

22 escorted out?

23 A Yes, sir, he is.

24 Q Please point him out.

25 A He's in the gray suit with the blue shirt over here.

1 **MR. MEADORS:** We'd like the record to reflect
2 she's picked out the defendant, Dewain Herring.

3 **THE COURT:** The record will reflect that the
4 witness identified the defendant.

5 **Q** How long had "Jon Jon", Mr. Johnson, been working at
6 that club?

7 **A** For as long as I had. For as long as I had. A long
8 time.

9 **Q** And that night his job was what?

10 **A** He was the manager on duty.

11 **Q** What did that mean to be the manager on duty?

12 **A** That meant he oversaw the employees, made sure the
13 bar had everything they needed, counted down the
14 money, dealt with any customer issues, that sort of
15 thing.

16 **Q** Well, that was my question. If an issue rose up with
17 a customer and the manager, Mr. Johnson, was there,
18 was he responsible of taking care of the situation?

19 **A** Yes, he was.

20 **Q** If another employee were to come into somebody first,
21 would they go to get Mr. Johnson and bring him back
22 to be in charge of it?

23 **A** They would. That's how we like things to be handled.

24 **Q** And is that what happened this night?

25 **A** Yes, sir, it is.

1 Q Please tell us a little bit -- and I've asked you
2 some about it -- these cameras, how are they recorded
3 initially over the system you have? Can you explain
4 that to the jury?

5 A They were recorded on a digital hard drive that holds
6 about three months of data before it records over
7 itself.

8 Q And after this incident, that same night --

9 A Mm-hmm (affirmative).

10 Q -- did you give the Sheriff's Department a copy of
11 camera 4's view?

12 A I gave them, yes, a copy of the front door camera.

13 Q Camera 4 view?

14 A Mm-hmm (affirmative).

15 Q And what time periods did you give them? Do you
16 remember?

17 A I'm not exactly sure. But I think it was, you know,
18 of the incident. It may have been from the time Mr.
19 Herring came in until the time of the incident.

20 Q Or maybe a little bit after that on that initial
21 tape?

22 A Yeah. It could have been a little after that. But
23 it did have the incident on tape.

24 Q And you yourself -- who downloaded that from the hard
25 drive?

1 **A** I did that.

2 **Q** You did?

3 **A** Yes, sir.

4 **Q** And you gave it over to officials with the Richland

5 County Sheriff's Department?

6 **A** Yes, sir, I did.

7 **Q** And do you remember who you gave it to?

8 **A** I'm not exactly sure.

9 **Q** And was it of a time period, like you just said, from

10 when he came in to shortly after this incident?

11 **A** Yeah. It should have been.

12 **MR. HARPOOTLIAN:** No objection.

13 **MR. MEADORS:** No objection to this?

14 **MR. HARPOOTLIAN:** No objection to -- as per we

15 said previously, no objection if the chain is

16 established.

17 **Q** Does this appear to be the disk that you downloaded

18 of camera 4 from 11 a.m. to 12, shortly after

19 12:06:06, that you gave to a member of the Richland

20 County Sheriff's Department?

21 **A** Yes, sir.

22 **Q** Your Honor, this is State's 60 for I.D. at this

23 point. Now, did somebody come and ask you for -- did

24 somebody from the Richland County Sheriff's

25 Department come and ask you for the other camera

1 views you had shortly after this incident?

2 A They did. They came out Monday.

3 Q Came out when?

4 A Monday, that Monday I believe.

5 Q After this incident?

6 A After the incident.

7 Q Which would have been January --

8 A 30th.

9 Q The calendar. January 30th, 2006?

10 A Yes, sir.

11 Q And as a result of that, did you download from the
12 hard drive all the other camera views that we've seen
13 in here today?

14 A Yes, sir.

15 Q And was that kept in your possession in the corporate
16 office under locked offices for -- until last week?

17 A Yes, sir.

18 Q Anybody from the Sheriff's Department come back and
19 get it, or did you take it to them back then?

20 A No, sir.

21 Q So on Tuesday of last week, which would have been May
22 whatever, Tuesday of last week, did Investigator Bill
23 O'Neill of Solicitor Giese's office come and get the
24 original copy from the hard drive from you?

25 A Yes, sir, he did.

1 Q From him -- from you to him, correct?

2 A Yes, sir.

3 Q And at that time also I believe Mr. Harry Heizer sent
4 a copy to Mr. Harpootlian, correct, on Tuesday of
5 last week?

6 A Yes, sir. We contacted our attorney to get Mr.
7 Harpootlian a copy.

8 Q The same day it went to us it went to them, correct,
9 from you?

10 A Yeah. Calls were made directly afterward on it.

11 MR. MEADORS: And, Your Honor, it's in --

12 MR. HARPOOTLIAN: That's the disk? Your Honor,
13 the disk in there is the disk that was given to us
14 last week. Again, if the chain is tied up, we have
15 no problem it.

16 MR. MEADORS: And the chain would begin last
17 Tuesday, Your Honor, with Bill O'Neill who just
18 walked in to law enforcement.

19 MR. HARPOOTLIAN: That's fine. Not a problem.

20 MR. MEADORS: That is the chain on that. This
21 is State's 54. And I think we can offer that at this
22 time.

23 MR. HARPOOTLIAN: Well, it's been places.

24 MR. MEADORS: That's fine.

25 MR. HARPOOTLIAN: Pardon me?

1 Q Is this the video that you saw that you gave us to
2 last week and gave to Mr. Harpootlian?

3 A Yes, sir.

4 Q The original would be in here, 54, correct?

5 A Yes, sir.

6 Q Thank you. That's good. That's all. Thank you.

7 CROSS EXAMINATION

8 BY MR. HARPOOTLIAN

9 Q Ms. Koon, you and I have met several times, correct?

10 A Yes, sir, we have.

11 Q And you have been kind enough to meet me at the club
12 and give me a tour and tell me it looks a little bit
13 different today than it did back in January. You all
14 have done some renovations, right?

15 A Yes, sir, we have.

16 Q Now, let me ask you a little bit about the cameras.
17 As I understand the cameras -- and again, you were
18 kind enough to walk me through this, so I'm going to
19 try to do it in summary fashion -- there are -- okay.
20 On the outside of the club, this being State's
21 Exhibit No. 53, there are cameras over the door?

22 A There is a camera over the door.

23 Q There's a camera back here in the corporate office
24 corner coming back this way, right?

25 A Yes.

- 1 Q There is another camera up here on this corner?
- 2 A Yes.
- 3 Q And I think there's cameras over here on this side,
- 4 are there not?
- 5 A There is. They're facing towards the dumpster.
- 6 Q Towards the dumpster which is up here, or it's back
- 7 there?
- 8 A Which is in the back of the parking lot. It's on the
- 9 side of the building.
- 10 Q So you have full coverage of the entire exterior. Is
- 11 that correct?
- 12 A I mean, pretty much. There are still some gray areas
- 13 the camera can't cover; but as much as we can.
- 14 Q Is there any camera further along on the other side
- 15 of the corporate headquarters looking back this way?
- 16 A I believe that there was, but I'm not real sure.
- 17 Whatever cameras we had we actually burned to the
- 18 disk that Monday. So --
- 19 Q Okay. Now, there are also cameras on the inside,
- 20 correct?
- 21 A Yes, sir.
- 22 Q And the cameras on the inside, as I understand it
- 23 from what you and I walked through, there are cameras
- 24 in this area, the bar area, correct?
- 25 A No, sir. There were originally when we had the

1 camera system installed, but they weren't at the time
2 of the incident.

3 Q There were no cameras in the back?

4 A There was one camera in the back but not in the bar
5 area.

6 Q Where?

7 A It was -- it would have been actually above -- you
8 see where you see the hall and you see the office and
9 storage? I'm sorry. Do you want me to point it out
10 to you?

11 Q Well, yeah. How about do that for me, if you would.
12 Can you reach it?

13 A Yeah. There would have been one right here in this
14 hallway.

15 Q Facing where?

16 A Facing towards this area. And it may be positioned a
17 little bit differently today than it was at that
18 time.

19 Q But it would have been in the hall area facing back
20 towards the champagne rooms and the VIP rooms. Is
21 that right?

22 A Yes, sir.

23 Q Okay. Now, all these cameras are fed into your hard
24 drive?

25 A Yes, sir, they are.

1 Q And it's recorded on a hard drive. We used to use
2 videotape, but apparently now it's digital on a hard
3 drive. Is that right?

4 A It is digital on a hard drive.

5 Q And then you can take a CD or whatever it is, a disk,
6 and then burn it onto there. You can burn copies of
7 whatever was on the hard drive. Is that right?

8 A Yes, sir.

9 Q Now, why wasn't the one on the -- the camera facing
10 back towards the VIP room, the champagne room, did
11 the Sheriff's Department ask you to burn that, too?

12 A I can't remember exactly who asked to burn what
13 cameras. But the cameras, when you actually burn,
14 you can't tell which camera you're burning. They're
15 all numbered. So it may have just been one that we
16 overlooked. It was just one that I didn't put on the
17 disk for whatever reason.

18 Q Okay. Now, did somebody from the Sheriff's
19 Department come down and help you do that? Did they
20 look at the different camera views and say I want
21 that one and that one and that one and that one?

22 A I don't remember if they asked for specific cameras
23 or if I burned them specific cameras.

24 Q Did they supervise you doing that? Were they there
25 when you did it?

1 A They actually came and looked at the videotape. And
2 up until both of you guys started questioning the
3 second tape that we thought we had given to you, I
4 thought that we had given it to someone from there.
5 It wasn't until we actually -- you guys started
6 questioning that we actually looked through our files
7 and found the disk.

8 Q And you said tape. You meant disk. Is that correct?

9 A Yes. Disk.

10 Q Because there's no tape?

11 A No. There's no tape.

12 Q It's all on that little disk?

13 A Yes, sir.

14 Q Like a CD or a DVD?

15 A Yes, sir.

16 Q And did somebody from the Sheriff's -- so, I mean,
17 and the hard drive is over at the corporate
18 headquarters, right?

19 A It is.

20 Q Now, were all the views that we talked about, could
21 you see those on the wall in the front, in the lobby
22 area that night, all the views, even --

23 A All of the parking lot cameras.

24 Q But not that one on the inside?

25 A No, sir.

- 1 Q Were there any others on the inside that night?
- 2 A There was just the one in the back and the one at the
- 3 front door area.
- 4 Q Okay. And so, no one from the Sheriff's Department
- 5 came and helped you with that technical process of
- 6 burning those?
- 7 A No. I mean, I've burned the CD's before.
- 8 Q Okay. And nobody came back and picked that CD up?
- 9 A No. I thought that they had. But not until we
- 10 started looking and we found the disk that we
- 11 realized they originally hadn't.
- 12 Q And one of the reasons you did that was because I
- 13 kept asking, did I not?
- 14 A Well, you and actually the Solicitor's Office asked.
- 15 Q But I came out there several times and said, if that
- 16 one records, why don't we have recordings of the rest
- 17 of them? Do you remember that, when I did that about
- 18 a month ago?
- 19 A Yeah, I remember. And we remembered making the
- 20 disks. Just apparently no one came and picked it
- 21 back up. But the Solicitor's Office also questioned
- 22 the second disk.
- 23 Q And you said this thing is kept for three months
- 24 before it records over again, right?
- 25 A Yeah. It's approximately three months.

1 Q So if the Sheriff's Department had picked that up in
2 January of '06 and seen that the back hall video was
3 not on it, they could have come back and asked you to
4 make another copy, right, with the hall video on it?

5 A Provided it was within that three months, yes.

6 Q Right. Well, three months would have been -- this
7 was January 29th, right?

8 A Yes.

9 Q February 29th, March 29th, April 29th?

10 A Yes, sir.

11 Q But nobody ever did that?

12 A No, sir.

13 Q And actually, when the disks were produced, it
14 wasn't -- it was because you called. You all found
15 it, right?

16 A Well, actually I was supposed to meet with Mr.
17 Meadors that morning.

18 Q Right.

19 A And Jerry and I got to talking, and I asked him to
20 look in his files.

21 Q And he found it?

22 A And he did.

23 Q Okay. Now, the front door -- I show you this. This
24 is a copy of one of the Solicitor's photographs
25 that's in evidence. I blew it up. It's a door.

1 **MR. MEADORS:** We have no objection if he wants
2 to admit that, Your Honor. We ask him to admit it
3 before he shows it.

4 **MR. HARPOOTLIAN:** Well, it's a copy of his
5 picture that's already in evidence.

6 **MR. MEADORS:** Your Honor, I'd like him to admit
7 it. If he wants to show that, it's his evidence. We
8 have no objection.

9 **THE COURT:** I'm not going to make him.

10 **MR. HARPOOTLIAN:** Thank you.

11 **Q** Do you recognize this door?

12 **A** Yes, sir.

13 **Q** Is this the camera that we're talking about that we
14 see camera number 4?

15 **A** I honestly don't know what numbers they are.

16 **Q** It's the one looking out?

17 **A** It's the one facing under the awning.

18 **Q** And is this where the bullet -- you saw the bullet
19 hole that night?

20 **A** I don't even think I looked at the bullet hole that
21 night. I was --

22 **Q** Did you ever look at it?

23 **A** I did after, after the fact.

24 **Q** And you had to have the door repaired, right?

25 **A** I don't think it was repairable. We replaced it

1 actually.

2 Q And how long -- this door -- it was a while before
3 you replaced it, right?

4 A It was a while.

5 Q And then the door was kept somewhere and then thrown
6 out. Is that right?

7 A It was probably kept in the dumpster and then thrown
8 out. But, yeah. We wouldn't have kept it inside.

9 Q But for some period of time after the shooting this
10 door was available for inspection?

11 A It was.

12 Q A month?

13 A Yeah. At least.

14 Q At least a month.

15 MR. MEADORS: Your Honor, could they mark that
16 at least?

17 THE COURT: Sure. I think you ought to mark it.
18 Yes, he ought to mark it.

19 MR. HARPOOTLIAN: I'll get a sticker rather than
20 drag it around if that's okay.

21 (WHEREUPON, Defendant's Exhibit No. 7 is marked
22 for identification.)

23 MR. HARPOOTLIAN: For I.D., right?

24 COURT REPORTER: Yes, sir.

25 MR. HARPOOTLIAN: Yeah. It's marked for

1 identification No. 7.

2 Q Now, you know, we've seen cameras on here, like
3 camera No. 12. Were there 12 cameras?

4 A No, sir.

5 Q You're sure of that?

6 A Yes, sir. It has the capability to have more
7 cameras. We just didn't have any additional ones
8 installed.

9 Q Okay. And could we have this again go back to about
10 12:01 in the lobby area for me, please. Thank you so
11 much. While he's putting that up, could you step
12 down here, please? Court's permission?

13 THE COURT: (Nods head affirmatively).

14 MR. HARPOOTLIAN: Thank you.

15 Q Okay. That's about right. Can you go back just a
16 little bit and play. Okay. This is the lobby area.
17 This area back in here, that looks back to that bar.
18 Is that right?

19 A Yes, sir.

20 Q Okay. And I think you -- now, is your office -- do
21 you have an office back here?

22 A There is an office.

23 Q But who uses that office?

24 A The managers did at the time.

25 Q Is the door kept open or closed?

- 1 A It's kept closed.
- 2 Q Okay. Do you know that gentleman who just came
- 3 forward?
- 4 A I don't believe so.
- 5 Q While we're looking at this, women, your dancers in
- 6 some places in the bar -- well, we'll get back to
- 7 that in a second. Who is that?
- 8 A That's Donnie Hawkins.
- 9 Q Okay. And at this point where are you?
- 10 A I'm right here. You see the cash register. Nicole
- 11 would be directly behind it and I would be to her
- 12 side.
- 13 Q And you're back over here 10, 12 feet away from the
- 14 monitors?
- 15 A Probably about ten feet.
- 16 Q Okay. And are women in this front bar -- I call it
- 17 the front bar area, not in the back -- were they
- 18 allowed to be undressed up there?
- 19 A Not completely nude.
- 20 Q But they can --
- 21 A We like them to be covered in that area.
- 22 Q Okay. But they can be topless for a table dance?
- 23 A No. There -- I think there were tables at the time,
- 24 but they would not have done any dances in that area.
- 25 Q Okay. Now, how loud is it in there on a Saturday

- 1 night?
- 2 A It can get pretty loud.
- 3 Q The music is very loud?
- 4 A Yeah. It's not overly loud where you can't hear
5 someone talking, but it is loud.
- 6 Q Now, when Mr. Herring came out, do you remember
7 seeing him escorted out?
- 8 A I do.
- 9 Q Do you remember him trying to walk into that office?
- 10 A At the time I didn't. But, you know, obviously now I
11 see.
- 12 Q You see it now in the video?
- 13 A Yeah.
- 14 Q Who was that that just walked by looking back?
- 15 A It looks like Carl Weeks.
- 16 Q Was that something frequent, that people walked into
17 the back, walked into the office? Or infrequent?
18 Did you ever see it happen before?
- 19 A No. Customers a lot of times would mistake that for
20 the front door area.
- 21 Q Okay. I'm sorry this is taking longer than I
22 thought. I probably should have had you start a
23 little farther up. Okay. That's you?
- 24 A It is.
- 25 Q You're going over to the door, right?

- 1 A Yes, sir.
- 2 Q And who is outside at this point?
- 3 A "Jon Jon".
- 4 Q What about Mr. Hawkins?
- 5 A Well, Mr. Hawkins is right there.
- 6 Q Stop that for one second. Who is that right there?
- 7 A She is a bartender or she was at the time.
- 8 Q What's her name?
- 9 A Jamie. I don't remember her last name right off the
- 10 top of my head.
- 11 Q Okay. Go ahead. Now, you all were watching that
- 12 video pretty astutely at that point. Mr. Hawkins
- 13 goes over there. Then you come back over here. And
- 14 you've got your back to the video?
- 15 A Yes, sir.
- 16 Q And you all were looking in the back. What's going
- 17 on back there?
- 18 A I'm honestly not sure what's going on back there.
- 19 Q Well, whatever was happening outside or by the door
- 20 obviously no longer concerns you. I mean, apparently
- 21 whatever is happening doesn't -- you or Mr. Hawkins.
- 22 I mean, you all are both -- until right then. Is
- 23 that right?
- 24 A Yes.
- 25 Q Go ahead and stop it. So, I guess -- you can go

1 ahead and take the stand again, please. Go ahead and
2 take the stand. I guess -- you can go ahead and turn
3 it off.

4 A And it could have been at that time maybe there was a
5 noise or something that would have distracted my
6 attention. I'm not sure exactly what was going on.

7 Q Okay. I'm sorry?

8 A I said and it could have been at that time maybe
9 there was a loud noise or something that distracted
10 my attention for a moment.

11 Q Okay. But it's clear that both you and Mr. Hawkins
12 are not looking towards the front door for some
13 period of time. I think it's about 15 seconds?

14 A Yeah. For a few seconds.

15 Q Prior -- 15. I think we've measured it. 15 seconds?

16 A Okay.

17 Q Prior to the shot, correct?

18 A Yes.

19 Q So you don't know what "Jon Jon" is doing. You don't
20 know where the door is. You don't know what's
21 happening at the door or what Mr. Johnson is doing
22 when the shot is fired?

23 A Well, from the seconds that my head is turned away,
24 obviously I can't --

25 Q Right. And I just want make that clear. For 10 or

1 15 seconds you're looking somewhere else?

2 A Yes, sir.

3 Q Okay. And you heard Mr. Herring say nothing that
4 night?

5 A Not that I remember.

6 Q Okay. Now, let me ask you a little bit. How long
7 have you been with -- can we go ahead and put this
8 down. I don't feel comfortable with the judge having
9 this in front of him without using it. How long did
10 you work at Chastity's prior to this? You still work
11 there. But how long have you been at Chastity's?

12 A Probably for about -- prior to this?

13 Q Prior to January 29th.

14 MR. MEADORS: Beg the Court's indulgence. Do
15 you want that off?

16 THE COURT: It's shining directly in my eyes.

17 MR. MEADORS: We'll turn it off.

18 THE COURT: Cover it.

19 Q How long had you worked there prior to January 29th
20 of '06?

21 A Probably about three years since it's been, you know,
22 over a year since it happened.

23 Q And you started as a bartender there?

24 A A bartender and a hostess.

25 Q And a hostess. And let's make this clear. You never

- 1 danced there, did you?
- 2 A No, sir.
- 3 Q Okay. Now, as a bartender and a hostess, did you go
- 4 back in the champagne room ever?
- 5 A No. I mean, I wouldn't have gone back there for
- 6 anything. I mean, I didn't dance. I mean, I might
- 7 have gone back there to clean up or, you know, pick
- 8 up cups and stuff like that.
- 9 Q What about as a bartender? You stayed to the bar?
- 10 A No. I mean, I could have went in the back and sold
- 11 shots or --
- 12 Q Go in the back and sold shots. Tell me what that
- 13 means?
- 14 A That's in the back room area. There are actually
- 15 shots you would serve customers.
- 16 Q Okay. And if we look at State's Exhibit No. 51, when
- 17 you say the back area, do you mean back here where it
- 18 says pole stage?
- 19 A Yes, sir. There are tables and chairs.
- 20 Q There's a bar up here?
- 21 A Mm-hmm (affirmative).
- 22 Q And then you take liquor back here and sell shots?
- 23 A Well, actually it was not liquor.
- 24 Q What was it?
- 25 A It was just juice and stuff.

- 1 Q Juice and --
- 2 A Juice, like juice and mixers and stuff. Sometimes
- 3 people put flask in them which I think tastes like
- 4 alcohol but it doesn't.
- 5 Q Well, who did they pay for those?
- 6 A They would pay me and I would pay the club.
- 7 Q So guys back at the pole stage are buying fruit juice
- 8 to drink?
- 9 A It was fruit juice. Sometimes flask was in it.
- 10 Q What?
- 11 A I think it's flask or flask. It tastes like liquor
- 12 but it's not.
- 13 Q So you're selling non-alcoholic beverages in the
- 14 back?
- 15 A Yes, sir.
- 16 Q Why? If a guy could get a drink at the bar,
- 17 alcoholic, why would he go to the back and have a
- 18 non-alcohol drink?
- 19 A Well, sometimes when customers were back there, they
- 20 were at the stage or they were sitting with a dancer,
- 21 sometimes they wouldn't want to get up and walk all
- 22 the way to the bar and come all the way back.
- 23 Q Why can't there be liquor in the back?
- 24 A I think it's illegal. I'm not sure.
- 25 Q Illegal?

- 1 A I'm not sure if it's illegal or not. I just know
2 that those were the rules.
- 3 Q Okay. Now, is it legal or illegal for the dancers to
4 be totally nude?
- 5 A That I do not know.
- 6 Q Are they totally nude?
- 7 A In the back? Yes.
- 8 Q Okay. Have you ever known them to dance and hold
9 their panties in one hand to put on if the police
10 came or SLED came?
- 11 A No.
- 12 Q Okay. Do you know anything about anybody ever saying
13 red alert or code red?
- 14 A Yeah. If there was a problem or there was a
15 situation, we would occasionally say that.
- 16 Q Now, back there in the champagne room, did people buy
17 champagne, or were they given complementary
18 champagne?
- 19 A They would buy champagne. I think at one time we
20 actually gave away like a complementary glass if you
21 purchased a room. But predominantly they had the
22 option to purchase champagne.
- 23 Q In January of '06, January 29th, 2006, was it
24 complementary or did you buy it?
- 25 A I honestly don't remember.

- 1 Q And tell me -- you're in management, right?
- 2 A Well, I'm not considered a manager. I work in the
- 3 corporate office, but --
- 4 Q Are you responsible for corporate policies, or do you
- 5 participate in those?
- 6 A Somewhat I do participate in them.
- 7 Q Let me see if I can ask you to look at some
- 8 documents, see if you've ever seen them before.
- 9 A Sure.
- 10 Q Have you ever seen that document before?
- 11 A Yes, I have.
- 12 Q Okay. Did you help prepare it?
- 13 A No, I did not.
- 14 Q Is it kept in the ordinary course of business at
- 15 Chastity's?
- 16 A It would have been kept in the manager's files, not
- 17 any file that I had.
- 18 Q Okay. But did you help produce this?
- 19 A No, sir, I did not.
- 20 Q When you say you're familiar with it, let me ask you
- 21 this. Have you seen it in the corporate office
- 22 before?
- 23 A No. Because we don't keep entertainer files in the
- 24 corporate office.
- 25 Q Okay. Have you seen it as part of your duties

1 working for Chastity's?

2 A I mean, it wasn't part of my duties to go over any
3 entertainment paperwork or anything like that. This
4 was part of the manager's responsibility.

5 Q Okay. What were the -- I mean, do you have -- who
6 would be responsible for the policies as to dances
7 and how all that works?

8 A The managers and the owner.

9 Q Mr. Britt?

10 A Yes, sir.

11 Q Okay. And the managers would be "Jon Jon"?

12 A "Jon Jon" would be one of the managers.

13 Q Now, did the managers -- the managers got paid a
14 salary?

15 A They did.

16 Q Did they get a percentage or tips or alcohol sales or
17 anything?

18 A Depends on the manager. Occasionally we hire people.
19 They get a percentage of sales. But at that time I
20 don't believe there was anybody that got a percentage
21 of sales.

22 Q What about tips? Do they get tipped by people?

23 A They may. They may get tipped by the girls. We have
24 no way to really know that.

25 Q And let me ask you this. The girls, when you say the

1 girls, the dancers, they're not employees at
2 Chastity's, are they?
3 A No, they're not.
4 Q As a matter of fact, when I asked for employment
5 records, you all sent me driver's license pictures?
6 A Yes, sir. That's --
7 Q And that's the only record you have on them; isn't
8 it?
9 A Yes, sir, it is.
10 Q A copy of their driver's license?
11 A Yes, sir. And their stage name.
12 Q And their stage name. And am I correct in that they
13 pay you; that is, Chastity's, the girls?
14 A Yes, they do.
15 Q Tell the jury how that works, what the financial
16 relationship is between a dancer --
17 A At the time, then or now?
18 Q Then.
19 A I believe it was they paid for a dance. In the past
20 we've had like a tip out depending on exactly what
21 time you come in. They basically pay to use the
22 facilities.
23 Q So they come in. You give them a dressing room where
24 they can change clothes, right?
25 A Yes.

1 Q And then if they get up on stage and dance, they pay
2 X number of dollars for a dance?

3 A No. Anything that they would have made on stage
4 would be theirs to keep. Only if they actually sold
5 a couch dance or a champagne room did we receive a
6 fee.

7 Q Ah. So dancing on one of these stages here or out in
8 the public areas, you don't get a piece of the
9 action?

10 A No, sir.

11 Q If they go back to the champagne room or the VIP room
12 for a lap dance, and that's what they do back there,
13 right?

14 A Yes, sir.

15 Q Then they you would get -- when I say you, I mean the
16 company you work for.

17 A Yes, sir.

18 Q Not you personally. But you would get a percentage
19 or a fee for them doing that?

20 A A fee.

21 Q A fee. And back in January of '06, what was the fee
22 to go into the VIP room that you all took? Do you
23 remember?

24 A It would have been depending on how long you actually
25 got the champagne room for.

- 1 Q Well, I'm talking about first the VIP room.
- 2 A Okay. The couch room.
- 3 Q Well, let me show you --
- 4 A Which has the VIP room sign over it. But it's a
- 5 couch room. Anywhere --
- 6 Q Well, if you look straight back, there's a thing that
- 7 says VIP room in neon, right?
- 8 A Yes. Are you talking about the smaller rooms or the
- 9 larger ones?
- 10 Q I'm talking about this one back here.
- 11 A Okay.
- 12 Q Not these. Not the champagne room, but the VIP room.
- 13 A I believe at the time it was 5 or \$10 per dance
- 14 depending on when you worked.
- 15 Q Okay. What about the champagne room?
- 16 A It was anywhere from 30 to \$65.
- 17 Q And 30 to 65, what was the variation there?
- 18 A 15 minutes and 30 minutes.
- 19 Q Okay. And were the dancers given rules?
- 20 A Obviously those rules that you just showed me are the
- 21 rules that were actually -- they should have gone
- 22 over those whenever the new dancers start.
- 23 Q And who was responsible for reviewing those with
- 24 them?
- 25 A The managers.

- 1 Q Okay. Now, was Carl Weeks a manager?
- 2 A At the time, no.
- 3 Q Is he now?
- 4 A No. He does not work for us now.
- 5 Q But did he become a manager?
- 6 A He did.
- 7 Q Okay. Now, were the girls supposed to have sex back
- 8 in the champagne room?
- 9 A No.
- 10 Q Okay.
- 11 A No, sir.
- 12 Q They were not?
- 13 A (Shakes head negatively).
- 14 Q But were they allowed to have lap dances?
- 15 A Yes, sir.
- 16 Q And tell the jury what a lap dance is?
- 17 A Basically a girl dances for you.
- 18 Q But is the girl sitting in your lap?
- 19 A I guess she could be. I'm not real sure.
- 20 Q Okay. Now, Ms. Koon, you have worked there for how
- 21 long?
- 22 A I have worked there for a while now.
- 23 Q And you're not aware of whether the women actually --
- 24 A It would actually -- Mr. Harpootlian, it would depend
- 25 on the entertainer.

- 1 Q But some entertainers --
- 2 A Could possibly sit on a customer's lap, yes.
- 3 Q Could possibly sit in the customer's lap and dance?
- 4 A Yes, sir.
- 5 Q While she is naked?
- 6 A Yes, sir.
- 7 Q And during your years there, have you ever -- has it
- 8 been reported to you in management that a dancer,
- 9 entertainer, girl had any sort of sex with a
- 10 customer?
- 11 A I've never heard of anyone having sex with a
- 12 customer, no.
- 13 Q There is no sex in the champagne room?
- 14 A No, sir. We don't allow sex in the champagne room.
- 15 Q Well, I understand you don't allow it. But no one
- 16 has ever broken that rule and --
- 17 MR. MEADORS: Your Honor. Objection. Asked and
- 18 answered.
- 19 THE COURT: Move on.
- 20 Q It's never been reported to you?
- 21 A No. It's never been reported to me.
- 22 Q Now, this night you indicated that Mr. Herring was
- 23 led out. He was found naked in the champagne room,
- 24 right?
- 25 A Yes, sir. That's what Carl Weeks told me.

- 1 Q That was pretty bizarre?
- 2 A Yes. It was very out of the ordinary.
- 3 Q Very bizarre behavior?
- 4 A Yes, sir.
- 5 Q And we see in the video, and I won't show it again,
- 6 but Carl is standing there talking to you. You were
- 7 laughing about it minutes before John got shot. Do
- 8 you remember that?
- 9 A Yes, sir.
- 10 Q You thought it was pretty funny?
- 11 A Well, we thought it was ridiculous.
- 12 Q Ridiculous?
- 13 A Yes.
- 14 Q Bizarre?
- 15 A Yes.
- 16 Q Weird?
- 17 A Strange.
- 18 Q Unprecedented?
- 19 A Yes.
- 20 Q All of that?
- 21 A Yes.
- 22 Q Okay. Now, have you ever received information or
- 23 heard there were drugs being used, like cocaine, by
- 24 the dancers? Have you ever heard of that?
- 25 A I have heard.

1 Q Have you ever heard of cocaine being done in your
2 establishment by the dancers, lines being snorted
3 back in the dressing area?

4 A No. I've heard rumors. I have never seen anything
5 firsthand. But generally speaking, if we even have
6 the slightest knowledge that someone is doing drugs,
7 we do try to get rid of them.

8 Q Okay. And the girls now, when they're coming out to
9 chat up the customers when they come into the bar,
10 you encourage them to get the customer to buy them a
11 drink, right?

12 A We don't encourage. I mean, most of the girls, you
13 know, like the customers to buy them drinks. But we
14 don't have a set quota or force them to make the
15 customers buy drinks or anything.

16 Q No. But you encourage them to get the customers to
17 spend money. Isn't that what they're supposed to be
18 doing?

19 A Yes. We do encourage them to spend money.

20 Q There's basically two things to spend money on,
21 right? The girls and alcohol?

22 A That is correct.

23 Q So you're encouraging them to spend money. You're
24 encouraging the girls to have them spend money on
25 either buying them drinks or having drinks themselves

1 or going back to the champagne room or to the VIP
2 room?

3 A Yes, sir.

4 Q Okay. And that's how you make money; that is,
5 Chastity's?

6 A Yes, sir.

7 Q Because if they don't buy the alcohol or don't buy
8 the girls, the dances with the girls, you don't make
9 any money?

10 A Yes, sir.

11 Q I mean, you've got a \$10, \$20 entry fee?

12 A Yeah. We sell admission and we charge \$2.50 for a
13 soda. So if you're not drinking, you're going to
14 spend money anyway.

15 Q And at some point you all sold costumes, too, didn't
16 you?

17 A We did not sell costumes. Occasionally people would
18 come in and sell costumes.

19 Q I'm talking about, could customers buy a specific
20 costume for their dancer to dress up in?

21 A Customers could if we had someone there to sell
22 costumes. It wasn't a service that we provided. But
23 occasionally an outside person would come in and sell
24 costumes.

25 Q Did they pay you a commission to do that?

1 A Yes.

2 Q Okay. So if I was in there -- which I'm not -- and I
3 was sitting seated at the bar and a young lady came
4 over to me and said do you want a dance and, you
5 know, I can dress up as a school girl or -- you all
6 sold school girl costumes -- or they sold costumes in
7 which dancers could dress up, dress up like a school
8 girl, right?

9 A Yeah. Different costumes.

10 Q Any other kind of costumes?

11 A I mean, skirts, bikinis. I mean, pretty much any
12 type of costume. I'm not sure, I mean, the exact
13 costumes.

14 Q Okay. And as those people sold those -- I think some
15 of them were \$100 to a customer?

16 A They can be very expensive.

17 Q And then the dancer would change into that costume
18 and go back in the champagne room with them?

19 A She could.

20 Q But it could happen? I mean, it has happened?

21 A It could happen.

22 MR. MEADORS: Objection.

23 Q Has it happened? That was what was supposed to
24 happen, right?

25 THE COURT: Mr. Harpootlian.

1 **MR. HARPOOTLIAN:** I'm sorry, Your Honor.

2 **THE COURT:** There's an objection on the floor.

3 **MR. HARPOOTLIAN:** I apologize.

4 **THE COURT:** And I assume it's as to relevance.

5 **MR. MEADORS:** Relevance.

6 **THE COURT:** Relevance. I think we're getting
7 pretty far afield, but I'll allow it.

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

9 **Q** So again, the process there is to get the customer
10 there to spend as much money as possible, correct?

11 **A** Yes.

12 **Q** Now, have you ever had a customer to your knowledge
13 complain that they paid for something in the
14 champagne room or they paid for a lap dance and
15 didn't get it?

16 **A** Yes. Occasionally that's happened.

17 **Q** Okay. And who sorts that out? You or the manager?

18 **A** The manager would sort that out.

19 **Q** But you've had complaints that a dancer would take
20 money from a customer, leave him in the champagne
21 room and not give him a champagne dance. Isn't that
22 right?

23 **A** No. I mean, occasionally, if a customer does
24 something inappropriate, the girl will come out of
25 the room and the dance is interrupted.

- 1 Q Now, inappropriate is touching?
- 2 A Anything inappropriate. We don't -- we never allow
- 3 touching or anything.
- 4 Q Okay. But the dancer is allowed to sit in the
- 5 customer's lap nude?
- 6 A Yes.
- 7 Q And dance on his lap?
- 8 A Yes. She could.
- 9 Q And that is allowed?
- 10 A Yes. We do allow that.
- 11 Q Okay. Oh, here it is. Did you participate in
- 12 putting together with Mr. Britt, putting together
- 13 some documents that were these documents that I've
- 14 showed you to ship to us?
- 15 A I don't know if that was in the documents. I did
- 16 help some, and we had someone come in and copy
- 17 things. I don't remember that being there.
- 18 Q Well, who was the person who put this together who
- 19 could say what was in it and what wasn't in it?
- 20 A I'm not sure about this. But I made some of the
- 21 copies of the employee files and the dancer I.D.'s
- 22 and the driver's license.
- 23 Q And these items would have been in dancer files?
- 24 A We didn't have any dancer files. The only thing we
- 25 had was a binder with a copy of their driver's

1 license and their stage name.

2 Q But would they have to sign off on like the new
3 entertainer checklist?

4 A It really depends on the manager.

5 Q I guess what I'm trying to say is, we received these
6 from you all. Who can I call to the stand to
7 authenticate I got them from you all?

8 A I mean, this is a document. But it's not something
9 that we keep over in the corporate office and it's
10 not something that I had a hand in putting together.

11 Q When Mr. Heizer sent these over to me, who put it
12 together for us?

13 A Myself and an assistant came in to help me.

14 Q Okay. But I guess what I'm trying to get out of you
15 is, are these copies documents that you all sent over
16 to us?

17 A Yeah. I'm not sure that we sent --

18 MR. MEADORS: Objection. That's not what he
19 asked her. That's not where he's going. If he wants
20 to enter something in evidence, he can't testify off
21 of it or ask questions unless it's --

22 MR. HARPOOTLIAN: Well, I'm trying to
23 authenticate it before I introduce it.

24 MR. MEADORS: She said she didn't put them
25 together.

1 **THE COURT:** She said she had something to do
2 with it. Let's try to find out.

3 **MR. HARPOOTLIAN:** I'm just trying to find out,
4 Judge.

5 **THE COURT:** Ask her straightforward questions.
6 Don't comment --

7 **MR. HARPOOTLIAN:** Right.

8 **THE COURT:** -- on where you got it.

9 **Q** Are these part of the documents that you shipped to
10 us that I then copied and gave to the solicitor a
11 copy of these?

12 **A** Now, the memos I recognize. And this is a document
13 from Chastity's, but I'm not sure that it was in the
14 information that we gave you.

15 **Q** Okay. Here. Okay. And this one. Okay?

16 **A** Okay.

17 **Q** So, can you tell us those are documents that came
18 from Chastity's that are kept in the ordinary course
19 of business?

20 **A** Yes.

21 **Q** Okay. I'd like them marked for identification.

22 **MR. MEADORS:** Your Honor, he can mark them, but
23 he cannot ask questions off of it unless he enters
24 it.

25 **MR. HARPOOTLIAN:** I haven't done that.

1 **THE COURT:** He can mark them.

2 **MR. HARPOOTLIAN:** Thank you.

3 (WHEREUPON, Defendant's Exhibit No. 8 is marked
4 for identification.)

5 **MR. MEADORS:** And we'd like to see it also.

6 **MR. HARPOOTLIAN:** As soon as they're marked I'll
7 give you a copy. Thank you.

8 (WHEREUPON, Defendant's Exhibit No. 9 is marked
9 for identification.)

10 (WHEREUPON, Defendant's Exhibit No. 10 is marked
11 for identification.)

12 **Q** I think I'm almost done, but let me ask a few
13 questions here. Do you remember anyone else ever
14 being escorted out?

15 **A** Yes. We've had customers that have had to leave
16 before.

17 **Q** Routine? Does it happen every night? Does it happen
18 once a month? Does it happen once a year? Does it
19 happen every six months?

20 **A** Occasionally.

21 **Q** Occasionally. Can you quantify that for me, if you
22 can? Is it once a week?

23 **A** I don't spend a whole lot of time in the club
24 nextdoor. So, I mean, I couldn't tell you how often
25 that it happens. I mean, but I have been in there on

1 occasion and seen people escorted out.

2 Q Thank you, Ms. Koon.

3 A Thank you.

4 THE COURT: Redirect?

5 MR. MEADORS: Just very briefly.

6 REDIRECT EXAMINATION

7 BY MR. MEADORS

8 Q Did either I or Investigator O'Neill or another
9 representative from the Solicitor's Office come out
10 to your place and inquire about these other camera
11 views in the last couple of weeks?

12 A Yes.

13 MR. HARPOOTLIAN: Objection. Leading.

14 MR. MEADORS: If we're going to start objecting
15 both ways, that's fine.

16 Q Do you remember, did we come out there?

17 A Yes, you did.

18 Q And did we ask for these other views also?

19 A Yes, you did.

20 Q And you all ultimately found them in that secured
21 office, correct?

22 A We did.

23 Q And those are the camera views that aren't --

24 MR. HARPOOTLIAN: Your Honor, objection.

25 THE COURT: Mr. Meadors, just rephrase the

1 question. That's the easy way to do it.

2 MR. MEADORS: Yes, sir.

3 Q Were those the camera views -- I'm not leading you.
4 You can have a yes or no with me not leading you.
5 Okay?

6 A I understand.

7 Q Were those the camera views that you produced at the
8 officer's request that were available at Chastity's
9 and put them on a disk?

10 A I put --

11 Q Downloaded them?

12 A The camera that -- they looked at several cameras
13 there, and I did put them on the disk. I'm not sure
14 if they actually pointed out the specific cameras or
15 I just made the disk for them.

16 Q You downloaded them from the hard drive?

17 A I did download them from the hard drive. Yes, I did.

18 Q The cameras, correct?

19 A Yes, sir.

20 Q And they just weren't picked up until last week,
21 correct?

22 A Yes. When we found them.

23 Q Thank you.

24 MR. HARPOOTLIAN: Just one further question.

25 RECROSS EXAMINATION

1 BY MR. HARPOOTLIAN

2 Q But the hard drive, they didn't ask for your hard
3 drive, correct?

4 A No, they did not.

5 Q They did not come out -- it was three months before
6 that hard drive was copied over. At any point during
7 that three months that hard drive would have been
8 available to the Richland County Sheriff's
9 Department. You would have let them have it if they
10 needed it to examine, right?

11 A Yes, sir.

12 Q Thank you.

13 THE COURT: All right, ma'am. You may come
14 down. Thank you very much. Any objection to
15 excusing this witness?

16 MR. HARPOOTLIAN: None, Your Honor.

17 THE COURT: Ma'am, you're free to go. Thank you
18 very much. All right, ladies and gentlemen of the
19 jury, let's take our lunch break now. I ask you to
20 be back in the jury room at 2:15. It's just a little
21 after 1. 2:15. All right. Don't discuss the case
22 among yourselves when you return to the jury room or
23 with anyone else over the afternoon hours, over the
24 lunch hour.

25 (Jury out at 1:08 p.m.)

1 **THE COURT:** We'll stand at ease until 2:15.
2 Counsel, let me just see you for just one second,
3 scheduling purposes.

4 **MR. HARPOOTLIAN:** Sir?

5 **THE COURT:** Scheduling purposes.

6 **MR. HARPOOTLIAN:** Oh, Your Honor. I'm sorry.

7 (Whereupon, a bench conference is had)

8 (Whereupon, a lunch break is taken)

9 **THE COURT:** Counsel..

10 **MR. HARPOOTLIAN:** Sir?

11 **THE COURT:** Let me see you a minute.

12 (Whereupon, a bench conference is had)

13 **THE COURT:** All right.. The State ready to
14 proceed?

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

16 **THE COURT:** Defense ready to proceed?

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

18 **THE COURT:** Mr. Harpootlian, it's my
19 understanding that you had or will have a motion with
20 regard to certain testimony of the next witness. Is
21 that correct?

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

23 **THE COURT:** That deals with the manager. And
24 I'm not sure about the facts. But as I understand
25 the facts, a manager saw the car drive away.

1 **MR. HARPOOTLIAN:** Right.

2 **THE COURT:** And either wrote down or called with
3 a cellphone somebody on the inside, at which time
4 that person transcribed the license plate number of
5 the defendant's car. And you took the position or at
6 least indicated earlier that you would take the
7 position that that's hearsay.

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

9 **THE COURT:** And inadmissible.

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

11 **THE COURT:** Is that your position?

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

13 **THE COURT:** All right.

14 **MR. HARPOOTLIAN:** And we filed with the court my
15 memorandum.

16 **THE COURT:** I've read your memorandum.

17 **MR. HARPOOTLIAN:** Under State v. Pressler.

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

19 **MR. HARPOOTLIAN:** And we would take the position
20 it's not a present sense impression.

21 **THE COURT:** All right. Does the State have a
22 position?

23 **MR. MEADORS:** Your Honor, the State would think
24 under present sense impression, it's not hearsay.

25 **THE COURT:** All right. I believe I would rule,

1 if those were the facts, that it is a present sense
2 impression exception number one to the hearsay rule,
3 803(1).

4 **MR. HARPOOTLIAN:** Yes, Your Honor. I have it.
5 We understand those are what the facts are going to
6 be. Of course the guy has never been willing to talk
7 to me. So I don't know what he's going to say.

8 **THE COURT:** Call your -- I'm sorry. Bring the
9 jury.

10 (Jury in at 2:20 p.m.)

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

12 **THE COURT:** Thank you very much. I hope you had
13 a pleasant lunch, ladies and gentlemen. We're ready
14 to continue with the trial. Solicitor, call your
15 next witness.

16 **MR. MEADORS:** If it please, Your Honor. The
17 State would call Carl Weeks.

18 **CARLISLE R. WEEKS,** after being duly sworn,
19 testifies as follows:

20 **THE CLERK:** Thank you. Please have a seat in
21 the witness stand and state your full name for the
22 record.

23 **WITNESS:** My name is Carlisle R. Weeks.

24 **DIRECT EXAMINATION**

25 **BY MR. MEADORS**

1 Q Good afternoon, Mr. Weeks.

2 A (Nods head affirmatively).

3 Q You maybe have a strong enough voice, but if you

4 will, just speak into the mike as best you can.

5 A Okay. Thank you.

6 Q Mr. Weeks, please tell these ladies and gentlemen of

7 the jury briefly about you. Where were you born?

8 A I was born in Plymouth, New Hampshire, and was raised

9 in Wentworth, New Hampshire which is around Franconia

10 Notch which is around the White Mountains of New

11 Hampshire.

12 Q And where did you go to high school?

13 A I went to high school at Plymouth Area High.

14 Q And when did you get through with high school?

15 A In 1979.

16 Q You don't need to move. If you'd go this way some,

17 I'll just move this over this way. After high school

18 tell them what you did. Just tell them about your

19 life.

20 A After high school I went to work as a painter. I

21 decided it was something that I really wanted to do.

22 So I got trained and was very good at it, ended up

23 starting my own business. And I was a

24 renovation/restoration paint contractor for the next

25 20 plus years.

- 1 Q Were you in the military?
- 2 A I was in the military, yes.
- 3 Q Were you at Fort Knox?
- 4 A Was at Fort Knox, Kentucky. Yes, sir.
- 5 Q How long were you in the military?
- 6 A I was in the military three years.
- 7 Q Did you have any other jobs prior to becoming a
- 8 painter, manufacturing or --
- 9 A I worked at -- when I got out of the military and
- 10 came home, I worked at a place called Hitcher
- 11 Manufacturing in Plymouth, New Hampshire. We made
- 12 aircraft engines.
- 13 Q And after that what did you do?
- 14 A I met a girl from North Carolina who was taking care
- 15 of my great aunt. And her and I ended up being sweet
- 16 on each other. She left and came to North Carolina.
- 17 So in about two to three weeks after that she asked
- 18 me to come down. So I came. I've been in the south
- 19 ever since.
- 20 Q When did you get to South Carolina or the south? You
- 21 came to North Carolina first.
- 22 A I came to North Carolina first. I came to South
- 23 Carolina back in '99. It was 1999.
- 24 Q And were you painting at this point?
- 25 A Yes, sir, I was.

1 Q Did there come a point where you decided to get out
2 of that business?

3 A Yes. I had just -- I had decided that I did not want
4 to paint renovation/restoration any more. I was
5 tired of jacking houses out, tearing walls out, then
6 decided to take some time off and think about what I
7 wanted to do. My finance decided -- or didn't
8 decide. She suggested I go to work as a floorman
9 which some people call a bouncer; some people call a
10 cooler.

11 Q What's that last name? Some people call it what?

12 A A cooler.

13 Q A cooler?

14 A Yes, sir. I thought about the idea for a little bit
15 and I decided it might be a good idea. She said,
16 you're good with people. You're pleasant. People
17 like you. She said, you'd probably do a real good
18 job.

19 MR. HARPOOTLIAN: Your Honor, I would object to
20 the hearsay.

21 MR. MEADORS: We'll just go to his next --

22 MR. HARPOOTLIAN: It's also self serving also.

23 THE COURT: I understand. I'm going to allow
24 it. Go ahead.

25 Q You left from the painting industry into the --

- 1 A The adult entertainment industry, yes.
- 2 Q And some of your different jobs leading up to
- 3 Chastity's, where did you work?
- 4 A I worked as a lot man first at Heartbreakers, was
- 5 quickly taken off the lot and promoted to the doorman
- 6 where I would greet all the customers that would come
- 7 in, was promoted from there to floorman inside and
- 8 then from floorman to champagne host in the span of
- 9 about I'd say four to six months.
- 10 Q And how long were you at Heartbreakers?
- 11 A I was at Heartbreakers almost a year.
- 12 Q When did you meet John Johnson?
- 13 A Johnny used to come in when I worked the door at
- 14 Heartbreakers. He'd come in and he'd always stop and
- 15 talk to me at the door and shake my hand and ask me,
- 16 you know, he says you're really good with people; why
- 17 don't you come up to Chastity's and work for me? He
- 18 tried for close to a year to get me to come work for
- 19 him.
- 20 Q So is that how you ended up going to work at
- 21 Chastity's?
- 22 A Yes, sir, it is.
- 23 Q As a result of meeting "Jon Jon"?
- 24 A Yes, sir.
- 25 Q And, Mr. Johnson, when did you start, as best can you

1 remember, at Chastity's?

2 A I think it was like the end of October, beginning of
3 November of '05.

4 Q The end of October, November '05?

5 A I can't be certain, but it was somewhere in that
6 time.

7 Q And what was your job when you first started working
8 there?

9 A When I first started working there, "Jon Jon" hired
10 me as training for the back room or what they call a
11 pit boss.

12 Q Okay. And what does that mean to be a pit boss?

13 A You run the back half of the club. You make sure the
14 entertainers get on stage. You make sure customers
15 are behaving themselves, they're keeping their hands
16 to themselves, they're not reaching and grabbing for
17 the girls that are on the main stage or in the VIP
18 room. You check the champagne room, make sure that
19 they're behaving themselves back there. Also
20 customers that come in, preferential customers that
21 come in, which we had quite a bit of, make sure that
22 they are served, they're taken care of it. It's
23 just -- mainly it's about customer service.

24 Q And did you have any other jobs, or were you
25 promoted, or did you get any other jobs at Chastity's

1 after pit boss?

2 A I had trained for pit boss for about two weeks and
3 then I was given the position because of my numbers,
4 I was given the position because I was allowed to do
5 the job three nights in a row and my numbers far
6 exceeded or the money that I made in the back room
7 for the company far exceeded what had been the norm
8 for that company. I doubled and tripled the numbers
9 back there because I was pretty good in sales.

10 Q So what did you start doing after pit boss?

11 A I was training for -- John was training me for
12 assistant manager. And when that took place I had
13 got him to bring a friend of mine called Kamall Nunez
14 and train him as a pit boss. He had worked in Hawaii
15 as a floorman when he was in the military. I figured
16 he'd do real well at it. So I brought him in. John
17 hired him. I was training him while John was
18 training me for management. He'd have me pull the
19 liquor orders at night, restock the beer coolers up
20 front. We really didn't get into much of the
21 paperwork. I mean, he had only been training me for
22 about a week before he was shot.

23 Q And this fellow named Kamall you said --

24 A Yes, sir.

25 Q -- was coming in to take your place?

1 A Yes, sir. He was being trained to take my place.

2 Q So in January of 2006, and specifically January 28th
3 of 2006, who was the manager?

4 A "Jon Jon" was the manager.

5 Q Now, do you remember this day, why we're here?

6 A Yes, I do. How could I forget it?

7 Q What time -- before we get to that day, did you have
8 any regular working hours? I mean, you know, January
9 prior to this day, did you have a certain --

10 A Usually --

11 Q -- schedule?

12 A -- on schedule, usually I was scheduled to come in
13 about 6:30. But I'd always come in about 5:30 to
14 help them pull the bar, to pull the credit card
15 receipts from the bar because it just makes it a lot
16 easier transition when you're changing shift if
17 you've got somebody helping. You count down your
18 liquor, count down your beer, pull your credit card
19 machines and have it all ready for the manager so he
20 could do his paperwork. It just makes shift change a
21 lot quicker.

22 Q Okay. On January 28th of 2006, Mr. Weeks, what time
23 did you come to work?

24 A I think I got there about 5:30, quarter to 6, which
25 is about the time that I always came.

1 Q And your job that night was what?

2 A Was pit boss.

3 Q And was there a -- tell me about -- I'm going to get

4 you to come down in a minute and look at this. But

5 pit boss, again referring to State's 51, and if you

6 can just, just so everybody can --

7 A Sure.

8 Q Okay. Where is the pit?

9 A This area right here is the pit. This is called the

10 pit.

11 Q And so you're basically in charge of this as the pit

12 boss?

13 A Yes, sir.

14 Q All right. Was alcohol allowed back in here?

15 A Beer, wine and champagne only.

16 Q Liquor?

17 A Absolutely not.

18 Q And so your role as a pit boss, and specifically this

19 night as the pit boss, January 28th, 2006 was to do

20 what back here? Show the jury.

21 A My role this night was to make sure the entertainers

22 made the stage when they were called by the DJ.

23 First and foremost my role as a pit boss was protect

24 the entertainers and protect my customers. That was

25 my main job function.

1 My other duties included serving any guests that
2 I had up here, making sure that the tease tables
3 around the room were clear. We didn't want any beer
4 bottles falling. We didn't want any broken glass.
5 And nobody likes a nasty table. Walk in the VIP
6 rooms here, make sure the gentlemen are behaving
7 themselves when the girls were dancing, check in any
8 champagne rooms if there's girls, checking on the
9 girls, checking on the customers in the champagne
10 room, making sure everything is up to snuff in there
11 as well.

12 Q So you're kind of floating in this whole area?

13 A Yes, sir.

14 Q Now, you said that there's special customers. Did
15 you have any special customers there that night?

16 A I did. I had a couple of gentlemen that came up
17 regularly from Atlanta. And they would -- every time
18 they'd come up, it was just their getting away place
19 away from their home town, from the job. They had
20 very stressful jobs. And their thing is they'd come
21 up, they'd buy a couple of bottles of champagne.
22 They'd sit up in the VIP area where those tables are
23 and have a couple of ladies sit with them and just
24 relax and unwind and drink their champagne.

25 Q Where were they sitting? Don't get up.

1 A They were sitting right here. They were sitting at
2 this table right here. At the time these weren't
3 tables. There was a couch here and a couch here and
4 a coffee table in the middle right here. And they
5 had both couches occupied.

6 Q So you made sure that they just got what they needed
7 when they needed it?

8 A Absolutely. I made sure their champagne was poured
9 and the ladies' champagne was poured. That was part
10 of my job description. If I --

11 Q These folks tipped well?

12 A They tipped very well.

13 Q In addition to that, was there anything else going on
14 there that night in the club?

15 A We'd had one of the entertainers come up to me and
16 she said, I've got a champagne room. She said I'm
17 going to take him back.

18 Q No. Prior to that.

19 A Prior to that.

20 Q Was V-2 folks there that night?

21 A Oh, my God, yes. Our club was just -- we were
22 slammed with V-2, the editors, the writers.

23 Q What's V-2?

24 A V-2, it's a magazine for a lot of business.
25 Entertainment business is advertised in V-2 Magazine.

1 Q So V-2 Magazine promotes or shows off --
2 A Yes.
3 Q -- adult entertainment? Is that first to say?
4 A V-2 Magazine promotes adult entertainment.
5 Q And was there a function there that night for V-2
6 employees or somebody from V-2?
7 A Yes, there was.
8 Q Can you describe the crowd; and, I mean, as in
9 numbers that evening?
10 A We probably had somewhere in the neighborhood of
11 about 100 people in there that night. We had quite a
12 few folks.
13 Q And I think it's been testified to. But what's the
14 cover charge? Or what was the cover charge that
15 night?
16 A The cover charge that night was \$10.
17 Q And what do the price of drinks range from?
18 A They range anywheres (sic) from \$2 to \$2.50 a beer
19 depending on what kind of beer you get up to; I mean,
20 you start getting exotic with the drinks, you can go
21 upwards of 10, 12, \$14 for drinks.
22 Q Now, did Kamall stay the whole night?
23 A Yes, sir, he did.
24 Q Now, part of being pit boss, how often would you go
25 to the VIP room or the champagne room as is depicted

1 on State's 51 --

2 A Usually --

3 Q -- during the course of a night? And why would you
4 go there?

5 A In the course of the night, probably three to four,
6 five hundred times a night.

7 Q And why were you going to either the VIP room and/or
8 the champagne room?

9 A My main job when there are people, customers and
10 entertainers in the VIP room and the champagne room
11 is to make sure the customers aren't exposing
12 themselves and they're keeping their hands to
13 themselves and they're not trying to get rough with
14 the girls.

15 Q Now, if one were to go to the champagne room, how
16 much would the fee be?

17 A It depends on how long you're going to go. If you're
18 going to go for 15 minutes, I think it was \$115. If
19 you're going to go for a half hour, it was 265.

20 Q And of that how much would go to the house.

21 A Of the 115, 30 would go to the house.

22 Q And of the --

23 A The 265, 65 would go to the house.

24 Q And who would collect that money?

25 A I would collect that money.

1 Q From the VIP room and the champagne room?

2 A Yes.

3 Q Do you know Ms. Renisha Grainger?

4 A Yes, I do.

5 Q Was she there that night working?

6 A Yes, she was.

7 Q Did she ever pay you for a champagne room that night?

8 A Yes, she did.

9 Q How much did she pay you?

10 A She gave me \$65. She just come up to me and she
11 said, I have a champagne room with this gentleman.
12 And she handed me \$65. So I wrote it down.

13 Q And did that person go back to the champagne room?

14 A She took him back there, and a couple of minutes
15 later she came out and she looked at me and she said,
16 I want to --

17 MR. HARPOOTLIAN: Objection, Your Honor.

18 MR. MEADORS: Your Honor, she's already
19 testified, been subject to extensive cross
20 examination. I don't know how that could be --

21 THE COURT: Just say that again.

22 MR. HARPOOTLIAN: I withdraw the objection.

23 THE COURT: All right.

24 Q Go ahead.

25 A She came out a couple of minutes, a minute and a

1 half, two minutes later. She came out and she said,
2 I want to go freshen up, because she had just come
3 down off the main stage, so she was sweaty. That's
4 not uncommon for the girls to go back and to get the
5 sweat off her and wipe down.

6 Q And do you check on all customers back in there?

7 A Absolutely.

8 Q Is that fair? At some point did you go back in
9 the -- one of the champagne rooms? And before I let
10 you know, I think we've got a picture in a minute.
11 But if you're looking back towards this way from
12 outside where it says office and storage, can you see
13 back into the champagne room?

14 A No, sir, you cannot.

15 Q So how many rooms are actually in what's called this
16 champagne area?

17 A The champagne area has four rooms.

18 Q As a matter of fact, if you were standing right here,
19 could you actually see back in this area if you're
20 standing out here in the hall?

21 A The hall, no. If you were standing right here, you
22 could see them. There's a mirror on each one of
23 these walls for the simple reason so the floorman can
24 actually see what's going on at the couch.

25 Q Standing here. But out anywhere in here, you could

1 not see back in this champagne room area?

2 A No, sir.

3 Q What, if anything, is -- you know, there's nothing
4 here. But what, if anything, is between the doorway?
5 If I was going in the champagne room that night,
6 would I have to go through anything to get in there?

7 A There were some clear beads in front of all the
8 champagne door booths.

9 Q And what's in furniture-wise in the champagne room?

10 A There's a couch, an end table, a candle and an
11 ashtray and a mirror.

12 Q And looking into -- well, looking at State's 49, it's
13 actually where I just asked you to look into, can you
14 see into any of the rooms from where this picture was
15 taken?

16 A Actually not.

17 Q And back here on the back left if you're looking at
18 the picture, was that the champagne room that
19 Ms. Grainger took Dewain Herring?

20 A Yes, sir, it was.

21 Q And to be more specific, State's 50, is that the
22 room?

23 A Yes, it is.

24 Q And what's that in there?

25 A That's the couch.

1 Q And what's this over here?

2 A A nightstand and a candle.

3 Q Could it also be a table?

4 A Yeah.

5 Q Did you ever have an occasion to go back into that
6 blue room, Mr. Weeks?

7 A Yes, I did.

8 Q Tell these folks why you did that?

9 A It was customary to go back and check on anyone
10 that's in the champagne room. I had made my rounds
11 out there taking care of my customers, customers of
12 the VIP, and I just --

13 Q If you would slow down a little bit. I'm sorry.

14 A Okay. I had made my rounds, cleaned off a few
15 tables, checked on my customers, my personal
16 customers that were sitting in the VIP, champagne,
17 poured them each another glass, got down, walked to
18 the champagne room. When I walked back to the
19 champagne room, I observed Mr. Herring completely
20 nude on that couch masturbating.

21 Q Why had you gone back there?

22 A It was customary to always go back there. I went
23 back to check, to see if he needed a beer or if he
24 wanted to get something to drink.

25 Q Had he been waiting a little bit? How long had it

1 been since Ms. Grainger had left?

2 A I'd say not more than four or five minutes. It
3 wasn't that long.

4 Q So you went back there to check on him?

5 A Yes, sir.

6 Q And specifically, where was the defendant when you
7 looked inside?

8 A The defendant was sitting on the couch with his head
9 up here, one leg here and one foot on the floor.

10 Q And how many clothes did he have on?

11 A Absolutely none.

12 Q And you said he was masturbating?

13 A Yeah.

14 Q How far were you from him when that happened?

15 A Four feet.

16 Q Is there any question in your mind what he was doing?

17 **MR. HARPOOTLIAN:** Objection, Your Honor.

18 A No.

19 **MR. HARPOOTLIAN:** He's answered. He doesn't
20 need to challenge him again. Repetitive.

21 **THE COURT:** All right.

22 Q What did you say to him when you saw him in that
23 state?

24 A I said, "Man, what are you doing? You can't do that
25 in here." And Mr. Herring stated, "I'm waiting on the

1 girl."

2 Q And what happened after that?

3 A I told him, I said, "You can't do that in here. You
4 need to get up get dressed and get your ass out of my
5 club."

6 Q And could you have been cussing, too? Could you have
7 said -- I don't know. Were you cussing?

8 A I mean --

9 MR. HARPOOTLIAN: Objection, Your Honor. Now
10 he's impeaching his own witness.

11 THE COURT: All right. Just answer.

12 A Chances are, yeah.

13 Q And when you were asking him to get up, put your
14 clothes on, did he do it?

15 A No. The whole time I was talking to him he never
16 quit masturbating.

17 Q What did you do after that?

18 A When he didn't move and he didn't get up, I went and
19 got my manager. "Jon Jon" was at the beer tub, and I
20 went back and I told John. I said, "John, I've got a
21 problem back there." I said, "This guy is fully nude
22 in the champagne room all the way back on the left
23 and he's masturbating."

24 Q As a pit boss, if there's a problem in the champagne
25 room or the VIP room and you have a problem with the

1 customer or a dancer, whoever, what are you supposed
2 to do?

3 A If the person won't respond, you know, to being asked
4 to get up and leave, then I would go get the manager
5 and let him handle it.

6 Q And that's what you did?

7 A That's exactly what I did.

8 Q And you went and got "Jon Jon". And what happened
9 after that?

10 A "Jon Jon" walked over to the door. And I'm not -- I
11 can't speak for John. I honestly don't know what he
12 said to the man, but he was talking to the man. And
13 I was kind of standing back a little ways and letting
14 John handle it.

15 Q And when you all -- or looking at State's 49, when
16 you got "Jon Jon" and you all came back, where were
17 you?

18 A I was standing right here, "Jon Jon" was standing
19 here, and Mr. Herring was standing next to the door
20 casing of the other champagne room just directly
21 across the hall from this one. He was standing right
22 there.

23 Q And when you got back, did he have any clothes on
24 then?

25 A Yes, he did.

1 Q And you are back there with "Jon Jon"?
2 A Yes, I am.
3 Q Mr. Herring?
4 A Yep.
5 Q And was Mr. Hawkins back there?
6 A At that point in time I don't believe Donnie was
7 there. John and Mr. Herring were talking. And I
8 said something. I said, "Sir, you're either going to
9 have to do one of two things. You're either going to
10 have to leave or I'm going to call the police and
11 have you arrested for solicitation of prostitution."
12 Q You said that to Dewain Herring?
13 A Yes, sir, I did.
14 Q What did he say to you?
15 A He looked at me and he said, "No. I will fucking
16 shoot you." I'm sorry, Your Honor.
17 Q All right. And where were you when he had said that?
18 A I was probably two feet from him.
19 Q At that moment did you take that as a threat?
20 A Yes, I did.
21 Q What did you do when he said that to you?
22 A I leaned towards him and I said, "You're not" --
23 excuse me, you all, again. I leaned towards him and
24 I said, "You're not going to fucking shoot nobody."
25 And at that point John reached out with his arm and

1 hit me in the mid section and pushed me back. And I
2 stopped when John did that.

3 Q When "Jon Jon" Johnson stopped you --

4 A Yes.

5 Q -- after the defendant threatened you --

6 A Yes.

7 Q -- what happened after that?

8 A After that, then I remember Donnie coming back. I
9 took a step back and let Donnie and "Jon Jon" handle
10 it. Because it's customary if somebody gets upset,
11 if one of the floor guys gets upset, it's customary
12 to take a step back, let somebody else step in.
13 Calmer heads seem to always prevail. So that's what
14 I did. I was upset. I was angry at Mr. Herring, so
15 I stepped back for a moment and let Donnie and "Jon
16 Jon" handle it.

17 I went back out to my area, went and checked on
18 my customers, my VIPs that were sitting up there,
19 checked on the customers that were on the floor. By
20 this time -- by this time Mr. Herring and "Jon Jon"
21 and Donnie were walking out. So I walked up in front
22 of them. I walked ahead.

23 Q Looking back at State's 51, after "Jon Jon" did like
24 that to you, --

25 A Mm-hmm (affirmative).

1 Q -- how did you get from here out to the front?

2 A They actually had started walking out and I walked
3 out in front of them and stopped right about here
4 because Mr. Herring, "Jon Jon" and Donnie had stopped
5 right here at the corner of the bar. So I stepped
6 back here just as a precautionary measure to make
7 sure, you know, make sure nothing went down or
8 anybody got stupid and started swinging or whatever.
9 And I stayed right there while they were talking.

10 Q And what happened after that, and what did you do
11 after that?

12 A After they talked for a few minutes -- I don't know
13 what was said because I was too far away -- they
14 started walking this way, Mr. Herring first, then
15 "Jon Jon", then Donnie. And I waited 'til Donnie got
16 past me, and then I fell in behind Donnie.

17 Q And where did you all go?

18 A We walked around the corner of the bar and out into
19 the lobby area, and "Jon Jon" walked out with Mr.
20 Herring and Donnie and I stopped inside the club.

21 Q All right. You're a pretty big fellow?

22 A Yeah.

23 Q You said you initially got angry, correct?

24 A Yes.

25 Q Did you get over that?

1 A Sure.

2 Q And --

3 A I'm not the type of person that stays angry long.

4 Q And were you over that by the time it got outside?

5 A Sure.

6 Q And after you said "Jon Jon" went outside with

7 Mr. Dewain Herring, --

8 A Yes, sir.

9 Q -- what did you do?

10 A I stayed inside and looked at the monitor for a

11 couple of seconds. And then Nicole, my door girl

12 that was sitting there, she said, she asked me what

13 had happened. And I made light of it. Listen, I

14 wasn't angry any more. I made light of it; and sure,

15 I was laughing.

16 Q Did you tell her what happened?

17 A Sure.

18 Q About what you're seen nude in the champagne room?

19 A Almost two years in the adult entertainment industry,

20 I've never had anybody do that in the champagne room.

21 Q What happened after that?

22 A After that. I had said a few things to Nicole. And

23 I'm not sure about the timeframe or how much time had

24 passed, but I ended up stepping outside. And I was

25 standing in the breezeway. By this time -- no.

1 Actually, no. I went back to the back of the club,
2 checked on the people and then came back up front a
3 few minutes later, checked on them all, because I was
4 still taking care of all the people in the pit. And
5 it was probably a couple of minutes.

6 Q Did you go back outside?

7 A I walked straight outside, yeah.

8 Q I'm looking at State's 9 which shows the front of
9 Chastity's. Did you -- after Dewain Herring, the
10 defendant, went out and you checked on your
11 customers, did you have an occasion to go out of
12 Chastity's again?

13 A Yes, sir, I did.

14 Q And where were you standing when you came out of
15 Chastity's?

16 A I was standing right here when I came out of
17 Chastity's. I was standing right there.

18 Q What, if anything -- why were you out there then,
19 Carl Weeks?

20 A Just because "Jon Jon", it's not customary to leave
21 just one person out there with somebody. You're not
22 supposed to be up in front of the person or be
23 imposing to anyone or threatening. Because if you do
24 that, it only brings defense and retaliation when you
25 do that. So I just stood back and just let "Jon Jon"

1 do his thing. At that point "Jon Jon" come across
2 the radio. He was calling in the tag number. And at
3 that point I was writing the tag number of the
4 vehicle down.

5 MR. HARPOOTLIAN: Your Honor, it's enough, you
6 know, nunc pro tunc we earlier made.

7 THE COURT: Yes, sir. Overruled.

8 MR. HARPOOTLIAN: Thank you.

9 Q And you wrote the tag number from the vehicle on your
10 hand?

11 A Yes, I did.

12 Q And you heard that from "Jon Jon"?

13 A Yes, I did.

14 Q Where was "Jon Jon" then?

15 A "Jon Jon" was back over here somewhere behind the
16 vehicle.

17 Q And where was the vehicle then?

18 A The vehicle -- could I have the other diagram?

19 Q Sure.

20 A When I stepped out ...

21 Q Now, Judge, and ladies and gentlemen of the jury,
22 we're referring to State's 53.

23 A When I stepped out this time, standing right here,
24 the vehicle had rolled forward a little bit and was
25 sitting catty-corner right here. At that time Donnie

1 had come out behind me. Probably 20, maybe 30
2 seconds later Donnie had come out. Donnie was
3 standing right beside me. We observed the black SUV
4 sitting here like this, and we were looking out just
5 to make sure he was leaving. And all of a sudden
6 both windows on the passenger's side of the vehicle
7 came down. And I told Donnie, I said, "Donnie, step
8 back before this guy -- this guy may start shooting."
9 I mean, it's a pretty clear indication. And Donnie
10 and I both stepped back into the breezeway, and we
11 kind of leaned out a couple of times just to look.
12 And I stayed outside until Mr. Herring, until the
13 vehicle pulled out of the -- slowly, just maybe two
14 miles an hour, just really eased out of the parking
15 lot onto River Drive and went up. And when he hit --
16 when the vehicle hit River Drive, Donnie and I both
17 stepped out of the breezeway under the awning and I
18 stayed outside and watched the vehicle until it was
19 totally gone and up around the corner and then I
20 turned and I went back inside.

21 Q And when you went back -- so you saw it turn the
22 corner up River Drive?

23 A Yes, sir.

24 Q And what would that be heading back toward? Do you
25 know what that road would be up there?

1 A No.

2 Q You headed back inside. What did you do, if
3 anything, after that?

4 A I went straight back to the pit, checked on them all,
5 check on my VIPs I had in there, checked on my
6 customers that were around the main stage and were
7 sitting around the room. I knew there wasn't anybody
8 in the champagne room. I checked into VIP. And then
9 I went to the dressing room.

10 Q And why did you to the dressing room?

11 A A stage call for one of the girls. I don't remember
12 her name. I went to get her to get her on the main
13 stage.

14 Q Did you have an occasion to go back up front after
15 that?

16 A Yes, I did.

17 Q What I call front, the lobby?

18 A I went back. Donnie come across the radio. And he
19 said, "Carl, Carl, I need you up front. "Jon Jon"
20 has been shot." And at that point in time I took off
21 out of the dressing room and ran up front, and that's
22 where I found him, saw John laying in the floor.

23 Q John -- Judge, we have this pared down. I think we
24 can get right to it and it won't take that long. Can
25 you come down?

1 A Sure.

2 Q Mr. Weeks, if you don't mind, what we've been doing,

3 if you'll stand at that side so Madam Court Reporter

4 can hear you. It may not be a problem, but ...

5 please go to inside camera, 11:56:48, please. All

6 right. Freeze it. Who is this going out here?

7 A That was Mr. Herring.

8 Q All right. Who is this?

9 A That's Johnny.

10 Q Who is this?

11 A That's Donnie.

12 Q Keep going. Who is this?

13 A That's me.

14 Q And you described earlier you were in the bar. Is

15 that this area back here?

16 A Yeah.

17 Q Now, where did "Jon Jon" and Dewain Herring go?

18 A Just straight out the door, just walking straight

19 out. John was standing under the awning.

20 Q This shows you and Mr. Hawkins were looking at

21 something initially here. What was that?

22 A Just watching Mr. Herring, make sure he walked to his

23 vehicle.

24 Q And who were you talking to back here?

25 A I'm talking to Nicole.

1 Q You're laughing about it?

2 A Mm-hmm (affirmative).

3 Q And why are you laughing?

4 A I just -- I thought it was funny. I'd never seen

5 anything like that. It was funny.

6 Q As far as you're concerned at that point it's over?

7 A Yeah.

8 Q Mr. Herring is out the door?

9 A Yes.

10 Q Have you done your job?

11 A Yes, I've done my job.

12 Q Keep rolling. At this point what are you looking at?

13 A Just watching the monitor.

14 Q And are you back here somewhere now?

15 A Yeah.

16 Q Who is this?

17 A That's Donnie.

18 Q You all are watching the monitors?

19 A Mm-hmm (affirmative).

20 Q And what are you all watching?

21 A I'm not sure what I was pointing at at that point.

22 Q Who is this?

23 A I believe that's Mia.

24 Q Stop right there. Tell these ladies and gentlemen of

25 the jury, what are you doing right there with Ms.

1 Grainger?

2 A When Mia came out, she's not supposed to be out in
3 this area right here dressed like she is. So I
4 redirected her back in the club.

5 Q And did she go back in the club?

6 A Yes, she did.

7 Q All right. Keep going. Stop if you will. Can you
8 now go -- are you leaving the lobby?

9 A I believe so, yeah.

10 Q If you'll go to camera 4 at 11 -- excuse me -- 12:55,
11 12:00:55. Who is that?

12 A That's myself. That's Donnie.

13 Q Stop. Is the defendant, Dewain Herring's, vehicle
14 there any more?

15 A No, it's not. His vehicle is actually --

16 Q Stop right there. Go back just a little bit, please.
17 What are you doing here?

18 A I'm writing down a tag number.

19 Q That you got from whom?

20 A That I got from "Jon Jon".

21 Q Where is "Jon Jon"?

22 A "Jon Jon" is back --

23 Q Where you showed us on this thing?

24 A No. "Jon Jon" is actually back here behind the
25 vehicle, kind of between another couple of cars back

1 there. He's actually back there looking at the back
2 of the vehicle so he can get the tag number.

3 Q Keep going. Stop it right there for a second. So
4 again, on State's 9, where on State's 9 are you in
5 relation to this picture up here?

6 A Me?

7 Q Yes, sir.

8 A I'm right here. I'm on this side right here.

9 Q All right. How would you describe that little
10 entranceway in there or whatever it is?

11 A It's all brick. It's narrow.

12 Q I mean, it's a little hole in there?

13 A Yeah.

14 Q Would you have to look around there to look out?

15 A Yeah.

16 Q Keep going. Where was Dewain Herring's vehicle right
17 now?

18 A Mr. Herring's vehicle was where I showed you all
19 before. It was parked catty-cornered right there.

20 Q Very briefly go to the front left at 12, the same
21 time. Whose vehicle was that?

22 A That is Mr. Herring's vehicle.

23 Q Is that the direction of where you were looking?

24 A Yes, it is.

25 Q Go back to camera 4, please, one second. Is Mr.

1 Hawkins still out here with you?

2 A I believe Donnie -- I'm not sure if Donnie -- I don't

3 remember if he's out there or not. If he is, he is

4 standing back here. I was asking John if he was all

5 right back there and if I could do anything.

6 Q What are these devices?

7 A Two-way radios.

8 Q Who is that?

9 A That's Donnie.

10 Q So he was out there?

11 A Yeah. He was out there.

12 Q The door opens. Who is that going in?

13 A That's Donnie going back in the club.

14 Q When do you go back inside from outside? When do you

15 go back in?

16 A After the vehicle is completely out of the parking

17 lot. This is where I tell Donnie to back up, he may

18 start shooting. At this point in time he had pulled

19 out of the parking lot and was pulling onto River

20 Drive.

21 Q What are you all doing here?

22 A Just watching him.

23 Q Who is that over here?

24 A That's "Jon Jon".

25 Q "Jon Jon" is back over here now with you all?

1 A Yeah.

2 Q And that's you going inside?

3 A Yeah.

4 Q Go briefly back to inside camera 4, the inside
5 camera, at that same time, please, 12:04:22. And
6 what do you do then?

7 A I go back in. I'm going back to the pit to check on
8 my customers and my VIPs, check my champagne room and
9 my VIP room out.

10 Q The next time you come back in this lobby, is John
11 Johnson dead or alive?

12 A He is laying on the floor dead.

13 Q Take a seat back up there. Beg the Court's
14 indulgence. And why were you staying back in that
15 cubby I call it when you were looking out on the
16 street?

17 A Just to observe. We always -- when we escort
18 somebody out like that, we always just kept observing
19 them until they were gone.

20 Q After John Johnson was shot, what did you do? Did
21 EMS respond?

22 A Yeah. It took them -- I don't know how long it took
23 them to get there. It took them a little while to
24 get there.

25 Q The police come?

1 A Yeah.

2 Q The police came?

3 A Yeah.

4 Q And is the person that you saw in the champagne room,
5 is the person that threatened to f'g shoot you, is
6 the person that you were third in line walking back
7 behind out of the club, and is the person that was in
8 the car sitting for approximately two and a half
9 minutes in the driveway before they pulled out onto
10 River Drive, is that person in this courtroom today?

11 A Yes. He is.

12 Q Would you please point him out?

13 A He is sitting right there.

14 Q Let the record reflect he's pointed to the defendant,
15 Dewain Herring.

16 THE COURT: Let the record reflect the witness
17 identified the defendant.

18 Q Please answer any questions Mr. Harpootlian has.
19 That's all I have, Judge. Thank you.

20 CROSS EXAMINATION

21 BY MR. HARPOOTLIAN

22 Q Mr. Weeks, my name is Dick Harpootlian. I don't
23 think we've met before.

24 A No, sir, we haven't.

25 Q I have tried to talk to you, called you, wanted to

1 talk to you about your testimony?

2 A Mm-hmm (affirmative).

3 Q You indicated to me that "Jon Jon" was one of your
4 closest friends and you didn't want to talk to me?

5 A He was one of my friends, yes.

6 Q And you did not want to talk to me?

7 A And I believe the gist of the conversation was: "You
8 represent the man that shot my friend?" And you
9 stated, "Yes. He was your friend?" And I said,
10 "Yes, he was. Then I said, "This conversation is
11 over." Click.

12 Q Click?

13 A I hung up on you.

14 Q So the first opportunity you and I are going to have
15 to talk about your statements and what happened that
16 night is right now with the jury. Is that correct?

17 A Yep.

18 Q Okay. So if I am a little hesitant and I repeat some
19 things, I apologize. But since we haven't had an
20 opportunity to meet before or talk about this before,
21 that may happen. Now, let me first of all go back
22 to -- I'm trying to understand the sequence of events
23 outside. And let me see if I can do this without
24 going to the video, to save some time. Could you
25 step down here for just a moment, please, sir?

1 A Sure.

2 Q And if you would stand right there.

3 A Okay.

4 Q And let me ask you what you observed. As I
5 understand it, did you come outside when "Jon Jon"
6 brought Mr. Herring out?

7 A No, I did not.

8 Q Okay. Did you watch on the video while they were out
9 here?

10 A Yeah.

11 Q Okay. And as I understand it -- and I think we've
12 all seen the video -- John Johnson, Mr. Hawkins and
13 Mr. Herring talked here for a moment?

14 A Yeah. I believe so.

15 Q Mr. Herring then goes and gets in his car which is
16 parked right here?

17 A Yeah.

18 Q And then he gets back out of his car. Is that right?

19 A I was inside when all that was taking place.

20 Q But were you watching on the video?

21 A (Nods head affirmatively).

22 Q He gets out of his car and goes back and talks to
23 John again, Johnson again. Is that correct?

24 A Yeah.

25 Q Okay. Now, did you see him pull his car away or

1 actually get back in his car and back up and pull
2 away?

3 A He walked back to his vehicle. I didn't see him back
4 up.

5 Q Okay. When did you see the windows come down that
6 you testified to?

7 A When he was parked catty-cornered right here.

8 Q Okay. Now, while he was sitting, he sat in his car
9 here for some period of time before he backed up. Is
10 that correct?

11 A I guess, yeah.

12 Q Okay. Where was John Johnson then?

13 A At that point in time John was standing -- say that
14 again now?

15 Q You know what? We can say this is going to take 15
16 minutes to do it this way. It will only take five
17 minutes. Let's just watch it. Can I have that?

18 MR. MEADORS: Mr. Kata.

19 Q Just stay where you are. I'm going to want you to
20 come down here. And let's go to the outside. I
21 guess that's camera number 4. If you'd -- is it more
22 comfortable for you to sit?

23 A No. I'll stand.

24 Q I'm going to need for you to stand over here. Would
25 you rather me get a chair for you?

- 1 A No.
- 2 Q Okay. I need you to stand here and face the jury.
- 3 A Okay.
- 4 Q Let's go to back before that when Mr. -- it would be
- 5 about 12:0 -- way back, back when he first off goes
- 6 out with -- there they are. Okay. So he is gone.
- 7 His car -- maybe you ought to back it up a little bit
- 8 so we can see him walk to his car. Okay. Now go
- 9 ahead. Go forward there. Now, is that Jerry Britt
- 10 leaving there?
- 11 A Yeah.
- 12 Q Okay. So that's the owner of the club walking out,
- 13 seeing Mr. Johnson and Mr. Hawkins talking to a
- 14 customer. Did you tell him as he walked by you what
- 15 had happened?
- 16 A No. I didn't speak to Jerry.
- 17 Q Pardon me?
- 18 A I didn't speak to Jerry.
- 19 Q Okay. But that was the owner of the club walking by?
- 20 A Mm-hmm (affirmative).
- 21 Q Okay. Now, Mr. Herring goes and get in his car and I
- 22 think we're going to see him come back in just a
- 23 minute. Are you watching this on the monitor?
- 24 A Yeah.
- 25 Q Okay. Now, Mr. Johnson at 11:59:59 goes over to the

1 left. Can we go to that camera over there on the
2 left so we can see where Mr. Johnson went. 11:59:59.
3 Okay. So he comes -- okay. So he is -- Mr.
4 Herring's car is parked. The front of his car would
5 be right up here. And we see Mr. Johnson walking
6 back over here, right? Isn't that what we just saw?

7 A No, it's not what we just saw.

8 Q Okay. How about back up?

9 A We saw Mr. Johnson walk this way as Mr. Herring got
10 in his vehicle and started backing up.

11 Q Oh, he did? At that point he is backing up?

12 A Yes.

13 Q Okay. So maybe what we need to do is go to the other
14 camera, the long shot on the other side at 12:59:59.
15 I mean 11:59:59. No. Okay. Go ahead. And you're
16 saying Mr. Johnson at this point is back over --

17 A He's back over here.

18 Q Here?

19 A Yes. He's back over here somewhere.

20 Q Has he put his windows down yet?

21 A No.

22 Q But, I mean, Mr. Johnson didn't stealthily sneak
23 around as we saw it. He walked over there in plain
24 view, right?

25 A He walked over there in plain view.

- 1 Q Anybody sitting where Mr. Herring was sitting could
2 see him plainly?
- 3 A If he was paying attention.
- 4 Q And he backed up to there?
- 5 A Mm-hmm (affirmative).
- 6 Q Is there another view of that? And he pulls up. And
7 at that point Mr. Johnson is -- and he's pulled up --
8 is he facing out towards the street at that point?
- 9 A Mr. Herring, yes; he's facing out towards the street.
- 10 Q He's facing out this way, parallel with that?
- 11 A No. I wouldn't say parallel. He's more at an angle
12 like this.
- 13 Q Okay. And Mr. Johnson is back behind his car?
- 14 A Several cars back.
- 15 Q Okay. Now, there's nothing at that point to stop Mr.
16 Herring from getting out of his car with his pistol
17 and shooting Mr. Johnson, is there?
- 18 A No. I guess not.
- 19 Q He's rolled his windows down. He could back up to
20 where Mr. Johnson is and shoot him with ease,
21 correct? Are you concerned about that?
- 22 A Not at this point, no.
- 23 Q Now, you testified that when you saw the windows come
24 down you got back in that alcove, right?
- 25 A The windows aren't down yet.

1 Q Okay. When are they down?

2 A When you see me standing out front, those windows are
3 down.

4 Q Okay. So once the windows come down -- but Mr.
5 Johnson is back in this area back behind the car, you
6 stop back in the alcove; are you concerned about Mr.
7 Johnson's safety?

8 A John is back between two cars back over there.

9 Q But, I mean, that's a parking lot. He can back up
10 and shoot him, couldn't he?

11 A I suppose, if he a notion.

12 Q Well, if he had a notion. And that's what we're
13 talking about. If he had a notion to shoot somebody,
14 he could have easily shot Mr. Johnson. He could have
15 gotten his gun before when he came back and shot him.
16 He could have backed up here and shot him. When the
17 windows are down, he could have shot him out of the
18 car then. He's standing out in an open parking lot.
19 He's not in front of the door?

20 A No. Quite frankly, John was on the radio telling me,
21 the second time when I was listening to the radio
22 that you all saw, John was telling me on the radio
23 he's doing something in his glove box.

24 Q Well, he'd already been in his glove box, hadn't he?
25 Did you know Mr. Hawkins testified to that?

1 A No, I did not.

2 Q Now, you actually have been sitting outside near the
3 monitors, the media monitors out there?

4 A Absolutely not. I've walked by them. I've walked to
5 the elevators. I've walked to the bathroom and back.

6 Q So you've heard none of that?

7 A Absolutely not.

8 Q Okay. So he was going through his glove box, right?

9 A That's what John said on the radio.

10 Q But he was seen going through his glove box before he
11 ever pulled out, right?

12 A I can't testify to that. I didn't see that.

13 Q Well, his windows are down. He's going through his
14 glove box. Are you not concerned about your friend?
15 He's out there all alone unarmed in the parking lot
16 near a man going through his glove box?

17 MR. MEADORS: Your Honor, if he's through with
18 the video, we'd ask --

19 MR. HARPOOTLIAN: I'm not done with the video.
20 I'm sorry. I'm talking to His Honor.

21 THE COURT: Ask a question.

22 Q Are you not concerned about your friend?

23 A Sure. I thought about "Jon Jon" behind him.

24 Q And were you concerned he was going to get shot?

25 A At that point in time, no; because the focus wasn't

1 on "Jon Jon". It was on Donnie and I.

2 Q Well, how did you know the focus was on you?

3 A Donnie and I are the ones standing in the breezeway.
4 The windows come down on the side of the vehicle. So
5 obviously his focus is on us.

6 Q So you weren't worried about "Jon Jon" at any point
7 out in that parking lot with Mr. Herring out there
8 going through his glove box with the windows down?

9 A Not with his focus on us, no.

10 Q Okay. So his focus you think, that's your
11 assumption, was on you. But there was nothing to
12 prevent him from backing up and shooting Mr. Johnson
13 out there, was there?

14 A No, sir, there wasn't.

15 Q Okay. There was nothing to prevent him from
16 shooting --

17 THE COURT: Mr. Harpootlian, sir.

18 MR. HARPOOTLIAN: I apologize.

19 THE COURT: Again, I can't see you. You've
20 asked that question six times now.

21 MR. HARPOOTLIAN: Okay. I just went to make
22 sure I --

23 THE COURT: Please move on.

24 MR. HARPOOTLIAN: Okay. Thank you.

25 Q Now, if you would go to the -- I think I'm done with

1 this for right now. Thank you. Please put the light
2 out so you don't blind the judge. Go ahead and take
3 the stand. Now, that night when you went back to the
4 champagne room, you indicated it was four or five
5 minutes after -- her name is Mia?

6 A Mia, Miah, Renisha.

7 Q Renisha?

8 A Right.

9 Q Her stage name is Mia or Miah?

10 A Mm-hmm (affirmative).

11 Q Okay. Now, did she pay you on the way in or on the
12 way out?

13 A The dancers, the entertainers always pay before they
14 go back there.

15 Q Okay. So she's given you the \$65?

16 A Yes, sir.

17 Q And she's taken him back there?

18 A That is the house fee.

19 Q Right. And then she comes out and goes to, quote,
20 freshen up?

21 A Yes.

22 Q Now, why can't you have liquor back there? Why can't
23 you have liquor in that back part?

24 A There's a statute in the state of South Carolina that
25 regulates you cannot have any liquor in an area of a

1 nightclub where it is fully nude. You can have beer,
2 wine and champagne.

3 Q Okay. So if somebody is at the bar in the front and
4 they've got a liquor, if they're drinking liquor and
5 they arrange to get a dance back in the VIP room, in
6 the champagne room, what do they do with their drink?

7 A They must finish their drink before they go back.

8 Q Can they leave it there and come back and get it?

9 A Sure. If they want to. Usually a lot of folks, they
10 take and they put a napkin on top of it or ask the
11 bartender to watch it.

12 Q And that's pretty common?

13 A Sure.

14 Q Now, you said that your numbers far exceeded the
15 norm, doubled and tripled the sales?

16 A Absolutely.

17 Q How?

18 A I was great with the customers. I was good with the
19 girls.

20 Q I mean, did you give more lap dances and more
21 champagne room dances?

22 A I sold more bottles of champagne in more champagne
23 rooms and more VIP rooms than anybody else they had
24 working there.

25 Q How were you selling champagne rooms and how were you

1 selling VIP rooms? You're not going in there doing a
2 lap dance?

3 A No.

4 Q Okay. Well, how would you sell them?

5 A I would sell them to the customer.

6 Q I mean, how do you sell a lap dance to a customer?

7 A 99 percent of the time the customers come to me.

8 Q They come to you and say --

9 A And they are the ones that open the door.

10 Q They say, hey, big guy, I want a lap dance? What do
11 they say?

12 A What does it cost for a champagne room normally is
13 what they ask.

14 Q Okay. And then you fix them up with a girl?

15 A And I ask them, I say, "We have a 15-minute and a
16 30-minute. Which one would you like?"

17 Q And let's say they 30 minutes. You say 265. Is that
18 what you say?

19 A Mm-hmm (affirmative).

20 Q And do you fix them up with a girl? Do you pick one
21 out for them?

22 A Actually, they've already been sitting with a girl
23 drinking with a girl at the bar and they've already
24 picked one out.

25 Q Well, why don't they just ask her how much?

1 A A lot of the girls didn't sell champagne rooms when I
2 got there because nobody actually pushed champagne.

3 Q Okay. But there is more going on in the champagne
4 room than champagne, is there not?

5 A Not on my shift.

6 Q I mean, there's lap dancers?

7 A It's lap dances.

8 Q What's a lap dance?

9 A A girl sits on top of the guy and she dances for him.
10 Or she'll dance in front of him. Or she'll stand on
11 the couch and dance for him.

12 Q But a lap dance is when she sits in his lap naked,
13 correct?

14 A She has no contact with him.

15 Q I'm sorry. Is her posterior in contact with him on a
16 lap dance? Is she sitting in his lap?

17 A No.

18 Q You've never seen that?

19 A Oh, sure, I've seen it.

20 Q And didn't that routinely happen in the champagne
21 room?

22 A Sometimes, yeah. When I go back there and I catch
23 them, I say, "Nope. Six inches."

24 Q So there's a six-inch rule?

25 A On my shift there was a six-inch rule. No hands.

1 You don't touch the girls. The girls do not touch
2 the men's genitalia. She can put her hands on his
3 shoulders and that is all.

4 Q But it was, I mean, routine for girls to sit in their
5 laps. You caught them all the time doing that,
6 didn't you?

7 A Sometimes, sure.

8 Q Sure. Every night?

9 A Does your wife ever sit in your lap?

10 Q I'm married to my wife. I am not paying her \$300 to
11 grind on my lap. Do you see a difference, sir? Is
12 there a difference to you?

13 A You pay \$300 for a private dance.

14 Q Is there a difference to you?

15 A He pays \$300 for a private dance, six inches between
16 the dancer and the customer. And most men that are
17 gentlemen that have a dance keep their damn hands to
18 themselves.

19 Q Sir, you are aware -- and look at this jury and tell
20 them that you're aware that every night there women
21 sat, ground their groins, their bottoms, their
22 genitalia into the man's genitalia?

23 A I think I just answered that yes. It does happen.

24 Q And it was routine at Chastity's, wasn't it? Wasn't
25 it? Admit it.

1 A It is routine? No, it was not routine. On my shift
2 girls did not grind on their customers.

3 Q Did they sit in their customer's laps?

4 A They sit on their knee. If they were sitting at a
5 table, they were sitting on their knee. They were
6 not sitting on their laps.

7 Q Was their bare bottom on the customer's knee?

8 A Absolutely not. When you're sitting out front, you
9 cannot be nude.

10 Q What about in the champagne room? They're sitting on
11 them nude, are they not?

12 A They're kneeling. Most of the time when they're
13 dancing their knees are on the couch and their
14 genitalia, their privates are nowhere near his
15 privates or his genitalia. I've answered this
16 question five times.

17 Q Have you ever discussed with Mia how she danced?

18 A No. I never discuss with the girls how they dance
19 unless I caught them doing something that was
20 inappropriate.

21 Q So you had to catch them. That was the guy? That
22 was the role?

23 A If I walked in and I saw a dancer doing something
24 inappropriate or a customer, I would say something to
25 them. If the customer didn't adhere, then they were

1 asked to leave.

2 Q As a practical matter, how many times a night did you
3 catch customers doing that?

4 A Well, you're asking me to speculate.

5 Q No. I'm asking you to remember.

6 A A couple of times a night probably.

7 Q Did you throw them out?

8 A I most certainly asked them to leave.

9 Q So a couple of times a night you asked people to
10 leave?

11 A Yes.

12 Q On the night that Mr. Herring was there, how many
13 people did you ask to leave?

14 A I think there was two or three prior to him.

15 Q In the hour before him?

16 A I would say a couple of hours prior to him getting
17 there.

18 Q And what had they done inappropriately?

19 A Around the back, the main stage that I showed you all
20 in the back, we have a lot of troubles with the
21 Spanish guys coming in. They'll have too much to
22 drink. And the girls are there dancing there on
23 stage and they'll want to reach up to put the
24 dollar -- they'll want to touch them with the dollar.
25 And you can't do that.

1 Q Just the Spanish guys?

2 A Oh. They get drunk black guys, drunk white guys. I
3 mean, just guys who just --

4 Q But you said just the Spanish guys. Now, what
5 about --

6 A This particular one was just the Spanish guys.

7 MR. MEADORS: Objection. He said a lot of
8 times. He didn't say just. Those were his words,
9 Your Honor. Objection.

10 THE COURT: I understand. Ask your question.
11 Let him answer the question. Don't argue with him.

12 MR. HARPOOTLIAN: Yes, sir.

13 Q A of times the Spanish guys got drunk back there is
14 what you said?

15 THE COURT: Is that a question?

16 Q I'm asking him is that what he said. Did you say
17 that?

18 A I said the Spanish guys that I threw out that I asked
19 to leave that night were -- yes, they were drunk.
20 And they were gentlemen. They left without no
21 problems.

22 Q How did you get paid when you were there? Did you
23 get a piece of the action on the --

24 A I get paid in tips from the girls; I get paid in tips
25 from the customers; and I get paid a salary.

1 Q Now, tips from the girls, what are you getting tips
2 from the girls for?

3 A Protection.

4 Q Protection. Now, that's an interesting word;
5 protection.

6 MR. MEADORS: Your Honor objection.

7 THE COURT: What's --

8 MR. MEADORS: Objection. His side comment.
9 Now, that's an interesting word. He can't do that.

10 THE COURT: Please, Mr. Harpootlian, just ask
11 questions.

12 MR. HARPOOTLIAN: Yes, sir. I apologize.

13 THE COURT: We don't needed editorial comments.

14 Q What do you mean by protection?

15 A My job is to make sure that the customers do not,
16 one, put their hands on the girls; two, do not get
17 forceful with the girls; three, that the customers
18 themselves, if there is another customer that's too
19 drunk and unruly, to make sure that customer doesn't
20 injure a girl or another customer. That's what I
21 mean by protection.

22 Q How much in tips do you make a night?

23 A Excuse me?

24 Q How much in tips would you make a night?

25 A Is that relevant?

1 Q Well, he hasn't objected to it. So go ahead and tell
2 me.

3 MR. MEADORS: Objection. Relevance.

4 MR. HARPOOTLIAN: Oops. Your Honor, I believe
5 it is relevant.

6 THE COURT: Overruled. Go ahead. Answer the
7 question.

8 Q Go ahead.

9 A It would just depend on -- I work prime time, and it
10 would average anywhere from 150 to 4 or \$500 a night,
11 sometimes more.

12 Q That's from the girls or from the girls and the
13 customers?

14 A That's from the girls, customer and champagne sales.

15 Q Okay. Now, what do you get out of the champagne
16 sales?

17 A Normally the champagne is sold for \$90 a bottle and
18 it's on the book, the champagne sales book for 150.
19 If I sell it for 150, I make \$60.

20 Q Okay. Now, you had to buy champagne to get in the
21 champagne room?

22 A No.

23 Q Do they give you complementary champagne?

24 A I never did.

25 Q But on the night in question, were you giving

1 complementary champagne to people in the champagne
2 room?
3 A No, sir, I was not.
4 Q Was there any champagne -- when you went in to see
5 Mr. Herring, was there any champagne in the champagne
6 room?
7 A Not that I saw.
8 Q All you saw in the champagne room was a naked Mr.
9 Herring?
10 A Yeah.
11 Q Yeah?
12 A A picture I'd like to forget.
13 Q And let me get this straight. When you walk in he is
14 masturbating?
15 A Yeah.
16 Q And doesn't stop. He looks at you and just keeps on.
17 Is that right?
18 A Yeah. He just kept spanking that monkey.
19 Q Kept spanking that monkey. Okay. And you left and
20 came back and he's still spanking the monkey?
21 A No. When I came back, he was up and he was dressed.
22 Q Okay. So, I mean, you walking in there in no way
23 impeded him whatsoever?
24 A No.
25 Q Had you ever seen anything like that?

- 1 A No.
- 2 Q This is one of the most bizarre episodes you've ever
3 seen, isn't it?
- 4 A It was unusual.
- 5 Q It is the most bizarre thing you've ever seen there?
- 6 A In there?
- 7 Q Yeah.
- 8 A Yeah.
- 9 Q So, beyond question, you've never seen anything like
10 that before then?
- 11 A I think I've answered that.
- 12 Q Well, I just want to make sure. Yes? Just say yes,
13 we'll move on.
- 14 A Yes.
- 15 Q Thank you. And now, this six-inch thing, is that
16 written down somewhere?
- 17 A No. It's a standard rule. It's a spoken rule.
- 18 Q It's what?
- 19 A It's a spoken rule.
- 20 Q A spoken rule. Now, were there written rules?
- 21 A I'm sure there was.
- 22 Q Have you ever seen them?
- 23 A Do I see them?
- 24 Q Have you ever seen them?
- 25 A Oh, I'm sure I have. Do I remember them? No.

1 Q Let me ask you if you've ever seen Defendant's
2 Exhibit marked for identification 8, 9 or 10?
3 A Yeah. I remember this memo.
4 Q That would be Exhibit No. 8?
5 A Yeah.
6 Q Okay.
7 A Yeah. I remember that.
8 Q Okay.
9 A I don't remember this one.
10 Q That would be Defendant's Exhibit No. 9?
11 A Yeah. I never read that one.
12 Q Okay.
13 A Yeah. I remember these.
14 Q Okay.
15 A I mean, I can't quote them verbatim, but I remember
16 that.
17 Q Sure, sure, sure. Okay. That would be Defendant's
18 Exhibit No. 10. Now, that \$65 that Mia,
19 Ms. Grainger, paid you that night, --
20 A Mm-hmm (affirmative).
21 Q -- did you get a piece of that? You personally?
22 A No, sir.
23 Q That goes directly to the club?
24 A That goes directly to the club.
25 Q Did she ask you to look in and check on the customer?

- 1 A No. It was just common practice for me to check. I
2 checked on all of my customers all the time.
- 3 Q And she would know that, would she not?
- 4 A Yes, she would.
- 5 Q I mean, that's just normal. If she doesn't come back
6 in four or five minutes, you're going to go look at
7 her?
- 8 A I'm going to go check on customers. I always check
9 on the customers.
- 10 Q You don't know what he told the customer when she
11 left, do you?
- 12 A I wasn't privy to the conversation.
- 13 Q Okay. Now, you threatened to have him arrested for
14 solicitation of prostitution?
- 15 A Yes, I did.
- 16 Q Well, who was he soliciting to be a prostitute?
- 17 A Well, when he made the statement: "I'm waiting on
18 the girl", and he is laying there fully nude
19 masturbating, I assumed he thought he was going to
20 get lucky.
- 21 Q With ...?
- 22 A Mia.
- 23 Q Mia. Based on what you saw, you thought he was going
24 to have sex with Mia?
- 25 A Yeah. That's what he thought.

1 Q That's what he thought obviously, correct?

2 A Apparently.

3 Q And we see you in this video. Mia walks up and you
4 grab her by the arm up at the area because she's
5 inappropriately dressed. Is that right?

6 A No, I do not grab her by the arm. My hand is open.
7 If you'll look at the video, my hand is open. I
8 redirect her towards the back of the club because she
9 is inappropriately dressed to be in the front of the
10 club, to be in the lobby area. If you knew anything
11 about entertainers, if you get physical with an
12 entertainer, she's going to get physical with you.

13 Q Sir, I do not know anything about entertainers. Now,
14 you have some alcohol troubles, correct?

15 A Have I?

16 Q Yes.

17 A After "Jon Jon's" -- after "Jon Jon's" death,
18 absolutely.

19 MR. MEADORS: Objection.

20 Q Prior to?

21 MR. MEADORS: May we approach?

22 A Prior to.

23 THE COURT: Sure.

24 (Whereupon, a bench conference is had)

25 Q Your position that night was pit boss, right?

- 1 A That night, yes.
- 2 Q And Mr. Johnson's position was ...?
- 3 A He was our club manager.
- 4 Q Club manager?
- 5 A Yeah.
- 6 Q Now, we've heard some testimony, and I assume it's
- 7 okay for the dancers to drink on the job?
- 8 A Sure. They're allowed to have some.
- 9 Q Well, they're actually encouraged to get the customer
- 10 to have a drink because that's how you make your
- 11 money, right?
- 12 A Normally the customers offer to by the dancers
- 13 drinks.
- 14 Q So you get a drink, I get a drink; I mean, the dancer
- 15 and the customer together?
- 16 A The customer is usually the one that initiates, let
- 17 me buy you a drink.
- 18 Q Right.
- 19 A The gentleman comes in, sees a girl he likes; can I
- 20 buy you a drink.
- 21 Q But the way you make money there is -- correct me if
- 22 I am wrong -- the first thing you make money off is
- 23 alcohol. That's one thing you make money off of?
- 24 A Oh, yeah. Every bar makes money off of alcohol.
- 25 Q Sure. Right. But very few bars have people that

1 work for the bar offering to drink with the
2 customers, correct?

3 A That's not true. Bartenders always drink with their
4 customers.

5 Q Bartenders always drink with their customers?

6 A For the most part.

7 Q Pardon me?

8 A For the most part. Every bartender I knew did.

9 Q Huh. But very few bars have people walking around
10 offering to have a drink with you that are paid by
11 the bar, right?

12 A Say that again?

13 Q This situation of having the girls out there
14 available to sit down and have a drink, the customer
15 is going to buy themselves a drink and your --
16 they're not necessarily your employees but they are
17 people that are working at your club -- they're
18 buying them a drink, too?

19 A Sure. I've had customers buy me drinks.

20 Q Okay. So, one way you make money there is to
21 promote, as any bar would, the consumption of
22 alcohol?

23 A To a degree.

24 Q Okay. The next way you make money is selling dances,
25 or whatever you want to call them, in the VIP room

1 and the champagne rooms, right?

2 A Yes.

3 Q And what you did was you doubled or tripled the
4 revenue by getting people to do several things, go
5 back and have those dances in the private rooms, \$65
6 worth --

7 A Mm-hmm (affirmative).

8 Q -- to the club? Also had them buy some champagne?

9 A Sure.

10 Q And promoted more drinking and more alcohol sales?

11 A I never promoted -- I wasn't in promotions. I was
12 in -- I was the pit boss. I didn't do promotions and
13 advertising.

14 Q But you doubled or tripled the revenue?

15 A Absolutely. On dances.

16 Q Now, you've had customers buy you drinks?

17 A Absolutely.

18 Q Did a customer buy you a drink that night?

19 A No, they did not.

20 Q Did you have anything to drink that night?

21 A Not that night, no.

22 Q What about "Jon Jon"?

23 A I can't speak for "Jon Jon".

24 Q Would he drink on the job?

25 A I think I've only seen "Jon Jon" drink one time.

1 Q Well, I guess what I'm trying to say is, with this
2 protection issue going on, you certainly want your
3 mental faculties about you?

4 A Absolutely.

5 Q So it would not be smart to drink anything on the
6 job, would it?

7 A It would not.

8 Q It would not?

9 A It would not. I agree.

10 Q And so your judgment might be impaired if you'd had a
11 few drinks?

12 A It would on the job, absolutely.

13 Q But on occasion you let a customer buy you a drink?

14 A Sure. What do I do to those drinks? A customer paid
15 for it.

16 Q And then you'd pour it in a potted plant?

17 A Absolutely not. The customer would pay for it. I'd
18 never take the drink. The bartender would hold my
19 money until the end of the night. And that's part of
20 how I made my money off tips. So I never drank the
21 drink.

22 Q Beg the Court's indulgence for a moment. Have you
23 ever been tipped by a dancer to come in and check on
24 them to make sure nothing untoward was going on?

25 A The dancers always tipped me to make sure they were

1 safe.

2 Q Okay. Have you ever been tipped by a dancer and
3 walked in and something untoward was going on; they
4 were being touched in some way?

5 A I never got tipped until after the dance was over.

6 Q Not before?

7 A No.

8 Q No one ever tipped you to come in and look?

9 A No.

10 Q Thank you. No further questions.

11 MR. MEADORS: Beg the Court's indulgence.

12 REDIRECT EXAMINATION

13 BY MR. MEADORS

14 Q Very briefly. Mr. Harpootlian was asking you about
15 the back of the club I guess. And looking back this
16 way, was there a camera back in here?

17 A Sir, the camera sits right here.

18 Q And where would it show?

19 A It would actually -- the camera would actually show
20 right to this area right here.

21 Q And was that camera working?

22 A Not to my knowledge, no.

23 Q Was this camera -- could you see back in here to the
24 champagne room?

25 A No.

1 **MR. MEADORS:** Judge, that's all I have.

2 **MR. HARPOOTLIAN:** I've got one follow-up
3 question.

4 **THE COURT:** Sure.

5 REXCROSS EXAMINATION

6 **BY MR. HARPOOTLIAN**

7 **Q** That camera, how do you know it wasn't working?

8 **A** I just assumed that it wasn't working. I'd never
9 seen it on video up front.

10 **Q** Well, are you aware that some of those cameras didn't
11 go to the video bank up front? They went over to
12 headquarters?

13 **A** At the time I didn't know that, no.

14 **Q** You know that now though?

15 **A** I do now, yeah.

16 **Q** Okay. So when you say it wasn't working, all you're
17 saying is you couldn't see it on the video screens in
18 the front?

19 **A** No.

20 **Q** You don't know whether it was going to corporate or
21 not?

22 **A** I just assumed it didn't work.

23 **Q** But you don't know that?

24 **A** I don't know that.

25 **Q** But you now know that there were other cameras that

1 weren't on the front screen, the front, that were
2 being fed over to corporate?

3 A Mm-hmm (affirmative).

4 Q Also that brings up another point. When that camera
5 is facing backwards, how dark is it back there in the
6 pit?

7 A It's actually pretty light back there.

8 Q In the pit?

9 A In the pit, yeah.

10 Q So if we had the video from that camera, we could see
11 people going in and out of the champagne room?

12 A Sure.

13 Q And you could see what was going on back towards the
14 VIP room?

15 A You would be able to see the first couch probably.

16 Q You could actually see what was going on on the first
17 couch?

18 A Probably. Sure.

19 Q So if somebody had been getting a lap dance on the
20 sofa right there on that first couch, we could see it
21 on that camera?

22 A Yeah. And you could see that there was six inches
23 between the customer and the dancer.

24 Q We could if we had it. Thank you.

25 THE COURT: All right, sir. You may come down.

1 Thank you very much. Any objection to this witness
2 being excused?

3 MR. MEADORS: No, sir.

4 MR. HARPOOTLIAN: Absolutely not.

5 THE COURT: You're free to go, sir. Thank you
6 very much. Next witness.

7 MR. MEADORS: Judge, could we take a quick
8 break, respectfully?

9 THE COURT: Do you all want a break? All right.
10 Let's take ten minutes. Don't discuss the case among
11 yourselves while you're in the jury room.

12 (Jury out at 3:40 p.m.)

13 THE COURT: Let me see you a second.

14 MR. HARPOOTLIAN: Sir?

15 THE COURT: Just scheduling. Let me see you a
16 minute.

17 (Whereupon, a bench conference is had)

18 THE COURT: Somebody please notify the solicitor
19 we're ready to start.

20 (Pause)

21 THE COURT: The State ready to proceed?

22 MR. MEADORS: Yes, sir. I apologize, Your
23 Honor.

24 THE COURT: Defense ready to proceed?

25 MR. HARPOOTLIAN: Could I just make, while I'm

1 thinking about it so I don't forget it; Your Honor,
2 on one of the views on this disk from the inside,
3 after the deceased is shot there is a period of time
4 and then EMS shows up and there's obvious attempts to
5 resuscitate. We'd ask before this is submitted to
6 the jury, if it goes to the jury, that that be
7 extricated.

8 MR. MEADORS: You lost me. If it goes if the
9 jury. When it goes to the jury, what are you --

10 MR. HARPOOTLIAN: If it goes to the jury. The
11 part where EMS tries to resuscitate him.

12 MR. MEADORS: I would like to look at that to
13 see what you're talking about.

14 MR. HARPOOTLIAN: Right. I just don't want you
15 to not --

16 THE COURT: Bring the jury, please.

17 MR. HARPOOTLIAN: I'm just giving you heads up
18 for the weekend so if you want to clean it up we can
19 do that.

20 (Jury in at 3:55 p.m.)

21 THE BAILIFF: Your Honor, the jury is present.

22 THE COURT: All right. Solicitor, call your
23 next witness.

24 MR. MEADORS: Thank you, Your Honor. If it
25 pleases the Court, the State would now you call

1 Investigator Ray Livingston.

2 RAY A. LIVINGSTON, after being duly sworn,
3 testifies as follows:

4 THE CLERK: Thank you. Please have a seat in
5 the witness stand and state your full name for the
6 record.

7 WITNESS: Ray A. Livingston.

8 DIRECT EXAMINATION

9 BY MR. MEADORS

10 Q Good afternoon, Investigator Livingston.

11 A Good afternoon.

12 Q Where are you born? Where were you born?

13 A Right here in Columbia, South Carolina.

14 Q Where were you raised?

15 A Right here in Columbia, South Carolina.

16 Q And where did you go to high school?

17 A C. A. Johnson.

18 Q And after you went to C. A. Johnson High School,
19 Investigator, what did you do?

20 A I went in the military, spent 23 years in the
21 military.

22 Q Did you travel around a lot?

23 A I did.

24 Q Where did you go?

25 A Three tours of Vietnam, Saudi, Germany, Thailand.

1 Q And what year did you retire, Investigator?

2 A '95.

3 Q And after serving this country, what did you do in
4 1995?

5 A I joined the Richland County Sheriff's Department.

6 Q And did you receive any training at the Criminal
7 Justice Academy or any other place in preparation to
8 work at the Richland County Sheriff's Department?

9 A I did.

10 Q Tell these folks about that?

11 A Okay. I attended a course at the South Carolina
12 Criminal Justice Academy. It's a basic course to
13 become a crime scene investigator. I went through
14 the basic crime scene investigation course,
15 fingerprint identification course, photography
16 course, doing other outside classes which I attended
17 at University of Maryland homicide course, also the
18 University of Louisville homicide course. Other
19 courses we had was CSC course which is given in
20 Tampa, Florida.

21 Q And when you first came on to work for the Sheriff,
22 in what capacity or role or job did you have when you
23 first started?

24 A Just a regular road deputy.

25 Q And have you changed positions and/or moved up in the

1 Sheriff's Department since you've been there?

2 A Yes, I have.

3 Q Tell them about that, please, the ladies and
4 gentlemen?

5 A I moved from the regular road deputy to the crime
6 scene investigation unit.

7 Q And how long have you been in CSI?

8 A Since 2000.

9 Q And what does that mean to be an investigator with
10 the crime scene investigation unit with the Richland
11 County Sheriff's Department? What do you do?

12 A Investigate crime scenes, go and process crime
13 scenes, photograph, collect evidence and preserve
14 evidence.

15 Q Did you have an occasion to respond to Chastity's
16 Gold Club on River Drive on the early morning hours
17 of January 29th, 2006?

18 A I did.

19 Q And why did you go there, Investigator?

20 A I received a call from the line units that there had
21 been a shooting and a victim had been hit.

22 Q And tell these folks what you do when you arrive at a
23 crime scene and specifically what you did this
24 morning, that morning of January 29th when you
25 arrived at Chastity's?

1 A Once I arrived on the scene, the officers met me out
2 in the parking lot, explained to me what had
3 happened, took me inside of the club in the area
4 where the victim was hit, then told me, showed me
5 where he dropped at. There is where I seen the blood
6 on the floor and just nothing else around the area,
7 just the blood on the floor and the stuff that EMS
8 had left there, the paperwork and things that they
9 used to try to revive him.

10 I looked around with my flashlight. And they
11 said shots had been fired. I looked around because I
12 want to look around and see if I found a projectile,
13 whether it was what we call a through-and-through
14 projectile, checked the walls, checked behind -- I
15 think they had an ATM machine. I checked behind the
16 ATM machine, just checking all over the area. And we
17 could do this; at least I do, I do it several times.
18 Just in case I missed it, I would do it several
19 times.

20 Q And is it fair to say that you kind of -- you said
21 you talked to some of the officers at the scene,
22 correct?

23 A Yes, sir.

24 Q And was Mr. Johnson's body gone when you got there?

25 A His body was gone when I got there.

1 Q And did you make some what we call bench notes in
2 this case?

3 A Yes, sir, I did.

4 Q Have you got those with you?

5 A Yes, sir.

6 Q So you talked with some officers that were already on
7 the scene, correct?

8 A Yes, sir.

9 Q Did you get an idea of what they knew?

10 A Yes, sir.

11 Q Okay. And what why are you doing that?

12 A Just to get a feel of what happened.

13 Q And then you started looking around?

14 A Yes, sir.

15 Q And did you have your lights?

16 A I had a flashlight.

17 Q And where were you looking? You said you were
18 looking around the ATM. Did you look inside and
19 outside?

20 A Inside and outside the area.

21 Q In looking for those items that you specified?

22 A The shell casing on the outside or on the inside the
23 projectile.

24 Q And one of your forms that you all use, I mean, do
25 you check off whether or not it was properly secured,

1 that being the scene?

2 A Yes, sir.

3 Q And do you note who the officers were?

4 A The officers on the -- the proper security that I
5 talked with was Officer Hodges who was I believe the
6 case officer. And his supervisor who was there was
7 Officer Savage and Bealer.

8 Q And are those names indicated on your form?

9 A Yes, sir.

10 Q I mean, you basically have a form you go down when
11 you're checking that kind of helps you when you're at
12 a scene, don't you?

13 A Yes, sir.

14 Q And during this gathering of information, did you
15 learn any type of particular vehicle was involved?

16 A Not -- I was hearing bits and pieces about the
17 vehicle. My main concern was the crime scene there.
18 And I was hearing bits and pieces or hearing the
19 officers talk about, you know, talking with the
20 proprietor about a vehicle that had drove past there.
21 I wasn't sure about it. I wasn't really paying
22 attention to them. I mean, I was just -- my concern
23 was the crime scene there.

24 Q Okay. And so you didn't know where a particular
25 vehicle may or may not have been prior to you getting

1 there at this point?

2 A I didn't know.

3 Q How do you preserve a crime scene so we prosecutors,
4 defense attorneys can come in here and share it with
5 the jury? What's one way you do that?

6 A Well, one way we do it is, depending on the other
7 line units to do it. And A lot of people have seen
8 the yellow tape put around. That's the border tape
9 there. And that is so that no one will enter into
10 the crime scene, unwanted person that's going to
11 enter into the crime scene to remove or disturb any
12 evidence that's at the crime scene.

13 Q And what's another way, if any, that you can recreate
14 or show the jury later on if necessary? What --

15 A After taking a number of photographs, I can pretty
16 much reiterate the crime scene to you with the
17 photographs.

18 Q If I may approach this witness, please.
19 Specifically, State's 13, does that depict the
20 interior of Chastity's?

21 A Yes, sir.

22 Q All right. And who took that photo?

23 A I did.

24 Q Investigator Ray Livingston took that photo. And
25 that's how it was when you were there, correct?

1 A Yes, sir.

2 Q There's a little box up here. I'm sorry. I can't
3 see it. There is what appears like a metal suitcase
4 in State's 13, right here on this. Can you tell me
5 what that is?

6 A That is my camera case.

7 Q Your camera case?

8 A Yes, sir.

9 Q Do you have other items that you use when you are
10 helping to recreate a scene or any other items in
11 investigation?

12 A I have my paperwork where I can do my sketch pad for
13 drawing.

14 Q And why are you taking a picture of -- and I'm
15 showing you State's 10. Why do you take this
16 picture, Investigator?

17 A For memory, so I remember, and to show you and the
18 attorneys how it was when I got there.

19 Q Okay. And obviously there appear to be some stains
20 at the bottom of the floor on State's 10, correct?

21 A Right.

22 Q So how many pictures did you take from the inside?
23 Do you know?

24 A The total I had is 22 photographs. I don't know how
25 many I took from the inside nor how many I took

1 outside.

2 Q And through the course of the investigation, did
3 you -- well, first of all, did you find any
4 projectiles, any bricks that were hit, any floors or
5 any other marks when you were there that morning of
6 the 29th?

7 A No. No projectile. The only other thing I found was
8 a hole in the door.

9 Q Okay. And that was my next question. I'm going to
10 show you -- did you take pictures of it?

11 A Yes, I did.

12 Q And let me kind of work out-in. This is State's 9,
13 Investigator. What's this a picture of?

14 A That's the picture of the outside area of the door.

15 Q Okay. You took that?

16 A Right.

17 Q Is that how it appeared on the morning of
18 January 29th, 2006?

19 A Yes.

20 Q And is that again a picture, State's 17, of the
21 exterior?

22 A Yes, sir.

23 Q And the door handle if you're looking at it is on the
24 left, correct?

25 A Yes.

1 Q If you're looking at it. So State's 11, is it fair
2 to say that's a closer picture from the outside of
3 the door?
4 A Right. Yes, sir.
5 Q The door handle is still on the left if you're
6 looking at it?
7 A Yes, sir.
8 Q And up in the right top of the door, if you're
9 looking at State's 11, there appears to be a number
10 1?
11 A Yes, sir.
12 Q What is that?
13 A That's depicting the bullet hole.
14 Q Okay. And who put that number 1 there?
15 A I did.
16 Q And why did you do that?
17 A To mark it.
18 Q It appeared to you based on your training and
19 experience to be a bullet hole?
20 A Yes, sir.
21 Q Showing you what's State's 15, what is that?
22 A That's a close up version of it.
23 Q Close up version of the bullet hole?
24 A Right, sir.
25 Q State's 15. And who took that? You also?

1 A Yes, sir.

2 Q Did you look at the other side of the door which

3 would be the interior of the door to see if there was

4 a hole on that side?

5 A Yes, sir, I did.

6 Q And how did you -- did you take a picture of that?

7 A Yes, sir.

8 Q And showing you again going out-in, State's 16, do

9 you recognize that?

10 A Yes, sir.

11 Q And that appears to be a number 2 right there,

12 correct?

13 A Yes, sir.

14 Q All right. Tell the folks what that is?

15 A That is the interior of the door where the projectile

16 came through the door.

17 Q Based on your training and experience, did that

18 appear to you to be a projectile hole?

19 A Yes, sir.

20 Q And State's 12, is that the same thing, a little

21 closer?

22 A Yes, sir. A close up.

23 Q And State's 8, is that's close up view?

24 A Yes, sir.

25 Q Okay. And this is the interior of the door to

1 Chastity's?

2 A Yes, sir.

3 Q Beg the Court's indulgence.

4 MR. HARPOOTLIAN: Your, we'd ask them to hook up
5 the overhead because both Mr. Meadors and I are going
6 to use it. It's going to take just a second. I
7 apologize.

8 THE COURT: All right.

9 MR. HARPOOTLIAN: Sir, that thing.

10 THE COURT: It's called an Elmo.

11 MR. HARPOOTLIAN: An Elmo?

12 MR. MEADORS: Back it up a little.

13 Q This is the exterior of the door, Investigator, that
14 you took?

15 A Yes, sir.

16 Q Now, after you took the pictures of the exterior and
17 the interior of Chastity's, did you do anything else
18 inside? And you said you looked with your light
19 inside and outside for projectiles or any other
20 evidence you thought might be related to this
21 shooting, correct?

22 A Yes, sir.

23 Q And did you find anything else inside the door?

24 A I found nothing.

25 Q Did you take any measurements that night?

1 A Of the hallway; yes, I did, and the area where the
2 victim had fell.

3 Q And have you got your drawing that you did on that?

4 A Yes, sir, I do.

5 Q Can you take that out? Investigator, you've got your
6 notes there, correct?

7 A I do.

8 Q And explain to the jury how you came up with this
9 diagram?

10 A Walking into the hallway area where the victim fell,
11 just doing a regular not-to-scale, we call it
12 not-to-scale sketch, just a brief sketch of the area
13 within the crime scene and just to show it just for
14 our notes and for the possibility of showing it to
15 you guys of how things were being sketched out there.

16 Q And it shows here, it's a scale, A is eight feet,
17 five inches from the door, correct?

18 A Right.

19 Q Which would be this here. B is seven feet, five
20 inches wall to wall, correct?

21 A Right, sir.

22 Q And C is sixteen feet, three inches hallway to wall?

23 A That would be back to the office door there.

24 Q Okay. You see here?

25 A Yes, sir.

1 Q Okay.

2 MR. HARPOOTLIAN: Is that in evidence?

3 MR. MEADORS: I was fixing to mark it.

4 (WHEREUPON, State's Exhibit No. 61 is marked for

5 identification.)

6 MR. MEADORS: I believe without objection,

7 State's 61, Your Honor.

8 MR. HARPOOTLIAN: Without objection.

9 (WHEREUPON, State's Exhibit No. 61 is admitted

10 into evidence.)

11 Q Mr. Johnson's body is gone already, right?

12 A Yes, sir.

13 Q So you're here taking measurements trying to get

14 information of the crime scene that would aid you and

15 us when we are presenting this case to the jury,

16 correct?

17 A That's correct, sir.

18 Q And these diagrams show what?

19 A Just show that right here in the center is where the

20 blood stain was and just a basic interior drawing

21 there.

22 Q And did you have your ruler?

23 A Yes, sir.

24 Q You did it yourself?

25 A Yes, sir.

1 Q Okay.

2 A I think I was assisted by another officer there.

3 Q And at some point during these early morning hours,

4 did you learn there had been a videotape?

5 A Pardon?

6 Q At some point during the early morning hours of

7 January 29th, did you learn there had been a video,

8 learn there was a video?

9 A Yes, sir, I did. Right. I hadn't seen it but I

10 learned that there was one.

11 Q But you knew there was one?

12 A Yes, sir.

13 Q And at some point, either it was the next day or the

14 day after, did you view that video?

15 A Yes, sir, I did.

16 Q Okay. And were you able to view what we've shown as

17 camera 4 from the inside showing the vehicle coming

18 across?

19 A Yes, sir.

20 Q Do you remember when you saw that, how long after?

21 A That was Monday morning.

22 Q Now, do you have your notes back in front of you?

23 A Yes, sir.

24 Q What I'm referring to as Crime Scene Investigation

25 Analysis Report, correct?

1 A Yes, sir.

2 Q And in here you basically put what you do, correct?

3 A Yes, sir.

4 Q And you have your bench notes?

5 A Yes, sir.

6 Q And then after that you have your Review Checklist,

7 correct?

8 A Yes, sir.

9 Q And I believe you said it, but properly secured. You

10 got Officer Hodges?

11 A Yes, sir.

12 Q Who started the crime scene log?

13 A The one I have here, I have I guess Officer Gwyn. I

14 have Officer Gwyn, Hodges, Bealer, and I think Marvin

15 in this one.

16 Q Okay. That's your writing?

17 A Yes, sir.

18 Q On these notes, have you got these right here with

19 you?

20 A Okay. Yes.

21 Q Crime scene log started: Yes. Whose name do you

22 have?

23 A Officer Hardy's.

24 Q Beelo?

25 A Beelo. Excuse me.

1 Q Officer Hodges was the property security, correct?
2 A Right.
3 Q And do you put on your checklist whether or not
4 you've taken digital photos?
5 A Yes, sir, I do.
6 Q A crime scene diagram?
7 A Right, sir.
8 Q Measured the inside temperature?
9 A Yes, sir.
10 Q Outside temperature?
11 A Yes, sir.
12 Q You go down a checklist you have after that. Illegal
13 drugs present, you have N/A. It means not
14 applicable?
15 A Right, sir.
16 Q Shoe tracks involved. You've got what?
17 A N/A.
18 Q Not applicable?
19 A Right, sir.
20 Q Tire tracks involved, you've got --
21 A N/A.
22 Q Tool marks?
23 A N/A.
24 Q DNA?
25 A N/A.

1 Q And at this point you knew there was a video of the
2 crime, right?

3 A Right.

4 Q And you knew the person was deceased, right?

5 A Right. At that point I did know.

6 Q And did you know at this point, too, the defendant
7 had been identified?

8 A No. I didn't know who had been identified.

9 Q You just knew there was a tape of it?

10 A I knew there was a tape of it. And again, just
11 hearing other officers speak, that the individual
12 driving the car had been in in the club area.

13 Q And you saw that tape a couple of days later?

14 A Yes, sir.

15 Q On the second page of this, hair/fiber evidence,
16 you've got N/A?

17 A Hold it just a minute.

18 Q It would be on page 2 of 2.

19 A Yeah. I've got to take it out. Okay.

20 Q Correct? N/A on that?

21 A Right, sir.

22 Q And soil samples, N/A?

23 A N/A.

24 Q It's got vehicle involved. Did you ask and did you
25 write in the type vehicle?

1 A Right, sir.

2 Q Which is what?

3 A A dark colored SUV.

4 Q And then the photographs. And then it says vehicle

5 towed to Lonnie Roberts' Towing, correct?

6 A Yes, sir.

7 Q And blood sample swabs taken from the incident scene

8 location. Did you do that?

9 A Yes, sir, I did.

10 Q No other body in there but "Jon Jon"'s, right?

11 A Right, sir.

12 Q And it's got down here weapons collected. Did you

13 see any weapons there in the lobby or the incident

14 location to collect?

15 A I didn't.

16 Q And you looked, didn't you? Or did you?

17 A Yes, sir.

18 Q Okay. Trajectory analysis, you've got N/A, correct?

19 A N/A.

20 Q And when did you look at that video?

21 A I looked at it on Monday morning.

22 Q And after looking at that video, did you do any

23 trajectory analysis?

24 A I didn't need to because we had the video.

25 Q You had the video?

- 1 A Right, sir.
- 2 Q It says GPR. Is that the same thing I call GSR?
- 3 A Yes.
- 4 Q GPR is gun primer. Is that gunshot?
- 5 A Yes, sir.
- 6 Q Okay. Performed on the victim?
- 7 A Yes, sir.
- 8 Q And was that done?
- 9 A That was done at the hospital. Yes, sir.
- 10 Q Another thing that's on your list that you check off,
- 11 projectiles recovered, you've got that at autopsy,
- 12 correct?
- 13 A Yes, sir.
- 14 Q We've got another officer coming in as far as you
- 15 know to testify to that?
- 16 A Yes, sir.
- 17 Q Injuries photographed, yes; and it says at autopsy,
- 18 correct?
- 19 A Correct, sir.
- 20 Q So you pretty much go right down this form, right,
- 21 after you make your initial observations?
- 22 A We do.
- 23 Q And that's what you did this night?
- 24 A Yes, sir.
- 25 Q Now, in addition to all of that that you did there,

1 did you have occasion, too, to; this vehicle that you
2 see, the Toyota, take pictures of it?

3 A I did. I was called I think late Sunday morning to
4 go to the home and take the photos.

5 Q Okay. And without State's 23, did you take that?

6 A Yes, sir.

7 Q And all these are pictures of the Toyota 4Runner
8 which you listed in your evidence log, correct?

9 A Yes, sir.

10 Q Did you take pictures of State's 24, items that were
11 in the back?

12 A Yes, sir.

13 Q State's 25?

14 A Yes, sir.

15 Q Did you pretty much take pictures of the outside and
16 the inside of the Toyota 4Runner?

17 A Yes, sir.

18 Q And that last one, Judge, was State's 26. This is
19 State's 27. Is that the exterior?

20 A Yes, sir.

21 Q And on State's 28 -- strike that. State's 30, is
22 that the steering wheel area of the Toyota 4Runner?

23 A It's the steering wheel area, but I don't believe I
24 took that one.

25 Q You did not take that one?

1 A No, sir.

2 Q That's okay. State's 31?

3 A Yes, sir.

4 Q And does that depict the back of it, the Toyota

5 4Runner?

6 A Yes, sir.

7 Q I'm sorry. I keep forgetting to use that. Now, on

8 State's 33 -- and let me ask you this much. On

9 State's 34, were there some items inside that you

10 photographed?

11 A It's those items right there.

12 Q Okay. And what is that?

13 A It's a Ruger gun magazine I think it is.

14 Q A Ruger catalog?

15 A Catalog, yes, sir.

16 Q And was that inside the car?

17 A Yes, sir.

18 Q And finally on State's 33, can you see on the

19 passenger's side window, there's still a window

20 there, isn't there?

21 A Yes, sir, it is. It's down.

22 Q You see that there's a window there. Does that

23 depict -- was there a window in the car?

24 A Yes, sir.

25 Q Okay. You stayed at Chastity's for quite a while,

1 didn't you?

2 A I did. Yes, sir.

3 Q Did you realize you were being videotaped when you

4 were there?

5 A I didn't. I didn't until I was told of it.

6 Q And actually your investigation and looking around

7 with the light and looking for the projectiles and

8 all the other stuff you testified, it's actually on

9 videotape, isn't it?

10 A Yes, sir. From what I seen, it is.

11 Q And it's on this tape right here, correct?

12 A It is.

13 Q And you have reviewed that, right?

14 A I have.

15 Q And that will show what you did at the scene and the

16 amount of time. Did you leave about 1:30 or so?

17 A Yes, sir.

18 Q In when you left, Investigator, did you -- if I asked

19 you this before, I apologize to everybody. Did you

20 know where the car had been that you took photos of

21 earlier? When you were there that night, did you

22 know where it had been?

23 A No, sir.

24 Q It was only after you saw the video you knew where

25 that was?

1 A Right, sir.

2 Q And based on seeing the video, you decided not do any
3 other investigation as far as trajectory, correct?

4 A That is correct, sir.

5 MR. MEADORS: Beg the Court's indulgence.

6 That's all.

7 THE COURT: Cross examination.

8 MR. HARPOOTLIAN: May it please the Court, Your
9 Honor.

10 CROSS EXAMINATION

11 BY MR. HARPOOTLIAN

12 Q What is trajectory?

13 A Well, trajectory, from what little I know about
14 firearms; I'm not a firearms expert, is the angle in
15 which the round hits an object.

16 Q That a round hits an object?

17 A Right.

18 Q And you can determine trajectory by -- if you can --
19 let me see if I can sketch this up here. If you've
20 got two points, you can draw a line through them and
21 figure trajectory, right?

22 A Right, sir.

23 Q Okay. So, if -- and do you have instruments? Do you
24 have a laser instrument, or do you have any sort of
25 instrument to try to do that with?

1 A Yeah. We have what we call dowels. We have
2 different sized dowels. They're long.
3 Q Dowels?
4 A Yeah. We call them dowels. They're long sticks.
5 They're round sticks, sir.
6 Q So, I mean, simply put, if -- maybe this is a crude
7 way to do it. If a projectile were to pass through
8 this cup, go through one side, come out the other,
9 you could take one of those dowels and stick it
10 through and say in this case the projectile was going
11 up at a -- and you could actually measure the degree?
12 A Yes, sir. But it would only give me -- because again
13 I'm not the firearms people. They would have to come
14 back and do it a little more substantially. But that
15 would give me somewhat of a degree of what had
16 happened there, the angle it took.
17 Q Well, did you ask any firearms people to come out to
18 the scene that night?
19 A Not that night. No, I didn't.
20 Q Did you ever ask them to come out to the scene?
21 A No. I didn't that night, and I think -- I don't know
22 if they went out later that night or the next day.
23 Q I mean, would you have had to request they come?
24 A Either I would have requested it or the investigator.
25 Q To your knowledge, was any such trajectory analysis

1 done?

2 A To my knowledge, no.

3 Q Okay. Now, so, when we look at -- and let me -- I've
4 done a blow up of State's Exhibit No. --

5 MR. MEADORS: Your Honor, again, it's already in
6 evidence, but he can't offer or show something that's
7 different unless he puts it in evidence. I don't
8 want him to show it right now, Judge, unless he puts
9 it in evidence as his exhibit.

10 THE COURT: What's different about it?

11 MR. MEADORS: The difference is it's bigger.
12 He's offering evidence. If he'd please not show it,
13 Judge.

14 MR. HARPOOTLIAN: They've seen it twice before.

15 MR. MEADORS: Exactly. It should have come in
16 then. Let him put it into evidence. We have no
17 objection, but he's got to put it into evidence.

18 THE COURT: Overruled. Go ahead.

19 MR. HARPOOTLIAN: Thank you.

20 Q Does this look like -- this is a blow up of State's
21 Exhibit, which is in evidence, of the front --

22 MR. MEADORS: Your Honor, that's got to be
23 labeled for the record.

24 MR. HARPOOTLIAN: It's marked for identification
25 No. 7.

1 **THE COURT:** It is labeled.

2 **Q** Does this look familiar?

3 **A** Yes, sir.

4 **Q** Okay. You took this picture, did you not?

5 **A** It looks like the one I took; yes, sir.

6 **Q** Yeah. And you put a number 1 right here?

7 **A** Yes, sir.

8 **Q** Now, first of all tell me -- and please check your
9 notes -- how far is that entrance hole? That's the
10 entrance hole?

11 **A** That's the entrance hole.

12 **Q** Are you sure?

13 **A** From my knowledge, that's the entrance hole.

14 **Q** Okay. And how far is that from this hinge line right
15 here from the edge?

16 **A** I don't know. I didn't measure it, sir. I didn't
17 measure --

18 **Q** You did not measure that distance?

19 **A** I did not measure that distance.

20 **Q** Okay. And how far is this hole from the floor here?

21 **A** I did not measure that distance either.

22 **Q** Okay. So -- and we have a picture here of the -- let
23 me find it; I just put it in a moment ago -- of the
24 interior of that door somewhere. Is that in
25 evidence? Mr. Meadors, is that in evidence?

1 **MR. MEADORS:** I'm sorry. I wasn't --

2 **MR. HARPOOTLIAN:** The interior shot, did you put

3 that in? Interior of the door.

4 **MR. MEADORS:** Yeah. It's up there somewhere.

5 It might be behind the blow up.

6 **Q** Is there a picture here? Oh, I'm sorry. Thank you.

7 And I didn't blow these up because these things are

8 right expensive to do. So this is number 2. That's

9 a picture taken on the interior --

10 **A** Interior, yes.

11 **Q** -- of that door; in other words, this was really the

12 door and we pulled it open right here. It opens out?

13 **A** Yes, sir.

14 **Q** And then on the inside of the door is number 2?

15 **A** Yes, sir.

16 **Q** Which is State's Exhibit No. 8, right?

17 **A** Right, sir.

18 **Q** Now, how far from the floor was number 2?

19 **A** I didn't measure that either, sir.

20 **Q** Now, if you had measured that, how thick was the

21 door? What was the thickness of the door?

22 **A** I don't know, sir. I didn't pay attention to how

23 thick the door was.

24 **Q** Okay. But if you had measured, if we knew this was

25 the door and we knew there was a hole here and there

1 was a hole here. Right?

2 A Mm-hmm (affirmative).

3 Q And let's say this is the exterior hole, number 1;

4 and this is the exterior hole or the interior hole,

5 number 2; you could project the path of that

6 projectile back, could you not?

7 A You could.

8 Q Okay. And the thickness would allow you to perhaps

9 even project it knowing how thick the door is back

10 20, 30, 40, 50 feet, right?

11 A I don't believe so. It would give me the angle in

12 which the round has traveled.

13 Q Traveled. The angle?

14 A But it won't tell me how far it came.

15 Q No, no; not how far it came. But you could take

16 that -- if you put a laser -- and you have laser

17 lights, little laser pen lights?

18 A Mm-hmm (affirmative).

19 Q Have you ever put one through one of those holes and

20 projected it back to see where the shot came from?

21 A Yes, sir, I have.

22 Q Okay. And you could have done that with this --

23 A You mean the -- excuse me. You mean the general

24 area?

25 Q Well, the general area. But it would give you a

1 direction, right?

2 A Right.

3 Q Of where it came. Can you tell me whether this round
4 was traveling up or down when it hit the door? In
5 other words, was the trajectory going up or going
6 down?

7 A No, sir. I couldn't tell you whether it was going up
8 or down.

9 Q Can you tell me whether it was coming from this side
10 or from this side?

11 A No, sir.

12 Q So you can't tell me anything about the direction
13 from which that round came?

14 A I cannot.

15 Q However, had you stuck a dowel through that door that
16 night, you would be able to give us a general sense
17 of where it came from?

18 A Could have.

19 Q Now, do you do trajectory analysis?

20 A Normally --

21 Q Is that a part of your job?

22 A Normally I like to have the firearms folks do that.

23 Q Okay. And I see on your sheet here that you said on
24 the check sheet it said trajectory analysis N/A.

25 What does N/A mean?

1 A It means I didn't do it. Not applicable.

2 Q Not applicable?

3 A I didn't do it.

4 Q And why?

5 A Well, on that particular night I didn't do it until
6 after I seen the video and I said I don't know
7 whether I need to do it when we had video.

8 Q Well, you had video --

9 A Right.

10 Q -- of what?

11 A We had a video of the shooting.

12 Q Well, what you saw was a black car pull up, right?

13 A Right.

14 Q Okay. But the angle of the shot is not -- I mean,
15 you can't tell whether the -- I mean, for all you
16 know, the bullet could have ricocheted off the ground
17 and gone up, right?

18 A It could have, yes.

19 Q It could have ricocheted off the brick way over here
20 and gone up?

21 A It could have.

22 Q Could have ricocheted off of some area and gone down
23 through there; down, around, sideways, right?

24 A Yes, sir.

25 Q Now, did you -- there is a long area. Here is the

1 State's Exhibit, No. 53. And if this is the front
2 entrance, that's where the door is, there is an area
3 that's probably, if you look at the scale, I'm just
4 guessing now, 30 or 40 feet out to where this SUV is
5 shown. Is that correct? That's just approximate.
6 A Yes, sir.
7 Q And this is an approximation, 114 feet?
8 A Okay, sir.
9 Q Something, 25, 35, 40 feet, something like that?
10 A Yes.
11 Q Okay. Now, did you -- when you did your crime scene
12 processing, did you go out here and work this area to
13 look for shell casings or anything like?
14 A If I am correct, I think we went all -- we looked all
15 around out here in the parking lot there.
16 Q And what were you looking for?
17 A Just looking for shell casings.
18 Q Okay. Did you find any?
19 A No, sir, I didn't.
20 Q Were you looking for anything other than shell
21 casings?
22 A Just shell casings. Shell casings, any other
23 projectiles. I mean, we were only told -- at least I
24 was only told -- one shot. I mean, I didn't know if
25 any more had been done or not there.

1 Q Okay. And do you know what evidence of a ricochet
2 would look like?

3 A It would be a chipped brick, chipped tree, anything.

4 Q But you weren't looking for that?

5 A I was looking for projectiles or shell casings.

6 Q Now, did you have any discussions with any of the
7 people? Now, you have a firearms section at the
8 Sheriff's Department? Do you have a firearms
9 section?

10 A Yes, sir.

11 Q Who is in charge of that?

12 A Dave Collins.

13 Q Did you talk to him when you got back about any of
14 this?

15 A He wasn't working actually that night. I think I
16 talked with him on Monday morning about it.

17 Q Now, did you go back to the scene on Monday?

18 A No, sir, I didn't.

19 Q Where did you see the videotape?

20 A At the office.

21 Q Okay. Did you ever go back out here after that
22 night?

23 A I went back on Sunday night.

24 Q Okay. You went back Sunday night?

25 A Right.

1 Q And what did you do then?

2 A I went back Sunday night just to do a final check,
3 just to check behind the ATM machine to see if there
4 had been a through-and-through that maybe the round
5 landed back there behind the machine there.

6 Q But again, this hole was still in the door at that
7 point?

8 A Yes, sir.

9 Q And you did not put a dowel through there. You carry
10 dowels in that metal case, don't you?

11 A I carry them in a case pretty big. I carry them in a
12 metal case in the truck. Yes, sir.

13 Q Right. And the truck was right outside?

14 A Yes, sir.

15 Q And you could have stuck a metal dowel through this
16 hole which would have given us some idea of the
17 trajectory of the bullet; but you did not do that,
18 correct?

19 A I did not do that. Right, sir.

20 Q To your knowledge, did any other law enforcement
21 official inspect or do an analysis of that entrance
22 and exit?

23 A To my knowledge, no.

24 Q Did you ask anybody to do it?

25 A No, I didn't.

- 1 Q To your knowledge, did the Richland County firearms
2 people come out after you and do analysis of
3 trajectory on this?
- 4 A I don't know, sir. I didn't ask them.
- 5 Q If the door was still there a month later, you could
6 have done it then or they could have done it then,
7 right?
- 8 A Yes, sir.
- 9 Q I mean, the door is the door and the hole is the
10 hole, right?
- 11 A Right, sir.
- 12 Q Do you know the composition of that door?
- 13 A No, sir, I don't.
- 14 Q Who was with you out there at the scene?
- 15 A Just the officers that are named on there. I was the
16 only crime scene investigator out there.
- 17 Q You were the only CSI person there?
- 18 A Yes, sir.
- 19 Q Do you have a supervisor?
- 20 A Yes, sir, I do.
- 21 Q Who is that?
- 22 A Lieutenant Zane Padgett.
- 23 Q Okay. Did you review with him your work on this?
- 24 A Always he has to look over it.
- 25 Q And when did he look over it?

1 A When I got completed with it there. It was A couple
2 of days later.

3 Q And he looked over it and signed off on it?

4 A Yes, sir.

5 Q Is that on that form?

6 A Yes, sir. He signed at the bottom there.

7 Q Now, Lieutenant, is it Lieutenant Padgett?

8 A Yes, sir.

9 Q If Lieutenant Padgett had wanted you at that point to
10 come back and do this trajectory analysis, what you
11 say N/A on here about, you would have done that,
12 would you have not?

13 A I would have.

14 Q But nobody ever asked you to do that?

15 A No, sir.

16 Q Do you know where the door is today?

17 A No, sir. I sure don't.

18 Q Have you ever tried to find the door?

19 A No, sir.

20 Q Has anyone ever asked you to find the door?

21 A No, sir.

22 MR. HARPOOTLIAN: Beg the Court's indulgence one
23 moment. Thank you.

24 REDIRECT EXAMINATION

25 BY MR. MEADORS

1 Q This Defense Exhibit for I.D., 7 I.D., does not show
2 the bottom of these steps, does it? Correct?
3 A No, it doesn't. It takes another step down.
4 Q And looking at State's 17, this door, how many steps
5 would you say it is up off the ground?
6 A That's three, three to four.
7 Q So you would have to climb up steps to go into this
8 door, correct?
9 A Yes, sir.
10 Q State's 33, you looked at is a car, correct?
11 A Yes, sir.
12 Q So if you're sitting in this vehicle, you would be
13 sitting up, correct, off the ground?
14 A Right, sir.
15 Q The wheels are up, correct?
16 A Right, sir.
17 Q So you'd be up a little bit?
18 A Yes, sir.
19 Q Now, you told Mr. Harpootlian you saw a video of the
20 shooting in response to one of his questions,
21 correct?
22 A Yes, sir.
23 Q With your own eyes you saw it?
24 A Yes, sir.
25 Q You've seen the video, correct?

1 A Yes, sir.

2 Q A few days later. As a result of that, you decided
3 you didn't need to do trajectory, correct?

4 A That's correct, sir.

5 Q The car. The door. How many holes in the door?

6 A One.

7 Q One hole. How many holes? One hole, right?

8 A One hole.

9 Q How many dead folks?

10 A One.

11 Q One car, one hole, one dead person?

12 A Yes, sir.

13 Q After you watched the video, did that line up?

14 A Yes, sir.

15 Q Did you think -- and one shot?

16 A One shot.

17 Q And you saw a video of the shooting?

18 A Yes, sir.

19 MR. HARPOOTLIAN: Done?

20 MR. MEADORS: Wait a minute. That's it.

21 RECROSS EXAMINATION

22 BY MR. HARPOOTLIAN

23 Q Just one follow-up question here. I am perhaps not
24 following the solicitor. We've got one car, one
25 door, one guy, one bullet. And you saw a video of

1 that?

2 A Yes, sir.

3 Q Now, can you tell this jury whether when this guy got
4 hit with the bullet, was the bullet coming down? Was
5 it going up? Was it straight in? Do you know?

6 A I don't know.

7 Q And you can't know without knowing the trajectory
8 through the door, right?

9 A If I had doweled the door, I would know.

10 Q If you had doweled the door you'd know. If, for
11 instance, this bullet came out and hit one of these
12 brick pylons we see out in front 30 feet away,
13 40 feet away and ricocheted through the door, we'd
14 see a door that has a -- let me look at the big
15 one -- and you put a dowel through here, you'd see
16 something like this through the dowel, right?
17 Because the pylon is down here, it would have come up
18 and through?

19 A You would have something different; yes, sir.

20 Q Right. And if on the other hand it had hit the
21 ground and come up, say it hit one of steps and went
22 up, you'd see a very steep angle on the dowel, right?

23 A On the dowel, yes.

24 Q And if it had hit something -- there's a canopy over
25 this. Did you inspect the canopy?

- 1 A We looked up at the canopy; yes, sir.
- 2 Q But, I mean, did you look for ricochet marks, for
- 3 damage or anything like that?
- 4 A No.
- 5 Q No.
- 6 A We just --
- 7 Q It could have hit the canopy and come back down,
- 8 correct?
- 9 A It could have, yes.
- 10 Q Do you know what the angle -- did you look or
- 11 determine what the angle of the wound was in his
- 12 head? Was it going up or going down, or do you know?
- 13 A No, sir. That's up to the pathologist.
- 14 Q Okay. So, one car, one door, one dead guy, one
- 15 bullet. Does that tell you anything about the path
- 16 of that bullet before it hit?
- 17 A Just when I looked at the video. That's the only
- 18 thing.
- 19 Q You just looked at the video and said, well, the
- 20 bullet must have come from the car. Is that about
- 21 it?
- 22 A Well, I think it did come from the car, sir.
- 23 Q You assume it came from the car?
- 24 A Assume it came from the car; yes, sir.
- 25 Q But you don't know where the muzzle of that gun was

1 pointed when the trigger was pulled?

2 A I don't, sir.

3 Q And it could have been pointed this way, this way,
4 this way, this way, this way, any -- you don't know?

5 A I don't know.

6 Q And apparently we never will know?

7 A No, sir.

8 Q Thank you.

9 MR. MEADORS: If it was pointed toward --

10 MR. HARPOOTLIAN: Objection, Your Honor.

11 MR. MEADORS: Did you see anything else?

12 THE COURT: That's it. Direct, redirect.

13 MR. MEADORS: No, sir. I've got a case, and
14 there's a re re. Yes, sir.

15 THE COURT: You've got --

16 MR. MEADORS: I've got a case for re redirect.
17 Yes, sir.

18 MR. HARPOOTLIAN: Re?

19 THE COURT: You've had redirect. Approach the
20 bench.

21 (Whereupon, a bench conference is had)

22 THE COURT: All right, Investigator. You're
23 free to go. Is there any objection to releasing this
24 witness?

25 MR. HARPOOTLIAN: No..

1 **THE COURT:** From the State?

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

3 **THE COURT:** All right, ladies and gentlemen.
4 That's going to conclude the testimony for today.
5 Did we make somebody happy over there? We'll
6 continue the case in the morning. Again, don't
7 discuss the case among yourselves when you return to
8 the jury room in the morning or with anyone else over
9 the evening hours.

10 Again, I'll caution you about press reports,
11 media reports, things of that nature. I'd appreciate
12 it if you do not avail yourself of those items. And
13 we'll see you. Let's try to start at 9 in the
14 morning. Does that suit everybody?

15 **MR. HARPOOTLIAN:** The defense will be ready,
16 Your Honor.

17 **THE COURT:** 9:00? 9:00. I'm not saying
18 anything more. All right. Thank you very much.
19 Have a pleasant evening, ladies and gentlemen.
20 Mr. 149, Mr. 149. Ask Mr. 149 to wait.

21 (Jury out at 4:48 p.m.)

22 **THE COURT:** Counsel, I have advised off
23 Mr. 149's problem Monday.

24 **MR. HARPOOTLIAN:** We defer to you totally, Your
25 Honor.

1 **MR. MEADORS:** We defer to you, Your Honor.

2 **THE COURT:** Just stand out in the hall. I'm
3 just going to speak with him about a scheduling
4 problem. All right. We'll stand at ease until 9:30.

5 **MR. HARPOOTLIAN:** Thank you. 9.

6 **THE COURT:** 9:00. 9:00. 9:00.

7 (Whereupon, the proceedings are concluded for
8 the day, to be reconvened tomorrow morning)

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1 Friday, May 11, 2007

2 **MR. HARPOOTLIAN:** Judge, from talking to the
3 solicitor, it appears to me they will not rest their
4 case today. They'll get close. Just for the --
5 because my witnesses, some of my witnesses have to
6 fly in, the logistics of that, I'm going to not plan
7 to have them here before lunch on Monday.

8 **THE COURT:** All right.

9 **MR. HARPOOTLIAN:** Because there's a flight
10 schedule issue.

11 **THE COURT:** That's fine.

12 **MR. HARPOOTLIAN:** If we call witnesses.

13 **THE COURT:** Is the State ready to proceed?

14 **MR. GIESE:** The State's ready.

15 **THE COURT:** The defense ready to proceed?

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

17 **THE COURT:** Bring the jury, please.

18 (Jury in at 9:05 a.m.)

19 **THE BAILIFF:** The jury is present, Your Honor.

20 **THE COURT:** Good morning, ladies and gentlemen.
21 We're ready to continue with the trial. Thank you
22 for your prompt attention this morning. Solicitor,
23 call your next witness.

24 **MR. GIESE:** May it please the Court, Your Honor.
25 The State calls Sergeant Linfert.

1 DAVID LINFERT, after being duly sworn, testifies
2 as follows:

3 **THE CLERK:** Thank you. Please have a seat in
4 the witness stand and state your full name for the
5 record. And spell your last name, please.

6 **WITNESS:** David Linfert, L-I-N-F-E-R-T.

7 DIRECT EXAMINATION

8 **BY MR. GIESE**

9 **Q** Sergeant Linfert, where are you employed?

10 **A** I'm employed with the Richland County Sheriff's
11 Department.

12 **Q** What's your position there?

13 **A** Currently a sergeant in the investigations unit
14 working major crimes.

15 **Q** How long have you been in law enforcement?

16 **A** Almost 11 years now.

17 **Q** With the Sheriff's Department the whole time?

18 **A** Yes, sir.

19 **Q** Tell the jury a little bit something about you. Are
20 you from Richland County?

21 **A** I was actually born in Connecticut. We moved down
22 here when I was three. I've lived in Columbia pretty
23 much ever since then.

24 **Q** Did you graduate from high school in the area?

25 **A** Yes, sir. I graduated from Spring Valley High School

1 in 1988.

2 Q And after that did you go to college?

3 A Yes, I did.

4 Q Where did you go?

5 A I went to Winthrop University. I also went to the
6 University of Georgia.

7 Q Now, I notice that you came up here on crutches.
8 Could you tell the jury how that happened?

9 A It was work related. I was doing some SWAT training
10 in Boise, Idaho.

11 Q And what did you do?

12 A Well, I fast roped and broke my ankle.

13 Q That was just pretty recently?

14 A Yes, sir. Last week.

15 Q Now, Sergeant, I want to draw your attention back to
16 January 29th of 2006. Were you an investigator at
17 that time?

18 A Yes, I was. I was assigned to work the night shift
19 investigations that day.

20 Q Were you a sergeant at that time?

21 A Yes, I was.

22 Q So you were actually a supervisor of investigators at
23 that time?

24 A That's correct.

25 Q Now, I want you to tell the jury what your first

1 contact with this case was?

2 A I was informed by our desk sergeant that we had a

3 shooting at the Chastity's Gold Club on River Drive,

4 and I responded to that location.

5 Q Approximately what time did you get there?

6 A It was shortly after midnight that I got the call.

7 So I probably got there right around 12:30.

8 Q Now, when you get to a scene like that, tell the jury

9 what you saw when you got there?

10 A The deputies who were on the scene first came up to

11 me the basic information they had at that time. They

12 relayed that they had suspect information that

13 includes a license plate of the suspect's vehicle.

14 Q Now, at that time had the witnesses in the area been

15 detained there?

16 A That's correct. The deputies kept everybody inside

17 the club who was a witness.

18 Q And that's standard procedure?

19 A Yes, it is.

20 Q Now, that night, early those early morning hours,

21 when you got there and got the initial information

22 from your line deputies -- and a line deputy is what?

23 A Just a regular patrol officer in a patrol car.

24 Q Are they the first people that usually go to the

25 scene?

1 A Yes, they are. They're the first responding units.

2 Q Once you got there and got acclimated, did you have
3 an opportunity to interview witnesses?

4 A Yes, I did. I interviewed Mr. Donnie Hawkins as well
5 as Nicole Beran who was working as a cashier at the
6 time.

7 Q And you personally interviewed them?

8 A That's correct.

9 Q And you're doing that why?

10 A To gather information on what exactly happened that
11 led up to the shooting.

12 Q And tell the jury what through your investigation
13 from talking to these two witnesses and your other
14 investigation at the scene you had determined at that
15 time had happened?

16 A We knew there was some type of verbal altercation
17 inside the club which continued outside until the
18 shooting took place. And the victim was struck,
19 transported to the hospital. And of course the
20 suspect departed the scene.

21 Q At that time did you know whether or not any threats
22 had been made by the shooter?

23 A Yes, I did. Mr. Hawkins said that --

24 MR. HARPOOTLIAN: Objection, Your Honor. That
25 would be hearsay.

1 THE COURT: Sustained.

2 MR. HARPOOTLIAN: Thank you.

3 MR. GIESE: Your Honor, may I be heard on that?

4 THE COURT: Sure.

5 MR. GIESE: It's been testified to and cross
6 examined by him.

7 THE COURT: All right. Overruled. Go ahead.

8 Q Were there threats made?

9 A Yes, I did. Mr. Hawkins was able to relay that
10 information, that threats had been made inside the
11 club as well as outside.

12 Q Were you able to get a description of the alleged
13 shooter in this case?

14 A Yes, I was.

15 Q And what was that description?

16 A Mr. Hawkins described the suspect as a white male in
17 his late 50's or early 60's with gray hair. He was
18 about five-ten, five-eleven, weighed about
19 200 pounds. He had a pot belly, wore glasses and was
20 dressed in very nice clothes.

21 Q Now, earlier you had mentioned that you had gotten
22 information that the shooter's tag number of his car
23 had been obtained. Do you know how that was
24 obtained?

25 A By the witnesses; the manager as well as the -- the

1 manager/victim as well as some of the witnesses
2 involved at the club.

3 Q So you had an alleged license tag number?

4 A Correct.

5 Q What did you do with that?

6 A The deputies had already ran that license tag through
7 the DMV website through their computers. It came
8 back to -- let me see -- I believe a business address
9 of .

10 Q Is that in Richland County?

11 A Yes, it is.

12 Q And did it come back to a certain person?

13 A Yes, it did. It came back to an H. Dewain Herring.

14 Q With that information; what, if anything, did you do?

15 A I requested that region -- that some other deputies
16 in that area that patrolled that area go to that
17 location and attempt to locate the vehicle. They
18 did. They called back to let me know that it was an
19 office park and that there was no vehicle present at
20 that location. I asked them to stand by there just
21 in case the vehicle did come to that location.

22 Q So you had one vehicle, one set of line deputies at
23 Landmark?

24 A Correct.

25 Q In case the vehicle came there?

1 A Yes.

2 Q Now, after you've interviewed witnesses at the scene
3 there, did you have an opportunity to view a
4 videotape?

5 A Yes, I did.

6 Q And tell the jury how you got your hands on the
7 videotape?

8 A I think Deputy Gwyn and Investigator Baker had met
9 with one of the managers or somebody who was able to
10 provide us with a videotape as well as a color
11 picture that they printed off for us of the suspect.

12 Q So you had that in your possession?

13 A Yes, I did.

14 Q Did you actually look and watch the videotape at that
15 time?

16 A Yes, I did.

17 Q Tell the jury what you saw?

18 A I saw -- basically what we saw or were given was the
19 victim arrived -- or the suspect arriving at the
20 location, the nightclub, coming inside and then being
21 escorted out of the club by the management. And this
22 included the verbal argument or altercation that
23 happens outside as well as the vehicle leaving and
24 coming back to the location just minutes just before
25 the shot is fired.

1 Q Did you see the shot fired?

2 A I did, yes.

3 Q Now, all of this information that you're gathering
4 you're gathering at the scene?

5 A Correct.

6 Q And at this point you have all that information?

7 A Yes, sir.

8 MR. HARPOOTLIAN: Your Honor, I believe this
9 officer has testified he looked at a video and saw
10 something. We've been through this before.

11 THE COURT: Overruled. Go ahead.

12 MR. HARPOOTLIAN: I'd like to argue that.

13 THE COURT: Approach the bench.

14 (Whereupon, a bench conference is had)

15 THE COURT: All right, ladies and gentlemen.

16 The last question: "Did you see a shot fired? I
17 did, yes"; it's the same instruction that I gave you
18 with regard to another witness that looked at the
19 same video and saw what he thought was -- one said a
20 light; one said a shot. That's an opinion. Just
21 take it as that. Nobody saw the shot fired based on
22 the testimony we've heard so far. It's all from this
23 video. You are going to have the video. You can
24 look at it. You can determine whatever you choose to
25 determine from it. Go ahead, Solicitor.

1 **MR. GIESE:** Thank you, Your Honor.

2 **Q** Sergeant, after you viewed the video and the still
3 photograph of -- who was the still photograph of?

4 **A** The suspect, Dewain Herring.

5 **Q** Is Dewain Herring in the courtroom today?

6 **A** Yes, he is.

7 **Q** Once you viewed that; what, if anything, did you do?

8 **A** Well, initially, when we first had the deputies check
9 the office park and we knew that there was no vehicle
10 there, we checked the DMV, Department of Motor
11 Vehicle website again for other addresses for Mr.
12 Herring, and we were able to locate a 460 Alexander
13 Circle address which was apparently a residence.
14 Upon checking our map book, it was in the
15 neighborhood. We verified that through I believe
16 either the phone book at the nightclub where his name
17 was listed or either the 411 phone system where we
18 called.

19 **Q** Now, you say you found this other address. How do
20 you do that? How did you do that?

21 **A** The deputies in their patrol cars have computers
22 hooked up to the Department of Motor Vehicle's
23 website.

24 **Q** And with this subsequent address, what did you do?

25 **A** I asked another region unit to go check that location

1 as well for the vehicle.

2 Q Now, at this point where are you?

3 A I'm still at Chastity's Club.

4 Q At some point do you go out to _____?

5 A Yes, I do. Those deputies that I had requested to go
6 to that location called back and said that they
7 observed a vehicle matching the description. They
8 weren't sure obviously if it was the same vehicle but
9 it was a black SUV in the garage.

10 Q And you went out to the scene?

11 A That's correct.

12 Q Approximately what time was that?

13 A It was about just after 2:00 in the morning.

14 Q So you go out to _____ at about
15 2:10 a.m. Is that right?

16 A That's correct.

17 Q And what are you going out there to do?

18 A Basically to locate our suspect who had just shot
19 somebody.

20 Q Tell the jury what you did when you got there at
21 2:10 a.m.?

22 A When we arrived we walked up towards the house.
23 There was a light on in the garage, so I peeked into
24 the garage to see if the suspect was inside the
25 garage at that time. He wasn't in there, but I did

1 see the vehicle. We proceeded up to the front door.
2 I knocked on the door several times, rang the
3 doorbell several times, announced who we were, got no
4 response.

5 Q Now, you say you knocked on the door several times.
6 Tell the jury how many times approximately and what
7 you used?

8 A Probably ten, fifteen times I knocked on the door
9 with a maglite flashlight I use, just something I
10 carry around when we're working nights.

11 Q You say you rang the doorbell?

12 A Yes, I did.

13 Q Approximately how many times?

14 A Several. Several times.

15 Q And was there any answer?

16 A No, there was not.

17 Q Since there was no answer; what, if anything, did you
18 do?

19 A I told the marked patrol uniformed deputies there to
20 stand by the residence, to watch, make sure the
21 vehicle did not leave the residence in case anybody
22 was inside and just chose not to answer the door, or
23 to be on the lookout for any other vehicle that may
24 come to the location in attempts to maybe pick up a
25 person. And at that time I went back to our office

1 and prepared a search warrant for the residence.

2 Q Now, is that standard procedure, to leave deputies on

3 the scene like that?

4 A Correct. Yes, it is.

5 Q And do they stand right in front of the door, or do

6 they stand on the property? What do they do?

7 A Some park right there in front. I believe this

8 officer had already had his car one house down across

9 the street from the residence. But he could see full

10 view of the residence.

11 Q So after there is no answer at the door at 460

12 Alexander Circle -- and if you would, describe the

13 area for me, if you could?

14 A It's a very well -- nice neighborhood.

15 Q Is it in Richland County?

16 A Yes, it is.

17 Q In fact, describe what it's near?

18 A It's right off of Forest Drive inbetween Trenholm

19 Plaza and Shandon Baptist Church.

20 Q So if you are going out toward the Fort on Forest

21 Drive, you have Trenholm Plaza, you pass Trenholm

22 Plaza on your right?

23 A Yes, sir.

24 Q And you keep proceeding?

25 A Yes, sir. It would be right up on your right-hand

1 side.

2 Q Is it a gated community?

3 A Yes, it is.

4 Q Do you know if they have surveillance there?

5 A I believe so. Yes.

6 Q So once you left the officers there, where did you
7 go?

8 A I went back to our office. I prepared a search
9 warrant for the residence, also looked at the video
10 again. We also pulled up an actual driver's license
11 photo of Mr. Herring and compared it to him. It was
12 no doubt who the same person was.

13 Q So you looked at a driver's license photo of the
14 defendant, Mr. Herring?

15 A Yes.

16 Q And compared it to what?

17 A The photo that we had printed out at Chastity's
18 Nightclub.

19 Q Any doubt in your mind it was the same person?

20 A No doubt.

21 Q And you said that you viewed the tape again?

22 A Yes.

23 Q And you said that you went back to get a search
24 warrant?

25 A Yes.

1 Q Explain to the jury what a search warrant is and what
2 it allows you to do?

3 A A search warrant is just basically a document signed
4 by a judge that allows us to conduct a search of the
5 location for items we may be looking for linked to a
6 crime.

7 Q And you did that?

8 A Yes.

9 Q Explain to the jury exactly how you did it?

10 A I prepared the search warrant, basically listing the
11 items that we were looking for, the clothing that the
12 suspect was wearing that night which I believe was a
13 burgundy sweater, a white turtleneck shirt, khaki
14 pants, eyeglasses, as well as the firearms or
15 ammunition and the vehicle.

16 (Pause)

17 Q I apologize, Your Honor. I apologize, Your Honor.

18 THE COURT: All right. Take your time.

19 MR. HARPOOTLIAN: What is that, Mr. Giese?

20 (Mr. Giese and Mr. Harpootlian confer)

21 Q I hand you this. Can you identify it?

22 MR. HARPOOTLIAN: No objection, Your Honor; with
23 the discussion the solicitor and I had, pursuant to
24 the previously made motions.

25 THE COURT: So there is no objection?

1 **MR. HARPOOTLIAN:** Sir?

2 **THE COURT:** So there is no objection to this
3 document?

4 **MR. HARPOOTLIAN:** We had a question about an
5 issue on it. Also there are previously made motions,
6 Your Honor, that dealt with it in limine, without
7 wanting it to be waived.

8 **THE COURT:** All right.

9 **Q** Do you recognize that?

10 **A** Yes, I do. This is the search warrant I typed up.

11 **Q** And so you typed it up. Explain how you do that?

12 **A** We have a form basically on our computer with a blank
13 search warrant where we type in the information,
14 which would be residence or the description of
15 premises that we're trying to search, what we're
16 searching for and then basically the probable cause
17 or the information needed to get the search warrant
18 for the judge.

19 **Q** And once you type that up; what, if anything, do you
20 do with it?

21 **A** I made contact with the judge immediately after that
22 to set up a time to meet with him to have it signed
23 by the judge.

24 **Q** Who was that judge?

25 **A** It was Judge Peay who is the other township

1 magistrate.

2 Q Now, did you actually go and meet with Judge Peay and
3 have the search warrant signed?

4 A I talked with Judge Peay over the telephone and
5 advised him what we were investigating at the time,
6 that we were obtaining a search warrant or attempting
7 to obtain a search warrant and what we would be
8 looking for. Investigator Davis who was working with
9 me at the club during the investigation I believe
10 told me he knew where Judge Peay's residence was;
11 because of the early morning hours, we knew he
12 wouldn't be in his office, that he would meet with
13 Judge Peay.

14 Q And this is very early on Sunday morning?

15 A Yes. This was probably 3, close to 4:00 in the
16 morning.

17 Q And that was done. Judge Peay actually signed the
18 search warrant?

19 A Yes, he did.

20 Q And at that point that becomes a legal search
21 warrant. Is that right?

22 A Yes, it does.

23 MR. GIESE: Your Honor, we'd like to offer it at
24 this time, I believe without objection except for
25 what we discussed earlier.

1 MR. HARPOOTLIAN: And previously noted.

2 MR. GIESE: And we'll tell you about it.

3 COURT REPORTER: State's 5, Your Honor, in
4 evidence.

5 (WHEREUPON, State's Exhibit No. 5 is admitted
6 into evidence.)

7 Q So, Investigator, you say Davis?

8 A Yes.

9 Q Actually got the search warrant?

10 A He took the search warrant and met with Judge Peay
11 and signed it before Judge Peay.

12 Q Now, once Investigator Davis came back and got the
13 search warrant signed and came back, tell the jury
14 what you did?

15 A I just told him to meet us at Trenholm Plaza on
16 Forest Drive where we would conduct a safety briefing
17 before executing the search warrant.

18 Q So, approximately what time was this?

19 A This was right around shortly after 4:00 maybe.

20 Q Who went with you?

21 A I believe it was myself, Deputy Gwyn, Deputy Hodges,
22 Investigator Baker, Investigator Davis and
23 Investigator Tavenner.

24 Q And they are going with you to do what?

25 A To execute the search warrant.

1 Q You say that you met at Trenholm Plaza?

2 A Yes, sir.

3 Q Now, approximately what time of the morning is this?

4 A Shortly after 4.

5 Q Around 4:00 in the morning. Are there any other
6 people in Trenton Plaza at that time that you know
7 of?

8 A No. There is no other people.

9 Q So your cars pull into Trenholm Plaza. And you said
10 something about a safety what?

11 A Safety briefing.

12 Q Safety briefing. Tell the jury what that means and
13 what you tell everybody in a search warrant situation
14 like that?

15 A Okay. We basically meet before every search warrant
16 to discuss what we're doing, where we're going,
17 describe the residence that we're going to so
18 everybody understands where we're going, the reason
19 we're going there which is obviously a murder
20 investigation at the time, what we'll be looking for,
21 what the suspect looks like, and then to ensure
22 everybody is wearing their issued equipment, their
23 bulletproof vests, identification that clearly
24 depicts them as law enforcement officers and such
25 like that.

1 Q How many officers with you that morning were in
2 uniforms?

3 A Deputy Gwyn, I know he was assigned to the Region 4
4 unit at that time. I don't remember if he was in
5 uniform or not. But I know Deputy Hodges was in
6 uniform. He is one of the initial officers I met at
7 the scene at Chastity's. The rest of us were
8 obviously in plain clothes but had our bulletproof
9 vests, raid vests with Deputy Sheriff and a badge
10 clearly marked on the front of them and the back of
11 them, as well as the department-issued jackets that
12 we are given that deputies and investigators both
13 wear that also has a badge and Deputy Sheriff on the
14 front and back.

15 Q And when you say a badge and Deputy Sheriff written
16 on your vest and on your jacket, we're not talking
17 about little letters, are we?

18 A No.

19 Q How big letters are we talking about?

20 A A couple of inches each.

21 Q And that's for a reason, isn't it?

22 A Yes; to clearly identify us as law enforcement
23 officers.

24 Q So anyone looking at you would see you?

25 A Yes.

1 **MR. HARPOOTLIAN:** Objection, Your Honor. That
2 calls for a conclusion.

3 **MR. GIESE:** Withdraw.

4 **THE COURT:** All right.

5 **Q** But you're wearing the jacket?

6 **A** Yes.

7 **Q** You personally?

8 **A** Yes. I was wearing a jacket over my vest, because it
9 was a cold night that night.

10 **Q** A cold night?

11 **A** Cold, rainy.

12 **Q** Now, when you say you have a safety check there, tell
13 the jury exactly what you told them?

14 **A** I told them we were executing a search warrant at
15 This was a -- I gave them a
16 description of the residence that we were going to
17 which was a single-story, white stucco residence, and
18 I told them where this residence was located. It was
19 in a proficient neighborhood but that even though it
20 was a nice neighborhood that this was a murder
21 investigation, you know, to be on your toes, be ready
22 for anything.

23 We discussed what we would be doing, that I
24 would approach the door first, knock and announce,
25 again to try to get somebody to come to the door.

1 And if nobody came to the door then we would make
2 forced entry to the residence to look for items that
3 we were looking for in regards to the murder
4 investigation.

5 Q You said knock and announce. Tell the jury what that
6 means?

7 A Basically just knocking on the front door or ringing
8 the doorbell and announcing ourselves as the
9 Sheriff's Department to clearly identify ourselves at
10 the front of the residence.

11 Q How many search warrants have you been on in your
12 career?

13 A Well over a thousand, probably about 1500 search
14 warrants.

15 Q So this is something you've done before?

16 A Yes. Several narcotics, SWAT, high risk search
17 warrants.

18 Q At that time did you also tell them -- you told them
19 that it was a murder investigation. Is that right?

20 A Yes, I did.

21 Q Did you tell them that this house you were searching,
22 the alleged shooter might be in there?

23 A Yes, I did.

24 Q And you tell them that why?

25 A Well, even though we believed at the time there was

1 nobody there because nobody answered the door at the
2 residence, I think it was a three-car or four-car
3 garage and there was only one vehicle inside, we
4 thought the suspect may have left in another vehicle
5 at the time. But you never know in circumstances
6 like that that somebody could just not answer the
7 door, could be hiding. So I tell them just to make
8 sure that they're alert for those things and to be on
9 the lookout for that kind of activity.

10 Q Once you had this safety briefing, what did you do?

11 A We went over to the neighborhood. We parked a few
12 houses down from We all met up
13 together and walked to the house together. I
14 assigned a deputy to each corner of the house, the
15 front corner I believe because we couldn't get to the
16 back of the residence because of a large either a
17 brick wall or some type of tall fencing that we
18 couldn't get over. And the rest of us went to the
19 front door of the residence.

20 Q I hand you these two items, ask if you can identify
21 them?

22 A This is the typical raid vest we wear. It has Deputy
23 Sheriff on the front. And we usually attach our
24 badges right here to the top left of the vest itself
25 to clearly identify ourselves.

1 **MR. GIESE:** I'd like to mark that for
2 identification, Your Honor.

3 **THE COURT:** All right.

4 (WHEREUPON, State's Exhibit No. 62 is marked for
5 identification.)

6 **Q** I hand you this, ask if you can identify it?

7 **A** Yes. This is the typical jacket that every officer
8 at the Sheriff's Department is issued for cold
9 weather basically. It has as flip out badge, flip
10 out Deputy Sheriff on the front, both sides, on the
11 front, and then on the back it also has Deputy
12 Sheriff.

13 **MR. GIESE:** I'd like to mark that for
14 identification also.

15 (WHEREUPON, State's Exhibit No. 63 is marked for
16 identification.)

17 **Q** Is this similar to what you were wearing? This?

18 **A** Yes.

19 **Q** Or you were wearing this?

20 **A** I had that on under my jacket.

21 **Q** Under your jacket. And you had a jacket on also?

22 **A** Yes.

23 **Q** But at least one of you was uniformed?

24 **A** Yes.

25 **Q** Totally uniformed?

1 A Totally uniformed. Marked patrol car. I think two
2 of them had a marked patrol car at the time.

3 Q Now, when you got back to was
4 the deputy that you had assigned to stay there still
5 there?

6 A Yes, he was. But he had a personal issue and had to
7 leave at that time. But I still had Deputy Hodges
8 and Gwyn who were uniformed patrol officers.

9 Q Tell the jury what you did?

10 A We went back up to the residence. I peeked in the
11 garage. The 4Runner was still there. The deputy had
12 told me there was no movement at the residence. But
13 again, I just checked to make sure. I went to the
14 front door, banged on the front door with my maglite
15 flashlight several times again because it's a lot
16 louder than just regular knocking. I got no
17 response. I rang the doorbell several times, again
18 announced that Sheriff's Department, who we were
19 outside. I got no contact from the residence.

20 Q What kind of door was this?

21 A It was a heavy steel and glass door. I think it was
22 a double door, but I'm not 100 percent sure on that.

23 Q So it was not wood?

24 A No, it was not wood. It was a steel encased door.

25 Q Once there was no answer; what, if anything, did you

1 do?

2 A At that time I instructed Investigator Baker to use

3 our tool to force entry into the residence.

4 Q Now, is that standard procedure?

5 A Yes, it is.

6 Q Are you taught that?

7 A Yes, we are.

8 Q You have a legal search warrant?

9 A Yes.

10 Q And you're taught you can go into a residence if

11 there's no answer?

12 A That's correct.

13 Q Tell the jury what happened?

14 A Baker got us into the residence. Upon entering, I

15 was the first one inside the residence, I again

16 announced Sheriff's Department search warrant; got

17 know response. We announced it again. And at that

18 time a person came from my right front area and we

19 made eye contact and I knew it to be the suspect,

20 Dewain Herring, at that time. I again announced

21 Sheriff's Department search warrant. Get down on the

22 ground; at which time he just stood there for a

23 second and then ran back down the hall where he came

24 from.

25 Q Let me stop you there. You say you went in the

1 house?

2 A Yes.

3 Q Did you announce yourself?

4 A Again announced ourselves upon -- as soon as we

5 walked into the residence.

6 Q And you're taught to do that?

7 A Yes, we are.

8 Q How many times did you do it before you saw Dewain

9 Herring?

10 A At least one. I know one time and possibly two times

11 before I even made eye contact with the suspect.

12 Q Now, you say you made eye contact with the suspect.

13 You made eye contact with Dewain Herring?

14 A Yes, I did.

15 Q And you are wearing this?

16 A Yes, I am.

17 Q When you talked to him, was he looking at you?

18 A Yes. We made direct eye contact with each other.

19 Q Now, how close did you get to Dewain Herring when you

20 talked to him?

21 A It's about ten feet. I mean, it's kind of hard for

22 me to say for sure.

23 Q Stop me when I'm far enough away.

24 A I'd probably say right around your feet there.

25 Q Now, when you say you made eye contact with him, you

1 were looking straight at him like I am looking
2 straight at you?
3 A That's correct.
4 Q And what, if anything, did you say?
5 A I again announced that we were Sheriff's Department,
6 we had a search warrant and to get down on the
7 ground.
8 Q Now, are you yelling this or are you just saying it?
9 A I'm yelling this.
10 Q And what happened?
11 A He paused for, you know, probably a half a second.
12 Q Still looking at you?
13 A Still looking at me and then turned and ran back in
14 the direction he came out.
15 Q And you say he ran back in the direction he came out.
16 At any time did you lose sight of him?
17 A I temporarily lost sight of him I believe because
18 there's a small wall, basically a hallway wall that I
19 lost sight of him.
20 Q Now, he went down a hallway. What did you do?
21 A I followed him. I ran after him in that direction.
22 As soon as I rounded that hall wall, I could see a
23 light on in the first left bedroom on my left-hand
24 side. I could only see him a little bit straight
25 back to the bedroom wall. But from what I could see,

1 it was him leaning against his bed with his hand in
2 the nightstand at that time.

3 And as I keep approaching, he is pulling out his
4 hand, and I can see a gun, a revolver that he clearly
5 pulls out from the nightstand. At that time I yelled
6 out gun to alert the other officers who were inside
7 the residence, started yelling to drop the gun, drop
8 the gun. And at that time he's still turning,
9 pulling the gun out of the nightstand. He was
10 turning towards me with the gun in his hand pointed
11 at my direction.

12 At that time I dropped to a knee. That's when I
13 was yelling drop the gun and I fired one shot at him.
14 And immediately after that one shot debris was
15 hitting me from all sides. So at that time I turned
16 and ran for some cover at that time.

17 Q Now, you say that he turned. Did he actually point
18 the gun at you?

19 A Yes. He actually started to take steps towards us.
20 I think Deputy Gwyn was right behind me at that time.
21 While we're both yelling gun, drop the gun, drop the
22 gun, he's coming towards us with a gun pointed at us,
23 and at that time I dropped to a knee, fired one shot.

24 Q In the thousands of search warrants that you've
25 served in your career, have you ever had a gun pulled

1 on you in a search warrant?

2 A We've had weapons pulled on us, or most of the time
3 it's people trying to get rid of guns usually. In
4 some of the SWAT circumstances we've had guns found
5 on people. But never have I had one actually pulled
6 and pointed towards me after identifying ourselves
7 clearly and again instructing them to drop the gun.

8 Q Will you ever forget the gun pointed at you?

9 A No. I'll never forget that. It's kind of funny.
10 It's like a cartoon when you see somebody pull out a
11 gun and the gun just keeps coming and the barrel gets
12 bigger and bigger and bigger as he pulls it out. It
13 just seemed to be like that, that same instant.

14 Q Any doubt in your mind it was pointed at you?

15 A No, no doubt.

16 MR. HARPOOTLIAN: We have no objection to him
17 marking it for identification.

18 THE COURT: Let me see you a minute.

19 (Whereupon, a bench conference is had)

20 (WHEREUPON, State's Exhibit No. 64 is marked for
21 identification.)

22 Q I hand you State's Exhibit No. 64 marked for
23 identification only. Don't take it out of the
24 casing. Does that look like the gun that was pulled
25 on you?

1 A Yes, sir.

2 Q And what type of gun is that? Do you know?

3 A It's a .357 Magnum.

4 Q Now, Sergeant, you said that you followed the
5 defendant down a hallway?

6 A Yes.

7 Q And dropped to a knee when he pointed the gun at you
8 and fired a shot. The other shots that were fired,
9 do you know who fired those shots?

10 A I had no idea at that time. I was locked in
11 basically on his gun. When I fired and began getting
12 hit by debris, I lost sight of the suspect at that
13 time. That's why I fell back to cover, find a safe
14 area where I could try to re-establish contact with
15 the suspect.

16 Q Now, if you would, could you -- I know you're hurt --
17 but could you just stand up and show the jury how --
18 place me where you were, if you can, and just show us
19 how you claim the defendant was standing and how he
20 turned? Could you do that?

21 A Yes, sir. If you were me, he would have been kind of
22 sitting against his bed at his nightstand with his
23 hand in the nightstand. He pulled the gun out and
24 came right towards us, began taking steps towards us
25 at the bedroom door. I was probably one to two steps

1 outside his bedroom door in the hall.

2 Q And that's when you felt in fear?

3 A Yes.

4 Q That's when you fired your one shot?

5 A That's correct.

6 Q Once you fired your shot and the debris started to

7 fly; what, if anything, did you do?

8 A I had fell back, ran back down the hall into the edge

9 of the kitchen of the residence which was I think

10 separated by one room where we had initially made

11 entry into the house.

12 Q Now, were there shots being fired at that time?

13 A Not at the time that I had gotten to the kitchen.

14 All the shooting was done.

15 Q And approximately how far from the defendant were you

16 at that time?

17 A We were separated by one room at that time. I

18 believe he was still in the bedroom area. And we had

19 the foyer, dining room, living room area separating

20 us where I was in the kitchen.

21 Q Do you know -- you said there was another officer

22 with you in the hallway. That was Officer Gwyn?

23 A That's correct.

24 Q Do you know where he went?

25 A He also fell back with me and was on my right side.

1 I believe he was at the end of the living room area.

2 Q And what did you do?

3 A We began yelling commands at the subject, again

4 identifying ourselves and asking him to come out with

5 his hands up. We received no response. We continued

6 to yell who we were, again to identify ourselves and

7 to get him to come out with his hands up, drop the

8 gun. At that time I believe he yelled back that he

9 was shot. And we yelled at him to come out with his

10 hands up and we would get him some help. He refused

11 to follow our commands. He asked us why we were

12 there. I told him that we were conducting an

13 investigation on an incident that happened earlier.

14 Q Did you tell him specifically what kind of incident?

15 A Not initially, because we didn't want to give up

16 everything we had. Because obviously we wanted a

17 chance to talk to him after this was all done. But

18 he yelled out that he hadn't been out all night, that

19 he had been in bed asleep all night.

20 Q He told you that he had been in bed asleep all night?

21 A Yes, sir.

22 Q You had seen him on the tape, hadn't you?

23 A Yes, I had.

24 Q Once he said he had been in bed all night, what, if

25 anything, did you do?

1 A We continued to yell at him to come out with his
2 hands up, put the gun down. He refused. He would
3 say that he would be hard of hearing. He said he was
4 hard of hearing. But when we continued to tell who
5 we were, he would say, well, that's not the Sheriff's
6 Department I know. It was obvious that he could hear
7 us. There was no doubt about that.

8 We continued to instruct him to come out, to put
9 the gun down. On one occasion him and Gwyn made eye
10 contact from their locations. I guess he was walking
11 back towards his bedroom door. And Gwyn said --
12 well, I heard a gun cock at that time. Me and Gwyn
13 fell back further into the kitchen area of the house
14 at that time and again continued to yell at him to
15 put the gun down.

16 And at that time, before we made entry into the
17 residence I had gotten on the radio and told the
18 dispatcher to stop all radio traffic. I advised them
19 where we were and what we were getting ready to do
20 and that I would give them the all clear once we had
21 basically entered the house and conducted our search
22 and detained anybody if there was anybody inside.

23 At that time I had notified them that we had
24 shots fired inside the residence. I also called the
25 desk sergeant on my phone and advised him what we

1 had, told him to try to contact the special response
2 team or SWAT team at that time in case we had a
3 barricade issue. And at that time, a few minutes
4 later, the desk sergeant called me back and said that
5 the subject had called 911 and told them that there
6 was somebody inside his house. The desk sergeant
7 said that he was going to try to get the call
8 transferred to him so that he could talk to the
9 suspect. We --

10 Q Let me stop you there. Who is the desk sergeant?

11 A Sergeant Joe Odom.

12 Q So once you're talking to Odom, he is trying to get
13 the call transferred to you?

14 A Transferred to him.

15 Q Or to him. I'm sorry. To him?

16 A Yes, sir.

17 Q And did that happen?

18 A Yes, it did.

19 Q Approximately how long is all this taking?

20 A It seems like hours but I know it's just a few
21 minutes.

22 Q Let me stop you, too. Now, you said something that I
23 want to make sure I heard. Are you saying at some
24 point after the shooting and while you were talking
25 to Dewain Herring trying to get him to surrender you

1 actually heard a gun cock?

2 A Yes.

3 Q Was it your gun?

4 A No. We don't have a cocking mechanism on our guns.

5 Q None of the Sheriff's Department's do?

6 A No. We have semi-automatic pistols.

7 Q You actually heard that?

8 A Yes.

9 Q At that point what were you thinking?

10 A I thought that we were going to basically have to
11 continue a gun fight at that time. That's why I got
12 back on the radio or with the desk sergeant to get in
13 touch with the special response team. Obviously
14 they're a little bit better equipped than we are to
15 handle those kind of situations where we have
16 somebody that's not willing to cooperate and give up.

17 Q And this gun being cocked is all after you've
18 identified yourself as the Sheriff's Department?

19 A That's correct. And we continued that while we were
20 talking with him and he was in the back room. It was
21 obvious at that time he knew who we were.

22 Q So once Sergeant Odom gets involved -- is it Sergeant
23 Odom?

24 A Yes, sir.

25 Q Once Sergeant Odom gets involved, tell the jury what

1 happens?

2 A Odom and myself coordinated some questions that he
3 would give the suspect to ask me to ensure his
4 understanding of who I was inside the residence at
5 that time, because he continued to say that he didn't
6 believe that it was the Sheriff's Department.

7 Q And at some point does Dewain Herring ask you
8 questions?

9 A Yes, he does.

10 Q Do you remember what the questions were?

11 A He asked my name first and I identified myself. I
12 said Sergeant David Linfert with the Richland County
13 Sheriff's Department. I think one of the questions
14 was how long I had worked at the Sheriff's
15 Department. I responded that I had worked at the
16 Sheriff's Department for ten years. He yelled back
17 that "I didn't ask for your age. I asked you how
18 long you've been working at the Sheriff's
19 Department." Then again we continued to tell him to
20 come out. I think Sergeant Odom gave him a question
21 and asked where I attended high school in the area..

22 Q What did you tell him?

23 A Spring Valley High School. And then Mr. Herring
24 asked where I attended high school and I told him
25 Spring Valley High School. I think him and Odom had

- 1 a short conversation and he finally came out of the
2 bedroom.
- 3 Q When he came out of the bedroom tell the jury what
4 happened?
- 5 A He came out. Deputy Gwyn instructed him to put his
6 hands up, yelled at him to get down on the ground.
7 He complied with those instructions at that time. He
8 was handcuffed. We called in EMS, the ambulance
9 services, to check his injuries at that time. They
10 took him outside the residence and transported him to
11 the hospital at that time.
- 12 Q Because he had been shot?
- 13 A That's correct.
- 14 Q In the arm?
- 15 A Yes, sir.
- 16 Q Now, you actually called EMS?
- 17 A Yeah. I believe I told -- I requested EMS as well as
18 the K-9 unit and assistance from other officers.
- 19 Q But EMS came and took him to the hospital?
- 20 A That's correct.
- 21 Q At the time that you saw him, was he conscious?
- 22 A Yes, he was.
- 23 Q Did he seem to understand you?
- 24 A Yes, he did.
- 25 Q Did he follow whatever you all told him to do at that

1 point after he was arrested?

2 A Yes, he did.

3 Q Did he slur his words at all?

4 A No, he did not.

5 Q Did he look alert to you?

6 A Yes, he did.

7 Q Did he seem to understand you when you asked him
8 questions?

9 A Yes, he did.

10 Q Did he respond appropriately?

11 A Yes, he did.

12 Q Now, these conversations, the 911, original 911 call
13 and the conversation with Sergeant Odom, that was all
14 tape recorded, was it not?

15 A Yes, it was. Our dispatch channels are all recorded,
16 as well as the desk phones in our office are
17 recorded.

18 Q And during this investigation you are aware that
19 those tapes were recovered?

20 A Yes, sir.

21 Q And that they're here in the courtroom today?

22 A Yes, sir.

23 MR. HARPOOTLIAN: No objection.

24 MR. GIESE: I'd like to play them at this time,
25 Your Honor, if we could. There's no objection by the

1 defense.

2 MR. HARPOOTLIAN: No objection.

3 THE COURT: Without objection.

4 MR. GIESE: If we could take just a second.

5 (Pause)

6 MR. GIESE: Beg the Court's indulgence.

7 (Pause)

8 Q Now, before we start playing the tape -- I'm sorry.
9 I want to go back for just a second. When you first
10 went in the house, when you all first rammed the door
11 in --

12 A Mm-hmm (affirmative).

13 Q -- and you went in the house and announced yourself
14 as police officers and you say you looked and saw
15 Dewain Herring and your eyes met, what was the
16 lighting like in there?

17 A There was lighting in the house. The kitchen light
18 was on and there was light in the area we were in.
19 It's kind of like a -- it seemed like a dimmer light
20 that was in there, but it was on. You could see -- I
21 could see clearly to the back of this house and knew
22 that there was like a Florida room, type room in the
23 very back of this house where we were, where we had
24 made entry into this house.

25 Q And when you went down the hallway and he was in his

1 bedroom, what was lighting like there? I think you
2 testified before.

3 A The light was on in his bedroom fully. I don't
4 believe there was a light on in the hall, but there
5 was a light on in his bedroom.

6 Q Now, you've listened to these tapes?

7 A Yes, I have.

8 Q The first tape, for the jury's information, was the
9 911 tape or call Mr. Herring had made to 911,
10 correct?

11 A Yes, sir.

12 Q After that tape, the next tapes are Sergeant Odom who
13 is the desk sergeant that night talking to Mr.
14 Herring?

15 A Correct.

16 Q Because the call was transferred from 911 to the
17 Richland County Sheriff's Department?

18 A That's correct.

19 Q All right. Play the first tape, the 911 tape. When
20 it goes to Odom, stop the tape so we can let the jury
21 know that's when Odom gets on.

22 (Whereupon, the 911 tape is played for the
23 jury).

24 Q Now, that's was the original -- that's the first tape
25 that goes from Dewain Herring to 911?

1 A Correct. I believe he called on his cellphone and
2 received the Forest Acres dispatch at that time.

3 Q Do you know how that works?

4 A Because most of the residents are connected directly
5 to the 911 center that they reside in but I think
6 cellphones just hit on the first available tower and
7 I think Forest Acres was the closest tower to him at
8 that time.

9 Q So when he called from his cellphone, it goes up to a
10 tower and then that tower directs it to the closest
11 911?

12 A That's correct.

13 Q And that's why Forest Acres got the call?

14 A Yes.

15 Q Now, at this point, prior to that 911 tape, has the
16 pointing and presenting a firearm at you and the
17 shots fired already happened?

18 A Yes, it has.

19 Q So that tape was after the incident inside the house?

20 A Yes, it was.

21 Q Now, Odom or the Richland County Sheriff's Department
22 gets involved at this point?

23 A I believe they transferred the call to our
24 Columbia/Richland dispatch. After a minute or two of
25 talking with them, they transferred the call to

1 Sergeant Odom at the desk of the Sheriff's
2 Department.

3 Q Okay. Go ahead.

4 (Whereupon, the 911 tape continues to be played
5 for the jury).

6 Q Now, at this point -- and the tape is not finished
7 yet -- I want to go back before we get to Odom and
8 his conversation. There are several things I need to
9 ask you about the incident, the tape. He is talking
10 to one or two of several of the dispatchers or people
11 that answer the phones at 911 and said in there that
12 he was -- he kept asking: "Why are they outside, why
13 are they out there?" Now, is this before or after
14 you had your conversation with him where you told him
15 it was about an incident on River Drive?

16 A This was all after.

17 Q So you had already told him what you were there for?

18 A That's correct.

19 Q These voices in the background saying, "Come on out
20 with your hands up, come out with your hands up",
21 people yelling in the background, who is that?

22 A It's myself and Deputy Gwyn.

23 Q And that is you all in the background saying, "Come
24 on out"?

25 A Yes.

1 Q And that is after you have told him why you're there?

2 A That's correct.

3 Q So every time he has said, "Why are they outside,
4 it's a mystery to me, why are they out there", this
5 is all after you've told him why you're there?

6 A That's correct.

7 MR. GIESE: We need to approach the bench.

8 (Whereupon, a bench conference is had)

9 Q Now, please play the Odom tape.

10 (Whereupon, the tape continues to be played for
11 the jury).

12 Q Now, there at the end, what was happening?

13 A That's where he finally gave up. Gwyn was giving him
14 instructions to get down on the ground.

15 Q Is that standard procedure in something like this?

16 A Yes, it is.

17 Q Is there a dog in the background?

18 A Yes, there was.

19 Q Did the dog come out when that was happening?

20 A The dog was not let loose. The handler held him on a
21 leash. It's just more to ensure he complies with us
22 at that time because we knew he was armed.

23 Q So that was a Richland County Sheriff's Deputy dog?

24 A That's correct.

25 Q In that conversation that you had with Mr. Herring at

1 the end talking about how long you'd been with the
2 force, --

3 A Yes, sir.

4 Q -- what did you tell him?

5 A I told him ten years.

6 Q And he answered ...?

7 A "I didn't ask for your age. I asked you how long you
8 worked at the Sheriff's Department."

9 Q He had been told that by Sergeant Odom?

10 A That's correct.

11 Q Just a couple more questions. Several times on the
12 tape Mr. Herring said that the Richland County
13 Sheriff's Department broke into the house and started
14 shooting?

15 A Yes, sir.

16 Q I think he said it several times. That you just
17 barged in, I believe was another one, and started
18 shooting?

19 A That's what he said; yes, sir.

20 Q Did you barge in and immediately start shooting?

21 A No, sir. I fired the first shot out of all the
22 gunshots that were involved. I fired when I was in
23 the hall just outside his bedroom after he pulled the
24 gun from the nightstand and pointed it at myself and
25 Deputy Gwyn.

1 Q And that was a period of time after you came in the
2 house?

3 A Yes.

4 Q If he had not pointed that weapon at you, would you
5 have fired a shot?

6 A Absolutely not.

7 Q Have you ever fired a shot at someone?

8 A Not at a person. No.

9 Q Have you ever had a gun pointed at you before?

10 A I've had guns pulled, never pointed at me like that.
11 No.

12 Q So you didn't just barge in --

13 A That's correct.

14 Q -- and start shooting?

15 A That's correct.

16 Q Beg the Court's indulgence. Just one or two more
17 questions. On the tape Dewain Herring talks about
18 having a business relationship with the Sheriff's
19 Department?

20 A Yes, sir.

21 Q Specifically, Stan Smith and Lancy Weeks?

22 A Yes, sir.

23 Q Are they in the courtroom today?

24 A Yes, they are.

25 Q Would you point to them, please.

1 A That's Captain Smith seated at the table with
2 yourself, and Lieutenant Weeks is in the back.

3 MR. GIESE: Will you stand up, please.

4 (Ms. Weeks stands)

5 Q Thank you. All right. At this time I'd like to move
6 the tapes into evidence.

7 MR. HARPOOTLIAN: No objection.

8 THE COURT: Without objection.

9 COURT REPORTER: May I mark them, please?

10 They're not marked.

11 MR. GIESE: It's going to be tough. Can you
12 pull that out of them? Dick, are you going to need
13 them?

14 MR. HARPOOTLIAN: I may, yeah. We can take our
15 morning break now.

16 MR. GIESE: Or do you just want to do it after
17 we take a break?

18 MR. HARPOOTLIAN: Cross may take a while.

19 THE COURT: Hmm?

20 MR. HARPOOTLIAN: Cross may take a while.

21 THE COURT: I can't hear you.

22 (WHEREUPON, State's Exhibit No. 65 is marked for
23 identification and received in evidence.)

24 (WHEREUPON, State's Exhibit No. 66 is marked for
25 identification and received in evidence.)

1 **THE COURT:** Cross examination.

2 **MR. GIESE:** One last question, Your Honor.

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

4 **Q** Sergeant Linfert, the man that pointed that gun at
5 you that you had to shoot at, is he in the courtroom
6 today?

7 **A** Yes, he is.

8 **Q** Point to him, please.

9 **A** It's the defendant wearing the gray suit with the
10 brown/tan striped tie.

11 **MR. GIESE:** Your Honor, may the record reflect
12 that he's identified Mr. Herring?

13 **THE COURT:** Let the record reflect the witness
14 identified the defendant.

15 **MR. GIESE:** Thank you, Your Honor. That's all I
16 have.

17 **MR. HARPOOTLIAN:** May it please the Court, Your
18 Honor.

19 CROSS EXAMINATION

20 **BY MR. HARPOOTLIAN**

21 **Q** Now, is it Sergeant Linfert?

22 **A** Yes, sir.

23 **Q** Let me do two things. One, let me pull this down.
24 Two, let's move that tape player out of the way so I
25 can see you when I'm talking to you. Now, first of

1 all, you went to Chastity's that night. Is that
2 correct?

3 A Yes, sir.

4 Q And when you walked in the front door, was there a
5 bullet hole in the door?

6 A Yes, sir. I believe there was.

7 Q Okay. And were you were in charge of the
8 investigation at that point?

9 A Not the crime scene, no. I was there to interview
10 witnesses to identify our suspect.

11 Q Well, who was the chief investigator?

12 A I was the senior officer for investigations there at
13 the time.

14 Q Did you talk to Mr. Livingston about his processing
15 the scene, what he found, what he was looking for,
16 those kinds of things?

17 A He was in the middle of all that. He said he would
18 advise me if he had any information for me.

19 Q Okay. And did you ever go back out to Chastity's?

20 A After we left initially? No.

21 Q Yes.

22 A Not that day, no.

23 Q Any other day?

24 A Yes, I did go back.

25 Q When did you go back?

1 A I believe it was probably Tuesday of the following
2 week.

3 Q Open the front door?

4 A Yes, sir.

5 Q Bullet hole still in the door?

6 A I believe so.

7 Q Okay. And at that point did you know that
8 Investigator Livingston had not -- your CSI unit had
9 not done anything to determine the trajectory of the
10 bullet?

11 A Yes, I did.

12 Q You knew it at that point?

13 A Yes, sir.

14 Q And did you ask him to do some sort of trajectory
15 analysis?

16 A No, we didn't.

17 Q Okay. And so, it didn't matter to you whether the
18 bullet ricocheted, or it didn't in any way impact
19 your analysis of this case as the chief investigator?

20 A I believe if there was a ricochet, he would have
21 found it at the time. I believe obviously we saw the
22 video where the shot was fired from inside the
23 vehicle. It was obvious that it didn't bounce off
24 the ground.

25 Q Why is that obviously?

- 1 A Because it would have hit the bricks or the steps
2 going up to it.
- 3 Q Did you examine the bricks?
- 4 A It's a clean, well kept area. If there was something
5 there, Livingston would have found it.
- 6 Q But Livingston -- I don't know whether you're aware
7 of it. Weren't you sitting in here yesterday?
- 8 A Yes, sir.
- 9 Q Didn't he testify he didn't look for ricochets?
- 10 A He looked I know out in the parking lot and that area
11 for an hour.
- 12 Q But for casings?
- 13 MR. GIESE: Your Honor, objection.
- 14 THE COURT: Let him answer the question.
- 15 MR. HARPOOTLIAN: I'm sorry. Yes, sir.
- 16 Q For casings?
- 17 A For projectiles and casings.
- 18 Q Casings?
- 19 A Yes, sir.
- 20 Q Isn't that what he testified?
- 21 A I believe so, yes.
- 22 Q So we now know he never looked for ricochets, did he?
- 23 A Not that I'm aware of.
- 24 Q Okay. So you knew two days afterwards as you opened
25 that door nobody has taken a wooden dowel and put it

1 through to see if it's going through this way or this
2 way or this way or this way. All you cared about was
3 that the projectile had come from a gun in Dewain
4 Herring's car. Is that correct?

5 A Yes, sir.

6 Q Okay. And you don't care how it got through the
7 door, do you?

8 A I know it went through the door and struck the victim
9 in the head.

10 Q And that's all that matters?

11 A Yes, sir.

12 Q Okay. Now, let's talk about your visit to Mr.
13 Herring's house that evening. The first time you
14 went by there, you went up and banged on the door?

15 A Yes, sir.

16 Q Before you had the search warrant?

17 A Yes, sir.

18 Q And you used your Mag flashlight. Is that correct?

19 A Yes, sir.

20 Q And you banged on the door. Is that right? A metal
21 door?

22 A Yes, sir.

23 Q Nobody came to the door?

24 A Nobody came to the door.

25 Q Nobody turned on any lights?

1 A The lights were already on inside the house.
2 Q Well, they were on dimmer I believe you said?
3 A And the kitchen light was on. And in the garage.
4 Q Now, are you aware other officers say it was dim in
5 there?
6 A Yes, sir, it was dim. I mean, there were lights but
7 it was dim.
8 Q It was dim?
9 A Yes, sir.
10 Q And there was no light in the foyer area?
11 A Like I said, it was dim in that area.
12 Q The lights were coming from the kitchen?
13 A I couldn't tell you.
14 Q Well, let me ask you this. When you went into the
15 house later on, you had your flashlight on, didn't
16 you?
17 A Yes, sir.
18 Q Okay. So it was dim enough to where you -- you
19 wouldn't turn your flashlight on in a lighted room,
20 would you?
21 A No. My flashlight doesn't work. I just used it to
22 knock on the doors.
23 Q Well, the other officers had their flashlights on.
24 Gun in one hand, flashlight in the other. Isn't that
25 the procedure?

1 A If it's dark; yes, sir.

2 Q Right. And they did have their flashlights on?

3 A I don't know for the other officers. I wasn't with
4 them. I was in front.

5 Q Well, you don't remember seeing flashlights?

6 A I was in the front.

7 MR. GIESE: Your Honor, objection.

8 THE COURT: Let him answer the question.

9 Q So you can't tell this jury whether or not
10 flashlights were on?

11 A No, I cannot. I was the first one in the house. I
12 was the first one to make contact with the suspect.
13 I did not have a flashlight in my hand.

14 Q Now, you'd gone up earlier and banged on the door and
15 rang the doorbell. And then you went across the
16 grass, behind the bushes and looked in the window of
17 the garage? Not the garage door but in a window to
18 the garage. Is that right?

19 A Yes, sir.

20 Q And when you looked in there, you saw you the black
21 4Runner?

22 A Yes, sir.

23 Q No other vehicles?

24 A No other vehicles.

25 Q And at that point you thought he might not even be

- 1 there. Isn't that correct?
- 2 A Yes, sir.
- 3 Q As a matter of fact, you'd written down big question
- 4 as to whether anybody is home or not, right?
- 5 A Yes, sir.
- 6 Q So when you go get this search warrant, you're really
- 7 believing he has dropped the car off and gone
- 8 somewhere else?
- 9 A It's a possibility, yes.
- 10 Q But, I mean, you believed it at that point. As a
- 11 matter of fact, you reported: "Highly likely suspect
- 12 not there"?
- 13 A Yes.
- 14 Q Okay. So when you go into the house that night --
- 15 when you get there, you left a deputy to secure it,
- 16 you come back with a search warrant. Did you go in
- 17 the backyard?
- 18 A We attempted to get into the backyard, but I believe
- 19 I stated there is a large fence or a brick wall or
- 20 something that --
- 21 Q There's a gate, isn't there?
- 22 A A gate, something --
- 23 Q Did you go through the gate?
- 24 A -- large, something tall.
- 25 Q But there's a metal gate. You could just open it and

1 walk in.

2 A I don't know. It was dark back there.

3 Q It was dark back there. Did you go back and try to
4 open the back gate?

5 A No. I did not, no.

6 Q Okay. Are you aware the entire back of that house,
7 there is French doors with glass panes in them,
8 including a back door and a door into the bedroom
9 that opens out into a back courtyard that's glass
10 from top to bottom?

11 A I saw that from the inside.

12 Q Right.

13 A I did not go into the backyard.

14 Q Well, before you took a battering ram to a metal
15 front door, did you think maybe you could have gone
16 around to the back and gone in without knocking down
17 a metal door, maybe even breaking a little pane out
18 or trying one of the doors to see if it was unlocked?

19 A No, sir.

20 Q Why not?

21 A We don't attempt go through glass because that's how
22 you can get hurt from the glass shards.

23 Q Now, here is -- did you ever call the residence?
24 You'd been on the front door banging on the door,
25 ringing the doorbell. Did you ever pick up the phone

1 and dial his home known number which you saw in the
2 phone book and see if he answered the phone?

3 A No.

4 Q Why not?

5 A Because we were knocking on the front door. There
6 was need to call.

7 Q Before you knocked on the front door?

8 A No.

9 Q Between the time you knocked on the front door the
10 first time and you knocked on the door the second
11 time, did you try to call?

12 A No.

13 Q Before you kicked in the front door, did you call?

14 A We didn't call because I wouldn't want him to have a
15 chance to get away if he was inside. We wanted to
16 make sure we were at the residence before we did
17 anything like that.

18 Q Well, when you say knocked on it, you knocked on it
19 earlier?

20 A Yes.

21 Q And left?

22 A Yes. We had a deputy outside waiting and watching
23 the residence.

24 Q Well, but you could have called and done the same
25 thing, couldn't you?

- 1 **A** Could have.
- 2 **Q** Didn't do it?
- 3 **A** No.
- 4 **Q** Okay. Now, you had a homicide suspect in there. You
- 5 showed up. And when you had these, these are
- 6 bulletproof, aren't they?
- 7 **A** Yes, sir.
- 8 **Q** And you had -- you carry weapon?
- 9 **A** Yes, sir.
- 10 **Q** What do you carry?
- 11 **A** It's a Glock .40 caliber.
- 12 **Q** Do you have it with you today?
- 13 **A** No, I don't.
- 14 **Q** You got your Glock with you?
- 15 **CAPTAIN SMITH:** No, sir.
- 16 **MR. HARPOOTLIAN:** No Glocks in the courtroom?
- 17 **CAPTAIN SMITH:** No, sir.
- 18 **Q** It's a pretty big weapon, right? .40 caliber?
- 19 **A** Yes, sir.
- 20 **Q** That's actually a bigger caliber weapon than the
- 21 .357?
- 22 **A** But it's a smaller handgun.
- 23 **Q** It's a smaller handgun but bigger rounds?
- 24 **A** Yes, sir.
- 25 **Q** And how many rounds does it hold?

1 A Mine holds 13. It varies from officers. There's
2 three different guns we're issued. Investigators
3 mostly carry a medium sized gun so we can wear it
4 concealed under our clothing.

5 Q Okay. When you came through the front door, did you
6 have your weapon out or in the holster?

7 A It was out.

8 Q Okay. So you came through the front door with a gun
9 in one hand?

10 A Absolutely. This was in regards to a murder.

11 Q Okay. And all the other officers had their handguns
12 out, right?

13 A I would believe so.

14 Q Now, when you came through the front door and you
15 said something to Mr. Herring -- let me make sure I
16 find this -- he indicated to you almost immediately
17 he couldn't hear you. He said, "I'm hard of
18 hearing." Isn't that right?

19 A This was after we had already talked to him, yelled
20 back and forth a few times. Yes, sir.

21 Q But when you came through the front door, was he --
22 and we'll talk about where he was in just a minute.
23 You yelled something at him. Did he have his glasses
24 on or off?

25 A I believe the glasses were on the counter, but I am

1 not 100 percent sure.

2 Q But they weren't on his face?

3 A Not that I can recall. No, sir.

4 Q Okay. And are you aware of the fact that he wears
5 hearing aids?

6 A I've been told that.

7 Q But that night after you took him into custody,
8 didn't you see these sitting in the bathroom on the
9 counter?

10 A I never made it to the bathroom. As soon as we were
11 done and had him in custody I instructed every
12 officer to go out of the residence so we could notify
13 our supervisors to conduct an investigation which
14 would normally be done by State Law Enforcement
15 Division at that time. So we had a deputy secure the
16 door with crime scene tape at that time. We made the
17 call to my chief deputy who instructed me to stand by
18 until his arrival.

19 Q Are you talking to me?

20 A I'm talking to the jury --

21 MR. GIESE: Objection.

22 A -- answering your question.

23 THE COURT: Yes, sir.

24 MR. HARPOOTLIAN: I'm sorry.

25 THE COURT: Yes, sir.

1 **MR. HARPOOTLIAN:** I just wondered if he was
2 giving a speech or answering my question.

3 **THE COURT:** Sir, he's answering your question.

4 **MR. HARPOOTLIAN:** Okay. Thank you.

5 **Q** I'm sorry. Go ahead.

6 **A** After the chief deputy arrived, I briefed him on what
7 had happened. He instructed myself and the other
8 officers to return the headquarters. At that time he
9 called the sheriff, and I believe they contacted SLED
10 at that time to conduct an investigation into what
11 happened at the residence.

12 **Q** Okay. Now, I want you to tell me, when you came in,
13 you said he didn't have his glasses on. He didn't
14 have -- as far as you know, didn't have his hearing
15 aids on. Okay? And as you came, I want you to --
16 can I have that magic marker from yesterday, please?
17 Do you still have it? I'm sorry. I probably didn't
18 give it back. Let me see if I can sketch this out.
19 If you disagree with me, correct me. You come in up
20 some -- let me stand back here. You come in the
21 front. There's a porch. You come up some stairs.
22 Right? And there's a foyer here?

23 **A** Yes, sir.

24 **Q** And at the end of the foyer there's a hall that comes
25 out here, right?

- 1 A Almost. Bring this first wall out this way a little
2 bit.
3 Q This wall?
4 A It sticks out probably two feet maybe.
5 Q This?
6 A Yes, sir.
7 Q Out here?
8 A Yes, sir.
9 Q Okay. Okay. And then it goes back here?
10 A And his room was the first on the left-hand side.
11 Q Over -- up here?
12 A It would be back just a hair.
13 Q Back further?
14 A No, no.
15 Q This way? Okay. So there's a door?
16 A It was open. Right.
17 Q Okay. And then his room is back in here. Is that
18 right?
19 A Yes, sir.
20 Q Okay. And the bureau you're talking about was right
21 about here? Is that right?
22 A Yes.
23 Q Bed here?
24 A Yes, sir. Right next to the bed as I recall.
25 Q Okay. And when you come in -- well, step down here

1 and show the jury. And I'm going to have you do some
2 numbers here for me. Okay? When you come in the
3 front door -- and the door would be right about here?
4 A Mm-hmm (affirmative).
5 Q Did you all have a battering ram or something?
6 A That's correct. A tool.
7 Q Tool. Okay. And when you come in the door, where is
8 he? You say you see him?
9 A He confronts me right here.
10 Q You see him. You say confront. He sees you; you see
11 him?
12 A We make eye contact.
13 Q You make eye contact. Okay. Does he have a gun in
14 his hand?
15 A No.
16 Q You do though?
17 A Yes, sir.
18 Q And there's how many deputies behind you?
19 A I don't know. I know Gwyn was right behind me. The
20 rest of them, I'm not sure.
21 Q How many deputies were there?
22 A There was a total of six of us I believe.
23 Q Six of you, all with Glocks in your hands?
24 A I would hope so.
25 Q Okay. And you all have kicked in the front door. It

1 made a big racket when you kicked it in, didn't it?

2 A Yes, sir.

3 Q A big metal door?

4 A Yes, sir.

5 Q Hit the ground?

6 A It didn't hit the ground. It never came off the

7 hinges.

8 Q It never came off the hinges. But it flapped back

9 and made a big noise?

10 A Just enough for us to get in.

11 Q Okay. And you rang the doorbell and banged on the

12 door before you did that?

13 A Yes, sir.

14 Q Okay. And when you come in, you see him there. How

15 about put a number 1 there? Okay. And then you do

16 what? What happens then?

17 A As soon as we make entry we announce ourselves,

18 Sheriff's Department search warrant. As soon as I

19 make contact with him, again yell Sheriff's

20 Department search warrant. Get down on the ground.

21 We have eye contact. He pauses for a split second

22 and then heads back down the hall.

23 Q Okay. Where does he go?

24 A I lose sight of him because of this wall here. As I

25 round the corner, I can see just a portion into the

1 bedroom, including the nightstand of course.

2 Q Okay.

3 A Into the bedroom. I keep coming. He is right here

4 at the bed inbetween the nightstand there with his

5 hand in the nightstand drawer.

6 Q Do you get into the door of the --

7 A I never make it into the doorway. As I keep

8 approaching I can see him pulling out the revolver at

9 that time. He turns towards me and starts coming

10 towards me. That's when we're yelling out, gun, drop

11 the gun, drop the gun; and that's when I shoot one

12 time.

13 Q Now, there's no lights on in the bedroom, is there?

14 A The light is on in the bedroom.

15 Q In the bedroom. Okay. And you've got to be standing

16 almost to the door?

17 A Yes, sir. I'm probably a step or two.

18 Q And where is Gwyn?

19 A He is -- states he's right behind me.

20 Q Okay. Now, after you fire that one shot, your other

21 deputies start shooting, right?

22 A I'm not sure who is shooting.

23 Q But you know afterwards when the lights come on and

24 you look there are some 17 shots fired. Is that

25 correct?

- 1 A I don't know any of that at that time, no.
- 2 Q But you know now?
- 3 A Yes, sir.
- 4 Q Okay. 17 shots fired, most of them through this wall
- 5 right here where you're standing?
- 6 A Yes, sir.
- 7 Q So the only person shooting at you that night are
- 8 your fellow deputies?
- 9 A At the time we didn't know who it was. But, yes, I
- 10 later learned it was some of the officers.
- 11 Q And you and Gwyn are back here and they're shooting
- 12 up here through this wall. There's bullet holes
- 13 through this door, through this wall, they these
- 14 pictures all the way back here. They go through the
- 15 house and out into the neighborhood. Isn't that
- 16 correct?
- 17 A I think most of them were through this door here.
- 18 The only one that went outside was the shot that hit
- 19 his arm and went out.
- 20 Q And you fired that one?
- 21 A Yes, sir.
- 22 Q Okay. So you shot him and then retreated back down
- 23 here. He'd never fired a shot at that point. Isn't
- 24 that correct?
- 25 A Not that I was aware of at the time.

- 1 Q Okay. Now, go ahead and have a seat, please. So,
2 all those shots, the 17 shots fired, you fired one of
3 them; 16 others are fired by your fellow deputies
4 into the hall where you were standing. Is that
5 correct?
- 6 A Yes, sir.
- 7 Q And only through the grace of God were neither you or
8 Gwyn hit?
- 9 A Well, I was hit but not severely. Yes, sir.
- 10 Q You were hit with a round?
- 11 A Projectile, yes.
- 12 Q Where?
- 13 A In the leg.
- 14 Q In the leg? Did it puncture the skin?
- 15 A No.
- 16 Q Your own deputies shot you?
- 17 A Yes, sir.
- 18 Q Okay. Now, when you came down the hall -- and it's
19 your opinion that he knew you were from Richland
20 County because you yelled it and you had these things
21 on, right?
- 22 A Yes, sir.
- 23 Q But you didn't know he was deaf at the time, did you?
- 24 A He could hear most of our comments when we were going
25 back into the --

1 Q Well, how do you know he could hear?

2 MR. GIESE: Objection.

3 A Because he obviously answered us on several
4 occasions.

5 THE COURT: Let him answer the question.

6 Q Well, maybe he heard some things and didn't hear
7 others.

8 A Some people choose to hear things and some people
9 choose not to.

10 Q And some people are deaf, right?

11 A Yes, sir.

12 Q You now know he is deaf, right?

13 A I don't know he's deaf, no.

14 Q Well, you will.

15 A Okay.

16 MR. GIESE: Objection.

17 THE COURT: Strike that comment.

18 MR. HARPOOTLIAN: Yes, sir.

19 Q Deputy sheriff on the front. Okay. You knocked down
20 his door?

21 A Mm-hmm (affirmative).

22 Q Five, six people coming in. He looks out, sees them
23 and runs back down the hall, right?

24 A Yes, sir.

25 Q You all all have guns out?

1 A Yes, sir.

2 Q Isn't the truth that as you came down the hall your

3 adrenaline is pumping?

4 A Sure.

5 Q The guy is running away from you?

6 A Sure. It happens all the time when we have been on

7 search warrants.

8 Q Okay. And as he goes and you see that gun, before

9 you can even turn around, you shoot him in the -- you

10 fire a shot because you're scared?

11 A No.

12 Q You're upset?

13 A No.

14 Q You're nervous? No.

15 A You would be incorrect.

16 Q Okay. And show me how he was standing when you shot

17 at him? He is sitting on the bed?

18 A He is leaned against the bed, kind of sitting.

19 Q Right.

20 A With his hand in the drawer.

21 Q Right.

22 A He pulls the gun out towards us --

23 Q Right.

24 A -- and starts taking steps toward us with the gun

25 pointed at us.

1 Q And where did you shoot him? Where did the bullet
2 hit?
3 A Hit him in the arm.
4 Q Where in the arm?
5 A I didn't know I hit him at the time. But the left
6 arm is all I know.
7 Q The left arm?
8 A Yes, sir.
9 Q Almost in the back?
10 A No idea.
11 Q Well, if he's facing you, how could he be hit
12 underneath his arm in the back?
13 A I have no idea.
14 Q Okay. You saw him grab the gun and start to turn and
15 that's when you pulled the trigger. Isn't that
16 correct?
17 A He is moving towards us, and that's when I shot him.
18 Q But he never brought that weapon up and pointed it at
19 you?
20 A Yes, he did.
21 Q And you fired one shot?
22 A Yes, sir.
23 Q And then retreated?
24 A That's because I was being hit by debris. Yes, sir.
25 Q You're being hit by debris because your officers

1 opened up?

2 A I didn't know who was shooting at that time.

3 Q Well, you didn't him shooting at you?

4 A I lost sight of him from getting hit with debris.

5 Q And Gwyn is behind you?

6 A Yes, sir.

7 Q And so you're between him and Mr. Herring?

8 A Yes, sir.

9 Q Now, who yelled gun?

10 A I did. And I believe officer Gwyn may have as well.

11 Q After you yelled gun?

12 A I believe.

13 Q He couldn't see the gun because you're between him

14 and Herring?

15 A You would have to ask him.

16 Q Well, I mean, the area between the bedroom door right

17 here where you are and the end of the hall here is

18 seven, eight feet?

19 A I have no idea. I don't recall.

20 Q And there are at least eight bullet holes through

21 these walls here coming like this, right?

22 A I don't know.

23 Q You and Gwyn couldn't have been standing there and

24 not gotten hit. I mean, hit.

25 A (Shakes head negatively).

1 Q Right?

2 A I don't know.

3 Q Beg the Court's indulgence one moment. And actually,
4 you hear Mr. Herring on this tape say to Mr. Odom
5 that he's hard of hearing, right?

6 A Yes, sir.

7 Q And you have to yell at him several times from back
8 in the kitchen, and he obviously is not understanding
9 what you're saying, right?

10 A He is answering some of our questions and is not
11 answering some.

12 Q Correct. In the process of this yelling back and
13 forth, your voice is a little high, a little high
14 pitched. Are you a little excited?

15 A I guess so.

16 Q You guess so. Because you've almost been killed by
17 your own men?

18 A I didn't know it at the time. I didn't realize I had
19 been shot until the following day.

20 Q Well, he is standing in front of you, right?

21 A Yes, sir.

22 Q And the bullets are coming from -- you're being
23 rained on debris from behind you. I mean, who did
24 you think was shooting at you?

25 A I was getting hit with debris. I didn't know which

- 1 way it was coming.
- 2 Q And as you all ran back up the hall, they're still
- 3 shooting, right?
- 4 A I don't know.
- 5 Q Now, you went into the house and you went down the
- 6 hall. How far ahead of you was he?
- 7 A He was already in the bedroom.
- 8 Q What do you mean he's already in the bedroom?
- 9 A He was already in the bedroom because when I rounded
- 10 the corner and could finally see, he's got his hand
- 11 in the nightstand.
- 12 Q How far away were you from him when you first saw him
- 13 right here?
- 14 A I don't know the exact distance there.
- 15 Q Well, I think you showed Mr. Herring -- you saw him
- 16 and you made eye contact with him how far away?
- 17 A In the foyer, it was from here to the corner.
- 18 Q To right here?
- 19 A Yes, sir.
- 20 Q And the distance around the corner and down to the
- 21 bedroom is probably from here to -- stop me when I'm
- 22 as far away from the corner there to the bureau?
- 23 A It was probably right around that area.
- 24 Q Right around here?
- 25 A A little step or two back.

1 Q Now, you've been trained with SWAT?
2 A Yes, sir.
3 Q And when he took off, you took off right after him?
4 A Yes, sir.
5 Q You didn't hesitate and went right around the corner?
6 A Yes, sir.
7 Q Are you telling this jury you could not catch a fat
8 old guy like that in that distance? You couldn't get
9 on him?
10 A I slipped on his hardwood floors because of the wet
11 grass.
12 Q So now you slipped. We haven't heard that before.
13 Is that in your report, that you slipped?
14 A No. I didn't think it was relevant.
15 MR. GIESE: Objection.
16 Q Did you testify to this jury -- do you have
17 something?
18 A I didn't think it was relevant to me slipping.
19 Q Was there anything else you've left out that you
20 didn't think was relevant?
21 A No, sir.
22 Q Okay. So you slip. Do you fall down on the ground?
23 A No.
24 Q Well, how long did the slip -- did you just slip and
25 then it --

- 1 A Just lost my momentum.
- 2 Q Lost your momentum for a second?
- 3 A Sure.
- 4 Q And you're telling me that in that distance, even
- 5 with a slip, that you couldn't catch this
- 6 63-year-old, overweight guy?
- 7 A Well, I'm not going to go directly straight at him
- 8 either. I'm going to round the corner so I can kind
- 9 of see as I go down the hall and make it a little bit
- 10 easier for me to see what's down the hall before I
- 11 just go blindly down the hall.
- 12 Q But he had no gun in his when you made eye contact
- 13 with him?
- 14 A No, he didn't. But he had just killed somebody. So
- 15 that's why --
- 16 Q Well, you knew he was unarmed? You knew he was
- 17 unarmed?
- 18 A At that time; yes, sir.
- 19 Q Well, as he rounded the corner, he was unarmed?
- 20 A Yes, sir.
- 21 Q I mean, as a practical matter, what happened was he
- 22 got a little bit ahead of you and he reached in and
- 23 you saw the gun and you shot. Can't you admit that?
- 24 A No. Because that's not what happened.
- 25 Q And then the rest of the deputies opened up 16 shots,

- 1 almost shooting you and Gwyn, right?
- 2 A Yes, sir.
- 3 Q And then you all retreat back up to the kitchen. And
- 4 you indicate at least on one of these that you
- 5 believe he shot?
- 6 A At that time. I didn't know who shot.
- 7 Q Well, I mean, you're a trained police officer going
- 8 into a situation. You've done it a thousand times?
- 9 A Yes, sir.
- 10 Q And you don't know who is shooting?
- 11 A I just got hit by debris, and obviously it took my --
- 12 Q So --
- 13 **THE COURT:** Let him finish.
- 14 Q So the procedure of the Richland County Sheriff's
- 15 Department is once you hear a gunshot just start
- 16 shooting at anything and everything, just open up, 17
- 17 rounds, Glock, .40 calibers, through walls?
- 18 **MR. GIESE:** Objection, Your Honor. Is this a
- 19 question?
- 20 Q It is. Is that the procedure at the Richland County
- 21 Sheriff's Department?
- 22 A I can't speak for those other officers.
- 23 Q You were in charge that night. You briefed them
- 24 before you went in?
- 25 A Yes, I did.

- 1 Q Is that acceptable procedure?
- 2 A I don't know what they were shooting at.
- 3 Q Do they know what they were shooting at?
- 4 MR. GIESE: Objection.
- 5 A You'd have to ask them.
- 6 MR. GIESE: Objection.
- 7 THE COURT: It calls for an opinion.
- 8 Q Were your instructions when you went in, the minute
- 9 you heard a gunshot and somebody yells gun, open up?
- 10 Were those your instructions?
- 11 A No, sir.
- 12 Q Would you have had them do that?
- 13 A No, sir.
- 14 Q You were the officer in charge?
- 15 A Correct.
- 16 Q Did they violate your orders?
- 17 A I didn't give them those orders.
- 18 Q Well, I thought you all had this big briefing outside
- 19 before you went in?
- 20 A Yes, we did.
- 21 Q You don't know whether they had their flashlights or
- 22 not?
- 23 A No.
- 24 Q And you don't know who fired those rounds and why?
- 25 A No, I don't.

1 Q Have you talked to your field officers after the
2 shooting?

3 A I've talked to one.

4 Q I'm sorry?

5 A I talked to one.

6 Q Okay. So after you got him handcuffed, there's six
7 deputies there?

8 A No. Not at that time. This was months after the
9 occasion.

10 Q So that night you never asked anybody who shot, who
11 did what?

12 A No. We only discussed it at that time with the SLED
13 investigators. We very instructed not to talk about
14 the incident by our chief deputy.

15 Q When did he instruct you to do that?

16 A As soon as he got to the location which was a couple
17 of minutes because he lives down the road.

18 Q So you've got him on the ground; the other deputies
19 are around you, and nobody says, what the hell was
20 that?

21 A I told -- instructed them to exit the residence and
22 to stay in front of the residence until the chief
23 deputy arrived and not to talk about it. Then the
24 chief deputy arrived and also told us to report to
25 headquarters and not to discuss the incident.

- 1 Q And when you took him into custody, he had to get
2 down on the ground?
- 3 A Yes, sir.
- 4 Q He is bleeding from his arm?
- 5 A Yes, sir.
- 6 Q You all took him to the hospital?
- 7 A The EMS units did. Yes, sir.
- 8 Q Did you go to make sure he was secure?
- 9 A He was handcuffed in front at that time by one of the
10 officers that came into the residence. Then EMS I
11 think put a bandage on his wound and then transported
12 him in their ambulance to the hospital.
- 13 Q Okay. And as the chief investigating officer on this
14 case, you of course instructed those officers or
15 asked those officers to have a blood sample drawn
16 from him, did you not?
- 17 A No, I did not. My duties as chief investigator
18 stopped at that time because of the incident at the
19 residence. At that time Chief Deputy Wilson took
20 over, and I believe he worked with the SLED
21 investigators at that time.
- 22 Q So it would have been Chief Deputy Wilson's
23 responsibility to make sure blood was drawn?
- 24 A Either him or the SLED investigators.
- 25 Q To your knowledge, was blood drawn?

- 1 A I have no idea.
- 2 Q Did Gwyn fire his weapon at Mr. Herring?
- 3 A At the time I did not know. I believe he did, yes.
- 4 Q Did you know whether -- strike that. When Mr.
- 5 Herring came out of the bedroom, he had no weapon,
- 6 correct?
- 7 A The first time, yes.
- 8 Q No. I'm talking about when he came out of the
- 9 bedroom to surrender himself, he had no weapon?
- 10 A Yes. That's correct.
- 11 Q He had a cellphone in one hand?
- 12 A I don't know what he had. I didn't have sight of him
- 13 at that time. Gwyn had sight of him and gave him
- 14 commands to get down on the ground.
- 15 Q And he left the .357 that you'd seen him come up with
- 16 on the bed?
- 17 A Yes. I believe so.
- 18 Q You don't know that?
- 19 A I didn't know that at the time. I've seen pictures
- 20 since.
- 21 Q Didn't give you any trouble?
- 22 A No.
- 23 Q Didn't attempt to resist?
- 24 A No.
- 25 Q Laid down on the floor?

- 1 A Yes.
- 2 Q Six officers pointing their Glocks at him?
- 3 A I don't believe there was six of us at the time. I
- 4 don't know. There was probably two or three inside.
- 5 Q Two or three pointing their Glocks?
- 6 A Right.
- 7 Q Never gave you any trouble?
- 8 A At that time, no.
- 9 Q So as I understand it, as a result of this raid by
- 10 the Sheriff's Department two people got wounded, Mr.
- 11 Herring and you. Is that correct?
- 12 A Yes, sir.
- 13 Q And you shot him and your men shot you?
- 14 A I believe so. Yes, sir.
- 15 Q Have you been sanctioned, disciplined in any way as a
- 16 result of this incident?
- 17 A No, I have not.
- 18 Q Have you all undergone any sort of remedial training
- 19 on how to conduct a raid?
- 20 A I have not, no.
- 21 Q Has anyone ever suggested to you as a process of your
- 22 training since then that you might want to call on
- 23 the phone or go around to the back door?
- 24 A Absolutely not.
- 25 Q So you'd do this exactly the same way today that you

1 did that night. Is that correct?

2 A That's correct.

3 THE COURT: Redirect?

4 MR. HARPOOTLIAN: Beg the Court's indulgence one
5 second.

6 THE COURT: I'm sorry.

7 Q Before you kicked in that front door, did you have
8 any idea or any information as to whether Mr.
9 Herring's wife or son was there?

10 A I had no idea. Didn't know if he was married.
11 Didn't know any of that.

12 (Cellphone goes off)

13 THE COURT: There was a phone in the box.

14 MR. HARPOOTLIAN: I'm sorry?

15 THE COURT: There was a phone in the box.

16 MR. HARPOOTLIAN: Sir?

17 THE COURT: Never mind. Go ahead.

18 MR. HARPOOTLIAN: Okay.

19 Q And so when the officers opened fire, these
20 bullets -- and these bullets went through several
21 walls, right?

22 A I believe so.

23 Q A Glock will go through Sheetrock, one wall of
24 Sheetrock, another wall of Sheetrock and then
25 outside, correct?

- 1 A As will a .357.
- 2 Q Was there any calculation before you all went in as
3 to whether or not there might be somebody else there
4 other than Mr. Herring?
- 5 A As I said, we didn't know if anybody was home at the
6 time because there was a large garage and only one
7 vehicle in the garage.
- 8 Q Did you check to see if any other people had driver's
9 licenses registered to that location?
- 10 A No, I did not.
- 11 Q You could have though?
- 12 A Difficult. But, yes, I could.
- 13 Q Yeah. I mean, you got his driver's license, right?
- 14 A Right. I would have to know her first name obviously
15 to identify her and to try to locate a driver's
16 license.
- 17 Q Well, actually you all went through an people search
18 and determined who lived at the residence, didn't
19 you?
- 20 A We did do that at the officer later on, yes.
- 21 Q No. Before the search warrant.
- 22 A Before the search warrant, yes.
- 23 Q And you knew that Virginia Herring lived there?
- 24 A I was just looking for his name at the time.
- 25 Q But you saw the addresses showed other people lived

1 at that location, right?

2 A It lists everybody who has ever been at that
3 residence or the address we tried to pull up.

4 Q And there are several people named Herring at that
5 residence?

6 A Yes.

7 Q And you knew then other people at least one point
8 other than Dewain Herring had lived at that
9 residence?

10 A Yes.

11 Q And in the process of kicking in the front door,
12 there was no caution about they may need to be a
13 careful, there may be a woman or children in this
14 place?

15 A No.

16 Q Thank you.

17 THE COURT: Now. Redirect.

18 MR. GIESE: Yes, sir. Just couple of questions.

19 REDIRECT EXAMINATION

20 BY MR. GIESE

21 Q Mr. Harpootlian was asking you about going to the
22 back door. Do you remember that line of questioning?

23 A Yes, sir.

24 Q And tell the jury, do you normally go to the back
25 door in a situation like this?

1 A Normally we don't. We try to get to the back corners
2 just to watch out in case somebody runs out the back.
3 And like I stated earlier, there was a large fence or
4 gate or something to where the officers went back
5 there said they could not get over. I don't recall
6 an opening gate or anything like that because I did
7 not go back there myself.

8 Q And that's standard protocol, not to go?

9 A Yes, it is.

10 Q Now, Mr. Harpootlian was also asking you about
11 calling inside the house before you served the search
12 warrant. How many search warrants have you been on?

13 A Well over a thousand.

14 Q Have you ever heard of a police officer who is
15 executing a search warrant calling the place to be
16 searched to let them know you're going to search the
17 house?

18 A No. Not -- you know, obviously after you make
19 contact with somebody, if they barricade themselves
20 in the house, then you would try to make contact with
21 them if they're not responding to you; but never
22 beforehand.

23 Q Have you ever done that?

24 A No.

25 Q Have you ever heard of it happening?

1 A No.

2 Q And, in fact, wouldn't that be special treatment if
3 you did that?

4 MR. HARPOOTLIAN: Objection, Your Honor.

5 THE COURT: Sustained.

6 MR. HARPOOTLIAN: Special treatment. Thank you.

7 Q It would certainly -- would it be different
8 treatment?

9 A Yes, it would. It possibly could endanger the lives
10 of the officers or other people involved obviously if
11 he knows ahead of time that we're outside.

12 Q Now, when you went in, you had already seen the
13 defendant on tape, correct?

14 A Yes.

15 Q At the club?

16 A Yes.

17 Q You'd already seen him on tape with the car matching
18 his description with what you've described as a flash
19 driving there?

20 A Yes.

21 Q So you believed he was involved in a shooting?

22 A Yes.

23 Q And you knew all that before you went in?

24 A Yes.

25 Q You knew that he had used a gun before?

- 1 A Yes.
- 2 Q And you're going into his residence?
- 3 A That's correct.
- 4 Q You knew all that before you went in?
- 5 A Yes, I did.
- 6 Q The shots that were fired by your co-deputies were
- 7 into the hallway, correct?
- 8 A Yes, sir.
- 9 Q Not you and Gwyn but in the hallway?
- 10 A Yes, sir.
- 11 Q And is that where the defendant was running?
- 12 A That's correct.
- 13 Q When a firearm is discharged by a deputy, any deputy
- 14 anywhere in Richland County, tell the jury what
- 15 happens?
- 16 A If it's involved to a shooting incident with a
- 17 civilian, obviously we have to conduct an
- 18 investigation. Our sheriff usually requests that the
- 19 State Law Enforcement Division conducts that
- 20 investigation.
- 21 Q And that was done in this case?
- 22 A Absolutely.
- 23 Q And when deputies fire a weapon, do they do anything
- 24 else in an investigation?
- 25 A No. Once the shooting investigation is conducted,

1 we're basically placed on admin status until they can
2 conduct their investigation to determine what
3 happened.

4 Q And that's what happened in this case?

5 A Yes, it is.

6 Q SLED was called?

7 A Yes.

8 Q The last thing I want to ask you is this. Mr.
9 Harpootlian was asking you why did you yell gun?

10 A Yes, sir.

11 Q Tell this jury why you yelled gun when you were in
12 Dewain Herring's house that morning?

13 A To alert the other officers that a gun was being
14 pulled on one of us.

15 Q Because you had seen the gun?

16 A That's correct.

17 Q Because you had had the gun pointed at you?

18 A That's correct.

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

20 RECROSS EXAMINATION

21 **BY MR. HARPOOTLIAN**

22 Q Just a couple of follow-up questions. Deputy, you
23 were just asked, you know, why you didn't call.
24 Because you didn't want to tip him off, right?

25 A Yes, sir.

1 Q Well, why did you go an hour and a half earlier and
2 knock on the door if you didn't want to tip them off?

3 A Well, as I said, we were trying to locate him to
4 arrest him.

5 Q Did you have an arrest warrant?

6 A It's possible that he could have come in the back
7 door.

8 Q Did you have an arrest warrant?

9 MR. GIESE: Objection.

10 THE COURT: Let him finish his answer.

11 Q I'm sorry.

12 A We did not need an arrest warrant at that time
13 because this was a freshly committed crime, a felony,
14 a murder. At that time we could have arrested him
15 upon sight. And also the warrants for arrest are
16 issued at the magistrate's offices. And obviously at
17 that time in the morning a magistrate office is not
18 open. Because the warrants are serially numbered for
19 purposes like a county audit and stuff I guess, each
20 judge has a secretary that types those warrants and
21 obviously the judge would sign them. So we did not
22 have that option to us at that time of the night.

23 Q So you went there to arrest him?

24 A That's correct.

25 Q And then you called -- the minute after you got back,

1 you went back and called a magistrate to get a search
2 warrant?

3 A Right.

4 Q But didn't ask the magistrate for an arrest warrant?

5 A Because he would not obviously call in his secretary
6 at that time of night. It's never been done before
7 to get an arrest warrant.

8 Q Well, it's never been done before. You had a
9 magistrate on the telephone.

10 A Right. But he doesn't type the warrants up.

11 Q Well, but you sent somebody out there. You could
12 have typed up a warrant for him?

13 A I can't issue a serial numbered arrest warrant, no.

14 Q Well, you could have taken him down to his office.
15 You certainly got him up at 4:00 in the morning to
16 sign a search warrant?

17 A That's correct. I didn't a -- as I stated, I didn't
18 need the arrest warrant. I could have arrested him
19 on sight.

20 Q You weren't going there -- you were going there to
21 arrest him that night. This wasn't a search issue?

22 A The search was secondary to collect items that were
23 obviously used in the crime.

24 Q So when you went there the first time and peered in
25 the window, you were going there to arrest him; not

- 1 what we call a talk and knock, not where you're just
2 going to talk and knock on the door and talk to him?
- 3 A We were attempting to locate him.
- 4 Q Well, were you going to arrest him though?
- 5 A Yes.
- 6 Q You were there to arrest him?
- 7 A Yes.
- 8 Q And you had gone there earlier and you had knocked on
9 the door. There was no response. You didn't try the
10 telephone. You come back and again don't try the
11 telephone. And your statement is you don't go around
12 back but you put people on the back. You never go
13 through the back door for a search warrant?
- 14 A Unless we know the front door is barricaded by
15 information we have, we typically do not because it
16 takes longer obviously to run around the house to get
17 inside the back. So we attempt to use the quickest
18 entry possible which would be the front door on most
19 occasions.
- 20 Q And you didn't -- so nobody even looked at the back?
- 21 A I had officers on the corners.
- 22 Q But nobody went in the backyard and looked?
- 23 A They told me that there was a fence or wall or
24 something to that effect they could not get around.
- 25 Q And you didn't investigate that on your own?

1 A No.

2 Q Thank you.

3 THE COURT: All right, Officer. You may come
4 down. Witness be excused? Any objection?

5 MR. HARPOOTLIAN: No, sir.

6 THE COURT: All right, Ladies and Gentlemen of
7 the Jury, let's take a morning break. I don't know
8 about you but my coffee is working overtime. So
9 let's take about a 15-minute break. Don't discuss
10 the case among yourselves while you're in the jury
11 room. Thank you very much.

12 (Jury out at 11:06 a.m.)

13 THE COURT: We'll stand at ease.

14 MR. HARPOOTLIAN: Thank you, Your Honor.

15 THE COURT: Ten minutes.

16 (Whereupon, a break is taken)

17 THE COURT: The State ready to proceed?

18 MR. MEADORS: The State's ready.

19 THE COURT: Defense ready to proceed?

20 MR. HARPOOTLIAN: Yes, sir.

21 THE COURT: Bring the jury, please.

22 (Jury in at 11:29 a.m.)

23 THE BAILIFF: The jury is present, Your Honor.

24 THE COURT: Thank you very much. Solicitor,
25 call your next witness.

1 **MR. MEADORS:** If it please the Court, the State
2 will now call Investigator Brien Gwyn.

3 **BRIEN GWYN,** after being duly sworn, testifies as
4 follows:

5 **THE CLERK:** Thank you. Please have a seat in
6 the witness stand and state your full name for the
7 record.

8 **WITNESS:** Brien Gwyn.

9 **DIRECT EXAMINATION**

10 **BY MR. MEADORS**

11 **Q** Good morning.

12 **A** Good morning.

13 **Q** Would you please tell the ladies and gentlemen of the
14 jury about yourself prior to your law enforcement
15 experience, just where you are born and where you are
16 raised, please?

17 **A** I was born here in Columbia, went to Irmo High
18 School. I graduated from Irmo High School in 1992,
19 went into the Marine Corps.

20 **Q** How long were you in the Marine Corps?

21 **A** Four years.

22 **Q** And where were you stationed?

23 **A** Camp Pendleton, California.

24 **Q** And after your service there, what did you do?

25 **A** I got into law enforcement and started out in

1 corrections.

2 Q If you just will, you can stay back so we can just
3 make sure we can all hear you, please. Where in
4 corrections did you start off?

5 A Richland County Detention Center.

6 Q How long were you there?

7 A I was there for just under a year and went to the
8 Lexington County Sheriff's Department.

9 Q How long were you at Lexington County?

10 A I was there for two years, got certified at Columbia
11 College Police Department, stayed there a year,
12 started Forest Acres, was there just under five
13 years; and then I came to Richland County in 2003.

14 Q All right. If you'll speak up, please, just into the
15 microphone a little bit. So you went from Lexington
16 County Sheriff's Department where?

17 A To Columbia College Police Department and then Forest
18 Acres and then to Richland County.

19 Q All right. And how long have you been with Richland
20 County?

21 A Going on three years.

22 Q And when you first started with the Richland County
23 Sheriff's Department, what was your role, your job?

24 A Regional investigator in Region 4.

25 Q What does that mean?

- 1 A Investigate misdemeanor crimes that occur in the
2 Region 4 area which is Broad River and Bush River,
3 Irmo area.
- 4 Q How many regions is Richland County divided in for
5 Sheriff's Department purposes?
- 6 A Six regions.
- 7 Q Is the courthouse one?
- 8 A It is. It's Region 5.
- 9 Q What position do you hold today?
- 10 A I am an investigator in CID, investigate burglaries
11 in the Region 4 area.
- 12 Q And Howard Hughes is your immediate boss?
- 13 A Yes.
- 14 Q And how long have you been doing that?
- 15 A I came up to CID in November of last year.
- 16 Q So in January of 2006, specifically January 28th,
17 2006, you were where in the Sheriff's Department?
18 Region?
- 19 A Region 4, regional investigator.
- 20 Q Now, what region is Chastity's in?
- 21 A Region 4.
- 22 Q And did you have an occasion to respond to Chastity's
23 I guess maybe on the early morning hour of January
24 29th, 2006?
- 25 A I did.

1 Q Tell these folks why?

2 A I was working an undercover special in Region 4
3 specifically on Bush River Road, and a call went out
4 with shots fired, one down at Club Chastity's, gave
5 the address on River Drive. I responded to that
6 call.

7 Q Now, were you the first law enforcement officer to
8 arrive?

9 A I was.

10 Q Had any other first responder type gotten there
11 before you did?

12 A EMS arrived just prior to my arrival.

13 Q And describe the scene to these folks when you got
14 there, Investigator?

15 A When I arrived, EMS was -- I walked through the door
16 and I noticed there was a hole in the front door of
17 Chastity's. As I proceeded into the entrance/lobby
18 area I observed "Jon Jon" laying on the floor with an
19 apparent gunshot wound to the head. He had brain
20 matter, what appeared to be brain matter coming out
21 of his ear. EMS was trying to revive him.

22 Q Based on your observation then and watching, was Mr.
23 Johnson dead?

24 A He appeared to be, yes.

25 Q And you referred to him as "Jon Jon". Did you know

1 him?

2 A I did not know him personally; no, sir.

3 Q Is that through getting ready for the case?

4 A Yes, sir.

5 Q We're now calling him "Jon Jon" as you prepared for
6 the case?

7 A Yes, sir.

8 Q As you come in and you've seen the body of John
9 Johnson, you saw EMS, what did you do next from a law
10 enforcement perspective as soon as you got there, if
11 anything?

12 A When I arrived and observed what I observed, I
13 immediately started pushing people away from Mr.
14 Johnson to secure the crime scene, to preserve any
15 evidence and to kind of keep witnesses, potential
16 witnesses in one area so they did not leave until we
17 interviewed them later.

18 Q And when you first got there, did you stay toward the
19 door area before you go out in the lobby?

20 A I was. I was in the immediate entrance to that area
21 because EMS was working on Mr. Johnson. And I had
22 instructed other personnel who worked at the club to
23 push people back into the bar area to keep them away
24 from Mr. Johnson and the area that they were working
25 on him.

1 Q And was anybody else -- before any other law
2 enforcement got there, were any other club employees
3 helping keep people back toward the bar area?

4 A They were. There were several club employees. They
5 were taking my instruction at keeping people in the
6 bar area away from the lobby.

7 Q Was one of those Mr. Weeks? Or do you remember?

8 A Mr. Carl Weeks; yes, it was.

9 Q And actually you and I have looked at the video, and
10 it shows exactly when you come into Chastity's,
11 doesn't it?

12 A Yes, sir.

13 Q And it shows, without bringing that up today because
14 the jury may have seen enough of the video for now;
15 but does it show you coming in and show EMS there?

16 A It does.

17 Q And at that point then you can't see the body of John
18 Johnson on the video, can you?

19 A No, you cannot.

20 Q EMS comes. You come. You kind of secure the scene
21 with the help of Carl Weeks. What do you do after
22 that at the scene that night, this morning?

23 A Relayed information. Mr. Weeks had gave me the tag
24 number to the suspect vehicle and a description of
25 the suspect and the vehicle. I relayed that via

1 radio to responding deputies and deputies out on the
2 road.

3 As investigators started arriving I made contact
4 with Angel Koon. And she proceeded, took me back to
5 the video, the security area where the video
6 surveillance is. And we observed the video of Mr.
7 Herring entering the club and she immediately pointed
8 him out as being the individual who got in the
9 confrontation with Mr. Johnson.

10 Q In going back, how long after you got there was it --
11 got to Chastity's; excuse me -- before Mr. Weeks you
12 said gave you the information about the vehicle tag?
13 How long was that?

14 A It was just a matter of minutes. It wasn't very long
15 at all.

16 Q And can you see that on the videotape where Mr. Weeks
17 is showing you his hand?

18 A You can. He had it written down on his hand and
19 provided that tag number to me and explained to me it
20 was an education tag and described the tag.

21 Q And do you immediately relay that to somebody?

22 A I did. Via the radio. Yes, sir.

23 Q Now, is there a Wilbur Savage? Did he come on the
24 scene?

25 A He did. He was the corporal on duty on that night.

1 Q And when he got there, what did he do, if anything,
2 or help do?

3 A Obtained information and assisted in keeping
4 potential witnesses in the bar area.

5 Q And prior to talking with Ms. Angel Koch, did you
6 talk to any other witnesses? You talked to Carl
7 Weeks?

8 A I talked to Mr. Weeks. I don't believe I talked to
9 anybody else.

10 Q And you're talking to Ms. Koon now?

11 A Right.

12 Q You said you went to an office?

13 A Yes. It was a separate office away from the
14 building.

15 Q All right. And at that time did she provide you with
16 what we've all been referring to as a video, a CD of
17 a video?

18 A Yes.

19 Q A CD of a picture of a monitor?

20 A Right.

21 Q And did you observe that before you left?

22 A Yes, I did.

23 Q And were you able to see Dewain Herring on that
24 video?

25 A I was.

1 Q Did you see him entering?

2 A Yes, I did.

3 Q Did you see him when his car came back up?

4 A Yes.

5 Q And what, if anything, did you see after his car came
6 back up in your opinion that night on the video?

7 A I saw a flash from the passenger's side door from the
8 window.

9 MR. HARPOOTLIAN: Objection, Your Honor, again.

10 THE COURT: Overruled. He said he saw a flash.

11 MR. HARPOOTLIAN: On the video.

12 THE COURT: I understand.

13 MR. MEADORS: How else could he say it?

14 MR. HARPOOTLIAN: Your Honor, I have a matter of
15 law I need to take up, please. I need to put this on
16 the record.

17 THE COURT: All right. Ladies and gentlemen, I
18 told you there would be times when I needed to
19 discuss these matters on the record with the lawyers.
20 It's the same issue that we've talked about twice
21 before. But I'm going to excuse you for just a few
22 minutes while we get this straightened out. Don't
23 discuss the case among yourselves while you're in the
24 jury room.

25 (Jury out at 11:39 a.m.)

1 **THE COURT:** Yes, sir, Mr. Harpootlian.

2 **MR. HARPOOTLIAN:** May it please the Court, Your
3 Honor. We've dealt with this issue twice. Your
4 Honor has given an instruction twice to the jury that
5 people, when they're looking at the same thing you're
6 looking at; that is, the jury has the same
7 opportunity to look at it as they do, this gentleman
8 is giving an opinion. Now, that opinion doesn't
9 assist the jury in any way whatsoever except to give
10 his opinion about what they're seeing on the
11 videotape. It's not that he saw a flash there that
12 night. He saw a flash on the videotape. We've seen
13 the videotape several times.

14 I'd further point out for the record, this
15 videotape has been shipped to NASA where experts at
16 analyzing these items have not rendered an opinion
17 that there's a flash on there. So this gentleman
18 is -- his opinion is -- and, by the way, for the
19 purposes of what he did, it doesn't matter. It's
20 prejudicial for the jury to be kept being told -- I
21 mean, it's as if I put a witness up there to say they
22 see a third person in the back seat and put five of
23 them up there to say they see another person in the
24 back seat; oh, I see a person in the back seat. I
25 mean, it's not -- the jury can see what it is.

1 They've attempted to have it enhanced. They've
2 attempted to have experts, real experts explain what
3 it is. This guy is not trained in analyzing
4 videotapes or looking at videotapes. This is a very
5 low resolution videotape, or it's actually recorded
6 on a digital hard drive. We've attempted to have it
7 enhanced and have somebody give us an opinion of what
8 is on it and nobody can do that.

9 So to have this witness say "I saw a flash" when
10 it may be what we call an artifact is beyond his
11 expertise. And he's giving an opinion, and opinions
12 can only be given under 701. "Opinions by lay
13 witnesses: If the witness is not testifying as an
14 expert, the witness's testimony in the form of
15 opinions or inferences is limited to those opinions
16 or inferences which are, (A), rationally based on the
17 perception of the witness; (B), are helpful to a
18 clear understanding of the witness's testimony or a
19 determination of a fact in issue, and (C), do not
20 require special knowledge."

21 This fits none of those exceptions. And we'd
22 ask you to instruct the jury again whatever is on the
23 video is up to them to determine if it's within their
24 ability to do so. But to have police officers keep
25 getting up here and say "I see a flash" is

1 prejudicial. And we'd move for a mistrial. This is
2 the third time. You've given them instructions
3 prior.

4 **MR. MEADORS:** Your Honor, we think every one of
5 them fits. It is what it is. As a part of his
6 investigation he looks at this video, sees Mr.
7 Herring, sees what appears to be a flash. Just like
8 I'd asked him, what do you see in here? It appears
9 to be an ATM. He can say that under 701. How could
10 he not be able to? He sees what he thinks is a shot
11 in his opinion. They can decide. It fits 701, every
12 word of it. I don't know how it wouldn't otherwise.

13 **THE COURT:** Here is the difference. He cannot
14 say it is a shot.

15 **MR. MEADORS:** He never has. I'm sorry.

16 **THE COURT:** Well, you just did.

17 **MR. MEADORS:** Okay. Well, he didn't.

18 **THE COURT:** I know that.

19 **MR. MEADORS:** I'm sorry.

20 **THE COURT:** So let me just state it. Under 701,
21 he can say that he saw a light. That is common.
22 Anybody can say they saw a light. Whether they did
23 or did not, that's for the jury to determine. If he
24 saw a flash, I don't see the difference. If he says
25 "I saw a gunshot", that is a significant difference.

1 And no witness has so far said that. These are
2 things within the common observation of not only
3 police officers but everybody else. Any person can
4 see a flash. Whether that person can interpret it as
5 a gunshot, I would agree with you.

6 MR. HARPOOTLIAN: Your Honor, if I could just
7 cite for the record.

8 THE COURT: I want you to go ahead and put it
9 all on the record.

10 MR. HARPOOTLIAN: Yes, sir. Will Lee Law of
11 Evidence 4.9: "The prohibition against lay opinions
12 applies generally to any testimonial statement or
13 description in which the lay witness's opinion is
14 unnecessary. Put otherwise, the rule for getting
15 opinions is applicable in circumstances where the
16 witness could if requested describe her observations
17 in factual terms. If the witness can adequately
18 reveal the facts, her opinion is superfluous because
19 the jury when provided these facts is able to draw
20 the necessary inferences."

21 In other words, it is what it is. You can see
22 it. There's no -- and he is giving an opinion of
23 what it is.

24 THE COURT: Well, that's where we disagree. If
25 he were to go outside and say "the sun is shining",

1 then your reading of the rule is that that's
2 opinion --

3 **MR. HARPOOTLIAN:** No. No. If he were to look
4 at a picture or a video in which it is questionable
5 because of the quality of it, whether the sun was
6 shining or not, whether the clouds were covering the
7 sun or not, and he says "well, it looks to me like it
8 was sunny that day", that's what I'm talking about.
9 That's the difference.

10 Your Honor, further, just to clear it up, the
11 prejudicial -- the police officer sitting on the
12 stand testifying there's a flash or a light or
13 something, inferring there's a gunshot, the
14 prejudicial effect of that far outweighs any
15 probative value. So we'd ask you to strike it under
16 701 and under 803(4), 8-0 whatever. So --

17 **THE COURT:** 403.

18 **MR. HARPOOTLIAN:** I'm sorry?

19 **THE COURT:** 403.

20 **MR. HARPOOTLIAN:** 403. And, by the way, you
21 twice before have told this jury to disregard that.
22 And if you let this stand, then it's going to draw
23 un --

24 **THE COURT:** I'm going to give them the same
25 caution over and over again. I don't know how many

1 times it's going to come. But the cumulative effect
2 of it, I would probably agree with you, is getting
3 close to a 403 violation.

4 **MR. HARPOOTLIAN:** Yes, sir. Well, if you're
5 going to give the same instruction then, then I will
6 take the same position again. It's okay if you give
7 that instruction. But I'd the solicitor to stop
8 doing it.

9 **MR. MEADORS:** Judge, you just ruled with us. I
10 don't know what he's talking about. As a part of
11 investigation, I think you've said he can say he sees
12 a flash. Correct? Not a gunshot.

13 **THE COURT:** I will tell the jury that they're
14 not to interpret that as anything other than what he
15 said.

16 **MR. MEADORS:** A lay person under 703 which he is
17 entitled to do.

18 **MR. HARPOOTLIAN:** Your Honor, I'm excepting.
19 I'm just excepting. I'm excepting.

20 **MR. MEADORS:** I certainly respect that. Under
21 his view, you'd never be able to give a lay opinion.

22 **MR. HARPOOTLIAN:** No. But we don't need to
23 debate that. That's purely academic at this point.
24 I have accepted the Court's ruling, asked for a
25 mistrial and all of the testimony to be stricken.

1 **THE COURT:** As to a mistrial, the motion is
2 denied --

3 **MR. HARPOOTLIAN:** Thank you.

4 **THE COURT:** -- for the record. Bring the jury,
5 please.

6 **MR. HARPOOTLIAN:** And, your Honor, he need not
7 ask the question again.

8 **MR. MEADORS:** Yes, sir. Yes, sir, I am. They
9 went out on it. As a part of your investigation, he
10 said it's okay. Why wouldn't I?

11 **THE COURT:** Well, look. Don't ask it again.
12 I'm going to give them the instruction. They have
13 heard it. It's just repetitive.

14 **MR. HARPOOTLIAN:** Thank you.

15 **THE COURT:** It's all it is.

16 (Jury in at 11:47 a.m.)

17 **THE BAILIFF:** The jury is present, Your Honor.

18 **THE COURT:** All right. Thank you very much.
19 All right, ladies and gentlemen. Similar to my prior
20 cautions, this witness has repeated something that
21 another witness said regarding a light or a flash.
22 You are not to interpret that as any evidence of a
23 gunshot wound again or a gunshot. It is your
24 responsibility to see what you see on the video, if
25 you see anything.

1 This witness has merely told you what he thinks
2 he saw. And that's the extent of it. I want you to
3 understand that. It was objected to and you can
4 understand why it was objected to. But any testimony
5 regarding whether that was or was not a gunshot
6 wound -- I mean a gunshot -- you are to disregard
7 that. Do you understand? Everybody clear? Okay.
8 The jury seems to understand, Mr. Meadors. Now let's
9 proceed.

10 Q Thank you very much. As a part of your
11 investigation, did you have an occasion to go with
12 Ms. Koon to her corporate office?

13 A I did.

14 Q And did she download a part of a hard drive showing
15 Chastity's from roughly 11 to 12:15 or so?

16 A She did.

17 Q And did you review that?

18 A I did.

19 Q As a result of that, could you see Dewain Herring?

20 A Yes, I did.

21 Q Could you also see the car? And you've told us what
22 your observations were on the basis of that just a
23 few minutes ago, correct?

24 A Yes, sir.

25 Q Now, after viewing that, she downloaded it from the

1 hard drive onto a what?

2 A On a CD. A CD.

3 Q I show you what's State's 54. And obviously it's

4 just a disk. But did you get the disk from Angel

5 Koon that night?

6 A I did.

7 Q You yourself?

8 A Yes, sir.

9 Q And what did you do with it?

10 A I took it and gave it to Investigator Baker.

11 Q John Baker?

12 A Yes, sir.

13 Q And this is that disk?

14 A Yes, it is.

15 Q And you got it from Ms. Koon and gave it to John

16 Baker that night?

17 A Yes, sir.

18 Q Okay. And where did you give it to John Baker?

19 A In the bar area where the witnesses were being

20 interviewed.

21 Q State's 54 for I.D. You've got that. Did you

22 take -- had you already given the information about

23 the tag?

24 A I did.

25 Q You gave that to Investigator Baker?

1 A Right.

2 Q What did you do next?

3 A Asked if I could assist them in any way. They were

4 taking statements. There was a few witnesses left.

5 I stayed at the bar area for a little while. They

6 were pretty much wrapping up their statements at that

7 time. I went back to my office and ran the

8 information that I had to see if I could assist with

9 coming up with an address.

10 Q And prior to you leaving, did other law enforcement

11 officers -- and is it depicted on these tapes -- do

12 they arrive to Chastity's?

13 A They did.

14 Q Hodges?

15 A Deputy Hodges.

16 Q Wilbur Savage you said was there?

17 A Yes, sir.

18 Q Other officers there to assist in controlling the

19 crowd and/or investigating, correct?

20 A Yes, sir.

21 Q You go back to your office?

22 A Yes, sir.

23 Q Which was where at that time?

24 A It's 3315 Broad River Road which is Widewater Square.

25 Q What do you do there in relation to this case?

1 **A** Ran -- did a name search for his name and ran the tag
2 and came up with the address for Landmark Circle.
3 Which I worked at Forest Acres prior to that and knew
4 that that was an office complex.

5 **Q** You knew that just from working at Forest Acres?

6 **A** Yes, sir.

7 **Q** What did you do after that?

8 **A** Asked if they needed assistance with anything.
9 Sergeant Linfert told me they were probably going to
10 need assistance with the search warrant later. I was
11 pretty much on standby at that time.

12 **Q** And what did you do after you went back to your
13 office? Did you end up going to the Sheriff's
14 office, main office?

15 **A** I did. I met up with Sergeant Linfert and the other
16 investigators in CID.

17 **Q** And what transpired at the Sheriff's Department
18 there? Did they have the tape at this time?

19 **A** They did.

20 **Q** Was the videotape looked at?

21 **A** Yes, sir.

22 **Q** And had Dewain Herring -- he'd already been
23 developed. You'd already seen his picture?

24 **A** Yes, sir.

25 **Q** Everybody at the Sheriff's Department knew that then,

1 correct?

2 A Yes, sir.

3 Q Had they seen Dewain Herring coming in the door?

4 A Yes, sir. They had.

5 Q Had they seen the car coming up to the door right
6 before it sped off to your knowledge?

7 A Yes, sir, they had.

8 Q Is the search warrant prepared?

9 A It was in the process of being prepared at that time.
10 Yes, sir.

11 Q And subsequently a lawful search warrant was prepared
12 and executed, correct?

13 A Yes, sir, it was.

14 Q What part, if any, did you take in that search
15 warrant? Specifically, where did you all go, if
16 anywhere, from the Sheriff's Department? Where did
17 you all go meet up?

18 A The search warrant was obtained and we had decided to
19 meet at Trenholm Plaza off of Forest Drive. We were
20 given a safety briefing and advised of the facts of
21 the case and who we were looking for. We had all got
22 in our respective vehicles and proceeded to 460
23 Alexander Circle.

24 Q Now, you've worked in the Forest Acres area. Were
25 you familiar with where 460 Alexander Circle is?

1 A I was not familiar with the exact road, but I was
2 familiar with where Gregg Parkway was at.

3 Q And is that in a gated subdivision?

4 A Yes, sir, it is.

5 Q What's the name of it?

6 A Gregg Parkway.

7 Q And when you come in, is there actually a guard or a
8 --

9 A There is a shack with a gate that keeps people from
10 freely coming into and out of the community.

11 Q And do folks have to check in there usually after
12 certain hours to get in and out?

13 A They have to enter a code in order to get in.

14 Q And if you're a visitor, do you know how to get in?

15 A I believe law enforcement has a specific code, but I
16 couldn't recall it at the time.

17 Q Besides law enforcement, if you didn't have the code
18 you couldn't get in?

19 A I couldn't answer that, sir.

20 Q After you have your briefing at the Trenholm Plaza --
21 and is that where you all just get together and
22 decide how you're going to execute the search
23 warrant?

24 A Yes, sir.

25 Q And what were you wearing?

1 A I was wearing a Richland County Polo shirt with a
2 badge on it and a raid vest that depicts Deputy
3 Sheriff across the front and the back.
4 Q This is marked State's 62 for identification. Do you
5 recognize this?
6 A Yes, I do.
7 Q And what is this?
8 A This is my tactical raid vest.
9 Q And this is actually your vest?
10 A It is.
11 Q All right. And were you wearing this that night?
12 A I was. And I always take my badge that I wear on my
13 belt around my neck and clip it to the neck part of
14 the vest.
15 Q All right. And when you first went into Chastity's
16 that night, what were you wearing when you responded
17 at 12:14 I believe?
18 A I was wearing a green long-sleeved shirt and blue
19 jeans with a badge around my neck.
20 Q Could you see your badge down here?
21 A Yes, you could.
22 Q In the video?
23 A Yes, sir.
24 Q Now, besides this, what were you are wearing at 460
25 Alexander Circle?

1 A I was wearing slacks, a Richland County Polo shirt
2 with a badge and that tactical vest.
3 Q And is this the tactical vest?
4 A That is our winter coat. I was not wearing that at
5 the time.
6 Q You were wearing a tactical vest?
7 A Yes, sir. Which is what you showed me.
8 Q Just this, right?
9 A Yes, sir.
10 Q You didn't have anything else you were wearing like
11 that?
12 A Yes, sir.
13 Q You all were dressed in this gear. And why do you
14 wear this stuff that says Deputy Sheriff on it?
15 A For identification and protection.
16 Q Take us from Trenholm Plaza to Gregg Park.
17 A We proceeded towards Gregg Park located at Alexander.
18 We had knowledge of how to get to Alexander Circle.
19 We parked just down the road and walked to the house,
20 Alexander Circle.
21 Q At this point did you have the individual identified
22 who lived there?
23 A We did.
24 Q Did you have the individual identified as a suspect
25 in the shooting at Chastity's?

1 A We did.

2 Q Did you go to prior to this?

3 A No, sir, I did not.

4 Q Had somebody gone?

5 A Yes.

6 Q So you had the right house?

7 A Yes, sir.

8 Q Did you or anyone else pull the defendant's driver's

9 license to compare to the picture in the video?

10 A I believe Sergeant Linfert or Investigator Baker had.

11 They had also visited his work website that depicts

12 his picture as well.

13 Q You're at Landmark -- (sic)

14 right now. Tell the jury what happened.

15 A We proceeded towards the door with caution, made

16 observations in the windows to make sure we did not

17 see anybody looking out the windows to see us coming.

18 The front doors are what I call French doors.

19 They're dual opening doors. Knocked and announced.

20 Several knocks were made by Sergeant Linfert. We

21 just identified ourselves as the Sheriff's

22 Department, we had a search warrant; rang the

23 doorbell. Nobody came. Investigator John Baker --

24 Q Let me stop you. When you identified yourself as the

25 Sheriff's Department, how do you do that?

1 A Scream loudly: Sheriff's Department search warrant.

2 Q You scream it?

3 A Yes, sir.

4 Q Knocked on the door, rang the doorbell. What
5 happened next?

6 A Nobody came to the door. Investigator John Baker had
7 a handheld ram and proceeded to hit the door around
8 the doorknob trying to open it.

9 Q And is that what you all do when you have a lawful
10 search warrant and nobody comes to the door?

11 A Yes, it is.

12 Q What happened after that?

13 A It took Investigator Baker several hits. He's a good
14 sized individual. It took him several hits, six to
15 seven hits to finally get the door to come open.

16 Q The doors open. What do you all do?

17 A Immediately identify Sheriff's Department search
18 warrant. At that point we're starting to enter the
19 house, and that's when we come in contact with Mr.
20 Herring.

21 Q And you say we are starting to enter the house. Who
22 is we?

23 A Everybody who was there, the investigators and I and
24 the other people who were there.

25 Q Okay. Who goes in first?

1 A Myself and Sergeant Linfert were the initial ones in
2 at that time.

3 Q When you say you came in and the first contact you
4 had with the defendant, Dewain Herring, explain that
5 to the jury?

6 A As the doors opened and we proceeded in identifying
7 ourselves, identifying the fact that we had a search
8 warrant, Mr. Herring unknown at the time came out of
9 a hallway or what we thought was a hallway and looked
10 at us. And we're giving repeated commands:

11 Sheriff's Department; we have a search warrant; get
12 on the ground; show us your hands. Which at that
13 time he ran back into the hallway.

14 Q Now, at that point how far is Dewain Herring from
15 you, Investigator?

16 A Less from here to the wall away. I couldn't give you
17 an accurate figure.

18 Q And you're wearing this?

19 A Yes, sir.

20 Q And you saw him?

21 A Yes, sir.

22 Q Are you going Sheriff's Department (whispers)? Are
23 you going Sheriff's Department (shouts)?

24 A Screaming Sheriff's Department loudly.

25 Q Search warrant?

1 A Yes, sir. There is a heightened sense of security at
2 that point because he was suspected in shooting
3 somebody. So the adrenaline is high. You're not
4 whispering. You're yelling who you are and what you
5 want him to do so he understands.

6 Q Did he stop when you all were yelling and saying
7 Sheriff's Department?

8 A He came out, made eye contact with us, paused and
9 then ran back into the hallway.

10 Q What did you and the other officers you were with do
11 then?

12 A Myself and Sergeant Linfert moved from the doorway in
13 an arch motion to what we call slicing a pie to try
14 and view the hallway to see where he had went. As we
15 rounded to where we could actually see into the
16 hallway, we realized that the hallway led to some
17 type of bedroom that he came from. As we were able
18 to break the plane of the door and look through, we
19 actually observed Mr. Herring in his bedroom.

20 Q And you could see him?

21 A Could see him clearly, yes.

22 Q With your eyes?

23 A Yes, sir.

24 Q And what happened next?

25 A We were identifying ourselves as we had been:

1 Sheriff's Department; we have a search warrant; let
2 us see your hands. At that time he was kind of
3 turned sideways and away from us bent over at his
4 waist. We were giving repeated commands to let us
5 see your hands. At that time as he stands up we
6 observed what he had, a pistol in his hand. And as
7 he stood up he turned to us and pointed the gun at
8 Sergeant Linfert and I, at which time we screamed,
9 gun, which is normal practice to identify we have a
10 gun and to let everybody else know that there is a
11 threat. We told him to drop the gun, gave him
12 repeated commands; and as he pointed the gun, shots
13 were fired in order to eliminate the threat.

14 Q You saw a gun, and what did you yell?

15 A Gun.

16 Q And how far was who you said was Dewain Herring from
17 you when the gun -- was it pointed at you?

18 A Yes, sir. It was pointed at us.

19 Q Is there any doubt about that?

20 A No, sir. Not at all.

21 Q How far were you from the end of that barrel?

22 A Maybe 20 feet. Maybe. I cannot give you an accurate
23 figure.

24 MR. MEADORS: Judge, I'm aware of the Court's
25 order. And I think pursuant I am supposed to ask you

1 for permission. This is sealed. There's no way it
2 can go off whatever. It's locked. Under your orders
3 can I ask the deputy investigator to hold this and
4 put me back to where he was that night? There's no
5 way this can go off.

6 **THE COURT:** Go ahead. Ladies and gentlemen,
7 just for your information, this pistol has what's
8 known as a trigger lock on it. I'm just trying to
9 talk to them.

10 **MR. MEADORS:** I'm sorry.

11 **THE COURT:** Mr. Meadors, show them the lock.
12 And has the chamber been removed?

13 **MR. MEADORS:** Yes, sir. The chamber is removed.
14 There is no way this can be fired. It's through the
15 barrel, locked. There's no way it can go off.

16 **THE COURT:** All right.

17 **Q** If you are Dewain Herring, stop me where you were
18 when --

19 **A** I would say a little bit back towards to where that
20 table is maybe, maybe a little bit further, right
21 around in there.

22 **Q** And this is where you were?

23 **A** Roughly; yes, sir.

24 **Q** Where is Sergeant Linfert in relation to you?

25 **A** Sergeant Linfert is to my left.

1 Q So over here?

2 A Yes. Yes, sir. He's to my left.

3 Q And point the gun as it was pointed at you?

4 A As we approached him he was bent over at an angle

5 with his back to us. As he stood up he pointed the

6 gun at us like so.

7 Q And did you see the barrel?

8 A Yes, I did. It looked a lot bigger than this at the

9 time.

10 Q What did you yell?

11 A Gun.

12 Q What happened after that?

13 A We fired at Mr. Herring to eliminate the threat.

14 Q What did you feel like when the gun was pointed at

15 you?

16 A Scared. Extremely scared.

17 Q You had already seen the video?

18 A I had.

19 Q You fired your shot after you saw that gun pointed at

20 you?

21 A Yes, sir, I did.

22 Q Were there other shots fired?

23 A There were.

24 Q Did you know who was firing them?

25 A No, sir, I did not. I thought Mr. Herring had shot

1 at us.

2 Q You didn't know where they were coming from?

3 A No, sir.

4 Q You saw a gun?

5 A Yes, sir.

6 Q Yelled gun?

7 A Yes, sir.

8 Q Shot at him?

9 A Yes.

10 Q What happened after that? Did he put down the gun
11 then?

12 A No, sir; he did not.

13 Q Tell the jury what happened after that?

14 A After shots were fired and we had collected up
15 ourselves and moved to a more secure area, there is a
16 foyer that the initial contact was made that led into
17 the hallway. It's an extremely large house. There
18 are pillars in the foyer that kind of separate a
19 formal dining area. There is a wall that cuts at a
20 90-degree angle that leads into the foyer along with
21 the dining room and kind of cuts the dining room from
22 the kitchen.

23 Sergeant Linfert led through the kitchen area to
24 cover our back side to make sure that there was no
25 possible way Mr. Herring could come around behind us.

1 I stayed at the corner of the wall and was able to
2 continuously make eye contact with Mr. Herring and
3 continued to give him commands to drop his gun. We
4 had a search warrant. He needed to come out with his
5 hands up and put his weapon down and come out with
6 his hands up.

7 Q And were you still screaming Sheriff's Department,
8 put the gun down?

9 A Yes, sir, I was.

10 Q And you've listened to that tape. The jury has heard
11 it. Are some of those, you are yelling that?

12 A The majority of them are coming from me. Yes, sir.

13 Q What, if anything else, did you see or observe Mr.
14 Herring do, the defendant, Dewain Herring, do with
15 this gun?

16 A We are taught to continuously peek around the corner,
17 not to keep our head out or keep any part of our body
18 out in the open to eliminate being hurt. So myself,
19 I kept peeking around the corner having a clear view
20 of where I had seen Mr. Herring initially. Mr.
21 Herring was -- obviously he was doing the same thing.
22 He was peeking back at me. So it's kind of like we
23 were peeking back and forth as I'm giving him
24 commands to come out with his hands up, drop the gun,
25 identifying who we were.

1 After a couple of seconds of this Mr. Herring
2 just stopped peeking and stood in the doorway. I
3 could clearly see the revolver in his hand. And he
4 was kind of just cantering back and forth. And I
5 told him several times, put your gun down, come out
6 with your hands up. I'd asked him if he'd been shot.
7 He said yes. I said, come out. We'll get you some
8 medical treatment. We'll get you help. You need to
9 come out.

10 I told him to put the gun down again. Mr.
11 Herring told me to put my gun down and come to him.
12 I obviously refused to do that. At that point he is
13 canting the gun around, and he actually pulls the
14 hammer back on the gun, cocks the gun. I screamed,
15 gun. I did not know if he was going to come out at
16 that point and engage us. At that point I decided to
17 back up from where I was at and get to a more secured
18 area into a doorway that led into the garage.

19 Q And you say he pulled it back. Does that mean cocked
20 it?

21 A Yes. He cocked the gun.

22 Q Did you see that?

23 A I did see that.

24 Q Did you hear that?

25 A I cannot recall hearing it. There was so much going

1 on. But I did see him pull the hammer back on the
2 gun.
3 Q Then you backed off a little more?
4 A I did.
5 Q And after that is what we've all heard -- you weren't
6 in here, but you may have heard it previously -- what
7 transpired on the tape with talking to the 911
8 officer?
9 A Yes, sir.
10 Q And Linfert and Herring back and forth?
11 A Right.
12 Q Did you have any direct conversation with him?
13 A I did. It was, put the gun down; come out; advising
14 him who we were. And he had told me on a couple of
15 occasions put my gun out and to come to him.
16 Q And other than that, when you were yelling back and
17 forth, you never engaged in a -- he didn't ask you
18 like he did Linfert where are you from and your
19 background?
20 A No, sir.
21 Q That was Sergeant Linfert, all of those, correct?
22 A Yes, sir.
23 Q And at some point did he put his gun down?
24 A After a conversation with Sergeant Odom, which I was
25 not able to hear that conversation at the time, he

1 did put his gun down somewhere in the bedroom and
2 came out with the phone in his hand.

3 Q And during this whole process are you yelling,
4 Sheriff's Department, put your gun down?

5 A Yes.

6 Q Why are you doing that?

7 A So he knows who we are, and we're telling him to put
8 the gun down so he does not come out with that gun in
9 his hand.

10 Q You may have said it just a minute ago. Could you
11 hear the conversations? Did you hear him deny that
12 he had been out that night?

13 A Yes, I did.

14 Q You heard him say that?

15 A Yes.

16 Q That he had not been out?

17 A He said he had been somewhere earlier in the day but
18 he had been home all night long.

19 Q Beg the Court's indulgence. When you saw that gun
20 the second time, saw the defendant, why didn't you
21 fire then?

22 A Because the gun was not pointed at me at that time.

23 Q You didn't consider that a threat at that time?

24 A I considered it a threat, but he did not make any
25 motion to point the gun at me at that time.

1 Q And after talking with him 20 or 25 minutes, was he
2 arrested?

3 A He was.

4 Q Who handcuffed him?

5 A One of the responding deputies that came out. I
6 could not tell you exactly who handcuffed him.

7 Q How many times did you fire?

8 A I believe five times total.

9 Q Beg the Court's indulgence. During the time when
10 either you were -- like the example when you said,
11 when you said, put your gun down, Sheriff's
12 Department; he responded with, no, you put your gun
13 down?

14 A Yes, he did.

15 Q So based on that and based on your experience, your
16 training, just common sense, did he appear to
17 understand what you were saying?

18 A Oh, he did. It appeared he understood clearly what
19 we were saying.

20 Q It may not be the response you wanted but it was a
21 response to what you said that made sense, right?

22 A Yes, sir.

23 Q And based on the conversations you heard between
24 Linfert and Dewain Herring, did he appear to
25 understand what Linfert was saying and back and

1 forth?

2 A He did.

3 Q Did you hear that night under these circumstances him
4 saying, I didn't ask for your age?

5 A Yes. I did hear that.

6 Q Investigator, is the -- and I'm not going to point
7 this -- but is this individual that pointed this gun
8 at you, after you said Sheriff's Department, put the
9 gun down; is the individual that pointed this gun at
10 you the first time when you came in there, into that
11 bedroom after you turned the corner, is that person
12 in this room?

13 A Yes, he is.

14 Q Would you please point him out for the ladies and
15 gentlemen of the jury?

16 A Sitting over there in the gray suit with the glasses.

17 MR. MEADORS: We'd like the record to reflect
18 he's pointed out the defendant, Dewain Herring, Your
19 Honor.

20 THE COURT: Let the record reflect the witness
21 has identified the defendant.

22 MR. MEADORS: That's all we've got. Thank you.

23 MR. HARPOOTLIAN: May it please the Court, Your
24 Honor.

25 THE COURT: Yes, sir.

CROSS EXAMINATION

BY MR. HARPOOTLIAN

Q Deputy Gwyn, have you ever fired your weapon before this night --

A No, sir.

Q -- in the line of duty?

A No, sir.

Q Okay. And have you ever been shot?

A I have not.

Q Have you been around people who have been shot?

A I have.

Q Does it appear painful?

A I would think so, yes.

Q I mean based on their reaction?

A Yes.

Q It hurts. So it's a very painful experience, correct?

A I would believe so, yes.

Q Now, when you came into the house that night and began yelling at Mr. Herring; that is, after he'd been shot, didn't he indicate to you that he was hard of hearing and couldn't understand you?

A He did say he was hard of hearing.

Q And couldn't understand what you were saying?

A I don't recall him saying he couldn't understand. He

1 did say he was hard of hearing. But he was
2 communicating back and forth with us.
3 Q Okay. But he did tell you, I can't hear you; I'm
4 hard of hearing?
5 A He said he was hard of hearing, yes.
6 Q Now, when you came into -- when you went down that
7 hall, how long was that hall from the foyer area to
8 his bedroom door?
9 A I cannot give you an accurate --
10 Q Well, this close? Further away? How long?
11 A Probably a little bit closer than what you are now.
12 Q Okay. So you come in the foyer. And this is the
13 hall right here that he comes out of when you get
14 there?
15 A Right.
16 Q And then he comes back down this hall and goes into
17 his bedroom?
18 A Yes, sir.
19 Q Okay. So if you -- if you come in the front door --
20 let me see if I can do this. You come in the front
21 door. This is double doors. And you all took a
22 battering ram to one of them, right?
23 A Yes, sir.
24 Q You come in. And I think there is a wall that sticks
25 out like this?

- 1 A Yes, sir.
- 2 Q And then there's a hall that goes back here, right?
- 3 A I believe so, yes.
- 4 Q And then is the bedroom on the right or the left?
- 5 A If you're looking down the hallway, it's going to be
- 6 on your left.
- 7 Q So on this side over here?
- 8 A Yes.
- 9 Q Okay. And then there's a door and then the bedroom
- 10 goes back in here and there's a bed here and a bureau
- 11 here. Right?
- 12 A I believe so, yes.
- 13 Q And then over here is a door to a bathroom?
- 14 A I could not answer that.
- 15 Q Okay. Now, your testimony is that you all came in
- 16 here and you saw Mr. Herring up here to begin with.
- 17 Is that right?
- 18 A That's correct.
- 19 Q What were the lighting conditions in there? Were the
- 20 lights on or off?
- 21 A They were on. There was some lighting inside the
- 22 house.
- 23 Q Very dim though, wasn't it?
- 24 A I couldn't answer that.
- 25 Q Did you have a flashlight?

1 A I did.

2 Q Was it on? Did you have it in one hand with your gun

3 in the other?

4 A I did not have my flashlight in my hand at the time.

5 Q Did you have your flashlight in your hand at any time

6 that night?

7 A During the standoff; yes, I did.

8 Q Why did you have it on?

9 A Because in his bedroom area it was dark.

10 Q There was no light on in his bedroom area?

11 A Not that I can recall.

12 Q So to see back there by the dresser as you look down

13 the hall you would have had to have your flashlight

14 on to see him. That's when you saw him back there

15 after he'd been shot with the gun in his hand. You

16 had him in your flashlight?

17 A Yes.

18 Q Because it was dark back there you had to do that.

19 So as you come down the hall -- and I think this hall

20 goes like this. Wait one second. I want to make

21 sure I'm getting this right. It actually stops right

22 there at the bedroom door. It stops right about

23 here. And I think this area back in here is where

24 the bathroom and the closet and all that would be.

25 It stops right there. So, how far down this hall did

1 you get before you could see him here?

2 A We could actually see him before there was any

3 entrance into the hall area.

4 Q You could see him from up here?

5 A Yes.

6 Q You could see back down this hall to where this

7 bureau is?

8 A Yes.

9 Q You did not have your flashlight on?

10 A I don't recall at that time if I had my flashlight in

11 my hand.

12 Q But you had to use your flashlight later on to see

13 him. Was he up here or down here when you were

14 looking down and saw him after you'd shot him?

15 A He was somewhere down and close to his bed area. He

16 was in his bedroom. He was not in the hallway.

17 Q And you all were way up here?

18 A Yes, sir.

19 Q And you could see him full on from up there?

20 A Absolutely.

21 Q Okay. And he was not out in the hall. He was down

22 by his bed?

23 A Absolutely.

24 Q Okay. Now, at that point is when you put your

25 flashlight on to see him down here?

1. A Correct.
2. Q And when he -- and so it's your testimony that from
- 3 back up here you're looking straight down and you
- 4 could see him down in here?
- 5 A Yes, sir.
- 6 Q Okay. Now, when you -- who was in front of who when
- 7 you went down that hall? And how far down that hall
- 8 did you get when the actual shooting occurred?
- 9 A I cannot give you an accurate --
- 10 Q I mean, if this is where the hall begins, were you
- 11 near the door? Were you back up here? Where?
- 12 A I don't ever recall making it to the bedroom.
- 13 Q So you would have been back beyond the door?
- 14 A I cannot give you an accurate answer.
- 15 Q Okay. Now, as you came down, was -- were you in
- 16 front, or was Sergeant Linfert in front?
- 17 A We were kind of what we call staggered or stacked.
- 18 He was just to my left and barely in front of me.
- 19 Q So he would have been closer to the bedroom door than
- 20 you?
- 21 A Yes, sir.
- 22 Q And he didn't block your view of Mr. Herring at all?
- 23 A Absolutely not.
- 24 Q Okay. And as -- and again I want you to -- how about
- 25 stand up here for just a second. Do you know what

1 this is?

2 A A tape measure.

3 Q Have you ever seen one of these before?

4 A Yes, sir.

5 Q Okay. I want you to hold that for me. I want you to

6 stop me when I'm as far away from you as when you saw

7 Dewain Herring come up with that gun?

8 A With the gun?

9 Q Pointing at you. Further than this?

10 A That's about where I told --

11 Q No. I want not what you told him; what you remember.

12 A Roughly in that area, maybe a little bit further to

13 about your table.

14 Q Okay. Well, hold on. Let's go there. That's

15 17 feet there. I think it broke. And about another

16 three. About 20 feet?

17 A Roughly. I believe so.

18 Q Okay. Will you fix that? Okay. And at 20 feet

19 you're in the hall to the right of Sergeant Linfert.

20 Right?

21 A Correct.

22 Q Back here behind him. And it's dark. There's no

23 light on in the bedroom. You haven't got your

24 flashlight out. And you see -- now, do you see and

25 yell gun or does Sergeant Linfert see and yell gun?

1 A It was automatic. It had to have been at the same
2 time.

3 Q You all yelled gun in unison?

4 A I couldn't say if it was in unison, but we were both
5 screaming gun to let everybody else know what we had
6 seen.

7 Q Okay. You testified a moment ago you not only yelled
8 gun. You testified that you said drop the gun?

9 A I believe so. Yes.

10 Q Okay. And he continued to -- had he pointed it to
11 you, at you at that point?

12 A It was as the process was happening. I couldn't
13 break it down for you and say that we yelled gun,
14 drop the gun, he paused and turned to us. It was
15 almost all at the same time.

16 MR. HARPOOTLIAN: May I handle this weapon, Your
17 Honor?

18 THE COURT: Yes. Is he going to handle it, or
19 are you going to handle it?

20 MR. HARPOOTLIAN: Well, I'm going to handle it
21 for a moment and then I'm going to hand it to him, if
22 that's okay.

23 THE COURT: Go ahead.

24 Q Okay. I'd like you to step down here holding this
25 gun. I'm going to stand up. Well, actually, I'd

1 like you to stand up there. I'm going to stand back
2 where you were. And I want you to demonstrate to the
3 jury how he turned, how he pointed it. Okay? I'm
4 going to get back here where you would have been. I
5 am you. You are Mr. Herring. And I think you said
6 it would be about here, right?

7 A Roughly, yes.

8 Q Okay. I'm looking at you down this hall. You're at
9 the bed. What does he do? You come. And when you
10 see him, what's he first doing?

11 A As I made contact with him and saw him, he was bent
12 over.

13 Q Front or back to you?

14 A Like I said earlier, kind of canted away, kind of
15 back.

16 Q I mean, in your mind's eye, show the jury what you
17 remember?

18 A Something to this effect here.

19 Q Okay.

20 A As he was getting up, I'm assuming he was retrieving
21 the gun at that point because we didn't see it
22 initially.

23 Q Okay. Then what?

24 A As he turned he came up and brought the gun up and
25 was -- we had already said, let us see your hands

1 because we could not see his hands.

2 Q So now you said, let us see your hands?

3 MR. MEADORS: No. He said he had already said
4 that, Your Honor.

5 THE COURT: Sir?

6 MR. MEADORS: No objection, Your Honor. I'm
7 sorry.

8 THE COURT: Ask him.

9 MR. HARPOOTLIAN: And, Your Honor, speaking
10 objections.

11 MR. MEADORS: Well, Your Honor, he is putting
12 words that he didn't say.

13 THE COURT: Sir, he is asking the questions.

14 MR. MEADORS: Yes, sir. .

15 THE COURT: There's not even an objection.

16 MR. MEADORS: Objection. He is putting words,
17 wrong answers that they've said before.

18 THE COURT: Overruled. Go ahead, please.

19 MR. HARPOOTLIAN: I'd ask the Court to please
20 instruct the solicitor to let me do my cross
21 examination without being interrupted through his
22 testimony.

23 THE COURT: We've been doing that for three days
24 now.

25 MR. HARPOOTLIAN: Yes, sir.

1 **THE COURT:** I've also been cautioning you.

2 **MR. HARPOOTLIAN:** Yes, sir. But I am doing this
3 right now, and I'd prefer to be cross examining him
4 rather than the solicitor.

5 **Q** Sir, did you say, let us see your hands?

6 **A** Show us your hands; let us see your hands.

7 **Q** Have you ever before this second just now ever told
8 anybody that?

9 **A** Told anybody ...?

10 **Q** Under oath, in your statement, any time.

11 **A** I don't understand your question.

12 **Q** Did you tell the jury that on your direct?

13 **A** To show me your hands?

14 **Q** Yes. Did you say that?

15 **A** I believe so.

16 **Q** You do?

17 **A** I believe so, yes.

18 **Q** Okay. Did you say that in your statement?

19 **A** It's a possibility.

20 **Q** Okay. So you see him coming up. You say, show me
21 your hands. Then you see a gun. And you say what?

22 **A** Gun. Drop the gun.

23 **Q** Drop the gun. Okay. Turn around. He is coming up.
24 Show me what he did?

25 **A** He's coming up, bringing the gun, turning and

- 1 pointing it at us.
- 2 Q And you're about this far away?
- 3 A Roughly.
- 4 Q You have your weapon already drawn?
- 5 A Absolutely.
- 6 Q As does Sergeant Linfert?
- 7 A Yes.
- 8 Q How many rounds did you fire at that point?
- 9 A I believe five.
- 10 Q Okay. Five rounds at this distance?
- 11 A I believe so, yes.
- 12 Q Now, you were in the Marines?
- 13 A Yes.
- 14 Q I mean, as a police officer, do you practice?
- 15 A I do.
- 16 Q And what's the distance at which you shoot at targets
- 17 with your handgun?
- 18 A It varies.
- 19 Q This is 20 feet. Do you shoot at 20 feet?
- 20 A Absolutely.
- 21 Q What's your accuracy at 20 feet?
- 22 A I'm -- I shoot. I'm good at what I do. I mean, I
- 23 shoot and I shoot well.
- 24 Q And so you put it at a pretty tight pattern at
- 25 20 feet?

- 1 A I have been known to, yes.
- 2 Q Okay. Sergeant Linfert is also shooting his weapon?
- 3 A Yes.
- 4 Q And do you know whether he hit him or you hit him?
- 5 A I have no idea.
- 6 Q But he did get hit?
- 7 A He did.
- 8 Q Did you see him get hit?
- 9 A I did not actually see him get hit, no.
- 10 Q Okay. And show me how he's holding his gun when you
- 11 open up?
- 12 A One handed.
- 13 Q And was he pointing it at you?
- 14 A Absolutely.
- 15 Q And he's directly face-to-face with you like this?
- 16 A He was not -- I don't believe he was turned
- 17 face-to-face. I believe he was coming up as such.
- 18 He maybe --
- 19 Q Coming up?
- 20 A He may have been canted at an angle. I cannot give
- 21 you an accurate --
- 22 Q But his right side would have been canted to you
- 23 because he had the gun in his right hand?
- 24 A I believe so, yes.
- 25 Q Okay. Show me again how he came up?

1 A As he bent over, he come up. He did not pause. It
2 was one fell swoop. He did not stop, look at us,
3 then raise the gun up to us.

4 Q And as he's coming is when you yelled drop the gun?

5 A Gun, drop the gun.

6 Q Okay. Now, you can go ahead and have a seat. You
7 might want to give me that back. Thank you. And as
8 you fired your five rounds -- and I think you've
9 testified you normally carry 15 rounds in a Glock.
10 There were ten left?

11 A Eleven. We keep one in the chamber. It's a 15-round
12 magazine. Yes, sir.

13 Q One in the chamber?

14 A Yes, sir.

15 Q So I mean 11 in the clip and -- I mean, sorry. 14 in
16 the clip and one in the chamber?

17 A I believe it's 15 and then one.

18 Q Fifteen and one. And you had ten rounds left?

19 A Eleven.

20 Q Eleven rounds left. So there's five rounds missing?

21 A Right.

22 Q And the weapon you have is not a revolver like this.
23 You don't have it on you today, do you?

24 A Yes, I do.

25 Q Could you take out the clip? I just want the jury to

1 see what it looks like, please.

2 A You want me to remove any gun and show them?

3 Q I want you to remove your gun and I want you to, with
4 the judge's permission, to take out the round and
5 show --

6 MR. MEADORS: Judge it may have a round in the
7 chamber, too.

8 A It absolutely does.

9 MR. HARPOOTLIAN: Your Honor, could I ask him to
10 step off the stand and go out there? I want the jury
11 to see the weapon he carries and just have him disarm
12 it and bring it back in.

13 MR. MEADORS: Objection to relevance at
14 Chastity's, Your Honor.

15 THE COURT: Well, this is a separate indictment.
16 All right. Sir, go outside, unchamber that weapon,
17 take the clip out. Bring it back in here unloaded.
18 Do you have another trigger lock? Has anybody got
19 another trigger lock?

20 MR. MEADORS: Yes, sir, we do.

21 THE COURT: Put the trigger lock on. Bring it
22 back in.

23 MR. HARPOOTLIAN: I apologize, Your Honor.
24 Could he also bring one loose round with him, please?
25 I apologize for the delay, Your Honor. This

1 shouldn't take long.

2 **THE COURT:** Go ahead and sit down.

3 **MR. HARPOOTLIAN:** Sir?

4 **THE COURT:** Go ahead and sit down.

5 (Pause)

6 **THE COURT:** Jessie, have you checked this
7 firearm?

8 **DEPUTY:** It's fine. The weapon is secured.

9 **THE COURT:** There's no load in it, is there?

10 **DEPUTY:** No, sir. It's secured.

11 **MR. HARPOOTLIAN:** I have a round, Your Honor,
12 that he just handed to me.

13 **THE COURT:** Go ahead.

14 **Q** Now, show the jury that weapon, please.

15 (Witness complies)

16 **Q** And it differs in what way from this weapon?

17 **A** It's a semi-automatic. That is a revolver.

18 **Q** And a semi-automatic is, as many times you pull the
19 trigger it will fire until you run out of rounds. Is
20 that correct?

21 **A** Yes, sir.

22 **Q** And it's a .40 caliber?

23 **A** Yes, sir.

24 **Q** And this is a .357, a somewhat smaller caliber?

25 **A** I couldn't give you an accurate answer on that one.

- 1 Q And do you carry these kinds of rounds routinely?
- 2 A Yes.
- 3 Q And that is -- what kind of round is that?
- 4 A I believe that's a -- I believe it's a Spear or a
- 5 Winchester. I'm not quite sure.
- 6 Q But, I mean, what's the front of it called?
- 7 A It's a hollow point.
- 8 Q Hollow point. Have you done anything special to
- 9 this, or is that the way it comes?
- 10 A That's the way it comes.
- 11 Q And your testimony is that you fired five rounds from
- 12 that weapon. Was it that weapon?
- 13 A Yes, it was.
- 14 Q That exact weapon?
- 15 A Yes, it was.
- 16 Q That same weapon at Ms. Herring at about this
- 17 distance. And Sergeant Linfert fired at him at the
- 18 same time from about the same distance. He may have
- 19 been a little bit closer?
- 20 A I would guess so. He wasn't much closer.
- 21 Q Okay. And that one of you hit him in the arm?
- 22 A Yes.
- 23 Q And there was at least six rounds of your fire and at
- 24 least one from him?
- 25 A Right.

1 Q And we would expect then that -- and behind him is a
2 window and a wall, correct?

3 A I believe so, yes.

4 Q Right back here. And a bed with a headboard, right?

5 A I believe so.

6 Q Now, we would expect then at least -- correct me if
7 I'm wrong -- at least six holes, five holes if the
8 round stayed in him; at least five holes around that
9 area in the wall, would we not?

10 A I would guess, yes.

11 Q I mean, you fired a gun?

12 A Yes, sir.

13 Q When you fire a gun typically into something like
14 wall board or wood, you'd expect to see a round, a
15 hole?

16 A Yes.

17 Q Okay. And you would also expect to see in this area
18 up in here -- now, the difference between again your
19 weapon and this weapon is when your weapon fires,
20 show the jury the thing at the top. That's called a
21 slide, right?

22 A Yes.

23 Q And the slide comes back and ejects. It throws out
24 the shell.

25 A Yes.

1 Q Right?

2 A It does.

3 Q Okay. And so when you shoot five times, five of the.

4 casings; that is, the top part of this is the bullet,

5 the bottom part in the casing. That's the casing,

6 right? That silver thing?

7 A Yes, sir.

8 Q And when you shoot that, the casings fly out?

9 A Yes, sir.

10 Q And so if you're in the hall, we would expect in that

11 hall area to see at least five casings from your

12 weapon in that hall?

13 A I never said I went in the hallway.

14 Q Well, where were you then if you were --

15 A I was at the entranceway of the hallway.

16 Q Way up here?

17 A Yes.

18 Q So there should be five casings up here?

19 A Somewhere in that area. I believe so. But you've

20 got to imagine they're getting kicked around and

21 bouncing.

22 Q Did you process the scene?

23 A No, I didn't.

24 Q SLED did, did they not?

25 A I would assume so.

1 Q Okay. And they took pictures as far as you know?

2 Have you seen the pictures?

3 A No, I have not.

4 Q But you shot five times from up here down here?

5 A Yes.

6 Q Right? So there should be five of your rounds or
7 holes in this area down here?

8 A Yes.

9 Q And Sergeant Linfert -- I'm sorry. Were you all at
10 the door or was he -- so he had to be back up here at
11 the end of the hall, too?

12 A I would guess.

13 Q I mean, well, not guess. You're standing right
14 behind him?

15 A Yeah. I'm right with him.

16 Q Okay. And your testimony is that you looked from the
17 end of the hall down into a dark room without a
18 flashlight and you see him come up with a gun?

19 A There was light because we could clearly see him.
20 So --

21 Q Well, I thought a moment ago you said that you had to
22 use your flashlight after that to look down and see
23 him?

24 A I did.

25 Q But at that point you could see him without the

- 1 flashlight?
- 2 A There was some light on him because we could clearly
- 3 see him.
- 4 Q Well, where was the light coming from?
- 5 A There again, I believe Sergeant Linfert had a
- 6 flashlight.
- 7 Q Did Sergeant Linfert have his flashlight on?
- 8 A I would assume so, because like I said, we could
- 9 clear see him.
- 10 Q When you all came in, did you have your flashlights
- 11 on? Did he have his flashlight on?
- 12 A I believe he did, yes.
- 13 Q So as he came in, that's a pretty bright flashlight.
- 14 What do they call it? A mag?
- 15 A I'm assuming he had a maglite.
- 16 Q A maglite. Isn't that what he was banging on the
- 17 door with to try to get him to come to the door?
- 18 A Right.
- 19 Q Those are very bright?
- 20 A It's a bright flashlight.
- 21 Q Okay. So you come in the front door in the foyer
- 22 here with at least one of you all with a flashlight,
- 23 correct? Shining in his eyes, correct?
- 24 A Not in his eyes that I can recall.
- 25 Q Shining at him. I mean, the guy is standing there.

1 You want to keep him in the light, don't you?

2 A Accurate.

3 Q He doesn't have any glasses on this?

4 A Not that I can recall.

5 Q And you've got a flashlight in his eyes?

6 A Right.

7 Q Okay. Now, he then -- so with a flashlight, it
8 wasn't working. Okay. This flashlight, I mean,
9 aren't you all trained to hold your gun in one hand
10 and your flashlight in the other?

11 A We're trained in different ways of holding a gun.

12 Q How do you do it?

13 A You can hold it single handed like you have it or you
14 can cross your hand over.

15 Q For the gun?

16 A Yes.

17 Q But if you've got a flashlight, you hold it in one
18 hand and the gun in the other? Is that typical?

19 A Well, obviously, yes.

20 Q You don't hold it in your teeth or between your legs?

21 A Right.

22 Q So you're holding the flashlight. And he is
23 initially about I believe, I think we've said about
24 this distance. And there's at least -- is it one
25 flashlight or a number of flashlights?

- 1 A I would assume there was a number of flashlights.
- 2 Q A number of flashlights at him. In a dim room. I'm
- 3 not saying it was totally dark, but dim?
- 4 A It couldn't have been totally dark. Like I said, we
- 5 could immediately identify who he was.
- 6 Q Because you had your flashlights on?
- 7 A And there was some light inside the house.
- 8 Q But you had your flashlights on?
- 9 A Yes.
- 10 Q And he then scurries down the hall?
- 11 A Yes.
- 12 Q And you all don't go down the hall?
- 13 A I don't recall ever going down the hall.
- 14 Q You don't ever recall entering this hall?
- 15 A Not to my knowledge, no. I do not recall.
- 16 Q And you don't ever recall coming to this door?
- 17 A No.
- 18 Q And your testimony is during the night you put your
- 19 flashlight on to see him down here. From how far up
- 20 here were you?
- 21 A Wherever the wall is, I was at the corner of the wall
- 22 that separates the living room or formal dining room
- 23 from the kitchen.
- 24 Q Back up here. Were you on this side?
- 25 A Yes. I was on the -- I was using the wall as

1 protection.

2 Q And the dining room is up in here, isn't it?

3 A I believe so, yes.

4 Q And then there's a kitchen over here?

5 A Yes.

6 Q Okay. And you were back up here looking down this
7 way?

8 A Correct.

9 Q And when you all were coming down that hall, when you
10 saw him, one of you you think had the flashlight
11 pointed down to see him here or not?

12 A I may have pulled mine out at that time, because I
13 don't recall having in it in my hand initially. But
14 I had to have had it in order to see him.

15 Q To see him?

16 A Yes, sir.

17 Q So before you ever fired the first round you had --
18 so you could see him very clearly in your flashlight?

19 A In light, yes.

20 Q But you had your flashlight on?

21 A Yes. Again, I'm telling you I can't recall if I had
22 my flashlight at the time that the shots were fired.

23 Q But Sergeant Linfert probably did?

24 A Well, he had to, because we could clearly see him.

25 Q Okay. And so when he looks back he sees a bright

- 1 light?
- 2 A I can't answer for what he saw.
- 3 Q Well, okay. Now, he told you he was hard of hearing?
- 4 A He did say he was hard of hearing.
- 5 Q And he didn't have his glasses on?
- 6 A I don't know if he put them on at that time or not.
- 7 I don't recall seeing them.
- 8 Q You have no recollection?
- 9 A I don't recall seeing him wear glasses.
- 10 Q Okay. Now, you went and got the -- let me shift
- 11 gears for just a second. The tape. We keep calling
- 12 it a tape, but it's basically a disk from the hard
- 13 drive that night. Is that right?
- 14 A Right.
- 15 Q Did they show you all the camera views they had over
- 16 at corporate that night?
- 17 A Are you saying did they show me the incidents of him
- 18 from the different angles?
- 19 Q Yes.
- 20 A I don't recall. I remember seeing him enter the club
- 21 and that's the individual that he got in the conflict
- 22 with.
- 23 Q Did they show you the lobby area picture? You've
- 24 seen it since I assume?
- 25 A I have seen it since, but I don't recall seeing it

- 1 that night.
- 2 Q Did you ask them to make a copy of all cameras?
- 3 A I asked them to make a copy of what I had saw.
- 4 Q But not anything else?
- 5 A I don't believe so, no.
- 6 Q Now, were you out at the scene when your CSI guy,
- 7 Livingston, was there?
- 8 A I was already back with Angel at that point.
- 9 Q I'm sorry. I couldn't hear you.
- 10 A I was already back out with Angel at that point.
- 11 Q Angel Koon?
- 12 A Koon.
- 13 Q Okay. So you didn't assist in -- and what's your --
- 14 you're not the chief investigating officer on this?
- 15 A No, I'm not.
- 16 Q I want you to think in your mind's eye again as you
- 17 see from up there with your flashlight. He comes up
- 18 with the gun like this?
- 19 A Pointed at us, yes.
- 20 Q And he is facing towards you?
- 21 A If I can I believe so. If I can recall correctly,
- 22 yes. I mean, he had to have been facing towards us
- 23 in some way to point the gun at us. He did not reach
- 24 over his shoulder and point it at us.
- 25 Q Right. And you all didn't fire when you saw him

1 coming up with the gun? You all waited until he was
2 pointing it at you?

3 A Absolutely.

4 Q Deputy Gwyn, thank you.

5 THE COURT: Redirect.

6 MR. MEADORS: Just a few.

7 DIRECT EXAMINATION

8 BY MR. MEADORS

9 Q Have you got the projectile he was showing you?

10 A Right there in front of you.

11 Q Mr. Harpootlian asked you about what you saw. Could
12 you see Dewain Herring with a gun pointed at you on
13 January 29th, 2006?

14 A Yes, I could.

15 Q And was there enough light for you to see him and the
16 gun pointed at you?

17 A Absolutely.

18 Q Do you know where that light was coming from?

19 A I cannot honestly say. I don't know if there was
20 maybe a light on in his bedroom, a dim light, or if
21 it was from Sergeant Linfert's flashlight at that
22 time. I couldn't honestly say. But we could clearly
23 see him and see the gun.

24 Q Were you thinking about the lighting when you were
25 sitting there and had a gun pointed at you?

1 A Absolutely not.

2 Q Could you see Dewain Herring and could you see that
3 gun?

4 A I could.

5 Q Does this appear to be that gun?

6 A It does.

7 MR. MEADORS: Your Honor, we'd offer this as
8 State's 64.

9 MR. HARPOOTLIAN: He sees it?

10 MR. MEADORS: He said he does.

11 MR. HARPOOTLIAN: No, no. But he sees it?

12 MR. MEADORS: I can't understand you.

13 MR. HARPOOTLIAN: Did he see it? Is he the one
14 who took it into custody?

15 Q Did you take this into custody?

16 A No, I did not.

17 MR. HARPOOTLIAN: Then we object.

18 Q Does this appear to be that gun?

19 A It does.

20 Q For identification, State's Exhibit 64, he's
21 identified that gun. And did you say in your
22 statement that when the suspect came up from the
23 dresser he was holding a gun? Did you put that in
24 your statement?

25 A I did.