

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Post Conviction Relief

S.C. SUPREME COURT

Honorable Jocelyn Newman, Circuit Court Judge

App. Case No. 2020-000205

H. Dewain Herring,

Petitioner,

vs.

State of South Carolina

Respondent.

APPENDIX
VOLUME III OF VII

Tricia A. Blanchette
Post Office Box 2147
Leesville, SC 29070
(803) 908-3266
Attorney for Petitioner

Alan Wilson
Attorney General

Megan Harrigan Jameson
Senior Assistant Deputy
Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
Attorneys for Respondent

INDEX

Trial Transcript.....	1
Arrest Warrant, Indictments and Sentencing Sheets.....	2355
Brief of Appellant.....	2365
Brief of Respondent.....	2412
Reply Brief.....	2471
Opinion, South Carolina Supreme Court.....	2489
Petition for Rehearing.....	2504
Order Denying Petition.....	2526
Remittitur.....	2528
Petition for Habeas Corpus.....	2530
Amended Petition for Habeas Corpus.....	2539
Amended Memorandum.....	2548
Return and Memorandum.....	2592
Memorandum in Opposition.....	2670
Report and Recommendation.....	2687
Petitioner's Objections.....	2712
Opinion and Order.....	2724
Judgment.....	2744
Notice of Appeal.....	2745
Application for Post Conviction Relief.....	2746
Return.....	2753
Order for Substitution of Counsel.....	2764
Discovery Order.....	2767

Motion Regarding Jurisdiction.....	2771
Motion.....	2775
Discovery Order.....	2779
Amendment to Application for Post Conviction Relief.....	2780
PCR Evidentiary Hearing Transcript.....	2784
PCR Exhibits.....	3011
Order of Dismissal.....	3067
Rule 59, SCRCP, Motion.....	3091
Order Denying Motion.....	3126
Amended Order Denying Motion.....	3128

1 Q And did you put in there that he, quote, turned
2 around and pointed a pistol at us?

3 MR. HARPOOTLIAN: Your Honor, leading.

4 Q Did you put in your statement that he pointed a
5 pistol at you? That is not leading.

6 MR. HARPOOTLIAN: Objection, Your Honor. That
7 is leading. It's what, if anything, did you put in
8 your statement? And all he's doing is asking him to
9 publish his statement which I would object to. And I
10 apologize for the speaking objection.

11 MR. MEADORS: Sir, he is crossed and he did say
12 he was able to see. It's not leading to say, did you
13 put it in your statement. It doesn't suggest --

14 THE COURT: All right. Go ahead. Please.

15 Q Did you put in your statement: "He did turn to his
16 right and pointed the pistol at Sergeant Linfert and
17 myself"?

18 A Yes, sir.

19 Q Did put in your statement: "I yelled gun to let the
20 other deputies know he had a gun and fired my
21 weapon"?

22 A I did.

23 Q Have you ever qualified with a gun pointed at you?

24 A Absolutely not.

25 Q This is coming from what's been marked for I.D. with

1 64, Your Honor. Is that yours?

2 A Yes, it is.

3 Q This is what's State 64 for ID. Which one is bigger?

4 A The State's.

5 Q How would you describe those ends?

6 A Both as hollow points.

7 Q Both of them hollow points?

8 A Yes, sir.

9 Q That's all. Thank you.

10 MR. HARPOOTLIAN: Just a couple of questions.

11 RECROSS EXAMINATION

12 BY MR. HARPOOTLIAN

13 Q You know, after you -- I mean before -- when you and
14 Linfert fired, had there been any shots fired prior
15 to that?

16 MR. MEADORS: Not proper recross.

17 MR. HARPOOTLIAN: Oh, yes.

18 THE COURT: Sir, I'm going to allow it.

19 MR. HARPOOTLIAN: Thank you.

20 Q Had any shots been fired prior to that?

21 A Are you talking about at us or from us?

22 Q Any shots.

23 A The first shot I heard, which is what I assume to be
24 Sergeant Linfert's, I thought Mr. Herring was firing
25 at us as he pointed the gun at us.

1 Q So you were mistaken when you fired your gun?

2 A No, sir. I was not mistaken when I fired my gun. I
3 knew that gun was pointed at me.

4 Q Now, isn't -- and did any of the other officers open
5 up at that point when the first shot was fired?

6 A I would assume they did, yes.

7 MR. MEADORS: Your Honor, this isn't proper
8 recross. I didn't go into any of this.

9 MR. HARPOOTLIAN: Well, he did go into what
10 occurred when he saw the gun pointed at him and what
11 occurred after that. This is appropriate.

12 THE COURT: Go ahead.

13 Q And so you all were standing up here when you yelled
14 gun, and then there were shots fired. Did the other
15 officers open up?

16 A I would assume they did, yes.

17 Q Well, when I say -- you say you assume, did you hear
18 gunshots?

19 A I heard my gunfire, yes.

20 Q Did you hear anybody else's gun fire?

21 A I could tell you that what I heard was my gun firing.

22 Q Did you see as you're looking down here firing your
23 gun projectiles popping out pieces of the wall?

24 A I was focused on Mr. Herring. I did not see any of
25 that.

- 1 Q And nothing obstructed your view of him; no
2 projectiles no Sheetrock flying, no debris falling on
3 you, nothing?
- 4 A Not mine, no.
- 5 Q And after the incident did you look to see if there
6 were any bullet holes in this wall down here or down
7 here or over here or in the study or did you --
- 8 A When you say after the incident, are you referring to
9 after Mr. Herring was taken into custody?
- 10 Q Yes.
- 11 A No, sir. We left to house. I made sure that Mr.
12 Herring was secure; I made sure he was getting
13 medical treatment, and we walked out the door.
- 14 Q So your testimony is you as you sit there today are
15 unaware as to whether any other Richland County
16 Sheriff's Deputy other than Linfert fired his weapon
17 that night?
- 18 A No. Other deputies had fired. Yes.
- 19 Q When did you become aware of that?
- 20 A After the incident.
- 21 Q No. But that night, when you say after the incident,
22 are you talking about after you left the house that
23 night?
- 24 A Yes.
- 25 Q So that night after you fired your five rounds, you

1 had no inkling, no idea that any other gun had been
2 fired other than Sergeant Linfert's. Is that right?
3 A Prior to the incident being over with or during the
4 incident? Are you asking me if I was aware that they
5 were firing their gun at the same time I was firing
6 mine?
7 Q Yes.
8 A I cannot answer. I did not know they were firing at
9 that time.
10 Q When you stopped firing your gun, were there still
11 shots going on?
12 A Not that I -- not to my knowledge, no.
13 Q So to your knowledge, at that point the only person
14 firing a gun was you and Sergeant Linfert?
15 A I can speak for what I did, yes; and the fact that I
16 heard an initial shot.
17 Q Now, when you fire your gun, does it make a flash?
18 A Yes, it does.
19 Q And in a dark place it makes a pretty big flash?
20 A It makes a flash.
21 Q I mean, does fire come out the end?
22 A I don't know if fire comes out the end but it makes a
23 flash, yes.
24 Q And could you see whether Sergeant Linfert who was in
25 front of you, was his gun flashing?

1 A Everything happened so fast, I couldn't tell you. I
2 know there was light and I know what I did. I know I
3 fired my weapon. I know I heard an initial shot. I
4 did not look over and see if Sergeant Linfert had
5 fired. I didn't ask him if he had fired. I heard a
6 shot, assumed Mr. Herring had fired at us because the
7 gun was pointing at us. At that point I had fired.

8 Q So you fired because you thought he fired at you?

9 A I fired because he pointed a pistol at me.

10 Q But you indicate you heard a shot, you thought he'd
11 fired at you?

12 A Absolutely.

13 Q So your impetus for pulling your trigger was you
14 thought he'd pulled his?

15 A No.

16 Q I'm sorry. I thought you just said that you thought
17 he'd fired at you; that's why you shot?

18 A No. I fired when he pointed the weapon at me.

19 Q Before you heard a shot?

20 A It was -- like I said, everything happened so fast,
21 it was simultaneous.

22 Q And was your weapon turned over to SLED?

23 A It was.

24 MR. MEADORS: Your Honor, clearly it's beyond
25 the scope.

1 **MR. HARPOOTLIAN:** I agree. I apologize.

2 **THE COURT:** Sustained.

3 **MR. HARPOOTLIAN:** Nothing further.

4 **THE COURT:** You may come down, sir. Thank you
5 very much. May the witness be excused? Any
6 objection?

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

8 **THE COURT:** Without objection. Approach the
9 bench, please.

10 (Whereupon, a bench conference is had)

11 **THE COURT:** All right, ladies and gentlemen of
12 the jury. It appears that the next witness is going
13 to be rather lengthy. It's a quarter to 1. This
14 would be a good time for our lunch break. I ask you
15 to be back in the jury room at 2:00. That will give
16 you about an hour and 15 minutes, at which time we'll
17 continue the trial. Again don't discuss the case
18 among yourselves or with anyone else at lunch or when
19 you return to the jury room.

20 (Jury out at 12:45 p.m.)

21 **THE COURT:** All right. Let me see you one more
22 time, counsel. Otherwise we'll stand at ease until
23 2:00.

24 (Whereupon, a lunch break is taken).

25 **THE COURT:** Counsel.

1 **MR. HARPOOTLIAN:** Sir?

2 **THE COURT:** Could I see you a minute?

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

4 (Whereupon, a bench conference is had)

5 **MR. HARPOOTLIAN:** Your Honor, for the record.

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

7 **MR. HARPOOTLIAN:** We have submitted to the
8 solicitor and to you the case of The State vs. Omar
9 Shariff Jenteel from Charleston County. The case was
10 reversed by the Court of Appeals based on search, a
11 search. And while the facts are distinguishable, the
12 principles enunciated therein are not. That is,
13 simply because there is some belief somebody keeps
14 something at their residence is not probable cause to
15 search the residence. We note that for the record.
16 We understand that it will not I'm sure persuade you.
17 We made the motion earlier in the week. But I would
18 like to note it for the record..

19 **THE COURT:** Well, as I said, I've reviewed the
20 case myself, find the facts are quite dissimilar from
21 the facts and the basis upon which the magistrate in
22 that case made his decision to issue the warrant. I
23 might agree with the court in Jenteel. It's not a
24 strong probable cause case. When the nextdoor
25 neighbors smell marijuana coming from the house

1 nextdoor, it's probably not a lot of probable cause
2 in my opinion.

3 **MR. HARPOOTLIAN:** Well, I just wanted to show
4 you they're flipping these things up there. You
5 might want to look at it.

6 **THE COURT:** I've been flipping forward.

7 **MR. HARPOOTLIAN:** Okay.

8 **THE COURT:** Anything further?

9 **MR. HARPOOTLIAN:** No, sir.

10 **THE COURT:** Is the state ready for the jury?

11 **MR. MEADORS:** Your Honor, the State's ready.

12 **THE COURT:** Is the defense ready for the jury?
13 You ready for the jury, Mr. Harpootlian?

14 **MR. HARPOOTLIAN:** I'm sorry, Your Honor. Yes.

15 **THE COURT:** Bring the jury, please.

16 (Jury in at 2:22 p.m.)

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

18 **THE COURT:** All right. Thank you very much.
19 Solicitor, call your next witness.

20 **MR. MEADORS:** If it please, Your Honor. At this
21 time The State of South Carolina would call Special
22 Agent Phillip Coonfield.

23 **COURT REPORTER:** I'm sorry. The last name,
24 please?

25 **MR. MEADORS:** Coonfield.

1 **MR. HARPOOTLIAN:** I'm sorry. What's his name
2 again, Mr. Meadors?

3 **MR. MEADORS:** Phillip Coonfield.

4 **MR. HARPOOTLIAN:** I'm sorry.

5 **THE COURT:** It's been repeated three times.

6 **MR. HARPOOTLIAN:** I'm sorry?

7 **THE COURT:** It was on the list.

8 **PHILLIP COONFIELD,** after being duly sworn,
9 testifies as follows:

10 **THE CLERK:** Thank you. Please have a seat in
11 the witness stand and state your full name for the
12 record, or please spell your last name.

13 **WITNESS:** It's Phillip Coonfield,
14 C-O-O-N-F-I-E-L-D.

15 DIRECT EXAMINATION

16 **BY MR. MEADORS**

17 **Q** Good afternoon.

18 **A** Good afternoon, sir.

19 **Q** You work with SLED?

20 **A** Yes, sir.

21 **Q** And for these purposes today, is it all right if I
22 call you Special Agent?

23 **A** Yes, sir. That's fine.

24 **Q** And, Special Agent Phillip Coonfield, I do it with
25 every witness; but would you just tell these folks a

1 little bit about yourself, where you were born, where
2 you're from, where you were raised?

3 A Well, I was born and raised in Marlboro County. I of
4 course went to Marlboro County High School and then I
5 went to Francis Marion College in Florence.

6 Q When you got through and graduating from Francis
7 Marion, what did you do?

8 A Once I graduated I got a job with SLED in the
9 Criminal Justice Information Center. I was
10 processing fingerprints, rolled impressions. I was
11 also working with Criminal Records.

12 Q And what year did you graduate college?

13 A I graduated in 1998.

14 Q So the first place you went to work after that was
15 SLED?

16 A Yes, sir.

17 Q And you mentioned fingerprints. Tell the folks
18 briefly about fingerprints. Latent print, inked
19 print, could you tell them generally about that and
20 if you have ever had the opportunity to exam a latent
21 print and an inked print?

22 A Yes, sir. Just to clarify, after I worked at the
23 Criminal Records Department working with rolled
24 impressions, I was transferred to the Latent Print
25 Crime Scene Department as a Special Agent. At that

1 time I attended the South Carolina Police Academy.
2 So I am a certified law enforcement officer. I also
3 attended and completed the SLED two-year in-house
4 training program working under court-qualified senior
5 examiners inside the Latent Print Crime Scene Unit.

6 As for the question of what is a latent print,
7 in discussing latent prints, on the base of the palm
8 to the tips of the fingers, people have raised
9 portions of skin. These raised portions of skin are
10 also found on the bottom of your feet, by the way.
11 These portions of skin have tiny pores that are
12 constantly exuding sweat. When these ridges come in
13 contact with an item, it is possible that they leave
14 an impression of those ridges on that item. To
15 recover it -- and that's what's known as a latent
16 print. Latent means hidden.

17 To recover that print we use several processes.
18 One of the most common processes is to use a black
19 powder and a brush. And we'll brush it across the
20 impression. To enhance that impression we'll use
21 just a basic lifting tape, and we'll put it on a
22 card. And that's known as a latent impression.

23 We'll then compare that to inked impressions
24 which is basically the impressions that you get,
25 known impressions. Ink is placed on your fingers and

1 your fingers are rolled onto a fingerprint card.

2 Q Is that kind of a known print?

3 A Right. That's known as a known impression. These
4 latent prints and inked prints can be compared to
5 each other to determine whether or not they match.

6 Q And you're looking for certain points on each one to
7 see if you have enough points from a latent to a
8 known print to see if you can say so and so made this
9 print basically, correct?

10 A Basically, yes, sir.

11 Q And how many fingerprint analyses have you done?

12 A Considering there are ten fingers on each fingerprint
13 card, I have spent approximately seven years in the
14 Latent Print Crime Scene Unit, I have examined
15 several thousand fingerprints.

16 Q In addition to your other training, your education
17 and your background, specifically, what do you do now
18 at SLED? What division or department are you in?

19 A I am currently in the SLED bloodhound tracking team.
20 I transferred approximately a year and four months
21 ago from the Latent Print Crime Scene Unit.

22 Q And prior to that you were in the --

23 A Prior to that and during this case I was in the
24 Latent Print Crime Scene Unit.

25 Q And prior to that did you go to crime scenes, and do

1 you investigate crime scenes in addition to trying to
2 get latent prints?

3 A Yes, sir. Included in our responsibilities and
4 duties as a crime scene agent is we respond to crime
5 scenes statewide whenever we are requested. Our
6 responsibilities include the collection, examination
7 and processing of fingerprint, footwear and tire
8 tread evidence, as well as crime scene reconstruction
9 and blood stain pattern analysis.

10 Q And how does SLED get involved in a local case? And
11 when I say local, I mean I guess a county or city
12 police?

13 A Normally we are asked by the county or the city to
14 become involved in that case to assist them in that
15 case.

16 Q How many crime scenes have you generally, or however
17 you can do it, have you investigated or been involved
18 in over your career?

19 A I have investigated or been involved in over 200
20 violent crimes. Above that, there was close to 100
21 involving follow-up scenes involving crimes against
22 property and things such as that.

23 MR. MEADORS: Your Honor, at this time we would
24 offer Special Agent Phillip Coonfield as an expert in
25 the field of latent print and crime scene processing,

1 latent print analysis and also an expert in the field
2 of crime scene processing, I believe without
3 objection.

4 **MR. HARPOOTLIAN:** I don't think there's any
5 objection, although I've never seen any latent prints
6 in this case.

7 **MR. MEADORS:** That he tested. And that's all.
8 That's all. I'm just covering it for the record.
9 I'm just getting him qualified so he can say there
10 were none there.

11 **MR. HARPOOTLIAN:** Sure. If he didn't find
12 anything, great.

13 **MR. MEADORS:** So I believe that's without
14 objection.

15 **THE COURT:** Without objection. Go ahead.

16 **Q** Specifically, how did you get involved in this case,
17 State of South Carolina vs. Dewain Herring, Special
18 Agent?

19 **A** I was requested along with my partner, Special Agent
20 Eddie Porter, and Special Agent Melissa Skipper by
21 the SLED Midlands office as well as the Richland
22 County Sheriff's Department to respond to this scene
23 to process an officer-involved shooting.

24 **Q** You're fine. I just want to put that a little
25 closer. And it kind of relates back to my other

1 question. Does SLED also get involved not only at a
2 county's request on violent crime matters, but are
3 they also brought in on occasion, and in this case,
4 when there's an officer-involved shooting?

5 A Yes, sir. Generally we are brought in when there is
6 an officer-involved shooting.

7 Q And who specifically requested SLED's assistance?

8 A Specifically, I think that was Chief Deputy David
9 Wilson, I believe.

10 Q And did you have occasion to see Chief Deputy David
11 Wilson on January 29th, 2006?

12 A Yes, sir.

13 Q Okay. And tell these folks where you saw him?

14 A We were requested to respond to the address of
15 in Forest Acres. And that is where
16 I met with Chief Wilson. Chief Wilson advised us of
17 the situation. He told us basically that there had
18 been an incident at a nightclub the night before
19 where Mr. Herring was involved in a shooting.

20 Following up to that he advised me, or advised
21 us, that Richland County Sheriff's Office attempted
22 to serve a warrant I believe on Mr. Herring in his
23 house. Once they entered the house, it was
24 advised -- I was advised that a shooting occurred
25 after Mr. Herring pointed and presented a weapon at

1 the officers.

2 Q Now, I believe there has been testimony about a
3 Richland County search warrant. Did SLED do an
4 additional search warrant before you all got involved
5 to investigate the police officer shooting?

6 A That's correct.

7 Q And was a lawful search warrant issued and executed
8 by you officers from the South Carolina Law
9 Enforcement Division?

10 A Yes, sir.

11 Q What time did you go to

12 A I arrived on the scene somewhere around 7:30 that
13 morning. I -- the two agents that I had assisting
14 me -- and just to explain that to you real quick,
15 between the three of us, Agent Porter and Agent
16 Skipper and myself, we were --

17 Q Was that Melissa Skipper?

18 A Melissa Skipper.

19 Q Eddie Porter.

20 A And Special Agent Eddie Porter; yes, sir. We rotate
21 what we call primary positions on the scene. And it
22 was my turn to be the primary position which is why
23 they were there assisting me. They were also in
24 route to the scene. And at that time I was able to
25 contact them and advise them of the situation that we

1 had on the scene.

2 Q And when you got to this scene, what did you do?

3
4 A Once I got there and I was advised by Deputy -- or
5 excuse me -- Chief Wilson, I contacted Agent Porter
6 and Agent Skipper. Again, like I said, I advised
7 them of what we had. Because they were driving
8 separately, I was able to ask Agent Porter to respond
9 to Richland Memorial Hospital. I wanted him to do
10 this so he could perform what's known as a gunshot
11 residue kit on Mr. Herring at the hospital, which he
12 did.

13 I also after I spoke with him asked him to go to
14 the hospital. I spoke with Agent Skipper and asked
15 her to respond to the Sheriff's Department to collect
16 the weapons from the officers that were involved in
17 the shooting which is a standard protocol whenever
18 we're involved in an officer-involved shooting or the
19 investigation of an officer-involved shooting.

20 Once they arrived back and after a search
21 warrant was secured, we entered the residence and do
22 what we call a walk through, which is basically you
23 walk through the scene, you observe any evidence that
24 you have, and you start making mental notes in your
25 head; you start writing down different notes, and you

1 kind of come up with a game plan of how you want to
2 handle this scene.

3 At that time we observed several cartridge
4 casings on the floor. Once we entered in the front
5 door there is a den --

6 MR. HARPOOTLIAN: I apologize, Your Honor. But
7 for the record, we made a previous objection to any
8 search of the house. We are entering that. Under
9 that new case, I want to make sure I renew that for
10 the record.

11 THE COURT: Yes, sir.

12 MR. HARPOOTLIAN: Thank you.

13 THE COURT: Overruled.

14 MR. HARPOOTLIAN: Yes, sir.

15 A We entered the den. We observed several cartridge
16 casings on the floor. We observed several bullet
17 holes in the wall. We also observed several drops of
18 blood on the floor. Once you walk into the front
19 door, to your right there is a narrow hallway. We
20 also observed several more bullet holes in the wall
21 in that hallway. Leading down that hallway to your
22 left there is an open room, and that was what we
23 believed to be Mr. Herring's bedroom.

24 Inside Mr. Herring's bedroom was a bed up
25 against the wall. Above the wall we observed what we

1 believed to be two bullet holes. We also observed
2 several more blood drops. We observed an open
3 nightstand drawer next to his bed. If you're walking
4 in it would be on the right side of the bed. And we
5 observed a silver revolver laying on the bed.

6 After all the observations were made I
7 instructed Special Agent Skipper to begin
8 photographing the interior and the exterior of the
9 residence. After she photographed, in order to
10 document the location and condition of the evidence
11 as we observed it when we arrived, we began
12 designating the items of evidence with evidence
13 markers.

14 All the cartridge casings were designated with a
15 letter. All the projectiles or the bullets that were
16 in the walls or on the floor were designated with a
17 number. Again, after all of those were marked with
18 evidence markers, we re-photographed the scene and
19 then we collected those items of evidence.

20 Q You mentioned a gun on the bed?

21 A Yes, sir.

22 Q Showing you what's State's 35 already admitted into
23 evidence and State's -- well, State's 35 is the only
24 one. Is that what you're talking about, the gun on
25 the bed?

1 A Yes, sir.

2 Q And this is the bed in the room you decide -- what
3 did you say about this room earlier when you found
4 it?

5 A That is what we believed to be Mr. Herring's bedroom
6 which would be down the hall and then kind of to your
7 left.

8 Q And I will show you what's State's 64. Do you
9 recognize this?

10 A Do you mind if I pull it out of the package?

11 MR. MEADORS: Sure. Then, your Honor, for the
12 record, it's the same gun that was used earlier.
13 It's got the safety lock in it and there's no way it
14 can go off. Is it all right if he pulls it out to
15 examine it for his --

16 THE COURT: Yes, sir.

17 MR. MEADORS: Thank you.

18 THE COURT: Just don't point it at anybody.

19 WITNESS: Yes, sir.

20 A I do. And this is the Smith and Wesson .357 that I
21 collected from Mr. Herring's bed. And the reason I
22 know that is because inside the weapon is the lab
23 number, my item number as well as my initials. It's
24 also the same on the plastic bag, my item number, lab
25 number and initials.

1 Q Now, what's in this bag down here? What are these?

2 A These are the -- appear to be the .357 bullets or the
3 cartridges that were removed from the weapon.

4 Q Removed from the weapon which is depicted in State's
5 35, correct?

6 A Yes, sir.

7 Q And were these collected by you and/or your people?

8 A This entire weapon including the cartridges were
9 collected by me. Yes, sir.

10 Q Okay.

11 MR. MEADORS: Your Honor, at this time we'd
12 offer State's 64, I think without objection.

13 MR. HARPOOTLIAN: No objection, except
14 previously made objections.

15 THE COURT: Yes, sir. I understand.

16 (WHEREUPON, State's Exhibit No. 64 is admitted
17 into evidence.)

18 Q Were the bullets in this gun when you got it?

19 A Yes, sir.

20 Q No question about that?

21 A No, sir.

22 Q Now, you've mentioned that as a part of your
23 investigation, were you able to determine how many
24 shots had been fired in that house?

25 A Yes, sir.

1 Q Can you tell the jury how you came to that conclusion
2 and based on your report you have with you and your
3 training and expertise where the projectiles would
4 have gone or where they were and what bullet holes
5 you found?

6 A Yes, sir. After we saw the bullet holes in the walls
7 of the house we determined that it would help clarify
8 for us the number of shots as well as the origin of
9 the shots if we would do what's known as a trajectory
10 or a bullet pattern.

11 Basically what we did at that point is use a
12 wooden dowel placed inside the entrance hole all the
13 way through the exit which would give you an
14 estimated range of trajectory or bullet pattern. At
15 that time we replaced the dowel with a string
16 following the same angle and attach it to a stable
17 platform. I think in this case we used a tripod.

18 Based on that we were able to follow the path of
19 the bullets and ended up finding or digging out
20 actually the projectiles or the bullets that were at
21 the end of that trajectory basically. We found 16
22 cartridge casings inside the house. We found 15
23 projectiles or bullets which would be, if you would
24 look at a bullet, what you'll see is the bottom part
25 which is known as the cartridge or cartridge case.

1 The top part that I'm referring to, the lead that
2 actually comes out of the gun, is referred to as the
3 bullet projectile. We were able to find 15 bullets,
4 one fragment from a bullet, and we were able to
5 locate 17 shots inside the house.

6 Q And how would you determine that? How could you
7 determine there were 17 shots?

8 A Based on the number of entrance holes that we were
9 able to find.

10 Q And were you able to determine based on your training
11 and expertise, and just out there looking at it,
12 Special Agent, how many would have gone from the
13 front door area to the direction of the den?

14 A Yes, sir. We determined that ten shots came from the
15 front door area towards the area of the den.

16 Q And were you able to determine based on your training
17 and your expertise out there looking at it how
18 many -- and you put this in your report -- how many
19 shots were from the dining room corner, I think as
20 you say, in the direction of the bedroom?

21 A We determined that seven shots came from as I call
22 the dining room corner to the direction of the
23 bedroom.

24 Q Seven shots from the dining room corner to the
25 bedroom?

1 A Yes, sir.

2 Q Ten shots back this way?

3 A Yes, sir.

4 Q Okay. And that's a total of 17, correct?

5 A That's correct.

6 Q And you found how many projectiles?

7 A Projectiles, we found 15 projectiles and one fragment
8 of a projectile.

9 Q Going into the bedroom, what evidence specifically in
10 the bedroom did you have of shots being fired in
11 there?

12 A Specifically, we had two entrance bullet holes above
13 the bed. One was actually a through-and-through,
14 which means it went entirely through the wall,
15 through the house. We were not able to find that
16 one. We also found several projectiles inside the
17 residence. And we could also see where bullets had
18 traveled through the wall in the hallway into the
19 bedroom.

20 Q Do you have the wall up there with you?

21 A I'm sorry?

22 Q The wall. Did you get a piece of the wall?

23 A Yes, sir.

24 (WHEREUPON, State's Exhibit No. 67 is marked for
25 identification.)

1 Q Look at what's marked State's 67, please. Just let
2 me know for right now if you recognize it, did you in
3 fact collect it, and does it relate to your
4 testimony?

5 A Yes, sir.

6 MR. HARPOOTLIAN: I can't see it.

7 Q Special Agent, what is this?

8 A This is a piece of the wall that we removed from the
9 wall above Mr. Herring's bed.

10 Q And what, if anything, did you see around that wall
11 or the hole?

12 A We observed what appeared to be tissue around this
13 wall, basically flesh all around the two bullet
14 entrance holes.

15 Q And did you see any other indication of where
16 somebody had been shot in this bedroom? Was there
17 blood in there?

18 A There was blood dripping but appeared to be blood
19 that was straight down which is called 90-degree
20 blood. So, to answer your question; yes, sir.

21 Q There was blood also in the bedroom?

22 A Right.

23 Q What appeared to be tissue on this on the wall,
24 correct?

25 A That's correct.

1 Q And would this have been consistent based on your
2 examination of one of the shots that had come from
3 the hall area to the bedroom?

4 A Yes, sir. That's correct.

5 MR. MEADORS: And that's State's 67, I believe
6 without objection.

7 MR. HARPOOTLIAN: No.

8 (WHEREUPON, State's Exhibit No. 67 is admitted
9 into evidence.)

10 Q Your testimony is you were able to determine that
11 five -- seven shots came from the hall area to the
12 bedroom, correct?

13 A That's correct.

14 Q And on the back wall or the wall behind the bedroom I
15 guess at where you found the gun, how
16 many holes were there in that back wall behind the
17 bed?

18 A Two holes behind the bed.

19 Q And how many projectiles?

20 A Projectiles inside that room?

21 Q Yes, sir.

22 A I think there were three projectiles recovered there
23 that room.

24 Q And five -- you determined seven shots went toward
25 that room, correct?

- 1 A Yes, sir.
- 2 Q That's what you stated in your report?
- 3 A Correct.
- 4 Q And did one of them go through-and-through? You said
- 5 you couldn't find it?
- 6 A That's correct. One of them went through the wall
- 7 above the bed and into the yard and we were not able
- 8 to recover that one.
- 9 Q But you went out and looked?
- 10 A Yes, sir.
- 11 Q I mean, you physically went out and looked and
- 12 couldn't find it?
- 13 A Yes, sir.
- 14 Q But there was a hole there that was consistent with a
- 15 bullet going through and through it and then it was
- 16 just right on the other side you couldn't find it;
- 17 somewhere on the other side?
- 18 A Somewhere on the other side; yes, sir. We also
- 19 checked the other surrounding residents, trees,
- 20 things like that where you would typically find a
- 21 projectile.
- 22 Q We qualified you in fingerprint analysis. Did you
- 23 have an occasion to try to get some prints off of
- 24 some pieces of evidence in this case?
- 25 A Yes, sir. Off of the .357 that we recovered from Mr.

1 Herring's bed. As a matter of protocol, whenever we
2 have a case involving a pointing and presenting
3 question, we normally would fingerprint that piece of
4 evidence, which I did in this case.

5 Q And you could not -- could you find anything?

6 A No, sir. I obtained no identifiable latent prints on
7 that weapon.

8 Q Is that unusual?

9 A No, sir.

10 Q Did you tell them why?

11 A No, sir. On the left, that's basically the revolver
12 that I just had in my hand, the grip is usually wood
13 or some type of plastic, and they usually put a rough
14 surface on there. That grip is usually where
15 somebody holds a weapon. And that surface is not
16 conducive at all to latent print impressions.

17 Q Now, the two projectiles that entered the wall above
18 the bedroom that you've testified to, did you do any
19 trajectory on those?

20 A No, sir.

21 Q Why not?

22 A We were unable to obtain what we would like to
23 consider an accurate trajectory on those due to the
24 fact that when the bullet struck the wall it broke
25 the wall up. So if you were to place a dowel in

1 there you would have nothing to line it up with. You
2 could actually move the dowel around, you know, at
3 just about a 180 or a 360-degree direction. So you
4 couldn't come up with an accurate trajectory.

5 Also we did not have another medium to line it
6 up with. Whenever you're trying to do a
7 trajectory -- well, first let me be clear. These are
8 not to scale per se trajectories. These are just to
9 give you an idea of where the shots originated from
10 and an idea of the general flight path of the bullet.

11 Now, when you do that, you want to have at least
12 two areas that you can line up, usually an entrance
13 and an exit. Sometimes you have an entrance and
14 exit, entrance and exit. In this case because it was
15 in the wall, there was actually no other medium for
16 us to line that up with. Therefore, I was not able
17 to get an accurate trajectory from that.

18 Q So based on what you just said, is trajectory, you're
19 trying to find out from the general direction where
20 something is coming from?

21 A Yes, sir. Again, we're just trying to determine a
22 general direction from where the shots originated.
23 You cannot tell exactly where that person was
24 standing, but you can -- it will at least give you
25 some idea of along what path that person was standing

1 when the shot was fired.

2 Q What path?

3 A The path. Simply the path that the bullet took from
4 the gun to where it finally struck.

5 Q Did you have a video of the shooting inside that
6 house that night?

7 A No, sir.

8 Q Now, I want to show you what marked State's 19,
9 State's 20 and State's 21 and ask -- well, they're
10 already in evidence. Do you recognize that?

11 A Yes, sir.

12 Q And what is State's 21?

13 A May I see State's Exhibit 21 one more time? I'm
14 sorry. I apologize.

15 Q I'm sorry.

16 A State's Exhibit 21 is a Ruger .357 that we found
17 inside the closet area. And the closet was located
18 in the bedroom.

19 Q If I am walking into this bedroom, would the closet
20 be on my right or the left?

21 A If you're walking in the bedroom, I believe the
22 closet would be on your right.

23 Q And does it appear to be on top of some clothes or
24 under some clothes?

25 A It appears to be I'd say half under some clothes.

1 Q And did you yourself, Special Agent Phillip
2 Coonfield, collect that item?

3 A Yes, sir.

4 (WHEREUPON, State's Exhibit No. 68 is marked for
5 identification.)

6 MR. MEADORS: Your Honor, at this time we would
7 offer State's 68.

8 MR. HARFOOTLIAN: Your Honor, pursuant to
9 previously made objections.

10 THE COURT: Yes, sir. Go ahead.

11 (WHEREUPON, State's Exhibit No. 68 is admitted
12 into evidence.)

13 MR. MEADORS: It's so entered?

14 THE COURT: It's admitted.

15 MR. MEADORS: Thank you. And, Your Honor, again
16 according to your court rules, this has a gun lock in
17 it. The barrel is out, and I've had several --

18 THE COURT: The cylinder is out?

19 MR. MEADORS: The cylinder is out. Excuse me.
20 I've had several people check it. There's no way
21 this gun could go off. If I may bring it out,
22 please?

23 THE COURT: Yes, sir. Don't point it at
24 anybody.

25 MR. MEADORS: Yes, sir.

1 Q Is that the gun you found?

2 A This appears to be the gun we found; yes, sir.

3 Q And did you find it in a holster or out of the

4 holster?

5 A We found it inside the holster.

6 Q And is that depicted on State's 21?

7 A Yes, sir.

8 Q In the holster?

9 A Yes, sir.

10 Q And if you need to refer to your notes, when you

11 looked in the barrel of the gun, what was in there?

12 A Do you mind if I refer to them?

13 Q Please.

14 A Inside the cylinder of the gun we found four unfired

15 cartridges and one fired cartridge.

16 Q Four unfired cartridges and one fired cartridge?

17 A Yes, sir.

18 Q And did it hold five?

19 A Yes, sir.

20 Q And were all those inside the barrel when you checked

21 it?

22 A Yes, sir.

23 Q It was loaded?

24 A Yes, sir.

25 Q One had been fired?

- 1 A That's correct.
- 2 Q A copy of the SLED search warrant was left on the
- 3 kitchen table. Did you do that, or do you know who
- 4 left that?
- 5 A I don't recall who left it there.
- 6 Q Just referring to your notes. Beg the Court's
- 7 indulgence. How many crime scenes have you been to?
- 8 A Have I been to?
- 9 Q Yeah.
- 10 A Somewhere around --
- 11 Q Or alleged crime scenes.
- 12 A Somewhere around 300.
- 13 Q Have you ever been to one that's the same as another?
- 14 A No, sir. It's not listed on my notes exactly who
- 15 left it, but there was a copy of the search warrant
- 16 left on the kitchen table.
- 17 Q That's fine. And I just was following through your
- 18 notes there.
- 19 A Yes, sir.
- 20 Q When you're investigating a police-officer shooting,
- 21 what are you trying to determine in relation to the
- 22 guns and the projectiles, if anything?
- 23 A As far as what, sir? I'm not sure what you're --
- 24 Q As far as are you trying to match up the guns with
- 25 the projectiles?

1 A Yes, sir.

2 Q Which projectiles would have matched up to which
3 guns?

4 A That's correct.

5 Q Trying to determine who shot what?

6 A That's correct. Yes, sir.

7 Q Beg the Court's indulgence. These two weapons that
8 you found, do you send them on to SLED for potential
9 further analysis by other agents?

10 A Yes, sir.

11 Q I mean, that's just what you all do?

12 A That's correct, yes.

13 Q As far as ballistics or trigger pull or anything like
14 that?

15 A Yes, sir. That would go to our firearms/ballistic
16 department.

17 Q And you did that in this case?

18 A I transferred them there; yes, sir.

19 Q Special Agent, thank you. Please answer any
20 questions Mr. Harpootlian has.

21 A Yes, sir.

22 MR. HARPOOTLIAN: May it please the Court?

23 THE COURT: Yes, sir.

24 CROSS EXAMINATION

25 BY MR. HARPOOTLIAN

- 1 Q Did you do any sketches of the scene?
- 2 A Yes, sir.
- 3 Q Do you have those with you?
- 4 A I do. Yes, sir.
- 5 Q Could I see them?
- 6 A Sure.
- 7 Q Is it one you did or a guy named Skipper?
- 8 A It would be a girl named Melissa Skipper. Yes, sir.
- 9 Q A girl named Skipper? If I may have that.
- 10 A Yes, sir.
- 11 Q Let me see if -- I have that right here. But you did
- 12 no independent -- you didn't do any notes or write
- 13 anything out in terms of measurements or those kind
- 14 of things?
- 15 A What we did was used a diagram just to show a general
- 16 area of where we found certain things.
- 17 Q But I guess what I'm trying to find out is, for
- 18 instance, we see that -- in the State's exhibits we
- 19 see -- let me see. I think it's here. Maybe not.
- 20 You took pictures of all these bullet holes, right?
- 21 A Yes, sir.
- 22 Q And you put streamers through the holes and those
- 23 kinds of things?
- 24 A Strings. Yes, sir.
- 25 Q You take pictures of that?

- 1 A We did. Yes, sir.
- 2 Q Did you give them to the solicitor?
- 3 A That's correct.
- 4 Q That would know trajectory of each bullet, right?
- 5 A That would show an approximate trajectory.
- 6 Q As I understand it, what you all did was you found a
- 7 hole in something like a wall or a door. And there
- 8 were several bullet holes through the door, right,
- 9 the door leading from the hall back into the foyer
- 10 area?
- 11 A Right. Yes, sir.
- 12 Q I think the door was actually back against the wall.
- 13 So you could take -- there was a hole through the
- 14 wall, a whole through the door, then it went through
- 15 the other wall and into the next room?
- 16 A Right. That's correct.
- 17 Q Several did that, right?
- 18 A Yes, sir.
- 19 Q And I think I saw a picture somewhere where you all
- 20 took a dowel. A dowel would be just a wooden stick
- 21 like this?
- 22 A That's correct. Something similar to that.
- 23 Q And you put it through the hole?
- 24 A Right.
- 25 Q And then you sight down that to see the general

1 direction of where the bullet would have come from,
2 right?

3 A That's correct.

4 Q And if there's enough of a differential, I want to
5 say enough differential, if somebody shot through a
6 door, for the sake of argument, you could put a dowel
7 through that door, if there is a bullet hole through
8 it, and get a general sense of where the bullet came
9 from?

10 A If you have an entrance and an exit.

11 Q Right. If you have an entrance and exit. Let me see
12 that big one right there, please. Now --

13 MR. MEADORS: Your Honor, is he offering that at
14 this time?

15 MR. HARPOOTLIAN: We'd been through this I
16 thought. Marked for identification No. 7, Your
17 Honor.

18 MR. MEADORS: He's not allowed to show it to the
19 jury if it's not in evidence, Your Honor,
20 respectfully.

21 THE COURT: Well, it's a picture that's already
22 in evidence.

23 MR. HARPOOTLIAN: Thank you.

24 Q Have you ever seen this before?

25 A No, sir.

1 Q Okay. This is a door. Looks like a door?

2 A Yes, sir.

3 Q Now, if you had an entrance wound -- I mean, entrance

4 wound -- an entrance hole right here -- and then let

5 me find State's Exhibit No. -- it's here somewhere.

6 Hold on one second. I apologize. I didn't quite

7 know we were going to do this. Okay. Here is one,

8 two. Okay. And you're an expert. So I'm going to

9 ask you this expert question here. If 1 as you see

10 in State's Exhibit No. 15 coincides with 1 in front

11 of this door, right; and 2, you see the hole on 2?

12 Can you see that? Do you need my glasses?

13 A I may; yes, sir. You're going to have to show me

14 where the hole is.

15 Q 2. See the little --

16 A Oh. Yes, sir.

17 Q Okay?

18 A Yes, sir.

19 Q So that's the entrance and exit hole in a door, in a

20 standard door, is an inch and a half, two inches?

21 A Possibly. Yes, sir.

22 Q Yeah. And so, if you had that, you when you got to

23 the scene would take a dowel like this and put it

24 through the hole?

25 A Well, not necessarily. It depends on several

1 factors. One of the major reasons that we do a
2 trajectory is if there is a question as to the
3 location that the shots originated from. Had there
4 been a question as to that; yes, sir, I would have
5 placed a dowel inside the hole.

6 Q Well, when you say a question, would it matter
7 whether the dowel was coming down like this or going
8 up like that or coming from the side? Would it not?

9 A Absolutely.

10 Q And you would want to know -- I mean, Officer, if you
11 go into that scene and you saw that hole, you'd put a
12 dowel in it, wouldn't you?

13 A I'm not sure, sir. I'd have to actually see that
14 hole, see the scene. You know, I don't have any
15 knowledge of this scene actually.

16 Q Absolutely. I'm giving you a somewhat hypothetical
17 here. But if you walk up and there's a hole in the
18 door, you're going to stick a dowel through it. And
19 you stuck a dowel through every one of these dowels
20 at didn't you?

21 A Yes, sir.

22 Q Okay.

23 A Well, close to every one.

24 Q And 17 holes? More than that because they went
25 through multiple walls and doors, right?

1 **A** No, sir. Just to be accurate, I did trajectories of
2 15 holes. There was two holes in the back of the
3 wall I was not able to do a trajectory on.

4 **Q** Okay. So in every one of those you took a dowel and
5 stuck it through the hole?

6 **A** Yes, sir.

7 **Q** And, I mean, this shouldn't be a big --

8 **MR. MEADORS:** Objection.

9 **THE COURT:** Let him answer the question.

10 **MR. MEADORS:** No, sir. As to the side comments
11 before the question. I'm again respectfully
12 objecting to it.

13 **THE COURT:** All right.

14 **Q** That's what you do when you see a hole. The first
15 thing you do is put a dowel through it?

16 **A** Each scene, sir, is different. So there have been
17 scenes that I have not placed a dowel through the
18 individual holes. Again, if there is a question as
19 to the original of the hole or if there's a question,
20 a big question as to the angle of the hole; then,
21 yes, I probably would have used a dowel.

22 **Q** Okay. The origin of the hole. Would it matter to
23 you -- do you know what a ricochet -- can a ricochet
24 go through a door?

25 **A** Can a ricochet go through a door?

1 Q Yeah. Do you know what ricochet is?

2 A Yes, sir, I do.

3 Q That is a projectile that hits something before it

4 hits --

5 A Right.

6 Q -- something else, right?

7 A That's correct.

8 Q They can go through a door?

9 A Yes, sir.

10 Q Okay. So, if you're looking at this, let me show you

11 a picture here. This is State's Exhibit No. 9. It's

12 that same door a little further away. Right?

13 A Appears to be; yes, sir.

14 Q Okay. If the projectile had hit obliquely, at an

15 angle, on one of these bricks or there's a brick walk

16 out here and projected up, when you put the dowel

17 through, it would be like this, right?

18 A Possibly. Yes, sir.

19 Q Okay. So, it would give you some idea, when you say

20 the general direction, while the round may have been

21 fired out from out here somewhere, we don't know

22 whether it did this, up, hit something up here, came

23 down, hit something on the side and went this way.

24 Correct? All those are possible?

25 A That's possible. Generally, if I may, we would also

- 1 look in the area for any type of signs of a ricochet.
2 Are there broken pieces of brick? Are there other
3 broken pieces of wood?
- 4 Q Right. But if you had sent somebody out and all they
5 looked for was casings and didn't look for ricochets,
6 that would have been a mistake, wouldn't it?
- 7 A Possibly.
- 8 Q Okay. Now, did you measure -- you said you put a
9 tripod up to get these trajectories, right?
- 10 A Yes, sir.
- 11 Q How far -- can you say with any degree of certainty
12 where the person was when they were firing the
13 weapon?
- 14 A No, sir; I cannot. It's just a general idea or a
15 general direction of fire. I cannot tell you where
16 along that path that they were.
- 17 Q Okay. Now, we do know you found two -- you found a
18 weapon on the bed, correct?
- 19 A That's correct.
- 20 Q And that weapon had not been fired, correct?
- 21 A That's correct.
- 22 Q Because there were five unfired rounds?
- 23 A Right.
- 24 Q Did you collect the weapons from the officers?
- 25 A I had actually directed Special Agent Skipper to

1 collect those weapons.

2 Q And there were ejected shell casings on the floor in
3 the foyer and in the den?

4 A That's correct.

5 Q And the only kind of weapon that ejects a shell would
6 be a semi-automatic weapon?

7 A That's correct. Yes, sir.

8 Q A .40 caliber Glock?

9 A That is one of the calibers used in this case. Yes,
10 sir.

11 Q What other caliber was used?

12 A I'm sorry. You're correct. It was all .40 caliber
13 Glocks.

14 Q Okay. And those, you found how many shell casings?

15 A We found 16 shell casings.

16 Q And you took pictures of where they were?

17 A Yes, sir.

18 Q You gave those to the solicitor, right?

19 A That's right.

20 Q And you actually did trajectory projections at that
21 house, correct?

22 A Yes, sir.

23 Q And you have given those to the solicitor?

24 A That's correct.

25 Q I want to you look at something only for

1 identification at this point. I don't even want you
2 to comment on it. See if it appears to be something
3 you've seen. Can you tell what this is?

4 A I'm not sure. No, sir.

5 Q Does it look like the floor plan --

6 MR. MEADORS: Objection.

7 THE COURT: Sir?

8 MR. MEADORS: He said he doesn't know.

9 THE COURT: He said no.

10 Q All right. Now, how many pictures did you take out
11 there that night?

12 A I'm not sure exactly, sir. It was --

13 Q A bunch?

14 A Yes, sir.

15 Q And --

16 MR. MEADORS: Judge, may we approach? May we
17 approach?

18 MR. HARPOOTLIAN: I'm offering these into
19 evidence.

20 MR. MEADORS: Your Honor, may we approach?

21 THE COURT: Certainly.

22 MR. HARPOOTLIAN: You got an objection? Do you
23 have an objection to me offering them into evidence?

24 MR. MEADORS: Your Honor, did you order him to
25 approach? Are you offering them?

1 **MR. HARPOOTLIAN:** Sir, I am offering them.

2 **THE COURT:** Sir, you said you wanted to
3 approach. What do you want to say?

4 **MR. MEADORS:** Judge, out of fairness, --

5 **THE COURT:** You talk to me.

6 **MR. MEADORS:** Out of fairness, he's been sitting
7 there --

8 **THE COURT:** You talk to me in terms that the
9 jury can't hear you.

10 **MR. MEADORS:** Oh, I'm sorry. Will he come up
11 here?

12 (Whereupon, a bench conference is had),

13 **MR. MEADORS:** Your Honor, we have no objection
14 whatsoever to these coming into evidence as Defense
15 Exhibits. He's had these pictures like we have, and
16 we have no objection whatsoever.

17 **MR. HARPOOTLIAN:** I am attempting to bring them
18 before the jury, Your Honor. I don't know what all
19 the hoopla is about.

20 **MR. MEADORS:** Your Honor, objection to that.

21 **Q** How about look at these and tell me if you're
22 familiar, if you can identify these photographs? And
23 then I'll have them marked. That one?

24 **A** Yes, sir.

25 **Q** That one?

1 A Yes, sir.

2 Q These two?

3 A Yes, sir.

4 Q And this one?

5 A Yes, sir.

6 MR. HARPOOTLIAN: Can I have them marked,
7 please.

8 (WHEREUPON, Defendant's Exhibit No. 11 is marked
9 for identification and received in evidence.)

10 (WHEREUPON, Defendant's Exhibit No. 12 is marked
11 for identification and received in evidence.)

12 (WHEREUPON, Defendant's Exhibit No. 13 is marked
13 for identification and received in evidence.)

14 (WHEREUPON, Defendant's Exhibit No. 14 is marked
15 for identification and received in evidence.)

16 (WHEREUPON, Defendant's Exhibit No. 15 is marked
17 for identification and received in evidence.)

18 Q And I would like to have you identify this, please.

19 A Yes, sir. This is a diagram.

20 Q Not to scale?

21 A Not to scale. Created on a computer by Special Agent
22 Skipper under my --

23 Q Under your supervision?

24 A Yes, sir.

25 MR. HARPOOTLIAN: Could I have this marked,

1 please. Could I have the overhead on, please. Thank
2 you.

3 (WHEREUPON, Defendant's Exhibit No. 16 is marked
4 for identification.)

5 Q You gave this to the solicitors on Monday though,
6 right?

7 A Yes, sir.

8 Q Now, --

9 THE COURT: Is this --

10 MR. HARPOOTLIAN: Sir?

11 THE COURT: -- in evidence?

12 MR. HARPOOTLIAN: Yes, sir.

13 THE COURT: Is there any objection?

14 MR. MEADORS: Oh, no. I did not -- I didn't
15 know you'd offered it. But certainly no objection to
16 any of them.

17 MR. HARPOOTLIAN: Okay. No objection to 16.

18 (WHEREUPON, Defendant's Exhibit No. 16 is
19 admitted into evidence.)

20 Q Now, let me see if I can make this a little bit
21 bigger. Okay. Let me see if I can slide it down a
22 little bit, make it a little bit bigger. And I think
23 we need to push it just a little. Now, if we are on
24 the left-hand side -- I mean, first of all, is that
25 the bedroom and the bathroom? Is that what that is?

- 1 A Yes, sir.
- 2 Q Basically?
- 3 A Yes, sir.
- 4 Q And so you didn't go all the way down the hall?
- 5 A No, sir. That's just -- actually, you can see the
- 6 hall area in that diagram.
- 7 Q I see. The door is the little line?
- 8 A The little line; yes, sir.
- 9 THE COURT: Would it be easier if the witness
- 10 came down and pointed?
- 11 Q Well, I'm going to point to it so I don't have to
- 12 keep coming and going, Judge. That right there,
- 13 that's the door?
- 14 A Yes, sir.
- 15 Q Okay. And then this area would be the hall?
- 16 A Right.
- 17 Q Okay. And this would be the bedroom and then a door
- 18 into a bathroom and then a closet?
- 19 A That's correct.
- 20 Q Now, if you're looking from the front door into
- 21 the -- and that would be further back here. There's
- 22 a -- the front door comes in here -- wait a minute --
- 23 comes in up here. And then you turn right and go
- 24 down this hall. Is that right?
- 25 A That's right.

1 Q Okay. When you come in the front door, you said you
2 noticed some bullet holes?

3 A That's correct.

4 Q And did you do trajectories on those?

5 A We did. Yes, sir.

6 Q And you used ribbons, did you not?

7 A Strings. Yes, sir. We call them strings.

8 Q Strings?

9 A Yes, sir.

10 Q And what do the colors mean?

11 A That is nothing in particular. In this case we had
12 such a different angle, we thought it was possible
13 that you had shooters in different positions. So we
14 used different colors just for demonstrative
15 purposes.

16 Q But they don't mean certain officers or certain
17 anything?

18 A No, sir.

19 Q But some are pink and some are green?

20 A That's correct.

21 Q Okay. Now, I would like you to step down right here,
22 please.

23 WITNESS: Your Honor, may I step down, sir?

24 THE COURT: Certainly.

25 Q And I guess it's best for you to stand over here

1 facing the court reporter. And is this the
2 trajectory you did coming in the front door? Is that
3 right.

4 A Yes, sir.

5 THE COURT: What are you referring to?

6 MR. HARPOOTLIAN: I'm sorry. I apologize, Your
7 Honor. Defendant's Exhibit No. 14.

8 THE COURT: Is it in evidence?

9 MR. HARPOOTLIAN: Yes, sir.

10 THE COURT: Without objection.

11 MR. HARPOOTLIAN: That's what I thought.

12 MR. MEADORS: We want that; yes, sir. If he's
13 offering it as evidence, no objection whatsoever for
14 I.D.

15 MR. HARPOOTLIAN: I am offering it as evidence,
16 bringing it before this jury, Your Honor.

17 Q Okay. So you come in the front door and you
18 immediately see one, two, three, four -- is that
19 another bullet hole over here?

20 A Yes, sir. These are strings that indicate a bullet
21 hole. So --

22 Q One, two, three, four, five, six, seven, eight --

23 A Nine.

24 Q -- nine, ten?

25 A Yes, sir.

- 1 Q From so from the front door, there are ten shots
2 fired into -- directly back into this hall, correct?
- 3 A That's correct.
- 4 Q Now, correct me if I'm wrong. Hold that there one
5 second. Could I get that one second? And this is
6 going to be crude, not like you all do. But as you
7 come in the front door, these are the steps up, you
8 come in a double door. French doors, right? And
9 then this area we're seeing is over here. Right?
10 There's a door here? And then --
- 11 A Right.
- 12 Q -- if we look back we see another room back here
13 which is like a den or an office or something, right?
- 14 A Yes, sir.
- 15 Q Okay. And these ten bullet holes are -- right? I
16 mean --
- 17 A Roughly.
- 18 Q Roughly. Okay. His bedroom is back all the way down
19 the hall down to about here. There's a door that
20 comes back, and then his bed is back here. Right?
- 21 A That's correct.
- 22 Q So those bullet holes are not really in the direction
23 of somebody standing back by that bed, are they?
- 24 A No, sir.
- 25 Q As a matter of fact, they are -- what is this?

1 15 feet?

2 A I'm not sure of the direction, but approximately.

3 Q 15 feet in the wrong direction for him back by the
4 bed, right?

5 A If he's standing back by the bed; yes, sir.

6 Q If he's standing back by the bed, they're not in the
7 right direction?

8 A Yes, sir.

9 Q Ten shots?

10 A Yes, sir.

11 Q And did you find shell casings up here in this area
12 by the front door?

13 A Yes, sir.

14 Q And that's because when you shoot that Glock, it's
15 going to eject a round out, right?

16 A It will eject a cartridge casing out; yes, sir.

17 Q I'm sorry. A cartridge casing would come out. And
18 the cartridge casing as you explained is the bottom
19 part of the bullet, right?

20 A That's correct.

21 Q And so we've not cartridge casings back here. We've
22 got ten shots. As a matter of fact, there's a corner
23 right here; and the door is beyond -- the entrance is
24 beyond this corner, if you went the entrance to his
25 bedroom, if you look through that wall?

- 1 A Right. Yes, sir.
- 2 Q Right?
- 3 A That's correct.
- 4 Q And so those rounds go through there to -- let me
- 5 make sure. Okay. State's Exhibit No. 15, this is
- 6 looking down that hall, correct?
- 7 A Yes, sir. State's Exhibit 15 is looking down the
- 8 hallway.
- 9 Q Who is that?
- 10 A That's me. Yes, sir. And this back room, you can
- 11 see the bedroom.
- 12 Q Okay. So you're looking straight down the hall?
- 13 A Yes, sir.
- 14 Q Are you taking the picture, or is somebody else
- 15 taking the picture?
- 16 A At that time I think somebody else -- I think Agent
- 17 Skipper was taking the picture.
- 18 Q Okay. And these streamers we see coming across here
- 19 are the ones that were followed through that wall?
- 20 A Yes, sir.
- 21 Q Okay. And then we see some green ones coming in?
- 22 A Right.
- 23 Q Which are from another direction, correct?
- 24 A That's correct.
- 25 Q And they're coming from up at the other end of the

- 1 hall?
- 2 A Right.
- 3 Q And you think up near the dining room?
- 4 A Right. I used that terminology. Near dining room
- 5 towards front of the hall.
- 6 Q The front of the hall?
- 7 A Yes, sir.
- 8 Q But there were shell casings -- that's the wrong
- 9 term. What do they call them?
- 10 A That's correct.
- 11 Q Shell casings up near the dining room?
- 12 A Yes, sir.
- 13 Q Okay. And that's where you suspect whoever was
- 14 shooting was standing?
- 15 A Now, the thing you've got to remember about shell
- 16 casings, once they're ejected from the Glock or from
- 17 any other automatic weapon, you can't determine where
- 18 they're going to go. Once they bounce, they're going
- 19 to roll around. There is going to be people walking
- 20 inside who are going to kick these shell casings. So
- 21 that is not an accurate --
- 22 Q Now, we do know this though, that these two rounds
- 23 went through this wall. And actually they come out
- 24 on the other side, don't they?
- 25 A Yes, sir.

1 Q And go through that wall?

2 A Right.

3 Q And there's one down here low?

4 A Yes, sir.

5 Q And they're coming back up from back up the hall,
6 right?

7 A That's correct.

8 Q And you are looking down the hall, and you can see --
9 I mean, how far up the hall are you? Are you all the
10 way up to the foyer?

11 A Yes, sir. I'm right at the foyer.

12 Q Right at the foyer. So that's what you can see
13 standing at the foyer looking straight down?

14 A That's correct.

15 Q Now, the --

16 A If you don't mind, could I also point out?

17 Q Sure.

18 A I was speaking earlier. It's in this general
19 direction that the two shots I was not able to
20 determine the trajectory on.

21 Q I've got a picture of them. We're going to show
22 those now I think. Hold on one second. Agent, go
23 ahead and take the stand. And I want to show you a
24 couple more of them.

25 MR. HARPOOTLIAN: Any objection to any of these?

1 They're all SLED pictures.

2 **MR. MEADORS:** Sure. Can I see them? So you've
3 had these pictures?

4 **MR. HARPOOTLIAN:** Right. And I'm presenting
5 them to the jury.

6 **MR. MEADORS:** We have no objection whatsoever.

7 (WHEREUPON, Defendant's Exhibit No. 17 is marked
8 for identification and received in evidence.)

9 (WHEREUPON, Defendant's Exhibit No. 18 is marked
10 for identification and received in evidence.)

11 (WHEREUPON, Defendant's Exhibit No. 19 is marked
12 for identification and received in evidence.)

13 (WHEREUPON, Defendant's Exhibit No. 20 is marked
14 for identification and received in evidence.)

15 (WHEREUPON, Defendant's Exhibit No. 21 is marked
16 for identification and received in evidence.)

17 (WHEREUPON, Defendant's Exhibit No. 22 is marked
18 for identification and received in evidence.)

19 **MR. HARPOOTLIAN:** Any objection to this other
20 SLED picture?

21 **MR. MEADORS:** No.

22 (WHEREUPON, Defendant's Exhibit No. 23 is marked
23 for identification and received in evidence.)

24 **Q** Now, let me just use the overhead projector. Can you
25 see the screen from there?

1 A Yes, sir.

2 Q And before I take off the sketch that's up there,

3 let's sort of orient ourselves a little bit again.

4 The picture we see looking down the hall which would

5 be from the vantage point here of looking back

6 towards this door and towards this bed. Is that

7 correct?

8 A That's right.

9 Q And we've now -- you've concluded, not me -- but

10 you've concluded that there were a number of shots

11 fired that basically went through before you even get

12 to the back wall of this bedroom? In other words,

13 they were perpendicular to this wall here, correct?

14 A Ten shots. Yes, sir.

15 Q And I'm talking about coming through this way.

16 Right?

17 A That is correct. Yes, sir.

18 Q Right about there. Now, Defendant's Exhibit No. 17

19 is another view from down -- this is standing out in

20 the foyer, right?

21 A That's correct. Yeah.

22 Q And as you're standing out in the foyer looking down

23 you can see two rounds that went -- that caught this

24 little wall sticking out here, right here and here,

25 right?

1 **A** Yes, sir.

2 **Q** And you've got trajectories off of those. And then

3 we see another round that apparently comes through

4 and hits this wall up here, right?

5 **A** Yes, sir.

6 **Q** Did it go on through?

7 **A** I don't think so, sir. I think that's one --

8 **Q** It stuck in the wall?

9 **A** I think that's one we retrieved from the wall. Yes,

10 sir.

11 **Q** And we're looking down the hall again. Right?

12 **A** Yes, sir.

13 **Q** Can you see -- as you zoom in on this, can you see

14 anything like a nightstand on that?

15 **A** Sir, I actually need to step down. If --

16 **MR. MEADORS:** Can he step down?

17 **Q** You can step down. Sure.

18 **WITNESS:** Your Honor, may I step down?

19 **THE COURT:** Sure.

20 **THE WITNESS:** Thank you.

21 **Q** Do you want to look at the photograph or the

22 projection?

23 **A** The projection is fine.

24 **Q** Do you see what I'm talking about as you look back

25 through that door?

1 A Yes, sir.

2 Q You can basically see one of the posts and a little

3 bit of the nightstand, right?

4 A Right.

5 Q Just stay where you are and hopefully the jury can

6 hear you. There you go right here. Defendant's

7 Exhibit No. 23. Let me back it up a little bit.

8 Back it up. There we go. Now, these are -- that's

9 the bed in the back bedroom?

10 A Yes, sir. That's the bed and what we believed to be

11 Mr. Herring's bedroom.

12 Q And you see two bullet holes?

13 A That's correct.

14 Q And you actually pulled -- there was one that went

15 through-and-through, right?

16 A Right.

17 Q And then one you pulled out had flesh on it?

18 A No, sir.

19 Q No. Not there?

20 A No, sir. The flesh that we observed that I spoke

21 about earlier is around the bullet holes. You can

22 actually see a piece of it.

23 Q Over there on the left?

24 A Yes, sir. But there is actually a better photograph

25 somewhere that shows more than it's showing.

1 Q Okay. But for our purposes, there is flesh around
2 that bullet hole there. So that would maybe indicate
3 to you that one of these two rounds is the round that
4 struck him?

5 A Right. And it's what appears to be blood. Yes, sir.

6 Q Okay. Did you swab it and send it off to the lab to
7 see if it was flesh?

8 A No, sir. Actually what I did was I cut out the
9 entire piece of wall.

10 Q That's what we have over there?

11 A Yes, sir. And I submitted that to our DNA analysis
12 department.

13 Q Now, was there any other evidence of rounds hitting
14 back there by the bed?

15 A No, sir.

16 Q Okay. So we can assume one of those two rounds hit?

17 A Yes, sir.

18 Q And those two rounds are -- let me make sure. Is
19 that the -- that's the front -- that's the headboard
20 and the post that comes up, right?

21 A Yes, sir.

22 Q So that would be to the left of that post?

23 A Right.

24 Q And then we have another picture at close up.
25 Actually that may be the one you were talking about.

- 1 A Yes, sir. That's correct.
- 2 Q And that would be the blood around it?
- 3 A The tissue around it; yes, sir.
- 4 Q Whatever. Human stuff. Okay. Now, were you able to
- 5 determine the trajectory of those shots?
- 6 A No, sir.
- 7 Q Okay. You have some shots though that, for instance,
- 8 went through that wall right outside the -- right
- 9 outside the -- right in the foyer area. It actually
- 10 went through the wall, went through that room and
- 11 into the board, the molding, correct?
- 12 A That's right.
- 13 Q Were you able to recover that round?
- 14 A I think so. Yes, sir.
- 15 Q And those are the product of these rounds here that
- 16 we're talking about, right?
- 17 A Right, sir. Right.
- 18 Q I understand. Now, there's a door to that hallway
- 19 that goes back to the bedroom from the foyer, right?
- 20 A Yes, sir.
- 21 Q And this would be a picture of that door?
- 22 A That's correct.
- 23 Q So the police officers shoot through the wall. It
- 24 goes through the door into the other wall and in some
- 25 cases through that wall?

- 1 A That's right.
- 2 Q And again, that is an area -- let me make sure I
- 3 understand -- that is nowhere near this headboard,
- 4 correct?
- 5 A That's correct.
- 6 Q As a matter of fact, it's way up here, isn't it?
- 7 A Yes, sir.
- 8 Q 15 feet or so?
- 9 A I'm not sure of the exact distance. Approximately
- 10 somewhere around there.
- 11 Q Did anybody measure distances?
- 12 A No, sir. We didn't measure distances.
- 13 Q Okay. And the rounds that are fired back here --
- 14 well, let me ask you this. You all picked up the
- 15 shell casings?
- 16 A Yes, sir.
- 17 Q And did you attempt to match them to different
- 18 weapons?
- 19 A We did not. We took the shell casings, transferred
- 20 them to our firearms department. And they would have
- 21 done the matching of the shell casings to the
- 22 firearms.
- 23 Q But you can match shell casings to firearms, correct?
- 24 A Not me personally; no, sir, but our firearms
- 25 department.

- 1 Q Because of the unique --
- 2 A That's correct.
- 3 Q -- imprint on each shell casing that's unique to each
- 4 gun?
- 5 A Right. Yes, sir.
- 6 Q Okay. Yeah. Go ahead and have a seat again. I'm
- 7 sorry. I think I'm done with these. I think this is
- 8 the same one I've had blown up but let me look.
- 9 Defendant's Exhibit No. 13 is again that view coming
- 10 from the front door showing rounds coming this way
- 11 and then ten rounds coming in here, correct?
- 12 A That's correct. Yes, sir.
- 13 Q Defendant's Exhibit No. 12 is the same picture again,
- 14 but this time we can see more of the rounds coming
- 15 this way. And how many rounds did you determine were
- 16 fired from this direction this way?
- 17 A Seven rounds.
- 18 Q Okay. But you can't tell how far back -- were there
- 19 any shell casings in this area here?
- 20 A There were shell casings; yes, sir, all along in this
- 21 area. But again, you can't determine --
- 22 Q You can't tell?
- 23 A -- by the shell casing or cartridge casing the
- 24 location of a bullet.
- 25 Q Well, let me ask you this. The dining room, how far

1 back is that?

2 A The dining room would be somewhere in this general
3 vicinity.

4 Q Back over here, isn't it? This is the foyer you come
5 in?

6 A Right.

7 Q The dining room is back over here, isn't it, back
8 further than what we see in this picture?

9 A Right. Yes, sir.

10 Q So if someone says they were shooting from the dining
11 room or nearing near the dining room, they would be
12 out of this picture? They'd be further back this
13 way?

14 A Right. That's correct.

15 Q And again, Defendant's Exhibit No. 11 shows again
16 basically the same trajectories and shots?

17 A Yes, sir.

18 Q Okay. Now, beg the Court's indulgence one moment. I
19 show you this item. See if you recognize it. Don't
20 tell me what it is, just if you've seen it before.
21 Was that taken at the house?

22 A Yes, sir.

23 MR. HARPOOTLIAN: Any objection? It's another
24 SLED picture.

25 MR. MEADORS: For the house, we don't have any

1 objection if you put them all evidence.

2 MR. HARPOOTLIAN: Will you mark this, please.

3 (WHEREUPON, Defendant's Exhibit No. 24 is marked
4 for identification and received in evidence.)

5 Q And this is a picture of Mr. Herring's concealed
6 weapons permit. Is that correct?

7 A Yes, sir.

8 Q And you found that at the house?

9 A That's correct.

10 Q So he had a right to carry a concealed weapon?

11 A He had a concealed weapons -- I didn't check the
12 expiration date or anything like that, but he did
13 have a concealed weapons permit.

14 Q Do you want to look at it now? Do you want my
15 glasses?

16 A Yes, sir. It's current.

17 Q Current. Expires ...?

18 A 5-20-07.

19 Q So it expires in about a week? Two weeks?

20 A Yes, sir.

21 MR. HARPOOTLIAN: I'd like to have this marked,
22 introduced. Again, these are all SLED pictures. Any
23 objection?

24 MR. MEADORS: If you're offering them as
25 evidence and not I.D., no objection.

1 **MR. HARPOOTLIAN:** Well, I keep offering them as
2 evidence. I'm not going to offer them as evidence.
3 I'm not going to offer them as I.D.

4 **MR. MEADORS:** That's fine.

5 **MR. HARPOOTLIAN:** Yes. Offer this into evidence
6 any objection?

7 **MR. MEADORS:** None whatsoever.

8 **MR. HARPOOTLIAN:** Thank you. Could you mark
9 that, please. And this one, please. And this one,
10 please. And this one, please.

11 (WHEREUPON, Defendant's Exhibit No. 25 is marked
12 for identification and received in evidence.)

13 (WHEREUPON, Defendant's Exhibit No. 26 is marked
14 for identification and received in evidence.)

15 (WHEREUPON, Defendant's Exhibit No. 27 is marked
16 for identification and received in evidence.)

17 (WHEREUPON, Defendant's Exhibit No. 28 is marked
18 for identification and received in evidence.)

19 **Q** Let me ask him if he can identify this one. Can you
20 I.D. this photo?

21 **A** Yes, sir.

22 **Q** Is that one of the back bedroom?

23 **A** Actually, may I take a look at one of these pictures?

24 **Q** Yes.

25 **A** Yes, sir.

1 Q That's the one that went outside?

2 A That's correct.

3 Q That would be a dowel you have sticking through
4 there?

5 A That's correct.

6 Q Here you go. Mark this one, please. And this one,
7 please.

8 (WHEREUPON, Defendant's Exhibit No. 29 is marked
9 for identification and received in evidence.)

10 (WHEREUPON, Defendant's Exhibit No. 30 is marked
11 for identification and received in evidence.)

12 Q Now, I don't think this is going to require you to
13 strain your eyes on this. But is that the front
14 entranceway, the door; and those little letters, do
15 they represent casings?

16 A Right. Those are evidence markers that we spoke
17 about earlier that are designated, each of the
18 cartridge casings.

19 Q And that's Defendant's 30. I'm sorry, Your Honor.
20 And the items sitting outside that door is what? Is
21 that a battering ram?

22 A Yes, sir.

23 Q Okay. And up at the top here we see on Defendant's
24 30 that letter and then something. Is that a shell
25 casing and is that your marker for it?

- 1 A That's correct.
- 2 Q Okay. And this is routine. This is what you all do?
- 3 A Yes, sir.
- 4 Q Okay. And then Defendant's Exhibit No. 29 is --
- 5 let's go to this one first. What is that? Is that a
- 6 dowel you've stuck through a hole in a wall?
- 7 A That is. That's actually the hole that went
- 8 through -- or excuse me -- the bullet that went
- 9 through-and-through the back bedroom above Mr.
- 10 Herring's bed.
- 11 Q Right. We saw those two holes in the wall. One of
- 12 them embedded and the other one went through, right?
- 13 A Right.
- 14 Q And that would give you some idea of the trajectory
- 15 of that bullet?
- 16 A This dowel was placed just to give an idea the round
- 17 had gone actually through-and-through.
- 18 Q Okay. And this would be -- tell me what this is,
- 19 Defendant's 28. Wait a minute. Let me come back.
- 20 Do you know what that is?
- 21 A Which picture are you referring to, sir?
- 22 Q This one here. Is that the front door?
- 23 A Yes, sir. That is the front door of the residence.
- 24 Q As it's -- after being hit with the battering ram?
- 25 A Actually I think it's upside down, sir, I think.

1 Q You're right.

2 A Yes, sir.

3 Q There we go. Battering ram?

4 A Yes, sir. Yes, sir. It appears to be.

5 Q And this picture is again looking at the foyer from
6 that battered door back towards, I guess that's the
7 den area. Over to the left would be where the dining
8 room was, where that post is back behind that. Is
9 that correct?

10 A Right. That's correct.

11 Q That's Defendant's 28. And in Defendant's 27, that
12 pole we just saw in the other one, that is actually
13 the back of one of the dining room chairs right here.
14 Isn't that correct? Can you see it?

15 A Yes, sir. It appears to be.

16 Q Let me see if I can get thing a little more better
17 here. Do you see that now? In other words, that's
18 the dining room table and the dining room chair over
19 here?

20 A Right. I don't mean to be picky, sir, but there is a
21 glare from my angle.

22 Q Why don't you come down?

23 A Yeah. Would you like me step down?

24 MR. HARPOOTLIAN: Could he step down, Your
25 Honor?

1 **THE COURT:** Certainly.

2 **MR. HARPOOTLIAN:** Thank you.

3 **Q** This is the equipment that -- maybe I'm doing
4 something wrong here. I think it's on the screen up
5 there. Do you want to look at it here?

6 **A** Yes.

7 **Q** That's the dining room table and the dining room
8 chair, right?

9 **A** Right. That's correct.

10 **Q** Did you find rounds back here, J, K, H, L it looks
11 like here. M, N, K, J. Right?

12 **A** By rounds, you're referring to cartridges cases?

13 **Q** Cartridge cases.

14 **A** Right.

15 **Q** Okay. And you marked those and took pictures of
16 them?

17 **A** We did; yes, sir.

18 **Q** Okay. And then you did the same thing further on up
19 again. And again this is the dining room table here,
20 right?

21 **A** Right. That's correct.

22 **Q** Okay. And I think this is in the lobby area there.
23 Again more casings. That's Defendant's 25. More
24 casings?

25 **A** That's right. Yes, sir.

1 Q That's A, B, I, H, F. And then when you looked at
2 the other side, it's the same picture again from a
3 different angle, right?

4 A That's correct.

5 Q Defendant's 25. Okay. Go ahead and take the stand
6 again for me, please.

7 A Yes, sir.

8 Q Now, when you removed the rounds, I'm talking about
9 the projectiles you found in the wall or in the
10 baseboards, wherever; did you tag those and send them
11 to your forensics unit for examination?

12 A That's correct.

13 Q And so the forensics unit ought to be able to take,
14 as you understand it, the rounds, the bullets you
15 pull out of the wall or the floor or wherever and
16 match those to a specific weapon. Correct?

17 A That's right. And when you say forensic unit, you
18 specifically mean the ballistic firearms unit,
19 correct?

20 Q Absolutely. Who does that for you all?

21 A Which?

22 Q On this case, do you know who did the ballistics?

23 A I think it was Agent Vello Paavel.

24 Q Paavel, right?

25 A Yes, sir.

1 Q And he would be able to take the bullets taken out of
2 the wall and match it to a specific gun to tell us
3 who -- if that gun was given by a specific officer,
4 we ought to be able to know who fired what round,
5 correct?

6 A Let me be clear. I'm not an expert in firearms
7 examinations, but I do know that it depends on the
8 condition of the projectile.

9 Q Right. He may be able to say inconclusive?

10 A Right.

11 Q Can't determine?

12 A That's correct.

13 Q But sometimes they can match them up?

14 A Yes, sir.

15 Q And also he'll be able to look at those casings where
16 you found them, right?

17 A Right.

18 Q And as you said, it doesn't mean necessarily that's
19 where they were standing. They may have been kicked
20 around. But it will give you some general idea.

21 Correct?

22 A Yes, sir.

23 Q Okay. And match it up to a gun?

24 A Correct. Possibly. Yes, sir.

25 Q Now, the -- and you do crime scene analysis. Is that

1 correct?

2 A That's correct.

3 Q Did you receive or take statements from any of the
4 officers in this case?

5 A No, sir. Statements do not fall under my
6 responsibility as a crime scene agent.

7 Q Did you -- were you able -- were you asked to in any
8 way do analysis of whether the officers' statements
9 were consistent with the physical evidence?

10 A No, sir.

11 Q Who does that?

12 A I'm not sure, sir.

13 Q Somebody above your pay grade?

14 A Possibly. Yes, sir.

15 Q So to your knowledge has anybody ever assessed the
16 physical evidence you gathered; that is, the
17 trajectory evidence, the projectiles matched the gun
18 and determine whether or not the stories told by the
19 officers are consistent with the physical evidence?

20 A I can't answer that question.

21 Q And you were not asked to do any measurements. That
22 is, you can't tell me how far it is from the door to
23 that hallway to the back bedroom to the back bed
24 wall?

25 A No, sir. We did not take any measurements.

1 Q Do you normally?

2 A It depends. Some cases we do; some we don't.

3 Q And why didn't you do it here?

4 A Why did I not do it here?

5 Q Yes, sir.

6 A No particular reason. Just there was nothing in my
7 mind at the time that would question why we would
8 need any type of measurements.

9 Q Why?

10 A Why not?

11 Q Well, --

12 A Well, because my major concern was to get a general
13 idea of where the officers were standing. And again,
14 doing the trajectories, like we discussed, I'm not
15 able to tell you exactly how far they are. So,
16 doing -- what we were there for, which was
17 investigating the officer-involved shooting, I
18 believed at the time that they were not -- there was
19 no need, no reason to take measurements.

20 Q And you said you found blood on the floor. Where was
21 the blood?

22 A There were several drops of blood in the dining area
23 next to the hallway. There was also several drops of
24 blood, or actually a small pool of blood, in Mr.
25 Herring's bedroom. And there were several drops of

1 blood into the bathroom in Mr. Herring's room.

2 Q Now, those drops of blood, did you document where you

3 saw those?

4 A Yes, sir.

5 Q And where were they?

6 A Which drops of blood are you referring to?

7 Q Well, forget -- the bedroom. Where were they in the

8 bedroom?

9 A The bedroom was -- if you're looking at the bed, it

10 would be on the right-hand side of the bed near a

11 small table.

12 Q Okay. Anywhere else in the bedroom?

13 A Inside there were small drops of blood. And going

14 from the bedroom into the bathroom there were also

15 drops of blood.

16 Q Anywhere else?

17 A Not to my knowledge. But as far as documentation,

18 those would have been documented in our photographs.

19 Q But you remember no other blood anywhere else?

20 A Not to my knowledge. No, sir.

21 Q There's some blood out by the dining room?

22 A Right.

23 Q And then there's some blood right next to the bed?

24 A Yes, sir.

25 Q And then there's some blood in the bathroom which is

1 right off -- the door is actually right next to the
2 bed?

3 A Yes, sir.

4 Q Beg the Court's indulgence one moment. Give me one
5 second, please. The projectiles and shell casings,
6 who did you turn those over to?

7 A Those were turned over to our evidence log-in who
8 logged them in to be transferred to the firearms
9 department.

10 Q And as I understand it -- let me make sure before I
11 sit down -- you found -- you show 15 trajectories,
12 correct?

13 A That's correct.

14 Q Ten going from the front door to the back. Not to
15 the bedroom. But ten back?

16 A Right.

17 Q And then five from the dining room corner in the
18 direction of the master bedroom?

19 A Now we're talking just able to show trajectories,
20 correct?

21 Q Right.

22 A That's correct. Five.

23 Q And then you found two projectiles above the bed in
24 the master bedroom that you didn't mark trajectory on
25 because you couldn't determine them?

1 A Right. And one was actually a through-and-through.
2 So we only found one projectile.

3 Q Thank you, sir.

4 MR. MEADORS: I won't be that long. Thank you.
5 May it please the Court?

6 THE COURT: Take your time.

7 REDIRECT EXAMINATION

8 BY MR. MEADORS

9 Q So how many shots, if any, were you able to determine
10 went back from the hallway toward the bedroom?

11 A From the hallway toward the bedroom were seven shots.

12 Q Five you were showing through trajectory and two with
13 holes in the wall, correct?

14 A That's correct.

15 Q And I think Mr. Harpootlian asked you; the five you
16 were able to show with trajectories, could you tell
17 where that shot was fired from?

18 A I'm sorry? Repeat the question.

19 Q Do you know exactly where the shot was fired from
20 when you did trajectory?

21 A No, sir. It's just there to give us a general idea.

22 Q Of where the shot came from?

23 A You're right.

24 Q Do you know where the officer's hand was by doing
25 that?

1 A No, sir.

2 Q Could you ever tell that?

3 A No, sir.

4 Q Would a video of that shot help you show that?

5 A Yes, sir. If we had a video of the officers actually
6 firing.

7 Q As a matter of fact, if you had a video of the inside
8 of this residence when these shots were fired, you
9 might not have done trajectory, would you?

10 A It's possible. But it depends on several factors.
11 It depends on if we have a video of the officers
12 actually firing, where the bullet struck; you know,
13 other factors.

14 Q And have you got -- Mr. Harpootlian said that he had
15 your diagram earlier when he was asking you about it
16 and asked if you'd given the pictures to us.
17 Obviously, as you know through discovery, he's got
18 all your pictures, too. Right?

19 A Yes, sir.

20 Q Have you got all your pictures up here with you?

21 A I do not; no, sir.

22 Q Are they back in the office?

23 A Yes, sir.

24 Q Where are they in the office?

25 A Sitting on your desk.

1 **MR. HARPOOTLIAN:** John, you have the ones I
2 didn't have if you want to save some time.

3 **MR. MEADORS:** Will you go get all his pictures
4 on my desk, please? They're in two folders.

5 **MR. HARPOOTLIAN:** They're not here in the
6 courtroom?

7 **MR. MEADORS:** No. They're coming right now. I
8 will have time. I do have some of them right here,
9 yes.

10 **Q** All of these are pictures you took?

11 **A** Pictures either I took or Agent Melissa Skipper took
12 under my direction.

13 (WHEREUPON, State's Exhibit No. 69 is marked for
14 identification.)

15 (WHEREUPON, State's Exhibit No. 70 is marked for
16 identification.)

17 (WHEREUPON, State's Exhibit No. 71 is marked for
18 identification.)

19 (WHEREUPON, State's Exhibit No. 72 is marked for
20 identification.)

21 (WHEREUPON, State's Exhibit No. 73 is marked for
22 identification.)

23 (WHEREUPON, State's Exhibit No. 74 is marked for
24 identification.)

25

1 (WHEREUPON, State's Exhibit No. 75 is marked for
2 identification.)

3 Q And are these be pictures that SLED took of the
4 residence of Dewain Herring?

5 A Do you want me to go through?

6 Q Do you have SLED marks on them?

7 A Yes, sir. Each picture is marked with the SLED lab
8 number.

9 MR. HARPOOTLIAN: And no objection to all of
10 them coming in, Your Honor.

11 MR. MEADORS: That's what we want.

12 MR. HARPOOTLIAN: Absolutely.

13 Q Bottom line, if it's got your raised SLED on it,
14 they're yours if they say SLED?

15 A That's correct.

16 MR. MEADORS: Your Honor, and I've talked with
17 the court reporter. For these purposes, we're just
18 going to bind these up and mark them one and we'll go
19 back later and separate them. For the record now,
20 they are --

21 THE COURT: Have you seen these?

22 MR. MEADORS: He's had them all; yes, sir. He
23 said without objection.

24 THE COURT: Just let me ask him the questions,
25 please. Have you seen these?

1 **MR. HARPOOTLIAN:** If they're the ones that SLED
2 gave me, yes. I assume Mr. Meadors would not slip
3 one in.

4 **MR. MEADORS:** I would not try to pull one over
5 on Mr. Harpootlian.

6 **THE COURT:** They're relevant to this case? Mr.
7 Harpootlian.

8 **MR. HARPOOTLIAN:** Sir?

9 **THE COURT:** And, Mr. Meadors, are they relevant
10 to this case?

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

12 **MR. HARPOOTLIAN:** Well, they're pictures of the
13 Alexander Circle.

14 **MR. MEADORS:** Are they relevant in this case or
15 Chastity's, Your Honor?

16 **THE COURT:** Yes or no?

17 **MR. MEADORS:** They're the same pictures he
18 showed.

19 **MR. HARPOOTLIAN:** Yes. I think. Let me see
20 them. I don't trust you.

21 **MR. MEADORS:** They're all pictures. Your Honor,
22 to answer, they'd only be relevant to the pointing
23 and presenting charge. But yes as to that.

24 **MR. HARPOOTLIAN:** Your Honor, a bunch of these
25 pictures are of a personal nature. They have no

1 relevance whatsoever to this case. I'll be happy to
2 go through with him and pull out the ones that aren't
3 relevant.

4 MR. MEADORS: That's fine.

5 MR. HARPOOTLIAN: The bathroom and the family
6 pictures.

7 THE COURT: You know, here is the thing,
8 gentlemen.

9 MR. HARPOOTLIAN: Sir?

10 THE COURT: Whether these are duplicative, a
11 waste of time or irrelevant I want some information.
12 I'm not going to flood this jury with 6 or 700
13 pictures that have little or nothing to do with this
14 case.

15 (Whereupon, a bench conference is had)

16 THE COURT: Needless presentation and cumulative
17 evidence.

18 MR. HARPOOTLIAN: Sir?

19 THE COURT: I said these are --

20 MR. MEADORS: Your Honor, we have --

21 THE COURT: -- needless presentation and
22 cumulative evidence.

23 MR. HARPOOTLIAN: Yes, sir. I would object to
24 any of these that are cumulative and, Your Honor,
25 note our objection.

1 **THE COURT:** I understand.

2 **MR. MEADORS:** Your Honor, we've marked these for
3 76 for I.D. at this time.

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

5 (WHEREUPON, State's Exhibit No. 76 is marked for
6 identification.)

7 **Q** Now, look at State's 75, please. I don't know if Mr.
8 Harpootlian entered this one or not. What's that?

9 **A** That is the nightstand next to what we believe to be
10 Mr. Herring's bed with an open drawer.

11 **Q** When you looked at it, was it open when you came in?

12 **A** It was. Yes, sir.

13 **Q** And that was State's 75 if I didn't say it. I can't
14 remember. State's 69 may be one of the other
15 pictures he has. Based on this trajectory, it's
16 green. Is it fair to say that green is going toward
17 the bedroom?

18 **A** Yes, sir. In that general direction.

19 **Q** And that's all you can show with trajectory, right?

20 **A** That's correct.

21 **Q** How many greens in the bedroom do you have?

22 **A** Five.

23 **Q** How many other shots in the wall do you have that you
24 didn't do trajectory?

25 **A** Two additional.

1 Q And all the rest of them are coming back toward the
2 other two officers who were shooting at Mr. Herring?

3 A Yes, sir.

4 Q Is that the bottom line?

5 A That's correct.

6 MR. HARPOOTLIAN: Objection. He doesn't know
7 where the other two officers were. Does he?

8 THE COURT: I'm going to allow it. Go ahead.

9 MR. HARPOOTLIAN: And leading.

10 THE COURT: Yes, sir. Don't lead your witness.

11 Q And this, State's 70 -- sorry, Judge -- shows the
12 shots based on your -- or does it show the shots
13 going toward the bedroom and back toward this way?

14 A It shows the shots going towards the bedroom and the
15 shots coming from the front door leading to that back
16 room.

17 Q State's 72, what is that?

18 A This is a photograph, what appears to be -- what we
19 believe to be; excuse me -- Mr. Herring's bed.
20 That's the right-hand side as you're walking into the
21 room. Also a pool of blood next to a small dresser.

22 MR. MEADORS: And, Your Honor, these are State's
23 75 -- 69, 70, 71, 72, 73, 74, 75, I believe without
24 objection.

25 MR. HARPOOTLIAN: Without objection.

1 (WHEREUPON, State's Exhibit No. 69 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 70 is admitted
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 71 is admitted
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 72 is admitted
8 into evidence.)

9 (WHEREUPON, State's Exhibit No. 73 is admitted
10 into evidence.)

11 (WHEREUPON, State's Exhibit No. 74 is admitted
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 75 is admitted
14 into evidence.)

15 Q Is the trajectory you show on his exhibits, our
16 exhibits; from the hallway back toward the room, is
17 that consistent with somebody firing from the hallway
18 into the bedroom?

19 A That's consistent. Yes, sir.

20 Q And is the hole in the wall in the bedroom, CSI,
21 crime scene investigation or common sense consistent
22 with a shot that went through that wall?

23 MR. HARPOOTLIAN: I'm sorry. I didn't hear him.
24 What did you say?

25 Q Is it consistent with a bullet coming and going into

1 that wall from the dining -- from the hallway?

2 **MR. HARPOOTLIAN:** Objection, Your Honor. We've
3 got no trajectory on that. That's the one thing he's
4 testified to. He did not -- he was not able to
5 determine trajectory.

6 **Q** There's a hole in the wall?

7 **A** Yes, sir.

8 **Q** Which way did it come from?

9 **A** Again, I --

10 **Q** Did it come from outside?

11 **A** No, sir. It came from inside.

12 **Q** Did it come from this way?

13 **A** Yes, sir.

14 **Q** He asked you about shell casings. Are you missing a
15 shell casing?

16 **A** Yes, sir, we are.

17 **Q** Where is that?

18 **A** That I cannot answer, sir. Again, once shell casings
19 are on the ground, they can go in a number of
20 different directions. We actually found one shell
21 casing inside a small can or a trashcan. Others
22 typically will get kicked around. Sometimes they'll
23 end up in the bottom of people's boots and we'll
24 never see them again.

25 **Q** And if a shell casing is on a wooden floor, could it

1 move? Could it be kicked?

2 A Absolutely.

3 MR. HARPOOTLIAN: I can't see that. What does
4 it say?

5 Q The address that you were doing this crime scene
6 investigation on, was that 3722 River Drive?

7 A No, sir.

8 Q It was not?

9 A No, sir.

10 Q What was the address of the crime scene you were
11 doing, investigation you were doing?

12 A Do you mind if I refer to my notes?

13 Q Yes, sir. To help you out, was it 460 Alexander
14 Circle?

15 A That's correct.

16 Q What did your investigation do, Investigator? What
17 part of your investigation had anything to do with
18 the murder of John Johnson at 3722 River Drive?

19 MR. HARPOOTLIAN: Please, Your Honor, I've got
20 an objection.

21 Q What part of it?

22 THE COURT: Overruled. You raised the issue.

23 MR. HARPOOTLIAN: Yes, sir.

24 Q What part of your investigation had anything to do
25 with John Johnson's death at 3722 River Drive?

1 A Nothing.

2 Q Nothing. And that's all we have.

3 RECROSS EXAMINATION

4 BY MR. HARFOOTLIAN

5 Q Just one more question, Officer. I'm going to try
6 not to yell. I'm going to try to keep it quiet here.
7 When you took this picture or had this picture taken,
8 looking down the hall, show me the nightstand. Is it
9 in the picture or out of the picture?

10 A The nightstand is in the picture.

11 Q Where?

12 A In this area.

13 Q Just to the edge of it?

14 A Yes, sir.

15 Q So, looking down from the hall, you can't really see
16 the whole nightstand, can you?

17 A No, sir. From the angle that picture is taken; no,
18 sir.

19 Q Well, that angle is down from the end of the hall?

20 A Right.

21 Q That's what you see?

22 A Right.

23 Q If you're not -- if you're -- and if you're further
24 back to the dining room, you wouldn't even be able to
25 see that, would you?

1 A That's correct.

2 Q You can't really see down that hall into his bedroom
3 from back by that dining room post, can you?

4 A I don't recall, sir, if you can see more than you can
5 see there or the same amount.

6 Q You can't see any more than that?

7 A Right.

8 Q The further back you go, it's going to be less?

9 A Right.

10 Q And less and less. The focus of the fire, where the
11 officers were firing in this case, was back to that
12 hall, not to the bedroom. Isn't that correct? Ten
13 shots into the hall, right?

14 MR. MEADORS: Objection. Speculation.

15 MR. HARPOOTLIAN: I'm sorry. He's the expert.

16 THE COURT: I'm going to let him testify.

17 MR. HARPOOTLIAN: Thank you.

18 THE COURT: If he knows.

19 Q The focus, ten shots fired into the hall, not towards
20 the bedroom, right?

21 A Right. There were ten shots fired from the general
22 area of the front door into -- you know, through the
23 wall through the door to the hall.

24 Q And if somebody had been in that hall, based on the
25 pattern you saw, they'd be dead or wounded?

1 **A** That's possible. Yes, sir.

2 **Q** You want to look at these trajectories again? You
3 think somebody could have survived that in that hall
4 area?

5 **A** I can't answer that, sir.

6 **Q** Okay. And then there are seven shots, five of which
7 you have trajectories on and two you don't, that come
8 back from around the dining room, around that pole in
9 the dining room?

10 **A** Right. Yes, sir.

11 **Q** That's all I have.

12 **THE COURT:** All right. Thank you very much.
13 You may come down.

14 **WITNESS:** Thank you.

15 **THE COURT:** You're excused.

16 **WITNESS:** Thank you, sir.

17 **THE COURT:** Any objection?

18 **MR. HARPOOTLIAN:** No, sir.

19 **THE COURT:** All right, ladies and gentlemen of
20 the jury. That will conclude our testimony for this
21 week. I think it's time for a break, in which case
22 we'll resume on Monday.

23 Now, it's my understanding that a member of the
24 jury, 149, had plans that can't be changed. And
25 we're going to have to excuse him from the remainder

1 of the trial. Mr. 149, you're going to be excused
2 for the remainder of this trial. Before you leave I
3 want to thank you for your service this week. I know
4 it's been a long week. And we wish you could stay
5 with us, but I understand your situation. And I'm
6 going to relieve you now of further responsibility in
7 this case.

8 Pursuant to Section 14-7-1340, the law requires
9 when a juror is discharged that the court draw the
10 name of one of the alternates, if there be more than
11 one, by ballot to serve in the place of such
12 discharged juror throughout the remainder of the
13 proceedings. And I have put the names of the two
14 alternates in a cup and folded them up. I'm going to
15 ask the Clerk of Court if she will at this time draw
16 the name of the alternate juror who will take
17 Mr. 149's place and serve throughout the remainder of
18 the trial. And read it to the court, please. The
19 number. The number. Is the number on there?

20 **THE CLERK:** No, sir.

21 **THE COURT:** Oh.

22 **THE CLERK:** Number 192.

23 **THE COURT:** All right. Mr. 192, you will serve
24 with the jury for the remainder of the trial. Thank
25 you very much. And, Juror 106, you'd better stay

1 with us. All right, ladies and gentlemen, we ask you
2 to again return to the jury room at 9:30. There may
3 be some preliminary matters next week before we
4 actually get started. 9:30.

5 **MR. HARPOOTLIAN:** Your Honor, may we approach
6 before you dismiss the jury?

7 **THE COURT:** Yeah. Let me talk about the
8 schedule here.

9 (Whereupon, a bench conference is had)

10 **THE COURT:** All right. Again, ladies and
11 gentlemen, I'll ask you to not discuss the case with
12 anyone else over the weekend or among yourselves when
13 you return to the jury room. I also caution you
14 about press reports, media reports of this trial, ask
15 you to avoid them at all costs.

16 And let me do -- Mr. 149, I want to give you
17 some final instructions before you leave. I know
18 where you're heading, but I'd like to talk with you
19 just a minute before you do leave.

20 All right. We'll stand adjourned until 9:30
21 Monday morning, at which time we'll recommence the
22 trial. All right. We have work -- those of you who
23 need -- clerk, go ahead. The clerk, anybody that
24 needs work excuses.

25 (Jury out at 4:08 p.m.)

1 **THE COURT:** All right. We'll stand at ease
2 until 9:30.

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

4 **THE COURT:** I will be available for anything
5 that you need. Any housekeeping matters that need
6 Monday morning, I'll be available.

7 (Whereupon, the proceedings are concluded for
8 the day, to be reconvened Monday morning)

Monday, May 14, 2007

(WHEREUPON, State's Exhibit No. 77 is marked for identification.)

(WHEREUPON, State's Exhibit No. 78 is marked for identification.)

(WHEREUPON, State's Exhibit No. 79 is marked for identification.)

(WHEREUPON, State's Exhibit No. 80 is marked for identification.)

(WHEREUPON, State's Exhibit No. 81 is marked for identification.)

(WHEREUPON, State's Exhibit No. 82 is marked for identification.)

(WHEREUPON, State's Exhibit No. 83 is marked for identification.)

THE COURT: Is the State ready to proceed?

MR. GIESE: The State's ready.

THE COURT: Defense ready to proceed?

MR. HARPOOTLIAN: Yes, sir. Your Honor, just logistically, the State believes it will take most of the day to finish its case?

MR. MEADORS: Yes, sir.

MR. HARPOOTLIAN: Because I've got some schedules to deal with. And I understand Judge Jacobs died over the weekend. And his funeral has

1 not been scheduled yet, but I assume Your Honor will
2 be going to it.

3 **THE COURT:** I will attempt to.

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

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

6 (Jury in at 9:38 a.m.)

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

8 **THE COURT:** Thank you, sir. Good morning,
9 ladies and gentlemen. We are now -- I hope you had a
10 pleasant weekend. I hope you had a pleasant Mother's
11 Day. We're now ready to continue with the trial.
12 Solicitor, call your next witness.

13 **MR. GIESE:** May it please the Court, Your Honor.
14 The State calls Lieutenant Lawrence.

15 **DAVID LAWRENCE,** after being duly sworn,
16 testifies as follows:

17 **THE CLERK:** Please have a seat. State your full
18 name for the record.

19 **WITNESS:** David Lawrence, L-A-W-R-E-N-C-E.

20 **DIRECT EXAMINATION**

21 **BY MR. GIESE**

22 **Q** Lieutenant Lawrence, where are you employed?

23 **A** For the State Law Enforcement Division, commonly
24 referred to as SLED.

25 **Q** How long have you been with SLED?

1 **A** I've been with SLED slightly over eight years.

2 **Q** Now, if you would, tell us a little bit, something
3 about yourself. Are you from Columbia?

4 **A** I grew up in Florence County. I was formerly
5 employed with the Johnsonville Police Department,
6 attended the University of South Carolina. I
7 graduated in 1981 with a Bachelor of Science degree
8 in criminal justice. I spent approximately thirteen
9 and a half years with the Richland County Sheriff's
10 Department.

11 And I've also conducted investigation in the
12 private sector as well as with Blue Cross and Blue
13 Shield fraud investigations. I am certified through
14 the South Carolina Criminal Justice Academy as a
15 police officer. I have attended numerous
16 investigative and detective schools through the
17 academy and other accredited agencies.

18 **Q** So how many years have you been in law enforcement?

19 **A** 21 years and a few months.

20 **Q** And with SLED the last --

21 **A** Eight.

22 **Q** -- eight?

23 **A** That's correct.

24 **Q** Okay. And your role at SLED is what?

25 **A** I originally came with SLED as a special agent

1 assigned to the State Grand Jury. I was with the
2 Midlands region of our investigative services during
3 the time of this incident. And I'm now presently a
4 lieutenant in our special victims unit, the
5 vulnerable adult investigation unit with SLED.

6 Q So you said when this case arose you were with the
7 Midlands division?

8 A That is correct.

9 Q And what is that?

10 A It is investigative services. We have our state
11 divided into four regions. The Midlands region is
12 geographically counties within the Columbia,
13 Richland, Lexington area. And it is -- we conduct
14 various types of criminal investigations to any
15 degree.

16 Q Now, if you would, tell the jury what your first
17 contact with this case was?

18 A I received a call from Captain Paul Grant who is the
19 captain of the Midlands region early Sunday morning
20 the day of January 29th, 2006 regarding an
21 officer-involved shooting with the Richland County
22 Sheriff's Department deputies and a private citizen
23 within Richland County and was asked to respond to
24 460 Alexander Circle, Columbia, South Carolina, in
25 Richland County.

1 Q Now, when you say officer-involved shooting, you
2 don't mean an officer is actually shot. What do you
3 mean by that?

4 A Historically and very routinely with a local law
5 enforcement agency that an officer has been involved
6 in a shooting, whether -- regardless of who has done
7 the shooting, if they're exactly involved in a
8 shooting with a private citizen, it is routinely --
9 SLED is asked to conduct an investigation of that
10 incident.

11 Q And that's why you were out there that morning?

12 A That's correct.

13 Q Okay. Tell the jury what you did after you got the
14 call?

15 A I got the call. I proceeded to that location at 460
16 Alexander Circle. At that time I was -- Captain Paul
17 Grant from the Midlands came upon the scene. And I
18 first came in contact with Deputy Chief David Wilson
19 of the Richland County Sheriff's Department who
20 provided a briefing of the incident that his officers
21 were involved in. And at that time I received some
22 basic information regarding that as well as why the
23 officers were at that location, that residence of 460
24 Alexander Circle to begin with.

25 Q So you knew at that point when you were there that

1 they had a legal search warrant that they were
2 serving at the location?

3 A Yeah. I was advised of such and was shown a copy of
4 a search warrant that the Sheriff's Office had
5 obtained pursuant to an incident that had occurred
6 prior to this they were already investigating.

7 Q Now, at this point you're at SLED and you all's focus
8 is on 460 Alexander Circle. Is that right?

9 A That is correct.

10 Q The murder that had taken place at Chastity's you
11 were not involved with?

12 A We were not.

13 Q Now, once you found out the basic information and
14 that the Sheriff's Department had a search warrant,
15 that they were serving at the time of the shootings,
16 what did you do?

17 A Trying to obtain as much information, I did take a
18 vision, a look at the house, crime scene tape. The
19 Crime Scene - Do Not Enter yellow and black tape was
20 already up by the Sheriff's Department during that
21 time.

22 I went through the doorway of the residence.
23 And I observed visually there were several holes in
24 the wall. I did observe some blood that was on the
25 floor. I tried to get a basic idea of what the scene

1 looked like without trying to do any further
2 contamination. You try to eliminate that to every
3 degree that you can to begin with. And it was at
4 that time that we were going to obtain -- that I was
5 going to obtain a search warrant for our crime scene
6 investigators to process that scene. And --

7 Q Explain that. Now, the Sheriff's Department had a
8 search warrant that they served?

9 A Correct.

10 Q But you felt SLED needed a search warrant. Is that
11 right?

12 A That's correct.

13 Q Explain to the jury why you do that?

14 A We do that, and really regardless of whether or not
15 the Sheriff's Office would have had one prior to
16 their arrival. Which obviously in this case they did
17 have one. And we always -- I always have an interest
18 what caused the initial engagement between the local
19 Sheriff's Office officers and a private citizen with
20 a shooting.

21 But in this case; one, out of an abundance of
22 caution, before our crime scene officials go in and
23 conduct it, it is very routinely that we do obtain a
24 search warrant based upon some type of probable cause
25 before any processing is done due to the fact that

1 whatever evidence that you may come across, whether
2 it be incriminating or not to an individual, we
3 always try to obtain a search warrant. It is very
4 routinely, very common that we do that at a crime
5 scene.

6 Q And you did that in this case?

7 A Yes, we did.

8 Q And you obtained a search warrant?

9 A We did.

10 Q And explain to the jury how you did that briefly?

11 MR. HARPOOTLIAN: If it please, Your Honor, just
12 for the record, I would note previous objections
13 made. I understand your rulings on those you. But I
14 think under the new cases I need to note that for the
15 record. Thank you.

16 THE COURT: Yes. Thank you. Continue.

17 Q Please.

18 A I went to the Richland County Sheriff's Office. One
19 of the first things that we try to do in an
20 officer-involved shooting is actually talk to the
21 police officers that are involved. In this case I
22 wanted to try to go ahead and obtain the search
23 warrant for our crime scene investigation prior to
24 starting that.

25 I did go to the Sheriff's Office. I did review

1 a search warrant that they had obtained. I used a
2 computer there to type up the search warrant that
3 SLED was obtaining. I contacted the Richland County
4 magistrate that's on call. And it varies from county
5 to county. We deal with all 46 counties throughout
6 the State and 13 within the Midlands region. I
7 contact the magistrate on call which was Magistrate
8 McDuffie. She was at the Richland County bond Court
9 during that time. She was conducting some bond
10 hearings.

11 And she explained to me about the protocol they
12 go through with. I do recall that she was conducting
13 bond court and had several other appointments that
14 morning and she seemed to be -- had a lot going on
15 that morning. So she stated that I would fill the
16 warrant out, I would sign it, talk to her about it on
17 the phone, fax it to that location where she was
18 which was at the bond court. She reviewed it.

19 We talked again on the telephone and then she
20 faxed it back to the Sheriff's Office. And at that
21 time since I actually signed the warrant, I gave it
22 to Agent LaRosa to make sure that someone at the
23 scene, at , had the original and
24 a copy.

25 Q So at that point the search warrant goes out to..

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A That's correct.

Q And Agent Coonfield who testified here Friday at that time would have executed or been involved in the execution of the search?

A That's correct.

Q Now, once you have gotten this search warrant, did you go back to Alexander Circle? I think you testified you sent the search warrant out there?

A Yes, we did.

Q What, if anything, did you do at that time?

A At that time -- and just prior to this we tried to orally speak to the officers involved to try to get, you know, somewhat of a basic idea of actually what took place. And of course we always usually obtain written statements from the officers as well, too.

On this particular morning I observed some officers from the Richland County Sheriff's Department transport a subject in which I later found out to be Mr. Dewain Herring in a marked unit. He was in handcuffs. He had a bandage on his upper left arm. And I was informed at that time that was the subject that the Richland County Sheriff's Department officers had engaged in the shooting incident with.

Q So at this point you are still at the Sheriff's

1 Department?

2 A Correct.

3 Q You see the defendant, Dewain Herring, being brought
4 into the Sheriff's Department?

5 A Correct.

6 Q Now, what do you know about Dewain Herring at that
7 point?

8 A Well, at that point just by my observations -- I was
9 told obviously at the scene by Chief Wilson that that
10 was the name of the subject and the residence of that
11 location at . . . And of course I just -- just due to
12 the fact, I mean, I just knew that Mr. Herring was an
13 attorney here in town and knew him somewhat,
14 certainly by face anyway, and there was no question,
15 no doubt that he was under arrest, not by SLED but by
16 obviously the Richland County Sheriff's Department.

17 Q And pursuant to your investigation of the
18 officer-involved shooting at .
19 would it be routine for you to interview Mr. Herring
20 at that point?

21 A Yes, it would be.

22 Q And why is that?

23 A Well, he was the individual that was involved. And
24 we obviously try to talk to everybody involved. I
25 wanted to try to just speak with him, you know, right

1 away. He was there at the Sheriff's Office. And we
2 all wanted -- I wanted to take that opportunity at
3 that time to see if he wanted to talk and was willing
4 to talk.

5 Q And did you do that?

6 A Yes, I did.

7 Q Where did that take place?

8 A It took place in a conference room on the floor that
9 investigations is on at the Richland County Sheriff's
10 Department. He was placed inside of a conference
11 room. And someone from the Sheriff's Office -- I was
12 advised at that time by the deputy that brought him
13 in that he had been to the hospital and had been
14 treated and released. When he came to the Sheriff's
15 Office -- and I don't know who from the Sheriff's
16 Office but apparently someone from the Sheriff's
17 Office had contacted Richland County Emergency
18 Medical Services, EMS, and an ambulance came to the
19 Sheriff's Office. And some EMT's or paramedics
20 tended to Mr. Herring again by applying more bandages
21 or either re-bandaging his wound that he had on his
22 upper left arm.

23 Q So you had an opportunity to talk to Mr. Herring at
24 that time?

25 A I did. It was approximately about 9:30 a.m. at that

1 time that myself and Agent Paul LaRosa interviewed
2 Mr. Herring at the Sheriff's Office.

3 Q I hand you State's Exhibit No. 1 marked for
4 identification and ask you if you can identify it?

5 A I can. This is a standard State Law Enforcement
6 Division Miranda rights form.

7 Q Now, you say it's a Miranda rights form.

8 MR. HARPOOTLIAN: Your Honor, I would like to
9 incorporate all previously made objections, let them
10 run, rather than me having to object to any exhibit
11 as to any of the State's -- any of the search.

12 THE COURT: Yes, sir.

13 MR. HARPOOTLIAN: Will Your Honor allow me to do
14 that nunc pro tunc?

15 THE COURT: Yes, sir. Yes, sir.

16 MR. HARPOOTLIAN: Thank you, Your Honor.

17 THE COURT: They were all previously overruled.

18 Q I hand you what's marked State's Exhibit for
19 identification 77. Is that a fair and accurate
20 depiction of the statement or of the advice of
21 rights?

22 A It appears to be an enlarged model.

23 Q Thank you. Now, you gave the defendant his advice of
24 rights?

25 A I did.

1 Q And why did you do that if you were interviewing him
2 because of the officer-involved shooting?

3 A He was -- like I said, he was in handcuffs. I
4 observed him getting out of a marked unit. And
5 pursuant to the investigation that the Sheriff's
6 Department was conducting of the incident that
7 occurred prior to this, he was under arrest; once
8 again, not by us. But still, out of an abundance of
9 caution, as well as the fact that he is in custody at
10 that time, he was not free to leave. Due to the fact
11 he was in custody, I was going to advise him of his
12 rights. Regardless of whether he may be a
13 victim/witness or a suspect in our case, he was still
14 under arrest, so I did advise him of his rights.

15 Q If you could, Lieutenant, speak up a little bit for
16 Mr. Harpootlian.

17 MR. HARPOOTLIAN: Maybe pull the microphone a
18 little bit closer. Thank you.

19 Q Now, Lieutenant, if you would, go over the advice of
20 rights exactly how you went over it with Mr. Herring?

21 A We came in contact with Mr. Herring at approximately
22 9:30 that morning. I discussed and I explained to
23 Mr. Herring prior to the advice of rights why SLED
24 was contacted and we were contacted by the Richland
25 County Sheriff's Department to investigate the

1 officer-involved shooting that had occurred at his
2 residence and that we wanted to get his obviously
3 side of the story. We wanted to get what he had to
4 say about it and I wanted to speak to him regarding
5 that.

6 So we chatted for approximately ten minutes or
7 so even before, not about the case itself but chatted
8 and tried to explain to him to make sure that he
9 didn't want to speak with us. He said he didn't want
10 to, he didn't want to do it right then. And then I
11 told him once again that I did want to advise him of
12 his rights because he was obviously under arrest, not
13 by us again but by someone else.

14 Q Now, this ten minutes that you talked to him, could
15 you understand what he was saying?

16 A I could understand what he was saying.

17 Q Did he answer your questions appropriately?

18 A He did.

19 Q And why did you have the ten-minute conversation?

20 A Well, I wanted to try to -- well, obviously he was
21 shot. He had a wound. He had been, you know, to the
22 hospital. However though, he had been treated and
23 released. He had been re-examined by EMS personnel
24 at the Sheriff's Office. I wanted to speak with him
25 for a while just to make an observation, an assess

1 myself of someone to find out whether or not they
2 were capable of discussing this incident at that
3 time. And he stated that he did. So there was some
4 time period in there before we actually started
5 talking about the basics and the merits of what took
6 place at the time.

7 Q If you would, go over the rights exactly how you went
8 over with him?

9 A During his rights form -- and this is the actual form
10 that I have right here. This is an enlarged version
11 that you see right here. I state -- I always ask
12 them, folks, can they read and write and understand.
13 And of course Mr. Herring, you know, stated that he
14 did. And I told him that it's a standard advice of
15 rights form that I wanted to read to him or he could
16 read them to himself, you know, as well while I read
17 them aloud.

18 I ask him, as I go through each one, I gave him
19 a pen to initial beside each sentence. As you see
20 there, I filled out the place at RCSD as far as being
21 at the Richland County Sheriff's Department; the
22 date, January the 29th, '06 at 9:42 a.m.

23 It states that "Before we ask you any questions
24 you must understand your rights. You have the right
25 to remain silent. Anything you say can be used

1 against you in court as evidence against you. You
2 are entitled to talk to a lawyer now and to have him
3 present now or at any time during the questioning.
4 If you cannot afford an attorney, one will be
5 appointed for you without cost. If you decide to
6 answer questions now without a lawyer present, you
7 still have the right to stop answering at any time.
8 You also have the right to stop answering at any time
9 until you talk to a lawyer."

10 There's a question: "Do you understand these
11 rights?" The next question: "Do you wish to talk to
12 us at this time?"

13 Q Let me stop you there. You said that you had him
14 initial after each one of these?

15 A That's correct.

16 Q And looking at State's Exhibit marked for
17 identification 77, that would be over here?

18 A That is correct.

19 Q Each one of these is his initials?

20 A Yes, it is.

21 Q And what is this right here?

22 A It appears to be there is a -- as you can see,
23 there's two sentences within that area right there.
24 And he initialed that as well.

25 Q He initialed after the first sentence?

1 A Yeah. Between the two sentences.

2 Q And then: "Do you understand these rights?"

3 Initial. "Do you wish to talk to us at this time?"

4 And he initialed that?

5 A Correct.

6 Q After you asked him "do you wish to talk to us at
7 this time", what happened?

8 A Whenever they say that, we have the second part we
9 refer to as a waiver of rights. It states: "I have
10 read this statement of my rights and I understand
11 what my rights are. I am willing to talk now without
12 a lawyer present. I understand and I know what I am
13 doing. No promises or threats have been made to me
14 and no pressure or coercion of any kind has been used
15 against me."

16 At that time he signed his name, and I witnessed
17 it with my signature, and Agent LaRosa witnessed it
18 with his signature.

19 Q Did he appear at that time to understand his rights?

20 A Yes, he did.

21 Q And did he appear to you to waive those rights?

22 A Yes, he did.

23 Q Now, at this time have you promised him anything or
24 threatened him in any way to talk to you?

25 A No, sir.

1 Q Have you coerced him at all?

2 A No, sir.

3 Q Does he appear to be coherent?

4 A Yes, sir.

5 Q He is understanding you apparently because he's
6 answering questions properly back to you?

7 A I felt very comfortable that he understood the advice
8 of rights, as well as being aware of this proceeding
9 that we were about to take place.

10 MR. GIESE: Your Honor, at this time we'd offer
11 State's Exhibit No. 1 into evidence.

12 THE COURT: Subject to the defendant's previous
13 objections, it's admitted in evidence.

14 (WHEREUPON, State's Exhibit No. 1 is admitted
15 into evidence.)

16 Q Now, once you read him the rights, tell this jury
17 what happened?

18 A We asked Mr. Herring if he would to just explain to
19 us what took place at his residence at 460 Alexander
20 Circle. Just simply for a lack of a better term,
21 it's getting their side of the story. And it's very
22 open-ended, just please tell me what happened in your
23 own words. We did orally go through what Mr. Herring
24 stated what took place during that time. And then,
25 very commonly, I asked Mr. Herring can we take a

1 written statement of what he just told us. He agreed
2 to do so. And we went at that time, took a written
3 statement.

4 Q Now, this first statement that he makes, the oral
5 statement that Mr. Herring makes to you at that time,
6 you said it's a very open-ended question?

7 A It is.

8 Q And the question was what?

9 A Basically the question is just please tell me what
10 happened at your residence this morning about the
11 encounter, you know, with the Richland County
12 Sheriff's Department.

13 Q Now, in this oral statement, tell the jury what he
14 told you orally at that point?

15 A Well, during that time he had stated that he had went
16 to -- he was at home and he went to bed that Saturday
17 night which would have been the 28th, just prior to
18 that. He went to bed around 11:00. He stated he
19 went to sleep. He got awakened by loud banging at
20 the door. He got up out of his bed and walked down a
21 short hallway to the family room near the front door.

22 He said he saw four or five individuals coming
23 in the front door after they had kicked it in. He
24 stated he did not recognize them to be police
25 officers. He stated that they told him, Mr. Herring,

1 come out with your hands up. He asked them why.
2 They replied, Mr. Herring, come out with your hands
3 up. He said that the individuals then said Sheriff's
4 Office. Herring told them to speak up because he
5 could not hear them. He had estimated he was
6 approximately 12 to 15 feet away from the individuals
7 as they entered the front door.

8 He stated that the individuals started shooting
9 at that time and he got wounded by one of their
10 shots. He explained that he turned and went back
11 towards his bedroom to get a .357 Magnum Smith and
12 Wesson handgun from a nightstand beside his bed. He
13 said he got the handgun, turned towards his bedroom
14 door.

15 He said that he did not see any of the
16 individuals at this time because of all the smoke.
17 He stated that he did not believe that he fired the
18 weapon but he did recall that he cocked it and then
19 uncocked it. He also stated that he did not point
20 his weapon at anybody at this time.

21 He stated that he tried to call 911 by using his
22 home telephone but did not call it right. He went to
23 an adjoining bathroom and got his cellphone and
24 called 911. He spoke with a female who answered and
25 he told her that his name was Dewain Herring, where

1 he lived. He told her that there were a bunch of men
2 inside of his house and they said that they were with
3 the Sheriff's Office but he did not know. She
4 informed him that it was the Sheriff's Office at his
5 house, and then she put another person on the phone
6 that identified himself as a sergeant or a
7 supervisor.

8 During that conversation Herring stated that one
9 of the individuals inside of the house told him that
10 he was a sergeant. The person on the phone said that
11 it was the Sheriff's Office and they were there to
12 talk to him about an incident on River Drive.
13 Herring said that the conversation on the phone and
14 the conversation with the individual inside his house
15 went on for about 20 to 25 minutes.

16 Herring said that he laid his handgun on the bed
17 and held his cellphone in his right hand. He walked
18 out into the hallway and the officers told him to put
19 his hands down. He got down on the floor and the
20 officers handcuffed him. The officers set him in a
21 chair and got a towel for his bleeding arm. Herring
22 said that one thing that crossed his mind was all
23 those burglaries that had occurred in the area and he
24 thought that they were coming in with great force.

25 Q Now, once he had made this oral statement to you, you

1 said that at that point -- and is this standard
2 procedure -- you then want to try to get it in
3 writing?

4 A Yes. We always like to try to get a written
5 statement so there will be a clear understanding
6 about what was said and transcribed on the paper and
7 have the individual receive a copy of that at that
8 time.

9 Q And in this original oral statement, what time did
10 Mr. Herring say he went to bed that night?

11 A 11:00 p.m.

12 Q At his home?

13 A Correct.

14 Q And did you take a written statement from Mr.
15 Herring?

16 A I did.

17 Q I hand you what's been marked State's Exhibit No. 2
18 for identification. Can you identify that?

19 A This is a standard voluntary statement form that we
20 use at SLED. And this is actual -- the original
21 written statement that was obtained from Mr. Herring.

22 Q And tell the jury how you got a statement like that
23 or how this statement took place?

24 A This statement, after once again speaking with Mr.
25 Herring orally, there is, as you'll see, parts on the

1 statement that has: My name is Dewain Herring. My
2 address is , Columbia, South
3 Carolina. Date of birth which he is providing as
4 information to me, Social Security number:
5 Phone number: I
6 completed the 12th grade in school and I can read and
7 write.
8 Q Let me stop you there. Who's writing this down?
9 A I am.
10 Q And who is telling you what to do write down?
11 A Mr. Herring.
12 Q All right. Now, these three pages is the first
13 written statement you took from him?
14 A That's correct.
15 Q And did he sign all three pages?
16 A Yes, he did.
17 Q And who witnessed those signatures?
18 A I did, and Agent LaRosa.
19 Q Now, who is Agent LaRosa?
20 A He was actually the case agent on this case. And he
21 was another agent that was assigned to the Midlands
22 region during this time.
23 Q So he is in the room also?
24 A Yes, he is.
25 Q And he has also witnessed Mr. Herring's signature on

1 all three pages?

2 A Yes, sir.

3 MR. GIESE: We'd like to offer it at this time,
4 Your Honor.

5 THE COURT: Subject to the defendant's prior
6 objection, the document is admitted over the
7 objection.

8 (WHEREUPON, State's Exhibit No. 2 is admitted
9 into evidence.)

10 Q Now, you said that the Social Security number, the
11 phone number, the address, all that was information
12 that Mr. Herring gave you?

13 A That's correct.

14 Q So he was clearly coherent enough to give you all
15 that?

16 A Yes, sir.

17 Q Any doubt in your mind that he was coherent?

18 MR. HARFOOTLIAN: Objection, Your Honor.

19 THE COURT: Just his observation.

20 Q How did you observe him at that time?

21 A From my observation as we had been speaking either
22 prior to the advice of rights and after the advice of
23 rights, even through the oral conversation that we
24 were taking place, it appeared to be through my
25 observation that Mr. Herring was still aware of what

1 was being done and said by him and me and Agent
2 LaRosa.

3 Q Promise him anything, threaten him in any way to make
4 this statement?

5 A No, sir.

6 Q If you would, read the statement as he gave it to
7 you?

8 A At the beginning there's a Q. It's got my name,
9 Lawrence. A for answer is Herring.

10 Q What are those by that? What are those? What's over
11 the A and the B? Or the Q and the A. I'm sorry.

12 A Those are Ms. Herring's initials.

13 Q You saw him initial that?

14 A Yes, sir.

15 Q All right. If you would, please go.

16 A During this time -- and these statements can be
17 obtained either way, but sometimes it's the
18 individual himself writing them or the agent writing
19 them. It varies. Under these circumstances Mr.
20 Herring did have a set of handcuffs on that was in
21 front, and I asked him about, do you want me to write
22 it? And he said he did. And that's the reason why
23 that I wrote this statement.

24 The question: "Will you explain what took place
25 at your residence at 460 Alexander Circle this

1 morning?

2 "A Yes. I went to bed around 11 p.m. I went to
3 sleep and was awakened by banging, very loud banging,
4 at my front door. One person could not have made
5 that much banging. I got out of bed. I walked out
6 of the bedroom door and went down a very short
7 hallway to a family room towards the front door. I
8 saw four to five individuals coming in the front door
9 after they had kicked it in.

10 "Q Did you recognize the individuals to be
11 police officers?

12 "A No.

13 "Q Did they identify themselves at all to
14 you?

15 "A They said, 'Mr. Herring, come out with your
16 hands up.' I said why?

17 Q Stop for just a second. His signature down here?
18 Dewain Herring?

19 A That's correct.

20 Q And witnessed by you and LaRosa?

21 A That's correct.

22 Q Go ahead.

23 A Page 2. Continue?

24 Q And that's his initials up there?

25 A Yes, it is.

1 Q Okay. Please continue.

2 "A They said, 'Mr. Herring, get your hands up.'
3 Then they said, 'Sheriff's Office.' I told them to
4 speak up, I can't hear you. I was approximately 10
5 to 15 feet from them as" --

6 Q Is that 10 or 12?

7 A I'm sorry. "Approximately 12 to 15 feet from them as
8 they entered the front door from where I was standing
9 near the family room and hallway. I turned and
10 walked back towards my bedroom to get my .357 Magnum
11 six-cylinder handgun. I think it was a Smith and
12 Wesson.

13 "Q When were the first shots fired by anyone?

14 "A The officers fired while I was standing in the
15 hallway by the family room as I was facing them.
16 This was before I went towards my bedroom to get my
17 gun".

18 Q So he is at this time saying he did not have his gun
19 when he was shot at?

20 A That's correct.

21 Q Keep going.

22 "Q What happened next?

23 "A I went to the bedroom and got the .357 handgun
24 from the drawer of my nightstand directly by the bed.
25 I pulled the handgun and turned towards my bedroom

1 door.

2 "Q Did you see any of the officers as you
3 turned towards the bedroom door with the gun in
4 your hand?

5 "A No. All I saw was smoke.

6 "Q Did you fire your .357 handgun?

7 "A I don't believe that I did.

8 "Q Was the gun full of bullets?

9 "A Yes. I remember cocking the gun and then
10 uncocked it. I never pointed the gun at anybody.

11 "Q When did you get shot?

12 "A I got shot the first time they came in before I
13 went to the bedroom to get my handgun.

14 "Q What else did the officers say?

15 "A They told me to come out with my hands up.
16 They said that they had a warrant for my arrest.
17 They never told me what it was for. I asked them
18 why? What do you want with me? They said to come
19 out, they had a warrant.

20 "Q What next?

21 "A I backed up and got the home telephone and
22 tried to call 911. I did not call it right. I got
23 another phone from the bedroom."

24 This is page 3 continued.

25 "A I went to the bathroom and got my cellphone and

1 called 911 on it. I started talking to a female who
2 answered at 911. I told her my name was Dewain
3 Herring and where I lived. I told her there was a
4 bunch of men inside my house. They said that they
5 were from the Sheriff's Office, but I don't know.
6 She told me that it was the Sheriff's Office at my
7 house.

8 "She then put another person on the line that
9 identified himself as a sergeant or some supervisor.
10 The person inside my house said he was a sergeant and
11 told me to come out with my hands up. The person on
12 the phone said that it was the Sheriff's Office and
13 they wanted to talk to me about an incident on River
14 Drive. I told them that I don't know nothing about
15 River Drive.

16 "We kept talking back and forth. I then put my
17 gun on my bed. I had my cellphone in my right hand.
18 I had the speaker phone on. The officers told me to
19 put my hands down as I walked out of the bedroom. I
20 laid down on the floor and they handcuffed me. They
21 told me to sit in a chair because I was bleeding.
22 One of the officers got a towel from the utility room
23 and put it on my arm. I saw several gunshot holes in
24 the walls of my house. The ambulance transported me
25 to the hospital.

1 "Q How much time elapsed from your first
2 contact with the officers until they placed you
3 in handcuffs?

4 "A Maybe 30 minutes at the most. Maybe 20 to 25
5 minutes.

6 "Q Do you wish to add anything else?

7 "A They kicked the door in with great force and
8 vigor."

9 Q Let me stop you there. "Great force and vigor".
10 Whose words are those?

11 A Those were Mr. Herring's.

12 Q Have you ever seen that in a statement before?
13 Vigor?

14 A I can't say as I can recall at the moment.

15 Q Keep going.

16 "A "This really scared me that these people came
17 in my house shooting their guns. I got shot in my
18 left upper arm. I was totally shocked. One thing
19 that crossed my mind early on was all the burglaries
20 that have occurred in our area. I thought that they
21 were coming in with great force. I was dumbfounded."

22 Q And that was also signed by Mr. Herring?

23 A That's correct.

24 Q And witnessed by yourself and Paul LaRosa?

25 A That's correct.

1 Q Now, I notice on the first page of that statement
2 when you asked: "Will you explain what took place at
3 your residence at this morning";
4 in this written statement, just like the oral
5 statement that he had given you, he answered: "Yes.
6 I went to bed around 11 p.m." Correct?
7 A Correct.
8 Q At that time did you question him about that?
9 A No, sir.
10 Q Specifically, also on page 3 where he says, "The
11 person on the phone said" -- it was about a third of
12 the way down -- "The person on the phone said that it
13 was the Sheriff's Office and they wanted to talk to
14 me about an incident on River Drive. I told him that
15 I don't know nothing about River Drive." At that
16 point did you question him any about River Drive?
17 A No, I did not.
18 Q But at that point he is still denying that he was at
19 River Drive?
20 A According to him at this time, that's correct.
21 Q May I see it? Now, once you got that first written
22 statement; what, if anything, did you do?
23 A We obtained that written statement. And even
24 actually right before then we had asked Mr. Herring
25 if he wanted anything to eat or drink. He said he

1 only wanted some water. So Agent LaRosa went and got
2 him a cup of water. And at the conclusion of that I
3 asked him if he wanted anything else, and he wanted,
4 I think it was a Coke at that time. I went and
5 bought him a Coke and then brought it to him. And I
6 exited the room. And Captain Paul grant from SLED
7 and Chief Wilson were at the Sheriff's Office during
8 that time.

9 Q Why did you exit?

10 A At that time -- and Agent LaRosa stayed in the room
11 with him. At that time I knew right then that the
12 information that I had received from Chief Wilson at
13 the scene and from speaking to some of the officers
14 at the Sheriff's Office and what Mr. Herring was
15 telling me, there was obviously a conflict in that
16 information. And I wanted to find out further about
17 what next -- what step do we need to do next
18 regarding this because I was actually receiving, you
19 know, some conflicting information.

20 Q Meaning what?

21 A Meaning that at that time, and I informed Chief
22 Wilson that some of the information that I had
23 received in here was not exactly the way you had
24 explained to me at the scene at

25 Q You being Chief Wilson?

1 A Yes. Speaking to, yeah, Chief Wilson. So it was at
2 that time that he further elaborated about the
3 incident prior to this, and that being the shooting
4 that had taken place at Chastity's Nightclub on River
5 Drive. And at that time he had obtained some video
6 from that location. And I actually witnessed it in
7 his office on a TV at --

8 Q Let me stop you there. So you're saying the conflict
9 that you saw between what the police were saying and
10 what Mr. --

11 MR. HARPOOTLIAN: Objection, Your Honor.

12 MR. GIESE: I'm going to ask him --

13 MR. HARPOOTLIAN: Is that a question?

14 MR. GIESE: Yes.

15 MR. HARPOOTLIAN: I object. It's leading. I
16 apologize.

17 Q What, if anything, can you tell us about what the
18 conflict that you just testified about as to what the
19 police officers said and what Mr. Herring was saying
20 about what he did that night?

21 A Well, Chief Wilson and even Sergeant Linfert, being
22 one of the officers I spoke with at the Sheriff's
23 Office, stated he was a suspect --

24 MR. HARPOOTLIAN: Objection, Your Honor.

25 Hearsay.

- 1 Q What conflict did you find, without going into
2 exactly what Chief Wilson said? What had you
3 learned?
- 4 A Pursuant to our investigation up to that point, based
5 upon statements that we had received that Mr. Herring
6 stated that he didn't know anything about River
7 Drive. We were informed that's where the incident
8 had taken place. So that was my first -- prior to
9 talking with Chief Wilson for the second time, that
10 was some of the information that appeared to be in
11 conflict, as well as the officers stated that there
12 were no shots fired until after they observed Mr.
13 Herring with a handgun in his hand. That was another
14 thing that was in conflict.
- 15 Q Now, you testified earlier that at that point you had
16 looked at videotape. What was the videotape of?
- 17 A Chief Wilson stated it was a videotape that was
18 obtained from Chastity's Nightclub. And on the
19 videotape it was a photograph that appeared to be
20 that of Mr. Herring that was seen entering the club
21 on Saturday night, January the 28th, at 11:01 p.m.
- 22 Q Is that consistent with what -- consistent or
23 inconsistent with what Mr. Herring had said in his
24 oral statement and his written statement?
- 25 A That was inconsistent.

1 Q What did you do at that inconsistency?

2 A Well, I had at that time discussed with Captain Grant
3 that we do have this conflicting information and that
4 I wanted to go in further and continue the interview
5 with Mr. Herring and to see if there was further
6 information that he either did not tell me or
7 something I had missed. I wanted to make sure that
8 we were correct about exactly what did take place.
9 Because, I mean, we are actually -- you know, per se,
10 it is an investigation that is centered toward the
11 shooting by the police officers, you know, at that
12 time. So we made a decision that we would go back
13 and we would continue the interview with Mr. Herring.

14 Q Now, is Mr. LaRosa or Special Agent LaRosa still in
15 the room with him?

16 A That's correct.

17 Q Tell the jury what you did?

18 A I went back in the room and I explained to Mr.
19 Herring that I wanted to further discuss with him
20 about what took place on this particular night; we
21 are, you know, receiving some information that does
22 appear to be in conflict, and I want to give him a
23 further opportunity to explain what had actually
24 taken place. And that's what we began to do.

25 Q Now, at this time did you take an oral statement from

1 him, or did you just take a written statement from
2 him?

3 A I advised him that we did want to take -- since we
4 are continuing this conversation and that we had
5 already signed a written statement, I think it would
6 be appropriate to take another written statement
7 since we are talking again. And once again I don't
8 want there to be no misunderstandings later on about
9 what was said. That's the reason why we did it in
10 writing. So we began to take a written statement, a
11 second written statement.

12 Q I hand you State's Exhibit No. 3 marked for
13 identification. Just take a look at that. And I ask
14 you, can you identify it?

15 A This is a standard SLED voluntary statement form, the
16 same type of form that we had used during statement
17 number one. And it's the basic same information at
18 the beginning. And it does start off once again with
19 a question and answer, Q and A, Q by Lawrence and A
20 by Herring.

21 Q Now, let's look at that. And on each page, is each
22 page signed by Dewain Herring?

23 A It is.

24 Q And did you and Paul LaRosa again witness the
25 signature?

1 A We did.

2 Q And this is the original statement?

3 A That's the original.

4 MR. GIESE: I'd like to offer it this time,
5 Your Honor.

6 THE COURT: Subject to the defendant's
7 objection, the document is admitted.

8 (WHEREUPON, State's Exhibit No. 3 is admitted
9 into evidence.)

10 Q Now, during this conversation, this second written
11 statement that you took from Mr. Herring, for the
12 record, did you promise him anything to make the
13 statement?

14 A No, sir.

15 Q Did you threaten him in any way to make the
16 statement?

17 A No, sir.

18 Q Did you offer him any reward or hope of reward if he
19 made the statement?

20 A No, sir.

21 Q Did you coerce him at all?

22 A No, sir.

23 Q Now, you are writing this contemporaneously with him
24 telling you?

25 A Yes, sir.

1 Q Please, if you would read it for them?

2 A During this statement I explained to Mr. Herring that
3 although we're trying to stay focused and centered
4 upon the incident that took place at

5 I asked him, let's go back further and beyond
6 that, earlier that day. So I start off with asking
7 him beginning with the question about, Q: "Did you
8 consume any alcoholic beverages on Saturday and
9 Saturday night, January 28th, 2006?"

10 "A I played golf at Palmetto Golf Club in Aiken.
11 I drank about nine beers during the day. We got
12 finished playing golf around 5:30 p.m. We started
13 playing around 1 p.m. We then went to The Bowery, a
14 tavern and grill place in Aiken. I drank about four
15 scotch and sodas while there. My golf partner, Chris
16 Isgett, drove back. He took me to my house. We went
17 in and had a few more drinks. I had two to four
18 scotch and soda while at my house. Isgett left my
19 house around 8 p.m. to 8:30 p.m. I was at my house
20 by myself. My family is out of town."

21 Q Let me stop you there. Four lines up where it says:
22 "I", and then there's some initials, who initialed
23 that?

24 A That's Mr. Herring's initials.

25 Q And why did he initial it there?

- 1 A I had made a mistake and I scratched it out. And so
2 when I did that I asked him would he initial that,
3 the fact that I had made a mistake. I think I put
4 "I" and I scratched it out. I should have written
5 "I" like it is.
- 6 Q And that's standard procedure for you?
- 7 A Yes, sir.
- 8 Q Is to have them initial when you change something?
- 9 A Yes, sir.
- 10 Q Now, also down here at the bottom after it says: "My
11 family", after it says: "Isgett left my house around
12 8 to 8:30 a.m. I was at my house by myself. My
13 family is out of town", what is that right there
14 after the period?
- 15 A Mr. Herring's initials.
- 16 Q And that's because it's the end of the page?
- 17 A That's correct.
- 18 Q Please continue.
- 19 A On page 2.
- 20 "Q What did you do then?
- 21 "A I took a shower. I laid down. I don't
22 remember going out anywhere."
- 23 Q Now, at this point has he said anything to you about
24 going to River Drive other than he's not been out of
25 his house that night?

1 A No, sir.

2 Q What did you ask at that point?

3 "Q Did you stay at your house the remainder
4 of the night?

5 "A I'm pretty sure I did. I thought about going
6 to the Tombo Grill to get something to eat, but I
7 don't recall going.

8 "Q Do you recall going to Chastity's
9 Nightclub?

10 "A No, I don't. I know where it is, but I don't
11 recall ever going there."

12 Q Stop. So after you asked him if he'd ever been to
13 Chastity's Nightclub, he said, "No, I don't, but I
14 know where it is"?

15 A That's correct.

16 Q At that point what did you decide to do?

17 A At that point I decided to ask him the next question,
18 which I explained to him as I asked the question,
19 "Mr. Herring, the Sheriff's Office has a videotape of
20 you entering Chastity's Nightclub last night. Does
21 this help your recollection?

22 "A I remember the white woman with the big tits.
23 I had a scotch and soda while there. I do recall,
24 but hazy, that I was there. I could not tell you if
25 the place was full or crowded or anything."

1 Q Let me stop you right there. Whose words are these?
2 "I remember the white woman with the big tits? I had
3 a scotch and soda while there. I do recall, but
4 hazy, that I was there. I could not tell you if the
5 place was full or crowded or anything." Whose words
6 are those?
7 A Those are Mr. Herring's.
8 Q After he was confronted by you with the fact that he
9 was on tape at Chastity's, how long did it take him
10 to make that answer?
11 A A few seconds.
12 Q A few seconds?
13 A If that.
14 Q So he goes from that he was in the house the
15 remainder of the night, that he's not been at
16 Chastity's, to saying, yes, I was there?
17 A That's correct.
18 Q All within a very short period of time?
19 A That's correct.
20 Q Proceed.
21 "Q Did you have a problem with anybody in
22 there?
23 "A I went into one of the back rooms and paid for
24 a lap dance. There were other people in there. The
25 lap dance was done by a light-skinned black woman."

1 Q Stop. So now he remembers being actually in
2 Chastity's and getting a lap dance. Is that right?

3 A That's correct.

4 Q Continue.

5 A Excuse me.

6 "Q What did you drive there?

7 "A A Toyota 4Runner, black. It belongs to me. I
8 was by myself as best I recall. I typically don't go
9 to places like this because the people who go there
10 have bad attitudes."

11 Q Can I stop you again? So now he's recalling that he
12 went in the black Toyota?

13 A That's correct.

14 Q Even though just minutes earlier he doesn't remember
15 going there?

16 MR. HARPOOTLIAN: May it please the Court, Your
17 Honor. I object to the leading nature of the
18 questions. The statement speaks for itself. And I
19 object.

20 THE COURT: Don't lead your witness.

21 MR. GIESE: Thank you. The statement does speak
22 for itself. I agree with you, Mr. Harpootlian. I'm
23 sorry.

24 Q Keep going.

25 "Q How many handguns do you own and what

1 types?

2 "A I have a .40 caliber Glock, a .22 Smith and
3 Wesson, the .357 Smith and Wesson, a Ruger .357. I
4 had a .38 Taurus but my son has it and has had it for
5 years. I have a concealed weapons permit. I also
6 have a .22 pump rifle. I usually have the .22
7 pistol, the .22 rifle or the Ruger .357 in the
8 vehicle with me. I can't recall which one was in the
9 Toyota last night."

10 Q And whose initials are those?

11 A Mr. Herring's.

12 Q And whose signature is that?

13 A Mr. Herring's.

14 Q Page 3. Question.

15 A "Do you recall firing the weapon from the Toyota as
16 you were leaving Chastity's?"

17 "A No, I don't.

18 "Q Did you fire a shot at all?

19 "A If I did, I was not shooting at anyone. I'm
20 not saying that I did not do it. If the gun went off
21 while in my hand, it was harmless error. It was
22 probably the Ruger .357, and if it went off, it was
23 an accident.

24 "Q Did you see anybody when you fired your
25 weapon?

1 "A No. I was not shooting at anybody. There was
2 nobody to shoot at.

3 "Q Is there anything else?

4 "A Not at this time."

5 Q Now, at that point did you see -- did the interview
6 end?

7 A Whenever I wrote "Not at this time", that's when we
8 actually went back and I read the statement over to
9 him as he had the chance to read it himself. You
10 know, we read the entire statement over again. When
11 we got back to the point where it said: "Is there
12 anything else; A: Not at this time", Mr. Herring did
13 want to write something at that time. And I gave him
14 my pen. And then he wrote in: "But do reserve the
15 right to edit, add or delete." And he initialed that
16 and I initialed it.

17 Q So this is actually his handwriting?

18 A That is his handwriting.

19 Q "But do reserve the right to edit, add or delete."
20 Correct?

21 A That's correct.

22 Q And he signed that?

23 A Yes, he did.

24 Q Initialed it?

25 A He did.

1 Q How long did these three statements take
2 approximately?

3 A As I said, we initially began speaking with Mr.
4 Herring at approximately 9:30 a.m. that morning. The
5 advice of rights was at 9:42. The first statement
6 was concluded -- I don't have it in front of me. I
7 think it's approximately 10:52 a.m. Then we started
8 and the second written statement was concluded at
9 11:54 a.m. on January 29th. So we're talking
10 approximately two and a half hours.

11 Q And during these two and a half hours, describe, if
12 you can, Mr. Herring's mental condition?

13 A By observation, he seemed to be certainly keenly
14 aware of his surroundings, what was taking place. I
15 did feel comfortable speaking with Mr. Herring,
16 number one, through his appearance and observation
17 even though, you know, he was wounded. He did agree
18 to talk. He wanted to talk. He was given the
19 opportunity to talk.

20 We took the written statements, you know, from
21 him. And the advice of rights, I felt even more
22 comfortable, one, due to the fact that he understood
23 them simply because he is an attorney himself, you
24 know, as well. And he wanted something to drink. We
25 provided it for him. We provided the second drink.

1 Someone from the Sheriff's Office provided another
2 drink and a breakfast sandwich from McDonald's which
3 he chose not to eat until after the second interview.

4 Q Once you finished your second interview; what, if
5 anything, did you do?

6 A At that time I -- we -- Mr. Herring was -- as he
7 still remained in custody of the Richland County
8 Sheriff's Department, I advised Chief Wilson that we
9 had concluded our interviews. And he was then turned
10 over to Chief Wilson. Mr. Herring was.

11 Q Now, if you will and if you can, the man that --
12 after you asked him did you see anybody when you
13 fired your -- when you, Mr. Herring, fired your
14 weapon; answer: "No, I was not shooting at anybody,
15 there was nobody to shoot at", is that man in the
16 courtroom today?

17 A Yes, he is.

18 Q Point to him, please?

19 A The gentleman sitting right here right beside Mr.
20 Harpootlian with his chin on his hand.

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

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

25 Q Once you got this final statement from Mr. Herring;

1 what, if anything, did you do?

2 A I went to to confer with our

3 crime scene investigators.

4 Q Were they searching the residence at that time?

5 A The search was still being continued.

6 Q Now, did you have an opportunity to talk to Special

7 Agent Coonfield or any of the forensic people in

8 there about a .357 Ruger?

9 A I did.

10 Q Tell the jury what you said and why?

11 A Pursuant to the second statement that Mr. Herring

12 gave he had made mention of the type of weapons that

13 he had owned and the type of weapon that could

14 possibly be involved in, one, the officer-involved

15 shooting at the residence; and, two, the possible

16 weapon that could be involved at the shooting that

17 took place at Chastity's, I did instruct Agent

18 Coonfield to take both weapons.

19 Q So both .357s were taken from the scene?

20 A That is correct.

21 Q At your request?

22 A That is correct.

23 Q Now, when you left the defendant, Dewain Herring,

24 that morning around 10:45 or 11:45 -- I'm sorry.

25 What time was it? I apologize.

1 A 11:54.

2 Q 11:54. Who did you turn him over to?

3 A Chief David Wilson.

4 Q Chief David Wilson. And where does he work?

5 A The Richland County Sheriff's Department.

6 MR. GIESE: Beg the Court's indulgence. That's
7 all I have.

8 THE COURT: Cross examination.

9 MR. HARPOOTLIAN: May it please the Court.

10 CROSS EXAMINATION

11 BY MR. HARPOOTLIAN

12 Q It's Lieutenant?

13 A Yes, sir.

14 Q Lieutenant, you worked with the Richland County
15 Sheriff's Department for almost 13 years. Is that
16 right? 14 years?

17 A Thirteen and a half years.

18 Q Thirteen and a half years. And you were a line
19 deputy there?

20 A I was.

21 Q And an investigator?

22 A I was.

23 Q And these officers that you were called upon to
24 investigate, are some of them people you worked with?

25 A They were.

1 Q People that you worked with for thirteen and a half
2 years? For a long time.

3 A The officers involved in this shooting, I actually
4 only knew two of them.

5 Q Who was that?

6 A Sergeant Linfert. And there was another,
7 Investigator Tavenner, but he did not discharge his
8 weapon at the scene. But those were the only two
9 that I recall knowing.

10 Q And they were your co-workers at one point in time?

11 A At one point in time.

12 Q Now, if the idea is for SLED to come in and
13 independently investigate officer shootings, is it a
14 good idea to have a former co-worker and employee to
15 do that?

16 A Well, one reason is why Agent Paul LaRosa was the
17 case agent instead of myself. And, secondly, we
18 do -- part of the intent is to be certainly as
19 neutral, you know, as possible of course.

20 Q But you were the chief investigating officer. Is
21 that right?

22 A No, sir.

23 Q You were not?

24 A Agent LaRosa was.

25 Q But you took statements from all of the officers. Is

1 that right?

2 A Myself and Agent LaRosa took statements from the
3 officers.

4 Q Okay. And you were taking statements from the
5 officers even before Mr. Herring appeared at the
6 Richland County Sheriff's Department. Is that right?

7 A Four of them. That's correct.

8 Q Well, you also took written statements, didn't you?

9 A Yeah, we did. Later that day.

10 Q I show you this.

11 A Go ahead.

12 Q Just if you look at this, maybe this will refresh
13 your memory. Did you take the statement from
14 Mr. Tavenner at 8:30 in the morning?

15 A Yeah. We did. There were some officers that we were
16 allowed or had time permitting to take oral and some
17 time permitting to take written. And we finished up
18 taking some of the written statements I think later
19 that day.

20 Q And let me see that back, please. Okay. You took a
21 statement from one of the people that was out at the
22 shooting at 8:30 that morning. That's an hour before
23 you saw Mr. Herring. Is that right?

24 A That's correct.

25 Q And that statement was typed?

1 A That's correct.

2 Q None of the statements with the officers are a Q and
3 A, are they, question and answer like we see here?
4 Do you want to see them? Do you have a copy of your
5 report with you?

6 A Yes, sir.

7 Q Let me ask you, you generated a pretty big report on
8 this, right?

9 A Agent LaRosa and myself did. That's correct.

10 Q Okay. Now, tell the jury, please, how many of those
11 statements you took from the officers, including the
12 ones you took before Mr. Herring, are done in a Q and
13 A fashion like this?

14 (Pause)

15 Q Lieutenant, are you looking at those statements?

16 A I am. We took quite a few. That's why I wanted to
17 be sure.

18 Q Well, let me maybe make this a little simpler. I
19 showed you Investigator Brent Tavenner. He was one
20 of the people there, correct?

21 A That's correct.

22 Q And that's a typewritten statement taken at 8:30 in
23 the morning. That's a narrative with no Q and A's.
24 Is that right?

25 A That's correct.

1 Q And then you took one from Brien Gwyn?

2 A That is correct.

3 Q And there is one, two, three, four, five, six, seven,
4 eight Q and A's, four questions, four answers at the
5 end of that. But again, it is primarily a narrative.
6 It is not a continual Q and A. Is that right?

7 A I'm checking them off, sir.

8 Q Let me just hand you mine, maybe save you --

9 A No. I have them all. I have them up here.

10 Q Okay. I'm trying to move this along a little bit.

11 A The fourth, I have a statement from Deputy Hodges.

12 Q Deputy who?

13 A Hodges. Deputy Tommy, Thomas Hodges.

14 Q Right. And that's a narrative with four or five
15 questions --

16 MR. GIESE: Objection, Your Honor.

17 MR. HARPOOTLIAN: I'm sorry. I'm asking a
18 question.

19 MR. GIESE: I think he's trying to answer.

20 MR. HARPOOTLIAN: I apologize.

21 A Okay. I have a statement from David Linfert.

22 Q Right.

23 A A statement from Investigator Brien Gwyn and a
24 statement from Investigator Morris Davis.

25 Q Right.

1 A And I need to take a look at Investigator Baker's
2 statement.
3 Q Who?
4 A Investigator Baker.
5 Q Right.
6 A Okay. I think I have all of the statements in front
7 of me now.
8 Q Okay.
9 A And I think your question was how many were Q and A?
10 Q No. Let's take them one-by-one. Let's start with --
11 this is David Linfert, right?
12 A That's correct.
13 Q Okay. And he gave a three and a quarter page
14 statement. Is that right?
15 A May I see it, please? That is correct.
16 Q Okay. And of those three pages, we have one page
17 fully typed, no Q and A, correct? Page 1?
18 A That's correct.
19 Q Page 2, another full page, no Q and A. Page 3, I
20 would say half way down the page there is a beginning
21 of a Q and A. Right? And then there's basically an
22 eighth of a page of Q and A for him. Is that right?
23 A That's correct.
24 Q So of the one, two, three, four pages, three and a
25 half are just a narrative; and then there are one,

1 two, three, four, five questions with answers that
2 correspond, right?

3 A That is correct.

4 Q Okay. As to Brent Tavenner, it is a page and a
5 quarter typewritten, no Q and A. Is that right?

6 A That's correct.

7 Q As to -- what did I do with Linfert? Where did I put
8 him? Let's put the ones we've done over here. Okay.
9 As to Brien Gwyn, it's two typed pages, the last I'd
10 say, I'll give you a fourth of the page, is one, two,
11 three, four questions with four answers. Is that
12 right?

13 A Correct.

14 Q Thomas Hodges, again a full typewritten page and then
15 maybe on the second page half way down double spaced
16 where the others are single spaced, Q and A, four
17 questions, four answers. Short answers, right?

18 A That's correct.

19 Q Now, Lieutenant, you had -- and let me ask you this.
20 How many of these officers -- you were there to
21 investigate a shooting, correct?

22 A That's correct. I also have one more statement.

23 Q I'm sorry. Who is that?

24 A Morris Davis.

25 Q May I see that?

- 1 A Yes, sir.
- 2 Q And Morris Davis is a page and a half, a page and a
3 quarter. And the first page there's no Q and A.
4 It's just a narrative by him and then one, two, three
5 questions on the second page. All of them are
6 one-word answers, correct? No, no, no, no?
- 7 A That's correct.
- 8 Q Okay. Now, you were there to investigate a
9 police-officer shooting. Is that right?
- 10 A That is correct.
- 11 Q And when you say a police officer shooting a
12 civilian, there might be, could be some allegation of
13 criminality on the part of the police officers. Is
14 that right? Could be?
- 15 A Could be. That's correct.
- 16 Q Okay. And when you went to interview Mr. Herring,
17 there could have been -- at that point you didn't
18 know that he'd committed any crime. You knew he was
19 in custody. You knew he'd been arrested for
20 something?
- 21 A He was in custody.
- 22 Q For what?
- 23 A It's my understanding at that time that he had not
24 been charged at that time, but it was my
25 understanding through Chief Wilson that charges were

1 going to be pending.

2 Q For what?

3 A The incident that occurred at Chastity's on River
4 Drive.

5 Q Murder?

6 A I didn't know what the charge was going to be, and
7 they had not charged him at that time.

8 Q But he was in custody. He was unable to leave. He
9 was in custody, right?

10 A That was the bottom line, that he was in custody.

11 Q But you weren't investigating -- you didn't come
12 there to investigate a murder or a shooting on River
13 Drive, did you?

14 A No, sir, we didn't.

15 Q You came to investigate what happened at
16 right?

17 A That's correct.

18 Q And you interviewed Mr. Tavenner an hour before Mr.
19 Herring got there, right?

20 A That is correct.

21 Q Okay. And then the other officers after you
22 interviewed Mr. Herring. Is that right?

23 A The written statements. That's actually true.

24 Q Okay. Well, the written statements is all we have.
25 Did you make notes? Do you have notes, independent

1 notes of any of these interviews?

2 A I did take notes at the time.

3 Q Where are they?

4 A They are destroyed.

5 Q You destroy your notes after you prepare a statement?

6 A I sure do. I've been doing it for over 21 years. I
7 transcribe it onto paper. And this is my report.

8 This is my investigative report.

9 Q Did you take notes of Mr. Herring, your conversation
10 with Mr. Herring?

11 A We did.

12 Q And you destroyed those?

13 A I sure did.

14 Q Is there some written procedure at SLED or the
15 Sheriff's Department or somewhere about destroying
16 notes you make contemporaneously with interviewing a
17 subject?

18 A This report serves as my official report. And the
19 answer to your question is, I'm not aware of any
20 policy per se that that's happened. But myself and a
21 lot of other police officers obviously do the same
22 thing.

23 Q Destroy your contemporaneous notes of interviews
24 after you type something up and have it signed?

25 A Yes, sir.

1 Q Well, if there was a discrepancy in those notes, we
2 wouldn't know it now, would we, because you destroyed
3 them?

4 A No. This is my report.

5 Q Well, I understand that's your report. But when you
6 were interviewing Mr. Tavenner at 8:30 you made
7 notes, right?

8 A Some.

9 Q And then you took those notes and converted them into
10 that written statement?

11 A That's correct.

12 Q Now, am I right to assume that you would have had
13 summaries of or summary statements in those notes?

14 A There wouldn't have been anything different.

15 Q So your testimony is that it's 100 percent exactly
16 the same. Your notes would exactly be the same as
17 any written statement?

18 A There would be no discrepancies in it.

19 Q So you are infallible. You make no mistakes?

20 A No. That's not the point. I'm talking about the
21 point is if that what's going to be presented in the
22 report and presented in this courtroom, that I am
23 very much aware is going to be presented in this
24 courtroom. And what is on these reports is what's on
25 the reports.

1 Q And you can't be cross examined on the notes by me
2 because you destroyed the notes. Is that right?
3 A I am cross examined. This is my report.
4 Q I understand that. Okay. We're not going to debate
5 what your report and what your notes are. But there
6 were notes you made contemporaneously with
7 interviewing these officers and with Mr. Herring and
8 you destroyed them?
9 A That is correct.
10 Q Okay. Now, if you were investigating a shooting at
11 Alexander Circle -- and when you walk in you walk in
12 with an open mind, right?
13 A Yes, sir.
14 Q And you walked in not predisposed to find that the
15 officer has done wrong or Mr. Herring had done wrong.
16 Isn't that correct?
17 A I try to be very open minded and neutral.
18 Q Okay. And you had Mr. Herring -- you advised him of
19 his rights. How many of the officers did you advise
20 of their rights?
21 A None.
22 Q Why?
23 A It was freely, voluntary, and they're not in custody.
24 And those statements still could have been used
25 because they were freely, voluntary, and they were

1 not in custody.

2 Q And so since they weren't in custody and it was free
3 and voluntary you decided you didn't say to them
4 anything, you say can and will be used against you in
5 a court of law?

6 A No, sir.

7 Q Did you use the same --

8 A I did not advise them of their rights.

9 Q Okay. Did you use the same form with them that you
10 used with Mr. Herring? It's got all the advice of
11 rights at the top, at the beginning of it. Did you
12 use this?

13 A No, sir.

14 Q And the officers had an opportunity to have their
15 notes typed, the notes you took, to read over those
16 typewritten notes. And did any of them change them?

17 A In this particular instance, and I'll explain and to
18 answer your question and to explain that further, we
19 advised the officers that, yes, once we write down
20 what happened, these officers, they did choose, as we
21 were, myself and LaRosa was doing himself, they gave
22 their explanation. And as you can see or will see on
23 these reports, they were Q and A, question and
24 answer, either by myself or Agent LaRosa to continue
25 out and maybe answer any question that we may have

1 that was not included in their narrative.

2 We do once again a very open-endedly, just like
3 I'd asked Mr. Herring to, about explain to me what
4 happened. And that's the reason why these are done
5 like this. And for somebody who is not in custody,
6 we do have another type of form that can be used.
7 However, it doesn't matter as far as what it's on as
8 far as it's paper as far as if you're under arrest or
9 not. But the statements that we obtained from the
10 officers were just like any other statement we would
11 obtain from somebody of a case that we are
12 investigating.

13 Q Now, the police officers, are you telling me that
14 they wrote out their rendition in their own
15 handwriting?

16 A Some of them actually typed out the majority of it,
17 yeah, themselves.

18 Q These statements we have they typed or you typed?

19 A It's some of both.

20 Q And where were they typed?

21 A At the Richland County Sheriff's Department.

22 Q So, I mean, you sit next to them while they're at a
23 computer?

24 A Yeah.

25 Q And they are typing it out?

- 1 A (Nods head affirmatively).
- 2 Q Now, you took a statement from Mr. Gwyn, right?
- 3 A Yes, sir.
- 4 Q And as I understand it, Mr. Gwyn and Mr. Linfert --
- 5 Linfert is the gentleman you used to work with at the
- 6 Sheriff's Department -- were the only people that
- 7 indicated they saw a weapon in Mr. Herring's hand.
- 8 Is that correct?
- 9 A Investigator Gwyn did. Sergeant Linfert did.
- 10 Q Okay. Now, what did Gwyn tell you about what he saw
- 11 Mr. Herring do that indicated he had a gun?
- 12 A He stated as he entered the residence, identified
- 13 themselves as Sheriff's deputies, he encountered a
- 14 white male who fit the description of the video and
- 15 the photographs taken from Chastity's, came running
- 16 out of the foyer, saw us and ran back to the bedroom.
- 17 Q You are reading from the statement?
- 18 A Yes.
- 19 Q So you're publishing what he said?
- 20 A No.
- 21 Q I'm sorry?
- 22 A May I answer your question? Yeah.
- 23 Q Okay.
- 24 A That --
- 25 Q And then what does he say?

1 **A** He stated that the subject ran to and saw him
2 reaching into some kind of dresser.

3 **Q** Let me have you publish it --

4 **MR. GIESE:** Objection, Your Honor.

5 **Q** -- rather than you summarize it.

6 **MR. GIESE:** Objection.

7 **THE COURT:** I understand. He keeps trying to
8 answer. What are you --

9 **MR. HARPOOTLIAN:** I'd asked him to publish the
10 portion of the statement he took from Brien Gwyn as
11 to what saw.

12 **THE COURT:** That's what he was doing.

13 **MR. HARPOOTLIAN:** No. He's summarizing it, Your
14 Honor. He's not reading it.

15 **THE COURT:** All right.

16 **Q** If you'll start at: "It took approximately" --

17 **THE COURT:** What's the objection?

18 **MR. GIESE:** The objection is, Your Honor, he's
19 answering the question. Mr. Harpootlian has
20 interrupted his answer. I would like for the
21 lieutenant to be able to finish his answer.

22 **THE COURT:** All right. Finish your answer. And
23 then if you can comply with the question, if you'll
24 specifically identify the place in the statement that
25 he's referring to, if you can do that.

1 A "A white male who fit the description of the video
2 and photographs taken from Chastity's came running
3 out into the foyer and saw us and ran back to his
4 bedroom."
5 Q Period, right?
6 A Period.
7 Q Slow down just a little bit, please.
8 A "Sergeant Linfert and myself entered the opened area
9 leading to the area the suspect had ran to and saw
10 him reaching into some kind of dresser. When the
11 suspect came up from the dresser he was holding a
12 pistol in his hand and pointed it at us. I cannot
13 say which hand he held the gun in. He did turn to
14 his right and pointed the pistol at Sergeant Linfert
15 and myself. I yelled gun to let the other deputies
16 know he had a gun and fired my weapon at Herring."
17 Q Go ahead.
18 A Continue? "Baker, Tavenner, Hodges and Davis
19 retreated to the front yard and Linfert and myself
20 were pinned in the kitchen and living room area. I
21 was able to see the suspect in his room with the gun
22 in his right hand. I kept yelling for him to drop
23 his gun and come out with his hands up. He kept
24 saying he did not believe we were the Sheriff's
25 Department and told me to drop my gun and to come to

1 him."

2 Q Okay. Let me stop you right there. Now, go down to
3 the Q and A part. Okay? Question: "What was the
4 distance between the suspect and you when you fired
5 your first round?" What does he answer?

6 A "Approximately 25 to 30 feet away".

7 Q Question: "Where was the suspect when you fired at
8 him"?

9 A Answer: "In the bedroom between the bed and the
10 dresser that he got the gun out of."

11 Q Okay. Now, you went out to the scene afterwards,
12 right?

13 A I did.

14 Q And you had an opportunity to look at the area,
15 right?

16 A That's correct.

17 Q And you've investigated officer shootings before?

18 A I have.

19 Q Have you seen 17 rounds fired like this before in a
20 house from five different officers?

21 A It's probably, as I can recall, probably the -- I can
22 only give you probably the most that I recall.

23 Q Now, if we look at Defendant's Exhibit No. 15, when
24 he said he was 25 to 30 feet away from the defendant,
25 Mr. Herring, he's alleging Mr. Herring was back here,

1 correct?

2 A According to his statement, yes, that he was in the
3 bedroom near this nightstand.

4 Q Now, was he in the hallway area? That is, was
5 Sergeant Linfert and he in the hallway area, or are
6 they back towards the dining room?

7 A As I recall, it is adjoining or it leads into. And
8 to be the exact location --

9 Q Well, let's look at Defendant's Exhibit No. 11. Were
10 they back here, or where they in here? Or do you
11 know?

12 A By the way they I think explained it, I don't -- to
13 answer your question, do I know exactly where they
14 are? No.

15 Q I'm talking about what they told you.

16 A According, yeah, to their statement, it would have
17 been somewhere in this area. That's all I can say,
18 somewhere within that area.

19 Q I understand. Now, according to -- was he standing
20 up? Was he sitting down? Was he -- I mean, how did
21 he turn? You're investigating this shooting. Tell
22 the jury, please, from talking to Mr. Gwyn, what's
23 your belief on what the defendant was doing when they
24 shot at him?

25 A Well, I can't say what my belief is. I'm going by

1 what --

2 **Q** Well, what was described to you?

3 **A** I'm going to go by what was told to me by Mr. Herring
4 and the officers.

5 **Q** Well, I want you to tell me what specifically Officer
6 Gwyn said.

7 **MR. GIESE:** Objection, Your Honor. Objection.
8 That's not the question he originally asked.

9 **MR. HARPOOTLIAN:** Well, he would not be
10 qualified to give an opinion. I apologize or if I
11 asked for one. What I'm asking for is what he was
12 told by Officer Gwyn and to where Mr. Herring was,
13 his posture and position when they fired at him.

14 **THE COURT:** Go ahead.

15 **MR. GIESE:** And, Your Honor, while he's looking,
16 the objection is asked and answered.

17 **THE COURT:** Well, it's cross examination. I'll
18 allow it.

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

20 **A** I can continue reading the statement if you like.
21 That will hopefully answer your question.

22 **Q** Is there a portion which will answer that?

23 **A** Well, I will continue. The exact -- I'm not sure
24 what you're looking for in trying to answer your
25 question.

1 Q Go ahead.

2 A If your question whether he -- was he standing or --

3 Q Yeah. What was his position? Standing? Seated? On

4 the floor? On the bed? Where according to Officer

5 Brien Gwyn?

6 A The only -- he stated that once he saw the subject

7 retrieve a weapon from some kind of a dresser, he

8 said, "When the suspect came up from the dresser he

9 was holding a pistol in his hand and pointing it at

10 us. I cannot say which hand he held the gun in."

11 Q Okay.

12 A "He yelled gun, and I was able to see the suspect in

13 his room with the gun in his right hand."

14 Q Okay. Now, let me ask you to go to -- you also took

15 a statement from Officer David Linfert that same day,

16 correct?

17 A I have the statement.

18 Q Okay. Go to page 2 of his statement. Do you see

19 where it begins: "As we entered the foyer, the front

20 foyer, we encountered the subject"? Do you see that?

21 No. The page before that. Well, that's Linfert.

22 Let me see page 1. Okay. Let me see page 2. We've

23 got one, two, three, four. Right?

24 A Four.

25 Q So I want you to go to -- there it is. Go down to

1 "As we entered the front foyer". Do you see that?

2 A "The subject ran down the hallway"?

3 Q Right. Right, right, right. "As we" -- no. "We
4 encountered the subject." Do you see that? "As we
5 entered the front foyer, we encountered the subject."
6 Yeah. Right here. "As we". Do you see that right
7 there?

8 A Yeah.

9 Q How about read that to the jury, please?

10 A "As we entered the front foyer, we encountered the
11 subject. I recognized the subject to be the same
12 person in the video and still pictures from
13 Chastity's Nightclub. He was standing in the foyer
14 next to the hallway. We again identified ourselves,
15 advised him that we had a search warrant and told him
16 to get down on the ground. The subject immediately
17 ran down the hallway. I followed the subject and
18 Deputy Gwyn was right behind me.

19 "I then saw him in a bedroom on the left. I saw
20 him reach into the nightstand beside the bed and pull
21 out a chrome revolver. He was sitting on the bed
22 that was to the left of the nightstand when he
23 reached in for a pistol. He then turned to his right
24 towards Deputy Gwyn and myself. I yelled out gun to
25 alert the others. The subject kept on turning

1 towards us with the gun in his right hand.

2 "I told the subject to drop the gun, at which
3 time he was still turning towards us with the gun
4 raised. I could see his full upper body from my
5 position. I fired one to two shots at the subject.
6 Officers behind me also fired shots immediately after
7 my discharge. We moved to cover inside the
8 residence."

9 Q Okay. Thank you. Now, his statement is that he and
10 Gwyn run down the hall, correct? They go down the
11 hall after him?

12 A That's correct.

13 Q And that they -- now he says he saw him sitting on
14 the bed. Isn't that right?

15 A "I saw him in a bedroom on the left. I saw him reach
16 into a nightstand beside the bed and pull out a
17 chrome revolver. He was sitting on the bed that was
18 to the left of the nightstand."

19 Q Okay. Okay. Let me stop you there one second. So
20 he is sitting on the bed?

21 A Mm-hmm (affirmative).

22 Q And he saw him reach in and come out with a chrome
23 revolver. So he is sitting on the bed when he is
24 pulling the gun and pointing it towards them. Is
25 that right?

1 A According to this statement.

2 Q Okay. And that differs from Officer Gwyn's
3 statement. Officer Gwyn didn't say anything about
4 sitting on the bed, did he?

5 MR. GIESE: Objection, Your Honor. Pitting.

6 THE COURT: Yes, sir.

7 MR. HARPOOTLIAN: I'm talking about the
8 statements, Your Honor, not their testimony in the
9 courtroom.

10 THE COURT: Go ahead.

11 Q Isn't that true?

12 A Will you ask the question again?

13 Q Officer Gwyn never said anything about him sitting on
14 a bed when he was reaching for the gun. Isn't that
15 right?

16 A I did not see that mentioned in his statement.

17 Q Well, I'm asking you to recall now. You destroyed
18 your notes.

19 A No.

20 Q But do you have any recollection of him saying that
21 to you?

22 A No, sir.

23 Q Okay. Now, their statements differ somewhat then,
24 don't they? Their written statements to you you took
25 that day?

1 **MR. GIESE:** Your Honor, I'm going to object.
2 He's pitting.

3 **THE COURT:** Approach the bench.

4 (Whereupon, a bench conference is had)

5 **Q** I believe you told this jury earlier that one of the
6 reasons, the main reason you went back and
7 re-interviewed Mr. Herring was there was a conflict
8 in information that you received from Mr. Herring as
9 opposed to somebody else, Chief Wilson. Isn't that
10 correct? A conflict in information I think were the
11 exact words you used.

12 **A** That is correct.

13 **Q** Okay. And that caused you to go further, right?

14 **A** Under those circumstances.

15 **Q** And yet when you had a conflict in information
16 between the officers, you didn't go any further, did
17 you?

18 **A** That's not necessarily a conflict. It's an
19 observation of someone. We don't expect every
20 statement and every observation from any witness to
21 always be the same. It's from their observation. If
22 it was all the same, that would make me more curious,
23 as inquisitive, as opposed to it being different.
24 And that's the difference in this situation. You
25 know, just like anything else, what the facts and

- 1 circumstances are at hand under the given situation.
- 2 Q And yet you have told us that every word contained in
- 3 this statement is accurate, correct?
- 4 A Every statement, every word in that was from Mr.
- 5 Herring.
- 6 Q I just want to understand. When police officers are
- 7 giving statements and giving conflicts you don't
- 8 pursue it. When citizens are giving statements about
- 9 the same incident and there are conflicts you pursue
- 10 it. I just want to make sure we understand what the
- 11 standard is here.
- 12 A I understand what the question is. And the answer to
- 13 your question is, the answer is, it is different
- 14 based upon the circumstances due to the facts of the
- 15 explanation that I just gave.
- 16 Q Which arm -- you were there -- which arm was Mr.
- 17 Herring shot in?
- 18 A If I recall, it was the upper left arm area.
- 19 Q Front or back?
- 20 A I did not see the entrance. Or I did not see the
- 21 actual wound itself. I saw that his arm was bandaged
- 22 in that area.
- 23 Q He was bleeding from that wound when you saw him,
- 24 right?
- 25 A I do recall it appeared as though the bandages were

1 discolored. And that is one reason why the Richland
2 County EMS was called to the Sheriff's Office to
3 further render some treatment --
4 Q Now, --
5 A -- to Mr. Herring.
6 Q -- you visited the scene that day. Is that correct?
7 A Yes, sir.
8 Q And did you see any bullet holes in his bedroom?
9 A I do recall --
10 Q Well, and actually, you received Defendant's Exhibit
11 No. 16 which is a sketch done by your forensic people
12 where they recovered projectiles, right? Is that
13 right?
14 A Yes, sir. I recall seeing this.
15 Q I'm sorry?
16 A I do recall seeing this.
17 Q And do you recall over the bed -- let me see if I can
18 find the photo. Over the bed there are two bullet
19 holes, right? You see 15 and 16 marked on there?
20 A I see 15 and 16, projectile from bedroom wall and
21 projectile hole in bedroom wall.
22 Q And look at Defendant's Exhibit No. 23. You remember
23 those two bullet holes over the bed, right?
24 A Could I see that? I recall seeing that.
25 Q Okay. And you also recall that one of those bullet

1 holes, I think the larger one, that they dug a
2 projectile out of the wall that had some fresh on it.
3 And there was actually splatters of blood around that
4 hole. Do you recall that?

5 A I do.

6 Q And now, when did you go back out there? Did you go
7 back out there that morning after you finished with
8 Mr. Herring?

9 A It was the early afternoon after the second statement
10 was taken from Mr. Herring.

11 Q Okay. And it's your testimony that when you went
12 back out there early afternoon is when you told --
13 what's the forensics guy? What's his name that was
14 processing the scene?

15 A Agent Coonfield.

16 Q Coonfield. That's when you told him to look for the
17 chrome .357?

18 A I think at that time that weapon had -- I cannot
19 honestly answer that because I was not there at the
20 time. But I do not recall whether or not that weapon
21 had already been located at that time or not.

22 Q Well, it actually is located before you ever start
23 questioning, Mr. Herring, wasn't it?

24 A I did not participate in that part of the search. So
25 I cannot actually answer that question.

1 Q Well, let's look at the -- have you got a copy of the
2 search warrant here?

3 A Yes, sir.

4 MR. HARPOOTLIAN: I thought it was in evidence.
5 Did you put the SLED search warrant into evidence?
6 No?

7 MR. GIESE: (Shakes head negatively).

8 Q You got it?

9 A Yes, sir.

10 Q And the return, it indicates they seized a chrome
11 .357, right?

12 A That's correct.

13 Q A Ruger?

14 A One Ruger .357 was confiscated and reported as part
15 of the inventory.

16 Q Okay. And what time did they execute the search
17 warrant?

18 A That's the time that it began.

19 Q Began. What time did they finish?

20 A It was well into in the afternoon. It was -- I don't
21 exactly what time it was actually concluded, but it
22 was -- I went over the statement myself. So it was
23 probably at least -- I don't know. It was 4:00 or
24 better.

25 Q Do you know when they found the gun?

1 A Exactly and what time they found the gun; no, sir, I
2 don't.

3 Q Now, when you got back over there after talking with
4 Mr. Herring and saw -- was it explained to you that
5 this bullet hole had tissue around it?

6 A I do recall Agent Coonfield and Agent Porter that
7 were at the scene did make reference to that.

8 Q And had they already put the streamers up?

9 A There were several up whenever I got there. I do
10 recall that.

11 Q And what's the purpose of these?

12 A Trying to identify and show trajectory of projectiles
13 as to their approximate location and angles.

14 Q Had you already taken the statements from the police
15 officers when you went back out there?

16 A Not all of them.

17 Q Had you taken Gwyn and Linfert?

18 A I had orally spoken with Linfert. And orally -- I
19 mean, yeah, and Gwyn as well. The rest of the
20 statements were taken afterwards.

21 Q Right. The bullet that had the tissue on it, at this
22 point you knew that Linfert had said he was sitting
23 down. Gwyn apparently had indicated he was standing
24 up. Did you ask for any -- the officer out there --
25 any trajectory done on this specific bullet that the

1 tissue was taken out of?

2 A Well, Gwyn never said he was standing up to start
3 with. He didn't give any indication whether he was
4 sitting or standing.

5 Q Did you ever go back and ask him?

6 A No.

7 Q Did it matter?

8 A Not necessarily.

9 Q Does it matter to you today?

10 A Not necessarily.

11 Q Well, wouldn't you like to know the trajectory of
12 that bullet, whether it's consistent with him sitting
13 down or standing up?

14 A And the reason being is that they could -- once
15 again, our crime scene in trying to process that,
16 give you the height from the floor, you know, and the
17 other factors involved, try to make some type of
18 determination that you don't know exactly and can't
19 say, if you weren't there to see it yourself, exactly
20 where the person and what position that they were in.

21 Q Well, if the bullet was head height high and the
22 angle was level, would it be possible for him to be
23 hit in the arm?

24 A We're talking about scenarios that it's hard to give
25 a definitive answer, and I am very reluctant to give

1 a definitive answer.

2 Q But did you ask anybody to figure out whether that
3 height of that bullet hole in the wall was consistent
4 or inconsistent with him sitting on the bed?

5 A It's not a matter of --

6 Q Just if you'd answer yes or no; then you can explain.
7 Did you ask anybody to do that?

8 A No.

9 Q Okay. Now, did you ever ask the officers to go back
10 out there; Linfert and Gwyn or any other officers,
11 did you ever ask them to go back to the scene and ask
12 them to show you where they were standing when they
13 fired their weapons?

14 A No, sir.

15 Q Now, Officer Linfert seemed to indicate he was in
16 this hall when he fired his weapon. Or do you know?
17 Does the statement tell you where he was standing?

18 A I can refer to it if you like.

19 Q Sure. I would hope -- never mind. Go ahead.

20 A Investigator Linfert stated: "The subject
21 immediately ran down the hallway. I followed the
22 subject. Gwyn was right behind me."

23 Q That would be this hallway?

24 A That would be I think part of it.

25 Q Okay. Well, the hallway is only about four feet

1 long, isn't it?

2 A It was very short.

3 Q A very short hallway?

4 A Yes, sir.

5 Q Did it occur to you that perhaps someone could not be
6 standing in this hallway and live? Linfert and Gwyn
7 said once they fired their weapon a hail of fire
8 broke out, right?

9 A There were several -- according to this, the
10 statements, Investigator Linfert apparently fired
11 first and there was numerous shots fired thereafter.

12 Q Right. Well, if he is standing in this hallway when
13 he fires first and numerous shots come afterwards, he
14 is awfully lucky to be sitting over here today, isn't
15 he?

16 A That would be a very true statement.

17 Q And as you said a moment ago, people's perceptions of
18 incidents like this, when the adrenaline is running
19 and gunfire is going off, is sometimes distorted,
20 isn't it? Their memories may be different, I think
21 is what you've said. People's recollections of the
22 same incident may be distorted to some extent?

23 A And that could be. And that's sometimes, it's not
24 uncommon for us when we speak with these officers
25 involved in a shooting that we get an oral statement

1 from them and sometimes wait even 'til the next day
2 to take a written statement from them. And that is a
3 very common practice as well because of that.

4 Q Did you talk to them the next day?

5 A Some we did that we were unable to obtain a written
6 statement from at the beginning. And some we took
7 later on that afternoon.

8 Q Right. But, no, you didn't talk to anybody the next
9 day? None of these statements -- all these
10 statements were taken -- were they all taken on the
11 29th or the 30th?

12 A No. Investigator Linfert's statement was taken on
13 the 30th.

14 Q A day afterwards?

15 A Yes, sir. So was Investigator Gwyn.

16 Q A day afterwards. Tavenner's however was taken that
17 morning? Is he the only --

18 A Correct.

19 Q Baker was taken that afternoon? These are yours.
20 I'm sorry.

21 A That's all right. That's correct. We asked the
22 officers usually at what time and what -- and, too,
23 their mental state at the time, whether or not
24 they're ready to gave a statement at that time or
25 want to wait 'til later in the day, like happened

1 with this situation; and even sometimes the next day.

2 That is very common.

3 Q Why do you care about their mental state?

4 A I care about anybody's mental state if we're going to
5 discuss and ask them whether or not, at what time
6 they want to speak and give us a statement.

7 Q Were you concerned about this is a pretty dramatic
8 event, the police officers firing their weapons?

9 A Was it traumatic?

10 Q Well, I mean, that's why you wait 'til the next day
11 sometimes; it's their mental state, I think was the
12 word you used, right?

13 A That's correct.

14 Q Now, none of them got shot, did they?

15 A I'm sorry?

16 Q None of them got shot, did they?

17 A I don't believe so. No, sir.

18 Q Mr. Herring however got shot, right?

19 A That's correct.

20 Q He had been shot in his own home. He is bleeding
21 when you talk to him. Did you give him the
22 opportunity, say, Mr. Herring, if you don't want to
23 talk about this today, we'll come back tomorrow or
24 we'll just talk tomorrow about it. Did you say that
25 to him?

- 1 A Yes, sir.
- 2 Q You said you'd give him 'til the next day?
- 3 A I asked him if he was willing to talk at this time
- 4 and he said yes.
- 5 Q Let me ask you this. When you talked with the
- 6 officers did you say, are you willing to talk to me
- 7 now; and they said, no, come back tomorrow?
- 8 A They didn't say that. That's the reason why the
- 9 dates and times vary on these officers, because we do
- 10 ask them when they went to give a written statement.
- 11 And that has varied. And that's the reason why I
- 12 asked Mr. Herring if he wanted to talk with us at
- 13 that time. He said yes.
- 14 Q Now, but I want to make it clear. None of the
- 15 officers told you no?
- 16 A No officer refused to talk to us.
- 17 Q Did you give them the option of coming back the next
- 18 day?
- 19 A We did.
- 20 Q But you never said to Mr. Herring, you can talk with
- 21 us tomorrow?
- 22 A I don't know if I actually said that. I gave him the
- 23 option of did he want to talk at that time.
- 24 Q Okay. Now, --
- 25 A And he agreed to do so.

1 Q -- what time did you start talking to him on that
2 second statement?

3 A On the second statement?

4 Q Yeah. Do you have notes about that, or is this going
5 to be a guess?

6 A On that second statement, as far as the discussion
7 about the second statement, that would have began
8 somewhere between 11 and 11:15 a.m. that morning.

9 Q But you don't have a specific time like you do on the
10 other one where you know you advised him of his
11 rights?

12 A No, sir. That's the reason why we do note a time
13 when it comes down to documenting on paper.

14 Q What time did you finish with him?

15 A 11:54 a.m.

16 Q So you spent you said between 11 and 11:15. So it
17 was either 54 minutes or 39 minutes. I went to
18 Clemson. Back me up on that now.

19 A There was only -- I'm talking about after the second
20 statement which was concluded at 10:52 a.m., that's
21 whenever I went and spoke with Captain Grant and
22 Chief Wilson and viewed the video. That's why I say
23 before I started discussing with Mr. Herring again
24 about that, it was -- that time it was between 11 and
25 11:15 a.m. It was still a continuation of throughout

1 those interviews.

2 Q Right. You didn't advise him of his rights again,
3 did you?

4 A No, sir.

5 Q Because you take the position it was a continuation?

6 A Yes, sir.

7 Q Even though it was about something about totally
8 different?

9 A No. It was still about the same thing.

10 Q Okay. But what I'm trying to get at is, how long did
11 that second session last? And if it started at 11,
12 it would have taken -- since that statement is signed
13 off on at 11:54, it would have taken 54 minutes,
14 right?

15 A It would have been approximately -- it was within an
16 hour, approximately 45 to 54 minutes.

17 Q 45 to 54 minutes is your estimate. Now, as I
18 understand it, you basically came in and sat down and
19 went through a Q and A. And this is written
20 contemporaneously. You're writing it as you're
21 saying it and he's saying it, right?

22 A On the second statement, yes.

23 Q Okay. And as I understand it, it's not a discussion
24 between the two of you. It is a -- where is the
25 second statement? And you're basically transcribing

1 this as he's saying it, right?

2 A That's correct.

3 Q You write pretty quick?

4 A Do I write pretty quick?

5 Q Yeah. Uh-huh (affirmative).

6 A I don't know. It's average. I do write I guess

7 average.

8 Q All right. So you come back in and you start this

9 process again. And it took somewhere between 54 and

10 45 minutes. So, you got a second hand on your watch?

11 A Yes, sir.

12 Q I'm going to read this. Time it. Okay?

13 "Q "Did you consume any alcoholic beverages

14 on Saturday night, on Saturday and Saturday

15 night, January 28th, 2006?

16 "A I played golf at Palmetto Golf Club in Aiken.

17 I drank about nine beers during the day. We got

18 finished playing golf around 5:30 p.m. We started

19 playing around 1 p.m. We then went to The Bowery, a

20 tavern and grill place, in Aiken. I drank about four

21 scotches and sodas while there. My golf partner,

22 Chris Isgett, drove back. He took me to my house.

23 We went in and had a few more drinks. I had two to

24 four scotches and sodas while at my house. Isgett

25 left my house around 8 to 8:30 p.m. I was at my

1 house by myself. My family is out of town.

2 "Q What did you do then?

3 "A I took a shower. I laid down and don't
4 remember going out anywhere.

5 "Q Did you stay at the house the remainder of
6 the night?

7 "A I'm pretty sure I did. I thought about going
8 to Tombo Grill to get something to eat but I don't
9 recall going.

10 "Q Do you recall going to Chastity's
11 Nightclub?

12 "A No, I don't. I know where it is but I don't
13 recall ever going there.

14 "Q Mr. Herring, the Sheriff's Office has a
15 videotape of you entering Chastity's Nightclub
16 last night. Does that help your recollection?

17 "A I remember the white woman with the big tits.
18 I had a scotch and soda while there. I do recall,
19 but hazy, that I was there. I could not tell you if
20 the place was full or crowded or anything.

21 "Q Did you have a problem with anybody in
22 there?

23 "A I went into one of the back rooms and paid for
24 a lap dance. There were other people in there. The
25 lap dance was done by a light-skinned black woman.

1 "Q What did you drive there?

2 "A A Toyota 4Runner black. This belongs to me. I
3 was by myself as best I recall. I typically don't go
4 to places like this because the people who go there
5 have bad attitudes.

6 "Q How many handguns do you own and what
7 types?

8 "A I have a .40 caliber Glock, a .22 Smith and
9 Wesson, the .357 Smith and Wesson, a Ruger .357. I
10 had a .38 Taurus but my son has it and has it for
11 years. I have a concealed weapons permit. I also
12 have a .22 pump rifle. I usually have the .22
13 pistol, the .22 rifle or the Ruger .357 in the
14 vehicle with me. I can't recall which one was in the
15 Toyota last night.

16 "Q Do you recall firing a weapon from the
17 Toyota as you were leaving Chastity's?

18 "A No, I don't.

19 "Q Did you fire a shot at all?

20 "A If I did, I was not shooting at anyone. I am
21 not saying that I did not, don't, I did not don't.
22 If the gun went off while in my hand it was harmless
23 error. It was probably the Ruger .357 and if it went
24 off it was an accident.

25 "Q Did you see anybody when you fired your

1 weapon?

2 "A No. I was not shooting at anybody. There was
3 nobody to shoot at.

4 "Q Is there anything else?

5 "A Not at this time but" -- and I write this -- "I
6 do reserve the right to edit, add or delete. Signed
7 Dewain Herring.

8 Now, how long was that?

9 A Four minutes and 41 seconds.

10 Q Okay. Four minutes and 41 seconds. Okay. Let's
11 double it for you to be a slow writer. Right? Let's
12 more than double it. Let's say it took ten minutes
13 for you to write that as he said it. Then you read
14 it to him?

15 A Yes, sir.

16 Q Let's give you another ten minutes. Did it take ten
17 minutes for you to read it to him?

18 A No, sir.

19 Q Okay. That's 20 minutes. Now, 20 minutes, I guess
20 you would agree with me, is generous, what it would
21 have taken you to ask him the questions, write your
22 question, write your answer and have him do it. I
23 think we've said -- you've said -- that you're in
24 there with him for 45 to 54 minutes, which gives you,
25 if it's a short time, 25 minutes of doing something

1 else; and if you take the 54, 34 minutes of doing
2 something else. Now, isn't the truth --

3 MR. GIESE: Your Honor, is this a question? I
4 mean, it's three straight minutes of something. He
5 hasn't asked him a question.

6 MR. HARPOOTLIAN: Oh, I've got questions, Judge.

7 THE COURT: Ask a question.

8 MR. HARPOOTLIAN: Thank you.

9 Q Tell the jury, please, if this is a back and forth;
10 write it, answer it, write it, answer it, write it,
11 answer it, read it, sign it, what are you doing those
12 other 25 to 35 minutes?

13 A The length that you gave is not an accurate
14 assessment of that situation at all.

15 Q Well, tell me why.

16 A I'm going very slow. I cannot write as fast as you
17 read it. We were going very slow. We were taking
18 our time and trying to be very careful about what was
19 said and what was written and what the reply was.
20 And based upon the circumstances and the fact that we
21 were going slow, reading the statement again, taking
22 time for him to write something on it, going back and
23 initialing every page, signing every page, making
24 sure we had a clear understanding of what it is,
25 unless you're actually in that setting, trying to do

1 a simulation of it is usually not accurate. And that
2 is the explanation. That was not a very accurate
3 assessment of it.

4 Q So it's not you ask a question, write it out, and
5 then he blurts it out quickly and you write it down.
6 It's a slower process?

7 A It is a process of making sure. And I was definitely
8 trying to be very particular and careful about
9 getting the information from Mr. Herring.

10 Q And so Mr. Herring -- now, Mr. Herring did not have
11 his hearing aids in, did he?

12 A I don't recall if he did or not.

13 Q Was he having any difficulty understanding you?

14 A No, sir. He didn't appear to have any difficulty
15 understanding me at all.

16 Q Well, in his first statement, he told you that he was
17 hard of hearing, didn't he? You don't remember that?
18 You've got to read it?

19 MR. GIESE: Objection, Your Honor.

20 THE COURT: Yes, sir. Sustained.

21 Q Strike that question. Let me ask you another
22 question.

23 MR. GIESE: Your Honor, I believe he has a right
24 to answer the question.

25 MR. HARPOOTLIAN: I withdraw the question. I

1 believe I have a right to do that, Your Honor.

2 **THE COURT:** Go ahead.

3 **Q** Do you remember him -- without reading the statement,
4 do you remember him telling you that he was hard of
5 hearing? Without reading the statement.

6 **A** I recall him making a comment about his hearing with
7 the officers.

8 **Q** And now looking at the statement, what did he tell
9 you?

10 **A** You said with or without looking at the statement?

11 **Q** Go ahead and look at it. If you need it, look at it.

12 **MR. GIESE:** Objection.

13 **THE COURT:** No comments, please.

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

15 **THE COURT:** We've been through this several
16 times.

17 **MR. HARPOOTLIAN:** Sir?

18 **THE COURT:** We've been through this several
19 times.

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

21 **A** He stated that "They said, 'Mr. Herring, get your
22 hands up.' They then said 'Sheriff's Department',
23 and I told them to speak up, I can't hear you."

24 **Q** Did you ask him at that point why he couldn't hear
25 them?

1 A It appeared that he did hear them because he said,
2 "They said, 'Mr. Herring, get your hands up, and then
3 they said, Sheriff's Office.' He just told them to
4 speak up, I can't hear you; but then again, he told
5 me what they said.

6 Q I mean, if he says on one hand I can't hear them; on
7 the other hand tells you what they said, that didn't
8 raise a question with you?

9 A No, sir.

10 Q And are you telling this jury that he understood
11 every word you were saying, never said, I'm sorry,
12 speak up; I can't hear you; I have hearing aids,
13 they're at my house; I'm deaf; I can't hear you? He
14 never said that?

15 A I don't recall. I could have very well repeated a
16 question or repeated something that I said, you know,
17 in there. And he could have -- it's not uncommon for
18 someone to ask you to repeat something. We were in a
19 conference room, just the three of us, in a small
20 setting. He didn't -- which is another reason why we
21 take things in writing, because you can see it and
22 hear it when you take something in writing. And
23 that's why we did it in this situation, so there
24 won't be no misunderstanding of what I heard or
25 didn't or whatever later.

1 Q Did he have his glasses or not?

2 A I don't recall.

3 Q He didn't have his glasses, did he?

4 A I don't recall.

5 Q Are you aware of the fact his glasses were seized
6 with the search warrant from his house, your search
7 warrant?

8 A The SLED search warrant?

9 Q Mm-hmm (affirmative). I'm sorry. It was the
10 Richland County search warrants. I apologize. It
11 was the Richland County search warrant.

12 A It's not listed on the SLED search warrant as being
13 an item that was retrieved.

14 Q I believe that's been introduced in evidence. What
15 exhibit is the Richland County search warrant,
16 please?

17 MR. GIESE: Your Honor, and I think I need to --
18 have a matter of law I need to approach the bench on.

19 THE COURT: All right, sir.

20 (Whereupon, a bench conference is had)

21 THE COURT: All right, ladies and gentlemen.

22 Once again there's a matter of law I need to take up
23 with the attorneys. I need to hear some of their
24 arguments on this point. Let's take a short break.

25 Well, let's take our morning break, I guess we should

1 say. And about 15 minutes. Again, don't discuss the
2 case among yourselves while you're in the jury room.
3 We'll call you in just a few minutes. Thank you.

4 (Jury out at 11:47 a.m.)

5 **THE COURT:** All right, Solicitor. Does this
6 need to be a matter of record?

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

8 (Pause - attorneys conferring)

9 **MR. HARPOOTLIAN:** Your Honor, we've resolved it.
10 They're going to allow me to ask that one question
11 about the search warrant.

12 **THE COURT:** All right.

13 **MR. HARPOOTLIAN:** Judge, this witness --

14 **THE COURT:** Let's take a break.

15 **MR. HARPOOTLIAN:** This witness is on the stand
16 and not to -- I just want to make sure he knows --

17 **THE COURT:** Lieutenant, do you need a break?

18 **WITNESS:** Can I stand up?

19 **THE COURT:** Yes, sir. Do you need a break?

20 **WITNESS:** Yes, sir. Can I stand up?

21 **THE COURT:** Yes, sir. Just don't discuss case
22 the case among yourselves; I mean, with anyone else
23 during the break.

24 (Whereupon, a break is taken)

25 **THE COURT:** Counsel.

1 **MR. HARPOOTLIAN:** Sir.

2 (Whereupon, a bench conference is had)

3 **THE COURT:** Is the State ready for the jury?

4 **MR. GIESE:** Why don't you show him and then ask
5 him the questions you're going to ask him.

6 **MR. MEADORS:** Right.

7 (Whereupon, Mr. Harpootlian and the witness
8 confer)

9 **THE COURT:** Bring the jury.

10 (Jury in at 12:10 p.m.)

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

12 **THE COURT:** All right, Mr. Harpootlian. You may
13 continue.

14 **MR. HARPOOTLIAN:** Thank you, Your Honor. Yes,
15 sir.

16 **Q** Lieutenant, prior to our break I was asking you about
17 a search done by the Richland County Sheriff's
18 Department of his house. And I believe we have
19 determined pursuant to your investigation that a pair
20 of glasses with clear lenses were found on the
21 kitchen countertop by the Richland County Sheriff's
22 Department. Isn't that correct?

23 **A** According to that search warrant and observation of
24 that, that's correct.

25 **Q** Great. So you have no clear recollection of him

1 having glasses on, right?

2 A No, sir, I don't.

3 Q And you have no clear recollection of him having his
4 hearing aids in?

5 A No, sir. I don't recall.

6 Q Now, where were you seated in relation to Mr. Herring
7 at the -- you all are at a long conference table?

8 A We are. I was seated at the head of it. Agent
9 LaRosa would have been seated to my left and Mr.
10 Herring would have been seated to my right.

11 Q So you would have been on Mr. Herring's left?

12 A That would have been correct.

13 Q I want to understand this. We'll go to the board
14 again. Let me see if I can do a little sketch here
15 on the corner. It's a long rectangular table, right?

16 A That's correct.

17 Q You were here. I'll put an L?

18 A Correct.

19 Q LaRosa?

20 A Is to my left.

21 Q Okay. That's LaRosa. And this is Herring over here,
22 right?

23 A That would be correct.

24 Q So you are to Herring's left and LaRosa is across the
25 table from him?

1 A That's correct.

2 Q Now, the first statement -- you've testified the
3 second statement was he said it, you wrote it. As he
4 said it, you wrote it kind of thing. That's not what
5 you did on the first statement though, is it?

6 A The first statement was a little more open endedly
7 than the second.

8 Q A little more open endedly. What does that mean?

9 A To begin with, the questions were: Explain to me
10 what took place at your residence. And in the second
11 statement it was probably more specific and direct
12 questions.

13 Q Okay. And then after you'd gone through -- and I
14 mean, you were there with him. You advised him of
15 his rights at 9:30 ...?

16 A 9:42 a.m.

17 Q 9:42. And you finished that statement at 10:52. Is
18 that right? An hour and ten minutes later?

19 A That's correct.

20 Q So -- and you all talked. You made notes?

21 A That's correct.

22 Q Then you converted the notes into a Q and A?

23 A Into the written statement.

24 Q Well, it was a Q and A, right?

25 A Part of it.

- 1 Q I mean, it's all Q and A, isn't it?
- 2 A The majority. That would be correct.
- 3 Q Okay. And then you had him read it and sign it. Did
- 4 you read it to him or did you have him read it?
- 5 A As I always explain to them, I said, please read it
- 6 yourself as I read it aloud. I read it aloud and
- 7 then give it to them and give them an opportunity for
- 8 them to read it themselves.
- 9 Q And that took an hour and ten minutes?
- 10 A Basically it did.
- 11 Q And that is a three-page statement?
- 12 A The first one, that would be correct.
- 13 Q The statement you took after that was how many pages?
- 14 A It's only three pages.
- 15 Q And it took you 45 to 54 minutes to do that?
- 16 A Approximately.
- 17 Q I'm sorry?
- 18 A Approximately, yes.
- 19 Q Approximately. And in that you didn't take a bunch
- 20 of notes and then transfer it to a written statement.
- 21 You took that as he was saying it. Is that right?
- 22 A Yes. Yes. I would ask the question and write it bit
- 23 by bit, a few words at a time as he was telling me.
- 24 Q Now, after you finished talking to him at 11:54, you
- 25 walked out and spoke to who?

1 A Chief David Wilson and Captain Paul Grant.

2 Q Okay. And did you explain to them what he had said
3 to you or did you show them the statement?

4 A I don't recall showing them the statement. I do
5 recall explaining to certainly Captain Grant that
6 what the contents -- basically what the contents
7 were, as well as Chief Wilson, too.

8 Q Okay. And you knew at that point, at 11:54, you
9 said.

10 "Q "Did you fire a shot at all?

11 "A If I did I was not shooting at anyone. I'm not
12 saying that I did or did not or don't. If the gun
13 went off in my hand it was harmless. It was probably
14 a Ruger .357 and if it went off it was an accident."
15 Is that right?

16 A No. I spoke with them after the first statement.
17 That's the second statement right there. I spoke
18 with Chief Wilson and Paul Grant after the first
19 statement.

20 Q You didn't come out and tell them he said it was an
21 accident?

22 A Well, you asked me about the first one. Are you
23 talking about now --

24 Q At any point.

25 A Are you talking about now after the second statement?

1 Q I'm talking about after 12 -- I mean 11:54 a.m. on
2 the morning of January 29th. When did you tell the
3 Richland County Sheriff's Department he said it was
4 an accident?

5 A I would have told Captain Grant as well as Chief
6 Wilson just moments thereafter.

7 Q Okay. And so they would have -- moments thereafter
8 would have been around noon on the 29th?

9 A Approximately so.

10 Q Okay. I think I'm almost through. Just give me a
11 second here. Now, when have you ever had somebody at
12 the end of their statement -- have you ever had, not
13 when; but have you ever had somebody put, "but do
14 reserve the right to edit, add or delete"? Have you
15 ever had somebody write that on a statement before?

16 A It's the first I ever recall I ever had anybody put
17 that exact verbiage in there like that, as well as
18 write it themselves.

19 Q I mean, that's after you've read it to them, after
20 everything has been said and done. He says: "I do
21 reserve the right to edit". That would mean change
22 it?

23 A Edit, change it.

24 Q Add something to it or delete something, right?

25 A That's what he wrote.

1 Q And he wrote that in his own hand?

2 A Yes, sir.

3 Q That's the only thing that day he writes in his hand
4 other than the signature and his initials, right?

5 A In my presence, that's correct.

6 Q Now, did that raise questions in your mind that the
7 statement you had just gotten might not be accurate,
8 that he might think it's not accurate? Did that
9 raise any questions in your mind?

10 A To answer your question; no, sir. And to further
11 state that, I guess he's -- as it states, that he's
12 reserving his right apparently to change his mind or
13 think of something else.

14 Q Or think about it?

15 A Or think of something else.

16 Q Or think about it, like you gave the officers a
17 chance to do?

18 A I can only go by what he wrote there. He wanted to
19 reserve that right.

20 Q Now, did you review -- you reviewed all the officers'
21 statements. Is that correct?

22 A I did.

23 Q I mean, was it your role to make some decision or
24 just to gather it and give it to somebody?

25 A Our role in this investigation is very similar to all

1 other investigations. It's to try to gather the
2 facts and evidence as they are and provide it to a
3 prosecutor for their review.

4 Q Beg the Court's indulgence one moment. Pursuant to
5 your gathering evidence, did you have an opportunity
6 to talk to or interview the EMS people that brought
7 him to the Sheriff's Department?

8 A I was there at the time that they were bandaging him,
9 Mr. Herring; and as a matter of fact actually
10 observed them when they were finishing up with Mr.
11 Herring. And I don't recall asking them any type of
12 specific questions.

13 Q I mean, they brought him about 9:30, correct?

14 A According to their report, I think they concluded
15 that at 9:28.

16 Q Okay.

17 A A.M.

18 Q And you reviewed that report?

19 A Have I reviewed it? I have a copy of it here.

20 Q And that's part of the SLED report, correct?

21 A Yes, sir.

22 Q Let me ask you if that's it?

23 A This does appear to be the one when they went through
24 the Sheriff's Office and attended to Mr. Herring.

25 Q Did they indicate when you were investigating this

1 that they thought he ought to go back to the
2 hospital?
3 A You talking about immediately?
4 Q At 9:28 when they left him there, didn't they think
5 he needed to go back to the hospital?
6 A Well, first of all, this report was not provided at
7 that time.
8 Q I'm sorry?
9 A This report was not provided to us at that time.
10 Q No, no, no. I understand that. But you gathered it
11 as part of your investigation. Did they indicate to
12 the Sheriff's Department that he needed to go back to
13 the hospital at 9:28?
14 A I don't recall them telling me that. They might have
15 told somebody else.
16 Q I'm talking about the report you gathered as part of
17 your investigation. Does it reflect that?
18 A It was my understanding that they later did take Mr.
19 Herring back to the hospital.
20 Q But at 9:28, before you ever started interviewing
21 him, didn't they want to take him back to the
22 hospital, according to their report?
23 A I don't recall them saying that. And if they -- this
24 report was not written. I did not receive this. And
25 I don't recall that at all.

1 Q Did you gather that report as part of your
2 investigation?

3 A After the fact.

4 Q Okay. What does it indicate that the --

5 MR. GIESE: Your Honor, can I object at this
6 time? Hearsay.

7 THE COURT: Yes, sir.

8 MR. HARPOOTLIAN: I'm not introducing it for the
9 matter asserted. I am introducing it to establish
10 the conditions.

11 THE COURT: The truth of the matter.

12 MR. HARPOOTLIAN: No. I am introducing it to
13 show the conduct of the Sheriff's Department. He is
14 investigating the Sheriff's Department. Not whether
15 it was true or not.

16 THE COURT: You don't need to ask him about the
17 statement. I mean, you can ask them what they did.
18 You just can't ask them what's in the statement or
19 the report. What they did or didn't do.

20 Q Were you there when they were treating him, the EMS
21 people when they dropped him off?

22 A Yes, sir. I saw them and I did see them in the room
23 attending to him.

24 Q As part of your investigation did you determine that
25 they felt, the EMS people, he ought to go back to the

1 hospital? Not then but now.

2 MR. GIESE: Objection, Your Honor.

3 THE COURT: Well, you've asked him if he
4 determined as part of his investigation.

5 MR. HARPOOTLIAN: Yes, sir.

6 THE COURT: Which took place at that time I
7 assume.

8 MR. HARPOOTLIAN: No, no. But since then.

9 THE COURT: Go ahead.

10 Q Go ahead.

11 A I'm trying to read it. I still am not requesting
12 transport of P.T. and --

13 MR. GIESE: Your Honor, I have to object.

14 THE COURT: That's clearly hearsay.

15 MR. HARPOOTLIAN: That's clearly hearsay.

16 A I mean, that's --

17 Q We'll tie this up later on. But if you'd known that
18 the EMS people felt that he needed further treatment,
19 would you have continued to question him?

20 A That's a what-if question. I don't recall what-if
21 happening. But I was aware he had been transported
22 to the hospital, treated and released and transported
23 to the Sheriff's Office and EMS came and treated him
24 and left. And then I spent some time with him before
25 I advised him of his rights to try to make some type

1 of assessment myself in asking him if he wanted to
2 speak and he said yes. And that's what I based it
3 upon.

4 Q Did the Richland County Sheriff's Department,
5 somebody at the Sheriff's Department, tell you that
6 he had been treated and released and required no more
7 medical treatment?

8 A I don't recall somebody specifically telling me that.
9 No, I don't.

10 Q Well, how do you know he was treated and released?

11 A Chief Wilson told me that he was transported by EMS
12 to Richland for treatment and then he was brought in
13 a patrol car from the hospital to the Sheriff's
14 Department.

15 Q And when he got to the Sheriff's Department he was
16 still bleeding, wasn't he?

17 A I recall seeing some discoloration on the bandage.
18 And that is the reason why someone -- once again, it
19 wasn't me -- but someone obviously from the Sheriff's
20 Office took it upon themselves to call EMS to come
21 over there to further treat him.

22 Q Was he ever transported back to the hospital? Do you
23 know?

24 A I understand that, yeah, we did have a report he got
25 transported back to the hospital later that day.

1 Q After you finished interviewing him?

2 A That's correct.

3 Q To be treated?

4 A We turned him back over to Chief Wilson. I do recall
5 Chief Wilson stated that before they took him to the
6 detention center that they took him back to the
7 hospital to get rechecked again.

8 Q He had been shot when you were talking to him, right?

9 A Yes, sir.

10 Q He'd been to the hospital?

11 A Yes, sir.

12 Q You were told he'd been released by the hospital?

13 A He was there in person. Yeah. That's correct.
14 Because --

15 Q Okay. And he was then after you finished talking to
16 him taken back to the hospital?

17 A I don't know exactly what time. I think the record
18 would reflect. I think it was several hours later.

19 Q And he was in the Sheriff's Department's custody,
20 right?

21 A That's correct.

22 Q He couldn't walk out and go to the hospital?

23 A No, sir.

24 Q Okay. Now, while any of those trips to the hospital,
25 did you investigating this matter ever ask that a

1 blood sample from him be taken?

2 A No, sir.

3 Q Do you ever tape record these statements?

4 A No, sir.

5 Q You never have?

6 A I don't take recorded statements. There may be some
7 other circumstances that we'd be somewhere that may
8 require something. But as a standard practice, no,
9 sir, we don't.

10 Q You don't tape record them and then you destroy your
11 notes after you prepare a written statement. Is that
12 right?

13 A That is correct.

14 Q Beg the Court's indulgence one moment, please. Just
15 one more question. The officers that you took
16 statements from that were at the house on Alexander
17 Circle that either fired their weapons or were
18 present when the weapons were fired, tell me their
19 names again, please?

20 A Gwyn, Baker, Hodges, Linfert, Davis, Tavenner.

21 Q Six?

22 A If I recalled them all.

23 Q Okay. That's fine. And have you seen any of those
24 officers other than -- I mean, Linfert is sitting
25 right here. And you've seen Gwyn. Have you seen any

1 of those other officers around the courthouse?

2 A I saw I think Deputy Hodges coming out of the
3 restroom when I entered. I don't recall seeing
4 Tavenner.

5 Q Do they all still work for the Sheriff's Department
6 as far as you know?

7 A My understanding.

8 Q Thank you. I don't have any further questions.

9 THE COURT: Anything further?

10 MR. GIESE: Beg the Court's indulgence. Just
11 one.

12 REDIRECT EXAMINATION

13 BY MR. GIESE

14 Q Mr. Harpootlian wrote up 45 to 54 minutes?

15 A Yes, sir.

16 Q Is that your testimony or what Mr. Harpootlian wrote
17 up there?

18 A That's what he wrote up there.

19 Q And yours was anywhere from 39 minutes to 54 minutes,
20 correct?

21 A That would be an estimate. Correct.

22 Q And that third statement that you took from the
23 defendant in which he says he shot a gun there at
24 Chastity's that night but he wasn't aiming at
25 anybody, that was all done between that 39 minutes

1 and 54 minutes. Is that correct?

2 A That's correct.

3 Q That's how long it took you to take that statement.
4 Is that correct?

5 A That's correct.

6 MR. GIESE: That's all I have.

7 MR. HARPOOTLIAN: Nothing further.

8 THE COURT: You may come down, sir. Witness be
9 excused? Any objection?

10 MR. HARPOOTLIAN: No objection, Your Honor.

11 THE COURT: Is the jury comfortable with calling
12 the next witness? All right. Call your next
13 witness.

14 MR. MEADORS: If it pleases, Your Honor, the
15 State would now call Special Agent Paul LaRosa.

16 PAUL C. LAROSA, III, after being duly sworn,
17 testifies as follows:

18 THE CLERK: Please have a seat. State your full
19 name for the record.

20 WITNESS: Paul Charles LaRosa, III. The last
21 name is spelled L-A, capital R-O-S-A.

22 DIRECT EXAMINATION

23 BY MR. MEADORS

24 Q Good afternoon.

25 A Good afternoon.

1 Q You're a Special Agent?

2 A Yes, sir.

3 Q Please tell the jury about yourself, your background,
4 where you were born, your training, your education
5 and then in particular the education in law
6 enforcement that brought you here today, please?

7 A Okay. I was born and raised in the greater Columbia
8 area. I graduated from the Citadel in Charleston,
9 South Carolina, in 1994. I then attended -- I got
10 hired at SLED, attended the police academy and was
11 assigned as a Special Agent to the crime scene unit
12 for six years and then was transferred to the
13 bloodhound tracking team. And I was assigned to that
14 for approximately five years. And now I'm with
15 the -- assigned to the Midlands investigative unit,
16 and I have been here for two years.

17 Q And the different roles you've had in SLED are what?

18 A I did crime scene investigations to include latent
19 fingerprints, crime scene reconstruction, blood
20 spatter. And then with the tracking team we went out
21 and arrested fugitives who, you know, run off in the
22 woods, helped find elderly and missing children. And
23 with the Midlands unit we investigate general crimes,
24 from police-involved shootings all the way down to
25 theft from a state agency.

1 Q And besides your training in criminal justice at the
2 Criminal Justice Academy and the other training
3 you've testified to, do you all have periodic CLE's
4 if you will, continuing learning?

5 A Yes, sir. We have to attend what we call in-service
6 every year, which is a two-day in-service in which we
7 are updated on legal, CDV laws, investigative
8 strategies; and also within the crime scene unit I
9 attended numerous, numerous times. I went to the
10 specialized school from Miami, Florida, all the way
11 to Boston, Massachusetts, and investigative schools
12 questioning and interviewing and multiple schools
13 along that avenue. And also firearms proficiency.

14 Q You are stationed in the Midlands. You're in the
15 Midlands now?

16 A Yes, sir, I am.

17 Q This is a crazy question. What does that mean?

18 A The Midlands, the state is broken up into four
19 different regions for the purposes of our
20 investigative services unit. You have the Low
21 Country which is Charleston, the upstate or the
22 Piedmont which is the Greenville area, and then the
23 Myrtle Beach area which is the PeeDee. And then the
24 Midlands runs from the north of Lexington to
25 Richland, covers from Lancaster all the way to Aiken.

1 So it's about the middle of the state approximately
2 or straight across the middle.

3 Q I'd like for you to direct your attention to
4 January 29th, 2006, please, Special Agent.

5 A Yes, sir.

6 Q And how did you get involved with this case?

7 A We got -- myself and my partner, we got involved in
8 this case due to an incident involving law
9 enforcement from the Richland County Sheriff's Office
10 and Mr. Herring at his residence. We were called in
11 to investigate the police-involved shooting aspect of
12 the incident.

13 Q And is that -- I think you stated it earlier -- as
14 part of what you do, that is one of the functions you
15 have as a Midlands Special Agent with SLED, correct?

16 A Yes, sir. That is correct. It is typical for local
17 police departments whenever their officers may be
18 involved in some kind of activities such as firing or
19 discharging their weapon that they would call us to
20 investigate, to make sure it's good. We're that
21 independent third party that would come in and review
22 and collect the data to present it to the Solicitor's
23 Office for review.

24 Q And you mentioned your partner. Who is that?

25 A My partner assigned to this case was Special Agent

1 Dave Lawrence. Now he's Lieutenant Dave Lawrence.

2 Q And as a part of that, did you have an occasion to go

3 to 460 Alexander?

4 A Yes, sir, I did.

5 Q And did you have an occasion to talk to some of the

6 officers involved?

7 A Yes, sir. We spoke with the officers who were

8 present at the scene. Yes, sir.

9 Q And also did you have an occasion to come in contact

10 with one Dewain Herring?

11 A Yes, sir. We interviewed and talked with Mr. Herring

12 at the Sheriff's Office.

13 Q And tell the folks about that. Specifically where

14 did you talk to the defendant, Dewain Herring?

15 A We spoke with the defendant, Mr. Herring, in a large

16 conference room. Special Agent Lawrence and myself

17 interviewed him there in the conference room.

18 Q And when you say a large conference room, a large

19 table?

20 A Yes, sir. When I'm saying a conference room, enough

21 to maybe sit, you know, anywhere from, you know, ten

22 to eleven people around the table. It looked like

23 maybe something where their command staff would hold

24 monthly meetings.

25 Q And in this room was you, Special Agent Lawrence?

1 A Yes, sir.

2 Q And the defendant, Dewain Herring?

3 A That's correct. It was myself, Agent Lawrence and
4 Mr. Herring.

5 Q Prior to talking to the defendant, did you make any
6 observations about him?

7 A Well, part of our -- when we interview somebody, Mr.
8 Herring for the purpose of this case was our victim.
9 Because we tend to look at -- when we go into
10 investigate a police-involved shooting, we still have
11 a suspect and we still have a victim. And the
12 suspects in this case would be the law enforcement
13 officers because we are trying to determine if -- to
14 help find the facts, to see if the police-involved
15 shooting was a good shooting, so to say. And so the
16 victim in this case would have been Mr. Herring who
17 had been fired upon. And we're going in to find out
18 all of those basic facts.

19 So as part of it, when we interview somebody, we
20 want to make sure that they can clearly understand
21 what we're talking about and if they're coherent and
22 if they're able to respond in the correct way.

23 Q Now, I'm going to show you what's marked State's 77.
24 It's actually a blowup of State's 77. Do you
25 recognize this?

- 1 A Yes, sir, I do. That is one of our standard Miranda
2 rights forms that all of our agents use whenever we
3 Mirandize somebody.
- 4 Q And is your name on here?
- 5 A Yes, sir, it is. I witnessed it.
- 6 Q Now, were you present when the Miranda rights were
7 read to the defendant, Dewain Herring?
- 8 A Yes, sir. I was present.
- 9 Q And who read him those rights?
- 10 A Mr. Lawrence read the rights to Mr. Herring and had
11 Mr. Herring review each line and initial. Unlike
12 television where they just whip out the little note
13 card and read it real quick, we want to make sure,
14 absolute sure, that the individual when they are in
15 custody understand their rights. So that's why we
16 take it slow and we read each line to them. In this
17 case Mr. Agent Lawrence read it to him and had him
18 initial each line as we go down that he understood
19 his rights.
- 20 Q Now, at this point it's got RCSD. Does that mean
21 Richland County Sheriff's Department?
- 22 A Yes, sir.
- 23 Q The date: 1-29-06?
- 24 A Yes, sir.
- 25 Q The time: 9:42. Is that correct?

1 A That is correct.

2 Q And as of January 2006, how long had you been doing

3 this, been in law enforcement?

4 A I'd been in law enforcement for at that time

5 approximately 11 years.

6 Q And in your presence you've testified these rights

7 were read to the defendant?

8 A Yes, sir, they were.

9 Q Did the defendant, Dewain Herring, indicate in any

10 form or fashion, either orally or otherwise, that he

11 understood these rights?

12 A Yes, sir, he did.

13 Q How did he do it? When it was read: "You have the

14 right to remain silent", did he indicate to you he

15 understood that?

16 A Yes, sir, he did. And we would -- we were asking him

17 almost in question form is our standard. "You have

18 the right to remain silent." And by him nodding in

19 understanding, he is initialing, saying that he

20 understands that specific right.

21 Q Would you go on to number 2? And did this day in

22 fact Special Agent Lawrence in your presence go on to

23 number 2 before that's been initialed?

24 A No, sir. We wouldn't go on because we would want to

25 make sure that he understood because each one kind of

1 plays off -- each different line plays off on the
2 other one. We would want to make sure that he
3 understands each of those rights.

4 Q So did you see him initial that, and did he confirm
5 to you and in your presence and/or Agent Lawrence he
6 understood that?

7 A Yes, sir. By his initials. That means to me, and
8 his nodding, that he understood that right.

9 Q Any question about it in your mind that day?

10 A Absolutely not.

11 Q "Anything you say can be used against you in court as
12 evidence against you. Anything that you say can be
13 used in court as evidence against you." Was that
14 read to him?

15 A Yes, sir, it was.

16 Q Did he appear to understand that?

17 A Yes, sir, he did.

18 Q Did he indicate so?

19 A He indicated by initialing and nodding. Yes, sir.

20 Q "You are entitled to talk to a lawyer now and have
21 him present now or at any time during questioning."

22 A Yes, sir.

23 Q And did he appear to understand that?

24 A Yes, sir.

25 Q Did he indicate it?

1 A Yes, sir, he did.

2 Q And was it a timely indication?

3 A I mean, all of these answers are coming at a normal

4 pace. There was nothing out of the ordinary with him

5 taking any time.

6 Q "If you cannot afford an attorney one will be

7 appointed for you without cost." Did he appear to

8 understand not only your question, but did he give

9 you a response to that question, and did he indicate

10 to you he understood?

11 A He understood that he could, you know, afford an

12 attorney if it was needed and he initialed it.

13 Q "If you decide to answer questions now without a

14 lawyer present, you will still have the right to stop

15 answering at any time. You also have the right to

16 stop answering at any time until you talk to a

17 lawyer." Was that read to him?

18 A Yes, sir, it was.

19 Q Did he appear to understand that?

20 A Yes, sir, he did.

21 Q Did he indicate that?

22 A Yes, sir, he did.

23 Q Now, in here it's got an -- I think it's a DH. It's

24 got some initials here?

25 A Yes, sir.

1 Q Could you explain that?

2 A I believe that Mr. Herring at that point was

3 indicating at that specific point on that line

4 because there is a stop in that. It's almost -- that

5 specific question is almost two questions. And I

6 believe that he was indicating that he understood

7 both sets, both statements in there.

8 Q In this advice of rights it has two sentences, and he

9 initials in there that he understands there are two

10 separate sentences in that, right?

11 A That is correct. Yes, sir.

12 Q Did you ask him to do that?

13 A No, sir. In fact, this was about one of the first

14 times that I've ever seen anybody break it up. It

15 made sense to me because that is a two-sentence

16 question. But it just -- you know, that just showed

17 to us that he definitely understood his rights. But

18 we knew he was an attorney at that time. So I

19 figured that's what an attorney would do.

20 Q So you knew he was an attorney?

21 A Yes, sir.

22 Q He broke that into two parts?

23 A Yes, sir.

24 Q "Do you understand these rights?" Did he indicate he

25 did?

- 1 A Yes, sir, he did.
- 2 Q "Do you wish to talk to us at this time?" Did he
- 3 indicate his initials at that point?
- 4 A Yes, sir.
- 5 Q Did he say he'd talk to you?
- 6 A Yes, sir, he did.
- 7 Q Waiver of rights. "I have read this statement of my
- 8 rights and I understand what my rights are. I am
- 9 willing to talk now without a lawyer present. I
- 10 understand and know what I am doing. No promises or
- 11 threats have been made to me, and no pressure or
- 12 coercion of any kind has been used against me." Was
- 13 that read to him?
- 14 A Yes, sir, it was.
- 15 Q Did he appear to understand not only his rights but
- 16 this waiver of rights?
- 17 A Yes, sir.
- 18 Q And did he indicate to you and/or David Lawrence in
- 19 your presence that he understood it?
- 20 A Yes, sir. By signing that, he understood the whole,
- 21 complete package.
- 22 Q That's his name there?
- 23 A Yes, sir.
- 24 Q Signed by Lawrence and you?
- 25 A Yes, sir.

1 Q Tell these ladies and gentlemen of the jury, at any
2 time during the reading of these rights, did you all
3 threaten him?
4 A No, sir.
5 Q You or agent Lawrence?
6 A No, sir. We would have never done that. No.
7 Q Did you coerce him?
8 A No, sir.
9 Q Did you hold out any hope of reward or promise?
10 A No, sir.
11 Q At any time in here did he say, I want to talk to
12 lawyer?
13 A If he would have said that at any point, the
14 interview would have ceased at that point.
15 Q You would have stopped?
16 A Absolutely. Yes, sir.
17 Q After that did you have an occasion to be with
18 Special Agent Lawrence when he started talking or you
19 all started talking with the defendant, Dewain
20 Herring?
21 A Yes, sir. I was present during the interview.
22 Q And tell the ladies and gentlemen about how the
23 interview went?
24 A With the interview, we explain to Mr. Herring after
25 the advice, the waiver was signed, the Miranda rights

1 waiver was signed, we explained to him what we were
2 there for and the reasoning that we were there. We
3 were here to investigate a police-involved shooting
4 and we were trying to find out the reason for the
5 police being there, just get the whole background.
6 Because as stated before, Mr. Herring was our victim
7 in this case and that's the way that we approached
8 this. We needed to find out the facts, to find, to
9 get the correct information to see if what the law
10 enforcement did was justified.

11 Q And after you all starting talking to the defendant
12 at this point, did at some point Special Agent
13 Lawrence in your presence put in writing on the
14 voluntary statement what Dewain Herring told you all
15 in this first part?

16 A Yes, sir. After we collect and we developed a
17 conversation with him, we were able to get enough
18 that we felt like we could do a question and answer
19 type style statement. And that's what we did.

20 Q It is fair to say he gave you an oral statement to
21 start with?

22 A Yes, sir. We were just trying to figure out
23 everything that happened leading up to the event of
24 both why police were there and what happened when
25 they were at his residence.

1 **MR. HARPOOTLIAN:** Your Honor, I hate to
2 interrupt, but the solicitor has been leading him. I
3 would ask that he just ask him what happened next
4 rather than suggesting answers. Thank you.

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

6 **Q** What happened next?

7 **A** Well, after we got the oral interview completed with,
8 we went into the question and answer written
9 statement with Mr. Herring.

10 **Q** And let me refer you to State's Exhibit 78. Before
11 we get to this, at the top, what's at the top?

12 **A** Well, this is just the -- we need to get some basic
13 facts of who we're interviewing, where we're
14 interviewing them at, you know. Have you
15 completed -- what grade have you completed in school,
16 address, and who is doing the interviewing; just the
17 basic people involved of the interview.

18 **Q** My name is; who gave you that name?

19 **A** Mr. Herring did.

20 **Q** My address is; who gave you that, if anybody?

21 **A** I believe when we were going through that that we
22 would read it to him and get the correct address.
23 Even though we knew the correct address, it would be
24 something that we would just question him. But we
25 would read each line to him.

1 Q So who told you my address is
2 if anybody?
3 A It would have been Dewain Herring.
4 Q Date of birth?
5 A Dewain Herring.
6 Q Social Security number?
7 A Dewain Herring.
8 Q Phone number?
9 A Dewain Herring.
10 Q Did -- did you understand him? Listen to this,
11 please. Did you understand him when he gave you
12 these answer?
13 A Yes, sir. I understood everything.
14 Q Did he appear to you, based on your training, your
15 experience or just everyday common sense, to
16 understand your questions?
17 A Yes, sir.
18 Q Was he timely in giving you a response to a Social
19 Security number?
20 A There was nothing to indicate that there was any
21 problems with Mr. Herring.
22 Q After this was filled out, did you all have an
23 opportunity to put down on paper what he had told
24 you?
25 A Yes, sir.

1 Q Specifically, questions were asked; answers were
2 given?

3 A Yes, sir.

4 Q And I'm not going to go over each one of those.
5 We've done that previously. But as to page 1, it's
6 got a question and an answer. Whose handwriting was
7 this?

8 A That was in Agent Lawrence's handwriting.

9 Q Are you present when State's 78 which consists of
10 three pages, 78, 79 and 80 for the record purposes;
11 were you present for this entire statement?

12 A Yes, sir, I was.

13 Q Now, looking on State's 78 to start with, it appears
14 at the top there's some initials here. Can you see
15 that?

16 A Yes, sir, I can.

17 Q Beg the Court's indulgence. If I can approach? I'm
18 sorry, Judge.

19 THE COURT: Go ahead.

20 Q Showing you what's State's 2, I don't believe you can
21 see it in the blowup. But in the bottom right or the
22 bottom of State's 2, do you see other initials?

23 A Yes, sir.

24 Q They just don't appear on this blowup, correct? Here
25 they are right here. I guess I'm blind. Is that it

1 right there?

2 A Yes, sir.

3 Q All right. What's that for?

4 A It is our -- the way that we write statements, you
5 want the individual to initial the beginning and the
6 end of each page of a statement.

7 Q And why?

8 A Well, it just shows we want them to know that we're
9 not going to put anything else in a statement that
10 they did not write and that they agreed that the
11 information on that page is the answers that they're
12 giving to our questions.

13 Q So are there initials at the top?

14 A Yes, sir.

15 Q At the bottom of the first page. The second page?

16 A Yes, sir.

17 Q Third page?

18 A Yes, sir.

19 Q And at the bottom there appears to be a line here.
20 And it is on there; but can you look at the original,
21 State's 2, and tell me whose signature is at the
22 bottom there? Why is that line drawn there?

23 A Well, that line is drawn there because the interview
24 ended -- the statement ended at the third from the
25 bottom line. There was nothing else put in there by

1 us. So when the statement was concluded, after the
2 statement was finished by us with Mr. Herring, we put
3 the line and have Mr. Herring or the defendant sign
4 that or initial that line stating that we didn't add
5 anything to the statement.

6 Q Did you all -- you all being you and Special Agent
7 Lawrence -- go back over this statement with Dewain
8 Herring, the defendant, after it was taken by Agent
9 Lawrence?

10 A Yes, sir.

11 Q Page-by-page?

12 A Page-by-page, word-for-word.

13 Q And the initials at the top and bottom of each page
14 have been made after that to show you all had done
15 that?

16 A Yes, sir.

17 Q And as you were going through, you or/and Agent
18 Lawrence, going through State's 78, 79 and 80, did he
19 appear to understand as you all were reviewing it?

20 A Yes, sir.

21 Q Went over each page?

22 A Went over each page word-for-word.

23 Q At any time during the oral statement or the taking
24 of this written statement, did Dewain Herring tell
25 you to and/or Special Agent Lawrence in your

1 presence, I don't want to talk to you any more?

2 A No, sir.

3 Q Stop questioning me?

4 A No, sir.

5 Q If he had asked for a lawyer then, what would you
6 have done?

7 A We would have stopped the interview or stopped the
8 statement at that point. And that would have
9 concluded the interview.

10 Q At any time during the taking of this statement, 78,
11 79 and 80, did you threaten, and/or did Agent
12 Lawrence, threaten, coerce or hold out any hope of
13 reward in exchange for this statement?

14 A No, sir.

15 Q Did you have an occasion to take -- and I say you. I
16 mean you and Special Agent Lawrence --

17 A Yes, sir.

18 Q -- have an occasion to take another statement from
19 Dewain Herring, the defendant?

20 A Yes, sir.

21 Q And can you tell the jury about that?

22 A After the first statement was complete, Special Agent
23 Lawrence went to discuss the matters with Richland
24 County because we were starting to get some
25 conflicting information. We were -- the statement

1 that we had gotten from Mr. Herring was not with the
2 statement that we had -- the first initial background
3 information we had gotten about the call. So Agent
4 Lawrence stepped outside to see exactly if we were
5 just misinformed or if we getting our -- we were just
6 trying to make sure that our ducks were in a row.
7 And while he was doing that I stayed in the
8 conference room with Mr. Herring. And then when
9 Mr. Lawrence came back we started the second
10 interview.

11 Q Was the defendant, Dewain Herring, offered the
12 opportunity to use the bathroom?

13 A Yes, sir.

14 Q What about if any food or drink was asked for? Would
15 he have been provided that? Or was he?

16 A I believe that he was provided a Coca-Cola on the
17 first one. He declined that he wanted anything to
18 eat.

19 Q If he had asked anything of you as far as that
20 regard, bathroom or food and water, would you have
21 given it to him?

22 A Absolutely.

23 Q I mean, is that your practice?

24 A That's our policy. Yes, sir.

25 Q And did there come a chance -- excuse me. After this

1 first statement, did you -- were you present for the
2 second statement?

3 A Yes, sir, I was.

4 Q And again, referring now to State's 81, 82 and 83 for
5 the record, and it refers to State's 3 which is the
6 original, you all already had this background
7 information?

8 A Yes, sir.

9 Q And again, looking at State's 81, do the initials
10 again appear at the first and the bottom?

11 A Yes, sir, it does.

12 Q Looking at State's 3?

13 A Yes, sir. Yes, sir.

14 Q On State's 3 right here now, did the defendant,
15 Dewain Herring, appear to you to understand the
16 questions as Agent Lawrence was asking them?

17 A Yes, sir.

18 Q He understood when he asked him a question?

19 A Absolutely.

20 Q How long would it take you him to give you an answer?
21 Was it timely?

22 A Yes, sir, it was.

23 Q Did it make sense as far as in response to the
24 question based on your training and experience?

25 A Yes, sir, it was.

- 1 Q And on page 2, and again back on the first one, your
2 signature is on each one of these pages, isn't it?
- 3 A Yes, sir. At the bottom.
- 4 Q As a witness?
- 5 A Yes, sir.
- 6 Q And on page 2 of -- which is State's 82 again, do the
7 signatures, the initials appear at the top and the
8 bottom?
- 9 A Yes, sir.
- 10 Q And again, Dewain Herring's name at the bottom?
- 11 A Yes, sir.
- 12 Q Who else's names are at the bottom of each page?
- 13 A Myself and Agent Lawrence's signature.
- 14 Q On each page?
- 15 A On each page at the bottom. Yes, sir.
- 16 Q Finally, State's 83, again signature at the top and
17 the bottom, initialed at the top and the bottom? I'm
18 sorry. Correct?
- 19 A Yes, sir.
- 20 Q And everybody's, everybody's signature at the bottom,
21 correct?
- 22 A Yes, sir.
- 23 Q Dewain Herring actually signed that?
- 24 A Yes, sir, he did.
- 25 Q With his own hand?

1 A Yes, sir.

2 Q Is it on the line?

3 A Yes, sir.

4 Q Was he handcuffed?

5 A I believe he was handcuffed in front.

6 Q Is that your practice?

7 A That would be the policy of whatever. We were with

8 Richland County. They were the ones that had him in

9 custody and they felt comfortable with him handcuffed

10 in front. I was fine with that also.

11 Q Now, there appears to be a line drawn on the last

12 page of State's 3 here and some initials on that?

13 A Yes, sir.

14 Q Again, on this statement, why is that line drawn?

15 A That line is to indicate that that is where our

16 interview and statement concluded. He drew that line

17 showing that we didn't add anything or change

18 anything at the bottom. And he initialed that.

19 Q Above that there appears to be something in someone

20 else's handwriting, correct?

21 A Yes, sir.

22 Q And who put that on it?

23 A That was Mr. Herring.

24 Q And who asked to put that on there?

25 A Mr. Herring did after he read his statement. And I

- 1 believe it's after the final question which we always
2 ask, is there anything else that you would like to
3 add to this statement or to some effect of that, and
4 he said no. But after he -- and so Agent Lawrence
5 wrote no. And then beside that, after he finished
6 reading his statement, he put, but I do -- "but do
7 reserve the right to edit, add or delete."
- 8 Q And did he initial that?
- 9 A Yes, sir, he did.
- 10 Q Did you understand the words when he wrote them?
- 11 A I could read them and understood what he was putting
12 down. Yes, sir.
- 13 Q And just a couple more questions. As you and/or
14 David Lawrence read through State's 3, are you all
15 sitting at a table actually going over each page with
16 him, reading it?
- 17 A Yes, sir. Word-for-word.
- 18 Q During that process, based on your training, your
19 experience and spending time that day with Dewain
20 Herring, did he appear to understand the statement?
- 21 A Yes, sir, he did.
- 22 Q Did he understand when you all were going back over
23 it?
- 24 A Yes, sir.
- 25 Q And he signed as such on each page?

1 A Yes, sir.

2 Q Any time during the taking of State's 3, this second
3 statement, Special Agent LaRosa, did you threaten,
4 coerce or hold out any hope of reward in exchange for
5 Dewain Herring's statement to you?

6 A No, sir.

7 Q Did he say during this statement, stop, I don't want
8 to talk to you?

9 A No, sir, he did not.

10 Q If he had, what would you have done?

11 A We would have stopped and concluded the interview at
12 that point.

13 Q Did you know he was a lawyer?

14 A Yes, sir, I did.

15 Q Beg the Court's indulgence. Just a couple of
16 follow-ups. Can you come down for a second?

17 A Yes.

18 MR. MEADORS: With the Court's permission?

19 WITNESS: Your Honor, may I?

20 THE COURT: Yes, sir.

21 Q If you'd stand over there so -- on page 2 which is
22 State's 82, you can point. I'll point it out. Were
23 you present when the question was asked: "What did
24 you do then?"

25 A Yes. Yes, sir, I was.

1 Q Were you present and did you hear the defendant say,
2 "I laid down and don't remember going out anywhere?"

3 A Yes, sir.

4 Q And in response to the question of "Did you stay at
5 the house the remainder of the night", what did the
6 defendant tell you?

7 A He said that "I'm pretty sure I did but I thought
8 about going to Tombo Grill to get something to eat
9 but I don't recall going."

10 Q And in response to the question: "Do you recall
11 going to Chastity's Nightclub", what did the
12 defendant tell you?

13 A He said, "No, I did not. I know where it is but I
14 don't recall ever going there."

15 Q Now, did he appear to you to understand that
16 question?

17 A Yes, sir.

18 Q "No, I did not"?

19 A Yes, sir.

20 Q And in response to the question: "Mr. Herring, the
21 Sheriff's Office has a videotape of you entering
22 Chastity's Nightclub last night. Does that help your
23 recollection", did he appear to you based on your
24 training and experience to understand that question?

25 A Yes, sir.

1 Q Did he ask you to repeat it?

2 A No, sir.

3 Q What did he tell you in answer to that?

4 A He just stated right off: "I remember the white

5 woman with the big tits."

6 Q What else did he say? Read the whole thing.

7 A "I had a scotch and soda while there. I do recall,

8 but hazy, that I was there. I could not tell you if

9 the place was full or crowded or anything."

10 Q And that says: I do what there? Recall?

11 A "I do recall."

12 Q And in response to the question, "Did you have a

13 problem with anyone in there"; do you remember that

14 question?

15 A Yes, sir, I do.

16 Q Did he appear to understand that?

17 A Yes, sir.

18 Q What did he tell you in response to that?

19 A He says, "I went into the one of the back rooms and

20 paid for a lap dance. There were other people in

21 there. The lap dance was done by a light-skinned

22 black woman."

23 Q Did you have any trouble understanding his response

24 to that question? Did you understand it?

25 A I understood his -- I understood the question. I

1 understood his answer.

2 Q Did you all ask him what kind of vehicle he drove?

3 A Yes, sir.

4 Q What did he tell you?

5 A He said, "A Toyota 4Runner, black, this belongs to

6 me. I was by myself best I recall. I typically

7 don't go to places like this because of the people

8 who go there have bad attitudes."

9 Q So in response -- yes or no? Was his response to

10 your question, "What kind of car did you go there",

11 timely?

12 A Yes, sir.

13 Q "What kind of car was it?"

14 A "It was a Toyota 4Runner, black."

15 Q And did you understand that answer?

16 A I understood exactly what he was saying.

17 Q And then I think you all asked him how many handguns

18 he had, correct?

19 A Yes, sir.

20 Q And let me ask you about that. On State's 82, how

21 many handguns does he list?

22 A Let's see. He said, "A .40 caliber Glock, a .22

23 Smith and Wesson, the .357 Smith and Wesson, a

24 revolver. I have a .38 Taurus but my son has it and

25 has had it for years. I have a concealed weapon" --

1 Q Stop right there. "My son has it. And has what?
2 A "Has had it for years."
3 Q Okay. Go ahead.
4 A "I have a concealed weapon permit. I also have a .22
5 pump rifle. I usually have the .22 pistol or the .22
6 rifle or the Ruger .357 in the vehicle with me. I
7 can't recall which one was in the Toyota last night."
8 Q In response to the question about a handgun, he told
9 you all this?
10 A Yes, sir.
11 Q Did you have any trouble understanding as he listed
12 off those handguns?
13 A No, sir.
14 Q Did he have an inventory sheet with him showing what
15 he had?
16 A No, sir.
17 Q Was he able to just recite them off?
18 A Yes, sir.
19 Q Written response to the question: "Do you recall
20 firing a weapon from the Toyota as you were leaving
21 Chastity's?" Do you remember --
22 A Yes, sir, I do.
23 Q What was his answer?
24 A "No, I don't".
25 Q Did you understand, "No, I don't"?

1 A I understood it. Yes, sir.

2 Q "Did you fire a shot at all?" What did he say?

3 A He said, "If I did I was not shooting at anyone. I'm
4 not saying that I don't, that I did not, don't."

5 Q Well, let me ask you this. Is that did not, don't,
6 or did not do it?

7 A It could be 'did not do it'.

8 Q Did not. I'm not saying --

9 MR. HARPOOTLIAN: Objection, Your Honor.
10 Leading. It says what it says.

11 MR. MEADORS: It sure does, Judge.

12 THE COURT: Sir, just don't lead him. Let him
13 read this.

14 Q Okay. Read this again starting right there. I'm
15 sorry.

16 A "I'm not saying that I did not, don't."

17 Q Can you read it another way?

18 MR. HARPOOTLIAN: Objection, Your Honor.

19 MR. MEADORS: He just testified a minute ago he
20 could.

21 THE COURT: Sir, he can read it. The jury can
22 read it. But you don't need to tell him what to
23 read.

24 A "I'm not saying that I did not do it."

25 Q "Did not do it." Now, right here it looks like --

1 what is that?

2 **MR. HARPOOTLIAN:** Your Honor, again --

3 **THE COURT:** Testifying.

4 **MR. HARPOOTLIAN:** -- he is pointing to it

5 saying, "It looks like."

6 **MR. MEADORS:** Then I stopped and said, "What is

7 it?"

8 **Q** Come right up here.

9 **THE COURT:** Let the witness testify.

10 **Q** What does this appear to be like here, if anything?

11 **MR. HARPOOTLIAN:** Your Honor, I object. The

12 witness that wrote that testified a minute ago and

13 now he's having him interpret what the witness wrote.

14 **MR. MEADORS:** He was doing the same thing.

15 **THE COURT:** Overruled. Sir.

16 **Q** Describe what you see in there. What's this, if

17 anything?

18 **A** That would have been a word that would have been

19 scratched out and it appears that it's got an S and

20 an H in the end, possibly an F or an I.

21 **Q** Possibly an F?

22 **A** Yes, sir.

23 **Q** What happened to this word, if anything, on that

24 document?

25 **A** It would have been made -- I'm assuming that Agent

1 Lawrence may have made a mistake and Mr. Herring
2 would have scratched it out and wrote an error.

3 Q Scratched it out?

4 A Yes, sir.

5 Q If you take away that scratch, what do you see there?

6 MR. HARPOOTLIAN: Your Honor, I object.

7 THE COURT: I can't even see what he's talking
8 about.

9 MR. MEADORS: I'll show it to you.

10 MR. HARPOOTLIAN: He says I assume so-and-so. I
11 was asking him to interpret a document written by
12 that man right back there. He could have testified
13 what he wrote and what he scratched out. Now he's
14 asking him to --

15 MR. MEADORS: Your Honor, with all due respect,
16 he's asked other people about other documents. He's
17 doing the same thing.

18 THE COURT: But that's not why you're here, to
19 argue with Mr. Harpootlian. This witness is on the
20 stand. I want him to testify about what he sees,
21 what he heard, and that's it. Please. Don't try to
22 put words in his mouth.

23 MR. MEADORS: Judge, for the record, I was not
24 trying to do that whatsoever.

25 THE COURT: All right.

- 1 Q Read that sentence. If you can read more than one,
2 read it. If you can't, you can't.
- 3 A "I was not shooting at anyone. I am not saying that
4 I did not, don't." Or it could say: I am not saying
5 that I did not do it.
- 6 Q Keep reading.
- 7 A "If the gun went off while in my hand it was harmless
8 error."
- 9 Q Harmless error?
- 10 A Yes, sir.
- 11 Q Now, who signs that right there?
- 12 A That is Mr. Herring's signature indicating that that
13 is what he was wanting to convey.
- 14 Q Keep reading.
- 15 A "It was probably the Ruger .357, and if it went off
16 it was an accident."
- 17 Q "Did you see anybody when you fired your weapon?"
18 What's the answer?
- 19 A "No. I was not shooting at anybody. There was
20 nobody to shoot at."
- 21 Q There was nobody to shoot at?
- 22 A Mm-hmm (affirmative).
- 23 Q Did you understand that response?
- 24 A I understood exactly that response.
- 25 Q "Is there anything else?" And that's when you put

1 "Not at this time." Correct?

2 A That is correct.

3 Q Did you understand that?

4 A Yes, sir.

5 Q Beg the Court's indulgence. For the record, Your
6 Honor. Is the person that gave you these statements
7 in the courtroom?

8 A Yes, sir, he is.

9 Q Please point him out.

10 A Mr. Herring in the middle.

11 MR. MEADORS: We'd like the record to reflect
12 he's pointed out Dewain Herring sitting at the
13 defense --

14 THE COURT: Let the record reflect he has
15 identified the defendant.

16 Q After you took these statements, was he provided a
17 copy?

18 A Yes, sir, he was.

19 Q And prior to leaving the Sheriff's Department, do you
20 know if somebody else came to talk with Dewain
21 Herring?

22 A After we concluded our interview, I believe Chief
23 Wilson went in and talked with him.

24 Q And that's chief David Wilson?

25 A Yes, sir.

1 Q Did you have an occasion to go back to
2
3 A Yes, sir. As soon as we were complete with the
4 interview we went back to
5 Q Beg the Court's indulgence. And are you aware of any
6 firearms that were taken out of
7 A Yes, sir. There were two of them.
8 Q Please tell the jury what you remember about those?
9 A We collected, or our crime scene unit collected, two
10 weapons. One was a .357 Smith and Wesson and one was
11 a Ruger .357.
12 Q And the investigation at
13 involved what?
14 A It involved the -- could you repeat? I'm sorry.
15 Q Why were you investigating
16 A Because of the law enforcement discharging a weapon
17 at Mr. Herring.
18 Q So the investigation; what, if anything, did the
19 investigation at have to do with
20 3722 River Drive which is Chastity's Nightclub?
21 A The reason why the police officers were there were
22 directly as a result of the incident that occurred
23 there.
24 Q Did anything at Chastity's happen at
25 A Other than Mr. Herring being present at both

1 locations; no, sir.

2 Q Thank you. That's all.

3 THE COURT: Cross examination.

4 MR. HARPOOTLIAN: Thank you.

5 CROSS EXAMINATION

6 BY MR. HARPOOTLIAN

7 Q Agent, was Mr. Herring wearing glasses when you all
8 talked to him?

9 A I don't recall. No, sir.

10 Q Did he indicate to you any difficulty in hearing you?

11 A When he would -- he asked a couple of times to speak
12 up, and we stopped the interview and spoke up louder
13 and repeated ourselves to him. Yes, sir.

14 Q Did he tell you he was hard of hearing?

15 A I believe that he mentioned something like that.

16 Q Did you know he wears two hearing aids?

17 A My main concern was that Mr. Herring could understand
18 everything that we were saying. Whether he was
19 wearing two hearing aids or no hearing aids, I wanted
20 to make sure he could understand. So we spoke loud
21 for him.

22 Q Would it matter to you if you knew that he was deaf
23 in one ear or both ears? Would that bother you?

24 A It would not concern me as long as I'm hearing
25 coherent answers and I know that he is understanding

1 what I'm trying to ask him.

2 Q Well, but when you say you know he's understanding,
3 it's based -- I mean, you may say one thing and he
4 hears something else. You don't know that he's
5 hearing you, do you?

6 A Well, I know that his answers are making sense with
7 the questions that we're asking him.

8 Q Okay. Now, while he's -- are both you and Agent
9 Lawrence talking to him?

10 A Not at the same time.

11 Q No, no. I mean, alternating questions. Or if he
12 answered something to Agent Lawrence, would you
13 follow it up with a question? Or are you just
14 sitting there? I mean, are you saying anything?

15 A Oh, yeah. I mean, this is an active interview
16 between myself and Agent Lawrence.

17 Q And that's as to both statements. Is that correct?

18 A Yes, sir.

19 Q Okay. So, there's an active interview. When you say
20 active interview, he comes in and sits down. You all
21 advise him of his rights. Then you all begin a
22 discussion with him. Is that right?

23 A It's kind of like step one in any interview. You
24 want to get the background of what happened before
25 you start writing down a statement.

1 Q Okay. And then after you took the statement, have
2 you seen the video by that time?

3 A No, sir, I had not.

4 Q Okay. So Agent Lawrence steps out. He comes back in
5 and then you all begin this discussion again?

6 A The second interview. Yes, sir.

7 Q Right. And you all have a discussion just like you
8 did before?

9 A No, not as exactly as before. Because this one, we
10 had already gotten a background from Mr. Herring on
11 what happened. The second statement kind of flowed a
12 little bit quicker. We went more into the
13 questioning and answer phase right away because we
14 had already gotten the background from him.

15 Q When you say you went into the Q and A right away,
16 you still had to have a discussion with him before
17 you could put it down into that Q and A?

18 A It was very short, very short. Because the Q and A
19 at that point was getting his response. The second
20 statement was so different than his response on the
21 first one that these questions were just coming. As
22 soon as we could finish the question in getting his
23 answer down, we would go into the next one. It would
24 create another question that we needed to get
25 answers.

- 1 Q And you were making notes?
- 2 A We were taking the statement. Yes, sir.
- 3 Q But you were making notes in addition to the
- 4 statement, weren't you?
- 5 A I was jotting down some things. Yes, sir.
- 6 Q Right. Did you bring those with you today?
- 7 A No, sir. As part of my normal policy, I'll destroy
- 8 my notes.
- 9 Q When did you destroy them?
- 10 A Probably after the statement was read.
- 11 Q So you were making notes as he is talking. You're
- 12 not -- are you questioning him, or is Agent Lawrence
- 13 questioning him?
- 14 A Agent Lawrence and I are both questioning him, but
- 15 Agent Lawrence is just writing it down.
- 16 Q Okay. So when it says on his statement Lawrence and
- 17 Herring, Q and A, it's really not Lawrence and
- 18 Herring. It's you, Lawrence and Herring?
- 19 A Well, actually what that means right there is the
- 20 questions are written. The questions are being
- 21 written down by Agent Lawrence. The handwriting is
- 22 by him. But I'm beside Agent Lawrence at the time.
- 23 Q But all this is in Lawrence's handwriting?
- 24 A Pardon?
- 25 Q The questions and the answers are written by Agent

1 Lawrence? Are they?

2 A Well, there's one part that Mr. Herring --

3 Q Except for the thing at the end, everything is being
4 written by Agent Lawrence, correct?

5 A Yes, sir.

6 Q So when it says Q, Lawrence; A, herring, right?

7 A Yes, sir.

8 Q Okay. So the statement would indicate the questions
9 are coming from Lawrence and the answers are coming
10 from Herring, right?

11 A It may indicate just -- that would be a perception.
12 I was present and asked him questions also.

13 Q So some of the questions on here were not asked by
14 Lawrence. They were asked by you?

15 A There may have been. I wasn't sure which ones were
16 asked by me or which one was asked my Lawrence.

17 Q As you're going through the process a second time,
18 you say there's more of a Q and A. Who is writing
19 that down? Who is writing the questions and the
20 answers down?

21 A Agent Lawrence is.

22 Q Is he writing them on a note pad?

23 A No. He's writing directly on the statement.

24 Q On the statement. Okay. What about you? Are you
25 making notes?

1 A Well, at that point, the thing, the questioning and
2 answers were going pretty quick. I was just letting
3 Agent Lawrence write everything down.
4 Q But were you making notes?
5 A Not at that point. No, sir.
6 Q So you're just sitting there?
7 A Well, I am actively involved in the -- in the --
8 Q The Q and A?
9 A The Q and A.
10 Q Now, when you got there, Mr. Herring was shot in the
11 arm, right?
12 A Yes, sir.
13 Q And he was bleeding?
14 A I mean, all open wounds bleed. But I didn't see any
15 blood coming out of his arm.
16 Q Didn't he ask that you all get him some medical
17 assistance? Some EMS people from Richland County
18 came in and re-bandaged his wound while you were
19 there?
20 A It wasn't us that he asked to get EMS to come.
21 Q Who did he ask?
22 A I'm not sure. EMS just arrived. They arrived prior
23 to us getting there.
24 Q Were these Richland County EMS people or independent
25 EMS people?

- 1 A I believe that the way that 911 service is set up in
2 Richland, it would have been Richland EMS.
- 3 Q No. I guess what I'm saying is, once he's in that
4 room, is somebody re-bandaging him while you're
5 interviewing him?
- 6 A Not while we're interviewing him. No, sir.
- 7 Q Before you interview him?
- 8 A Yes, sir. That is correct.
- 9 Q And he's in the room being re-bandaged?
- 10 A He was getting re-bandaged. Yes, sir.
- 11 Q Okay. And did he or any of the EMS people indicate
12 that he needed to go back to the hospital?
- 13 A I know that he declined to go back to the hospital.
- 14 Q Did the EMS people ask to take him back to the
15 hospital because his wound was bleeding?
- 16 A I'm not sure about that.
- 17 Q You don't know, or you're not sure?
- 18 A No. I don't know.
- 19 Q Okay. Now, you were alone with Mr. Herring for some
20 period of time while agent Lawrence was out looking
21 at the video and doing other things, right?
- 22 A Yes, sir.
- 23 Q Did you continue to have a conversation with him?
- 24 A Absolutely not. No, sir.
- 25 Q You all just sat there staring at each other?

1 A Well, I believe at that time the door was open. And
2 I felt like the interview was going well enough
3 between Dave and I, and I wasn't about to start
4 questioning him at that point by myself.

5 Q Did you -- you indicated before you that regarded Mr.
6 Herring as a victim at that point. Is that right?

7 A He was a victim for the purpose of why we were called
8 out.

9 Q And the victim in the sense that he'd been shot by
10 the police. You were there to investigate the
11 police, right?

12 A Yes, sir.

13 Q And did you participate in taking statements from the
14 police?

15 A Yes, sir, I did.

16 Q And one of the things you indicated as to Mr. Herring
17 was the reason you all did a second statement is
18 there was inconsistencies in the statement?

19 A From the -- when we originally got to the scene, it's
20 normal to get just a ballpark idea of what is going
21 on.

22 Q Right.

23 A And the ballpark idea that we had was nowhere close
24 to Mr. Herring's first statement. And so to get at
25 the truth, and that's what we were there for, to get

1 the truth; we had to go back and interview Mr.
2 Herring again.
3 Q You're saying you're not getting the truth about what
4 happened on _____?
5 A That is correct.
6 Q And the reason you're not getting the truth about
7 what happened on _____ what did you have
8 that was inconsistent with what he was telling you as
9 to _____ Circle?
10 A Well, we had the fact that we were getting reports
11 that eye witnesses saw Mr. Herring at Chastity's
12 Club.
13 Q No, no. I'm talking about at
14 A Right. Yes, sir. But to get the truth of Alexander
15 Circle, we have to get the truth from Chastity's.
16 Q So, but nothing he said about _____ set
17 off any bells or whistles?
18 A Well, the fact that he said that he was in his house
19 all night long was contradicting the --
20 Q I'm talking about the series of events there after
21 the police came in. Anything about that?
22 A Oh. After the police came in?
23 Q Right.
24 A Well, yes, sir. He said that they were just banging
25 on the floor and just came in. And we were getting

1 other indications that Sheriff's Office was being
2 yelled at a very high, loud volume. They were
3 wearing complete uniforms, jackets and vests that
4 have Sheriff's Office on there. And Mr. Herring said
5 that he didn't know who they were. And so that kind
6 of stuff was getting a little confusing because you
7 could see these guys come in, you know what they do.
8 It's pretty obvious that they're police officers.

9 Q But when you came back, I mean, those inconsistencies
10 were not asked about. The inconsistency that was
11 asked about was being at Chastity's that night,
12 right?

13 A Well, that was the main inconsistency; yes, sir. But
14 that changed a whole complexity of the case.

15 Q And you were there actually to investigate not only
16 the police shooting but the shooting at Chastity's,
17 weren't you?

18 A No, sir.

19 Q That was just sort of serendipitous, that it went
20 into that?

21 A Well, to get the truth about the police, the reason
22 for the police being that there at
23 Circle to serve a search warrant for a murder suspect
24 for his residence, for weapons, we had to know if Mr.
25 Herring was at Chastity's. And in his first

1 statement he said he went to bed at 11:00. And
2 that -- well, if he went to bed at 11:00, there's no
3 way he could have been at Chastity's. So we had to
4 get into the fact of were the police there on a legal
5 warrant. This is kind of information that we needed
6 to work up the latter to the Solicitor's Office so
7 that we can get them all the truth and the facts so
8 that they can make a determination.

9 Q And you took statements from several officers that
10 there were there at the shooting, right?

11 A Yes, sir.

12 Q And you took one of those, at least one of those,
13 before you ever interviewed Mr. Herring?

14 Mr. Tavenner was taken at 8:30 that morning, wasn't
15 he?

16 A I believe so. If I can check my notes, I'll be glad
17 to --

18 Q Yeah. Notes or copies of statements?

19 A Copies of my report.

20 Q Because you have no notes?

21 A That's correct.

22 Q Because you've destroyed them?

23 A That's -- it's per what I usually do. Yes, sir.

24 Q Is that Mr. Tavenner's statement?

25 A That's what I'm checking on, sir.

1 Q The time was 8:30, wasn't it?

2 A I am checking that.

3 Q Right at the top of the statement.

4 A I believe so. Yes, sir.

5 Q 8:30 a.m. that morning. So you all had already begun
6 interviewing the police officers before Mr. Herring
7 even got there, right?

8 A We started to get some statements because they
9 were -- if they were available, we would go ahead and
10 get a statement from them.

11 Q That was a typewritten statement, wasn't it? You all
12 had time to get it typed and signed?

13 A Well, we would have him go ahead when we would get
14 there and say, hey, if you want to start writing up a
15 statement -- because these guys had been up all night
16 long. They had been through an incredible amount of
17 stress. And so if they can go ahead and feel
18 comfortable writing a statement right then and
19 getting it down, that's probably when Mr. Tavenner
20 started the statement at 8:42. And then as we go
21 interview Ms. Herring, he may have already completed
22 it. And then we go and read it, read over it with
23 them.

24 Q They'd been under an incredible amount of stress that
25 night because they had tried to kill Mr. Herring?

1 **MR. MEADORS:** Objection.

2 **THE COURT:** Sustained. Go ahead.

3 **Q** Sir?

4 **THE COURT:** Sustained.

5 **Q** Let me rephrase that they were under an incredible

6 amount of stress because they'd fired 17 shots at Mr.

7 Herring?

8 **A** Well, only speaking from my experience, when a weapon

9 is pointed at you, that's a pretty stressful event.

10 So that's what I'm referring to.

11 **Q** What about when six of them are pointed at you? Is

12 it six times more stressful?

13 **MR. MEADORS:** Objection. There's no evidence of

14 that whatsoever.

15 **MR. HARPOOTLIAN:** Well, two. Two weapons.

16 There is evidence of that.

17 **THE COURT:** Answer the question.

18 **Q** Multiple weapons is multiply stressful?

19 **A** Yeah. I guess I've never been in a situation where

20 I've had law enforcement weapons pointed at me

21 before. So I can't state the --

22 **Q** You've been shot?

23 **A** Have I ever been shot?

24 **Q** Yes.

25 **A** No, sir.

1 Q Okay. That, I would submit, you would think would be
2 stressful, would it not?

3 A I would think any time something like that would
4 happen, it would probably cause somebody's blood
5 pressure to rise.

6 Q Right. And Mr. Herring had had guns pointed at him,
7 and he'd actually been shot that night, right?

8 A He was shot in the arm. Yes, sir.

9 Q Somebody had to point a weapon at him to shoot him,
10 right?

11 A I believe that they were eliminating the threat, is
12 what one of the statements said.

13 Q Right. Right. And the police officers indicated
14 they were eliminating the threat. Let me ask you
15 this. Where -- do you have any independent
16 recollection -- did you take notes when you
17 interviewed these officers, or did you just let them
18 write up their own statements?

19 A Well, what we did was, we wanted them to write up
20 their statement. Then we went over it word-for-word
21 and line-for-line. And then --

22 Q So the answer is no. They wrote up their own
23 statements?

24 A Correct. Everybody writes up their own statement.

25 Q Mr. Herring didn't, did he?

1 A It's his words.

2 Q It's his words as interpreted, translated and written
3 down by you and Mr. Lawrence, correct?

4 A No, sir. That -- we had him review everything that
5 we wrote down that was his --

6 Q But --

7 MR. MEADORS: Your Honor, objection.

8 THE COURT: Let him answer the question.

9 MR. HARPOOTLIAN: Yes, sir.

10 THE COURT: Sir.

11 MR. HARPOOTLIAN: Yes, sir. I did. I thought
12 he was done.

13 Q Are you done?

14 A Could you repeat the question?

15 Q No. I'm moving on to another one. You had him; that
16 is, Mr. Tavenner, that morning type up his own
17 statement, didn't you?

18 A Yes, sir.

19 Q Okay. He signed it. You witnessed it. And that's
20 all you got from him, right?

21 A No, sir. What we did, before we have him sign it, we
22 read over the statement with him, just like we would
23 any other statement. It was just availability of
24 having a computer. I would rather type up a
25 statement than write one if that ability is there to

1 do that.

2 Q And that was in the same Sheriff's Department where

3 you handwrote Mr. Herring's rather than typing it.

4 Isn't that right?

5 A The reason why Mr. Herring's was handwritten, it was

6 in a more secure area.

7 Q A conference room?

8 A Yes, sir.

9 Q Not in the jail. In the Sheriff's Department?

10 A That's correct. It was in the conference room.

11 Q Now, sir, you indicate that you all were there to

12 investigate this because Mr. Herring was a, quote,

13 victim. Is that right?

14 A Yes, sir.

15 Q When you went to the -- you went to the house later

16 on that day?

17 A Yes, sir.

18 Q On Alexander Circle?

19 A Yes, sir.

20 Q Did you talk to the forensics people out there?

21 A Yes, sir, we did. We were working right alongside of

22 them.

23 Q Based on your investigation did you determine whether

24 or not Mr. Herring was sitting or standing when he

25 allegedly pointed his weapon?

1 A From the indication, I don't want to get into the
2 crime scene aspect of it because that wasn't my
3 responsibility.
4 Q No, no. Your interviews.
5 A Oh. My interviews?
6 Q Yes.
7 A That he was pointing a weapon standing.
8 Q Okay. And did you -- there was a slug taken out of
9 the wall back behind his bed. Are you aware of that?
10 A A slug?
11 Q A bullet. Referring to Defendant's Exhibit No. 23,
12 do you remember those two holes in the wall?
13 A Yes, sir, I do.
14 Q Was there a bullet taken out of there?
15 A I'm not quite sure what crime scene found in that.
16 But I know that there was a through-and-through
17 bullet. One bullet went completely through and out
18 into the yard.
19 Q And did the other bullet go completely through or
20 not?
21 A I don't recall.
22 Q Now, who was in charge of this investigation?
23 A It would have been -- I would have been in charge of
24 the investigative report. And then we would have
25 crime scene in charge of the crime scene.

1 Q But you're trying to determine and gather all the
2 evidence you can for the solicitor to determine
3 whether or not Mr. Herring or the police officers
4 were, quote, at fault at this scene. Isn't that
5 right?

6 A That is correct. Yes, sir.

7 Q Now, wouldn't it be important to know -- first of
8 all, what arm was Mr. Herring hit in?

9 A I believe it was -- without checking my notes, I
10 believe it was the left arm.

11 Q Okay. And do you know where in the left arm he was
12 hit?

13 A It was hit in the fleshy part of the bottom of the
14 bicep.

15 Q Front or back?

16 A I believe it was in the underneath arm and then
17 exited out the other. Forearm.

18 Q So consistent or inconsistent with the information
19 you received from the officers who actually saw him
20 pointing a gun?

21 A It was consistent with their statement.

22 Q And was it consistent or inconsistent with these
23 holes and the other evidence you saw with him
24 standing and pointing a weapon at them?

25 A Yes, sir.

1 Q Okay. How about look at Officer Linfert's statement.
2 Did you help gather that? Have you got that there?
3 A I believe so. Yes, sir. I've got it. Yes, sir.
4 Q Okay. Go to page 2 of that, please. Page 2 of his
5 statement. Got it?
6 A Yes, sir.
7 Q And read -- start reading "The subject immediately
8 ran the hallway."
9 A Let me make sure I get it correctly here.
10 Q "the subject immediately ran down the hallway." Read
11 that out loud, please.
12 A "The subject immediately ran down the hallway. I
13 followed the subject and Deputy Gwyn was right behind
14 me. I then saw him in a bedroom on the left. I saw
15 him reach into the nightstand beside the bed and pull
16 out a chrome revolver. He was sitting on the bed,
17 and that was to the left of the nightstand. When he
18 reached in for the pistol, he then turned to his
19 right towards Deputy Gwyn and myself, and I yelled
20 out gun to alert the others. The subject kept on
21 turning towards us with the gun in his right hand. I
22 told the subject to drop the gun, at which time he
23 was still turning towards us with the gun raised. I
24 could see his full upper body from my position. I
25 fired one to two shots at the subject. Officers

1 behind me also fired shots immediately after my
2 discharge."

3 Q Based on the statement -- and you took that statement
4 from Officer Linfert, right?

5 A Yes, sir.

6 Q Okay. Based on the statement, where do you think
7 Officer Linfert was standing at the time he fired
8 those shots?

9 A Do you have a map, sir?

10 Q Actually I have a picture somewhere. Here they are.
11 I don't know if these are going to show it. Let me
12 -- you went out there and looked at the scene, right?

13 A Yes, sir.

14 Q I'm going to do a very crude sketch very quickly.
15 But as I understand, there is the front door. There
16 is a foyer here. Then there's a hall that comes back
17 here. There's a bedroom door. And then back here
18 there's a bed and a wall back here. And then there's
19 a bureau right here. Right? There's a door that
20 opens and closes there. And if we were to look at
21 this photograph which is Defense Exhibit No. 13,
22 right?

23 A Yes, sir.

24 Q We're looking actually at this wall right here,
25 correct?

- 1 A Yes, sir.
- 2 Q Okay. And if we look at Defendant's Exhibit No. 15,
- 3 we're actually looking down that hall towards the
- 4 bedroom through this door, right?
- 5 A Actually you're at the very beginning of the hall
- 6 right there. This is -- this door is almost part of
- 7 the hallway.
- 8 Q Right. That's this door right here?
- 9 A Yes, sir.
- 10 Q Right at the beginning. Is that right?
- 11 A Yes, sir.
- 12 Q Now, where is your understanding, from talking to
- 13 Linfert and Gwyn, where they were when they saw Mr.
- 14 Herring and fired their shots?
- 15 A They were at the very -- right on the inside of the
- 16 hallway.
- 17 Q Right here?
- 18 A Yes, sir.
- 19 Q And I believe Officer Linfert and Gwyn says that as
- 20 soon as they fired their shots everybody started
- 21 shooting, right?
- 22 A The other two officers who were on that side of the
- 23 wall did fire. Yes, sir.
- 24 Q And their shots went -- right?
- 25 A Yes, sir.

1 Q Now, if in fact they shot as soon as Linfert shot, do
2 you have some explanation as to why Linfert and Gwyn
3 weren't hit?

4 A Nothing other than just God was on their side.

5 Q God was on their side. What about -- you just read
6 that Linfert told you that Mr. Herring was sitting
7 when he got that gun and turned. Isn't that correct?

8 A I believe what was in that statement was that he
9 was -- when he saw him he was sitting, pulling the
10 gun out of the bureau and then got up to turn around
11 like that, and that's when the shot happened.

12 Q He told you he got up?

13 A That was the way I interpreted what his statement
14 would say.

15 Q Does he say in the statement to you that he got up?

16 A No. It doesn't say got up, but that's the way that I
17 read, read his statement.

18 Q That's the way you read his statement?

19 A Yes.

20 Q But that's not what he said?

21 A What he said is what I interpreted was that Mr.
22 Herring was sitting on the bed. He saw him sitting
23 on the bed, reach into the bureau to pull out a
24 silver chrome colored handgun and as he -- and the
25 way it was set up, he was right there on the bed and

1 the bureau was right -- do you mind if I stand up,
2 sir?

3 Q No. Go ahead.

4 WITNESS: Your Honor?

5 THE COURT: Yes, sir. Go ahead.

6 A Excuse me. He was sitting right here in this area
7 pulling the gun out of this drawer. The officers are
8 in here. They had a clear line of sight on Mr.
9 Herring. As he pulled that gun up, he moved into
10 more of like a crouching/standing position. And when
11 Sergeant Linfert saw that weapon, he started yelling
12 drop the gun and fired.

13 Q And go ahead and sit down again.

14 A Thank you.

15 Q Your forensics people then checked the trajectory on
16 the bullet with his flesh they took out of the wall?

17 A Well, they -- with the flesh on the wall, the crime
18 scene would be able to indicate that he would have
19 been close proximity to that.

20 Q But did you ask them to check the trajectory of that
21 bullet that they took out of the wall that had his
22 flesh on it? That's obviously the one that hit him,
23 right?

24 A Yes, sir.

25 Q Did you have them do the trajectory? You're in

1 charge of the investigation. Did you have them do
2 it?

3 A I would have them look at it and see if it was
4 consistent with the statements. Yes, sir.

5 Q Okay. And who would have done that to compare the
6 statements to the forensics? Who did that?

7 A Well, we would have been collecting statements and
8 collecting oral statements from them and then making
9 sure that it was consistent with crime scene
10 reconstruction.

11 Q Who was in charge of making sure that the statements
12 you took were consistent with the forensics?

13 A Who was in charge? It was my investigation.

14 Q Okay. So, tell me how high that bullet went in the
15 wall?

16 A I would have to check the crime scene notes because
17 it's been --

18 Q Check them.

19 A It doesn't say.

20 Q So we don't know how high this bullet went in, either
21 one of these bullets went in the wall, correct?

22 A That is correct. We would just know it was
23 consistent with the statements that we were --

24 Q Do we know the trajectory on each one of these
25 bullets?

1 A They were both moving from the hallway into the wall.
2 Q Did they go through that wall before they got there?
3 A No, sir.
4 Q Are you sure?
5 A I mean, it was consistent with when we did the crime
6 scene reconstruction that the bullets were fired from
7 the hallway.
8 Q Right. What about this green line here? Could one
9 of those bullets that embedded in the wall, went
10 through the wall, could that green line be consistent
11 with their trajectory?
12 A It could have been. Yes, sir.
13 Q Okay. So these bullets before it ever hit him could
14 have gone through a wall?
15 A Yes, sir.
16 Q Now, have you determined whether or not the slug they
17 took out of the wall with his flesh on it went
18 through a wall before it hit him or not?
19 A That would have been a process for the lab to do if
20 it was needed.
21 Q Well, you're --
22 A We did not see that it was needed.
23 Q It wasn't needed. So who sat down and looked at each
24 one of these officers' statements and compared
25 whether or not the statement was consistent with the

1 forensics?

2 A That would have been the job of the investigating
3 agent, and that would have been me.

4 Q Okay. And you're telling me you can't say how high
5 that bullet was, how far it was from the wall. You
6 can't tell me the trajectory on either one of these
7 bullets?

8 A I know that they were consistent with the officers'
9 statement.

10 Q Did the officers say they shot through a wall to hit
11 him?

12 A I think they were trying to eliminate the threat, is
13 what their statement said. If you've got to shoot
14 through a wall to eliminate somebody, you're going to
15 do what it takes.

16 Q But if you've got to shoot through a wall, can you
17 see them? Can you see through a wall? That's my
18 question. Can you see through the wall?

19 MR. MEADORS: Your Honor. Objection. He's
20 facing the jury like he's doing a closing arguments.
21 Can he put it in the form of a question?

22 Q If the bullet, the path of the bullet was through a
23 wall that hit him, can the officer see through a
24 wall? Just, can you see through a wall?

25 A Can I see that photograph again? The one with the

1 strings, sir.

2 Q Well, we've got a bunch of them with strings.

3 A The one you just showed me, sir.

4 Q Well, there's this one and then there's one with more
5 green strings. Do you want to see that one, too?

6 A No, sir. This one will be fine. This bullet right
7 here was consistent with the officer standing who had
8 an angle on Mr. Herring. The two officers here who
9 could see Mr. Herring from this area pick up a gun
10 and turn it towards them is consistent with going
11 straight this way. That bullet was not consistent
12 coming through the wall where the officers couldn't
13 see him. This just from looking at the angle was
14 just these officers firing and one just hit the wall
15 going towards the suspect.

16 Q You're saying that one with the green is the one that
17 embedded in the wall?

18 A I'm not saying which one it is.

19 Q What about these two over here?

20 A That was probably from an officer taking cover and
21 putting rounds downfield.

22 Q Do you know whether these are the ones that hit, went
23 into the wall?

24 A That would be a crime scene question because they're
25 the ones who collected all the forensic evidence.

1 Q I understand that. I understand that. But what
2 you're saying is that it could have been any of these
3 that went into the wall, and it didn't matter to you
4 whether they went through a wall before they got to
5 him or not. Isn't that true?

6 MR. MEADORS: Objection. He did not say it
7 didn't matter to him.

8 THE COURT: All right. Let him answer the
9 question.

10 Q Did it matter to you?

11 A That the green strings that you're pointing to right
12 there went through a wall before they hit the
13 subject? No, sir, it does not.

14 Q Okay. Now, the fact that 10 of the 17 shots you
15 could account for went through the hall wall back
16 here, what were they shooting at?

17 A That was a question that we asked them. And they
18 said that they just believed that they were shooting
19 at the subject. They were in fear for the sergeant's
20 life.

21 Q I mean, they were just shooting at him. Because the
22 subject is 25 feet down the hall, isn't he?

23 A At that time, yes, sir. I believe he was in the
24 bedroom.

25 Q And the police and Linfert and Gwyn are, according to

1 their statements, back behind this wall as bullets go
2 through. Isn't that correct?
3 A Yes, sir.
4 Q Now, you knew when you got there that Mr. Herring was
5 a suspect in a murder, right?
6 A That was part of the briefing that we got when we
7 arrived at the scene.
8 Q And so, I mean, look at these jurors and tell them
9 you weren't real serious about trying to determine
10 whether or not he was a victim at that point. You
11 knew he was a suspect in a murder. You were there to
12 go ahead and dot every I and cross every T for the
13 Sheriff's Department, not for this victim. Isn't
14 that true?
15 A No, sir. It is not.
16 Q Just a couple more questions here. You work in the
17 Midlands?
18 A Yes, sir.
19 Q And you work with the Sheriff's Department on
20 investigating cases?
21 A Well, it depends on what kind of requests --
22 Q Have you?
23 A Have I ever worked with Richland County?
24 Q Yes.
25 A I believe that this was probably one of the first

1 investigations that I had done with them because
2 they're so self-serving.

3 Q You had never worked on a case with them before?

4 A Not directly with a case of Richland County. They
5 tend to take care of, investigate things on their
6 own.

7 Q Now, Mr. Herring indicated in that second statement
8 to you that if there had been firing of a gun that
9 night it was an accident. Is that right?

10 A I believe he said a harmless error and then an
11 accident.

12 Q An accident. Now, when you came out and you talked
13 to anyone from the Sheriff's Department, did you tell
14 them that he had indicated to you that it was an
15 accident?

16 A We showed them what he had written down and then
17 briefed Chief Wilson with it. Yes, sir.

18 Q Beg the Court's indulgence a moment. And when you
19 finished, you got a report about that thick that you
20 all put together with pictures, all these crime
21 scenes photos and statements. You put that all
22 together, right?

23 A Yes, sir.

24 Q And what did you do with it?

25 A We would present that to the Solicitor's Office.

1 Q And then they could decide whether to charge the
2 officers or not?

3 A Absolutely.

4 Q That's not your decision?

5 A That's correct.

6 Q Thank you.

7 THE COURT: Redirect.

8 MR. MEADORS: Just a few briefly.

9 (WHEREUPON, State's Exhibit No. 84 is marked for
10 identification.)

11 REDIRECT EXAMINATION

12 BY MR. MEADORS

13 Q Mr. Harpootlian had you read from Linfert's
14 statement. Do you remember?

15 A Yes, sir.

16 Q If I could just get you to go back about four lines
17 above that. Start with: "Upon entering" down to --
18 I stopped where he you start. But read "Upon
19 entering" down to there.

20 A "Upon entering the residence we announced our
21 presence, Sheriff's Office."

22 MR. HARPOOTLIAN: Objection, Your Honor.
23 Objection. This is not proper redirect. This is not
24 concerning the specific area I was talking about.
25 This is just bolstering other testimony. I object to

1 it.

2 **MR. MEADORS:** Your Honor.

3 **THE COURT:** Just -- overruled. Okay.

4 **Q** Go ahead.

5 **A** "Upon entering the residence, we announced our
6 presence. Sheriff's Department, search warrant was
7 yelled several times. As we entered the front foyer,
8 we encountered the subject. I recognized this
9 subject to be the same person in the video and still
10 pictures from Chastity's Nightclub. He was standing
11 in the foyer next to a hallway. We again identified
12 ourselves, advised him that we had a search warrant
13 and told him to get on the ground. The subject
14 immediately ran down the hallway."

15 **Q** Now, this is State's 84. Do you recognize that?

16 **A** Yes, sir.

17 **MR. MEADORS:** We'd offer this without objection,
18 Your Honor.

19 **THE COURT:** It's not already in?

20 **MR. MEADORS:** This one is not. No, sir.

21 **MR. HARPOOTLIAN:** I thought it was in. I'm
22 sorry. I don't have any objection.

23 **THE COURT:** It's my understanding they're all
24 in.

25 **MR. MEADORS:** No, sir. You asked us to review

1 some of those and we haven't finished doing that.

2 MR. HARPOOTLIAN: Was this part of the group?

3 MR. MEADORS: I did not see you enter this one
4 as one of yours. This is part of the group that was
5 taken therein and I have not been able to look
6 through.

7 MR. HARPOOTLIAN: Sure. No objection.

8 (WHEREUPON, State's Exhibit No. 84 is admitted
9 into evidence.)

10 Q Is this another view of that hallway?

11 A Yes, sir, it is.

12 Q And your testimony, Mr. Harpootlian asked you about
13 where Gwyn and Linfert said they were standing,
14 correct?

15 A Yes, sir.

16 Q What was that answer?

17 A They were standing right at the edge of that hallway.
18 Yes, sir.

19 Q So you can see -- can you see from the opening of
20 that hallway into the bedroom?

21 A Yes, sir.

22 Q Is this the opening of the hallway?

23 A Yes, sir, it is.

24 Q Is that the bedroom?

25 A Yes, sir, it is.

1 Q And all these other streamers here, these right here?
2 A Yes, sir.
3 Q That you may not be able to see. But the pink?
4 A Yes, sir.
5 Q Which way are they, direction are they going?
6 A They're going -- they are going I guess from right to
7 left if you're looking at the photograph.
8 Q Now, Mr. Harpootlian asked you about some tissue I
9 believe that was on the back of the bedroom wall. Do
10 you remember that?
11 A Yes, sir.
12 Q Would that be based on your investigation consistent
13 with the shot coming from the opening of that hallway
14 into the bedroom?
15 A Yes, sir. The green strings. Yes, sir.
16 Q And he asked you about the statements, specifically
17 the first statement and why you were getting
18 inconsistent information I think. Correct?
19 A Yes, sir.
20 Q And here it is. Specifically on State's 2, it's in
21 the evidence, what time did defendant Dewain Herring
22 tell you he'd gone to bed?
23 A "I went to bed around 11 p.m."
24 Q Was that consistent or inconsistent with him being at
25 Chastity's shortly after 11?

1 A That was directly inconsistent with the reports that
2 we had received when we arrived.

3 Q And at any time during the taking of State's 2, was
4 the video mentioned to the defendant at Chastity's?

5 A In the --

6 Q The first statement?

7 A No, sir. It was not.

8 Q Did you even know there was a video then?

9 A We didn't. We were only getting sketchy things about
10 the -- what happened at Chastity's.

11 Q We didn't go over it like we did the second
12 statement. But on State's 2, was he giving long
13 answers to your questions?

14 A Yes.

15 Q Come on down here. This won't take but a second.
16 Come on down here.

17 WITNESS: Your Honor?

18 MR. MEADORS: With the Court's permission?

19 THE COURT: Yes, sir.

20 MR. HARPOOTLIAN: Your Honor, I do have one
21 objection. Was he giving long answers? Yes or no.
22 Leading. And the document speaks for itself.

23 MR. MEADORS: Beg the Court's indulgence.

24 Q Went to bed about 11, correct?

25 A Yes, sir.

1 Q "Did they identify themselves at all to you?" What
2 was his answer?

3 A "They said, 'Mr. Herring, come out with your hands
4 up.' I said, Why?"

5 Q Let me go back to the first one. In response to the
6 question: "When you were" --

7 MR. HARPOOTLIAN: Your Honor, this is so
8 repetitive. I hate to object again, but he's leading
9 him over and over. He's speaking --

10 THE COURT: Approach the bench, please.

11 (Whereupon, a bench conference is had)

12 Q Would you describe this answer here as long or short?
13 His answer?

14 A I would consider that one long.

15 Q Did he have trouble giving you answers based on your
16 opinion?

17 A No, sir.

18 Q At any time in this first statement, at any time in
19 the first statement did he say, I don't recall?

20 MR. HARPOOTLIAN: Objection. Repetitive. Not
21 responsive to cross.

22 MR. MEADORS: Your Honor, it is. He put his --

23 THE COURT: Sir, go ahead.

24 A Answer the question? He did not say that at all.

25 Q Take a seat back, please.

1 **MR. HARPOOTLIAN:** Two brief questions.

2 RE CROSS EXAMINATION

3 **BY MR. HARPOOTLIAN**

4 **Q** Can you see this monitor?

5 **A** Yes, sir.

6 **Q** Okay. Now, he asked you about trajectories.

7 **MR. MEADORS:** No, sir, I didn't.

8 **MR. HARPOOTLIAN:** He asked him about this
9 picture and the green lines and asked him if the
10 shots could be fired from out in the hall.

11 **Q** My first question to you would be, we see right here
12 these shots going through the wall, correct?

13 **A** No, sir. They're ...

14 **Q** They're not going through the wall?

15 **A** I can't -- if you push it down just a little bit,
16 sir.

17 **Q** Do they go through the wall or not?

18 **A** No, sir.

19 **Q** And what is the angle of those shots? Where are they
20 coming from?

21 **A** I think they're coming from the hallway towards the
22 bedroom.

23 **Q** Well, at that level it looks like if you follow the
24 trajectory back, there is about a -- oh, I don't
25 know. What would that be? About a foot off the

1 ground?

2 A Well, no, sir. The reason why the strings are coming
3 back that far is you to have to have where to tie
4 them off. You can't just tie them off into air. So
5 those strings would keep on continuing on and on
6 until you could find a piano or something to tie it
7 off to.

8 Q But you would agree at some point on that string
9 there should be a weapon if you're following this
10 trajectory, correct?

11 A Yes, sir. And that would be closer towards the
12 bedroom.

13 Q Okay. Well, I want to get closer to the bedroom.
14 We're getting there now. We're going to follow the
15 string up. And there it's closer to the bedroom, but
16 there it's no more than about two feet off the
17 ground. Isn't it?

18 A Yes, sir. That was consistent with Sergeant Linfert
19 taking a knee and shooting, trying to eliminate the
20 threat.

21 Q So now we have Sergeant Linfert on a knee shooting?

22 A Yes, sir. That was proper tactical position, taking
23 a knee for cover, making yourself as small a target
24 as possible.

25 Q He told you that?

1 A When he said he took a knee.

2 Q He said he took a knee. Can you find that in your
3 statement for me, please?

4 A I don't see it in here. If I misspoke, I apologize.

5 Q Did you misspeak?

6 A On that about the knee; yes, sir.

7 Q And you have no notes to refresh your memory, do you?

8 A That's correct.

9 Q Because you destroyed them?

10 A That's correct.

11 Q So the shot that's that low, Sergeant Linfert never
12 told you that he went down on one knee?

13 A No, sir. I'm not quite sure where I got that from.

14 Q Right. And those shots actually -- at least one of
15 those shots actually goes into the wall, doesn't it?
16 I mean, it doesn't actually go into the room. It
17 goes into the wall right over here on the right side
18 of the door jamb?

19 MR. MEADORS: If he can just show him what he's
20 asking him about.

21 MR. HARPOOTLIAN: Well, I'm looking at this
22 picture up here.

23 MR. MEADORS: But it's a different picture he's
24 asking him questions about.

25 Q Or if you know. If you don't know, you can tell me .

1 you don't know.

2 **A** That would have been something that crime scene would
3 have collected, documented.

4 **Q** And you would agree with me that the area right
5 outside the door right here has a number of rounds
6 coming through it perpendicularly. That is, they're
7 coming from -- we're looking at it from the
8 right-hand side through that wall into this wall
9 right here?

10 **A** Yes, sir.

11 **Q** There are about ten rounds that go that way, right?

12 **A** Approximately. Yes, sir.

13 **Q** Thank you.

14 **THE COURT:** Thank you very much. You may come
15 down. Any objection to excusing this witness?

16 **MR. HARPOOTLIAN:** No, sir.

17 **THE COURT:** The witness is excused. All right,
18 ladies and gentlemen. I'd say we're going to take
19 our lunch hour but I think we're going to take our
20 afternoon break, hour, whatever. Anyway, I'll excuse
21 you now for lunch until 3:00. I ask you to be back
22 in the jury room. We may run a little over 5:00
23 tonight depending on witnesses. I hope that's not
24 inconvenient. We won't run late. Don't discuss the
25 case among yourselves while you're at lunch or when

1 you return to the jury room or with anyone else over
2 the lunch hour. Thank you very much. Have a
3 pleasant lunch.

4 (Jury out at 1:57 p.m.)

5 **THE COURT:** We'll stand at ease until 3:00.

6 (Whereupon, a lunch break is taken).

7 **THE COURT:** State ready to proceed?

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

9 **THE COURT:** Defense ready to proceed?

10 **MR. HARPOOTLIAN:** Yes, sir. Your Honor, how
11 long do you think you'll go tonight? Never mind.

12 **THE COURT:** I should ask you the same question.

13 **MR. MEADORS:** Can we approach?

14 (Whereupon, a bench conference is had)

15 **THE COURT:** Are you ready? Bring the jury,
16 please.

17 (Jury in at 3:10 p.m.)

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

19 **THE COURT:** All right. Thank you, sir. I hope
20 you had a pleasant lunch. We're ready to continue
21 with the trial. Solicitor, call your next witness.

22 **MR. MEADORS:** If it please, Your Honor. The
23 State would now call Investigator John A. Baker.

24 **JOHN A. BAKER,** after being duly sworn, testifies
25 as follows:

1 **THE CLERK:** Please have a seat. State your full
2 name for the record.

3 **WITNESS:** John Baker.

4 **DIRECT EXAMINATION**

5 **BY MR. MEADORS**

6 **Q** Good afternoon, Investigator Baker.

7 **A** Good afternoon.

8 **Q** Please tell these ladies and gentlemen of this jury
9 about yourself, specifically where you were born and
10 raised?

11 **A** I was born in Columbia, South Carolina. I went to
12 Columbia High School. Then I attended Midlands Tech,
13 went to the University of South Carolina, graduated
14 with a criminal justice degree from there.

15 **Q** And what did you do after graduating and getting your
16 criminal justice degree?

17 **A** I was working part time at Campbell's Prelease
18 Center, applying for a job in law enforcement. I
19 originally was hired at USC Police Department, worked
20 there for about a year and a half, and then I came
21 over to Richland County.

22 **Q** What did you do at USCPD?

23 **A** Worked road patrol. After about a year I was
24 promoted -- well, actually after about a year and a
25 half I was promoted to sergeant, stayed there about

1 another three months. And then I left the job and
2 came over to Richland County.

3 Q And did you go to the Criminal Justice Academy?

4 A Yes, I did.

5 Q In addition to that, have you received other training
6 and do you receive periodic continuing legal
7 training?

8 A Yes, I do.

9 Q So you started at the Sheriff's Department what year?

10 A 1998. July of '98.

11 Q All right. And in what capacity were you employed?
12 What did you when you first started working there?

13 A I first started out as a road deputy, region one
14 area. I did that for about two years. Then I moved
15 to a region one investigator. I did that probably
16 for about two, two and a half years. And then I was
17 promoted to investigations.

18 Q And do you respond -- as a region one deputy, just
19 generally, what does that mean?

20 A Respond to all type of calls, assist other units,
21 assist narcotics with search warrants, assist CID
22 when they needed assistance. But the main function
23 at that time was answering calls.

24 Q In January of 2006, what was your position?

25 A An investigator.

1 Q For ...?

2 A Burglary in the region one area.

3 Q And today you're an investigator?

4 A Financial crimes.

5 Q You work county wide?

6 A County wide.

7 Q Now, let's go right to January 28th or January 29th,
8 '06. Did you have an occasion to go to 3722 River
9 Drive which is also the location of Chastity's Gold
10 Club?

11 A Yes, I did.

12 Q Can you tell these ladies and gentlemen of the jury
13 what time you went?

14 A I believe I actually responded there, I believe it
15 was around 12:45. When the call originally went out,
16 I was finishing up another call that I was on
17 earlier, doing a follow-up with a witness. Once I
18 left that call, I made contact with Sergeant Linfert
19 to see what they had over there. At that time he
20 requested me to come over there.

21 Q Linfert requested you come to Chastity's?

22 A Yes, sir.

23 Q Tell these ladies and gentlemen, you're at Chastity's
24 right now, approximately 12:45. What do you observe?
25 What do you do when you get there?

1 A When I first come up, it's a lot of cars there. So I
2 park out in the median. I approach. I speak with
3 some deputies. They give me -- basically tell me
4 what has happened. A bouncer had been shot. They
5 also told me that they did have a possible suspect.

6 MR. HARPOOTLIAN: Objection, Your Honor, as to
7 hearsay.

8 THE COURT: Yes, sir.

9 MR. MEADORS: Your Honor, they've already
10 testified and been subject to extensive cross
11 examination.

12 MR. HARPOOTLIAN: But I wasn't able to cross
13 examine what he's talking about now.

14 THE COURT: Identify who you talked to.

15 Q Who did you talk to?

16 A I believe the first deputy I spoke with was Deputy
17 Hodges. There were several other deputies out there.
18 Basically a lot of people were talking at one time.

19 Q Did you end up talking to who you referred to as a
20 bouncer?

21 A Eventually I spoke with Carl, Carl Weeks.

22 Q And did Mr. Weeks tell you what happened?

23 A Yes, he did.

24 MR. MEADORS: And, Your Honor, he has been a
25 subject of extensive cross examination.

1 **THE COURT:** Yes, sir. We understand.

2 **MR. HARPOOTLIAN:** Your Honor, I'd object. This
3 is some sort of bolstering a witness. And there's no
4 exception for hearsay or bolstering a witness.

5 **THE COURT:** Well, I don't think it's bolstering
6 testimony.

7 **MR. HARPOOTLIAN:** It's a prior consistent
8 statement, Your Honor. I don't understand --

9 **MR. MEADORS:** I'm not looking to go into detail,
10 Judge.

11 **Q** Did you talk to Carl Weeks as a result of that?

12 **MR. HARPOOTLIAN:** Well, if that's all he's
13 doing, I don't have any objection.

14 **Q** Did Carl Weeks tell you what had transpired earlier?

15 **A** Yes, he did.

16 **Q** And did you put that in the notes you made, in the
17 statement you made?

18 **A** Yes, I did.

19 **Q** What other information did you gather?

20 **A** From Carl?

21 **Q** From anybody at the scene.

22 **A** From anyone? When I first got in there, I went
23 around to the bar area asking if anyone had seen
24 anything. I did speak with a female by the name of
25 Roni. She stated that --

1 **MR. HARPOOTLIAN:** Objection, Your Honor.

2 **THE COURT:** Sustained.

3 **Q** Go ahead. What other information did you gather?

4 **A** After speaking with Mr. Weeks, I'd spoke with
5 Investigator Gwyn. He had also in the process of
6 speaking with Roni, the female that was named Roni,
7 previous to that conversation, when I spoke with
8 Investigator Gwyn, he had made a comment about a
9 video, a video, CD or whatever. He had brought that
10 item to me when I was speaking to Roni.

11 **Q** Brien Gwyn gave you the CD of the front camera 4 of
12 Chastity's, right?

13 **A** That is correct.

14 **Q** And, your Honor, for chain purposes, this came in
15 your possession?

16 **A** Yes, it did.

17 **Q** State's 54 I believe, Your Honor; it is the camera
18 that shows the front shot, camera 4?

19 **MR. HARPOOTLIAN:** The one shot about a year and
20 a half ago?

21 **MR. MEADORS:** It is camera 4, Your Honor, which
22 we both got at the same time. That's correct. The
23 first shot.

24 **MR. HARPOOTLIAN:** Right.

25 **Q** It goes into your hands from Investigator --

1 A Gwyn.

2 Q -- Gwyn? And you do what with it?

3 A I put it with my -- had a little notebook where I was

4 taking notes. It was put in that notebook.

5 Q And what do you eventually do with that? Who did you

6 give it to, if anybody?

7 A Sergeant Linfert.

8 Q Sergeant David Linfert?

9 A Yes, sir.

10 Q Correct? And was that then taken back to the

11 Sheriff's Department?

12 A Yes, it was.

13 Q Had you looked at that video at that point?

14 A Not at that point.

15 Q Did you subsequently look at that?

16 A Yes, I did.

17 Q When was that?

18 A When we returned to headquarters on Two Notch Road.

19 Q All right. Now, prior to getting to Two Notch Road,

20 what else did -- I think your testimony has been you

21 talked to Carl Weeks, somebody named Rhonda?

22 A Roni.

23 Q Roni. I apologize. R-O-N-I?

24 A Yeah.

25 Q Gwyn back here. Correct?

1 A Correct.

2 Q Perhaps some other officers?

3 A Correct.

4 Q Now you've got the video, correct?

5 A That's correct.

6 Q What else do you do at the club?

7 A That was pretty much it at the club.

8 Q And then where do you go after that?

9 A I would leave out of there. Linfert and myself

10 briefly talked. We got in our vehicles. About the

11 time I was getting in my vehicle, Investigator Gwyn

12 called me on the Nextel, stated that they believed

13 the vehicle was located at the

14 residence. At that time I notified Sergeant Linfert.

15 And we had actually went down the road, pulled over,

16 pulled out our map book to look up the street address

17 because we were both not familiar with that at that

18 time.

19 Q Had you ever been to before?

20 A No, sir.

21 Q Were you familiar with the Gregg Park Subdivision?

22 A No, sir.

23 Q What do you do next? Do you go back to headquarters?

24 A From there we went by the location. We approached

25 the door along with two uniformed deputies, knocked

1 on the door. Sergeant Linfert rung the doorbell.
2 I'm not sure how long we were there at that point.
3 We left and returned back to headquarters. We went
4 back to headquarters on Two Notch Road.

5 Q And you are back at headquarters now on Two Notch
6 Road. Did you have the opportunity to view a
7 driver's license or anything else?

8 A At that time I had seen the video. I went back to my
9 computer and I believe I Google searched Dewain
10 Herring, came up with --

11 Q You said Googled, right?

12 A Yes, sir. Came up with his website. I saw his
13 picture. I knew it was the same person off of the CD
14 tape we had just watched. I believe at that time
15 Sergeant Linfert was in the process of getting a DL
16 photo of the suspect.

17 Q Did you as a part of your investigation compare the
18 Google picture and/or DL picture with the video?

19 A Yes.

20 Q And was it Dewain Herring?

21 A Yes, it was.

22 Q After that was a search warrant prepared?

23 A Yes, it was.

24 Q Who was to take part, or who did take part in the
25 execution of that search warrant? Let me take you

1 back. At the Sheriff's Department what did you all
2 do next?

3 A After the search warrant was obtained?

4 Q Yes, sir.

5 A We went to meet -- I believe it was Investigator
6 Davis who was getting the search warrant signed. We
7 met him. I believe it was at Trenholm Plaza, a
8 little shopping center right up the street from the
9 subdivision.

10 Q It's where Bobby's Barber Shop is and some of those
11 other places?

12 A Correct.

13 Q All right. And you said -- was that Investigator
14 Davis? Morris Davis?

15 A Yes, it was.

16 Q Why did -- and I say you all. You, the police
17 officers involved in this. Why did you all meet
18 there at Trenholm Plaza?

19 A Just to meet to go over everything, proceed with what
20 we were going to do. We put our raid vests on.

21 Q What did you do after meeting at Trenholm Plaza?

22 A I'm sorry?

23 Q What did you do next? You all met at Trenholm Plaza.
24 You went over the game plan. What happened next?

25 A Then we all got in our vehicles and went over to

1 Well, actually as we went down the street, there's a
2 little court probably about two houses from his
3 location on the opposite side of the road. And
4 that's where we met. From there we went to the
5 house.

6 Q Trenholm Plaza to this court?

7 A Yes, sir.

8 Q All right. We're at the court there. What happens
9 next, sir?

10 A At that time we approached that residence. We had
11 already decided I was going to use the tool,
12 basically a ramming device used to hit the door. We
13 approached the door. Sergeant Linfert knocked on the
14 door again. There was no response. At that time I
15 started using the tool to open the door.

16 Q And specifically, how do you use this tool?

17 A It's basically got two handles. If I may stand up,
18 if I may?

19 Q Sure. If the Court doesn't mind.

20 **THE COURT:** Go ahead.

21 A It's basically got two handles. I hold one here like
22 that and just kind of swing it into the door.

23 Q Have you ever used or been present when that's been
24 used at other search warrants?

25 A I have used it before, yes.

1 Q And how many times did you hit this door at 460
2 Alexander, investigator?

3 A It seemed like a thousand times. Most doors I've
4 ever hit in the past where it's been one hit, the
5 door opens. This time it was a double door. I
6 started hitting. I hit the first time. It barely
7 came up. I believe I hit it the second time. At
8 that time Sergeant Linfert advised me to go top to
9 bottom center. I believe I did that twice or in the
10 process of doing it the second time and that's when
11 the door opened.

12 Q The door comes open?

13 A Yes, it does.

14 Q What do you observe next and what do you do next?

15 A When the door opens up, I can see inside the house.
16 At that time I turned and dropped the tool. I
17 believe that Sergeant Linfert and Investigator
18 Gwyn -- Sergeant Linfert was actually the first one
19 in and then Investigator Gwyn. I believe I was the
20 third one in at that time. At that time we come into
21 the residence.

22 Q And was there -- who were the other officers there
23 with you, Investigator?

24 A It was Investigator Davis, also Investigator Tavenner
25 and Deputy Hodges.

- 1 Q And what happens next?
- 2 A As we come in everyone is yelling the Sheriff's
3 Department. You know, people was yelling Sheriff's
4 Department, search warrant. At that time the
5 individual comes from the hallway, stops and looks at
6 us. I'm able to identify that as the same person,
7 Mr. Herring, that I've seen in the photos and saw on
8 the video.
- 9 Q Let me stop you there. When you all were yelling
10 Sheriff's Department -- and I don't mean for you to
11 yell right now -- but were you all yelling?
- 12 A We were yelling. Yes, sir.
- 13 Q And at this point what were you wearing?
- 14 A I was wearing, I believe it's khaki pants or black
15 pants with a tanned shirt. I also had a raid vest.
16 It's black in color. And big letters across my
17 chest. It says Deputy, Deputy Sheriff.
- 18 Q State's 62 for I.D., do you recognize this?
- 19 A Yes, I do.
- 20 Q What is this?
- 21 A That's the same type vest that I was wearing that
22 night.
- 23 Q You were wearing this that night?
- 24 A Yes, sir; along with my badge.
- 25 Q Where would your badge have been?

1 A Around my neck.

2 Q Back where you were, you came in. You said you

3 observed somebody?

4 A Yes, I did. Mr. Herring.

5 Q And you say you recognized him?

6 A Yes, I did.

7 Q And you recognized him from that?

8 A From the picture in the video.

9 Q And how far were you from him when you first saw him

10 in the house?

11 A I'm not good at guessing distance. But I would

12 probably say six to seven feet, maybe eight.

13 Q What happened next?

14 A We were all yelling Sheriff's Department, search

15 warrant. I was yelling Sheriff's Department, get on

16 the ground. At that time he just kind of just looked

17 at us and he took off back into the hallway.

18 Q Did he stop when you said Sheriff's Department?

19 A No. He just came out briefly, stopped, looked at us

20 and turned around and took off back to the back.

21 Q What happened next?

22 A At that time I could see Sergeant Linfert and Gwyn.

23 Everybody was moving in. It's almost like a -- a

24 term we use. It looked like they were cutting pie on

25 the door.

- 1 Q Cutting the what?
- 2 A Cutting the pie. Or we had kind of cut the angles.
- 3 At that time I hear them both start yelling gun, gun,
- 4 drop the gun. At that time I see a flash, see them
- 5 firing into the hallway. The last place I seen Mr.
- 6 Herring was going back to the hallway. At that time
- 7 I felt the threat was still in the hallway shooting
- 8 at Linfert and Gwyn. I felt at that time my only
- 9 option in a second was to protect them and stop him
- 10 from coming back out the hallway. And that's when I
- 11 fired at the wall where I last saw him go into.
- 12 Q Where did you think Dewain Herring was?
- 13 A In the hall, wherever I seen him run.
- 14 Q Tell these ladies and gentlemen of the jury, you've
- 15 heard the word what?
- 16 A Gun.
- 17 Q What else were the other officers yelling? Who was
- 18 in front of you?
- 19 A Sergeant Linfert and Investigator Gwyn were basically
- 20 to my left.
- 21 Q You heard the word gun. What else? What happened
- 22 next?
- 23 A I heard gun, gun, drop the gun. And that's when the
- 24 shots.
- 25 Q And you fired?

1 A And I fired. Yes, I did.

2 Q What about where you were? What type of cover did
3 you have?

4 A I had no cover at all. Once you go in the house,
5 it's a big foyer area when you walk in. As I was
6 firing my weapon, I was starting to step back to the
7 door because I had nowhere to go. As a matter of
8 fact, right when we got to the door, at that time
9 Deputy Hodges had fired one more shot after I had
10 finished firing. I told him to go ahead and step,
11 kind of like get out the house.

12 At that time I stood by the front door trying to
13 keep cover on the edge of the hallway and the opening
14 out of the hallway. And honestly, I was sitting
15 there and I didn't think I had good cover. At that
16 time he had a column on his front porch. I stepped
17 around the column and I was trying to keep my
18 balance.

19 I noticed that the column is stucco and I know
20 there's no cover with that. That's when I looked
21 down and noticed a step. So I stepped down off of
22 the porch and took cover behind the steps but still
23 had a visual on the hallway and probably about two
24 foot from the hallway.

25 Q I think you said earlier in your testimony you had

1 talked to Carl Weeks?

2 **A** Yes, I did.

3 **Q** Now, he has testified previously up here. Did he
4 tell you anything about a threat he received?

5 **MR. HARPOOTLIAN:** Objection, Your Honor, under
6 Rule 801.

7 **MR. MEADORS:** Your Honor, we're now going to
8 state of mind of this officer, what was in his mind
9 at the time.

10 **MR. HARPOOTLIAN:** 801.

11 **THE COURT:** I don't know the question.

12 **MR. HARPOOTLIAN:** Well, if he is asking for a
13 statement from Mr. Weeks, that would be hearsay. It
14 has to be an exception.

15 **MR. MEADORS:** Your Honor, can we approach?

16 **MR. HARPOOTLIAN:** I don't believe under Rule 801
17 that that would be an exception.

18 (Whereupon, a bench conference is had)

19 **Q** Had you talked to Carl Weeks at this point?

20 **A** Yes, I had.

21 **Q** As a result of that, did you learn of a threat to
22 him?

23 **A** Yes, I did.

24 **Q** Why were you there?

25 **A** I'm sorry?

1 Q What were you executing?

2 A A search warrant.

3 Q Now, beg the Court's indulgence. I just have a
4 picture. Your Honor, with the Court's permission I'm
5 going to ask the officer to come down, please. I
6 think for expediency, it would be easier.

7 THE COURT: Come on down, sir.

8 Q I don't have anything to use. Use your finger.

9 Okay?

10 A Okay.

11 Q Do you recognize this?

12 A Yes, I do.

13 Q Who were the first officers in

14 A It would be Investigator Gwyn and -- actually
15 Sergeant Linfert was the first, then Investigator
16 Gwyn.

17 Q And you came in. Who came in next?

18 A I believe it was me.

19 Q Can you show the ladies and gentlemen of the jury on
20 State's 84 I think where Officer Sergeant Linfert and
21 Investigator Gwyn were to the best of your
22 recollection?

23 A They would actually have been more over in this area,
24 maybe I would say about maybe what appeared to me
25 about maybe two to four feet back from this entrance

1 right here.

2 Q And still staying on 84, where would you have been,
3 Investigator?

4 A I would have been somewhere I believe right in this
5 area, maybe a little bit further back.

6 Q So your testimony is you hear the word gun, see or
7 hear shots and you fire?

8 A Yes, sir.

9 Q And what were you firing at?

10 A I was firing where I thought the threat was, at where
11 I last saw him, and that's leading back, going back
12 in the hallway.

13 Q Can you show on State's 84 where Dewain Herring ran
14 to that you observed that night?

15 A Back into this hallway.

16 Q That's all. You can have a seat. Gun, shots fired.
17 What happens next?

18 A That's when I go back out to the porch, get down and
19 take cover. At that time everyone is still yelling
20 Sheriff's Department trying to get him to come out.
21 Also at that time Sergeant Linfert called out all the
22 officers' names to make sure everyone was okay.

23 Q And could you hear the back and forth talking
24 between -- not asking you what they were saying
25 necessarily -- but could you hear Linfert and/or Gwyn

1 yelling at Dewain Herring?

2 A Yes, sir.

3 Q And Dewain Herring talking back?

4 A Yes, I could.

5 Q Did you ever hear Dewain Herring say anything?

6 A Excuse me?

7 Q Did you ever hear Dewain Herring say anything?

8 A Yes. When I was out on the porch. It was a lot of

9 the yelling and stuff going back. I remember hearing

10 the comment basically to the fact of, why are you all

11 coming in here like I killed somebody? And it was to

12 that extent.

13 Q And did you tell the SLED folks that on January 29th?

14 A Yes, I did.

15 Q Of '06?

16 A Yes, sir. Yes, sir.

17 Q Beg the Court's indulgence. Don't take offense at

18 this.

19 A Okay.

20 Q Were you scared?

21 A Yes. I was in fear of my safety and the safety of

22 the other officers there.

23 Q Had you ever received any training quite like this?

24 A Not like that. No, sir.

25 Q Is the person that you saw when you came in the front

1 door of [redacted] and yelling, police,
2 Sheriff's Department, and you saw run around that
3 corner, is that person in the courtroom?

4 A Yes, he is.

5 Q Would you point him out?

6 A (Witness points).

7 MR. MEADORS: Let the record reflect he's
8 pointed to Mr. Herring seated beside Mr. Harpootlian.

9 THE COURT: Let the record reflect the witness
10 identified the defendant.

11 Q After he was taken into custody there, did you have
12 any part of the arrest or the handcuffing there at
13 [redacted] Herring?

14 A When he finally came out of the hallway, that's when
15 we all kind of moved. I moved back in the house. We
16 were Sheriff's Department, get on the ground. And at
17 that time he was handcuffed by one of the uniformed
18 deputies I believe.

19 Q Thank you, sir. Please answer any questions Mr.
20 Harpootlian has.

21 A Thank you.

22 CROSS EXAMINATION

23 BY MR. HARPOOTLIAN

24 Q You told SLED that Mr. Herring acted like he couldn't
25 hear you very well. Isn't that right?

- 1 A I don't remember saying that.
- 2 Q Well, do you have your statement with you?
- 3 A Yes, I do.
- 4 Q How about let's look at it.
- 5 A What page was that on?
- 6 Q That would be on page 2 I believe.
- 7 A Yes, I did. I stated the suspect was being combative
- 8 and acting like he could not hear us.
- 9 Q Acting like he could not hear you?
- 10 A However, he did answer us several times.
- 11 Q Now, when you all came in the door, did anybody have
- 12 any flashlights? Hadn't somebody banged on the door
- 13 with a Mag flashlight?
- 14 A I didn't see anyone with a flashlight.
- 15 Q Anybody holding a flashlight?
- 16 A Not that I saw.
- 17 Q Was it bright or dim or how in there?
- 18 A It was dim.
- 19 Q It was dim. Now, show the jury, please -- stand up.
- 20 May I approach the witness, please?
- 21 **THE COURT:** Sure.
- 22 Q Go ahead and stand up. You don't have your service
- 23 revolver on you, do you?
- 24 A I do.
- 25 Q I don't want you to pull it out. I've made that

- 1 mistake once this week. Show me with your hands how
2 you would be holding your weapon?
- 3 A When I come in the house?
- 4 Q Like you're walking in the house.
- 5 A Like this.
- 6 Q Okay. Now, is that what you're trained to do?
- 7 A Yes, it is.
- 8 Q Okay. How about step down here for just a second.
9 Show me how you do it. Face the jury, please. Show
10 them how you're supposed to hold your hands?
- 11 A I was holding it like this.
- 12 Q And this was just like --
- 13 A I think mine might be a little bit bigger than this
14 one.
- 15 Q So your hands were between the Deputy Sheriff and the
16 person standing in front of you. Is that right?
- 17 A I can't see me, so --
- 18 Q Well, you don't know whether they could see it or
19 not?
- 20 A I mean, I don't know what he saw.
- 21 Q You don't know what he saw. But clearly as you all
22 walk in, everybody has got their hands like this?
- 23 A I don't know if everybody does.
- 24 Q Well, isn't that what you're trained to do?
- 25 A That's what I was trained to do, yes.

1 Q Okay. And are you all trained separately, different
2 ways at the Sheriff's Department?
3 A We have different -- you have SRT training and then
4 you have the regular training.
5 Q Well, I mean, do people walk in like we see in the
6 movies, holding it from their hip?
7 A No, sir.
8 Q You're supposed to have it up in a two-handed grip,
9 correct?
10 A Yes.
11 Q Isn't that the appropriate way to hold a gun?
12 A Yes.
13 Q When you do, it blocks to some degree what's on your
14 chest if you have your hands in front of you?
15 A To some extent.
16 Q Right. Now, it's dim in there. You've got your
17 hands in front of whatever letters are on your chest,
18 correct?
19 A That's correct.
20 Q Was he wearing his glasses?
21 A I don't remember if he was wearing his glasses or
22 not.
23 Q You come through the door and you see him. It's
24 pretty dim in there. You couldn't tell whether he
25 had glasses on or not?

1 A I couldn't tell at that time. No, sir.

2 Q Now, the other thing I want to know is -- and we're

3 looking at this picture up here -- if you come back

4 from that doorway -- yeah. Here is Defendant's

5 Exhibit No. 14. We're looking at that same sort of

6 shot right there, right?

7 A Yes, sir.

8 Q Except this would have been where you were shooting

9 from?

10 A Yes, sir.

11 Q And probably one or two of these bullet holes are

12 yours?

13 A Maybe.

14 Q How many shots did you fire?

15 A Seven rounds.

16 Q Seven rounds towards this wall?

17 A Towards that wall.

18 Q Apparently some of them hit the wall; some of them

19 didn't?

20 A Apparently.

21 Q Now, they are standing back over here, I think what

22 you've said, about four to six feet from this door

23 back that way?

24 A I was guessing on the distance. That's about right

25 from what I can recall.

- 1 Q When you see this entrance here, this room, were they
2 beyond this entrance or in the entrance?
- 3 A I would say they're probably in here.
- 4 Q That would be right towards -- so let the record
5 reflect he is looking at the -- facing that room
6 where we see a number 3, it would be almost to the
7 doorway on the left, the edge of the doorway on the
8 left?
- 9 A They were on this side, yeah; going where they could
10 see down the hallway.
- 11 Q Right down this way?
- 12 A Right.
- 13 Q But if you looked at them from this way, they'd be
14 about parallel with that?
- 15 A I believe.
- 16 Q And you're back over here?
- 17 A No. I'm in this area.
- 18 Q Back over here?
- 19 A Right.
- 20 Q Okay. You could not see down the hallway?
- 21 A I could not see there. No, sir.
- 22 Q And you were in front of -- who was in front of you?
- 23 A No one is in front of me. Sergeant Linfert and
24 Investigator Gwyn were to my left.
- 25 Q How far?

1 A It's hard to guess.

2 Q Well, I don't want you to guess. I want you to try
3 to remember. Stop me when I'm as far away from you
4 as they were that night.

5 A They were further back. I'd say maybe take a step
6 forward.

7 Q About this distance?

8 A That's what I remember. About that far.

9 MR. HARPOOTLIAN: Okay. Now, Your Honor, may he
10 step down for just a moment?

11 THE COURT: Sure.

12 MR. HARPOOTLIAN: Because I don't think we have
13 enough room up there to do this.

14 Q I want you to stand here facing the jury for me,
15 please. Just stand this way. And we're going to --
16 how far away -- if this was the wall that we see with
17 the bullet holes in here, how about back up or come
18 forward to where you're about the distance from the
19 wall as you were that night with your gun?

20 A From the wall?

21 Q Yeah.

22 A I'm guessing maybe right here. Everything had
23 happened so quick, I would say about this distance.

24 Q And Linfert and Gwyn, where were they?

25 A They would have been over here. Actually probably if

1 you're looking down the hallway here, they would have
2 been about this angle right here.

3 Q Okay. Now, when Mr. Herring came out of that
4 doorway, where were Gwyn and Linfert?

5 A When he originally came out of the hallway, I'm not
6 sure where they were. My focus was directly on him.

7 Q Did you see him?

8 A Yes, I did.

9 Q But they were over to your left, over here somewhere.
10 Is that right?

11 A As far as I remember, they were.

12 Q I mean, they had to be in front of you because you
13 came in after them?

14 A My focus was on him.

15 Q But they're over here somewhere?

16 A Correct.

17 Q In the distance from the hallway door to where you
18 are is about that, right? About that distance?

19 A About that.

20 Q Okay. And their distance from the hallway door
21 couldn't be any more than they end up over there,
22 over here, somewhere in this area probably?

23 A I would imagine.

24 Q Now, Mr. Herring, did he come all the way out the
25 door? Could you see his whole body?

1 A I saw his whole body. He came out and was probably
2 standing --
3 Q Wait a minute. I want the jury to see this. Okay.
4 Came out. Let me stand over here and you point.
5 A He came out I believe -- I believe was right at about
6 the edge right here.
7 Q Right here?
8 A Right here.
9 Q And you've testified that Linfert and --
10 A At that time when he was in the hallway, I'm not sure
11 where they were at. I know they were to my left.
12 Q They were to your left. So they'd have to be over
13 here in this area?
14 A They would have to tell you where they were during
15 that time.
16 Q But you didn't see him come from the kitchen over to
17 the dining room?
18 A No.
19 Q They had to be over in this area over here to your
20 left?
21 A When the shots were fired, I didn't see which
22 direction they were.
23 Q Before the shots were fired?
24 A Before the shots were fired, as I said, he came out
25 the hallway. He turned around and ran back in the

1 hallway. That's when they were I guess you could say
2 approaching the corner right here slicing the pie or
3 whatever. That's when they started yelling gun, gun,
4 drop the gun. That's when the shots were fired.

5 Q Okay. Now, how far did Gwyn or Linfert get in this
6 hallway?

7 A I never saw anyone go in that hallway except Mr.
8 Herring.

9 Q You wouldn't have shot down this wall this many times
10 if you thought Gwyn and Linfert were back there?

11 A If I thought another officer was in there; no, sir.

12 Q Actually, when they fired, you think they're around
13 in here somewhere?

14 A I remember seeing several flashes from this area.

15 Q Right here?

16 A Like I said, my focus was here because I knew they
17 were over here. My focus was here. My focus was
18 concerned he was coming out of the hallway with a
19 gun. They were yelling gun, drop the gun. I didn't
20 know if he was shooting at them or not. My concern
21 was if he came back out the hallway, we had six
22 officers in this little area with nowhere to go.

23 Q So --

24 A My main focus was to keep him in that hallway.

25 Q Okay. And again Linfert and Gwyn have come in.

1 They're cutting the pie. They're going over this
2 way. You're staying there. Herring comes out?
3 A No.
4 Q No?
5 A Well, as we're moving in, Herring -- from the time we
6 pretty much come in the door, Herring is coming out
7 the hall.
8 Q But Linfert and Gwyn are in front of you and you're
9 about that far away from them?
10 A My main focus at that time was on him.
11 Q But they're in front of you?
12 A To the side of me.
13 Q To the side of you. And give your best estimate from
14 looking at the picture and your memory of how far
15 Linfert and Gwyn would have been away from Herring as
16 he came out that door and stood there?
17 A I can't give a guess. When he came out the door, my
18 main focus was on him. I looked at his face and then
19 I moved. I looked down at his hands to see if he had
20 anything in his hands.
21 Q Did you see Linfert and Gwyn chase after him?
22 A No, I didn't.
23 Q Did you see -- I mean, did they try to chase after
24 him?
25 A I don't know.

1 Q Did you see Gwyn slip?

2 A No, I did not.

3 Q Linfert. Did you see him slip?

4 A No, I did not.

5 Q And your testimony is that you saw flashes. When you
6 heard gun, gun, and flashes, you saw flashes back in
7 here?

8 A It would have been this area in front of the hall
9 that's standing back.

10 Q Standing back. Back in here?

11 A Right. So at that time I felt that he was in this
12 hallway with a gun. At that time I thought he was
13 actually shooting at them and that's why I fired my
14 weapon.

15 Q Okay. And the result of your firing your weapon, we
16 see in Defendant's Exhibit 1, you're responsible for
17 some of those holes in the wall?

18 A Yes, sir.

19 Q Okay. Now, who else was over here if we see these
20 streamers over here on this side firing other than
21 Linfert and Gwyn?

22 A That's the only ones I know of that were shooting.

23 Q So if we look down the hall, it may be on this one
24 right here. Do you see these green streamers coming
25 from the left?

1 A Yes, I do.

2 Q Those would be either Gwyn or Linfert based on what
3 you saw that night?

4 A Based on what I saw, yes.

5 Q Okay. Go ahead and take the stand, please. Now, you
6 had gone to the Internet prior to going out there,
7 right?

8 A Yes, I did.

9 Q And you got -- do you recognize this document? Is
10 that something you got off the Internet that night?

11 A I don't remember that's the one I got or not. I'm
12 not sure. It looks familiar.

13 Q It looks familiar. Okay. And you went out there
14 with Sergeant Linfert before you went out there with
15 a search warrant. You went out there with him and
16 banged on the door for a while, didn't you?

17 A Yes, sir.

18 Q And you all banged pretty loud, didn't you?

19 A We knocked. Yes, sir.

20 Q And you were going out there to do what?

21 A Try to make contact with him, contact with the person
22 at the residence.

23 Q Contact who?

24 A With whoever was at the residence.

25 Q Okay. And I believe you checked on the Internet and

1 found that a Virginia Herring lived there, right?

2 A I checked AccuRent and it showed a Virginia and I
3 believe another male subject. AccuRent, it's
4 updated. It's updated a good bit. But a lot of
5 times, sometimes it's not accurate on who actually
6 stayed at the house.

7 Q But you had some feeling there were people there
8 other than Mr. Herring based on that?

9 A Yeah. I believe that other people lived there.

10 Q Now, you all went there about 2:00 and started
11 banging on the door. You and Sergeant Linfert banged
12 on the door with a maglite?

13 A I didn't bang on the door with a maglite. I used my
14 hand.

15 Q Rang the doorbell?

16 A Yes, sir.

17 Q Tried to get somebody to come to the door?

18 A Yes, sir.

19 Q And then you all went over to the garage and looked
20 in the window?

21 A I know I looked in the window after we had knocked on
22 the door. I believe Linfert had seen the vehicle in
23 there prior to that.

24 Q I'm talking about before the search warrant.

25 A Before?

1 Q Yes. When you say prior to, did he go out there with
2 you?

3 A When we left Chastity's, that's when I was notified
4 by Investigator Gwyn that the deputies had went by
5 that location and they believed the vehicle fitting
6 the description was at that residence.

7 Q I guess what I'm trying to find out is the only way
8 you could do that would be to look in the window
9 because the door wasn't up.

10 A You had to go look through a window. I mean, I went
11 and looked through a window.

12 Q Which window did you look through?

13 A The garage window.

14 Q And there's a window on the front and there's a
15 window on the side?

16 A It would have been the front.

17 Q On the front. And those, you've got to walk across
18 some grass, behind some bushes and then look in the
19 window, right?

20 A I believe you could see it from there. But that's
21 what I did when I went back. So I went to pop my
22 head in the window because the light was on in the
23 garage and I wasn't going to risk him being inside
24 there.

25 Q And you saw a black Toyota 4Runner in there, right?

1 A That's correct.

2 Q But you couldn't see a license number because it was
3 parked towards you?

4 A That's correct.

5 Q And you -- okay. Now, you gave a written statement
6 to SLED at approximately 18:55 hours on the 29th. Is
7 that correct?

8 A That's correct.

9 Q 18:5 would be 6:55?

10 A Yes.

11 Q P.M.?

12 A P.M.

13 Q It's a typewritten statement?

14 A Yes, sir.

15 Q Who typed it?

16 A I did.

17 Q And did you present it to Mr. Lawrence?

18 A Yes, I did.

19 Q And did he go over it with you?

20 A Yes, he did.

21 Q Did you make any changes in it after he went over it?

22 A No, sir.

23 Q So you typed it up and gave it to him and signed it
24 in front of him?

25 A No, sir.

1 Q No questioning, no what about this, what about that
2 kind of stuff?

3 A Not that I recall.

4 Q Okay. Now, did you go back in the bedroom after the
5 shooting?

6 A Yes, I did.

7 Q And did you see a weapon lying on the bed?

8 A I noticed one laying on the bed. Yes, I did.

9 Q Were the lights on or lights off?

10 A I can't remember. We just -- I believe they were on
11 because we went back there to clear the residence
12 just to make sure no one else was back there.

13 Q You don't know who turned them on?

14 A No. I'm not sure.

15 Q Now, other than the statement you gave at 18:55 hours
16 on the 29th, were you questioned by anybody else
17 about what occurred that night, any other law
18 enforcement officer in an official capacity to
19 determine anything about the shooting?

20 A No, sir.

21 Q So you typed up a statement, went over it with
22 Mr. Lawrence. You signed it. And since
23 January 29th, 2006, no one has questioned you about
24 this in an official capacity, official way except me
25 here today and the solicitor here today?

1 A Let me say I did meet with Bob White.

2 Q Who?

3 A Bob White. He's an investigator with the Sheriff's
4 Department.

5 Q What was the purpose of meeting with him?

6 A He called me down there to meet him. We basically
7 talked about the incident.

8 Q And did you have to give him a statement?

9 A Yes, I did.

10 Q Written statement?

11 A Verbal. He typed it. I signed it.

12 Q Did all you all have to do that?

13 A I don't know.

14 Q Did you have to swear to it? Was it notarized?

15 A I believe it was notarized.

16 Q And you just didn't give him this one. You did a
17 whole new one?

18 A It wasn't a whole new one. We basically went over
19 what had occurred that night, why did I fire my
20 weapon.

21 MR. HARPOOTLIAN: Can we approach just a moment,
22 please?

23 MR. MEADORS: Sure.

24 (Whereupon, a bench conference is had)

25 THE COURT: All right, Ladies and Gentlemen.

1 We're going to take a short break. I need to take up
2 a matter of law with the attorneys. Don't discuss
3 the case among yourselves while you're in the jury
4 room. We'll call you in just a few minutes.

5 (Jury out at 3:55 p.m.)

6 **THE COURT:** Yes.

7 **MR. HARPOOTLIAN:** If it please the Court, Your
8 Honor, and I want to make it clear at the outset, I'm
9 not alleging any impropriety on the part of the
10 Solicitor's Office. We have been provided Brady
11 material and the appropriate discovery material under
12 the criminal rules which included statements of these
13 officers who were involved in the shooting, and it
14 was represented those were the only statements that
15 would have been taken because any other statements
16 which could have been viewed as exculpatory under
17 Brady.

18 I am cross examining this witness and I must say
19 that I'm somewhat shocked to find there are other
20 statements that -- were sworn statements taken by Bob
21 White? I thought that was --

22 **MR. MEADORS:** That was my understanding from the
23 testimony.

24 **MR. HARPOOTLIAN:** Mr. Meadors and Mr. Giese are
25 not aware of those statements. But it is difficult

1 for me to go forward with the cross examination
2 without those statements. I'm not trying to delay
3 this thing, but --

4 **THE COURT:** We'll take about a 15-minute break
5 to see what the State has got.

6 **MR. MEADORS:** Thanks for putting that on the
7 record. And I appreciate that. We obviously did not
8 know there were other statements out there, learned
9 it, as we all did, from the stand. Apparently Bob
10 White is an investigator, internal investigator. If
11 there were other statements, we will certainly
12 attempt to acquire that right now. It may have been
13 internal. I have no idea.

14 **THE COURT:** See if we can find out right now.

15 **MR. HARFOOTLIAN:** I apologize, Your Honor. I
16 mean, it's not my fault but I'm apologizing anyway.

17 **THE COURT:** Do you want to take a ten-minute
18 break?

19 **MR. MEADORS:** It is what it is, Your Honor.

20 (Whereupon, a break is taken)

21 **THE COURT:** All right, Solicitor, for the
22 record, what status is this matter?

23 **MR. MEADORS:** Your Honor, as we had talked about
24 earlier, it came out on the stand through
25 Investigator Baker that there were some statements

1 taken I believe by a Bob White who is with Internal
2 Affairs at the Sheriff's Department, Your Honor. We
3 had no knowledge of that. I put that in the record.
4 Mr. Harpootlian has placed on the record previously
5 he knows we did not. We have that statement and/or
6 statements -- I'm not even sure what they are --
7 coming up here now at any moment. We're here. We
8 would propose to look at those with Mr. Harpootlian
9 and/or ask Your Honor to look at them to see if
10 there's anything exculpatory. That process will take
11 a minute. We would like at this time to recess until
12 the morning.

13 **MR. HARPOOTLIAN:** We have no objection that,
14 Judge.

15 **THE COURT:** Do you want me to explain to the
16 jury why you're doing that?

17 **MR. MEADORS:** I do not know. And obviously
18 these would just relate to the shooting at 460. It
19 may be internal matters as to that, has nothing to do
20 with the murder at --

21 **MR. HARPOOTLIAN:** Well, we don't know.

22 **MR. MEADORS:** Well, I'm assuming that it would
23 relate to the shooting portion.

24 **THE COURT:** I need to give them some
25 explanation.

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

2 **MR. GIESE:** There's a legal matter, which is the
3 truth. How about the truth? It's a legal matter
4 that can't be resolved until morning. Or it can be
5 resolved tonight but there's no reason for them to
6 stay around until we resolve it.

7 **MR. MEADORS:** Thank you, sir.

8 **MR. HARPOOTLIAN:** Whatever you want to say,
9 Judge. It doesn't matter to me.

10 **THE COURT:** That's pretty open ended.

11 **MR. HARPOOTLIAN:** As long as it's not my fault,
12 anything else will be fine.

13 (Jury in at 4:35 p.m.)

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

15 **THE COURT:** All right. Thank you very much.
16 Ladies and gentlemen of the jury, I have been unable
17 to resolve this matter at this point in time. And I
18 think rather than keep you here, probably the most
19 efficient use of our time hopefully will be for me to
20 dismiss you now until 9:00 in the morning at which
21 time I hope to have this matter resolved and we'll
22 reconvene the trial.

23 Again I'll ask you not to discuss the case among
24 yourselves when you return to the jury room or with
25 anyone else over the evening hours and give you

1 enough -- caution you again about taking liberty, of
2 not taking the liberty of exposing yourself to
3 anything from the press, the media, things like that,
4 that caution I've given to you before. I hope you
5 have a pleasant evening. We'll try to get started at
6 9:00 in the morning. Hopefully we'll have a better
7 day tomorrow. But we're going to get through it.
8 All right. Thank you very much.

9 (Jury out at 4:37 p.m.)

10 **THE COURT:** All right. We'll stand at ease
11 until 9:00. I am going to remain here for a while to
12 see if I am needed when those statements arrive.

13 **MR. MEADORS:** Your Honor, hopefully we'll be
14 contacting you in the next five or ten minutes.
15 Thank you.

16 (Whereupon, the proceedings are concluded for
17 the day, to be reconvened tomorrow morning)

Tuesday, May 15, 2007

(WHEREUPON, State's Exhibit No. 85 is marked for identification.)

(WHEREUPON, State's Exhibit No. 86 is marked for identification.)

MR. HARPOOTLIAN: May we approach?

(Whereupon, a bench conference is had)

THE COURT: The State ready to proceed?

MR. MEADORS: Yes, sir.

THE COURT: Defense ready to proceed?

MR. HARPOOTLIAN: Yes, sir. Your Honor, for the record, during Investigator Baker's testimony yesterday he revealed that he had given a statement to the Internal Affairs Unit of the Richland County Sheriff's Department concerning the shooting incident.

The solicitor, as I, was unaware of these statements or any other materials. The solicitor requested the Sheriff's Department produce those. They were produced late yesterday afternoon or early evening. We broke court so we could examine them. We've examined them. Some of the materials were examined by you. You have met with us this morning and shared those terms with us. We are now aware of them.

1 And if we decide to make any use of them, we are
2 as I understand within certain constraints allowed to
3 do so. We've reviewed my position with the
4 solicitor. We feel there is no prejudice to the
5 defendant based on the late revelation. However, I
6 want to state for the record that if the Sheriff's
7 Department, the solicitor has given me everything
8 they have, and I think he's confirmed with the
9 Sheriff's Department to review their files again so
10 we don't get this case going to the jury and find out
11 there are more statements, there are other reports or
12 those sorts of things. It's incomprehensible. We
13 could at this late date still be getting statements.
14 Thank you, Your Honor. So we're ready to proceed.

15 **THE COURT:** Anything else from the State on this
16 issue?

17 **MR. MEADORS:** I do not believe so, Your Honor.
18 At this point there has been full disclosure. He
19 does have the statements. We have them. And we're
20 ready to proceed.

21 **THE COURT:** All right. Ready for the jury?

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

23 **THE COURT:** Bring the jury, please.

24 (Jury in at 9:27 a.m.)

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

1 **THE COURT:** Good morning. Good morning, ladies
2 and gentlemen. The issue that caused us to break a
3 little early yesterday afternoon has now been
4 resolved. We're ready to continue with the trial and
5 the cross examination of Investigator Baker by Mr.
6 Harpootlian. You may proceed, sir.

7 **MR. HARPOOTLIAN:** May it please? Your Honor,
8 I'm going to have to just review a little bit that we
9 went over yesterday afternoon to get back to where we
10 were, if that's okay.

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

12 **Q** Investigator Baker, we were talking yesterday
13 afternoon about what occurred on
14 Do you remember all that?

15 **A** Yes, sir.

16 **Q** And I'm trying to make sure I understand what you're
17 saying. If you come in the front door of this house,
18 and I think there's some poles over here, this is the
19 dining room. There's a dining room table right here,
20 right?

21 **A** Yes, sir.

22 **Q** And then there is a hall that goes down here. I
23 think there's a door to the bedroom and then back
24 here there's a wall. I think this wall actually goes
25 like this, sort of like that, right?

1 A I believe so.

2 Q Then there's a bed here, right?

3 A Yes, sir.

4 Q And a dressing stand here?

5 A Yes, sir.

6 Q And I think there's a door to a bathroom right there,

7 right?

8 A Yes, sir.

9 Q Now, when you came in the front door, officers

10 Linfert and Gwyn had gone in ahead of you and they

11 headed over into this direction over here. You said

12 cutting the pie or slicing the pie, right?

13 A Yes, sir.

14 Q And you came in and got into this area in here,

15 right?

16 A I believe I was -- this is the front door. You come

17 in. I believe I was probably about in this area

18 right here.

19 Q Right in here. I'll put B on there. And you were

20 the third person in?

21 A I believe so.

22 Q Now, I further understand your testimony to be --

23 correct me if I'm wrong -- that you -- did you see

24 Mr. Herring come out of this hallway or did you --

25 when you looked up he was there? Which was it?

1 A I believe when we came in the door, I believe I saw
2 him taking a step and he was about right in this
3 area --

4 Q Okay.

5 A -- as we entered in the house. It's kind of like
6 we're coming in and he's basically coming out.

7 Q And you believe Linfert and Gwyn are moving over in
8 this direction over here?

9 A They were somewhere to my left.

10 Q Okay. Now, from -- and there's also a wall right
11 about here that goes back like that. Isn't that
12 right?

13 A I know there was a wall somewhere right here. I
14 really wasn't paying too much attention to it.

15 Q Okay. And you I think indicated you were about six
16 feet from Mr. Herring, about this distance?

17 A I'm guessing. Yeah.

18 Q And you weren't looking at Linfert and --

19 A No, sir.

20 Q -- Gwyn?

21 A When he came out in the hallway my attention was on
22 him.

23 Q And when he went back in here, you fired when you
24 heard a shot. You shot in here because you thought
25 he was there. Is that right?

1 A When he came out and ran back in, that's when I heard
2 Sergeant Linfert and Investigator Gwyn yelling gun,
3 drop the gun; it's probably about, guessing; I mean,
4 it all happened so quick, I would say probably two,
5 three seconds after he went back in the hallway. And
6 then at that time when I saw the flashes coming from
7 to my left where they were at, at that time I knew he
8 was -- I thought he was in the hallway with a gun
9 firing at them. That's why --

10 Q So no question in your mind when he came out you
11 looked at his hands to see if he had a gun?

12 A I did not see one.

13 Q Did not see a gun?

14 A (Shakes head negatively).

15 Q So there's no question when he came out here and
16 looked at you all he was unarmed, right?

17 A Yes, sir. That I could say.

18 Q Well, and then as he ran back down the hall, you
19 indicate it was some very short period of time before
20 you heard gun and saw flashes to your left?

21 A I saw gun, heard gun, gun, drop the gun, drop the
22 gun, that's when the flashes.

23 Q Was there anything to prevent Sergeant Linfert or
24 Mr. Gwyn from running after him?

25 A I wouldn't suggest they would run after him if you're

1 running back to a bedroom.

2 Q I mean, he's a rather portly 63-year-old. You all,
3 at least Sergeant Linfert before he broke his foot
4 and Gwyn seem to be -- I think he was a lean, seemed
5 to be in pretty good shape?

6 A I know I'm a family man, have a three-year-old son,
7 and I'm not going to chase a murder suspect down a
8 hallway.

9 Q I know you're not. But Gwyn and Linfert are standing
10 here looking at him and they can see -- can't they
11 see down this hall where they are?

12 A Like I said, they were to my left. My focus was not
13 on them.

14 Q So your testimony is they saw him run back in there,
15 and then a very short period you heard gun, gun, drop
16 the gun, and then somebody fired?

17 A Then shots were fired.

18 Q You don't know whether he was facing them?

19 A I did not see him.

20 Q You don't know whether he had his back to them?

21 A I did not see him.

22 Q As a matter of fact, you assumed, apparently wrongly,
23 that he was in this area right here, correct?

24 A In that area, yes, sir. That's where I last saw him
25 run.

1 Q And you put seven rounds through there?

2 A Yes, sir.

3 Q And as we now know, thank goodness, they didn't hit
4 anybody, right?

5 A That is correct.

6 Q Now, and you went back outside. You retreated
7 outside once the gunfire started, right?

8 A Well, as I was firing my weapon I was moving back
9 towards the front door.

10 Q You apparently assumed, I think you testified, that
11 one of those shots you heard was him firing. You
12 thought he had fired?

13 A I thought he had fired.

14 Q You were wrong?

15 A I was wrong.

16 Q And you assumed he'd fired?

17 A I assumed he had fired.

18 Q Because Linfert or Gwyn had yelled gun?

19 A Had yelled gun, gun, drop the gun. Then they fired.

20 Q Now, after the shooting, where did you go; I mean,
21 after Mr. Herring had been handcuffed and taken away?

22 A After he was taken away by the EMS?

23 Q Right.

24 A We were advised at that time to return back to
25 headquarters.

1 Q Now, how long after he was shot -- and he was
2 handcuffed on the floor, right?
3 A I believe so.
4 Q Were you there when he was handcuffed?
5 A Yes, sir.
6 Q He was put down on the floor, handcuffed behind him?
7 A I believe so.
8 Q Okay. And then you had to wait a little while for
9 EMS to show up?
10 A EMS was -- I believe they were already down the road.
11 Once we said the scene was secure, I believe it was a
12 matter of minutes.
13 Q Okay.
14 A If not shorter than that.
15 Q Three to five minutes?
16 A I believe it was a shorter time than that.
17 Q And then how long did you all stay at the scene
18 after?
19 A That, I mean, I'd have to guess again. I wouldn't
20 imagine longer than ten or fifteen minutes, if that.
21 Q Place full of gun smoke?
22 A Not that I saw.
23 Q You fired your weapon how many times?
24 A Seven.
25 Q And other officers, I think we've heard there were 15

1 or 16 shots, didn't generate any blue haze of gun
2 smoke?

3 A I didn't pay attention to that. My focus was on the
4 hallway and him coming out of the hallway.

5 Q What officers were out there with you that night that
6 would have been -- that went in the door with you?

7 A It would have been Sergeant Linfert, Investigator
8 Gwyn, Deputy Hodges, Investigator Davis and
9 Investigator Tavenner.

10 Q Now, you've been waiting up here this week to
11 testify?

12 A On and off.

13 Q You've seen Investigator Tavenner?

14 A I have not.

15 Q Davis?

16 A Saw him in the office.

17 Q What about Davis?

18 A I saw him in the office.

19 Q Who was the other one? Davis. Tavenner.

20 A Hodges.

21 Q Hodges. You've seen him in the office, too?

22 A I've seen him up here.

23 Q He's been up here?

24 A (Nods head affirmatively).

25 Q Where have you all been waiting?

- 1 A Been waiting out front and back in the --
- 2 Q Solicitor's Office?
- 3 A -- solicitor's Office.
- 4 Q You were subpoenaed to be here?
- 5 A Yes, sir. Not for this week. Last week.
- 6 Q Last week. And so those officers have been -- one of
- 7 them has been up here. Others have been at the
- 8 Sheriff's Department which is a few miles away?
- 9 A Yes, sir.
- 10 Q Now, after the shooting, tell me what you and Gwyn
- 11 and Linfert and these officers talked about? Did you
- 12 all talk about what had just happened?
- 13 A No, sir. We went back up to headquarters and just
- 14 kind of sat up there.
- 15 Q I'm talking about at the scene.
- 16 A At the scene?
- 17 Q You all stand and say, I almost got shot? Or did you
- 18 see that? Or, you know, he was pulling a gun out of
- 19 a bureau? I mean what? What did they say? Who said
- 20 what?
- 21 A I remember hearing something about he pointed a gun.
- 22 Q From who?
- 23 A I believe it was Linfert.
- 24 Q Okay. Anybody else?
- 25 A Not that I can recall.

- 1 Q Nobody asked why everybody had opened fire back here,
2 why there were ten bullet holes in that whole hall?
- 3 A No.
- 4 Q Did Linfert complain to you all that you all almost
5 shot him?
- 6 A No, he didn't.
- 7 Q Did he indicate to you which direction or how Mr.
8 Herring was allegedly standing or pointing the gun?
- 9 A No, he didn't.
- 10 Q Did Mr. Gwyn indicate to you he'd seen him point a
11 gun?
- 12 A I can't recall that night if he did or if he didn't.
- 13 Q So you all go back to the Sheriff's Department?
- 14 A Yes, we did.
- 15 Q Do you all sat in the same room?
- 16 A We were in the conference room. I believe some
17 people would get up and walk out, call home.
- 18 Q How long were you all in the conference room?
- 19 A I couldn't tell you.
- 20 Q An hour?
- 21 A I couldn't tell you.
- 22 Q Five minutes?
- 23 A It was longer than five minutes, longer than thirty
24 minutes.
- 25 Q Okay. And while you're in there, were you all again

1 sort of having a post event discussion about what
2 happened?

3 A I wouldn't say a post event. I mean, we were all
4 kind of still in -- I mean, I was still not in shock
5 but still surprised how quick everything happened.

6 Q Pretty traumatic?

7 A I would say so.

8 Q Did it scare you, that process?

9 A Not the process but just makes you see how close and
10 how quick things can happen.

11 Q But it was traumatic to you to pull your gun and
12 shoot it?

13 A It's not something I do every day, no.

14 Q And other officers pulling their guns and shooting
15 them?

16 A Can be.

17 Q Pardon me?

18 A Yes.

19 Q And it was traumatic that night?

20 A (Nods head affirmatively).

21 Q It upset you. It upset the other officers?

22 A I would imagine so. I can't speak for them.

23 Q Did you give a statement that night?

24 A I believe I gave a brief statement. But I had been
25 in since 3:30 that afternoon. We were now looking

1 at -- it was early hours in the morning. We left. I
2 returned back to headquarters and that's when I gave
3 my statement to SLED.

4 Q About 7:00 the next night?

5 A About 7:00.

6 Q And you may have established this yesterday. I want
7 to understand. You typed your own statement?

8 A Yes, sir.

9 Q Handed it to Mr. Lawrence?

10 A Yes, sir.

11 Q He looked at it, said, is this true; and then had you
12 swear to it?

13 A As far as I remember, yes, sir.

14 Q Was Agent LaRosa there with him?

15 A He was.

16 Q How long have you been at the Sheriff's Department?

17 A Since July of '98. Right at nine years.

18 Q Nine years. Was Lieutenant Lawrence at the Sheriff's
19 Department when you were there?

20 A No, sir.

21 Q He had already left at that point?

22 A Yeah. I didn't know he worked there.

23 Q Okay. Now, in your statement you gave to SLED you've
24 told them under oath on January 29th that you heard
25 Sergeant Linfert or Gwyn say, drop the gun. Is that

1 right?

2 A I believe so. Let me look at that.

3 Q Look at your statement.

4 (Pause)

5 A That's correct, in my statement.

6 Q Pardon me?

7 A I did say that in my statement.

8 Q So back within 12 hours of this occurring you said
9 Dewain Herring ran, then ran back into the hallway.
10 I heard either Sergeant Linfert or Gwyn -- or Gwyn --
11 say drop the gun. I then saw a flash and heard
12 gunshots at that time. Correct?

13 A That is correct.

14 Q So it wasn't gun, gun, gun, drop the gun, drop the
15 gun, bang. It was --

16 A I mean, the statement's not accurate on that. I did
17 hear the drop the gun more than once.

18 Q Well, you later on say that after the shooting
19 occurred you heard him. You heard them telling him
20 to drop the gun after the shooting, did you not?

21 A Throughout the -- throughout the conversation. And,
22 right.

23 Q So that wasn't the only time that night you heard
24 drop the gun. You heard it after the shooting
25 occurred. They're yelling at him drop the gun, drop

1 the gun?

2 A That is correct.

3 Q You hear it on the 911 tape. Put your hands up, drop
4 the gun. Right?

5 A That's correct.

6 Q So you think your recollection today, 14, 15 months
7 later, is better than it was 12 hours after the
8 incident?

9 A After the incident, like I said earlier, there's a
10 lot going through my mind. But I do remember we went
11 in the house. I heard gun, gun, drop the gun. I
12 heard it more than once before the shot was fired.

13 Q That's what you say today. But back 12 hours after
14 the incident that's not what you said, is it?

15 A That's not what was in my statement.

16 Q Right. And you're attributing that to the shock of
17 being around a shooting. Is that right?

18 A I just really can't answer that. I don't know why
19 it's in my statement just once.

20 Q And you would say to this jury your recollection 12
21 hours after the incident is not as good as it is 14
22 months later? Is that what you're saying?

23 A I wouldn't say that.

24 Q Well, is that what the result is though?

25 A That's what it says in my statement.

1 Q And Investigator Hodges was there?

2 A Deputy Hodges.

3 Q Deputy Hodges. He would have heard it. He was in a
4 position to hear it, right?

5 A He should have. I can't answer for him.

6 Q Tavenner, he was also coming in that door with you.
7 He would have heard it?

8 A I'm not sure whether Tavenner made it inside the
9 house or not.

10 Q And who else? David?

11 A Davis.

12 Q He was inside the house?

13 A I was not looking behind me. I know they would have
14 been after Tavenner or Hodges.

15 Q I mean, it was obviously said loud enough for you to
16 hear. Would it have been heard at the door?

17 A You would have to ask them.

18 Q No. I'm asking you. I'm asking you your opinion as
19 to --

20 A I can't answer for them.

21 Q Well, how can you answer whether Mr. Herring would
22 have heard it if you can't say whether other officers
23 in a room ten or fifteen feet could have heard it?

24 A I can't answer for him.

25 Q So you don't know whether he heard it or not?

1 A I can't answer for him.

2 Q Just yes or no to that and we can move on. Can you
3 say whether he heard it or not?

4 A I would have to say no.

5 Q Okay. But Davis and Hodges and Tavenner were on this
6 call with you into the house. Is that correct?

7 A That is correct.

8 Q And I believe you indicated earlier that you had done
9 a records check to determine there were other people,
10 at least Virginia Herring and one other individual,
11 that were listed as residents at that house. Is that
12 right?

13 A That is correct.

14 Q When you fired your weapon through that wall, did you
15 think about the fact there might have been somebody
16 behind that wall other than the suspect?

17 A At that time I was thinking that the suspect was the
18 only one down that hallway and I was concerned for
19 the safety of the other officers there and myself.

20 Q Thank you. Please answer any questions on redirect.

21 MR. MEADORS: Very briefly.

22 REDIRECT EXAMINATION

23 BY MR. MEADORS

24 Q Good morning.

25 A Good morning.

1 Q I believe Mr. Harpootlian was asking you about
2 whether you heard gun, gun, drop the gun? Do you
3 remember that?
4 A That's correct.
5 Q And he showed you this. But in your statement did
6 you put the words "drop the gun"?
7 A Yes, I did.
8 Q You did put that in your statement?
9 A Yes, sir.
10 Q Just not gun, gun, drop the gun?
11 A Yes, sir.
12 Q When you all first came in this residence,
13 Investigator, did you shoot when you first came in?
14 A No, sir.
15 Q Did you know whether or not you had hit David
16 Linfert?
17 A No, sir.
18 Q Did you come to find out he had been hit with
19 something?
20 A Yes, sir.
21 Q You regret that, don't you?
22 A Very much.
23 Q Where was John Johnson's body in this place?
24 A It wasn't in there.

25 MR. HARPOOTLIAN: Your Honor, this isn't

1 appropriate redirect. Where is "Jon Jon"'s body.
2 We'll stipulate Mr. Johnson's body was nowhere near
3 460 Alexander Circle.

4 **MR. MEADORS:** Your Honor, I didn't interrupt.
5 I'm asking a final question here.

6 **Q** Was his body at 460 Alexander Circle?

7 **A** In the back of my mind.

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

9 **Q** But was his body here?

10 **A** No, sir.

11 **THE COURT:** He said, "In the back of my mind."

12 **MR. HARPOOTLIAN:** Your Honor, I object to the
13 response, move it be struck.

14 **THE COURT:** Sustained. Strike that. It doesn't
15 have anything to do with the Alexander Circle
16 address.

17 **MR. MEADORS:** That's all we have.

18 **MR. HARPOOTLIAN:** Nothing further.

19 **THE COURT:** Thank you very much, Mr. Baker. You
20 may come down. The witness be excused? Any
21 objection?

22 **MR. HARPOOTLIAN:** No, sir.

23 **THE COURT:** No objection. Solicitor, call your
24 next witness.

25 **MR. MEADORS:** Chuck Earles.

1 **MR. HARPOOTLIAN:** Who did you say?

2 **MR. MEADORS:** Chuck Earles.

3 **CHARLES A. EARLES,** after being duly sworn,
4 testifies as follows:

5 **THE CLERK:** Please have a seat there, sir.
6 State your full name for the record.

7 **WITNESS:** Charles Albert Earles, E-A-R-L-E-S.

8 **DIRECT EXAMINATION**

9 **BY MR. MEADORS**

10 **Q** Where are you from? Is it Officer? What's your
11 title?

12 **A** Investigator.

13 **Q** Investigator Earles. Tell these folks where you're
14 from?

15 **A** I am the technical investigator for the Richland
16 County Sheriff's Department.

17 **Q** Where are you from?

18 **A** I'm from Columbia.

19 **Q** Where are you raised?

20 **A** Here in Columbia.

21 **Q** Tell the folks briefly about yourself, your schooling
22 and how you got in law enforcement?

23 **A** I graduated from Cardinal Newman High School here in
24 Columbia, attended the University of South Carolina,
25 have a Bachelor of Science degree in biology,

1 pre-med. I went to work out of college as a
2 paramedic. I was a paramedic, an EMT for 22 years
3 with Richland County. I became an administrator at
4 EMS and decided I wanted a change, had more fun at
5 the Sheriff's Department, transferred to the
6 Sheriff's Department in 1997 with the goal of going
7 into forensics. I did that, became the sergeant over
8 the forensic science unit, subsequently retired and
9 was rehired by the Sheriff. And I've been the
10 technical investigator since 2003.

11 Q And you work down on Two Notch?

12 A Yes, sir.

13 Q At the Sheriff's Department?

14 A Yes, sir.

15 Q Your role in this case is -- I don't mean it bad or
16 anything. But your role in this case is a custodian
17 primarily, correct?

18 A Yes, sir. Pretty much.

19 Q And when I say that, did you have the opportunity to
20 collect what's State's 54 which I believe is an
21 hour-long, the initial hour-long video that was given
22 to Gwyn, to Baker, to Linfert, to the file, to you?

23 A That would be item number 16?

24 Q Item number 16, what's entered as State's 54.

25 A Okay. Yes, sir.

1 Q And also did it come in your possession what we have
2 marked tape 60? And our tape 60 is the one-hour
3 tape. I apologize. Tape 60o is the one-hour tape
4 that you initially got, and tape 54 would be the tape
5 that shows all five camera views that we've been
6 showing to the jury. Do you know what I'm talking
7 about?

8 A Yes, sir.

9 Q Those came in. And did you have an opportunity to
10 check those out of the Sheriff's Department?

11 A The first item I checked out of inventory on
12 February 1st, 2006, in order to make copies so that
13 the investigators could use the copies, put that back
14 into evidence on February 2nd of 2006.

15 Q And again, so the record will be clear even if I'm
16 not, that's State's 60, the one-hour tape, correct?

17 A When you say tape --

18 Q I've been calling it tape the whole time.

19 A It's a CD.

20 Q CD. What we've been showing, the type we've been
21 showing in here, correct?

22 A It's a digital video recording on a compact disk.

23 Q And so you downloaded that for the deputies, the
24 one-hour tape, State's 60, correct? Made copies?

25 A I made copies of it.

1 Q Excuse me. Not downloaded. All right. Did you also
2 come in contact with State's 54 which is what we've
3 been showing to the jury which had the different
4 camera views?

5 A That's the one that came to light later? Yes.

6 Q Came to light a couple of weeks ago?

7 A Yes.

8 Q Who did you get that from?

9 A I got that from Bill O'Neill with the Solicitor's
10 Office.

11 Q Who as far as you know got it from Angel Koon with
12 Chastity's, correct?

13 A That's my understand.

14 Q So that would be the chain right there on that,
15 right?

16 A Right.

17 Q No question about that. And on the first one, too,
18 the chain was the gentleman I mentioned to the file
19 to you, correct?

20 A It went into evidence. I'm not sure --

21 Q Gwyn, Baker, Linfert, evidence, you?

22 A Correct.

23 Q No dispute about that?

24 A No.

25 Q Did you have an occasion to take State's 54 and

1 State's 60 to NASA?

2 A Yes, sir, I did.

3 Q And where is NASA?

4 A It's at the Kennedy Space Center in Titusville,
5 Florida.

6 Q All right. Had you ever been there before?

7 A No, I had not.

8 Q And you personally took these yourself down to NASA?

9 A Yes, I did.

10 Q They were reviewed by the NASA folks down there?

11 A Yes, sir.

12 MR. HARPOOTLIAN: Your Honor, I'd object to any
13 hearsay.

14 MR. MEADORS: I'm not going into anything.

15 Q And as a result of that, they were not able to
16 enhance it any more than you were?

17 MR. HARPOOTLIAN: Objection, Your Honor. I
18 would object to that. We need to approach.

19 THE COURT: Yes, sir.

20 (Whereupon, a bench conference is had)

21 MR. MEADORS: Did Your Honor want to send the
22 jury?

23 THE COURT: Do you want to do it now? What's
24 the question?

25 MR. MEADORS: Your Honor, I think we're going

1 into --

2 **THE COURT:** No. Just tell me.

3 (Whereupon, a bench conference is had)

4 **THE COURT:** All right. Ladies and gentlemen,
5 it's a little early to be taking the morning break,
6 but there's as a matter of law that I need to take up
7 with the attorneys. I'm going ask you to go to the
8 jury room, not discuss the case among yourselves
9 while I deal with this issue.

10 (Jury out at 9:55 a.m.)

11 **THE COURT:** All right, Solicitor. What's your
12 proffer?

13 Q Well, first of all, were you down there when NASA
14 conducted testing on this? And, very briefly, what
15 was the gentleman you were down there with?

16 A The gentleman that I took it to was named Brad
17 Lawrence. He is actually with the -- excuse me just
18 a second. Brad Lawrence is the computer science lead
19 at the United Space Alliance which is part of the
20 Kennedy Space Center. And I was with him the whole
21 time he was working.

22 Q All right. And you took State's 54 and 60 down
23 there?

24 A Correct.

25 Q And were you present when he pulled these up on a

1 screen and looked at them and attempted to enhance
2 them?

3 A Yes, sir.

4 Q Did you compare those with what you already had, the
5 originals, 54 and 60?

6 A Yes. We --

7 Q You yourself?

8 A Yes, sir.

9 Q Could you tell any difference or see any more detail?

10 A No.

11 Q Just looking at them, you couldn't?

12 A No.

13 Q Tell the judge -- Judge, that right there is what I
14 wanted out. And I think he can testify to that
15 without going any further. But at this time I'd like
16 to ask him for qualifications.

17 THE COURT: What's the objection to that?

18 MR. HARPOOTLIAN: Your Honor, his looking at the
19 videotape and comparing it is no better than the jury
20 looking at the videotape and comparing.

21 THE COURT: I agree.

22 MR. HARPOOTLIAN: So he hasn't been qualified.

23 THE COURT: He can say what he saw, can't he?

24 MR. HARPOOTLIAN: Well, he's looking at two.
25 The jury doesn't even have the other videotape,

1 doesn't have the screen he's looking at. I mean,
2 that's why they send it to NASA where they have an
3 expert who does this.

4 **THE COURT:** What will the jury have?

5 **MR. MEADORS:** We can certainly give them the
6 other one if you want to.

7 **THE COURT:** It's not what I want, you
8 understand. The jury needs to be able to see what he
9 saw --

10 **MR. MEADORS:** Judge, that's fine.

11 **THE COURT:** -- to test his credibility. And I
12 don't see -- I don't understand any objection to
13 that.

14 **MR. HARPOOTLIAN:** Well, I do, Your Honor. May I
15 Voir Dire this witness?

16 **MR. MEADORS:** Your Honor, I'm not through yet as
17 far as setting his qualifications.

18 **THE COURT:** We're not going to get into his
19 qualifications at this point. I see no need to.
20 He's not testified to anything that he needs to be
21 qualified for.

22 **MR. HARPOOTLIAN:** I don't want to qualify him.
23 I just want to probable this. I mean, it's as if we
24 sent somebody who is not a fingerprint expert to take
25 some fingerprints somewhere and he says, well, watch

1 me do the fingerprint comparison. And while I'm not
2 a fingerprint comparison person myself, they looked
3 at them and said they don't match, they do match, or
4 whatever. I mean, A, that's hearsay; and, B, that's,
5 you know, okay, jurors, you look at the fingerprints.

6 They sent it to NASA because these people have
7 expertise in looking at it and determining whether or
8 not it can be enhanced and whether or not he can see
9 something. You know, this is a guy who has asked
10 three witnesses, do you see a flash or do you see a
11 line or do you see something? It's like looking at a
12 Picasso painting and asking what you see. That's
13 what they're asking this guy to do.

14 And his opinion as to what you could see or not
15 see, unless he's qualified, unless he's qualified;
16 and again, we haven't heard any qualifications, is an
17 opinion. And, therefore, we would object to that
18 opinion. We've been over this on, I believe it's 701
19 and 702. His opinion doesn't assist the jury in any
20 way. He is not qualified as an expert.

21 **MR. MEADORS:** Judge, first of all, he keeps
22 referring to this guy, that's me asking people about
23 the light. Yes. I asked them, common sense, if they
24 saw the light. That's a common sense. And I think
25 he sees the light, too. But so that clearly wasn't

1 objectionable.

2 Now, Judge, as far as this witness, we are
3 prepared to ask his qualifications if we need to. I
4 don't think we need to get to that. But if we need
5 to, we can explore his qualifications in that area.

6 THE COURT: All right. Let's go with that.

7 Q Give His Honor your background specifically in the
8 electronic field?

9 A In -- I started out with crime scene investigation in
10 1999. Part of that training was digital, was
11 photography as it relates to crime scene. In 2002,
12 June of 2002, we got our forensic video system and
13 received three-day training at the manufacturer which
14 is Ocean Systems in Burtonsville, Maryland. At that
15 time I was the back up for the technical investigator
16 since I was his supervisor.

17 When he left in 2003 I moved into that position
18 since I had an interest in it, attended another
19 three-day school at Ocean Systems in Burtonsville,
20 Maryland, with training on the forensic video systems
21 and have been the technical investigator for the
22 Department since that time. And as part of that, a
23 significant part of that, I do video work enhancement
24 evaluations.

25 Q How do you do that?

1 A It's a matter of loading it into the computer system
2 through various means because every media is
3 different and adjusting levels through the software
4 which will try to bring out detail. You don't change
5 anything, any of the points. You don't alter the
6 image. You change the levels, increase and decrease
7 in brightness and contrast, that sort of thing.

8 Q And is the hope or the intent in that, intent, to
9 sharpen the image?

10 A Yes. The intent is to make sure that we see all the
11 detail.

12 Q And how many of those videotapes, attempted
13 enhancements have you done?

14 A Hundreds.

15 Q Hundreds?

16 A Yes, sir.

17 Q All right. Now, you went down to NASA. And were you
18 there when they used their enhancement procedures?

19 A Yes. I was with them at that time.

20 Q And can you explain to the judge what they did in
21 your presence?

22 A They took the CD, inserted it into the computer,
23 copied the files. These are all digital files,
24 copied them into their system. From that point I was
25 given the CD back. He looked at it on his system

1 which is an evaluation like I would do.

2 They from that point determined that they could
3 not do anything with the motion pictures. So he
4 picked individual frames at the point that I pointed
5 out to him that we were most interested in and
6 exported them as still images. Then he made several
7 copies, adjusted brightness, contrast and resolution
8 on each individual copy of the same frame. Then he
9 used some of his software to layer these together so
10 that they became one image. And those were the
11 images. The ones that he did this to were the ones
12 that we took to a 96-inch high resolution screen at
13 NASA and we looked at that and could not see any
14 additional detail.

15 Q No additional detail?

16 A No.

17 Q And that's from you down there viewing it right then
18 on the big screen?

19 A Yes.

20 Q Was a copy of that download to a CD?

21 A Yes.

22 MR. HARPOOTLIAN: No objection to qualification.
23 No objection to him giving an opinion. We're ready
24 to proceed with the jury.

25 THE COURT: Let's go. Bring the jury. 702. He

1 moved from 701 to 702.

2 **MR. HARPOOTLIAN:** Absolutely. Absolutely, Your
3 Honor.

4 (Jury in at 10:05 a.m.)

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

6 **THE COURT:** Thank you for your patience, ladies
7 and gentlemen. We're now ready to continue.
8 Solicitor, continue.

9 **MR. MEADORS:** If it please the court.

10 **Q** Investigator Earles, can you please relate to the
11 jury your specific background, training and knowledge
12 of electronics, specifically video analysis?

13 **A** My education in video analysis began when I took the
14 crime scene photography course at the South Carolina
15 Criminal Justice Academy in 1999. I again
16 experienced photography throughout my career in crime
17 scene. In June -- excuse me. Yes. In June of 2002
18 we got our video, forensic video system at the
19 Sheriff's Department and I was one of two people that
20 was sent to attend the manufacturer's training in
21 Burtonsville, Maryland, in that field.

22 At that time I was the supervisor over the
23 person who did the primary work. I was his back up.
24 In 2004 he left the Sheriff's Department for another
25 job, and I elected to move into that position. In

1 January of --

2 MR. HARPOOTLIAN: Your Honor, to save time,
3 we'll stipulate to his expertise in the area of video
4 enhancement. We've heard his qualifications.

5 MR. MEADORS: Your Honor, we offer him
6 specifically as an expert in the field of forensic
7 video analysis I guess.

8 THE COURT: Without objection.

9 Q Still very briefly go on with your training and then
10 specifically just a few questions about how many
11 you've looked at, please.

12 A Okay. January of 2005 I attended additional training
13 at the manufacturer's on that particular system, the
14 Ocean Systems, detective forensic video system. And
15 since April of 2004 I have been the primary forensic
16 video analyst.

17 Q When you get a -- what are you attempting to do when
18 you get a video?

19 A Bring out detail that's not readily available. We
20 don't want to change the image in any way but we want
21 to adjust essentially brightness, contrast and to
22 some degree resolution to try and bring out the
23 images.

24 Q How do you do that?

25 A It's all done through the computer system. The video

1 comes to me through a variety of media: CD's,
2 videotapes, different sized videotapes, even on hard
3 drives. And I import this import into my computer.
4 And that allows me to do some work and look at it
5 frame-by-frame, one individual frame at a time. I
6 can adjust brightness, contrast and pull still images
7 from it. And I pull still images and use Adobe Photo
8 Shop to make those same adjustments on those still
9 images.

10 Q And how many of those videos or CD's have you
11 analyzed?

12 A Hundreds.

13 Q And you do that right down there at the Sheriff's
14 Department?

15 A Yes, sir.

16 Q Did you have an occasion in this case to take State's
17 54 and 60 down to NASA?

18 A Yes, I did.

19 Q And who did you meet with down there?

20 A I met with Brad Lawrence who is the computer science
21 lead at the Kennedy Space Center with the United
22 Space Alliance.

23 Q Were you present and involved with his attempt to
24 enhance the videos, 54 and 60?

25 A Yes. I was present at all times and having ongoing

1 discussions with him as he was doing the work.

2 Q Do you understand what he was attempting to do?

3 A Yes, sir.

4 Q Can you explain to these folks what he and you all
5 were attempting to do down there?

6 A He was essentially doing what I'm doing with
7 different software. He took the CD, loaded it in his
8 computer, copied the file, gave the CD back to me so
9 that he had it in his computer. From that point he
10 viewed it as much as I'm sure you viewed it here and
11 made a determination that there was nothing that he
12 could do with the motion portion. Now, digital video
13 is made up of --

14 Q What portion?

15 A The motion.

16 Q Okay. I just didn't hear you. I'm sorry.

17 A Digital video is made up of a series of individual
18 pictures. So what we did, what he did while I was
19 there was to take certain still images that were of
20 critical points in the video, copy them out. And
21 once he copied them out, he made multiple copies,
22 anywhere from seven to twelve copies depending on the
23 frame, and he took each one of those individual
24 pictures and made a different level of adjustment on
25 it, changing the resolution slightly, changing the

1 brightness slightly, changing the contrast slightly.
2 And when he finished that whole series, he has a
3 program that I do not have where he took those
4 individuals pictures and layered them on top of each
5 other to make one picture in the hopes that that
6 would bring out some detail in the content that
7 wasn't visible.

8 We took those images to a room where the
9 engineers actually view the shuttle launch video.
10 They have a very large, eight-foot wide
11 high-resolution screen. We looked at the images on
12 that screen, and we determined that we could not see
13 any detail that was not visible in the original.

14 Q So the work you did down there with this gentleman,
15 in your opinion, from your training, could see any
16 more detail than the original CD you took down there?

17 A No.

18 Q Beg the Court's indulgence.

19 MR. HARPOOTLIAN: No objection.

20 Q This is State's 85 and 86 which are copies of Gregg
21 Park videos. These came in your -- you came in touch
22 with these, and did you copy them as a part of your
23 job at the Sheriff's Department? And if you want to
24 look at the front -- I'm sorry -- maybe that will
25 help you.

1 A Well, actually the sticker on the back is what I'm
2 most interested in. I have a record of having one
3 but I do not have a record of having the other.

4 Q Which one do you have a record of? They are in
5 without objection, 85 and 86.

6 (Pause - conferring)

7 MR. HARPOOTLIAN: It doesn't matter. Fine.
8 Whatever you want to do.

9 MR. MEADORS: Your Honor, 85 and 86 without
10 objection.

11 (WHEREUPON, State's Exhibit No. 85 is admitted
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 86 is admitted
14 into evidence.)

15 MR. MEADORS: Beg the Court's indulgence.

16 (WHEREUPON, State's Exhibit No. 87 is marked for
17 identification.)

18 (Whereupon, a bench conference is had)

19 MR. MEADORS: Beg the Court's indulgence. Your
20 Honor, the next exhibit is State's 87 which is the CD
21 that was brought back by Investigator Earles. It's
22 being -- we'd offer that as State's 87 at this time.
23 That's the tape he brought back, put into custody of
24 the Richland county Sheriff's Department, into
25 evidence.

1 **MR. HARPOOTLIAN:** We don't have any objection.
2 But Mr. Meadors understands we're doing something
3 with it right now.

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

5 **THE COURT:** I'll withhold it a minute.

6 (WHEREUPON, State's Exhibit No. 87 is admitted
7 into evidence.)

8 **Q** Thank you.

9 CROSS EXAMINATION

10 **BY MR. HARPOOTLIAN**

11 **Q** Mr. Earles, do you have some materials you brought
12 with you today? Do you have them up on the stand?

13 **A** Yes, sir.

14 **Q** Could I see them, please?

15 **A** Sure.

16 **Q** You've got a notebook?

17 **A** Yes.

18 **Q** Okay now. And you have been with the Sheriff's
19 Department for how long?

20 **A** I have been a deputy sheriff since 1993. I became
21 employed by the Sheriff's Department in 1997.

22 **Q** Okay. Now, do you currently -- because in this
23 surveillance society we live in now, there are
24 surveillance cameras, just a lot more than there were
25 ten years ago. Let's put it that way.

1 A Yes.

2 Q People have them in their stores. People have

3 them -- actually the police in some areas of this

4 city have them on light poles, correct?

5 A Yes, sir.

6 Q And some of those cameras are linked to an old-time

7 VC -- when I say old-time VCR, videotape, correct?

8 A Yes.

9 Q And some of them are linked to computers? Well, and

10 some of them are linked to just DVD recordings,

11 right?

12 A There are a variety of ways to record them. DVR's.

13 Some of them go to computers that have DVD recorders

14 on them.

15 Q Right. Now, does the quality of what you get out of

16 those depend on, A, the quality of the camera?

17 Right?

18 A Yes.

19 Q B, the quality of where it goes to. I mean, is it

20 easier to enhance a VCR tape or a piece of videotape

21 than it is a DVD?

22 A It's easier to bring out details on a videotape than

23 it is on a CD or DVD.

24 Q Okay. And when the camera is going directly to a

25 hard drive, would you like to have that hard drive

1 rather than a CD or DVD produced by that hard drive?

2 A One of the things that I learned at NASA is that in
3 some systems it's better to have the hard drive than
4 a CD it came from it.

5 Q Because the hard drive in some instances -- and the
6 technical terms escape me. But does it compress the
7 image? Or what do they call that?

8 A The data is compressed. When a picture is taken -- I
9 don't want to get too technical. When a picture is
10 taken, a non-compressed image is about one megabyte.
11 You take multiple frames per minute, you eat up hard
12 drive in a hurry. So there is a compression that
13 takes place. The computer and the software actually
14 takes individual parts of the image and it's
15 discarded. And by doing that, some of the resolution
16 is lost at the time it's put to the hard drive.

17 Q So if you had that hard drive, it's easier to try to
18 enhance on that hard drive than that hard drive being
19 copied onto -- what is it? A DVD? Is this what it
20 is?

21 A In this case it's a CD. Different systems are
22 different.

23 Q Okay. Copied onto a CD and then you look at it. In
24 other words, I think NASA indicated to you if they
25 had the hard drive they might have been able to do

1 some enhancement?

2 A Well, not knowing the software of the system, each
3 individual system is different. Some of them -- all
4 of them that I'm aware of compress it at the point
5 that it's originally saved. There are evidently some
6 out there that when it's put on the CD compress it
7 again. I don't know if this particular system, and
8 we don't know if that particular system does that or
9 not.

10 Q Okay. Now, the -- let me make sure I don't mess
11 something up. You received the video over the --
12 looking down from the door on this; and I think it's
13 Exhibit No. 64 or 65 here, in February of '06. Is
14 that right?

15 A I first came into contact with that one in February
16 of 2006. Correct.

17 Q Okay. And did you do any analysis on it in February
18 of '06?

19 A I looked at it at the time that I was coping it.

20 Q And what were you coping it from?

21 A I was coping the CD. I was making a working copy for
22 the investigators. So I had the CD that came from --
23 it was someone else made at the incident location
24 that was put into evidence. And I was making a copy
25 of that CD for the investigators.

1 Q Okay. And it was indicated to you that they made
2 this CD copy off of a hard drive?
3 A Well, that's where it would have to come from.
4 Q I'm sorry?
5 A That's where it would have to come from.
6 Q Right. And did you ask them at that time if you
7 could have access to the hard drive?
8 A No, I did not.
9 Q Why?
10 A Because hard drives, after -- and this varies again
11 from system to system. Some of them after four days,
12 some of them after 30 days, some of them after 14
13 days rewrite over the information. So it's lost.
14 Q But in this case were you aware of the fact they
15 didn't rewrite for two months? Did you know that?
16 A I was not aware of that.
17 Q What?
18 A I was not aware of that.
19 Q So the people that brought you the CD didn't tell you
20 that the hard drive was available for you to go get
21 at that point?
22 A No, sir.
23 Q And if you'd known that, would you have gone and
24 gotten the hard drive so you could have tried to
25 reship it to NASA to have NASA try to enhance from

1 that?

2 A No, sir.

3 Q You would not have?

4 A No.

5 Q Why not?

6 A At that time we were not aware that that would make a
7 difference.

8 Q Okay. But today you know that?

9 A Correct.

10 Q Okay. But at the time, with all your training and
11 the schools you've attended, you only found that out
12 when you got to NASA?

13 A That was a point that they brought up, was that it
14 could possibly have made a difference.

15 Q It could possibly have made a difference if they'd
16 had the hard drive?

17 A Correct.

18 Q And so if you'd had the hard drive and taken it to
19 NASA, the NASA people told you all you could possibly
20 get much more detail from it. Isn't that correct?

21 A No. That's not correct.

22 Q What did they say?

23 A They said that it was still compressed and they could
24 not undo that compression. The question is whether
25 or not there would have been additional compression

1 onto the CD. And if that were the case, we may have
2 had a better product to work with.
3 Q Can you tell this jury whether there was additional
4 compression onto the CD or not?
5 A No, I cannot.
6 Q So we don't know that?
7 A No.
8 Q And if there was, then the original image would have
9 been enhanceable?
10 A It would have been a higher quality.
11 Q I mean, you got on an airplane and carried those CD's
12 down to Cape Canaveral, right?
13 A Yes.
14 Q Richland County paid for that?
15 A Yes, sir.
16 Q Put you up for the night?
17 A Yes, sir.
18 Q Ate. They paid for that?
19 A Not yet.
20 Q Not yet. But they will. Right?
21 A Yes, sir.
22 Q So they spent some money and time and effort to have
23 you carry this CD down to -- one of these CD's down
24 to NASA, this little -- this is all you were
25 carrying, right?

1 A Yes, sir.

2 Q Okay. And you spent a day down there?

3 A Yes, sir.

4 Q And they used the same equipment they used to enhance
5 pictures from the Hubble Telescope and from the Mars
6 Rover. And isn't that the same technology they use?

7 A I can't testify to that. I don't know what they used
8 this particular equipment for.

9 Q Well, it's the same place they do all that, right?

10 A I don't know what they do on a daily basis.

11 Q Okay. And they were unable to enhance. Is that
12 correct?

13 A That's correct.

14 Q But they did tell you that if you had the hard drive
15 they might have a chance of enhancing it further,
16 correct?

17 A Yes. They said if we had a hard drive, the image may
18 be clearer.

19 Q And when you received this around the first of
20 February in 2006, you didn't know that. And so you
21 didn't ask for the hard drive?

22 A That's correct.

23 Q This hard drive thing is just some new discovery, or
24 has this been around for a while and you just didn't
25 know it?

1 A I have no idea. I have never heard that in the
2 training and seminars that I've been to.

3 Q Thank you.

4 MR. MEADORS: Very briefly.

5 REDIRECT EXAMINATION

6 Q For the record, this is State's 87. Is this the CD
7 from NASA?

8 A Yes, sir. But actually it's a DVD.

9 Q DVD. I'm sorry. I apologize. And we offer this
10 subject to the limited --

11 MR. HARPOOTLIAN: Sure. I don't think we have
12 any problem with that. We just need an opportunity
13 to look.

14 MR. MEADORS: And the others were 54 and 60, I
15 believe without objection at this point.

16 MR. HARPOOTLIAN: Correct.

17 (WHEREUPON, State's Exhibit No. 54 is admitted
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 60 is admitted
20 into evidence.)

21 Q And, finally, Mr. Harpootlian had asked you about
22 your qualifications, your book up there. Did you
23 look at this video down there?

24 A Yes, I did.

25 Q At 12:06, did you look at the Toyota 4Runner outside

1 of Chastity's when you were at NASA?

2 A That was one of the frames that we pulled out and
3 worked with individually.

4 Q What were your observations?

5 MR. HARPOOTLIAN: Objection, Your Honor. Not
6 proper redirect.

7 MR. MEADORS: Your Honor, he went into his
8 qualifications, whether they could enhance it, would
9 a hard drive make a difference.

10 THE COURT: I understand that.

11 MR. HARPOOTLIAN: Objection. Not proper
12 redirect.

13 MR. MEADORS: Your Honor, he clearly went in --

14 THE COURT: Sir. Well, approach the bench.

15 (Whereupon, a bench conference is had)

16 THE COURT: I sustain the objection.

17 MR. MEADORS: That's all.

18 MR. HARPOOTLIAN: Nothing further.

19 THE COURT: Thank you. You may come down, sir.

20 Thank you very much. May the witness be excused?

21 MR. HARPOOTLIAN: Yes, sir. No objection.

22 THE COURT: Without objection. Next witness.

23 MR. GIESE: Chief Wilson. May we approach?

24 THE COURT: Just one second.

25 DAVID WILSON, after being duly sworn, testifies

1 as follows:

2 **THE CLERK:** Please have a seat there, sir, and
3 state your full name for the record.

4 **THE COURT:** Just one minute, sir.

5 **WITNESS:** David Wilson.

6 **THE COURT:** Solicitor, proceed.

7 DIRECT EXAMINATION

8 **BY MR. GIESE**

9 **Q** Chief Wilson, where are you employed?

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

11 **Q** What's your position there?

12 **A** The deputy chief over the criminal investigative
13 division.

14 **Q** Tell the jury what a deputy chief over the criminal
15 investigations does?

16 **A** Primarily administrative duties. We have about 120
17 employees assigned to our unit. We encompass all of
18 the crime labs, evidence room, all the
19 investigations.

20 **Q** Tell the jury a little bit something about yourself.
21 How long have you been in law enforcement?

22 **A** Overall, about 30 years. About 27 years with the
23 Sheriff's Department.

24 **Q** And so you've been in law enforcement 30 years. This
25 is 2007. So approximately when did you start?

- 1 A I believe it was 1978.
- 2 Q And where did you start?
- 3 A As a campus police officer.
- 4 Q At USC?
- 5 A No. It was at Midlands Technical College. They had
- 6 their own police force for a while.
- 7 Q Tell the jury what your educational background is?
- 8 A I've got a Bachelor's in criminal justice and several
- 9 hours toward a Master's degree.
- 10 Q Now, how long have you been the chief deputy or
- 11 deputy chief -- I'm sorry -- deputy chief at Richland
- 12 County Sheriff's Department?
- 13 A I've been in my current position approximately ten
- 14 years.
- 15 Q How long you been an investigator for investigations?
- 16 A Since 1983.
- 17 Q During that time, from 1983 to this day, were you
- 18 always with the Sheriff's Department?
- 19 A I left for a short period of time. With the previous
- 20 sheriff I left and became a chief of police in the
- 21 upstate.
- 22 Q And where was that?
- 23 A That was in Seneca, South Carolina.
- 24 Q How long were you the chief up there?
- 25 A About four months.

- 1 Q Tell the jury why you came back?
- 2 A Sheriff Lott was elected and he approached me about
- 3 coming back. And after a lengthy discussion I
- 4 finally decided to come back.
- 5 Q Now, I'm going to call you Chief. Is that all right?
- 6 A That's fine.
- 7 Q Chief, if you would tell the jury what your first
- 8 contact with this case was?
- 9 A The first contact was a little bit after midnight. I
- 10 was advised by Sergeant Linfert that we had had a
- 11 homicide.
- 12 Q Is that pretty standard procedure?
- 13 A Yes, sir.
- 14 Q You say Sergeant Linfert. Sergeant Linfert is in the
- 15 courtroom today?
- 16 A Yes, sir.
- 17 Q Now, once you got that call; what, if anything, did
- 18 you do?
- 19 A I listened to what he had and advised him to keep me
- 20 advised of the situation and I rolled over and went
- 21 back to sleep at that point.
- 22 Q And that would have been early Sunday morning?
- 23 A That's correct.
- 24 Q The 29th?
- 25 A Yes, sir.

- 1 Q Now, what was your second contact with the case?
- 2 A The second contact is when he called me to advise
- 3 that he they had identified a suspect, had made entry
- 4 into the house and had to shoot the suspect.
- 5 Q Tell the jury what you did at that time?
- 6 A At that point I got out of bed, got dressed and
- 7 responded to the scene which was a short distance
- 8 away from my residence.
- 9 Q The scene. Which scene?
- 10 A The defendant's house where the shooting had taken
- 11 place.
- 12 Q
- 13 A Yes, sir.
- 14 Q Once you got there what did you find?
- 15 A I found a bunch of deputies milling around. I passed
- 16 the ambulance as it was going out as I was coming in
- 17 to the subdivision, found several deputies
- 18 maintaining the scene. I notified, had notified the
- 19 Sheriff in route. He was in route also at that
- 20 point. I'd also notified Lieutenant Weeks, our
- 21 victim advocate person, and had her respond to our
- 22 headquarters.
- 23 Q Now, you say that. And that's Ms. Weeks who is in
- 24 the courtroom today?
- 25 A Yes, sir.

1 Q Now, you say that you had some deputies containing
2 the area. Explain that to the jury?

3 A Well, we maintain the scene to preserve the scene.
4 We wouldn't be processing that scene. Another
5 outside agency would.

6 Q And why is that?

7 A Because any time we are involved in a shooting we
8 have an outside agency come in and review those.

9 Q Now, when you get this outside agency, in this case I
10 believe it was SLED?

11 A That's correct.

12 Q How does that happen?

13 A After the sheriff arrived on the scene he advised me
14 to call the duty officer at the State Law Enforcement
15 Division which I did and requested an investigative
16 team and their crime scene unit to respond to the
17 scene.

18 Q And did SLED respond?

19 A Yes, sir, they did.

20 Q Specifically, were you there when they responded?

21 A Yes, sir.

22 Q Who, if any, came?

23 A David Lawrence, one of their captains, Captain Grant
24 with the State Law Enforcement Division. He's over
25 the Midlands section; and several other crime scene

1 people but I don't recall their names.

2 Q Now, you were at the scene when SLED arrived?

3 A That's correct.

4 Q Did you brief SLED at that time?

5 A I did.

6 Q And who did you brief?

7 A I briefed them all, specifically Dave Lawrence.

8 Q What did you tell them?

9 A I told them what had happened, what had happened
10 leading up to the incident, the fact that we had had
11 a homicide, the fact that Mr. Herring had been
12 identified as a suspect and the fact that they
13 responded to the house with a search warrant. Upon
14 execution of the search warrant when they couldn't
15 get anybody to the door that he approached them down
16 at a foyer and retreated to a bedroom.

17 Q Now, once you told them this information, did you
18 stay at the scene, at

19 A I stayed at the scene for a short period of time. I
20 had an on-duty investigator that works for us stay
21 there at the scene to assist SLED and to coordinate
22 anything they needed and to provide protection for
23 the vehicles as they were coming and going from their
24 vehicles. I responded back to headquarters on Two
25 Notch Road along with Captain Grant from the State

1 Law Enforcement Division.

2 Q Now, while you were at the Sheriff's Department did
3 you become aware that the defendant in this case,
4 Dewain Herring, had been transported to Richland
5 County Sheriff's Department?

6 A Yes, sir. I was made aware. This was several hours
7 after the initial incident. And he had already been
8 released from the hospital and he was sitting in our
9 investigative conference room.

10 Q Did you actually see him at that time?

11 A Yes.

12 Q Was anybody with him at that point?

13 A Several uniformed deputies were there.

14 Q Now, after you saw him in the conference room, it is
15 a fairly large conference room?

16 A Yes, sir. It can seat about 20 people.

17 Q Did anyone from SLED to your knowledge go in there
18 and talk to him?

19 A Yes, sir.

20 Q Tell the jury who that was?

21 A That would have been Dave Lawrence and the other
22 agent. I can't remember his name that was assisting
23 Dave Lawrence in the investigation.

24 Q Did you actually see them go in there? Was the door
25 open? How did you see them in there?

- 1 A Actually we had talked in my office for a short
2 period of time. They left my office which is
3 adjacent to the conference room. They left to go
4 into the conference room.
- 5 Q And you already informed them of what you had told
6 them at the crime scene. Is that correct? At
7 Alexander?
- 8 A That's right.
- 9 Q And then they went in?
- 10 A That's correct.
- 11 Q How long were they in there to your knowledge?
- 12 A I don't really recall. Probably about an hour the
13 first time.
- 14 Q You say an hour the first time. Did you have an
15 opportunity to talk to Lieutenant Lawrence after that
16 first conversation that they had?
- 17 A I did. Lieutenant Lawrence.
- 18 Q Tell the jury what you told him?
- 19 A Lieutenant Lawrence came back to my office and showed
20 me if the statement or told me what the defendant was
21 saying at that point denying ever going to
22 Chastity's. I showed him a video that we had of the
23 defendant at Chastity's at that point and then he
24 went back in and talked to the defendant again.
- 25 Q Once Lieutenant Lawrence had finished this second

1 interview with the defendant, Dewain Herring, what,
2 if anything, happened?

3 A Well, once the second interview was completed and
4 they were through talking to Mr. Herring that day, I
5 went into the conference room to talk to him about
6 the shooting incident at Chastity's.

7 Q Now, at this point did you know whether or not the
8 defendant, Dewain Herring, had been read his
9 Constitutional rights?

10 A Yes, sir. I had seen the advice of rights form the
11 State Law Enforcement Division used.

12 Q In fact, did you know whether or not Mr. Herring had
13 made a written statement the second time that he was
14 interviewed?

15 A Yes, sir. I had seen that statement as well.

16 Q So you actually saw the advice of rights?

17 A Yes, sir.

18 Q Signed?

19 A (Nods head affirmatively).

20 Q And also both statements?

21 A Yes, sir.

22 Q Once you saw those things, you went back in to see
23 Mr. Herring?

24 A That is correct.

25 Q If you would, tell this jury exactly what happened

1 when you went in?

2 A After they'd finished the interview I went into the
3 room. Mr. Herring, the defendant, was offered food
4 and drink which he accepted. I had ordered some food
5 brought in for all the deputies, himself, and he was
6 offered some food as well. I asked him if he'd been
7 advised of his rights by the State Law Enforcement
8 Division, which he said that he had. And I asked him
9 if he understood those rights and he replied that he
10 did.

11 Q Let me stop you. Now, did you know at that point
12 that Mr. Herring was a lawyer?

13 A Yes, I did.

14 Q You had dealt with him before?

15 A I had been on the edge of another case, a civil case
16 several weeks prior where we had dealt with Mr.
17 Herring.

18 Q And if you would describe how he was sitting there.
19 Did he appear coherent to you at that time?

20 A Yes, sir, he did.

21 Q Did he answer your questions at that time about the
22 advice of rights?

23 A Yes.

24 Q Did he appear to understand everything you said to
25 him?

1 A Yes, he did.

2 Q You had just a normal conversation with him at that
3 point?

4 A That's correct.

5 Q Once he had told you that he had been read his rights
6 and that he understood them, what did you do?

7 A I asked him specifically what he remembered about the
8 incident at Chastity's.

9 MR. HARPOOTLIAN: Your Honor, I'd note
10 previously made objections.

11 THE COURT: Yes, sir.

12 MR. HARPOOTLIAN: Thank you.

13 A He stated he remembered very little. He stated that
14 he did remember having a dispute with employees. He
15 stated that when he fired the gun he wasn't shooting
16 at anyone. He stated that he thought it would be his
17 Ruger handgun because that was the one he usually
18 kept in the car. He stated that he had a concealed
19 weapons permit through the State Law Enforcement
20 Division.

21 Q Let me stop you there. You just testified Dewain
22 Herring -- now, were you looking at Dewain Herring
23 when he made this statement to you?

24 A Yes, sir.

25 Q And specifically, did Dewain Herring tell you that he

1 fired a weapon that night?

2 A Yes, sir.

3 Q Tell the jury exactly what he said in regards to
4 firing a weapon?

5 A He stated when he fired the gun he was --

6 Q Stop. He looked at you and said, "I fired the gun"?

7 A Yes, sir.

8 Q After he told you he fired the gun, did he say which
9 weapon he thought he had used?

10 A Yes, sir.

11 Q And what was that?

12 A He told me it was a Ruger.

13 Q Did he say what caliber?

14 A I don't think he said. He just said handgun.

15 Q Did I spell Ruger right?

16 A Yes, sir.

17 Q After he told you it was a Ruger, what did he say?

18 A He said that he thought it was a Ruger because that's
19 what he usually kept in the car. He talked about the
20 concealed weapons permit that he had through SLED.
21 And then he asked me if he was under arrest.

22 Q He asked you whether he was under arrest at that
23 point. What, if anything, did you say to him?

24 A I told him that he was under arrest.

25 Q When you told him he was under arrest, what happened?

1 A When he asked me what he was under arrest for, I told
2 him for murder.

3 Q How did he respond?

4 A He was surprised. I went on to tell him and advise
5 him that when he shot through the door of the club
6 that it hit someone inside and killed them. He
7 stated, "No, no, no", and lowered his head into his
8 hands.

9 Q Once he did that, did he say anything else to you?

10 A Yes, he did.

11 Q What was that?

12 A He stated that he needed a lawyer.

13 Q Did the interview cease at that time?

14 A Yes, it did.

15 Q Prior to him asking for a lawyer after he stated,
16 "No, no, no" and lowered his head, did he say
17 anything?

18 A No, sir.

19 Q This statement was oral?

20 A Yes, sir.

21 Q At the Sheriff's Department?

22 A That is correct.

23 Q You and he were in the room?

24 A That's correct.

25 Q You distinctly remember him saying, "I fired the

1 gun"?

2 A Yes, sir.

3 Q Beg the Court's indulgence. If you would, Chief, did
4 you bring your notes up with you?

5 A Yes, I did.

6 Q Could you refresh yourself as to after the defendant
7 said, "No, no, no"?

8 MR. HARPOOTLIAN: Objection, Your Honor.

9 Q Would it help you to refresh yourself?

10 MR. HARPOOTLIAN: He's asking him to look at his
11 notes and refresh his memory.

12 THE COURT: Overruled.

13 A Okay. Yes.

14 Q So after he said, "No, no, no", what did he say at
15 that point?

16 A He told me that he had not intended to hurt anyone.

17 Q And that's when it ceased?

18 A That's correct.

19 Q Now, once the interview ceased, what, if anything,
20 did you do?

21 A I asked him specifically when his wife was coming
22 back. I was aware that she was out of town and asked
23 if he wanted to call somebody to have at the house.
24 His wife would have driven up and seen all the police
25 cars. So I offered to let him use the phone to call

1 a friend to have them at the house.

2 Q And he did that?

3 A He did.

4 Q After that phone call did you have any other contact
5 with him that day?

6 A No, sir. I turned him over to uniformed deputies and
7 gave them instructions.

8 Q And the man that said, "I fired the gun and it was
9 Ruger", is he in the courtroom?

10 A Yes, sir.

11 Q Point to him, please?

12 A The man in the dark suit and the yellow tie next to
13 Mr. Harpootlian.

14 MR. GIESE: Thank you, Your Honor. That's all I
15 have.

16 MR. HARPOOTLIAN: May it please.

17 THE COURT: Let the record reflect the witness
18 identified the defendant. Mr. Harpootlian.

19 MR. HARPOOTLIAN: Thank you, Your Honor.

20 CROSS EXAMINATION

21 BY MR. HARPOOTLIAN

22 Q Chief, the solicitor had to get back up and remind
23 you you forgot to tell the jury something, did he
24 not?

25 A That's correct.

- 1 Q And what was it you forgot to tell the jury that you
2 had to be reminded to tell them?
- 3 A That he told me "I did not intend to hurt anyone."
- 4 Q What did he say? Read your note to them.
- 5 A He told me he had not intended to hurt anyone.
- 6 Q I did not intend to -- intend to -- hurt anyone,
7 correct?
- 8 A That's correct.
- 9 Q And this is after you've told him he's under arrest,
10 after you've told him that somebody has been killed,
11 right?
- 12 A That is correct.
- 13 Q Now, did you have him do a written statement?
- 14 A No.
- 15 Q Is what you are reading to us, direct quotes from him
16 or your summary of what he said?
- 17 A It's the notes that I made about our conversation.
- 18 Q But you have written notes you made?
- 19 A Yes, sir. Right here. They are typed.
- 20 Q No. Notes typed. I'm talking about contemporaneous
21 written notes.
- 22 A No.
- 23 Q You never made any notes?
- 24 A No.
- 25 Q You never wrote any handwritten stuff down?

- 1 A Not that I recall. No, sir.
- 2 Q When were these typewritten notes prepared?
- 3 A It would have probably been later that afternoon as
- 4 far as I know.
- 5 Q Okay. So you were called upon to recall what he had
- 6 said to you? I mean, when you wrote this down,
- 7 you're trying to recall what he said to you hours,
- 8 five, six, seven hours earlier?
- 9 A I don't know that it would have been that long, sir.
- 10 I don't recall the --
- 11 Q What time did he say that to you? Look at your
- 12 notes. What time in your notes?
- 13 A This would have been a little bit after 12 I believe.
- 14 Q No. I'm talking about your note. What time does it
- 15 say he said that?
- 16 A I don't put it down in my notes.
- 17 Q You don't put it down in your notes?
- 18 A No.
- 19 Q As a matter of fact, the last time you record is what
- 20 time?
- 21 A 5:30 in the morning.
- 22 Q 5:30 in the morning is the last time you record
- 23 anything in your notes?
- 24 A Yes.
- 25 Q Now, let me ask you this. You took no written

1 statement, correct?

2 A No, sir.

3 Q You didn't advise him of his rights in writing as

4 SLED had done, correct?

5 A That's correct.

6 Q And at that point you know that officers under your

7 supervision are being investigated by SLED for

8 shooting him, correct?

9 A That is correct.

10 Q And have you seen the -- had you at that point seen

11 the statement SLED took from him?

12 A At what point?

13 Q Prior to talking to him.

14 A Yes, sir, I had.

15 Q And so you'd seen where he'd said to SLED agents --

16 let me find this. Before you ever went in there you

17 saw that he said -- "Do you recall firing a weapon

18 from the Toyota as you were leaving Chastity's?" He

19 said, "No, I don't." Is that right?

20 A I don't recall that specific part of the statement,

21 but I did see a statement, sir.

22 Q You didn't read it before you went in to talk to him?

23 A I'm sure I did. I just don't recall.

24 Q You don't recall him seeing this, seeing he said this

25 before you ever went in there?

1 A I read the statements before I ever went in to talk
2 to him. Yes, sir. But I don't recall exactly what
3 those two statements said.
4 Q Well, I mean you see it now. Is that what it said?
5 A Can you bring it a little bit closer?
6 Q Sure.
7 A That is what it says.
8 Q Is that different from what he told you?
9 A That is correct.
10 Q So how long after Mr. Lawrence had been in there did
11 he say this to you?
12 A I believe it was probably 15 or 20 minutes.
13 Q So 20 minutes later, I mean, he said, "Did you fire a
14 shot at all. If I did, I wasn't shooting at anyone.
15 I'm saying that If I did or did not do it or I did
16 not do it. If the gun went off while in my hand it
17 was harmless error. It was probably my .357 Ruger
18 and if it went off it was an accident. He actually
19 never said to you -- I mean, he said to you he didn't
20 intend to shoot anybody, correct?
21 A He did say that, yes.
22 Q And he also indicated to you -- it was apparent to
23 you that he had -- he never said to you he shot
24 through a door. You said that, correct?
25 A That's right.

- 1 Q You gave him that information?
- 2 A That is correct.
- 3 Q And he never said anything that would indicate to you
- 4 he intentionally fired a weapon, that he pointed it
- 5 at somebody and pulled the trigger? He never said
- 6 anything?
- 7 A He never said he pointed. He said that when he fired
- 8 the gun he wasn't shooting at anyone. So he
- 9 certainly wasn't aiming it at someone.
- 10 Q But you didn't record this?
- 11 A Yes.
- 12 Q You did it in a tape recorder?
- 13 A It's in my notes.
- 14 Q And your summary, what he said you wrote down is
- 15 hours later?
- 16 A I don't know that it was hours later. It could have
- 17 been minutes later.
- 18 Q When was it?
- 19 A It was later that afternoon.
- 20 Q And it's typewritten but no handwritten notes?
- 21 A That's correct.
- 22 Q And you were there to make a case against Mr.
- 23 Herring, weren't you?
- 24 A I was there to try to get a statement from Mr.
- 25 Herring as to the incident at Chastity's. Yes, sir.

1 Q Well, are you telling this jury you were an impartial
2 observer, that you weren't interested in making a
3 case on Mr. Herring?
4 A No, sir. I was interested in investigating the case
5 at Chastity's.
6 Q Oh. You were interested in impartially gathering all
7 the evidence you could?
8 A That's correct.
9 Q And so when they took Mr. Herring to the hospital,
10 they took him in the morning before you interviewed
11 him, right?
12 A That's correct.
13 Q Did you instruct your officers to have blood drawn?
14 A No.
15 Q Did you -- didn't you all receive a call from the
16 hospital at some point saying that your officers
17 wanted blood drawn?
18 A We may have. I don't recall that.
19 Q So you don't recall them calling and saying you've
20 got to have proper paperwork to have blood drawn?
21 A No, sir.
22 Q Who took him to the hospital?
23 A The ambulance took him to the hospital.
24 Q No, no. Who accompanied him from your department?
25 A Uniformed deputies. I'm not sure.

1 Q You're the Chief. You're chief of investigations.

2 A That's right.

3 Q You're in charge of all the investigative apparatus
4 at the Richland County Sheriff's Department, right?

5 A That is correct.

6 Q Did you instruct anybody or have you ever learned
7 whether or not somebody asked for blood to be drawn
8 at the hospital?

9 A I don't recall that.

10 Q Okay. Would you have wanted blood drawn?

11 A It would have probably been nice.

12 Q It probably would have been nice?

13 A With the makeup as far as what I found out later as
14 far as his statements about his drinking and stuff,
15 yes. And SLED may have asked for the blood to be
16 drawn. I don't know.

17 Q Okay. Are you aware -- you're aware that he was
18 initially saying -- never did say that he remembered
19 about going back in the champagne room, never said
20 anything about remembering about being naked, never
21 remembered about walking out or walking in. I mean,
22 you saw his written statements, right?

23 A Yes.

24 Q And you didn't -- you thought a blood sample would be
25 nice?

- 1 A Well, to get the alcohol level, yes.
- 2 Q Okay. Now, what about trajectory? Is this something
- 3 that is of assistance -- now, is Mr. Livingston under
- 4 your supervision?
- 5 A He is.
- 6 Q Now, Mr. Livingston, was he asked to do a trajectory;
- 7 that is, to determine the path of the bullet through
- 8 the door?
- 9 A At Chastity's?
- 10 Q Yes.
- 11 A I do not know. There are several layers of
- 12 supervision between myself and Mr. Livingston. I
- 13 have sergeants, lieutenant, captains that would deal
- 14 with him.
- 15 Q Would you routinely participate in the investigations
- 16 of homicides?
- 17 A Not routinely, no, sir.
- 18 Q How many a year do you probably personally get
- 19 involved with?
- 20 A Probably one or two.
- 21 Q Why would you get involved in those one or two?
- 22 A Because of situations like this where my
- 23 investigators are involved in another the type of
- 24 section of the case and I certainly couldn't send
- 25 them in to interview Mr. Herring. Normally I don't

1 come out on homicides any more. I have Captain Smith
2 who is over that unit. He is very capable and does
3 that.
4 Q Was there -- I mean, were there any people at the
5 scene involved in the shooting that were
6 investigators?
7 A Several.
8 Q You had no other investigators that could interview
9 Mr. Herring other than you?
10 A Not on duty at that time.
11 Q Now, did you get up out of bed on this homicide?
12 A Yes, I did.
13 Q Now, if you get up out of bed a little bit after 12
14 when Mr. Johnson was shot --
15 A I got up, talked to Mr. Linfert, Sergeant Linfert,
16 who briefed me as to the homicide, and then I went
17 back to bed until I got the call about 5:30 that
18 morning.
19 Q And the call at 5:30 that morning was they'd shot Mr.
20 Herring?
21 A That's correct.
22 Q Okay. And then you got out of bed?
23 A Yes, sir.
24 Q But it wasn't worth getting out of bed for Mr.
25 Johnson's death. It was worth getting out of bed

1 though when you found out your officers had shot
2 somebody, right?

3 A That's not quite true.

4 Q I'm sorry. Maybe I misunderstood you.

5 MR. GIESE: Objection, Your Honor. Let him
6 answer.

7 THE COURT: Let him answer.

8 Q I'm sorry. I thought you were done. Not quite true
9 why?

10 A Why? Because I have people that are highly trained
11 to handle homicides. If I go out to a homicide
12 scene, normally I just get in the way. We have
13 sergeants that respond to the homicide scenes. They
14 call in a team of on-call investigators to handle
15 that homicide and they work that homicide.

16 Q But you decided to get in the way on this one after
17 your officers shot Mr. Herring. Is that correct?

18 A After the officers shot Mr. Herring at his house,
19 obviously I didn't want those officers to go back in
20 and talk with Mr. Herring because they were talking
21 to SLED agents at the time. On that Sunday afternoon
22 I had two other investigators on duty. One was at
23 the scene at Mr. Herring's house coordinating with
24 SLED and the other one was handling bond court and
25 other duties. So I was it. I went in to talk to Mr.

1 Herring.

2 Q Well, you wanted to make sure that you nailed down
3 the case against Mr. Herring. Isn't that right?

4 A I wanted to make sure we did everything we could do.

5 Q Well, why wasn't the SLED statement good enough?
6 You'd already had a SLED statement. Why did you have
7 to go in again? Anybody in there with you?

8 A Not that I recall, no.

9 Q So you walk in alone to interview Mr. Herring. After
10 SLED has gotten a statement from him, you decide you
11 need to go a little bit further, right?

12 A I wanted to get a statement for us, yes.

13 Q Well, you already had a statement for you in writing,
14 didn't you?

15 A It was a statement taken by SLED for their
16 investigation.

17 Q Well, actually SLED had taken their statement for
18 their investigation. They came out and talked to
19 you. You said he's lying about it. Here is the
20 video. Go back in there and get the truth. Isn't
21 that right?

22 A I didn't say go back in there and get the truth. I
23 said he's not telling you the whole truth.

24 Q He's not telling the truth. Go get more. And they
25 go back in and then they question him about what

- 1 happened at Chastity's, right?
- 2 A That is correct.
- 3 Q And they have this statement from him in writing; two
- 4 officers in there with him, witnessed, signed by him,
- 5 initialed by him, but that's not good enough for you.
- 6 You need to go back in by yourself without a witness
- 7 and get an oral statement which you made notes on
- 8 hours after you interviewed him. Isn't that correct?
- 9 A Basically it's correct.
- 10 Q And at that point your officers are at risk. They're
- 11 suspects in a shooting, aren't they?
- 12 A They are being investigated by SLED as to the
- 13 shooting at Mr. Herring's house. But I didn't feel
- 14 like they were at risk at any time.
- 15 Q You weren't told my Agent LaRosa or by Lawrence that
- 16 they're regarding Mr. Herring as their victim?
- 17 A That's standard procedure. Yes, sir.
- 18 Q That's standard procedure. So if he is being
- 19 regarded as the victim, then your officers are being
- 20 recorded as the perpetrators, right?
- 21 A You could say that.
- 22 Q Now, how long have you known Dave Lawrence?
- 23 A Probably 20, 25 years.
- 24 Q You all worked together?
- 25 A Yes, we did.

1 Q As uniformed deputies?

2 A No, sir.

3 Q Investigators?

4 A Investigators.

5 Q So you all worked together as investigators

6 investigating homicides 20 years ago?

7 A Yes, sir.

8 Q For how many years?

9 A For a number of years.

10 Q And so when he showed up to investigate your

11 officers, there was a little comfort level there.

12 Dave had been a Richland County Sheriff's Deputy.

13 Dave had been an investigator with Richland County.

14 And so you had a Richland County alumnus come back to

15 conduct this investigation, right?

16 A Dave Lawrence works for SLED. And I don't know that

17 it is a comfort level as much as there is a trust

18 level. However, based on what I knew about the scene

19 at Mr. Herring's house, I had no concerns about

20 whether my officers had acted properly.

21 Q And that was based on what your officers told you?

22 A That's correct.

23 Q Now, when you went back in there, if you're so

24 concerned, did you ask Mr. Herring about what

25 happened at the house?

1 A No.

2 Q Why not?

3 A Because that's a SLED investigation. It's not my
4 investigation.

5 Q But your supervisor there you're worried about, maybe
6 at that point you had a comfort level; didn't you
7 want to make sure that they didn't shoot him in the
8 back or shoot him as he was fleeing down the hall or
9 shoot him before he ever got to the gun, that they
10 panicked, that they pulled the trigger before they
11 should have?

12 A That's certainly something that would be addressed
13 but not at that time.

14 Q Now, let me ask you this. Did you see the -- and is
15 this what your men are trained to do, shoot ten times
16 through a wall blindly if they don't even know who is
17 behind it?

18 A No.

19 Q They're not trained to do that?

20 A No.

21 Q So you had a comfort level. You went over to the
22 house and saw this?

23 A I saw parts of it.

24 Q I mean, have you ever seen a shoot up like this
25 before?

1 A No.

2 Q This many shots fired?

3 A No.

4 Q And so you had a comfort level when you went in to
5 talk with Mr. Herring and get a statement from him
6 that your officers had done no wrong, right?

7 A That's correct.

8 Q And you weren't trying to make a better case against
9 Mr. Herring so that if he is guilty of murder, what's
10 the problem with shooting a murderer? Isn't that
11 right?

12 A What was your question?

13 Q My question is, the worse he looks, the better your
14 men look. Isn't that right?

15 A I don't think it's an issue of the worse he looks the
16 better my men look. We had two separate cases here.
17 SLED is investigating our shooting at his house, and
18 I'm investigating his shooting of the victim at
19 Chastity's.

20 Q But if he were not guilty of the murder, your men
21 would have shot an innocent man. Isn't that true?

22 A Yes, sir.

23 Q So the better the case against Mr. Herring, the less
24 culpable your men are for what they did that night.
25 Isn't that true?

1 A I think my men are responsible for what they did that
2 night, irregardless of what Mr. Herring has done.

3 Q How many homicides has Sheriff Lott worked in the
4 last five years, has he gone out and helped, gone out
5 to the scene on?

6 A I couldn't tell you.

7 Q Well, he came out that night. You indicated that the
8 Sheriff was in route when you were in route?

9 A Any time we have an officer-involved shooting the
10 Sheriff responds.

11 Q So if Mr. Johnson is laying on the floor at
12 Chastity's, you get up and go to bed. The Sheriff is
13 still asleep. But once your officers wound somebody
14 at a house, everybody rolls out. Is that right?

15 A The necessary people roll out; yes, sir.

16 Q And that would be the Sheriff and the Chief?

17 A That's correct.

18 Q Who was the chief investigator on this homicide case?

19 A Stan Smith and David Linfert.

20 Q So if there was blood drawn, they would know about
21 it? They should?

22 A It's possible. If SLED hadn't requested the blood to
23 be drawn.

24 Q But somebody would know about what had been drawn,
25 right?

1 A I would like to think so.

2 Q Have you seen any blood?

3 A No, sir, I haven't.

4 Q Have you seen any requests for blood?

5 A No, sir.

6 Q Have you seen any analysis of blood?

7 A No.

8 Q And I'm sorry. He was in your custody; that is, the
9 Richland County Sheriff's Department custody from
10 approximately 4 a.m. that day on. Is that correct?

11 A I know from 5:30 on; yes, sir.

12 Q From 5:30 on. Beg the Court's indulgence just a
13 moment. I'm sorry, Your Honor. Just give me one
14 moment, please?

15 THE COURT: Yes, sir.

16 (Pause)

17 Q I want you to look at your notes again. Was this --
18 this was prepared at one time?

19 A Yes, sir.

20 Q Okay. So you sat down and prepared these notes at
21 one time?

22 A As far as I recall; yes, sir.

23 Q Okay. And they begin at 1-29-06 at 00:30, right?

24 A Yes, sir.

25 Q And they go through -- look at the next page. Where

1 do they go through?

2 A Well, 1-30-06.

3 Q At 9:00 the next morning?

4 A Yes. That's when I --

5 Q So would that indicate to you that you didn't prepare
6 these until at least 9:00 the next morning?

7 A No. That could have been added in.

8 Q Well, I just asked you if you prepared them all at
9 one time.

10 A Well, that's correct.

11 Q And you said yes. So they were prepared all at one
12 time?

13 A Well, obviously I was mistaken. Because I mentioned
14 it in a conversation with John Meadors the next day.

15 Q So you were mistaken a moment ago about when you
16 prepared them?

17 A I was mistaken about preparing them all at one time;
18 yes, sir.

19 Q So you're mistaken then. You're not mistaken now?

20 A That's not what I said.

21 Q Well, when did you prepare these notes?

22 A Initially several hours afterwards. Obviously I
23 added something in the next day.

24 Q So they weren't all prepared at one time?

25 A That is correct.

1 Q And you still don't -- you can't tell this jury what
2 time you sat down and typed up what he told you?

3 A No, I can't.

4 Q Thank you.

5 THE COURT: Redirect.

6 MR. GIESE: Just a couple of questions, Your
7 Honor.

8 REDIRECT EXAMINATION

9 BY MR. GIESE

10 Q Mr. Harpootlian was talking to you about when Dewain
11 Herring told you about when you said to Mr. Herring
12 about shooting, when he shot through the door he
13 killed someone. Do you remember that, when he was
14 asking you about that?

15 A Yes.

16 Q And if you would, look at your notes in regards to
17 that part of your statement, or his statement?

18 A Right.

19 Q You said you advised him that when he shot the door
20 of the club that he had hit and killed someone. Do
21 you see that?

22 A (Nods head affirmatively).

23 Q After you told him that, did Mr. Herring ever say, I
24 did not shoot the gun into the door?

25 A No, sir.

1 Q At the club, in the club? Did he ever say that?

2 A No, sir.

3 Q Now, Mr. Harpootlian was also asking you about your
4 officers being in . . . And he is
5 questioning you something about whether or not if the
6 defendant was guilty of murder, not guilty of murder,
7 then your people weren't inside the residence
8 properly. Do you remember that conversation?

9 A Yes, sir.

10 Q Well, isn't it a fact that your investigators had a
11 legal search warrant with them that they were trying,
12 that they were trying to execute at that time?

13 A That is correct.

14 Q Therefore, they were legally in that residence at
15 that time, correct?

16 A That's correct.

17 Q He also asked you as to whether or not you had ever
18 worked or that you had had a long working
19 relationship with Lieutenant Lawrence. Is that
20 correct?

21 A That's correct.

22 Q Did you have a working relationship with Special
23 Agent LaRosa?

24 A I don't think I'd ever met him prior to that day.

25 Q And he was the chief investigating officer in this

1 case. Is that right?

2 A I'm not sure which one was.

3 Q And finally, Mr. Harpootlian was questioning you
4 about when you actually wrote or typed in the notes
5 from your interview of the defendant. Do you
6 remember that?

7 A Yes.

8 Q Let me ask you this. Are you mistaken about what
9 that man said he did that night?

10 A No.

11 Q Are you mistaken as to whether or not that man said,
12 "I fired the gun"?

13 A No.

14 Q That's all I have.

15 RECROSS EXAMINATION

16 **BY MR. HARPOOTLIAN**

17 Q Just a couple of questions. The solicitor just asked
18 you, I advised them that when he shot through the
19 door and he had hit and killed someone. And then you
20 have in here, and he asked you, did he say that he
21 hadn't done it and you said, no, he hadn't said that.
22 Read the next three words or four words, five words.
23 He stated, I believe it says, what words?

24 A No, no, no.

25 Q No, no, no?

1 A Then he lowered his head.
2 Q And then he lowered his head?
3 A Mm-hmm (affirmative).
4 Q No, no, no. Now, which part of no do you not
5 understand when you say you did something and he says
6 no? Does no not mean no?
7 A I think he was surprised.
8 Q Well, I mean, now --
9 A I don't believe that was a denial.
10 Q You don't think it was a denial?
11 A No.
12 Q But no means something other than denial?
13 A I think he was surprised, he was horrified at being
14 charged with murder.
15 Q Surprised. Surprised?
16 A Yes.
17 Q No idea?
18 A No. I don't believe until that point he knew that he
19 had shot someone.
20 Q No, no, no. Now, Mr. Giese has asked you if I
21 suggested that you were mistaken and you've indicated
22 you were not. These are his exact words. Right?
23 A Yes, sir.
24 Q But you would concede that when he said them you
25 weren't making notes?

- 1 A That's right.
- 2 Q You would concede that your officers were being
3 investigated?
- 4 A Yes.
- 5 Q And you would concede that your memory is what you
6 typed down several hours later?
- 7 A I don't know that it was several hours but it was
8 after the interview.
- 9 Q Well, you don't know when actually, do you?
- 10 A I do not know.
- 11 Q You have no independent recollection of when you did
12 this?
- 13 A No, sir.
- 14 Q And you are making -- now, you already arrested him.
15 You're arresting him for murder at that point, right?
16 He's already arrested?
- 17 A He's already in custody. Yes, sir.
- 18 Q In custody. Now, was he in custody for murder at the
19 point, at that point?
- 20 A Yes, sir.
- 21 Q Okay. When Mr. Lawrence and Mr. LaRosa are
22 interviewing him, he's already in custody for murder?
- 23 A Yes, sir.
- 24 Q You know it?
- 25 A Yes, sir.

1 Q They know it?

2 A That's correct.

3 Q But he doesn't know it. Mr. Herring didn't know it,
4 did he?

5 A No, sir.

6 Q Okay. You all were keeping that a secret?

7 A I don't know it was kept a secret as much as they
8 just didn't tell him. I don't know what was in the
9 SLED agent's mind.

10 Q Well, you didn't tell him when you walked in, you're
11 under arrest for murder, did you?

12 A No, sir.

13 Q Why didn't you tell him? I mean, he's in handcuffs,
14 arrested. He's in an orange jumpsuit. He's already
15 been charged with pointing and presenting a firearm.
16 He's going to be charged with murder. Why don't you
17 tell him that before you start questioning him?

18 A No specific reason.

19 Q Oh, there was a specific reason, wasn't there? What
20 did he do the minute you told him he was charged with
21 murder?

22 MR. GIESE: Your Honor, I'm going to object to
23 that side comment.

24 THE COURT: Yes, sir. No more.

25 MR. GIESE: It's not a question.

1 **THE COURT:** Ask him only a question.

2 **Q** What did he do once you told him he was charged with

3 murder?

4 **A** He asked for an attorney.

5 **Q** He stopped talking, right?

6 **A** That's correct.

7 **Q** So you were not honest with him. You kept that from

8 him intentionally. So there was a reason, wasn't

9 there?

10 **A** No.

11 **Q** There was a reason. You just forgot to tell him?

12 **A** No.

13 **Q** Well, why didn't you tell him?

14 **A** I went in there to interview him about the case.

15 **Q** And you knew that if you told him that he was charged

16 with murder he would stop talking?

17 **MR. GIESE:** Objection, Your Honor. Speculation.

18 **MR. HARPOOTLIAN:** I'm asking.

19 **THE COURT:** Answer the question. I'll allow it.

20 Go ahead.

21 **MR. HARPOOTLIAN:** Thank you.

22 **A** No. I did not know that.

23 **Q** He's a lawyer?

24 **A** He is a lawyer.

25 **Q** You had met him on a civil case weeks earlier, had

1 you not?

2 A Yes, sir, I had.

3 Q Not criminal. It was civil, right?

4 A That's correct.

5 Q And as he is being interviewed, he is in custody,
6 he's been shot. Do you notice whether he was
7 bleeding or not?

8 A He had bled. There was some bleeding. Yes, sir.

9 Q Beg the Court's indulgence one moment. Thank you.
10 No further questions.

11 **THE COURT:** Thank you very much, sir. You may
12 come down.

13 **MR. HARPOOTLIAN:** No objection.

14 **THE COURT:** The witness may be excused.

15 (Whereupon, a bench conference is had)

16 **THE COURT:** All right. Ladies and gentlemen,
17 we're going to take our morning break. I'll ask you
18 to retire to the jury room. Don't discuss the case
19 among yourselves. Just relax for a few minutes and
20 we'll be ready to start in about 15 minutes.

21 (Jury out at 11:13 a.m.)

22 **THE COURT:** All right. We'll stand at ease for
23 about ten minutes.

24 (Whereupon, a break is taken)

25

1 (WHEREUPON, State's Exhibit No. 88 is marked for
2 identification.)

3 (WHEREUPON, State's Exhibit No. 89 is marked for
4 identification.)

5 (WHEREUPON, State's Exhibit No. 90 is marked for
6 identification.)

7 (WHEREUPON, State's Exhibit No. 91 is marked for
8 identification.)

9 (WHEREUPON, State's Exhibit No. 92 is marked for
10 identification.)

11 (WHEREUPON, State's Exhibit No. 93 is marked for
12 identification.)

13 MR. HARPOOTLIAN: Your Honor.

14 THE COURT: Yes, sir.

15 MR. HARPOOTLIAN: May it please the Court?

16 THE COURT: Yes, sir.

17 MR. HARPOOTLIAN: They are going to -- we've
18 already moved to exclude items seized from his house
19 and the vehicle under the search warrant. So I'm not
20 renewing that motion. But one of the things seized
21 was a coupon book for targets from the Indigo Club
22 which is a clay shooting club.

23 THE COURT: I'm familiar with it.

24 MR. HARPOOTLIAN: And we would move to exclude
25 these in that the prejudicial outweighs the

1 probative. What does it prove?

2 **MR. MEADORS:** Your Honor, it could prove several
3 things. But, number one, it was in his car when it
4 was searched. We'd argue it would go to the weight,
5 not the admissibility. He could argue what he wanted
6 to. You know, there have been several things the
7 defendant has put forward here actually. Obviously
8 some other matters, other items from the car we're
9 putting in, some ammunition, some gun boxes. This
10 clearly shows he's proficient or knows how to shoot a
11 gun.

12 **MR. HARPOOTLIAN:** A shotgun.

13 **MR. MEADORS:** I don't know. But I don't know if
14 the defense is going to be accident. He's already
15 put accident in here, maybe unintentionally. I don't
16 know. But this clearly was in his car the night when
17 he had shot. We think it would go to the weight, not
18 the admissibility, and we clearly think it's relevant
19 to --

20 **THE COURT:** Well, 403, it could be excluded
21 under 403.

22 **MR. MEADORS:** And we don't think the prejudicial
23 value of one round of 25 targets Indigo Club, that is
24 prejudicial, Your Honor, based on the other evidence
25 that's already in at this point.

1 **THE COURT:** The rule says it has to
2 substantially outweigh the probative value.

3 **MR. HARPOOTLIAN:** I don't know what the
4 probative value is. So if there's no probative value
5 whatever, we say it outweighs it. And the shooting a
6 shotgun, is he going to argue shooting a shotgun
7 makes you proficient at shooting a pistol?

8 **THE COURT:** No, sir. I don't know what he's
9 going to argue. But this comes up frequently, not
10 the Indigo Club but other guns. And the State always
11 argues that it's relevant for the issue of whether or
12 not the defendant had or used a handgun. I mean, it
13 comes up all the time. Let's just put it that way.

14 **MR. HARPOOTLIAN:** Do people object to it?

15 **THE COURT:** Always.

16 **MR. HARPOOTLIAN:** Do you ever grant the
17 objection?

18 **THE COURT:** Seldom.

19 **MR. HARPOOTLIAN:** Well, for the record, I'll
20 just go ahead and throw my two cents worth in.

21 **THE COURT:** Probative value is substantially
22 outweighed by the danger of unfair prejudice,
23 confusion of the issues or misleading the jury.
24 That's what 403 says.

25 **MR. HARPOOTLIAN:** Shotgun/pistol. I just don't

1 understand the connection.

2 **THE COURT:** However slim, it may be.

3 **MR. HARPOOTLIAN:** Judge, I just want to note for
4 the record, I object to any of it coming in
5 specifically under the 401 analysis. But Your Honor
6 has overruled that. So I'd just as well move on.

7 **MR. MEADORS:** Your Honor, we're ready to go.
8 We've got them marked as far as the items from the
9 car. There are some clothes, too, that we're going
10 to offer. Do you have any objection?

11 **MR. HARPOOTLIAN:** I haven't seen them. Can I
12 see them?

13 **MR. MEADORS:** We have been to the Sheriff's
14 Department several times to look for these items.

15 **MR. HARPOOTLIAN:** We're just going through the
16 boxes, Your Honor. There was an a little incident
17 down in Calhoun County where some clothes came in.

18 **THE COURT:** Which is your better side, Mr.
19 Harpootlian?

20 **MR. HARPOOTLIAN:** Which is my better side?

21 **THE COURT:** The cameras are ...

22 **MR. HARPOOTLIAN:** My back would be my better
23 side, Your Honor.

24 (Pause)

25

1 (WHEREUPON, State's Exhibit No. 94 is marked for
2 identification.)

3 (WHEREUPON, State's Exhibit No. 95 is marked for
4 identification.)

5 (WHEREUPON, State's Exhibit No. 96 is marked for
6 identification.)

7 (WHEREUPON, State's Exhibit No. 97 is marked for
8 identification.)

9 THE COURT: Are you ready to proceed, counsel?

10 MR. MEADORS: Yes, sir.

11 THE COURT: Mr. Harpootlian?

12 MR. HARPOOTLIAN: Sir?

13 THE COURT: Are you ready to proceed?

14 MR. HARPOOTLIAN: Yes, sir.

15 THE COURT: Bring the jury, please.

16 (Jury in at 11:40 a.m.)

17 THE BAILIFF: Your Honor, the jury is present.

18 THE COURT: Thank you. All right, Solicitor,
19 you may continue.

20 MR. MEADORS: If it pleases the Court.

21 THE COURT: Call your next witness.

22 MR. MEADORS: At this time the State of South
23 Carolina would call Investigator Stan Richards.

24 IVAN S. RICHARDS, after being duly sworn,
25 testifies as follows:

1 **THE CLERK:** Please have a seat. State your full
2 name for the record.

3 **THE WITNESS:** Ivan Stan Richards.

4 DIRECT EXAMINATION

5 **BY MR. MEADORS**

6 **Q** Good afternoon, Investigator.

7 **A** Good afternoon, sir.

8 **Q** Please tell these folks a little bit about yourself.
9 And I want you to start off with where you were born,
10 where you were raised and then where you went to
11 school, please?

12 **A** I was born in Cumming, Georgia. I went to school
13 there and high school. I attended St. Rio University
14 as a crime, criminalist major. I worked for six
15 years in the state of Georgia as a law enforcement
16 officer. I am retired from the military. I came to
17 work with the Richland County Sheriff's Department in
18 1994.

19 **Q** And how long were you in the military?

20 **A** 23 years, sir.

21 **Q** How long were you in law enforcement in Georgia?

22 **A** Six years, sir.

23 **Q** What did you do there?

24 **A** I was a law enforcement deputy, road deputy.

25 **Q** Road deputy?

1 A Yes, sir.

2 Q And you came here in what year?

3 A 1994, sir.

4 Q And once you -- prior to working at the Sheriff's
5 Department, did you go to the Criminal Justice
6 Academy?

7 A Yes, I did. I have attended Northeast Georgia Police
8 Academy; the South Carolina Criminal Justice Academy
9 also.

10 Q And did you receive any other specialized training?

11 A Yes, I have. I've been trained in latent print
12 development, latent print verification, advanced palm
13 print verification, blood spatter analysis, shoe and
14 tire impression collection and analysis, crime scene
15 processing, crime scene reconstruction, crime scene
16 photography, and I have been certified as a crime
17 scene investigator through the International
18 Association for Identification.

19 Q You work now in the crime scene unit at the Sheriff's
20 Department?

21 A I do, sir.

22 Q And is it -- do you get called out to scenes?

23 A Yes, sir, I do.

24 Q Is that how you got involved in this?

25 A Yes, sir. Pretty much.

1 Q What we're here about today?

2 A Yes, sir.

3 Q Did you have an occasion to go and look at a Toyota
4 4Runner that was involved in this case?

5 A I saw a 1996 Toyota 4Runner that had been placed in
6 our forensics garage which is a climate controlled
7 facility that we process vehicles in.

8 Q And is that your first involvement in this case?

9 A No, sir. It's not.

10 Q Okay. When is the first time you got involved?

11 A The first time I was involved was the -- if I may.
12 On January the 29th at approximately 7 in the morning
13 I received four Glock .23 -- one Glock .23 and three
14 Glock .22's from an investigator with our department.
15 I signed for those, counted the rounds in the
16 magazines and then turned them over to SLED agents
17 with the chain of custody.

18 Q And that was an incident at
19 correct?

20 A Yes, sir.

21 Q Now, you looked at the Toyota 4Runner, 1996 I believe
22 you said, on what date and what time?

23 A I looked at the 4Runner on February the 1st of '06
24 beginning about 8:30 in the morning.

25 Q All right. And prior to that had you seen some

1 pictures and/or did you take pictures of the Toyota
2 4Runner?

3 A I took photographs of the vehicle at that time.

4 Q Why were you doing that, sir?

5 A That's basic procedure when we are going to process a
6 vehicle. The first thing we do is to photograph.

7 Q What do you mean by processing a vehicle?

8 A Processing the vehicle could be any number of things,
9 to include latent prints, DNA, gunshot residue,
10 searching the vehicle for pertinent evidence that
11 might be useful in a case further.

12 Q And tell these folks, what is gunshot residue?

13 A Gunshot residue is when a person fires a weapon, the
14 firing pin strikes the cartridge which we know it as
15 the bullet itself in the rear. That detonates primer
16 inside the cartridge itself which in turn ignites the
17 gunpowder inside the cartridge. Now, a chain
18 reaction or chemical reaction starts, gasses expand
19 and that expels the bullet or the projectile from the
20 cartridge down the gun along with fired and gunpowder
21 burn or unburned gunpowder along with components of
22 the primer itself. All of these go into the air,
23 fall on the surrounding persons or items in the form
24 of an aerosol.

25 MR. HARPOOTLIAN: Your Honor, I hate to

1 interrupt, but is this gentleman qualified as an
2 expert?

3 **MR. MEADORS:** I do certainly do that, Your
4 Honor. We have an expert coming from SLED after
5 that.

6 **Q** But how many crime scenes have you processed?

7 **A** In my almost six years with the crime scene unit,
8 it's probably been close to a thousand, sir, at
9 least.

10 **Q** And as part of that crime scene processing, I think
11 you've had training in fingerprints?

12 **A** Yes, sir.

13 **Q** Gunshot residue?

14 **A** Yes, sir.

15 **Q** Gathering of DNA evidence?

16 **A** Yes, sir. And physical evidence, trace evidence.

17 **MR. MEADORS:** Your Honor, we'd offer him as an
18 expert in the field of crime scene investigation.

19 **MR. HARPOOTLIAN:** No objection.

20 **THE COURT:** All right. Go ahead.

21 **Q** Did you process the 1996 Toyota 4Runner for gunshot
22 residue?

23 **A** I did, sir.

24 **Q** And tell the jury how you do that. How did you do
25 that in this case?

1 A Processing for the particles that we try to detect or
2 collect for gunshot residue, I used what we call a
3 sticky tab. There's two ways you can process for
4 gunshot residue. One is using a swab moistened and
5 of course swab areas that you want to swab. Second
6 is a sticky pad or a stub which is a two-sided piece
7 of cellophane is on there. It will stick to or
8 adhere to particles of trace evidence also. I used
9 the sticky tab.

10 Q Looking at State's 88 and 89, can you look on here
11 and see if you recognize these, and do they relate to
12 your testimony?

13 A May I look inside?

14 Q Sure.

15 A I also look inside because inside these envelopes is
16 where I placed my sticky tabs and I sealed and turned
17 into evidence. And these are the tabs that I
18 collected from the vehicle. This one is. These are
19 sticky tabs as well.

20 Q So this is -- State's 88 are yours?

21 A Yes, sir.

22 Q And you do all that and sign it so you can come in
23 and say which one you did and which one you lifted,
24 correct?

25 A Yes, sir.

1 Q Tell them exactly how you processed this car?

2 A I take into consideration of course what the
3 investigators or the investigation has unfolded and
4 then I process the cars or a vehicle for gunshot
5 residue in the same way every time. I look at the
6 back seats, whether it be the left or the right side
7 of the vehicle, because that's a good place for
8 gunshot residue to adhere to. I look at a weapon as
9 possibly being fired out of a window. I look at the
10 surrounding door frame around the window itself to
11 process that for gunshot residue. I also usually --
12 or not usually -- I also always process the steering
13 wheel and the driver's or the passenger's side door
14 handle for trace evidence that may have been
15 deposited there also.

16 Q So did you process the steering wheel?

17 A I did.

18 Q How exactly did you do that?

19 A I took the sticky tabs ever so slightly, went all the
20 way around the steering wheel, top side, bottom side,
21 inside.

22 Q And if I can approach with Your Honor's permission;
23 showing you State's 25, can you show the jury on here
24 where you did that?

25 A Well, it's a basic steering wheel. It's a basic

1 steering wheel that just about anybody has on their
2 vehicle. I processed -- I call it the inside portion
3 of that faces the driver. I processed that all the
4 way around. The top portion around the outside of
5 the steering wheel, I processed that all the way
6 around. And I did go up and under the steering wheel
7 itself.

8 Q And when you say processing, you're applying the --

9 A I'm applying the sticky tab one after the other,
10 overlapping all the way around.

11 Q After you processed the steering wheel, did you have
12 an occasion to process the left inside front driver's
13 side door handle?

14 A I did.

15 Q And can you tell the ladies and gentlemen of the jury
16 how you did that?

17 A A door handle is very simple. It's usually very
18 small. You use the same sticky tab. You process the
19 sticky tab all over the outside of the door handle
20 and the inside of the door handle.

21 Q And did you have an occasion to process the right
22 side front passenger window area, Investigator?

23 A I did. I did. That involves going all the way
24 around the window frame that surrounds the window
25 itself, up the top, the bottom, left and right side,

1 sticky tabbing the whole area for possible particles
2 or gunshot residue.

3 Q And just referring to State's 28, does that appear to
4 be a picture of the Toyota that you were processing?

5 A It does.

6 Q All right. And would this be the passenger's side
7 door?

8 A Yes. That's a picture depicting the outside of the
9 right front passenger's side door.

10 Q Specifically, where did you process the door? The
11 inside or the outside?

12 A The inside.

13 Q And specifically show us, where specifically on the
14 window or around the window did you process? And
15 maybe this will help you here on State's 25?

16 A Yes. This depicts the window, the right front
17 window, a shot looking at it from the inside. If the
18 window is up, I took a sticky tab, went all the way
19 around the window up and under the top, the sides
20 right next to the window itself, the door frame which
21 include if you look out your window, a lot of the
22 rubber portion around the window and some of the
23 metal portion around the window and the very bottom
24 where the door frame meets the window itself,
25 360 degrees around it.

- 1 Q What about the right side front passenger's seat and
2 back of seat?
- 3 A The back side of the seat back here, the passenger's
4 front, I sticky tabbed it, starting at the top, back
5 and forth, all the way down that seat.
- 6 Q After you sticky tabbed this, all these different
7 locations, what do you do with your tabs?
- 8 A I take the tabs. I put them in an envelope. I seal
9 them with my initials. I submit them to our evidence
10 room who in turn submits them to SLED for analysis.
- 11 Q And I think you've testified you seal them up?
- 12 A I do.
- 13 Q Send them to SLED?
- 14 A I do.
- 15 Q For further analysis?
- 16 A Yes, sir.
- 17 Q There's some other pictures here. Did you also take
18 pictures of some other items that were in the car?
- 19 A Yes, I did.
- 20 Q State's 22?
- 21 A Yes, sir. Those are boxes of shotgun cartridges that
22 I found in the vehicle.
- 23 Q State's 34?
- 24 A Magazines.
- 25 Q And what's the magazine there on top?

1 **A** It a Ruger catalog for Fine Firearms.

2 **Q** And where was that in the Toyota, 1996 Toyota
3 4Runner?

4 **A** To be specific, this is what I collected, three boxes
5 of Federal .12 gauge shotgun shells, one box of
6 Federal field target .12 gauge shotgun shells, one
7 box of Winchester .20 gauge shotgun shells and one
8 box of Clay .20 gauge shotgun shells from the rear
9 cargo area, hatch-back. I collected one Ruger
10 catalog from the rear driver's seat pocket area, one
11 Buckmaster magazine and one Gunhunter magazine from
12 the rear cargo area and one Indigo Club target
13 coupons from under the front passenger's seat.

14 **Q** Can you look at State's 91 and tell me that that's
15 one of the items you just recited that you collected?

16 **A** Yes, sir. This is the Indigo Club coupons from under
17 the front passenger's seat.

18 **MR. MEADORS:** State's 91, Your Honor, we'd offer
19 at this time.

20 **THE COURT:** Is there objection?

21 **MR. HARPOOTLIAN:** Your Honor, we dealt with it.

22 **THE COURT:** Previous objection?

23 **MR. HARPOOTLIAN:** Yes.

24 **THE COURT:** Subject to the defendant's
25 objection, it's admitted.

1 (WHEREUPON, State's Exhibit No. 91 is admitted
2 into evidence.)

3 Q State's 92, are these the magazines you said you
4 found? Ruger?

5 A Yes, sir.

6 Q What year is that? What's it say under there? What
7 year is that catalog?

8 A 2006, sir.

9 Q Catalog of Fine Firearms?

10 A Yes, sir.

11 Q Also included in State's 92 that you gathered, what
12 is that?

13 A It's a Buckmaster's, Gunhunter magazine.

14 Q And the final magazine is what?

15 A It's also a Buckmaster's.

16 MR. MEADORS: Your Honor, we'd now offer these,
17 State's 92, I believe without --

18 THE COURT: Subject to the defendant's prior
19 objection.

20 MR. MEADORS: Okay. On these. I'm sorry.

21 (WHEREUPON, State's Exhibit No. 92 is admitted
22 into evidence.)

23 Q Finally, you mentioned some shells I believe or shell
24 casings that you collected?

25 A Shotgun cartridges. Yes, sir.

1 Q Cartridges?

2 A Yes, sir.

3 Q State's 93 is that them?

4 A It is.

5 Q All right. And these were located where?

6 A Those were located in the rear cargo area, sir.

7 Q And how many of these are in here?

8 A Six.

9 Q Bring them out and tell us what each one is, please?

10 A Box of Federal .12 gauge. The second box is Federal
11 .12 gauge, a box of clay .20 gauge, a box of
12 Winchesters, another box of Federals and an
13 additional box of Federals.

14 MR. MEADORS: Your Honor, I'm going to put these
15 all in this one box which is 93, Your Honor.

16 Q I think you said it, but where did you process this
17 car and what type place was it? Was it
18 environmentally controlled?

19 A Yes. It's in our forensics garage which is an
20 environmentally controlled facility for processing
21 vehicles.

22 Q And why is that?

23 A It's important for the weather, rain; so evidence,
24 especially that of trace evidence, is not lost or
25 destroyed.

1 Q And at Sergeant Anna Clemson's request did you later
2 process two other items?

3 A I did, sir.

4 Q What are those?

5 A She asked me to process, to retrieve from our
6 evidence room and process two burgundy sweaters for
7 gunshot residue, which I did.

8 Q And do you have those stickies?

9 A Yes, I do. They're here, sir.

10 Q And would you look at those again and tell us which
11 ones those are?

12 A These are sticky tabs that I used to process the
13 sweaters.

14 Q And did you know where those sweaters were located in
15 relation to where the defendant was arrested?

16 A No, sir.

17 Q This was done at your sergeant's request?

18 A It was.

19 MR. MEADORS: All right. Your Honor, that's
20 State's 89.

21 MR. HARPOOTLIAN: The same, objection, Your
22 Honor.

23 (WHEREUPON, State's Exhibit No. 89 is admitted
24 into evidence.)

25 Q Was that -- excuse me, ladies and gentlemen. Was

1 that sticky sealed and sent to SLED for analysis at
2 some point?

3 A It was secured by me. It was sealed by me and sent
4 to SLED.

5 Q And specifically, what type sweaters were those?

6 A I have them in my notes as burgundy sweaters, sir. I
7 have the item number for the two sweaters from
8 evidence. One extra large nylon and one extra large
9 knit.

10 Q Beg the Court's indulgence. Beg the Court's
11 indulgence. That's all.

12 **THE COURT:** Cross.

13 **MR. HARPOOTLIAN:** May it please the Court, Your
14 Honor.

15 CROSS EXAMINATION

16 **BY MR. HARPOOTLIAN**

17 Q Investigator Richards, you retrieved the evidence but
18 you don't actually do the analysis on it. Is that
19 correct?

20 A That's correct, sir. You're talking about gunshot
21 residue?

22 Q Right.

23 A I do not do the analysis on it. Correct.

24 Q Okay. And now, gunshot residue is sort of the gas
25 left by -- it's microscopic. You can't see it?

1 A That's correct. The particles that are in the
2 aerosol type particles that come down, yes, is
3 invisible to the naked eye.

4 Q And your experience in this area indicates that when
5 somebody fires a handgun, gunshot residue comes out
6 not only the barrel; it comes out around the cylinder
7 on a revolver, correct?

8 A It can. Yes, sir.

9 Q And it also blows back a little bit, does it not?

10 A It can. Yes, sir.

11 Q I mean, typically it does?

12 A Yes, sir, it does.

13 Q So it creates a cloud around the weapon; back and
14 forward of gunshot residue, correct?

15 A Yes, sir.

16 Q Now, when somebody fires a gun, they typically end up
17 with gunshot residue on their hand, correct?

18 A You would think so. Yes, sir.

19 Q And when they touch something with that hand, gunshot
20 residue can be left on that surface?

21 A It can be.

22 Q Right?

23 A Not always.

24 Q So when you find or don't find gunshot residue, it
25 doesn't mean that there was or was not a weapon fired

1 there but simply that someone or something that had
2 come in contact with gunshot residue could have
3 touched that area, correct?

4 A That's possible.

5 Q Now, let me ask you this. These items introduced --
6 are you a hunter?

7 A I am not.

8 Q You're not. Do you go Skeet shooting at all?

9 A I do not.

10 Q Okay. The items introduced: The shotgun shells,
11 books about hunting, some target coupons for the
12 Indigo Club, that is Skeet shooting. That is where
13 you shoot shotguns, correct?

14 A If you say so.

15 Q If someone had been out Skeet shooting and got in the
16 vehicle and then touched the areas you dabbed,
17 there's a likelihood gunshot residue would be found
18 there, correct?

19 A There could have been some particles deposited or
20 traced from someone to an item. That is possible.
21 Yes, sir.

22 Q Now, when you processed this car, my understanding
23 from looking at your record, and let me make sure I
24 understand this correctly. First of all, do you know
25 who drove this car over to the location? Do you have

1 any idea?

2 A No, sir.

3 Q The officers that were involved in the shooting?

4 A I doubt that it was driven.

5 Q You think it was today?

6 A It probably was today. That's what it usually is. I

7 do not know.

8 Q Now, if there had been a cloud of smoke after a --

9 maybe the smoke that you see after a gun is fired,

10 does that have gunshot residue in it? The smoke? If

11 I shot a gun and there's smoke in the area, does that

12 have gunshot residue in it?

13 A The burned and unburned powder along with the primer

14 that comes out of the gun is all the components of

15 gunshot residue.

16 Q So if you walk through that, you're going to get some

17 of it on your clothes, on your hands, correct?

18 A It's possible.

19 Q So do you know who secured this vehicle and how they

20 moved it? That is, did somebody that had walked

21 through the house that may have had gunshot residue

22 swirling around them get in this car and move it? Or

23 do you know?

24 A I do not know that.

25 Q Do you know how it got to the hermetically sealed,

1 environmentally controlled space that you placed it?
2 Do you know how it got there?

3 A I do not know, sir. I was asked or requested to
4 process the vehicle per the search warrant and that's
5 what I did.

6 Q Now, look at your report. Let me find my glasses.
7 You processed this steering wheel, correct?

8 A Yes, sir.

9 Q The left inside front driver's side door handle?

10 A Yes, sir.

11 Q Now, why did you pick those two places?

12 A Because it's possible that trace can come from a
13 person's hand onto a steering wheel, onto a door
14 handle. It's possible. So I do process those.

15 Q You're looking for areas that are more probable to
16 have gunshot residue. You didn't process the whole
17 side of the car?

18 A No, sir.

19 Q You picked the areas that you thought were consistent
20 with gunshot residue being found if somebody had
21 fired a gun from inside the car?

22 A That's correct.

23 Q And your information was they were sitting in the
24 driver's seat and fired out the passenger window?

25 A That's correct.

1 Q So you expected to find, if you're going to find it,
2 gunshot residue on the steering wheel because he'd
3 have it on his hand after he fired?

4 A That was possible to find it there. You're not
5 always, because gunshot residue is very fragile trace
6 evidence.

7 Q Right.

8 A And it can be rubbed off, brushed off, washed off.

9 Q Rubbed on? Left on?

10 A It can be left on.

11 Q And then on the handle, of course if he fired gun and
12 he used his hand to get out of the car, you might
13 find it on the door handle?

14 A You might.

15 Q Then you processed the left -- I'm sorry -- right
16 side front passenger window area. And I am looking
17 at State's Exhibit No. 25. And by that you mean this
18 area right here?

19 A All the way around, sir.

20 Q All the way around?

21 A Yes, sir.

22 Q Okay. And do you use different stickies for
23 different parts and mark them, or did you just do
24 one?

25 A I used the same sticky all the way around for that

1 area.

2 Q So if they do find gunshot residue there, we don't

3 know whether it came off the bottom or the top?

4 A No.

5 Q I mean you agree with me?

6 A I do.

7 Q And then you process the right side of front

8 passenger seat, back of seat is what it says?

9 A Yes, sir.

10 Q So you processed the back of the seat right here?

11 A That's correct, yes.

12 Q Now, did you process the bottom part of that seat?

13 A I processed the back of the seat only.

14 Q Now, did you process the area around, as we see here,

15 the glove compartment in front of the passenger's

16 seat?

17 A No, sir. That's the only area that I processed.

18 Q Did you process the floor area, carpet on the floor?

19 A No, sir.

20 Q Now, did you inspect for -- do you know what

21 stippling is?

22 A Yes, sir.

23 Q Did you inspect for that?

24 A I did not find any.

25 Q Did you look for it?

1 A Yes, sir.

2 Q Okay. And so there are no close up shots. In other

3 words, everything that you picked up would be

4 invisible to the naked eye?

5 A Yes, sir.

6 Q Would the fact that these shotgun shells were in the

7 vehicle in any way contribute to gunshot residue?

8 A They themselves, no. No, sir.

9 Q I mean, if they had been handled in the car?

10 A No, sir.

11 Q Those burgundy sweaters, when were you asked to

12 process those?

13 A February the 25th of '06, sir.

14 Q Okay. Beg the Court's indulgence one moment, please.

15 Now, you have also testified that you collected some

16 Glocks from your own deputies. Is that correct?

17 A That's correct.

18 Q You might want to look at that report because I'm

19 going to ask you some questions about it. You

20 collected those at 07:30 on the 29th. That would be

21 7:30 a.m.?

22 A Yes, sir.

23 Q And it says here David Linfert, Glock 23, one round

24 from chamber magazine with 11 rounds. What does that

25 mean?

1 A I took one round out of the chamber. There was 11
2 rounds in the magazine.
3 Q Okay. John Baker, you took his Glock. One round
4 from chamber, magazine with eight rounds?
5 A Correct.
6 Q Brien Gwyn, Glock. These are all Glock .22's?
7 A Yes, sir.
8 Q One round from chamber magazine with ten rounds?
9 A Yes, sir.
10 Q And Thomas Hodges, Glock .22, one round from chamber,
11 magazine with 12 rounds. Is that right?
12 A Yes, sir.
13 Q Now, how many rounds does a Glock hold? If you have
14 one in the chamber, how many does the magazine hold?
15 A It depends on the type of Glock, whether it's a .23
16 or a .22.
17 Q These are all -- okay. A .23, how many does it hold?
18 A I'm not sure, sir. I'd have to go back and find out
19 myself.
20 Q What about a .22? Do you know?
21 A No.
22 Q And what did you do with those guns?
23 A I in turn signed them over to SLED in the chain of
24 custody forms.
25 Q Now, let me ask you this. I'm looking at two forms

1 here, one which is a typewritten form and the other
2 one is called bench notes. Is that right?

3 A Yes, sir.

4 Q Now, the bench notes, do you take those? You write
5 those contemporaneously with what you're doing?

6 A I do.

7 Q And then you at a later time convert those into this
8 typewritten form?

9 A Yes, sir. I use this to jog my memory on some of the
10 things that I do. It's not in detail.

11 Q It's not in detail, but it helps you jog your memory
12 to prepare the written report?

13 A Yes.

14 Q Which becomes a formal report?

15 A Yes, sir.

16 Q And you don't destroy these bench notes after you're
17 down with them?

18 A No, sir.

19 Q You save them. Why?

20 A It's a part of the report, sir.

21 Q In other words, what you write down early on, your
22 notes as it's going on are important to help jog your
23 memory and prepare your report?

24 A Yes, sir.

25 Q Have you ever destroyed your bench notes?

- 1 A Have I ever?
- 2 Q I mean, after just -- I mean, within -- after you
- 3 prepare your original report, do you ever just shred
- 4 these or destroy them or throw them away?
- 5 A No, sir. We are required to have them along with the
- 6 typewritten report.
- 7 Q Just the forensics unit?
- 8 A I couldn't tell you, sir. That's the way it pertains
- 9 to us, forensics.
- 10 Q Do you also -- now, you do fingerprints, gunshots.
- 11 Do you do any other kind of forensic analysis? You
- 12 collect blood?
- 13 A Yes, sir. I collect blood. I do blood pattern
- 14 analysis. I do shoe and tire impression collection
- 15 and analysis.
- 16 Q Do you ever have to, or do you ever accompany a
- 17 defendant to the hospital to have blood drawn to
- 18 compare to blood found other places?
- 19 A Have I ever done that?
- 20 Q Yes.
- 21 A No. I don't believe I ever had.
- 22 Q Have you ever asked for it to be done?
- 23 A I don't believe I have.
- 24 Q Do you know that it's done?
- 25 A Yes, sir.

1 Q How do you know that?

2 A I've heard people say it's been done.

3 Q Okay. Now, do you ever do -- have you ever done
4 trajectory analysis or crime scene processing when
5 you look to try to determine the path of a bullet?

6 A Yes, sir.

7 Q How do you do that?

8 A Well, usually you use a dowel and you can use a
9 string or a laser in order to shoot the trajectory
10 from the dowel itself.

11 Q Okay. And you have done that?

12 A I have.

13 Q Have you used a laser?

14 A I have.

15 Q Do you have a laser at the Richland County Sheriff's
16 Department?

17 A Yes, sir.

18 Q And you have string?

19 A Yes, sir.

20 Q And you have dowels?

21 A Yes, sir.

22 Q Did you participate in the processing of the
23 Chastity's scene at all that night?

24 A I did not.

25 Q When you were told to process this car, did anyone

1 indicate to you how the defendant was allegedly
2 holding the weapon to sort of give you an idea of
3 where to process?

4 A No, sir.

5 Q You just knew a weapon had gone off in the car?

6 A Yes, sir.

7 Q Is that a photograph you took of the inside of the
8 car?

9 A If you'll give me a minute I can see.

10 Q We'll stipulate.

11 MR. MEADORS: Your Honor, it may already be into
12 evidence.

13 MR. HARPOOTLIAN: I did not see it.

14 MR. MEADORS: We have no objection to it coming
15 in. I don't know if it's in yet or not.

16 MR. HARPOOTLIAN: Let me be sure. I don't want
17 to repeat anything if it's been done.

18 A Do you want me to go through my series of photos?

19 MR. MEADORS: No. I think the solicitor will
20 stipulate this is a photograph that was taken. I
21 don't know if it was taken by him, but we have no
22 objection to that.

23 MR. HARPOOTLIAN: It's a photograph taken.

24 MR. MEADORS: It either was taken by Livingston
25 earlier. But I have no objection.

1 **MR. HARPOOTLIAN:** That's fine. I offer it into
2 evidence, Your Honor.

3 **THE COURT:** Without objection.

4 (WHEREUPON, Defendant's Exhibit No. 31 is marked
5 for identification and received in evidence.)

6 **Q** And, Officer, this appears to be the front passenger
7 seat looking at the floor and the glove compartment
8 and the passenger door. Is that right?

9 **A** Yes, sir.

10 **Q** Thank you. I believe I am done, Your Honor, but let
11 me check with my associate. I have no further
12 questions.

13 **MR. MEADORS:** I just have one.

14 REDIRECT EXAMINATION

15 **BY MR. MEADORS**

16 **Q** Mr. Harpootlian was asking you about the window. I
17 think it was State's 25. The window in the passenger
18 side door, was it broken?

19 **A** No, sir.

20 **MR. HARPOOTLIAN:** Is that it?

21 **MR. MEADORS:** I'm not sure. That's all.

22 **THE COURT:** Anything further?

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

24 **THE COURT:** You may come down, sir. Thank you
25 very much.

1 **MR. HARPOOTLIAN:** No objection to excusing him.

2 **THE COURT:** Excuse the witness. All right,
3 ladies and gentlemen of the jury. I know we haven't
4 been back in here long after our break, but I'm not
5 going to make you wait until 2:00 today to have a
6 lunch break. So we're going to take our lunch break
7 now, ask you to be back in the jury room at 1:30.
8 That's a little over an hour. Don't discuss the case
9 among yourselves when you return to the jury room or
10 with anyone else over the lunch break. I hope you
11 have a pleasant lunch. We'll see you at 1:30. Thank
12 you.

13 (Jury out at 12:20 p.m.)

14 **THE COURT:** We'll stand at ease until 1:30.

15 (Whereupon, a lunch break is taken)

16 **THE COURT:** The State ready to proceed?

17 **MR. MEADORS:** I think so. Can we approach?

18 **THE COURT:** Sure.

19 (Whereupon, a bench conference is had)

20 **THE COURT:** All right. Are you ready for the
21 jury?

22 **MR. MEADORS:** The State's ready.

23 **THE COURT:** Bring the jury, please.

24 (Jury in at 1:47 p.m.)

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

1 **THE COURT:** Thank you. All right, ladies and
2 gentlemen. We are now ready to continue with the
3 trial. Solicitor, call your next witness.

4 **MR. MEADORS:** Thank you, Your Honor. May it
5 please the Court. The State would call Investigator
6 Jay Russell.

7 **JERRY A. RUSSELL,** after being duly sworn,
8 testifies as follows:

9 **THE CLERK:** Please have a seat there, sir.
10 State your full name for the record.

11 **WITNESS:** My name is Jerry Alec Russell.

12 **DIRECT EXAMINATION**

13 **BY MR. MEADORS**

14 **Q** You go by Jay?

15 **A** Yes, sir.

16 **Q** Investigator, where were you born and raised?

17 **A** Clarendon County, South Carolina.

18 **Q** Raised there?

19 **A** Yeah. For the most part.

20 **Q** Where did you go to high school?

21 **A** Over in Florence, South Carolina.

22 **Q** What high school?

23 **A** West Florence.

24 **Q** What did you do after that?

25 **A** Did civil engineering work for a couple of years,

1 went to school for that, ended up getting into law
2 enforcement and eventually moving into forensics,
3 working crime scenes.

4 Q And specifically, what training did you receive in
5 law enforcement?

6 A Crime scene investigation, which we encounter a lot
7 of different areas and different aspects.
8 Fingerprints, working crime scenes, processing them,
9 also attending autopsies, take photographs, checking
10 evidence at crime scenes or an autopsy that have been
11 discovered during an autopsy, about everything
12 encompassed in a crime scene.

13 Q And you don't have to speak directly into it but just
14 verbally speak in there. And you started off your
15 career in law enforcement in what year?

16 A In 1996.

17 Q And did you go to the Criminal Justice Academy?

18 A Yes, sir, I did.

19 Q Where were you in '96?

20 A In 1996 I started with the Forest Acres Police
21 Department as a road officer. I worked traffic over
22 in that jurisdiction.

23 Q Did you go somewhere else after Forest Acres?

24 A I stayed there until 1999 where I went to Richland
25 County Sheriff's Department, worked there for several

1 months, almost a year on the road as a road officer.
2 And then I transferred and was promoted up into the
3 crime scene unit there at the Richland County
4 Sheriff's Department.

5 Q How long were you in the crime scene unit at the
6 Richland County Sheriff's Department?

7 A Until April of last year where I had an opportunity
8 to come back to Forest Acres and handle their crime
9 scene and other criminal investigation there at that
10 department.

11 Q So you're currently an investigator with the Forest
12 Acres Police Department in the crime scene unit
13 division?

14 A That's correct.

15 Q Now, back in January of 2006, specifically January
16 29th, 2006, you were employed with the Sheriff's
17 Department?

18 A Yes, sir.

19 Q And as far as your involvement in this case,
20 Investigator, did you have an occasion to go to the
21 autopsy?

22 A Yes, sir, I did.

23 Q I think you testified earlier that's part and parcel
24 of what you did at that time?

25 A That's correct.

- 1 Q Correct?
- 2 A Yes, sir.
- 3 Q And you take photographs?
- 4 A Yes, sir.
- 5 Q Would you actually observe the autopsy?
- 6 A Yes, sir, I would.
- 7 Q And the doctor who performed the autopsy in this
- 8 case, Dr. Stan Kessler?
- 9 A That's correct.
- 10 Q Now, if any items of potential evidentiary evidence
- 11 are gathered from a deceased, how would they get from
- 12 the pathologist to SLED where they could undergo an
- 13 examination for any potential evidentiary value? How
- 14 would they get from the pathologist to SLED?
- 15 A Actually, whatever items of evidence they collect
- 16 that is essential to law enforcement other than I say
- 17 they would actually chain it over on a chain of
- 18 custody from the pathologist, chain it over to me and
- 19 then I in turn take it out and submit it to State Law
- 20 Enforcement Division for analysis.
- 21 Q And do you remember going to this autopsy?
- 22 A Yes, sir.
- 23 Q Where was it performed?
- 24 A At Palmetto Richland Hospital in their morgue.
- 25 Q Where is the morgue?

- 1 A It's down in the basement there of the hospital.
- 2 Q In addition to any physical evidence there may or may
- 3 not be, are there any other fluids that were taken
- 4 from the deceased body that you would transport to
- 5 SLED also?
- 6 A No, sir. That's done by the Coroner's Office.
- 7 Q In this case I want you to look at what's marked
- 8 State's --
- 9 A 90.
- 10 Q -- 90 for I.D. only at this point, Your Honor. Do
- 11 you recognize it and does it relate to your
- 12 testimony?
- 13 A Yes, sir, it does.
- 14 Q What is that?
- 15 A This is the actual vial of the bullet fragments that
- 16 were located and removed from the body of the victim.
- 17 Q John Johnson?
- 18 A John Johnson. Yes, sir.
- 19 Q How did they come into your possession?
- 20 A They were chained over on this chain of custody which
- 21 I have a copy of here from a Dr. Kessler to me. And
- 22 then I transported them to SLED.
- 23 Q John Johnson's body, Dr. Kessler to you?
- 24 A That's correct.
- 25 Q And then you take it to SLED?

1 A Yes, sir.

2 Q And is that all documented right there?

3 A Yes, sir.

4 Q And were other fluids gathered that were also sent to
5 SLED? You're saying they were sent to SLED. Is that
6 correct?

7 A Yes, sir.

8 Q Is that standard in an autopsy to take samples of
9 fluids from the deceased and send them to SLED?

10 A Yes, sir.

11 Q And that was done in this case?

12 A Yes, sir.

13 MR. MEADORS: Judge, that's all. Thank you.

14 MR. HARPOOTLIAN: Nothing.

15 THE COURT: All right. You may come down, sir.
16 Thank you very much. May this witness be excused?

17 MR. HARPOOTLIAN: (Nods head affirmatively).

18 THE COURT: Without objection.

19 MR. MEADORS: Special Agent Eddie Porter.

20 COURT REPORTER: I'm sorry. Last name, please?

21 MR. MEADORS: Porter, P-O-R-T-E-R.

22 MR. HARPOOTLIAN: No objection to him being
23 excused.

24 MR. MEADORS: Thank you.

25 EDWARD PORTER, after being duly sworn, testifies

1 as follows:

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

3 State your full name for the record.

4 **WITNESS:** Edward Porter, P-O-R-T-E-R.

5 DIRECT EXAMINATION

6 **BY MR. MEADORS**

7 **Q** Good afternoon.

8 **A** Good afternoon.

9 **Q** Tell these folks -- I've done this with everybody --
10 where you are born and where you were raised?

11 **A** I was born in Savannah, Georgia. I've lived in
12 Lexington County, South Carolina approximately 35
13 years.

14 **Q** Where did you go to high school?

15 **A** Brooklyn Cayce just across the river. I graduated
16 also from the University of South Carolina and
17 Spartanburg Methodist College in criminal justice.

18 **Q** Spartanburg Methodist College?

19 **A** Yes, sir.

20 **Q** Criminal justice? Did you just go home and change
21 from work?

22 **A** Yes, I did.

23 **Q** After graduating from Spartanburg, what did you do?

24 **A** After graduating from Spartanburg Methodist with an
25 Associate's in criminal justice, I then transferred

1 to the University of South Carolina, received my
2 Bachelor of Science degree also in criminal justice
3 and worked with the South Carolina Department of
4 Corrections for approximately one year as a liaison
5 Ombudsman's office. And after that I worked at the
6 Lexington County Sheriff's Office for seven and a
7 half years on their road patrol, also their crime
8 scene investigation unit. Prior to leaving in 2000,
9 January of 2000 and being employed by the South
10 Carolina Law Enforcement Division, commonly referred
11 to as SLED.

12 Q So you started at SLED in what year?

13 A 2000.

14 Q What have you done, different positions, if any, have
15 you held at SLED?

16 A I've been in the same position for the last seven and
17 a half years in the latent print crime scene
18 department.

19 Q And do you all have the occasion to respond to
20 different potential scenes around the state, or are
21 you assigned to a certain region?

22 A Part of our job description is we will respond to all
23 46 counties within the state of South Carolina and
24 process scenes for physical evidence.
25

1 (WHEREUPON, State's Exhibit No. 98 is marked for
2 identification.)

3 Q Now, I want to ask you specifically in this case, did
4 you have an occasion to come in contact with the
5 defendant, Dewain Herring, in this case?

6 A Yes, I did.

7 Q Specifically, did you have the occasion to go to the
8 Richland Memorial Hospital at approximately
9 7:30 a.m.?

10 A Yes, sir.

11 Q Was that January 29th of '06?

12 A Yes, sir.

13 Q And for what purpose were you going there, Special
14 Agent Eddie Porter?

15 A At this particular time I was responding to the
16 Richland Memorial Hospital to do what we call a
17 gunshot residue kit on the defendant, Mr. Herring.

18 Q If you would look at what's State's 98 at this point,
19 open that up and tell me if you recognize that. And
20 if you do, does it relate to what you just told the
21 ladies and gentlemen about?

22 A State's Exhibit 98 is a gunshot residue evidence
23 collection kit with the subject's name, Dewain
24 Herring, officer's name that collected it being
25 myself, Eddie Porter, the badge number is 590, agency

1 number, our agency name is SLED. And then on the
2 back it was sealed with red evidence tape and also
3 with my initials going across the back of it
4 indicating that I'm the one that actually sealed it.

5 Q How many times have you gotten samples off anyone?
6 Gunshot residue?

7 A I would not know. I do not do the actual analysis.

8 Q How many times have you examined somebody and
9 conducted this test on them?

10 A Over about nine and a half years of crime scene, I've
11 probable done probably anywhere between 400 of them
12 to 500.

13 Q And specifically, you were at the hospital?

14 A Yes, sir.

15 Q All right. Tell the jury what you did when you came
16 in contact with the defendant?

17 A On this particular date Mr. Herring was actually
18 leaving the ER, the emergency room underneath the
19 breezeway at the hospital, and I approached the two
20 deputies that was escorting him out to one of the
21 patrol cars and advised them who I was, what I was
22 there for, what I needed. At that time I performed
23 the kit on Mr. Herring.

24 Q And can you using my hand show me what you did?

25 A There is two different types. The first type is

1 basically, it's sticky tabs and they're round little
2 cylinders. And if I can use your hand, you take one
3 of the cylinder tabs and you dab it. It's got like a
4 little sticky tape on the bottom of it. You sit
5 there and dab the entire palm of the hand with one
6 particular swab, one tab. Then you flip the hand
7 over and then you do the back side of the hand as
8 well so you're doing two different tabs on each hand.

9 And then once that's completed you do the right
10 hand. Then you also do the left hand the same way.
11 And then once that's completed you do a swab and you
12 have -- it's kind of like a water type solution. You
13 dab it on the Q-tip. You swab the palm of the right
14 hand, the palm of the left hand and also the back of
15 the hands.

16 And then once you do that, you also do what we
17 call a controlled swab, which you do a swab at a
18 general location that there is gun primer or any kind
19 of residue floating in the air that would not be
20 accessible to that area such as a leg under clothing
21 or something. And I performed that test on Mr.
22 Herring and then sealed it up and went from there.

23 Q So when you're taking a swab from this hand, --

24 A The tab.

25 Q -- a tab from the hand, would you package that

1 together with that or separately with any other tabs?

2 A Each tab is individually labeled and then it's
3 contained in a little plastic container.

4 Q And --

5 A If you'd like for me to open up the kit?

6 Q That's fine if you'd like to. And you testified a
7 control, too. That is separately packaged also,
8 correct?

9 A Yes, sir. These are the sticky tabs. On the bottom
10 part, brown part of it, if you look inside of it,
11 there's a sticky part. You pull this brown part out
12 of the case. You dab it on the hand. Then you
13 completely seal it back up. And it is contained
14 within there protecting the swab itself. And the
15 swabs are done the same way. They're housed in
16 actual plastic cylinders or plastic tubes.

17 Q Both sides and control?

18 A Yes, sir.

19 Q Packaged. What do you do with it, if anything?

20 A Once we are back at the SLED laboratory we transfer
21 it to our trace division at SLED where they actually
22 analyze it for gunshot residue.

23 Q And you stated earlier you don't do that?

24 A No, I do not.

25 Q You are collecting?

1 A Yes, sir.

2 Q In this case you collected, correct?

3 A Yes, sir.

4 Q Approximately what time did you do this?

5 A At 07:30 in the morning.

6 Q On January 29th of 2006?

7 A Yes, sir. And also, if I may interject also, within
8 the kit we also fill out a form that is placed inside
9 the kit which also has time, dates, and everything
10 indicating when we do it and also the defendant's
11 occupation, hobbies if they're known, if they cleaned
12 their hands or if they've washed their hands. And if
13 we know at the time what type of firearm was used or
14 caliber, we would indicate that on the report also.

15 Q Had you had any indication the defendant had washed
16 his hands?

17 A Yes. I --

18 MR. HARPOOTLIAN: Object, Your Honor. Hearsay,
19 unless somebody told him.

20 THE COURT: Well, I don't know how he knew if he
21 knows.

22 Q How did you know?

23 A I asked the defendant directly.

24 MR. HARPOOTLIAN: Well, Your Honor, that would
25 be hearsay.

1 **MR. MEADORS:** Your Honor.

2 **THE COURT:** Not from the defendant.

3 **MR. MEADORS:** Not from the defendant.

4 **MR. HARPOOTLIAN:** May we approach?

5 (Whereupon, a bench conference is had)

6 **Q** Do you have the form you used with you?

7 **A** I brought in a photocopy. Detective Powell has the
8 actual original.

9 **Q** Without stating the answer, does the form say the
10 subject's full name?

11 **A** It states a first name and --

12 **Q** Without saying -- yes, sir.

13 **A** First name and last name.

14 **Q** And whether subject is living or not?

15 **A** Yes, it does.

16 **Q** Whether the subject is right handed or left handed?

17 **A** Yes, sir.

18 **Q** What's checked here?

19 **A** Subject is living. Subject is right handed.

20 **Q** Do you check to see if there's any other debris or
21 anything else on the hands?

22 **A** As far as debris, I'm looking for normally some type
23 of blood or any other type of, you know, oils or
24 anything else on the hands. Yes, sir.

25 **Q** And you're actually looking for that?

1 A Yes, sir.

2 Q Did you see any?

3 A No, I did not.

4 Q And then the question without giving the answer: Has

5 subject washed his hands since the shooting, correct?

6 A It's stated on there. Yes, sir.

7 Q Subject's occupation?

8 A Yes, sir.

9 Q And by the time you got there at 7:30, were you aware

10 of if anybody that had seen him, medical personnel or

11 anybody that he may have received some medical

12 attention? Do you know?

13 A He was bandaged up walking out of the ER. Yes, sir.

14 Q And based on common sense, would he have had to come

15 into contact with somebody putting the bandage on

16 him?

17 A He was walking out the door with a bandage on. Yes.

18 Q On here, type of firearm used, did you know?

19 A No, I did not.

20 Q Did you have trouble communicating? I'm not asking

21 you what he said. Did you have trouble communicating

22 with the defendant, as far as did you request, do

23 your hands over like this?

24 A Yes, sir, I did.

25 Q Did you have trouble communicating that with him and

1 did he have trouble based on your experience and
2 being there that day following your directions?

3 A He followed them perfectly. Yes, sir.

4 Q And is that person in the courtroom?

5 A Yes, sir, he is.

6 Q You would you point him out?

7 A He's sitting at the defense table right here wearing
8 a yellow tie and blue jacket.

9 MR. MEADORS: We'd ask the record to reflect
10 he's identified the defendant.

11 THE COURT: Let the record reflect he's
12 identified the defendant.

13 MR. MEADORS: Thank you, Judge.

14 MR. HARPOOTLIAN: May it please the Court, Your
15 Honor?

16 THE COURT: Yes, sir.

17 CROSS EXAMINATION

18 BY MR. HARPOOTLIAN

19 Q Just a few questions, Agent. He had a bandage on his
20 arm?

21 A Based on my recollection; yes, sir.

22 Q I'm sorry?

23 A Based on my recollection; yes, sir.

24 Q And was there blood on that bandage? Do you
25 remember?

1 A No. I do not recall.

2 Q Now, you do GSR. Do you ever do any collection of
3 blood? Do you ever do that, go to the hospital and
4 have them draw blood on cases?

5 A No, sir, I do not.

6 Q Have you ever had that done?

7 A No, sir.

8 Q Do you remember any discussion -- he's at the
9 hospital with two deputies. Do you remember any
10 discussions with personnel there or with the deputies
11 about getting a blood sample from him?

12 A The only contact I had with him was when he was
13 getting into the back of a patrol car.

14 Q You don't remember anybody saying anything about
15 that?

16 A No.

17 Q But he was at the hospital, right?

18 A Yes, sir.

19 Q He was in the custody of the Richland County
20 Sheriff's Department?

21 A That's correct.

22 Q And when you asked for something you got it?

23 A Yes, sir.

24 Q Thank you.

25 THE COURT: Anything further?

1 **MR. MEADORS:** Your Honor, for the record, I
2 think without objection the kit.

3 **MR. HARPOOTLIAN:** Well, there's got to be --

4 **MR. MEADORS:** Yeah. For ID. Just for the
5 record. That's all. Thank you.

6 **THE COURT:** You may come down, sir. Thank you
7 very much. Witness be excused? Without objection.

8 **MR. HARPOOTLIAN:** No objection.

9 **THE COURT:** Call your next witness.

10 **MR. MEADORS:** The State calls Joe Powell.

11 JOSEPH D. POWELL, after being duly sworn,
12 testifies as follows:

13 **WITNESS:** My name is Joseph D. Powell,
14 P-O-W-E-L-L.

15 DIRECT EXAMINATION

16 **BY MR. GIESE**

17 **Q** You are Special Agent?

18 **A** Lieutenant, sir.

19 **Q** Lieutenant. Lieutenant Powell, where are you
20 employed?

21 **A** I'm currently employed at the South Carolina Law
22 Enforcement Division as both a supervisor in the
23 trace evidence department as well as a forensic
24 chemist.

25 **Q** Now, you say trace element division?

1 **A** Trace evidence, sir.

2 **Q** Trace evidence. Tell the jury what that is?

3 **A** Trace evidence is a discipline within SLED where we

4 deal with analysis of various types of materials such

5 as explosives, fibers, paints, gunshot residue. This

6 is a residue that comes out of a weapon like a smoke.

7 Bullet hole analysis. This would be how far away

8 somebody was. Accelerant which would be somebody

9 burns something down by using Kerosene or gasoline

10 and other types of building materials such as

11 matching up of wood products or maybe cinder block,

12 things such as that.

13 **Q** You say you're a supervisor of that division or a

14 supervisor in that division?

15 **A** That is correct.

16 **Q** How long have you been a supervisor there?

17 **A** I've been a supervisor there approximately 13 years.

18 **Q** Please tell the jury what your training and

19 background is in the area of trace evidence?

20 **A** I originally received my Bachelor of Science degree

21 in chemistry from the University --

22 **MR. HARPOOTLIAN:** Your Honor, in order to save

23 time, we would stipulate he's an expert in the area

24 of trace evidence, just to move things alone.

25 **THE COURT:** However you wish to proceed,

1 Solicitor.

2 Q Just very briefly tell them quickly your background
3 in that area?

4 A I have a chemistry degree. Within that I have taken
5 training in various aspects of trace evidence where
6 I've attended schools around the country. I have
7 testified approximately 600 times in various courts
8 in both drug analysis as well as trace evidence.

9 Q 600 times as an expert?

10 A Yes, sir.

11 Q Now, specifically I want to draw your attention to
12 the case that we're here on. And I believe in this
13 case you did some work on some trace evidence. Is
14 that right?

15 A That is correct.

16 Q And what specific evidence did you look at?

17 A I looked at several different types of evidence. I
18 had a gunshot residue kit that was sent to me for
19 analysis. A gunshot residue kit is a kit that is
20 used to capture any debris or material that may be on
21 someone's hands. When you discharge a weapon or are
22 around a weapon, your hands become contaminated with
23 the smoke from that weapon.

24 This kit is designed to capture that material
25 using two mechanisms, one of which is a particle lift

1 which is a flattened piece of aluminum with sticky
2 adhesive on it. It's used to pick up any particles
3 that might be on the surface of your skin. It is
4 then followed up with a cotton swab which is wetted
5 with a weak acid solution to mop up any debris that
6 may have been left. These two are collected on four
7 areas: The right palm, right back, left palm and
8 left back. This kit was collected and sent to me for
9 analysis.

10 Q Now, you said that you did some work on gunpowder
11 residue and you've just explained something about
12 gunpowder getting on someone's hands. When a weapon
13 or revolver is fired, any weapon is fired, tell the
14 jury what happens?

15 A When a weapon is discharged, when the hammer comes
16 down and strikes the back of the cartridge case, it
17 strikes an area of the cartridge case; that is, if
18 you will, assistive to that impact, a small explosion
19 will occur. The material that explodes is called gun
20 primer residue or gun primer. It is chemicals which
21 are shock sensitive.

22 That material once it ignites will when ignite
23 the gun powder that is found within the cartridge
24 case itself. These two materials as they begin to
25 burn and build up pressure will force the bullet to

1 break away or separate from the cartridge case and
2 travel towards the target. The material as it's
3 coming out will come out in the form of both
4 gunpowder particles as well as gunshot residue
5 particles. And gunshot residue are small particles
6 of both the gun primer as well as bits and pieces of
7 the bullet and maybe some of the barrel, and all of
8 this material will come out of the weapon
9 simultaneously. It will then come out as a cloud and
10 will go approximately three to five feet, depending
11 upon the size weapon, and then it will stop and will
12 fall to the ground.

13 Q And that is what you tested?

14 A That is correct.

15 Q So not only do you test for any gunpowder residue
16 that could be found on someone's hands or body, you
17 can test clothing?

18 A Yes, sir. Now, when you say gunpowder, that's a
19 different component than gunshot. Gunshot is on the
20 hands. Gunpowder would be what we look for on the
21 clothing.

22 Q You look for gunshot residue on the hand?

23 A Yes, sir.

24 Q Gunpowder residue anywhere else?

25 A That is correct.

1 Q Now, you say you tested for gunshot residue. And I
2 think you testified earlier that you did one of those
3 tests, correct?

4 A Yes. There was actually several of these that were
5 performed, one on an automobile as well as one on the
6 victim.

7 Q Okay. And you also had an opportunity to test for
8 other things. Is that right?

9 A That is true. There was also Brooks Brothers
10 sweaters that we also ran to see if we could find any
11 gunshot residue on it also.

12 Q And how many sweaters were there?

13 A There were two sweaters that were submitted to me.

14 Q I hand you this and ask you if you can identify it?

15 MR. HARPOOTLIAN: Solicitor, have I seen that?

16 A Yes, sir. This is the box where the evidence that I
17 removed, which is the two sweaters, I placed them
18 into this box, sealed it and placed my initials on
19 top of it.

20 Q And you brought those to court today?

21 A That is correct.

22 MR. GIESE: I'd like to offer them at this time,
23 Your Honor, I believe without objection.

24 MR. HARPOOTLIAN: I think so. And I saw it at
25 some point.

1 **MR. GIESE:** Do you want to look at it?

2 **MR. HARPOOTLIAN:** Can you just open it? No
3 objection except just the previously made
4 objections, --

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

6 **MR. HARPOOTLIAN:** -- your Honor.

7 **THE COURT:** Yes, sir. Subject to the
8 defendant's prior objection, it's admitted.

9 (WHEREUPON, State's Exhibit No. 99 is marked for
10 identification and received in evidence.)

11 **Q** I hand you also what's been marked State's Exhibits
12 89, 88 and 98 and ask you if you can identify those?

13 **A** State's Exhibit 98 is going to be a gunshot residue
14 kit bearing the name of Dewain Herring. This was a
15 kit that I received in our laboratory and ran
16 analysis on the contents.

17 **MR. GIESE:** All right. I'd like to offer that
18 at this time.

19 **MR. HARPOOTLIAN:** No objection.

20 **THE COURT:** Without objection.

21 (WHEREUPON, State's Exhibit No. 98 is admitted
22 into evidence.)

23 **A** State's Exhibit 88 contains a package which within is
24 a particle list which was collected from an
25 automobile. This is found within the kit also that I

1 received in the laboratory and ran analysis on.

2 MR. GIESE: Let me see that. Your Honor, at
3 this time we'd like to offer State's Exhibit No. 88.

4 MR. HARPOOTLIAN: Except just to previously made
5 objections, Your Honor, we don't have an objection.

6 THE COURT: Subject to previous objection.

7 (WHEREUPON, State's Exhibit No. 88 is admitted
8 into evidence.)

9 A State's Exhibit 89 is also another kit that was
10 collected on Dewain Herring. This kit, because of
11 the time and what was going on, I did not run the
12 analysis on this kit, as it was collected after the
13 first kit. So we did not do analysis on the second
14 kit.

15 MR. GIESE: Thank you. I offer that at this
16 time.

17 (WHEREUPON, State's Exhibit No. 89 is admitted
18 into evidence.)

19 Q You need to if you could read the item submitted.
20 Does that say sweaters?

21 A Yes, sir. That says GSR kit. It says in parentheses
22 (sweaters subject).

23 Q So that's the sweaters that we have down here?

24 A Now, the samples I took from the sweater was found in
25 those little small, dark containers that was found

1 inside the box.

2 Q So this is another sweater?

3 A This is a different one. Yes, sir.

4 Q My mistake. Now, Lieutenant, you say you run tests.
5 Someone else actually takes these, correct?

6 A In most cases that is true. I at times do go to the
7 scene and collect them. But we try to train officers
8 throughout the state on how to take this kit, and
9 they collect these at the scene and they're submitted
10 to our laboratory for analysis.

11 Q So it's collected somewhere in the state, sent to
12 you, and then you would make some type of analysis on
13 it. Is that right?

14 A That is correct.

15 Q Now, specifically I hand you State's Exhibit -- we
16 just went over it -- specifically 98, the one that
17 you testified was from Dewain Herring?

18 A Yes, sir.

19 Q Tell the jury what you did with that?

20 A Once the kit was brought into our laboratory, the
21 first thing that was performed was an inspection to
22 be sure that it was sealed. If it's not sealed
23 properly we will not proceed any further. In this
24 case it was sealed properly. The evidence had been
25 properly effaced with evidence tape. We then remove

1 the contents and we then run analysis on the
2 contents. Based upon our analysis we will then draw
3 a conclusion as to whether someone has gunshot
4 residue on their hands or do not have gunshot residue
5 on their hands.

6 Q You say you run tests on it. What kind of tests are
7 you talking about?

8 A Well, there's two types of tests that can be run on
9 these samples. The first one is actually a chemical
10 test where we run it through an instrument to look at
11 various types of elements that are found from a
12 weapon. There are three primary metals. One is
13 antemone, one is barium, and one is lead.

14 We look at the combination of these materials to
15 see if they have enough elevation or enough of the
16 material there to make a determination someone has
17 been around a weapon. If they do, we would then take
18 it in some cases to a second test which is a very,
19 very powerful microscope. It allows us to actually
20 look at the particles of smoke. And we go and we
21 look and see if we can find these particles. If we
22 find these particles, then we then have gunshot
23 residue.

24 Q Now, did you actually perform the tests on State's
25 Exhibit No. 98?

1 A Yes, sir, I did.

2 Q And tell the jury what you found, if anything?

3 A One moment. On the kit, GSR kit labeled Dewain
4 Herring, the quantities of metals detected did not
5 indicate the presence of gunshot residue. That means
6 the first test that was administered which was going
7 to be looking for the three metals, we did not find
8 any amounts of materials to indicate he had fired a
9 weapon or been around a weapon.

10 Now, there was one condition that I placed on
11 this report. I indicated that we are talking about a
12 six-hour window with someone. You cannot get this
13 material on you. Or excuse me. After you have
14 discharged a weapon, this material will stay on you
15 up to six hours, and that's the maximum amount of
16 time.

17 Because there were several events that had
18 happened in his -- in the last 12 to 24 hours, I made
19 it very clear that this had nothing to do with the
20 shooting at the club. It had to do with the later on
21 event. You could not associate this with a shooting
22 at the club.

23 Q And that is because of the time lapse?

24 A That is correct. It was beyond the six-hour window.
25 So we could not draw any conclusions either way. If

1 he had been positive, we could not have drawn a
2 conclusion that he had fired a weapon at the club
3 because the time had -- too much time had passed. It
4 would not have been from that event.

5 Q So even if it was positive you couldn't say that it
6 came from the shooting at the club because of the
7 time period?

8 A That is correct.

9 Q And tell the jury what effect time has on a situation
10 like this?

11 A When this material comes out of the weapon, it's much
12 like flour. It's very fine. It's easily removed.
13 If someone goes and washes their hands, it's gone,
14 it's removed. If someone doesn't wash their hands
15 but just happens to be walking or doing normal
16 activity, because of touching things, handling
17 things, it's removed. But even that, if you just
18 hold your hand still after getting it on you, your
19 heart starts beating, your body will begin to absorb
20 it. In about six hours it's gone. If you've done
21 nothing, it can still be removed just because of the
22 action of your body.

23 Q And how would washing your hands affect it?

24 A Absolutely would remove it. If you -- once you've
25 immersed your hands in water and wiped them down, you

1 know, like you normally would, then it would be gone.
2 Now, obviously if someone has it on their hands, they
3 just do this, you still have the material on the back
4 of the hands but the palms would be clean. So you
5 can leave some in certain areas depending on what you
6 do. But, yes, washing your hands properly, it's
7 gone.

8 Q You also at some point did tests on these sweaters.
9 Is that right?

10 A That is correct.

11 Q And tell the jury what, if any, conclusions you came
12 to because of testing State's Exhibit No. 99?

13 A State's Exhibit No. 99 was two Brooks Brothers
14 sweaters. I was requested to take those sweaters and
15 to take and run sample or particle lifts over those
16 sweaters to see if I could find any gunshot residue
17 on those garments. If I'd found some on those
18 garments, it would be indicative he had been around a
19 weapon or that he would have shot a weapon. I found
20 no gunshot residue on them. So there was no gunshot
21 residue on the sweaters at all.

22 Q I believe you testified you also did some testing on
23 State's Exhibit No. 88 which was I believe you
24 testified coming from a car. Is that right?

25 A That is correct, sir.

1 Q If you would, tell the jury what, if anything, you
2 found concerning the -- and I call them tabs?

3 A They are called tabs. They can also be called
4 particle lifts. They are called by many different
5 names. But basically that are nothing but a
6 flattened piece of aluminum with a sticky adhesive on
7 them.

8 Q And how many tabs did you receive?

9 A In this case I received one, two -- four. I received
10 four from the automobile.

11 Q And these four tabs that you received were from four
12 different areas of the automobile?

13 A That is correct.

14 Q All right. Specifically, let's start on the driver's
15 side. Can we do that?

16 A Yes, sir.

17 Q All right. Specifically, did you find any gunpowder
18 residue anywhere on the driver's side?

19 A Gunshot residue. There were samples taken from the
20 steering wheel. There was no gunshot residue found
21 on the steering wheel. There was --

22 Q The driver's side door handle?

23 A Yes, sir. There was a sample taken from the driver's
24 side door handle. And there was no gunshot residue
25 on that either. So both the steering wheel and the

1 handle on the door was sampled. There was no gunshot
2 residue on either of those areas.

3 Q And there again, does time have any affect on that
4 also?

5 A With an inanimate object such as an automobile, time
6 may have an effect from the point of view of the less
7 time you clean the car or wipe it down. However, if
8 you discharge a weapon inside of an automobile and
9 you do nothing to wipe down the inside, that material
10 will stay inside that automobile until it's washed
11 down or wiped down. And that could be months. It
12 could be up to years. That material will stay inside
13 until something is physically applied to it such as
14 water to remove it off.

15 Q And now, specifically, let's draw your attention
16 to -- if I could, draw your attention to the
17 passenger's side of the vehicle. Were tests also
18 done over there?

19 A Yes, sir. There was particle lifts that was taken
20 from the right front passenger window area. And
21 those samples have gunshot residue on them. There
22 was -- a gun has been discharged from in this car to
23 deposit gunshot residue around this window in the
24 passenger's side.

25 Q So the tests for -- and you say around the window

1 area. That would be on the inside of the window?

2 A My understanding from the information I have is from
3 the inside of the window. That is correct.

4 Q And you found gunpowder residue there?

5 A Gunshot residue.

6 Q Gunshot residue. I'm sorry.

7 A Gunshot residue was found around that window area.
8 That is correct.

9 Q I believe there was also one swab or one tab for the
10 seat, the passenger's seat?

11 A Yes, sir. That is true. And let me make one
12 correction. I said four. There was actually five in
13 total. I made a miscount. But, yes. There was also
14 samples that was taken from the seat, and also there
15 was gunshot residue found in the seat area.

16 Q And what does that tell you, if anything?

17 A Well, again, the seat area is right next to the
18 window area. This is consistent with a weapon having
19 been discharged and leaving the smoke residue in that
20 area.

21 Q So you found the residue on the seat?

22 A Yes, sir.

23 Q And also on the inside of the window?

24 A That is correct.

25 Q And did you -- was there one other test? I think you

1 said there were four or five?

2 A Well, there was two of them taken from the window
3 area itself. So two areas of the window was taken
4 and the seat. That would account for the three.

5 Q So those three were positive?

6 A That is correct.

7 Q Now, when you find or get a result such as that, as
8 an expert in this area, are you able to draw any
9 conclusions from that?

10 A Yes, sir. My conclusions in this case is that a
11 weapon has been discharged to leave this material.
12 It's been discharged where the blast coming out the
13 end of the weapon was such that the weapon was within
14 the vehicle and that it's contaminated or coated this
15 area of the automobile.

16 Q Beg the Court's indulgence. Thank you, Lieutenant.
17 Answer any questions Mr. Harpootlian has.

18 A Yes, sir.

19 CROSS EXAMINATION

20 BY MR. HARPOOTLIAN

21 Q Now, Lieutenant, there are a number of explanations
22 for how that materials gets in that car other than a
23 gun going off, isn't there?

24 A There may be other explanations such as someone has
25 powered it or something like that. I'm not quite

1 sure -- you have to give me the example so I can --
2 Q Well, let me ask you this. If somebody had been out
3 Skeet shooting, you're familiar with that?
4 A Yes, sir.
5 Q What are these?
6 A That is .20 gauge shotgun shells it appears from
7 here.
8 Q What are these used for?
9 A These are clay -- these are designed to be used to
10 shoot clay pidgeons they would be called. What you
11 would do is you would have a shotgun. The clay
12 object would be projected into the sky and then you
13 would shoot it out of the sky. The goal is to be
14 able to hit the target no matter how it flutters or
15 where it goes to be able to shoot it out of the sky.
16 Q Now, if you did that all day long --
17 A Yes, sir.
18 Q -- or an hour or two, you would have GSR on you,
19 correct?
20 A Yes, sir. After the first round, you would have
21 gunshot residue on your hands.
22 Q And you'd have a lot more of it on you if you did
23 that for two or three hours?
24 A You would have more on you. However, it does not
25 double up every time you shoot. Once you do the

1 first shot of the weapon, you get the most amount on
2 your hands. After that you will get some, but it
3 doesn't double up each time. If I shot a weapon five
4 times, I don't have five times the amount of residue
5 on my hands. I would have maybe one and a half,
6 maybe one and --

7 Q You get it on your hands. You get it on your
8 clothes?

9 A Hand, clothes, anything that's around where this
10 material was at.

11 Q You get it on your sleeve if you're shooting like
12 this?

13 A That is true.

14 Q Okay. So if you're getting in the car and you do
15 this, put your hand up on the window, you're going to
16 leave some GSR down on the bottom part of the
17 passenger window, right?

18 A If you sit down here and you have it on the garment,
19 now you're talking about what's called a transfer, a
20 double action transfer.

21 Q Right.

22 A If you sit down here and do that, you have to have a
23 sufficient amount of material on that garment, about
24 ten times as much here as you would get onto the
25 glass. You can do it, yes. But you're talking about

1 a large amount of material would have to be on that
2 garment transfer down to that window.

3 Q Were you able to quantify how much GSR there was?

4 A No, sir. There is not a quantifiable way to say
5 exactly how much is there because you're doing
6 piecemeal with this.

7 Q Okay. But what I've just described, there is another
8 way to get GSR around that window, right?

9 A There's a way to get it to a spot.

10 Q Okay. But let me ask you this. Let me find that red
11 marker of mine. Here it is. If the car window looks
12 something like this, and I understand it's not
13 necessarily on the -- that's a very crude drawing of
14 a car window?

15 A Better than I would do.

16 Q Okay. And this is the area above it -- I don't know
17 what you call that -- where it slips up into the
18 door?

19 A I'm not sure. I would call that interior trim, is
20 what I usually call it.

21 Q Interior trim here. And then down here you've got
22 like a -- you've got to have a little lock thing
23 there, right?

24 A Yes, sir.

25 Q Okay. And then there's a little ledge down here. As

1 you're riding along, you put your arm on it, right?

2 A Yes, sir.

3 Q Now, show us where in this continuum around here this
4 GSR was found?

5 A Oh, I cannot tell you that precisely. Wherever the
6 person collected the sample, it could be on it.
7 Remember what you're doing is you're taking a sticky
8 adhesive and you're going over an area. If it runs
9 into some material, it's captured, and you continue
10 on. So whatever area he covered, any of that would
11 now be considered to be where the gunshot residue
12 came from.

13 Q Did he use one on the window, one sticky thing?

14 A He used two on the window.

15 Q Okay. And were both of them positive?

16 A That is correct.

17 Q And you don't know whether he used one half way down
18 here and one half way around her. Or you don't know
19 whether it stuck here, just there, or whether it
20 might have been just here or just here, do you?

21 A I do not know that, sir.

22 Q Okay. Now, on the seat, only the back of the seat he
23 did, right?

24 A One moment. I'm not sure. I've got right front
25 passenger's seat. I don't have information as far as

1 if it was the back of it or the front of it. It may
2 be on the evidence.

3 Q Let's look at that. And can I just -- Mr. Meadors.

4 A It is listed as right front passenger's seat. It
5 doesn't give me a description as to the front of that
6 seat or the back of the seat.

7 Q Okay. Now, you found nothing on the steering wheel?

8 A That is correct.

9 Q Nothing on the driver's side?

10 A That is correct.

11 Q Now, did he check the -- do you know whether he did
12 any GSR picking up around the glove compartment?

13 A I have no information. I have no samples from that
14 area for analysis.

15 Q What about on the floor?

16 A Nothing from the floor was sent to me for analysis.

17 Q So there are other explanations, reasonable ones to
18 you, as to why GSR might be on that window or on that
19 door; I mean, on that -- around that window or on the
20 seat other than a weapon being fired in there?

21 A If you want to say the scale of probability, are
22 there other answers other than it being a gun being
23 shot, that is true. It is most probable it was a
24 discharged weapon. However, transfer can occur. But
25 it does require lots of materials on your hands.

1 But --

2 Q Did you -- I'm sorry. Go ahead. I apologize.

3 A If you handle a weapon and you get soot and black on
4 your hands, then as you touch the inside of the
5 automobile, it's definitely going to be able to
6 transfer the material. If you have a lighter amount,
7 you don't get that much transfer.

8 Q But you don't know how much material was there?

9 A No, sir, I do not.

10 Q It's microscopic?

11 A It's very, very microscopic. Yes, sir.

12 Q And were you aware of the fact there were a bunch of
13 shotgun shells in there?

14 A No, sir.

15 Q I mean, that's important to know, isn't it?

16 A A shotgun shell that has been discharged; yes, sir.
17 If it still contained, non discharged, it doesn't
18 have an affect on this.

19 Q But it would be important to know that somebody had
20 been out shooting clay pidgeons or hunting in that
21 vehicle and getting back into the vehicle on multiple
22 occasions, right?

23 A Oh, yes. If someone would tell me I've used this
24 vehicle to go hunting with, if I had sat down here,
25 if someone said I've shot a weapon out of this

1 vehicle at some point in my life, then that would
2 account for the materials I found. Because again,
3 time, there is no time limit on it. Until you clean
4 the inside of that vehicle up, it's going to remain
5 there.

6 Q Let me ask you to look at State's Exhibit No. 31.
7 Have you ever seen that before?

8 A No, sir.

9 Q What does that look like in the back there?

10 A This looks like some clothing.

11 Q What kind of clothing?

12 A Camouflage clothing. It would be the type that you
13 would wear if you was going to be going hunting.

14 Q Hunting. Right.

15 A You also have a door handle or a doorknob. You have
16 pieces of carpet, a flashlight. You have a book.
17 And I can't make out what. Some sort of magazine or
18 a book in the back of it.

19 Q Right. But there's hunting clothes back there,
20 right?

21 A Yes, sir. There's hunting clothes back there.

22 Q Now, these shotgun shells are used for shooting clay
23 pidgeons, right?

24 A Yes, sir.

25 Q What about these, Gold Metal Handicapped shells?

1 A Those would be used more for hunting game.

2 Q Game?

3 A Yes, sir.

4 Q Okay. And the Federal field and target lead, what
5 are those for? Field and target lead. I'm sorry.

6 A If I might take a closer look at those, sir. Oh,
7 thank you. This is going to be a -- I think this is
8 a quail load, quail or certain types of game birds.

9 Q Okay. So we've got shells here you use for target
10 shooting. We have shells you use here for hunting.
11 We've got some camouflage clothes in the back?

12 A Yes, sir.

13 Q Does it take a detective to figure out that maybe
14 this vehicle had been used for hunting and maybe
15 shooting Skeet?

16 A I have no problems with saying that someone may have
17 been hunting. They may have gotten into the vehicle.
18 It makes it a little more difficult to say that it
19 was a transfer. You can't rule it out. But it's
20 more consistent from my position of being someone
21 discharging a weapon because it was found in several
22 different locations.

23 Q Can you say where the weapon was when it was
24 discharged?

25 A All I can say is that the weapon would have been

1 pointing out that window recessed within the
2 automobile. As far as angle, there's no way to
3 determine that.

4 Q Could it have been down near the glove compartment?

5 A It could have been. If it was close to the glove
6 compartment, we could have seen on the glove
7 compartment probably some soot, maybe some burning,
8 some indication there was a weapon in the car.

9 Q But it would have been to be close to it to do that?

10 A Yes. If you're within six inches, you will get that.
11 If you get further away, you may get a little light
12 dusting of gunshot residue. A little bit further
13 away, you get nothing.

14 Q But we don't know because you weren't provided any
15 gunshot residue from the glove compartment, right?

16 A No, sir. There was no sample submitted to me from
17 the glove compartment.

18 Q Okay now. And you've I think said that gunshot
19 residue can last until the car is cleaned again,
20 right?

21 A Yes, sir. It does not -- the inside of an automobile
22 is very stable and it has to be actually wiped off.
23 Not true on the hands. But it is true on the
24 vehicle.

25 Q If you all knew that he didn't fire -- you knew that

1 he did not fire a weapon at the house, right? Nobody
2 said he fired a shot. Did you know that?

3 A I received the kits and ran them. Actually, the
4 information on the case was developed after running
5 the kit.

6 Q Okay. Have you ever done any analysis on body
7 fluids, blood, those kinds of things?

8 A Yes, sir.

9 Q You do that also?

10 A Yes. We do -- I've run analysis on body fluid for
11 various types of chemicals such as drugs. I've also
12 run body fluids sometimes when we have had, say, like
13 a suicide and there's been blood on someone's hands.
14 We have taken the blood and have analyzed the
15 contents of the blood for gunshot residue.

16 Q And you can also -- I mean, you can analyze that
17 blood for drugs, alcohol, those sorts of things, can
18 you not?

19 A Yes, sir. It is a carrier for that material.

20 Q You do that every day?

21 A Yes, sir. Well, now, our laboratory does it every
22 day. I'm specialized. I don't do it any more but --

23 Q You used to do it all the time?

24 A Yes, sir. And we have a department which does it
25 every day.

1 Q And to do that, one just merely has to draw blood
2 from somebody and then they put it in a vile and it's
3 sealed and they send it to you all for analysis.
4 Right?

5 A That is correct.

6 Q You've seen it happen thousands of times, right?

7 A Many thousands of times.

8 Q Many thousands of times. Did you see any blood
9 submitted in this case?

10 A One moment.

11 Q From Mr. Herring?

12 A I don't think so. Let me look to be sure. No, sir.
13 On my notes, as far as the log-in sheets, I reflect
14 no samples of blood being submitted for analysis.

15 Q And were you asked to do any GSR tests on the
16 officers who allegedly fired at the house?

17 A No, sir.

18 Q Did you do any GSR?

19 A No. There was no kits submitted to me from that.

20 MR. HARPOOTLIAN: Beg the Court's indulgence.
21 Nothing further.

22 THE COURT: Solicitor.

23 MR. GIESE: Nothing, Your Honor. Thank you.

24 THE COURT: All right. You may come down, sir.

25 WITNESS: Thank you, sir.

1 **THE COURT:** May this witness be excused?

2 **MR. HARPOOTLIAN:** No objection.

3 **THE COURT:** Without objection.

4 **WITNESS:** Thank you, sir.

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

6 **MR. MEADORS:** If it please Your Honor.

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

8 **MR. MEADORS:** The State would call Special Agent
9 Vello Paavel. And can we approach pursuant to Your
10 Honor's order?

11 (Whereupon, a bench conference is had)

12 **MR. MEADORS:** Special Agent Vello Paavel.

13 VELLO PAAVEL, after being duly sworn, testifies
14 as follows:

15 **THE CLERK:** Please have a seat there, sir, and
16 state your full name for the record.

17 **WITNESS:** Thank you.

18 DIRECT EXAMINATION

19 **BY MR. MEADORS**

20 **Q** Would you state your name?

21 **A** My name is Vello Paavel, spelled V-E-L-L-O,
22 P-A-A-V-E-L.

23 **Q** Good afternoon.

24 **A** Good afternoon, sir.

25 **Q** Please tell the jury about yourself, where you're

1 born, where you're raised, your education, and in
2 particular -- it's Lieutenant?

3 A Yes, sir.

4 Q And particularly your education and training in the
5 field of expertise we've called you here to testify
6 about today?

7 A I was born in Richland County in South Carolina. I
8 was raised in the lower part of the county. I
9 attended Lower Richland High School. I attended the
10 University of South Carolina. I received a Bachelor
11 of Science degree. My major was in chemistry.

12 After completing the University I worked with my
13 father for a while doing some farm work and some odd
14 jobs. Then in 1980 I went to work at the Columbia
15 Police Department as an officer. I worked there for
16 approximately three years, then went to the Richland
17 County Sheriff's Department for approximately three
18 to three and a half years.

19 Then in April of 1987 I went to work at SLED in
20 the firearms department and I have been there since.
21 During my tenure in the firearms department I was
22 responsible at first for doing latent print and crime
23 scene work and a limited amount of firearm and tool
24 mark identification work.

25 MR. HARPOOTLIAN: Your Honor, again trying to

1 expedite, we'd stipulate he's an expert in the area
2 of firearms comparison, ballistics.

3 **MR. MEADORS:** Ballistics.

4 **MR. HARPOOTLIAN:** I've known him for 30 years.
5 He knows what he's talking about.

6 **MR. MEADORS:** We certainly accept that and would
7 offer him as an expert in the field of firearms and
8 ballistics.

9 **THE COURT:** Without objection.

10 **Q** Can you briefly summarize, just briefly?

11 **A** Again, when I was in the firearms department I first
12 worked at crime scenes and latent prints. The
13 firearms department separated in 1989, forming a
14 crime scene unit and a firearms department. I stayed
15 in the firearms department.

16 And in the firearms department what I do is work
17 firearm and tool mark related cases and currently
18 oversee the operation of the firearms department. In
19 working firearm and tool mark related cases, what an
20 examiner does is try to determine whether fired
21 bullets and fired cartridge cases were fired by
22 particular firearms. You also examine firearms to
23 determine if they're working properly and do serial
24 number restorations on obliterated serial numbers.

25 In the absence of a firearm, and you only have

1 bullets and cartridge cases, you try to tell the
2 investigator what type of firearm may have been used
3 in that crime and what caliber of bullet may be --
4 what the bullet may be.

5 I also do general tool mark examination, meaning
6 I compare tool marks that are found at, say, scenes
7 of burglaries. If somebody pries on a door or a lock
8 or uses a bottle cutter to cut the chain or a
9 padlock, you can do comparisons of tool marks to
10 determine whether a particular tool cut that
11 particular lock or the tool was used to pry on a
12 particular door.

13 Q If I was to ask you how many examinations you've done
14 or conducted, how many would you say?

15 A It's thousands of actual cases that I work. As a
16 matter of actual physical examinations, actually
17 doing microscopic comparisons, it probably has to be
18 tens of thousands if not hundreds of thousands of
19 actual physical comparisons.

20 Q And where do you do all this work and the examination
21 specifically? It is at SLED?

22 A Yes, sir. That's done at the forensic services
23 laboratory on Broad River Road in Columbia.

24 Q As a part of this case, did you receive certain items
25 of evidence for you to compare?

1 A Yes, sir, I did.

2 Q And did you complete a report and submit it as a part
3 of this?

4 A Yes, sir, I did.

5 Q Is that what you do as an expert in your field? Do
6 you after you've examined something, made
7 comparisons, do you give your opinion in a report?

8 A That's correct. I normally examine evidence that is
9 submitted to the laboratory and then I render a
10 conclusion about the evidence. And then a report is
11 generated and a report is usually sent out to the
12 submitting agency.

13 Q And I'm going to show you what's marked State's 90
14 and ask you if you've looked at that. That's State's
15 90 and ID until you get through with it I think. Do
16 you recognize it, and does it relate or will it
17 relate to what you're fixing to talk about,
18 Lieutenant?

19 A Yes, sir. This has our SLED laboratory case number
20 on it. It has my initials on it. It has the number
21 for the particular item in question or items in
22 question. That's on the outside container. I
23 recognize my case number, the initials and item
24 number on the inside container. And if I may open
25 this. May I open this?

1 Q Yes, sir. Please. You put your signature and
2 initials on here so you can come in here like right
3 now and tell these folks it is what it is?

4 A Yes, sir. I recognize it again by descriptors that
5 were placed on the packaging and/or the evidence
6 before or during the examination. Sir, I do
7 recognize these items. These were submitted to SLED
8 for examination and I did make examinations on these
9 items.

10 Q And what were you just doing just then?

11 A What I was doing is looking at each individual item
12 that's in these containers and looking for the
13 laboratory case number, the item number and my
14 initials. And they are present.

15 Q And did you receive these from the autopsy or from
16 the body of John Johnson?

17 MR. HARPOOTLIAN: Objection, Your Honor. I
18 don't believe he did.

19 Q Did these come from the autopsy?

20 MR. HARPOOTLIAN: Your Honor, I don't believe he
21 knows.

22 Q Can you say, tell in there who submitted those to
23 SLED?

24 A Can I tell you who submitted them?

25 Q Yes.

1 A Yes. Jay Russell submitted these to SLED. The
2 containers that these items were in, there was a
3 bottle that has John Johnson, Jr., Richland County
4 coroner. It has the number 8-06-022. It has a date,
5 the name of Kessler and Pittman. The other container
6 says location collected, autopsy, and indicates John
7 Johnson's name and has J. A. Russell's name.

8 Q Thank you.

9 A Yes, sir.

10 Q And these are the items you examined, some of the
11 items you examined?

12 A Yes. These are some of the items that I examined.

13 Q Can we put these back in here, just --

14 A Yes, sir. Let me get them into the correct
15 containers.

16 Q So this is what you recognize and examined as State's
17 90 still for I.D.?

18 A Correct.

19 Q Look at State's 68, please. It's been entered as
20 State's 68 and other contents that may be in there.
21 Tell me, did you recognize that, and did you have a
22 chance to examine that?

23 A Sir, I recognize these items also. These were
24 submitted to me for examination and I have examined
25 them.