

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
Post Conviction Relief

MAY 14 2020

S.C. SUPREME COURT

Honorable Jocelyn Newman, Circuit Court Judge

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App. Case No. 2020-000205

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H. Dewain Herring,

Petitioner,

vs.

State of South Carolina

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Respondent.

APPENDIX  
VOLUME IV OF VII

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1 Q You love your job, don't you?

2 A Yes, sir, I do.

3 Q And I didn't mean that very -- I mean, you're very  
4 thorough in your work, aren't you?

5 A I try to be; yes, sir.

6 Q And let me ask you this. There it is. State's 64 --  
7 I want to keep this -- this was in here.

8 A Yes. Let's put this all back.

9 Q State's 64, did you also get this item in this case  
10 and did you examine it?

11 A Yes, sir. I received -- bear with me one moment,  
12 sir.

13 Q Sure.

14 A Yes, sir. I recognize this item, this particular  
15 handgun. I also -- I recognize these cartridges.  
16 These were not submitted in the same SLED laboratory  
17 case number as the other revolver you just showed me.  
18 But I did examine this particular revolver and the  
19 cartridges.

20 Q Okay. I'm going to hold State's 64 out for a moment.  
21 State's 68 which I believe is the Ruger .357, and  
22 just keep it up there. This is your item number 2 in  
23 your report, correct?

24 A That's correct, sir.

25 Q State's 90 for I.D., would that be designated as



1 items 1.1 to 1.5 in your report?

2 A Yes, sir. That's correct.

3 Q What, if any, examinations and/or comparisons did you  
4 do with these two items; and what conclusions, if  
5 any, did you come up with?

6 A What I did was compare State's Exhibit No. 90 which  
7 are bullet fragments to test bullets that were fired  
8 by this Ruger revolver. And the way I do that is by  
9 taking the revolver, documenting its condition,  
10 writing down the information about the firearm on my  
11 worksheets, and then I test fired the firearm into a  
12 bullet recovery tank which allows me to recover a  
13 fired bullet or bullets and that I can use for  
14 comparison purposes. I also will recover fired  
15 cartridge cases if I need those for comparison  
16 purposes also.

17 Then by means of using a comparison microscope I  
18 can compare the fired evidence to the test fired  
19 specimens that I have and render a conclusion as to  
20 whether or not they were fired by this particular  
21 firearm. That was done in this case.

22 In regards to State's No. 90, there were a total  
23 of five bullet fragments submitted to me for  
24 examination. Three of these fragments were bullet  
25 jacket fragments and two of these fragments were lead

1 fragments that were consistent with being lead core  
2 fragments.

3 Now, to explain that, there are bullets that are  
4 called jacketed bullets. They have an external  
5 covering usually of a harder metal than what the core  
6 is made of. In this particular instance you have a  
7 copper jacket which surrounds a dense lead core.  
8 What I did was examine the markings that were placed  
9 on the jacket fragments as a result of this bullet  
10 traveling through the gun barrel.

11 And, in essence, what happens when a bullet is  
12 fired through a rifle barrel, the inside of the  
13 barrel or the rifling area will mark the outside of  
14 the bullet jacket in this case. And I can use the  
15 comparison microscope to compare the markings that  
16 are on the evidence bullet or the evidence fragments  
17 with the test specimens that I actually fired.

18 And the reason I do that is because in the field  
19 of firearms identification we've found that no two  
20 guns will marble bullets exactly the same way. As a  
21 bullet travels through a barrel, it is marked with  
22 certain unique identifying markings that can be used  
23 for identification purposes.

24 So when I do the comparison I will compare the  
25 markings that are on my evidence specimen and also

1 compare them to the tests. I also will compare my  
2 tests to each other to see if my test specimens are  
3 marking consistently.

4 Q And you did that in this case?

5 A Yes, sir. That was done in this case. And what I  
6 found was one of the jacket fragments that was  
7 submitted in State's No. 90 was indeed fired by this  
8 Ruger revolver. Another jacket fragment, the result  
9 of that conclusion was inconclusive. I could not  
10 positively tell whether it was fired by this  
11 particular firearm or whether it could have been  
12 fired by another firearm based on the limited amount  
13 of markings that were on that particular fragment.

14 There were three other fragments total, one  
15 being the jacket fragment and two lead fragments.  
16 Those were unsuitable for identification with any  
17 specific firearm. And what that means is there are  
18 no markings on those fragments that could be used to  
19 make a comparison microscopically to determine  
20 whether it came from that particular firearm.

21 Q And specifically, do you have an opinion in your  
22 expertise as to whether specifically 1.1 jacket  
23 fragment which you've testified to a minute ago, did  
24 it come from the Ruger .357?

25 A Yes, sir. The 1.1, my item 1.1 jacket fragment which

1 is one of the fragments that's found in State's  
2 No. 90, was fired by this particular Ruger revolver  
3 which is State's Exhibit No. 68.

4 Q Your testimony is one of the other fragments, it was  
5 inconclusive?

6 A Yes, sir.

7 Q And the others were unsuitable for identification?

8 A That's correct.

9 Q Does that mean they weren't fired by it?

10 A No, sir. That means there is not enough information  
11 on these fragments to determine what they were fired  
12 from.

13 Q And the test bullets you used?

14 A Yes, sir.

15 Q Where did you get that?

16 A The test bullets I used are test ammunition that I  
17 use which contains a bullet that came from our  
18 ammunition reference collection. I used ammunition  
19 of the same brand and the same type as was submitted  
20 in this particular incident.

21 Q Now, Lieutenant, what else was submitted with State's  
22 68?

23 A Along with the Ruger revolver there were four unfired  
24 cartridges. And those are pieces of ammunition that  
25 have not been fired. There also was a holster that

1 was submitted and a fired .357 Magnum caliber  
2 cartridge case.

3 Q Are you able to do anything with that fired Magnum  
4 cartridge casing?

5 A Yes, sir. Using the same basic process I just talked  
6 about, test firing the firearm, obtaining the test  
7 specimens and doing a microscopic comparison by using  
8 the comparison microscope, I determined that the  
9 fired cartridge case which is my item number 3 was  
10 fired by this particular Ruger revolver.

11 Q When you got these items, and when I say that I mean  
12 the bullets, the gun and the holster, were they  
13 together when they came in your possession?

14 A When I received these items the bullet fragments were  
15 in this particular container which is currently  
16 marked State's No. 90. The Ruger revolver, the  
17 unfired cartridges and the fired cartridge cases were  
18 in another container.

19 Q Is it your opinion that all of the fragments, 1.1  
20 through 1.5, came from a single bullet?

21 A Sir, I believe that all of those fragments that were  
22 submitted could have been part of one bullet.

23 MR. MEADORS: Your Honor, at this point with  
24 Your Honor's permission we'd ask Lieutenant Paavel to  
25 step down in front of the jury. We also have a

1 special request from Your Honor. We've consulted  
2 with the defense attorney as to firearms and we  
3 understand Your Honor's rules. He's been accepted as  
4 a firearms expert. We would ask that if Your Honor  
5 is assured with Lieutenant Paavel's -- we would ask  
6 him to undo the lock on the gun so we can show the  
7 jury how this gun operates.

8 **THE COURT:** Yes, sir. Mr. Paavel, would you  
9 handle the firearm by the barrel only if you can do  
10 that in this demonstration.

11 **A** Yes, sir. Unless I -- all right, sir. Before I do  
12 anything, I'll ask you.

13 **THE COURT:** And it not be pointed at anybody.

14 **A** Yes, sir. I understand.

15 **THE COURT:** Okay.

16 **A** Do you have a key?

17 **MR. MEADORS:** Do you have a key? Where is the  
18 key?

19 **Q** Step down.

20 **A** You got the key?

21 **Q** This may not be an issue, Your Honor. If you can  
22 step down. If safety is of a concern --

23 **THE COURT:** It's not taped to the lock down at  
24 the bottom, the lock itself?

25 **Q** How many bullets will this hold?

1 A It holds five cartridges. Up to five. You can put  
2 one in it, two, three, four, five.

3 Q And if you'll hold that, please. And how much  
4 ammunition did you receive with the gun?

5 A There were four unfired cartridges and one fired  
6 cartridge case.

7 Q And the one fired cartridge case is what you have  
8 testified to came from this gun?

9 A Yes, sir. That's correct.

10 Q Can you specifically while we're up here describe  
11 these to the jury?

12 A When I received these, I received four unfired .357  
13 Magnum caliber cartridges. The head stamp or marking  
14 on the head of the cartridge indicates PMC. That's a  
15 particular brand name. In the course of my  
16 examination I actually disassembled one of those  
17 cartridges to see what type of bullet and what weight  
18 of bullet was present in this particular cartridge.  
19 So you will see three cartridges that are fully  
20 assembled and one that's been taken apart. I  
21 actually disassembled that.

22 These particular cartridges are loaded with  
23 what's known as a jacketed hollow point bullet that  
24 weighs approximately 125 grains. To give you an idea  
25 of what a grain is, approximately 40 grains is the

1 weight of a penny. So this bullet or projectile  
2 that's in this particular cartridge weighs about as  
3 much as three pennies.

4 Now, I referred to cartridges. The cartridge is  
5 the unfired piece of ammunition. The cartridge is  
6 composed of a bullet, a cartridge case, gunpowder and  
7 a primer.

8 Q How do you describe the end of that bullet?

9 A These bullets are described as a copper jacketed  
10 hollow point bullet.

11 Q What does that mean, hollow point?

12 A A hollow point bullet has a hollow cavity or hollow  
13 nose that's designed to cause the bullet to expand or  
14 deform when it strikes a target.

15 Q You're the gun expert. Will you take that out?

16 A Yeah. Let's put the ammunition away.

17 Q For the record, the ammunition is back in the  
18 container, Your Honor. Will you, as I know you will  
19 in your field, confirm and assure His Honor the gun  
20 is unloaded?

21 A It is unloaded, sir. It is secure. All right.

22 Q What kind of gun is that?

23 A This is what's known as a revolver, in particular a  
24 double action revolver. It's made by a company known  
25 as Ruger, R-U-G-E-R. It is .357 Magnum caliber. The



1 model number is SP 101 which is just a designator  
2 that the manufacturer uses for a particular model of  
3 firearm.

4 Q How do you fire that? It sounds like a crazy  
5 question, but how do you fire it?

6 A Well, what you need to do is either have the firearm  
7 loaded or you have to load it itself. With this  
8 particular firearm, a revolver, it has a cylinder  
9 which swings out from the rest of the firearm. That  
10 cylinder holds the ammunition or the cartridges. So  
11 in order to fire this particular revolver, what you  
12 have to do is place cartridges into the cylinder,  
13 close the cylinder, and now it's ready to be fired.  
14 There are two ways that you can cause this particular  
15 firearm to discharge or be fired.

16 Your Honor, may I cock this and show that?

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

18 A All right, sir. I'll keep it pointed down at the  
19 floor, sir. And again, it's empty. Two ways to do  
20 it. First you can either cock the hammer and then  
21 merely pull the trigger and that will cause it to  
22 fire. Then you have to let go of the trigger. Then  
23 you can cock it again, fire it, let go of the  
24 trigger. You do that for each shot.

25 The second way that you can do it is merely pull

1 the trigger. You simply pull the trigger and that  
2 forces the hammer to the rear, cocking the firearm.  
3 It also moves the cylinder indexing the cartridge so  
4 it's in line with the barrel and it causes the  
5 revolver to fire. Then I have to let go of the  
6 trigger and then I can do it again. And you have to  
7 do one or the other for each shot in order to make  
8 them fire.

9 Q Which one of those is easier? And are you familiar  
10 with the term trigger pull?

11 A Yes, sir. If you're referring to the amount of  
12 weight that's required to cause the gun to go off by  
13 pulling the trigger, we're referring to trigger pull  
14 weight. Since this particular revolver and double  
15 action revolvers can be fired two ways, there will be  
16 a difference in the trigger pull weight if you cock  
17 the hammer first or if you don't cock the hammer.

18 For instance, if I cock the hammer and pull the  
19 trigger, the trigger pull weight will be considerably  
20 less than if I simply pull the trigger and don't have  
21 it cocked. Also if you notice if I cock the hammer  
22 first and pull the trigger, and I will do it with my  
23 thumb so you can see it, the trigger moves a fairly  
24 small distance; whereas, in this manner the trigger  
25 moves a considerable distance.

1 Q Did you do -- or in your analysis of this gun, did  
2 you determine the trigger pull?

3 A Yes, sir. I did measure the trigger pull weights.  
4 The single action trigger pull weight was five and a  
5 quarter to five and three quarter pounds.

6 Q Again, the single action would be what?

7 A The single action is the one where you cock it first.  
8 Now, Mr. Meadors, if you would, let me refer to my  
9 notes for one moment.

10 Q Sure.

11 A Ladies and gentlemen, I should have referred to my  
12 notes a little bit earlier. The single action  
13 trigger pull was five to five and one quarter pounds.

14 Q And the single action is the single action of the  
15 gun. You actually manually had to pull it back to  
16 cock it, right?

17 A That's correct. You have to manually cock the hammer  
18 when you're talking about single action. And it  
19 requires five to five and a quarter pounds of weight  
20 on that trigger in order to make the firearm  
21 discharge.

22 Q This gun can't cock unless somebody cocks it, right?

23 A Some sort of action has to take place in order to  
24 cock the hammer and then pull the trigger or you have  
25 to pull the trigger which causes it to be cocked.

1 Some sort of motion or action has to take place.

2 Now, in reference to the double action trigger  
3 pull, the double action trigger pull meaning you  
4 don't cock it first, you merely pull the trigger like  
5 this, that's 11 and a quarter to 11 and three quarter  
6 pounds of weight.

7 Q 11 and a quarter to 11 and three quarters --

8 A Three quarters. Yes, sir.

9 Q -- pounds of weight? I probably should have asked  
10 you this while you were down here. I think I can --  
11 I'm going to close this back. Still no bullet,  
12 correct?

13 A Yes, sir.

14 Q If this is in the holster, Lieutenant, --

15 A Yes, sir.

16 Q -- can you pull the trigger and fire?

17 A You can't reach the trigger on the revolver with your  
18 finger when it's in the holster. The leather portion  
19 of the holster covers both sides of the trigger and  
20 trigger guard. So you can't pull the trigger.

21 Q Can it fire within the holster?

22 A I didn't try that. I could probably stick a stick in  
23 here now and cause it to fire. Or something small.  
24 I can't get my finger in there to cause it to fire.  
25 But you would have to cock it first. You would have

1 to place the firearm into the holster cocked in order  
2 to do so because I don't think you would be able to  
3 reach the trigger and cause that trigger to be pulled  
4 back all the way unless you put a piece of wire or  
5 something in there. Let me try one other thing. I  
6 can't readily cause this gun to be cocked when it's  
7 in the holster itself.

8 Q And if by some chance it was cocked and then put back  
9 in the holster, you're saying something would have to  
10 be stuck down in there?

11 A Something has to go in there to pull that trigger  
12 sufficiently to give it approximately five and a  
13 quarter to five and three quarters pound of weight on  
14 the trigger to cause it to discharge.

15 Q Because it's already cocked?

16 A That's correct.

17 Q Okay. Now, if you'd take that out. Would you look  
18 in there? And is there anything to you based on your  
19 training and experience that looks like that gun has  
20 been fired in that holster?

21 A No, sir. The inside of this holster is relatively  
22 clean. I would expect to see soot, carbon, some sort  
23 of debris on the inside of this holster if a revolver  
24 was fired inside the holster. Revolvers have an area  
25 which is known as the barrel cylinder gap. There has

1 to be a gap between the rear of the barrel and the  
2 front of the cylinder so the cylinder can turn. The  
3 cylinder has to be able to rotate. And in order to  
4 do so, there has to be a gap in the area where the  
5 cylinder is located near the rear of the barrel.

6 When you fire that revolver, a tremendous amount  
7 of residue comes out of that barrel cylinder gap.  
8 You can have burned and unburned particles of  
9 gunpowder. You can have small particles of metal  
10 from the bullet itself. And a tremendous amount of  
11 gas is forced out of that barrel cylinder gap. And I  
12 would expect to see evidence of that in this holster  
13 and I don't see that.

14 Q Take it off, please. And you're now looking at --

15 A 64.

16 Q -- 64?

17 A All right, sir.

18 Q Is this a Smith and Wesson .357?

19 A Yes, sir. This is a Smith and Wesson .357 Magnum  
20 caliber revolver.

21 Q And did this come into your possession for  
22 examination as a part of one of these cases?

23 A Yes, sir, it did.

24 Q And did you have an occasion to examine this gun to  
25 determine whether or not it was in proper working

1 order?

2 A Yes, sir.

3 Q All right. And did you receive any projectiles with  
4 it?

5 A I didn't receive any projectiles with it. I received  
6 actually unfired ammunition with this particular  
7 revolver.

8 Q Unfired ammunition?

9 A Yes, sir.

10 Q And what did you do with that to determine if it was  
11 in working order?

12 A In essence what I do is examine it, document its  
13 condition, test to see whether any safety mechanisms,  
14 if any, are present, are working properly. I  
15 determine the trigger pull weights and then I will  
16 test fire the revolver to see if it's working  
17 properly.

18 Q Did you do that in this case?

19 A Yes, sir, I did.

20 Q And was it working properly?

21 A Yes, sir, it was.

22 Q And did you determine the trigger pull on this gun?

23 A Yes, sir. This particular revolver had a single  
24 action trigger pull weight of about three and one  
25 half to three and three quarter pounds.

- 1 Q Three and one half to three and one quarter?
- 2 A Three and one half to three and three quarters.
- 3 Q Three quarters. I'm sorry.
- 4 A And then approximately a ten-and-a-half pound double
- 5 action trigger pull weight.
- 6 Q And again, without getting you back up here,
- 7 specifically --
- 8 A Let's point it downward.
- 9 Q Yes, sir.
- 10 A Just like the other revolver, when you pull the
- 11 hammer back, that cocks it. That's the so-called
- 12 single action mode. And in the single action mode,
- 13 if you pull the trigger, it takes approximately three
- 14 and a quarter -- correction -- three and a half to
- 15 three and three quarter pounds in order to cause it
- 16 to fire; in the double action mode, approximately
- 17 ten-and-a-half pounds of pressure.
- 18 Q Now, just listen to me if you could. Can you hear
- 19 that cock?
- 20 A Oh, yes, sir.
- 21 Q How many bullets does that hold?
- 22 A This particular revolver holds six.
- 23 Q And did you receive any bullets with it?
- 24 A Yes, sir.
- 25 Q And how many?



1 A I received six unfired .357 Magnum caliber cartridges  
2 with the revolver.

3 Q Beg the Court's indulgence. And as a part of -- did  
4 you examine some other guns by officers?

5 A Yes, sir.

6 Q As a part of this case?

7 A That's correct. I did, sir.

8 Q That's all. Thank you.

9 MR. HARPOOTLIAN: May it please the Court.

10 CROSS EXAMINATION

11 BY MR. HARPOOTLIAN

12 Q Were you shipped State's Exhibit 67? Have you ever  
13 seen that?

14 A May I see it, sir?

15 Q Sure.

16 A No, sir. I haven't received this. I have not  
17 examined this.

18 Q Now, were you sent some Glock .40 caliber shots,  
19 projectiles to examine?

20 A Yes, sir. There were some projectiles that could  
21 have been fired from a 40 Glock. Yes, sir.

22 Q And did one of those contain or was covered with  
23 or -- I don't know how you describe it -- some blood?

24 A Bear with me, sir. There was one bullet which had I  
25 indicated two small drops or spatter of a blood-like

1 material.

2 Q Right.

3 A Then there was another bullet and fragment, which I  
4 indicated this bullet was swabbed to collect any  
5 blood or tissue that may have been present. And the  
6 swab was stored with the bullet. I recall in my  
7 notes that -- bear with me. Yes. I have in my notes  
8 that that particular bullet was expanded. There was  
9 no obvious blood or tissue but the container in the  
10 bullet smelled like body tissue. You start getting  
11 some odor of decomposition in short order or a smell  
12 of tissue. And this particular bullet and its  
13 container did smell like blood or body tissue.

14 Q And that was a Glock .40 caliber slug or a .40  
15 caliber slug?

16 A Yes, sir. That bullet was consistent from being  
17 fired from a .40 caliber Glock type firearm.

18 Q And you compared that to -- were you able to match  
19 that up to any specific weapon?

20 A No, sir. And the problem with doing any sort of  
21 identification with Glock firearms is that they use a  
22 type of rifling which is known as polygonal rifling.  
23 It is very, very smooth on the inside of the  
24 barrel --

25 Q Right.

- 1 A -- as compared to conventional rifling. So we have  
2 very little success in comparing Glock bullets to  
3 Glock firearms. On the other hand, we have very good  
4 success in comparing to fired cartridge cases. But  
5 due to the nature and type of rifling that's used in  
6 the Glock firearm, it is very difficult to make  
7 microscopic identifications of bullets to specific  
8 firearms because of the limited markings that are  
9 available on the bullet.
- 10 Q Okay. Now, who did you receive these projectiles  
11 from?
- 12 A Bear with me, sir. These were submitted to SLED by  
13 Phillip Coonfield. They went to evidence log-in, in  
14 particular Betty Butler. And then I would have  
15 received them or did receive them from Betty Butler.
- 16 Q Let me show you this inventory. Have you ever seen  
17 that before?
- 18 A Let me see if I have a copy of that, sir.
- 19 Q That's what I'm trying to figure out.
- 20 A Where this came from?
- 21 Q Yeah. I mean, where it fits into the big scheme.
- 22 A I understand. I may be able to explain that  
23 momentarily, sir.
- 24 Q That looks like it right there.
- 25 A Yes, sir. This is a computer generated list of items

1           that have been submitted.

2   Q       Okay. Go to your copy, please. Okay?

3   A       All right, sir.

4   Q       And it indicates there are 15 fired bullets, right?

5   A       15, it indicates fired bullets.

6   Q       16. I'm sorry. One is a projectile?

7   A       One is a fragment,

8   Q       Fragment. Okay. And then there are -- items 17

9           through 32 are cartridge cases head stamped S&W .40  
10          Winchester, right?

11   A       That's correct, sir.

12   Q       And then item number 31 is a Smith and Wesson .357  
13          revolver with six unfired shells?

14   A       Yes, sir.

15   Q       We've seen that, right?

16   A       Yes, sir.

17   Q       And then four Glock .22 -- I'm sorry -- three Glock  
18          .22 handguns with one magazine and a Glock .23  
19          handgun. Is that right?

20   A       That's correct.

21   Q       Okay. Then cutting from wall in master bedroom above  
22          bed?

23   A       That's correct.

24   Q       Number 38. Now, is there any way to tell whether  
25          this in fact is that cutting?

1 A May I look at it, sir?

2 Q Sure.

3 A I am looking for an item number of any sort that's on

4 here.

5 Q Do you need to open it up?

6 A I may have to in a moment. Let me see. I don't have

7 any paperwork on that. If I may, sir, if I could see

8 what's on this particular bag if we can turn this

9 over.

10 Q You're welcome to open it as far as I'm concerned.

11 A Let me see if I can just flip it over this way. I

12 think we're going to have to open it.

13 Q Do you have a knife?

14 A Somewhere.

15 Q Civilians are not allowed to have knives. Here. I'm

16 sorry. What is that?

17 A It's apparently a swab.

18 Q It says blood from bedroom floor in front of bathroom

19 door. That would be the swab from floor, number 39?

20 A Yes, sir. But there is no item number on here. So I

21 don't know that for a fact.

22 Q And then that looks like the cutting from wall in

23 master bedroom above bed, right?

24 A Yes, sir. That makes sense. But again, I don't see

25 an item number on it. So I don't know whether it was

1 analyzed. I have not examined this item.

2 Q Okay. And according to the report you have, the  
3 analysis requested on both these items was for what?

4 A On item 38 and 39, the cutting from the wall and the  
5 swab from the floor, it says DNA analysis.

6 Q Okay. And do you have any record of a DNA analysis  
7 being done?

8 A I don't. No, sir.

9 Q Okay. Thank you.

10 A Yes, sir.

11 Q And you attempted to match up these Glock -- what do  
12 we call them? Slugs? Projectiles?

13 A Yes, sir. What I do is I try to determine which of  
14 the fired bullets were fired by which particular  
15 Glock. I also try to determine which fired cartridge  
16 case was fired by which particular Glock.

17 Q And I don't want to belabor a point here, but you  
18 were unable to match most of the projectiles with a  
19 weapon. Is that correct?

20 A Actually all of them, sir. None of them were  
21 actually positively identified to the four Glock  
22 pistols. And again that's not unusual with Glock  
23 type rifling.

24 Q And you were able to identify the cartridge shells  
25 laying on the ground?

1 A Yes, sir. The fired cartridge cases were identified  
2 to specific firearms.

3 Q But that's not going to tell us much about where  
4 people were standing because those as I understand  
5 are automatically thrown out, on a semi-automatic  
6 pistol are thrown out, kicked around, stepped on,  
7 moved around?

8 A Yes, sir. It is very difficult sometimes to  
9 determine where someone is standing based on the  
10 location of fired cartridge cases.

11 Q Thank you. No further questions.

12 THE COURT: Redirect.

13 MR. MEADORS: Very briefly.

14 REDIRECT EXAMINATION

15 BY MR. MEADORS

16 Q He was asking you about -- I don't know what exhibit  
17 that is. 67 I think. Is this your report, one of  
18 your reports?

19 A Yes, sir, it is. It's a copy. Yes, sir.

20 Q On item number 14, one fired bullet and lead  
21 fragment?

22 A Let me grab my copy.

23 Q Page 3 of 6.

24 A Okay. That's on the other one. Yes, sir.

25 Q I believe, is that the bullet you were talking about

1 that was swabbed to collect blood or tissue based on  
2 what you were looking at?

3 A Item number 14, this particular fired bullet and lead  
4 fragment, I actually swabbed this bullet and left the  
5 swab with the bullet in case it needed analysis.

6 That would not be the swab that we were just talking  
7 about that Mr. Harpootlian and I found in that bag.

8 Q What is the item 14 labeled on SLED marker number?

9 A It is numbered 15.

10 Q SLED marker number 15. Beg the Court's indulgence.  
11 Thank you. That's all.

12 MR. HARPOOTLIAN: Nothing further.

13 MR. MEADORS: Your Honor, we'd ask that he be  
14 protected, stayed under his subpoena to retain his  
15 viability.

16 MR. HARPOOTLIAN: I've got no problem with that.

17 THE COURT: Yes, sir.

18 (Whereupon, a bench conference is had)

19 THE COURT: All right, ladies and gentlemen.

20 Let's take about a 15-minute break. Go to the jury  
21 room. Don't discuss the case among yourselves while  
22 you're in the jury room. We'll call you when we're  
23 ready. Thank you.

24 (Jury out at 3:38 p.m.)

25 THE COURT: All right. We'll stand at ease for



1 about ten minutes.

2 (Whereupon, a break is taken)

3 (WHEREUPON, State's Exhibit No. 100 is marked  
4 for identification.)

5 MR. HARPOOTLIAN: Before we bring the jury, this  
6 is going to be the autopsy from the pathologist. I  
7 understand the family is here. This is going to be  
8 traumatic for them. I'd admonish you to admonish --

9 THE COURT: Have you already done it?

10 MR. MEADORS: Yes, sir. If they didn't feel  
11 like they could control themselves, please go  
12 outside. I did that very respectfully. I think they  
13 understand that.

14 MR. GIESE: And I'll be very brief.

15 MR. MEADORS: And they have told -- I think one  
16 of them may not be here because she felt like she  
17 couldn't.

18 THE COURT: All right. This is the wife? Sit  
19 down, please. I can't see her.

20 MR. HARPOOTLIAN: I'm sorry.

21 THE COURT: Does everybody understand what we're  
22 about to go into? Everybody in control? I know it's  
23 been a long trial, but we need to respect that. All  
24 right, Solicitor. I'm sorry. Bring the jury,  
25 please.

1 (Jury in at 4:00 p.m.)

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

3 **THE COURT:** All right, Solicitor. You may  
4 conversation.

5 **THE MR. GIESE:** The State calls Dr. Stan  
6 Kessler.

7 DR. STANTON C. KESSLER, 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:** Stanton Coleman Kessler.

12 DIRECT EXAMINATION

13 **BY MR. GIESE**

14 **Q** Dr. Kessler, where are you employed now?

15 **A** I am employed as a medical examiner for the Coroner's  
16 Office and work at Palmetto Richland Health.

17 **Q** Tell the jury what a medical examiner does?

18 **A** A medical examiner is a person like myself who is  
19 trained in pathology, which is the study of disease,  
20 and has taken extra training in forensic pathology,  
21 which is the study of sudden, unexpected death:  
22 Trauma, accidents, unusual deaths.

23 And the medical examiner is a forensic  
24 pathologist who looks at why people die. And he does  
25 this in various ways. He is trained first, as I

1       said, a general pathologist for four years and then  
2       another training for about a year, sometimes two  
3       years. And after that time you sit for an  
4       examination, take your boards in general pathology  
5       and forensic pathology. And then you work for years  
6       in an office where you learn how to do your craft,  
7       how to do your art. And you learn about homicides,  
8       suicides.

9       **MR. HARPOOTLIAN:** Your Honor, we stipulate he's  
10      qualified as a forensic pathologist, to save a little  
11      time here.

12      **THE COURT:** Go ahead.

13      **Q**     Just a couple of questions about that. Are you board  
14      certified?

15      **A**     Yes, I am. I am board certified initially in 1987,  
16      and I recertified two years ago.

17      **Q**     And board certified means what?

18      **A**     You have a bunch of subspecialties in medicine.  
19      There are several of them: Kidney disease, heart  
20      disease, lung disease. Pathology is one of these.  
21      Nephrology is another, neurology. And when you take  
22      a training program outside of medical school, there  
23      is a group of experts who set up certain criteria  
24      that you have to know before you're considered  
25      eligible to go on and work in your specialty or

1 subspecialty. And these people are called the  
2 American Board of Graduate Medical Education. And  
3 after you've taken your training in this  
4 subspecialty, my instance was pathology and then  
5 forensic pathology, you have to sit and take an  
6 examination they put together. If you sit and take  
7 the exam after you've done your training, then you're  
8 considered board certified.

9 Q And, Dr. Kessler, I'm not going to go into all your  
10 background, but could you just tell the jury where  
11 you spent most of your time in the area of forensic  
12 pathology?

13 A Well, I trained in Miami with Dr. Davis at Jackson  
14 Memorial. And then I spent most of my time in  
15 Massachusetts. I retired from Massachusetts where I  
16 was the deputy chief, the chief of staff and the  
17 acting chief medical examiner for almost 15 years  
18 during which time I ran a training program in  
19 forensic medicine for both Harvard and Boston  
20 University Hospital and ran all of our five offices  
21 that we had throughout the Commonwealth.

22 Q So it is fair to say that forensic pathology has been  
23 your career all your life?

24 A Yes, it has.

25 Q And you've been qualified as an expert in the area of

1 forensic pathology numerous times?

2 A Yes, sir.

3 Q It's your first time here in South Carolina?

4 A Yes.

5 Q Now, Dr. Kessler, I'd like to draw your attention to  
6 an autopsy that you performed on January the 30th of  
7 2006 on one John Johnson. Do you recall that  
8 autopsy?

9 A Yes, I do.

10 Q Now, if you would, just tell the jury very briefly  
11 when you do an autopsy, tell the jury exactly kind of  
12 how you go about it?

13 A We perform an autopsy. First the body will come into  
14 our morgue. It's weighed. It's measured. And then  
15 it's put on the table with their clothing on that it  
16 comes in with. Drawings are made. Photographs are  
17 taken of any trauma or abnormality. Then the body is  
18 unclothed. We look for any signs of chronic disease,  
19 natural disease and/or traumatic disease.

20 And in doing so, this is then reported. And we  
21 then open the body cavities, the cranial cavity where  
22 the head is, the chest cavity, and the abdominal  
23 cavity where the intestinal organs are to see what  
24 damage is done to these organs by chronic disease  
25 and/or trauma. And that's basically an autopsy in a

1 nutshell.

2 After we do that, in some cases we have to take  
3 little sections and look at them under a microscope  
4 to see if there's any trauma that we don't see with  
5 the naked eye that we need to look at with the  
6 microscope. Often toxicology is taken, usually in  
7 our cases, to look for poisons or toxins or drugs  
8 that could be in the body. And when that's all done  
9 we put it all together and determine the cause or  
10 manner of death.

11 Q Now, so is it fair to say that when John Johnson or  
12 any body comes in that the first thing you do is do  
13 an external examination?

14 A That is correct.

15 Q All right. And in this case with John Johnson; what,  
16 if anything, can you tell this jury as to what you  
17 saw externally?

18 A Externally I will briefly describe Mr. Johnson. He  
19 was well developed, well nourished. He looked his  
20 age, about 32. He was five-nine, about 250 pounds.  
21 We looked at the body. We gave general identifying  
22 marks. He had two yellow metal earrings in each ear.  
23 But what was important in this case more than  
24 anything else other than just general descriptions of  
25 him, he had a gunshot wound to his left ear.

1 Q Now, a gunshot wound to the left ear, you could see  
2 that visually?

3 A Yes.

4 Q And describe that, if you could, to the jury?

5 A Well, a gunshot wound is a hole. If the bullet goes  
6 in the body, it usually makes a hole. And then as it  
7 goes in, it sometimes spins. And sometimes you can  
8 see a little ring of abrasion around where it's spun  
9 in. Usually it's a circular wound. In this instance  
10 the wound was a little off circular. It was a  
11 regular wound about a half inch. And we saw that,  
12 documented it, photographed it.

13 Q And this wound that you saw on John Johnson or on his  
14 ear, could you point to your ear and show us where it  
15 would be?

16 A Sure. It went into the ear canal, almost right into  
17 the middle of the canal.

18 Q Now, once you saw the wound and you looked at it  
19 externally, at that point or some point later did you  
20 have an opportunity to internally look for the path  
21 or for whatever the weapon -- or not weapon -- but  
22 projectile?

23 A Yes. First I had x-ray come and took x-rays of the  
24 skull to see where the bullet or the bullet fragments  
25 were. And then after that was done we opened the

1           cranial cavity and looked at the pathway of the  
2           bullet, the projectile and looked at the brain to see  
3           how it was damaged and removed pieces of the  
4           projectile and put them in police custody and then  
5           looked at the brain to see what further damage there  
6           was.

7   Q       Now, were you able to see actually see the path of  
8           the bullet?

9   A       Yes.

10  Q       And could you describe that for the jury?

11  A       The bullet plowed through the ear canal and then went  
12           in a bone we call temporal bone and went deeper into  
13           this bone, actually a portion of it called the  
14           mastoid process and sort of went a little bit  
15           downward. I think we have a photograph of that. A  
16           little bit downward and a little bit to the other  
17           side. It went from left to right. And it went from  
18           the front of the body to the back of the body. So it  
19           traversed going backwards. And actually in this, it  
20           went backwards and a little down and from this side  
21           to this side, from the left to the right.

22  Q       From the left to the right?

23  A       It went through the bone. As it went through the  
24           bone, it fragmented. Many pieces were still in the  
25           bone. And there are multiple fragments that were too



1 small to remove. But I removed many fragments. I  
2 think I took five fragments out and the base of the  
3 bullet which was a copper jacket. Some bullets have  
4 jackets. Some don't. I put a little mark on it and  
5 I put it into police custody.

6 Q Now, I hand you State's Exhibit No. 37. Can you  
7 identify that?

8 A Yes, I can.

9 Q And what is that?

10 A This is a copy of the x-ray that I had taken that day  
11 by radiology. It has the name of the deceased on it  
12 and it shows the decedent's skull x-ray taken from  
13 the left side. You can see two earrings on that  
14 side. You can see multiple bullet fragments, some in  
15 the bone, some too small to gather. And there were  
16 about five or six good fragments here but not all  
17 could be taken.

18 MR. GIESE: Your Honor, may he step down?

19 THE COURT: Yes, sir.

20 Q Come with me, Doctor. Doctor, you talked about --  
21 we've got a chair in there. You talked about the  
22 bullet fragments. I'm showing you State's Exhibit  
23 No. 37. Could you point out for the jury where those  
24 fragments are?

25 A We have a bunch of fragments. Here is one here, one

1 here, one here, one here, one here, one here and then  
2 one here. And then there are tiny little minute  
3 fragments all over the place that look almost like  
4 little grains of pepper. And these two big circular  
5 rings are his earrings. They're scattered throughout  
6 the bone. Some are densely packed in the bone and  
7 unable to be removed.

8 Q But you said you removed five of them to your  
9 knowledge?

10 A Yes.

11 Q And you put them in a -- you gave it to law  
12 enforcement, correct?

13 A That is correct.

14 Q I hand you State's Exhibit ...

15 COURT REPORTER: The big manila envelope  
16 probably would have the number.

17 Q Thank you. Beg the Court's indulgence. There it is.  
18 Thanks. State's Exhibit No. 90, do you see those  
19 fragments in there?

20 A Yes, I do.

21 Q Would you pull them out, just look at them, make sure  
22 they're what we are talking about. There you go.

23 A Pieces of copper jacket, pieces of the lead core, and  
24 I can see my markings there and my marking at the  
25 base of the fragment there. So we have one, two,

1 three, four and five. And it's got the name of the  
2 decedent. And I see my printed label that I put  
3 together myself for the bottle that it was in. So  
4 that's from the decedent.

5 Q And you gave those to law enforcement?

6 A That is correct.

7 Q From his head to law enforcement?

8 A That is correct.

9 MR. GIESE: Your Honor, I'd like the offer these  
10 at this time.

11 MR. HARPOOTLIAN: No objection.

12 THE COURT: Without objection.

13 (WHEREUPON, State's Exhibit No. 90 is admitted  
14 into evidence.)

15 Q Doctor, you can have a seat again. Dr. Kessler, just  
16 a couple more questions.

17 A Surely.

18 Q You testified earlier that you saw the path of the  
19 bullet as it went in the ear and went through I guess  
20 John Johnson's brain?

21 A Through the bone and the brain. It actually went in  
22 the underside of the brain.

23 Q What effect would a bullet going through that path  
24 have on an individual like John Johnson?

25 A It would cause what we call severe cranial cerebral

1 trauma. That means the bone and the brain causes  
2 death.

3 Q And how long would you be conscious after something  
4 like that?

5 A At best, a few minutes, if not immediately.

6 Q Any hope of recovery from a wound like that?

7 A No. It transected the major portions of the brain,  
8 we call the mid brain and pons that you couldn't  
9 recover from.

10 Q So even if he'd been shot in that direction like that  
11 in a hospital, right there, could he have been saved?

12 A It's possible he could have been saved as a vegetable  
13 but not a living human that we normally would say is  
14 John Johnson.

15 Q And, Doctor, the cause of death for the record in  
16 this case is what?

17 A The cause of death was the gunshot wound to the ear  
18 perforating the brain.

19 Q Thank you. That's all I have, Doctor.

20 CROSS EXAMINATION

21 BY MR. HARPOOTLIAN

22 Q Just a few questions, Doctor. I'll try to be brief.  
23 You indicate the entrance wound was irregular. What  
24 do you mean by that?

25 A It didn't have a nice round edge. And that's often

1           what I see when they go into that ear canal there.  
2           There's bone underneath it. And it was a little bit  
3           oblique looking.

4   Q    So sometimes when bullets go in they leave a smooth  
5           hole and sometimes when they go in they leave a  
6           ragged hole?

7   A    Sometimes they can.

8   Q    Right. Now, your report indicates that the path of  
9           the bullet was from right to left, from front to  
10          back, and slightly downward. Is that right?

11  A    No. That's not correct. Left to right, sir.

12  Q    I'm sorry?

13  A    Left to right. You said right to left.

14  Q    The direction is from left to right?

15  A    That's correct.

16  Q    From front to back?

17  A    Yes.

18  Q    And slightly downward. Is that right?

19  A    That is correct.

20  Q    So, how about step down here for just a second. May  
21          he, Your Honor?

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

23  Q    This is my left ear here. How about show me, if this  
24          were the projectile, the path of that as to my ear.  
25          Slightly down.

1 A Left to right.

2 Q Left to right.

3 A And front to back.

4 Q Front to back. So it would be coming down and to the  
5 back?

6 A Somewhat. A little bit.

7 Q Okay. Thank you. Go ahead and take the stand,  
8 please. Thank you. No further questions.

9 MR. GIESE: Nothing.

10 THE COURT: Anything further?

11 MR. GIESE: No, sir.

12 THE COURT: All right. You may come down.

13 Thank you very much. May the witness be excused?

14 Without objection.

15 MR. HARPOOTLIAN: Without objection.

16 MR. MEADORS: Investigator Stan Smith.

17 JAMES S. SMITH, after being duly sworn,  
18 testifies as follows:

19 THE CLERK: Please have a seat there. State  
20 your full name for the record.

21 WITNESS: James Standin Smith. S-T-A-N-D-I-N,  
22 middle name.

23 DIRECT EXAMINATION

24 BY MR. MEADORS

25 Q What is your rank at the Sheriff's Department?

1 A I'm a captain.

2 Q You know my next question, please. Please tell the  
3 jury where you're born, where you were raised and  
4 your education leading up to where you are today,  
5 please?

6 A I was born in a small town right on the  
7 Georgia/Alabama line by the name of Lanette, Alabama.  
8 We actually resided in Georgia. The closest hospital  
9 was across the Chattahoochee River. My father was a  
10 Baptist minister, so we moved a good bit when I was a  
11 child. We moved to the South Carolina area, Rock  
12 Hill and Columbia, then Sumter. I finished high  
13 school in Sumter. I came to the University of South  
14 Carolina, got a degree in criminal justice in 1983.

15 Q What did you do after that?

16 A My first job out of college was with the Richland  
17 County Sheriff's Department. I was hired in June of  
18 1984.

19 Q And what did you do then with the Sheriff's  
20 Department?

21 A I was a road deputy for three years. I answered  
22 calls for service like a road deputy, any other  
23 scenario. During the last year I was actually in a  
24 special unit called the saturation team which would  
25 then be comparable to the present-day CAT team. If

1 the jury is familiar with Cat team, Community Action.  
2 It's sort of a specialized unit, still answering  
3 calls. They just go into troubled areas and that  
4 kind of thing.

5 Q Did you hold any other positions at the Richland  
6 County Sheriff's Department?

7 A In 1997 I was promoted to investigator. I was with  
8 the property crimes unit for a number of years. In  
9 the early nineties, I think around '91, I was  
10 promoted to corporal and then sergeant, again in the  
11 property crime sections. However, during the early  
12 nineties I began to work or be on call for homicides  
13 and I worked a number of homicides from that point on  
14 even though I was primarily assigned to a property  
15 crimes unit.

16 Q And did you stay as an investigator for a period, a  
17 while after that?

18 A Yes. Again, I stayed in investigations until 1996.  
19 I took a job in the private sector. I was recruited  
20 and I stayed with it about two years and ten months.  
21 And I wasn't very happy doing that. Sheriff Lott had  
22 been elected in the interim and sort of recruited me  
23 back. And I was happy to come back. I came back in  
24 October of '99. I came straight back into  
25 investigations. I worked sex crimes for a year. I



1 worked armed robbery for a year. Sheriff Lott  
2 promoted me to sergeant over the robbery unit. And  
3 from then he's promoted me to lieutenant and now  
4 captain.

5 Q And you're a captain over what?

6 A I'm a captain in the criminal investigative division,  
7 commonly referred to as CID. Primarily my  
8 responsibility is armed robbery and homicide.

9 Q How many homicides have you investigated over your  
10 career?

11 A I don't have an exact number, but I've investigated  
12 dozens of homicides. I'm involved in most every  
13 homicide that occurs in Richland County, sometimes  
14 more, sometimes not quite as much. But I have a  
15 certain amount of responsibility with regard to every  
16 homicide.

17 Q In addition to the Criminal Justice Academy, have you  
18 received other training?

19 A Yes. I've been to numerous seminars, schools on  
20 interrogation, crime scene, blood spatter analysis,  
21 too numerous to mention.

22 Q What is basically your responsibility, if any, with  
23 the Sheriff's Department and the Solicitor's Office?

24 A I am -- again, as I'm involved in most homicides, I  
25 am sort of a liaison with the Sheriff's Department

1           between the Sheriff's Department and the Solicitor's  
2           Office on these homicides.

3    Q    Let's go back to January 29th of 2006. Were you on  
4           call that weekend or did you learn about the shooting  
5           at Chastity's, Captain?

6    A    I wasn't officially on call per se. But in a way I'm  
7           always on call. My detectives and my detective  
8           supervisors are instructed to let me know of course  
9           when there is a homicide. And that Sunday morning of  
10          the 29th of January I was informed about the  
11          homicide.

12   Q    And as a result of that what did you do?

13   A    I conferred with Sergeant Linfert and I also  
14          conferred with Deputy Chief Wilson who had come out  
15          on this particular case. It's my understanding that  
16          Sheriff Lott instructs him to come out on any  
17          officer-involved shooting. So he had come out in the  
18          middle of the night because of the officer-involved  
19          shooting, and he was also at that point in time  
20          involved in certain aspects of the investigation of  
21          the homicide.

22   Q    And any officer-involved shooting, it's your  
23          understanding he gets involved? Any?

24   A    Yes. He's mandated by the sheriff get involved.

25   Q    What information had you gathered by this point from

1 Sergeant Linfert and/or Chief Wilson?

2 A I knew where the incident occurred and I was aware  
3 that a suspect had been immediately developed based  
4 on some tag information which was later correlated to  
5 a driver's license photo and video surveillance taken  
6 from the club. Of course by 9:00 Sunday morning I  
7 was also aware of the secondary incident involving  
8 when the defendant's home was searched and he was  
9 arrested.

10 Q And that's

11 A Yes, sir.

12 Q And in case it hasn't been testified to, is that in  
13 Richland County?

14 A Yes, it's in Richland County, just outside of the  
15 city limits of Forest Acres I believe.

16 Q Did you learn the suspect was one Dewain Herring?

17 A Yes.

18 Q And had you -- did you know Dewain Herring?

19 A Yes. Ironically, just literally weeks before I had  
20 had a number of contacts with Mr. Herring regarding a  
21 case we were working involving a suspicious death and  
22 had some probate issues. And that was his specialty  
23 of law.

24 Q And in that case, it was a civil, potential civil  
25 matter with the victim in that case, correct?

1 A Yes.

2 Q And that's how the defendant, Dewain Herring, was  
3 involved in that and that's how you -- what you were  
4 dealing with him shortly before this, correct?

5 A Yes.

6 Q You've heard the 911 tape, and it's been played in  
7 here. Are you the Stan Smith that he was referencing  
8 that he had been dealing with recently?

9 A I am.

10 Q Along with Lancy Weeks who is in the second row back  
11 here, correct?

12 A Yes, sir. The blonde headed lady with the yellow  
13 coat on.

14 Q Now, when did you view the video? And I say the  
15 video. The DVD, CD, whatever it is, that shows the  
16 front of Chastity's?

17 A When I came in that Monday -- again, I did not come  
18 out Sunday -- I came in that Monday morning. One of  
19 the first things I did in conjunction with the  
20 briefing was to view the video or the digitized  
21 version of a CD.

22 Q Is that when you confirmed, or did you confirm then  
23 that that was the same Dewain Herring you'd been  
24 dealing with?

25 A Yes. I recognized him.

1 Q What do you do, and specifically what did you do in  
2 this case as the Captain over investigations as far  
3 as what to do next in the investigation?

4 A Well, as in most cases, we have a review, immediate  
5 review. In this case I believe it involved Sergeant  
6 Linfert, Chief Wilson, some of the lab people who  
7 were there to try to determine if other things needed  
8 to be done with regard to the investigation where we  
9 get it to a point where we submit a case to the  
10 Solicitor's Office.

11 Sometimes there is a lot of things that still  
12 need to be. Sometimes there's only just a few things  
13 that need to be done. And again, as you're building  
14 a case like this, you're of course trying to  
15 anticipate the possible defenses and things of that  
16 nature. You're trying to cross T's and dot the I's  
17 and do what you think is needed to be done if you've  
18 made a murder charge against somebody to make sure  
19 it's a valid charge and, you know, you're proceeding  
20 appropriately.

21 Q Did you have various 911 tapes? And I say you. You  
22 know I mean, were 911 tapes involved in this?

23 A Yes, there were. There was a 911 tape -- careful  
24 with this terminology about tapes and CD's -- that  
25 had actually come into the Forest Acres Police

1 Department. And then there was a 911 tape that had  
2 been secured from Richland central dispatch. When  
3 that call was rolled over from Forest Acres to the  
4 Richland central dispatch, that was also a tape. And  
5 then there was an in-house phone recording that was  
6 on a CD. Our phones at the Sheriff's Department, all  
7 are recorded. And there's a designation on each  
8 phone saying this line is recorded. And we can  
9 actually pull any conversation. And that had been  
10 done as well per orders of Chief Wilson.

11 Q And was that the one where you hear Sergeant Odom?

12 A Yes.

13 Q And was it at your direction that these tapes were  
14 gathered from the different agencies, put into  
15 evidence and ultimately played as one as we did here  
16 the other day?

17 A Yes. I actually gathered personally the tapes from  
18 the Forest Acres Police Department. I believe  
19 Lieutenant Lawrence from SLED had already recovered  
20 the central dispatch tape. And then one of our  
21 captains at the Sheriff's Department who is kind of  
22 our technical criminal guy for that kind of thing  
23 secured the in-house CD.

24 Q And that was Captain ...?

25 A Captain Lane.

1 Q And again, as far as keeping up with this, as it's  
2 progressing, the investigation, you're in charge?

3 A The buck stops with me. Yes, sir.

4 Q In addition to -- well, we've heard some testimony  
5 about some firearms?

6 A Yes, sir.

7 Q And the Ruger .357; what, if anything, were you able  
8 to do to determine ownership of that, if anything?

9 A We at that time had one of our detectives that was  
10 assigned to the Alcohol, Firearms and Tobacco unit or  
11 a special team, and we would use him routinely to do  
12 the traces of firearms. All firearms that are  
13 purchased or all pistols that are purchased are  
14 recorded through Alcohol, Tobacco, Firearms through  
15 records. And theoretically you can trace the origin  
16 of a pistol, its initial purchase.

17 I had my detective do that trace for me, and he  
18 provided me with a report sometime thereafter that  
19 revealed that Mr. Herring was indeed the purchaser of  
20 the Ruger .357 Magnum. He had actually purchased it  
21 back in April of 2004 from Shooters Choice which is  
22 located right over here on Sunset Boulevard in West  
23 Columbia.

24 Q So you traced the ownership of that back to Dewain  
25 Herring?

1 A Yes.

2 Q Were there any other images on film, CD, that you  
3 gathered as a part of this investigation?

4 A Yes. We actually received a phone call -- actually,  
5 Sheriff Lott's secretary received a phone call on the  
6 3rd of February from a Robert Weston of Weston Real  
7 Estate Property Management. They handle the physical  
8 circumstances, if you will, of Gregg Park Subdivision  
9 where Mr. Herring resided. Previously we had been  
10 aware that there was a gate there, but I don't know  
11 that we had been aware that there was actually a  
12 video that was collected from that gate. And  
13 Mr. Weston called to volunteer that video.

14 Q He called in and said, I have this video?

15 A Yes. And it's another one of these CD's that was  
16 actually I guess compressed to hard drive. I'm not  
17 sure of the correct terminology.

18 Q And who retrieved it?

19 A I retrieved it.

20 MR. MEADORS: And, Your Honor, at this time, I  
21 believe without objection, we'd offer the CD.  
22 They're already in evidence.

23 MR. HARPOOTLIAN: Well, we don't have any  
24 objection to it. It's been just played one minute  
25 instead of watching four hours of it.



1           **MR. MEADORS:** Your Honor, we're not planning on  
2           doing that.

3           **MR. HARPOOTLIAN:** No. I'm just --

4           **THE COURT:** Without objection.

5           **MR. MEADORS:** Could you play, please,  
6           Mr. Derrick, play the Gregg Park entrance video?

7           **COURT REPORTER:** Could you tell me what the  
8           number is, please?

9           **THE COURT:** Number?

10          **MR. MEADORS:** Yes, sir. Beg the Court's  
11          indulgence. Your Honor, I believe we are referring  
12          to State's 86.

13          **COURT REPORTER:** Okay. Thank you.

14          **MR. MEADORS:** It's previously been admitted  
15          without objection. Can you go back and show a still  
16          of that, please?

17    **Q**    Captain, have you looked at this before?

18    **A**    Yes, I did.

19    **Q**    And based on your observing it, can you see Mr.  
20          Herring in the video?

21    **A**    You can see the red sweater or arm of his sweater  
22          sticking out the side of what is definitely a Toyota  
23          4Runner. You just cannot make out the tag of the  
24          vehicle.

25    **Q**    Stop. And have you looked at that?

1 A Yes, sir.

2 Q Okay. And after observing that, what does that

3 appear to you to be inside?

4 A It appears to be an arm of the red sweater.

5 Q And where was this video? Is this going in Gregg

6 Park or out of Gregg Park?

7 A It's the entrance gate coming in.

8 Q And what time was this?

9 A It was at 1:12 a.m. of that Sunday morning.

10 Q 1:12 a.m. of January 29th, 2006?

11 A That's correct.

12 Q Keep going. Now, I think you were provided some

13 other video of Gregg Park. Did you look through it?

14 A Yes, sir. I did. Actually, we actually got a call

15 back from Mr. Weston who was I guess attempting to

16 help out in the investigation, and he advised that he

17 also had video from the exit gate. Actually got that

18 call on the 7th. And he secured it from between 8

19 and midnight to attempt to cover the time that Mr.

20 Herring may have left. And some of that was based on

21 the statements that he gave regarding what time he

22 got home I believe from playing golf and the

23 probability of the timeframe when he would have left.

24 Q And that's been admitted into evidence also. But

25 instead of running it up and showing all of it, did

1           you observe it all?

2    A    Yes.

3    Q    What were you able to determine generally as far as  
4           looking at that video?

5    A    Well, earlier in the night when there was more  
6           traffic, there were a lot of SUV's that exited. And  
7           it was too difficult, as was not the case with that  
8           one when it was, you know, later and you could see  
9           identifying characteristics with the red sweater, you  
10          could not do it with the earlier video based on the  
11          number of vehicles. You did see a number of SUV's  
12          leaving. I did note one at 10:05 p.m., almost 10:06,  
13          initially it looked like it might be that dark or it  
14          might black from one view, and then as it changed the  
15          view, it looked like it may be a little lighter. So  
16          I wasn't sure if that was him or not.

17   Q    So you weren't sure?

18   A    I am wasn't sure. No.

19   Q    Both of those you got from Mr. Adams?

20   A    Mr. Weston.

21   Q    Mr. Weston. You put them in the evidence log, and  
22          they have now been entered into evidence, correct?

23   A    Yes. I asked Chuck Earles to dub copies of those for  
24          our use, as I did with the other.

25   Q    Did you all -- and I say you all -- you and your

1 investigators, Sheriff's investigators, meet and make  
2 any to-do lists of what to do?

3 A We did. We have a homicide review within a couple of  
4 weeks of a homicide to try to formulate a list of  
5 things so when we get to trial time there's things  
6 that hopefully we've caught that we try to get done.  
7 And again, you're anticipating as you to do this, and  
8 if you've done it a number of years, you're  
9 anticipating possible defenses. And as you make  
10 those considerations, you also want to do the  
11 obvious. You want to do a thorough investigation and  
12 do what's right.

13 Q And did you do that? Did you have the meeting?

14 A Yes.

15 Q Did you determine there's some things that needed to  
16 be done? If so, what were they?

17 A I believe we had made a list of a few things that we  
18 felt needed to be done.

19 Q Specifically, did you inquire as a result of that,  
20 try to find out what \$300 at Chastity's would -- what  
21 could you get for \$300 at Chastity's?

22 A We wanted some more details about it, yes.

23 MR. HARPOOTLIAN: Your Honor, that would call  
24 for hearsay. I object.

25 MR. MEADORS: Your Honor, we're not going into

1 particulars. He made a list, and this is what --

2 **MR. HARPOOTLIAN:** He made a list? I mean,  
3 what --

4 **MR. MEADORS:** Your Honor, he's the head or the  
5 captain of investigations. Here is what we  
6 formulated. Here is our plan. Here is what --

7 **THE COURT:** He made list.

8 **MR. HARPOOTLIAN:** He made a list.

9 **THE COURT:** That's as far as we are.

10 Q And did you do that?

11 A Yes.

12 Q And was it determined to do GSR on the clothing?

13 A Yes.

14 Q Did you -- I guess you said the buck stops here. Let  
15 me ask you. Was any blood that you're aware of taken  
16 from the defendant?

17 A None that I was aware of, no.

18 Q Can you explain that?

19 A I've worked a number of homicides involving  
20 defendants who were drinking or intoxicated. And I  
21 am under the understanding and awareness that  
22 intoxication is not a valid or a recognized defense  
23 in South Carolina. So, you know, shootings at bars  
24 and clubs where there is going to be alcohol, it  
25 doesn't really affect the investigation per se.

1 Q Were there any other witnesses that you had  
2 determined you needed to talk to or might try to talk  
3 to?

4 A Yes. You know, the idea came up of possibly  
5 interviewing the defendant's wife, just an attempt to  
6 try to find out if -- the defendant's pattern as far  
7 as visiting these clubs like Chastity's, if that's  
8 something he did on a regular basis or was this a  
9 first-time thing, you know. Of course by that time  
10 of course the defendant had invoked his attorney  
11 privileges and we were no longer able to communicate  
12 with him except through his attorney, which was not  
13 going to happen. And I did call Mr. Harpootlian who  
14 was representing the defendant at that juncture. And  
15 I believe he did ask the defendant's wife and he  
16 called me back and said that she was not interested  
17 in speaking with us.

18 Q As far as the video from Chastity's, the initial  
19 video I believe there's been testimony was collected  
20 that night of the front camera 4, correct?

21 A Yes.

22 Q Were the other cameras' views, shots collected that  
23 night?

24 A No.

25 Q And when were they collected?

1 A They were collected several weeks ago. Basically I  
2 was unaware there was other camera views available  
3 that had been recorded. We were specifically  
4 interested -- and again, in that meeting I know we  
5 talked about getting specific video of the champagne  
6 room which seems to be the exact location where the  
7 conflict, if you will, originated. And we were able  
8 to determine that that room is not recorded.

9 Q Determined there was no view of the champagne room?

10 A Correct.

11 MR. MEADORS: Beg the Court's indulgence. Your  
12 Honor, I believe all this is without objection.  
13 State's 100.

14 (WHEREUPON, State's Exhibit No. 100 is admitted  
15 into evidence.)

16 Q State's 100, do those appear to be marked as the  
17 glasses, clear glasses?

18 A Yes, sir.

19 Q Okay. Of Dewain Herring, for time purposes?

20 A Yes, sir.

21 MR. HARPOOTLIAN: All this received at the  
22 house, correct?

23 MR. MEADORS: Correct. State's 97 --

24 MR. HARPOOTLIAN: And, Your Honor, we're not  
25 objecting to it, but we have a previous objection.

1                   **THE COURT:** The underlying. I understand.

2   **A**   A pair of pants.

3   **Q**   Collected by Investigator Rowe?

4   **A**   Yes.

5                   **MR. MEADORS:** That's 97.

6                   (WHEREUPON, State's Exhibit No. 97 is admitted  
7   into evidence.)

8   **Q**   94?

9   **A**   White in color --

10   **Q**   Necktie shirt?

11   **A**   -- turtleneck type shirt.

12   **Q**   From Dewain Herring?

13   **A**   Yes, sir.

14   **Q**   By Investigator Rowe?

15   **A**   Yes, sir.

16                   (WHEREUPON, State's Exhibit No. 94 is admitted  
17   into evidence.)

18   **A**   Off white in color turtleneck type shirt.

19   **Q**   Alexander?

20   **A**   Yes, sir. And that's 95.

21                   (WHEREUPON, State's Exhibit No. 95 is admitted  
22   into evidence.)

23   **Q**   96?

24   **A**   A Nike brand burglary and black jacket by Rowe. And  
25   I don't know --



1           **MR. MEADORS:** All without objection.

2                   (WHEREUPON, State's Exhibit No. 96 is admitted  
3           into evidence.)

4   **Q**   And we've heard testimony; but Chuck Earles went to  
5       NASA, correct?

6   **A**   Yes.

7   **Q**   And for the record, we would offer that. I know we  
8       had that one stipulated initially off of that. I  
9       think at this point without objection.

10           **MR. HARPOOTLIAN:** Without objection. No  
11       objection.

12           **MR. MEADORS:** The NASA CD, Your Honor.

13           **COURT REPORTER:** I need the number.

14           **MR. HARPOOTLIAN:** I think it's in.

15           **MR. MEADORS:** I think it was subject to one  
16       thing earlier. Just for the record, I just want to  
17       put it in.

18           **MR. HARPOOTLIAN:** Yeah. But I think you put it  
19       in. You said you had it mixed it up.

20           **COURT REPORTER:** Do you know what number?  
21       That's 87.

22           **MR. HARPOOTLIAN:** No objection.

23           **COURT REPORTER:** It is already in.

24           **MR. MEADORS:** Thank you, Madam Court Reporter.

25   **Q**   And is Dewain Herring in the courtroom?

1 A He is.

2 MR. MEADORS: Beg the Court's indulgence. Thank  
3 you.

4 MR. HARPOOTLIAN: May it please the Court,  
5 Judge. Just a couple of questions.

6 CROSS EXAMINATION

7 BY MR. HARPOOTLIAN

8 Q I want to show you the medical record of Mr. Herring  
9 here. Isn't it accurate that on the 29th when he was  
10 taken to the hospital by Sheriff's deputies that the  
11 Sheriff's Department asked for blood to be drawn?  
12 Isn't that correct?

13 A It says: "If patient consents we need to get a tube  
14 of blood." Let me read the whole thing.

15 Q Go ahead.

16 A Yes. It said: "Guard stated, 'If patient consents  
17 to get a tube of blood.'"

18 Q But also, they didn't have the proper paperwork,  
19 right?

20 A Yes. It goes on say: "I explained to them that  
21 without proper paperwork, the patient was here to get  
22 dressing changed only."

23 Q Right.

24 A "And there was no indication for us to obtain any  
25 labs for medical necessity. The Sheriff's officer

1       called his Chief. I spoke to him and reiterated that  
2       without proper paperwork, chain of command request  
3       from them, we would not draw any blood. Chief stated  
4       they needed it for a murder investigation. I  
5       transferred his call to charge nurse. Charge nurse  
6       came to staff and stated we were not to obtain or  
7       release any blood to officers without proper legal  
8       paperwork. Officers were explained this. Dressing  
9       to left upper arm of patient changed, has entrance  
10      wound." Do you want me to continue?

11     Q   No, no. That's okay. I guess what I'm saying is,  
12       the Sheriff's Department did try to draw blood on the  
13       29th or have blood drawn while he was at the hospital  
14       having the wound --

15     A   Yes, sir. And I have no idea why.

16     Q   Well, according to this, because of an ongoing  
17       homicide investigation.

18     A   Again, I have no idea why.

19     Q   Well, when somebody is at the hospital and you want  
20       to get blood, there's certain paperwork apparently  
21       you've got to have?

22     A   It would be my understanding that he could consent to  
23       it. I'm not sure what other paperwork they were  
24       referencing there. But again, as I testified to  
25       earlier, I would not have been interested in his

1 blood at that time. I don't know what they're  
2 talking about, quite frankly.

3 Q Now, this gentleman indicated in his statement that  
4 he had no memory whatsoever. He doesn't indicate  
5 anything about a lap dance or being naked or being  
6 escorted out, any of that. And you all knew that  
7 from these statements on the 29th, right?

8 A I don't believe that's accurate. I believe he  
9 indicated in one of the statements that he did go  
10 into a champagne room and had some kind of dance, if  
11 I'm not mistaken.

12 Q Well, I think you're mistaken.

13 A Okay.

14 Q Didn't he indicate he went and got a lap dance in a  
15 room with other people, right?

16 A I believe he referenced a light-skinned black female.  
17 And again, if you'll show it to me, I'll -- but I  
18 believe that was a reference. And he said other  
19 people were present.

20 Q Right. But we know in the champagne room nobody is  
21 present?

22 A But your question, you indicated he didn't have any  
23 recollection. That's not accurate.

24 Q Any recollection of getting in an argument with "Jon  
25 Jon"? Any of the details we see on that videotape,

1 was there anything in this statement that -- didn't  
2 it indicate to you he had some memory?

3 A I believe in the verbal statement to Chief Wilson he  
4 made some indication that he had had some sort of  
5 dispute. It may not be in the written statement.

6 Q I guess what I'm saying is, you didn't find it  
7 strange that a 63-year-old lawyer that you've dealt  
8 with very professionally before, right; he came in,  
9 and you all dealt on some civil matter earlier,  
10 right?

11 A Yes, sir.

12 Q Very professional, right?

13 A Yes, sir.

14 Q Very normal?

15 A Seemed to be. Yes, sir.

16 Q You didn't find this is a little bizarre?

17 A Which?

18 Q I mean, the fact that he is sitting there handcuffed  
19 in a red, in an orange jumpsuit having, A), been  
20 involved allegedly in a shooting in a strip club; and  
21 B), having been shot by your officers?

22 A Well, again, Mr. Harpootlian, I wasn't familiar with  
23 Mr. Herring's personal habits. His propensity, I  
24 didn't know his alcohol habits, his habits with  
25 regard to going to strip clubs. So I knew him from

1           one case. That's all I could comment on that.

2   Q       But you would concede now that your officers, people  
3           under your supervision, had tried to get blood?

4   A       According to that report they did.

5   Q       That doesn't shock you. That's pretty normal in a  
6           number of different cases. You all get blood drawn  
7           all time?

8   A       We get blood on DUI's.

9   Q       Right.

10   A       Things of that nature.

11   Q       Driving under the influence you can go get blood?

12   A       This wasn't a DUI case. Again, I don't know why that  
13           was important to those officers at the time.

14   Q       Do you know who they were?

15   A       I have no idea.

16   Q       Even if there's no view of the champagne room,  
17           actually there was a camera that looked down towards  
18           the champagne room, right?

19   A       I understand from the trial here there was a camera  
20           backwards that went to that area.

21   Q       Right.

22   A       Not specifically in the room that they were in.

23   Q       Did you go to Chastity's or to the corporate  
24           headquarters to get these tapes or look at it on the  
25           hard drive?

1 A At which time? I mean, I never went.

2 Q On the 29th.

3 A No, sir.

4 Q I mean, back when the incident happened a year and a  
5 half ago?

6 A No, sir. And most recently the new video was  
7 retrieved by an investigator with the Solicitor's  
8 Office.

9 Q Right. But I guess what I'm saying is, when you say  
10 there's no video camera back towards the champagne  
11 room, we actually we now know there was one back in  
12 that area but it wasn't retrieved?

13 A Our specific intent was to get video of the  
14 activities within the champagne room. And that was  
15 my testimony. Because that was important because  
16 that was the focal point or the initiation of this  
17 conflict. And we were unable to. We were told that  
18 think didn't have that video.

19 Q When were you told that?

20 A Contemporaneous to that meeting we had, because those  
21 are things we did right then.

22 Q You got a to-do list with you?

23 A Yes, sir, I do.

24 Q May I see it? Okay. Did you subpoena the medical  
25 records of Herring?

1 A No, sir, we didn't.

2 Q And if you had, then you would have seen your  
3 officers tried --

4 A Those are medical records pertaining to prior history  
5 we were interested in because of statements that you  
6 made at the bond setting.

7 Q Okay. GSR on clothing Herring was wearing?

8 A We did that.

9 Q Now, interview Chris Isgett regarding Herring. Did  
10 you do that?

11 A We did not actually do that. But Mr. Meadors was  
12 involved in that negotiation.

13 Q Okay.

14 A There were some issues with that.

15 Q Okay. That's all I have.

16 REDIRECT EXAMINATION

17 BY MR. MEADORS

18 Q The medical record he was asking you about said "if  
19 he consents", correct? Is that what you read?

20 A Regarding the blood being drawn?

21 Q Yes.

22 A Yes.

23 Q Thank you.

24 RECROSS EXAMINATION

25 BY MR. HARPOOTLIAN



1 Q You can get a search warrant for blood, can't you?

2 A Yes, sir.

3 Q You can have a judge order him to give his blood?

4 A Yes, sir.

5 Q Do it all the time, right?

6 A Yes.

7 Q Thank you.

8 A If there's relevance, we would do that.

9 Q And you determined there was no relevance?

10 A I did.

11 Q Okay.

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

14 MR. MEADORS: Beg the Court's indulgence, Your  
15 Honor, just for a second.

16 THE COURT: I need to see you.

17 (Whereupon, a bench conference is had)

18 THE COURT: Ladies and gentlemen of the jury,  
19 we're checking with a witness to see if he will be  
20 available tomorrow.

21 (Whereupon, a bench conference is had)

22 THE COURT: All right, ladies and gentlemen of  
23 the jury. I've been advised by the State that we  
24 believe that will conclude the case for the State.  
25 But just to be certain, the State Solicitor's Office

1 wants to review this pile of evidence to make certain  
2 that the evidence that was admitted with witnesses,  
3 it's the complete list. In other words, when they  
4 rest, they can't put in any more evidence in the  
5 record, so they want to double check. There are  
6 approximately 100 exhibits that have been introduced  
7 during the course of the trial. I'm going to allow  
8 them to do that, but there's no sense in you sitting  
9 here and watching them do that. Because even so,  
10 we're not going to go hurt further today.

11 So I'm going to dismiss you now for the evening,  
12 ask you to be back in the jury room at 9:00 in the  
13 morning at which time, as I say, I think the State  
14 will be prepared to rest their case. The defense  
15 will then have their opportunity to present a case to  
16 you if they wish to do so.

17 And again, I'll caution you not to discuss the  
18 case with anyone else over the evening hours. I  
19 caution you about availing yourself of press reports,  
20 media reports and ask you not to discuss the case  
21 when you return to the jury room in the morning. I  
22 hope you have a pleasant evening. We'll see you at  
23 9:00 in the morning. Thank you very much.

24 (Jury out at 4:53 p.m.)

25 **THE COURT:** All right. It's my understanding

1 that the State plans to close in the morning at which  
2 time defense will be prepared to move forward with  
3 their case. And it's my understanding that any  
4 motions will be made nunc pro tunc and that you will  
5 state the motions for the record. Is that correct?

6 **MR. HARPOOTLIAN:** Your Honor, what I'd like to  
7 do is sort of seamlessly move from their resting  
8 into, you know, putting our case up.

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

10 **MR. HARPOOTLIAN:** And I just note the motions  
11 nunc pro tunc. I could do that now, a motion for a  
12 directed verdict, a motion on the --

13 **THE COURT:** Well, let's let them rest their case  
14 first.

15 **MR. HARPOOTLIAN:** Okay. But those would be the  
16 motions I'm going to make. I just don't want to have  
17 to send the jury out to make them.

18 **THE COURT:** All right. Well, let me do this at  
19 this time. Mr. Herring, I need you to stand. I need  
20 to advise you, sir, of your Fifth Amendment rights  
21 under the Constitution of the United States. I am  
22 going to explain to you certain rights that you have  
23 under the Constitution of the United States. If you  
24 do not understand anything I say, please let me know.  
25 If you want me to explain anything in further detail,

1 please let me know. Do you understand?

2 MR. HERRING: Yes, sir.

3 THE COURT: All right. We've now reached the  
4 stage of the trial where you may present your  
5 defense. You have a right to testify in your own  
6 behalf. However, no one can make you testify.

7 I advise you now that you have the right to  
8 invoke the protections given to you by the Fifth  
9 Amendment to the Constitution of the United States  
10 and a similar counterpart provision of the  
11 Constitution of the state of South Carolina.

12 The Fifth Amendment to the Constitution of the  
13 United States provides in part: No person shall be  
14 compelled in any criminal case to be a witness  
15 against himself. This provision of Constitutional  
16 law means that you cannot be compelled or required to  
17 testify in this case.

18 This is a right and a privilege which the law  
19 extends to you. This is a personal privilege. No  
20 one can waive this right except you. You have the  
21 right not to testify, but you also have the right to  
22 testify.

23 The Court will grant you the right to consult  
24 with your attorney before you make that decision. If  
25 you elect not to testify, your failure to testify

1 cannot be used by the State as any inference of  
2 guilt, and your failure to testify cannot be  
3 considered by the jury in its deliberations. If you  
4 elect to testify and waive the privilege extended to  
5 you by the Fifth Amendment to the Constitution of the  
6 United States, I advise you now that you will then  
7 assume the role of any other witness in this case and  
8 you will then waive or give up your Constitutional  
9 privilege against self-incrimination.

10 This means that if you voluntarily take the  
11 witness stand and testify, then you will subject  
12 yourself to the same rules that govern other  
13 witnesses, that you may be examined and cross  
14 examined on any relevant issue in this case,  
15 including a criminal record if you have one. You may  
16 be impeached to the same extent as any other witness,  
17 all of which, however, are subject to the rules of  
18 evidence of the state of South Carolina.

19 I further advise you that if you elect to take  
20 the witness stand and testify, this decision on your  
21 part must be freely, voluntarily, intelligently and  
22 with knowledge of the protections given to you by  
23 Fifth Amendment to the Constitution of the United  
24 States and with knowledge of the consequences of your  
25 election to testify.

1 I am going to grant you obviously the evening  
2 hours to consult with your lawyer about whether or  
3 not you should testify. And I'll ask you now, do you  
4 understand what I have explained to you?

5 MR. HERRING: I understand.

6 THE COURT: Do you have any questions about what  
7 I have explained to you?

8 MR. HERRING: No, sir.

9 THE COURT: All right. Thank you very much.  
10 All right. We'll stand adjourned. I'm sorry. Does  
11 the State, do you want to -- I'm going to adjourn the  
12 court at this time.

13 MR. MEADORS: If madam court reporter would hang  
14 around.

15 THE COURT: Yes, sir.

16 MR. MEADORS: We will certainly go through these  
17 right now and I'll go over them with Mr. Harpootlian.

18 THE COURT: We'll go over the evidence. All  
19 right. We'll stand adjourned until 9:00 in the  
20 morning.

21 MR. HARPOOTLIAN: Thank you, Your Honor.

22 MR. MEADORS: Thank you, Your Honor.

23 (Whereupon, the proceedings are concluded for  
24 the day, to be reconvened tomorrow morning)  
25

Wednesday, May 16, 2007

1  
2 **MR. MEADORS:** Judge, if I could clarify a few  
3 things for the record before the jury comes.

4 **THE COURT:** All right.

5 **MR. MEADORS:** Photos 4 and 7, I think that photo  
6 4 was what we used in the suppression hearing. It  
7 had the picture of the tag with the car. We'd offer  
8 that now before we close. And I think it's been  
9 testified to.

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

11 **MR. MEADORS:** In addition to that --

12 **MR. HARPOOTLIAN:** I mean, exception as to the  
13 search, we have no objection to it coming in.

14 **MR. MEADORS:** -- 7 was the picture of the coupon  
15 book. The coupon book is already in now. So we'd  
16 ask that that come in, too, subject to his --

17 **MR. HARPOOTLIAN:** The same objection.

18 **MR. MEADORS:** That would be 4 and 7 then without  
19 objection. Or with the objection, 4 and 7 in  
20 evidence.

21 **COURT REPORTER:** Okay.

22 (WHEREUPON, State's Exhibit No. 4 is admitted  
23 into evidence.)

24 (WHEREUPON, State's Exhibit No. 7 is admitted  
25 into evidence.)

1           **MR. MEADORS:** Blowup. Well, the others we went  
2 over last night. The only other one that we would  
3 offer, we would offer these blowup's of the  
4 statements in evidence.

5           **MR. HARPOOTLIAN:** Your Honor, I think those are  
6 demonstrative evidence, but they don't go back to the  
7 jury.

8           **MR. MEADORS:** That's fine. That's fine. We're  
9 trying to be easy this morning. I'm just going  
10 through what's marked. That's okay. I'm okay with  
11 that. And one thing I thought I put in but I  
12 neglected to was this evidence I went over. I  
13 thought I offered it. But State's 93 would be the  
14 shells from the car. I know that Richards testified  
15 to it. And we'd offer those.

16           **MR. HARPOOTLIAN:** Other than our previously made  
17 objections.

18           **THE COURT:** Subject to the defendant's  
19 previously made objections.

20           (WHEREUPON, State's Exhibit No. 93 is admitted  
21 into evidence.)

22           **MR. MEADORS:** That should cover everything.  
23 Everything else that is not -- like this right here  
24 was not in. And that's it.

25           **MR. HARPOOTLIAN:** Okay. So State's Exhibit



1 No. --

2 MR. MEADORS: 52 is ID.

3 MR. HARPOOTLIAN: But not in.

4 MR. MEADORS: That's correct. And for the  
5 record, 56 was ID but not in. That's a statement  
6 from one of the -- I don't think it's allowed to come  
7 in. It might have been Nicole Beran or one of those.  
8 The same with State's 57. It was a statement by one  
9 of the lay witnesses which I just marked for ID.

10 MR. HARPOOTLIAN: Oh, you marked them for ID.  
11 Okay.

12 MR. MEADORS: 58 I think is the same thing. 62,  
13 Your Honor, was a vest, a jacket, which I don't think  
14 we intended the solicitor offer those as evidence,  
15 just I.D. only.

16 MR. HARPOOTLIAN: So it's not going back to the  
17 jury.

18 MR. MEADORS: Other than that, 76, Your Honor,  
19 the final pictures we looked over. I took out some.  
20 Mr. Harpootlian took out some. We're left with some.  
21 I'm not going to offer them. If he wants to later,  
22 he can. That should clear the record. 76 would be  
23 ID.

24 COURT REPORTER: There was State's Exhibit  
25 No. 5, a search warrant, that you wanted to withdraw.

1           **MR. MEADORS:** Oh. And, Your Honor, for the  
2 record, State's 5, search warrant, I think was  
3 offered during the suppression hearing. We would ask  
4 that not go to the jury. We don't think that's  
5 proper for their consideration. That would just be  
6 held as Court's I.D. And I don't think there's any  
7 objection to that.

8           **MR. HARPOOTLIAN:** To what?

9           **MR. MEADORS:** The actual search warrant going to  
10 the jury. I believe they're not entitled to have the  
11 actual search warrant, Your Honor.

12           **MR. HARPOOTLIAN:** No. They're not allowed to  
13 have the search warrant.

14           **MR. MEADORS:** So I think that was just marked  
15 and may have been entered inadvertently in the  
16 suppression hearing.

17           **MR. HARPOOTLIAN:** Well, the statements, there is  
18 a jury issue. I mean, it's a purely legal issue on  
19 the search. There's no reason to admit the search  
20 warrant.

21           **MR. MEADORS:** So we'd like the record to reflect  
22 that search warrant, 5, is for Court's Exhibit or  
23 I.D. only. It does not go to the jury. And with  
24 that, the State I believe will rest, Your Honor.

25           **MR. HARPOOTLIAN:** Well, your Honor, if they can

1 go ahead and rest outside the jury's presence, I'll  
2 go ahead and open motions. Then if they rest in  
3 front on the jury, we can save a little time.

4 MR. MEADORS: Your Honor, the State of South  
5 Carolina rests.

6 THE COURT: Thank you very much. Any motions?

7 MR. HARPOOTLIAN: Yes, sir. May it please the  
8 Court, Your Honor, viewing the evidence in a light  
9 most favorable to the State, the defendant would move  
10 for a directed verdict as to all charges.

11 THE COURT: All right, sir. I'll think about  
12 it. Let me do it. As to the motion for directed  
13 verdict, I feel the evidence goes beyond that of mere  
14 conjecture or suspicion, that there's evidence,  
15 either direct or circumstantial or some combination  
16 of both, which reasonably tends to prove the guilt of  
17 the defendant or from which guilt of the defendant  
18 might be logically and reasonably deduced if that  
19 evidence is taken in the light most favorable to the  
20 State. So I must respectfully deny the motion for a  
21 directed verdict. All right.

22 MR. MEADORS: If we can inquire as to the  
23 defense's first witness?

24 MR. HARPOOTLIAN: I'm sorry?

25 MR. MEADORS: Could you tell us your first

1 witness's name, please?

2 **THE COURT:** By the way, have you settled the  
3 record as to any and all witnesses?

4 **MR. MEADORS:** No, sir. That's what I was doing.

5 **MR. HARPOOTLIAN:** Settle the record as to what?

6 **THE COURT:** Criminal impeachable offenses.

7 **MR. MEADORS:** I think Ms. Lindsay has been --  
8 they have been discussing back and forth any  
9 potential birth dates or Social Security numbers for  
10 any potential witnesses. We have a large list and we  
11 don't know who's coming next. So at this time we --

12 **MR. HARPOOTLIAN:** Your Honor, we've given them a  
13 list of every potential witness. And for me now to  
14 say who I'm going to call ...

15 **MR. GIESE:** Could we approach for just a second?

16 (Whereupon, a bench conference is had)

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

18 **MR. GIESE:** Just one matter, Your Honor. Vello  
19 Paavel from SLED is in the courtroom. He is an  
20 expert, as he testified to yesterday. We are just  
21 notifying Your Honor that he is here to watch the  
22 expert testimony of we believe Mr. Harpootlian's  
23 first witness. I think he has a right to do that  
24 under our law.

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

1           **MR. HARPOOTLIAN:** I would object to it, Your  
2 Honor.

3           **THE COURT:** He's already testified.

4           **MR. HARPOOTLIAN:** Yes, sir. But now he's going  
5 to listen to another witness's testimony and perhaps  
6 testify in reply. We believe that violates  
7 sequestration.

8           **MR. MEADORS:** Your Honor, clearly, I think his  
9 expert could have been in here when Vello Paavel was  
10 testifying. I think that's the one exception to the  
11 sequestration. Experts can be in here when others  
12 testify.

13           **MR. HARPOOTLIAN:** I'm sorry, Your Honor. I'm  
14 not familiar with that rule. Is there a rule? If  
15 somebody would cite it to me.

16           **MR. MEADORS:** Yes, sir. That's the law.

17           **MR. HARPOOTLIAN:** And I'm sure it is, but I'd  
18 sure like to see it.

19           **MR. MEADORS:** And in addition to that, he's  
20 testified.

21           **MR. HARPOOTLIAN:** Well, again, if they want to  
22 maintain his viability, I'd ask he be kept out of the  
23 courtroom. I don't know of any rule that allows a  
24 witness they intend to call to sit in the courtroom.  
25 And if there is some exception to the sequestration

1 rule, I'd sure like to learn something here today.

2 THE COURT: All right. Sequester the witness.

3 MR. HARPOOTLIAN: Sir?

4 THE COURT: Sequester the witness.

5 MR. HARPOOTLIAN: Thank you, Your Honor.

6 MR. MEADORS: Beg the Court's indulgence.

7 THE COURT: Yes, sir.

8 MR. MEADORS: Your Honor, I'll be back in just a  
9 second.

10 MR. HARPOOTLIAN: Your Honor, we're ready to  
11 proceed. I've had these witnesses sitting here for  
12 two days.

13 THE COURT: Yes, sir.

14 MR. MEADORS: Your Honor, this is a few more  
15 minutes, in the interest of justice.

16 THE COURT: You've been here two weeks.

17 MR. MEADORS: Does Your Honor have a book up  
18 there?

19 THE COURT: Do I have a book?

20 (Pause)

21 THE COURT: All right. If you're looking at  
22 State v. Sullivan, State v. Tyner, State v. Williams,  
23 a series of cases on sequestration, it appears that  
24 it's certainly a discretionary matter with the Court  
25 and that the mere opportunity to compare testimony

1 within itself is insufficient, insufficient to compel  
2 sequestration.

3 State v. Sullivan held that there was no abuse  
4 of discretion to refuse a motion to sequester when  
5 only ground is that prosecution witness could hear,  
6 witnesses could hear each other and change their  
7 testimony accordingly.

8 MR. HARPOOTLIAN: Your Honor, you granted the  
9 motion for sequestration.

10 THE COURT: Well, I'm reconsidering.

11 MR. HARPOOTLIAN: Half way through the trial,  
12 after we've kept our witnesses out and none of them  
13 heard the prosecuting witnesses?

14 THE COURT: No. This is a specific -- this is a  
15 different case than the first sequestration. This is  
16 a different issue.

17 MR. HARPOOTLIAN: Your Honor, I think there's a  
18 statute on sequestration, is there not?

19 THE COURT: There is a rule on sequestration  
20 that says it's discretionary with the Court.

21 MR. HARPOOTLIAN: And Your Honor exercised your  
22 discretion, and we played by those rules during their  
23 case. And now the rules are about to change?

24 THE COURT: I did not say the rules are about to  
25 change.

1           **MR. HARPOOTLIAN:** Sir?

2           **THE COURT:** I did not say the rules were about  
3 to change.

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

5           **MR. MEADORS:** Your Honor.

6           **THE COURT:** I said the original -- I think that  
7 the witness has testified. You've heard his  
8 testimony. I think I'll allow him to stay.

9           **MR. HARPOOTLIAN:** Your Honor.

10          **THE COURT:** This witness.

11          **MR. HARPOOTLIAN:** Sir?

12          **THE COURT:** This witness.

13          **MR. HARPOOTLIAN:** Well, what they're going to  
14 do, if we put experts up, they're going to bring  
15 their experts in to listen to ours. We were not  
16 afforded that opportunity. Your Honor sequestered  
17 the witnesses. I want to note for the record that we  
18 believe this to be a violation of equal protection  
19 and due process. I understand you're exercising your  
20 discretion, but this is a fundamental issue in this  
21 case, these experts. This is critical to the  
22 defense. And we were not afforded that right to  
23 hear. As they rest their case, the rules change. I  
24 state that for the record.

25          **MR. MEADORS:** Your Honor, we'd have had no



1 objection if their expert wanted to stay for ours.

2 The State would have had no objection to that.

3 **MR. HARPOOTLIAN:** If it's at the front end and  
4 everybody said experts could be here, that would be  
5 one thing. But we said sequester the witnesses. And  
6 they sequestered their experts. We sequestered our  
7 experts.

8 **MR. MEADORS:** Your Honor, I assumed an expert  
9 could be in here when another expert is testifying.  
10 If he had asked if his could be, I certainly was  
11 looking for Mr. Yates yesterday. I thought he would  
12 be here.

13 **MR. HARPOOTLIAN:** Well, I'm just making my  
14 position clear for the record.

15 **THE COURT:** Are you ready for the jury?

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

17 **THE COURT:** Bring the jury.

18 (Jury in at 9:25 a.m.)

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

20 **THE COURT:** All right. Good morning, ladies and  
21 gentlemen. We're now ready to continue with the  
22 trial. Solicitor.

23 **MR. GIESE:** The State rests, Your Honor.

24 **THE COURT:** All right. Ladies and gentlemen,  
25 the State has concluded its case. The defense will

1 now proceed with their case. Mr. Harpootlian.

2 MR. HARPOOTLIAN: May it please the Court, Your  
3 Honor. Lawton Henry Yates to the stand, please.

4 LAWTON H. YATES, JR., after being duly sworn,  
5 testifies as follows:

6 THE CLERK: Please have a seat. State your full  
7 name for the record.

8 DIRECT EXAMINATION

9 BY MR. HARPOOTLIAN

10 Q State your full name for record, please?

11 A My name is Lawton Henry Yates, Jr.

12 Q And, Mr. Yates, I'm going to go through a number of  
13 questions with you, but let me first of all ask you,  
14 have you worked in the area of firearms and  
15 ballistics in your life?

16 A Yes, I have.

17 Q And for how long did you do that?

18 A Since about September of 1972.

19 Q And did you have anything to do with the -- you're  
20 from Alabama?

21 A That's correct.

22 Q And did you have anything to do with the Alabama  
23 State Law Enforcement or police firearms lab?

24 A Yes, I did. In 1972 I was hired by the State of  
25 Alabama Department of Forensic Sciences. I worked

1 with them for approximately 25 years until I retired  
2 in 1997. During that course of time my particular  
3 area of specialty is called firearms and tool marks  
4 identification.

5 Q Okay. And you worked with them from -- you worked  
6 for the state of Alabama department of forensic  
7 sciences from 1972 to 1997. Is that right?

8 A That's right.

9 Q And during that period of time did you examine  
10 firearms?

11 A Yes, I did.

12 Q Did you testify in court about those examinations?

13 A Yes, I did.

14 Q On how many different occasions?

15 A Many occasions.

16 Q Now, after you retired from the state of Alabama, did  
17 you go to law school?

18 A Actually I went to law school at night while I was  
19 still working with them.

20 Q And do you have a law degree?

21 A I do.

22 Q Are you an active member of the Association of  
23 Firearms and Tool Mark Examiners?

24 A Yes, I am. I'm a life member.

25 Q I'm sorry?

1 A A life member.

2 Q And what is that?

3 A It just means that I don't pay dues any more for one  
4 thing. I am paid up for the rest of my life.

5 Q Are you a legal adviser, retired member of the  
6 Southern Association of Forensic Sciences?

7 A I am.

8 Q Are you a retired member and past president of the  
9 Alabama Association of Forensic Sciences, American  
10 Society of Crime Lab Directors?

11 A Yes, I am.

12 Q And were you a crime lab director?

13 A Yes. I was.

14 Q For how many years?

15 A From approximately 1986 until my retirement in 1997,  
16 I was the director of the Birmingham Regional  
17 Laboratory and also supervised the laboratories in  
18 Tuscaloosa, Alabama, and also Jacksonville, Alabama.

19 Q Tell the jury, please, what training you received in  
20 firearms. I'm not so interested in tool marks right  
21 now but firearms examination.

22 A I received training in the field of firearms  
23 identification from within the Department of Forensic  
24 Sciences. And I also received training by attending  
25 schools and seminars sponsored by professional

1 organizations that I belonged to, such as the  
2 Association on Firearm and Tool Mark Examiners, the  
3 Southern Association of Forensic Scientists, the  
4 American Academy of Forensic Scientists and other  
5 organizations.

6 I also received training by attending schools  
7 and seminars sponsored by manufacturers of firearms  
8 such as Smith and Wesson, Glock, Sig Sauer, Remington  
9 Arms and others. And I also received training by  
10 attending schools and seminars sponsored by  
11 manufacturers of ammunition. And I also received  
12 training by attending schools and seminars sponsored  
13 by such organizations as the FBI Academy and  
14 particularly the course that the FBI teaches in  
15 specialized firearms.

16 Q So you attended the FBI Academy?

17 A Yes.

18 Q And took classes there?

19 A Yes.

20 Q Have you ever given expert testimony in state or  
21 federal Court regarding firearms; that is, all  
22 aspects? Ballistics, for instance; have you done  
23 that?

24 A Yes.

25 Q On how many occasions?

1 A Many times.

2 Q In federal and state courts of this country?

3 A Yes, sir.

4 Q Now, after -- you also have been a prosecutor, have  
5 you not?

6 A Yes, I have.

7 Q And how long did you do that?

8 A After I retired from the State of Alabama Department  
9 of Forensic Sciences I was a prosecutor or an  
10 assistance State's attorney in Blount County,  
11 Alabama, for about four years.

12 Q Now, since then you've appeared as an expert witness,  
13 correct?

14 A Yes. I do forensic consulting.

15 Q Do you do any legal work?

16 A Yes, I do.

17 Q So you also do some legal work?

18 A I do.

19 Q Now, you're here because I -- well, first of all, I  
20 make a motion to have him qualified as an expert  
21 in --

22 MR. MEADORS: A few questions, please.

23 VOIR DIRE EXAMINATION

24 BY MR. MEADORS:

25 Q Good morning.

- 1 A Good morning.
- 2 Q So how long have you been in forensic consulting?
- 3 A About 30 years.
- 4 Q Okay. But specifically in testifying -- you can have
- 5 a seat.
- 6 MR. HARPOOTLIAN: Oh. It's going to be a long?
- 7 MR. MEADORS: It's going to be a few minutes.
- 8 MR. HARPOOTLIAN: Okay.
- 9 Q Testifying as an expert in cases, how long have you
- 10 been doing that?
- 11 A Since I worked with the Department of Forensic
- 12 Sciences in the early seventies.
- 13 Q As far as testifying on behalf of the defense, I just
- 14 couldn't tell from your resume, how long have you
- 15 been doing that in criminal cases?
- 16 A Well, many times my testimony may benefit the defense
- 17 or the prosecution. And either one in the state of
- 18 Alabama could call an employee of Forensic Sciences
- 19 to testify. So I don't know how many times I
- 20 testified for the defense.
- 21 Q And you know what I'm trying to ask you. I'm not
- 22 trying to be difficult. How many times have you been
- 23 hired by the defense to testify in a case? When was
- 24 the first time?
- 25 A I don't know, because I did some consulting even when

1 I worked for The Department of Forensic Sciences  
2 which was from 1972 to from 1997. When I was a  
3 prosecutor, I did not do any consulting.

4 Q When was the last time you testified under oath and  
5 you were called by the defense attorney in a criminal  
6 case?

7 MR. HARPOOTLIAN: May it please the Court, Your  
8 Honor. I don't believe this is proper Voir Dire. If  
9 he has --

10 THE COURT: Sustained.

11 MR. MEADORS: I'm just trying to get a simple.

12 L --

13 THE COURT: Sir, you can't examine him as to  
14 bias.

15 MR. MEADORS: Well, I'm not. I'm just trying to  
16 find out when he started.

17 Q Did you prepare any notes --

18 THE COURT: Sir, would you let me finish my  
19 sentence?

20 MR. MEADORS: I thought you sustained me.

21 THE COURT: I did sustain you. You can ask him  
22 questions about his qualifications. That's what the  
23 voir dire is for. Not to try to imply bias or  
24 anything like that. So just --

25 MR. MEADORS: I'm sorry. I'm sorry.



1           **THE COURT:** -- ask him questions as to his  
2           qualifications. That's why you're allowed to Voir  
3           Dire him.

4           **MR. MEADORS:** And as a part of that, I was  
5           trying to do that; how many times he testified and  
6           was qualified as defense witness. Can I ask him  
7           that?

8           **THE COURT:** Go ahead.

9    **Q**   How many times have you been qualified as a defense  
10   witness?

11   **A**   I have never kept up with, you know, whether I was  
12   called by the defense or the state.

13   **Q**   So you don't know how many times you've been  
14   qualified as a defense witness?

15   **A**   No, sir, I do not.

16   **Q**   And did you make any notes in preparation for this  
17   testimony today?

18   **A**   No.

19   **Q**   You made no notes?

20   **A**   Not in preparation for my testimony today, no.

21   **Q**   Did you make notes in preparation for this case?

22   **A**   I did.

23   **Q**   Could I have those, please?

24   **A**   I didn't bring them with me.

25   **Q**   They're not in the courtroom?

1 A They are not.

2 Q Are they in the car?

3 MR. HARPOOTLIAN: Your Honor, this is not proper  
4 Voir Dire.

5 THE COURT: You're correct. Sustained.

6 MR. HARPOOTLIAN: Thank you.

7 MR. MEADORS: Your Honor, we would oppose his  
8 qualifications. He can't even remember how many  
9 times he's been qualified as a defense expert.

10 THE COURT: Overruled.

11 MR. HARPOOTLIAN: Thank you.

12 THE COURT: He's qualified to testify.

13 MR. HARPOOTLIAN: Thank you.

14 MR. MEADORS: And, Your Honor, in what areas?  
15 He hasn't even offered him officially. In what  
16 areas?

17 MR. HARPOOTLIAN: Firearms and ballistics. Your  
18 Honor, is that okay?

19 THE COURT: He's qualified.

20 MR. HARPOOTLIAN: Thank you.

21 DIRECT EXAMINATION

22 BY MR. HARPOOTLIAN

23 Q Now, you are being paid to be here, a fee by the  
24 hour. Is that correct?

25 A That's correct.

1 Q And how much are you being paid by the hour?

2 A I work for the group called TASA, T-A-S-A, which is  
3 Technical Assistance for Attorneys. And they bill.  
4 And the hourly rate I believe is \$230 an hour.

5 Q And you get some of that?

6 A That's correct.

7 Q And they get some of that?

8 A That's right.

9 Q Now, you worked as a -- for the state of Alabama for  
10 a number of years, correct?

11 A That's right.

12 Q And you appeared in court, just like you're appearing  
13 in court here today, and testified. Is that correct?

14 A That's right.

15 Q Were you paid to do that?

16 A Of course.

17 Q Okay now. And you've met Mr. Paavel who is the  
18 State's ballistics expert. Is that right?

19 A That's correct.

20 Q That's him seated right back here. Is that correct?

21 A That's right.

22 Q Okay. Were you here yesterday to hear his testimony?

23 A No.

24 Q Were you allowed in here yesterday to hear him  
25 testify?

1 A No.

2 MR. MEADORS: Your Honor, objection. He could  
3 have been.

4 THE COURT: Sir, overruled. Overruled.

5 MR. HARPOOTLIAN: I object to the speaking  
6 objections, Your Honor.

7 MR. MEADORS: I object to the leading.

8 THE COURT: Sir, I overruled his objection. Go  
9 ahead.

10 MR. HARPOOTLIAN: Yes, sir. Thank you.

11 Q You've met with Mr. Paavel?

12 A I have.

13 Q You and I went out to the South Carolina Law  
14 Enforcement Division?

15 A We did.

16 Q And you reviewed his findings?

17 A Yes, sir.

18 Q Do you disagree with any of them?

19 A No.

20 Q Now, tell the jury what ballistics is. What is the  
21 science of ballistics? What does that involve?

22 A Ballistics, if you really define what the word  
23 ballistics means, it means the flight of the  
24 projectile. Oftentimes people use the word  
25 ballistics to talk about not only the flight of the

1 bullet but also about the identification of bullets,  
2 being able to match a bullet back to a particular  
3 firearm. So it can include that as well.

4 Q Okay. Now, you have had an opportunity in this case  
5 to review statements by people?

6 A Yes, I have.

7 Q Did you have an opportunity to visit -- and let's  
8 deal with first. Okay? Did you  
9 have an opportunity to visit that house?

10 A Yes, I have.

11 Q On a couple of occasions I believe?

12 A That's correct.

13 Q And in addition to that, did you have an opportunity  
14 to examine the reports of Mr. Paavel and other  
15 statements by officers who were involved in the  
16 shooting there and look at photographs that were  
17 taken. Is that correct?

18 A Yes, I did.

19 Q Did you also have an opportunity to examine medical  
20 records concerning Mr. Herring's wound and look at  
21 x-rays?

22 A I did.

23 MR. MEADORS: Your Honor, objection at this  
24 point.

25 THE COURT: To what?

1           **MR. MEADORS:** I'm not speaking. I'm going to  
2           say I object as to him trying to testify to any  
3           medical records. That's clearly out of his  
4           expertise.

5           **THE COURT:** Ask him.

6   **Q**   Did you have an opportunity to look at some x-rays of  
7           Mr. Herring's?

8   **A**   Yes.

9   **Q**   And did you look at the report from those x-rays?

10   **A**   Yes, I did.

11   **Q**   And was that report helpful in making your opinion as  
12           to some of the expert opinions you're going to  
13           consider, you're going to testify to as to the path  
14           of certain projectiles?

15   **A**   Yes.

16           **MR. HARPOOTLIAN:** Okay. Okay, Your Honor?

17           **THE COURT:** Yes, sir.

18   **Q**   Now, I show you Defendant's Exhibit No. 11. You've  
19           seen these before?

20   **A**   Yes, sir.

21   **Q**   Defendant's Exhibit No. 12, you've seen this before?

22   **A**   Yes, sir.

23   **Q**   Defendant's Exhibit No. 13, have you seen that  
24           before?

25   **A**   Yes, sir.

1 Q And Defendant's Exhibit No. 14, right? You've seen  
2 that?  
3 A Yes, sir.  
4 Q And Defendant's Exhibit No. 15, right?  
5 A Yes, sir.  
6 Q Now, there are a number of other photographs that  
7 were furnished that were taken that day by SLED; and  
8 you've seen those, too, right?  
9 A Yes, sir.  
10 Q And you've read the statements given by the police  
11 officers that were involved in the shooting?  
12 A Yes, I have.  
13 Q And you had an opportunity to read Mr. Herring's  
14 statement that he gave SLED, correct?  
15 A Correct.  
16 Q And you visited out there, right?  
17 A Yes, sir.  
18 Q Now, also were you given an opportunity to -- and can  
19 you tell us what this is, please?  
20 A That is an architectural drawing of the residence out  
21 there.  
22 Q Okay. And you reviewed this with Mr. Herring?  
23 A I have.  
24 Q And he told you where it came from?  
25 A Yes, sir.

1           **MR. HARPOOTLIAN:** I offer this into evidence.

2           **MR. MEADORS:** We haven't seen it. I'd just like  
3 to look at it.

4           (Pause)

5           **MR. MEADORS:** No objection.

6           **THE COURT:** Without objection.

7           (WHEREUPON, Defendant's Exhibit No. 32 is marked  
8 for identification and received in evidence.)

9   **Q**   This is Defendant's Exhibit No. 32. And you've done  
10 measurements out there, correct?

11   **A**   Yes, I have.

12   **Q**   And did you determine this to be an accurate  
13 depiction of the layout of that house?

14   **A**   Yes.

15   **Q**   You didn't see any modifications that have been made,  
16 any changes made?

17   **A**   No.

18   **Q**   Okay. Now, let me ask you to step down here, please,  
19 and face the court reporter. May he step down, Your  
20 Honor?

21           **THE COURT:** Yes, sir.

22   **Q**   Okay. And let me get this pointer right here. For  
23 the jury's purposes, let me get my glasses on so I  
24 can see. Let's give them, orient them as to where --  
25 okay. Orient them as to where certain areas are.



1           How about point to them the entrance, the steps that  
2           go into the foyer?  
3    A       That would be in this area right here.  
4    Q       These are the steps. You walk up the steps and come  
5           in. We've heard testimony, you've seen pictures, of  
6           a door that was knocked in, a metal door?  
7    A       Yes, sir.  
8    Q       Is that metal door right there?  
9    A       Yes, it is.  
10   Q       And this would be the foyer area. Is that correct?  
11   A       That's correct.  
12   Q       Now, show the jury, please, the master bedroom, where  
13           it is?  
14   A       It's right here on this corner.  
15   Q       And you reach that from the foyer how?  
16   A       To access that you have to come through the foyer,  
17           through this hallway, through this door into the  
18           bedroom.  
19   Q       And that hallway according to this is about  
20           four-foot-four wide. Is that right?  
21   A       That's right.  
22   Q       And it's three, four and three. So it would have  
23           been a little over six feet, a little over seven  
24           feet?  
25   A       That's correct.

1 Q Seven feet long. So that hall would be -- let me  
2 make sure we get some perspective on that. Let's  
3 just do it on the jury rail. In terms of the length,  
4 it's a little over seven feet?

5 A That's correct.

6 Q Stop at seven feet, if you would. Okay. So the hall  
7 is about this long. Where is seven feet?

8 A Right here.

9 Q From my finger to your finger, right?

10 A That's right.

11 Q And it's four-foot-four wide?

12 A That's right.

13 Q Let's go to four-foot-four. About that wide?

14 A Yes, sir.

15 Q So it's not a very long or very wide hall?

16 A No, sir.

17 Q And when we talk about that hall, we're talking about  
18 you're looking down this picture which is State's  
19 Exhibit No. 15. That's actually looking down that  
20 hall to that bedroom door we're talking about?

21 A Yes, sir.

22 Q This would be the beginning of the hall and that  
23 would be the end of it?

24 A That's correct.

25 Q And that's seven feet long. This is about four feet

1 wide. Is that right?

2 A That's correct.

3 Q Now, you also had an opportunity to look at the  
4 trajectory ribbons. Go ahead and take the stand  
5 again, please. The trajectory ribbons that were  
6 done. Is that correct?

7 A Yes, sir.

8 Q And you went out to the house, compared where they  
9 were. By the time you got to the house, everything  
10 had been repaired, had it not?

11 A That's correct.

12 Q But could you see where Sheetrock had been cut out or  
13 repaired?

14 A Yes.

15 Q And particularly I speak of in the bedroom. Let me  
16 see if I can find that photograph. I thought there  
17 was -- or -- here we go. I apologize. Okay. Now,  
18 let me first of all, can you see that from there, or  
19 do you need to step down? Can you see that, Mr.  
20 Yates, or do you need to come over here with me?

21 A It's got a little bit of a glare.

22 MR. HARPOOTLIAN: Your Honor, may he step down?

23 THE COURT: Certainly.

24 Q Come on down.

25 THE COURT: Come on around.

1 Q Can you see that?

2 A Yes.

3 Q And is that looking down that hall again back towards  
4 the bedroom?

5 A Yes, sir.

6 Q And does that pretty well accurately depict what you  
7 saw when you were out there the other day and on  
8 previous occasions when you looked down the hall?

9 A Yes, sir.

10 Q Okay. Now -- I'm sorry. Let me find the other  
11 picture I want. Here we go. Now, when you visited  
12 the location, did you see where the bed was located?

13 A Yes, sir.

14 Q And could you tell where these holes were?

15 A Yes, sir.

16 Q Now, introduced into evidence, SLED agents actually  
17 cut -- this is the piece that was cut from that wall.  
18 Is that correct?

19 A Yes, sir.

20 Q With numbers 15 and 16, correct?

21 A That's right.

22 Q And we know that No. 15, the little circle, No. 15  
23 they've indicated had blood or tissue on it. Is that  
24 correct?

25 A Yes, sir.

1 Q And they pulled a Glock .40 caliber or a .40 caliber  
2 slug from this wall?

3 A That's my understanding.

4 Q And the other one went through-and-through, went  
5 outside. Is that correct?

6 A Yes, sir.

7 Q So when we look at those two holes -- and let me go  
8 to the next picture -- we're looking at those two  
9 holes, the same thing we see here; they just cut it  
10 out. Right?

11 A That's correct.

12 Q Now, did you measure -- and you took the  
13 complicated -- well, first of all, did SLED give you  
14 any measurements as to how far that hole was from the  
15 floor? Well, there weren't any measurements, were  
16 there?

17 A No.

18 MR. MEADORS: Objection.

19 MR. HARPOOTLIAN: I apologize. I am trying to  
20 move this along.

21 THE COURT: Don't lead your witness.

22 MR. HARPOOTLIAN: Yes, sir.

23 Q What, if any, measurements did you see SLED make as  
24 to any trajectory, any height, any distances?

25 A None.

1 Q Okay. Did you go out and measure where that hole  
2 would have been based on seeing the picture and  
3 understanding -- you could see where this was cut  
4 out, correct?

5 A Yes.

6 Q And did you get some measurement as to how high  
7 No. 15 would have been from the floor?

8 A Yes, sir.

9 Q How high?

10 A Both of them are approximately four-feet-four inches  
11 above the floor.

12 Q Okay. Now, go ahead back up there. Did you have an  
13 opportunity to observe Mr. Herring's wound that's  
14 healed? Is that correct?

15 A That's right.

16 Q And as a result of examining that wound and doing  
17 measurements and assessments, do you have an opinion  
18 as to his position relevant to the muzzle of the gun  
19 that shot him when he was shot? Do you have such --  
20 do you have an opinion?

21 A I do.

22 Q And if -- I don't want you to point a gun at me. But  
23 how about stand down here for just a second.

24 Actually I'm going to have you be Mr. Herring. Okay.

25 And I want you to stand ever here. If I am the

1 police officer pointing a weapon at him, okay, show  
2 me how Mr. Herring is standing when the bullet struck  
3 his arm?

4 A If he were in this position and the shot was fired,  
5 the bullet could have passed through his arm at the  
6 same level as the bullet holes on this wall.

7 Q So how would he have been positioned to the gun when  
8 he was shot?

9 A In this position.

10 Q So he shot him in the back basically?

11 A It's consistent with that.

12 Q Okay. Now, did you try to determine if there was any  
13 other consistent position that would be consistent  
14 with a hole in the wall with his flesh on it and the  
15 wound he has?

16 A Yes.

17 Q And did you find any other position that was  
18 consistent?

19 A I found that if he were facing from where the shot  
20 came from, he would have had to have been leaning  
21 over the bed to have sustained the path of the  
22 projectile through his left arm and at the same  
23 height in the wall.

24 Q So this is on the wall at four-foot-four, right?

25 A That's right. About that --

1 Q This hole?

2 A -- position. Yes, sir.

3 Q How did you line up this wound with this hole? Did  
4 you use a device?

5 A Yes, I did.

6 Q Do you have a device?

7 A A laser.

8 Q Show me how that works.

9 A It's simply a laser that marks it and it projects a  
10 straight line of light. And I used this to align the  
11 path of the projectile.

12 Q And how did you determine the path from Mr. Herring?  
13 I mean, how did you line it up with his wound?

14 A Well, he was present. I was able to position him  
15 either in the hallway or in front of the bed, either  
16 one of those. And the path would have aligned with  
17 the laser through the left arm and also in the same  
18 general area as the bullet holes in the wall.

19 Q All right.

20 MR. HARPOOTLIAN: Your Honor, could I have Mr.  
21 Herring take his coat off so we can show how this  
22 works?

23 THE COURT: Certainly.

24 MR. HARPOOTLIAN: Go ahead. Take your coat off.  
25 Can you roll your sleeve up to where the witness --



1 is that possible? Let's try. Okay. Can we get it  
2 up there? There we go. That will work. Okay. Come  
3 over here, please. Now, I want you to -- first of  
4 all, if this is -- where is that piece of wall,  
5 please? You say it's 4.4 off the wall?

6 A Yes. Approximately.

7 MR. MEADORS: Your Honor, what was that last  
8 statement? Approximately?

9 MR. HARPOOTLIAN: Approximately 4.4. That's  
10 what he said.

11 Q So that would be 52 inches. Is that right?

12 A That's correct.

13 Q And you're the expert. How about look and see if  
14 I've measured this right?

15 A Yes, sir.

16 Q Okay. So the hole would be basically on the lip of  
17 this. Is that right?

18 A That's correct.

19 Q If I hold it up there?

20 A Yes, sir.

21 Q Okay. Now, show the jury -- stand over here, Mr.  
22 Herring. Show the jury, please, where the entrance  
23 and exit wound would be? Is there a scar there?

24 A This is two scars. One is on the back and then one  
25 is on the front.

1           **MR. MEADORS:** Your Honor, objection again. He's  
2 not a doctor.

3           **MR. HARPOOTLIAN:** Well, I'll ask him how he came  
4 to that conclusion, Your Honor.

5           **THE COURT:** He said scar is on the front and  
6 scar is on the back. I think that's common  
7 knowledge.

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

9           **THE COURT:** You don't have to be a doctor.  
10 **Q** One of the scars, the scar on the front is slightly  
11 smaller than the scar on the back. Does that  
12 indicate to you -- now, have you ever looked at a  
13 gunshot wound? Is that something you've done?

14 **A** Yes, sir.

15 **Q** On how many occasions?

16 **A** Many times.

17 **Q** From looking at the gunshot wounds, have you been  
18 called upon to give an opinion as to the ballistics;  
19 that is, the path of the bullet; what was the  
20 entrance, what was the exit?

21 **A** Yes, I have.

22 **Q** In looking at this, the ballistics on this, do you  
23 have an opinion as to what is the entrance and what  
24 is the exit?

25 **A** Oftentimes it's very hard to tell with a degree of

1           certainty which way a bullet travels and which in  
2           fact is the entry and which is the exit. So just by  
3           looking at the wounds, a person cannot draw any  
4           distinct conclusion based on that.

5    Q       So there's no way to tell just by looking at the  
6           small and the big or the big and the small. That  
7           doesn't tell you anything?

8    A       That's right.

9           MR. MEADORS: Your Honor, we'd move to strike  
10          from the record where Mr. Harpootlian referred to it  
11          as the entrance wound.

12          MR. HARPOOTLIAN: As what?

13          THE COURT: Overruled.

14          MR. HARPOOTLIAN: Thank you.

15   Q       Now, did you attempt to line up -- we're using your  
16           laser. These holes in the bedroom, did you move him  
17           around a number of different ways?

18   A       I did.

19   Q       Making him looking front, looking back, all of that.  
20           Is that right?

21   A       That's correct.

22   Q       Now, if you have him facing the officer and you put  
23           the laser through what would appear to be the path of  
24           the bullet, here back to the hole in the wall, is  
25           that consistent with the physical layout of what you

1 see in these pictures and what you've seen at the  
2 house if he is facing him?

3 A No.

4 Q Why not?

5 A Because, as I said earlier, he would have had to have  
6 been leaning over the bed in an unfamiliar position.

7 Q I mean, if he is facing the police officer as he is  
8 facing me now and holding a gun in his right hand --  
9 I believe it's been testified to his right hand --  
10 the left side of him would be where?

11 A Towards the bathroom.

12 Q Towards the bathroom. And to move him over far  
13 enough -- let me look at this picture right here. To  
14 move him over far enough this way to line up his  
15 shoulder, his left shoulder, which would be facing  
16 him, where would he have to be?

17 A It's not showing it on there.

18 Q Oh. I'm sorry. Slide it up. Okay. Let me make  
19 this is a little bit -- tell it a little bit more.  
20 Okay. Come over here and show me where his body  
21 would have to be.

22 MR. MEADORS: May Mr. Herring take his seat?

23 MR. HARPOOTLIAN: No, no. I'm not done.

24 THE COURT: Mr. Meadors, would you take a seat,  
25 please? Let this -- go ahead.

1           **MR. HARPOOTLIAN:** Thank you.

2   **Q**   How about show the jury, please, where the rest of  
3       his body would have been -- if you want to use this  
4       pointer -- where the rest of his body would have had  
5       to have been if he's facing the police officer and  
6       being shot in the left arm?

7   **A**   It's going to have to be in this area right here.

8   **Q**   Now, did you have him sit on the bed to see if that  
9       was consistent with him sitting on the bed and being  
10      shot?

11   **A**   Yes, sir.

12   **Q**   And did that work?

13   **A**   No, it did not.

14   **Q**   Would his arm have been too low? Is that the  
15      problem?

16           **MR. MEADORS:** Objection.

17   **Q**   I apologize. What would the problem have been? I  
18      apologize, Your Honor.

19   **A**   It would not have lined up because his arm with the  
20      path would have been lower than the marks on the  
21      wall.

22   **Q**   Okay. Now, let's get that little laser light out for  
23      me, would you? Okay, Mr. Herring, come over here,  
24      please. Okay. And face -- how about stand right  
25      back over here some. Show the jury what you did, how

1       you lined this up. And I think you've testified that  
2       the hole would be right about this width. So I'm  
3       holding it at about four-feet-four, right?

4       A     That's correct.

5       Q     So you put it to the wound and then what?

6       A     And just move it slightly over, and it hits the board  
7       that you're holding.

8       Q     Right about where the hole is?

9       A     Yes, sir.

10      Q     Now, you moved him in a variety of directions,  
11      correct?

12      A     Yes, sir.

13      Q     And now, can you tell -- and you looked at the  
14      physical location. Can you tell whether he was  
15      standing at the bed when he -- how -- if there's this  
16      continuum from the muzzle of the pistol to where the  
17      bullet hit, at what point in that continuum, that  
18      line -- and I think you measured it -- how far was it  
19      out beyond the hall door?

20      A     It's somewhere within 20 feet from the point of the  
21      area right in front of the hallway to the area right  
22      beside the bed. It's about 20 feet.

23      Q     About 20 feet. And once you determined this  
24      position, did you move Mr. Herring up and down that  
25      continuum?

- 1 A I did.
- 2 Q Okay. And did you come to any conclusions about
- 3 where he was standing when he was struck with the
- 4 bullet? Is there one location? Multiple locations?
- 5 What?
- 6 A He could have either been in the hallway or in a
- 7 position at the edge of the bed.
- 8 Q Okay. Facing away from or toward the police officer?
- 9 A Facing away.
- 10 Q Okay. Facing towards the bed?
- 11 A That's correct.
- 12 Q Now, you say either those two places. Why not
- 13 anywhere along that line?
- 14 A Because the physical constraints of the walls in the
- 15 hallway don't allow for that, that if you're standing
- 16 in the entryway to the hallway and the door to the
- 17 bedroom is opened, there is only a narrow opening
- 18 that you can see if you're by the bed.
- 19 Q So if he's nearer, move him about to where he would
- 20 have been by the bed. How close? About like that?
- 21 A Something like that. Yes, sir.
- 22 Q And how about show me the -- do the laser again.
- 23 Well, the laser is in the way. How about back up and
- 24 move over a little bit. Okay. The same height?
- 25 A Yes, sir.

1 Q Okay. Now, you also indicated he might have been in  
2 the hall. Why is that?

3 A Because it also would align in a straight line which  
4 is the path of the bullet.

5 Q How far based on -- and you've read the officer's  
6 statements. How far from the door going into that  
7 hall would he have been for it to line up? I mean,  
8 we've determined that hall is only seven feet long.  
9 How far into the door would he have been when he got  
10 hit?

11 A It would have been about four and a half feet,  
12 something like that.

13 Q Okay. Now, this wound we're talking about is this  
14 wound right here. Is that right?

15 A Yes, sir.

16 Q A scar here and a scar here?

17 A That's correct.

18 Q Is this unusual? Have you seen wounds like this  
19 before?

20 A Yes, I have.

21 Q Now, tell me, please, about -- well, no. That's  
22 okay. Go ahead and have a seat, Mr. Herring. Thank  
23 you. Go ahead and take the stand again, please.

24 A Yes, sir.

25 Q Now, Mr. Yates, is there anything -- you talked about



1           those x-rays and medical records earlier. Is there  
2           anything in those medical records or x-rays or  
3           medical reports that went with the x-rays that would  
4           give you some basis for your opinion as to whether he  
5           was standing when he was shot initially?

6    A     Yes, sir.

7    Q     What do you find in those records?

8    A     In the report accompanying the x-rays it mentions  
9           four small particulates that are found in the wound  
10          tract, associated with the wound tract, that are  
11          described as being punctated.

12   Q     What does that mean?

13   A     Well, it means that --

14               MR. MEADORS: Objection. This is way beyond his  
15          field of expertise, Your Honor, explaining what  
16          wounds and their --

17               THE COURT: He's talking about trajectory of the  
18          wound. I'll allow it. Go ahead.

19   Q     Thank you. What does punctate mean?

20   A     What that could mean is that it could be partially  
21          burned or unburned gunpowder particles associated  
22          with the trajectory of the bullet.

23   Q     Based on your expertise, do you have an opinion as to  
24          how close you need to be to the muzzle of the weapon  
25          to have this kind of material in you?

1 A Yes, sir.

2 Q How far does that travel?

3 A Generally, with a handgun, the type that we're  
4 talking about, a .40 caliber, one can expect when the  
5 bullet is fired out from the inside of the barrel  
6 that along with that bullet there are partially  
7 burned and some unburned particles of gunpowder that  
8 can vary in size from the mark that you could make  
9 with a pencil on a clean white sheet of paper to  
10 almost the size of the head of a pin. These things  
11 are projected out along with the bullet. They move a  
12 distance usually of up to about four feet. If they  
13 don't strike anything, then they simply use up all  
14 their energy and fall to the ground. If they strike  
15 a target, they can either penetrate that target or  
16 stick to it.

17 Q Did you -- in reviewing the medical record, did you  
18 determine whether or not the wound had been cleaned  
19 prior to the x-ray?

20 A Yes, sir.

21 Q Had it?

22 A They indicate that it had been cleaned. Yes.

23 Q And does that affect what you're saying?

24 A It could. Yes, sir.

25 Q Why?

1 A Well, it could have washed out any gunpowder if it  
2 was there.

3 Q So all that's left are these punctated --

4 A Well, it could be gunpowder, caused from gunpowder or  
5 you just don't know.

6 Q But there are some -- what do you call them, the  
7 little things?

8 A They are described as small particles punctate in  
9 nature.

10 Q Okay.

11 MR. MEADORS: I'm sorry. I couldn't hear that.

12 MR. HARPOOTLIAN: Small particles functate (sic)  
13 in nature.

14 A No. Punctate.

15 Q Functate, right?

16 A That's their word. Yes, sir.

17 Q And because of that piece of information, do you have  
18 an opinion as to where Mr. Herring was standing when  
19 the bullet went through his arm?

20 A If those are attributed to gunpowder, it could  
21 indicate that he was in a position approximately  
22 around four feet or something like that from the end  
23 of the barrel.

24 Q And if the testimony has been as the officers were  
25 standing just outside the hallway or in the hallway

1 firing at him, where would he have been based on the  
2 length of seven feet of the hallway?

3 A In the hallway.

4 Q So it's consistent with him being shot as he runs  
5 down the hallway?

6 A That's right.

7 Q Now, you've also read the testimony or the statement  
8 of Mr. Tavenner. And if in fact all the other shots  
9 were made after his initial shot, one or two I think  
10 is what he said, could he have been in that hallway  
11 and survived?

12 A I doubt it.

13 Q Why is that?

14 A There are many, many paths through the hallway.

15 Q And I'm looking at Defendant's Exhibit No. 12. Is  
16 that a depiction of the bullets that would have gone  
17 through the area where you believe he had to have  
18 been standing if he was in the hallway firing a gun?

19 A Yes.

20 Q Would he be dead?

21 A Probably.

22 Q Or seriously wounded?

23 A I would think so.

24 Q Now, the opinion you've given here as to this -- the  
25 opinion you've given here as to the trajectory of the

1 bullet, are those opinions to a degree of scientific  
2 certainty more probably than not?

3 A Yes, they are.

4 Q Now, you've testified for the State, correct, before?

5 A Yes, sir. Correct.

6 Q And you've testified for the defense before?

7 A Yes, sir.

8 Q Are you shading your testimony to meet the needs of  
9 your client, or are you testifying as to what you  
10 honestly believe?

11 A As to what I honestly believe, what the truth is.

12 Q Now, in reading the information given to you, the  
13 SLED reports, the Richland County Sheriff's  
14 Department reports, did you see in any of them -- and  
15 we're going to talk about Chastity's in just a  
16 moment -- but did you see any measurements whatsoever  
17 as to the height of bullets, any measurements at all  
18 whatsoever?

19 A No.

20 Q I'm sorry, Your Honor. I thought it was right here.  
21 Hold on just a second. Where is the sketch, the  
22 little SLED sketch?

23 COURT REPORTER: It should be down there.  
24 Everything was there this morning.

25 MR. HARPOOTLIAN: Beg the Court's indulgence one

1 moment. Mr. Meadors, a little sketch done by SLED I  
2 put into evidence. Have you seen it?

3 UNKNOWN PERSON: Is it the one on the graph  
4 paper?

5 MR. HARPOOTLIAN: Yeah.

6 UNKNOWN PERSON: It's up there.

7 MR. HARPOOTLIAN: I'm sorry. Maybe if I put on  
8 my glasses. I apologize. Here it is. It's in a  
9 box. I'm sorry. Nope. That's not it. No. Not  
10 this one. The other one that was done by SLED, do  
11 you have another copy of that? That's it right  
12 there. I thought it was in evidence. It may not be.  
13 It may already be in, Your Honor. I just can't find  
14 it. I'd like to go ahead and have it marked again.

15 (WHEREUPON, Defendant's Exhibit No. 33 is marked  
16 for identification and received in evidence.)

17 Q Defendant's Exhibit 33, have you seen this item  
18 before produced by SLED?

19 A Yes.

20 Q Okay. Let me put it up on the projector so we can  
21 understand. Tell the jury what this is, please?

22 A That is a diagram showing the hallway on the left  
23 side and the master bedroom on the top side and the  
24 master bathroom on the bottom.

25 Q All right. And it says up here -- let me make sure

1 we understand. Not to scale, correct?

2 A That's what it says.

3 Q Now, are there any measurements on here as to the  
4 height of these bullets?

5 A No.

6 Q The relevant direction of where they are?

7 A No.

8 Q Would that have been helpful --

9 A Yes.

10 Q -- in trying to determine ballistics?

11 A Yes.

12 Q But even without this, you are able to determine  
13 where these bullets went in?

14 A I believe so.

15 Q And was it difficult to do that?

16 A No, sir.

17 Q It just took a little time?

18 A Yes, sir.

19 Q All right. Mr. Yates, let's move on. Have you had  
20 an opportunity to look at the Richland County  
21 Sheriff's Department's forensic investigation of  
22 ballistics trajectory, whatever, at Chastity's  
23 Nightclub?

24 A Yes, I have.

25 Q Have you also had an opportunity to visit there with

1 me examining the exterior and interior for your  
2 purposes to measure?

3 A Yes, sir.

4 Q Now, the Richland County Sheriff's Department, the  
5 files that you received, the forensics files, did it  
6 have any measurements as to anything that occurred  
7 outside the club?

8 A No.

9 Q Now, I show you this photograph. Do you recognize  
10 this to be a blowup of one of the photographs taken  
11 by the Richland County Sheriff's Department?

12 A Yes, I do.

13 Q Okay. And does the front door look like this today?

14 A No. But that's upside down.

15 Q See, that's why you're the forensics expert. Okay.  
16 There we go. You're worth every dollar, every  
17 dollar. Okay. Does it look like this today?

18 A No.

19 Q Okay. And in what way has it changed?

20 A The door and the -- the door has been replaced by a  
21 different door that actually swings in the opposite  
22 direction than that door, and the area including the  
23 new door has been repainted.

24 Q Okay. So the things are over here now?

25 A That's right.



1 Q And it opens in or out? Or do you remember?  
2 A Out.  
3 Q Out. Okay. Now, you've looked at the SLED  
4 photographs. You see this number 1 here, correct?  
5 A That's correct.  
6 Q And you also -- and I'm not going to go ahead and  
7 show it to you -- it's a picture of the other side  
8 marked number 2. Is that correct?  
9 A That's correct.  
10 Q Now, did you see any evidence that anyone attempted  
11 to determine the trajectory of that, of the  
12 projectile that went through that door?  
13 A No.  
14 Q Are there any measurements that tell you how high  
15 this hole is from the ground?  
16 A No.  
17 Q Is there any measurements on the flip side that show  
18 you how high that hole was from the ground?  
19 A No.  
20 Q Would that have been helpful?  
21 A Yes.  
22 Q Why?  
23 A By having that information, it could have been used  
24 in possibly reconstructing the actual flight of the  
25 bullet.

1 Q Okay. And you went out there and took some  
2 measurements, did you not?  
3 A I did.  
4 Q The front of this club, there is a -- let me see if I  
5 can find the -- this is State's Exhibit No. -- oh,  
6 here it is. 53. You've been out to this club,  
7 right? And show us where the door that we're looking  
8 at is located?  
9 A Yes, I've been here. And this would be the front  
10 door right there.  
11 Q Okay. And that camera we see is located where?  
12 A Right above the door.  
13 Q Okay. And were you able to take measurements to  
14 determine if there is any elevation difference  
15 between something that's at this level with the  
16 bottom of the floor?  
17 A Yes.  
18 Q And what is the elevation difference?  
19 A It's about three and a half feet.  
20 Q Between?  
21 A This ground level here.  
22 Q This ground level here?  
23 A And the entryway into the front door.  
24 Q To the bottom of the door?  
25 A That's correct.

- 1 Q Okay. And that's because of what?
- 2 A Steps. There are a series of steps and also a slight
- 3 incline.
- 4 Q Slight incline. And that's just to three and a half
- 5 feet to this point, right here, this little --
- 6 A That's correct.
- 7 Q Can you tell me how far it was from the bottom here
- 8 to the bullet hole exactly?
- 9 A Not exactly.
- 10 Q Why not?
- 11 A Well, there's no measurement and the door is gone.
- 12 Q And the door is gone. Now, have you ever done
- 13 trajectory analysis at a crime scene?
- 14 A Yes, sir.
- 15 Q On how many occasions?
- 16 A Many times.
- 17 Q And is there a sort of accepted way to do that to
- 18 figure out when you have a bullet hole through a door
- 19 like this how you do that?
- 20 A Yes, sir.
- 21 Q How do you do it?
- 22 A Well, generally you take measurements and locate
- 23 certain bullet holes, that sort of thing, and then
- 24 you can use a wooden dowel similar to the pointer you
- 25 hold in your hand to put them into the hole and

1 approximate the flight of the projectile.

2 Q Okay. So if you put it through the hole and it went  
3 like that, what would that tell you?

4 A Well, it would be angled upward.

5 Q You would expect the projectile to have come from  
6 where immediately preceding hitting the door?

7 A Well, it depends on which end of the rod you're  
8 referring to.

9 Q Yeah. This is the -- this is number 1, if you will,  
10 towards outside?

11 A Then it would be downward. And if you turned it that  
12 way, it would be the opposite; it would be upward, at  
13 an angle.

14 Q So you do that and it gives you an idea of where the  
15 projectile was coming from immediately before hitting  
16 the door, correct?

17 A That's correct.

18 Q Now, tell the jury what a ricochet is?

19 A A ricochet basically is when the bullet hits an  
20 intervening surface before it strikes something else.

21 Q Okay. And when you process a crime scene, should  
22 you -- when you have a bullet hole like this outside,  
23 would it be normal procedure to look for ricochets or  
24 look for evidence of a ricochet?

25 A Yes.

1 Q And let me see if I can find the picture. Okay. Let  
2 me show you State's Exhibit No. 9 and State's Exhibit  
3 No. 48. Does that look like the front of the club?

4 A Yes, it does.

5 Q And 48, does that look like a picture away from the  
6 club?

7 A Yes, it does.

8 Q How about step down here for a moment, please. Your  
9 Honor, may he step down?

10 THE COURT: Yes, sir.

11 Q Stand over here, please. And if you would point out  
12 to the jury, please, first of all, in State's Exhibit  
13 No. 48, this slight -- you talk about an incline.  
14 Can you show that to the jury, please?

15 A I think so. It would be in this area of the parking  
16 lot from where this car is, the back of, sloping  
17 upward towards the wall, the front wall of the  
18 building.

19 Q Okay. And the door would be where?

20 A The door is located directly under the highest part  
21 of the canopy.

22 Q And look at State's Exhibit No. 9. Is that a close  
23 up of that door underneath the canopy?

24 A Yes, it is.

25 Q Okay. Now, are there any objects upon which a bullet

1           could ricochet between where you see this out here  
2           beyond the awning and up to the door?  
3    A    Yes.  
4    Q    And what would they be?  
5    A    Well, obviously there are some pillars and some poles  
6           and that sort of thing there.  
7    Q    What about those metal poles? Could something  
8            ricochet off of that?  
9    A    It could.  
10   Q    Could something ricochet off the -- I mean, the  
11           pillars?  
12   A    It could.  
13   Q    Now, did you see -- go ahead and take the stand  
14           again, please. If I were processing this scene and  
15           looking for evidence of -- well, first of all, would  
16           it be normal and natural for somebody processing the  
17           crime scene to look for ricochet, evidence of  
18            ricochet?  
19   A    It could be, yeah.  
20   Q    If you were processing this crime scene -- well,  
21           strike that. You've examined the records of the  
22           forensic, the CSI unit of the Richland County  
23           Sheriff's Department, have you not?  
24   A    I have.  
25   Q    Have you seen any evidence whatsoever that they

1 looked for any evidence of a ricochet of something, a  
2 bullet ricocheting off something?

3 A No.

4 Q Now, if you had been examining this scene and stuck a  
5 dowel through that hole and it had gone like this,  
6 going up to the sky and there are no tall buildings  
7 around, would that indicate to you to look for  
8 ricochet?

9 A Possibly.

10 Q But without knowing that trajectory, all these other  
11 things become very iffy?

12 A Yes, sir.

13 Q Now, we also have heard testimony that the wound was  
14 slightly downward and back and forth. Can I see the  
15 Coroner's report? Apparently the bullet entered the  
16 left ear, left to right, through left to right from  
17 front to back and slightly downward. So it was going  
18 something like this, at an angle something like this,  
19 correct?

20 A That's what I understand. Yes, sir.

21 Q Okay. Now, there are a number of explanations for  
22 that?

23 A Yes, sir.

24 Q One could be the way he was holding his head when the  
25 bullet hit?

1 A That's correct.

2 Q But another explanation if you knew this trajectory  
3 might be that the bullet came from slightly up and  
4 from the -- in other words, it would have had to have  
5 come in like this, correct?

6 A It could have.

7 Q If he was holding his head straight at the moment of  
8 impact?

9 A That's correct.

10 Q Now, did you have an opportunity to examine the  
11 Richland County forensic unit's examination of Mr.  
12 Herring's 4Runner?

13 A Yes.

14 Q Did you see -- were you able to find any measurements  
15 of that vehicle vis-a-vis windows, passenger  
16 compartment, any measurements whatsoever?

17 A No.

18 Q Did you then do some measurements?

19 A Yes, I did.

20 Q And you have had an opportunity to also go Chastity's  
21 and measure distances from the door out to the area  
22 where a vehicle would have been, the 4Runner you saw  
23 in the videotape?

24 A That's correct.

25 Q You measured how high the window would have been, how



1 high the window in the 4Runner is from the ground?

2 A Yes.

3 Q And you've done a number of different measurements as  
4 to the vehicle and as to Chastity's. Is that  
5 correct?

6 A That's correct.

7 Q As a result of those measurements and examining all  
8 the evidence in this case, do you have an opinion as  
9 to whether or not whoever was sitting in that  
10 vehicle -- assume it was Mr. Herring -- was pointing  
11 the gun, pointing the gun at the time it was fired?

12 A Yes.

13 Q And tell me to a degree of scientific certainty more  
14 probably than not whether or not he was pointing the  
15 gun at the time the weapon was fired?

16 A After reviewing the videotapes and the information  
17 available to me, it --

18 MR. MEADORS: Objection. Can we approach?

19 (Whereupon, a bench conference is had)

20 Q Your opinion you are about to give is based on the  
21 separate -- we keep saying videotapes but it's  
22 actually a CD -- views from this and other cameras,  
23 right?

24 A That is correct.

25 Q And information provided by the Richland County

1 Sheriff's Department and measurements you've taken,  
2 correct?

3 A Yes, sir.

4 Q It's not based on interviewing any witnesses, any  
5 internal, you know, independent interviews. It's  
6 based on what you see from the forensic evidence. Is  
7 that correct?

8 A That is correct.

9 Q Okay. And do you have an opinion as to whether or  
10 not if Mr. Herring fired the shot or whoever fired  
11 the shot was holding the weapon seated in the seat  
12 pointing like this, aiming, pointing to, firing at  
13 that door? Do you have an opinion?

14 A I do.

15 Q And what is that opinion?

16 A My opinion is that it is inconsistent for somebody to  
17 be in that position at the time the shot was fired.

18 Q Okay. Inconsistent with what?

19 A With the evidence being the videotape and the fact  
20 that the vehicle, the 4Runner, the way that the front  
21 door and the back door come together, there is a post  
22 that prevents a person from assuming that position  
23 when the vehicle rolls to its forward post as the  
24 door closes in the video.

25 Q Let me go to the video.

1 A The front door closes in the video.

2 Q Camera number 4, 12:06:06. We'll need the screen,

3 won't we?

4 MR. CABA: Yeah. It's going to take a minute.

5 MR. HARPOOTLIAN: Sorry, Your Honor.

6 (Pause)

7 MR. HARPOOTLIAN: I apologize, Your Honor. I

8 didn't realize it would take this much time.

9 Q Camera number 4, it's about 12:06, please. Okay.

10 Back it up just a little bit, please. Can you see

11 that?

12 A Yes, sir.

13 Q Do you want to step down?

14 A Yes, sir.

15 Q Come on down. Is that okay, Your Honor, for him to

16 step down?

17 THE COURT: Yes, sir.

18 Q Thank you. How about stand over here, please. Can

19 you stand over here?

20 A Sure.

21 Q So the jury can hear you. Okay. If you back it up

22 just a little bit more, please. A little bit more.

23 Okay. You can stop it there. Now, before he starts

24 it up, let me ask you; we talked about the brick, the

25 brick columns. Is that what you're talking about

1       there?

2       A     Yes, sir.

3       Q     The metal poles. You're talking about that here?

4       A     Yes, sir.

5       Q     And there are actually metal poles up here in this  
6             awning, are there not?

7       A     There are.

8       Q     Okay. Now, the vehicle -- go ahead. I'll tell you  
9             when to stop in just a second. The vehicle pulls up  
10            and then pulls in. Let's watch it for a minute. Do  
11            you see the door open up then and close? Stop it.  
12            Now, get the door closed. I'm sorry. So we can see  
13            the car. Okay. Stop it. Now, we saw it pull up and  
14            then pull forward, right?

15      A     Yes, sir.

16      Q     You can -- tell the jury how you figured out -- I say  
17             figured out -- what your analysis is as to where  
18             different things are based on your measurements of  
19             that vehicle and that location?

20      A     Looking at the position of where the front wheel is,  
21             you can get a general idea of where the location of  
22             the bottom of the window is and also where the post  
23             is. Excuse me. Located between the front window  
24             door and the back door where those come together.  
25             There's a part of metal in this area right here.

1 Q Well, if we look at State's Exhibit No. 28, let's  
2 step over here for just a second, show the jury here  
3 that post you're talking about.

4 A That would be right here, this part of the vehicle  
5 right there.

6 Q And when you're looking at the vehicle, this is sort  
7 of the same view, you're looking at the tire which is  
8 right about here, correct?

9 A Correct.

10 Q And you're like -- it's up with that post. Is that  
11 correct?

12 A That's correct.

13 Q That front post. And you've been out there and done  
14 the measurements?

15 A Yes, sir.

16 Q Now, how far is it from the edge of that front wheel  
17 back to this post and the car?

18 A It's about four feet.

19 Q About 48 inches. Is that correct?

20 A That's correct.

21 Q Okay. Go ahead and explain to the jury now about the  
22 post?

23 A With the post being in this position and knowing  
24 where approximately the entry hole is on the front  
25 door, makes it difficult if not impossible for a

1 person to align the gun and site it and have it to  
2 line up so that it can be fired straight away through  
3 the vehicle window.

4 Q Well, if you're sitting in the seat of the car and  
5 you're trying to line it like this, what problem  
6 would you have?

7 A The post obstructs the ability to align it that way.

8 Q Okay. Go ahead and play it a frame at a time,  
9 please. Go forward. You see the door open. Now  
10 back it up just a little bit, please. If a shot  
11 came -- back up just one more minute. Okay. If the  
12 shot came from this vehicle -- well, first of all, do  
13 you have an opinion as to whether or not you could  
14 see -- if a .357 Magnum we're talking about -- may I  
15 hand this to the witness, Your Honor? It's locked.

16 THE COURT: Yes, sir.

17 Q Is this a --

18 THE COURT: The same rules.

19 MR. HARPOOTLIAN: I'm sorry?

20 THE COURT: The same rules.

21 MR. HARPOOTLIAN: Yes, sir.

22 THE COURT: Don't point it at anybody. Keep the  
23 barrel to the ground.

24 Q Is this a Ruger .357 Magnum or .357?

25 A It is.

1 Q And if it were firing -- are you familiar with these  
2 rounds?  
3 A Yes, sir.  
4 Q Have you ever test fired a Ruger .357?  
5 A Yes, sir.  
6 Q Have you ever seen weapons fired in -- and you've  
7 been out here. Would you call that low light? Dim  
8 light? What would you call that?  
9 A Low light.  
10 Q What would you expect to see -- if you're looking  
11 towards the barrel (sic) of that vehicle, what  
12 would -- I mean of that gun, what would you expect to  
13 see?  
14 A I would expect to see a flash, a fire ball when it's  
15 fired.  
16 Q A fire ball. How big?  
17 A With a gun like this and that type of ammunition, it  
18 would be substantial; say, like a foot in diameter  
19 and several feet long, like an ice cream cone.  
20 Q Ice cream cone coming out, expanding?  
21 A That's right.  
22 Q At its largest point, what would you expect? How big  
23 would you expect it to be?  
24 A Like I said, you know, something more than a foot, a  
25 foot and a half in diameter and projecting out from

1 the end of the barrel several feet maybe, something  
2 like that.

3 Q Go forward frame-by-frame. Stop. Go back. You see  
4 that little white line there?

5 A Yes, sir.

6 Q Consistent or inconsistent with a -- and you've seen  
7 guns fired. Is that evidence of a .357 Magnum Ruger,  
8 that gun being fired from that car?

9 A No.

10 Q Do you know what it is?

11 A No.

12 Q Could it be a reflection?

13 A Appears to be.

14 Q Okay. Go ahead and move that up. Go ahead and take  
15 the stand. Now, for that weapon to have been fired  
16 from that car and you don't see any evidence of that  
17 fire ball you're talking about, do you have an  
18 opinion as to -- first of all, if we look at this  
19 window here, assuming that the bullet went through  
20 this passenger door window -- okay. I think I've got  
21 the lock in the wrong place. But is the muzzle of  
22 the weapon above or below the edge of the window? Do  
23 you have an opinion?

24 A Yes.

25 Q What is that opinion?



1 A For there to be no evidence of any fire ball or  
2 flash, it could indicate that the weapon was below  
3 the plain of the bottom of the window.

4 Q Okay. All right. And if it were below the plain of  
5 the bottom of the window, I mean, is anybody pointing  
6 it? Can somebody point it from -- how does that -- I  
7 mean, is that consistent with what you testified to  
8 earlier; that is, that they weren't pointing it?

9 A That's right.

10 Q Now, if we knew the trajectory through the door, if  
11 we knew that, would that be helpful in determining  
12 where the muzzle of that gun was when it was fired?

13 A Yes.

14 Q But we don't have that?

15 A No.

16 Q So, can anybody say beyond a doubt --

17 MR. MEADORS: Objection to what anybody can say.

18 THE COURT: That's his opinion.

19 MR. HARPOOTLIAN: It's his opinion; yes, sir.

20 THE COURT: No. Ask his opinion, not what  
21 somebody else can say.

22 Q Okay. Can you say with certainty -- well, no.  
23 Strike that. Well, it's your opinion with certainty  
24 that you would see a fire ball --

25 MR. MEADORS: Objection. He's leading.

1           **THE COURT:** Ask the question.

2       **Q**   What is your opinion to a degree of scientific  
3           certainty more probably than not whether the muzzle  
4           of the gun was above the window line in this car?

5       **A**   Could reasonably expect to see a flash if a gun was  
6           fired pointing in the general direction of that  
7           camera from the vehicle through the window.

8       **Q**   When you say reasonably expect, is there some reason  
9           you wouldn't expect?

10      **A**   No.

11      **Q**   Okay. Secondly, if it's below -- well, you've done  
12           some measurements which you did not see any evidence  
13           of by any agency. You've done measurements they  
14           didn't do, right?

15      **A**   I believe so. Yes.

16      **Q**   The post -- well, let me ask you this. That little  
17           laser device there, did you go out to the scene and  
18           try to approximate where somebody would be sitting in  
19           that seat?

20      **A**   Yes, I did.

21      **Q**   Did you first of all have the opportunity to examine  
22           Mr. Herring's 4Runner?

23      **A**   Yes, sir.

24      **Q**   Did you do measurements?

25      **A**   I did.

1 Q And based on those measurements, did you approximate  
2 or try to approximate where somebody would have  
3 been -- looking at this video -- sitting in the seat?

4 A Yes.

5 Q And did you then take that laser and try to --

6 MR. MEADORS: Objection.

7 Q What, if anything, did you do with your laser?

8 A After determining that the position of a person  
9 located in the approximate position of the driver's  
10 seat as depicted in the video being about 39 feet and  
11 using a laser device to project a straight line back  
12 towards the door in the approximation of where the  
13 entry of the bullet wound or bullet hole was in the  
14 original door, I attempted to the best I could  
15 reconstruct that from that area.

16 Q And were you able to do that? Were you able to sit  
17 there and get the laser to go to where the bullet  
18 hole approximately was?

19 A Not in the position of aligning a pistol in that  
20 direction.

21 Q Okay.

22 A I was able to --

23 Q I'm sorry?

24 A -- lean forward and move the laser device forward and  
25 project it back and approximate a path that the

1 projectile could have taken.

2 Q And if you did that; I mean, if when you moved  
3 forward and you did get it to approximate, your hand  
4 would have been, if you were in the vehicle, near  
5 what part of the vehicle?

6 A My hand and the device, laser device, would have been  
7 in the area immediately in front of the passenger's  
8 seat and just back behind or in front of the glove  
9 box area.

10 Q Now, if in fact they had stuck a wooden dowel through  
11 that hole and brought that vehicle back out there,  
12 you could have put a laser right through that hole,  
13 what would it have told you?

14 A Well, could have determined the flight of the  
15 projectile possibly.

16 Q And exactly where it came from?

17 A That's right.

18 Q But they didn't do that, did they?

19 A No, they didn't.

20 Q But when you move that laser, it's -- let me see if I  
21 can get a picture here. I want to make sure I  
22 understand where you're talking about. How about  
23 step down again. May he step down, Your Honor?

24 THE COURT: Yes, sir.

25 Q Step over here, please. Looking at State's Exhibit

1 No. 29, does that look like the inside of the  
2 vehicle?

3 A Yes, it does.

4 Q And when you move the laser, show the jury  
5 approximately where the laser lined up? Of course  
6 the hole is gone but the general area where you  
7 believe the hole was?

8 A It was in this area right here.

9 Q Down near the glove box?

10 A Yes, sir.

11 Q Go ahead and take the stand, please. Now, I show you  
12 State's Exhibit -- do you know what the Ruger number  
13 is? The Ruger is State's Exhibit whatever it is.  
14 The Ruger that's in evidence, the .357 Ruger, okay?

15 A Yes, sir.

16 Q Did you have an opportunity to conduct trigger pull  
17 tests on this?

18 A I did.

19 Q And I believe you conducted those at the Richland  
20 County Sheriff's Department?

21 A Yes, sir.

22 Q In the presence of the Richland County Sheriff's  
23 forensics unit, right? There were people there in  
24 the evidence room?

25 A Yes.

1 Q Okay. And what did you determine about the trigger  
2 pull if this gun was cocked?

3 A It's a little over four pounds.

4 Q Is that a lot of effort?

5 A No.

6 Q So if this gun were cocked and moving down towards  
7 the glove compartment, if one touched the trigger, it  
8 would go off?

9 A Sure.

10 Q Now, you're not telling this jury that's what  
11 happened, that you know for certain that's what  
12 happened, is it?

13 A That's correct. I don't know.

14 Q Can anybody say for certain that's not what happened?

15 A I don't believe so.

16 MR. MEADORS: Objection.

17 THE COURT: Sustained. Strike that from the  
18 record.

19 Q In your opinion to a degree of scientific certainty  
20 more probably than not, can anybody say that? Can  
21 any other expert in your opinion based on forensics  
22 here say that is not the case?

23 MR. MEADORS: Objection. He cannot say what  
24 other experts would say.

25 THE COURT: It's his opinion as to what they

1           could or could not say. I'll allow that one.

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

3           **THE COURT:** Proper foundation.

4           **MR. HARPOOTLIAN:** Sir?

5           **THE COURT:** There was a proper foundation laid  
6           for that.

7           **MR. HARPOOTLIAN:** Thank you.

8   **Q**     Can anybody say that didn't happen? With the  
9           foundation I gave you a minute ago, can any other  
10          expert say it didn't happen?

11   **A**     No. I would expect any other competent expert to  
12          arrive at the same conclusions I have.

13   **Q**     Okay. Beg the Court's indulgence for a moment. Just  
14          a few more questions. Tell the jury what GSR is?

15   **A**     GSR stands for gunshot residue. It can actually be a  
16          number of things that it represents. It can be  
17          referred to and mean the cloud of gas of almost  
18          submicroscopic elements like barium, antemone and  
19          lead. And it can also include gunpowder particles  
20          which are things big enough to see with the unaided  
21          eye. As I said earlier in my testimony, they can  
22          range from size of, say, if you took the lead of a  
23          pencil and touched it to the size of the head of a  
24          pin, something of that size.

25   **Q**     Now, if a gun was fired from this car, you would

1 expect to see gunshot residue in it?

2 A Yes.

3 Q And one can't tell the concentration of gunshot  
4 residue, can you?

5 A No.

6 Q Now, there was gunshot residue found around the  
7 window. That doesn't surprise you, does it?

8 A No. And like I said, there are two kinds of gunshot  
9 residue. But what you're referring to is sometimes  
10 called primer residue because it is the gunshot  
11 residue from the primer of the cartridge that is so  
12 small you can't see it with the naked eye.

13 Q Now, if -- and I believe you read the forensic  
14 reports. And I believe they processed or did  
15 stickies around the window?

16 A That's correct.

17 Q The driver's side, the steering wheel?

18 A I think so.

19 Q The driver door handle inside?

20 A Yes, sir.

21 Q And the back of the passenger's seat. By the back I  
22 mean the seated part as I understand it if you sit in  
23 the chair, the back of your chair here?

24 A Yes, sir.

25 Q But there was no GSR done on the seat, the bottom



1 part?

2 A Correct.

3 Q None done on the glove box?

4 A Correct.

5 Q None done on the floor of the passenger's side?

6 A No, sir.

7 Q Now, if a weapon was held where you indicate your  
8 laser showed, down in front of the -- in the area  
9 between, around the seat and the glove box, would you  
10 expect to find gunshot residue there?

11 A Yes.

12 Q And maybe even high concentration. What else is  
13 there other than gunshot residue? What else would  
14 you be looking for?

15 A Well, gunshot residue can include also the gunpowder  
16 particles. And if it were as you described a gun of  
17 this caliber and being a .357 Magnum with a short  
18 barrel, that sort of thing; if a gun was fired in  
19 that location, there would also be the possibility of  
20 having gunpowder particles actually embedded either  
21 in the panel or the front of the seat or the front of  
22 the glove box.

23 Q And those might be visible and might not be visible  
24 to the naked eye?

25 A That's correct.

- 1 Q But since that area, those areas weren't processed,  
2 we don't know. Is that correct?
- 3 A That's right.
- 4 Q A couple of other questions. You met with Mr. Paavel  
5 with me?
- 6 A Yes, I did.
- 7 Q And you looked at the bullet fragments?
- 8 A Yes, I did.
- 9 Q That were removed from the deceased?
- 10 A Yes, sir.
- 11 Q And you looked at Mr. Paavel's comparison of the  
12 bullet fragments with known bullets fired by this  
13 gun?
- 14 A Yes, I did.
- 15 Q You agree with his conclusion that the bullet that  
16 struck John Johnson's head was fired by this gun,  
17 right?
- 18 A Yes, I do.
- 19 Q Now, also you saw the report concerning the Smith and  
20 Wesson that was done by Mr. Paavel, the Smith and  
21 Wesson found on the bed on --
- 22 A Yes, sir.
- 23 Q And it indicated there were six bullets in it and it  
24 had not been fired. Is that right?
- 25 A That's right. Six cartridges.

1 Q And in the Ruger there were -- it holds five. One of  
2 them had been fired?

3 A That's right.

4 Q Beg the Court's indulgence one moment. I believe I  
5 am done, but ...

6 (Pause)

7 MR. HARPOOTLIAN: That's all I have, Your Honor.

8 MR. MEADORS: Your Honor, we'd ask for the  
9 morning break or a five-minute break.

10 THE COURT: That's fine. All right, ladies and  
11 gentlemen. Let's take our morning break. I'll again  
12 ask you not to discuss the case among yourselves  
13 while you're in the jury room.

14 BAILIFF: Everyone else remain seated, please.

15 THE COURT: We'll call you in about ten or  
16 fifteen minutes. Just relax for a few minutes.

17 (Jury out at 10:50 a.m.)

18 THE COURT: We'll stand at ease for about ten  
19 minutes.

20 (Whereupon, a break is taken)

21 THE COURT: State ready for the jury?

22 MR. MEADORS: Yes, sir. Excuse me, sir. I'm  
23 sorry.

24 THE COURT: Bring the jury.

25 (Jury in at 11:15 a.m.)

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

2           **THE COURT:** All right. Thank you very much.  
3 All right, Solicitor. You may begin cross  
4 examination.

5           **MR. MEADORS:** If it please, Your Honor.

6           **MR. HARPOOTLIAN:** Your Honor, may we approach  
7 before he does that? I've got some scheduling  
8 issues.

9           (Whereupon, a bench conference is had)

10          **MR. MEADORS:** If it please the Court.

11                           CROSS EXAMINATION

12 **BY MR. MEADORS**

13 **Q** Good afternoon, Mr. Yates.

14 **A** Good afternoon. Or morning.

15 **Q** Just for the record, I believe you've testified you  
16 reviewed -- you'd been to -- do you mind? I move  
17 around a lot. I apologize. Do you care if I stand  
18 here, Your Honor?

19          **MR. HARPOOTLIAN:** Your Honor, we can't hear him  
20 very well from there.

21          **MR. MEADORS:** I'll speak up.

22 **Q** You've been to                           number of times?

23 **A** Two times.

24 **Q** Reviewed Vello Paavel's reports?

25 **A** Yes.

1 Q I'm just going over what Mr. Harpootlian asked you.  
2 Medical records I think you've already testified to?

3 A Yes, sir.

4 Q Pictures?

5 MR. HARPOOTLIAN: Your Honor, I apologize. We  
6 cannot hear him. And I'm not trying to be difficult.  
7 But he has a hearing disability. He can't hear you,  
8 and I can't hear.

9 Q Pictures of

10 A Yes, sir.

11 Q Okay. Dewain Herring's statements?

12 A Yes, sir.

13 Q Architectural drawing of

14 A Yes, sir.

15 Q What else did you review in the file? That's what I  
16 wrote down that Mr. Harpootlian asked you about. Can  
17 you tell us specifically what else you reviewed?

18 A I looked at a number of the photographs, not only at  
19 460 Alexander but also from Chastity's and the  
20 autopsy. I reviewed the crime lab reports regarding  
21 the GSR primer residue.

22 Q Who did that?

23 A The gentleman at SLED. I'm sorry. His name escapes  
24 me right now.

25 Q What else?

1 A I think that's all.

2 Q You think that's all. Who is Carl Weeks?

3 A I don't know who that is.

4 Q Who is Nicole Beran?

5 A They could be the officers.

6 Q They could be the officers?

7 A Yes, sir.

8 Q Angel Koon?

9 A Could be.

10 Q You've watched the video, haven't you?

11 A Yes, I have.

12 Q You know who Donnie Hawkins is for sure?

13 A No, sir, I don't.

14 Q Is he in the video?

15 A I don't know.

16 Q Is Ray Livingston in the video?

17 A I don't know.

18 Q What did Ray Livingston do in this case?

19 A I don't know.

20 Q You haven't reviewed over half the file, have you?

21 A I don't know what you're talking about.

22 Q Well, you haven't reviewed any of the documents I've  
23 talked about, correct?

24 MR. HARPOOTLIAN: Your Honor, object. He  
25 said --

1           **THE COURT:** It's cross examination.

2           **MR. HARPOOTLIAN:** Well, I understand. But he  
3           made a mistake. He didn't say anything about  
4           documents. He said people's names.

5           **THE COURT:** Well, let him answer the question.  
6           Don't prompt him.

7   **Q**    You didn't even know who the folks were I just named,  
8           correct?

9   **A**    Well, I don't know for sure. They could be the  
10          officers. And I don't know exactly -- what file are  
11          you referring to?

12   **Q**    What I'm referring to?

13   **A**    I'm sorry. I didn't understand your question.

14   **Q**    I didn't understand your question. What I'm  
15          referring to? What the file is?

16   **A**    Yes, sir. I understood you to say, you haven't  
17          reviewed half the file or something. I don't know  
18          what file you're talking about.

19   **Q**    I'm talking about this case.

20   **A**    I don't know what's half or any judgment about that.

21   **Q**    Now, Mr. Harpootlian may have asked you this. There  
22          is no dispute, and you agree, that this weapon fired  
23          the bullet. What kind of ammunition is in here, by  
24          the way? What kind of ammunition is in here?

25   **A**    Basically that is a semi-jacketed hollow point

1       cartridge, the remaining four, for hollow point  
2       cartridges.

3       Q     What brand?

4       A     May I see it?

5       Q     You don't know?

6       A     I don't remember off the top of my head.

7       Q     There is State's 68. There's no question that the  
8       bullet that was in here went into the brain of John  
9       Johnson and killed him, is it? You agree with that?

10      A     I do agree with that. Yes, sir.

11      Q     And would you also agree that this gun is in working  
12      order?

13      A     Yes, sir.

14      Q     Nothing wrong with it whatsoever?

15      A     Nothing that I could find.

16      Q     And the trigger pull when it, if you don't cock it  
17      and do it, it's about 11 and a quarter to 11 and  
18      three quarters, correct?

19      A     That's right. Double action; yes, sir.

20      Q     And you said you agreed with everything Paavel said.  
21      But you said cocked -- I believe Paavel's testimony  
22      was about five pounds cock. What did you say?

23      A     Somewhere over four pounds, between four and five  
24      pounds.

25      Q     Now, the Smith and Wesson .357, where was it found in



- 1 the house, if anywhere, at 460?
- 2 A My understanding, it was recovered from the house.
- 3 Q That's all you know. And it was your understanding
- 4 it was uncocked when it was recovered?
- 5 A I don't know.
- 6 Q Well, let me just show you State's 18. That appears
- 7 to be uncocked there, doesn't it?
- 8 A Yes, it does.
- 9 Q And what was the trigger pull on this gun, State's
- 10 18?
- 11 A I don't know.
- 12 Q Did you look at this gun at all, State's 64?
- 13 A I don't believe I examined that gun.
- 14 Q But you wouldn't dispute Lieutenant Paavel, that that
- 15 gun is in working order, would you?
- 16 A It appears within normal limits for that kind of gun.
- 17 Q In your field of expertise, firearms/ballistics I
- 18 think, and you've testified to several things today;
- 19 you're familiar with -- and help me if I'm wrong on
- 20 the correct language. But there are fire handling,
- 21 firearm handling rules, aren't there? I mean,
- 22 generally? I mean, should you handle a firearm when
- 23 you've been drinking?
- 24 A No.
- 25 Q There's no question about that, is there?

1 A That's right. You shouldn't.

2 Q Now, I think you met at SLED. I was out there one

3 time with Mr. Harpootlian and Vello Paavel. And Joe

4 Powell was the guy's name. Does that ring a bell?

5 A It does. . Yes, sir.

6 Q I was out there one day we had a brief meeting,

7 correct?

8 A That's correct.

9 Q And you may have met another time with Lieutenant

10 Paavel. I'm not sure.

11 A No, sir.

12 Q You didn't?

13 A Did not.

14 Q But you said you had met with him and you saw the

15 fragments, correct?

16 A Yes, I did.

17 Q Where was that?

18 A I saw them in the photographs that were supplied to

19 me. And also we saw the fragments that day, or

20 photographs of them, that day that we met.

21 Q And there's no dispute, is there, that there was no

22 evidence of concrete or anything else on those

23 fragments, is there? None whatever?

24 A Didn't see any, no.

25 Q That's something you might see if there had been a

1 ricochet on something, wouldn't?

2 A That's right. It could.

3 Q Ricochet. I want to very briefly go to  
4 Alexander. It is fair to say you spent most of your  
5 time preparing your testimony on

6 ? Wouldn't that be fair to say?

7 A No.

8 Q Well, this diagram, you reviewed it?

9 A Yes, sir.

10 Q You reviewed one of these like this at Chastity's?

11 A No.

12 Q And you keep saying the word approximate, right?

13 When Mr. Harpootlian had it up here, you said about  
14 how high was the bullet holes up on the wall?

15 A Approximately four-feet-four inches.

16 Q And you're saying approximate. You don't know for  
17 sure?

18 A That's true.

19 Q And when you arrived at SLED, you didn't even look at  
20 the piece of the wall, did you?

21 A At that time, no. I didn't.

22 Q When did you look at it?

23 A Today.

24 Q Today. So when you say not at that time I didn't,  
25 the first time you looked at it was just a minute

1           ago, this morning?

2   A    Earlier today. Yes, sir.

3   Q    When you testified?

4   A    Before I testified.

5   Q    How long before?

6   A    Approximately a little before 9.

7   Q    This was out at SLED for you to look at that day,

8        wasn't it?

9   A    I don't know.

10   Q   You didn't ask for it, did you?

11   A   No, I didn't.

12   Q   But the wall had been repaired when you were trying

13       to figure out this approximation, correct?

14   A   That's correct.

15   Q   And that's why it's approximate?

16   A   Yes, sir.

17   Q   Now, Mr. Harpootlian put you in several different

18       positions or put the defendant in several different

19       positions. You don't have any idea where David

20       Linfert or Investigator Gwyn were holding their

21       hands, do you?

22   A   No, I don't.

23   Q   No way you could tell that, is there?

24   A   Well, other than what I've already testified to, I

25       can't make any determination about that.

1 Q And where did Dewain Herring get the Smith and Wesson  
2 .357 from?

3 A I don't know.

4 Q You don't know?

5 A No, I don't.

6 Q Wouldn't that be important in you trying to tell this  
7 jury what position his body was turned as an expert  
8 in your field?

9 A No.

10 Q It would not?

11 A No.

12 Q And referring to State's 74, can you recognize that  
13 as a dresser right -- well, you've been there. Do  
14 you recognize that?

15 A Yes.

16 Q And what came out of that drawer?

17 A I don't know.

18 Q If there had been testimony the defendant reached in  
19 and grabbed the weapon out of that drawer, wouldn't  
20 you want to know that in doing your opinion, in  
21 considering your expert opinion?

22 A It might be useful information. But in this  
23 particular case, as far as establishing where he was  
24 at the time he was shot, I don't believe it does.

25 Q How about if the defendant got the weapon and turned

1 and came forward, down the hallway like that,  
2 wouldn't you want to know that that potential  
3 testimony was there before you gave your opinion?

4 A Not necessarily.

5 Q Why?

6 A Well, because what you just described would be  
7 inconsistent with what I was able to determine by  
8 projecting a path from the laser through the bedroom  
9 through the wound in his arm into the wall.

10 Q You don't know which wound was entrance or exit?

11 A Not for sure, no.

12 Q That's a no? I mean, right? You're telling me that  
13 your testimony previously that this bullet hole --  
14 and what's the SLED marker on the bullet hole?

15 A I'm sorry? What's your question?

16 Q What's the SLED marker on those bullet holes in  
17 there?

18 A I don't recall. They're on there.

19 Q Wouldn't it be inconsistent with Dewain Herring  
20 grabbing the gun and heading back this way with his  
21 body turned and getting that shot? Would that be  
22 inconsistent? You couldn't rule that out, could you?  
23 Come on, Mr. Yates.

24 MR. HARPOOTLIAN: Your Honor, he is attempting  
25 to answer the question. He's thinking about it. I

1 would object.

2 **THE COURT:** Take your time, sir.

3 **A** Thank you, Judge. If that were the case, then his  
4 body would have been -- would have had to have been  
5 positioned over the bed if in fact he was shot in the  
6 location at the bed. I testified that he could have  
7 been shot at the location of the bed or in the  
8 hallway.

9 **Q** Okay. And you testified he could have been shot in  
10 front?

11 **A** It's possible.

12 **Q** That's all I'm trying to ask you. It's possible.  
13 And if he grabbed the gun and turned and was crouched  
14 down, it's possible he can get hit here, can't he?

15 **A** I don't think so.

16 **Q** Is it possible?

17 **A** No. I don't think so.

18 **Q** You're saying that's not possible?

19 **A** Well, it would be impossible for that to be crouched  
20 down and then align with the holes that are in the  
21 wall.

22 **Q** Have you reviewed the statements of the officers?

23 **A** I believe I have.

24 **Q** Well, what did they say? What did Investigator Gwyn  
25 say?

1 A I don't know off the top of my head.

2 Q Well, who actually shot back in the room?

3 A I believe that it's Officer Linfert.

4 Q Did Gwyn shoot back there, too?

5 A I don't know.

6 Q But you reviewed their statements. What did Linfert  
7 say?

8 A I don't remember.

9 MR. HARPOOTLIAN: Your Honor, Your Honor, I  
10 object. He ought to have an opportunity to review  
11 his statement if he's being asked about it.

12 THE COURT: He said he hasn't -- he's not been  
13 asked about it. I assume he's not going to be asked  
14 about it. He said he hasn't reviewed it.

15 MR. HARPOOTLIAN: Thank you, Your Honor.

16 Q It's your testimony here today that if Dewain Herring  
17 reached into this, State's 74, on the bed, grabbed a  
18 weapon and turned around that his body could not get  
19 in a position to get a bullet in his arm from that  
20 hallway? Is that your testimony?

21 A My testimony is that it would be inconsistent with  
22 what I was able to determine.

23 Q Do you know which way Dewain Herring's body was  
24 turned?

25 A Obviously I was not there and I don't know.



1 Q You have no idea?

2 A Well, yes, I have an idea based on what I did by  
3 examining the reports and going out there and making  
4 my own measurements.

5 Q And you really can't -- I mean, you can't say if it  
6 was a forward shot or a back shot, can you? I mean,  
7 you can't say it?

8 A Well, all I can say is what I testified to earlier  
9 and what it's consistent with.

10 Q Where was the blood found?

11 A My understanding is that there was blood found  
12 associated with the two holes that are in the cut out  
13 portion of the Sheetrock.

14 Q In the bedroom?

15 A Yes, sir.

16 Q And specifically, looking at State's 72, where is  
17 that blood?

18 A Well, you had asked me about the blood on the  
19 Sheetrock. There obviously is a pool of blood or a  
20 puddle of blood there in the hall.

21 Q That's what I was asking you, where that was. That's  
22 in the hallway? Is it?

23 A Not the hallway. The area in the master bedroom near  
24 the entrance to the master bath.

25 Q It's near the -- is it near that table where the

1 door -- the drawer is open, too, in the bedroom?

2 A Let me look at it. Well, it's within, it looks like

3 about maybe five feet from that, four or five feet.

4 Q All right. And you testified something about -- so

5 you're not even sure if he was at the bed or in the

6 hallway, correct?

7 A That's correct.

8 Q And you testified about punctate. Pronounce that

9 word. Punctate?

10 A Punctate.

11 Q Punctate. Now, I'm not trying to --

12 A Well, it's not my word.

13 Q I didn't understand your pronunciation. I pronounce,

14 too, bad. I'm not saying anything bad. Just go

15 ahead.

16 A Punctate is not my word. It's in a medical record

17 with the x-ray.

18 Q Okay. But you were trying to say punctate to say

19 that that's where some gunshot particles could have

20 made those, correct?

21 A Could be.

22 Q Yeah. But you have no idea whether they did or not?

23 A That's correct.

24 Q And based on that, you're trying to say this shot

25 could have been a little farther down the hallway,

1 correct? If, assuming a gunshot particle made that,  
2 then it could be that a shot was made when he was  
3 further down the hallway. Is that what you're  
4 saying?

5 A No, sir. What I'm saying is that if it is in fact  
6 gunpowder residue that is of the type that is  
7 consisting of gunpowder or partially burned  
8 gunpowder, then the shot could have been at a  
9 distance from the end of the barrel which would have  
10 been a distance of several feet, maybe four, maybe  
11 even a little bit further, but something like that.

12 Q But you don't even know if that's what it is?

13 A No, I don't.

14 Q And there was no blood in the hallway, correct?

15 A I don't know of any.

16 Q And there was no indication whatsoever from the shots  
17 that were fired from the front door toward the  
18 hallway, no human tissue, no blood on any of those,  
19 correct?

20 A Can you ask your question again?

21 Q Yes, sir. All streamers that are going this way from  
22 the bedroom, I think there are ten in that hallway  
23 and they're in evidence, all going through the hall;  
24 there is no evidence of blood, human tissue or any of  
25 those, correct?

1 A In the hallway?

2 Q Yes, sir.

3 A None that I know of.

4 Q And where was Linfert hit?

5 A I don't know that he was hit.

6 Q Well, would that be important in your analysis?

7 A I don't know. It could be.

8 Q All depends on the position of Dewain Herring's body,

9 correct?

10 A I don't understand your question. I'm sorry.

11 Q Well, you're trying to say where he was depends on

12 how his body was at the time, correct?

13 A That's a factor. Yes, sir.

14 Q Isn't that a pretty big one?

15 A Yes, sir. I think so.

16 Q John Johnson's body was not at

17 was it?

18 A No.

19 Q You don't have any notes with you?

20 A No, sir.

21 Q I'll stop here. I'm allowed to ask you now. Are

22 they out in the car?

23 A No, sir.

24 Q Where are they? Are they in Columbia?

25 A They're in my suitcase back at Mr. Harpootlian's

1 office I believe.

2 **MR. MEADORS:** Beg the Court's indulgence. Your  
3 Honor, we're entitled to those notes. We'd certainly  
4 like to have them.

5 **MR. HARPOOTLIAN:** There is no report prepared  
6 for me, Your Honor. He is not entitled to those  
7 notes.

8 **MR. MEADORS:** Yes, sir, we are.

9 **MR. HARPOOTLIAN:** Your Honor, I object to  
10 arguments in front of the jury. I think that's  
11 inappropriate, and I move for a mistrial.

12 **MR. MEADORS:** For the record --

13 **THE COURT:** Sir. All right, ladies and  
14 gentlemen. I'd ask you to go to the jury room for  
15 just a minute. Let me get this straightened out.  
16 Don't discuss the case among yourselves while you're  
17 in the jury room.

18 (Jury out at 11:40 a.m.)

19 **THE COURT:** What's your position, Solicitor?

20 **MR. MEADORS:** Your Honor, Mr. Harpootlian has  
21 asked every one of our witnesses for their notes.  
22 They've either testified they destroyed them or  
23 didn't have them. Under the rules, once an expert  
24 has testified, anything he has used in preparing his  
25 testimony we're entitled to. I've asked it every

1 time I've done an expert. He said they're in the  
2 have vicinity. They're right nextdoor. We'd like to  
3 review them. I don't know why -- what's the  
4 objection?

5 **MR. HARPOOTLIAN:** Well, the objection is under  
6 unfortunately Rule 65b(2), information not subject to  
7 disclosure, which if everybody else has been giving  
8 that to you, you have not read the rule. "Except as  
9 to scientific and medical reports, this subdivision  
10 does not authorize the discovery or inspection of  
11 reports, memorandum or other internal defense  
12 documents made by the defendant or his attorneys or  
13 agents in connection with the investigation or  
14 defense of the case or statements made by the  
15 defendant or prosecution or defenses witnesses, by  
16 prospective defense witnesses to the defendant, its  
17 agents or attorneys."

18 So, Your Honor, first of all, I should have  
19 cited this when he was after Mr. Hawkins' statement.  
20 He wasn't entitled to that under this rule.

21 Secondly, he certainly is not entitled to  
22 anything that is done my agent in preparing. Now, it  
23 doesn't cut both ways because of the presumption of  
24 evidence and they have the burden of proof. So we  
25 would oppose any production of this witness's notes

1 he has made in preparation for his testimony.

2 MR. MEADORS: If I may be heard. I'd like to  
3 cite for his knowledge Rule 705, if he is not aware  
4 of it. "Disclosure of facts or data underlying an  
5 expert opinion. The expert may testify in terms of  
6 opinion or inference and give reasons therefore  
7 without first testifying to the underlying facts or  
8 data unless the Court requires otherwise. The expert  
9 may in any event be required to disclose the  
10 underlying facts or data on cross examination." I'm  
11 asking for that.

12 MR. HARPOOTLIAN: He's done that. He's  
13 disclosed them.

14 MR. MEADORS: That's Rule 705.

15 MR. HARPOOTLIAN: Well, I would suggest the  
16 Rules of Criminal Procedure and Disclosure trump the  
17 general rules of evidence, Your Honor. I'll defer to  
18 you on this. But we believe and we prepared our case  
19 based on this rule. And we've complied with it.

20 Your Honor, I'd also note that under the rules  
21 he's cited, he'd be entitled to discovery,  
22 depositions, all of them.

23 MR. MEADORS: I think it's just like the tape he  
24 did. The same thing. We're entitled to that.

25 MR. HARPOOTLIAN: You're not entitled to that.

1 I wish you'd read the rule.

2 **THE COURT:** He's not using his notes to refresh  
3 his memory or anything like that here. What's your  
4 position with regard to Rule 5(b)(2)?

5 **MR. MEADORS:** Your Honor, I think Rule 705  
6 controls. Once he's testified, we're entitled to it.

7 **THE COURT:** The rule says it's discretionary  
8 with the Court.

9 **MR. MEADORS:** I'm not saying it's not. No, sir.  
10 I didn't that say that. NO. I firmly agree with  
11 that. I'm just citing that I in good faith think  
12 we're entitled to it under 705.

13 **THE COURT:** All right.

14 **MR. MEADORS:** Certainly I wouldn't argue with  
15 your opinion, your ruling whatsoever.

16 **THE COURT:** Sir, what's your motion?

17 **MR. HARPOOTLIAN:** Well, my motion first of all  
18 is that he not -- that the solicitor's motion be  
19 denied. Secondly, --

20 **THE COURT:** All right. The solicitor's motion  
21 is denied.

22 **MR. HARPOOTLIAN:** Okay. And the question be  
23 struck from in front of the jury and indicate that  
24 that was not to be asked and move on; or, in the  
25 alternative, for a mistrial.



1           **MR. MEADORS:** Your Honor.

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

3           **THE COURT:** You have moved for a mistrial. I  
4 just wanted it to be clear on the record.

5           **MR. MEADORS:** No. I don't think the question is  
6 inappropriate. It's in your discretion. So I don't  
7 think Your Honor -- we would object to Your Honor  
8 saying the question was inappropriate. I don't think  
9 it was.

10           **THE COURT:** Bring the jury.

11           (Jury in at 11:44 a.m.)

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

13           **THE COURT:** Continue.

14   **Q**   Before we move to Chastity's, your opinion is  
15 inconsistent with the defendant's statement of what  
16 happened at:        isn't it?

17   **A**   I don't understand your question.

18   **Q**   Well, what part do you not understand?

19   **A**   I don't understand what you're question is about how  
20 it is inconsistent.

21   **Q**   Did you review Dewain Herring's statements?

22   **A**   Yes, I did.

23   **Q**   Is your opinion here inconsistent with his statements  
24 he gave to the police?

25   **A**   In regard to anything in specific?

1 Q Where he was shot.

2 A I don't recall.

3 Q Let's go to Chastity's. Joe Powell's findings are

4 consistent with the gun being pointed out the window,

5 aren't they? Or toward the window?

6 A Could be.

7 Q How are they not?

8 A Well, his findings were for the presence of GSR

9 gunshot residue. I mean -- sorry -- GSR, meaning

10 primer residue. And it doesn't delineate as to

11 exactly where they were found or how long they had

12 been there.

13 Q Sticky tabs around the window would be consistent

14 with a firearm being shot and gunshot residue coming

15 out of there and being placed on the window, wouldn't

16 it?

17 A It could. Yes, sir.

18 Q And gunshot residue found in the passenger seat would

19 be consistent with a firearm being fired out that

20 window, wouldn't it?

21 A Yes, sir.

22 Q Your Honor, very briefly, we'll ask Mr. Justin to set

23 this up. With Your Honor's permission, if Mr. Yates

24 doesn't mind, could I ask him to step down?

25 THE COURT: Certainly.

1 Q Do you mind standing over there so madam court  
2 reporter can hear you?  
3 A Sure.  
4 Q Thank you. Go back to camera 4, 12:05:50, please.  
5 Go back again to 12:05:30. 12:05:30. I apologize to  
6 the Court and the ladies and gentlemen. All right.  
7 Stop. This is 12:05:30 seconds. Vehicle pulls up,  
8 correct?  
9 A Yes, sir.  
10 Q Okay. Go ahead. Stop. Vehicle pulls up a little  
11 more, doesn't it?  
12 A Yes, sir.  
13 Q The door opens. Go ahead. Stop. What's the -- I'm  
14 sorry. I want you to go back. Go back again. I  
15 apologize. Stop it. I need you to stop there. I'm  
16 sorry. My bad. When I say stop, just leave it  
17 there. If you would go back. And I apologize. I  
18 didn't mean to fuss at you. What's that?  
19 A It appears to be a reflection of some sort.  
20 Q Could it be a flash?  
21 A I don't think so, because it's below the window.  
22 Q That couldn't be a flash?  
23 A I don't think so.  
24 Q And you mentioned a fire ball, correct?  
25 A Yes, sir.

1 Q And you would expect that to be a big fire ball?

2 A Yes, sir.

3 Q So you would expect to see a fire ball whether it was  
4 pointed straight or down, wouldn't you?

5 A I'm not sure what you mean by straight or down. I'm  
6 sorry.

7 Q You really don't understand that question?

8 A No, sir. I don't.

9 Q If the gun was either pointed straight or down, you'd  
10 expect to see a fire ball based on the way you've  
11 described it?

12 A Yes, sir. I would expect to see it in this location  
13 right here if it were pointed in this fashion in this  
14 direction. I would expect to see it. Yes, sir.

15 Q Go back one more time, please. Just leave it stopped  
16 right after 06. Okay. Start now. Stop. What's  
17 that?

18 A I don't know.

19 Q Okay. And you're not trying to say that a shot  
20 wasn't fired from this vehicle?

21 A No.

22 Q There's no question about it, a shot is fired from  
23 that vehicle?

24 A Probably, yes.

25 Q Did you say probably?

1 A Yes.

2 Q Can't you say for sure a shot is fired from that

3 vehicle? Can't you say that based on that video?

4 A No, sir.

5 Q You cannot say that?

6 A No, sir.

7 Q Keep going. Can you say that car drove away?

8 A Sure.

9 Q Can you say that?

10 A Sure. Yes, sir.

11 Q Go back to inside camera 12. Stop. What camera did

12 Donnie Hawkins hear John Johnson say -- excuse me, my

13 language -- "oh, shit"?

14 A I don't know.

15 Q You don't know?

16 A No, sir.

17 Q Isn't that something you would like to know and

18 determine when and if a shot was fired? Isn't that

19 one of the evidence -- go back to your state days.

20 When you worked for the state, isn't that something

21 you would have liked to have known or reviewed before

22 you testified?

23 A Not necessarily.

24 Q Not necessarily?

25 A No, sir.

1 Q Go ahead. Stop. 12:06:07, shot forward on camera 4  
2 at 12:06:06. Right after that, right at 12:06:07 we  
3 see "Jon Jon" fall?

4 A Correct.

5 Q That gun released the projectile that went into his  
6 head based on this, didn't it?

7 A I would think so. Yes, sir.

8 Q So you can say a gun was fired out of that car?

9 A It would be consistent with that obviously.

10 Q Is there any other car that comes in there?

11 A Not that I'm aware of.

12 Q What's the address of Chastity's?

13 A I don't know.

14 Q You can have a seat.

15 A Thank you.

16 Q And go back to the front one more time. I'm sorry.  
17 I'm sorry, Mr. Yates. Camera 4 one more time. Just  
18 stop right here. Mr. Harpootlian I think asked  
19 you -- and again you've already testified to it I  
20 think -- but no evidence on the fragments you  
21 reviewed with Investigator Paavel of anything other  
22 than -- any concrete or anything else on the  
23 fragments?

24 A Correct. I didn't see anything.

25 Q You didn't see anything?

1 A No, sir.

2 Q Now, right here, wouldn't it -- you said -- Mr.  
3 Harpootlian put you in that position, said, it would  
4 be inconsistent with a shot. But doesn't it all  
5 depend on what position the person in the car is as  
6 to how the shot was fired?

7 A Yes.

8 Q Doesn't that make sense?

9 A Sure.

10 Q So if you're in the car and you pulled up -- and what  
11 did you -- I'm sorry. I'm getting in the way. Can  
12 you back up just so I can just see. Just back up  
13 just a little bit. All right. Stop. This middle,  
14 what do you call this right here? I just can't  
15 remember.

16 A A post.

17 Q That's all. A post. You're talking about a post.  
18 That's the post. Your window here, post here,  
19 passenger window, correct?

20 A Correct.

21 Q Could you lean over and make your shot easier?

22 A Sure.

23 Q There's no question about that, right?

24 A No.

25 Q And you have no idea which way the person driving

1           this car's body was or how he turned or when he  
2           turned or when he leaned between 12:06:06 and  
3           12:06:07 when that bullet went through the door in  
4           John Johnson's skull, do you?

5   A       I don't know.

6   Q       But it's consistent with the projectile coming from  
7           here, through that door and into John Johnson's head,  
8           isn't it? Isn't it consistent with that?

9   A       It would be I believe once the vehicle had moved up  
10          further.

11   Q       Could have gotten a better shot, couldn't he?

12   A       I wouldn't say that.

13   Q       Could have though?

14   A       No, sir. I don't think so.

15   Q       Couldn't have made a shot easier?

16   A       No, sir.

17   Q       Oh, it could not have. You know that for sure?

18   A       Yes, sir, I do.

19   Q       Go ahead. You can go ahead with what you -- were you  
20          going to finish?

21   A       I just said that once the vehicle moves up again like  
22          from this position here, when the door closes again,  
23          it could have come from an area below the window back  
24          towards the door. There is no evidence of any flash  
25          or gunshot plume that shows anything above the



1 window.

2 Q And that little light doesn't mean anything to you?

3 A No, sir, it does not.

4 Q Right there?

5 A No, sir.

6 Q Right before the car drives off and right before "Jon  
7 Jon" hits the door, that doesn't mean a thing to you?

8 A That's below the edge of the window.

9 Q Could it be a reflection off the car of the flash?  
10 Isn't it consistent with that?

11 A No. I don't think so. Because if it were, then you  
12 would expect to see the flash in that position.

13 Q What is it?

14 A I don't know.

15 Q Does it make common sense that the bullet goes in  
16 there?

17 A I don't know.

18 Q You don't know if it makes common sense?

19 A I don't agree with that. It could be, you know, a  
20 reflection from any number of other things. When I  
21 was there I noticed that the cars are coming by and  
22 create reflections on vehicles that are in this  
23 parking lot. There are also lights that are up on  
24 top of the building that shine in this direction.

25 Q But all your determining -- you never know, you, what

1 position that hand was in when the shot was fired?

2 A Not for sure. No.

3 Q And you said you went out there and took

4 measurements. That's approximate?

5 A Well, they were measurements and approximations, yes.

6 Q And if it's a little rounder hole that would appear

7 to be, it would go in straight, wouldn't it?

8 A I am sorry. I don't understand your question.

9 Q Well, if the hole is round that would be more like if

10 the projectile went in straight, wouldn't it?

11 A It could be an indication. Yes, sir.

12 Q And on State's 15, that's a round hole, isn't it?

13 A Pretty much. But it still can be somewhat angled to

14 the plane of where it enters.

15 Q That hole is round, isn't it?

16 A Generally it's round.

17 Q And that's consistent with coming in straight, isn't

18 it?

19 A No. It's not. It can be -- as you can see, it has a

20 little bit of evidence of possibly being angled back

21 in this direction.

22 Q The location of that bullet when it goes in, it can

23 be altered once it goes in his skin, can't it?

24 A If your question is can the path of the bullet change

25 a little bit; yes, sir.

- 1 Q And Mr. Harpootlian was -- where is the pointer? I  
2 think Mr. Harpootlian was saying slightly downward.  
3 And doing mine slightly downward would be consistent  
4 with that bullet hole coming -- with the projectile  
5 coming in this way, wouldn't it?
- 6 A It could be. Yes, sir.
- 7 Q Was this car out there when you were out there?
- 8 A No.
- 9 Q So you didn't take -- how long have you been in law  
10 enforcement?
- 11 A Over 25 years.
- 12 Q And you're now a lawyer?
- 13 A Yes, sir.
- 14 Q You've investigated how many crime scenes?
- 15 A I don't know.
- 16 Q Thousands?
- 17 A Maybe.
- 18 Q You didn't take this car back to the crime scene?
- 19 A No.
- 20 Q And put it in the position where this was?
- 21 A No.
- 22 Q And you didn't measure the wheels from here or where  
23 they were from there, did you? You didn't take it to  
24 the crime scene?
- 25 A No, I didn't take it there.

1 Q Because it wouldn't matter. It all depends on where  
2 it's leaving. You wouldn't have been able to tell us  
3 any more if you did that than you're telling us now  
4 today?

5 A Probably not.

6 Q And you're an expert?

7 MR. HARPOOTLIAN: Is that a question, Your  
8 Honor?

9 MR. MEADORS: I'm waiting for an answer.

10 MR. HARPOOTLIAN: Well, he's been qualified as  
11 one.

12 Q If you'd have a seat back, please.

13 A Thank you.

14 Q I had down here when you said if it was difficult or  
15 not impossible to fire straight out that door. But I  
16 think you've testified if you turned and did it, you  
17 could fire out that window and hit the door, can't  
18 you? It depends on how the body is?

19 A Yes, sir. If somebody were to lean forward; yes,  
20 sir.

21 Q And would you agree there is one car? Would you  
22 agree with that in the video?

23 A Certainly.

24 Q One shot?

25 A Would I agree?

1 Q (Nods head affirmatively)

2 A Yes, sir.

3 Q One door with a bullet hole. Would you agree?

4 A Yes, sir.

5 Q One dead John Johnson?

6 A Is that a question?

7 Q Yes, sir.

8 A Yes, sir.

9 Q Beg the Court's indulgence. Thank you, Mr. Yates.

10 A Yes, sir.

11 MR. HARPOOTLIAN: Just a few questions on  
12 redirect, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. HARPOOTLIAN

15 Q Mr. Meadors asked you about concrete on the fragments  
16 that they took out of Mr. Johnson, right?

17 A Yes.

18 Q Right?

19 A That's correct.

20 Q Now, if it had ricocheted off of metal or concrete,  
21 would you expect to necessarily see metal or concrete  
22 on it or not?

23 A Maybe; maybe not.

24 Q Maybe; maybe not. Now, the pathologist has testified  
25 that there were a number of small fragments of

1 something that he did not remove from Mr. --

2 MR. MEADORS: Your Honor, objection. This is  
3 not proper at all, not brought up.

4 THE COURT: Yes, sir. I'll allow it. Yes, sir.  
5 Go ahead.

6 MR. HARPOOTLIAN: Thank you.

7 Q As a matter of fact, I think we've got an x-ray  
8 around here somewhere, a picture of an x-ray. Here  
9 it is. State's Exhibit No. 37. And if the  
10 pathologist testified that there were some large  
11 fragments he took out, which one of them matched the  
12 gun, but there were a number of smaller fragments  
13 that were not taken out; could that be concrete or  
14 metal that were left in there? We don't know, do we?

15 A Don't know. But it would be probably metal because  
16 it's radio opaque.

17 Q Okay. As the bullet goes through the door, if there  
18 is concrete or some substance that it ricocheted off  
19 of, could it be left in the door?

20 A Sure.

21 Q And the way you deal with that is you go to the hole  
22 in the door, State's Exhibit No. 15, and you process  
23 it. You swab the inside of it?

24 MR. MEADORS: Objection. Form of the question.

25 Q Do you or do you not? What would you do inside?

1           What would you do to determine if there was any other  
2           matter in the door, in the hole in the door?

3    A       An analyst could either look at the hole with the  
4           unaided eye, use some kind of magnification to see if  
5           there is other foreign material found inside the  
6           hole.

7    Q       Have you done that?

8    A       No.

9    Q       It could be done though?

10   A       It could be done.

11   Q       Sure. Any evidence it was done in this case?

12   A       No.

13   Q       So the fact that there is no particulate matter like  
14           concrete or metal on the fragments taken out by the  
15           doctor, does that prove or disprove anything?

16   A       No.

17   Q       Now, he also asked you about when you looked at the  
18           piece of wall, the actual piece of the wall. That  
19           was today, correct?

20   A       That's correct.

21   Q       That's been in the custody and control of SLED and  
22           the State, correct?

23   A       That's my understanding.

24   Q       But you've been looking at these pictures over here  
25           that we've projected before, Defendant's Exhibit 23

1 and all these other pictures. You've been looking at  
2 those for months, correct; since you were retained?

3 A Yes, sir.

4 Q And so you had pictures of that. And when you  
5 visited the house, you could see where the square was  
6 cut out, right?

7 A Yes, sir.

8 Q So in terms of your ability to measure where these  
9 approximately went into the wall, you were able to do  
10 that based on the pictures and based on visiting the  
11 scene, right?

12 A That's right.

13 Q And this morning you looked at this and confirmed  
14 your measurements. Is that correct?

15 A That's correct.

16 Q Now, Mr. Meadors asked you about -- you read the  
17 statements of Mr. Herring. It's here somewhere. Let  
18 me find the one I am looking for. I'm sorry. I've  
19 got the wrong page. This is State's Exhibit marked  
20 for identification I believe 79. This is a blowup of  
21 his statement. If you look at the question: "When  
22 did you get shot", what was his response?

23 A The answer is: "I got shot the first time they came  
24 in before I went to the bedroom to get my handgun."

25 Q Okay. And he'd indicated in his statement he was in



1 the hall at that point. Isn't that correct?

2 A That's my understanding. Yes, sir.

3 Q Now, Mr. Meadors asked you about moving Mr. Herring  
4 around and the constraints of the hall and the  
5 bedroom, right?

6 A Yes, sir.

7 Q And I want to make sure I understand you and this  
8 jury understands you. Did you attempt to line up the  
9 wound with the laser into these holes into the wall  
10 in a number of different ways?

11 A Yes, sir.

12 Q Were any of the other ways -- I mean, Mr. Meadors  
13 said, coming up with a gun. Now, if you're in that  
14 room -- okay.

15 MR. MEADORS: Your Honor, objection to the form.  
16 He's now testifying, there's no question, and I  
17 object to leading.

18 MR. HARPOOTLIAN: I'm stating what he said. I  
19 said, if you're in the room, and I will ask a  
20 question.

21 THE COURT: Go ahead.

22 Q Come down here, please. Stand over there facing me,  
23 please. Referring to Defendant's Exhibit No. 32,  
24 going from -- you've previously testified this is the  
25 door coming in. This is the hall that you've

1 testified about or everybody has testified about, and  
2 this is the bedroom back here, right?

3 A Yes, sir.

4 Q Now, show the jury the different places you moved,  
5 general area you moved Mr. Herring, oriented around  
6 to try to line this shot up to be consistent with the  
7 hole in the wall at 4.4 inches?

8 A I moved him in this area here which is in the hallway  
9 and then moved him to a position right here in the  
10 master bedroom here this way.

11 Q And did you attempt to move him inbetween here?

12 A Yes, I did.

13 Q And when you did that, what problem did you have with  
14 lining up the shots?

15 A The problem is that if a person is in the area right  
16 in front of the hallway, they can see into the  
17 hallway and they can see into the bedroom but their  
18 vision in the bedroom is limited by the opening of  
19 this door here, which when viewed from the position  
20 in front of the hallway, that opening is very narrow.  
21 It's only about six inches or something like that  
22 that you can see into the bedroom, to the location  
23 between the bedroom and the wall.

24 Q Now, even if you came up to the door in the bedroom,  
25 right?

1 A Correct.

2 Q And looked in, unless you came into the bedroom,  
3 would you be able to see Mr. Herring's left arm if he  
4 were standing facing you?

5 MR. MEADORS: Objection. How can he testify to  
6 that?

7 THE COURT: Sir.

8 MR. MEADORS: Objection.

9 THE COURT: Overruled.

10 Q Could you see Mr. Herring's left arm? I believe you  
11 positioned him there as we walked through the  
12 process. If you're standing in the door but if you  
13 haven't entered the room and he is at that -- next to  
14 the bed there, can you see his left arm?

15 A I can see his left arm, but you cannot see the scars  
16 that are on his arm which would be facing you from  
17 that perspective.

18 Q Okay. And even if they were facing you, if a bullet  
19 were fired at that point, would it embed itself in  
20 the place that we find this bullet?

21 A No.

22 Q It would be back?

23 A It would be in a different place.

24 Q Okay. Now, I want you to take -- wait here one  
25 second. I thought I had my red magic marker here. I

1           may have laid it down somewhere. Well, let me see if  
2           I can do this with a blue one. Can I have the blue  
3           one? I want you to show me based on using the laser  
4           and lining up the wound with the hole in the wall any  
5           places on this sketch where they line up. This is an  
6           architectural drawing when I say sketch. That area?  
7    A    In that area and --  
8    Q    And in that area?  
9    A    -- that area.  
10   Q    And in both those areas where they line up, is Mr.  
11       Herring's front or back towards where the shot came  
12       from?  
13   A    His back would be towards this direction.  
14   Q    Okay. Thank you. Please take the stand.  
15   A    Yes, sir.  
16   Q    Now, whether that is an entrance or an exit wound, I  
17       mean, does that -- strike that. What, if anything,  
18       did you do to determine -- let me strike that. Let  
19       me see that black Sharpie just a second. Maybe this  
20       is the best way. If you have two points that you  
21       know a projectile traversed, if you connect those two  
22       points, you get what we call trajectory. Is that  
23       right?  
24   A    Yes, sir.  
25   Q    Okay. In this case we have, what are the two

1 points -- or there may be more than two. You've got  
2 to have at least two, right?

3 A Yes, sir.

4 Q Okay. Do you have two points that you connected to  
5 determine the trajectory of the bullet that struck  
6 Mr. Herring?

7 A Yes. Actually three.

8 Q Right.

9 A You have the two in the arm and then the one on the  
10 wall.

11 Q Okay. But assume for a moment that you don't know  
12 whether that's -- you only have one on the arm,  
13 because you don't know the trajectory within the arm,  
14 do you?

15 A No.

16 Q Assume you have this and this. And did you assume  
17 that? That is, did you make any assumptions about  
18 what was exit, what was entrance when you began  
19 lining him up?

20 A When I began; no, sir.

21 Q And you moved him in a number of different positions?

22 A That's correct.

23 Q Forward and backwards?

24 A That's correct.

25 Q Up and down and sideways; each way, right?

1 A Yes, sir.

2 Q Between the door of the hallway back to the bureau  
3 next to the bed. Is that right?

4 A That's right.

5 Q And in doing that, at any point did the wound to the  
6 left arm line up in such a way with the hole in the  
7 wall in which it was consistent with him pointing a  
8 firearm at police officers?

9 A No.

10 Q I'm sorry?

11 A No.

12 Q Nowhere?

13 A No, sir.

14 Q It was consistent however in two different --

15 MR. MEADORS: Objection.

16 Q Where it was consistent, if it was consistent with  
17 him having his back to the police officers when he  
18 was shot, are those two places?

19 A They are the two places that I marked on this  
20 diagram.

21 Q On Defendant's Exhibit No. 32?

22 A That's correct.

23 Q Now, Mr. Meadors also asked you if you read the  
24 officers' statements. Do you remember whether you  
25 read them or not?

1 A I did read them. Yes, sir.

2 Q Okay. And did it matter to you -- what, if any,

3 difference did it make to you in forming your opinion

4 as to whether they were standing or how they were

5 standing or whether they were crouched or standing

6 up?

7 A I didn't base my opinion in making that determination

8 on the officers' reports.

9 Q And why weren't they important?

10 A I didn't say they weren't important, but I said that

11 I did not base my opinion on that because they were

12 inconsistent.

13 Q Inconsistent with what?

14 A Inconsistent with the findings that I got.

15 Q And the findings you got are based on statements or

16 forensic evidence?

17 A They're based on forensic evidence of what I did when

18 I went there and the projections that I made.

19 Q I mean, so that's ----- And you told

20 this jury what your opinions are, right?

21 A Yes, sir.

22 Q Now, let me talk just for a moment about Chastity's.

23 Okay? The finding of GSR in the vehicle is

24 consistent with a weapon being fired from that car.

25 Is that right?

- 1 A True. Yes, sir.
- 2 Q It's also consistent with a lot of other things?
- 3 A That's correct.
- 4 Q And when he asked you about whether that proved a gun
- 5 was fired from the car, you equivocated on that. It
- 6 doesn't prove a gun was fired from the car, does it?
- 7 A That's correct. It doesn't.
- 8 Q Now, does it -- does the GSR, where they found GSR,
- 9 does that tell you anything about where the muzzle of
- 10 the gun was when it was fired?
- 11 A No.
- 12 Q Just that a gun may have been fired from the car?
- 13 A It tells you that a gun may have been discharged for
- 14 the GSR to be deposited on that surface or that
- 15 somebody handled, for instance, a weapon or that they
- 16 placed GSR there somehow at some other time.
- 17 Q Okay. Could I see the video, please? Okay. What
- 18 time is that? 12:05:42. How about step down here.
- 19 I want you to see this here. Stand right over here,
- 20 please. Can we see the black 4Runner?
- 21 A Yes, sir.
- 22 Q Okay. How about go forward on that, please. Stop
- 23 that for one second, please. Do you see this streak
- 24 of light here?
- 25 A Yes, sir.



1 Q Is that evidence of a gunshot to you?

2 A No, sir.

3 Q What does that look like to you?

4 A It looks like a reflection.

5 Q Okay. Go ahead. Continue. I want you to watch the

6 window up there on the 4Runner, the driver's window.

7 I'm sorry. The passenger's side front window. Back

8 it up again at 12:06:05. Do you see any flash?

9 A No.

10 Q Do you see any line like you saw in camera number 4,

11 anything in this area that would indicate to you that

12 a gun had been fired from that car?

13 A No, sir.

14 Q If we go to the other side now, please. Okay. Okay.

15 Take me up to 12:0 -- yeah. Go ahead forward. Okay.

16 And let that run for just a second. Okay. Now stop

17 it. Now, we don't see -- oh. No. I'm sorry. I

18 apologize. What, if any, flash did you see coming

19 from the car on that angle?

20 A None.

21 Q And you've seen these views before, right?

22 A Yes, I have.

23 Q Continue to let it run for just a second. Now, there

24 is traffic by there, correct?

25 A Yes, sir.

1 Q Would that account for -- what, if any, role would  
2 that play in that streak we saw earlier?

3 A The reflections could have been caused by the  
4 headlights of the traffic on the street.

5 Q Go ahead and take the stand again, please. Mr.  
6 Meadors asked you about that flash. We've now looked  
7 at two other views. Does that in any way change your  
8 opinion, support your opinion, affect your opinion as  
9 to whether or not that line we see is a flash from a  
10 .357 Magnum shell being fired from that car?

11 A Yes, sir.

12 Q And what's the opinion?

13 A That I see no evidence of a gun of that type being  
14 fired from that vehicle.

15 Q Okay. Now, we've described the plume like an ice  
16 cream coming out. Do you see such a plume from any  
17 view? There are three different views here. Do you  
18 see it from any view?

19 A No, sir.

20 Q And if you don't see a plume and adopt the  
21 solicitor's position, everybody else's position the  
22 gun is fired from the car, is the weapon --

23 MR. MEADORS: Objection to leading.

24 Q Where is the muzzle of the weapon? If you have an  
25 opinion, where would the muzzle of the weapon have to

1 be if you can't see the plume?

2 A It could be below the level of the window.

3 Q If it's shooting this way?

4 A That's correct.

5 Q Now, the other question he asked you about was, I  
6 think Mr. Meadors said that the person could lean  
7 forward, right?

8 A Yes. That's correct.

9 Q Okay. Now, where does the bullet go in? Number 1?

10 A Yes, sir.

11 Q And that is to the far -- facing it, the far right,  
12 correct?

13 A That's correct.

14 Q Almost to the hinge line?

15 A That is correct.

16 Q And as the car pulls up, he seemed to ask you if the  
17 car pulling up made it easier or harder to make that  
18 shot. If this is the door and this is the car, as  
19 the car moves this way and, as you've testified it  
20 moved up a little bit, does it become harder or  
21 easier to shoot back over here?

22 A It becomes more difficult.

23 Q And Mr. Meadors asked you about that hole being a  
24 round hole going through the door. How far below  
25 that hole approximately -- you don't know how high

1       that hole is, but you've approximated it as how  
2       high -- just estimating how high above the floor  
3       line?

4    A    It's about five-feet-eight inches, something like  
5       that.

6    Q    How far above the floor line or above the floor line  
7       is the window sill -- I don't know what you call it;  
8       the base of the window in the car if it's sitting  
9       there -- based on your measurements?

10   A    It's about four feet above the surface that the car  
11       is on.

12   Q    Okay. So the car is -- the car window is about four  
13       feet. The bottom of the door is how far from level  
14       here?

15   A    Three and a half feet.

16   Q    Three and a half feet. So there's about -- the car  
17       window is about six inches above the bottom, this  
18       bottom of this door, correct?

19   A    That's correct.

20        MR. MEADORS: Your Honor, for the record, is he  
21       saying about?

22        MR. HARPOOTLIAN: He's saying about.

23   Q    Did the Richland County Sheriff's Department take any  
24       measurements for you?

25        MR. MEADORS: Objection, Your Honor.

1           **THE COURT:** It's a question.

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

3   **Q**   Did the Richland County Sheriff's Department furnish  
4           you with any measurements they took that night of  
5           anything?

6   **A**   No, sir.

7   **Q**   So "about" is about the best you can do?

8   **A**   Yes, sir.

9   **Q**   Now, as to the measurements on the car, you took  
10          those, right?

11   **A**   I did.

12   **Q**   And did the Richland County Sheriff's Department  
13          provide you with any measurements as to the vehicle?

14   **A**   No, sir.

15   **Q**   Did they take any measurements while they had it in  
16          custody as far as you know?

17   **A**   No, sir.

18   **Q**   Did they tell you anything -- did you see any -- is  
19          there any evidence that they used the most  
20          sophisticated forensic CSI device known to man, this?  
21          Any evidence they ever used one of these?

22   **A**   No.

23   **Q**   To measure anything?

24   **A**   No, sir.

25   **Q**   Except you've seen the sketch inside?

1           MR. MEADORS: Objection, Your Honor. He is  
2           testifying.

3   Q       What, if any, sketches have you seen of the inside  
4           that were done? Let me show you.

5           MR. MEADORS: Your Honor.

6   Q       Let me ask you if you've seen State's Exhibit No. --  
7           if I can find it. I think it's over here. I'm  
8           sorry. Did you say something, Mr. Meadors?

9           MR. MEADORS: No, sir, I didn't.

10   Q       State's Exhibit No. 61, have you seen this before?

11   A       I don't believe so.

12   Q       You don't remember seeing that?

13   A       No, sir.

14   Q       Do you know what it -- can you look at it and say  
15           what it represents based on your view of the crime  
16           scene? Let me ask you to compare it to State's  
17           Exhibit No. 6.

18   A       Okay.

19   Q       Does that help explain what it is?

20   A       Yes. This is a schematic not drawn to scale of the  
21           front door of Chastity's and the entryway.

22   Q       Inside?

23   A       Yes, sir.

24   Q       And everything is keyed to what? What is he  
25           measuring?

1 A It is measured from apparently blood.

2 Q To what?

3 A To the front door and to the wall.

4 Q Is that of any assistance whatsoever in determining  
5 trajectory or where the bullet was when it came  
6 through the door or where Mr. Johnson was when he got  
7 hit or anything?

8 A No, sir.

9 Q So other than these measurements, have you seen any  
10 other measurements by the Richland County Sheriff's  
11 Department?

12 A No, sir.

13 Q And in looking at -- okay. We're going through the  
14 measurements. It was about -- the edge of the window  
15 would be about six inches above to the bottom of the  
16 door. And how high approximately -- and it's an  
17 approximation because you didn't have measurements --  
18 was the bullet hole?

19 A About five-foot-eight inches.

20 Q Five-foot-eight inches. And over on the right-hand  
21 side. Is that right?

22 A That's correct.

23 Q He showed you a picture of the hole through the door  
24 and asked you if that went straight through. If the  
25 bullet was fired from the gun -- they're assuming it

1 is -- would it have been a straight through shot or  
2 would it have been at an angle?

3 A It most likely would have been at an angle.

4 Q Well, most likely because the window area is several  
5 feet below the hole, isn't it?

6 A Thereabouts.

7 Q Like that, right?

8 A That's right.

9 Q So when Mr. Meadors asked you if the hole was a round  
10 hole flat through, straight through, you indicated to  
11 him what?

12 A I indicated to him that it was generally round but it  
13 looked to me to be slightly elliptical.

14 Q Which would mean what?

15 A It would mean that it was at an angle.

16 Q And is there some way that you could have told what  
17 that angle was and where it came from if you'd been  
18 there that night?

19 A Probably so. If a dowel or something like that had  
20 been placed in the hole in the door, it could have  
21 given an indication of which way it went through  
22 there and what angle.

23 Q Mr. Meadors asked you if you'd read the statements of  
24 people like Carl Weeks and other people. Do you even  
25 know who they are?



1 A Not for sure. No.

2 Q Would you want to -- understand somebody saw the shot  
3 being fired?

4 MR. MEADORS: Objection to the form of the  
5 question.

6 MR. HARPOOTLIAN: May I ask the question and  
7 then you can rule on it?

8 THE COURT: Yes.

9 Q Unless the people saw the shot fired; what, if any,  
10 relevance would their statements have to what you do?

11 A Little or none.

12 THE COURT: Overruled.

13 MR. HARPOOTLIAN: Thank you.

14 Q Now, what, if any, relevance -- you saw the young  
15 man. Do you know who Mr. Hawkins is?

16 A No, I do not.

17 Q Did you read any statements by him?

18 A May have. I don't know.

19 Q If Mr. Hawkins testified he heard Mr. Johnson say,  
20 "Oh, shit" before he saw Mr. Johnson fall to the  
21 floor, is that forensically relevant?

22 A I don't think so.

23 Q And I'm sorry, Mr. Yates. You're a witness for the  
24 defense and you have come in here to testify we've  
25 concluded. You're being paid for that, right?

1 A Yes, sir.

2 Q As to the shooting at Chastity's, what you did here  
3 almost a year after the shooting, I think is when you  
4 did it, is that something that could have been done  
5 the night of the shooting?

6 A True. Yes, sir.

7 Q Would that have resolved -- I mean, if they'd done  
8 what they needed to do that night, would that have  
9 resolved these doubts that --

10 MR. MEADORS: Objection.

11 THE COURT: Sustained. It calls for a  
12 conclusion. Speculation.

13 Q If you'd been there that night and put a dowel  
14 through that hole; what, if any, doubts would you  
15 have had as to the --

16 MR. MEADORS: Objection.

17 Q -- path of the bullet?

18 THE COURT: He's asking him about his own  
19 opinion.

20 MR. HARPOOTLIAN: It's his opinion. Thank you.

21 Q What, if any, opportunity would you have had if you'd  
22 been there with a dowel or laser that evening? What,  
23 if any, doubts would you have about the path of the  
24 bullet?

25 A None. It could have been reconstructed by using a

1 dowel and possibly a laser.

2 Q And if the path had led to one of the brick pillars  
3 or to a metal rod; what, if anything, would you have  
4 concluded then?

5 A Well, they could have been examined to see if there  
6 was any evidence of a ricochet or something like  
7 that.

8 Q You'd be looking for what for ricochet? On metal  
9 what would you look for?

10 A You'd be looking for a depressed area that would have  
11 a sign of a bullet hitting it. The same thing if you  
12 were looking at any other kind of surface like a  
13 brick or mortar or things of that nature.

14 Q No evidence that was done?

15 A No, sir.

16 Q Thank you. Please answer any additional questions  
17 Mr. Meadors might have.

18 MR. MEADORS: Directly on point, very briefly.

19 THE COURT: Yes, sir.

20 RECROSS EXAMINATION

21 BY MR. MEADORS

22 Q So if you're wrong about your entrance and exit on  
23 Dewain Herring's arm, then everything is the  
24 opposite, correct?

25 MR. HARPOOTLIAN: I'm sorry. I can't hear him,

1 Your Honor.

2 Q If you're wrong about entrance and exit on Dewain  
3 Herring, then everything is the opposite, correct?

4 A I'm sorry. I don't understand your question.

5 Q Well, I'll move on. And your analysis of Dewain  
6 Herring doesn't take into factors the moving body,  
7 does it? Does it take in the fact of moving?

8 A Yes, sir.

9 Q It does?

10 A Yes, sir, it does.

11 Q Well, you didn't -- does it take in the factor of the  
12 moving of officers? And you said a minute ago the  
13 statements really aren't necessary for your opinion.  
14 If the officers are moving, then you'd want to know  
15 that?

16 A That's true. It does take that into consideration.

17 Q But you don't know what they were doing?

18 A Not exactly. But I do know by reconstructing, by  
19 positioning Mr. Herring and using the laser, I can  
20 extrapolate back to where the shot came from.

21 Q Did you all do moving motions, too?

22 A Yes, sir.

23 Q And the defendant's best camera angle -- I'm not  
24 going to show it -- isn't the best camera angle to  
25 look at that is from the front? Would you agree with

1           that? The best view of the car coming up in  
2           Chastity's, is it not the one looking straight at the  
3           car? Can't you say that?

4           **MR. HARPOOTLIAN:** Object to the form of what's  
5           best, Your Honor. I'm not sure what he means.

6    **Q**       It's easier view for you to look at and determine  
7           what happened if the camera is right in front of you?

8    **A**       I don't know that it's best or worst or whatever.  
9           But I did look at all of them that were available.

10   **Q**       And very briefly, this -- do you have the diagram of  
11           Ray Livingston?

12           **MR. HARPOOTLIAN:** It's right up there on --

13   **Q**       You used -- I think he said the used the word  
14           relevance. There's no relevance to this at all?

15   **A**       As far as locating everything in relationship to a  
16           pool of blood, I didn't put any significance on that.

17   **Q**       No significance. Whose blood is that?

18   **A**       The deceased.

19   **Q**       John Johnson's blood?

20   **A**       I would think so; yes, sir.

21   **Q**       Does that help you put in relation to how close he  
22           was to that door? That's relevant, isn't it?

23   **A**       Well, it doesn't. It positions where he fell but it  
24           doesn't actually position him as to where he was when  
25           he was struck with the projectile.

1 Q And assume I am standing at this door that's in  
2 evidence. Okay? The door is open. Okay. I'm  
3 looking out. I see a Toyota 4Runner come in front of  
4 me. Okay. I say -- excuse me -- "Oh, shit". I back  
5 up. Gunshot comes. Is that consistent with me  
6 looking out, coming back and getting a gunshot  
7 through the door in my ear? That's consistent with  
8 that, isn't it?

9 A I don't know. It could be.

10 Q Could be. Have you ever played, shot -- shot clays?

11 A Sporting clays?

12 Q Yes, sir.

13 A Yes, sir.

14 Q You kind of gauge it ahead a little bit when it  
15 comes?

16 A Yes, sir.

17 Q That's all.

18 MR. HARPOOTLIAN: Nothing further.

19 THE COURT: You may come down.

20 MR. HARPOOTLIAN: May the witness be excused?

21 THE COURT: Any objection to excusing the  
22 witness?

23 MR. MEADORS: Oh, I'm sorry. No, sir.

24 THE COURT: Come down. Thank you very much.

25 WITNESS: Thank you, Your Honor.

1           **THE COURT:** All right, ladies and gentlemen.  
2           It's time for the daily lunch break. Let's see.  
3           I'll ask you to be back in the jury room -- it's  
4           quarter to 1. That will give you a little over an  
5           hour. Well, let's just make it 2:00. 2:00. Don't  
6           discuss the case among yourselves when you return to  
7           the jury room or with anyone else over the lunch  
8           hour. Thank you very much. Have a pleasant lunch.

9           (Jury out at 12:40 p.m.)

10          **THE COURT:** We'll stand at ease until 2:00.

11          (Whereupon, a lunch break is taken)

12          **THE COURT:** How do you want to do this?

13          **MR. HARPOOTLIAN:** Sir?

14          **THE COURT:** How do you want to do?

15          **MR. HARPOOTLIAN:** Just call her by her last name  
16          and then give you a document which you can make a  
17          part of the record at a later time.

18          **THE COURT:** All right. The State ready to  
19          proceed?

20          **MR. GIESE:** The State's ready.

21          **THE COURT:** Defense ready to proceed?

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

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

24          (Jury in at 2:13 p.m.)

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

1           **THE COURT:** All right. All right, ladies and  
2 gentlemen. We're now ready to continue with the  
3 trial. Mr. Harpootlian, call your next witness.

4           **MR. HARPOOTLIAN:** May it please the Court, Your  
5 Honor. We call Ms. Morris to the stand.

6           **THE COURT:** Come around.

7           **MS. MORRIS,** after being duly sworn, testifies as  
8 follows:

9           **THE CLERK:** Please have a seat and state your  
10 full name for the record.

11                           DIRECT EXAMINATION

12   **BY MR. HARPOOTLIAN**

13   **Q**    Ms. Morris, how old are you, please?

14   **A**    I'm 23.

15   **Q**    And I believe I met you a few weeks ago, did I not?

16   **A**    Yes, sir. Like three.

17   **Q**    Now, I'm going to ask you to speak up. Have you ever  
18 testified before?

19   **A**    Yes, sir.

20   **Q**    Are you a little nervous?

21   **A**    A little; yes, sir.

22   **Q**    I'm going to ask you to speak up loud enough for you  
23 hear me back here because I know if I can hear you  
24 back here this jury can hear you. Okay?

25   **A**    Okay.



1 Q And the people you want to talk to are right here.  
2 Okay? Now, Ms. Morris, tell me how old are you  
3 again, please?  
4 A I'm 23.  
5 Q Maybe you ought to pull up. I don't know which one  
6 of these. There you go. How about that? Okay. And  
7 have you been an entertainer or a dancer at  
8 Chastity's?  
9 A Yes, sir, I have.  
10 Q Now, tell us how you came to be a dancer there?  
11 A I heard about it in a club in Augusta where I  
12 started. And I heard about Chastity's, and so I went  
13 to check it out.  
14 Q Okay. And let's talk a little bit about Chastity's.  
15 Is it the same or different than the other clubs  
16 you've danced in?  
17 A It's way different from Augusta clubs. But Columbia  
18 clubs, I mean, ...  
19 Q Have you danced in other clubs in Columbia?  
20 A Yes, sir, I have.  
21 Q Where else have you danced?  
22 A Heartbreakers, Platinum's, Southern.  
23 Q Heartbreakers, Platinum and Southern. Those are  
24 names of establishments here in Richland County, in  
25 Columbia?

1 A Yes, sir.

2 Q And is the dancing at Chastity's, is the clothing the  
3 same or different than it is at those other clubs?

4 A Chastity's is all nude and the rest of them are  
5 topless.

6 Q So the other clubs you would dance topless. In this  
7 club you would dance nude?

8 A Yes, sir.

9 Q And let's talk a little bit about how -- let me ask  
10 you this. Were you dancing the night or were you  
11 there the night that John Johnson was killed?

12 A Yes, sir, I was.

13 Q I'm sorry?

14 A Yes, sir, I was.

15 Q Okay. And it's upsetting to you to talk about that,  
16 is it not?

17 A (Nods head affirmatively).

18 Q Okay. Let me move on to something else then for just  
19 a minute. Okay? Are you okay?

20 A (Nods head affirmatively).

21 Q Do you need a drink of water?

22 A (Shakes head negatively).

23 Q Kleenex?

24 A I'm all right.

25 Q Okay. At Chastity's how did you -- how did you make

1 your money? You danced?

2 A We gave dances.

3 Q I'm sorry?

4 A You gave dances.

5 Q Okay. Now, when you're dancing on -- there's a  
6 couple of stages, right?

7 A (Nods head affirmatively).

8 Q Do you get paid a salary for dancing on those stages?

9 A No, sir. You get paid by tips alone.

10 Q Tips?

11 A It's tips alone, just tips, what people give you.

12 Q Do you have to pay anything to Chastity's for dancing  
13 there?

14 A You pay a house fee and you can tip. You have to  
15 pay, tip the DJ, and you can tip the floorman. You  
16 can tip the manager but you have a house fee at the  
17 end of the night.

18 Q How much is the house fee at the end of the night?

19 A Oh, man. I forgot how much the house fee was. I  
20 honestly don't. It was around \$25 or 30 something  
21 like that.

22 Q So you made money dancing on stage just by tips?

23 A Yes, sir.

24 Q Now, if you dance, what other kind of dances were  
25 there?

1 A There were lap dances and there is a champagne room  
2 there.  
3 Q Okay. And what's the difference between a -- where  
4 is a lap dance done?  
5 A The lap dances were done in the VIP room.  
6 Q We may actually have a sketch of the inside of this  
7 place. And let me refer you to State's Exhibit  
8 No. 51. Okay? Look at this for just a second, see  
9 if you can familiarize yourself with it.  
10 A Mm-hmm (affirmative).  
11 Q Okay. Now, when you say the VIP room, you're talking  
12 about the room with the couches in it in the back?  
13 A Yes, sir.  
14 Q And you looked at this sketch. Is that what that  
15 would be?  
16 A Yes, sir.  
17 Q That's about where it would be?  
18 A Yes, sir. That's where it was.  
19 Q Okay. And in the VIP room, what kind of dances did  
20 you do?  
21 A They were lap dances. And those were I think 30  
22 or -- \$30.  
23 Q Okay. And of the \$30, how much did you have to give  
24 to the house?  
25 A Five.

1 Q Okay. And the champagne room, what kind of dances  
2 did you give in the champagne room?  
3 A That was a dance.  
4 Q No lap dance in there?  
5 A It was. That was it. It was a lap dance, but it was  
6 like a 30-minute lap dance.  
7 Q Okay. Now, when you talk about a lap dance, I'm not  
8 trying to embarrass you in any way.  
9 A No. You're all right.  
10 Q Okay. You are nude?  
11 A Mm-hmm (affirmative).  
12 Q I'm sorry. You're going to have to say yes or no  
13 because this young lady right here is writing down  
14 what you say.  
15 A I'm sorry.  
16 Q So you are nude, correct?  
17 A Correct.  
18 Q And the customer is nude or not?  
19 A No, sir.  
20 Q The customer is clothed?  
21 A Yes, sir.  
22 Q And you -- do you sit in his lap?  
23 A Yes, sir. You can sit on his lap or you can stand up  
24 and dance for him.  
25 Q But most customers prefer or didn't prefer to have

1           you sit in their lap?

2    **A**     Preferred I would say.

3           **MR. MEADORS:** Objection.

4           **THE COURT:** I'm going to allow it.

5    **Q**     Go ahead. I'm sorry. You're allowed to answer it.

6           Most had you in the lap or didn't have you in the  
7           lap? Or did it vary?

8    **A**     It's however you wanted to dance for them. It's --  
9           yes, you did a dance. And like me, I had a routine  
10          of how I danced. And I would dance in your lap and  
11          then I would get up and, you know, dance standing up.

12   **Q**     Okay now. And I'm not trying to offend you in any  
13          way. I'm not trying to offend you in any way. Did  
14          you ever have sex with any customers?

15   **A**     No, sir.

16   **Q**     Did any customers ever ask you to have sex?

17   **A**     Yes, sir.

18   **Q**     Is that frequent or infrequent?

19   **A**     Kind of either/or I guess you would say. It's --  
20          some people would and some people wouldn't, you know.  
21          It wasn't more or less, but ...

22   **Q**     Okay. Now, but there were times when you naked sat  
23          on a gentleman's lap. Is that right? And moved  
24          around?

25   **A**     Yes.

1 Q And how much did you all charge to go to the  
2 champagne room?

3 A I believe there was a house fee of \$65 for every half  
4 hour and then you -- the dancer fee was 200. Or you  
5 could charge whatever you wanted to charge, your  
6 price to have you in there. But you had to pay a  
7 house fee of \$65. But the going rate was \$200 plus  
8 the 65. So 265.

9 Q But if you charged 300, you'd pay them 65 and keep  
10 the rest?

11 A Yes, sir.

12 Q Okay. Now, was there any kind of rule about how  
13 close in the champagne room the customer could be to  
14 you, or was it okay for you to sit in his lap?

15 A It was okay for you to sit in their lap, but they're  
16 not supposed to touch to you.

17 Q They're not supposed to touch you?

18 A Any time in the club.

19 Q They're not supposed to touch you, but you can touch  
20 them?

21 A Yes, sir.

22 Q Now, was there any sort of rule that you had to  
23 remain a foot or six inches or two inches above his  
24 lap?

25 A No, sir.

1 Q Okay. Now, did you know a dancer named Mia?

2 A Yes, sir.

3 Q On the night that "Jon Jon" was shot -- I'm not

4 trying to upset you -- did you have occasion

5 afterward to see Mia in the dressing room? And let

6 me show you where the dressing room is. And tell me

7 if I'm correct or not. If you look at that sketch

8 again, do you see the dressing room there?

9 A Yes, sir.

10 Q Is that where it is?

11 A Yes, sir.

12 Q And did you have occasion to see Mia in the dressing

13 room that night after "Jon Jon" was shot?

14 A Yes, sir. I didn't know "Jon Jon" had gotten shot

15 when -- when I was giving a dance, I heard the music

16 shut off and I stopped. And I went to the back and

17 everybody was getting dressed.

18 Q Okay.

19 A And I asked what had happened. They said "Jon Jon"

20 was shot. And I said, "You're lying." They said,

21 "No, 'Jon Jon' was shot." And I remember Mia back

22 there crying and saying it was her fault.

23 Q You remember Mia back there crying and saying it was

24 her fault. What was Mia saying?

25 A It was all her fault because of the man not getting



1 his money back.

2 Q Did she tell you how much she had charged him?

3 A Not herself. No, sir.

4 Q Now, I want to ask you about a -- beg the Court's

5 indulgence one moment. In talking about Chastity's,

6 are you aware of what we would call a pattern or

7 practice involving the champagne room and women

8 charging money and then not delivering services for

9 it?

10 A Yes, sir.

11 Q Okay. Tell the jury what that pattern and practice

12 is?

13 A For instance, if you --

14 MR. MEADORS: Objection. May I approach?

15 (Whereupon, a bench conference is had)

16 Q Ms. Morris, you were telling us there was a pattern

17 and practice involving dancers charging money to go

18 back in the champagne room and then not delivering on

19 your promise. Tell me how that worked?

20 A For instance, if you promise a man --

21 MR. MEADORS: Objection.

22 THE COURT: Overruled.

23 MR. MEADORS: Relevance.

24 THE COURT: Overruled.

25 Q Go ahead.

1 A For instance, if you tell a man, say I will give you  
2 oral sex in the back for so-and-so ex amount of  
3 dollars --

4 Q Right.

5 A -- and you go to the back and you tell the bouncer,  
6 well, I told this man I would give him oral sex but I  
7 don't want to. So, they would -- you would pay the  
8 bouncer off to come back there and check on you. And  
9 when --

10 MR. MEADORS: Objection. Hearsay.

11 THE COURT: Sir, does she have any personal  
12 knowledge of this? And, I mean, is this --

13 MR. HARPOOTLIAN: I mean, it's a pattern or  
14 practice. There's no question --

15 THE COURT: Well, this is not IBM.

16 MR. HARPOOTLIAN: Sir?

17 THE COURT: Go ahead. Go ahead.

18 MR. HARPOOTLIAN: Thank you.

19 Q And what would happen then?

20 A They would give the bouncers money.

21 Q And then what?

22 A Say come back and check on me every couple of  
23 minutes. And when they make a move, you can come out  
24 because the men are not supposed to touch you.

25 Q Set them up?

- 1 A Well, yes. That's what you would call it, yes.
- 2 Q Okay. Now, have you ever seen drugs in the dressing
- 3 room?
- 4 A Yes, sir, I have.
- 5 Q What kind of drugs?
- 6 A You would see like cocaine.
- 7 Q Now, if you are going back to the champagne room or
- 8 to the VIP room from the bar and you had a drink, did
- 9 customers buy you drinks?
- 10 A Yes, sir, they did.
- 11 Q And if you had a drink, were you allowed to take it
- 12 back here with you?
- 13 A I don't quite remember when -- it was at one point
- 14 you couldn't take liquor. There was only beer and
- 15 wine only allowed in the back.
- 16 Q But if you had a liquor drink in the front, could you
- 17 take it in the back at that point?
- 18 A I don't believe so.
- 19 Q Okay.
- 20 A You had to leave it at the bar.
- 21 Q Okay. Now, did you leave your drinks at the bar?
- 22 A No, sir. If I did not finish a drink, I would leave
- 23 it there but I wouldn't come back to it.
- 24 Q Nobody put a napkin on top of it?
- 25 A You put a napkin on top of it; yes, sir, but I still

1 would not go back and drink it.

2 Q Why not?

3 A You just don't know if people will put stuff in your  
4 drink.

5 Q Now, is that something -- now, if you're at home or  
6 in a restaurant and you have a drink on the table and  
7 you go get up to go to the bathroom and come back --  
8 Lizard's Thicket, do you ever eat at Lizard's  
9 Thicket?

10 A Yes, sir.

11 Q Okay. I mean, you leave a glass of water on there  
12 and you go to the bathroom and you come back, are you  
13 worried about --

14 MR. MEADORS: Objection.

15 THE COURT: Overruled.

16 Q Are you worried about somebody putting something in  
17 your drink at Lizard's Thicket?

18 A I mean, you drink that water when you sit back down.  
19 You wouldn't worry about it as much in Lizard's  
20 Thicket as you would in a club.

21 Q Why are you worried about it in a club?

22 A You hear of people putting --

23 MR. MEADORS: Objection.

24 THE COURT: Sir, overruled.

25 MR. MEADORS: "You hear".

1           **THE COURT:** Overruled.

2   **Q**    Go ahead.

3   **A**    You hear of people putting stuff in people's drinks a  
4           lot.

5   **Q**    So you would never leave your drink alone there,  
6           would you?

7   **A**    I would, but I wouldn't come back to it.

8   **Q**    You wouldn't drink it again?

9   **A**    No, sir.

10   **Q**    Beg the Court's indulgence.

11   **A**    Am I done?

12   **Q**    Ms. Morris, thank you so much. Well, let me ask you  
13           this. You were subpoenaed to be here today, right?

14   **A**    Yes, sir.

15   **Q**    Did you want to come?

16   **A**    No, sir, I didn't.

17   **Q**    Are you a friend of "Jon Jon's"?

18   **A**    Yes, sir, I was.

19   **Q**    Please answer any questions that the solicitor might  
20           have for you.

21                           CROSS EXAMINATION

22   **BY MR. MEADORS**

23   **Q**    I'll be very brief, Ms. Morris. I'm sorry about "Jon  
24           Jon". I'm sorry you're upset.

25   **A**    I'm sorry I had to come here.

1 Q None of that stuff he asked you about happened this  
2 night. You don't have any information that any of  
3 that stuff he was asking you about happened this  
4 night at all, do you?

5 A I don't know exactly what happened that night but the  
6 man shot "Jon Jon".

7 Q That's what you know about that night, isn't it?  
8 "Jon Jon" got shot?

9 A I just know "Jon Jon" was shot over some money that  
10 was not given back.

11 Q And Mia was upset because he didn't get his money  
12 back, right?

13 A She was upset, yes.

14 Q And customers were not supposed to take their clothes  
15 off, were they?

16 A No, sir.

17 Q Have you ever had a customer -- how long did you work  
18 there?

19 A A little over two years I believe.

20 Q Have you ever had a customer that fully disrobed and  
21 started masturbating?

22 A No, sir.

23 Q Waiting on you?

24 A Not fully, no. But you would have people try to  
25 expose themselves.

- 1 Q And would they be kicked out of the bar?
- 2 A Yes, sir.
- 3 Q Because that's not allowed there, right?
- 4 A Yes, sir. That's right.
- 5 Q And would the people that worked there, the managers
- 6 or the bouncers and all those, they would help them
- 7 get out, right? Take them out?
- 8 A Yes, sir. They would throw them out.
- 9 Q And that's what you all wanted, too, right?
- 10 A Yes, sir.
- 11 Q And they chose you all, didn't they? I mean --
- 12 A The customers?
- 13 Q Yeah. They would choose you?
- 14 A Yes, sir. I mean, they would if they liked you.
- 15 Q Will you give me a lap dance? Can I go to the
- 16 champagne room with you? That was their decision for
- 17 you to dance with them, wasn't it?
- 18 A Yes, sir.
- 19 Q Thank you, Ms. Morris.
- 20 A Can I get down?
- 21 Q Yes, ma'am. You can.

22 MR. HARPOOTLIAN: No.

23 THE COURT: Just one minute.

24 MR. HARPOOTLIAN: Just one minute.

25 REDIRECT EXAMINATION

1 BY MR. HARPOOTLIAN

2 Q I'm sorry, Ms. Morris. I forgot. You were just  
3 asked by the solicitor about they would choose you?

4 A Yes, sir.

5 Q Tell the jury, please, if the floorman would play any  
6 process, any part in the process of you and the  
7 customer matching up?

8 A They would point men. Like if they seen them come in  
9 that might have some money, they would point you in  
10 the direction. That maybe would help you make some  
11 money.

12 Q Point in the direction of someone that had some  
13 money?

14 A Possibly have some money.

15 Q What would they be looking for?

16 A I mean, businessmen. Or they have like regular  
17 people that come in there and spend money on random  
18 girls.

19 Q And who would point them out to you?

20 A Bouncers would.

21 Q The manager ever do that?

22 A I mean, managers, bouncers; they're all pretty much  
23 paid the same thing.

24 Q Point them out you said because they had some money  
25 so that you could do what?



1 A Dance for them.

2 Q I'm sorry?

3 A Dance for 'em.

4 Q And get their money?

5 A And get their money.

6 Q Thank you. Anything further?

7 RE CROSS EXAMINATION

8 BY MR. MEADORS

9 Q Did you ever force somebody to come with you and give  
10 a dance? Did you ever make them?

11 A No, sir.

12 Q Thank you. That's all.

13 THE COURT: You may come down.

14 WITNESS: Thank you.

15 THE COURT: She free to go?

16 MR. HARPOOTLIAN: Ask her to be excused.

17 THE WITNESS: May I be excused?

18 THE COURT: Yes, ma'am. You're free to go.

19 WITNESS: I'll finish with my dinner.

20 MR. HARPOOTLIAN: Beg the Court's indulgence one  
21 moment. May it please the Court, Your Honor?

22 THE COURT: Yes, sir.

23 MR. HARPOOTLIAN: The defense calls Dewain  
24 Herring.

25 THE COURT: All right.

1 DEWAIN HERRING, after being duly sworn,  
2 testifies as follows:

3 THE CLERK: Please have a seat. State your full  
4 name for the record.

5 WITNESS: My name is Dewain Herring.

6 DIRECT EXAMINATION

7 BY MR. HARPOOTLIAN

8 Q Mr. Herring, how old are you, sir?

9 A I am 63.

10 Q Where are you born?

11 A I was born in Kingstree, South Carolina, lived at  
12 Andrews. The first grade went to Charleston. I had  
13 a family, then came to Columbia in 1954, have lived  
14 here ever since.

15 Q 1954. Did you attend high school here?

16 A Yes, sir. I graduated from Eau Clair High School in  
17 1962.

18 Q And what did you do after high school? Did you go to  
19 school elsewhere?

20 A Yes. I went to the University of South Carolina in  
21 '62 and graduated in '66. I received a business  
22 degree in management when I went to the University  
23 Law School. I received a law school, a Juris  
24 Doctorate, in 1969.

25 Q You graduated from law school in 1969?

1 A Yes, sir.

2 Q What did you do then?

3 A I had been working in my senior year with State Bank  
4 & Trust Company. They offered me a job and I went to  
5 work as a trust officer in The Trust Bank. And State  
6 Bank changed to Bank & Trust. I worked for Hootie  
7 Johnson for about --

8 COURT REPORTER: I can't hear him, Your Honor.

9 Q Your voice is dropping a little bit, Dewain.

10 A Okay.

11 Q If you would, just move this over here like this.

12 I'm going to stand back over here. And try to speak  
13 into the microphone.

14 A All right. Is this better?

15 Q That's better.

16 A Okay.

17 Q I'm going to stand back over here because I know if I  
18 can hear you, then the jury can hear you.

19 A All right. Where do I start over?

20 Q You were working at Bank & Trust for Hootie Johnson;

21 A Right. And I resigned from the bank in 1978.

22 Q What kind of work did you do for the bank? As a  
23 lawyer, what were you doing?

24 A I was in the trust department.

25 Q What does the trust department do?

1 A The trust department in those days was very general.  
2 I did estate -- I had done estate, probate work. We  
3 did some estate planning with lawyers. We didn't  
4 draft wills. We did investments, investments for  
5 trusts. Another area did pension and profit sharing  
6 management.

7 Q Okay. But generally wills, trusts, pension plans,  
8 those sorts of things. You left the bank when?

9 A About -- well, September 30 of 1978.

10 Q And where did you go to work then?

11 A I went to work for myself as a solo practitioner here  
12 in Columbia October 1.

13 Q Was that a big step?

14 A Sir?

15 Q To go out on your own, was that a big step?

16 A Oh, yes. Absolutely. I went from --

17 Q No paycheck every two weeks?

18 A No. No.

19 Q And were you married at the time?

20 A I was.

21 Q And how long had you been married at that point?

22 A My wife, Virginia, and I were married in July of  
23 1978. I had been married at that time ten years.

24 And --

25 Q I'm sorry. When did you get married? In '78?

1 A No. I'm sorry. '68.

2 Q Okay.

3 A I get my dates confused.

4 Q And your wife you speak of, Virginia; stand up,  
5 please.

6 A Right. We got married in July of 1968.

7 Q You've been married since then?

8 A Absolutely. It was my senior year rising in law  
9 school and her senior year rising at Columbia  
10 College.

11 Q Okay. And so you went into private practice. And  
12 you've stayed in private practice ever since. Is  
13 that right?

14 A No. I took my practice at the end of about 13 months  
15 or so. Former Mayor Patton Adams and I had shared  
16 office space for that period of time. Judge Owens  
17 Cobb, now retired, had come out to practice law. The  
18 three of us created a law firm of Cobb, Adams &  
19 Herring.

20 Q And you still were doing trust and estate work,  
21 drawing wills, doing trusts, doing estate?

22 A Yes, sir. Estate planning, probate and trust has  
23 been my specialty area for 36 odd years. Yes.

24 Q Okay. And without taking the rest of the afternoon  
25 and going through the permutation of your practice,

1       you continued to do that in different -- you went out  
2       on your own again. You were in solo practice at some  
3       point, right?

4       A     Yes.

5       Q     And you continued to do that up until January 29th of  
6       last year, 2006?

7       A     That's correct. Yes.

8       Q     Now, also during that period of time have you been on  
9       any Boards or Commissions?

10      A     Yes, sir. I was on the Board at Richland Memorial  
11      Hospital, in Richland Memorial Hospital. I served  
12      several years. I was also the Board Chairman from  
13      1982 until 1984. Our Board created Children's  
14      Hospital. We also created the Richland Memorial  
15      Hospital Foundation. I served on that Board until  
16      1996. I've served with the South Carolina Bar  
17      Association, Richland County Bar Association, those  
18      type of things. Chamber of Commerce.

19      Q     Let me ask you this. You also have participated in  
20      the drafting of wills and estates for a number of  
21      people, including the singer, James Brown. Isn't  
22      that right?

23      A     I have, yes.

24      Q     And you drafted his will and his estate?

25      A     Yes, sir.

- 1 Q His trust?
- 2 A Mr. James Brown, yes. Absolutely.
- 3 Q He was a client of yours for a number of years before
- 4 his death?
- 5 A Yes, sir.
- 6 Q So you had a good business legal career, made money
- 7 out of it, successful?
- 8 A Yes, I did.
- 9 Q And your family consists of your wife of almost 40
- 10 years?
- 11 A Yes. My wife of almost 40 years. And I have two
- 12 sons, one of whom is 33, one is 25.
- 13 Q And do you have any grandchildren?
- 14 A One who is 15.
- 15 Q Okay. Now, we've heard testimony about shotgun
- 16 shells and clay shooting shells. Do you go to a
- 17 place called the Indigo Club and shoot at clay
- 18 things? Skeet?
- 19 A Yes. Clay, trap, Skeet.
- 20 Q Take the grandson with you to do that?
- 21 A I do.
- 22 Q And are you a hunter? Do you hunt birds?
- 23 A I do. Yes, sir.
- 24 Q Ducks?
- 25 A Yes, sir.

1 Q Dewain, tell us what you did during the day of  
2 January 29th in summary fashion until we get up to --  
3 you were at Chastity's that night, right?

4 A Yes, sir.

5 Q Until we get to that point, I want to deal with it so  
6 we're -- I don't need to know every minute and every  
7 hour. But did you play golf that day?

8 A I did. I played golf with a friend of mine. He had  
9 invited me to go to play a golf course in Aiken.

10 Q Did you go down there with him? What time did he  
11 pick you up? Or did you drive?

12 A He picked me up probably 10, 10:30 in the morning.  
13 We drove to Aiken, you know, hit some golf balls,  
14 practice putt, that type things. And we played 18  
15 holes of golf, finished probably about 5, 5:30 or so.

16 Q What did you do after that?

17 A We went to a place called The Bowery which is a grill  
18 room and bar in Aiken. I hadn't been there in a long  
19 time. I had a few drinks and came back to Columbia.  
20 Mr. Isgett was driving. We came back to my home.

21 Q Where was your wife? Where was Virginia?

22 A She was out of town. She was at Edisto Beach with  
23 some friends.

24 Q Okay. And what time did you get home from being  
25 with -- playing golf and having a couple of drinks?



1 A Probably 7:30 or so.

2 Q Okay. And then what did you do?

3 A I had a few drinks at home. My golfing partner then,  
4 my host left, went home. I was at my home. I went  
5 and I guess kind of stayed around the house, took a  
6 shower, laid down. I really was just going to go to  
7 sleep fairly early.

8 Q What happened then? Did you get up?

9 A Yes, sir. I got up.

10 Q What did you get up for? What were you going to do?

11 A I got up. I really thought I might go to a grill  
12 near where we live out toward Forest Acres called  
13 Tombo's Grill.

14 Q And did you get up to go to Tombo's Grill?

15 A I got up to go there; but, no, I didn't go in.

16 Q Why not?

17 A I just -- I changed my mind. I mean, also it was  
18 closed early as far as the kitchen. But I just  
19 changed my mind.

20 Q Where did you go?

21 A I went to Platinum Plus.

22 Q Okay. Now, Platinum Plus, what kind of place is  
23 that?

24 A It's a social men's club, dance club, strip club.

25 Q Strip joint? Strip joint?

- 1 A Yes.
- 2 Q Now, Dewain, you're a reputable, educated attorney.
- 3 Tell the jury, please, why you would go to such a
- 4 place?
- 5 A Because I also am a fallible human being. I was
- 6 tempted to temptation. I fell to it. I will -- I
- 7 don't go to those type places. I think people there
- 8 particularly have a rather bad attitude. But, yes, I
- 9 went.
- 10 Q What's your relationship with alcohol?
- 11 A I've had a drinking problem on and off for the past
- 12 25, 30 years.
- 13 Q Are you an alcoholic?
- 14 A Yes, sir.
- 15 Q Were you drinking that day?
- 16 A Yes, sir.
- 17 Q Should you have been drinking that day?
- 18 A No, sir.
- 19 Q Did that play any part in your decision to go into or
- 20 go to Platinum Plus that night?
- 21 A Would you repeat that, please?
- 22 Q Did the alcohol play any part in your decision to go
- 23 to Platinum Plus that night?
- 24 A I am sure it did. Alcohol seems to lessen one's
- 25 resistance and one's -- yes.

1 Q Now, have you ever been -- have you ever been to a  
2 club like Platinum Plus or Chastity's before in your  
3 life?  
4 A I've been to Platinum Plus several, three or four  
5 times in the past six or seven years.  
6 Q Have you ever been there by yourself?  
7 A Not until this day, no.  
8 Q Ever before January 29th, 2006, have you ever been in  
9 a strip club by yourself in Columbia?  
10 A No, sir.  
11 Q Okay.  
12 A Not that I remember, no.  
13 Q Okay. And that night you went by yourself, right?  
14 A Yes, sir.  
15 Q What time of night was this?  
16 A Probably 10.  
17 Q Okay.  
18 A Maybe -- yeah. Around 10 or so.  
19 Q And you went into Platinum Plus. And what happened?  
20 A I ordered a drink, a scotch and soda. I then looked  
21 around and I proceeded to have a young lady perform a  
22 lap dance for me for which I am mortified. I just --  
23 Q Are you done? I don't want to interrupt you.  
24 A No. I'm done. I'm just very horrified at my own  
25 behavior.

1 Q Now, the young lady that you had the lap dance with,  
2 was she naked or was she dressed or was she partially  
3 clothed?

4 A She was dressed.

5 Q She had on a top and a bottom?

6 A She had on a top and a bottom. Yes, sir.

7 Q And did she touch you? Did she sit on your lap while  
8 she danced?

9 A Yes.

10 Q And how many times did that happen?

11 A The best I recall, twice.

12 Q Now, tell the jury the circumstances under which you  
13 left Platinum Plus that night?

14 A I had completed -- or she had completed, and I saw a  
15 young lady on her knees in that room --

16 Q This was like multiple people in the room, multiple  
17 people having lap dances?

18 A Yes, sir. There was a young female on her knees on  
19 the floor maybe from me to this socket, four feet or  
20 so. And she had her head between the stripper's  
21 legs. The stripper was seated as I am. That made me  
22 nervous. I didn't like it up and I got up to leave.

23 Q And did you leave?

24 A I was intercepted on the way out the door. But, yes,  
25 I left.

1 Q As a result -- I don't want to you go into hearsay.  
2 But as a result of that interception -- I don't  
3 want -- not what you said. What did you do? Not  
4 what you said. What did you do?

5 A I paid the management person that intercepted me  
6 another \$20.

7 Q And did you then leave?

8 A Yes, I did.

9 Q Now, Platinum Plus is up at Greystone and --

10 A It's the frontage road off of Greystone Boulevard out  
11 near Embassy Suites kind of. I think that's the best  
12 way to describe it.

13 Q And where did you go then? And about what time was  
14 this?

15 A I think this was probably 11:00 or so.

16 Q Where did you go then?

17 A I was -- I was heading home. I went to Greystone to  
18 Broad River Road, took a right to come Broad River  
19 through Eau Clair home.

20 Q Where you grew up?

21 A Right.

22 Q And to get to where you live, you go through Eau  
23 Clair on what?

24 A Well, it starts as Summalia Drive. It then crosses  
25 Main Street, North Main. It then continues and goes

1 into another small street behind Richland Memorial  
 2 Hospital. And then it intersects at Farrow Road.  
 3 And then it turns into Beltline Boulevard which goes  
 4 all the way around the city. I take that until I get  
 5 to Forest Drive, take a left to my home past Trenholm  
 6 Plaza unless I happen to take a left sometimes at  
 7 Covenant Road which is another place that I lived.

8 Q Okay. But that was the route you intended to go  
 9 home. Is that right?

10 A That's right.

11 Q But on your way down River Drive, did you see  
 12 something that caused you to stop?

13 A Yes, sir.

14 Q What was that?

15 A I -- I saw this large neon sign for Chastity's Club.

16 Q And did you pull your car in right in front and go on  
 17 in?

18 A I pulled in and went in.

19 Q And we have seen -- I don't even remember the number  
 20 of the video, but --

21 MR. MEADORS: 54.

22 Q 54, a video of a person parking a black 4Runner and  
 23 walking up the steps and going in at a little bit  
 24 after 11:00 p.m. on the night of the 29th. That  
 25 person looks into the camera?

1 A Yes, sir.

2 Q And then we see inside that person pulling out their

3 wallet and paying money and going in the back?

4 A Yes, sir.

5 Q We've heard witnesses from Nicole Beran to others

6 testify that that's you. Is that you?

7 A Yes.

8 Q Okay. And you remember doing that?

9 A I remember going in, yes.

10 Q Right. Now, after you get in, you do what?

11 A I looked around. You know, I'm kind of curious. I

12 looked and then I order a drink, a scotch and soda.

13 Q Do you see any women that drew your attention? Did

14 or didn't?

15 A No. Not at that time, no. Not at all.

16 Q Did anybody approach you?

17 A Yes, sir. Once I had ordered my drink.

18 Q And tell the jury what this woman looked like?

19 A I'm sorry?

20 Q Tell the jury what this woman looked like?

21 A I thought that she -- it was dark but I thought she

22 was more of a light-skinned African-American.

23 Q Now, you heard Ms. Grainger testify here earlier this

24 week. Or was it last week? At some point?

25 A Yes, sir. I heard her.

1 Q Did you recognize her?

2 A No, sir, I did not.

3 Q But you would not disagree with the proposition that  
4 was her that talked to you that night?

5 A No. Not since she was sworn.

6 Q And do you remember what you and she talked about?

7 A She asked me if I would like some company. I said  
8 maybe. Best I recall, I don't remember much else of  
9 the conversation quite honestly. I really don't.

10 Q Did you have a drink?

11 A Did she?

12 Q Did you?

13 A Yes. I had ordered a drink.

14 Q Were you drinking it?

15 A I was drinking it.

16 Q What do you remember, if anything, about going in the  
17 back with her to the so-called VIP room?

18 A I don't recall anything about that.

19 Q Do you recall getting a lap dance from her?

20 A I don't recall it, but SLED the next morning  
21 indicated to me that I had. I didn't have any real  
22 reason to question them.

23 Q Now, from that point forward, from that point  
24 forward, the point where you're sitting at the bar,  
25 you're having a drink with Mia until the next morning



1       when the Sheriff's Department comes in your front  
2       door, do you have any coherent memory of what  
3       occurred?

4       A    No, I do not.

5       Q    You've seen the video of you being escorted out by  
6       Mr. Johnson, Mr. Weeks, Mr. Hawkins. You've seen the  
7       video. You've seen yourself on the video?

8       A    Yeah. I've seen that video several times.

9       Q    Do you have any recollection of that whatsoever?

10      A    No. I -- I have -- I had I guess bits and pieces of  
11      flashes of things the next morning. But I couldn't  
12      really tell anything. I didn't have -- I don't have  
13      a coherent memory or recall. I -- I did not have  
14      one.

15      Q    Well, do you remember being walked out by them?

16      A    No, sir, I don't.

17      Q    What you see on the video, do you remember that?

18      A    No, sir, I do not.

19      Q    Do you remember getting in your car?

20      A    No, sir, I do not.

21      Q    Do you remember getting home that night?

22      A    No, sir, I do not.

23      Q    Do you have a coherent memory of firing a gun that  
24      night?

25      A    No, sir, I do not.

1 Q We're going to talk about that a little bit more in a  
2 minute. The first thing you remember after the  
3 coherent memory after this drink with Mia, is it when  
4 the police came in the next morning?

5 A That's correct.

6 Q Now, tell the jury, please, about your sleeping  
7 habits. Do you wear hearing aids?

8 A I wear hearing aids all the time. I don't wear them  
9 while I'm sleeping, no.

10 Q Take your hearing aids out of your ears, please.

11 A Take them out?

12 Q Yes, sir.

13 A Two of them. Both ears.

14 Q Put them back in your ears. Put them back in your  
15 ears. Now, do you have a serious hearing problem?

16 A Yes, sir. It -- it's a partial cause of my  
17 disability. I have a 48 percent -- I'm told by my  
18 hearing specialist that I can hear only 48 percent in  
19 I think it's in this ear. Or maybe I'm 52 percent  
20 deaf. I'm half deaf in this ear.

21 Q Right. What about your right ear?

22 A And this ear, I am about 56 or 7 percent deaf.

23 Q In your right ear?

24 A Yes.

25 Q Now, without the hearing aids, can you hear very

1 well?

2 A No. Not at all.

3 Q You can hear loud noise or you're totally deaf? I  
4 mean, you can hear some noise?

5 A I can hear loud noise but I can't hear a television.  
6 I could not hear in this courtroom. I couldn't hear  
7 the mingling of like a party or mingling. I can't  
8 hear in the courtroom. I've had to strain here.

9 Q What about those glasses you wear?

10 A These are for distance primarily but they're  
11 bifocals.

12 Q So you need them a little bit for reading and a lot  
13 for distance?

14 A Yes. I can't watch television or a movie. Or I  
15 don't drive without them.

16 Q So at what distance do things become a little bit  
17 blurred? Further than this? Closer than this?

18 A Well, right there.

19 Q Okay. And in addition, you sleep with a device  
20 called a C pack I think. I don't want to put this in  
21 evidence, just have him identify it. Do you want to  
22 see it?

23 MR. GIESE: (Shakes head negatively).

24 MR. HARPOOTLIAN: Do you want to see it?

25 MR. MEADORS: (Shakes head negatively).

1 Q You sleep with this on all night?

2 A Yes. That's a C pack machine which helps with my

3 sleep apnea which is an affliction or problem I have

4 breathing. My breath, I stop.

5 Q I'm making a mess here. This device plugs into the

6 wall and then you wear this mask?

7 A Yes.

8 Q Okay. Does it make any noise?

9 A Yes, sir.

10 Q A lot of noise?

11 A Yes. It always hums. Yeah. Absolutely.

12 Q Did you have this on the night of the 29th?

13 A Yes, sir.

14 Q So you're in bed, no hearing aids, no glasses, and

15 you have the C pack on. What wakes you up?

16 A A tremendously loud banging at my front door; I mean,

17 a racket that's really, really loud.

18 Q And as a result of hearing that really loud racket,

19 what do you do?

20 A I got out of my bed. I went to the --

21 Q Let me stop you. You've got a mask on. What do you

22 do with the mask?

23 A I took it off.

24 Q Okay. What do you do next?

25 A I go out of my -- if you can help me there.

1 Q Right. 32. Show the jury where you went? Okay.  
2 This is the master bedroom?  
3 A Is my master bedroom and that's the bed. I sleep on  
4 this side.  
5 Q Okay.  
6 A I got up and I went to that doorway. That doorway is  
7 into this hall.  
8 Q Did you go into the hall?  
9 A I did. I went.  
10 Q And then where did you go?  
11 A I took a quick right and went this way, got out here  
12 to about where this little mark is. It's an  
13 architectural rendering. But it's -- I probably  
14 got --  
15 Q Did you get outside the hallway, or did you stay in  
16 the hallway, or did you speak out? Or what did you  
17 do and/or do you remember?  
18 A Well, at that time these are the --  
19 Q No. Where were you?  
20 A I was right here.  
21 Q Okay. Are you out of the hallway or are you in the  
22 hallway or do you remember?  
23 A If I -- if I was out, it was no more than like what I  
24 call half of me out.  
25 Q Okay.

1 A I saw all these people coming in.

2 Q Were they making noise?

3 A They were making noise. I could not distinguish what  
4 they were saying. They were making a lot of noise.  
5 I turned around and ran back here.

6 Q Why?

7 A Because I was scared.

8 Q And where were you going?

9 A I was going back here to get a weapon.

10 Q Okay. Now, a weapon? You couldn't see they were  
11 Richland County Sheriff's Department?

12 A No, sir. I could not.

13 Q You couldn't hear them yelling Sheriff's Department?

14 A No, sir, I could not.

15 Q What was the lighting like? Were your lights on up  
16 in the foyer or was it dim?

17 A It was dim. We don't keep all those on.

18 Q And as you ran back through this hallway, what  
19 happened?

20 A Well, --

21 Q Were there shots fired?

22 A Yes. There were a lot of shots fired. And when I  
23 ran, I ran back this way, shots came.

24 Q Well, did you know where they were coming from at the  
25 time?

1 A No. But I figured they had to be coming from here  
2 because everything was flying. And I did see one  
3 person up here, some kind of sliding across the  
4 floor. There were shots here, shots here. I ran  
5 back through this doorway which is three feet to back  
6 here to my bureau so as to get a gun out of my  
7 bureau.

8 Q And that gun would be this Smith and Wesson .357?

9 A It would be.

10 Q And did you get to the bureau and get the gun?

11 A Yes. I got the gun.

12 Q And did you turn around?

13 A Yes. I turned around to face this way.

14 Q Did you see anybody when you turned around?

15 A No, I did not.

16 Q Did you point the gun at anybody?

17 A No, I did not.

18 Q And at that point do you get shot at some point?

19 A Yes. I --

20 Q When did you determine you -- I mean, when did you  
21 realize you'd been shot?

22 A When I turned and saw no one, all I saw was smoke and  
23 I could smell gunfire. It was very active.

24 Q Right.

25 A I turned into this wall. That's the bathroom. I

1       turned into here, this wall. I knew then that I was  
2       in a tremendous amount of pain in my left arm. It  
3       was all wet. It was bleeding. I could tell that.

4       Q   Now, you told the officers the next day that you'd  
5       been shot in the hallway up here. Do you know where  
6       you got shot?

7       A   Not really. But it had to be in that -- it could not  
8       have been there because I'd be dead. So it had to be  
9       inbetween here and there. And, I mean, there was so  
10      much gunfire and so much screaming and so much noise  
11      that, no, I do not know exactly. All I know is that  
12      I was shot and when I turned I saw nothing and I went  
13      to that wall.

14      Q   Okay. Now, go ahead and sit down. You went to that  
15      wall. At that point did you have any idea as to who  
16      had shot you, whether it was -- well, strike that.  
17      Did you believe that the Richland County Sheriff's  
18      Department or any police officer had shot you at that  
19      point?

20      A   No. Not at all. No, sir. No.

21      Q   So what did you do next?

22      A   I --

23      Q   Where did you go?

24      A   I reached across to grab the phone beside my bed.  
25      It's a portable type phone in a cradle. I dialed



1 911. Either I misdialed it or the phone didn't work  
2 properly. So I threw it down. I peeked out again to  
3 make sure no one was coming and I ran further into  
4 that bathroom behind me.

5 Q I'll show it to you in just a second here.

6 A Sir?

7 Q I'm going to show it to you in just a second. I'm  
8 going to find a picture here.

9 A All right. To get my cellphone, I have always keep  
10 it in the very same place because I am always  
11 recharging it. It's just a habit. But I do just  
12 like the same place. I put my ...

13 Q Here it is. Let me show you State's Exhibit No. 72.  
14 What is that a picture of?

15 A That's a picture of the floor beside by bed. This is  
16 a picture of the floor where I was standing or  
17 leaning against this wall that I just said I was.

18 Q So that puddle of blood down there is what came it of  
19 your arm as you stood there after you'd been shot.  
20 72. Is that right?

21 A Yes, sir. That's correct.

22 Q And you then went I think you just said into your  
23 bathroom which would be -- okay. This is the master  
24 bedroom. You testified you're standing somewhere in  
25 this area right here?

1 A Excuse me. I am standing in -- this is the doorway.  
2 I am standing like this against that wall. That's  
3 where the blood is right there. When I could not  
4 reach 911 on the phone that was here, I ran back here  
5 and picked up my cellphone. This corner which is a  
6 long counter, I picked it up and ran back here, got  
7 back in that position next to that wall.

8 Q Why were you running back out there? What were you  
9 concerned about?

10 A Mr. Harpootlian, I had just had this onslaught of  
11 people coming in my home, my front door, knocked it  
12 down, broke in, had shot up my and my wife's home; I  
13 mean, shot it to high heaven. I was afraid. Why  
14 would I not be afraid?

15 Q So okay. So you called 911. And I think we've heard  
16 the 911 tape, right?

17 A Absolutely I did, yes.

18 Q And that's you on the tape?

19 A Yes, it is.

20 Q Red alert, red alert? What's that about?

21 A That was just kind of whoever is answering 911 please  
22 pay attention. This is -- I need help.

23 Q Okay. Now, you ultimately surrender, give your  
24 weapon up after you're convinced it is the Sheriff's  
25 Department?

1 A Yes, sir. And quite honestly, I was hesitant then  
2 but I figured the consequences could be worse. So I  
3 put my weapon on the bed. They had coached me. I  
4 was satisfied through this exchange the different  
5 times that I could -- that it would be in my and my  
6 family's best interest for me to come out.

7 Q Okay. And did you surrender?

8 A I did, yes.

9 Q And were you taken into custody, handcuffed and then  
10 transported to the hospital in handcuffs?

11 A Yes.

12 Q Okay. And when you got to the hospital were you  
13 treated?

14 A I was.

15 Q Now, at any point during that process at the  
16 hospital, did anybody ask you if they could take your  
17 blood sample?

18 A No. Not that I recall.

19 Q Anybody ever say to you, Mr. Herring, sign this  
20 document so we can draw some blood from you?

21 A No, sir. Not that I recall.

22 Q And let me understand this now. From the time that  
23 you surrender at the house, for the next day you're  
24 in the custody of the Richland County Sheriff's  
25 Department, they have total control over where you

1 go, what you do, what you say, et cetera. Is that  
2 correct?

3 A Yes, sir.

4 Q Okay. And at no time did anyone in your presence ask  
5 you for permission to draw blood?

6 A No. Not that I recall. No, sir.

7 Q Now, did anybody tell you as you're laying there on  
8 the floor that you're being arrested for murder?

9 A No, sir.

10 Q Did anybody tell you as they took you to the  
11 hospital, sir, you're being charged with murder?

12 A No, sir.

13 Q Did anybody tell you as you were brought back to the  
14 Sheriff's Department that you were being charged with  
15 murder?

16 A No, sir.

17 Q Did Lieutenant, any of the SLED people, Dave Lawrence  
18 or anybody, tell you you were charged with murder?

19 A No one told me.

20 Q And apparently they talked to you from sometime  
21 around 9:30 until noon; and no time during that  
22 period did the folks from SLED infer or implicate  
23 that you were in trouble, did they?

24 A No, sir. As a matter of fact, they really indicated  
25 that I was a victim.

1 Q Okay. Now, sir, when you -- we hear it on the 911  
2 tape. They say something about River Drive. And you  
3 indicate I think -- I'm paraphrasing it -- that you'd  
4 been home all night?

5 A That's correct.

6 Q At that point did you have any recollection of  
7 leaving your house that night?

8 A No, sir, I did not.

9 Q Can you tell the jury why you believe you have no  
10 recollection, at that point you had no recollection  
11 of leaving the house that night?

12 A That next morning?

13 Q Tell them what you think.

14 A Oh.

15 Q What caused you to not have any memory?

16 A I'd been shot.

17 Q I'm talking about before you got shot.

18 MR. GIESE: Objection, Your Honor.

19 Q Well, let me rephrase it. Withdraw the question.  
20 Let me put it this way. You have difficulty -- even  
21 today you can't remember seeing yourself --

22 MR. GIESE: Objection, Your Honor.

23 THE COURT: Leading.

24 Q Can you remember yourself as you see yourself being  
25 walked out of Chastity's? Can you remember

1           yourself --

2           **MR. GIESE:** Objection. Leading.

3           **THE COURT:** Go ahead.

4   **Q**   Can you remember yourself walking out of Chastity's  
5           that night? What we've seen on the video, can you  
6           remember that?

7   **A**   I can't remember that. I can identify me.

8   **Q**   Right. Tell the jury why you believe you can't  
9           remember that and why you believe you told people  
10          that for the next day you couldn't remember that and  
11          today you tell us you can't remember that?

12          **MR. GIESE:** Objection, Your Honor.

13          **THE COURT:** He said tell me why.

14          **MR. GIESE:** It's not a proper question.

15          **MR. HARPOOTLIAN:** I said tell me why.

16          **THE COURT:** I said go ahead. Overruled.

17   **Q**   Why? And make it just --

18   **A**   A short answer is I had been drugged.

19   **Q**   Now, what makes you think you had been drugged? What  
20          is it that happened that night, if anything? What  
21          feelings did you have, if any? What leads you to  
22          believe you were drugged that night? What is it that  
23          as you look back on that now indicates to you you'd  
24          been drugged?

25   **A**   I have never had any feeling or any problem like that

1 in my life, my entire life. I felt as if I was  
2 really watching myself, kind of a -- I guess what  
3 you'd call an out-of-body experience. I've never  
4 done drugs, so I wouldn't know what that is. But, I  
5 mean, that's an expression I guess. It wasn't me  
6 doing anything. I just -- I don't remember. I could  
7 not remember. That's not like me. I was detained.

8 Q Now, you're an alcoholic?

9 A Yes, sir.

10 Q You've been drunk?

11 A Yes, sir.

12 Q Many times in your life?

13 A Yes, sir.

14 Q Any time you've been drunk, has it ever felt like you  
15 felt that night or you felt the next morning or as  
16 you tried to recall what happened? Have you ever had  
17 anything like that?

18 A Not at all. No. Not at all.

19 Q Now, so when on the 911 tape they say something about  
20 River Drive, you say then I haven't left the house.  
21 Right?

22 MR. GIESE: Objection, Your Honor. If he just  
23 wouldn't lead.

24 MR. HARPOOTLIAN: I'm just restating what's on  
25 the 911 tape.

1           MR. GIESE: Which is leading.

2           THE COURT: Ask him a question.

3           MR. HARPOOTLIAN: I'm just trying to cut to the  
4 chase. I apologize.

5 Q       When you were talking to 911; what, if any,  
6 recollection did you have of leaving the house that  
7 night when you were talking to 911?

8 A       I did not have any.

9 Q       Now, as time progressed; that is, after you'd been  
10 taken down to the Sheriff's Department, your  
11 statements, tell us how -- first of all, when you got  
12 to Sheriff's Department, what was your physical  
13 condition?

14 A       I was a -- my physical condition?

15 Q       Physical and mental condition.

16 A       I was a -- a wreck. I had been shot. I was  
17 bleeding. I was still bleeding profusely. I was in  
18 great pain. I really -- it affected my abilities  
19 to -- to think. I just -- I was cold. I hadn't been  
20 provided anything to wear that I recall.

21 Q       Did you have your hearing aids in?

22 A       No, sir.

23 Q       Where were they?

24 A       They were at my home.

25 Q       What about your glasses?



1 A I did not have those. They were at my home I think.  
2 I didn't have them.  
3 Q Okay. And as -- first of all, what did Lieutenant  
4 Lawrence tell you or the other SLED officers tell you  
5 while you with were there and you're in this room?  
6 Were you handcuffed?  
7 A Yes, I was.  
8 Q What, if anything, did they tell you why you were  
9 there?  
10 A They told me as best I recall that I was there  
11 because they had been called in to investigate a  
12 shooting involving law enforcement officers and that  
13 they were there to find out what had happened. They  
14 did the part of what they did.  
15 Q And we've seen -- and I guess maybe we ought to walk  
16 through these statements. Do you remember being  
17 advised of your rights?  
18 A No, I don't remember. No. No, I don't.  
19 Q Is that your signature on this advice of rights form?  
20 A Yes, it is.  
21 Q You wouldn't argue with or dispute the testimony that  
22 you signed this advice of rights at 9:42 on 1-29-06?  
23 Is that correct?  
24 A No. I would not dispute that that's my signature.  
25 That is my signature.

1 Q Okay. You were then -- tell me how the process  
2 worked. Was there a Q and A with a transcription?  
3 Tell me how it worked.

4 A Once SLED told me why they were there questioning me.  
5 They asked me a lot of questions, as Mr. Harpootlian  
6 says, some Q and A. They would ask; I would answer.  
7 They would ask; I would answer. They would ask  
8 again. They would to me really rephrase the  
9 question, take some of them out of sequence. But I  
10 was never allowed to ask them anything. I was told  
11 that I was a victim of that shooting and that's why  
12 they were there, to investigate that.

13 Q Okay. Well, let's walk through this statement. And  
14 you signed it, correct?

15 A Yes, sir. I did.

16 Q Okay. Who wrote this? Did you write it?

17 A No, I did not. It was Lieutenant ...

18 Q Lawrence? LaRosa? Somebody?

19 A No, sir. He testified earlier.

20 Q SLED agent?

21 A Yes.

22 Q Okay. I think it was Lawrence. David Lawrence?

23 A Yes. Lieutenant Lawrence.

24 Q Okay. Let's go over this. And first of all, you've  
25 read this several times now, have you not? A

1 multitude of times since you gave it?

2 A Yes, I have.

3 Q Since you gave it?

4 A Yes, I have. Yes.

5 Q Is it accurate?

6 A No.

7 Q Okay. And yet you've put your signature on something  
8 at 10:42 that morning you now concede was not  
9 accurate. Why was that?

10 A I was confused. I had been drugged. I was in pain.  
11 I had been shot. I wanted to cooperate. I had been  
12 told that I -- I had not been told that I was accused  
13 of anything. I thought that I could answer some  
14 questions, really get it done, get out of there and  
15 go home.

16 Q Let's go over this statement.

17 "Q Will you explain what took place at your  
18 residence at ----- this morning?

19 "A Yes. I went to bed around 11 p.m. I went to  
20 sleep and was awakened by banging, very loud banging,  
21 at my front door. One person could not have made  
22 that much banging. I got out of bed and walked out  
23 the bedroom door and went down a very short hallway  
24 to a family room towards the front door. I saw four  
25 to five individuals coming in the front door after

1           they kicked it in.

2           "Q     Did you recognize those individuals to be  
3           police officers?

4           "A     No".

5   Q     So far so good?

6   A     So far. Yes.

7           "Q     Did they identify themselves at all to  
8           you?

9           "A     They said, 'Mr. Herring, come out with your  
10          hands up.' I said, 'Why?' They said, 'Mr. Herring,  
11          get your hands up.' They then said, 'Sheriff's  
12          Office.' I told them to speak up, 'I can't hear  
13          you.' I was approximately 12 to 15 feet from them as  
14          they entered the front door from where I was  
15          standing, meaning the family room in the hallway. I  
16          turned and went back towards my bedroom to get my  
17          .357 Magnum six-cylinder handgun. I think it is a  
18          Smith and Wesson.

19          "Q     Where were the first shots fired by  
20          anyone?

21          "A     The officers fired while I was standing in the  
22          hallway by the family room as I was facing them.  
23          This was before I went towards my bedroom to get my  
24          gun.

25          "Q     What happened next?

1 "A I went to the bedroom and got the .357 handgun  
2 from the drawer of my nightstand directly by the bed.  
3 I pulled the handgun and turned towards my bedroom  
4 door.

5 "Q Do you see any officers as you turned  
6 toward the bedroom door with the gun in your  
7 hand?

8 "A No. All I saw was smoke.

9 "Q Did you fire your .357 handgun?

10 "A I don't believe that I did.

11 "Q Was the gun full of bullets?

12 "A Yes. I remember checking the gun but did  
13 uncock it. I never pointed the gun at anybody."

14 Q Now, at this point have they said to you you're  
15 accused of pointing a gun at the police officers?  
16 Have they said you're accused of any crime  
17 whatsoever?

18 A No, sir, they had not. And when I said earlier that,  
19 that was some of that statement.

20 Q Well, we're going to go back over it.

21 A Okay. No. No one had told me that.

22 "Q When did you get shot?

23 "A I got shot the first time they came in before I  
24 went to the bedroom to get my handgun.

25 "Q What else did the officers say?

1 "A They told me to come out with my hands up.  
2 They said that they had a warrant for my arrest.  
3 They never told me what it was for. I asked them,  
4 'Why? What do you want with me?' They said to come  
5 out, they had a warrant.

6 "Q What next?

7 "A I backed up and got the home telephone and  
8 tried to call 911. I did not call it right. I got  
9 another phone from the hallway. I went to the  
10 bathroom and got my cellphone and called 911 on it.  
11 I started talking to a female who answered at 911. I  
12 told her my name was Dewain Herring and where I  
13 lived. I told her that there was a bunch of men  
14 inside my house. They said they were from the  
15 Sheriff's Office but I don't know. She told me it  
16 was the Sheriff's Office at my house. She then put  
17 another person on the line that identified himself as  
18 a sergeant or some supervisor. The person inside my  
19 house said he was a sergeant and told me to come out  
20 with my hands up. The person on the phone said,  
21 'That is the Sheriff's Department.' They wanted to  
22 talk to me about an incident on River Drive. I told  
23 them I don't know nothing about River Drive. We kept  
24 talking back and forth. I then put my gun on my bed.  
25 I had my cellphone in my right hand, had the speaker

1 phone on. The officers told me to put my hands down  
2 as I walked out of the bedroom. I laid down on the  
3 floor. They handcuffed me. They told me to sit in a  
4 chair because I was bleeding. One of the officers  
5 got a towel from the utility room and put it on my  
6 arm. I saw several gunshot holes in the walls of the  
7 house. The ambulance transported me to the hospital.

8 "Q How much time elapsed from your first  
9 contact with the officers until they placed you  
10 in handcuffs?

11 "A Maybe 30 minutes at that time most. Maybe 20,  
12 25.

13 "Q Do you wish to add anything else?

14 "A They kicked the front door in with great force  
15 and vigor. It really scared me that these people  
16 came in my house shooting their guns. I got shot in  
17 my left upper arm. I was totally shocked. The thing  
18 that crossed my mind early was the burglaries that  
19 have occurred in my area. I thought they were coming  
20 in with great force. I was dumbfounded."

21 Q Okay. That's the statement you gave --

22 A Yes.

23 Q -- initially to Mr. Lawrence? Now, did he write this  
24 contemporaneously, or did you talk to him and then  
25 did he go back and do this? Or do you remember?

1 A I don't totally recall, but I think they would ask me  
2 a question and he would write it. Sometimes he would  
3 ask it and write it. Sometimes he would ask a series  
4 and then write whatever his summary was.

5 Q Okay. Now, let's go back to the beginning of the  
6 statement. "I went to bed around 11 p.m." When you  
7 said that to Agent Lawrence, did you believe that  
8 you'd gone to bed at 11:00?

9 A Yes, I did. Yes, sir.

10 Q And you then said they said, "Did they identify  
11 themselves to you at all? They said, 'Mr. Herring,  
12 come out with your hands up.' I said, 'Why?' Now,  
13 the sequence of events you've told them, is this a  
14 correct sequence?

15 A No, sir. It's not.

16 Q What did you tell them? The difference about it?

17 A SLED?

18 Q Yes.

19 A Come on over to the next page of it.

20 Q I'm sorry.

21 A I don't recall, and I did not recall then, the  
22 Sheriff's Department telling me anything until after  
23 all of the shots were fired, all of the .40 caliber  
24 Glocks I guess. Okay? Then I had retreated at that  
25 time after that to get my gun. And then when I went



1 up against the bedroom wall towards the bathroom door  
2 is when they said, "Come out with your hands up."  
3 Q So the first part of this was said after you got  
4 shot?  
5 A Right.  
6 Q So this is out of sequence?  
7 A Yes. That's out of sequence. It was after I got  
8 shot.  
9 Q Other than that, is there any -- do you take any huge  
10 dispute with the rest of this?  
11 A As far as the sequence?  
12 Q Yes.  
13 A Not really, I don't think.  
14 Q Okay. So after he took this statement, did he leave  
15 the room? Or do you remember?  
16 A He did. But one thing that is, if you will, out of  
17 sequence is that it was not a rapid-fire Q and A.  
18 He, mostly Lieutenant Lawrence, I don't know that  
19 Lieutenant Delessia (phonetic) or --  
20 Q LaRosa I think was his name.  
21 A Sir?  
22 Q LaRosa I think is his name.  
23 A Oh. Would ask me a question. I would -- I'd think  
24 about it. I would respond. I would try to be as  
25 truthful as I could. Then we would take a little

1 time and move on to the next question. So it was not  
2 this staccato, rapid-fire type of question and  
3 answer.

4 Q Now, he at that point had not told you you were under  
5 arrest when he left the room. Is that correct?

6 A No one had told me anything about being under arrest.

7 Q So he comes back in, correct?

8 A Yes, sir.

9 Q And he asks you: "Did you consume any alcoholic  
10 beverages on Saturday and Saturday night,  
11 January 28th, 2006?" Is that right?

12 A I said yes.

13 Q And you had?

14 A I had. Yes.

15 Q You indicated: "I played golf at Palmetto Golf Club  
16 in Aiken. I drank about nine beers during the day.  
17 We got finished playing golf around 5:30 p.m. We  
18 started playing around 1 p.m. We then went to The  
19 Bowery, a tavern and grill place in Aiken. I drank  
20 about four scotches and sodas while there. My golf  
21 partner, Chris Isgett, drove back. He took me to my  
22 house. We went in and had a few more drinks. I had  
23 two to four scotches and sodas while at my house.  
24 Isgett left my house around 8:30 p.m. I was in my  
25 house by myself. My family was out of town." Is

1           that accurate? Well, first of all, is that what you  
2           told Mr. Lawrence?  
3    A       I think I told him that, that I had eight or nine  
4           beers. Yes.  
5    Q       Do you think you had eight or nine beers?  
6    A       No. I don't.  
7    Q       But you had how many?  
8    A       Probably four or five.  
9    Q       Well, why weren't you accurate with him on that?  
10   A       I -- I don't know other than I was just -- once again  
11           I was confused. I was in pain. I just -- I really  
12           can't drink nine beers in 18 holes. So I don't know.  
13   Q       Do you normally claim to drink more than you actually  
14           have drunk?  
15   A       Not really.  
16   Q       Okay. Now, he then asked you: "What did you do  
17           then?"  
18           "A       I took a shower. I laid down and don't  
19           remember going out anywhere."  
20   Q       Was that the truth when you told him that?  
21   A       I told him that.  
22   Q       Did you think you were being truthful?  
23   A       I did.  
24           "Q       Did you stay at the house the remainder of  
25           the night?

1 "A I'm pretty sure I did. I thought about going  
2 to Tombo's Grill to get something to eat, but I don't  
3 recall going."

4 Q Right?

5 A That's right.

6 Q And then he asks you: "Do you recall going to  
7 Chastity's Nightclub?"

8 "A No, I don't. I know where it is, but I don't  
9 recall ever going there."

10 Q Now, did you mean "ever", or did you mean that night?

11 A I meant that night.

12 Q Okay. Then he says: "Mr. Herring, the Sheriff's  
13 Office has a videotape of you entering Chastity's  
14 Nightclub last night. Does this help your  
15 recollection?" Now, when he asks you that, the next  
16 line is: "I remember the white woman with the big  
17 tits." Is that something that happens, bammo back,  
18 or was there some period of time between when he asks  
19 you that question and you respond?

20 A There was a passage of some time.

21 Q How much time?

22 A I don't recall. But I was really searching my memory  
23 very, very hard.

24 Q Did that jog your memory in some way when he said  
25 that?

1 A Well, yes. I mean, he told me he had a video of me  
2 going into Chastity's, that the Sheriff's Department  
3 did. And he said, you know, here it is. You can't  
4 refute it. Tell me what you saw. I thought about  
5 it, and I said, well, you know, maybe I did. And  
6 then asked he me if I remembered anything about it.  
7 And I really could not remember between those two  
8 places, like really.

9 Q Between Platinum Plus and Chastity's?

10 A Right. Right.

11 Q Did you tell him about Platinum Plus?

12 A No, I didn't.

13 Q Did you even remember Platinum Plus?

14 A No, I did not. Not until later, in some period of  
15 time much later.

16 Q "I remember the white woman with big tits. I had a  
17 scotch and soda while there." Do you know whether  
18 that -- did that occur at Chastity's? You had a  
19 scotch and soda?

20 A Right. I did.

21 Q Do you remember a white woman with big tits?

22 A I remember at some point in time a white woman with  
23 big tits, yes.

24 Q "I had a scotch and soda while there. I do recall,  
25 but hazy." What did you mean by hazy? What did you

1 mean when you told them "but hazy"?

2 A Hazy, like I don't remember, I don't recall.

3 Everything is -- it's hazy. You know, the definition  
4 of the word, is that you just don't -- you're not  
5 precise, you're not clear, you don't --

6 Q "But hazy, that I was there." Hazy that I was there.  
7 So you had -- tell me what that means when you say  
8 "hazy, I was there"?

9 A To me that means that they, SLED, had told me I was  
10 there. That was the power of suggestion, if you  
11 will. I mean, that's --

12 Q And did you at that point have a clear memory of  
13 being there?

14 A No. Not at all.

15 Q And you tell them after that -- now, SLED agents are  
16 writing this down, right? You're not writing this  
17 down?

18 A No. I never wrote anything down.

19 Q Well, you did at the end but we'll talk about that in  
20 just a second.

21 A Okay.

22 MR. GIESE: Your Honor, I want to object to that  
23 side comment. If he would just ask him a question  
24 and let him answer it, I'd appreciate it.

25 MR. HARPOOTLIAN: I apologize.

1           **THE COURT:** Please don't comment.

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

3   **Q**    "I could not tell you if the place was full or  
4           crowded or anything." Or anything. Is that right?

5   **A**    That's correct. Absolutely.

6           **Q**    Did you have a problem with anybody in  
7           there?

8           **A**    I don't remember. I went into one of the back  
9           rooms and paid for a lap dance. There were other  
10          people in there. The lap dance was done by a  
11          light-skinned black woman."

12   **Q**    Do you know if that was Ms. Grainger or not? Are you  
13          referring to her? Or do you know?

14   **A**    I don't know. I really don't know. I didn't  
15          remember. SLED I think suggested that I had done  
16          that. They knew all of these answers.

17          **Q**    What car did you drive there?

18          **A**    A Toyota 4Runner, black. This belongs to me.  
19          I was by myself best as I can recall. I typically  
20          don't go to places like this because of the people  
21          who go there have bad attitudes."

22   **Q**    Now, the question is: "What car did you drive  
23          there?" Why did you respond -- you remember  
24          responding about, continuing to talk about  
25          Chastity's?

1 A I don't think I talked about Chastity's.

2 Q It says: "I was by myself as best I recall. I

3 typically don't go to places like this because of the

4 people who go there have bad attitudes." Do you

5 remember that?

6 A What was the question before that?

7 Q "What car did you drive there?"

8 A Well, the question --

9 Q "Did you have a problem with anybody in there?"

10 A Okay. Then he asked me about what car did I drive.

11 Which once again, you know, to me just struck me as

12 being totally out of sequence of what he was asking.

13 So I responded my Black 4Runner which I have driven

14 for ten years. It's kind of hard not to remember

15 that.

16 Q Now, he goes on to ask you how many handguns you own

17 and what kind. Okay. Now, you have a .40 caliber

18 Glock. Did you buy that gun?

19 A No. It was given to me.

20 Q By ...?

21 A A friend of mine.

22 Q A .22 Smith and Wesson. Smith and Wesson. Did you

23 buy that gun?

24 A That's a revolver.

25 Q Right. Did you buy it?



1 A No. That was given to me.  
2 Q By ...?  
3 A My father.  
4 Q A .357 Smith and Wesson. Did you buy that?  
5 A No. That came from my father's estate.  
6 Q Okay. A Ruger .357. You bought that?  
7 A I bought that.  
8 Q "I had a .38 Taurus but my son has it and has had it  
9 for years." Is that right?  
10 A Yes, sir.  
11 Q "I have a concealed weapons permit. I also have a  
12 .22 pump rifle. I usually have a .22 pistol, the .22  
13 rifle or the Ruger .357 in the vehicle with me. I  
14 can't recall if it was in the Toyota last night."  
15 Did he ask you if you had a gun in the car?  
16 A No. Not that I recall.  
17 Q Well, why would you be telling him: "I don't recall  
18 which one was in the Toyota last night"?  
19 A Why did I tell him what?  
20 Q "I don't recall which one was in the Toyota last  
21 night"?  
22 A He must have asked me do I remember which one was in  
23 the car.  
24 Q Okay. Now, you also have a concealed weapons permit.  
25 How many years have you had that?

1 A Three or four. Three or four.

2 Q You carry a gun everywhere with you on your person?

3 A No.

4 Q You kept one, as you said, in your car?

5 A Yes, sir.

6 Q And so it was legal for you to have a gun in your  
7 car?

8 A Right.

9 Q And then he asks you: "Did you recall firing a  
10 weapon from the Toyota as you were leaving  
11 Chastity's?" And your answer is ...

12 "A No, I don't."

13 A That's correct. I don't.

14 Q "Did you fire a shot at all?" And you said, "If I  
15 did I was not shooting at anyone. I am not saying  
16 that I did not do it. If the gun went off while in  
17 my hand it was harmless error. It was probably the  
18 Ruger .357. If it went off, it was an accident."

19 Now, do you have a memory having this weapon,  
20 the Ruger .357 in your hand that night and pointing  
21 it at anybody?

22 A No, sir. I do not.

23 Q Do you have a memory of it, as you say, going off?

24 A I have a memory of that gun going off or a gun. I --  
25 but, I mean, it's been identified that that's the one

1 I had. So I can't refute that.

2 Q You said it was probably the .357, Ruger .357. Did  
3 you say that?

4 A I said probably. Yes.

5 "Q "Did you see anybody when you fired your  
6 weapon?"

7 "A No. I was not shooting at anybody. There was  
8 nobody to shoot at."

9 Q What did you mean by that?

10 A I just wasn't shooting at anybody. I wanted to  
11 clarify what I was saying. I mean --

12 Q When you said, "No. I was not shooting at anybody,  
13 there's nobody to shoot", did Lieutenant Lawrence ask  
14 you another question like, what do you mean by that?  
15 Did he ask you that?

16 A No, sir. He did not.

17 Q And then: "Is there anything else?"

18 "Not at this time."

19 And then you wrote in something. Was this your  
20 handwriting?

21 A Yes, sir.

22 Q "But do reserve the right to edit, add or delete."

23 And then you initialed that. Is that right?

24 A Would you show me that, please? I can't quite see  
25 it. "Right to edit, add or delete." That's my

1 handwriting. Yes.

2 Q Why would you have not written that? Or not -- why  
3 would you? Why did you?

4 A When I was reading those two statements, one first,  
5 took a break; the second one, they just did not to me  
6 sound right. That did not ring true. I also thought  
7 that I could sign those, that I would have an  
8 opportunity to come back and edit them, add to them,  
9 delete. And I just wanted to be sure that I reserved  
10 that right. And I didn't sign off forever. That was  
11 my intent and purpose. I mean, I guess I still had  
12 some little bit of capacity.

13 Q Were you bleeding at that point?

14 A I was -- yes. I was bleeding horribly.

15 Q Were you taken back to the hospital to be treated  
16 after you finished your statements?

17 A Not by SLED. No.

18 Q Richland County I mean. Did they take you back?

19 A Eventually.

20 Q Right. That day?

21 A Yes, sir.

22 Q To be re-bandaged and re-examined?

23 A Yes, sir. As a matter of fact, if I may, earlier I  
24 had asked the officials, SLED or somebody, to please  
25 get me some more medical attention, that I was in

1 pain, I was bleeding. I mean, I was bleeding all  
2 over everything, including me. So they did call EMS.  
3 But, you know, it was my asking for it.

4 Q Okay.

5 A And then later the Sheriff's Department took me back  
6 to the hospital.

7 Q Now, at that point after the SLED people left,  
8 somebody came in and saw you. Captain Wilson. Is  
9 that who came to see you?

10 A According to all these statements, yes.

11 Q Do you remember him coming in?

12 A Yes, sir. I think so. Yes.

13 Q Is he the one that told you were under arrest for  
14 murder?

15 A Well, he told me after he had started questioning me.  
16 And then I asked him why was I there. I still did  
17 not know. I had no idea.

18 Q So you asked him why you were there and he told you  
19 what?

20 A He said that you are under arrest. I said, "For  
21 what?" And he says, "For murder."

22 Q And how did you react to that?

23 A I just could not believe it. I -- I said -- I did  
24 say what was written about no, no, no. No. No one  
25 has been shot or killed. No, I did not do it. No, I

1 cannot be charged with murder. That is just totally  
2 not improbable but impossible. I can't do that.

3 Q Now, you're 63 years on this earth. Have you ever  
4 pointed a gun at anybody?

5 A Never in my life.

6 Q Have you ever -- are you considering yourself a  
7 marksman? Do you practice every week with that  
8 pistol?

9 A Oh, no. Not at all.

10 Q You shot Skeet. We've heard some inference that that  
11 gives you some added skill with a pistol. Do you  
12 have added skill?

13 A A pistol and Skeet have nothing to do with each  
14 other.

15 Q Dewain, your decision that night to go out and go to  
16 Platinum and go to Chastity's, was that a good  
17 decision or a bad decision?

18 A It was the most horrific, horrible decision I have  
19 ever made in my life. Absolutely.

20 Q What's been the impact? What's the impact of that  
21 decision on you, your family, and others?

22 A Life for me is unalterably changed. It's just -- I  
23 can't re-alter that for my family. It's a -- it's a  
24 destruction. I thank God for my wife and my  
25 children, for Mr. Johnson's family. It's hard for me

1 to imagine their pain. If I could bring it back or  
2 make it all better, I would. If prayer would change  
3 it, it would have been changed. It's -- it's been a  
4 horrible, horrible nightmare over which I -- for  
5 instance, there are other people that will not  
6 recover. I won't ever recover. Never.

7 Q Did you intentionally point a gun at anybody or  
8 anything on the night of January 29th, 2006?

9 A No, sir. I would not do that.

10 Q Did you mean any harm to anybody on the night of  
11 January 29th, 2006?

12 A No. And not only then, I never really meant any harm  
13 to anyone, much less firing a weapon. No. No.

14 Q Beg the Court's indulgence. Thank you, Dewain.  
15 Please answer any questions either Mr. Giese or Mr.  
16 Meadors might have for you.

17 THE COURT: Approach the bench.

18 MR. HARPOOTLIAN: Sir?

19 THE COURT: I asked them, counsel, to approach  
20 the bench, please.

21 (Whereupon, a bench conference is had)

22 THE COURT: All right, ladies and gentlemen.

23 Let's take a short break.

24 THE BAILIFF: Everyone else remain seated.

25 THE COURT: Ladies and gentlemen, let's take a

1 short break. I'll ask you to go to the jury room.  
2 Don't discuss the case among yourselves while you're  
3 in the jury room. We'll call you in about -- I  
4 always say ten minutes, but you know it's a little  
5 longer than that. So just relax for a few minutes.

6 (Jury out 3:55 p.m.)

7 **THE COURT:** All right. We'll stand at ease for  
8 about ten minutes. Mr. Herring, you can come down  
9 from the stand, but don't discuss the case with  
10 anybody else, including your lawyer. You can stand  
11 at ease.

12 (Whereupon, a break is taken)

13 **THE COURT:** Mr. Herring, will you take the  
14 stand. Do you wish to address the court?

15 **MR. HARPOOTLIAN:** I would, Your Honor.

16 **THE COURT:** Yes.

17 **MR. HARPOOTLIAN:** May it please the Court. The  
18 State has not embarked on its cross examination of  
19 Mr. Herring. My experience has been that the State  
20 occasionally, whether it be Mr. Meadors or just  
21 generally solicitors, like to yell to make a point.  
22 I would object and ask the Court to admonish if the  
23 State is thinking about doing that, it depends on  
24 whether Mr. Meadors or Mr. Giese, to not raise their  
25 voice at my client. That would be purely an appeal



1 or emotion. And he does not need to be yelled at or  
2 treated rudely. I don't expect them to do that. I'd  
3 just like to put it on the record. Some solicitors  
4 do that. I don't expect Mr. Giese or of course Mr.  
5 Meadors to do that. But I will be very vociferous.

6 **MR. GIESE:** Your Honor, I'll try not to yell at  
7 him. However, I understand that he is hard of  
8 hearing. So if he can't hear, I might have to raise  
9 my voice.

10 **MR. HARPOOTLIAN:** I don't mind the solicitor  
11 raising his voice to clarify something.

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

13 **MR. HARPOOTLIAN:** Just screaming at him would  
14 not --

15 **THE COURT:** Everybody will conduct themselves in  
16 a proper manner. Everybody is an officer of this  
17 court.

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

19 **THE COURT:** Solicitor, do you plan to use the  
20 video?

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

22 (Jury in at 4:12 p.m.)

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

24 **THE COURT:** Thank you very much. All right,  
25 Solicitor, you may cross examine the witness.

CROSS EXAMINATION

BY MR. GIESE

Q Mr. Herring, you chose to go to Chastity's that night, didn't you?

A Yes, sir.

Q Now, you've testified in front of or with Mr. Harpootlian about your recall of that evening, correct?

A Yes, sir. I did.

Q I want you to look at this jury and tell them who shot John Johnson?

A John Johnson died as a result of a bullet that came from a gun owned by me. He was not intentionally shot by me, no.

Q Did you intentionally fire that weapon?

A I did not, no.

Q Do you remember telling Chief Wilson that you fired the gun? Yes or no?

A No.

Q You did not tell Chief Wilson that you fired the weapon?

A I did not.

Q So Chief Wilson when he interviewed you --

MR. HARPOOTLIAN: May it please the Court, Your Honor. This is pitting one witness against the

1 other, A. And, (B), there's no written statement to  
2 that effect. This is an oral statement, so this  
3 would be quoting from once against the other. I ask  
4 he not show that to the jury, please. I object.  
5 It's pitting.

6 **THE COURT:** Well, it's not pitting yet but it's  
7 close.

8 **MR. GIESE:** Thank you.

9 **MR. HARPOOTLIAN:** I ask you not to show --

10 **THE COURT:** That's in an oral statement. I  
11 mean, that's an oral -- that's testimony of an oral  
12 statement. It's not written. You might be able to  
13 use it in your closing argument but not at this  
14 point.

15 **MR. GIESE:** That's fine.

16 **Q** You did not tell -- just for the jury's knowledge,  
17 you did not tell -- it is your testimony that you did  
18 not tell Chief Wilson that you fired the weapon?

19 **A** I did not tell him that. No, sir.

20 **Q** Now, Mr. Herring, you seem to have a great memory and  
21 great recall about everything that happened after  
22 4:30. Is that correct?

23 **A** After 4:30?

24 **Q** A.M. after the police came into your house.

25 **A** Mr. Giese, it's very difficult for me to now separate

1 to some degree what I remembered, recalled, did, and  
2 what I have read multiple times now.

3 Q Well, on direct examination isn't it true that you  
4 showed Mr. Harpootlian on Defense Exhibit -- on this  
5 Defense Exhibit that I can't find the number --  
6 numbered 32, you went into great detail as to where  
7 the police officers were when they came in, where you  
8 were when you thought you were shot and exactly what  
9 you did. Isn't that true?

10 A I did go into that detail. Yes, sir.

11 Q Because your memory of that you're saying was  
12 excellent, correct?

13 A Not at that very moment, no. But over the period of  
14 time, yes. I know my home. We designed it. We  
15 built it.

16 Q That's not what I asked you, Mr. Herring. I asked  
17 you whether or not you had good recall of what  
18 happened when those police officers came in your  
19 house, and you answered yes, correct?

20 A Not totally, no. I recalled it as best I could.

21 Q Now, 11:00 approximately you go into Chastity's,  
22 correct?

23 A I -- that's what the video says, yes.

24 Q Do you remember going into Chastity's at 11:00?

25 A I remember going into Chastity's.

1 Q So you remember going into Chastity's at 11:00?

2 A I don't know that it was 11:00. It was about that.

3 Q And you remember going into Chastity's and getting a  
4 drink, correct? Scotch and water?

5 A Scotch and soda. Yes, sir.

6 Q Excuse me. Scotch and soda. And it's your testimony  
7 to this jury that after you got that drink you  
8 remember nothing else about that evening?

9 A That's my testimony. Yes, sir.

10 Q And at 12:00, actually 12:08:06 I believe your car is  
11 seen in front of the door. But you don't remember  
12 that?

13 A No, sir. I don't.

14 Q Yet -- and you don't remember anything else, correct?  
15 Until 4:30 the next morning?

16 A Anything?

17 Q Yes, sir. Anything. You testified on direct you  
18 don't remember anything. You had no recall of that  
19 evening after you took that drink at Chastity's,  
20 didn't you?

21 A I believe on direct I said that I remembered a gun  
22 going off.

23 Q Ah. So you do remember something. You remember a  
24 gun going off. Was this gun in your hand?

25 A I'm not sure.

1 Q So you remember a gun going off but you don't  
2 remember if it was in your hand?

3 A No, I don't. I mean, I've got two hands. I don't  
4 know. But, I mean the gun going off, as I testified  
5 already, was very loud. I don't remember anything  
6 other than that. No.

7 Q So you're sitting in your car?

8 A I don't know that.

9 Q You don't know where you were when the gun went off?

10 A Not really. No.

11 Q You don't remember -- you remember a gun going off  
12 but you don't remember where you were when the gun  
13 went off?

14 A I -- I don't remember. But I -- no. I really don't.  
15 I don't -- no.

16 Q And it's not in your hand, or you don't know if it's  
17 in your hand? Is it in your hand?

18 A I -- I think that it may have been in my hand and  
19 I -- I don't want to surmise anything. But I don't  
20 know really where I was. I mean, my -- the video  
21 showed my vehicle.

22 Q You didn't answer my question. Do you remember it in  
23 your hand, or do you not remember it in your hand?

24 A I don't remember it in my hand.

25 Q You just remember a gun going off?

- 1 A That's correct.
- 2 Q And you don't remember whether you're in your car or  
3 not in your car?
- 4 A Not really, no.
- 5 Q You just remember a gun going off. Correct?
- 6 A That's what I testified to on direct and that's --  
7 I'm giving you the same answer.
- 8 Q Now, Mr. Herring, let me ask you this. You've  
9 testified to this jury that you believe you were  
10 drugged, correct?
- 11 A I was drugged.
- 12 Q You believe you were drugged?
- 13 A No, sir. I don't believe it. I know it.
- 14 Q Mr. Herring, how did you communicate with people if  
15 you'd been drugged?
- 16 A Like who?
- 17 Q We're going to get to that in just a minute. But  
18 like John Johnson, like Mia, like Carl Weeks? How  
19 did you communicate with those people if you had been  
20 drugged to where you don't remember anything?
- 21 A I don't know.
- 22 Q Let me ask you this. After you see that car, after  
23 your car leaves the lot, after the shot has been  
24 fired, let me ask you this. If you've been drugged  
25 to where you don't remember anything, how did you get

1 home?

2 A Apparently I drove my 4Runner home.

3 Q So you obviously were not impaired enough to not be

4 able to get home. Is that correct?

5 A I don't know that. I got home.

6 Q You've seen the pictures of your car driving in at

7 1:10 a.m. in the morning. Do you remember that?

8 A I did not pick up the time but I saw it going through

9 the gates at Gregg Park, yes.

10 Q So somehow after being drugged to where you can't

11 recall anything that happened, you're able to drive

12 from Chastity's on River Drive through town, through

13 traffic with stoplights, with turns, with streets

14 into your neighborhood and to your home even though

15 you have been drugged. That's your testimony?

16 A No, sir. I did not describe my route home, Mr.

17 Giese. You did.

18 Q How then did you get home?

19 A There are several ways that I could tell you.

20 Q From that night, your recollection of that night is

21 you do not remember driving home?

22 A I do not. No, sir. I do not remember it.

23 Q Even though you're able to get home and navigate

24 through town driving your car to your home. And you

25 don't recall that?



1 A I don't remember that, no.

2 Q Yet, yet -- and that was at 1:10 I believe. Correct?

3 A Like I said earlier, I really don't know. I

4 didn't -- I can't see the video. If you're

5 representing to me it said 1:10 --

6 Q Yet --

7 A Is that correct? 1:10?

8 Q Well, we'll watch in a minute. We'll see. Yet three

9 hours and 20 minutes later when the police serve a

10 lawful search warrant on your house, three hours

11 after getting home and being drugged, three hours

12 approximately and 20 minutes later you have almost

13 total recall as to what happened in your house. Is

14 that what you're telling this jury?

15 A No, sir. I'm not telling them that.

16 Q Well, you just testified as to exactly what happened

17 in your home at 4:30 that morning. Correct? Did you

18 or did you not testify as to exactly what you saw in

19 detail that morning at 4:30?

20 A I -- I testified to that according to my statement

21 given to Lieutenant Lawrence.

22 Q So you now -- you don't have any recollection of your

23 own of what happened that morning? You took it right

24 from the statement as to what happened? Is that what

25 you're telling this jury?

1 A No. I recall because I was shot. I was in pain.

2 I -- you've got to remember that. Have you ever been  
3 shot? No. This is not TV. Yeah, I was in a great  
4 deal of pain.

5 Q Mr. Herring, and I know you'd love to ask me  
6 questions, as you well know.

7 A I understand that, but --

8 Q Please follow the rules that you know.

9 MR. HARPOOTLIAN: Your Honor, Mr. Giese doesn't  
10 have to argue with the witness. I apologize at  
11 making this, but if he'd stand back from the witness,  
12 he wouldn't get in those exchanges.

13 THE COURT: Overruled. It's fair cross  
14 examination. Go ahead.

15 Q So three hours and 20 minutes after you have no idea  
16 how you got home because you got drugged, three hours  
17 and 20 minutes later you remember everything in  
18 detail. Is that right? Yes or no?

19 A No.

20 Q Even though you just testified to it about an hour  
21 ago?

22 A I testified according to a great degree of what was  
23 in my statement to SLED. I testified that I went  
24 out -- I testified to what I testified to. I heard a  
25 tremendous racket. I went to investigate. It scared

1 me, people coming in my door. I turned around and  
2 ran until they started shooting, firing. It's hard  
3 to not remember that.

4 Q Yet it's not hard, or it is too hard to remember  
5 shooting someone else?

6 A I did not shoot someone else.

7 Q Mr. Herring, is it your testimony that you did not  
8 shoot John Johnson?

9 A I did not shoot John Johnson. No, sir. I did not  
10 intentionally shoot anyone then nor ever.

11 Q Yet he was shot by your gun, correct?

12 A I admitted that.

13 Q Shot out of your car, correct?

14 A If you insist, and it sounds as if the evidence  
15 points to a gun being discharged within my vehicle;  
16 yes, sir.

17 Q And you recall a gun going off, correct?

18 A I recall a gun going off. Going off. Not me firing  
19 it.

20 Q Mr. Herring, do you need to step down to see this?

21 A Step down?

22 MR. GIESE: Your Honor, may he step down? I  
23 don't think he can see where from he is.

24 THE COURT: Yes, sir.

25 Q Do you recognize that?

1 A Only from the video. Only it's been shown all week  
2 or all last week or whatever.

3 Q Will you stop the video? Mr. Herring, who is that?

4 A Right there?

5 Q Yep.

6 A That's me.

7 Q And it's your testimony you don't remember that?

8 A No, I do not.

9 Q You don't recall it at all?

10 A No, sir. I don't.

11 Q Because you had been drugged?

12 A Yes, sir.

13 Q Are you staggering?

14 A Not that I recall. No. I don't -- you know.

15 Q Walking pretty normal, weren't you?

16 A Well, it looks it from the video. I didn't say I was  
17 physically impaired. I said I was drugged.

18 Q Correct. Who is that?

19 A Quite honestly, I -- I'm really not totally certain.  
20 I don't recall who that is.

21 Q You don't know that's John Johnson?

22 A No, sir, not really. I don't.

23 Q Go ahead. Now, if you would, Justin, please go to  
24 the conversation that occurs outside. Let me stop it  
25 there. You're going to your car, aren't you?

1 A That's what it looks like. Yes, sir.

2 Q Did anyone have to point you to your car?

3 A Sir?

4 Q Did anyone have to point you to your car?

5 A No.

6 Q Did they have to help you into your car?

7 A Not that I recall.

8 Q Did they have to say, this is your car?

9 A I don't recall. But, you know, like I said, I've  
10 been driving my vehicle, the same Toyota 4Runner, ten  
11 years.

12 Q But they don't have to show you where your car is  
13 even though you've been drugged, as you say.  
14 Correct?

15 A You know, I really don't recall.

16 Q Does it look like they're pointing you to your car?

17 A Well, I'm not there yet, wherever I'm going.

18 Q Stop it. Well, now that you've gone to your car, do  
19 you see them pointing you to your car?

20 A I don't see them pointing me to my car. No, sir.

21 Q So obviously at that point in time you were conscious  
22 enough to make it to your car, correct?

23 A I think conditioned enough would be the word. Not  
24 conscious.

25 Q Go more forward to the conversation. Stop it. Now,

1 Mr. Herring, it is your testimony that -- is that you  
2 having a conversation with someone?

3 A I can identify me, yes.

4 Q You're having a conversation with him?

5 A It looks like it, yes.

6 Q And it is your testimony today that you don't recall  
7 what that conversation was about?

8 A That's my testimony. Yes, sir.

9 Q You don't even remember the conversation? Is that  
10 your testimony?

11 A That's my testimony. I don't.

12 Q Do you recall, do you recall telling John Johnson  
13 while you were out there and Donald Hawkins who the  
14 State submits is that gentleman right there, do you  
15 remember telling them, "You don't want me to come  
16 back here. If I come back there is going to be some  
17 issues. Someone is going to get fucked up"? Do you  
18 remember that threat to those two men?

19 A No, sir, I don't. I do not.

20 Q You have a perfect recall of what happens after 4:30  
21 that morning but you can't recall threatening those  
22 two gentlemen out in front of that club. Is that  
23 your testimony?

24 A I have no recall. I have no memory of this. No, I  
25 don't remember, period.

1 Q Play it.

2 A Bottom line.

3 Q Do you know what he's saying to you there?

4 A I have no memory. I don't know. I can't remember.

5 Q Do you remember talking to him?

6 A No, I don't.

7 MR. HARPOOTLIAN: Your Honor, this is  
8 repetitive. He keeps asking him and he keeps saying  
9 I have no recollection. I think it's clear he has no  
10 recollection.

11 MR. GIESE: Objection.

12 THE COURT: You're testifying, Mr. Harpootlian.  
13 It's fair cross examination.

14 MR. HARPOOTLIAN: Objection. Repetitive. I'm  
15 sorry.

16 Q Play. Now, stop. Mr. Herring, is that you turning  
17 around going back to your car?

18 A Could you bring it back a bit, please? Yes.

19 Q Play.

20 A That's me. Whoa. Right there.

21 Q Stop. And once again, Mr. Herring, did someone have  
22 to point you back to your car, or did you walk back  
23 there on your own?

24 A According to the video, no one pointed me to my car.  
25 Whether they told me where my car was I don't recall.

1 If you're saying that I walked there under my own and  
2 I remembered it, I don't remember. That was a  
3 condition. It's just like I guess a Pavlov's dog or  
4 something. I mean, I'm conditioned to get in my own  
5 car after ten years. It's the only thing I've  
6 driven.

7 Q Are you also conditioned to get the .357 Ruger out of  
8 the glove compartment?

9 A No, sir.

10 Q Is that where the .357 was that night?

11 A In the glove compartment?

12 Q (Nods head affirmatively).

13 A Yes, sir.

14 Q So for that .357 to kill John Johnson, to have gotten  
15 out of your glove compartment to kill John Johnson,  
16 you would have had to pull it out of there, correct?

17 A It was in my glove compartment and I apparently  
18 pulled it out, but I did not kill anyone to my  
19 knowledge, certainly not intentionally. No, sir.

20 Q Well, if you don't recall shooting the gun, how can  
21 you tell this jury that it was unintentional?

22 A I'm conditioned to not pointing a gun at anyone ever,  
23 one. Two, I don't remember anything. And I just  
24 don't -- I know I did not shoot anyone intentionally.

25 Q Mr. Herring, you've told this jury you don't remember



1       it being in your hand. How can you look at them now  
2       and say you didn't intentionally shoot him?

3    A    Would you repeat that?

4    Q    I'm sorry. You've told this jury already you don't  
5       recall a gun being in your hand or it going off.

6       Correct?

7    A    I did not say that. I said I recall it going off.

8    Q    My question is, if you don't recall how it went off,  
9       whether it was in your hand or anything else about  
10       this night, how can you tell this jury that that gun  
11       wasn't intentionally pointed at that door that John  
12       Johnson had opened and then closed?

13   A    The simple, straightforward answer is because I was  
14       drugged.

15   Q    No, sir.

16   A    And I didn't do it.

17   Q    If you -- what I'm asking you is this. You're  
18       telling this jury that it was unintentional if you  
19       did it. Yet you have no memory of it being  
20       unintentional, do you?

21   A    I -- I can't remember what I don't remember.

22   Q    That's my point. So how can you tell this jury it  
23       was unintentional?

24   A    Because anything like that would be unintentional  
25       because I'm -- I'm not a person of malicious intent,

1 no. I mean, I -- I don't remember.

2 Q Please go forward to 12: -- well, actually at some  
3 point you understand that your windows were rolled  
4 down. Is that right?

5 A That's been the testimony, yes.

6 Q But you don't remember rolling your windows down?

7 A No. No, sir.

8 Q You don't remember going in the glove compartment and  
9 getting your gun out?

10 A No, sir.

11 Q You don't remember sitting there for two minutes,  
12 approximately two minutes while they went and got  
13 your tag number? Do you remember that?

14 A No, sir. I don't.

15 Q Do you remember them pulling away out of Chastity's  
16 going down River Drive toward Edna's?

17 A Going down River Drive toward where?

18 Q Edna's Hotdogs.

19 A No. I don't.

20 Q Please show the part where he pulls out. And you're  
21 telling this jury as you pull out of there that you  
22 have no recall of that. That's what you're telling  
23 them, correct?

24 A That's what I'm telling them.

25 Q Go to 12:06 when he comes back. Stop. Now, Mr.

1 Herring, it's your testimony to the jury today that  
2 you have no recollection of driving back into  
3 Chastity's parking lot and pulling your car up right  
4 in front of the door? That's your testimony?

5 A I have no recollection. I don't have a memory of  
6 that. No, sir.

7 Q You have no idea, you have no idea who is driving?

8 A No. I think I told SLED that, you know, I probably  
9 didn't have anybody with me. So --

10 Q But you have an independent recollection as to who  
11 was driving?

12 A No. It was hinted to me by SLED that I was there,  
13 that I was in my car, I was the only one driving.

14 Q So SLED --

15 A But I don't recall myself. No, sir.

16 Q So now SLED is putting words in your mouth?

17 A They did. Yes, sir.

18 Q We'll get to that in a minute. But ... stop. That's  
19 your 4Runner driving off?

20 A Back it up a bit, please. It looks like it.

21 Q And you have no recall of that?

22 A No, I don't.

23 Q Now, you testified earlier that what you do remember  
24 of the evening, that a gun went off, a gun going off.  
25 You're not sure if it was in your hand or in your

1 car. Do you have any recollection of a gun going off  
2 while it's in the car?

3 A I recall only that a gun went off.

4 Q But you don't remember where?

5 A No. Not precisely.

6 Q Now, Mr. Herring, first off you say you don't recall.  
7 Then you say I don't remember precisely where it went  
8 off. What does that mean?

9 A Through the testimony --

10 Q No, no. Your recollection.

11 A My recollection is no, I do not.

12 Q You have no idea where that gun went off but you  
13 remember it going off?

14 A That's correct.

15 Q Do you have the tape of him pulling into?

16 MR. CABA: I've got to change CD's.

17 Q That's all right. You can take the stand, please.

18 And I'm not sure if I got this wrong or you can  
19 correct me if I did. Do you or do you not remember  
20 getting a lap dance at Chastity's?

21 A I don't remember. No, sir.

22 Q So you don't recall that either, correct?

23 A I don't recall what?

24 Q The lap dance.

25 A No.

- 1 Q You also mentioned something about you having  
2 flashes, that I believe the quote was you never had a  
3 feeling like that before, that you were watching  
4 yourself have an out-of-body experience and you could  
5 see yourself doing it but it wasn't you doing it. Do  
6 you remember testifying to that?
- 7 A That's pretty close. Yes, sir.
- 8 Q And you were talking about the situation in  
9 Chastity's or when you shot the gun?
- 10 A I was talking about from the time I got into  
11 Chastity's and until the next morning.
- 12 Q Well, but you said you had an out-of-body experience  
13 and you were watching yourself do things. Is that  
14 while you were in Chastity's or when you were in your  
15 car and fired the shot? Which is it?
- 16 A All of the above. I just don't remember.
- 17 Q I know.
- 18 A I told you I can't recall.
- 19 Q What did you mean by having an out-of-body experience  
20 where you watched yourself do these things?
- 21 A I said it felt as if I were watching myself. I don't  
22 really -- as I also testified to, I don't do drugs.  
23 I haven't done drugs. I don't know what an  
24 out-of-body experience is supposed to feel like. But  
25 I do know that whatever was going on was not me. I

1 don't recall it. I -- no, sir. I just -- I don't  
2 recall. I was drugged and I can't remember.

3 Q What do you have the out-of-body experience memory  
4 of?

5 A Repeat that, please?

6 Q If you don't recall anything, how can you identify a  
7 memory of an out-of-body experience?

8 A Because I don't remember anything. If I don't  
9 remember anything, it wasn't me. I have a pretty  
10 good memory. Or at least I thought I did.

11 Q Now, let's talk about the 911 call that you made.  
12 Okay?

13 A Yes, sir.

14 Q On that tape -- and Mr. Harpootlian has been  
15 questioning you and talking to you extensively about  
16 how you can't hear, correct?

17 A That's right.

18 Q Now, your testimony was that you had didn't have your  
19 hearing aids in when you went to bed, correct?

20 A That's correct. I never sleep with them.

21 Q But you don't remember taking them out?

22 A Not specifically, no.

23 Q And why not?

24 A I just don't ever sleep with them.

25 Q So you hear the bang at the door. You run out.

1       You're confronted by police. And it's your testimony  
2       at that time they fired a shot at you, shots at you.  
3       You ran back down the hallway. You got the gun. You  
4       got your phone, correct, and made the 911 call,  
5       right?

6       A    Not precisely in that sequence, no.

7       Q    Close?

8       A    Well, I tried to call on the telephone beside my bed,  
9       my side of the bed. It's really not reliable from  
10      time to time and I really probably misdialed that  
11      night. Okay? Then I ran in to get my cellphone from  
12      where I normally keep it which is always on my vanity  
13      bureau. And then I called 911.

14      Q    And you remember that very, very well. Correct?

15      A    Mr. Giese, I felt as if I was scrambling for my life.

16      Q    And you remember it?

17      A    Sir?

18      Q    And you remember it very well? Yes or no?

19      A    It's flight or fight syndrome. Yes. I remember  
20      that. I thought I was threatened, imminently  
21      threatened.

22      Q    And you called 911?

23      A    I did.

24      Q    And you talked to numerous people on the phone. And  
25      we listened to the tape, didn't we? We listened to

1 the tape?

2 A You mean the 911 tape?

3 Q All the 911 tapes. You remember everybody talking to  
4 them. They were talking to you, correct?

5 A Yes, sir. Yes, sir.

6 Q Well, and you could understand what they said to you  
7 because we heard it on the phone. And you could  
8 understand everything that they said, correct?

9 A No, sir. I couldn't.

10 Q Well, the tapes speak for themselves as to whether or  
11 not you responded appropriately, correct?

12 A I think I might have asked them several times to  
13 repeat that, please.

14 Q Well, the jury will have that with them.

15 A I also turned on the speaker phone on my cellphone  
16 because I can't hear with it up to my ear. I  
17 can't -- not only can I not hear, I can't distinguish  
18 between words.

19 Q Mr. Herring, you never put your hearing aids back in,  
20 correct?

21 A No, sir.

22 Q Yet on the phone with 911 and all those conversations  
23 you had, you clearly understood what they said,  
24 correct?

25 A No, sir. Because I believe I said one time that one



1 of the deputies -- I said, you know, I didn't ask you  
2 your age. I did not understand what he was saying.

3 Q So your testimony was when the police officer on the  
4 phone told you -- you asked how long he has been on  
5 the force and he said 11 years and you went out and  
6 talked to Sergeant Linfert right here and asked him  
7 how long have you been on the force and he said 11  
8 years, when you then responded, "I didn't ask your  
9 age; I asked how long you had been on the force",  
10 you're now saying that's just a misunderstanding?

11 A First you said I went out and talked to Sergeant  
12 Linfert. I didn't go out and talk to anybody. I was  
13 afraid.

14 Q When you yelled to him.

15 A Well, we were really hollering back and forth.

16 Q And you could hear him?

17 A I heard some of them. I wanted them to identify  
18 themselves. I knew not why they were there. I had  
19 no idea why they were there. I also could not  
20 believe that it was a law enforcement agency, much  
21 less the Richland County Sheriff's Department.

22 Q Do you remember seeing the officers wear these?

23 A No, sir, I don't.

24 Q Even after you had -- even after you'd been arrested?

25 A I don't remember those. No.

1 Q You don't recall them at all?

2 A I don't what?

3 Q You don't recall them at all?

4 A No, sir.

5 Q You don't remember them telling you that they were  
6 with the Richland County Sheriff's Department and  
7 that they had a search warrant? You don't remember  
8 that?

9 A I remember that somewhere in the 911 and asking what  
10 for and nobody told me anything.

11 Q Until 911?

12 A I said why do you want me?

13 Q To 911?

14 A I'm pretty sure.

15 Q Or was it to Sergeant Linfert?

16 A I don't recall. It was all happening so fast. I  
17 wanted to know why the people that were in my home  
18 had broken in, shot it up, shot me, represented  
19 themselves as being law enforcement and that they had  
20 a search warrant. And I asked why and they would not  
21 tell me.

22 Q But they did tell you, didn't they?

23 A How?

24 Q They did tell you during that conversation, didn't  
25 they? They told you it was for an incident on River

1 Drive, correct?

2 A I think they said they wanted to question me about an  
3 incident on River Drive.

4 Q So they did tell you?

5 A Question me.

6 Q They did tell you why they were there, correct?

7 A That's different than a search warrant to me.

8 Q Mr. Herring, let's go to SLED, when SLED got in  
9 contact with you. Okay? Can we do that?

10 A That morning?

11 Q That morning. Exactly 9:42 a.m. you were read your  
12 rights, correct?

13 A That's what that says. That's what I signed. But  
14 quite honestly, as I've told over and over, I do not  
15 remember signing that. I don't remember being read  
16 those. No. I do recall -- here's what I do recall.  
17 I recall early on asking Mr. Harpootlian as my  
18 attorney to please check to see if they had read me  
19 my Miranda warnings because I did not remember.

20 Q Now, you're telling this jury that you remember what  
21 happened in your house at . . . , yet  
22 you don't remember your rights being read to you  
23 after you'd been to the hospital, after they had  
24 released you and after you had been handcuffed and  
25 taken to Richland County Sheriff's Department, you do

1 not have a recollection of your rights being read to  
2 you?

3 A I do not. No, sir.

4 Q You don't have a recollection of the people saying,  
5 of SLED saying, you have the right to remain silent,  
6 and you initialing it?

7 A No, sir, I don't.

8 Q You don't have recollection of them saying, saying  
9 anything can be used in court as evidence against  
10 you, and you initialing it?

11 A I don't remember it.

12 Q You don't recall, you're entitled to talk to a lawyer  
13 now and to have him present now or at any time during  
14 questioning, and you initialing it?

15 A As I've said, I don't remember that.

16 Q You don't remember on this one, you don't remember  
17 any of these, any of these initials?

18 A No, sir.

19 Q And you don't remember when asked, if you decide to  
20 answer questions now without a lawyer present you  
21 will still have the right to stop answering at any  
22 time, and you initialing that? You don't remember  
23 that?

24 A No. No. I don't remember any of those. That's what  
25 I told you.

- 1 Q Nor do you remember waiving your rights?
- 2 A No, sir.
- 3 Q Nor do you remember signing the waiver of rights?
- 4 A No, sir, I do not. I do not have a memory of that,
- 5 no.
- 6 Q Yet you remember everything, as you say, that
- 7 happened at correct?
- 8 A I don't remember everything. I told you that I have
- 9 had a pretty fair recall. I also was scared. I had
- 10 been threatened. I had had guns pointed at me.
- 11 Q And you recall all that?
- 12 A Well, that's pretty traumatic for a law abiding
- 13 citizen.
- 14 Q Yet as a lawyer you don't remember your rights being
- 15 read to you?
- 16 A I do not. No, sir. I do not.
- 17 Q That's your testimony?
- 18 A I do not. That is my testimony.
- 19 Q We'll move on. Do you remember making this voluntary
- 20 statement?
- 21 A With Lieutenant Lawrence?
- 22 Q Yes, sir.
- 23 A And help me.
- 24 Q LaRosa?
- 25 A Rosa?

1 Q LaRosa.

2 A Yeah. I remember those. I remember some of those.  
3 I mean, I remembered them sitting down and telling me  
4 that they were there to question me about an incident  
5 at my home that was related to a shooting having to  
6 do with the Richland County Sheriff's Department and  
7 that it was a procedure they followed, that SLED had  
8 always -- SLED was always called in when there had  
9 been a shooting, or maybe more particularly a  
10 confrontational shooting, with law enforcement  
11 officers with a citizen and that they just wanted to  
12 get to the bottom of it. And that's it.

13 Q And that would have been right after your rights were  
14 read to you, correct?

15 A I don't know. I don't --

16 Q Do you remember that specifically, what they said to  
17 you, just like you testified to; yet you don't  
18 remember your rights being read?

19 A I do not remember my rights but I certainly remember  
20 what they told me, what they represented to me as  
21 being the truth.

22 Q "Did you consume any alcoholic beverages on Saturday  
23 and Saturday night, January 28th, 2006?" Your answer  
24 was: "I played golf at Palmetto Golf Club in Aiken.  
25 I drank about nine beers." But you're saying that's

1 not true now, correct?

2 A That's correct. That's not true.

3 Q How many beers did you have?

4 A Four or five.

5 Q Four or five. "We got finished playing golf around

6 5:30. We started playing around 1 p.m. We then went

7 to The Bowery, a tavern and grill place in Aiken. I

8 drank about four scotches and soda while there."

9 Correct?

10 A That's what I said, but that's wrong.

11 Q How many scotches did you have?

12 A I would expect I may have had two scotch and sodas.

13 Two.

14 Q So you are mistaken or SLED was mistaken?

15 A I think I was mistaken. I think they probably wrote

16 what I said. Didn't I say two to four?

17 Q No, sir. "Drank about four scotches and soda while

18 there. He took me back to my house. We went in. I

19 had a few more drinks." How many more drinks did you

20 have?

21 A Maybe two.

22 Q "I had two or four scotches" -- two to four scotches

23 and sodas -- "while at my house. Isgett left my

24 house around 8 to 8:30. I was at my house by myself.

25 My family was out of town." That's all true,

1 correct?

2 A That's what I believe to be true. Yes, sir.

3 Q And you have a recall of that, correct?

4 A Mr. Giese, I've read that statement and seen it read  
5 and heard it read in here so much that, as I said,  
6 that is what Lieutenant Lawrence wrote. Yes.

7 Q Mr. Herring.

8 A And he attributed that to me. Yes.

9 Q But you have a recollection of how many drinks you  
10 had that day because you just corrected this  
11 statement, correct?

12 A No, I didn't correct that statement. Because I  
13 just -- I really cannot and never have had nine beers  
14 or drinks in 18 rounds of golf.

15 Q But you have a recollection that that is incorrect on  
16 the statement?

17 A I do.

18 Q Question: "What did you do then?" Answer: "I took  
19 a shower. I laid down and don't remember going out  
20 anywhere." Do you remember making that statement?

21 A Yes, sir. I do.

22 Q And that is incorrect, right?

23 A Well, I thought it was correct at the time.

24 Q That's an untruth, isn't it?

25 A As it turns out, yes. It is now in hindsight.



1 That's like a lot of things.

2 Q "Did you stay at the house the remainder of the  
3 night?" Answer: "I'm pretty sure I did. I thought  
4 about going to Tombo's Grill to get something to eat,  
5 but I don't recall going." Question: "Do you recall  
6 going to Chastity's Nightclub?"

7 "A No, I don't. I know where it is but I don't  
8 recall ever going there."

9 Q Do you remember telling SLED that?

10 A I remember the night that I had -- I didn't recall  
11 going to Chastity's.

12 Q And then they asked you: "Mr. Herring, the Sheriff's  
13 Office has a videotape of you entering Chastity's  
14 Nightclub last night. Does this help your  
15 recollection?" And your answer was: "I remember the  
16 white woman with big tits. I had a scotch and soda  
17 while there. I do recall, but hazy, that I was  
18 there. I could not tell you if the place was full or  
19 crowded or anything." Did you tell SLED that?

20 A I told SLED. Yes. Because I was confused as to the  
21 woman as between Platinum Plus and Chastity's I'm  
22 sure. But, yeah. It was hazy. I didn't recall it.  
23 That's what I told them.

24 Q Question: "Did you have a problem with anybody in  
25 there?" Answer: "I went into one of the back rooms

1 and paid for a lap dance." Correct?

2 A They asked me if I had gone into the back room and  
3 paid for the lap dance. That was the question.

4 Q "There were other people in there. The lap dance was  
5 done by a light-skinned black woman." Your words or  
6 their words?

7 A Quite honestly, I don't recall. But I was obviously  
8 wrong because of the stripper that testified here is  
9 not a light-skinned African-American.

10 Q Mr. Herring, please answer my question. Are those  
11 your words or not? Or theirs?

12 A I really don't know. I think they knew -- I think  
13 that SLED knew all the answers to all the questions  
14 they were asking me. Yes, sir. That's what I  
15 believe.

16 Q So you're saying those were SLED's words and they are  
17 merely setting you up?

18 A That's what I am saying. I was being set up. Yes.

19 Q By SLED?

20 A Right.

21 Q South Carolina Law Enforcement Division is setting  
22 you up. That's your testimony?

23 A Given that they are graduates of the Richland County  
24 Sheriff's Department and that's who they are  
25 investigating and they misrepresented why they were

1 there for me on behalf as a victim; yes, sir.

2 Absolutely.

3 Q SLED has conspired to frame you?

4 A Sir?

5 Q SLED has conspired with the Sheriff's Department to  
6 frame you?

7 A I don't know who conspired with who, but I certainly  
8 don't know that I would want an inside job.

9 Q Then they asked you which car you drive. Toyota  
10 4Runner, blah. "This belongs to me. I was by myself  
11 best I recall. I typically don't go into places like  
12 this because of the people who go there have bad  
13 attitudes." Their words or your words?

14 A Those are my words about bad attitudes and me not  
15 going to places.

16 Q So SLED got that right in your opinion, correct?

17 A That is right.

18 Q Then they asked you how many handguns do you own and  
19 what types and you go over that. And by the way, you  
20 still saying you're a little hazy at this point in  
21 time talking to them?

22 A I am.

23 Q Yet you're able to describe each gun that you have?

24 A That's right.

25 Q Did they know these answers before you gave it to

1           them?

2    A    No. But that's like me describing this black Toyota

3           4Runner. I've had those guns a long, long time.

4    Q    You had enough sense at that moment to be able to

5           recite every gun that you had, correct?

6    A    It's not every one; no, sir.

7    Q    A lot of them?

8    A    It's a fair number, yes. It's a fair representation

9           of what I have. Yes. Absolutely.

10   Q    Then they ask you: "Do you recall firing a weapon

11           from the Toyota as you were leaving Chastity's?"

12           Answer: "No, I don't."

13           "Q    Did you fire a shot at all?

14           "A    If I did I was not shooting at anyone. I'm not

15           saying that I did not do it. If the gun went off

16           within my hand it was harmless error."

17                   Isn't that lawyer talk? Harmless error?

18   A    It's not weird talk to me. No, sir.

19   Q    Lawyer talk: "It was probably the Ruger .357 and it

20           went off. If it went off it was an accident."

21           Correct?

22   A    Accident -- all right, sir -- is a lay person's word,

23           any person's word. It is what it is.

24   Q    And it's your testimony that these are your words and

25           not SLED's?

- 1 A Those are my words.
- 2 Q Unlike this other page, it's not your words, that
- 3 you've already said aren't your words, correct? "Did
- 4 you see anybody when you fired your weapon?" Answer:
- 5 "No. I was not shooting at anybody. There was
- 6 nobody to shoot at." So you distinctly remember
- 7 shooting your weapon or not shooting your weapon?
- 8 A I don't remember shooting my weapon, no.
- 9 Q But it says: "No, I was not shooting at anybody",
- 10 meaning you shot your weapon?
- 11 A No. No. I -- that gun, as I testified earlier, had
- 12 just went off. I didn't shoot at anybody.
- 13 Q It just went off?
- 14 A I would not shoot at anybody.
- 15 "Q "Is there anything else?"
- 16 "A No, not at this time, but do reserve the right
- 17 to edit, add or delete." Those are your words,
- 18 correct?
- 19 A That's my words. Yes, sir. I wrote those.
- 20 Q "Edit, add or delete." Lawyer talk?
- 21 A I think a lot of people would adopt that. You know,
- 22 you can call it lawyer talk if you want. But I just
- 23 thought that I needed to reserve some rights because
- 24 here again I did not know why I was there. I had
- 25 been told nothing. I had not been told I was under

1 arrest.

2 Q Now, --

3 A I don't --

4 Q I'm sorry. You can finish.

5 A I thought I was only there to clear what had gone on  
6 in a shooting occasioned by the Sheriff's Department  
7 breaking into my home and shooting it up.

8 Q Well, now, Mr. Herring, I don't want to belabor the  
9 point, but your testimony is the only reason that you  
10 thought you were there was to clear up the shooting  
11 where you were the victim. Is that your testimony?  
12 Is that your testimony?

13 A That's why I thought I was there, yes.

14 Q Yet you were handcuffed, weren't you?

15 A Yes, sir.

16 Q Do you think that's normal for someone who is just  
17 going to be there to clear up a situation that you  
18 had just been shot?

19 A If this --

20 Q Your lawyer --

21 A At this point I did not know what was normal. I also  
22 considered it highly not normal for someone to come  
23 in my home and shoot it up, to wound me. I was  
24 bleeding. I was hurt. I was in pain. And I had  
25 been taken to the hospital. I had been taken to the

1 Sheriff's Department. I was in a conference room. I  
2 was cold. I was bleeding. And they came in and told  
3 me what I've told you. They were there to clear up a  
4 problem with the Sheriff's Department that happened  
5 at my home.

6 Q And you think being handcuffed is normal in a  
7 situation like that?

8 A I did not say that. I said I did not know what was  
9 normal at this point in time. I mean, everything has  
10 been --

11 Q Now, --

12 A -- basically irrational and not normal.

13 Q -- this conversation or this interrogation that you  
14 had with Chief Wilson, you knew Chief Wilson,  
15 correct?

16 A I've talked with him on the telephone.

17 Q But you knew him, correct?

18 A I knew of him.

19 Q You had worked with him?

20 A I had talked with him about a case I was working on.  
21 So I knew of him.

22 Q Do you remember telling Chief Wilson -- let me make  
23 sure I get it right -- that morning that he asked you  
24 about what you remembered about the incident at  
25 Chastity's? Do you remember him asking you that?

1 A It was in the afternoon.

2 Q Do you remember him asking you that, what you  
3 remember about the incident at Chastity's? Did he  
4 ever ask you that?

5 A I really don't remember.

6 Q Do you remember telling him that you remembered very  
7 little?

8 A Just like I don't remember then, I don't remember  
9 then. Very little.

10 Q Do you remember telling him?

11 A Like I said, I don't remember. I don't remember.

12 Q You don't remember if you told Chief Wilson that or  
13 not?

14 A No, sir.

15 Q Do you remember telling him you stated that you  
16 remembered going there and that you had had a dispute  
17 with the employees? Did you tell him that or not?

18 A He asked me if I remembered going there. And I by  
19 this time with SLED had said, yes, I remember going  
20 there. They had a video of me going there.

21 Q And that you had a dispute with the employees?

22 A I did not tell him that. I did not remember that.  
23 No, sir.

24 Q So that is not true?

25 A Sir?



1 Q So you're saying that is not true?

2 A I'm saying first I didn't tell him that; and,  
3 secondly, I don't remember having a dispute with the  
4 employees, no.

5 Q And then you told him, did you or did you not tell  
6 him that when you fired the gun you weren't shooting  
7 at anybody? Do you remember telling him that?

8 A I think I said if I fired the gun I wasn't shooting  
9 at anyone.

10 Q So now you remember telling him?

11 A Sir?

12 Q So now you do remember telling him that you fired the  
13 gun?

14 A I said if I told him anything, I told him if I fired,  
15 not when I fired or that I fired.

16 Q Mr. Herring, I'm not asking you if you told him. I  
17 am merely asking you did you make the statement he  
18 said, you said that you fired the gun but you weren't  
19 shooting at anybody? Yes or no?

20 A He said/I said?

21 Q Yes. You testified earlier you didn't tell him that.  
22 Do you remember that?

23 A I didn't tell him what. I mean, just repeat. I  
24 mean, I am confused with the he said/I said/they said  
25 type thing. Excuse me. I'm sorry. I'm sorry.

- 1 Q I asked you at the beginning of this cross  
2 examination do you remember telling Chief Wilson that  
3 you had fired a gun at Chastity's and you said no.  
4 Do you remember that?
- 5 A When was that?
- 6 Q Earlier when I was questioning you right at the  
7 beginning.
- 8 A From who? You? Mr. Harpootlian? I mean, I don't  
9 remember. I don't --
- 10 Q Well, we'll let the --
- 11 A Help me clear that up.
- 12 Q We'll let the record reflect whether you said that  
13 Chief Wilson was making that up or not, because I  
14 believe that was your testimony.
- 15 A No. What I said was that whatever Chief Wilson wrote  
16 or typed is his summary of our discussion, which it  
17 was not read to me and I did not have an opportunity  
18 to read it. No, sir. And it's -- no, sir. It was  
19 just, here it is; take it or leave it.
- 20 Q Just a couple more questions. This gun that shot and  
21 killed, the .357 of yours that shot and killed John  
22 Johnson, this gun that was in your car, how did it  
23 get back into your bedroom underneath some clothes?
- 24 A I don't know. I don't remember. I really don't.
- 25 Q But it did, correct?

1 A I do not know where that gun was found. No, sir.  
 2 Q Just a couple more questions. You chose to go to  
 3 Chastity's that night, correct?  
 4 A I made that awful, awful, horrible choice, yes.  
 5 Q You chose to have a lap dance?  
 6 A I don't recall that.  
 7 Q You chose to have a champagne room dance?  
 8 A I do not recall that. I do not remember that. No,  
 9 sir.  
 10 Q You chose to masturbate in the room, in the champagne  
 11 room?  
 12 A No, sir. I do not remember that. No, sir.  
 13 Q You chose to threaten Carl Weeks, Carl Weeks by  
 14 saying, "I will shoot you"?  
 15 A No. No, sir. I do not remember that. No, sir.  
 16 Q And you chose to threaten Jay-Jay, John Johnson, and  
 17 Donnie Hawkins out front? Did you or didn't you?  
 18 A I don't remember. I really don't.  
 19 Q You chose to leave in the car?  
 20 A I chose what?  
 21 Q To leave in the car, in your car, leave Chastity's in  
 22 your car, correct?  
 23 A Apparently that's what the video shows. Yes, sir.  
 24 Q It shows you drive back in?  
 25 A I don't know that it's showed me driving back in. I

1 don't know whether I backed up. I don't know. I  
 2 mean, it shows my car in front.  
 3 Q You chose to pull in front of the door?  
 4 A That's what the video shows.  
 5 Q Chose to point a gun out the window and fire a .357  
 6 bullet into a door that you had just seen close.  
 7 Isn't that correct?  
 8 A That is not correct. No, sir.  
 9 Q But you have no memory, do you?  
 10 A I don't believe that's correct. I would not do that.  
 11 Q And lastly --  
 12 A I'm sorry?  
 13 Q And lastly, to end.  
 14 A Last week?  
 15 Q To end, you chose after the shot was fired to drive  
 16 away as John Johnson lay there dying in his own  
 17 blood, didn't you?  
 18 A I had no idea that anyone had been harmed. I did not  
 19 know anything other than my gun had gone off. And,  
 20 no, sir, I didn't know anything about John Johnson or  
 21 anyone else being hurt. No, sir.  
 22 Q Except that your gun went off?  
 23 A Sir?  
 24 Q Except that your gun went off?  
 25 A I -- I remember that because it frightened me. I

1 mean, it was, you know, if I was in the vehicle with  
2 the -- what do they call it? Gunpowder residue or  
3 whatever, and I was not purposely or intentionally  
4 shooting that gun at anyone. No. No, sir.

5 **MR. GIESE:** No further questions.

6 **MR. HARPOOTLIAN:** No questions.

7 **THE COURT:** All right, sir. You may come down,  
8 sir. Thank you very much. Counsel, let me see you  
9 for scheduling purposes.

10 (Whereupon, a bench conference is had)

11 **THE COURT:** All right, ladies and gentlemen.

12 I'm trying to figure out whether to continue this  
13 evening or wait until tomorrow. I've been advised  
14 that the next witness may be lengthy. Let me do  
15 this. I ask you to go to your jury room. And, Madam  
16 Forelady, will you poll the jury to see if they could  
17 stay for another hour to an hour and a half? If not,  
18 we'll adjourn for the day.

19 If we can, I'm just trying to assure that we'll  
20 finish up this week, which of course I have no  
21 control over that because witnesses sometimes take  
22 longer than anticipated. But would you check with  
23 the jurors and just let me know in a few minutes? Go  
24 ahead and take a break right now. Just poll the  
25 jury. If they wish to retire for the evening, that

1 will be fine. But come back in if you wish to retire  
2 for the evening so I can just give you my final word.

3 (Jury out at 5:25 p.m.)

4 (Whereupon, a break is taken)

5 **THE COURT:** All right. Bring the jury in.

6 (Jury in at 5:30 p.m.)

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

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

9 Ladies and gentlemen of the jury, I understand that  
10 due to family commitments it would be inconvenient to  
11 stay this evening. I respect that.

12 Once again I'll ask you over the evening hours  
13 not to discuss this case with anyone else over the  
14 evening hours or among yourselves when you return to  
15 the jury room in the morning. Please do not again  
16 view any media or press reports of this trial.  
17 Again, I hope you'll respect that.

18 Let me ask you to do one other thing when you  
19 return in the morning. I'm not certain about the  
20 length of the defense's case, the number of  
21 witnesses, that sort of thing. It might be necessary  
22 to stay late tomorrow evening. So if you will, just  
23 poll the jury. I know of one conflict, but I need to  
24 find out if there are any other conflicts that cannot  
25 be resolved during the day by phone calls, by making

1 arrangements for somebody to take care of your  
2 children or to keep your supper warm or something  
3 like that.

4 So if you will just let me know in the morning  
5 if it's an impossibility or would be a great  
6 inconvenience to go late tomorrow. I'm trying to  
7 encourage these lawyers to finish this case up this  
8 week. And that's my purpose. And I am sensitive to  
9 your needs. So I hope you have a pleasant evening.  
10 We'll see you at 9:00 in the morning.

11 (Jury out at 5:32 p.m.)

12 **MR. MEADORS:** Can we approach again?

13 **THE COURT:** Certainly. We'll stand at ease  
14 until 9:00 in the morning. Ms. Court Reporter, you'd  
15 better stay for a minute. I don't know what this is  
16 about.

17 (Whereupon, a bench conference is had)

18 (Whereupon, the proceedings are concluded for  
19 the day, to be reconvened tomorrow morning)

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1                    Thursday, May 17, 2007

2                    **THE COURT:** The State ready to proceed?

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

4                    **THE COURT:** Defense ready to proceed?

5                    **MR. HARPOOTLIAN:** Yes, sir. Can I just talk  
6 about logistics for just a second? The jury is not  
7 in here.

8                    **THE COURT:** Sure.

9                    **MR. HARPOOTLIAN:** We anticipate completing our  
10 case sometime around lunch, just before or just  
11 after. We've pared back witnesses significantly. I  
12 think this jury has about heard enough. Mr. Giese  
13 and I talked. If that happens, we're going to need a  
14 charge conference this afternoon to talk about all  
15 that. So we would then anticipate, I mean, they  
16 probably have some reply I would think. And then we  
17 think that -- so if we finished 3:30, 4:00, we would  
18 break, do the charge conference, come back and argue  
19 at 9 tomorrow morning?

20                    **THE COURT:** Yes, sir. But any rebuttal --

21                    **MR. HARPOOTLIAN:** Sir?

22                    **THE COURT:** Any rebuttal we'll take up  
23 immediately following the defense case if there's  
24 any.

25                    **MR. MEADORS:** We'll need a short break, a short



1 recess just to make sure because we don't even know  
2 who the witness next is. I don't. So ...

3 **THE COURT:** I understand that. It sounds like  
4 a --

5 **MR. HARPOOTLIAN:** We're ready, Your Honor.

6 **MR. MEADORS:** Your Honor, I would request a  
7 short recess between direct and cross on this witness  
8 if you don't mind.

9 **MR. HARPOOTLIAN:** Why?

10 **THE COURT:** Between direct and cross?

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

12 **THE COURT:** On the witness you don't even know  
13 who it is?

14 **MR. MEADORS:** I think it's an expert. And just  
15 out of -- just ask a few minutes.

16 **THE COURT:** We'll see where we are. I'll take  
17 that under advisement. Bring the jury, please.

18 (Jury in at 9:10 a.m.)

19 **THE BAILIFF:** The jury is all present, Your  
20 Honor.

21 **THE COURT:** Thank you. Good morning, ladies and  
22 gentlemen. We're ready to continue with the trial.  
23 Mr. Harpootlian, call your next --

24 **MR. HARPOOTLIAN:** May it please the Court, Your  
25 Honor. Dr. John Holbrook.

1 DR. JOHN M. HOLBROOK, after being duly sworn,  
2 testifies as follows:

3 THE CLERK: Please have a seat. State your full  
4 name for the record.

5 THE WITNESS: My name is John Marshal Holbrook.

6 DIRECT EXAMINATION

7 BY MR. HARPOOTLIAN

8 Q One second, Dr. Holbrook. Dr. Holbrook, let's talk a  
9 little bit about your background, a little bit of  
10 biography on you. As we say here, where are you from  
11 originally?

12 A I am originally from Mableton, Georgia. Mableton,  
13 Georgia.

14 Q Okay. And did you graduate from high school in  
15 Mableton, Georgia?

16 A Yes, I did.

17 Q And after graduating from high school, where did you  
18 go to school?

19 A I attended Berry College in Rome, Georgia, for three  
20 years and completed a pre-pharmacy curriculum. I  
21 attended Mercy University School of Pharmacy in  
22 Atlanta, Georgia, and received a B.S. degree in  
23 pharmacy. And I attended the University of  
24 Mississippi in Oxford, Mississippi, from 1969 to 1974  
25 and received a Ph.D degree in pharmacology.

1 Q Pharmacology. A Ph.D in pharmacology. Tell the  
2 jury, please, what pharmacology is?

3 A Pharmacology is the science which studies the methods  
4 and the means by which drugs produce their effects on  
5 the living organism.

6 Q Okay. And after receiving your Ph.D, what did you  
7 do?

8 A I was on the faculty of Mercer University in Atlanta,  
9 Georgia, from 1974 to 2005.

10 Q And did you participate in any studies or research  
11 during your educational process concerning, when I  
12 say drugs, that's a pretty broad category. How about  
13 let them know a little bit about your background in  
14 terms of studies and research you have done?

15 A As a graduate student, my area of expertise became  
16 drugs of abuse. I studied the effects of marijuana  
17 in humans and animals. I studied the effects of  
18 cocaine in humans and animals. And I also studied  
19 some experimental drugs, primarily in animals.

20 During my tenure at Mercer University as a  
21 professor, I was director of research for a period of  
22 time. And during that period of years I studied  
23 drugs, primarily in animals, but also some studies  
24 involved humans. One of the major studies that I  
25 completed involved a drug called Ativan for use in

1 the treatment of alcohol toxicity and detoxification.

2 Q Okay. Were you also a co-director of the  
3 postgraduate residency in alcoholism and substance  
4 abuse at Fulton County Alcohol Treatment Center from  
5 1980 to '82?

6 A Yes.

7 Q And director of the Center for Substance Abuse  
8 Education and Research 1994 to 2005?

9 A That's correct.

10 Q Were you also an adjunct professor for the Department  
11 of Cardiopulmonary Sciences at Georgia State  
12 University in Atlanta?

13 A Yes, sir.

14 Q From '76 to '91?

15 A Yes, sir.

16 Q Adjunct faculty at the School of Nurse  
17 Anesthesiologists at Georgia Baptist Medical Center  
18 in Atlanta?

19 A Yes, sir.

20 Q Lectured in toxicology department and chemistry,  
21 Georgia State University, Atlanta, Georgia?

22 A Yes, sir.

23 Q Adjunct faculty, University College of Mercer, '93 to  
24 '94?

25 A Yes.

1 Q Now, the pharmacology courses you taught at Mercer?

2 A Yes. I did.

3 Q And other places?

4 A That's correct.

5 Q And the courses that you've taught included drugs  
6 affecting the central nervous system?

7 A Yes, sir.

8 Q Drugs affecting the autonomic nervous system. Now,  
9 what's the difference between the central nervous  
10 system and the autonomic nervous system?

11 A The central nervous system is the brain and spinal  
12 cord. The autonomic nervous system is the nerves  
13 that lie outside of the brain and the spinal cord,  
14 those nerves that control respiration, blood  
15 pressure, and so forth.

16 Q Okay. And you also taught many pharmacology courses;  
17 that is, just about the general principles of drugs  
18 and the reaction in the human body?

19 A Yes. General principles was a graduate course.

20 Q And you have been -- I've got a vitae here. You have  
21 written a number of articles and books on drugs,  
22 their affect on the human organism?

23 A I've only written one book. But the rest of them  
24 were articles and chapters for books.

25 Q Okay. You've written -- any objection to just

1 putting that vitae into --

2 MR. MEADORS: Yes, sir, I do have an objection.  
3 Has he offered him yet in anything?

4 MR. HARPOOTLIAN: Well, I will in a minute.

5 MR. MEADORS: I have an objection to that going  
6 into evidence. I've never seen it before. I've  
7 never seen it before go into evidence. You can just  
8 ask him about it.

9 MR. HARPOOTLIAN: I'm just trying to save a  
10 little time here, Your Honor.

11 Q You have publications. Let me just go through them.  
12 Well, first of all, you received a commendation from  
13 the Navy and Marine Corps for service in alcohol and  
14 drug abuse education?

15 A Yes, sir.

16 Q You have published books of "The Nervous System" in  
17 Substance Abuse: Pharmacologic, Developmental and  
18 Clinical Perspectives, John Wiley and Sons, 1991  
19 second edition?

20 A Yes.

21 Q CNS stimulants. Now, what is that?

22 A Central nervous system stimulants: Cocaine,  
23 methamphetamine, drugs that stimulate respiration.

24 Q And that was a chapter in a book published in 1991  
25 second edition?

1 A Yes.

2 Q "The Hallucinogens" in a book published, again the  
3 same book. Was that a chapter?

4 A Yes.

5 Q In Bennett, G., C. Vourakis and D. Woolf, Substance  
6 Abuse: Pharmacological, Developmental and Clinical  
7 Perspectives, 1983, second edition, 1991. Is that  
8 right?

9 A That's correct.

10 Q Also in Respiratory Therapy Pharmacology. Is that a  
11 book?

12 A Yes. It's a text.

13 Q You wrote a chapter called "Central Nervous System  
14 Depressions and Respiratory Stimulants"?

15 A That's correct.

16 Q And that was published in 1989?

17 A That's correct.

18 Q You have written again I believe a chapter in  
19 Substance Abuse: Pharmacological, Developmental and  
20 Clinical Perspectives called "Drug Screening"?

21 A Yes.

22 Q That was published originally in '83, and that's  
23 again second edition, '91?

24 A That's correct.

25 Q You wrote an article in Clinical Pharmacy and

1       Therapeutics called "General Nutrition". I believe  
2       you wrote that with a guy, a person named D. N.  
3       McCarter?  
4       A     That's correct.  
5       Q     And that was in 1992. You've written a number of  
6       articles about vitamins and minerals?  
7       A     That's correct.  
8       Q     You have also had a number of publications and  
9       articles on various subjects such as corticosteroids  
10      and antibiotics?  
11      A     Yes.  
12      Q     Octane Derivatives as Conformational Analogs of Local  
13      Anesthesia?  
14      A     Anesthetics, yes.  
15      Q     Anesthetics. I'm sorry.  
16      A     That's all right.  
17      Q     Did you write that?  
18      A     Yes, I did.  
19      Q     How about Hair Follicle neogenesis from Dissociated  
20      Newborn Mouse Skin Cells Injected into the Nude  
21      Mouse? Did you write that?  
22      A     I did. Actually I co-authored that.  
23      Q     Fascinating.  
24      A     I had a grant from a company called Bosley who does  
25      hair replacements to develop a process for cloning a



1 hair follicle.

2 Q Okay. And you have one called Aminergic Influences  
3 on Cocaine-Induced Activity and the Interaction  
4 Between Cocaine and Intracranial Stimulation in the  
5 Rat, 1974. Is that your dissertation?

6 A That's my dissertation. Yes.

7 Q I have three pages here. Let me see if -- Doctor,  
8 did you have an opportunity in the early seventies to  
9 study or be around a study of the impact of LSD on  
10 people, an area where you've had an opportunity to  
11 watch that?

12 A Yeah. I was observer. I was at the University of  
13 California in San Francisco Medical School for a  
14 summer study in molecular pharmacology. And one of  
15 the places that we observed was at Haute Ashbury  
16 Clinic.

17 Q Now, the Haute Ashbury Clinic was full of people that  
18 had taken various different drugs?

19 A That's correct. It was a treatment facility.

20 Q Okay. Now, as part of your course of study, your  
21 knowledge, do you have any knowledge in the area  
22 of -- and I'm going to call them generally date rape  
23 drugs. I'm going to call them that. Is there  
24 another technical name for them?

25 A That's the general term. The government calls them

1 drug assisted assault drugs.

2 Q Okay. And have you had any -- participated in or  
3 read or had any association with either reading,  
4 studying or developing any expertise in those kinds  
5 of drugs?

6 A I have not done any actual clinical studies with the  
7 date rape drugs. However, I did a clinical study  
8 involving Ativan which is in the same category as one  
9 of the date rape drugs.

10 Q And tell me what the -- when you say one of the  
11 category of a date rape drug, what is a category of a  
12 date rape drug? Is there a -- I mean, a stimulant  
13 for instance would be an amphetamine or caffeine.  
14 Right?

15 A Correct.

16 Q Okay. What is a date rape drug?

17 A Date rape drugs are in the category that we call them  
18 generally central nervous system depressants.  
19 They're called that because they decrease in a dose  
20 related manner the activity of the central nervous  
21 system.

22 Q Okay. And you have done studies of those and read on  
23 those and --

24 A Well, yes. Because of my position as a faculty  
25 member, as a professor in pharmacology and teaching

1 in the area of drugs of abuse, I have kept up with  
2 the literature since they became available in the  
3 1980's.

4 Q And literature has been generated since the 1980's.  
5 Give me the names of a couple of these so-called date  
6 rape drugs.

7 A One is called Rohypnol.

8 Q Rohypnol?

9 A Rohypnol. On the street they call them "roofies".  
10 Another is Xanax which is called Xanax on the street.  
11 Another is gamahydroxyalbuterate which is often  
12 called GHB.

13 Q And that's just a few of them. There are many, many  
14 of them?

15 A Theoretically, any central nervous system depressant  
16 could be used as a date rape drug. The reason that  
17 Rohypnol and gamahydroxyalbuterate and Xanax have  
18 received so much attention is because they cause  
19 amnesia to occur.

20 Q And you hold yourself out as someone having  
21 expertise; that is, someone who has the ability to  
22 give opinions about the characteristics of these  
23 drugs, the effect they have on the human organism.  
24 Is that correct?

25 A That's correct.

1           **MR. HARPOOTLIAN:** Your Honor, I'd offer Dr.  
2 Holbrook as an expert in the area of the effects of,  
3 the appearance of, the impact of date rape drugs. I  
4 believe he's met all the criteria under Council and  
5 its progeny.

6           **THE COURT:** Any Voir Dire?

7           **MR. MEADORS:** Yes, sir. What are you offering  
8 him again as specifically? Would you state that  
9 again?

10           **MR. HARPOOTLIAN:** As an expert in the area of  
11 the pharmacology of, for lack of a better word, the  
12 symptoms of, the impact of this class of drugs called  
13 date rape drugs; in the generic term, central nervous  
14 system depressants.

15           **THE COURT:** All right.

16           **MR. HARPOOTLIAN:** I mean, that's pretty broad.  
17 I don't know if I could make it any broader. But  
18 that's it.

19                           VOIR DIRE EXAMINATION

20           **BY MR. MEADORS**

21           **Q**   How many times have you been so qualified in that?

22           **A**   The general area of pharmacology, probably a hundred  
23 times.

24           **Q**   And what he just specified to, pharmacology and  
25 symptoms of the nervous system. How many times have

1           you been qualified in a court of record on that  
2           specifically?  
3    A    With depressants specifically?  
4    Q    Yes, sir.  
5    A    Maybe 25 times or so.  
6    Q    How many times in this state?  
7    A    Never in this state.  
8    Q    Never in this state. And you said that's a  
9           depressant?  
10   A    Depressant, yes.  
11   Q    And you have not been involved in any clinical  
12           studies involving a date rape, done any clinical  
13           studies?  
14   A    No. But I have been involved in a study that  
15           involved Ativan which is in the same category as one  
16           of the date rape drugs.  
17   Q    But no studies on the date rape?  
18   A    No, sir.  
19   Q    And what's he qualifying you again? Would you tell  
20           me?  
21   A    In the pharmacology of these drugs.  
22   Q    Of what drugs?  
23   A    Date rape drugs, nervous system depressants.  
24   Q    And you've testified in courts of record specifically  
25           about date rape drugs before?

- 1 A No, I haven't.
- 2 Q That was my question. You've never testified about
- 3 date rape drugs in a court of record ever?
- 4 A No.
- 5 Q And your research, isn't it primarily with animals?
- 6 He listed a couple of things there. But doesn't it
- 7 deal primarily with animals?
- 8 A Yes. Most of the time it has.
- 9 Q The large majority of the time, correct?
- 10 A Yes.
- 11 Q Like what percentage? 100?
- 12 A No. I was involved in a major study funded by the
- 13 Department of Transportation in which we studied the
- 14 effects of central nervous system depressants on
- 15 driving behavior.
- 16 Q That didn't involve date rape drugs though, did it?
- 17 A It involved drugs that are similar to the date rape
- 18 drugs..
- 19 Q But did it not involve Rohypnol or any date rape drug
- 20 whatsoever, did it?
- 21 A No.
- 22 Q Beg the Court's indulgence. You can't write
- 23 prescriptions, can you?
- 24 A No.
- 25 Q You're not a medical doctor?

- 1 A No, I'm not. I'm a Ph.D in pharmacology.
- 2 Q You're not a toxicologist?
- 3 A No.
- 4 Q Not a clinician?
- 5 A No.
- 6 Q And you're pretty much an academian in the research
- 7 into the effects of chemicals on animals, correct?
- 8 A Animals and humans, yes.
- 9 Q Do you have any experience with -- well, when does --
- 10 I think Mr. Harpootlian asked you this. This usually
- 11 comes up in what context? Date rape drugs?
- 12 A I'm sorry?
- 13 Q Sexual assaults? Is that usually what it's involved
- 14 in?
- 15 A Yes.
- 16 Q Have you ever testified in any case involving that in
- 17 a court of record?
- 18 A No. But I have reviewed two cases.
- 19 Q You have reviewed two cases?
- 20 A Yes.
- 21 Q When?
- 22 A Within the last ten years.
- 23 Q Does that mean you read about them?
- 24 A That's when I was asked to review witnesses'
- 25 statements, victims' statements.

1 Q And no experience or no testimony that you've ever  
2 provided involving involuntary toxication in a court  
3 of record, correct?

4 A That's correct.

5 Q Never?

6 A Not that I know of. Not that I remember.

7 Q Have you ever treated any patients?

8 A No.

9 MR. MEADORS: Your Honor, we would object to him  
10 being qualified. He has no experience, no  
11 background. He's dealt with animals. He's never  
12 testified about the effects of this drug. He's got  
13 no experience, with all due respect. We'd object to  
14 him being found as an expert.

15 MR. HARPOOTLIAN: May it please the Court, Your  
16 Honor. Citing the case of Kolon vs. State, a Georgia  
17 case, Southeastern case, "Pharmacologists are  
18 qualified to testify as to the effects of GHB on  
19 criminal capacity." It's what the highest court of  
20 the state of Georgia said.

21 Also, in our City of North Charleston vs.  
22 Claxton: "An expert is qualified if the sufficiency  
23 of the foundation for his opinion on values  
24 ordinarily is a question of weight for the jury, not  
25 a basis for excluding."



1           **MR. MEADORS:** Your Honor, this is the state of  
2 South Carolina. And, number one, criminal capacity  
3 is not an issue in this case.

4           **MR. HARPOOTLIAN:** Oh, it is.

5           **MR. MEADORS:** No, sir.

6           **MR. HARPOOTLIAN:** Oh, it is.

7           **THE COURT:** All right. I find him qualified.

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

9           **MR. MEADORS:** As what, Your Honor, respectfully?

10           **THE COURT:** As stated by counsel for the  
11 defense.

12                           **DIRECT EXAMINATION**

13 **BY MR. HARPOOTLIAN**

14 **Q**   Now, Dr. Holbrook, you've been qualified as an expert  
15 to testify about the effects of date rape drugs.

16       We've heard from the solicitor a minute ago that you  
17 had not conducted clinical tests of date rape drugs.  
18 Clinical tests, would that require you giving these  
19 drugs to somebody and watching the effects?

20 **A**   Yes, it would.

21 **Q**   Can you do that?

22 **A**   No, sir.

23 **Q**   Why not?

24 **A**   It would be inappropriate, probably unethical.

25 **Q**   Perhaps illegal?

1 A Perhaps illegal.

2 Q Now, central nervous system depressants, that's what  
3 we're talking about here, right?

4 A That's correct.

5 Q And central nervous system depressants, you mentioned  
6 you did a study of Ativan. And let's talk about GHB  
7 and Rohypnol a little bit in a minute. But central  
8 nervous system depressants do what to the body?

9 A They work specifically in the brain. Their desired  
10 effect is to reduce functioning of the brain in a  
11 dose dependent manner. For instance, we use central  
12 nervous depressants as sedatives, something like  
13 phenobarbital or a small dose of Valium, sedative,  
14 anti anxiety effect. We use larger doses of these  
15 same drugs to cause sleep. We call those hypnotic  
16 doses. And then we use even larger doses in surgery  
17 to cause a state of anesthesia for procedures to be  
18 performed.

19 Q Okay. And let's talk a little bit about GHB,  
20 Rohypnol and that class of drugs. I think you  
21 indicated earlier that they have the added effect of  
22 amnesia?

23 MR. MEADORS: Your Honor, I'm going to object to  
24 any leading questions.

25 THE COURT: Yes, sir.

1           **MR. HARPOOTLIAN:** I'm just restating what he  
2 testified to before.

3           **THE COURT:** Sir, just ask him questions.

4   **Q**   What, if any, effect regarding amnesia do these drugs  
5 have?

6   **A**   Some central nervous system drugs have no effects  
7 that we would term amnesia. Some central nervous  
8 system depressants produce some alteration in the  
9 ability to store memory. Some drugs appear to have a  
10 more unique ability to cause a state of amnesia that  
11 occurs at a point when the drug begins to take  
12 effect, and that amnesic action will last until the  
13 drug effect wears off.

14   **Q**   Now, what do you mean by amnesia? What is amnesia?

15   **A**   Amnesia is a loss of memory. With these drugs we use  
16 the term anterograde amnesia which means inability to  
17 store memory or to form memory during the time that  
18 the drug is having its effect.

19   **Q**   Have there been clinical studies on this?

20   **A**   Yes, there have.

21   **Q**   And well documented?

22   **A**   Extremely well documented.

23   **Q**   And so, in the class of drugs; we obviously said date  
24 rape drugs, are there specific drugs that have this  
25 amnesia effect?

1 A Yes. The drugs that are in the chemical category of  
2 Benzodiazepines, that includes Valium, Librium,  
3 Xanax, Rohypnol, Clonopin and similar drugs; these  
4 drugs all have the ability to some extent to cause  
5 amnesia.

6 Q What, if any -- as to GHB and Rohypnol; what, if any,  
7 difference do they have than these other drugs that  
8 you just talked about?

9 A In their ability to produce amnesia, they don't seem  
10 to have any significant difference.

11 Q Now, you've indicated to Mr. Meadors you had had some  
12 previous readings, experience, studies on, was it GHB  
13 or Rohypnol?

14 A GHB.

15 Q Tell the jury, please, what the effect of GHB or  
16 Rohypnol, what you would expect to see in someone who  
17 had ingested GHB or Rohypnol?

18 A Similar to any other central nervous depressant, the  
19 initial effects of the drugs is one of euphoria and  
20 what we call behavioral disinhibition; that is, a  
21 reduction in normal inhibitions. You may see the  
22 person who is normally very quiet becoming loud and  
23 boisterous; the person who is normally loud sitting  
24 in the corner crying, that kind of thing.

25 As we increase the dose we see dizziness,

1 sometimes nausea and vomiting, sedation. Then the  
2 higher dose, you see a loss of consciousness. If the  
3 dose is sufficiently high, then you see the person  
4 with respiratory depression and death. That's very,  
5 very rare with Rohypnol. It's an extremely safe  
6 drug. It's more likely to occur with  
7 gammahydroxyalbuterate, more likely to occur with both  
8 if they're mixed with alcohol.

9 Q And why if they're induced or if they're mixed with  
10 alcohol? What happens?

11 A Possibly two things. First of all, Rohypnol and  
12 alcohol work at the same place in the brain, with  
13 alcohol having the ability to cause death and  
14 Rohypnol usually not having the ability to cause  
15 death.

16 Secondly, is purely physiologic. If you drink a  
17 very strong drink by itself, it will often change the  
18 size of blood vessels in the stomach and slow down  
19 its own absorption. If you drink a drink that is  
20 much less potent, like if you put a drug into a beer,  
21 then you get faster absorption because of the  
22 increased fluid volume and because it's less  
23 irritating to the gastrointestinal tract.

24 Q And if ingested with alcohol, the effects of Rohypnol  
25 or -- I'm going to call it GHB because I can't

1 pronounce the long name -- or a drug like that --

2 MR. MEADORS: Objection. Is he referring to GHB  
3 or Rohypnol? Because there is a difference.

4 Q I'm sorry. I said Rohypnol or GHB. And there is a  
5 difference. Right? The difference between Rohypnol  
6 and GHB are two different drugs?

7 A Yes, sir.

8 Q They are both date rape drugs?

9 A Yes, sir.

10 Q If they're induced with alcohol in a sufficient  
11 quantity; what, if any, effect do they have on this  
12 amnesia issue you talked about earlier?

13 A Alcohol usually does not produce true amnesia. But  
14 you would have an increase in depression of the  
15 central nervous system.

16 Q But if you had GHB or Rohypnol in the alcohol as you  
17 drink it; what, if any, effect would it have on  
18 amnesia?

19 A On amnesia, it would -- could increase it.

20 Q Okay. And what is the dosage that would begin to  
21 bring about this amnesia? How much would you have to  
22 have in a drink?

23 A It's totally dependent on the individual and their  
24 previous experience with drugs and alcohol. A few  
25 milligrams of a drug like Rohypnol or Ativan or Xanax

1 will produce the state of amnesia.

2 Q Okay. Now, a few milligrams. I'm not quite sure I

3 understand what a few milligrams are. How about --

4 and I don't cook very well. But a teaspoon, do you

5 know what a teaspoon is?

6 A Yes.

7 Q Is it more or less than a teaspoon?

8 A Much, much, much less than a teaspoon of Rohypnol.

9 Q A few drops?

10 A A few drops. It's a powder. It is a powder, not a

11 liquid.

12 Q Oh, it is a powder?

13 A Rohypnol is a powder.

14 Q Okay. And what color is it?

15 A It's white, dissolves clear, odorless, pretty much

16 tasteless.

17 Q That is Rohypnol?

18 A Right.

19 Q What about GHB?

20 A Same.

21 Q Powder? White?

22 A Powder that can be dissolved in a liquid.

23 Q Odorless, tasteless, clear?

24 A Pretty much tasteless, especially if you put it an

25 alcoholic drink or a colored drink or something like

1 that.

2 Q Now, Doctor, I'm going to ask you for an opinion and  
3 then I'm going to ask you what you based it on.  
4 Okay?

5 A Yes.

6 Q Do you have an opinion as to whether or not Dewain  
7 Herring ingested a date rape drug, GHB, Rohypnol --  
8 we'll talk about specifics in just a minute -- on the  
9 evening of January 29th, 2006? Do you have an  
10 opinion?

11 A Yes, I do.

12 Q And what is that opinion?

13 A My opinion is that more likely than not he did ingest  
14 a drug at that time.

15 Q More likely than not with a degree of scientific  
16 certainty that he did ingest a drug that night?

17 MR. MEADORS: Your Honor, objection. He didn't  
18 say that last part.

19 MR. HARPOOTLIAN: I'm just trying to --

20 MR. MEADORS: No, sir. It's got to come from  
21 the stand.

22 MR. HARPOOTLIAN: Let me ask a question.

23 THE COURT: I sustain the objection.

24 MR. HARPOOTLIAN: Okay.

25 Q Do a degree of medical certainty more probably than



1 not, did he ingest --

2 **MR. MEADORS:** Your Honor, objection to leading.  
3 That's not what he said.

4 **THE COURT:** That's overruled. Go ahead.

5 **Q** Did he ingest a date rape drug on the evening of  
6 January 29th, 2006?

7 **A** In my opinion he did ingest a date rape drug or  
8 something similar.

9 **Q** Okay. Now, let's talk about what you relied on to  
10 reach that opinion. Okay?

11 **A** Yes, sir.

12 **Q** Did you view any videotape?

13 **A** Yes.

14 **Q** Where did you view that videotape?

15 **A** Your office.

16 **Q** And I think you were sitting in the courtroom?

17 **A** The courtroom. Yes, sir.

18 **Q** The courtroom. And did you see it in here yesterday?

19 **A** Yes.

20 **Q** The same videotape?

21 **A** Yes.

22 **Q** Did you hear Mr. Herring testify yesterday?

23 **A** Yes, I did.

24 **Q** Have you spoken to anybody else about date rape drugs  
25 and Chastity's?

1 A Yes, I have.

2 Q Who did you speak to?

3 A I spoke to two women who were employed at Chastity's,  
4 a Ms. Cummings --

5 Q I'd ask you not to refer to their full names. If it  
6 please the Court?

7 MR. MEADORS: Your Honor, and I don't think he's  
8 going into what they said, just the basic --

9 MR. HARPOOTLIAN: Oh, he is going to go into  
10 what they said.

11 MR. MEADORS: No, sir. That's objectionable.  
12 He can base it on it, but he can't repeat it.

13 MR. HARPOOTLIAN: I'm sorry.

14 MR. MEADORS: May we approach?

15 THE COURT: Is there an objection on the floor?

16 MR. HARPOOTLIAN: I don't hear an objection.

17 MR. MEADORS: Objection. Hearsay.

18 Inadmissible.

19 (Whereupon, a bench conference is had)

20 Q As a result of talking to these two women -- I don't  
21 want you to relate what they said --

22 MR. MEADORS: Your Honor, for the record, could  
23 we get their names or an indication of who they were,  
24 even if it's an abbreviation?

25 MR. HARPOOTLIAN: When they testify I will give

1           you their names and their dates of birth and Social  
2           Security numbers.

3    Q       I believe their names were -- I'm sorry --  
4           Ms. Cummings and Ms. McClendon. Is that correct?

5    A       That's correct.

6    Q       You saw them this morning, did you not?

7    A       I did.

8    Q       They were sitting in my office, right?

9    A       That's correct.

10   Q       Ready to come here and testify, right?

11   A       That's correct.

12   Q       Now, as a result of talking to them -- not what they  
13           said -- what did you get that helps you in forming an  
14           opinion? Not what they said.

15   A       That date rape drug type drugs were available at  
16           Chastity's.

17           **MR. MEADORS:** Objection.

18           **THE COURT:** Sustained.

19           **MR. HARPOOTLIAN:** Well, it's the basis of his  
20           opinion, Your Honor.

21           **THE COURT:** That is based on hearsay. It's  
22           based on hearsay.

23           **MR. MEADORS:** Your Honor, this is why I think  
24           we, respectfully, want to handle this outside the  
25           presence of the jury.

1           **THE COURT:** All right. Ladies and gentlemen, I  
2 have a legal matter I need to take up with the  
3 attorneys.

4           **MR. HARPOOTLIAN:** Your Honor, you've sustained  
5 that objection. I'm not going to go into anything  
6 further with it.

7           **THE COURT:** No, sir. I'm going to strike it  
8 from the record.

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

10          **THE COURT:** All right. Ladies and gentlemen,  
11 that last comment, it's my ruling that that should  
12 not be in this record. Just ignore it. We'll move  
13 on. Strike it from the record.

14    **Q** All right. Now, you looked at the video. You saw  
15 him testify. You spoke to some people. What other  
16 information did you have that you used to base your  
17 opinion on?

18    **A** His behavior.

19    **Q** His behavior?

20    **A** And the symptoms that I have heard.

21    **Q** Is that based on what you saw in the courtroom  
22 yesterday?

23    **A** Yes.

24    **Q** Have you read his statements?

25    **A** Yes, I have.

1 Q The ones given to SLED on the morning of --

2 MR. MEADORS: Your Honor, objection. Leading.

3 Q Okay. You see State's Exhibit Nos. 81, 82 and 83.  
4 Is this a blowup of something you've seen before or  
5 heard about?

6 A Yes.

7 MR. MEADORS: Your Honor, if the question was  
8 seen before or heard about, I'd like to know which.

9 Q Have you seen them before?

10 A Yes.

11 Q Did you hear about them in the courtroom yesterday?

12 A Yes.

13 Q Thank you. I show you State's Exhibit Nos. 78, 79  
14 and 80. Have you seen this document before?

15 A Yes, I have.

16 Q Did you hear about it in the courtroom yesterday?

17 A Yes, I did.

18 Q Have you had an opportunity to listen to the 911 tape  
19 that's been referred to in the courtroom?

20 A Yes, I have.

21 Q And did you have an opportunity to -- you've already  
22 said the video. I apologize. Beg the Court's  
23 indulgence. Now, let's walk through the effects of  
24 these drugs and how you reached your opinion. Okay?  
25 What is it about what you've learned about Mr.

1 Herring's condition that leads you to the conclusion  
2 he was under the influence of one of these drugs?  
3 A First of all, his behavior at the time of this  
4 incident was totally out of character, just  
5 absolutely different than his normal behavior as I  
6 have understood it. Secondly, he showed a period of  
7 behavioral disinhibition in which he went into the  
8 place and took his clothes off. Third, he had no  
9 memory after a certain period of time of the events  
10 of that evening.

11 Q Can we see the video camera 4 as he walks out with  
12 Mr. Johnson? Thank you. I want you to look at this  
13 video. But let them set it up. Okay? May the  
14 doctor step down, Your Honor?

15 THE COURT: Yes, sir.

16 Q Can you see it from over there?

17 A I can see it from over here.

18 Q You're going to have to speak up so these jurors can  
19 hear you.

20 A I can see it from over here.

21 Q Go ahead and play it, please. Stop it for one  
22 second, please. Do you know who this gentleman is  
23 right here?

24 A Yes, I do.

25 Q Who is that?

- 1 A That's Mr. Herring.
- 2 Q That's the gentleman seated right over here?
- 3 A That's correct.
- 4 Q Do you know who this is?
- 5 A I assume that's the gentleman who was shot.
- 6 Q Okay. Go ahead. Keep rolling. Now, stop it one
- 7 second. You've testified that this gentleman, Mr.
- 8 Herring, is under the influence of a drug, correct?
- 9 A Yes.
- 10 Q Does he appear to be staggering to you in any way?
- 11 A No, he doesn't.
- 12 Q Go ahead and continue to run it. Do you see him
- 13 getting in his car there? Do you see him walking
- 14 over to his car?
- 15 A No, I didn't. I couldn't see that.
- 16 Q Okay. Get to the point where he comes back. Speed
- 17 it up a little. What's he doing now?
- 18 MR. MEADORS: Objection.
- 19 Q That you observe?
- 20 MR. MEADORS: I'm sorry. I'll withdraw that. I
- 21 apologize.
- 22 A He is speaking to the two gentlemen.
- 23 Q You've seen this before?
- 24 A Yes.
- 25 Q Speed it up so you can see him going back to his car.

1           Okay. And then he goes back to his car. Go ahead  
2           and take the witness stand again, please. And just  
3           leave that on for just a minute. Okay? Now, Doctor,  
4           is this conduct you see here, that you saw in this  
5           videotape, consistent or inconsistent with having  
6           been given a so-called date rape drug, Rohypnol, GHB,  
7           one of those?

8    A       It could be consistent.

9    Q       He's having a conversation here?

10   A       Yes.

11   Q       Would he or would he not have any memory of that  
12           whatsoever?

13   A       If he were sufficiently under the influence, he might  
14           not have any memory of that whatsoever.

15   Q       Influence of ...?

16   A       Under the influence of a drug.

17   Q       Like ...?

18   A       The date rape drugs, any central nervous depressant  
19           in the right dose.

20   Q       Now, you understand that he after this drove home?

21   A       Yes.

22   Q       Could be as far as eight, nine miles?

23   A       Yes.

24   Q       Through a gate to a house, in a garage, goes in,  
25           carries his gun in, goes in, goes to bed, dresses,



1 takes his hearing aids out, takes his glasses off and  
2 goes to bed?

3 A Yes.

4 Q And has no memory of that whatsoever?

5 A That's correct. I understand that that's what  
6 happened, yes.

7 Q Consistent or inconsistent with having ingested a  
8 quantity of one of these drugs?

9 A Well, it's not inconsistent. In fact, you can ask  
10 almost anybody about their trip home last night or  
11 yesterday and they can't tell you a thing about it  
12 because they're on something of an automatic pilot.  
13 They don't store any memory of those kind of things  
14 but they can do them by rote because they drive on a  
15 regular basis or something like that. In addition,  
16 these drugs are notorious for producing what's called  
17 automatism which is --

18 Q I'm sorry. Automatism?

19 A Automatism.

20 Q What is that?

21 A It's kind of like an automatic pilot at which you  
22 function at an almost subconscious level and have no  
23 memory of.

24 Q Now, we keep calling them date rape drugs. Why is  
25 that?

- 1 A Because they lower inhibitions, produce a  
2 disinhibiting effect, decrease a person's ability to  
3 not do those things that they would not normally do,  
4 and because they produce amnesia. Which for a person  
5 who wants to a commit a crime, it's a real advantage  
6 because the victim doesn't remember.
- 7 Q And what is that crime they're committing?
- 8 A It could be rape. It could be anything along that  
9 line.
- 10 Q So typically ingested by women and then taken  
11 advantage of by men?
- 12 A Yes.
- 13 Q And they have no recollection of it having happened?
- 14 A That's correct.
- 15 Q Now, does the drug always induce complete amnesia, or  
16 can there be some variation on that?
- 17 A There can be variation. It would be dose dependent  
18 as well as dependent on the person's previous history  
19 with that drug or similar drugs.
- 20 Q You heard Mr. Herring's testimony yesterday?
- 21 A Yes.
- 22 Q You remember him testifying about a gun going off?
- 23 A Yes.
- 24 Q Would it be consistent or inconsistent with him to  
25 have that memory but no other memory?

- 1 A I think it would be consistent to have a very, very  
2 sharp memory stick out where other more common  
3 memories did not.
- 4 Q What, if any, history of medications that Mr. Herring  
5 is taking was given to you? Did he give you a list  
6 of the medications he is taking?
- 7 A Yes, he did.
- 8 Q Did that factor in any way in your opinion? Do those  
9 affect your opinion in any way?
- 10 A Not with this particular incident because he'd been  
11 taking those drugs for a number of years for his  
12 medical disorder and also because he was -- he used  
13 alcohol frequently, consumed alcohol frequently.
- 14 Q He used alcohol frequently?
- 15 A As I understand it, yes.
- 16 Q Now, go forward when the car drives by. It's 12:06.  
17 Now, you've seen this where the car drives by up  
18 front?
- 19 A Yes.
- 20 Q Could Mr. Herring operate a motor vehicle while under  
21 the influence of one of these drugs?
- 22 A Yes. People operate motor vehicles while under the  
23 influence of drugs every day.
- 24 Q What about this kind of drug?
- 25 A Yes. This is not an unusual kind of drug.

1 Q Now, when you say it reduces inhibitions so that I  
2 think you've indicated someone who would not normally  
3 have sex would have sex with somebody?

4 A Yes.

5 Q That they wouldn't without this drug have any  
6 interest in doing whatsoever. Is that right?

7 A I can't go that far. But, yes. It lowers  
8 inhibitions.

9 Q Lowers inhibitions. What, if any, effect does it  
10 have on the person's ability to distinguish between  
11 right and wrong?

12 A These drugs characteristically during their  
13 disinhibiting or lower dose effects reduce what we  
14 call executive functioning; that is, the ability to  
15 think, to reason, to make rational decisions; those  
16 types of functions.

17 Q Would it affect their ability to distinguish between  
18 right and wrong?

19 A Yes.

20 Q Now, what is the duration or half life or whatever  
21 you call it? How long would the effects of this drug  
22 last?

23 A Duration and half life are two totally different  
24 things.

25 Q I'm sorry.

1 A Duration of action?

2 Q Yes. How long would it have this effect on him?

3 A For Rohypnol, the literature says from two to eight  
4 hours. Again, the gamma hydroxyalbuterate is very  
5 dose dependent; perhaps four hours.

6 Q Now, you read the reports in this case. Are you  
7 aware that the Sheriff's Department came into his  
8 house about 4:30 the next morning?

9 A Yes.

10 Q And you listened to the 911 tape. When asked  
11 something about River Drive, I believe he said I  
12 haven't been out of the house all night or I've never  
13 been to River Drive. Is that consistent or  
14 inconsistent with the effects of this drug?

15 A Consistent.

16 Q And then he is shot in a pretty traumatic event,  
17 taken to the hospital and then brought back and  
18 questioned by the South Carolina Law Enforcement --

19 MR. MEADORS: Objection.

20 THE COURT: Sustained.

21 Q Do you know what happened to him after he was shot?

22 A Yes.

23 Q What happened to him?

24 A He was taken to the hospital, to an emergency room  
25 for treatment.

1 Q And after he was released from the emergency room,  
2 where was he taken?  
3 A To the jail I assume.  
4 Q What, if any, of these statements I've showed you, do  
5 you know approximately -- let me show them to you  
6 again. Okay. Have you seen this advice of rights  
7 form before?  
8 A Yes. I saw it yesterday.  
9 Q Okay. And did anybody begin to talk to him at  
10 9:42 a.m. on this form?  
11 A According to that form, yes.  
12 Q Now, you heard Mr. Herring's testimony yesterday,  
13 that he doesn't remember signing this form?  
14 A Yes.  
15 Q He's admitted to signing it but he doesn't remember  
16 signing it. Is that consistent or inconsistent with  
17 what has occurred to him? The drugs?  
18 A That's quite a long period of time for the drugs to  
19 have had an effect. That would be over 12 hours.  
20 Q Okay. Now, when he's called upon --  
21 A Over 14 hours.  
22 Q -- to recollect for these statements about what  
23 happened the night before; you've read the  
24 statements. Are they consistent with the effects of  
25 the drug?

- 1 A Yes.
- 2 Q Would someone who'd been given this drug, would they
- 3 be more open or less open to suggestion about what
- 4 happened?
- 5 A I don't know.
- 6 Q Beg the Court's indulgence just a moment. Well, a
- 7 couple of other questions. You're being paid for
- 8 your testimony?
- 9 A Yes, sir.
- 10 Q Have you ever testified for a prosecution case?
- 11 A Yes.
- 12 Q On how many occasions?
- 13 A The last two times I've testified have been for the
- 14 prosecution. I'm not sure exactly how many I've
- 15 testified.
- 16 Q So before this you were testifying for prosecutors?
- 17 A Yes.
- 18 Q And did they pay you?
- 19 A One did. One didn't.
- 20 Q So you do the prosecution for free?
- 21 A Sir?
- 22 Q You've done the prosecution for free?
- 23 A Yes. A lot of the small counties in Georgia don't
- 24 have money to pay for witnesses.
- 25 Q And you have charged Mr. Herring how much?

1 A \$400 per hour.

2 Q How much?

3 A \$400 per hour.

4 Q Okay. Beg the Court's indulgence for just a moment.

5 You've indicated something about dose dependency. Is  
6 that correct?

7 A Yes.

8 Q What do you mean by dose dependency?

9 A Dose dependency is simply the effects are dependent  
10 on the amount of drug that is administered or that's  
11 ingested. So a small dose may have one effect, as  
12 with the depressants I've mentioned. A small dose  
13 may produce sedation. A moderate dose may produce  
14 sleep. A high dose might produce an anesthetic  
15 state.

16 Q Okay. If the doses are being given in a bar -- when  
17 you as a pharmacist create doses, do you have an  
18 instrument you use for that? When you measure  
19 something out, do you have instruments you use for  
20 that?

21 A A scale. Yes.

22 Q A scale? For powder, it would be a scale?

23 A Yes.

24 Q Any evidence you read about anybody using a scale to  
25 create the dose in this case?



1 A No.

2 Q Now, you had indicated a moment ago that Mr. Herring  
3 went to a hospital at I think sometime early the next  
4 morning. Would a blood test have been helpful to you  
5 and this jury to determine the presence of one of  
6 these drugs --

7 MR. MEADORS: Your Honor, I'm going to object to  
8 him saying and pointing to that jury. He can ask him  
9 if it's his opinion that -- that is improper.

10 THE COURT: Ask your question.

11 Q Would it be important to know -- would it have been  
12 important to have a blood test the next morning?  
13 Could it have indicated the presence of such a drug?

14 A Yes.

15 Q And the opinions you've given here today are to a  
16 degree of scientific certainty more probably than  
17 not?

18 A That's correct.

19 Q Thank you. Please answer Mr. Meadors' questions.

20 MR. MEADORS: Your Honor, we'd ask for a short  
21 break. And we have a matter we'd like to bring  
22 before the Court.

23 THE COURT: All right. Ladies and gentlemen, I  
24 ask you to go to your jury room for a few minutes  
25 while I take this matter up with the attorneys. And

1 don't discuss the case among yourselves while you're  
2 in the jury room. Have a cup of coffee. We'll be  
3 with you in just a minute.

4 (Jury out at 10:03 a.m.)

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

6 **MR. GIESE:** Your Honor, before we take this  
7 break, it's the State's position that this Ph.D's  
8 testimony should be struck from the record. I  
9 believe that Mr. Harpootlian asked him on direct  
10 examination what effect it would have on someone's  
11 sanity, specifically knowing the difference between  
12 right and wrong.

13 Mr. Harpootlian on numerous occasions has told  
14 this Court and told these lawyers on this side of the  
15 courtroom insanity is not an issue in this case, nor  
16 after we served him with reciprocal rule for  
17 discovery and specifically asked him about sanity  
18 being an issue or criminal capacity being an issue,  
19 Mr. Harpootlian stated that it was not.

20 Now we find out on the however many days of  
21 trial this is that he has asked an expert who, by the  
22 way, is not qualified in the area of sanity, that  
23 question. I believe all his testimony, especially  
24 about whether or not it would inhibit his decision  
25 making processes, on what was right and what is wrong

1 be struck.

2 **THE COURT:** Mr. Harpootlian.

3 **MR. HARPOOTLIAN:** Your Honor, we're not raising  
4 insanity. We're not raising mental capacity. What  
5 we're raising is involuntary intoxication. And this  
6 is not insanity. The standard that's been adopted  
7 and charged by Judge Pieper is not knowing right from  
8 wrong. But it's not an insanity defense.

9 No one is going to testify he is insane or was  
10 insane. No one is going to testify that he lacked  
11 capacity. What they're going to testify to, what  
12 they've testified to is that he because of the  
13 involuntary ingestion of a drug -- and, Your Honor,  
14 we've done great study on this.

15 The majority of cases have determined the  
16 defenses of insanity and involuntary intoxication are  
17 separate and distinct. Supported by most  
18 commentators, criminal law commentators, the defense  
19 of intoxication is quite different from the defense  
20 of insanity.

21 "It stands that the voluntary intoxication is a  
22 separate defense from insanity, as shared by states,  
23 the statutorily defined defense and those that  
24 recognize under it under their common law."

25 For example, in Georgia, a statutory state

1 provides for the defenses of insanity and involuntary  
2 intoxication by two statutes, Georgia Code 16-3-4  
3 defining involuntary intoxication, and Georgia  
4 statute 16-3-2 defining insanity.

5 "Even where the defenses have not been  
6 statutorily defined as separate and distinct, courts  
7 have recognized they're not the same defense.  
8 Commonwealth vs. Collins, 810 Atlantic 2d 698, 2002,  
9 recognized common law defense of involuntary  
10 intoxication in states where insanity is defined by  
11 statute."

12 South Carolina has already determined that  
13 voluntary intoxication of an accused is not  
14 tantamount to insanity. State vs. Ballou.

15 **THE COURT:** Similar.

16 **MR. HARPOOTLIAN:** Sir?

17 **THE COURT:** Similar.

18 **MR. HARPOOTLIAN:** Sir?

19 **THE COURT:** Similar. It's similar.

20 **MR. HARPOOTLIAN:** Similar? Okay.

21 **THE COURT:** Go forward.

22 **MR. HARPOOTLIAN:** "Upholding trial court's  
23 refusal to charge insanity upon evidence that the  
24 accused was drunk during the commission, there is no  
25 reason to think our Supreme Court would now reverse

1 course and I find that involuntary intoxication is  
2 analogous to insanity."

3 In State vs. Pittman tried by Mr. Giese over  
4 here, the defendant produced evidence of both  
5 insanity and involuntary intoxication due to  
6 prescription medication. The trial judge, The  
7 Honorable Daniel F. Pieper, recognized that these are  
8 separate and distinct offenses, charging the jury on  
9 both the law of insanity and the law of involuntary  
10 intoxication. We have his charge with us.

11 But he said to them, "Now, I know it may sound a  
12 little confusing trying to understand the concepts of  
13 insanity and involuntary intoxication, so I'm going  
14 to try to paraphrase these two concepts and perhaps  
15 common lingo just to help you distinguish between the  
16 two.

17 "The overwhelming majority of states that have  
18 addressed the issue have determined that the accused  
19 is not required to disclose the defense of  
20 involuntary intoxication prior to trial."

21 The Georgia Uniform Superior Court in Rule 31.5  
22 requiring notice of intention of defense to raise the  
23 issue of insanity, mental illness or mental  
24 retardation, but containing no such requirement for  
25 involuntary intoxication.

1           People vs. Garcia, 113 Pacific 2d, 77, 2005:  
2           "No special pleading requirement exists for the  
3           affirmative defense of an involuntary intoxication."

4           Commonwealth vs. Collins which I mentioned  
5           before, 2002: "The Pennsylvania Rules of Criminal  
6           Procedure do not require the defendant to disclose  
7           intention to assert the defense of involuntary  
8           intoxication until trial."

9           South Carolina's Rule 5, Your Honor, like the  
10          rules considered in the preceding paragraph require a  
11          defendant specially plead a defense of alibi or  
12          insanity. No mention is made of the defenses based  
13          upon intoxication. Rule 5, South Carolina Rules of  
14          Criminal Procedure.

15          To find that Rule 5 requires disclosure of a  
16          defense of involuntary intoxication would rewrite the  
17          rule in a way that would prejudice Mr. Herring's  
18          right to present a defense and would unfairly benefit  
19          the State.

20          Furthermore, other state courts have held that  
21          the Rules of Criminal Procedure would prejudice the  
22          accused and benefit -- where a liberal construction  
23          of the rules would prejudice the rules and would  
24          benefit the prosecution. Daffin vs. State, 885,  
25          Southwestern 3d, Arkansas, 1994. State v. Flannigan,

1 890 Atlanta 2d, 123, 2006.

2 There is absolutely no basis in the law for  
3 requiring an accused to disclose prior to trial that  
4 he intends to present a defense of involuntary  
5 intoxication and no acceptable rationale to  
6 judicially rewrite Rule 5.

7 So what this witness has testified to is that  
8 Mr. Herring because of his involuntary ingestion of  
9 drugs became involuntary intoxicated and that because  
10 of that he could not distinguish between right and  
11 wrong. That is not an insanity defense. Every state  
12 we've looked at, every court we've looked at  
13 distinguishes between the two. And the only case in  
14 South Carolina which Mr. Giese tried, Pittman,  
15 distinguished between the two. Actually Mr. Meadors  
16 did that with him. I'm sorry. Distinguishes between  
17 the two. So there is no law, I don't believe the  
18 solicitor can cite a single case, a single statute, a  
19 single rule that supports their position.

20 **MR. MEADORS:** Your Honor -- are you through?

21 **THE COURT:** Let him finish.

22 **MR. MEADORS:** I think he --

23 **MR. HARPOOTLIAN:** I'm through.

24 **MR. MEADORS:** If it pleases the Court. I can  
25 cite you trial transcripts from The State vs. Chris

1 Pittman which we did try together in Charleston, Your  
2 Honor. And the difference in that case and this  
3 case, we had a forensic psychiatrist who had  
4 interviewed Chris Pittman from the State and the  
5 defense, interviewed him, reviewed the records, and  
6 after interviewing Chris Pittman took the stand under  
7 oath and gave their opinion to a reasonable degree of  
8 medical certainty that he knew the difference between  
9 right and wrong or he didn't know the difference  
10 between right and wrong. That's how you get it into  
11 evidence and that's how a jury is allowed to hear it.

12 No offense, Doctor. What's your name, last  
13 name?

14 **WITNESS:** Holbrook.

15 **MR. MEADORS:** No offense to Dr. Holbrook. He  
16 treats animals. He is not a medical doctor. He is  
17 not a psychiatrist. He can't come in here and give  
18 us an opinion about whether or not Dewain Herring  
19 knew the difference between right and wrong. No  
20 disrespect. He's not qualified to.

21 They're trying to get it in the back door  
22 because they don't have a psychiatrist who can come  
23 in and testify to that. And that's how you have to  
24 get it as evidence in front of a jury, Your Honor.

25 **MR. HARPOOTLIAN:** Your Honor, a psychiatrist



1 would see him today and say, well, you know, today he  
2 can tell right from wrong. The only way to determine  
3 whether he'd know right from wrong is for a  
4 pharmacologist to testify that the clinical symptoms  
5 of taking the drugs are they obliterate your ability  
6 to distinguish between right and wrong. I hand up to  
7 the Court a copy of the charge Judge Pieper gave.

8 **THE COURT:** I have it.

9 **MR. HARPOOTLIAN:** Okay. In which he says --

10 **THE COURT:** He doesn't say much.

11 **MR. HARPOOTLIAN:** He doesn't say much, but he  
12 does say they're two different things.

13 **MR. MEADORS:** The issue was did he know the  
14 difference between right and wrong.

15 **THE COURT:** One at a time.

16 **MR. HARPOOTLIAN:** They are two different things.  
17 "In your consideration of insanity and involuntary  
18 intoxication". He says, "However, the defendant must  
19 raise the issue of insanity by a preponderance of the  
20 evidence, and that simply means the greater weight.  
21 Now, as to involuntary intoxication, generally  
22 voluntary intoxication is not a defense under the  
23 law. However, when a person becomes involuntarily  
24 intoxicated by prescription medication, then you may  
25 consider such evidence in determining whether the

1 person was capable of having criminal intent and also  
2 as to whether the person had a temporarily  
3 drug-induced incapacity to understand right from  
4 wrong, as that aspect of the insanity was described  
5 to you. Involuntary intoxication, just as in the  
6 same sense of insanity, is an affirmative defense."

7 They're two different things.

8 **MR. MEADORS:** Your Honor, that case's charge was  
9 not guilty by reason of insanity, guilty but mentally  
10 ill, not guilty, not guilty of involuntary  
11 intoxication. So the defense had asserted and had  
12 stated in that case that they were. It was a mental  
13 defense. They were going to seek not guilty by  
14 reason of -- a GBMI defense. They served us with  
15 that. That's the difference I think we're objecting  
16 to. We got served with nothing here.

17 **MR. HARPOOTLIAN:** "Involuntary intoxication,  
18 just as in the same sense that insanity, is an  
19 affirmative defense. However, inasmuch as the  
20 required mental state is an element of the crime, as  
21 I previously explained to you, the state must also  
22 prove beyond a reasonable doubt the mens re of the  
23 offense, here malice aforethought. You may consider  
24 all the facts and circumstances of this case in your  
25 determination of whether the State has met their

1       burden."

2               And then he goes on. He says, "As I have  
3       indicated, if the State has failed to prove malice  
4       aforethought beyond a reasonable doubt, you must find  
5       the defendant not guilty since intent is the element  
6       of the offense."

7               And then he goes through the requirements of  
8       involuntary intoxication. "And, third, as a result  
9       of the involuntary intoxication by the prescribed  
10      medication, the defendant lacked the capacity to  
11      distinguish moral or legal right from moral or legal  
12      wrong. In other words, the defendant lacked capacity  
13      to know right from wrong."

14              So, Your Honor, he defines insanity. He defines  
15      involuntary intoxication.

16              **MR. MEADORS:** And he is not qualified.

17              **MR. HARPOOTLIAN:** Well, he is qualified to  
18      testify that one who ingests this drug cannot know  
19      legal or moral right from wrong. And that's what  
20      he's testified to. And he's a pharmacologist. I  
21      mean, if I asked him if you look this drug, would it  
22      make you unconscious? Yes. If you took this other  
23      drug, would it -- LSD, would --

24              **THE COURT:** I've already ruled on his competence  
25      to testify as a pharmacologist.

1           **MR. MEADORS:** I think a forensic psychiatrist  
2 needs to be here to get in what he wants.

3           **MR. HARPOOTLIAN:** And, Your Honor, we  
4 respectfully submit it goes to the weight, not to the  
5 admissibility. If they want to whack him on it and  
6 challenge him on it and cross examine him on it and  
7 humiliate him in front of the jury, that's fine. But  
8 this is the law as it exists right now in the state  
9 of South Carolina. The Supreme hasn't decided. But  
10 it is consistent with the law of every other state in  
11 the country.

12           **THE COURT:** Well, I might agree with you. It  
13 does bother me that the State has no notice -- of  
14 course there is always rebuttal -- that the State had  
15 no notice of the defense. Now, the defense  
16 technically is not an insanity defense.

17           **MR. HARPOOTLIAN:** Correct.

18           **THE COURT:** It is similar to an insanity defense  
19 according to authors in this state.

20           **MR. HARPOOTLIAN:** Well, if they wanted to say  
21 insanity or insanity-like defense in the criminal  
22 rules, they could have done that. But they didn't  
23 say that. And those rules have to be strictly  
24 construed against the State in any criminal case and  
25 afforded the defendant.

1           And we have played by the rules, just as the  
2           State has played by the rules. And, Your Honor, to  
3           deny this defendant the defense which every other  
4           state in the country recognizes as a separate defense  
5           and not disclosable under the criminal rules I submit  
6           would be at this late date tantamount to denying him  
7           a fair trial.

8           And the State can have reply. They can have  
9           reply this afternoon. If they need 'til morning;  
10          good golly, we waited a day to get a witness here  
11          from Texas, I've got no problem with arguing and  
12          charging them on Saturday.

13          **MR. MEADORS:** Your Honor, I don't think -- and  
14          again, I don't think even think he knows what the  
15          standards are for insanity in this state right now.  
16          So how could he testify to what moral right or moral  
17          wrong is? He doesn't know.

18          **THE COURT:** He's never used the word "insanity".

19          **MR. MEADORS:** He did.

20          **MR. HARPOOTLIAN:** I did not.

21          **MR. MEADORS:** He's arguing that.

22          **MR. HARPOOTLIAN:** I'm sorry. I never used the  
23          word "insanity".

24          **THE COURT:** The witness never used the word  
25          "insanity".

1           **MR. MEADORS:** Your Honor, if he's asking him the  
2 difference between right and wrong, that is our  
3 standard that we use, Judge.

4           **THE COURT:** I know McNaughton. However,  
5 involuntary intoxication is recognized in this state  
6 as a defense. You know that.

7           **MR. MEADORS:** Yes, sir. I've experienced it  
8 with coming through forensic psychiatrists.

9           **THE COURT:** I don't know that a forensic  
10 psychiatrist is necessary to state or to testify  
11 about involuntary intoxication. It would seem to me  
12 that anyone versed in the field of forensic  
13 pharmacology, shall we call it, would be able to  
14 testify. Go ahead.

15           **MR. MEADORS:** I'm just saying I don't know what  
16 experience he has, whether animals do right or wrong,  
17 based on his experience how he can say that.

18           **THE COURT:** Well, you can ask him that. All  
19 right. Let's take a -- I'm going to re-read -- I  
20 have Judge Pieper's charge. I'm going to re-read it.  
21 I'll let you know.

22           **MR. MEADORS:** Can we have a few minutes?

23           **THE COURT:** I'm going to take it under  
24 consideration. The witness can come down. Sir, just  
25 don't talk with anybody.

1 (Whereupon, a break is taken)

2 MR. MEADORS: Beg the Court's indulgence one  
3 second. Beg the Court's indulgence one second.

4 THE COURT: All right. As to the motion to  
5 strike, Solicitor, you made a motion to strike this  
6 witness's testimony. Is that correct?

7 MR. GIESE: Yes, sir.

8 THE COURT: All right. I've considered this  
9 matter, and particularly in light of the Pittman case  
10 as pointed out by counsel. And it goes without  
11 saying there is very little -- there are just --  
12 there are no South Carolina cases on point. The  
13 Pittman case is a case that's still under  
14 consideration by the South Carolina Supreme Court.

15 And in that case both the State and the defense  
16 were well aware of the fact that Pittman was raising  
17 not only a mental illness defense but also an  
18 involuntary intoxication by prescription medication  
19 defense. Different from this.

20 And the Court did instruct on both. And the  
21 jury in that case considered numerous or various  
22 types of verdicts, including guilty but mentally ill.  
23 There was a variety of options given to the jury in  
24 that case. But there was plenty of -- there was  
25 certainly notice to the State that the defendant

1 planned to use that defense.

2 Now, as to involuntary intoxication, there is  
3 precedent in the United States for the defense of  
4 involuntary intoxication. I have reason to  
5 believe -- I mean, it's my opinion that our Supreme  
6 Court will recognize the defense of involuntary  
7 intoxication. So the question then becomes: Should  
8 this witness's testimony be stricken due to the  
9 surprise that has been presented to the State?

10 Under Rule 5, if there is an insanity defense or  
11 a plea of guilty but mentally ill, that needs to be  
12 disclosed to the State prior to the presentation of  
13 that defense. "If the defendant fails to comply with  
14 the requirements of this section, the court may  
15 exclude the testimony of any expert witness offered  
16 by the defendant on the issue of insanity."

17 The defendant takes the position that this is  
18 not a plea of insanity or a plea of guilty but  
19 mentally ill and that it's well within the defense's  
20 prerogative to offer a defense that the State may not  
21 know about prior to trial.

22 I think the terminology of the statute or the  
23 rule allows the Court to allow the testimony or  
24 exclude the testimony. It's discretionary. I feel  
25 that if I agree to allow the testimony, that the



1 State because of the surprise issue should be allowed  
2 the opportunity, if they wish to do so, to prepare a  
3 rebuttal which may take time. And I will so offer  
4 the State that opportunity.

5 But at this point in the trial, we've come this  
6 far, I think that I'm going to allow the testimony.  
7 And I assume the State wants to cross examine this  
8 witness. And we'll go forward from there.

9 Now, is there anything else before we bring the  
10 jury?

11 MR. MEADORS: No, sir.

12 MR. HARPOOTLIAN: Yes, sir. During this  
13 witness's testimony I attempted to elicit his  
14 conversations with two women who had worked at  
15 Chastity's and who will testify that they had been  
16 drugged at Chastity's. And he diagnosed them or  
17 examined them and determined they had in fact had  
18 been given date rape drugs.

19 Your Honor would not allow me to go into that.  
20 Under rule 703 that I've handed Your Honor, we looked  
21 at the break, Collins vs. ABT, a case we believe is  
22 appropriate because this would be something this  
23 expert would use in reaching normal -- or any expert  
24 would use -- normally in reaching conclusions he  
25 reached about Mr. Herring.

1 Hearsay is admissible under 703. Specifically  
2 in that case our court found that it was admissible  
3 because he used it in forming his opinion.

4 If Your Honor would not allow it in, I'd like to  
5 make a proffer at this point as to what he would say.  
6 It should take five minutes at the most as to what he  
7 would say so that the record is clear that if at some  
8 later point Your Honor does not allow -- well, first  
9 of all, he is going to talk about his conclusions  
10 concerning what they said and how that affected his  
11 diagnosis or conclusion as to Mr. Herring. So might  
12 I do that? Would Your Honor allow me to go into that  
13 before the jury, or will you allow me to make a  
14 proffer?

15 MR. MEADORS: Can I ask one thing. The last  
16 part; he is going to make a diagnosis?

17 MR. HARPOOTLIAN: Not a diagnosis.

18 MR. MEADORS: I thought you said that.

19 THE COURT: I understand you're asking that this  
20 witness be able to testify as to what these other  
21 people told him and that's it, and the conclusions he  
22 is drawing from that?

23 MR. HARPOOTLIAN: Yes, sir.

24 THE COURT: Well, what's the State's position?

25 MR. MEADORS: Your Honor, I think he can say

1 under the rules I've reviewed so-and-so, so-and-so  
2 and so-and-so, list a bunch things. Now, do you have  
3 opinion? Yes, I do. Like that. You can't right  
4 after you say something talk to them and then get the  
5 answer out, which is what he's doing.

6 MR. HARPOOTLIAN: I don't understand what he's  
7 saying.

8 MR. MEADORS: Oh, of course you do. You can't  
9 get it out the back door through his question here.  
10 He can say, I've based my opinion on talking to all  
11 these people. Then he can give an opinion.  
12 Otherwise, he's saying basically what they say to  
13 him. That's hearsay. You can use hearsay to base an  
14 opinion, but the words, the hearsay can't come in.

15 THE COURT: Mr. Meadors, the question is, is  
16 that a type of testimony reasonably relied on by  
17 experts in this field?

18 MR. MEADORS: No question. It's not, sir.

19 THE COURT: Well, that's my feeling. I mean, I  
20 think that's the part of the rule that applies.

21 MR. HARPOOTLIAN: May I proffer?

22 THE COURT: Yes, sir.

23 IN CAMERA EXAMINATION

24 BY MR. HARPOOTLIAN

25 Q Doctor, you talked to two women who had worked at

1 Chastity's?

2 A Yes.

3 Q In determining and making your assessment as to what  
4 happened to Mr. Herring, or in the normal course of  
5 attempting to determine what happened to somebody,  
6 would it be important to you to have the information  
7 or information similar to what these women related to  
8 you?

9 A Yes.

10 Q Why?

11 A The information they gave me was related to the  
12 effects that they experienced when drugs were  
13 administered to them at Chastity's.

14 Q And how is that important? How does that relate to  
15 Mr. Herring?

16 A It relates in that drugs were available at  
17 Chastity's.

18 Q That this drug would have been there at Chastity's?

19 A Could have been there, yes.

20 Q Right. And is that something in the normal course of  
21 reaching your opinion that is important to you?

22 A Yes.

23 Q And is it something you would routinely look for and  
24 try to determine in forming an opinion such as this?

25 A I'm sure it would be.

1 Q You're sure it would be.

2 IN CAMERA EXAMINATION

3 BY MR. MEADORS

4 Q Something that could be available at Chastity's?

5 A Yes.

6 Q And would you use this hearsay --

7 THE COURT: Solicitor, I'm not going to allow  
8 it.

9 MR. HARPOOTLIAN: Sir?

10 THE COURT: I say I'm not going to allow it  
11 under 703 or any exception to the hearsay rule. In  
12 effect, it's almost double hearsay.

13 MR. HARPOOTLIAN: In what way, Your Honor?

14 THE COURT: That's my ruling.

15 MR. HARPOOTLIAN: Your Honor, may I for the  
16 record state; in effect, if he was determining  
17 whether or not there was some sort of salmonella  
18 poisoning, Your Honor's ruling would not allow him to  
19 talk to people that eat in the same restaurant, find  
20 out from them what they said happened to them, find  
21 out from them if they got sick, find out from them  
22 what their symptoms were and then use that as a basis  
23 to determine whether or not somebody else complains  
24 about getting sick and getting salmonella were valid?  
25 And that's all he's doing here. That's 703 on the

1 money.

2 **THE COURT:** Well, you couch it in terms of a  
3 scientific study. This does not --

4 **MR. HARPOOTLIAN:** No, no, no.

5 **THE COURT:** -- reach that level of credibility  
6 in my opinion.

7 **MR. HARPOOTLIAN:** Well, Your Honor, what's  
8 important about that is we're going to attempt to  
9 have these women testify they were drugged.

10 **THE COURT:** Well, I haven't prevented that.

11 **MR. HARPOOTLIAN:** All right. Well, if Your  
12 Honor is -- you've heard what they would say. If  
13 Your Honor at this point is -- of course he's  
14 indicated that he has determined they also were  
15 drugged.

16 **THE COURT:** That's my ruling. Inadmissible.

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

18 **THE COURT:** You ready for the jury?

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

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

21 (Jury in at 11:42 a.m.)

22 **THE BAILIFF:** The jury is all present, Your  
23 Honor.

24 **THE COURT:** All right. Thank you very much.  
25 Well, sorry for the delay, ladies and gentlemen. But

1 I think we've got it worked out now. Solicitor, you  
2 may cross examine.

3 MR. MEADORS: If it pleases Your Honor.

4 CROSS EXAMINATION

5 BY MR. MEADORS

6 Q Hey, Doctor. Just a couple of -- to start off with,  
7 Rohypnol, GHB, date rape drugs; they are a sedative,  
8 correct?

9 A Yes, sir.

10 Q And does it kind of go without saying that makes you  
11 drowsy? Isn't that what a sedative does?

12 A Yes. It's a dose dependent effect.

13 Q But, I mean, it makes you drowsy. That's what it's  
14 designed for. Drowsy? Sedated? Right? Sedative?

15 A In general, yes.

16 Q Okay. And if you combine that with alcohol, that  
17 would make you even more sedated, even more drowsy.  
18 Isn't that pretty much common sense?

19 A Yes. As a general rule.

20 Q And in addition to that, doesn't it go right along  
21 those lines, it would make you less aggressive?

22 A No.

23 Q It doesn't?

24 A No.

25 Q Make you drowsy, sleepy; but not less aggressive?

1 A No. Not necessarily. It's dose dependent again.

2 Q And there is no documented case history out there  
3 where it's caused somebody to do a violent act  
4 whatsoever, is there? None?

5 A Are you -- I'm not understanding that.

6 Q What did you not understand?

7 A You said there's no history?

8 Q No documented case out there --

9 MR. HARPOOTLIAN: Your Honor, could he push the  
10 microphone a little bit closer to Dr. Holbrook? I  
11 can't hear him. I apologize.

12 THE COURT: Pull up your chair.

13 Q Is there?

14 A Oh, there are many, many cases documented of  
15 sedatives causing aggressive behavior, very commonly  
16 with alcohol.

17 Q You can't cite but one now, can you?

18 A No. But I'm sure that there are many criminal cases  
19 that involve aggression related to alcohol.

20 Q Doctor, your two cases you reviewed, what type of  
21 cases were those?

22 A GHB.

23 Q And involving the facts, what kind of facts cases  
24 were those?

25 A What kind of facts cases?



1 Q The facts. Yeah. I mean, what --

2 A I read the incident report written by the victims.

3 Q I understand that. What was the case concerning?

4 A Date rape.

5 Q Okay. Both of them?

6 A Yes.

7 Q And that's primarily what we've heard about this  
8 Rohypnol drug, is date rape?

9 A That's correct.

10 Q And they're given to a female primarily, I presume.  
11 And they pretty much just lose control and then  
12 they're taken advantage of, correct?

13 A That's correct.

14 Q In both those cases you read, too, generally  
15 involuntary intoxication in those cases, there wasn't  
16 a motive in any of those, correct? For the girls?

17 A Correct.

18 Q And that's pretty much the only time -- if  
19 involuntary intoxication defenses are the times it's  
20 raised, actually there's never been a case where  
21 there is the individual involved that has a motive  
22 that you're aware of, is there?

23 A Not the victim, no.

24 Q Never. And that would kind of be consistent with the  
25 involuntary intoxication, wouldn't it?

1 A Of the victim?

2 Q Yes, sir.

3 A Yes.

4 Q And let's tell these ladies and gentlemen why.

5 Because if you took or were given enough of the

6 dosage to make you involuntarily intoxicated to the

7 amount you're talking about where you couldn't

8 remember, you really, really wouldn't be able to

9 reason and function, could you?

10 A It depends on the individual and the dose.

11 Q So actually you'd be kind of in a robotic state,  
12 wouldn't you?

13 A Somewhat, yes.

14 Q Somewhat?

15 A But functional.

16 Q That's right. But you couldn't reason, could you?

17 You shouldn't be able to reason. It's like the date  
18 rape; you're just kind of out of it?

19 A These drugs decrease the ability to think and reason  
20 and make rational decisions.

21 Q Think and reason, make rational decisions. Shouldn't  
22 be able to get mad about anything, could you?

23 A Yes. Actually you could if you're irrational.

24 Q If you'd paid for something, didn't get something  
25 that you thought you were getting for it and you got

1 mad about it, that would be reasoning, wouldn't it?

2 You were getting mad about a specific thing?

3 A Getting angry would be reasonable. Yes.

4 Q And if you did that and you had a reason for doing  
5 that, that would mean you understood you had a reason  
6 for getting mad about it, right? You understand  
7 there was a reason. You were done wrong?

8 A Yes.

9 Q And that would be inconsistent with involuntary  
10 intoxication, wouldn't it?

11 A Not necessarily. If you're intoxicated because  
12 someone did it to you, not because you wanted it to  
13 be.

14 Q That's not my question. If you're involuntary  
15 intoxicated, you should not be able to reason. You  
16 shouldn't be able to act. You'd be kind of robotic,  
17 right?

18 A Kind of. Yes. Yes, sir.

19 Q And you really shouldn't be able to get mad about  
20 something if you felt you were done wrong, correct?  
21 To understand all that. You'd just be kind of out of  
22 it, wouldn't you?

23 A No, not necessarily. There is a period of  
24 disinhibition that's common to all the depressants.  
25 And during that disinhibition, a person who is mild

- 1           mannered may become very angry and act out.
- 2   Q       But if something happened, you knew you felt cheated,
- 3           you reacted to it, that means your mind is thinking
- 4           and you understood that situation?
- 5   A       Yeah. But it may be very irrational thinking.
- 6   Q       When did that happen in this case?
- 7   A       When the bouncer told Mr. Herring to leave.
- 8   Q       And why did he tell him to leave?
- 9   A       Because of irrational behavior.
- 10   Q      Which was what?
- 11   A      Removing his clothes.
- 12   Q      All right. And did Mr. Herring tell him he wanted
- 13           his money back?
- 14   A      Yes.
- 15   Q      And did he get escorted out?
- 16   A      Yes.
- 17   Q      And did Mr. Herring get mad about that?
- 18   A      I assume that he did.
- 19   Q      You assume that he did. And that's a motive, isn't
- 20           it?
- 21   A      That's a behavior.
- 22   Q      He didn't just walk out when he got escorted out and
- 23           not ask for his money back, did he?
- 24   A      I don't believe so.
- 25   Q      So the fact he's asking for his money back, getting

- 1           angry, that shows he's thinking, he's rational,  
2           correct? You'd get angry if you didn't get your  
3           money back, wouldn't you?
- 4    **A**    Yeah. Yes. Yes.
- 5    **Q**    That is inconsistent with being involuntarily  
6           intoxicated. That's all I'm asking you. I mean, it  
7           is, isn't it?
- 8    **A**    Actually, if he's involuntarily intoxicated and he is  
9           disinhibited, then you might expect some type of  
10          irrational behavior like that.
- 11   **Q**    But you have nothing to base that on. You said  
12          something about it I think when Mr. Harpootlian asked  
13          you about and showed you the video about him going  
14          out to his car. Do you remember that correctly?
- 15   **A**    Yes, sir.
- 16   **Q**    He clearly had no trouble going to his car?
- 17   **A**    Correct.
- 18   **Q**    He really didn't have any trouble when he came back  
19          to talk to "Jon Jon", did he?
- 20   **A**    I didn't have any audio. So I'm not sure what he was  
21          saying. But he was able to stand and walk.
- 22   **Q**    And that's what I mean. The appearance of coming  
23          back, right?
- 24   **A**    Yes.
- 25   **Q**    And this just popped into my head. But, I mean, if

1 he's going to his car and he's angry about something  
2 in that robotic, you said you just perform and you go  
3 home; well, coming back to talk to "Jon Jon" again,  
4 that's inconsistent with involuntary intoxication,  
5 isn't it? Because he's coming back. He's got a  
6 reason for coming back?

7 A That still does not say that he was not intoxicated.

8 Q Well, yes, sir. Alcohol can make you intoxicated,  
9 can't it?

10 A Yes, it can.

11 Q And you can drink enough alcohol where you can't  
12 remember some things the next day. Can't you,  
13 Doctor?

14 A Yes. But symptoms of alcohol intoxication are  
15 usually very obvious.

16 Q Very what?

17 A Obvious. Staggering, slurred speech.

18 Q Well, some of that is supposed to be in involuntary  
19 intoxication, too, isn't it?

20 A Up to a point, yes.

21 Q Slurred speech. Lack of moving around. That's  
22 involuntary intoxication, right?

23 A It is if the dose is high enough.

24 Q And if the dose is high enough, you're out of it.  
25 You can't remember. You can't function. You

1 wouldn't know whether to go to that car or wait a  
2 minute; I'm going to go back one more time and try  
3 and get my money and go back. That's thinking?

4 A Yes. Whether it's rational or not, it's thinking.

5 Q It's thinking. It's reasoning. He knew he had been  
6 done wrong and he's going back to try to get his  
7 money, correct? Reasonable inference there, isn't  
8 it, Doctor?

9 A Reasonable inference, yes.

10 Q Driving home, Doctor. Driving home, you say it's  
11 automatic. How many times had he been to Chastity's?

12 A I'm sure that he knew Columbia very well. I don't  
13 know how many times he'd been. Well, he had not been  
14 there before. But he knew the city.

15 Q And so you're saying that he just drove there out of  
16 habit?

17 A The area, yes.

18 Q And that's not inconsistent with involuntary  
19 intoxication?

20 A That's not inconsistent with involuntary  
21 intoxication.

22 Q Being sedated. If you're sedated enough where you  
23 have amnesia, you're not going to have control over  
24 your body functions to drive a car, Doctor. Isn't  
25 that inconsistent with amnesia? Totally

1 inconsistent?

2 A No. No, it's not. Amnesia is the end point. You  
3 have taken a drug. You go through the stages of the  
4 drug effect. When you wake up, you don't remember  
5 what happened. That's what amnesia is. Not being  
6 able -- not being able to not understand anything  
7 that's going on around you at the time it's going  
8 on --

9 Q Exactly.

10 A -- is not amnesia.

11 Q Well, yes, sir. It's one of the side effects of  
12 involuntary intoxication.

13 A But it's not amnesia. That's what you were saying.

14 Q No, sir. No, sir. I'm trying to say they're both.  
15 On Rohypnol, it's a sedative; you're just out of it.  
16 That's why they give them to women so they can rape  
17 them and they don't remember anything. The women are  
18 just out of it.

19 A They give it to them so they won't remember anything.  
20 They are not totally out of.

21 Q They lose total control of their body, and that's why  
22 men can violate them?

23 A No. Not necessarily. They become disinhibited, but  
24 they don't necessarily lose total control of their  
25 body.



1 Q They can't reason. They can't pick up the phone and  
2 call 911. They can't get out there and drive to the  
3 police station?

4 A They can't if they're sufficiently intoxicated. But  
5 you don't have to have someone unconscious to perform  
6 rape..

7 Q And you don't know what level, if any, was  
8 administered in this case, do you?

9 A No, I don't. We don't have a blood test.

10 Q And actually that blood test, by the time the police  
11 got there, it would have already been gone anyway,  
12 wouldn't it?

13 A It very well could have been.

14 Q Would have been, wouldn't it?

15 A It depends on how sensitive your dependency is.

16 Q There'd be no way to get a blood test by the time the  
17 police had gone, because if there was something in  
18 there -- there's no evidence there was except he said  
19 it yesterday -- it would have already gone out of his  
20 body, correct?

21 A If you're talking about at 9:00, more than likely.  
22 But I believe they arrested him around 4, which would  
23 have been about four hours.

24 Q And it would have already been out of his body then,  
25 wouldn't it, Doctor?

- 1 A Not the Rohypnol. No. It stays in the body for  
2 longer than four hours.
- 3 Q What were the EMS nurses he talked to?
- 4 A Sir?
- 5 Q What were the EMS nurses he talked to?
- 6 A I don't know.
- 7 Q You didn't look at that in preparation for your  
8 testimony?
- 9 A I looked at the EMS report but I didn't see any  
10 names.
- 11 Q How many reports did you look at?
- 12 A I think it was one page.
- 13 Q You didn't see the other EMS report?
- 14 A I don't know that I did.
- 15 Q Well, wouldn't that be helpful in looking at the  
16 records to come in here? And if you're saying to say  
17 he -- and, by the way, you're just saying he could  
18 have been. That's all you're saying. You're not  
19 saying he was. You're saying he could have been,  
20 correct.
- 21 A I am saying he could have been.
- 22 Q And so if you didn't look at the reports, you clearly  
23 didn't talk to the EMS nurses, did you?
- 24 A I did not.
- 25 Q There's no indication in their report at all that

1           they saw anything wrong with the defendant, is there?

2    **A**    No.

3           **MR. HARPOOTLIAN:** Your Honor.

4    **A**    I didn't -- didn't read that.

5           **MR. HARPOOTLIAN:** I would object to him  
6           publishing hearsay from a report.

7           **MR. MEADORS:** Your Honor, he said he read it.  
8           He said hen reviewed it.

9           **MR. HARPOOTLIAN:** Well, I'm sorry. What's good  
10          for the goose is good for the gander, Your Honor.

11          **THE COURT:** The witness said he read the report.

12   **Q**    No indication whatsoever in this file -- and you  
13           reviewed the file?

14   **A**    Yes.

15   **Q**    What did you review, by the way?

16   **A**    I reviewed several pages of a medical report on a  
17           wound being dressed. I saw the EMS report.

18   **Q**    And ...?

19   **A**    I believe that's all.

20   **Q**    Did you review Nicole Beran's statement?

21   **A**    No, sir. I don't know who she is.

22   **Q**    Donnie Hawkins' statement?

23   **A**    No.

24   **Q**    Carl Weeks' statement?

25   **A**    No.

- 1 Q Angel Koon's statement?
- 2 A No.
- 3 Q You don't even know who they are?
- 4 A No, I do not.
- 5 Q You're offering an opinion here today. Wouldn't you
- 6 like to know what other -- wouldn't you like to have
- 7 been Carl Weeks, number one, or Donnie Hawkins?
- 8 Wouldn't you have liked to have seen what they said
- 9 the defendant was doing and his actions were before
- 10 you come in here and try to say, hey, the defendant
- 11 was involuntarily intoxicated?
- 12 A I don't know who they are.
- 13 Q You don't even know who they are?
- 14 A No, I don't.
- 15 Q Wouldn't you like to talk to witnesses that had
- 16 talked to him and corresponded with him and described
- 17 his demeanor after he supposedly got a drug?
- 18 Wouldn't you want to at least read their statements
- 19 before you came in here and gave an opinion?
- 20 A Yes. If they described his demeanor.
- 21 Q You would. And you didn't.
- 22 A I didn't know such statements existed.
- 23 Q You didn't know they existed?
- 24 A No.
- 25 Q That -- now, listen to this one, Doctor.

1           **MR. HARPOOTLIAN:** Your Honor, --

2           **THE COURT:** Sir?

3           **MR. HARPOOTLIAN:** -- I object to the solicitor's  
4 demeanor --

5           **THE COURT:** Sustained.

6           **MR. HARPOOTLIAN:** -- with this witness. Thank  
7 you.

8   **Q**   Those opinions -- I'll talk softly. I didn't mean --

9           **MR. HARPOOTLIAN:** Your Honor, I'd object to the  
10 solicitor approaching the witness for no purpose  
11 whatsoever but to stick his finger in his face.

12           **MR. MEADORS:** I just apologized to him I think.

13           **THE COURT:** Sir, conduct yourself.

14           **MR. MEADORS:** I'm trying to.

15           **THE COURT:** Please?

16           **MR. MEADORS:** I just said I didn't mean to do  
17 that. Can I approach the witness?

18           **THE COURT:** If you need to.

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

20   **Q**   Doctor?

21   **A**   Yes.

22   **Q**   Would you look at me a second, please? Those  
23 statements and how he was acting and those people's  
24 observations, they could change your opinion and your  
25 testimony. They'd have to potentially, couldn't

1           they? Couldn't it change your opinion?

2    A       They could.

3    Q       They could. Because how he was acting, how he was

4           corresponding and reasoning is important to whether

5           you think he might or might not have been

6           involuntarily intoxicated, correct?

7    A       Yes. I don't know how much weight I could put on

8           their opinions or their statements if they were

9           opinions.

10   Q       If in response to saying, you've got to get out of

11           here, he says, I'm going f'ing kill you, would that

12           show you that he heard and made a response that was

13           consistent, whether you like it or not, with being

14           thrown out of a place?

15   A       Well, that would -- would certainly mean that he made

16           a response, yes.

17   Q       That he realized what was going on?

18   A       Appeared to be, yes.

19   Q       Following it through, if you knew of a statement that

20           said, there's going to be some trouble if I come back

21           here. Somebody is going to get f'd up, you'd like to

22           have had that to help you form your opinion again

23           also to show that he's corresponding and reasoning

24           and giving a reason why he doesn't want to leave.

25           You'd like to know that, wouldn't you?

- 1 A I couldn't tell it from a statement. Yes, I'd like  
2 to know it. If he made the statement, he made the  
3 statement. But that doesn't tell me -- I don't know  
4 that anyone recorded him making that statement. But  
5 if he made that statement, that still doesn't tell me  
6 whether he was rational or not at the time.
- 7 Q It shows he's interacting with people?
- 8 A Interacting. But it doesn't tell me just from a  
9 written statement that it was rational.
- 10 Q But you didn't even read it?
- 11 A Sir?
- 12 Q You didn't even read it. You didn't know it existed?
- 13 A I didn't. Probably not.
- 14 Q Walking out, we've talked about going to the car and  
15 coming back. And that is inconsistent with not being  
16 able -- that is inconsistent with involuntary  
17 intoxication. Yes or no?
- 18 A The fact that he's walking out and back is not  
19 inconsistent with involuntary intoxication. Someone  
20 who is intoxicated can walk.
- 21 Q Inconsistent with involuntary intoxication in the  
22 regard that those same symptoms you're talking about  
23 would cause you to not remember. Because if you're  
24 saying he couldn't remember, that he wouldn't be able  
25 to reason and come back, he would have a reason to

1           come back, Doctor. That's not consistent with him  
2           having amnesia, is it?

3    A       Amnesia is the end point, not the beginning point.

4    Q       But you have to take it all together, Doctor.

5    A       No, you don't.

6    Q       Yes, you do.

7           MR. HARPOOTLIAN: Objection, Your Honor. Now  
8           he's arguing with the witness when he doesn't get the  
9           answer he wants.

10          THE COURT: Ask a question.

11   Q       Part of the symptoms of involuntary intoxication are  
12           that you lose control, you get relaxed, you get  
13           drowsy. As the end result, that goes to amnesia,  
14           correct?

15   A       That's correct.

16   Q       So if you don't have the first factors, it's not  
17           really realistic that you'll have the end, is it? I  
18           mean, is it?

19   A       Not always. No.

20   Q       Thank you.

21          MR. HARPOOTLIAN: Your Honor, I object to the  
22           solicitor running up to the witness every time he has  
23           a question.

24          THE COURT: All right. Overruled.

25   Q       Reaching into a glove box, rolling down a window



1 would be inconsistent with being involuntarily  
2 intoxicated, wouldn't it?

3 A No. Not if the person is still functional.

4 Q If you had a reason for doing that and you were mad,  
5 that's inconsistent with involuntary intoxication,  
6 isn't it?

7 A No. You could be angry and intoxicated.

8 Q Organized activity, planned out events, those are  
9 less likely, and actually very unlikely, if you are  
10 involuntarily intoxicated to the point that you can't  
11 remember having amnesia, correct? Less likely  
12 organized thought, organized actions if you get to  
13 the point of amnesia. I mean, you understand that  
14 question. That is very -- it's not likely, correct?

15 A When you get to the point of being so intoxicated  
16 that you can't function, then you lose the ability to  
17 do those organized activities.

18 Q And to get to that point, leading up to that point,  
19 you are less likely to be organized, correct?

20 A The closer you get to the end point the less likely  
21 you are to be able to carry out complex functions.

22 Q Okay. He left Chastity's. He's driving. Right?

23 A Yes.

24 Q Actually he left Chastity's and came back. He tried  
25 to talk to "Jon Jon" one more time, correct?

1 A Yes.

2 Q Leaves Chastity's, correct?

3 A Yes.

4 Q Backs out of the parking lot and waits there. How

5 long did he wait?

6 A Just a few minutes.

7 Q When did you watch that video?

8 A What?

9 Q When is the first time you watched that video?

10 A Yesterday.

11 Q Yesterday. When is the first time you read --

12 MR. HARPOOTLIAN: I can't hear a word the

13 solicitor is saying.

14 MR. MEADORS: When is the first time he saw the

15 video. He said yesterday.

16 MR. HARPOOTLIAN: Thank you.

17 Q The first time you read those reports?

18 A What reports?

19 Q The reports you've testified you had read.

20 A Two or three weeks ago.

21 Q And the first time you talked to anybody else was

22 yesterday?

23 A No. I talked to both Mr. Harpootlian and Mr. Herring

24 by phone about three weeks ago.

25 Q By phone?

- 1 A Yes.
- 2 Q He backs out in the parking lot, correct?
- 3 A Yes.
- 4 Q It takes some mental capacity to back out, doesn't
- 5 it?
- 6 A Very little.
- 7 Q Turn your lights on, crank the car, back out. Stayed
- 8 at Chastity's two minutes 38 seconds? Are you all
- 9 right with that? Roughly. You said two minutes. A
- 10 little over two minutes?
- 11 A Okay.
- 12 Q Sits there. Consistent with him being mad, correct?
- 13 A Or out of touch with reality. Yes.
- 14 Q Out of touch with reality. So then he shouldn't know
- 15 how to get home?
- 16 A Yes.
- 17 Q Well, what does he do after that?
- 18 A He drove.
- 19 Q Where does he go?
- 20 A I don't know.
- 21 Q You don't know where he went after he left
- 22 Chastity's?
- 23 A I know that he spent quite a bit of time getting
- 24 home.
- 25 Q Goes home. What does he do?

- 1 A According to his testimony, he did his routine thing,  
2 went to bed.
- 3 Q What's his routine thing?
- 4 A Got undressed.
- 5 Q He got undressed. Had to do that. Had to be  
6 thinking to do that, right?
- 7 A No. You absolutely don't have to be thinking to  
8 undress.
- 9 Q You can be totally out of it and do that?
- 10 A You can be totally out of it and get undressed.
- 11 Q Go ahead. What else did he do?
- 12 A He took his hearing aids out, removed his glasses.
- 13 Q What else?
- 14 A That's all I remember.
- 15 Q You don't remember the rest? Didn't he put his  
16 oxygen machine on?
- 17 A Oh. Yes, he did.
- 18 Q You can do that if you're totally out of it?
- 19 A Yeah. If you do it every night.
- 20 Q And what one thing did you leave out, Doctor? And  
21 has amnesia hit him at this point? He's still pretty  
22 organized, thinking and moving. Is he --
- 23 A I don't know how organized he is. I know he's doing  
24 routine things.
- 25 Q Okay. Routine things. So at this point still

1 organized, maybe not in amnesia at this point,  
2 correct? Which means he could remember everything  
3 prior to that, correct?

4 A At that point?

5 Q If it hadn't set in, he ought to remember everything  
6 prior to that?

7 A He's not storing memory if he's going to have  
8 amnesia. He is just doing things.

9 Q Would that be inconsistent, the organized activity  
10 with the final result? I mean, you'd admit that at  
11 least?

12 A Organized activity.

13 Q Or actions or thinking. What about the gun?

14 A I don't know what you are asking me.

15 Q The gun that killed John Johnson, what happened to  
16 that gun?

17 A He brought it into the house, as I understand it from  
18 his testimony.

19 Q Undid the glove box?

20 A Pardon me?

21 Q Undid the glove box?

22 A Opened the glove box, yes.

23 Q Took it out?

24 A I assume so.

25 Q Where did he take it?

1 A To his house.

2 Q Where did he put it?

3 A I think in the bedroom.

4 Q Underneath something?

5 A If I remember correctly, under some clothes.

6 Q Now, you've got to be thinking to do that?

7 A It would require some thought, yes.

8 Q Took the gun and he'd used on John Johnson out of his

9 car and takes it in his house and puts it under some

10 clothes?

11 A Yes.

12 Q Involuntarily intoxicated, can't control your

13 emotions, can't rationally think; that's

14 inconsistent, those actions, with your diagnosis,

15 correct, at that point?

16 A I didn't make a diagnosis.

17 Q It's different from your opinion?

18 A My opinion, yes.

19 Q I apologize. That would be inconsistent with your

20 opinion?

21 A Up to a point. Up to a point, yes.

22 Q Thank you. Now, after he was at the hospital, I

23 think you testified after he went to see the doctor

24 or something -- I can't remember -- you said he went

25 the jail or you assumed he went to jail?

1 A Yes.

2 Q Now, Your Honor, if I could approach for the  
3 specific -- does Rohypnol, isn't it kind of salty?

4 A Yes, sir.

5 Q So you said earlier it had a little taste. Actually  
6 it's a little salty?

7 A Well, it's a hydrochloride salt.

8 Q Can I approach?

9 THE COURT: Yeah. For the purpose of showing  
10 him the document.

11 MR. MEADORS: Yeah. For the record, I'm not  
12 going to do anything.

13 Q Doctor, this is State's 77, an advice of rights form.  
14 You may or may not be familiar with them. I don't  
15 know. I think when Mr. Harpootlian asked you about  
16 this, would he have been aware or would he have still  
17 been intoxicated or would the effects still been  
18 there? And you said, well, that's quite a long time  
19 at this point. And that's 9:42 a.m.

20 So, in your opinion, assuming he was intoxicated  
21 on something, by this point in your own words, well,  
22 that would be quite a long time; he ought to remember  
23 this, correct?

24 A Yes. I would think so.

25 Q And that's common sense?

1           **MR. HARPOOTLIAN:** Your Honor.

2           **THE COURT:** Question.

3           **MR. HARPOOTLIAN:** I would object to that's  
4 common sense. This is an expert doctor.

5           **THE COURT:** Question.

6   **Q**     And, Doctor, just looking at State's 70 -- I think  
7           that's 70. If one had -- Mr. Herring corrected or  
8           put a -- made this into two sentences or two rights,  
9           would that be consistent in your opinion that he  
10          understood what was going on here?

11   **A**     Yes.

12   **Q**     So to say that you don't remember any of this would  
13          be inconsistent?

14   **A**     It may.

15           **MR. HARPOOTLIAN:** May it please the Court, Your  
16          Honor. There's no allegation --

17           **THE COURT:** It's cross examination. I'm going  
18          to allow it.

19           **MR. HARPOOTLIAN:** I understand that. But his  
20          opinion or what he remembered and didn't remember  
21          after the drug is worn off, he is not qualified. He  
22          is not qualified to give that opinion.

23           **THE COURT:** Overruled.

24   **Q**     Can I get you to come down just for one second.  
25          Doctor, do you mind standing on this side so she can



1 hear you?

2 A Okay.

3 Q Specifically, he asked you as to when it would have  
4 potentially worn off. And those are his questions.  
5 That advice of rights was at what time on State's 77,  
6 Doctor? I believe it says 9:42. You wouldn't  
7 dispute that, would you?

8 A No, I wouldn't.

9 Q So if this is after that, would you have expected the  
10 results to still be here? Would you have expected  
11 him to understand and know what was going on right  
12 here, right? If this was taken after the rights?

13 A Yes.

14 Q And you've reviewed this?

15 A I've read it, yes.

16 Q Answers to the questions: "Will you explain what  
17 took place at your residence?" "I went to bed around  
18 11. I went to sleep, was awakened by banging, very  
19 loud banging at my front door. One person would not  
20 have made that much banging. I got out of bed and  
21 walked out the bedroom door and went down a very  
22 short hallway to a family room towards the front  
23 door. I saw four to five individuals coming in the  
24 front door after they kicked it in." Now, that  
25 answer based on your studies, your field of opinion,

1           that answer would be inconsistent with being  
2           involuntarily intoxicated when that happened,  
3           wouldn't it, if you were able to describe those  
4           details?

5    A    No. Because this is when he woke up. The effect of  
6           the drug is wearing off or it's worn off.

7    Q    Okay. So --

8    A    Therefore, I would expect for him to have memory from  
9           then on.

10   Q    So from this point on, you would say he should  
11          remember everything, correct?

12   A    He should. Yes. I don't know what his emotional  
13          state is. Emotions greatly reduce the ability to  
14          remember things appropriately.

15   Q    Should be able to understand questions that are asked  
16          of him?

17   A    Yes.

18   Q    Should be able to respond?

19   A    Yes.

20   Q    Should be able to tell you, hey, this ain't right,  
21          this ain't me, I've been drugged. He ought to be  
22          able to tell you that there, shouldn't he?

23   A    I don't know why he shouldn't be able to.

24   Q    Why he shouldn't be able to?

25   A    I don't know why he shouldn't able to.

1 Q Out of character, never happened before. Never after  
2 this point on did he tell anybody he'd been drugged  
3 until yesterday, did he?

4 MR. MEADORS: Objection, Your Honor. And I  
5 object to that.

6 Q Do you see anything --

7 THE COURT: Sir.

8 MR. HARPOOTLIAN: I object to that.

9 THE COURT: Sustained.

10 MR. MEADORS: May I approach?

11 MR. HARPOOTLIAN: I ask the question be struck.

12 THE COURT: Yes, sir.

13 (Whereupon, a bench conference is had)

14 THE COURT: All right. Ladies and gentlemen of  
15 the jury, strike that last question and answer. It  
16 was improper. Strike it from the record.

17 Q At any time after these advice of rights until he was  
18 taken into custody -- and I didn't mean to point at  
19 you. I'm sorry. After he was taken into custody,  
20 after talking to Chief Wilson; based on your review  
21 of the records, at any time in there, again for the  
22 record, until after he talked to chief David Wilson,  
23 he didn't tell anybody this ain't right, I've been  
24 drugged, did he?

25 A I saw no indication of that. I don't know what he

1 did.

2 Q There wasn't any indication of it. But without going  
3 through it, the rest of this statement would tell  
4 you, wouldn't it, at this time he understood the  
5 answers and the questions?

6 A Yes.

7 Q And, Doctor, if -- and remembering details at this  
8 point would not be inconsistent, correct? In this  
9 statement?

10 A I wouldn't think so.

11 Q Just stay there one minute more if you don't mind.  
12 This is 81. I'll put this down. Come in a little  
13 closer, please. "Did you consume any alcoholic  
14 beverages?" "I played golf at Palmetto Club. I  
15 drank about nine beers during the day. We got  
16 finished playing at 5:30. I drank about four  
17 scotches and soda while there." Had a few more  
18 drinks back at his house. "I had two to four  
19 scotches and sodas while at my house, left around 8  
20 or 8:30." Alcohol is a sedative?

21 A Yes.

22 Q I think I asked you that. It clearly can make you --  
23 I don't know if you're a drinking man. But if you've  
24 ever had too much, you can get up and initially not  
25 remember some stuff, right?

- 1 A I'm sure you could.
- 2 Q From alcohol?
- 3 A Yes.
- 4 Q He took a shower. But, Doctor, under this
- 5 involuntary intoxication defense, to the levels where
- 6 you're going to have to get where you don't remember
- 7 anything, you're not going to remember anything,
- 8 correct? I mean, if there's an blackout period right
- 9 before -- well, I don't know -- right before or after
- 10 he took the drink until these officers came, or
- 11 somewhere in there, you're not going to remember
- 12 anything in there with amnesia, correct?
- 13 A You may have bits and pieces but you will not have a
- 14 memory of most of the events.
- 15 Q So, if he first said, "I went to bed around 11",
- 16 that's not right. Right?
- 17 A Well, if you think that's what you did, then that's
- 18 right.
- 19 Q But if you hadn't had this involuntary intoxication
- 20 until after 11 and you had gone to Chastity's, when
- 21 you say, "I went to bed at 11", and you haven't even
- 22 had the involuntary intoxication, that clearly could
- 23 not cause you to give that answer?
- 24 A That's right.
- 25 Q So, that's not the truth?

1 A Yeah. He may not have known what the truth was then.

2 Q Say that again?

3 A He may not have known what the truth was then. He  
4 may normally go to bed at 11.

5 Q Would that explain that, saying that before you had  
6 the involuntary intoxication? Because it's not  
7 retrograde. You can remember everything prior to  
8 taking the date rape drug, can't you?

9 A Yes.

10 Q No question about that?

11 A Yes. That's correct.

12 Q So 11:00 would have been retrograde. No reason  
13 whatsoever he should have known -- no reason  
14 whatsoever he should not have known he didn't go to  
15 bed at 11 at this time?

16 A Probably not.

17 Q Probably not. And this drug doesn't go in and out,  
18 does it? I mean, it doesn't have a control in it.  
19 If you take a drug and you're involuntarily  
20 intoxicated, you can't get amnesia, come out of  
21 amnesia and go back into amnesia? It doesn't have a  
22 delayed effect, does it? In and out and in? I mean,  
23 that's not --

24 A No. That doesn't work that way.

25 Q So I don't know. "Do you recall going to

1 Chastity's?" "No, I don't. I know where it is but I  
2 don't recall ever going there." Well, if you'd been  
3 there prior to the alleged or the statements that you  
4 had of the drug, then you would know you went there?  
5 A Say that again?  
6 Q Okay. I'll try and get it out myself. If you had  
7 gone to Chastity's prior to taking the drug. Okay?  
8 A Yes.  
9 Q You would know that you went to Chastity's?  
10 A Yes.  
11 Q That's that retrograde thing, right?  
12 A Yes.  
13 Q So, "No, I don't know where it is. I don't recall  
14 going there." Well, you would have been able to,  
15 correct, prior to taking the drug?  
16 A More than likely.  
17 Q "Mr. Herring, the Sheriff's Office had a videotape of  
18 you entering the nightclub. Does that help your  
19 recollection?" Now, if you have amnesia and you're  
20 just sitting there and it's not event, no nothing, it  
21 just says guess what, there's a video, that shouldn't  
22 spark your memory, just saying there's a video, is  
23 there? If you have no memory whatever, you haven't  
24 had amnesia, they say, we've got video, that  
25 shouldn't automatically go back and in do away with

1           that amnesia, should it?

2    A       If -- I wouldn't think so. But I don't know what was  
3           actually said there.

4    Q       Well, that's what was said. "Mr. Herring, the  
5           Sheriff's Office has a video of you entering the  
6           Chastity's Nightclub. Does that help your  
7           recollection?" "I remember the white woman with big  
8           breasts."

9    A       Yes.

10   Q       That's inconsistent with involuntary intoxication to  
11           the point of amnesia, isn't it?

12   A       This is prior to him taking the drink.

13   Q       It is?

14   A       According to this.

15   Q       Where does it say that? I had a scotch and soda?

16   A       We're talking about events --

17   Q       How do you know when he had them?

18               **MR. HARPOOTLIAN:** Your Honor, he's attempting to  
19           answer and being interrupted. I object.

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

21   A       It's my understanding that they asked him had he been  
22           to Chastity's. He said he doesn't remember that.

23           They said they have a videotape --

24   Q       He should have remembered that?

25               **MR. HARPOOTLIAN:** Objection, Your Honor. He's



1 attempting to answer the question.

2 **THE COURT:** I understand that. Let him answer  
3 the question, Mr. Meadors.

4 **A** This is prior to, as I understand it, when he would  
5 have gotten the drink.

6 **Q** But my point is, then he didn't even remember going  
7 there to start with. And then they say they have a  
8 video and he says, oh, okay. I was going there and I  
9 remember a white woman with big breasts. Right?

10 **A** That's what he says, yes.

11 **Q** Then he should have remembered both of those if it  
12 was before the drink, shouldn't he?

13 **A** Yes.

14 **Q** "Did you have a problem with anybody in there?" "I  
15 went into one of the back rooms and paid for a lap  
16 dance. There were other people in there. The lap  
17 dance was done by a light-skinned black woman."

18 That's detail. That's a detailed description, isn't  
19 it, Doctor? The back room, paid for a lap dance.

20 Other people were in there. Lap dance was done by a  
21 light-skinned black woman. Was that before or after  
22 the drink?

23 **A** This is before.

24 **Q** That was before the drink?

25 **A** As I understand it, yes.

- 1 Q As you understand it?
- 2 A Yes.
- 3 Q When was the drink?
- 4 A What I understood was that he went in, had a drink,  
5 had a lap dance, had another drink.
- 6 Q Had another drink?
- 7 A Yes. Or finished the one that was sitting on the  
8 bar, one or the other.
- 9 Q Or finished the one that was on the bar?
- 10 A Yes.
- 11 Q So now he should have remembered this. You're saying  
12 this is retrograde. He should have remembered this,  
13 all of this when they said you go to Chastity's,  
14 correct?
- 15 A He should have remembered it unless there's some  
16 other reason why he didn't.
- 17 Q And there's not, is there, that you know of?
- 18 A 17 alcoholic beverages prior to it.
- 19 Q But he changed that yesterday, didn't he?
- 20 A No, sir.
- 21 Q You just said 17 --
- 22 A What you just said --
- 23 MR. HARPOOTLIAN: Your Honor, he is attempting  
24 to answer. He gets interrupted the minute he says --
- 25 THE COURT: Don't approach the witness and get

1           that close to the witness, in his face.

2           **MR. MEADORS:** Okay. I'm sorry.

3   **A**    I'm sorry. But what you just showed me was nine  
4           beers, two to four scotches, plus two to four  
5           scotches. That's a maximum of 17 drinks.

6   **Q**    17 drinks, correct?

7   **A**    Yes, sir.

8   **Q**    So could he --

9   **A**    Well, it could have been 13, because he said two to  
10          four scotches two times.

11   **Q**    But, yesterday he changed that, correct?

12   **A**    Yes.

13   **Q**    He basically cut that in half, right? Right? I  
14          mean, did you hear that testimony?

15   **A**    I heard that testimony.

16   **Q**    And would that make the Rohypnol more powerful if he  
17          had less alcohol?

18   **A**    No.

19   **Q**    And all this alcohol with some sedative would make  
20          him he really, really sleepy, wouldn't it?

21   **A**    No. Not necessarily. In me, since I don't drink, it  
22          would. In someone who drinks quite a bit every day,  
23          it wouldn't have nearly so much effect. It's called  
24          tolerance.

25   **Q**    So at this point, you're saying this was before his

1 drink, he should have remembered all of this when he  
2 told law enforcement he hadn't even been there,  
3 correct?

4 A He should have.

5 Q "What car did you drive there?" "Toyota 4Runner. It  
6 belongs to me. I typically don't go to places like  
7 that because of the people who go there have bad  
8 attitudes." Correct?

9 A Yes.

10 Q Now, yesterday he said he'd been to Platinum Plus  
11 several times, correct?

12 A Yes.

13 Q And just kind of got drawn into Chastity's?

14 A As I understand it, yes.

15 Q Saw the sign. What I want to just make clear with  
16 you and your opinion, clearly as he is driving into  
17 Chastity's he hasn't had this drink, has he?

18 A No.

19 Q So that could not be a defense to him deciding to go  
20 to Chastity's, correct?

21 MR. HARPOOTLIAN: Your Honor, I object to the  
22 use of "defense".

23 THE COURT: Sustained.

24 MR. HARPOOTLIAN: Thank you.

25 THE COURT: Reason.

- 1 Q For his reason to go into Chastity's?
- 2 A No.
- 3 Q A reason to say I wasn't there? Involuntary
- 4 intoxication would not be a reason for him to say "I
- 5 wasn't at Chastity's" to law enforcement?
- 6 A Right.
- 7 Q Not a reason to say "I went to bed at 11"?
- 8 A That is correct.
- 9 Q I mean, not a reason to tell them before about going
- 10 to the back room with Renisha, correct?
- 11 A What?
- 12 Q In the back room, the lap dance with -- I didn't mean
- 13 to say her name. But Ms. Grainger?
- 14 A No.
- 15 Q "The Toyota 4Runner belongs to me." He knows his
- 16 car, correct? I think he asked. Then he gives
- 17 detail about the guns. That is not unusual. Habit,
- 18 correct?
- 19 A I would think so, yes.
- 20 Q And again, the robotic, if you're in this trance,
- 21 correct?
- 22 A You're not in a trance.
- 23 Q Okay. Well, I mean, this robotic motions? Isn't
- 24 that the symptoms going toward amnesia?
- 25 A Robotic motions?

- 1 Q Well, restrictive motions.
- 2 A No. Not necessarily.
- 3 Q Disorganized?
- 4 A I've never heard that term before.
- 5 Q How many cases like this have you worked on?
- 6 A I've worked on a bunch of cases where there was
- 7 intoxication involved.
- 8 Q How many cases like this with Rohypnol have you
- 9 worked on, or alleged Rohypnol?
- 10 A I told you I have not worked with any of these
- 11 before.
- 12 Q None. "Do you recall firing a firearm?" "No, I
- 13 don't. If I did I was not shooting anyone. I'm not
- 14 saying I did not do it." That means he knows he did
- 15 it, thinks he might have done it, correct?
- 16 A I don't know what he means.
- 17 Q It could mean that?
- 18 A That's one interpretation.
- 19 Q Didn't say no?
- 20 A I don't know what he says other than what's written.
- 21 Q Well, here's what he said. Right? He didn't say,
- 22 "Did you fire a shot at all?" He did not say no,
- 23 correct?
- 24 A Not right there, no.
- 25 Q He didn't say, I don't remember. "If the gun went

1 off in my hand, it was a harmless error." So he is  
2 saying that it could have gone off in his hand but if  
3 it did it was harmless error. Is that what he's  
4 saying?

5 A Yes.

6 Q And that means he's got an idea he was there and had  
7 the gun in his hands, doesn't it, Doctor?

8 A Yes..

9 Q "It was probably the Ruger." He remembers what type  
10 of gun it was?

11 A (Nods head affirmatively).

12 Q "And if it went off, it was an accident." That one  
13 means he remembers it going off, doesn't he?

14 A No. He says, "If it went off".

15 Q Wouldn't all that be totally inconsistent with  
16 involuntary intoxication to the point of amnesia  
17 where you could remember any of this? That doesn't  
18 make sense, does it?

19 A That's a good question. You see in cases of this  
20 type, with any type of depressant sometimes total  
21 amnesia, sometimes partial amnesia. Sometimes events  
22 stick out. Sometimes they don't.

23 Q It kind of comes and goes?

24 A Yes.

25 Q But saying the word "video" would make him remember

1 something?

2 A It could if it had significance to him.

3 Q "Did you see anybody else when you were there?" "No.  
4 I was not shooting at anyone." Doesn't that imply he  
5 was shooting at something?

6 A That doesn't even seem to be an appropriate response  
7 to the question.

8 Q "I was not shooting at anybody"? Doesn't that say he  
9 was shooting?

10 A The question says: "Did you see anybody when you  
11 fired your weapon?"

12 Q And the answer was: "I wasn't shooting at anybody"?

13 A The answer should have been, no, I didn't see  
14 anybody.

15 Q Which he's saying, "I didn't. I was not shooting at  
16 anybody." That doesn't advice he's shooting at the  
17 door?

18 MR. HARPOOTLIAN: May it please the Court, Your  
19 Honor. He's asking for opinions way outside of  
20 anything this gentleman is qualified. And I don't  
21 believe anybody can speculate what he meant to say.  
22 His statement is being --

23 THE COURT: It's not couched in those terms. I  
24 mean, that's a side issue. The issue is whether --

25 MR. MEADORS: Rohypnol --



1           **THE COURT:** -- is whether the defendant had a  
2 specific memory and whether that's inconsistent with  
3 the defense of involuntary intoxication.

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

5           **THE COURT:** That's the way I interpret it.

6           **MR. HARPOOTLIAN:** He's arguing with the witness  
7 about what this means, what does this mean. And that  
8 I submit --

9           **THE COURT:** He is not to argue with this  
10 witness.

11           **MR. HARPOOTLIAN:** -- is inappropriate.

12           **THE COURT:** Just ask the witness questions.

13   **Q**    "There was nobody to shoot at." "Did you see anybody  
14 when you fired your weapon?" Is that a more  
15 appropriate response --

16   **A**    Yes.

17   **Q**    -- to that? When he gave that answer, he is not  
18 under the influence of anything, is he.

19   **A**    Doesn't appear to be, no.

20           **COURT REPORTER:** I'm sorry. I didn't hear the  
21 answer.

22   **A**    Doesn't appear to be.

23           **MR. MEADORS:** He didn't appear to be.

24   **Q**    And if he's under the influence of involuntary  
25 intoxication like GHB or Rohypnol, sir, to the point

1 of amnesia, it would be inconsistent, would it not,  
2 in your opinion that he'd be able to remember  
3 shooting and nobody being there and there's nothing  
4 to shoot at, correct? Wouldn't that be inconsistent?  
5 If you say, I don't remember anything, wouldn't it be  
6 inconsistent to come back and say, well, there was  
7 nobody there when I was shooting?

8 A There is some inconsistency there, yes.

9 Q There is some inconsistency there. If you'll have a  
10 seat back. Thank you. I just have a couple of  
11 questions, Doctor. I appreciate you answering them.  
12 Rohypnol -- and I think Mr. Harpootlian asked you in  
13 one of his -- and I apologize if I inadvertently  
14 pointed this at you. I'm sorry.

15 A I thought you were trying to shoot me.

16 Q No, I wasn't. I apologize. Mr. Harpootlian I think  
17 asked you would this drug or side effect when he gave  
18 these statements to law enforcement, would it have  
19 made him more or less suggestive. And your answer  
20 was, "I don't know"?

21 A That's correct.

22 Q One thing I forgot to ask you about, Doctor. If you  
23 are involuntarily intoxicated to the point of it led  
24 to --

25 MR. HARPOOTLIAN: Your Honor, objection. Your

1 Honor, is he asking the witness a question or  
2 addressing the jury?

3 MR. MEADORS: Your Honor.

4 THE COURT: What's good for the goose is good  
5 for the gander.

6 MR. HARPOOTLIAN: I understand that, Your Honor,  
7 but -- but --

8 THE COURT: You've both been doing it.

9 MR. HARPOOTLIAN: I understand.

10 THE COURT: And I have not stopped either one of  
11 you.

12 MR. HARPOOTLIAN: Well, I'll stop doing it then.  
13 Because this is I would submit entirely inappropriate  
14 to be giving a jury argument through the witness.

15 THE COURT: He's asking a question. I overrule  
16 the objection.

17 MR. HARPOOTLIAN: Yes, sir.

18 Q Beg the Court's indulgence. Your opinion is that if  
19 he got involuntarily intoxicated and your opinion is  
20 it caused amnesia, with that being your opinion, and  
21 along the line leading up to that, okay, would be  
22 more disorganized, more disorganized, more  
23 disorganized, correct?

24 A Yes.

25 Q Wouldn't it be inconsistent with your opinion,

1 Doctor, for him to drive off, leave and come back?  
2 Does that make any sense with involuntary  
3 intoxication whatsoever?  
4 A I don't know that it does not make sense. It's a  
5 very short period of time between when he left the  
6 first time and when he came back. And on a continuum  
7 he was able to drive home. Therefore, he was not  
8 totally disorderly by that point.  
9 Q I'm going to go to continuum. When he left  
10 Chastity's, he came back, correct?  
11 A Yes.  
12 Q And that shows he was thinking and had a reason to  
13 come back, didn't he?  
14 A It shows that he had -- he was thinking, yes, but not  
15 that he was rational.  
16 Q He left and could drive the car back in there,  
17 couldn't he?  
18 A That has nothing to do with rationality. Rationality  
19 is appropriate thinking.  
20 Q If you were in this state leading to amnesia,  
21 disorganized, sedated, date rape, you're almost out  
22 of it, correct?  
23 A You will be by the time you have full amnesia, yes.  
24 Q So when he came back, he was still thinking. He  
25 wasn't near that point then?

1. A Yes. He was thinking rationally.
2. Q This was still rational?
3. A It meant he was rational.
4. Q Okay. That's fine. But he's still retrograde then?
5. A Amnesia?
6. Q No, sir. When he comes back there --
7. A Or prior to the beginning of amnesia?
8. Q Yes, sir. Before amnesia. He goes back. He is
9. retrograde. He's got a reason for coming back. He
10. knows why he's coming back, doesn't he?
11. A I'm sure that he does.
12. Q You're sure that he does. And when he gets back, the
13. window is down and he fires a shot into that door,
14. doesn't he?
15. A I know that he fired a shot into the door.
16. Q That's retrograde, isn't it?
17. A I'm not sure -- you're using the term retrograde
18. totally out of context as far as I'm concerned.
19. Q Well, he has a reason for coming back. He thinks
20. about coming back. He drives right in front of the
21. door. Those are all organized actions, aren't they?
22. Deliberate actions?
23. A They seem to be deliberate, yes.
24. Q Consistent with getting mad and coming back?
25. A Yes.

1 Q Having a reason for coming back?

2 A Yes.

3 Q Being upset and coming back?

4 A Yes.

5 Q And he fires a shot into the door, correct?

6 A That's what I understand, yes.

7 Q Where does his amnesia start?

8 A At the point where the drug began to produce its

9 effect.

10 Q Beg the Court's indulgence. And then he went home

11 and took the gun out and took it inside and put it

12 under some clothes, correct?

13 A I don't know what he did. I understand that's where

14 it was found.

15 Q Then the police officers came. And at that point,

16 when he's talking to the police officers, he has

17 testified earlier on 911, he is corresponding back

18 and forth. Who are you all? Do you remember that?

19 A Yes, I do.

20 Q Asking Sergeant Odom, well, Sergeant, where did David

21 Linfert go to school and how old was he. That's

22 reasonable and rational thinking, isn't it? Saying,

23 okay, tell me how he is out here so I can find out,

24 right?

25 A Yes. But he sounded very confused.

1 Q But he understood, didn't he?

2 A Well, yes. But that's past the point where the drug  
3 was working.

4 Q Past the point right there?

5 A Yes. When he was awake.

6 Q So did the amnesia come in after he let the gun down  
7 and then right before then, after he put the gun down  
8 in his house and right before?

9 A Amnesia means that he was not able to form memory  
10 during the time when the drug was producing the  
11 effect, that he had the drug while he was in  
12 Chastity's, that as the concentration built up the  
13 amnesia developed. It doesn't mean he wasn't  
14 functional. It means that during that time he was  
15 not forming memory that he could bring up at a later  
16 time, or at least not forming much.

17 Q But his actions as far as arguing, as far as coming  
18 back would be inconsistent with him not being able to  
19 remember, wouldn't it? His organized actions and  
20 thoughts would be inconsistent with that, wouldn't  
21 it?

22 A Not with him not being able to remember. Those are  
23 separate points.

24 Q How many studies on people in cases like this have  
25 you done? Zero?

1 A Zero.

2 Q Thank you. That's all.

3 THE COURT: Any redirect?

4 MR. HARPOOTLIAN: Yes, sir.

5 REDIRECT EXAMINATION

6 BY MR. HARPOOTLIAN

7 Q Doctor, he just asked if you've done other studies.  
8 Have you interviewed other people who you've  
9 concluded were under the influence of Rohypnol or  
10 some date rape drug recently?

11 A No, I haven't.

12 Q Recently?

13 A Pardon me?

14 Q Recently have you?

15 A Yes.

16 Q And tell the jury, please, the symptoms they -- for  
17 instance, these are two young ladies?

18 A Yes.

19 Q And the symptoms of those young ladies, without  
20 getting into where they were, but what did they  
21 relate to you which indicated to you they had been  
22 given a date rape drug?

23 MR. MEADORS: Objection.

24 THE COURT: Sustained.

25 MR. HARPOOTLIAN: Your Honor, he asked him if



1 he's done any studies. This is a study. I'm trying  
2 to get into what the study was.

3 MR. MEADORS: Your Honor, this is not a complete  
4 study. He knows that.

5 MR. HARPOOTLIAN: May I ask?

6 THE COURT: Put it on the record.

7 Q Did you do a clinical examination of the claims of  
8 these two young ladies, what you would do and the  
9 scientific method to determine whether or not they  
10 received a date rape drug?

11 A No. I didn't do a clinical examination. I  
12 interviewed them.

13 MR. MEADORS: Your Honor, there's the answer.  
14 Wait a minute.

15 THE COURT: I heard the answer, Mr. Meadors.

16 Q Well, a clinical examination would be in a hospital  
17 somewhere or in a medical facility where you draw  
18 blood and look at their eyeballs and all those sorts  
19 of things, correct?

20 A Yes.

21 Q But given that these events happened sometime  
22 earlier, did you have what we have used, the  
23 scientific method to examine them?

24 A Yes, I did.

25 Q Okay. And based on that scientific method, did

1           you --

2           **MR. MEADORS:** Objection.

3   **Q**       -- draw an opinion as to whether or not they'd been  
4           given a date rape drug?

5           **THE COURT:** Sustained.

6           **MR. MEADORS:** Objection.

7           **THE COURT:** Sustained. I have ruled that out  
8           under 703. I am going to continue to rule it out.

9           **MR. HARPOOTLIAN:** All right.

10          **THE COURT:** It's testimony allegedly from  
11          somebody else.

12          **MR. HARPOOTLIAN:** I understand that. But --  
13          okay. Well, let me deal with it this way.

14   **Q**       As a result of your investigation, discussions,  
15           reading, women who are given -- and I think most  
16           of -- we've discussed the clinical studies or  
17           clinical reports you've read and discussions you've  
18           have. Do these women, is there an abrupt cutoff? Do  
19           they have amnesia? First of all, is there amnesia in  
20           most of these cases?

21   **A**       Yes.

22   **Q**       Is there an abrupt cutoff of that amnesia? That is,  
23           is there a point that you don't remember from that  
24           point forward? Or it is hazy? Is it mushy?

25   **A**       It's hazy usually.

1 Q And as they discuss it, do they have more memories  
2 oftentimes?

3 MR. MEADORS: Objection to the form of the  
4 question. Quit leading him, please.

5 Q If they discuss it, would they or would they not have  
6 more bits, more memories?

7 A I could -- I could not answer that appropriately.  
8 Sometimes if you discuss something with a person over  
9 and over again and tell them what happened, they will  
10 reach the point where they actually think that they  
11 remember it. Sometimes they have no memory  
12 whatsoever.

13 Q Okay. I guess what I am -- and the other point I'm  
14 getting to is this. Mr. Meadors asked you about  
15 involuntarily intoxicated. Let's talk about people  
16 that get voluntarily intoxicated for just a moment so  
17 we can do a comparison. Okay?

18 A Yes, sir.

19 Q Somebody goes out to a bar or goes somewhere or sits  
20 at home and drinks so much alcohol that it impairs  
21 their mental and physical faculties. Is that  
22 intoxicated?

23 A Yes.

24 Q Now, when they do that, what happens to their  
25 judgment?

1 A It goes down the tubes.

2 Q It goes down the tubes. So their ability to make a  
3 rational -- we talked about rational decisions. They  
4 might get behind the wheel of a car?

5 A That's correct.

6 Q That if they were impaired -- if they rationally knew  
7 they were impaired they wouldn't do?

8 A That's correct.

9 Q So people when they are impaired or intoxicated do  
10 things, oftentimes say things, that they would not do  
11 had they not been intoxicated. Isn't that correct?

12 A That is correct.

13 Q And tell me the chemical mechanism. What happens to  
14 people's brains as they ingest alcohol? Let's just  
15 use alcohol. What happens to their brains that  
16 causes them to say and do things that they wouldn't  
17 do had they not ingested substance, alcohol?

18 A It's called behavioral disinhibition.

19 Q Behavioral disinhibition. Is there a chemical  
20 reaction that happens?

21 A Not that we know of.

22 Q What happens? Why does it happen?

23 A Because there is an area of the brain called the  
24 limbic system, and the limbic system is responsible  
25 for maintaining those normal inhibitions as well as a

1 normal emotional state. When you alter the  
2 functioning of that limbic system, then you see the  
3 irrational kinds of behavior. And the limbic system  
4 is obviously extremely sensitive to the effects of  
5 depressant drugs.

6 Q And a depressant drug is like alcohol?

7 A That's correct.

8 Q Alcohol is a depressive drug, as is GHB, as is  
9 Rohypnol and all the others. Those are all central  
10 nervous system depressants, right?

11 A That's correct.

12 Q Now, if one has a central nervous system depressant  
13 like alcohol and drinks a lot, 17 drinks, ten drinks,  
14 that would be a lot over a 12-hour period, wouldn't  
15 it?

16 A That's correct.

17 Q But if you consume alcohol all the time, I think you  
18 said you have more tolerance. Is that correct?

19 A That is correct.

20 Q Just that, forget about any other intoxicant, just  
21 that; if you were startled, awoken, brought out of a  
22 deep sleep, shot, trauma, taken to a hospital,  
23 handcuffed and then put in a room, that alcohol that  
24 you had to drink the day before, would that in any  
25 way affect your ability to recall what had happened?

1 A Not the day before.

2 Q I mean the night before. I'm sorry.

3 A No. I don't think so. But I think you might have a

4 hangover which would make you less functional.

5 Q You would have a hangover which is -- what is a

6 hangover?

7 A A hangover.

8 Q Medically speaking?

9 A It's a toxic side effect produced by alcohol

10 associated with changes in the tensioning of the

11 blood vessels in the brain so that you have headache.

12 Sometimes you have nausea and vomiting.

13 Q Would it affect your cognitive abilities, the

14 hangover?

15 A It certainly could.

16 Q Now, on top of that, let's assume you get a dose

17 unknowingly of Rohypnol or GHB or some other date

18 rape drug. Okay?

19 A Yes, sir.

20 Q Is that a dangerous cocktail then?

21 A Certainly.

22 Q And you haven't had so much alcohol that -- you saw

23 the video of Mr. Herring walking into the club?

24 A Yes.

25 Q He walks in. His gait is okay, correct?

1 A Yes.

2 Q He doesn't appear to be stumbling or falling down?

3 A That's correct.

4 Q And certainly they wouldn't have served him if he had  
5 slurred speech or appeared to be over intoxicated,  
6 correct?

7 MR. MEADORS: Your Honor, objection to leading.  
8 He is just testifying.

9 THE COURT: Yes, sir.

10 Q And when he leaves, does he -- as you saw in the  
11 video, does he or does not he appear to be -- when I  
12 say impaired, his physical faculties. Is he weaving?  
13 Is he stumbling?

14 A No. He doesn't show symptoms of overt intoxication.  
15 That does not mean he is not impaired.

16 Q Okay. Now, that's what I want us to distinguish  
17 here. Mr. Meadors asked you about him getting in his  
18 car and backing up and coming back and all of that  
19 and talking to people. If one is under the influence  
20 of this Rohypnol or GHB or one of these drugs, will  
21 it necessarily eliminate your ability to walk and  
22 talk and drive and do all the sorts of things we see  
23 him doing?

24 A No. It's very dose dependent.

25 Q Okay. Now, women who have been given this drug

1 oftentimes find out later on -- or do they find out  
2 later on -- that they had walked around and talked to  
3 people and then had no memory of it?

4 A Yes.

5 Q I mean, it's very normal with this drug?

6 MR. MEADORS: Your Honor, again, objection.

7 He's leading.

8 Q Is that very normal with this drug?

9 A It's not very normal because most people don't know  
10 how to dose. Most guys don't know how to dose  
11 Rohypnol or GHB, and they think the more you give the  
12 woman the better off you'll be. But it's certainly  
13 possible to dose so that you have a person who is  
14 somewhat functional for a period of time.

15 Q Somewhat functional. Is what you see of Mr. Herring  
16 and what you've read in the statements about Mr.  
17 Herring, consistent or inconsistent with that  
18 somewhat functional definition you've just given?

19 A It is consistent with a somewhat function.

20 Q Now, you were asked if you read statements and names  
21 were mentioned. And I want you to look at these  
22 documents. Have you seen this before?

23 A No, I have not.

24 Q Do you want to take just a minute to look through  
25 them and see if there's anything in them that makes



1 any difference to you? Beg the Court's indulgence  
2 for just a moment.

3 (Pause)

4 **THE COURT:** What is he referring to?

5 **MR. HARPOOTLIAN:** Sir?

6 **THE COURT:** What's he referring to?

7 **MR. HARPOOTLIAN:** He asked him if he had read  
8 the statements of Donald Hawkins, Nicole Beran, Carl  
9 Weeks.

10 **THE COURT:** So he's going to read all these  
11 statements now?

12 **MR. HARPOOTLIAN:** Sir?

13 **THE COURT:** Is he reading all of those  
14 statements now?

15 **MR. HARPOOTLIAN:** Well, he's --

16 **THE COURT:** You just said -- you asked him if  
17 he's read the statements.

18 **MR. HARPOOTLIAN:** Right. I'd ask him to read  
19 them now to see if it would make any difference in  
20 his opinion.

21 **THE COURT:** Approach the bench.

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

23 (Whereupon, a bench conference is had)

24 Q Go ahead. I'm sorry. I just want to see where  
25 you're at.

1 A I'm right here.

2 MR. HARPOOTLIAN: Okay. He is almost done,  
3 Judge.

4 (Pause)

5 Q Actually, I don't think there's anything -- let me  
6 look at this one real quick. Okay. There is no  
7 reason for us to take up time for you to read Angel  
8 Koon's. But you have now read the statements of  
9 Donald Hawkins, Nicole Beran, Renisha Grainger,  
10 correct?

11 A Yes.

12 Q Anything in these change your opinion in any way?

13 A No.

14 Q Okay. Now, I'm trying to understand. Mr. Meadors  
15 used the term robotic and he used the term trance.

16 MR. MEADORS: Objection. I did not use the word  
17 trance.

18 MR. HARPOOTLIAN: Oh, you used the word trance.  
19 I wrote it down.

20 THE COURT: Yes, sir.

21 Q And your position in response to Mr. Meadors'  
22 questions were that it would not be robotic, would  
23 not be a trance. I think Mr. Meadors actually came  
24 up here and did a little robotic thing for us.

25 Let's talk about intoxication. Okay? We talked

1 about somebody who takes a drug like alcohol and  
2 becomes intoxicated. And are there physical  
3 manifestations of that that you can look at them?  
4 Are there physical manifestations of that you can see  
5 if somebody is grossly intoxicated or intoxicated on  
6 alcohol?

7 A Yes.

8 Q And what would those be?

9 A Slurred speech, motor incoordination (sic),  
10 staggering, changes in coloration of the skin,  
11 reddening of the skin usually.

12 Q And does it make some people drowsy?

13 A Yeah. But that's not something you can normally  
14 observe unless they have their eyes closed.

15 Q Okay. And it's a central nervous system depressant,  
16 correct?

17 A That's correct.

18 Q So as people drink it they don't necessarily go to  
19 sleep?

20 A That's correct.

21 Q These particular drugs we're talking about, the date  
22 rape drugs, if somebody ingests one, ingests them,  
23 and it begins to effect their -- well, when you're  
24 intoxicated, what does it affect? I mean, with  
25 alcohol, it affects your motor skills. Would some

1 dosage with Rohypnol or GHB, would they not affect  
2 your motor skills?

3 A Yes. At lower doses you would not expect them to  
4 affect motor skills.

5 Q At lower doses you would not expect them to affect  
6 your motor skills?

7 A Correct.

8 Q At lower dosages, would it affect your ability to  
9 speak?

10 A No.

11 Q To walk?

12 A No.

13 Q To drive a car?

14 A No.

15 Q So it's different, even though it's a central nervous  
16 system depressant, different than alcohol to some  
17 extent?

18 A No. They're the same. Alcohol at some doses does  
19 not produce any of those adverse effects.

20 Q Well, at what point does it eliminate or affect your  
21 ability to make -- and you used the term rational  
22 decisions -- to be rational, to become uninhibited,  
23 disinhibited? What happens?

24 A At what dose did you say or what --

25 Q Well, I mean, is there a progression?

- 1 A It's early on. In the progression you go through the  
2 period of irrationality, inability to think and  
3 reason and make decisions and so forth at a point  
4 where you still have enough coordination to carry out  
5 your stupid activities.
- 6 Q Your what? Did you say stupid activities?
- 7 A Yes. So the person who just has three beers real  
8 quickly may not be incoordinated (sic) but may be  
9 irrational enough to think they can drive.
- 10 Q Okay. And people -- you've worked with alcohol and  
11 drug abuse clinics and treatment and those sorts of  
12 things over the years, have you not?
- 13 A That's correct.
- 14 Q Have you seen people do stupid things when they had  
15 too much to drink --
- 16 A Right.
- 17 Q -- when they become intoxicated from alcohol?
- 18 A Yes.
- 19 Q Do they kill people sometimes?
- 20 A Yes.
- 21 Q Now, the difference with these drugs is; well, in  
22 those people when they do something really stupid  
23 like kill somebody, does it affect -- does the drug  
24 affect their ability to remember that, the alcohol?
- 25 A Sometimes it does.

1 Q And sometimes ...?

2 A It does not.

3 Q With the Rohypnol and GHB, is there an amnesia piece  
4 of that; that is, that they do stupid things and then  
5 don't remember it?

6 A Yes.

7 Q Okay. Now, you also said to Mr. Meadors that the  
8 amnesia is at the end point. What do you mean by  
9 that?

10 A When you wake up and say I don't remember, that  
11 doesn't mean that you were not cognizant during the  
12 time when the drug was working on you. It just means  
13 that you haven't stored any of those memories.

14 Q So you're aware of what's going on around you?

15 A You may be aware quite a while of what's going on  
16 around you.

17 Q You're uninhibited?

18 A That's correct.

19 Q And your ability to distinguish between right and  
20 wrong at that point when you're uninhibited is what?

21 A It's decreased.

22 Q And in examining everything, you've determined that  
23 Mr. Herring -- and you were questioned by Mr.  
24 Meadors -- had difficulty remembering things prior to  
25 the dose. Is that right?

1 A Yes.

2 Q Is that unusual?

3 A I'm not absolutely sure whether it's unusual or not.

4 I would think that any time you have emotional trauma

5 involved that your memory would be less solid.

6 MR. MEADORS: Your Honor, I would object. He

7 says he's not sure.

8 THE COURT: Sure.

9 MR. HARPOOTLIAN: Well, he said --

10 THE COURT: Wait a minute. Let me hear the

11 objection.

12 MR. MEADORS: He says I'm not sure. He's saying

13 I guess. He said I'm not sure. And he's not a

14 psychiatrist.

15 THE COURT: If he's not sure, he's not sure.

16 MR. MEADORS: Thank you.

17 Q But you did say any time there's emotional trauma it

18 would affect memory?

19 A Yes.

20 Q Do you think getting shot is emotional trauma?

21 A It would be if it were me.

22 Q Okay. Now, let's look at these statements for just a

23 second. Mr. Meadors went over them with you. Okay.

24 He has asked, did you have a problem with anybody in

25 there? Okay? That was the question. Right?

1 A Yes, sir.

2 Q Now, at this point in time are you aware of the fact  
3 that the problem he had while he was in there was he  
4 was caught or seen in the back room naked  
5 masturbating?

6 A Yeah. I'm aware of that.

7 Q Is that a problem?

8 A I would think it would be.

9 Q Are you aware that he was ejected, walked out of  
10 there?

11 A Yes.

12 Q Are you aware that he was seen getting into his black  
13 4Runner and then coming back and having an argument  
14 or a discussion, whatever it was we saw in the video,  
15 with the deceased? Are you aware of that?

16 A Yes.

17 Q Are you aware of the fact that the 4Runner then  
18 leaves and comes back and apparently a bullet was  
19 fired from his gun that struck the deceased in the  
20 head. Are you aware of that?

21 A Yes.

22 Q Now, when I asked him if you have a problem with  
23 anybody in there, his response is: "I went into one  
24 of the back rooms and paid for a lap dance. There  
25 were other people in there. The lap dance was done



1 by a light-skinned blam woman." Now, is that  
2 responsive to: "Did you have a problem with anybody  
3 in there?"

4 A No, it's not.

5 Q And you think maybe his response --

6 MR. MEADORS: Objection.

7 MR. HARPOOTLIAN: Strike that.

8 Q Do you see any question on here from a law -- what,  
9 if any, question on here do you see from a law  
10 enforcement officer saying, do you remember being in  
11 a back room naked masturbating? Do you see that on  
12 here?

13 A No.

14 Q Do you remember leaving and riding around in your  
15 car, pulling up in your car and firing a shot; do you  
16 see that on here?

17 A No.

18 Q Do you see anything on here about those problems we  
19 talked about?

20 A No.

21 Q Only at the end of this statement do they ask him:

22 "Do you recall firing a weapon from the Toyota as its  
23 leaving?" And he says, "No, I don't." Is that  
24 right?

25 A Yes, sir.

1 Q Now, having -- I think you responded to Mr. Meadors  
2 that one may have -- and you called it amnesia. That  
3 is, you don't remember. Isn't that what amnesia is?  
4 A Yes, sir.  
5 Q And the reason these drugs create amnesia is why? Is  
6 there a chemical reaction? What happens?  
7 A We don't know. Whatever the reaction is that  
8 converts an action into short-term memory and into  
9 long-term memory doesn't occur. It's blocked.  
10 Q So as it's happening, you understand what's going on;  
11 it's just not being stored?  
12 A That's correct.  
13 Q So you're looking through a video camera with no tape  
14 in?  
15 A That's a good way of saying it.  
16 Q Or perhaps bad tape in it?  
17 A Right.  
18 Q He also indicates in his statement: "I had a scotch  
19 and soda while there. I do recall, but hazy, that I  
20 was there." Is that what he says?  
21 A That's what he says.  
22 Q Now, it's important. "I could not tell you if the  
23 place was full or crowded or anything." Is that  
24 consistent with your opinion in this case?  
25 A Yes.

1 Q Now, involuntary intoxication is the term used by the  
2 solicitor over here several times. Whether you knew  
3 you were taking it or didn't know you were taking it,  
4 voluntary or involuntary, what you would see from Mr.  
5 Herring would be the same, correct?

6 A Yes, sir.

7 Q And the result would be the same. He wouldn't  
8 remember?

9 A That's correct.

10 Q So the key element here is that he involuntarily  
11 ingested it; that is, had --

12 MR. MEADORS: Objection to leading.

13 THE COURT: Yes, sir. Sustained.

14 Q People get intoxicated all the time voluntarily. Is  
15 that correct?

16 A That's correct.

17 Q In this particular case, after viewing the  
18 videotapes, after reading the statements, looking at  
19 what I've just given you, do you have an opinion as  
20 to whether or not -- do you have an opinion as to  
21 whether or not Mr. Herring over here ingested a date  
22 rape drug that night? After all the questioning by  
23 the solicitor, you still have that opinion, do you  
24 not?

25 A Yes, I do.

1 Q That he got it that night?

2 A Yes, sir.

3 Q That he was drugged that night?

4 A Yes.

5 Q Thank you.

6 THE COURT: Anything further?

7 MR. MEADORS: Very brief; yes, sir. Not long.

8 THE COURT: I've heard that before.

9 RECROSS EXAMINATION

10 BY MR. MEADORS

11 Q You said something about it's like a video with no  
12 film, right? Do you remember when he asked you that?

13 A Yes, sir.

14 Q Then there would be no reason whatsoever, would  
15 there, Doctor, for him to come back, would there?

16 A You talking about when he drove back around --

17 Q When he left on River Drive and came back, he came  
18 back for a reason, didn't he?

19 A I'm sure he did.

20 Q You're sure he did.

21 MR. HARPOOTLIAN: Your Honor, he didn't give him  
22 an opportunity to answer the question. I apologize.

23 MR. MEADORS: He said, "I'm sure he did."

24 MR. HARPOOTLIAN: No. Came back, would that be  
25 a --

1           **MR. MEADORS:** Your Honor, if he wants to  
2 approach, I don't want him to testify.

3           **THE COURT:** Certainly.

4           **MR. MEADORS:** Judge, if I --

5           **MR. HARPOOTLIAN:** May it please the Court.

6           (Whereupon, a bench conference is had)

7           **THE COURT:** Ask the question again.

8           **MR. MEADORS:** I don't remember. The last answer  
9 was I guess he did.

10          **MR. HARPOOTLIAN:** The court reporter can read  
11 it.

12          **MR. MEADORS:** Please read it.

13          (Whereupon, the court reporter reads back the  
14 last question and answer).

15   **Q**   Now, what statements did he hand you and that you  
16 reviewed for the first time today and still concluded  
17 your opinion was the same? What statements did he  
18 give you?

19   **A**   There were some handwritten statements. I didn't see  
20 names on them. I didn't pay attention to them.

21   **Q**   You would have liked to have had a little more time  
22 to review them before giving an opinion, wouldn't  
23 you?

24   **A**   Probably so.

25   **Q**   And one of those was -- Carl Weeks' was not in those.

1 I didn't hear him call that name out. You don't  
2 remember a Carl Weeks, do you?

3 A No, I don't.

4 Q And that would be the one that he didn't show you  
5 where Carl Weeks said that he threatened to f'ing  
6 shoot me. You would have liked to have seen that,  
7 wouldn't you?

8 A I don't know if I would or not.

9 Q And you're a pharmacist, correct?

10 A Yes. I'm a pharmacist.

11 Q And he asked you about alcohol. And I guess I need a  
12 new board. And he asked you about 17 drinks. And  
13 based on alcohol, most -- would it be fair to say  
14 based on your studies and everything, when people  
15 tell you or people that drink a lot tell you I've had  
16 two beers or three beers, sometimes it's usually  
17 higher than that? Isn't it sometimes people that  
18 drink a lot tend to underestimate a little bit?

19 A Depending on the situation.

20 Q Right. If you're going home to your wife: I only  
21 had a couple of beers?

22 A Right.

23 Q Could be more?

24 A My experience is if they are in detox, they tell you  
25 they have had more because they want more detox meds.

1 But during the recovery period they tell you less.

2 Q But that's just general out there if you're --  
3 usually underestimate, correct?

4 A Yes.

5 Q Yesterday it was 17. He brought it back down,  
6 correct?

7 A Yes.

8 Q Now, and Mr. Harpootlian asked you doesn't alcohol  
9 lower your inhibitions. There's no question about  
10 that, is there?

11 A No question.

12 Q Make you do some things that you wouldn't ordinarily  
13 do, right?

14 A That's correct.

15 Q And you voluntarily consume alcohol, don't you?

16 A Yes.

17 Q I mean, you do. And it would make you do stuff like  
18 potentially like taking your clothes off and  
19 masturbating, right? If you had enough alcohol, it  
20 could make you take your clothes off and masturbate?  
21 I'm not talking about you, Doctor. But, I mean, if  
22 somebody had enough, it would lower your inhibitions.  
23 That would be consistent with drinking a lot of  
24 alcohol, wouldn't it?

25 A Yeah. But it's more consistent with drinking a

1 little bit and lowering your inhibitions.

2 Q How can you say that? And he didn't just drink a  
3 little bit. He had --

4 MR. HARPOOTLIAN: Your Honor, he asked him:  
5 "How can you say that?" Allow him to answer.

6 THE COURT: Let him answer the question.

7 A Well, the answer is, when the drug or alcohol level  
8 is rising when you have a couple of drinks, that's  
9 when you usually expect to see the effects on the  
10 thinking and reasoning and that's when you would  
11 expect someone to do something like that or for a  
12 teen-ager to have two or three drinks and start  
13 driving when you do irrational things. When you get  
14 to the really, really high concentrations of alcohol,  
15 you may do the same thing but it would not be as a  
16 form of disinhibition at that point.

17 Q 17 drinks clearly gets you to that point, correct?

18 A Or it would get you past that point, yes.

19 Q Or even past that point. And I think he asked you a  
20 minute ago that Rohypnol and alcohol would have the  
21 same effects. Well, they don't necessarily with  
22 amnesia. With alcohol if you wake up. You said  
23 earlier I think you have a hangover?

24 A Yes.

25 Q But you're going to remember what happened, aren't



1           you?

2    **A**    Most of it, yes.

3    **Q**    So there is a difference there? They're not the  
4           same, correct?

5    **A**    Yeah. Rohypnol is used as a date rape drug because  
6           of that propensity. If alcohol did the same thing,  
7           then it would probably be a date rape drug.

8    **Q**    Exactly. And in those Rohypnol cases --

9           **MR. HARPOOTLIAN:** Objection, Your Honor.

10          "Exactly"? I mean --

11          **THE COURT:** Just let him ask the question. I  
12          mean, answer the answer. That's the procedure.

13    **Q**    And it's in those date rape situations, Rohypnol,  
14           where there isn't as organized thought, movement,  
15           structure and reasoning, correct?

16    **A**    That's correct.

17    **Q**    Beg the Court's indulgence. Voluntary  
18           intoxication -- you are from Georgia -- that's not a  
19           defense in South Carolina, is it?

20          **MR. HARPOOTLIAN:** Objection, Your Honor.

21          **THE COURT:** Yes, sir.

22          **MR. HARPOOTLIAN:** Move that be struck and the  
23          jury be instructed --

24          **THE COURT:** Improper question.

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

1 (Whereupon, a bench conference is had)

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

3 **THE COURT:** All right, ladies and gentlemen.  
4 Strike the last question and answer. That's an  
5 improper question.

6 **MR. MEADORS:** From this witness, to this  
7 witness.

8 **THE COURT:** From this witness.

9 **Q** And you had Donnie Hawkins' statements up there,  
10 didn't you, a minute ago? Well, you did. You had  
11 Donnie Hawkins' statement.

12 **A** Okay.

13 **Q** Correct? And again, the amount of Rohypnol that you  
14 take to get you amnesia depends on the dosage,  
15 correct? It would take a lot of amount to get you up  
16 to amnesia, where you wouldn't remember, wouldn't it?  
17 A higher dose?

18 **A** It would take more than a sedative does if that's  
19 what you're asking.

20 **Q** Now, "You don't want me to come back. If I come back  
21 there's going to be trouble. Somebody is going to  
22 get f'd up." Did you see that in Donnie Hawkins'  
23 statement?

24 **A** Yeah. I saw it in his statement.

25 **Q** That that's what the defendant told him. "You don't

1 want me to come back. If I come back there's going  
2 to be trouble. Somebody is going to get f'd up?"

3 MR. HARPOOTLIAN: Your Honor, I object. There's  
4 no question here. He said it twice.

5 MR. MEADORS: I'm asking him if he saw that in  
6 his statement.

7 THE COURT: Overruled. Ask the question.

8 Q You saw that in the statement?

9 A I saw it, yes.

10 Q And after that, he made those statements, he came  
11 back, didn't he?

12 A Okay.

13 Q And somebody got f'd up, didn't they?

14 A Yes, sir.

15 Q That's all.

16 THE COURT: Thank you very much, Doctor. You  
17 may come down. Witness be excused? Any objection?  
18 No objection.

19 MR. MEADORS: No, sir.

20 THE COURT: All right, ladies and gentlemen of  
21 the jury. We're going to take our lunch break at  
22 this time. As you know, we've ordered lunch for you  
23 today. We're only going to take a short lunch break  
24 today. We're going to keep on working. So I'll ask  
25 you to be back and prepared to reconvene at 2:00.

1 That's 45 minutes. You're certainly not confined to  
2 the jury room or your -- you can take your lunch over  
3 at Finley Park if you wish to do so. I'm not  
4 restricting your movement in any way. I hope you  
5 have a pleasant lunch. We bought it for you. And  
6 we'll see you at 2:00.

7 (Jury out at 1:15 p.m.)

8 **THE COURT:** We'll stand at ease until 2:00.

9 (Whereupon, a lunch break is taken)

10 **THE COURT:** Counsel, let me see you for  
11 scheduling purposes.

12 **MR. HARPOOTLIAN:** Sir?

13 **THE COURT:** Could I see you for scheduling  
14 purposes?

15 **MR. HARPOOTLIAN:** Yes, sir. I'm sorry.

16 (Whereupon, a bench conference is had)

17 **THE COURT:** All right, Mr. Harpootlian, it was  
18 my understanding you plan on calling a witness.

19 **MR. HARPOOTLIAN:** Yes.

20 **THE COURT:** The State objects to that witness's  
21 testimony. And I'm going to allow you to proffer  
22 that evidence.

23 **MR. HARPOOTLIAN:** Your Honor, this is a witness.  
24 We'd ask the media to blur her face. She's a former  
25 dancer at the club.

1           **THE COURT:** The news media understand? Thank  
2 you very much.

3           **MR. HARPOOTLIAN:** And she will be using her last  
4 name only. And we've given all the identifying data  
5 to the solicitor so that they could --

6           **THE COURT:** Call her.

7           **MR. HARPOOTLIAN:** Sir?

8           **THE COURT:** Call her.

9           **MR. HARPOOTLIAN:** Okay. Ms. Cummings.

10           **MS. CUMMINGS,** after being duly sworn, testifies  
11 as follows:

12           **THE CLERK:** You may have a seat.

13           **MR. HARPOOTLIAN:** Your Honor, I'm just going to  
14 cut -- rather than doing all the preparatory, I'm  
15 just going to cut to the part that's in dispute, if  
16 that's okay.

17           **THE COURT:** Better lay some foundation.

18           **MR. HARPOOTLIAN:** Right.

19                   IN CAMERA EXAMINATION

20 **BY MR. HARPOOTLIAN**

21 **Q** Have you ever been employed as an entertainer/dancer  
22 at Chastity's?

23 **A** Yes.

24 **Q** And did you stop being an entertainer or dancer at  
25 Chastity's sometime in the spring or summer of 2004?

1    **A**    No.

2    **Q**    When was it?

3    **A**    Early beginning of 2003, the middle of 2003.

4           **THE COURT:** 2000 what?

5           **MR. HARPOOTLIAN:** 2003.

6    **Q**    And wait one second.

7    **A**    No. You're correct.

8    **Q**    I'm sorry?

9    **A**    No. You're correct.

10   **Q**    I am correct?

11   **A**    Yes, sir.

12   **Q**    Okay. That's what I thought. Because we --

13           **MR. MEADORS:** Your Honor, who is correct?

14           **MR. HARPOOTLIAN:** I am correct. The early part

15           of 2004.

16   **Q**    Right. And we're not going to talk about all the

17           things that go on there. But did you have occasion

18           to have an episode in which you believed you were

19           drugged?

20   **A**    Yes.

21   **Q**    On how many occasions?

22   **A**    Twice. Twice.

23   **Q**    And, Ms. Cummings, I'm going to ask you to maybe -- I

24           don't know whether you're too close or too far away.

25           Okay. But I know I'm having difficulty hearing you.

1 I know Mr. Meadors back here is having difficulties.

2 How many times?

3 A Twice.

4 Q Twice. And there was an occasion -- let's talk about  
5 both times. Tell the Court, please, about those two  
6 occasions?

7 A The first occasion I was with a co-worker who is also  
8 a friend.

9 Q What's her name?

10 A Jessica.

11 Q McClendon?

12 A McClendon.

13 Q Okay. And she's seated outside?

14 A Correct.

15 Q Okay. And what happened?

16 A We had been at a club approximately two to three  
17 hours. A customer ordered us both a drink. She got  
18 her drink from the bartender. I was called on stage.  
19 So I was -- the bartender was supposed to hold my  
20 drink until I got back. When I got back the drink  
21 was sitting on the bar and the bartender told me she  
22 had been watching it. I drank the drink. Shortly  
23 after, about 30 to 40 minutes, we both started puking  
24 and feeling --

25 Q Started what?

1 A Puking.  
2 Q Vomiting?  
3 A Yes. Throwing up. We asked to leave the club. We  
4 both felt very weak, like we couldn't move.  
5 Ms. McClendon drove my car because I felt I couldn't  
6 drive. We made it half way to Blythewood and stopped  
7 at a gas station because she felt she couldn't drive  
8 any further. We sat there for approximately 30  
9 minutes and then attempted to make it the rest of the  
10 way to her house.  
11 Q Okay.  
12 A She was then pulled by an officer and arrested for  
13 driving under suspension. The officer at that time  
14 knew I was incapable and told me to drive home. I  
15 have lived in the Blythewood area my entire life and  
16 managed to make it from Blythewood instead of to my  
17 house to Rock Hill.  
18 Q You drove instead to Rock Hill?  
19 A Correct.  
20 Q Do you have a memory of driving to Rock Hill?  
21 A Oh, yes.  
22 Q Okay. And did you know you were going to Rock Hill?  
23 A No.  
24 Q Okay.  
25 A I figured I was in Rock Hill when I came to a gas



1 station. I was trying to find a place to turn around  
2 and figure out where I was. And I --

3 Q Did you drive on back?

4 A Yes. I made it to the interstate afterwards.

5 Q Okay. And is that -- you had a -- was that what you  
6 wanted to tell us about that episode?

7 A That's all I can remember of that episode. We did  
8 inform the managers before we left.

9 Q Okay. And you'd informed the managers at Chastity's?

10 A Correct.

11 Q That what?

12 A We felt we had been drugged or something, had been  
13 put in our drinks. Because normally they wouldn't  
14 allow us to have left that early because otherwise it  
15 would have been double tip out.

16 Q Okay. Tell us about the next time something  
17 happened?

18 A The second time I arrived at work probably about 7:00  
19 in the evening, had a beer and two to three drinks.  
20 It was around 10:00 when I looked at the clock. I  
21 walked into the dressing room and woke up at 5:30 in  
22 the morning with one of the floor guys shaking me and  
23 telling me it was time to go home.

24 Q Now, when you walked into the dressing room that  
25 night, were you wearing what?

1 A I had on a work outfit: Stilettoes, thongs and a  
2 little baby doll dress type thing.  
3 Q When you woke up the next morning --  
4 A I was fully dressed.  
5 Q Wearing different clothes?  
6 A Different clothes in a part of the club I had never  
7 been in.  
8 Q And were you -- anything you noticed about your  
9 condition?  
10 A Yeah. I had bruises on my cheek. I had bruises on  
11 my ankles and blisters and no memory of anything at  
12 all.  
13 Q No memory whatsoever from the time --  
14 A No.  
15 Q -- you walked into the dressing room which was about  
16 10:00 --  
17 A Correct.  
18 Q -- until you woke up the next morning at 5:00?  
19 A Correct.  
20 Q Do you remember getting dressed?  
21 A No.  
22 Q I mean, were you dressed correctly as if you dressed  
23 yourself?  
24 A Yeah. Jeans on and a shirt on.  
25 Q And you don't know how you got there?

1 A No.

2 Q No memory whatsoever?

3 A No memory at all.

4 Q Now, how long after that did you continue to work at  
5 Chastity's?

6 A Two to three months maybe.

7 Q Okay. So this would have been about -- if you left  
8 in spring/summer of '04, this would have been around  
9 January of '04?

10 A That is correct.

11 Q We can't be -- you didn't -- did you call the police?

12 A No. It didn't hit me until after the left the club  
13 and I was driving that it seemed strange I didn't  
14 remember anything. I went to a friend's house and  
15 told him that I didn't know what happened, anything  
16 could have happened.

17 Q When did you realize that something -- do you have in  
18 opinion about what happened to you?

19 A I really don't know what happened. All I know is  
20 that I was -- it sunk in about an hour after I left  
21 the club and it sort of freaked me out. And then for  
22 the club to wake me up and tell me to leave because  
23 they were closing I thought was kind of --

24 Q And did you think about how you got dressed?

25 A I was informed that another dancer had dressed me.

1 Q But, I mean, do you have any memory of the other  
2 dancer dressing you? Do you have any memory of how  
3 you got the bruises on your feet?

4 A No. I don't know how I got back into the other room,  
5 who carried me, I mean, I have no -- the club  
6 basically told me nothing.

7 Q Do you believe you were drugged?

8 A I believe something -- I had very little alcohol that  
9 night. And I've never passed out.

10 Q Your Honor, that is the substance of her testimony.  
11 Let me just -- when you were getting these drinks,  
12 were you getting them from the bar at Chastity's?

13 A Correct.

14 Q Did you go anywhere else before you had those drinks  
15 that night? Did you drink anything?

16 A No. I only drink at the club. I am not a big  
17 drinker.

18 Q At the club.

19 IN CAMERA EXAMINATION

20 **BY MR. MEADORS**

21 Q This was January of 2004?

22 A That would have been the second incident. The first  
23 incident would have been end of 2003.

24 Q The first incident was end of 2003?

25 A Around that area. It was cold outside. I remember ,

1           that.

2    Q       And you quit working there when?

3    A       2003 to beginning of 2004.

4    Q       Well, the second one is 2004 you said?

5    A       Correct.

6    Q       So you were working there then when the second one  
7           happened?

8    A       Yes.

9    Q       So you quit right after that?

10   A       Correct.

11   Q       Shortly thereafter?

12   A       Shortly thereafter.

13           **MR. MEADORS:** Your Honor, we would object to  
14           relevance. It's two years prior to this incident.  
15           It's remote.

16           **THE COURT:** Position, Mr. Harpootlian.

17           **MR. HARPOOTLIAN:** Sir?

18           **THE COURT:** What is your position?

19           **MR. HARPOOTLIAN:** My position is under Rule 401,  
20           "Relevant evidence means evidence having any tendency  
21           to make the existence of any fact that is of  
22           consequence to the determination of the action" --

23           **THE COURT:** Yes, sir. I've read the rule. You  
24           don't have to read it to me. Tell me why you think  
25           it's relevant.

1           **MR. HARPOOTLIAN:** Well, because within a  
2           24-month period my client is in the same bar and  
3           basically has the same symptoms that this young lady  
4           has. It would show -- it has a tendency to show it  
5           is more likely than not that the drug is being  
6           dispensed by someone in the club and that it is  
7           available there and somebody is putting it in drinks.

8           And let me look at one other thing right here.  
9           406: "Evidence of the habit of a person or of the  
10          routine practice of an organization, whether  
11          corroborated or not, and regardless of the presence  
12          of eye witnesses, is relevant to prove the conduct of  
13          the person, or the organization, on a particular  
14          occasion which was in conformity with the habit or  
15          routine practice."

16          In addition, Judge, we have -- and this place is  
17          run -- I mean, it's the same place. And we've  
18          already heard testimony from one witness she was  
19          afraid to leave her drink because people would put  
20          stuff in it. And here's someone that had something  
21          put in their -- I mean, Judge, there can't be  
22          anything more relevant, more relevant, to our defense  
23          than this case which is involuntary intoxication.

24          **MR. MEADORS:** Judge, if I may be heard briefly?

25          **THE COURT:** Absolutely.

1           **MR. MEADORS:** Judge, as far as habit, I think  
2           you've had one witness who said, I put something over  
3           my drink. Here you've got a --

4           **THE COURT:** We're not talking about habit.

5           **MR. MEADORS:** Thank you. I just wanted to  
6           dispel that at this point.

7           **THE COURT:** We're talking about routine practice  
8           at this point.

9           **MR. MEADORS:** I don't think you could show habit  
10          from that, Your Honor, and that it's even tied to the  
11          organization at all. It could be anybody that did  
12          it.

13          Second, as far as relevance, I think it's  
14          stretching it beyond the boundaries, Judge. It's two  
15          years prior. There's nothing in her testimony that  
16          two years prior to this that she got something in  
17          there that's relevant to the January 29th, 2006 at  
18          all.

19          We don't know who put that in there with her.  
20          That could be another customer. That could be  
21          something else. Not disputing you at all. But it  
22          could be somebody else that did that. No ties to  
23          January 2006 at all. You can't say the place did it.  
24          There's no relevance to this night.

25          **THE COURT:** She doesn't say the place did it.

1 She doesn't say who did it. All she says is she  
2 believes it was in there. That's all she says.

3 **MR. MEADORS:** How does that make an issue in  
4 fact that it's more likely than not that he got it?  
5 You can I guess bring anybody in in the world that's  
6 been in Chastity's and say, well, I left and I think  
7 I got something, I don't know what it was.

8 **MR. HARPOOTLIAN:** Well, Your Honor, and I've got  
9 Dr. Holbrook sitting here if necessary. I could ask  
10 her this.

11 IN CAMERA EXAMINATION

12 **BY MR. HARPOOTLIAN**

13 **Q** Have you talked to Dr. Holbrook?

14 **A** No.

15 **Q** This gentleman?

16 **A** Yes. Yes. Dr. Holbrook.

17 **Q** And you explained to him your symptoms?

18 **A** Correct.

19 **MR. MEADORS:** Judge, how do you know it's not  
20 the flu, that she caught the virus?

21 **THE COURT:** I don't.

22 **MR. MEADORS:** And that's why we think --

23 **THE COURT:** I don't. I don't know that. But  
24 the rule uses the word "any". I have explained  
25 before that is a very, very broad term. "Any"



1 relevance to make the existence of "any" fact that is  
2 of consequence in this case."

3 **MR. MEADORS:** Any tendency to make it more  
4 probable or less probable. I don't think this makes  
5 what he says happened any more or less probable  
6 because we don't even know what it was. She could  
7 have gotten it from --

8 **THE COURT:** You can ask her about it. I'm going  
9 to allow it. But not --

10 **MR. HARPOOTLIAN:** Thank you, Your Honor. Sir?

11 **THE COURT:** But not as to habit or routine  
12 practice or habit. It's what happened to her.  
13 That's all.

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

15 **MR. MEADORS:** And we object.

16 **THE COURT:** Not a -- may I finish?

17 **MR. MEADORS:** I'm sorry.

18 **THE COURT:** Not a habit or routine of the place  
19 of business. You may want to argue that to the jury,  
20 but that's not evidence. I don't think that's --  
21 this incident is not sufficient to bring it under  
22 406.

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

24 **MR. MEADORS:** So Your Honor is forbidding Mr.  
25 Harpootlian to put that in the form of a question

1 that it in way was related to Chastity's ownership or  
2 manager or anything. Correct?

3 MR. HARPOOTLIAN: I'm not going to ask her. And  
4 we have the other woman outside who is merely going  
5 to corroborate pretty much the same right here.  
6 Would you like to hear a proffer from her?

7 MR. MEADORS: I'd like to know a time limit. I  
8 mean, is it -- do you know when it was?

9 MR. HARPOOTLIAN: Well, it's going to be the  
10 incident --

11 THE COURT: It's the same thing.

12 MR. HARPOOTLIAN: -- where they rode together.

13 MR. MEADORS: In other words, it's not a  
14 separate incident she is going to relate?

15 MR. HARPOOTLIAN: No. Correct.

16 MR. MEADORS: We'd have the same objection for  
17 the record.

18 THE COURT: Yes, sir. I understand. Bring the  
19 jury.

20 MR. MEADORS: Do you want to ask her to step  
21 down?

22 THE COURT: Yes, ma'am. Come on down. Ma'am,  
23 you're going to have to go back up there when the  
24 jury comes in. Okay?

25 (Jury in at 2:28 p.m.)

1           **THE BAILIFF:** The jury is all present, Your  
2 Honor.

3           **THE COURT:** Thank you very much. Mr.  
4 Harpootlian.

5           **MR. HARPOOTLIAN:** May it please, Your Honor.  
6 Your Honor, the witness has previously been sworn.  
7 She's not on the stand. Okay. Ms. Cummings. I'm  
8 sorry.

9           **THE COURT:** Swear the witness.

10          **MR. HARPOOTLIAN:** I apologize.

11          **MS. CUMMINGS,** after being duly sworn, testifies  
12 as follows:

13          **THE CLERK:** Please have a seat.

14                           **DIRECT EXAMINATION**

15   **BY MR. HARPOOTLIAN**

16   **Q**   Ms. Cummings, you first met me what? About four  
17 weeks ago? Five weeks ago?

18   **A**   Correct.

19   **Q**   Were you at one time a dancer at an establishment  
20 called Chastity's in Columbia, South Carolina?

21   **A**   That's correct.

22   **Q**   And are you a dancer now?

23   **A**   No.

24   **Q**   And how long have you not been a dancer?

25   **A**   Going on four years, beginning in the middle of 2004

1 I stopped dancing.

2 Q Three years?

3 A Correct.

4 Q Let me have you think back to when you were working  
5 there. I'm going to ask you about two specific  
6 occasions. What, if any, occasions, and let's -- did  
7 you have -- well, first of all, let me go through the  
8 process of what you do or what you did at Chastity's?

9 MR. MEADORS: Your Honor, at this point in time,  
10 just respectfully, we'd like the record to reflect  
11 our earlier objection to relevance.

12 THE COURT: Yes, sir. Subject to the State's  
13 objection.

14 Q How long did you dance at Chastity's?

15 A It was A little over a year.

16 Q Okay. And when I say dance at Chastity's, if I show  
17 you State's Exhibit No. 51, does that look like the  
18 internal layout? Pole stage, champagne rooms, VIP  
19 room, office, dressing room?

20 A Correct.

21 Q Does that look about right?

22 A Yes.

23 Q And when you were dancing there, who was the -- do  
24 you know who the owner was?

25 A Jerry.

- 1 Q Jerry?
- 2 A Jerry.
- 3 Q Do you know his last name?
- 4 A No.
- 5 Q Just Jerry. Okay. And did you know a man named John
- 6 Johnson?
- 7 A Correct.
- 8 Q Was he there at the time?
- 9 A Yes.
- 10 Q Did you know him?
- 11 A Yes.
- 12 Q Where did you first meet Mr. Johnson?
- 13 A John hired me. I met him at a friend of mine's dad.
- 14 He came over with a couple of the other girls that
- 15 worked there. And they asked me if I would be
- 16 interested in dancing. And I was hired by John
- 17 there, to come into the club.
- 18 Q Had you ever danced?
- 19 A I had never danced before.
- 20 Q So Mr. Johnson recruited you to dance in the club?
- 21 A Well, the dancers that were with him at the time.
- 22 And then he hired me.
- 23 Q And when you danced at the club, did you dance
- 24 clothed, semi clothed or nude?
- 25 A You started off with clothes and by the second song

1           you were supposed to be nude.

2   Q       Was that difficult?

3   A       The first time. And the second time. That's why I

4           drank basically only in the club. I had to be tipsy

5           to get on the stage.

6   Q       Now, what's a champagne dance or a lap dance?

7   A       Champagne dance is to consist of 30 minutes which is

8           supposed to be five songs, the same as a lap dance.

9   Q       And what is a lap dance?

10   A      A lap dance is five minutes. It's one song. And

11           it's rubbing up against and rubbing on the guy

12           basically.

13   Q      And when you say rubbing on him, what are you rubbing

14           on him?

15   A      Well, of course some girls rub their chests. I mean,

16           you sit on his lap. And it is basically grinding.

17   Q      And are you naked while you're doing that?

18   A      You can be. It's optional.

19   Q      And is he naked or is he clothed?

20   A      He's clothed.

21   Q      And that occurs in the VIP room and the champagne

22           room?

23   A      Correct.

24   Q      Now, have you ever had an occasion while working at

25           Chastity's where you felt that you had been drugged?

1 A Yes.

2 Q Okay. Let's talk about those occasions. How many  
3 occasions?

4 A Twice.

5 Q Okay. And you indicated you quit there in the spring  
6 or summer of 2004?

7 A That's correct.

8 Q So, did either one of those instances cause you to  
9 quit?

10 A Yes.

11 Q So let's talk about that instance, the one that  
12 caused you to quit. Was that with somebody or by  
13 yourself?

14 A That was by myself.

15 Q Tell the jury what happened?

16 A Second incident I had gone into work approximately  
17 about 7:00 in the evening.

18 Q Okay. I'm going to ask you to slow down just a  
19 little bit. Okay?

20 A Okay.

21 MR. MEADORS: Your Honor, I'm sorry. Can you  
22 give a time? You said second incident. I didn't  
23 hear a time period.

24 A 7.

25 Q 7.p.m.

1 A 7 p.m.

2 Q And you left. Well, you weren't --

3 MR. MEADORS: Your Honor. I'm sorry.

4 Q Okay. Approximately when was that if you left in the

5 spring or summer of '04?

6 A February or March.

7 Q Okay. Of '04?

8 A It was very early.

9 Q Okay. And you come into work about 7:00?

10 A Correct.

11 MR. MEADORS: Your Honor, objection. I'm sorry.

12 Excuse me.

13 Q Okay. And when you came to work, what did you do?

14 A I got dressed, did my hair and make-up, and went out

15 into the bar and got a Bud Lite.

16 Q Okay. And when you say you got dressed, what did you

17 wear?

18 A Thong and stilettos and a little dress

19 thingamajiggy.

20 Q A little what?

21 A Dress type. They're like lingerie type.

22 Q And you had a Bud Lite?

23 A Correct.

24 Q What happened then?

25 A I danced. And then I had about two to three drinks.



- 1 Q Okay.
- 2 A And I remember going to the dressing room and I
- 3 looked at the clock. It was 10:00. And I was going
- 4 in there to talk to another girl that worked there
- 5 that I have been friends with. And that's the last
- 6 thing I remember.
- 7 Q Until when?
- 8 A 5:30 in the morning. I was woken up by one of the
- 9 floor guys informing me that the club was closing and
- 10 that it was time for me to leave.
- 11 Q And were you dressed as you had been dressed when you
- 12 last remembered, or had your clothing changed?
- 13 A My clothing has been changed.
- 14 Q How were you dressed then?
- 15 A Jeans and a shirt.
- 16 Q Do you remember yourself getting dressed, or do you
- 17 remember anybody helping you get dressed?
- 18 A No. I don't remember anything. It was completely
- 19 blank.
- 20 Q Now, did you notice anything about your physical
- 21 condition when you woke up?
- 22 A I had a bruise on my cheek and I had bruises on my
- 23 ankles and blisters.
- 24 Q Blisters where?
- 25 A Where my shoes had been.

1 Q Okay. And are those -- those blisters you had you  
2 say where your shoes had been?

3 A Yeah. On the top where the strap goes across the top  
4 of your foot.

5 Q Consistent with you walking in them?

6 A No. This would have been bleeding. It had been like  
7 a gash, like a -- like it had pinched it, like a  
8 blood blister.

9 Q And the bruise on your cheek, where was that?

10 A It was right about here.

11 Q Do you have any recollection of how you got that  
12 bruise or you how you got the blisters?

13 A No. Not at all.

14 Q Do you know where, if anywhere, you had gone? Well,  
15 let me ask you this. Did you wake up in the same  
16 dressing room that you remember last?

17 A No. I woke up in a part of the club I had never been  
18 in.

19 Q Okay. If you look at this drawing, the dressing area  
20 is in here, right?

21 A Correct.

22 Q Where would be the place you woke up?

23 A Storage. There was extra couches and stuff for the  
24 VIP rooms that weren't being used.

25 Q Here?

1 A That's where, yeah. And there was extra -- there was  
2 just stuff they didn't use stored in a room. And  
3 that's where I woke up, is in one of the VIP chairs.

4 Q Do you know how you got from here to there?

5 A No.

6 Q Do you know whether you walked there, got carried  
7 there?

8 MR. MEADORS: Your Honor, she testified she  
9 doesn't know. Objection.

10 MR. HARPOOTLIAN: Withdraw that.

11 Q Could you walk there? Do you know?

12 A No.

13 Q Do you have any idea how you got there?

14 A No. I looked at the clock. It was 10, went in the  
15 dressing room and remember nothing.

16 Q Now, you had a Bud Lite?

17 A Correct.

18 Q And you said you had three drinks. Who did you get  
19 those drinks from?

20 A Two of them I bought myself and one from a customer.  
21 It was a slow night.

22 Q When you say from a customer, did the customer hand  
23 it to you or did the bartender hand it to you?

24 A The customer paid for it. The bartender handed it to  
25 me.

- 1 Q What I'm trying to ask you is, as you got the Bud  
2 Lite and the drinks, did you see it come from the  
3 bartender to you, or did it sit on the bar for a  
4 while, or what?
- 5 A Oh, no. It was handed to me from the bartender.  
6 Customers don't usually hand you the drinks. If a  
7 customer buys you a drink, the bartender hands it to  
8 you.
- 9 Q Did you ever set it down and take your eye off any of  
10 those drinks?
- 11 A No.
- 12 Q And you quit soon after this incident?
- 13 A Correct.
- 14 Q Now, when you woke up did you immediately realize --  
15 you say you were drugged. Did you immediately  
16 realize you had been drugged?
- 17 A It didn't sink in until about an hour after I left.  
18 It didn't register what had happened, why I had  
19 passed out. I knew I hadn't been drunk. It didn't  
20 make any sense. It sort of freaked me out an hour  
21 afterwards. I drove straight to a friend's house at  
22 5:30 in the morning.
- 23 Q So it didn't immediately freak you out. About an  
24 hour later when you started thinking about it, it  
25 freaked you out?

- 1 A Mm-hmm (affirmative).
- 2 Q Is that right?
- 3 A Yes.
- 4 Q And you quit as a result of that?
- 5 A That was a factor in why I quit.
- 6 Q Now, let me ask you, there was an occasion previous  
7 to this with a girl named McClendon. Is that  
8 correct?
- 9 A Correct.
- 10 Q And tell the jurors about that?
- 11 A Me and Ms. McClendon went to work together. We went  
12 to the same school. We grew up together. We drove  
13 in my car that night from her house. And we got  
14 there the same time, around 7:00 in the evening. And  
15 this was our first drink of the night, I'm pretty  
16 sure. A customer ordered us both a drink.
- 17 Jessica, Ms. McClendon, had her drink at the  
18 bar. I was called on the stage. The bartender was  
19 told to hold my drink until I got back. When I got  
20 back the drink was on the bar and the bartender  
21 informed me she had just put it there. I drank the  
22 drink. 30 to 40 minutes later me and Jessica both  
23 started puking.
- 24 Q Puking being vomiting?
- 25 A Throwing up, yes.

1 Q Throwing up?

2 A Yes. We both started throwing up. We stayed for  
3 another 20 minutes or so and then asked to leave.  
4 Started feeling weak, like we couldn't move. Very,  
5 very weak. Ms. McClendon drove my car because I felt  
6 I could not drive. Plus, we were throwing up. And  
7 she drove half way into Blythewood which is where we  
8 were going and pulled into a gas station. She felt  
9 she could no longer drive.

10 After we pulled into the gas station we sat  
11 there for about 20 minutes and then proceeded to try  
12 and make it the rest of the way home. She was then  
13 pulled by an officer, pulled, and was informed by the  
14 officer we had been swerving and they had been  
15 following us for a while.

16 She was arrested for driving under suspension.  
17 After that they told me to go ahead and go home. I  
18 got in the driver's side and started driving. And  
19 I've grown up in Blythewood my entire life. And  
20 somehow I ended up from Blythewood to Rock Hill in a  
21 matter of time.

22 Q I mean, do you remember deciding you were going to  
23 Rock Hill?

24 A No.

25 Q Do you remember how all -- I mean, what caused you to

1 drive to Rock Hill?

2 A I made a wrong turn somewhere and I started looking  
3 for a gas station. I was almost on E and I kept  
4 driving further and further and further trying to  
5 find a gas station and couldn't see anything. From  
6 memory, I just kept going down this one road that  
7 lead all the way down to Rock Hill. And when I got  
8 to a gas station that's when I stopped and asked  
9 where I was at and was informed and then asked how to  
10 get to the interstate and then drove back.

11 Q You felt drugged during that process?

12 A Oh, I felt very out of it at that point.

13 Q What do you mean out of it?

14 A Not normal. Like I couldn't move. I was weak. And,  
15 I mean, things seemed blurry. It just wasn't right.

16 Q And did you get home? Did somebody come pick you up,  
17 or how did you get home?

18 A I drove. Once I made it to the interstate I was able  
19 to find my way.

20 Q Now, what you have told this jury and me in the  
21 courtroom here today, do you recognize Dr. Holbrook  
22 back here?

23 A Correct.

24 Q Stand up, Dr. Holbrook. Right here. Did you tell  
25 him all that, too?

- 1 A Yes.
- 2 Q You told him that several weeks ago?
- 3 A Correct.
- 4 Q Now, either one of these incidents, you believed you  
5 were drugged, correct?
- 6 A Correct.
- 7 Q Did you ever report that to anybody at Chastity's?
- 8 A Yes.
- 9 Q Who?
- 10 A The manager?
- 11 Q Who was that?
- 12 A I would say Bob.
- 13 Q Bob, the manager?
- 14 A Correct.
- 15 Q Both times?
- 16 A Correct.
- 17 Q Did you ever tell "Jon Jon"?
- 18 A I am not positive he was working that night.
- 19 Q Either night?
- 20 A I'm not positive.
- 21 Q Beg the Court's indulgence for a moment. Thank you,  
22 Ms. Cummings. Please answer any --
- 23 MR. MEADORS: Beg the Court's indulgence.
- 24 MR. HARPOOTLIAN: Just one minute.
- 25 Q You didn't volunteer to come here today?



1 A No.

2 Q Did I subpoena you?

3 A Yes.

4 Q You came here under threat of subpoena, correct?

5 A Correct.

6 Q You don't want to be here?

7 A No.

8 CROSS EXAMINATION

9 BY MR. MEADORS

10 Q Hey, Ms. Cummings. Good afternoon.

11 A Good afternoon.

12 Q I've just got a few questions for you. I'll start  
13 with the way he did, the second incident.

14 A Mm-hmm (affirmative).

15 Q And you testified just a little bit previously that  
16 it might have been the first part of January of 2004,  
17 January of 2004?

18 A Correct.

19 Q You're not real sure which month it was?

20 A I'm not positive.

21 Q So January or February of 2004, correct?

22 A Correct.

23 Q And that would be two years prior to this incident --

24 A Correct.

25 Q -- if this happened in January of 2006? You got

1           there at 10?

2    A    No. I got there at 7. I looked at the clock at 10.

3    Q    Say it one more time. I'm sorry. You got there at  
4           7?

5    A    Yes.

6    Q    You remember getting there at 7?

7    A    Correct.

8    Q    I mean, you remember when you went to Chastity's and  
9           worked that night at 7, right?

10   A    Mm-hmm (affirmative).

11   Q    Before this. You remember going there before you got  
12           this substance?

13   A    Yes.

14   Q    You remember dressing?

15   A    Yes.

16   Q    He just asked you. And you remember getting --

17           **MR. HARPOOTLIAN:** Your Honor, I can't hear Mr.  
18           Meadors again. I mean, his back is to me. He's  
19           standing up close to the witness. I can't hear him.

20   Q    Do you remember dressing?

21   A    Yes.

22   Q    Do you remember getting Bud Lites I think you said?

23   A    One. Correct. I always got one when I got to work.

24   Q    Say it slowly? I'm sorry.

25   A    I always get one before -- when I got to work. It

- 1           helped me get on stage.
- 2   Q   Released your inhibitions a little bit?
- 3   A   Correct.
- 4   Q   10:00, how many beers did you have? Just one?
- 5   A   Just one.
- 6   Q   Okay. And at 10:00 was the last thing you remember?
- 7   A   Correct.
- 8   Q   And then you woke up. And where were you at 10:00?
- 9   A   I had walked into the dressing room.
- 10   Q   You already finished dancing?
- 11   A   I'd just come off the stage actually.
- 12   Q   So had a beer, danced?
- 13   A   Mm-hmm (affirmative).
- 14   Q   Came back in this dressing area?
- 15   A   Correct.
- 16   Q   10:00?
- 17   A   Yes.
- 18   Q   And you wake up when?
- 19   A   At 5:30 in the morning.
- 20   Q   After that 10:00 which the last thing you remember,
- 21           the next thing you remember is 5:30?
- 22   A   Yes.
- 23   Q   Did you leave and come back between 10 and 5:30?
- 24   A   No.
- 25   Q   No way. Did you?